



Le changement de circonstances en droit comparé des contrats

publié le 27/03/2009, vu 7273 fois, Auteur : [Corentin Kerhuel](#)

Mémoire/Project : The change of circumstances in comparative contract law. Subject : An examination of challenges to the harmonisation of European contract law illustrated by the treatment of change of circumstances. Rédigé en Anglais, London South Bank University 2009.

Image not found or type unknown Ce mémoire est disponible gratuitement sur simple demande en contactant l'auteur de ce blog.

This project is available for free upon request, by contacting the author of this blog.

[Document de présentation \(format PDF\), disponible ici](#)
[Presentation document \(PDF format\), available here](#)

Introduction, en français

Selon **E. McKendrick**, "Il est souvent dit que le droit anglais n'encourage pas l'ajustement des affaires dans l'hypothèse où l'exécution contractuelle deviendrait plus onéreuse [dans le cas d'évènements imprévisibles]. Ce n'est pas entièrement juste. La question ne devrait pas être vue comme savoir si le droit anglais permet un réajustement ou pas. La véritable question est : qui devrait faire ce réajustement ? Le juge ou les parties ? La réponse donnée par le droit anglais est qu'il appartient aux parties de faire le réajustement. Si les juges n'ajusteront pas les affaires pour les cocontractants, ils seront réticents à placer des obstacles dans les tentatives des parties d'ajuster leurs affaires pour faire face aux changements de circonstances". De façon intéressante, la même chose pourrait être dite du droit français. Excepté que si le droit anglais va considérer qu'il devra être mis fin au contrat par la doctrine de *frustration* dans le cas d'un changement de circonstances, le droit français lui, obligera les cocontractants à respecter le contrat à la lettre. Ces solutions diffèrent des propositions faites à un niveau européen.

Ce mémoire est un examen des challenges de l'harmonisation européenne du droit des contrats illustré par la question du changement de circonstances.

Introduction, in English

According to **E. McKendrick**, *"It is often said that English law does not encourage the adjustment of bargains in the event of contractual performance becoming more onerous [in the case of unforeseeable events]. This is not entirely accurate. The issue should not be seen as whether or not English law permits readjustment. The real issue is: who should do the readjusting? Is it the courts or is it the parties? The answer which English law gives is that it is for the parties to do the readjusting. While the courts will not adjust the bargain for the parties, they will be reluctant to place significant obstacles in the way of attempts by the parties to adjust their bargain to meet changing circumstances"*. Interestingly the same thing could be said about French law, except the fact that English law will consider that the contract must be brought to an end under the doctrine of frustration in the case of changing circumstances, whereas French law will bind the parties 'to make it good'. Both solutions differ from European proposals.

This project is an examination of challenges to the harmonisation of European contract law illustrated by the treatment of change of circumstances.

Contents / Sommaire

Introduction

General Introduction

Definitions

The Pacta Sunt Servanda and Rebus sic stantibus principles.

The issue raised by the change of circumstances

The different approaches in the English and the French legal systems

A Commentary on the French and The English legal reasonings in the French case Canal de Craponne [1876] and the English case Staffordshire Area Health Authority v South Staffordshire Waterworks Co [1978]

The facts in the French case

The facts in the English case

The question arising

The French ruling

The English ruling

Similarities between the English and the French solutions

Differences between the English and the French solutions

National projects to review the law

The instigator of the reform: the judge or the legislator?

The European Law: finding a common solution?

Brief overview of different solutions in other countries

The Principles of European Contract Law and the Draft Common Frame of Reference

The change of circumstances in the UNIDROIT Principles

The change of circumstances in The Principles of European Contract Law

The change of circumstances in The Draft Common Frame of Reference

Comparison between the PECL and the DCFR

Arguing for a new solution in French and English laws?

Conclusion

The necessity of a European debate

Different systems: to a common solution in the future?

Appendix

Bibliography

Main documents

Other documents

Acknowledgements

En plus / In addition

Ce mémoire a été réalisé durant l'année 2008/2009, sous la direction de Mic Jeeves, professeur de droit européen et de droit des contrats, London South Bank University.

This project has been realised during the year 2008/2009, under supervision of Mic Jeeves, European Law lecturer and Contract law lecturer, London South Bank University

Corentin Kerhuel