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**FB JURIS SOCIÉTÉ D'AVOCATS**

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# **INTERNATIONAL BUSINESS LAW**

**Legal guide to doing business internationally**

**INTRODUCTION TO LAW AND INTERNATIONAL LAW**

**11 October 2023**



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***I thank the schools that give me the opportunity to teach and my students who are an inexhaustible source of inspiration. FB***

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# MATERIALS / UPDATES

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**This Keynote presentation will be regularly completed, improved and updated. Find the latest version and complementary materials (notes, references, Internet links, guides, templates...) on the website [i-law.co](https://i-law.co):**

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# INTRODUCTION

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**Brief introduction to law and international law.**

# QUESTIONS

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**What is the definition of law?**

**When and where did law appear?**

**Is law universal?**

**What are the specificities of international law?**

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# OBJECTIVES

- # Understand the main features of law that explain the complexity of international law.**
- # Know some major stages in the history of law.**
- # Distinguish public international law and private international law.**

# SUMMARY

- # Law is both universal and relative: law is a universal concept applied, in various forms, in all human societies.**
- # The substance of the rules is contingent, variable in time and space.**
- # Private international law deals with private cases that concern the legal systems of several States.**

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# DEFINITION OF LAW

**In general terms, law refers to the set of norms that govern human activities.**

- **Positive law vs. natural law**
- **Law vs. philosophy, religion, politics, morality, ethics, equity, legitimacy**
- **Law and custom**
- **Formalism: oral law and written law**
- **Sources of law**
- **Public and private law**
- **Public international law and private international law**

# **THE ORIGINS OF WRITTEN LAW**

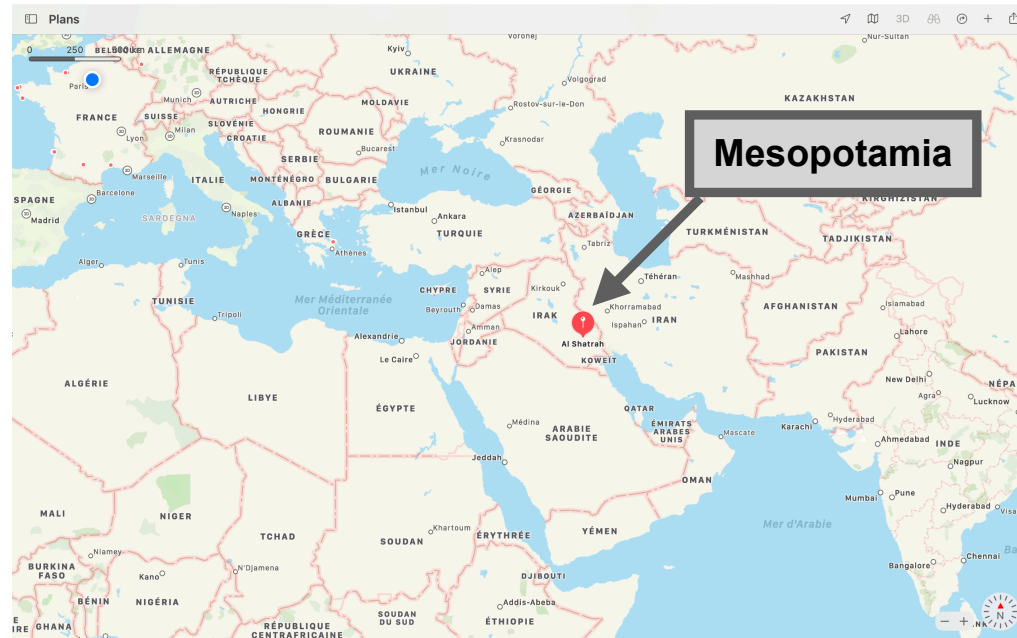
**CURRENT KNOWLEDGE SITUATES THE  
ORIGINS OF WRITTEN LAW IN MESOPOTAMIA,  
MORE THAN 2400 YEARS BEFORE CHRIST.**

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# LEGISLATION OF URUKAGINA

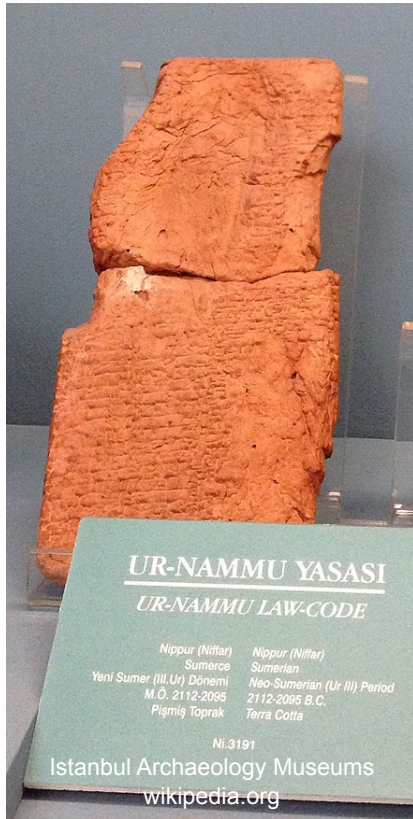


Laws of Urukagina,  
Louvre Museum



**2400 BC : Legislation of Urukagina, King of the city-states of Lagash and Girsu in Mesopotamia (today: south Iraq). Oldest writing currently known using the word "freedom" ("ama-gi").**

# CODE OF UR-NAMMU



**Code of Ur-Nammu,  
Istanbul Museum**

**2100 BC : Code of Ur-Nammu**, King of Ur in Mesopotamia (today: Tell el-Muqayyar, south Iraq). Cuneiform tablet written in Sumerian language.

This code instituted **financial compensation** in case of physical harm, which distinguishes it from the basic principle of Babylonian law, the law of Talion ("eye for an eye, tooth for a tooth").

# CODE OF LIPIT-IŠTAR



Francis Rue Steele / wikipedia.org

**1934-24 BC : Code of Lipit-Ištar (or Lipit-Ishtar), King of Isin in Mesopotamia (today: south Iraq). Known thanks to copies (fragments of school tablets written in Sumerian language).**

**Form:** prologue, articles, epilogue.  
**Content:** deals with the rights of persons, marriage, succession, offences, injuries, damages, penalties, property, economic activities, trade, contracts...

# LAWS OF EŠNUNNA

**1930 BC : Laws of Ešnunna (or Eshnunna)**, ancient Sumerian (and later Akkadian) city-state in central Mesopotamia (modern Tell Asmar, Iraq).

Known thanks to two copies (cuneiform tablets discovered in Tell Abū Harmal, Baghdad, Iraq, written in Akkadian language).

It is generally not called "code" because no prologue and no epilogue are known.

# CODE OF HAMMURABI



**1750 BC - Code of Hammurabi**, king of Babylon (today: near Hilla, 100 km south of Baghdad, Irak).

The original text is written on a basalt stele currently preserved in the Louvre museum, exhumed by the French Gustave Jéquier and Louis-Charles Watelin in 1901-1902 in Susa, Iran.

The text is written in cuneiform script and Akkadian language (longest inscription in cuneiform script, currently known).

# CODE OF HAMMURABI

**The text of the Code of Hammurabi is divided into three parts:**

- prologue commemorating Hammurabi's achievements;
- "laws" or court decisions;
- epilogue.

## **Religious and political dimensions of Mesopotamian laws**

- The law is of divine source; it confers its political legitimacy on the one who is invested with temporal power: "**Hammurabi, king of law**, it is me, to whom Samaš [the sun-god] has offered the present laws".
- The law is of **divine origin**, but it is in itself **secular**. It regulates human relations within society: it deals notably with crimes and offences, family, marriage, inheritance, agrarian and economic matters.

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# THE EGYPTIAN–HITTITE PEACE TREATY

- The Egyptian–Hittite peace treaty is also known as the Treaty of Kadesh, the Eternal Treaty or the Silver Treaty.
- The treaty was concluded between Egyptian pharaoh Ramesses II and king of the Hittite empire Hattuşili III in 1259 BC.
- It is the oldest bilingual peace treaty currently known.



Egyptian version: Precinct of Amun-Re in Karnak (Egypt).  
(c) Olaf Tausch / [wikipedia.org](https://www.wikipedia.org) / CC BY 3.0



Hittite version: Museum of the Ancient Orient in Istanbul (Türkiye).  
(c) [wikipedia.org](https://www.wikipedia.org) / CC BY 3.0



Hittite version: Neues Museum in Berlin (Germany).  
(c) Osama Shukir Muhammed Amin FRCP(Glasg) / [wikipedia.org](https://www.wikipedia.org) / CC BY-SA 4.0

# PERSEPOLIS

## LAW VARIES IN SPACE AND IN TIME.

Persepolis was built at the initiative of Darius I, as from approximately 515 BC. The clay tablets preserved as a result of the fire of the city by Alexander the Great around 330 BC suggest that the city was built without resorting to slavery. In addition, women workers were paid the same amounts as men and were paid during pregnancy leaves. Today, the archeological site is located near Shiraz in Iran.



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# BRIEF HISTORY OF LAW: MAJOR TEXTS

**1500 BC** (Anatolia / Türkiye):  
Hittite laws.

**1400 BC**: Assyrian law (the  
Code of the Assyrians).

**621-620 BC** (Athens): laws  
put in writing by Dracon.

**594 BC** (Athens): code of  
laws and constitution written  
by Solon.

**539 BC** (Babylon): Cyrus  
Cylinder (Cyrus Charter).

**449 BC** (Rome): Law of the  
Twelve tables.

**438 AD**: Codex Theodosianus.

**529 AD** (Constantinople): Corpus  
Juris Civilis (Digest / Pandects /  
Code of Justinian).

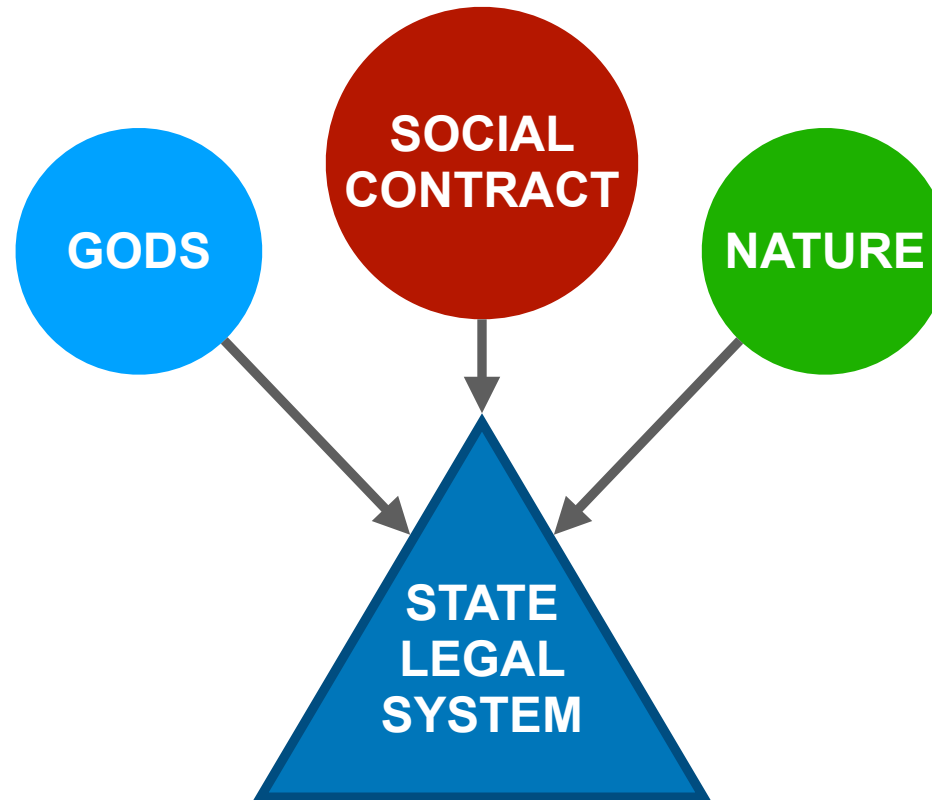


**Cyrus  
Cylinder,  
British  
Museum**

- **1100 AD** (England): Charter of Liberties.
- **1215** (England): Magna Carta (modified notably in 1354).
- **1222** (Hungary): Golden Bull.
- **1312** (Belgium): Charter of Kortenberg.
- **1349** (Serbia): Dušan's Code.
- **1525** (Germany): Twelve Articles.
- **1573** (Poland): Henrician Articles.

- **1679** (England): Habeas Corpus Act. **1689** (England): Bill of Rights.
- **1776** (USA): Virginia Declaration of Rights / Chapter 1 of the Pennsylvania Constitution.
- **1789** (France): Declaration of the Rights of Man and of the Citizen.
- **1791** (USA): Bill of Rights of the United States Constitution.
- **1804** (France): French civil Code.

# THE ORIGINS OF LAW



**THE ORIGIN OF LAW MAY VARY DEPENDING ON THE SOCIETIES.**

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# DIEU ET MON DROIT



**Motto of the British monarchy that would say, in modern French:  
"Mon droit divin" / "My divine law".**

[https://fr.wikipedia.org/wiki/Dieu\\_et\\_mon\\_droit#/media/Fichier:Royal\\_Coat\\_of\\_Arms\\_of\\_the\\_United\\_Kingdom.svg](https://fr.wikipedia.org/wiki/Dieu_et_mon_droit#/media/Fichier:Royal_Coat_of_Arms_of_the_United_Kingdom.svg)

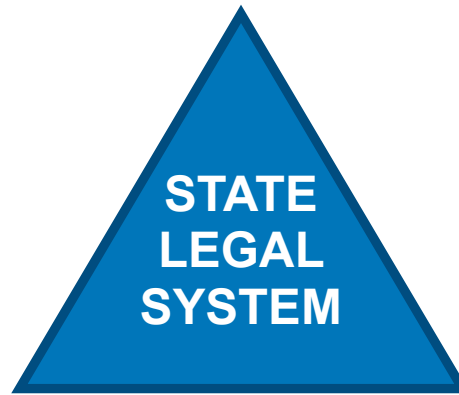
# FRENCH REPUBLIC

The principle of the French Republic is government of the people, by the people and for the people (article 2 of the French Constitution). National sovereignty belongs to the people who exercise it through their representatives and through the referendum (article 3 of the French Constitution).



Eugène DELACROIX, Liberty guiding the people (28 July 1830)  
LOUVRE MUSEUM: <https://collections.louvre.fr/ark:/53355/cl010065872>

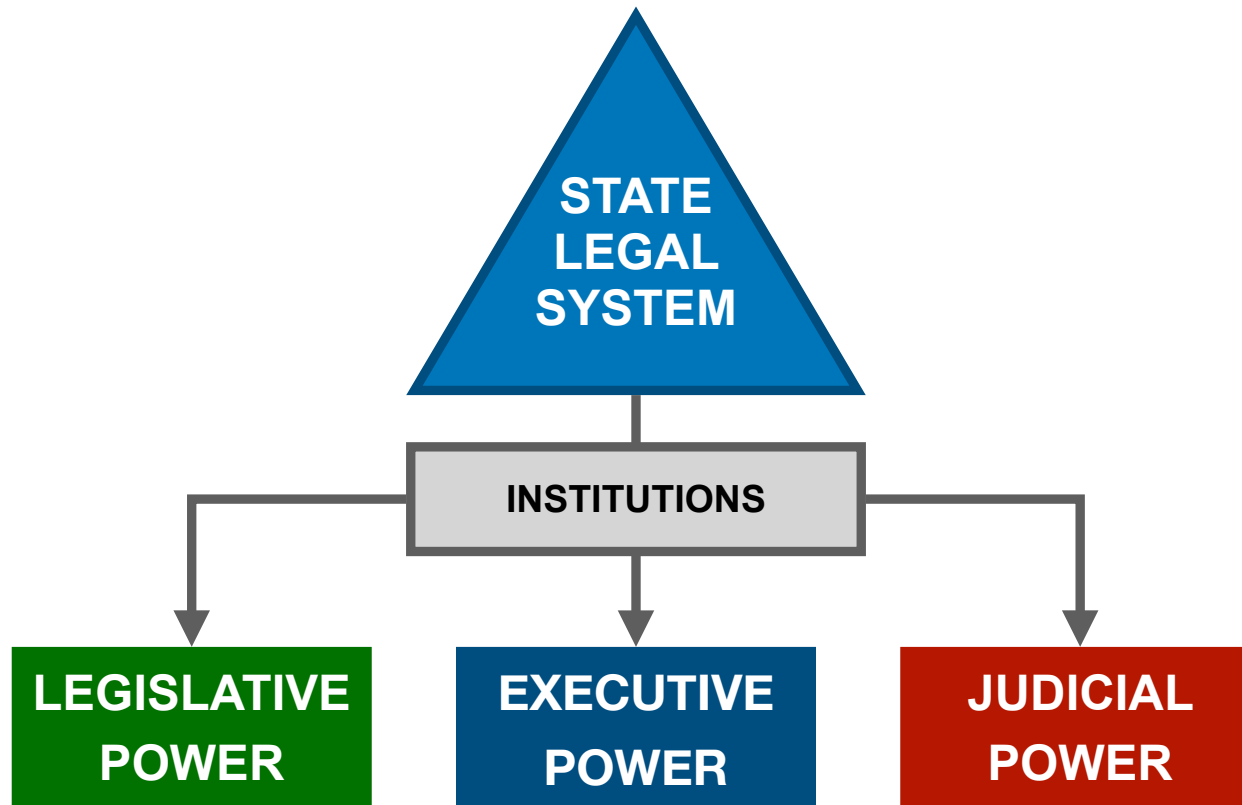
# LAW, SOCIETY AND STATE



**LAW REGULATES THE RELATIONSHIPS BETWEEN HUMAN BEINGS. IT IS CONSUBSTANTIAL TO THE SOCIAL AND POLITICAL ORGANISATION OF A PARTICULAR SOCIETY. LAW IS A (HUMAN) CREATION EXISTING BASICALLY WITHIN A PHILOSOPHICAL, CULTURAL, SOCIAL, POLITICAL, LEGAL CONTEXT. LAW EXISTS WITHIN A STATE AND IT IS APPLIED IN ITS TERRITORY.**

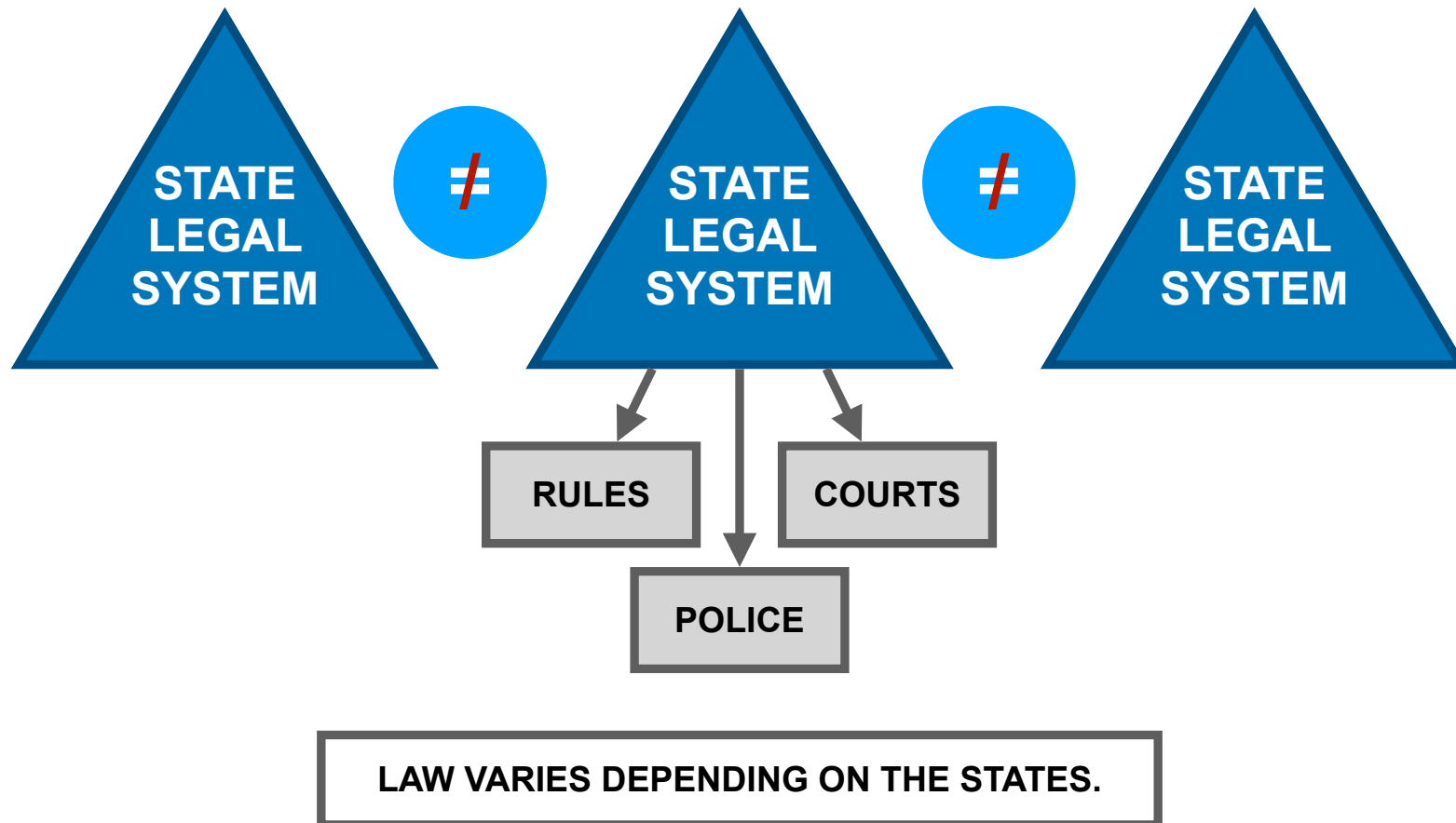
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# LAW, SOCIETY AND STATE



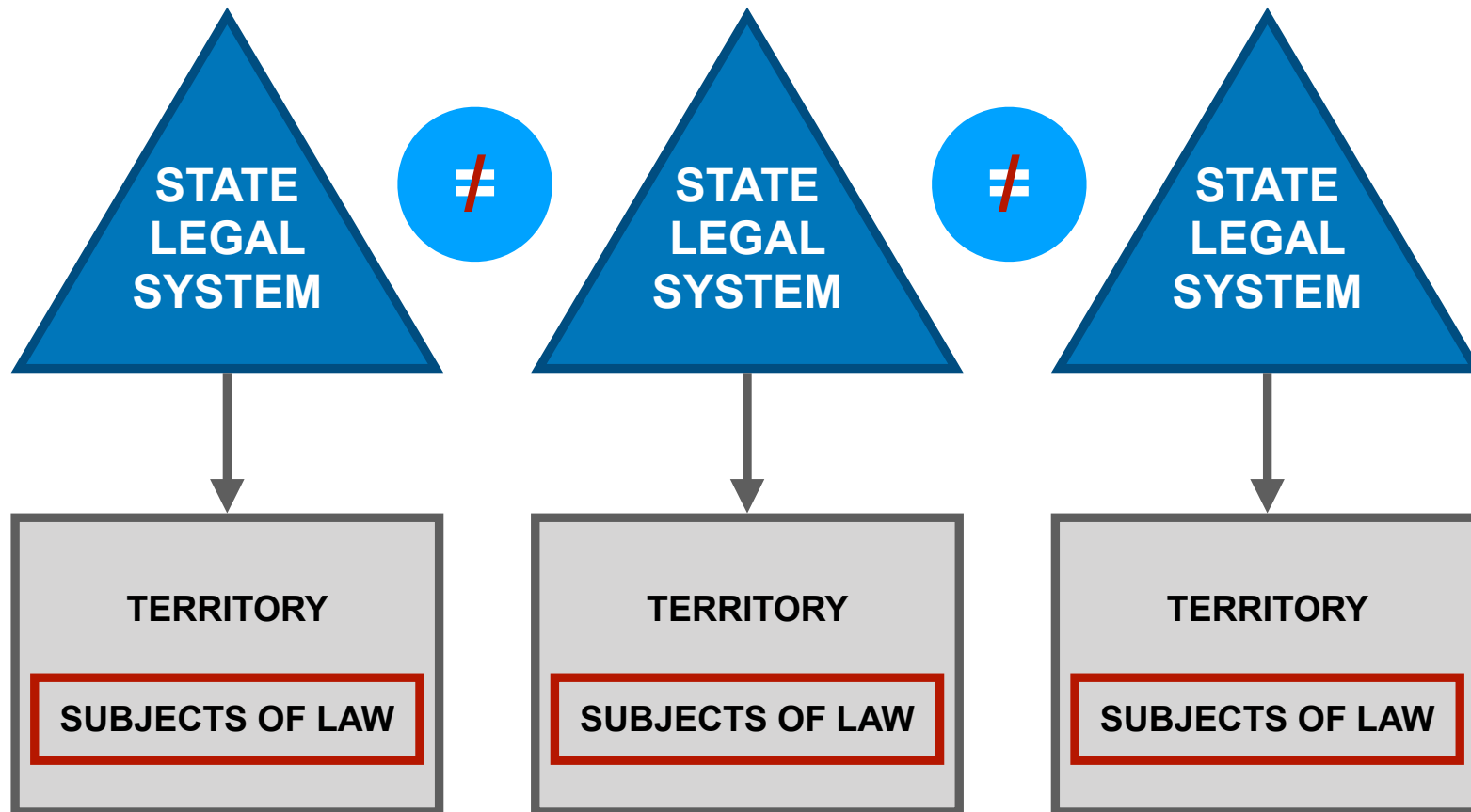
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# LAW / LAWS



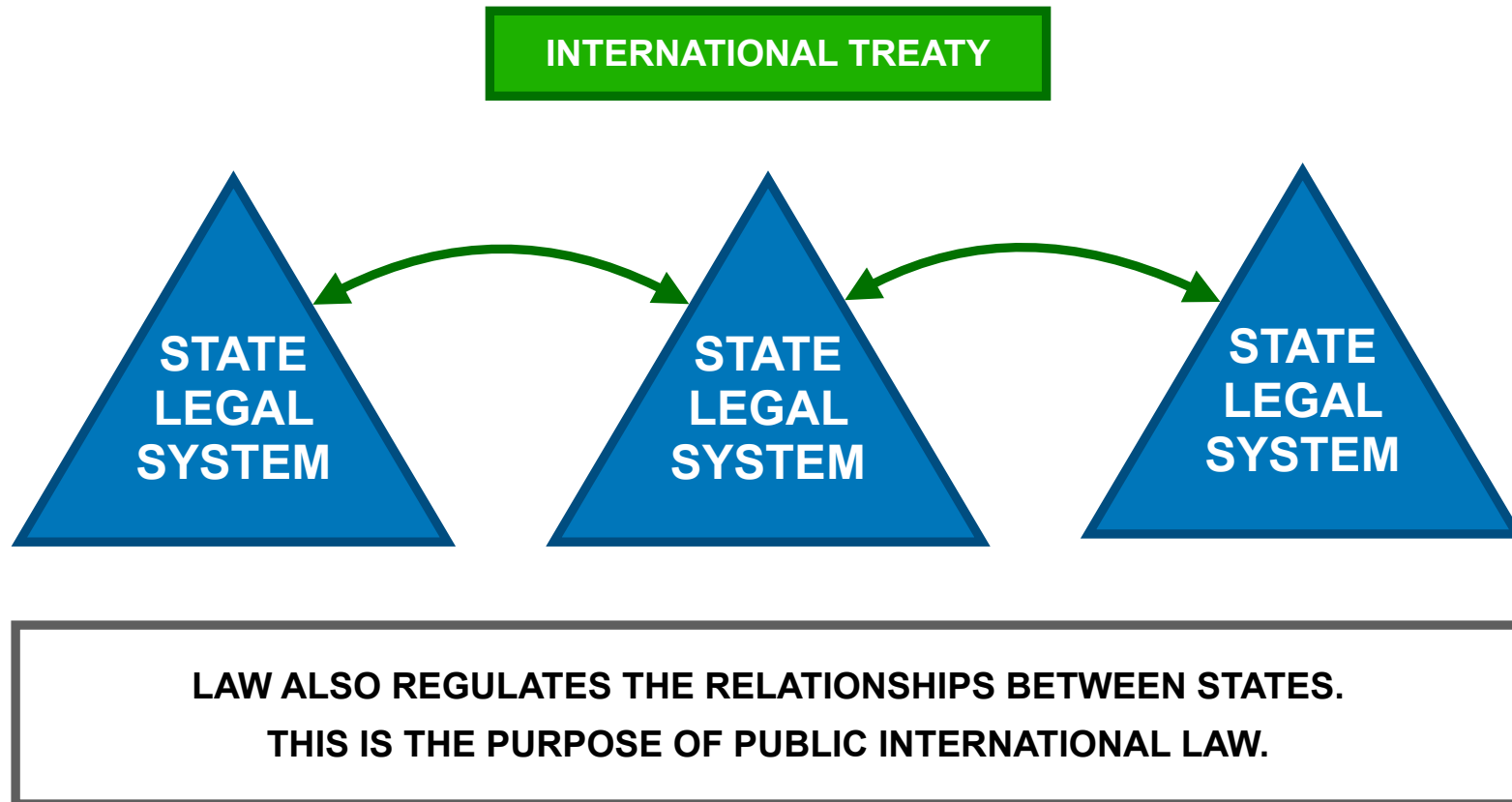
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# LAW / LAWS



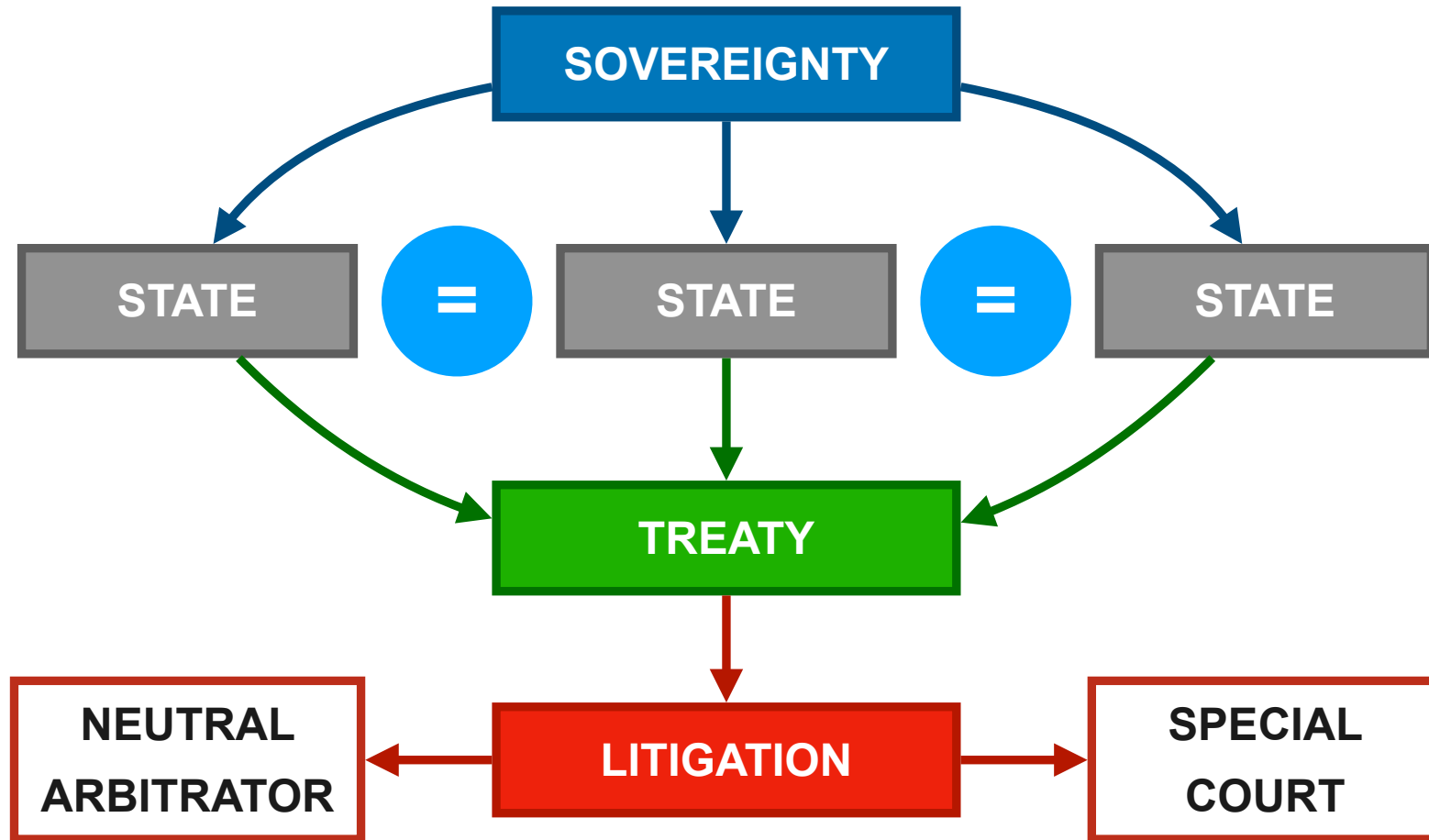
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# PUBLIC INTERNATIONAL LAW



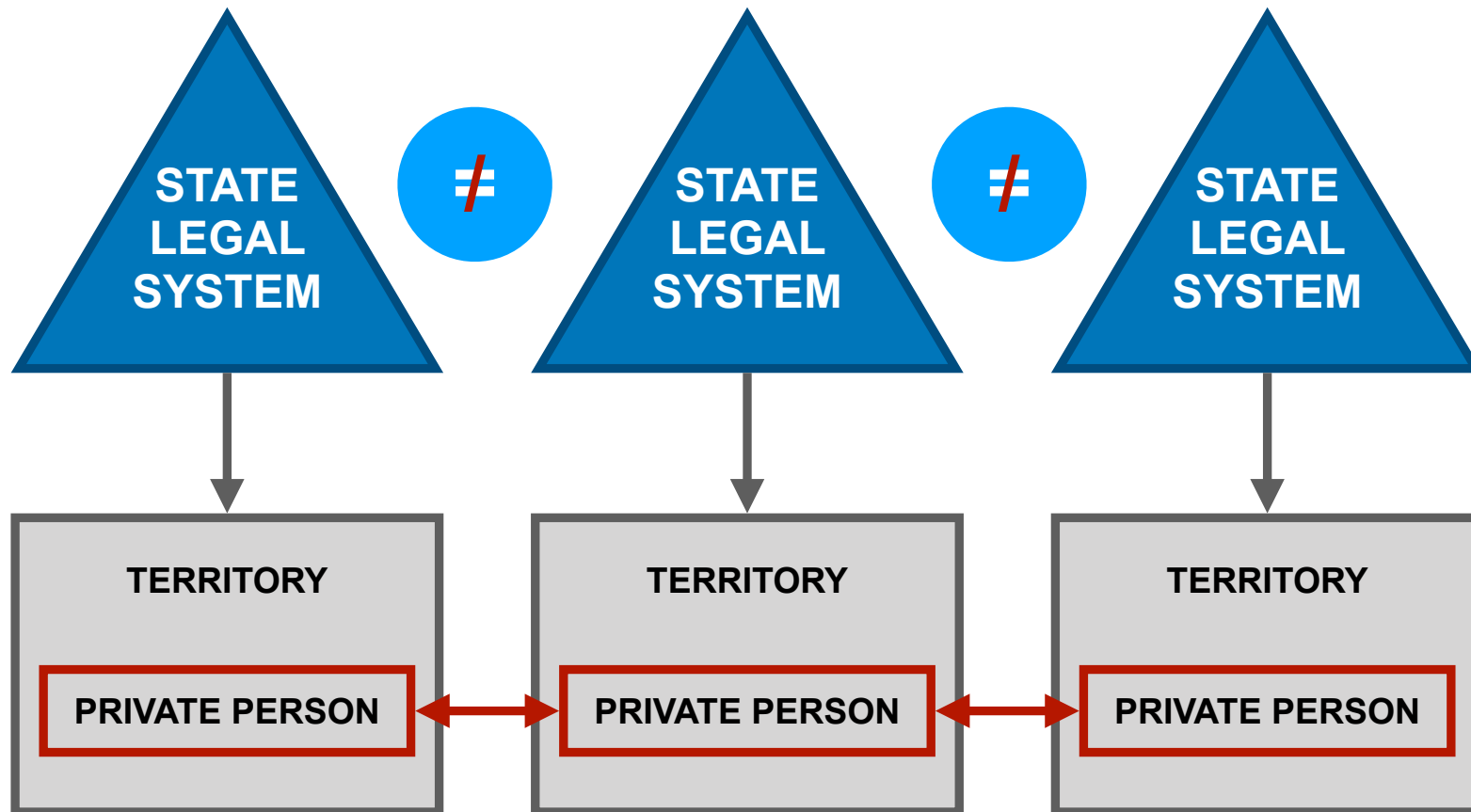
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# PUBLIC INTERNATIONAL LAW



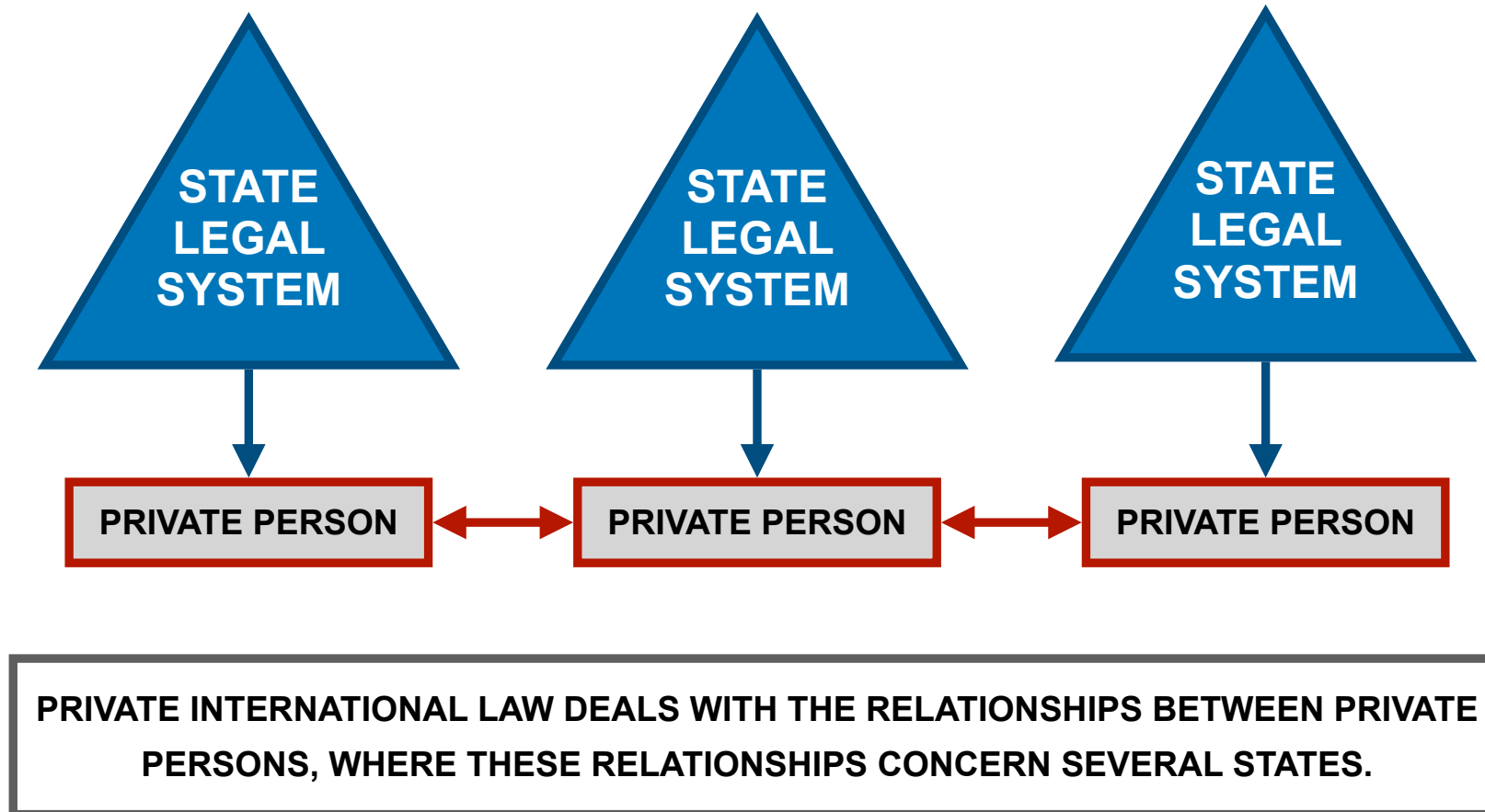
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# PRIVATE INTERNATIONAL LAW



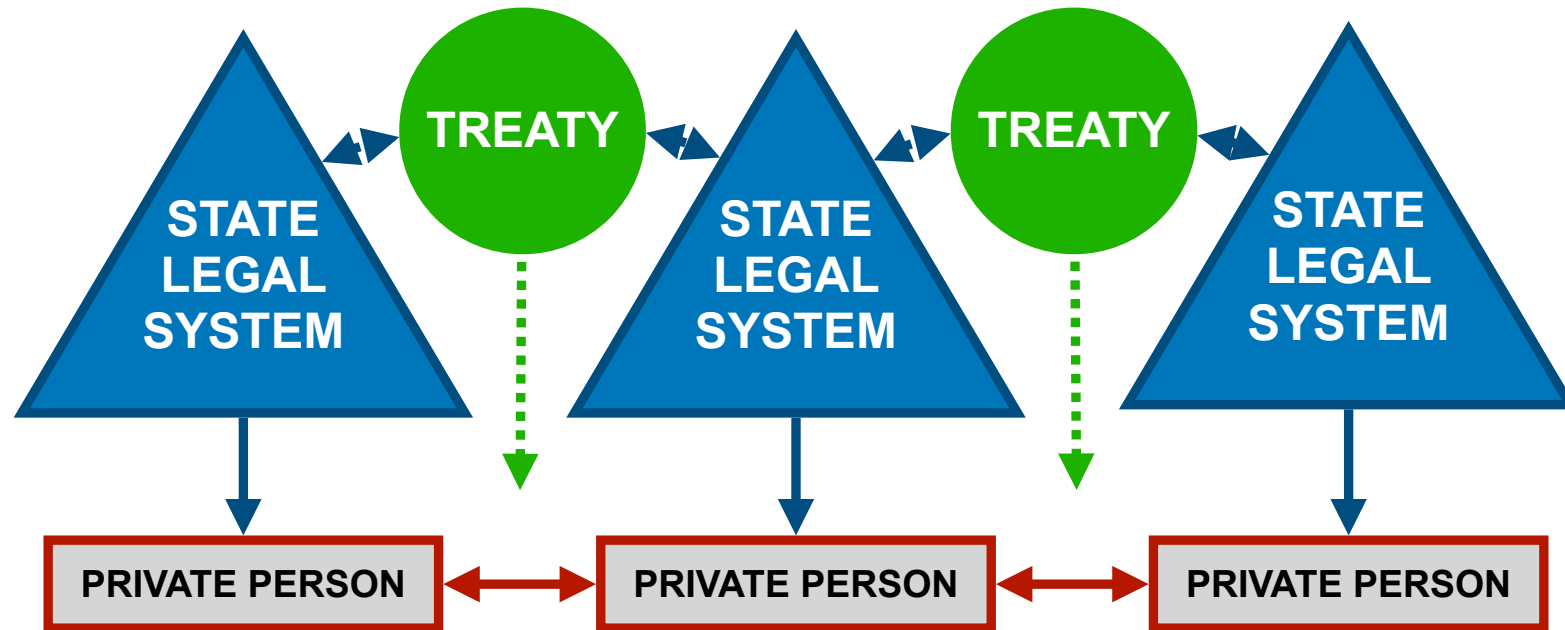
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# PRIVATE INTERNATIONAL LAW



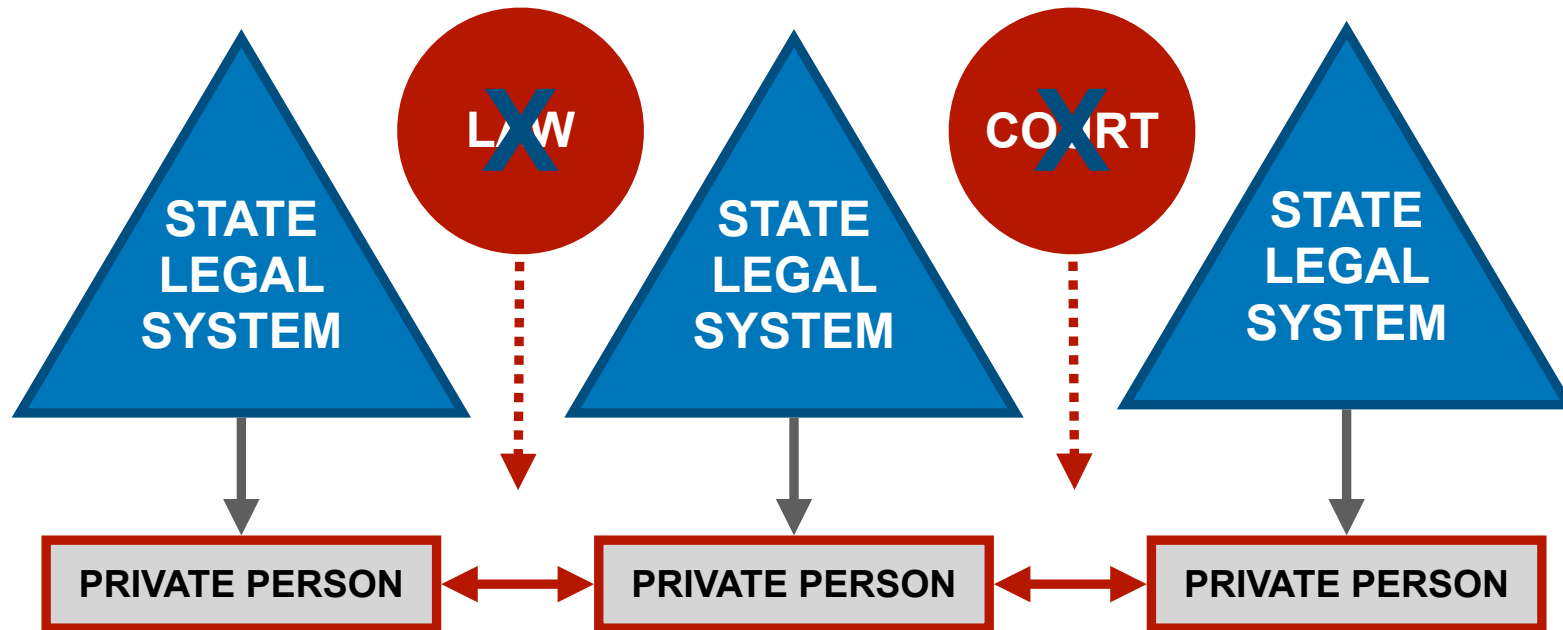
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# PRIVATE INTERNATIONAL LAW



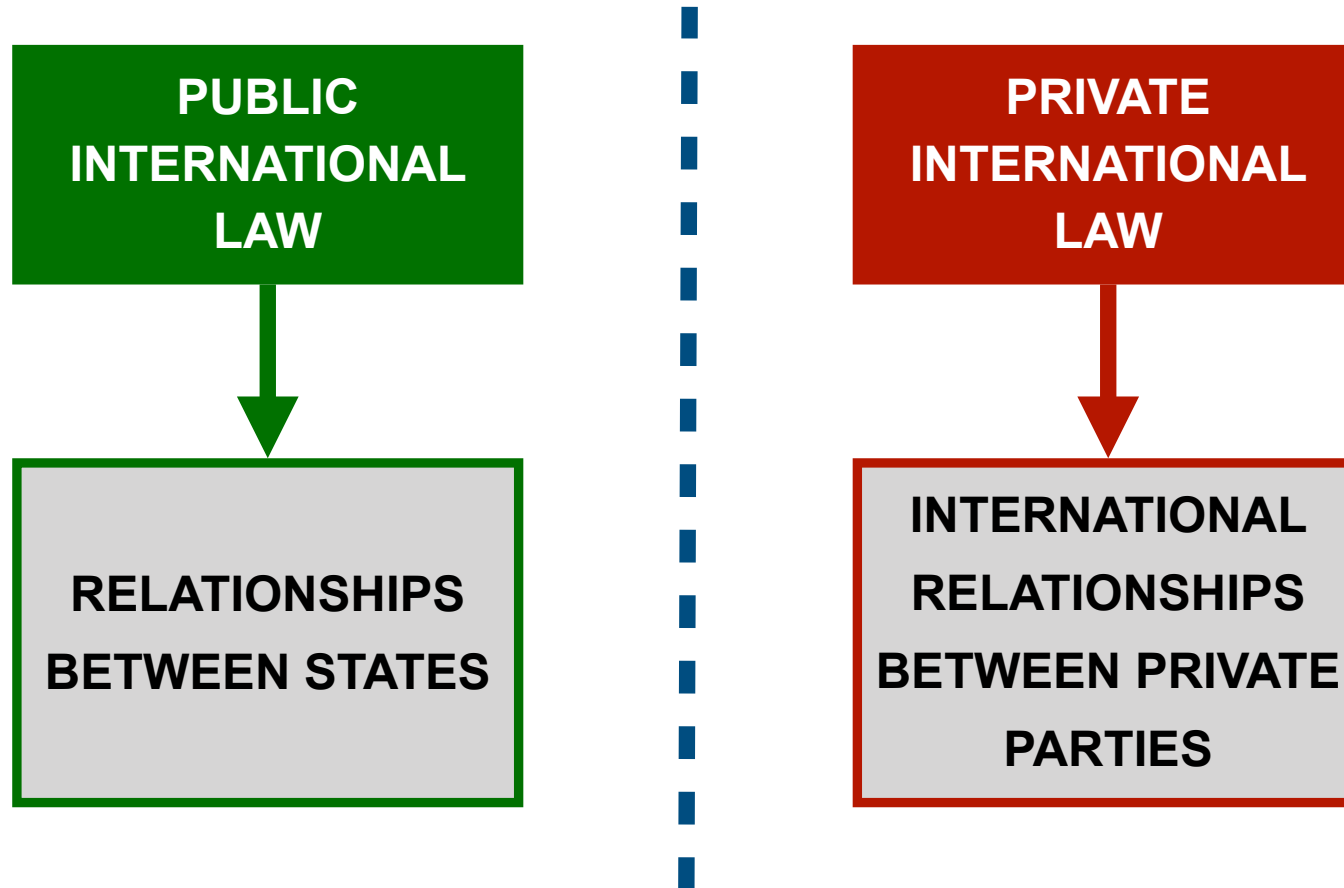
**THE RULES APPLIED TO THE INTERNATIONAL RELATIONSHIPS BETWEEN PRIVATE PERSONS MAY NOTABLY BE THOSE OF THE STATES, AND/OR THOSE AGREED BETWEEN THE STATES IN INTERNATIONAL TREATIES.**

# INTERNATIONAL vs TRANSNATIONAL



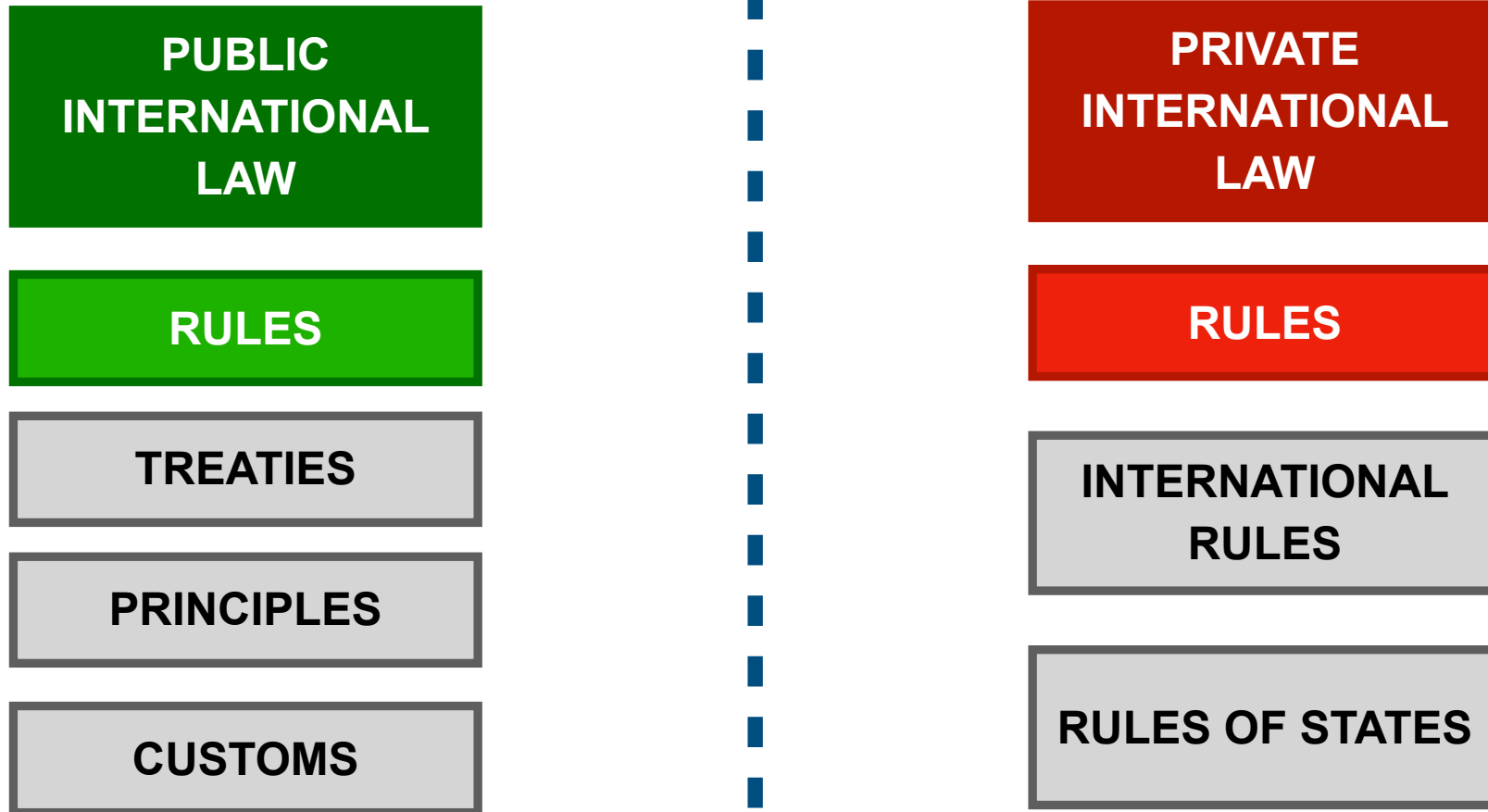
**BASICALLY, INTERNATIONAL LAW IS NOT A COHERENT BODY OF TRANSNATIONAL RULES, CONTROLLED BY TRANSNATIONAL COURTS, WHICH WOULD APPLY TO PRIVATE TRANSNATIONAL RELATIONSHIPS.**

# INTERNATIONAL LAW



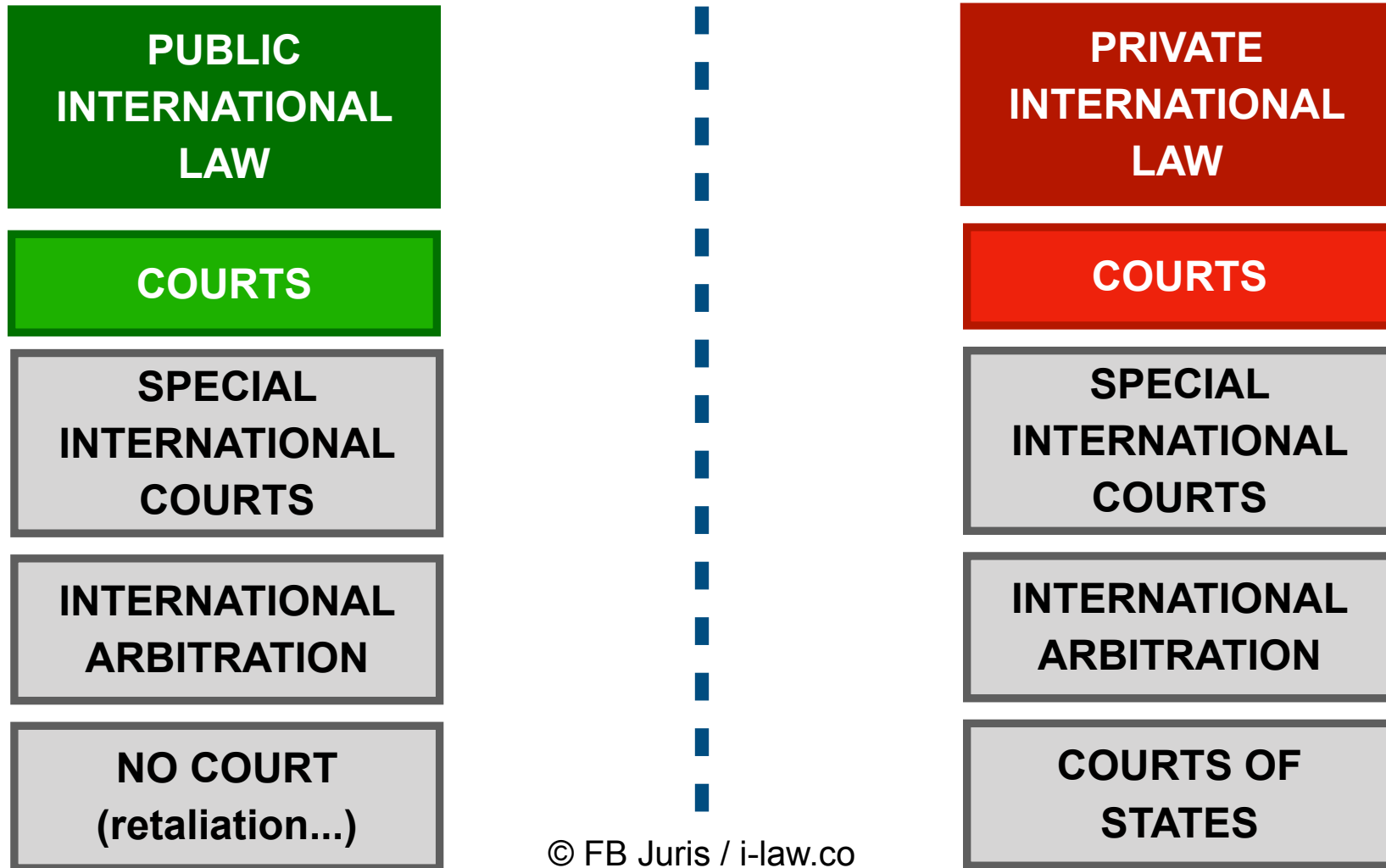
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# INTERNATIONAL LAW

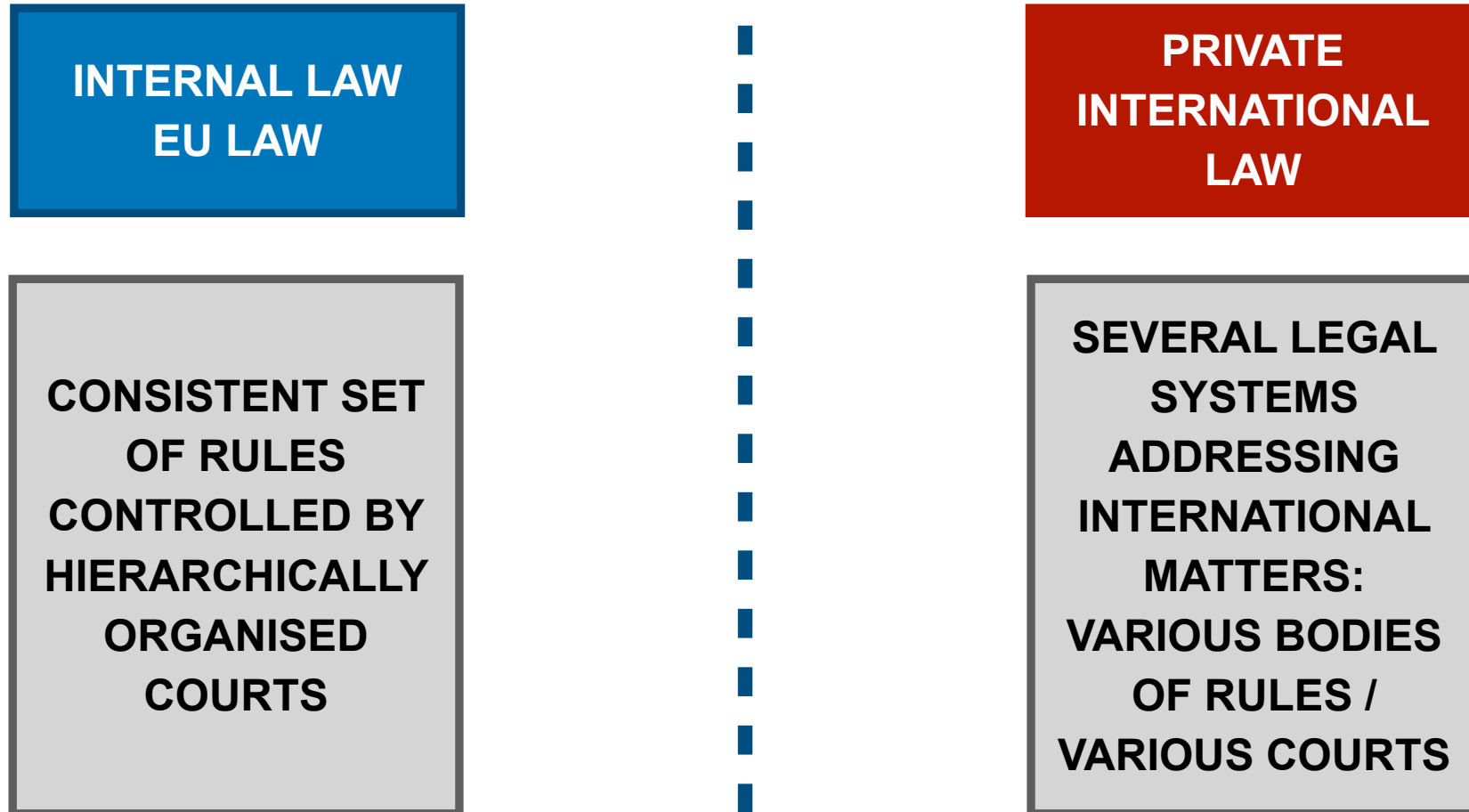


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# INTERNATIONAL LAW



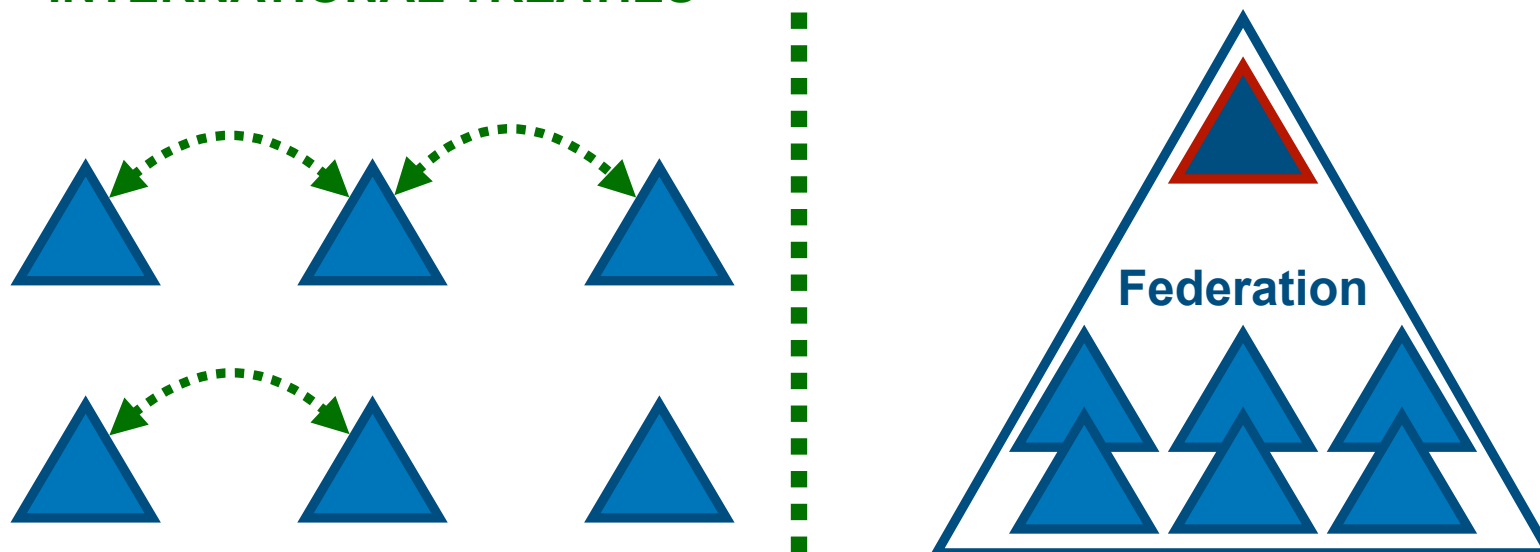
# INTERNAL LAW / INTERNATIONAL LAW



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# INTERNATIONAL vs FEDERAL

## INTERNATIONAL TREATIES



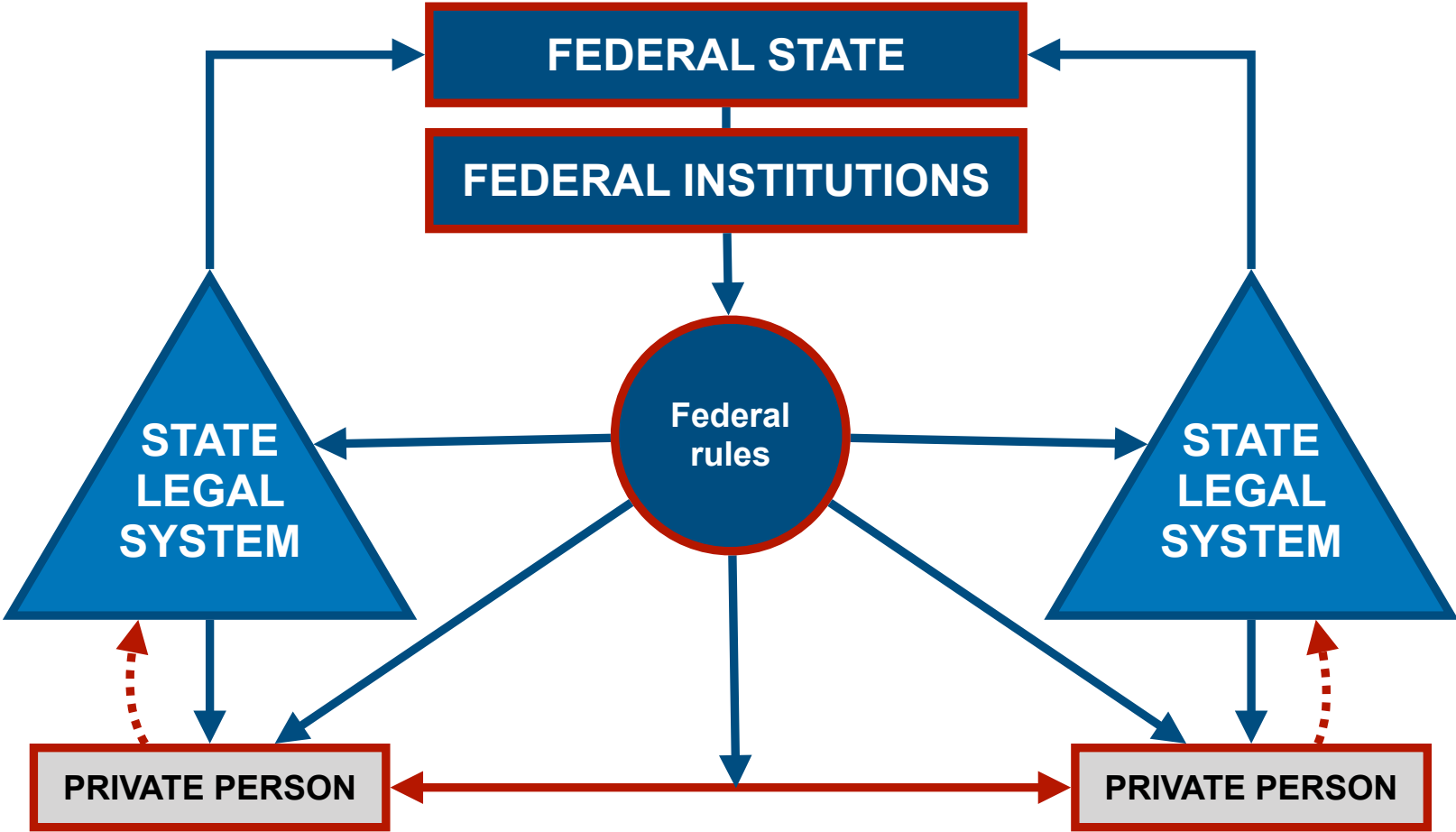
**INTERNATIONAL TREATIES ARE NOT UNIVERSAL AND, GENERALLY, THEY DO NOT INSTITUTE COURTS AND OTHER BODIES. AS AN EXCEPTION, SOME TREATIES CREATE INSTITUTIONS. A FEDERATION INSTITUTES A FEDERAL STATE.**

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# SOVEREIGNTY

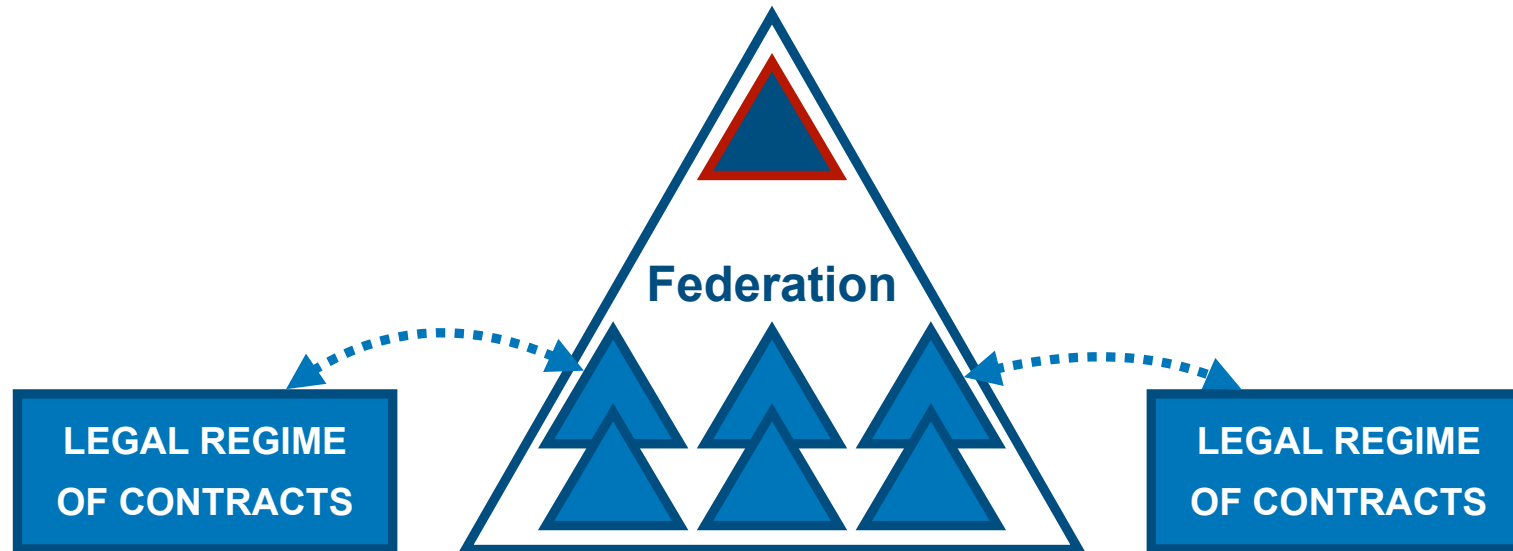
- # Each State is competent to determine the extent of its own competence, which it may decide to limit.**
- # Sovereign States are equal. The sovereignty of a State ends where that of other States begins.**
- # In a federal State, the federated States transfer part of their competences to the federal State. The federal State has powers of attribution. It does not have the competence of its competence.**

# FEDERATION



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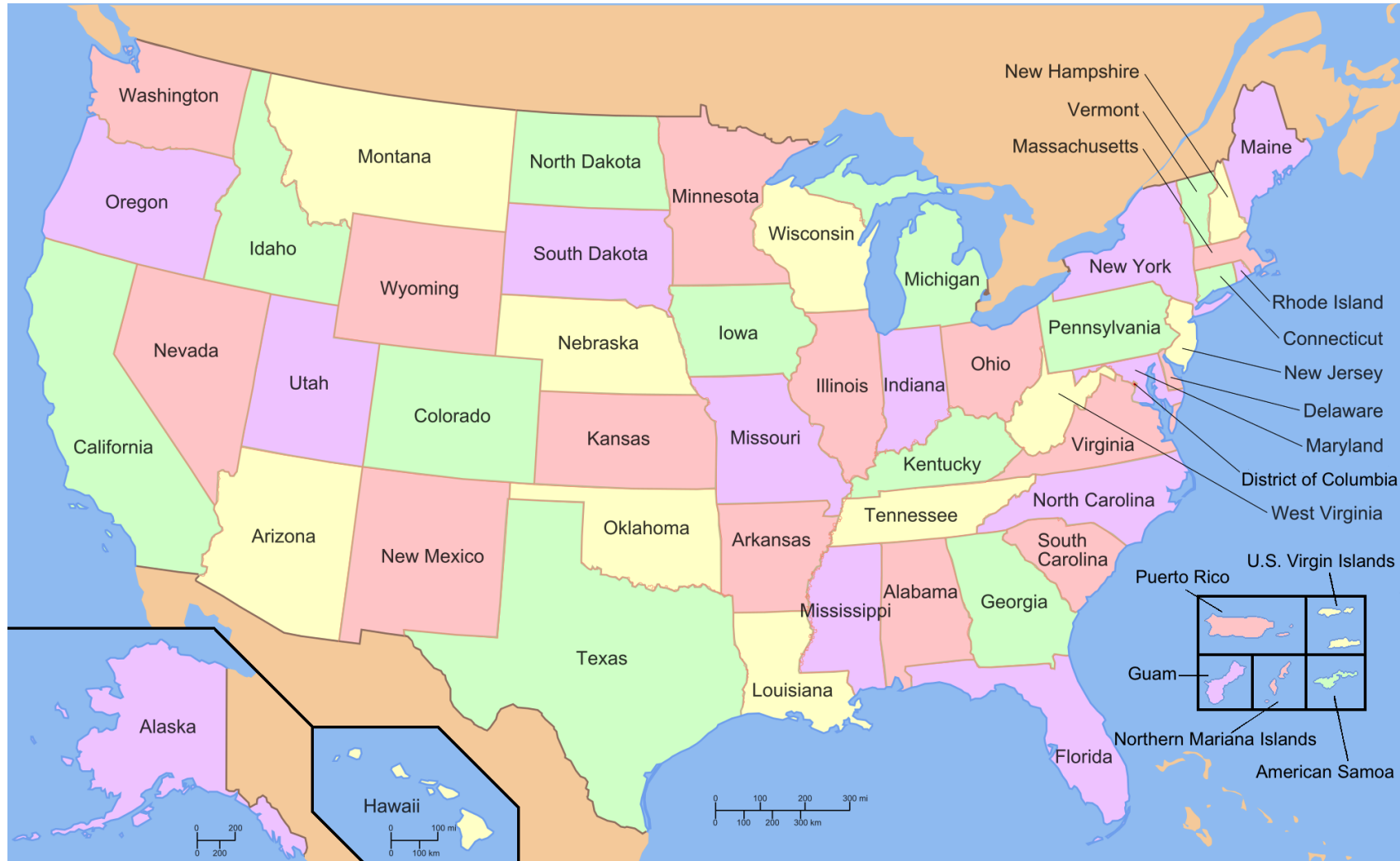
# HARMONIZATION VS UNIFORMITY



**EACH FEDERATED STATE HAS A LEGAL REGIME OF CONTRACTS.  
THEREFORE, THE LEGAL PROVISIONS CONCERNING THE EXISTENCE, THE VALIDITY  
AND THE EFFECTS OF A CONTRACT ARE DIFFERENT.**

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# EXAMPLE OF FEDERATION: USA

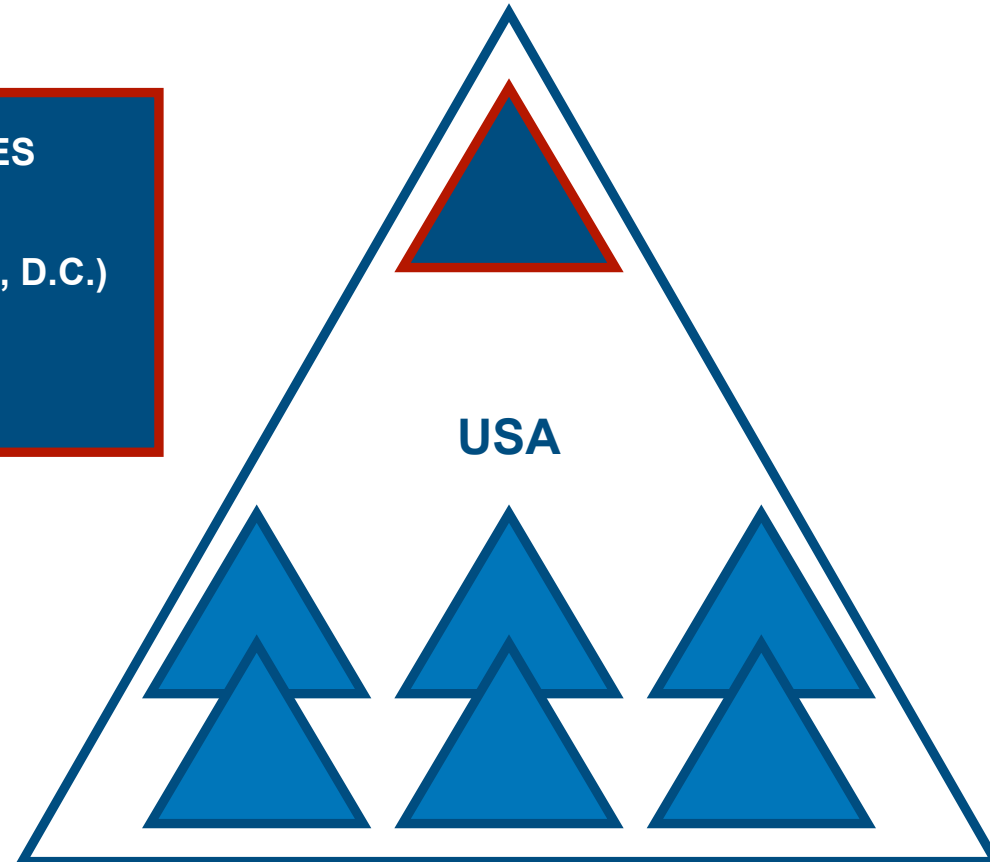


[https://commons.wikimedia.org/wiki/File:Map\\_of\\_USA\\_with\\_state\\_and\\_territory\\_names\\_2.png](https://commons.wikimedia.org/wiki/File:Map_of_USA_with_state_and_territory_names_2.png)

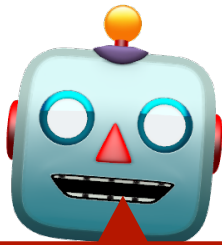
# USA

**STATES AND TERRITORIES**  
50 states  
A federal district (Washington, D.C.)  
Five major territories  
Minor islands

**The 50 federated States and  
the federal State are each  
sovereign entities.**



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# FIGURES: USA 🇺🇸

**Did you know?**

## POPULATION

**331.4 million inhabitants (2020)**

## SURFACE AREA

**9.834 million km<sup>2</sup>**

## STATES

**50 federated States**

## GROSS DOMESTIC PRODUCT

**€ 25.35 trillion (2022)**

# EUROPEAN UNION

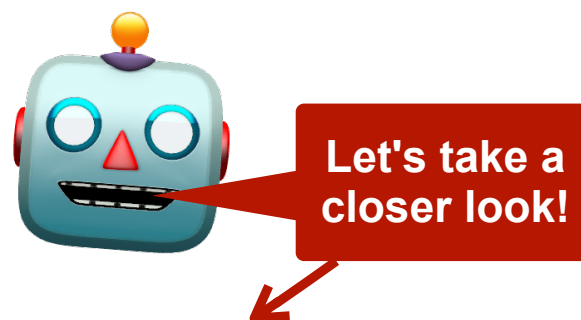
**THE LEGAL SYSTEM OF THE EUROPEAN UNION IS  
INTERMEDIATE BETWEEN A DEVELOPED LEGAL SYSTEM  
INSTITUTED BY A TREATY AND A FEDERAL STATE.**

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# EUROPEAN UNION

## 27 MEMBER STATES

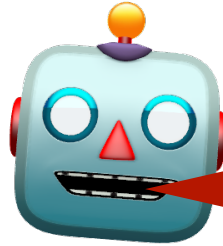
Austria , Belgium , Bulgaria , Cyprus , Czechia , Croatia ,  
Denmark , Estonia , Finland , France , Germany , Greece ,  
Hungary , Ireland , Italy , Latvia , Lithuania , Luxembourg ,  
Malta , The Netherlands , Poland , Portugal , Romania ,  
Slovakia , Slovenia , Spain , Sweden 



[https://european-union.europa.eu/principles-countries-history\\_en](https://european-union.europa.eu/principles-countries-history_en)

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# FIGURES: EUROPEAN UNION



**Did you know?**

**POPULATION**  
447.7 million inhabitants

**SURFACE AREA**  
Over 4 million km<sup>2</sup>

**LANGUAGES**  
24 official languages

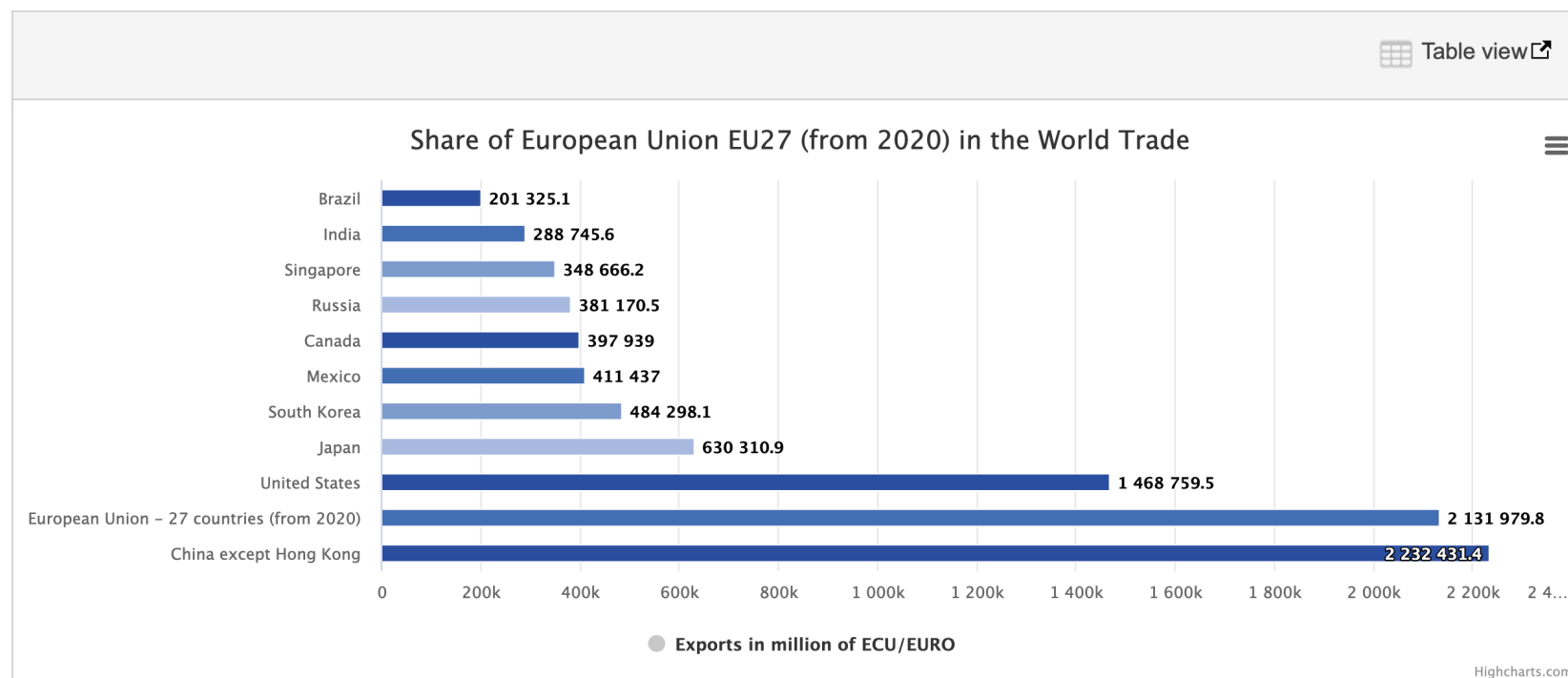
**GROSS DOMESTIC PRODUCT**  
€ 16.4 trillion in 2019 (with the UK)

[https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/life-eu\\_en](https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/life-eu_en)

# FIGURES: INTERNATIONAL TRADE

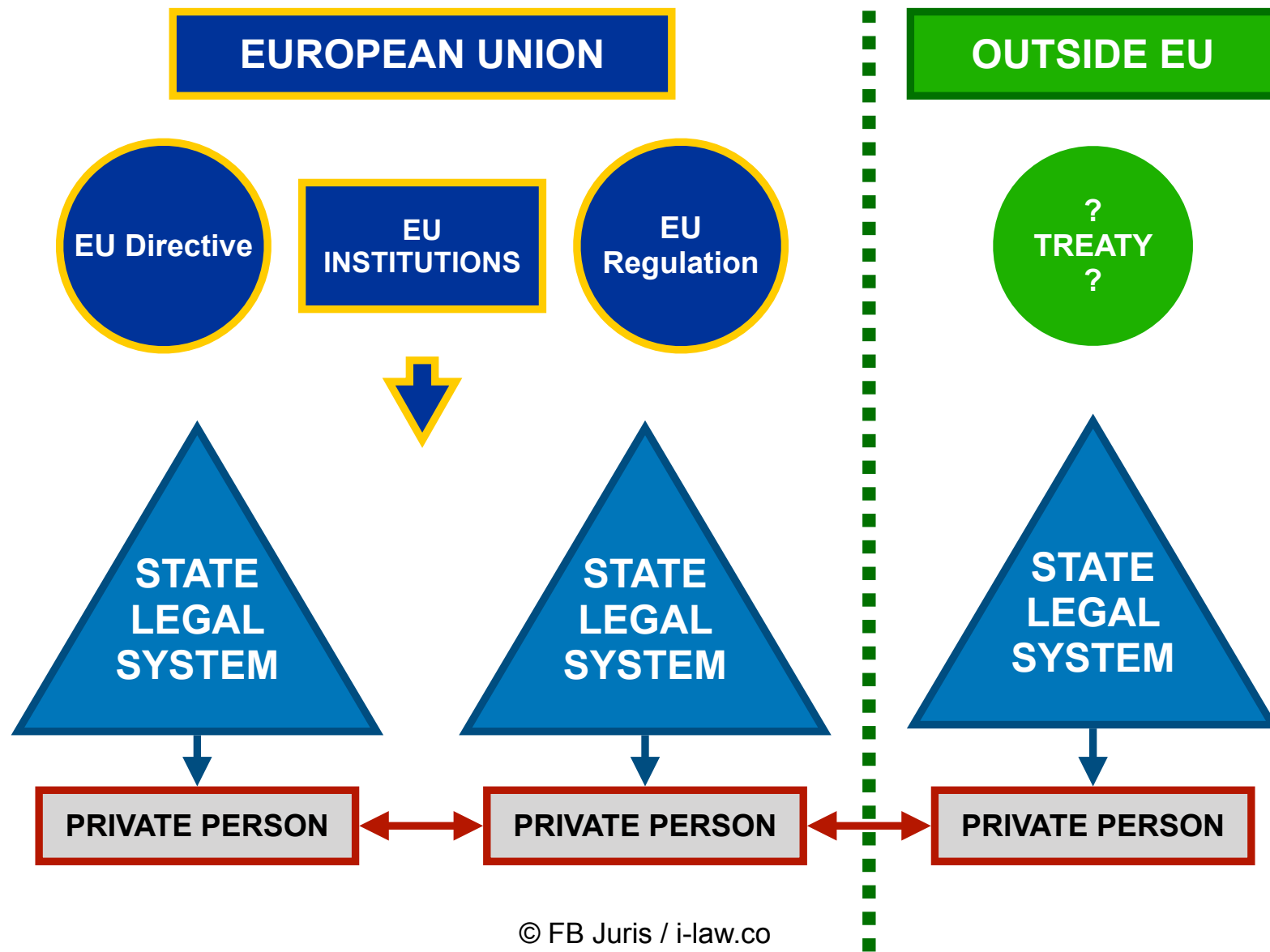
## Trade

The EU accounts for around 15% of the world's trade in goods. The EU, China and the United States are the three largest global players in international trade.



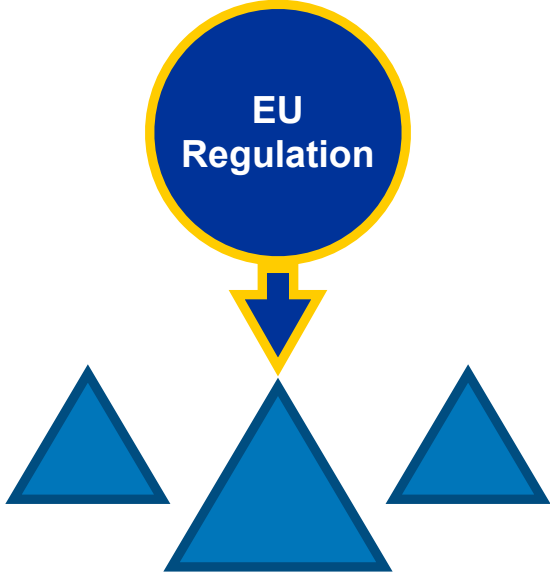
Source: [Eurostat](#)

[https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/economy\\_en](https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/economy_en)

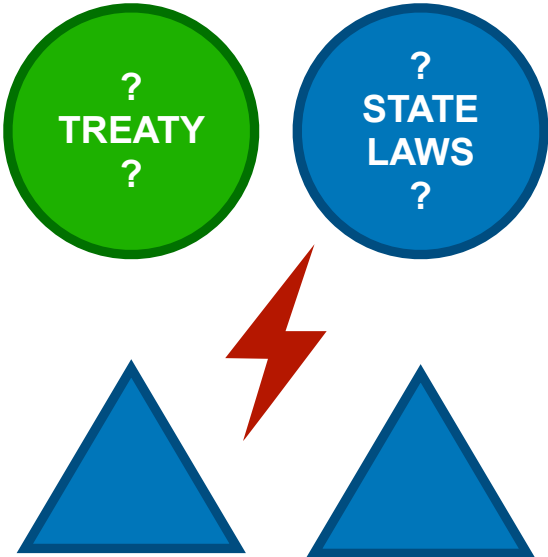


**WHICH LAW APPLIES? WHICH COURT IS COMPETENT?**

**EUROPEAN UNION**

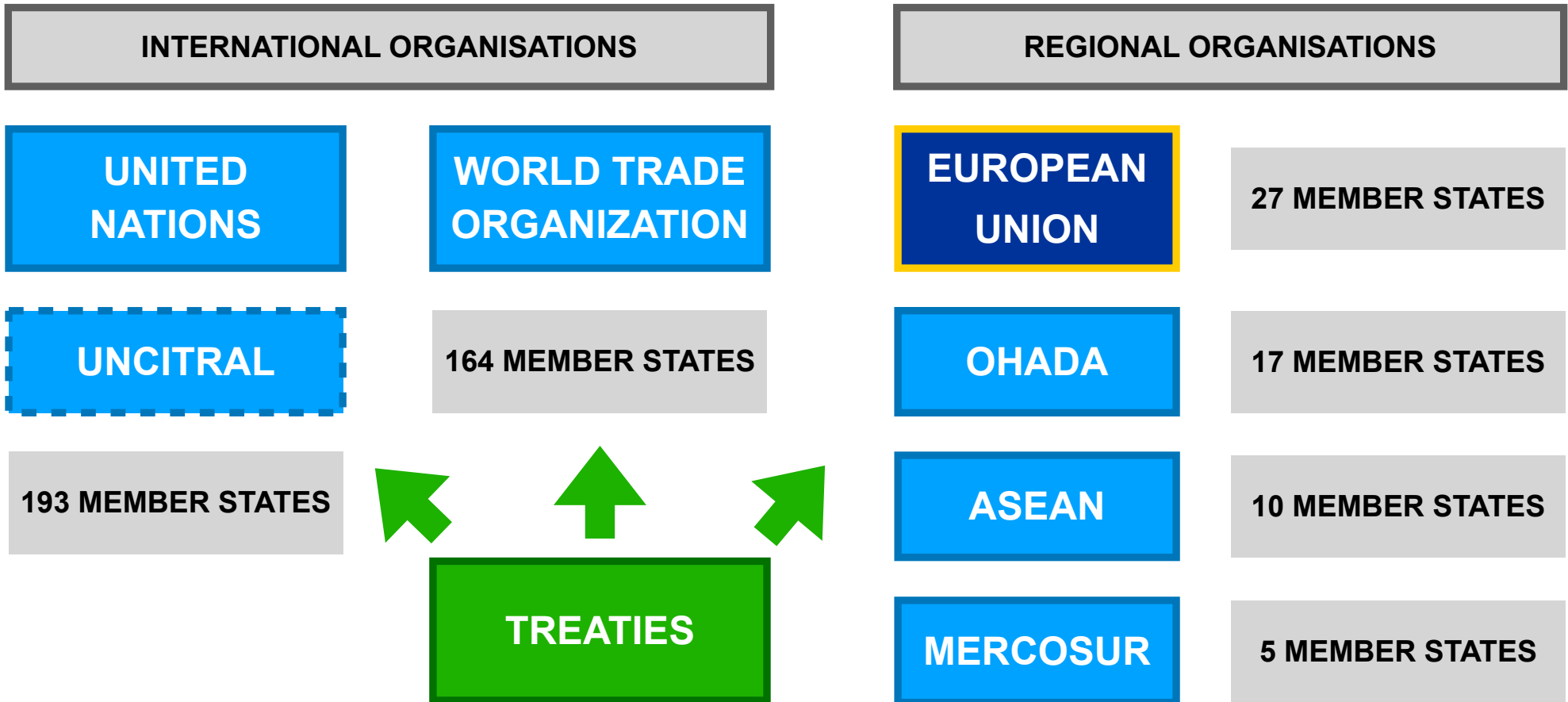


**OUTSIDE EU**



**IN THE EU, THE CONFLICTS BETWEEN LAWS AND COURTS ARE EASILY SOLVED, THANKS TO THE EU REGULATIONS AND THE EU JUDICIAL SYSTEM.**

# INTERNATIONAL ORGANISATIONS



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**PUBLIC INTERNATIONAL LAW**

**WORLD TRADE ORGANIZATION**

**164 MEMBER STATES**

**THE WTO DEALS WITH THE GLOBAL RULES OF TRADE BETWEEN NATIONS, NOT BETWEEN PRIVATE PARTIES.**

**PRIVATE INTERNATIONAL LAW**

**UNCITRAL**

**CISG**

**97 STATES (2023)**

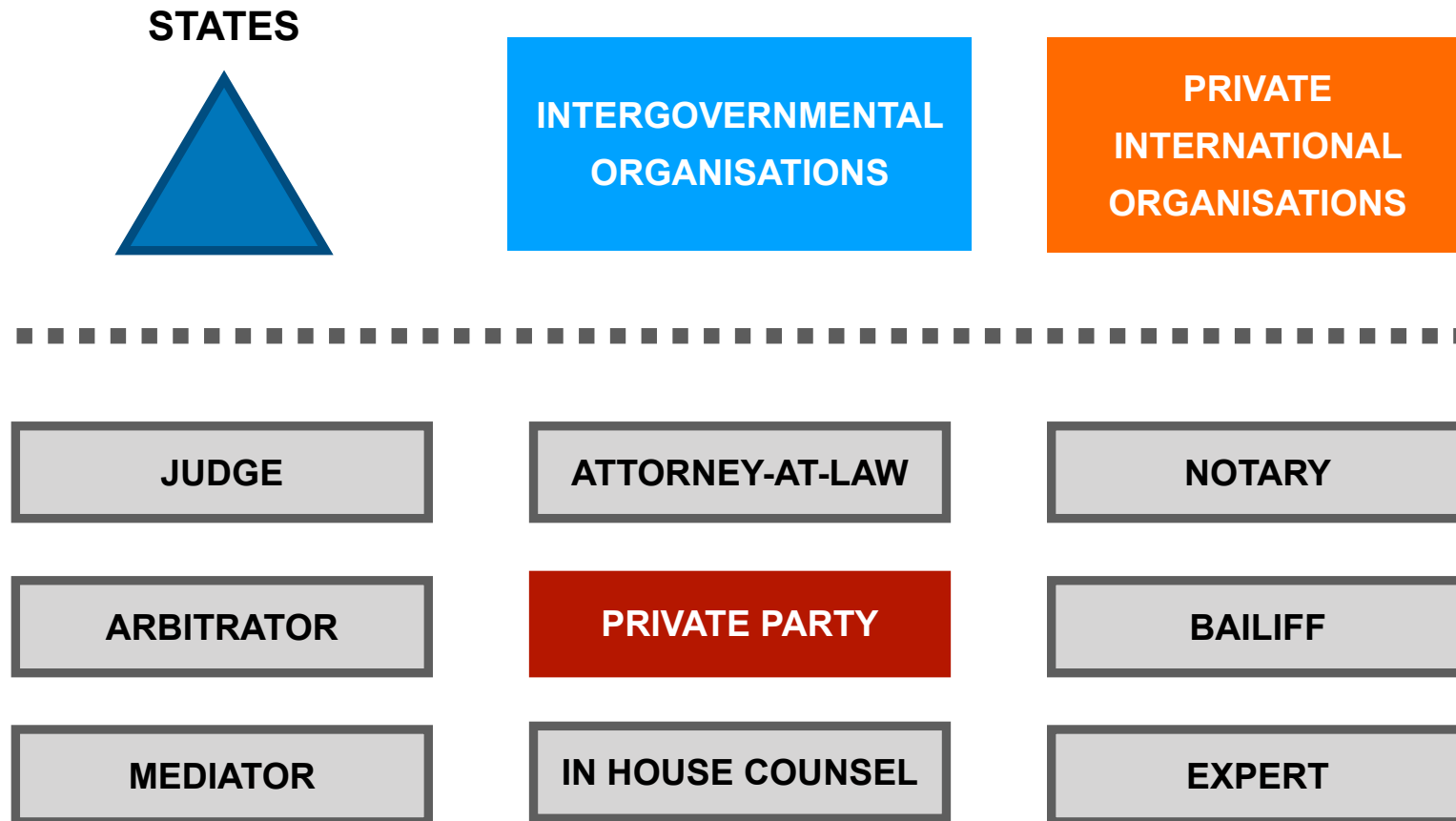
**GOVERNING LAW**

**INTERNATIONAL SALE**

**THE CISG DEALS WITH THE INTERNATIONAL SALE OF GOODS BETWEEN PRIVATE BUSINESSES.**

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# PROTAGONISTS OF INTERNATIONAL LAW



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# INTERNATIONAL TRADE

## SECURITY AND FLEXIBILITY

PRIVATE INTERNATIONAL LAW AIMS AT SECURING INTERNATIONAL RELATIONSHIPS, IN ORDER NOTABLY TO FACILITATE AND SECURE INTERNATIONAL TRADE AND INVESTMENTS. FOR THIS, CERTAINTY AND FLEXIBILITY ARE GENERALLY NEEDED.

## INFLUENCE

STATES KNOWN FOR FAVOURING INTERNATIONAL TRADE ATTRACT BUSINESS, INVESTMENTS...

## NEUTRALITY

A NEUTRAL TRIBUNAL OR ARBITRATOR GIVES GUARANTEES TO INTERNATIONAL INVESTORS.

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# DOMESTIC LAW, EUROPEAN UNION LAW AND INTERNATIONAL LAW

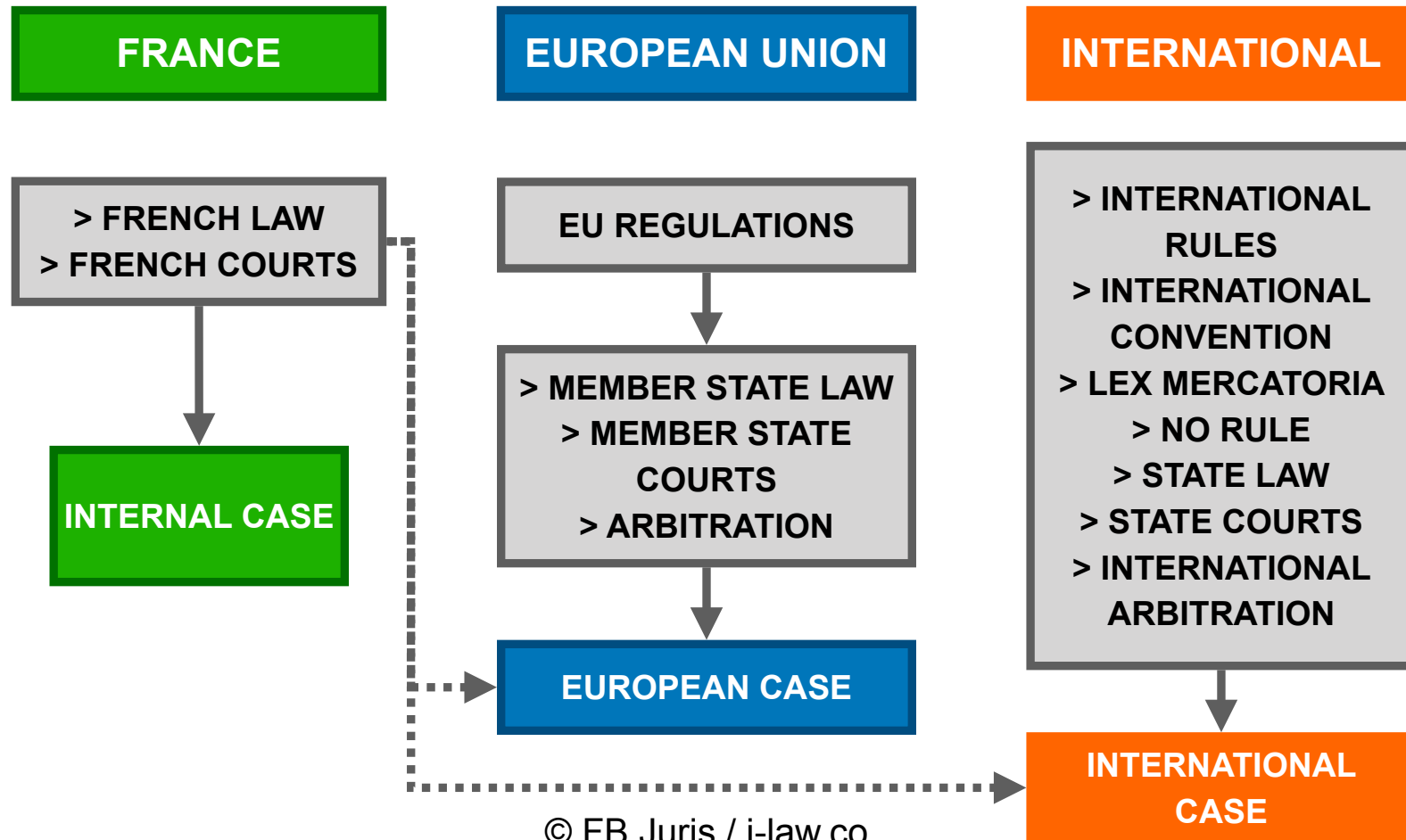
**DOMESTIC LAW** is the basis of European and international law. A State legal system comprises detailed norms controlled by courts, both of which are hierarchically organised to ensure consistency.

**EUROPEAN UNION LAW** comprises regulations, which provide notably conflict rules applying directly between private persons established in different Member States of the European Union.

**PRIVATE INTERNATIONAL LAW** is not a universal law, nor a unified transnational legal system. It is a complex set consisting of State rules applied internationally, treaties and private rules.

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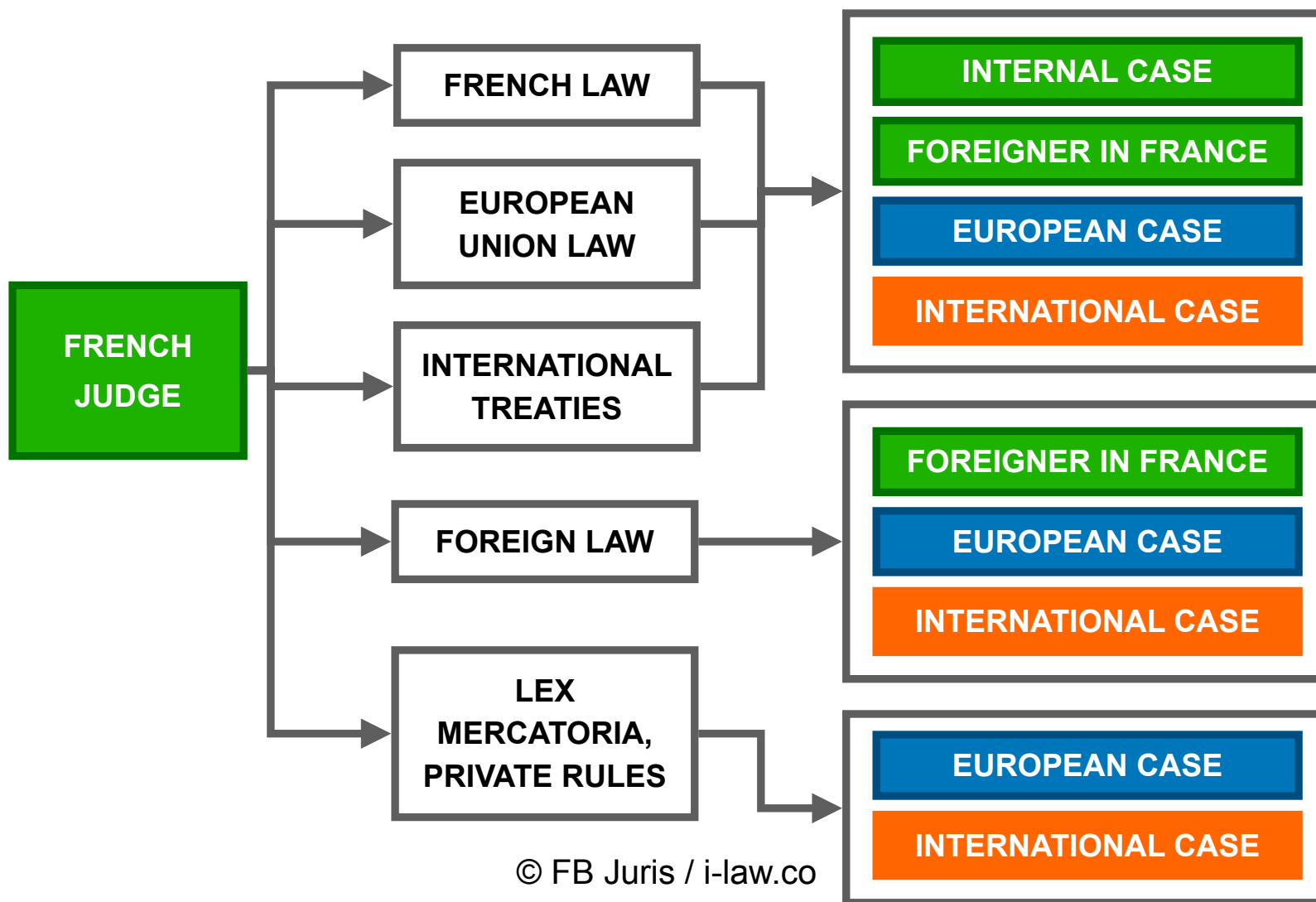
# INTERNAL / EUROPEAN / INTERNATIONAL CASES



	FRANCE	EUROPEAN UNION	INTERNATIONAL
LAW	<p><b>PRINCIPLE: FRENCH LAW</b></p> <p># <b>Internal case:</b> French laws and regulations.</p> <p># <b>International case:</b> French specific provisions relating to international cases (article 55 of the constitution, article 3 of the civil code, art. 113-6 and f. of the penal code...).</p> <p><b>EXCEPTION: FOREIGN LAW</b> (e.g., state and capacity of foreigners)</p>	<p># <b>CONFLICT RULE:</b> EU Regulation n° 593/2008 (contracts), EU Regulation n° 864/2007 (non-contractual obligations)...</p> <p># <b>SUBSTANTIVE LAW:</b> law of a Member State (incorporating EU law) or law of another country, designated by the EU Regulation (cf. above).</p>	<p># <b>INTERNATIONAL CONVENTIONS:</b></p> <ul style="list-style-type: none"> <li>- Conflict rules (determining which national substantive law applies)</li> <li>- Substantive rules</li> </ul> <p># <b>STATE RULES</b> (notably international public order)</p> <p># <b>NO STATE RULE</b></p>
COURT	<p><b>FRENCH COURTS</b></p> <p># <b>Internal case:</b> art. 42 and f. of the code of civil procedure...</p> <p># <b>International case:</b> art. 14 and 15 of the civil code, art. 689 and f. of the code of penal procedure...).</p>	<p>EU Regulation n° 1215/2012: national court of a Member State or of another country.</p>	<p># <b>INTERNATIONAL CONVENTIONS</b> (determining which national courts are competent)</p> <p># <b>STATE COURTS</b></p> <p># <b>ARBITRATION</b></p>

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# WHICH LAWS DOES A FRENCH JUDGE APPLY?



# WHICH LAWS DOES A FRENCH JUDGE APPLY?

## A FRENCH JUDGE MAY APPLY:

### # French law

- > to an internal case
- > to a foreigner residing in France
- > to a European case
- > to an international case

### # European Union law, which is incorporated into French law

- > to an internal case
- > to a foreigner residing in France
- > to a European case
- > to an international case

### # International treaties to which France is a party

- > to an internal case
- > to a foreigner residing in France
- > to a European case
- > to an international case

### # Foreign law

- > to a foreigner residing in France
- > to a European case
- > to an international case

### # Lex Mercatoria, private rules, treaties to which France is not a party

- > to a European case
- > to an international case

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# FINDINGS

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**# The legal systems of States form the basis of private international law. In some aspects, private international law is like a bridge between the legal systems of States.**

**# Private international law is not one consistent legal system that would be separate from the legal systems of States, that would comprise one consistent set of international rules and one international court competent for any international case. Instead, there are several international organisations, several international legal systems, several international sets of rules, several courts that may be competent for international cases.**

**# The legal system of the European Union is much more developed and consistent than that of a traditional international organisation.**

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# ENGLISH-FRENCH VOCABULARY

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**# Commercial law: droit commercial.**

**# Court: tribunal.**

**# European Union: Union européenne.**

**# Federation: fédération.**

**# Federal State: État fédéral.**

**# Federated State: État fédéré.**

**# International business law: droit international des affaires.**

**# International trade: commerce international.**

**# International treaty: traité international.**

**# Law: 1) droit ; 2) loi.**

**# Private international law: droit international privé.**

**# Public international law: droit international public.**

**# Regulation: règlement.**

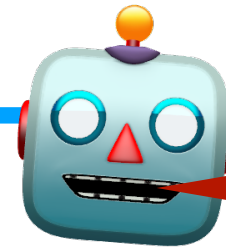
**# Rule: règle.**

**# Sovereignty: souveraineté.**

**# State: État.**

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# QUIZZ



Let's play!

## Right or wrong?

- A** - International law applies universally, to all States and private persons.
- B** - There exists an international court, which is competent to judge any international business case.
- C** - International business law is not an integrated legal system. Instead, several legal systems address international matters.

# CROSSWORDS

## VERTICALLY

**A** - Adjective qualifying international law that does not deal with the relationships between States.

**D** - An agreement between States.

**G** - A system of rules.

**J** - An institution in charge of controlling the application of law.

**L** - The political organisations that form the basis of international law.

## HORIZONTALLY

**3** - The adjective qualifying a relationship concerning several States.

**7** - What is imposed or adopted as a guideline.

	A	B	C	D	E	F	G	H	I	J	K	L	M
1													
2													
3													
4													
5													
6													
7													

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