

Title: Test for Economic impossibility and economic impracticability in US and English Law

Subject: Law

Type of Paper: Proposal

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Statement of The problem:

The Doctrine of Frustration which is seldom considered by Courts is arguably an excuse for failure to perform. There are various events under which courts grant discharge to contract under frustration. One of event is “economic impossibility” or “economic impracticability”. The purpose of this research is to provide analysis for reasoning an economic frustration from perspective of US and English law. This research will try to establish that what test should be applied to declare economic frustration for contracts under US and English law. Furthermore, it will verify whether this test will be applicable within civil and common law jurisdictions and related problems in establishing facts for proving economic impracticability/impossibility.

Background and History:

It will analyze details for frustration of contracts under hardship and will review the allocation of loss under The Law Reform (Frustrated Contracts) Act 1943 for common law. It will highlight force majeure doctrine for commercial impracticability under U.S. Law. It will study the article 2-615 of the Uniform Commercial Code. It will provide details for “Better Loss Bearer Theory” and “Economic Analysis” of frustration.

Justification of problem:

This will provide the insight for impossibility v. impracticability in economic frustration of contract to be dealt with in US and English law jurisdictions. This will allow courts to decide impossibility and impracticability and will ease in providing decision during an event of economic impossibility and economic impracticability within the specified reasons for frustration. This will allow generation for doctrine of impossibility and impracticability in terms of economic losses in contracts and not mere excuse to escape from performance.

Theoretical Framework:

The rationale for doctrine is to provide practical considerations to the commercial sense in which impracticable defense is provided by a disputed party considering the surrounding circumstances of a particular case. Thus, impracticality could be made in order to cover scenarios consisting of

severe and increased difficulty, expenses, cost, injury, loss to a party. This appears to be wider and flexible as compared with impossibility approach adopted by English courts. Also, US courts have indicated declination of economic frustration based on impracticability which is similar to English courts providing decisions under economic imbalance. Thus in order to clearly identify economic impossibility and economic impracticability it is necessary to establish test that will provide guidance to court to justify economic frustration otherwise all contracts failed due to economic impossibility and economic impracticability will be declined based on function of contract which is to allocate risk and that, if something goes wrong then it is just risk which is the contract ought to have contemplated. Thus in event if the contract is hard to perform due to economic impossibility and economic impracticability the court will tend to interpret it in term of fulfilling obligation or damages in lieu , as this is rationale of contract.

Methods and Procedure

The data will be collected from Contracts Journal, Text books and research carried by various authors as indicated in Bibliography. Additional sources will be updated as per progress of dissertation.

Proposed Chapter Outline:

The proposed chapters will be as follow which will be further revised during final dissertation.

- (1) Introduction, Aims and General principle
- (2) Doctrine of Economic Impossibility and Economic Impracticability in term of US and English Law
- (3) Element for Economic Impossibility and Economic Impracticability
- (4) Literature Review for Economic Frustration in term of US and English Law
- (5) The Theories- “The Better- Loss Bearer” and The “Economic Theory”
- (6) Economic Impossibility and Economic Impracticability in Terms of Hardship and Force Majeure
- (7) Legal Solutions from an Economic Perspective
- (8) The Consequences of legal test for Economic Impossibility and Economic Impracticability
- (9) Conclusion

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