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**Original article**

## The study of act of god in the light of law

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### ABSTRACT

According to the principle of requirement of the contracts, the contents of contract must be respected and binding for parties. This principle is accepted in the law of different countries, so that for example, articles 219 of Iran civil code and 1134 of France civil code confirm it. According to this principle, failure to perform the contract duties is the fault of promisor, unless he could prove the cause is for the force majeure. This study surveys the force majeure process in comparative law with a brief look to Iran law. Result of this paper states that force majeure is accepted in all legal systems as an excuse for failure of performance; because, it may cause performance practically impossible. Hence, it has impressive effects on contract. In common law, the terms "termination of contract" and "impossibility" are used instead of force majeure. Also, force majeure and hardship are distinguished. Force majeure causes impossibility in contract performance, while hardship causes one of parties falls in a hard circumstance for performing the contract promises. Almost in all international contracts, force majeure condition is considered. It is analyzed and regarded according to initial circumstance of contract and implied terms.

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## **1. Introduction**

It seems that the term "force majeure" is used in France civil code for the first time. Other countries use the same term or equal translation of it. In international law, commonly the same term is used (Safaie 2007). Some of French law scientists differ the unforeseen from force majeure. They think unforeseen events are internal incidents, like: fire, product defect, railroad derail, (in some cases) strike, etc. While, force majeure is external incident, like: flood, storm, earthquake, etc. (Puenlinck) Iranian law scientists don't differ these two terms. Their opinions are based on 3 factors. They are: unforeseen, unpredictable and impossibility in contract performance (Emami 1984, Katoozian 1991, Jafari Langroodi 1993). The mean of force majeure is accepted in international convention of sale of goods. Article 79 of international contract convention confirms the supposed rule (Some authors, Hariri 2010). This paper is consisted of 6 sections. In second section, we will have a survey on the mean of force majeure. Third section is dedicated to conditions of force majeure. Fourth section talks about force majeure effects and fifth section covers the instances of force majeure. Finally conclusion is placed at the end of paper.

## **2. Force majeure**

### **2.1. Comparative law**

In Black law dictionary, force majeure is defined as: "Force majeure (French), in insurance law: A superior or inevitable force. Such this condition is used for supporting contract parties in the circumstance that a part of contract is out of parties' control, so that performance gets practically impossible." (Black 1984)

In another law dictionary, force majeure is defined as: "Force majeure is defined as events out of parties' control such as: riot, strike, war, flood, storm, etc. These factors cause impossibility in contract performance." (Heollin 1986) In another definition: "Unforeseen and unavoidable events that make promisor unable to perform the promises, or damage the promisee so that promisor is not able to remedy. For example, fire in a factory makes the owner unable to manufacture the products. The term "Force majeure" or "Cas fortuit" (means unforeseen events) is seen in law researches of France." (Jafari Langeroodi 1993). Force majeure has both public and private meaning in France law. In public term, it means any external unforeseen and unavoidable incident that prevents the promisor from doing the duties. Force majeure covers the third parties and promisee role, too. Force majeure in private term means any nameless unforeseen and unavoidable event (absolutely natural and independent from people acts) (Mazeaud 1970). Nowadays, France legal system doesn't differ the Force majeure from unforeseen events, where as some of scientists distinguish them (Carbonnier 1972). In common law system, force majeure term is not used, but the concepts are investigated with the title "Termination of the contract" or "impossibility". These legal entities are different from force majeure. In fact, they widely cover the subjects that stop the contract performance. Nevertheless, common law system rules get to similar results with force majeure (Ghristou 1982). In jurisprudential sources, the term of "celestial pest" is used for force majeure subjects (Najafi 1987). Iran law is based on jurisprudential rules, but law is separated from it. Studies show that there are anticipations for force majeure in law, so as there is in jurisprudence. Jurisprudential rules point to force majeure as an excuse for contract performance. This rule is based on consensus of juristic opinions. In an extent branch of Islamic sects (that are followers of prophet precedents and called "Sonni") this rule is accepted, too (Seraj 1990, Bejnourdi, Sanhori). In Iran law, Articles 227 and 229 are borrowed from Articles 1147 and 1148 of France civil code. According to them, external factors include both force majeure (like: earthquake, flood, storm, volcano erupts, etc.) and unforeseen incidents (like: strike, fire, etc.). External factors are nominated as excuses for failure in contract performance.

### **2.2. International law**

Force majeure is accepted in France and common law, and also it is nominated as an integrated basic rule in international public law. Consideration of force majeure is very important in international

relationships, especially in promises between governments. But, some of law scientists look to this subject from a doubtful point of view (Chenc 1953, Cavare 1926).

### **3. Force majeure conditions**

Basically 4 conditions for force majeure are nominated. Referring to them, promisor can avoid of performing the contract contents:

1. Event must be external
2. Event must be independent from promisor
3. Event must be unforeseen
4. Event must be unavoidable
5. These conditions are investigated separately in follow.

#### **3.1. Event must be external**

One way for avoiding the remedy by promisor is proving the external events. In France law, external events theory is include by force majeure or unforeseen theory. Promisor can refer to Article 1148 of France civil code regarding following conditions (Sadeghi Moghadam 2007):

- Event is out of control
- Event is unpredictable
- Event is an external factor
- Event is independent from promisor

Laubadere (1984) says that event must be external, due to refer to theory of force majeure (Laubadere 1984).

In England law, in frustration theory, one of conditions that cause contract cancellation is external events (that is independent from promisor) (Treitel 1990).

External reason includes both force majeure and unforeseen events and causes cancellation of promise and irresponsibility of promisor.

#### **3.2. Event must be independent from promisor**

There must be no relationship between the reason of force majeure event and action of promisor. For example, if an employer doesn't pay the employees' salary and they strike, he can't refer to force majeure to excuse from promises.

In France law, it is mentioned that for example if institute of railway delay in delivery of goods and the goods be robbed because of this delay, then institute of railway will be responsible for remedy. Also, in other cases such as wasting the goods in fire, while promisor is able to protect them, and pouring the goods into sea because of ship collision to the boulder, while captain is able to moor in the foggy air, promisor and captain are responsible for damage (Corbin 1962).

Also, in England law it is stated that for example if renter of ship order to go to war zone and the ship be arrested because of his command, then he can't refer to frustration. Generally, in such cases that the promisor's fault causes damage, frustration theory is not applicable (Treitel 1979).

#### **3.3. Event must be unforeseen**

If contract parties don't anticipate unforeseen events that may occur, they will be responsible for the damages. Also, a jurisprudential rule confirms it as, it means "each body that does an action, he will be responsible for consequences".

In France law, force majeure and unforeseen events will be accepted if they be absolutely unpredictable (Rayner 1991).

In England law, only being predictable events doesn't prevents the contract as frustration. It may a foreseen event cause stopping the contract. In well-known coronation claims, frustration was applied, while the king's patient was predictable (Treitel 1990).

In Egypt law, it is stated that events which destroy the contract financial balance must be unforeseen. So, some cases like usual river flooding or increasing the employees' wage can't be referred

in order to apply the unforeseen events theory. But, if the Nile River has a huge flooding or the workers' wage increase unpredictably, then it is possible to refer to unforeseen events theory. Articles 147 and 608 of Egypt law states that event must be unpredictable in order to be accepted for unforeseen events theory. But, incision 4 of Article 658 knows the unpredictability of event at contract acceptance time as sufficient condition for unforeseen events theory (Sanhori).

Iran law borrows the Articles 227 and 229 from Articles 1147 and 1148 of France civil code and states that unpredictability of events is dependable and the metric for evaluation is common sense. Also, it mentions that continuing the contract is the basic goal and force majeure is an exception. It nominates the unpredictability as one of force majeure conditions.

#### 3.4 Event must be unavoidable

Unforeseen events must be so severe that promisor be unable to perform the contract duties, else, he will be responsible for the damages.

In France law, unavoidability concept means absolute unfeasibility of doing contract promises, not for personal or non-absolute reasons. Force majeure is called to events that cause inability for everybody not for a promisor in cause of his poor facilities (Mazeaud 1970, Carbonnier 1972).

In Egypt law, sufficient condition is absolute unavoidability of event, too (Sanhori).

### **4. Force majeure effects**

Force majeure may cancel or suspend the contract. Both of these effects are talked separately in follow.

#### **4.1. Contract cancellation**

Force majeure may cause permanent impossibility in contract performance. In such this circumstance, contract will be cancelled, and promisor will be exempt of doing contract promises, and promisee can't ask for remedy. Articles 1148 of France and 229 of Iran civil code confirm this subject. But, in following cases, force majeure fails in exempting of promisor:

- A. If promisor accepts with force majeure damages in the contract, then he will be responsible for remedy (Safaie 2007).
- B. If force majeure includes a part of promises, then promisor will be partially exempted (Safaie 2007).
- C. If performance date is before occurring force majeure and promisee asks the promisor to perform in accepted date, then promisor is responsible for remedy. Clause 2 of Article 1138 and Article 1302 confirm it (David R.).
- D. If force majeure is caused by promisor action (as what we told in the example of ordering the ship to go to war zone and arresting the goods), then the promise will continue (Corbin 1962, Ommeslaghe 1980).

#### **4.2. Contract suspension**

If occurrence of an event causes temporary impossibility in performance, then force majeure event suspends the contract. After event disappearing, contract will continue, providing acceptance of parties (Safaie 2007).

According to Articles 43, 48 and 49 of contract public conditions, if occurrence of an event causes impossibility of performance, then promisor will not be responsible for damages. But, if it puts the performance off, then contract will continue (according to requirement of the contract rule), but promisor will not be responsible for damages caused by delay. So, the result is that force majeure suspends the contract in such these cases (Esmaeil Harisi 2008). According to Article 15, legislature says: If occurrence of force majeure causes closing the manufactory or a part of it and doing the contract promises will be impossible for a while, then final decision about this circumstance must be done by ministry of labor and social affairs.

### **5. Force majeure instances**

Revolution, strike, legal prohibition, etc. are some of force majeure instances, which will be talked in follow.

### **5.1. Revolution**

Revolution is mentioned as a force majeure instance in international courts. Governments are not responsible for the damages to people and aliens during the revolution formation (Safaie 2007).

In United States law, promisor exemption from performance caused by war or revolution is seen in courts, too (Corbin 1962).

In Iran law, there is difference between launch to war, war phenomena and state of war. It means, war isn't nominated as force majeure events, but its sequences may cause hardship for promisor. War effect is regarded as force majeure when it makes the contract performance impossible. For example, bombardment of promisor facilities that are needed for performance by anomies is regarded as force majeure (Esmaeil Harisi 2008).

### **5.2. Strike**

Force majeure instances nominated by international chamber of commerce (ICC) are: strikes, boycotts, hypothyroidism, destruction of manufactories and institutes, individual work stoppage that claim to performance failure (Samavati 2010).

In France law, strike is one of force majeure instances with confirmation of court, and has 3 conditions. First, strike must be at least partly public. Second, it must be unpredictable. Third, it must be independent of promisor. For example, rigor of employer may cause strike of workers. If employer is able to give reasonable credit to avoid strike, then he can't refer to strike as force majeure (Carbonnier 1972).

In public conditions of contract in Iran law, there are two cases for strike: public strike and employees strike. Public strike is considered as force majeure, if it occurs suddenly and publicly, so that takes the chance of promisor. In second case, if strike is independent of employer's action, then he is not responsible for remedy. But, if his fault causes strike, then he will be responsible (Esmaeil Harisi 2008).

### **5.3. Legal prohibition**

Changes in law after contract acceptance may cause legal prohibition for performance. Legal prohibition in such this circumstance is regarded as force majeure (Safaie 2007).

In public conditions of contract in Iran law, one of contract cancellation cases is that "employee is covered by legal prohibition of Article 44". This rule is mentioned in clause B, part 2 of Article 46 of contract public circumstance.

## **6. Conclusion**

Basically according to requirement of the contracts rule, parties are required to perform the promises; unless force majeure occurs. In such this condition, promisor must prove the force majeure in order to excuse for performance. Also, in doubtful situations, continuing the contract is prior to force majeure.

Force majeure is raised in Roman-Germany legal system. In Common law, it is called "frustration" or "cancellation of contract". Also, it is regarded in international trade law and international convention of sale of goods (Article 79). In Iran law, Articles 227, 229 and in section of "pubic conditions of contract" in Article 43, it is been mentioned, too. Furthermore, force majeure condition is suggested to be added to implied terms of contract (even if there is no anticipation for force majeure).

Force majeure conditions in all the legal systems include: be external event, be unforeseen, be unavoidable, and be independent from promisor actions.

Effects of force majeure are cancellation or suspension of contract.

Force majeure philosophy is based on events occurring out of individual control. So, it seems there is no difference between external (flood, earthquake, storm, etc.) and internal (fire, strike, railroad derail, etc.) events. Promisor is required to perform the contract duties; unless he faces to hardship or impossibility in doing the promises. In such this circumstance, there is no difference between internal and external events, and promisor can excuse of performance, if he can prove the force majeure conditions.

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