

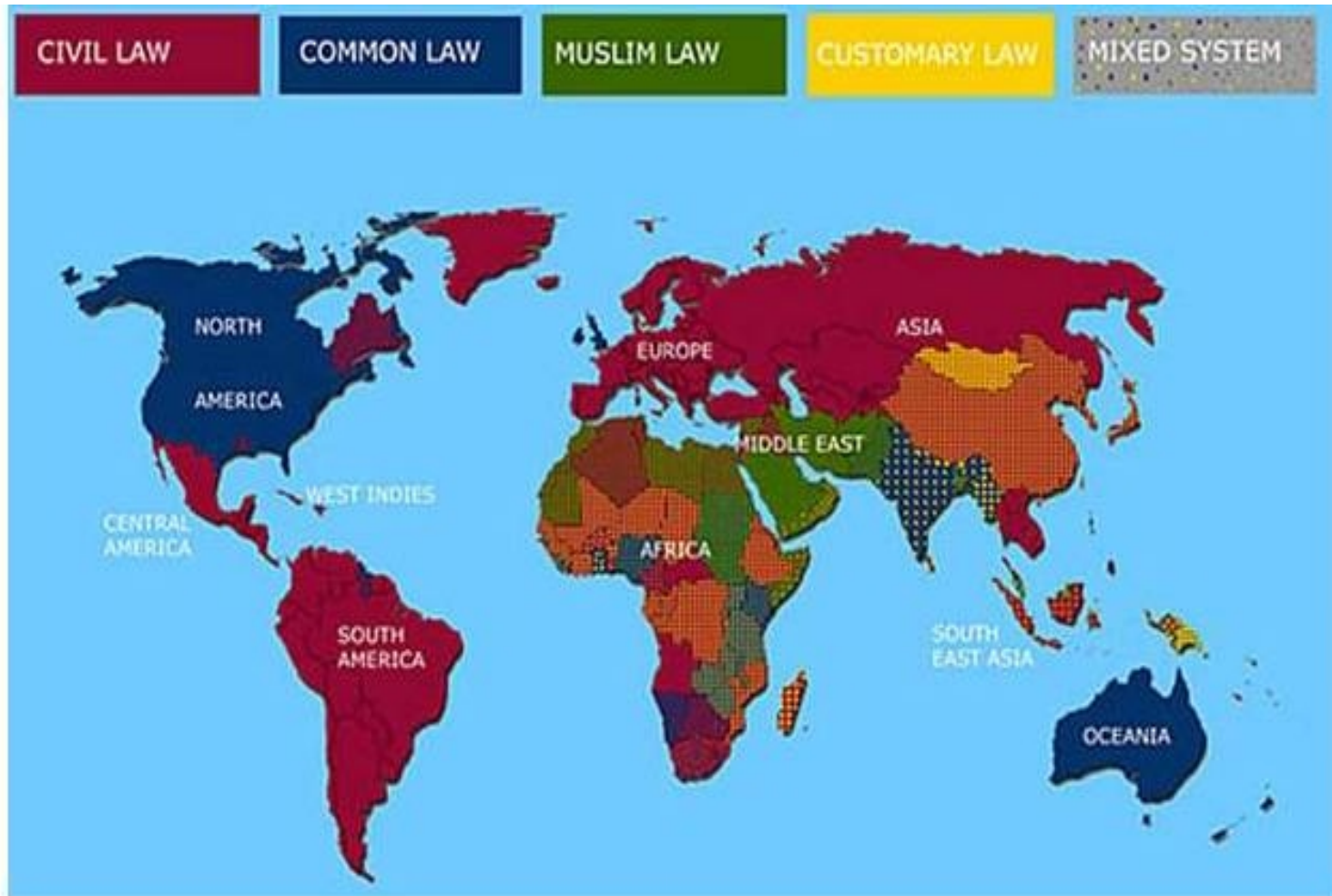
# Choice of Jurisdiction



Common Law vs. Civil Law  
England and Colombia compared

# Choice of Jurisdiction

## Common Law vs. Civil Law Map



# Perfect Fish & Chips



- Exclusive distribution contract with Colco
- Heritage and values v. important – newspaper wrapping part of brand
- Colco switch newspaper wrapping to polystyrene
- Following meetings relationship deteriorated so that further breaches of contract

# Jurisdiction

- ENGLAND
  - Courts recognise freedom to choose jurisdiction
  - Courts reluctant to interfere with express choice of parties
  - Courts examine implied choice on basis of common law rules/European law
- COLOMBIA
  - Courts recognise freedom to choose jurisdiction between private individuals and/or private companies
  - Public contracts (public tender) no freedom to choose jurisdiction save in public contracts with more than a 50% investment from a foreign government

# Arbitration

- ENGLAND
  - Courts supportive of arbitration
  - Courts will recognise and enforce arbitration clauses - reluctant to nullify arbitration clauses
  - No distinction between local/international arbitration
- COLOMBIA
  - Courts supportive of arbitration (both local and international)
  - Courts will recognise and enforce arbitration clauses



# Limitation



- ENGLAND
  - Limitation Act 1980 provisions:
    - 6 years for actions in respect of simple contracts and of tort
    - 12 years in respect of breach of an obligation contained in a deed
    - Period begins to run e.g.
      - Contract: on the date of the breach of contract (no need for damages to have been caused)
      - Tort: from the date the damage is suffered
- COLOMBIA
  - Civil Code (title XLI) provisions:
    - 5-10 years for actions in respect of simple contracts and of tort
    - 3 years for professional fees
    - 2 years for actions in relation to provision of goods and services
    - Period begins to run from the date on which the cause of action accrued

# Court Jurisdictions



- ENGLAND
  - Magistrates' Courts – both civil and criminal capacity
  - County Courts – approx 132 in England & Wales
  - High Court – Royal Courts of Justice in London & 131 district registries
  - Specialised Commercial Court
- COLOMBIA
  - Superior Tribunals 33, Municipal Courts 3807, Administrative Courts 257
  - Constitutional Court, Supreme Court, Administrative Supreme Court

# Freedom of Judge

- ENGLAND
  - Judges enjoy reasonable freedom
  - Not too restricted by strict/inflexible procedural rules
- COLOMBIA
  - Judges are highly restricted by statutory law and procedural rules
  - Ample means to consider/grant/modify rights given or reserved by the Colombian Constitution (Bill of Rights)





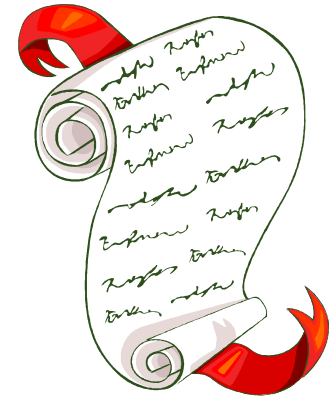
# Costs



- ENGLAND
  - Recoverability – Costs hearing following hearing on merits
  - Complex regime designed to discourage litigation
  - General rule (though court has discretion): loser pays i.e. unsuccessful party ordered to pay the costs of the successful party
  
- COLOMBIA
  - Recoverability – legal costs are fixed by law
  - General rule (court has no discretion): loser pays



# Pre-Action Protocols



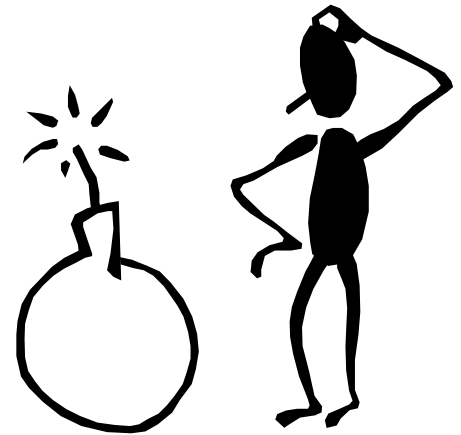
- ENGLAND
  - Aimed as last chance to negotiate settlement
  - Claimant must set out its case in letter to defendant
  - Set time frame for defendant to respond
- COLOMBIA
  - Conciliation process - enables parties to settle the issue between them without the need to start proceedings
  - Interrupts the statutory limitation period

# Privilege & Disclosure

- ENGLAND
  - Generally all relevant documents (helpful and unhelpful) must be disclosed. Exception for privileged documents.
  - Two types of privilege: legal advice & litigation privilege
- COLOMBIA
  - Disclosure: the claimant and the court have legal right to request disclosure from the other side, no duty to disclose
  - Privilege: the concept of Privilege has never found roots in Colombia

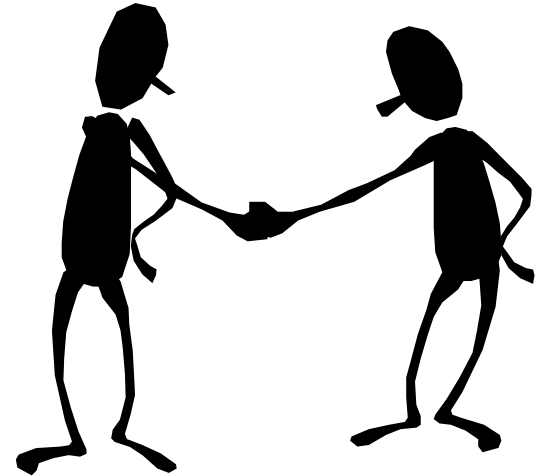


# Settlement offers



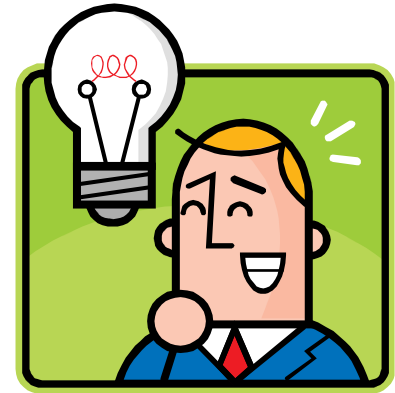
- ENGLAND
  - **Without prejudice settlement offers:**
    - Aim to encourage parties to settle their disputes
    - Terms of settlement not necessarily privileged – include confidentiality provision in settlement agreement
  - **Part 36 settlement offers:**
    - Cost consequences of not accepting a Part 36 offer
- COLOMBIA
  - Settlement offers are not regulated by a specific set of rules
  - Court has discretion in respect of costs consequences

# Mediation



- ENGLAND
  - Courts strongly encourage mediation
  - Procedure requires judges to enquire whether mediation has been attempted and if not why not
- COLOMBIA
  - Optional; in practice, mediation is very rare and definitely not common practice

# Experts



- ENGLAND
  - No court list of experts
  - Experts chosen by parties
  - Courts encourage parties to agree on one expert
- COLOMBIA
  - No court list of experts
  - Experts proposed by one party to the other with the court's approval
  - If no agreement, possibility of instructing 3 experts for high-value cases

# Stays



- ENGLAND
  - Court has the power to stay legal proceedings
  - Court can stay at its own initiative or at request of one of the parties only
- COLOMBIA
  - Proceedings are 'stayed' once they are issued