AWARD OF DAMAGES IN CONTRACT LAW IN NIGERIA: ISSUES, CHALLENGES AND REFORMS

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BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, ENUGU STATE IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW (LL. B) OF GODFREY OKOYE UNIVERSITY

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DECLARATION

I affirm that this research work titled 'Award of Damages in Contract Law in Nigeria; Issue, Challenge and Reform' was done by me in the Faculty of Law, Godfrey Okoye University, Enugu. All the information were deduced from the existing literature which has been duly acknowledged in the work and a list of the source of materials is provided herein. The content of this long essay is original and has not been submitted either in part or full for the award of any degree in this or any other institution.

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CERTIFICATION

We, the undersigned, certify that this project was completed by Ogbodo Miracle Chiwendu with registration number GOU/U21/Law/427, in partial fulfillment of the requirement for the award of Bachelor of Law Degree (LL. B)

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DEDICATION

To God Almighty, my beloved parents, Mr and Mrs. Sunday Nsude Ogbodo. My siblings: Ogechukwu , Chinenye, Emmanuel and Ndubuisi, all of you mean the whole world to me.

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LIST OF ABBREVIATIONS

AC	Appeal Cases
ACB	African Continental Bank
ADR	Alternative Dispute Resolution
All NLR	All Nigeria Law Reports
AP	Associated Press
CA	Court of Appeal
CBN	Central Bank of Nigeria
CLRN	Commercial Law Reports of Nigeria
CPI	Consumer Price Index
EWHC	England and Wales High Court
FBN	First Bank of Nigeria Plc
FX	Foreign Exchange
HL	House of Lords
IMF	International Monetary Fund
KB	King's Bench
LFN	Laws of the Federation of Nigeria
LPELR	Law Pavilion Electronic Law Reports
NALT	Nigerian Association of Law Teachers
NBS	National Bureau of Statistics
NICN	National Industrial Court of Nigeria
NJI	National Judicial Institute
NLRC	Nigerian Law Reform Commission
NNPC	Nigerian National Petroleum Corporation
NWLR	Nigerian Weekly Law Reports

OUP	Oxford University Press
P&ID	Process and Industrial Developments
PPP	Public-Private Partnership
QB	Queen’s Bench
RCC	Reynolds Construction Company
SC	Supreme Court
SGHC	Singapore High Court
SPDC	Shell Petroleum Development Company
SSRN	Social Science Research Network
UBA	United Bank for Africa Plc
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
USD	United States Dollar
W/A	West Africa
WACA	West African Court of Appeal
WJP	World Justice Project
WLR	Weekly Law Reports

ABSTRACT

This study examines the award of damages in contract law in Nigeria, with particular focus on the issues, challenges and reforms affecting the practical operation of damages as a remedy for breach of contract. It assumes that damages are the primary remedy in contract law and should be given to the innocent party as to how if at all he can be put in the position he would have been in if the contract had been fulfilled. The study utilises the doctrinal legal research methodology to analyse Nigerian statutes, judicial decisions, common law principles and some relevant comparative materials. It explores the conceptual underpinnings of contract damages and discusses the interests of expectation, reliance and restitution, remoteness, mitigation, causation, foreseeability and certainty of cause. The study reveals that Nigerian contract law on damages law is a well-developed doctrine, but is not well practiced due to inconsistent judicial reasoning, strict proof requirements, difficult in proof of loss and causation, economic volatility, inflation, foreign exchange instability, litigation delay and enforcement challenges. It also observes that vague contract wording, the uncertainty of valuation dates, and the failure to distinguish between the various types of damages and the failure to define the interest minimizes predictability and fairness in damages awards. The study recommends that structured judicial reasoning should be used in damages cases, that early damages schedules should be used, that focused disclosure should be adopted, that expert evidence is to be managed better, that there is improved contract drafting, that the valuation of damages is made clearer and that the payment of interest is made clearer. It concludes that damages in Nigerian contract law should continue to be compensatory, but should be made more predictable, evidence-based, economically realistic and enforceable for the contract law to promote commercial confidence, fairness and effective dispute resolution.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

In the present day commercial life in Nigeria is dominated by contracts. Parties use contractual promises to distribute risk, establish performance levels, and secure reasonable expectations for a variety of circumstances, including routine transactions (supply, employment, leases, services), as well as more complicated ones (construction, energy, banking, telecommunications, public-private partnerships and cross-border investments)[1]. If there is a breach, the law needs to provide an effective remedy which restores confidence in contracting, deters opportunistic breach, and helps maintain an economic stability.[2]

In fact, damages are the predominant remedy for breach of contract in practice, given that most of the time in business, performance has failed, and the innocent party would like to be paid rather than continue dealing with the other party. The classical objective is compensatory, with the aim of bringing the claimant back to where he would have been if the contract had been fulfilled.[3] This is not so easy to accomplish in an economy of inflation, currency fluctuations, and cost fluctuation. Under these circumstances, the real value of awards can be lost to the delayed

[1] World Bank Group, *Doing Business 2020: Economy Profile of Nigeria* (World Bank 2020) https://documents1.worldbank.org/curated/en/270991575031203294/txt/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Nigeria.txt accessed 29 November 2025.

[2] World Justice Project, *Rule of Law Index 2024* (WJP 2024) https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf accessed 29 November 2025

[3] Edwin Peel, *Treitel: The Law of Contract* (15th edn, Sweet & Maxwell 2020) https://www.wildy.com/isbn/9780414070714/treitel-the-law-of-contract-15th-ed-paperback-sweet-maxwell-ltd accessed 29 November 2025

adjudication, and the issues surrounding exchange rates, interest and valuation dates can either make damages a windfall or an under compensation[4].

Nigeria's commercial environment in the last few years has amplified these difficulties. Inflationary pressure and exchange-rate adjustment have significantly affected the cost of replacement transactions, imported inputs, credit, and business operations[5]. These facts pose practical issues frequently before courts in contract disputes: what is the correct valuation date; what about the value of foreign currency, of dependence on imported goods, or of fluctuating prices; and how should interest be treated so that the value of the compensation does not come to naught during a long litigation?[6] These questions are not merely technical. They directly affect whether damages serve justice in individual cases and whether contract law supports commercial predictability.

Another driver of the problem is procedural and institutional. Commercial disputes often face delay, and the cost of enforcing contracts can be high relative to claim value.[7] Where adjudication is slow, claimants may struggle to prove losses with the precision demanded for special damages, especially when business records are incomplete, informal, or disrupted by market shocks[8]. At the same time, defendants may exploit strict pleading and proof requirements to defeat legitimate claims, even where breach is clear but quantification is contested. The

[4] International Monetary Fund, *Nigeria: 2024 Article IV Consultation – Press Release; Staff Report* (IMF Country Report No 24/102, 2024) https://www.elibrary.imf.org/downloadpdf/view/journals/002/2024/102/002.2024.issue-102-en.pdf accessed 29 November 2025

[5] National Bureau of Statistics, *CPI and Inflation Report: June 2024* (NBS 2024). https://www.nigerianstat.gov.ng/elibrary/read/1241533 accessed 29 November 2025

[6] International Monetary Fund, *Nigeria: 2024 Article IV Consultation – Press Release; Staff Report* (IMF Country Report No 24/102, 2024) https://www.elibrary.imf.org/downloadpdf/view/journals/002/2024/102/002.2024.issue-102-en.pdf accessed 29 November 2025

[7] World Bank Group (n 1)

[8] *Grand Marine Oil & Gas Nigeria Ltd & Anor v Othniel Brooks Ltd* (2023) LPELR-59377(CA)

resulting pattern can be inconsistent outcomes across similar disputes, which undermines the stabilising function that contract damages ought to perform.

From the Nigerian perspective, too much conflict can also reveal the systemic implications of damage and monetary awards structures and review. It is a testament to the volume of financial risk that can result from contractual failure that the P&ID dispute, though occurring in an arbitration setting, highlights the extent of financial liability that can ensue once contractual expectations are set against seemingly large monetary awards.[9] The cases serve as a reminder of the need to analyze damages under a contract in Nigeria, not only jurisprudentially, but also in the context of the realities such as proof challenges, valuations, interest and institutional capacity.[10]

This study is warranted by recent reforms and the changing nature of dispute-resolution practice. The Arbitration and Mediation Act 2023 is a step in the right direction in Nigeria's policy directions to modernise dispute resolution processes and to give commercial certainty a boost. [11] Yet, the question looms large even on the basis of court litigation or arbitration, whether the damages shall be assessed and awarded to provide a just, predictable and realistic compensation that is commensurate with the economic and institutional realities of Nigeria. This research thus places damages in the context not only of the doctrinal study of Nigerian contract law, but also in the context of the practical instrument of commercial justice, touching on issues, challenges and the needed reforms to improve the outcome.

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[9] *Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2023] EWHC 2638 (Comm)

[10] Y Hortoğlu Grant, 'Arbitral fraud and the power of arbitrators in the Nigeria v P&ID case' (2025) 41(3) *Arbitration* 633

[11] International Bar Association, 'The Nigerian Arbitration and Mediation Act 2023' (20 December 2023).

1.2 Statement of the Problem

While the principles of contract damages are relatively clear in theory, there are some enduring issues in Nigeria as to their application. The first is that while doctrine maybe strict, actual results may often be less. Damages that are awarded often do not reflect the actual loss sustained or reasonably foreseeable from the violation. This can lead to under compensation, over compensation, or awards that seem to have nothing to do with the evidence.

Another issue is the lack of clarity and consistency in judicial reasoning regarding the appropriate compensation, particularly for future profits, changing markets, foreign currency exposure and other specific commercial arrangements. When materially different awards are available for similar facts, actors find it difficult to estimate awards and that makes it more difficult to assure enforcement of contracts.

Another challenge is establishing loss, which can be challenging in circumstances where business records are incomplete, transactions are on an informal basis, expert evidence is costly, and causation is an issue. However, the absence of proof can result in a small payment to a claimant when there is a real loss in existence, and can be a huge advantage to a defendant who wants to limit their liability.

In addition, delays in litigation and enforcement will compromise the compensatory role of damages. Years of proceeding to judgment can also result in a claimant losing purchasing power due to inflation, currency devaluation and can still have some hurdles to overcome in executing the judgment. Under these conditions, damages may not be a worthwhile remedy, while breach may become more and more attractive.

It is not only the issue of whether damages exist as a remedy, it is whether the damages that are awarded in Nigeria are in a manner that is consistent, evidence sensitive and economically realistic and capable of achieving the core compensatory purpose of contract law. This study tackles the challenges and assesses for reform options.

1.3 Research Questions

This research is guided by the following questions:

1. What practical challenges do claimants and defendants face in proving, resisting, or quantifying contractual loss in Nigerian litigation?
2. How adequate and effective are damages as a remedy in Nigeria, considering inflation, delay, enforcement difficulties, and commercial realities?
3. What reforms, legislative or judicial, can enhance fairness, predictability, and the remedial effectiveness of damages in Nigerian contract law?

1.4 Aim and Objectives of the Study

The aim of this study is to critically review the issue of damages in Nigerian contract law, highlight the problems and challenges it faces and suggest some amendments to make it more just, certain and implementable.

The objectives of the study are:

1. To examine the adequacy and effectiveness of damages as a contractual remedy in Nigerian practice.
2. To identify challenges faced by courts and litigants in determining, proving, and assessing damages.

3. To recommend reforms to enhance fairness, predictability, consistency, and enforcement of award of damages in Nigeria.

This aims and objectives align with the study framework set out in the chapterisation document and will be pursued progressively across the doctrinal, legal framework, and reform-focused chapters.

1.5 Scope and Limitation of the Study

In this study, only damages for violation of contract under Nigerian law are considered. It does not discuss the entire spectrum of contractual remedies, including, except when needed for comparison or explanation, specific performance, injunctions, restitutionary orders, and rescission, but only the principles, categories and assessment of contractual damages.

The study is limited to jurisdiction of Nigeria based on the Nigeria statutes, Nigerian judicial decisions and received common law principles which guide Nigerian contract doctrine. The perspective of other common law jurisdictions will be used selectively to shed light on options for reform and interpretation, but not to supplant legal authority in Nigeria.

In subject focus, the scope extends to conceptual differences with regard to damages such as the distinction between an expectation interest with regard to damages and other remedial interests, the limits of remoteness, the nature of the damage mitigator, evidence of damage and problems of distinguishing between kinds of damage. It also considers practical issues like delay, prosecution and economic uncertainty as limitations on successful compensation.

The study's limitations are the availability of full sets of trial-level awards and settlement results: not all awards or settlement results are published. There are other restrictions, too, as damages is fact-driven and generally will not apply in specific commercial settings with the level of detail required to explain the nuances. To tackle this the study focuses on the use of doctrinal analysis, appellate guidance and the thematic evaluation of patterns and recurring problems.

1.6 Research Methodology

The approach for this research is doctrinal legal research that uses the analysis of legal rules and principles in statutory, case, and authoritative legal texts. This is suitable because the determination of damages, while partly based on the interpretation of the judges, is significantly determined by the interpretation of the common law principles in the Nigerian legal system.

The study will engage in a structured analysis of the Nigerian judicial reasoning regarding damages in contract, particularly its application of the following principles, compensatory purpose, remoteness, mitigation, causation and certainty. It will also explore the approach of courts to various heads of claim and the criteria for proof and quantification.

It also adopts a restricted comparative approach to looking at how problems similar to those encountered in the research are dealt with in other selected jurisdictions, including issues of predictability, guidelines and judicial discretion in quantification. The comparative element is to derive lessons of reform that are transferable to Nigeria's legal and institutional context.

There is a critical and evaluative approach all throughout methodology. Not only will this assess the law, but also it will consider whether the doctrine and/or practice already in place, is satisfactory in terms of the underlying goals of contractual damages and whether such changes in light of the realities of Nigeria including the delays in litigation, enforcement constraints, and economic uncertainty, should be made.

1.7 Significance of the Study

The study is significant because one of the most concrete ways in which the contract law touches the economic reality is related to the award of damages. This is because an inefficient contract system that is not consistent in its remedies for breach, or that is inconsistent in its methods of paying a remedy, undermines economic co-ordination and has a negative impact on the viability of commercial planning and on the confidence of the legal system as a mechanism of economic co-ordination.

The judiciary will have a more clear path to revisit the same issues in damages, and it will focus attention on the need for greater uniformity of reasoning, clarity or more organized guidance to assist judges in making better decisions. Where there is broad discretion between courts in the use of this measure, this is especially significant.

The material is also useful for lawyers and litigants because it provides an explanation of the proof burdens, common problems in quantification and the implications of doctrines such as mitigation and remoteness. This can result in improved litigation strategy, contract drafting and planning for dispute resolution.

The study identifies the gaps that offer Nigeria an avenue to improve its legislative guidance, procedural adjustments to reduce delays, or directions that help ensure awards are certain, but keeps the "flexibility" for the courts. It also plays a role in the overall goal of improving the business climate of the region through strengthening remedy and enforcement credentials.

1.8 Literature Review

The general principle of damages for breach of contract is supported by a consensus in the literature that contractual damages are essentially compensatory in nature instead of punitive.

The predominant aim is to restore to the innocent party, so far as money will reach him, his position as far as it was affected by the observance of the contract.[12] This compensating foundation is the rationale for damages typically being claimed on the basis of the claimant's expectation interest, and in exceptional cases, where damages for the reliance interest are too speculative to establish.[13] The basic duty of damages is thus consistently described in the main texts upon contract law as the metamorphosis of "position if performed" into a "monetary reward" which is then subjected to the doctrines of limitation such as causation, remoteness, mitigation and certainty of proof.[14] These writings serve as the conceptual basis of assessing damage to with Nigerian Contracts, specifically the measure of damage, recoverability of consequential losses, mitigation and the handling of liquidated damages clauses.[15]

One of the themes of contemporary scholarship is the conflict between clarity of doctrine and complexity of the facts for damages. While compensation continues to be the major motivator, courts will need to find methods to value that are sufficiently workable so as not to under-compensate or over-compensate.[16] Similarly, Peel posits that damages doctrine is a disciplined remedial system that provides damages, but only to a point determined by the rules of law regarding causation, remoteness, mitigation, and proof.[17] Despite the inherent complexities of commercial disputes where contract damages may be subject to uncertainty due to 'grey areas' such as substitute 'transactions', variable market prices, defective performance or unknown profits, Beale also notes that some categories and tests are stable, leading to a degree of

[12] *Robinson v Harman* (1848) 1 Exch 850; Peel (n 3) 1081.
[13] *Anglia Television Ltd v Reed* [1972] 1 QB 60; James Edelman, Jason Varuhas and Andrew Higgins (eds), *McGregor on Damages* (22nd edn, Sweet & Maxwell 2024) paras 1-001–1-010.
[14] Hugh Beale (ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021) vol 1, paras 26-001–26-015.
[15] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Adetoun Oladeji (Nig) Ltd v Nigerian Breweries Plc* (2007) 5 NWLR (Pt 1027) 415 (SC).
[16] McGregor (n 13) 21
[17] Peel (n 3) 4

predictability in contract damages.[18] This theme is especially applicable to Nigeria, where inflation, volatile exchange rates, lack of documentation, and delayed performance and extended litigation can complicate commercial disputes.

The second is related to remoteness and foreseeability. In the literature, it is always acknowledged that contract damages are not supposed to be to cover all losses that arise after the breach. Instead, the remoteness limitation only allows for a recovery for losses that result from the breach or those that are reasonably foreseeable at the time of the contract. This principle, which is best expressed in *Hadley v Baxendale*[19], is the basis for the claim of liability remaining linked to the risks which the parties may properly be said to have assumed by the contract. Further, Nigerian courts have adopted this stance, limiting the losses to those that are not too remote and those that are at least supported by the context and terms of the transaction.[20] This is particularly significant in the Nigerian commercial arena where, if the commercial contract is entered into, the effect of any disruption in the supply chain, foreign exchange exposure and cost escalation can result in a chain of events that the parties did not intend to price in. It is therefore suggested by the literature that the Nigerian courts must be sensitive to the commercial realities while at the same time maintaining the predictability which the doctrine is intended to assure.[21]

A third theme is mitigation. Contemporary scholarship treats mitigation not as a moral duty owed by the claimant to the defendant, but as a legal limit on recoverable loss. The claimant cannot recover for losses which could reasonably have been avoided after the breach.[22] McGregor's account emphasises the practical nature of this inquiry, since the court must consider what was

[18] Beale (n 14) 12
[19] (1854) 9 Exch 341
[20] *Adetoun Oladeji (Nig) Ltd v Nigerian Breweries Plc* (2007) 5 NWLR (Pt 1027) 415 (SC); *SPDC (Nig) Ltd v Tiebo VII* (2005) 9 NWLR (Pt 931) 439 (CA
[21] *The Achilleas (Transfield Shipping Inc v Mercator Shipping Inc)* [2008] UKHL 48; Peel (n 1) 1102–1112.
[22] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673.

reasonable in the circumstances, including market conditions, availability of substitute performance, access to funds, timing and commercial risk.[23] This is important in Nigeria because an innocent party may face practical barriers to mitigation, including limited access to credit, rapid price increases, scarcity of substitute goods or services, and infrastructure-related disruptions. Accordingly, mitigation analysis should prevent opportunistic inflation of claims, but should not impose unrealistic expectations on claimants operating within difficult economic and commercial conditions.

A fourth theme is the treatment of liquidated damages and penalty clauses. The ongoing argument about the difference between enforceable pre-estimates of loss and penalties as a main deterrence is reflected in the current scholarship. For Peel, the penalty doctrine is a way of regulating the "agreed consequences" of a contract, especially one that might be "disproportionate" due to "bargaining power" or "commercial pressure.[24] Related academic discussion (including recent analytical work that revisits the modern justification for regulating penalty clauses) highlights that courts increasingly focus on proportionality and legitimate interest, not only mathematical pre-estimation[25]. In Nigeria, the practical significance of this theme is seen across construction, procurement, employment and finance contracts, where parties often draft fixed sums for delay, default, or non-performance.[26] Contemporary Nigerian judicial materials show recurring disputes over whether a sum is truly “liquidated” and what evidential burden remains once the sum was contractually fixed.[27]

[23] McGregor (n 12) 22
[24] Peel (n 3) 6
[25] FD Amara, ‘Revisiting Contractual Penalty Clauses: A Critical Analysis Implied Terms and Breach in Cavendish Square Holding BV v Talal El Makdessi and ParkingEye Ltd v Beavis in Modern Contract Law’ (2024) SSRN Working Paper https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5076430& accessed 30 November 2025
[26] *Captain Falilou Diagne v Oil & Industrial Services Ltd* Suit No: NICN/LA/497/2022
[27] *Ashbard Energy Company Ltd v. Mr. Jeremiah Agbarakwe* Suit No: NICN/PHC/39/2022

A fifth theme in Nigerian-facing literature and judicial reasoning is pleading and proof, especially the strict approach to special damages. Nigerian courts repeatedly insist that special damages must be specifically pleaded and supported by credible evidence that allows the court to quantify the claim without guesswork. Recent judicial pronouncements also clarify that "strict proof" does not require an unrealistic evidential standard, but does require coherent particulars and evidential materials that make assessment dependable. This doctrinal position intersects with the administrative problems of record-keeping in Nigeria, and the fact that a large number of business transactions take place informally, where the proof might be a challenge even if the loss is actual. In scholarly writing that mentions damages in sector-specific contexts (e.g., consumer/commercial redress discussions), this constant tension between doctrine and market practice is also present.[28]

Although not exhaustive of contract damages generally, employment-related scholarship is often resorted to in Nigerian writing because it is a type of dispute that is frequently litigated with regard to contractual remedies. Kenen's analysis of termination-related disputes in 2022 reinforces the ongoing discussion around the "right" amount of damages and the "right" limits in "ordinary" employment relationships.[29] Wobodo also refers to remedies for wrongful termination and repeats the compensatory basis, and highlights the way courts put damages into practice in actual practice.[30] The employment-focused nature of these works does not detract from the value of their insights for the project as a whole, as they highlight the common judicial practices, such

[28] Rose Ohiama Ugbe, Brian FI Anyatang, B E Kooffreh and Anne Uruegi Agi, 'Consumer Redress Channels Under Nigerian Laws: A Comparative Analysis' (2020) 104 *Journal of Law, Policy and Globalization* 18

[29] Godwin Kenen, 'Determination of Contract of Employment through Termination and Dismissal: Trends and Challenges of Modern Nigeria' (2022) *Benue State University Law Journal* 11. https://bsum.edu.ng/journals/law/vol11/files/7.pdf

[30] Godwin Wobodo, 'Wrongful Termination of Contract of Employment in Nigeria: A Case for Reinstatement in Private Sector (2023) 11(1) *Rivers State University Journal of Public Law* 133. https://www.rsupubliclawjournal.com.ng/wp-content/uploads/2023/10/A8-Wobodo.pdf

as quantification, proof expectations and reliance on contractual terms as a starting point for remedies.[31]

Finally, a growing body of work on arbitration and commercial justice is relevant to damages discourse in Nigeria, particularly where large-scale contractual disputes are resolved through arbitral processes with court supervision at enforcement or set-aside stages. The P&ID-related literature and commentary illustrates how questions of evidential integrity, public policy, and procedural regularity can shape whether large monetary awards survive judicial scrutiny. This stream of writing is important because it highlights that damages discourse is not only about the measure of loss, but also about the legitimacy and reliability of the process by which loss is proven and monetised. [32]

[31] Wobodo (n 31) 6
[32] *Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2023] EWHC (Comm)

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Conceptual Issues and Meaning of Contract

The conceptual framework of contract damages is derived from the common law tradition, but there are a number of factors peculiar to Nigeria that make this application difficult. First, the definition of “compensation” can be undermined by economic uncertainty. The replacement costs can also vary significantly over time as a result of inflation and exchange rate fluctuations, so that a valuation date selected by the court can have a significant impact on whether or not the claimant is truly restored.[33] This will lead to a conflict between formal rules and economic reality, especially for contracts that rely on imported inputs, foreign currency needs, or price-sensitive supply chains.[34]

Litigation delay and the enforcement restrictions can have the effect of diminishing the value of awards. If cases drag on for years, an appropriate award when filed may not be sufficient at trial. This brings up doctrinal and policy issues related to interest, currency conversion and the more consistent employment of devices to preserve the compensatory value of awards by the courts. Third, weak record keeping, informality, and under-documented records can often add to the burden of proof challenges. When courts require specific loss, claimants may not be able to

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[33] Elisha Bala-Gbogbo and Chijioke Ohuocha, *Nigeria's inflation rate drops after statistics overhauled and updated* (Reuters 2025) https://www.reuters.com/world/africa/nigeria-inflation-2448-yy-january-after-rebasing-2025-02-18/ accessed 8 January 2026

[34] Central Bank of Nigeria, *Quarterly Statistical Bulletin* (2024 Q3) https://www.cbn.gov.ng/Out/2025/STD/2024Q3%20Statistical%20Bulletin_Contents%20and%20Narratives_Final.pdf accessed 8 January 2026

establish the loss even if their business loss is actual and directly related to the breach.[35] What this does is it allows someone to prove their damages occurred, but the damages they can recover are capped.[36]

In Nigeria, the practice of drafting contracts sometimes gives rise to avoidable damages dispute. Improperly worded variation clauses, lack of clarity around risk allocation, performance terms that are not clearly defined, and ambiguous liquidated damages clauses can leave courts with little guidance, and lead to uncertainty and discretion in damages calculations. Fifth, extra layers of complexity can be added by public contracting and regulated sectors. Approvals, policy changes and administrative action can impact contracts in fields such as construction, energy and infrastructure. This makes it difficult to analyse causation and can lead to conflicts of whether losses were caused by breach or regulatory or policy events.[37]

These conceptual questions suggest that it is important to consider not only legal doctrine but also the circumstances in which doctrine is applied and the effects of circumstances on outcomes when examining contract damages in a study that focuses on Nigeria.

A contract is a legally binding agreement between two or more parties that establishes the requirements for each party, and that the law will enforce.[38] The law generally stipulates that an agreement must contain elements of offer and acceptance, consideration, agreement to create legal relations, capacity, and certainty of terms.[39]

[35] World Bank, *Doing Business 2020: Economy Profile—Nigeria* (World Bank 2019/2020)
[36] *Conoil Plc v Vitol SA* (2018) 9 NWLR (Pt 1625) 463
[37] *Federal Republic of Nigeria v Process and Industrial Developments Ltd (P&ID)* [2023] EWHC 2638 (Comm)
[38] Peel (n 3) 12
[39] *BFI Group Corp v Bureau of Public Enterprises* (2012) 18 NWLR (Pt 1332) 209 (SC); *Orient Bank (Nig) Plc v Bilante Intl Ltd* (1997) 8 NWLR (Pt 515) 37 (CA).

Contract law in Nigeria is a highly common law based and equitable system with statutes governing specific types of contracts and commercial relations.[40] Consequently, Nigerian contract law has incorporated common law principles, with local economic and transactional considerations being taken into account. This hybrid position means that contract rules are, in principle, stable, but their application to real disputes can be complex, especially where contracts are partly informal, documentation is incomplete, or performance conditions shift due to market volatility.[41]

A useful point to appreciate when considering the concept of contract in the context of damages is that contract distributes risks. Adjusting risk distribution is done through the price, timelines, quality clauses, variation clauses, termination clauses and sometimes liquidated damages clauses.[42] Damages is an issue that courts may be considering when determining whether an alleged loss is within the "risk allocation" agreed between the parties or whether the loss is too remote or too speculative to be the responsibility of the party who breached the contract.[43]

2.1.1 Historical Development of Contract Law

An important reason for studying the history of the contract law is that it helps to understand its current status as a mechanism that is legally binding only if it meets certain legally recognised conditions. Not all promises were regarded as legally binding in early legal systems. Enforcement was typically in connection with formal acts, sealed instruments, debt, property, or status-based relationships. Over time, the law moved from strict formalism to a more commercial

[40] Richard Stone and James Devenney, *The Modern Law of Contract* (14th edn, Routledge 2022)
[41] International Monetary Fund, *Nigeria: 2024 Article IV Consultation—Staff Report* (IMF Country Report No 24/102, 2024)
[42] *Hadley v Baxendale* (1854) 9 Exch 341
[43] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673;

and promise-based model, where bargains voluntarily made between parties could be enforced by courts if the essential elements of contract were present.[44]

In the common law tradition, the emergence of assumpsit was central to this development. It allowed courts to enforce undertakings where one party had assumed an obligation and the other party had relied on or provided consideration for that undertaking. This gradually shifted the law from rigid forms of action to a wider recognition of consensual obligations. Another aspect of the doctrine of consideration also was significant because it drew the line between enforceable bargains and mere promises. In this respect, contract law emerged as a way of safeguarding exchange, commercial reliance, and the expectations engendered by mutual consent.[45]

Another aspect of the doctrine of consideration also was significant because it drew the line between enforceable bargains and mere promises. In this respect, contract law emerged as a way of safeguarding exchange, commercial reliance, and the expectations engendered by mutual consent.

Equity was also a contributor to the development of contract law, by making the rules of common law more flexible. Under common law, damages were the main remedy; under equity, specific performance, injunction, and rescission were remedies, but only in proper cases. Such remedies were of importance when a monetary remedy was not available, such as in a contract for land, for unique goods, or for restraint. The common law and the equitable principles then

[44] PS Atiyah, *An Introduction to the Law of Contract* (6th edn, Clarendon Press 2005); AWB Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Clarendon Press 1975).
[45] Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (9th edn, Oxford University Press 2020) chs 1 and 2; Peel (n 3) 15.

gave rise to a more comprehensive system of contract, one which valued both monetary damages and discretionary, non-monetary relief.[46]

Contract law was shaped in Nigeria by importation of the English common law, doctrines of equity and statutes of general application, all of which are subject to the Nigerian laws in force and the interpretation of Nigerian judges. Common law principles of offer and acceptance, consideration, intention to create legal relations, capacity, certainty, breach, remoteness, mitigation and proof of damages have continued to be used in the Nigerian courts. However, these principles are not applied in a vacuum. They operate within Nigerian statutes, Nigerian commercial practices, local economic realities and the binding force of Nigerian judicial precedent.[47]

The Nigerian development of contract law is therefore best understood as a hybrid process. Its doctrinal foundation is inherited largely from English common law, but its present application is shaped by Nigerian constitutional arrangements, state and federal legislation, sector-specific statutes, local commercial realities and judicial decisions. This hybrid character becomes significant in determining damages as damages are a product of common law but its impact is dependent on the Nigerian setting where breach, proof, valuation and enforcement occur.[48]

2.1.2 Sources of Contract Law

Sources of contract law are the legal resources used to derive laws, rights, and obligations of a contract. In Nigeria these sources are not included in one single code of contracts. They are taken from common law, the doctrines of equity, statutes, existing case law, customary law (when

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[46] Peel (n 3) 20; Hugh Beale (ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021).
[47] TO Elias*, The Nigerian Legal System* (Routledge & Kegan Paul 1963)
[48] *BFI Group Corp v Bureau of Public Enterprises* (2012) 18 NWLR (Pt 1332) 209 (SC); *Orient Bank (Nig) Plc v Bilante International Ltd* (1997) 8 NWLR (Pt 515) 37 (CA).

relevant), and party consent. This multi-layered system is the reason for Nigerian contract law being both doctrally solid and quite complex.

The first major source is received English common law and equity. Many core principles of contract law, including offer and acceptance, consideration, intention to create legal relations, privity, breach, remoteness and mitigation, developed in the common law tradition and continue to influence Nigerian law. Equity remains relevant in relation to remedies such as specific performance, injunction, rescission, rectification and relief against forfeiture. Although these principles are inherited, Nigerian courts apply them through Nigerian precedent and in light of Nigerian statutory and commercial realities.[49]

The second source is legislation. Federal and state statutes affect contract formation, interpretation, proof, performance, remedies and enforcement. Some statutes regulate particular kinds of transactions, while others affect litigation generally. For example, the Evidence Act regulates admissibility and proof, including documentary and electronic evidence. The Sale of Goods Act influences implied terms and remedies in contracts for the sale of goods. The Arbitration and Mediation Act 2023 affects the dispute resolution framework for commercial contracts where parties choose arbitration or mediation. At state level, the Contract Law, Cap 26, Vol. 1 of the Revised Laws of Enugu State 2004 is relevant as a local statutory source within Enugu State.[50]

The third source is judicial precedent. Nigerian courts give practical meaning to contractual principles by applying them to disputes. Precedent is particularly important in damages because many rules on compensatory purpose, remoteness, mitigation, certainty, special damages,

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[49] *Richard Stone and James Devenney, The Modern Law of Contract* (14th edn, Routledge 2022); Peel (n 3) 12.
[50] Evidence Act 2011, ss 83-84; Sale of Goods Act 1893; Arbitration and Mediation Act 2023; Contract Law, Cap 26, Vol 1, Revised Laws of Enugu State 2004.

liquidated damages and interest are developed through case law. For instance, courts repeatedly emphasise that special damages must be specifically pleaded and strictly proved, while damages generally remain compensatory and not punitive. Judicial precedent therefore operates as the working source of Nigerian contract damages law.[51]

The fourth source is the contract itself. Parties may define their own obligations, performance standards, payment terms, default triggers, termination rights, limitation of liability clauses, dispute resolution clauses and liquidated damages provisions. The court ordinarily begins with the contract because the agreement is the primary expression of the parties' risk allocation. However, the parties' freedom is not absolute. Contractual terms may be limited by statute, public policy, equitable principles, illegality, unconscionability, penalty doctrine, or rules requiring certainty and lawful purpose.[52]

Customary law may also influence contractual relationships in appropriate cases, particularly where the transaction is local, informal, and governed by recognised customary practices. However, customary rules must satisfy the usual tests of validity and must not be repugnant to natural justice, equity and good conscience or incompatible with applicable legislation. In modern commercial disputes, customary law is less dominant than statute, precedent and written contractual terms, but it remains part of the broader Nigerian legal landscape.[53]

Overall, the sources of Nigerian contract law show that the law of contract is not derived from a single instrument. It is built from common law doctrine, equitable intervention, legislation, precedent, party autonomy and, in limited contexts, customary law. This multiplicity of sources

[51] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Ajigbotosho v Reynolds Construction Co Ltd* (2019) 3 NWLR (Pt 1659) 287 (SC); *Adetoun Oladeji (Nig) Ltd v Nigerian Breweries Plc* (2007) 5 NWLR (Pt 1027) 415 (SC).
[52] *BFI Group Corp v Bureau of Public Enterprises* (2012) 18 NWLR (Pt 1332) 209 (SC); *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79.
[53] Evidence Act 2011, ss 16-18; *Zaidan v Mohssen* (1973) 11 SC 1.

is useful because it provides flexibility, but it can also create uncertainty where statutes are outdated, judicial reasoning is inconsistent, or contracts are poorly drafted.

2.1.3 Breach of Contract

A breach of contract occurs when a party fails, without lawful justification, to perform a contractual obligation when performance is due, or performs in a manner inconsistent with the contractual terms.[54] Breach can take different forms, including complete non-performance, late performance, defective performance, or repudiation (where a party shows, by words or conduct, an intention not to be bound).[55] Breach may be actual or anticipatory. Actual breach occurs when the time for performance has arrived and a party fails to perform as required.[56] Anticipatory breach occurs before the time for performance, where a party clearly indicates by words or conduct that it will not perform, or disables itself from performing, the contract.[57]

The type of breach matters for damages. For example, late delivery may require proof of losses related to delay (such as storage, alternative procurement costs, or lost profits), whereas defective performance may invite claims for the cost of cure or diminution in value[58]. Repudiatory breach may entitle the innocent party to terminate and claim damages measured by what the contract would have produced had it been performed, subject to limits such as mitigation and remoteness.[59]

In Nigeria, breach disputes frequently turn on factual and evidential issues such as whether a condition precedent was met, whether a party waived strict compliance, whether variations were

[54] McKendrick (n 47) 10
[55] *Hochster v De La Tour* (1853) 2 E & B 678
[56] McKendrick (n 47) ch 19.
[57] *Hochster v De La Tour* (1853) 2 E & B 678*; Frost v Knight* (1872) LR 7 Ex 111.
[58] R*uxley Electronics and Construction Ltd v Forsyth* [1996] AC 344
[59] *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827

agreed, and whether external conditions such as regulatory approvals or foreign exchange constraints affected performance.[60] These issues directly shape the damages enquiry, because damages are not awarded in the abstract; they are tied to what the contract required, how performance failed, and what loss flowed from that failure.

2.1.4 Remedies in Contract Law

Remedies in contract law are the legal responses available when a contractual obligation is breached. The remedy determines the practical value of the contractual right because a right without an effective remedy may have limited commercial significance. In contract law, the main remedies include damages, specific performance, injunction, rescission, restitutionary relief, quantum meruit and, in some cases, declarations. The availability of each remedy depends on the nature of the breach, the type of contract, the claimant's loss, the adequacy of damages and the discretion of the court.[61]

Damages are the most common remedy for breach of contract. Their primary purpose is compensatory, not punitive. The court seeks, so far as money can do it, to place the innocent party in the position they would have occupied if the contract had been performed. This explains the importance of expectation damages, replacement cost, price difference, wasted expenditure and loss of profit. However, damages are controlled by limiting principles. The claimant must prove breach, loss, causation, remoteness and certainty, and must also show that reasonable steps were taken to mitigate avoidable loss.[62]

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[60] World Justice Project, *Rule of Law Index 2024—Nigeria Country Press Release* (WJP 23 October 2024)
[61] Hugh Beale (ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021); Peel (n 3) 18.
[62] *Robinson v Harman* (1848) 1 Ex 850; *Hadley v Baxendale* (1854) 9 Exch 341; *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673.

Specific performance is an equitable remedy compelling a party to perform the contractual obligation. It is not granted as of right and is usually available where damages would be inadequate. For example, it may be appropriate in contracts involving land or unique subject matter. Courts are generally reluctant to order specific performance where performance would require constant supervision, where the contract is personal in nature, or where enforcement would be inequitable. Its discretionary character distinguishes it from damages, which remain the ordinary remedy for breach.[63]

Injunction is another equitable remedy. It may restrain a party from breaching a negative covenant or compel compliance with certain obligations in appropriate cases. In contract disputes, injunctions are useful where the threatened breach may cause harm that damages cannot adequately repair, or where the parties agreed to restrictions such as confidentiality, non-disclosure or non-compete obligations, subject to legality and public policy. Like specific performance, injunction is discretionary and depends on equitable considerations.[64]

Rescission permits a contract to be set aside and parties restored, as far as possible, to their pre-contract position. It may arise in cases involving misrepresentation, mistake, undue influence, duress or other vitiating factors. Restitutionary relief is related but distinct. It focuses on preventing unjust enrichment, especially where one party has received a benefit in circumstances where it would be unjust to retain it. Quantum meruit may also apply where a party has performed work or supplied services and seeks reasonable remuneration in the absence of a fully enforceable agreed price.[65]

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[63] *Beswick v Beswick* [1968] AC 58; Peel (n 3) 15.
[64] *American Cyanamid Co v Ethicon Ltd* [1975] AC 396; *Warner Bros Pictures Inc v Nelson* [1937] 1 KB 209.
[65] *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32; *Benedetti v Sawiris* [2013] UKSC 50; Hugh Beale (ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021).

For this study, damages remain the central remedy because they are the dominant response to breach and are most directly connected to the issues of proof, quantification, delay, interest, enforcement and reform. Other remedies are important, but they often operate as alternatives or supplements where damages are inadequate or where justice requires a non-monetary response. The key point is that remedies determine whether contract law merely recognises obligations or actually protects commercial expectations in practice.[66]

2.1.5 Damages

The main purpose of damages in a contract is to compensate the innocent party for the loss suffered as a result of the breach, and not to punish the breaching party.[67] The central objective is compensatory rather than punitive: the claimant should, as far as money can achieve, be placed in the position they would have been in if the contract had been properly performed.[68]

Damages therefore perform two practical functions. First, they try to fix the claimant's financial situation through compensation for the quantifiable losses, including the replacement value, wasted expenditure or loss of profit. [69] Second, they enhance market reliability because they indicate that contractual obligations have legal ramifications enabling performance and decreasing strategic breach incentives..[70]

However, damages are constrained by doctrinal limits. The law generally restricts damages to losses that are caused by the breach, not too remote, reasonably foreseeable (in the relevant legal sense), and sufficiently certain to be assessed.[71] These limitations reflect a policy balance:

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[66] McGregor (n 13) 5
[67] McGregor (n 13) 12
[68] *Robinson v Harman* (1848) 1 Exch 850
[69] *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528
[70] *Attorney-General v Blake* [2001] 1 AC 268
[71] *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443

damages should compensate genuine loss, but courts should not impose unpredictable, limitless liability on breaching parties.[72]

2.1.6 Types of Damages

Contract damages are commonly classified to reflect both the nature of the loss and the court's approach to assessment. In Nigerian practice, categorisation is often significant because each category may carry different proof demands and different judicial attitudes.[73] General damages refer to damages that the law presumes to flow naturally from the breach, and which the court may award based on the circumstances without strict item-by-item proof, although there must still be a credible basis for assessment.[74]

Special damages refer to specific losses that are not presumed by law and must be specifically pleaded and strictly proved with credible evidence[75]. In contract claims, this often includes identifiable expenses, invoices, replacement transactions, and specific loss of profit items tied to evidential records.[76] Nominal damages may be awarded where a breach is established but the claimant fails to prove actual loss, or where the loss is minimal[77]. Nominal damages may have strategic value by confirming legal rights, but they often do not address the economic harm that triggered the dispute.[78]

Aggravated and exemplary damages are generally exceptional in contract and are not the ordinary measure, because contract damages are primarily compensatory.[79] Where such claims appear, courts typically examine whether the facts truly justify a departure from the ordinary

[72] *SPDC (Nig) Ltd v Tiebo VII* (2005) 9 NWLR (Pt 931) 439 (CA)
[73] *Wertheim v Chicoutimi Pulp Co* [1911] AC 301
[74] *Robinson v Harman* (1848) 1 Exch 850
[75] *Addis v Gramophone Co Ltd* [1909] AC 488
[76] *Jarvis v Swan Tours Ltd* [1973] QB 233
[77] *Wrotham Park Estate Co Ltd v Parkside Homes Ltd* [1974] 1 WLR 798
[78] *Ekwunife v Wayne (W/A) Ltd* (1989) 5 NWLR (Pt 122) 422 (SC)
[79] *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443

compensatory framework or whether the claimant's complaint belongs more properly in tort or statutory wrongs.[80]

Liquidated damages and penalties involve agreed sums stated in the contract payable upon breach.[81] If the clause is construed as a genuine pre-estimate of loss or otherwise justifiable as a proportionate protective mechanism, it may be enforceable; if it is oppressive or out of proportion and operates as punishment, it may be treated as a penalty and not enforced as stated.[82] Expectation damages aim to give the claimant the value of performance, including the profit or benefit expected from the contract.[83]

Reliance damages aim to reimburse the claimant for expenditure reasonably incurred in reliance on the contract, especially where expectation loss is too uncertain to prove.[84] Restitutionary remedies may focus on reversing unjust enrichment rather than compensating expectation, though restitution operates differently from ordinary contract damages and is typically analysed under a distinct remedial logic. [85]

These categories overlap in practice. A claimant may plead several alternatives, but the court should avoid double recovery, ensuring that the award reflects a coherent remedial basis rather than layered compensation for the same loss. [86]

2.2 Theories Underpinning the Award of Damages

[80] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673
[81] *The Mediana* [1900] AC 113
[82] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Okunzua v Amosu* (1992) 6 NWLR (Pt 248) 416 (SC).
[83] *Borno State Government v Illyasu* (2017) 9 NWLR (Pt 1570) 1 (SC); *SPDC (Nig) Ltd v Tiebo VII* (2005) 9 NWLR (Pt 931) 439 (CA).
[84] *Ighreriniovo v SCC (Nig) Ltd* (2013) 10 NWLR (Pt 1361) 138 (SC)
[85] *Ajigbotosho v Reynolds Construction Co Ltd* (2019) 3 NWLR (Pt 1659) 287 (SC); *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC).
[86] International Monetary Fund, *Nigeria: 2024 Article IV Consultation—Staff Report* (IMF Country Report No 24/102, 2024); National Bureau of Statistics, *CPI and Inflation Report (June 2024)* (NBS 2024).

2.2.1 Expectation Interest Theory

Expectation interest theory justifies damages as a means of giving the claimant the benefit of the bargain. The theory treats the contract as a mechanism for creating future value and sees breach as depriving the claimant of that value. Under this approach, damages should reflect the net gain the claimant would have made from performance, subject to recognised limits such as remoteness, mitigation, and certainty.[87]

In Nigerian disputes, expectation analysis often arises in claims for lost profits, replacement contract costs, and price differentials. However, the more volatile the market, the more contested expectation damages become, because the "position if performed" becomes harder to model with confidence.[88]

2.2.2 Reliance Interest Theory

Reliance interest theory supports damages aimed at reimbursing the claimant for expenditure or losses incurred because they relied on the contract being performed[89]. It is especially valuable where expected profits are too uncertain to quantify. Instead of projecting what would have been gained, the court focuses on what has been wasted or lost in preparing for performance.[90]

In practice, reliance damages can provide a more evidentially manageable route in Nigeria where accounting records or market forecasts are weak, and where courts are reluctant to award

[87] *Kachalla v Bank of the North Ltd* (2005) 3 NWLR (Pt 913) 150 (CA)
[88] *Statoil (Nig) Ltd v Inducon (Nig) Ltd* (2014) 9 NWLR (Pt 1411) 43 (SC)
[89] *Robinson v Harman* (1848) 1 Exch 850
[90] Hugh Beale (gen ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021) vol 1 paras 27-001–27-040.

speculative profit-based claims.[91] The theory still requires discipline, because reliance recovery should not exceed what the claimant would have gained under the contract, otherwise it risks over-compensation.

2.2.3 Restitution Theory

Restitution theory focuses on reversing unjust enrichment rather than compensating expectation or reliance.[92] It is concerned with the defendant's gain rather than the claimant's loss, and it seeks to prevent a breaching party from retaining benefits unjustly obtained. In contract settings, restitution may become relevant where a contract fails, is rescinded, is void, or where one party has conferred a benefit without receiving the bargained exchange.[93] In Nigeria, restitutionary analysis is important because contract disputes sometimes involve part performance and payments made under arrangements that later collapse.[94]

2.2.4 Economic Efficiency and Deterrence Theories

Economic approaches view contract damages as shaping behaviour. Under efficiency analysis, damages should encourage parties to perform when performance is socially and economically preferable, while permitting breach when breach plus compensation produces greater overall value (the "efficient breach" concept).[95] Deterrence-oriented views emphasise that predictable and enforceable damages discourage opportunistic breach and support investment confidence.[96]

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[91] *Ruxley Electronics and Construction Ltd v Forsyth* [1996] AC 344; Hugh Beale (gen ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021)
[92] *Anglia Television Ltd v Reed* [1972] 1 QB 60; Edwin Peel (gen ed), *Treitel: The Law of Contract* (15th edn, Sweet & Maxwell 2020) paras 20-045–20-060.
[93] *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32; Hugh Beale (gen ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021)
[94] *Attorney-General v Blake* [2001] 1 AC 268
[95] Oliver Hofmann, *Breach of Contract: An Economic Analysis of the Efficient Breach Scenario* (Springer 2021)
[96] Duong Anh Son and Gian Thi Le Na, "Efficient Breach of Contract" (2020) 17(4) *Journal of US–China Public Administration* 147.

In Nigeria, economic perspectives are relevant because weak or unpredictable damages outcomes can distort incentives, encouraging breach where liability exposure is low in real terms due to delay or evidential difficulty. However, economic theories must be applied carefully, because markets characterised by significant informality, enforcement constraints, and volatility may not respond to incentives in the same way as stable environments.

2.3 Principles Governing Assessment of Damages

Theories justify the remedy. Principles govern its application. Nigerian courts, like other common law courts, generally assess contract damages using structured limits that control the scope of recovery and guide quantification.

2.3.1 Remoteness of damages (*Hadley v Baxendale* rule)

The remoteness doctrine restricts recoverable losses to those that arise naturally from the breach in the ordinary course of events, and those that were within the reasonable contemplation of the parties at the time of contracting as a probable result of breach.[97] The rule serves predictability by preventing unlimited liability for unusual or unexpected losses.[98]

In Nigeria, remoteness disputes frequently arise where the claimant alleges consequential losses such as business interruption, downstream contract losses, or losses linked to currency exposure.

[97] *Hadley v Baxendale* (1854) 9 Exch 341
[98] *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528

Courts must decide whether such losses were ordinary consequences of breach or special circumstances communicated to the defendant.[99]

2.3.2 Mitigation of loss

Mitigation requires the claimant to take reasonable steps after breach to reduce avoidable loss. [100] The claimant is not expected to take extraordinary risks or unreasonable steps, but cannot recover losses that could have been avoided through reasonable action. Mitigation is particularly sensitive in Nigeria where replacement goods or services may be unavailable, credit may be constrained, and price movements may be rapid. Courts must evaluate reasonableness in context, without turning mitigation into an unfair burden that ignores real constraints.[101]

2.3.3 Certainty of damages

The certainty principle requires that damages be sufficiently ascertainable and not speculative.[102] While the law recognises that some estimation is inevitable, especially for profit-based claims, the claimant must provide an evidential foundation that enables the court to make a reasoned assessment.[103]

In Nigeria, certainty concerns often explain judicial reluctance toward broad loss of profit claims where records are poor or forecasts are unsupported. The doctrinal challenge is to enforce

[99] *The Achilleas (Transfield Shipping Inc v Mercator Shipping Inc)* [2008] UKHL 48
[100] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673
[101] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Ighreriniovo v SCC (Nig) Ltd* (2013) 10 NWLR (Pt 1361) 138 (SC).
[102] *Oando (Nig) Plc v Adijere West Africa Ltd* (2013) 15 NWLR (Pt 1377) 374 (CA)
[103] *Chaplin v Hicks* [1911] 2 KB 786

certainty without denying compensation where loss is real but evidence is imperfect due to business conditions.[104]

2.3.4 Causation

Causation requires a link between breach and loss. The claimant must show that the breach caused the loss, and that the loss was not the result of an independent intervening event.[105] In contract, causation often overlaps with remoteness, but it remains distinct: causation asks whether breach produced the loss, while remoteness asks whether the law will treat that loss as recoverable.[106] Nigerian disputes frequently present causation complexities where losses may be influenced by market conditions, regulatory changes, third-party defaults, or supply disruptions. Courts must decide whether the breach was a real and substantial cause of the loss claimed.[107]

2.3.5 Foreseeability

Foreseeability is closely connected to remoteness. It expresses the idea that recoverable losses are those that were reasonably foreseeable as a likely consequence of breach at the time the contract was made[108]. Foreseeability works as a policy limit that aligns liability with what parties could reasonably have anticipated and priced into the contract.[109]

In Nigerian commercial practice, foreseeability often turns on what the parties knew about the transaction context, including whether special risk factors (such as foreign exchange exposure, critical delivery timelines, or dependence on a particular project) were disclosed and accepted.[110]

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[104] *Yalaju-Amaye v A.R.E.C. Ltd* (1990) 4 NWLR (Pt 145) 422 (SC)
[105] *Liesbosch Dredger v SS Edison* [1933] AC 449
[106] *Hadley v Baxendale* (1854) 9 Exch 341; *The Achilleas (Transfield Shipping Inc v Mercator Shipping Inc)* [2008] UKHL 48
[107] *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79; *Cavendish Square Holding BV v Makdessi; ParkingEye Ltd v Beavis* [2015] UKSC 67.
[108] *Oyeneyin v Akinkugbe* (2010) 4 NWLR (Pt 1184) 265 (SC); *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79.
[109] *ParkingEye Ltd v Beavis* [2015] UKSC 67
[110] *Johnson v Agnew* [1980] AC 367

Clear contractual drafting and evidence of shared assumptions can therefore shape foreseeability analysis and ultimately affect damages outcomes. [111]

[111] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673; *Payzu Ltd v Saunders* [1919] 2 KB 581.

CHAPTER THREE

LEGAL FRAMEWORK GOVERNING THE AWARD OF DAMAGES IN NIGERIA

3.1 Statutory Provisions and Sources of Law

The basis for damages in contract in Nigeria can be best described as a mix of received common law principles, the equitable doctrines, judicial precedents and statutory rules that govern procedure, evidence, interest, limitation and enforcement.[112] Nigeria has no single uniform "Contract Code" as some jurisdictions have a comprehensive codified Contract Law. The law of contract and the rules of damages are thus multiple-layered pieces of law.[113]

On the basic level, Nigerian contract damages are based on the common law concept of "compensation" and the rules governing the extent of recoverable damages, particularly remoteness, mitigation, causation, foreseeability and certainty.[114] The principles have been handed down through history and have been consistently cited by the Nigerian courts in its general contract law.[115] The legal definitions of "loss", the caps on damages recoverable and how those damages are quantified are largely matters of law and are influenced by the courts' ongoing evolution and application of common law principles, despite the fact that the claim is subject to the parties' contract.[116]

Statutory provisions typically do not define "contract damages" in general terms, but have a few determinative effects on damages claims.

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[112] McKendrick (n 47) 15
[113] Peel (n 3) 19
[114] Harvey McGregor, *McGregor on Damages* (22nd edn, Sweet & Maxwell 2024)
[115] *Adetoun Oladeji (Nig) Ltd v Nigerian Breweries Plc* (2007) 5 NWLR (Pt 1027) 415 (SC); *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC).
[116] KC Adam Kramer, *The Law of Contract Damages* (4th edn, Hart Publishing 2025)

First, evidence legislation states what must be proven and how to prove it in a claim. The rules governing admissibility, relevance, documentary evidence, expert witnesses and presumptions are central to the rules of contract damages, where courts require a credible witness, a reliable evidential basis for the special damages, and a credible basis for quantification.[117] A claimant may have suffered a real commercial loss but the evidence may not meet statutory and procedural requirements and the award may be reduced to a nominal or minimal amount.[118]

Second, the pleadings, case management and relief rules of civil procedure have a significant impact on damages outcomes. Procedural law in Nigeria will require that the claimants adequately plead the material facts and particularise the special damages, whilst the defendants will be required to traverse the claim and raise any legal objection.[119] Procedural rules also govern the amendment, disclosure and treatment of admissions, which can make the difference between resolution of damages issues early or late in trial.[120] Damages claims can be highly fact driven, making procedure a critical area of the process.

Third, limitation of actions is a legislative bar on damages actions. Where there is clear breach and loss, the claim is usually excluded where it is brought after the expiry of the limitation period, as there is no recovery at all[121]. It is especially important where a claimant's loss is ongoing and

[117] Evidence Act 2011 (Nigeria) ss 83–84

[118] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Ajigbotosho v RCC Ltd* (2019) 3 NWLR (Pt 1659) 287 (SC)

[119] High Court of Lagos State (Civil Procedure) Rules 2019, Orders on pleadings and frontloading; Federal High Court (Civil Procedure) Rules 2019, Orders on pleadings and case management; Caroline Nwokedi Oba, *Civil Procedure in Nigeria* (2nd edn, Cambridge University Press 2022)

[120] Caroline Nwokedi Oba, *Civil Procedure in Nigeria* (2nd edn, Cambridge University Press 2022); High Court of Lagos State (Civil Procedure) Rules 2019

[121] Limitation Law of Lagos State 2015, ss 8 and 18; Public Officers Protection Act, Cap P41 Laws of the Federation of Nigeria 2004, s 2(a)

he or she is wrong in working out the time clock, or where a dispute is developing over a period of time, or where parties try to settle a dispute before it goes to court.[122]

Fourth, the effect of laws and rules regarding interest upon the compensation for damages. In reality, the difference between worthwhile pay and an award that is diminished by inflation and delay is interest.[123] In Nigeria, interest is considered as being governed by a mixture of contractual provision, trade usage, equitable considerations, statutory provisions and procedural rules (which may vary from different court and jurisdiction).[124] The framework thus leaves a recurring question as to whether there is any claim to pre-judgement interest, what is the correct rate of interest, which is the period over which it is calculated and does the rate of post-judgement interest compensate for value?[125]

Fifth, enforcement law determines the working of damages. An award for damages that is not enforceable or becomes enforceable late, after a period of delay, may not restore the claimant.[126] Thus the law concerning enforcement of damages, including the execution, garnishee proceedings, and attachment, is also a factor in making damages effective or ineffective in reality.[127]

[122] DLA Piper, *Real Estate in Africa: Nigeria (Construction) – Limitation Periods* (last modified 13 March 2025) https://www.dlapiperrealworld.com/law/index.html?t=construction&s=liability&c=NG accessed 15 January 2026

[123] National Bureau of Statistics (Nigeria), *Consumer Price Index and Inflation Report, June 2024* (2024) 1–3; International Monetary Fund, *Nigeria: 2024 Article IV Consultation – Staff Report* (IMF Country Report No 24/102, May 2024)

[124] M Jimoh, 'Prejudgment Interest in the Absence of Statute, Contract or Mercantile Custom: The Nigerian Supreme Court's Approach' (SSRN, 2022) https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4248404_code5519052.pdf?abstractid=4248404&mirid=1&type=2 accessed 15 January 2026

[125] E*kwunife v Wayne (W/A) Ltd* (1989) 5 NWLR (Pt 122) 422 (SC); *Interdrill Nigeria Ltd v UBA Plc* (2017) 13 NWLR (Pt 1581) 52 (SC); UUBO Publication (n 14).

[126] Sheriffs and Civil Process Act, Cap S6 Laws of the Federation of Nigeria 2004; Judgment (Enforcement) Rules (subsidiary to the Sheriffs and Civil Process Act)

[127] (n 127)

Finally, sector-specific statutes may indirectly influence damages cases by impacting on contractual interpretation and the context of contractual performance. For instance, laws related to procurement, labour, consumer protection, banking or regulated industries may affect the enforceability of the obligations, the existence of performance requirements and the losses that can be justly chargeable with a breach.[128] Even when such statutes do not create the damages remedy itself, they can shift the legal and factual context within which damages are assessed.[129]

The statutory aspect of contract damages in Nigeria can thus be viewed as an enabler and limiter of the proof, procedure, time bar, interest, and enforcement of contractual damages, with common law principles being the dominant thoughts in Nigeria's judicial decisions regarding the substantive doctrine of damages.

3.2 Judicial Precedents in Nigeria

In Nigeria judicial precedents have been the major lawmakers of the rules on compensation for breach of contract.[130] The remedy for breach of contract is in a way compensatory and that damages are judged on structured principles, which has been the consistent finding of Nigerian appellate courts.[131] The Nigerian judicial system continues to be strongly influenced by its classical common law origins, and at the same time has been modified to suit the Nigerian commercial environment.

The first and most significant line of precedent has to do with the purpose and amount of damages. The courts of Nigeria have time and again ruled that the purpose of damages is to

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[128] Arbitration and Mediation Act 2023 (Nigeria) (arbitral process and awards); Public Procurement Act 2007 (Nigeria)

[129] International Monetary Fund, *Nigeria: 2024 Article IV Consultation – Staff Report* (IMF Country Report No 24/102, May 2024) (macroeconomic context relevant to valuation); Central Bank of Nigeria, *Monetary Policy Communique No 160* (25 November 2025)

[130] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6 (judicial powers); *Rossek v ACB Ltd* (1993) 8 NWLR (Pt 312) 382 (SC)

[131] *Robinson v Harman* (1848) 1 Ex 850; *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC)

restitute the claimant, to the extent money can, to the position he was in had the contract been properly carried out.[132] This principle is the foundation for expectation damages and guides replacement costs, price differentials, cost of cure, and loss of profit claims. In reality, courts will ask what the claimant suffered due to the failure to provide him with performance and enforce limitations. In practice, courts will ask what the claimant suffered, due to the failure to provide him with performance, and then apply limitations to prevent excessive or speculative The second thread is general and special damages, particularly the strict standard that must be met for proof of special damages. Nigerian precedent is clear that special damages must be pleaded and strictly proven and the court will not speculate or guess a sum.[133] This is one of the most practically significant feature of Nigerian damages law, as it influences how the cases are pleaded, the preparation of the evidence and will ultimately have a bearing on the chances of obtaining full compensation. Nigerian courts also differentiate between general damages which may be presumed to exist if the wrongful act is known, and special damages which must be proved by documents or other satisfactory means.[134]

The third strand involves remoteness and foreseeability. Nigerian courts apply the remoteness framework associated with the *Hadley v Baxendale*[135] approach, restricting recovery to losses that arise naturally from breach or were within the contemplation of the parties at the time of contracting as a probable result of breach. In commercial disputes, this framework is frequently used to exclude consequential claims, downstream losses, or unusual losses that were not

[132] *Robinson v Harman* (1848) 1 Ex 850; *Okongwu v NNPC* (1989) 4 NWLR (Pt 115) 296 (SC).
[133] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Ajigbotosho v RCC Ltd* (2019) 3 NWLR (Pt 1659) 287 (SC).
[134] *Ajigbotosho v RCC Ltd* (2019) 3 NWLR (Pt 1659) 287 (SC); *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC).
[135] (1854) 9 Ex 341; *Adetoun Oladeji (Nig) Ltd v Nigerian Breweries Plc* (2007) 5 NWLR (Pt 1027) 415 (SC).

brought to the defendant's attention.[136] The practical effect is that parties who want broader protection must disclose special circumstances and often should draft express contractual allocations of risk.[137]

The fourth strand is about mitigation. Nigerian courts have ruled that an innocent party does not have the right to recover avoidable losses after a breach of contract, and that reasonable measures must be taken by him to mitigate loss.[138] This does not require the claimant to take unreasonable risks or accept humiliating or commercially irrational alternatives, but it restrains claims that continue losses unnecessarily.[139] In Nigeria, with its volatile markets, replacement transactions can be expensive and with limited supply options, mitigation disputes are becoming more relevant.[140]

The fifth strand is on certainty and proof of loss of profit. In cases of weak evidence or speculative projections, Nigerian courts are likely to be hesitant to award profits.[141] When there is a dispute regarding the amount of profit, courts typically require credible financial records, market evidence or expert support. However, courts also have the understanding that the difficulty of determining how much can be quantified does not undermine an action if there is a rational basis on which a reasonable estimate can be made.[142] This tension arises in balancing against the awarding of speculative awards and the failure to award an award when the loss is substantial.

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[136] *The Achilleas* [2008] UKHL 48s

[137] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673; *Reynolds Construction Co (Nig) Ltd v Rockonoh Properties Co Ltd* (2005) 5 CLRN 53.

[138] Ibid

[139] *Chaplin v Hicks* [1911] 2 KB 786

[140] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); Evidence Act 2011, ss 83–84.

[141] *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* [1915] AC 79*; ParkingEye Ltd v Beavis* [2015] UKSC 67.

[142] *ParkingEye Ltd v Beavis* [2015] UKSC 67

The sixth strand relates to liquidated damages and penalty clauses. Nigerian courts interpret agreed damages clauses by asking whether the clause is a genuine pre-estimate of loss or whether it operates as a penalty designed to punish breach.[143] The Nigerian courts have also, on several occasions been found using persuasive common law reasoning in the face of modern commercial clauses, and this is relevant to the developments in the doctrine of penalties in recent times in the world generally, particularly the "legitimate interest" approach.[144] One of the practical issues is that contracting parties habitually include fixed sums for delay and/or default and litigation is frequently hinged on whether a court will enforce the clause as drafted or whether it is to be regarded as a 'penal' clause and thus unenforceable.

The seventh strand concerns interest and valuation. Nigerian courts have developed principles on when interest may be awarded, whether it must be pleaded, whether it is contractual, equitable or statutory, and how it should be calculated.[145] The area is of special importance in today's economy as interest is at the heart of the real compensatory value of awards.

Judicial precedents thus provide the substantive content of the damages in Nigeria's contract law. It sets out the purpose of damages, defines heads of loss that can be recovered and sets out proof and policy limits. Meanwhile, the jurisprudence shows examples of where Nigerian courts have failed to be consistent, and where more clear-cut guiding principles would make their decisions more predictable.

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[143] Chinedu Asadu, *A British Court Ruling Frees Nigeria From Paying $11 Billion In Damages Over a Failed Gas Project* (AP, 2023) https://apnews.com/article/nigeria-gas-britain-economy-d693b26166aff5532b973a5856f6980d
[144] (n 123)
[145] Piper (n 124)

3.3 Role of the Courts in Assessing Damages

The courts are key to the interpretation of law into actual restitution. While the law is well clear in theory, the award of damages is still dependent on the interpretation of pleadings, evidence, causation narrative and quantification logic by the court.[146] The court is not just picking a number, it is employing legal tests to decide if the claimed losses are recoverable, and then deciding what evidence indicates how much is recoverable.

Firstly, courts decide what sort of damages are being claimed. This includes distinguishing between general and special damages, determining whether the claims are expectation, reliance or restitutionary claims and avoiding double recovery.[147] This is important because Nigerian courts have tight standards of proof for special damages and are hesitant to accept some categories of special damages, especially speculative profit claims.

Second, Courts apply discipline of pleadings. Although a court may have sympathy for a claimant who has not pleaded special damages with sufficient particulars, or with sufficient connection to the breach, they do not accept special damages.[148] When considering damages in complex commercial disputes, this is particularly relevant when there are a large number of invoices, cost items and profit calculations to consider.[149]

Third, courts evaluate evidence. The claimant will need to establish the breach, loss and cause. Document evidence, witness evidence and expert evidence will be the ultimate deciding factors.[150] Nigerian courts are known to pay little attention to mere speculations and it is

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[146] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 6 and 36
[147] Evidence Act 2011, ss 83–84; *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC)
[148] *Hadley v Baxendale* (1854) 9 Ex 341
[149] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673; *Reynolds Construction Co (Nig) Ltd v Rockonoh Properties Co Ltd* (2005) 5 CLRN 53.
[150] *Chaplin v Hicks* [1911] 2 KB 786

imperative that evidence which would justify the figure which is awarded should be used.[151] Courts also consider credibility and consistency, especially if records are reconstructed after a dispute or if numbers change throughout the litigation process.[152]

Fourth, courts apply legal limitations on recovery, including remoteness, foreseeability, mitigation, and certainty.[153] A court may find that a claimant has suffered loss and yet deny a claim if it is not within the scope of the remoteness rules, if the claimant has been unable to mitigate or if the evidence is too uncertain to enable a claim to be quantified with any degree of reliability. The reasoning of the court ought to be particularly rigorous: if it is not, it is very likely that an appeal or a charge of arbitrariness will be made because of it.

Fifth, valuation issues such as valuation on a particular date, fluctuations in market value, foreign currency parts and interest to be applied at the valuation are settled by the courts. In Nigeria, such decisions carry significant consequences as a damages claim can have an economic impact depending on inflation and currency changes[154]. While, in principle, the court seeks to restore the claimant, in practice, the compensation effect could be dependent on these valuation decisions.[155]

Sixth, the role of appellate courts is a supervisory one. They're not likely to object to damages awards just because they would have given away a different amount. They usually come in when the trial court has applied the wrong principle or ignored factors or considered irrelevant factors, or it has reached a figure which neither has been supported by the evidence. The appellate posture serves to emphasize that damages assessment is a structured discretion and not a free discretion.

[151] *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); Evidence Act 2011, ss 83–84.
[152] Ekwunife v Wayne (W/A) Ltd (1989) 5 NWLR (Pt 122) 422 (SC)
[153] *Ekwunife v Wayne (W/A) Ltd* (1989) 5 NWLR (Pt 122) 422 (SC)
[154] *Kasimu v NNPC* (2008)
[155] *Adike v Obiareri* (2002) 4 NWLR (Pt 758) 537 (CA); *Zik's Press Ltd v Ikoku* (1951) 13 WACA 188.

Generally, the courts are the spark of Nigeria's damages regime. They apply doctrine practically in their procedures, in their assessment of evidence and in their principled quantification. If the reasons are clear and the rules consistently applied by the courts, damages will help to encourage business confidence; if the reasons are flaky, and the rules are not, then damages will be uncertain and subject to challenge.

3.4 Limitations within the Legal Framework

While the Nigerian legal system offers a clear framework for a contract claim for damages, it has some limitations that impact the fairness, predictability and remedial effectiveness of the law.

One is that there is no single statutory rule defining the damages for contracts. Nigeria has a high judge-made law which gives flexibility, but can lead to uncertainty when different courts interpret in different ways, or attach more weight to various elements of the proof and discretion. In reality, litigants may be unable to forecast the result of a lawsuit, particularly a complicated business case, and the uncertainty can diminish the deterrent impact of damages.

Secondly, there is an inconsistent application of the damages principle. Where the same tests are recognised, the courts have disagreed about the strictness of the remoteness requirement, the extent to which they consider mitigation, the treatment of evidence of profit and expert evidence.[156] The opacity of judicial reasoning on quantification can lead to subjective awards, sparking appeals and, consequently, less faith in the process of the trial.[157]

A third restriction exists in the form of the strict proof requirement, especially in the case of special damages. Strict proof is meant to avoid overclaiming or exaggerated claims, but in some cases it can result in under-compensation because of a lack of documentation systems or because

[156] *Adike v Obiareri* (2002) 4 NWLR (Pt 758) 537 (CA); *Zik's Press Ltd v Ikoku* (1951) 13 WACA 188.
[157] Central Bank of Nigeria, *Monetary Policy Communique No 160* (25 November 2025) (interest-rate environment)

losses are real but not readily apparent in a standard documentation system[158]. The framework is thus jeopardized to granting relief to the breaching party if evidentiary standards are not met even though there is a genuine loss.

Delay is a fourth restriction. If the disputes go on for years, the damages can be lost to the changing economy. Whilst the overall principle of judgment may be correct, inflation and the depreciation of currency can diminish the actual value of the award.[159] his erosion is not always addressed by the legal framework and so damages may not fully compensate, highlighting the need for careful consideration of compensation.

A fifth limitation concerns interest rules and inconsistency across jurisdictions. The various court rules and practices may result in varying effects on pre-judgment and post-judgment interest, such as the rate to be applied and the nature of interest (discretionary vs. plead and prove). If interest is not high enough to counteract inflation, or if no interest is paid for the failure to pay, due to technicalities, the compensation for damages may sink.

The sixth limitation is related to enforcement issues. A judgement for damages becomes vague and achieves little if it cannot be realised. Damages might not be effective in deterring infringement when enforcement is slow or problematic, or a claimant might settle for less than actual loss to avoid lengthy enforcement proceedings.

The seventh constraint that comes from the weak drafting of contracts. Poorly drafted performance terms, unclear risk allocations, and poorly drafted liquidated damages clauses can amplify damages disputes and is where general doctrine will fill holes left by poorly drafted

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[158] Evidence Act 2011, ss 83–84; *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC).
[159] Rob Harkavy, *London court nullifies USD 11 billion award* (African Law and Business, 2023) https://www.africanlawbusiness.com/news/19605-london-court-nullifies-usd-11-billion-award/

clauses. That means that the legal structure is under tension as doctrine does not provide clarity when it is missing from the contract, particularly in large-scale projects.

Such restrictions, however, do not mean that the framework is fundamentally flawed as a whole, but rather it demonstrates the weakness in Nigerian Contract Damages Law in the provision of a consistent, economically viable compensation. They further call for reforms, such as better standards for judicial reasoning, improved guidance on valuation and on interest, better commercial case management and improved drafting culture in contracts.

3.5 Revision Law of Contract, (Enugu State) 2004

A further reform issue within the legal framework is the need to review and modernise the Contract Law, Cap 26, Vol. 1 of the Revised Laws of Enugu State 2004. As a state-level statutory source, the Law is relevant to contract formation and contractual obligations within Enugu State. However, the economic context in which contracts are now entered into and enforced has undergone significant changes since the 2004 Revised Laws. The electronic communication, digital records, foreign exchange exposure, complex supply chain, public-private contracting, arbitration clause, automated payment systems, and sophisticated risk allocation provisions are increasingly common elements of modern transactions. Thus, a modern contract statute ought to offer more direction, more in keeping with these realities.[160]

The proposed revision should not make an attempt to supplant the entire common law of contract. That's not necessary, and could cause unnecessary uncertainty. Instead, the reform should be setting out principles which would create greater certainty and litigational certainty for areas in which statutory guidance would be able to help. In this study, the most significant area is

[160] Contract Law, Cap 26, Vol 1, Revised Laws of Enugu State 2004; Enugu State Ministry of Justice, Laws of Enugu State in Downloadable PDF <https://www.moj.en.gov.ng/laws> accessed 29 May 2026.

damages. The use of contractual damages should be examined in Cap 26 to see if it provides adequate guidance on the purpose, measure and limits of contractual damages, including: compensatory principle, remoteness, mitigation, causation, certainty, proof of special damages, liquidated damages, penalty clauses and restitutionary recovery. If the Law does not provide for a specific amendment or is ambiguous, then targeted amendments should be added.[161]

A priority should be on guidance with regards to valuation and interest. The amount of damages may be enormously influenced by inflation and the depreciation and delay of currency between the time of breach and judgment. The Law should thus establish more precise rules concerning the valuation date, claims in foreign currency, pre-judgment and post-judgment interest. This would ensure that courts would not give awards to punish the wrongdoers in order to preserve the compensatory value of an award. It would also eliminate some of the inconsistencies that occur in similar cases, with different economic results, due to the choice of valuation date or interest approach.[162]

Second, it's time for a modern evidential/process alignment. Email, electronic documents, platform records, digital invoices, bank transfer records, WhatsApp messages and other electronic communications are some of the documents that many contract disputes rely on today. While admissibility is governed by the Evidence Act, a new State contract law could accommodate the commercial reality that contracts can be drafted, amended and executed

[161] McGregor (n 13) 6; *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC).
[162] *Interdrill Nigeria Ltd v United Bank for Africa Plc* (2017) 13 NWLR (Pt 1581) 52 (SC); *Ekwunife v Wayne (W/A) Ltd* (1989) 5 NWLR (Pt 122) 422 (SC); *National Bureau of Statistics, Consumer Price Index and Inflation Report* (June 2024).

electronically, with the necessary proof attached. This would diminish arguments on forms and not substance and would aid the enforcement of modern commercial transactions. [163]

Third, to improve the legal provisions of public authority and government contracts. In cases involving state contracts, questions of authority, approval, formalities of execution, limitations on the state budget, and whether an officer had actual or ostensible authority to commit the State may arise. A new law ought to make clear the conditions under which the State or its agencies can be obligated, and to ensure protection against unwarranted engagement and abuse. Especially for infrastructure, procurement, energy, construction and service delivery contracts where public and private interests meet.[164]

A fourth priority should be reform of agreed damages clauses. Liquidated damages clauses are commonly employed by modern commercial entities to assign risks, particularly in the context of construction, supply, infrastructure and service contracts. The Law should distinguish between liquidated damages which can be enforced and penalties which cannot by adopting a proportionality test and applying it to the extent that the clause is necessary to serve a legitimate commercial interest and does not impose an oppressive or extravagant impositions. Greater clarity in statutory guidance would help to eliminate uncertainty and would lead to better drafting discipline.[165]

Lastly, the revision should help to promote alternative problem solving and quicker enforcement. A modern contract framework should incentivize parties to embrace mediation and arbitration

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[163] Evidence Act 2011, ss 83-84; U Obuka, Regulation of Electronic Contracts in Nigeria (2023) *Nigerian Journal of Legal Studies.*

[164] *Azubuike v Government of Enugu State* (2014) 5 NWLR (Pt 1400) 364; Contract Law, Cap 26, Vol 1, Revised Laws of Enugu State 2004, ss 90-92.

[165] *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79; *Cavendish Square Holding BV v Makdessi*; *ParkingEye Ltd v Beavis* [2015] UKSC 67; *NNPC v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC).

and other alternative dispute-resolution tools when they are applicable, and provide for pleadings and damages schedules and evidence to support damages claims. This would align the state contract framework with Nigeria's broader movement toward modern commercial dispute resolution and would improve confidence in contractual enforcement.[166]

[166] Arbitration and Mediation Act 2023; Caroline Nwokedi Oba, Civil Procedure in Nigeria (2nd edn, Cambridge University Press 2022).

CHAPTER FOUR

ISSUES, CHALLENGES AND REFORMS IN THE AWARD OF DAMAGES IN NIGERIA

4.1 Inconsistency in Judicial Awards

The failure to have uniformity of results in contract damages in Nigeria is one of the oldest issues in this area of law. Damages assessment follows agreed concepts (compensation, remoteness, mitigation, causation, certainty, proof standards).[167] In reality, however, the amounts of damages given and the explanations behind why they were awarded differ greatly among courts, as well as even within the same court level.[168] This inconsistency is not always because judges disagree on the law. It often occurs due to damages being fact intensive and court's varying interpretations and weighing of facts.[169]

It is common for trial courts to make general comments about the compensatory nature of damages, but offer little explanation for (a) the value calculation applied, (b) what was accepted and what was rejected, and (c) how the amount was arrived at[170]. If reasoning is lacking, results will be hard to predict and review on appeal. Parties then view damages litigation more like a game of chance than rules-based.[171]

Inconsistency also appears in three recurring areas:

[167] McGregor (n 13) ch 1; Kramer(n 118) 1–9; *Robinson v Harman* (1848) 1 Exch 850 (Exch).
[168] *Union Bank of Nigeria Plc v (2014) 6 CLRN 82 (CA)* (2014) 6 CLRN 82 (CA)
[169] *Dumez (Nig) Ltd v Ogboli* (1972) 1 All NLR (Pt 1) 241 (SC)
[170] *Guaranty Trust Bank Plc v Foxglove Nigeria Ltd* (2016) LPELR-40467(CA)
[171] *Passmakk Services (Nig) Ltd v First Bank of Nigeria Plc* (2020) LPELR-50218(CA)

1. **Loss of profit claims**: Some courts allow profit claims if there is some documentary evidence, and others disallow the same type of claims to be based on only a small amount of documentation or on expert evidence.[172]

2. **Foreign currency and valuation date**: Courts may have varying views on when to be entitled to convert, at the contract date, breach date, filing date, judgement date or payment date, and views on whether the loss of the exchange rate is a head of damage or too remote.[173]

3. **Interest**: Pre-judgment interest is awarded as of right, on an ad hoc basis, or subject to a contractual / trade usage basis. Even with comparable base damages, a difference in approach results in a material difference in economic outcomes.[174]

The systemic consequence is significant: if damages outcomes are not consistent, contracting parties can include excessive risk premiums, demand high collaterals or deny the use of long-term contracts. This adds to the cost of the transaction and undermines business confidence in law.[175]

4.2 Difficulty in Proving Loss and Causation

A second major challenge is the burden of proving loss and causation.[176] Nigerian courts have a right to caution themselves of damages that are unarguable. But in Nigeria where many

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[172] National Bureau of Statistics, *Consumer Price Index and Inflation Report (June 2024)* (NBS 2024); International Monetary Fund, *Nigeria: 2024 Article IV Consultation – Staff Report* (IMF Country Report No 24/102, 2024).
[173] *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443 (HL)
[174] *Interdrill Nigeria Ltd v United Bank for Africa Plc* (2017) LPELR-41907(SC)
[175] Senior Courts of England and Wales, *Commercial Court Guide* (latest edn); McGregor (n 13) 23.
[176] *Nigerian National Petroleum Corporation v Clifco Nigeria Ltd* (2011) 10 NWLR (Pt 1255) 209 (SC); *Ajigbotosho v RCC* (2018) LPELR-44774(SC); *Passmakk Services (Nig) Ltd v FBN Plc* (2020) LPELR-50218(CA).

businesses operate, proving loss to the expectation of the court can be challenging even if there is loss.[177]

Numerous claimants find it difficult to prove damages in a way that satisfies the requirements of special damages and the evidentiary burden of profit-based claims.[178] These difficulties are driven by factors such as:

i. The weak record-keeping and inadequate transaction documentation are i.

ii. Informal arrangements/mixed documentation (emails, WhatsApp, cash records)

iii. Limited access to specialist evidence due to cost

iv. Poor segregation of costs (making it hard to attribute costs directly to the breach)

v. Commercial disturbances that make "before and after" comparisons invalid.[179]

As a result, litigants sometimes plead large figures but fail to provide a coherent evidential pathway from breach to loss event to quantification method to supporting documents.[180] Courts then reduce awards significantly or grant nominal sums, which can create the perception that damages law protects breaching parties.[181]

Causation is also difficult because many losses occur in multi-causal environments. In Nigeria, business losses may be influenced by inflation, foreign exchange movements, regulatory constraints, power supply disruptions, supply chain instability, and third-party defaults[182]. In such

[177] Caroline Nwokedi Oba, *Civil Procedure in Nigeria* (2nd edn, Cambridge University Press 2022)
[178] Evidence Act 2011, ss 131–134
[179] McGregor (n 13) 23
[180] Ibid
[181] *Passmakk Services (Nig) Ltd v FBN Plc* (2020) LPELR-50218(CA).
[182] McGregor (n 13) 23

contexts, the court must decide whether the breach was a sufficiently direct and substantial cause of the loss claimed, and whether intervening events broke the chain of causation.[183]

This is particularly litigated with respect to claims including consequential losses (in terms of lost customers or downstream contracts, shutdown costs or reputational damage). This is a matter of prudence by courts, because these losses may be actual, but they may also be inflated or caused by a general market situation.[184] To establish a coherent damages framework, courts must state (i) what test it is applying and (ii) why the evidence meets the test.

4.3 Ambiguity in Distinguishing Types of Damages

One of the repeated conceptual and practical issues is a failure to distinguish between general damages and special damages and between compensatory damages and other types of monetary damages.[185]

First, claims for "general damages" in contract are often made as if there was no limit on the amount of damages awarded, rather than as a result of the compensatory purpose of contract damages. But this is dangerous as contract damages do not exist to penalise. If pleadings are not well drafted, the court may give an award of modest amounts, not because there is no loss, but because there needs to be a disciplined compensatory basis of the law.[186]

Second, there is frequent ambiguity in claims involving:

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[183] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673 (HL)

[184] *The Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2023] EWHC 2638 (Comm)

[185] McGregor (n 13) 19

[186] *Cavendish Square Holding BV v Makdessi* [2015] UKSC 67; *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* [1915] AC 79 (HL); Olusegun Durotolu, 'Some Legal Issues Involved in International Commercial Arbitration' (2021) (IJLDAI)

i. **Liquidated Damages Versus Penalty Clauses**: parties often label clauses "liquidated damages" without ensuring that the clause is defensible as a genuine pre-estimate or proportionate protection of legitimate interests.[187]

ii. **Restitutionary Recovery Versus Reliance Loss**: some pleadings seek refund of benefits conferred while also claiming expectation profits, which risks double recovery if not properly structured.[188]

iii. **Contract Damages Versus Tort or Statutory Claims**: parties sometimes include reputational loss and "aggravation" in contract claims without properly grounding the claim in the contract framework, leading to rejection or confusion.[189]

The absence of clear analytical separation weakens both litigation outcomes and the development of consistent precedent.[190]

4.4 Inadequacy of Damages as a Deterrent

Damages are not primarily punitive, but they play an indirect deterrent role by making breach economically unattractive.[191] In Nigeria, several factors reduce this deterrent effect.

First, where the proof of breach resulted in substantial economic loss, but the damages awarded by the court were minimal or none, under-compensation is a concern. When the breaching party believes that the claimant won't satisfy the requirements for strict proof, it is a sensible option to simply breach.

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[187] *Hadley v Baxendale* (1854) 9 Exch 341; *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48; McGregor (n 13) ch 6.
[188] *Rookes v Barnard* [1964] AC 1129 (HL); McGregor (n 13) ch 39.
[189] *Benedetti v Sawiris* [2013] UKSC 50
[190] Nigel Blackaby and Constantine Partasides (eds), *Redfern and Hunter on International Arbitration* (7th edn, OUP 2022)
[191] *Robinson v Harman* (1848) 1 Exch 850 (Exch).

Second, awards will be reduced in terms of real value due to delay and inflation. If a defendant thinks it may go on for years and the eventual award will be eroded, breach can possibly be considered financially viable.[192]

Third, weak enforcement can compound the effects of weak deterrence. If it takes a long time or is hard to make the defendant do, damages may be considered negotiable instead of mandatory[193].

Fourth, where courts do not clearly articulate the basis for valuation and interest, damages outcomes may not reliably reflect the economic consequences of breach, which undermines deterrence through unpredictability.[194]

This does not mean Nigeria should convert contract damages into punitive damages. Rather, it supports targeted reforms that ensure damages remain genuinely compensatory in real terms and reliably enforceable[195].

4.5 Delay in Litigation and Enforcement

Delay is one of the most practically destructive issues in damages law because damages are meant to restore economic position, and economic reality changes over time.[196]

4.5.1 Delay in adjudication

[192] International Monetary Fund, *Nigeria: 2025 Article IV Consultation – Press Release; Staff Report* (IMF Staff Country Reports 2025)
[193] *Interdrill Nigeria Ltd v UBA Plc* (2017) LPELR-41907(SC); *Ekwunife v Wayne (W/A) Ltd* (1989) 5 NWLR (Pt 122) 422 (SC)
[194] National Industrial Court of Nigeria, 'Review of Some Significant Decisions – Labour and Employment 2020' (NICN publication, 2021)
[195] Hugh Beale (gen ed), *Chitty on Contracts* (35th edn, Sweet & Maxwell 2023)
[196] World Bank, *Doing Business 2020: Nigeria* (World Bank 2020)

Where cases take years to conclude, the valuation of replacement cost, business interruption, and profit loss becomes more difficult. Evidence becomes stale, witnesses disappear, records degrade, and the court is forced to reconstruct past economic realities in an unstable market.

4.5.2 Erosion of value

Even where the court awards damages properly on doctrine, the real purchasing power of the award may shrink significantly due to inflation and currency changes during the delay period.[197] This makes interest central to effective compensation. If interest is not awarded or is awarded at a rate that does not reflect the economic environment, damages may fail in real terms.[198]

4.5.3 Enforcement delay

Enforcement delay further shifts bargaining power. Claimants sometimes accept discounted settlements after judgment because execution is costly, time-consuming, or uncertain.[199] This turns damages into a bargaining chip rather than a reliable remedy.

4.6 Absence of Clear Legislative Guidance

Nigeria's contract damages regime is largely judge-made. This is not inherently negative; common law systems rely on precedent. However, the Nigerian context has created areas where clearer statutory or practice-direction guidance would improve predictability and fairness.

Key gaps include:

i. absence of clear standards on valuation date selection in volatile economic contexts

[197] Sheriffs and Civil Process Act, Cap S6 LFN 2004, s 84; *Central Bank of Nigeria v Inagua Frankline Ochife & 3 Ors* (2025) LPELR-80220(SC).
[198] *BN v Ochife* (2025) LPELR-80220(SC).
[199] National Judicial Institute, 'Case Management and Tracking Paper' (NJI 2024) (framework for reducing delays and improving disposition)

ii. lack of uniform guidance on pre-judgment interest (basis, pleading requirements, rate approach)

iii. limited procedural structures specifically tailored for commercial damages proof, such as early damages schedules, mandatory disclosure of financial records, and structured expert evidence in high-value claims.[200]

Without such guidance, courts rely on case-by-case discretion, which increases variation and reduces predictability.[201]

4.7 Judicial Discretion and Subjectivity

Damages assessment inevitably involves discretion, but discretion should be structured and transparent.[202] In Nigeria, concerns arise where awards appear to reflect the judge's impression rather than a clearly articulated method grounded in the pleadings and evidence.

Subjectivity enters damages decisions through:

i. adopting broad figures without explaining calculation steps

ii. rejecting heads of loss without linking rejection to a specific legal test

iii. applying "strict proof" language without explaining what evidence would have sufficed

iv. inconsistent treatment of similar evidence across cases.[203]

This is not a claim that judges act improperly. Rather, it shows that the system would benefit from clearer expectations about damages reasoning, including structured judgments that explain

[200] Nigerian Law Reform Commission, 'Mandate and Functions' (NLRC official website) (law reform institutional role); BE Ecoma, 'The Nigerian Law Reform Commission Act 2022' (2024) (FULAJ)
[201] Squire Patton Boggs, 'Nigeria Reform of Arbitration Law: Major Legislative Changes' (2023); Aceris Law, 'Arbitration in Nigeria: The 2023 Reform' (2023).
[202] *Dumez (Nig) Ltd v Ogboli* (1972) 1 All NLR (Pt 1) 241 (SC)
[203] McGregor (n 13) 20

valuation methods, the evidential basis for each head of loss, and the application of limiting principles.[204]

4.8 Reforms in Awards of Damages

Contract damages should be maintained as a foundation of reform but made more predictable, more fair and more practical in the real world.[205] Judicial practice and procedure, the culture of evidence, the drafting of contracts and legislative or quasi-legislative guidance are areas of a Nigerian reform agenda.

4.8.1 Reforms on judicial reasoning reforms

i. **Structured Damages Reasoning**: courts should split into breach, heads of loss, causation, remoteness, mitigation, certainty and method of quantification and explain the acceptance/rejection of each head.

ii. **Valuation Transparency**: valuation dates and reasons for selection should be included in judgments.

iii. **Interest Clarity**: Pre Judgment Interest and Post Judgment Interest should be clearly differentiated by the courts, with the laws for both and their methods of rate selection explained.[206]

4.8.2 Procedural reforms

[204] *Moruf Adeyemi Adesanya v First Spring Franchise (Nig) Ltd* (NICN, 1 December 2022)
[205] National Judicial Institute (n 37)
[206] *nterdrill Nigeria Ltd v UBA Plc* (2017) LPELR-41907(SC)

i. **Early Damages Schedules**: Parties should be expected to present a detailed damages schedule early, and documents to go with each item.[207]

ii. **Focused Disclosure**: Surprise financial disclosure and proof issues should be addressed through structured financial disclosure protocols in focused disclosure commercial claims.[208]

iii. **Expert Evidence Management**: courts should put control on expert evidence, scope, assumptions, methodology, to avoid speculative profit claims and enhance reliability.[209]

4.8.3 Evidence and record reforms

i. Facilitate admissibility-friendly documentation practices by providing training in businesses and law, such as proper invoicing, keeping proper business ledgers, contract variations in writing, and systematic storing of communications.[210]

4.8.4 Drafting reforms

i. Foster more robust liquidated damages, limitation of liability, FX risk, variation and interest clauses, to provide better contractual clarity for the courts.[211]

4.8.5 Targeted guidance instruments

Although there is no full statutory code in Nigeria, some specific changes may be implemented such as:

i. Commercial damages proof and valuation date analysis practice directions are issued

[207] Arbitration and Mediation Act 2023 (Nigeria); Squire Patton Boggs (n 40); Alliance Law Firm, 'A Review of the Arbitration and Mediation Act 2023' (16 June 2025).
[208] Sheriffs and Civil Process Act, Cap S6 LFN 2004, s 84; *CBN v Ochife* (2025) LPELR-80220(SC
[209] World Bank (n 33)
[210] Beale (gen ed) (n 32)
[211] National Judicial Institute (n 37)

ii. advice on interest and inflation protection for long term conflicts

iii. Model commercial contract clauses by commercial sectors, developed by professional bodies.[212]

4.9 Comparative Insights: Lessons from Other Jurisdictions

Comparative analysis is not meant to supplant Nigerian doctrine, but to seek out practical tools to make the doctrine more predictable and fair.

4.9.1 England and Wales

English courts have grown ever more method-driven in their thinking on contractual damages, particularly in respect of (i) remoteness and scope of duty analysis, (ii) modernisation of the penalty doctrine and (iii) structured approaches to loss of profit and wasted expenditure.[213] The lesson for Nigeria is that it is important for the judiciary to articulate the method clearly in all transactions, especially commercial transactions of this magnitude.

4.9.2 United States

Many jurisdictions in the United States employ a structured jury instruction and a thorough discovery process that require parties to exchange a financial record and expert reports at an early stage. In Nigeria, the process is different but the principle is the same: Damages become more predictable when proof systems bring clarity early on and minimise the prejudice to be suffered by either party.[214]

4.9.3 South Africa

[212] McGregor (n 13) 19

[213] *Hadley v Baxendale* (1854) 9 Exch 341; *The Achilleas* [2008] UKHL 48; *One Step (Support) Ltd v Morris-Garner* [2018] UKSC 20

[214] *Cavendish Square Holding BV v Makdessi* [2015] UKSC 67; *Dunlop* [1915] AC 79

The rules of South African contract law are still rooted in the concept of compensation, although there has been a robust academic and judicial focus on proof and quantification – such as the notion of reasonableness and the management of commercial uncertainty. The lesson for Nigeria is that it is beneficial to have integrated doctrinal and practical guidance, which enables courts to robustly calculate loss while avoiding speculation.[215]

4.9.4 Singapore and other commercial hubs

In leading jurisdictions, commercial courts actively manage damages, identify issues early and have a disciplined expert evidence system. The lesson is that there is a way of designing the procedure to avoid the inconsistency if you don't change the substance of the law.[216]

4.9.5 Practical comparative takeaway for Nigeria

Nigeria doesn't need a complete transplacation. The most adaptable comparative tools are:

i. structured damages schedules and early disclosure

ii. managed expert evidence protocols

iii. consistent guidance on interest and valuation methodology

iv. clearer judicial reasoning expectations.

The reforms are ones that can be accommodated within the current common law system in Nigeria but will have a significant impact on enhancing the predictability and the true deterrent effect of damages awards.[217]

[215] *Restatement (Second) of Contracts* (1981) §§ 347–351 (black-letter foundations).
[216] *Li Jialin & Anor v Wingcrown Investment Pte Ltd [2024] SGCA 48*
[217] A Kalisz, 'Assessment and Quantification of Damages in International Sales' (2020–2024)

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Key Findings

This study examined considered damages as a remedy, as a doctrine, and in the context of Nigeria's economic and institutional framework. The study draws on the conceptual foundations (Chapter Two), the governing legal framework (Chapter Three) and the issues and reform debates (Chapter Four) and the following key findings are made.

Nigeria's courts acknowledge the compensatory nature of damages under contract, and have been applying the recognised limiting principles (remoteness, mitigation, causation and certainty) in cases in a somewhat predictable manner, albeit not without some inconsistencies. What this means in practice is that if two claimants have similar circumstances, one might obtain one result from the court and the other a different result based on the framing of the evidence, the reasoning of the judge and the methodology used in estimating damages.

The rigor of proof for special damages, and the reluctance to accept loss of profit claims, are sensible considerations of speculation. But in Nigeria's commercial setting, numerous businesses have poor recordkeeping, lack formal documentation, and are burdened by the expense of expert evidence. This leaves an ongoing problem as true losses are hard to be translated into awards that meet the judicial expectations.

Inflation, currency fluctuations, disturbances in supply and regulatory restrictions and failures of third parties frequently influence losses. This makes it more difficult to establish breach as an actual cause of loss and more difficult to challenge intervening causes and “business-as-usual” risks. When judicial reasoning is not clearly used to explain causal analysis, it seems that the damages are being done based on the subjective opinion of the judge, and are therefore easy to be appealed.

However, whether or not doctrine is applied correctly, delays and enforcement issues in litigation can weaken the purchasing power of damages awards. Formal “correctness” can be misleading in real terms because of inflation or currency depreciation, particularly when interest rates are low, differential and/or not paid, for example, due to technicalities.

One of the key practical issues is not just 'how much was lost', but also 'when was the loss suffered and at what rate should the monetary compensation be valued. The variation of the definition of “valuation date” and the lack of uniformity in the calculation of pre-judgment interest yields very real variations in results and potentially facilitates “strategic behaviour” by defendants.

Contract damages should not be used to punish, but rather, should make it economically unattractive to commit a breach by providing for compensation for proven loss in money and by making it easy to collect damages without going too far. Damages serve as a compensatory and confidence-building tool when awards are not certain, do not arrive in a timely fashion, or are difficult to implement.

The damages regime in Nigeria is theoretically sound, but there is a need for more clarity as regards the proof of damages, valuation options, treatment of interest and management of expert evidence for contemporary commercial disputes such as FX exposure, long running projects and sophisticated loss modelling.

The above findings converge on the need to make the damages remedy more predictable, coherent in evidence, more real valued and more enforceable in our institutional environment in Nigeria, rather than because damages as a remedy is not available.

5.2 Recommendations

The following recommendations are designed to be practical, reform-oriented, and compatible with Nigeria's existing common law structure. They are grouped into reforms that can be driven by courts and judicial institutions, procedural reforms, targeted legislative or quasi-legislative guidance, and private-sector drafting and practice reforms.

1. Adopt a structured "damages reasoning template" in judgments: It is recommended that judges use a structured "damages reasoning template" in judgments, which breaks down damages into: breach findings, heads of loss pleaded, causation, remoteness/foreseeability, mitigation, certainty/proof, and methodology and valuation date. This enhances transparency, diminishes alleged subjectivity, and promotes disciplined appellate review.

2. Require explicit valuation-date justification in commercial damages awards: In situations where the valuation date will have an important impact on the outcome of the damages award (replacement cost, loss caused by foreign exchange, price differential), the trial court should specify the date adopted (date of breach, date of judgment, etc.) and why the date was chosen. This is especially important in high volatility markets.

3. Develop clearer judicial treatment of interest as a compensation tool, not an afterthought: Leave the courtroom some clarity on the basis and purpose of pre-judgment interest; leave the courtroom some clarity on the computation period and rate of post-judgment interest; provide reasoning on rate selection and computation period. This lowers the likelihood of uncertainty and safeguards the purchasing power of benefits.

4. Introduce early "Damages Schedules" as a case-management requirement in commercial cases: In commercial cases, early "Damages Schedules" should become a mandatory case-management step, where claimants provide a damages schedule that sets out each head of loss and the basis, causal explanation, method of calculation and supporting documents for each head of loss. A "damages response schedule" is a structured response by the defendant to identify admissions, denials, and reasons (remoteness vs. mitigation and proof gaps). This helps to focus issues and minimise trial surprises.

5. Strengthen focused disclosure for damages proof: Commercial courts should facilitate that disclosure orders are made in relation to financial records and documents on the basis of specific heads of loss pleaded. This is not a generic fishing endeavor but evidence directed and linked to pleaded damages items (invoices, ledgers, bank statements, purchase orders, delivery confirmations, exchange rate basis, etc.).

6. Improve expert evidence management: Expert evidence should be managed in court at an early stage where loss-of-profit or complex valuation is being claimed, by setting out the range of the expert's task, the assumptions to be made, the standards of the task, and the underlying data; This will limit speculative modelling and allow courts to have greater confidence in expert evidence.

7. Reduce enforcement friction through clearer practice direction and administrative support: Consider enforcement prosecutions as a component of remedial effectiveness. Courts (and related justice-sector institutions) should make the execution process more streamlined, enhance timelines for post-judgment processes, and improve administrative monitoring of enforcement applications.

8. Encourage ADR and arbitration for damages-heavy commercial disputes, with better quantification discipline: With delay risks, parties should be encouraged to use ADR and arbitration where appropriate, but with reliable and clear standards for damages proof and valuation to avoid over- or under- inflating claims. This matches the speed of dispute resolution with credible quantification.

9. Adopt limited, targeted guidance instruments rather than a full contract code: Nigeria does not necessarily need a comprehensive codification of contract damages. However, some guidance would be useful:

a. a practice direction on valuation date analysis (including FX and inflation-sensitive claims),
b. guidance on interest (pleading requirements, basis, and rate principles), and
c. procedural rules that compel early damages schedules and structured disclosure in commercial cases.

10. Clarify the treatment of agreed damages clauses in modern contracts.

Advice should be given to the courts and practitioners to apply a clear test to liquidated damages clauses (genuine pre-estimate or proportionate protection of legitimate interest) to minimise uncertainty and enhance risk allocation in contracts.

5.3 Conclusion

This research concludes that the award of damages for breach of contract in Nigeria is supported by a coherent doctrinal foundation, but its practical effectiveness is constrained by inconsistent application, demanding proof burdens in a difficult evidential environment, economic volatility, litigation delay, and enforcement weaknesses. These constraints produce a recurring gap between the compensatory promise of contract damages and the real-world experience of parties who litigate or negotiate damages outcomes.

The study also concludes that meaningful improvement does not require abandoning Nigeria's common law tradition or converting contract damages into punitive awards. The priority is to strengthen the method and infrastructure of damages assessment: clearer judicial reasoning, structured proof processes, disciplined valuation and interest analysis, improved expert evidence handling, and enforcement efficiency. Complementary drafting and record-keeping reforms would reduce avoidable disputes and improve the alignment between contractual risk allocation and remedial outcomes.

Ultimately, damages are where contract law meets economic reality. If damages are predictable, evidence-sensitive, inflation-aware, and enforceable, contract law supports commercial confidence and investment planning. If damages remain uncertain, delayed, and weakly executed, breach becomes easier to rationalise and contractual trust is weakened. The reforms proposed in this study offer a realistic pathway to improving fairness, predictability and remedial effectiveness in Nigerian contract damages without destabilising core legal principles.

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