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Liquidated Damages in Cross-Border Trade Agreements: A Comparative Legal and Islamic Perspective

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Abstract
This paper provides a comparative analysis of liquidated damages in international trade, focusing on their treatment under common law, civil law, and Islamic legal traditions. It highlights the fragmented legal landscape, where international instruments such as the CISG, PECL, and PICC have sought to harmonize approaches but remain either cautious or non-binding. Special attention is given to Islamic jurisprudence, tracing its evolution from classical objections based on gharar (uncertainty) and ribā (usury) to modern reforms by institutions such as the OIC Fiqh Academy and AAOIFI, which permit compensatory clauses under strict conditions. Case studies of China and Pakistan illustrate pragmatic approaches: China's two-way judicial adjustment with a 30% threshold, and Pakistan's hybrid system balancing common law and Islamic principles. The paper concludes that, despite some convergence, substantial legal diversity persists, emphasizing the need for a unified global framework for liquidated damages.

Keywords
Liquidated Damages, International Trade Law, Islamic Law, CISG, PICC, Contract Law, Gharar, Ribā

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1. Introduction

The agreement on liquidated damages in cross-border contracts is one of the most common clauses in which the parties stipulate a reasonable amount of compensation for the damages that one party may receive if the other party breaches the contract.[1] This monetary compensation remedy is widely recognized in international law, as well as in civil and common law systems. This era marks the pinnacle of international trade; in other words, it is a time to harmonize and unify legal regulations across different legal systems to find a common voice in international law. However, the role and position of the liquidated damages clause are interpreted differently in each legal system. In contrast, the regulation of liquidated damages in international trade law has not yet fully realized its potential to help traders feel secure when drafting this clause in their international commercial contracts. Liquidated damages set a pre-determined compensation clause in contracts, vital in commercial law for certainty and dispute resolution. But their alignment with Islamic principles, which limits contractual freedom to prevent injustice and unjust enrichment, is complex. This paper explores the historical and theoretical basis of liquidated damages in Islamic law, examines scholarly debates, and considers their application within Pakistan's hybrid legal system. It covers legal sources, differing school opinions, and modern Islamic finance challenges. Liquidated damages clauses are common in cross-border contracts to ensure certainty, reduce litigation, and facilitate enforcement, but their enforceability varies across systems. In Islamic contexts, classical jurisprudence was cautious about pre-agreed penalties due to concerns over uncertainty and unjust enrichment. Modern Islamic finance, through institutions like the OIC's Islamic Fiqh Academy and AAOIFI, allows such clauses under specific conditions. Pakistan's hybrid system, blending common law and Islamic mandates, presents unique opportunities and tensions in applying these clauses.

[1] The 8th Edition of Black's Law Dictionary page 1175.

2. The Contribution of Different Legal Systems to the Development of Liquidated Damages In International Trade Law

International law is a harmonization of the general rules of nations to facilitate a fair and equal environment for common development. Therefore, liquidated damages is also a concept that originated from national law. Countries around the world have three main legal traditions: common law, civil law, and Islamic law.

Among these, the contract law of common law countries makes a very clear distinction between liquidated damages and a contractual penalty. The difference between these two forms stems from their nature: the liquidated damages clause is used as a form of compensation for damages caused by the breaching party, whereas a penalty clause is often used for the purpose of deterrence to prevent the breach[2]. In the 20th century, common law countries often tended to invalidate the enforceability of liquidated damages clauses if they had a punitive tendency. The courts developed a test, famously articulated in the landmark case of Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd [1915] AC 79. Lord Dunedin laid down a series of tests to determine if a clause was a liquidated damages clause (enforceable) or a penalty (unenforceable). However, in the late 20th and early 21st centuries, particularly in a precedent by the English Court, Jobson v. Johnson [1989] 1 WLR 1026, and by the UK Supreme Court, Cavendish Square Holding BV v Makdessi; ParkingEye Ltd v Beavis [2015] UKSC 67, a turning point was marked which moved away from the rigid "genuine pre-estimate" test as the sole criterion. Currently, courts tend to focus on the legitimate rights of the innocent party, so even if the pre-estimated damages exceed the actual loss, they can still be enforced (unless the clause is purely punitive in nature).

As for civil law, the clause on liquidated damages originated from Roman Law. According to Roman law, this clause provided a pre-estimate of the damage likely to be suffered in case of a breach of obligation. It thus aided the creditor by relieving him of having to prove the damage actually suffered by the debtor's non-compliance. Such clauses are genuine or accessory penalty clauses[3]. To this day, there are generally two primary schools of thought in the laws of civil law countries: one that provides for a contractual penalty that can be judicially modified (e.g., Germany.[4], Vietnam[5]...), and a second school that allows for agreements on compensation for damages without using the two terms 'punitive penalty' or 'liquidated damages' (e.g., China[6], France[7], Japan...).

3. Islamic Law

The legal validity of any contractual condition in Islamic law is derived from a meticulous analysis of primary sources. While the concept of a pre-agreed penalty clause is not explicitly mentioned, the foundational principles that govern it are deeply rooted in the Qur'an and Sunnah.

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[2] Miller, "Penalty Clauses in England and France: a Comparative Study", International and Comparative Law Quarterly (2004), 53(1): 79-106.

[3] Frier, Bruce W., "The Harvard Casebook on Roman Law of Contracts". Accessed August 4, 2025. Page 87. http://www.law.harvard.edu/faculty/cdonahue/courses/rlaw/mats/Frier_007%20Chapter%204%20Casebook%20on%20the%20Roman%20Law%20of%20Contracts.pdf

[4] German Civil Code - Bürgerliches Gesetzbuch, Art. 339, 343.

[5] Vietnamese Commercial Law, Art. 300 – 306.

[6] Contract Law of the People's Republic of China, Article 585.

[7] French Civil Code, Article 1231-5.

3.1 Primary Sources

1. **The Qur'an** establishes the ethical and legal foundation for contractual relations. A central directive is the command to fulfill all obligations, which forms the basis of the binding nature of contracts. As stated in Surah al-Mā'idah: "O you who believe! Fulfill (all) obligations" (Qur'an يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ[8] 5:1). Furthermore, the prohibition of unjust enrichment and usury (ribā) is a critical principle that influences the permissibility of penalty clauses. Surah al-Baqarah highlights the importance of justice in financial dealings: the capital sums. You will not oppress "Yours is فَلَكُم رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُون[9] nor be oppressed" (Qur'an 2:279). This verse is particularly relevant as it mandates that damages must not be punitive or exceed the actual harm suffered, thereby preventing one party from oppressing the other.
2. **The Sunnah** provides the practical application of Qur'anic principles. The Prophet Muhammad (ﷺ) upheld the general principle of contractual liability and restitution for harm, encapsulated in a key legal maxim: مَن أَتْلَفَ شَيْئًا فَهُوَ لَهُ ضَامِنٌ[10] "Whoever damages something, he is liable for it" (Sunan Abu Dawood, 3561). This tradition establishes the principle of ḍamān (liability to compensate for harm). However, it is crucial to note that this and other traditions do not report the enforcement of a pre-agreed penalty clause, leading classical jurists to conclude that compensation should be determined based on actual, proven damages, not a speculative pre-set sum. One of the Prophetic Examples is the Prophet's approach to contractual breaches. A man once failed to deliver a quantity of dates he had sold, and the Prophet (ﷺ) intervened to ensure the buyer was compensated. While the Prophet did not enforce a pre-agreed sum, he emphasized that a failure to meet the agreed-upon delivery time constituted a breach that necessitated rectification, either through performance or through compensation for the actual loss incurred. This absence of a tradition enforcing a fixed penalty has been a central point in later jurisprudence and forms the basis for the classical juristic scepticism towards such clauses.

3.2 Classical Jurisprudence

Classical Islamic jurists rejected pre-agreed penalty clauses, which they referred to as al-sharṭ al-jazā'ī (the penal condition), on two primary grounds.

First, they argued that such clauses involved gharar (excessive uncertainty), as the actual harm from a future breach was unknown at the time of contracting.

Second, they were concerned that a penalty clause could lead to ribā (usury) or unjust enrichment if the stipulated sum exceeded the actual damage, particularly in contracts of debt. The core principle was that compensation must be tied to actual, quantifiable harm (ta'wīḍ), not to a speculative or punitive sum.

But in the main, the **four primary Sunni schools** of jurisprudence articulated nuanced positions on the matter: as the

The Ḥanafī school was generally opposed to liquidated damages because a penalty clause was not a valid condition of a contract unless the actual damage could be proven.

But the **Mālikī** position was slightly more flexible. However, they allowed for some degree of damage estimation and were more lenient in enforcing a pre-agreed.

[8] The Qur'an, 5:1

[9] The Quran, 2:279

[10] Almerja. (n.d.). Hadith 3561. Retrieved August 21, 2025, from https://almerja.com/more.php?idm=61154

The **Shāfiʿīs** school was the most conservative, strictly requiring actual proof of loss for any compensation to be awarded.

Similar to the Ḥanafī school, the **Ḥanbalī** school was generally against penalty clauses. However, later Hanbali scholars, in considering the principle of maslahah (*public interest*), began to permit certain commercial practices that facilitated trade, paving the way for more modern interpretations.

3.3 Modern Islamic Development

Modern Islamic legal scholars and financial institutions have extensively debated the issue, seeking to reconcile the need for contractual certainty with core Islamic principles. **Islamic Fiqh Academy (OIC)** Resolution No. 109 (6/12). This marked a significant shift in modern Islamic jurisprudence. It permitted the use of al-sharṭ al-jazāʾī in contracts for compensating actual damage caused by delay or breach. Critically, it made a clear distinction between different types of contracts: it is permissible in commercial agreements, but is strictly prohibited in contracts involving debts or financial loans. The rationale is that in commercial contracts, the penalty is a form of compensation for a real, though difficult to quantify, loss. In debt-based agreements, however, any additional payment for a delay would be considered ribā. The Arabic summary states: يجوز اشتراط التعويض في العقود المالية غير القروض إذا وقع إخلال بالعقد وأدى إلى ضرر فعلي. "It is permissible to stipulate compensation in financial contracts other than loans, if a breach of contract occurs and leads to actual harm." **AAOIFI** (Accounting and Auditing Organization for Islamic Financial Institutions), a leading standard-setting body for the Islamic finance industry, has also adopted a similar position. It allows liquidated damages, provided they are a reasonable reflection of the actual harm and not a punitive tool. This approach ensures that the primary function of the clause remains compensatory (ta'wīḍ) rather than a means of generating speculative or unearned income (ribā).

Therefore, a major difference can be seen across various legal systems. Throughout the process of building international commercial law, the United Nations has also made great efforts to find a way to harmonize the definition of liquidated damages in order to provide a common regulatory framework for international traders. The first turning point marking the birth of this clause in international trade law was stated in The Report of the United Nations Commission on International Trade Law in 1979: "The Commission considered this note, and decided to include liquidated damages and penalty clauses as a priority topic in its new program of work."[11]. After a series of reforms and developments, the regulation on liquidated damages has now seen significant improvements; however, not yet been fully unified in a single document

4. International Instruments (CISG, PECL, PICC)

Currently, international law regulating the clause generally exists in two forms: legally binding conventions (such as CISG...) and recommendatory principles (such as PICC and PECL...).

CISG, one of the most successful conventions in harmonizing international commercial law, does not directly address liquidated damages. The convention's approach is indirect and cautious, reflecting the difficulty of reconciling the opposing views of common law and civil law. The principle of damages in Article 74 CISG provides for full compensation, including loss of profit, but may not exceed the loss that the breaching party foresaw or ought to have foreseen. This is a basic principle that is **compensatory**, not punitive. For this reason, CISG does not officially recognize liquidated damages as a separate remedy, as whether such a clause

[11] UNCITRAL, report on the 11th session (A/33/17) para.67 (Yearbook of the United Nations Commission on International Trade Law 1978, part II, A)

is considered punitive remains a matter of national law. However, CISG also does not prohibit the parties from agreeing on this clause. In fact, CISG only implicitly acknowledges agreements on pre-estimated damages. Still, the validity of such an agreement is entirely dependent on the national law chosen as the law applicable to the contract. Thus, the role of CISG is to create an environment where the parties can agree, but it delegates the decision on the validity of that agreement to a specific national law. The opinion from the CISG Advisory Council in point 1.3 also reinforces this, confirming that "The parties may agree on other remedies for breach of contract." This includes "limiting liability... to a specified amount," and "provisions for liquidated damages." This view confirms that CISG does not hinder the parties' agreements, but also emphasizes that some legal systems may reject their validity due to public policy concerns[12].

If CISG reflects a cautious approach, then principles like PICC and PECL showcase a more ambitious effort to harmonize and establish a more unified rule. Both sets of principles follow similar approaches and are clearly stated in Article 7. 4. 7.4.13 PICC (Agreed Payment for Non-Performance) and Article 9: 509 PECL. These principles acknowledge the validity of an agreement to pay a specific amount upon breach of contract, whether the goal is compensation or deterrence. This means the harmed party is entitled to the agreed sum without needing to prove actual damages. To prevent abuse, both principles include an important "safety net. " If the agreed amount is 'grossly excessive' compared to the actual harm, it can be reduced to a reasonable sum by a court or arbitrator. Additionally, this right to reduce cannot be waived by agreement, ensuring the principle of fairness is always upheld. In summary, PICC and PECL have effectively bridged the gap between common law and civil law by combining the civil law principle of freedom of contract (accepting punitive clauses) with the common law caution against excessive penalties through a judicial adjustment process, rather than declaring the entire clause void. However, determining what qualifies as "grossly excessive" remains challenging in some cases. Liquidated damages, now often called "Delay Damages" in modern FIDIC contracts, remain central, especially outlined in clauses such as Sub-Clause 8.7 of the 1999 Red and Yellow Books and continued in the 2017 edition. This clause requires the contractor to pay a pre-agreed amount for each day or week of delay in completing the work beyond the contractual deadline if no Extension of Time (EOT) has been granted. While the specific amount and maximum payable are not fixed in the sample articles, they are detailed in the Appendix to Tender, allowing for project-specific adjustments and a structured approach to ensuring damages reflect a genuine estimate of the employer's losses rather than an unenforceable penalty. This framework continues to serve as the sole remedy for delay, meaning the employer cannot claim additional damages for late completion. Whether in its 1999 or 2017 version, the FIDIC system provides a clear and predictable way to manage delays' risks and impacts for both parties, reinforcing its position as an industry standard.

The FIDIC clause on liquidated damages is generally seen as clear and strong, but its effectiveness ultimately depends on how it is implemented and the specific legal jurisdiction. Its clarity comes from its organized approach: it establishes a pre-agreed daily or weekly rate and a maximum limit, both detailed in the Appendix to Tender. This removes ambiguity by clearly defining the exact financial consequences of a delay from the start.

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[12] CISG Advisory Council Opinion No. 10, Agreed Sums Payable upon Breach of an Obligation, 15 October 2008, Part 1.3. Available at: https://cisgac.com/opinions/cisgac-opinion-no-10/

5. Chinese Law

The liquidated damages system has a long history in China, dating back to the Han Dynasty.[13] In 1950, the Government Administration Council issued the *Interim Measures for the Conclusion of Contracts by Government Agencies, State-owned Enterprises, and Cooperatives*, the first economic contract regulation in the People's Republic of China, which included "breach fines" or liquidated damages, laying the foundation for the modern system.[14]

Following the reform and opening-up, key laws such as the Economic Contract Law (1981), Foreign Economic Contract Law (1985), and Technology Contract Law (1989) further developed the system. The 1981 law emphasized punishment and allowed courts to increase damages, while the 1985 and 1989 laws focused more on compensation. This led to an evolution from a punitive model to a primarily compensatory one with residual punitive aspects.[15]

The 1999 *Contract Law* unified the system and introduced Article 114, allowing adjustment of liquidated damages without clearly defining what constitutes "excessively high." In 2009, *Judicial Interpretation II* clarified factors for adjustment (like actual losses and contract performance) and defined "excessively high" as exceeding losses by 30%, though this rigid standard drew criticism.[16]

In 2020, China's *Civil Code*, through Article 585, retained the rules from the *Contract Law* but expanded the basis for adjustment from "actual loss" to "loss caused," including expected benefits. It also absorbed relevant judicial interpretations, reinforcing a more flexible and fair approach to adjusting liquidated damages.

5.1 Regulations

Article 585 of **China's** 2021 Civil Code, in its design of the liquidated damages system, reflects the unique innovation and integration of legal traditions within Chinese law.

Unlike common law systems, which strictly distinguish between liquidated damages and penalties and render punitive clauses entirely invalid, this provision allows adjustment of the portion of damages that is "excessively higher than the loss" rather than voiding the entire clause. This avoids leaving the contract without any remedy. The article centers on "actual loss" as the key criterion and introduces a quantified threshold, 30% above the loss.[17] Making judicial application more objective and reducing the risk of arbitrary discretion by judges.

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[13] Han Shiyuan, "Scattered Reflections on Liquidated Damages", Tsinghua University Journal (Philosophy and Social Sciences Edition), No. 4, 2003, p. 78.

[14] Zhou Yun, "A Brief Discussion on the Evolution of the Nature of Liquidated Damages in China's Contract Law: From the Economic Contract Law to the Contract Law", Journal of Anhui Police Vocational College, 2019, Vol. 18(02): 27–32.

[15] Li Jie, "On the Judicial Application of Liquidated Damages Adjustment", Journal of China University of Petroleum (Social Sciences Edition), 2013, Vol. 29(06): 54–58.

[16] Li Ying'er, Research on the Judicial Application of Liquidated Damages Adjustment Rules, South China University of Technology, 2022.

[17] Wang Xiaoying, Niu Zhewen. The Dilemma of Judicial Adjustment of Liquidated Damages and the Path to Improvement. Journal of Shanxi Political Science and Law Management Cadre College, 2025, 38(01): 65-68.

Compared with civil law jurisdictions, such as Germany, where punitive damages are strictly prohibited, and France, where adjustment is largely disallowed, Article 585 adopts a "non-adjustment as the rule, adjustment as the exception" approach and introduces a "two-way adjustment" mechanism.[18] This mechanism allows both downward adjustment of excessive damages and upward supplementation when the agreed amount is too low, thereby strengthening the compensatory and guarantee functions of liquidated damages.

At the international level, the CISG does not provide standards for adjusting liquidated damages. Although the UNIDROIT Principles permit adjustment of "excessive" damages, they lack specific thresholds.[19] Article 585, by setting a benchmark of "30% above actual loss," enhances its practical operability.

Regarding the burden of proof, this provision and judicial interpretations place the onus on the breaching party to prove liquidated damages are "excessively higher than the loss" (per Supreme People's Court Judgment No. 340 [2021]), [20] Rather than shifting it to the non-breaching party. Unlike common law, where the non-breaching party must prove losses, this aligns with the pre-agreed damages' purpose, eases the non-breaching party's burden, ensures fairness, and encourages honest performance.

Chinese Case Law: Guiding Case No. 189[21] Involves a contract dispute between Shanghai Panda Interactive Culture Co., Ltd. (Panda) and streamer Li Cen, along with his management company Kunshan Boaiyou Information Technology Co., Ltd. The core issue concerns Li Cen's breach of an exclusive cooperation clause by streaming on a competitor's platform, Douyu, contrary to the contract, which requires him to stream exclusively on Panda's platform. The contract stipulated a very high penalty for breach (50 million RMB plus training and promotion costs).

The court confirmed the validity of the contract and found that Li Cen clearly breached it. However, since actual damages were difficult to quantify in the live streaming industry, the court considered the industry's characteristics, such as the platform's initial investment, traffic volume, and the streamer's influence, and adjusted the penalty from 30 million RMB down to 2.6 million RMB. This judgment was upheld on appeal.

Moreover, the establishment criteria for penalty adjustment take into account the unique characteristics of the emerging live streaming industry, demonstrating flexibility and practicality rather than rigidly enforcing contractual penalties. The court considered factors such as platform investment, streamer influence, and expected revenue, promoting fairness and good faith by avoiding excessive penalties disproportionate to actual damages, thereby protecting parties' rights and enhancing contract enforceability. The case also reflects the spirit of Article 69, Clause 1 of the Draft Interpretation of the Civil Code, which mandates that penalty adjustments consider the transaction context, contract type, and performance circumstances, setting an important precedent for contract law in creative and digital sectors. However, the case leaves unresolved issues, such as unclear allocation of the burden of proof in penalty adjustments and the lack of distinction

[18] Wang Liming, Excessively Higher Than Losses: The Basic Standard for Adjusting Liquidated Damages - Focusing on Article 585, Paragraph 2 of the Civil Code. Legal Studies, 2024, 46(06): 110-127.

[19] Xiong Qinghua, On the Application of the Rules for Adjustment of Liquidated Damages. Southwest University of Political Science and Law, 2023. DOI: 10.27422/d.cnki.gxzfu.2023.000042.

[20] Wang Xingfei, On the Procedural Realization of the Right to Adjust Liquidated Damages. Law Review, 2024, 42(06): 152-165.

[21] https://nyzy.hncourt.gov.cn/public/detail.php?id=31736, accessed: August 3, 2025.

between punitive and compensatory penalties, which complicates consistent application and calls for further legal refinement and guidance.[22]

6. Pakistani Law: Hybrid System

Common Law Influence: While Pakistan operates a unique hybrid legal system, where common law principles inherited from the British era coexist with a constitutional mandate to bring all laws into conformity with the injunctions of Islam (Article 227 of the Constitution). This creates a dynamic interplay in the application of liquidated damages. **Contract Act 1872** (Section 74) reflects the common law position. Section 74 allows for liquidated damages, stipulating that a party who suffers a breach is entitled to receive from the breaching party "a reasonable compensation not exceeding the amount so named." The key phrase here is "reasonable," which grants Pakistani courts the discretion to scrutinize and reduce excessive penalty clauses, even if no actual loss is proven. This provision provides the legal framework for enforcing such clauses, a legacy of the common law system.

Islamic Influence: The Federal Shariat Court acts as a check on laws that may conflict with Islamic principles. In the landmark case of Elahi Cotton Mills Ltd v. Federation of Pakistan (PLD 1997 SC 582)[23]The Supreme Court held that **interest-based** penalties are un-Islamic and must be abolished. This ruling, while focused on ribā, has a profound impact on the interpretation of liquidated damages, requiring that they be tied to a demonstrable loss rather than operating as a form of pre-determined, punitive interest. Consequently, Pakistani courts often strike down penalty clauses if they are deemed to be excessive, unfair, or tantamount to unjust enrichment.

Case Law: In Al-Haj & Company v. Province of Punjab (1993 SCMR 1686)[24]. The Supreme Court of Pakistan explained how courts navigate the country's unique hybrid legal system by generally upholding liquidated damages clauses, especially in commercial and construction contracts, because they offer a practical way to estimate losses that might be hard to prove otherwise. However, the courts also examine such clauses carefully to ensure the agreed amount is a fair pre-estimate of potential loss rather than an unjust penalty. This judicial approach reflects a balance between the common law principle of reasonableness and Islamic legal prohibitions against excessive uncertainty (gharar) and unjust enrichment (ribā).

In practice, Pakistani courts navigate this dual legal system by upholding reasonable liquidated damages clauses, especially in commercial and construction contracts, as they provide a practical solution for estimating difficult-to-prove damages. However, they will meticulously examine the clause to ensure it is not punitive and that the sum is a genuine pre-estimate of loss, aligning with both the common law principle of reasonableness and the Islamic prohibition of gharar and ribā

7. Recommendations

1. A "**Hybrid**" Model Framework for Liquidated Damages synthesizes the best features of different legal systems to create a new hybrid framework that is both predictable and fair. This model would uphold a party's agreement while allowing for the adjustment of "grossly excessive" sums, using quantifiable benchmarks to prevent arbitrary decisions.

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[22] Zhu Xiaolei, On the Rule of Judicial Reduction of Liquidated Damages in Performance Brokerage Contract Disputes: Based on the Guiding Case No. 189 of the Supreme People's Court [J]. Journal of Shandong Judges Training College, 2023, 39(03): 185-200. DOI:10.14020/j.cnki.cn37-1430/d.2023.03.010..

[23] Elahi Cotton Mills Ltd. v. Federation of Pakistan, PLD 1997 SC 582

[24] Al-Haj & Company v. Province of Punjab, 1993 SCMR 1686

2. Advocate for **an official annex** to the CISG, bridging the gap between the CISG's widespread adoption and its silence on this issue by recommending that an international organization, such as UNCITRAL, develop an official protocol or annex. This would enhance the balanced approach in the PICC by formally linking it to a binding international convention.
3. **Judicial and Arbitral Harmonization,** Harmonize the application of the law, not just the text, by recommending that international legal bodies develop and share "Best Practice Guidelines" for judges and arbitrators. These guidelines would promote a consistent, cross-border interpretation of reasonableness and excessiveness, helping to reduce uncertainty in international disputes.
4. Strengthen party autonomy with standardized "**Safe Harbor**" clauses, and equip businesses with practical tools by suggesting that trade organizations develop and promote consistent "safe harbor" liquidated damages clauses. These pre-vetted clauses, grounded in the hybrid model, are more likely to be upheld across different jurisdictions, providing immediate risk mitigation for commercial parties.

8. Conclusion

This analysis shows that although liquidated damages are common worldwide, their legal treatment varies, creating uncertainty in international trade. The CISG, PICC, and PECL haven't established a unified standard procedure, adding risk. Meanwhile, Islamic jurisprudence through ijtihad and ijmaa has shifted from strict concerns about gharar and ribā to permitting compensatory clauses but still banning punitive or unjust enrichment, emphasizing fair compensation. Case studies from China and Pakistan illustrate adaptable laws. China's clear 30% threshold offers predictability, and while Pakistan's hybrid system balances British law with Islamic mandates, supporting fair loss estimates. The main question of whether a universal legal framework is necessary is answered yes. Despite differences, a shared foundation is emerging: respecting party autonomy and ensuring fairness through judicial review. The legal diversity highlights the urgent need for a unified approach that combines strengths to improve predictability and security in cross-border trade.

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