



FORCE MAJEU I PRAKSIS – NOEN SJØRETTSLIGE EKSEMPLER



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OPPLEGGET

1. Rettslig bakgrunn – sjørettens internasjonale karakter
2. Noen praktiske eksempler på force majeure klausuler i certepartier (ved leie av skip og transporttjenester)
3. BIMCOs nye FM-klausul



BAKGRUNNSRETTE FRAKTAVTALER

- **Stykkgodstransporter**
- Linjefrakt (buss)
- De nordiske sjølovene kap 13
- Konvensjonsbakgrunn
- Implementerer Haag-Visby-reglene (med Hamburgkompromiss)
 - **Standardisert og preseptorisk ansvarsregime**
 - Nordisk rett
- **Befraktning av skip**
- Tid eller reise (taxi)
- De nordiske sjølovens kap 14
- **Avtalefrihet**
- Standardavtaler: BIMCO
 - Arbitration London/engelsk rett



STYKKGODS- TRANSPORTER

- **Haag-Visby reglene**
- Culpa med omvendt bevisbyrde + ***liste med force majeure unntak***
- **Nordiske sjølover**
- Culpa med omvendt bevisbyrde + unntak for nautiske feil
- **Lovgivningsteknikk** – culpa konsumerer force majeure unntaket





BEFRAKTNING AV SKIP

- Tidscertepartier Leie av båt og mannskap
 - Reisecepartier Leie av båt og mannskap
 - Bareboat Leie av båt
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- Engelsk bakgrunnsrett
 - Standardkontrakter (certepartier)
 - Kontraktsbrudd leder til ansvar om ikke force majeure
 - Frustration kreves for hevning

EKSEMPEL - LONDON ARBITRATION 4/22

Ankommer kl.15.20 **4.3.2020**

Kina episentrum for COVID

Losene nektes ombord.
Termometer a) viser 37.5C, ber
losene benytte termometer b)

Nekter og ber om unnskyldning

Forsinkelse til 10:48 **13.3.2020**





NYPE 2015

THE NEW YORK PRODUCE EXCHANGE FORM

- 8. ...The Captain shall be under the orders and directions of the **Charterers** as regard employment and agency
- 25. ... The **Owner** shall remain responsible for **navigation** of the vessel, acts of pilots and tug boats, insurance, crew and all other similar matters, same as when trading for their own accounts
- **21. Exceptions**
- **The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and navigation, and errors of navigation throughout this Charter Party, always mutually excepted**



KRAVENE

- **Reder/Bortfrakter**

- Kapteinen hadde handlet rett
- Båten var **ikke off-hire**. Den alternative handlingen kunne potensielt skade båt, mannskap og last.
- Kina var episenter for covid19 på tidspunktet og feber var et av tegnene på sykdommen.
- Det forelå ingen deviation eller putting back - bare forsinkelse.

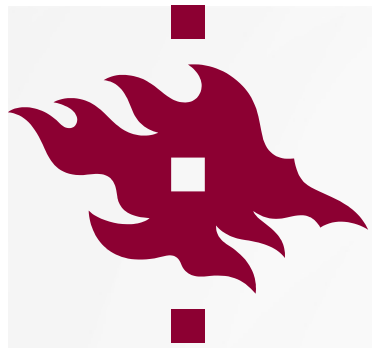
- **Charterer**

- Kapteinen hadde nektet å ta imot losene for å føre skipet til kai. Dette ledet til en "put back" situasjon som rederen har ansvaret for.
- Chartereren hadde ingen forpliktelse til å betale leie for båten i denne perioden da den var **off-hire**



VOLDGIFTSDOMSTOLEN

- Årsaken til konflikten var rederens hårdhendte og kompromissløse håndtering av spørsmålet. Rederen burde ha sjekket dette tidligere og optrådet mer forsiktig. Også losene kunne ha vist mer forståelse, men dette var ikke befrakterens ansvar.
- Voldgiftsdomstolen kom til at rederen, tross redselen for COVID 19, ikke hade rett til å kreve at losene underkastet seg rederens egen testregler.
 - Kontraktsbrudd: 8. ...The Captain shall be under the orders and directions of the **Charterers** as regard employment and agency
 - **COVID** var ikke en FM hendelse
- **Befrakteren kunne kreve erstatning for leie og bunkers under forsinkelsen (33.581,05 US dollar for 9 dager)**



COVID 19 OG FORCE MAJEURE KLAUSULER

- BIMCO FORCE MAJEURE CLAUSE 2022
- This clause addresses force majeure events occurring under contracts used by the shipping industry that affects the performance of the parties.

It is a model clause that should be carefully reviewed by the parties and adapted as required to fit the context of the type of contract it is used in

- <https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/force-majeure-clause-2022>



DEFINISJONER

- (a) **Definitions** - “Force Majeure” means the occurrence of an event or circumstance as defined in (b) below (“Force Majeure Event”) that prevents a party from performing one or more of its contractual obligations (“the Affected Party”), provided that such party proves:
 - (i) the existence of a **Force Majeure Event**; (ink. pandemic)
 - (ii) that such Force Majeure Event is **beyond its reasonable control**;
 - (iii) that the Force Majeure Event could **not reasonably have been foreseen** at the time of the conclusion of the contract; and
 - (iv) that the effects of the Force Majeure Event could **not reasonably have been avoided or overcome** by the Affected Party.



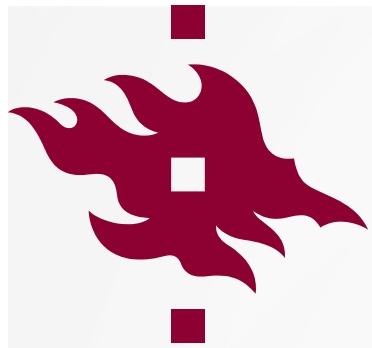
FORCE MAJEURE - RETTSVIRKNING

- (e) **Non-liability for breach** – Neither party shall be considered in breach of contract nor liable in damages for delay in or for non-performance of one or more of its contractual obligations to the extent caused by the Force Majeure from the time a valid notice under subclause (c)(i) was given.



HEVNING

- (g) **Termination** – Where a valid notice has been given in accordance with subclause (c)(i) above and the Force Majeure has the effect of:
 - (i) rendering the performance of the contract **impossible, illegal or radically different** from what was intended at the time of the conclusion of the contract; **or**
 - (ii) **substantially affecting the performance** of the contract as a whole and the duration of the Force Majeure exceeds [.....] days from the time notice was given (if this space is left blank then this subclause (g)(ii) shall not apply),



OM DET ER GODS OMBORD

- (i) While a vessel has cargo on board **neither party shall have the right to terminate the contract** under subclause (g).
- **the Affected Party may request the other party to accept one or more of the following options**
 - (1) discharge of the cargo at the load port or at the **nearest safe port or place**;
 - (2) completion of loading at an **alternative berth** or load port within the terms of the contract;
 - (3) proceeding part loaded to the discharge port; and/or
 - (4) nominating an alternative safe port which lies within the contract range for discharge.



BIMCO

- *Ved force majeure* unngår partene erstatningsansvar tross kontraktsbrudd
- Kontrakten kan sies opp om **vilkårene for frustration** foreligger, eller **partene har avtalt en særlig frist**
- **Knyter an til engelsk rett**
- **Særlige regler når båten har gods ombord. Da gjelder ikke force majeure, partene må bli enige om trygg lossehavn.**



TAKK FOR OPPMERKSOMHETEN

Velkommen til Helsingfors 24-25 August 2022

IMPLEMENTING "FIT FOR 55" - THE RIGHT LOGISTICS AND TRANSPORT INFRASTRUCTURE FOR A NET ZERO- CARBON FUTURE - THE NORDICS AT THE HELM?

<https://www2.helsinki.fi/en/node/112819>

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