

# Study on the possibility of compensation for moral damages for breach of contract

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**Abstract** :The purpose of this article is to explore the possibility of establishing a system of moral damages for breach of contract through the study of tourism contracts, so as to protect the interests of contractual counterparties who suffer non-pecuniary losses as a result of non-serious damages. The current state of affairs is that, in general, for breach of contract, current scholarship and general doctrine is strongly opposed to the inclusion of moral damages in the system of damages for breach of contract, and instead insists on a dualistic system of remedies for breach of contract and tort. The shortcomings of this approach are that tort damages and breach of contract damages have different principles of proof and imputation, and the standard of damages cannot be claimed without reaching a certain standard, making it impossible for the interests of the right holder to be adequately remedied. This article will examine the case law and comparative approach to the possibility of moral damages for pure contractual breaches that have not yet resulted in serious damage, and thus to develop a vision for the establishment of such a system. The establishment of such a system will provide a higher degree of protection for the interests of the contractual counterparty and thus achieve a full remedy of rights.

## 1. Introduction

### 1.1 Background

As the economy grows, more and more people are choosing tourism as a way of resting themselves, and the tourism industry has increased significantly with the rapid economic development. However, behind this development are many hidden problems and disputes arising from tourism issues are becoming more and more frequent. In some cases, although the travel agency, as a party to the contract, has not caused serious personal injury to the traveller, the failure to achieve the purpose of the contract has forced the traveller to change his plans, resulting in moral damage and loss of expectation of benefit due to the failure to achieve the purpose of the contract. Under current domestic law, it is not possible to claim moral damages for breach of contract as a remedy. In addition, tort claims are often not fully protected and the burden of litigation is increased due to the difficulty of proving liability and the principle of imputation. At the same time, travel agencies and other tourism service providers are gradually reducing the cost of breach of contract, a small amount of damages can be exchanged for high benefits, making the market order very chaotic.<sup>[1]</sup>

### 1.2 Research problem

Based on the fact that the interests of the contractual counterparty are not fully protected by a dual remedy system, is there a separate set of standards that can be established so that they can be included in the scope of compensation. If it is not possible to establish new standards, can principles be interpreted from the existing legal system that can be applied to protect the rights and interests of the relator. Institutionally, moral damages should be recognised for breach of contract, but not over-protected to the extent that they can be abused. For example, an expansive interpretation of the purpose of the contract could lead to a claim for moral damages. The establishment of such a system would allow moral damages to be recovered outside the context of a tort claim, thus allowing for a more comprehensive protection of the interests of the relevant rights holders and a degree of restoration of market order. In exploring the protection of rights and interests, consideration should be given to the expectation interests of travellers, i.e. if it is not possible to establish a new regime to enable moral damages to be recovered from a breach of contract, then whether it is possible to claim damages to the detriment of the expectation interests of the contractual counterparty and whether such damages would be of a moral nature. The

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advantage of addressing these issues is that it may help to explain the possibility of moral damages from breach of contract in the context of the existing legal system, so that even if a new regime cannot be established immediately to enable moral damages from breach of contract, the law can be interpreted in such a way that moral damages from breach of contract can be obtained from the existing legal provisions or the prevailing opinion.<sup>[2]</sup>

### 1.3 Status of Research

The issue of whether to remedy moral damages caused by contractual breach of contract is divided between two domestic academic circles, one is the affirmative theory represented by Professor Cui Jianyuan, and the other is the negative theory represented by Professor Wang Liming. The negative view is that the traditional theoretical obstacles and difficulties in the implementation of the system make it impossible to use moral damages as a remedy for breach of contract. The first is the lack of foreseeability of moral damages, "mental suffering is experienced differently by different objects, and the degree of mental suffering that a breach of contract will bring to the other party cannot be foreseen at the time of contracting"; the second is that it will increase the risk of transactions, which is not conducive to encouraging market transactions; the third is that "the determination of moral damage is too subjective and difficult to measure in monetary terms, while the quality of judges varies, prone to the phenomenon of different judgments in the same case". Although the negative theory is the current general theory, the legislation is gradually relaxing the restrictions on it, specifically Article 996 of the Civil Code states that if a breach of contract causes serious moral damage, moral damage compensation can be requested. In his article, Professor Cui Jianyuan states that "the application of moral damages should not be monopolised by the law of tort liability, and the legality of applying moral damages in the case of breach of contract should be recognised in some special interest contracts such as tourism contracts". Professor Li Yongjun also argues that "it is a necessary requirement of the logic of life that victims of contractual breaches be given relief for moral damages under certain conditions". In the field of specific contracts, Yu Honglei believes that "tourism is the constitutional right of citizens to rest and relax, and if the purpose of the tourist's spiritual enjoyment is not achieved due to the travel agency's breach of contract, the tourist's spiritual health will inevitably be damaged, and the tourist's spiritual rights and interests should be protected". In the civil law system, articles 1610 and 1611 of the French Civil Code were applied in the Margo case, where the contract for the sale of a wedding dress entered into by a bride had caused moral damage to the buyer due to non-delivery by the seller, and the French Civil Code protected this right of the victim. The Portuguese Civil Code also provides for the recovery of moral damages in the Margo case in its article 808, but, similarly, Vaz Serra considers that there are two conditions for damages, one of which is the seriousness of the damage. The legislator has left it intact and incorporated it into its legal system, which is extremely

similar to our Civil Code. However, if the injury suffered by Margo is mild and brief, it does not rise to the level of severity and the corresponding remedies and compensation will be different. The provisions of the Spanish Civil Code in articles 1101 and 1107, and 1461 lead to similar results to those of Portugal, and the principle that the suffering is mild and transient is also very similar.<sup>[3-4]</sup>

The German Civil Code differs in that the second paragraph of Article 253 of the Civil Code can only be applied in a limited way if the mental damage causes harm to health and if the contract provides for health benefits in addition to economic benefits. In addition, the German Civil Code does not generally provide compensation for non-pecuniary damage in the form of pecuniary compensation, which was still available in Germany in tort until 2002, when it was extended to the field of contract. The legal provisions in Germany are more stringent than in other countries. Non-pecuniary damages can only be claimed in the event of injury to health, but not for short-term discomfort or transient emotions such as anger. This strict regime is also intended to protect the stability of society and to prevent some people from taking advantage of the situation.<sup>[5]</sup>

English law does recognise the ability to award non-pecuniary damages for moral injury, but it specifically divides the recoverable suffering into a category of contracts, such as contracts for the making and delivery of wedding dresses, contracts for the making and delivery of honeymoon dresses, etc. From the perspective of an English lawyer, it is difficult to view damages for moral injury as purely compensatory, due to the traditions of its commercial society and not directly to the fact that the claimant would be in an economic position if the contract was formed. However, if the contract was entered into to bring pleasure or other positive emotion to one of the parties, then a breach of contract would naturally give rise to liability for emotional injury under English law.

### 1.4 Problems and shortcomings of existing research

It is clear that almost all existing laws do not fully recognise the extent to which moral damage can affect a person, and more laws consider that a claim for purely moral damage can only be made if there is a significant injury or event affecting a person's health. Most national laws consider a claim to be for moral damage only if it has a long-term effect on the person concerned and if that effect is intense. In fact, however, most breaches of contract do not cause such a degree of irritation to the person concerned. Some contractual breaches may affect the person's life in some way, such as a photographer not attending the person's wedding ceremony, a hairdresser not meeting the bride's expectations for her hair, or a tailor not completing the wedding dress as promised, all of which can have a more or less psychological impact on the person concerned. For most people who only get married once in a lifetime, this absence will be a lifelong regret, and some will even be so upset and depressed that they will be thinking about it until they pass away; others will

potentially be an indirect trigger for the breakdown of the marriage, leading directly to the end of a marriage that should have been happy and fulfilling. Other contracts, such as travel contracts, where the parties may take one of their few vacations to spend time with family, partners or friends, and where the contract was entered into for their own positive psychological enjoyment, may not be fulfilled due to the other party's breach of contract, some may miss out on the opportunity to spend time with someone important for the rest of their lives, others may have to wait a cycle in anticipation of their next trip, and others may choose not to go on that trip again. Still others may choose not to travel to the area again because of having had an unpleasant experience. Either way, these results have led to commercially oriented values that are detrimental to English law, and have also left the spiritual enjoyment of the individual compromised. The greatest shortcoming of existing research as well as doctrine is that pure and minor moral damage is not recognised or included as compensable, and even low amounts of compensation are relatively uncommon.<sup>[6-7]</sup>

### **1.5 Objectives and scope of the study**

The objective of this study is to find out whether, in terms of the purpose of the contract and the expectation of benefit, the conditions applicable under current law can be applied to prove that minor moral damages can be compensated, or to redefine the nature of certain damages under special contractual conditions and to view the nature of these damages from the perspective of moral damages, so that moral damages can be compensated for minor damages under current remedial mechanisms. The nature of these damages can be seen in the context of special contractual conditions, so that under the existing remedies, moral damages can be awarded for minor damages.<sup>[8]</sup>

### **1.6 Structure of the article**

The first will be a literature review of current national legal studies on moral damages, and an analysis of the different jurisprudence in different countries on a case-by-case basis, and whether there is a theoretical basis that can be applied to this study. Secondly, the methodology of the study will be described, and through cross-disciplinary research, the application of psychological evaluation criteria to the institutional development of the study will be explored. Further, based on the analysis of different national jurisprudence of individual cases and the design of a model for psychology, it is concluded whether it can be cross-applied and compared which of the new regime construction is more suitable for the definition of psychiatric damage compared to the original regime interpretation content. Finally, the conclusions are drawn and a critique of the existing system and a vision of the new system is drawn, in order to find ways to protect the market order and the injured party and to promote the protection of personality rights.

## **2 Literature review**

### **2.1 Justification**

It is significant to examine the extent to which moral damage can be claimed in the context of a breach of contract, however slight the damage may be. The significance lies in the fact that, as recognised by the vast majority of the law, moral damage needs to be of such a magnitude that it affects a person's physical health before it can be claimed as a non-pecuniary loss, and that this is a good standard of decision for cases where the moral damage meets the criteria, but for the more serious ones, where the damage to physical health does not meet the criteria, it will not be possible to obtain a claim from the current jurisprudence. In the case of travel contracts, most travellers are not seriously affected by the travel agency's inability to organise the trip as expected, but are more likely to be slightly upset and have negative feelings because their expected benefits cannot be realised, but the degree of damage does not reach a serious standard and therefore cannot be compensated for moral damage under current law. The German Civil Code is similar in that the bride's distress and anguish in the Margo case did not indicate an injury to health, while Austria is more direct in stating that non-pecuniary losses are generally not recoverable unless the contracting party has acted deliberately or with gross negligence. From the point of view of the injured person, the purpose of his or her contract is not fulfilled and he or she is usually only entitled to damages in the form of liquidated damages, provided that, for the time being, the amount of the damages is not mentioned and that the traveller has, on the one hand, been disrupted in his or her plans, resulting in an impaired expectation of benefit and, on the other hand, may have made a lot of extra preparations for the trip, but all of this will have been in vain and will have been more or less damaged from a moral point of view, only this damage does not reach the level of a serious impact on life. It is just that this damage does not reach the level of seriousness that would affect your life. It is certain, then, that a claim for damages for impaired expectancy, or for non-serious moral damage, would be more conducive to protecting the interests of the relator and helping him or her to exercise his or her rights.<sup>[9]</sup>

### **2.2 Existing literature to draw on**

China's civil law denied the relevance of moral damages to contractual breaches before the civil code was enacted, until the continuous appeals of the academic community and the emergence of more and more practical cases led the legislator to recognize the scope of non-pecuniary damages for breach of contract in the civil code, although it is conditional moral damages, but all show that the possibility of moral damages for breach of contract is gradually being enlarged, rather than just denying their inability to obtain a claim for damages. The German Civil Code, although very strict in its recognition of compensation only to the extent that it affects health, does

not, however, provide for direct claims for moral damages at first, but is slowly evolving to recognise its status.

The classic case of *Addis* in 1909, one of the first countries not to recognise it, gave three reasons: firstly, that the award of damages for injury to feelings would amount to recognition of punitive damages and would be inconsistent with the purpose of contract law; secondly, that recognition of moral damages for breach of contract would lead to malicious prosecution; and thirdly, that recognition of moral damages for breach of contract would lead to malicious prosecution.

The third was that moral damages were too remote to be foreseen in the contract. As time progresses, classic cases are breaking through the pre-existing jurisprudence and changing the course of the law, such as the classic decision of *Jarvis v. Swans Tours Lt. J.*, which made it possible to award moral damages for non-pecuniary loss. In the famous *Watts v. Morrow* case, Justice Bingham of the Court of Appeal summarised two representative exceptions: firstly, contracts providing peace and pleasure of enjoyment or relief from pain and suffering, such as in the case of travel contracts, and the latter, such as in the case of plastic surgery contracts, as both types of contract have a significant requirement for moral pursuits. Secondly, in addition to these special purpose contracts, the UK has also come to recognise those contracts where the inconvenience of life and direct emotional distress is caused by the breach of the contract. This is the case, for example, with contracts for the purchase of a house, where the moral injury is very direct and the award of actual performance<sup>[10]</sup>

The cost of remedies such as demolition and reconstruction would be prohibitive and the buyer would be awarded a certain amount of damages for moral injury on the basis of fairness. Apart from this, contractual remedies for non-property damage in the UK are far from limited to these two types of contract and are very flexible in their recognition on a case by case basis, with judges having a wide margin of discretion. This evolution reflects the fact that although there are no written rules, social developments are pushing the judiciary forward, making it more relevant to people's social lives, rather than towering over them and remaining far removed from social practice. One part of this can be drawn from the fact that even if moral damages for breach of contract are not recognised as universal in the judiciary in general, they can be applied by limiting the scope of the contract as a special contract capable of claiming moral damages. It is not necessary to do this in one step, but to some extent a slow evolution will allow for a better process of adaptation and correction in the process of adaptation.

American law is similar to English law in that it does not recognise them in principle, but recognises them under special conditions. This approach is reflected in the provisions of section 341 of the First Restatement of Contracts and section 353 of the Second Restatement of Contracts. The First Restatement of Contracts includes three conditions: subjective intent or connivance; objective infliction of personal injury; and foreseeability. The Second Restatement of the Law of Contract includes two exceptions: one is where the breach of contract causes serious moral damage and a competing breach of contract

and tort occurs. From these two Restatements of Contract Law, it can be found that the United States adheres to the doctrine of dependence on personal injury for breach of contract for moral damages, i.e., personal injury is a prerequisite for moral damages. The disadvantage of this theory is that only personal injury to mental harm can be remedied, and purely mental harm cannot be remedied, which is to some extent similar to the German Civil Code where the damage reaches the standard of affecting physical health. The US has adopted a medical proportional damages approach, combined with the doctrine of personal injury dependency to limit the discretion of judges, but the problem with this is that the cost of not going to hospital to receive treatment is not compensated, and this definition of minor damage is undoubtedly unfavourable, as usually the person does not go to hospital to receive treatment for minor damage, most people choose to digest their own suffering, and some have their own psychiatrist, but the cost of treatment by a private doctor is not necessarily included in the cost of hospital treatment. This is a very low level of redress for the injured party.

Most civil law systems have responded to the issue of moral damages with adaptive legislation, such as the amendment of the German Civil Code to Article 253, which led to the commercialisation of non-property interests and the recharacterisation of damage to them as property damage, adding a theoretical definition of justification for damages. The fact that the French Civil Code does not limit damage to material damage in Article 1382 presumes that it is open to compensation for moral damage. In the French view, there is no difference between damage in contract and damage in tort, so damage in contract should be included in the same way as damage in tort, including non-property damage. The Italian Civil Code initially only recognised the compensability of moral damage arising from criminal acts, but no other acts were covered by this provision. As people became more aware of the importance of moral damages, the Italian legal practice and doctrine gradually changed this lack of recognition, and constitutional provisions were adopted to protect the rights of the citizen as a person. The Constitution, as the fundamental law of the State, is not affected by any other law, and the rights protected by the Constitution should be reflected in all other subordinate laws, so that the protection of civil law is fully justified in legal terms.<sup>[11]</sup>

### **2.3 Research methods that are not relevant to the field**

The psychological approach to the assessment of mental impairment, although it may vary from person to person, is a useful way of drawing conclusions about a person's psychological state, and in some ways introduces a criterion for defining minor mental impairment. The advantage of this method of research is that numerical measurements can be made to provide an intuitive understanding of the extent of mental harm, even in the most minor of cases, and thus a criterion for claiming compensation for mental harm. Numerical calculations

will be more convincing than theoretical studies, but the only thing to note is that we need to have a standard of evaluation, as with physical injuries, for example, a minor injury of class B or above is officially included in the injury. The solution to this is very easy and is simply a matter of practice and the usual values in most cases.

### 3 DISCUSSION

#### 3.1 The German law view on non-pecuniary damages

The Prussian Civil Code of 1794 recognised the compensability of pain and suffering caused by bodily injury, but limited it to injuries caused intentionally or with gross negligence, while simple negligence was not compensable. In the 18th and 19th centuries, views on the protection of honour and reputation changed and most German lawyers considered that it was unacceptable on moral grounds to link money to damages for pain and suffering, in other words to link money to personal feelings was a disgusting act. This is because in the beginning, honour was seen as something sacred that could never be destroyed. Then, on the basis of its unbreakable nature, it could not be restored through civil claims, because there was nothing to restore. And it is considered an insult to the sanctified object to use money to compensate for it. The root cause as to why this phenomenon of honour came about was the importance attached to honour in Europe and the fact that the dueling system had survived for so long. In Savigny's view, the plaintiff's claim for damages to his honour and reputation was a sordid act that tarnished the plaintiff himself and aggravated the damage to the defendant. With these ideas in mind, the German legislator codified the law in such a way as to prevent the extension of non-pecuniary harm and to ensure that it was limited to a reasonable extent. "Professor Palmer argues that the defensive wall of the BGB blocks much more than it defends. Basic human emotions such as pain, fear, distress, humiliation or embarrassment will never be considered compensable injuries and in their pure state can never be compensated. In current law, they are still compensated as an accessory to bodily injury. Although, in this day and age, serious mental illness has become a condition for the award of damages, it is still not compensated for the fact that it has caused serious consequences.

Germany has strict criteria for compensation for damage, one of which lies in the fact that substantial psychopathological damage of non-negligible duration must have been caused. A typical case is *Margo v. Daniel's Department store*, where a bespoke dress was made for a wedding and honeymoon and a definite delivery date was agreed, but due to the non-delivery and late delivery by the department store the bride was left without a suitable dress for the wedding and had to put off. The bride was unable to wear her dress on the wedding day due to the non-delivery and delayed delivery of the dress by the department store. For most people, weddings are once in a lifetime events and they want to be as perfect as possible. The dress is one of the most essential parts of the wedding

and almost everyone chooses their favourite dress before the wedding and has it custom made early, just to look their best for the ceremony. This shows the importance of the dress to the wedding and the impact that a perfect wedding can have on a person's happiness. So is it possible to claim damages under the German Civil Code? The answer is no. In the first place, German law requires that the mental damage has a considerable impact on health in order to be compensable (assuming that the suffering does not cause sufficient damage to a person). The criterion for such an effect usually has to meet the criteria for a pathological mental illness in order to be considered to have caused damage to a person's health and body. However, there is a huge question as to whether simply not being able to wear the wedding dress you want and not being able to socialise on your honeymoon can have a direct enough impact on mental illness. Most people will simply feel sorry and regret it, and a few will postpone the wedding or reschedule a second time, but there is no denying the impact on the already agreed time and the emotional upset. Most of the wedding guests may have taken time off work specifically to attend this wedding and a sudden rescheduling may make it impossible for the vast majority to adjust their arrangements, thus forcing the bride and groom to complete the wedding on the set date. In such circumstances it is inevitable that the bride will suffer further moral damage, but not to the extent that the standard of illness has been met. Secondly, to be able to claim moral damages, it is necessary to have a contractual agreement that guarantees both the bride's economic and her personal interests in order for non-pecuniary damages to apply. The German Civil Code expressly states in section 253 (2) that it is an equitable pecuniary remedy, but it is considered unfair to claim compensation for damages that do not exist in the terms of the contract, especially if the damage does not appear to be serious from the outside. In what way, then, can Margo claim damages? The seller is obliged to deliver the goods within the contractual time limit in order to obtain the contract price and the buyer is entitled to take possession of the goods and pay the contract price within the agreed time limit. However, the breach of this obligation cannot be considered as compensation for moral damages.

It is clear from the wording of sections 249 and 251 of the German Civil Code that the injured person "shall be restored to the damage as if the circumstances which gave rise to the obligation to indemnify had not occurred" and that "if restitution is not possible or sufficient to cover the damage to the creditor, the person liable to indemnify the debtor in money". "It would seem that Margo could be awarded moral damages on this basis, but the restriction in Article 253 makes this directly impossible, as the German Civil Code only recognises "cases provided for by law". The question then comes back to whether Margo's injury is of such a degree as to constitute a mental illness, which, in the present jurisprudence, is impossible. The German courts have clearly expressed their attitude in the cases of 1998 and 2004 that even the impressions of the wedding cancellation on the newlyweds cannot be considered as having a physical impact on their health, nor as having a significant and far-reaching impact, which shows that German law is extremely restrictive in terms of

protecting non-pecuniary damage. It is only possible to justify damages if they are expressly provided for by law and included in a contractual clause, which is a huge restriction in terms of the protection of personality rights. Such a restriction of non-pecuniary damages may be based on the desire of the German Civil Code Codification Commission "to prevent greed in society and an increase in the number of vexatious and vexatious lawsuits by the less decent members of society". But this is an inappropriate legislative principle in today's social life.

### **3.2 The English law view of non-pecuniary damages**

Let us turn to English law. At the outset English law also did not recognise non-pecuniary damages, nor did the concept of moral damages even exist, and Professor Palmer points out that English law is more safety-oriented, allowing compensation for moral suffering only when other recognised wrongs have been committed, and that damage for emotional and mental suffering is arguably parasitic. Then if there is physical damage to a person's existence, there may be compensation for various non-pecuniary consequences. This is despite the fact that these damages, if they are the only damages suffered, are irremediable. Such a view would lead to the inherent notion that where a non-pecuniary loss is the only loss, that loss is not recoverable. But the English legal system does not only include non-pecuniary loss attached to property, nor is it only loss attached to property that is actionable. nineteenth century discretion was given to juries, in the mid-nineteenth century juries included pain and suffering as part of personal injury, and in the twentieth century judges took over the task of assessing damage. English law did not identify non-pecuniary damage in cases of tort as the original act, such as what Professor Palmer calls trespass to land, the core of which is a personal affront to the landowner; unauthorised entry is actionable even if it does not cause material damage. It follows from the above that intangible damage is compensable in English law. Professor Chloros also points out that the torts of non-material damage for which recovery is permissible can be divided into three categories: one protecting the liberty of the subject, the second protecting family relations, and the third protecting against suffering. But the professor also says that this view may be difficult to accept, as indeed it is, and that English lawyers will not readily admit it.

In *Addis*, when an employee was dismissed by his employer in a humiliating manner, the Court of First Instance ruled that his distress was then worth £600. Lord Atkinson argued against the availability of compensation for non-pecuniary loss on the grounds that if non-pecuniary loss were available, it would lead to business disruption and uncertainty. This is in line with the UK's long-standing legislative philosophy of promoting commercial development, all in the interests of the security and stability of transactions. It could be said that he completely strips away contract from tort and does not want a breach of contract to give rise to aggravated liability as a result of tort. In general, as in German law,

monetary damages are expected to be determined from the outset and to be calculated in a more objective manner. This view is a great safeguard for the functioning of business, but in another way, it is also extremely detrimental to the interests of the vulnerable. It protected economic benefits, while all the pain and mental discomfort was borne by the victims themselves. All this was changed half a century later by a Scottish court decision in the case of the photographer and the bride, where the judge found that their contract was not commercial, at least not in the purely conceptual sense, and the judge protected the bride's moral interests by awarding her damages. It is easy to see that the English courts have finally wavered from their fundamental view of the compensability of moral damages to a position of progressive protection of personality rights.

Another more classic case exists in the context of travel contracts, in *Jarvis v. Swan's Tours Ltd*, where the victim was awarded not only his entitlement to compensation for the costs of the original contract, but also for his moral damages. In the case of a travel contract, the traveller has an interest in the full realisation of the contract when he has delivered the itinerary to the tour operator after having planned all his time, but the key point is the determination of the interest to be met. Since the determination of moral interests is inherently uncertain and there is no definitive measure of pleasure, joy or satisfaction, the loss of expectation of benefit cannot be obtained from a foreseeable benefit. In English law, the purpose of a contract is to provide pleasure, relaxation, peace of mind or freedom from disturbance, and if the purpose of the contract is not achieved, or if the contract does not achieve the appropriate result, it is considered possible to claim moral damages. It is easy to see from this that contracts of purely mental enjoyment, by virtue of their singularity of purpose and contractual agreement, can be claimed for moral damages on the basis of breach of contract alone. The conclusion that can be drawn is that English law, in comparison to German law, does not inject so many restrictions on the limitation of non-pecuniary damages, but is constantly open to the path of historical development, which plays a great exemplary role in the protection of personality rights.

## **4 Conclusion**

The Civil Code has also progressively liberalised the restrictions on moral damages, with Article 996 of the Civil Code recognising for the first time that a breach of contract does not affect claims for moral damages. Although, like the German Civil Code, our Civil Code is required to cause serious effects on human health, the changes to the Civil Code also set a precedent in terms of damages in our country. While the German Civil Code was naturally well-intentioned, its rigid provisions were too restrictive to keep pace with the times. In a world where more emphasis is placed on the human being as an individual, the protection of personality rights has become an increasingly important topic, and the direction shown by German law is one that is relatively contrary to the norm. Serious mental impairment can easily be proven,

and for today's technological developments it is already possible to detect mental illness and its severity. However, it is worth considering whether compensation can only be awarded for mental impairment if it becomes a disease. The overly stringent criteria for determining damages have resulted in most damages failing to meet the standard of compensability, and it is difficult to link a breach of contract to a serious physical impairment from the outset. In most cases, such as *Jarvis v. Swan's Tours Ltd*, the mental harm suffered by the injured party is so minimal that it does not rise to the level of a pathological illness, so should we deny that such harm does not exist? The answer is no. Even a life event such as a wedding does not, in the opinion of the court, constitute damage for an extended period of time, let alone a mere travel contract. These sufferings and injuries are not yet considered by German judges to have an effect on physical health, but they will undoubtedly have a more or less significant change on a person's life. Even leaving aside for the moment the question of contracts of travel, which are classified as contracts of moral enjoyment, a contract such as the one in the *Margo* case, where the protection of the bride's personality is still governed by a strict regime of moral damages, regardless of the purpose of the contract, would be socially detrimental to the protection of the rights of the victim, and the breaching party would only have to pay a small amount of liquidated damages to escape the consequences of its own breach of contract. The bride's life of regret. In terms of quantifying the damage, this regret cannot naturally be determined by a fixed set of criteria, with some people seeing it as having a profound effect and even spending their days in depression, while others do not care much and continue to live their lives as they have always done. But what we should think about is not the inability to quantify and then avoid punishing the defaulting party, just as the right of personality was not valued by legislators at the beginning of history, but the individual human being has always been increasingly valued in the evolution of the law and of the times, just as the distinction between nobility and slaves at the beginning was overturned by the changes of the times. Even in countries where commercial interests are as important as in England, there is still a more open and advanced jurisprudence on moral damages for breach of contract. In the context of the review of moral damages, it is important to consider how to protect the rights of victims by updating the judicial system, such as the English law, which emphasises the importance of the purpose of the contract to facilitate the interpretation of the existing legal system to protect the rights of victims. It is important to clarify that most contractual breaches of contract do not result in a sufficient level of mental harm to meet the existing criteria, i.e. mental illness. If a person in good health suffers from a mental illness because the purpose of the contract cannot be fulfilled, the current law protects his or her legal rights and interests and supports his or her claim for damages, but if a person already suffering from a mental illness aggravates his or her condition because the purpose of the contract is to relax, etc., and the contract cannot be fulfilled, there seems to be no protection under the current law. There does not appear to be any protection under the current law nor is there any

particular doctrine that would justify a claim for damages. For the purposes of this article, the view is positive as to whether we should consider protecting their legal rights. The only legal basis that can be used is that the damage aggravated the victim's mental illness to the extent that it affected his or her health, but this does not seem to make sense in theory because the victim was mentally ill and the breach of contract only aggravated the victim's condition but the breach may not directly cause a normal person to become mentally ill. In such a case, it is a difficult question whether mental impairment can still be applied to the extent that it affects a person's physical health. If Chinese and German law were used, the answer would probably be no, but if English law were used, it would be easy to reach a positive and clear conclusion. The key point is that the purpose of the contract is pure enjoyment and English law supports the right to claim damages based on that pure enjoyment.

From a traditional tort law perspective, the ability to claim moral damages requires the involvement of the burden of proof. However, breach of contract requires a much lower burden of proof for the victim than that required in tort, which is why it has been argued that moral damages can be claimed for breach of contract, in one respect to reduce the burden of proof on the injured party. In medical malpractice cases, if the case is dealt with in tort, the plaintiff has to bear the burden of proof as to whether the medical unit is at fault. In the case of contractual disputes, it is sufficient to prove that the medical unit was in breach of contract and that the medical condition was not well treated in a timely manner, without the need to prove fault and medical malpractice. The reduced burden of proof will greatly reduce the risk of litigation for the injured party, thus protecting their legitimate rights and interests. In the case of medical contracts, most patients will suffer a major physical and psychological blow if they fail, and some may lose their ability to work and become suicidal. The most typical example is the case of Jocelyn Wildenstein, who underwent countless re-facials in an attempt to change herself into what she wanted to be, but earned the title of "Bride of Frankenstein", and whose side effects later made it impossible for her to adapt to a normal life. She lost all her features. Although it is difficult to assume that the fault lies with the patient, the doctor did not follow his professional ethics when the patient made unreasonable demands and succumbed to the magic of money. A simpler example is that we often hear in the news about the death of a girl who died as a result of a botched cosmetic procedure, but it is difficult to trace the case back to the hospital to find an admission of fault, and more often than not, the conclusion is that the cause was unknown or that the patient had an allergy. At this point, the burden of proof in tort is very difficult, and most lay patients have no way of knowing whether the doctor is at fault in the process of treatment, and it is even more difficult to prove this, which is a great obstacle to the protection of patients' rights and facilitates the hospital to avoid its own responsibility. However, if a breach of contract is dealt with, the burden of proof on the patient will be greatly reduced and will be far less onerous than the burden of proof in tort.

As history progresses, the right to personal integrity as a non-material aspect of the human person is being given increasing attention, and English law is far more experimental than other countries, arguably placing greater emphasis on individual compensation for moral damage means placing greater importance on the human person as an individual in social practice. Whilst it is true that we recognise that general breaches of contract can only cause limited damage to the human person and that there are legitimate reasons for the high morals protected by the legislator, we cannot deny that negative emotions such as pain and suffering can have a personal impact on us, such as time off work, loss of productivity, loss of trust, or depression, all of which we cannot avoid. Strict protection for minor emotional damage is intended to prevent immoral people from taking advantage of loopholes in the law to engage in immoral litigation, but extended protection is more likely to protect the rights of every individual, making our integrity system better and more conducive to securing transactions. Naturally, there must be a system of assessment for minor psychiatric damage, similar to the system of damage rating for physical damage, and there should be a similar system for assessing a person's state of damage mentally, which should, of course, be closely related to the amount of damages.

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