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Engineering law (Eng 384)

Question 2.

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. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure.

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.