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RIGHT OF CANCELLATION FOR BOOKING OF SHORT-TERM ACCOMMODATION THROUGH DIGITAL ECONOMY PLATFORM BEFORE MOVEMENT CONTROL ORDER (MCO)

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ABSTRACT

Nowadays, many hotel operators and homestay owners (host) advertise their assets for short-term accommodation through digital platforms in search of a wider market while offering positive options for customers in terms of its compatible prices and variety of choices. However, the recent Movement Control Order (MCO) declared by the Malaysian Government to control the spread of the COVID-19 pandemic has affected Malaysia's tourism industry. This had caused concern on the effect of the existing contracts entered by hosts and the guests via digital platforms as it was impossible for the parties to perform their contract, especially when the customers had made full payment of the bookings. Though MCO's effect has contributed great financial loss to the digital platforms and the hosts, the guests also suffered a loss due to the travel restriction and the money they have paid for the travel. Many hosts argued that since the MCO was an abrupt announcement from the government, they have discretionary power not to grant cancellation of booking since the contract's performance becomes impossible. Additionally, the digital platforms have provided terms or policies concerning the refund of payments, which applies to certain circumstances and the procedures stated in the platforms' policy statement. Thus, this article will analyse the legal effect of the frustrated contract with special reference to a booking made via digital platform before MCO and discuss the nature of the doctrine of frustration and *force majeure* in the contract law. The authors will adopt doctrinal and statutory analysis. Its findings will highlight the scope and effect of the doctrine of frustration in contracts entered with homestay owners via Malaysia's sharing economy platform.

Keywords: *Contract law, the doctrine of frustration, COVID-19, force majuere, sharing economy*

Introduction

The coronavirus disease (COVID-19), which was discovered in December 2019, had profoundly impacted the world. Malaysia is not an exception to this, and due to the rapid increase in the number of positive cases of COVID-19, the Government of Malaysia had made an announcement to restrict and control the movement [Movement Control Order (MCO)] of its people in order to curb the spread of the disease (Ashley Tang, 2020). As a result, governmental operations and businesses temporarily ceased their operations; either entirely or by working at home, except for operations that are considered as 'essential services,' such as water, electricity, energy, telecommunications, postal, transportation, irrigation, oil, gas, fuel, lubricants, broadcasting, finance, banking, health, pharmacy, fire, prison, port, airport, safety, defense, cleaning, retail, and food supply. (Nurbaiti Hamdan, 2020; Samadi Ahmad, 2020). The MCO had severely affected the country's economy, including the tourism industry, which recorded a loss of approximately RM45 billion in the first half of 2020 (Mohd Roji Kawi, 2000).

The tourism industry comprises a few segmentations such as transportation, accommodation, food and beverages, entertainment, and other connected industries. In the accommodation segment such as hotels and alternative accommodation alike, COVID-19 has significantly contributed to the losses due to cancellation of bookings and the inability to operate due to the MCO (Foo et al., 2020; Teoh, 2020; The Edge Malaysia, 2020). The digital platforms which most hotel operators and homestay owners depend upon in advertising their assets were also massively hit by the pandemic (Ahmad, 2020). Notwithstanding MCO's negative effect on hotels and homestay owners, the customers have also reported losses due to the unexpected travel restrictions. As many accommodation bookings were made via digital platforms, customers had no choice but to abide by the terms and conditions in the contract put forward by the digital platform companies, especially about the refund of payments due to no-show.

There is debate on whether the inability of performance of the contract due to MCO is regarded as frustration or *force majeure*, which would either terminate the contract entirely or suspends the performance of the contract for the period that the event subsists (Claudia Cheah & Aufa RAdzi, 2020; Donovan & Ho Advocates & Solicitors, 2020). The issue would then arise whether a refund of payments for cancellation of bookings due to MCO when full payment is made via digital platforms is available for the customers. Henceforth, this conceptual analysis paper will address three issues, namely (a) the position of a contract which has frustrated event (b) the position of the contract under *force majeure* provision (c) the formation of the contract via digital platforms.

Doctrine of Frustration

In a valid, binding contract, all the contracting parties are bound to perform their contractual obligations, and it is difficult to discharge themselves from the contract as well as to escape liability for performance, even when anything happens to the contract, which makes it harder, more expensive or onerous to perform. However, a contract may be discharged by frustration when there was a change of circumstances that could render the agreement legally or physically impossible to be performed. Lord Denning MR had explained the common law doctrine of frustration in *Ocean Tramp Tankers v V/O Sovfracht*[1] as follows:

> *"It has frequently been said that the doctrine of frustration only applies when the new situation is unforeseen or unexpected or uncontemplated, as if that were an essential feature. But it is not so. It is not much that it is unexpected, but rather that the parties have made no provision for it in their contract. The point about it, however, is that: if the parties did not foresee anything of the kind happening, you can readily infer that they have made no provision for it. Whereas, if they did foresee it, you would expect them to make provision for it. But cases have occurred where the parties have foreseen the danger ahead, and yet made no provision for it. Such was the case in the Spanish Civil War when a ship was let on charter to the Republican Government. The purpose was to evacuate refugees. But they made no provision for it in their contract. Yet, when she was seized, the contract was frustrated".*

In Malaysia, the doctrine of frustration is embodied in Section 57 (2) of the Contracts Act 1950 (Act 136), which provides that:

> *"A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."*

The section proposes two scopes of supervening events that frustrate a contract; which is an event that causes the contact to be impossible to perform and an event which is supervening illegality[2] A contract is frustrated when it becomes impossible or unlawful to perform. The Act has not defined the word

[1] [1964] 1 All ER 161

[2] *Yee Seng Plantations Sdn Bhd v Kerajaan Negeri Terengganu & Ors* [2000] 3 AMR 3209; the court held that the doctrine of frustration is inapplicable as the refusal of the State Executive Council to alienate the land in question as a result of a deliberate act of non-compliance of a consent order by the party and it was not a supervening event.

impossible; thus, reference can be made to *Satyabrata Ghose v Mugneeram Bangur & Co*[3] where Indian Supreme Court stated that;

> *"The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if a untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do."*

Examples of contracts which are impossible to perform are includes; the non-existence of subject matter of the contract(Ram Mohan et al., 2020)[4], the non-occurrence or cancellation of some event which must reasonably be the basis of the contract[5], government interference in a tie of war or an outbreak of war prevents the parties from fulfilling their obligations[6], the occurrence of storm[7] or fire[8], the delay which does not attribute to the default of either party and the delay is of such a character that the fulfillment of the contract in the way contemplated is so inordinately delayed or postponed that the delayed fulfillment will involve something commercially or fundamentally different from that contemplated in the contract, the thing contracted for is unavailable[9], the pandemic illness which disturbed the performance of parties in the contract[10] and the land acquisition by the government[11]. The impossibility in the context of the Contracts Act does not include commercial impossibility. Thus, a contract of supplying goods cannot be said to become impossible within the meaning of Contracts Act merely because of the goods cannot be procured except at an exorbitant price[12]. In *Pacific Forest Industries Sdn Bhd & Anor v Lin Wen-Chih & Anor*[13], the Federal Court held, inter alia, that a contract does not become frustrated merely because it becomes difficult to perform.

[3] AIR 1954 SC 44 at 46
[4] Taylor v Caldwell (1863) 3 B & S 826, the hire of a musical hall had to be terminated as the hall was accidentally destroyed by fire six days before the specified concert.
[5] *Krell v Henry* [1903] 2 KB 740, the English Court of Appeal held that the basis of the contract was the procession and the effect of the cancellation was to discharge the parties of their obligations as it was no longer possible to achieve the substantial purpose of the contract.
[6] *Metropolitan Water Board v Dick Kerr* [1918] AC 119, the contract, in this case, was held to be frustrated because the interruption was of such a nature as to make the contract, if resumed, a different contract due to the wartime statute.
[7] *Khoo Than Sui v Chan Chiau Hee* [1976] 1 MLJ 25,
[8] Wincart Sdn Bhd & Anor v Zalaraz Sdn Bhd [2008] MLJU 267
[9]. For instance, detention or seizure of a ship or in the case of a service contract, the contractor falls sick, dies, or is permanently incapacitated through accident or disease unless there is a stipulation in the contract to the contrary.
[10] *Li Ching Wing v Xuan Yi Xiong* [2004] 1 HKLRD 754, the District Court held, inter alia, that the tenancy agreement was not frustrated because the isolation order for the SARS outbreak was only for a short duration in the context of the lease at issue, i.e., a period of 10 days out of a 2-year tenancy, and such event did not significantly change the nature of the contractual rights and obligations from what the parties could reasonably have contemplated at the time of the execution of the tenancy agreement.
[11] *Semangat Positif Sdn Bhd v Pelantar Agresif (M) Sdn Bhd* [2010] 7 MLJ 137
[12] *Samuel Fitz & Co v Standard Cotton Co* AIR 1945 Mad 291
[13] [2009] 6 CLJ 430

The unlawful or illegal event within the ambit of Contracts Act means that the supervening legislation or regulations that make the contract illegal or impose a duty on one of the parties to regularise the contract or its obligations under the contract. Change of law, for instance, the banning of the sale of particular products, outlawing services such as particular types of financial services, money or lending services, banning attendance at event venues following a virus outbreak, such as pubs, clubs, business conference centers, preventing of entry to countries in the interest of public health by the government of a country.

In order to rely on section 57 (2) of the Contracts Act 1950, the contracting party must fulfill three requirements; which are, firstly, the event upon which the promisor relies as having frustrated; the contract must have been one for which no provision has been made in the contract. If provision has been made, then the parties must be taken to have allocated the risk between them; secondly, the event relied upon by the promisor must be one for which he or she is not responsible. In other words, self-induced frustration is ineffective[14] Third, the event that is said to discharge the promise must be such that renders it radically different from that undertaken by the contract. The court must find it practically unjust to enforce the original promise(Jayabalan, 2020)[15].

Consequently, a frustrated contract may come to an end, and the contracting parties may be discharged from performing the contractual obligation provided that the frustration is not due to the act or election of the party seeking to rely on it but must due to some outside event or extraneous change of situation. The frustration must also not come from the fault on the side of the party seeking to rely on it (*Lauritzen AS v Wijismuller BV (The Super Servant Two))*[16].

Under Section 57 of the Contracts Act 1950, once the contract becomes impossible to perform or becomes unlawful due to a supervening event, without any fault of the party claiming, the contract becomes void and fall under the purview of Section 66 of the same Act. The party to a contract which discovered to be void or becomes void, can claim restitution, that is, any advantage received under the agreement or contract should be restored back or make compensation to the other party claiming[17]. Section 15 of the Civil Law Act 1956 (Act 67) make the position of the frustrated contract clear when (2) of the Section highlighted that all sums paid by one party to the other prior to frustration should be recoverable from that party, any sums that are to be paid by one to the other prior to frustration shall no longer be paid, and this was also further elaborated in (3) of the same Section that, when a party to whom money has been paid and has incurred expenses for the purpose of the performance of the contract

[14] *Ocean Tramp Tankers Corporation v V/O Sovfracht, The Eugenia* [1964] 2 QB 226; a charterer who, in breach of contract, orders a ship into the war-zone thereby causing the hardship to be detained, cannot rely on the detention as a ground of frustration.
[15] *Guan Aik Moh (KL) Sdn Bhd & Anor v Selangor Properties Bhd* [2007] 3 AMR 609; [2007] 3 CLJ 695
[16] [1990] 1 Lloyd's Rep 1
[17] Govindram Seksaria & Anor v Edward Radbone (1947) LR 74 IA 295

prior to dissolution, the court may allow that party to retain or recover the whole or any part of the sums so paid depending on the discretion of the court to look whether it is justifiable to award the money.

Force Majeure

Force majeure is a civil law concept that had been applied and used in common law systems, including Malaysia, and originated from the French language, which carries the literal meaning of 'a superior force.' It has neither come with any absolute definition nor any consensus definition of its terms. According to Black Law Dictionary(2019), *force majeure* is an event or effect that can be neither anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially due to an event that the parties could not have anticipated or controlled[18]. *Force majeure* is normally used to describe a contractual term by which one (or both) of the parties is entitled to … (be) excused from performance of the contract, in whole or in part, or is entitled to suspend performance or to claim an extension of time for performance, upon the happening of a specified event or events beyond his control(The Common Law Library, 2017). Due to the absence of its unanimous definition, many contractual provisions set out a list of *force majeure* events that are deemed to be out of control or unavoidable by the parties, such as Act of God, war, strike, and riot. This list, however, is not exhaustive as it may include many supervening events that can affect the performance of the contracting party to fulfill his contractual obligation(S Santhana Dass, 2017). In *Malaysia Land Properties Sdn Bhd (formerly known as Vintage Fame Sdn Bhd) v Tan Peng Foo*[19], the Court of Appeal held that the meaning of *force majeure* is not limited to the general notion of delay caused by the act of God, strikes, lockouts, riots, civil commotion, general chaos, and inclement weather only. It has been held in many cases to have more extensive meaning than an act of God or *vis major*. In addition to that, it also includes the dislocation of business by various actions and events like universal coal strike or accident to machinery[20]. Typically, a *force majeure* clause in a contract will normally set out a list of matters that qualify as *force majeure*, explain the consequences of any of these *force majeure* events, and set out what happens to payments services delivered prior to the *force majeure* event.

The application of *force majeure* provisions is not automatic as it is only applicable to the existence of the relevant clause of *force majeure* in a contract. Where parties to a contract intend to excuse the performance of obligations for reasons beyond the parties' control, the same shall be set out in the contract. In the absence of such clause, it means the parties have no intention whatsoever of relieving any one of them from their obligations upon the occurrence of certain events. Therefore, the parties

[18] Black Law Dictionary, 11th edition, p.788.
[19] [2014] 1 MLJ 718
[20] Global Destar (M) Sdn Bhd v Kuala Lumpur Glass Manufacturers Co Sdn Bhd [2007] MLJU 91

cannot plead *force majeure* when it is not available in the contract. The rationale behind inserting a *force majeure* clause in a contract is then clear enough to exclude the liability of the parties when they were unable to perform their contractual obligations due to factors beyond of their control. However, one should able to make distinction between an event beyond the control of a party and an event that a party was unable to overcome. Thus, a party seeking to invoke *force majeure* endures the burden to prove not only the existence of such clause in the contract, but also the occurrence of such supervening event is beyond of his reasonable control that caused delay or inability to comply with the time sensitive obligations under the contract(Claudia Cheah & Aufa Radzi, 2020)[21]. He also need to prove that he has taken all the reasonable steps to avoid or mitigate the event to occur or its consequences[22]. Besides that, he need to comply with all the requirements in the clause to successfully invoke the clause. Therefore, it is vital for the court to scrutinize the construction of the *force majeure* clause whether such clause is wide enough to cover the triggering event and whether it has affected the performance of the parties' contractual obligations under the contract. However, the court has no power to construe the clause but to analyse it depends on the language and the words used in constructing the terms. The Federal Court in *CIMB Bank Bhd v Anthony Lawrence Bourke & Anor*[23] held that the court is not empowered to improve upon the instrument which it is called upon to construct. It can also be further supported with the advice of the Board when Lord Hoffman in *Attorney General of Belize v Belize Telecom Limited*[24] said;

> *"The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed … It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument".*

Although Contracts Act 1950 does not provide any provisions for *force majeure,* the Malaysian courts are no strangers to the enforceability and interpretation of *force majeure* clauses in the Malaysian cases. Abdul Wahab Patail J in *Global Destar (M) Sdn Bhd v Kuala Lumpur Glass Manufacturers Co Sdn Bhd*[25] held that the term *force majeure* is not intended to enable one party to renege upon its contract to take advantage of and profit from better deals available, but in this case to protect each party from laws

[21] *PT Kiara Temasek International v Inai Kiara Sdn Bhd & Ors* [2019] 1 LNS 158, *Mah Sing Properties Sdn Bhd v Goh Leng Nguen @ Goh Ah Guan &* Anor [2018] 1 LNS 45
[22] *Crest Worldwide Resources Sdn Bhd V Mohammad Amin Abdul Sattar*
[23] [2019] 2 MLJ 1
[24] *Attorney General of Belize v. Belize Telecom Limited* [2009] UKPC 10
[25] [2007] 1 LNS 54

or war, strikes, lockouts, breakdowns, or other circumstances beyond the control of plaintiff or defendant causing the party to be able to perform their part of their bargain. The events of *force majeure*, such as universal coal strike or accident to machinery, refer to incidents that affect one or both parties regarding their ability to perform.

Differences between Frustration and *Force Majeure*

Although *force majeure* and frustration are often mentioned in the same breath, they are distinct doctrines. Frustration is a doctrine embedded in common law while *force majeure* has no unanimous legal meaning in English law; thus, the definition should be included by the contracting parties in their contract. Any party can invoke frustration to a contract without being referred to in the contract; on the other hand, *force majeure* must be included in a contract to be invoked. Generally, a frustrating event makes a contract impossible to perform and leads to its termination. A *force majeure* event, on the other hand, can frustrate a contract, but it may equally only delay a party's ability to perform its contractual obligations. However, if contracting parties also want a *force majeure* event to trigger termination rights, they should specifically include it in the contract. In *force majeure*, the party relying on it must prove that the event falls within the clause. This approach is different from the frustration doctrine, which applies only in more restricted circumstances and discharges the parties from their liability.

The differences may also be put in the following table;

Scope	Frustration	*Force Majeure*
Source	Common Law doctrine	No source
Application	It is applicable without any need for a clause to be inserted in the contract.	It is only applicable to the existence of such a clause in the contract.
Consequence	Inability to perform the contract makes the contract come to an end	The contract may become frustrated, but it may delay the party from performing their contractual obligation only. If they wish to include termination of the contract as a result of *force majeure*, the same should be specified out in the contract
List of events	A list of the supervening event has been specifically set out in Section 57 (2)	The party must put the list of event in their contract

Table 1: Differences between Frustration and Force Majeure

Contract Formation via Digital Platforms

The use of digital platforms for any transactions, either buying or selling goods, providing services, and accommodation rental, is advancing these days profoundly. This idea stems from a new economic model called as 'sharing economy' encompasses the idea that digital platforms do not own the assets or services, but rather they act as intermediaries between the owner of assets (or provider of service) and the users of the platforms in a two-sided market system (Busch et al., 2016; Eckhardt et al., 2019; Hang & Kim, 2019; OECD, 2016). The primary role of digital platforms is to facilitate the search, organise the matching criteria between the assets or services with the users, and set up a reputation and other enhancing mechanisms, and finalise the deal between the owner of assets and the users (OECD, 2016; Trivett, 2013). As compared to the conventional transaction, the provider of assets, and the guest rarely know each other at the time of the contract and thus increase the risk disproportionately to the participants. Many authors have acknowledged that in a sharing economy, the participants are in a weak position as they cannot negotiate nor impose their own terms to the contract and that the intermediation activity of the digital platforms is unregulated with lesser duties as compared to traditional companies (Cherry, 2017; Jacquemin, 2019; Østergaard & Jakobsen, 2019).

Hence, an important aspect of the relationship between the platform user and the online platform needs to be ascertained in discussing consumer protection. The relationship between the owner of assets, online platform, and user of the platform in a short-term residential accommodation can be illustrated below:

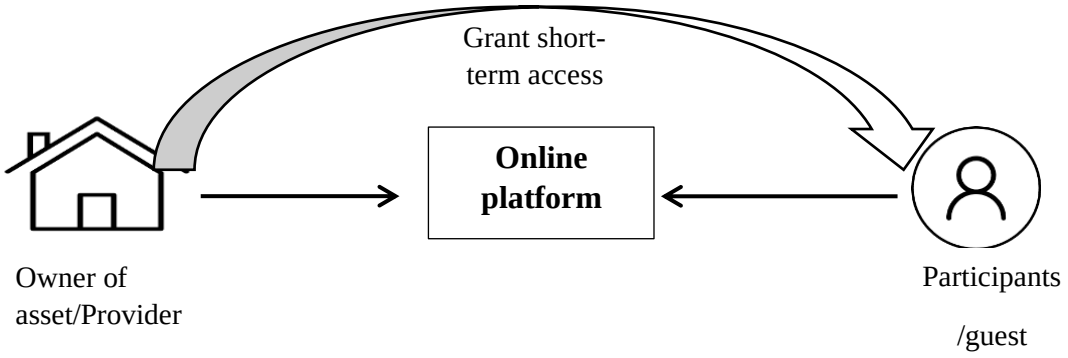

Image 1: The Relationship between the Owner of Assets, Online Platform and User of the Platform in a Short-Term Residential Accommodation

The relationship between the three parties is known as a 'triangular relationship,' different from a 'bipolar or linear relationship' in a conventional transaction (Busch et al., 2016). In a triangular relationship, it was opined that, when the contract is concluded via a digital platform, the parties to the contract are the participants and the assets' owner, excluding the digital platform. This is similar in a bipolar relationship when for example, the owner of the asset employs an agent to advertise the asset; the contract of sale is concluded between the owner and the buyer and not with the agent. The formation of a contract between the owner of the asset and the participant is mediated through the digital platform

where the owner will, later on, provide temporary access to the assets on the specified period of time (Stemler, 2015; Wirtz et al., 2019). Significantly, in determining the contractual parties, the main terms of the contract are to be considered, i.e., to provide a place of accommodation as requested by the participation and thus, this obligation must fall on the provider of the asset, not on the digital platform (Østergaard & Jakobsen, 2019). Notwithstanding, the participants also enter into a contract with the digital platform as the service provider, which would facilitate the service for payments and other booking services (Holloway, n.d.). Evidently, almost all digital platforms provide the terms and policies on their websites, indicating that they self-regulate the bookings made via their digital platforms (Agoda, 2020; Airbnb, 2020; Booking.com, 2020). Thus, in any event of cancellations or refunds of payment, the terms and policies of the digital platforms need to be considered in determining the customers' rights.

Effect of COVID-19 on the Existing Contract

Before a party can successfully plead COVID-19 as *a force majeure* event, five crucial considerations should be taken into account, firstly, whether the contract has a *force majeure* clause, and if the answer yes, whether the clause covers COVID-19 outbreak as a *force majeure* event or whether there has been a government decision or administrative action preventing the performance of the contract which is commonly included in the definition of *force majeure*, such as governmental orders enforcing quarantine, the mandatory shutdown of businesses, travel bans/restrictions, thirdly, whether the performance of the contract at the question is prevented or hindered as a result of *force majeure* event, for example, pandemic, quarantine, travel restriction, fourthly whether caution has been taken as to any additional requirement set out by the relevant clause, such as the issuance of notice issued to the other party and lastly, whether the contracting party has taken reasonable steps to mitigate the effect of the outbreak(Seng et al., 2020).

There is no concrete rule to classify the COVID-19 outbreak as a *force majeure* event or not as it mainly depends on the word used and the scope of the *force majeure* clause in the contract itself. The use of the word to connote illness such as disease, pandemic should be reasonably sufficient to include the Covid-19 outbreak in force majeure event. Conversely, the word Act of God is arguably insufficient to carry the meaning of supervening events under *force majeure*(Claudia Cheah & Aufa Radzi, 2020). An entire contract should be construed together with *the force majeure* clause so that the court can consider the underlying purpose of the contract and analyse whether the defaulting party to invoke the *force majeure* clause has taken necessary steps to mitigate the situation. COVID-19 virus is a pandemic as announced by World Health Organization on 12th March 2020 (Ranjan N Chandran et al., 2020)due to the rapid increase in the number of cases outside the origin country of disease (China) in two weeks that has affected a growing number of countries. Thus, no one could reasonably foresee the far

paralyzing effects of the virus, and no one would have taken the necessary precautions to avoid the same. It is vital to be highlighted that the effect of *force majeure*, however, is not permanent, as it cannot be used in situations where one party is attempting to enrich himself or gain an economic advantage from the situation. (Jayabalan, 2020) The effect is actually only subsisting during the pandemic and up until a medical solution is found.

However, the one who wishes to exercise the force majeure clause has an obligation to prove that there is a force majeure clause in their contract by showing that the relevant event occurred and stipulated the effect of such event on the contractual obligation performance of the contracting parties. It is also necessary for the party to prove that the non-performance of his contractual obligations was due to unavoidable circumstances and that he could not, by taking reasonable steps, mitigate the consequences of the event(Andrianna Solomonides, 2020). Therefore, when the contracting parties successfully invoked *force majeure* in their contracts by fulfilling all the provisions of such provisions, they can discharge themselves from performing the contract.

On the other hand, if there is no *force majeure* clause in the contract, the parties may resort to the contract's doctrine of frustration. A contract may become frustrated with the existence of some inevitable or extraneous circumstances which leads to an abrupt stop of a contract, and the continuance of performance becomes impossible or unlawful because the circumstances in which performance is called for, would render it a thing radically different from that which was undertaken by the contract. COVID-19 does not frustrate the contract as a contract can still be performed unless the pandemic's delay makes the contracting parties incapable of performing the contractual obligation because of the radical difference of the nature of such a contract. Thus, the implications of the COVID-19 should be decided from case to case basis since each case carries different facts and situations.

As mentioned above, since the Malaysian Prime Minister announced MCO on 17th March 2020 and during the school holiday, many holiday trips and booking for short term accommodation were canceled automatically. However, most of the customers had already paid for the booking, especially for those who were using the digital economy platform such as Airbnb, Booking.com, and Agoda. Issues arose as to the status of such booking money since travel was restricted during MCO. The one who wishes to rely on *the force majeure* clause needs to prove such a clause in their contract and must identify carefully on the list of the supervening event as covered by such provisions. If there are any requirements laid down by the digital platform, the guests need to fulfill all the elements to plead for *force majeure*. For example, on the Airbnb website, it was clearly stated that they were three categories of bookings affected by the MCO; firstly, reservations made on or before 14th March 2020 with a check-in date within the next 45 days can be canceled before the check-in date. The guests who cancel under the policy eligible to claim for a full cash refund or travel credit in the amount they paid; secondly,

reservation made on or before 14th March 2020 with a check-in date more than 45 days are not covered for COVID-19 extenuating circumstances, thirdly, reservations for stays made after 14th March 2020 will also not be covered under extenuating circumstances except when the guest or host is infected with COVID-19 disease (AirBnb, 2020). Booking.com and Agoda, on the other hand, do not highlight their policy for cancellation on their website precisely. Booking.com cancellation policy will only available for the guests when they login to the website and manage their existing booking. However, generally, Booking.com highlighted that the guests might cancel their booking depending on certain factors, including their travel destination, date of the booking, date of arrival, country origin of the guests, and the purpose of their travel. If the booking made by the guests falls under the Booking.com cancellation policy, the guests have the right to claim for a refund of their money or travel credit or change their booking date to another date without any need for an extra charge (Booking.com, 2020). Meanwhile, Agoda does not specifically mention on the general policy of cancellation. It may be different depending on each booking (Agoda,2020).

Conclusion

Although frustration and *force majeure* were always discussed in the same breath, however, there are many aspects to differentiate between the two, especially on the position of such event in the contract, sources of such doctrine, and consequences of the contract affected by the doctrine. However, to determine whether a contract is frustrated or not due to the spreading of COVID-19, it highly depends on the case-to-case basis. Consequently, it will also affect the right of booking cancellation for short term accommodation through the digital economy platform. Airbnb is precisely stated the pre-requisites for the guests to cancel his booking validly but not in Booking.com and Agoda. Booking.com only laid down the general condition to activate cancellation policy while Agoda silence on this. The cancellation policies for Booking.com and Agoda are only available when the guest signs in to the website, and the applicability of the policies may vary from one guest to another guest.

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