

# English Law for Contracts: Trusted Ally or Trojan Horse?

Contracts are essential to any business or personal transaction, providing a legal framework that outlines the obligations and responsibilities of all parties involved. Choosing the right law to govern a contract is a critical decision that can have far-reaching implications. One popular choice is English law, which has long been regarded as a trusted ally when it comes to commercial contracts. However, the use of English law for contracts is not without controversy, with some arguing that it can be a Trojan horse that imposes unfamiliar rules and creates legal uncertainty.

This article seeks to explore the advantages and disadvantages of using English law for contracts. By examining the benefits and drawbacks, we aim to help businesses and individuals make informed decisions about whether English law is the right choice for their contracts. Ultimately, the question of whether English law is a trusted ally or a Trojan horse requires a nuanced answer that considers various factors, including cultural differences, the cost of obtaining legal advice, and the specific details of each contract.

## Introduction

Contracts are the foundation of modern business. They provide the legal framework for parties to make agreements and ensure that all parties are held accountable for their actions. When entering into a contract, parties must select the governing law that will be used to interpret and enforce the terms of agreement.

One option that has gained popularity in Russia over the course of the past 30 years is English law. English law has earned a reputation as a respected and reliable choice for contracts globally. Its widespread acceptance and use can be attributed to several factors, including its long history of promoting commercial and business interests, its clarity and predictability, and the established and experienced legal system within which it operates.

However, the suitability of English law for contracts is not a universally accepted fact. Critics suggest that it may not be the best choice for all contracts, particularly those involving parties from different cultural backgrounds or those involving less complex issues. Critics also argue that the cost of obtaining legal advice to ensure compliance with English law may be prohibitive for some parties.

Given these concerns, it is important for any party affected to examine the use of English law for contracts closely.

## Benefits of using English law

English law has several advantages that make it a popular choice for contracts. Here are some potential benefits:

### 1. Clarity and predictability

English law is known for its clarity and predictability, which makes it easier for parties to understand their rights and obligations under a contract. This can reduce the likelihood of misunderstandings and disputes. For example, in the landmark case of *Hadley v Baxendale*, English law established the principle of foreseeability of damages, which provides clear guidance on how damages will be calculated when one party breaches a contract.

## **2. Transparency**

The English legal system provides transparency and accessibility, with a well-established body of case law and statutes. This helps parties to navigate the legal framework and make informed decisions. For instance, the Contracts (Rights of Third Parties) Act 1999 grants third parties the right to enforce contractual terms, which serves as a clear and transparent mechanism for protecting the rights of non-signatories to the contract.

## **3. Global acceptance**

English law has gained widespread global acceptance, particularly in commercial contracts, banking, finance, and insurance sectors. This makes it an attractive choice for parties operating in international markets. For example, many cross-border transactions use English law to govern their agreements.

## **4. Expertise**

The English legal system has a wealth of legal expertise, with leading lawyers and judges practicing and adjudicating in the UK. This expertise can be leveraged by parties to obtain high-quality legal advice and representation. In addition, English courts often have the jurisdiction to hear disputes that arise under international contracts, which demonstrates their expertise and knowledge in this area.

Overall, the benefits of using English law provide a stable and predictable legal framework for contracts, which can benefit parties across various sectors and industries.

## **Potential drawbacks of using English law**

While English law has numerous advantages, it also has potential drawbacks that should be considered when choosing the governing law for a contract. Here are some potential drawbacks of using English law:

### **1. Cultural differences**

The use of English law may not be suitable for all types of contracts, particularly in situations where parties come from different cultural backgrounds. This can lead to misunderstandings or difficulties in interpretation. For example, a clause with specific English law terminology or concepts may not be familiar or easily understandable to non-English speakers.

### **2. High costs**

Obtaining legal advice on English law can be expensive, particularly for small or medium-sized businesses. This may put them at a disadvantage when negotiating contracts with larger corporations that have greater resources. Additionally, resolution of disputes in English courts can be costly and very time-consuming.

### **3. Biases and Geopolitical Risk**

English law, like any legal system, is not completely neutral. It is subject to geopolitical influences, and Britain's strained relations with certain countries may impact its application of English law in cases involving parties from those countries. For example, Russia and Russian businesses have been subject to sanctions by the UK government, which may have introduced a bias in the application of English law in disputes involving Russian parties. While the prevalence and extent of such biases is a matter of debate, they are an important consideration for parties entering into contracts where such factors could influence the choice of governing law.

#### **4. Complexity**

English law can be complex, with a vast body of case law and statutes that can be difficult to navigate for those unfamiliar with the legal system. This can lead to confusion or errors in interpretation, which can have significant consequences for parties involved in the contract.

#### **5. Slow-moving legislation changes**

English law is a common law system, which means that changes to the law are often made incrementally through case law, rather than through changes in legislation. This can make it difficult for parties to anticipate changes or updates to the law, which may result in unforeseen impacts on their contracts.

In summary, while English law has numerous potential benefits, such as clarity and global acceptance, it is not without its drawbacks. Parties should carefully consider these potential drawbacks when deciding whether to use English law as the governing law for their contracts.

## **English law and Russian Sanctions**

### **Enforcement of Judgments**

The use of English law as a governing law for contracts involving sanctioned parties may pose risks, particularly with regard to the enforcement of judgments. This is because sanctions may result in an increased likelihood of challenges to the enforcement of English court judgments in other jurisdictions or the freezing of assets.

Effectively, it is important to consider the potential effects of sanctions when selecting the jurisdiction and governing law for a contract. Parties should ensure that they have considered all relevant factors, including the possibility of biased government actions, future sanctions or political instability in general, and seek appropriate legal advice to avoid the risks associated with sanctions.

Parties to international contracts should consider alternative governing laws, such as Hong Kong law or the law of a non-Western jurisdiction, that may provide greater certainty in situations involving sanctions.

Overall, sanctions pose significant challenges for the use of English law in international contracts. Parties need to assess the risks involved and take appropriate measures to mitigate them.

### **Political Factors; Brexit**

The imposition of sanctions by the UK government against Russia has led to increased uncertainty and risk in using English law as a governing law in such contracts. The application of English law in cross-border contracts involving parties subject to sanctions may be biased or influenced by political factors. This is due to the reliance on the English legal system, which is subject to geopolitical influences, including the UK's negative stance towards Russia.

Another factor to consider is a potential challenge of enforcing English court judgments in other jurisdictions, particularly in light of the UK's withdrawal from the European Union and the resulting uncertainty around cross-border enforcement mechanisms.

## Choice of Forum

As noted above, the use of English law in cross-border contracts involving parties subject to sanctions may pose risks, particularly with regard to the enforcement of judgments. This is because sanctions may result in an increased likelihood of challenges to the enforcement of English court judgments in other jurisdictions or the freezing of assets.

Even if a cross-border contract were to be governed by English law, parties should consider alternative dispute resolution mechanisms, such as the Hong Kong International Arbitration Centre (HKIAC), which may provide greater certainty and transparency in situations involving sanctions.

## Conclusion

English law remains a popular choice for cross-border contracts due to its reputation for stability and predictability. However, as we have seen, parties should be aware of the potential pitfalls that may arise when dealing with sanctions or other unforeseen circumstances. In particular, parties entering into cross-border contracts governed by English law should consider alternative dispute resolution mechanisms, such as HKIAC or local arbitration forums, which may offer greater certainty and transparency.

Ultimately, whether English law is a trusted ally or a Trojan horse will depend on the specific circumstances of each case. Nonetheless, by being aware of the risks and taking steps to mitigate them, parties can ensure that their cross-border contracts are both effective and enforceable. As such, while there are challenges to doing business across borders, there are also opportunities for growth and expansion. By working together and engaging in thoughtful planning, stakeholders can navigate the complexities of cross-border contracting and overcome any obstacles that arise along the way.

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