



In Defence of French Contract Law

How do French Hardship rules fare in comparison with English Frustration and Hardship clauses?

*By Fernando Marco Dufort
With the help of Niamh Connolly*



About the authors:

Fernando Marco Dufort is a student of Law with French law at University College London and at Paris Panthéon Assas in the Faculty of Laws and a part of the 2026 UCL Laidlaw Scholar cohort.
fernando.marco.25@ucl.ac.uk

Supervisor:

Dr Niamh Connolly is an Associate Professor at UCL laws. She specialises in the law of unjust enrichment and also researches and teaches contract law. Niamh studied Law and French at Trinity College Dublin, where she was elected to Scholarship in 1998. Niamh worked as an Assistant Professor at Trinity College Dublin, where she directed the degree in Law and French. She joined UCL in 2016.
n.connolly@ucl.ac.uk

Table of contents

Introduction	4
1) The English Opinion	6
2) Thesis	7
3) Article 1195	8
a) In theory	8
b) In practice	9
c) The benefits of Article 1195.....	10
4) The English Equivalent	11
a) Frustration	11
b) Hardship clauses	11
5) Conclusion	12

– Introduction –

The French legal system has a reputation in the anglo-saxon world of condoning excessive judicial interference. In the field of contract law this is manifested by a view that judges are vested with exorbitant powers, permitting them to significantly modify the language and interpretation of contracts. Detractors of the French system argue that this undermines freedom of contract and renders French law unattractive for parties who wish to conduct business on their own terms.

The French government sought to counteract through the 2016 reform of French contract law. This broad rework of French legislation had 3 principal objectives¹. Firstly, guaranteeing juridic security and efficiency of rules by updating the language, originally written in the early 19th century, making them easier to read and more accessible. Secondly, to reinforce the protections of weaker parties, those with limited legal experience and fewer means to procure competent legal counsel for themselves. Lastly, to reinforce the appeal of French law over its competition (Germany, UK, Québec, Netherlands and others), by making it less unpredictable. The goal was to make French law more attractive and incentivise foreign economic actors to conduct their business there.

Paradoxically this reform introduced Article 1195 to the French Civil Code providing parties with the opportunity to call for the renegotiation of contracts when they are faced with “imprévision” also known as hardship, if these fail they can then call a judge who is given the power to redraft or even terminate the contract if seen fit. Upon first impression, it would seem as though this provision in the French Civil Code vindicates this vision of an interventionist attitude within French law. There seems to be a tension between these competing aims of making French law more attractive, whilst simultaneously maintaining an interventionist attitude, with Article 1195 being its expression.

This essay is a study of Article 1195 of the French Civil Code and its English counterparts: frustration and hardship clauses. This text is the fruit of a tripartite method. Firstly, an analysis of the language used in the Civil Code to describe Article 1195 to understand the purpose. Secondly, an examination of a database of judicial decisions in which Article 1195 was cited to get a picture of the practical application of this legislation and an accurate account of the extent to which judges use their statutory powers. Finally, a consideration of academic articles which explain the manner in which French judges understand the Article’s language. This database was obtained using the French government website “légifrance” which stores judicial decisions of the French higher courts, the cases consulted were those in which Article 1195 of the French Civil Code was mentioned at least once.

The aim of this study is to establish whether in practical application, Article 1195 does really allow for excessive judicial intervention. It also poses the question of whether parties would find greater protection within France or England and if English law can learn from the French manner of regulating contracts.

¹ Le nouveau droit français des contrats – Caroline Asfar-Cazenave

Through this analysis I hope to answer three questions:

Does Article 1195 succeed in offering greater protection to weaker parties?

Does Article 1195 betray or support the aims of the 2016 reform – making French law more attractive and predictable?

When compared with English law, which system protects the interests of contractual parties suffering from the effects of unforeseen circumstances affecting their contracts?

1) The English opinion

The commonly held understanding is that the French legal system allows for too much judicial intervention in contract law. This has been a contributing factor to English lawyers advising their clients to avoid French law's application on their contracts.² Their aim is to protect the parties' freedom of contract by avoiding a system where this agency can be stripped by an external judicial actor. It is understandable that they feel as though in a system where judges are encouraged to make decisions which alter the contents of a contract, individuals are more restrained in the manner they conduct their business.

The question of which legal system to apply in your contracts is not mundane. The choice has significant consequences for a contract. English law is dominated by economic considerations, whilst the French system favours the will of the parties.³ Gaining contractual parties' preference enhances the influence a country possesses over international trade, giving them the ability to establish the rules parties must follow.

It is becoming increasingly common for parties to insert arbitration or jurisdiction clauses into their contracts in order to avoid the application of French law.⁴ This trend is driven in part by an increase in business dealings with parties from the USA who seek to apply Common Law rules, but also by lawyers as important dossiers in Europe are dealt by anglo-saxon law firms who show not only a bias against french legislation but also increase the influence that English law has on the continental system, even when the law that is applied is French.

Article 1195 of the French Civil Code seems to vindicate this attitude of avoidance by giving judges the power to rewrite contracts in the face of "imprévision" or an unforeseen event after parties have failed an attempt of renegotiation. The irony is clear as it was an addition of the 2016 reform of French contractual law, whose stated objective is to make French law more attractive for foreign investors. It seems paradoxical as by giving additional powers to the judge, this reform appears to widen the seemingly clear contrast with the English frustration rules.⁵

² Alaris Law

³ C Anno, '«Common law» ou droit civil, est-ce que cela importe?' (*Le Petit Juriste*, 8 July 2015) <https://www.lepetitjuriste.fr/common-law-ou-droit-civil-est-ce-que-cela-importe/>

⁴ David Gordon-Krief, 'L'influence de la common law dans la pratique du droit, en France et dans l'Union européenne' (2002) 32(1) *Revue générale de droit* 141

⁵ Solène Rowan, 'The New French Law of Contract' (2017) 66(4) *International and Comparative Law Quarterly* 805

2) Thesis

This negative view of French law lacks nuance. When article 1195 is invoked, it is rare for a judge to have to intervene with a redrafting of the clauses. Its main purpose is to foment dialogue between parties, by giving parties the right to call for a renegotiation before having to go in front of a judge, this establishes an avenue for consensual renegotiation which in order avoids an imposed settlement. A proper comparison of each system's methods needs to compare Article 1195 with English law's approach.

Article 1195 offers greater protection for parties when compared with the English equivalent. Since parties have the possibility of eliminating the application of article 1195 from their contract, the fear that a judge may tamper with your work can be swiped away with the flick of a pen. Meanwhile in England, frustration stands as the only legal remedy for parties whose contracts have been upended by an unforeseen event. The issue is that frustration places a much higher threshold than Article 1195, making it impractical for most contracts.

3) Article 1195

A) In theory

Article 1195 of the French Civil Code allows for a party in a contract to call for a renegotiation of contractual terms when an unforeseen event causes the execution of the contract to be “excessively onerous”. If this renegotiation fails, a judge can be called by one of the parties to adapt or end the contract.

Concretely, the court is allowed to terminate the contract or adapt it to appropriately distribute profits and losses amongst the parties. The article reverses the longstanding “Canal de Craponne” decision which barred judges from reworking legal contracts; this rule was governed by values of individual responsibility in the face of clauses that have been accepted freely.

The article uses three words to describe the conditions that must be met for it to be used by one of the parties.⁶ There must be a “change”, of “circumstances” that was “unforeseeable” at the time the contract was concluded. This change must make it so that the execution of the contract becomes “excessively costly” for one of the parties. This seems to indicate that the parties’ grievance must be of an economic nature. The vocabulary used in the text seems to leave the scope of its application quite open ended. There is no explicit limit to the extent of the judge’s “revision”, anything seems possible. Overall the writing seems to be left open to interpretation.

Before proceeding to a practical analysis, we must differentiate Article 1195 hardship from Article 1218 of the French Civil Code which establishes the rules for “force majeure”⁷. It can be confused with Article 1195 as it is also used when an unforeseeable event occurs. However the difference is that this event must “totally escape the control” of the party, and its effects which could not have been avoided even with “appropriate measures” must completely prevent the party’s execution of their contractual obligations, whereas with Article 1195 the execution is still possible. Furthermore, the result of Article 1218 is always a suspension of the parties’ obligations and termination of the contract if the unforeseeable events’ effects are not temporary. Article 1218 does not apply when execution of a party’s contractual obligations become financially too onerous, it requires a “real” impossibility to do the thing required.

In this context, Article 1195 seems to place itself as an intermediary between a complete lack of intervention and a nuclear solution with high likelihood of ending contractual relations. It gives the opportunity for parties to salvage their contract and work through their struggles, as the judge only intervenes if the renegotiation is unsuccessful.

⁶ Philippe Stoffel-Munck, 'L'imprévision et la réforme des effets du contrat' [2016] *Revue des contrats* (numéro hors-série) 30

⁷ Elise Roumeau, 'Le droit des contrats face aux risques' [2024] *La Revue du Centre Michel de l'Hospital* n° 28

Since the language of the lawmakers is murky as to the threshold needed for the law to apply, and to the extent of the judge's powers, it is necessary to study real-life examples of this legislation being applied to obtain an accurate picture of its effects.

B) In practice

English jurists feel that this article causes a more interventionist judicial attitude.⁸ Therefore, they are prone to advise their clients to remove French law's application from their contracts, in favour of the English system. In practice however, the application of Article 1195 rarely ends in front of a judge.⁹ Judges are reluctant to use their powers as they acknowledge that courts lack the specific industry metrics required to reconstruct contractual agreements. Furthermore, parties are free to exclude the application of Article 1195 in their contracts.¹⁰

The fundamental purpose of article 1195 is to get parties to talk before abandoning a contract.¹¹ The judge can only be summoned at the initiative of one of the parties. Judicial intervention in these cases does not result from an external imposition, but from the parties' own initiative. Furthermore, this intervention only occurs if the parties are still divided following an attempt at renegotiation.

During emergency situations which make performance of the contract tougher by provoking sudden changes in product-prices, such as Covid-19 or the Russo-Ukrainian war, parties often want to cut their losses by abandoning their contractual obligations.¹² Through Article 1195, the French government is attempting to rescue these contracts from ending. Renegotiation gives parties the chance to voice their grievances and search for a mitigating solution.

It must be stated that Article 1195's invocation by one or both of the parties rarely reaches the judicial level, therefore the sample size is low. Through observation of those cases where the judicial stage is reached, we can see two scenarios occur following the invocation of Article 1195.

⁸ Bashayer Al Majed and Abdulaziz AlMajed, 'Frustration v Imprévision, Why Frustration is so "Frustrating": The Lack of Flexibility in the English Doctrine's Legal Consequence' (2024) 45(1) Liverpool Law Review 25

⁹ Andrew Tetley, Aurélie Lopez and Diana Jacquot, 'Adapting Contracts in Times of Crisis: Force Majeure and Hardship under French Law' (Reed Smith, 22 April 2026) <https://www.reedsmith.com/articles/adapting-contracts-in-times-of-crisis-force-majeure-and-hardship-under-french-law/>

¹⁰ Squire Patton Boggs, 'Gérer l'imprévision (art 1195 du code civil) Quelques conseils pratiques à l'aune de décisions récentes' (*La Revue*, 9 October 2024) <https://larevue.squirepattonboggs.com/gerer-limprevision-art-1195-du-code-civil-quelques-conseils-pratiques-a-laune-de-decisions-recentes.html>

¹¹ Yves Picod, 'Existe-t-il une obligation de renégocier en cas de bouleversement des circonstances économiques ?' in Yves Picod and Albert Ruda Gonzalez (eds), *L'imprévision et le nouveau droit des obligations : Journées Capitant bilatérales franco-espagnoles organisées à Perpignan et Gérone, les 27 et 28 juin 2022* (Société de Législation Comparée 2024)

¹² Catherine Pédamon and Radosveta Vassileva, 'Contractual Performance in COVID-19 Times: Does Anglo-French Legal History Repeat Itself?' (2021) 29(1) European Review of Private Law 3

Firstly, where an agreement is not reached, the judge's intervention takes into account each parties' needs which have had an opportunity to be expressed. The "Cour de cassation 26 juin 2024"¹³ case is an example of a situation where Article 1195 was invoked to successfully modify a contract to allow parties to maintain economic relations. In this example concerning two corporations who traded materials to produce chemical products, one of the parties used Article 1195 to revise the prices established in a contract following the rise in the cost of one of the product's key ingredients. Following the other party's refusal, a judge was called upon to intervene and amended the contract to amend the excessive financial burden placed on one of the parties due to the price variation. We can observe that Article 1195 can be used to protect parties from incurring financial losses due to circumstances which escape their control.

Then, we find cases where a judge's intervention is not necessary as parties are capable of finding an agreement, such as in the "Procès-Verbal de modification de l'accord NAO 2020 Signé le 11 mars 2020, CHATAL – Site d'Herbignac"¹⁴, where parties used Covid-19 as a hardship cause of their excessive financial burden. In this case both parties agreed to suspend obligations to increase worker salaries and food compensation for one year. Here we can observe how Article 1195 can be used in a way that does not intrude excessively on each party's autonomy through mutual accord. Furthermore, in this case the measures added by Article 1195 were temporary, meant to be in effect only during the sanitary crisis. This example shows that Article 1195's purpose is not to operate a complete overhaul of the parties' agreement but to adapt it in times of crisis.

C) Benefits of Article 1195

The primary benefit of this article is the protection it offers to weaker parties, that is to say those which do not possess the financial resources or experience to obtain adequate legal representation at the time of contract formation.¹⁵ They are given an opportunity to rework the flaws in their contracts, whose drafting will tend to be in favour of the stronger parties.

An additional advantage is the flexibility inherent in Article 1195 as parties have the right to exclude its application from their contracts. This frees French law from claims of excessive interference as the judge's intervention is essentially a choice made by the contractual sides.

¹³ Cour de cassation, civile, Chambre commerciale, 26 juin 2024, 23-12.586, Inédit

¹⁴ "Procès-Verbal de modification de l'accord NAO 2020 Signé le 11 mars 2020, CHATAL – Site d'Herbignac"

¹⁵ The paradoxes of the theory of imprévision in the new French law of contract: a judicial deterrent ? Catherine Pédamon

4) The English equivalent

In English and Welsh law we cannot find a doctrine that corresponds exactly to French hardship rules established by Article 1195. Two doctrines overlap significantly but not perfectly.

a) Frustration

The first is frustration, established in the case of *Taylor v Caldwell*¹⁶, whereby a contract is automatically terminated (frustrated) if an unforeseen event makes performance physically or commercially impossible, through no fault of either party. The case of *Davis Contractors*¹⁷ established that this event must make performance impossible or “radically different” from what the parties originally agreed. This high threshold means that the doctrine is rarely applied in practice, in stark contrast to article 1195, meaning it cannot act as a practical solution for most contracts.

This doctrine has more in common with Article 1218 force majeure than Article 1195. It is a final solution for a contract that is not salvageable. In both cases the contracts cannot be continued after the doctrine is applied.

We can observe that English and Welsh law does not guarantee parties an opportunity to renegotiate their contracts in unforeseen circumstances. Parties must rely either on the consent of the other party for a renegotiation, accepting a contract that turned out against their favour or using an unreliable nuclear option to completely end all obligations, with no middle ground.

b) Hardship clauses

Though English and Welsh law does not admit hardship,¹⁸ per *Davis Contractors*, in practice lawyers can insert clauses into their clients’ contracts. Hardship rules in English and Welsh law must be the result of all parties’ wills, the judge is not involved in the contract’s redrafting.¹⁹ When included in the contract,

¹⁶ *Taylor v Caldwell* (1863) 122 ER 309

¹⁷ *Davis Contractors Ltd v Fareham Urban District Council* [1956] AC 696

¹⁸ *Davis Contractors Ltd v Fareham Urban District Council* [1956] AC 696

¹⁹ L'imprévision en droit anglais des contrats – Sandrine Tisseyre

these “hardship clauses” tend to mirror the French law, allowing for the renegotiation of the contract when contractual balance is lost due to an unforeseen event whose risk neither party accepted to be encumbered with.

5) Conclusion

This study’s methodology can only provide a limited assessment of the French and English contract legal systems as I solely focused on hardship rules. To get a clearer picture broader research must be performed, investigating other elements of each system. Please keep this in mind as you read through these parting words.

English and Welsh law allows parties greater flexibility when they create contracts. The system places very few guardrails, giving them greater agency to decide how to proceed when facing complicated situations. This benefits stronger parties that can afford accurate legal advice.

French law on the other hand shows greater protection of weaker parties by establishing a more hands-on approach. In French law the advantage is for the weaker party that must be convinced to relinquish hardship, whilst in English law it is the stronger party that must be moved to accept it. It also retains flexibility by allowing for the exclusion of Article 1195’s application.

This system benefits both weaker and stronger parties, it provides a greater baseline of protections, which gives more leverage to those smaller parties, but allows deals between stronger parties who do not need or wish for this intervention to free themselves from any perceived constraints.

We can therefore conclude that the a priori assessment often echoed in the English speaking world claiming that French law undermines Freedom of contract is not accurate. The French system is capable of adapting itself to the differing characteristics of contractual parties in a way that English and Welsh law cannot.

Thank you for reading!