

## CONTRACTS

### Force Majeure: H1N1 – Swine Flu and Contracts

Georgia CTAE Resource Network instructional Resources

#### **Introduction:**

Force Majeure is a French term meaning "superior force". It is a common clause in contracts which frees both parties from liability or obligation when an extraordinary event or circumstance occurs that is beyond the control of the parties. Examples are war, a labor strike, riot, crime, or "acts of God" such as floods, earthquake, and hurricanes. Such events prevent one or both of the parties in the contract from fulfilling their obligations.

As can be imagined, many people wishing to get out of a contract try to find something that could be classified as Force Majeure to cancel the contract. These situations arise in courts on a regular basis. For example, if a supplier has a contract to provide gasoline for \$2 a gallon for two years to gas stations and the cost to the supplier goes to \$4 a gallon because of war in the Middle East, the supplier will try to use Force Majeure to get out of the contract.

#### **Importance:**

The importance of the force majeure clause in a contract is that it relieves a party from an obligation under the contract when certain special circumstances beyond their control exist. Suppose a hurricane destroyed the processing plant when the owner had a contract to deliver a product. The company with whom he had the contract might sue the owner and ruin them financially for not delivering the products on time. In this case the Force Majeure clause protects the producer because they had no power to stop the hurricane.

#### **Examples of Force Majeure Contract Clause:**

*“Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.”*

#### **Swine Flu - H1N1 Flu and Force Majeure:**

In 2009, the H1N1 Flu virus posed a major threat to the health of people around the world. H1N1, also known as the swine flu, is the most deadly flu since the Great Influenza of 1918, which killed millions of people.

The labeling of the H1N1 virus as Swine Flu was incorrect and created a very unfortunate situation for hog producers. People were under the misconception that they could catch Swine Flu from eating pork. Although this belief was completely false, many people stopped buying pork. This caused hog prices to plummet. As a result, prices for pork in the supermarket fell, and the packer had to pay more for the hogs than they get for the pork. The packing houses had long-term contracts with growers to pay them a certain price for their hogs. The packers tried to break their contracts with the farmers by invoking the Force Majeure clause of the contracts. If the farmers lost their contracts, the prices they would get for their hogs would be much lower than it had cost to produce them.

In cases where a contract is cancelled due to Force Majeure, one party may benefit while the other party involved may lose money or even be forced out of business. If Force Majeure is not upheld, the contract cannot be broken.

## Study Sheet

### Contracts: Force Majeure

To accompany the information sheet on contracts concerning H1N1 – Swine Flu and Contracts

Name: \_\_\_\_\_

Date: \_\_\_\_\_

1. Define Force Majeure:

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2. Explain the circumstances under which a Force Majeure clause in a contract be invoked?

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3. Why is it important to include a Force Majeure clause in a contract?

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4. Put a ‘Yes’ or ‘No’ by each of the following if you think a Force Majeure clause should be invoked for non-performance of obligation in a contract. Note that most situations are debatable and must be settled in court. You will be listing your opinion. Be ready to defend your opinion when called upon. For this exercise, assume the Force Majeure clause is a standard clause as shown here:

*“Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.”*

Examples of situations in which one party wishes to be released from their obligations or liability in a contract due to extraordinary circumstances.	Force Majeure? Yes or No
A. A flood destroys the processing plant. This is the first flood that has hit the area of the plant in 100 years	
B. A flood shuts down the processing plant for a month. This is the fourth time it has happened in 3 years.	
C. The manager’s wife is diagnosed with cancer.	
D. The producer learns that she can get a higher price from another company.	
E. The production manager, a highly talented manager, quits.	
F. The sales of the product has fallen dramatically because of the recession.	
G. The State government bars the importation of the product.	
H. The product is deemed unsafe by the Consumer Product Safety Commission.	
I. The raw material, only available from one foreign country, is impossible to get because of a civil war in that country.	
J. The price of wool used in the product, imported from New Zealand, is no longer available and buying the same wool in the US would cost more.	
K. The company buying the product cannot sell the product for a profit.	

5. In this case, the pork packing houses contracted with farmers to buy hogs at a specified price. After the H1N1 (swine flu) scare, pork prices fell and packers want the court to release them from their contracts with the producers because of low pork prices in the stores. If the court allows the contract to be broken the farmers may be forced out of business. If the court does not allow the contract to be broken then the packers will lose money and may be forced out of business. What should be the ruling of the court in the Swine Flu case? Explain your opinion.

### Contracts: Force Majeure: H1N1 – Swine Flu and Contracts

## Study Sheet

### Contracts: Force Majeure

## Answer Key

1. Define Force Majeure.  
It is a common clause in contracts which frees both parties from liability or obligation when an extraordinary event or circumstance occurs that is beyond the control of the parties. The extraordinary event or circumstance prevents one or both of the parties in the contract from fulfilling their obligations.
2. Explain the circumstances under which a Force Majeure clause in a contract be invoked.  
The Force Majeure clause in a contract may be invoked when an extraordinary event or circumstance occurs that is beyond the control of the parties. Examples are war, a labor strike, riot, crime, or "acts of God" such as floods, earthquake, and hurricanes. The circumstances cause one or both of the parties in the contract from fulfilling their obligations.
3. Why is it important to include a Force Majeure clause in a contract?  
It is important to include a Force Majeure clause in a contract because it relieves a party from an obligation under the contract when certain special circumstances beyond their control exist.
4. Put a 'Yes' or 'No' by each of the following if you think a Force Majeure clause should be invoked for non-performance of obligation in a contract. Note that most situations are debatable and must be settled in court. You will be listing your opinion. Be ready to defend your opinion when called upon. For this exercise, assume the Force Majeure clause is a standard clause as shown here: Students answers will vary.

*"Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected."*

Examples of situations in which one party wishes to be released from their obligations or liability in a contract due to extraordinary circumstances.	Force Majeure? Yes or No
A. A flood destroys the processing plant. This is the first flood that has hit the area of the plant in 100 years	Yes
B. A flood shuts down the processing plant for a month. This is the fourth time it has happened in 3 years.	No, This can be argued either way.
C. The manager's wife is diagnosed with cancer.	No
D. The producer learns that she can get a higher price from another company.	No
E. The production manager, a highly talented manager, quits.	No
F. The sales of the product has fallen dramatically because of the recession.	No
G. The State government bars the importation of the product.	Yes
H. The product is deemed unsafe by the Consumer Product Safety Commission.	Yes
I. The raw material, only available from one foreign country, is impossible to get because of a civil war in that country.	Yes
J. The price of wool used in the product, imported from New Zealand, is no longer available and buying the same wool in the US would cost more.	No
K. The company buying the product cannot sell the product for a profit.	No

5. In this case, the pork packing houses contracted with farmers to buy hogs at a specified price. After the H1N1 (swine flu) scare, pork prices fell and packers want the court to release them from their contracts with the producers because of low pork prices in the stores. If the court allows the contract to be broken the farmers may be forced out of business. If the court does not allow the contract to be broken then the packers will lose money and may be forced out of business. What should be the ruling of the court in the Swine Flu case? Explain your opinion.

Students' answers will vary. The most important thing is that students can explain their reasoning. Response should highlight a few of these points. The student should focus on the facts of the case and how they relate to the Force Majeure contract clause. The student should give their opinion of the circumstances of the H1N1 (swine flu) scare and if this should be considered an extraordinary event or circumstance that is beyond the control of the parties.

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