

CONTRACT LAW

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Module

Foundations of Contract Law

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Answer 1: Part A

INTRODUCTION

Under contractual relations, complexities resulting from unexpected events often require legal examination.¹ This is the situation in which Ali finds himself after his vehicle breaks down and he gets hurt as well as causing damage to other property. As a result of Ali's request for help from Bonnie, who was a mechanic at King's Automotive Repairs (KAR), there were some obligations that needed fulfillment and consequences to be ensued. However, during the repair process something went wrong which raised issues about liability and contract compliance. The essay assesses Ali's position under contract law and explores the implications of contractual terms, exclusion clauses validity, and available remedies in terms of damages mitigation. By taking into consideration specific statutes and decided cases, this paper will evaluate KAR's responsibility for its actions towards Ali and whether or not he can recover anything from it through courts of Law.

IDENTIFICATION OF LEGAL ISSUES

The principal legitimate issue to consider is whether a Valid contract was formed between Ali and King's Automotive Repairs (KAR). One more significant issue is the legitimacy and enforceability of the exclusion clause displayed on the back of KAR's recovery vehicle. The following issue relates to whether KAR breached the contract with Ali and, if so, the extent of their liabilities for damages. This incorporates evaluating whether KAR neglected to perform their obligations with reasonable care and skill, leading to harm suffered by Ali. Finally, it's fundamental to consider the potential remedies available to Ali if he establishes breach of contract by KAR.^{2 3}

APPLICATION OF CONTRACT LAW PRINCIPLES

Formation of contract

For a contract to be valid, there must be an:

¹ Knapp, Charles L., Nathan M. Crystal, Harry G. Prince, Danielle K. Hart, and Joshua M. Silverstein. *Problems in Contract Law: cases and materials*. Aspen Publishing, (2023).

² Knapp, Charles L., Nathan M. Crystal, Harry G. Prince, Danielle K. Hart, and Joshua M. Silverstein. *Problems in Contract Law: cases and materials*. Aspen Publishing, 2023.

³ Poole, Jill. *Textbook on contract law*. Oxford University Press, 2016.

Offer: An offer is a clear expression of willingness to be bound by specific terms. ⁴

Acceptance: It is the unqualified agreement to the terms of the offer. ⁵

Consideration: This refers to something of value exchanged between the parties. ⁶

Intention: For a contract to be enforceable, the parties must have intended to create legal relations.⁷

The principle of formation of contract law were develop in the case of Carlill v Carbolic Smoke Ball Co (1893), where the court held that an offer can be accepted by performance and consideration can consist of an act, such as using the smoke ball as instructed. Like Ali's solicitation for repair services, KAR's dispatch of Bonnie, and Ali's agreement to pay for the services constitute the essential elements of contract formation. ^{8 9}

Analysis

Ali's initial appeal to KR was an invitation to heal rather than directly. KR's sending Bonnie to test drive the van can be seen as an offer for repair work. Bonnie's decision to tow the van to the parking lot for repairs can be interpreted as an acceptance of KR's claim. However, the precise terms of this admission need to be examined, especially in light of the additional information provided by KR. Ali's promise to pay the maintenance fee and KR's promise to make repairs in return satisfy the need for consideration. Given the commercial nature of the transaction, it is presumed that the parties intended to create a legal relationship. Thus, it can be contended that an agreement was formed between Ali and KAR for the repair of the van, with Ali consenting to pay for the maintenance service and KAR consenting to perform the repairs.

⁴ Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.

⁵ Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.

⁶ Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.

⁷ Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.

⁸ Wightman, John. "Carlill v Carbolic Smoke Ball Co Ltd (1893)." (2008).

⁹ Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256 <https://ipsaloquitur.com/contract-law/cases/carlill-v-carbolic-smoke-ball/>

Based on the above analysis, it is likely that a valid contract was formed between Ali and KAR for the repair of Ali' van. Therefore, Ali has legal rights against KAR for the agreed-upon repair service

Now, considering the disclaimer on the back of KAR's recovery vehicle. Which attempts to limit KARS's liability for any loss, damage or injury during the maintenance processes, we need to assess its enforceability.

Exclusion Clause: Validity and Enforceability

The exclusion clause showed on the back of KAR's recovery vehicle attempts to limit KAR's liability for any loss, damage, or injury to clients or their property during the vehicle recovery process.¹⁰ However, the validity and enforceability of this exclusion clause are dependent upon the necessities of the Unfair Contract Terms Act 1977¹¹. Exclusion clauses may be rendered ineffective if found to be unreasonable or not properly incorporated into the contract.¹²

In *Thompson v LMS Railway* (1930), where the court held that exclusion clauses must be reasonably brought to the other party's notice and agreed upon before the contract is formed. If an exclusion clause attempts to reject responsibility for negligence, it will be subject to stricter examination.¹³ Subsequently, Ali can contend that KAR's exclusion clause is unreasonable, particularly regarding personal injury caused by negligence during vehicle recovery.

Advice: Ali ought to challenge the legitimacy of the exclusion clause by arguing that it is unreasonable and unfair to absolve KAR of liability for injuries caused by their negligence. The weight will be on KAR to show that the exclusion clause was properly incorporated into the contract and that its terms are reasonable.

¹⁰ QC, Adam Kramer. "The law of contract damages." (2022): 1-696.

¹¹ Nwankwo, P. F. U. "“TERMS AND CONDITIONS APPLY”: THE WORLD OF EXCLUSION CLAUSES IN CONTRACTS." *CHUKWUEMEKA ODUMEGWU OJUKWU UNIVERSITY LAW JOURNAL* 6, no. 1 (2022).

¹² Stone, Richard, and James Devenney. *The modern law of contract*. Routledge, (2022).

¹³ *Thompson v LMS Railway* (1930) 1 KB 41 <https://www.lawteacher.net/cases/thompson-v-london-midland-and-scottish-railway.php>

EVALUATION OF LIABILITIES AND POSSIBLE REMEDIES

Breach of contract and liabilities for damages

The essential question here is whether KAR breached the contract by failing to exercise reasonable care and skill in the performance of their obligations.¹⁴ The winch rope snapping, making Ali's van roll back, bringing personal injury to Ali and damage to his van, suggests potential negligence on the part of KAR. If KAR is found to have breached the contract, they may be liable for the resulting damages suffered by Ali.

In *Bolton v Mahadeva* (1972), the court held that an obligation of care emerges when a party embraces work that requires expertise and skill¹⁵. Essentially, KAR, as a professional mechanic, owed Ali a duty to perform the vehicle recovery process with reasonable care and skill. The failure of the winch rope, resulting in injury to Ali and damage to his van, indicates a potential breach of this obligation

Advice: Ali should accumulate proof to exhibit that KAR's carelessness prompted the winch rope snapping and the resulting wounds and harms. He ought to report his wounds, obtain estimates for van repairs, and keep track of any medical expenses or loss of earnings incurred as a result of the accident.

Potential remedies

If Ali effectively lays out breach of contract by KAR, he might be entitled to various remedies to compensate for his losses. Ali can look for monetary compensation from KAR to cover his medical expenses, loss of earnings during his recovery period, and the cost of repairing his van. In situations where damages are inadequate, Ali may seek an order for specific performance to compel KAR to fulfill their contractual obligations, such as completing the repairs to his van. If there is a risk of further breaches by KAR, Ali may seek injunctions from the court to prevent KAR from continuing their negligent practices.

In *Hadley v Baxendale* (1854) the court laid out the standards overseeing the appraisal of damages for breach of contract. Damages must be foreseeable and not too remote.¹⁶

¹⁴ Robertson, Andrew. "Policy-based reasoning in duty of care cases." *Legal Studies* 33, no. 1 (2013): 119-140.

¹⁵ *Bolton v Mahadeva* (1972) 2 QB 130

¹⁶ *Hadley v Baxendale* (1854) EWHC Exch J70

Consequently, Ali can guarantee damages for his medical expenses, loss of earnings and the cost of repairing his van.

Advice: Ali should consult with a legal expert who have specialties in contract law to identify the most appropriate strategy and probability of successful results in seeking the remedies against KAR.

PART B

INTRODUCTION

For part (b) of this question, where Ali is driving a van belonging to Sunny Seeds, and the business wishes to recuperate misfortunes from KAR for the harm to their vehicle and temporary loss of a driver, the analysis shifts from Ali's individual rights to the potential rights and liabilities of Sunny Seeds. In this situation, Sunny Seeds would probably be viewed as the party going into the agreement with KAR for the repair services, as they are the owner of the van being repaired. Thusly, Sunny Seeds would be the primary party entitled to seek remedies for any breach of contract or negligence on the part of KAR. In assessing Sunny Seeds' in regards to the incident involving their van and the potential recovery of losses from King's Automotive Repairs (KAR), it is essential taking into account contract law standards.

ASSESSMENT OF EXCLUSION CLAUSE

Under contract law, parties are limited by the conditions of an agreement they have gone into, including any exclusion clauses limiting liability. However, the legitimacy and enforceability of such statements are dependent upon legal and common law guidelines. The Unfair Contract Terms Act 1977 (UCTA) and the Consumer Rights Act 2015 (CRA) are pertinent legislation governing exclusion clauses and consumer contracts. One critical perspective to consider is whether the exclusion clause displayed by KAR, clearing them of obligation regarding any misfortune, harm, or injury during the vehicle recuperation process, is reasonable under UCTA.^{17 18 19 20}

In *Photo Production Ltd v Securicor Transport Ltd* (1980), the House of Lords laid out models for deciding the sensibility of exclusion clauses. These include the relative bargaining power of the parties, whether the statement was brought to the other party's

¹⁷ Giliker, Paula. "The Consumer Rights Act 2015—a bastion of European consumer rights?" *Legal Studies* 37, no. 1 (2017): 78-102.

¹⁸ Macdonald, Elizabeth. "Unifying unfair terms legislation." *Mod. L. Rev.* 67 (2004): 69.

¹⁹ Strauss, David A. "Common law constitutional interpretation." *The University of Chicago Law Review* 63, no. 3 (1996): 877-935.

²⁰ Jandu, Sandeep Singh. "What to Consider When Construing and Drafting Exemption and Limitation of Liability Clauses in Commercial Contracts (England and Wales and New York)." *Mich. St. Int'l L. Rev.* 30 (2022): 321.

attention before the contract was formed, and whether there was an opportunity to negotiate the terms²¹. In the case of Sunny Seeds and KAR, if the exclusion clause was not adequately featured to Sunny Seeds before entering into the contract for repair services, and if Sunny Seeds had restricted bargaining power, the condition might be considered absurd and consequently unenforceable. Additionally, the Court of Appeal's decision in *George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd (1983)* demonstrated that an exclusion clause should cover responsibility for negligence expressly. If the clause does not explicitly prohibit negligence, it may not shield KAR from liability for any negligent acts or exclusions that brought about mischief to Sunny Seeds' property or employees.²²

CONSIDERATION OF NEGLIGENCE

Sunny Seeds might investigate avenues of negligence with respect to KAR. Negligence arises when a duty of care is breached, resulting in foreseeable harm to the other party. In examining whether KAR breached their duty of care owed to Sunny Seeds, reference can be made to the standards laid out in *Donoghue v Stevenson [1932]*, which presented the concept of negligence in English law. As per this case, an obligation of care is owed to the people who may reasonably be affected by one's actions, and a breach of this obligation happens when the respondent neglects to satisfy the guideline of care anticipated in the conditions.^{23 24}

Applying these standards to the situation, in the event that KAR neglected to practice sensible care and skill in performing the service, bringing harm to Sunny Seeds' van and employees, they might be responsible for negligence. For example, if Bonnie, the technician sent by KAR improperly secured the van during the recovery process, prompting the winch rope snapping and bringing about additional harm and injury, KAR could be considered liable for the misfortunes caused by Sunny Seeds.

Additionally, the example of case *Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964)* laid out the guideline of negligent misstatement, where a party might be at risk for

²¹ *Photo Production Ltd v Securicor Transport Ltd (1980) AC 827*

²² *George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd (1983) QB 284*

²³ *Donoghue v Stevenson [1932] AC 562*

²⁴ Owen, David G. "The five elements of negligence." *Hofstra L. Rev.* 35 (2006): 1671.

economic misfortune result by providing off base data or exhortation, even in the absence of a contractual relationship²⁵. If KAR provided Sunny Seeds with misleading assurances regarding the safety and competence of their recovery procedures, they could be expected to take responsibility for any subsequent misfortunes endured by Sunny Seeds.

THE ANSWER

Yes, it would make a difference to my advice. As Sunny seed, the owner of the van in this scenario would have legal standing to seek remedies for the damages happened during the incident. As such Sunny seed would need to assess the legal agreement with KAR, evaluate the validity of any exclusion cause and consider potential claims for negligence or breach of contract. Thus, the focus of the legal analysis and advice would shift from Ali's individual position to that of sunny seed as the owner of the van want to recover losses from KAR.

²⁵ Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964) AC 465

Reference

1. Donoghue v Stevenson [1932] AC 562
2. Owen, David G. "The five elements of negligence." Hofstra L. Rev. 35 (2006): 1671.
3. Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964) AC 465
4. Giliker, Paula. "The Consumer Rights Act 2015—a bastion of European consumer rights?" Legal Studies 37, no. 1 (2017): 78-102.
5. Macdonald, Elizabeth. "Unifying unfair terms legislation." Mod. L. Rev. 67 (2004): 69.
6. Strauss, David A. "Common law constitutional interpretation." The University of Chicago Law Review 63, no. 3 (1996): 877-935.
7. Jandu, Sandeep Singh. "What to Consider When Construing and Drafting Exemption and Limitation of Liability Clauses in Commercial Contracts (England and Wales and New York)." Mich. St. Int'l L. Rev. 30 (2022): 321.
8. Photo Production Ltd v Securicor Transport Ltd (1980) AC 827
9. George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd (1983) QB 284
10. Thompson v LMS Railway (1930) 1 KB 41
<https://www.lawteacher.net/cases/thompson-v-london-midland-and-scottish-railway.php>
11. Robertson, Andrew. "Policy-based reasoning in duty of care cases." Legal Studies 33, no. 1 (2013): 119-140.
12. Bolton v Mahadeva (1972) 2 QB 130
13. Hadley v Baxendale (1854) EWHC Exch J70
14. Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." Stanford Law Review (2015): 1269-1301.
15. Wightman, John. "Carlill v Carbolic Smoke Ball Co Ltd (1893)." (2008).
16. Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256 <https://ipsaloquitur.com/contract-law/cases/carlill-v-carbolic-smoke-ball/>
17. QC, Adam Kramer. "The law of contract damages." (2022): 1-696.

18. Nwankwo, P. F. U. "“TERMS AND CONDITIONS APPLY”: THE WORLD OF EXCLUSION CLAUSES IN CONTRACTS." *CHUKWUEMEKA ODUMEGWU OJUKWU UNIVERSITY LAW JOURNAL* 6, no. 1 (2022).
19. Stone, Richard, and James Devenney. *The modern law of contract*. Routledge, (2022).
20. Knapp, Charles L., Nathan M. Crystal, Harry G. Prince, Danielle K. Hart, and Joshua M. Silverstein. *Problems in Contract Law: cases and materials*. Aspen Publishing, (2023).
21. Knapp, Charles L., Nathan M. Crystal, Harry G. Prince, Danielle K. Hart, and Joshua M. Silverstein. *Problems in Contract Law: cases and materials*. Aspen Publishing, 2023.
22. Poole, Jill. *Textbook on contract law*. Oxford University Press, 2016.
23. Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.
24. Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.
25. Wilkinson-Ryan, Tess, and David A. Hoffman. "The common sense of contract formation." *Stanford Law Review* (2015): 1269-1301.

Answer 2

ESSAY: THE IMPACT OF THE LAW REFORM (FRUSTRATED CONTRACTS) ACT 1943 ON CONTRACT LAW: A CRITICAL ANALYSIS

INTRODUCTION

Frustration, a fundamental guideline in contract law, recognizes that unexpected occasions might deliver legally binding commitments difficult to perform, unlawful, or drastically different from what was initially contemplated by the parties.^{26 27} It fills in as a component to ease parties from their legally binding obligations when execution becomes impracticable due to external circumstances beyond their control. The statement suggests that prior to the Law Reform (Frustrated Contracts) Act 1943, the common law's treatment of frustration was unsustainable, necessitating legislative intervention. The essay aims to critically analyze this statement by investigating the influence of the 1943 Act on frustration. We will examine historical context, legislative provisions, case examples, and academic views to understand how far the act has addressed shortfalls in common law relating to frustration.

Overview of Frustration under Common Law

The English common law doctrine of frustration expresses the idea that, under certain circumstances, a contract can be terminated and obligations discharged where an unforeseeable event occurs, making it impossible, unlawful or very different from what was originally contemplated by the parties when they entered into the deal. Frustration acts as an exception to *pacta sunt servanda* principle that requires contracts to be adhered. Certain situations exist where enforcing the contract would be inequitable because obligations have been rendered futile by some uncontrollable event. But it should also be noted that this doctrine had its own limitations and drawbacks in terms of its practical application. The above mentioned limitation is about the narrowness of frustrating events which can justify non-performance of a contract. The range of these

²⁶ Kovac, Mitja. "Frustration of purpose and the French Contract Law reform: The challenge to the international commercial attractiveness of English law?." *Maastricht journal of European and comparative law* 25, no. 3 (2018): 288-309.

²⁷ Liu, Fengming. "The Doctrine of Frustration: An Overview of English Law." *J. Mar. L. & Com.* 19 (1988): 261.

events was often reduced such that many courts would insist on “unforeseeable” happenings outside control of the parties, leading to total indeterminacy and inconsistency. Another limitation of frustration is that it was narrowly interpreted so that courts were reluctant to find contracts frustrated unless their performance became objectively impossible or illegal. In practice, this strict interpretation often led to unjust results for a party seeking relief under this principle.^{28 29 30 31 32}

case examples

Case regulation gives various representations of the difficulties and irregularities in the application of frustration under common law. For instance, in *Taylor v. Caldwell* (1863), the court held that the destruction of a music hall by fire frustrated the contract to hire the hall for musical performances.³³ However, subsequent cases like *Krell v. Henry* (1903), introduced additional criteria, such as the fundamental purpose test, leading to uncertainty in determining when frustration would apply.³⁴ These cases highlighted the difficulties inherent in applying frustration under common law featuring the requirement for authoritative mediation to address its lacks and give lucidity and assurance in legally binding relations.

Introduction of the Law Reform (Frustrated Contracts) Act 1943

The Law Reform (Frustrated Contracts) Act 1943 was put into place with the purposes of providing a legal standard for addressing the situations where the unpredictable events have resulted in the parties being unable to fulfill their commitments, or prohibited in doing so, or that what was previously agreed upon by the parties has become radically different

²⁸ Liu, Fengming. "The Doctrine of Frustration: An Overview of English Law." *J. Mar. L. & Com.* 19 (1988): 261.

²⁹ Sen, G. M. "Doctrine of Frustration in the Law of Contract." *Journal of the Indian Law Institute* (1972): 132-177.

³⁰ Jayabalan, Sheela. "The legality of doctrine of frustration in the realm of Covid-19 Pandemic." *Sociological Jurisprudence Journal* 3, no. 2 (2020): 84-90.

³¹ Jan, Halberda. "The principle of good faith and fair dealing in English contract law." *Правоведение* 64, no. 3 (2020): 312-325.

³² Crafa, Silvia, Cosimo Laneve, Giovanni Sartor, and Adele Veschetti. "Pacta sunt servanda: legal contracts in Stipula." *Science of Computer Programming* 225 (2023): 102911.

³³ *Taylor v. Caldwell* (1863) 3 B & S 826, 122 ER 309 <https://legalvidhiya.com/taylor-v-caldwell-1863-3-bs-826/>

³⁴ *Krell v. Henry* (1903) 2 KB 740 <https://ipsaloquitur.com/contract-law/cases/krell-v-henry/>

from what was actually intended. The Act was basically created so that the common law rule on take-or-leave undertaking cannot result in the undoing of contracts. Through this legislation, the government aimed to correct the gap in common law whereby frustration was not clearly stipulated by introducing statutory rules that provided a framework for determining how to interpret the effect of frustrations. It made sure the clause by clause table, providing the basic rights and liabilities of parties, when they dismiss a frustration contract, this created the certainty and consistency to the common law. Besides that, the Act aspired to achieve justice by means of giving equal possibilities to those parties directly affected by frustration, so that both of the contracting parties could have a fair chance in their interests. The Act substantially affected the sphere of contract relations because it contributed to the creation of certainty, fairness, and overall efficiency in this practice. The common law with the consequent embracement of the theory of frustration converged these factors, making it a method of reducing uncertainty by giving parties the opportunity to assess their rights and duties when frustrating circumstances arise.^{35 36 37}

Analysis of the Statement

Looking at the statement that the effects of frustration under the common law were flawed and could not stand the test of time, it is reasonable to take notice of the limitations and uncertainties with the doctrine. Regular law frustration is based on the judicial interpretation and precedent which resulted in inconsistencies and ambiguities in its application. Thus, the common law frustration became infamous for its restrictive nature and narrow constructions. The fact that its main clauses ask for very strict evidence of frustration too often meant that parties which failed to perform as contractually required because of circumstance beyond their control had to face harsh consequences. Therefore, the doctrine of common law was incapable of dispensing with - or coping with the justice of the parties. The Law Reform (Frustrated Contracts) Act 1943 ushered a new era in the legal framework through the introduction of provisions to facilitate the equity of

³⁵ Fairgrieve, Duncan, and Nicole Langlois. "Frustration and Hardship in Commercial Contracts: A Comparative Law Perspective." *Jersey and Guernsey Law Review* 24, no. 2 (2020).

³⁶ Corbeil, Tommy. "The Rule of (Constitutional) Law? Examining the Changing Balance Between Political and Legal Constitutionalism in Post-1997 United Kingdom." PhD diss., Université d'Ottawa/University of Ottawa, (2022).

³⁷ Hoffman, David A., and Cathy Hwang. "The social cost of contract." *Columbia Law Review* 121, no. 3 (2021): 979-1016.

the parties under such circumstances. Frustration was harmonized in the Act by turning it into fair countermeasures, so in such situations contracting parties got legal clarities and safeties. It was the first attempt of the Parliament to resolve the situation by giving direct guidelines to party rights based on the features of contracts' frustrations. In a way, the new legal principle was designed to block gaps and shortcomings of the doctrine owed to previous legal practice. Also, the Act was meant to encourage such monetary distributions as an alternative to outright awards of money damages, which can very often be prejudicial. Besides, the regulations intended to improve long-term results and to reduce the level of dependence and further inconvenience of the debtors. While the passing of the Law Reform Act 1943 clearly represents a major leap forward, the Reform Act is still subject to criticisms suggesting that it is perhaps too strict and conservative for current day realities and commercial practices. Critics assert that the Act may have left room for too much uncertainty and more adequate for the situations that are suitable for the Act. ³⁸³⁹⁴⁰

Case Examples and Discussion

Taylor v Caldwell (1863), In this milestone case, the court considered that the frustration by fire of a music hall made a contract for its hire frustrated and discharged both parties from further obligations. However, it only based its decision on common law and which results in uncertainty surrounding application of frustration in same case⁴¹s. Davis Contractors Ltd v Fareham UDC (1956), This case is one of the earliest judicial interpretations of these provisions following the enactment of Law Reform Act 1943. The Court ruled that requisitioning by government frustrated a contract to build houses and emphasized that Act as an enabling statute for resolving questions of frustration between

³⁸ Suherman, Yuliana Yuli W., Sonyendah Retnaningsih, and Dyah Sugandini Sutrisno. "The Effectiveness of Force Majeur on the Civil Law and Doctrin Frustration on the Common Law System in Completing Business Disputes during the Covid 19 Pandemic." *PalArch's Journal of Archaeology of Egypt/Egyptology* 18, no. 7 (2021): 2038-2053.

³⁹ Fairgrieve, Duncan, and Nicole Langlois. "Frustration and Hardship in Commercial Contracts: A Comparative Law Perspective." *Jersey and Guernsey Law Review* 24, no. 2 (2020).

⁴⁰ Leider, Robert. "The Modern Common Law of Crime." *The Journal of Criminal Law and Criminology* (1973-) 111, no. 2 (2021): 407-499.

⁴¹ Taylor v Caldwell (1863) 3 B & S 826 <https://lawprof.co/contract/frustration-cases/taylor-v-caldwell-1863-3-b-s-826/>

contracting parties⁴². The contrasting outcomes of Taylor v Caldwell and Davis Contractors show how Law Reform Act 1943 transformed frustration in contract law. Prior to the enactment of this Act, common law was used to govern frustration which was neither uniform nor equitable. But with statutory provisions introduced through this Act, there was a clear roadmap on when frustration could be said to have occurred and what should happen thereafter. This approach has brought about predictability, fairness, as well as efficiency in resolving disputes arising out of frustrated contracts. As a result of the Law Reform Act 1943 which introduced progress, still some issues and problems are faced by people. The critics state that the Act contains certain clauses which may prove to be overly rigid or fail to consider the great variations in modern business operations. For example, the provision of this Act that illegality should be supervening as the ground for frustration has been criticized as having too narrow a perspective and as the one depicting the obsolete nature of contractual arrangements in the modern day. Contrary, discussions are ongoing about whether the Act is relevant to some industries or certain contract types. Varying opinions are given out on the adequacy of the law to accommodate specifying legal and commercial practices.^{43 44}

Critique of the Statement

The claims regarding the inefficacy of common law legislation became obvious because of the uncertainty and the lack of consistency in the legal environments immediately prior to 1943. There was a lack of certainty and except ability in the ruling law principles related to frustration, so the courts, many times, invented the legal authority and reached an injustice support. Importantly, however, the declared or mandated frustration doctrine was necessary as it provided an easy way of addressing impediments that hindered the performance of contractual terms or that created an environment that was totally different from those foreseen at inception. Along with the shortcomings of these expectations, they gave a decent opportunity to judge's intervention when one was in an actual distress. Without a doubt, the Law Reform Act 1943 was being an ethical progress towards the

⁴² Davis Contractors Ltd v Fareham UDC [1956] AC 696 <https://lawprof.co/contract/frustration-cases/davis-contractors-ltd-v-fareham-udc-1956-ac-696/>

⁴³ Sharma, K. M. "From Sanctity to Fairness: An Uneasy Transition in the Law of Contracts." *NYL Sch. J. Int'l & comp. l.* 18 (1998): 95.

⁴⁴ Murdoch, John, and Will Hughes. *Construction contracts: law and management*. Routledge, 2002.

reforming the law of frustration. However, the Act boosted the credibility through the writing down the grounds for rescission and made the statutory provisions restrictively clear, while at the adoption of the act, certainty and fairness in contractual relationship were ensured. Conversely, many other could be brought forth as the Act did not tackle the issue at the core of frustration at common law. It though helps in creating a structured framework, some of the aspects which are in the nature of frustration is again subject to judicial review, leaving a question mark on select areas. Moreover, the Act's clauses could be suboptimal with respect to new business practices of the contemporary world implying that a review or making the law simpler may be needed. Understanding it's advantages and limitations is what categorizes the Law Reform Act 1943. One possible critique is that the Act cannot deal completely with the fact that it's so inflexible it does not accommodate situations in discourse of fairness where people should be granted reasonable time. Similarly, supervening event rule in the Act and its narrow definition of frustration which fails to provide remedies in cases of unforeseen situations are points of concerns as such. Firstly, the scope of application to certain types of contracts or business sectors could be questioned which brings into play the doubts in the Act's capability of fully dealing with the diverse nature of modern contractual relationships. In retrospect, however, the Act did represent a big step in improving the existing legal environment. To keep pace with the changed landscape, constant review and future changes may be necessary to maintain its core values and efficiency over time.^{45 46 47 48 49}

CONCLUSION

In this essay, I highlighted the evolution of frustration in contract law and classified this evolution into preliminary, reform, and modern periods. Our discussion included the restrictions on frustration at common law as well as the essential provisions which happened to the act enacted in 1943, along with the impact on the contractual law

⁴⁵ MacMillan, Catharine. "Remedies for common mistake and frustration." In *Research Handbook on Remedies in Private Law*, pp. 220-238. Edward Elgar Publishing, 2019.

⁴⁶ Murdoch, John, and Will Hughes. *Construction contracts: law and management*. Routledge, 2002.

⁴⁷ Ernst, Daniel R. "Common Laborers? Industrial Pluralists, Legal Realists, and the Law of Industrial Disputes, 1915–1943." *Law and History Review* 11, no. 1 (1993): 59-100.

⁴⁸ Garoupa, Nuno, Carlos Gómez Ligüerre, and Lela Mélon. *Legal origins and the efficiency dilemma*. Vol. 24. Taylor & Francis, 2016.

⁴⁹ Aranson, Peter H., Ernest Gellhorn, and Glen O. Robinson. "Theory of legislative delegation." *Cornell L. Rev.* 68 (1982): 1.

concepts. The Law Reform Act 1943 represented a positive step in the law of frustration by providing surety and clear framework which, on the other hand, may still leave some doubts open. It did fix many problems, yet some aspects have judicial filtration, which possess the issue of interpretation and uncertainty. A reform in the future should incorporate a stipulation on the clarity about the Act's scope especially in a present-day business world. Also, it should be precise about the fact that frustration of the contracts is possible and what remedies are there for it. In light of this, an assessment will be essential in order to maintain the ability of contract law to remain up-to-date and sufficient. Our analysis, exhibit how the act had a critical influence on principle of frustration of the contract act. However, the Act remedied commonly made mistakes and appeared incompleteness of this concept and the level and extend of its implementation are still a subject of debate and interpretation. Therefore, continued examination and mending are essential so that the contract law can evolve to meet the need of modern commercial and keep unchanged the principles of justice and certainty.

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