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RED SEA CRISIS AND THE PROBLEM OF FRUSTRATED CONTRACTS

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ABSTRACT

The Red Sea Crisis, triggered by Houthi attacks on commercial vessels from October 2023, has disrupted one of the world's most strategic maritime corridors and exposed significant legal uncertainty in international commercial contracts. This article examines the doctrine of frustration under English law in the context of disruptions affecting shipping, logistics, insurance and the sale of goods. It asks whether the increased cost, delay and risk caused by rerouting vessels through the Cape of Good Hope can amount to a frustrating event or whether such consequences remain within the ordinary commercial risks assumed by contracting parties. Employing a doctrinal legal methodology based on statutory analysis, case law and contemporary legal literature, the study traces the historical development of frustration from its strict common law foundations to its modern application in maritime and commercial disputes. The study contributes to existing scholarship in three main respects. First, it situates the Red Sea Crisis within the wider legal history of maritime disruptions, including earlier Suez Canal cases, thereby clarifying the relevance of established precedents to current trade conditions. Second, it demonstrates that the Law Reform (Frustrated Contracts) Act 1943 offers only a limited remedial framework, because it focuses mainly on post-discharge adjustment rather than preserving or rebalancing continuing contractual relationships. Third, it distinguishes frustration from force majeure and hardship clauses, showing that contractual risk-allocation mechanisms may provide greater flexibility than the doctrine itself. The article argues that Red Sea-related disputes are unlikely to satisfy the high threshold of frustration unless performance becomes radically different, not merely more expensive or delayed. It concludes by calling for a more coherent interpretative approach and renewed consideration of statutory reform to enhance certainty, fairness and commercial predictability.

Introduction

Armed conflict is widely acknowledged to have profound implications for the law. While the full impact of the Red Sea Crisis on private law may take time to be fully understood, one immediate and critical issue concerns whether contracts may be discharged due to frustration. In particular, the crisis raises pressing questions as to whether unforeseen and exceptional circumstances arising from armed conflict can fundamentally alter contractual obligations under established principles of contract law (Aldalbeeh et al., 2023).

The Red Sea Crisis began on 19 October 2023, when the Houthis in Yemen launched missile and drone attacks towards Israel (Partington, 2024). Since then, the Houthis have captured or attacked merchant and military vessels originating from or destined for the United States, the United Kingdom, and Israel while transiting the Red Sea. These attacks prompted retaliatory strikes by the United States and its allies against missile sites and other strategic targets in Yemen (Diakun et al., 2023). The escalation of hostilities forms part of the broader context of the Israel–Hamas war.

The escalating shipping crisis in the Red Sea—one of the world's most critical maritime corridors, accounting for approximately 30 per cent of global container traffic—has resulted in far-reaching and increasingly severe consequences. Repeated attacks on commercial vessels linked to the broader Middle East conflict have caused a significant drop in maritime traffic through the region. Since March 2024, traffic through the Suez Canal and the Bab el-Mandeb Strait has reportedly decreased by nearly half, while reliance on the Cape of Good Hope route has doubled. These diversions have increased voyage distances for cargo vessels and tankers by up to 53 per cent. The economic repercussions have been substantial: freight rates have soared, marine insurance premiums have reached unprecedented levels, and both regional and global shipping markets have experienced significant disruption. Moreover, these developments are expected to exert additional upward pressure on inflation (Dire Strait, 2024).

Following British Petroleum announcement of a temporary suspension of shipments through the Red Sea, the prices of oil and fossil gas rose significantly. Analysts have warned that if attacks on vessels continue and more energy companies suspend their operations in the region, energy prices are likely to increase further. Consequently, shipping companies face a critical decision: whether to continue navigating through the Red Sea—thereby incurring substantially higher insurance costs—or to reroute vessels via alternative passages. Both options entail increased costs, while diversion through the Cape of Good Hope also leads considerable delays in transit time (Yerushalmy, 2023).

Contract law primarily focuses on assessing and addressing changes in circumstances that affect contractual performance (Al-Khawaldah et al., 2023). In civil law systems, the law of obligations and contract law form part of the broader law of property, yet contracts themselves are concluded at a specific moment in time (Juwaihan et al., 2025). As a result, the rights and obligations of the parties are generally determined by the circumstances existing at the time of contract formation. Subsequent events, however, may intervene in a manner that alters the legal position of the parties, particularly with respect to the performance of contractual obligations (El-Refaie et al, 2021).

Legislative frameworks and legal jurisprudence have increasingly demonstrated sensitivity to the profound impact of major historical events on contractual relationships and their transformation over time. In the aftermath of the First World War, modern legal scholarship extensively examined the consequences of radical economic and social disruption on contractual obligations (Krückmann, 1918; Almási, 1922; Schuster, 1923). Similarly, the Great Depression of 1929 vividly illustrated how sudden and far-reaching changes in circumstances could destabilise contractual arrangements, highlighting the necessity for heightened legal vigilance in addressing such disruptions.

In both common law and civil law systems, a significant change in circumstances after the formation of a contract may give rise to doctrines such as hardship, frustration of contract, impossibility, or impracticability. It should be noted, however, that the theories addressing changed circumstances have evolved differently under English law, leading to substantial variations in legal institutions, underlying conditions, and legal consequences as the law has developed over time (McKendrick, 2023).

The early Continental response to the consequences of altered contractual performance and its resulting legal implications is particularly instructive. Similar concerns can also be found within English law, especially where national legislators sought to address similar challenges arising from the disruptive effects of global conflicts (MacMillan, 2014). Notably, the recognition of such demands emerged earlier in English law—dating back to the eighteenth century—than in Continental legal systems. In practical legal terms, the doctrine of frustration developed as a framework through which English law aimed to address the repercussions of fundamental changes in circumstances affecting contractual performance (Mazzacano, 2012).

Until the mid-nineteenth century, English law largely adhered to the principles of contractual sanctity and binding force. Under the doctrine of absolute contracts, contractual obligations were regarded as unconditional, requiring parties to perform their agreed duties irrespective of any subsequent changes in circumstances following the conclusion of the agreement (Juhasz, 2019).

The English law approach to changed circumstances initially resembled Continental legal traditions, which were rooted in the Roman law principle of *pacta sunt servanda*. Continental legal systems recognised a special doctrine known as *clausula rebus sic stantibus*, which, although not formally codified, operated to preserve the binding nature of contracts subject to fundamental changes in circumstances. This doctrine, originating in the Middle Ages, was, however, entirely foreign to English law (Rösler, 2007).

Subsequently, the doctrine of frustration of contract emerged in English law as the principal mechanism for addressing the effects of supervening changes in circumstances on contractual relationships. Through its gradual development, a range of situations and events has come to be recognised as constituting fundamental changes capable of discharging a contract and releasing the parties from further performance (Juhasz, 2019).

Peel provides a comprehensive analysis of the doctrine of frustration, identifying its principal forms and subcategories, including impossibility, frustration of purpose, and illegality. Supervening impossibility may arise for a variety of reasons, such as the total or partial destruction of the contractual subject matter or the death or incapacity of a party in contracts of a personal nature (Peel, 2020).

The classification of frustrating events remains fluid, with no definitive or exhaustive boundaries. While the scope of the doctrine initially expanded, it subsequently underwent judicial refinement, with certain earlier decisions being reconsidered or overturned. Although the doctrine of frustration continues to evolve, its development has slowed in recent years. Nevertheless, the recurring emergence of frustration claims necessitates ongoing judicial scrutiny and careful resolution of such disputes (Peel, 2020).

In the United Kingdom, the Law Reform (Frustrated Contracts) Act 1943 specifically addresses the legal consequences of contract frustration by regulating the rights and liabilities of the parties involved. The Act introduced a statutory framework that departed from the traditional common law position, which generally prevented parties from recovering sums paid prior to frustration. This restrictive approach was exemplified in *Chandler v Webster* (1904), where the claimant was denied recovery of money paid despite the subsequent frustration of the contract (*Chandler v Webster*, 1904).

In addition, contracts for the sale of goods in the UK are governed by the Sale of Goods Act 1979, which applies across England, Scotland, Wales, and Northern Ireland. The Act represents a consolidated and updated version of the Sale of Goods Act 1893 (Fidelma, 2013). Section 7 of the Sale of Goods Act 1979 provides that:

> Where there is an agreement to sell specific goods, and subsequently, without any fault on the part of the seller or buyer, the goods perish before the risk passes to the buyer, the contract is avoided.

It is important to note that this provision applies exclusively to contracts for the sale of specific goods that have perished, and only where there is an agreement to sell. Moreover, the goods must have perished without any fault on the part of either the seller or the buyer (Guest, 2023). These statutory provisions, however, may prove inadequate in circumstances where contracts are disrupted by events such as the Red Sea Crisis, particularly when multiple interconnected contracts are involved that extend beyond the scope

of a simple sale of goods. In such cases, the traditional doctrine of frustration assumes a residual role in addressing the legal gaps left by contracts rendered ineffective by supervening events (Alsharqawi et al, 2020).

Frustration remains a narrowly applied and often unsatisfactory doctrine within English contract law. English law places a strong emphasis on the sanctity of contracts, even when circumstances undergo significant change. Although frustration may, in limited cases, discharge parties from their contractual obligations, such outcomes are exceptional rather than routine. It is therefore anticipated that legal disputes arising from the widespread disruptions caused by the Red Sea Crisis may contribute to a more refined and authoritative understanding of the scope and limits of the doctrine.

Over the past nine months, the Houthi movement, a Yemeni political and military organisation, has conducted a sustained series of attacks in the Red Sea, causing extensive disruption to maritime trade in the region. To date, more than 100 attacks have reportedly targeted merchant vessels transiting the Suez Canal, employing unmanned aerial vehicles, ballistic missiles, unmanned surface vessels, and acts of piracy. These attacks have resulted in the loss of three seafarers' lives. Initially, the Houthis targeted vessels affiliated with Israel or the United States, but they have more recently declared their intention to attack any ship navigating through the Suez Canal, regardless of its national affiliation. The escalation shows no signs of abating, and it is widely anticipated that such attacks may persist for at least the next six months and potentially extend into 2026, even after the conclusion of the conflict in Gaza (Elisabetta, 2024).

In order to address unforeseen circumstances that may render contractual performance difficult or impossible, many parties incorporate specific contractual provisions designed to allocate risk in advance. Such provisions include force majeure clauses (McKendrick, 2023), hardship clauses, and intervening event clauses. These mechanisms aim to reduce reliance on the doctrine of frustration, as the contract itself determines the legal consequences of unexpected events.

Although the precise scope and operation of these clauses vary, and their application is never entirely predictable, contemporary legal disputes increasingly centre on their interpretation and effect. This article does not examine the detailed operation or enforcement of such contractual provisions (Manasra et al., 2022). However, it is important to emphasise that the widespread inclusion of force majeure and hardship clauses significantly constrains the courts' ability to develop a more consistent and uniform doctrine of frustration. The Red Sea Crisis represents an atypical event that was largely unforeseen and, in many cases, not expressly contemplated in contractual arrangements. Consequently, the crisis is likely to generate a wave of legal disputes that may contribute to the further clarification and evolution of the doctrine of contractual frustration.

Literature Review

The Historical Development of the Frustration Theory under English Law

The principle established in the English legal system until the beginning of the second half of the century regarding contracts is that a contracting party is not exempted from their obligations even if the impossibility of performance is the result of force majeure or a change in circumstances (René et al., 1985). No excuse is accepted from the contracting party to relieve them of responsibility for non-performance (Smith et al., 2023).

English law did not recognise any modification or interference with contracts outside its provisions, even when performance becomes impossible or burdensome due to changes in circumstances, in accordance with the pacta sunt servanda doctrine (Mansour, 1995). It was a matter of the will of the parties, who bore the burden of including clauses that protected them against incidents that might occur during the performance of the contract. For example, in the area of sea-related risks, there was a detailed list of various events that the parties could include as model requirements in the contract (René et al., 1985).

In the realm of legal proceedings, English law adopted a strict approach aligned with the principle of pacta sunt servanda, emphasizing strict adherence to this principle. During this period, absolute contracts were fully recognised in English law through the landmark case of *Paradine v. Jane* (1647). This case has been cited in numerous subsequent court decisions and is still considered as good law by some legal

commentators (Treitel, 2004). Notably, it was from the *Paradine* case that the important legal maxim emerged, stating that one party cannot be excused from performance due to an intervening event that renders such performance impossible. Additionally, this case implicitly rejects the application of rebus sic stantibus in English common law.

Originating from the English Civil War, the *Paradine* case began when Prince Rupert, an enemy of the king and his kingdom, illegally entered the country with an army and seized Paradine's property (*Paradine v. Jane*, 1647). Jane, the defendant, had rented the farm, which remained under enemy occupation for three years until 1646 when the hostile army finally surrendered. Paradine then initiated a lawsuit against Jane for three years' unpaid rent. Jane defended herself by arguing that she had not occupied the property due to the presence of enemy forces and claimed that had not profited from its use; therefore, she contended she was liable for the rent.

The court ruled that Jane was obliged to pay rent. The ruling stated, "the lessee is at liberty to make casual earnings but also bears the risk of casual losses". Jane assumed that the use of the land could either yield profit or incur loss. The court distinguished between obligations created by contract and those imposed by law under the circumstances". Parties assume responsibility for lease provisions; if they wish to escape certain obligations, they may do so through their contract. A party who voluntarily accepts a responsibility or obligation must fulfil it, even in the face of an unavoidable accident. Consequently,the affected party bore the loss because the contract did not account for damages caused by foreign invasion. Therefore, unless Jane had a valid reason to breach the contract, she was required to pay rent, despite losing the property through no fault of her own or the owner’s.

The *Paradine* case laid down the rule that lessees must pay rent even if the property is destroyed by fire, flood, or war. Pacta sunt servanda, as upheld in English contracts for two centuries, meant that physical impossibility was not an excuse for non-performance. Lord Campbell summarised this in *Brown v Royal Insurance Company* (1859)*, stating*: "the impossibility of performance is not a legal reason for non-performance,"encapsulating the essence of the Paradine ruling".

The Latin principle pacta sunt servanda was once dominant among contracting parties until changes and events emerged that softened its strict application. The English judiciary sought to mitigate its impact through the theory of "frustration".

Under English law, the decision *in Taylor v. Caldwell* (1863) serves as the foundation of the doctrine of frustration, which was viewed as a blatant violation of the *pacta sunt servanda* rule governing contractual agreements (*Taylor v Caldwell*, 1863). The case involved a concert hall that the plaintiff had leased out to the defendantfor 'grand concerts and fetes'. Before these events could take place, the hall was destroyed by fire, with no party at fault. The plaintiff sued for breach of contract, questioning whether the defendant's claim of being unable to perform at the contracted hall was valid? The defendants were held liable to the plaintiffs for failing to hire a music hall for four days, according to the rule of positive acts. Justice Blackburn emphasised this duty, stating that if the contract was frustrated, it would excuse the defendant from further performance. This was deemed the fairest and most reasonable outcome under contract law. If the parties were required to perform despite the closure of the music hall, the nature of the performance fundamentally altered. Consequently, the contract was rendered unenforceable due to the destruction of the music hall.

Lord Blackburn’s rule, as articulated in the *Taylor v Caldwell* (1863), applies only to contracts that are definite and unconditional, without any express or implied conditions. The decision illustrates that the doctrine of frustration can apply when the performance of a positive contractual obligation is hindered by an unforeseen event not accounted for in the contract itself. This reasoning has significantly influenced the modern development of the doctrine of frustration and was subsequently encapsulated by Lord Radcliffe in his well-known formulation in *Davis Contractors Ltd v Fareham Urban District Council (Davis Contractors Ltd v Fareham Urban District Council*, 1956*)*.

Due to changing circumstances, the English judiciary has moderated the rigidity of the principle. In the case of *Taylor v Caldwell* (1863), the cancellation of the king's coronation procession resulted in the termination of lease contracts for viewing locations, despite their legality and validity. However, this limitation was applied to two aspects: the origination side, which pertains to the cancellation of future obligations, and does not affect previous periods, which remains self-sustaining; and the consequence side, which assumes, in the change in circumstance, that it has led to the difference in the equilibrium of the contract (Gammal, 1969).

Many English courts have applied this principle, leading to the emergence of the concept of absolute impossibility within the theory of "frustration." The initial applications of this theory were limited to cases of absolute impossibility, which could arise from natural events such as fire and natural disasters, personal circumstances affecting one of the contracting parties, such as illness or death, or legal impediments like confiscation (René et al., 1985).

Historical instances of frustration as a result of illegality often centre on contracts that become illegal due to the outbreak of war. A notable case, *Avery v. Bowden* (1856), specifically addressed the concept of supervening illegality. In this instance, the contract involved the transportation of cargo from Odessa. However, following the enactment of a regulation prohibiting the landing of cargo at enemy ports during the Crimean War, the contract was deemed void due to the intervening illegality. Had this law been enacted prior to the parties signing the contract, it would likely have been viewed as a mistake rather than a case of frustration (*Avery v Bowden*, 1856).

The English judiciary has practically established the judicial amendment of private contracts in response to changes in circumstances. Courts have exempted carriers from their obligation to transport goods between cities when the war caused increased costs and disrupted the contractual balance. Similarly, debtors in commercial contracts have been relieved from their obligations when unforeseen changes in circumstances rendered performance impossible or excesseively burdensome (Alsharqawi & Younes, 2020).

Frustration of Contractual Performance Due to the Red Sea Crisis

The hindrance of fulfilling contractual obligations caused by an unexpected occurrences is commonly referred to as frustration. Contracts play a crucial role in facilitating cooperation and ensuring the enforcement of legally binding commitments (Dagan et al., 2025). The fundamental nature of contracts involves a mutual exchange of tangible value (Serafin, 2022) through actions performed by each party (Hegel, 1820).

Contract law governs the provision of services to third parties and the transfer of property ownership (El-Refaie & Alsharqawi, 2022). It does not focus on the outcomes, advantages, or commercial feasibility of the decisions made by the contracting parties to form the agreement. The parties involved may have different viewpoints, risk allocations, business expectations, and anticipated benefits and satisfactions regarding the contracts they enter into and the value they ascribe to them.

In contract law, the explicit language of a contract typically holds greater importance than the circumstances surrounding its formation. This tension is evident in various areas of contract law, including contract interpretation, as illustrated by the case of *Investors Compensation Scheme Ltd v West Bromwich Building Society* (1997), and the inclusion of implied terms. Traditionally, contract law prioritises the specific intentions, desires, and economic considerations that may motivate the actions of the contracting parties. Instead, the focus is on the outward expressions of the parties, which provide an objective foundation for evaluating their agreement (Benson, 2019). The written terms and conditions of the contract, along with its full content, represent this outward expression. By agreeing to these terms, the parties communicate to the external world the essence of their arrangement, which involves an exchange of obligations and mutual consideration.

In numerous instances, contracts do not unfold as anticipated by the involved parties at the time of creation. It is not uncommon for contracts to result in financial setbacks. Nonetheless, the primary aim of contract law is not to guarantee the fulfilment of parties' expectations but to focus on the moment of contract creation (Baker, 1979). Upon signing a contract, parties concentrate solely on the explicit terms of the agreement, taking into account the surrounding circumstances at that time.

Due to the escalation of Houthi attacks amid the conflict in Gaza, many contractual obligations have been affected, prompting the majority of shipping companies to completely avoid the use of the Suez Canal. Instead, they are redirecting their vessels to navigate around the Cape of Good Hope, located at the southern most point of Africa.

The diversion is significant, as it adds approximately 3,500 nautical miles to each journey and extends the duration by about 15-20 days. Such delays can have a substantial impact, especially for ships transporting perishable goods, potentially resulting in total loss of cargo. However, companies are willing to accept these "risks" rather than face the potential danger of Houthi attacks.

The attacks have led to severe congestion and disruption in the supply chain, which may result in conflicts among the various parties involved in shipping and logistics contracts. If prolonged delays affect shipping and sales of goods contracts, the parties involved will undoubtedly seek remedies to compensate for their losses. Given the increased likelihood of shipping disputes, it is crucial to examine specific measures that can be implemented to minimise losses and prevent disagreements (Scanferla, 2024).

In light of the blockage of the Suez Canal on 23 March 2021, the use of alternative routes through the Red Sea has been proposed (Yin Lee et al., 2021). One potential substitute for the Suez Canal in the Red Sea is the Cape of Good Hope route, which is under consideration.

The potential of the Cape of Good Hope route was assessed by analysing the distance, transit time, and overall cost for 11 major trade lanes (Notteboom, 2012). The findings suggested that this route has the greatest potential. Verny and Grigentin (2009) considered the Suez Canal route as an alternative. Their analysis of the economic viability of various transportation options, including the Northern Sea Route and the Suez Canal, revealed that both routes offer significant advantages.

The Northern Sea Route provides an alternative for shipping companies aiming to minimise transportation costs, as it is recognised as the least expensive means of transporting goods (Verny et al, 2009). In their pursuit of maximising profits, shipping companies consistently seek ways to reduce transportation expenses, making the Northern Sea route an appealing choice.

The application of the doctrine of frustration is perplexingly inconsistent, despite its formulation during the twentieth century. The legal basis for frustration remains unclear, and doubts arise when examining Lord Blackburn's role in establishing the doctrine in *Taylor v Caldwell* (1863). This wide-ranging principle (*Taylor v Caldwell*, 1863) was developed in response to two significant events in the twentieth century, which resulted in numerous legal disputes.

In English common law, the principle of frustration addresses the distribution of risk within a contract. This clause becomes relevant when a contract has been signed and partially executed, but circumstances arise that make performance impossible, illegal, or substantially different from the original agreement between the parties involved (Al-Dlabeeh et al, 2022).

The term 'frustrated' was first officially recognised by the English legal system with the passage of the Law Reforms (Frustrated Contracts) Act 1943. Frustration, often described as the "impossibility of performance," was not expressly defined in the Law Reform (Frustrated Contracts) Act 1943. In the case of *Davis Contractors Ltd vs. Fareham Urban District Council*, Lord Radcliffe provided a modern definition of frustration, stating that it occurs when a contractual obligation becomes impossible due to circumstances that would render performance radically different from what was originally undertaken, without fault on either side.

IIn order to address situations where non-performance is justified due to a substantial change in circumstances, English law has developed the doctrine of frustration, which has traditionally been applied in three principal categories: impossibility, frustration of purpose, and temporary impossibility. The first category arises where a supervening event renders contractual performance impossible. Although the terms “impossibility” and “frustration” are sometimes used interchangeably, impossibility is more accurately understood as one category within the broader doctrine of frustration. As McCamus in 2020 explains, frustration may operate where performance becomes impossible, where the contractual purpose is substantially defeated despite performance remaining possible, or where temporary impossibility justifies discharge in exceptional circumstances (McCamus, 2020).

Another type of frustration within the legal framework is known as "frustration of purpose." This category has expanded the definition of impossibility in English law. Cases involving frustration of purpose often seek to restore the original intent and purpose of the contract. Instead of solely considering the implied intentions of the parties, the court strives to uncover the true meaning of the contract. The rationale for expanding the scope of frustration lies in the fact that the commercial objective of the contract has become unattainable (Mazzacano, 2012).

The emergence of the common law principle of frustration of purpose can be traced back to the landmark case of *Jackson v. Union Marine Insurance Co. Ltd* (1874). This legal concept is exemplified by the famous 'coronation case' of *Krell v Henry* (1903). In the *Krell* case, the primary cause of frustration was the inability to witness the Derby Day event. As Vaughan Williams LJ suggested, this involved a person who had contracted to hire a cab at an enhanced price to take him to Epsom on Derby Day. When the race was called off, the judge asserted that the contract would not be frustrated because attending the Derby was not the foundation of the contract. However, the increased costs were directly linked to the contractual agreement, leading to limited understanding of the contract's underlying basis (Chapman, 1960).

The authority of *Krell v Henry* 1903 has not been consistently followed in subsequent case law. In *Amalgamated Investment and Property Co Ltd v John Walker & Sons Ltd* (1977), the court adopted a more restrictive approach, declining to extend the doctrine of frustration of purpose in circumstances where the contractual foundation had not been sufficiently undermined. Nevertheless, in the later decision of *North Shore Ventures Ltd v Anstead Holdings Inc* (2010), it was argued that a precise and principled application of *Krell v Henry* 1903 should be preserved when assessing claims of frustration of purpose. The central question in such cases concerns the threshold at which the contractual purpose is so fundamentally altered that performance would be radically different from what the parties originally contemplated. Consequently, the application of *Krell v Henry* is based on the requirement that the supervening event must substantially destroy the common purpose underlying the contract.

The doctrine of frustration comprises three categories, one of which is known as "Temporary Impossibility." This concept finds its roots in Roman law, specifically the principle of perpetuatio obligationis, which states that a delay in performance occurs when an obligation become temporarily impossible to fulfil (Ramsden, 1977). Under common law, a contract is not terminated in such cases; rather, it is suspended until the temporary impossibility is resolved (Treitel, 2004). However, common law, includes an exception; if time is of the essence (Treitel, 2004), contracts may be discharged due to temporary impossibility, treated as if they were entirely frustrated. This aligns with the perspectives found in German and Swiss law, where transitory impossibility is considered as permanent impossibility (Brunner, 2009).

In contract law, courts have drawn a conceptual parallel between the doctrine of frustration and the doctrine of mistake. This comparison typically arises when a mistake exists at the time of contract formation and is subsequently compounded by an event that renders contractual performance futile. In *Great Peace Shipping Ltd v Tsavliris Salvage International Ltd* (2002), Lord Phillips observed that both doctrines are rooted in a common legal principle: where one or both parties undertake an obligation they are ultimately unable to perform, the contractual bond may cease to bind them. Thus, mistakes and frustration, operating within the broader framework of contract law, can serve to discharge or qualify contractual obligations when performance deviates fundamentally from the original contractual intent.

In his comprehensive analysis, Ewan McKendrick describes frustration as a situation where an unforeseen event occurs after a contract is made, rendering it impossible, illegal, or radically different from what the parties initially agreed upon (McKendrick, 2025).

Frustration, in a strict sense, is a legal concept that applies only under specific circumstances. The courts have adopted a restrictive approach to interpreting cases of frustration, making it challenging to assert that a contract has been frustrated. It is a residual theory that does not apply if the parties have made express provision for the unforeseen event in their contract. A party that has caused the frustrating event cannot invoke the doctrine of frustration. Similarly, if the intervening event was among the foreseeable risks but was not allocated in the contract, the doctrine of frustration will not be applicable (Younes & Alsharqawi, 2021).

It is important to recognise that frustration does not excuse parties from their contractual obligations. A reduction in price or a poor exchange rate does not render a contract invalid, as the principle is that "it is unlikely to be invoked to release contracting parties from the usual consequences of ill-advised business agreements." This explains the caution with which courts approach frustration; they are reluctant to accept it, as it could lead to one party attempting to evade their responsibilities under the agreement, thereby placing the other party at an unfair disadvantage.

If frustration is established, it will result in the termination of the contract. This will extinguish future obligations and preclude any judicial action, except that which entitles the aggrieved party to treat the contract as discharged from further performance by either party. It is important to note that terminations have a prospective effect— while they do not release past claims — some cases may leave parties worse off than if they remained bound by an imperfect bargain (Treitel, 2007). Treitel argues that granting courts the power to adjust contracts would produce better results for both parties, as contributions would only cease if they could be restored to a clean slate. Under frustration, however, one of the losses is risk allocation, which leaves other aspects of wealth distribution between promisors and promisees unaffected. Post-termination common law commitments may still have resource implications, despite efforts to restore the status quo ante, because even parol evidence can establish agreements with legal consequences, regardless of whether they were reasonably foreseeable at the time of making these arrangements. This includes cases where agreements are later confirmed in writing or deemed executed based on partial performance. Treitel describes the Law Reform (Frustrated Contracts) Act 1943 as "general but limited" and believes that losses should be allocated fairly between the parties (Treitel, 2007). Therefore, frustration appears to be a narrow and potentially unfair approach, adopted only as a last resort.

Discussion

The Doctrine of Frustration: Principles, Application, and Limitations

In contract law, the doctrine of frustration operates to bring about the automatic discharge of contractual obligations where an unforeseen event fundamentally alters the nature of the agreement. The restrictive scope of this doctrine has been consistently emphasised in judicial reasoning. In *Davis Contractors Ltd v Fareham Urban District Council*, Bingham LJ in 1990 highlighted that frustration should be confined to exceptional circumstances and not lightly invoked. This stringent approach was reaffirmed in subsequent decisions, including *National Carriers Ltd v Panalpina (Northern) Ltd* (1981) and *J. Lauritzen AS v Wijsmuller BV* (The Super Servant Two) (1990), which collectively stress that mere hardship, inconvenience, or increased expense does not suffice to frustrate a contract.

Similarly, the House of Lords has rejected attempts to reinterpret contractual obligations based on perceived fairness in light of supervening events. In *British Movietonews Ltd v London and District Cinemas Ltd* (1952), the court affirmed a strict and principled approach to frustration, emphasising that contractual obligations should not be displaced merely because unforeseen circumstances render performance less advantageous than anticipated. The legal framework for frustration was articulated by Lord Simon in *National Carriers Ltd v Panalpina (Northern) Ltd* (1981), who outlined that frustration occurs when an event, unforeseeable by the parties and beyond the contract's provisions, fundamentally alters the contractual obligations. In such circumstances, the law operates to release both parties from their contractual obligations. This approach was further refined by Rix LJ in *Edwinton Commercial Corporation v Tsavliris Russ* (2007), where he advocated a “multi-factorial” analysis for determining whether a contract has been frustrated. According to this approach, the assessment of frustration requires careful consideration of the contractual terms, the surrounding factual and commercial context, the nature and impact of the supervening event, and the parties’ reasonable expectations regarding the allocation of risk. (*Edwinton Commercial Corporation v Tsavliris Russ*, 2007).

Three essential elements guide the application of the doctrine of frustration. First, the supervening event must occur without fault on the part of either contracting party, as affirmed in *J Lauritzen AS v Wijsmuller BV* (1990). Second, the change in obligations must be so radical that performance would result in something entirely different from what was originally agreed (Atiyah, 1995). Third, a foreseeable event might still frustrate a contract if it radically alters the obligations beyond what the parties reasonably anticipated.

Frustration is closely related to the concept of supervening impossibility. In the *Krell v Henry* case, for example, the cancellation of the coronation procession after the contract was made frustrated the agreement. In contrast, in the *Griffith v Brymer* (1903) case, where the cancellation had already occurred, the contract was deemed void due to a mistake, as both parties were unaware of the cancellation at the time of contracting (Brunner, 2009; Taylor et al., 2011).

The doctrine of frustration also covers supervening illegality, as illustrated in the *Avery v Bowden* case. Here, a contract for loading cargo in Odessa was frustrated when a law passed during the Crimean War prohibited cargo loading at enemy ports. Similarly, in *BP Exploration Co (Libya) Ltd v Hunt (No 2)* (1983), the seizure of Hunt's oil concession by the Libyan government frustrated the contract. Frustration must fundamentally undermine the contract and release both parties from future obligations (*BP Exploration Co (Libya) Ltd v Hunt (No 2),* 1983).

The allocation of the burden of proof in cases of frustration was clarified by Viscount Simon L.C. in *Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp Ltd* (1942), where he affirmed that frustration operates automatically to terminate the contract and release both parties from further performance. The decision establishes that, for frustration to arise, the supervening event must be unforeseen, must not be attributable to the fault of either party, and must fundamentally alter the nature of the contractual obligations undertaken (*Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp Ltd*, 1942).

Foreseeability plays a crucial role in frustration cases. Bugden and Lamont-Black argue that a contract may still be voided, even if the event was foreseeable, when no binding commitment exists, as seen in *Edwinton Commercial Corp v Tsavliris.* McKendrick similarly asserts that frustration should not apply if the event was foreseeable at the time of contracting, as frustration addresses unexpected occurrences (McKendrick, 2023). Courts determine foreseeability based on whether a reasonable person could have anticipated the event, as illustrated in *Krell v Henry.*

However, the foreseeability of an event does not invariably preclude the operation of frustration, particularly in cases involving supervening illegality. This principle was illustrated in the Suez Canal cases, where contractual performance was rendered unlawful or fundamentally altered following the closure of the Canal, as demonstrated in *Ocean Tramp Tankers Corporation v V/O Sovfracht (The Euginia)* (1964) and *W J Tatem Ltd v Gamboa* (1939). In circumstances where the parties have failed to make an express contractual provision for such events, frustration may nonetheless be invoked. This position was reaffirmed by the Court of Appeal in *Edwinton Commercial Corporation v Tsavliris Russ* (2007), where it was observed that even foreseeable events may give rise to frustration if they result in a fundamental alteration of the contractual obligations undertaken. The concept of self-induced frustration is also essential in understanding the doctrine.

In *The Eugenia case,* the charterer breached the contract by sending a ship into a war zone, which led to its detention. As the charterer caused the frustrating event, frustration could not be claimed. Similarly, in *Maritime National Fish Ltd v Ocean Trawlers Ltd* (1935), the appellants' decision to exclude a vessel from their licence allocation was ruled to have caused the frustrating event, and thus, frustration could not apply. Hobhouse J further explained that self-induced frustration occurs when a party's breach disrupts the causal link between an event and the performance of the contract. This concept was upheld in *J Lauritzen AS v Wijsmuller BV* (1990), where it was ruled that if an event is within the control of the parties, frustration cannot be claimed .In The Super Servant Two case, the Court of Appeal determined that frustration could not be invoked as the defendants could have utilised an alternative vessel to fulfil the contract. This case underscored the limited application of the frustration doctrine and highlighted the importance of drafting force majeure clauses to address unforeseen events, as evidenced in the case *Jackson v Union Marine Insurance Co Ltd* (1874).

In conclusion, frustration is a narrowly applied doctrine that is invoked only when an unforeseen event radically alters the contractual obligations without fault from either party. Courts emphasise the necessity and importance of including force majeure or hardship clauses to safeguard against such events, as any occurrence of self-induced frustration will nullify their applicability.

Clarifying the Suggested Vision of Frustration Through a Multi-Factorial Approach

Peari & Golestani (2022) present a critical assessment of the multi-factorial approach to frustration, which advocates for the consideration and balancing of a wide range of factors. They argue that such an approach risks undermining doctrinal certainty and predictability in contract law, a concern reflected in the judicial reasoning in *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* (2019), where the Court of Appeal adopted a cautious stance towards extending frustration based on flexible evaluative criteria. Their normative framework seeks to unify and challenge the often conflicting elements of the multi-factorial method. While their approach incorporates certain aspects such as the parties' reasonable expectations and the nature of intervening events, we align with the scholarly debate that questions whether this layered justification sufficiently elucidates frustration (Peari & Golestani, 2022).

Peari and Golestani's proposed explanation offers alternative conceptual views on frustration, particularly through the lens of foundational and construction theories. A key reference point is Lord Haldane’s remarks in *Tamplin SS Co Ltd v Anglo-Mexican Petroleum Co* (1916), where he suggested that an event could be so substantial that it undermines the very foundation of the contract, rendering it void. However, subsequent scholarship and case law have critiqued this interpretation for its vagueness. In the *Canary Wharf* case, Smith J expressed doubt, noting that while the foundation theory may appear compelling, it lacks a clear and substantial explanation (*Canary Wharf (BP4) T1 Ltd v European Medicines Agency,* 2019).

Peari and Golestani’s account provides a normative perspective on the core principles of contractual frustration. Every contract is predicated on the objective concept of agreement. When unexpected circumstances undermine the underlying purpose of the agreement between the parties, it challenges the very foundation of the contract. Once the unforeseeability criterion is satisfied, any significant deviation from the original obligations can result in the frustration of the contract (Peari & Golestani, 2022).

Another theory to consider is the role of frustration based on the interpretation of force majeure clauses. This approach evaluates whether a particular clause includes the event that precipitated the frustration. However, scholars have noted that this interpretation-based justification does not provide a normative basis for the doctrine. By focusing on force majeure clauses, it addresses how these provisions should be construed; however, the construction theory of frustration does not engage deeply with the essence of frustration itself.

Comprehending the concept of frustration is essential for grasping the doctrine’s true nature and its potential future developments. It is crucial to distinguish between cases in which frustration applies and those in which it does not. As we will explore in the following section, this conceptual framework also seeks to elucidate the remedial outcomes associated with frustration.

Consequences of Frustration

The aftermath of a frustrated contract is a subject that has sparked intense debate among scholars of English law. This issue has been characterised by confusion and a lack of clarity, as evidenced by the works of Stewart and Carter (1992) and Carter (2018). It is noteworthy that attempts have been made within common law jurisdictions to address this confusion. In 1943, the UK Parliament enacted the Frustrated Contracts Act in an effort to resolve the problem. Additionally, other statutory enactments, such as Section 7 of the Sale of Goods Act 1979 and the Trading with the Enemy Act of 1939, can also lead to contract frustration under English law. However, despite these legislative efforts, a consensus has yet to be reached among English law jurisdictions regarding the appropriate remedies for frustration and how they fit within the framework of contract law doctrine (Stewart & Carter, 1992).

Should parties allege that the Red Sea Crisis disrupted their agreement, the remedies may prove inadequate. For the majority of contracts, the Law Reform (Frustrated Contracts) Act 1943 governs frustration remedies. A limited number of contracts fall outside the purview of the 1943 Act, and common law remedies fall short. In case of frustration, parties can draft their own contractual clause.

To illustrate the deficiencies of contemporary legal interpretation in addressing the remedial implications of frustration, the UK case of *Fibrosa v Fairbairn* (1943) offers a compelling example. In this case, a Polish company had entered into a contract with a UK company for the purchase of machinery, which was to be delivered in Poland. However, prior to the delivery, Nazi Germany invaded Poland, rendering the contract impossible to fulfil and thereby frustrating it. Notably, the contract did not address the issue of frustration or its remedies. The UK company, citing the earlier decision in *Chandler v Webster* 1904, contended that the principle of "loss lies where it falls" should apply. They also claimed to have incurred substantial costs associated with the production of the machinery.

The *Chandler* precedent was ultimately overturned by the House of Lords, which ruled that the Polish company should be refunded its deposit. The reasoning for this decision was somewhat mixed and lacked full clarity. Lord Atkin advocated for a rule allowing individuals who had paid for goods but received nothing to recover their money, asserting that both laypersons and legal professionals would likely concur with such an outcome. Lord Macmillan emphasised the need for equitable adjustment between the parties, arguing that fairness mandated such an approach. Lord Wright introduced the concept of unjust enrichment, although it was not formally recognised at the time, as a framework for understanding the remedy for frustration. He also noted that the deposit was paid under specific conditions, and when those conditions were not met, the right to retain the deposit ceased to exist. Similarly, Lord Roche remarked on the conditional nature of the Polish company's payment (Peari & Golestani, 2022).

The *Fibrosa* case established the precedent that a "total failure of consideration" serves as the foundation for restitution in frustrated contracts. This implies that a party may recover payments if they can demonstrate that they received no consideration in return. In this instance, the Polish company had received no machinery, thereby justifying the refund of its deposit. Had the company received even one machine, the return of the deposit would not have been possible (*Fibrosa v Fairbairn*, 1943).

The doctrine of "total failure of consideration" has faced significant criticism for its rigidity. Some scholars suggest that it should be reinterpreted to encompass "partial failure" of consideration (Wilmot-Smith et al., 2013). In response to the inflexibility of this doctrine, UK legislation was enacted to provide a remedy in frustrated contracts. The current legislation permits the restitution of payments, irrespective of whether the failure of consideration is total or partial (UK Act s 1(2)). These legislative provisions grant courts broad discretion to consider the expenses incurred by both parties and to adjust the remedy accordingly, thereby promoting broader notions of fairness. Additionally, the provisions extend beyond monetary payments and may apply to contracts involving services as well.

The 1943 Act has been subject to criticism due to its inadequate drafting and limited enhancement of the common law (Harris et al., 2002). The Act aims to address two forms of unjust enrichment resulting from frustration: the payment or obligation to pay monetary benefits and the provision of a valuable benefit. Its purpose is to prevent these specific forms of unjust enrichment. According to Subsection 1(2), if a payment has been made or if sums that were supposed to be paid are no longer required, those amounts may be recovered. However, there is a scarcity of legal precedents that explain how this provision should be applied. Subsection 1(3) pertains to the granting of a valuable advantage due to the completion of a task before the termination of the contract. A significant legal case is *BP Exploration (Libya) v Hunt* (1983), which provides guidance on the implementation of this section.

Not only was the 1943 Act passed during the war in a futile attempt to address what was thought to be a significant number of forthcoming frustration cases, but it also developed several decades before English law established effective measures to address unjust enrichment. The Act contains several major flaws. The most critical issue is that the provisions of the particular contract dictate the remedial actions. It is illogical and potentially unfair to impose penalties based on the timing of obligations within a contract without considering that the contract may be terminated before its anticipated completion. Another disadvantage of the 1943 Act is that it excludes non-monetary payments in kind (Peel, 2020).

The 2024 Red Sea Crisis can be compared to its predecessors, namely, the Suez Canal blockages of 1956, 1967, and 2021, providing insight into similar past disruptions affecting contractual commitments and international trade. As one of the vital maritime routes, legal debates surrounding the Suez Canal have centred on the doctrine of frustration of contract, which is invoked when unforeseen events arise, leading to a significant alteration in performance under a contract (Yin Lee et al., 2021).

The Suez Crisis of 1956 occurred when Egypt nationalised the Suez Canal, resulting in military conflict and the temporary closure of the canal. The blockage in 1967, resulting from the Six-Day War, also led to the canal's closure, stranding numerous ships and disrupting global shipping lanes. In March 2021, a large container ship, the Ever Given, ran aground in the canal, blocking this crucial waterway for nearly a week. The consequence was what would later be termed a disruption of global trade, causing delays and significant value destruction. Subsequently, supply chains worldwide experience secondary effects, with ships waiting to enter or taking longer routes due to increased difficulties in navigating the Suez Canal (Yin Lee et al, 2021).

The disruption of the Suez Canal resulted in numerous legal challenges, particularly concerning contracts that could no longer be performed as originally intended. Courts were initially reluctant to declare contracts frustrated unless the changes were so fundamental that they rendered the contract radically different from what had been originally agreed upon (McKendrick, 2023). This principle is exemplified in key legal cases, such as *Tsakiroglou & Co Ltd v Noblee Thorl GmbH* (1962), which, although it occurred before the 1967 blockage, addressed the closure of the Suez Canal. The House of Lords held that frustration could not be established because an alternative route was available. This case established the precedent that mere inconvenience or increased costs alone do not amount to frustration.

Another significant case is the *Eugenia* case, which directly addressed the Suez Canal's closure during the 1956 crisis. The English Court of Appeal determined that the canal's closure due to the Suez War did not frustrate a voyage from Genoa/Black Sea to India via the Suez/Red Sea, as the ship could navigate around the Cape of Good Hope. The deviation increased the duration of the voyage; however, as the cargo was non-perishable, this only resulted in higher expenses for the charterers, without any significant impact (Elliott et al, 2019).

In determining whether the 2024 Red Sea Crisis constitutes a frustrating event, courts may rely on principles laid down in cases such as The *Sea Angel,* where the Court of Appeal ruled that the doctrine of frustration should only be applied in instances where the event has fundamentally altered the basis of the contract. The case further reinforced that mere inconvenience or monetary loss does not constitute frustration (*Edwinton Commercial Corporation v Tsavliris Russ*, 2007).

The Red Sea Crisis of 2024, like past Suez Canal blockages, is likely to give rise to legal disputes wherein the courts will reexamine the availability of alternative routes and the extent to which the situation has altered contractual obligations. Historical precedents suggest that unless the Red Sea Crisis leads to a complete impossibility of performance, claims of frustration may not succeed. With respect to the Red Sea Crisis, it is improbable that the contract of carriage and the sale of goods will be invalidated due to the increased difficulty or cost of fulfilling contractual obligations. A charter party cannot be deemed frustrated if there is an alternative route available through the Cape of Good Hope, unless the nature of the charter party and the duration of any delay significantly impact the intended performance. Typically, contracts are not likely to be frustrated in most situations.

Scholars have examined the blockage of the Suez Canal in 2021 as a stress test for the frustration doctrine in contemporary legal contexts. McKenzie argued that, although the blockage resulted in substantial disruptions, it did not meet the threshold for being classified as a frustrating event under common law, as it remained feasible to await the reopening of the canal or to reroute. This suggests that any future courts adjudicating cases related to the 2024 Red Sea Crisis are likely to assess them solely on logistical grounds, rather than as events meriting the application of the frustration doctrine (McKenzie, 2021).

Should numerous cases of frustration arise from the Red Sea Crisis, we can anticipate a broader interpretation and application of the 1943 Act. However, it is unlikely that these fundamental omissions can be resolved without additional legislative intervention. This article posits that frustration cases related to the Red Sea Crisis represent some of the most complex aspects of an already deficient doctrine. It is hoped that, should a legal dispute emerge, the legislation in this domain will be enhanced to provide parties greater assurance and fairness (Alsharqawi et al., 2021).

From the perspective of English common law, the reasoning articulated above is inadequate. The core issue is that English law provides only a singular remedy under the doctrine of frustration, whereas civil law systems are equipped with both imprévision and force majeure doctrines to address similar

circumstances. Consequently, English law delivers merely one outcome, rather than the two that are typically necessary. While legislative measures can partially rebalance accounts once a contract is rendered void, they fail to address the fundamental issue of rebalancing the contract for future performance (Al Majed, 2024).

Although outside the scope of this paper, other common law jurisdictions have successfully introduced statutory clauses to mitigate this issue. However, English common law has not followed suit, as evidenced by the unaltered 1943 UK Law Reform (Frustrated Contracts) Act. Furthermore, it is improbable that common law can undergo such a fundamental shift as to allow courts to engage in contract rebalancing without legislative change. Judges remain constrained without statutory reform, which is why this paper advocates for the Law Commission to review the frustration doctrine with a view towards reform. Currently, English courts are unable to adopt a more comprehensive approach, regardless of the distinctions drawn by scholars between impossible, quasi-impossible, or impracticable contracts. The application of the frustration doctrine continues to result in a blanket discharge of the contract (Al Majed, 2024).

The current legal framework in the UK regarding remedies for frustration is in urgent need of reform, despite previous efforts to address the limitations highlighted in the Fibrosa case. The existing provisions grant judges almost unlimited discretion to evaluate each case individually. Furthermore, each piece of legislation operates from a distinct normative viewpoint on the issue of frustration remedies, leading to inconsistencies in the language across different statutes. This arbitrary and flexible approach has been widely criticised, raising questions about whether legislative intervention was necessary in the first place (Stewart et al., 1992). Consequently, it is unsurprising that these statutes are infrequently applied in the UK.

Conclusion

The 2024 Red Sea Crisis may be assessed in comparison with earlier maritime disruptions, most notably the Suez Canal blockages of 1956, 1967, and 2021, which provide valuable insights into the contractual and commercial consequences of similar events. Historically, incidents such as the repeated closures of the Suez Canal and the disruption of navigation through the Strait of Hormuz have demonstrated the vulnerability of global trade to interruptions in critical maritime routes. These events led to substantial shifts in global trade patterns, resulting in significant delays and increased operational costs. If access to the Red Sea is restricted or denied, the immediate consequence is a disruption in the movement of goods between Europe, Asia, and East Africa. Such disruption necessitates the use of longer alternative routes, most notably via the Cape of Good Hope, thereby extending transit times and substantially increasing fuel consumption and associated costs.

The Red Sea Crisis may also activate *force majeure* clauses contained in commercial contracts, potentially excusing parties from performance where unforeseen circumstances beyond their control directly prevent contractual fulfilment. Parties seeking to rely on force majeure must, however, establish a clear causal connection between the crisis and their inability to perform their contractual obligations. In addition, parties affected by the Red Sea Crisis remain subject to the duty to mitigate losses. This obligation requires affected parties to take reasonable measures to reduce the financial impact of non-performance. A failure to mitigate may adversely affect claims for damages or other contractual remedies. In response to the crisis, contracting parties may also pursue renegotiation or rescheduling of contractual terms. Cooperative approaches aimed at amending contractual arrangements can play a crucial role in mitigating disruption and preserving commercial relationships in an environment of heightened uncertainty.

Furthermore, parties may seek recourse to insurance coverage for losses arising from the Red Sea Crisis. The availability of such coverage depends on the specific terms of the insurance policies in question, as well as the interpretation of those terms under applicable law. Judicial precedents arising from the closure of the Suez Canal in 1956, 1967, and 2021 indicate that English courts have consistently adopted a restrictive approach to the doctrine of frustration, confining its application to circumstances involving a fundamental alteration of contractual obligations. Accordingly, in the context of the 2024 Red Sea Crisis, frustration is unlikely to be established unless the disruption renders contractual performance radically different from that originally contemplated by the parties. This judicial stance underscores the limitations

of the doctrine of frustration in addressing contemporary disruptions to global trade and reinforces the central problem examined in this study.

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