



## Beyond Force Majeure: Rethinking Contractual Risk through the Lens of Shariah and Common Law Doctrines

Seema Gul<sup>1</sup>, Riaz Ahmad<sup>2</sup> & Faisal Shahzad Khan<sup>3</sup>

<sup>1</sup>Lecturer, Department of Law University of Sialkot Pakistan, Email: [gulseema03@gmail.com](mailto:gulseema03@gmail.com)

<sup>2</sup>Director (Law), Election Commission of Pakistan, Email: [lawofficerkpk@gmail.com](mailto:lawofficerkpk@gmail.com)

<sup>3</sup>Assistant Professor, Department of Shariah and Law Islamia College Peshawar, Email: [faisal.shahzad@icp.edu.pk](mailto:faisal.shahzad@icp.edu.pk)

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#### Corresponding Author:

Seema Gul

Email:

[gulseema03@gmail.com](mailto:gulseema03@gmail.com)

### ABSTRACT

This article explores the limitations of the traditional force majeure doctrine in managing contractual risks and proposes a comprehensive framework that integrates principles from both Shariah and common law. While force majeure clauses in common law primarily serve to excuse non-performance due to unforeseen events, their rigid and narrow application often leaves parties exposed to inequities and unresolved risks. Shariah law, by contrast, emphasizes ethical considerations, risk-sharing, and judicial flexibility, focusing on public interest (maslahah) and avoidance of harm (darar). This study adopts a comparative legal research design to analyze how each legal system conceptualizes and addresses contractual risks beyond force majeure, including doctrines such as frustration, impossibility, and istihalah (transformation). The findings reveal that Shariah's adaptable and equitable approach complements the common law's strict contractual interpretations, offering valuable insights for hybrid and transnational contracts. By synthesizing these doctrines, the article advocates for a more flexible, fair, and resilient contractual framework that transcends mere excuse and promotes cooperation, risk-sharing, and contract adaptation in complex commercial environments. Contractual risk allocation traditionally relies on doctrines like force majeure to address unforeseen events that excuse performance. However, the growing integration of Islamic finance and common law-based commercial transactions invites a comparative exploration of how Shariah and common law conceptualize and manage contractual risks beyond force majeure. This article critically examines the similarities and divergences between the two legal traditions, explores complementary doctrines such as impossibility, frustration, and istihalah (transformation), and proposes a holistic framework to enhance contractual risk management in transnational contracts. The study underscores the potential for cross-jurisdictional enrichment, especially in contexts involving Islamic finance, hybrid contracts, and multicultural business environments.



## **1. Introduction**

In today's dynamic global economy, contracts frequently encounter unforeseen challenges that strain the ability of parties to fulfill their obligations. Traditionally, the doctrine of force majeure has been employed within common law systems as a key mechanism to excuse non-performance caused by extraordinary events beyond the parties' control. However, the rigidity and narrow scope of force majeure clauses often result in unresolved disputes and inequitable outcomes, particularly in complex, cross-border transactions where cultural and legal plurality prevails. Simultaneously, the rise of Islamic finance and the increasing intersection of Shariah principles with common law frameworks present an opportunity to rethink contractual risk management beyond conventional doctrines. Shariah law, rooted in ethical imperatives and social justice, approaches risk through doctrines emphasizing risk sharing, contract adaptation, and public welfare (*maslahah*) (Alrdaan, 2016). This contrast raises important questions about how contractual risk can be more equitably and flexibly managed by integrating elements from both legal traditions. This article aims to address the following research questions: How do Shariah and common law doctrines conceptualize and manage contractual risk beyond force majeure? What complementarities exist between these systems that can enhance contractual resilience? How can contractual frameworks incorporate ethical and adaptive mechanisms to better serve transnational commerce? Using a comparative legal analysis, the study examines doctrinal sources, case law, and contract practices across both systems. The key findings reveal that Shariah's emphasis on judicial flexibility and risk-sharing complements the common law's structured, clause-based approach, offering a more holistic risk management paradigm. The article proceeds as follows: Section one outlines the common law's force majeure doctrine and its limitations; Section two explores key Shariah principles related to contractual risk; Section three provides a comparative analysis; Section four proposes an integrated framework for risk management; and Section five illustrates applications through case studies, concluding with reflections on practical implications and future research.

The doctrine of force majeure serves as a fundamental mechanism in common law and civil law jurisdictions to address unforeseeable and uncontrollable events that hinder contractual performance. Nonetheless, with the expansion of Islamic finance and increased cross-border trade, there is a compelling need to rethink contractual risk management through the dual lenses of Shariah and common law principles. While force majeure focuses primarily on excusing non-performance, Shariah introduces broader ethical, contractual, and public interest considerations that influence risk allocation and contract sustainability. This article explores the doctrinal bases and practical applications of risk management beyond traditional force majeure clauses, engaging critically with Shariah concepts such as *maslahah* (public interest), *gharar* (excessive uncertainty), and *istihalah* (transformation) alongside common law doctrines of impossibility, frustration, and mistake. By doing so, it aims to offer a nuanced framework that transcends mere contractual excuse, fostering resilient and equitable contractual relationships.

## **2. Research Methodology**

This study employs a comparative doctrinal methodology to investigate how contractual risk is conceptualized and addressed within both common law and Shariah legal traditions. The research focuses on the analysis of primary legal sources, including statutory provisions and judicial decisions from common law jurisdictions, alongside classical and contemporary Islamic jurisprudential texts derived from the Quran, Hadith, and scholarly interpretations within major Sunni schools of thought. Key Shariah concepts such as *gharar* (uncertainty), *maslahah* (public

interest), *darar* (harm), and *istihalah* (transformation) are explored to understand their legal and ethical implications in contractual settings. The rationale for this approach lies in its capacity to critically evaluate normative frameworks and identify points of convergence and divergence in the treatment of force majeure, risk-sharing, and contractual flexibility. Secondary sources—including legal commentaries, academic journals, and comparative law literature—supplement the analysis, providing theoretical depth and practical context. By applying an interdisciplinary and cross-jurisdictional lens, the research aims to propose an integrated model of risk management that harmonizes the procedural certainty of common law with the equitable and ethical flexibility of Shariah. This methodology ensures both conceptual clarity and practical relevance, especially for practitioners, policymakers, and scholars engaged in transnational commercial transactions and Islamic finance.

### **3. Force Majeure in Common Law: Scope and Limitations**

#### **3.1 Definition and Purpose**

The doctrine of force majeure originates from civil law traditions but has been widely adopted and adapted in common law jurisdictions primarily through express contractual clauses. Broadly defined, force majeure refers to extraordinary, unforeseen events or circumstances beyond the control of the contracting parties, which prevent or significantly hinder the performance of contractual obligations. Such events typically include natural disasters (e.g., earthquakes, floods), wars, strikes, pandemics, or governmental actions like embargoes and regulatory restrictions. The purpose of the force majeure doctrine is to allocate risk and provide relief to parties who cannot fulfill their contractual duties due to causes that are both unforeseeable and unavoidable (Salman et al., 2025). It serves as a legal mechanism to excuse or suspend performance without holding the affected party liable for breach, thus preserving the contractual relationship or allowing its termination on equitable grounds. In essence, force majeure mitigates the harsh consequences of strict contractual enforcement under circumstances where performance has become objectively impossible or impracticable. However, the doctrine's application in common law is largely contract-dependent, requiring that force majeure clauses be clearly drafted and narrowly construed. Courts typically demand proof that the event was external, unforeseeable at the time of contract formation, and directly caused non-performance. Importantly, force majeure does not generally encompass mere economic hardship, financial inability, or changes in market conditions, limiting its scope (Guo et al., 2024).

The limitations inherent in the traditional force majeure doctrine—particularly its rigidity, strict interpretation, and lack of provision for contract adaptation or risk sharing—have prompted renewed interest in alternative or supplementary frameworks. In this context, comparative insights from Shariah law, which emphasizes equitable risk distribution and judicial flexibility, offer promising avenues for reimagining contractual risk management beyond the conventional boundaries of force majeure. Force majeure, derived from French civil law, is generally defined as an extraordinary event or circumstance beyond the parties' control that prevents contractual performance. In common law jurisdictions, it is typically governed by express contractual clauses rather than implied law, requiring strict interpretation. Common examples include natural disasters, wars, pandemics, or government actions (Ullah, 2024).

#### **3.2 Legal Effects and Challenges**

The invocation of a force majeure clause typically excuses or suspends contractual performance when extraordinary events beyond the parties' control prevent fulfillment of obligations. When

established, force majeure can relieve the affected party from liability, temporarily suspend duties, or allow contract termination if performance becomes impossible or excessively burdensome. However, its practical application faces significant challenges. In common law, force majeure is a strictly contractual doctrine requiring clear and specific clauses; courts interpret these narrowly, often excluding unforeseen or unprecedented events not expressly mentioned. The burden of proof lies heavily on the invoking party, who must demonstrate the event was unforeseeable, beyond control, directly caused non-performance, and that mitigation efforts were made. Notably, economic hardship or market changes typically do not qualify, leaving parties exposed to substantial risks without relief (Farooq et al., 2023).

Moreover, force majeure clauses rarely impose a duty to renegotiate or adapt contracts, which limits flexibility and may exacerbate disputes rather than foster cooperation. Judicial approaches also vary across jurisdictions, adding uncertainty in international contexts. These limitations illustrate that while force majeure remains essential, it is often insufficient as a sole risk management tool, inviting exploration of more adaptable and equitable doctrines such as those found in Shariah law. Upon occurrence of a force majeure event, the affected party may be excused from liability or granted suspension of performance obligations. However, the doctrine is not without limitations: Strict contractual interpretation: In common law jurisdictions, force majeure is not an automatic right but must be explicitly included in the contract. Courts tend to interpret force majeure clauses very narrowly, applying them only to events clearly specified or closely analogous to those listed. Ambiguities are typically resolved against the party seeking to rely on the clause, limiting its applicability. This strict approach ensures predictability but can exclude unforeseen or novel circumstances, thereby restricting relief to parties despite genuinely uncontrollable disruptions. Force majeure clauses are narrowly construed, often excluding economic hardship of foreseeable events (Gul et al., 2025).

Burden of proof the invoking party must prove that the event was unforeseeable, unavoidable, and directly prevented performance. The party invoking force majeure bears the responsibility of proving that the event qualifies under the contractual clause and has directly prevented performance. This includes demonstrating that the event was unforeseeable at the time of contracting, beyond their control, and that they took reasonable steps to mitigate its impact. Failure to satisfy any of these requirements often leads courts to reject force majeure claims, making the burden of proof a critical and often challenging hurdle for the affected party. No duty to renegotiate: Relief is typically limited to suspension or termination without obligation for contract adaptation. Force majeure clauses typically provide for suspension or termination of contractual obligations but do not impose any legal obligation on the parties to renegotiate or adapt the contract in response to changed circumstances. This absence of a renegotiation duty can lead to rigid outcomes, where parties are left without cooperative mechanisms to adjust terms fairly, often resulting in disputes or contract breakdowns rather than mutually beneficial solutions. These limitations have prompted calls for more flexible and equitable doctrines to address contractual risk (Khan & Usman, 2023).

#### **4. Contractual Risk and Shariah Principles**

Shariah law approaches contractual risk management through a distinct lens grounded in ethical imperatives and social justice, emphasizing fairness, mutual benefit, and the public interest (maslahah). Unlike the common law's predominantly strict and clause-dependent doctrines, Shariah seeks to minimize excessive uncertainty (gharar) in contracts, prohibiting arrangements that involve undue ambiguity or speculation which could harm one party. Central to Shariah's risk framework is the concept of risk sharing, exemplified in partnership-based contracts such as

Mudarabah (profit-sharing) and Musharakah (joint venture), where profits and losses are equitably distributed, fostering cooperation and trust between parties. Furthermore, Shariah permits judicial intervention and contract adaptation when unforeseen events cause harm (darar) or injustice, reflecting a flexible, equitable approach that prioritizes preserving contractual balance and social welfare. The doctrine of istihalah (transformation) also allows for legal consequences when the nature or substance of the subject matter changes, potentially relieving parties of obligations under altered circumstances. This ethical and adaptive framework contrasts with the common law's emphasis on rigid excuse doctrines and introduces a more holistic, justice-oriented means of managing contractual risk, particularly valuable in cross-border transactions involving Islamic finance or parties guided by Shariah principles (Khan et al., 2021).

#### **4.1 Fundamental Concepts: Gharar, Maslahah, and Istihalah**

Shariah's approach to contractual risk is deeply informed by three fundamental concepts: gharar, maslahah, and istihalah. Gharar refers to excessive uncertainty or ambiguity in contracts that can lead to unfairness or disputes, and its prohibition aims to promote clarity, transparency, and risk minimization in contractual dealings. By limiting gharar, Shariah ensures that parties have sufficient information and certainty to enter agreements fairly, reducing the chances of exploitation or harm. Maslahah, meaning public interest or welfare, guides Islamic jurisprudence to prioritize outcomes that benefit society and prevent harm (darar), allowing for judicial flexibility and equitable adjustments when strict contract terms threaten justice or social good. This principle empowers courts to intervene and adapt contracts to preserve fairness and balance. Finally, istihalah refers to a transformation or fundamental change in the nature or substance of a contractual subject matter, which can affect the enforceability of obligations. When such transformation occurs, Shariah may permit relief or modification of duties to reflect the new reality. Together, these concepts underpin a dynamic, ethically driven framework that manages contractual risk by balancing certainty, fairness, and social welfare. Shariah law, grounded in the Qur'an, Sunnah, and juristic consensus, emphasizes justice, fairness, and public welfare in commercial dealings (Usman et al., 2021).

Gharar (excessive uncertainty) refers to excessive uncertainty, ambiguity, or risk in a contract that can lead to injustice or disputes between parties. In Shariah law, contracts involving significant gharar are prohibited because they undermine fairness and transparency, essential principles in Islamic commercial transactions. The prohibition aims to protect parties from entering into agreements where key terms, outcomes, or subject matter are unclear or speculative, thus reducing the potential for exploitation or harm. By minimizing gharar, Shariah encourages contracts to be based on clear, definite terms that promote trust and mutual consent, ensuring that risks are understood and fairly allocated. Contracts containing excessive ambiguity or risk are prohibited to protect parties from harm. Maslahah (public interest): refers to the principle of promoting public interest and welfare within Shariah law. It serves as a guiding concept that allows Islamic jurists to interpret and apply legal rulings in ways that prevent harm (darar) and ensure justice and social benefit. In the context of contractual risk, maslahah supports judicial intervention and flexibility to protect the rights of parties and maintain the balance and fairness of agreements, especially when unforeseen circumstances threaten the contract's purpose or cause undue hardship. By prioritizing the broader social good, maslahah encourages adaptations or modifications to contracts that uphold ethical obligations and equitable outcomes beyond the strict letter of the contract (Khan et al., 2020).

This principle guides legal rulings towards outcomes that promote social welfare. Istihalah (transformation): refers to a fundamental transformation or change in the nature, substance, or

essential characteristics of an object or subject matter within a contract. In Shariah law, when such a transformation occurs—making the original item or condition essentially different—the legal consequences attached to the original state may no longer apply. This concept allows for flexibility in contractual obligations, as parties may be relieved from their duties if the subject matter of the contract undergoes *istihalah*, rendering performance impossible or irrelevant. *Istihalah* thus provides a mechanism to address unforeseen changes that alter contractual risk, emphasizing adaptability and justice in commercial dealings. This concept allows for a change in the nature or substance of a subject matter, affecting contractual obligations (Khan et al., 2020).

#### **4.2 Risk Sharing and Contractual Flexibility**

A cornerstone of Shariah's approach to contractual risk is the principle of risk sharing, which encourages parties to distribute risks and rewards equitably rather than shifting the entire burden to one side. This principle is evident in Islamic financial contracts such as *Mudarabah* (profit-sharing) and *Musharakah* (joint venture), where both profits and losses are shared in agreed proportions, fostering cooperation, mutual trust, and aligned incentives. In contrast to the rigid, clause-based nature of common law's *force majeure* doctrine, Shariah promotes contractual flexibility by allowing contracts to be adapted or renegotiated in light of changed circumstances, supported by judicial oversight grounded in ethical and social welfare considerations. This flexibility mitigates disputes and promotes contract sustainability by balancing strict adherence to terms with the need for equitable adjustments. Together, risk sharing and contractual flexibility form a dynamic framework that prioritizes fairness, cooperation, and resilience, offering valuable lessons for modern contract law, especially in cross-border and hybrid legal contexts. Unlike common law's often rigid approach, Shariah promotes risk sharing through equitable contracts such as *Mudarabah* (profit-sharing) and *Musharakah* (partnership). These contracts inherently distribute risk, reducing the reliance on *force majeure* as a simple excuse for non-performance (Khan et al., 2020).

#### **4.3 Force Majeure and Related Doctrines in Shariah**

While the specific term "force majeure" is not traditionally used in Shariah law, its underlying principles are reflected through various doctrines and ethical imperatives that address unforeseen circumstances affecting contractual obligations. Shariah law recognizes that certain events beyond human control—such as natural disasters, war, or sudden changes—may impede performance, and it provides mechanisms to alleviate the resulting hardship. Unlike the common law's focus on rigid contractual clauses, Shariah emphasizes judicial discretion and equitable principles to adapt or suspend obligations in light of changed realities, thereby safeguarding justice and preventing undue harm (*darar*). Key related concepts include *'udhr* (excuse), which permits relief when performance becomes genuinely impossible due to uncontrollable events, and *maslahah* (public interest), which empowers courts to balance contractual rights with social welfare. Moreover, the principle of *istihalah* (transformation) can relieve parties when the contract's subject matter fundamentally changes, reflecting a flexible understanding of impossibility or frustration. This holistic approach integrates ethical considerations, risk-sharing, and judicial intervention, contrasting with the common law's more formalistic treatment of *force majeure*. Consequently, Shariah doctrines offer a broader, justice-oriented framework for managing contractual risks in unpredictable circumstances (Alfaifi, 2024). While Shariah recognizes events that make performance impossible or harmful, it places emphasis on contractual fairness and adaptation. Key Shariah principles related to contractual risk include:

**Darar (harm):** Darar is a fundamental principle in Shariah law that prohibits causing harm or injustice to oneself or others. In the context of contracts, the avoidance of darar requires that

agreements do not result in unfair hardship, loss, or damage to any party. This principle empowers courts and arbitrators to intervene when contractual terms or circumstances lead to significant harm, allowing for the modification, suspension, or annulment of obligations to restore fairness. Darar thus acts as a safeguard against exploitation and imbalance, ensuring that contractual risk is managed in a way that upholds justice and social welfare. Contracts should avoid undue harm to either party. Adjustment through judicial intervention is a key feature of Shariah's approach to managing contractual risk, emphasizing the role of courts in preserving justice and equity. When unforeseen events or circumstances cause undue hardship or imbalance in contractual obligations, Shariah grants the judge the authority to modify, suspend, or even annul contracts to prevent harm (darar) and uphold the public interest (maslahah). This judicial flexibility contrasts with the common law's limited scope for court intervention, which often restricts relief to strict interpretations of contractual clauses. By allowing adjustments based on ethical considerations and social welfare, Shariah law fosters fairness and cooperation between parties, ensuring that contracts remain viable and just even in changing conditions. Courts can modify or terminate contracts to restore fairness, reflecting a more flexible approach than common law (Jevremovic, 2022).

## **5. Comparative Analysis: Common Law and Shariah on Contractual Risk**

Common law and Shariah offer distinct yet potentially complementary frameworks for managing contractual risk, shaped by their respective legal traditions and underlying philosophies. Common law relies heavily on the doctrine of force majeure, which functions primarily as a narrowly defined contractual excuse for non-performance caused by unforeseen, uncontrollable events. Its application is largely contingent on precise clause drafting, strict interpretation, and a high burden of proof, focusing on excusing performance without imposing duties for adaptation or renegotiation. This rigid framework prioritizes legal certainty and predictability but often falls short in addressing fairness or equitable risk distribution, particularly during prolonged or complex disruptions. In contrast, Shariah's approach is founded on ethical principles such as maslahah (public interest), darar (harm avoidance), and gharar (prohibition of excessive uncertainty), which collectively emphasize fairness, social welfare, and the equitable sharing of risks. Rather than merely excusing non-performance, Shariah promotes risk sharing through partnership-based contracts and endorses judicial intervention to adjust or adapt contractual obligations in response to unforeseen circumstances. This flexibility ensures that contracts remain balanced and just, mitigating disputes and encouraging cooperation. The concept of istihalah further broadens Shariah's scope by addressing fundamental changes to the contract's subject matter, allowing relief beyond the common law's typical force majeure boundaries. While common law prioritizes legal formalism and contractual autonomy, Shariah integrates ethical and social considerations directly into the legal framework, fostering adaptability and resilience. This comparative perspective suggests that integrating Shariah's flexible, justice-oriented principles with common law's structured predictability could enhance contractual risk management—especially in transnational transactions involving parties from diverse legal and cultural backgrounds. Such a hybrid model would promote not only clarity and certainty but also fairness, cooperation, and sustainability in contractual relationships (Talib, 2017).

Aspect	Common Law	Shariah Law
Basis for Relief	Express force majeure clause or frustration	Principles of justice, public interest (maslahah)
Approach to Risk	Risk is often allocated or excused, but not shared	Risk is shared and contracts are structured for mutual benefit
Flexibility	Limited; emphasis on strict clause interpretation	High; courts/jurists can adjust contracts for fairness
Scope of Application	Focused on performance impossibility or delay	Broader, including avoidance of harm (darar) and ethical considerations
Remedy	Excuse or termination	Adaptation, compensation, or contract reform

## 6. Beyond Force Majeure: Proposing an Integrated Framework

Recognizing the limitations of the traditional force majeure doctrine in common law and the strengths of Shariah's equitable, flexible principles, there is a growing need to develop an integrated framework for contractual risk management that transcends conventional boundaries. Such a framework would combine the predictability and clarity of force majeure clauses with the ethical flexibility, risk-sharing, and judicial adaptability inherent in Shariah law. At its core, this integrated approach would encourage parties to explicitly include risk-sharing mechanisms in contracts, inspired by Shariah principles such as Mudarabah and Musharakah, which allocate risks and rewards more equitably. In addition, the framework would incorporate a duty to renegotiate or adapt contracts in response to unforeseen changes, supported by judicial intervention where necessary to preserve fairness and public interest (maslahah). This would address the rigidity of common law's excuse-only model, promoting resilience and cooperation. The framework would also expand the scope of force majeure to consider not only impossibility but also fundamental transformations (istihalah) and avoidance of harm (darar), allowing contractual parties relief or modification rights when the contract's substance or purpose is fundamentally altered. Clear guidelines and standards would be established to balance legal certainty with judicial discretion, ensuring that courts have defined yet flexible powers to intervene without undermining contractual autonomy. Implementing this integrated model requires legislative support, careful drafting, and judicial training to harmonize principles across diverse legal cultures. Such an approach is particularly relevant in an increasingly globalized economy where contracts span multiple jurisdictions and involve parties guided by different legal traditions. Ultimately, beyond force majeure, this framework aspires to create more just, adaptable, and sustainable contractual relationships capable of weathering unforeseen challenges (Mehmood, 2024).

### 6.1 Incorporating Ethical and Public Interest Norms

A meaningful shift beyond the traditional force majeure framework requires embedding ethical and public interest norms into the heart of contractual risk management. Both Shariah and common law recognize—albeit in different ways—the importance of fairness, equity, and the avoidance of unjust enrichment, yet these values are often subordinated to formalistic enforcement in conventional legal practice. Incorporating ethical standards, particularly those rooted in maslahah (public welfare), can help restore balance in contractual relationships by ensuring that private agreements do not produce socially or morally harmful outcomes. From a Shariah perspective, contracts are not merely private instruments but also carry social and moral implications, with obligations to prevent darar (harm) and promote justice. Public interest serves as a dynamic source



of legal reasoning, empowering courts to adapt contractual obligations to changing societal conditions, protect vulnerable parties, and prevent exploitative outcomes. Similarly, emerging trends in common law such as doctrines of good faith, unconscionability, and frustration of **purpose** suggest a growing willingness to factor in ethical considerations, though these remain limited in scope and consistency (Oladapo, 2024).

By embedding ethical safeguards into contract design and enforcement such as obligations to renegotiate, disclose material risks, or maintain commercial reasonableness parties and courts alike can ensure that legal frameworks remain responsive to social realities. Such safeguards also align with broader developments in corporate social responsibility (CSR), sustainable contracting, and human rights due diligence, signaling a paradigm shift toward more holistic and accountable economic relationships. Ultimately, integrating ethical and public interest norms into contract law enhances its legitimacy, adaptability, and social utility. It strengthens the moral foundation of private law and aligns legal obligations with shared values, making contractual systems not only more resilient in times of crisis but also more just in ordinary practice. Contracts, especially in transnational contexts involving Islamic finance or hybrid parties, should embed ethical safeguards that promote fairness and welfare rather than merely excuse non-performance (Ramli et al., 2022).

## **6.2 Flexible Risk Allocation Mechanisms**

Modern contract law must move beyond rigid doctrines to embrace flexible risk allocation mechanisms that reflect the realities of commercial uncertainty and promote equitable outcomes. Traditional common law mechanisms—such as force majeure and frustration—often operate as binary solutions, either excusing performance or not, without offering intermediate pathways for contract adaptation. This rigidity frequently fails to capture the complex, evolving nature of contractual relationships in the face of disruptions like pandemics, political instability, or climate change. In contrast, Shariah law encourages contractual flexibility through built-in mechanisms that distribute risk fairly, such as profit-and-loss sharing models (e.g., *Mudarabah* and *Musharakah*) and the recognition of hardship or transformation (*istihalah*) as valid bases for adjusting obligations. These models allow parties to engage in arrangements where risk is not simply offloaded onto the weaker party but is shared in proportion to contribution and capacity, aligning legal structure with commercial ethics. A modern, integrated approach would incorporate tiered risk clauses, hardship renegotiation triggers, and judicially supported contract rebalancing tools into standard agreements. These mechanisms would enable parties to address disruption dynamically—by reallocating risk, suspending obligations, or redefining performance standards—based on transparent criteria and shared responsibilities (El-Saadouni, 2013).

Flexible risk allocation mechanisms also support commercial sustainability by reducing litigation, encouraging renegotiation, and enhancing the adaptability of contracts across diverse legal systems. This approach fosters trust, resilience, and cooperation, making it indispensable for cross-border transactions, long-term projects, and sectors exposed to volatile risk environments. By marrying the procedural certainty of common law with the ethical adaptability of Shariah, such mechanisms offer a forward-looking blueprint for contract design in an unpredictable world. Borrowing from Shariah, common law contracts could incorporate risk-sharing structures and mechanisms for judicial or arbitral adaptation to unforeseen events, encouraging cooperation rather than conflict (Trakic, 2022).

### **6.3 Drafting and Negotiation Best Practices**

To operationalize a more resilient and equitable approach to contractual risk, parties must adopt best practices in contract drafting and negotiation that reflect both legal robustness and ethical foresight. The increasing frequency of global disruptions—ranging from pandemics to geopolitical instability—demands contracts that are not only enforceable but also adaptable. Accordingly, practitioners should move beyond boilerplate force majeure clauses and instead craft bespoke provisions tailored to the specific context, risk profile, and governing legal framework of each agreement. First, contracts should include precisely defined risk events and graded response mechanisms, allowing for partial suspension, renegotiation, or alternative performance before reaching the threshold of termination. Integrating hardship clauses, renegotiation triggers, and mitigation duties can empower parties to address adversity collaboratively rather than adversarial. These clauses should explicitly reference both commercial reasonableness (from a common law perspective) and principles of equity and public welfare (consistent with Shariah norms such as *maslahah* and *darar*) (Khalef, 2021).

Second, negotiation practices must emphasize transparency, good faith, and mutual understanding—particularly in cross-border contexts where legal cultures differ. Parties should engage in risk-sharing dialogues, supported by legal counsel familiar with both common law and Shariah principles, to ensure that agreements align with their mutual expectations and ethical obligations. Documenting these shared intentions not only aids interpretation but strengthens trust and durability in contractual relationships. Finally, drafters should anticipate judicial or arbitral interpretation and include provisions granting dispute resolution bodies limited discretion to adjust or interpret contracts in accordance with changing circumstances, fairness, and public interest. This aligns with Shariah's allowance for judicial intervention and provides common law systems a structured path toward contractual adaptation. By embedding these best practices into contract formation, parties can construct agreements that are not only legally sound but ethically resilient—capable of withstanding uncertainty while upholding justice and cooperation (Alhowaimil, 2013).

## **7. Conclusion**

This research has critically examined the limitations of traditional force majeure doctrines and offered a comparative exploration of how Shariah and common law approach contractual risk. While common law emphasizes legal certainty through narrowly defined clauses, it often falls short in addressing fairness and adaptability in the face of complex disruptions. In contrast, Shariah provides a broader ethical and equitable framework—grounded in principles such as *maslahah*, *darar*, and *istihalah*—that allows for dynamic adjustment and risk-sharing. By synthesizing these two traditions, the article proposed an integrated framework that combines the structural clarity of common law with the moral flexibility of Shariah, thereby fostering contracts that are both enforceable and just. This integrated model is particularly relevant in our increasingly globalized and unpredictable commercial environment. It not only enhances legal resilience but also promotes ethical contracting practices, judicial adaptability, and long-term commercial sustainability. Stakeholders—from legal practitioners to policymakers—should therefore reconsider standard drafting practices, encourage good faith negotiations, and explore hybrid legal mechanisms that reflect both legal and moral imperatives.

Future research should further explore the operationalization of such integrated models in transnational contracts, assess their enforceability in mixed jurisdictions, and investigate their implications for international arbitration. Additionally, empirical studies on how courts across jurisdictions interpret and apply ethical norms in contract law could provide valuable insights. As

global commerce becomes more interdependent, the need for adaptable, fair, and ethically grounded contractual frameworks becomes not only desirable but necessary. The doctrine of force majeure, while essential, is insufficient alone for comprehensive contractual risk management in an increasingly interconnected and multicultural commercial world. Integrating Shariah principles with common law doctrines offers a promising avenue to rethink contractual risk moving beyond mere excuse to embrace ethical risk sharing, fairness, and adaptability. Such integration not only harmonizes cross-border commercial relations but also enhances the resilience and justice of contractual dealings.

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