

Where is the limit on recovery of loss, particularly economic loss, for contractors and clients? What factors will sway a Court in your favour?*

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*Or: How can I get everything I ever wanted but was too afraid to ask for?

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Overview

- ▶ General points about recovery of losses
- ▶ Contractor Claims
- ▶ Employer Claims
- ▶ Tort



Standing on one foot...

**What is hateful to
thyself do not do to
another. That is the
whole Law, the rest is
Commentary.**

Hillel

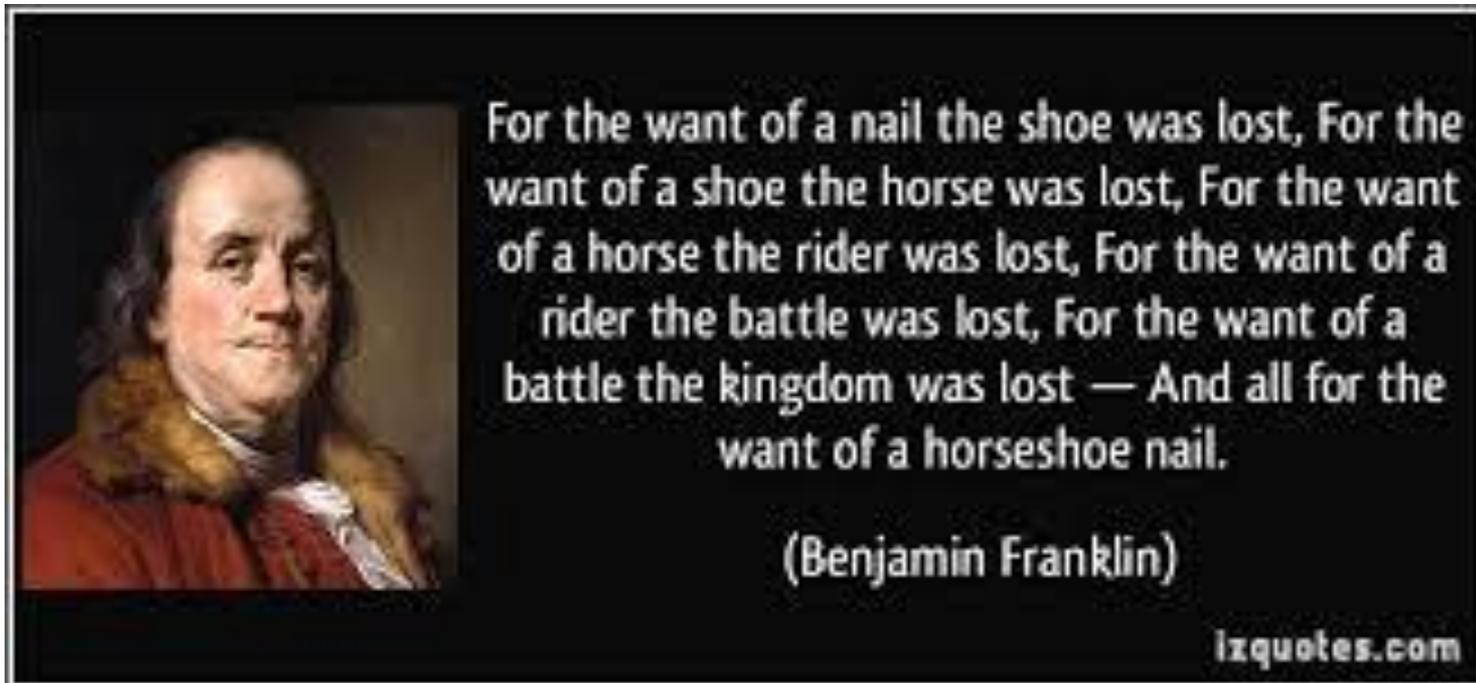
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Standing on one foot...

- ▶ *“Where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation with regard to damages, as if the contract had been performed”*
- ▶ ...and the rest is commentary



But not quite



Hadley v Baxendale (1854)

- ▶ Losses arising naturally in the usual course of things from such a breach [Limb 1]
- ▶ Losses as may reasonably be supposed to be in contemplation of both parties at the time they made the contract as the probable result of it [Limb 2]



‘Consequential’ Losses; profits?

- ▶ Generally, this doesn’t mean losses that are the consequence of the breach (!) - *Pegler v Wang (UK)* [2000].
- ▶ Claiming loss of profits:
 - ▶ Limb 1?
 - ▶ Proof?



Mitigation

- ▶ A 'duty' to take all reasonable steps to mitigate the consequences of the breach
- ▶ Barred from recovering losses due to own failure to do so but burden of proof on the wrongdoer
- ▶ Can recover costs incurred to mitigate



Loss of Management Time

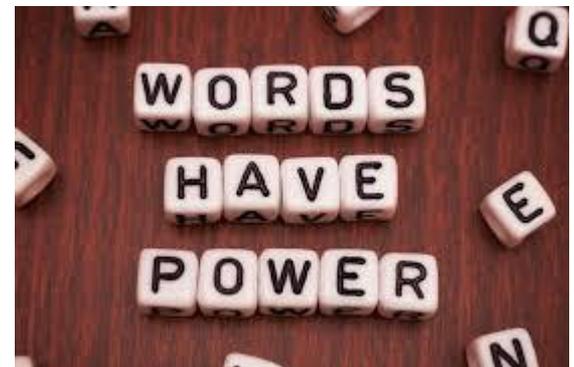
- ▶ “No additional staff have been employed and no overtime paid. The Claimant has suffered no loss”
- ▶ *Aerospace Publishing Ltd and another v Thames Water Utilities Ltd [2007] EWCA Civ 3*
- ▶ Practical Tips:
 - ▶ Time sheets; what done and why?
 - ▶ What should they have been doing?
 - ▶ Impact on the business?

Contractor Claims; Losses on termination

- ▶ Get paid for what you've done
- ▶ Loss of Profits (not loss of payment)
- ▶ Remember Remoteness

Employer Claims

- ▶ LADs:
 - ▶ *Tripple Point v PTT [2019] EWCA Civ 230*
 - ▶ *North Midland Building v Cyden Homes [2018] EWHC Civ 1744*



Employer Claims

- ▶ Losses on termination:
 - ▶ Diminution in value?
 - ▶ Costs of rectification/completion
 - ▶ *Pearce and High v Baxter (1999) 66 Con LR 111*
 - ▶ Betterment

Economic Claims in Tort

- ▶ *Spartan Steel v Martin* [1973] 1 QB 27 – damage to property vs loss of profit
- ▶ *D & F Estates v Church Commissioners* [1989] AC 177
- Damage to ‘the Thing Itself’ vs ‘Other Damage’
(Complex Structure Theory)
- ▶ The contractual structure



Thank you! Any questions?

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