

UNIVERSITI TEKNOLOGI MARA

**A LEGAL ANALYSIS AND
IMPROVEMENTS OF *FORCE
MAJÉURE* CLAUSE IN PACKAGE
HOLIDAY CONTRACTS: BETWEEN
TRAVEL AGENTS AND
HOLIDAYMAKERS**

AHMAD AFIQ BIN HASAN

LL.M

March 2017

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Thesis submitted in fulfilment
of the requirements for the degree of
Master of Laws

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CONFIRMATION BY PANEL OF EXAMINERS

I certify that a Panel of Examiners has met on 21st February 2017 to conduct the final examination of Ahmad Afiq Bin Hasan on his Master of Laws thesis entitled “A Legal Analysis and Improvements of *Force Majéure* Clause in Package Holiday Contracts: Between Travel Agents and Holidaymakers” in accordance with Universiti Teknologi MARA Act 1976 (Akta 173). The Panel of Examiners recommends that the student be awarded the relevant degree. The panel of Examiners was as follows:

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AUTHOR'S DECLARATION

I declare that the work in this thesis was carried out in accordance with the regulations of Universiti Teknologi MARA. It is original and is the results of my own work, unless otherwise indicated or acknowledged as referenced work. This thesis has not been submitted to any other academic institution or non-academic institution for any degree or qualification.

I, hereby, acknowledge that I have been supplied with the Academic Rules and Regulations for Post Graduate, Universiti Teknologi MARA, regulating the conduct of my study and research.

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ABSTRACT

Package holiday contract is projected into an uncertain future where even the best laid plans can go awry. Given the intangible nature of package holiday, and its complexity, reliance on the English doctrine of frustration of contract, in some circumstances, could be impracticable and inequitable to both outbound and inbound holidaymakers and travel agents. To secure the economic interest of both parties, industry practice is to pray in aid of the flexibility accorded by *force majeure* clause in the event of inevitable cancellation of package holiday and variation of terms in package holiday contracts. However, regulated *force majeure* clause in standard form outbound holiday contracts resulted to unfair circumstances which must be faced by both the outbound holidaymakers and travel agents in many aspects. On the other hand, inbound travel agents freely construct *force majeure* clause to be too broad to cover many types of events and the resulting consequences of the events are, sometimes, unfair to holidaymakers. By employing qualitative research method, the research analysed the shortcomings of the out-dated Tourism Industry (Tour Operating Business and Travel Agency Business) Regulations 1992, the Consumer Protection Act 1999, the unregulated inbound practices of *force majeure* clause and the proactive approaches adopted by the European Union member states, the United States, the United Kingdom, Australia, Canada, New Zealand and Hong Kong. The primary objective of the research is to propose an improved framework on the application of *force majeure* clause in holiday package contracts in view of the legal complications of the regulated outbound package holiday contracts and the unregulated inbound package holiday contracts. Based on the theory of good faith, the proposed framework for *force majeure* clause provides greater consumer protection of holidaymakers while securing sustainable travel agency business in Malaysia.