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Question 2

A force majeure clause is “a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event or effect that the parties could not have anticipated or controlled.”[1] Simply put, a force majeure clause excuses a party’s performance under certain unforeseen circumstances. However, there is no “one size fits all” force majeure clause and the precise language of the clause can significantly impact its application. Therefore it is incumbent during the contract drafting process to identify which circumstances will and will not excuse performance and tailor the language to fit the parties’ intent.

2 scenarios that a force majeure is applied

1. The party inability to perform its obligation was as a result of circumstances that were not controllable by each party
2. The events was not anticipated by each party at the time they entered into the contracts