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Considering Force Majeure Clauses Alongside New York Common Law Doctrines

*By Jennifer Huang, Nick Kouvaritakis, Yu-Jin Tay, Noelle Jolin,
Nicole T. Hamilton and Caitlyn Coffey**

In this article, the authors provide an overview of the key legal and contractual remedies that apply in times of emergency: geopolitical conflict, global pandemics, natural disasters, and other crises.

The U.S.-Iran conflict has effectively shut down the Strait of Hormuz, one of the world's most important waterways, leaving thousands of oil tankers and container ships at a standstill. Unable to safely pass through, shipping has ground to a halt, leaving sellers unable to deliver vital goods, including oil and natural gas.

The ripple effect is widespread—surging energy prices, global shortages, and political maneuvering, leading to volatile markets. The conflict has also profoundly affected the thousands of contracts that dictate the terms of shipping. In times of crisis, it's therefore crucial to understand the legal consequences.

This article provides an overview of the key legal and contractual remedies that apply in times of emergency: geopolitical conflict, global pandemics, natural disasters, and other crises.

This article focuses on New York law, given the widespread prevalence of international contracts with New York governing law. As a key commercial center, New York law is regarded for its developed and commercially favorable case law, offering predictability when a dispute arises. In particular, New York strictly enforces contracts according to the “four corners” of the page, meaning that unambiguous contracts will be enforced as written without considering extrinsic evidence.¹ As New York's highest court has explained, New York law has “long deemed the enforcement of commercial contracts according to the terms adopted by the parties to be a pillar of the common law.”²

New York has enacted the Uniform Commercial Code (UCC) at Chapter 38 of its Consolidated Laws. Article 2 of the UCC governs the sale of goods (such

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¹ W.W.W. Assocs., Inc. v. Giancontieri, 77 N.Y.2d 157, 162 (1990).

² 159 MP Corp. v. Redbridge Bedford, LLC, 33 N.Y.3d 353, 359 (2019) (“Freedom of contract is a ‘deeply rooted’ public policy of this state[.]”).

as oil and gas). This means that parties selecting New York law to govern their sales contracts have also selected the UCC to apply to their contract.

CONTRACTUAL REMEDIES

In any disrupted transaction—whether from an outbreak of war or a global pandemic—the first step is to examine the contract. Well-drafted contracts anticipate such events and allocate the associated risks.

Many contracts include force majeure clauses, provisions designed to address unanticipated disasters and allocate risk. Crucially, New York law—in keeping with its policy to enforce contracts *exactly* as written—construes force majeure clauses narrowly. They are, therefore, not a panacea.

To excuse non-performance, a force majeure clause must specifically contemplate the event at issue—general language that covers a variety of catastrophes in broad strokes will not suffice. With respect to the Iran conflict, for instance, the provision must specifically address war, regional conflict, or something similar.

The COVID-19 pandemic brought this requirement into sharp focus. At a time when many businesses were forced to close owing to supply-chain disruption, lost business, and numerous other pandemic-related reasons, they were unable to obtain judicial relief unless their force majeure clause specifically contemplated a pandemic. By way of illustration, several courts found that the COVID-19 pandemic was not a “casualty event” referenced in many force majeure provisions.³

Special care should also be given to ensure that any prerequisites are met. A force majeure clause may require, for example, timely notice to the parties. Failure to follow such requirements may preclude relief.⁴

Where a valid force majeure clause applies, the remedy depends on the specific language of the contract. Some force majeure clauses suspend performance for the duration of the triggering event, effectively excusing delay without terminating the agreement. Others provide for an extension of time to perform, with the contract resuming once the event has passed. Certain clauses go further and grant one or both parties the right to terminate the contract entirely if the force majeure event persists beyond a specified period. New York courts enforce these provisions as written, meaning that the scope of relief—whether temporary suspension, extension, or outright termination—is dictated

³ A/R Retail LLC v. Hugo Boss Retail, Inc., 72 Misc. 3d 627 (N.Y. Sup. Ct. N.Y. Cnty. 2021) (collecting cases).

⁴ A/R Retail LLC, 72 Misc. 3d at 639 (lessee not entitled to terminate lease because it did not provide timely written notice, as lease required).

by the four corners of the clause itself. Parties should therefore carefully review the operative language of their force majeure provision to determine what remedy, if any, is available.

COMMON LAW REMEDIES

In the absence of an enforceable force majeure provision, parties must look to New York common law (which, in some instances, is codified in the UCC). Two potential remedies are relevant.

Frustration of Purpose

As the name suggests, the frustration-of-purpose doctrine is intended to relieve contractual performance when an unforeseen event destroys the fundamental basis of a contract. In legal parlance, “the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense.”⁵

In a classic example, the purpose of a commercial lease was frustrated when the tenant leased the space to open a restaurant, but could not do so for three years after the lease was executed because a public sewer was under construction.⁶

Importantly, however, a temporary hardship is not enough. Returning to the COVID-19 context, New York courts held, for example, that lost business did not frustrate the purpose of a commercial lease.⁷ The frustration must be more than a temporary inconvenience or financial hardship.⁸

A successful frustration-of-purpose defense discharges the affected party’s remaining obligations under the contract. Unlike force majeure, which may merely suspend performance, frustration of purpose operates as a complete defense to a claim for breach—meaning the non-performing party is excused from further performance entirely. The doctrine does not, however, provide an affirmative right to terminate the contract or to recover damages. Rather, it serves as a shield: if a party is sued for failing to perform, it may invoke frustration of purpose to avoid liability for breach. Any obligations already

⁵ *Kay v. Heavenly Events & Catering Corp.*, 241 A.D.3d 1305, 1308 (N.Y. App. Div. 2025) (quotation omitted).

⁶ *Ctr. for Specialty Care, Inc. v. CSC Acquisition I, LLC*, 185 A.D.3d 34, 42 (N.Y. App. Div. 2020).

⁷ *9-11 Stanton St. Realty Corp. v. Stanton St. Cleaners, Inc.*, 222 A.D.3d 570, 571 (N.Y. App. Div. 2023).

⁸ *Gap Inc. v. Ponte Gadea New York LLC*, 524 F. Supp. 3d 224, 236 (S.D.N.Y. 2021) (“The possibility that the stores at issue in this case may suffer particularly adverse financial consequences from the COVID-19 pandemic does not amount to frustration of the purpose of the Lease.”).

performed prior to the frustrating event generally remain enforceable, and the parties may be entitled to restitution for benefits conferred before the frustration occurred.

Impracticability

Impracticability is codified under the New York UCC and treated as an impossibility defense. Section 2-615(a) of the UCC excuses non-performance of a contract when performance is “made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made.” Unlike frustration of purpose, which applies when a contract is able to be performed but its purpose has been frustrated, Section 2-615(a) applies where performance itself is impracticable.

To prevail on an impracticability defense, a party must generally show that an unforeseen event occurred which was not foreseeable at the time of contracting and made performance impracticable. Impracticability does not apply merely where a contract has become unprofitable or burdensome to perform.

Under Section 2-615(a), a seller whose performance has been made impracticable is excused from timely delivery of goods—in whole or in part—for the duration of the impracticability. This remedy does not automatically terminate the contract. Instead, Section 2-615(b) requires the seller to allocate production and deliveries among its customers in a fair and reasonable manner if the impracticability affects only a portion of the seller’s capacity. The seller must also provide timely notice to the buyer under Section 2-616(1) that there will be a delay or non-delivery. Upon receiving such notice, the buyer may either terminate the unperformed portion of the contract or accept the modified allocation. Thus, impracticability operates primarily as a defense to excuse or delay performance while giving the buyer the option to terminate if the modified terms are unacceptable.

INTERPLAY BETWEEN CONTRACTUAL AND COMMON LAW REMEDIES

Under New York law, the frustration of purpose and impracticability doctrines turn on foreseeability. If a catastrophe was foreseeable and addressed by the parties in the contract, New York courts will not relieve performance beyond what the contract provides.⁹ Again, this stems from New York’s policy to hold parties to the benefit of their bargain.

⁹ *Kel Kim Corp. v. Cent. Markets, Inc.*, 70 N.Y.2d 900, 902 (1987) (“impossibility must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract”); *RedHill Biopharma Ltd. v. Kukbo Co.*, 241 A.D.3d 1130, 1131 (N.Y. App. Div. 2025) (“the frustration of purpose doctrine is inapplicable when the event which prevented

Thus, if the contract contemplated the event leading to frustration of purpose or impracticability, the non-performing party cannot prevail under either doctrine, because a New York court will deem such events to have been foreseen by the parties by virtue of their inclusion in the contract.¹⁰ In other words, though force majeure events are, by their very nature, unforeseeable, their inclusion in a force majeure clause effectively renders them foreseeable for purposes of New York law. This, in turn, forecloses reliance on frustration of purpose or impracticability.

Though it may seem intuitive to apply these two common law doctrines during states of emergency, parties should seek legal advice to determine whether they conflict with a contractual force majeure provision in a manner precluding relief.

KEY TAKEAWAYS

Review Force Majeure Clauses Carefully and Act Promptly

The first line of defense in any crisis is the contract itself. Force majeure clauses are construed narrowly under New York law and will only excuse performance if the clause specifically contemplates the type of event at issue—such as war, armed conflict, or government action, in the case of the U.S.-Iran conflict. Equally important, many force majeure clauses impose procedural requirements, such as timely notice to the counterparty, that must be strictly followed. Failure to comply with these prerequisites may forfeit the right to relief altogether. Parties should review their contracts immediately and take all steps required to preserve their rights.

Understand the Scope of Relief Your Contract Provides

Not all force majeure clauses provide the same remedy. Some suspend performance temporarily, others extend deadlines, and still others permit termination after a specified period. The specific language of the clause controls. Parties should assess whether the available remedy—suspension, extension, or termination—addresses their commercial needs and plan accordingly.

Common Law Doctrines Are Narrow and Context-Dependent

Where no force majeure clause applies, the doctrines of frustration of purpose and impracticability may provide relief, but both must meet a high threshold. Frustration of purpose excuses performance only when the fundamental purpose of the contract has been destroyed—not merely when

performance was foreseeable” (quotation omitted)).

¹⁰ A/R Retail LLC, 72 Misc. 3d at 627 (“the frustration doctrine is unavailing when the parties’ contract made provision for the particular calamity that eventually befell the parties”).

performance has become more expensive or less profitable. Impracticability excuses a seller's delivery obligations when performance itself has become unfeasible due to an unforeseeable contingency, but it does not automatically terminate the contract and requires fair allocation of remaining capacity and timely notice to the buyer.

Beware the Foreseeability Trap

Both common law doctrines require the triggering event to have been unforeseeable at the time of contracting. Critically, New York courts have held that events expressly referenced in a force majeure clause are, by definition, foreseeable—even if the force majeure clause itself does not provide relief. This means that a broadly drafted force majeure provision that fails to cover the specific event at issue may simultaneously preclude relief under the common law. Parties should be aware that a force majeure clause can cut both ways.

Consider the Full Range of Options

In volatile markets, contractual remedies are only one element of the analysis. Parties should also evaluate whether renegotiation, alternative performance routes, mitigation measures, or insurance coverage may provide additional avenues of relief. Early engagement with legal counsel is essential to preserve rights, assess exposure, and develop a comprehensive strategy.