



FRUSTRATION

Legal doctrine-independent of contract terms.

Not automatic-the affected party needs to invoke the doctrine. Since the other party will usually resist it, expect to litigate.

There must be a "supervening event"... a fundamental change to the contract's circumstances which makes it impossible for a party to perform the contract.

If the event just makes the contract more expensive to perform-not enough.

Effect: if the other party or the court agrees, all future obligations of the contract will be deemed to be discharged

FORCE MAJEURE

Application and effect wholly dependent on contract terms. They don't have to be called "force majeure".

The party seeking to rely on force majeure must make the case, in accordance with the terms of the contract.

The party seeking to rely on the terms must make a claim. If it is resisted-expect to litigate.

Effect: Depends on the terms in the contract. Could be, e.g., a waiver for a breach, extended deadlines or even termination if the force majeure event persists).



LEGALISTIC

FRUSTRATION

Issues to consider:

- Was the supervening event the fault of the party claiming frustration?
- Are there terms in the contract that could deal with the supervening event? For example, force majeure or the right to initiate change control in such circumstances?
- Is it a B2C contract? If so, consumer protection law applies as well.

FORCE MAJEURE

Issues to consider:

- Does the contract contain force majeure terms and, if so, how is "force majeure" defined?
- Does the relevant event satisfy the definition of "force majeure"?
- If it does satisfy the contractual definition, what are the effects?
- Does the contract stipulate a precise process that needs to be followed? For example, notice in a specific manner/timing?