**The Doctrine of Changed Circumstances in Contract Law**

**Section 1: Introduction**

A contract has the force of law if it is formed in accordance with the provisions of law. This principle is known as *pacta sunt servanda*. This principle has been established in most legal systems deriving from the Canon laws. However, the principle is not absolute. That is the reason why infringements on good faith, reasonableness, and justice keep rising as a result of the strict application of this principle. For this reason, a compromise between the principle of *pacta sunt servanda* and the *clausula rebus sic stantibus* is strived by the legal theory and practice. The new principle states that the contract remains binding between the parties so long as and to the extent the subject matter of a contract remains the same as it was made at the time of formation of the contract. Over the time, different historical circumstances and legal traditions have played the role in giving rise to a number of limits on the principle of *pacta sunt servanda*.

However, the effect of changed circumstances in contracts is not entirely explained in most of the cases. For instance, investment in infrastructure is a long-term project. Many governments seek to attract expertise in capital due to the lack of the expertise and resources to financing and maintaining the infrastructure on their own. In this regard, the governments offer predictable revenue streams on that particular project over a period of 5 to 30 years International banks and developers that look to the longer end of the spectrum depending on the nature of the investment. For this reason, the host governments and the investors establish of pricing scheme concerning off-take agreements and production sharing arrangements and concessions in typical contracts related to investment. The purpose of the pricing scheme is to assure adequate revenue to the investors for covering their services obligations along with the high profit on the invested equity capital. The pricing schemes are established my keeping in view the risk profile and the possibility of an eventual return of the equity capital to the investors. Moreover, the pricing schemes are expected to allow for the adjustments over the life of the contract due to the demand of the sophisticated investors and lenders. The pricing schemes must allow adjustments for changes in currency valuation, the effects of inflation and other changes in law.

**Section 2: Origins**

However, the effect of changed circumstances in many cases is not entirely explained. Therefore, the landers and investors have to consult the legal regimes that cover their connection with the government hosting the project. In a typical situation, the law of the host government governs the so cold project contract between the parties whereas block the International Financial guarantees and facilities consists of either England and New York and sometimes France. As a matter of fact, it entirely depends on what part of the world the contract has been formed between the contracting parties.

Under these situations, dichotomy exists as to preservation of long-term contracts as well as the source of many conflicting understandings among practitioners. Countries, where the main multilateral banks, international commercial lenders, and their representatives are resided, with common legal traditions do not have to suffer under these circumstances due to the fact that they understand contract as allocation of the risk of unforeseen events between the contracting parties particularly the contracts with a fixed price. Practitioners from such countries are trained to think that the terms of the contract should be in force except in the most extreme circumstances. Please practitioners also trained to think that the parties must insert price adjustment and other clauses for safeguarding against risks. There is no recognized mechanism on legal theory for a contract to be adjusted by an arbitral Tribunal or a Court except put the rarely invoked common law doctrine of the formation of contracts.

For instance, in the United States of America, any court has never adjusted the contractual terms due to a change in circumstances. As a matter of fact, there is only one prominent decision to this effect in all of the American jurisprudence and commentators have also roundly criticized it.[[1]](#footnote-1) For this reason, a contract is either enforced or avoided (especially in the cases of bankruptcy) if the change in circumstances is extreme.

The Civil law traditions are practiced in many states that receive foreign investment in infrastructure. It indicates that the French Civil Code and its Roman Origins have inspired the legal systems. The philosophy tends to be, without considering the differences between various Municipal legal systems and as this legal tradition has evolved, a contract sets and economic balance between the contracting parties as they entered into it. If this economic balance is significantly disturbed by the change in circumstances in a long-term contract, the contractual terms may be adjusted to preserve it. The contracting parties reserve the right to go to the courts as well as administrative tribunals for re-establishing the balance if they remain unable to agree on the scope of the adjustment. However, practitioners trained in common law countries seek to neutralize or contain this concept through contract drafting, as they tend to be very suspicious of it. The general legal principles in the host country prevail if the practitioners have not addressed the change in the circumstances.

Difficult situations in performance of the contract often arise due to natural or manmade events. Since the Russian crisis in the mid nineties, drought-inspired power shortages, the devaluation of the Real in Brazil, the Asian contagion leading to collapsing of the Indonesian economy, and the Argentine crisis starting in 2000, the recent history provides a wealth of examples. As a result of these events, numerous disputes arose between host governments and their investors. Some of these disputes have also resulted in published arbitral awards.

Over the time, the researchers and practitioners have discussed and written a lot about the doctrine of change in circumstances and its effect on the performance of a contract along with the broader issue of allocating risks long term contracting under such situations.[[2]](#footnote-2) There are common threads in these disputes despite the fact that they have arisen in projects of different countries. These observations are applied to the issues the domain of the greatest concern to the investors World confronting the effect of changed circumstances in either a dispute or a contract negotiation.

The theory of change in circumstances evolved as the Roman law evolved. The basic principle of this theory revolves around the fact that if the performance of a contract is possible but has been rendered due to any hardship fundamental change in circumstances then the principle of *clausula rebus sic stantibus* can be invoked by the affected party. As pointed out earlier, this principle states that the contract remains binding between the parties so long as and to the extent the subject matter of a contract remains the same as it was made at the time of formation of the contract. To be specific, this principle implies that every contract contains a *clausula* (implied term) which means that the important circumstances surrounding the contract must remain *sic stantes* (unchanged).[[3]](#footnote-3)

As pointed out by one author, this principle was codified as a part of the private law in the 18th century. However, due to its lack of clarity and weakness, this principle was subsequently criticized and thus, fell out of disfavor in an era of party autonomy[[4]](#footnote-4) being emphasized by liberal theories, i.e., the 19th century. As a result of the destruction caused by the First World War, the principle was then resurrected in the 20th century on the grounds of French administrative Court ruling in a dispute between the City of Boredeaux, France and private power company.

The dispute arose in 1916. The company known as the *Gaz de Bordeaux* or *Compagnie générale d’éclairage de Bordeaux* was granted concession providing gas lightning to the City of Bordeaux by the government. Although the contract had a fixed price but it also came with a closed for adjustment mechanism of the price beyond a certain range of fluctuation. Due to the First World War, the price of the coal increased. Therefore, earning revenues out of the fixed price contract was no more a possibility for the company. The administrative tribunals ultimately the French *Conseil d’Etat* heard the dispute related to a concession for a Public Service. The letter decided that the under the given circumstances, the adjustment mechanisms in the concession agreement remained insufficient. For this reason, the economic viability of the contract had been undermined. Based on this argument, the court decided that the company was not required to perform the services as per the original conditions.

In this regard, the court set out the elements of circumstances permitting a temporary adjustment of administrative contracts especially the ones concerning concessions.[[5]](#footnote-5) As a matter of fact, the event must result in a profound and balancing of the contract, exceed all reasonable expectation, and had to be external to the parties and thus, unforeseeable. For the purpose of preserving the long-term viability of the contract, the solution must be temporary. Based on this decision, the doctrine of change in circumstances has come to known as *thethéorie de l’imprévision* which means hardship. This principle emphasizes on the enforceability of the events under circumstances. The upshot of the decision was that the City must pay compensation to the company.[[6]](#footnote-6) If the contracting parties do not agree on the amount, others must fix it for them.

According to a famous Roman maxim, "there is no obligation to the impossible." Therefore, the uncertain events excuse performance of the contract is the particular focus on two types of contracts, i.e., sale and *stipulatio*.[[7]](#footnote-7) For instance, the contract of sale cannot be validate if the object sold had perished prior to the sale or never existed. Simultaneously, it is also true that a parties excused from performance of contract if that performance had been made impossible after the formation of the contract due to an uncertain event provided that the party being excused is not at fault. However, it cannot be concluded that a party is excused from performance of a contract under the Roman law if it was not at fault in the ordinary sense if its performance became or was impossible. According to one text, the performance of the contract is excused only if beyond anyone's power to perform the contract and not merely beyond the power of the claimant party. Putting it in simple words, impossibility must not be personal or subjective but absolute or objective. For this reason, a party cannot escape performance of a contract primarily due to the fact that it was unable to perform it and it was not at fault in the ordinary sense of the world.

Therefore, a party who borrowed a property is responsible for exercising due diligence in this regard. However, the party would not be held liable if bands of robbers or invading enemies destroyed the property. The question in this situation revolves around the fact that why a party should be held liable for failing to be more diligent than the diligent. According to the modern scholars, the party was liable for *custodia*, under the Roman law. It meant neither strict liability nor negligence. For this reason, a party liable for *custodia* was liable for that could have been prevented if proper care was used but the same party would not be liable for *vis maior* which meant accidents that could not be prevented. This kind of fault has been classified as most light fault (*cupla levissima*) by the mediaeval jurists.

However, the medieval Canon lawyers turned fault and impossibility into basic principles of moral responsibility. It means that a person or a party under the contract cannot be morally held responsible to do the impossible. As Gratian said,[[8]](#footnote-8) one must choose the lesser sin when every alternative course of action is sinful. For the matter under discussion, he indicated towards breaking a promise under the contract. For example, one must break the promise to keep the secret of a friend after he discovers that he is planning a murder. Canonists later rejected the position of Gratian. From the point of view, no one is morally obligated to commit a sin. They argue that one could not be obligated to do the impossible. Therefore, it is not sinful to reveal the secret of a friend under the given circumstances where it should be revealed. Simultaneously, the Cannon lawyers concluded that a person failing to use due care is both morally obligated and morally guilty to compensate the harm that he has caused. Nevertheless, the Cannon conclusion was in tension with the Roman limitations on civil liability.

In order to explain the Cannons conclusions, Thomas Aquinas[[9]](#footnote-9) made use of the Aristotle's theory of human responsibility in the 13th century. He explained that the performance of a contract revolves around the choice and the choice was an act of will and that a person can only choose what is possible to perform. For this reason, according to Aquinas, promising to do the impossible is not binding. This approach was later followed by the late scholastics in the 16th century. This school of thought worked on synthesizing the moral philosophy of Aquinas and Aristotle with Roman law. In this regard, the borrowed the conclusion that a contracting party is not bound to perform the impossible. However, the level provided an explanation for how to reconcile the Roman law with this maxim. In the 17th and 18th centuries, the members of Northern Natural Law School followed the late scholastics school. Samuel Pufendorf explained that nevertheless the seller is not responsible to do the impossible but he remains at fault for making the promise at the first place therefore the buyer has the privilege to recover any losses suffered by him in this regard. Although Samuel had achieved consistency but he sacrificed the Roman texts for it.

Later, the late scholastics admitted that it was not possible to reconcile the Domino with their moral philosophy primarily due to the fact that fault meant sin under the moral philosophy and theology. It is a deviation of the will from the law of God and thus, right reason. Molina[[10]](#footnote-10) and Lessius,[[11]](#footnote-11) two leading late scholastics, concluded that the jurists were not describing the natural law but the positive Roman law. The contracting party can only be held responsible for not exercising that you care under the natural law. These rules, according to Lessius, prevented iniquity and fraud and promoted diligence. Simultaneously, they discouraged litigation, according to Molina, and encouraged people to make contracts promoting human society and Commerce including loans for lease, deposit, another uses.

Therefore, a body of law in disarray transferred in inheritance to the 19th century jurists. The Roman law was very hard to explain in any case and the principled explanations of the natural lawyers failed to explain it as well. Although the textual problem in France changed due to the enactment of the Code but the solutions became more elusive. The Roman law was borrowed in part in England but was then confounded with another doctrine concerning implied conditions. The Roman law remained in force in Germany whereas the jurists forced the Roman text confirm to the principled explanations developed by them.

In the 20th century, it was claimed by Williston[[12]](#footnote-12) that impossibility was no excuse. Based on this claim, Williston concluded that the cases in the 19th century had made inroads in the principle. His conclusion was widely supported. Max Rheinstein[[13]](#footnote-13) explained that the principle follows the essence of assumpsit and therefore the cases that excused performance of contract due to an uncertain event have made exceptions to the principle. Both Williston and Max concluded that the judge Blackburn in the case of Taylor vs Caldwell excused the performance of contract to the owners of a music hall that was burnt down took the rule from the Civil law.

The modern search for solutions in this regard also follow the same pathway that a contracting party cannot be responsible to perform the impossible when it is not at fault in the ordinary meaning of the word. Recent example in this regard can be taken from the rule of Vienna Convention[[14]](#footnote-14) that explains that a party is not liable failing to perform any of the contractual obligations if it successfully proves that the impediment is beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the formation of the contract how to have overcome or avoided it or its circumstances. It gives rise to several questions such as that if impediment beyond the control of the contracting party means impediment that cannot be overcome by reasonable efforts, that if the failure to take this impediment into account at the time of the formation of the contract means that it could have been done by taking reasonable efforts, and that if the party is not liable if it is not at fault is explained by a principle that is explained by none of the legal systems that we have discussed previously.

However, as a matter of fact, we are dealing with the problem of rusty location independent of fault and not with a doctor and based on fault. Therefore, the German theorists who believed that the sphere of a risk must be calculated for each party tuition event belongs suggest the possibility of a solution. Although it is a good solution but it does not come without problems primarily due to the fact that speaking about this spheres of risks does not be helpful unless it can be explained that why there is has to be Borne by one particular party both sides of the contracting party. Richard Posner[[15]](#footnote-15) attempted such an explanation. Explain that a party must be the risk if it can foresee the uncertain event primarily by either preventing its occurrence or insuring against it. All these observations are helpful in other context but for explaining the doctrine of impossibility, they are not that good. For example, award has been declared and because of this war a shipment cannot be made. This is not an event that could have been foreseen at the time of the formation of the contract by either of the contracting party. Therefore, it is not that sort of any event for which the contracting parties can be readily by insurance. Moreover, the parties engaging in similar transactions do not provide an answer as well. It is a common day-to-day business for one party to repeatedly make shipments and the other party repeatedly receive the shipments. It only leaves one factor to discuss here, i.e., control. It explains the fact that the results of impossibility cases only related to the degree of control that could have been exercised by the claimant party.

**Section 3: Essential Elements of the Claim of Changed Circumstances**

Today, clauses concerning the changes in circumstances mandatory part of the contract between the parties particularly the contracts between state enterprises or government entities and private parties, governed by administrative law. Although, these clauses are supposed to be protecting the concession holders, in theory, they can operate in both directions which means that either the government or the private party can invoke them. The key point of this Doctrine is that a private contractor earns an indemnity from the government if he successfully establishes that the events were unforeseeable and exceptional and that they were capable of upsetting the economic balance of the contract.

Continuing further, change of circumstances in contract is a fancy term indicating that the performance of the contract is no longer possible buy one or both of the parties due to the fact that they are unable to keep their promises made in the origin of agreement result of the event that is beyond the control of the either party, i.e., it was unforeseeable. Although it does not indicate that the elements word missing and the clauses of the contract poorly written but it means that the terms of the contract did not contain every possibility of voidability. As an example, many people found themselves unable to pay for their mortgages in the time of economic hardship such as high unemployment and rising interest rates. These events were beyond the control of these people and therefore, it led many people to walk away from their homes. In this regard, the banks, instead of bailing on the obligation to pay mortgage, offered programs following the people to stay their homes paying the loan amount or the principal not including interest, insurance and taxes or either a royalty payment.

The homeowners and the banks make promises in the original mortgage. Typically, at a certain rate of interest, the banks promised to learn the money for a certain period of time. On the other side of the contract, the homeowners promise to pay a certain amount of money to the bank on monthly basis for the period of mortgage. However, during the period of economic hardship such as a higher level of unemployment and increased interest rate, the contract could no longer be performed. For this reason, the banks made changes to the original agreement between the parties and thus, allowed a different set of promises.

**Section 3.1: Impossibility and Impracticality**

Under the contract law, a court considers several specific instances reasonable for a change in circumstances. They include impossibility and impacticality, and frustration of purpose. There are two types of impossibility in the performance of a contract, i.e., objective impossibility and subjective impossibility. The former implies that if the terms of a contract become impossible to perform, a party can remove itself from the obligations if the non performance is not due to default of the breaching party where is the latter implies that a particular event or circumstance will make the promises of the contract impossible to perform.

Super Storm Sandy, in October 2012, created landfall. The storm destroyed, in her path, parts of New York City and its suburbs as well as much of the New Jersey Shore area. The people living in those areas went about their daily businesses prior to the storm. However, after the storm, all commerce and industry stopped through the region. Homes and businesses were leveled. Nothing was left. For the sake of an example, if a bride had her wedding on the day of the storm booked on the area of the New Jersey Shore in a catering hall that no longer exists, what the bride must do? As a matter of fact, it is clear on the face that the wedding can no longer be performed on that particular venue. In this regard, the court must look at the possibility for the catering hall to perform the promises of the original contract. The parties can breach the contract if the catering all no longer exists primarily due to the fact that the wedding reception cannot happen through no fault of either of the contracting parties.

It was an example of objective impossibility. Sometimes, the breach of a contract occur due to subjective impossibility. As pointed out earlier, it implies that a particular event or circumstance will make the promises of the contract impossible to perform. For the sake of an example, let's consider the possibility that the catering hall did not destroy in the super storm Sandy. However, the bride herself chooses note to continue with the wedding reception at a particular venue due to the fact that her friends and family members unable to travel to date venue due to airline cancellation. If the matter is taken to the court then the court might find the reason for speech two subjective on behalf of the bride herself primarily due to the fact that the captain hall is still able to perform the part of the contract. For this reason, the bride must care to make good on her promise to pay for the event despite the fact that if she moves on with the reception or not.

An alternative to this situation can arise in the form of impracticality. It means that the circumstance occurred and resulted in keeping the contract promises impossible or impractical. Therefore, in such a case the bride can claim impracticality. Under any circumstances, if any of the contracting parties claims that contractual terms are impractical for them then the court must look for three things. Firstly, the court must see that if an unexpected event has occurred after the contract had been formed between the parties. Secondly, the court must see that is the contracting parties had is used during the formation of the contract that an unexpected event would not happen. Lastly, the court must see that is the extent runtime of the unexpected event is of such a level that made it impractical or impossible photo contract in parties to move forward in the performance of their contract promises or contractual obligations. Based on these observations, example under consideration can be explained as that when the super storm Sandy hit the Northeast region of the country, the rain and wind continued for several hours. For this reason, major airports closed stations for the incoming flights. Simultaneously, due to serious flooding roads and highways became impassible. Therefore, half of the people residing in this side of the country return to find their homes that had been washed into the ocean. The curtain hall, even though, remained operable and intact, the surrounding areas had been devastated. At the same time, traveling to the region was impractical by automobiles and impossible by air. Therefore, the court might decide why looking at the circumstances that the contract had been made in practical due to the unexpected event of the super storm Sandy. It came as an act of God.

**Section 3.2: Frustration of Purpose**

Business ventures often miss the idea that the circumstances change. The commitments made by the businesses towards each other often come under stress due to a surprising turn in the market. For this reason, many commercial Enterprises and business owners struggle delivering their contract promises on time particularly after a demand dries up overnight, clients disappear or a business deal goes bust. The contact become impractical impossible to perform for this business owners and commercial Enterprises. The contract becomes not possible to deliver or no longer profitable under the original contemplated terms. Therefore, they may try to get out of a contract. Under such a situation, the businesses can claim frustration of purpose. The general rule of this claim is that the claimant is legally excused from performance of its obligations if he successfully establishes a valid claim of frustration of purpose. Simultaneously, The Other contracting parties who before what seeking relief for dead non performance will become unable to claim and collect relief or damages from that party. It indicates that the party claiming the frustration of purpose doesn't need to occupy a property or pay for it after signing lease, or the party does not need to shift the products it contracted to manufacture or deliver.

To successfully claim a valid frustration of purpose, the claimant party must show that the situation has occurred and that it has occurred without the fault or involvement of that party. Simultaneously, the claimant party must also show that the non-occurrence of that situation has been made a part of the contract under the basic assumption that it will not happen. Lastly, the claimant party must indicate that the language of the contract explaining the terms and conditions of the promises to be performed by both sides of contracting parties did not contemplate the event, and thus, had not assigned the risk of loss.

As a matter of fact, when the claimant party claims that it is unable to perform the contract promises due to frustration of purpose the court considered three important elements. First of all, a court considers that if the supervening event what's possible at the time of formation of contract or not. Secondly, a court considers that how the risk of occurrence of the event had been allocated between the contracting parties. Lastly, the court seeks the degree of hardship to the promises that has occurred due to the claim of frustration of purpose by the claimant party.[[16]](#footnote-16) The Jury remains responsible for making the findings about the fact that if the necessary elements all in evidence in a case or not primarily due to the fact that these metals are highly contextual. It means that the commercial agents must argue against or for frustration of purpose based on the facts.

An essential element in the claim of frustration of purpose is the foreseeability of the event. It is on the shoulder of the claimant party to prove that the event causing frustration of purpose was not reasonably foreseeable at the time of the formation of contract between the contracting parties. Moreover, it is not enough for the claimant to just expect that the event would not occur. This fact is brought forward primarily on the based of the fact that some events can reasonably be anticipated at the time of the contract such as severe weather, new legislation, change in price or a downturn in demand for a good or service. These kinds of events do not make valid grounds for frustration of purpose due to the fact that they are not really unforeseeable.[[17]](#footnote-17) However, an event to such as a political coup, negation of a large government contract, sudden cancellation of a message sporting event, the powerful earthquake or a war breaking out may comprise unforeseeable event. These events may result in negation of obligations of the claimant party under frustration of purpose. While being engaged in a commercial relationship, many parties under take risks. The party can have a poor stroke of luck.[[18]](#footnote-18) Therefore the fact that an unlikely event occurs forest turns out poorly for the party does not mean that the event was unforeseeable. For instance, if a student had leased a property after her student visa application was denied, he or she cannot avoid the obligations of the lease based on the fantasy could not enter the country to study. The reason behind it lies in the fact that the denial of the visa application reasonably foreseeable for the student at the time of formation of the lease agreement therefore the frustration of purpose claim fails.

The other essential element in claim of frustration of purpose is the allocation of risk. It is a critical element that if the parties at the time of entering into the contract allocated the risk for an event or a circumstance that made performance of the contract impractical or impossible for the contracting parties. Questions such as if the parties accounted for such things in their contract or if the parties anticipated this event happening can be asked in this regard. If the answer to such questions is in affirmation then the claimant party enjoys no grounds for a valid claim for frustration of purpose.[[19]](#footnote-19) Risk of loss, warranties and representations, indemnity provisions and other standard contractual clauses open anticipate and acknowledge a certain event that would otherwise be unforeseeable. For instance, an indemnitor cannot claim frustration of purpose in the event of a super Storm such as Sandy that wiped out the ship or trucks used for transportation of the goods if one party indemnifies the other for any harm or loss cost in transportation of goods. If such a clause were not made part of the contract at the first place, then the super storm Sandy destroying the trucks or ships of the seller would be unforeseen event. Such an event good excuse performance of the contract promise of the seller towards the buyer.

**Section 4: Applications**

An **impossible performance** gives rise to the question that why a party would enter into a contract that is impossible to perform. There are two possible arrangements. Firstly, an arrangement in which a party is held liable for non-performance of the contract although it is not at the fault. It explains that the non-performance of the party has occurred not due to the causes that the party could have controlled therefore it could not be held liable. The second amendment is that where a party is held liable performance of the contract regardless of the fact that if the party was at fault or not. This arrangement is simply another way of asking the question that if ability of the contracting party to perform the promise is a tacit condition of the contractual terms.

The modern courts have also given relief for **hardship in performance of a contract** instead of the non-performance itself. It indicates that the performance of the promise is not practically impossible to exist however it is physically more difficult to perform than the parties had imagined at the time of the formation of the contract. For example, in a case in California,[[20]](#footnote-20) the court excused the defendant from the performance of the contract on the basis of hardship. The defendant had agreed to take the gravel from the land of the plaintiff however he later found out that the cost of doing so much higher than the anticipated amount primarily due to the fact that the gravel was under the water and the parties what unknown of the fact at the time of the formation of the contract.

As pointed out earlier, business ventures often miss the idea that the circumstances change. The commitments made by the businesses towards each other often come under stress due to a surprising turn in the market. In most of the commercial contracts, **market changes**. It often results in the contract easier or more difficult to perform. Because these changes occur as part of the routine in the market, such changes do not call for relief. Nevertheless, the German courts have sometimes given relief in such situations. For instance, due to the First World War, the price of the coal increased. Therefore, earning revenues out of the fixed price contract was no more a possibility for the companies dealing in Iron wire or steam. A case[[21]](#footnote-21) was settled before appeal in the Westinghouse litigation. The corporation was involved in selling nuclear generators. It entered into a contract of selling uranium at a fixed price for a fixed term. Due to the world energy crisis, the price of Uranium soared and performance of the contract became impossible for the company; it might have resulted and bankruptcy for it. Because the case was settled before going into appeal therefore it cannot be argued that if a relief would have been given by an American Court or not.

**Section 5: Conclusion**

As discussed, the theory of change in circumstances evolved as the Roman law evolved. However, the doctrine of changed circumstances dealt by two major doctrines. Firstly, the doctrine of impossibility based on the Roman origin and secondly, the doctrine of *clausula rebus sic stantibus* based on the Canon law origin. The former resisted the efforts of the jurists trying to make a sense out of it for centuries. It explains that a party was not liable for performance of a contract simply because it found it difficult to perform. The latter, on the other hand of discussion, explained the problems confronted by the Roman law doctrine. Under the influence of the moral philosophy of Aristotle, a person or a party under the contract cannot be morally held responsible to do the impossible. It further explained the fact that the results of impossibility cases only related to the degree of control that could have been exercised by the claimant party. The applications of the doctrine change circumstances primarily revolve around impossible performance, hardship in the performance of a contract, and market changes.

**List of Bibliography**

**Books**

Clayton Gillette, Commercial Rationality and the Duty to Adjust Long-Term Contracts, 69 MINNESOTA LAW REVIEW 521 (Feb. 1985)

Conseil d’Etat, Compagnie générale d’éclairage de Bordeaux, Rec. 125, concl. Chardenet, 30 March 1916, quoted in M. Long, P. Weil et al., Les Grands Arrêts de la Jurisprudence Administrative (2003) at 188-89.

GRATIAN, DECRETUM dicta Gratiani ante D. 13 c. 1 in 1 CORPUS IURIS CANONICI (E. Friedberg, ed., 1876)

John Gotanda, Renegotiation and Adaptation Clauses in Investment Contracts, Revisited, Id. at 1461

Norbert Horn, Changes in Circumstances and the Revision of Contracts in Some European Laws and in International Law, p. 17 in ADAPTATION AND RENEGOTIATION OF CONTRACTS IN INTERNATIONAL TRADE AND FINANCE, ed. by Norbert Horn (Kluwer 1985)

REINHARD ZIMMERMANN, THE LAW OF OBLIGATIONS ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION 687 (1990).

**Cases**

Aluminum Company of America (Alcoa) v EssexGroup, Inc., 499 F.Supp 53 (W.D. Pa. 1980)

*Baetjer* v. *New England Alcohol Co.*, 319 Mass. 592, 602, 66 N.E.2d 798 (1946)

*Chase Precast Corp.* v. *John J. Paonessa Co.*, 409 Mass. 371, 375, 566 N.E.2d 603 (1991)

*Gurwitz* v. *Mercantile/Image Press, Inc.*, 2006 WL 1646144, \*2 (Mass.Super.2006)

Mineral Park Land v. Howard 156 P. 458 (Cal. 1916).

*Mishara Constr. Co.* v. *Transit–Mixed Concrete Corp*., 365 Mass. 122, 310 N.E.2d 363 (1974)

Translation from the award in ICSID Case No. ARB/01/8, CMS Gas Transmission Company v The Argentine Republic (May 12, 2005).

**Journal Articles**

Convention on the International Sale of Goods art. 79.

Joskow, Commercial Impossibility, the Uranium Market and the Westinghouse Case, 6 J. LEG. STUD. 119 (1977).

LEONARDUS LESSIUS, DE IUSTITIA ET IURE, CETERISQUE VIRTUTIBUS CARDINALIS LIBRI QUATUOR lib. 2, cap. 10, dub. 10 no. 70 (1628)

LUDOVICUS MOLINA, DE IUSTITIA ET IURE TRACTATUS disp. 271 no. 1 (1614)

MAx RHEINSTEIN, DIE STRUKTUR DES VERTRAGLICHEN SCHULDVERHALTNISSES IM ANGLO-AMERIKANISCHEM RECHT 162 (1932).

Richard A. PoSner & Andrew M. Rosenfield, Impossibility and Related Doctrines zn Contract Law: An Economic Analysis, 6 J. LEG. STUD. 83 (1977)

Robert A. Hillman, Court Adjustment of Long-Term Contracts: An Analysis under Modern Contract Law, 1987 DUKE LAW JOURNAL 1

SAMUEL WILLISTON, THE LAW OF CONTRACT § 1931 (1920).

THOMASQUINAS, SUMMA THEOLOGIAE I-II q. 13 a. 5 ad 1.

1. Aluminum Company of America (Alcoa) v EssexGroup, Inc., 499 F.Supp 53 (W.D. Pa. 1980) [↑](#footnote-ref-1)
2. Robert A. Hillman, Court Adjustment of Long-Term Contracts: An Analysis under Modern Contract Law, 1987 DUKE LAW JOURNAL 1; Clayton Gillette, Commercial Rationality and the Duty to Adjust Long-Term Contracts, 69 MINNESOTA LAW REVIEW 521 (Feb. 1985); John Gotanda, Renegotiation and Adaptation Clauses in Investment Contracts, Revisited, Id. at 1461 [↑](#footnote-ref-2)
3. Norbert Horn, Changes in Circumstances and the Revision of Contracts in Some European Laws and in International Law, p. 17 in ADAPTATION AND RENEGOTIATION OF CONTRACTS IN INTERNATIONAL TRADE AND FINANCE, ed. by Norbert Horn (Kluwer 1985) [↑](#footnote-ref-3)
4. Id [↑](#footnote-ref-4)
5. Conseil d’Etat, Compagnie générale d’éclairage de Bordeaux, Rec. 125, concl. Chardenet, 30 March 1916, quoted in M. Long, P. Weil et al., Les Grands Arrêts de la Jurisprudence Administrative (2003) at 188-89. Translation from the award in ICSID Case No. ARB/01/8, CMS Gas Transmission Company v The Argentine Republic (May 12, 2005). [↑](#footnote-ref-5)
6. Id. [↑](#footnote-ref-6)
7. REINHARD ZIMMERMANN, THE LAW OF OBLIGATIONS ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION 687 (1990). [↑](#footnote-ref-7)
8. GRATIAN, DECRETUM dicta Gratiani ante D. 13 c. 1 in 1 CORPUS IURIS CANONICI (E. Friedberg, ed., 1876) [↑](#footnote-ref-8)
9. THOMASQUINAS, SUMMA THEOLOGIAE I-II q. 13 a. 5 ad 1. [↑](#footnote-ref-9)
10. LUDOVICUS MOLINA, DE IUSTITIA ET IURE TRACTATUS disp. 271 no. 1 (1614) [↑](#footnote-ref-10)
11. LEONARDUS LESSIUS, DE IUSTITIA ET IURE, CETERISQUE VIRTUTIBUS CARDINALIS LIBRI QUATUOR lib. 2, cap. 10, dub. 10 no. 70 (1628) [↑](#footnote-ref-11)
12. SAMUEL WILLISTON, THE LAW OF CONTRACT § 1931 (1920). [↑](#footnote-ref-12)
13. MAx RHEINSTEIN, DIE STRUKTUR DES VERTRAGLICHEN SCHULDVERHALTNISSES IM ANGLO-AMERIKANISCHEM RECHT 162 (1932). [↑](#footnote-ref-13)
14. Convention on the International Sale of Goods art. 79. [↑](#footnote-ref-14)
15. Richard A. PoSner & Andrew M. Rosenfield, Impossibility and Related Doctrines zn Contract Law: An Economic Analysis, 6 J. LEG. STUD. 83 (1977) [↑](#footnote-ref-15)
16. *Chase Precast Corp.* v. *John J. Paonessa Co.*, 409 Mass. 371, 375, 566 N.E.2d 603 (1991) [↑](#footnote-ref-16)
17. *Gurwitz* v. *Mercantile/Image Press, Inc.*, 2006 WL 1646144, \*2 (Mass.Super.2006) [↑](#footnote-ref-17)
18. *Baetjer* v. *New England Alcohol Co.*, 319 Mass. 592, 602, 66 N.E.2d 798 (1946)  [↑](#footnote-ref-18)
19. *Mishara Constr. Co.* v. *Transit–Mixed Concrete Corp*., 365 Mass. 122, 310 N.E.2d 363 (1974) [↑](#footnote-ref-19)
20. Mineral Park Land v. Howard 156 P. 458 (Cal. 1916). [↑](#footnote-ref-20)
21. Joskow, Commercial Impossibility, the Uranium Market and the Westinghouse Case, 6 J. LEG. STUD. 119 (1977). [↑](#footnote-ref-21)