

REVIEW OF CONTRACT CLAUSES TO ADDRESS POST-PANDEMIC CHALLENGES

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Master's Degree in Contract Law & Dispute Resolution

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DECLARATION

I, Weganthalawattegedara Leelasiri Upali, declare that this work submitted for assessment is my own and is expressed in my own words. This dissertation does not incorporate any acknowledgement of any material previously submitted for any Degree or Diploma in any other University or Institute of higher learning, and to the best of my knowledge. I do believe that it does not contain any material previously published or written by another person except where the acknowledgement is made in the text. Any uses made within it of the works of other authors in any form (E.g., ideas, equations, figures, text, tables, programmes) are properly acknowledged at the point of their use. A full list of the references employed has been included.

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Date:

The above candidate has carried out research for the Master's in Contract Law & Dispute Resolution under my supervision. I do confirm hereby that the declaration made above by the student is true and correct.

Name of Supervisor:

Signature:

Especially dedicated to my late wife:

Mrs. Wasana Samarasekera.

ACKNOWLEDGEMENT

Firstly, I would like to express my sincere thanks to my course leader, Ch. QS. Vijitha Disaratne, as well as for the knowledge, assistance, encouragement, guidance, and suggestions provided to initiate and complete the research.

Further, I do convey sincere thanks to the supervisor, Dr. K.A.K.Devappriya, for all the supervision, knowledge, proposals, guidance, and advice extended towards the successful completion of the report from its inception.

The study compiles a lot of data collections, discussions, interviews, visits, and arguments as it tries to extract the best information for a successful completion of the research. In that process, Mr. Chandima Dharmarathne provided many texts and references from time to time to write the report on this research. Also, it remembers all other Managers, Engineers, and Quantity Surveyors who spent time with me at discussions, surveys, and case studies.

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To conclude, I should not forget to mention the vendors who became victims of the subjective matter with formidable impact over the pandemic in the global arena, as they silently persuaded me to conduct this research to identify the avenues to overcome the challenges related to the post-pandemic. In fact, though we have encountered a lot of plagues in history, the COVID-19 virus changed the whole mindset of living beings to craft & draft avenues to defend losses of lives in addition to all industries & trades engaged accordingly.

ABSTRACT

Since the evolution of the Universe from a billion years ago to date, the developing World's history has witnessed several crucial pandemics emerging either in individual continents or globally from time to time. Out of all occasions, a few but deadly plagues have caused socio-economic transitions from good phases to troublesome ones, with their impact on living beings being drastic. Such epidemics occurred within a particular timeline and ended with the HIV epidemic. In addition, the present pandemic, too, the so-called COVID-19 outbreak, did not come to an end but compels the entire globe to find avenues to live together or cooperate with it rather than running away to hide or outfighting. Connolly (2021) predicts 3% to 7% probability for a new pandemic to happen, for which the general population has less or no immunity, causing the disease to spread globally. Simply, it is to noting that from the year 2020 to date, there are still a lot of states at present living together with SARS-CoV-2 (Corona) virus embracing it as normalcy in their day-to-day existence as a nation competing with allied influence rising. Nevertheless, no surety can be expressed that there will not arise any more epidemics or pandemics in the future, as a new or variant similar to those experienced, infectious or fatal with high-end impact compared to the present. As a result of it, the Construction industry, like all other commerce, has been compelled to draft its own strategies to encounter the challenges identified on pandemic grounds as a force majeure event to keep its goals alive. Therefore, the industry experts have become very inquisitive, vigilant & intense to redraft standards, reform common laws, re-texting regulations in finding remedies to form avenues to secure in achieving the predetermined construction objectives; Time, Cost & Quality governed by construction Contracts against damages, disruptions & losses.

Standard construction contracts are to serve the parties impartially when and how the economic and environmental phenomena under Force Majeure are to be handled in favor of the party at default on justifiable grounds. When it happens, delay & disruption over the work progress due to enormous reasons beyond any party's control, the consequences for the end delivery will be compensated in time as per Contract terms. Usually, an extended time period endurable to the responsible party is conventionally granted at zero liability for monies over it. It is a covenant by agreement to waive off the financial liabilities to one party by the default against late completion, with valid proof of the case, subject to Force Majeure. Exercising sole discretion to reject the time extension by the employer himself only implies that the resultant delay in completion under the pandemic is not identified as "concurrent" though either a unique or all parties are being "concurrent victims" within the same time span of that particular force majeure event.

Hence, the core issue in this research is: *"Can one party claim any delay & disruptions when both parties are truly harmonized in a pandemic at the same time, which is actively in force when the Contract is awarded? As in most recent Contracts signed during the pandemic, the contractors have been compelled to lose their contractual entitlements over force majeure events, especially in pandemics, at the cost of winning the bid with injustice buttered on amended specification clauses. The amended clauses restrict the Contractor from claiming losses already incurred due to pandemic grounds, simply stating that "the bidder should be aware of all disruptions & constraints due to pandemics by the time it signed" as the Contract is offered in a period where the pandemic is still in*

force, which is beyond the Contractor's control. Therefore, it is totally injustice to intimidate the Contractor since both parties are synchronized in a force majeure event that is equally affected.

Therefore, this research aims to find the avenues to defend the Contractor's interests in Contracts signed during the pandemic, as a force majeure event is in force. The aims & objectives are addressed from the point of Contractor's view as he is always subjected to losses & damages due to reasons beyond his control, unjustifiably.

TABLE OF CONTENTS

Declaration	Page i
Dedication	Page ii
Acknowledgements.....	Page iii
Abstract	Page iv
Table of Contents	Page vi
List of Figures	Page ix
List of Tables	Page x
List of Abbreviations	Page xi
List of Appendices	Page xii

1. Introduction

1.1	Research Background	Page 01
1.2	Problem Statement	Page 02
1.3	Aim and Objectives of the Research Study.....	Page 03
	1.3.1 Aim of the Research Study	Page 03
	1.3.2 Objectives of the Research Study.....	Page 03
1.4	Research Methodology.....	Page 03
1.5	Scope of Study.....	Page 04

2. Literature Review

2.1	General View over Contract Management.....	Page 05
2.2	The Challenges of a Construction Contract in Pandemic.....	Page 05
2.3	Construction Contracts Phases & correlations to Pandemic.	Page 08
	2.3.1 Pre-contract Award Stage.....	Page 09
	2.3.1.1 Design Information	Page 09
	2.3.1.2 Site Access	Page 11
	2.3.1.3 Project Tendering (Bidding Procurement).	Page 12
	2.3.1.4 Work program	Page 14

2.3.2	Commencement of Work Stage and Construction..	Page 16
2.3.2.1	Site Possession, Default on Notice, Price Fluctuation	Page 16
2.3.2.2	Delay & Extension of Time, Discrepancy and Inconsistency of Information	Page 18
2.3.2.3	Interference, Problem by Sub Contractors.	Page 20
2.3.2.4	Interim Payment & Period of honoring Certificate	Page 22
2.3.2.5	Postponement or Suspension of Site, Practical Completion	Page 23
2.3.2.6	Quality of Workmanship, Standard & Quality Materials, Supply difficulties	Page 24
2.3.3	Post-Construction Stage.....	Page 25
2.3.3.1	Defects, Defect Liability Period, Final Account And Certificates	Page 25
2.3.3.2	Determination, Liquidated Damages, & Dispute Resolution	Page 27
2.3.3.3	Outstanding Claims, Retention Money & Unresolved Variations	Page 28
2.4	Review of Standards Forms of Contracts against Pandemic	
2.4.1	Correlated Contractual Clauses against unfair terms in Pandemic Challenges.....	Page 29
2.4.1.1	Doctrine of Impracticality.....	Page 30
2.4.1.2	Limitation of Liability.....	Page 31
2.4.1.3	Unfair Terms Act 1977.....	Page 34
2.4.1.4	New Contracts with justifiable amended clause.....	Page 35
2.4.2	Draft Amendments to Rephrase Contract Clauses....	Page 36

3.	Research Methodology	
3.1	Research Approach	Page 37
3.2	Research Strategy	Page 37
3.3	Research Techniques	Page 37
	3.3.1 Data Collection Techniques	Page 37
	3.3.2 Data Analysis Techniques	Page 38
3.4	Research Process.....	Page 39
4.	Analysis of Research Study	
4.1	Introduction.....	Page 40
4.2	Summary of Questionnaire (Numerical Data) & Evaluation Criteria.....	Page 40
4.3	Analysis of Outcome upon Research Objectives	Page 43
	4.3.1 Research Objectives No 01 & 02	Page 43
	4.3.2 Research Objective No 03	Page 43
	4.3.3 Research Objective No 04	Page 46
	4.3.4 Research Objective No 05	Page 53
5.	Conclusions & Recommendations	
5.1	Conclusions.....	Page 54
	5.1.1 Research Objective No 01 & 02	Page 54
	5.1.2 Research Objective No 03	Page 54
	5.1.3 Research Objective No 04	Page 54
	5.1.4 Research Objective No 05	Page 55
5.2	Recommendations.....	Page 55
5.3	Recommendations on further Research Topics	Page 56
	References.....	Page 57
	Appendices	
	Appendix A: Sample Questionnaire.....	Page 62
	Appendix B: Marking Scheme for Analysis of Research Survey.	Page 69

LIST OF FIGURES

Figure	Description
Figure 2.1	- Contractual Issues in three working stages
Figure 2.2	- Disruption & Response from E & C Bidders
Figure 3.1	- Research Process
Figure 4.1	- Academic Background of Research Survey Participants
Figure 4.2	- Overall Experience of Participants in the Construction Industry
Figure 4.3	- Hand in Experience of Participants in Contract Administration
Figure 4.4	- Doctrine of Impracticability (Q17. (a))
Figure 4.5	- LOL- Indemnity Provisions (Q17.(b).(i))
Figure 4.6	- LOL- Wavier of Consequential Damages (Q17.(b).(ii))
Figure 4.7	- LOL- Termination on Convenience (Q17.(b).(iii))
Figure 4.8	- Unfair Terms (Q17.(c))
Figure 4.9	- New Contracts with unbiased Pandemic clauses (Q17.(d))
Figure 4.10	- Employer bears more Losses (Q18.(i))
Figure 4.11	- Ordinarily Unpredictable as actually seen (Q18.(ii))
Figure 4.12	- Not expected as occur regularly to others (Q18.(iii))
Figure 4.13	- Collateral Losses: expenses incurred or gains or losses (Q18.(iv))
Figure 4.14	- Anticipated profits provable as certain (Q18.(v))
Figure 4.15	- Damages incurred by Employer (Q19.(i))
Figure 4.16	- Damages incurred by Contractor (Q19.(ii))
Figure 4.17	- Mutual Wavier of Consequential Damages (Q19.(iii))
Figure 4.18	- Release from Performance under Law (Q20. (i))
Figure 4.19	- Optional Termination (SC 18.5) (Q20. (ii))
Figure 4.20	- Periodical Risk Assessment & Develop Contingency (Q20. (iii))
Figure 4.21	- Cost plus Profit type Contract Procurement (Q20. (iv))
Figure 4.22	- Breaks up the Contract in stages (Q20. (v))
Figure 4.23	- Summary of Contractual Strategies mostly picked

LIST O F TABLES

Table	Description
Table 1.1	- Summary of Methodology- Objectives alignment
Table 2.1	- Pre-Contract Stage: Design Information
Table 2.2	- Pre-Contract Stage: Site Access
Table 2.3	- Project Tendering (Bidding & Procurement)
Table 2.4	- Work Program
Table 2.5	- Accessing Site, Default on Notice, and Fluctuation of Price
Table 2.6	- Delay & Extension of Time, Discrepancy & Inconsistency of information
Table 2.7	-Interference/problem by subcontractors, suppliers & professionals
Table 2.8	- Interim Payments & Periods of honoring Certificates
Table 2.9	- Postponement of Site or Suspension, Practical Completion
Table 2.10	- Quality of Workmanship, Standard & Quality of Material, Supply Difficulties
Table 2.11	- Defects, Defects Liability Period, Final Accounts & Certificate
Table 2.12	- Determination, Liquidated Damages & Dispute Resolution
Table 2.13	- Outstanding Claims, Retention Money & Unresolved Variations
Table 2.14	- Sub Clauses texted for Employer's Claims
Table 2.15	- Proposed Re-Phrase of Appendix to Contract
Table 4.1	- Summary of Research Survey
Table 4.2	- Level of Contribution to Wave off Consequential Damages
Table 4.3	- Tendency level on applicable strategies

LIST OF ABBREVIATIONS

Abbreviation	Description
CD	- Concurrent Delay
CCD	- Contractor Caused Delay
CP	- Critical Path
CPM	- Critical Path Method
DB	- Design & Built
DD	- Delay Damages
DLP	- Defect Liability Period
DNP	- Defects Notification Period
E & C	- Engineering & Construction
EOT	- Extension of Time
FPC	- Final Payment Certificate
HSE	- Health & Safety Engineering
LAD	- Liquidated & Ascertained Damages
L & D	- Losses and Damages
LOL	- Limitation of Liabilities
OCD	- Owner Caused Delay
OCN	- Owner, Contractor, Third Party
PC	- Prolongation Cost
PPP	- Public-Private Partnership
RIBA	- The Royal Institute of British Architects
SC	- Sub Clause
SLR	- Systematic Literature Review
SOC	- Statement of Completion
UT	- Unfair Terms
WFH	- Work from Home
WUC	- Works Under Contract

LIST OF APPENDICES

Appendix A: Sample Questionnaire

Appendix B: Marking Scheme for Analysis of Research Survey