D) FORESEEABILITY 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. See:

Walton Harvey Ltd v Walker & Homfrays Ltd [1931] 1 Ch 274.

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. (For the previous inflexible common law rules see ILEx Textbook, 13.5.4)

(A) RECOVERY OF MONEY PAID

Section 1(2) provides three rules:

· Money paid before the frustrating event is recoverable, and
· Money payable before the frustrating event ceases to be payable, whether or not there has been a total failure of consideration.
· 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.

For an example, see:

Gamerco v ICM/Fair Warning (Agency) Ltd [1995] 1 WLR 1226.

(B) 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 has discussed, inter alia, the meaning of the words 'valuable benefit'. See:

BP Exploration v Hunt [1982] 1 All ER 925.

(C) SCOPE OF THE 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.