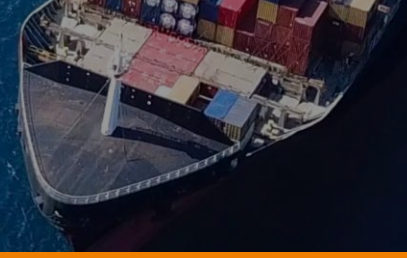
SKYROS- White Paper June 2026

JOHN RUSSELL KC

Quadrant Chambers

The big question



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Can a party recover damages for breach of contract, when it has not, in fact, suffered any loss?

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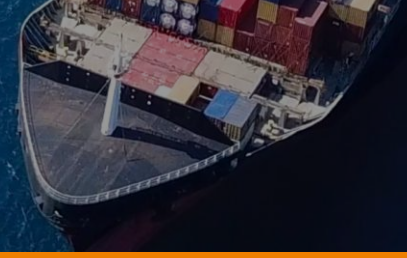

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Specifically- Can Owners under a TCP recover charter market rate damages in the overrun period following late delivery by Charterers were, as a matter of fact, Owners would not and “could not” have chartered out the Vessel?

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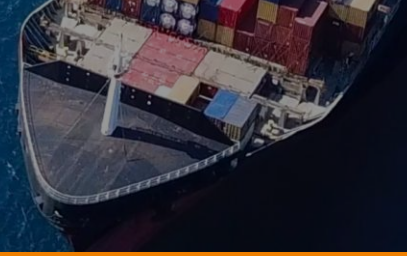

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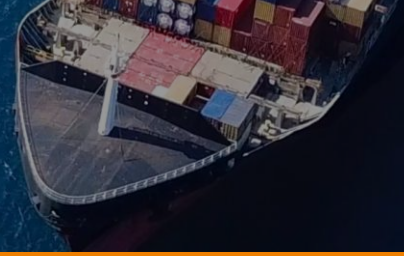
Principle or pragmatism?

The Facts



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Charterers redelivered SKYROS and AGIOS MINAS late (2 days and 7 days)

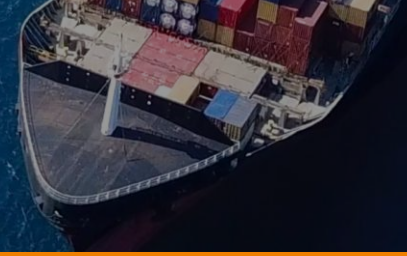
C paid the TCP hire for the overrun

The charter market rate was higher than the TCP hire

Owners had entered MOA sales. Delivery under the MOAs was to take place immediately on redelivery under the TCPs

Owners would not and “could not” have re-chartered even with on-time redelivery

The Consequence



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As a matter of fact/ counterfactual, Owners did not suffer any loss of market rate charter hire because they would not/ “could not” have entered the charter market

Whenever redelivery took place, they would have delivered to their buyers

The Tribunal- 

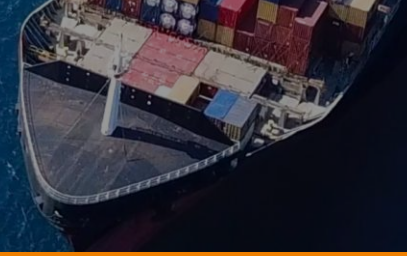
Yes, market rate damages available for the overrun period

- Quantum meruit
- User damages
- Negotiating damages

Described the Tribunal's reasons as "makeweights" and dismissed them all.

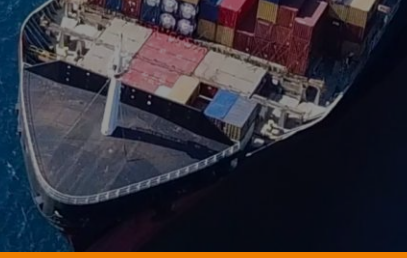
And complained that the argument about them meant less time has been spent on the real issue of principle (as he saw it).

“The hearing lasted for one day. However, about half that time was taken up with other points – quantum meruit, user damages and negotiating damages. It would have been much better if the parties had been able to concentrate on *The Achilleas* and on the line of cases flowing from *Rodocanachi v Milburn*, and I would have benefited from more time being spent in oral submissions on the crucial judgments.”



"In oral submissions, the only authorities I was taken to and shown in this regard were *The Achilleas*, *Rodocanachi v Milburn* (but only because I begged) and *Slater v Hoyle & Smith Ltd*."

Bright J



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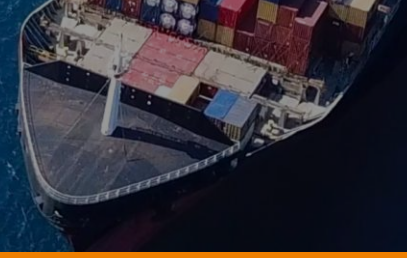
“Furthermore, I am sure that more research might have yielded additional authorities. …

I am also sure that there are more academic articles that may assist. …

I make these remarks because, if this matter proceeds to the Court of Appeal, I trust that the members of that court will receive all the assistance that is merited by points of this significance and intellectual interest.”

Bright J



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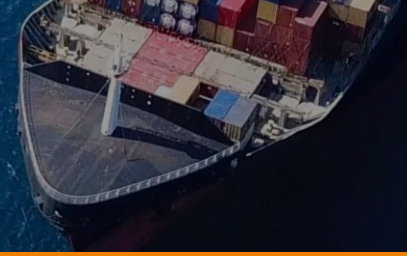
Lengthy analysis of Achilleas, the sale of goods cases, and *res inter alios acta*

In particular in relation to *res inter alios acta* cited Lord Sumption in *Swynson v Lowick Rose*

“Res inter alios acta

11. The general rule is that loss which has been avoided is not recoverable as damages, although expense reasonably incurred in avoiding it may be recoverable as costs of mitigation. To this there is an exception for collateral payments (res inter alios acta), which the law treats as not making good the claimant’s loss.”



SKYROS not a case about whether or not collateral benefits should be brought into account…

Therefore, res inter alios acta “nothing to do with this case”

Then:

“The MOAs are relevant in a narrative sense. They explain why the Vessels would never have been let on the charter market. However, the assessment of damages does not require an answer to the question “Why were the Vessels not let?” It only requires an answer to the question, “Have Owners lost the opportunity to earn charter hire?” – to which, on the assumed facts, the answer must be: “No”.”

Court of Appeal

Males LJ viewed the case in rather simpler terms:

"We had the benefit of extensive submissions on the sale of goods and carriage cases concerning the circumstances in which a claimant's sub-contracts should be taken into account for the purposes of assessing damages for non-delivery, late delivery and delivery of damaged goods."

Court of Appeal

But:

“In my opinion these are potentially deep waters which it is unnecessary to explore in this appeal. This appeal can and should be decided on the relatively straightforward basis which I have sought to explain.”

Court of Appeal

The “normal measure”

Took as a strong starting presumption that market rate damages recoverable

Cited numerous cases where the “normal measure applied”

Court of Appeal

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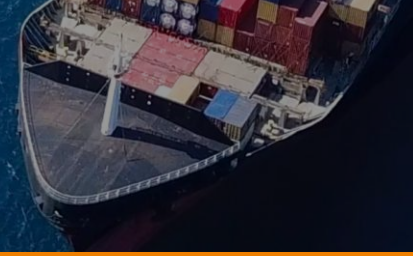
"This is a formidable line of authority, including cases decided by judges of great distinction in maritime law."

Court of Appeal



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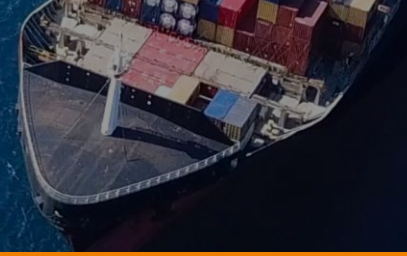
Took a much broader view of the res inter alios doctrine (not citing *Swynson*)- not limited to effect of “collateral benefits”

Court of Appeal



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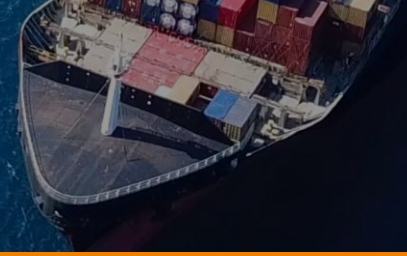
"The principle of *res inter alios acta*, on the other hand, operates at the first stage of determining what the claimant has lost. It is part of the *Robinson v Harman* comparison between the financial position in which the claimant would have been if the contract had been performed and the financial position in which the claimant finds itself as a result of the breach. But it operates to require that some aspects of the claimant's actual financial position should be disregarded for the purpose of assessing damages."

Court of Appeal



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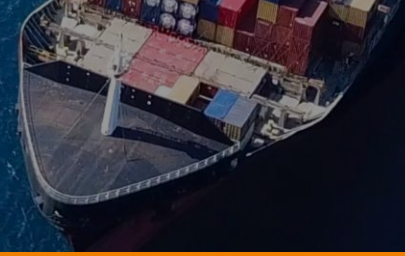
“Such matters are regarded as collateral, or res inter alios acta, because they arise independently of the circumstances giving rise to the loss, and are ignored in determining the damages to which the claimant is entitled. This is so regardless of whether the effect of disregarding such matters is to increase or decrease the loss which the law determines the claimant to have suffered.”

Court of Appeal



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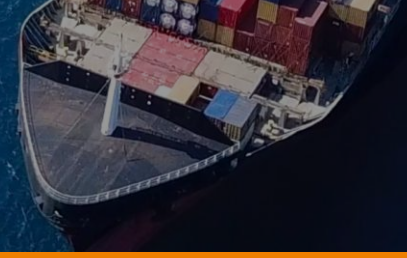
“In my opinion this is a beneficial outcome which promotes certainty in commercial dealings, and enables accounts to be closed and disputes settled with a minimum of complication and expense.”

Supreme Court



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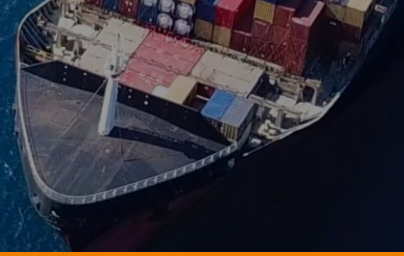
Permission granted 23 February 2026

Briggs, Hamblen, Burrows

Academic commentary



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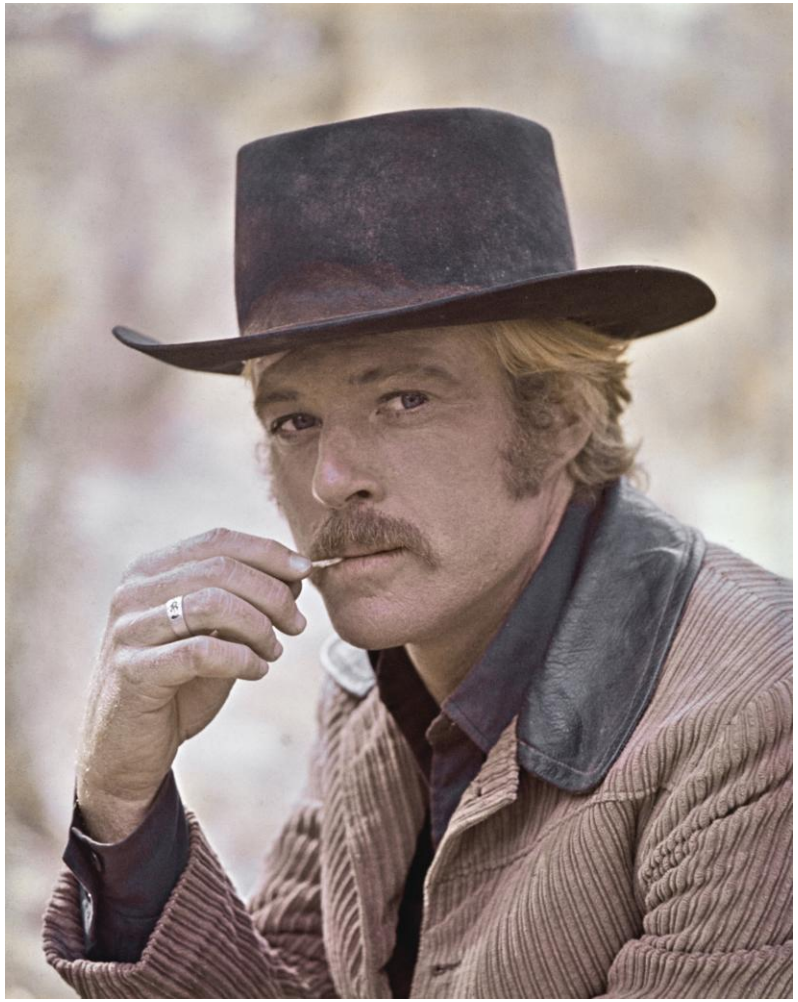
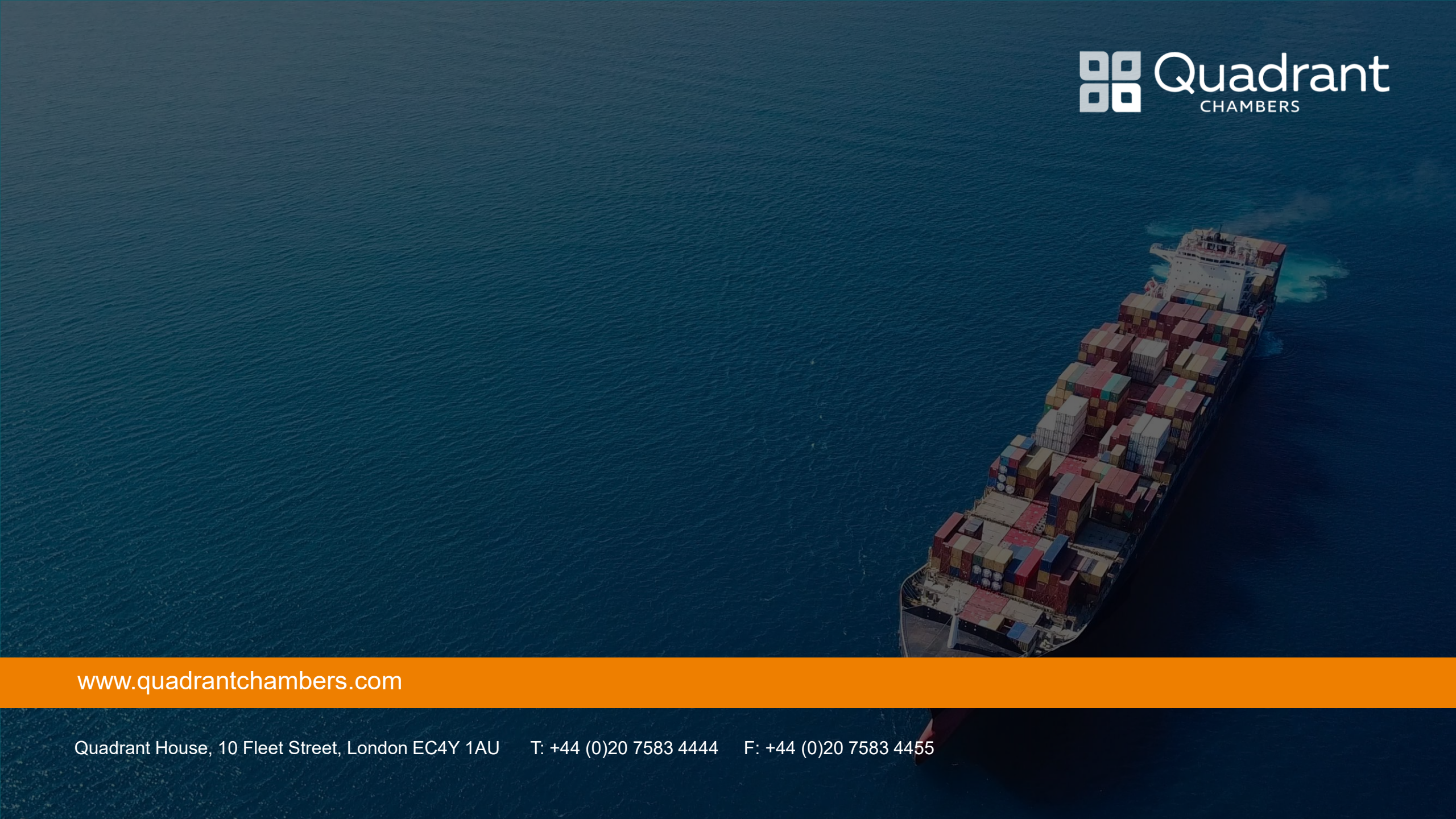
A “general damages” justification for recovery.

“Awards of general damages "are not for ‘loss’ in the counterfactual sense (*damnum*) but for ‘loss’ in the sense of having been the victim in the past of a wrong (*iniuria*)”.”

Damages for *iniuria* do not depend on proving a counterfactual loss so a “normal” or “conventional” measure can apply.





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