This leaflet aims to provide our members with a summary of the rules relating to a claim for loss of use of your boat as a result of your boat being damaged.

THE PURPOSE AND MEASURE OF DAMAGES:

Contract

The measure of damages for breach of contract is the estimated loss directly and naturally resulting, in the ordinary course of events, from the Seller’s breach of contract. The legal authority for this rule can be found in the case of Hadley v Baxendale 1854.

The principle behind an award of damages in respect of a breach of contract is that the successful claimant should, so far as possible, be compensated for all losses arising from the defendant’s breach of contract. He should, as far as money can do it, be placed in the same position as if the contract had been fully performed. In assessing damages the court will only take account of strict legal obligations; it cannot take account of the expectations of one party to the contract that the other will do something that he is under no obligation to do. If the claimant cannot establish actual loss, he will only be entitled to nominal damages.

Tort

The object of tort damages is to put the claimant in the position he would have been in if the event had never happened. Most damages in a tort action are intended to be compensatory, that is to compensate the claimant for loss which has been suffered. Only such expenses as are considered reasonable by the court are recoverable, and this is a question of fact in each case.

LOSS OF USE:

The common law provides that a claimant may claim for loss of use where he has been denied the use of his boat, possibly due to breach of a duty by another e.g. a collision, or boatyard negligence, dropping the boat whilst on a lift-out, breach of contractual duty or statutory duty e.g. negligent repair, delayed delivery, etc.

The owner will be entitled to more than merely nominal damages, the loss of pleasure being a ground for an award even though this is not accurately measurable.

The amount permitted for such a claim is generally fairly low. The accepted principle is to carry out a calculation based a percentage of the estimated capital value of the vessel.
multiplied by the number of days loss of use. The percentage has varied but for many years was 8% (the court rate).

The recent case of *Henry Broughton-Leigh v Geoffrey Hunton* QBD (Mercantile Court) 17 March 2010 acts as useful guidance on this. The claim involved damage to a motor yacht arising out of a partial flood. The vessel was not used commercially i.e. it was a private pleasure vessel. The owner was deprived of her use between 21 August 2005 and 21 June 2006. The Defendant argued that as the vessel was laid up between 1 November and 1 April every year the Claimant should only recover damages for loss of use from 21 August to 1 November and 1 April to 21 June. His Hon. Judge Pelling QC rejected this and found that the Claimant was entitled to succeed in the full value of his claim over the full period.

His Hon. Judge Pelling QC considered that in commercial cases interest would be awarded at base rate plus 1.5%, in the circumstances he awarded a rate of 6% based on the base rate at the time of the loss. Obviously such calculation, at today’s base rate, is going to result in a very low award.

Alternatively, the owner may charter another boat and submit a claim for loss of use based on the amount paid in charter charges.

A word of warning, such awards are at the court’s discretion. The owner is under a duty to minimise his loss, so if, for example, he had time booked off for a boating holiday with family and friends, the cost of a charter may well be appropriate but he should first put the other side on notice, to give them an opportunity to object or source a suitable vessel direct as they may be able to provide a cheaper charter.

The owner’s measure of damages for loss of use would therefore be the sum paid for the charter of a comparable boat, less any expenses which would be common to the damaged boat e.g. insurance, mooring etc.

A loss of use calculation is all encompassing; therefore the owner cannot also claim marina fees, insurance etc. for the same period.

As always, available remedies are subject to the terms of any written agreement that there may be.

**CONTACTS:**

For more information kindly contact the RYA Legal Team on 02380 604223 or legal@rya.org.uk.
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