

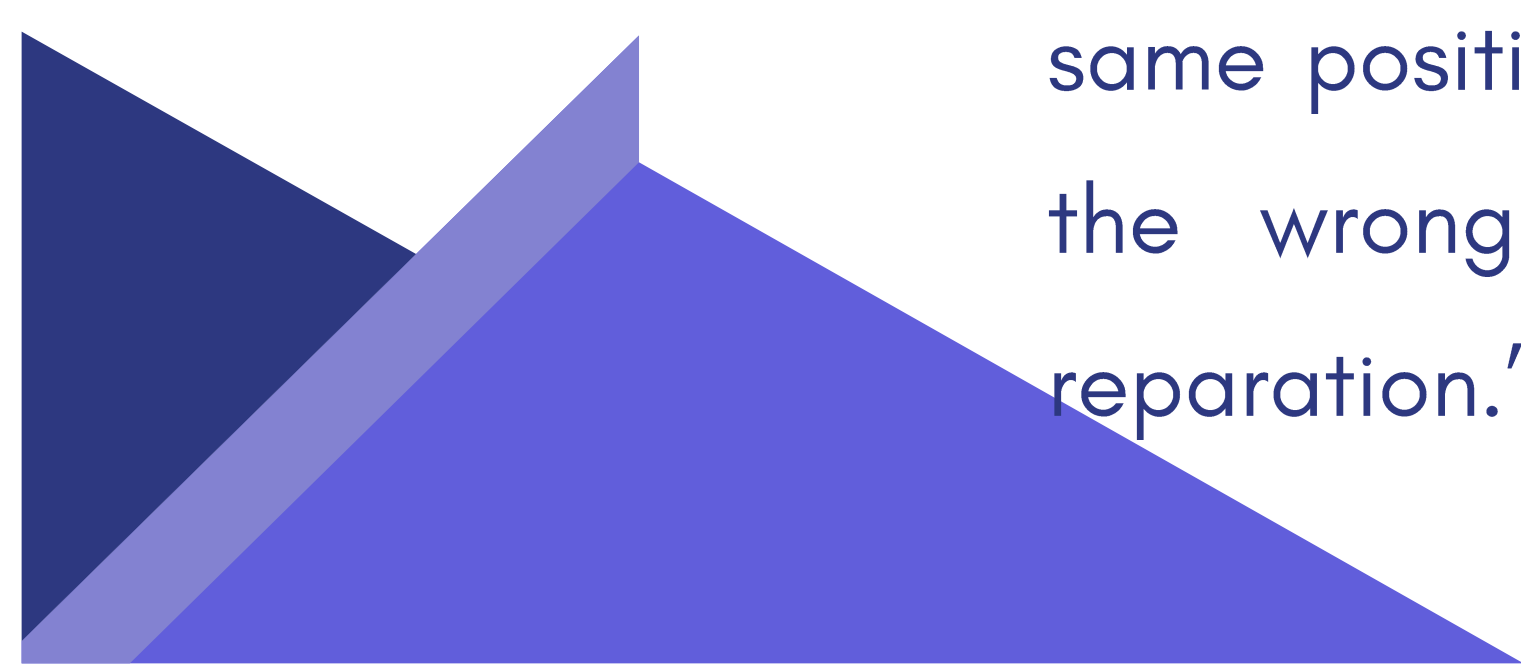
What is/are Damages?

- In law, damages are a form of compensation for injury or loss.
- Damages are monetary compensation that is awarded by a court in a civil action to an individual who has been injured through the wrongful conduct of another party.
- Damages attempt to measure in financial terms the extent of harm a plaintiff has suffered because of a defendant's actions.



Fundamental Principles of Ascertaining/Determining Damages

- “According to the law of nature, it is only fair that no one should become richer through damages and injuries suffered by another.” Cicero, Marcus Tullius, Pomponius, (106–43BC)
 - “The recovery of damages in a contract is intended, so far as it is possible, to put the claimant in the same position as it would have been had the contract been properly performed, or “. . . in the same position as he would have been in if he had not sustained the wrong for which he is now getting compensation or reparation.”





- “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, ie, 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**”. *Hadley v Baxendale* (1854) 9 Ex 341

What Can Parties Recover In Construction Contracts?



- In construction contracts, the damages the Contractor may wish to recover are related to those costs generally referred to as **“direct loss, or expense”**, but are in any event general costs that are not recovered from a strict pro rata adjustment of work rates for the effect of change.
- The requirements are that **the loss or expense should be ‘direct’, that it should not ‘be reimbursed by a payment under any other provision in [the] contract’**, and that ‘the [CA] or quantity surveyor is to ascertain the amount of such loss or expense’, all suggest strongly that the amount of direct ‘loss or expense’ will not exceed what might have been recoverable as damages.

The Likely Claim Categories under L&E

1. Direct costs incurred for the duration of a delay to progress including:

1. Incremental costs (eg, labour and equipment);
2. (Lost efficiency costs (eg, additional labour and equipment costs incurred because of the decreased productivity resulting from disruption, demobilisation and remobilisation);
3. Premium wages for working overtime, or multiple shifts;

2. Direct costs incurred during a prolonged construction period, including:

1. Additional site preliminaries and overheads; and
2. Extended head office overheads.

3. Indirect costs, incurred during a prolonged construction period including:



1. Lost profits;
2. Unearned overheads; and
3. Reduced bonding capacity

Methods of Assessing Some of the Head of Claims

Formula Method

- Hudson (UK)
- Emden's (UK),
- Eichleay's (US)

The important point to note is that:
“The claimant has the burden of proving every element of its case including the damages that flow from the alleged breach. In an action for damages, C bears the burden of proving liability, causation, and the amount of the damages incurred.....”

