10. Fundamental changes: Frustration and common mistake

This chapter examines the doctrines of frustration and common mistake that deal with situations where fundamental changes have occurred. Frustration and common mistake apply to situations where the parties find themselves in uncharted territory. The doctrines ask courts to determine the limits of a contract, the point where the contractual framework runs out and the contract no longer holds. This chapter first considers the impact of ‘unknown unknowns’ on the contract and the distinction between frustration and common mistake before discussing frustrating events and the consequences of frustration. It also describes three types of common mistake that render the contract void: mistakes as to the existence of the subject matter, mistakes as to the possibility of performance, and certain types of mistakes as to the quality of the subject matter. Finally, it looks at the legal consequences of common mistake and remedies for common mistake.