

Hardship and Force Majeure in International Commercial Contracts

Dealing with unforeseen events in a changing world

Contents

Foreword

by Yves Derains 5

Introduction

by Fabio Bortolotti and Dorothy Ufot, SAN. 8

Chapter

1. The Evolution of the Rules on Hardship	
by Marcel Fontaine.	11
Introduction	11
The 1976 Study on Hardship Clauses	12
Hardship Regulated.	14
The ICC Clause on Hardship.	33
Conclusion	35
Notes	37
2. Adaptation of Contracts by Arbitrators	
by Pascale Accaoui Lorfing	41
Introduction	41
The reality of contract adaptation by arbitrators.	42
The perspectives of contract adaptation by arbitrators.	54
Conclusion	71
Notes	72
3. Rules on Force Majeure as Illustrated in Recent Case Law	
by Christoph Brunner.	82
Introduction	82
The force majeure excuse as a general principle of law	84
Salient features of the force majeure excuse as illustrated by recent case law.	86
Conclusion	107
Notes	107
4. Analysing the ICC Force Majeure Clause 2003	
by Prof Filip De Ly	113
Introduction	113
The ICC Force Majeure Clause 2003	114
Conclusion	121
Notes	121

5.	Revision of the ICC Force Majeure and Hardship Clause by Prof Dr H. Ercüment Erdem	123
	Introduction	123
	New FM Clause	123
	New Hardship Clause	127
	Conclusion and Next Steps	129
6.	Force Majeure Clauses and their Relationship with the Applicable Law, General Principles of Law and Trade Usages by Klaus Peter Berger	137
	Introduction	137
	ICC Award No. 4462 (<i>National Oil Corporation v Libyan Sun Oil Company</i>)	138
	ICC Award No. 19299 (<i>Gujarat State Petroleum Corp. et al v Republic of Yemen et al</i>)	143
	ICC Award No. 8873 (<i>French claimant v Spanish respondent</i>)	147
	Conclusion	154
	Notes	155
7.	Economic Sanctions, Force Majeure and Hardship by Dr Mercédeh Azeredo da Silveira	161
	Introduction	161
	Characterisation of Economic Sanctions from a Private Law Perspective	162
	Application of Economic Sanctions by Domestic Courts and Arbitral Tribunals	165
	Effects of Economic Sanctions on the Rights and Obligations of Private Operators under International Law Instruments	171
	Concluding Remarks	187
	Notes	188
	Conclusion	212
	About the Authors	213
	About the Editors	217
	Index	219
	Cases	221
	ICC Dispute Resolution Publications	228