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Le changement de circonstances en droit comparé

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Introduction

Je suis actuellement en train de réaliser un **mémoire en droit comparé, sur le changement de circonstances dans la révision judiciaire du contrat**, en anglais. Je me penche sur le droit français, anglais et européen.

Je vous mets ici une description de mon projet. J'aimerais communiquer par mail pour échanger avec tous les lecteurs qui auraient des idées de réflexion sur un tel projet.

Description of the project

"A person who fails to perform his contract properly is liable for breach of contract; this is true in English law, as it is in French law. One main difference is that French lawyers tend to consider that Pacta sunt servanda is better respected through specific performance of the contract, while English lawyers are more usually satisfied with damages" . This solution, through the eyes of a French professor, underlines some of the differences between the English and the French contract law including the solution given to the question of a judicial power to review (or redraft) a contract due to changes of circumstances (due to the effect of supervening events). In fact, the English and the French solutions are closer than we think, but much different than most of the other European solutions. What is interesting is that the English and the French legal systems have quite the same reasoning (they do not accept a judicial redraft of a contract) on this question, but through totally different legal mechanisms. Differences remain, as states B. Fauvarque-Cosson observing for example that the English cases more often end up by the termination of the contract and damages, whereas French cases tend to the specific performance of the contract, even if it can be unequal for one the parties. But in both cases, the judge cannot redraft a contract that has been made, in which no specific clauses (like hardship clauses, unforeseeability clauses, harshless clauses, serving clauses or renegociations clauses) already exist to solve the issue of supervening events.

In French Civil Law, the Cour de cassation (highest civil court) held in 1876 that "The judge is not allowed, however fair and equitable his decision may appear, to take into account the time and the circumstances in order to modify the contract" (Case ‘Canal de Craponne'). We can find this same solution in English Civil Law in a similar case: Staffordshire Area Health Authority v South Staffordshire Waterworks Co . But I shall stress similarities and differences between the two ways of reasoning, similarities and differences that I will study (through the English doctrine of frustration (and through the implied term theory and equity) and the French doctrine of force majeure , which have different definitions and consequences).

"In other legal systems the courts do have broader powers to intervene and to adjust the contract"

: some other European legal systems give more freedom to the judge on this question, allowing judicial mechanisms to compensate any injustice resulting from an imbalanced contract , whereas the English and the French judges don't have such powers, even if the powers of the French and of the English judges are totally different (due to the doctrine of binding precedent, or Stare Decisis et non quieta movere:"let the decision stand, don't upset things that have been settled", that exists in England but not in France, which is not a Common law country). The European debates on the matter , and the European law of contract, are interesting to study, as they are seeking to find the solution that suits the best, often arguing in favour of mechanisms to compensate the injustice of an imbalanced contract due to changes of circumstances. Moreover, there exists in France, projects to review the French solution on the subject, which are currently being discussed.

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