IN-DEPTH

Global Damages

UNITED KINGDOM

LEXOLOGY

Global Damages

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In-Depth: Global Damages (formerly The Global Damages Review) is an incisive survey of the codified rules and common law principles underpinning the analysis and presentation of damages in key jurisdictions worldwide. With a focus on recent legal changes and noteworthy cases, it provides an in-depth examination of the various rules that set boundaries on what is permissible damages evidence.

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United Kingdom

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Summary

Introduction

Under English law, the basic principle for a breach of contract is that a party is entitled to be put in the same position as it would have been had it not sustained the wrong.[1] As the name suggests, compensatory damages are intended to compensate a claimant for losses suffered as a result of the other party's (wrongful) conduct.

While the concept of compensatory damages is common to several jurisdictions, a distinctive feature of English law is the emphasis on mitigation of loss. The claimant is expected to take all reasonable steps to minimise its loss resulting from the defendant's breach of its obligations. Loss that could have been avoided through reasonable action or inaction by the claimant will not be recoverable. By corollary, if the injured party takes reasonable steps to minimise the loss that it incurred, the cost of these steps is recoverable and the damages owed by the defendant are reduced by the amount of the reduction of loss.[2]

There are three main categories of recoverable damages under English law:

1. expectation damages;
2. damages for the cost of non-performance; and
3. reliance or 'wasted expenditures' damages.

Other categories of damages include moral damages, punitive or exemplary damages and non-monetary remedies such as specific performance.[3] This chapter's focus, however, is on compensatory damages.

Expectation damages are awarded to put the claimant in the position that it would have been in but for the breach of contract. The ability of a claimant to recover lost profits will depend on the subject of the breach in question.[4] There are two types of 'expectation damages': normal or direct damages (also known as general damages) and consequential damages (also known as special damages).[5] Normal or general damages follow as a natural and probable consequence of the breach,[6] whereas consequential or special damages are those that do not flow directly from the breach and are particular to the injured party, and therefore can be difficult to calculate in financial terms.[7]

Damages to cure non-performance compensate the cost of curing the defective performance[8] and 'wasted expenditures' or 'reliance damages' compensate the losses or expenditures incurred by the claimant in reliance on the contract.[9]

Quantification of financial loss

Introduction

In English law, the purpose of an award of damages for breach of contract is to compensate the injured party for loss, rather than to punish the wrongdoer. The general rule is that damages should (so far as a monetary award can) place the claimant in the same position as if the contract had been performed.[10] Therefore, damages are usually measured by the difference in value between the prescribed and actual performance of the contract.[11]

To establish an entitlement to damages, the claimant is also required to show that adequate steps have been taken to mitigate the damage resulting from the defendant's actions. Failure to take mitigating steps will likely result in the claimant's entitlement to damages being reduced.

In addition to mitigating factors, damages awarded under English law are influenced by methods of calculation, application discount and interest rates and income tax or capital gains tax.

Evidence

If a claimant has suffered a loss,[12] there are four key elements that are relevant to establishing a party's entitlement to damages and determining the amount of damages to be awarded:

1. the existence of a wrong;
2. reasonable foreseeability;
3. failure to mitigate the impact of the breach; and
4. chain of causation.

The first and most basic requirement is that, to establish an entitlement to damages, one must prove the existence of a 'wrong'[13] – that is, a breach of contract. Second, a claimant must establish that the damage is not too remote and that the losses were reasonably foreseeable at the time the parties entered into the contract.[14] The test for reasonable foreseeability was first outlined in *Hadley v. Baxendale* as:

> Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.[15]

For loss to have been foreseen, it must have been contemplated by the parties and 'not unlikely'[16] at the date of entering into the contract. Loss is said to have been in contemplation of the parties (and therefore assumed)[17] if, objectively assessed, it could be said to occur in the ordinary course of events or, if subjectively assessed, there are special circumstances or knowledge attributable to the parties.[18]

Third, any damages awarded are subject to deductions for any failure to mitigate (or contributory negligence in the case of breaches of the duty of care). The defendant carries the burden of proof in relation to establishing the claimant's actions (or lack thereof) to mitigate damage as a result of the defendant's breach.[19] Provided the steps taken by the claimant to minimise the loss incurred are reasonable, the cost of such steps is recoverable even if the steps taken have increased the loss.[20] However, any profit accrued as a result of the claimant's mitigating actions is also credited to the defendant if causation is established, with the latter having the burden of proving the existence and amount of such profit.[21]

Fourth, any damages awarded are also subject to any breaks in the chain of causation.[22] Irrespective of factual causation, English law can treat some losses as not having been legally caused by the breach, on the basis that it is not fair to hold the defendant responsible for such losses because of a break in the chain or *novus actus interveniens*.[23] If the breach of contract was the effective or dominant cause of the loss, damages may be recoverable even if the breach was not the sole cause of the loss.[24] Where there are competing causes, a balance of probabilities test applies.[25]

Date of assessment

Under English law, damages are normally assessed at the date of the breach of contract, unless to do so would not be in the interests of justice.[26]

However, the date of the breach may not be appropriate as the starting point for the calculation of damages. For example, a claimant's steps to mitigate the loss may impact the evaluation of the damages. Similarly, where the claimant has not in fact suffered any loss at the date that the actual breach occurred, but only began to suffer loss subsequently, the latter date may be the more appropriate starting point for the calculation.

Financial projections

Under English law, a claimant must prove the fact of loss and the amount of the loss on the balance of probabilities, that is: 'If the evidence shows a balance in favour of it having happened, then it is proved that it did in fact happen.'[27] However, different principles apply for future or projected loss.

Where it is difficult to prove the amount of loss with certainty, the wrongdoer should not be relieved of his or her responsibility to pay.[28] Damages can be recovered for 'loss of a chance'. However, this is an inherently uncertain head of loss, and can raise difficult issues for the purposes of both causation and quantification.[29]

The doctrine of loss of chance was introduced in English law by the decision in *Chaplin v. Hicks*,[30] but has since evolved considerably. In *Mallett v. McMonagle*, Lord Diplock opined:

> Anything that is more probable than not [the court] treats as certain. But in assessing damages which depend on its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate as to what are the changes that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages it awards.[31]

Establishing a loss of chance requires that there be both a real and a substantial chance – a chance that is negligible is not likely to support recovery of projected damages.[32] This is a lower threshold than the balance of probabilities. Loss of chance damages will normally be awarded in proportion to the percentage probability of the lost chance occurring had the defendant not committed a breach.[33] Similarly, a chance to which only a speculative money value can be assigned is unlikely to succeed.[34] However, where the realisation of a chance appears to be virtually certain, the court will consider it appropriate to award what would have been awarded against the defendant originally.[35] The court recently held that where a claimant's recovery is dependent on what a third party would have done (absent the breach), then loss of chance principles must apply, rather than an all-or-nothing assessment on the balance of probabilities of what the third party would have done.[36] If causation depends at least in part on the action of one or more third parties, the claimant must demonstrate that there would have been a real or substantial chance that the third party would have acted in the respect relied upon by the claimant.[37]

Liquidated damages and penalties

Parties to a contract can agree between them the amount of damages payable for particular breaches (stipulating different sums for different breaches that reflect the amount of loss likely to be suffered – i.e., liquidated damages).[38] If a clause is found to be a penalty rather than a provision for liquidated damages, it will normally be unenforceable. Therefore, the court will have to determine whether the payment stipulated is a liquidated damage or a penalty. A penalty is a payment of money stipulated as *in terrorem* of the offending party and liquidated damages are a genuine pre-estimate of damage.[39] The Supreme Court in the 2016 conjoined appeals in *Cavendish Square Holdings v. Makdessi and ParkingEye Ltd v. Beavis* [40] revisited and reinstated the above law on penalties and liquidated damages.

The Court held that the penalties doctrine only applies to secondary obligations (i.e., obligations that arise from the breach of a primary obligation). If the obligation in question does not arise from the breach of another term, it may be considered a primary obligation in itself, which would not engage the penalties doctrine. If a term does amount to a secondary obligation, a court would then go on to examine whether it is penal. In the *Makdessi* judgment, Lords Neuberger and Sumption stated that 'the true test is whether the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation'.[41] The Court further observed that whether a clause operates as a primary or secondary obligation is a question of substance and not form.[42]

Discount rates

The calculation of compensatory damages often involves the determination of future losses or loss of chance. When calculating future losses, the application of an appropriate discount rate is required to estimate the expected rate of return had the loss not occurred.

In a consultation by the Ministry of Justice in relation to the Damages Act 1996, the overriding aim behind discount rates was described as an attempt to set the rate of return as accurately as possible so that under-compensation or over-compensation by reason of the accelerated payment of the future losses was avoided as far as possible.[43]

While this principle was articulated in the specific context of personal injury claims, the general presumption is helpful when considering the general application of discount rates to the calculation of compensatory damages. In the discounted cash flow analysis (discussed further below), if a breach of contract results in loss of profits over time, a discount rate is applied to estimate the current value of the cash flow. The discount rate in such instances would typically depend on the asset being valued. For example, while valuing equity, the relevant discount rate would be that most appropriately reflecting the cost of the equity. Discount rates are influenced by a variety of factors, including political changes, future inflation, currency devaluation and fluctuating interest rates.

Experts use a variety of discount rate calculation methods when valuing assets, including the capital asset pricing model (which considers a stock's rate of return, the market's rate of return and a risk-free rate) and the weighted average cost of capital (which is usually used to assess a company's value as a whole by estimating the weighted average of new debt and equity needed to operate the company).

Currency conversion

The currency contemplated by the contract generally determines the currency of the damages to be awarded.[44] Where the contract does not provide for a specific currency for the awarding of damages, the damages will be awarded in the currency in which the claimant suffered the loss.[45]

In *Miliangos Respondent v. George Frank (Textiles) Ltd*,[46] the House of Lords found that the English courts had the authority to give judgment in foreign currency where under a contract, payment obligations were in a foreign currency and the proper law is that of the foreign country, with payment to be made outside the United Kingdom.[47] The courts will take into account commercial considerations and give judgments in foreign currency or its sterling equivalent at the date when the court authorises the claimant to enforce the judgment.[48] This protects the claimants against any decrease in the external value of sterling in relation to their own currency, save for in instances where the value of sterling is rising.[49]

The courts have also considered the issue of whether a court has the power to make a cost award to compensate for any exchange rate losses incurred in paying costs. In *Elkamet Kunststofftechnik GmbH v. Saint-Gobain Glass France SA*,[50] the court held that 'order for costs is designed to compensate the successful party for its expenditure so that exchange rate losses can be compensated in the same way as it is entitled to be compensated by way of interest for being kept out of the money'.[51]

Interest on damages

The court has the authority to award interest on damages for any period between the date when the cause of action arose and the date of judgment.[52] If the claimant caused unwarrantable delay, interest on damages for such period will be reduced accordingly. Therefore, a damages claim (including a claim for interest) should be clearly particularised and supported by the necessary written and oral evidence required to prove the claimant's case.

The court has the discretion to award interest at different rates in respect of different periods; in contractual claims, the interest rate should reflect the current commercial rate. The Commercial Court and the Court of Appeal generally award 1 per cent above the base rate. However, if such calculation would put either party in an unfair position (e.g., smaller businesses pay higher interest rate), the court can adopt an appropriate interest rate to suit the parties.[53]

Where the damages are calculated in a foreign currency, the commercial borrowing rate in the foreign currency in the relevant country is considered as the relevant interest rate.[54]

Costs

As a general principle, legal costs incurred as a result of the breach of contract can be recovered as damages, where they were incurred in actions against third parties or previous actions against the defendant. The costs of the dispute over the breach of contract itself, although caused by the breach, usually cannot be claimed as damages as they fall within the exclusive jurisdiction of the courts' costs regime so would be recovered by way of a separate costs order.[55]

Legal costs recoverable as contract damages are assessed in the same way as an indemnity basis of costs. That is, the claimant will not normally need to show that the costs were proportionate (as it would do for costs assessed on the standard basis); however, recovery may be limited if the defendant can show that the costs are unreasonable.[56]

Tax

There are two types of taxation that may apply in relation to an award for damages: income tax and capital gains tax.

Prior to 1956, the English courts did not reduce awards of damages to account for income tax. However, in *British Transport Commission v. Gourley*,[57] the House of Lords ruled that when calculating damages for personal injuries resulting from a tort, the court will take into account the tax liability in respect of loss of earnings (both past and prospective). This rule has been modified over the years in instances where the damages sought would have been taxed.[58]

Capital gains tax differs from income tax in that it does not cause damages to be reduced. However, the impact of capital gains tax would need to be considered on a case-by-case basis where the application of capital gains tax affects the value of the asset in respect of which the claimant is said to have suffered the loss.

Expert evidence

Introduction

The Civil Procedural Rules 1998 as amended (Rules) and accompanying Practice Directions deal extensively with the appointment of experts and assessors. At a primary level, the aim of these Rules and Practice Directions is to regulate the use of expert evidence in civil proceedings, in particular to address concerns relating to independence of experts, excessive expenditure and increasing complexity.

The role of expert evidence in calculation of damages

Experts can play an important role in assessing damages, particularly where damages are influenced by a range of factors occurring both at and after the date of the breach or the application of rates of interest are in dispute.

For example, a claimant seeking expectation damages for an asset's loss of value may adduce expert evidence to calculate the loss using a discounted cashflow analysis (discussed further below). A claimant seeking reliance damages may adduce expert evidence to establish the quantum and reasonableness of its wasted expenditure.[59]

The court's role in excluding and managing expert evidence

English law provides that expert evidence must be restricted to that which is reasonably required to resolve the proceedings. The court may therefore control the evidence by giving directions about the issues on which it requires evidence, the nature of the evidence required and the way in which the evidence is to be placed before the court.[60] For instance, in *Dudding v. Royal Bank of Scotland Plc*,[61] the court held that the claimants were entitled to rely on the expert evidence concerning the sale of derivatives by the defendant banks as the evidence was reasonably required to resolve the issues.

Courts are required to seek to restrict the excessive or inappropriate use of expert evidence. Under English law, parties are required to seek the court's permission prior to filing an expert report, and their application for permission must include an estimate of the costs of the proposed expert evidence. In *British Airways plc v. Spencer*, the court held that when assessing whether to admit expert evidence, the court will consider whether the evidence is necessary (i.e., whether a decision could be made without it) or if it is of marginal relevance. The courts will strike a balance if it is of marginal relevance by taking into account the value of the claim, the effect of a judgment on the parties, how the commissioning of the evidence would be paid for and any delay likely to be entailed by the production of such evidence.[62]

Permission given by the court is limited to the expert or field specifically identified in the parties' application, and the court can limit the amount of the expert's fees and expenses that can be recovered from the other party.[63] In *Darby Properties Ltd and Darby Investments Ltd v. Lloyds Bank plc*,[64] the court held that while a judge would benefit from evidence explaining the specific financial products in question, this could be conducted by way of factual evidence and therefore expert evidence was not required.[65]

Judges are required to give reasons for preferring the evidence of one expert over another and failure to provide such reasoning may be considered valid grounds for appeal.[66]

Independence of experts

English law provides that experts must provide opinions that are independent and uninfluenced by the pressures of litigation. Experts are required to assist the court by providing objective, unbiased opinions on matters within their expertise by considering all material facts (including those that might detract from their opinions) and should avoid assuming the role of an advocate. If a question or issue falls outside their expertise or they are unable to reach a definite opinion, they should make this clear to the court and any change of view should be communicated to all the parties without any delay (and, when appropriate, to the court).[67] In the case of *Arroyo and others v. Equion Energia Ltd (formerly known as BP Exploration Co (Colombia) Ltd)*,[68] the court held that the 'deliberate and serious breach' of the expert was highly relevant in the court's assessment of order of costs paid on an indemnity basis. Similarly, in the case of *Igloo Regeneration (General Partner) Ltd v. Powell Williams Partnership*,[69] a partial indemnity costs award was made against the claimant related to the conduct of its inexperienced expert engineer who made concessions in his joint statement, which undermined the claimant's case on liability.

The courts have reiterated the importance of experts' independence and impartiality in recent cases, including *Watts v. The Secretary of the State for Health* [70] and *Bank of Ireland v. Watts Group*.[71] In the former, the court went so far as to criticise the expert for choosing to 'ignore or play down matters that were inconvenient to her assessment of the case'.[72] In a recent judgment where the impartiality of experts was criticised, the court emphasised the need for all experts to read Practice Direction 35 to CPR Part 35.[73] The judge also re-stated the principles laid down in *The Ikarian Reefer* case.[74] Such principles include that issues of fact in a case that are relevant to the expert must be determined by the court and that experts of like discipline should have access to exactly the same materials.[75]

Novel science and methods

Expert evidence is typically helpful in the calculation of damages under two methods:

1. the discounted cash flow method; and
2. the comparable transactions and comparable trading multiples methods.

The discounted cash flow method projects future cash flows and uses a discount rate to estimate the current value of the projected cash flows. This method is best used in instances where the parties are trying to calculate the earning potential of an asset in the future and require expert evidence in the accurate forecasting of such cash flows. Among other things, expert evidence is used to determine the time period in the future that should be used to assess the cash flows, and the appropriate discount rates to be applied in the calculation of the asset value. As explained above, discount rates such as the capital asset pricing model and weighted average cost of capital are two such methods.

The comparable transactions or comparable trading multiples methods primarily use publicly reported transactions and share prices to arrive at an estimated value of the asset in question, provided that sufficiently comparable transactions and prices exist in the market. Expert evidence can be crucial in determining the comparability of prices in the public domain, and the relevance of the proposed comparisons.

Year in review

EE Ltd v. Virgin Mobile Telecoms Ltd [2025] EWCA Civ 70

Facts of the case

The telecommunications supply agreement contained an exclusion clause providing that 'neither party shall have liability to the other in respect of anticipated profits'. After Virgin Mobile Telecoms Ltd (VM) breached the exclusivity obligations under the agreement, EE brought a claim for the revenue they would have received under the agreement for services customers would have consumed had they remained on the network, rather than being migrated to another network. VM argued that the damages claimed amounted to anticipated profits and the judge agreed and gave a summary judgement dismissing the claim. EE appealed.

Decision

The majority dismissed the appeal – the legal basis for the claim was lost profits and therefore fell within the ambit of the exclusion clause. Previous cases did not establish an overarching principle of law that limits the exclusion of liability for loss of anticipated profits to losses outside the contract rather than sums payable if it were performed. Those cases concerned different clauses used in different commercial contexts. Phillips J dissented, as he did not think the parties would have intended than VM could breach the exclusivity agreement without being liable to EE for the resulting loss of revenue.

Significance of the decision

Exclusion of liability will be interpreted using ordinary language and close attention is needed for clear drafting. The meaning of phrases such as 'loss of profit' or 'anticipated profit' do not have an overarching definition, and depend on the wording of the contract and commercial factual context – referring to previous cases will be of little assistance. The dissenting opinion illustrates that such issues are not universally agreed by senior judges.

Barrowfen Properties Ltd v. Patel [2025] EWCA Civ 39

Facts of the case

Barrowfen's property development was disrupted when its directors breached their fiduciary duties. This breach caused Barrowfen to pursue a different but profitable property development. Barrowfen brought a damages claim for the loss of chance to complete the original development and earn rental profits from it. The defendants argued that Barrowfen gained an uplift in capital value from the alternate development, which should be deducted from the damages claim.

Decision

The court restated the law regarding compensation, mitigation and accounting benefits: that the key question is one of causation, that is, whether the benefits were caused by the breach or the actions reasonably taken to mitigate the losses caused by the breach. Applying the loss of chance percentages, the court followed *Hartle v. Laceys* and held that the actual sale price obtained for the property should be deducted from the potential higher sale price before applying the relevant percentage to reflect the chance of achieving the higher price, reflecting that the claimant had lost a chance of achieving the higher price but did not lose the property itself.

Significance of the decision

The decision provided a useful restatement of the law on benefits and mitigation, and an application of the loss of chance percentages.

Sharp Corp Ltd v. Viterra BV [2024] UKSC 14

Facts of the case

This case concerned the Grain and Free Trade Association (GAFTA) Contract. The buyers were required to make payment prior to their arrival at Mundra but failed to do so. The seller declared the buyers to be in default, terminated the contracts and resold the goods, which had in the interim substantially increased in value in the Indian domestic market because of an imposition of import tariffs. The sellers then initiated arbitration proceedings in London, claiming damages under clause 25(c) of GAFTA 24 whereby damages were based on the difference between the contract price of the goods and either the 'default price', namely the sale or purchase price of the replacement contract, or 'the actual or estimated value of the goods, on the date of default'. Because the sellers' resale had been to a related company the default price could not be used because it was not an arms-length transaction, and there having been no evidence before the board of an available market for a substitute transaction on C&FFO Mundra terms, it was necessary for the tribunal to estimate the value under clause 25(c). The buyers argued that the appropriate figure was the market value of the customs-cleared goods left on the seller's hands ex-warehouse at Mundra, while the seller argued that it was the cost to a theoretical buyer of buying new goods FOB Vancouver and shipping them to Mundra.

Decision

The Supreme Court affirmed the principle of mitigation is a 'fundamental principle of the law of damages' alongside the compensatory principle. It held that the GAFTA default clause should reflect both the compensatory and mitigation principles, just like the approach to damages for non-delivery and non-acceptance at common law and under the Sale of Goods Act 1979. The Supreme Court further held that:

1. where it was the buyer in default and the goods were left in the seller's hands with no available market for a substitute transaction on the same terms as the contract, the mitigation principle was of particular relevance and required the question to be asked as to what would be reasonable steps to be taken to sell those goods, which necessarily meant taking into account where those goods were situated at that time and how they were circumstanced; and
2. in circumstances where the sellers had been left on the date of default with goods that had been landed, customs cleared and stored in a warehouse in Mundra, where their value had significantly increased because of the imposition of the import tariffs, the obvious market in which to sell the goods, and in which it would

clearly be reasonable to do so consistently with the principle of mitigation, was the ex-warehouse Mundra market.

Significance of the decision

This decision reaffirms the well-established principle under English law that damages are meant to compensate for the losses suffered by a claimant as a result of the other party's breach. More importantly, the decision emphasises the duty of the claimant to take reasonable steps to minimise its loss. In this regard, any profit received by the claimant's mitigation actions would be taken into account to reduce the damages payable to the claimant.

Orchard Plaza Management Co Ltd v. Balfour Beatty Regional Construction Ltd [2022] EWHC 1490 (TCC)

Facts of the case

Orchard Plaza (the management company) managed a block of residential apartments that had been converted from an office block by the previous freeholder. The conversion works were carried out by Balfour Beatty (the contractor), which granted the development's funder an assignable collateral warranty with respect to the works. The rights under this collateral warranty were subsequently assigned to the freeholder, which in turn assigned them to the management company.

In 2020, the local council issued an improvement notice to the management company requiring it to replace defective cladding on the apartments. The management company sought to recover the costs of these remedial works from the contractor through the collateral warranty. The contractor argued that the losses were too remote on the basis that the collateral warranty was originally entered into with a funder and therefore did not contemplate the type of loss now claimed by the management company. The management company applied to strike out this part of the contractor's defence.

Decision

The court granted the management company's application to strike out the contractor's defence that the losses were too remote. While the mere fact that the benefit of a contract might be assigned to a third party was not sufficient to bring within a defendant's contemplation any kind of loss that might be sustained by a potential assignee, this was not the position in this case.

The funder was expressly permitted to assign the benefit of the collateral warranty and the contractor knew that losses might be claimed for by such an assignee. The court found that it was reasonably foreseeable that the funder might take possession of the property and sell the site to another landlord with the benefit of the collateral warranty and that landlord might carry out remedial works. It was equally foreseeable that, upon repayment, the funder would assign the benefit of the collateral warranty to the borrower who might in turn carry out remedial works or pass the benefit to a person with an interest in the property required to carry out remedial works. Therefore, loss in the form of repair costs was within the reasonable contemplation of the contractor as being a serious possibility at the time the collateral warranty was concluded.

Significance of the decision

This decision demonstrates the courts' practical approach to the test for remoteness and highlights their reluctance to allow potential defendants to escape liability simply because the benefit of a contract has been assigned. As shown, the courts will examine the particular facts of the case to determine whether the loss was within the reasonable contemplation of the defendant as being a serious possibility.

Ahuja Investments Limited v. Victorygame Limited [2021] EWHC 2382 (Ch)

Facts of the case

Ahuja Investments (the buyer) purchased a shopping centre from Victorygame (the seller) under a sale agreement. The seller loaned the buyer part of the purchase price under a separate loan agreement. The loan agreement required the buyer to make repayments in defined tranches before a redemption date at an interest rate of 3 per cent per month. It set a default rate of 12 per cent per month for any amounts outstanding after the redemption date.

The buyer commenced proceedings against the seller under the sale agreement after certain of the seller's representations turned out to be false. The seller advanced counterclaims against the buyer, including a claim for repayments outstanding under the loan agreement. The redemption date having expired, the seller invoked the 12 per cent default rate. The buyer argued that this default provision was an unenforceable penalty clause.

Decision

The court agreed with the buyer that the default provision was a penalty clause, and thus refused to award interest on the outstanding repayments at the 12 per cent rate.[76] This was notwithstanding the court's finding that the loan agreement was an arm's-length transaction between parties of equal bargaining power and advised by lawyers.

The court rejected the seller's contention that the drafting of the default provision was such that it must be a primary obligation. HHJ Hodge QC made clear this was 'a question of substance and not of form'. He distinguished the ordinary interest payments due under the loan (a primary obligation) from the default provision (triggered by a breach of this primary obligation, so a secondary obligation).

The default provision being a secondary obligation, the court moved on to consider whether it was penal. It accepted the seller's position that a defaulting borrow presented a higher credit risk, and thus 'a lender has a legitimate commercial interest in applying a higher rate of interest'. However, the 12 per cent rate in this case represented a 400 per cent increase in the rate that applied prior to a default, which the court considered to be 'so obviously extravagant, exorbitant and oppressive' as to be unenforceable. HHJ Hodge QC explained that as a 'rule of thumb' he would accept an increase of up to 200 per cent without supporting evidence, but that a lender would need to adduce evidence to justify any greater increase (which the seller had failed to do in this case).

Significance of the decision

The decision demonstrates the application of the recent leading penalty cases to the question of default interest rates under loan arrangements. It provides a clear rule of thumb with a specific threshold (200 per cent) above which a default rate risks being struck down as an unenforceable penalty.

Soteria Insurance Limited v. IBM United Kingdom Limited [2022] EWCA Civ 440

Facts of the case

Soteria Insurance (the buyer) entered into an agreement with IBM to procure a new IT system from IBM. The project was delayed, and when IBM requested a milestone payment, the buyer refused to pay it. IBM then terminated the agreement and the IT system was never delivered to the buyer. The buyer brought a claim against IBM for wrongful repudiation of the agreement and sought damages for its wasted expenditure (among other things).

At first instance, the court accepted that IBM had wrongfully repudiated the agreement, but ruled that an exclusion clause (which excluded liability for losses including lost profits, revenues and savings) prevented the buyer from recovering its wasted expenditure. The buyer appealed.

Decision

The Court of Appeal allowed the appeal. It overturned the decision to construe the exclusion clause as excluding wasted expenditure. This type of loss was not expressly referred to in the clause and 'on the natural and ordinary meaning of the words, was not included in "loss of profit, revenue [or] savings"'.

The Court of Appeal observed that loss of profit, revenue and savings are similar types of loss – they all require a hypothetical counterfactual to prove, and thus are 'notoriously open-ended' and 'difficult to estimate in advance'. Wasted expenditure, however, is 'an entirely different animal' that can be easily ascertained. The Court of Appeal saw commercial logic in construing the exclusion clause as excluding liability for the former but not for the latter. It rejected the lower court's reasoning that wasted expenditure would have been recouped from profits (or else it should not be recoverable), such that it is simply part of the lost profits equation. Connected as they may be, the Court of Appeal held that they are different types of loss for the purpose of construing an exclusion clause.

The decision emphasised the need for clear language: 'The more valuable the right, the clearer the language of any exclusion clause will need to be.' The Court considered that wasted expenditure is an obvious type of loss that the parties could have referred to the exclusion clause, but they did not: ‘Claims for “wasted expenditure” were not excluded because those words were simply not there.’

Significance of the decision

The decision underlines the value of specificity in an exclusion clause. Wasted expenditure is a distinct type of loss. It is unlikely to be treated as a subset of lost profits. If parties wish to exclude it, they should do so expressly rather than relying on other general exclusions.

K Line Pte v. Priminds Shipping (HK) Co Ltd [2021] EWCA Civ 1712 (The Eternal Bliss)

Facts of the case

K-Line (owners) and Priminds (charterer) entered into a charterparty for the Eternal Bliss for a shipment of soybeans from Brazil to China. At the discharge port, there was a 31-day delay as a result of congestion, and a lack of storage space for the cargo. During this period of delay, the cargo deteriorated, as a result of which owners faced a claim by the cargo owners and their insurers, which they settled for US$1.1 million, and then sought to recover this cost from the charterer in arbitration proceedings. The only breach that the owners alleged against the charterer was the failure to discharge the cargo within the time allowed. The owners sought to recover the US$1.1 million from the charterer as damages or in the form of an indemnity, in addition to the demurrage due. The first instance court ruled in the owners’ favour, allowing them to recover the additional damages. The charterer appealed.

Decision

The issue for the Court of Appeal to decide was whether the owners could recover damages (for the cargo claim, which they settled for US$1.1 million) in addition to demurrage, absent separate breach claims.

The appeal was allowed. The Court of Appeal ruled that the demurrage was a form of liquidated damages for a specific breach, and thus the charterer could not be liable for additional (unliquidated) damages for the same breach. Demurrage was the exclusive remedy for this breach. Recovery of additional, unliquidated damages required the owner to prove a distinct and separate breach of the charterparty by the charterer. The Court of Appeal considered that it would be ‘unusual and surprising’ if a liquidated damages clause covered only some of the losses arising from a specified breach without clear language for such a limit.

Where an owner suffers a different type of loss (i.e., a loss beyond the loss of use of the ship to earn freight by further employment) arising from a failure to load or discharge within the laytime, the owner must demonstrate a separate breach in order to recover damages in addition to demurrage.

Significance of the decision

The decision confirms that where, in consequence of a charterer's failure to load or discharge cargo within its allowed time, an owner has suffered a further type of loss in addition to its loss of use of the vessel, it must prove breach of a separate term of the charterparty to recover that loss by way of damages. Although the decision specifically focused on the parameters of a demurrage clause, there may also be general applicability to the Court of Appeal's finding that a liquidated damages clause should be treated as liquidating all of the damage for a particular breach (such that it is an exclusive remedy for that breach), unless the contract expresses otherwise.

Triple Point Technology Inc v. PTT Public Co Ltd [2021] UKSC 29

Facts of the case

In a contract for commodities trading software, an issue of principle arose as to how to apply a clause imposing liquidated damages for delay in circumstances where the contractor never achieved completion.

Triple Point Technology Inc (Triple Point) designs, develops and implements software for use in commodities trading. PTT Public Co Ltd (PTT) undertakes commodities trading. Both companies entered into a contract for commodity trading and a risk management system for the provision of relevant commodities software within 460 calendar days. Under Article 5 of the contract, Triple Point would pay damages for delay at a rate of 0.1 per cent of undelivered work per day. The contract provided for payment in three phases, and Triple Point completed Phase I of the contract 149 days late. When Triple Point requested further payment, PTT refused because Triple Point had not completed the next phase of work. Unwilling to continue work until further payment, Triple Point suspended work and left the site. PTT then terminated the contract for wrongful suspension of work. Triple Point commenced an action to recover the outstanding sums claimed in its invoices. In response, PTT claimed damages for delay and damages due upon termination of the contract.

At first instance, the court dismissed Triple Point's claims and awarded PTT liquidated damages for the delay in completing Phase I of the work and on all other phases until the termination of the contract pursuant to Article 5.3 of the contract.

On appeal, the Court of Appeal found that, in situations where a contract provides for liquidated damages for delay, and the contractor fails to complete the task resulting in a second contractor stepping in, there was no strict rule that a provision for liquidated damages must be used as a formula to compensate the defendant, and that the court's approach will depend on the wording in the contract. On the basis that the clause focused specifically on delay between the contractual completion date and the date when the work was actually completed, the Court found that it had no application in a situation where the contractor never handed over completed work to the employer and that, in such circumstances, the remedy would be general damages for delay. PTT was therefore only entitled to liquidated damages according to Article 5.3 of the contract for the 149 days' delay to completion of Phase I by Triple Point but not the delay in completion of the remaining two phases. For these two phases, PTT could claim only damages in accordance with ordinary principles. PTT has appealed to the Supreme Court.

Decision

Allowing the appeal unanimously, the Supreme Court held that the Court of Appeal had erred in concluding that the liquidated damages provision for delayed performance did not entitle the employer under the contract to liquidated damages where the contractor never completed the work, as a result reverting to the decision at first instance.

It held that the liquidated damages clause applied up to the date of termination and that general damages were recoverable from then onwards.

Significance of the decision

This decision clarifies the interpretation of contractual provisions for liquidated damages. The Supreme Court's decision signals a return to what had previously been understood to be the orthodox approach prior to the Court of Appeal's judgment that, subject to clear, express terms, liquidated damages cease to accrue on termination but rights accrued as at the date of termination survive.

Furthermore, the Supreme Court clarified that the *British Glanzstoff* decision,[77] to which the Court of Appeal had given significant importance, was confined to its specific facts and did not create a special rule applying to liquidated damages clauses.

The Supreme Court's decision in this *Triple Point* case was recently followed by the TCC in *Struthers v. Davies*,[78] in which the court upheld a claim for liquidated damages that had accrued up to the date of termination of the underlying building contract.

Outlook and conclusions

Under English law, compensatory damages aim to restore the claimant to the position they would have been in but for the breach of contract, emphasising the need for claimants to mitigate their losses. The determination of damages involves proving the existence of a breach, that the losses were reasonably foreseeable, that reasonable steps were taken to mitigate the losses and that there is a direct causal link between the breach and the loss.

Recent case law, such as *Makdessi and EE Ltd v. Virgin Mobile Telecoms Ltd*, highlights the importance of clear contract drafting and underscores the principles of mitigation and reasonable foreseeability. Crucially, the courts' approach involves a detailed, fact-specific analysis to ensure that the broad principles are applied fairly and justly, reflecting the unique circumstances of each case. As the judiciary continues to refine these principles, this nuanced application ensures outcomes that are tailored to the individual facts of each dispute while adhering to established legal standards, and there is no sign that trajectory will alter.

Endnotes

1 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 2-003, citing *Livingstone v. Rawyards Coal Co* [1880] 5 App Cas 25 at 39. ^ Back to section

2 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 9-002–9-006. ^ Back to section

3 J Chitty, H Beale, *Chitty on Contracts* (34th ed Sweet & Maxwell, London 2021), Chapter 29, Sections 29-022–29-033, 29-047–29-049, and Chapter 30, 30-001. ^ Back to section

4 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Sections 4-0018–19. See also the series of cases concerned with breach of restrictive covenants and damages to account for profits, e.g., *Wrotham Park Estate Co v. Parkside Homes Ltd* [1974] 1 WLR 798, giving rise to Wrotham Park damages. ^ Back to section

5 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Sections 3-001–3-016. ^ Back to section

6 For the position under English law, see *Halsbury's Laws of England*, Volume 29, Section 317, citing *Ratcliff v. Evans* [1892] 2 QB 524 at 528, CA, per Bowen LJ. ^ Back to section

7 For the position under English law, see *Halsbury's Laws of England*, Volume 29, Section 317 and H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 3-009. ^ Back to section

8 J Chitty, H Beale, *Chitty on Contracts* (34th ed Sweet & Maxwell, London 2021), Sections 29-043–26-045. ^ Back to section

9 *Halsbury's Laws of England*, Volume 29, Section 503. ^ Back to section

10 *Robinson v. Harman* (1848) 1 Ex 850. ^ Back to section

11 J Chitty, H Beale, *Chitty on Contracts* (34th ed Sweet & Maxwell, London 2021), Section 29-001. See, e.g., *Durham Tees Valley Airport Ltd v. Bmibaby Ltd* [2010] EWCA Civ 485. ^ Back to section

12 Where a loss has been suffered by another party – for example, a party further up a chain of sub-contracts – this can give rise to the 'black hole' problem, where the damages risk being unrecoverable because of the parties' chosen procurement structure. The English courts have indicated a willingness to find a solution in such circumstances and may permit the claimant to recover damages on behalf of a non-party, where appropriate (see, e.g., *McAlpine v. Panatown* [2001] 1 AC 518), but it may depend on the particular facts of the case (see *BV Nederlandse Industrie Van Eiprodukten v. Rembrandt Enterprises* [2019] EWCA Civ 596). See also *Palmali Shipping SA v. Lit Asco SA* [2020] EWHC 2581 (Comm). ^ Back to section

13 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 1-004. ^ Back to section

14 Wagon Mound (No. 1) [1961] AC 388; J Chitty, H Beale, *Chitty on Contracts* (34th ed, Sweet & Maxwell, London 2021), Section 29-126. The notion of foreseeability is further analysed below. ^ Back to section

15 *Hadley v. Baxendale* (1854) 9 Exch 341. For a recent case summarising the courts' approach to remoteness of damages, see *Att-Gen of the Virgin Islands v. Global Water Associates Ltd* [2020] UKPC 18. These principles were recently applied in *Barkby Real Estate Developments Ltd v. Cornerstone Telecommunications Infrastructure Ltd* [2022] EWHC 1892 (TCC), in which the court held that losses by way of additional project finance and management costs due to delay were not too remote as the defendant would or should have recognised that these additional costs were a serious possibility. ^ Back to section

16 *Hadley v. Baxendale* (1854) 9 Exch 341.; *H Parsons (Livestock) Ltd v. Uttley Ingham & Co Ltd* [1977] EWCA Civ 13. ^ Back to section

17 *Transfield Shipping Inc v. Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48; *Supershield Ltd v. Siemens Building Technologies FE Ltd* [2010] EWCA Civ 7; *Rubenstein v. HSBC Bank plc* [2012] EWCA Civ 1184. ^ Back to section

18 *Victoria Laundry (Windsor) Ltd v. Newman Industries Ltd* [1949] 2 KB 528. ^ Back to section

19 *Lombard North Central plc v. Automobile World (UK) Ltd* [2010] EWCA Civ 20. A claimant should nevertheless consider whether to take steps to show how it has mitigated its loss, as failure to do so can be risky. *Bulkhaul Ltd v. Rhodia Organique Fine Ltd* [2008] EWCA Civ 1452. ^ Back to section

20 *Lagden v. O'Connor* [2004] 1 AC 1067, per Lord Scott, at paragraph 78. ^ Back to section

21 *Thai Airways International Public Co Ltd v. KI Holdings Co Ltd (formerly Koito Industries Ltd)* [2015] EWHC 1250 (Comm). See also *Globalia Business Travel SAU (formerly TravelPlan SAU) of Spain v. Fulton Shipping Inc of Panama* [2017] UKSC 43, in which the Supreme Court confirmed that the issue turns on causation: where the claimant has obtained a benefit following a breach of contract and this benefit was caused either by the breach or by the claimant's act of mitigation, the recoverable loss will be reduced by the benefit. See also *Assetco Plc v. Grant Thornton UK LLP* [2020] EWCA Civ 1151. These principles were also recently considered in *Richards v. Speechly Bircham LLP* [2022] EWHC 1512 (Comm). ^ Back to section

22 C T Salomon, 'Chapter 10: Damages in International Arbitration', in J Fellas and J H Carter (eds), *International Commercial Arbitration in New York* (2nd ed Oxford University Press, Oxford 2016), p 354. ^ Back to section

23 See, e.g., *Corr v. IBC Vehicles Ltd* [2008] 1 AC 884, per Lord Bingham at paragraph 15: 'The rationale of the principle that a *novus actus interveniens* breaks the chain of causation is fairness.' ^ Back to section

24 *Galoo v. Bright Grahame Murray* [1994] 1 WLR 1360, at 1374–1375. See also J Chitty, H Beale, *Chitty on Contracts* (34th ed, Sweet & Maxwell, London 2021), Section 29-083: 'If a breach of contract is one of two causes, both co-operating and both of equal efficacy in causing loss to the claimant . . . the contract-breaker is liable so long as his breach was "an" effective cause of his loss: the court need not choose which cause was the more effective.' ^ Back to section

25 *Nulty and others v. Milton Keynes Borough Council* [2013] EWCA Civ 15, at paragraph 35: '[T]he court must be satisfied on rational and objective grounds that the case for believing that the suggested means of causation occurred is stronger than the case for not so believing.' In other words, even if a different event is considered and determined not to be causative, the claimant must still discharge its burden to prove (on the balance of probabilities) that the remaining event was causative. ^ Back to section

26 *Johnson v. Agnew* [1980] AC 367, per Lord Wilberforce at 401. ^ Back to section

27 *Davies v. Taylor* [1974] AC 207 at 213. ^ Back to section

28 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Sections 10-001–10-002. ^ Back to section

29 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Sections 10-005–10-006. ^ Back to section

30 [1911] 2 KB 786. ^ Back to section

31 *Mallett v. McMonagle* [1970] AC 166 at 176. ^ Back to section

32 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 10-052. For recent decisions discussing loss of chance issues, see *Assetco Plc v. Grant Thornton UK LLP* [2020] EWCA Civ 1151, *PCP Capital Partners LLP v. Barclays Bank Plc* [2021] EWHC 307 (Comm) and *Bugsby Property LLC v. LGIM Commercial Lending Ltd* [2022] EWHC 2001 (Comm). ^ Back to section

33 *McGill v. Sports and Entertainment Media Group* [2016] EWCA Civ 1063 at 60. ^ Back to section

34 *Halifax Building Society v. Urquart-Dykes and Lord* [1997] RPC 55 at 87, line 18. ^ Back to section

35 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 10-098, referring to inter alia, *McGrath v. Kiely and Powell* [1965] IR 497 and *White v. Jones* [1995] 2 AC 207 CA. ^ Back to section

36 This is the case even where the third party has given evidence, see *Moda International Brands Limited v. Gateley LLP* (later known as Gateley Heritage LLP), Gateley Plc [2019] EWHC 1326 (QB). ^ Back to section

37 *Assetco Plc v. Grant Thornton UK LLP* [2020] EWCA Civ 1151. ^ Back to section

38 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 16-001. ^ Back to section

39 *Dunlop Pneumatic Tyre Co Ltd v. New Garage and Motor Co Ltd* [1915] AC 79. ^ Back to section

40 [2015] UKSC 67. ^ Back to section

41 [2015] UKSC 67. ^ Back to section

42 *Triple Point Technology, Inc v. PTT Public Company Limited* [2021] UKSC 29. ^ Back to section

43 Ministry of Justice Consultation Paper CP 3/2013, 'Damages Act 1996: The Discount Rate', at p. 4. ^ Back to section

44 *Federal Commerce and Navigation Co Ltd v. Tradax Export SA* [1977] 1 QB 324; J Chitty, H Beale, *Chitty on Contracts* (34th ed , Sweet & Maxwell, London 2021), Section 33-305. ^ Back to section

45 *Attorney General of Ghana v. Texaco Overseas Tankships Ltd (The Texaco Melbourne)* [1994] 1 Lloyd's Rep 473 (HL). See also, *Milan Nigeria Ltd v. Angeliki B Maritime Company* [2011] EWHC 892 (Comm) paragraph 57. ^ Back to section

46 [1975] 3 WLR 758. ^ Back to section

47 *Miliangos v. George Frank (Textiles)* [1975] 3 WLR 758; *Helmsing Schiffahrts v. Malta Drydocks Corp* [1977] 2 Lloyd's Rep 444, 449. ^ Back to section

48 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 20-029. ^ Back to section

49 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 20-053. ^ Back to section

50 [2016] EWHC 3421 (Pat). ^ Back to section

51 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 20-054. ^ Back to section

52 Section 35A of the Senior Courts Act 1981. ^ Back to section

53 J Chitty, H Beale, *Chitty on Contracts* (34th ed, Sweet & Maxwell, London 2021), Section 29-286. ^ Back to section

54 *Miliangos v. George Frank (Textiles) (No. 2)* [1977] QB 489, 497; *Helmsing Schiffahrts v. Malta Drydocks Corp* [1977] 2 Lloyd's Rep 444, 449. ^ Back to section

55 *Hutchinson v. Harris* [1978] 10 BLR 19. ^ Back to section

56 *National Westminster Bank plc v. Rabobank Nederland* [2007] EWHC 1742 (Comm). See also *Hawksford Trustees Jersey Ltd v. Halliwells LLP (In liquidation)* [2015] EWHC 2996 (Ch). ^ Back to section

57 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 18-002, citing *British Transport Commission v. Gourley* [1956] AC 185. ^ Back to section

58 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 18-005. See, e.g., *BskyB Ltd v. HP Enterprise Services UK Ltd* [2010] EWHC 862 (TCC) at [77] and *Taylor v. O'Connor* [1971] AC 115. ^ Back to section

59 H McGregor, *McGregor on Damages* (21st ed incorporating First Supplement, Sweet & Maxwell, London 2020 (updated 2021)), Section 10-039; *Vasiliou v. Hajigeorgiou* [2010] EWCA Civ 1475 CA, paragraph 15. See, e.g., in *Vasiliou v. Hajigeorgiou*, the trial judge found the claimant to be an accomplished restaurateur whose restaurant would have been successful and assessed his loss of profits on that basis. The expected turnover, together with gross and net profit, was calculated with expert evidence and the ultimate decision not to apply a discount was upheld by the Court of Appeal. ^ Back to section

60 CPR 35.1 and White Book commentary paragraph 35.1.1 at p. 1231. ^ Back to section

61 [2017] EWHC 2207 (Ch). ^ Back to section

62 [2015] EWHC 2477 (Ch). See *Declan Colgan Music Ltd v. UMG Recordings Inc* [2023] EWHC 4 (Ch) for a recent example of how the courts carry out this balancing exercise.- ^ Back to section

63 CPR 35.4(4). ^ Back to section

64 [2016] EWHC 2494 (Ch), See also, *Barings Plc (In Liquidation) v. Coopers & Lybrand (No. 2)* [2001] Lloyd's Rep Bank 85. ^ Back to section

65 See also White Book commentary paragraph 35.1.8 at p. 1232. ^ Back to section

66 *Flannery and another v. Halifax Estate Agencies Ltd* [2000] 1 WLR 377. ^ Back to section

67 CPR 35.3, and White Book commentary paragraphs 35.3.1 and 35.3.2 at p. 1234. ^ Back to section

68 [2016] EWHC 3348 (TCC). ^ Back to section

69 [2013] EWHC 1718 (TCC). ^ Back to section

70 [2016] EWHC 2835 (QB). ^ Back to section

71 [2017] EWHC 1667 (TCC). ^ Back to section

72 *Watts v. The Secretary of State for Health* [2016] EWHC 2835 (QB) at paragraph 64. ^ Back to section

73 *Imperial Chemical Industries Ltd v. Merit Merrell Technology Ltd (No. 2 Quantum)* [2018] EWHC. ^ Back to section

74 *National Justice Compania Naviera SA v. Prudential Assurance Co Ltd (The Ikarian Reefer) (No. 2) Ikarian Reefer, The (No. 2)* [2000] 1 WLR 603. ^ Back to section

75 *Imperial Chemical Industries Ltd v. Merit. Merrell Technology Ltd (No. 2 Quantum)* [2018] EWHC. ^ Back to section

76 It applied the ordinary 3 per cent rate instead. ^ Back to section

77 [1913] AC 143. ^ Back to section

78 [2022] EWHC 333 (TCC). ^ Back to section

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