

Peter Cane Prize for Legal Reasoning – Corpus Christi College:

Frustrated contracts challenge the balance between fairness and certainty in contract law, raising inevitable questions about how losses and benefits should be distributed when obligations become impossible to fulfil. The doctrine of frustration, first articulated in *Taylor v Caldwell* [1863]^[1], discharges parties from obligations when unforeseen events make performance impossible or significantly different. Nonetheless, it fails to tackle financial consequences, resulting in the Law Reform (Frustrated Contracts) Act 1943 (hereinafter referred to as the Act), which specifies management of payments and benefits prior to frustration. Section 1(2) governs payments made beforehand, whereas Section 1(3) permits the reimbursement for benefits provided prior to discharge. The Act's reliance on judicial discretion raises concerns about predictability. This essay examines a case involving Amber and Boats Co., focusing on Amber's liability and the value of benefits conferred. It critiques the Act's fairness and effectiveness, suggesting the need for further improvements.

Liability Under Clause B: Balancing Sums Payable + Pre-Frustration Expenses

Section 1(2) of the Act encompasses both sums that have been paid and those due in case the contract is frustrated. Amounts that have been paid can be recovered by the paying party as funds designated for their use, whereas unpaid amounts are no longer required to be settled. Nonetheless, the court, at its discretion, permits the recipient to keep all or a portion of what has been paid or is due. In the case of *Fibrosa SA v Fairbairn Lawson Combe Barbour Ltd* [1903]^[2], the House of Lords established that expenses incurred for performances before frustration may justify partial retention of sums, provided the amounts retained reflect fairness under the circumstances. Amber faces liability in light of Clause B but will argue that the frustrated contract relieves her of the payment of £25,000. Her position aligns with *Krell v Henry* [1903]^[3], where the Court of Appeal determined that obligations related to a contract's primary goal are discharged when the goal is not met. Yet, Boats Co. relies on the ability for recovery of the £25,000 based on the £15,000 incurred upgrading the vehicle to be

deemed adequate for the event. It points to *BP Exploration Co (Libya) Ltd v Hunt (No. 2)* [1979]^[4], which ruled for expenses incurred for performance before frustration, due to the specificity of the upgrades. Improvements to the hull and kitchen are tied to the contract's performance expectations. The Court of Appeal stated reasonable preparation expenses could be recuperated. Boats Co. will likely argue these enhancements are specifically for Amber's event, to support their fairness claim. Amber may counter that the upgrades benefit Boats Co. beyond the event, suggesting unfair enrichment if both expenses and the upgrades' residual value are recovered. As demonstrated in *Gamerco SA v. ICM (Agency)* [1995]^[5], where the court took into account the residual value of preparatory work when determining fairness, the court might be hesitant to permit such double recovery. One example is Treitel's ^[6] assessment, which pointed out that Section 1(2) of the Act seeks to guarantee fairness by avoiding unjust enrichment, yet it is largely dependent on judicial rulings, which may result in inconsistent results. The court needs to weigh Boats Co's assertions against Amber's financial loss, probably deciding in Amber's favour and nullifying the £25,000 payment. Nonetheless, a partial reimbursement of costs by Boats Co. might be supported.

Effects of Clause C: Assessing Valuable Benefits

Section 1(3) of the Act addresses compensation for valuable expenses incurred prior to contract frustration. Amber's setup of speakers prompts enquiries about whether Boats Co. ought to be reimbursed for the expected advantages. The court evaluates the advantages

gained by one party compared to the expenses borne by the other, as noted in *Gamerco SA v ICM*^[7], fostering equity to prevent unfair enrichment. Amber may argue the installation was for her event before its frustration, but the speakers provided no legitimate benefit since the event did not occur, aligning with *Appleby v Myers (1867)*^[8], which stated costs tied to a hindered purpose are deemed unnecessary. Amber could assert continuous advantages for Boats Co. from the installations, whereas Boats Co. could contend that the speakers increase the marketability value of the vessel, as having been installed prior to the contract's frustrations, confirming that it would have provided great benefit for Amber's sales of the event. The case of *BP Exploration Co v Hunt*^[9] states lasting improvements allow compensation. Amber may argue Boats Co. unjustly profited from the speaker's utility, challenging her compensation. Double recovery is generally avoided and the rulings from *Gamerco v ICM*^[10], may guide decisions if Boats Co. is to receive compensation plus the speakers 'advantages'. It seems probable the courts are to decide in favour of partial recovery for Amber for costs, weighing Boats Co's gained benefit with principles of equality. We can bring consideration by *Ewan McKendrick*^[11] noting that Section 1(3) of the Act confirms fairness but disputes the idea of valuing benefits objectively. This could in turn enhance that inconsistency may arise in outcomes without the inclusion of other mitigating factors, i.e., Amber's costs. This must advocate the aims of the policy to avoid disproportionate inclusions that burden parties unfairly.

Evaluation of the Outcomes and Assessment of the Act's Principles:

The general outcomes of Clauses B and C mirror the values of fairness that are embroidered within the Act. However, the Act's dependency on judicial leniency casts doubts about uniformity and regularity. This section assesses the equity of the stated outcomes, the

strengths of the Act's composition, and its limitation in achieving certainty in frustrated contracts.

Fairness of Clause B Outcomes:

Under Section 1(2), Amber faces partial liability for the £25,000. Rulings may return that Amber is relieved of full liability for the amount, balancing the lack of profits from the frustrated event. Yet to Boats Co., partial recovery of £15,000 is evenly levelled, due to the specificity of improvements designed for Amber's event, aligning with the contract, which can be referenced to *Fibrosa v Fairbairn*^[12], recognising the ability for claims of partial recovery. The court must rule avoiding 'double recovery' in the preferences of Boats Co., with Amber likely to dispute the company will obtain disproportionate benefits.

Fairness of Clause C Outcomes:

Under Section 1(3) of the Act, we seek to evaluate whether compensation for Amber is just. Revisiting *BP Exploration Co v Hunt*^[13], the 'speakers' in question need to be recognised, as 'added benefit,' which ensures that Boats Co. is not able to keep the upgrade without compensating Amber. Still, the payment must be an adequate reflection of the value added to Boats Co. by the speakers, as overcompensating Amber also looks to be avoided. The court is upheld by the valuation of benefits objectively, as noted in *Gamerco SA v ICM*^[14], with the possibility of subjective decisions.

Strengths of the Act:

The Act assesses financial disputes arising from frustration well in many instances. It ratifies precepts for allotting financial consequences and acknowledges gaps in common law, e.g., *Krell v Henry*^[15]. Each section adds to the reliability of the Act, with Section 1(2) disallowing parties to gain unfair benefits through the allowance of retention of sums

dependent on fairness. Section 1(3) addresses valuable rewards obtained before frustration but ensures burden and benefits are shared by both parties. Argued by *Treitel*^[16], the Act strikes a balance between certainty and equity by allowing courts the foresight to resolve outcomes based on the evidence presented.

Limitations of the Act:

Although the Act allows for the encompassing of the needs of each party, it still fluctuates and possesses ambiguities and weaknesses in its application.

Reliance on Judicial Discretion:

Both Sections 1(2) and 1(3) of the Act provide courts with broad discretion, which can result in inconsistency and uncertain outcomes, which again is highlighted in *BP Exploration Co v Hunt*^[17]. This idea suggests that weight is placed upon the courts to confer value judgements. Terms coined like ‘valuable benefits’ are not explicitly defined, making them open to interpretation, which may differ each time, which casts challenges for parties aiming for certainty. This is displayed by *McKendrick*^[18] due to Section 1(3)’s lack of clear criterion for valuation of benefit, which employs subjectivity, adding difficulties in balancing opposing claims. This Act prioritises fairness and equality but may compensate predictability and assurance, a key principle of contract law.

Necessity + Effectiveness of the Law Reform Act:

First introduced in 1943, the Act ceased to fill the gaps in common law frustration. In particular, the financial consequences for parties affected by unforeseen circumstances. Its implication resolved financial losses by reallocating finances without burdening just one of the parties, as seen in *Krell v Henry*^[19]. For instance, amounts paid were not recoverable

unless a total collapse of consideration could be proven. It addresses these issues by chartering principles to alter sums paid/payable as well as compensating for ‘valuable benefits’ conferred.

Effectiveness in Practice:

The Act enables fairness to both parties involved in the contract by reallocating losses and benefits. It also seeks to prevent undue enrichment as demonstrated in *BP Exploration Co v Hunt*^[20]. Yet it equivocates definitions of terms like ‘valuable benefits,’ which lead on to subjective interpretations. The heavy dependence on judicial weighting under both sections creates inconsistency. While the Act advocates equity for both parties involved, any ambiguities and reliance on decision-making from courts suggest the need for possible reforms, such as clearer definitions for greater improvements in outcome certainty and consistency.

Conclusion:

Throughout my essay I have explored how the implications of Sections 1(2) and 1(3) of the Act are applicable to Amber and Boats Co., analysing their practical and doctrinal applications. It is likely that Amber's liability for the sum of £25,000 is to be dispelled, yet a partial fee of £15,000 or less, could be of recovery for Boats Co., residing with their fairness claim. Furthermore, the installation of the speakers is likely to be seen as an added benefit, so Amber could claim and receive partial recovery too, which levels with her claim of unjust enrichment. The Act successfully acknowledges the pitfalls of frustrated contracts by limiting unfair enrichment and dividing the burden fairly. However, its unpredictability arises from inexplicit definitions, prompting potential reforms. The ambiguous definitions may create uncertainty for parties seeking to recover losses due to frustration and move to trial. Additionally, judicial discretion is hindered through limiting scopes, i.e., sentencing, which can alter the consistency of outcomes. Identifying necessary improvements can enhance clarity, structure, and guidance for courts, ultimately leading to better decision outcomes in frustrated contract disputes. However, adjudicators help to consider variables not explicitly registered in the Act to tailor outcomes to the specificity of the case, as noted by *Steven*

Shavell^[21]. This leaves questions surrounding the extent to which judicial discretion is beneficial.

[1] Taylor v Caldwell [1863] 3 B & S 826

[2] All Answers ltd, 'Fibrosa SA v Fairbairn Lawson Combe Barbour Ltd' (Lawteacher.net, January 2025)

<<https://www.lawteacher.net/cases/fibrosa-v-fairbairn-lawson.php?vref=1>> accessed 2 January 2025

[3] Krell v Henry [1903] 2 KB 740

[4] All Answers ltd, 'BP Exploration Co v Hunt - Summary' (Lawteacher.net, January 2025)

<<https://www.lawteacher.net/cases/bp-exploration-co-v-hunt.php?vref=1>> accessed 5 January 2025

[5] Gamerco SA v ICM/Fair Warning (Agency) Ltd [1995] 1 WLR 1226

[6] GH Treitel, Frustration and Force Majeure (2nd edn. , Sweet & Maxwell 2004) 309

[7] Gamerco v ICM (n 5)

[8] All Answers ltd, 'Appleby v Myers' (Lawteacher.net, January 2025)

<<https://www.lawteacher.net/cases/appleby-v-myers.php?vref=1>> accessed 9 January 2025

[9] BP Exploration Co v Hunt (n 4)

[10] Gamerco v ICM (n 5)

[11] Ewan McKendrick, Contract Law: Text, Cases, and Materials (9th edn, OUP 2020) 681

[12] Fibrosa v Fairbairn (n 2)

[13] BP Exploration Co v Hunt (n 4)

[14] Gamerco SA v ICM (n 5)

[15] Krell v Henry (n 3)

[16] GH Treitel (n 6)

[17] BP Exploration Co v Hunt (n 4)

[18] Ewan McKendrick (n 11)

[19] Krell v Henry (n 3)

[20] BP Exploration Co v Hunt (n 4)

[21] Shavell S, "Optimal Discretion in the Application of Rules" (2007) 9 American law and economics review: the Journal of American Law and Economics Association 175

