

Davis Contractors Ltd v Fareham Urban District Council [1956] UKHL 3

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Facts

- Davis Contractors agreed with Fareham UDC to build 78 houses over eight months for \$93,000.
- It ended up taking 22 months, because Davis was short of labour and materials.
- It cost \$115,000.
- Davis said the contract was frustrated, void and therefore they were entitled to *quantum meruit* for the work done.

Held

- The House of Lords held that a contract cannot be frustrated just because it becomes more onerous and expensive. Such was the risk of entering into a contract.
- Reid LJ said that it was fanciful to say there was an implied term because people don't make implied terms for unforeseeable events
- Quote; "In my view, the proper approach to this case is to take... all facts which throw light on the nature of the contract, or which can properly be held to be extrinsic evidence, relevant to assist in its construction and then, as a matter of law, to construe the contract and to determine whether the ultimate situation... is or is not within the scope of the contract so construed... appears to me that frustration depends, at least in most cases, not on adding any implied terms, but on the true construction of the contract, read in light of the nature of the contract and of the relevant surrounding circumstances when the contract was made."
- Quote (Radcliffe J); "frustration occurs whenever the law recognises that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. *Non haec in foedera veni*. It was not this that I promised to do."

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