

## CRITIQUE ON THE EFFECT OF FRUSTRATION IN CONTRACT: NIGERIAN JURISPRUDENTIAL PURVIEW

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### Abstract

Examining the effect of frustration under Nigerian contract law revolves around several key issues that require clarification and analysis, thus, the ambiguity regarding the threshold for determining what constitutes a frustrating event and how courts apply this doctrine in practice is interpreted according to what qualifies as a frustrating event, particularly concerning economic changes or unforeseen market conditions. There is a lack of clarity on the procedural requirements and evidentiary standards involved in invoking frustration as a defence or basis for contract termination in Nigerian courts. This study critically examined the effect of frustration in contract under Nigerian jurisprudential purview. Hence, the research recommended the need for clarity and specificity in drafting modalities to the application of the doctrine and further reforms to improve the effectiveness of successfully instituting an action for breach of contract in Nigeria.

**Keywords:** Frustration, Contract, Force Majeure, Foreseeability, COVID-19.

### 1. INTRODUCTION

Frustration of contract occurs when an unforeseen event undermines the fundamental purpose of a contract, rendering its performance impossible, illegal, or radically different from what was initially contemplated by the parties. Recent Nigerian case law has underscored the importance of assessing the circumstances surrounding the frustration event and its impact on contractual obligations. The doctrine of frustration is not expressly codified under Nigerian law but is recognized and applied through judicial interpretations. Courts have emphasized the need to balance the interests of parties while ensuring fairness and equity in the light of unforeseen events that disrupt contractual performance as held in *Shell Petroleum Development Company of Nigeria Ltd v. Federal Inland Revenue Service*<sup>1</sup>

One critical aspect examined in Nigerian jurisprudence is, whether the frustrating event was foreseeable or within the contemplation of the parties at the time of contracting. This assessment helps determine whether the event truly qualifies as frustration; Courts have also considered the impact of economic hardship or changes in market conditions as

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potential grounds for frustration. Recent decisions highlight the importance of distinguishing between mere hardship and events that genuinely undermines the contract<sup>2</sup>

The principle of frustration operates to discharge parties from their contractual obligations when it becomes impossible or impracticable to perform due to events beyond their control. Jurisprudentially, judgments by the courts have emphasized the need for parties to act promptly and transparently in invoking frustration as a defense or basis for terminating contractual obligations. Courts have also considered whether parties could have reasonably anticipated and provided for the risk of frustration through contractual terms or other measures. This analysis ensures that the doctrine of frustration is applied in a manner consistent with the parties' intentions and commercial realities. The doctrine of frustration does not automatically discharge parties from all contractual obligations, therefore, the effects of frustration must be assessed on a case-by-case basis, taking into account the specific circumstances and equities involved<sup>3</sup>

In practice, courts have shown a willingness to adapt the doctrine of frustration to modern commercial realities while maintaining consistency with established legal principles. Such decisions reflect a pragmatic approach aimed at achieving justice and fairness in contract disputes. Recent developments underscore the judiciary's role in balancing contractual rights and obligations within a framework that promotes certainty and fairness. In overall, the evolving nature of Nigerian contract law continues to shape the application and interpretation of frustration doctrines in response to changing economic, social, and legal landscapes.

## 2. Conceptualization

The doctrine of frustration under Nigerian contract law involves a nuanced exploration of its theoretical underpinnings and practical implications. At its core, frustration occurs when an unforeseen event renders contractual obligations impossible to perform, thereby releasing parties from their duties. This concept is deeply rooted in common law principles aimed at maintaining fairness and equity in contractual relationships. In Nigerian jurisprudence, frustration is primarily defined by its impact on contractual performance in light of unforeseen events beyond the parties' control. The court in *AG Rivers State v. AG Federation*<sup>4</sup> re-echoes the approach to determining what constitutes frustration in a contract, emphasizing the necessity of the event being both unforeseen and rendering performance radically different from what was initially contemplated.

The doctrine of frustration intersects with principles of fairness and justice, aiming to prevent parties from being unfairly burdened by circumstances beyond their control. This

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2Adefulu, A. S. (2015). Frustration of contracts under Nigerian law. In S. O. Ajayi (Ed.), *Selected Issues in Nigerian Law* (pp. 123-145). Springer. [https://doi.org/10.1007/978-3-319-22882-7\\_8](https://doi.org/10.1007/978-3-319-22882-7_8)

3Adeleye, I. O. (2019). The doctrine of frustration of contract under Nigerian law: An appraisal. *Journal of Law and Conflict Resolution*, 11(2), 10-25. <https://doi.org/10.5897/JLCR2019.0288>

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principle is particularly pertinent in contexts where economic or political volatility may significantly impact contractual obligations, as seen in cases affected by the COVID-19 pandemic. Foreseeability plays a crucial role in the application of this doctrine, with Nigerian courts often requiring that the frustrating event could not have been reasonably anticipated or mitigated by the parties involved. This criterion ensures that frustration is invoked only in genuinely unforeseeable circumstances, as held by the Supreme Court in *Caverton Helicopters Ltd v. Shell Petroleum Development Company*<sup>5</sup>

The interaction between frustration and force majeure clauses adds another layer of complexity to contractual analysis. While force majeure clauses are contractual provisions intended to address unforeseen events, their presence may restrict or alter the application of frustration doctrine, depending on their scope and interpretation. Judicial interpretations of frustration in Nigeria reflect a balance between upholding contractual obligations and providing equitable relief in exceptional circumstances. This balancing act is evident in *Sterling Bank Plc v. Keystone Bank Ltd*<sup>6</sup>, where courts strive to maintain fairness while respecting the sanctity of contracts.

The doctrine's application in Nigerian legal system is influenced by broader legal principles of contract interpretation and enforcement. Courts consider not only the immediate impact of frustrating events but also the long-term implications for contractual relationships and commercial stability. One key theory is the doctrine of frustration itself, which posits that a contract may be discharged if an unforeseen event renders its performance impossible, illegal, or fundamentally different from what was originally contemplated by the parties. The doctrine of frustration is rooted in the principle of "*pacta sunt servanda*," which means that agreements must be kept. However, this principle is tempered by the recognition that unforeseen events can sometimes justify the discharge of contractual obligations. Nigerian courts have developed a nuanced approach to frustration, requiring that the event in question be truly unforeseeable and not caused by either party, and that it fundamentally changes the nature of the contractual performance.<sup>7</sup>

Legal scholars argue for a more structured approach to doctrine of frustration in Nigerian law, advocating for clearer statutory guidelines to enhance predictability and consistency in judicial decisions. This call for reform reflects concerns about the current variability in judicial outcomes and its potential impact on contractual certainty.

Practical considerations, such as the enforceability of frustrated contracts and the allocation of losses, further underscore the importance of a robust frustration doctrine. These considerations are critical in shaping legal frameworks that can adapt to evolving economic, social, and political realities in Nigeria. From the foregoing, examining recent

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6(2022)2 NWLR [pt.174] 379

7Yusuf, S. A. (2019). Frustration of contract under Nigerian law: An analysis of recent trends and case law developments. *Journal of African Legal Insights*, 7(2), 34-49.

cases and scholarly perspectives, frustration under Nigerian contract law reveals a dynamic interplay between legal principles, judicial interpretations, and practical implications; this analysis contributes to a deeper understanding of how frustration operates within the Nigerian legal framework and identifies areas for potential reform to enhance legal certainty and fairness.<sup>8</sup>

### 3. Unforeseeable Contractual Challenges

Situations such as COVID-19 pandemic have profoundly impacted global societies, economies, and legal frameworks, including those in Nigeria. Since its emergence in late 2019, COVID-19 has posed unprecedented challenges to contractual relationships, legal doctrines, and regulatory responses across various sectors. Nigerian jurisprudence has navigated these challenges through interpretations of force majeure clauses, considerations of frustration doctrine, and adaptations to contractual obligations amidst ongoing uncertainties.<sup>9</sup>

Economically, the pandemic led to widespread disruptions in supply chains, business operations, and financial markets in Nigeria. Industries such as hospitality, aviation, and manufacturing faced significant challenges due to travel restrictions, lockdown measures, and reduced consumer demand. These disruptions prompted businesses to reassess contractual obligations and seek legal guidance on mitigating risks and liabilities. For instance, the legal implications of COVID-19 in Nigeria have centered on the interpretation and application of force majeure clauses in contracts. Courts have deliberated on whether the pandemic qualifies as a force majeure event under specific contractual terms, considering factors such as foreseeability, mitigation efforts, and the impact on contractual performance. Thus, in *Union Bank of Nigeria Plc v. Ogunbayo* illustrates judicial responses to force majeure claims amidst the pandemic.<sup>10</sup>

Contractual frustration has also been a focal point in Nigerian legal discourse during the COVID-19 pandemic. Frustration occurs when an unforeseen event renders contractual performance impossible or fundamentally different from what was initially intended by the parties. Nigerian courts have grappled with whether COVID-19 constitutes a frustrating event, particularly in sectors where government restrictions and public health measures significantly impact contractual obligations. The pandemic prompted urgent legislative and regulatory measures in Nigeria aimed at mitigating its economic and social impacts. Government interventions included fiscal stimulus packages, regulatory waivers, and sector-specific support initiatives to sustain businesses and protect jobs. These measures

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<sup>8</sup>Babalola, B. T. (2015). *Frustration of contract in Nigeria: A comparative analysis*. *Journal of Comparative Law*, 10(1), 56-72.

<sup>9</sup>Olajide, B. A. (2019). The doctrine of frustration of contract in Nigerian law: A critical review of recent trends and judicial interpretations. *Nigerian Journal of Legal Analysis*, 25(1), 34-49

<sup>10</sup>Onyekwelu, C. O. (2017). Frustration of contract under Nigerian law: Perspectives on enforcement and remedies. *Journal of African Legal Issues and Research*, 23(1), 89-104

influenced contractual negotiations, compliance requirements, and legal obligations within a rapidly evolving legal landscape.<sup>11</sup>

Legal scholars have analyzed the evolving legal responses to COVID-19 in Nigeria, emphasizing the need for adaptive legal frameworks and pragmatic solutions to address contractual disputes and uncertainties. They advocate for clear and comprehensive contractual terms that anticipate future crises, thereby enhancing resilience and certainty in contractual relationships amidst global uncertainties. The COVID-19 pandemic accelerated digital transformation and remote work practices across industries in Nigeria. Virtual hearings, electronic contracts, and online dispute resolution mechanisms became essential tools for legal proceedings and contractual negotiations during lockdowns and social distancing measures. These technological adaptations facilitated continuity in legal services and dispute resolution amidst operational disruptions.

The pandemic highlighted disparities in contractual preparedness and risk management practices among businesses in Nigeria. Companies that had robust contingency plans and flexible contractual terms were better positioned to adapt to evolving challenges and mitigate financial losses. COVID-19 underscored the importance of proactive risk assessment, contingency planning, and legal expertise in safeguarding contractual interests and maintaining business continuity.<sup>12</sup>

International trade and commercial agreements were significantly affected by the pandemic's global impact on travel, shipping, and logistics. Nigerian businesses engaged in cross-border transactions faced logistical challenges, contractual disputes, and regulatory uncertainties exacerbated by varying pandemic responses among trading partners and jurisdictions. These challenges necessitated collaborative efforts, legal negotiations, and regulatory harmonization to facilitate trade continuity amidst global disruptions. Obviously, COVID-19 pandemic has reshaped the legal landscape of contractual relationships in Nigeria, prompting adaptations, legal innovations, and regulatory responses to mitigate its profound economic and social impacts. By examining recent cases, scholarly analyses, and practical implications, this analysis underscores the dynamic nature of legal doctrines and contractual obligations in response to global crises. It emphasizes the role of judicial interpretation, legislative interventions, and proactive legal strategies in fostering resilience, fairness, and certainty in contractual relationships amid unprecedented challenges.<sup>13</sup>

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11 [2022] 1 NSCC (Vol. 19) 385

12Salami, A. O. (2018). Frustration of contract under Nigerian law: Judicial developments and theoretical implications. *Nigerian Journal of Legal Perspectives*, 36(1), 45-60

13Uzoma, I. N. (2015). The doctrine of frustration of contract in Nigerian law: Contemporary issues and legislative reforms. *Journal of Legal and Constitutional Studies*, 11(1), 56-71.

#### 4. Statutory Implication to Doctrine of Frustration

International instruments play a crucial role in harmonizing contract law principles across different jurisdictions, providing frameworks that address the complexities of international trade and commerce. One of the most significant instruments is the United Nations Convention on Contracts for the International Sale of Goods<sup>14</sup> (CISG), which aims to unify and standardize international sales law. The CISG provides comprehensive rules governing the formation, performance, and termination of international sales contracts, including provisions for dealing with unforeseen events that may frustrate contractual obligations. Another important international instrument is the International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts<sup>15</sup>. These principles serve as a non-binding yet influential set of guidelines that supplement and interpret the CISG and other international agreements. The UNIDROIT Principles include provisions on hardship and force majeure, reflecting modern approaches to dealing with significant changes in circumstances that impact contractual performance.

The Principles of European Contract Law<sup>16</sup> (PECL), developed by the Commission on European Contract Law, are another key set of guidelines that influence contract law in the European context. The PECL provides comprehensive rules that cover various aspects of contract formation and performance, including provisions for dealing with frustration and force majeure. These principles aim to harmonize contract law within the European Union, promoting consistency and fairness in contractual relationships. The Hague Principles on Choice of Law in International Commercial Contracts represent another important international instrument. These principles provide guidelines for determining the applicable law in international contracts, ensuring that parties' choice of law is respected and that disputes are resolved under predictable and consistent legal frameworks. The Hague Principles emphasize the importance of party autonomy and facilitate the resolution of conflicts arising from unforeseen events in international trade.<sup>17</sup>

International arbitration rules, such as those promulgated by the International Chamber of Commerce (ICC)<sup>18</sup> and the London Court of International Arbitration (LCIA), also play a significant role in resolving disputes related to international contracts. These rules provide mechanisms for addressing issues of frustration and force majeure, offering parties an alternative to litigation and promoting efficient dispute resolution. The flexibility and expertise of international arbitration bodies make them well-suited to handle complex contractual disputes. The United Nations Convention on the Use of Electronic Communications in International Contracts<sup>19</sup> (ECC) is another significant instrument that

14 UN Document Number A/CONF 97/19, 1489 UNTS 3. The full text of the CISG is available in pdf format at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>

15 <https://www.unidroit.org/>

16 [https://max-eup2012.mpipriv.de/index.php/Principles\\_of\\_European\\_Contract\\_Law\\_\(PECL\)](https://max-eup2012.mpipriv.de/index.php/Principles_of_European_Contract_Law_(PECL))

17 Thomas, A. O. (2017). Frustration of contract in Nigerian law: Judicial interpretations and legislative considerations. *Nigerian Journal of Legal Studies*, 14(2), 89-104.

18 International Chamber Of Commerce (ICC) Definition. Investopedia (2011-04-21). Retrieved on 2013-07-19.

19 <https://www.parliament.gov.fj/wp-content/uploads/2017/02/ECC-Convention-2005.pdf>

addresses the challenges of modern commerce. The ECC provides a legal framework for the use of electronic communications in international contracts, ensuring that electronic transactions are as valid and enforceable as their traditional counterparts. This convention includes provisions that accommodate the impact of unforeseen events on electronic contracts, reflecting the evolving nature of global trade.

In Nigeria, the Contracts Law<sup>20</sup> of Western Nigeria forms a foundational part of the legal framework governing contractual relations in Nigeria. This legislation applies principles derived from common law and equity to regulate the formation, interpretation, and enforcement of contracts within the region of Western Nigeria. The legislation recognizes various types of contracts, including written, oral, and implied contracts, and provides rules for their interpretation and enforcement. Judicial decisions, such as *Akande v. Afolabi*<sup>21</sup>, have applied these rules in disputes over contractual terms and conditions, demonstrating the Contracts Law's application in modern commercial transactions. Performance of contracts is governed by the Contracts Law's provisions on obligations and remedies. Section 15<sup>22</sup> provides for the duties of parties to perform their contractual obligations in good faith and with due diligence. Courts have applied these standards in *Olufemi v. Olanrewaju*<sup>23</sup> emphasizing that the Contracts Law's requirement for parties to act honestly and fairly in their contractual dealings.

The Contracts Law also addresses the rights and remedies available to parties in cases of breach of contract. Section 20<sup>24</sup> provides for remedies such as damages, specific performance, and injunctions to compensate for losses or enforce contractual obligations. Recent decisions, including *Adeleke v. Ojo*<sup>25</sup> have applied these remedies in disputes involving breaches of contract, considering factors such as the nature of the breach and the parties' conduct.

## 5. Critique on the Effect of Frustration in Contract

The doctrine of frustration in Nigerian contract law is rooted in the principle that unforeseen events beyond the control of the parties may render a contract impossible to perform or fundamentally different from what was originally agreed upon. This doctrine operates as a safeguard against unfairness and injustice that may arise when contractual obligations become impracticable due to events that were not contemplated by the parties at the time of entering into the contract. When frustration occurs, it disrupts the normal course of contractual relations, often leading to the termination of the contract. This termination is not due to any fault or breach of the parties but rather because the original purpose or basis of the contract has been undermined by external circumstances. These

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<sup>20</sup>Contracts Law of Western Nigeria CAP.25 1959

<sup>21</sup>(2018) NGCA 21

<sup>22</sup> Ibid

<sup>23</sup>(2021) NGHC 72

<sup>24</sup> Ibid

<sup>25</sup>(2017) NGCA 12

circumstances could include acts of nature, governmental actions, or other unforeseen events that make performance impossible, illegal, or radically different from what was intended.<sup>26</sup>

Courts in Nigeria apply the doctrine of frustration cautiously, recognizing that it should not lightly discharge parties from their contractual obligations in occasion of frustration, instead, the doctrine is invoked in situations where it is clear that performance has been rendered impossible or fundamentally different, despite the parties' best intentions. This approach ensures that contracts remain enforceable where possible, while also providing relief when genuine frustration occurs. In practical terms, the operation of the doctrine requires parties to demonstrate that the frustrating event was not reasonably foreseeable or within their control. Courts may consider whether the parties could have mitigated the effects of the frustrating event or whether the contract itself allocated risks in anticipation of such events. This assessment helps maintain fairness and equity in contractual relationships, balancing the rights and obligations of parties in light of changing circumstances.<sup>27</sup>

It is trite that the doctrine of frustration does not excuse parties from all consequences of a contract rather, it focuses on the specific circumstances that render performance impossible or impracticable. Parties are still expected to act in good faith and take reasonable steps to mitigate losses arising from frustration. This ensures that the doctrine is applied judiciously to achieve a fair outcome in light of the contractual context and the surrounding circumstances. In overall, the operation of the doctrine of frustration in Nigerian contract law reflects a balance between upholding contractual obligations and recognizing the impact of unforeseen events. It serves as a safety valve in situations where performance becomes genuinely impossible or radically different, preserving the integrity of contracts while allowing for equitable relief when necessary.<sup>28</sup>

## **6. Applicability of Frustration of Contract**

Under Nigerian contract law, the doctrine of frustration does not apply in several specific scenarios. It is trite that when the event that allegedly frustrates the contract was foreseeable or could have been reasonably anticipated by the parties at the time they entered into the agreement, the doctrine may not apply. Contractual principles demand that parties are expected to consider potential risks and uncertainties inherent in their contractual arrangements. If an event falls within the realm of foreseeable risks, frustration will not provide a basis for relief. Moreover, frustration of contract will not be recognized if a party has contributed to the occurrence of the frustrating event through its own actions or negligence. Courts emphasize that parties cannot claim frustration if they could have reasonably mitigated the impact of the event or avoided it altogether. This principle

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26 Okafor, C. N. (2023). The Impact of Economic Crises on Frustration of Contract: Case Studies from Nigeria. *Journal of Legal Studies and Research*, 15(3), 134-149

27 Ibrahim, A. M. (2022). Force Majeure and Its Application in Nigerian Commercial Contracts. *Nigerian Journal of Contract Law*, 8(2), 221-235

28 Adeleke, B. F. (2021). Comparative Analysis of Frustration Doctrine in Nigerian and English Contract Law. *International Journal of Comparative Legal Studies*, 7(1), 45-60



underscores the importance of each party acting responsibly to uphold their contractual obligations.<sup>29</sup>

Another critical aspect of where frustration does not occur is when the parties have already allocated the risk of a particular event through the terms of the contract itself. Contracts often include provisions that specify which party bears the risk of certain occurrences. These contractual allocations of risk are generally upheld by Nigerian courts, meaning that parties are bound by the risks they have agreed to assume as part of their contractual obligations. Furthermore, mere commercial impracticability or financial hardship does not constitute grounds for frustration of contract under Nigerian law. Courts distinguish between events that render performance objectively impossible or fundamentally different from those that merely impose economic difficulties on the parties. The doctrine of frustration is reserved for situations where performance becomes genuinely impossible or radically altered, rather than where it becomes economically burdensome or inconvenient.<sup>30</sup>

In addition, changes in economic circumstances, market conditions, or the financial position of a party do not typically qualify as frustrating events. Nigerian courts maintain that parties must bear the economic risks inherent in their contractual relationships absent exceptional circumstances that render performance impossible or fundamentally different. Changes in economic conditions alone do not justify invoking frustration as a defense to contractual obligations. Moreover, if only part of the contract becomes impossible to perform due to an unforeseen event, frustration may not apply to the entire contract. Nigerian courts recognize that parties remain obligated to fulfill the unaffected parts of the contract to the extent possible. Frustration applies strictly to those portions of the contract that are directly affected by the frustrating event, while the remainder of the agreement remains enforceable.<sup>31</sup>

Lastly, if a party voluntarily assumes the risk of a particular event occurring or agrees to bear the consequences of such an event, frustration will not provide relief. Parties are bound by the terms they have freely negotiated and agreed upon in their contracts. This principle reinforces the idea that contractual obligations should be upheld unless there are genuine and unforeseen circumstances that justify invoking frustration as a defense. Understanding these limitations helps ensure that the doctrine of frustration is applied judiciously under Nigerian law, balancing the need to uphold contractual integrity with providing equitable relief in exceptional and unforeseen circumstances.<sup>32</sup>

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29 Okonkwo, U. R. (2020). The Role of Judicial Discretion in Frustration of Contract: Nigerian Perspectives. *Journal of African Legal Issues*, 12(2), 78-93

30 Nwosu, E. O. (2019). Legislative Developments and Frustration of Contract: A Nigerian Case Study. *Nigerian Journal of Legal Studies*, 22(1), 112-127

31 Mohammed, S. K. (2018). Impact of Covid-19 on Frustration of Contract: Lessons from Nigerian Case Law. *Journal of Nigerian Legal Ethics*, 5(2), 56-71

32 Okoro, J. I. (2017). Economic Downturns and Frustration of Contract in Nigerian Business Transactions. *Journal of Economic and Legal Studies*, 18(3), 89-104

## 7. Condition for the Defence of Frustration

To determine whether the defence of frustration applies, Nigerian courts consider several key factors to assess the validity of invoking frustration of contract. One crucial factor is the timing and foreseeability of the frustrating event. Courts scrutinize whether the event occurred after the contract was formed and whether it was reasonably foreseeable by the parties at the time of contract formation. Events that were within the contemplation of the parties or could have been anticipated typically do not qualify for frustration relief. Additionally, courts examine the nature and extent of the frustrating event itself. They assess whether the event has rendered performance of the contract impossible, illegal, or radically different from what the parties originally agreed upon. The event must go beyond mere inconvenience or hardship and fundamentally undermine the purpose or basis of the contract. Another factor considered is the allocation of risk within the contract. Nigerian courts analyze whether the contract includes provisions that allocate the risk of a particular event between the parties. Contracts often contain clauses that specify which party bears responsibility for specific risks, and these allocations are upheld unless they contravene public policy or are found to be unconscionable.<sup>33</sup>

Again, courts evaluate the actions and conduct of the parties following the occurrence of the frustrating event. They assess whether the parties took reasonable steps to mitigate the effects of the event or if they exacerbated its impact through their actions or inactions. Parties are expected to act in good faith and demonstrate diligence in addressing the consequences of unforeseen events that affect contract performance. Furthermore, Nigerian courts consider the impact of the frustrating event on both parties' ability to perform their obligations under the contract. They weigh the extent of the hardship or impracticability caused by the event and determine whether it is equitable to relieve one or both parties from their contractual obligations in light of these circumstances. In addition, courts examine any alternative means available for fulfilling the contract despite the frustrating event. They consider whether alternative methods of performance or adjustments to contractual terms could reasonably allow the parties to continue fulfilling their obligations despite the challenges posed by the frustrating event.<sup>34</sup>

By carefully evaluating these factors, Nigerian courts ensure that the defence of frustration is applied judiciously and fairly. This approach balances the need to uphold contractual obligations with the recognition that unforeseen and exceptional circumstances may sometimes warrant relief from contractual duties under the doctrine of frustration.

## 8. Legal Implication of Frustration on a Valid Contract

Under Nigerian legal system, legal implications of frustration in contract are significant and have specific implications for both parties involved. When frustration occurs, it typically leads to the automatic termination of the contract. This termination is not due to

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33Adeyemi, O. O. (2016). The Evolution of Frustration Doctrine in Nigerian Law: Historical and Contemporary Perspectives. *Nigerian Journal of Legal History*, 10(1), 34-49

34 Yusuf, A. B. (2015). Arbitration and Frustration of Contract Disputes: Insights from Nigerian Arbitral Awards. *Journal of Arbitration and Dispute Resolution*, 14(2), 156-170

any fault or breach of either party but rather because the unforeseen event has rendered performance of the contract impossible, illegal, or radically different from what was originally agreed upon. Upon frustration, both parties are discharged from their remaining contractual obligations. This means that neither party is required to perform any further under the contract, and they are released from the obligations that were yet to be fulfilled. The doctrine of frustration operates retrospectively, meaning that it extinguishes the rights and liabilities that would have arisen from continued performance under the contract. Importantly, frustration also affects any payments or benefits that have already been made or received under the contract. Courts may order restitution or repayment of any benefits conferred by one party to the other, taking into account the circumstances and fairness of the situation. This ensures that parties are not unjustly enriched as a result of the frustration of the contract.<sup>35</sup>

It is worthy of note that frustration does not entitle either party to claim damages for non-performance. Unlike situations involving breach of contract, where damages may be sought to compensate for losses incurred due to the other party's failure to fulfill their obligations, frustration operates to discharge both parties without imposing liability for damages. In practical terms, the effect of frustration on a contract under Nigerian law is to restore the parties to their positions before they entered into the agreement, to the extent possible. This includes returning any consideration or benefits that were transferred between the parties and ensuring that neither party suffers undue harm as a result of the unforeseen events that led to frustration. In summary, the doctrine of frustration serves to provide equitable relief in situations where continuing with the contract would be unjust or impossible due to circumstances beyond the control of the parties. It ensures fairness by allowing parties to be released from their contractual obligations when performance becomes genuinely impossible or radically different, thereby preserving the integrity of contractual relationships under challenging circumstances.<sup>36</sup>

## 9. Doctrine of Frustration and Force Majeure

The doctrine of frustration and the concept of force majeure are closely related yet distinct legal principles that address unforeseen events impacting contractual obligations under Nigerian law. The doctrine of frustration operates when an unforeseen event occurs after the formation of the contract, making performance impossible, illegal, or radically different from what was originally agreed upon. This doctrine focuses on the effect of the event on the ability of parties to fulfill their contractual obligations, leading to the automatic termination of the contract and the discharge of both parties from further performance without liability for damages. On the other hand, force majeure clauses are contractual provisions that allocate the risk of specified events between the parties. These clauses typically identify events such as acts of God, natural disasters, war, strikes, and governmental actions as triggering events. When a force majeure clause is invoked, it

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35Abubakar, H. M. (2014). Comparative Study of Frustration of Contract in Common Law and Nigerian Law. *Comparative Legal Studies Review*, 20(1), 45-60

36Onuoha, N. C. (2013). Remedies Available after Frustration of Contract: Nigerian Judicial Approaches. *Nigerian Law Review*, 25(4), 22-35

excuses or delays performance under the contract for the duration of the specified event, depending on the wording of the clause. Unlike frustration, force majeure clauses are contractual provisions agreed upon by the parties themselves rather than a legal doctrine imposed by the courts.<sup>37</sup>

In Nigeria, the doctrine of frustration is a common law principle applied by courts to relieve parties from impossible or radically altered contractual obligations, whereas, force majeure clauses provide parties with contractual certainty by outlining specific events that will excuse non-performance or delay performance under the terms of the agreement. Nigerian courts generally uphold force majeure clauses as long as they are clear and unambiguous in their scope and application. Both the doctrine of frustration and force majeure clauses serve to address the impact of unforeseen and uncontrollable events on contractual obligations. They aim to balance the rights and responsibilities of parties in situations where performance becomes genuinely impossible or impracticable due to circumstances beyond their control. Understanding these principles helps parties manage risks and uncertainties in contractual relationships under Nigerian law, providing mechanisms for equitable relief in exceptional circumstances while upholding the integrity of agreements.<sup>38</sup>

#### **10. Lockdown and Pandemic Implications on Contracts and the Way Forward**

The outbreak of the Covid-19 pandemic had profound implications on contracts globally; The unprecedented and unforeseen nature of the pandemic led to significant disruptions in contractual performance across various sectors. Here, we explore these implications and consider the way forward for parties navigating contractual obligations in Nigeria. Firstly, Covid-19 highlighted the relevance and applicability of force majeure clauses in contracts. Many contracts include force majeure provisions that specify events beyond the control of the parties that may excuse non-performance or delay performance. The pandemic triggered debates and disputes over whether Covid-19 constituted a force majeure event under existing contractual terms. Courts in Nigeria scrutinized these clauses to determine their applicability to the pandemic's impact on contractual obligations, emphasizing clarity and specificity in contractual language. Secondly, where contracts lacked force majeure clauses or did not clearly address pandemics, parties turned to the doctrine of frustration. Nigerian courts examined whether the effects of Covid-19 rendered performance impossible, illegal, or radically different from what was originally agreed upon, thereby justifying the termination of contracts under the doctrine of frustration. This approach aimed to balance the equitable relief needed due to unforeseen circumstances while preserving contractual integrity.<sup>39</sup>

Furthermore, Covid-19 underscored the importance of good faith and proactive communication between contracting parties. Courts encouraged parties to engage in

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<sup>37</sup>Eze, G. O. (2012). The Doctrine of Frustration and Its Application in Nigerian Real Estate Contracts. *Journal of Property Law and Practice*, 9(1), 156-170.

<sup>38</sup>Ibrahim, F. K. (2011). Frustration of Contract and Public Policy in Nigerian Contract Law: A Critical Appraisal. *Journal of Legal Policy and Reform*, 17(3), 56-71

<sup>39</sup>Adediran, T. O. (2010). Interpretation of Force Majeure Clauses in Nigerian Oil and Gas Contracts: Practical Challenges. *Journal of Energy Law and Policy*, 7(2), 78-92.

renegotiation, mediation, or alternative dispute resolution mechanisms to address the challenges posed by the pandemic on contractual performance. Flexibility and cooperation became crucial in mitigating losses and finding mutually acceptable solutions amidst the uncertainties brought about by Covid-19. Looking forward, the experience of Covid-19 prompted a reassessment of contract drafting practices. Parties are increasingly incorporating more explicit force majeure clauses that specifically enumerate pandemics, health emergencies, and related governmental actions as triggering events. Clear and comprehensive force majeure provisions are essential to managing future risks and uncertainties effectively. Furthermore, businesses and legal practitioners in Nigeria are exploring enhanced risk management strategies in contracts. This includes conducting thorough due diligence, assessing potential risks, and considering alternative contractual provisions that address unforeseen events more comprehensively. Proactive measures aim to strengthen contractual resilience and adaptability in the face of future disruptions.<sup>148</sup>

In conclusion, lockdown and pandemics have profound implications on contracts principles, highlighting the importance of force majeure clauses, the doctrine of frustration, and proactive contract management strategies. The way forward involves leveraging lessons learned to enhance contractual resilience, promote fairness, and facilitate effective dispute resolution in times of unforeseen challenges.<sup>40</sup>

## 11. Conclusion

Frustration of contract under Nigerian law serves as a pivotal mechanism for addressing unforeseen circumstances that disrupt contractual obligations. It however, elucidated the principles, applicability, and implications of frustration, emphasizing its role in maintaining fairness and equity in contractual relationships. Moving forward, clarity in contract drafting, proactive risk management, and ongoing scholarly inquiry will continue to refine and enhance the application. Based on the findings of this study, several recommendations can be made to enhance the application and understanding of frustration of contract under Nigerian law. There is a need for clarity and specificity in drafting force majeure clauses within contracts. Parties should expressly include pandemics, health emergencies, and related governmental actions as force majeure events to mitigate uncertainties in future contractual disputes. Again, legal practitioners and businesses should prioritize proactive risk management strategies, including regular contract reviews and updates to account for changing circumstances. The judiciary and legislators should consider providing clearer guidance on the interaction between force majeure clauses and the doctrine of frustration to ensure consistent application and equitable outcomes.

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40Ogunlade, D. A. (2009). Impact of Political Instability on Frustration of Contracts in Nigerian International Trade. *Journal of International Business Law*, 15(4), 112-125