The second consequence of the principle that damages are compensatory is that an award of damages should not enrich the plaintiff: he cannot recover more than his loss.

The theory of "adequate causation" holds\(^{566}\) that a wrongdoer is liable for a loss if his default appreciably increased the objective possibility of loss of a kind that in fact occurred;\(^{567}\) on the other hand, he is under no liability if his default was, according to the ordinary course of things, quite indifferent with regard to the consequence which in fact occurred, and only became a condition of the occurrence of the loss as a result of unusual or intervening events.\(^{568}\)

[Set out in detail.]

The original rule of ENGLISH law was that if a debtor failed to perform an obligation to pay a fixed sum of money he could be sued for that sum and no more. He was not liable even to pay interest unless the debt arose out of a mercantile security, or unless there was a special agreement to pay interest.\(^{762}\) The English courts have however long had a power by statute to award interest on overdue debts;\(^{763}\) and the general position in Anglo-American law now is that interest is recoverable by way of damages for non payment of money.

It is also the general rule that interest constitutes the sole damages for a default of this kind.\(^{764}\) The explanation for this rule is sometimes said to be that the creditor could have mitigated his loss by going into the market to borrow an equivalent sum; or that extra loss resulting from his failure or inability to do so is not foreseeable.\(^{765}\)

Where the breach is "fundamental" (\textit{infra} s.162) termination takes place without preliminary formal steps. A distinction is drawn between cases in which the defaulting party has not performed at all (e.g. the seller has failed to deliver on the agreed day) and those in which he has performed defectively (e.g. the seller has delivered late, or he has delivered non-conforming goods). In the former case there is "ipso facto avoidance".\(^{1033}\) In the latter case, the contract may be avoided by a declaration of the aggrieved party;\(^{1034}\) this is the Common Law position.

\(^{566}\) \textit{Idem} [Enneccerus and Lehmann] 65-75; \textit{Larenz} I 315-325.
\(^{567}\) GBH 23 Oct. 1951, BGHZ 3, 261 at 267; RG 22 June 1931, RGZ 133, 126.
\(^{568}\) \textit{Enneccerus and Lehmann} 66.
\(^{762}\) \textit{Treitel} 814.
\(^{763}\) See now Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41) s. 3.
\(^{764}\) \textit{Corbin} § 995; \textit{Treitel} 814; \textit{CALIFORNIAN CC} § 3302; Revised Codes of MONTANA (\textit{supra} n. 137) § 17-303; NORTH DAKOTA Century Code (\textit{supra} n. 154) § 32-03-10; OKLAHOMA Statutes (\textit{supra} n. 187) § 23-27; SOUTH DAKOTA Compiled Laws (\textit{supra} n. 154) § 21-2-2.
\(^{765}\) \textit{Corbin} § 995; \textit{Treitel} 814.
\(^{1033}\) E.g. art. 26 (l), 30 (l), 62 (l).
\(^{1034}\) E.g. art. 26 (3), 30 (3), 43.

\textbf{Referring Principles:}

VI.1 - Termination of contract in case of fundamental non-performance
VII.2 - Principle of foreseeability of loss
VII.3.1 - Limits to claims for damages
VII.6 - Duty to pay interest