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18/eng04/077

Electrical/Electronics engineering

EEE 324 Test 2

1. During a Pandemic/Epidemic

Depending on the language of the clause, the COVID-19 pandemic itself may not necessarily be considered a force majeure event. The scope of force majeure sphere might have been broadened in light of W.H.O's declaration of COVID-19 as a "pandemic" and the reactions by the government to contain the spread of the virus, which has had a ripple effect on the ability of businesses to perform their contractual obligations.

Courts may view COVID-19 as a force majeure event or see the government's action taken to combat the virus as the force majeure event as opposed to COVID-19. This decision will be left to the discretion of the Court. It is also important to mention that some countries have gone ahead to declare COVID-19 as a force majeure event, e.g. Turkey⁸ and Mexico⁹.

Where the force majeure clause specifies "disease", "outbreak of illness", "epidemic", "pandemic" or some other similar term, it is opined that the current outbreak would likely qualify by virtue of its scale and disruptive effects. In contracts where no specific clause relating to disease is used, it might still be a valid ground if an omnibus term such as "act of God" is included.

2. During a war

Any circumstances that are specifically contemplated (included) in the contract—for example, if the contract for the outdoor event specifically permits or requires cancellation in the event of rain.

Under international law, it refers to an irresistible force or unforeseen event beyond the control of a state making it materially impossible to fulfill an international obligation, and is related to the concept of a state of emergency.

Force majeure in any given situation is controlled by the law governing the contract, rather than general concepts of force majeure. The law of the contract often specified by a choice of law clause in the agreement, and if not is decided by a statute or principals of general law which apply to the contract. The first step to assess whether - and how - force majeure applies to any particular contract is to ascertain the law of the country which governs the contract.