

Cambridge University Press

978-1-107-00340-8 - Unexpected Circumstances in European Contract Law

Edited by Ewoud Hondius and Hans Christoph Grigoleit

Table of Contents

[More information](#)

Contents

<i>List of contributors</i>	<i>page</i> x
<i>General editors' preface</i>	xv
<i>Preface</i>	xvii
<i>List of abbreviations</i>	xix
Part I Introduction and context	1
1 Introduction: An approach to the issues and doctrines relating to unexpected circumstances	3
EWOUD HONDIUS AND HANS CHRISTOPH GRIGOLEIT	
1. Setting the scene	3
2. <i>Pacta sunt servanda</i>	4
3. General approach	5
4. 'Conventional' doctrines (relief based on the contract)	6
5. 'Exceptional' doctrines (relief based on extraordinary effects on the contract resulting from unexpected events)	6
A. Doctrine of Frustration	7
B. <i>Wegfall der Geschäftsgrundlage</i>	7
C. Doctrine of assumptions	8
D. <i>Clausula rebus sic stantibus</i>	8
6. Legal consequences	8
A. Termination of the contract	8
B. Adjustment of the contract	9
C. Renegotiation	9
7. 'Open' versus 'closed' legal systems	10
8. Unexpected circumstances in supervening legislation and in model codes	12

9. Specific legislation and contract terms specifically addressing unexpected circumstances	13
10. Matters not dealt with	14
2 Legal history	15
ANDREAS THIER	
1. Unexpected change of circumstances: perspectives of legal history	15
2. The emergence of the <i>clausula</i> doctrine	15
3. The Early Modern period	19
4. The nineteenth and early twentieth centuries	27
5. Conclusion	31
3 Law and economics: the comparative law and economics of frustration in contracts	33
MARTA CENINI, BARBARA LUPPI, FRANCESCO PARISI	
1. Introduction	33
2. Review of the literature	34
3. The economics of frustration in contracts	38
A. Optimal allocation of the risk of frustration	39
B. Allocating risk to harvest information	42
(a) Frustration rule as signal of promisor's confidence	42
(b) Frustration rule as signal of promisee's sensitivity to risk	44
(c) Frustration rules as matching devices	45
C. Incentives and moral hazard	46
4. Legal solutions from an economic perspective	48
Part II Overview	53
4 Overview: concepts dealing with unexpected circumstances	55
GERMANY AND RELATED JURISDICTIONS	
Germany	55
Austria	63
The Netherlands	70
EASTERN EUROPEAN JURISDICTIONS	
Slovenia	76
Lithuania	81
Czech Republic	88

CONTENTS vii

SCANDINAVIAN JURISDICTIONS	98
Sweden	98
Denmark	109
ROMANIC-MEDITERRANEAN JURISDICTIONS	118
Italy	118
Spain	126
Portugal	133
Greece	138
FRANCE AND RELATED JURISDICTIONS	144
France	144
Belgium	156
ENGLAND AND RELATED JURISDICTIONS	163
England and Ireland	163
Scotland	166
Part III The case studies	173
EWOUD HONDIUS AND HANS CHRISTOPH GRIGOLEIT	
5 Questionnaire	175
A. EQUIVALENCE OF EXCHANGE IS DISTORTED	175
B. RECIPIENT'S USE OF CONTRACTUAL GOODS OR SERVICES IS SUBSTANTIALLY AFFECTED	176
C. FRUSTRATION OF SPECIFIED PURPOSES (OTHER THAN A OR B)	178
D. MUTUAL MISTAKE CONCERNING THE CALCULATION UNDERLYING THE CONTRACT	179
E. MISCELLANEOUS ISSUES	179
6 The case studies	181
A. EQUIVALENCE OF EXCHANGE IS DISTORTED	181
Case 1 'Canal de Craponne'	181
Long-term agreement – devaluation of the price agreement	181
Case 2 Extraordinary inflation	218
Hardship due to extraordinary inflation; hardship resulting from a foreign currency agreement	218
Case 3 Government intervention – tax increase	256
Post-contractual imposition of a tax	256
Case 4 Unexpected benefit	278

Long-term lease – extraordinary increase of the rental value	278
B. RECIPIENT'S USE OF CONTRACTUAL GOODS OR SERVICES IS SUBSTANTIALLY AFFECTED	299
Case 5 Destruction of cellar	299
Renovation of cellar becomes useless due to the destruction of the building by natural disaster	299
Case 6 Confiscation of petrol	327
Government intervention makes the use of a rented petrol station impossible	327
Case 7 Hotel reservation	354
Individual purpose of the visit frustrated; strike at the airport; general safety endangered; coronation case	354
Case 8 Shop rental	405
Renting a retail outlet; unexpected business environment at a shopping centre	405
Case 9 Beer supply agreement	431
Long-term supply of beer; beer sales are far below expectations	431
Case 10 Export ban	450
Purchaser of technical equipment is affected by export ban	450
C. FRUSTRATION OF SPECIFIED PURPOSES (OTHER THAN A OR B)	471
Case 11 Sale of real estate involving expectation of cultural use	471
Use of real estate by transferee does not comply with expectations of the transferor	471
Case 12 Investment in spouse's house is frustrated by divorce	504
Equitable compensation if divorce laws lack a basis for compensation	504
D. MUTUAL MISTAKE CONCERNING THE CALCULATION UNDERLYING THE CONTRACT	531
Case 13 Share deal – mutual mistake	531
False determination of the market value in a share deal	531
E. MISCELLANEOUS ISSUES	561
Case 14 Impediments of production beyond seller's control	561
Production of contractual goods is inhibited by a strike/restriction of electricity supplies	561

CONTENTS ix

Case 15 Disclaimer	600
Disclaimer concerning the rights arising from unexpected circumstance; other clauses related to unexpected circumstances	600
Part IV General comparative Remarks	641
7 General comparative remarks: Converging tendencies, remaining differences and the unsolved mystery of adjustment	643
EWOUD HONDIUS AND HANS CHRISTOPH GRIGOLEIT	
1. 'Open' versus 'closed' legal systems, the variety of doctrines and the difficulty of identifying clear tendencies	643
2. Convergence as to the general issue of suspending (or upholding) the binding character of the contract terms	644
A. Equivalence of exchange is substantially affected	645
B. Recipient's use of goods or services is substantially affected	645
C. Failure of a specified purpose (other than A and B)	647
D. Mutual Mistake	647
E. Miscellaneous issues	647
3. The preference for openly addressing the conflict between the principle of <i>pacta sunt servanda</i> and the goal of a fair allocation of risks	648
4. Minimum requirements of setting aside the contract	649
5. Distinction between issues of initial mistake and of unexpected events arising after the conclusion of the contract	651
6. Legal Consequences – the unsolved mystery of 'adjustment'	652
7. Uncertainty, the lack of precedents and harmonisation by advancing the legal discourse	654
<i>Appendix: Some Texts on Change of Circumstances</i>	656
<i>Selected bibliography</i>	662
<i>Index</i>	665