INTERNATIONAL CONTRACT LAW

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Introduction to international contract

Papy Djilobodji
• Papy is a professional football player from Senegal

• He signed a three year contract with Sunderland in 2016, coming from Chelsea F.C.

• The estimated fee was £ 1 million a year.

• In the summer of 2018 he was allowed to go on unpaid leave throughout June, with the expectation that he would either find a new club or return (in August) with the required fitness to play for the Team.

• Sunderland claim that he instead returned in September (72 days late), "ignoring written requests for his return", and “failed" all fitness tests given to all players during pre-season.

• The club have subsequently issued Djilobodji notice that his contract has been terminated on the ground of his breach of contract.
Chapter I
INTRODUCTION TO CONTRACTS

Learning Objectives
• International framework. Common ground rules
• Nature of contracts
• Basic elements of a contract
• Basic contract types
• Non-contract obligations
The legal systems: international framework
## Common law vs Civil law

<table>
<thead>
<tr>
<th>Common law</th>
<th>Civil law</th>
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<tbody>
<tr>
<td>• Courts made common law as they decided individual cases (Judgments of the Courts are binding - <em>stare decisis</em>)</td>
<td>• Civil law was made by king, princes, or legislatures issuing decrees</td>
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<tr>
<td>• Codes do not have a key role</td>
<td>• Codes have a key role</td>
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<tr>
<td>• Judges in a common law jurisdiction have the power to interpret the law</td>
<td>• Judges in a civil law jurisdiction have the power only to apply the law</td>
</tr>
<tr>
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<td>• Judgments of the Courts are not binding</td>
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Common law vs Civil law.

In a nutshell

• Common-law systems use juries, have one judge, and adhere to precedent.

• Civil-law systems decide cases without a jury, often use three judges, and often render shorter opinions without reference to previously decided cases.

• In civil law sist., as George Cameron of the University of Michigan has noted, “The law is in the code, not in the cases”
Criminal Law

- The main purpose of criminal law is to maintain law and order and protect society as a whole and to provide punishment for those who break the laws.

- A criminal case involves a governmental decision to prosecute someone (named as a defendant) for violating society’s laws.

- If you break a criminal law, you can lose your freedom (in jail) or your life (if you are convicted of a capital offense).
Civil law vs Criminal law.

CIVIL LAW

• The main purpose of civil law is to uphold the rights of individuals.

• Civil cases are usually disputes between two individuals. The party who starts the case by taking action is usually called the claimant (or plaintiff, in USA), and the party that the action is being taken against is usually called the defendant.

• The claimant takes action against the defendant who will then be liable or not liable for a form of compensation which is usually a payment of a sum of money awarded to the claimant.

• This decision is usually made by a Judge.
Civil law vs Criminal law.

Definition

- Civil law deals with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.
- Criminal law is the body of law that deals with crime and the legal punishment of criminal offenses.
Civil law vs Criminal law.

Purpose.

CIVIL LAW

• To deal with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.

• Juries virtually never involved in civil actions. Judges ensure law prevails over passion.

• Case filed by private party

CRIMINAL LAW

• To maintain the stability of the state and society by punishing offenders and deterring them and others from offending.

• In the criminal justice system, the jury must agree unanimously before a defendant is convicted.

• Case filed by government
Civil law vs Criminal law.
Standard of proof and types of punishment

CIVIL LAW

• "Preponderance of evidence." Claimant must produce evidence beyond the balance of probabilities.

• Compensation (usually financial) for injuries or damages, or an injunction in nuisance.

CRIMINAL LAW

• "Beyond a reasonable doubt".

• "Innocent until proven guilty": The prosecutor must prove defendant guilty.

• Fines, Jail
## Civil law vs Criminal law.

### Examples

**CIVIL LAW**
- Landlord/tenant disputes, divorce proceedings, child custody proceedings, property disputes, personal injury, breach of contract...

**CRIMINAL LAW**
- Theft, assault, robbery, trafficking in controlled substances, murder, etc.
## Criminal law vs Civil law

<table>
<thead>
<tr>
<th></th>
<th>Civil Cases</th>
<th>Criminal cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PARTIES</strong></td>
<td>Plaintiff brings case; defendant must answer or lose by default</td>
<td>Prosecutor brings case; defendant may remain silent</td>
</tr>
<tr>
<td><strong>PROOF</strong></td>
<td>Preponderance of evidence</td>
<td>Beyond a reasonable doubt</td>
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<tr>
<td><strong>REASON</strong></td>
<td>To settle disputes peacefully, usually between private parties</td>
<td>To maintain order in society; To punish the most blameworthy; To deter serious wrongdoing</td>
</tr>
<tr>
<td><strong>REMEDIES</strong></td>
<td>Money damages; Injunctions; Specific performance</td>
<td>Fines, jail, death penalty</td>
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### Contract law vs Tort law

#### In short

<table>
<thead>
<tr>
<th>Contract law</th>
<th>Tort law</th>
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<tr>
<td>• Injury from a broken promise</td>
<td>• Injury without any promises</td>
</tr>
<tr>
<td>• Duty owed to other contracting party</td>
<td>• Duty owed generally</td>
</tr>
<tr>
<td>• Protects expectations of future benefits</td>
<td>• Protects what is already owned or possessed</td>
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Tort law vs Contract law

CONTRACT LAW

- Contract law is a body of law that governs, enforces, and interprets agreements related to an exchange of goods, services, properties, or money.

- Contract law imposes duties on parties who enter into an agreement. Within this agreement, both parties are expected to act reasonably toward one another.

- If either party breaches their duty to perform what is outlined in the contract, contract law aims to provide damages to the injured party.

- Typically, damages are awarded with the intent to restore the injured party to where they were before the breach occurred, or as if the contract had been performed.

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TORT LAW

• Tort law refers to the set of laws that provides remedies to individuals who have suffered harm by the unreasonable acts of another.

• Under tort law, members of a community are expected to act reasonably toward everyone else within the community. Tort law is based on the premise that people are liable for their actions.

• If someone’s careless actions injure another person, they may face consequences—whether their actions were intentional or accidental.

• Tort law aims to compensate victims for any injuries or damages suffered by the unreasonable acts of others.
Back in November of 2005, Geeslin and a friend attended a Lakers/Grizzlies game. The fans held courtside seats for the event. At some point during the game, famous basketball player Bryant ran to retrieve an out-of-bounds ball. As he reached for the ball, he lost his footing and fell atop Geeslin, leaving him with injury to his chest and lungs. After several days, Geeslin began experiencing uncomfortable pain in his chest severe enough to visit an emergency room. Once examined, it was diagnosed that he suffered a bruising and a crushed lung. He was prescribed several pain medications and a breathing machine and sent home.
Tort law vs Contract law
Case study I

- Contract law or tort law involved?
- Who’s the plaintiff?
- Who’s the defendant?
Tort law vs Contract law
Case study I

HOW DID IT END?

The court ruled in favor of Bryant.

When the court analyzed the case, it felt that the elements for tortious behavior were not present.

• Geeslin assumed the risk of injury by choosing courtside seats.

• Bryant in no way intended to cause injury to Geeslin at the time of the initial fall or as he attempted to return to the court.

• Geeslin appealed and Bryant settled with him out of court for the sum of $75,000 to put a rest to any further appeals or complaints against him.
Tort law vs Contract law

Case study II

• Josh agrees to deliver 300 red roses to Charles at his home on Monday, for $150.00.

• Charles pays Josh the full amount up front

• Josh fails to deliver the flowers on Monday.

• When the roses still haven’t been delivered on Wednesday, Charles is angry and simply wants his money refunded.

• CONTRACT OR TORT LAW?

• Josh has committed a breach of his contract with Charles.
CONTRACTUAL FREEDOM

• The law of contracts differs from other branches of law in a very important respect. It does not lay down so many precise rights and duties which the law will protect and enforce.

• It contains rather a number of limiting principles, subject to which the parties may create rights and duties for themselves, and the law will uphold those rights and duties.

• In a sense, the parties to a contract, make the law for themselves.

• So long as they do not transgress some legal prohibition, they can frame any rules they like in regard to the subject matter of their contract and the law will give effect to their contract (contractual freedom)
WHAT IS A CONTRACT?

• A contract is an **agreement** giving rise to obligations which are enforced or recognised by law.

• There are 3 basic essentials to the creation of a contract
  • (i) agreement;
  • (ii) contractual intention;
  • (iii) consideration.

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(i) AGREEMENT
(i) AGREEMENT

An agreement is reached when one party makes an offer, which is accepted by another party.

Usually preceded by **Letter of Intents** and **Memorandum of Understanding**: drafts without binding efficiency. They just state that the parties are currently negotiating.
OFFER

An offer is an expression of willingness to contract on specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed.

- There must be an objective manifestation of intent by the offeror to be bound by the offer if accepted by the other party.
- An offer may be made expressly (by words) or by conduct.
- An offer can be addressed to a single person, to a specified group of persons, or to the world at large (a reward poster for the return of a lost pet).
- Offer differs from "invitation to treat" by which a person does not make an offer but invites another party to do so (advertisements).
Offer: case study 1

Displays of goods on a shelf in a store

Offer?

Invitation to treat?
Offer: case study 2
(Carill v. Carbolic Smoke ball company, 1893)

A medical firm advertised that its new drug, a carbolic smoke ball, would cure flu, and if it did not, buyers would receive £100. When sued, Carbolic argued the advert was not to be taken as a legally binding offer; it was merely an invitation to treat.
Judgment

The Court held that the advertisement was an offer. An intention to be bound could be inferred from the statement that the advertisers had deposited $1,000 in their bank “shewing our sincerity”
An acceptance is a final and unqualified expression of assent to the terms of an offer.

- An offer must be accepted in accordance with its precise terms. It must exactly match the offer and ALL terms must be accepted.

- A communication fails to take effect as an acceptance where it attempts to vary the terms of an offer. In such cases it is a counter-offer, which the original offeror can either accept or reject.

- An offer may be accepted by conduct (for example, an offer to buy goods can be accepted by sending them to the offeror).

- Acceptance has no legal effect until it is communicated to the offeror.

- The general rule is that a postal acceptance takes effect when the letter of acceptance is posted (even if the letter maybe lost, delayed or destroyed).
Agreement: case study

- ‘A’ owns 2 cars x and y.
- He wishes to sell car ‘x’ for $. 30,000.
- B does not know that ‘A’ owns car ‘x’ also. He thinks that ‘A’ owns only car ‘y’ and is offering to sell the same for the stated price. He gives his acceptance believing he’s buying “y”.
- Is there a contract?

There is no contract because the contracting parties have not agreed on the same thing at the same time, ‘A’ offering to sell his car ‘x’ and ‘B’ agreeing to buy car ‘y’.

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(ii) CONTRACTUAL INTENTION
Contractual intention

- An agreement is not binding as a contract if it was made **without an intention to create legal intentions**.

- An agreement of a purely social or domestic nature is **not a contract**.

- Even in the case of agreements of purely social or domestic nature, there may be **intention of the parties to create legal obligations**.

- In commercial and business agreements the law will **presume** that the parties entering into agreement intend those agreements to have legal consequences. The onus of rebutting this presumption is on the party who asserts that no legal effect was intended.

- Similarly, in the case of agreements of purely domestic and social nature, the **presumption is that they do not give rise** to legal consequences. However, this presumption is **rebuttable** by giving evidence to the contrary, i.e., by showing that the intention of the parties was to create legal obligations.
**Contractual intention: case study 1**

A invites B for dinner in a restaurant. B accepts the invitation. On the appointed day, B goes to the restaurant. To his utter surprise A is not there.

In the above example, promise is not enforceable at law as there was no intention to create legal obligation.

Such agreements is **social agreement** which do not give rise to legal consequences.

*This shows that an agreement is a broader term than a contract:*

*A contract is an agreement but an agreement is not necessarily a contract*
### Facts

- A husband who worked abroad promised to pay an allowance of £30 per month to his wife, who was in England.
- As he failed to pay the promised amount, his wife sued him for the recovery of the amount.

### Judgment

- She could not recover as it was a social agreement and the parties did not intend to create any legal relations.

# Contractual intention: case study 3

*(Rose and Frank Co. v. J.R. Crompton and Bros. Ltd., 1925)*

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<tr>
<th>Facts</th>
<th>Judgment</th>
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| • There was an agreement between Rose Company and Crompton Company, where of the former were appointed selling agents in North America for the latter.  
• One of the clauses included in the agreement was: “This arrangement is not... a formal or legal agreement and shall not be subject to legal jurisdiction in the law courts”. | • *This agreement was not a legally binding contract as the parties intended not to have legal consequences* |
## Contractual intention: case study 4
*(Parker v. Clark, 1960)*

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<tr>
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<tbody>
<tr>
<td>An aged couple (C and his wife) held out a promise to their niece and her husband (Mrs. and Mr. P.) that C would leave them a portion of his estate in his will, if Mrs. and Mr. P. would sell their cottage and come to live with the aged couple and to share the expenses. The young couple sold their cottage and started living with the aged couple. The two couples subsequently quarreled and the aged couple repudiated the agreement. The young couple filed a suit against the aged couple for the breach of promise.</td>
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</table>

<table>
<thead>
<tr>
<th>Judgment</th>
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<tbody>
<tr>
<td>• That there was intention to create legal relations and the young couple could recover damages</td>
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</table>

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(iii) CONSIDERATION
Consideration

- Consideration is "something of value" which is given for a promise and is required in order to make the promise enforceable as a contract.

- Each party to the agreement must give or promise something and receive something or a promise in return. Consideration is the price for which the promise of the other is sought. However, this price need not be in terms of money. In case the promise is not supported by consideration, the promise will be nudum pactum (a bare promise) and is not enforceable at law.

- Consideration must be sufficient, but need not be adequate

- Courts do not, in general ask whether adequate value has been given (in the sense of there being any economic equivalence between the value of the consideration given and the value of any goods or services received). This is because they do not normally interfere with the bargain made between the parties
Example I

Brittney agrees to sell her car to Bill for $1,000.
• Bill’s benefit: the car
• Brittney’s benefit: money
What Can be Used as Consideration

Consideration in a contract is the exchange of anything of value by each party. Most often, services or goods are exchanged or promised in a contract, though consideration may be whatever the parties agree to. Examples include:

- Money
- Services
- Personal property
- Real property
- Promise to act
- Promise to refrain from acting
Consideration. Case study I

John backed into Allen’s car, damaging it. John is liable to pay for the damages, but does not have the money right now. While Allen could sue John for the damages to his car, he enters into an agreement with John to give him 90 days to pay the full amount of $1,500, plus an additional $250 for the inconvenience. The agreement states that Allen will not file a lawsuit before the 90 days is up, but is free to do so after that time.

This agreement, or “contract,” provides consideration for both parties?

(...)
Consideration. Case study I

Answer

YES

- John’s benefit: Allen gives up the right to sue for a period of 90 days (refrain from acting is consideration)

- Allen’s benefit: John will pay for the damages, plus an additional amount of $250
Adequacy of Consideration.
Case study II

Scrooge offers to buy Caspar’s motorcycle, worth $700, for $10 and a shiny new pen (worth $5). Caspar agrees.

Is this agreement supported by adequate consideration?
Adequacy of Consideration. Case study II

Yes, because both have agreed to give up something that is theirs: Scrooge, the cash and the pen; Caspar, the motorcycle.

In short: Courts are not generally concerned with the economic adequacy of the consideration but instead with whether it is present.
A contract may be deemed invalid by a court if it lacks consideration. Some of the scenarios where a contract lacks consideration includes:

- The agreement is more of a promise of a gift, rather than a contract

- **Past Consideration**: Promises made in return for acts or events that have already taken place

- **Pre-Existing Legal Duty**: a promise to do what one already has a legal duty to do (ex. The dogwatcher who finds the dog can not claim the reward promised by the owner).

- When consideration is based on an _illusory promise_
Lack of Consideration

**Example of a Gift**

- Naomi’s mother promises to buy her a car when she graduates making an official-looking document, which she signed.

- After graduation, Naomi is disappointed that her mother has decided not to buy the car, as Naomi got into trouble with drugs and delinquent behavior over the past couple of years.

- Naomi files a civil lawsuit, claiming that she had a contract with her mother, and that her mother must buy her a car.

- Because there was no mutual benefit, no consideration given by both parties, the court is likely to determine that the document was simply a promise of a *future gift*, which is not an enforceable contract.
Lack of Consideration

- Example of Past consideration
- Past consideration is not sufficient to support a promise. By past consideration, the courts mean an act that could have served as consideration if it had been bargained for at the time, but that was not the subject of a bargain.

- EX. Mrs. Ace’s dog Fluffy escapes from her mistress’s condo. Robert finds Fluffy. The mistress says, “Oh, thank you for finding my dear dog. Come by my place tomorrow morning and I’ll give you fifty dollars as a reward.”

- No consideration: Robert contribution—finding the dog—was paid out before her promise, and his past consideration is invalid to support a contract.
Lack of Consideration

• **Example of a Preexisting duty**

• When the only consideration offered is an act or promise to carry out a *preexisting duty*, there is no valid contract.

• **EX.** David is sixteen years old; his uncle promises him $50 if he will refrain from smoking. The promise is not enforceable: legally, David already must refrain from smoking, so he has promised to give up nothing to which he had a legal right.
Lack of Consideration

• **Example of an Illusory Promise**

• A contract containing a statement that gives the person making a promise no actual obligation to fulfill the promise is considered an “illusory promise,” or “illusory contract.”

• The language in this type of agreement is indefinite and unclear, making it uncertain whether the promising party must perform even if paid or compensated by the other party.
Lack of Consideration

• Example of an Illusory Promise

• ChocoTime candy company enters into a contract with Cocoa Merchants in which ChocoTime will purchase all of the cocoa it needs for its candy from Cocoa Merchants, and Cocoa Merchants will sell as much cocoa as it wants to ChocoTime.

• Because this contract binds ChocoTime to purchasing all of the cocoa it needs only from Cocoa Merchants, ChocoTime is not bound to do anything. In fact, Cocoa Merchants could choose not to sell any cocoa to ChocoTime if it desired.
FORM
• The general rule is that contracts can be made informally; most contracts can be formed orally, and in some cases, no oral or written communication at all is needed.

• Thus, an HAND SHAKE can still be as binding and legally valid as a written contract.

• There are statutory exceptions to this rule. For example: (i) most contracts for the sale or disposition of an interest in land must be "made in writing"
CONTENTS OF CONTRACT
The terms of a contract can be divided into:

**EXPRESS TERMS**

**IMPLIED TERMS**
EXPRESS TERMS

• Express terms are ones that the parties have set out in their agreement

• Once the express terms have been identified, there is the question of interpretation.

• The document must be interpreted objectively: it is not a question of what one party actually intended but of what a reasonable person in the position of the parties would have understood the words to mean.

• WORDS are interpreted according to their meaning in conventional usage, unless there is something in the background showing that some other meaning would have been conveyed to the reasonable person.

• The "parol evidence" rule provides that evidence cannot be admitted to add to, vary or contradict a written document.
A contract may contain terms which are not expressly stated but which are implied, either because the parties intended this, or by operation of law, or by custom or usage.

Terms implied in fact are ones which are not expressly set out in the contract, but which the parties must have intended to include.

The courts have adopted two tests governing whether a term may be implied.

- The first is the "officious bystander" test, where a term is so obvious that its inclusion goes without saying, and had an officious bystander asked the parties at the time of contracting whether the term ought to be included, the parties would have replied "Oh, of course".
- The alternative test for implication is that of "business efficacy", where the contract would be unworkable without the term.
• **Terms implied in law and by statute.**

Terms implied in law are terms imported by operation of law, whether the parties intended to include them or not.

- For example, in a contract for the sale of goods, it is an implied term if sold for a particular purpose, will be fit for that purpose.

• **Terms implied by custom or usage**

- Evidence of custom is admissible to add to, but not to contradict, a written contract. Terms may also be implied by trade usage
THE END OF A CONTRACT
THE END OF A CONTRACT

- There are essentially four ways in which a contract can be brought to an end

① EXPIRATION
② TERMINATION
③ VITIATION
④ FRUSTRATION
EXPIRATION

- This refers to a contract which comes to an end in accordance with its terms, either because it has a fixed expiry date or because there is a right to terminate contained in the contract.
• **Termination for Breach**

Termination is the remedy by which one party (the injured party) is released from his obligation to perform because of the other party's **defective or non-performance** (breach).

A breach gives the injured party the option to terminate the contract or to affirm it and claim further performance.

• At law, the right to terminate for breach arises in three situations:
  
  • (a) repudiation – where a party evinces a clear and absolute refusal to perform;
  
  • (b) impossibility – where a party disables himself from performing;
  
  • (c) substantial failure to perform. Any defect in performance must attain a certain minimum degree of seriousness to entitle the injured party to terminate. For less serious breaches, a right to damages may arise, but not a right to terminate.
• **Misrepresentation**

A misrepresentation is a false statement of fact made by one party to another, which, whilst not a term of the contract, induces the other party to enter into the contract.

• A misrepresentation may be:

• (i) **Fraudulent**- made knowingly, without belief in its truth or recklessly;

• (ii) **Negligent**- made by a person who had no reasonable grounds to believe that it was true; or

• (iii) **Innocent**- made in the wholly innocent belief that it was true.
VITIATION

• **Misrepresentation**

• There are multiple remedies available once misrepresentation has been proved:

  • (i) **Rescission**- This sets aside the contract and primarily aims to put the parties back in their original position as if the contract had never been made. Rescission can be sought for all cases of misrepresentation.

  • (ii) **Indemnity**- The court may order payment for expenses necessarily incurred in complying with the terms of the contract.

  • (iii) **Damages**- This remedy varies according to the type of misrepresentation.
VITIATION

• **Mistake**

• A contract may be void or voidable if mistake has occurred. If a contract is void, then it is so 'ab initio' (from the beginning), as if the contract was never made. In such cases, no obligations will arise under it. Alternatively, if the contract is voidable, the contract will have been valid from the start and obligations may arise under it despite the mistake.

• Mistake can be classified into different forms:

• (i) Common Mistake- A common mistake is one where both parties make the same error relating to a fundamental fact.

• Unilateral Mistake-This occurs when only one party is mistaken.

• Mutual Mistake- A mutual mistake is one where both parties fail to understand each other.
FRUSTRATION

• Frustration

• A contract may be discharged if, after its formation, an unforeseen event occurs which makes performance of the contract impossible, illegal or essentially different from what was contemplated.
## Frustration: case study

### Facts

<table>
<thead>
<tr>
<th>A, for the price of $900 a month, undertake the obligation to ride B every morning up to the working place.</th>
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<tbody>
<tr>
<td>Ten days later, A’s car is stolen.</td>
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<tr>
<td>A can no longer fulfill his obligation</td>
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### Solution

**IT DEPENDS.**

Frustration will not occur where the frustrating event was caused by the fault of one party.