

# BRITISH LEGAL CENTRE

## General Legal English Course Lesson 8

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# PART 1

## Contract Law

The screenshot shows a web browser displaying the British Legal Centre website. The URL in the address bar is [british-legal-centre.com/set/contract-law-course](http://british-legal-centre.com/set/contract-law-course). The website has a dark blue header with navigation links: Home, Test your English, Teachers, Services, About Us, Payment, Articles, and Contact Us. Below the header is the British Legal Centre logo and the tagline "LEGAL TRAINING FOR THE 21ST CENTURY". To the right of the logo are links for "Test Your English", a phone number "+ 44 208 144 6440", and "Sign In / Register". A dark red navigation bar contains links for "ONLINE COURSES", "LIVE TRAINING SEMINARS", "DUBAI CLPD TRAINING", "SUMMER SCHOOLS 2020", "INTERNATIONAL CENTRES", and a search bar. The breadcrumb trail reads "Home / Courses by area of Law / Contract Law Course". The main content area is titled "CONTRACT LAW COURSE" and features a left-hand sidebar with a menu of course categories. The "Contract Law Course" is highlighted in red. The main content area includes an "OVERVIEW" section with a paragraph describing the course and a "COURSE INCLUDES" section with a bulleted list of course features.

Home / Courses by area of Law / Contract Law Course

### CONTRACT LAW COURSE

- Learn the Basics
- Courses by area of Law
  - Contract Law Course**
  - Arbitration Law and Practice Course
  - Oil and Gas Law and legal vocabulary
  - Company and Corporate Law
  - Intellectual Property English

#### OVERVIEW

The Contract Law course covers the law of contract and the vocabulary needed by lawyers working in this area of law. The course uses video-conference technology to deliver brief online speaking, reading and listening exercises and tasks. The exercises following each lesson include a variety of different multiple choice tasks. These are designed to help participants understand and learn the correct use of the vocabulary through its use in simulated work scenarios that occur in the daily working lives of lawyers in practice. All of your results are retained in our on-line archive which the participants can visit to check the rate of improvement.

#### COURSE INCLUDES

- 15 Live video-conferencing lessons
- On-line exercises to test reading ability
- On-line exercises to test listening ability
- On-line exercises to test writing ability
- On-line exercises and live discussions to test speaking ability
- On-line exercises and live discussions to teach the law of Contract

# CONTRACT: FRUSTRATION

If a contract is made, and for whatever reason it later becomes impossible to for one party to perform their obligations, then we need to think about frustration.

Be careful to note that frustration is about subsequent impossibility; if a contract was impossible to perform right from the outset, then the issue is one of mistake and not frustration!



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# CONTRACT: FRUSTRATION

You should first establish whether or not the particular situation in question has been expressly provided for in the contract. Such a provision is usually called a force majeure clause.

For example, a contract for the sale of some goods being imported by sea might say, “in the event of the cargo being lost at sea, this is what happens...”.

A force majeure clause is only valid if the provision is full and complete – that is, it has to be specific about what risk is being provided for.



# CONTRACT: FRUSTRATION

If there isn't a force majeure clause, then we need to look at the three sorts of frustration established in case law:

## **1. Supervening illegality.**

Since the contract was made, a new law has made it illegal to carry it out! The best example is *Avery v Bowden* (1856), in which a ship was supposed to pick up some cargo at Odessa. With the outbreak of the Crimean War, the government made it illegal to load cargo at an enemy port, so the ship couldn't perform its contract without breaking the law. The contract was therefore frustrated.



# CONTRACT: FRUSTRATION

## 2. Further performance rendered impossible.

Two key reasons:

Destruction of the subject matter: e.g. I agree to sell you my house, but then my house burns down.

The non-availability of a party, due to death, illness, or other exceptional circumstances. e.g. you hire a famous band to play at a party, but the lead singer is taken ill and can't perform.



# CONTRACT: FRUSTRATION

## **3. The nature of the contractual obligations becomes significantly different from what was agreed:**

The non-occurrence of an event which formed the basis of the contract. A slightly bizarre example: in 1901, a coronation procession was organised for King Edward VIII, but it had to be cancelled at the last minute because the King was ill. Someone had hired a flat for the day from which to view the procession. He refused to pay the day's rent, because he said the contract had been frustrated. The court said he was right: the whole point of hiring the room was to watch the procession; if the procession wasn't going to happen, then there was no benefit to be gained from hiring the room! We will look at this later in the lesson.



# CONTRACT: FRUSTRATION

There is also the possibility of a **4th** reason:  
Government intervention of some sort, which makes it unreasonable for the parties to carry on with the contract.



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# CONTRACT: FRUSTRATION

There are some points to be careful of here:

A contract isn't frustrated just because it's become more difficult or expensive to perform. That's a risk that you take when you enter into a contract. We're looking for some sort of physical impossibility.

The supervening event must be beyond the control of both parties.

The event must be unforeseeable by both parties.



# THE LEGAL EFFECTS OF FRUSTRATION

## The legal effects of frustration

At common law: the contract is automatically brought to an end at the time of the frustrating event.

In countries where the law on this topic is covered by statute e.g. The Law Reform (Frustrated Contracts) Act 1943. They usually only apply where there is no express provision in the contract for what happens if it's frustrated.



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# THE LEGAL EFFECTS OF FRUSTRATION

The key provisions are:

If some sort of pre-payment or deposit has been made, the buyer can get that pre-payment back, minus any expenses incurred by the seller.

If the contract has already been partly performed, it's a bit more complicated. You have to pay for any benefit you've already received. Suppose the contract is for a complete garden makeover, and at the time of the frustrating event, the contractor has already installed a swimming pool in your garden. You have to compensate the gardener for the expenses he's incurred in installing your pool.



# THE LEGAL EFFECTS OF FRUSTRATION

In the law of contracts, frustration of purpose is a defence to enforcement of the contract.

Frustration of purpose occurs when an unforeseen event undermines a party's principal purpose for entering into a contract, and both parties knew of this principal purpose at the time the contract was made. Any third party (or even nature) can frustrate a contracting party's primary purpose for entering into the contract. This concept is also called commercial frustration.



# THE LEGAL EFFECTS OF FRUSTRATION

For example, if Joe gets a mortgage for a new home, and, after three years, the house is destroyed, for whatever reason, at no fault of Joe's. Without a 'Hell or high water' clause, Joe might be exempt from the remainder of the mortgage, as the principal purpose of the contract (to have a house to live in) has been compromised. However, he might still have a foreclosure on his credit rating.



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# THE LEGAL EFFECTS OF FRUSTRATION

Frustration of purpose is often confused with the closely related doctrine of impossibility. The distinction between the two is that impossibility concerns the duties specified in the contract, whereas frustration of purpose concerns the reason a party entered into the contract.



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# THE LEGAL EFFECTS OF FRUSTRATION

For example, suppose entrepreneur Emily leases space from landlord Larry so she can open a restaurant that only serves Tibetan Speckled Lizard meat. If the city re-zones the property to forbid commercial uses, or if the property is destroyed by a tornado, then both Larry and Emily are excused from performing the contract by impossibility.



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# THE LEGAL EFFECTS OF FRUSTRATION

However, if the Tibetan Speckled Lizard suddenly goes extinct, then Emily may be excused from performing the contract because Larry knew her primary purpose for entering into the lease was to serve Tibetan Speckled Lizard, and that purpose has been frustrated. In the second scenario, the parties could still carry out their obligations under the lease, but one of them no longer has a reason to.



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# THE LEGAL EFFECTS OF FRUSTRATION

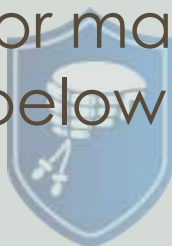
Frustration of purpose has been defined in a statute as:

Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or circumstances (of the contract) indicate the contrary.



# THE LEGAL EFFECTS OF FRUSTRATION

A circumstance is not deemed to be a "basic assumption on which the contract is made" unless the change in circumstances could not have been reasonably foreseen at the time the contract was made. As a result, it is rarely invoked successfully. Successful invocations usually come in waves during times of substantial tumult, such as after the passage of Prohibition, when bars and taverns no longer had a reason for their leases, or during major wars, when demand for many consumer goods and services drops far below normal.



# THE LEGAL EFFECTS OF FRUSTRATION

If successfully invoked, the contract is terminated, and the parties are left as they are at the time of the litigation.



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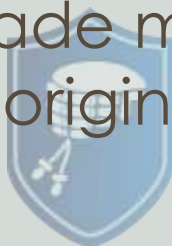
# THE LEGAL EFFECTS OF FRUSTRATION

A famous case from 1903 is *Krell v. Henry*, which concerned a party who had rented a room for the purpose of watching the coronation procession of Edward VII. When the king fell ill, the coronation was indefinitely postponed. The hirer refused to pay for the room; the owner sued for breach of contract and the hirer then counter-sued for the return of his £25 deposit. The court determined that the cancellation of the coronation was unforeseeable by the parties, and discharged the contract, leaving the parties as they were: the hirer lost his one third deposit and the owner lost the rest of the rent.



# THE LEGAL EFFECTS OF FRUSTRATION

In addition, the Court also noted that the doctrine of 'impossibility' could not be applied in this manner, because it was not 'impossible' for the lessee (the 'renter') to take possession of the flat on that prescribed day and merely sit in front of the window and view the street where the coronation parade was to have occurred. The point the Court was making is this: The illness of the King did not make the execution of the contract 'impossible.' Rather, the cancellation of the parade merely frustrated the purpose for which both men originally contracted.



# PART 2

## Grammar

Forming legal verbs, nouns and adjectives from the same word



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# LEGAL WORD FORMATION

In both legal and general conversational English it is quite usual to form nouns, adjectives, verbs, and adverbs from the root of the same word. In legal English this often causes a problem because the source of the word might be Latin, ancient Norse language, or Norman French. Because these words do not appear in everyday conversational English they cause problems for lawyers as they are so unfamiliar. In this lesson we are going to look at verbs, adverbs, nouns and adjectives. It will be easiest if we group them together in tables. The first table is on the next slide.



# LEGAL WORD FORMATION

<b>Verb</b>	<b>Abstract noun</b>	<b>Personal noun</b>
Administrate	Administration	Administrator
Audit	Audit	Auditor
Liquidate	Liquidation	Liquidator
Perpetrate	Perpetration	Perpetrator
Appoint	Appointment	---
Assume	Assumption	---
Authorise	Authorisation	---
Form	Formation	---
Issue	Issue	Issuer
Omit	Omission	---
Provide	Provision	Provider
Redeem	Redemption	Redeemer
Require	Requirement	---





# LEGAL WORD FORMATION

Now that you can see how the tables are set out it would be very boring to merely show you a long set of already completed slides, so I will leave some gaps in the slides and you can test your own knowledge as we go through the words together. You might want to pause the recording for a moment to equip yourself with a pen and paper to write down your answers.



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# LEGAL WORD FORMATION

**Verb**

**Abstract noun**

Pre-empt

Pre-emption

Refuse

Consolidate

Consolidation

Divide

Resolve

Resolution

Diversify

Diversification

Amend

Rely on

Reliance

Issue

Issuance



# LEGAL WORD FORMATION

**Verb**

**Abstract noun**

Pre-empt

Pre-emption

Refuse

Refusal

Consolidate

Consolidation

Divide

Division

Resolve

Resolution

Diversify

Diversification

Amend

Amendment

Rely on

Reliance

Issue

Issuance



# LEGAL WORD FORMATION

Sometimes the pronunciation of the word changes when it moves from a verb to an noun. I have underlined where the stress should go in the words in the table below. Again, I have left some blank.

<b>Verb</b>	<b>Abstract noun</b>
D <u>istrib</u> ute, d <u>istrib</u> ute	D <u>istrib</u> ution
Merge	Merger
Regulate	
Submit	Submission
Approve	Approval
Consolidate	Consolidation
Acquire	Acquisition
Liquidate	
Cancel	Cancellation



# LEGAL WORD FORMATION

<b>Verb</b>	<b>Abstract noun</b>
Distrib <u>u</u> te, distrib <u>u</u> te	Distrib <u>u</u> tion
Merge	Merger
Regulate	Regulation
Submit	Submission
Approve	Approval
Consolidate	Consolidation
Acquire	Acquisition
Liquidate	Liquidation
Cancel	Cancellation



# LEGAL WORD FORMATION

**Verb**

**Abstract noun**

Remedy

Remedy

Breach

Breach

Intend

Rely

Reliance

Violate

Enforce

Enforcement

Reverse

Reversal

Anticipate

Anticipation

Perform

Performance



# LEGAL WORD FORMATION

**Verb**

**Abstract noun**

Remedy

Remedy

Breach

Breach

Intend

Intention

Rely

Reliance

Violate

Violation

Enforce

Enforcement

Reverse

Reversal

Anticipate

Anticipation

Perform

Performance



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# LEGAL WORD FORMATION

Verb	Abstract noun	Personal noun
<u>Delegate</u>	<u>Delegation</u>	<u>Delegate</u> , <u>Delegator</u> , <u>Deligatee</u>
<u>Assign</u>	<u>Assignment</u>	<u>Assignor</u> / <u>Assignee</u>
<u>Oblige</u>	<u>Obligation</u>	<u>Obligor</u> / <u>Obligee</u>
<u>Imply</u>	<u>Implication</u>	---
<u>Intend</u>	<u>Intention/intent</u>	---
<u>Consult</u>	<u>Consultation</u>	<u>Consultant</u>
<u>Enact</u>	<u>Enactment</u>	---
<u>Rebut</u>	<u>Rebuttal</u>	---
<u>Construe</u>	<u>Construction</u>	---
<u>Determine</u>	<u>Determination</u>	---
<u>Draft</u>	<u>Draft</u>	<u>Drafter</u>
<u>Transfer</u>	<u>Transfer</u>	<u>Transferor</u> / <u>Transferee</u>
<u>Disclaim</u>	<u>Disclaimer</u>	---





# LEGAL WORD FORMATION

Here are some verbs and nouns, and some verbs and adjectives.

## Verb

Disclaimer

Exclude

Indemnify

Tolerate

Specify

Retain

Postpone

## Verb

Suit

Accept

Imply

Bind

Ascertain

## Noun

Disclaimer

Exclusion

Indemnification

Specifications

Retention

## Adjective

Suitable

Acceptable

Binding

Ascertainable



# LEGAL WORD FORMATION

## Verb

Disclaimer

Exclude

Indemnify

Tolerate

Specify

Retain

Postpone

## Verb

Suit

Accept

Imply

Bind

Ascertain

## Noun

Disclaimer

Exclusion

Indemnification

Tolerance

Specifications

Retention

Postponement

## Adjective

Suitable

Acceptable

Implied

Binding

Ascertainable



# LEGAL WORD FORMATION

Lastly here are some adjectives and adverbs.

## Adjective

Basic

Electronic

Principal

Reliable

Specific

Strict

Uniform

## Adverb

Basically

Electronically

Reliably

Specifically

Uniformly



# LEGAL WORD FORMATION

Lastly here are some adjectives and adverbs.

## Adjective

Basic

Electronic

Principal

Reliable

Specific

Strict

Uniform

## Adverb

Basically

Electronically

Principally

Reliably

Specifically

Strictly

Uniformly



# LEGAL WORD FORMATION

As you can see there are not many reliable conventions in changing the words from verbs to nouns, or adjectives or adverbs. As usual with legal English the only way to learn them is by constant repetition and practice. Watch this lesson several times until you feel comfortable with the different version of the words.



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# PART 3

## Legal Vocabulary

more Legal Vocabulary



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# LEGAL ENGLISH VOCABULARY

## Culpable negligence

**Definition:** Recklessly acting without reasonable caution and putting another person at risk of injury or death (or failing to do something with the same consequences).

**Example:** The car hire company was found to be culpably negligent for the accident, as they had failed to check the car's brakes before hiring the car to the claimant.



# LEGAL ENGLISH VOCABULARY

## Caveat

**Definition:** A formal notice filed with a court or officer to suspend a proceeding until the person filing the notice is a hearing. It prevents dealing with property such as a sale or mortgage until the person filing the 'caveat' can explain why their interest in the property has to be considered, e.g. an ex-wife or husband in relation to the sale of the matrimonial home.

**Example:** The house sale was stopped when the purchaser found that a Caveat against dealing had been entered on the Land Register in respect of the house.





# LEGAL ENGLISH VOCABULARY

## Certiorari

**Definition:** A common law writ issued by a superior court to a lower court demanding the record of a particular case - usually used to check that the lower court's proceedings were correctly conducted and that it did not over-exceed its powers.

**Example:** The High Court issued a Writ of Certiorari against the tribunal to check the claim, that the way it dealt with the unfair-dismissal claim had been conducted unfairly.



# LEGAL ENGLISH VOCABULARY

## Contravene

**Definition:** Go against rules and laws.

**Example:** He contravened the speed limit in his car.  
The building contravened the City planning regulations.



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# LEGAL ENGLISH VOCABULARY

## Damage

**Definition:** The loss caused by one person to another or to his property, either with the intention of injuring him, through negligence and carelessness, or by inevitable accident. The loss which some one has sustained, and/or the profit which he has failed to make.

**Example:** I suffered £2,000 damage to my car because of his bad driving. I suffered damage to my business reputation because of his lies.



# LEGAL ENGLISH VOCABULARY

## Damages

**Definition:** The financial compensation awarded to someone who suffered an injury or was harmed by someone else's wrongful act. The payment ordered by the court, from a wrongdoer, to be paid to the person who suffered the harm, because of the wrongdoer's acts.

**Example:** The court awarded me £2,000 Damages in compensation, for what Mr Smith did to my car. I will go to court and ask for damages.



# LEGAL ENGLISH VOCABULARY

## Actual Damages

**Definition:** Real damages to compensate for loss or injuries that have actually occurred. This is in contrast to "nominal" damages (a small amount paid where there is no real loss) or "punitive" damages (intended to punish the party who must pay damages). When damages, which have been suffered by someone as a result of another's wrongdoing, can be precisely measured, they are called actual damages.

**Example:** The garage bill for repair to my car was £1,500. And the court awarded actual damages of £1,500.



# LEGAL ENGLISH VOCABULARY

## Compensatory Damages

**Definition:** The amount of money to compensate for any actual damages caused by the party against whom they awarded. Also awarded for things that are harder to measure, such as pain and suffering. (As opposed to punitive damages).

**Example:** After the car accident the court awarded me an extra £500 compensatory damages on top of the damages to pay the garage bill.



# LEGAL ENGLISH VOCABULARY

## Consequential Damages

**Definition:** Damages or loss which arise not from the immediate act of the party, but in a longer term result of such act; such as if a man causes another to become injured by his negligent driving so that he lost his employment and, therefore, his salary.

**Example:** Because I was injured by his bad driving. I needed a nurse for 3 months at home, so he had to pay consequential damages amounting to 3 month's salary for the nurse.



# LEGAL ENGLISH VOCABULARY

## Contingent

**Definition:** What may or may not happen. It depends upon a doubtful event, such as a contingent debt, which is a debt depending upon some uncertain event.

**Example:** Whether we will pay in full is contingent upon the goods arriving on time. Payment was contingent upon good work being performed.





# LEGAL ENGLISH VOCABULARY

## Contingent Damages

**Definition:** Those given where the issues upon counts or claims to which no demurrer has been filed, are tried before the demurrer to one or more counts in the same claim has been decided.

**Example:** The judge decided that the loss was £10,000 and awarded contingent damages, pending the outcome of the trial as to compensatory negligence.



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# LEGAL ENGLISH VOCABULARY

## Contingent Estate

**Definition:** A contingent estate depends for its effect upon an event which may or may not happen, such as an estate left to a person not yet born.

**Example:** There is a contingent estate left to my future grandchild, provided he or she is born within the next 5 years.



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# LEGAL ENGLISH VOCABULARY

## Contingent Remainder

**Definition:** An Estate in Land – A special type of ownership of land. An estate in remainder which is limited to take effect and pass, either to a dubious and uncertain person, or event, by which no present or specified interest passes to the remainder-man, so that the particular estate and estate may never take effect.

**Example:** If the lease is still running when my son John dies, then the contingent remainder shall pass to my son Peter. - If John does not die, Peter does not get anything.



# LEGAL ENGLISH VOCABULARY

## Contingent Use

**Definition:** A use of land limited by a deed or conveyance of land which may or may not happen to vest, i.e. pass to someone, but is subject to the contingency, or condition, expressed in the limitation of such use.

**Example:** The house shall pass to John subject to the contingent use that it shall never be used for the sale of alcohol.



# LEGAL ENGLISH VOCABULARY

## General Damages

**Definition:** Damages which the law implies to have arisen from the act of the person who caused the loss. To assault somebody is an Example of this kind of behaviour. The law understands that he has been more or less deteriorated, or hurt, as a result of the assault, and that he is not required to specify what injury he has sustained, nor to prove it.

**Example:** I was awarded £1,000 general damages in respect of his assault on me.



# LEGAL ENGLISH VOCABULARY - EXERCISE

1. What is a '**Caveat**'?

- 1) A Charge over land to secure repayment of a debt.
- 2) A dangerous legal argument.
- 3) A registered warning against buying or selling something.
- 4) A warning not to sell land.



# LEGAL ENGLISH VOCABULARY - EXERCISE

## 2. What are 'Contingent Damages'?

- a) A Court order to pay money which may, or may not, be ordered.
- b) Damages for something that may, or may not, happen.
- c) Compensation for unexpected losses.
- d) Court order for damages for items which are not contested.



# LEGAL ENGLISH VOCABULARY - EXERCISE

3. What is the legal meaning of the word '**Damage**'?
- a) Physical harm to a person.
  - b) The loss caused by one person to another or another's property.
  - c) The money needed to compensate someone for their loss.
  - d) A monetary judgement ordered by the Court.





# LEGAL ENGLISH VOCABULARY - EXERCISE

4. What is a '**Writ of Certiorari**'?

- a) An order from a superior court requiring a lower court's record of a case.
- b) A legal claim for compensation.
- c) A legal claim to certify who owns a particular piece of property.
- d) Certification that a claim is just and legal.



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Thank you for your attention

<https://www.british-legal-centre.com>