DOCTRINE OF FRUSTRATION UNDER NIGERIAN CONTRACT LAW: ISSUES, CHALLENGES AND REFORMS

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A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, ENUGU STATE, NIGERIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW (LL. B) OF GODFREY OKOYE UNIVERSITY, ENUGU STATE, NIGERIA.

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DECLARATION

I, **ISOLOKWU CHUKWUKA MICHAEL,** with registration number **GOU/U21/LAW/331**, declare that the research in this long essay titled **"DOCTRINE OF FRUSTRATION UNDER NIGERIAN CONTRACT LAW: ISSUES, CHALLENGES AND REFORMS"** was done by me in the Faculty of Law, Godfrey Okoye University Enugu. The information derived, from the existing literature has been duly acknowledged in the text and a list of references provided. The content of this work is original and has not been submitted in part or full for the award of any degree in this or any other institution.

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CERTIFICATION

This is to certify that this study titled ‘Doctrine of Frustration Under Nigerian Contract Law: Issues, Challenges and reforms was carried out by **ISOLOKWU CHUKWUKA MICHAEL**, an undergraduate student in the Faculty of Law Godfrey Okoye University with Registration number, **GOU/U21/LAW/331,** under our supervision and that this research work is original and has not been submitted for the award of any degree in this or any other university.

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A.G.	Attorney-General
AC / A.C.	Appeal Cases
Art.	Article
BGB	Bürgerliches Gesetzbuch / German Civil Code
BOA / B.O.A.	Bank of Agriculture
CA	Court of Appeal
CAMA	Companies and Allied Matters Act
CBPP	Contagious Bovine Pleuro-Pneumonia
CBN	Central Bank of Nigeria
CFRN	Constitution of the Federal Republic of Nigeria
CISG	United Nations Convention on Contracts for the International Sale of Goods
Co.	Company
Dev.	Development
edn	Edition
Eng.	Engineering
EPC	Engineering, Procurement and Construction
ER / E.R.	English Reports
EWHC	England and Wales High Court
FBN	First Bank of Nigeria
FCT	Federal Capital Territory
HL	House of Lords
JLCLE	Journal of Law and Clinical Legal Education
JSC	Justice of the Supreme Court
KB / K.B.	King's Bench

LCL	Lagos Contract Law / Lagos Contracts Law
LFN	Laws of the Federation of Nigeria
LLP	Limited Liability Partnership
LPELR	Law Pavilion Electronic Law Reports
Ltd	Limited
Nig.	Nigeria / Nigerian
NDIC	Nigeria Deposit Insurance Corporation
NWLR	Nigerian Weekly Law Reports
OUP	Oxford University Press
para.	Paragraph
Plc	Public Limited Company
Pt	Part
QB	Queen's Bench
SC	Supreme Court
s.	Section
ss.	Sections
TLR	Times Law Reports
UBA	United Bank for Africa
UDC	Urban District Council
UK	United Kingdom
UNIDROIT	International Institute for the Unification of Private Law
UNTS	United Nations Treaty Series
WACA	West African Court of Appeal
WRNLR	Western Region of Nigeria Law Reports

ABSTRACT

This study critically examines the doctrine of frustration under Nigerian contract law, with particular focus on its development, application, challenges, and suitability for modern commercial realities. The doctrine operates as an exception to the principle of *pacta sunt servanda*, allowing parties to be discharged from contractual obligations where a supervening event, beyond their control and contemplation, renders performance impossible, illegal, or radically different from what was originally agreed. The study adopts doctrinal legal research methodology by analysing relevant case law, statutes, textbooks, journal articles, and comparative materials. It finds that Nigerian courts recognise and apply the doctrine through decisions such as *Araka v Monier Construction Co Ltd, Mazin Engineering Ltd v Tower Aluminium (Nig) Ltd,* and *Nwaolisah v Nwabufoh*, but they do so narrowly and cautiously to preserve contractual certainty. The research further reveals that Nigeria lacks a comprehensive federal statutory framework regulating frustrated contracts, leaving only a few jurisdictions, such as Lagos and Enugu States, with detailed statutory provisions on post-frustration remedies. This fragmented legal framework creates uncertainty, especially in relation to restitution, recovery of advance payments, allocation of expenses, and treatment of benefits conferred before discharge. The study also identifies challenges posed by economic instability, foreign exchange restrictions, pandemics, supply-chain disruptions, and other modern commercial risks, which Nigerian courts often treat as mere hardship rather than frustration. It concludes that while the doctrine remains important in protecting parties from genuinely unforeseen events, its current application in Nigeria is restrictive and inadequately regulated. The study therefore recommends the enactment of a federal Law Reform (Frustrated Contracts) Act, clearer judicial guidelines, improved force majeure drafting, and a more commercially responsive approach to post-frustration remedies.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Every valid contract invariably creates obligations enforceable and recognised by the law of contract which regulates it.[1] These obligations arise from the terms of the contract which the parties agree to at its formation. Contract law rests on the foundational principle that parties are bound by their agreements: *pacta sunt servanda*.[2] However, there are situations when it may become impracticable or impossible for either of the parties to perform their part of the contract, or when such performance may become radically different from what was contemplated by the parties at the formation of the contract.[3] In such situations, the doctrine of frustration can be invoked by a party to the contract to discharge both parties of their duties. This study examines how Nigerian courts apply that doctrine and whether their approach is suitably equipped for modern commercial practice. It also explores whether there is a need to adopt and approach that is amenable to Nigeria's political and socio-economic risks

The earliest origins of the doctrine are traceable in 17th century English case of *Paradins v. Jane*[4] which led to the pronouncement: "where the law creates a duty or charge and the party is disabled to perform it without any default in him, and hath no remedy over, there the law will excuse him."[5] However, this principle was not applied to discharge contractual obligations until the landmark case of *Taylor v. Caldwell.* [6] where the doctrine was initially applied by Blackburn J in situations of a fundamental loss of the essence of the contract thereby making

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[1] G H Treitel, *The Law of Contract* (14 edn, Sweet & Maxwell 2010) 1.
[2] Agreements must be kept.
[3] Treitel (n 1); H G Beale (ed), *Chitty on Contracts: Volume I – General Principles* (32nd edn, Sweet & Maxwell) Ch 23, 1.
[4] [1647] EWHC KB J5.
[5] ibid cited in Ben Symons, *Force Majeure and Frustration in Commercial Contracts* (1st edn, Bloomsbury Professional 2022) 174.
[6] [1863] EWHC QB J1.

performance of the contract impracticable.[7] The principle was further extended to other cases where performance was rendered impossible through the occurrence of a supervening event in other cases such as *Krell v. Henry*[8] where the contract was deemed frustrated because the purpose of the contract had been lost. It also applies in the event of a change in law which makes performance illegal, and where performance of the contract would make it radically different from the original intention of the parties.[9]

In Nigeria, the doctrine has been recognised and applied by various courts up to the Supreme Court. One of the earliest decisions recognising its application can be found in the case of *Araka v. Monier Construction Co (Nig) Ltd*.[10] In the instant case, the Supreme Court held that a leasehold agreement had been frustrated by the Biafran Civil war and discharged the tenant from liability to pay the balance of the period of time he was unable to occupy the premises due to the war.[11] The doctrine has also been inserted in some legislations such as the Contracts Law of Western Nigeria 1959, Cap 25,[12] Law Reform (Contracts) Act 1961,[13] among others.

Despite the robust judicial and statutory framework guiding the application of the doctrine of frustration in the UK where the doctrine was developed and adopted from, the Nigerian jurisprudence is still heavily lacking in this regard. Although the Supreme Court narrowed the scope of its application in *Nwaolisah v. Nwabufoh*,[14] it is the view of this study that the wide scope of contracts which could be affected by supervening events still makes the application of the doctrine uncertain. In addition to the scope of contracts, the aftermath of COVID-19 pushed a lot of agreements to the limit thereby challenging the existing judicial position on the

[7] M P Furmston, 'Discharge Under the Doctrine of Frustration' in *Cheshire, Fifoot & Furmston's Law of Contract* (32nd edn, Oxford University Press) 2.
[8] [1903] 2 KB 740.
[9] Furmston (n 7) 2; *Davis Contractors* [1956] AC 696.
[10] [1978] 2 SC 99.
[11] ibid.
[12] Contracts Law of Western Nigeria 1959, Cap 25.
[13] Law Reform (Contracts) Act 1961.
[14] [2011] LPELR-2115 (SC).

doctrine. Furthermore, Nigeria's unstable and developing political and socio-economic climate could result in drastic policy changes which could drastically affect the performance of certain contracts. These aforementioned issues underline the importance of this study to the Nigerian jurisprudence on the doctrine of frustration.

1.2 Statement of the Problem

The doctrine of frustration, being a predominantly case law-based doctrine, is prone to multiplicity and uncertainty in its interpretation. Nigerian courts have maintained that the performance of the contract must have been rendered impossible, illegal or radically different from what was intended, as opposed to mere hardship or difficulty. This study asserts that distinguishing a radical change from a mere change is often difficult, hence the uncertainty in interpretation in some situations. Various courts have used different rationales; "impracticability" or "commercial sterility" in some cases, and "impossibility" in others.[15] These varying judicial interpretations coupled with the fact that there is no statutory provision which recognises a wide range of potential situations which could lead to frustration leaves room for uncertainty in the application of the doctrine.

Another shortcoming of the doctrine in the Nigerian jurisprudence is its narrow and rigid scope. Although it could be argued that rigidity will make its application more predictable, it also runs a greater risk of causing injustice on parties due to situations which a court might qualify as 'mere hardship'. For instance, in *Lewis v. UBA Plc*[16] where the claimant was dismissed by the defendant, it was held that the hardship and change of fortune as a result of losing his job was not sufficient to frustrate the contract.[17] This strict approach in application in an unstable

[15] *Nigerian Agricultural & Co-operative Bank Ltd v Salem Farms Ltd* (Suit No SC/307/2006, Supreme Court, Unreported); *Maxifund Investment & Securities Plc v FBN Plc* (2023) LPELR-61476 (CA).
[16] (2016) LPELR-40661 (SC).
[17] ibid.

economic environment like Nigeria where currency devaluation, inflation, or a market crash have become a norm could leave many a claimant in precarious situations.

Furthermore, the lack of adequate statutory mechanism for applying and enforcing the doctrine, an approach contrary to other common law jurisdictions, especially the United Kingdom (UK)where it was developed, often leaves parties at the mercy of the courts. Except for a couple of states which will be discussed later in this study, there is a dearth of statutory contract law provisions relating to frustration in Nigeria. This study asserts that more regulations is needed to give contractual parties increased certainty and protection in the event of the occurrence of a supervening event which may frustrate a contract.

1.3 Research Questions

In the course of this research, the following questions have been identified:

1. How has the doctrine of frustration developed under Nigerian contract law and how effectively does it address modern commercial risks and what tests do Nigerian courts apply to establish frustration?
2. To what extent does the inadequacy of comprehensive statutory regulation in Nigeria contribute to the uncertainty surrounding the application of the doctrine of frustration?
3. What are the existing post-frustration remedies and equitable adjustments, and are they adequately suited to Nigeria's political and socio-economic realities?

1.4 Aim and Objectives of the Study

The aim of this study is to critically examine the application of the doctrine of frustration in Nigerian contract law, and the issues and challenges surrounding its application. In order to achieve this aim, this study will be guided by the following objectives:

1. To identify and explain the legal tests used by Nigerian courts to establish frustration.

2. To analyse case laws on the doctrine of frustration and identify the attitude of courts towards its application.
3. To assess the doctrine's operation in banking, construction and oil & gas through selected case studies and determine its suitability for the rigours of Nigeria's socio-economic climate.
4. To recommend legislative and judicial reforms to improve predictability and fairness.

1.5 Scope and Limitation of the Study

This focus of this research is primarily on the judicial and statutory authorities on the application of the doctrine of frustration in Nigeria. The doctrine was developed in form of common law and has remained majorly regulated by case laws and judicial precedents in Nigeria. Various decisions from the Supreme Court and the Court of Appeal, to other courts of record will be examined. Statutes which contain provisions of elements of frustrations will be analysed as well. Other sources which form part of the Nigerian jurisprudence on the doctrine like textbooks, journal articles, and academic opinions will be examined to provide context and critique on how the doctrine operates domestically.

Although the focus of this study is on the application of the doctrine in Nigeria, it will not be limited to Nigerian laws and decisions. The laws and decisions of common law countries may be made reference to occasionally, and only where there are improvements which could be drawn from them. Common law is relevant because it is the foundation of the law of contract in Nigeria.

1.6 Significance of Study

This study will be important to lawyers, litigants, the judiciary, policymakers, contracting parties, and the jurisprudence on frustration in Nigeria. For lawyers and judges, it stresses on the importance of consistency and predictability of judgements in cases on frustration, and its importance in improving trust in the judiciary, and the ease of doing business. If the doctrine is applied with ambiguity, it could lead to unpredictability, making it hard for lawyers to advise clients and for judges to ensure that justice is done. This is important, given the state of the world we live in, and considering the dynamic nature of commercial and contract law.

For litigants and contracting parties, this study will help them to understand frustration as its importance cannot be overstated. It also emphasises the importance of preventive measures like force majeure clauses, and in the event of unforeseen circumstances, it highlights the safety net that the doctrine of frustration can provide.

This research will, therefore, advance knowledge and contribute to a more just, and risk-aware environment for regulating contracts in Nigeria.

1.7 Research Methodology

The methodology of this study is doctrinal legal research. It involves an analysis of primary sources of law, which in the context of this research will mostly be judicial decisions from Nigerian courts that illustrate the application of the frustration doctrine. Statutory authorities will also be made reference to where they apply. Secondary sources including academic journal articles, textbooks, etc., will be used to inform and critique the primary source analysis. These sources provide scholarly viewpoints, theoretical frameworks, and critiques which will help in evaluating the doctrine's effectiveness and in suggesting improvements.

1.8 Literature Review

The doctrine of frustration is a principle which is used to excuse a party from performance of its part in a contract in the event of a situation where further performance has become an impossibility, illegality or radically distinct from the original purpose.[18] It is an exception to

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[18] Templars LLP, 'Termination of Contracts under Nigerian Law: Dos and Don'ts' (PDF, 2024) <https://templars-law.com/app/uploads/2024/08/Termination-of-Contracts-under-Nigerian-Law.pdf> accessed 8 October 2025.

the absoluteness and the sanctity of contracts as enunciated in *Paradins v. Jane* wherein the English court pronounced that a contract must be fulfilled no matter what happens.[19] The doctrine was established by Blackburn J., in *Taylor v. Caldwell*.[20] In the aforementioned case, a music hall was destroyed by a fire before the event and the court implied a provision that the parties would be discharged if the essence of the agreement was lost. This decision established the 'implied term' theory which propounded that parties implied that they would be discharged from the contract on the occurrence of certain events. The theory was rightly criticised by scholars and jurists because the court had manufactured a situation which the parties cannot reasonably be said to have anticipated and provided for. Subsequently, a new theory, known as the 'construction theory' was put forward by Lord Radcliffe in *Davis Contr. Ltd v. Fareham UDC*.[21] This theory asserts that frustration takes place whenever the law recognises that a subsequent change of circumstances has transformed the obligation into something radically different from what was originally undertaken. Rather than fictitiously imply that the parties had agreed to be discharged from the contract, the construction theory asserts that on a true construction of the contract after the supervening event takes place, the nature of the original agreement had radically been changed. This theory influenced the modern application of the doctrine. It has also been adopted by Nigerian courts in several cases, including *Araka v. Monier Construction* where it was held that the lease in question had lost its underlying purpose because of the Biafran War.[22] The war forced all expatriates to abandon the house and as such, the "foundation had disappeared".[23]

Although both theories propose different methods of applying the doctrine of frustration, both recognise that frustration occurs when certain supervening events may so radically alter the

[19] [1647] EWHC KB J5.
[20] [1863] EWHC QB J1.
[21] [1956] AC 696.
[22] [1978] 2 SC 99.
[23] ibid.

nature of a contract that the law declares it discharged. These events may be categorised into: impossibility of performance, frustration of the contract's purpose, and supervening illegality.[24] Impossibility could be literal or practical; either in form of the destruction of the subject matter as in *Taylor v. Caldwell*[25] or death or incapacitation in a contract for personal services respectively. Frustration of purpose applies where although performance is possible, it would become pointless because the underlying event or condition that formed the basis of the contract has failed to occur. For instance, in *Krell v. Henry* a room was rented for a coronation but the coronation was cancelled and the contract lost its purpose because the entire contract was built on the coronation event.[26] Lastly, supervening illegality is used where there is a change in a law or policy, or an outbreak of war which renders the contract or its performance illegal or legally untenable.

These categories have been discussed extensively by various seasoned contract law authors, especially English authors. Chitty argues that the 'coronation cases' illustrate that because the doctrine can operate in the absence of destruction of the subject matter does not change how narrow the doctrine still operates.[27] He further argues that *Krell's case* is an exceptional case where a contract may be discharged because its commercial purpose was lost, but also how closely confined such relief is.

In Nigeria, the courts have exercised great caution in developing and applying the doctrine. In earlier cases, the doctrine was applied almost verbatim. For instance, in *Araka v. Monier*, the Supreme Court had to decide whether a leasehold agreement was subject to frustration.[28] In the instant case, a matter was initiated by the claimant for the recovery of rent for a duration of two years. The defendant argued that the house was abandoned by its employees in that timeline

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[24] Treitel (n 1); Beale (n 3**);** and Furmston (n 7).
[25] [1863] EWHC QB J1.
[26] [1903] 2 KB 740.
[27] *Chitty on Contracts* (n 3).
[28] [1978] 2 SC 99.

owing to the civil war, which made it impossible for them to remain in the country. It was ultimately held that the lease had been frustrated by the civil war.[29] This case was notable for two reasons. Firstly, it was the first Nigerian case of frustration on record, and it was also the first time that frustration had been extended to leasehold agreements. The first point builds on Chitty's argument that the doctrine could be applied in cases other than the destruction of the subject matter, while maintaining its narrow scope, the occurrence of war in this case. It also solidified the position that frustration could be applied to any type of contract, provided that the supervening event falls under the established categories capable of frustrating a contract. The doctrine was also applied in *Mazin Eng. Ltd v. Tower Alum. Ltd* where the SC properly defined the doctrine as a "premature determination of an agreement… owing to the occurrence of an intervening event or change of circumstances so fundamental as to strike at the root of the agreement and beyond what was contemplated by the parties".[30]

Despite the argument that frustration could be extended to every type of contract, Nigerian courts have shown reluctance in applying the doctrine in some types of contracts. Commercial contracts, especially the oil and gas sector, often demand a more critical approach from the courts. In *Addax Petroleum Dev. (Nig.) Ltd v. Loycy Investment Co. Ltd*,[31] the appellant terminated and re-awarded a contract between them and the respondent because the members of the community where the project was to be executed had protested against its quality. The respondent sued for a breach of contract, and the appellant claimed that the contract had been frustrated because of the protest. The Court of Appeal dismissed the appeal and asked the appellant to pay the respondent on a *quantum meruit* basis.[32] The reasoning of the court was that the contract had merely become commercially difficult due to the protest, and not radically

[29] ibid.
[30] [1993] 5 NWLR (Pt 295) 526 (SC).
[31] (2017) LPELR-42522 (CA).
[32] ibid.

different. The road was neither destroyed, nor did war break out. Secondly, the parties provided force majeure clauses which anticipated such a situation, therefore discharging the contract on the claimed basis would have amounted to aiding an indolent party. This scenario demonstrates an even narrower scope, which would have ordinarily availed a party in any other type of contract, that parties in commercial contracts are subject to. A probably more controversial situation which courts are extremely reluctant to order frustration in is in situations of economic hardship. Nigerian courts have stressed that a contract is not frustrated merely because it becomes more expensive or onerous for one party to perform.[33] While this is in line with the position of the English courts in the Davis Contractors case, for instance, this study argues that Nigeria's peculiar economic situation demands a need to revisit this stance, especially in meritorious cases.

The effect of frustration on a contract is to automatically discharge the parties from the contract. This discharge takes place by operation of law at the moment the frustrating event takes place. However, it does not totally absolve the parties of their contractual obligations prior to the supervening event, nor does it void the contract *ab initio*. This position operates with differences in different jurisdictions. At common law, all payments made prior to the frustration were not refunded. This position was ameliorated in *Fibrosa's Case*[34] to the effect that where the paying party received nothing, then they were entitled to a refund. This has been adopted by Nigerian courts in similar cases. However, due to lack of statutory authorities, there is no prescribed mechanism for apportioning the losses. The focus is on preventing unjust enrichment through the application of equitable remedies such as constructive trust, quantum meruit, characterising payments as refundable deposits. A uniform statutory provision on the

[33] [2011] LPELR-2115 (SC).
[34] [1943] AC 32.

effects and remedies of frustrated contracts, similar to UK's Law Reform (Frustrated Contracts) Act 1943 will solve this issue.

A review of the existing literature on the doctrine of frustration in Nigeria shows the absence of comprehensive materials on the application of the doctrine in Nigeria. Most of the literature are scattered across various publications by practitioners who approach the doctrine from a practical basis. While this is not an issue, there is a need for academic insight on the doctrine as it would greatly enrich the jurisprudence on frustration similarly to English treatises such as Treitel, Chitty, Ewan McKendrick, and others. Further analysis of the doctrine in practice reveals that Nigerian courts adopt a very narrow approach to applying the doctrine, and even more so in certain types of contracts. While this is a welcome approach, this study calls for an approach which is not completely oblivious of the existing political and socio-economic conditions in the country. This can be done while balancing the need the preserve the sanctity of contracts and an imperative on the courts to do justice.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Doctrine of Frustration

Frustration is a doctrine at common law which recognises that the parties to a contract may be discharged of their obligations under the contract through the occurrence of a fundamental independent event or action, (i.e. an event or action which cannot be blamed on any of the parties to the contract) which renders the performance of the contract impossible, illegal or makes the contract a completely different one from what the parties contemplated at the formation of the contract.[35]

The doctrine essentially relives the parties to the contract of all their obligations, even if it is one party whose performance has become impossible or illegal. Thus, it is an exception to the foundational principle of contracts—*pacta sunt servanda*.[36]

2.1.1.1 Concept and Scope of the Doctrine

The term 'frustration' has a similar meaning in both ordinary and legal parlance. In the former, frustration is explained in the Oxford Advanced Learner's Dictionary as "the fact that something is preventing something/somebody from succeeding".[37] The term is derived from the Latin word '*frustrare*' meaning 'disappoint' which itself is derived from the Latin verb '*frustra*' meaning 'in vain'. Although the Latin terms and the Oxford dictionary make use of different terms, they share a common theme, which is futility of purpose.

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[35] Chitty (n 3) 1.
[36] Agreements must be kept.
[37] Oxford Learners Dictionaries, 'frustration' (Oxford University Press) <https://www.oxfordlearnersdictionaries.com/definition/english/frustration?q=Frustration> accessed 3 March 2026.

In the legal sense, there is no generally acceptable definition of the concept of frustration; however, all the definitions which have been given over the years by respected legal scholars also share the aforementioned common theme—futility of purpose. Chitty describes it as: "when something occurs after the formation of the contract which renders it physically or commercially impossible to fulfil the contract or transforms the obligation to perform into a radically different obligation from that undertaken at the moment of entry into the contract".[38] According to Treitel, frustration takes place when "events occur making its performance impossible certain analogous situations".[39] Furthermore, in *Taylor v. Caldwell*,[40] which is one of the founding common law cases on the doctrine, Blackburn J defines the concept as follows:

"if the performance of the promise of the … bailee to return the things lent or bailed becomes impossible because it has perished, this impossibility (if not arising from the fault of the … bailee from some risk which he has taken upon himself) excuses the … bailee from the performance of his promise to redeliver the chattel."

The aforementioned definitions all recognise the same common theme, that the purpose has been defeated. However, there are other essential elements which must be present and proved for a claim of frustration to discharge a party to a contract of their obligations, they include: that there was a supervening event, the event occurred independently of the parties, it could not have been foreseen or reasonably foreseeable by contract, and it renders performance impossible or radically different.[41]

The doctrine could be generally applicable to all contracts in the Nigerian legal system. However, some contracts more than others are affected more often by the doctrine in its contemporary form. They include building and construction contracts, aviation and

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[38] Chitty (n 3) 1.
[39] Treitel (n 1) 1034.
[40] EWHC QB J1.
[41] Ewan McKendrick, *Contract Law: Text, Cases and Materials* (8th edn, OUP 2020) 34.

international carriage contracts, turnkey projects (EPC), among others.[42] There are some other contracts which are hardly ever discharged by frustration, such as, financial and loan agreements, contracts with force majeure clauses, and contracts excluded under a statute.

2.1.1.2 Historical Development of the Doctrine

The landmark pronouncement by the court in *Taylor's case* has been recognised as the birthing moment for the doctrine of frustration.[43] However, there are other preceding events which may have also contributed to its foundation.

Prior to the aforementioned decision, the obligations of the parties to a contract were sacrosanct and absolute in the sense that they must be carried out regardless of the circumstances.[44] Simply put, a party's failure to perform their part in a contract could not be excused because the circumstances had substantially changed after the formation of the contract. This is known as the doctrine of absolute contracts. The doctrine was established in *Paradins v. Jane* where a tenant sought to be discharged of his rent which had accrued for two years, citing the fact that he was no longer in possession of said premises because he was removed by 'an enemy of the king'.[45] Although the tenant was not discharged of his obligations in this case, certain elements of the case, considered as exceptions to the absoluteness of contracts, gave rise to the development of the doctrine of frustration. Firstly, the case recognised that a party may be excused from a duty imposed on him by law, if it is established that they cannot perform such duty due to circumstances independent of their actions.[46] This pronouncement acknowledged that in fact, supervening events may discharge a party of their obligations imposed by a law. Secondly, it was later argued that the doctrine of absolute contracts did not apply to

[42] AB Legal Practitioners, 'Force Majeure Clauses and Their Legal Effect Under Nigerian Law' (29 January 2026) https://abe-lp.com/2026/01/29/force-majeure-clauses-and-their-legal-effect-under-nigerian-law/ accessed 3 March 2026.
[43] [1863] EWHC QB J1.
[44] Edwin O Ezike, *Nigerian Contract Law* (Chenglo Ltd 2018) 347.
[45] [1647] EWHC KB J5.
[46] Symons (n 5) 174, 175.

personal/employment contracts where a party died or was indefinitely incapacitated.[47] The first of these elements/exceptions, and certain other factors, gave rise to the establishment of the general rule in *Taylor v. Caldwell* upon which contracts, which have been frustrated, may now be discharged.[48]

2.1.1.3 Supervening Events

Although the determination of a contract which is has been brought to an end by frustration is not straight forward, especially given that parties now insert numerous clauses to provide for the occurrence of certain events which may have ordinarily frustrated the performance of the contract, there are three main categories of supervening events which are recognised by common law and have been historically relied on in the application of the doctrine. They are events that may make a contract impossible to perform; or frustrate its purpose; or make its performance illegal.

A contract will become impossible to perform where the parties to the contract identify a principal thing in the terms, a person or object, as the subject matter to which the performance of the contract is bound, and without which the purpose of the contract cannot be achieved.[49] The application of this category of supervening events is strict, and there are several cases where apparent impossibility does not discharge a contract. A common instance is in the case of a seller who agrees to deliver goods to their buyer via shipping but is unable to do so due to unavailability of shipping, they will be held liable even if the unavailability of the ship cannot be attributed to them.[50] Contrastingly, where a shipowner contracts to transport persons or goods, and an explosion destroys their ship, due to no fault of theirs, the contract may be

[47] Treitel (n 1) 1034.
[48] ibid; [1863] EWHC QB J1.
[49] Symons (n 5) 185, 186.
[50] [1959] 2 LR 629 cited in Treitel (n 5) 1039.

discharged.[51] The major difference between both events is that in the former, the seller guaranteed that the shipping space would be available, while in the latter instance, the parties made the contract under the assumption that the ship would be available.[52]

The second category of events which could result in the discharge of a contract by frustration are the supervening events which frustrate the common purpose of the contract when they occur. These events do not render the contract impossible, rather they make one party's performance (usually the supplier) meaningless to the other party (the buyer). This type of event was established and in *Krell* v. *Henry*[53] which arose from the cancellation of King Edward VII's coronation, along with a host of other similar cases. In the instant case, a room was rented to enable the renting party to view the coronation from the room. However, the coronation was cancelled due to ill health, and the renting party sued to have the contract discharged due to frustration.[54] It was contended and agreed upon by the court that the very purpose of renting the room had been defeated by the cancellation of the coronation, thus frustrating the contract.[55] Supervening events which fall under this category are decided on a subjective basis. The doctrine of frustration does not avail a party merely because the performance of the contract had become impracticable, or that the circumstances which existed at the formation of the contract had drastically changed. As long as the subject matter has not become impossible, the contract will most likely not be discharged. This is evidenced by the refusal of various courts to discharge other similar cases which arose from the cancellation of the coronation. In one of such cases, a party hired a boat to watch the review of the naval fleet, which was part of the coronation activities, and to cruise around the fleet.[56] The argument that the cancellation of the coronation had defeated the purpose of the contract and thus frustrated

[51] [1942] AC 154 cited in Treitel (n 5) 1039.
[52] Treitel (n 5) 1039.
[53] [1903] 2 K.B. 740.
[54] ibid.
[55] ibid.
[56] [1903] 2 K.B. 684.

it was rejected by the court. Although the court admitted that the cancellation affected one of the purposes of hiring the boat, it maintained that the hiring of the boat was not essentially tied to the watching the review of the naval fleet, and the fleet was not affected by the cancellation, so it could still be toured.[57] The distinguishing element is that the former case was essentially tied to a purpose which had been defeated, whereas the latter was not. Nevertheless, frustration of purpose is seldom used as a supervening event for discharging a contract by frustration.

The last set of supervening events includes the events which make the performance of a contract, which was legal at its formation, illegal. For the doctrine to apply here, the contract must have been legal at the time of its formation.[58] If the contract was initially illegal, then it is an entirely different remit because an illegal contract is unenforceable and not subject to frustration, even if the parties believed the contract to be legal at its formation. Furthermore, for the entire contract to be discharged, the supervening illegality must be one which affects the contract in its entirety as, rather than a part or an obligation under the contract, unless the entire contract is tied to that obligation.[59] The latter would only result in prohibition of partial performance.

The most common instance of frustration under this category is where performance is rendered illegal is where one of the parties to the contract is under the jurisdiction of a country that has been declared an enemy during war, and it becomes illegal to engage in the supply of goods and services with the enemy country. An exemplary case is that of *Fibrosa Ackcyjna v. Fairbairn, Lawson Combe Barbour Ltd* where a contract was formed to supply machinery to a port which was subsequently occupied by an enemy during World War II.[60] While it may have still been possible to supply the machinery, the contract was nevertheless discharged due to

[57] ibid.
[58] Symons (n 5) 183.
[59] [1944] A.C. 278; Treitel (n 1) 357.
[60] [1943] AC 40.

frustration because supplying the machinery would have resulted in aiding an enemy territory.[61] Apart from war related illegality, there are other instances of supervening illegality which could result in frustration. For instance, a law could be passed to prohibit the importation and/or the exportation of certain goods. In *Obayuwana v. The Governor of Bendel State,* [62] The appellant was appointed as a member of the Oredo Customary Court in 1977. His employment contract was intended to remain in effect until March 1981. However, the Governor of Bendel State issued an executive order (the Customary Court Revocation Order) to terminate the appellant's appointment in January 1980. The argument before the court was whether a contract of employment could be terminated by a governor's executive order or if it was ended by a subsequent change in legislation. At the trial court, it was held that the employment contract had been discharged by frustration due to a subsequent legal change. On appeal to the Supreme Court, the judgement of the trial court was upheld.

Ultimately, the frustration of a contract due to supervening illegality depends on the terms of the contract, *i.e.* what was contemplated and provided for at its formation—whether they can be adequately interpreted to make performance illegal.[63]

2.1.2 Distinction between Frustration and Related Doctrines

2.1.2.1 Frustration and Force Majeure

[61] Treitel (n 1) 1061.
[62] Suit No SC 214/1973 (unreported).
[63] Symons (n 5) 185.

Force Majeure can be best described as an occurrence or which cannot be foreseen or prevented. This encompasses natural occurrences (for example, floods and hurricanes) and human activities (for example, riots, strikes and wars).[64] The term has been judicially recognised as a clause in a contract that permits one or both parties to withdraw from the contract or to be relieved of their duty to perform (either in whole or in part) should certain predetermined circumstances arise or unexpected events occur that neither party could reasonably have controlled or anticipated.[65]

A force majeure clause generally has a similar effect as frustration in a contract. The major difference is that the former gives the parties the opportunity to provide for mitigating alternatives in the event of an occurrence of the supervening event.[66] Where a force majeure clause exists in a contract, a party cannot raise a defence of frustration to discharge them completely from the contract, unless the supervening event was not expressly or impliedly covered by the clause, or the clause recognises the event as one which its occurrence would completely discharge parties of their obligations under the contract. Furthermore, when a force majeure event occurs, the parties must show that they have complied with the requirements under the force majeure clause in the contract before it they can invoke force majeure.[67]

2.1.2.2 Frustration and Mistake

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[64] Bryan A Garner (ed), *Black's Law Dictionary* (8th edn, Thomson/West 2004) 673-674 quoted in Ezike (n 9) 380.
[65] *GS Mills Nig. Plc v. Reliance TIL* (2017) LPELR-41234 (SC).
[66] Adeshina and Okonkwo, 'Frustration of Contract in Nigeria' (Jackson, Etti & Edu, 24 April 2020) https://oldsite.jee.africa/frustration-of-contract-in-nigeria/ accessed 6 March 2026.
[67] Sheldon W Halpern, 'Application of the Doctrine of Commercial Impracticability: Searching for the Wisdom of Solomon' [1987] (135) *University of Pennsylvania Law Review* 1123, cited in Kenneth I Ajibo, 'Covid-19, Force Majeure and Frustration in Commercial Transactions: A Re-assessment' [2023] (2) *Godfrey Okoye University Law Journal* 231.

The doctrine of mistake is another concept which has similar characteristics with frustration, yet so different in effect and application. Mistake refers to the reasonable belief as to the existence of a state of affairs, which does not exist, upon which a contract is formed, and which its non-existence has made performance of the contract impossible or extremely different from what was contemplated.[68] The similarity here is that the subject matter of the contract is either non-existent or exists fundamentally from what it was believed to be.[69] However, these doctrines are different in nature because the former deals with a mistaken presumption at the formation of the contract, while the latter is based upon an event which occurs after the contract has been formed.[70] This was exemplified in the contrasting cases of Krell and Griffith.[71] In *Krell's case*, the contract was frustrated because the room was rented for the purpose of viewing the coronation of King Edward VIII which was later cancelled, while in *Griffith's case*, the contract was voided because the coronation had already been cancelled before the contract was formed.[72]

The essential difference between the two is that mistake is void *ab initio* (that is, from the beginning of the contract), while frustration is not as any obligation which had arisen prior to the frustrating event is enforceable.

2.2 Sources of Contract Law in Nigeria

[68] Chitty (n 3) 1.
[69] Treitel (n 1) 1106.
[70] Chitty (n 3) 1.
[71] [1903] 2 KB 740 para 19-043 and (1903) 19 TLR 434 para 8-003 cited in Treitel (n 1) 1106.
[72] ibid.

2.2.1 Received English Law

Received English Law comprises the laws which were applicable in England and extended to Nigeria by virtue of colonisation Contract law in Nigeria. It is made of the common law, the doctrines of equity, and statutes of general application.[73] Common law refers to the decisions made the judges in the old common law courts.[74] These decisions laid down the general rule in most areas of law applicable in most common law jurisdictions today. For contract law specifically, there are certain decisions which developed the foundational principles of contract still in practice today or which contributed to the development of the present position of the law today. They include *Adams v. Lindsell* – the postal rule;[75] *Carlill v. Carbolic Smoke Ball Co.* – unilateral contracts;[76] and *Taylor v. Caldwell* – doctrine of frustration,[77] among others. These common law cases, along with several others, gave rise to the development of the principles of contracts applicable in Nigeria. Similarly, the doctrines of equity were also developed in the Courts of England. However, they were developed to remedy and mitigate the hardships and injustice caused by the rigid nature of common law, where every claim had to be fit into a writ in order for a relief to be granted to the claimant.[78] Equity was developed on the back of the *Earl of Oxford's* case.[79] The doctrine led to the development of principles such as promissory estoppel in *Central London Property Trust Ltd v. High Trees House Ltd*;[80] specific performance in *Walsh v. Lonsdale*;[81] and rescission in cases of undue influence in *Allcard v. Skinner*,[82] amongst others. Lastly, statutes of general application also make up

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[73] Bowen University, 'Contract Law Lecture Note' (unpublished lecture material, Bowen University) https://bowenstaff.bowen.edu.ng/lectureslides/1732175732.pdf accessed 10 April 2026; Learn Nigerian Law, 'English Law' https://www.learnnigerianlaw.com/learn/legal-system/englishlaw#recieved accessed 10 April 2026.
[74] ibid.
[75] (1818) 1 B & A 681.
[76] (1893) 1 QB 256.
[77] *Taylor v. Caldwell* [1863] EWHC QB J1.
[78] Bowen University (n 73) 1.
[79] (1615) 21 ER 485.
[80] (1947) KB 130
[81] (1882) 21 Ch D 9.
[82] (1887) 36 Ch D 145.

received English law. They are the laws which were in application in England on the 1st of January 1900 and they applied throughout Nigeria, except in the Western Region and other places which have similar laws or statutes in place on the same subject matter or issue.[83] Some of the statutes include the Sale of Goods Act,[84] Statute of Frauds,[85] Infant Relief Act,[86] and the Married Women's Property Act,[87] amongst others.

Although some of the aforementioned cases and statutes have been repealed or domesticated or overturned by the Supreme Court, it still shows that the Nigerian legal system, and contract law in particular, was developed by, and is still being heavily influenced by, English Law.

2.2.2 Legislations

There is no single contract law in Nigeria; however, various legislations, both statutes and laws, contain various provision which govern the formation of contract and regulate the contractual rights, obligations and relationships of the parties to a contract. The Constitution is the most significant of these laws and it provides for the right to fair hearing,[88] thereby ensuring that parties to a contract have the right to institute an action in court to enforce their rights and recover damages, where applicable.

Other federal laws which govern contracts constitute another important source of contract law in Nigeria. Although there is no single federal contract code applicable throughout the federation, several statutes regulate particular aspects of contractual relationships. They include

[83] *Adeponle v. Saidi* (1956) WACA 100.
[84] Sale of Goods Act 1893.
[85] Statute of Frauds 1677.
[86] Infant Relief Act 1874.
[87] Married Women's Property Act 1882.
[88] Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended, s 36.

the Companies and Allied Matters Act,[89] the Bills of Exchange Act,[90] the Insurance Act,[91] and the Evidence Act.[92]

On the state front, the several states have enacted a comprehensive law of contract such as the Contract Law of the Western Region, the Law Contracts Reform Act – applicable to the FCT, Lagos State Contracts Law[93] and the Enugu State Contract Law, amongst several others.[94] These statutes mostly adopt the contract law principles as developed by English Law, with a few modifications.

2.2.3 *Judicial Precedents*

Judicial precedent, otherwise known as case law, is another major source of contract law in Nigeria. Precedents are based on the doctrine of stare decisis. This means that decisions of superior courts are binding on lower courts and this contributes significantly to the development of contractual principles.

The decisions of Nigerian courts, especially the Supreme Court, have played a key role in cementing common law principles or clarifying and even establishing new principles governing contract law. General contract law decisions in cases like *Akenzua II, Oba of Benin v. Benin Divisional Council* – only a party who has furnished consideration can enforce a contract in court;[95] *Bilante International Ltd v. Nigeria Deposit Insurance Corporation (NDIC)* – a counter-offer destroys the original offer;[96] and frustration related landmark decisions such as

89 Companies and Allied Matters Act (CAMA) 2020.
90 Bills of Exchange Act, Cap B8, Laws of the Federation of Nigeria (LFN) 2004.
91 Nigeria Insurance Industry Reform Act 2025.
92 Evidence Act 2011.
93 Lagos State Law Reform (Contracts) Law 2015.
94 Enugu State Contract Law 2004.
95 [1959] WRNLR 1.
96 [2011] 16 NWLR (Pt 1270) 407 SC.

Mazin Engineering Ltd v Tower Aluminium (Nig) Ltd,[97] *Araka v Monier Construction Co Ltd*,[98] and *Nwaolisah v Nwabufoh*[99] are important sources of contract law in Nigeria.

2.3 Theoretical Foundations of the Doctrine of Frustration in Contract Law

2.3.1 Implied Term Theory

The implied term theory was initially developed by Blackburn J in *Taylor's case,*[100] where his decision marked the first instance of a departure from the doctrine of absolute contracts by discharging parties from their obligations under the contract because the hall where the performance was to be had was destroyed by fire.[101] He opined that a contract cannot be absolute where parties intended for its fulfilment to be tied to the continued existence of a particular which they agreed was the very foundation of the contract.[102] He further said that in such cases, there is an implied condition subsequent upon which the destruction of such shall make performance impossible, provided that the destruction was due to no fault of the either party. This birthed the implied term theory. The theory was further propagated by the court in *Tamplin S.S Co Ltd v. Anglo Mexican Petroleum Products Co. Ltd* where it stated that:[103]

> "a court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And if they must have done so, then a term to that effect will be implied; though it be not expressed in the contract".

[97] (1993) 5 NWLR (Pt 295) 526.
[98] (1978) 2 SC 99.
[99] (2011) LPELR-2115 SC.
[100] [1863] EWHC QB J1.
[101] [1863] EWHC QB J1.
[102] ibid.
[103] (1916) 2 AC at 403-404.

This decision reiterates and builds upon that of Blackburn J in *Taylor's case*. The theory has been heavily criticised by several legal scholars and jurists. Treitel contends that at the time of the formation of the contract, which is the time the purported implication takes according to the theory, the parties would have most likely not thought about and adopted a common solution for the effects of a supervening event, and even if they did, they would most likely not agree that the contract should be completely discharged.[104] Lord Wright also disagreed with the theory and said that assuming the parties had thought of the event at the formation of the contract, they would have inserted mitigating conditions, rather than a complete discharge.[105] The unsatisfactory nature of this theory led to the development of other theories.

2.3.2 Justice/Fairness Theory

This theory was developed by Lord Wright as a departure or an alternative to the implied term theory. He maintained that the doctrine was not dependent upon the possibility of an implied term, rather "a substantive and particular rule which the common law has evolved".[106] He went further to state in another case that "The court is exercising powers, when it decides that a contract is frustrated, in order to achieve a result which is just and reasonable".[107] This theory does not attempt to show why the court, in certain cases, deviate from the absoluteness of contracts, rather they just do so as a just solution.

2.3.3 *Foundation Theory*

This theory was propounded by Lord Haldane in the *Tamplin case*,[108] where it was held that when parties' contractual performance is dependent upon the continued availability of a particular thing, and that thing becomes unavailable through circumstances beyond their

104 Treitel (n 1) 1101.
105 [1944] AC 265 at 274.
106 ibid.
107 [1942] AC 154 at 186.
108 (1916) 2 AC.

control, the contract is frustrated. The theory operates where performance is contingent upon items or circumstances which have been specified. Maritime contracts are the perfect example for this principle because the navigability of essential waterways, such as the Suez Canal, constitutes a basis for charter performance. However, "foundation" becomes problematic when parties deliberately assume risk regarding the continued existence of specified things, as such situations require careful contractual interpretation to determine whether a condition truly represents the foundational basis of the agreement.

CHAPTER THREE

LEGAL FRAMEWORK FOR THE DOCTRINE OF FRUSTRATION IN NIGERIA

3.1 Statutory Basis for the Doctrine

Unlike the Law Reform (Frustrated Contracts) Act,[109] which was purportedly enacted in 1943 to mitigate the difficulties occasioned by the common law application of the doctrine of frustration, there is no similar uniform statute on frustration which applies throughout the country.[110] However, there are several laws scattered around the country with statutory provisions on frustration. The Contract Law of 1958 which applied to defunct Western and Midwestern Regions of Nigeria was the first local legislation with provision for frustration in Nigeria.[111] It was copied from the Reform Act, albeit with minor modifications.[112] This was shortly followed by the Law Reform (Contracts) Act enacted for Lagos which was the Federal Capital Territory (FCT) at the time;[113] and the Contract Law of 1986 for the Eastern Region.[114] However, there was no law for Northern Nigeria which was guided by the common law position of the doctrine.[115]

Following the demarcation of these regions into states, and the removal of Lagos as the FCT, many states, especially states which belonged to the former Eastern Region, and Lagos State have now enacted individual laws to regulate the application of frustration. Given that these laws are mostly re-enactment of the regional laws, this study will focus on the position of the law in Lagos and Enugu States respectively.

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[109] Law Reform (Frustrated Contracts) Act 1943.

[110] For instance, the decision in *Fibrosa's case*, although a response to the injustice created by *Chandler's case*, created another hardship in respect of parties who had taken some steps and incurred some expenses in furtherance of the contract prior to the occurrence of the frustrating event by requiring them to fully refund the buyer to their own detriment.

[111] Contracts Law 1958, s 6-11.

[112] Itse Sagay, *Nigerian Law of Contract* (Spectrum Books Ltd, Ibadan 2011) 609.

[113] Law Reform (Contracts) Act 1961.

[114] Contracts Law 1986.

[115] Sagay (n 112) 610.

3.1.1 Lagos Law Reform (Contracts) Law 2015

Frustration can be found in Part II of the Lagos Law Reform (Contracts) Law.[116] Sections 7 and 8 specifically focus on frustrated contracts.[117] Section 7 respects the rights and autonomy of contracting parties made under the terms of the contract which governs them.[118] The section limits the application of the law to instances which the parties have not provided for in the contract and requires the court to give effect to those provisions that govern frustration-related matters, where they exist.[119] Subsection 2 also provides for severance of a contract to the effect that where only a part of a contract has been frustrated and the contract can properly be separated, the other part will be treated as if it had not been frustrated.[120] This means that if a contract has both frustrated and completed parts, the completed part is treated as severable (so performance and payments on that part stand). Section 7 further excludes the application of the law from certain types of contracts, including most charter-parties, contracts for the carriage of goods by sea, contracts of insurance except as specifically provided, and contracts for the sale of specific goods that perish before the risk passes.[121]

Section 8 contains the remedial provisions of the law, including various situations and the resulting effect under the law.[122] Subsections 2 to 7 essentially provide that once a contract has become frustrated, sums paid before discharge are recoverable, sums payable cease to be payable, and the court may allow the recipient to retain or recover part of those sums to the extent of expenses actually incurred.[123] These provisions grant the court the discretion to determine whether a party has obtained a valuable benefit before discharge. However, this only

[116] Law Reform (Contracts) Law 2015, ss 7-8.
[117] ibid.
[118] ibid, s 7(1).
[119] ibid.
[120] ibid, s 7(2).
[121] ibid, s 7(3)(a-c).
[122] ibid, s 8.
[123] ibid, s 8(2) – (7).

applies to the value of that benefit. They also create a separate mechanism for recovery in such cases.

Lagos' Contract Law provisions on frustration mirror both the resolution adopted in the *Fibrosa* case and the mitigating provisions created in the aftermath of the case by the 1943 Reform Act.[124] They further purport to cure the gap created by the decision and grant the court the power to ensure that this solution is not abused by litigants looking to take advantage of the law's remedial nature. The importance of the LCL lies in the balance it strikes between certainty and fairness. It preserves the common-law threshold for frustration, but once frustration is established it moves to remedies such as expense recovery, and benefit adjustment. That is a better approach than the older common law rule in *Chandler v. Webster*,[125] under which accrued rights remained enforceable even after frustration.

Although the law provides general guidelines for parties in the event of frustration, it has a long way to go in respect of specific contracts, especially in this digital centric era and post-covid world. Contracts for the provision of digital services, for instance, are prone to several frustrating events which may not be adequately contemplated by a force majeure clause and this may expose unsuspecting parties to the exploitative nature of big tech companies or a judicial system which is inadequately equipped to make uniform decisions across the cases which could arise when supervening events occur. The state legislature could prevent this kind of situation by codification of the existing decisions, and enacting pre-emptive laws to protect parties from situations which could leave them exposed.

3.1.2 Contract Law, Laws of Enugu State 2004

[124] [1943] A.C. 32.
[125] [1904] 1 KB 493 (CA).

Chapter X of the Enugu Law of Contract sets out detailed rules on frustration under sections 367 to 383.[126] It implies an implied term that performance is excused if the "perishing of the thing" or radical change occurs under section 367.[127] This echoes the decision in *Taylor's case*.[128] Section 369 explicitly makes the "test of frustration" a matter of law, requiring the court to construe the contract in light of the facts as they existed at formation.[129] Thus Enugu law adopts the approach to the effect that if the supervening event lies outside the contract's contemplated scope, performance is excused.

The statute specifies common frustration events such as destruction of subject-matter,[130] illegality,[131] or outbreak of war after formation,[132] cancellation of an expected event,[133] and illness or death in personal-service contracts.[134] Each mirrors common law frustrating events which have been deliberated by several English courts (for instance, irrecoverable subject-matter in the case of *Taylor*, and future illegality in the case of *Fibrosa*). Section 372 even covers "public policy" illegality (permanent or temporary statutory prohibition) to the effect that any event rendering performance illegal voids the contract.[135]

Enugu State's Contract Law also addresses the issue of partial frustration just like in Lagos. Section 370 provides that temporary impossibility of a part performance does not frustrate the whole contract unless the change is so "radical" as to alter the entire obligation.[136] Similarly, section 381 codifies self-induced frustration.[137] This means that a party cannot rely on frustration caused by its own fault. Just like that of Lagos again, and the Reform Act, the law

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[126] Cap 26, Laws of Enugu State of Nigeria 2004, ss 367-383.
[127] ibid, s 367.
[128] [1863] EWHC QB J1.
[129] ibid, s 369.
[130] ibid, s 367.
[131] ibid, s 372.
[132] ibid, s 373.
[133] ibid, s 374.
[134] ibid, s 375.
[135] ibid, s 372.
[136] ibid, s 370.
[137] ibid, s 381.

provides for adjustment of rights on discharge under sections 382 to 383. Advance payments are recoverable as money received,[138] unless expenses were incurred performing the contract (the court may let the payee retain an amount up to those expenses. Similarly, where one party has conferred a valuable benefit on the other before discharge, subsection 3 allows recovery of a just sum up to its value.[139] These provisions depart from the harsh common law (where money paid was irrecoverable and debts survived) by apportioning losses justly upon frustration.

Enugu State's Contract Law takes a different approach from that of its counterpart in Lagos. It codifies the common frustrating events which arose under the common law practice, while respecting the right and autonomy of the parties to make terms which they will be bound by in the occurrence of a frustrating event. The significance of this approach is that it reduces uncertainty. Contractual parties do not have to infer the doctrine from scattered judicial dicta. The provisions of the law itself state when frustration arises and how it will be treated. They also define the exemptions, and how losses are adjusted after discharge. The law attempts to create a relatively more predictable legal mechanism for determining frustration.

Despite its broader provisions, Enugu's Contract Law still fall short of an ideal regulatory scope for a codified law on frustration in this present age, much like the Lagos counterpart. There is still a similar need to amend the law in line with the realities of contemporary contracts in order to ensure uniformity in discharging frustrated contracts.

3.2 Judicial Basis for the Doctrine

[138] ibid, s 382(2).
[139] ibid, s 382(3).

3.2.1 English Common Law Precedents

Although the doctrine of frustration has been adopted in several jurisdiction across the world, it is still deeply rooted in English Common Law where its origins can be traced to. The doctrine was developed and shaped across several English courts and decisions, from its birthing in *Taylor v. Caldwell* where the exception to the erstwhile impervious and absolute nature of contracts at common law,[140] emphasised in *Paradins v. Jane*,[141] was established albeit with a narrow scope. This scope, which initially applied to personal contracts, was later expanded to in *Krell v. Henry* to include frustration of common purpose.[142] However, discharge on the basis of frustration of common purpose is only granted in rare cases.

The modern application of the doctrine which still guides courts all over the world, including Nigerian courts, in this present day was developed from Lord Radcliffe's decision in *Davis Contractors Ltd v Fareham Urban District Council* where it was established that frustration occurs only when performance becomes radically different from what was agreed, not merely more onerous, slower, or expensive.[143] This decision is crucial because it reiterated that the absolute nature of contracts is a general rule governing parties to a contract, and that a contract will not be discharged by frustration simply because it has turned out to be a bad bargain for one of the parties.

The legal effects of a contract which has been frustrated, and its implication with respect to restitution and recovery of money, where it had been paid or partly paid, was laid down in *Chandler v. Webster.*[144] The case established the rule that a frustrated contract only terminates the obligations which had not accrued as at the time of the happening of the frustrating event.[145]

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[140] [1863] EWHC QB J1.
[141] [1647] EWHC KB J5.
[142] [1903] 2 KB 740.
[143] [1956] AC 696.
[144] [1904] 1 KB 493 (CA).
[145] Ezike (n 9) 276.

Simply put, the rule states that every part of the contract from its formation up until its frustration is valid and enforceable. Essentially, the parties to the contract can enforce their contractual rights and obligations, including any money which had become due and payable. However, any which was payable in advance but was yet to be due was not enforceable.[146] The case had a rigid outcome in some cases and as a result of this, the House of Lords had to remedy the shortcomings in *Fibrosa Spolka Ackcyjna v Fairbairn, Lawson Combe Barbour Ltd*.[147] The decision in this case opened the door for the recovery of money paid in advance because there was an absence of actual benefit in the opinion of the court.

3.2.2 Landmark Nigerian Cases

In Nigeria, the judicial interpretation and application of the doctrine closely mirrors that of English courts for obvious reasons—the English common law system. The judiciary has made several pronouncements on the issue of frustration. However, a few of these decisions have shaped the application of the doctrine in the Nigerian legal system today. One of the earliest cases is the unreported case of *African Continental Bank Ltd v. Francis Emo Omo* where the defendant obtained a loan from African Continental Bank Ltd, with the understanding that repayment would be made from the proceeds of a contract he was executing for the Mid Western State Ministry of Works.[148] When the Ministry terminated the road construction contract, the defendant pleaded frustration as a defence when the bank sued him for recovery of the loan.[149] The court dismissed the frustration plea. Evidence disclosed that the contract had been terminated because of the defendant's own failure to complete it within the stipulated time. The court reaffirmed the cardinal principle that frustration will not avail a party whose

[146] ibid.
[147] [1943] A.C. 32.
[148] B/37/1968 (17 September 1969).
[149] ibid.

own default caused or contributed to the supervening event.[150] In addition to this, it could be argued that even if the defendant had not contributed to the frustration, the plea would have still failed because the termination of the contract merely made it onerous for the defendant to repay the loan, rather than impossible, unless the terms of the contract were tied completely to the project and it is clear upon construction by the court.

Araka v Monier is another important judicial basis for the doctrine of frustration in Nigeria.[151] The case is the leading authority on frustration and leases. The facts of the case are that the appellant leased his house in Port Harcourt to the respondent company for occupation by the company's expatriate employees. It was mutually understood at all material times that the house was to serve as residence for the respondents' expatriate engineers. In June 1967, the Biafran authorities ordered all expatriate personnel to vacate the territory under their control. The expatriate occupant left and the house became unoccupied.[152] Consequently, the appellant claimed rent for the unexpired period of the tenancy. At the trial court, the case was dismissed with the court finding the contract had been frustrated by war-related events. Upon appeal, the Supreme Court upheld the trial court's ruling that the tenancy had been frustrated and dismissed the appeal.[153] It was the first time in Nigeria that the apex court had the opportunity to settle the debate on whether the doctrine may apply to lease agreements in certain circumstances. The court stated that where a lease is for a specific purpose which becomes impossible of achievement, there may be a strong case for holding the lease frustrated, particularly where the lease is of short duration.[154] According to Adekeye JSC, the parties could not have contemplated war-induced access restrictions when they contracted, and denying a tenant the

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[150] Edeh Samuel Chukwuemeka, 'Nigerian Cases on Frustration of Contract' (*Bscholarly*, 2 November 2019) <https://bscholarly.com/nigerian-cases-on-frustration-of-contract/> accessed 11 April 2026; *WNFC v. WC Builders Ltd* [1970] UILR 93.
[151] (1978) LPELR-531(SC).
[152] ibid.
[153] Ibid.
[154] ibid.

benefit of frustration when an external war event makes performance impossible would be "tantamount to injustice.[155] Since the fundamental purpose of the tenancy, which was occupation by the expatriate employees, had been destroyed by the Biafran war, the foundation of the contract had disappeared. The contract was accordingly discharged by frustration. The case established two principles in Nigeria: firstly, it established that frustration applies in Nigeria to leases as well as to ordinary commercial contracts; and secondly, it shows that a supervening event such as war can discharge a lease where it destroys the practical enjoyment of the subject matter as opposed to the subject matter itself.

The application of the doctrine in Nigerian courts was further strengthened in *Mazin v. Tower Aluminium (Nig) Ltd*.[156] In the instant case, the respondent (Tower Aluminium Ltd) was contracted by the appellant (Mazin) to supply aluminium roofing. The respondent initially sent a quotation containing locally sourced materials, but the appellant demanded a particular kind of material which had to be imported and was made aware of this fact during negotiation.[157] Due to the reluctance of the Central Bank of Nigeria (CBN) to grant the respondent the foreign exchange (forex) it needed to import the roofing sheets, the responded notified the appellant that it would be impossible to deliver the roofing sheets within the stipulated period unless the appellant was willing to make do with a locally sourced alternative. The appellant refused and demanded a refund of the money which they had paid in advance and the respondent obliged.[158] The appellant, feeling aggrieved, instituted an action against the respondent for breach of contract and misrepresentation of the delivery date. The trial court dismissed the claims and held that "that the contract was frustrated by the subsequent and intervening events".[159] On appeal to the Court of Appeal (CA), the case was once again dismissed and the judgement of

[155] ibid.
[156] (1993) 5 NWLR (Pt 295) 526.
[157] ibid at 527.
[158] ibid.
[159] ibid at 528.

the trial court was upheld.[160] Still dissatisfied, the appellant appealed to the Supreme Court which held per Wali JSC, who delivered the lead judgement, thus:

> "From the facts and circumstances prevalent in this case, it can be implied that the delivery of the iron sheets within the time estimated would be subject to the approval of Form "M" by the Central Bank of Nigeria to enable the respondent import the required components in time, which were then under the list of classified items for importation purpose. This was a condition precedent which the respondent must meet if it was not to break the Regulations… There was such a change of circumstances in this case and the contract looked at as whole, must be considered as frustrated by reasons of the events."[161]

Consequently, the appeal was also dismissed. *Mazin's* case is significant for several reasons. Firstly, it outlined the criteria which must be present for a plea of frustration to succeed in a comprehensive form. The event must fulfil the following requirements: "(i) it occurred before breach of the contract, (ii) it is without the fault of either party, and (iii) it is due to a fundamental change of the circumstances beyond the control and original contemplation of the parties."[162] It also exemplified the adoption of the implied test theory as an effective test for determining whether frustration has occurred when the terms of the contract are silent in this regard. From the trial court all the way to the Supreme Court, the terms of the contract between Mazin and Tower Aluminium were construed to have placed the essence of the contract on the importation of the roofing sheet, and when the importation became impossible within the agreed time, the contract was rightly interpreted to have been frustrated.

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[160] ibid.

[161] (1993) 5 NWLR (Pt 295) 537 paras E-F; See also *Tsakiroglou & Co. Ltd. v. Noblee & Thorl G.m.b.H* (1961) 2 All E.R 179; *Morgan v. Manser* (1947) 2 All E.R 666; and *Unger v. Preston Corporation* (1942) 1 All E.R. 200.

[162] ibid at para D.

Nwaolisah v. Nwabufoh is another judicial authority which further shaped Nigeria's jurisprudence on the doctrine of frustration.[163] Nwaolisah, the appellant, bought adhesive glue from Italy.[164] As at when the goods were shipped, there was no import restriction on them; however, by the time they got to Nigeria, an import licence was now required to clear them. Owing to this, the appellant hired Nwabufoh, the respondent, to obtain an import licence and clear the shipment in Nigeria.[165] Nwabufoh obtained the licence but then failed to clear the goods and refused to refund the money. The Nigerian Ports Authority seized the goods as overtime cargo and sold them. Nwaolisah sued Nwabufoh for breach of contract. Nwabufoh invoked frustration and based his claim on the outbreak of the Nigerian Civil War which he asserted to have fundamentally disrupted his duty, thus making performance impossible. At the trial court, judgement was given in favour of the respondent, and on appeal to the CA, the appeal was allowed in part, but the judgement on the substance of the suit was still in favour of the respondent.[166] Consequently, the issue resolved against the appellant was appealed to the SC where the appeal was allowed and the decisions of both lower courts were overturned. The SC rejected the defence of frustration and in doing so, it held that frustration takes place where the execution of the obligations under a contract has become impossible, and that continuous execution would become radically distinct from what was agreed, due to no fault of either party.[167] The SC went further to list the events which have been held to lead to frustration: war, change in law, etc.[168] The SC also re-echoed the common law position that a plea of frustration cannot succeed simply due to the fact that the contract had turned out to be

[163] [2011] 14 NWLR (Pt 1268) 600.
[164] ibid at 617.
[165] ibid at 618.
[166] ibid.
[167] ibid at 631 para A.
[168] ibid. See also *Davies Contractors Ltd v. Fareham NDC* (1956) AC 696; *Akanmu v. Olugbode* (2001) 13 WRN 132; *NBCI v. Standard (Nig.) Eng Co. Ltd* (2002) 8 NWLR (Pt 768) 104; and *Obayuwana v. the Governor of Bendel State* (1982) SC 167 among others.

onerous or more economically difficult than earlier anticipated by either party which has established in *Davies Contractors Ltd v. Fareham UDC*.[169]

The cases which have been analysed in the foregoing paragraphs are the key judicial pronouncements which embody the attitude of Nigerian courts towards the application of the doctrine of frustration in Nigeria. However, there are a few other noteworthy cases. In *Attorney-General of Cross River State v. Attorney-General of the Federation & Anor*,[170] the scope of the application of the doctrine was adjudged by the SC, in its original jurisdiction, to include all categories of contracts.[171] The case demonstrates the SC's willingness to apply the doctrine across diverse contractual types, provided that the established conditions for establishing the doctrine are met.

More recently, the doctrine has been applied by the SC in *B.O.A. Ltd v. Salem Farms Ltd.*[172] In the instant case, Salem Farms Ltd, the respondent, obtained a business loan from B.O.A., the appellant, which it used principally to purchase 446 cows for a cattle-rearing project. To protect the investment, the respondent also secured insurance coverage from the Nigeria Agricultural Insurance Company and paid the relevant premiums. The project unravelled when the cattle herd was struck by Contagious Bovine Pleuro-Pneumonia (CBPP).[173] Despite intervention from the Kwara State Ministry of Agriculture's Veterinary Department, none of the administered treatments worked. The disease was so devastating that the respondent was forced to slaughter and burn the infected animals, and with 18 cows left, the farm collapsed.[174]

The respondent informed the appellant of these events and repaid ₦1,055,616. It then wrote letters requesting a waiver of the accrued interest, arguing that the epidemic was an act of God.

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[169] [2011] 14 NWLR (Pt 1268) 600 at 631 para F.
[170] [2012] 16 NWLR (Pt 1327) 425.
[171] ibid at 479 para G.
[172] (2025) 16 NWLR (Pt 2012) 505.
[173] ibid.
[174] ibid.

The appellant was silent for years before, in April 1996, demanding ₦877,736.04 in outstanding interest and threatening to auction the respondent's property. The respondent then sued, claiming it had fully discharged its loan obligation, that the contract was frustrated by force majeure, and seeking a perpetual injunction against any further enforcement action.

The trial court found for the respondent, holding that the CBPP epidemic was an act of God that made full performance of the repayment obligation impracticable, thereby frustrating the loan contract. The Court of Appeal upheld this. On further appeal to the Supreme Court, the decision was again affirmed. It noted that there was no evidence the CBPP epidemic was a usual occurrence on cattle farms, that the respondent had taken reasonable precautions, and that the disease had so thoroughly destroyed the project's purpose that continued repayment of interest would be extremely onerous and commercially impracticable.[175]

The application of impracticability in *B.O.A. Ltd. v. Salem Farms Ltd* seems like an attempt to expand the scope of the rationale for granting a plea of frustration.[176] However, this study does not completely agree with the reasoning of the SC. The disease which affected the cows is not an uncommon one like the respondent asserted, and the witness to this fact was not thoroughly analysed by the court in reaching the conclusion that it was an uncommon disease. A more equitable approach would have been waiving only a portion of the interest while preserving the lender's core right to repayment of what it was actually owed.

CHAPTER FOUR

ISSUES, CHALLENGES AND REFORMS ON THE DOCTRINE OF FRUSTRATION UNDER NIGERIAN CONTRACT LAW

4.1 Narrow and Strict Interpretation by Nigerian Courts

[175] ibid.
[176] ibid.

Nigerian courts have consistently treated frustration as a very limited escape from the general rule of *pacta sunt servanda* which means that agreements must be kept and contractual obligations are binding.[177] The doctrine of frustration is a narrow and rarely granted exception. In practice, the courts demand a genuine supervening event **beyond the parties' control** that makes performance literally impossible or transforms it into something radically different from what was agreed.[178] It is not enough that the event has made performance onerous or inconvenient, or has caused hardship or loss.[179]

This approach is reflected in authorities. In *Mazin Engineering Ltd v. Tower Aluminium (Nigeria) Ltd*,[180] the Supreme Court emphasised that frustration arises only if, without default of either party, a supervening event renders performance "entirely beyond what was contemplated by the parties" and so fundamental that it "strikes at the root of the agreement".[181] These criteria have since been applied across the Nigerian appellate hierarchy and represent the settled doctrinal framework. In *A.G. Cross River State v. A.G. Federation*,[182] the apex court emphasised that frustration occurs only if a supervening change destroys a fundamental assumption of the contract, in effect making performance "impossible to perform" or "a thing radically different from what was undertaken".[183]

This approach closely mirrors the English position as articulated by Lord Radcliffe in *Davis Contractors Ltd v. Fareham Urban District Council*,[184] where his Lordship held that "frustration occurs when the law recognises that, without default of either party, a contractual

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177 C S Nwakoby and O U Okoye, 'A Critique on the Effect of Frustration on a Contract under Nigerian Law' (2024) *JLCLE* 1, 4–5.
178 ibid; O G Osagie and M Dedon, 'Covid-19 Pandemic and the Doctrines of Force Majeure and Frustration of Contract: Impact on Commercial Contracts' (20 October 2020) LEX Africa https://lexafrica.com/2020/10/nigeria-covid-19-pandemic-and-the-doctrines-of-force-majeure-and-frustration-of-contract-impact-on-commercial-contracts/ accessed 22 April 2026.
179 [2011] 14 NWLR (Pt 1268) 600.
180 (1993) 9 NWLR (Pt 257) 223 (SC).
181 ibid.
182 [2012] 16 NWLR (Pt 1327) 425.
183 ibid.
184 [1956] AC 696 (HL) 729.

obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract".[185] The reason for the narrow and strict approach is that the doctrine requires an exceptionally high threshold, precisely because too liberal an application would destabilise contractual relations and encourage parties to resile from obligations whenever circumstances become unfavourable.[186]

In sum, the Nigerian judiciary insists on four strict conditions for frustration, and it is only when all four are met that the court will infer that the parties must have intended an implied condition excusing performance. This is in line with the construction theory which effectively limits frustration to cases where the parties plainly could not have contemplated continuing the contract under the new circumstances. It has been argued that the defence of frustration is not readily available; it is confined to truly exceptional events that go to the basis of the bargain.

4.2 Uncertainty in Determining What Constitutes Frustration

Despite the factors which must be present for a plea or defence of frustration to succeed, as set out in the *Mazin Engineering* case,[187] the application of frustration in Nigeria is still fraught with several uncertainties. For example, in *Wema Bank Plc v Alhaji Oloko* (CA),[188] the court took pains to note that for frustration to apply the intervening event must be "so fundamental… as to be regarded by law both as striking at the root of the agreement, and as entirely beyond what was contemplated by the parties when they made the contract".[189]

The central problem is that determining whether an event was truly unforeseeable, or whether it genuinely destroyed the foundational assumption of the contract, requires the court to engage

[185] ibid.
[186] Ibid (n 177)
[187] (1993) 9 NWLR (Pt 257) 223.
[188] [2014] 9 NWLR (Pt 1390) 177 (CA).
[189] ibid.

in a retrospective assessment of what the parties must have been taken to have contemplated at the time of contracting. The result is a degree of judicial variability that legal commentators have identified as "ambiguity regarding the threshold" for what constitutes a frustrating event.[190]

The decision of the Court of Appeal in *Wema Bank v. Oloko* illustrates why this is difficult.[191] In that case, the Bank argued that the obligations under the judgment had been frustrated by the outbreak of war.[192] The Court rejected this contention, holding that in Nigeria's post-independence context the risk of armed conflict was sufficiently foreseeable as to preclude the doctrine's application.[193] The decision underscores a broader tendency in Nigerian courts to treat a wide range of political and economic disruptions, such as civil unrest, foreign-exchange controls, government policy reversals, etc., as falling within the reasonable contemplation of sophisticated commercial parties.

It has been argued persuasively that this creates 'variability in judicial outcomes' that cannot be attributed to principled distinction between cases, but rather reflects the absence of clear legislative or judicial criteria.[194]

The lack of a bright-line formula exacerbates this uncertainty. Unlike statutory tests for some questions, frustration is judged ad hoc. One judge may approve of a risk and another may not. For example, the pandemic illustrated this ambiguity. Courts and practitioners treated the lockdowns as giving rise, at best, to a force majeure event under a contract, rather than as a frustration of the contract itself.[195] Still, in some contexts, such as the *Salem Farms* decision,

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[190] Ibid (n 177).
[191] [2014] 9 NWLR (Pt 1390) 177 (CA).
[192] ibid.
[193] ibid.
[194] ibid (n 1) 23–24.
[195] Adeyemi Ayeku and Oludare Senbore, 'Frustration in Financial Contracts: A Critical Analysis of the Supreme Court's Decision in *Bank of Agriculture Limited v Salem Farms Limited*' (May 2025) Aluko & Oyebode https://www.aluko-oyebode.com/wp-content/uploads/2025/05/Frustration-in-Financial-Contracts-May-2025.pdf accessed 22 April 2026.

judges have hinted that “impracticability” or “commercial-sterility” can meet the test, provided that the situation warrants it.[196]

4.3 Judicial Reluctance and the Fear of Abuse

Another notable challenge in applying the doctrine is the reluctance of the judiciary to invoke it, albeit somewhat justified. Nigerian courts are acutely aware that a liberal interpretation of frustration could provide opportunistic parties with a ready mechanism for escaping disadvantageous bargains under the guise of supervening impossibility. Even in the face of severe economic hardship or geopolitical shocks, judges will hesitate to discharge contracts on equitable grounds alone.

Indeed, the courts often remind that frustration does *not* automatically wipe away all liabilities or invite complete forfeiture of consequences. The general rule is that one party cannot avoid the consequences of a supervening event it itself helped create. The Court of Appeal in *Jacob v. Afaha* bluntly stated that self-induced frustration is no frustration at all, thus, a party cannot benefit from a predicament of its own making.[197] Having carefully examined several Nigerian cases on frustration, it is clear that our courts apply the doctrine cautiously, not lightly,[198] and the burden placed on a party asserting the doctrine is correspondingly onerous.

The judicial reluctance is further illustrated by the treatment of commercial disruptions arising from Nigeria's recurring economic crises. During the currency and foreign-exchange crisis of 2015–16, numerous parties argued that the collapse of the naira and the severe restrictions imposed by the Central Bank of Nigeria had frustrated their commercial obligations. Courts have rejected these arguments in some cases by treating instability as a feature of the business environment in Nigeria that parties must have anticipated and for which they ought to have

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[196] (2025) 16 NWLR (Pt 2012) 505.
[197] (2012) LPELR-7854 (CA).
[198] ibid (n 1) 4.

made provision for in their contracts. The decision of the CA in *Addax Petroleum Development (Nigeria) Ltd v. Loycy Investment Co Ltd* encapsulates this approach:[199] when protests disrupted road-construction under a contract, the Court refused to hold the contract frustrated, observing that the contractor had assumed the risk of the disturbances and that a force-majeure clause should have provided for such risks.[200]

The recent decision by the SC in *Bank of Agriculture Ltd v. Salem Farms Ltd* represents a departure from this pattern.[201] In that case, the SC accepted that the destruction of a herd of cattle by bovine plague rendered the agreement sterile to the extent that it excused the borrower from accruing further interest on the loan. The decision has attracted commentary as an extension of the doctrine's reach into loan agreements under conditions which were unforeseen;[202] yet even the Salem Farms outcome is understood as a narrow application of the doctrine, rather than a liberalisation of the threshold. The Court's willingness to relieve the borrower only of the interest, whilst preserving the debt, underscores that Nigerian courts, even when acknowledging frustration, will go no further than necessary.

4.4 Challenges in Commercial Transactions

The practical upshot of the above doctrines is that modern Nigerian businesses often find little solace in frustration. Nigeria's economy is characterised by volatility and risk: sudden currency devaluations, fuel subsidy removals, inflation spikes, foreign exchange controls, supply-chain breakdowns, security crises and periodic pandemics are all part of the landscape. Each of these challenges routinely disrupts contractual performance in material ways. Yet the frustration

[199] (2017) LPELR-42522 (CA).
[200] ibid.
[201] (2025) 16 NWLR (Pt 2012) 505 (SC).
[202] ibid (n 19).

doctrine, as interpreted and applied by Nigerian courts, provides no relief in the vast majority of such cases.

In construction and infrastructure, long-term projects can be disrupted by war, confiscation of assets or new regulations. Yet in Nigeria even here frustration is rare. The courts will ask whether, say, a seized construction site or violent conflict was within the scope of foreseeable risk. If so, they uphold the contract. In *Addax Petroleum v Loycy Investment*,[203] the Court of Appeal declined to hold a road-construction contract frustrated by the sustained refusal of local communities to permit access to the construction site.

In the oil and gas sector, the mismatch between the doctrine and reality is acute. Oil companies typically anticipate drilling bans, pipeline sabotage or government licensing revocations and build contractual safeguards. If an oil contract goes sour because of an adjudication by government or a change in local law, the courts will carefully examine whether the contract itself contemplated that possibility.

In international trade and supply contracts, frustration sometimes arises in theory, but usually without success. For example, in *Okambah Ltd v Sule,* a sale of goods was agreed and payment was to be made through foreign exchange. When the Central Bank froze forex, the seller claimed frustration. The Supreme Court did not rule on the merits (it struck out pleadings), but hinted that such governmental restrictions *could* be argued as frustration if pleaded properly.[204] This poses a risk of uncertainty to parties entering international sales agreements governed by Nigerian law. The CISG approach, which requires the impediment to be beyond the obligor's control and unforeseeable at the time of contracting, offers a potentially more nuanced

[203] (2014) LPELR-23256 (CA).
[204] (1990) 9 NWLR (Pt 163) 142 (SC).

framework for international trade contracts, but it does not form part of Nigerian domestic law.[205]

4.5 Post-Frustration Remedies

Even where frustration is successfully established, there is a question of what remedy the parties will be entitled to. Unlike some civil-law systems, Nigerian jurisprudence primarily relies on common-law and equitable principles, supplemented in only a few states by statute. The basic outcome is that a frustrated contract is automatically discharged from the time of the frustrating event.

At pure common law, the old English rule, as established in *Chandler v. Webster* was that nothing paid before frustration could be recovered.[206] This proved harsh, and was displaced in *Fibrosa Spolka Akcyjna v. Fairbairn*, where the House of Lords allowed restitution where the payer had obtained no performance.[207] Nigerian courts have followed the equitable principle established in Fibrosa's case where it was held that where there has been a total failure of consideration, that is, where the paying party received nothing of what it bargained for, the sum paid is recoverable.[208] This principle was applied in *Abdullahi & Anor v Lead Automobile Co Ltd* where a buyer had paid a deposit under a contract which was later frustrated by war.[209] The court held the deposit recoverable, since the buyer received nothing in return.

If the frustrated party has provided some partial benefit, equity steps in via quantum meruit or constructive trust to avoid unjust enrichment. For example, in *Mazin Engineering v Tower Aluminium* the supplier had already been paid an advance under a frustrated sale contract. The advance was returned, after the expenses had been deducted.[210] In *National Revenue*

[205] UNCCI Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3, art 79(1).
[206] [1904] 1 KB 141 (CA).
[207] [1943] AC 32 (HL).
[208] Ibid.
[209] [2020] LPELR-51940 (CA).
[210] (1993) 9 NWLR (Pt 257) 223 (SC).

Mobilisation and Fiscal Commission v Johnson,[211] the Supreme Court drew a distinction between obligations, which were frustrated by a suspension of appointments by the government, and entitlements in the form of earnings and salary, which survived the frustration.[212] The decision reflects the principle that frustration relieves parties only from future obligations; it does not operate in retrospect to deprive a party of rights that have already accrued.

Outside Lagos (and the states that copied its law, or the Contract Law of the Western Region), there's no statutory regulation on frustration at the national level. Enugu State's Contract Law 2004 (Ch. X) likewise provides that pre-payments are recoverable and allows courts to adjust benefits but its scope is limited to Enugu. In most of Nigeria, the courts must rely on the decided cases on contract law and equitable remedies. The absence of a an equivalent of the UK 1943 Act means that the principles applied by courts in Nigeria lack the precision and predictability that stakeholders require. A party seeking to recover an advance following frustration may succeed in Lagos under the 2015 Act, and have outcomes which are inconsistent elsewhere, and obtain no remedy at all in many parts of the federation.

4.6 Reforms

4.6.1 Statutory Reforms

Nigeria's statutory provisions on frustration are fragmented. As noted previously, Western Region's 1961 law (replicated in Lagos 2015) and Enugu's 2004 law provide a framework, but their territorial reach is limited. No law akin to the UK Law exists. As a result, in much of Nigeria, parties rely on uncodified laws. This patchwork is widely viewed as inadequate for the economy. The arrangement leaves most contracts without any guidance on frustration or

[211] (2019) 8 NWLR (Pt 1703) 249 (SC).
[212] ibid (n 177) 12.

its effects.[213] The regional laws, whilst valuable in their jurisdictions, are models rather than solutions. Their very existence highlights the vacuum that the legislature has yet to fill.

An ideal reform would be to enact a **Federal Law Reform (Frustrated Contracts) Act** along the lines of the UK statute. Such an Act would codify the test (perhaps echoing Nigeria's current standard: unforeseeable event, impossible performance, etc.) but more importantly would set out uniform remedies. Section 1 of the UK Act, which resembles Lagos S.8, ensures that pre-payments are recoverable and allows courts to account for expenses. Adopting similar provisions nationwide would eliminate the current disparity between states.

A federal Act could also address the challenges of the ease of doing business in Nigeria. It might, for example, include provisions dealing with the interaction between the doctrine and force majeure clauses, clarifying the circumstances in which the parties' mechanisms should take precedence over the statute. It might also address the question of partial frustration, where, as in *Salem Farms*, the supervening event destroys only a portion of the subject-matter.

4.6.2 Judicial Reforms

Even without legislation, courts themselves can refine their approach to provide certainty. One suggestion is for the Supreme Court to issue guidelines on the frustration test. If higher courts consistently frame the doctrine in similar language, lower courts may become more predictable. Such guidance might specify the factors for determining foreseeability, and the manner in which courts should approach the relationship between contractual clauses and the doctrine.

Consistency in judgements would reduce uncertainty, along with emphasis on mitigation and equity. Currently, the courts in Nigeria focus on impossibility, but they could inquire whether the party invoking frustration took steps to mitigate it. In the *Salem Farms* case, for instance,

213 ibid, 25-26.

the Supreme Court commended the farmer for insuring against disease and seeking containment. This links frustration to mitigation.

Finally, judges might address hard cases short of true frustration through equitable doctrines. One idea, albeit, controversial is for courts to use something akin to an economic hardship doctrine to restructure contracts that have become oppressive but technically possible. For now, Nigerian judges have resisted this; they traditionally say contract law has no "gap" to fill here. But as *Salem Farms* shows (where only interest was waived), the courts are already tinkering with equitable adjustment.

4.6.3 Lessons from other Jurisdictions

The United Kingdom's Law Reform (Frustrated Contracts) Act 1943 represents the most directly relevant model for Nigerian reform. The Act preserves the common law threshold — frustration requires that performance become radically different from what was undertaken — whilst providing a statutory framework of remedies designed to prevent the harsh 'all-or-nothing' outcomes that the common law would otherwise produce. Under the Act, sums paid before frustration are recoverable, sums due but unpaid cease to be payable, and a party that has conferred a valuable benefit on the other prior to the frustrating event may recover a 'just sum' in respect of that benefit, up to its value.[214] The UK experience demonstrates that statutory remedies can co-exist with a narrow doctrinal threshold without opening the floodgates to opportunistic frustration claims.

Civil-law jurisdictions offer a contrasting approach through doctrines of *imprévision* (France) and *Wegfall der Geschäftsgrundlage* (Germany), which permit courts to revise or terminate contracts whose performance has become excessively burdensome as a result of unforeseeable

[214] Law Reform (Frustrated Contracts) Act 1943 (UK), s 1(2) & (3).

changes incircumstances.[215] France introduced a formal *imprévision* doctrine into the Civil Code by the 2016 reform of contract law, enabling courts to adjust the terms of a contract where supervening circumstances have rendered performance excessively onerous for one party. These civil-law mechanisms go considerably further than the common-law doctrine of frustration, effectively authorising courts to engage in contractual revision rather than merely discharge. Those systems are more flexible, but they are also far from Nigeria's tradition. However, even international instruments can guide us. The CISG and UNIDROIT Principles offer a middle ground; if an impediment (like a political event) prevents performance, they excuse liability but typically only suspend obligations or allow contract adaptation. Under CISG Art.79(5), for example, a party can recover pre-payments (minus costs). These models show that a regime combining a strict test with equitable remedies (rather than outright discharge) can be workable internationally.[216]

The overarching lesson of comparative analysis is clear: a common-law doctrine of frustration operating without statutory support or judicial guidelines is a blunt and unpredictable instrument. The UK 1943 Act, the CISG framework, and the civil-law doctrines of *imprévision* all reflect a shared recognition that supervening impossibility creates problems of loss-allocation and adjustment that require more than the binary outcome of discharge or enforcement. Nigeria's law, as it presently stands, provides neither the predictability that commercial actors require nor the equitable adjustment mechanisms that justice demands.

[215] Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, art 1195 (France); Bürgerliches Gesetzbuch (BGB), § 313 (Germany).

[216] CISG (n 23) art 79(1) & (5); UNIDROIT Principles of International Commercial Contracts 2016, art 7.1.7.

CHAPTER FIVE:

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The study carried out a critical analysis of the application of the doctrine of frustration in Nigeria. Several aspects of the doctrine, such as the conceptual basis, the legal and regulatory framework, judicial precedents, practical application and challenges, were thoroughly examined. The purpose of this analysis was to determine how frustration is applied to supervening events which may arise in a contractual situation. The findings revealed that the doctrine operates as an exception to the principle of the absoluteness of contracts which was reiterated in *Paradins v. Jane*. In simple terms, contracts are formed on the basis of *pacta sunt servanda* (agreements must be kept). This means that once a contract is formed, the parties are bound to the terms of the contract, and any breach of the terms will result in a claim for damages by the affected party. However, where such breach is caused by a supervening event which cannot be attributed, actively or constructively, to either party, and the breach renders performance impossible, illegal, or radically different from what was originally contemplated, the contract will be discharged. The study also explored the practical challenges the doctrine faces due to the generally unfavourable attitude of Nigerian courts towards granting frustration.

The findings further revealed that the frustration is a common law doctrine which was developed in the landmark decisions of *Taylor v Caldwell*. The decision established a new position in contract law which says that parties could be discharged from a contract where the continued existence of a specific subject matter, which has been destroyed, formed the foundation of the contract. The study also revealed that the scope of the doctrine has been widened in relatively contemporary times. What initially applied to impossibility has now been extended to frustration of purpose and supervening illegality, although these categories continue to be applied cautiously. It also revealed the relationship and the differences between frustration and other doctrines such as mistake, force majeure, etc. In the case of force majeure, a notable difference is that while force majeure is based on the express agreement of the parties, frustration is imposed by law. In practice, the former operates as a clause in agreements which provides for certain events which could fundamentally affect a contract and how parties are to deal with them. It is commonly used in commercial contracts as a mitigating effect. However, the presence of a force majeure clause does not entirely rule out the application of frustration in genuine circumstances, it only further narrows the scope.

Furthermore, the study analysed the theoretical foundations which guide the application of the doctrine. These theories show the reasoning behind the application of the doctrine in courts since its inception. They expose what the courts take into consideration before they can grant a plea of frustration. Although there are over five theories, this study restricted its analysis to the theories which have characterised judicial decisions in both English and Nigerian courts over time. They include the implied term theory, the justice or fairness theory and the foundation theory. The implied term theory was one of the first theories which was developed on the subject. It reveals an attitude of the courts to treat frustration as arising from an implied condition that the contract would terminate upon the occurrence of a specified supervening event. However, this reasoning was fraught with several shortcomings chief amongst which was the assumption it makes regarding the intention of the parties, which may not have been contemplated by them. Consequently, the justice or fairness theory emerged as an alternative view to the application of the doctrine. This theory views frustration as a judicial mechanism designed to achieve equitable outcomes where strict enforcement would produce injustice. Lastly, the foundation theory, as the name implies, rationalises the doctrine from the standpoint of the foundation of the contract. It simply propounds that a contract is discharged because of the destruction of the fundamental basis upon which the contract was formed. The study found elements of these theories in the rationale used in granting frustration by Nigerian courts.

The study found that there is little or no statutory framework on the doctrine of frustration in Nigeria. This has created a cloud of uncertainty in decisions on the subject matter. In similar jurisdictions like the United Kingdom, there is a Law Reform (Frustrated Contracts) Act to regulate the consequences of frustration. Laws on frustration only exist in a few states such as. the Lagos Law Reform (Contracts) Law and the Contract Law of Enugu State 2004. These laws contain detailed provisions regarding frustration, including the recovery of advance payments, adjustment of expenses incurred before discharge, treatment of valuable benefits conferred, and circumstances under which contracts may be severed. The study also found that these statutes substantially mirror the principles developed under English law following the decision in *Fibrosa Spolka Akcyjna v Fairbairn, Lawson Combe Barbour Ltd*. However, their territorial limitation means that much of Nigeria continues to rely primarily on common law principles and equitable remedies.

The research also found that Nigerian frustration related cases are eerily similar to English common law precedents. Decisions such as *Taylor v Caldwell, Krell v Henry, Davis Contractors Ltd v Fareham Urban District Council, Chandler v Webster, and Fibrosa* continue to exert significant influence on Nigerian courts. The study found that Nigerian courts have consistently adopted the principle that frustration arises only where a supervening event fundamentally alters the nature of the contractual obligation. Mere hardship, increased expense, commercial inconvenience, or diminished profitability are generally insufficient to justify discharge. This strict approach was reaffirmed in landmark Nigerian cases such as *Mazin Engineering Ltd v Tower Aluminium (Nigeria) Ltd, Nwaolisah v Nwabufoh, and African Continental Bank Ltd v Francis Emo Omo.*

Another important finding of the study is that Nigerian courts have developed several guiding principles for determining when frustration will apply. The courts generally require proof that the supervening event occurred after the formation of the contract, was beyond the control of the parties, was not self-induced, and rendered performance impossible, illegal, or radically different from what was originally undertaken. The study found that self-induced frustration remains a complete bar to relief and that courts consistently refuse to excuse parties whose own conduct contributed to the supervening event. The Supreme Court's decision in *Araka v Monier Construction Co Ltd* further demonstrated that frustration may apply to leases where the underlying purpose of the tenancy has been completely destroyed by external events such as war.

The study further found that significant challenges continue to affect the application of the doctrine in Nigeria. One of the most prominent challenges is the narrow and restrictive interpretation adopted by Nigerian courts. Although this approach protects contractual certainty and prevents abuse, it also limits the doctrine's ability to respond effectively to modern commercial realities. The research found that courts remain reluctant to discharge contracts unless the threshold of impossibility or radical change is clearly established. Consequently, events such as inflation, foreign exchange shortages, economic instability, supply-chain disruptions, and changes in market conditions are generally treated as commercial risks that parties must bear rather than grounds for frustration.

The study also found that uncertainty remains a persistent feature of frustration jurisprudence. Despite the existence of judicial guidelines, determining whether a particular event was foreseeable, whether it destroyed the foundation of the contract, or whether it merely made performance more burdensome often depends on judicial discretion. This has resulted in variability in outcomes and difficulty in predicting how courts will respond to certain categories of supervening events. The COVID-19 pandemic further exposed these uncertainties, as courts and practitioners frequently relied on force majeure clauses rather than the doctrine of frustration itself to address contractual disruptions.

Another major finding is that post-frustration remedies remain inadequately regulated across Nigeria. While Lagos and Enugu have enacted statutory provisions governing the adjustment of losses and recovery of benefits following frustration, most states continue to rely on common law and equitable principles. The study found that this creates inconsistency in the treatment of frustrated contracts and undermines commercial predictability. Although Nigerian courts generally follow the equitable approach established in Fibrosa by allowing recovery where there has been a total failure of consideration, the absence of a uniform statutory framework leaves considerable uncertainty regarding the allocation of losses and benefits after discharge.

The comparative analysis conducted in the study revealed that several foreign jurisdictions provide useful lessons for Nigeria. The United Kingdom's Law Reform (Frustrated Contracts) Act 1943 demonstrates how statutory intervention can preserve the common law threshold for frustration while creating a clear and equitable framework for remedies. The research also found that civil law jurisdictions such as France and Germany adopt more flexible approaches through doctrines that permit judicial adjustment of contracts affected by unforeseen hardship. Similarly, international instruments such as the CISG and the UNIDROIT Principles provide mechanisms for dealing with supervening events that balance contractual certainty with commercial fairness. These comparative models suggest that Nigeria can benefit from reforms aimed at improving both doctrinal clarity and remedial flexibility.

In sum, the findings of this research demonstrate that the doctrine of frustration remains an important mechanism for addressing unforeseen events that undermine contractual performance. However, the study found that its effectiveness in Nigeria is constrained by fragmented legislation, restrictive judicial interpretation, uncertainty in application, and inadequate remedial regulation. While the doctrine continues to protect the sanctity of contracts by limiting discharge to exceptional circumstances, it does not always provide adequate solutions for modern commercial disputes. The comparative analysis further revealed that legislative reform and clearer judicial guidelines are necessary to improve certainty, fairness, and commercial efficiency. Accordingly, the study concludes that the Nigerian law on frustration requires significant reform to ensure that it remains responsive to contemporary contractual realities while preserving the stability and predictability essential to commercial transactions.

5.2 Recommendations

In view of the challenges identified in the preceding chapters and the findings of this research, the following recommendations are proposed to strengthen the legal framework governing the doctrine of frustration under Nigerian contract law:

1. **Enactment of a Federal Law on Frustrated Contracts**

   The National Assembly should enact a comprehensive federal statute governing frustrated contracts in Nigeria. At present, statutory provisions on frustration exist only in a few states, such as Lagos and Enugu, leaving most jurisdictions dependent on common law principles and equitable remedies. A federal law, modelled substantially on the United Kingdom's Law Reform (Frustrated Contracts) Act 1943 but adapted to Nigerian realities, would provide a uniform legal framework applicable throughout the federation. Such legislation should clearly define the consequences of frustration, regulate the recovery of pre-payments, provide for the allocation of expenses incurred before discharge, and establish rules governing benefits conferred before the frustrating event. This would promote certainty, consistency, and fairness in commercial transactions.

2. Legislative Clarification of the Scope and Application of Frustration

The legislature should provide clearer statutory guidance regarding the circumstances that may constitute frustrating events. Although Nigerian courts have developed principles through judicial decisions, uncertainty remains regarding the treatment of economic crises, government regulations, pandemics, supply-chain disruptions, and other modern commercial risks. A statutory framework should specify the factors relevant to determining frustration, including foreseeability, impossibility, illegality, and radical change in obligation. Such clarification would reduce uncertainty and improve predictability for contracting parties.

3. Judicial Development of Consistent Guidelines for Determining Frustration

The Supreme Court should take the opportunity in future cases to formulate more detailed and consistent guidelines on the doctrine of frustration. Particular attention should be given to the concepts of foreseeability, commercial impracticability, radical change of obligation, and the interaction between frustration and force majeure clauses. Greater consistency in judicial reasoning would reduce uncertainty and enable lower courts to apply the doctrine more predictably. It would also provide commercial actors with clearer guidance when assessing contractual risks.

4. Promotion of Comprehensive Force Majeure Clauses in Commercial Contracts

Legal practitioners, commercial parties, and business organisations should be encouraged to draft comprehensive force majeure clauses that adequately address foreseeable risks. Many disputes concerning frustration arise because contracts fail to allocate risks associated with supervening events. Properly drafted force majeure provisions should identify specific events, establish procedures for notification and mitigation, specify the consequences of non-performance, and determine whether obligations should be suspended, varied, or discharged. Greater reliance on carefully drafted contractual provisions would reduce the need for judicial intervention and provide parties with more predictable outcomes.

5. Reform of Post-Frustration Remedies

The law should move beyond the current reliance on fragmented common law and equitable principles by establishing a clear statutory regime for post-frustration remedies. Courts should be empowered to make equitable adjustments that reflect the circumstances of each case, including the recovery of advance payments, reimbursement of expenses reasonably incurred, and compensation for valuable benefits conferred prior to discharge. Such reforms would prevent unjust enrichment and ensure that losses resulting from frustration are distributed fairly between the parties.

6. Recognition of Contemporary Commercial Realities

Future reforms should take account of the changing nature of commercial transactions in Nigeria. Digital service agreements, technology contracts, online platforms, international supply chains, and other modern contractual relationships present challenges that were largely absent when the traditional doctrine developed. Legislative and judicial reforms should ensure that the doctrine remains capable of addressing disruptions arising from cyber incidents, digital infrastructure failures, government-imposed internet restrictions, pandemics, and other emerging commercial risks. A modernised framework would make the doctrine more responsive to contemporary business realities.

7. Professional Training and Capacity Building for Judges and Legal Practitioners

Continuous professional training should be organised for judges, arbitrators, legal practitioners, and commercial advisers on the evolving principles governing frustration and force majeure. Comparative developments from other jurisdictions, emerging commercial practices, and recent judicial decisions should form part of such training programmes. Improved understanding of the doctrine would contribute to greater consistency in judicial decisions and enhance the quality of legal advice provided to contracting parties.

8. Adoption of Comparative Best Practices from Other Jurisdictions

Nigeria should draw lessons from jurisdictions that have successfully modernised their approach to supervening events in contract law. The United Kingdom's statutory framework demonstrates how a narrow doctrine of frustration can be complemented by flexible remedial provisions. Similarly, international instruments such as the CISG and the UNIDROIT Principles offer useful guidance on balancing contractual certainty with commercial fairness. While wholesale transplantation may not be appropriate, carefully adapting these approaches could improve the Nigerian legal framework and enhance its suitability for modern commercial transactions.

9. **Periodic Review of Contract Laws Governing Frustration**

There should be periodic review of state and federal contract laws to ensure that they remain responsive to changing economic, technological, and social conditions. The doctrine of frustration developed in response to the commercial realities of an earlier era and must continue to evolve to address contemporary challenges. Regular legislative review would enable lawmakers to identify gaps in the law, respond to emerging forms of contractual disruption, and maintain a balance between contractual certainty and fairness. Such reviews would ensure that the doctrine continues to serve its fundamental purpose of providing justice where unforeseen events make contractual performance impossible, illegal, or radically different from what the parties originally contemplated.

5.3 Conclusion

This research has revealed a significant disconnect between Nigeria's legal framework on the doctrine of frustration and the manner in which the doctrine operates in practice. While Nigerian contract law recognises frustration as a legitimate basis for discharging contractual obligations where a supervening event renders performance impossible, illegal, or radically different from what the parties contemplated, the doctrine remains narrowly applied by the courts and inadequately supported by a uniform statutory framework. The study found that, although the judiciary has developed important principles through cases such as *Araka v Monier Construction Co Ltd*, *Mazin Engineering Ltd v Tower Aluminium (Nig) Ltd*, and *Nwaolisah v Nwabufoh*, the absence of comprehensive federal legislation has left the law fragmented, with only a few states having enacted statutory provisions governing frustrated contracts. This has created uncertainty as to the applicable legal consequences of frustration, particularly in relation to restitution, recovery of pre-payments, and the adjustment of losses.

Moving forward, the doctrine of frustration in Nigeria requires a more coherent, responsive, and commercially realistic approach. The protection of contractual certainty must remain important, but it should not be allowed to override fairness where genuine supervening events destroy the foundation of a contract. Clearer statutory reform, more consistent judicial reasoning, and better contractual risk allocation through force majeure clauses are necessary to ensure that the doctrine remains effective in modern commercial life. Comparative lessons from the United Kingdom and other jurisdictions show that frustration can be retained as a strict doctrine while still providing fair and predictable remedial outcomes. Without deliberate reform and a stronger commitment to doctrinal clarity, Nigeria risks maintaining a legal regime in which frustration is recognised in principle but applied too narrowly to respond adequately to contemporary contractual realities.

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