

When Performance Becomes Impossible

Law

Frustration at common law, and force majeure by agreement.

Frustration

- Doctrine applied by the court
- Event makes performance impossible or radically different
- Contract ends automatically
- Narrow — hardship is not enough
- No party at fault

Force majeure

- A contractual clause the parties drafted
- Covers whatever events it lists
- Consequences are as the clause states
- Can include suspension or extension
- Requires careful drafting

THE DIFFERENCE THAT MATTERS

Increased cost or difficulty rarely frustrates a contract. A well-drafted clause is the practical protection.

Educational reference. The scope of frustration is deliberately narrow to preserve certainty in commercial dealings.