The Law of Contract Damages BY ADAM **KRAMER** [Oxford: Hart Publishing, 2014. lxv + 648 pp. Hardback: £95.00]

I. INTRODUCTION

Damages—this is an unavoidable word in almost any kind of contractual dispute, and is of critical importance to the practitioner as it usually determines whether a suit should even be commenced. Where damages are concerned, it is more often than not a question of "how much?" Indeed, there are many species of damages such as compensatory, nominal, punitive and liquidated damages, and of all species of damages, the calculation of compensatory damages is perhaps the most complex. A large bulk of Kramer's *The Law of Contract Damages* (Oxford: Hart Publishing, 2014) is therefore devoted to addressing this question.

This end goal of "how much damages?" may not be easily reached; the path to it can be either painless or perilous. What the book does is to help readers navigate through this path, and assist them in understanding how much damages are recoverable in the eyes of the law. Despite the large focus on compensatory damages, *The Law of Contract Damages* also provides sections on non-compensatory damages and other damages-related topics, thereby providing a comprehensive coverage on contractual damages.

It should be further noted that a key feature of this book is its practicality. The book is designed for practitioners and students who frequently come across issues related to contractual damages. This book review will first discuss the contents of the book, and will subsequently explore and evaluate its practicality for practitioners, students and judges too. The biggest question to be tackled in this book review is this: Does *The Law of Contract Damages* live up to its expectations as a book arranged to "assist understanding and practicality", and as being "the most comprehensive and detailed treatment of the subject to date" (at i)? The answer to this question will be explored.

II. Diving into the Deep: A Discussion on Damages

A large part of *The Law of Contract Damages* deals with the quantification of compensatory damages. Almost the entire book (save for Chapter 23 which is on non-compensatory damages) discusses issues related to the quantification of compensatory damages. Where compensatory damages are concerned, the overarching theory of its quantification is to find out "the net difference between the breach and non-breach positions", and in so doing, "one can work out what loss was caused by the breach" (at p 15). The tricky part, however, lies in determining what loss the claimant had actually suffered, and whether this actual loss should be entirely claimable. How will one decide with certainty that specific heads of losses ought to be claimable while the rest should be discounted?

The Law of Contract Damages addresses this question by first providing readers with a basic overview and grounding on the fundamental theories governing the law of contract damages in Chapter 1, particularly for compensatory damages (at p 12). This chapter serves as a framework for subsequent chapters, where advanced principles that hinge on these basic theories are discussed.

In Chapters 2 to 8, the book takes on a different approach by analysing the potential heads of losses which can arise from specific types of complaints in a contract litigation setting. By doing so, the book provides readers with the opportunity to visualise how contrasting complaints arising from dissimilar contracts may require practitioners to consider, depending on the type of complaint, which losses are recoverable. For example, in Chapter 3, readers are brought to attention that the recovery of losses for misadvice is contingent on three different scenarios (at p 47, with reference to the diagram): (1) whether the claimant entered into the actual transaction; (2) whether the claimant entered into an alternative transaction; or (3) whether the claimant entered into neither. The book then discusses the types of recovery available for losses that occur as a result of each of these three scenarios (at p 69). Chapters 9 and 10 subsequently consider issues such as warranties, indemnities and negative covenants (at xii).

In Chapters 11 to 17, the book is concerned as to whether there are any legal principles that can restrict recovery of the entire loss suffered, such as the rules related to factual causation, legal causation, remoteness, mitigation and the dates of assessment. The focus in these chapters is momentarily shifted away from determining which heads of losses are permitted based on the type of complaint. Here, the book begins with the overarching principle to be applied (*eg* the 'but for' test for factual causation (at p 241) and the 'assumption of responsibility' test for remoteness (at p 290)) before embarking on an analysis of these tests. In Chapters 18 to 20, the

book proceeds to discuss the types of losses permitted for recovery which have yet to be examined in Chapters 2 to 8, such as "Proving Business Loss: Revenue, Profit and Costs", "Non-Pecuniary Loss" and "Indemnity for Liability to Third Parties and Compensation for Litigation Costs" (at xiv). The book then ends off with a discussion on ancillary matters that intersect with the law of contract damages. In Chapters 21 to 24, issues such as "Third Parties and Loss", the "*Wrotham Park* Hypothetical Bargain Damages", "Non-Compensatory Damages" and "Concurrent Claims" are explored (at xiv to xv). In so doing, *The Law of Contract Damages* provides a comprehensive coverage on damages.

III. The Practicality of *The Law of Contract Damages*

The Law of Contract Damages states on the first page that it is designed with a view to "assist understanding and practicality" (at i), and it indeed lives up to its expectations. After the introductory chapter, the book is organised by the types of specific disputes that are intuitive to the practitioner. Chapters 2 to 10 are, according to the author, arranged by the types of complaint. For example, a practitioner facing an issue on damages for misadvice can easily refer to Chapter 3, which covers the potential scenarios that can arise for a misadvice claim, which are depicted in a diagram in the book (at p 47). Likewise, a practitioner who has to advise on the damages recoverable for defective property or non-pecuniary loss can readily turn to Chapters 4 and 19 respectively. Classifying each chapter by common issues of contention in actual contract litigation, rather than by textbook principles, saves time for the practitioner as it allows him or her to swiftly pinpoint the exact heads of loss for that particular issue or contract in question. Practitioners who have to regularly advise on contractual disputes may consider using this book to swiftly retrieve answers to their legal questions on the subject.

The utility of *The Law of Contract Damages* for modern day practitioners, students and judges is further enhanced by the book's international outlook. Although the issue on the currency of damages awarded falls under the realm of conflict of laws or private international law, its inclusion in this book greatly assists practitioners who have to advise on contracts that deal with different currencies (see p 19 onwards). The book also takes a cosmopolitan approach in explaining the principles in contract damages as it does not shy away from citing non-English cases. For instance, in discussing the presumption of breaking even, the book refers to cases decided in the High Court of Australia and the United States (US) to emphasise the applicable principle for these scenarios (see *eg* p 483). The book's cosmopolitan approach does not end there—it also cites cases from Canada and several states in the US, such as New York and Arkansas (at xii to lxiii). Such a comparative perspective can be beneficial to practitioners, students and judges working beyond the English realm as they may wish to compare the English position with other common law jurisdictions and evaluate whether these jurisdictions share a similar view on certain principles.

While this book is organised and written for practitioners and students (at ix), and is also seen as an assistant to judges (at v), readers who hope to be enlightened by the academic theory behind the principles concerning damages will not be disappointed as they will find brief historical summaries of points of law considered in the book. For instance, in discussing the test for remoteness, the book first highlights

at p 290 that "the reasonable contemplation test must… be understood as a general application of, or rule of thumb for, the assumption of responsibility test" before briefly highlighting at p 292 that this test is actually a "reworking of a version of the remoteness test that reached its zenith in the latter half of the nineteenth century". Practitioners working under time constraints can understand which rule is to be applied after glancing through the first paragraph, but academics, who wish to trace why and how this rule has evolved, are not deprived of this chance as subsequent paragraphs provide for it. However, it should be noted that the book is 'case heavy', *ie* many more cases than academic articles are cited to support the principles discussed.

The book also departs from a text-only approach by including some diagrams and tables in the text. In the introductory chapter, the essence of the contract damages enquiry—to find the net difference between the breach and non-breach positions—is illustrated in a simple diagram (at p 15). This same diagram is also adopted at p 47 for losses arising from a misadvice statement. Further on, when the topic of proving business loss is broached, the book provides an uncomplicated table to demonstrate to readers the calculations for the non-breach position, breach position and net loss caused by the breach where revenue, profit and cost are concerned. Through these diagrammatic explanations, readers can quickly understand how the losses are derived generally and for the specific types of complaints.

Crucially, this book is a tome for practitioners who have to advise or litigate on issues relating to damages. *The Law of Contract Damages* explains the stage of the matter (*eg* the pre-trial, trial, or appeal stages) at which issues relating to damages surface (at pp 9 to 12). In Chapter 13, the book explicitly mentions "The Future: What Would Have Happened after Trial" at p 282 and discusses issues relating to lost post-trial profits, future post-trial liability to a third party and future post-trial costs. Furthermore in Chapter 18, the book emphasises very practical information for practitioners at trial, such as the amount of pleading or evidence required to prove lost profits. For practitioners who have to consider whether more damages are prevented from being claimed because of procedural reasons or other trial-related issues (*eg* appeals on damages and how damages will be paid out), this is the go-to book as it provides detailed coverage on such issues relating to damages.

IV. Conclusion

The Law of Contract Damages is indeed for practitioners, judges and students who need a handy reference book on legal issues relating to contractual damages. Returning back to the question of whether *The Law of Contract Damages* lives up to its expectations, the answer is short but clear and certain: Yes.

Irene **Ng** (Huang Ying)
LL.B. (Hons.)
Faculty of Law, National University of Singapore