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CHEMICAL ENGINEERING

ENGINEERING LAW & MANAGERIAL ECONOMICS

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Force majeure is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, epidemic or an event described by the legal term act of God, prevents one or both parties from fulfilling their obligations under the contract.

For a defendant to invoke force majeure, the event proposed as force majeure must pass three tests:

1. Externality

The defendant must have nothing to do with the event's happening.

2. Unpredictability

If the event could be foreseen, the defendant is obligated to have prepared for it.^[11] Being unprepared for a foreseeable event leaves the defendant culpable.

3. Irresistibility

The consequences of the event must have been unpreventable.

SCENARIO IN CHEMICAL ENGINEERING

CASE 1:

A steel making chemical process industry, Industry A, has a drawn contract with a construction company, Industry C, to supply steel. But Industry A has to deliver goods to Industry C which is located abroad. They both agreed to send the goods by plane. However, there is a major terrorist attack at Industry A country's airport.

The major terrorist attack is an unforeseeable event. It wasn't expected, and there is nothing you can do about it, i.e., it's beyond your control.

In this case, you would not be liable for the late arrival of Industry A's goods. ['Liable,' in this context, means 'responsible.'](#)

Events of Force Majeure

For the purpose of this Agreement, an “Event of Force Majeure” means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and the observance of Good Utility Practice, cannot be, or be caused to be, prevented, avoided or removed by such Party, and (ii) such circumstance materially and adversely affects the ability of the Party to perform its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof.

CASE 2:

Industry A is a Pharmaceutical Company that supplies drugs to a Hospital. But during one of the processes as a result of the ongoing security issues in the country caused by war, there was an explosion in the industry due to air strikes which resulted to destruction of the plant and equipments. There was also chemical contamination and so the agreed amount drugs required to be supplied by Industry A could not be reached.

Industry will not be held accountable for breaching the contract due to the unforeseen circumstance.