THE DEATH OF QUEEN ELIZABETH II: IMPLICATIONS FOR THE PRINCIPLE OF *PACTA SUNT SERVANDA**

Abstract

This article takes a broad look at the death of Queen Elizabeth II of Great Britain and its implications for the commercial/ economic principle of Pacta Sunt Servanda (agreements must be honoured). Queen Elizabeth II of United Kingdom died on the 8 September 2022, born in 1926; she became the Queen at the age of 25, and reigned for 70 years. She was buried on 19 September, 2022. On her death and burial so may appointments or agreements were cancelled or postponed. The day she was buried, was declared a public holiday (bank holiday) throughout the United Kingdom. The main aim of this article is to explain this unforeseen circumstance on the principle of Pact Sunt Servanda, that agreements must be honoured. Can her death act as an exception to this principle of commercial transaction?This article then goes further to discuss the principle of contract called rebus sic stantibus that seek to offer excuse for non-performance of a contractual obligation because of fundamental change of circumstance. One of the questions this paper seek to answer is that, could the death of the Queen of United Kingdom be used as fundamental change of circumstance thereby impeding the performance of a contractual obligation due on those days of her death and burial? Discussions shall also briefly touch the principle of force majure and recommendations shall be proffered.

Keywords: Queen Elizabeth II, *Pacta Sunt Servanda, rebus sic stantibus* Frustration, Implication.

1. Introduction

Queen Elizabeth II (Elizabeth Alexandra Mary; 21 April 1962-8 September 2022) was Queen of the United Kingdom and other Commonwealth realms from 6 February 1952 until her death in 2022.[1] She was the reigning queen of 32 sovereign state**s** during her lifetime and 15 at the time of her death. Her reign of 70 years and 214 days was the longest of any British monarch and the longest recorded of any female head of state in history.[2] Although the law of contract is one of the basic and unavoidable institutions of our society with very vast and complex attributes in recent years, it has undergone and is still undergoing some significant changes.[3] At the centre of these manifold changes has been the much-vaunted sanctity of individual autonomy in contracting, a fall out of the liberal notion of freedom of contract, which was the ideological backbone for the development of the law of contract.[4] Enshrined in the Biblical injunction 'thou shall keep thy word,' and the age-old Roman adage of *pacta sunt servanda ex fide bona*. This modern concept of 'freedom of contract' maintains significant roots within the lexicon of contract law, and signifies that parties to an agreement have the right and authority to construct their own bargains and insist upon their literal execution.[5] For, since contracts are consensually assumed obligations, in principle, within the confines set by the precepts of illegality and immorality, the parties should be able to specify their own distinctive regime of rules to govern their contractual relationship.[6] This divine mandate of contractual sanctity, unquestionably common to the laws of all civilized nations in both the common law and Western European legal systems, and hitherto a lynchpin of the freedom of the parties' will, has been either gradually replaced or, at least, supplemented by other competing considerations of justice, paving way for the emergence of a new contractual morality over a broad spectrum of human activity.[7] This progressive transition from principles to pragmatism, or principle to discretion, in the law of contract has of necessity involved an accommodation with the allegedly Procrustean intellections of, say, consideration, privities, mistake, duress, and so on. – not only in the countries of common law but also of civil law lineage toward producing results that are perceived to be just, fair and in consonance with commercial commonsense.[8] Accordingly, the judicial reluctance to, 'police the fairness of every commercial contract, by reference to moral principles' has of late witnessed a significant transformation and shift in legal norm.[9]

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[1] Peoples Gazette, 'Flash: Cause of Queen Elizabeth's Death Revealed'< https://gazettengr.com/flash-cause-of-queen-elizabeths-death-revealed/ > accessed 30 September, 2022.

[2] Ibid.

[3] K.M. Sharma, 'From Sanctity' to Fairness: an uneasy Transition in the Law of Contracts', *NYLS Journal of International and Comparative Law, 1999 <https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1451&context=journal_of_international_and_comparative_law> accessed 5 October, 2022.*

[4] Ibid

[5] Ibid

[6] Samuel Williston, 'Freedom of Contract' *Cornell Law Quarterly*, 1921 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/clqv6&section=28 > accessed 5 October, 2022

[7] Ibid

[8] P.S. Atiyah, *An Introduction to the Law of Contract* (8th ed. 1995). <https://www.amazon.com/Atiyahs-Introduction-Law-Contract-Clarendon/dp/0199249415> accessed 5 October, 2022.

[9] Ibid.

2. Queen Elizabeth II

When Queen Elizabeth II's father died in February 1952, Elizabeth, who was 25 years old-became queen of seven independent Commonwealth: the United Kingdom, Canada, Australia, New Zealand, South Africa, Pakistan, and Ceylon (known today as Sri Lanka), as well as Head of the Commonwealth, Elizabeth reigned as a constitutional monarch through major political changes such as the trouble in Northern Ireland, devolution in the United Kingdom, the decolonization of Africa, and the United Kingdom's accession to the European Community and the withdrawal from same. The number of her realm varied over time as territories gained independence and some realms became Republics.[10] Very significant and major events include Elizabeth's coronation in 1953 and the celebrations of her Silver, Golden, Diamond, and Platinum Jubilees in 1977, 2002, 2012 and 2022, respectively.[11] Elizabeth was the longest-lived British monarch and the second-longest reigning sovereign in world history, behind only Louis XIV of France.[12] She faced occasional republican sentiment and media criticism of her family, particularly after the breakdowns of her children's marriages her *annus horribilis* in 1992, and the death of her former daughter-in-law Diana, princess of Wales, in 1997. However, support for the monarchy in the United Kingdom remained consistently high, as did her personal popularity. Elizabeth died age 96 at Balmoral Castle, Aberdeenshire in 2022, month after her Platinum Jubilee, and was succeeded by her eldest Son, Charles III. [13] During her grandfather's reign, Elizabeth was third in the line of succession to the British throne behind her uncle, Edward and her father. Though her birth generated much public interest, she was not expected to become queen, as Edward was still young and likely to marry and have children of his own, who would precede Elizabeth in the line of succession.[14] At the death of her grandfather in1936 and when her uncle succeeded as Edward VIII, she became second in the line to the throne, after her father. Later that year, Edward abdicated, after his proposed marriage to divorced socialite Wallis Simpson provoked a constitutional crisis.[15] Consequently, Elizabeth's father became King, taking the regal name George VI. Since Elizabeth had no brothers, she became heir presumptive. If her parent had subsequently borne a son, he would have been heir apparent and above her in the line of succession, which was determined by male preference primogeniture at the time.[16]

Britain entered the Second World War in September 1939. Lord Hailsham suggested that Princess Elizabeth and Margaret should be evacuated to Canada to avoid the frequent aerial bombing of London by the *LuffWaffe*.[17] This was rejected by their mother, who declared, 'The children won't go without me. I won't leave without the King. And the King will never leave'.[18] The princesses stayed at Balmoral Castle, Scotland, until Christmas 1939, when they moved to Sandringham House, Norfolk.[19] From February to May 1940, they lived at Royal Lodge, Windsor, until moving to Windsor Castle, where they lived for most the next five years.[20] At Windsor, the Princesses stayed at Balmorals staged pantomimes at Christmas in aid of the Queen's Wool Fund, which bought yarn to knit into Military garments.[21] In 1940, the 14-year-old Elizabeth made her first radio broadcast during the BBC's Children Hour, addressing other children who had been evacuated from the cities.[22] She stated: 'we are trying to do all we can to help gallant sailors, soldiers, and airmen and we are trying, too, to bear our own share of the danger and sadness of war.[23] During the war, plans were drawn up to quell Welsh nationalism by affiliating Elizabeth more closely with Wales. Proposal, such as appointing Constable of Caenarfon Castle or a patron of Urdd Gobaith Cymru (the Welsh League of Youth), were jettisoned for several reasons including fear of associating Elizabeth with conscientious objectors in Urdd at a time when Britain was at war. Welsh politicians suggested she be made Princess of Wales on her 18th birthday. Home Secretary Herbert Morrison supported she was made the idea, but the King rejected it because he felt such a title belonged solely to the wife of a Prince of Wales who had always

[10] Ibid

[11] B Holt, *The Queen:70 years of Majestic Style* (Ryland Peters, 2022)

[12] Sarah Bradford, *Queen Elizabeth II: her life in our Time,* (Penguin, 2012) <https://www.amazon.com/Queen-Elizabeth-II-Life-Times-ebook/dp/B006B6YTQS> accessed 30 September, 2022

[13] Ibid

[14] Jennie Bond, *Elizabeth: Eighty Glorious Years* (Carlton Publishing Group, 2006) <https://www.amazon.com/Elizabeth-Glorious-Years-Jennie-Bond/dp/1844422607> accessed 30 September, 2022.

[15] Robert Lacey, *Royal: Her Majesty Queen Elizabeth II:* (Little Brown, 2002)< https://www.amazon.com/Royal-Majesty-Elizabeth-Robert-2002-02-06/dp/B01K17XZLW> accessed 30 September, 2022.

[16] Andrew Marr, *The Diamond Queen: Elizabeth II and her People* (Macmillan 2011) <https://books.google.com/books/about/The_Diamond_Queen.html?id=9yuhkgEACAAJ > accessed 30 September, 2022.

[17]Women Corner, 'Second World War's History of Elizabeth II' <https://www.womenscorner.com.bd/en/photograph/article/1394/second-world-war/%E2%80%8D%E2%80%8Ds-history-of-elizabeth-ii > accessed 30 September 2022

[18] *Queen Elizabeth the Queen Mother, Royal Household 21 December 2015 <https://en.wikipedia.org/wiki/Death_and_funeral_of_Queen_Elizabeth_The_Queen_Mother> accessed 30 September 2022.*

[19] Marion Crawford, *The Little Princess,* (Cassell & Co 1950) < https://www.abebooks.com/book-search/title/the-little-princesses/author/crawford-marion/> accessed 30 September 2022.

[20] Ibid

[21] Ibid

[22] Children's Hour: *Princess Elizabeth* (13 October 1940) < https://www.bbc.co.uk/archive/childrens-hour--princess-elizabeth/z7wm92p> accessed 30 September 2022.

[23] Ibid.

been the heir apparent.[24] In 1946, she was inducted into the Gorsedd of Bards at the National Eisteddfod of Wales.[25]

Elizabeth met her future husband, Prince Philip of Greece and Denmark, in 1934 and again in 1937.[26] They were second cousins once removed through King Christian IX of Denmark and third cousins in Dartmouth in July 1939, Elizabeth-though only 13 years old – said she fell in love with Philip, and they began to exchange letters.[27] She was 21 when their engagement was officially announced on 9 July 1947.[28] Elizabeth gave birth to her first child, Prince Charles, on 14 November 1948. One month earlier, the King had issued letters patent allowing her children to use the style and title of a royal prince or princess, to whom they otherwise would not have been entitled as their father was no longer a royal prince.[29] A second child, Princess Anne, was born on 15 August 1950.[30]

3. The Growth and Development of *Pacta Sunt Servanda*

Though the word *pactum* is one of the oldest words in the Latin language, the exact wording of the maxim *pacta sunt servanda* (agreements must be honoured) was not common in the days of the Roman Empire.[31] However, the concept of the sanctity of contracts is worldwide: it is found in nearly all legal systems, in all periods of history, in all cultures, and in all religions.[32] In 1292 B.C.E., for example a peace treaty was signed between Ramses II and Hatushill III in which their gods were held to guarantee the sanctity of their agreement. Although the *pacta* maxim, which has since been elevated to a recognized legal principle, has its roots in ancient Roman law, identical doctrines exist in Hindu, Buddhist, Muslim, Confucian, and in communist systems among others.[33] It would appear that *pacta sunt servanda* in contractual agreements has provided a standard conduct for humanity from time immemorial. It is one of the world's most important legal norms, and it enjoys a very long custom in all national legal systems. As an arbitral panel held in *Liamco v. Libya*,[34] 'the principle of the sanctity of contracts has always constituted an integral part of most legal systems. These include these systems that are based on Roman law, the Napoleonic Code (e.g. article 1134) and other European civil codes, as well as Anglo-Saxon Common Law and Islamic Jurisprudence 'Shari'a'. The *pacta* principles reflect not only natural justice, but also an economic necessity: commerce would not be possible without reliable promises. As a basic and universal principle, it is today recognized in Article 1.3 of the UNIDROIT Principles,[35] and codified in international law in Article 26 (entitled '*Pacta sunt servanda*') of the Vienna Convention on the Law of Treaties.[36] Without doubt, it is a paramount feature of contract law till today.

The *pacta* maxim was first used in a slightly altered form in 348 A.D. in a consilium by the Church involving a dispute between two bishops.[37] It read *pacta quantumcunque nuda servanda sunt* ('pacts, however naked, must

[24] Ben Pimlott, *The Queen: Elizabeth II and the Monarchy* (HarperCollins 2001) <https://books.google.com/books/about/The_Queen.html?id=Mf21QgAACAAJ> accessed 30 September 2022.

[25] Gorsedd of the Bards, National Museum of Wales < https://museum.wales/collections/online/object/ee293bf1-8124-3c45-9cbb-82e54010c1f3/The-Gorsedd-of-the-Bards---The-Address/?index=9> accessed 30 September 2022.

[26] Gyles Brandreth, *Philip and Elizabeth: Portrait of a Marriage,* (Century 2004) < https://www.amazon.in/Philip-Elizabeth-Portrait-Gyles-Brandreth/dp/0712661034> accessed 30 September 2022.

[27]Dionysios P. Flambouras, 'The Doctrines of Impossibility of Performance and *clausula rebus sic stantibus* in the 1980 Vienna Convention on Contracts for the International Sale of Goods and the Principles of European Contract Law: A Comparative Analysis' (2001) 13 Pace Int'l L. Rev. 261 at 265. The rule of *force majeure* is established in Article 1148 of the French Civil Code. <https://digitalcommons.pace.edu/pilr/vol13/iss2/2/> accessed 10 October, 2022

[28] Tim Heald, *Princess Margaret: A Life Unravelled,* (Weidenfield & Nicolson 2007) <https://books.google.com/books/about/Princess_Margaret.html?id=OYFbPwAACAAJ> accessed 30 September 2022.

[29] Brian Hoey, *Her Majesty: Fifty Regal Years,* (HarperCollins 2002) <https://www.amazon.com/Her-Majesty-Fifty-Regal-Years/dp/0006531369> accessed 30 September 2022.

[30] Lacey (note 15).

[31] Richard Hyland, '*Pacta Sunt Servanda: A Meditation' (1994)* 32 Va. Journal International Law 405 at 412. <https://www.trans-lex.org/124500/_/hyland-richard-pacta-sunt-servanda:-a-meditation-34-vjil-1994-at-405-et-seq/> accessed 30 September 2022.

[32] W. Paul Gormley, 'The Codification of *Pacta Sunt Servanda* by the International Law Commission: The Preservation of Classical Norms of Moral Force and Good Faith' (1969) 14 St. Louis U. L.J. 367 at 373. <https://camilleripreziosi.com/loadfile/453f20a7-7551-42f8-b2a6-505edb4efa4c> accessed 30 September 2022.

[33] Ibid

[34] April 12, 1977, Y.B. Comm. Arb., (1981) at 101. < https://www.trans-lex.org/127400/_/note-general-principles-of-law-in-international-commercial-arbitration-101-harvlrev-1987-88-at-1816-et-seq/> accessed 30 September 2022.

[35] UNIDROIT , *UNIDROIT Principles of International Commercial Contracts 2004,* 2d ed. (Rome: UNIDROIT, 2004). < https://www.unidroit.org/english/principles/contracts/principles2004/integralversionprinciples2004-e.pdf> accessed 30 September 2022.

[36] 23 May 1969, 1155 U.N.T.S 331 (entered into force 27 January 1980). The Vienna convention on the Law of Treaties has been ratified by 111 states as of 16 June 2010. <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&clang=_en> accessed 30 September 2022.

[37] (Gormley note 32)

be kept').[38] The full phrase is not found in Justinian's Digest, even though an entire chapter is devoted to agreements, entitled, *De pactis*.[39] In the *Decretals* of Gregory IX, issued in 1234, it is found again in a modified form as a sb-heading to a chapter on agreements.[40] The maxim as it is known today was likely first coined in the seventeenth century by the German jurist Samuel von Pufendorf (1632-1694).[41] Over the course of many centuries, excuses for non-performance did eventually develop into a recognized legal principle. This development was likely assisted by new scientific discoveries that forced academics to think in more abstract terms.[42] Without this level of abstraction, general legal principles would not evolve. Instead, what would follow would be a series of legal rules (i.e. maxims) and their exceptions, as typically found in Roman law.[43] In this way, excuses for non-performance evolved out of two conflicting Latin maxims: *pacta sunt servanda*[44] and *rebus sic stantibus* ('assuming things remain the same') .[45] Individually, neither maxim adequately addressed the situation where unforeseen supervening events made contractual performance impossible. *Pacta sunt servanda* would insist on performing in spite of the impossibility. Alternatively, reliance on *rebus sic stantibus* provided too much uncertainty in contractual relations. As a result of this inherent conflict, each maxim presented a different vision of contractual relations. As David Bederman stated, 'one is harmonious, predictable and stable; while the other is dynamic, dangerous and uncertain'.[46] This begs the question: how can a promise to perform a contractual obligation be reconciled with a fundamental change of circumstances? The development of the principle of an excuse for contractual non-performance, as in the United Nations Convention on Contracts for the International Sale of Goods **(**CISG) Article 79, seeks to address this apparent contradiction. However, prior to the adoption of the CISG, it took a number of centuries to resolve the conflict between these two competing principles.

4. Origins of the Principle of *Rebus sic Stantibus*: Excuse for Non-Performance in Common Law

The dichotomy posed by the conflict between the sanctity of the contract or its discharge by supervening events has, over time, received divergent treatment by the civil and common law systems. While both legal systems acknowledged in varying degrees the doctrines of *pacta sunt servanda* and *rebus sic stantibus*, they emphasized certain aspects of each doctrine, and they did so at various historical periods. To say that one legal system embraced one doctrine over the other is to simplify the rather complex interaction each system had with these doctrines over the centuries.[47] Rather than focus on the broader principles of *pacta sunt servanda* or *rebus sic stantibus*, each legal system placed greater emphasis on the extent of the available remedies, as well as the culpability or degree of 'fault' embedded in each doctrine. The civil law tradition rejected the notion that a party could contract to do the impossible. This is stated in Justinians's Digest: *impossibilium nulla obligatio*.[48] Civil law remedies are concerned primarily with performance, not damages. From this it follows that a party cannot b forced to do the impossible, even if this was promised in contract.

Conceptually in civil legal systems, there can be no enforceability of an impossible obligation. In contrast, this concept was originally rejected in the common law tradition. It had little difficulty in holding such a party liable, at least in damages. While the obligation may be physically impossible to perform, it could be compensated for by way of a monetary judgment. Holt J.C. put it in the following terms in 1706: 'when a man with for valuable consideration undertakes to do an impossible thing, although it cannot be performed, yet he shall answer in damages'.[49] Performance of an obligation may become physically impossible, but the payment of damages is always possible. In later common law jurisprudence, the common law came closer to acknowledging *rebus sic stantibus* as in the civil law approach. In *Forrer v. Nash*[50] it made the analogy with the civil law nullity of an impossible obligation, and ruled the 'court does not compel a person to do what is impossible'. In such cases, the courts would not order specific performance, but such a refusal did not preclude the awarding of damages.

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[38] Ibid
[39] Ibid
[40] John D Calamari and Joseph M Perillo, *The Law of Contract* (3rd ed, West Publishing1987) <https://books.google.com/books/about/The_Law_of_Contracts.html?id=Hpm0AAAAIAAJ> accessed 18 October, 2022.
[41] Ibid
[42] *Ibid*
[43] Ibid
[44] (Hyland note 31,. See also Coenraad Visser, 'The Principle *Pacta Sunt Servanda* in Roman and Roman-Dutch Law, with Specific Reference to Contracts in Restraint of Trade" (1984) 101 *S.A.L.J.* 641. <https://academic.oup.com/book/36387/chapter/319989341> accessed 17 October 2022.
[45] Guenter Treitel, *Frustration and Force Majeure*, 2d ed. (Sweet & Maxwell, 2004) at 1. <https://search.library.uq.edu.au/primo-explore/fulldisplay?vid=61UQ&docid=61UQ_ALMA2188868300003131&lang=en_ US&context=L > accessed 30 September 2022.
[46] David J. Bederman, 'The 1871 London Declaration, *Rebus Sic Stantibus* and a Primitivist View of the Law of Nations' (1988) 82 *Am. J. Int'l L.* 1 at 2.< https://www.jstor.org/stable/2202874> accessed 30 September 2022.
[47] Hyland (note 31).
[48] Ibid
[49] *Thornborow v. Whitacre* (1706), 92 E.R. 270, 2 Ld. Raym. 1164 at 1165. <https://vlex.co.uk/vid/thornborow-v-whitacre-802184369 > accessed 30 September 2022.
[50] (1865), 35 Beav. 167 at 171. <https://vlex.co.uk/vid/forrer-v-nash-802807481> accessed 30 September 2022.

Unlike the initial common law approach, civil law could simultaneously acknowledge the existence of *pacta sunt servanda*, while stressing the importance and the flexibility provided in the principle of *rebus sic stantibus*. Of course, this would be tempered with the principle that no contract could be formed to do the impossible *(impossibilium nulla obligatio)*.[51] In addition, the emphasis on *pacta sunt servanda* was treated in civil law as a self-evident legal norm, with ethical and moral characteristics, incorporating the notion of 'fault', Not surprisingly, the Canonists believed all promises to be binding, including those that had not yet been accepted.[52] The moral imperatives of the Church were to carry over into promissory obligations. The prominence of *rebus sic stantibus* over *pacta sunt servanda* provided the civilian legal tradition with a differing view towards contractual obligations. Assuming events remained unchanged, this view incorporated the notion that a party would be liable for contractual non-performance, but only if it could be demonstrated that the party was somehow at fault.[53] By contrast, the common law tradition at least initially, rejected the civil law position, and held parties liable to their contracts even where performance had become impossible.[54] As Rosler has noted, 'English law has never known the medieval clausa (*rebus sic stantibus*) doctrine'.[55] *Pacta sunt servanda* was to dominate; *rebus sic stantibus* was to play a subservient role. The earliest recorded evidence of this principle is from an unnamed case in the Year Books.[56] Reported in 1366, the case involved a defendant who has agreed to maintain the buildings on a property that he had leased from the plaintiff.[57] The defendant was to return the buildings in the same condition as they had been in when they were initially leased. When the lease ended and one building was returned to the plaintiff in damaged condition, he sued for breach of contract. In defence, the defendant pleaded that the damage, a fallen wall, had been caused by a severe wind storm. The plaintiff argued that this was still a breach of contract. The defendant responded that he was not obliged to repair the damage caused by acts of God, which were beyond his control and unavoidable. The court ruled in favour of the plaintiff, upholding the *pacta sunt servanda* principle. Strictly speaking, while the storm was a supervening event, returning the property in its original condition was not something that was impossible. Rather, the promise was simply more onerous, but still capable of being performed, as the defendant could repair the damaged wall. Thus, the defendant was liable if he did not perform. The court stated that 'a man is liable to do a thing which is capable of being done by a man, thus when he bound himself to the lessor to repair them, even though it was knocked down by the wind, or by other sudden events, yet the defendant is capable of repairing them, and can do this.[58] If the defendant sought to avoid liability for damage caused by acts of God, he should have protected himself by expressly providing for such exclusion at the time of contracting.

Later English cases also upheld the primacy of *pacta sunt servanda*. Many of these cases involved the carriage of goods by sea. In one case, the defendant promised to carry apples by a boat from Greenwich to London, but the vessel sank in a 'great and violent tempest'.[59] The defendant pleaded an act of God, but the court ruled, 'It was holden to be no plea in discharge of the *assumpsit*, by which the defendant had subjected himself to all adventures'.[60] In a similar case a few years later, it was held that the defendant was still liable in damages under a contract of carriage, even though the boat was overturned 'by the violence of wind and water'.[61] Although the law on impossibility of performance in England was still developing at this time, the initial emphasis was on a strict reading of *pacta sunt servanda*. This principle became enshrined in the English doctrine of absolute contacts in the 1647 case of *Paradine v. Jane.*[62] Frequently cited in later court decisions, and still regarded by some jurists

[51] Ibid
[52] Ibid
[53]E. Allan Farnsworth, *Contracts* (2d rev. ed. 1990) <https://scholar.google.com/scholar?q=E.+Allan+Farnsworth, +Contracts+(2d+rev.+ed.+1990)&hl=en&as_sdt=0&as_vis=1&oi=scholart> accessed 6 October 2022.
[54] Ibid
[55] Hannes Rosler, 'Protection of the Weaker Party in European Contract Law: Standardized and Individual inferiority in Multi-Level Private Law, *European Review of Private Law* (18) 2010. <https://kluwerlawonline.com/journalarticle/European+ Review+of+Private+Law/18.4/ERPL2010059> accessed 6 October 2022.
[56] Anonymous (1366), Y.B. Hil. 40 Edw. III, pl. 11, fol. 6 <https://www.bu.edu/law/journals-archive/bulr/documents/seipp.pdf > accessed 30 September 2022.
[57] Ibid
[58]John D. Wladis, 'Common Law and Uncommon Events: The Development of the Doctrine of impossibility of Performance in English Contract Law' (1987) 75 *Geo. L.J.* 1575 at 1582 <https://works.bepress.com/john_wladis/13/download/> accessed 17 October 2022.
[59] *Taylor's Case* (1583), 4 Leon 31, 74 E.R. 708. <https://www.researchgate.net/publication/228204507_Force_ Majeure_Impossibility_Frustration_the_Like_Excuses_for_Non-Performance_the_Historical_Origins_and_Development_ of_an_Autonomous_Commercial_Norm_in_the_CISG > accessed 30 September 2022.
[60] Ibid
[61]*Tompson v. Miles* (1591), I Rolle's Abridgement, Condition G.9. <https://www.academia.edu/2349732/Force_ Majeure_Impossibility_Frustration_and_the_Like_Excuses_for_Non_Performance_the_Historical_Origins_and_Developme nt_of_an_Autonomous_Commercial_Norm_in_the_>
[62] Aleyn 26, 82 E.R. 897 (K.B.) *[Paradine]. <https://www.trans-lex.org/381700/_/paradine-v-jane%C2%A0[1647]-ewhc-kb-j5-82-er-897/ > accessed 30 September 2022.*

as good law,[63] *Paradine* has come to stand for the common law principle that an impossible supervening event will not necessarily discharge a party from its contractual obligations. In doing so the case is an implicit rejection in English common law of the principle *rebus sics stantibus*.

Over time, the exception, as initially formulated in *Taylor*, would be developed further and extended to recognition of *rebus sic stantibus* and the doctrine of discharge through frustration, impossibility, or hardship. Through this progression, by the early 1900s, the law came to recognize and address the problem of loss allocation that arise in situation where contractual performance becomes impossible because of supervening event for which neither of the parties is responsible.[64] The law did evolve to address this problem, particularly with a group of cases that arose when the coronation of King Edward VII was postponed due to illness.[65] These cases were *Chandler v. Webster;* [66] *Clark v. Lindsay;*[67] *Griffith v. Brymer*;[68] and *Krell v. Henry.*[69] It was in the coronation cases that the doctrine of frustration was recognized for the first time. Variants of the frustration, such as impossibility, hardship, and impracticability, also develop to address the realities of the modern world. However, *pacta sunt servanda* never disappeared entirely from the legal landscape in the common law. The principle continues to exit primarily in cases that concern landlord and tenant law, as well as in other case law that follows the reasoning of *Paradine*, including those that concern antecedent impossibility.[70] While the common law has developed to recognize the doctrine of discharge (through frustration, ·impossibility; hardship, or impracticability) due to supervening events;· in the interests of commercial certainty, the common law has come to attach greater importance to *pacta sunt servanda.* For this reason, in England the doctrine of discharge was severely restricted in scope after its initial development. The First World War did give rise to a number of cases that successfully relied upon the doctrine of discharge due to impossibility.[71]

However, by the Second World War there were few reported cases of supervening impossibility.[72] Indeed, in the post-War era there was a distinct judicial reluctance to apply *rebus sic stantibus* to discharge a contract except in only the rarest of circumstances. As Treitel remarked, 'this reluctance is primarily based on the importance now attached to the principle of sanctity of contract'.[73] In this manner, excuses for non-performance of contractual obligations experienced a distinct evolution in the common law. This was to be different from the progression of excuses for nonperformance as it evolved in civil law jurisdictions, and beyond, as incorporated in CISG Article 79 as an autonomous principle. But as in civil law, the common law developed an array of related doctrines and principles to deal with a fundamental change in circumstances.

Frustration

The common law has developed the doctrine of frustration to deal with three types of cases that concern excuses for non-performance because of a fundamental change in circumstance. These are, impossibility, frustration of purpose; and temporary·· impossibility.[74] The first type of case is that where the frustrating event has rendered performance impossible.[75] In this respect, impossibility in the common law is a sub-set of the broader doctrine of frustration. In addition, the term 'impossibility' must be differentiated from 'frustration' even though these words are sometimes used interchangeably.[76] Indeed, as John McCamus has observed, 'the doctrines of impossibility and frustration were received as and continue to be regarded as two separate doctrines'.[77]

Impossibility

Frustration in the common law provides a party with an excuse for nonperformance of a contract because that party's ability to perform has become severely compromised because of a supervening event. In many respects, it resembles the civilian doctrine of *force majeure*, but there are notable differences. While civil law never accepted

[63] Ibid
[64] Ibid
[65] The cases are commonly known as the 'Coronation Cases'.
[66] [1904] 1 K.B. 493 <https://simplestudying.com/chandler-v-webster-1904-1-k-b-493/ > accessed 17 October 2022.
[67] (1903), 19 T.L.R. 202 <https://www.lexisnexis.com/community/casebrief/p/casebrief-lindsey-v-clark > accessed 17 October 2022.
[68] (1903), 19 T.L.R. 434 <https://blogs.kentlaw.iit.edu/harriscontracts/home/excuse/griffith-v-brymer/ > accessed 17 October 2022.
[69] [1903] 2 K.B. 740 <https://www.lawteacher.net/cases/krell-v-henry.php>
[70] Treitel (n 45), *Frustration and Force Majeure,* (2d ed. Sweet & Maxwell, 2004).
[71] Ibid
[72] Ibid
[73] Ibid
[74] Ibid
[75] Ibid
[76] G.H.L. Fridman, *The Law of Contract in Canada,* 5th ed. (Toronto: Thomson/Carswell, 2006) at 576-577. <https://www.worldcat.org/title/law-of-contract-in-canada/oclc/1206192970?referer=di&ht=edition> accessed 30 September 2022.
[77] Ibid

that a party could contract to do the impossible, in the early stage of the development of the doctrine of frustration, the common law accepted that impossibility was no excuse for failure to perform a contract.[78] As Treitel noted, generally, in most common law jurisdictions, there was no theory of impossibility.[79] Thus, as noted above, initially the common law adopted the strict doctrine of absolute contractual obligations. From this it followed that an impossibility to perform was generally not a legally recognized excuse. Unlike the civil law, the common law was much more reluctant to allow for the termination of a contractual obligation because of a new, unanticipated event. However, there were some exceptions to the general rule of absolute contracts. The death of a promisor in a contract of personal service was one recognized exception; the other was the enactment of subsequent legislation that would make the performance illegal.[80] Apart from these narrow grounds, in the common law *pacta sunt servanda* was to prevail over a contractual impossibility. As Lord Buckmaster of the Privy Council stated in 1920, 'no phrase is more frequent! y misused than the statement that impossibility of performance excuses breach of contract. Without further qualification such a statement is not accurate; and indeed if it were necessary to express the law in a sentence, it would be more exact to say that precisely the opposite was the real rule'.[81] Thus, in the common law where a party made an unqualified contractual promise, it had a *prima facie* duty to perform. If circumstances materially changed after contract formation, making performance impossible, the parties still remained bound to their obligations unless a term of discharge could be implied in the contract. More recently, Martin C.J. of Saskatchewan made this point when he stated, 'where a person by his own agreement creates a duty or charge upon himself, he is bound to carry it out notwithstanding that he is prevented from so doing by some accident or contingency which he· ought to have provided against in his agreement'.[82] The words of Martin 'C.J. echo those found in the seventeenth century judgment of *Paradine:* contractual performance was to be 'absolute' to the extent that impossibility was not excusable, unless such a provision was provided for in the contract.

Over time, the common law became less strict in the application of the doctrine of absolute contractual obligations. The process of change began with Blackburn J.'s decision in *Taylor v. Cadwell.*[83] Blackburn J. did not directly contradict the precedent in *Paradine* in that impossibility could not apply to cases involving land, as the land could not be destroyed, and the remaining interests could survive.[84] However, the accidental destruction of a *building* by fire on property that was to be leased could discharge a contract. Blackbum J. made a similar ruling in *Appleby v. Myers*[85]. That case concerned a contract for the manufacture and installation of machinery for a factory, and maintenance of the machinery for two years. The contract was held to be discharged when the factory was destroyed by fire prior to the installation of the machinery. Blackburn J. also acknowledged the principle he laid down in *Taylor v. Cadwell* both parties were excused from their performance-but the plaintiffs could not recover for any work that had already been completed. The common law approach to frustration and discharge was that losses should lie where they fall at the time of the frustrating event. This approach has also been adopted in Canada where two early Supreme Court decisions applied *Taylor v. Cadwell* and *Appleby v. Myers.*[86]

As Fridman noted, it was the decisions of Blackbum· J. in the cases of· *Taylor v. Cadwell* and *Appleby v. Myers* that were instrumental in facilitating the development of the modem doctrine of frustration in the common law.[87] According to Fridman, 'the courts were attempting to extricate themselves from the straightjacket of the absolute theory of contracts'.[88] Treitel would appear to concur with this view by acknowledging that the judgment of Blackbum J. in *Taylor v. Cadwell '*formulated the doctrine of discharge in a way which facilitated its development and expansion'.[89] However, in discussing the development of frustration, Treitel did so within the context of cases beginning with *Paradine* that remain historical 'survivals of the doctrine of absolute contracts'.[90] The common law, in developing the modem doctrine of frustration, never abandoned the *pacta* principle. As Lord Shaw stated: 'frustration can only be pleaded when the events and facts on which it is founded have destroyed the subject-

[78] *Paradine v. Jane (* note 62).
[79] Ibid
[80] Ibid
[81] *Grant, Smith & Co. v. Seattle Const. & Dry Dock Co.,* (1920] A.C. 162 at 169 (U.K.). <https://www.casemine.com/judgement/uk/5b4dc25a2c94e07cccd2409f> accessed 30 September 2022.
[82] *McCuaig v. Kilbach,* [1954] 3 D.L.R. 117 at 119 (Sask. C.A.). <https://www.uniselinus.education/sites/default/files/2021-06/Tesi%20Chelumbrum.pdf> accessed 30 September 2022.
[83] Ibid
[84] Ibid
[85] *Appleby v. Myers,* [1867] L.R. 2 C.P. 651. <https://www.lawteacher.net/cases/appleby-v-myers.php > accessed 30 September 2022.
[86] The cases were *Kerrigan v. Harrison* (1921), 62 S.C.R. 374 and *Canadian Government Merchant Marine Ltd. v. Canadian Trading Co.* (1922), 64 S.C.R. 106. See also Fridman, *supra,* note 420 at 636-637 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/3095/index.do?site_preference=normal> accessed 30 September 2022.
[87] Ibid
[88] Ibid
[89] Ibid
[90] Ibid

matter of the contract, or have, by an interruption of performance there under so critical or protracted as to bring to an end in a full and fair sense the contract as a whole'.[91]

Frustration of Purpose

Frustration of purpose is the second type of case that falls under the doctrine of frustration. This type of case has broadened the notion of impossibility in English law. In many respects, cases of frustration of purpose seek to reconstruct the fundamental basis or foundation of the contract. The implied intent of the parties is not the focus; rather, the court attempts to uncover, or 'reconstruct' the true meaning of the contract. The common law concept of frustration of purpose appears to have originated with the early case of *Jackson v. Union Marine Insurance Co. Ltd.*[92] *at* least that was the view of Diplock L.J in *Hong Kong Fir Shipping Co. v. Kawasaki Kisen Kaisha Ltd*.[93] In *Jackson,* a-ship, which was to be chartered, ran aground without the fault of either contractual party. This caused several months' delay in the availability of the vessel. The court ruled that this event discharged the charter party. The ship could have been sent later, but by the time it would have been ready, the original purpose of the charter could not have been fulfilled. On this basis the case was decided, even though there was no physical impossibility or true frustration. Instead, there was practical frustration, or frustration of purpose. Giving credit to Bramwell B. in this case, Diplock L.J. noted that: 'It was recognized that it was the happening of the event and not the fact that the event was the result of a breach by one party of his contractual obligations that relieved the other party from performance of his obligations'.[94] Following *Jackson,* English courts treated cases of this type as frustrating the contract, even though the contract could be performed at some point in the future. The rationale for extending the scope of frustration was the notion that the commercial purpose of the original contract had been frustrated. To continue with performance would be to bind the parties to a new arrangement, under new circumstances. This would be a radically different agreement than was originally agreed to. As Lord Radcliffe put it:

> frustration occurs whenever the law recognizes that without default of either party a contractual 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. *Non haec in foedera veni.* It was not this that I promised to do.[95]

The historical impetus for the expansion of the principle of frustration in the common law came from a series of cases[96] that occurred as a result of the postponement of the coronation procession of King Edward VII due to his illness. It appeared that the similar problems presented in these cases could not be easily resolved under the rigid common law rule of impossibility. As impossibility was never an issue, the courts felt compelled to expand the principle frustration to incorporate situations where the purpose of the contract failed or was defeated through a subsequent event that was not the fault of either party. In what became known as the coronation cases,[97] they represented an innovative approach to frustration, and marked a clear departure from earlier decisions. The facts in these cases had a common element. Numerous contracts ·had been made in anticipation of the coronation, such as the rental of rooms, the rental of seats in stands and so on. When the coronation had to be postponed, performance of these contracts did not become impossible. The leased rooms and seats could still be occupied on the contracted dates, but this would have been a superfluous exercise. The leading case was *Krell* v. *Henry.*[98] The defendant, Henry, had agreed to hire from the plaintiff some rooms to watch the coronation procession on 26 and 27 June, 1902. He paid ·£25 as a deposit and was to pay the balance of £50 on 24.June. When the· King became ill and the coronation procession was postponed, Henry refused to pay the balance, and the plaintiff brought a claim for the outstanding amount due. Henry also counterclaimed to recover the £25 deposit he had paid. At trial, the court held that there was an implied term in the contract that the procession should take place. Accordingly, Darling J. gave judgment for the defendant on both the claim and the counterclaim. Krell appealed, but the Court of Appeal dismissed the appeal, holding that the purpose of the contract had been frustrated. The court noted that the agreement made no reference to the coronation. However, the plaintiff was aware of the purpose for

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[91] Ibid

[92] (1874), L.R. 10 C.P. 125 *[Jackson]*. According to Bramwell B. at 147:

There are the cases which hold that, where the shipowner has not merely broken his contract, but has so broken it that the condition precedent is not performed, the charterer is discharged. Why? Not merely because the contract is broken. If it is not a condition precedent, what matters it whether it is unperformed with or without excuse? Not arriving with due diligence or at a day named is the subject of a cross action only. But not arriving in time for the voyage contemplated, but at such a time that it is frustrated is not only a breach of contract, but discharges the charterer. And so it should though he has such an excuse that no action lies.

[93] In *Hong Kong Fir Shipping Co. v. Kawasaki Kisen Kaisha Ltd.,* [1962] 2 Q.B. 26 at 68-69 *<https://www.lawteacher.net/cases/hong-kong-fir-shipping-co-v-kawasaki-kisen-kaisha.php> accessed 30 September 2022.*

[94] Ibid

[95] Ibid

[96] *Chandler v. Webster,* [1904] 1 K.B. 493; *Clark v. Lindsay* (1903), 19 T.L.R. 202; *Griffith v. Brymer* (1903), 19 T.L.R. 434; *Herne Bay Steamboat Co. v. Hutton,* [1903] 2 K.B. 68 *[Herne Bay]; Krell v. Henry,* [1903] 2 K.B. 740 *[Krell]. <https://www.academia.edu/2349732/Force_Majeure_Impossibility_Frustration_and_the_Like_Excuses_for_Non_Performance_the_Historical_Origins_and_Development_of_an_Autonomous_Commercial_Norm_in_the_ >*

[97] Ibid

[98] *Krell* v. *Henry.* <https://www.lawteacher.net/cases/krell-v-henry.php> accessed 30 September 2022

renting the rooms. In the court's view, the postponement of the coronation destroyed the value of the contract for the defendant. Referencing the *Taylor's* case, Vaughan Williams L.J. stated that the *Taylor* rule had been expanded to include those cases where the event which renders the contract incapable of performance is the cessation or non-existence of an express condition or state of things, going to the root of the contract, and essential to its performance.[99] In his view, the novel point in this case was whether the court should consider circumstances that went beyond the terms in the contract in applying the rule that was established in *Taylor.* He answered in the affirmative: you first have to ascertain, not necessarily from the terms of the contract, but, if required, from necessary inferences, drawn from surrounding circumstances recognized by both contracting parties, what is the substance of the contract, and then to ask the question whether that substantial contract needs for its foundation the assumption of the existence of a particular state of things. If it does, this will limit the operation of the general words, and in such case, if the contract becomes impossible of performance by reason of the· non-existence of the state of things assumed by both contracting parties as the foundation of the contract, there will be no breach of the contract thus limited.[100]

Although it was not stated in the court's decision, such an approach would also honour the *pacta* principle. It was not that the contract became impossible to perform; the payment of money for the rent of a room is rarely impossibility. Rather, where the occurrence of an event becomes the basis of a contract-even though it may not be explicitly mentioned in the agreement-the parties may be discharged from their obligation if the event does not occur. It is not an impossibility that has prevented performance, but instead it is the failure of the purpose of the contract that has rendered performance superfluous. In this way, *Krell* established a doctrine related to, but independent of impossibility. As McCamus stated:

> by eliminating references to impossibility of performance and by formulating the rule in terms of a cessation or nonexistence of a 'state of things' going to the root of the contract, the *Krell* decision cast the rule in broad enough form to embrace all of the impossibility cases' as well as cases like *Krell* 'in which no question of impossibility arises.[101]

The *Krell* decision has been subject to some criticism for its theoretical ability to allow a party to be excused from a bad bargain as a result of an unfortunate subsequent event.[102] As Thomas Roberts stated that 'to accept *Krell* as a general precedent allowing frustration of purpose to be a valid ground for cancellation would however introduce into the law a principle at odds with the principle sanctity of contract'.[103] However; the · potential for the expansion of the doctrine of frustration of purpose has not been realized. As Lord Wright remarked of the *Krell* decision, it 'is certainly not one to be extended'.[104] Indeed, *Krell* has been narrowly distinguished from similar cases. In another of the coronation cases, *Herne Bay,*[105] decided in the same year as *Krell* by the same panel of judges, the defendant's contract to hire a boat to watch the King at a naval review was not discharged from the agreement by the cancellation of the coronation.

Temporary Impossibility

As frustration can occur without the fault of either party, the courts have been able to fashion rules to excuse the parties from their contractual obligation as long as the impossibility continues. A problem arises, however, when the impossibility ceases and one party then insists on performance. In such cases, it must be determined whether the party should then perform, or whether the prolonged delay caused by the temporary impossibility should excuse performance entirely. In this respect, the term temporary impossibility must be distinguished from partial impossibility. The latter term is often used to designate a situation in which some part, but not all of the promised performance becomes legally impossible, while temporary impossibility refers to a delay in performance resulting from some operative facts of impossibility. The origin of the principle *of* temporary impossibility can be traced to Roman law. The *perpetuatio obligationis* excused the delay in performance in those situations where the obligation had become temporarily impossible to perform.[106] Most importantly, it did not terminate the obligation to perform, but only suspended it.[107] When the temporary impossibility ceased to operate, performance was expected, or could be demanded. The same rule applies today in the common law: a temporary impossibility may have other legal effects, but it does not discharge a contract.[108] In this respect, temporary impossibility is not firmly rooted in the principle of frustration. However, there is one exception. Contracts will be discharged in cases of temporary impossibility only where it is deemed that time is of

[99] Ibid
[100] Ibid
[101] Ibid
[102] Ibid
[103] Thomas Roberts, 'Commercial Impossibility and Frustration of Purpose: A Critical Analysis' (2003) 16 *Can. J.L. & Juris*. 129 at para. 30. <https://www.academia.edu/2349732/Force_Majeure_Impossibility_Frustration_and_the_Like_Excuses_for_Non_Performance_the_Historical_Origins_and_Development_of_an_Autonomous_Commercial_Norm_in_the_ > accessed 30 September 2022.
[104] *Martime National Fish Ltd. v. Ocean Trawlers,* [1935] A.C. 524 at 529. < https://www.lawteacher.net/cases/maritime-national-fish-v-ocean-trawlers.php> accessed 30 September 2022
[105] Ibid
[106] W.A. Ramsden, 'Temporary Supervening Impossibility of Performance' (1977) 94 *S. African L.J.* 162 at 162. <https://www.academia.edu/2349732/Force_Majeure_Impossibility_Frustration_and_the_Like_Excuses_for_Non_Performance_the_Historical_Origins_and_Development_of_an_Autonomous_Commercial_Norm_in_the_ > accessed 30 September 2022.
[107] Ibid
[108] Ibid

the essence of the contract.[109] In such cases, the practical effect is to treat the contract as though it were wholly frustrated. This approach is similar to that found in German and Swiss law, which is to treat a temporary impossibility as a permanent impossibility.[110]

Implications

The early common law of England rejected any notion of hardship that did not amount to impossibility. The principle of frustration was not applied to cases of *rebus sic stantibus* where unforeseen circumstances had rendered performance extremely onerous. Treitel, for example, concluded that the 'English cases do not provide a single clear illustration of discharge on such grounds ([of hardship or pure impracticability] alone'.[111] The House of Lords has denied relief on the grounds of hardship or impracticability in a number of cases. As Lord Lorebum stated in one case: 'The argument that a man can be excused from performance of his contract when it becomes 'commercially' impossible seems to me a dangerous contention which ought not to be admitted unless the parties have plainly contracted to that effect'.[112] Similar judicial hostility in England to hardship and impracticability appeared in a number of other cases involving contractual performance difficulties due to World War I. In one case, for example, the contract was not discharged even though it was 'practically impossible for the vendor to deliver'.[113] McCardie J. elaborated and expressed the view that-it could not be'said that grave difficulty on the· part of the vendor in· procuring the contract articles will excuse him from the performance of his bargain'.[114] This is representative of the common law's preference towards *pacta sunt servanda,* and the subservient--or almost irrelevant-role played by *rebus sic stantibus.* This is in general contrast to the treatment of hardship in civil law jurisdictions, which have been much more receptive to cases of changed circumstances that result in situations of hardship and impracticability.[115]

5. Conclusion

The right to conclude contracts is one of the primordial civil rights acknowledged since olden times. It was essence of '*commercium*' or '*jus commercii*' of the Roman '*jus civile*' whose scope was enlarged and extended by *'jus gentium'*. Then it was always and constantly considered as security for economic transactions, and was even extended to the field of international relations. This fundamental right is protected and characterized by two important propositions couched respectively in the expression that 'the contract is the law of the parties', and in Latin maxim that *'Pacta sunt servanda'* (pacts are to be observed). The contract is the law of the parties. It cannot be cancelled or amended except by their mutual consent or for reasons admitted by the law. International custom and case law had always sustained the proposition of '*pacta sunt servanda'*. It has been upheld in many arbitration awards, such as *Aramco-Saudi Arabia Arbitration* of 1958,[116] and *Sapphire International Petroleum Ltd v National Iranian Oil* of 1963.[117] This principle is also upheld by most international publicists, who maintain that the sovereign right of nationalization is limited by the respect due for contractual rights[118] However, under international law, the principle of the binding force of treaties is sometimes restricted by the proposition of '*Rebus sic stantibus'.* This means that the binding force is subject to the continuance of circumstances under which a treaty was concluded. If such circumstances change substantially, then its modification or cancellation may be claimed and resorted to. This limitation is akin to the 'doctrine of unforeseen events' *(théorie de l'imprévision*), which is known is civil and administrative laws in some countries. However, If exceptional general circumstances arise which were not capable of being foreseen and for which the performance of the contract, although did not become impossible, but has become so onerous to the debtor that it threatens him with heavy loss, (then) the judge, according to the circumstances and after weighing the reciprocal interests of the parties, may reduce the onerous obligation down to a reasonable limit. Any agreement to the contrary shall be void.

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[109] Ibid

[110] Ibid

[111] *Taylor v. Caldwell,* [1863] 3 <https://www.lawteacher.net/cases/taylor-v-caldwell.php> accessed 30 September 2022 , *pacta sunt servanda* nonetheless survives as a general principle in common and civil law systems.

[112] Tenants (Lancashire) Ltd. V. C.S. Wilson & Co. Ltd., [1917] A.C. 495 at 510 <https://www.casemine.com/judgement/uk/5a8ff8de60d03e7f57ecec11> accessed 30 September 2022.

[113] *Blackburn Bobbin Co. Ltd. v. T. W. Allen* & *Co.,* [1918] 2 K.B. 540 at 551, aff'd [1918] 2 K.B. 467. <https://www.lawteacher.net/cases/blackburn-bobbin-v-allen.php > accessed 30 September 2022.

[114] Ibid

[115] D. b. Imprevision,, *Changed Circumstances and other Hardship Principles. <https://www.trans-lex.org/128100/_/puelinckx-ah-frustration-hardship-force-majeure-impr%C3%A9vision-wegfall-der-gesch%C3%A4ftsgrundlage-unm%C3%B6glichkeit-changed-circumstances-3-jintl-arb-1986-no-2-at-47-et-seq/ > accessed 30 September 2022.*

[116] ILR 1963, at 117 <https://www.trans-lex.org/260800/_/aramco-award-ilr-1963-at-117-et-seq/> accessed 17 October 2022.

[117] *Sapphire International Petroleum Ltd v National Iranian Oil* of 1963 <https://jusmundi.com/en/document/decision/en-sapphire-international-petroleums-ltd-v-national-iranian-oil company-arbitral-award-friday-15th-march-1963> accessed 17 October 2022

[118] Hans Wehberg '*Pacta Sunt Servanda*' American Journal of International Law (2017) <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/pacta-sunt-servanda/E8967A236B1141934DD8D1495FEA2BFA> accessed 17 October 2022.