

Comparative Case Studies

Objective: Compare how the same legal dispute is handled in French (Civil Law) vs UK (Common Law) systems



THE FACTS (Same for both jurisdictions)

Parties:

- **Claimant/Demandeur:** TechStart Ltd/TechStart SARL - A software development company
- **Defendant/Défendeur:** MegaCorp Inc/MegaCorp SAS - A multinational corporation

Dispute: TechStart was contracted to develop a custom inventory management system for MegaCorp for €500,000. After 8 months of development, MegaCorp terminated the contract claiming the software was "defective and unusable." TechStart argues the software met specifications and demands payment of €350,000 remaining fee plus €150,000 in damages for breach of contract.

Key Evidence:

- Written contract with technical specifications
- Email exchanges between project managers
- Software testing reports
- Expert testimony on software functionality
- Previous similar case: DataSoft v RetailChain (2019) - similar contract dispute

FRANCE - CIVIL LAW SYSTEM

Court & Procedure

Court: Tribunal de Commerce de Paris

Judges: Panel of 3 commercial judges (juges consulaires)

Procedure: Written procedure with oral hearings

Language: French

Legal Framework

Primary Sources:

- Code Civil (Articles 1101-1231 on contracts)
- Code de Commerce
- Specific statutes on software contracts

Key Difference: Judges rely primarily on written codes and statutes, not previous court decisions.

Role of the Judge

Inquisitorial Approach:

- Judge **actively investigates** the case
- Judge orders expert reports (expertise judiciaire)
- Judge questions witnesses directly
- Judge determines which evidence is relevant
- Judge controls the pace and direction of proceedings

Key Difference: The judge is the primary investigator, not a passive arbitrator.

Evidence & Expert Testimony

Court-Appointed Expert: Judge appoints a neutral software expert (expert judiciaire) to examine the code and provide technical analysis

Documentary Evidence: All documents submitted through written pleadings (conclusions)

Witness Testimony: Limited role; witnesses mainly provide factual information when questioned by the judge

Role of Precedent

Previous DataSoft v RetailChain case:

- May be cited as *persuasive* authority
- **Not binding** on the court
- Judge focuses on applying Code Civil provisions
- Jurisprudence (case law) has secondary importance

Key Difference: Previous cases provide guidance but are not legally binding.

Trial Process

1. **Assignment:** TechStart files complaint
2. **Exchange of pleadings:** Written conclusions exchanged
3. **Instruction:** Judge investigates and gathers evidence
4. **Expert report:** Court-appointed expert examines software
5. **Oral hearing:** Brief oral arguments
6. **Délibéré:** Judges deliberate in private
7. **Judgment:** Written decision based on legal codes

Likely Outcome

Decision Process: Judges apply Articles 1231-1 (specific performance) and 1231-2 (damages) of Code Civil

Expert Report Influence: Court-appointed expert's technical findings heavily influence the decision

Remedy: If contract specifications were met, TechStart receives remaining payment plus contractual damages as specified in Code Civil

UK - COMMON LAW SYSTEM

Court & Procedure

Court: High Court, Business and Property Courts

Judge: Single judge (possibly with jury for complex factual disputes)

Procedure: Adversarial with oral advocacy

Language: English

Legal Framework

Primary Sources:

- Common law of contract
- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982
- **Case law precedents** (binding)

Key Difference: *Case law and judicial precedents are equally important as statutes.*

Role of the Judge

Adversarial Approach:

- Judge acts as **neutral arbitrator**
- Lawyers present their cases to the judge
- Judge rarely questions witnesses directly
- Judge rules on procedural matters and admissibility
- Judge ensures fair trial but doesn't investigate

Key Difference: *Judge is passive; lawyers control the case presentation.*

Evidence & Expert Testimony

Party-Appointed Experts: Each side hires their own software experts to testify

Cross-Examination: Opposing lawyers rigorously question expert witnesses

Documentary Evidence: Presented through witness testimony and formal disclosure

Witness Testimony: Central role; witnesses give evidence-in-chief and face cross-examination

Role of Precedent

Previous DataSoft v RetailChain case:

- **Binding precedent** if decided by higher court
- Lawyers extensively cite and distinguish previous cases

- Stare decisis: "let the decision stand"
- Judge must follow established legal principles

Key Difference: Previous similar cases are legally binding and must be followed.

Trial Process

1. **Claim Form:** TechStart files at court
2. **Pleadings:** Claim, defence, and reply exchanged
3. **Case Management:** Judge sets timetable
4. **Disclosure:** Parties exchange relevant documents
5. **Expert Reports:** Each side's experts file reports
6. **Trial:** Oral hearing with witness testimony
7. **Judgment:** Judge applies precedents to facts

Likely Outcome

Decision Process: Judge applies precedents from DataSoft v RetailChain and other similar contract cases

Expert Battle: Judge weighs competing expert opinions after cross-examination

Remedy: Following established precedents on software contracts, damages awarded based on previous case outcomes



STUDENT ACTIVITY: COMPARATIVE ANALYSIS

TASK 1: Identify the Differences (15 minutes)

Instructions: Read both case summaries and complete the comparison table below. Work in pairs to identify at least 8 key differences between how the same case would be handled in France vs the UK.

Aspect	France (Civil Law)	UK (Common Law)
Primary Legal Sources	_____	_____
Judge's Role	_____	_____
Investigation Approach	_____	_____
Expert Witnesses	_____	_____
Role of Precedent	_____	_____
Trial Procedure	_____	_____
Lawyer's Role	_____	_____
Evidence Presentation	_____	_____

TASK 2: Discussion Questions (10 minutes)

1. Which system do you think would be faster for resolving this dispute? Why?
2. In which system would the parties have more control over their case presentation?
3. How might the different approaches to expert testimony affect the outcome?
4. Which system seems more predictable based on the role of precedent?
5. What are the advantages and disadvantages of each approach?

TASK 3: Vocabulary in Context (5 minutes)

Find and explain these terms from the case studies:

- Inquisitorial vs Adversarial
- Stare decisis
- Cross-examination
- Binding precedent
- Forensic expert
- Jurisprudence (Casse Law)



ANSWER KEY - COMPARISON TABLE

Aspect	France (Civil Law)	UK (Common Law)
Primary Legal Sources	Written codes and statutes (Code Civil, Code de Commerce)	Case law precedents and statutes equally important
Judge's Role	Active investigator, controls proceedings	Neutral arbitrator, passive role
Investigation Approach	Inquisitorial - judge investigates facts	Adversarial - parties present competing cases
Expert Witnesses	Court-appointed neutral expert	Each party hires own expert, cross-examined
Role of Precedent	Persuasive only, not binding	Binding precedent (stare decisis)
Trial Procedure	Mainly written with limited oral hearing	Oral advocacy and live witness testimony
Lawyer's Role	Submit written pleadings, limited oral argument	Active case presentation, examine witnesses
Evidence Presentation	Judge determines relevance and admissibility	Strict rules, lawyers present to judge/jury

Sample Discussion Answers:

1. **Speed:** French system might be faster as judge controls proceedings and uses written procedure, but UK system's clearer precedents might prevent appeals.
2. **Party Control:** UK system gives parties more control through adversarial presentation and choice of experts.
3. **Expert Testimony:** French neutral expert might be more objective, while UK competing experts allow thorough testing of opinions through cross-examination.
4. **Predictability:** UK system more predictable due to binding precedent; parties can better predict outcomes based on similar cases.
5. **Advantages:** French system: thorough investigation, neutral expertise. UK system: party autonomy, tested evidence through cross-examination.

