

**THE MEASUREMENT OF DAMAGES
IN CARRIAGE OF GOODS BY SEA**

**- A COMPARATIVE STUDY OF ENGLISH AND CHINESE LAW WITH
A VIEW TO POSSIBLE REVISIONS OF THE CHINESE MARITIME CODE
AND OTHER LEGISLATION**

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Abstract

Trade between Britain and China is rapidly expanding, and shipping law plays an important role in facilitating economic activity. This thesis provides an exemplification on the measure of damages in the carriage of goods by sea in both countries. It will help practitioners as well as scholars from both countries to understand the peculiar features and dynamics of the topic in the other's shipping laws.

The Chinese law of damages and shipping law are not as detailed or as well-structured as its English counterpart. Over the years, some articles in the Chinese Maritime Code (CMC) have been interpreted inconsistently, *e.g.*, art.55, and there is contradiction among different laws on the said topic, resulting in considerable confusion about the law. Bizarre and arguably unjust applications of legal rules continue to surface in claims for damages. A large number of contradictory decisions have been produced in Chinese shipping cases. Similar heads of damages are accepted or rejected in a process which at times seems alarmingly random. It is time to revisit the CMC and the law of damages and to urge their reform. England is a well-established centre of shipping litigation and arbitration in the world and its shipping laws are more influential on Chinese maritime courts than those of any other country. Several senior Chinese scholars suggest that English law is the model on which the reformed CMC should be based.

This thesis is written with a view to encouraging a revision of the defects in the CMC and to changing aspects of the current Chinese law of damages. It expounds on the English law part, provides a principled explanation for legal rules in cargo claims, reviews relevant Chinese law, makes comparisons between English and Chinese law at length, addresses the problems in Chinese shipping law and seeks a solution. It is hoped that this thesis can provide instructive recommendations to Chinese lawmakers and clarify the chaos inherent in interpreting the relevant law. In a few aspects, Chinese law seems fairer than the English position, which English scholars may find refreshing and enlightening. This thesis also proposes to increase the awareness of national decision-makers, especially the Chinese, of the international tenor of existing and proposed international maritime laws, as well as the concomitant duty to interpret and implement them as such.

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