Smith, Hogg & Co v Black Sea Insurance (1940)

A shipowner was held liable to a charterer in damages for loss of a cargo which had been caused by a combination of perils of the sea and the unseaworthiness of the ship. The latter was sufficient to carry a claim for damages.

Stansbie v Troman (1948)

A painter in breach of contract after he had completed decorations, left unlocked a house, which was later burgled by thieves. The defendant was held liable for the value of goods taken as this was exactly the sort of loss he should have guarded against and foreseen.

Weld-Blundell v Stephens (1920)

The plaintiff employed an accountant, the defendant, to investigate the affairs of a company he had invested in. The defendant's partner negligently dropped a letter from the plaintiff in the office of the company's manager, which the manager picked up and showed to his directors, who sued the plaintiff in libel and won. The plaintiff sued the defendant for breach of contract to recover the damages he paid out in the libel action.

The court declared that the claim must be dismissed since (1) the plaintiff's liability for libel existed apart from the contract, and (2) the loss was not caused by breach of contract, but by the act of the company's manager showing the letter to the directors. This was an act the defendant could not have foreseen.

Hadley v Baxendale (1849)
Victoria Laundry v Newman Industries (1949)
The Heron II (1969)

Pilkington v Wood (1953)

The plaintiff bought a house in Hampshire and his solicitor, in breach of contract, negligently failed to notice that the house had a defective title. The solicitor was held liable for the amount by which the house's value had been lessened by the title not being good. The plaintiff shortly afterwards took up work in Lancashire and suffered added loss as the house was hard to resell. However, the solicitor was not liable for the latter loss as he could not anticipate that the plaintiff would shortly move.

Horne v Midland Railway (1873)

The defendant contracted to carry a consignment of shoes to London by 3 February, but delivered a day late. As a result of the delay, the plaintiff lost an opportunity of selling shoes at an exceptionally high price. It was held that the defendant was not liable for this loss. Although he knew the plaintiff would have to take the shoes back if they were not delivered by 3 February, he did not know the plaintiff would lose an exceptionally high profit.

Simpson v L&N Railway (1876)

The defendant contracted to carry the plaintiff's samples of cattle food from an agricultural show at Bedford to another at Newcastle. He delivered certain goods to an agent of the defendant at Bedford showground. The goods were marked 'must be at Newcastle by Monday certain'. No express reference was made in the contract of carriage to the Newcastle show. The samples arrived at Newcastle after the show was over.

The defendant was held to be liable for loss of profits which the plaintiff would have made had the samples reached Newcastle on time. The plaintiff's purpose and intention could readily be inferred from the circumstances, which clearly indicated that the contract was one to carry samples to the Newcastle show and not simply to Newcastle.

Payzu v Saunders (1919)

The plaintiff agreed to buy certain goods from the defendant over a period of nine months with payment within one month of delivery, and deliveries monthly. The plaintiff failed to make prompt payment for the first instalment, and the defendant, in breach of contract, refused to deliver any more instalments under the contract, but offered to deliver the goods at the contract price if the plaintiff paid cash on delivery of the order. The plaintiff refused this and claimed damages, these being the difference between the contract price and the market price.

It was held that the plaintiff had permitted himself to sustain a large measure of the loss which, as prudent and reasonable people, they ought to have avoided. He had the cash available to meet the defendant's demands and could have mitigated by purchasing off the defendant at the contract price as the defendant offered, instead of going into the market to purchase at a higher price. He was, therefore, not entitled to damages.

Pilkington v Wood (1953)

A solicitor, in breach of contract, obtained for the plaintiff a house which had a defective title. The plaintiff tried to sue the solicitor, who argued that the plaintiff should have mitigated by suing the vendor under the covenants for title under s76 LPA 1925. The court remarked:

"The so-called duty to mitigate does not go so far as to oblige the injured party, even under an indemnity, to embark on a complicated and difficult piece of litigation against a third party … it is no part of the plaintiff's duty to embark on the proposed litigation in order to protect his solicitor from the consequences of his own carelessness' (per Harman J)."

British Westinghouse v Underground Electric Railway of London (1912)

The defendant agreed to supply the plaintiff with turbines of stated efficiency, but supplied less efficient ones, which used more coal. The defendant accepted them and used them for some years before replacing them with turbines which were even more efficient than those specified in the contract with the defendant. After replacement, the plaintiff claimed damages from the defendant.

The plaintiff was held to be under no duty to mitigate by buying new turbines, but since he had done so, the financial advantages he had gained from new turbines had to be taken into account. Thus, as the plaintiff's saving in coal exceeded the cost of the new turbines, he was not entitled to damages. However, if the plaintiff had claimed damages before buying the new turbines, the defendant would have had no defence.

White and Carter v McGregor (1962)

See Law Report.

McRae v Commonwealth Disposals (1950)

The plaintiff recovered £3,000 spent on sending out a salvage expedition to salvage a wrecked tanker, in a specified position, which they had purchased from the defendant. The tanker had never, in fact, existed. See Handout on Mistake.

Anglia Television v Reed (1972)

The plaintiffs incurred expenses in preparation for filming a television play. They subsequently entered into a contract with the defendant to play the leading role. The defendant repudiated the contract. the plaintiffs tried hard to find a substitute but failed, and had to abandon the play. The plaintiffs sued the defendant for expenses of production amounting to £2,750 incurred by the plaintiffs on production before the contract. They were held to be entitled to recover the whole of the wasted expenditure. The defendant must have known that much expenditure had already been incurred and would be wasted.

Millar's Machinery v David Way (1935)

The plaintiff bought some machinery which was installed in his factory and paid for. However, the machinery was not in accordance with the specifications laid down by the contract and the plaintiff rejected it. It was held that the plaintiff could recover the price (restitution), installation expenses (reliance loss) and the net loss resulting from the breach (loss of bargain).

Johnson v Agnew (1980)

The vendors agreed to sell a house and land to the purchaser, but the purchaser failed to complete the transaction on the appointed day. The vendors then obtained an order for specific performance, but it was not drawn up for five months, by which time it had become impossible as the mortgagee had taken possession and sold. The vendors sought discharge of the order for specific performance and to recover damages in its place.

The House of Lords found for the vendors and held that the damages were to be assessed at the date when specific performance had become impossible. Lord Wilberforce said:

"In cases where a breach of contract for sale has occurred, and the innocent party reasonably continues to try to have the contract completed, it would to me appear more logical and just rather than to tie him to the date of the original breach, to assess damages

as at the date when (otherwise than by his default) the contract is lost."

Peevyhouse v Garland (1962)

A coal company took a mining lease of farmland, covenanting to restore the land to its original state at the end of the lease. The work at the end of the lease would have cost $29,000, while the result of not doing it would reduce the value of the land by only $300. It was held that damages for the company's failure to do the work should be assessed at $300.

Ruxley Electronics v Forsyth (1995)

The defendants built a swimming pool for the plaintiffs. The swimming pool was not as deep as specified, yet it was perfectly safe to dive into. To award the cost of digging it out and rebuilding it, simply to add an extra three or four inches of depth would be unfair and unjust. Instead the House of Lords ordered the payment of a much smaller sum by way of compensation for loss of amenity.

See Law Report.

Thompson v Robinson (Gunmakers) Ltd (1955)

The defendant bought a Vanguard car from the plaintiff, and later refused to accept and pay for it. The plaintiff's profit would have been £61. It was held that where, as here, the supply of Vanguard cars exceeded the demand, had the plaintiff found another customer and sold to him as well as the defendant, then there would have been two sales and two profits. Therefore, the defendant was liable for £61.

Charter v Sullivan (1957)

The defendant bought a Hillman Minx car from the plaintiff but refused to accept it. The plaintiff's profit would have been £97. However, only nominal damages were awarded because he could only sell as many cars as he could get from the makers.

Addis v Gramaphone Company (1909)

The plaintiff could be dismissed by his employers on six months' notice, which he was given but, at the same time, a new manager was appointed to take his place and the plaintiff was prevented from acting as manager. The plaintiff claimed damages for the harsh and humiliating manner in which he was dismissed, as well as for loss of salary and commission after his dismissal.

The plaintiff was held only to be entitled to the commission and salary he had lost, and not to damages because his dismissal was harsh and humiliating. Lord Atkinson stated: "I can conceive nothing more objectionable and embarrassing in litigation than trying in effect an action of libel or slander as a matter of aggravation in an action for illegal dismissal".

Alexander v Rolls Royce Motor Cars Ltd (1995)

The plaintiff argued that the purchase of a Rolls Royce had been the culmination of a lifelong ambition, and that when the garage concerned had not repaired it properly or quickly enough he had suffered distress and inconvenience. The Court of Appeal, while accepting that there was a breach of contract to repair, were not prepared to award damages for the plaintiff's 'emotional anguish' while his Rolls Royce was being repaired.

LIQUIDATED DAMAGES & PENALTY CLAUSES

Dunlop Pneumatic Tyre Co v New Garage (1915)

The defendant bought tyres from the plaintiff and agreed not to: tamper with manufacturer's marks; sell below the list price; sell to any person blacklisted by the plaintiff; exhibit or export tyres without the plaintiff's consent. The defendant agreed to pay £5 for every tyre he sold or offered in breach of the agreement. In breach, the defendant sold to the public below the list price. It was held that the provision for payment of £5 was held not to be penal. Looking at the language of the contract itself, the character of the transaction and the circumstances, it was clear that the provision was to prevent a price war and so protect the plaintiff's sales. The clause was, therefore, an attempt to estimate damage at a certain figure and as the figure was not extravagant, it could only be concluded that it was a bargain to truly assess damages and not a penalty clause.

Lord Dunedin laid down three rules concerning penalty clauses:

1. The use of the words 'penalty' or 'liquidated damages' may prima facie be supposed to mean what they say, yet the expression used is not conclusive.

2. The essence of a penalty is a payment of money as in terrorem of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimate of damage.

3. Whether a sum stipulated is penalty or liquidated damages is a questions of construction to be decided upon the terms and inherent circumstances of each particular contract, judged as of the time of making the contract, not as at the time of breach. There are a number of tests which would prove helpful, or even conclusive:

(a) it will be held to be a penalty if the sum stipulated for is extravagant and unconscionable in amount in comparison to the greatest loss that could conceivably be proved to have followed from the breach;
(b) it will be held to be a penalty if the breach consists only in not paying a sum of paying, and the sum stipulated is a sum greater than the sum which ought to have been paid.

Cellulose Acetate v Widnes Foundries (1933)

The defendant agreed to build a chemical plant for the plaintiff in 18 weeks. If it took longer than this, they agreed to pay 'by way of penalty £20 per working week'. The defendant completed 30 weeks late, and the plaintiff lost £5,850 as a result of the delay. The defendant argued that they were only liable for £600 damages. The plaintiff was held only to be able to recover £600. The clause was not a penalty clause although it was described as such, because its object was not to act in terrorem. The parties must have known that

the actual loss would be more than £20 per week, and the clause would, therefore, appear to have been an attempt to limit liability.

Wall v Rederiaktiebolaget Luggade (1915)

It was held that a shipowner could disregard a penalty clause and sue for the actual loss he suffered where it exceeded the amount of the penalty.