

FORCE MAJEURE

(IMPOSSIBILITY & TRIGGERING EVENTS)

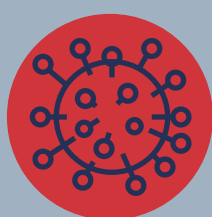
WHAT IS FORCE MAJEURE?

One scenario where the failure to perform on a contract is excused is when it is *impossible* to do so because of an unforeseeable event outside of the parties control. In California, impossibility is both a common law defense and a statutory one.

Many contracts have a *force majeure* clause, which excuses a party's performance of certain obligations if a specified event occurs which is out of the parties' control.

ELEMENTS OF FORCE MAJEURE

The following three elements must be proven to invoke impossibility:



Unforeseeable Event



Outside the Parties
Control



Renders Performance
Impossible or Impractical

California Civil Code section 1511(2)

The performance of a contractual obligation is excused “when it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary.”

Frustration of Purpose

If the contract has not become impossible, performance may still be excused by the principle of frustration of purpose. Frustration of purpose applies where “performance remains possible, but is excused whenever a fortuitous event supervenes to cause a failure of the consideration or a practically total destruction of the expected value of the performance.”

Triggering Events

1. Acts of God
2. Acts of the Public enemy
3. Acts or omission of any government entity
4. Quarantine or epidemic
5. Catchall: unforeseen events outside the parties control

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