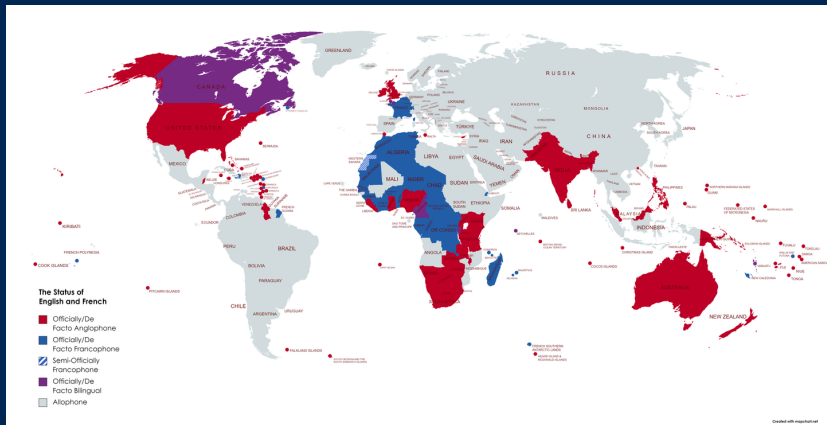


In defence of French contract law

Background

Problem: French contract law is criticised

- perception that it gives judges too much power
- intervene in private contractual matters
- Hinders business freedoms
- Takes away agency



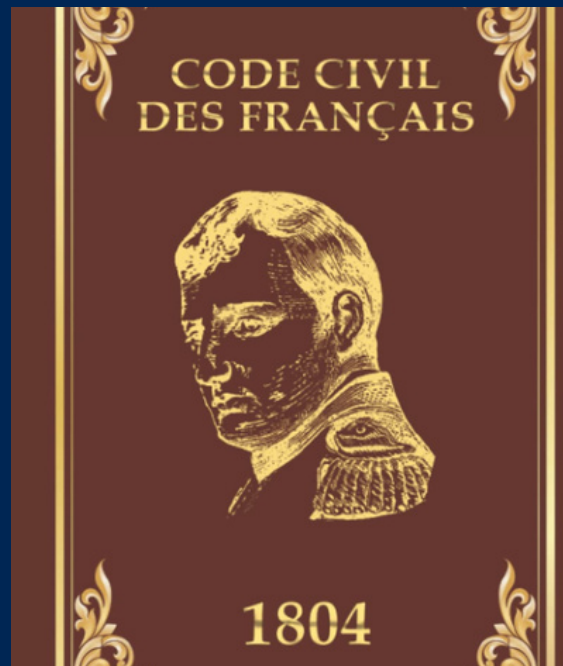
Parties doing business in French speaking countries often prefer to use English law instead

Are these claims about French law accurate?

Decided to concentrate on Article 1195 of the French Civil Code:

- Uses at a contract party's request
- When contract is confronted with unforeseen problem
- Causing the party difficulty to fulfil their duties
- Can call a renegotiation of the contract
- If it fails – a judge may be called to settle the matter

At first glance this legal provision seems to vindicate aforementioned claims



Research

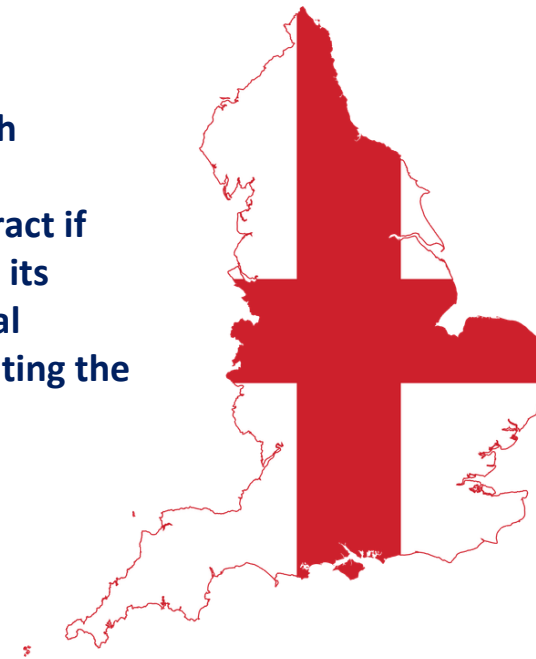


- Went through database with French law cases which involved Article 1195
- Analysed academic papers examining the meaning and purpose intended for Article 1195

Compared Article 1195 to English provisions of similar nature

-> Frustration – ending the contract if unforeseen circumstances make its performance impossible or illegal

-> Hardship clauses – parties writing the effects of Article 1195 into their contract voluntarily



There is no direct equivalent of Article 1195 in English law



Results

Findings:

- Purpose of Article 1195
=/
fomenting judicial intervention
- Designed to encourage renegotiation
- In most cases where Article 1195 is used, the judge does not intervene
- French law promotes a mutual consent based solutions
- At the same time protects weaker parties
- Weaker = those who don't have financial means to procure themselves legal support to help them draft the contracts
- Comparison with English and Welsh law:
- Parties must either add protections of Article 1195 into the contract themselves or do without it – Hardship clauses
- The threshold necessary for frustration is too high for it to be used frequently
- In England weaker parties must convince stronger ones to abandon a position where they have the negotiating advantage, whereas in France they are already automatically protected by the law
- French legal system is more flexible than it is given credit as parties can remove Article 1195's application to their contract
- Overall parties are better served in French system than credit is given, weaker parties enjoy additional protections whilst stronger parties can remove them if they feel it impedes their ability to do business

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