

CONTRACT LAW

The limits of full compensation: a comparative analysis of contractual damages in English and Chinese law

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Introduction

The principle of full compensation is a basic starting point of contractual damages in both English and Chinese law. Under this principle, the innocent party should, as far as money can achieve it, be put in the position they would have been if the contract had been properly performed.¹ However, although both systems share this general principle, they do not apply it in precisely the same manner. In practice, full compensation is limited by other rules, such as causation, remoteness, foreseeability, and the control of agreed damages. Recent developments in both systems show this clearly. In English law, cases concerning commercial damages show that recovery is not decided only by asking what loss was foreseeable. The court may also consider whether the loss falls within the type of risk that the defendant can fairly be taken to have accepted under the contract.² In Chinese law, Article 584 of the Civil Code also adopts a foreseeability limitation, but recent guidance from the Supreme People's Court shows that this rule must be applied in context, taking account of the nature of the parties, the type of transaction, and commercial practice.³ Therefore, neither system allows the full compensation principle to operate without sophisticated limitation. If the principle were applied too broadly, it could, in some commercial situations, impose liability on the breaching party for losses that were beyond the risk they could reasonably have expected when entering into the contract.

This comparative issue has not been fully addressed in the existing literature. Much scholarship on English and Chinese contract law discusses each system within its own legal tradition.⁴ Comparative studies also tend either to discuss the compensation principle in general terms, or to focus on individual doctrines without connecting them to the wider framework of contractual damages. This article aims to address that gap by comparing how English and Chinese law apply the principle of full compensation through several important mechanisms, including causation, remoteness, liquidated damages, and non-pecuniary loss. The central question is whether the shared principle of full compensation leads to similar outcomes, or whether the different legal mechanisms used in each system produce materially different results for the parties.

The article argues that full compensation operates only as a starting point, not as a complete answer. Both systems qualify it and apply it through mechanisms that are structurally different. These differences matter in commercial practice, especially in cross-border transactions, because the choice between English law and Chinese law may affect the scope and the amount of recoverable damages. The article is structured as follows. It introduces the shared principle of full compensation in English and Chinese law; it then examines the main mechanisms that limit or shape recovery for pecuniary loss – namely causation, remoteness and liquidated damages. Finally, it considers non-pecuniary loss, where the differences between the two systems are especially clear.

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¹ Its authority in English law derives from *Robinson v Harman* (1848) 1 Ex 850, and the equivalent in Chinese law is codified in Article 584 of the Civil Code of the People's Republic of China 2020.

² *Prakash Industries Ltd v Peter Beck Und Partner* [2022] EWHC 754 (Comm), [2022] 3 WLUK 528.

³ Civil Code of the People's Republic of China 2020, art 584. See also Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China 2022, art 63.

⁴ Larry A. DiMatteo and Lei Chen, *Chinese Contract Law: Civil and Common Law Perspectives* (Cambridge University Press 2018).

The shared principle: full compensation

English Law

English law on contractual damages starts with the rule in *Robinson v Harman*.⁵ Parke B stated that, where a party suffers loss because of breach of contract, the claimant should be put in the same position as if the contract had been performed. This rule is the basis of the expectation interest. The expectation interest includes two different kinds of loss.⁶ One is the loss of bargain. This is a forward-looking measure since it looks at the value of the performance which the claimant was promised but did not receive. For example, it may include the profit that the contract would have produced. Another kind is consequential loss, which refers to the concrete further loss caused by the breach such as damage to property, or other financial loss resulting from the breach. In some cases, these losses may be recovered together, if this does not lead to double recovery. The basic point is that the claimant should be compensated for the benefit they lost and for the real harm caused by the breach.

Distinct from both is the reliance measure. English law also recognises reliance damages, which compensate for expenditure wasted in preparing for performance. They are usually claimed where it is difficult to prove the profits that would have been made (expectation loss) under the contract.⁷ However, reliance damages are not a separate way to obtain extra compensation. Therefore, the claimant cannot normally recover both expectation loss and reliance loss, as it would lead to double recovery. This is shown in *Cullinane v British Rema Manufacturing Co Ltd*,⁸ where the claimant bought a clay-pulverising machine which was said to process six tons of clay per hour, but it in fact processed only two. He claimed both the cost of the machine and the profits he would have made if the machine had worked as promised. The Court of Appeal did not allow both claims because they are alternative. To award both the capital cost and the lost profits would compensate the same loss twice. A similar approach was taken in *Omak Maritime Ltd v Mamola Challenger Shipping Co.*,⁹ Teare J confirmed that reliance damages are still limited by the compensatory principle. A claimant cannot use them to reach a better position than the one they would have been in if the contract had been performed. Therefore, English law gives the claimant different ways to measure loss, but these measures are controlled by the rule against overcompensation.

Another important feature of English contract law is that liability for breach is generally strict. It comes from the non-performance itself, no matter whether the breaching party was at fault, except in the limited group of contracts that require reasonable care.¹⁰

Chinese Law

Chinese law reaches a similar starting point, but in a different way. Whereas the English position rests on a judicial dictum, in China, the principle of full compensation is codified directly in Article 584 of the Civil Code of the People's Republic of China. It provides that, where a party fails to perform a contractual obligation, or the performance does not conform to the agreement, and this causes loss to the other party, the amount of compensation shall be equivalent to the loss caused by the breach. It also includes the benefits that the innocent party expected to obtain if the contract had been performed.

This provision shows that Chinese law also protects the expectation interest. Like the rule in *Robinson v Harman*,¹¹ the purpose is to put the innocent party in the position they would have

⁵ *Robinson v Harman* (1848) 1 Ex 850 (Parke B).

⁶ Hugh Beale, *Chitty on Contracts* (36th edn, Sweet & Maxwell 2025) para 30-022.

⁷ *Anglia Television Ltd v Reed* [1972] 1 QB 60 (CA).

⁸ *Cullinane v British Rema Manufacturing Co Ltd* [1954] 1 QB 292 (CA).

⁹ *Omak Maritime Ltd v Mamola Challenger Shipping Co* [2010] 2 CLC 194 (QB).

¹⁰ P.S. Atiyah, *Essay on Contract* (Oxford University Press 1990), Chapter 2.

¹¹ *Robinson v Harman* (1848) 1 Ex 850.

been in if the contract had been properly performed, but not the pre-contract position.¹² Article 584 covers both actual loss and loss of expected benefits (in other words, loss of bargain),¹³ which is structurally similar to common law's design.

However, Article 584 also internally limits the principle of full compensation.¹⁴ It states that compensation shall not exceed the loss which the breaching party foresaw or should have foreseen at the time of entering the contract, akin to the second limb of the *Hadley case*. It reflects what Chinese scholars such as Wang Liming call “interest balancing”, which means in this context protecting the innocent party's interest in performance while at the same time preventing a disproportionate allocation of risk to the breaching party.¹⁵

Two further features make the Chinese position distinct. First, though the prohibition on double recovery is not stated as a clear rule like the one in *Cullinane*, it is achieved through the compensatory ceiling in Article 584, since damages “shall be equivalent to” the losses caused. It is also reinforced by the Supreme People's Court's 2023 Interpretation on the General Provisions of the Contract Part of the Civil Code, which requires courts to consider benefits which the innocent party has obtained, or could reasonably have obtained, because of the breach.¹⁶ Second, like English law, Chinese contract law imposes liability on a strict basis. Under Article 577, liability for breach comes from non-performance itself, regardless of fault, except where the Code or the contract provides otherwise.¹⁷ The two systems therefore share both a compensatory aim and a no-fault basis of liability. These characteristic matters because neither system uses fault to screen recoverable loss, the work of limiting recovery falls entirely on the mechanisms examined below, causation, remoteness, and the control of agreed damages.

Different mechanisms

The shared principle of full compensation may suggest that English and Chinese law are very similar. However, this similarity becomes less clear when the specific rules on damages are examined. In practice, recovery is shaped by several mechanisms, including causation, remoteness and liquidated damages. These rules affect not only whether loss is recoverable, but also the scope and amount of damages available to commercial parties.

Causation

English Law

Although the compensatory principle in *Robinson v Harman* aims to put the claimant in the position of due performance, not every loss suffered by the claimant is recoverable. The first filter is causation. The claimant must show that the breach *caused* the loss for which compensation is claimed.¹⁸ The strict-liability character of English contract law, mentioned above, carries particular weight as it performs the screening function that fault performs in tort.¹⁹

English law usually starts with the but for test, as the baseline measure of factual causation. This test asks whether the loss would have happened but for the defendant's breach. If the same loss

¹² Article 500 of the Civil Code of the People's Republic of China 2020 lists three types of circumstances when damages are recoverable such as pre-contractual liability.

¹³ Liming Wang, *Study on Contract Law* (4th edn, China Renmin University Press 2025).

¹⁴ Civil Code of the People's Republic of China 2020, art 584.

¹⁵ Liming Wang, ‘The Hierarchy of Competing Interests in Civil Law’ [2014] *The Jurist* 79.

¹⁶ Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China 2022, arts 60-62.

¹⁷ Civil Code of the People's Republic of China 2020, art 577.

¹⁸ Margaret Brazier, John Frederic Clerk and William Henry Barber Lindsell, *Clerk and Lindsell on Torts* (2nd supp, 17th edn, Sweet and Maxwell 1997).

¹⁹ For the relationship between strict liability and causation in English contract law, see Andrew Burrows, *Remedies for Torts, Breach of Contract, and Equitable Wrongs* (4th edn, Oxford University Press 2019).

would have happened anyway, the breach is not deemed as the factual cause of that loss.²⁰ However, the but for test is necessary, not sufficient. Where there are several causes, or where the breach starts a chain of events whose later stages owe more to other factors than to the breach, the courts ask a second question, that is whether the breach was an effective or dominant cause of the loss. The leading authority is *Galoo Ltd v Bright Grahame Murray*,²¹ where the Court of Appeal held that the breach must be an “effective” or “dominant” cause, and that it should be decided by a common-sense approach rather than a purely mechanical test. It is demonstrated that the court does not only ask whether the breach formed part of the factual background but also ask whether it is fair and reasonable to attribute the loss to that breach.

The but for test runs into a well-known difficulty in cases of concurrent causation.²² Where there are two causes, and each one on its own is sufficient to produce the loss, neither cause passes the but for test, because the loss would have happened anyway through the other cause. It would be unreasonable, however, to conclude from this that neither party is liable. The courts therefore relax the requirement in this situation. The breaching party is liable if the breach was an effective cause of the loss, and the court does not need to decide which of the two causes was more effective.²³ To this extent the strict “dominant cause” language of *Galoo* gives way. Where two causes are each sufficient, it is enough that the breach was one effective cause among them.

A further issue is whether an intervening event has broken the chain of causation. This is also known as *novus actus interveniens*. The intervening event can take any form. It may be the conduct of a third party, an unreasonable act of the claimant himself, or a natural event. Such event may relieve the defendant from liability for the losses that follow. In practice, the court decided that the chain is broken only where the intervening event is of a kind that the defendant could not reasonably have anticipated because of the breach. Where the intervention is foreseeable as a likely reaction to the breach, the defendant stays liable for the further loss it causes. Where it is unforeseeable, unusual, or is an independent wrong of its own, the chain is broken, and the defendant’s liability ends at that point.

The classic illustration is *Lambert v Lewis* where the claimant kept using a trailer coupling even after discovering the defect. The trailer later detached and caused a fatal accident. The House of Lords held that the farmer’s continued use of an obviously damaged coupling was so unreasonable that it broke the chain of causation between the manufacturer’s breach of warranty and the loss that the farmer had to pay in the tort claim against him. As a result, the farmer could not pass that liability up the contractual chain to the manufacturer.²⁴ The modern approach is also shown in *Borealis AB v Geogas Trading SA*,²⁵ Gross LJ in this case asked whether the intervening conduct was such as to “obliterate” the defendant’s wrongdoing as the operative cause of the loss.²⁶ This is a demanding test, where mere unreasonable conduct may not always be enough, especially if the defendant’s breach remains an effective cause. Reckless conduct, on the other hand, will usually break the chain, although no rule limits the doctrine to recklessness alone. The doctrine therefore performs different role from the but for and effective-cause analysis. It does not ask whether the breach caused the loss in the first place, but whether something occurring *after* the breach has displaced it as the operative source of the loss.

²⁰ Edwin Peel, *Treitel on the Law of Contract* (15th edn, Sweet & Maxwell 2020). See also *Quinn v Burch Bros (Builders) Ltd* [1966] 2 QB 370 (CA).

²¹ *Galoo v Bright Grahame Murray* [1994] 1 WLR 1360, 1374-1375.

²² See Andrew Burrows, *Remedies for Torts, Breach of Contract, and Equitable Wrongs* (4th edn, Oxford University Press 2019).

²³ *County Ltd v Girozentrale Securities* [1996] 3 All ER 834 (CA).

²⁴ *Lambert v Lewis* [1982] AC 225 (HL).

²⁵ *Borealis AB v Geogas Trading SA* [2010] EWHC 2789 (Comm), [2011] 1 Lloyd’s Rep 482 [42]-[47].

²⁶ *Borealis AB v Geogas Trading SA* [2010] EWHC 2789 (Comm), [2011] 1 Lloyd’s Rep 482 [44].

Chinese Law

Chinese law deals with causation in a different form. Article 584 of the Civil Code provides that compensation shall be equivalent to the loss caused by the breach of contract.²⁷ This single formula, with key phrase “loss caused by the breach” included, gives Chinese courts a statutory basis for asking whether there is a sufficient connection between the breach and the loss.

The obvious strength of this approach is that it gives the courts one fixed point to start from. An English court must move between the but for test and the common-sense test, choosing among them according to the facts. A Chinese court does not face that choice in the same way, because Article 584 supplies a single standard. At least on the face of the Code, this looks like a more predictable starting point for commercial parties.

That predictability, however, is more apparent than real, because a short statutory phrase cannot do all the work that the English case law does. In straightforward cases, Article 584 provides a clear basis for limiting damages. If the loss was not caused by the breach, it is not recoverable. But in more complex cases, such as where there are several causes, several parties, or later intervening events, the statutory wording gives less detailed guidance. Chinese courts still need to decide whether the connection between the breach and the loss is strong enough to justify compensation, close in substance to the English *novus actus* doctrine but without any clear basis in the Code. The Supreme People’s Court’s judicial interpretations have begun to fill this gap, yet the position remains less developed than in English common law.

For this reason, the difference between the two systems should not be overstated. English law has a more developed set of causation doctrines, but this can also make the law more complex and less predictable. Chinese law has a clearer statutory starting point, but difficult questions may still arise in practice because Article 584 does not explain in detail how to deal with concurrent causes or intervening events.

Remoteness

English Law

The second limitation on the compensatory principle is remoteness. Even where the claimant can show that the breach caused the loss, the loss will not be recoverable if it is too remote. The basic rule, the orthodox rule, derives from *Hadley v Baxendale*, which divides recoverable loss into two categories. The first category is loss which arises naturally, in the ordinary course of things, from the breach (the first limb). The second covers losses which do not arise in the ordinary course but were within the reasonable contemplation of both parties at the time of contracting because special circumstances had been communicated (the second limb).²⁸

An important point is that the contractual test is not the same as reasonable foreseeability in tort. In *Koufos v C Zarnikow Ltd (The Heron II)*,²⁹ the House of Lords held that the threshold of probability required in contract is higher than in tort and expressly disapproved the looser language of “foreseeability” that Asquith LJ had used in *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd*. The question is not simply whether the loss was foreseeable as a possibility. Lord Reid stated that the loss must be of a kind which the defendant ought to have realised was “not unlikely” to result from the breach. He explained that this degree of probability is considerably less than an even chance, but it is nevertheless not very unusual.³⁰ This is because contracting parties normally have a chance to discuss unusual risks and allocate them before making the contract. In tort, the defendant usually has no such chance.³¹ Another important point

²⁷ Civil Code of the People’s Republic of China 2020, art 584.

²⁸ *Hadley v Baxendale* (1854) 9 Ex 341, 354 (Alderson B).

²⁹ *Koufos v C Zarnikow Ltd (The Heron II)* [1969] 1 AC 350 (HL) 424.

³⁰ *The Heron II*, 383.

³¹ *The Heron II*, 385–86.

is that the parties only need to contemplate the kind or type of loss, not its exact amount. Once the kind of loss is within reasonable contemplation, the defendant is liable, even if the actual quantum is much greater than could have been anticipated.³²

The orthodox rule was recast in *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)*.³³ Lord Hoffmann reframed remoteness as a question of the implied allocation of responsibility. The issue, on this view, is not simply whether a loss was within reasonable contemplation, but whether, on the proper construction of the contract against its commercial background, the defendant can be taken to have assumed responsibility for losses of that kind. The case concerned late redelivery of a vessel. Because of the delay, the owners lost a later fixture. Although this kind of loss may have been foreseeable, the House of Lords held that the charterers were not liable for the whole loss from the missed fixture. In the commercial context of the shipping market, a charterer would not normally be understood as accepting responsibility for such enormous and volatile losses. However, *The Achilleas* should not be understood as replacing the rule in *Hadley v Baxendale*, which was clarified by the Court of Appeal in *Supershield Ltd v Siemens Building Technologies FE Ltd*.³⁴ Toulson LJ held that *Hadley v Baxendale* remains the general rule, which simply reflects the responsibility the parties would ordinarily be taken to have assumed. The assumption of responsibility approach is mainly useful in unusual cases, where the ordinary foreseeability test does not properly reflect the risks which the parties can be taken to have accepted. It can exclude a loss that the orthodox test would admit, as in *The Achilleas*, or include a loss that the orthodox test might exclude. *Supershield* itself was an instance of the latter. Damage from a flood, though an unlikely consequence of the defendant's failure to maintain a float valve, was recoverable because preventing precisely that flooding was within the scope of the contractual duty the defendant had undertaken.³⁵

The better view, confirmed in *Sylvia Shipping Co Ltd v Progress Bulk Carriers Ltd*,³⁶ is therefore not that *The Achilleas* displaced the orthodox rule, but that the two operate together. *Hadley v Baxendale* and *The Heron II* supply the general test, and assumption of responsibility is a supplementary inquiry, reserved for the unusual case in which the commercial context makes the orthodox rule inappropriate. Therefore, in most cases, the court asks whether the type of loss was within the parties' reasonable contemplation at the time of contracting. In more unusual commercial cases, the court may also ask whether the defendant can fairly be treated as having assumed responsibility for that type of loss.

Chinese Law

In contrast to the common law's separation of remoteness from causation, Chinese law deals with it through Article 584 of the Civil Code. The same provision which governs causation also contains a foreseeability limit. It provides that compensation shall not exceed the loss which the breaching party foresaw or should have foreseen at the time of entering the contract.³⁷ Three points of comparison with English law stand out.

First, the relevant date, the moment of contracting, not the moment of breach, is the same as in English law. Each system therefore fixes the parties' horizon of responsibility at the point where they could still have bargained over the allocation of risk.³⁸ This alignment is not accidental, as

³² *Parsons (Livestock) Ltd. v Uttley Ingham & Co. Ltd.* [1978] QB 791 (CA).

³³ *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48, [2009] 1 AC 61.

³⁴ *Supershield Ltd v Siemens Building Technologies FE Ltd* [2010] EWCA Civ 7, [2010] 1 Lloyd's Rep. 349.

³⁵ *ibid* [43].

³⁶ *Sylvia Shipping Co Ltd v Progress Bulk Carriers Ltd* [2010] EWHC 542 (Comm), [2010] 2 Lloyd's Rep 81 [40]–[48].

³⁷ Civil Code of the People's Republic of China 2020, art 584.

³⁸ For the English position that the relevant date is the time of contracting, see *Koufos v C Zarnikow Ltd (The Heron II)* [1969] 1 AC 350 (HL).

both systems treat remoteness as a question of what the parties could have dealt with when they made their agreement.³⁹

Second, the threshold of probability appears, on the face of the Code, to be lower than its English counterpart. Article 584 asks only whether the loss was “foreseen or should have foreseen.” That language is closer to the tort-derived “reasonable foreseeability” that the House of Lords in *The Heron II* rejected as the English contractual standard, in favour of the stricter requirement that the loss be “not unlikely to result.”⁴⁰ On a literal reading, this may suggest that some losses which would be too remote under English law might still be recoverable under Chinese law. However, this point should not be overstated, because Chinese courts do not apply Article 584 only by looking at the words in isolation.⁴¹

Third, and most significantly, the bare statutory language has been supplemented by Article 63 of the Supreme People’s Court’s 2023 Interpretation. This article directs courts to determine foreseeability objectively by reference to a range of contextual factors such as the nature of the parties, the type and content of the contract, transaction practices, and the negotiations between the parties.⁴² This makes the Chinese approach more contextual. The court does not only ask whether the loss was foreseeable in an abstract sense. It also considers the commercial background of the contract. This development makes Chinese law closer to the modern English approach in some respects. In English law, *The Achilles* asks whether the loss falls within the risk which the defendant can be taken to have assumed. In Chinese law, Article 63 also asks courts to look at the commercial context and the parties’ transaction background. The legal route is different, because English law develops through cases while Chinese law develops through statute and judicial interpretation. But both systems are concerned with a similar question: whether it is fair to make the breaching party responsible for this type of loss, given what the parties knew or should have known when they made the contract.

Liquidated Damages

Chinese Law

Chinese law allows parties to agree in advance what amount should be paid if one party breaches the contract. Article 585 of the Civil Code provides that the parties may agree on a fixed sum of liquidated damages or agree on a method for calculating compensation after breach.⁴³ The reason Chinese law allows for such compensation is that it works effectively in commercial sense in the business practice. Parties no longer must go through tedious work to prove the extent of the loss caused by the breach. It both facilitates the risk assessment and simplifies the compensation assessment.⁴⁴

One important feature of Chinese law is that liquidated damages do not always have to be a genuine pre-estimate of loss. In Chinese doctrine, liquidated damages may have both a compensatory function and a deterrent function (punitive liquidated damages). In other words, they may compensate the innocent party for loss, but they may also encourage performance and discourage breach.⁴⁵ This means that Chinese law is more willing to accept liquidated damages which are higher than the actual loss, at least in principle. However, this freedom is not unlimited. Article 585(2) gives the court or arbitral tribunal discretion to adjust the agreed amount. If the agreed sum is excessively higher than the actual loss, the court may reduce it on the application

³⁹ Jianyuan Cui, ‘On the Doctrinal Interpretation of the Reasonable Foreseeability Rule’ [2022] *Oriental Law* 171.

⁴⁰ *The Heron II*, 385–86.

⁴¹ Yongkuan Zheng, ‘Reflections on the Application of the Reasonable Foreseeability Rule in Damages for Breach of Contract’ [2025] *Journal of Comparative Law* 158.

⁴² Interpretation by the Supreme People’s Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People’s Republic of China 2022, art 63.

⁴³ Civil Code of the People’s Republic of China 2020, art 585(1).

⁴⁴ Larry A. DiMatteo and Lei Chen, *Chinese Contract Law: Civil and Common Law Perspectives* (Cambridge University Press 2018).

⁴⁵ Shiyuan Han, *The Law of Contract* (4th edn, Law Press China 2018).

of a party. If the agreed amount is lower than the actual loss, the court may also increase it.⁴⁶ The Supreme People's Court has given this open standard more concrete content. In the guidance, where the agreed sum is more than 30 per cent higher than the actual loss, this may be treated as a sign that it is "excessively higher". When deciding whether to reduce the amount, the court may also consider factors such as the actual loss, the degree of performance, the parties' fault, fairness and good faith.⁴⁷ Therefore, Chinese law allows liquidated damages clauses to go beyond actual loss to some extent. But the final amount remains subject to judicial control. The agreed sum is generally respected, but it may be adjusted if it becomes clearly unfair or disproportionate.

English Law

English law approaches the same problem from the opposite direction, through the rule against penalties. A clause fixing the consequence of breach is either enforceable as liquidated damages or void as a penalty. English law does not recognise a separate category of valid "punitive" liquidated damages in the same way as Chinese law.⁴⁸

The traditional test came from *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd*.⁴⁹ Lord Dunedin gave four working criteria for deciding whether a clause was a valid liquidated damages clause or a penalty. The main question was whether the agreed sum was a genuine pre-estimate of the likely loss, or instead it was extravagant and unconscionable when compared with the greatest loss that could result from the breach. This test was developed by the Supreme Court in *Cavendish Square Holding BV v Makdessi*.⁵⁰ The Court held that Lord Dunedin's criteria, though still useful for a simple damages clause, are not a universal test that fits every case. Lord Neuberger and Lord Sumption explained that the real question is whether the clause imposes a detriment on the contract-breaker which is out of all proportion to any legitimate interest of the innocent party in enforcing the contract. It means that English law no longer asks only whether the agreed amount is close to the actual loss. The innocent party may have a legitimate interest in performance which extends beyond simple compensation. In *ParkingEye*, for example, the £85 parking charge was enforceable even though it did not reflect ParkingEye's actual financial loss. The charge was accepted because it protected a legitimate interest in managing the car park and making users follow the parking rules.

Both systems therefore accept, in different ways, that an agreed sum may be higher than the innocent party's actual loss. Chinese law openly recognises punitive liquidated damages, subject to the ceiling in Article 585(2). English law does not openly allow punitive liquidated damages, but after *Cavendish* it accepts that a clause may protect a legitimate interest beyond compensation. The real divergence lies in the limiting mechanism and its rationale. Chinese law treats the agreed sum, even in punitive nature, as presumptively valid and steps in only where it is disproportionate to the actual loss by a wide margin, keeping an openly compensatory benchmark. English law, by contrast, gives up actual loss as the benchmark altogether and asks instead whether the clause is proportionate to a legitimate interest. But it still refuses to enforce a clause that goes beyond any legitimate interest and exists only to punish. The contrast, therefore, is not simply that Chinese law permits penalties and English law forbids them. Rather, both systems try to separate legitimate agreed remedies from unacceptable punishment, but they do this through different legal techniques – a quantitative test of proportionality to loss, applied after the event by the Chinese courts, and a qualitative test of proportionality to interest, applied by the English courts.

⁴⁶ Civil Code of the People's Republic of China 2020, art 585(2).

⁴⁷ Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China 2022, art 65.

⁴⁸ Ewan McKendrick, *Contract Law, Text, Case, Materials* (6th edn, Oxford University Press 2014) 905.

⁴⁹ *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79 (HL).

⁵⁰ *Cavendish Square Holding BV v Makdessi ParkingEye Ltd v Beavis* [2015] UKSC 67, [2016] AC 1172.

Non-pecuniary damages

Damages for non-pecuniary loss, such as disappointment, distress, and loss of enjoyment, are difficult to measure in market terms, and this raises a doctrinal problem common to both systems. The compensatory principle in *Robinson v Harman* and the equivalent rule in Article 584 both assume losses that can be quantified in money, and the difficulty of putting a money value on subjective suffering has made both systems cautious about awarding such damages. Each system, however, has carved out a defined space for recovery, and the techniques they use are conceptually different.

English Law

The general rule in English contract law is that damages are not recoverable for the mental distress, disappointment, or anxiety caused by a breach of contract.⁵¹ This rule was authoritatively restated by Bingham LJ in *Watts v Morrow*,⁵² who explained that the law refuses such damages not because the loss is unreal, but because in ordinary commercial contracts it is too remote and speculative to compensate. However, *Watts v Morrow* also recognised two exceptions to this restrictive position. The first occurs where the very object of the contract is to provide pleasure, relaxation, or peace of mind. The second is where the claimant suffers physical inconvenience or discomfort caused by the breach, together with mental distress that follows directly from that physical inconvenience.⁵³

The first exception was illustrated in *Jarvis v Swans Tours Ltd*,⁵⁴ where the Court of Appeal awarded damages for the disappointment of a skiing holiday that was very different from what had been promised. Lord Denning MR observed that the disappointment, frustration, and distress caused by such a breach were recoverable when the explicit purpose of the contract was the provision of enjoyment. A similar approach was taken in *Jackson v Horizon Holidays Ltd*, where the court also considered the disappointment suffered by family members who were meant to benefit from the holiday. These cases established the first *Watts* exception in its narrow form, confined to contracts whose entire object was pleasure or enjoyment.⁵⁵

The exception was substantially broadened in *Farley v Skinner*.⁵⁶ In this case, a surveyor negligently reported that a country house was unaffected by airport noise, despite being specifically instructed to investigate the matter. After the purchase, the claimant found that the property was in fact badly affected and sued for the loss of amenity. The House of Lords unanimously held that the *Watts* exception extends to contracts where a major or important object, even if not the exclusive or primary purpose, is to provide pleasure, relaxation, or peace of mind. The resulting £10,000 award was described by their Lordships as being “at the higher end of the scale” but not excessive, illustrating the modest quantum at which English law conventionally caps these types of damages.

These cases indicate that English law has not removed the general rule against damages for distress. Instead, it has created limited exceptions where the contract itself is closely connected with enjoyment, peace of mind, or physical comfort. The approach is therefore quite categorical. Recovery is permitted only within these tightly managed, judicially defined exceptions, regardless of the actual depth of distress a claimant might have suffered.⁵⁷ Even where damages

⁵¹ *Addis v Gramophone Co Ltd* [1909] AC 488 (HL). See also modern illustration: *Johnson v Gore Wood & Co* [2002] 2 AC 1 (HL) 49.

⁵² *Watts v Morrow* [1991] 1 WLR 1421 (CA).

⁵³ *ibid.*

⁵⁴ *Jarvis v Swans Tours Ltd* [1973] QB 233 (CA).

⁵⁵ *Jackson v Horizon Holidays Ltd* [1975] 1 WLR 1468 (CA).

⁵⁶ *Farley v Skinner* [2001] UKHL 49, [2002] 2 AC 732.

⁵⁷ Roger Halson, ‘The Recovery of Damages for Non-Pecuniary Loss in the United Kingdom: A Critique and Proposal for a New Structure Integrating Recovery in Contract and Tort’ (2015) 3 *The Chinese Journal of Comparative Law* 245.

are allowed, the amount is usually modest and is assessed by reference to previous similar cases rather than by an exact calculation.

Chinese Law

Chinese law approaches non-pecuniary loss in contract through a structurally different mechanism, statutory cross-reference. Article 996 of the Civil Code provides that where a party's breach of contract has also infringed the other party's personality rights and causes serious mental harm, the injured party's claim for non-pecuniary damages is preserved. This claim is not excluded simply because the party chooses to sue in contract rather than in tort.⁵⁸ To succeed under this framework, three elements must be established, a breach of contract, a simultaneous infringement of the claimant's personality rights causing serious mental harm, and a causal link between the breach and the harm.⁵⁹

Article 996 is therefore not a general contractual remedy for all kinds of distress. It sits within the personality rights provisions of the Code and works through the protection of personality rights, such as life, health, bodily integrity, reputation, privacy or human dignity. This creates a possible gap. Some breaches of contract may cause real disappointment or emotional harm but may not clearly infringe a recognised personality right. For example, a ruined holiday, failed wedding photography, or poor funeral services may cause serious distress. However, it may be difficult to explain these cases only through the language of personality rights.⁶⁰ On the face of Article 996, claims of this kind fall outside the statutory remedy.

In practice, some Chinese courts have responded to this problem in a flexible way, granting compensation in a substantial portion of these emotionally significant cases. This includes situations where the performance of the contract is closely linked to the claimant's emotions or is aimed at providing emotional satisfaction.⁶¹ Notably, courts frequently achieve this outcome by reframing the contractual breach itself as a tortious infringement of a personality interest. It is often categorized broadly under human dignity or the right to personal feelings, thereby allowing non-pecuniary damages to flow from tort provisions rather than through Article 996 directly.⁶² While the substantive outcome often mirrors the English *Watts* or *Farley* position, the underlying legal route is different. English law creates exceptions inside contract law, while Chinese law often relies on personality rights and tort-based reasoning.

Comparison between the two legal systems and conclusions

The two systems therefore reach broadly comparable practical results by opposite techniques. Both begin with a general bar on contractual damages for mental distress, justified by the difficulty of monetary valuation and the risk of speculative recovery. However, both systems also recognise that this rule cannot be absolute. Where the contract is closely connected with enjoyment, peace of mind, emotional interests or personal dignity, damages for non-pecuniary loss may be possible. The difference is in the legal method. English law builds its exception inside the law of contract, through judicially defined categories within the *Watts/Farley* framework. It is more transparent doctrinally, but it is rigid, leading to a result that a claim either fits a recognised category, or it fails.⁶³ Chinese law builds the qualification by cross-reference to the law of tort, leaving courts to develop pragmatic workarounds for the gaps the statute fails to

⁵⁸ Civil Code of the People's Republic of China 2020, art 996.

⁵⁹ Xianbin Yang, 'On Damages for Mental Distress for Infringement of Personality Rights' [2025] *Journal of Comparative Law* 104.

⁶⁰ Aijun Zhu, 'The scope of compensation for moral damages under the Civil Code has been extended and improved' (2023) 4 *Legality Vision* 87, 89.

⁶¹ Hui Li, Yumei Xu and Zhiying Pang, 'Comparative Reflections on the Issue of Moral Damages for Breach of Contract' (2018) 4 *Legality Vision* 39.

⁶² Jun Xue, 'The development of the system of compensation for moral damages in the Civil Code' (2021) 3 *Journal of Xiamen University (Arts and Social Sciences)* 91.

⁶³ Hui Li, 'A Comparative Study of Damages for Mental Distress for Breach of Contract' [2012] *Commercial Research* 200.

reach. It has the clarity of a statutory rule but may leave uncertainty in cases where the emotional loss is real but the link with personality rights is not obvious.⁶⁴ Neither system has produced a fully settled doctrine in this area and demonstrates that the shared idea of compensation does not produce the same legal structure in both systems.

This article has compared how English and Chinese law apply the principle of full compensation and has asked whether the shared principle leads to the same result, or whether the different mechanisms in each system lead to different results. The principle itself is only a starting point in both systems. Each of them tries to put the innocent party in the position they would have been in if the contract had been performed, and neither of them requires fault. For this reason, the real control on damages does not come from the shared principle, but from the mechanisms discussed above, and these mechanisms are not the same in the two systems. However, the difference is not equally large in every area. In causation and remoteness, the two systems are in fact quite close. They ask similar questions, although they reach the answer in different ways. English law works through a large body of case law and Chinese law through one general provision, read together with 2023 Interpretation. The clearest difference appears in liquidated damages. Chinese law allows the agreed sum to be higher than the actual loss, and the court may adjust it under Article 585(2). English law does not take this approach. After *Cavendish*, it asks whether the clause protects a legitimate interest, and if it does not, the clause is treated as a penalty and cannot be enforced. The same clause may therefore be valid in China but not in England. Furthermore, non-pecuniary loss shows a similar result but a different method. In both systems the innocent party may sometimes recover, but English law does this inside contract law, while Chinese law works through personality rights and tort. In both areas the law is still not fully settled. It is suggested here that the shared principle of full compensation does not mean that the two systems are really the same. In many cases the choice between English law and Chinese law affects the reasoning more than the final amount. But in some cases, and most clearly in liquidated damages, this choice may also change how much the innocent party can finally recover. This shows that, even though the two systems share the same basic principle, they do not always achieve the same result.

⁶⁴ Sumin Xu, 'The Judicial Application of the Civil Code's Provision on Damages for Mental Distress for Breach of Contract: An Empirical Study of 202 Cases after the Civil Code Came into Force' [2023] *Law and Economy* 100.