(main difference is that Shogun displaced the **presumption** that parties intend to deal with the person in front of them by using thorough background checks, voiding the contract)

***Lady Hood of Avalon v Mackinnon* (1909)** demonstrated that if a **gift** is made by mistake, then a lack of consideration from the receiver means that the gift can be revoked

***Cundy v Lindsay* (1877)** held the contract of sale for linen to a rogue was void, as Lindsay **intended** to contract with a reputable company, not the rogue, so Lindsay could claim the linen from the Cundy, an innocent third party who the rogue sold to because the original contract of sale was void

***Hartog v Colin and Shields* (1939)** showed that C&S's mistaken quote for price per pound instead of per piece, as was the convention for hare skins, was not enforceable, since this was a mistake concerning a **term** of the contract, and Hartog must have known that it was a mistake, **voiding** the contract of sale

***A Roberts & Co v Leicestershire CC* (1961)** demonstrated that if a party allows the other to sign a document **knowing** that the other was mistaken as to the terms of that document, then the court may allow **rectification** of the document, with this rectified document being legally binding

***Raffles v Wichelhaus* (1864)** involved the sale of cotton from Bombay which was agreed to be sent on *The Peerless*, but each party had a different *Peerless* ship in mind, as two ships were named the same and arrived at different times, so Wichelhaus did not accept the delivery from the late *Peerless* – EWHC held that courts should try find a **reasonable interpretation** to preserve contracts where possible, but intention could not be found due to the common mistake so without a meeting of the mind, there was **no agreement** and a **voided** contract

***Shogun Finance v Hudson* (2003)** UKHL held that a third party who bought a car from a rogue, who purchased it from Shogun using a fake identity which Shogun ran a credit check on, did not have ownership of the car, since written agreements do not infer a presumption to sell to the immediate purchaser if **identity** is of **key** importance, so the hire purchase contract with the rogue was voided due to **mistaken identity** – dissenting Lord Nicholls held that for public policy, where there are two innocent parties the loss is more appropriately borne by the person who takes the risks by parting with his goods without receiving full payment

Sale of Goods Act 1979, s.6 states that if A and B agree on the purchase of a specific article, the contract is **void** if the article **perished before** the date of the sale, even if both parties agree on the subject matter, since a contract for something which does not exist is useless, **nullifying consent**

***Blackburn Bobbin Co v TW Allen & Sons* (1918)** held that the rule only applies to specific goods, since with unascertained goods the seller warrants to the buyer that these goods will be available, so he cannot rely on unavailability to void the contract

***McRae v Commonwealth Disposals Commission* (1951)** Australian HC did not apply the specific article rule since McRae had incurred great expense looking for the ship sold by CDC only to find that it did not exist, so CDC had to pay damages for their mistaken contractual promise of its existence, since it was **their fault and mistake** which caused McRae to waste money on trying to find the ship which did not exist

***Fibrosa Spolka v Fairbairn* (1943)** showed increased leniency towards frustrated contracts, as the £1000 paid for the contract for machinery was frustrated due to the outbreak of war making it illegal, though Fibrosa was awarded the £1000 back since despite Fairbairn incurring manufacturing expenses, there was **no benefit transferred** and therefore a **total failure of consideration**, so the £1000 was returned to avoid **unjust enrichment** (issues as trivial benefits would still prevent this)

Law Reform (Frustrated Contracts) Act 1943 dealt with money and non-money benefits acquired through frustrated contracts, aiming to introduce rules to make frustration fairer for parties

S.1(2) looks at money benefits, **ending** the previous common law rule by stating that any money **paid before** the event is also recoverable, and debts **due before** the event cease to be payable either, whilst allowing the defendant to **offset the costs incurred** against the money claimed back (ceiling of offset costs is the "sum so paid or payable")

***Gamerco SA v ICM/Fair Warning (Agency)* (1995)** ruled that the **onus** is on the **receiver** of the money to show why the liability of returning the money should be reduced; the band claimed that they should retain some of the money paid since they also incurred **expenses**, and the court exercised **broad discretion** (since **total retention** or **equal proportioning** were inadequate), so that the promoter could recover the full sum paid, as it incurred **far greater** expenses (900% more)

S.1(3) refers to non-money benefits and states that if party A obtains a valuable non-money benefit as part of performance before the frustrating event, then party B can recover a sum from A, not exceeding the value of the said benefit to A – this is also subject to expenses incurred by A for the purpose of performance

***BP Exploration Co (Libya) v Hunt (No 2)* (1983)** can be looked at again since BP claimed under s.1(3) for the benefits it incurred upon Hunt by exploring and developing their oil exploration rights, and the court ruled that the **benefit** was the **enhancement of value** of the oil concession, not the cost incurred by BP's work, and this benefit was greatly reduced by the government's expropriation; ultimately the court decided a fair sum was the **agreed price for the work** under the contract

Performance and Breach

***Taylor v Webb* (1937)** indicated that **independent obligations** exist even if the other party is in breach of their obligations, so the tenant's obligation to pay rent was independent of the landlord's obligation to keep the property in repair, since it was an **independent promised recondition**

***Cutter v Powell* (1795)** raised issues with **entire obligations** which require complete performance before the other party's obligations are triggered, since Cutter died just before the end of the voyage so his widow was denied a claim for payment, with the court reasoning that the defendant should not have to pay for part performance when he wanted full performance

***Dakin v Lee* (1916)** demonstrated the doctrine of **substantial performance**, as the court held that Lee could not avoid the obligation to pay since Dakin had substantially performed the repairs which cost £1500, since only minor aspects required rectification (costing £80), so Dakin was entitled to the contract price of £1500 minus the £80 Lee would have to spend

***The Borag* (1981)** concerned the **negative limb** to avoid taking unreasonable steps that worsen losses, which is why the interest payments on an unnecessary **high interest loan** was not claimable; ***Bacon v Cooper* (1982)** held that **incurring hire charges** was a reasonable step which reduced losses

***Lambert v Lewis* (1982)** demonstrated that there must be a **causal link** between the breach and the loss, which can be broken, seen here with the **unreasonable acts** of the claimant to continue using a towing hitch that he knew was faulty, preventing him from claiming against the garage that supplied the hitch when the hitch failed and caused a serious accident

***Quinn v Burch Bros* (1996)** ruled that despite a breach of contract, it was the claimant's **voluntary act** to use inadequate equipment which cause his injury, so his **negligence** broke the causal chain

***The Heron II* (1967)** contained clarification by the UKHL that the defendant only needs to foresee the **type of loss** incurred, not the extent of the loss, to be held liable for it; also the loss must be foreseen as a **serious possibility**, not just a slight possibility as tort law requires

***Hadley v Baxendale* (1854)** referred to **remoteness**, that losses caused by the defendant cannot be recovered if they are too remote, the test for which is whether losses could have been **reasonably contemplated as consequences** of breach by the parties, at the **time** the contract was entered into; Here although the defendant breached the contract by delivering the broken mill shaft too late, he was not liable for loss of profits since he was **not specifically aware** that a delay would shut down the whole mill, and it was **reasonable to assume** that Hadley could find another shaft to use

***Victoria Laundry v Newman Industries* (1949)** showed the importance of such knowledge, as the EWCA held Newman liable for the profits lost since Newman was in breach by delivering 5 months late and also **knew of the importance** of the boiler plus how it was needed immediately, as they had a **pre-existing** business relationship and **expertise** in the area however exceptionally profitable contracts that were lost could not be claimed since Newman did not know of them when the contract was entered into, distinguishing between **ordinary and exceptional** profits

Agreed damage clauses

***Dunlop Pneumatic Tyre Co v New Garage & Motor Co* (1915)** UKHL defined an agreed sum as a **penalty** if it is "**unconscionable** in **comparison** with the **greatest loss** that could conceivably be proved to have followed from the breach", with relevant aspects of penalties including a description which is **not conclusive**, a **lack of proportionality** between the sum payable and the seriousness of the breach, and specified damages **higher than** the sum paid by the other party

***CMC Group plc v Michael Zang* (2006)** EWCA held that an agreed term that Zang's breach of contract would require him to pay $45,000 was a **penalty** since it was **unconscionably large** and was liable even for **trivial breaches**

***Murray v Leisureplay* (2005)** EWCA ruled that a term entitling the claimant to a year's gross salary upon unfair dismissal was enforceable, since the court used **discretional tolerance** to allow it as it was generous but not unconscionable, partly due to the difficulty in estimating what his actual loss would be, so it was a **reasonable estimate of loss at time of contract formation**

the case here because it would be unjust to force the defendant to give up her home four years after she'd contracted to sell it since during this time, she was diagnosed with cancer and had her leg amputated, she gave birth to two children, and her husband was bankrupted and sent to prison, leaving Ali very dependent upon others

***Wilson v Northampton and Banbury Junction Railway Co* (1874)** illustrated how a contract to build a railway station had terms **too difficult to specify**, so the court did not grant specific performance since it would be too difficult to determine if the defendant had completed performance, potentially wasting judicial resources and time if performance had to be supervised

***Cooperative Insurance Society v Argyll Stores* (1988)** is the leading case on specific performance, where the UKHL ruled that a lease with an obligation to stay open for 35 years (supermarket was the main attraction of the shopping centre) could not result in specific performance when Argyll Stores was losing money after 16 years and wanted to end the lease, the main reasons for which were: **1. Settled practice** of the courts was to not grant specific performance if it would require the defendant to **carry out an activity** as opposed to a single act; **2.** In this particular case, granting specific performance would be **unduly oppressive** since it would require Argyll to operate business under **constant threat of contempt of court**, which he could be imprisoned for; **3. Uncertainty of terms** was another issue since a set of terms would not be completely precise, e.g. what level of trade had to be sustained, therefore requiring supervision; and **4.** Specific performance would cause Argyll to potentially **suffer huge losses**, costing millions of pounds to re-run the shop and carry on running a loss-making enterprise for 19 more years