DEFINITION OF FRUSTRATION

'Discharge' is the technical name for bringing contractual relations to an end. A contract can be discharged in one of four ways. The main one being Frustration.

'Frustration' is an event which occurs outside the parties' control which prevents the contract from being carried out.

If the injured party chooses to affirm, then the contract continues in force and the injured party awaits performance on the performance date. This does not mean that the damages will be recoverable by the injured party due to the fact that the guilty party does not perform on the performance date.

The injured party can then seek damages for this actual breach of contract, subject to there being no subsequent breaches to the contract.

The following cases are examples of discharge for breach of contracts through frustration.

If the contract is frustrated between the date of affirmation and the fixed date for performance, then the injured party will lose their right to remedies for the breach.

Avery v Bowden (1855) 5 E & B 714; 119 ER 647 (QB) affirmed Exchequer Chamber (1856) 6 E & B 953

A ship was required to load a cargo at Odessa within 45 days. The ship's master was informed before the expiry of the laydays that no cargo would be available. However, the master decided to stay at the port and wait for a cargo to be loaded.

Before the 45 days were up the contract was frustrated by the outbreak of war, thus making it illegal to load a cargo at an enemy port.

The case was held as the ship owners could not recover any damages for the anticipatory breach in failing to provide a cargo as the ship's master had confirmed. Where as if the master had sailed the ship away upon receiving the information, the cargo could have been loaded at a friendly port and the ship owner would have the right to claim damages for loss caused by the breach.

Sometimes it is possible for the injured party to continue with the contract and then claim the contract price rather than suing for damages for the breach. This happened in the following case of

White & Carter (Councils) Ltd v McGregor (1962) AC 413 (HL)

A contract had been agreed between the two parties that the respondents' business could be advertised on litter bins which were to be supplied by the local authorities for a three year period. On the same day the contract was drawn up the defendant requested that the agreement was to be cancelled, but the plaintiffs refused to do so.

The plaintiffs then displayed the adverts for 156 weeks and then claimed the contract price of £196 4s.

Lords Reid said of this case '*If one party to a contract repudiates it in the sense of making it clear to the other party that he refuses or will refuse to carry out his part of the contract, the other party, the innocent party, has an option. He may accept that repudiation and sue for damages for breach of contract, whether or not the time for performance has come; or he may if he chooses disregard or refuse to accept it and then the contract remains in full effect……'*

A similar case is *Pancahud Freres SA v Establissments General Grain Co (1970) 1 Lloyd's Rep 53.*

With this case the innocent party elected to affirm their contract after an anticipatory breach by the other party. This meant that they were not released from obligation from tendering further performance of their own obligations under the contract. Due to this, the repudiating party could escape liability if the affirming party was subsequently in breach of the contract.

Not all instances of anticipatory breach will amount to repudiation. It all depends on the individual circumstances of the case. In the case of *Mersey Steel v Naylor Benson (1884) 9 App Cas 434*, **Lord Selborne** stated '*you must examine what (the) conduct is to see whether it amounts to renunciation, to an absolute refusal to perform the contract and whether the other party may accept it as a reason for not performing his part'*

When trying to determine if the conduct does actually amount to repudiation, it is very difficult to do so. This has been illustrated by two decisions made at the House of Lords in the following cases.

Federal Commerce & Navigation v Molena Alpha (1979) AC 75 7

In clause 9 of the charter it provided details that the charterers were to sign bills of lading stating that the freight had been correctly paid for. After a dispute had arisen, with regards to deductions made by the charterers, the ship owners withdrew authority, contrary to the terms of the charter. The master was also instructed not to sign bills of lading with the indorsement which gave the owners a lien over the cargo for freight. By taking this action, it meant that the charterers were put in an awkward position commercially.

The charterers treated the owner's actions as a repudiation of the charter. The result of the case was that it was held. Although the term which was broken was not a condition, the breach went right to the root of the contract by depriving the charterers of virtually the whole of the benefits of the contract because the issue of such bills was essential to the charterer's trade.

Woodar Investment Development Ltd v Wimpey Construction UK Ltd (1980) 1 WLR 277

Wimpey construction had contracted to buy a piece of land for £850,000 and had agreed to pay £150,000 upon completion to a third party, Transworld Trade Ltd. The contract allowed the purchaser to rescind the contract if before completion a statutory authority 'shall have commenced' to acquire the property by compulsory purchase.
At the date of the contract both parties knew that a draft compulsory purchase order had been made.

Wimpey purported to terminate the contract relying on this provision, and Woodar sought damages alleging that this amounted to a wrongful repudiation. Their damages included the loss suffered by the third party.

The House of Lords held, by a majority of 3:2, that in order to constitute a renunciation of the contract there had to be an intention to abandon the contract Instead of abandoning the contract Wimpey were relying on its terms as justifying their right to terminate.

Similar cases where the breach of contract was by frustration through repudiation are as follows;

- *Jackson v Horizon Holidays Ltd (1975) 1 WLR 1468*
- *New Zealand Shipping Co. Ltd v A.M. Satterth waite & Co (1975) AC 154, 167*
- *Beswick v Beswick (1968) AC 58*
- *Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd (1994) 1 AC 85*
- *Darlington Borough Council v Wiltshier Northern ltd (1995) 1 WLR 68 (CA)*
- *Alfred McAlpine Construction Ltd v Panatown Ltd (No.1) (2001) 1 AC 518; (2000) 3 WLR 946 (HL)*

A contract is deemed to be frustrated when it is deemed impossible to perform; however frustration should not be confused with initial impossibility, which may render the contract *void ab intio*.

This can occur when;

- Carrying out the contract has now become illegal because the law has changed

- The party who is due to carry out a service is unavailable through illness or some other reason

- Something which is essential to the contract has been destroyed

- Circumstances have changed, so that it is impossible to carry out the contract

- Circumstances have changed, so that the contract is now pointless. If a contract is frustrated, it is terminated from that point onwards and neither party has to do anything further with regards to the contract.

However, there will be situations where frustration is not allowed to be incurred as a breach of contract. These situations are;

- The contract is still able to be to be carried out, but in a more difficult or expensive way
- The contract has been impossible to be carried out because of one party's actions
- The parties had foreseen the possibility of the contract being impossible to perform and had included a term in the contract to cover this
- The parties should have foreseen the possibility of the contract becoming impossible to perform

TESTS FOR FRUSTRATION

There are two alternative tests for frustration. They are the ***'Implied Term Theory'*** and the ***'Obligation Test'*** of which a radical change for this was adopted by the House of Lords in 1956.

Below are examples of cases which apply to these two tests and why.

Implied Term Theory

Paradine v Jane (1647) A1 26, 82 ER 897

As the rent was due on a certain piece of land the defendant had argued that as a form of defence that he had been deprived of the possession of his land by the actions of an enemy army.

In this case the defence failed as the defendant had agreed to pay his rent and had made no provision in his original contract to be excused from payments should this particular event occur.

In 1863 the law was to change to limit the number of unrealistic contracts which were to contain express provisions for every eventuality.

This change came about because of the case Taylor v Caldwell.

Taylor v Caldwell (1863) 3 B & S 826

On the 27th May 1862, the plaintiffs entered into a contract with the defendants. It was agreed that the plaintiffs would be allowed use of the Surrey Gardens & Music Hall on the 17 June, 15 July and 5 and 19 August for the sole purpose of giving grand concerts and fetes. Unfortunately, on the 11 June, the hall was destroyed by fire through no fault of either party. This meant the concerts could not proceed.

The plaintiffs then argued that the defendants were in breach of contract by failing to supply the Hall, so they sought damages for having spent so much money on advertising that particular venue and because the preparations where so well in advance.

Blackburn J who delivered the judgement of the court spoke frankly about the contract.

'*Where, from the nature of the contract, it appears that the parties must from the beginning have known that it could not be fulfilled unless when the time for the fulfilment of the contract arrived some particular specified thing continued to exist, so that, when entering into the contract, they must have contemplated such continuing existence as the foundation of what was to be done; there, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be*

construed as a positive contract, but as subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of the thing without default of the contractor.'

Another case where the ***'Implied Term Theory'*** comes into action is

FA Tamplin v Anglo – Mexican Petroleum (1916) 2 AC 397

With this case the courts had to decide whether or not the requisition of a ship in February 1915, which was under charter until December 1915, was frustrated by the contract. This was due to the ship being requisitioned by the war, but the requisition would be over in time for the contracted ship to be used as its intended purpose.

In this case **Lord Loreburn** explained the following;

'*.....can infer from the nature of the contract and the surrounding circumstances that a condition which was not expressed was a foundation on which the parties contracted... Were the altered conditions such that, had they thought of them, the parties would have taken their chance of them, or such that as sensible men they would have said "if that happens of course, it is all over between us" '*

The Obligation Test

Davis Contractors v Fareham UDC (1956) AC 696 (HL)

With this case, Lords Reid and Radcliffe stated that the '*radical change in the obligation'* test required the court to do the following;

1. Construe the contractual terms in the light of the contract and surrounding circumstances at the time of its creation.

2. Examine new circumstances and decide what would happen if the existing terms are applied to it.

3. Compare the two contractual obligations and see if there is a radical or fundamental change.

On July 9, 1946, Davis Contractors entered into a building contract to build 78 houses for a local authority within 8 months. Due to fault of neither party, there was not enough labour available to complete the job on time and the work took 22 months to complete.

The contractors then argued that their case was frustrated and they could claim on a *Quantum Meruit* basis.

However, the case was held as the contract had not been frustrated as the labour shortage had made the contract more of a burden than anticipated, but it had not altered the fundamental nature of the contract.

National Carriers v Panalpina (Northern) Ltd (1981) AC 675

On the 1st January 1974 a warehouse unit was leased to the defendants for a period of 10 years. The lease contained a covenant that the premises must only be used as a warehouse. With this problems occurred as the only access available to vehicles was via a street which was closed by the local authorities on the 16 May 1979 in order to demolish a dangerous building. The street was likely to be closed for 20 months which would mean the defendants would be unable to use the premises for this period of time.

The plaintiffs took the defendants to court for unpaid rent, but the defendants claimed that the lease was frustrated, so they were discharged.

Lord Wright criticised a similar case in *Denny, Mott & Dickson Ltd v James B. Fraser & Co Ltd (1944) AC 265*

'The parties did not anticipate fully and completely, if at all, or provide for what actually happened. It is not possible to my mind, to say that, if they had thought of it, they would have said: "Well, if that happens, all is over between us" On the other contrary, they would almost certainly on one side or the other have sought to introduce reservations or qualifications or compensations'

EXAMPLES OF FRUSTRATION

Frustration can be broken down into 6 sections. Examples of frustration and in which circumstance they occurred and why can be seen below.

DESTRUCTION OF THE SPECIFIC OBJECT ESSENTIAL FOR PERFORMANCE OF THE CONTRACT

The destruction of the specific object essential for performance of the contract will frustrate it.

- *Taylor v Caldwell (1863) 3 B&S 826*
- *Stubbs v Holywell Railway Co (1867) LR 2 Ex 311*

- *Robinson v Davison (1871) LR 6 Ex 269*

Here the defendant's wife had been booked to play the piano at a concert. On the day in question she was extremely ill and was unable to attend.

- *Gamerco SA v ICM / Fair Warning (Agency) Ltd (1995) 1 WLR 1226*

In this instance the stadium at which a Guns 'n' Roses concert was to be held was declared unsafe and no other venue could be made available in time.

PERSONAL INCAPACITY

Personal incapacity where the personality of one of the parties is significant may frustrate the contract.

- *Condor v The Baron Knights (1966) 1 WLR 87*

A drummer was engaged to play in a pop group which was contractually bound to work on seven nights a week when the work was available. After an illness, Condor's doctor advised him that it was only safe for him to be employed for four nights a week, even though he was willing to work seven. Therefore it was necessary to engage another drummer who could work seven nights a week.

The court held the case as being frustrated as Condor's contract of employment had been frustrated in a commercial sense. This was because it was not practical to engage a stand in for three nights a week when Condor could not work, since this involved doubling up the groups rehearsals.

- *Phillips v Alhambra Palace Co (1901) 1 QB 59*

A partner in a firm of music hall proprietors died after a troupe of performers had been engaged. The contract with the performers was held not to be frustrated as the contract was not of a personal nature, and could be enforced against the surviving partners.

- *Graves v Cohen (1929) 46 TLR 121*

The court held that the death of a racehorse owner frustrated the contract with his employee, a jockey, because the contract created a relationship of mutual confidence.

- *FC Shepherd v Jeromm (1986) 3 ALL ER 589*

The Court of Appeal held that a sentence of imprisonment imposed on an employee was capable of frustrating the employee's contract of employment if the sentence was such that it rendered the performance of the contract radically different from that which the parties contemplated when they entered into the contract.

THE NON OCCURRENCE OF A SPECIFIED EVENT

The non occurrence of a specified event may frustrate the contract. The two main cases for this are;

- *Krell v Henry (1903) 2 KB 740*

Henry hired a room from Krell for two days, which was to be used to view the coronation procession of Edward VII, but the contract itself made no reference to this being the intended use. The King's illness caused a postponement of the procession.

The case was held on the grounds that Henry was excused for paying the rent of the room as the holding of the procession on the planned dates was regarded by both parties as basic enforcement of the contract.

- *Herne Bay Steamboat Co v Hutton (1903) 2 KB 683*

Herne Bay agreed to hire a steamboat to Hutton for a period of two days for the purpose of taking passengers to Spithead to cruise round the fleet and see the naval review at Edward VII's coronation. The review was cancelled, but the boat could have been used to cruise round the assembled fleet.

It was held that the case was not frustrated. The holding of the naval fleet was not the only event upon which the intended use of the boat was dependant. The other object of the contract was to cruise round the fleet. This was what remained capable of fulfilment.

A more recent case is that of *Amalgamated Investment & Property Co. Ltd v John Walker & Sons Ltd (1977) 1 WLR 164*

INTERFERENCE BY THE GOVERNMENT

Interference by the government may frustrate.

- *Metropolitan Water Board v Dick Kerr (1918) AC 119*

Kerr agreed to build a reservoir for the Water Board within six years. After two years, Kerr was required by a wartime statute to cease work on the contract and to sell their plant.

The contract was held to be frustrated because the interruption was of such a nature as to make the contract, if resumed, a different contract.

SUPERVENING ILLEGALITY

A contract may become frustrated if it later becomes illegal.

- *Denny, Mott & Dickinson v James Fraser (1944) AC 265*

A contract for the sale of and purchase of timber contained an option to purchase a timber yard. By a wartime control order, trading under the agreement became illegal, however one party wanted to exercise the option.

It was held that the order had frustrated the contract so the option could not be exercised.

Lord Wright's comments on this case sum up the case in one.

'*In the nature of things there is often no room for elaborate enquiry. The court must act upon a general impression of what its rule requires. It is for that reason that special importance is necessarily attached to the occurrence of any unexpected event that, as it were, changes the face of things. But, even so, it is not hardship or inconvenience or material loss itself which calls the principle of frustration into play. There must be as well such a change in the significance of the obligation that the thing undertaken would, if performed, be a different thing that from that contracted for.'*

'I am bound to say that, if this is the law, the appellants' case seems to me a long way from a case of frustration'

- *Re Shipton, Anderson and Harrison Brothers (1915) 3 KB 676*

A contract was concluded for the sale of wheat lying in a warehouse. The Government requisitioned the wheat, in pursuance of wartime emergency regulations for the control of food supplies, before it had been delivered, and also before ownership in the goods had passed to the buyer under the terms of the contract.

It was held that the seller was excused from further performance of the contract as it was now impossible to deliver the goods due to the Government's lawful requisition.

DELAY

Inordinate and unexpected delay may frustrate a contract. The problem is to know how long a party must wait before the delay can be said to be frustrating.

- *Jackson v Union Marine Insurance (1873) LR 10 CP 125*

A ship was chartered in November 1871 to proceed with all possible despatch, danger and accidents of navigation excepted, from Liverpool to Newport, where it was to be loaded with a cargo of iron rails bound for San Francisco.

It set sail on the 2nd January, but it ran aground the next day in Caernarvon Bay. It was refloated on the 18th February and taken to Liverpool, where it underwent extensive repairs, which went on till August. On the 15th February, the charterers repudiated the contract.

The court held that the time taken was so long as to put an in a commercial sense to the commercial speculation entered upon by the ship owner and the charterers. The express exceptions were not intended to cover an accident causing such extensive damage. The contract was to be considered frustrated.

LIMITATIONS OF THE DOCTRINE

Viscount Simmonds spoke of the *Tsakiroglou v Noble Thorl GmBH (1961) 2 All ER 179* case *'**The doctrine must be applied within very narrow limits'***

Lord Roskill spoke about the doctrine of frustration when he commented on the case of *Pioneer Shipping v BTP Tioxide (1982) AC 724.* He said that the doctrine of frustration was ***'not lightly to be invoked to relieve contracting parties of the normal consequences of imprudent commercial bargains'***

EXPRESS PROVISION FOR FRUSTRATION

The doctrine of frustration cannot override express contractual provision for the frustrating event.

MERE INCREASE IN EXPENSE OR LOSS OF PROFIT

The mere increase in expense or loss of profit is not a ground for frustration.

- *British Movietonews Ltd v London & District Cinemas Ltd (1952) AC 166*
- *Davis Contractors v Fareham UDC (1956) AC 696 (HL)*
- *Tsakiroglou v Noble Thorl GmBH (1961) 2 All ER 179*

Tsakiroglou agreed to sell Sudanese groundnuts to Noble Thorl GmBH. The nuts were to be shipped from Sudan to Hamburg in November / December 1956. As a result of the 'Suez Crisis', the Suez Canal was closed from the 2nd November 1956 until April 1957. Tsakiroglou failed to deliver the goods with the argument that shipment round the Cape of Africa was commercially and fundamentally different.

The court held that the contract was not frustrated. Tsakiroglou were, therefore, liable for a breach of contract as the changes in circumstances were not fundamental.

FRUSTRATION MUST NOT BE SELF INDUCED

- *J. Lauritzen AS v Wijsmuller BV, The Super Servant Two (1990) 1 Lloyd's Rep 1*
- *Joseph Constantine Steamship Line Ltd v Imperial Smelting Corporation Ltd (1942) AC 154*
- *Maritime National Fish v Ocean Trawlers (1935) AC 524*

Maritime National Fish chartered a vessel from Ocean Trawlers which could only operate with an otter trawl. Both parties realised that it was an offence to use such a trawl without a government license. However, Maritime National Fish was granted three such licenses, but chose to use them in respect of three other vessels, with the result that the Ocean Trawler vessels could not be used.

The case was held so that the charter party had not been frustrated. Consequently Maritime National Fish was liable to pay the charter fee. Maritime National Fish freely elected to not licence the Ocean Trawlers vessel, consequently their inability to use it was a direct result of their own deliberate act.

FORSEEABILITY OF THE FRUSTRATING EVENT

A party cannot rely on an event which was, or should have been, foreseen by him but not by the other party.

- *Eurico SpA v Philipp Brothers (1987) 2 Lloyd's Rep 215*
- *Pagnan SpA v Tradax Ocean Transportation SA (1987) 3 All ER 565*
- *Bangladesh Export Import Co. Ltd v Sucden Kerry SA (1995) 2 Lloyd's Rep 1*
- *Walton Harvey Ltd v Walker & Homfrays Ltd (1931) 1 Ch 274*

With the case of Walton Harvey Ltd v Walker & Homfrays Ltd, the defendants granted the plaintiffs the right to display an advertising sign on the defendant's hotel for seven years. Within this period the hotel was compulsorily acquired and demolished by the local authority acting under statutory powers. The defendants were held liable in damages.

The contract was not frustrated because the defendants knew and the plaintiffs did not of the risk of compulsory acquisition. They could have provided against that risk, but chose not to do so.

EFFECTS OF FRUSTRATION

The Law Reform (Frustrated Contracts) Act 1943 was passed to provide for a just apportionment of losses where a contract is discharged by frustration.

Damages for the contract will be assessed under the ***Law Reform (Frustrated Contracts) Act 1943,*** which will try to split any losses between the two parties fairly.

The main points covered by this act are;

- Money which has been paid in advance must be refunded. However, deductions can be made for expenses which have already been incurred when the frustration took place

- Money which is due to be paid under the terms of the contract does not have to be paid

- The provider of any goods or services which have been provided before the contract was frustrated is entitled to a nominal sum in payment for the benefits that have been received

RECOVERY OF MONEY PAID

Section 1 (2) of the act provides the following three rules;

1. Money paid before the frustrating event is recoverable
2. Money payable before the frustrating event ceases to be payable, whether or not there has been a total failure of consideration
3. If, however, the party to whom such sums are paid/payable incurred expenses before discharge in performance of the contract, the court may award him such expenses up to the limit of the money paid/payable before the frustrating event.

- An example of this is the case of *Gamerco SA v ICM / Fair Warning (Agency) Ltd (1995) 1 WLR 1226*

The plaintiff's, who were pop concert promoters, had agreed to promote a concert to be held by the defendants at a stadium in Spain. However, the stadium was found to be unsafe by engineers and the authorities banned its use and revoked the plaintiff's license permit to hold the concert. No alternative site was available at the time and the concert had to be cancelled.

During the preparation of the concert, both parties had incurred expenses. The plaintiff's had already paid the defendants $412,500 on account. The plaintiffs then sought to recover the advance payment under the **s1 (2) Law Reform (Frustrated Contracts) Act 1943** and the defendants counter claimed for breach of contract by the plaintiffs in failing to secure the permit for the concert.

It was an implied term of the contract that the plaintiffs would use all reasonable endeavours to obtain a permit. Once the permit was granted, they were could not be required to guarantee that it would be withdrawn.

The contract was frustrated by the stadium by unsafe which was a circumstance out of the plaintiffs' control; however the revocation of the permit after subsequently being obtained by the plaintiffs' was not a frustrating event.

Under **s1 of the Law Reform (Frustrated Contracts) Act 1943,** the plaintiffs were entitled to recover the advance payments made to the defendants. The court did have the discretion to allow the defendants to offset their losses against this. Due to the circumstances in the case the court felt that no deduction should be made in favour of the defendants and their counterclaim was dismissed.

VALUABLE BENEFIT

Section 1 (3) provides:

If one party has, by reason of anything done by the other party in performance of the contract, obtained a valuable benefit (other than money) before the frustrating event, he may be ordered to pay a sum in respect of it, if the court considers it just, having regard to all the circumstances of the case.

A case where this has occurred is *BP Exploration Co. (Libya) v Hunt (No.2) (1979) 1 WLR 783 (1983) 2 AC 352*

This case arose from a contract between the concessionaire of a potential oil field in Libya and the oil company who were to do the prospecting and development of the field. Four years after the oil production began; the contract was frustrated by the Libyan Government's nationalisation of the plaintiff oil company's interest in the particular field.

The oil company then sought a just sum from the defendant concessionaire for the benefits allegedly conferred by its performance under the contract before the time of nationalisation.

SCOPE OF THE LAW REFORM (FRUSTRATED CONTRACTS) ACT 1943 ACT

Section 2 (3) permits contracting out

Section 2 (4) provides that the Act does not apply where wholly performed contractual obligations can be severed from those affected by the frustrating event.

Section 2 (5) provides that the Act does not apply to:

- Contracts containing a provision to meet the case of frustration;
- Charterparties (except time charterparties or charterparties by demise)
- Contracts for the carriage of goods by sea;

- Contracts of insurance
- Contracts for the sale of specific goods, which perish before the risk has passed to the buyer.

CONCLUSION

'The law is absolutely clear on the issue of frustration. There are types of situation in which a contract will be deemed to be frustrated and those which it will not'

From writing this report I conclude that the above statement is true. The law is clear on the issue of frustration. However, the courts have a very difficult job in determining whether the case is deemed to be frustrated or not.

By having an Act passed on frustration is also a great help in determining whether or not a contract has been frustrated. It can also help to claim back any losses incurred after the contract has been breached.

A majority of the cases that I came across was for shipping cargo. It seems that this is where the main body of frustration lies. This could be for a number of reasons such as natural or man made occurrences. But if the contract is not met, then it is going to have a knock on effect to all the people in the chain and obviously the front man will want compensating for his losses.

However, not all of the cases are straight forward in determining whether or not they were clearly frustrated. This was highlighted in the case of ***Gamerco SA v ICM / Fair Warning (Agency) Ltd (1995) 1 WLR 1226.*** In this case there was a number of contributing factors that could have deemed the contract frustrated. But it was only the report from the engineers about the stadium which frustrated the contract. Due to there being a number of factors the plaintiffs tried to sue for a breach of contract for not maintaining the permit which would allow the concert to go ahead.

The level of frustration will all depend on the circumstances the breach was committed in. In many of the cases the breach was out of the hands of the two contracting parties, but there is always someone who wants to claim as much as possible for damages incurred.

However, there are many people who try and claim for breach of contract through frustration even though they know that they are in the wrong. For example they will rent a property for a specific purpose knowing full well that at a later date it will be unable to be used for that purpose as in the cases of ***Walton Harvey Ltd v Walker & Homfrays Ltd (1931) 1 Ch 274*** and ***National Carriers v Panalpina (Northern) Ltd (1981) AC 675.***

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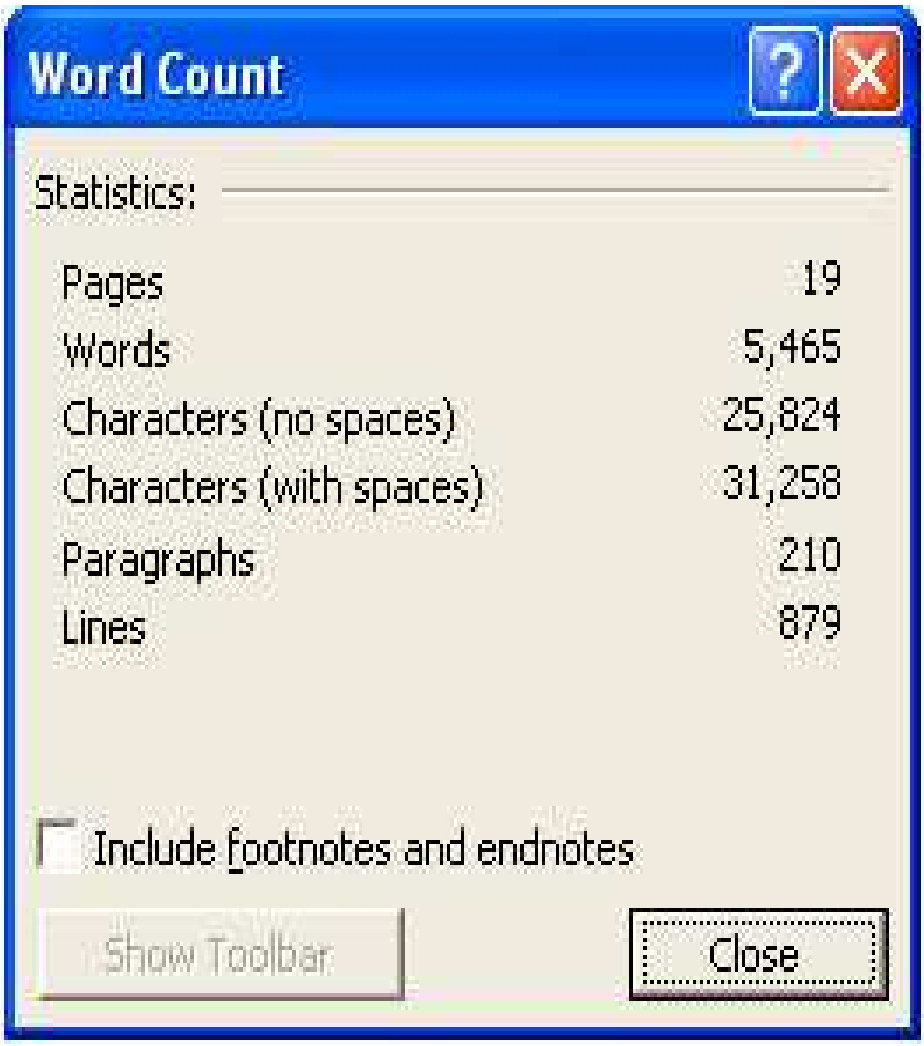
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