

# Cutting Corners: Freighters Fire Engines and Formula One

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PRACTICES Litigation, International Arbitration

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In *Tibermede v Graham & Co* (1921) 7 Ll.L.Rep. 25 a charterer hired a freighter. It seems that, when the time came to load it, the charterer discovered the vessel was slightly smaller than had been warranted, but the charterer was still able to carry all its intended cargo without difficulty. The charterer nonetheless claimed damages for this breach of warranty.

In English law, the purpose of contract damages is for the claimant “*so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed*” (per Baron Parke in *Robinson v Harman* (1848) 154 ER 363). Lords Scott and Sumption confirmed this to be the ‘fundamental principle’ governing the quantum of damages for breach of contract (in *Golden Strait Corporation v. Nippon Yusen Kubishka Kaisha* (“*The Golden Victory*”) [2007] UKHL 12 at paragraph 29 and again in *Bunge SA v Nidera BV* [2015] UKSC 43 at paragraph 14).

*Tibermede*’s owner had ‘skimped’ on performance but the charterer was no worse-off than if the contract had been performed in full. The undersized ship carried all the cargo. A larger ship would have carried the same cargo. The charterer was already in the same situation as if the contract had been performed. No money was needed to place him there. Yet the charterer was awarded damages for breach of contract. In this article, we consider whether that award can be justified.

## An error of law?

Breaches of contract (as distinct from torts) are ‘actionable per se’, meaning a claimant who proves a breach but suffers no loss is still entitled to a small sum by way of ‘nominal’ damages. The answer to the question is thus that the charterer in *Tibermede* should properly have been awarded nominal damages. The same logic applies more generally, if the charterer had been supplied with a vessel which was deficient in some other way besides cargo capacity, but still performed the commercial function for which the charterer required it.

[Read the full article here.](#)