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INTERNATIONAL BUSINESS LAW

Legal guide to doing business internationally

4 - FRENCH BUSINESS LAW

27 September 2023

Institut Mines-Télécom Business School

EMBA Business School

Une école supérieure

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FRENCH LEGAL SYSTEM

LEGAL GUIDE TO DOING BUSINESS IN FRANCE

OBJECTIVES

 # Study the main features of a State legal system, given that the legal systems of States form the basis of international law.

 # Understand the essential differences between a State legal system and international law.

 # Know some major aspects of French law.

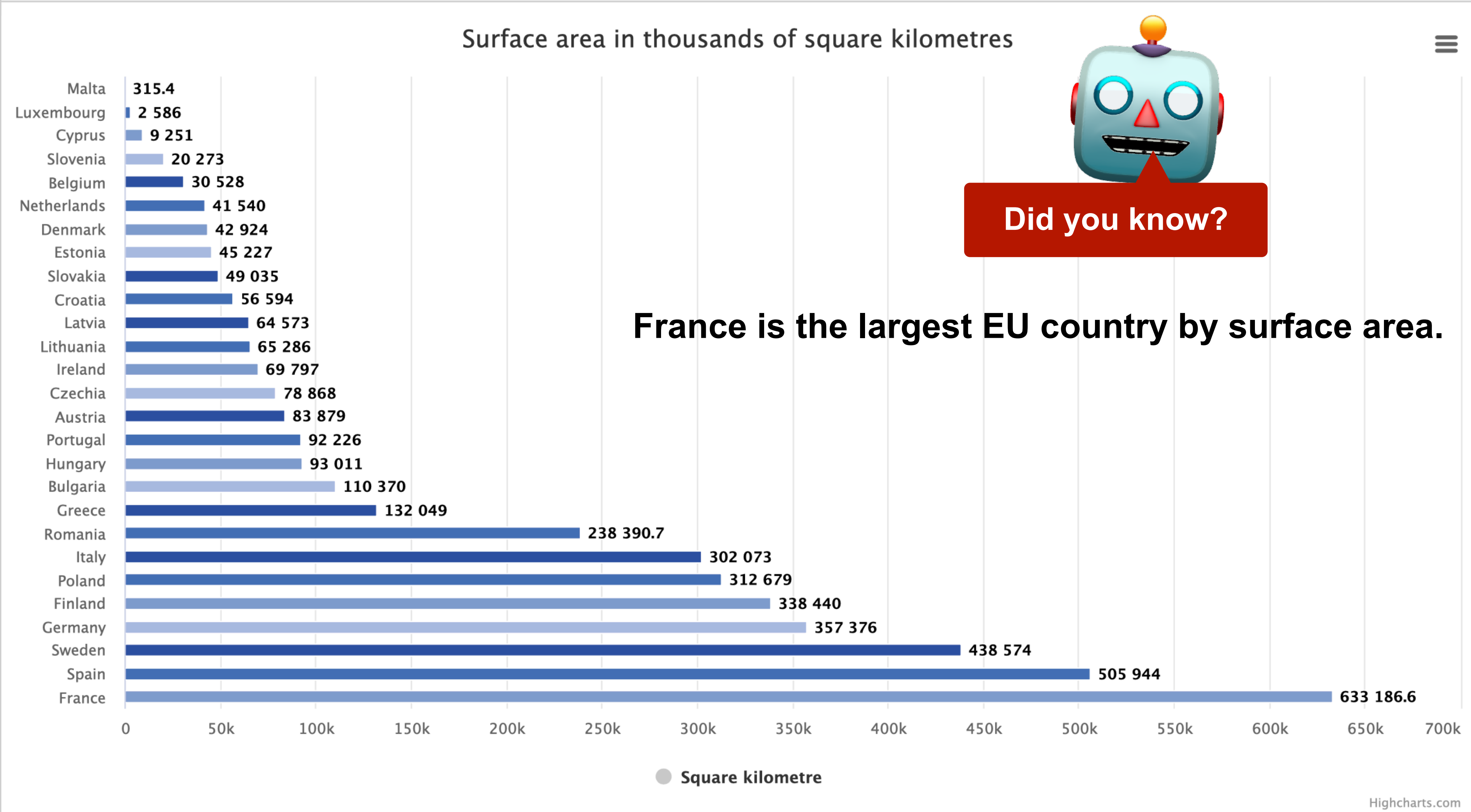
SUMMARY

 # France is a State governed by the rule of law. It is a democracy and a Republic.

 # French law is essentially written. It is a codified law.

 # The normative system can be represented in the form of a pyramid, which expresses the hierarchy of norms.

 # The judicial system can also be represented in the form of a pyramid, which expresses the hierarchy between jurisdictions.



Did you know?

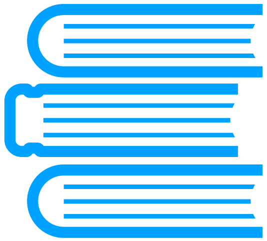
France is the largest EU country by surface area.

Source: [Eurostat]

https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/life-eu_en

CODIFICATION

FRENCH LAW



Civil code

Penal code

Commercial code…

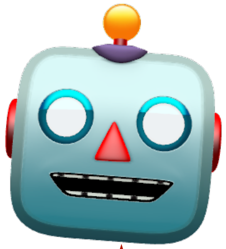
ANGLO-SAXON LAWS

Bills

Case law

French law is generally codified.
Anglo-Saxon laws are generally not codified and rely highly on the doctrine of precedent (rule of precedent), whereas under French law, case law is less important when the written rules are clear. French law regulates more strictly than Anglo-Saxon laws the power of the judges to interpret laws.

FRENCH CODES

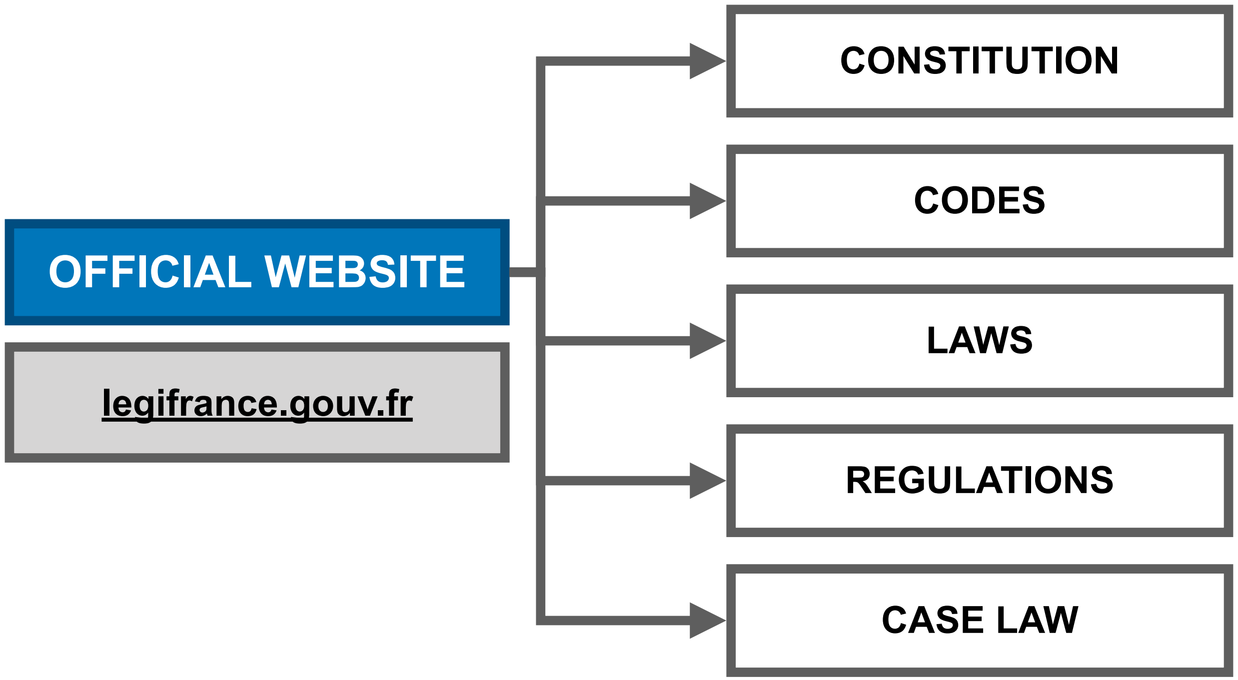


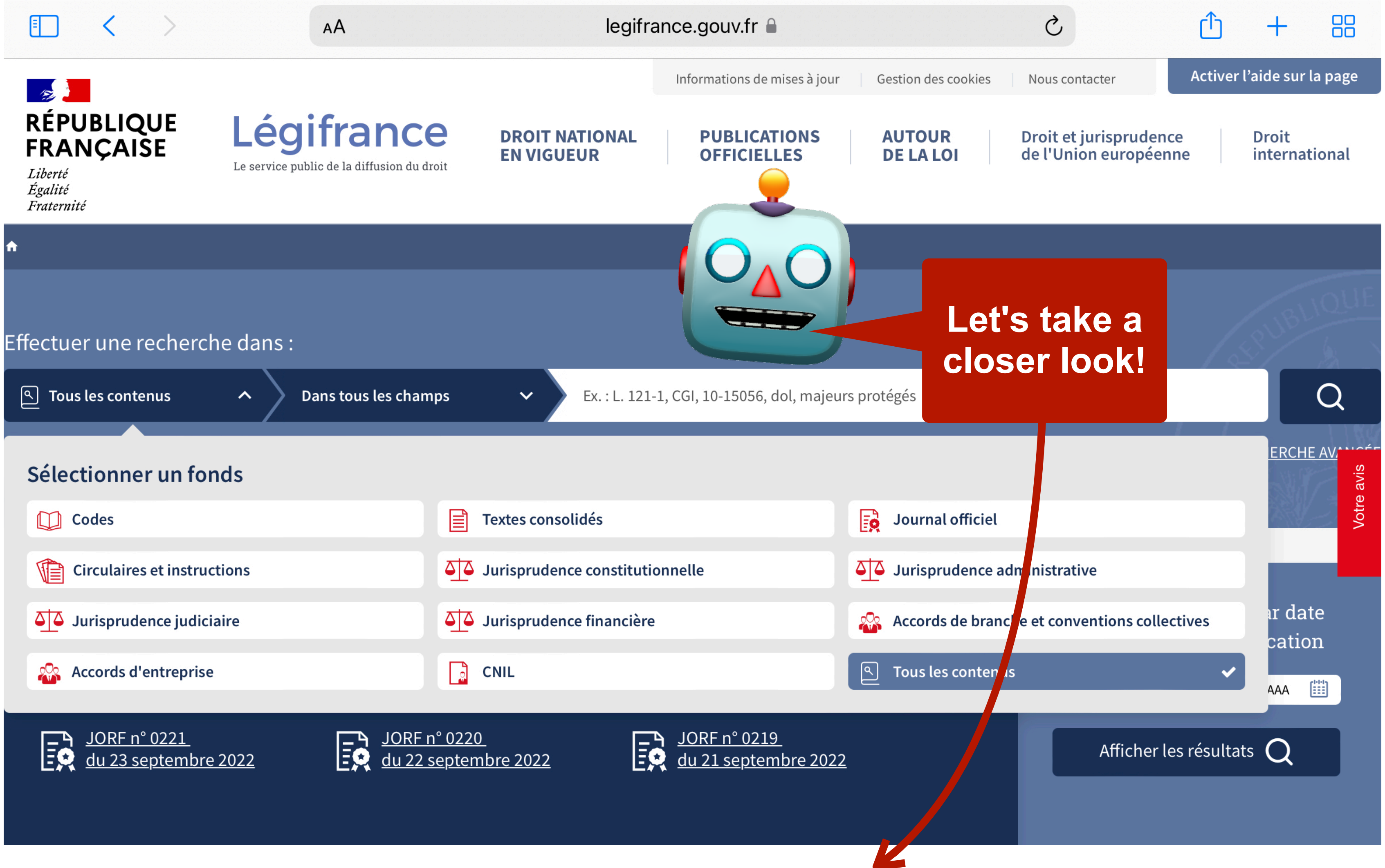
Let's take a closer look!

The codes are published on the official website legifrance.gouv.fr.

Each code is an orderly collection of laws and regulations applicable to a defined field. The codes are structured by an intelligible plan (books, titles, chapters, sections...).

FRENCH LAW


OFFICIAL WEBSITE
legifrance.gouv.fr
CONSTITUTION
CODES
LAWS
REGULATIONS
CASE LAW



legifrance.gouv.fr

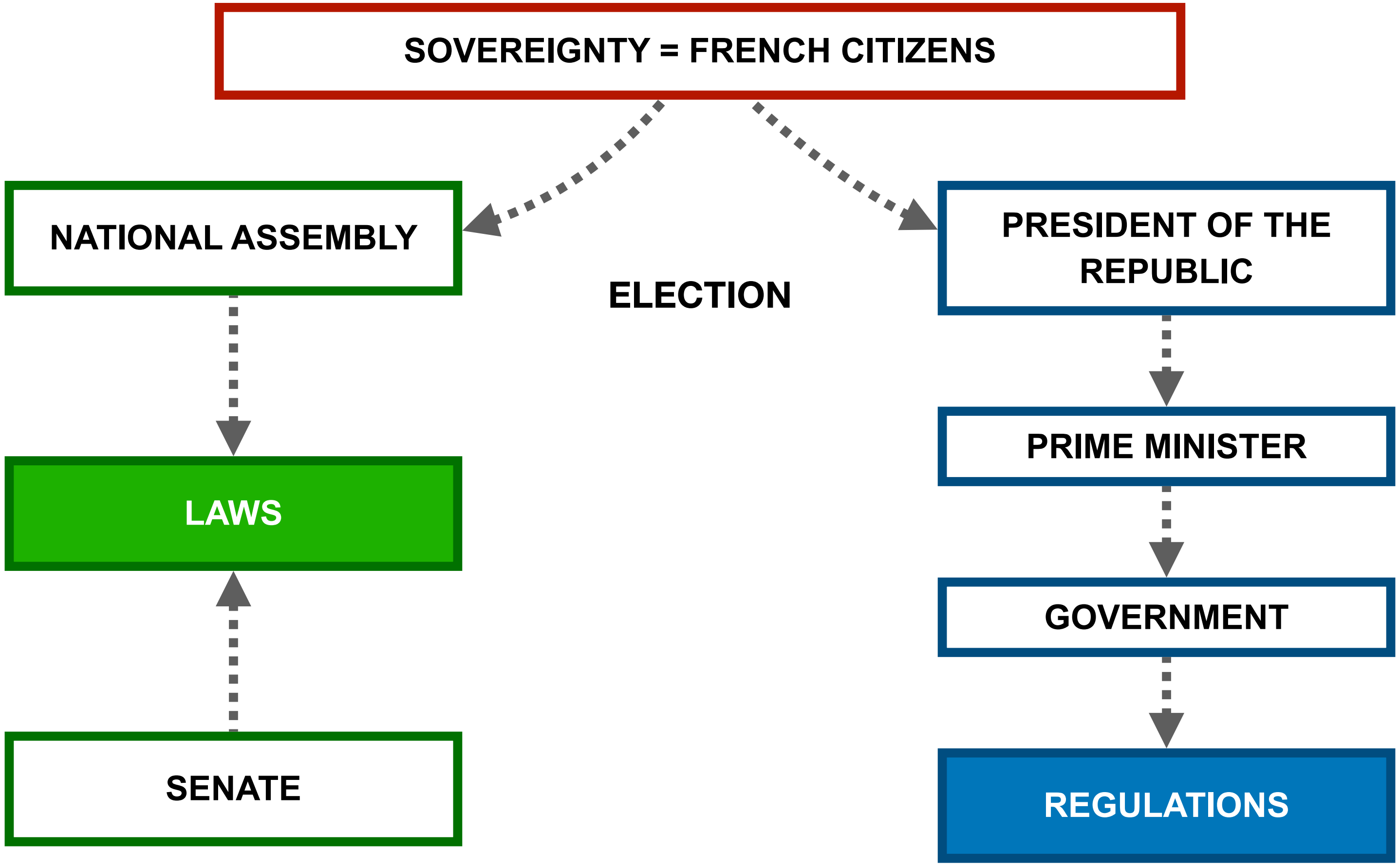
FRENCH INSTITUTIONS

FRENCH INSTITUTIONS

FRENCH INSTITUTIONS

LEGISLATIVE POWER	EXECUTIVE POWER	JUDICIAL POWER
SENATE	PRESIDENT OF THE REPUBLIC	CONSTITUTIONAL COUNCIL
NATIONAL ASSEMBLY	PRIME MINISTER	COURT OF CASSATION
	GOVERNMENT	COUNCIL OF STATE

FRENCH INSTITUTIONS



SEPARATION OF POWERS

LEGISLATIVE POWER	EXECUTIVE POWER	JUDICIAL POWER
THE POWER TO PASS LAWS	THE POWER TO ENFORCE LAWS	THE POWER TO CONTROL LAW ENFORCEMENT

SEPARATION OF POWERS

The principle of separation of powers has been theorized by **Locke (1632-1704)** and **Montesquieu (1689-1755)**. It tends to limit arbitrariness and ensure a balance by distinguishing functions within a political system and prescribing their separation. According to Montesquieu, *« In order for power not to be abused, it is necessary that, by the disposition of things, power stops power. »*

Based on this principle, there are 3 main powers within a political system:

- the legislative power is the power to pass laws,
- the executive power is the power to enforce laws,
- the judicial power is the power to control law enforcement and to settle disputes.

SEPARATION OF POWERS

In the **United States of America**, this theory inspired the drafters of the American Constitution, who instituted in 1787 a presidential system organized according to a **strict separation of the three powers**, tempered by the existence of reciprocal means of control and action designed in accordance with the doctrine of « **checks and balances** ».

In **France**, article 16 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 also refers to this theory by providing that *« Any society in which the guarantee of rights is not ensured or the separation of powers determined, has no Constitution »*.

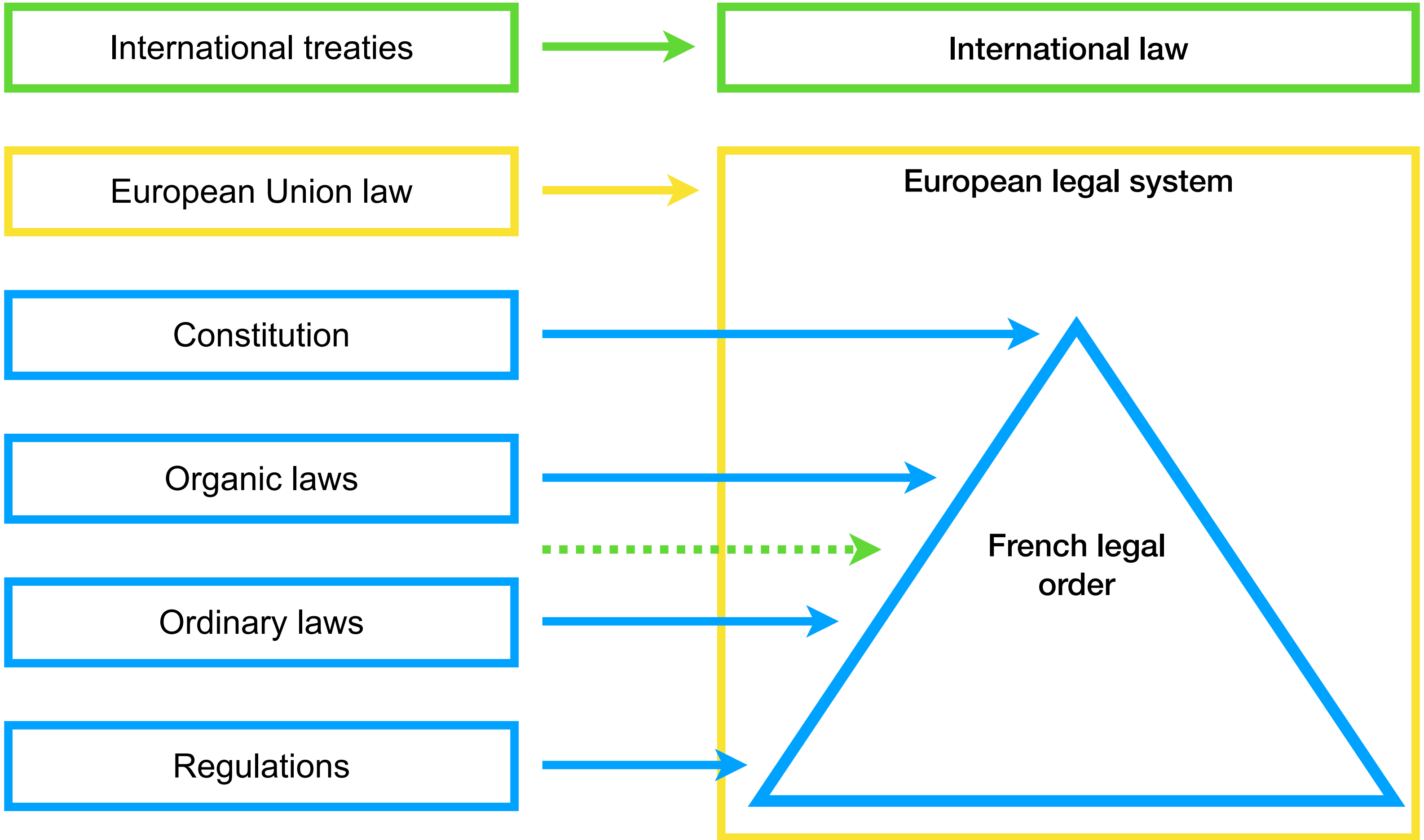
SEPARATION OF POWERS

In **France**, however, quickly, in 1790 and 1795, texts prohibited the courts of the judicial order from hearing disputes concerning the administration. **The legislative power and the executive power were removed from judicial review** on the grounds that they did not have sufficient legitimacy to judge acts of authorities elected by universal suffrage and acting in the public interest. From **1799**, an **administrative court separate from the judicial authority**, the Council of State (Conseil d'État), was established to allow the challenge of the acts of the administration.This is how we speak of a *« French conception of the separation of powers »*, characterized by a certain mistrust of the judiciary and a desire to limit it. This conception is reflected in particular in the existence of a duality of jurisdictions (the **judicial order** and the **administrative order**) and in the interference of the executive power in judicial activities.

RULE OF LAW

The rule of law (in French: « État de droit ») refers to a State which submits to rules and which offers individuals judicial remedies in order to enforce their rights against the State.

NORMATIVE PYRAMID



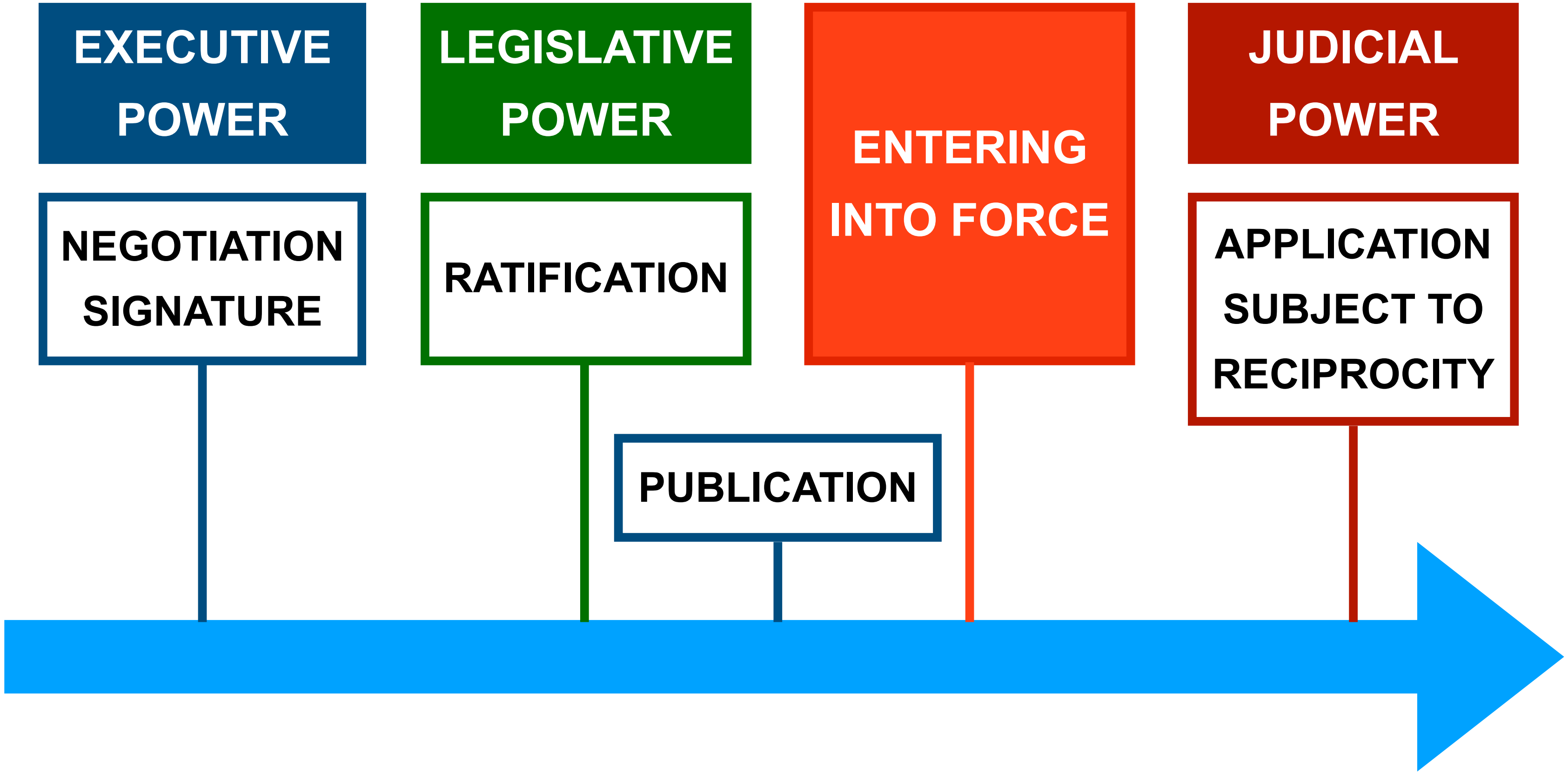
TREATIES

ARTICLE 55 OF THE FRENCH CONSTITUTION

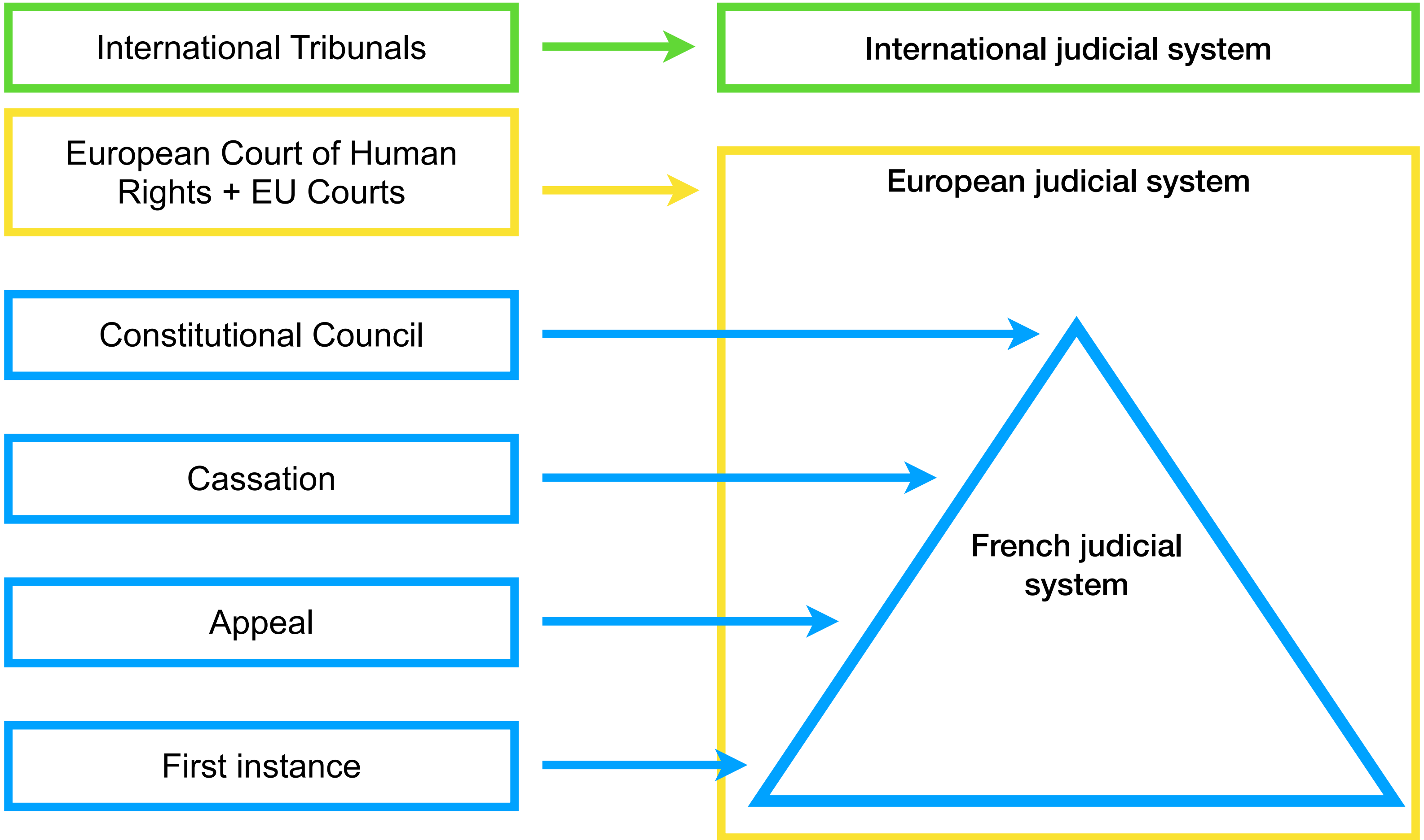
TREATIES OR AGREEMENTS DULY RATIFIED OR APPROVED SHALL, FROM THE TIME OF THEIR PUBLICATION, HAVE A HIGHER AUTHORITY THAN LAWS, SUBJECT, FOR EACH AGREEMENT OR TREATY, TO ITS APPLICATION BY THE OTHER PARTY.

+ Read: International treaties binding France (official website diplomatie.gouv.fr)

INTERNATIONAL TREATY



JUDICIAL ORGANISATION



JUDICIAL SYSTEM

EUROPEAN CONVENTION ON HUMAN RIGHTS

- European Court of Human Rights

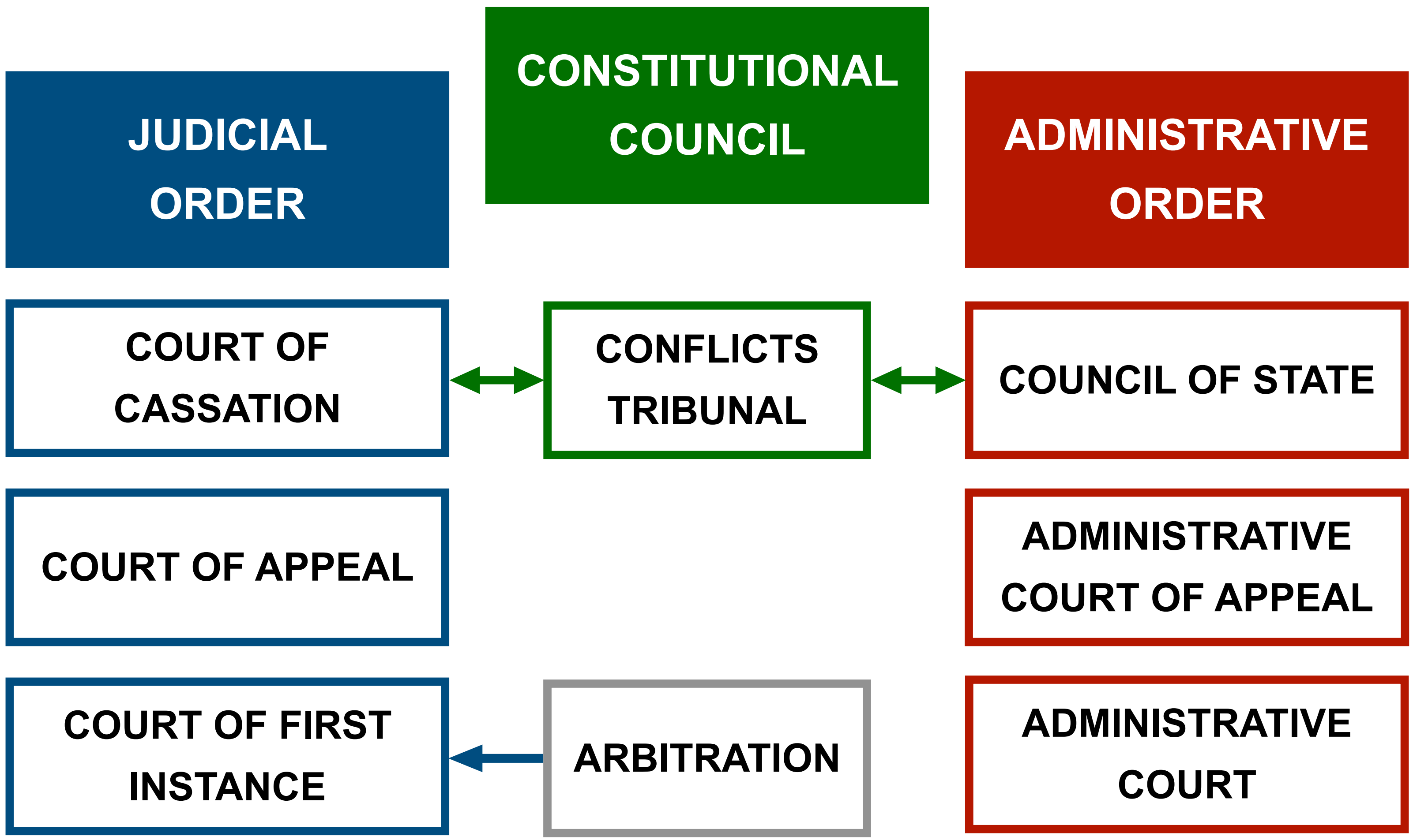
EUROPEAN UNION

- Court of Justice of the EU
- General Court of the EU

FRANCE

- Constitutional Council
- Court of Cassation
- Conflicts Tribunal
- Council of State
- Court of Appeal
- Administrative Court of Appeal
- Judicial Court
Commercial Court
Labour Court
Specialized courts
- Arbitration
- Administrative Tribunal

JUDICIAL POWER IN FRANCE



EXTRA-TERRITORIAL APPLICATION OF FRENCH LAW

EXTRA-TERRITORIAL APPLICATION OF FRENCH LAW

FRENCH PENAL CODE

FRENCH CIVIL CODE

FRENCH PENAL LAW

PENAL LAW

WHEREAS THE PARTIES MAY ALWAYS SETTLE A CIVIL OR COMMERCIAL CASE, IN PRINCIPLE, SETTLING A PENAL CASE IS NOT POSSIBLE.

BY EXCEPTION, SETTLEMENT IS POSSIBLE FOR MINOR OFFENCES.

FRENCH PENAL LAW

EXTRA-TERRITORIAL APPLICATION OF FRENCH LAW

↓

> Crimes and offences committed abroad by French people.
> Crimes and offences committed abroad by foreigners against French people.

Article 113-6 and followings of the French Penal Code

FRENCH PENAL LAW

INTERNATIONAL COMPETENCE OF FRENCH COURTS

↓

> WHEN FRENCH LAW IS APPLICABLE (pursuant to the French Penal Code)
> WHEN AN INTERNATIONAL CONVENTION OR EU LAW GRANTS COMPETENCE TO FRENCH COURTS

Article 689 and followings of the French Code of Penal Procedure

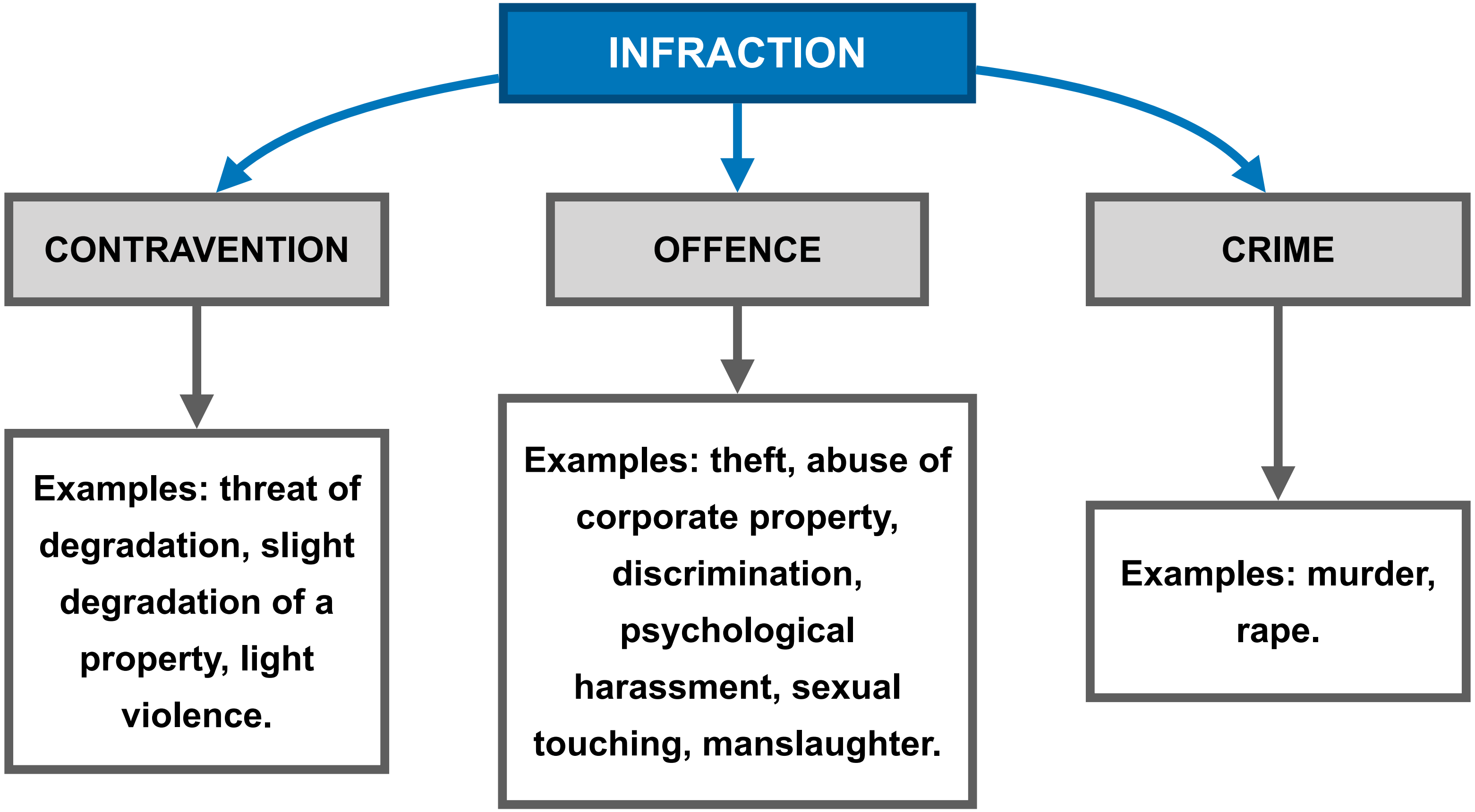
PENAL LAW

ARTICLE 113-6 AND FOLLOWINGS OF THE FRENCH PENAL CODE

FRENCH PENAL LAW IS APPLICABLE TO ANY CRIME COMMITTED BY A FRENCHMAN OUTSIDE THE TERRITORY OF THE REPUBLIC.

IT IS APPLICABLE TO OFFENCES COMMITTED BY FRENCH PEOPLE OUTSIDE THE TERRITORY OF THE REPUBLIC IF THE ACTS ARE PUNISHABLE UNDER THE LEGISLATION OF THE COUNTRY WHERE THEY WERE COMMITTED.

PENAL LAW


INFRACTION
CONTRAVENTION
OFFENCE
CRIME
Examples: threat of degradation, slight degradation of a property, light violence.
Examples: theft, abuse of corporate property, discrimination, psychological harassment, sexual touching, manslaughter.
Examples: murder, rape.

PENAL LAW

	CONTRAVENTION	OFFENCE	CRIME
PRESCRIPTION	1 year	6 years	20 years (30 years for the worse crimes)
PENALTY INCURRED	Fine (38 € to 3,000 €)	2 months to 10 years imprisonment + Fine (at least 3,750 €)	15 years to life imprisonment + Fine (at least 3,750 €)
COURT	Tribunal de police	Tribunal correctionnel	Cour d'assises

PENAL LAW

ARTICLE 113-6 AND FOLLOWINGS OF THE FRENCH PENAL CODE

French penal law is applicable to any crime, as well as to any offence punishable by imprisonment, committed by a Frenchman or by a foreigner outside the territory of the Republic when the victim is of French nationality at the time of the offence.

French penal law applies to crimes and offences classified as attacks on the fundamental interests of the nation and to any crime or offence against French diplomatic or consular agents or premises, committed outside the territory of the Republic.

PENAL LAW

ARTICLE 113-6 AND FOLLOWINGS OF THE FRENCH PENAL CODE

FRENCH PENAL LAW IS APPLICABLE TO OFFENCES COMMITTED BEYOND THE TERRITORIAL SEA, AS LONG AS INTERNATIONAL CONVENTIONS AND THE LAW SO PROVIDE.

FRENCH PENAL LAW APPLIES TO CRIMES AND OFFENCES CLASSIFIED AS ACTS OF TERRORISM COMMITTED ABROAD BY A FRENCHMAN OR BY A PERSON ORDINARILY RESIDENT ON FRENCH TERRITORY.

PENAL LAW

ARTICLE 113-6 AND FOLLOWINGS OF THE FRENCH PENAL CODE

FRENCH PENAL LAW IS APPLICABLE TO CRIMES AND OFFENCES COMMITTED ON BOARD OR AGAINST AIRCRAFTS NOT REGISTERED IN FRANCE OR PERSONS ON BOARD:

1 ° WHEN THE PERPETRATOR OR THE VICTIM IS OF FRENCH NATIONALITY;

2 ° WHEN THE AIRCRAFT LANDS IN FRANCE AFTER THE CRIME OR OFFENCE;

3 ° WHEN THE AIRCRAFT HAS BEEN LEASED WITHOUT CREW TO A PERSON WHO HAS THE MAIN SEAT OF ITS OPERATION OR, FAILING THAT, HIS PERMANENT RESIDENCE IN THE TERRITORY OF THE REPUBLIC.

FRENCH CIVIL LAW

FRENCH CIVIL LAW

APPLICATION OF FRENCH LAW TO FOREIGNERS

> French laws of police and security apply to foreigners residing in France.
> Immovables, even those owned by foreigners, are governed by French law.

EXTRA-TERRITORIAL APPLICATION OF FRENCH LAW

The laws concerning the state and capacity of persons govern the French, even residing in a foreign country.

PRIVILEGE OF JURISDICTION

French courts may judge litigations between French people or entities and foreigners.

Articles 3, 14 and 15 of the French Civil Code

APPLICATION OF FRENCH LAW TO FOREIGNERS AND OUTSIDE FRANCE

ARTICLE 3 OF THE FRENCH CIVIL CODE

The laws of police and security oblige all those who inhabit the territory. Immovables, even those owned by foreigners, are governed by French law. The laws concerning the state and capacity of persons govern the French, even residing in a foreign country.

PRIVILEGE OF JURISDICTION

ARTICLE 14 OF THE FRENCH CIVIL CODE

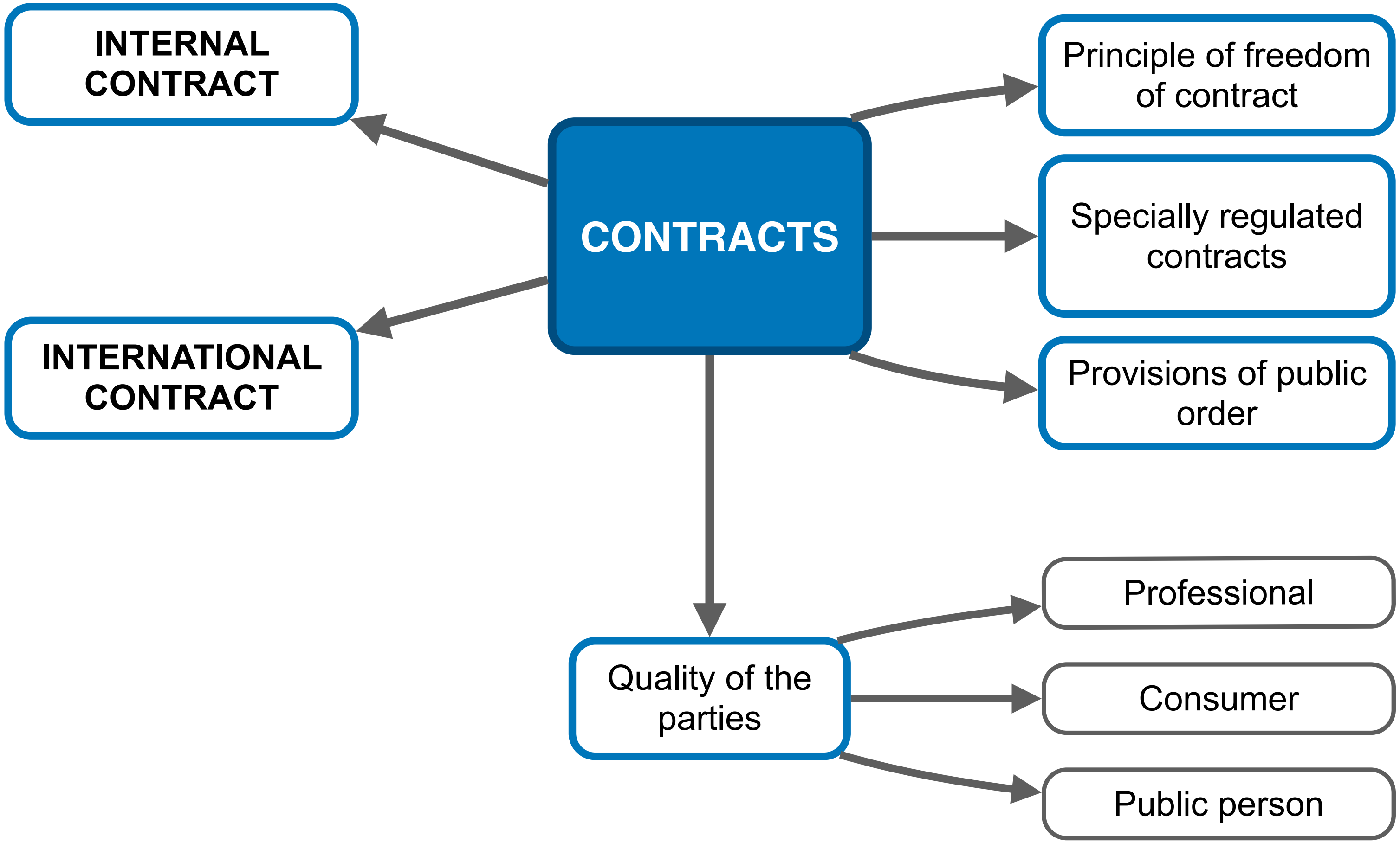
THE FOREIGNER, EVEN IF NOT RESIDING IN FRANCE, MAY BE SUMMONED BEFORE THE FRENCH COURTS, FOR THE PERFORMANCE OF THE OBLIGATIONS CONTRACTED BY HIM IN FRANCE WITH A FRENCHMAN; HE MAY BE BROUGHT BEFORE THE COURTS OF FRANCE, FOR THE OBLIGATIONS CONTRACTED BY HIM IN A FOREIGN COUNTRY TOWARDS FRENCH PEOPLE.

ARTICLE 15

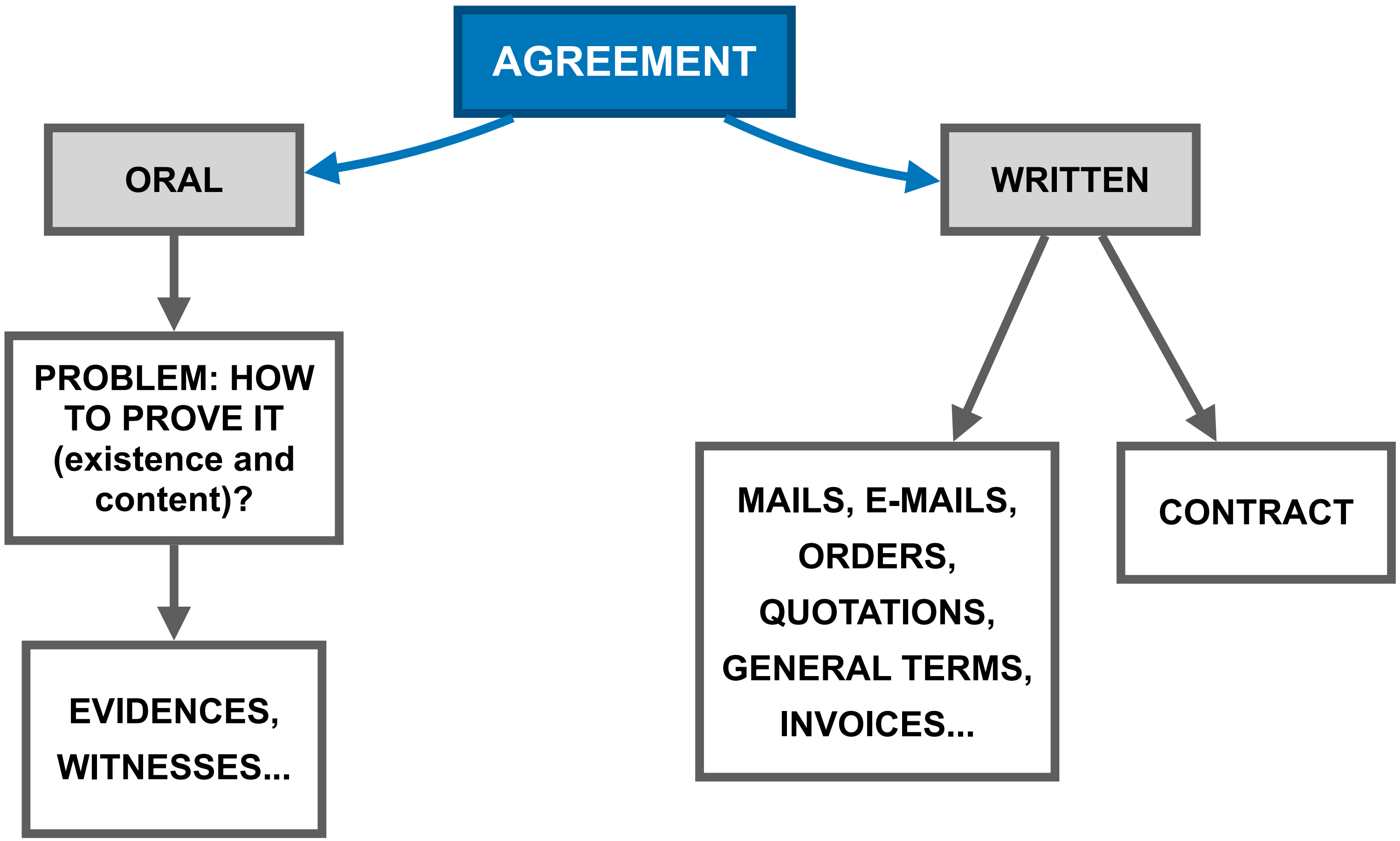
A FRENCHMAN MAY BE BROUGHT BEFORE A COURT IN FRANCE, FOR OBLIGATIONS CONTRACTED BY HIM IN A FOREIGN COUNTRY, EVEN WITH A FOREIGNER.

FRENCH LAW: CONTRACTS

CONTRACTS


INTERNAL CONTRACT
INTERNATIONAL CONTRACT
CONTRACTS
Principle of freedom of contract
Specially regulated contracts
Provisions of public order
Quality of the parties
Professional
Consumer
Public person

FORM OF THE CONTRACT



FORM OF THE CONTRACT

B TO B	B TO C
A WRITING IS NOT NECESSARY. GREAT FREEDOM CONCERNING THE CONTENT.	A WRITING IS NECESSARY. THE CONTENT IS REGULATED.

DEFINING THE CONTRACT

Article 1101 of the French Civil Code - The contract is an agreement of wills between two or more persons intended to create, modify, transmit or extinguish obligations.

1102 - Everyone is free to contract or not to contract, to choose his co-contractor and to determine the content and form of the contract within the limits set by law.

Freedom of contract does not allow derogation from rules of public order.

1103 - Legally formed contracts take the place of law to those who made them.

1104 - Contracts must be negotiated, formed and executed in good faith. This provision is of public order.

BINDING FORCE OF THE CONTRACT

French Civil Code

Article 1193 - Contracts may only be modified or revoked with the mutual consent of the parties, or for reasons permitted by law.

1194 - Contracts bind not only to what is expressed in them, but also to all the consequences given to them by equity, usage or the law.

NON-PERFORMANCE OF THE CONTRACT

Article 1217 of the French Civil Code

The party to whom the commitment has not been performed, or has been imperfectly executed, may:

- refuse to perform or suspend the performance of its own obligation;
- continue the enforcement in kind of the obligation;
- obtain a price reduction;
- cause the contract to be terminated;
- seek compensation for the consequences of non-performance.

Sanctions that are not incompatible may be cumulated; damages may always be added.

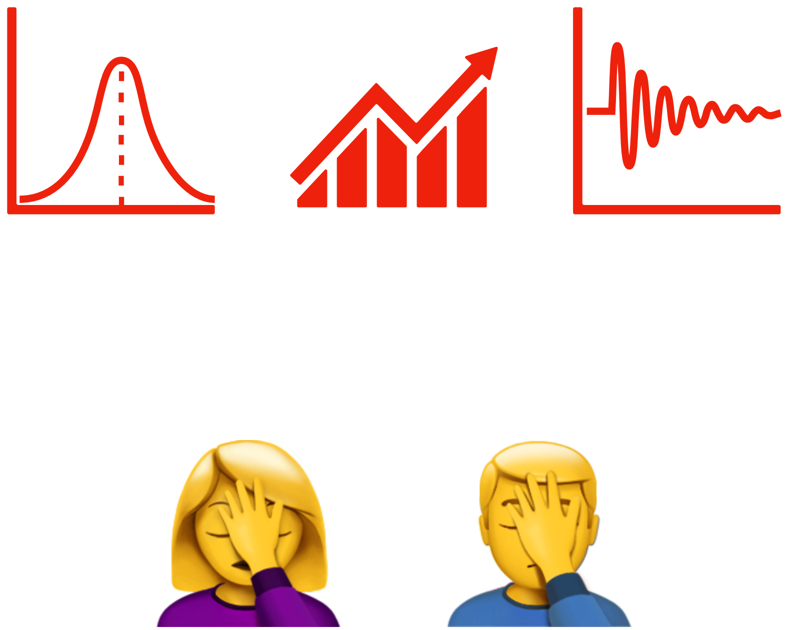
EXCEPTION OF NON-PERFORMANCE

Articles 1219 and 1220 of the French Civil Code

A party may refuse to perform its obligation, even though it is due, if the other party does not perform its obligation and if such non-performance is sufficiently serious.

A party may suspend performance of its obligation if it is clear that its counterparty will not perform by the due date and the consequences of such non-performance are sufficiently serious for it. Such suspension must be notified as soon as possible.

UNFORESEEABILITY AND FORCE MAJEURE



A HEALTH CRISIS CAN LEAD TO AN UNPREDICTABLE CHANGE IN CIRCUMSTANCES

Example: sharp increase in the price of raw materials

UNFORESEEABLE CHANGE

Article 1195 of the French Civil Code

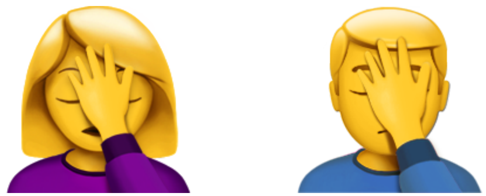
If a change in circumstances unforeseeable at the time of the conclusion of the contract makes performance excessively onerous for a party who had not agreed to assume the risk, the latter may request a renegotiation of the contract from its counterparty. It shall continue to perform its obligations during the renegotiation.

In the event of refusal or failure of the renegotiation, the parties may agree on the termination of the contract, on the date and on the conditions they determine, or request by mutual agreement the judge to proceed with its adaptation. In the absence of agreement within a reasonable time, the judge may, at the request of a party, revise the contract or terminate it, on the date and on the conditions he fixes.

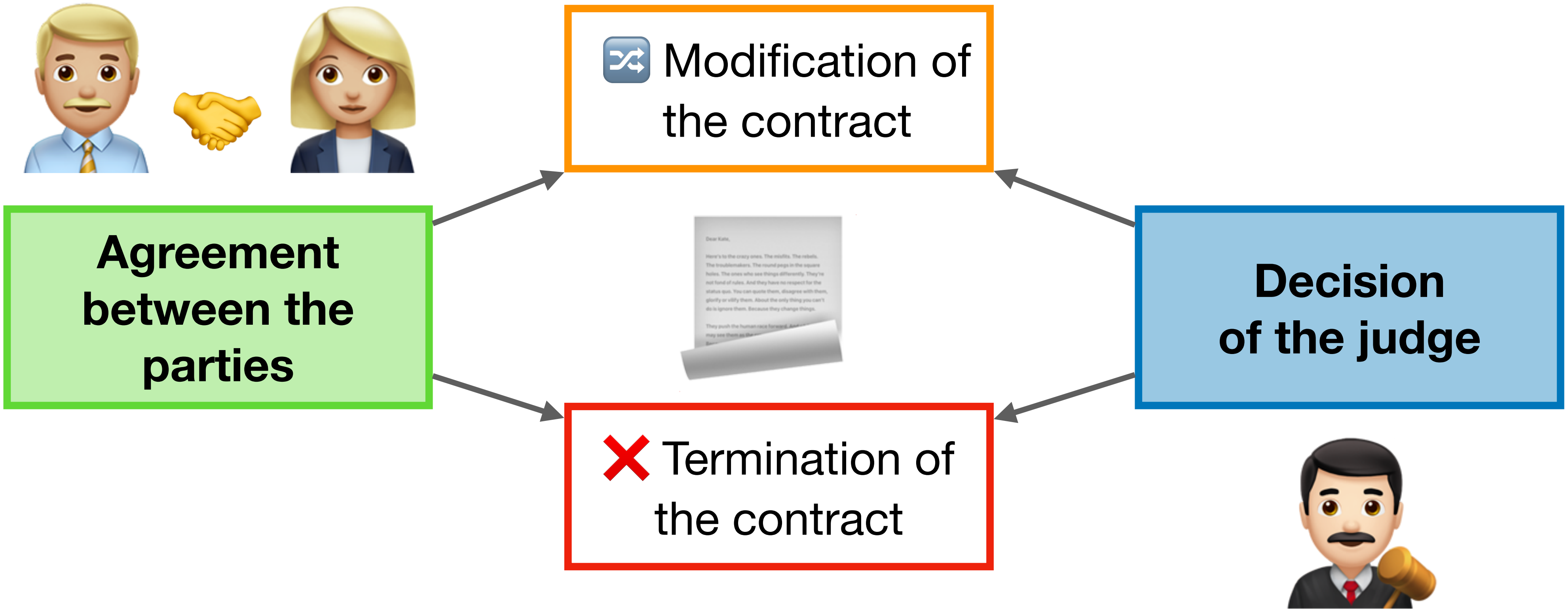
CONDITIONS FOR UNFORESEEABILITY

Two conditions for unforeseeability:

- a **change of circumstances unforeseeable** at the time of the conclusion of the contract,
- this change makes the performance of the contract **excessively onerous** for a party who had not agreed to assume the risk.



THE EFFECTS OF UNFORESEEABILITY ON THE CONTRACT

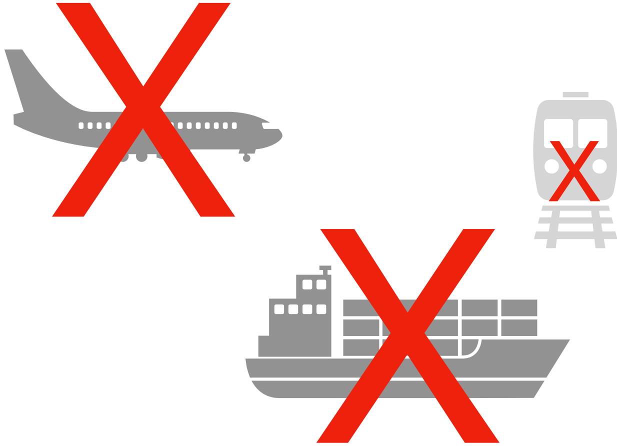


INTEREST AND DISADVANTAGE
OF THE LEGAL BASIS OF UNFORESEEABILITY

Interest: possibility of obtaining the modification or termination of the contract, even though the execution of the contract is not impossible, but only more expensive than expected.

Disadvantage: unforeseeability requires an agreement with the contracting party, or failing that, the decision of a judge. Obligations must continue to be performed until renegotiation or decision.

A HEALTH CRISIS CAN CONSTITUTE A CASE OF FORCE MAJEURE



Supply disruption

Closure of the factory

Inability to ship

FORCE MAJEURE

Article 1218 of the French Civil Code

Force majeure in contractual matters occurs when an event beyond the control of the debtor, which could not reasonably have been foreseen at the time of the conclusion of the contract and the effects of which cannot be avoided by appropriate measures, prevents the performance of its obligation by the debtor.

If the impediment is temporary, the performance of the obligation shall be suspended unless the resulting delay justifies the termination of the contract. If the impediment is definitive, the contract is automatically terminated and the parties are released from their obligations under the conditions provided for in articles 1351 and 1351-1.

FORCE MAJEURE

Four conditions for force majeure:
- the event is **beyond the control** of the debtor,
- the event could **not** reasonably have been **foreseen** when the contract was concluded,
- the event produces **effects** that cannot be avoided by appropriate measures,
- the event **prevents** the debtor from **performing** its obligation.

FORCE MAJEURE VIS-A-VIS THE CONSUMER

Article L. 221-15 of the French code of consumer

"The professional shall be automatically liable to the consumer for the proper performance of the obligations arising from the distance contract, whether those obligations are performed by the professional who concluded that contract or by other service providers, without prejudice to his right of recourse against them.

However, he may be ***exempted*** *from all or part of his liability by providing proof that the non-performance or improper performance of the contract is attributable either to the consumer, or to the unforeseeable and insurmountable fact of a third party to the contract, or to a* ***case of force majeure****. »*

THE EFFECTS OF FORCE MAJEURE ON THE CONTRACT

Temporary impediment → ⏸ Suspension of the obligation

Permanent impediment → ❌ Termination of the contract

UNFORESEEABILITY

FORCE MAJEURE

DEFINITION

UNFORESEEABILITY: The execution of the contract is **possible**, but excessively expensive.

🤦‍♀️ 🤦‍♂️

FORCE MAJEURE: The execution of the contract is **impossible**, temporarily or permanently.

🙅‍♀️ 🙅‍♂️

UNFORESEEABILITY | **FORCE MAJEURE**

CONDITIONS

Requires the **agreement** of the contracting party or a **décision** of the judge.

Force majeure produces legal effects **as of right**.

UNFORESEEABILITY

FORCE MAJEURE

EFFECTS

Effects of unforeseeability on the contract:

🔀 **modification**

or ❌ **termination**

🤦‍♀️ 🤦‍♂️

Effects of force majeure on the contract:

⏸️ **suspension**

or ❌ **termination**

🙅‍♀️ 🙅‍♂️

PROBLEM

The production cost of a company has increased significantly, because of a health crisis.

- A - This is a case of force majeure, it can unilaterally increase its prices, even for its contracts providing for a firm price.
- B - If the contract does not provide for a firm price, or in the absence of a contract, it may immediately increase its prices with distributors, without formality and without legal risk.
- C - It may notify its distributors of a request for price increases, invoking unforseeability, but it must continue to apply the firm prices contractually provided for during this attempt to renegotiate the contract.

PROBLEM

Because of a health crisis, a company no longer has access to the raw materials needed to manufacture its products.

- A - It is a case of force majeure, it can suspend or terminate its contracts concluded before the crisis, without incurring liability.
- B - It is a case of force majeure, it can suspend or terminate its contracts concluded after the crisis, without incurring liability .
- C - It can renegotiate its contracts concluded before the crisis, on the basis of unpredictability.

PRACTICAL CASE (1/2)

My supplier increases prices by invoking unforeseeability,

whereas our contract provides for firm prices.

Can I refuse this price increase?

NOTE

UNFORSEEABILITY

Article 1195 of the Civil Code allows the **renegotiation** or **termination** of the contract, in the event of a change of circumstances unforeseeable at the time of the conclusion of the contract, making its execution excessively onerous. This requires the **agreement** of the contracting party or, failing that, the decision of the **judge**.

PRACTICAL CASE (1/2)

My usual supplier unilaterally increases prices,

strongly and abruptly. We do not have a framework contract.

Legally, can I contest this increase?

NOTE

WRONGFUL TERMINATION OF AN ESTABLISHED BUSINESS RELATIONSHIP

Article L. 442-1 II of the Commercial Code prohibits the abrupt termination, even partially, of an established commercial relationship, in the absence of a written notice that takes into account in particular the duration of the commercial relationship.

This provision applies even in the absence of a contract.

A sudden increase in prices can be analyzed as an abusive break.

PRACTICAL CASE (1/4)

My supplier stops delivering to me the contractually planned raw materials, on the grounds that they are temporarily unavailable due to a health crisis. He invokes force majeure.

Can I contest this suspension, demand delivery and request the application of the late penalties provided for in the contract?

PRACTICAL CASE (3/4)

My supplier stops delivering to me the contractually planned raw materials, on the grounds that they are temporarily unavailable due to a health crisis. He invokes force majeure.

Can I demand the termination of the contract and buy from another supplier?

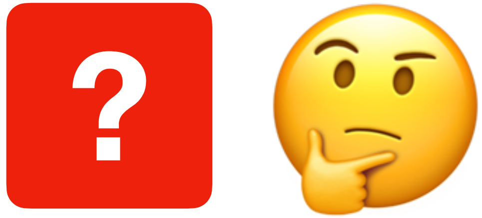
NOTE

FORCE MAJEURE

Article 1218 of the French civil code provides for the automatic termination of the contract in case of **permanent impediment**.

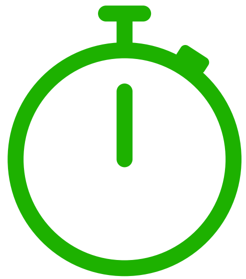
In the event of **temporary impediment**, performance of the obligation shall be suspended, unless the resulting delay justifies the termination of the contract.

PRACTICAL CASE (1/4)



The cost of my raw materials having risen sharply
because of the health crisis, I want to pass on the price increase,
for my current contracts providing for a firm price,
by invoking unforeseeability.

Can I increase prices immediately?



PRACTICAL CASE (3/4)

The cost of my raw materials having risen sharply
because of the health crisis, I want to pass on the price increase,
for my current contracts providing for a firm price,
by invoking unforeseeability.

Can I just make an oral request?

THIRD PARTIES TO THE CONTRACT

Article 1199 of the French Civil Code

The contract only creates obligations between the parties.

Third parties may neither request the performance of the contract nor be obliged to perform it, subject to the provisions of this Section and those of Chapter III of Title IV.

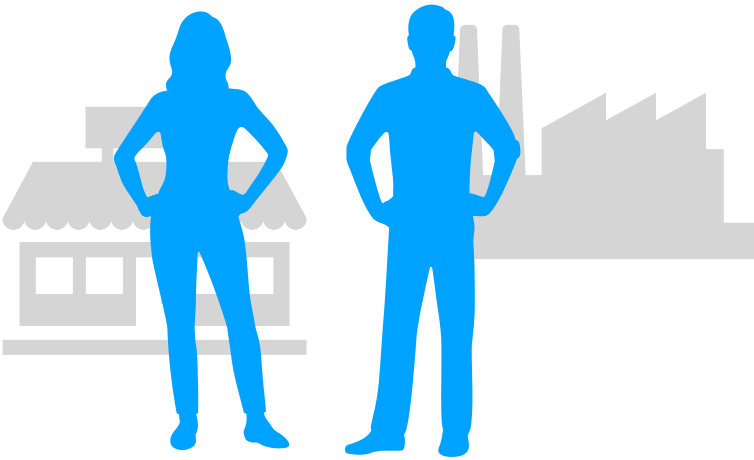
Article 1200 - Third parties must respect the legal situation created by the contract.

They may rely on it in particular to prove a fact.

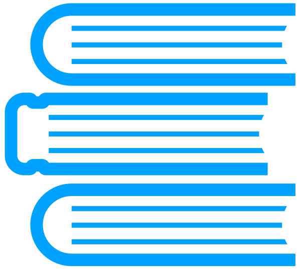
FRENCH LAW: CUSTOMER CONTRACTS
CONSUMER LAW

OBJECTIVES

✔ Distinguishing customers: consumers, professionals and non-professionals



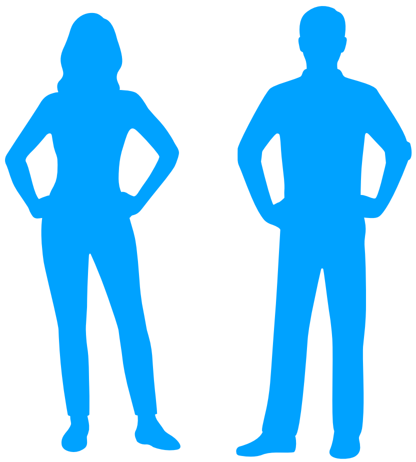
✔ Master the basics of consumer law



✔ Secure and optimize contracts and practices: prohibited clauses, mandatory clauses, essential clauses

THREE CATEGORIES OF CUSTOMERS

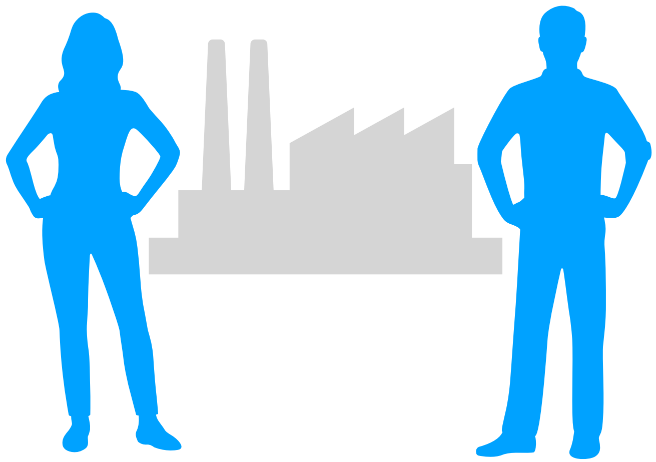
CONSUMER



B to C

NON-PROFESSIONAL

PROFESSIONAL



B to B

DEFINITIONS

CONSUMER	NON-PROFESSIONAL	PROFESSIONAL
Natural person Non-professional activity	Legal person Non-professional activity	Natural or legal person Professional activity

THREE CATEGORIES OF CUSTOMERS

The preliminary article of the French Consumer Code defines **three categories of customers**.

CONSUMER: Any natural person who acts for purposes which do not fall within the scope of his commercial, industrial, craft, liberal or agricultural activity.

PROFESSIONAL: Any natural or legal person, public or private, who acts for purposes relating to his trade, business, craft, profession or agricultural activity, including when acting in the name or on behalf of another trader.

NON-PROFESSIONAL: Any legal person that does not act for professional purposes. The Consumer Code grants the non-professional a number of rights that benefit the consumer.

CUSTOMERS CONTRACTS

General terms
and conditions
B to C

General terms
and conditions
B to B

General terms and conditions
B to C + B to B

CUSTOMER CONTRACTS
CONSUMERS AND NON-PROFESSIONALS

Pre-contractual information obligation

Model contract
Terms & Conditions

GENERAL TERMS AND CONDITIONS

FORM

SUBSTANCE

CONTRACTUAL CLAUSES

MANDATORY CLAUSES

PROHIBITED CLAUSES

UNFAIR TERMS

Significant imbalance

Presumed unfair terms:

- either irrefutably,
- or until proven otherwise.

UNFAIR TERMS

REFLEX: CHECK THE CLAUSES APPLICABLE TO CONSUMERS AND NON-PROFESSIONALS

1) No term appears in the list of unfair terms

2) No clause creates a significant imbalance

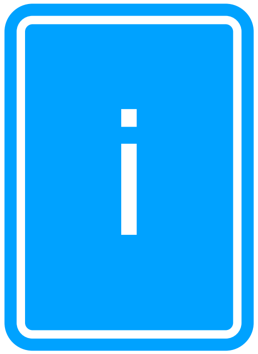
Articles L. 212-1, R. 212-1 et R. 212-2
of the consumer code

DURATION OF THE CONTRACT

FIXED-TERM SERVICE CONTRACT
TACITLY RENEWABLE

At the earliest 3 months before the deadline

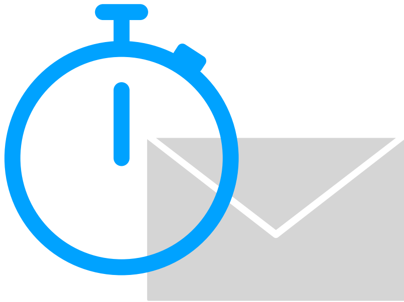
At the latest 1 month before the deadline



Obligation to inform the consumer
or the non-professional before renewal

TERMINATION OF THE CONTRACT

Reasonable prior notice



No compensation

Equal conditions

Customer = consumer
or non-professional

PRICE AND SPECIAL TERMS

OBLIGATION TO INFORM THE CONSUMER

by means of marking, labelling, display

or by any other appropriate means.

Article L. 112-1
of the consumer code

PRICE AND EXPENSES

If the **price**
cannot be calculated
in advance

Indicate the
method of calculation
of price and expenses

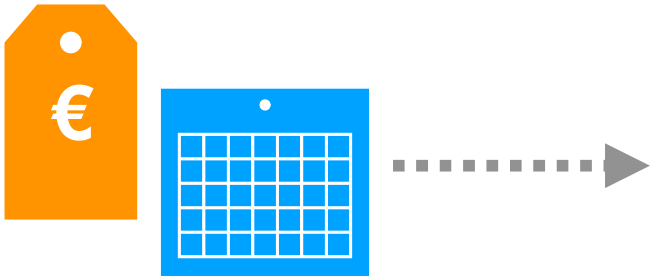
If the **expenses**
cannot be calculated
in advance

Mention
the **chargeability** of
expenses

PERIODIC PAYMENT

CONTRACT OF INDEFINITE DURATION OR SUBSCRIPTION

TOTAL PRICE

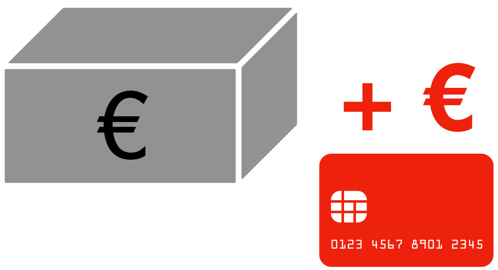


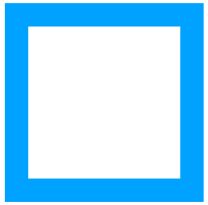
Include total costs
for **each invoicing period**

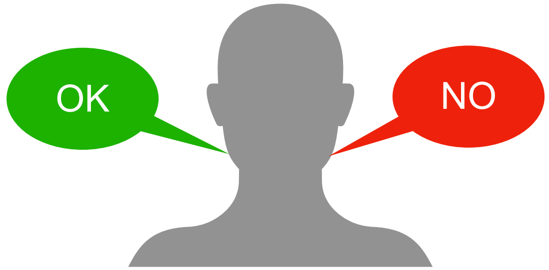
If the **total cost**
cannot be calculated
in advance

Indicate the
method of calculation

ADDITIONAL PAYMENT







CHECK BOX
not pre-checked

Additional payment adding to the price of the main object of the contract

Express consent of the consumer

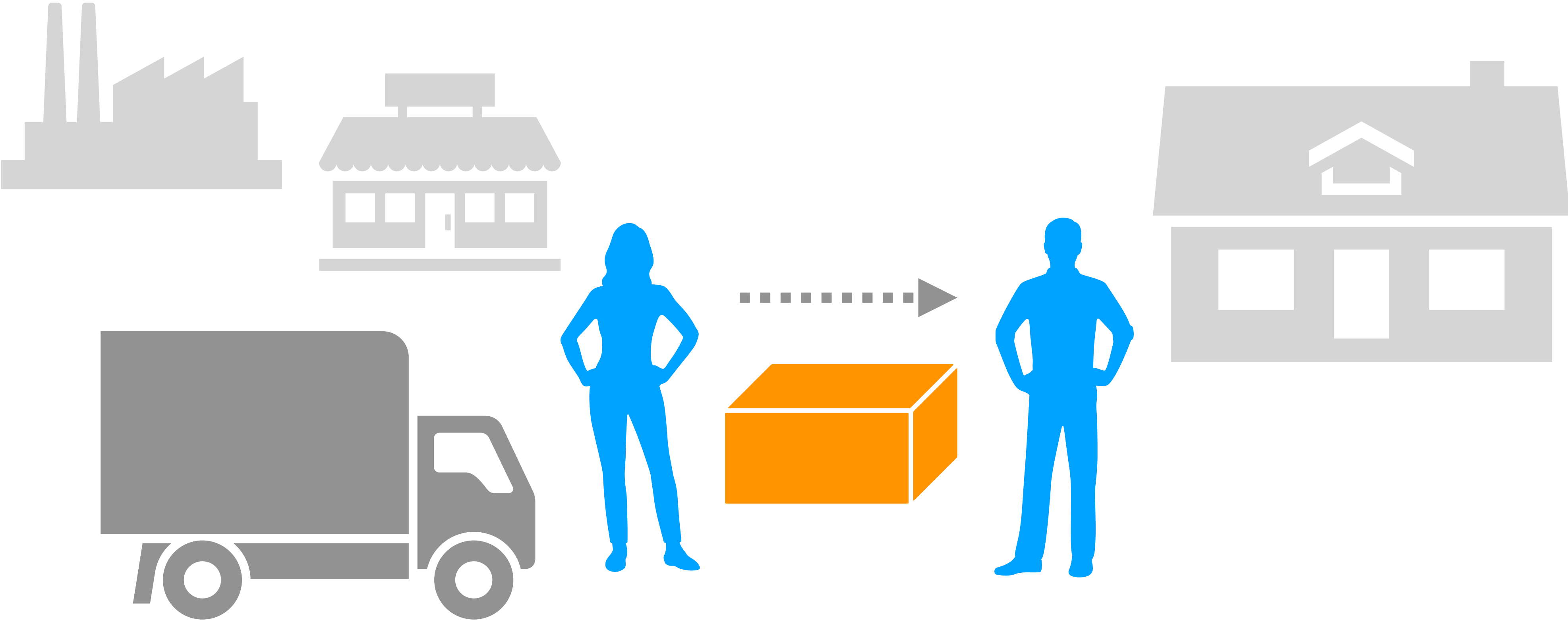
DELIVERY TIME / EXECUTION TIME

Before the conclusion of the contract: mandatory indication of the time limit

Do not stipulate an indicative date

Otherwise: 30 days time limit

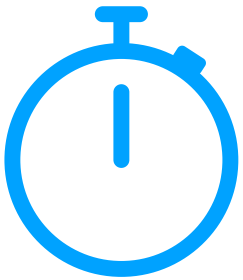
DELIVERY / TRANSFER OF RISKS



RIGHT OF WITHDRAWAL

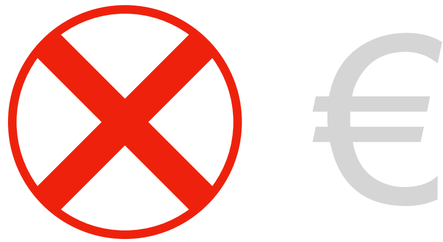
Contract concluded at a distance,
following a telephone solicitation
or off-premises

14 days delay



Without justification

No additional costs



LIMITATION OF LIABILITY

Dereliction
of the professional

Compensation for damage
suffered by the consumer

Limitation of liability

Unfair term

OTHER SPECIFIC TERMS OF CONSUMER CONTRACTS

GUARANTEE

AFTER-SALES SERVICE

CLAIMS

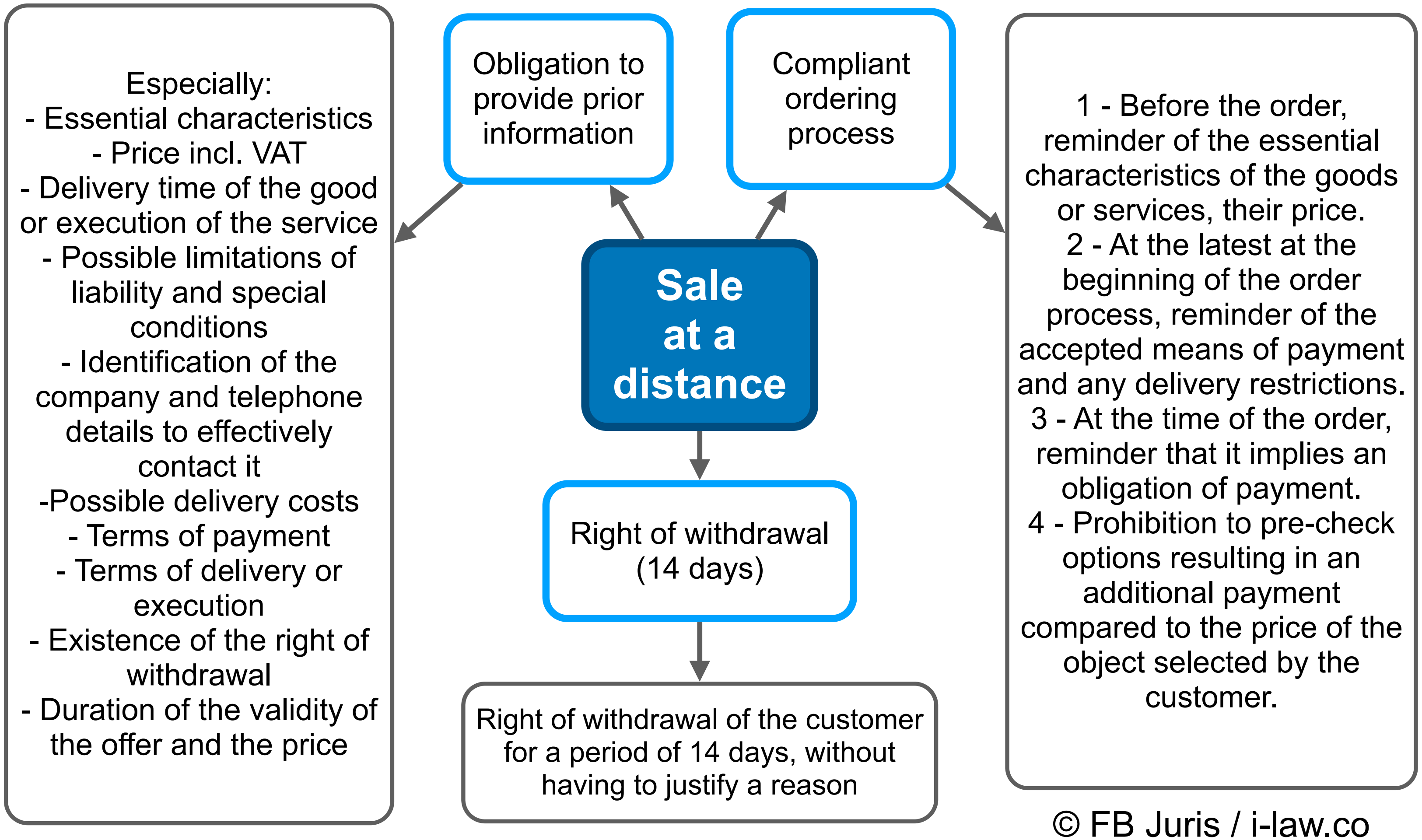
MEDIATION

DISPUTE RESOLUTION

APPLICABLE LAW

...

DISTANCE CONTRACTS WITH CONSUMERS



CONTRACT CONCLUDED AT A DISTANCE

ORDERING PROCESS:

OBLIGATIONS AT ALL STAGES

> Before the order process begins
> At the beginning of the ordering process
> Before ordering
> When ordering
> Before the conclusion of the contract

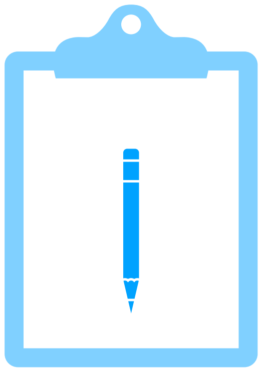
> At the time of payment
> After the conclusion of the contract and at the latest at the time of delivery of the goods or before the start of the performance of the service

ONLINE ORDERING PROCESS

BEFORE THE ORDER PROCESS BEGINS

Obligation of pre-contractual information:

mandatory information.



ONLINE ORDERING PROCESS

AT THE LATEST AT THE BEGINNING OF THE ORDERING PROCESS

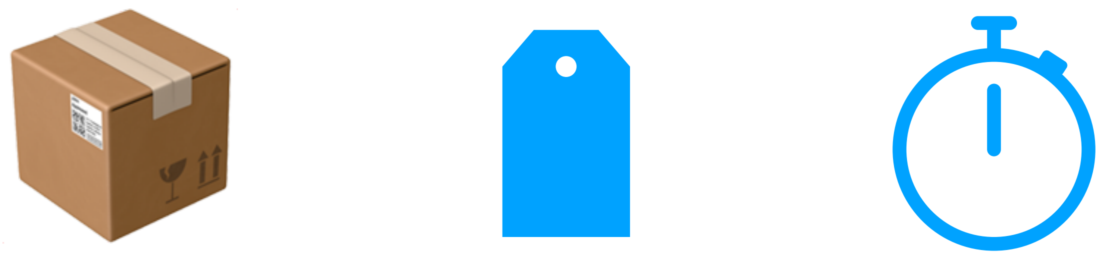
Payment methods

Delivery restrictions

ONLINE ORDERING PROCESS

BEFORE THE ORDER

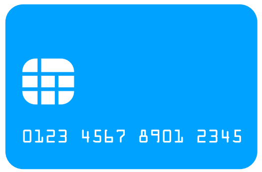
Essential characteristics, price, duration



ONLINE ORDERING PROCESS

WHEN ORDERING

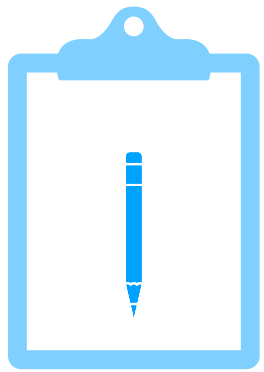
Mention: "order with obligation to pay"



ONLINE ORDERING PROCESS

WITHIN A REASONABLE TIME, AFTER THE CONCLUSION OF THE CONTRACT AND AT THE LATEST AT THE TIME OF DELIVERY OF THE GOODS OR BEFORE THE START OF THE PERFORMANCE OF THE SERVICE

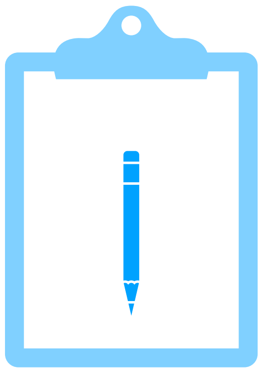
Confirmation of the contract



ONLINE ORDERING PROCESS

IF APPLICABLE, BEFORE THE EXPIRY OF THE WITHDRAWAL PERIOD

Confirmation of waiver of the right of withdrawal



FRENCH LAW: NON-CONTRACTUAL LIABILITY

NON-CONTRACTUAL LIABILITY

- Precautionary principle
- Extra-contractual civil liability
- Liability for defective products
- General obligation to ensure the safety of products and services
- Criminal liability: the offence of wilful endangerment of the lives of others

NON-CONTRACTUAL LIABILITY

French Civil Code

Article 1240 - Any fact of man which causes damage to others obliges the one through whose fault it has come to repair it.

Article 1241 - Everyone is liable for the damage he has caused not only by his fact, but also by his negligence or recklessness.

Article 1242 - One is responsible not only for the damage that one causes by one's own fact, but also for that which is caused by the fact of the people for whom one must answer, or the things that one has in one's custody. […]

LIABILITY FOR DEFECTIVE PRODUCTS

Article 1245 of the French civil code:

"The producer shall be liable for damage caused by a defect in his product, whether or not he is bound by a contract with the victim."

LIABILITY FOR DEFECTIVE PRODUCTS

A product is defective when it does not offer the safety that can legitimately be expected, taking into account all the circumstances and in particular the time of its release into circulation (article 1245-3 of the French civil code).

GENERAL OBLIGATION TO ENSURE THE SAFETY OF PRODUCTS AND SERVICES

Pursuant to article L. 421-3 of the French consumer code, products and services must present, under normal conditions of use or under other conditions reasonably foreseeable by the professional, the safety that can legitimately be expected and not harm human health.

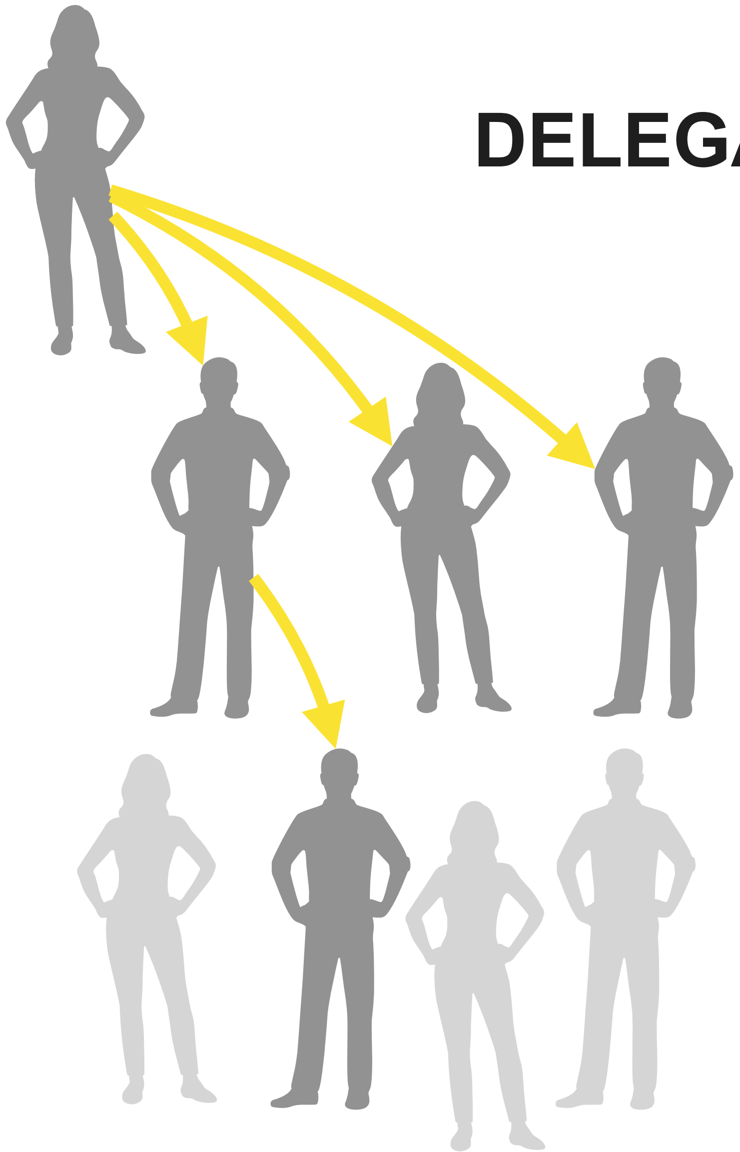
PENAL LIABILITY
ENDANGERING THE LIVES OF OTHERS

Article 223-1 of the French criminal code criminalizes the fact of directly exposing another person to an immediate risk of death or injury likely to cause mutilation or permanent disability by the manifestly deliberate breach of a particular duty of care or safety imposed by law or regulation.

PENAL LIABILITY
ENDANGERING THE LIVES OF OTHERS

Criminal offence punishable by the following penalties:
- for natural persons, one year's imprisonment and a fine of 15,000 euros,
- for legal persons, a fine of 75,000 euros and additional penalties.

DELEGATION OF AUTHORITY



1) Specially empower the delegate (or sub-delegate), in order to ensure the validity of his acts.

2) Define responsibilities, in particular by allowing the delegator to exonerate his responsibility.

+ Templates and legal guide: idroit.co

PROBLEM

What must be proven to engage
the extra-contractual civil liability of a person?

- **A** - A fault
- **B** - A damage
- **C** - A causal link between fault and damage
- **D** - The intent to cause injury

PROBLEM

What are the constituent elements of an offence or a crime?

- ◯ **A** - A legal element (a rule punishable by law)
- ◯ **B** - A material element (acts infringing the penal rule)
- ◯ **C** - An intentional element (the intention to commit an offence or a crime)
- ◯ **D** - Harm (a victim suffering damage)

PROBLEM

A person's civil liability
is likely to be engaged:

- **A** - in case of fault
- **B** - in case of negligence
- **C** - in case of carelessness
- **D** - in the absence of fault

PROBLEM

Penal responsibility of a person
is likely to be engaged:

- **A** - in the event of an intentional breach of any rule
- **B** - in the event of intentional breach of a rule, provided that a penal sanction is precisely defined by a text
- **C** - in case of negligence or recklessness causing damage
- **D** - by manifestly deliberate breach of a particular duty of care or safety

PROBLEM

Can one be civilly liable for a person for whom one must answer,
or for something in one's custody?

- **A** - Yes
- **B** - No

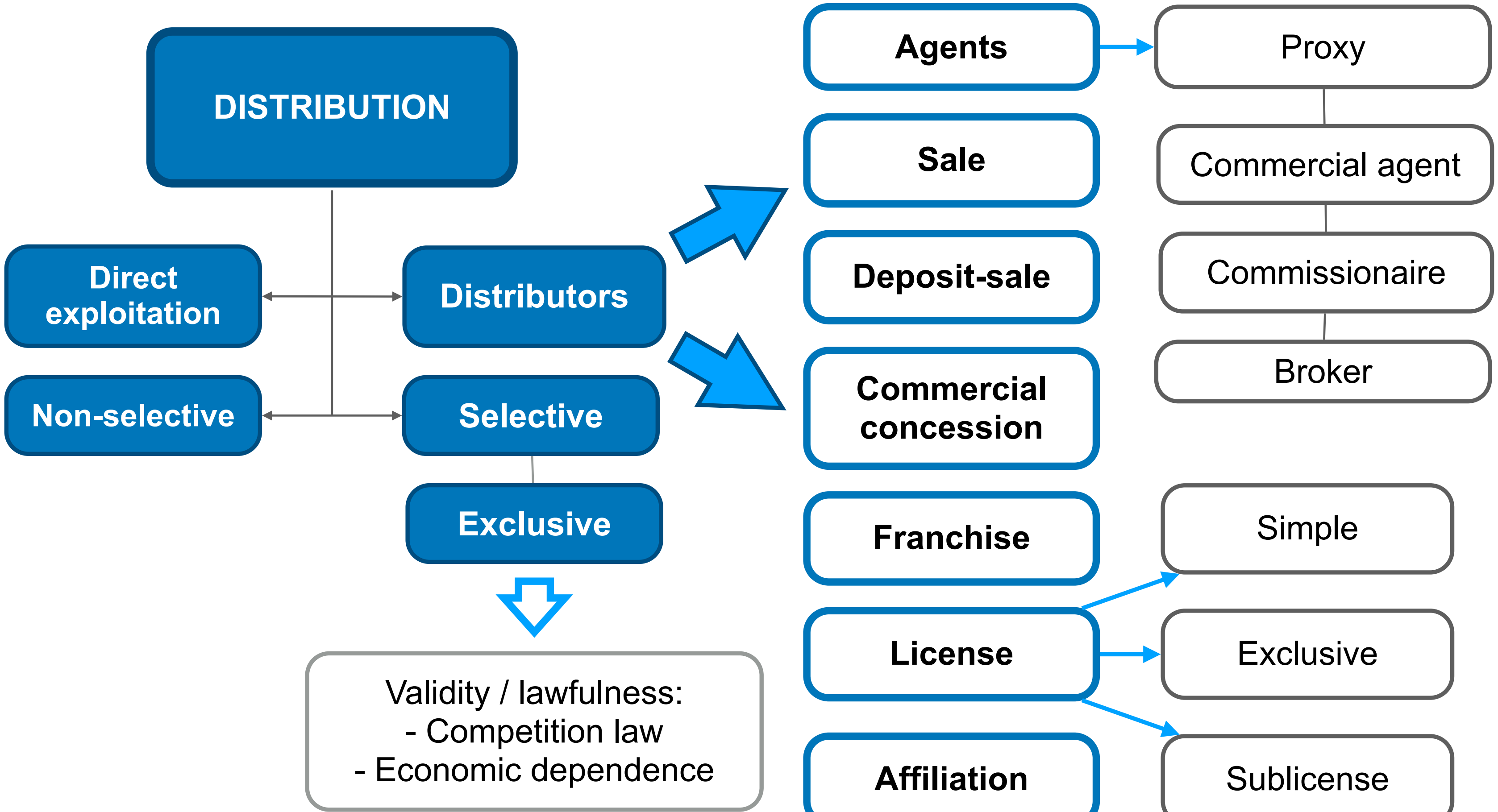
PROBLEM

Can one be penally responsible for a person for whom one must answer, or for something one has in one's custody?

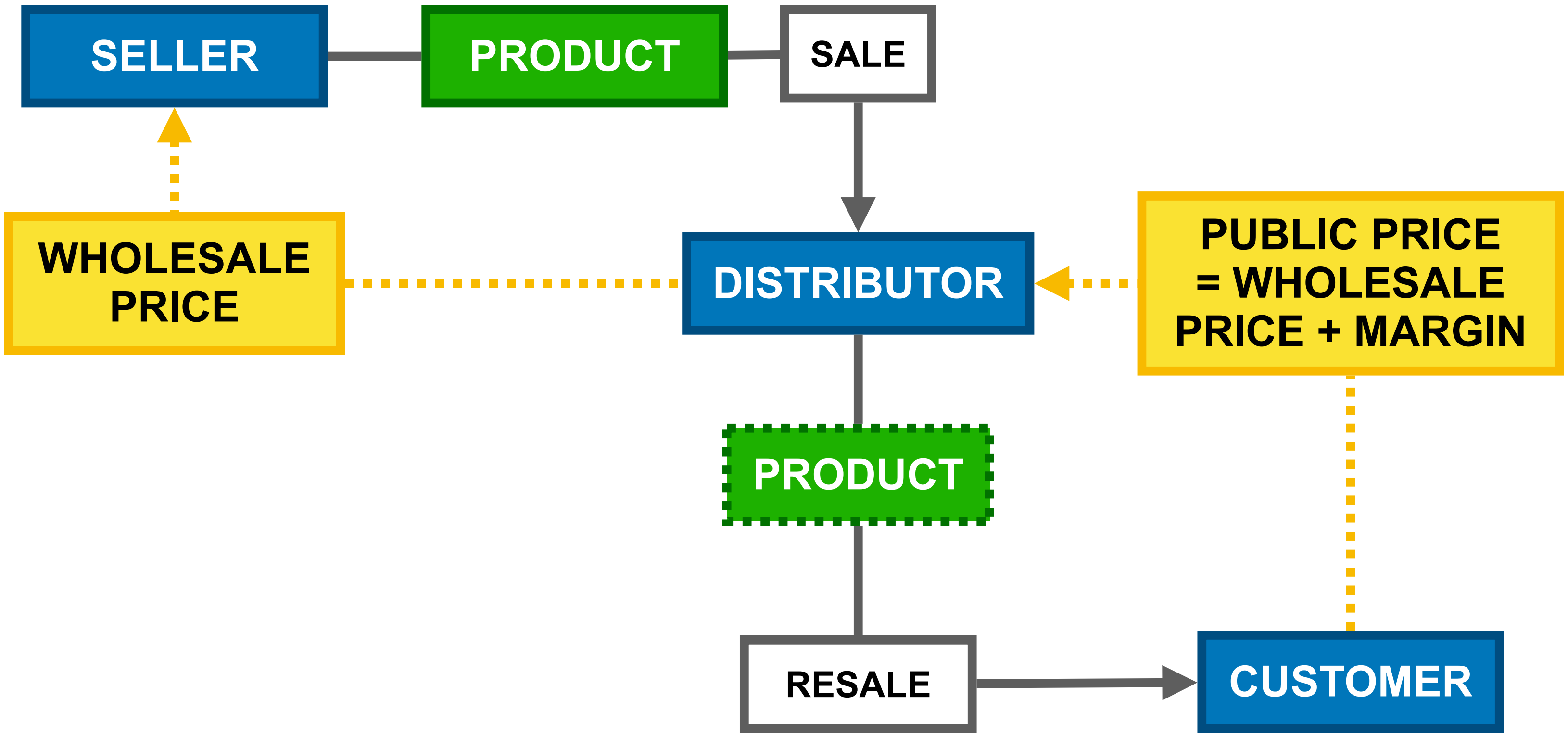
- **A** - Yes
- **B** - No

FRENCH COMMERCIAL LAW

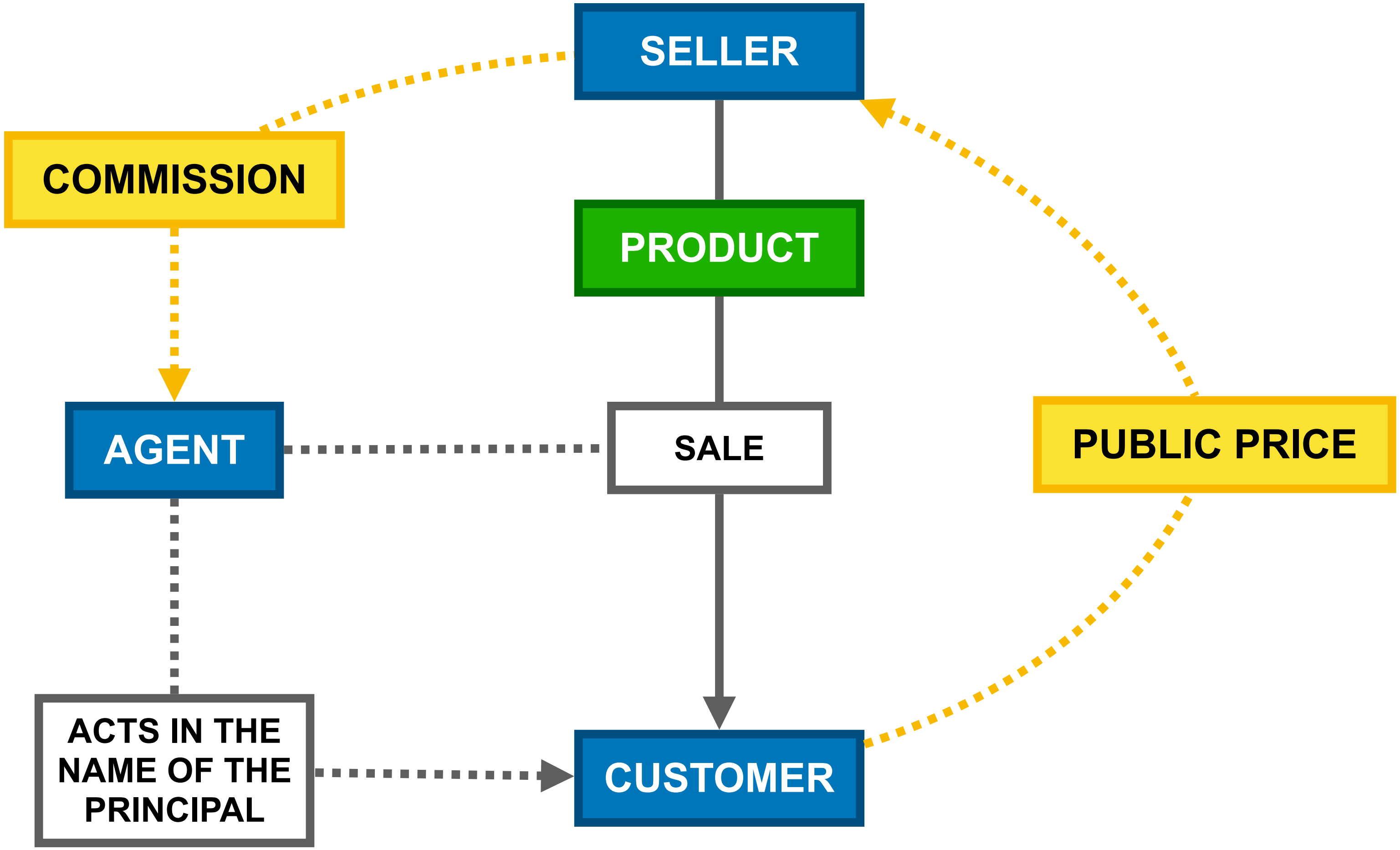
DISTRIBUTION CONTRACTS



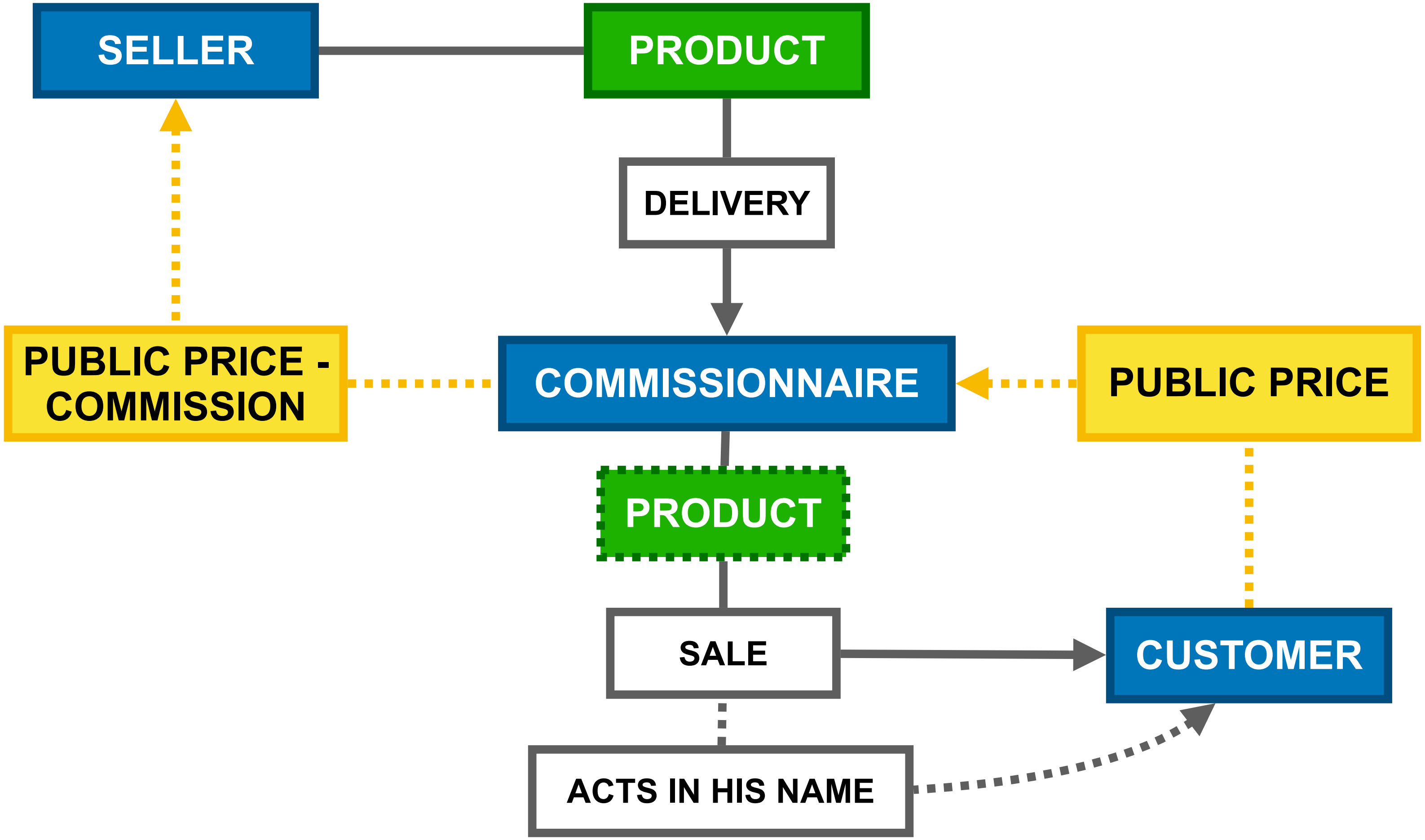
PURCHASE AND RESALE



COMMERCIAL AGENT



COMMISSIONNAIRE



DISTRIBUTION CONTRACT: CLAUSES

NATURE OF THE RELATIONSHIP → **SALE / PURCHASE, COMMISSION, AGENCY, FRANCHISE...**

- PRODUCTS / SERVICES
- EXCLUSIVITY
- NON-COMPETITION
- TRADEMARK LICENCE
- KNOW-HOW
- COMMUNICATION

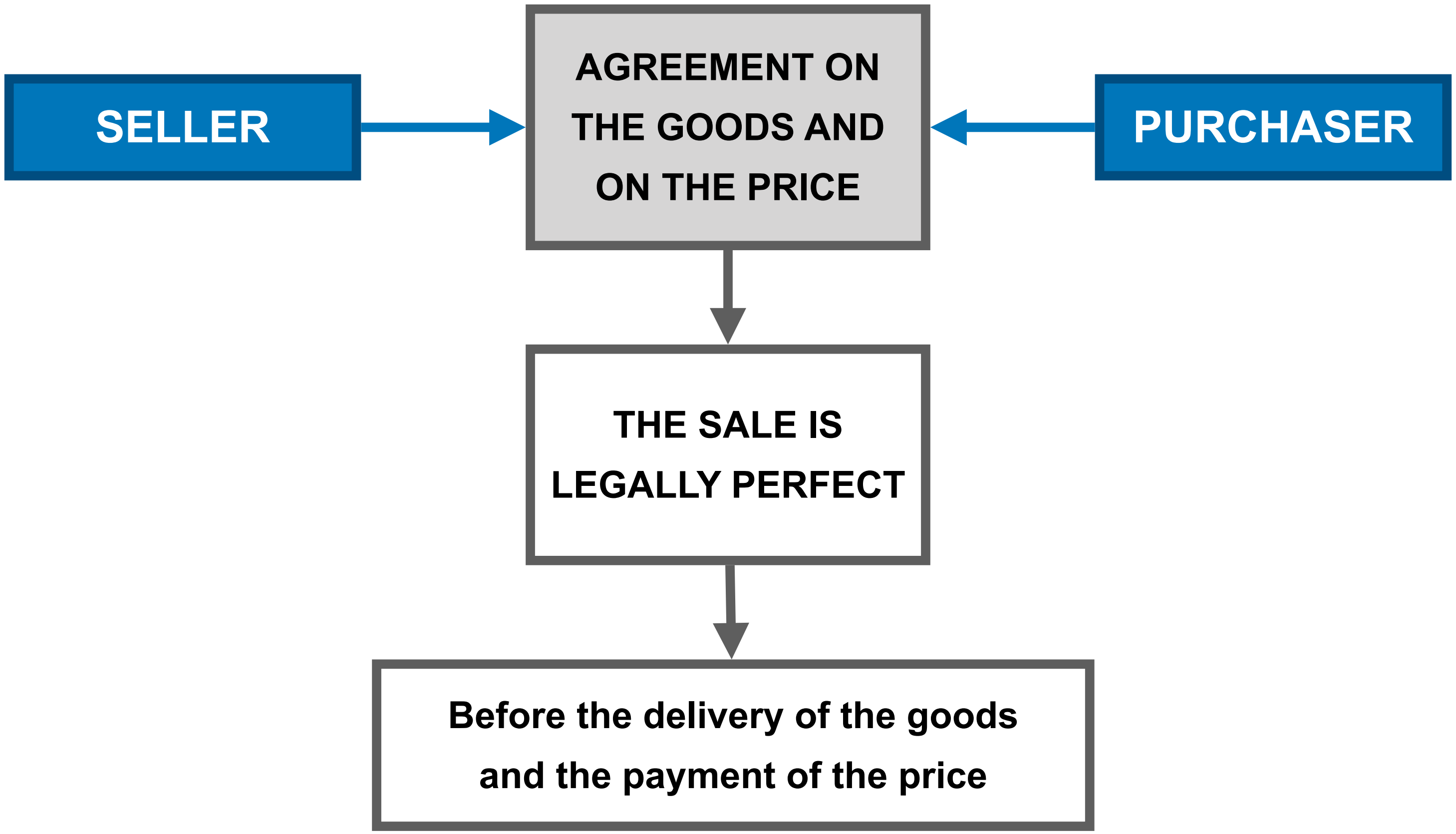
- FINANCIAL TERMS
- DURATION
- INSURANCE
- AUDIT

- DELIVERY
- TRANSFER OF OWNERSHIP
- TRANSFER OF RISKS
- TRANSPORT
- ADMINISTRATIVE FORMALITIES

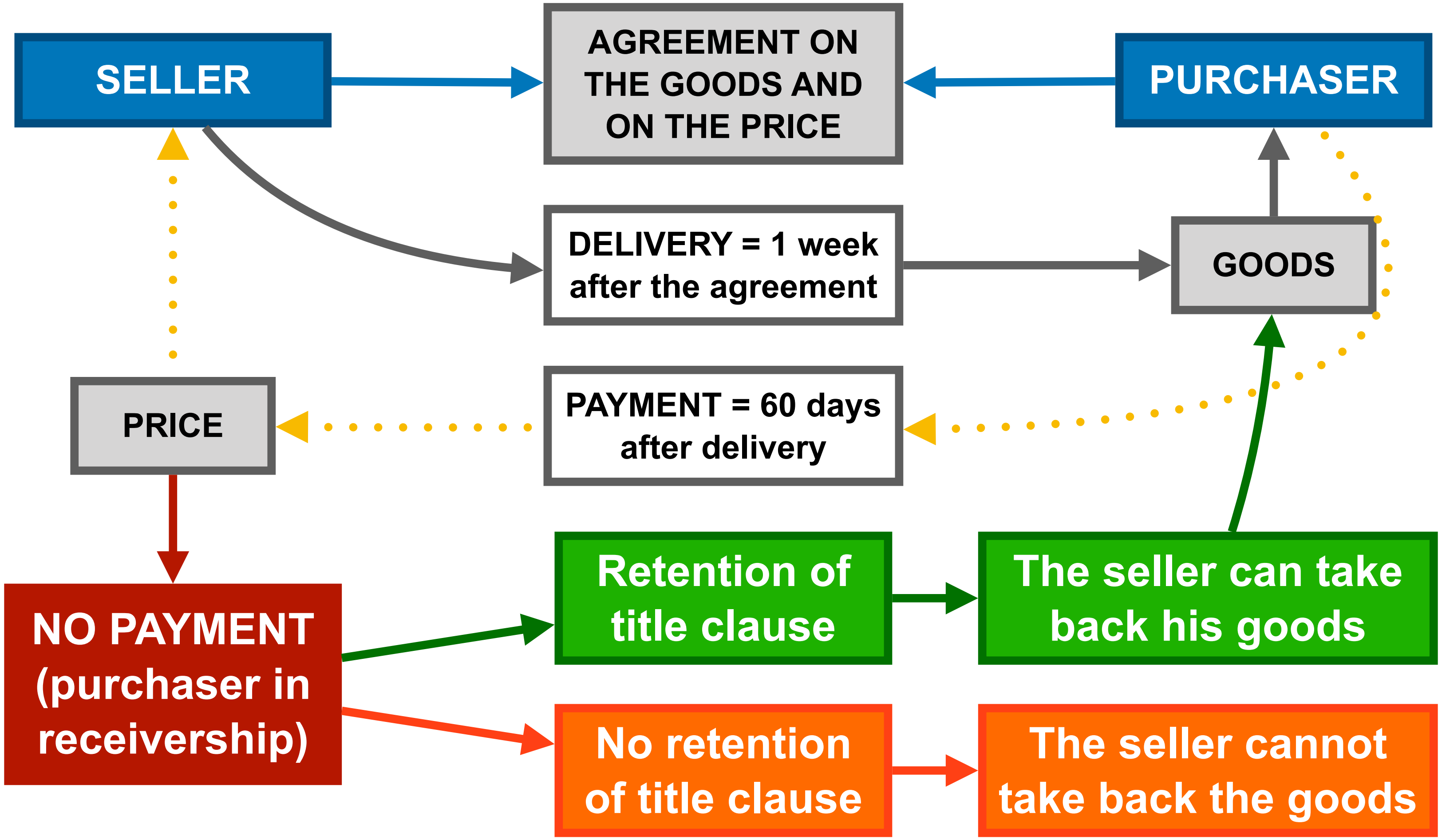
PREVENTING THE RISKS / GUARANTEES

- Client information (KYC)
- Payment terms
- Retention of title clause
- Bank guarantee
- Personal surety
- Company surety

SALE OF GOODS



SALE OF GOODS



CESSATION OF PAYMENT

COMPANY

↓

CANNOT PAY ITS OUTSTANDING LIABILITIES WITH ITS AVAILABLE ASSETS

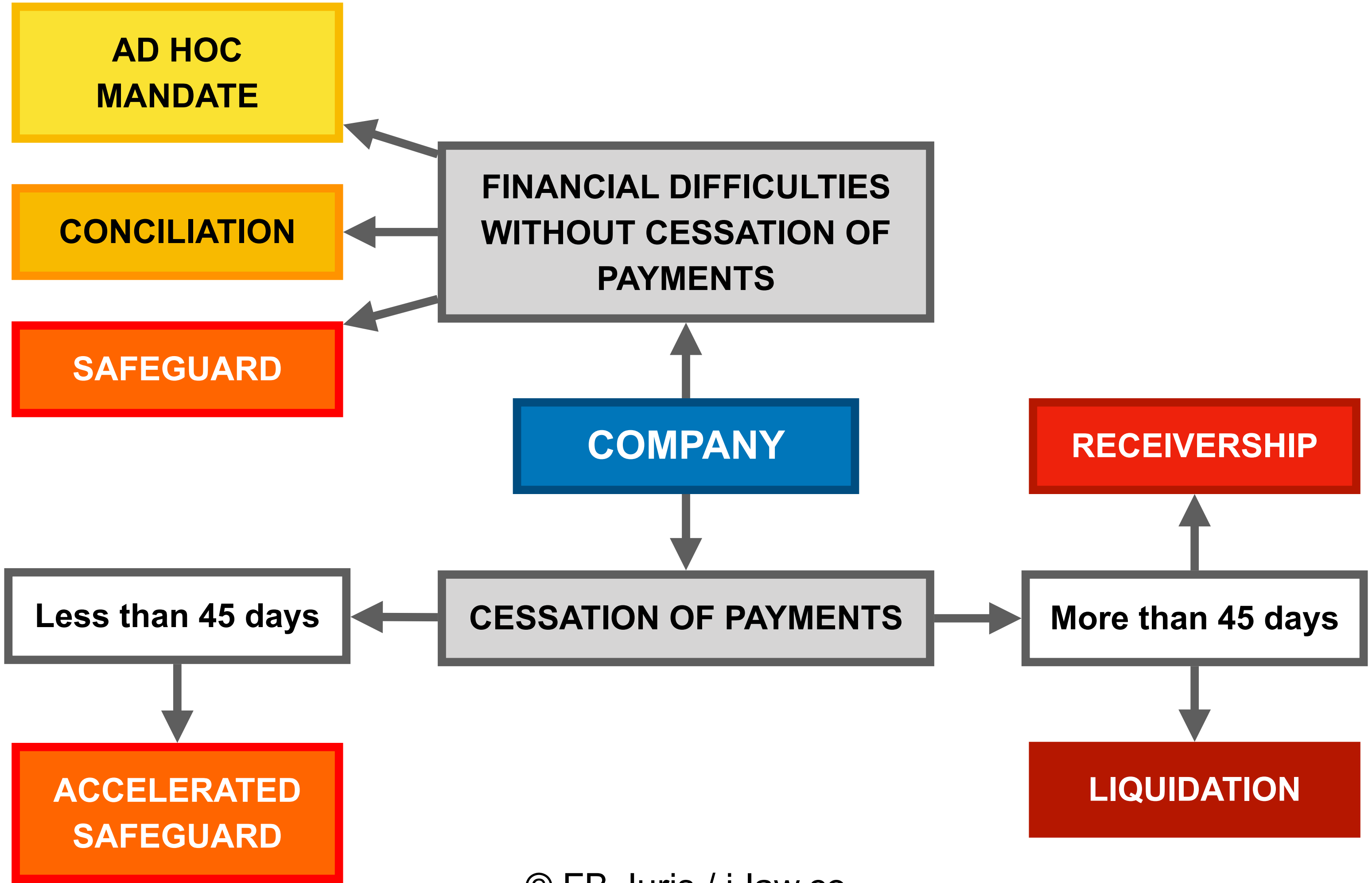
↓

CESSATION OF PAYMENTS

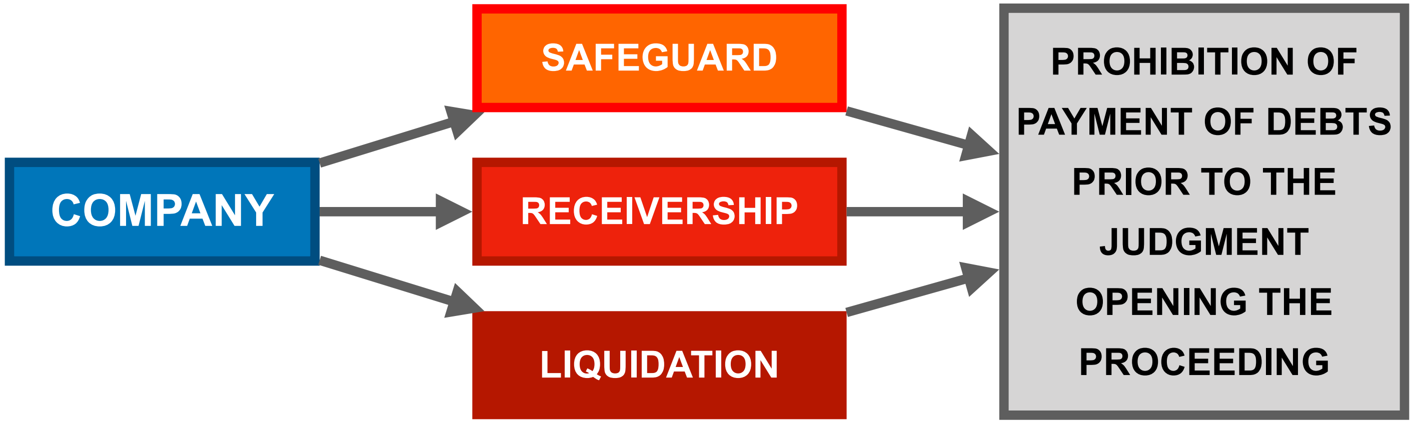
↓

OBLIGATION TO DECLARE THE CESSATION OF PAYMENTS TO THE COMMERCIAL COURT AT THE LATEST 45 DAYS AFTER

CESSATION OF PAYMENT



CESSATION OF PAYMENT



TRANSLATIVE EFFECT

Article 1196 of the French Civil Code

In contracts having as their object the alienation of ownership or the assignment of another right, the transfer takes place at the time of the conclusion of the contract.

This transfer may be deferred by the will of the parties, the nature of things or by the effect of the law.

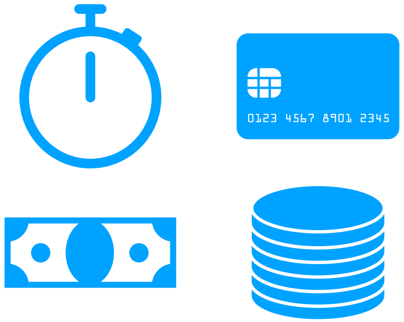
The transfer of ownership entails a transfer of risks of the thing.

[…]

CLAUSE: RETENTION OF TITLE

THE SELLER SHALL RETAIN THE OWNERSHIP OF THE GOODS UNTIL THEY ARE FULLY PAID-UP.
HIS RIGHTS SHALL APPLY EQUALLY, IF APPLICABLE, EITHER TO THE PRICE OF THE PRODUCTS SOLD, OR TO ANY AMOUNT PAID BY AN INSURER FOR THE GOODS IN CASE OF DAMAGE.
THE PURCHASER SHALL DULY INFORM HIS CREDITORS OR ANY INTERESTED PARTY OF THIS RETENTION OF OWNERSHIP.

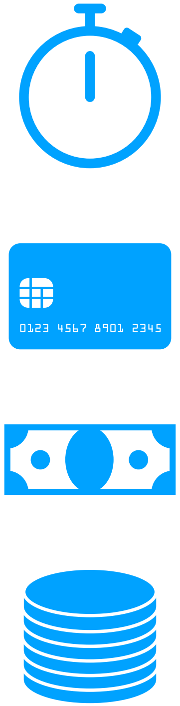
PAYMENT TERMS



Legal payment period:
maximum 30 days after
the date of receipt of the goods or
performance of the requested service.

Articles L. 441-10 and followings of the
French commercial code

PAYMENT TERMS



Contractual payment terms:

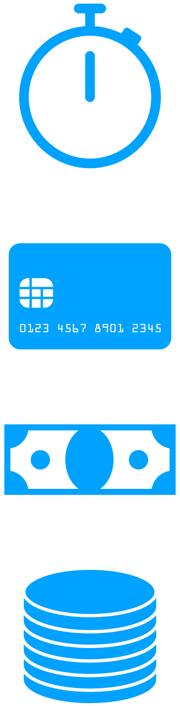
- **60 days** after the date of issue of the invoice,
- **45 days end of month** after the date of issue of the invoice.

PAYMENT TERMS

There are specific payment terms depending on the sectors and territories concerned.

The parties may agree on a period of **90 days** after the date of issue of the invoice, for the payment of purchases made free of value added tax of goods intended for delivery in the same state outside the European Union (article L. 441-12 of the French commercial code).

PAYMENT TERMS



Penalty in case of non-compliance with payment deadlines: administrative fine whose amount may not exceed **75,000 euros** for a natural person and **two million euros** for a legal person.

In case of **repetition**: **150,000 euros** for a natural person and **four million euros** for a legal person.

ABUSIVE TERMINATION OF AN ESTABLISHED BUSINESS RELATIONSHIP

Article L. 442-1 II
of the French commercial code

PRE-CONTRACTUAL INFORMATION OF THE DISTRIBUTOR SUBJECT TO EXCLUSIVITY

Any person who makes available to another person a trade name, a trade mark or a sign, by requiring him to undertake **exclusivity or quasi-exclusivity** for the exercise of his activity, shall be required, prior to the signing of any contract concluded in the common interest of both parties, to provide the other party with a **comprehensive document giving sincere information**, that allows him to make an informed commitment.

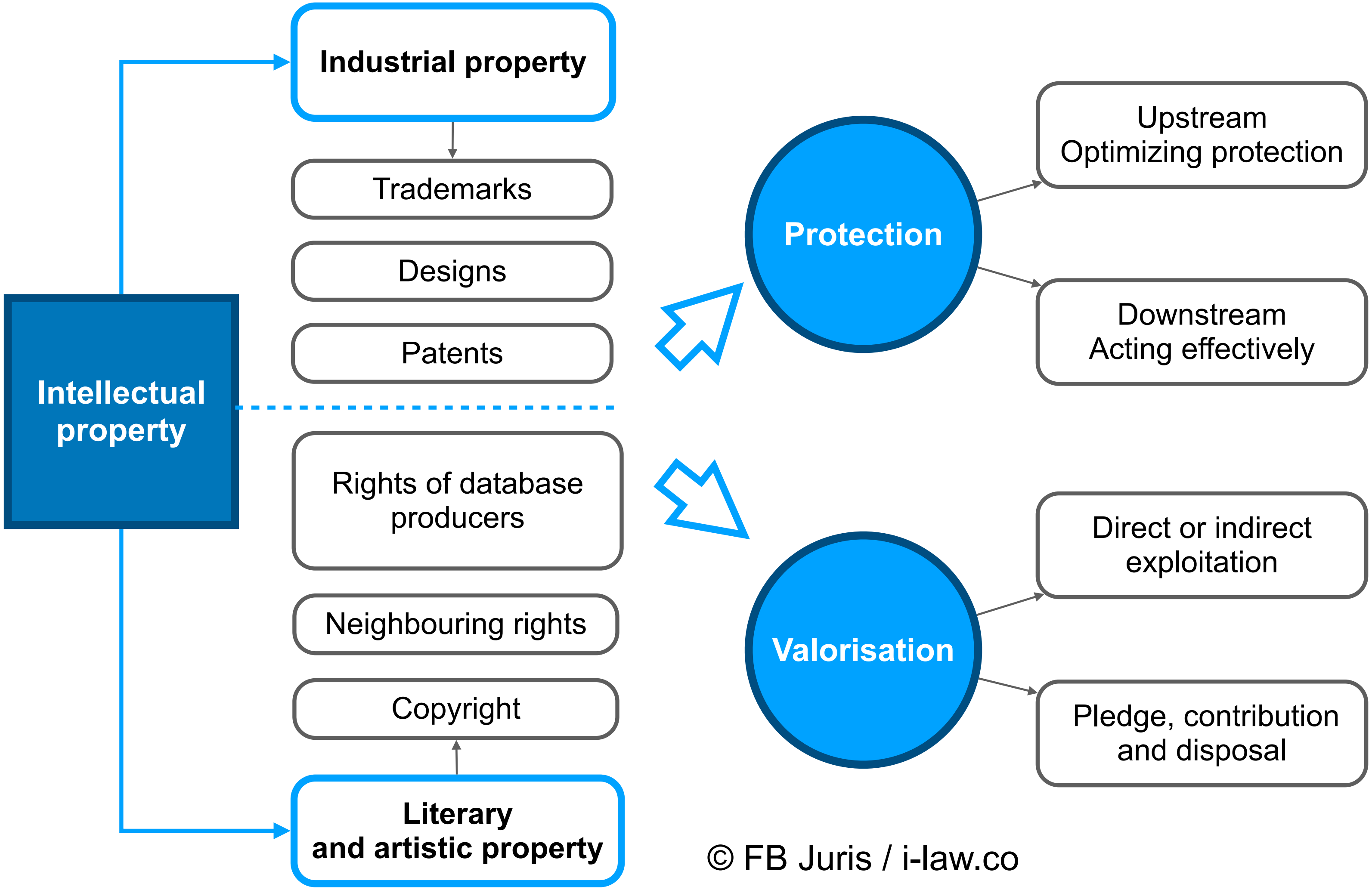
Said document and the draft contract shall be communicated **at least twenty days before the contract is signed**, or, where applicable, before payment of any amount by the distributor.

> Article L. 330 of the French commercial code.

FRENCH LAW:

INTELLECTUAL PROPERTY (IP)

INTELLECTUAL PROPERTY



INTELLECTUAL PROPERTY

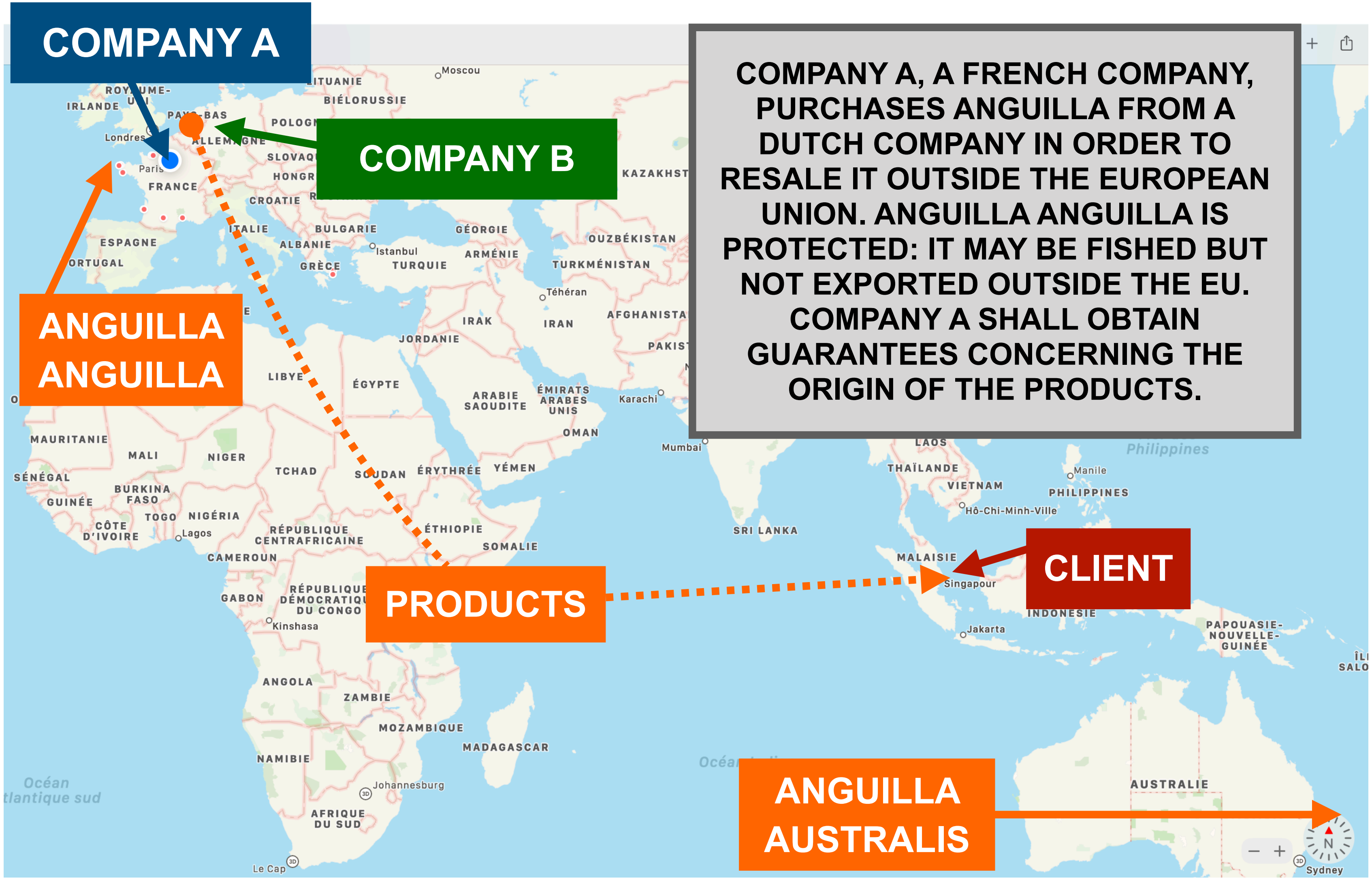
Protection	Duration of the protection	Formality
Trademark	10 years renewable indefinitely	Deposit at the INPI
Design	5 years renewable 4 times, up to 25 years	Deposit at the INPI
Company name, trade name or sign	Duration of registration and use	Registration with the Trade and Companies Register
Domain name	Duration of registration and use	Registration
Patent	20 years	Deposit at the INPI
Utility Certificate	6 years	Deposit at the INPI
Copyright	70 years from disclosure for a legal person or death for a natural person	Optional: deposit with a public officer or an author's society or Soleau envelope.
Neighbouring rights	50 years	
Rights of database producers	15 years	

INTELLECTUAL PROPERTY

FRENCH LAW:

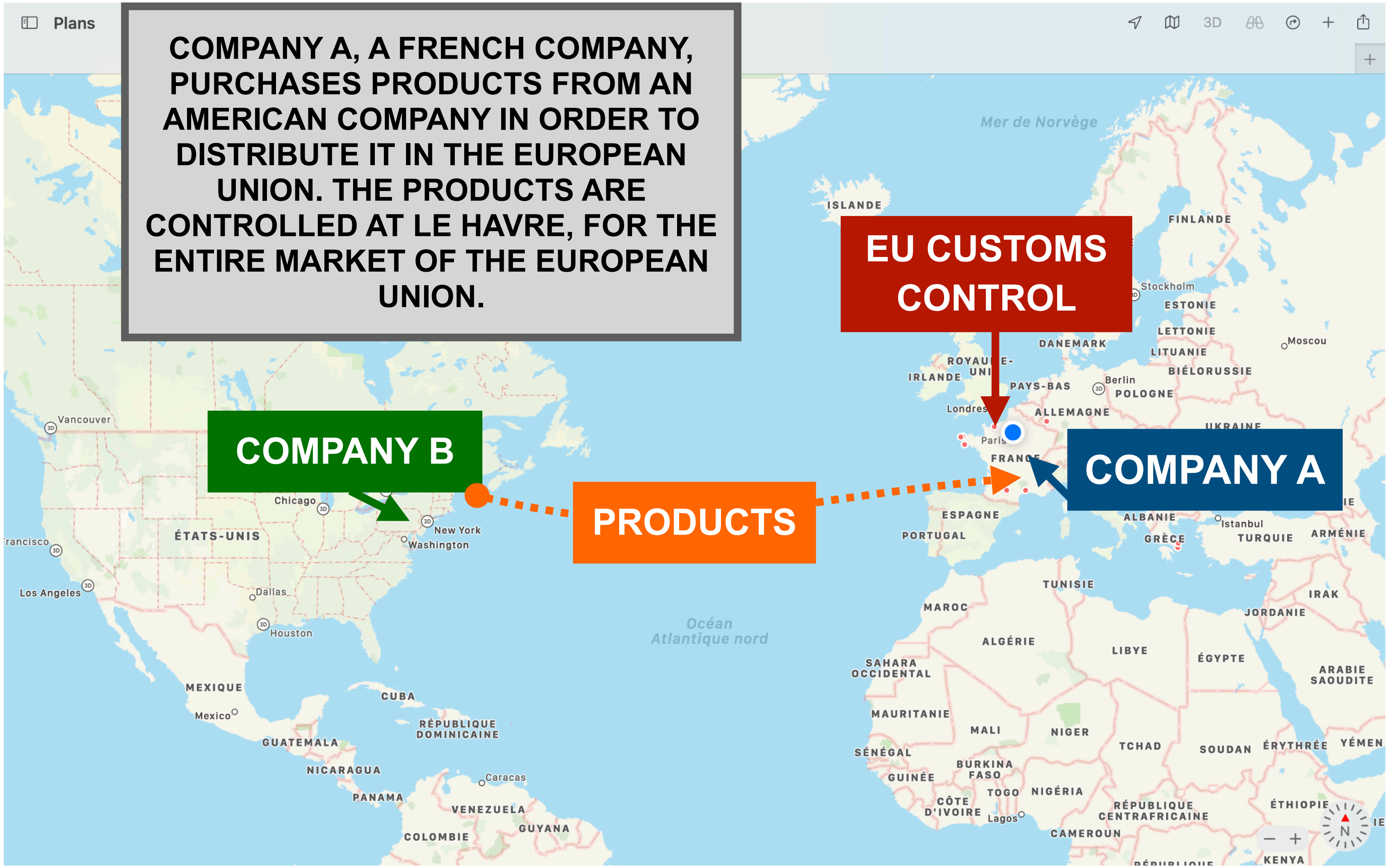
IMPORTING / EXPORTING ADMINISTRATIVE LAW

EXPORTING

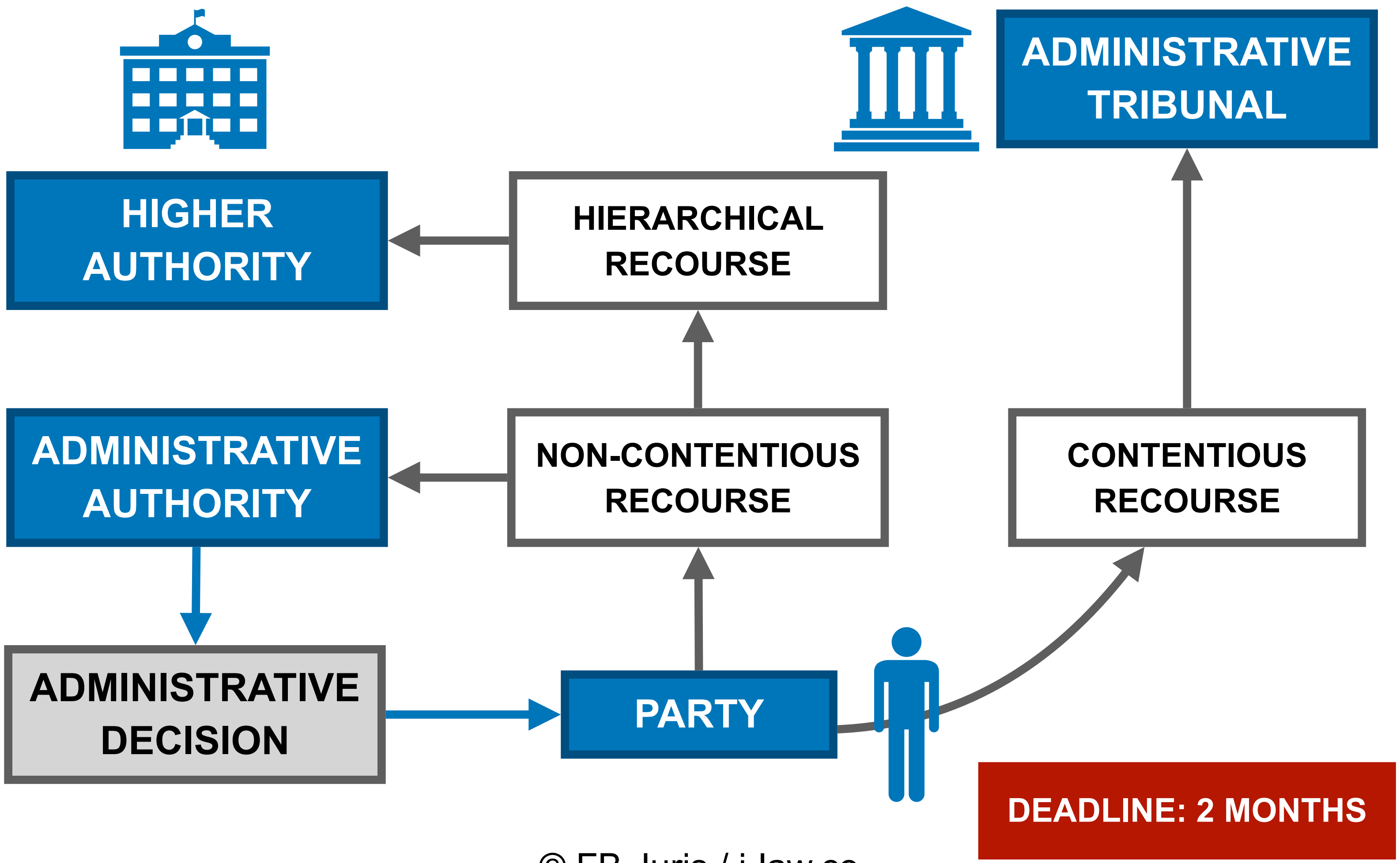


COMPANY A, A FRENCH COMPANY, PURCHASES ANGUILLA FROM A DUTCH COMPANY IN ORDER TO RESALE IT OUTSIDE THE EUROPEAN UNION. ANGUILLA ANGUILLA IS PROTECTED: IT MAY BE FISHED BUT NOT EXPORTED OUTSIDE THE EU. COMPANY A SHALL OBTAIN GUARANTEES CONCERNING THE ORIGIN OF THE PRODUCTS.

IMPORTING

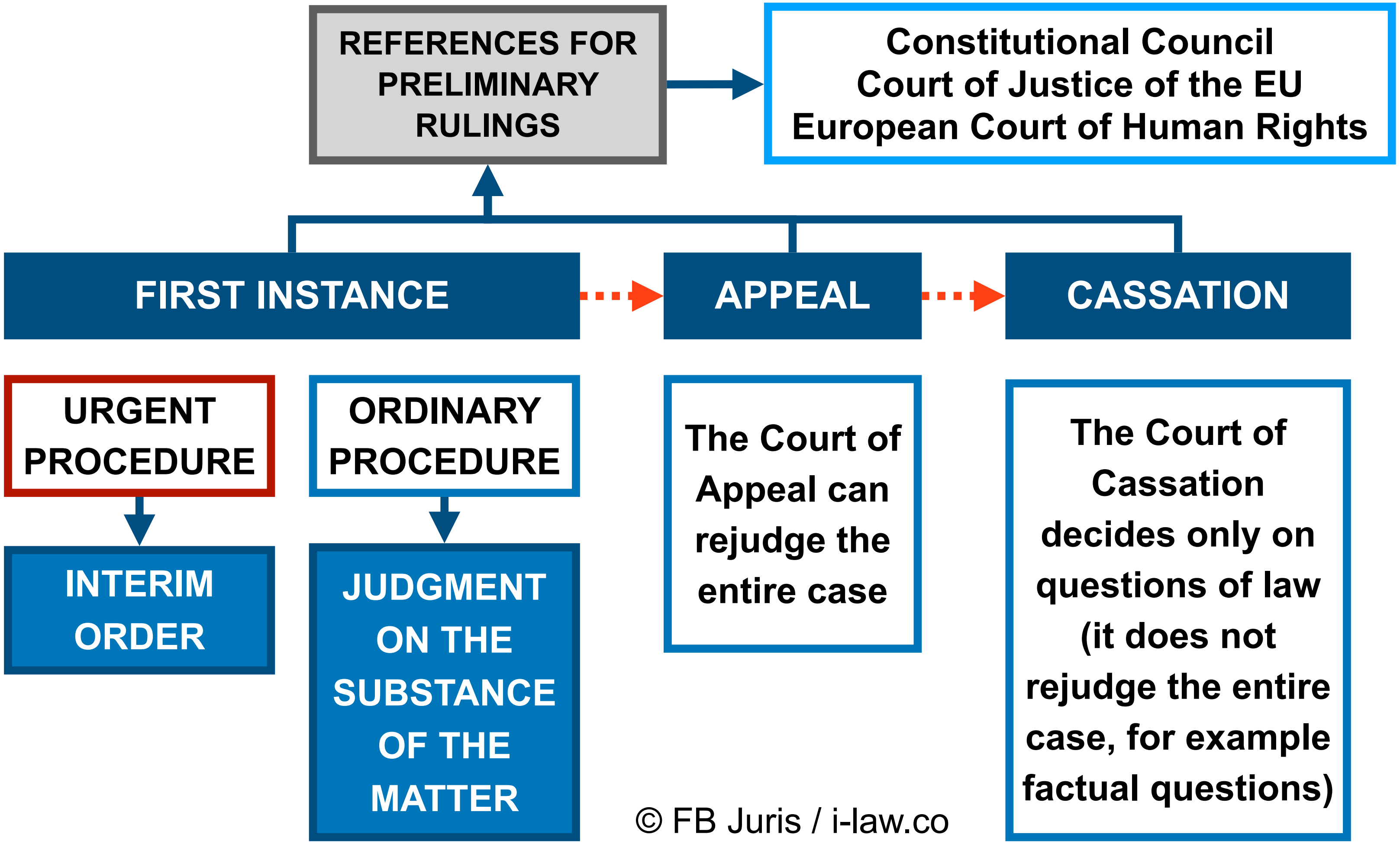

COMPANY A, A FRENCH COMPANY, PURCHASES PRODUCTS FROM AN AMERICAN COMPANY IN ORDER TO DISTRIBUTE IT IN THE EUROPEAN UNION. THE PRODUCTS ARE CONTROLLED AT LE HAVRE, FOR THE ENTIRE MARKET OF THE EUROPEAN UNION.
EU CUSTOMS CONTROL
COMPANY B
PRODUCTS
COMPANY A

ADMINISTRATIVE LAW

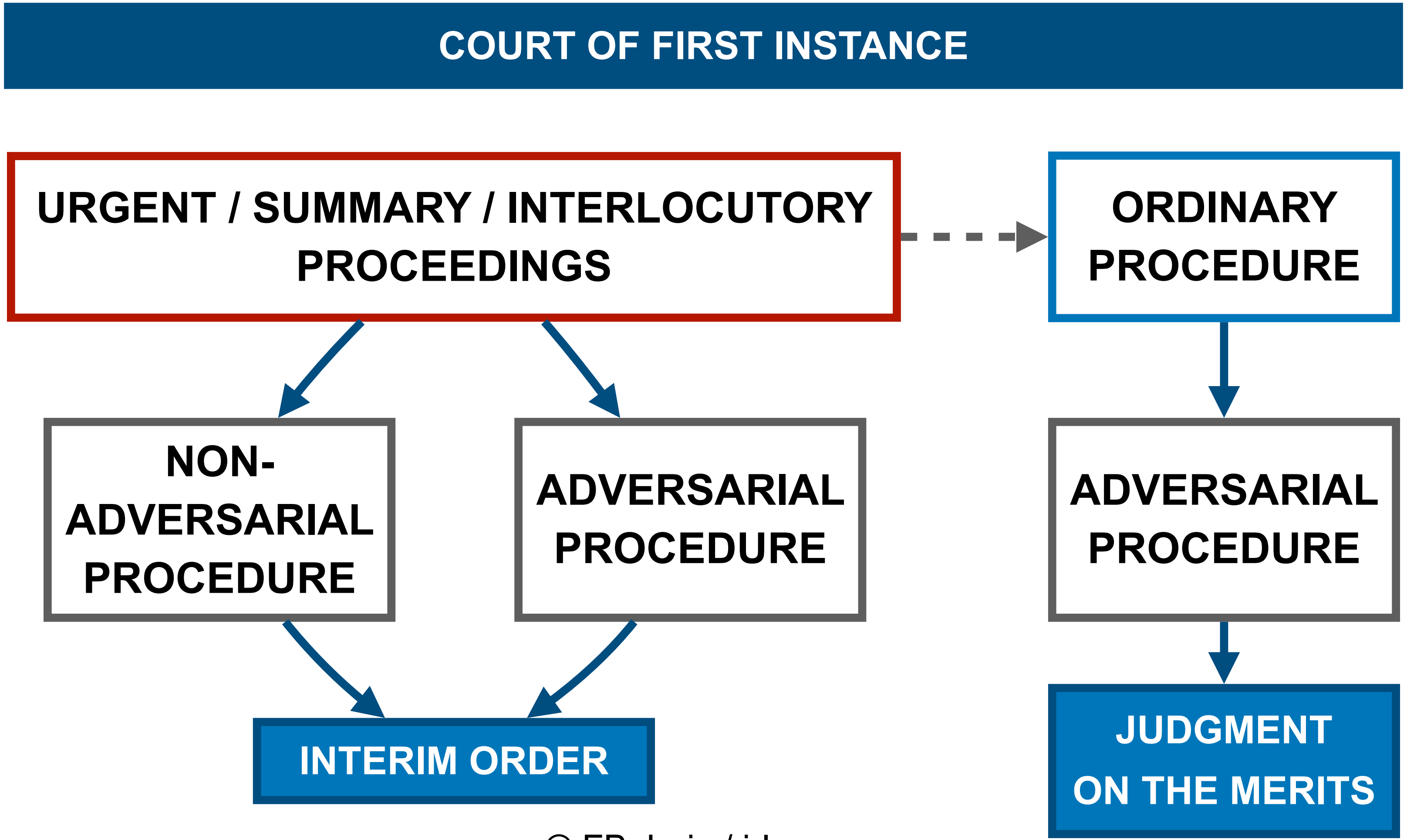


LITIGATIONS IN FRANCE

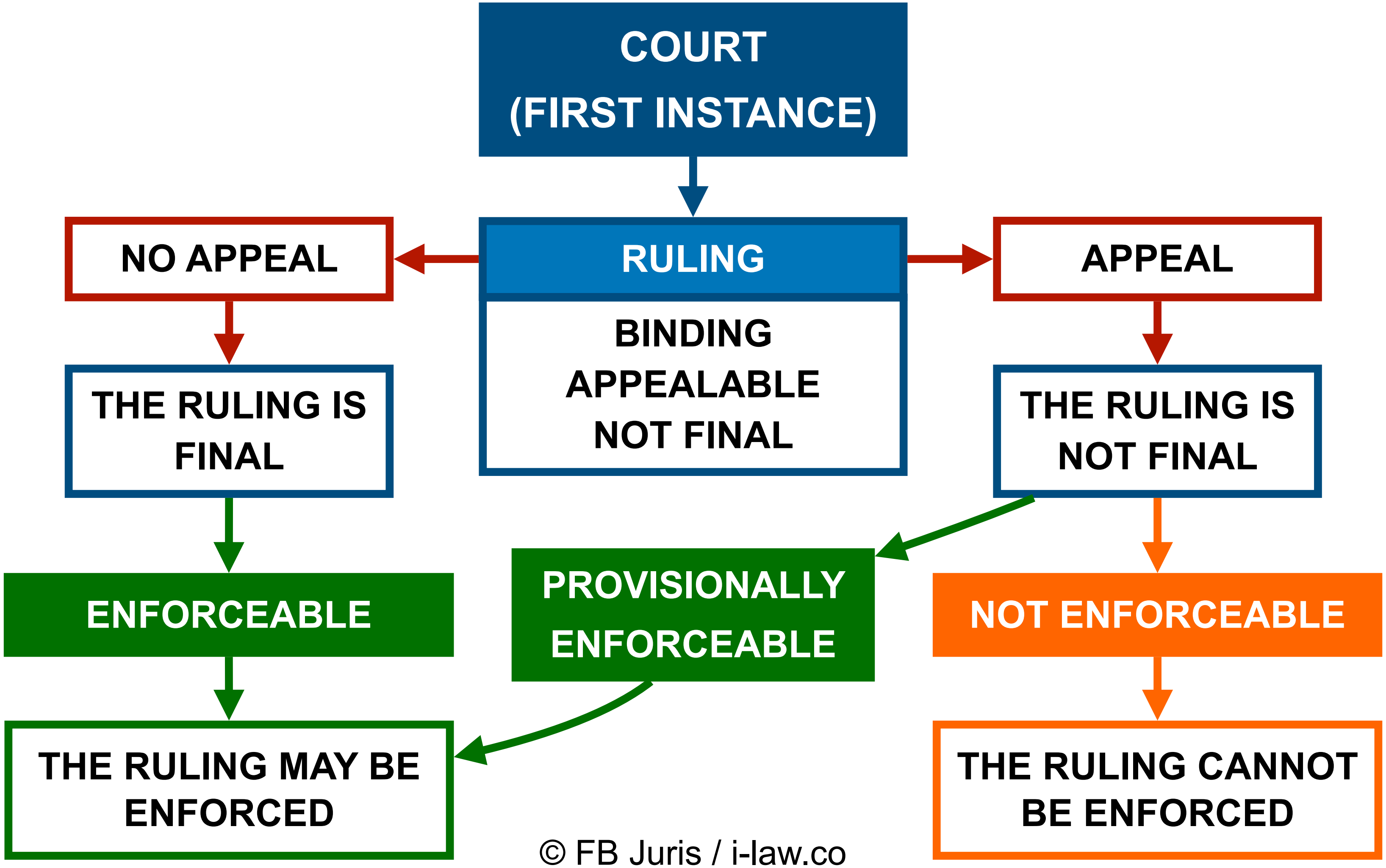
JUDICIAL PROCEEDINGS



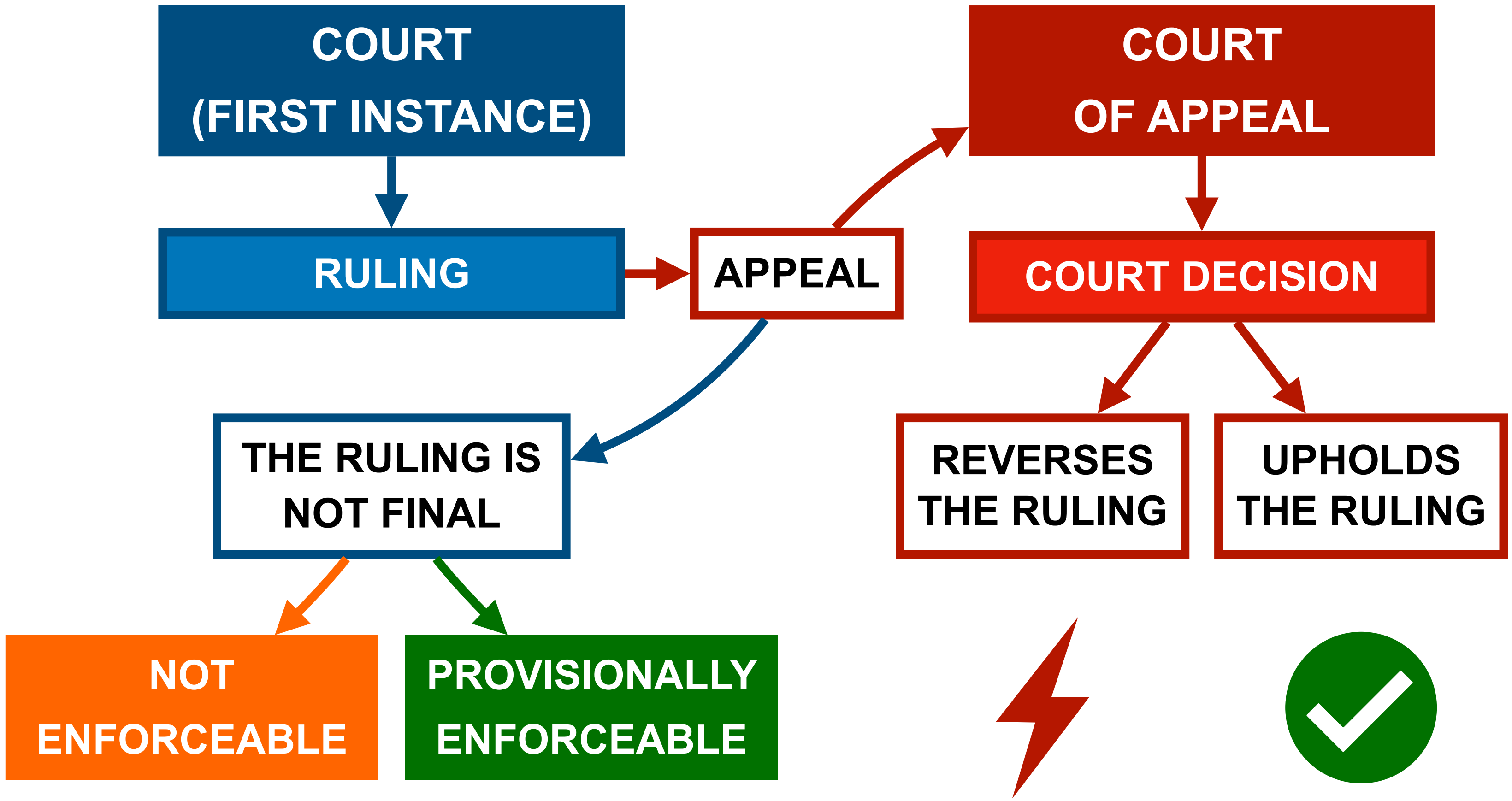
JUDICIAL PROCEEDINGS



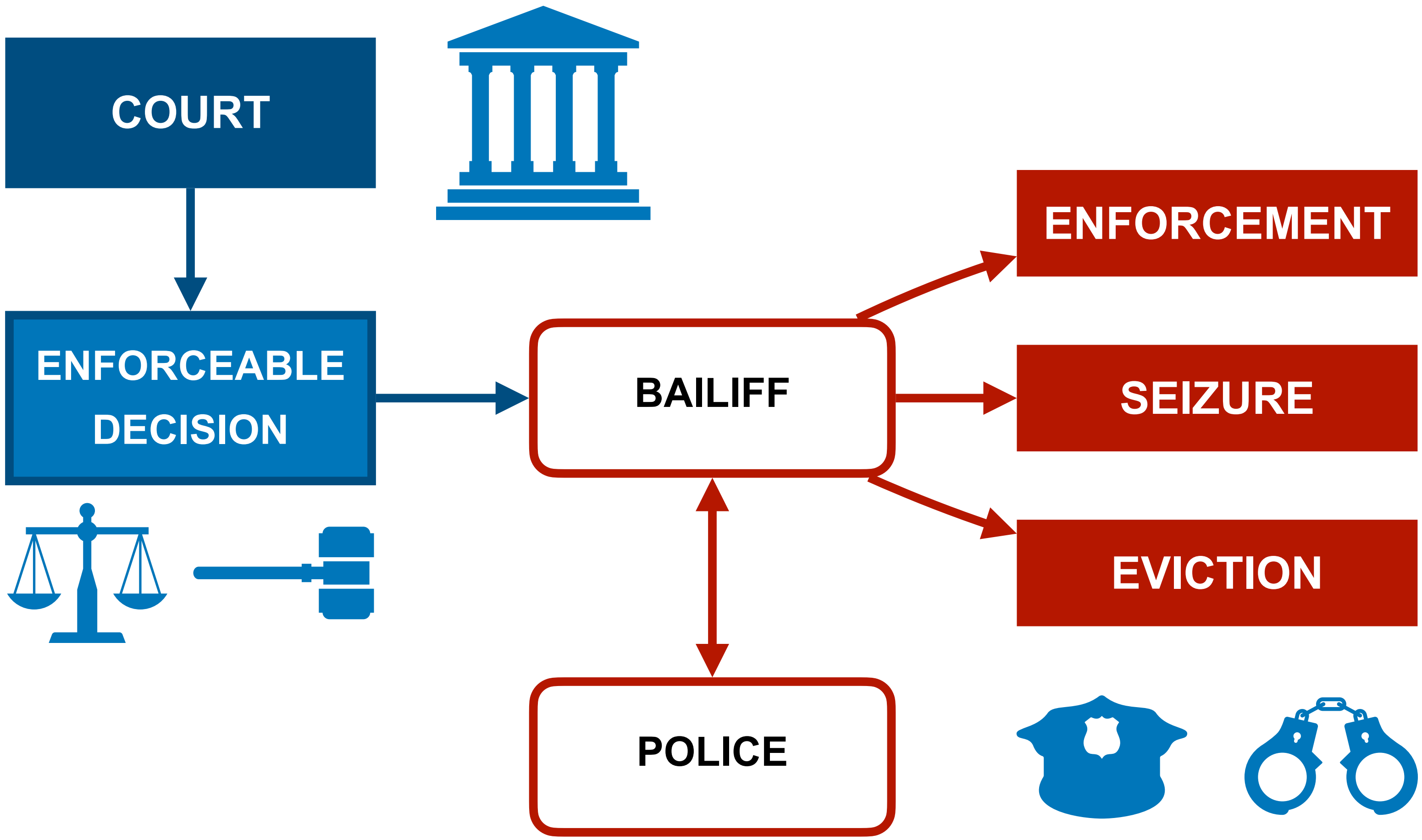
ENFORCING A COURT DECISION



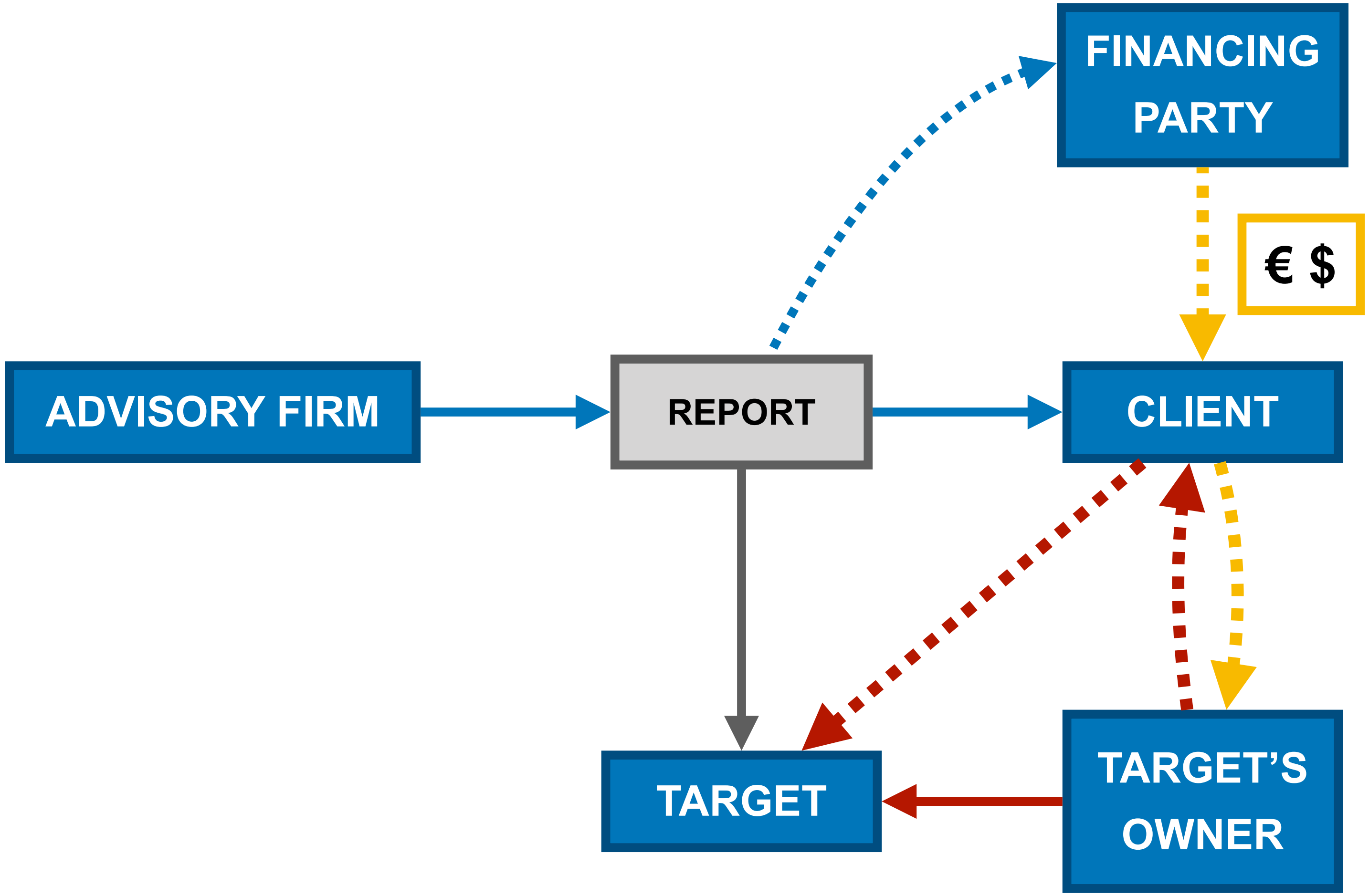
ENFORCING A COURT DECISION



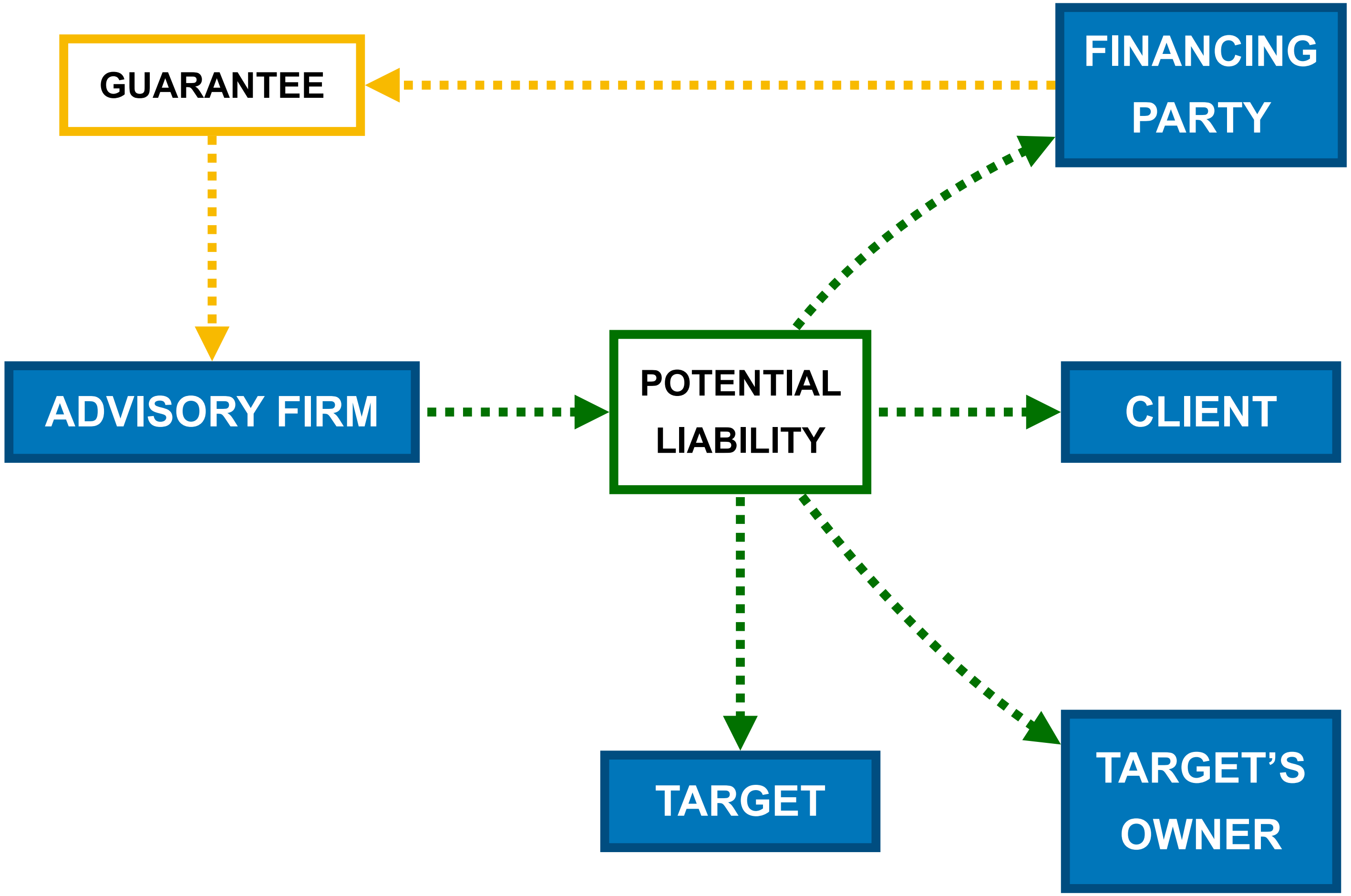
ENFORCING A COURT DECISION



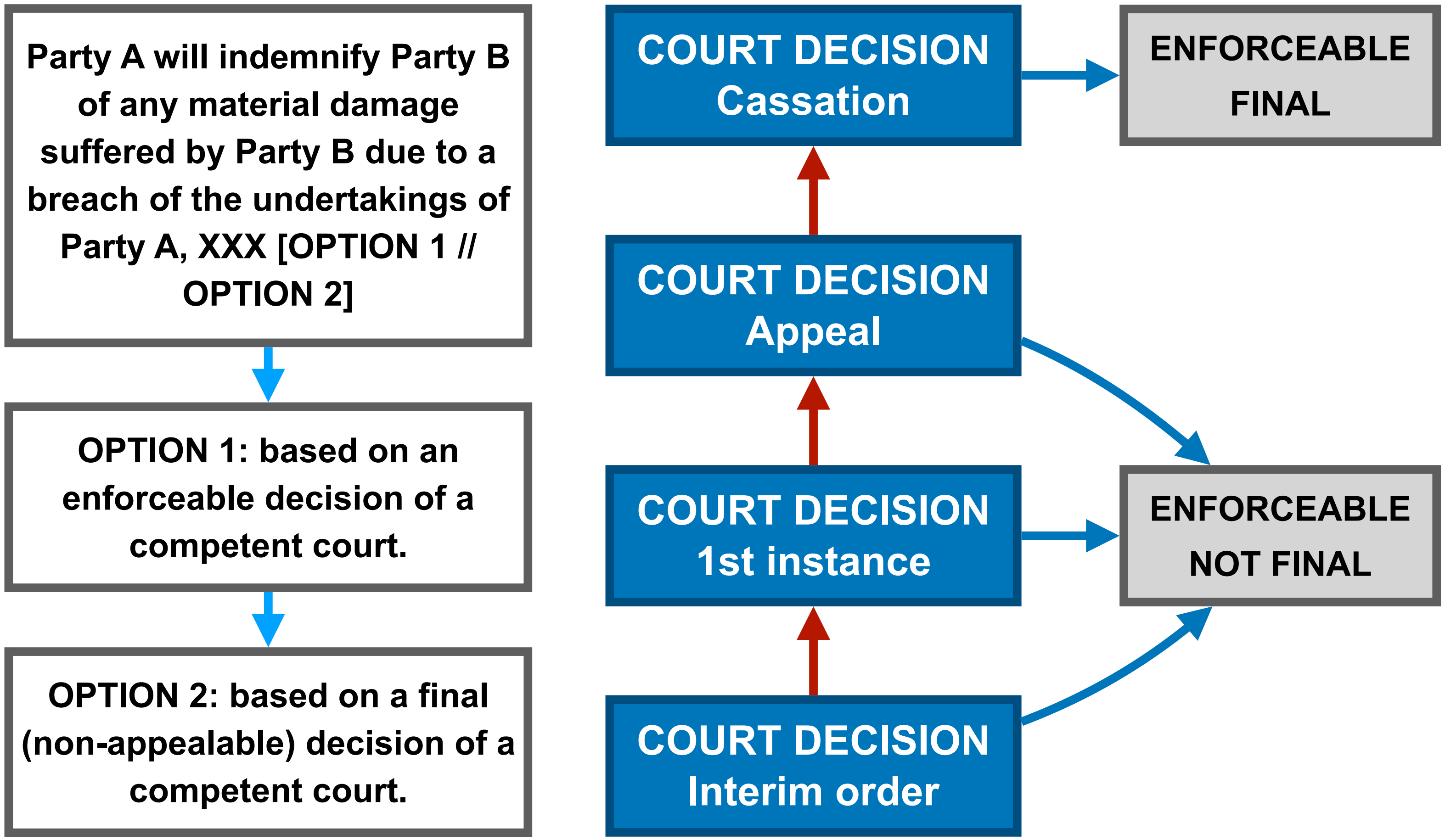
LIABILITY / GUARANTEE



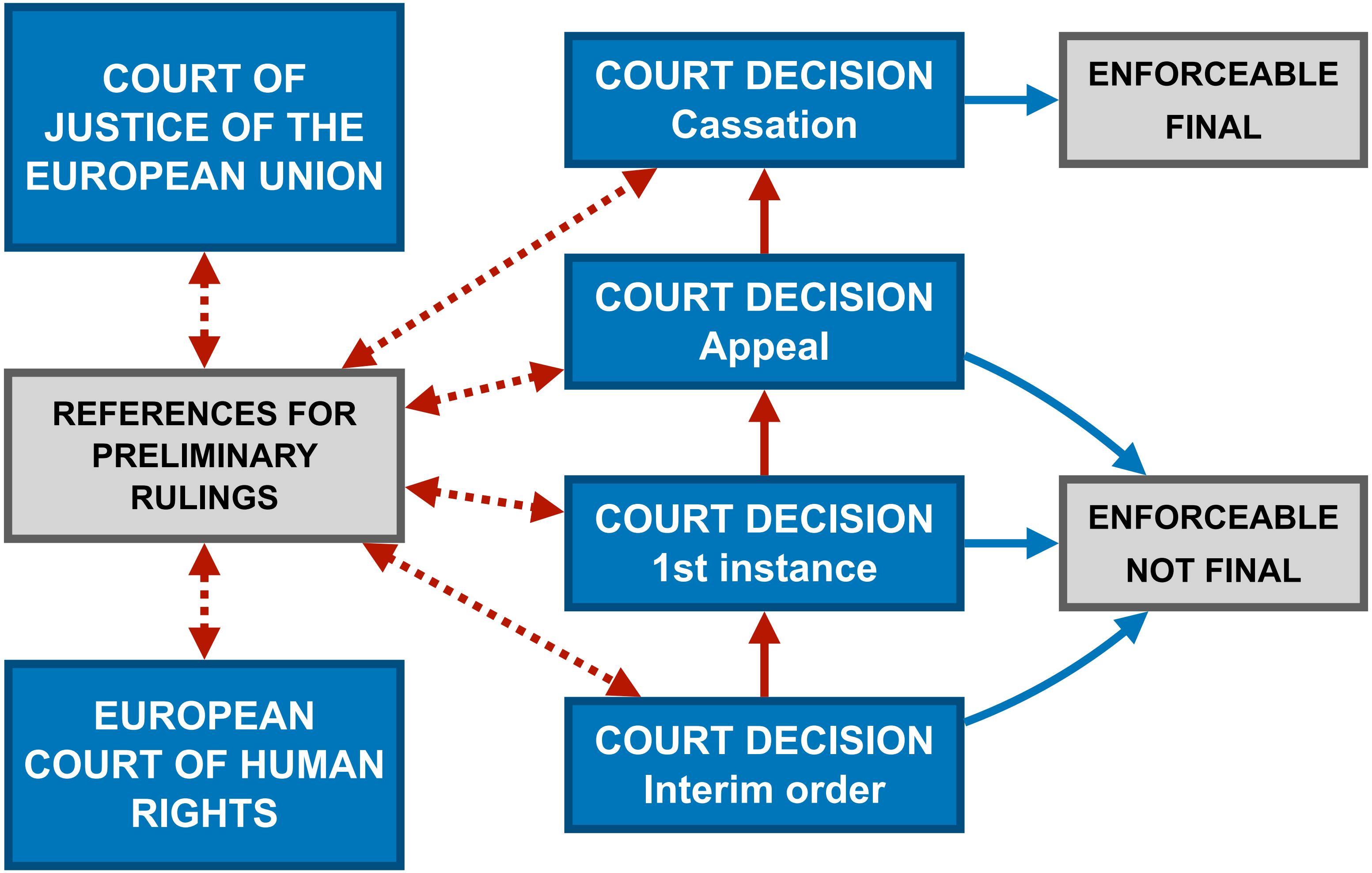
LIABILITY / GUARANTEE



INDEMNIFICATION



JUDICIAL PROCEEDINGS



PRESCRIPTION UNDER FRENCH LAW

2 months

Appeal against an administrative decision.

1 year

Action against a mover or a telephone or internet service provider.

This list is not exhaustive…

2 years

Actions brought by professionals against consumers.
Actions for guarantee of conformity.
Actions relating to an insurance contract.
Liability of sea and air carriers.

4 years

Prescription of claims on public persons.

5 years

ORDINARY LIMITATION PERIOD FOR CIVIL AND COMMERCIAL MATTERS.

6 years

Offences

10 years

Actions relating to bodily injury.
Enforcement of a court decision.

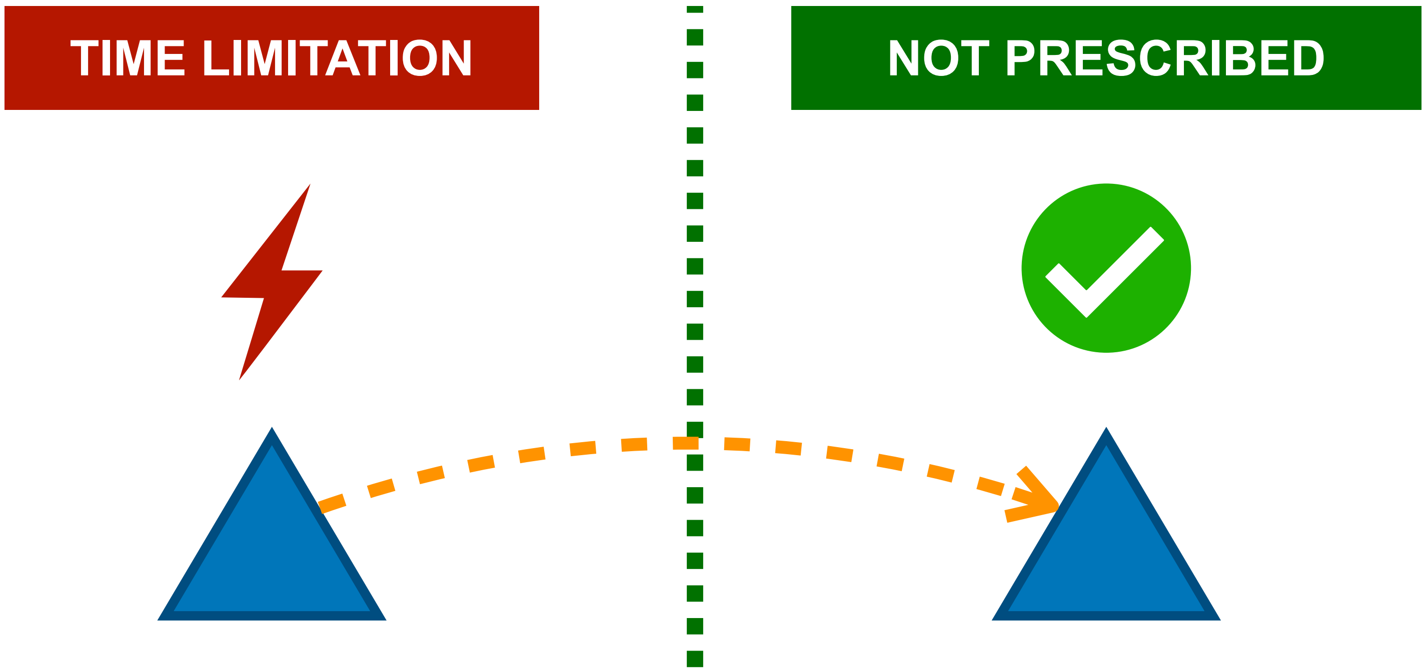
20 years

Crimes

30 years

Terrorism.
Real estate actions.
Damage to the environment.

FORUM SHOPPING



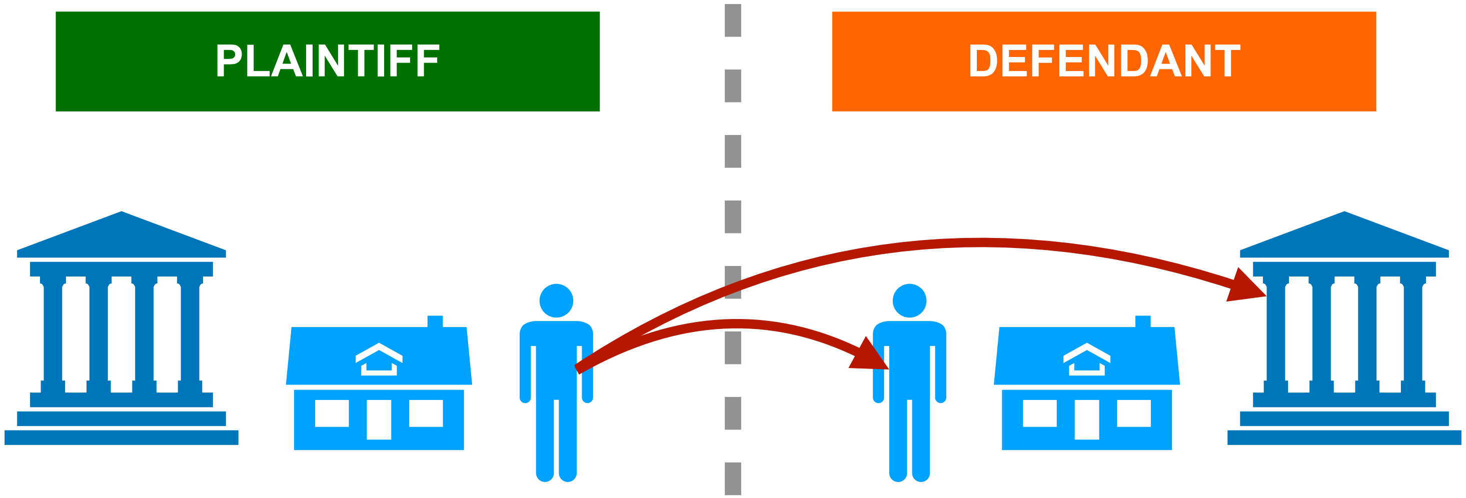
IN INTERNATIONAL LITIGATIONS, THE PARTIES MAY BE TEMPTED TO CHOOSE THEIR JURISDICTION BASED ON THE BENEFITS THEY HOPE TO DERIVE FROM IT.

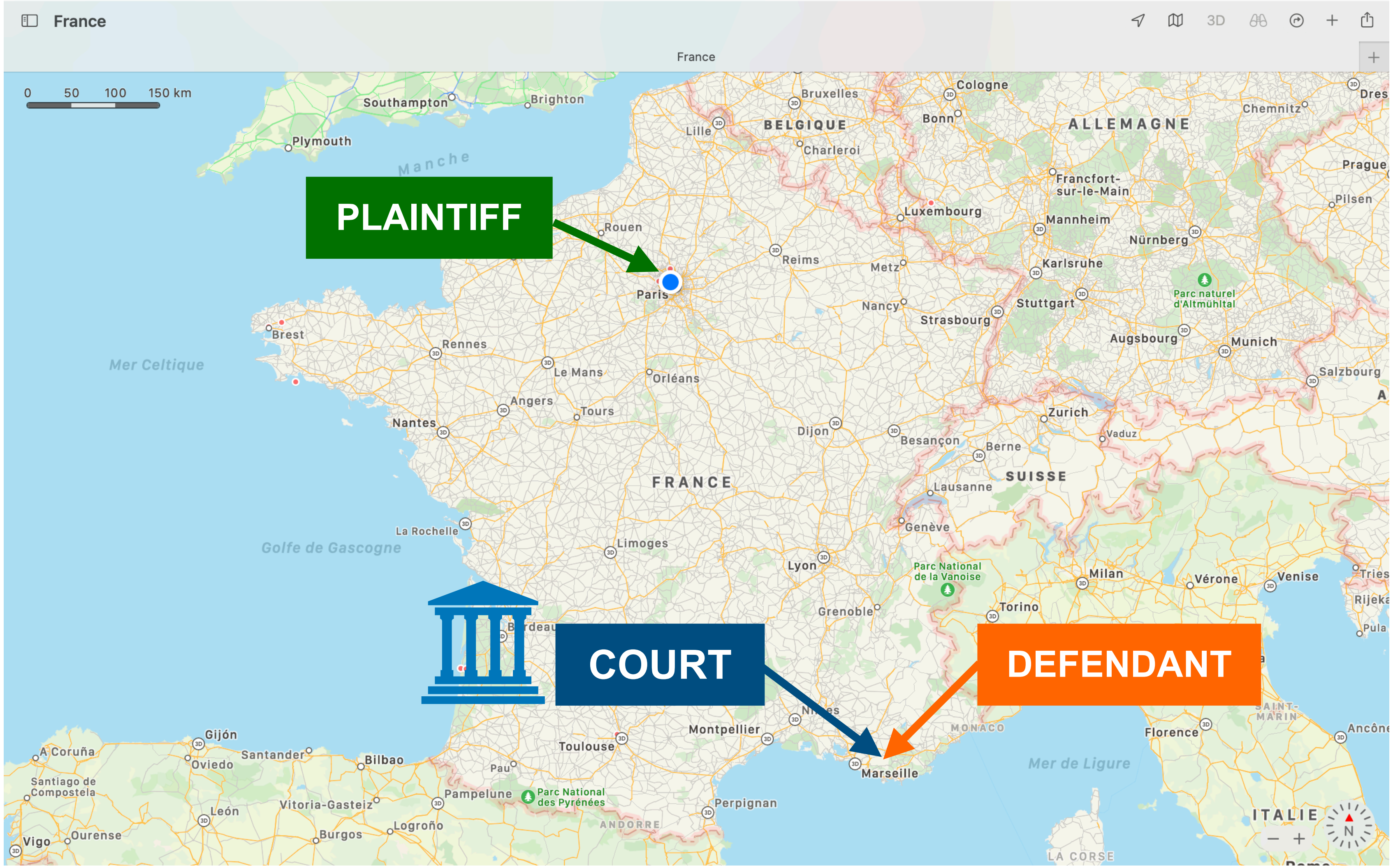
TERRITORIAL JURISDICTION

ARTICLE 42 OF THE FRENCH CODE OF CIVIL PROCEDURE

PRINCIPLE: THE COMPETENT COURT IS THAT OF THE PLACE WHERE THE DEFENDANT RESIDES

PLAINTIFF | **DEFENDANT**



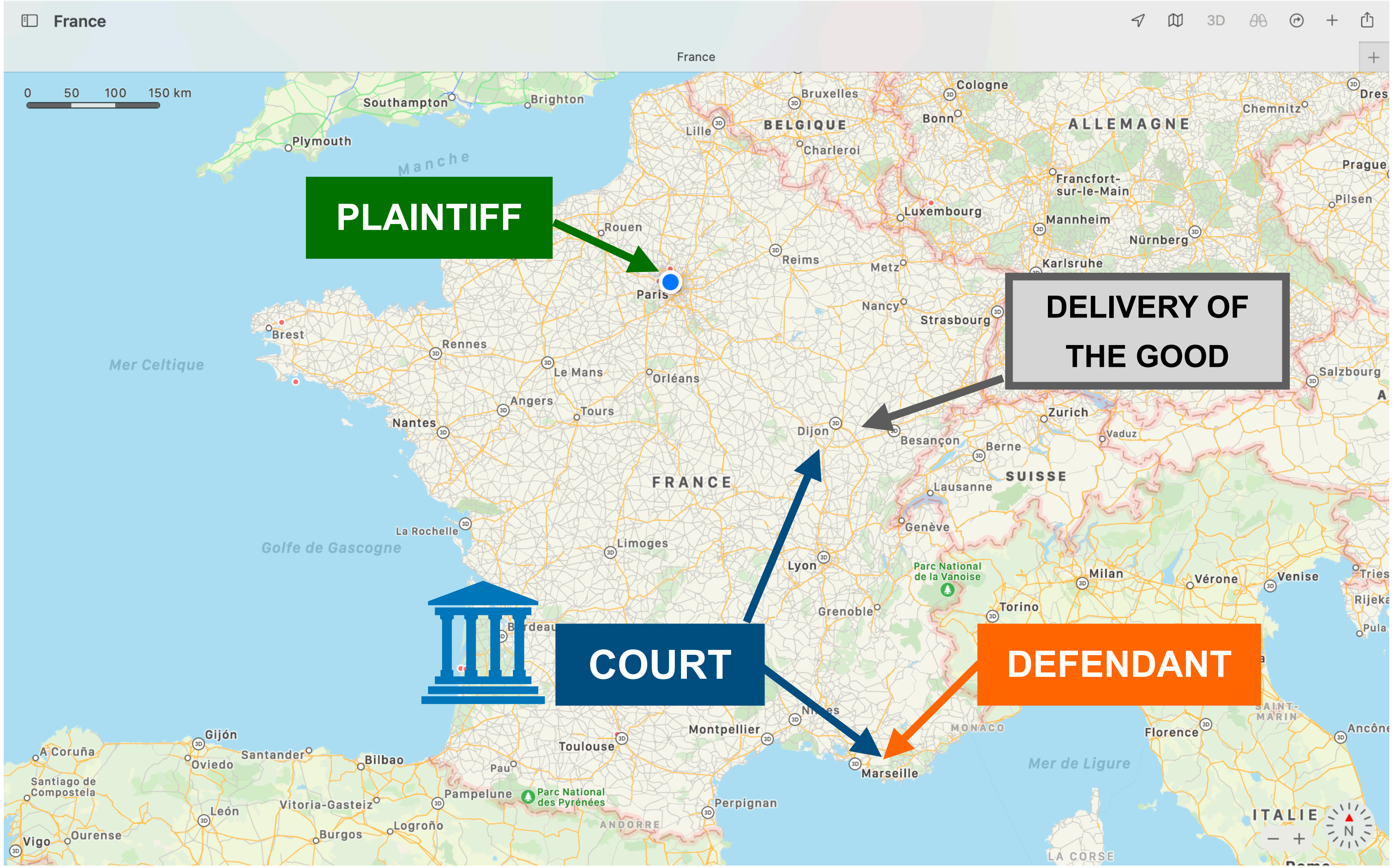

PLAINTIFF
COURT
DEFENDANT

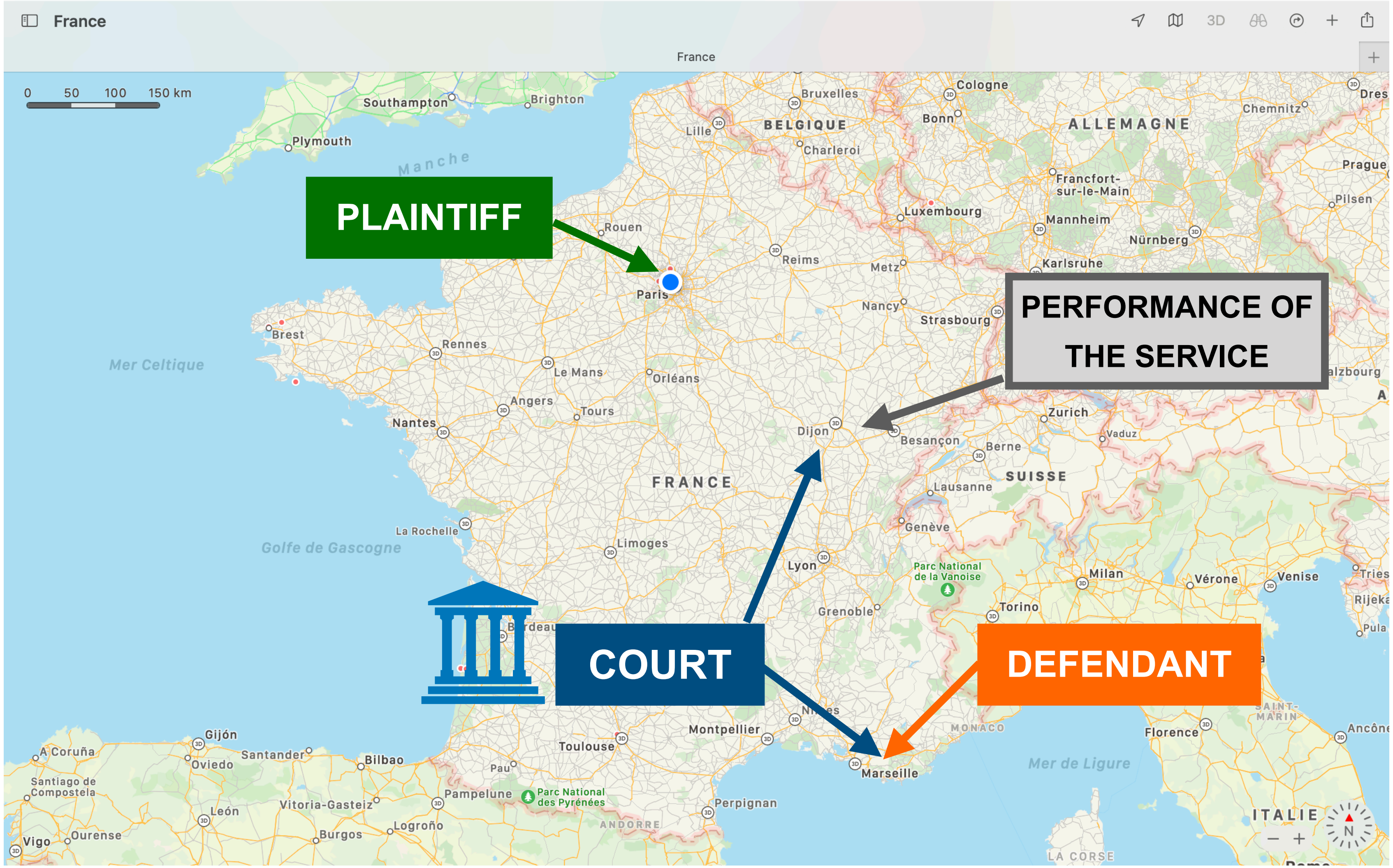
TERRITORIAL JURISDICTION

ARTICLE 46 OF THE FRENCH CODE OF CIVIL PROCEDURE

IN ADDITION TO THE COURT OF THE PLACE WHERE THE DEFENDANT RESIDES, THE PLAINTIFF MAY BRING AN ACTION AT HIS CHOICE BEFORE, NOTABLY:

IN CONTRACTUAL MATTERS	IN MATTERS RELATING TO TORT
THE COURT OF THE PLACE OF ACTUAL DELIVERY OF THE GOOD OR THE PLACE OF PERFORMANCE OF THE SERVICE	THE COURT OF THE PLACE OF THE HARMFUL EVENT OR THE COURT IN WHICH JURISDICTION THE DAMAGE WAS SUFFERED


PLAINTIFF
DELIVERY OF THE GOOD
COURT
DEFENDANT
FRANCE


France
PLAINTIFF
PERFORMANCE OF THE SERVICE
COURT
DEFENDANT

TERRITORIAL JURISDICTION

ARTICLE 44

IN REAL ESTATE MATTERS, THE COURT OF THE PLACE WHERE THE IMMOVABLE IS LOCATED HAS SOLE JURISDICTION.

ARTICLE 48

ANY CLAUSE WHICH, DIRECTLY OR INDIRECTLY, DEROGATES FROM THE RULES OF TERRITORIAL JURISDICTION SHALL BE DEEMED TO BE UNWRITTEN UNLESS IT HAS BEEN AGREED BETWEEN PERSONS WHO HAVE ALL CONTRACTED AS TRADERS AND HAS BEEN SPECIFIED IN A VERY APPARENT MANNER IN THE UNDERTAKING OF THE PARTY TO WHOM IT IS OPPOSED.

FINDINGS

 # French legal system and judicial organisation ensures respect for the rule of law and the separation of powers.

 # Technically, the legal system and the judicial organisation are characterised as a complete and coherent set of norms controlled by hierarchically and materially organised courts.

 # The judicial organisation guarantees that there can be no positive or negative conflict of jurisdictions.

 # As a principle, French law applies in France to French litigants and/or cases. French law may also be applied extraterritorially, to foreign litigants and/or international cases. By way of exception, French judges may apply foreign laws.

ENGLISH-FRENCH VOCABULARY

 # Case law: jurisprudence.

 # Codified law: droit codifié.

 # Democracy: démocratie.

 # French law / laws of France: droit français.

 # Hierarchy of norms: hiérarchie des normes.

 # Judicial system: système judiciaire.

 # Legal system: système juridique.

 # Normative system: système normatif.

 # Oral law: droit oral.

 # Pyramid: pyramide.

 # Republic: République.

 # Rule of law: État de droit.

 # Rule of precedent / doctrine of precedent: règle des précédents / doctrine des précédents

 # Written law: droit écrit.

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