Force Majeure and Hardship: A Comparative Analysis of Civil Law and Common Law in the UAE

Force Majeure

Civil Law: Under Article 273 of the current Civil Code (Article 236 of the new Code), force majeure operates by operation of law. Where an extraordinary, unforeseeable event beyond the parties' control renders performance impossible, the reciprocal obligations lapse and the contract is dissolved automatically. The threshold is **impossibility**. Mere hardship, increased cost, or reduced profitability will not suffice. Total impossibility extinguishes the obligation entirely; partial impossibility extinguishes only the affected portion, with a right of termination where what remains is insufficient. Courts apply the doctrine narrowly.

Common Law: The architecture is fundamentally different: force majeure is a creature of contract. Absent an express clause, no right exists. The **ADGM**, which applies English law directly, offers no statutory safety net; clauses are construed strictly. The **DIFC** is unusual in providing a statutory backstop through Article 82 of its Contract Law, which excuses non-performance caused by an unforeseeable impediment beyond a party's control. Article 82 does not, however, apply to a mere obligation to pay, though parties may contractually disapply that carve-out.

Comparative takeaway: Civil law provides automatic, statutory relief but demands a high threshold. Common law demands less of the event itself but more of the drafter: protection exists only to the extent the contract grants it.

Unforeseen Circumstances (Hardship)

Civil Law: Article 249 of the current Civil Code (Article 224 of the new Code) recognises hardship where exceptional public circumstances, unforeseeable at the time of contracting, render performance **excessively onerous**, threatening the debtor with grave loss, though performance remains possible. The court may reduce the obligation, rebalance the contract, or, under the new Code, terminate it altogether. UAE courts apply the doctrine flexibly, particularly in cases involving major economic disruption, inflation, or currency collapse. COVID-19 illustrates its fact-sensitive application: courts have invoked the doctrine where a school could not use its bus fleet during distance-learning periods, but declined to do so where the debtor's own negligence caused the delay, or where no causal link to the pandemic was proved.

Common Law: There is no general doctrine of hardship in common law. Courts will not rewrite a contract because performance has become more expensive or commercially difficult. Protection exists only where the parties expressly incorporated hardship or price review clauses. In long-term contracts, the absence of such clauses leaves a party fully exposed to price volatility, supply chain disruption, and geopolitical shifts.

Comparative takeaway: Civil law offers a built-in equitable safety valve, allowing courts to intervene where rigid enforcement would produce injustice. Common law prises certainty and pacta sunt servanda; relief is a matter of bargained-for protection, not judicial grace.

Conclusion

The civil law and common law systems reflect two different philosophies of contract. Civil law leans on codified, court-administered fairness; common law leans on the autonomy and foresight of the parties at the drafting table. For clients operating across onshore UAE, the DIFC, and the ADGM, understanding which philosophy governs each agreement is the difference between automatic statutory relief and a clause-by-clause battle over wording. Advising effectively across both traditions requires fluency in each and a clear-eyed view of where they converge, where they diverge, and where careful drafting can bridge the gap.

Hashem AlAidarous
UAE, NY, AUS
Partner

Rakshit Jha
Associate