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Agrarian contracts and theory of unpredictability under the light of COVID-19

Contratos agrarios y teoría de la imprevisión a la luz de COVID-19

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Abstract

This study seeks to provide a brief introduction on agrarian contracts, and from the discussion about unpredictable and extraordinary events and how they impact the hiring, under the auspices of doctrine and jurisprudence, in order to verify the consequences for the parties from the theory of impunation. The discussion gains valid contours as the COVID-19 pandemic broke out in China and spread across the globe in 2020. Since the explosion in the number of cases, who has recommended nations to implement social isolation and even the controversial lockdown, which has generated and caused a shutdown of the economy. This economic cataclysm has affected jobs, industry and trades, in addition to lives, generating contractual impacts on all fronts. The focus will be on the contractual agrarian discussion, and, based on empirical, to make elucubrations about the current and close consequences for this contractual nature.

Agrarian contracts, Theory of impedance, COVID-19, Contractual review, Contractual imbalance

Resumen

Este estudio pretende hacer una breve introducción sobre los contratos agrarios, y a partir de la discusión sobre los acontecimientos imprevisibles y extraordinarios y cómo impactan en la contratación, bajo los auspicios de la doctrina y la jurisprudencia, verificar las consecuencias para las partes a partir de la teoría de la impunidad. La discusión adquiere contornos válidos a partir del estallido de la pandemia de COVID-19 en China y su propagación por todo el mundo en 2020. A partir de la explosión del número de casos, quien ha recomendado a las naciones implementar el aislamiento social e incluso el polémico lockdown, que ha generado y provocado una paralización de la economía. Este cataclismo económico ha afectado a empleos, industria y oficios, además de vidas, generando impactos contractuales en todos los frentes. El foco estará en la discusión contractual agraria, y, a partir de la empiria, hacer elucubraciones sobre las consecuencias actuales y próximas para esta naturaleza contractual.

Contratos agrarios, Teoría de la impedancia, COVID-19, Revisión contractual, Desequilibrio contractual

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Abbreviations

art.: article
arts.: articles
CCB: Brazilian Civil Code
CF/1988: Federal Constitution of 1988
COVID-19: Coronavirus Disease 2019
CPR: Rural Product Ballot
DET: Regulatory Decree of Agrarian Lease and Partnership Contracts (Decree No. 59,566/1966)
ET: Land Statute (Law No. 4,504/1964)
INCRA: National Institute of Colonization and Agrarian Reform
NCPC: Code of Civil Procedure 2015
WHO: World Health Organization
GDP: Gross Domestic Product
REsp: Special Feature
STJ: Superior Court of Justice
TJ-RS: Court of Justice of Rio Grande do Sul
TJ-SP: Court of Justice of São Paulo

Introduction

Brazilian agribusiness is a cornerstone for the economy, accounting for 21.4% (twenty-one-point four percent) of GDP (CNA: 2020; p.2), and, among other reasons, the scenario is promising since by 2030 there will be global demand for energy of 40% (forty percent) and food production by 35% (thirty-five percent) – MORETTI: 2019; p. 1 -.

In addition, exports of Brazilian agro increased from US$20.6 Billion to US$96.9 billion between 2000 and 2019, feeding Brazil in the world at least 800 million people, with its global share in world grain production increased from 6% (six percent) in 2011 to 8% (eight percent) in 2020 (EMBRAPA: 2018).

Despite the privatistic nature of agrarian contracts, their rules have fulguring public and social attributes, being cogent, not being susceptible to renunciation, as a defense to what it will actually produce, entailing the delineated principle of the social function of property.

In a first step, it is that *agrarian* contract is all agreement between parties by which someone is granted the use or temporary possession of property of rural nature, so that this activities of agricultural, livestock, extractivist and congeners are carried out.

It is astoed by the legal concept, this time, that, more important than the location, the rural characteristic is given by the nature of the activities carried out in the property, that is, that these have the agrarian attributes, and, *therefore, applies, in casu, the so-called theory of the destination* of real estate.

Agrarian contracts, as provided by ET, have a clear mission to make the social function of property prevail, because, in addition to guaranteeing the rights of the one that it will actually produce, seeks to make the productive use of real estate prevail, always with the aim of obscing improductivity, speculation, on the contrary, generating wealth for the owner, for the producer-owner and for the nation.

Fundamental to the economy, agrarian contracts must maintain balance and any impacts that may generate contractual imbalance may lead to revision for the maintenance of the agreement. This will depend on the adoption of the effects of the theory of impudency, which would be a way of restoring parity of contractual conditions and economic acovenant.

The current global pandemic of COVID-19 and its intercorrências in contracts have brought many issues and agrarian agreements cannot be insulated from the sad reality. Thus, as a way of anticipating, it remains interesting to verify the doctrinal and jurisprudential posture, with regard to the approach to extraordinary facts in agrarian agreements, which, despite not equating the current serious situation, may bring contributions to the elucidation of disputes possibly arising from the facts outlined.

Briefly, agrarian contract, the institutional environment and its social attribute, the existing modalities of those are, from now on, before the discussion on the theory of impurious in agrarian contracts from COVID-19.

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Modalities of agrarian contracts

Elsewhere it has been delimited that the titration of agrarian for a convention of wills between parties depends on the economic nature of the activity intended, regardless of, effectively, where the property is located. This time, when it is possible to distinguish which contracts are agrarian or not, it is necessary to investigate their different modalities.

It is important to point out that only lease or partnership agreements are nominated or typical. This name is based on the fact that it is expressly arranged in the ET and det, being completely regulated with all the provisions of constitution and reciprocal rights and obligations arranged.

Art. 39 of the DET guarantees the existence of several other contractual species to govern the use or temporary possession of the land, even if they are not explicitly regulated, as with the Lease and partnership. Article 92 of the ET, in this same tuning point, asserts that the possession or temporary use of land will be regulated in a contract between the owner and the one who exercises the activity (tenant or partner), in the form of "*rural lease, agricultural partnership, livestock, agroindustrial and extractive*", which ratifies the existence of only two typical contracts, i.e. regulated by law.

On the existence of only two agrarian contracts housed by the standard: "*Our order has two contractual figures and establishes the specific rules applicable to these contracts, that is, partnership and lease contracts*" (ROCHA: 2011; p.18). The lease and partnership, therefore, are typical, because they have typicality (definition and formatting expressed in law) and nominated (when they have an unambiguous name to distinguish from any other figure). Thus, they are genuinely agrarian, with the purpose of regulating the existing agreements between owners and squatholders in the specific economic activity of agrarian nature, as stated above.

The expansion of business and agrarian relations was a factor that served to make the existing figures in et and det insufficient to provide solutions to all the needs of stakeholders, which forced the loan of other contractual figures of other legal areas, at first foreign to agrarian law. Fortunately, Art. 39 of the DET left the door open for the use of atypical contracts as valid provided that in association with the principles of Agrarian Law and public order and can be freely used by the parties.

Therefore, it is possible to use atypical (not expressly provided for in ET) or innominate (without direct origin from Agrarian Law), i.e., those not expressly regulated by ET and DET. There is no legal fence for this, as well as the agrarian standard itself molds so that they can be adopted eventually to regulate agrarian issues. Most of these contractual figures will be found in the CCB, always becoming the same precepts and requirements as the typical and nominated.

Despite this open door, predominantly, the agrarian medium adopts the lease and partnership contracts as the main format. In a study conducted in Sugar and Energy Plants in the State of São Paulo, it was found that more than 52% (fifty-two percent) of agrarian contracts were lease or partnership (TRENTINI: 2016, pp. 57-58).

Data such as these show why the study of typical contracts prevails in the agrarian environment. In view of its extensive predominance, it is more prolific to direct efforts in leasing and partnership, since they are the most common to those who want to understand the agrarian contractual system.

All agreements aimed at regulating the use of property for agriculture, livestock and similar (rural) purposes are agrarian, in what is part of the modalities of the lease and partnership, fully regulated by the ET and DET, and only in the case of omission of these, in a subsidiary way, the CCB can be used (art. 92, § 9 of the ET). These figures are based on the economic and social functions of the property, geded by Art. 2 of the ET).

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Typical and nominated contracts

Rental

It is an agrarian contract by which someone gives to another rural property for the use and enjoyment by the rural property, with fixed or not, so that it can exploit it for agricultural, livestock, extractive or agroindustrial purpose, including all improvements in the existing property, in exchange for rent or retribution to be aldue devolved to the owner.

It is practically a contract for renting the rustic building, that is, for the realization of an agricultural activity.

The figures present in this contractual species are *the lessor*, the one who owns or owns the property and responsible for the transfer *to the lessee*, the one who will carry out the economic activity through the retribution provided (Art. 3, § 2, of the DET). The object of the agreement is the property transferred for use and enjoyment of the lessee, which may not change the destination described in the contract unilaterally, so that it does not incur so as to the question of contractual termination and other consequences. Instead of fixing the termination by default, the parties may accept responsibility for the criminal clause, and may avoid termination of the agreement, even without the need to prove the occurrence and *the quantum of* losses and damages.

As for the assumptions of remuneration, the lease may be paid in cash or in quantity of products that equal the amount of the rent (art. 18, of the DET). The Brazilian agrarian spectrum, obeying this design, has payments stitled, often, in the delivery of part of the product, as is curial in the sugar-alcohol sector, and, not necessarily, in pecunia. For the STJ, "*The clause that sets the price of rural lease on a product or its equivalent is invalid, and not in a fixed amount of money (art. 18 and its sole paragraph of Dec. 59,566/66). (REsp 120.157/RS, Rel. Minister WALDEMAR ZVEITER, THIRD CLASS, tried on 19/11/1998, DJ 05/04/1999, p. 124*)".

With the time limits, it is unseen to observe that the lease must end after the harvest has ended, except in case of force-major, in which case the period will be extended until the term necessary to compensate *for this Alea*. Moreover, as for an indefinite period, it should be reputed as a minimum of 3 (three) years (art. 95, I and II, of the ET). This term would be reasonable for the lessee to be able to pay a return from the rural activity carried out, since a shorter term would be unfeasible for the rental to be productive, observing the harvest times and livestock development, for example (STJ - REsp 195.177/PR, Rel. Ministro BARROS MONTEIRO, Rel. p/ Judgment Ministro RUY ROSADO DE AGUIAR, FOURTH CLASS, judged on 03/02/2000, DJ 28/08/2000, p. 88)[1]. However, the DET has extended cases of tacit minimum deadlines.[2]

Complementing the system of rural leasing, there is the hybrid figure *of rural leasing*, which is the figure of a financial agent that enables the resources for a future acquisition of property. The tenant, therefore, leases to the tenant, the rustic building, facilitating, at the end of the term, acquisition of the respective property and the exercise of the option to purchase. "*Agrarian leasing follows the rules of leasing and financing contracts in general, but also the rules of agrarian contracts that should be considered, including, in the interpretation and protection of the same*" (SENN: 2016; p. 16).

[1] In the same sense: REsp 128.542/SP, Rel. Ministro RUY ROSADO DE AGUIAR, FOURTH CLASS, tried on 14/10/1997, DJ 09/12/1997, p. 64711.

[2] And according to Art. 13, II, *a)* healthy:

- three (3) years in rental cases where temporary farming activity occurs and or small and medium-sized livestock; or in all cases of partnership.
- five (5) years in cases of rental in which permanent farming activity occurs and or large livestock farming for breeding, breeding, fattening or extraction of raw materials of animal origin.
- seven (7) years in cases where forest exploitation activity occurs.

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Rural partnership

In *the rural*[3] partnership someone gives the other rustic building for him to perform agricultural activities, livestock, extractivists and others. In addition, there may be the disposal of animals for the creation, fattening and other practices. In any case, there will be the sharing of profits and risks between partners.

> In turn, in partnership agreements, the owner shares with the partner-granted the results and risks of the enterprise. Therefore, the partnership is similar to the partnership contract, since two or more people collaborate to carry out an enterprise with sharing the risks and results of the enterprise. (TRENTINI: 2016; p. 58)

The contractual partner *and the granting partner* are *part of this contractual* species, and the granting partner is the owner or owner of the immovable property or cattle, while the second is the transferee of the property that will act directly in the activity destined to the partnership. The partnership, this time, must be signed by the persons outlined in the exact terms of Art. 4, paragraph, of the DET. This time, the partner-granted is the person or family group, not admitting disvirtuation, of these chalkings of the law, especially so that they are covered by the dictates of the partnership various contractual species, which are not fundamentally collated by the people involved, especially business conglomerates.

This time, in the partnership, the management of the business is restricted to the granted partner, who will share the results (profits and losses) with the granting partner, defluids of the agrarian activity.

The terms of the various partnership agreements provided for above may be determined or indeterminate, being at least 3 (three) years, based on Art. 96, of the ET, in the absence of stipulation, having the nature, in any case, of temporary, never definitive. As for the possible renewal, unlike the lease, which provides for more formalities, in the case of partnership, the preference is unrestricted to the granted partner, who, at the end of the contractual term, will not have that, only if the owner or owner of the property intends to directly exploit and at his own expense the contractual object (art. 96, II, of the ET).

Table with differences between lease and partnership agreements

Criteria	Lease	Parnership
Installment	Fixed rent, e, as a rule, cash	Depends on the fruits produced, suffering the partners the profits and losses jointly
Rights of the owner and/or possessor	The tenant does not have the same rights as the granting partner	More rights, as possibility of review of culture and joint management
Crops grown in the property	Unless otherwise available, the lessee has complete freedom to manage the activity	Can not produce crops foreign to the contract
Activity risks	The tenant is indene, except hypothesis of force major characterized	Divided between granting partner and granted partner
Real right of preference in the sale of the property	Tenant owns	Granted partner does not own (without legal express provision)

[3] Art. 5 of the DET specifies the species of *partnership* agrarian law:
I' agricultural, when the object of the assignment is the use of rural property, part or parts of it, with the purpose of exerting the activity of plant production therein;
II livestock, where the purpose of the assignment is animals for breeding, breeding, naporyling or fattening;
III agro-industrial, when the object of the session is the use of the rural property, part or parts of it, or machinery and implements, with the objective of processing agricultural, livestock or forestry products;
IV extractive, when the object of the assignment is the use of rural property, part or parts of it, and or animals of any kind, with the purpose of extracting agricultural, animal or forest products;
V mixed(V), where the subject-matter of the assignment covers more than one of the partnership modalities defined in the Previous."

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Minimum time limits	At least: a) three years, for rental cases in which temporary tillage and small and medium-sized livestock farming activity occurs; b) five years, for rental cases in which permanent tillage and or large livestock farming activity occurs for breeding, recreating, fattening or extraction of raw materials of animal origin; and c) seven years, for rental cases in which forest exploitation activity occurs.	At least 3 (three) years

From the theory of impedance

Since Roman law, the characteristic of immutability is instillable to contracts, and the theory of impedance has genesis in the *rebus sic stantibus clause*, easing the principle of compulsory contract due to facts that are supervening and unrelated to the will of the contracting parties. The unpredictable fact in a deferred or contracted execution contract generates consequences and onerous and undesirable for one of the signatories.

The question of the mutability of contracts appears more rigorously after The First World War with the Faillot Law, which allowed the change or contractual renewal (a kind of decoding), establishing the principle of revision, allowing, precisely, the intervention of the Judiciary in the relationship between individuals (REIS: 2020; p. 4).

Contracts do not always have the *washout clause*, which allows the end of the contract and the fixing of indemnities derived from the contractual default. A contract, especially agrarian, is only one of the parts of the chain, but important, which will have serious consequences for the continuation of subsequent contracts.

> But why does this clause exist? Because, as we said, the contract is part of a chain. If the producer does not deliver the product, the company that bought it has commitments in sequence and will have to fulfill its part. Therefore, in the absence of grain, it will seek in the market product to fulfill its contracts. That's why she's entitled to charge this difference, since she's going to pay a much higher price to have that product that hasn't been delivered to her. (TORMA: 2021; p.2)

A contract is intended for the future, benefits to be fulfilled, and, this time, it can be submitted to the theory of impietion is provided in Art. 317 of the CCB, since, for unpredictable reasons, there is a significant disproportion between the value of the performance and the time of execution. Such a legal provision allows the contractual revision, whereas Art. 478 of the CCB, due to excessive burden, may lead to the resolution of the agreement.

Such unpredictability stems from a supervenient event, of an anomalous nature, which escapes from a reasonable prediction by the parties. This fact unbalances the execution of the agreement and the contractual economic basis, and may justify the judicial review of the value of the benefit, with the fulcrum guaranteeing social justice.

> Impudet must therefore be a global phenomenon that affects society in general or a considerable part of it. Take the example of a war, a revolution or something. (...) The judge when examining a situation of contractual review or resolution, shall take into account the average conscience of society, and should always guide its decisions to this social measure. (KINGS: op. cit.; p.4)

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It must be treated as exceptionality, which is irrefutable to change the economic conditions originating from the contract. The theory of impietion is based on the [4]*rebus sic* stantibus clause, from an unforeseen occurrence, bringing an excessive burden to one of the parties.

This unpredictability may lead to revision or even contractual resolution, as an exception to *the pacta sunt servanda*. The theory fixed in the new and extraordinary situation alters the situation that, if already existing, would either make it impossible to perform the contract, or would entail its fixation under totally different conditions.

The arts. 479 and 480, both from the CBB, accept the possibility of reducing or changing the way in which the obligation is carried out in order to depart from excessive burden. In addition, the continuous or deferred execution of the contract is an essential requirement. On predictability to rule out contractual review, the STJ recognizes the imprescindibility, and, moreover,[5]

> Thus, it would not be sufficient to have an extraordinary fact in order to justify the contractual change. Such a circumstance was required to be also unpredictable. It is for this reason that the Brazilian courts do not accept, as causes for the review of contracts, events such as inflation or uncontrols in the economy, perfectly predictable among us. (ALVES: 2010; p. 47)

In international contracts, changes in factors that cause economic damage to any of the contractors is termed as *hardship*. It is a contractual readaptation in order to keep it when there is excessive burden in case of unforeseen events. About the hardship *clause*,

> (a) events occur or become known by the disadvantaged party after the conclusion of the contract; (b) events cannot reasonably be taken into account by the disadvantaged party at the time of conclusion of the contract; (c) events are out of the control of the disadvantaged party; and (d) the risk of such events was not assumed by the party at a disadvantage. (MEINERO: 2013; p. 193)

That is, the express provision of such a clause requires renegotiation, aiming to mitigate the consequences of the fortuitous case and force-greater force.

COVID-19

COVID-19 is an infectious disease, generating a severe acute respiratory syndrome, which broke out severely in China, having been declared a global pandemic by the WHO on March 11, 2020, and on March 20 the National Congress approved the decree of recognition of public calamity in Brazil. Although a small percentage of deaths is observed in comparison with the number of cases, it has a high incidence of transmission through droplets in the airways of infected people, having proliferated globally in the years 2020 and 2021.

> Coronaviruses are a large family of viruses common in many different species of animals, including camels, cattle, cats and bats. Coronaviruses infecting animals rarely can infect people, such as MERS-CoV and SARS-CoV. Recently, in December 2019, a new coronavirus (SARS-CoV-2) was transmitted, which was identified in Wuhan, China and caused COVID-19, and then spread and transmitted person by person. (BRAZIL: 2021)

[4] The analysis of the judges of the STJ shows a careful tendency to view the contractual review based on the theory of impiency as an exceptionality, requiring a broad demonstration of change in the original economy of the contract. For example, it has already decided that superior court that does not configure an abnormal (unpredictable) event for the revision of the original value of the commercial rent provision, the significant disproportion of the same with the current market value of the property, under penalty of configuration of undue interference of the judiciary in the autonomy of the parties who, when considering the circumstances in force at the time of the business - which remained unchanged - elected the rent value and its monetary update factor. [4] In other terms, the STJ recognized that the mere economic interest of the tenant to obtain the reduction of the rental value originally agreed, without any support in unforeseen change in the economy of the contract, sautés from the purpose of the action of review of the rent provided for in Article 19 of Law 8.245/91 and the theory of the unforeseen expressly received by art. 317 of the CC/2002. (MELLO: 2020; p. 3)

[5] RURAL LEASE. TERMINATION AND EVICTION. JUDICIAL RECUPARATION. COMPETENCE. JUDGMENT OF THE LOCATION OF THE PROPERTY. THEORY OF IMPEDANCE. PRICE TO THE OX'S ROBA. INHERENT VARIATION. IRRELEVANCE. It is competent to know, process and judge the Action of termination of rural lease of company that is in judicial recovery the judgment of the place of the property. The variation is inherent in the price of agricultural products, so if there is no intense and unpredictable variation, there is no need to talk about the application of the theory of impability due to the simple, even if significant, appreciation of the commodity. (TJ-MG - AC: 10443120009255002 MG, Rapporteur: Cabral da Silva, Trial Date: 14/04/2015, Civil Chambers / 10th Civil CHAMBER, Publication Date: 28/04/2015)

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This disease presents many controversies and narratives, prevailing, in a very debatable way, the need for social distancing, aiming to slow the spread of the virus. As such resulting measures lead to quarantines, travel bans, and especially the closure of workplaces, trades, industries, leading to unemployment, business breakdowns and financial collapse. These facts led to ruptures and contractual imbalances, generating a chaotic contractual relationship, being a crisis caused by an unprecedented and extraordinary event.

Containment measures create restrictions on freedom and property and have caused millions of jobs and entrepreneurs to be cut without a date still near the end of the pernicious framework.

Possible effects on agrarian contracts

The COVID-19, as stated above, can generate an extraordinary and costly event in agrarian contracts, and may accept the application of the theory of impedance in the established relationships.

The technology in the field and the greater technicality in the agro, as well as greater access to credit, have been distancing the understanding of the Judiciary in accepting the theory of impuder in agrarian contracts, which can only be in bilateral commutative contract. Eventually, the theory of impion is not likely to be applied in random (uncertain) contracts, such as derivatives, those deriving from "an *underlying asset, reference rate or index, which can be physical (coffee, gold, etc.) or financial (stocks, interest rates, etc*.)" (ROSSETI: 2020; p. 2), and aim to contribute so that the party suffers less instability, such as foreign exchange hedge, a transaction "*in which the price of a commodity or financial asset is fixed in advance in order to neutralize the impact of changes in the price level*" (ROSSETI: *op. cit.*). This type of contract favors a kind of price stabilization, since eventually linked to the foreign currency, with the risk of profit or loss when paying the price of the main contract (SPECIAL FEATURE No. 1,689,225 - SP (2017/0120440-5. Trial Date: 5/21/2019 and STJ — Resp: 858785 GO 2006/010 6587-4. Rapporteur Minister Humberto Gomes de Barros. Trial Date: 6/8/2010. T3 - Third Class. Publication Date - DJe. 3/8/2010).

Soybeans are the largest example of a contract in which the hedge operation manifests itself, in order for the parties to set a communal price, with lower risk of fluctuation. However, this agreement can be traded on the Stock Exchange, the so-called futures contract, being the first relationship entabulada perhaps the only stable. The emergence of the concept of agribusiness at Harvard in 1957 led to the understanding that the sector is the beginning of a business chain, from the insums to the agricultural products (TORMA: [6]*op. cit*.; p.2), demonstrating the complexity of the sector.

These contracts for the purchase and sale of future things have been constantly being discussed in the Courts about the application of the theory of impieration, and, in the case of soybeans, the STJ has ruled out such application in REsp 936741/GO. On the question of fortuitous case or force greater force, Law No. 8.929/1994 prevents the issuer of the CPR from being able to invoke such facts in its favor, removing the unpredictability in this respect by legal imperative.

The COVID-19 is an extraordinary fact, unpredictable, but the agro continued to operate, and the Pandemic Law (n. 14.010/2020), promulgated by President Jair Bolsonaro, inspired by the Faillot Law, in its article 7, aimed to remove the apanágio of the unpredictability "the increase in *inflation, the exchange variation, the devaluation or the substitution of the monetary standard*". These contradictions will certainly lead to the need for various judicial interventions in contractual relations,

> Judges should understand the real need of each contractor and its specificities in the face of the specific case. Despite a classic case of fortuitous case and completely unpredictable force-up force, magistrates will not be able to apply the theory of impuder to all who knock on the doors of the judiciary because of the pandemic, because, as the popular saying teaches, while some cry, others sell scarves, and this should be determined. (KINGS: *op. cit*.; p. 7)

[6] With regard to Asian rust, a disease that affects soybeans caused by the fungus phakopsora pachyrhizi, Antônio Augusto Coelho recalled that the STJ did not admit pests as unpredictable facts capable of justifying contractual revisions. (JC: 2020; p.1)

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The concern with the Pandemic Law aims to reduce the effects of this, obusing the overuse of the theory of impieting, limiting the number of lawsuits, maintaining a greater balance in relations.

> In this respect the bill does not innovate, but only enshrines through law jurisprudential understanding already consolidated in the Superior Court of Justice on the impossibility of resolution or contractual review based on the unpredictability when excessive burdeniness resulted from increased inflation, exchange variation of the dollar, for example, or changes in the monetary pattern in the country as occurred at the time of the Real Plan. (MELLO: 2020; p. 3)

In the view of CHIANCA *et al*: 2020; p. 3, the pandemic would have no effect on the rural lease agreement with regard to its clauses, especially on the basis of Art. 29 of the DET, force-greater force can lead to loss of the contractual object, with extinction and without loss and damage between the parties. The same authors (2020; p.4) also do not believe that partnership agreements would not be afflicted by COVID-19, since these presuppose the sharing, alone or cumulatively, of many contractual risks, and both parties would bear possible consequences of the theory of impudetion.

On COVID-19, a proposed thesis would be the inevitability of the event (MELLO: 2020; p. 6):

> The fortuitous or force-force case capable of excluding the contractor's liability for losses resulting from non-compliance with the contracted obligation does not dispense with the demonstration, to satiety, that the damage would not have been avoided even if taken by the debtor all the measures reasonably required for the performance of the contract as a result of the COVID-19 pandemic. (MELLO: 2020; p. 6)

Eventually, the continuity of the pandemic may bring uncertainty regarding production, distribution and prices. Possible reduction in exports, as well as an increase in imported machinery in dollars, are cause for concern, while the volume of credit does not grow in adequate quantity, affecting contracts and judicial recoveries.

The picture is still uncertain about the impact of the crisis and the participation of the judiciary, requiring a need for good faith and mutual cooperation. Variations in the price of the dollar as well as pests in agricultural crops at some point have already been, at some point, reputed as likely to be predictable by the judiciary, and the STJ admits that COVID-19 may lead to different conclusions

> Minister Cueva recalled that Brazil, despite not having faced health attacks in recent decades, has accumulated experience with price freezes, changes in monetary pattern and all kinds of state intervention in the economy. Judging by the evolution of jurisprudence in the Supreme Court it is possible to assess that today judges are more attentive to the consequences of their decisions and, therefore, will seek to take into account – speculating as indoctrinator and not as a judge – the peculiarities of each specific case. (JC: *op. cit.*; p.2)

Apparently, the Courts are waiting for the increase in the number of demands from the complications of the pandemic for some time, and, as Minister Ricardo Cueva recalls, "there will *hardly be a collective, uniform and appropriate response for any type of situation that presents itself. Not only sectorally, but due to peculiarities of specific markets and peculiar situations there may be losses and benefits*" (JC: *op. cit.*; p. 2).

COVID-19 as excessive burden in agrarian contracts will require a full demonstration of continued compliance disproportionately from the obligation. Exclusion of liability would depend on (ROVEDA: 2020; p. 9):

> proof of the irresistibility regarding the occurrence and impact of the consequences of the new COVID-19, with no fault of the party (i.e., adoption of the expected mitigating measures) and the occurrence of the causal link with the impossibility of implementation (i.e., absence of other causes for the impossibility of contractual implementation).

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Checking jurisprudential positions on cases of impudency theory that could illuminate the issue of the effects of COVID-19 on agrarian contracts, it has been that, for example, an unforeseeable frost claim impacting the cultivation, planting and harvesting of sugarcane was not the basis for the contractual review because it is a supposed foreseeable risk of the activity developed (TJ-SP - 1000891-57.2018.8.26.0136; 1006911-30.2016.8.26.0073).

In the case of rural leasing, there was the understanding that more relevant than the unpredictability of the event would be the configuration of economically excessive advantage to one of the parties, that is, great advantage for only one of the contractors, in order to justify possible revision (TJ-RS - 0215728-05.2014.8.21.7000; Civil Appeal No. 70051029494). Increase in tax burden also does not serve as a basis for applying the theory of impability in 70044543114 a rural lease (TJ-RS)

In another case, the rural producer who adhered to long-term financing cannot claim the theory of impudence, since he should be aware of problems such as a crop failure, bad weather that would make production unfeasible, among other facts, because he would have to take risks (TJ-RS – Civil Appeal No. 70005778204).

Final considerations

The table is open with regard to the effects of COVID-19 on contracts, especially agrarian contracts, the focus of work. The consequences are current, but mainly forward.

Based on the economic paralysis and the instability generated, the work sought to question whether the theory of impsoon can be applied for a contractual review regarding the possible economic imbalance generated to one of the parties. As parameters, we sought doctrinal understanding and jurisprudential positions on similar cases, in order to understand the applicability or not from pandemic disease.

At the moment, in which the moving train lives, there is still no perfect perception of the consequences of agrarian contracts, having sought this article in bringing gizamentos that may eventually contribute to the dislinde of disputes resulting from alleged contractual imbalances from this state of things.

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