

THE INCLUSION OF THE FORCE MAJEURE CLAUSE IN THE UMRAH CONTRACT AGREEMENT IN THE CONTEXT OF CONSUMER PROTECTION

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ABSTRACT

The global outbreak of COVID-19 in early 2020 had profound implications on the travel and tourism sector, particularly affecting religious pilgrimages such as Umrah. In March 2020, the government of Saudi Arabia imposed an unprecedented ban on entry to holy places, Mecca and Medina to curb the rapid spread of the virus. This measure led to the mass cancellation of Umrah packages by the domestic travel agencies, triggering diverse responses across the industry. While some Umrah agencies invoked the force majeure clause in their contracts to absolve themselves from liability, others faced significant legal ambiguities due to the absence of such clauses. Notably, certain companies cancelled Umrah contracts without offering any compensation to the affected pilgrims, further exacerbating consumer vulnerability. This paper critically examines the legal complexities surrounding the invocation of force majeure in Umrah contracts during extraordinary circumstances such as a global pandemic. It argues that the absence of a standardized approach among Umrah tour operators and travel agencies creates inconsistency in consumer protection and contractual obligations. Through a doctrinal research methodology adopting a qualitative approach, this study analyzes legal doctrines, statutory provisions, and contractual frameworks by engaging in comprehensive documentary analysis. The findings reveal a significant gap in the uniform application of force majeure clauses in Umrah package contracts. This lack of consistency results in disparate treatment of consumers, where the contractual rights and remedies available to Umrah pilgrims vary widely depending on the presence or absence of specific legal provisions. The paper advocates for the urgent implementation of standardized contractual practices, including mandatory force majeure clauses, to enhance consumer protection and ensure equitable treatment during unforeseen and extraordinary events. By establishing a uniform legal framework, this study aims to mitigate legal uncertainties and reinforce the rights of Umrah pilgrims. It further recommends legislative intervention to mandate the inclusion of comprehensive force majeure clauses in all Umrah package agreements, thereby promoting legal certainty, transparency, and consumer welfare in the face of future disruptions.



Introduction

The continuing worldwide flu pandemic caused by the COVID-19 virus has surpassed the outbreaks of Middle East respiratory syndrome (MERS) in 2012 and severe acute respiratory syndrome (SARS) in 2003 as the greatest pandemic to hit the world since World War II (Baldwin & di Mauro, 2020; Huynh, 2020; Matiza, 2020). Despite the notable occurrences of significant outbreaks, including MERS and SARS, in previous instances, the Kingdom of Saudi Arabia (KSA) had never adopted any measures to restrict the entry of Malaysian pilgrims seeking to perform Umrah (Gautret et al., 2013). Subsequent to the World Health Organization's (WHO) official declaration of COVID-19 as a pandemic on 11 March 2020, a considerable number of nations enacted Movement Control Orders (MCO) or Temporary Entry Restriction Orders (TERO) barring entry of international travellers as well as restricting the movement of local citizens to high-risk countries (Tang, 2022; Ghapa et al., 2021). In March 2020, the KSA registered the first case of COVID-19. Subsequently, there has been a progressive daily increase in the number of infections. As of 20 September 2020, the KSA reported a total of 334,605 confirmed cases, along with 319,154 recoveries and 4,768 deaths (Awwad et al., 2021). The KSA has taken several measures to control the spread of COVID-19, including prohibiting any entry to Mecca and Medina until further notice. Umrah also ceased from March 2020. Travellers on Umrah packages have thus been severely impacted by this situation, suffering significant losses on emotional, spiritual, and financial level (Ghapa et al., 2021).

Persatuan Agensi Pelancongan Umrah & Haji Malaysia (PAPUH) recorded that since the country's borders have been closed following COVID-19 in 2020, approximately 60,000 pilgrims have been left stranded, and the majority of them are currently in a state of uncertainty, eagerly awaiting responses from travel agencies regarding the status of their respective travel packages (Ariffin, 2022). The lack of clarity demonstrated by Umrah travel agencies in addressing matters concerning cancellations, refunds, and compensations indicates a lack of transparency in fulfilling their responsibilities. Consequently, customers are left with no viable means to seek refunds or compensation in such circumstances. As of the present, there is a notable absence of any established standard practice adhered to by domestic tour operators in cases where significant changes in circumstances occur, subsequently affecting the execution of Umrah contracts.

As part of the contractual process, the domestic travel agencies who involved in Umrah businesses are obliged to provide customers with either a physical or digital copy of the contract agreement. This serves as tangible evidence of the mutual agreement entered into between the parties involved. The terms and conditions in that Umrah contract will bind all contracting parties. Travel Agency X executive chairman, in his interview, stressed that a black-and-white agreement might be one of the instruments that may prevent the Umrah pilgrims from being victimized by unscrupulous Umrah operators with fraudulent packages (The Sun, 2023). When Umrah pilgrims and Umrah operators enter into a contractual agreement, they mutually consent to a defined set of terms and conditions that regulate their relationship. These terms encompass various aspects, including the package date, transportation, accommodation, itinerary, liability, responsibilities, and the provisions for force majeure events. Furthermore, the contract agreement may encompass dispute resolution mechanisms, such as arbitration or mediation, which provide consumers with alternative avenues for resolving conflicts without resorting to legal proceedings in the event of fundamental changes that impact the enforceability of the contract. One significant provision that typically addresses fundamental changes in the terms of the contract is the force Majeure clause. In Malaysia, only a limited number of tour operators opt to incorporate force majeure clauses in their Umrah contracts as a pre-emptive measure to safeguard the interests of all contracting parties.

A contractual provision known as the "force majeure clause" is intended to handle unanticipated situations or occurrences that are out of the parties' control. It recognizes that these unexpected events can make it impossible or very difficult for the parties involved to fulfill their obligations under the contract. It grants parties the flexibility to design remedies according to their preferences and also allows them to specify the types of events that will be considered as force majeure. The force majeure clause is subject to negotiation and mutual agreement between the parties involved prior to entering into a contract. This affords them the opportunity to customize and adapt the provisions of the clause according to their individual needs and particular circumstances. It is essential to prove that a force majeure incident occurred in order to trigger the force majeure provision. When a force majeure event occurs, it allows the

affected party to postpone or terminate the agreement without being held liable for a breach. The party seeking to invoke the force majeure clause must show that the incident was covered by the clause and that it actually made it more difficult for them to carry out their responsibilities.

The insertion of force majeure clauses in Umrah contract agreement varies among travel agencies. While some travel agencies may choose to incorporate force majeure clauses in their Umrah contracts, others may opt not to include them. It is crucial to acknowledge that the incorporation of force majeure clauses does not grant complete exemption to the carrier and service providers. Contrarily, some Umrah agencies have chosen not to invoke force majeure clauses in their Umrah contracts and have, instead, decided to cancel the contracts and offer refunds to the impacted Umrah pilgrims. In contrast, several travel package contracts explicitly state that the travel agency holds no responsibility for payment in situations involving cancellation and force majeure events. A few travel agencies were silent regarding this matter and were unable to accommodate all the refund requests because the payments had been made, and tickets were booked ahead of time. Nevertheless, certain travel agencies guarantee a full refund to customers, albeit with deductions for management fees.

Additionally, in some cases, a travel agency may present an alternative package tour or a partial alternative, with the customer being informed of any associated charges before making a selection and proceeding with the additional payment. If no viable alternatives are proposed or if the customer declines all offered alternatives, the travel agency will refund all payments received from the customer, excluding the administrative fee associated with the applicable package tour or relevant portion. This refund will be provided without interest and will serve as a complete discharge of the travel agencies' obligations to the customer. The inconsistencies and variations in the usage of force majeure clauses among Umrah travel agencies in Malaysia are causing confusion among consumers.

The broad interpretation of force majeure events poses an additional concern, as it has the potential to give rise to ambiguous situations for consumers. Several Umrah travel agencies rely on their Umrah contract, which specify what are the events that may be classified as force majeure events, which prevent that party from performing its obligations under a contract. Indeed, it is worth noting that not all travel agencies have established contract agreements, and even among those that have such agreements, not all incorporate force majeure clauses. Travel Agency A invokes the force majeure clause in the contract agreement and interprets force majeure as an act of God and war. However, this company did not highlight any events that may be classified as force majeure events, and it is open to various interpretations by the Umrah pilgrims. On the other hand, Travel Agency B clearly stated in its digital Umrah contract as follows:

“Such circumstances shall include, but are not limited, weather conditions, fire, flood, hurricane, strike, industrial dispute, war, hostilities, political unrest, riots, civil commotion, lockdown, movement control restriction due to epidemic and pandemic as pronounced by the World Health Organisation, inevitable accidents, supervening legislation or any other circumstances of whatsoever nature beyond the control IKHLAS”.

(Travel Agency B, 2025)

The observed scenarios have brought to light the varied approaches adopted by Umrah tour operators in addressing the issue of force majeure clauses within Umrah contracts during the COVID-19 outbreak. In order to guarantee the effectiveness of the contract and safeguard the interests of Umrah package travellers in Malaysia, it is important to map out the actual concerns surrounding force majeure clauses. Such studies are necessary by providing Umrah pilgrims, legislators, businesses, and service providers accurate information about how to interpret and apply force majeure clauses in their contracts. Therefore, it is of utmost importance to scrutinize the concept of a force majeure clause, particularly in relation to the status of the COVID-19 outbreak as one of the force majeure events. Additionally, it is crucial to explore the efficacy of the force majeure clause as a legal measure aimed at safeguarding the interests of Umrah pilgrims in Malaysia, particularly in the wake of the COVID-19 outbreak.

Literature Review

The Concept of Force Majeure

Force majeure, a concept which is originated from civil law, should always be clearly defined. Force majeure is defined by the International Chamber of Commerce (2020) and McKendrick (2013) as the occurrence of an event or circumstance that hinders a contracting party from fulfilling its contractual obligations. Three essential elements must be demonstrated by the impacted party: a) that the impediment is beyond human control; b) that it could not have been reasonably anticipated at the time the contract was signed; and c) that the affected party could not have reasonably avoided or overcome the impediment's effects. However, due to the decision ruling by the Supreme Courts in the case of *Gleeson v. Virginia Midland Railway* (1981) 140 U.S. 435, force majeure concepts in the United States (US) are typically narrowly understood as severe natural disasters. This definition is more rigid than the former one, in which the degree of natural disaster must be severed. However, there is no definite measurement of the level of severity that needs to be proved.

Common law systems include comparable ideas for the exemption of liability due to changed circumstances, but they do not recognise force majeure, despite the strict definition used in the US (McKendrick, 2013). This concept, which Brown (1975) referred to as a doctrine of impossibility, is utilised to provide relief to a promisor whose performance under a contract materially deviates from what was reasonably expected of him because of an intervening circumstance. Only specific types of supervening events have been recognised due to the doctrine's narrow scope. These include the destruction of the particular thing required for performance or contracted for, the death or incapacity of the person whose services were the subject of the contract, or the prohibition of performance by a subsequent legislation revision.

From the layman's perspective, a force majeure event is usually referred to as a certain act, event, or circumstance beyond the control of the parties. Natural disasters such as earthquakes, wars, riots, tsunamis, hurricanes, and floods are among the force majeure events that have been recognised before. The question here is whether COVID-19 can be considered as one of the events of force majeure. Since "COVID-19 is a force majeure" occurrence, according to the European Construction Industry Federation, construction businesses are free to close their sites without being subject to contractual claims. The COVID-19 pandemic is also acknowledged by the Indonesian government as a force majeure occurrence that influenced the ongoing completion of construction projects in Indonesia (Hansen, 2020).

Judge Denise Cote interpreted "natural disaster" as a force majeure clause to encompass the COVID-19 pandemic in a recent ruling from the United States District Court for the Southern District of New York, *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. Dec. 16, 2020). Drawing upon the existing literature, this study can deduce that the COVID-19 pandemic can be recognised as one of the force majeure occurrences, supported by several justifications. Firstly, its rapid and uncontrollable spread beyond human control signifies an unforeseeable occurrence for all parties involved in the contract. The global scale of COVID-19's impact further emphasizes its unforeseen nature. Furthermore, the epidemic has resulted in movement restrictions announced by several nations, making it more difficult for all parties to carry out their obligations of the contract. Additionally, the temporary yet significant effects of the pandemic, including illness, quarantine measures, travel restrictions, business and school closures, and the shift to remote work, exemplify the disruptive consequences caused by COVID-19. It is evident that the severity of the COVID-19 infection has profound implications for society as a whole, further strengthening the argument for its classification as a force majeure occurrence.

The Doctrine of Frustration: How It Differs from Force Majeure?

McKendrick (2013) claimed that force majeure is not equivalent to frustration. The same opinion was shared by Jack and Flora (2020), who claimed that force majeure and frustrations refer to two different concepts. Roman contract law is where the doctrine of frustration first appeared. When the "thing is destroyed without the debtor's act or default", and the contract's goal has "ceased to be attainable," the doctrine was created to terminate the obligations of innocent parties (Kiley, 1960). Prior to its introduction to the US, this philosophy was initially used in England. When circumstances change and the performance

is drastically different from what was initially agreed upon, the contracting party in England is excused from non-performance under the doctrine of frustration. Unlike force majeure, frustration needs not to be referred to or included in a contract and can potentially be invoked by any party. Besides, these two doctrines have different consequences. All parties will be released from any further performance of their contractual duties upon frustration, returning them to their pre-frustrating circumstances. In the meanwhile, force majeure gives parties the freedom to respond anyway they see proper.

The common law concept of frustration developed in Malaysia's legal system, namely in contract law, as a result of the country's British colonialism and the adoption of certain English laws. In contrast to England, Malaysia's principle of frustration is enshrined in the Contracts Act (CA) 1950, even though the theory's interpretation still follows the common law approach. Section 57(2) of the CA 1950 defines the principle of frustration in Malaysia as a contract to do an act that, once made, becomes impossible or unlawful due to an unforeseen circumstance that the promisor could not have avoided. The contract is dissolved when the conduct becomes unlawful or impossible. According to section 57(2) of the CA 1950, frustration can occur in two situations: either a contract becomes difficult to fulfil or it becomes illegal after it is made. Most of the Malaysian cases have applied the House of Lords' test laid down in the case of *Davis Contractors Ltd v. Fareham UDC* (1956) AC 696, which determined that frustration occurs without default of either party when a contractual obligation has become incapable of being performed due to the circumstances in which performance would render it as a thing radically different from what was undertaken by the contract. A few main elements need to be satisfied to prove there is frustration in a contract, namely:

- i. The frustrating incident must not have been mentioned in any clause in the parties' agreement. The contract is applicable otherwise;
- ii. The frustrating event did not occur on its own and;
- iii. The unpleasant event did not occur on its own and;
- iv. The frustrating occurrence changed the situation and resulted in a drastically different contract performance than was first agreed upon. The initial promise must be deemed practically unjust by the court.

A contract is frustrated when, after it has been formed, a change in circumstances makes it physically or legally impossible to fulfil, according to Justice Zaki Azmi, who was Chief Justice at the time, in *Pacific Forest Industries Sdn Bhd & Anor v. Lin Wen-Chih & Anor* (2009) 6 MLJ 293. The Japanese Encephalitis (JE) outbreak is an illustration of frustration under Section 57 of the Contracts Act 1950. In the case of *Yew Siew Hoo & Ors v Nikmat Maju Development Sdn Bhd & Another Appeal* (2014) 4 MLJ 413 (Court of Appeal), the State Government banned the rearing and selling of pigs in the affected regions on March 20, 1999, after the JE outbreak negatively impacted Bukit Pelandok. The High Court held that the JE outbreak frustrated the tapping and service agreements between the parties, rendering them void.

The obligation test should be employed to determine whether an incident falls under the purview of Section 57 of the CA 1950 as a frustrating event. According to the criteria, a contract will be frustrated when there is a significant or fundamental shift in the situation that makes it impossible to carry out the obligations of the contract both legally and practically. Holding the parties to their agreement must be positively unjust; the situation must be more than just burdensome or costly.

The force majeure clause and frustration are two legal concepts that deal with unforeseen events that make it difficult or impossible for parties to fulfill their contractual obligations. When a force majeure clause event occurs and is properly invoked, it usually entitles the affected party to suspend, delay, or, in some cases, terminate the contract without being held responsible for a breach. Usually, the force majeure clause specifies the precise implications that are applicable. Frustration, nevertheless, has the impact of automatically terminating the contract. It stops further performance and releases both parties from their responsibilities. Therefore, the conditions under which frustration can be used are limited; it is doubtful that COVID-19-related circumstances will give rise to contract frustration (Jayabalan, 2020). Thus, the concept of force majeure is more appropriate to be applied in the case of the COVID-19 pandemic

compared to the doctrine of frustration. The table below presents a summary of the significant differences between the force majeure clause and the doctrine of frustration.

Table 1. Summary of the differences between the Force Majeure Clause and the Doctrine of Frustration

Aspects	Concept of Force Majeure	Doctrine of Frustration
Definition	When an unforeseen circumstance or incident prevents or hinders one party's capacity to fulfil its contractual obligations as outlined in the agreement, the force majeure clause is invoked.	The theory that exempts a party from failure to perform when the performance is drastically altered from what was initially planned.
Source of the Principle/ Doctrine	Contract.	Common Law.
Nature	Explicitly included in a contract.	Implied by Law.
Effects	Both parties can fashion an agreement prior to entering into the contract on how to address the issues.	Render performance is impossible.
Main elements	i. Beyond reasonable control. ii. Unforeseen events but specifically enumerated in the contract as force majeure events.	i. Arises from a radical change in circumstances. ii. Unforeseeable when the contract was made.
Termination	Parties may formulate the terms to address the issues without automatic termination.	Result in the contract's automatic termination once it has been established.

The Principle of Extraordinary Circumstances

The concept of extraordinary circumstances is discussed in multiple papers. Borek and Puciato (2023) focused on the legal status of tour operators in Poland and their obligations to refund payments to travelers in the case of package travel cancellation due to extraordinary circumstances. They defined extraordinary circumstances in tourism as unforeseen events that significantly impact the implementation of travel packages, such as natural disasters or pandemics. According to Rojnic Kuzman et al., (2022), the COVID-19 pandemic and earthquakes that occurred in Croatia in 2020/2021 can also be considered extraordinary circumstances. This view was strongly agreed upon by Fadiloglu et al., (2021).

Methodology

This study's primary goal is to investigate the concept of force majeure and how much it can be utilised as a safeguard to provide pilgrims doing the Umrah greater safety in the event of unforeseen events. The primary qualitative research methods used in this study were conceptual, doctrinal and documentary analysis. The conceptual approach is a research technique that breaks down abstract concepts, ideas, or theories into their most basic parts and investigates how they relate to one another. The primary goal of this method is to generate new knowledge by combining information from carefully chosen sources in accordance with a set of standards. (Hirschheim, 2008). In this paper, the concept of force majeure, as well as the doctrine of frustration and impossibility, were examined. The secondary sources of legal materials such as books, scientific works, internet articles, and expert opinions that are associated with the force majeure events due to the COVID-19 pandemic were referred to.

Apart from that, a doctrinal approach was used in this study to examine further the laws governing the force majeure clauses in the Umrah contract in Malaysia. Doctrinal research can be illustrated as research that asks what the law is in a particular area (Dobinsons & Johns, 2007). It is library-based research aimed at finding a single correct answer to a specific legal issue or question, intended to conduct targeted research to identify specific information (Ali et al., 2017). It can also be described as the study of legal concepts by applying reasoning to the analysis of legislative provisions and case law. The analysis of legal concepts, norms, or principles is the main focus. It entails an empirical investigation of how the law functions and how the doctrine or principle has been applied in practical contexts. The creation of legal doctrines by analysing existing laws based on the literature authored by academics and professionals is the focus of doctrinal research (Kharel, 2018). To determine the most effective strategy for achieving the primary goal of this study, scholarly literature on the idea of force majeure is reviewed and assessed.

Primary and secondary legal materials constitute the two categories of legal materials used in this study. Legislation such as the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020, the Consumer Protection Act (CPA) 1999, and the Contracts Act (CA) 1950 are examples of primary legal sources. Secondary legal documents, on the other hand, consist of justifications for primary legal materials, including textbooks, scientific publications, journal articles, seminar papers, newspapers, and government websites related to the COVID-19 pandemic-related force majeure occurrences.

Results and Findings

Force Majeure Clause in Umrah Package Travel Contract in Malaysia

By having a brief discussion on the concept of force majeure earlier, it is vital for us to examine further the significance of providing force majeure clauses in a contract agreement. According to Corrada (2007), a force majeure clause is a clause in a contract that gives a party the right to cease fulfilling its responsibilities in the event that uncontrollable events make execution impossible, unwise, unlawful, or impracticable. Typically, a force majeure clause excuses one or both parties from the performance of the contract in some way following the occurrence of such events from what would otherwise be a breach of contract. A provision that requires a party to be “prevented” by the force majeure event from performing its obligations will likely be more difficult to rely upon than one which only requires the party to be “impeded” or “hindered” in the performance of its obligations (Clark, 2020). This concept is similar to the decisions in the case of *RHB Capital Bhd v. Carta Bintang* (2012) 10 MLJ 469, where the court emphasised that both parties are released from responsibility or liability in the event of force majeure, which includes occurrences like riots, war, and natural disasters like earthquakes.

In response to the Yang di-Pertuan Agong Sultan Abdullah Sultan Ahmad Shah (YDPA) announcing a state of emergency on January 12, 2021, the Emergency (Essential Powers) Ordinance 2021 (Emergency Ordinance) was formally gazetted on January 14, 2021 (with retroactive effect from January 11, 2021). This was done to stop the COVID-19 pandemic, which included addressing concerns about the use of private hospital assets, acquiring buildings and property temporarily, and filing requests for the use of resources for COVID-19 patient treatment. Although commercial transactions are not directly addressed by the Emergency Ordinance, they may be impacted if certain authorities granted under the Emergency Ordinance are used. For instance, in the case of the Umrah contract during COVID-19, the root cause that prevented Umrah pilgrims from traveling and performing their Umrah was the movement restriction declared by Saudi Arabia. This scenario prevents Umrah pilgrims, tour operators, and service providers from performing their obligations and responsibilities as parties to the contract. Establishing the causal connection between the occurrence and its failure to function is the most crucial step in proving force majeure events.

Should the Umrah contract contain a force majeure clause, its enforceability would be depending on the particular language used and the particulars of each event. The party that is unable to complete their contractual commitments because of COVID-19 may not be held liable if the clause’s wording is sufficiently broad to cover the pandemic. Clauses such as “pandemic outbreak”, “government impediment to continuing transaction”, and “change in the law that impedes the continuance of the transaction” are common phrases incorporated in force majeure clauses. Travel Agency A, Travel Agency H, Travel Agency B and Travel Agency D are among the travel agencies which provide force majeure clauses in their Umrah package travel contract, which may excuse them from their obligations of the contract in any event that is out of their control, including pandemic, earthquake, riot, war, natural disaster, tsunami, hurricanes, and flood.

However, if the agreement in question lacks a specific force majeure clause that sufficiently addresses breaches or non-performance of contractual obligations due to actions taken by the government or new laws promulgated under the Emergency Ordinance, parties may choose to use the common law doctrine of frustration and Section 7 of the COVID-19 Act 2020. Umrah package travel is one such instance. Section 7 of the COVID-19 Act 2020 states that the other party or parties will not be able to exercise their rights under the terms of the contract if one or more parties are unable to fulfil their contractual obligations under any of the contract categories listed in Part II’s schedule due to actions taken under the Prevention and Control of Infectious Diseases Act 1988 (such as the implementation of MCO 2.0) to stop the spread

of COVID-19. Among the contracts specified under the COVID-19 Act 2020 are those made by travel businesses as defined by the Tourism Industry Act (TIA) 1992, contracts for the development of tourism in Malaysia, and contracts related to religious pilgrimages.

The inclusion of force majeure clauses in travel agency terms and conditions protects both the company’s interests and the rights of its customers. The table below provides a detailed analysis of the utilization of force majeure clauses. Each travel agency’s approach to incorporating these clauses in their terms and conditions is carefully assessed, highlighting the events or circumstances considered as force majeure and the corresponding actions to be taken. In the subsequent paragraphs, a comprehensive explanation of the findings will be presented, shedding light on the significance of these clauses in safeguarding the interests of both travel agencies and their customers during unforeseen and extraordinary situations.

A close review of the force majeure clauses specified above discloses a variety of terms, each customized to deal with unexpected circumstances. Travel Agency A, for example, clearly lists “acts of God and War” as force majeure events, giving them the right to cancel group tours in such cases. Similarly, Travel Agency B addresses an extensive list of unforeseen circumstances, which includes natural disasters, instability in politics, pandemics, and other catastrophic situations. Travel Agency C expands the definition of force majeure by including, among other things, acts of government, earthquakes, and labour disputes.

Travel Agency D takes a broad viewpoint, listing an extensive list of events beyond their control, such as wars, natural disasters, pandemics, and government orders. Travel Agency E, on the other hand, takes a more general definition, preserving the right to dismiss customers or bookings for a number of reasons, including force majeure events. Travel Agency F and Travel Agency G have similar clauses that claim their right to terminate tours in the event of natural disasters, wars, and government directives while highlighting the availability of alternative choices and refunds. Travel Agency H takes into account regulatory provisions, where itinerary changes may occur, and the company absolves itself of the responsibility to match the cost or value of replaced itineraries.

Table 2. Force Majeure Clause in Umrah Travel Package Contracts

No.	Travel Agency	Force Majeure Clause	Terms
1.	Travel Agency A	Yes	Item 9.3: Cancellation. ‘(e) Cancellation by Company: Travel agency A reserves the right to cancel Group or Series Tours due to Force Majeure - any act of God and War. Upon confirmation and the issuance of the notice by Wisma Putra, Travel agency A offer hereby agreed that the processing time for such refund will be within 60 days.’
2.	Travel Agency B	Yes	Item 13.4: Cancellation ‘(d) Travel agency B shall not be liable for any failure to comply or for any delay in performing its obligations where the failure is caused by circumstances beyond its control. Such circumstances shall include but are not limited to, weather conditions, fire, flood, hurricane, strike, industrial dispute, war, hostilities, political unrest, riots, civil commotion, lockdown, movement control restriction due to epidemic and pandemic as pronounced by the World Health Organisation, inevitable accidents, supervening legislation or any other circumstances of whatsoever nature beyond the control Travel agency B.’
3.	Travel Agency C	Yes	Item 5: Force Majeure ‘We shall not be liable for any claims, losses, damages, costs, expenses, delays, or loss of enjoyment of any nature or kind whatsoever resulting from events beyond our or a supplier's reasonable control, including but not limited to acts of God, strikes, lockouts or other labor disputes or disruptions, wars, blockades, insurrections, riots, earthquakes, weather conditions, floods or acts or restraints imposed by government authorities.’

Table 2. Force Majeure Clause in Umrah Travel Package Contracts (*Continued...*)

4.	Travel Agency D	Yes	<p>Item 8: Miscellaneous</p> <p>8.1 'The Company shall not be liable for any breach of obligations if the Company is unable to perform its obligations under the Terms & Conditions, or any part thereof, due to the occurrence of events beyond the Company's control. Such events shall include, but not be limited to:</p> <ol style="list-style-type: none"> a. war (declared or undeclared), battles, invasions, or actions by foreign enemies. b. Rebellions, revolutions, seizures of power, civil wars, or terrorist actions. c. Natural disasters, including but not limited to earthquakes, floods, spontaneous underground fires, tsunamis, or any other natural calamities. d. Nuclear explosions, radioactive or chemical contamination, or radiation. e. Wave pressure caused by aircraft or any other aerial devices moving at sonic or supersonic speeds. f. Riots, civil commotions, or public disturbances. g. Orders from the Government of Malaysia and/or the Government of Saudi Arabia. h. Failures arising from third parties. i. Pandemics or outbreaks of dangerous diseases. j. Other reasons or hazards beyond the Company's control.'
5.	Travel Agency E	Yes	<p>Exclusion Of Liability and Indemnity</p> <p>'Travel agency E reserves the right not to accept customers or bookings (or, in exceptional cases, to cancel confirmed ones) at our discretion and for whatever (legal) reason without the need to justify such refusal. Typical reasons for rejecting a customer or booking include, but are not limited to:</p> <p>Accommodation requests, breach of the Terms and Condition Agreement, force majeure events, trade or economic sanctions, embargoes, legal restrictions, (suspicions of) fraud or theft, suspected criminal activity, suspicious bookings, submission by the customer of misleading or erroneous information, credit card problems, inappropriate behavior, threats, insults, violence, refusal to supply information, practical obstacles, communication problems.</p> <p>In case a booking is rejected or cancelled by travel agency E and a payment has already been made, you will receive a refund of the total booking value.'</p>
6.	Travel Agency F	Yes	<p>Cancellation and Refund by Travel agency F</p> <p>'For FIT Travel Package (Individual) - The Company reserves the right to cancel the tour in the event of a natural disaster, war, strike, riot, or on the instructions of the Government of Malaysia beyond the company's control.</p> <p>The company should recommend alternative tourism, preferably to the same destination or another tourism.</p> <p>If the passenger decides not to accept alternative travel, all money paid will be refunded to the passenger after deducting the administration fee to be paid.</p> <p>For Group Travel Packages -The Company reserves the right to cancel the tour in the event of a natural disaster, war, strike, riot, or directive of the Government of Malaysia beyond the company's control. The company should recommend alternative tourism, preferably to the same destination or another tourism. If the passenger decides not to accept alternative travel, all money paid will be refunded to the passenger after deducting the administration fee to be paid.</p> <p>If the company cancels the visit due to lack of passengers or inability to obtain transportation or accommodation, the company will refund all the money paid and also pay compensation.'</p>

Table 2. Force Majeure Clause in Umrah Travel Package Contracts (*Continued...*)

7.	Travel Agency G	Yes	Item 3: Cancellation by Company ‘We shall endeavour to notify you before the scheduled departure date if, due to any unforeseen circumstance(s) or force majeure event such as strike, riot, war, any act of God and/or order from the government of Malaysia, any Package Tour or part thereof cannot be finalised, needs to be changed by us or your reservation has to be cancelled. In such case, we may shall recommend an alternative to the applicable Package Tour or part thereof, to either the same or another destination. If no alternatives are offered or should you decide not to accept any alternative offered, we will refund all payments received from you less the administrative fee chargeable for the applicable Package Tour or part thereof, without interest, in full discharge of our obligations to you. If an alternative is offered and accepted by you that is of a lesser value than the original Package Tour or part thereof that cannot be fulfilled, we will refund the difference in value, without interest, in full discharge of our obligations to you.’
8.	Travel Agency H	Yes	Package Itinerary ‘Possibility Of Itinerary Changes Subject To Regulation 9 Of The Fourth Schedule Of The Tourism Industry Act 1992, In The Event Of Any Changes To The Itinerary, And If Travel agency H (Tourism Agency) Is Required To Arrange An Alternative Itinerary As A Replacement, Travel agency H Shall Not Be Held Responsible For Ensuring That The Alternative Itinerary Matches The Cost Or Has Similar Value To The Original Replaced Itinerary.’
9.	Travel Agency I	Yes	Item 6: Responsibility 6.1. Travel agency I shall not be liable for "force majeure" events, such as natural disasters, floods, fires, riots, wars, storms, earthquakes, or occurrences beyond the control of Travel agency I.
10.	Travel Agency J	Yes	Item 5.2: Amendment to Itinerary ‘Travel agency J will make every effort to avoid changes to the itinerary. However, the Company reserves the right to modify the travel schedule, travel arrangements, or hotel reservations at any time (without compensation) due to unforeseen circumstances, especially during peak periods or in the event of force majeure occurrences.’
11.	Travel Agency K	No	
12.	Travel Agency L		
13.	Travel Agency M		
14.	Travel Agency N		

A close review of the force majeure clauses specified above discloses a variety of terms, each customized to deal with unexpected circumstances. Travel Agency A, for example, clearly lists “acts of God and War” as force majeure events, giving them the right to cancel group tours in such cases. Similarly, Travel Agency B addresses an extensive list of unforeseen circumstances, which includes natural disasters, instability in politics, pandemics, and other catastrophic situations. Travel Agency C expands the definition of force majeure by including, among other things, acts of government, earthquakes, and labour disputes.

Travel Agency D takes a broad viewpoint, listing an extensive list of events beyond their control, such as wars, natural disasters, pandemics, and government orders. Travel Agency E, on the other hand, takes a more general definition, preserving the right to dismiss customers or bookings for a number of reasons, including force majeure events. Travel Agency F and Travel Agency G have similar clauses that claim their right to terminate tours in the event of natural disasters, wars, and government directives while highlighting the availability of alternative choices and refunds. Travel Agency H takes into account

regulatory provisions, where itinerary changes may occur, and the company absolves itself of the responsibility to match the cost or value of replaced itineraries.

Meanwhile, Travel Agency I and Travel Agency J accentuate natural disasters, wars, and unforeseen circumstances as force majeure events, leaving room for itinerary modifications and providing clarity on refund procedures. However, the companies, namely Travel Agency K, L, M and N have not included a force majeure clause in their agreements. This omission may lead to potential issues in the event of unforeseen and extraordinary circumstances occurring in the future.

Force Majeure Clause: Legal Mechanism for Safeguarding the Interests of Consumers

It should be common procedure for Umrah travel agencies to include force majeure terms in their contracts for Umrah packages. Regarding all goods and services that are provided or supplied to one or more customers in trade, including Umrah package services, the implementation of CPA 1999 demonstrated a favourable development towards stronger consumer protection. For Umrah package travel, prospective pilgrims have specific rights as customers of Umrah package travel services when they sign a contract with local tour operators or travel agencies. They are entitled to read, check, and understand the terms and conditions stated in the Umrah contract. However, in practice, not all potential Umrah pilgrims have an opportunity to understand the terms and conditions stated in the contract. The CPA 1999 contains no specific clause requiring Umrah tour operators and travel agencies to inform their customers of the terms and conditions. The rights of customers who are entitled to adequate information may be harmed by this situation.

Thus, it is significant to highlight that force majeure clauses should be inserted in all Umrah contracts as a mechanism to protect the rights of Umrah package travellers. Nevertheless, this study shows that the current legislation does not contain a single clause requiring Umrah trip operators and travel agents to include force majeure terms in their contracts. When a contract is written down, it is widely accepted that the parties' intentions must be contained within the text of the agreement. Only when expressly included in the contract can the force majeure provision be applied and relied upon. In their Umrah package travel contracts, several tour operators and travel companies include force majeure clauses that release them from contract performance in the event of unforeseen circumstances. However, some people might not include this condition in their contract for Umrah. Therefore, there is no standard practice between Umrah agencies in relation to the adoption of force majeure clauses in their contracts.

The Malaysian Association of Travel and Tourism Agents (MATTA), the Association of Bumiputera Travel and Tourism Agencies (BUMITRA), and the Umrah Regulatory Council (PAPUH) should review the existing Code of Ethics and guidelines, particularly on the significance of force majeure clauses in Umrah package travel contracts as an instrument for providing better protection to the consumers and travel agents. Mohd Afiq and Nuraisyah Chua (2012) admitted the crucial roles of force majeure clauses in protecting the economic interest of travellers and travel operators.

If the service is not provided as promised, consumers are entitled to remedies under Section 60(1) of the CPA 1999. It indicates very apparent that:

‘Where a consumer has a right of redress against the supplier under this Part in respect of the failure of any services or any product resulting from the services to comply with a guarantee under Part VIII, the consumer may exercise the following remedies:

(a) where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time’.

If the problem cannot be resolved, the customer has the right to end the service agreement or demand damages from the supplier to cover any decline in the product's worth caused by the services below the amount the client has paid or is required to pay. Customers have the option of using words, actions, or both to indicate their desire to terminate the contract, and they should make this clear (section 63, CPA 1999).

During COVID-19, lots of consumers, including Umrah pilgrims, seek refunds due to the cancellation of travel packages by tour operators and travel agents. However, different responses were given by the Umrah tour operators and travel agents when the contract of Umrah cannot be performed due to this COVID-19 outbreak, depending on the terms and conditions that have been agreed by the contracting parties. Many of the travel agencies refused to refund the Umrah pilgrims after cancelling the Umrah package travel contract. Some of the travel agencies ensure full refunds to the consumers but with deductions of management fees upon cancellation. Some other travel agencies offer an alternative package tour or part thereof, or if the consumer chooses not to accept any offered alternatives, the travel agency will refund all payments received from the customer, less the administrative fee charged for the applicable package tour or portion thereof, without interest, in full discharge of our obligations to the customer. Section 58 of the CPA 1999 provides that the Umrah pilgrims have no right of redress against the tour operator or travel agencies in respect of any failure of the services where the failure is due to a cause independent of human control, including COVID-19.

When invoking the force majeure clauses in an Umrah contract, the agencies must take the repercussions of a force majeure occurrence into account. Such repercussions could include requiring the parties to lessen the impact of the event, permitting the impacted party to fulfil the contract in full or in part, permitting a party to postpone performance, providing them with the option to suspend or ask for an extension of the time for performance, or allowing the other party to end the contract before more losses happen.

Set out a Specific List of Force Majeure Events in the Umrah contract.

The other gap that could be addressed in this study is in relation to the list of force majeure events. This paper identified that every Umrah tour operator and travel agent has a different list of events that can be categorized as force majeure events. The tour operators and travel agencies should set out a specific list of force majeure events in their Umrah contract, which are deemed to be events beyond the control of the parties, such as “pandemics,” “epidemics,” or “diseases.” This is an effort to provide better provision in relation to the force majeure events that might happen in future contracts. For instance, Travel Agency B and D specify that ‘the force majeure events shall include, but not be limited to, weather conditions, fire, flood, hurricane, strike, industrial dispute, war, hostilities, political unrest, riots, civil commotion, lockdown, movement control restriction due to epidemic and pandemic as pronounced by the World Health Organisation, inevitable accidents, supervening legislation or any other circumstances of whatsoever nature beyond the control of the company’ similarly to Travel Agency O which recognised pandemic as one of the force majeure events and spell out clearly in the Umrah contract as one of the circumstances that might lead to the cancellation of the trip. Therefore, in order to invoke force majeure, the circumstances must be unpredictable and must unavoidably affect or prevent the parties from fulfilling their contractual commitments. Additionally, all Umrah agencies in Malaysia shall adhere to the same set of rules.

Conclusion

The COVID-19 pandemic has greatly affected various industries, including Umrah package travel industries, as it has led to widespread lockdowns in various countries to minimize the spread of the COVID-19 virus. Consequently, this has implications for the delay of the parties in conducting Umrah business contracts. Responding to this situation, some travel agents decided to postpone the contract performance to a later date, while others opted to cancel the contract by invoking a force majeure clause that had been inserted in the Umrah contract. Some travel agents are responsible for providing remedies and refunding their customers’ money. Whereas there were few travel agents who neglected to provide any assistance, leaving their customers clueless. This scenario poses a significant detriment to the interests of consumers, who should rightfully be protected due to their vulnerable position in this circumstance.

Based on the above discussion, it is vital for travel agencies, service providers, and consumers to be aware of the crucial significance of incorporating force majeure clauses into an Umrah contract, specifically encompassing the terms epidemic or pandemic. Failure to insert force majeure clauses in any Umrah contract may lead to the application of the doctrine of frustration, which differs in its concepts and impacts from force majeure. Thus, the contracting parties must meticulously consider the contents of the agreement, ascertain the presence of a force majeure clause, and determine the agreed limits of force

majeure. If the parties do not regulate force majeure clauses in their contract, they will act in accordance with the provisions of the applicable law.

The findings of this research can serve as valuable input for policymakers to enhance existing regulations, such as the MATTA ethics code, which governs the Umrah travel industry. By incorporating the research outcomes, policymakers can work towards refining and strengthening the legal framework to better protect the consumer's interests and ensure fair practices within the Umrah package travel sector. Finally, it is anticipated that this research will make an important contribution to the government and policymakers by providing insights that can help improve the legal protection for umrah package travel contracts.

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