

## Frustration in Irish contracts: more on the Law Reform (Contracts) Bill 2024

Insights - 13/05/2024

In addition to proposed changes to the law in Ireland relating to the rights of third parties to contracts, the Law Reform (Contracts) Bill 2024, a private members' bill introduced by TD Deputy Patrick Costello of the Green Party, also proposes changes to the legal doctrine of frustration.

The bill confronts how contracts should be treated when they become impossible to perform due to unforeseen circumstances - a scenario known as frustration which to date has been governed by the common law in Ireland. The doctrine of frustration became particularly relevant to many Irish contracts during the COVID-19 lockdowns, as businesses and individuals faced unprecedented disruptions.

### **The doctrine of frustration under current Irish law**

Under current Irish law, the doctrine of frustration exists but is applied differently when compared to the English legal framework. In Ireland, a contract may be frustrated when an unforeseen event occurs after the formation of the contract, rendering its performance impossible, illegal, or radically different from what was contemplated by the parties at the time of the contract's inception.

The effect of frustration under Irish common law is to discharge both parties from their future obligations under the contract. This has been subject to judicial interpretation, leading to some uncertainty and variability in its application.

In England, the Law Reform (Frustrated Contracts) Act 1943, introduced principles for addressing the effects of contract frustration, focusing on the equitable adjustment of rights and liabilities between parties. It allows for the recovery of sums paid before the contract was frustrated and for a fair allocation of expenses incurred by either party in the performance of the contract. This approach highlights the importance of fairness and equity, ensuring that neither party is unduly disadvantaged by the unforeseen event that caused the contract to be

frustrated.

The Law Reform (Contracts) Bill 2024 largely mimics the 1943 English Act, and sets out how parties will recover sums paid or be relieved from obligations under a contract that has become frustrated, articulating an adjustment of rights and liabilities of the parties to such contracts. It provides that all sums paid by any party in pursuance of the contract prior to its frustration are recoverable. Furthermore, sums that were to be paid for the performance of the contract, which has now become impossible, cease to be payable.

## **Proposed changes – fairness and equity**

The bill also introduces a consideration of fairness and equity by allowing the court to permit a party who has incurred expenses in the performance of the contract to retain or recover part or all of the sums paid or payable, provided that these do not exceed the incurred expenses. Additionally, if any party has obtained a valuable benefit other than money before the contract was frustrated, the bill allows for the recovery of a sum not exceeding the value of this benefit, as considered just by the court, taking into account all relevant circumstances including any expenses incurred by the benefited party in performing the contract.

This approach aims to balance the financial implications of a frustrated contract, ensuring neither party is unduly advantaged or disadvantaged by the unforeseen event leading to frustration.

The discussion on third-party rights in our previous article ([contracts and the rights of third parties](#)) highlighted a similar ambition to bring Irish law on that issue in step with other common law jurisdictions, including England. The bill's provisions in relation to frustration continues this theme, addressing another aspect of contract law that might benefit from greater harmonisation with other common law jurisdictions.

As the bill makes its way through the legislative process, the changes it proposes to the common law understanding of contract frustration will likely spark further analysis and discussions. Assuming the bill survives the scrutiny to which private members' bills are traditionally subjected, it could affect how contracts are interpreted and managed, and we will continue to monitor its progress through the Oireachtas.

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