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How UK Ship Sale Ruling Expands Lost-Bargain Damages

By **John Laird and Nicola Phillips** (September 11, 2026, 2:44 PM BST)

On July 22, the U.K. Supreme Court handed down its judgment in Great Asia Maritime Ltd. v. Orion Shipping and Trading LLC.


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The ruling disapplies the long-standing principle established by the Court of Appeal's 1963 ruling in Financings Ltd. v. Baldock, which concluded that a nonrepudiatory breach should not carry forward "loss of bargain" consequences where a contractual termination right is accompanied by an express compensation clause separately addressing losses and expenses.[1]

With such express language, the natural and ordinary meaning of "losses" encompasses loss of bargain, without requiring the terminating party to establish repudiatory breach.


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When a commercial relationship breaks down, the legal characterization of how a party terminates its contract has historically determined the scope of damages it can recover. English law has long distinguished between terminating for common law repudiatory breach and exercising a contractual termination right.

As the High Court discussed in its 2018 opinion in Phones 4U Ltd. v. EE Ltd., a party electing the contractual route for a breach that does not go to the root of the contract risks forfeiting its claim to loss of bargain damages, a significant element of recovery for buyers of goods and services in any rising market.[2]

Here we discuss how Great Asia Maritime sharpens parties' ability to contractually control their damages destiny in the event of a dispute.

Prior Policy on Repudiation and Loss of Bargain

At common law, the right to terminate for a repudiatory breach and claim loss of bargain is triggered by the breach of a condition or other term whose consequences deprive the innocent party of substantially the whole benefit of the contract or renunciation.

Where a breach is not repudiatory, the normal position is that the innocent party can recover losses accrued up to termination, but not loss of bargain. This is the causation principle established in Financings v. Baldock.

There, Justice Alfred Denning held that a minimum payment clause stipulating two-thirds of the full amount of a hire contract would be payable as damages on early termination, regardless of actual loss, as well as the hirer recovering possession of the truck at issue. He ruled that it was an unenforceable penalty because it reflected future payments rather than losses to date.[3]

The practical response to Financings was to elevate an obligation to the status of a contractual condition, most commonly by providing that time was of the essence. The effect, confirmed by the Court of Appeal in 1987 in Lombard North Central PLC v. Butterworth, is that any breach of the designated obligation, regardless of actual severity, is treated as going to the root of the contract, triggering the full loss of bargain measure.[4]

The court in Lombard was openly uncomfortable, acknowledging that the difference between a bare termination power and a time-of-the-essence provision was insubstantial.

Great Asia Maritime

The dispute arose from the $15 million sale of the vessel Lila Lisbon, which was conducted using the 2012 version of the Norwegian Saleform standard form contract. The sellers failed to give notice of readiness by the original canceling date of Aug. 20, 2021, and the revised date of Oct. 15, 2021 — in each case due to proven negligence.

By the time the contract was canceled, the market value of an equivalent vessel to the Lila Lisbon was $16.85 million, producing a loss of $1.85 million if the buyer wished to procure an alternative.

Clause 14 of the 2012 Norwegian Saleform has two paragraphs, labeled by the Supreme Court as Clauses 14A and 14B. Clause 14A confers a right to cancel if a seller fails to deliver by the canceling date. Clause 14B provides that where a seller's failure is due to proven negligence, they shall make "due compensation to the buyer for their loss and for all expenses together with interest," whether or not the buyer cancels.

The above market differential was awarded as loss of bargain in arbitration. On appeal, it was common ground there was no repudiatory breach. Judge Julia Dias at first instance reversed the award, agreeing with the sellers that Clause 14B did not entitle the buyers to loss of bargain, absent repudiatory breach. The Court of Appeal reversed the decision and the Supreme Court dismissed the further appeal.

Analytical Tensions

The Supreme Court's interpretation of Clause 14B focused on its express inclusion of both loss and all expenses. The word "loss" is general and unqualified, and loss of bargain is a type of loss.[5]

The court decided that if loss does not mean something beyond expenses in the cancellation scenario, its inclusion as a separate term serves no purpose. When pressed, the sellers could not identify any satisfactory alternative content for the word in the cancellation context.

From there, the court held that the Financings causation principle was exhausted by Clause 14B. That principle addresses a bare termination clause standing alone, where no contractual provision confers a damages remedy. Once parties have incorporated an express compensation clause, the Financings principle has nothing left to do; the compensation clause must be interpreted on its own terms.

The court essentially disagreed with Judge Dias, who had held that losses up to termination were caused by the breach of contract in late delivery itself — the market price loss by the innocent buyer's election to cancel.[6] And so, in this scenario there was no loss to speak of for loss of bargain, just as in Financings.

The court reached this determination to give the term "loss" meaning in the cancellation scenario, in part because sellers should not "reap the benefit of their negligence," but that sits uneasily with compensatory principles.[7]

Compensatory damages make good a proven loss; the transfer of benefits of wrongdoing is the province of gain-based remedies, as in the 2000 House of Lords decision in Attorney General v. Blake, analytically distinct from ordinary contractual compensation.[8]

The rationale in the scenario to determine that loss in Clause 14B entitles the buyer to loss of bargain in the form of the market price difference for the vessel at termination assumes that the buyer will reenter the market to acquire an equivalent asset at today's price. This is similar to the prima facie loss of bargain damages for nondelivery codified for applicable sale of goods contracts in Section 51(3) of the Sale of Goods Act 1979.

However, where the breach is not repudiatory and the buyer cancels voluntarily, that assumption is not necessarily valid: The buyer may simply have lost interest in delivery, in which case the market differential may not meaningfully represent a loss. The scenario is not the same as in Lombard because the 2012 Norwegian Saleform had not been drafted to make delayed delivery a repudiatory breach of a condition.

So, there is a connected policy concern in the outcome of Great Asia Maritime. The repudiatory breach threshold has historically calibrated the available remedy to the seriousness of the wrong, and in Lombard, Justices Donald Nicholls and John Mustill expressed reluctance in so-called manufacturing breach severity to ensure the full loss of bargain remedy.

If a broadly worded compensation clause produces the same recovery, regardless of the magnitude of the triggering breach, that threshold becomes less meaningful. The Supreme Court did not address this policy aspect directly.

Under the modern test for penalty clauses established in 2015 by the Supreme Court's ruling in Cavendish Square Holding BV v. Talal El Makdessi, a clause is unenforceable only where it imposes a detriment "out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation."[9] A clause negotiated between sophisticated commercial parties providing for actual compensatory loss measured at market is unlikely to satisfy that test.

But still, where a breach is nonrepudiatory, does the severity threshold for a repudiatory breach, and thus loss of bargain, define the outer limit of the innocent party's legitimate interest in recovery? In both Lombard and Great Asia Maritime, the penalty doctrine was not the vehicle for analysis, and the rule established by Financings was circumvented by drafting, rather than confronted directly. A court directly confronted with an expressly drafted clause for loss of bargain on contractual termination may yet need to address this.

Drafting Express Remedies and Contractual Conditions

The practical consequence of Financings and Lombard was that a buyer was left either to tolerate a breach in the hope of accumulating a pattern sufficient to establish repudiation, or to negotiate time-of-the-essence or condition language into the contract to ensure any breach of a key obligation produced the full damages remedy. The upshot of Great Asia Maritime is that, regardless of the policy concerns, the tension may be avoided by appropriately drafted contracts.

The condition approach is double-edged. If a party invokes a designated condition and is wrong, it has potentially committed an anticipatory repudiatory breach of its own: The purported terminator becomes the contract-breaker, and the counterparty may claim loss of bargain against it. The damages exposure may be the very measure the terminating party was seeking to claim.

Conversely, a party that tolerates a continuing breach without invoking a condition trigger may be held to have affirmed the contract. In a developing pattern of delay, later escalation may or may not be treated as a fresh repudiatory event, complicating both the termination right and the damages claim.

Great Asia Maritime indicates that where a contract contains an express compensation clause distinguishing losses from expenses linked to a contractual termination right, the terminating party may recover loss of bargain without characterizing the breach as repudiatory.

A well-drafted express compensation clause may achieve the same economic outcome as the condition approach, with less strategic exposure.

Indeed, the Norwegian Shipbrokers' Association responded to the Great Asia Maritime litigation when publishing the 2025 version of the Norwegian Saleform in June this year. Clause 14(e) now expressly provides for loss of bargain on cancellation where a seller's failure is due to proven negligence. The form also adds a positive express delivery obligation in Clause 5(b).

In the English construction market, the 2024 version of the JCT Design and Build Contract provides a complementary illustration. Following the Supreme Court's guidance in 2021 in Triple Point Technology v. PTT on whether liquidated damages may continue to accrue after termination,[10] the Joint Contracts Tribunal inserted Clause 2.29.5 to confirm that liquidated damages apply up to termination, with general damages — including provable loss of bargain — remaining available thereafter.

Practical Implications

Three points follow from the court's judgment.

Where a contractual termination right is accompanied by a compensation clause separately addressing losses and expenses, loss of bargain is recoverable on termination without establishing repudiatory breach, a materially stronger position than parties contracting on such terms may have appreciated.

If no compensation clause exists, Financings continues to govern: The only routes to loss of bargain remain repudiatory breach at common law or condition designation under Lombard.

Broadly worded compensation clauses, whether in standard form or bespoke contracts, will likely be construed as extending to the full loss of bargain measure, absent express qualification; parties wishing to limit that exposure should do so explicitly.

Looking Ahead

The Supreme Court in Great Asia Maritime expressly declined to overrule Financings, but noted that whether it should be reconsidered was left open. Financings has now been practically circumvented twice: by Lombard and the condition device, and by Great Asia Maritime and the express compensation clause route. Its causation principle has been characterized as exhausted wherever a compensation clause exists, and its substantive reach is progressively narrower, applying only to bare express termination clauses without associated compensation language.

Whether the rule should survive in that residual form remains reserved. The court noted that Financings has been subject to academic criticism, suggesting a future case may invite the court to confront the rule's foundations more directly.

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[1] Great Asia Maritime Ltd. v. Orion Shipping and Trading LLC [2026] UKSC 23: https://www.bailii.org/uk/cases/UKSC/2026/23.html; Financings Ltd. v. Baldock [1963] 2 QB 104.

[2] Phones 4U Ltd. (in administration) v. EE Ltd. [2018] EWHC 49 (Comm).

[3] Financings Ltd. v. Baldock [1963] 2 QB 104, 121.

[4] Lombard North Central PLC v. Butterworth [1987] QB 527.

[5] Great Asia Maritime, [24].

[6] Orion Shipping and Trading Ltd v. Great Asia Maritime Ltd. [2024] EWHC 2075 (Comm), [48].

[7] Great Asia Maritime, [48].

[8] Her Majesty's Attorney General v. Blake and Another [2000] UKHL 45.

[9] Cavendish Square Holding BV v. Talal El Makdessi [2015] UKSC 67.

[10] Triple Point Technology v. PTT [2021] UKSC 29.