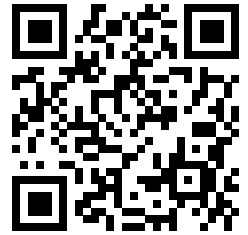


Title:

VII.3.5 - Future damages/Lost profits



Content:

No. VII.3.3 - Future damages/Lost profits

(a) A claim for compensation of future damages - including lost profits - is not excluded by a claim raised under Principle VII.3.2 above, provided that such harm was foreseeable under Principle VII.2 and is established with a reasonable degree of certainty.

(b) The aggrieved party may only recover lost net profits. This requires that the benefits of avoiding performance - the operating or other costs avoided by the absence of performance - must be deducted from the value to be received through performance.

Commentary:

1 Subsection (a) makes it clear that the aggrieved party may claim [compensation for damages](#) for additional future harm, including lost profits ("consequential loss"), which it may have sustained due to the non-performance of the other party, provided that such harm was [foreseeable](#) and is established with a reasonable degree of certainty. Such future harm may include any gain of which the aggrieved party has been deprived by the non-performance of the other party. However, Subsection (a) provides that recovery of such future harm is always subject to the principle of foreseeability and certainty. A party may never recover damages for alleged future harm which, from a [reasonable](#) perspective, may never have occurred (foreseeability) or for which there is no sufficient [causal nexus](#) between the non-performance and the occurrence of the harm (certainty). This would contravene the [Principle of full compensation](#) which provides not only the scope, but also the limits of any claim for compensation of damages. Compensation for damages may [never result in an enrichment](#) of the aggrieved party. Therefore, the application of the principle of foreseeability and certainty relates both to the occurrence of the future harm and to its extent.

2 Subsection (b) applies the limitations outlined above to the recovery of lost profits as a sub-species of future damages. Compensation for lost profits [may not lead to an enrichment](#) of the aggrieved party. Therefore, the aggrieved party may claim compensation only for net lost profits. Any benefits resulting from the fact that the aggrieved party must not perform must therefore be deducted from the value to be received through performance.