CONCEPT

Common Law vs Civil Law in Cross-Border Contracts: Interpretation, Remedies and Governing Law

14 – 18 December 2026
London - Central London four-star



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Introduction:

Cross-border deals often pair a counterparty trained in one legal tradition with a governing law from another, and clauses that look settled at signature behave differently once a judge or tribunal reads them. This Core Concept course examines common law vs civil law as they affect commercial agreements: where each tradition finds its rules, how its courts reason, and how doctrines on good faith, implied terms, agreed damages, exclusions and remedies diverge. Participants finish with a Governing-Law and Clause Risk Review for a case cross-border contract.

Course Objectives:

- Classify a counterparty's legal system by legal family and identify its primary sources of law, precedent and codified rules
- Predict how a court from each tradition will construe disputed wording, pre-contract negotiations and unstated terms
- Assess the enforceability of agreed damages, penalty, limitation and exclusion provisions under each tradition
- Compare remedies, evidence rules and procedural styles to forecast how a breach claim will unfold before a judge or tribunal
- Recommend a governing law, forum and arbitration seat that fit the risk profile of a cross-border transaction
- Produce a Governing-Law and Clause Risk Review with redrafted provisions that hold their meaning across both traditions

Target Audience:

- In-house lawyers who advise on agreements governed by a foreign legal system
- Contract managers who negotiate terms with counterparties from another legal tradition
- Commercial leads who structure cross-border supply, distribution, services and joint venture deals
- Legal and compliance managers who assess dispute exposure before a transaction closes
- Project and procurement managers who administer international contracts through performance and claims

Course Outline:

Day 1: Legal Families, Sources of Law and Judicial Reasoning

- Legal Family Classifications: Common Law, Civil Law and Mixed Systems
- Codes, Statutes and General Clauses as Primary Sources in Civil Law Systems
- Stare Decisis, Ratio Decidendi and Binding Precedent in Common Law Systems
- Deductive Code Reasoning Versus Inductive Case-by-Case Reasoning
- Legal Transplants and Convergence Between the Two Traditions

Day 2: Contract Formation and Interpretation Across Traditions

- Consideration Versus Cause: Validity Requirements Compared
- Pre-Contractual Negotiations and Culpa in Contrahendo Exposure
- Literal and Contextual Construction Versus Search for Common Intention
- Parol Evidence Rule and Entire Agreement Clause Effect
- UNIDROIT Principles as a Neutral Interpretation Reference

Day 3: Good Faith, Implied Terms and Agreed Damages

- General Duty of Good Faith Versus Targeted Implied Duties
- Implied Terms by Fact, by Law and Default Code Provisions
- Penalty Doctrine and the Genuine Pre-Estimate of Loss Test
- Judicial Reduction of Excessive Penalty Clauses in Civil Law Courts
- Limitation of Liability and Exclusion Provisions: Mandatory Limits and Gross Fault

Day 4: Remedies, Evidence, Procedure and Forum Selection

- Specific Performance as Primary Remedy Versus Equitable Discretion
- Expectation Damages, Foreseeability and Mitigation Rules Compared
- Adversarial Versus Inquisitorial Procedure: Disclosure, Witnesses and Experts
- Choice of Law and Forum Matrix: Litigation Versus Arbitration Seat
- Arbitration Interplay: Tribunal Approach to Mixed-Tradition Parties

Day 5: Case Study: Governing-Law and Clause Risk Review

- Case Contract Diagnostic: Mapping Clauses to Tradition-Specific Risk
- Redrafting Agreed Damages and Exclusion Wording That Travels
- Definitions and Interpretation Clause Rebuild for a Mixed-Tradition Deal
- Governing-Law and Clause Risk Review Drafting
- Peer Tribunal Challenge and Defence of the Review

Skills You Will Gain:

- Legal Family Analysis
- Cross-Tradition Contract Construction
- Good Faith Exposure Assessment
- Agreed Damages Enforceability Testing
- Remedies Forecasting
- Procedural Strategy Comparison
- Governing Law and Forum Selection
- Tradition-Neutral Drafting

Why Attend This Course:

- Leave with a Governing-Law and Clause Risk Review for a case cross-border contract, tested by peers acting as a tribunal
- Anticipate how a judge trained in the other tradition will read a clause before it is signed
- Negotiate governing law, forum and arbitration seat from an evidence-based view of procedural and remedial differences
- Compare experience with legal and commercial peers from trading, construction, energy and services organisations

Conclusion:

Choosing a governing law settles far more than the name printed in the boilerplate: it decides how words are read, which unstated duties apply, whether an agreed sum survives and which remedy a claimant can obtain. The week moves from legal families and judicial reasoning, through formation and interpretation, to good faith, implied terms and agreed damages, then remedies, procedure and forum. The final day applies this to a case contract and produces a Governing-Law and Clause Risk Review. The course explains general principles and is not legal advice.