

Force majeure in Cayman Islands Law

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As a British Overseas Territory, the Cayman Islands adheres to English common law in its law of contracts.¹ There are no reported or unreported judicial decisions in the Cayman Islands concerning *force majeure* and no legislation that alters the general common law position.

The result is that a *force majeure* clause is construed according to the ordinary, common law rules of construction. If, as is common, the contractual definition of an event of *force majeure* contains a laundry list of occurrences that fall within the definition, the question will be whether “pandemic”, or some phrasing synonymous with that, has been included. If it has not, a party seeking to excuse its non-performance will need to fall back upon the doctrine of frustration.²

If the contract says merely that performance will be excused in the event of an “act of God” or *force majeure*, without itemizing the events that are meant, then reference must be had to the common law definitions. An act of God is an extraordinary occurrence or circumstance which could not have been foreseen and which could not have been guarded against.³ A more expansive definition is that an act of God is an accident due to natural causes, directly and exclusively, without human intervention, and which could not by any amount of ability have been foreseen or, if foreseen, could not by any amount of human care and skill have been resisted.⁴ The meaning of *force majeure* is somewhat broader than this and has been held to include such things as strikes and breakdowns in machinery.⁵

The present pandemic is an extraordinary occurrence or circumstance which could not have been guarded against (i.e., by the parties to the contract), but could it have been foreseen? That is a pure question of fact, to be resolved in each case; much will likely depend upon the date of the agreement. From about the end of January 2020, there is a reasonable argument that contracting parties could have foreseen the possibility of a pandemic. The argument is also available, with considerably less force, in disputes over contracts made before 2020, having regard to the MERS, SARS, and swine flu outbreaks.

There are a few Cayman Islands statutory provisions that apply to specific situations but none that apply to a pandemic. The Merchant Shipping Law provides that damages resulting from the collision between ships that are caused by *force majeure* are to be borne by the parties suffering them.⁶ The Customs Law excuses a failure to report to customs when prevented from doing so by *force majeure*.⁷ The Labour Law includes *force majeure* in its list of justifiable reasons for redundancy.⁸ The Stock Exchange Company Law specifies *force majeure* as one of the justifications for the suspension of trading.⁹

1. Contracts Law (1996 Revision), s. 3.↩

2. As to which see Contracts Law, Part II.↩

3. Halsbury, Vol. 9(1) (Reissue), para. 906.↩

4. Ibid. ↩

5. See, for example, *Matsoukis v Priestman & Co* [1915] 1 KB 681.↩

6. Merchant Shipping Law (2011 Revision), s. 148(4).↩

7. Customs Law (2017 Revision), s. 13(1).↩
8. Labour Law (2011 Revision), s. 2, definition of “redundancy”. ↩
9. Stock Exchange Company Law (2014 Revision), s. 17(1). ↩

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