

CASEBRIEFS

The Understanding Video Lecture Series™

Excuse

EXCUSE FOR NONPERFORMANCE

- **Frustration of Purpose** - has the purpose of the contract been frustrated?
- **Impossibility** - is the contract impossible for anyone to perform?
- **Commercial Impracticability** - has the contract been made commercially impracticable by some unforeseeable event?



Impossibility

An excuse for the nonperformance of duties under a contract, based on a change in circumstances (or the discovery of preexisting circumstances), the nonoccurrence of which was an underlying assumption of the contract, that makes performance of the contract literally impossible.



What does this mean?

- Intervening event that is unforeseeable
 - Think weather, war, etc.
- Literally impossible for anyone to perform



Let's try a hypo

On May 15, BIG Strawberries Inc., a wholesaler of large strawberries, entered into a written contract with Farmer, a farmer, to purchase from Farmer, at an agreed price per basket, 500 baskets of large strawberries for delivery the following October 15. The contract, which was signed by Farmer and BIG Strawberries' president, President, stipulated that all 500 baskets would be grown on Farmer's organic farm located in Orange County, California. As both parties knew, Farmer's farm in Orange County had an established average annual production of 2,000 baskets of large strawberries. On September 1, an earthquake struck Farmer's farm and a substantial part of his strawberries were destroyed. The following day, Farmer sent the following telegram to BIG Strawberries:

"September 2

Please be advised that an earthquake has devastated my farm. It has caused severe damage the strawberries. I anticipate a reduction in the October 15 shipment. Would like to confirm new delivery estimate of 250 baskets conforming to contract specifications.

S/Farmer"

Is farmer excused under impossibility?

Answer: Yes

- Unforeseeable Event? Earthquake
- Impossible for ANYONE to perform? Yes, the contract stipulated that strawberries be grown on this specific farm.
- Note on agriculture: whatever crop farmer yields, must split between contracts, in proportion to those contracts.



Commercial Impracticability

Requirements for discharge:

- Performance “impractical” (not just more difficult, not mere lost profits) ;
- Based on event non-occurrence of which was a “basic assumption” of K;
- Risk of event was not expressly or implicitly placed on the party seeking discharge.

Let's try a hypo

Cars R Us contracts to sell Dealer 10 Tesla 102s, an electric sports car that Cars R Us says will go from 0 to 80 mph in 4.2 seconds, based on a new battery technology they are working on.

Delivery is to occur by June 1st.

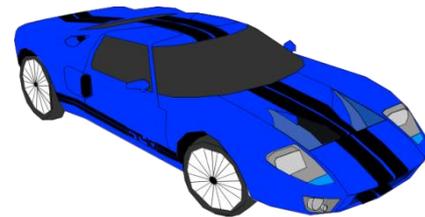
On 4/1, Cars R Us notifies Dealer that the battery technology has hit a roadblock, and the car will be delayed 1 year.

Contract is silent on risk of delays.

Can Cars R Us be excused from delay damages?

Probably Not

- Commercial impracticability can be used only where the parties did not expressly or implicitly allocate the risk of the event in question.
- Where the product is premised on a new invention or development, and the K is silent, the seller bears the risk



Frustration of Purpose

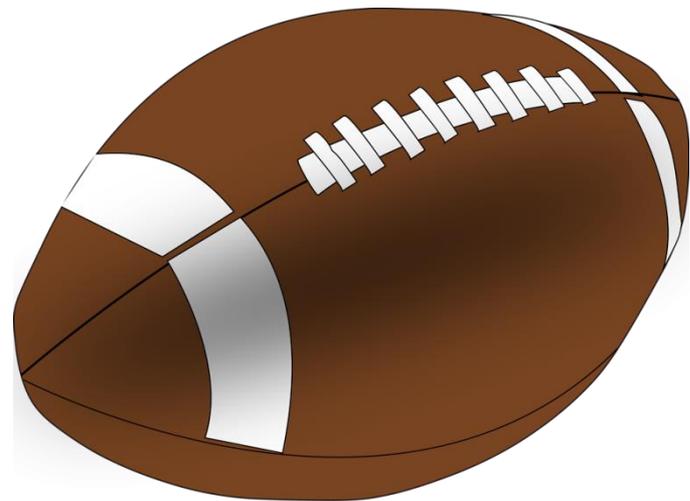
Frustration of purpose occurs when an unforeseen event undermines a party's principal purpose for entering into a contract such that the performance of the contract is radically different from performance of the contract that was originally contemplated by both parties, and both parties knew of the principal purpose at the time the contract was made.

For Example

- Jeff owns a home very close to the football stadium where they plan to host the Super Bowl this year. He decides to rent out his home to a family attending the Super Bowl. However, a week before the game is to take place, the NFL cancels the Super Bowl for no reason. Frustration of Purpose?

Yes

- Both parties knew that the contract was contingent upon the super bowl taking place. The family was renting the house in order to attend the game, and Jeff was renting out the house for the purpose of having someone attend the game.



Let's try another

- Lindsay contracts with a gorgeous ballroom to host her wedding. She puts down the payment, and they work out all the details. However, one week before the wedding, Lindsay and her fiancé call the wedding off. Is this frustration of purpose?

No

- Even though all parties knew that the purpose of the contract was for the wedding, since the purpose was frustrated by one of the parties to the contract, the contract will not be void.



Let's try another

Employee, a worker who is about to retire from Company, has a choice of 2 retirement options funded by Company:

- (1) A cash sum of \$200K (the default); and
- (2) A lifetime pension of \$2K/mo.

Employee, being in apparent good health, and worried (as company knows) about outliving his pension, elects option (2).

1 week later, before getting even the first monthly check, Emp dies of massive heart attack.

His estate sues to have the monthly-pay election rescinded on frustration of purpose.

Will the estate win?

Answer

- No. With frustration, as with impracticability,
 - doctrine will not apply if parties expressly or implicitly allocated risk of even to the party now seeking to use the doctrine.
- Here, Emp implicitly took risk of very early death,
 - and Company took risk of Emp's living far longer than his life expectancy,
 - so doctrine won't apply.