
FB JURIS LAW FIRM



INTERNATIONAL BUSINESS LAW

Legal guide to doing business internationally

OVERVIEW OF INTERNATIONAL BUSINESS LAW

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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

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:

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OVERVIEW

International business law is not an integrated legal system.

Instead, several legal systems address international matters.

OBJECTIVES

Understand the differences between public international law, private international law, European Union law and internal law.

Understand the essential issues of private international law.

Master the concept of international public order.

Understand the stakes of international commercial contracts.

SUMMARY

Private international law deals with the international relationships between private parties.

Private international law aims notably at preventing or solving conflicts of laws and jurisdictions. Generally, it tends to facilitate and secure international trade and investments.

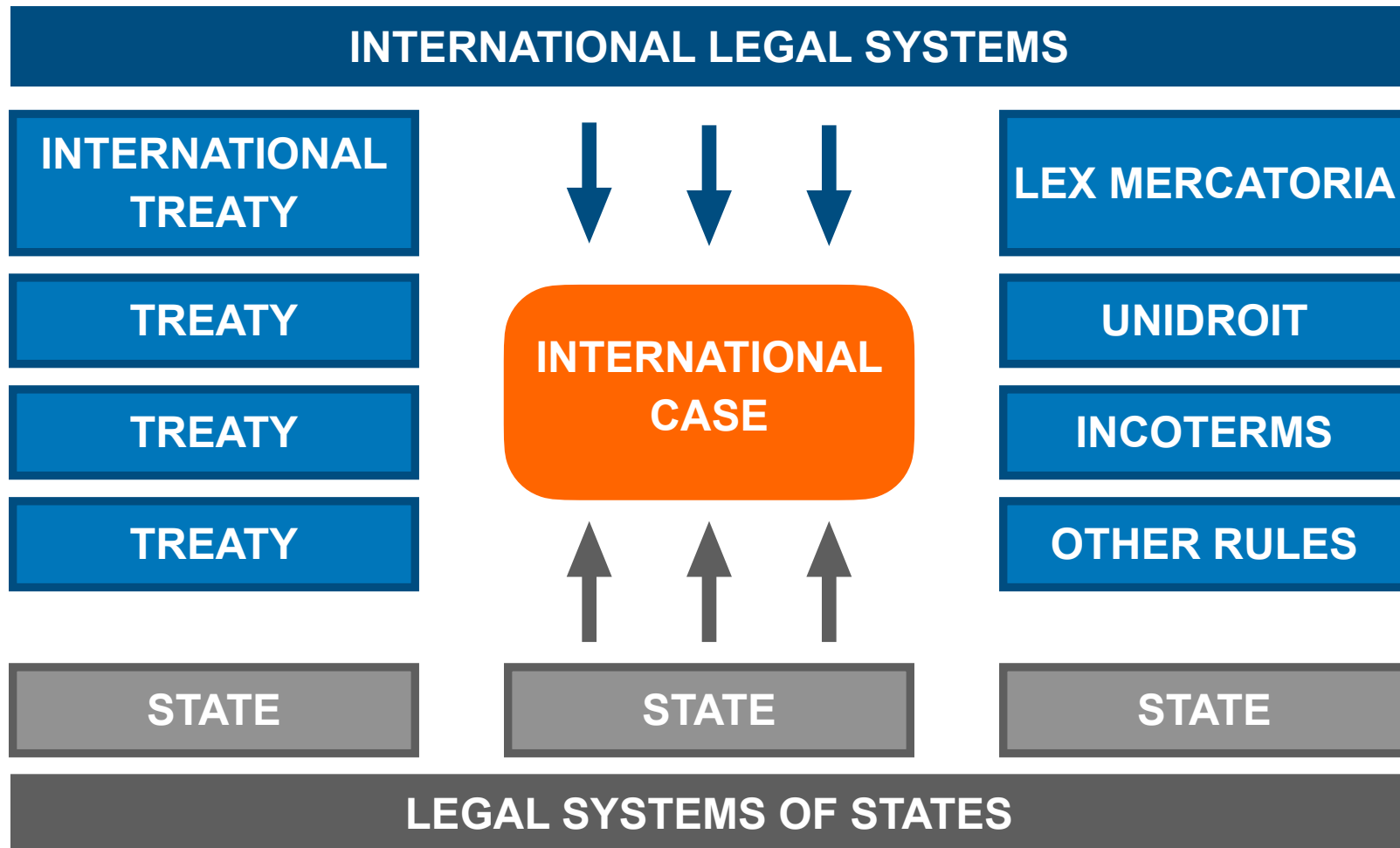
The legal systems of the States form the basis of private international law.

Private international law comprises various norms, notably State laws, international treaties, principles, private rules.

From a European point of view, a distinction must be made between national law, European Union law and international law.

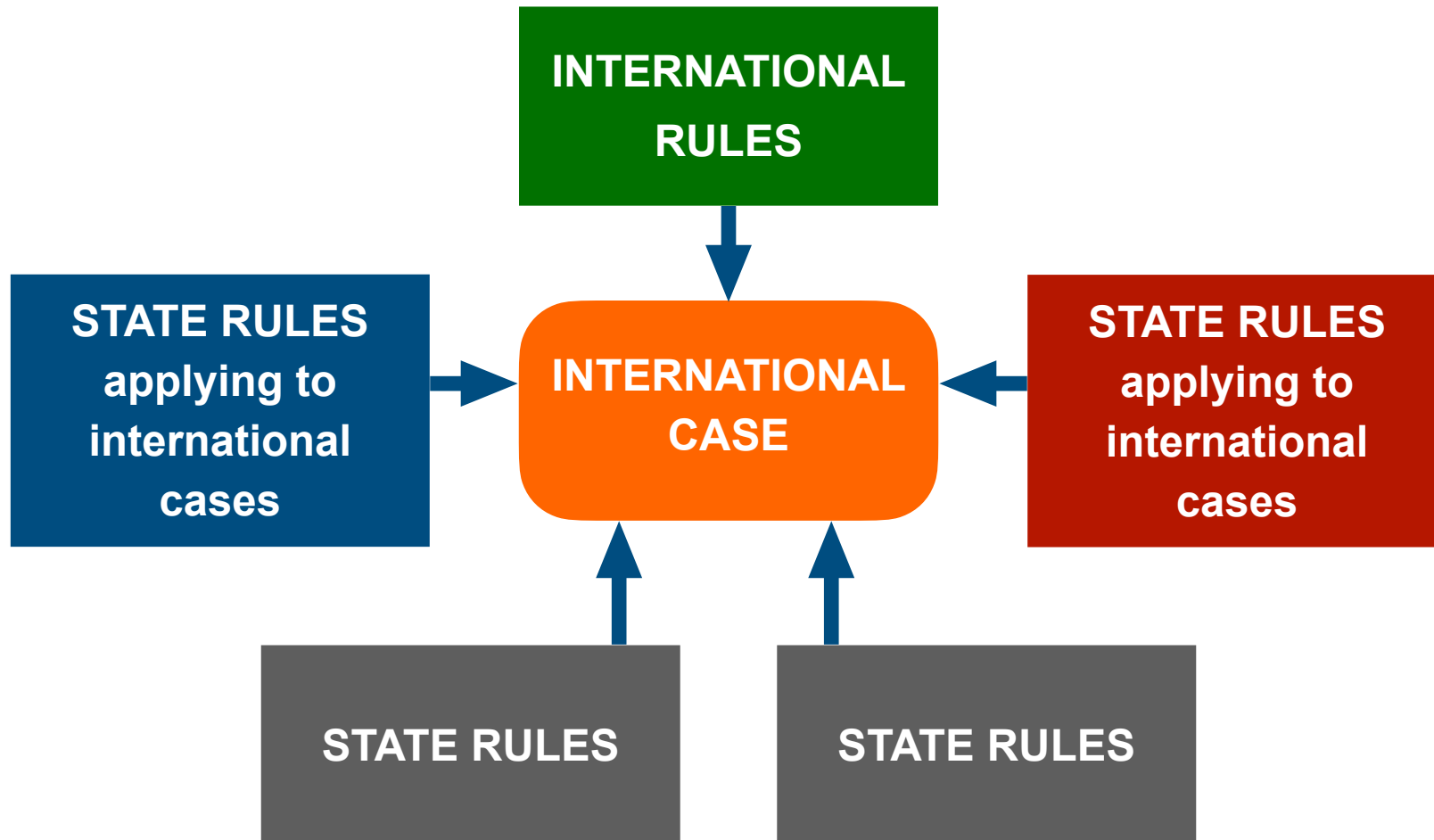
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INTERNATIONAL BUSINESS LAW



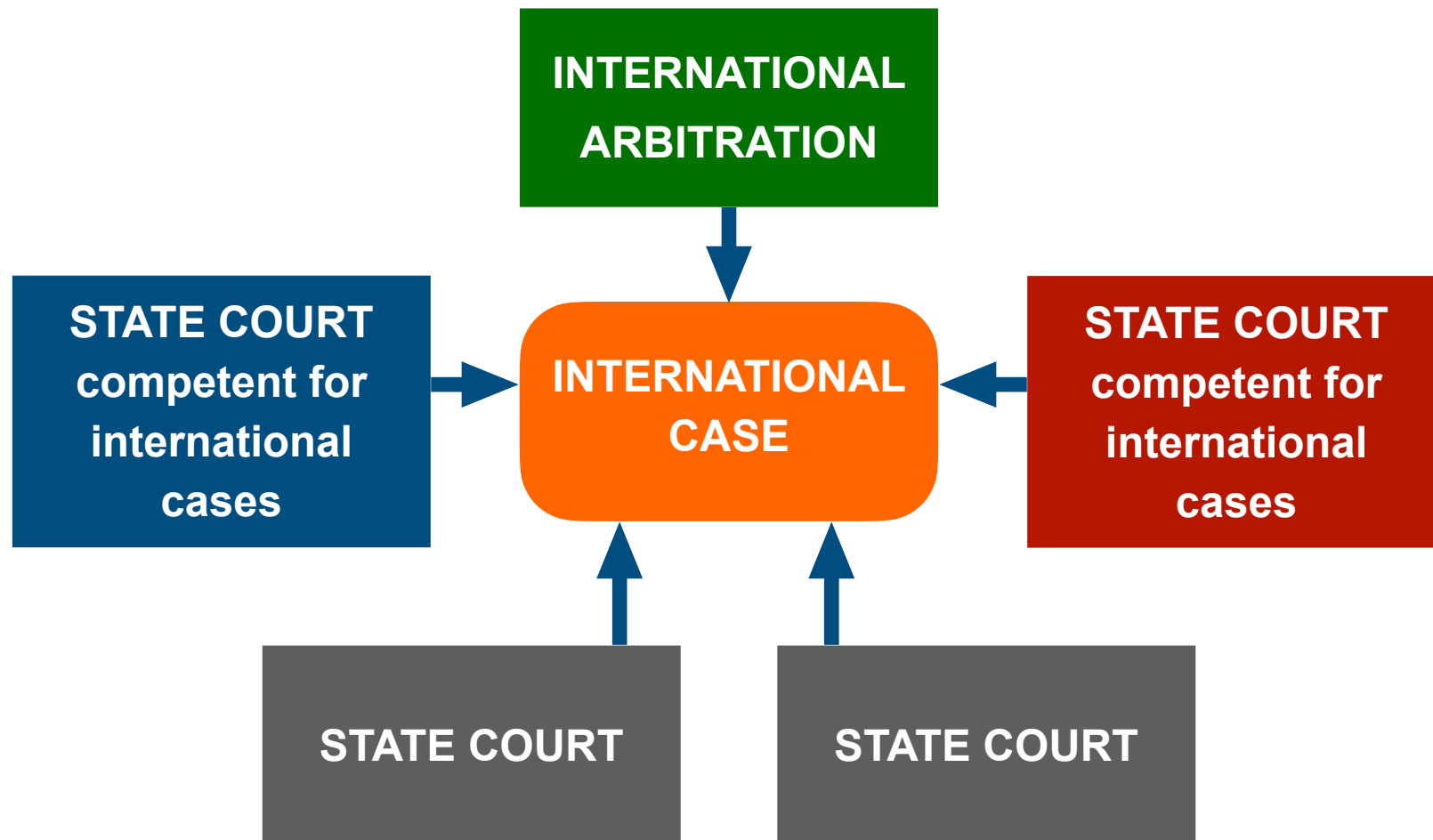
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INTERNATIONAL BUSINESS LAW



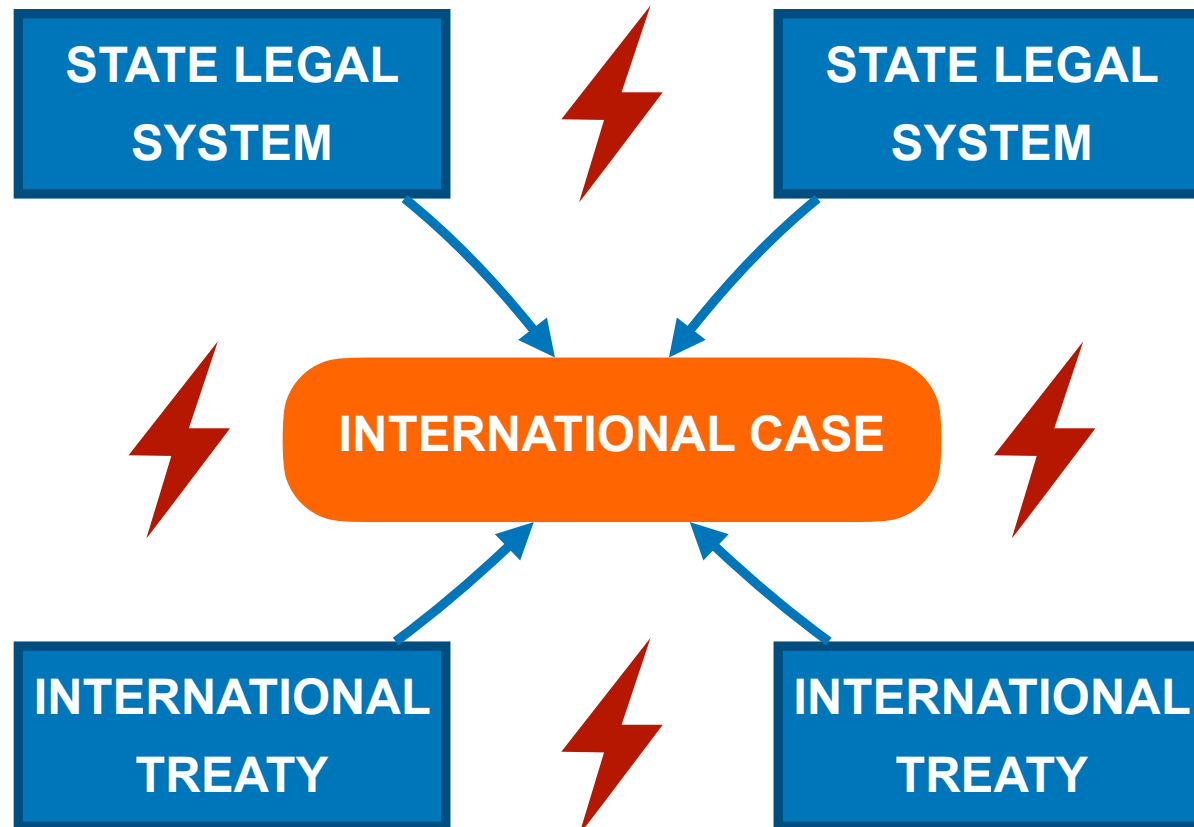
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INTERNATIONAL BUSINESS LITIGATION



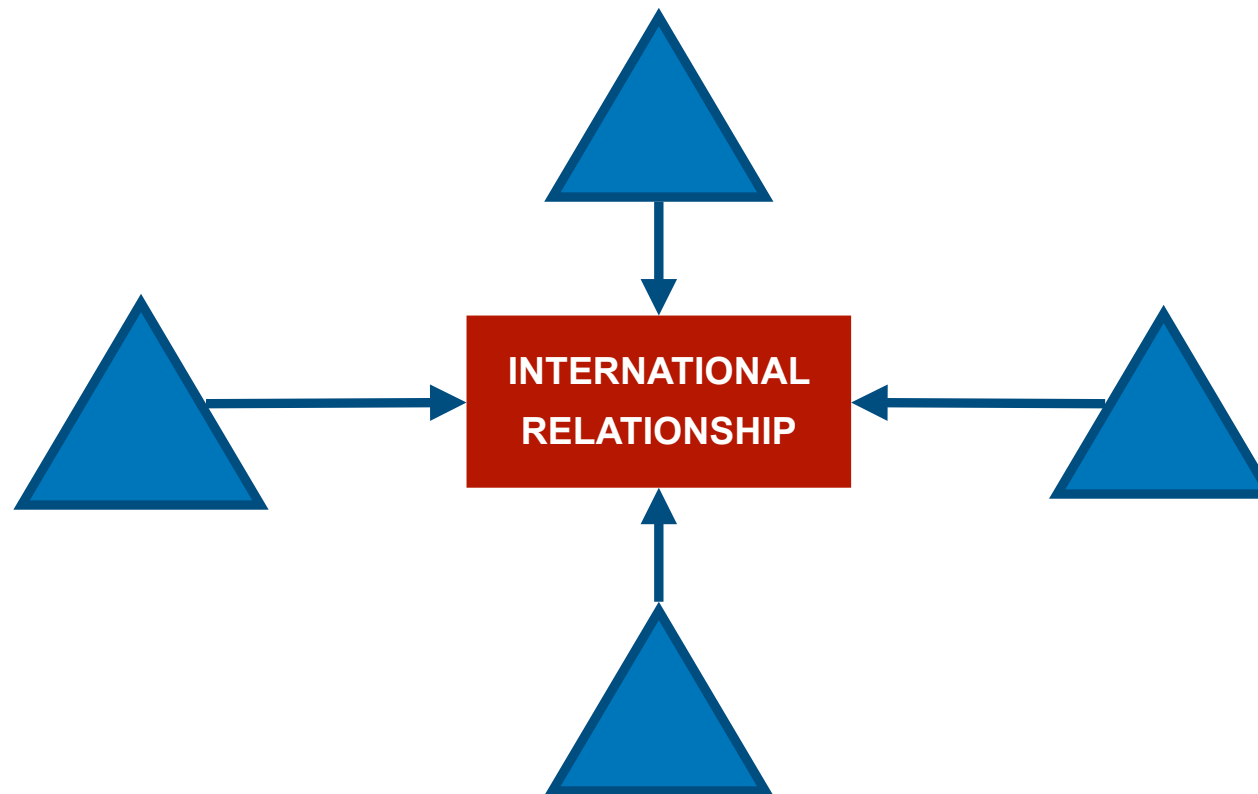
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CONFLICTS



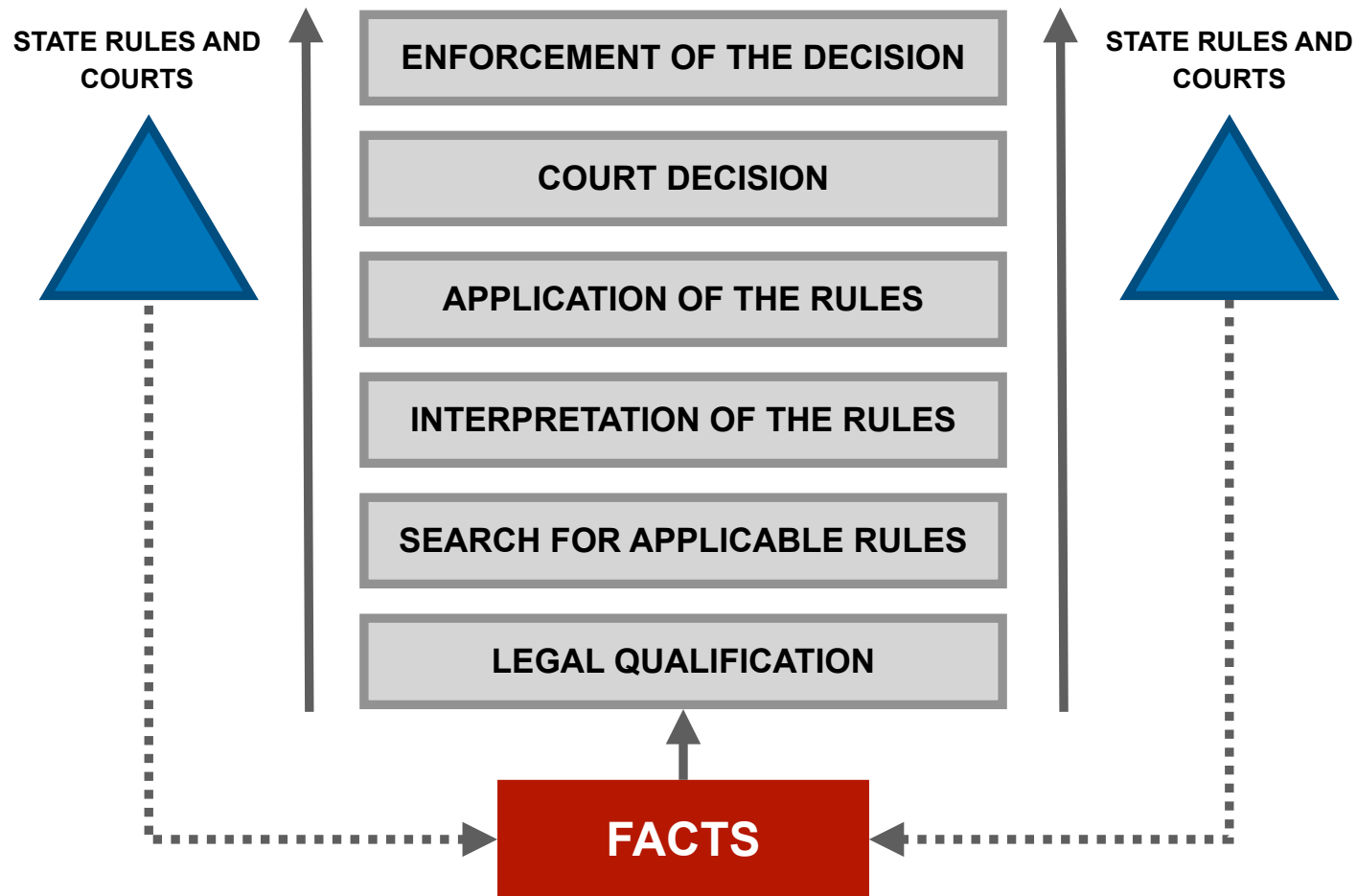
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**THE LEGAL REGIME APPLICABLE TO AN INTERNATIONAL RELATIONSHIP
MAY VARY DEPENDING ON THE LAWS OF THE STATES.**



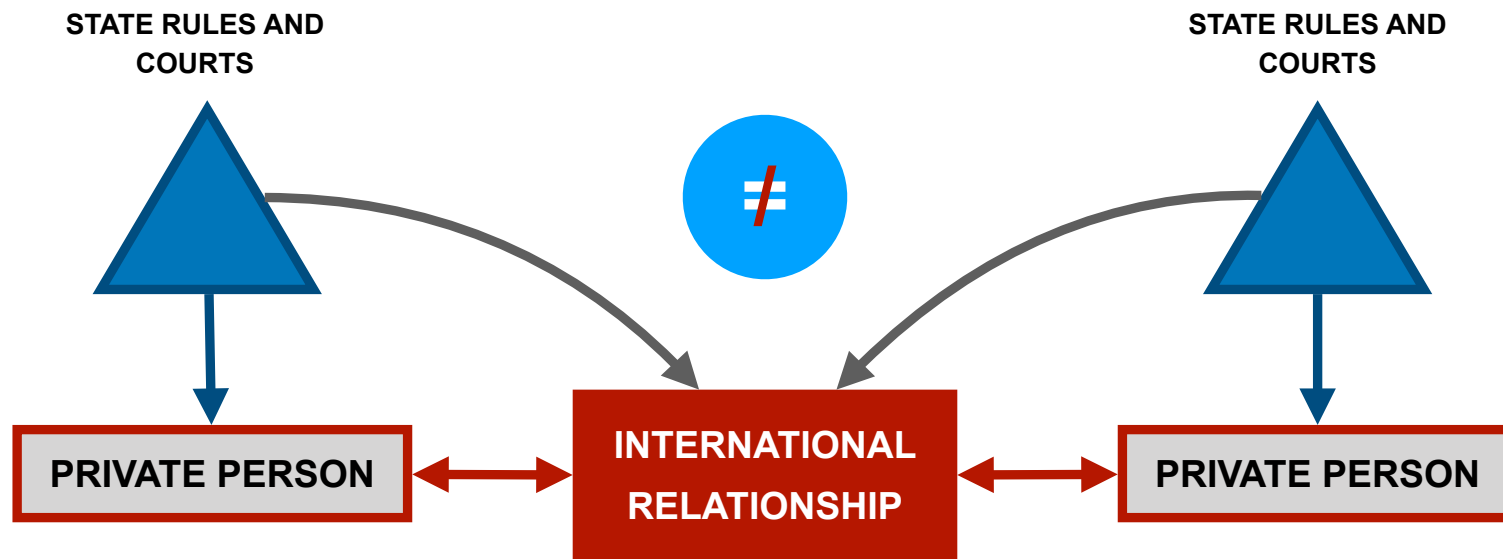
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LEGAL REASONING / PROCESS



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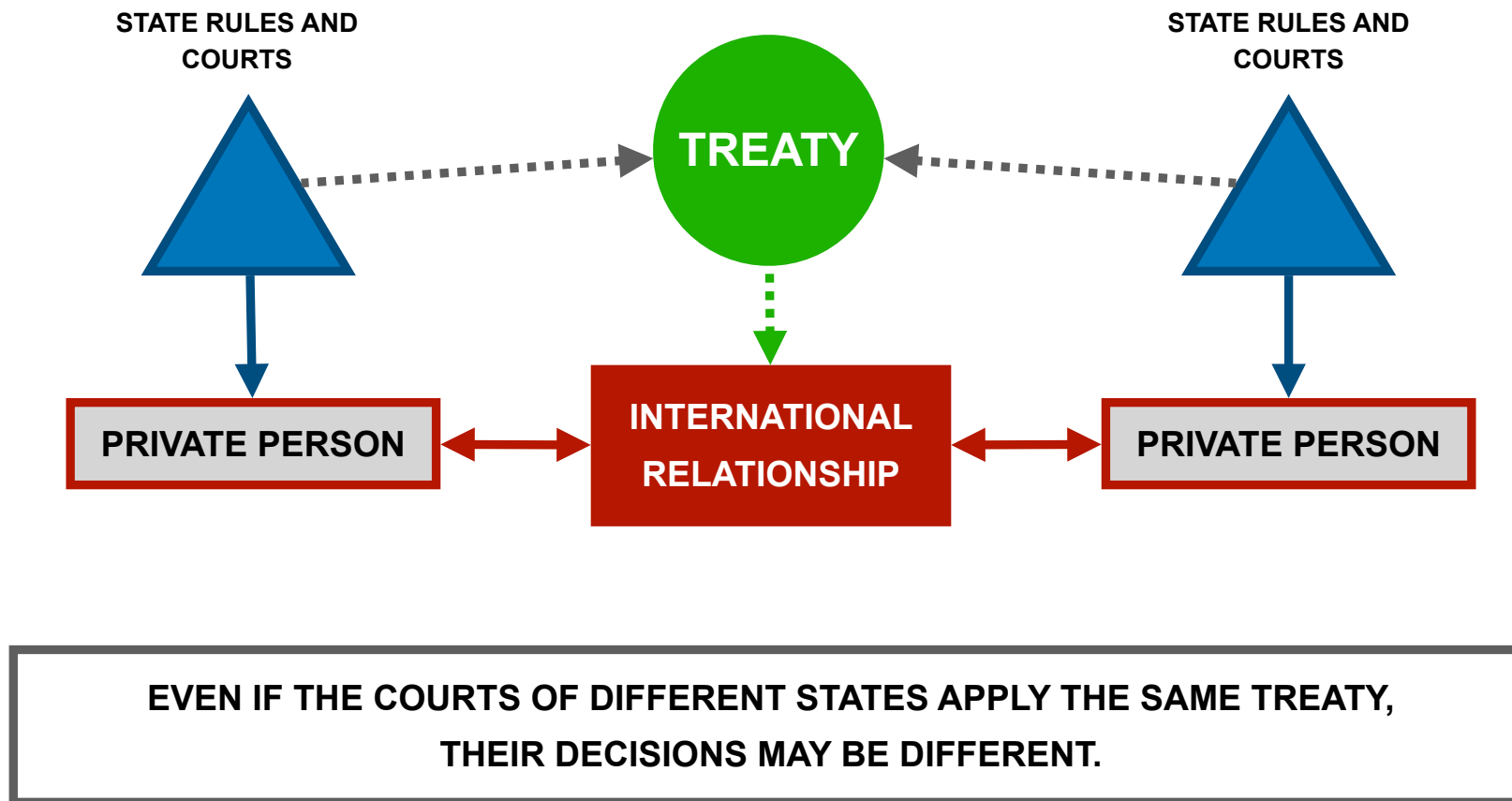
CONFLICTS OF LAWS AND JURISDICTIONS



THE RULES OF THE STATES ARE GENERALLY DIFFERENT, AT LEAST SLIGHTLY.
IF THE COURTS OF THE VARIOUS STATES CONCERNED MADE DECISIONS
CONCURRENTLY, THEY COULD BE CONTRADICTORY.

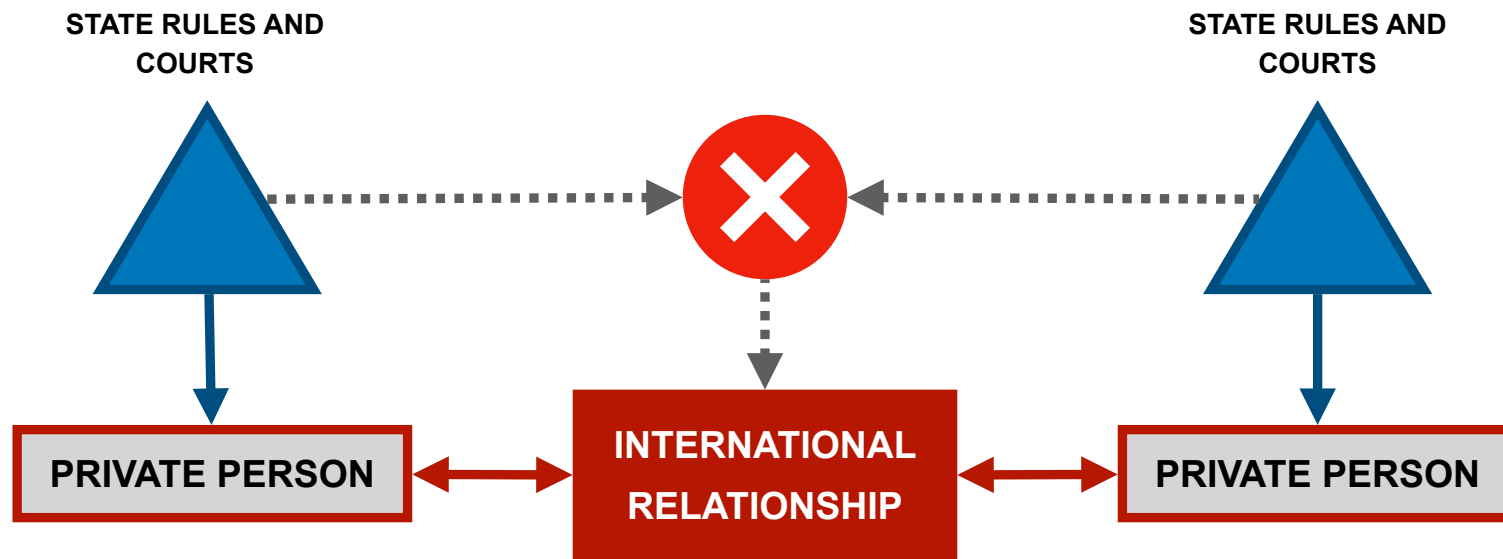
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CONFLICTS OF LAWS AND JURISDICTIONS



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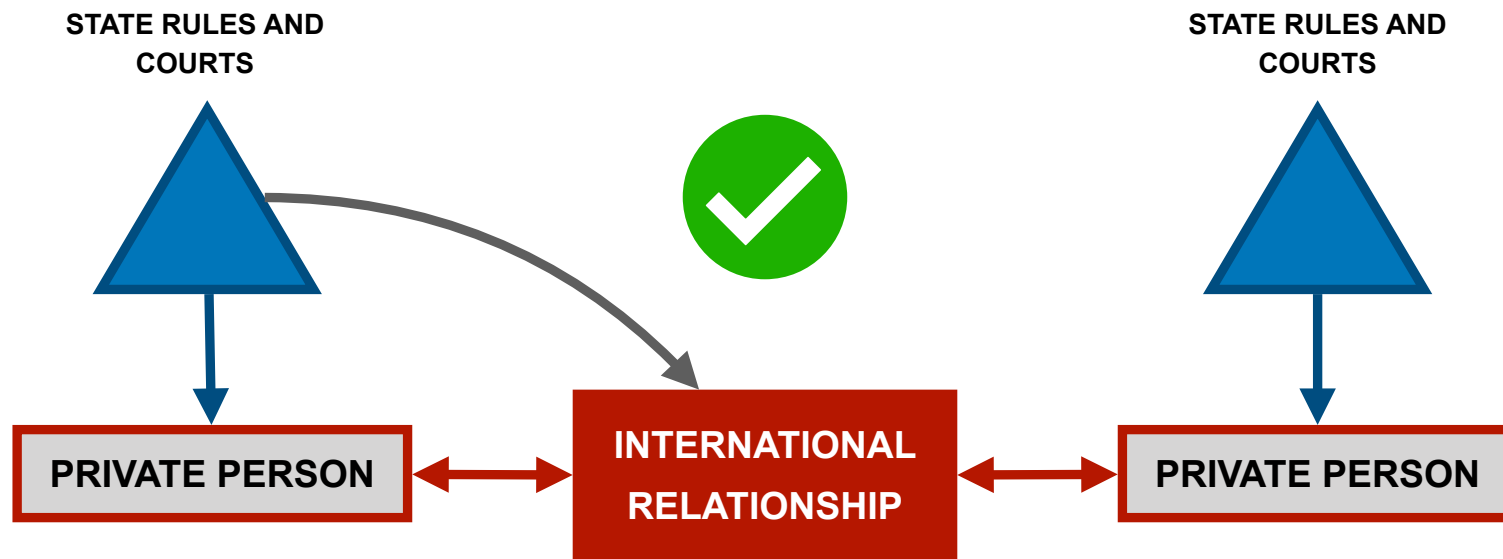
CONFLICTS OF LAWS AND JURISDICTIONS



TWO OPPOSING SITUATIONS POSE A PROBLEM. POSITIVE CONFLICT: SEVERAL COURTS RECOGNISE THEMSELVES AS COMPETENT. NEGATIVE CONFLICT: NO COURT AGREES TO ADJUDICATE THE DISPUTE.

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CONFLICTS OF LAWS AND JURISDICTIONS



IDEALLY, AN INTERNATIONAL RELATIONSHIP SHOULD BE GOVERNED BY A SINGLE LAW AND AN INTERNATIONAL LITIGATION SHOULD BE JUDGED BY A SINGLE COURT.

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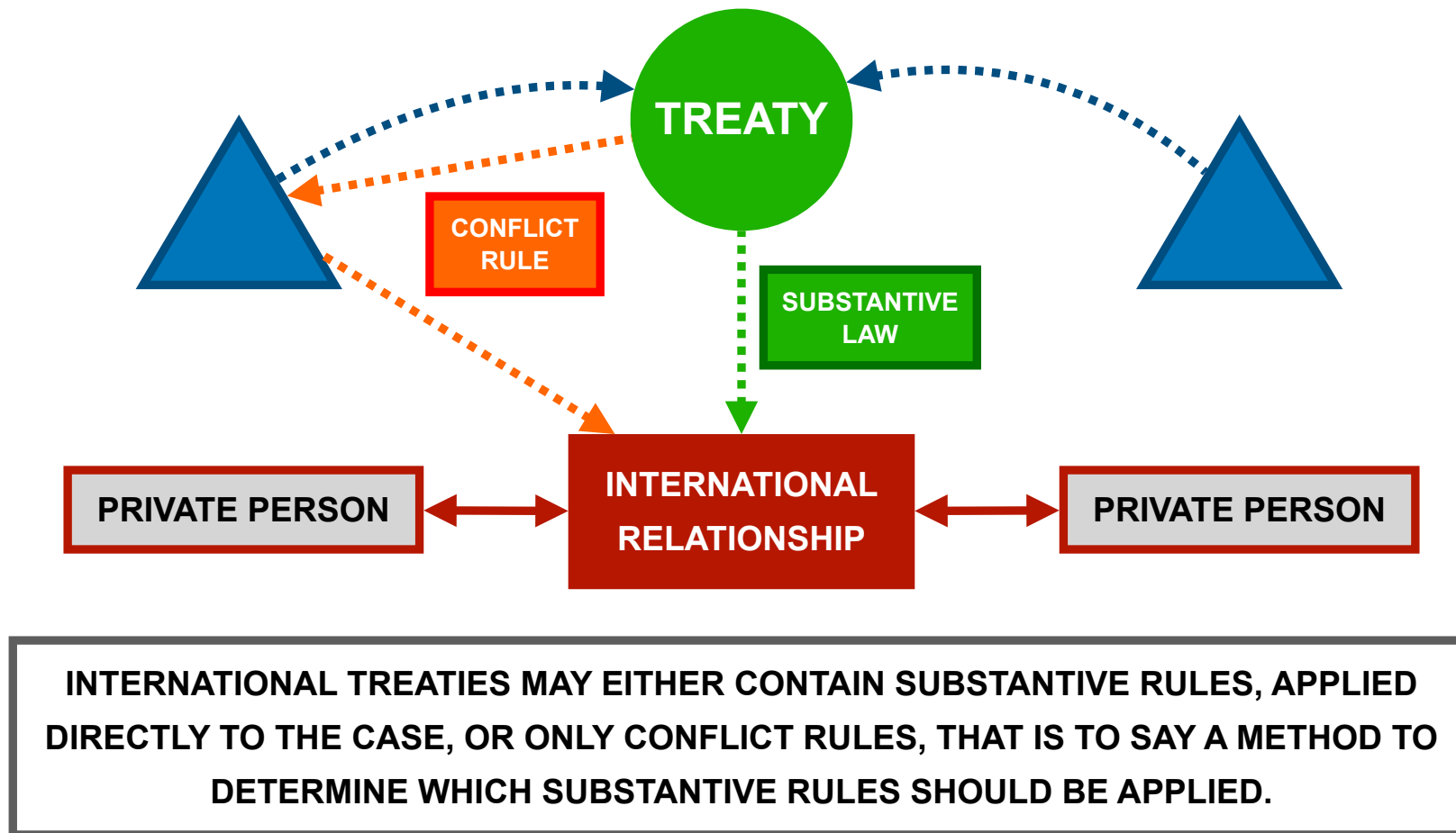
INTERNATIONAL TREATIES



INTERNATIONAL TREATIES MAY PROVIDE DISPUTE RESOLUTION MECHANISMS, LIKE MANDATORY INTERNATIONAL ARBITRATION, ALLOWING INVESTORS TO BRING ACTIONS AGAINST ANOTHER INVESTOR OR EVEN A HOST STATE, BEFORE A NEUTRAL TRIBUNAL.

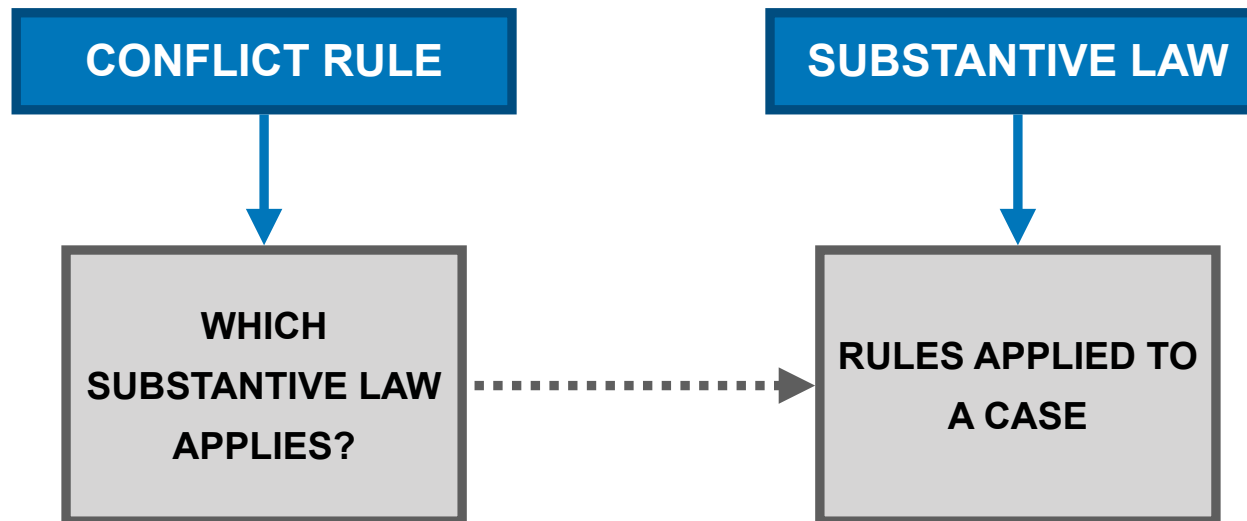
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INTERNATIONAL TREATIES



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CONFLICT RULE / SUBSTANTIVE LAW



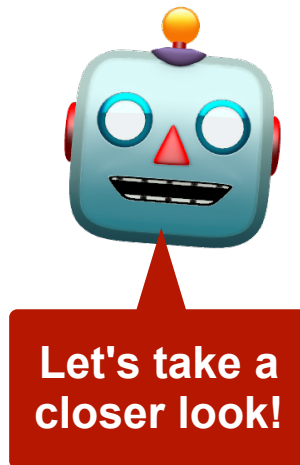
A CONFLICT RULE DETERMINES WHICH SUBSTANTIVE LAW SHOULD BE APPLIED. A CONFLICT RULE IS A METHOD.

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EXAMPLES

CONFLICT RULE

**REGULATION (EC)
no 593/2008 of the
European Parliament and
of the Council of 17 June
2008 on the law applicable
to contractual obligations
(Rome I)
+ [Link](#)**

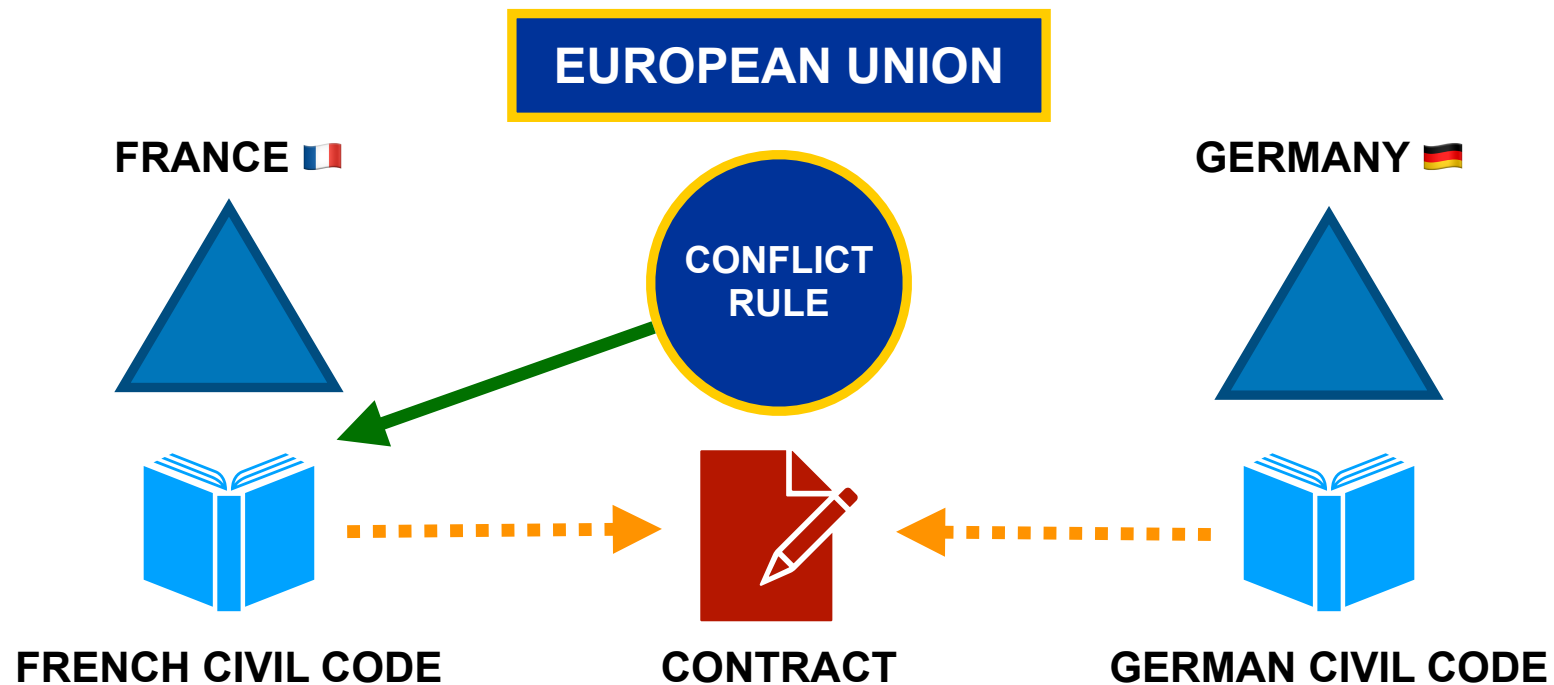


SUBSTANTIVE LAW

**UNIDROIT PRINCIPLES
OF INTERNATIONAL
COMMERCIAL
CONTRACTS (2016)
+ [Link](#)**

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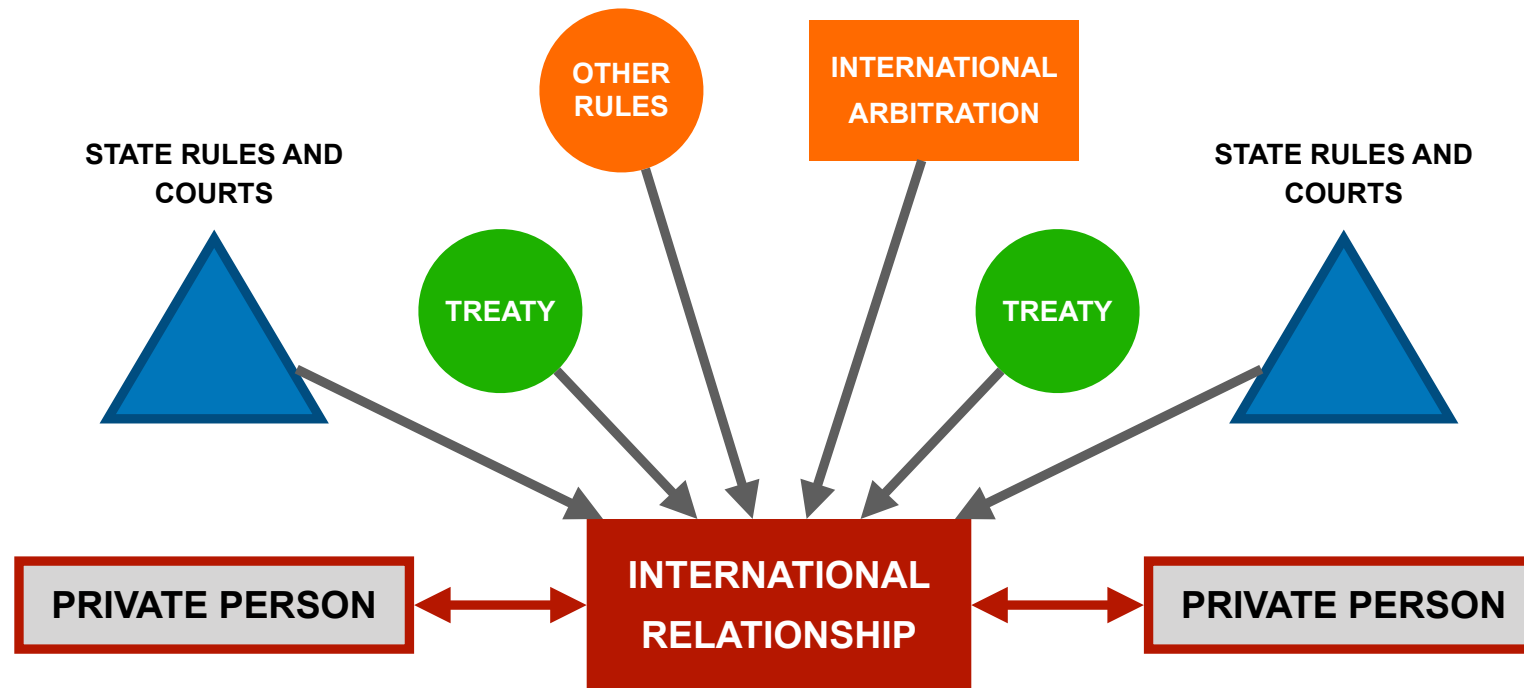
CONFLICT RULE / SUBSTANTIVE LAW



A EUROPEAN CIVIL CODE DOES NOT EXIST. IN A LITIGATION BETWEEN A FRENCH COMPANY AND A GERMAN COMPANY CONCERNING THE VALIDITY OF A CONTRACT, THE EU CONFLICT RULE DETERMINES WHICH SUBSTANTIVE LAWS SHOULD BE APPLIED: FRENCH CIVIL CODE OR GERMAN CIVIL CODE?

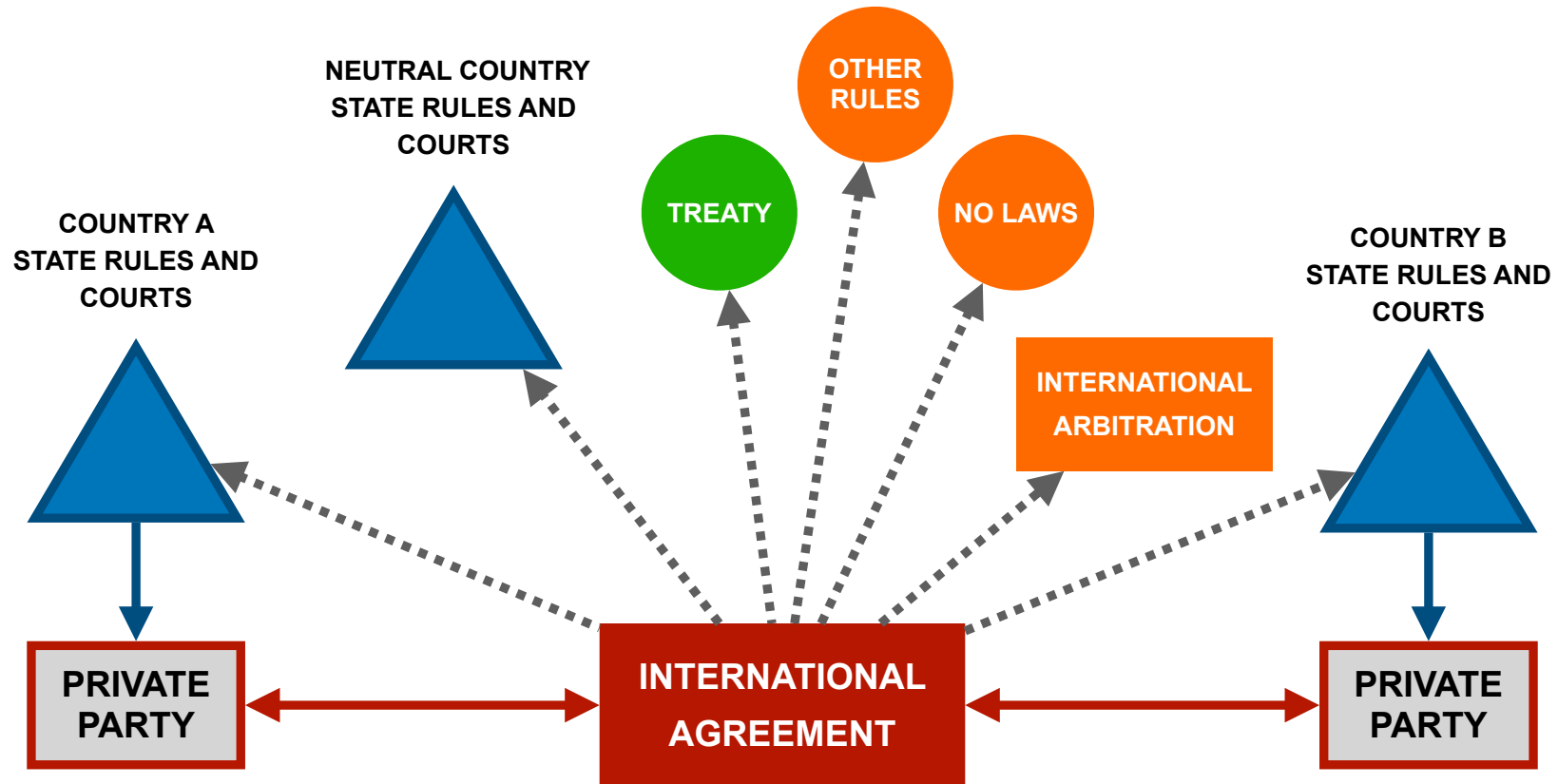
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ONE OF THE MAIN OBJECTIVES OF PRIVATE INTERNATIONAL LAW IS TO DETERMINE WHICH RULES APPLY TO AN INTERNATIONAL RELATIONSHIP AND WHICH JURISDICTION IS COMPETENT IN THE EVENT OF INTERNATIONAL LITIGATION.



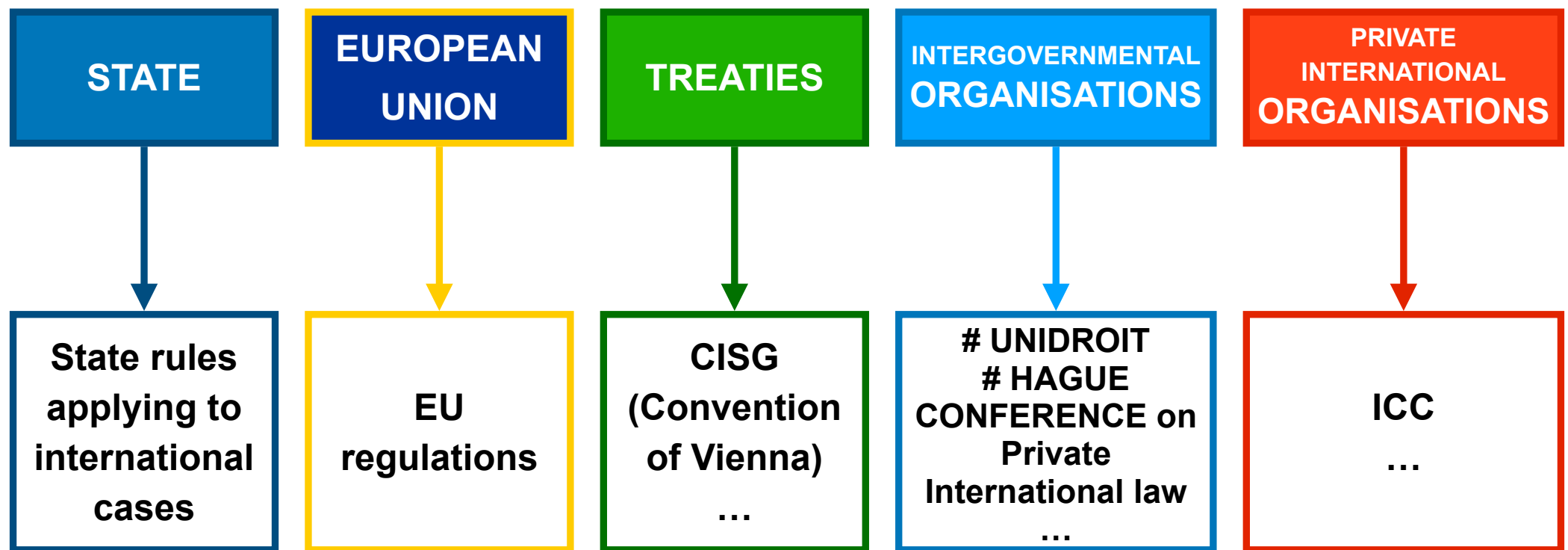
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**THE PARTIES TO AN INTERNATIONAL AGREEMENT MAY IN PRINCIPLE
CHOOSE FREELY THE LAW GOVERNING THEIR AGREEMENT AND THE
COURTS COMPETENT IN CASE OF LITIGATION.**



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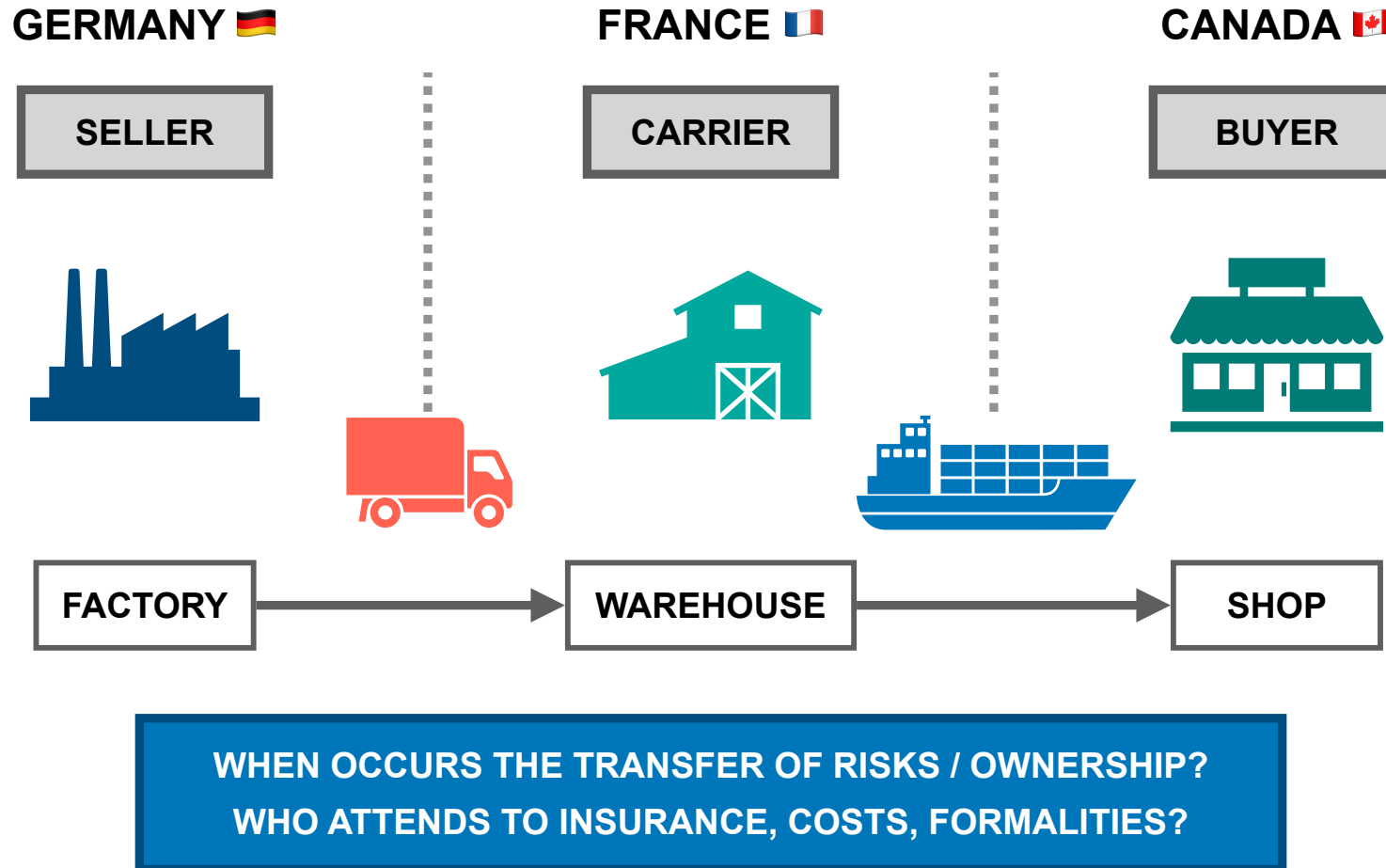
PRIVATE INTERNATIONAL LAW: LEGAL SYSTEMS



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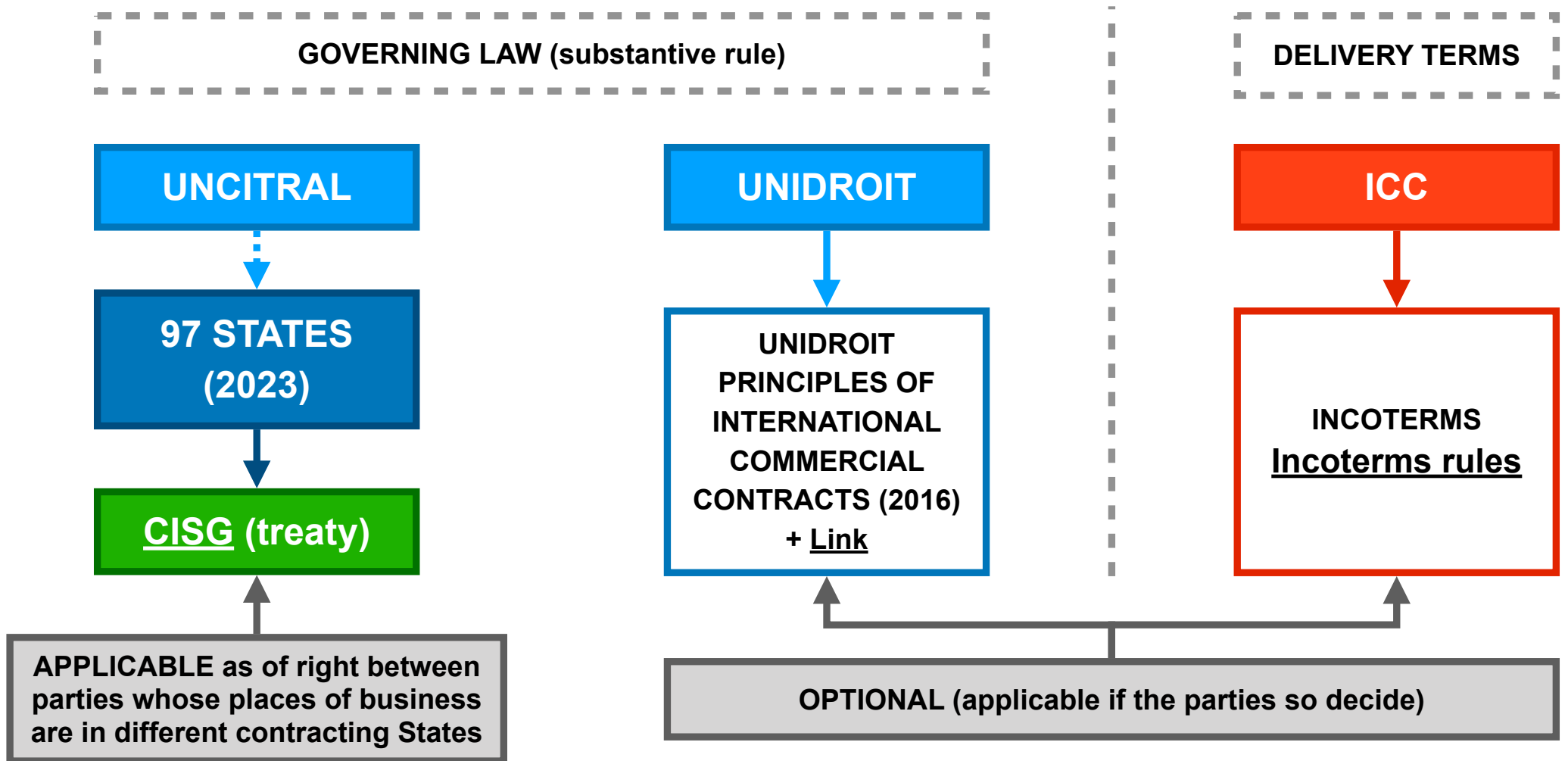
NON-EXHAUSTIVE LIST

INTERNATIONAL SALE OF GOODS



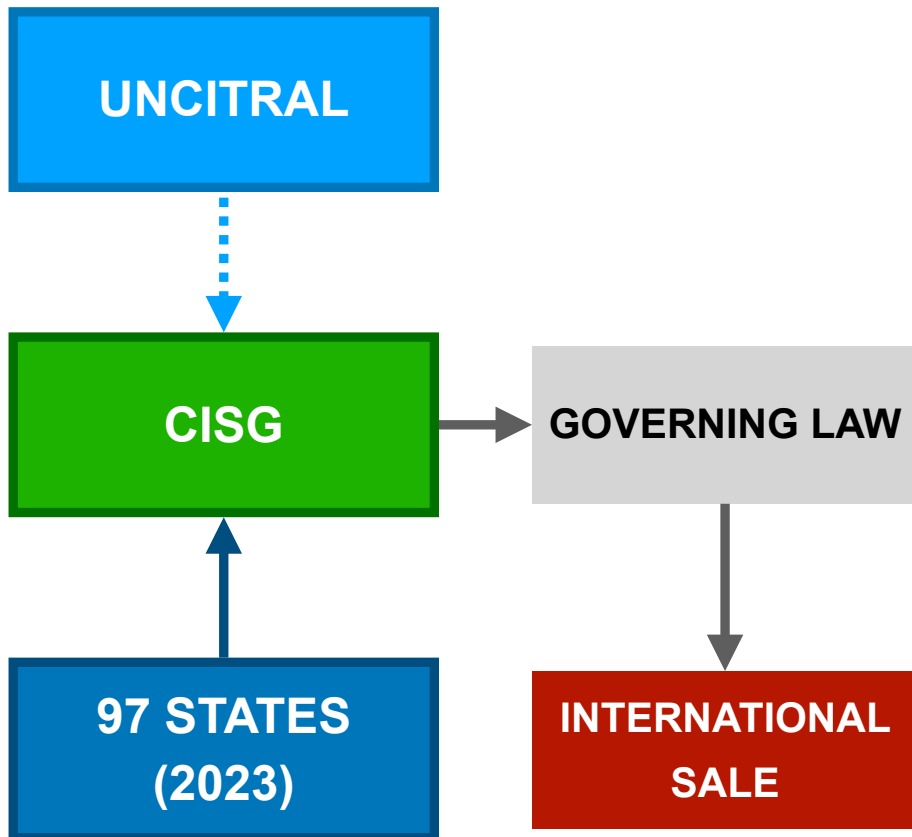
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INTERNATIONAL SALE OF GOODS



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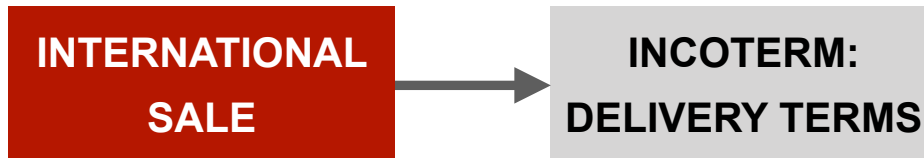
CONVENTION OF VIENNA (CISG, 1980)



- **UNCITRAL: United Nations Commission on International Trade Law.**
- **CISG: United Nations Convention on Contracts for the International Sale of Goods (signed in Vienna in 1980). Presentation**
- **This multilateral treaty between 97 States governs contracts for the international sale of goods between private businesses, excluding sales to consumers and sales of services, as well as sales of certain specified types of goods.**

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INCOTERMS



- **The Incoterms (International Commercial Terms) are defined by the ICC (International Chamber of Commerce), which is a private international organisation.**
- **The Incoterms are trade terms dealing with the delivery of goods. These private terms may be legally binding only if the parties so decide freely. Incoterms may be incorporated in contracts for the delivery of goods.**
- **Incoterms rules (ICC's website)**

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RULES FOR ANY MODE OR MODES OF TRANSPORT

EXW – Ex Works

FCA – Free Carrier

CPT – Carriage Paid to

CIP – Carriage and Insurance Paid to

DAT – Delivered at Terminal

DAP – Delivered at Place

DDP – Delivered Duty Paid

RULES FOR SEA AND INLAND

WATERWAY TRANSPORT

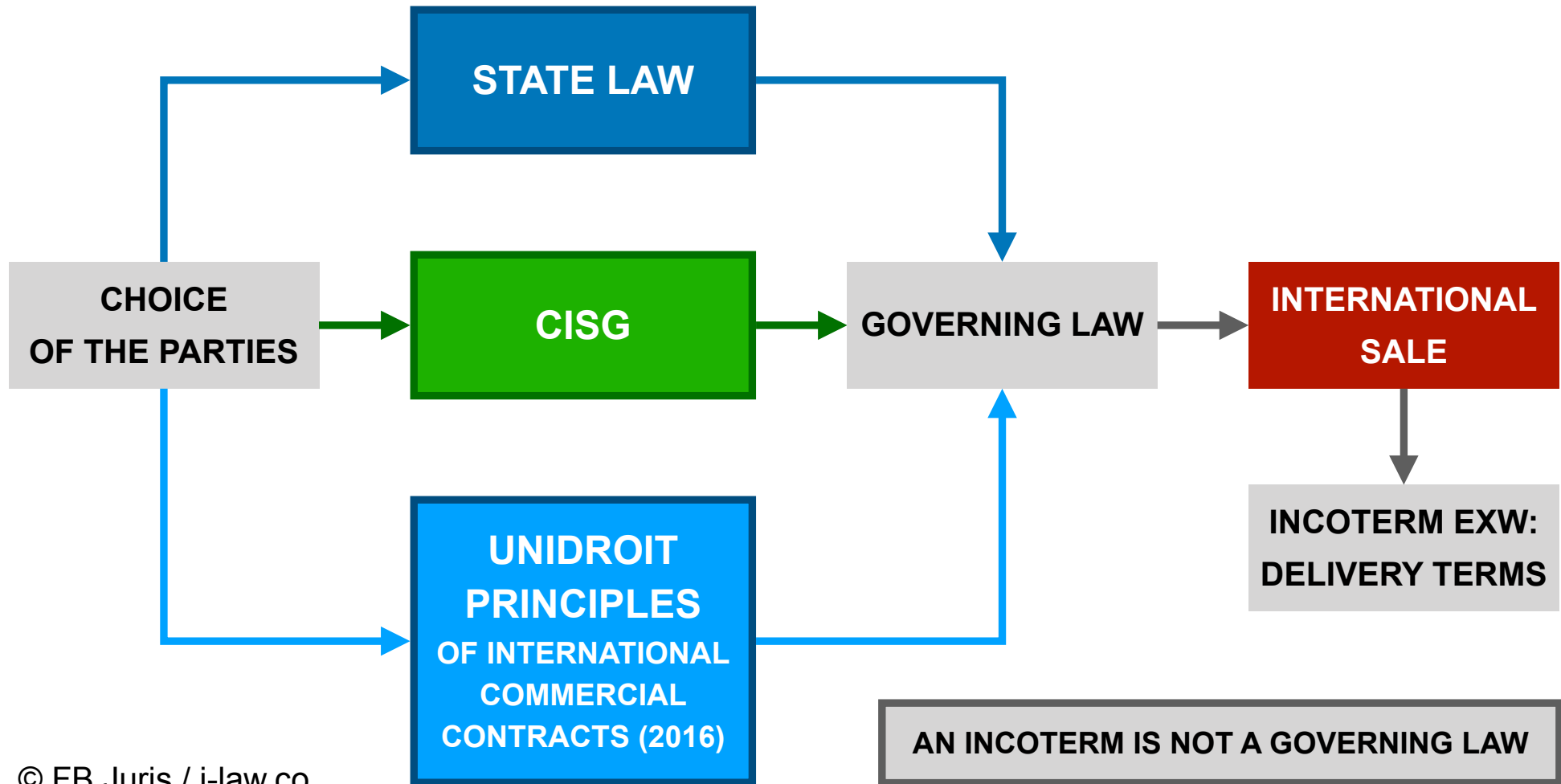
FAS – Free Alongside Ship

FOB – Free On Board

CFR – Cost and Freight

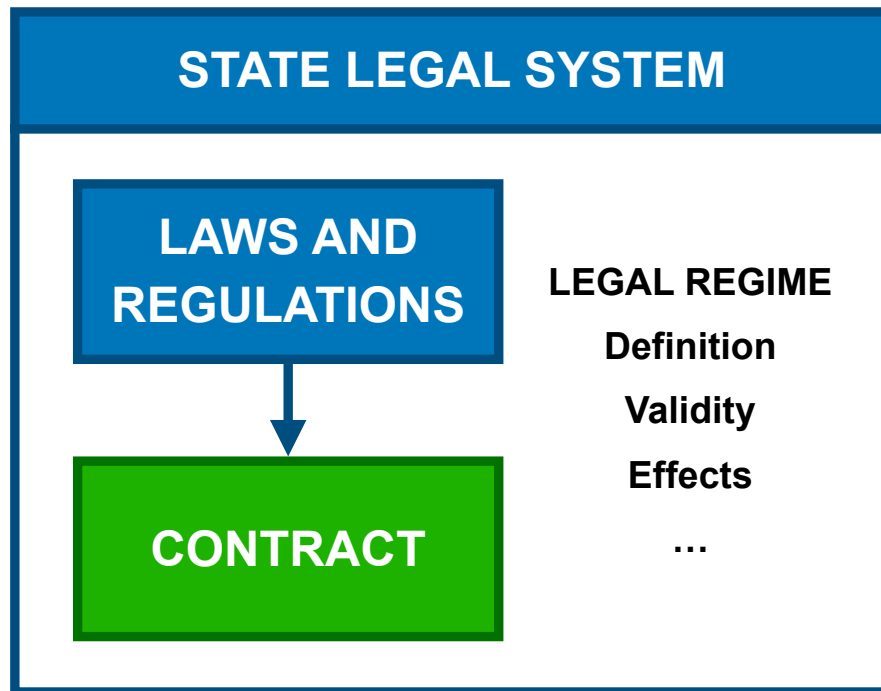
CIF – Cost, Insurance and Freight

GOVERNING LAW AND INCOTERMS



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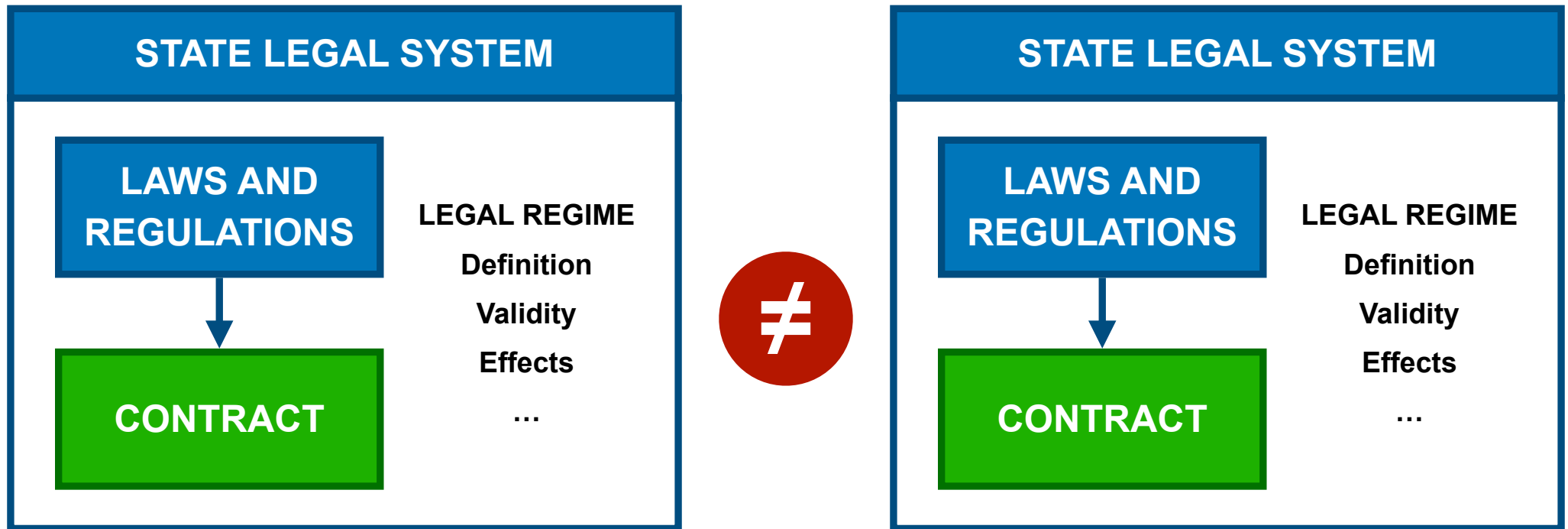
CONTRACT



A CONTRACT IS A CONCEPT EXISTING WITHIN A LEGAL SYSTEM, THAT DEFINES ITS EXISTENCE, ITS VALIDITY, ITS EFFECTS (ITS LEGAL REGIME).

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CONTRACT



THE LEGAL REGIMES OF CONTRACTS MAY VARY DEPENDING ON THE STATES.

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CONTRACT

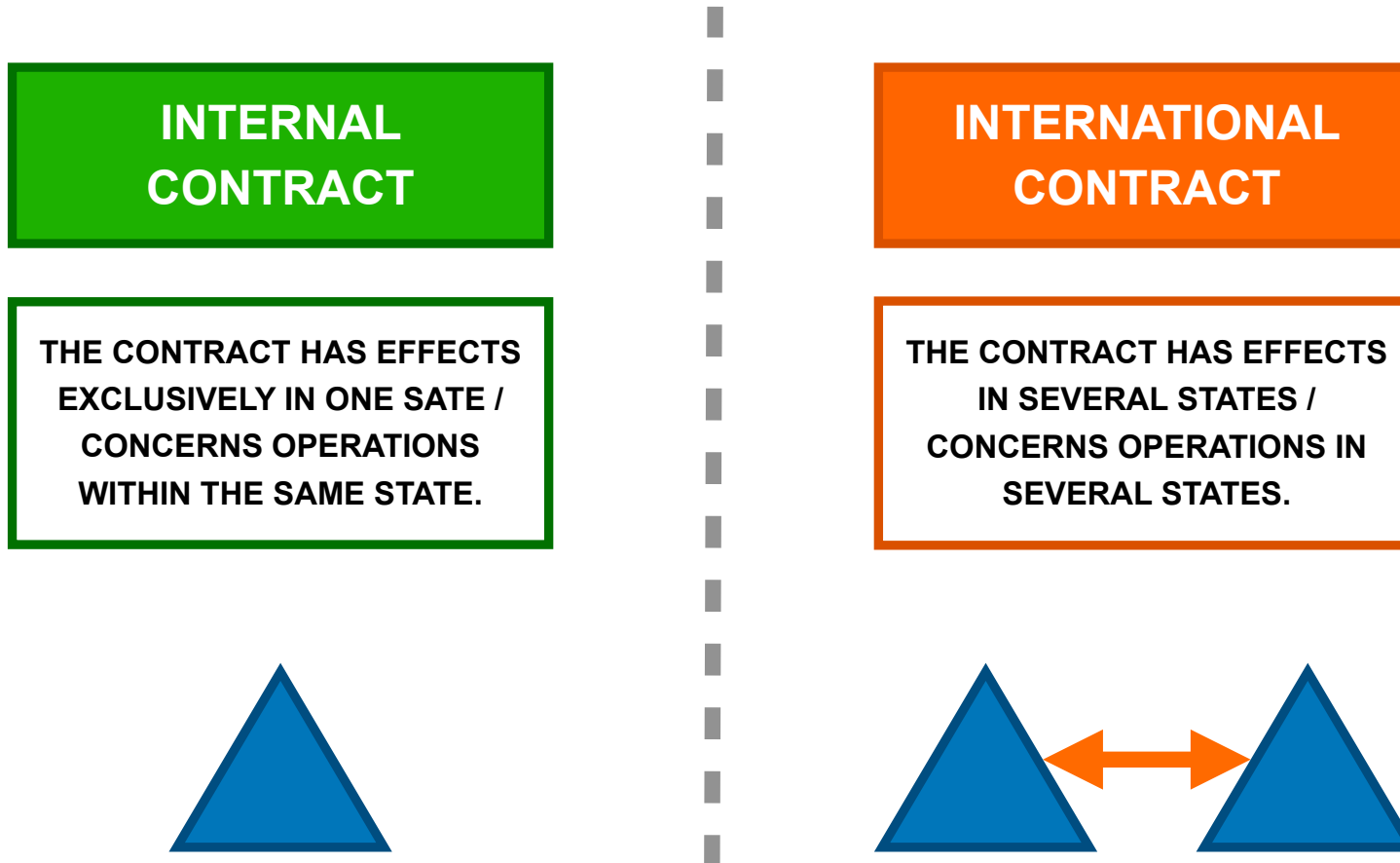
**IN GENERAL TERMS, A CONTRACT IS FORMED WHEN AT LEAST TWO
PARTIES UNDERTAKE RECIPROCAL OBLIGATIONS.
A PARTY UNDERTAKES OBLIGATIONS IN CONSIDERATION OF THE
UNDERTAKINGS OF THE OTHER PARTY.**

**THE PARTIES ARE FREE TO ENTER INTO A CONTRACT AND TO DETERMINE
ITS CONTENT, SUBJECT TO THE MANDATORY RULES FROM WHICH THEY
CANNOT DEROGATE (PUBLIC ORDER).**

**OFTEN, A SPECIFIC FORM IS NOT IMPOSED:
AN ORAL AGREEMENT IS VALID.**

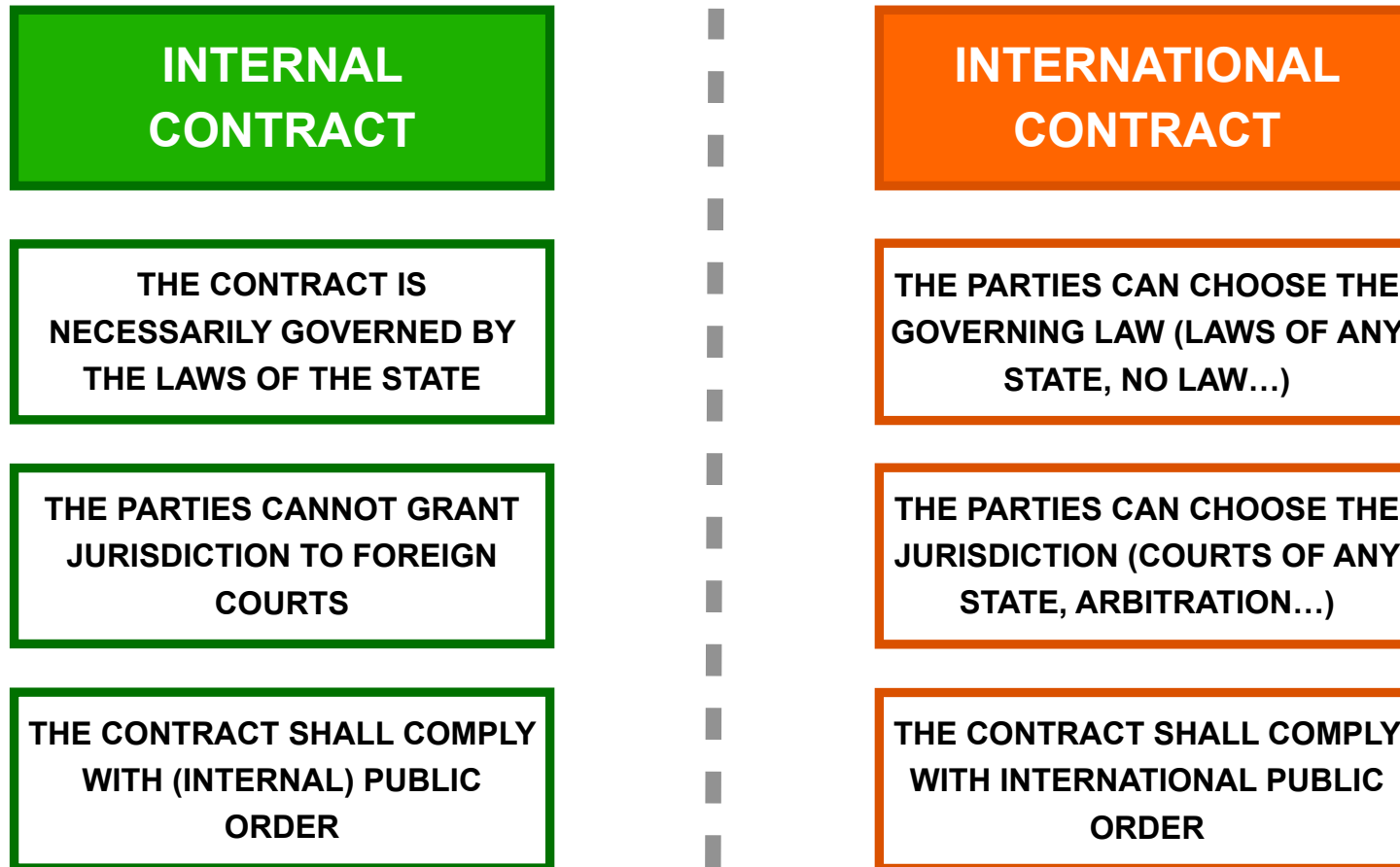
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INTERNAL / INTERNATIONAL CONTRACT



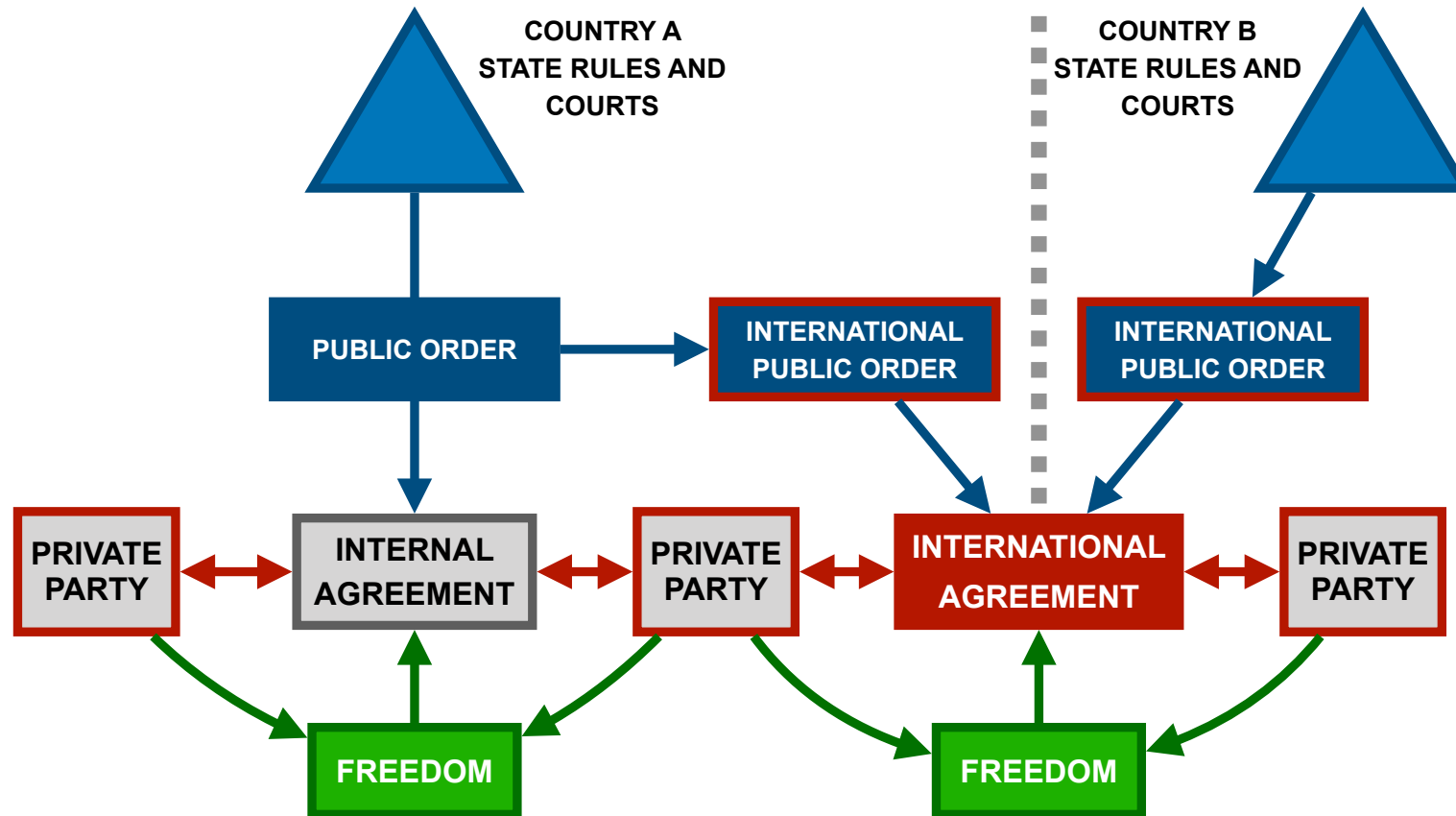
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INTERNAL / INTERNATIONAL CONTRACT



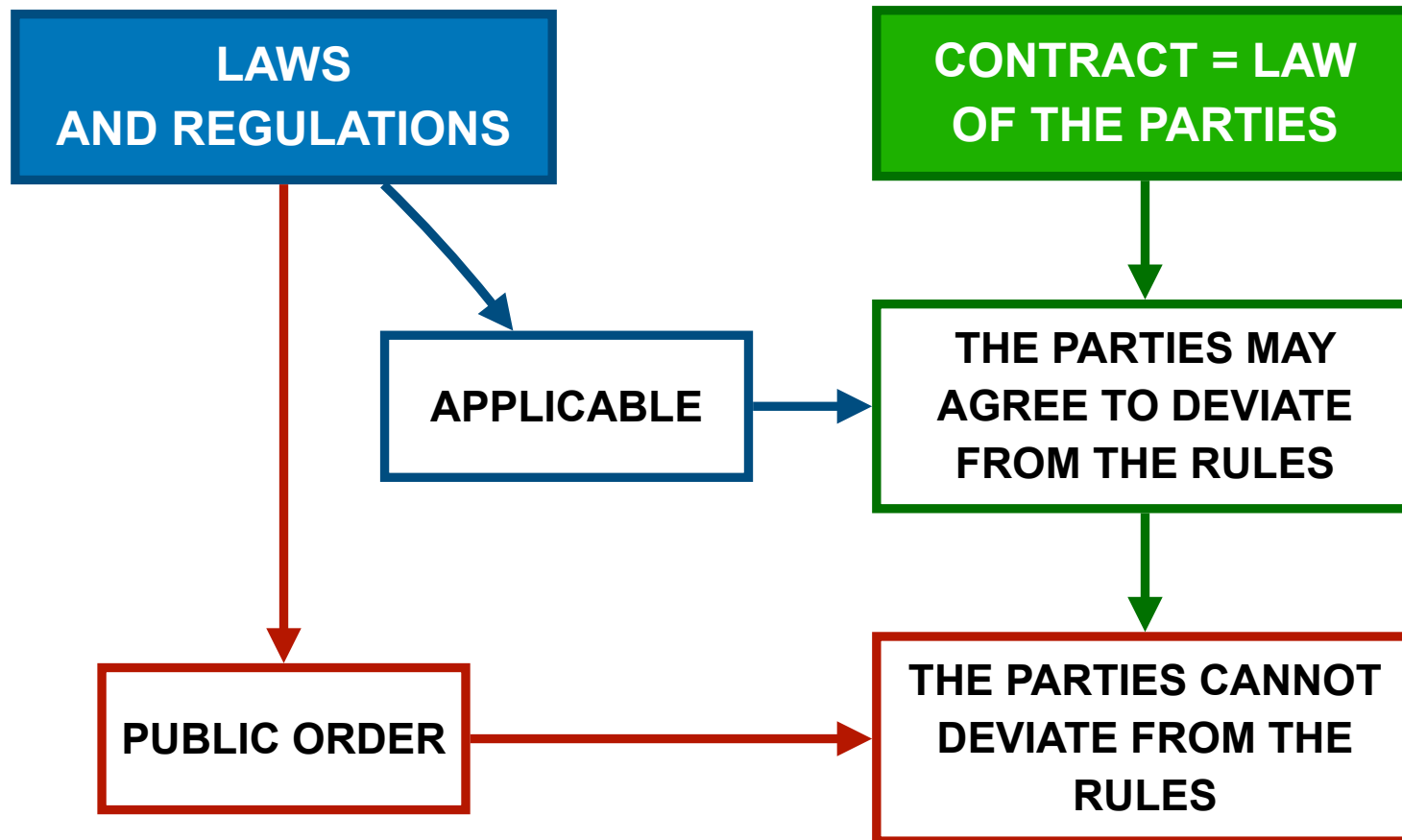
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FREEDOM vs MANDATORY RULES



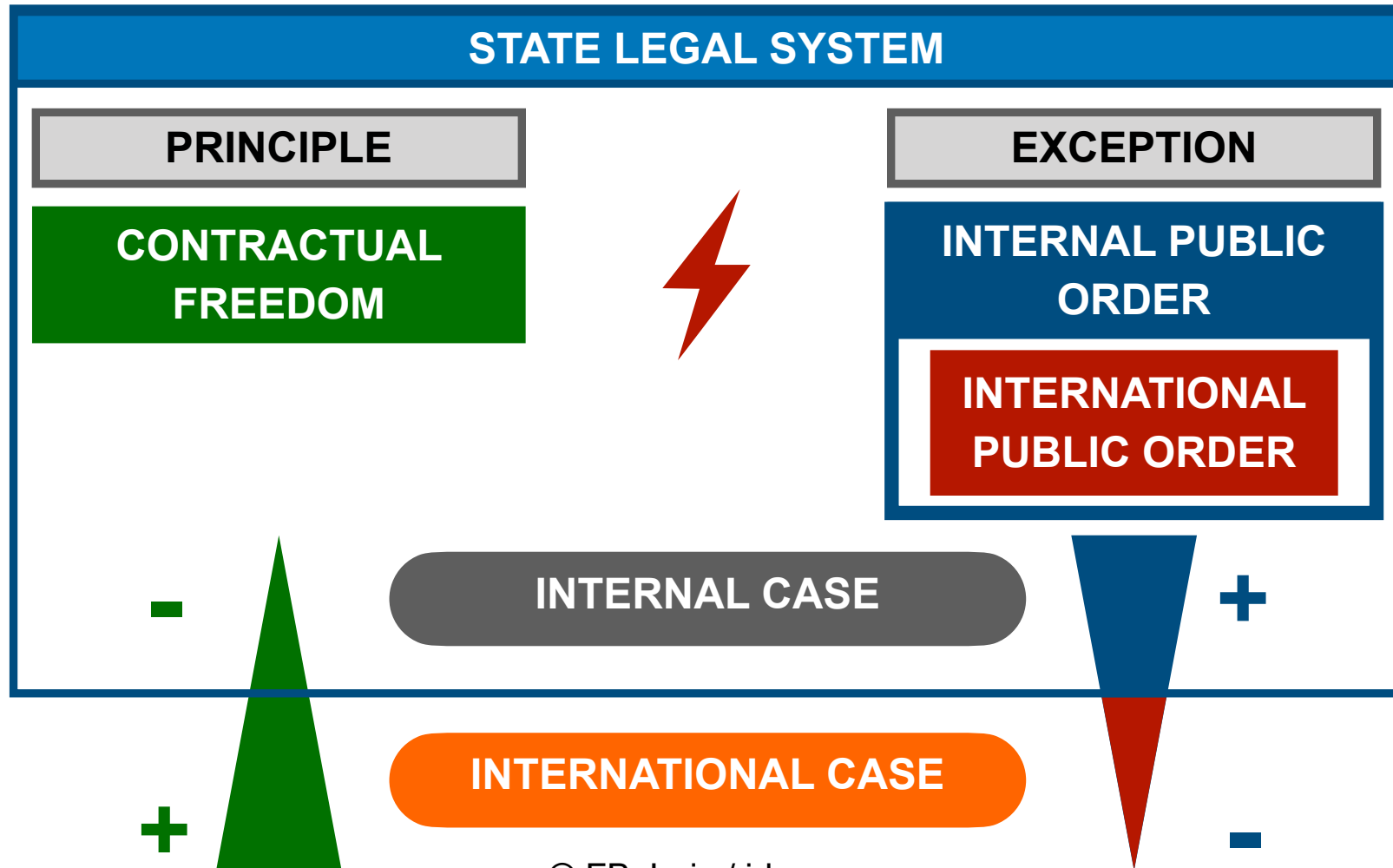
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RULES / PUBLIC ORDER



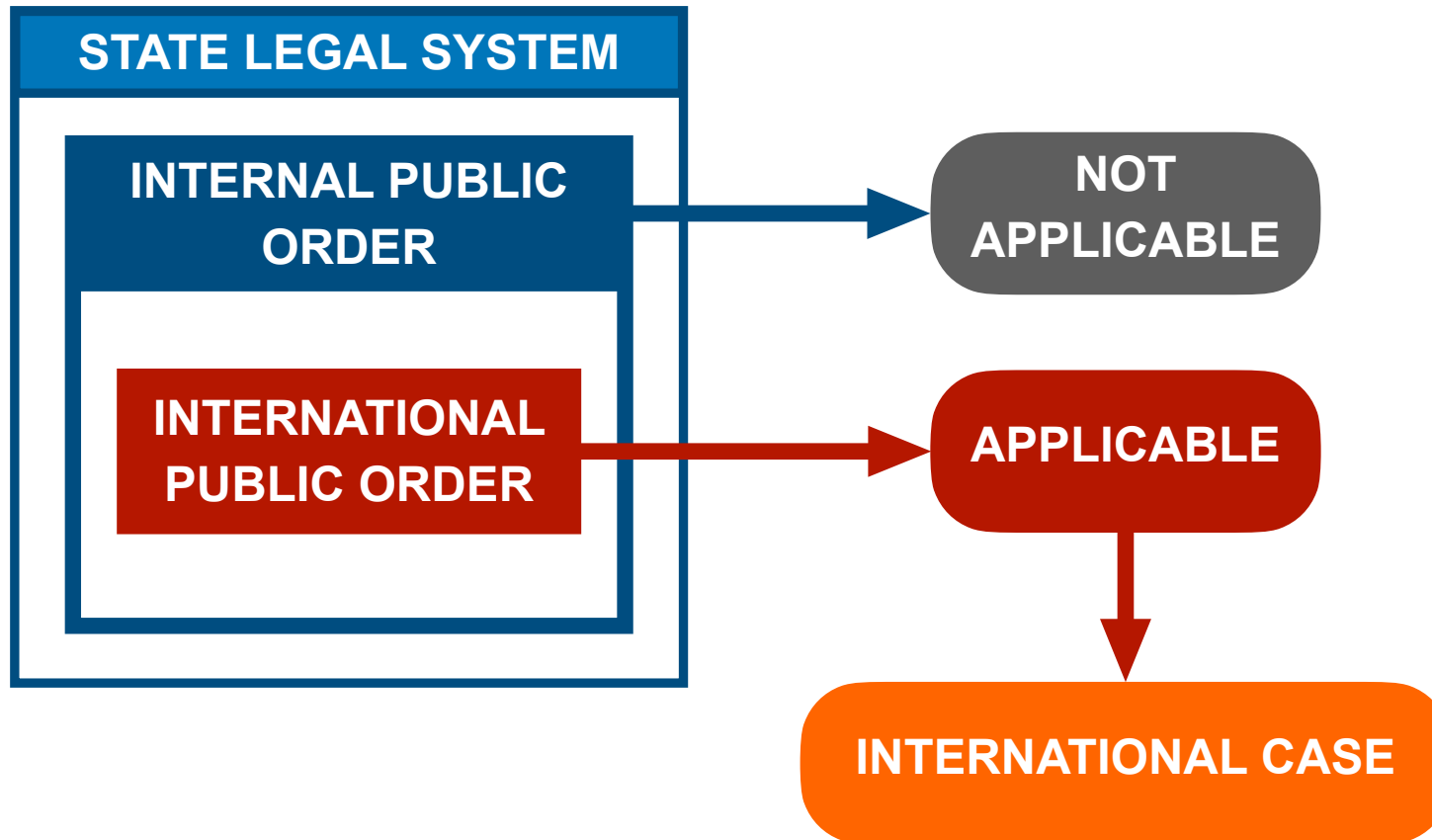
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FREEDOM VS PUBLIC ORDER



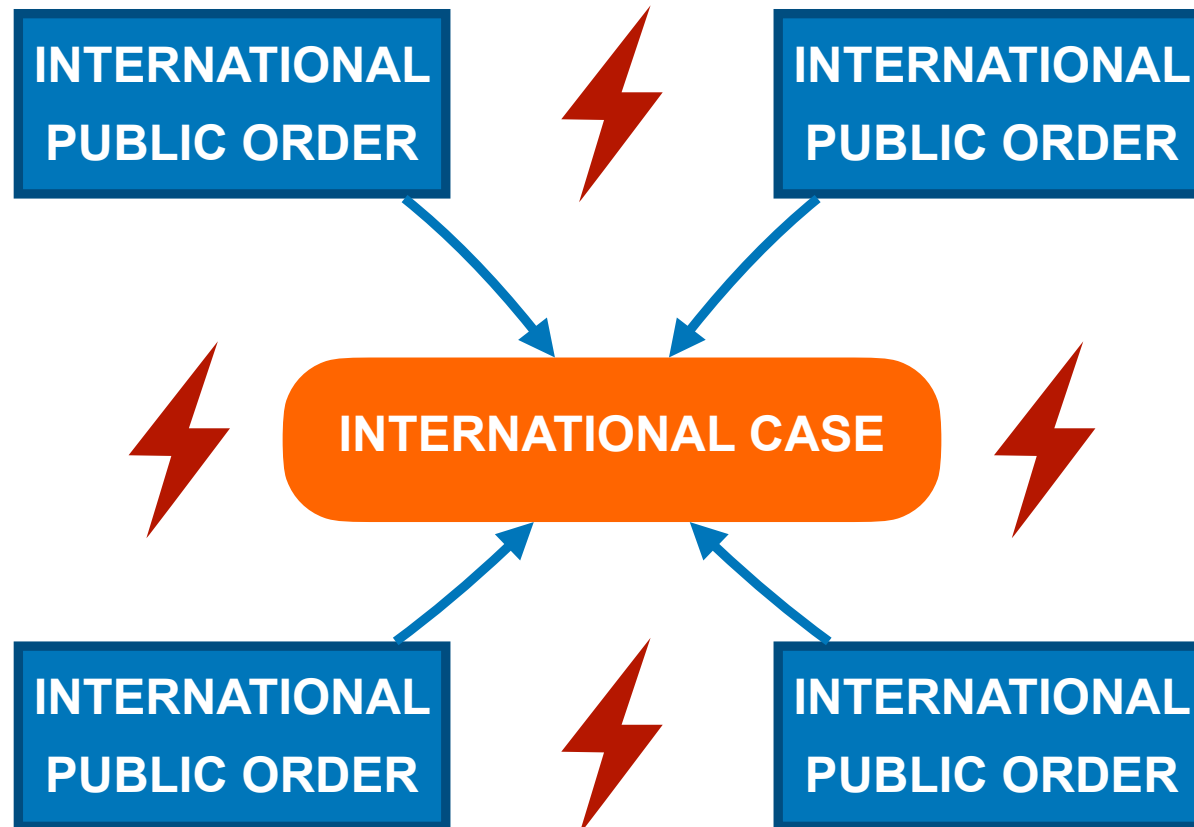
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INTERNATIONAL PUBLIC ORDER



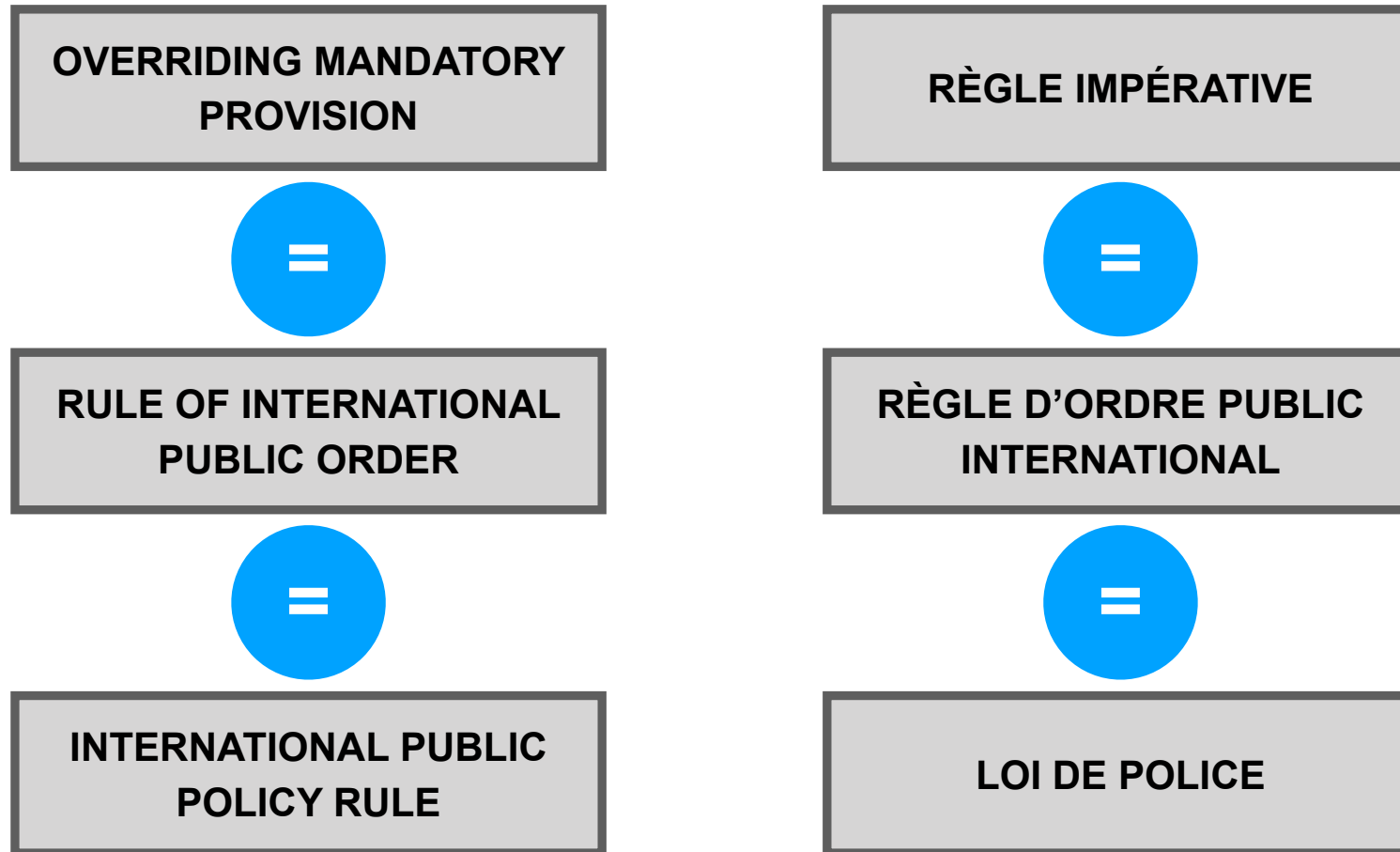
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CONFLICTS



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INTERNATIONAL PUBLIC ORDER



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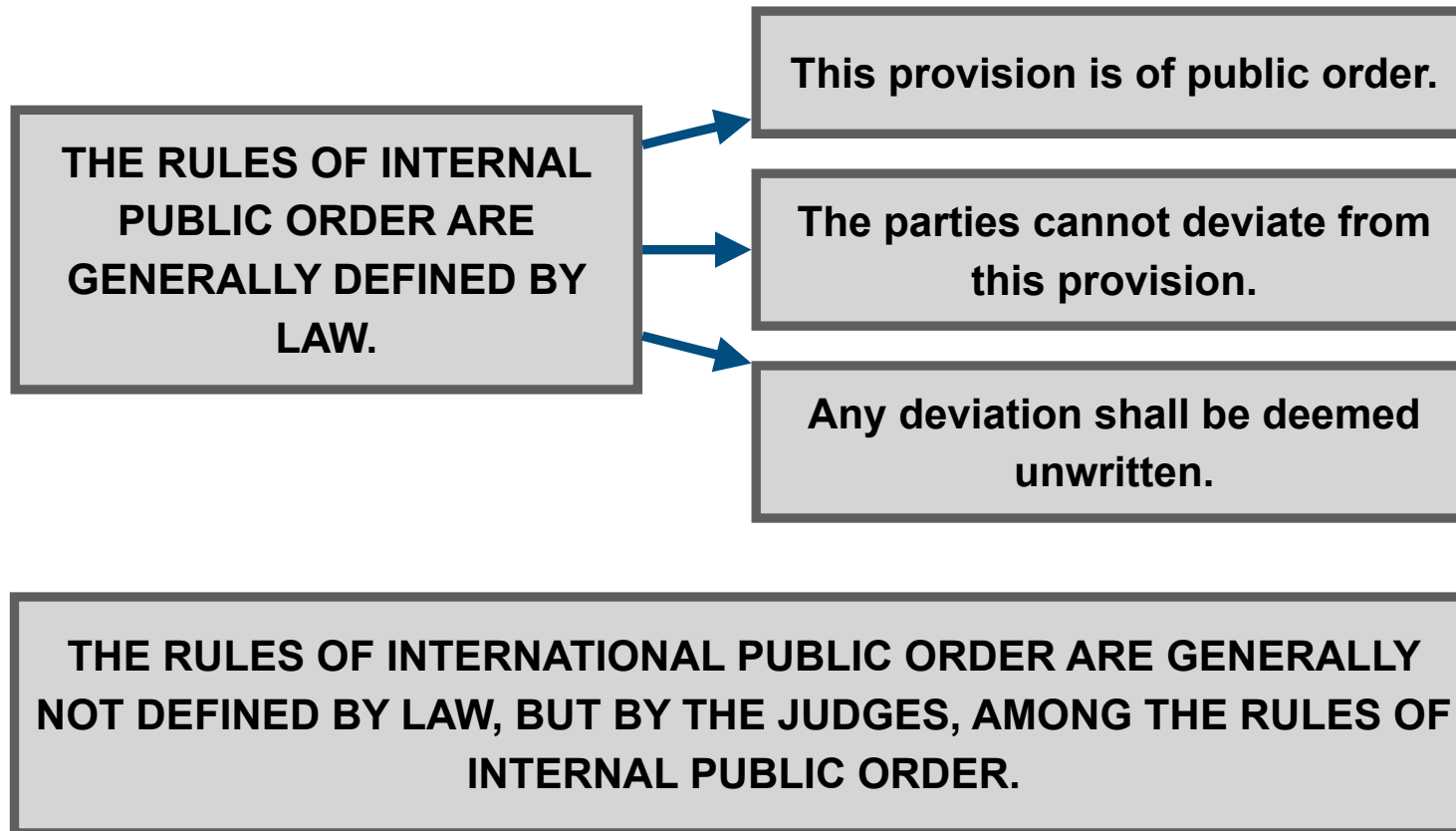
INTERNATIONAL PUBLIC ORDER

**THE EXPRESSION
"INTERNATIONAL PUBLIC
ORDER" MAY BE MISLEADING,
BECAUSE THE PUBLIC
ORDER IS NOT
INTERNATIONAL BY ITS
ORIGIN, BUT BY ITS SUBJECT,
BY ITS PURPOSE. IT IS THE
STATE RULE THAT A JUDGE
WILL APPLY IN ANY CASE,
EVEN TO AN INTERNATIONAL
LITIGATION.**

**THE RULES OF
INTERNATIONAL PUBLIC
ORDER ARE DEFINED BY
THE JUDGES. THERE IS A
POLITICAL DIMENSION.**

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INTERNATIONAL PUBLIC ORDER



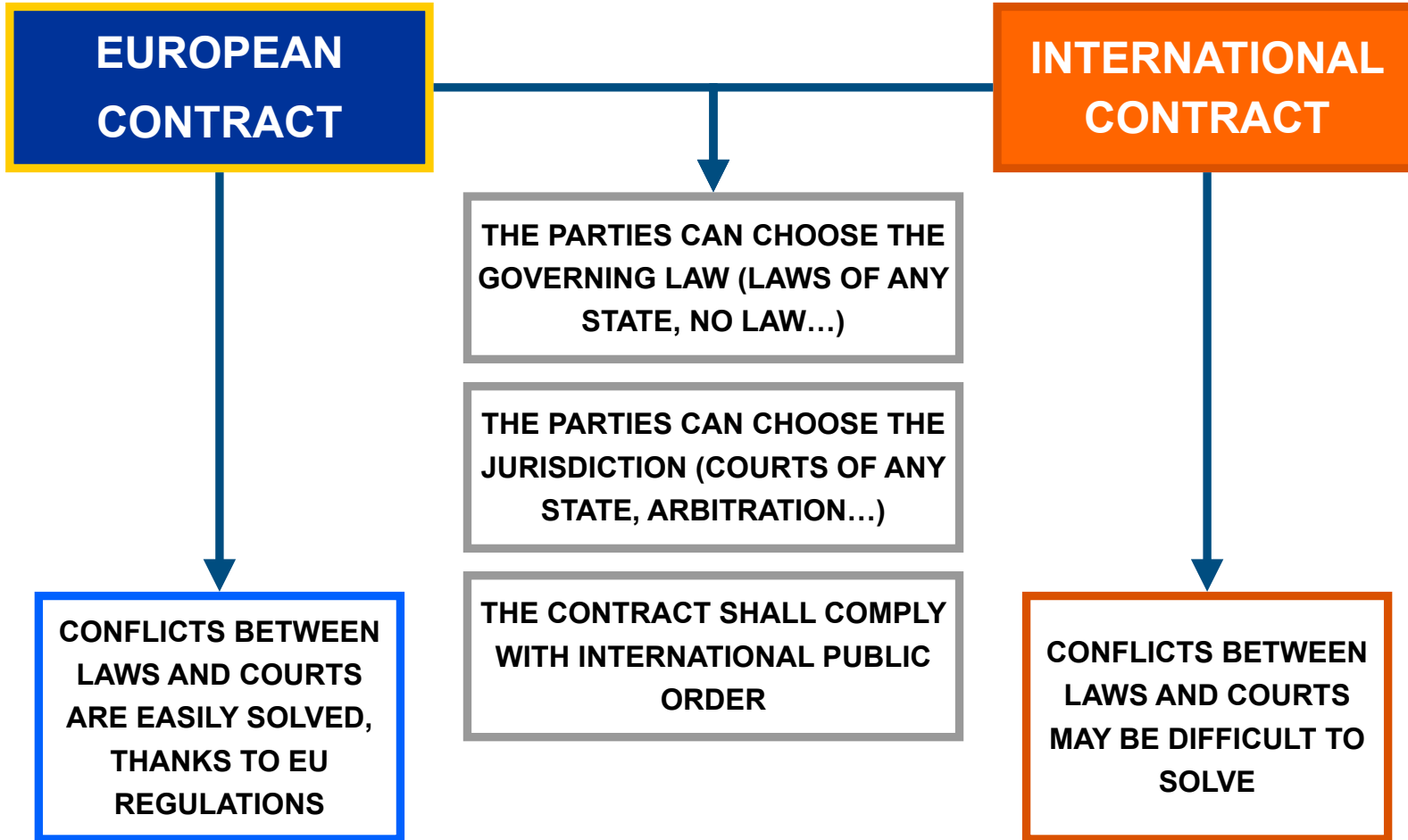
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EUROPEAN / INTERNATIONAL CONTRACT



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EUROPEAN / INTERNATIONAL CONTRACT



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EU REGULATIONS

APPLICABLE LAW

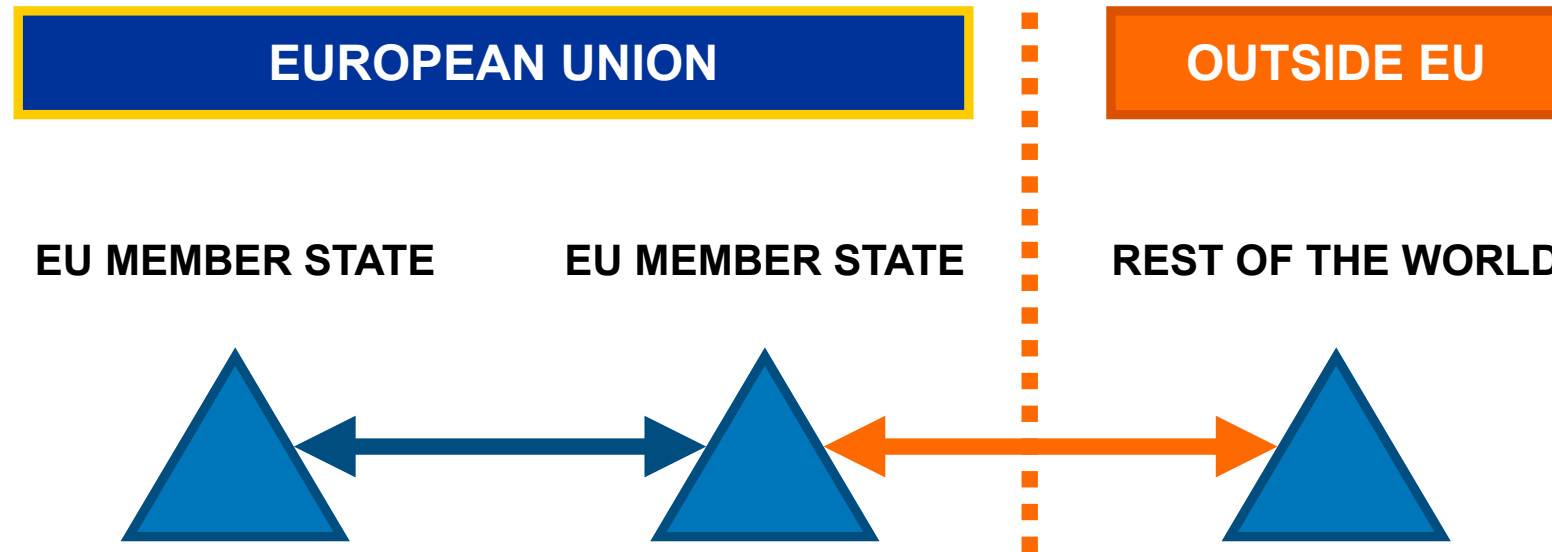
**REGULATION (EC)
No 593/2008 OF THE
EUROPEAN
PARLIAMENT AND
OF THE COUNCIL
of 17 June 2008
on the law applicable
to contractual
obligations (Rome I)
+ [Link](#)**

**REGULATION (EC)
No 864/2007 of the
European Parliament
and of the Council
of 11 July 2007
on the law applicable
to non-contractual
obligations (Rome II)
+ [Link](#)**

COMPETENT COURTS

**REGULATION (EU) No
1215/2012 OF THE
EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 12 December 2012
on jurisdiction and the
recognition and enforcement
of judgments in civil and
commercial matters
(Bruxelles I bis)
+ [Link](#)**

EUROPEAN CASE / INTERNATIONAL CASE



RELATIONS BETWEEN PRIVATE PERSONS CONCERNING DIFFERENT EU MEMBER STATES ARE GOVERNED BY MANY PRINCIPLES OF PRIVATE INTERNATIONAL LAW. HOWEVER, THE EU LEGAL SYSTEM PROVIDES MUCH GREATER LEGAL CERTAINTY THAN FOR RELATIONS INVOLVING THIRD COUNTRIES.

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INTERNATIONAL COMMERCIAL CONTRACT: LAW AND JURISDICTION



**UNCERTAINTY AND INSECURITY MAY ARISE WHERE THE PARTIES TO AN
INTERNATIONAL AGREEMENT DO NOT SPECIFY
THE APPLICABLE LAW AND THE COMPETENT COURTS.**



**PARTIES TO AN INTERNATIONAL AGREEMENT SHOULD ALWAYS SPECIFY
THE APPLICABLE LAW AND THE COMPETENT COURTS.
THEY HAVE GREAT FREEDOM TO DO SO.**

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INTERNATIONAL COMMERCIAL CONTRACT: LAW AND JURISDICTION

**IN PRACTICE, INTERNATIONAL CONTRACTS ARE OFTEN GOVERNED BY THE
LAW OF THE STATE OF WHICH ONE OF THE PARTIES IS A NATIONAL (OR
WHERE ONE OF THE PARTIES HAS ITS REGISTERED OFFICE) AND SUBJECT
TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THAT STATE.**

**IF NEUTRALITY IS DESIRED, A SIMPLE AND SECURE SOLUTION CONSISTS OF
SUBJECTING THE INTERNATIONAL CONTRACT TO THE UNIDROIT PRINCIPLES
OF CONTRACTS AND PROVIDING FOR ARBITRATION ACCORDING TO THE
RULES OF THE ICC.**

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INTERNATIONAL COMMERCIAL CONTRACT: LAW AND JURISDICTION

**AN INTERNATIONAL CONTRACT MAY BE
GOVERNED BY:**

- THE STATE LAW OF ONE PARTY
- A NEUTRAL STATE LAW
- AN INTERNATIONAL CONVENTION (CISG)
- AN OPTIONAL SUBSTANTIVE RULE
(UNIDROIT PRINCIPLES OF CONTRACTS)
- ITS OWN TERMS (NO LAWS)
- LEX MERCATORIA



**AN INTERNATIONAL CONTRACT
CANNOT BE GOVERNED BY:**

- INTERNATIONAL LAW
- EU LAW
- A CONFLICT RULE
- A FREE TRADE AGREEMENT
- INCOTERMS



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INTERNATIONAL COMMERCIAL CONTRACT:

CHECK LIST - RED FLAGS

- THE CONTRACT SHOULD SPECIFY THE GOVERNING LAW AND THE COURTS HAVING (IDEALLY EXCLUSIVE) JURISDICTION IN CASE OF LITIGATION.
- THE MAIN TERMS OF THE CONTRACT SHOULD BE CLEARLY DEFINED (CHARACTERISTICS OF THE GOODS OR SERVICES, LICENSE SCOPE...).
- THE DURATION OF THE CONTRACT AND THE DEADLINES FOR EXECUTION MUST BE PRECISELY DEFINED.

- FOR A CONTRACT FOR THE SALE OF GOODS, THE DELIVERY TIMES AND TERMS SHOULD BE CLEARLY DEFINED (IDEALLY THE CONTRACT SHOULD SPECIFY THE APPLICABLE INCOTERM).
- THE IDENTITY AND SITUATION OF THE OTHER PARTY MUST BE VERIFIED. THE OTHER PARTY MUST NOT BE IN RECEIVERSHIP OR IN A SITUATION OF CESSATION OF PAYMENTS.

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INTERNATIONAL COMMERCIAL CONTRACT:

CHECK LIST - RED FLAGS

- IF YOU SELL GOODS WITH A SUPPLIER CREDIT, THE CONTRACT SHOULD STIPULATE A RETENTION OF TITLE. DEPENDING ON THE CASE, OTHER GUARANTEES SHOULD BE CONSIDERED (BANK GUARANTEE ON FIRST DEMAND, ETC.)
- PAYMENT TERMS MUST BE REASONABLE AND COMPLIANT WITH IMPERATIVE RULES.
- IF APPLICABLE, THE CONTRACT SHOULD LIMIT THE RISK OF EXCHANGE RATE FLUCTUATIONS.

- IF APPLICABLE, THE CONTRACT SHOULD STIPULATE AN INDEXATION AND/OR PRICE REVISION CLAUSE.
- THE INDEMNIFICATION CLAUSE SHOULD BE CHECKED (WITH DIFFERENT CONCERNS DEPENDING ON WHETHER YOU'RE SELLING OR BUYING).
- THE ISSUE OF COMPENSATION AT THE END OF THE CONTRACT MUST BE VERIFIED.
- THE INSURANCE SHOULD COVER THE ACTIVITIES STIPULATED BY THE CONTRACT.

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ENGLISH-FRENCH VOCABULARY

Agreement / contract: accord / contrat.

Civil code: code civil.

Conflict rule: règle de conflit.

Conflict of laws: conflit de lois.

Conflict of jurisdictions: conflit de juridictions.

Foreign law: droit étranger.

Govern: régir.

Governing law: droit applicable.

Internal case: affaire interne.

International arbitration: arbitrage international.

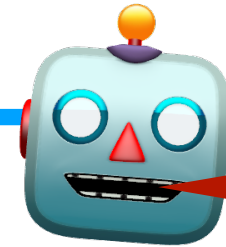
International case: affaire internationale.

Judge: juge.

Litigation: litige, contentieux.

Substantive rule: règle de fond.

QUIZZ



Let's play!

Right or wrong?

- A** - International business law is an integrated legal system, controlled by transnational courts.
- B** - International public order does not refer to rules applying beyond the States, but to the rules that the judges of a given State will always apply, even to international cases.

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QUIZZ

Right or wrong?

- A** - Conflicts of laws and jurisdictions may be quite easily solved in the European Union, thanks to conflicts rules that are mandatory within the European Union.
- B** - European Union law comprises both conflict rules and substantive rules.
- C** - A contract may be governed by European Union law, as a substantive rule.
- D** - National laws may be applied to international cases.

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