Oriental Renaissance: Innovative, educational, natural and social sciences
Scientific Journal Impact Factor
Advanced Sciences Index Factor

VOLUME 2 | ISSUE 5
ISSN 2181-1784
SJIF 2022: 5.947
ASI Factor = 1.7

THE DOCTRINE OF FRUSTRATION IN ENGLISH CONTRACT LAW AND COMPARATIVE ANALYSIS WITH THE CONTRACT LAW OF UZBEKISTAN

Akhtamova Yulduz
Lecturer, International Private Law Department,
Tashkent State University of Law,
Niyozov Khushnudbek
4rd Year Student, International Law And Comparative Legislation Faculty, Tashkent State University of Law, Tashkent, Uzbekistan

ABSTRACT

At a time when the modern world is rapidly evolving, there is a need to adapt the legal system to emerging innovations. This is called the evolution of law. Law families are going their separate ways, and each is building its own system. However, these legal families must constantly change and innovate in order to adapt to the requirements of the new era. There are many different ways to create news and feed a legal family. Examples range from the new legal institutions that emerge as a result of scholarly research to the deepening areas. One way is to use the productive experience of others, to apply that experience, or to incorporate it into the legal system itself. This is the most common situation among legal families. Below we study the mechanism of the frustration doctrine of English contract law in the world experience and try to make a comparative analysis of it in relation to contract law in the legislation of the Republic of Uzbekistan, formed within another family of law. In this article, we consider the set of features of the frustration element in the contract law of Uzbekistan and observe the prospects for further integration.

Keywords: *English contract law, doctrine of frustration, contract law in Uzbek law*

ANNOTATSIYA

Zamonaviy olam tezkor sur'at bilan rivojlanib borayotgan bir davrda huquqiy tizimni vujudga kelayotgan yangiliklarga moslashtirish zaruriyati vujudga keladi. Buni o'ziga xos huquq evolyutsiyasi deb atash mumkin. Huquq oilalari turli xil yo'lni bosib o'tyapti va har biri o'z tizimini yaratib bormoqda. Biroq, ushbu huquqiy oilalar yangi davr talablariga moslashish uchun doimiy o'zgarish va yangiliklar yaratishi lozim. Yangiliklar yaratish va huquqiy oilani to'yintirib boorish usullari esa turli xil. Olimlarning izlanishi natijasida vujudga keladigan yangi huquqiy institutlardan tortib, sohalarga chuqurlashib borishgacha misol qilib keltirish mumkin. Shu yo'llardan biri boshqalarning unumi tajribasidan foydalanish, ushbu tajribani tadbiq etish yoki uni o'zi

huquqiy tizimiga singdirish hisoblanadi. Bu eng keng tarqalgan huquqiy oilalar o'rtasida uchrab turadigan holat. Biz quyida jahon tajribasida ingliz shartnoma huquqining frustratsiya doktrinasi mexanizmini o'rganamiz va uni boshqa huquq oilasi doirasida shakllangan O'zbekiston Respublikasi qonunchiligidagi shartnomaviy huquqqa nisbatan qiyosiy tahlilini o'tkazishga intilamiz. Ushbu maqolada O'zbekiston shartnoma huquqida frustratsiya elementiga xos xususiyatlar majmuini ko'rib chiqamiz va buning keying integratsiya istiqboli yuzasidan mushohada yuritamiz.

Kalit so'zlar: *Ingliz shartnoma huquqi, frustratsiya doktrinasi, O'zbekiston qonunchiligida shartnoma huquqi.*

INTRODUCTION

In this article, we consider the doctrine of frustration in English contract law and its theoretical comparative analysis with contract law in Uzbek law. Our goal is to more fully disclose the mechanism of frustration and analyze the need to integrate it into the contract law of Uzbekistan. To do this, we approach the term frustration, its essence, and its content from relevant legal sources. Then we make an analogy with the legislation of Uzbekistan. Then we will determine whether we need to incorporate this mechanism into the legislation of Uzbekistan.

The role, origin and essence of the doctrine of frustration in English contract law

Doctrine of frustration is one of the existing mechanisms in English contract law, which is activated when the parties are unable to fulfill the contract or if the implementation of this contract does not bring any economic or other intended benefit to both parties. and serve as a means for the court to terminate this Agreement. One of the basic principles of English contract law is the pacta sunt servanda. This principle means that the contract is binding , regardless of the circumstances. This is based on the general principles of English law, and *Paradine c. The president of Jane [1647]* [1]makes this very clear. This is not always the right approach to the various contractual relationships that are problematic from the point of view of justice . As a result, there is a specific gap in the legal system , which needs to be regulated by new legal mechanisms. One of the methods used to fill this gap is the doctrine of frustration. Of course, there are other legally regulated mechanisms of [2] circumstances leading to the termination of the contract , such as "clausula rebus sic stantibus" (difficulty in fulfilling obligations) , fors - majoure (Latin: Vis major; make it impossible or impossible to do). These mechanisms differ in doctrine of frustration according to different degrees and criteria, and one of the main elements of these is that the other systems above must cover man-made situations or

[1] 82 ER 897, [1647] EWHC KB J5, (1647) Aleyn 26 / http://www.bailii.org/ew/cases/EWHC/KB/1647/J5.html
[2]Agarkov M.M. Selected works on civil law. T. II. M., 2002. S. 16, 41–54

are directly contracted. Frustration, on the other hand, operates in the form of a general law and can be applied directly by a court in the event of a situation requiring it. If we look at the origins of the Frustration Doctrine , its first application is in the presidency of Taylor & Anor v Caldwell & Anor [1863] EWHC QB J1 (May 6, 1863) [3]. According to this case, the plaintiff will sign a contract for the lease and use of the concert hall and the park for 4 days, but the fire will become unusable 6 days before the 1st day of the concert hall. As a result, in practice, the subject of the lease agreement becomes invalid. In this case, the plaintiff claims that the defendant was not able to hand over the concert hall on the scheduled date, as a result of which he could not give a concert and the money spent on advertising the concert was lost. However, in practice, the contract was frustrated because the object of the obligation was invalid prior to the commencement of the contract and without the participation or action of the counterparty. To better understand the nature of frustration, we refer to another case law. In Krell v Henry [1903], the object of frustration and the reasons for the termination of the obligation attached to it are well explained. Since then, the general concept, status, and working mechanism of frustration have emerged, and have gradually taken shape as an institution, which continues to this day.

Frustration doctrine and its theoretical structure

We have tried to explain the essence and purpose of frustration in the above paragraph, and now we will consider the order of its operation. The elements and components that lead to frustration are determined by the situation. Initially, at the time of signing the contract, the counterparties must have the intention to enter into an agreement on the subject of the contract, and this intention must be clear to both parties. In the case of Blackburn Bobbin Co Ltd v TW Allen & Sons Ltd [1918], the fact that the parties had two different ideas and did not pay attention to the intention at the time of signing the contract deprives them of the opportunity to address the element of frustration. Now, let's look at the theoretical foundations that lead to frustration in the English treaty . In English law, there are 3 types when approaching frustration to an object. These are:

- In the event of an event that in practice or in the future makes it impossible to perform the contract;
- In the event of an event in which the performance of the contract is found to be illegal;
- When the performance of a contractual obligation becomes meaningless or unprofitable for the parties;

[3] [1863] EWHC QB J1, 3 B&S 826, 122 ER 309 / http://www.bailii.org/ew/cases/EWHC/QB/1863/J1.html

Circumstances leading to impossibility: destruction or unavailability of something essential for contract's performance, death of either party , unavailability of party, method of performance impossible. In this case, the [4]fulfillment of the obligation to the object of the contract becomes impossible due to the above circumstances. For practical clarity, I ask you to look at Robinson v Davison [1871].

This is as follows : the terms of the contract are agreed between the parties, but the subject of the contract is declared illegal by the state or the competent authority until these conditions are met. This means that frustration is applied to the contract. This method became popular during the First and Second World Wars. Another situation: an armed conflict has arisen between State A and State B, and an agreement on mutual trade has been concluded between an entrepreneur located in State C and an entrepreneur located in State A. However, State C in this case is on the side of State B for political purposes and has restricted any trade relations with State A at the state level in order to support it. As a result, we can apply the doctrine of frustration to the contract signed between entrepreneurs in countries A and C, because state C, which restricts state A, finds it illegal to trade with state A in its territory.

Fulfillment of the obligation specified in the contract is detrimental to all parties . In this case, the situation differs from the time of signing the contract and in the new case loses its significance equally for the parties. That is , in practice it is possible to fulfill the contract, but there is no need or desire for it.

Aspects that are not the basis for frustration

If, after the conclusion of the contract, the situation and the situation of its implementation change as a result of external influences, which makes it very difficult to implement the contract, but not impossible, then we can not apply the doctrine of frustration with this contract. This is because the possibility of fulfilling the contract is preserved, which is not a basis for its termination . This can be seen in the case of Tsakiroglou & Co Ltd against Noblee Thorl GmbH, The Law Report 1962 at Page 7 et seq [5]. Another point to note is that a situation is expected to change at the time of signing the contract, and if both parties are aware of this and as a result this happens in practice, one party may apply the doctrine of frustration to the other. can't ask. Example: If the supplier agrees to supply the buyer with a certain price at a certain price, knowing that the price of the product is rising, but the price of the product increases, the supplier can not ask to change the price. Because he knew that the price would change and agreed to set a clear price. It frees you from frustration. It obliges the fulfillment of the contract.

[4] Contract Law, Catherine Elliot & Frances Quinn, seventh edition 2009 - p.302 - 310;
[5] https://www.trans-lex.org/311500

Contractual rights and obligations in the law of Uzbekistan

It is known that the legal system of Uzbekistan belongs to the Romano-Germanic family of law , and the legislative system is formed on the basis of the principles of this family. Contract law is no exception. The main principles of contract law are codified and enshrined in the Civil Code of the Republic of Uzbekistan and the Law No. 670-I "On the legal framework for the activities of business entities." In this way, the institute was standardized, that is , standard principles were created. This, of course, limits the possibility of using various legal frameworks, scientific theories and doctrines in the contract law, and at the same time weakens the contract law of Uzbekistan in the face of news. Due to strict standards, it is difficult for contract law to adapt to the evolution of law, to new social relations that may arise . Unexpected changes can have a severe impact on legislation. In addition, lawmaking in Uzbekistan is not in the hands of the judiciary , but in the hands of the government and the legislature, the Oliy Majlis. At the same time, the head of state is likely to issue a relevant legal document and thus influence the law of the contract. This created the possibility of partial difficulty in creating and developing a free economic system . This is because the state retains a great opportunity to intervene in the contractual relations and to regulate them. On the other hand, this approach allows the state to strictly regulate, protect and control its domestic market. He also argues that the law that the Roman-German legal family derives from the Anglo-Saxon family of law and the law that is created focus on the regulation and standardization of society and are more important than finding a solution to this legal problem. However, this does not serve as a basis for assuming that the legal system is far behind. Although the legislative system does not react quickly to emerging innovations, it is slowly adapting. It will only take some time.

Frustration with the contractual relations in force in the Republic of Uzbekistan

Look at frustration . There is no clear frustration doctrine in the legislation. However, in theory, this mechanism has been studied and specified in the Civil Code of the Republic of Uzbekistan. The Code provides general rules on contract law and its general description, tasks and consequences. An important part for us is the issue of obligations. This is reflected in Chapter 25 of the Civil Code of the Republic of Uzbekistan. Here 346; 349; 350 - The substances provide the constituent elements of frustration.

Article 346 : As a result of future merger of two parties to one person (legal entity or corporation), the obligation to fulfill the terms of the contract becomes invalid. This corresponds to the 3rd theoretical element, which requires frustration, that is, the performance of the contract is meaningless. However, this only applies in this case.

Article 349 : In this article the parties are released from their obligations as a result of the impossibility of performance of the contract due to the fault of both parties. This is the first case of frustration that we have seen above , that is, the situation makes it impossible to fulfill the contract.

Article 350 : Completion of the contract, in whole or in part, due to the new legal order issued and established by the state, relieves the parties of their obligations. Here, the law does not have to completely deny the object of the contract or its implementation, it is enough to partially deny it. In both cases there is a possibility of waiver. However, if the procedure issued by the state is revoked and the performance of the contract has not lost its significance for the parties (in this case, the creditor), the obligation to perform it is restored. This corresponds to the second theoretical basis of the element of frustration in English contract law, that is, the object of the contract remains illegal.

CONCLUSION

Frustration is an emerging and widespread legal mechanism in English contract law. There are elements and norms in the legislation of Uzbekistan that fulfill its alternative function . But that only covers part of it. However, it is not possible to introduce this system in a comprehensive way, because the concept of frustration has not yet fully reached its exact and complete form. Once the nature of frustration in the scientific and legal world and the circumstances in which it is required are fully covered, work on the full integration of this mechanism will become a requirement of the time for other legal families, including the legal system of Uzbekistan.

REFERENCES

1. *Paradine v. Jane [1647]*
2. Taylor & Anor v Caldwell & Anor [1863] EWHC QB J1 (6 May 1863)
3. Blackburn Bobbin Co Ltd v T. W. Allen & Sons Ltd [1918]
4. Tsakiroglou & Co Ltd v Noblee Thorl GmbH, The Law Report 1962 at Page 7 et seq

Primary Sources

1. O‘zbekiston Respublikasi Fuqarolik Kodeksi I qism
1. Contract Law, Catherine Elliot & Frances Quinn, seventh edition 2009 - p.302 - 310;
2. Агарков М.М. Избранные труды по гражданскому праву. Т. II. М., 2002. С. 16, 41–54;
3. Чукреев А.А. Доктрина фрустрации в английском договорном праве // Право. Журнал Высшей школы экономики. 2017. № 4. С. 188–201.