

## Summary

**English law underpins most contracts and transactions made within the UK, and many outside the UK. However, the value of English law (as it applies to business transactions) to society as a whole, as opposed to the legal services sector, has not been examined before.**

English Law is a key part of what makes the UK an attractive place to do business for internationally mobile activity and underpins a vast amount of economic activity both in the UK and globally (e.g. English law likely governed at least \$11.6tn of global metals trading in 2020). However, English law's role as a national asset and its wider commercial importance are not fully appreciated or exploited by the UK.

### How does the law generate economic value?

It is a well-established economic principle that value is created through transactions: I focus on what I am good at and then trade with you for the things that you are good at, and—in this way—we are both better off than we would be otherwise. Law, and the legal systems that administer that law, provide predictability and confidence around such transactions. This lowers transaction costs and increases the volume and complexity of the transactions that can take place. In this way, the law supports the creation of economic value. Law is therefore a critical platform on which other economic activity rests.

One of the remarkable facets of English law is the extent to which it is the international standard for contracts in many internationally mobile markets. This internationally mobile standard creates a range of economic benefits to the UK, contributing to the location of the cluster of international businesses located in the UK (including parts of the UK that have a different domestic law), reducing transaction costs for UK firms trading internationally, and building the UK's international influence.

### Are we taking the value generated from English law for granted?

Due to the globalisation and digitisation of business models, an increasing proportion of transactions and contracts are now internationally mobile—i.e. their governing law and the jurisdiction to which they are subject are chosen by those transacting based on their attractiveness to those parties.

Historically, English law has been a popular choice of governing law for many types of internationally mobile transactions. In 2019, it governed around £250bn of global mergers and acquisitions, and 40% of global corporate arbitrations.

The development of new areas of the economy (such as fintech and green bonds), and the recent establishment of international commercial courts across the EU, for example, provide opportunities and risks for English law's status as a global standard for internationally mobile transactions.

Success in these markets is particularly important because many markets have a tendency to 'tip' to one governing law, due to the benefits of using standardised contracts: for example, the International Swaps and Derivatives Association's (ISDA) Master Agreements went from having a range of English, New York and Japanese law prior to 2018 to primarily being governed by English law for EU/EEA counterparties since then. A failure to invest in English law therefore gives rise to major risks for the UK economy.

The most successful platforms of the 21st century have been digital platforms, and their value is directly related to the size of their user base. However, English law suffers from a market failure known as the free-rider problem where no entity acts as the 'platform operator' to grow the user base of English law and maximise the benefits. Such a 'platform operator' should invest in growing the user base and consider how to monetise the value of the platform. This can be delivered through a combination of technological, judicial, professional and industry expertise, alongside government involvement.

### Where next?

Oxera's research leads to several challenging questions for the legal industry and UK government.

1. Which organisations either in the private or public sector should coordinate efforts in nurturing and strengthening this asset for the benefit of the UK as a whole?
2. Who should take responsibility for ensuring that English law be promoted as an international business platform and that the UK is well placed to take advantage of new opportunities?
3. What would be the best form of investment in English law that can appropriately reflect the significant value that English law brings to the UK?

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