

[May 2005]

Questionnaire: Unexpected Circumstances

(Hard Core Cases marked by *)

I. Equivalence of exchange is distorted

1. (*1) *AC (~Canal de Craponne: Long-term contract, “regular” inflation/price-increase)*

Early in the 20th century, the farmers *A* and *B* enter into a contract under which *A* promises to build and maintain an irrigation channel; *B* is entitled to draw off water at a fixed price. The contract is concluded for an unlimited period of time. Almost 100 years later, *A*'s successors ask for an increase in the price arguing that due to inflation and a rise in the cost of maintenance as well as labour the agreed price has become completely inadequate.

Is the claim of *A*'s successors justified? Are they, alternatively, entitled to terminate the contract?

2. *FM (Hardship due to extraordinary inflation; hardship resulting from a foreign currency agreement)*

(Extraordinary inflation) *A* receives a loan from the *B*-Bank. Under the agreement, the interest rate is fixed at 10 percent for five years. In the last 20 years before the agreement, the rate of inflation had been relatively stable within a range of one to six percent. In the third year after the conclusion of the agreement, the economic situation begins to destabilize and inflation rises quickly to 50 percent.

B-Bank asks for renegotiation and adjustment of the contract.

(Variation: foreign currency agreement) The loan agreement between *A* and the *B*-Bank provides for repayment and interest in a foreign currency. In the last 10 years before the agreement, the relevant exchange rate had been relatively stable within a range of 20 percent. Subsequently, the national currency devaluates by 80 percent as compared to the foreign currency.

A asks for renegotiation and adjustment of the contract.

3. *HCG (Government intervention; post-contractual imposition of a tax)*

A and *B* enter into a contract under which *A* promises to supply 120,000 liters of industrial spirit to *B*. Subsequently, a statute is enacted by which an alcohol tax is imposed on the sale of industrial spirit. The tax statute provides that the seller has to pay the tax. The tax is so high that it even exceeds the price that *A* and *B* have agreed upon.

Is *A* entitled to recover compensation for the additional costs or to cancel the contract?

4. *LV (Unexpected benefit)*

B leases business premises from *A* for a fixed period of 15 years. Shortly after conclusion of the contract, the character of the area changes strongly and unexpectedly: A military airport located nearby is shut down and an enormous amount of public funds is invested in the area (infrastructure etc.). As a consequence, *B*'s business soars and his profits are 500% of what he could reasonably have expected. By the same token, the rental value of comparable business premises in the same area rises to 500% of the amount *A* and *B* have agreed upon. *A* claims that the leasing price is to be adjusted accordingly or, alternatively, that the agreement is to be terminated.

Is A's claim justified?

II. Recipient's use of contractual goods or services etc. is substantially affected

5. (*2) *LV (Renovation of cellar becomes useless due to destruction of the rest of the building)*
A agrees to refurbish B's cellar into a wine-cellar. The work is scheduled to start one month after the agreement. Before the work has started, B's house is completely destroyed during a heavy summer storm. However the cellar of the house remains fully intact. B immediately informs A and asks him not to perform. A insists on the agreement. He argues that B's cellar is still intact, that he has reserved two weeks to perform the work and that he has already purchased the necessary materials.

Is B obliged to pay the contract price or, alternatively, to compensate A for his losses?

6. *HCG (Government intervention makes use of rented gas station impossible)*
A leases a petrol station from B. Due to outbreak of war, the government confiscates all petrol in that area and it is impossible for A to obtain petrol from any source. As a result, A can make no use of the petrol station. He stops the payment on the lease.

Is A's refusal to pay the rent justified?

7. *PM (Hotel reservation: individual purpose of the visit frustrated; general safety endangered; coronation case)*

A booked a room at B's hotel, but:

- a) The exhibition he wants to visit is cancelled at the very last moment.
- b) A terrorist movement declares that it is to launch a campaign against tourists in that town.
- c) An unforeseeable strike of airport personnel prevents A from travelling at the specified time to the city where the hotel is located.
- d) The coronation procession scheduled at the respective date is cancelled. The room has a view to the street, on which the procession was supposed to take place. Due to the extraordinary event, the agreed price is ten times higher than the regular price.

Is A entitled to cancel the reservation?

8. *MP (Shop rental: unexpected business environment in shopping center)*

A is the owner of a bookshop. He contracts with B for the rent of business accommodation in B's shopping center. The fixed period of the lease is 5 years. The shopping center has just been built and a large part of the accommodation is still unoccupied. Both parties expect at the time of contracting that a variety of shops (hotel and catering trade, retail sale) will settle down. One year later almost all accommodation is rented, but $\frac{3}{4}$ of the shopping center consists of restaurants and cafes. For that reason most potential customers visit the shopping center after A closes the doors of his bookshop.

Is A entitled to cancel or to renegotiate the contract?

9. *LV (Long-term supply of beer; beer sales are far below expectations)*

A is the landlord of a bar. He enters into an exclusive supply agreement with the beer brewery B for a fixed period of 15 years. Pursuant to the contract, A is obliged to accept and pay a specific quantity of beer on a monthly basis, while he is allowed use technical equipment and

furnishings owned by *B*. Consumption of beer, however, remains far below expectations. The bar is well attended but the “*B*-beer” is unpopular amongst customers of *A*’s bar. *A* requests adjustment or termination of the agreement.

Is *A*’s claim justified?

10. *HCG (Export ban)*

Firm *A* purchases technical equipment which is to be produced by firm *B*. The parties know that firm *A* plans to resell the equipment to Iraq. At the time of contracting, exports to Iraq are illegal but the parties expect that the status quo will change until the time of delivery. The parties are aware that the equipment can only be sold to Iraq at a reasonable price. When firm *B* has completed production and offers delivery, exports to Iraq are still illegal and no change is in sight. Firm *A* refuses acceptance and payment.

Is *A*’s refusal of acceptance and payment justified?

III. Frustration of specified purposes (other than I or II)

11. (*3) *PM (Use of real estate by transferee does not comply with the expectations of the transferor)*

A sells his family house to *B* at a price far below its market value. Both parties assume that *B* would dedicate the house to cultural purposes only. However, this assumption was not inserted into the contract as an explicit condition. *B* changes his mind and gives it to one of his daughters instead.

Is *A* entitled to ask for the difference between the agreed price and the market value or, alternatively, to reclaim the house?

12. *HCG (equitable compensation if divorce laws lack a basis for compensation)*

Before *A* and *B* get married, they enter into a prenuptial agreement, in which they agree on separation of property. During the marriage *A* buys a house and *A* and *B* use the house as their family home. The price for the house is 500 000 Euro. *A* is the sole proprietor of the house, but *B* has contributed 100 000 Euro to the purchase-price. In addition, *B* does extensive renovation work before they move in. The renovation would have cost 50 000 Euro, if professional services had been employed. After *A* and *B* have lived together in the house for one year, they separate and get divorced. Divorce law does not provide for a basis of compensation.

Is *B* entitled to compensation for his contributions to the family home?

IV. Mutual mistake

13. (*4) *HCG (Common mistake concerning the market value of shares)*

A holds shares of the *X*-corporation. He agrees to sell the shares to *B* at the current price as listed by the stock-exchange on the day of contracting. In the written contract, the parties set a price of 10 Euro per share. However, the actual price per share on the day of contracting is 12 Euro. The internet service, from which the parties derived the price, had displayed an incorrect number. When *A* finds out about the correct price, he demands that the purchase price is to be increased to 12 Euro.

Can *A* ask for a price of 12 Euro per share? Can he, alternatively, cancel the contract?

V. Miscellaneous issues

14. (*5) *PM (Production of contractual goods is inhibited by strike/restriction of electricity supply)*

A agrees to deliver some goods to B at a certain date, but:

- a) The workers of a subcontractor go on strike.
- b) Due to problems with the State energy production and distribution system the Government decides to cut the electricity supply during night making it impossible to work at night.

As a result, A cannot deliver the goods for an uncertain period of time.

Is B entitled to cancel the contract and to ask for damages?

15. *AV (Disclaimer concerning the rights arising from unexpected circumstances; other clauses on unexpected circumstances)*

The construction company A agrees to build a double-floor building on B's ground for the price of 2.000.000 €. In the contract the parties stipulate a disclaimer which excludes "all the rights of both parties arising from unexpected circumstances". Two weeks after the construction work has begun a granite rock, which could not have been detected by the parties before conclusion of the contract, is revealed on B's ground. As a result the costs of the construction increase by 300 %.

Can A ask for renegotiation or can he cancel the contract in spite of the disclaimer?

Has any other contractual stipulation addressing the issue of unexpected circumstances played a major role in the case material or in scholarly discussion?