XV. Latvia

Agris Bitāns

A. Legislation

1. Patent Law (Patentu likums) Latvian Herald (Latvijas Vēstnesis) No. 34 (3610) 27 February 2007

1 On 15 February 2007 the Latvian Parliament adopted the new Patent Law, which replaced the previous Patent Law adopted on 30 March 1995. This statute is effective from 1 March 2007.

2 Besides harmonisation to European legislative acts[1], the present statute brings new possibilities and conditions for legal protection against patent infringement.

3 Firstly, while a person shall be liable for infringement of a patent if he has performed acts with the patent without the consent of the owner of the valid patent (part 1 art. 62), the law does not require an obligation to prove the fault of the infringer as was determined by part 2 and 3 art. 41 of the previous Patent Law[2]. The claimant (the patent owner or the holder of the license) is only obliged to prove the fact of the patent infringement (part 1 art. 63).

4 Secondly, clear and precise criteria regarding when the holder of the licence (not only the exclusive licence holder) has a right to submit a claim against the infringer has been determined. In addition to the patent holder, the holder of

[1] Such as the Convention on the grant of European Patents (European Patent Convention) of 5 October 1973, Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, Official Journal (OJ) L 213, 30.7.1998, 13–21; Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, OJ L 136, 30.4.2004, 34–57; Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004, 45–86.

[2] Art. 41: Liability for patent infringement.
(2) Liability for patent infringement may arise only in the event that the fault of the infringer is proved.
(3) It is the obligation of the aggrieved party (the patent owner or the holder of the exclusive license) to prove the fact of the patent infringement and the fault of the infringer.

the licence is entitled to submit a claim if he has the prior consent of the patent holder. Moreover, the Law allows the holder of the exclusive licence to initiate civil proceedings independently from the patent holder if he/she does not submit a claim after the holder of the exclusive licence has invited him/her to do so (part 2 art. 63). In any case the patent holder maintains the right to enter the civil proceedings initiated by the licence holder and claim damages for infringement (part 3 art. 63).

5 Thirdly, the present statute provides more extensive legal remedies for patent infringement. Any claimant is entitled generally to claim both pecuniary and non-pecuniary damages for patent infringement (part 1 art. 64). Compensation for pecuniary loss and non-pecuniary loss will be determined according to the Civil Code (general principle), and the court should take into account the unfair profit gained as a result of patent infringement (part 2 art. 64). Moreover, if it is impossible to establish the amount of damage suffered by the patent holder, then damages equal to the potential licence fee could be awarded (part 3 art. 64).

6 The Law has retained the obligation to bring an action against a patent infringer within a period of three years from the date when the aggrieved party discovered, or should have discovered, the fact of patent infringement (part 1 art. 67). The Regional Court of Riga has been determined as the court of first instance with jurisdiction over patent disputes (part 2 art. 65).

2. Amendments to the Law on Trademarks and Geographical Indications (Grozījumi likumā "Par preču zīmēm un ģeogrāfiskās izcelsmes norādnēm") Latvian Herald (Latvijas Vēstnesis) No. 33 (3609) 23 February 2007

7 On 8 February 2007 the Latvian Parliament adopted amendments into the Law on Trademarks and Geographical Indications, which is effective from 1 March 2007. As result of harmonisation to European legislative acts[3], the present statute brings new possibilities and conditions for legal protection against trademark infringements.

8 The first significant amendment is related to the possibility for liability to be established not only for infringements which have already been performed but also for preparing to do so (potential infringement) (part 1 art. 28). This should prevent possible infringements even before they are actually performed. A court can determine the actions of the defendant or other intermediary persons as preparing to infringe a trademark and, therefore, legal remedies can be applied.

9 Secondly, the Law determines clear and precise criteria regarding when the holder of the licence (not only exclusive licence) has a right to submit a claim against the infringer. In addition to the trademark owner, the holder of the licence is entitled to submit a claim if he has the prior consent of the trademark owner. Moreover, the licence holder does not need the consent from the trademark owner to submit a claim if such rights are granted by the licence or if he does not submit a claim after being invited in writing to do so by the licence holder (part 2 art. 28). In any case the trademark owner maintains the right to enter the civil proceedings initiated by the licence holder and claim damages for the infringement.

10 Thirdly, art. 28[1] now provides more extensive legal remedies for trademark infringement. Any claimant is entitled generally to claim pecuniary and non-pecuniary damages for trademark infringement (part 1 art. 28[1]). Compensation for pecuniary loss and non-pecuniary loss will be determined according to the Civil Code (general principle), and the court should take into account the unfair profit gained as a result of the trademark infringement (part 2 art. 28[1]). Moreover, if it is impossible to establish the amount of damage suffered by the trademark owner, then damages could be awarded as a lump sum equal to the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the trademark (potential licence fee) (part 3 art. 28[1]). Similar remedies are available in cases where geographical indications are infringed (part 3 art. 43).

11 Fourthly, the Law has retained the obligation to bring an action against a trademark infringer within a period of three years from the date when the aggrieved party discovered, or should have discovered, the fact of trademark infringement (part 5 art. 28). The Regional Court of Riga remains the court of first instance with jurisdiction over trademark disputes (part 2 art. 28).

3. Amendments to the Law on Designs (Grozījumi Dizainparaugu likumā) Latvian Herald (Latvijas Vēstnesis) No. 33 (3609) 23 February 2007

12 On 8 February 2007 the Latvian Parliament adopted amendments into the Law on Designs, which is effective from 1 March 2007. As a result of harmonisation to European legislative acts[4], the present statute brings new possibilities and conditions for legal protection against design infringements.

13 The first significant amendment is related to the possibility for liability to be established not only for infringements which have already been performed but also for preparing to do so (potential infringement) (part 3 art. 48).This should prevent possible infringements before they actually occur. A court can determine actions of the defendant or another intermediary person as preparing for design infringement and, therefore, legal remedies can be applied.

14 Secondly, the Law determines clear and precise criteria regarding when the holder of the licence (not only the exclusive licence) has the right to submit a claim against the infringer. In addition to the design patent holder, the holder

[3] Such as the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, OJ L 40, 11.2.1989, 1–7, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004, 45–86.

[4] Such as Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, OJ L 289, 28.10.1998, 28–35 and Directive 2004/48/EC.

of the licence is entitled to submit a claim with the prior consent of the design patent holder. Moreover, the licence holder does not need the consent from the design patent holder to submit a claim if such rights are granted by the licence or if the right holder does not submit a claim after being invited to do so by the licence holder (part 4 art. 48). In any case the design patent holder maintains the right to enter the civil proceedings initiated by the licence holder and to claim damages for infringement.

15 Thirdly, art. 48[1] now provides more extensive legal remedies for design infringement. Any claimant is entitled generally to claim pecuniary and non-pecuniary damages for design infringement (part 1 art. 48[1]). Compensation for pecuniary loss and non-pecuniary loss will be determined according to the Civil Code (general principle), and the court should take into account the unfair profit gained as a result of the design infringement (part 2 art. 48[1]). Moreover, if it is impossible to establish the amount of damage suffered by the design patent holder, then damages could be awarded as a lump sum equal to the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the design (potential licence fee) (part 3 art. 48[1]).

16 Fourthly, the Law allows an additional ground for claims for design infringement based on the Copyright Law, legislative acts on unfair competition or other legislative acts (part 6 art. 48).

4. Amendments to the Copyrights Law (Grozījumi Autortiesību likumā) Latvian Herald (Latvijas Vēstnesis) No. 33 (3609) 23 February 2007

17 On 8 February 2007 the Latvian Parliament adopted amendments into the Copyrights Law, which is effective from 1 March 2007. As a result of harmonisation to European legislative acts[5], the present statute brings new possibilities and conditions for legal protection against copyrights and the infringement of neighbouring rights.

18 First, the present statute provides an extensive list of legal remedies regarding the infringement of copyrights and neighbouring rights. Part 1 art. 69 grants to the holders of copyrights and neighbouring rights, organisations that admin-

[5] Such as Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17.5.1991, 42–46; Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, 6.10.1993, 15–21; Council Directive 93/98/EEC Official Journal L 290, 24/11/1993 p. 0009–0013, of 29 October 1993 harmonizing the term of protection of copyright and certain related rights; Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 77, 27.3.1996, 20–28; Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, 10–19; Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001on the resale right for the benefit of the author of an original work of art, OJ L 272, 13.10.2001, 32–36; Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004, 45–86.

ister their economic rights on a collective basis and representatives of other subjects on copyrights and neighbouring rights the following rights:

1) to require the person who illegally used the object of the copyright or neighbouring right to recognise their rights;
2) to prohibit the use of their works;
3) to require the person who illegally used the object of the copyright or neighbouring right to restore the status to that prior to the infringement of these rights and that the illegal activity be stopped or that the creative work not be threatened;
4) to require the infringer to cease activities which are deemed as preparing for the illegal use of the object of the copyright or neighbouring right;
5) to require the person who illegally used the object of the copyright or neighbouring right to compensate both pecuniary and non-pecuniary losses to the subject of the copyright or neighbouring right;
6) to require that the counterfeiting copies be destroyed;
7) to require intermediaries whose provided services have been used in order to infringe the rights of the holders of a copyright and of a neighbouring right, or who have made it possible to perform such an infringement, to perform the necessary measures to prevent the infringer from performing such infringements. If the intermediary does not carry out the necessary measures, the holders of a copyright and of a neighbouring right or their representatives have the right to bring an action against the intermediary.

19 Secondly, the new art. 69[1] now entitles any claimant to claim pecuniary and non-pecuniary damages for the infringement of a copyright or neighbouring right (part 1 art. 69[1]). Compensation for pecuniary loss and non-pecuniary loss will be determined according to the Civil Code (general principle), and the court should take into account the unfair profit gained as a result of the trademark infringement (part 2 art. 69[1]). Moreover, if it is impossible to establish the amount of damage suffered by the copyright or neighbouring right owner, then damages could be awarded as a lump sum equal to the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the copyright or neighbouring right (potential licence fee) (part 3 art. 69[1]).

B. Cases

1. Senate of the Supreme Court, 28 February 2007 No. SKC-97[6]: Determination of Fault in a Road Accident

a) Brief Summary of the Facts

20 The limited liability company, X, as plaintiff initiated a civil procedure against the defendant – insurance company Y for awarding the full amount of insurance indemnity following a road accident. Despite the fact that the police had established that the driver of the limited liability company Z car was respon-

[6] Published: Jurista vārds, 5 June 2007 No. 23, 476. Also available at http://www.lv.lv/index.php?menu_body=DOC&id=158187&print=on.

sible for the road accident, the insurance company Y decided to pay out only 50% of the insurance indemnity, i.e. LVL 1,740.30 (about € 2,500).

21 There was no discussion between the parties that the insurance event (insured risk) is accrued. However, the defendant considered that the plaintiff had contributed to the occurrence of the accident and, therefore, the compensation due should be reduced by 50%, in accordance with the plaintiff's expertise that fault allocation between drivers involved in the present road traffic accident is 50/50.

22 The court of first instance satisfied the claim for the full amount of insurance indemnity plus statutory interest and the appeal court upheld this claim.

23 The defendant submitted cassation, arguing that the appeal court did not evaluate evidence regarding the fault of the plaintiff driver.

24 The Senate dismissed cassation and upheld the judgment of the court of second instance.

b) Judgment of the Court

25 The Senate stated that only institutions authorised by law are entitled to declare a person at fault for a road traffic accident, based on particular legislative acts and procedures. Since the traffic police had declared the fault of the driver of company Z, there is no ground to revaluate the fault of the other persons involved in the road accident.

26 In addition, the Senate provided an interpretation of part 3 art. 33[7] of the Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners effective which had been in force until 1 May 2004. The Court stated that the present legal norm provided rights to an insurance company to determine only the liability of the vehicle owner but not fault which is just one precondition of liability for losses.

c) Commentary

27 The Senate tried to minimise the lack of consistency between the regulations provided by the new and the older Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners[8]. The present statute indeed focuses more on liability rather than fault[9], because the purpose of this Law is to protect the interests of third persons who have suffered losses in road traffic accidents (art. 2).

[7] (3) If losses have been caused in a road traffic accident to the property of several owners and thereby caused mutual losses, the insurance company shall compensate the losses within the amount in proportion to the fault of each owner.

[8] Short introduction to the new Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners please see *A. Bitāns*, Latvia, in: H. Koziol/B.C. Steininger (eds.), European Tort Law 2004 (2005) 395 f.

[9] Art. 33: Losses Caused to the Property of Several Persons.
(3) If losses have been caused in a road traffic accident to the property of several owners and the total amount of losses exceeds the limit of insurer liability, the losses shall be compensated within the amount of the limit of the insurer liability in proportion to the amount of losses of each injured person.

28 However, the argumentation that the court is not obliged to evaluate the fault of drivers involved in a road traffic accident if there has been an official declaration of fault by the traffic police can be disputed. Perhaps such a declaration would be sufficient if only an administrative fine were to be imposed but in some cases the amount of pecuniary damages can alternate depending on the degree of the driver's fault.

2. Senate of the Supreme Court, 19 April 2006 No. SKC-266[10]: Infringement of Photograph's Copyright; Non-Pecuniary Loss

a) Brief Summary of the Facts

29 The plaintiff initiated civil proceedings against a foodstuffs company which used the plaintiff's natural landscape photo taken in 1956 on the packing of processed cheese. Since the plaintiff had not concluded any agreement regarding the republishing and use of his work for advertising purposes, the defendant infringed his copyright. The plaintiff demanded compensation in the amount of LVL 25,000 (approx. € 36,000).

30 The court of first instance rejected the claim. The appeal court partly satisfied the claim, awarding LVL 2,000 (approx. € 2,900) as compensation for infringement of the plaintiff's copyright.

31 Both the plaintiff and defendant submitted cassations. The plaintiff argued that the amount of compensation determined by the court was unreasonably low because, due to the fact that the work is an original work of visual art and that the minimal royalty for alienated original works of visual art could be € 12,500. The defendant argued that there is doubt that the photograph in question is the result of an author's creative activities. Since this is a photograph of a natural landscape, which is the symbol for a particular region, there is no legal protection under copyright law.

32 The Senate dismissed both cassations and upheld the judgment of the court of second instance.

b) Judgment of the Court

33 The Senate recognized that there is a basis for copyright protection because the particular work complies with the request of the results of an author's creative activities and protection is granted irrespective of the mode or form of its expression and its value. Moreover the law does not require registration or any other formalities to establish copyright. Therefore the author holds the inalienable moral rights of an author to the inviolability of a work, i.e., the right

[10] Published: Jurista vārds, 15 May 2007 No. 20, 473. Also available at http://www.lv.lv/index.php?menu_body=DOC&id=157104&print=on.

to permit or prohibit the making of any transformations, changes or additions either to the work itself or to its title.

34 The Senate accepted that there had been an infringement of the plaintiff's copyright and that he is, therefore, entitled to receive compensation the amount of which is to be determined by the court according to art. 5[11] of the Civil Code. However, since a re-assessment of the compensation amount is not the responsibility of the Senate, there is no ground to change the decision.

c) Commentary

35 The present decision shows the unsatisfactory court practice when applying art. 5 of the Civil Code[12]. By simply refusing to review how reasonable court judgments are, the Senate continues not to evaluate the quality of decisions taken. The court should specify the principles of law which were applied in arriving at the judgment, as well as the reasons which led the court to hold that such a judgment meets the sense of justice.

36 Moreover the Senate as third and final instance is under an obligation to review and control the implementation of general principles. The Senate should demand that the court sets out in more detail the arguments of justice and principles of law serving as a basis for the judgment passed.

3. Riga Regional Court, 9 February 2007 No. C04381306 (C-2211/12)[13]: Invasion of Privacy as a Result of Publication of Recorded Telephone Conversation; Non-Pecuniary Loss

a) Brief Summary of the Facts

37 The plaintiff (journalist) initiated a civil procedure against the Republic of Latvia represented by the Ministry of Finance, the State Revenue Service, and the Finance Police for invasion of privacy and compensation of non-pecuniary loss to the amount of LVL 300,000 (approx. € 430,000). The plaintiff claimed that personal and professional telephone conversations that she had were published by several mass media including the internet from 7 September 2006. According to public information tapped conversations were organised by the Finance Police within an investigation and had been accepted by a Supreme Court judge.

38 Since such private and professional conversations and information gained from such tapped conversations are classified information (state secret), the state should keep such recorded telephone conversations confidential. Moreover the present information concerns personal data, which is legally protected by the state. Therefore such information should not be available to the public.

[11] 5. Where a matter is required to be decided at the discretion of a court or on the basis of good cause, the judge shall decide the matter in accordance with a sense of justice and the general principles of law.

[12] For more comments regarding the implementation of art. 5 of the Latvian Civil Code, please see *Bitāns* (fn. 8) 403 f.

[13] Published: http://www.tiesas.lv/index.php?id=2325.

39 However, audio records of the tapped phone conversations and their abstracts were published in the mass media and in the internet. Therefore, the Republic of Latvia is liable for this invasion of privacy and the non-pecuniary damage suffered by the plaintiff.

40 The court of first instance partly satisfied the claim: by awarding LVL 100,000 (approx. € 143,000) as compensation for invasion of privacy and non-pecuniary loss. The State Revenue Service as defendant submitted an appeal but the Supreme Court has failed to set a date for the court hearing.

b) Judgment of the Court

41 The court agreed with the plaintiff that such public distribution of tapped private and professional phone conversations can be deemed an invasion of the plaintiff's privacy. Since the state has an obligation to keep all tapped phone conversations which are recorded during an investigation confidential, the state institutions neglected this obligation. Therefore, the state is liable for a violation of human rights.

42 The court pointed out that the defendants had failed to prove that the plaintiff's tapped private and professional phone conversations had been published by a third party and not by them. Moreover it was proven that the Finance Police had provided false information (ground) to the Supreme Court in order to obtain permission to tap the phone conversations.

43 Accordingly, such behaviour is recognisable as an invasion of privacy which caused the plaintiff non-pecuniary loss. The court specified that the amount of LVL 100,000 (approx. € 143,000) would be justified as compensation for the invasion of privacy and non-pecuniary loss.

c) Commentary

44 This is the first civil case where the court has declared the state liable for an invasion of privacy as the result of publishing tapped private and professional phone conversations.

45 The amount of compensation for the non-pecuniary loss is surprisingly high compared to existing court practice. However, the court did not provide arguments as to why the awarded amount was justified in the present case. The decision of the next level court will show if this case indicates a new tendency for the recognition of personal rights or if it is just an exception.

C. Literature

1. *Kaspars Balodis*, Ievads Civiltiesībās (Introduction to Civil Law) (Zvaigzne ABC, 2007)

46 The present book is the first comprehensive monograph on introductory topics of civil law for legal studies after Latvian independency. The monograph ex-

plains the place of civil law in the legal system and provides a comprehensive analysis of legal concepts common to all sub-branches of civil law.

47 The author reviewed such important institutions in all branches of civil law such as the legal transaction, subjects of civil law, subjective rights adhering to the subjects of law, as well as objects of civil law. Balodis attempts to provide answers to a number of complex legal problems in the Latvian Civil Code. His research is based not only on Latvian legal doctrine and the practice of Latvian courts but also takes into account foreign and European civil law developments. His explanations of the concepts of civil law in the German, Austrian and Swiss legal doctrines will be very educational for students. It should be mentioned that the book combines both theoretical and practical approaches where the author uses some practical examples to explain the fundamentals of civil law.

48 Part One of the monograph explains the place and role of civil law as private law in the legal system. The author points out the principle of private autonomy as one of the main characteristics of civil law. Therefore, freedom of contract as an expression of individuals' private autonomy is logically the next issue. However, the author does not forget that private autonomy does not mean absolutely unlimited freedom.

49 Besides classical civil law branches such as the law of obligations, inheritance law, family law and property law, Balodis also describes the special branches of civil law such as commercial law, labour law, intellectual property law, consumer protection law and other branches of special civil law in Latvia.

50 He indicates how important it is to distinguish civil law as substantive (material) law from procedural law. In addition the author devotes attention to the sources of civil law in Latvia, where, in addition to laws and other normative acts adopted by the national legislator, European Union legislation, international law, general principles of law, customary law, jurisprudence of the courts and legal doctrine (legal science) also exist.

51 Part Two of the book deals with subjects and objects of civil law. The author singles out three types of subjects: natural persons, legal persons and commercial partnerships with legal capacity. The subject of legal personality, especially regarding legal entities, is very complicated and requires more research therefore the provided classification could not be recognized as complete. Additionally, the author reviews objects of law which include things (tangible objects) or immaterial goods (including rights) (intangible objects).

52 The author pays special attention in Part Three to issues regarding subjective rights in civil law. He points out subjective rights which provide an individual with the legal possibility to implement his/her interests and secure his/her private autonomy (subject of law). Subjective rights are correctly subdivided into absolute rights and relative rights. Balodis describes the nature of and differences between absolute rights and relative rights.

53 The main part of the book is Part Four, where the author examines part of legal obligations – legal transactions. He reviews the definition and essence of legal transactions, including agreements and contracts. Balodis provides a general overview of doctrinal topics such as the concept of an expression of will, types of legal transactions, form of legal transactions, the interpretation of legal transactions, unlawful transactions, defects of will in legal transactions, agency in legal transactions, etc.

54 Last but not least, the final part (Part Five) of the monograph addresses the practically important topic of case resolution in civil law. Since legal conflicts between parties include one party filing a claim against another, he suggests solving legal conflicts by the so-called "claim method" *(Anspruchsmethode* in German), which allows a systematic and determined approach to ascertaining the validity of the claims brought forward by the participants. The introduction of this method would be very useful for both students and lawyers.

2. *Kalvis Torgāns*, Vairāki zaudējumus (kaitējumu) izraisoši cēloņi (Several causes leading to damage (loss)) Jurista Vārds, 10 July 2007 No. 28, 481

55 Professor K. Torgāns addresses the problem of a causal link between unlawful behaviour and loss. In general, Latvian legal theory and court practice recognise causality as a precondition for civil liability. However, there is a need to modernise the Latvian Civil Code and to examine the modern understanding of causality. Therefore, lawmakers propose amending art. 1785 to read: "A loss which is too remote from the breach of an agreement is not required to be compensated".

56 The author generally describes the *conditio sine qua non* principle and theory of *remoteness of damage*, concluding that the Latvian Civil Code does not touch on important issues such as *remoteness of damage* and *foreseeability*. Torgāns cites examples from many foreign court decisions to illustrate how complicated and deep the causal link issue is.

57 The author stresses that it is important to distinguish remoteness of damage from the subdivision of losses into direct and indirect[14]. Torgāns, by citing additional examples, highlights the necessity of implementing ideas from the European Principles of Tort Law into the Latvian Civil Code.

[14] 1773: A loss shall be considered: direct where it is the natural and inevitable result of an illegal act or failure to act; indirect where it is caused by an occurrence of particular circumstances or relationships; and accidental where caused by a chance event or force majeure.