

WHEN EQUITY AND THE COMMON LAW CONFLICT, EQUITY DOES NOT ALWAYS PREVAIL

*Lim Kim Som v Sherriffa Talbah Bte Abdul Rahman*¹

INTRODUCTION

The present case highlights yet again the question whether the doctrine of frustration applies to contracts for the sale of land. However, the interest in this case lies in the fact that equitable principles did not prevail over the common law. This short article attempts to examine the equitable principles applicable to situations between the time of contract and completion where there has been a sale and purchase agreement for a piece of property and the rights and interests of both the vendor and the purchaser. It is not the aim of the writer to argue that the doctrine of frustration does not and cannot apply to contracts of the sale of land. Whether or not it does apply, has already been dealt elsewhere.² It is the writer's view that frustration was not appropriate in the present case because of the interplay of equitable principles.

FACTS

The respondent-vendor and the appellant-purchaser entered into a sale and purchase agreement (the agreement) for a piece of property. Completion did not take place on the specified date and five days later, on 13 July 1983 the respondent sent the appellant a 21-day notice to complete. On the very same day, a declaration was made under s 5 of the Land Acquisition Act (Cap. 272, 1970 Ed.) ('the Act') stating that the property was required for a public purpose. On 19 July 1983 a notification was published in the government gazette. On 1 August 1983 the appellant wrote to the respondent stating, *inter alia*, that in view of the declaration in the gazette the appellant did not intend to carry on with the purchase and requested the refund of the 10% deposit. In response, the respondent, by a telex dated 5 August 1983, stated that the 21-day notice had expired and as the appellant did not intend to complete, the deposit had been forfeited. On 7 August the respondent commenced the present action against the appellant claiming the balance for the purchase price plus interest or alternatively damages for breach of contract. The Collector of Land Revenue had, in the meantime, awarded a sum of compensation for the acquisition which was paid into court and later paid out to the respondent. The amount of compensation was approximately a fifth of the purchase price.

¹ [1994] 1 SLR 393.

² see for instance, Phang, 'Frustration Of Contracts For the Sale of Land In Singapore' (unpublished). See also *Scanlon's New Neon Ltd v Tooheys Ltd* (1943) 67 CLR 169 (per Williams J at p 229).

The appellant raised, *inter alia*, two defences which may be summarized as follows:

- (a) the performance of the agreement without any fault on his part was frustrated by the compulsory acquisition of the property under the Act which was initiated by the declaration under s 5 of the Act and the appellant was thereby discharged from the performance of the agreement.
- (b) the respondent was precluded by the declaration from giving to the purchaser a good title to the property. The appellant counterclaimed the refund of the deposit of 10% of the purchase price.

At trial,³ Michael Hwang JC held, *inter alia*, that the declaration under s 5 did not deprive the vendor (respondent) of her interest in the subject land so as to preclude her from completing the sale. Nor did the declaration destroy the subject matter of the agreement. On the question of good title to the property, the learned judicial commissioner held that the declaration under s 5 was not an encumbrance on the property and the fact that the property would shortly after completion, have to be 'surrendered' to the state should not affect the validity of the vendor's title at completion. The effect of the declaration under s 5 might be to diminish the value of the property but that did not impeach the vendor's title.

Before the Court of Appeal three main issues were raised: first, whether the doctrine of frustration was capable of being applied to a contract for the sale of land; secondly, if the answer to the first question is in the affirmative, whether in this case the agreement was frustrated by the compulsory acquisition of the property under the Act, and thirdly, whether by reason of the compulsory acquisition, which had already commenced, the vendor could on completion convey to the purchaser a good title to the property.

The court held, that on the authorities which it had considered, frustration is capable of being applied to contracts for the sale of land. It held further that the occurrence of the unexpected event i.e. the commencement of the process of compulsory acquisition, had altered fundamentally the 'face of things' and there was such a change in the significance of the obligation that the thing undertaken would, if performed, be a different thing from that contracted for. Finally the court held that the process of compulsory land acquisition which de facto had begun with the s 5 declaration had changed the nature of duration of the title. The title had become no longer one as provided in the agreement but a defeasible one which within a short period of time would vest in the state.

3 [1992] 2 SLR 516.

COMMENTARY

The first question one must address is what is the position in equity between a vendor of land and a purchaser at the time of contract for the sale of the land but before completion takes place? The principal conflict has been whether it is correct to say that the trust arises immediately a contract for sale is entered into, or whether it arises at some later date.

It has been said that the effect of a binding contract is that the vendor remains the owner of the *legal* estate until this passes to the purchaser as a result of the conveyance. Nevertheless the purchaser does have an *equitable* interest by virtue of the contract, and the vendor is in a position similar to that of a trustee.⁴ Immediately a binding contract for the sale for the sale of land is made the purchaser becomes the owner of the property in the eyes of Equity.⁵ The vendor retains the legal estate in a position similar to that of a trustee holding the property for the purchaser, who is the beneficial owner. It is true that this trusteeship is not absolute,⁶ for the vendor has a *personal* and substantial interest in the property, which he is entitled to protect.⁷ His beneficial interest in the property, however, converted to the purchase money, or he may always fall back on the lien on the land that equity gives him until he is actually paid.⁸

In *Hillingdon Estates v Stonefield Estates Ltd*,⁹ Vaisey J stated that the position of a vendor in such a situation is that from the moment the contract is entered into he holds the legal estate as trustee for the purchaser. In that case, the vendors contracted in 1938 to sell their property in two portions. The purchase for the first portion was completed without any mishap. The completion of the second portion was delayed by, among other things, the outbreak of war. In 1948 the local authority made a compulsory purchase order affecting the second portion and the purchase was never completed. The events that subsequently occurred led to the purchasers bringing an action claiming a declaration that they were discharged from liability under the contract and the return of the interest that they had paid. The vendors counterclaimed for specific performance.

4 *Shaw v Foster* (1872) LR 5 HL 321.

5 *Muskelwhite v C H Muskelwhite and Son Ltd* [1962] Ch 964; *Hillingdon Estates Co v Stonefield Estates Ltd* [1952] Ch 627. See also P H Pettit (1960) 24 Conv. 47.

6 see generally per Jessel MR in *Lysaght v Edwards* (1876) 2 Ch. D. 499 at p 506.

7 *Shaw v Foster* (1872) LR 5 H1 321 at p 328; *Lysaght v Edwards* (1876) 2 Ch. D. 499 at p 506; *Rayner v Preston* (1881) 18 Ch. D. 1 at p 6. See also T Cyprian Williams *A Treatise on the Law of Vendor And Purchaser of Real Estate and Chattels Real*, (4th ed) (1936) Vol. 1 at p 546.

8 *Phillips v Silvester* (1872) LR 8 Ch 173 at p 176–178. See also J T Farrand *Contract and Conveyance* (4th ed) (1986) Oyez Longman, at p 167.

9 [1952] 1 Ch. 627 at p 632.

Vaisey J held that the vendor's interest when he has entered into a contract for sale is not an interest in land but an interest in personal estate, in a sum of money. The purchasers, subject to the payment of that purchase-money, are to be regarded as owners of the land. The effect of the compulsory purchase order process is merely to place an obligation on those who are already owners of the land in question i.e. the purchasers. The compulsory purchase order does not affect the vendors who have no interest in the matter save in respect of the purchase-money which they are entitled to be paid.¹⁰

In *Lim Kim Som*, Michael Hwang JC, although he found the case of *Hillingdon* as being of assistance, did not rely on the passing of the beneficial ownership as the basis for finding that the agreement had not been frustrated.¹¹ In the Court of Appeal, LP Thean JA said that the passing of beneficial ownership to the purchaser is not a sufficient answer to the question why frustration cannot apply to a contract for the sale of land. It is submitted that the issue of whether the common law doctrine of frustration applies to a contract for the sale of land is a separate issue from deciding the rights and position of the parties in equity from the time the contract is entered into to the time of completion.

As stated earlier, there are authorities to suggest that the true owners of the land from the time the contract is entered into are the purchasers. On the sale of land the risk passes at the time of contract rather than on completion.¹² This stems from the principle that, from that date, the purchaser is regarded in equity as the owner of the property. From the middle of the seventeenth century the effect of a contract for the sale of land has been said to be to pass the equitable title to the purchaser.¹³ The reason for this is probably that, unlike most contracts of sale, specific performance is routinely awarded of a contract for the sale of land. This is on the basis that damages are never considered adequate compensation to a purchaser for non-performance of such a contract. The application of

¹⁰ See also *Bridges v Mees* [1957] Ch. 475.

¹¹ *supra*, note 3 at p 538.

¹² *Lysaght v Edwards* (1876) 2 Ch. D 499 at p 507. In *Castellain v Preston* (1883) 11 QBD 380 it was stated that any loss or damage to the property occurring between contract and completion falls on the purchaser unless it is occasioned by a breach of the vendor's duty to take reasonable care to preserve the property. In the Australian case of *Austin v Sheldon* (1974) 2 NSWLR 661, Mahoney J stated that, in his opinion, the principle as to the passing of the risk is not a proper basis for determining that resumption of the land does not terminate the contract. The principle as to the passing of the risk, in his Lordship's opinion, operates in anticipation of the contract being completed and upon the assumption that it will be completed. However, in relation to requisitioning cases, the view has been taken that such a requisitioning does not frustrate the contract. See *Scanlon's New Neon Ltd v Tooheys* (1943) 67 CLR 169. See also *In re Winslow Hall Estate Co v United Glass Bottle Manufacturers Ltd's Contract* [1941] Ch. 503.

¹³ *Lady Foliamb's Case* (1651) cited in *Daire v Beversham* (1661) Nels. 76.

the maxim, equity looks on that as done which ought not to be done leads to the conclusion that the property belongs in equity to the purchaser.¹⁴

The rule of law that the risk passes to the purchaser was perhaps most clearly stated by Sir George Jessel MR in *Lysaght v Edwards*.¹⁵

‘If anything happens to the estate between the time of sale and the time of completion of the purchase it is at the risk of the purchaser. If it is a house that is sold, and the house is burnt down, the purchaser loses the house. He must insure it himself if he wants to provide against such an accident. If it is a garden, and a river overflows its banks without any fault of the vendor, the garden will be ruined but the loss will be the purchaser’s.’¹⁶

As the risk passes on exchange of contracts, the purchaser must bear any losses occurring after date and is also entitled to any gains which are of a capital nature. If the property is consumed by fire,¹⁷ damaged by an earthquake¹⁸ or blown up by a terrorist bomb,¹⁹ it is the purchaser who must suffer the loss. In *Robertson v Skelton*,²⁰ the vendor’s premises collapsed damaging neighbouring property. The purchaser had to indemnify the vendor in respect not only of the cost of repairing the property but also in respect of a neighbour’s successful claim against the vendor for damages. In none of these cases were there any question as to who were the owners of the land at the relevant time.

More pertinent authorities are those where the purchasers are entitled to take any benefits accruing with respect of the land. Under an open contract if the value of the land increases between the contract and completion the vendor is not allowed to increase the purchase price to take this into account. The purchaser is the owner of the land in Equity and any gains accruing during that period belong to him.²¹ This is shown by *Lake v Bayliss*²² where the vendor, having contracted to sell the property to a purchaser, subsequently sold it to a third party at a higher price. The first

14 See *Atcherley v Vernon* (1723) 10 Mod 518. at p 527 per Lord Macclesfield LC; *Re Cary-Elwes’ Contract* [1906] 2 Ch. 143 at p 149 per Lord Swinfen Eady J.

15 Supra, note 12. The opposite view expressed in *Stent v Bailis* (1724) 2 P Wms 217 at 220 per Joseph Jekyll MR has attracted no judicial support.

16 The Law Commission in their Working Paper No 109/89 considers this position as obviously unsatisfactory as they see the rule in *Lysaght v Edwards* as resulting in the purchaser being put at risk of a financial disaster or unnecessary expense being incurred. Their principal concern is to ensure that that a purchaser is not exposed to these risks, at least without full warning in advance. (at p 3). The accuracy of the law as stated by Sir George Jessel has also been criticised. See MP Thompson, ‘Must a Purchaser buy A Charred Ruin?’ [1984] Conv. 43.

17 *Paine v Meller* (1801) 6 Ves. 349.

18 *Cass v Rudele* (1693) 2 Vern. 280.

19 *Redmond v Dainton* [1920] 1 KB 256.

20 (1849) 12 Beav. 260.

21 *Harford v Purrier* (1816) 1 Madd. 532.

22 [1974] 1 WLR 1073.

purchaser had not protected his contract under the UK Land Charges Act 1972 and thus could not enforce it against the second purchaser. Walton J reasoned that the vendor was a trustee for the purchaser and consequently his sale to the third party was in breach of trust. The purchaser as beneficiary was entitled to trace the trust property (the land) into the proceeds of its sale.

In *Sinclair-Hill v Sothcott*,²³ the purchaser, a property developer, agreed to buy land from the vendor. The vendor had an application for planning permission already before the local planning authority. This made the land more valuable to the purchaser because planning permission for his development could be granted more quickly than if he had to submit a fresh application. Consequently there would be less delay in completing the development and the profit margin would be higher. After contract, and without consulting the purchaser, the vendor withdrew the application. The purchaser's argument that the vendor had broken his trustee-like duty of care was upheld by the court. Similarly, if in the instant case, the property had been rezoned for planning purposes (instead of a compulsory acquisition order being made) between contract and completion and consequently becomes more valuable, who would stand to gain?²⁴ In *Scanlon's New Neon Ltd v Tooheys Ltd*, Williams J said

'The doctrine [of frustration] applies to the sale of land but it does not apply where the land is requisitioned between the date of making the contract and the date for completion. This is, presumably, because the equitable interest in the land, and therefore the risk, to the extent to which a court of equity would, under all the circumstances, order the contract to be specifically performed, passes to the purchaser at the date of the contract.'²⁵

If the purchaser is held to be entitled to trace the proceeds of sale in a subsequent sale to a third party (*Lake v Bayliss*) and if the purchaser can take the value of an application for planning permission which renders the land more valuable (*Sinclair-Hill v Sothcott*), why can't he take the loss of value of the property because of the compulsory acquisition? If the effect of the contract not being performed means that the vendor is treated as never being trustee for the purchaser, how could the purchaser be allowed to trace?

In the instant case Thean JA adopted the view that the passing of the beneficial ownership to a purchaser of land is premised on the availability of specific performance, as equity looks upon as done what has been agreed

²³ (1973) 26 P & CR 490.

²⁴ It would most likely be the purchasers who would stand to gain. See also *Modern Conveyancing* (1984) Sweet & Maxwell at p 247.

²⁵ (1943) 67 CLR 169 at p 229.

to be done²⁶ and the purchaser is deemed to be the owner of Equity as of the date of the contract. If *for any reason* specific performance is not available the purchaser is deemed never to have been owner of the land.²⁷ His Lordship's view is consistent with that of Mahoney J. in *Austin v Sheldon*,²⁸ where the latter stated 'The equitable doctrine, if it be based upon the view that equity regards as done that which ought to be done, or upon similar equitable doctrines, in my opinion has no application if, by a supervening event such as resumption, it is clear that which was to be done under the contract cannot in the event be done.'²⁹ It is submitted that this view is not consistent with the authorities cited above, in particular *Lake v Bayliss*,³⁰ where specific performance was no longer available as the land had already been sold to a third party.³¹ Yet, the purchaser was held to be beneficially entitled to trace the proceeds of sale. It may be argued that in *Lake v Bayliss*, the vendor was at fault, but the view as appears to be adopted by Thean JA³² was that as stated by Professor Barnsley³³ i.e. that if specific performance was not available for *any* reason, the vendor is considered as never being trustee for the purchaser.³⁴

In contrast to the authorities that insist that specific performance must remain available, there is also a line of authority where this requirement is not insisted upon.³⁵ These cases insist merely upon the contract being valid if the beneficial ownership is to pass to the purchaser. Validity is generally taken to mean that the vendor has a good title or one that the purchaser has agreed to accept. Under an open contract completion should take place at this time.³⁶ In *Lysaght v Edwards*,³⁷ the issue of pre-completion relationship was squarely raised, since, following the contract and the

26 The principle expounded in *Walsh v Lonsdale* (1882) 21 Ch D 9 i.e. that Equity looks upon as done what ought to have been done.

27 *supra*, note 1 at p 406.

28 (1974) 2 NSWLR 661.

29 *ibid*, at p 672.

30 *supra*, note 23.

31 See also *Gordon Hill Trust Ltd v Segall* [1941] 2 All E R 379. This case provides support for the view that the passing of beneficial ownership does not depend on the continued availability of specific performance but, instead from the existence of an initially valid contract.

32 *supra*, note 1 at p 406.

33 See *Barnsley's Conveyancing Law And Practice* (3rd Ed) at p 277.

34 See also *supra*, note 26. Professor Barnsley too makes no qualification as to the reason for the unavailability of specific relief. See also Lord Parker in *Central Trust v Safe Deposit Co v Snider* [1916] 1 AC 266 where he expressly made the point that if, for *any reason*, equity would not decree specific performance, then the vendor either never was or has ceased to be a trustee at all. (at p 272).

35 See *Lysaght v Edwards* (1876) 2 Ch.D 499; *Gordon Hill Trust Ltd v Segall* [1941] 2 All E R 379. See also Phillip H Pettit 'Conversion Under a Contract for the Sale of Land' (1960) 24 Conv (NS) 41; Simon Gardner 'Equity, Estate Contracts and the Judicature Acts: *Walsh v Lonsdale* Revisited' (1987) 7 OJLS 60.

36 See Waters 'The Constructive Trust' (1964) University of London at p 90.

37 (1876) 2 Ch. D 499, 507.

purchaser's acceptance of title, the vendor had died, having earlier devised to X all real estate vested in himself as trustee. Did the estate in dispute pass to X or to the heir-at-law? Jessel MR's view was that the trust arose not when parties entered into the contract but when there proved to be a valid contract. The interpretation placed on the expression 'valid contract' in *Lysaght v Edwards* was that *there was nothing in the contract itself* to cause it to be set aside. This would encompass such matters as the vendor having a good title and also, presumably, that there was no significant misdescription or misrepresentation.³⁸ In *Lim Kim Som*, the vendor had shown good title and the purchaser must be taken to have accepted that title as the date of completion had passed. It may be that the reality of the situation was that the purchaser had an inkling that the property was about to be requisitioned and was merely dragging her feet in completing what was a binding contract at the time of completion.

The learned judge also disagreed with the trial judge's reasoning to the effect that the contract had not been frustrated because the date fixed for completion fell prior to the vesting of the title of the property concerned in the State. According to his Lordship, the availability of specific performance is decided only at the time of proceedings. It is submitted that the view of the Chief Justice in the Australian case of *McMahon v Sydney County Council*³⁹ encapsulates the position correctly where his Lordship stated

'In the present case, immediately prior to the date of resumption the contract had a twofold operation. Since it was specifically enforceable in equity it created equitable interests in the land. It also created rights enforceable at common law. The resumption transmuted the equitable interest into claims for compensation. *The fact, however, that the resumption prevented the contract from being enforced* and the fact, assuming it to be a fact, that it also prevented further rights from accruing under the contract, either at common law or in equity after the date of resumption, *do not alter the fact that immediately prior to the resumption the parties had certain interests in the land; and it is by those interests that their claims to compensation must be measured.*'⁴⁰

Before the compulsory order was made, the contract was specifically enforceable. Indeed, it has been stated that one of the more important peculiarities of a contract for the sale of land is the availability almost as of right to either party of the equitable remedy of specific performance.⁴¹

³⁸ See Law Commission Working Paper No 109/88 at p 29.

³⁹ (1940) 40 SR (NSW) 427.

⁴⁰ No contentions were raised at the appeal in this case that there was no frustration of the contract. So the court did not decide on this point.

⁴¹ J T Farrand, *Contract And Conveyance* (4th Ed) (1986) at p 167.

The heart of the matter is that in the eyes of equity the purchaser has become the owner of the land and the vendor the owner of the purchase money just as if the contract had been completed by conveyance.⁴² Although it is true that specific performance is decided at the time of trial, this does not alter the fact the immediately prior to the declaration under s 5, the parties had certain interests which are transmuted into claims for compensation after the making of the order. The vendor's interest is still in the purchase money but the purchaser's interest, as beneficial owner of the land, is transmuted to the compensation money awarded for the land.

It is probably true that the doctrine of *Walsh v Lonsdale*⁴³ appears to be premised on the availability of specific relief. Expressed broadly, *Walsh v Lonsdale* has been taken to require the same treatment of parties to an agreement to lease as they would receive if the lease had been executed and there was in existence a demise effective at law. In other words, *Walsh v Lonsdale* stands for the proposition that Equity looks as done what ought to have been done. On the facts of the instant case, the subject matter of the property was still capable of being conveyed. One tends to agree with the trial judge that as the date fixed for completion fell prior to the Collector taking possession of the property and the vesting of the title thereof in the state, then as of that date the vendor was able to convey the land to the purchaser. A similar observation may be made in relation to the English cases⁴⁴ which have considered the effect of compulsory purchase legislation. Under that legislation, the effect of a compulsory purchase order, and of a notice to treat given to then 'owner', has been described as analogous to the making of the contract of sale between such owner and the relevant statutory authority.⁴⁵

Until the actual conveyance of the land consequent upon the compulsory purchase order, the ownership of the land does not vest in the statutory authority, and therefore, the making of a compulsory purchase order and the giving of the order to treat does not deprive the vendor or the purchaser of their respective interests in the land. Even if as Thean JA stated, the title had become a defeasible one which would shortly vest in the state,⁴⁶ the operative word is 'defeasible' and not 'defeated'. One would agree with Hwang JC, the effect of the declaration may have diminished the value of the property but it did not impeach the vendor's title. Many of the Australian cases reflect this view. In *Brett v Cumberland Properties*⁴⁷, after

⁴² *ibid*, at p 167. See also *Hillingdon Estates Co v Stonefield Ltd* [1968] 1 WLR 627 at p 631 per Vaisey J; also per Pennycuik J in *Capital Finance Co Ltd v Stokes* [1968] 1 WLR 1158, at pp 1162–3.

⁴³ *supra*, note 20.

⁴⁴ see for example, the observations of Dankwerts LJ in *Square Grip Reinforcement Co. (London) Ltd v Rowton Houses Ltd* [1967] Ch. 877 at p 886 *et seq.*

⁴⁵ see generally Halsbury's Laws of England, 3rd ed., vol. 10, p 60 *et seq.*, par 97 *et seq.*

⁴⁶ *supra*, note 1 at p 413.

⁴⁷ [1986] VR 107.

execution of a contract for the sale of land, an application was made by a third party to register a building on the land in the register of historic buildings which, if granted, would have had the effect of effect prohibiting the owner from removing or demolishing the building or otherwise developing the land without the permission of the relevant Council. The purchaser refused to complete the contract. At the date of the hearing, the relevant Minister had not made a decision on the application. Starke J held that since there was had been no fraud, misrepresentation, non-disclosure or delay by the vendor, the purchaser was bound to complete. The prospect of the Minister implementing the application did not constitute an existing restriction or a defect in title. In *Doust v Hubbard*⁴⁸, after agreeing in writing to buy a house free from encumbrances the defendant learnt that under such a scheme the house was in an area which the corporation intended one day to acquire for public purposes. They sought to rescind the contract for a substantial defect of title and the vendors brought an action for specific performance. The court held that the title was good but because of hardship the vendors should only recover damages.

More pertinent is the case of *Tsekos v Finance Corporation of Australia Ltd*,⁴⁹ where there was a threat of resumption of the properties existing at the date of contract. The plaintiff-purchasers claimed that the agreement for the sale of the properties were validly terminated by them and claimed damages and the return of their deposit. Rath J held that the threat was not a defect in title. The defendant could have transferred the title bargained for up until the resumption, and the plaintiffs could not refuse to complete. Similarly, in *Lim*, the vendors could have transferred title on the date of completion. Specific performance of the contract would still be available at that stage and the principle of *Walsh v Lonsdale* should operate. One would also agree with Vaisey J in *Hillingdon* that the mere fact the title would later be defeated is of no concern to the vendor (who not being the equitable owner) whose only interest lies in the purchase money. As stated earlier, if the order had been a rezoning order rendering the land more valuable, the purchaser would have argued the principle enounced in *Walsh v Lonsdale* and would more than likely have been granted specific relief had the vendor refused to complete the sale.

CONCLUSION

The weight of the decision in *Lim Kim Som* was based on the common law principles of the doctrine of frustration. As stated earlier, it is not the aim of the writer to argue that the doctrine of frustration does not or cannot

⁴⁸ [1964] Tas SR 260.

⁴⁹ [1982] 2 NSWLR 347 at p 354.

apply to contracts for the sale of land⁵⁰. However, it is submitted that the combination of the equitable principles discussed above as to the position of the parties to a contract of sale of land prior to completion, and the principle in *Walsh v Lonsdale* would mean that the purchaser in the instant case would be 'left carrying the baby' i.e. the compulsory acquisition order. Instead, in the instant case, Equity appeared to have been raised and summarily dismissed as being too simplistic a basis for decision. The rules of equity and the common law appeared to be in conflict and the outcome of the decision was that the common law prevailed.

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⁵⁰ In *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675, the majority of the House of Lords held that it could apply to a lease or an agreement for a lease. Dicta in the case suggest that although the doctrine is not applicable to a sale of land which has been completed by conveyance, it is applicable whilst the contract for sale remains executory. But it must be said that although the House of Lords stated that it was not true to say that the doctrine of frustration could never apply to a contract for the sale of land they felt it would hardly ever do so. It seems that their Lordships were endorsing the view of Viscount Simon LC in *Cricklewood Property & Investment Trust Ltd v Leighton's Investment Trust Ltd* [1945] AC 221 that frustration may only occur where there was some vast convulsion of nature 'as causing houses, gardens, even villages and their churches to fall into the North Sea' (per Lord Hailsham at p 691).

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