

5TH IENE ENERGY & SHIPPING SEMINAR

Energy Security, Energy Transition and
the New Maritime Reality

Force Majeure as an Implication of the War in Iran

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I. *Force majeure* in common law and civil law systems

Common law systems: force majeure a contractual stipulation

- no implied legal doctrine of force majeure

Civil law systems: force majeure a legal doctrine

- no need for contractual stipulation



2. FORCE MAJEURE UNDER COMMON LAW

Contractual stipulation

- broad or narrow definition of force majeure (incl. exclusion of events): events impacting a party's performance, which are out of its control – operative provisions: legal consequences of force majeure
- commercial solution – not an exclusion clause which is subject to limitations

Lack of contractual stipulation: substitute – doctrine of frustration (limited application)

3. THE DOCTRINE OF FORCE MAJEURE UNDER GREEK LAW (CIVIL LAW SYSTEM)

- Objective theory
- Subjective theory



4. OBJECTIVE THEORY

- Restrictive scope
- 2 elements:
 - Events unavoidable by their own nature
 - External origin of events (outside the sphere of influence of the debtor)

5. SUBJECTIVE THEORY

- More expansive scope
- Only one element:

Events unforeseen and unavoidable even with measures of extreme care and prudence by the debtor – only unavoidable damage is compensated



6. GREEK CASE LAW

- Greek courts follow the subjective theory

Supreme Court plenary (ΟΛΑΠ) 1340/1979, Special Supreme Court (ΑΕΔ) 11/1983

- Recent case law “objectivised” specific circumstances (esp. in labour disputes): Circumstances that belong to the sphere of professional activity of the employer are not considered force majeure

7. OTHER INSTANCES

- **Convention on international sale of goods (CISG):**
Objective theory in principle
- **CJEU case law:**
Closer to subjective theory with elements of objectivity

8. THE IRAN WAR CASE: ACTS OF WAR, DETENTION AND BLOCKADE

All three, acts of war, detention and blockade are force majeure events

- Common law: traditionally included in contractual definition of force majeure
- Civil law: unavoidable events by their own nature & of external origin (force majeure under both substantive and objective theory)

9. IMPORTANCE OF APPLICABLE LAW

- Vessels usually chartered under English law
- Contracts for the goods carried between the consignees and their further customers: choice varies



THANK YOU!

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