

Uniform Frustrated Contracts Act

(1974 Proceedings, page 28)

1. (1) Subject to subsection (2), this Act applies to Application
every contract

- (a) from which the parties thereto are discharged by reason of the application of the doctrine of frustration; or
- (b) that is avoided under section 13 of the *Sale of Goods Act*.

(2) This Act does not apply

Where Act does not apply

- (a) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by demise;
- (b) to a contract of insurance; or
- (c) to a contract entered into before the date of coming into force of this Act.

2. This Act applies to a contract referred to in section 1(1) only to the extent that, upon its true construction, it contains no provision for the consequences of frustration or avoidance. Limited application

3. The Crown is bound by this Act. Crown bound

4. Where a part of a contract to which this Act applies Severable contracts
is

- (a) wholly performed before the parties are discharged; or
- (b) wholly performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract,

and that part may be severed from the remainder of the contract, that part shall, for the purposes of this Act, be treated as a separate contract that has not been frustrated or avoided, and this Act, excepting this section, is applicable only to the remainder of the contract.

5. (1) Subject to section 6, every party to a contract Restitution for performances
to which this Act applies is entitled to restitution from the other party or parties to the contract for benefits created by his performance or part performance of the contract.

Relief from obligations

(2) Every party to a contract to which this Act applies is relieved from fulfilling obligations under the contract that were required to be performed prior to the frustration or avoidance but were not performed, except in so far as some other party to the contract has become entitled to damages for consequential loss as a result of the failure to fulfil those obligations.

Idem

(3) Where the circumstances giving rise to the frustration or avoidance cause a total or partial loss in value of a benefit to a party required to make restitution under subsection (1), that loss shall be apportioned equally between the party required to make restitution and the party to whom such restitution is required to be made.

"benefit" defined

(4) In this section, a "benefit" means something done in the fulfilment of contractual obligations whether or not the person for whose benefit it was done received the benefit.

Where no restitution

6. (1) A person who has performed or partly performed a contractual obligation is not entitled to restitution under section 5 in respect of a loss in value, caused by the circumstances giving rise to the frustration or avoidance, of a benefit within the meaning of section 5, if there is

- (a) a course of dealing between the parties to the contract; or
- (b) a custom or a common understanding in the trade, business, or profession of the party so performing; or
- (c) an implied term of the contract,

to the effect that the party so performing should bear the risk of such loss in value.

Idem

(2) The fact that the party performing such an obligation has in respect of previous similar contracts between the parties effected insurance against the kind of event that caused the loss in value is evidence of a course of dealing under subsection (1).

Idem

(3) The fact that persons in the same trade, business, or profession as the party performing such obligations generally effect insurance against the kind of event that caused the loss in value, or entering into similar contracts, is evidence of a custom or common understanding under subsection (1).

Amount of restitution

7. Where restitution is claimed for the performance or part performance of an obligation under the contract other than an obligation to pay money,

- (a) in so far as the claim is based on expenditures incurred in performing the contract, the amount recoverable shall include only reasonable expenditures; and
- (b) if performance consisted of or included delivery of property that could be and is returned to the performer within a reasonable time after the frustration or avoidance, the amount of the claim shall be reduced by the value of the property returned.

8. In determining the amount to which a party is entitled by way of restitution or apportionment under section 5, ^{Idem}

- (a) no account shall be taken of
 - (i) loss of profits, or
 - (ii) insurance money that becomes payable by reason of the circumstances that give rise to the frustration or avoidance; but
- (b) account shall be taken of any benefits which remain in the hands of the party claiming restitution.

9. (1) No action or proceeding under this Act shall be commenced after the period determined under subsection (2). ^{Limitations}

(2) For the purposes of subsection (1), a claim under this Act shall be deemed to be a claim for a breach of the contract arising at the time of frustration or avoidance, and the limitation period applicable to that contract applies. ^{Idem}

