The Issue Implemented and Interpreted Civil law on the COVID-19 Pandemic Situation as Force Majeure: Focus on Thai Construction Business

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Abstract

One of the most significant threats that might have an effect on the obligations of the parties to a contract in the construction industry is force majeure. The concept of "force majeure" is fundamentally a civil law phrase, and it may be found in the civil codes of most civil law regimes. However, common law does not recognize it with the same wide meaning and application as civil law does. The law prohibits one or both parties from fulfilling their obligations for reasons that are beyond their control and expectation, the occurrence of a force majeure event has the potential to have a major influence on the performance of the contract. According to the COVID-19 outbreak, COVID-19 scenario and the government anti-pandemic measures deemed or interpreted as force majeure in Thailand construction contract. Thus, it is essential for construction contracts to provide a force majeure clause that has been carefully drafted. This will enable the aggrieved party to delay further execution of the contract's obligations until the triggering event has passed or, in some instances, to terminate the contract altogether. This paper aims to provide a comparative law analysis of force majeure under the civil law and common law framework of the UK, the US, and Thailand in order to understand the legal implementations in Thailand. Then the duties of the parties to the contract will continue to be a cause of dispute in the future. Therefore, in order to reduce disputes that usually arise in terms of building contracts, analysis of force majeure in construction contracts in Thailand and other countries will be required.

Keywords: Force Majeure, Interpretation, Construction Contract

1. Introduction

The research's beginnings and challenges.

With the spread of The COVID-19 Pandemic across the world countries have enacted legislation to combat the outbreak, including country and city lockdowns, public travel restrictions, and prohibitions on people leaving their homes. These laws have an impact on the economy, trade, manufacturing, and exports, and the disruption in travel and tourism caused by the COVID-19 problem has had an impact on the global financial situation. During the beginning stages of the Pandemic Thai people were require to take precautions to protect themselves from infection by not leaving the house. Some employees of private companies were allowed to work from home. Laws required the closing of restaurants, shopping malls, and other places where large crowds gather. To prevent the spread of the coronavirus, people were forbidden to leave their houses at specific times, and villages, cities, provinces, and airports were closed. These government's preventive actions had the effect of hurting people's lives, the economy, and commercial sectors. Many businesses were forced to close. Ordinarily, large number of people go out to conduct business but because of these laws. Business operations are experiencing issues that are not as typical as they formerly were. The government's public services can't be fully implemented, causing a financial crisis in the private sector and among the general public.

It is a Construction firms have been affected by the Covid-19 crisis, which intern has had an effect, either directly or indirectly, on the construction sector as a whole[1]. When examining the immediate impact, some types of construction businesses experienced delays in delivering work and some project not able to be completed on time. Some workers, for example, were allowed to go to work between the hours of 10 p.m. and 4 p.m., which is the government's curfew. Excepts to curfew were made for medical personal. But such excepts do not apply to construction-related professions that require work continuous due to engineering principles, such as pouring concrete to

[1] Natasha Johnson, COVID-19: Pressure Point: Will this be valid Basis for Avoiding Contractual Obligation (UK), accessed February 8, 2022, https://www.herbertsmithfreehills.com/latestthinking/i s-covid-19-likely-to-be-a-valid-basisfor-avoiding- contractual-obligations.

a concrete standard that cannot be paused and must continue to work simultaneously.

The basis of the task delay, which causes delays in the delivery of work, is harmful to the construction industry. It could also be caused by unintended outcomes, such as a decrease in the number of house delivery contracts due to the real estate business. When you book a house, you are, for example, selling a housing estate that is a division of the construction firm. According to the contract, a date will be selected for the house to be delivered. Alternatively, a work adjustment may be necessary to ensure that the house is delivered according to the contract. As a result, if the job is not completed according to the aforementioned specifications, it will have an indirect influence on the real estate company.

Is the outbreak deemed force majeure because of the COVID-19 scenario and the government's anti-pandemic measures? Should it be a source of concern for interpreting force majeure and formulating the contract? In addition, the government's anti-pandemic measures make it difficult for some people who are unable to return to their usual life. This includes disturbing the performance of legal obligations or agreements, as well as the business activities of many private sector operators, such as construction firms, who are considered businesses in this study - unable to carry out the parties' or legal obligations or may be able to act later than planned. This is a difficulty in enforcement of contracts. However, a more thorough assessment of Thailand's Civil and Commercial Code's rules on force majeure is required. Is it appropriate in the cases mentioned above? To be considered for future use in the aforementioned law, it must consider the building contract as a specialization sector. If force majeure legislation is employed, it will aid in lessening the damage caused by government legal measures. Construction regulation is not only relevant in particular instances in a developed country, for example, in the United States of America and the United Kingdom due to the significance of their respective building industries. Moreover, the COVID-19 status is a condition that has an international influence on the construction sector, it plays a critical rule to analyze the impact and take action to address the issue of delayed deliveries.

The purpose of the study is to investigate the civil theory of the force majeure criterion both domestically and internationally. Additionally, it is important to fully comprehend the civil law's application to civil contract liability in Thailand's construction business and to research the procedures for using Thai legal systems to resolve issues brought on by the COVID-19 outbreak in Thailand. The best course of action for incorporating research into teaching and learning in subject areas is to include the implementation and improvement of pertinent legal measures in Thailand while examining and evaluating techniques for interpreting foreign laws.

In order to obtain data for this study, academic texts, books, journals, articles, publications, legal texts, decisions, and expert views in Thai and foreign language papers will be consulted. internet databases relating to legal education, the study report, thesis, statistical data, and associated resources. The most complete conclusions and suggestions can be made by incorporating data into a system for use in research initiatives, both in direct usage and in analysis.

While conducting this study, the researcher hoped to produce guidelines for interpreting various force majeure scenarios in the future for businesses in Thailand that have been affected by unforeseeable events that are acceptable and consistent with local customs. In order to properly implement the law in the future, it is also important to apply knowledge of socialization and Thai culture, as well as to develop civil law guidelines and directives that apply to a specific business, such as construction business contracts and construction laws. To this end, knowledge of civil law theory should be widely disseminated in construction business studies to aid in future development. Inform the public how Thai law on "force majeure" has changed over time and encourage the use of research results in the teaching of relevant subjects.

2. Literature Review

In civil law, there is a concept known as force majeure.

"The description and impact of force majeure vary from jurisdiction to jurisdiction, but the concept is widely recognized. A force majeure incident is semi-unannounced, unforeseeable, then-out. This frees a party from future contract duties. Force majeure in civil law dates back to Roman law. It's also related to common law frustration. Countries regulated by civil law, particularly the French Civil Code, have accepted this concept. Force majeure excuses contract parties from their commitments. "Force majeure" refers to external, unanticipated, and unavoidable events in French civil law."[2]

"The contract is terminated as a result of the consequences of force majeure and potential legal liabilities. When a contract is terminated, each of the parties to the agreement is liable for their own risk and the implications of that risk, which most of the time implies that the debtor has taken the weight of the termination effects on themselves. Work that had already been finished prior to the start of the force majeure event may on occasion be rewarded. In a variety of contexts, significant delays might be caused by external sources. This is a regular occurrence if the execution of the contract is halted for an extended length of time. In this scenario, activities are anticipated to begin again after the circumstance that rendered them impossible (such as a pandemic, terrorist attack, war, revolution, flood, or terrorist attack, amongst other examples) or the repercussions of such events have ended. Instead of being terminated, the contract has been put on hold."[3]

"The requirements for using the force majeure notion are not universally defined. Different laws and jurisdictions use different methods. The term of force majeure, in addition to their occurrences and the effects they have, will be investigated in the context of the civil law jurisdictional used in the countries of Europe and Thailand."[4]

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[2] Geoff Haley, "Model Contracts in the Construction Industry," *Amicus Curiae* 17 (1999): 8-14.

[3] John Hagedoorn and Geerte Hesen, "Contract Law and the Governance of Inter-Firm Technology Partnerships: An Analysis of Different Modes of Partnering and their Contractual Implications," *Journal of Management Studies* 44, no. 3(2007): 342-366.

[4] Ibid.

In European Civil Law, there is a concept known as force majeure

"Two articles of the French Civil Code, 1147 and 1148, define force majeure. The first article clearly states that debtors must pay damages for nonperformance or late performance of obligations unless they can demonstrate that the failure is attributable to an external cause that cannot be placed on them, even if they have not behaved in bad faith. According to the second article, debtors are not entitled to compensation if they have been prevented from performing their obligations or have done what they were forbidden to do due to force majeure or an accident. Force majeure is not a policymaking theory, although parties involved in the contract may dispute the law's definitions of force majeure and its effects."[5]

"German contractual impossibility is like force majeure. It has defended that the contract's foundations (For example Freedom of Contract, etc.) should be dissolved. German Civil Code Article 275 codifies objective impossibility (an incomprehensible impossibility)."[6]

"According to Italian law, an incident constitutes force majeure if it is unusual, out from the ordinary, outside of what the contractual party may reasonably expect when negotiating the arrangement to continue functioning without interruption. A period of twenty years ago, Italy formalized this approach. Political disorder, revolutions, strikes, government actions, and natural disasters including volcanic eruptions, floods, and earthquakes are examples of force majeure."[7]

"Article 6:75 Legal Excuse for Non-Performance of the 1992 Dutch Civil Code also mentions force majeure. Consultant must never be ascribed to the debtor if, under law, a legal act, or commonly acknowledged principles, he is not responsible."

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[5] Catherine Kessedjian, "Competing Approaches to Force Majeure and Hardship," *International Review of Law and Economics* 25, no. 3 (2005): 415-433.

[6] Michael Polkinghorne and Charles Rosenberg, "Expecting the unexpected: The force majeure clause," *Business Law International* 16, no. 1 (2015): 49.

[7] Elena Fumagalli, Luca Lo Schiavo, SL Salvati and Piercesare Secchi, "Statistical Identification of Major Event Days: An Application to Continuity of SupplyRegulation in Italy," *IEEE Transactions on Power Delivery 21*, no. 2 (2006): 761-767.

In common law, there is a concept known as force majeure.

"In relation to the concept of "force majeure," both the civil law system and the common law system have been the subject of a number of comparative research projects. The general English common law does not include the idea of force majeure, which is a valid doctrine in the legal system of countries that follow the civil law tradition. In spite of the fact that the phrase is occasionally recognized and applied in contracts that are regulated by common law, the applicability of the term is restricted with regard to what has been specifically agreed upon between the parties to the contract in terms of events and consequences. Therefore, the context of the force majeure clause and the clauses it contains define the extent to which the theory can be used and the bounds within which it can be covered. In addition, although English common law does not recognize the concept of "force majeure," the doctrines of impossibility of performance and frustration are, in some ways, comparable to the force majeure concept in certain aspects. This is despite the fact that English common law does not recognize the principle of "force majeure." As a result, one could reach the conclusion that the fundamental concept of the legal principle of force majeure has been utilized, albeit in a modified form, by the vast majority of the legal systems found across the globe."[8]

According to the findings of this study, "the idea of force majeure was first articulated in France inside the Napoleonic Code. After afterwards, the idea of alternatives began to be utilized in nations that use the common law system. In the United Kingdom, these options were referred to as "physical impossibility" and "frustration of purpose," while in the United States, they were called "commercial impracticability." In common law, the issue of impossibility was evaluated on an objective basis, namely in terms of whether or not the execution of the obligations was utterly or physically impossible. The same topic, titled "Force Majeure, A Comparative Approach to Different Legal Systems," was covered in the discussion. The idea of "force majeure," which is not employed in the legal system based on common law, was mentioned in the article. Nevertheless, research is being conducted on the idea under the headings "impossibility" and "Termination of the contract." In point of fact, the concept of force majeure is

[8] Mehdi Hariri, "Force Majeure: A Comparative Approach to Different Legal Systems," *World Applied Programming* 3 no. 6 (2013): 247-251.

distinct from these legal bodies, which only include the aspects that interfere with the performance of the contract. Despite this, the principles of the common law system and the doctrines associated with it have produced outcomes that are comparable to force majeure."[9]

As stated, "force majeure originated in Roman law and is currently employed in civil law countries worldwide. In French law, a party may be excused from completing all or part of his contractual duties due to an unforeseeable and uncontrollable external incident. Impracticability and contract frustration are similar to Common Law's force majeure."[10]

"When the contract was being signed, an unexpected case of force majeure must have arisen. According to courts and tribunals, not defending against a predicted occurrence does not relieve one from penalties and damages. The loser should have seen this coming."[11]

Liability without Fault

"Contract liability in common law systems is a no-fault liability; however, some sort of excuse has been allowed in the past. In spite of the fact that in the civil law system fault is regarded as playing a more significant role regarding the breach of contractual liability than it does in the common law system, there are some exceptions to this rule in the common law system that are presented including in the doctrines of hardship, agreement frustration, and performance difficulties. Contractors must restrict their strict contractual obligation by incorporating a force majeure provision. United States contracts strictly enforce the servant principle. Even if the contracting party didn't make a mistake, if his or her contractual responsibilities become burdensome and the relationship becomes financially imbalanced, the contracting party is fully accountable for a breach of contract damages. Contract obligations are strong liabilities under common law, as seen above. The contractual party is accountable if he fails to fulfill a pledge, even if the failure is attributable to an external agreement. Under common law,

[9] Ibid.

[10] Ibid.

[11] Ibid.

contracts are binding. Contract parties must fulfill their obligations, even if circumstances prohibit them. Only the agreement's terms can prevent this. The parties' agreement must contain emergency protections. The harmed party must fulfill its responsibilities or face legal repercussions, according to court rulings."[12]

Doctrine of Frustration

"The principle of frustration is used in the common law system, in contrast to the concept of force majeure, which is utilized in the civil law system. In English law, unanticipated circumstances do not absolve the party that is not executing its obligations. The concept of frustration is used in the case that unusual occurrences take place after the contract has been signed. This is done in order to determine whether or not a defaulting party is excluded from performing its responsibilities. It is claimed that a contract has been frustrated when an unanticipated occurrence prevents one or more of the parties to the contract from completing their responsibilities under the terms of the contract to the point where the contract cannot be extended."[13] "The contractual connection is severed when a contract is voided, even if the parties to the contract did not want the contract to be voided. However, if the contract is not breached, the parties are obligated to continue fulfilling their promises, regardless of how burdensome those duties are or how much their circumstances have changed. In this case, the courts can't restore the contract's financial balance, and neither party must pay for damages. English common law exclusively handles force majeure and hardship explicitly."[14]

"The concept of frustration[15] was invented to alleviate the harshness and strictness of the common law when it came to the literal fulfillment of contracts. The doctrine's purpose is to apply fairness and equitable norms to come up with acceptable alternatives that protect the contracting parties from suffering an inconsistent damage cost as a consequence of the contract's literal performance in the case of a change in

[12] Kessedjian, "Competing Approaches to Force Majeure and Hardship," 415-433.

[13] David McLauchlan, "Frustration in the Court of Appeal," *Victoria University of Wellington Law Review 44*, no.3/4(2013): 593-608.

[14] Ibid.

[15] Force Majeure and Hardship, Brochure ICC, 1985, p.18. The draft Brochure is of 1978, and was discussed by Lando, p.53, giving alternative rules.

circumstances that is unfavorable. Frustration, however, leads the contract to collapse, discharging the parties from future commitments. To keep contractual agreements stable and consistent, the notion should not be employed lightly and should be used within very strict parameters. Frustration should not be blamed on the one who claims it. Frustrating situations, on the other hand, should be outside the parties' control and expectations, and without any fault on the part of the party attempting to rely on them."[16]

Thai Civil Law Code, there is a concept known as force majeure.

According to determining whether a natural disaster (such as a tsunami, pandemic, or flood) or other uncontrollable events (such as a war, strike, or riot) are events of force majeure the events are examined on an individual case basis, according to Supreme Court precedent.

"Whether or not the contract contains a force majeure clause, force majeure can be used in Thailand to relieve or discharge a party from contractual responsibilities and liabilities. However, due to the broad definition of force majeure, the party claiming it as an explanation for failing to perform may face confusion about how Thai courts may interpret it."[17]

Given that the COVID-19 outbreak has now lasted more than 3 years and that it is hard to anticipate when it will cease, the outbreak could be categorized as a force majeure matter for preexisting contracts not for mentioned into since contract. For example, the Ministry of Labor has declared COVID-19 to be a force majeure event under the Social Security Act, which means that a business is not required to pay wages to an employee and that the employee is eligible for unemployment benefits from the Social Security Office. The COVID-19 outbreak is a force majeure event in modern commercial agreements (for example FIDIC[18], AIA[19], etc.), laws, and ministerial rules.

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[16] Chris Rodger and Jason Petch, *Uncertainty & Risk Analysis: A Practical Guide from Business Dynamics* (United Kingdom: Business Dynamics, Price Waterhouse Coopers, 1999).

[17] William Cary Wright, "Force Majeure Delays," *The Construction Lawyer* 26, no. 33 (2006): 33.

[18] The International Federation of Consulting Engineers (FIDIC) (commonly known as FIDIC, acronym for its French name Fédération Internationale Des Ingénieurs-Conseils), types of contracts. This form of contract is covered by the FIDIC (International Federation of Consulting Engineers)

[19] The American Institute of Architects and the initials (AIA) is a professional organization for

Pacta sunt servanda Theory

"The phrase "agreement of contracts have to maintained"[20] (Pacta sunt servanda), which originates from Latin, is both a legal precept and a brocard[21]. According to Hans Wehberg, an expert in international law, "few rules for the ordering of society have such a profound moral and spiritual importance."[22]

"This concept, in its most fundamental form, refers to agreements kept and states terms, or clauses, of a contract, become law amongst the contracting parties, meaning that failing to perform one's commitments is a violation of the contract. In its more complex version, the principle refers to public contracts and asserts that the terms of a public contract establish law between the public contracting parties."[23]

Clausula rebus sic stantibus[24]

Clausula rebus sic stantibus is a legal theory that permits an agreement or convention to be rendered ineffective owing to a fundamental change in circumstances.[25] The term "Clausula rebus sic stantibus" comes from the Latin language and means "properties thus standing."[26] The concept, in its most basic form, functions as a "escape clause" to the overarching principle of public international law known as pacta sunt servanda.[27]

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architects in the United States. Headquartered in Washington, D.C.

[20] Bryan A. Garner, Black's Law Dictionary, 8th ed. (St. Paul, MN: Thomson West, 2004).

[21] Hans Wehberg, "Pacta Sunt Servanda," *The American Journal of International Law* 53, no. 4 (1959): 775-786.

[22] Ibid.

[23] Vienna Convention on the Law of Treaties (signed in Vienna, Austria on 23 May 1969 and entered into force on 27 January 1980)

[24] Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th rev. ed. (London: Routledge, 1997), 144.

[25] "Denunciation of the Treaty of November 2nd, 1865, between China and Belgium, Belgium v. China, Order, 25 May 1929, Permanent Court of International Justice (PCIJ)". *www.worldcourts.com*.

[26] Mahmood M. Poonja, "Termination of Treaties Owing to Fundamental Change of Circumstances (Clausula Rebus Sic Stantibus)," Ph.D. diss. (Charles University, Praguem 1977), 13.

[27] Case of the Free Zones of Upper Savoy and the District of Gex Archived 2013-02-

3. Findings of study analysis

3.1 Interpretation and Construction in Contract Law (USA)

"It is essential to differentiate between the activities of interpretation and construction in order to have an understanding of how the law of contracts transforms the words and actions of the parties involved into legal duties, permissions, powers, and other connections. The interpretation of the words and actions of the parties is what determines the meaning, while the architecture of the agreement is what determines the legal effect."[28]

"The process of determining the meaning of parties' words and actions via the use of the language skills and social knowledge possessed by interpreters is known as interpretation. However, there are a great many distinct kinds of meaning, and as a consequence, there are a great many distinct interpretations. The existence of a contract may hang in the balance based on the plain meaning of a writing, the use meaning of the parties' words and actions as determined by the context of the transaction, the parties' beliefs and intentions, the purpose of the agreement or a term contained within it, subjective or objective meaning, or any combination of these factors, depending on the specifics of the transaction and the legal question at hand. Whenever one is tasked with interpreting a contract, one may come across any of these several kinds of meanings."[29]

"If the form of interpretation is legally significant, the appropriate construction rule decides it. It triggers the relevant altering rule in greater depth. Changing regulations defines who is responsible for what in order for a legal change to occur. Parties are required to say or do things that have the right meaning in order for them to comply with interpretative shifting requirements. Interpretation is included in the exposition of the contract via the use of interpretive modifying rules."[30]

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[28] Klass, Gregory, "Interpretation and Construction in Contract Law," accessed January 19, 2022, https://ssrn.com/abstract=2913228.

[29] Ibid.

[30] Ibid.

"There is no guarantee that all laws governing agreements will take into account the actions and wording of the parties. Violation of correct form may have legal consequences due to procedural and substantive legislation."[31]

"Despite the fact that interpretation occurs before construction in the exposition sequence, construction might come before interpretation in three additional ways. To begin with, legal interpretation is always advantageous to the construction contract. As a result, the appropriate construction rule determines the correct approach of interpretation. Second, certain construction acts, such as the application of interpretative modifying rules, can result in the emergence of new legal formalities in our system. Therefore, completely new meanings may be given to words via the activity of construction. Last but not least, because the parties to a contract work under the shadow of the construction rules that will give their activities the force of law, it may be challenging to comprehend what they say and do if one does not first have a knowledge of the ever-evolving rules that they want to obey or avoid. The worker at the construction site should to consider this their top focus."[32]

As a result, it is feasible that the law governing contracts ought to pay greater attention to one particular sort of meaning as opposed to another, or the variables that impact which interpretative technique ought to be utilized. These are key things to keep in mind when designing. As a consequence of this, it's feasible that contract law ought to pay a greater amount of attention to the elements that impact which interpretative method ought to be applied.

Interpreting Force Majeure Provisions in Construction Contracts in Light of COVID19- Disruptions

It's no secret that COVID-19 has wreaked havoc on the construction industry, causing labor and material shortages and delays for many companies. In this case, issues have been raised over the ability to more time and money if the international epidemic causes performance to be impractical or impossible. Companies are looking

[31] Edwin W. Patterson, "The Interpretation and Construction of Contracts," Columbia Law Review 64, no. 5 (1964): 833-865.

[32] Ibid.

for information on this subject in the fine print of their contracts, particularly the force majeure provisions.

Clauses of Force Majeure Generally

"The "force majeure" provision in a contract gives the parties the ability to prepare for a scenario that will make it difficult or impossible for them to meet the terms of the contract. Floods, power outages, storms, and acts of God are examples of events that may trigger a force majeure clause; an act of God may include all misfortunes and accidents arising from unavoidable necessities that human prudence could not foresee or prevent. Parties may be excused from performance if an unanticipated occurrence or circumstance makes it impossible to perform."[33]

"Force majeure clauses can be either general, encompassing a wide range of conditions, or specific, encompassing and contemplating specific events. A general clause will frequently state that it contains conditions or contingencies beyond the control of the parties. A specific phrase will specify the circumstances under which performance will be excused."[34]

"Even though an agreement doesn't include a force majeure provision, courts could nevertheless be able to excuse performance if it has become impossible due to a supervening event. As a result, businesses that are unable to execute because of COVID-19 may be excused from doing so."[35]

"For example in New Jersey, judges will have to decide what constitutes force majeure when it comes to COVID-19. For example, worker unavailability, the Governor's Executive Order directing non-essential individuals to stay at home, and supply chain disruptions are unanticipated events that make performance unfeasible or impossible, hence excusing performance."[36]

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[33] Janice M. Ryan, "Understanding Force Majeure Clauses," accessed February 8, 2022, https://www.herbertsmithfreehills.com/latestthinking/i s-covid-19-likely-to-be-a-valid-basisfor-avoiding- contractual-obligations.

[34] Ibid.

[35] Ibid.

[36] Janice M. Ryan, "Understanding Force Majeure Clauses," accessed February 8, 2017, https://www.venable.com/insights/publications/2011/02/understanding-force-majeure-clauses.

Agreements Concerning Construction May Include a Provision for Force Majeure.

Both the AIA A201-2017 General Conditions of the Contract for Construction in content of AIA[37] General Conditions and the Standard Specifications of the New Jersey Department of Transportation have provisions for force majeure; however, the language used in these provisions is slightly different between the two sets of documents.

There is no mention of "force majeure" in the AIA General Conditions but do address delays in the contractor's performance caused by the owner or caused "by any other circumstances beyond its control, including, but not limited to, adverse weather, flood, fires, acts of god, war, unavoidable casualties or other causes beyond the Contractor's control. . . ." AIA A201 (2007). The 2017 AIA A201 is essentially identical. For example in case of New Jersey above, it could be solution by Section 8.3.1 appears to be a force majeure clause, as it allows for timeline or "Contract Time" extensions due to "causes beyond the Contractor's control." According to the parties, the protections provided by the provision are likely to be applied in the event of a pandemic that causes a disruption in a contractor's supply chain or the capacity of the contractor to accomplish work. Similarly, Section 14.1 of the General Conditions allows a contractor to cancel a contract if work is delayed for more than 90 days due to, among other things, a government act prohibiting the job from being completed (e.g., a declaration of a national emergency). In contrast, the NJDOT Standard Specifications Section 108.11.01.B.2 contains a very specific language that includes, among other things, Cataclysmic Natural Phenomena, Sovereign Acts of the State, War and Unrest, and Material Shortage. According to the State's Sovereign Acts, "[d]elays caused by sovereign governments imposing their will on others. State of emergency, restrictions or quarantines due to an outbreak, and state shutdown. The contract terms and business interruptions seem to indicate that the Coronavirus is a serious obstacle."[38]

[37] The American Institute of Architects and the initials (AIA) is a professional organization for architects in the United States. Headquartered in Washington, D.C.

[38] Ibid.

3.2 Interpretation and Construction in Contract Law (UK)

Recently, there has been an upsurge in the use of FIDIC[39] contract arrangements in the UK. This type of agreement is fairly similar to the one ICE[40] had in the past. In the UK, conventional contracting is represented by the ACE's ICC[41] contract, JCT[42] forms of contract, or a variety of other process engineering contracts. Process engineering contracts come in a variety of forms as well. However recently there has been a rise in the use of FIDIC contract forms.

"Force Majeure" is defined by the globally used FIDIC Conditions of Contracts as "an exceptional event or circumstance beyond the control of the party affected, which the party could not have foreseen or protected against before entering the construction contract and which could not be avoided once it occurred". The other party isn't responsible. The FIDIC Conditions provide an example of force majeure. Failure to notify may entitle the contractor to a time extension or/and cost refund. If the event lasts too long, It may be ended. Many FIDIC contracts are negotiated and modified. Therefore, contractual specifications must be examined, and force majeure will be established by the circumstances.[43]

If a building contract define a disease the outbreak as a force majeure event, contractors, subcontractors, and suppliers may demand the right to apply contract conditions and suspend work. If the contract includes force majeure cost protections. Depending on the agreement, the affected party may be required to purchase products

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[39] The International Federation of Consulting Engineers (FIDIC) (commonly known as FIDIC, acronym for its French name Fédération Internationale Des Ingénieurs-Conseils), types of contracts. This form of contract is covered by the FIDIC (InternationalFederation of Consulting Engineers) Silver Book containing the title

[40] Institution of Civil Engineering (ICE) is an independent professional association for civil engineers and a charitable body in the United Kingdom. Based

[41] International Commerce Commission (ICC) (ICC; French: Chambre de commerce internationale) is the largest, most representative business organization in the world.

[42] Joint Contract Tribunal(JCT), also known as the JCT, produces standard forms of contract for construction, guidance notes and other standard documentation for use in the construction industry in the United Kingdom. From its establishment in 1931, JCT has expanded the number of contributing organisations. Following recommendations in the 1994 Latham Report, the current operational structure comprises seven members who approve and authorise publications. In 1998 the JCT became a limited company.

[43] Nael G. Bunni, *The FIDIC Forms of Contract* (London:John Wiley & Sonsm, 2013).

or employees from other sources. Concurrent claims may complicate the analysis.

3.3 Interpretation and Construction in Contract Law (Thailand)

Many people question whether parties will be excused from implementation of interpretation and construction in contract law due to the pandemic or under any unforeseen under the theory of force majeure, which excuses parties from contractual performance when it becomes impossible due to an unusual or exogenous incident. When a contract has no force majeure provision, section 8 of the Civil and Commercial Code applies. Parties may negotiate a force majeure provision and response plan. This clause may also address culpability exclusion, contract termination or renegotiation, and force majeure damage distribution.

All force majeure provision, such as those relating to pandemics, have to be evaluated independently and depending on the context of the contract since the terms of the contract will determine the conclusion. If the provision concerns pandemics, epidemics, or quarantines, it may be simpler to claim that COVID-19 was the cause of the provision than it would be otherwise. The World Health Organization's (WHO) decision to designate COVID-19 as a pandemic has the potential to result in an increase in the stringency with which regulations regarding force majeure are implemented. If a party wants to make use of a force majeure clause in the contract, they must first demonstrate that COVID-19 is covered by the terms of the agreement.

The Approaching of Thai Modeling and the Developing of Thai Model Force Majeure Clause.

There is no such thing as a universal force majeure clause, applied to any and all contracts and circumstances. This is because there is no such thing as a universal force majeure provision. The reason for this is that there is no such thing as an all-encompassing force majeure provision. The amount of time that is spent drafting the force majeure clause, on the other hand, ought to be proportionate to the level of risk that is connected with the contract. An approach for designing force majeure provisions was created after conducting a study of the relevant literature, gathering documentary evidence (from primary or secondary resources), and analyzing international contracts (such as the FIDIC NEC contract). This was done because these sources provide the

context for the force majeure condition as well as the actual execution of the contracts that were handled to create new Thai provisions for the future development of Thai Model Form.

The inclusion of a clause addressing “force majeure” in a construction contract that has been drafted with meticulous attention to detail is a standard component of such agreements. These force majeure contracts served as the basis for the development of the standard force majeure provision that is still in use today. In addition to this, it was determined that multinational construction businesses that employ FIDIC contracts are accepted by the World Bank when they submit FIDIC forms.

“For the purpose of ensuring the depth and comprehensiveness of the force majeure clause, the following criteria were evaluated: A declaration of force majeure, events that are regarded to be of a character that constitutes force majeure, and force major are the elements that make up the concept of force major. The obligation to lessen the negative effects of force majeure, the various consequences of force majeure, and the presence of a force majeure provision in the agreement with the International Federation of Consulting Engineers.”[44]

The International Federation of Consulting Engineers (FIDIC) is the organization that speaks for the consulting engineering industry on a global scale. There is a membership limit of one country for each organization. Every organization that wishes to remain a member is required to make a declaration of compliance with the federation’s ethics and practice code for consulting engineers; these models have evolved throughout the course of time, particularly in the most recent ten years.

“The International Federation of Consulting Engineers and Architects (FIDIC) has developed standardized forms of construction contracts to accommodate a broad variety of procurements. The Red Book[45] is the form that is used the majority of the time for the execution of tasks in which the employer acts as the designer.”[46]

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[44] Issaka Ndekugri, Nigel Smith and Will Hughes, “The Engineer under FIDIC’s Conditions of Contract for Construction,” *Management and Economics* 25, no.7 (2007): 791-799.

[45] Ibid.

[46] Federation Internationale Des Ingenieurs-Conseils, *Conditions of Contract for Works of Civil Engineering Construction,* 4th ed. (Geneva: Federation Internationale Des Ingenieurs-Conseils, 1987).

"The rules and requirements that Multilateral development banks (MDBs), such as the World Bank, have for building projects have been included in the Red Book via a process of harmonization. FIDIC published the Orange Book -International Federation of Consulting Engineers 1995 (first edition, 1995) for design-build construction projects in addition to the Red Book - International Federation of Consulting Engineers 1995. FIDIC published the updated fifth edition of the Red Book -International Federation of Consulting Engineers 1999, the Green Book - International Federation of Consulting Engineers 1999 - a short form of contract for construction work, the Yellow Book (International Federation of Consulting Engineers 1999 for plant and design-build projects, and the Silver Book -International Federation of Consulting Engineers 1999 for engineering projects. FIDIC I also published a short form of contract for construction work called the Silver Book. The vast majority of the forms have the same structure and order, with a total of twenty different clauses."[47]

"The FIDIC Red Book 1999 edition"[48] "might be used in order to draft the force majeure provision and the conditions for construction contracts in which the employer does the design. In a contract of this kind, Clause 19 addresses all elements of force majeure, including the occurrence of events, the responsibilities of the parties, and the consequences". "The characteristics of incidents considered to be "force majeure" are laid forth in Clause 19.1"[49], "which also classifies clusters of these occurrences. According to the provisions of paragraph 19.2, the party that is adversely affected is required to provide notification to the other party within 14 days of the occurrence of the force majeure event. In accordance with the provisions of Subclause 19.3, notifying the party is not necessary after the party is no longer impacted by the occurrence. According to Subclause 19.4, The implications of force majeure are mitigated by extending the completion date, compensating for costs, or both. The engineer is responsible for evaluating the contractor's claim and rendering a decision". "If a subcontractor is provided

[47] Ibid.

[48] Tunay Koksal, "Fidic Conditions of Contract as a Model for an International Construction Contract," *Business and Management Review* 1, no.2 (2011): 32-55.

[49] Duncan Wallace, *Constructions: Principles and Policies in Tort and Contract,* Vol 2 (London: Sweet & Maxwell), 425-429.

an explanation that is wider than those in Clause 19"[50], " the contractor does not have the right to further relief based on the subcontractor's larger reason, as stated in Clause 19"[51] of the contract. At the international level, FIDIC[52] "contracts are generally considered to be the standard. However, engineering and contracting companies who use the FIDIC suite of contracts are increasingly employing it in the UK. This Model serves as an example case in both Scotland and England; however, in Thailand, engineers, surveyors, project managers, and contractors need a deeper understanding of the contract administration requirements for these types of contracts. In addition, the FIDIC model may be of assistance in clarifying the impacts of force majeure events as well as the rights of both parties to the contract, which would allow Thailand's construction industry to grow on an international scale."[53]

4. Conclusion

This study has investigated the meaning of the term "force majeure" as it pertains to the construction industry, as well as the significance of including a provision in construction contracts that tackles this issue for application in Thailand. The primary objective of this study have been to devise a force majeure model by approach for designing force majeure provisions was created after conducting a study of the relevant literature, gathering documentary evidence (from primary or secondary resources), and analyzing international contracts (such as the FIDIC NEC contract) that is simple to comprehend and that addresses all elements of force majeure, such as its definitions, incidents, duties, and consequences.

[50] Ibid.

[51] Ibid.

[52] Ibid.

[53] Ndekugri, Smith and Hughes, "The Engineer under FIDIC's Conditions of Contract for Construction," 791-799.

The modeling and the development of the model force majeure clause are based on three research elements: first, a literature review that identified force majeure as a legal concept and its smarting control in both civil law and common law legal systems; second, academic evidence in the field of contracts in the construction industry about force majeure best practice in construction permitted; and third, finding model contracts in the construction industry.

Force majeure is a civil law notion that releases contractual parties from their duties when circumstances beyond their control occur. Pandemics, state or government action, natural disasters, civil unrest or military, nuclear calamities or warfare, and terrorism are examples.

Common law doesn't recognize force majeure. Force majeure must be contractually defined. Unexpected events shall be dealt with by the parties to the degree that such provisions are stated in their contract. The ideas of impossible, impracticability, frustration, and hardship, for example, are similar to force majeure in some aspects but have a smaller scope than force majeure.[54]

Force majeure may temporarily or permanently stop work. If fulfilling contractual commitments is difficult or takes a long time, the contract may be cancelled. Neither party is accountable for late contract responsibilities.[55]

A provision for "force majeure" that is well articulated and well-written may help mitigate the risk of liability arising from unanticipated events. As a means of preventing violations and ensuring that contractual duties are met, the liabilities of the parties to the contract are postponed until the conclusion of the event.

The primary contribution consists of the construction of a model force majeure clause that is acceptable in common law legal theories while also being consistent with the legal system of civil law as it is reflected in civil codes from a variety of nations. As a consequence of this, a model provision of this kind may be used in a diverse selection of contracts even though the underlying law of the contract is different.

[54] Ibid.

[55] Ibid.

The model of contract in Thailand needed to be modified in order to adhere to the FIDIC paradigm. This was an essential step. Given that one of the contracts under consideration is a FIDIC-based agreement, it is possible that an all-encompassing comparison will be taken into consideration. The comparison demonstrates that the model clause is suitable for use in accordance with Thai civil law.[56] Despite this, the clause needs to include a comprehensive list of situations involving force majeure and describe the responsibilities of the party that will be adversely affected before, during, and after the event. It's possible that the FIDIC model may also explain force majeure and contract rights, both of which would be beneficial to the expansion of Thailand's construction industry on the global stage.[57]

[56] See Christopher R. Seppala, "Contractor's Claims under the FIDIC Civil Engineering Contract, Fourth (1987) Edition," *Int'l Bus. LJ* 9, no. 9 (1991): 457-460.

[57] Ibid.

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