AILET

Know All About Vis Major (Act of God)

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Vis Major. If you have been keeping up with the recent news relating to Cyclones Tauktae or Yaas, you might have an idea what this means in simpler terms. Or if you are a movie buff and have watched the movies "The Man Who Sued God" or "Oh My God!" (the Bollywood remake of the same movie), you must have some understanding of what this maxim is.

Vis Major is a phrase derived from *Latin,* which means **"Superior force" or "The Act of God."** This is recognized as a defence under the Law of Torts.

It means that if an accident is caused **due to natural forces, directly and exclusively without any human intervention involved in it.** However, to claim *Vis Major* as a defence, the following elements must be fulfilled:

Working of natural forces + Extraordinary occurrence

Only those acts, where there is an involvement of:

1. i) natural forces, ii) no human intervention and also, iii) no reasonable grounds for the anticipation of such occurrence, are called as the Acts of God.

Let us take a closer look as to what these elements mean.

1. Working of natural forces:

Only those acts where there is an involvement of natural forces and no human intervention, can be called as the Acts of God. These acts are considered to be inevitable in nature and something that is and unforeseeable by human beings. Things which can neither be predicted and are unlikely to be controlled are called **unforeseeable.**

For instance, an earthquake or a dash of lightning are naturally occurring events and beyond the control of human beings. The element of suddenness could be one important aspect of it. An interesting example of the same could also be the Covid-19 pandemic which rendered various contracts around the world unenforceable due to the 'Act of God', i.e., an unforeseeable, naturally occurring situation.

A leading case on the same is **Blyth v. Birmingham Water Works Co.** The defendant in this case had constructed very strong water pipes which could brave severe frost in winter. However, the pipes in the plaintiff's property burst causing damage due to an unprecedented frost season. In this situation, the defendants were absolved of any liability since the extreme weather was attributable to an "Act of God".

Some more common examples are earthquakes, tsunamis, floods, drought, cyclones etc.

Let us take a practical example:

Two parties enter into a contract for the supply of cotton in another country via ship. However, the seller of the contract could not deliver the goods due to a tsunami in the said region. Can the buyer claim damages from the seller in this case? No, he can't.

Why? Because the reason for the failure on the part of the seller to deliver goods to the buyer was not because of negligence on his part but because of the tsunami which is considered as a natural disaster. Therefore, the defendant (seller) can take the defence of the Act of God*Vis Major* in order to evade liability.

If seen from the other side, if the cotton was stolen by a gang of thieves from the defendant, the defence will fail. Why? Because in this case, though the event was uncontrollable by the defendant, it was not an act caused by natural forces. **(NOTE: This does not mean that some other defence will not be successful – only this particular one won't be.)**

1. Extraordinary Occurrence:

The act need not be necessarily unique, it should simply be an extraordinary act and in a nature, where it is beyond the **reasonable** capacity of a human being to anticipate such natural occurrences.

Now the question arises: what is reasonable?

This is a very important and perhaps the most debated term in law. However, the common understanding of the term **"reasonable"** under the Black's Law dictionary is "ordinary or usual."

A **reasonable person** is an ordinary person who can give a reasoned judgement on a particular aspect and not someone of an extraordinary nature. Therefore, you, me and everyone around us are considered to be of a reasonable nature.

The word ‘reasonable’ used in this context is: if a particular natural event was going to take place, as a reasonable man would you have anticipated such an event to occur?

Let us consider a situation to understand the concept better:

Consider the previous example of the cotton supply, with a little twist in it. Two parties enter into a contract for the supply of cotton in another country via ship. However, the day when the contract was signed, the buyer listening to the radio heard that there might be a Tsunami in the coming days. Eventually, the seller could not deliver the goods due to the Tsunami in the said region as the consignment was lost.

Can the buyer claim damages here? No. In this case, the buyer cannot claim damages from the seller as he had already **foreseen** such a situation coming his way. The anticipation here is **reasonable.**

Or

In a similar manner, if a particular area where the cotton is shipped, is prone to Tsunami or it was anticipated that in the near days there was a possibility for the occurrence of the same. Then, this would fall under the reasonable capacity of the defendant to anticipate such occurrence, thereby not allowing him to claim this defence in order to evade his liability.

Therefore, one can see that an Act of God or *Vis Major* is a naturally occurring incident which is beyond the control of a human. Further, the nature of the occurrence should be such that it could not have been reasonably foreseen. For instance, if you have prior knowledge (like in the case of the recent cyclones that hit the eastern and western coasts of India) and take no steps to protect the consideration of the contract which eventually leads to a loss, you cannot claim *Vis Major* as a defence.

Here are some sample questions on Vis Major/Act of God which have been previously asked in CLAT:

Sample question:

1. Principle: An Act of God is a valid defence in action for torts. The essential elements required to plead this defence are that the act must have been caused by the working of the natural forces and the occurrence must have been an extraordinary one. Such occurrence could not have been foreseeable and reasonably guarded against.

Facts: One day, during the monsoon season, there was heavy rainfall. According to the MET department, it was about 3 inches. The wall of the government building collapsed causing the death of two children who were playing nearby. The parents of the children sued the government which pleaded the defence of the Act of God. The government could:

1. 1. Take the defence of the act of god as rainfall is a natural phenomenon.
   2. Take the defence of the act of god as heavy rain could not have been anticipated and reasonably guarded against.
   3. Both a. and b
   4. None

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