



Le changement de circonstances en droit comparé des contrats

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Introduction, en français

Selon **E. McKendrick**, "Il est souvent dit que le droit anglais n'encourage pas l'ajustement des affaires dans l'hypothèse ou l'exécution contractuelle deviendrait plus onéreuse [dans le cas d'évènement 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 tentative 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.

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Acknowledgements

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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

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