
FB JURIS LAW FIRM



TRAINING: PRACTICING INTERNATIONAL BUSINESS CONTRACTS

18 October 2023



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- Professor of Private International Law (courses taught in English at IMT-BS and EMBA-BS).
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- Graduate of Sciences Po Paris (major in Finance and Corporate Strategy). DEA (Master 2) in 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:

i-law.co/international-business-law



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INTERNATIONAL BUSINESS AGREEMENT

**Great freedom but possibly great uncertainty
if the parties do not define precisely
the governing law and the competent courts.**

OBJECTIVES

- # Define the international contract.**
- # Apply the criteria to qualify a contract as international.**
- # Know the legal regime of the international contract.**
- # Remember to define the governing law and the competent courts.**

SUMMARY

- # Several criteria can be used to identify an international contract.**
 - # The international agreement has a specific legal regime.**
- # The international contract is characterised by a very high degree of contractual freedom.**

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What is an international business agreement?

Definition

Criteria

Legal regime

Practical cases - Identifying international contracts.

QUESTIONS

What is the definition of a contract?

What is an international contract?

What are the criteria of the international contract?

What are the specificities of the international contract?

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DEFINITION OF THE CONTRACT

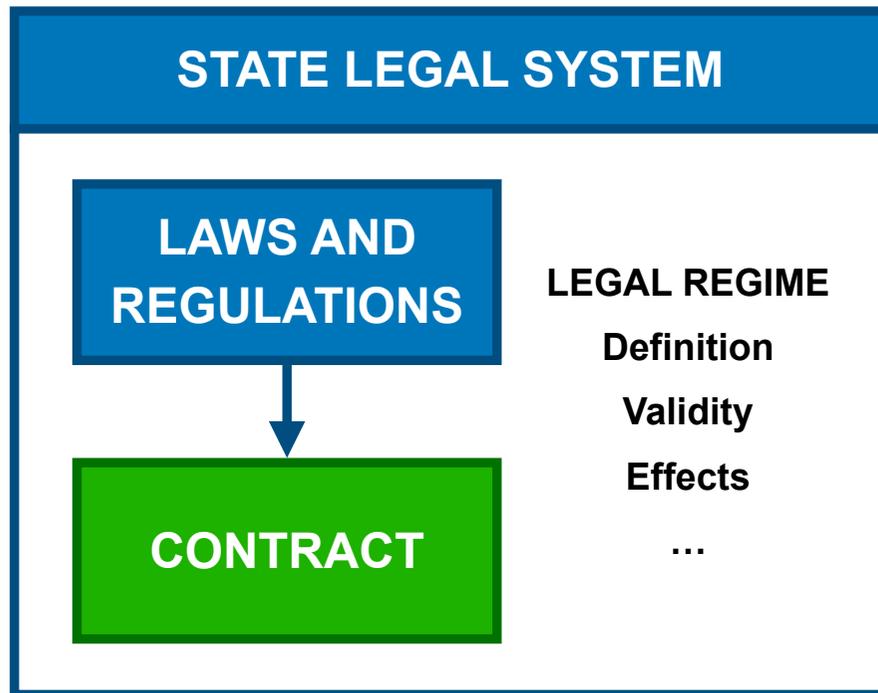
IN GENERAL TERMS, A CONTRACT IS FORMED WHEN AT LEAST TWO PARTIES UNDERTAKE RECIPROCAL OBLIGATIONS. A PARTY UNDERTAKES OBLIGATIONS IN CONSIDERATION OF THE UNDERTAKINGS OF THE OTHER PARTY.

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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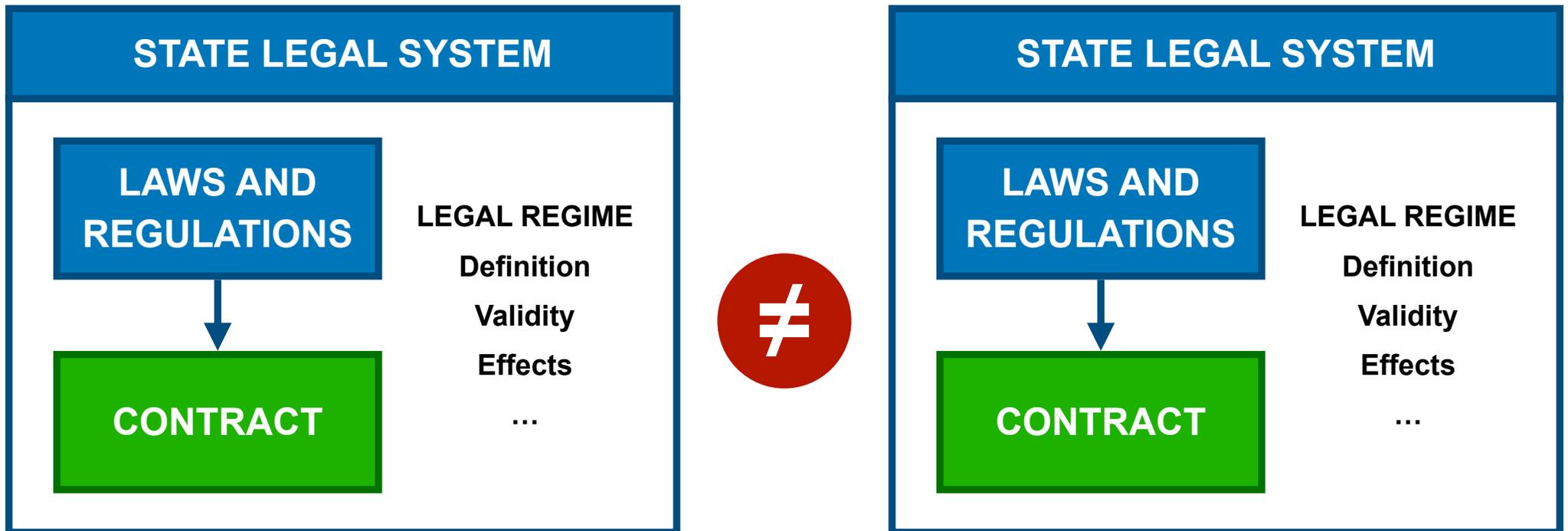
DEFINITION OF THE CONTRACT



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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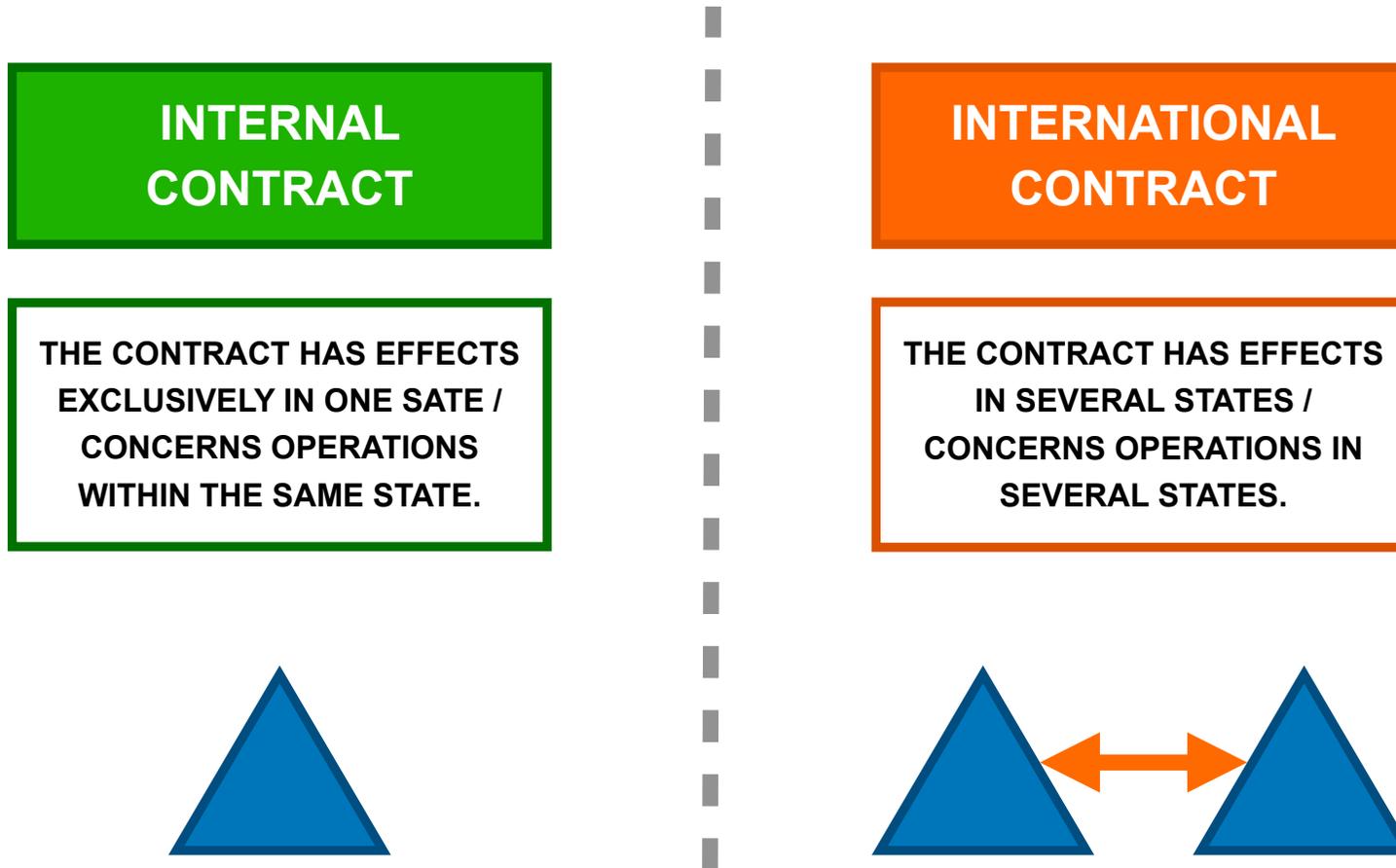
DEFINITION OF THE CONTRACT



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

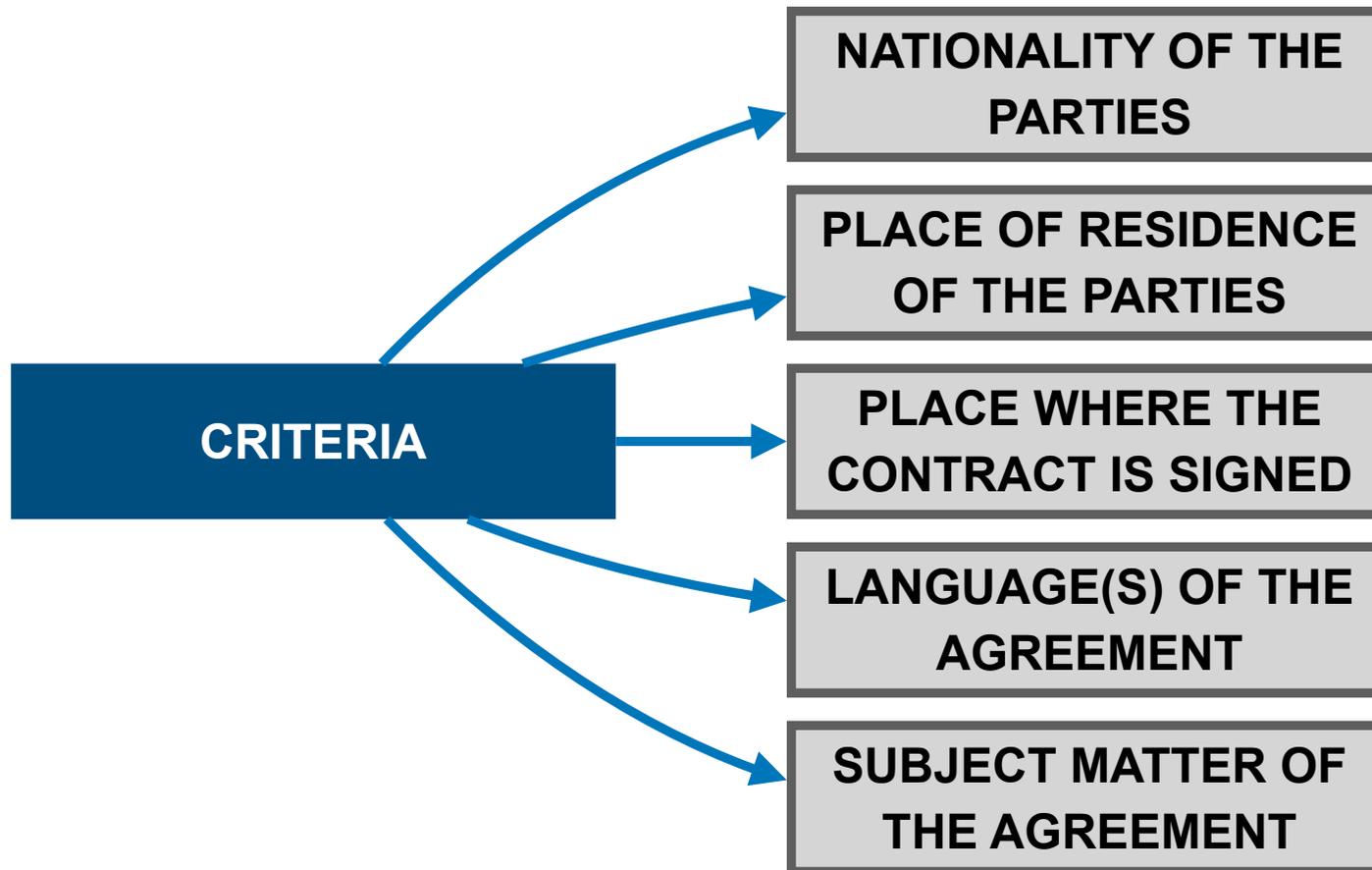
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INTERNAL / INTERNATIONAL CONTRACT



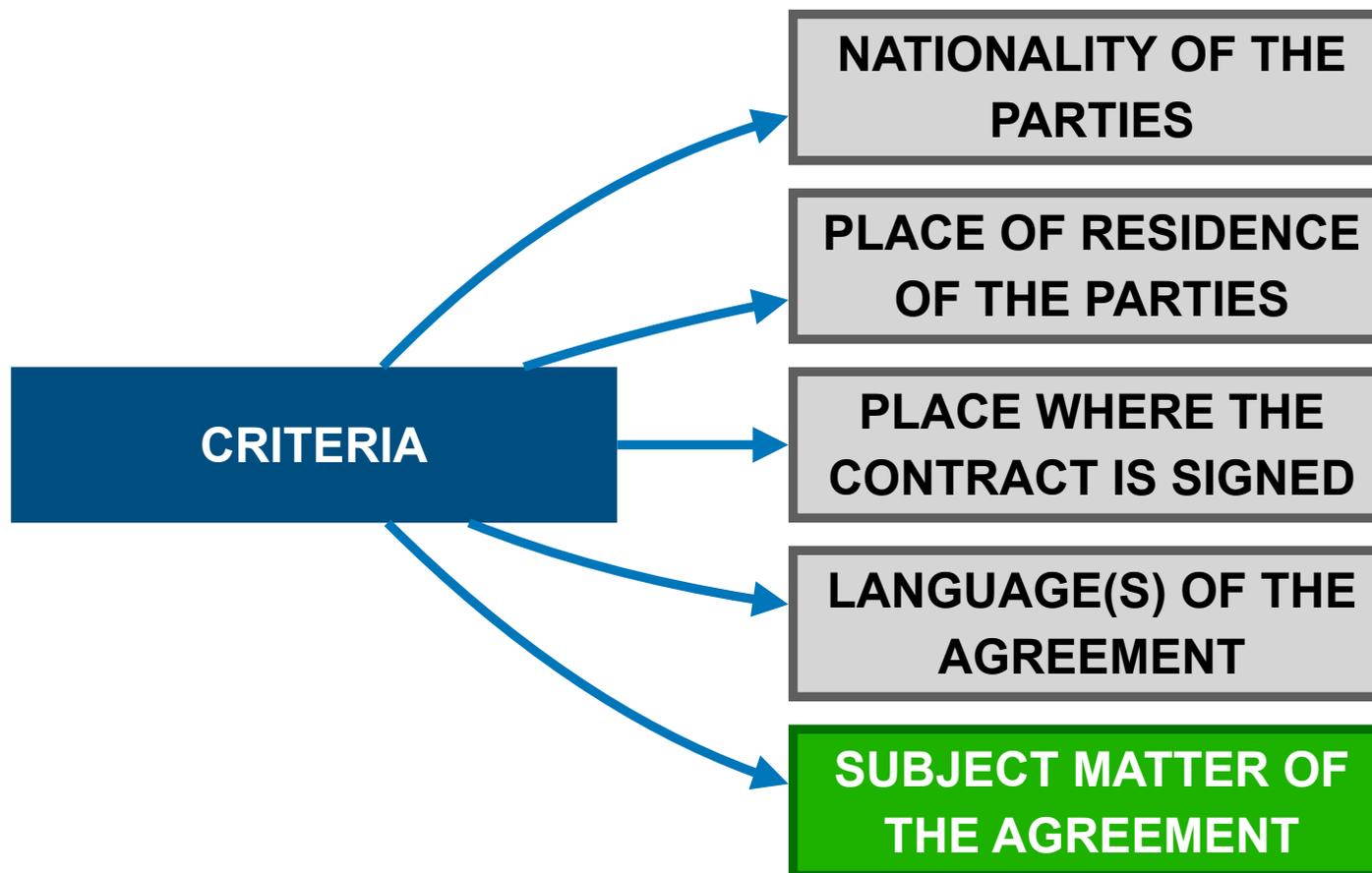
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CRITERIA OF THE INTERNATIONAL AGREEMENT



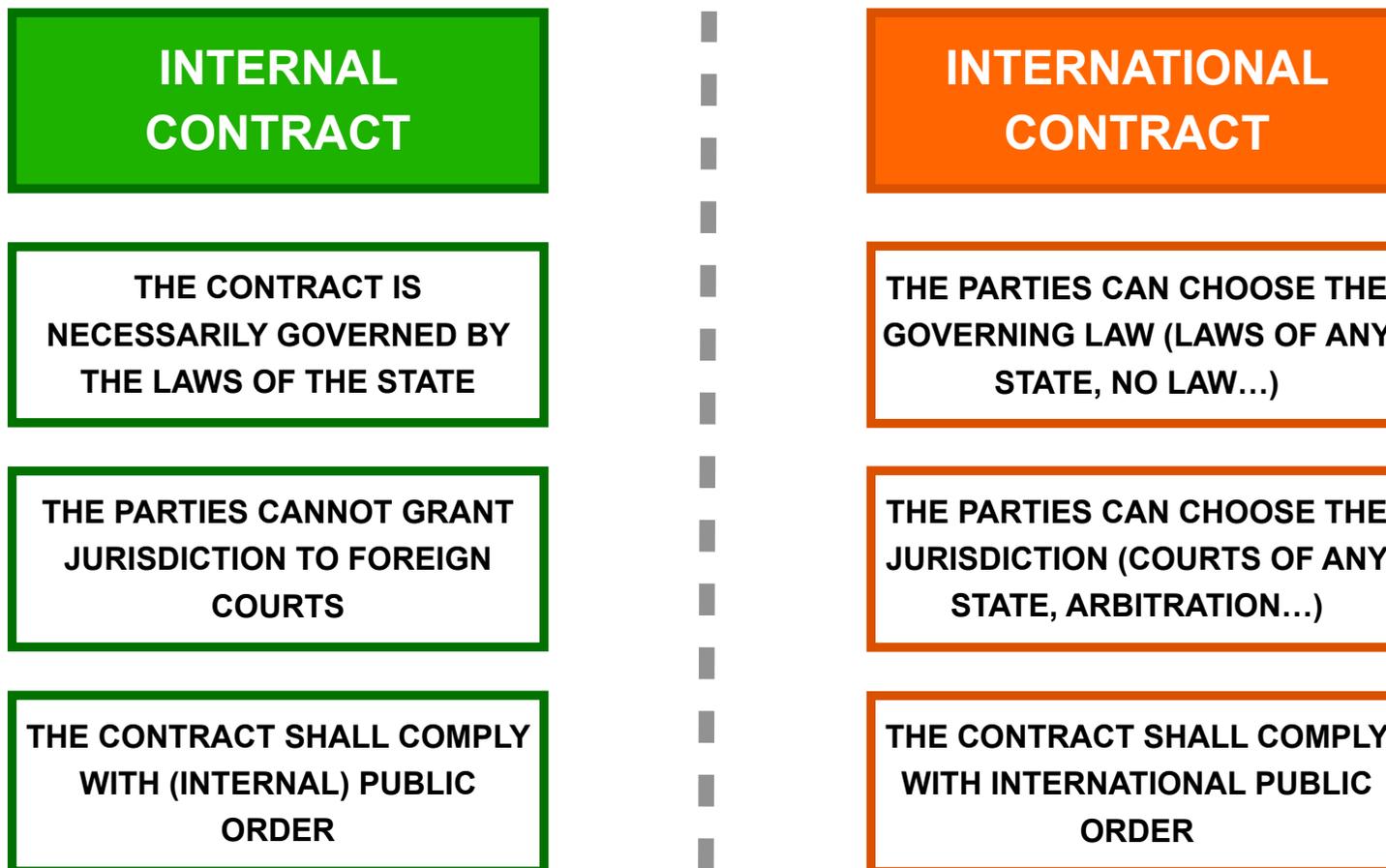
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CRITERIA OF THE INTERNATIONAL AGREEMENT



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INTERNAL / INTERNATIONAL CONTRACT



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PARTY A IS A FRENCH COMPANY.
PARTY B IS A COLUMBIAN COMPANY.
SUBJECT MATTER OF THE AGREEMENT: PARTY B WILL DISTRIBUTE THE PRODUCTS OF PARTY A IN COLOMBIA.
LANGUAGE: ENGLISH.
PLACE OF SIGNATURE: BOGOTA, COLOMBIA.



**# PARTY A IS A FRENCH COMPANY.
PARTY B IS A TURKISH COMPANY.
SUBJECT MATTER OF THE AGREEMENT:
PARTY A (LESSOR) WILL RENT PREMISES TO
PARTY B (LESSEE) IN PARIS.
LANGUAGE: FRENCH.
PLACE OF SIGNATURE: PARIS, FRANCE.**



PARTY A IS AN IRANIAN COMPANY.
PARTY B IS AN INDIAN COMPANY.
SUBJECT MATTER OF THE AGREEMENT: PARTY B WILL SELL PRODUCTS TO PARTY A.
LANGUAGE: ENGLISH.
PLACE OF SIGNATURE: NEW DELHI, INDIA.





**# PARTY A IS A FRENCH COMPANY.
PARTY B IS A FRENCH COMPANY.
SUBJECT MATTER OF THE AGREEMENT:
PARTY B WILL DISTRIBUTE THE PRODUCTS OF
PARTY A IN FRANCE.
LANGUAGE: ENGLISH.
PLACE OF SIGNATURE: NEW YORK, USA.**

PARTY A

PARTY B

SIGNATURE

**IS THIS CONTRACT
INTERNATIONAL?**



**# PARTY A IS A FRENCH COMPANY.
PARTY B IS A FRENCH COMPANY.
SUBJECT MATTER OF THE AGREEMENT:
PARTY B WILL DISTRIBUTE THE PRODUCTS OF
PARTY A IN THE USA.
LANGUAGE: FRENCH.
PLACE OF SIGNATURE: PARIS, FRANCE.**



PARTY A IS A FRENCH COMPANY.
PARTY B IS THE FRENCH SUBSIDIARY OF A COMPANY INCORPORATED IN NEW YORK (USA).
SUBJECT MATTER OF THE AGREEMENT: PARTY A WILL PROVIDE ADVISORY SERVICES TO PARTY B (IT SERVICES).
LANGUAGE: FRENCH.
PLACE OF SIGNATURE: PARIS, FRANCE.

**MOTHER
COMPANY
OF PARTY B**

PARTY A

PARTY B

SERVICES

**IS THIS CONTRACT
INTERNATIONAL?**



Which laws govern the international business contract?

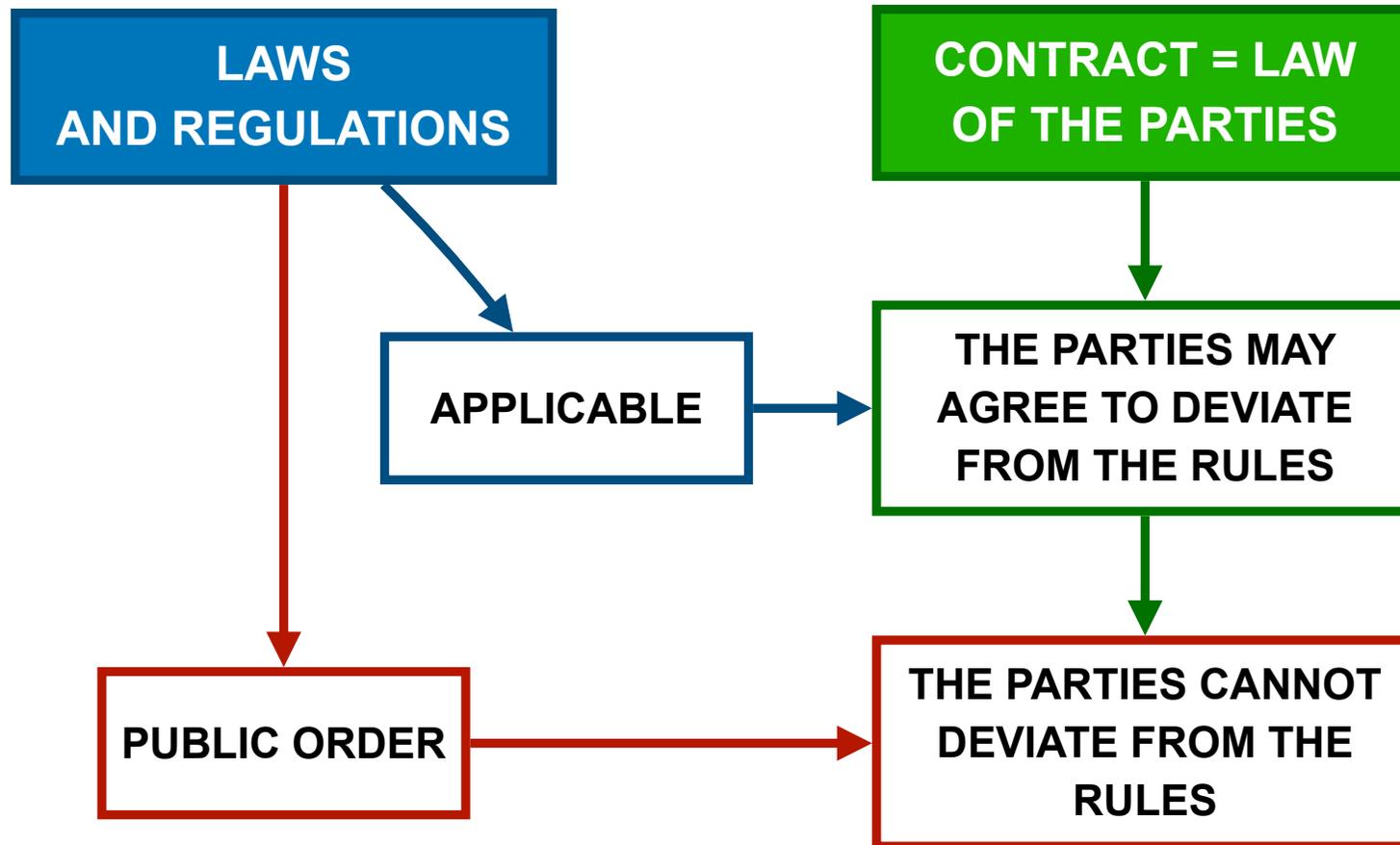
LAW GOVERNING THE CONTRACT



**THE GOVERNING LAW DEFINES THE LEGAL REGIME OF THE CONTRACT.
IT DOES NOT EXCLUDE THE APPLICATION OF THE LAWS OF PUBLIC ORDER THAT
APPLY TO THE OPERATIONS PROVIDED FOR IN THE CONTRACT.**

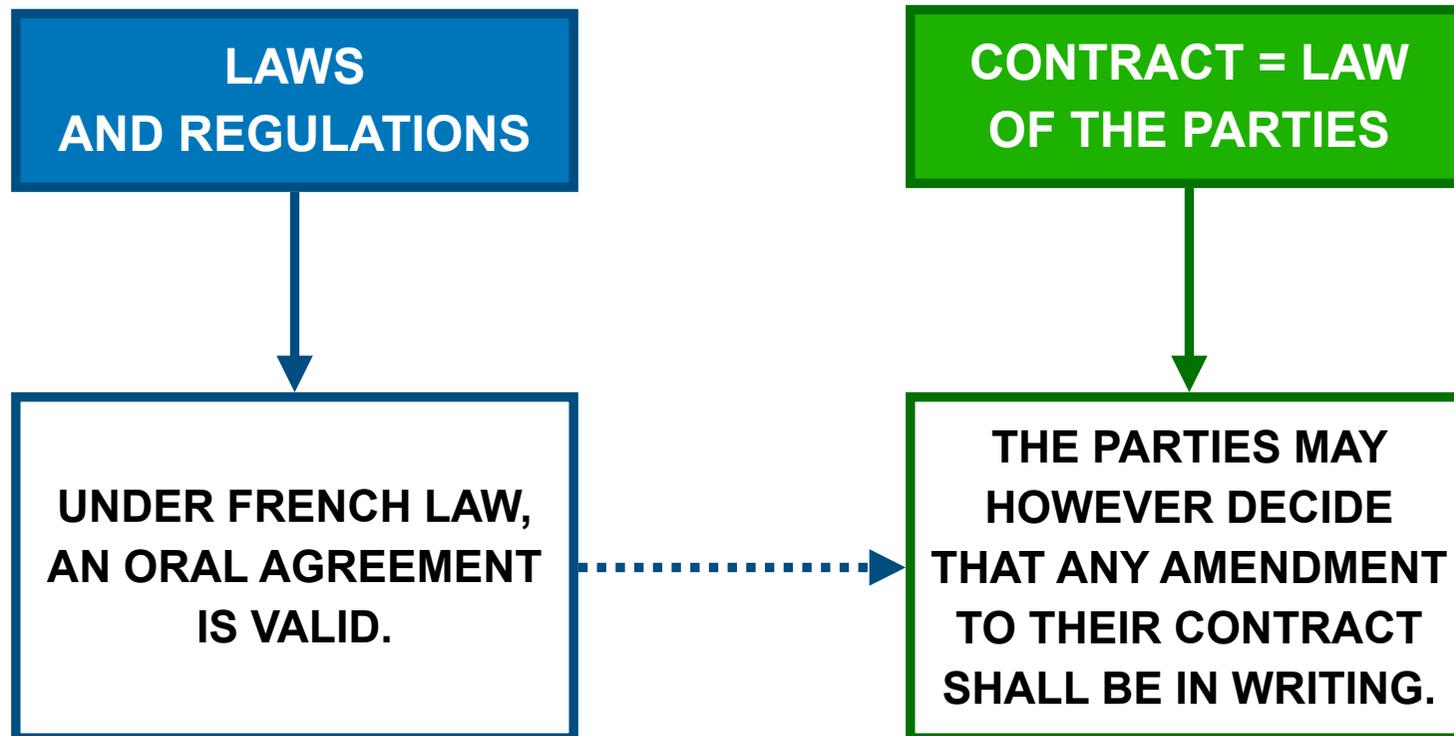
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RULES / PUBLIC ORDER



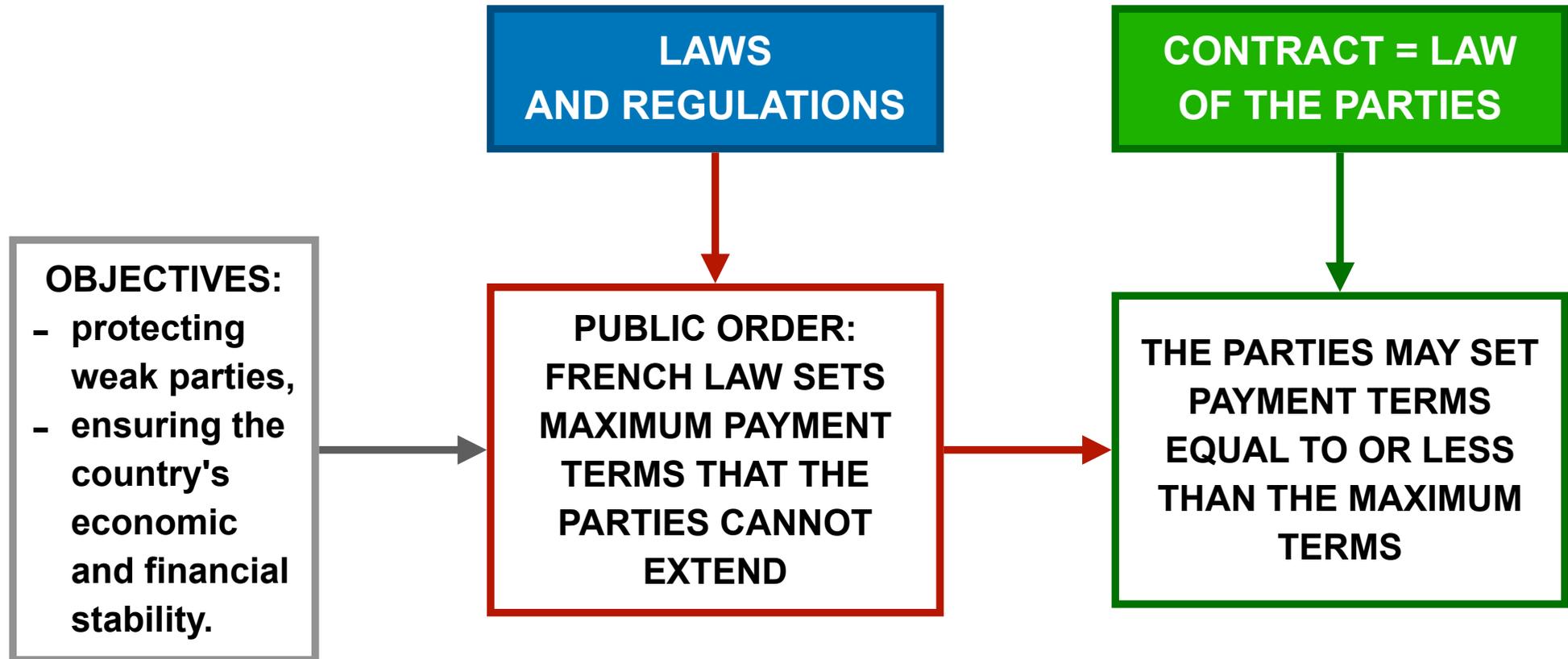
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EXAMPLE: AGREEMENT DEROGATING FROM ORDINARY LAW



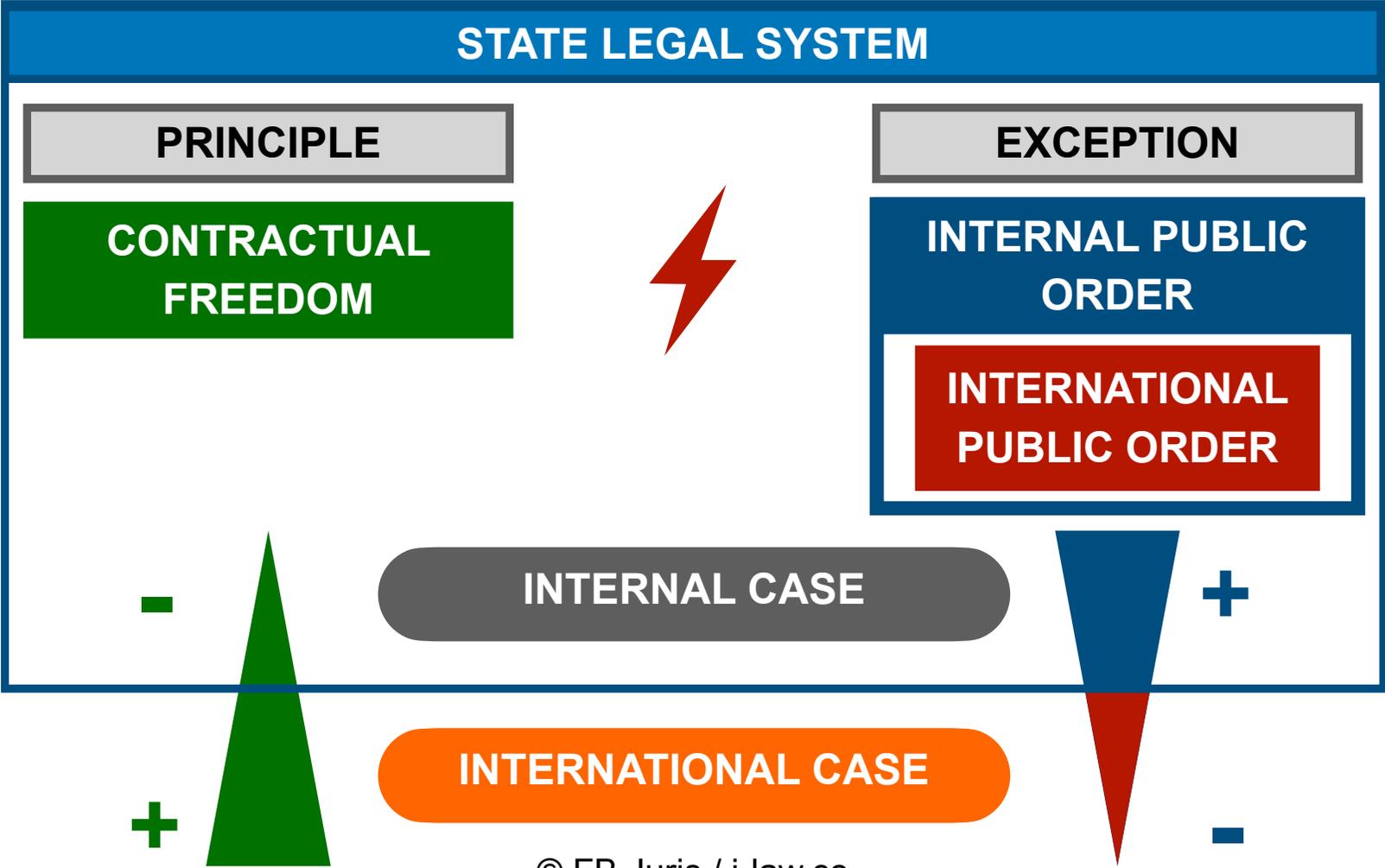
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EXAMPLE: RULE OF PUBLIC POLICY



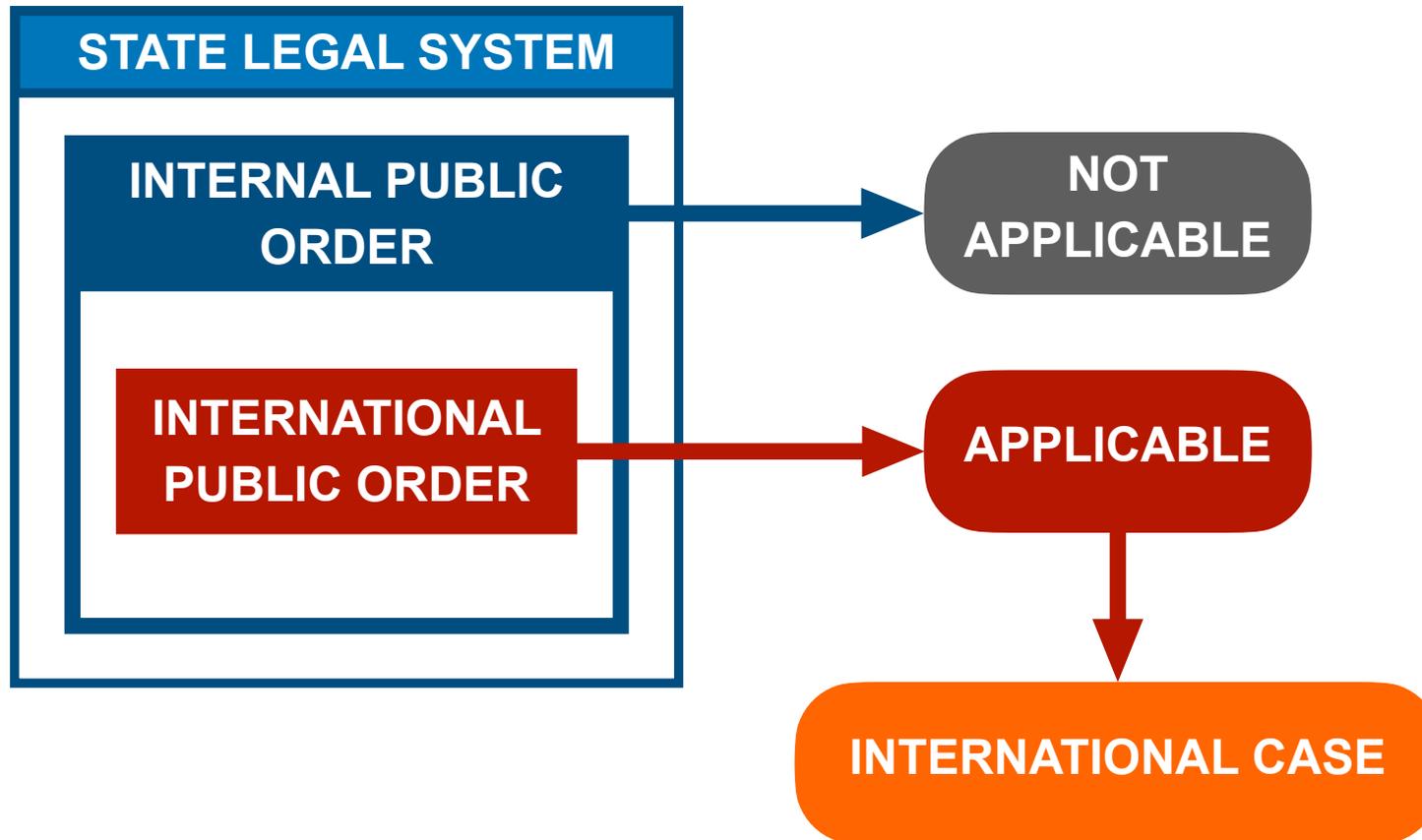
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FREEDOM VS PUBLIC ORDER



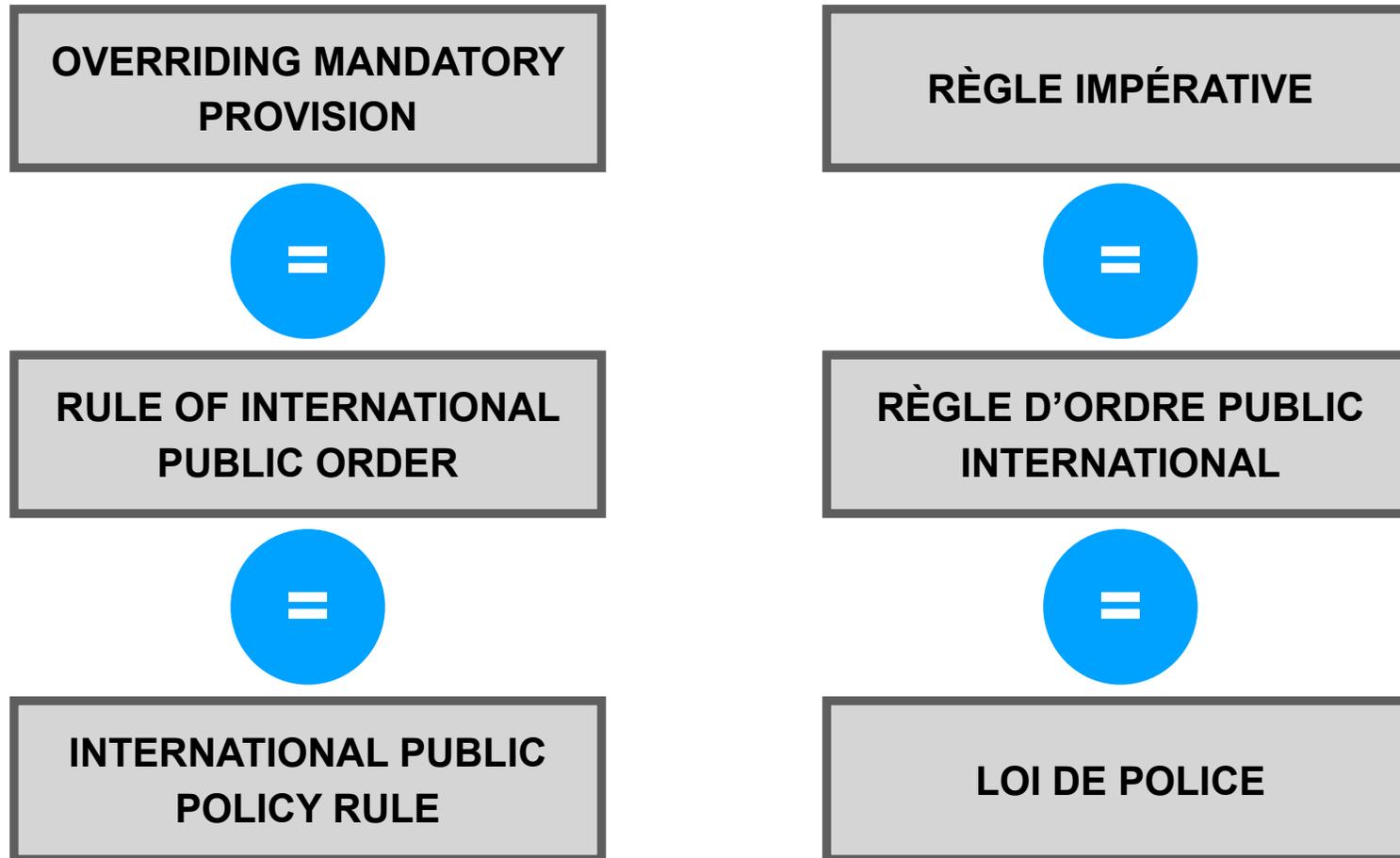
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INTERNATIONAL PUBLIC ORDER



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INTERNATIONAL PUBLIC ORDER



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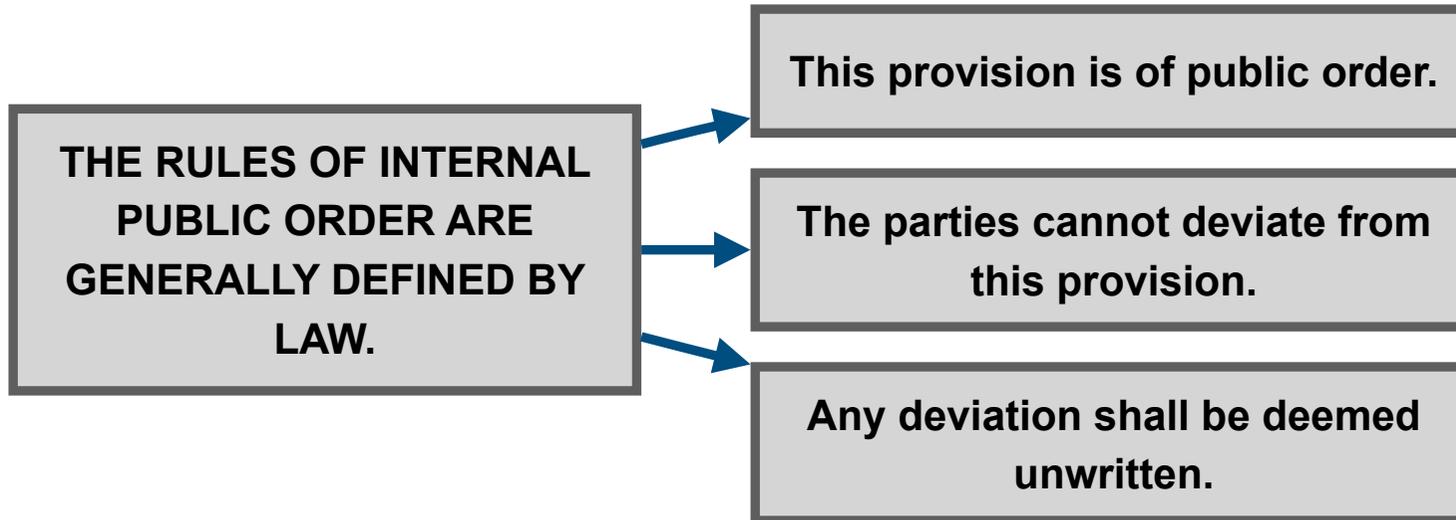
INTERNATIONAL PUBLIC ORDER

**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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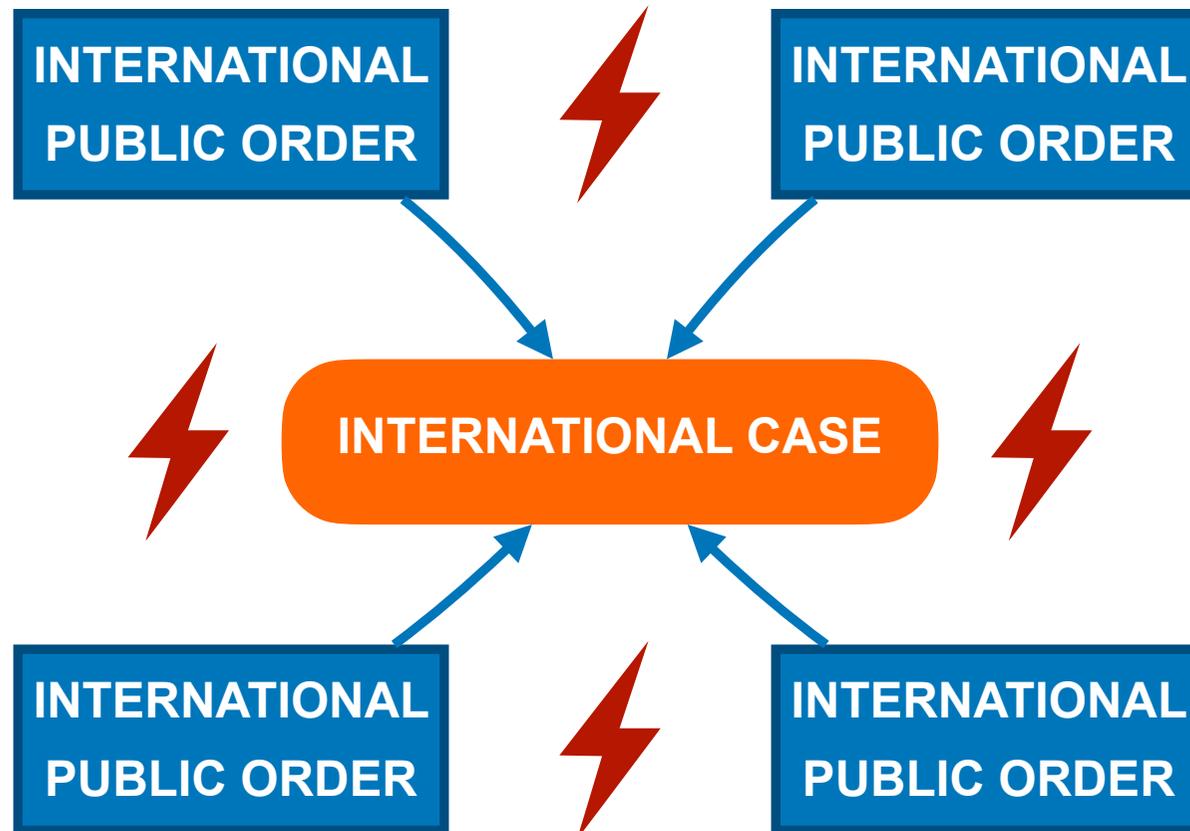
INTERNATIONAL PUBLIC ORDER



THE RULES OF INTERNATIONAL PUBLIC ORDER ARE GENERALLY NOT DEFINED BY LAW, BUT BY THE JUDGES, AMONG THE RULES OF INTERNAL PUBLIC ORDER.

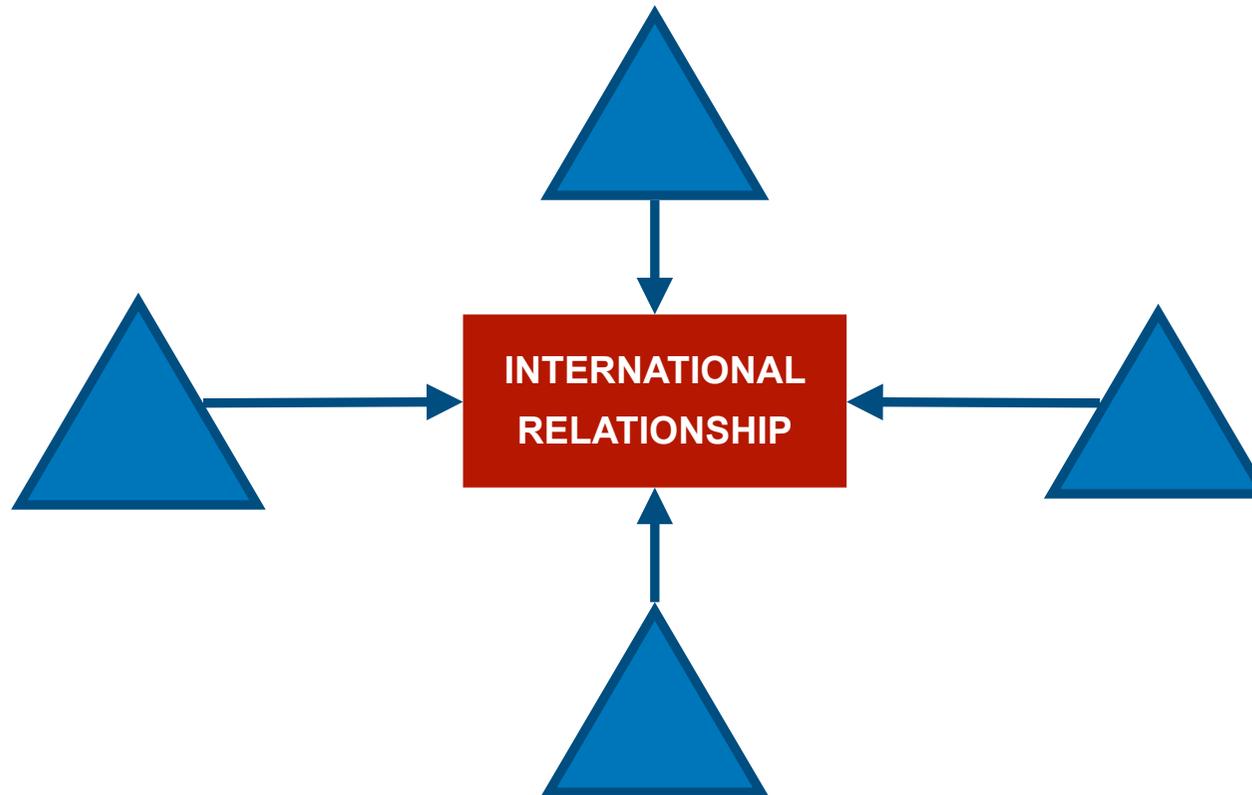
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CONFLICTS



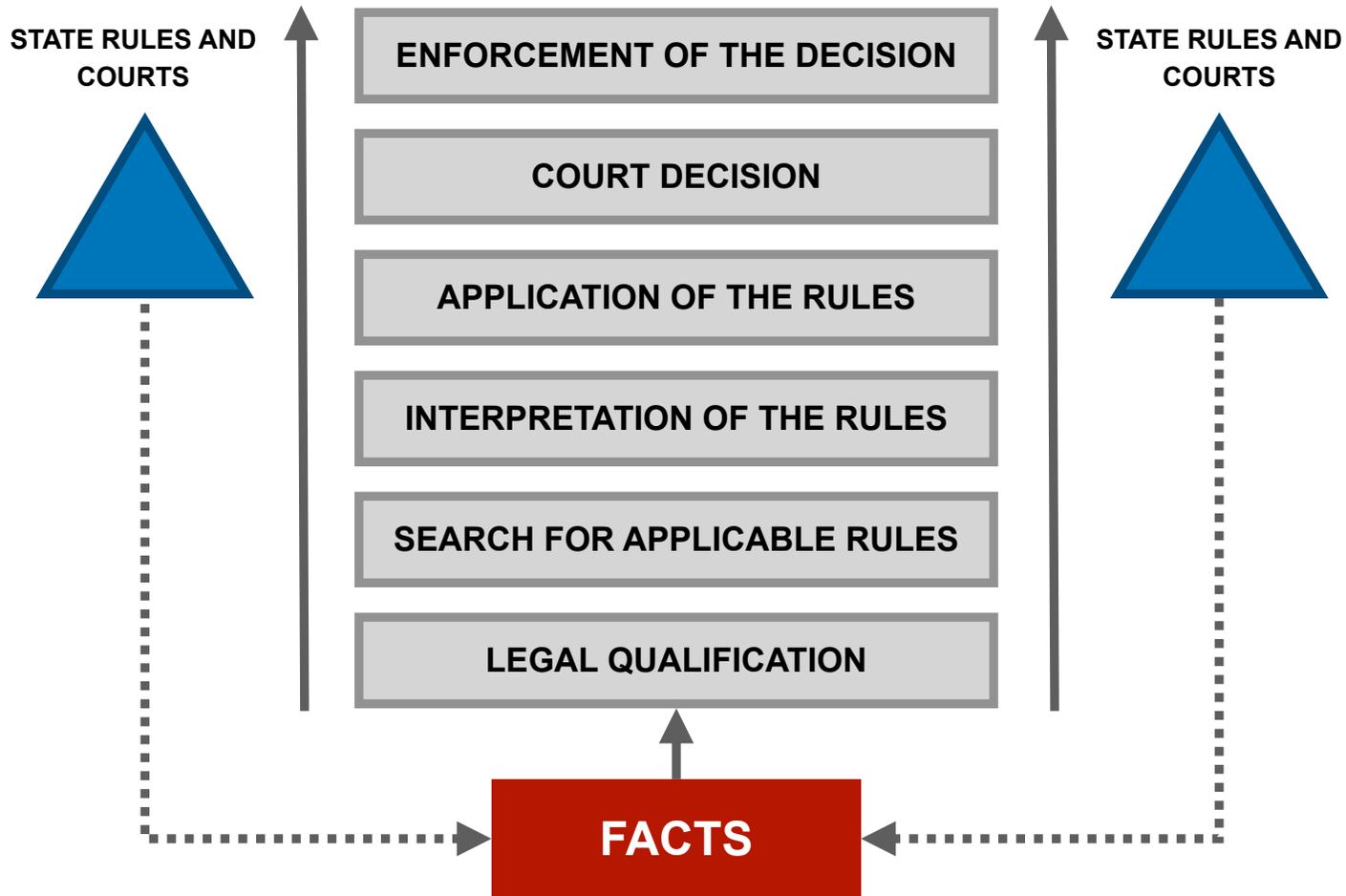
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**THE LEGAL REGIME APPLICABLE TO AN INTERNATIONAL RELATIONSHIP
MAY VARY DEPENDING ON THE LAWS OF THE STATES.**



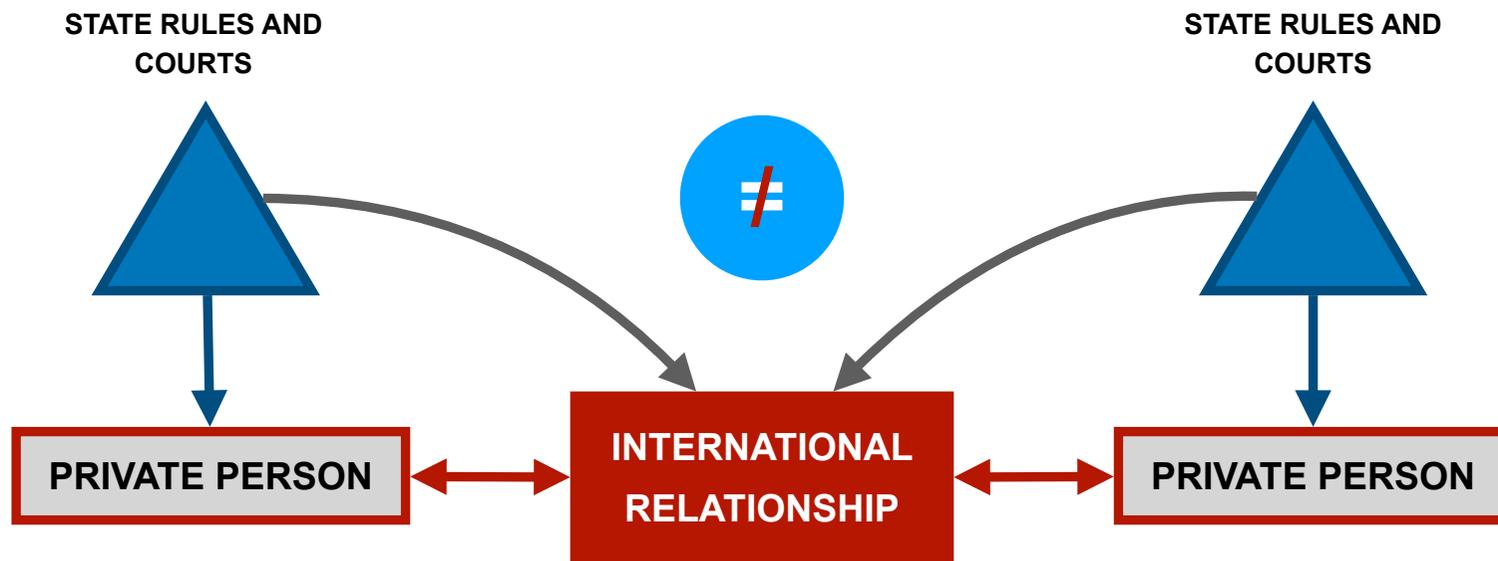
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LEGAL REASONING / PROCESS



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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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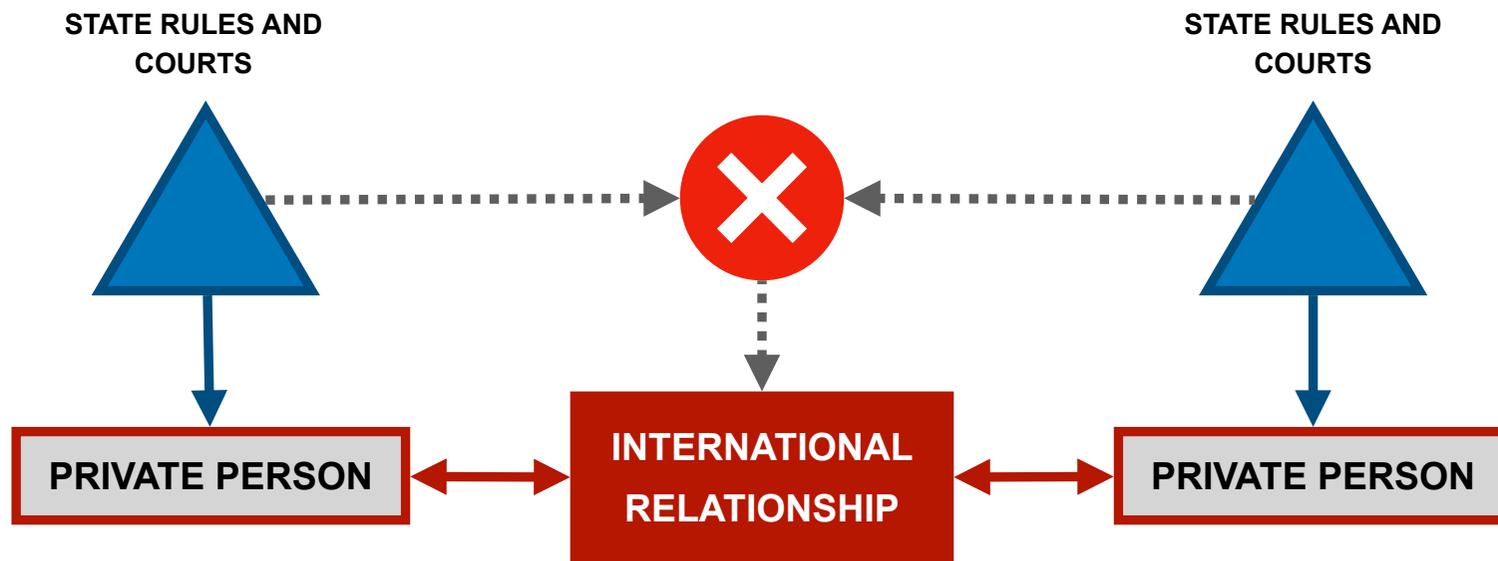
CONFLICTS OF LAWS AND JURISDICTIONS



**EVEN IF THE COURTS OF DIFFERENT STATES APPLY THE SAME TREATY,
THEIR DECISIONS MAY BE DIFFERENT.**

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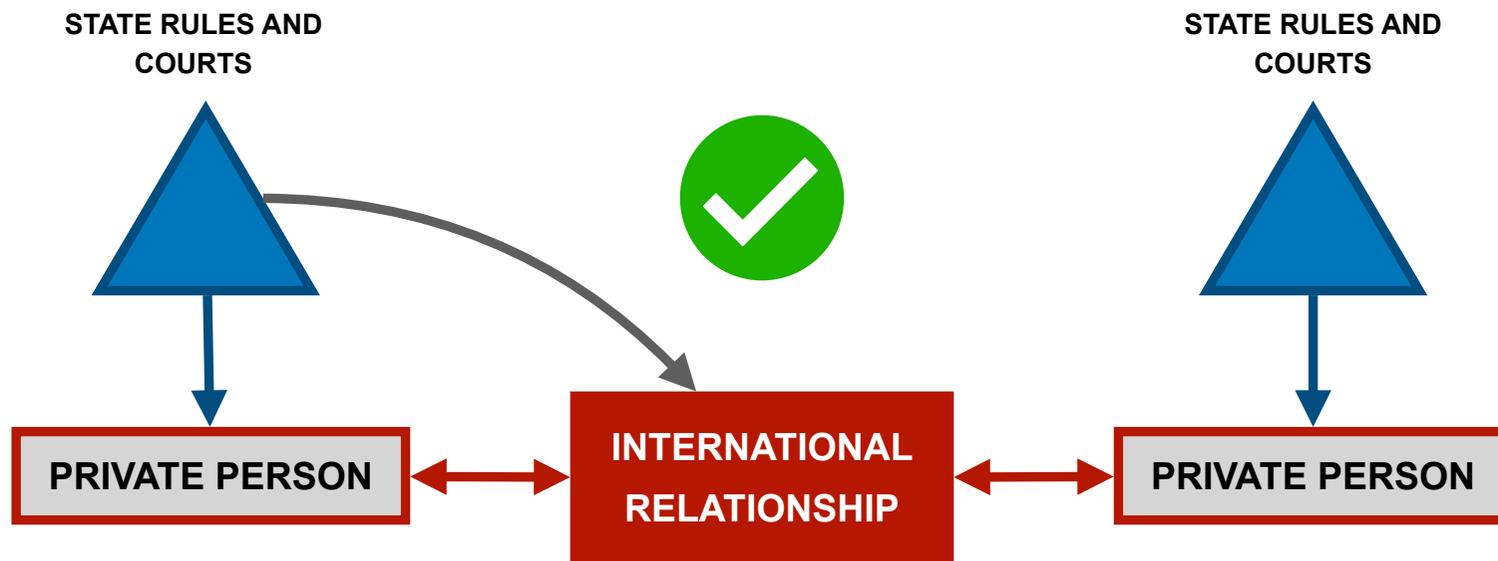
CONFLICTS OF LAWS AND JURISDICTIONS



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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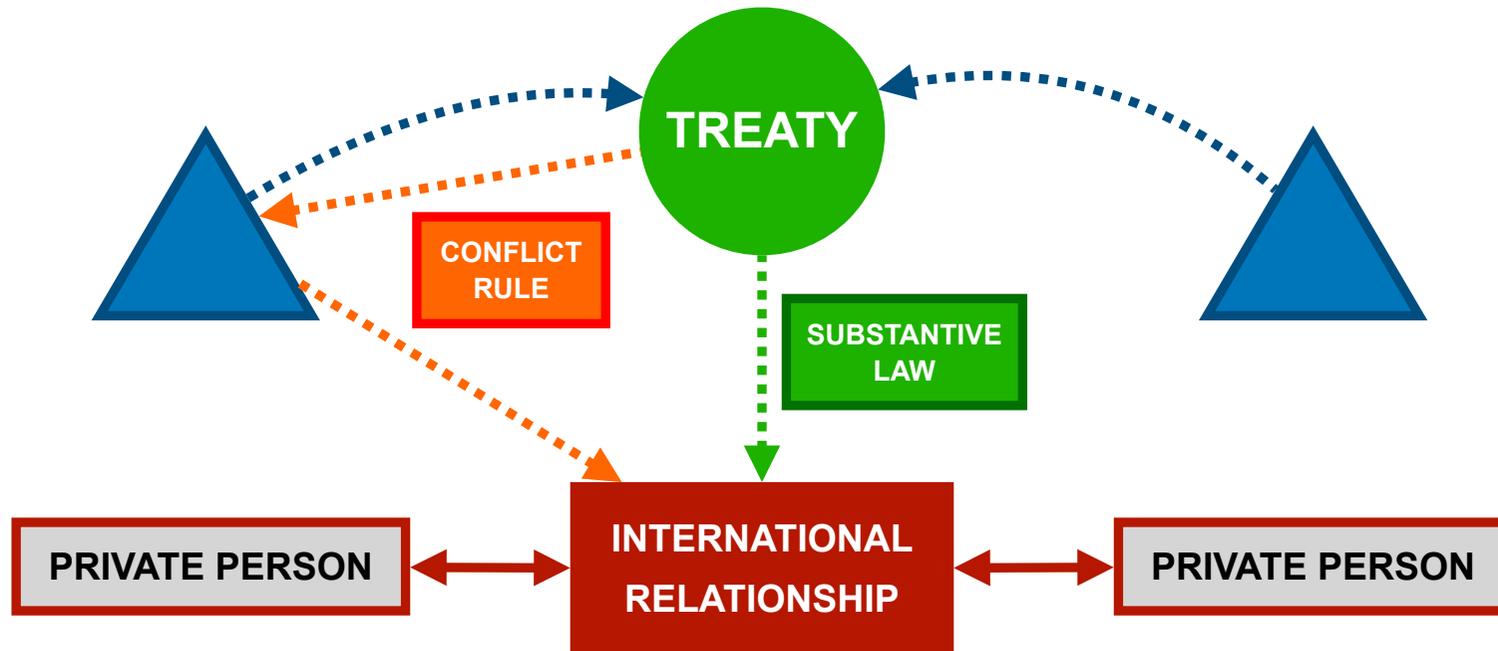
INTERNATIONAL TREATIES



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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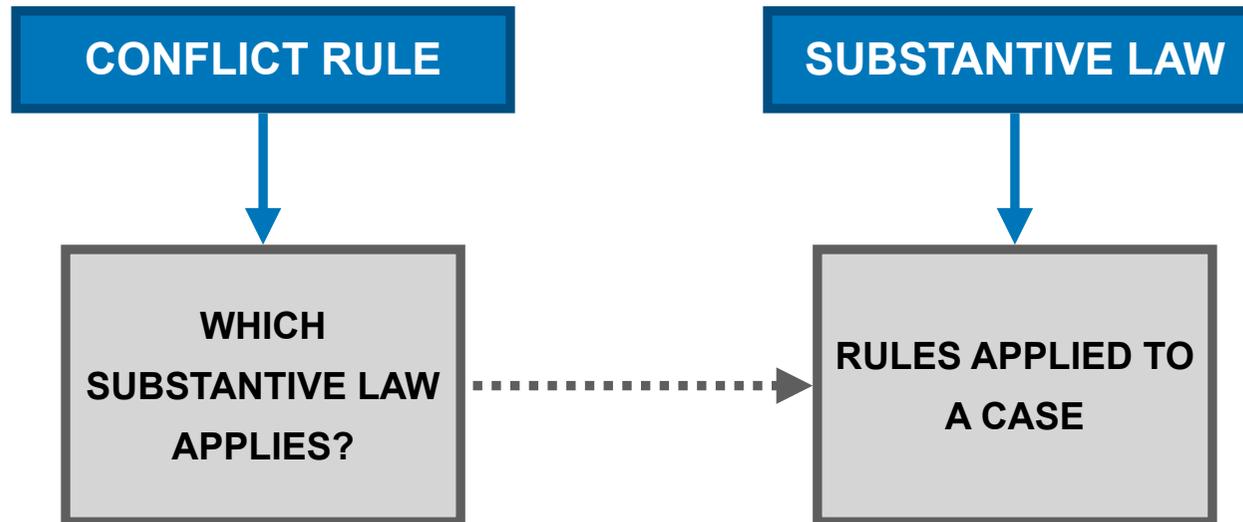
INTERNATIONAL TREATIES



INTERNATIONAL TREATIES MAY EITHER CONTAIN SUBSTANTIVE RULES, APPLIED DIRECTLY TO THE CASE, OR ONLY CONFLICT RULES, THAT IS TO SAY A METHOD TO DETERMINE WHICH SUBSTANTIVE RULES SHOULD BE APPLIED.

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CONFLICT RULE / SUBSTANTIVE LAW



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

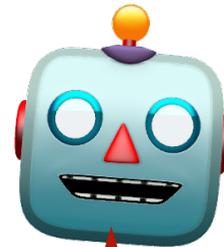
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EXAMPLES

CONFLICT RULE

**HAGUE
CONVENTION**
of 15 June 1955 on
the law applicable to
international sales of
goods
+ [Link](#)

**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](#)



**Let's take a
closer look!**

SUBSTANTIVE LAW

**CISG: United Nations
Convention on
Contracts for the
International Sale of
Goods (signed in
Vienna in 1980).**
+ [Link](#)

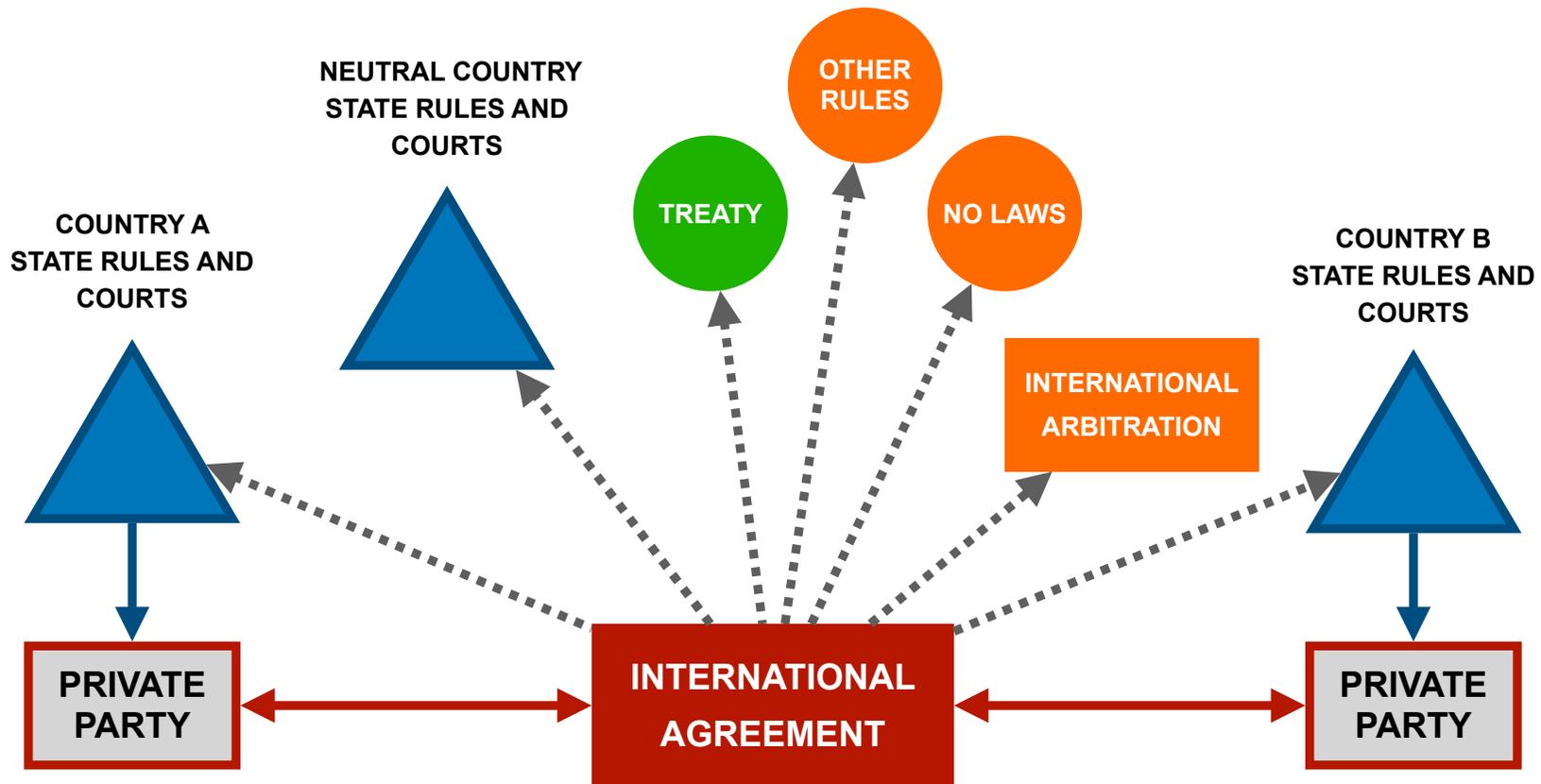
**UNIDROIT
PRINCIPLES OF
INTERNATIONAL
COMMERCIAL
CONTRACTS (2016)**
+ [Link](#)

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.



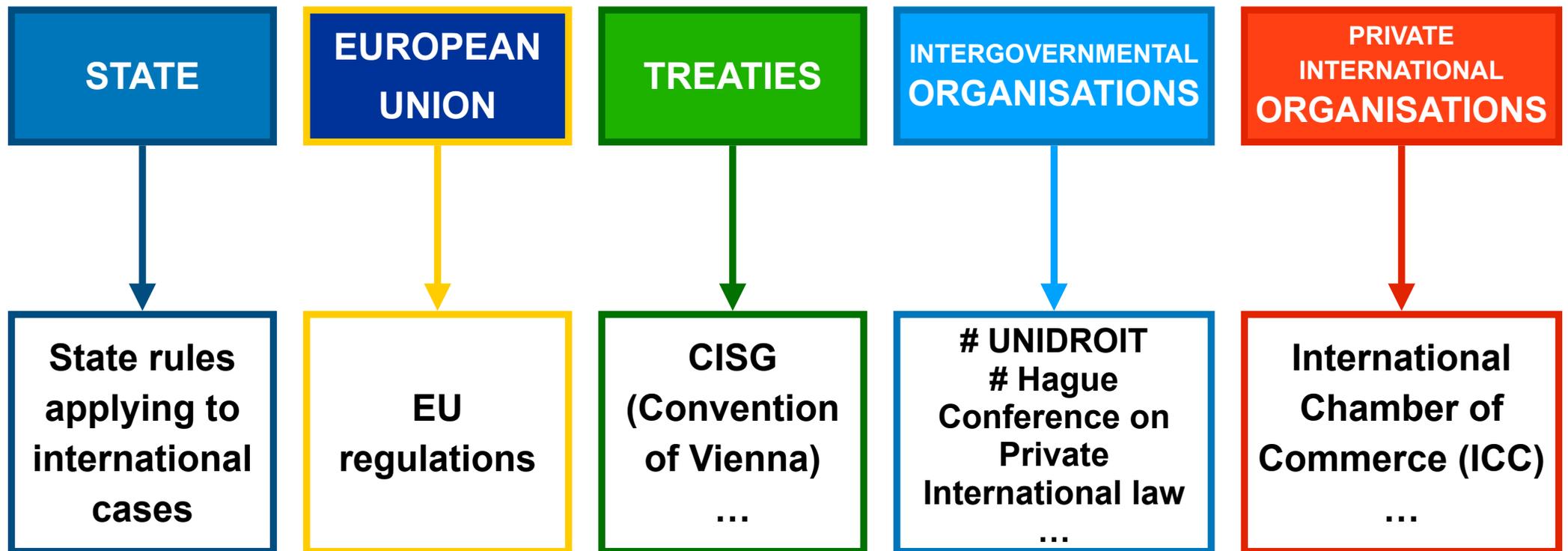
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THE PARTIES TO AN INTERNATIONAL AGREEMENT MAY IN PRINCIPLE CHOOSE FREELY THE LAW GOVERNING THEIR AGREEMENT AND THE COURTS COMPETENT IN CASE OF LITIGATION.



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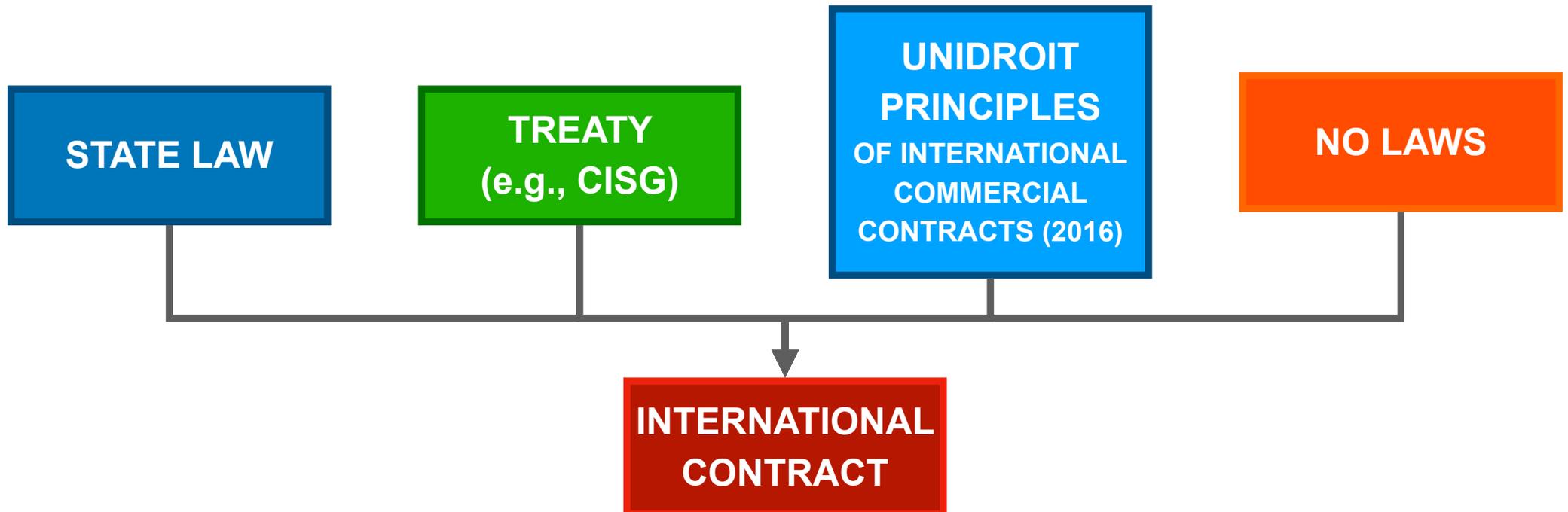
PRIVATE INTERNATIONAL LAW: LEGAL SYSTEMS



NON-EXHAUSTIVE LIST

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LAW GOVERNING THE CONTRACT



AN INTERNATIONAL CONTRACT MAY BE GOVERNED BY THE LAWS OF A STATE, OR A TREATY OR A LEGAL REGIME PROPOSED BY AN INTERGOVERNMENTAL ORGANISATION. IT CAN ALSO EXIST WITHOUT LAW.

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INTERNATIONAL COMMERCIAL CONTRACT: GOVERNING LAW AND JURISDICTION



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



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

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INTERNATIONAL COMMERCIAL CONTRACT: GOVERNING 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: GOVERNING LAW

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:

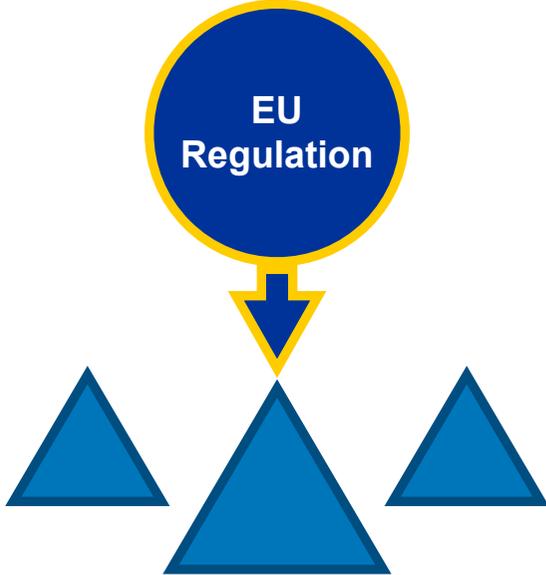
- INTERNATIONAL LAW
- EU LAW
- A CONFLICT RULE
- A FREE TRADE AGREEMENT
- INCOTERMS



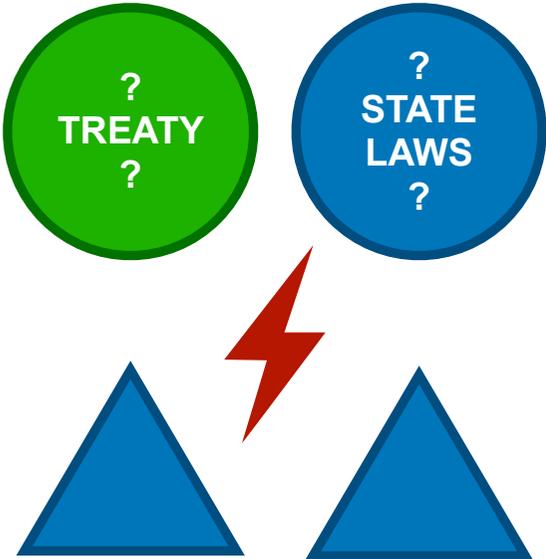
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WHICH LAW APPLIES? WHICH COURT IS COMPETENT?

EUROPEAN UNION

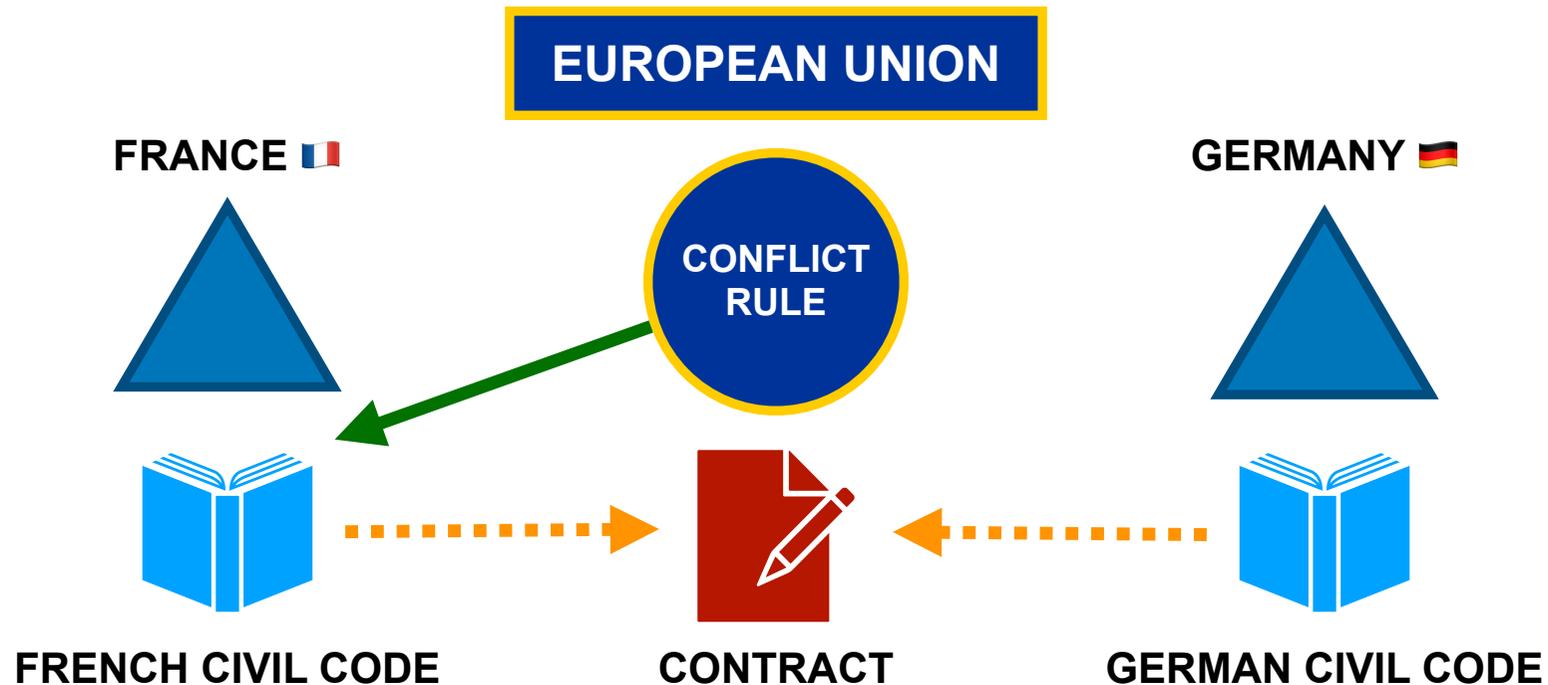


OUTSIDE EU



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

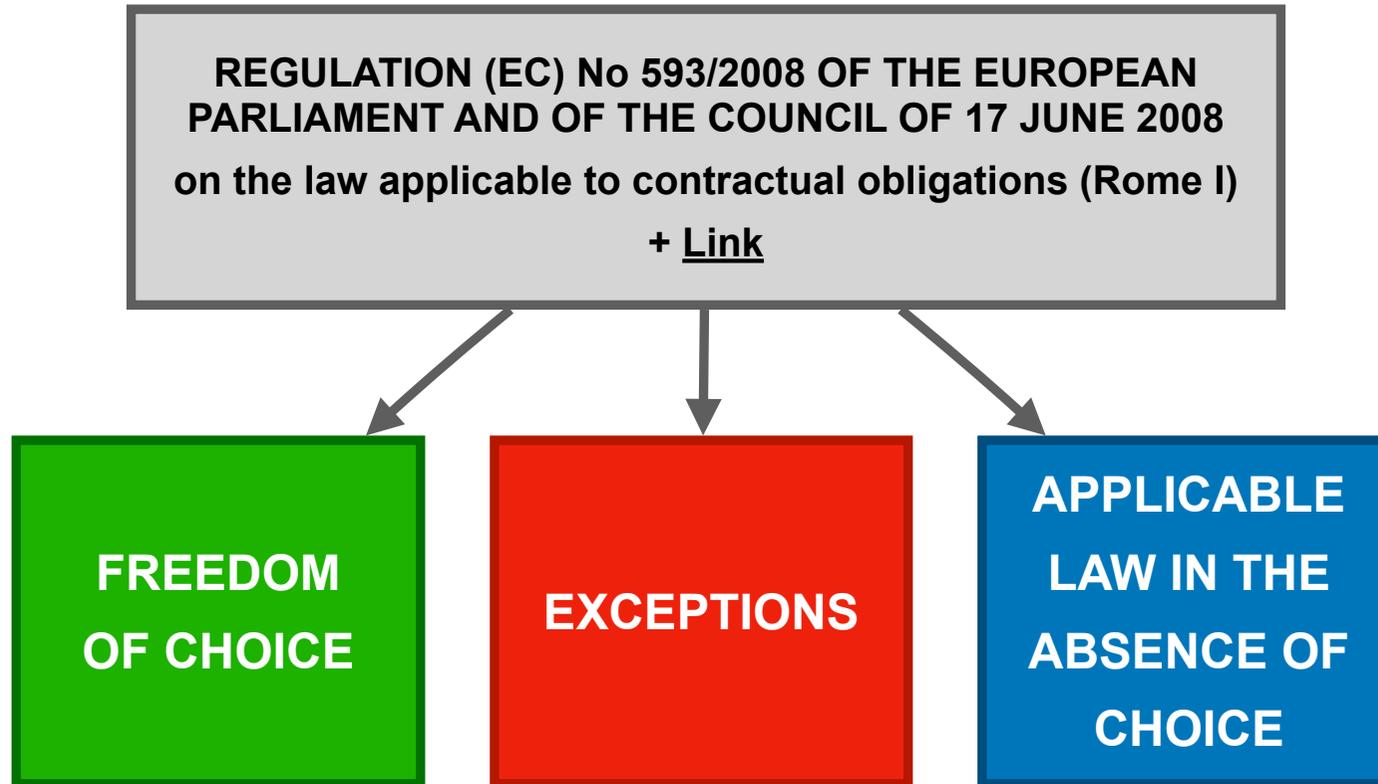
CONFLICT RULE / SUBSTANTIVE LAW



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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APPLICABLE LAW IN THE EU



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APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

**CONTRACT FOR
THE SALE OF
GOODS**

Law of the country where the seller
has his habitual residence

**CONTRACT FOR
THE PROVISION
OF SERVICES**

Law of the country where the service
provider has his habitual residence

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APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

**FRANCHISE
CONTRACT**

Law of the country where the franchisee has his habitual residence

**DISTRIBUTION
CONTRACT**

Law of the country where the distributor has his habitual residence

**CONSUMER
CONTRACT**

Law of the country where the consumer has his habitual residence

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APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

OTHER



Contract of carriage, consumer contract, insurance contract, employment contract, immovable property...

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APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

Where the contract is not covered by article 4, paragraph 1, or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2 of article 4, the law of that other country shall apply.

Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

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APPLICABLE LAW IN THE EU

OVERRIDING MANDATORY PROVISIONS (ART. 9)

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.
2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

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PRACTICAL CASE



A French company and a German company entered into a contract under which the French company shall manufacture in France products that it will deliver in Germany to the German company, which should pay the price. The contract does not specify the governing law.

Which law governs the contract?

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PRACTICAL CASE



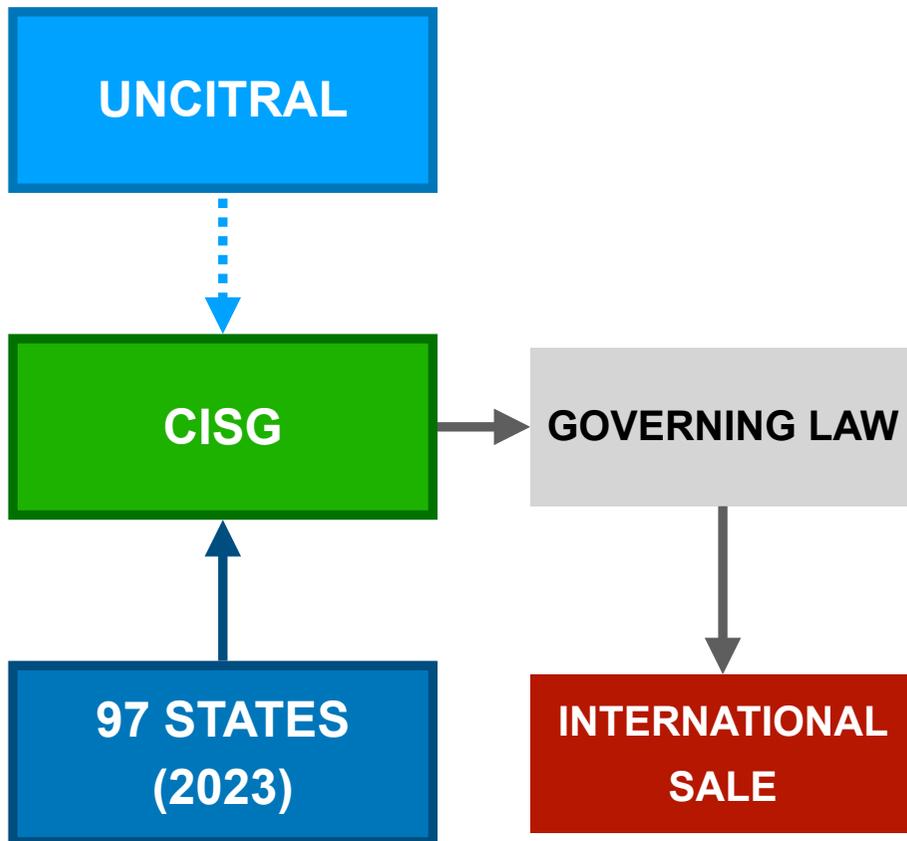
A French company and a Spanish company entered into a contract under which the French company shall provide advisory services to the Spanish company, which should pay fees.

The contract does not specify the governing law.

Which law governs the contract?

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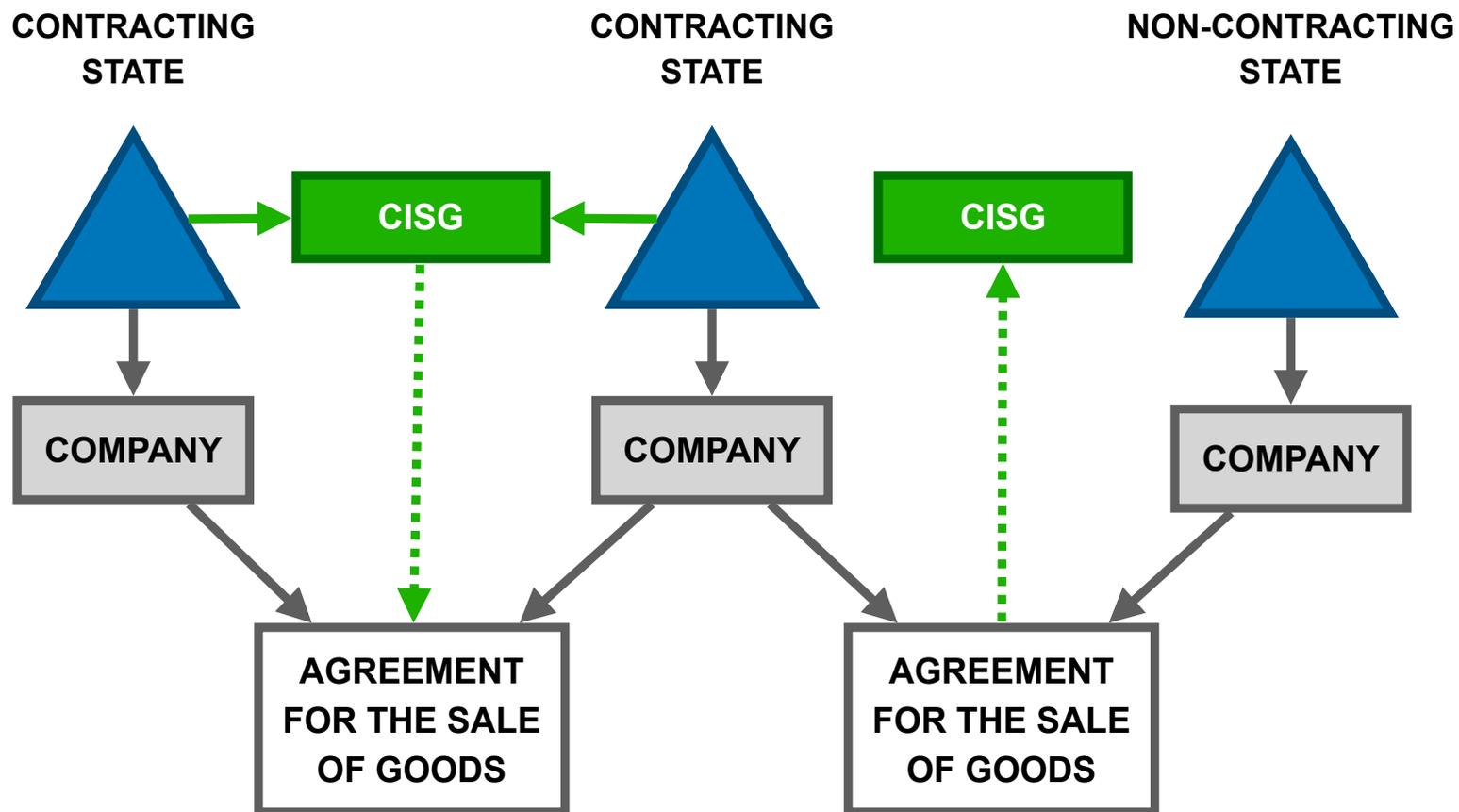
CONVENTION OF VIENNA (CISG, 1980)



- **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.**

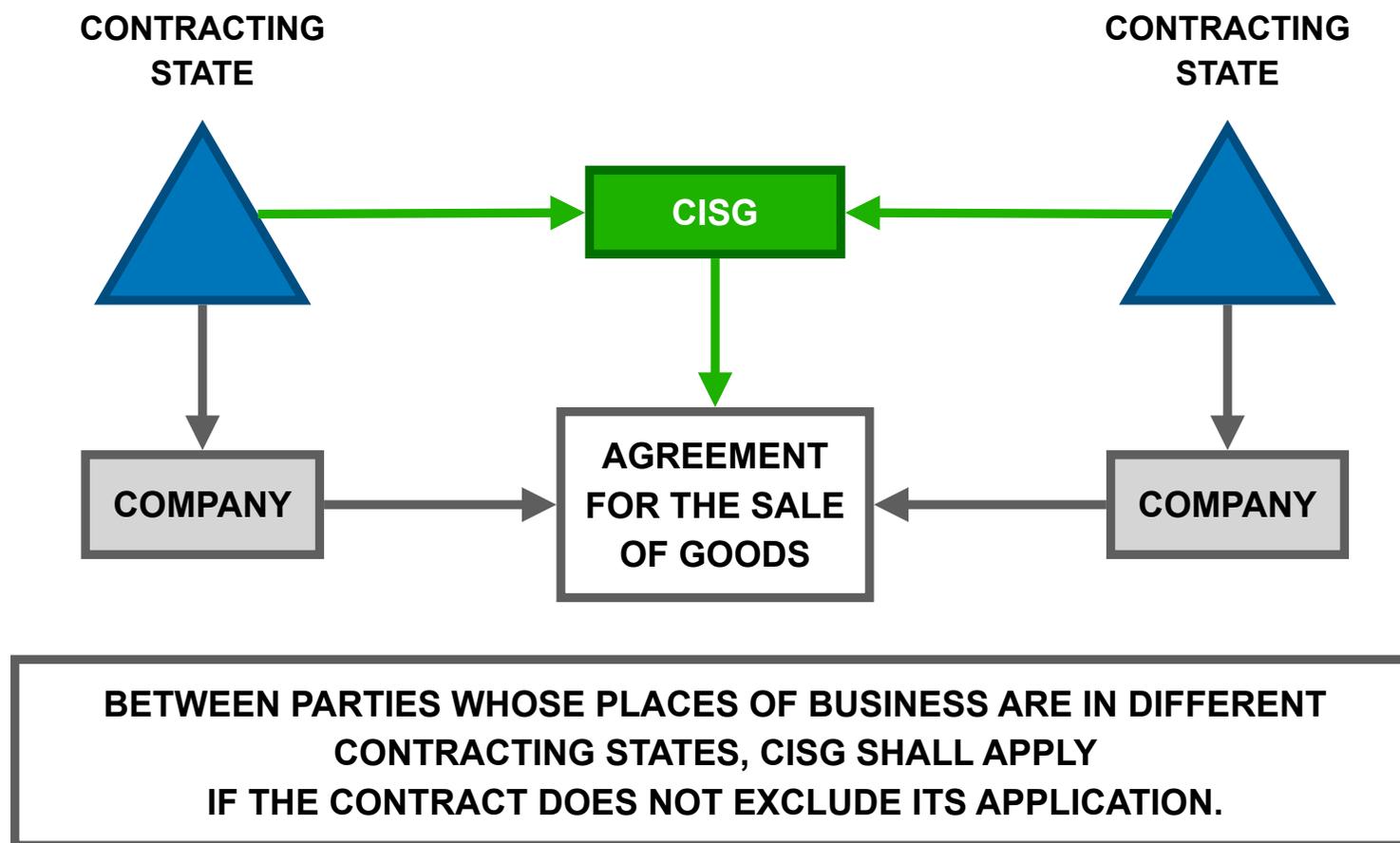
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CONVENTION OF VIENNA (CISG, 1980)



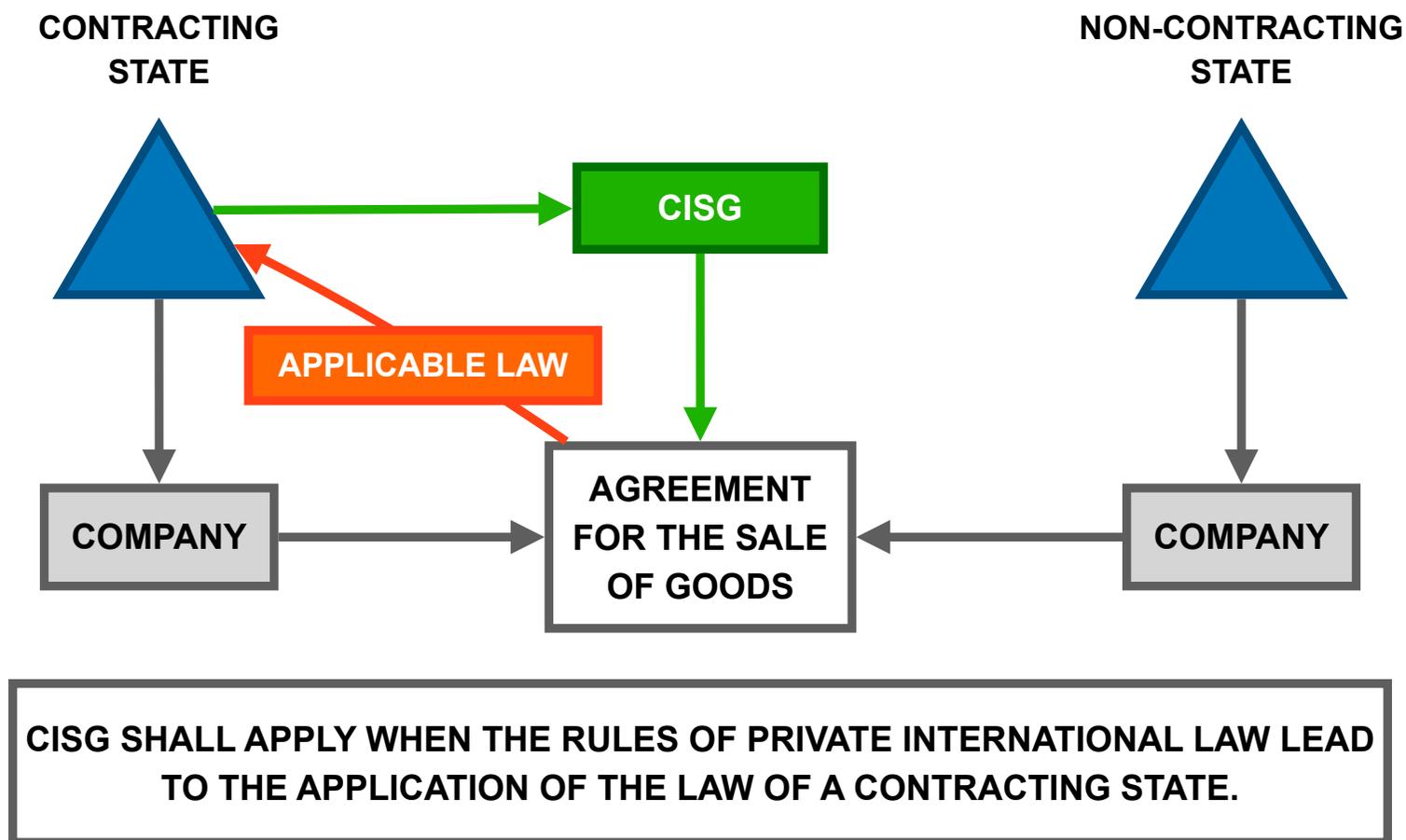
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CONVENTION OF VIENNA (CISG, 1980)



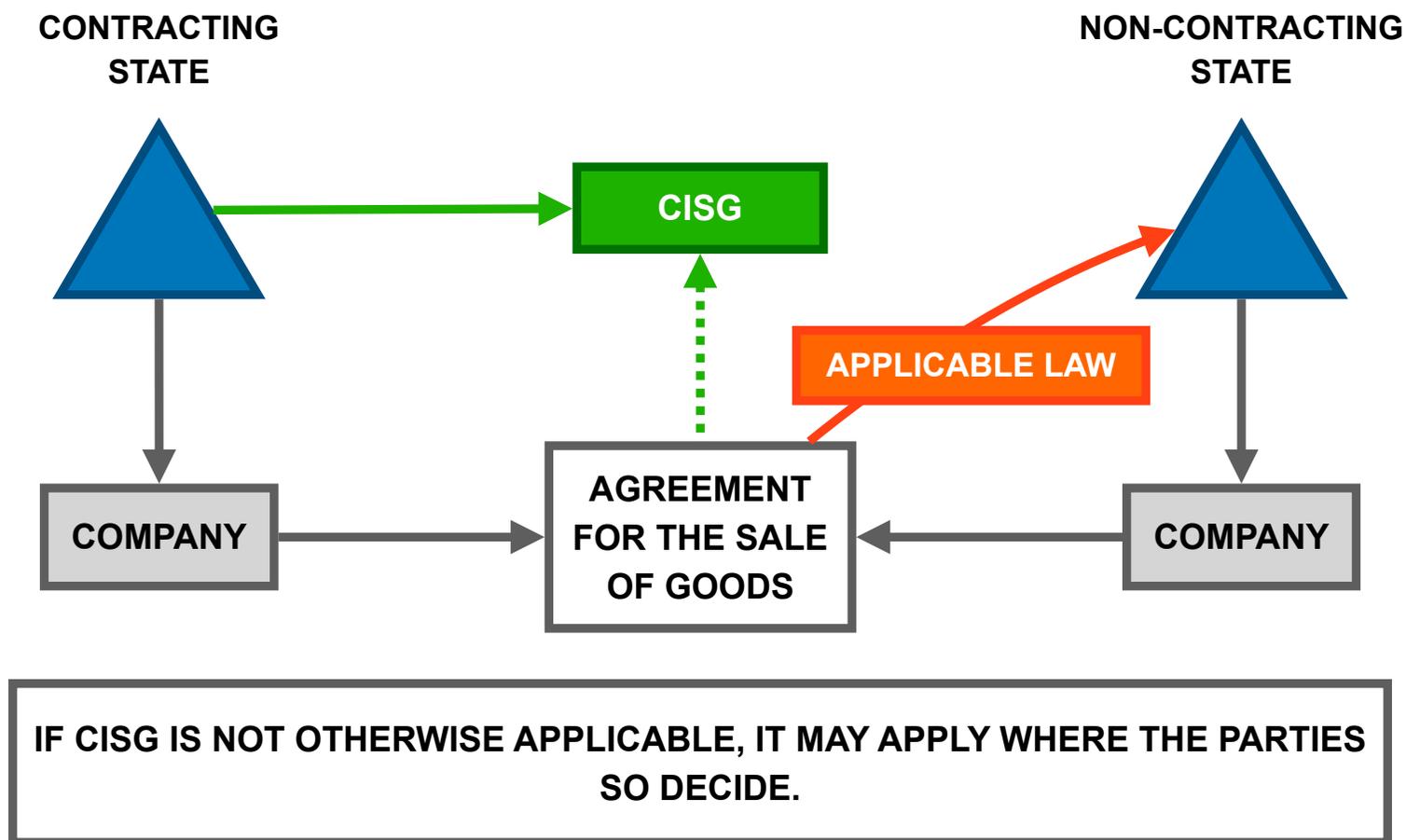
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CONVENTION OF VIENNA (CISG, 1980)



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CONVENTION OF VIENNA (CISG, 1980)



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PRACTICAL CASE



A Chinese company and a Vietnamese company enter into a contract for the international sale of goods (textile to produce clothes for resale).

The contract does not specify the applicable law.

Which rules apply to the contract?

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WHAT HAPPENS IF THE PARTIES DID NOT CHOOSE THE LAW GOVERNING THE CONTRACT?

- **IN THE EUROPEAN UNION, EU REGULATION N° 593/2008 DETERMINES WHICH STATE LAW SHOULD GOVERN THE CONTRACT.**
- **FOR AN INTERNATIONAL SALE OF GOODS, THE CONVENTION OF VIENNA ON THE INTERNATIONAL SALE OF GOODS (CISG) OFTEN APPLIES AS OF RIGHT (SINCE IT IS IN FORCE IN 97 STATES).**
- **OTHERWISE, IT IS NECESSARY TO CHECK WHETHER A TREATY IS APPLICABLE OR, FAILING THAT, TO CHECK THE RULES OF THE STATES CONCERNED BY THE CASE.**

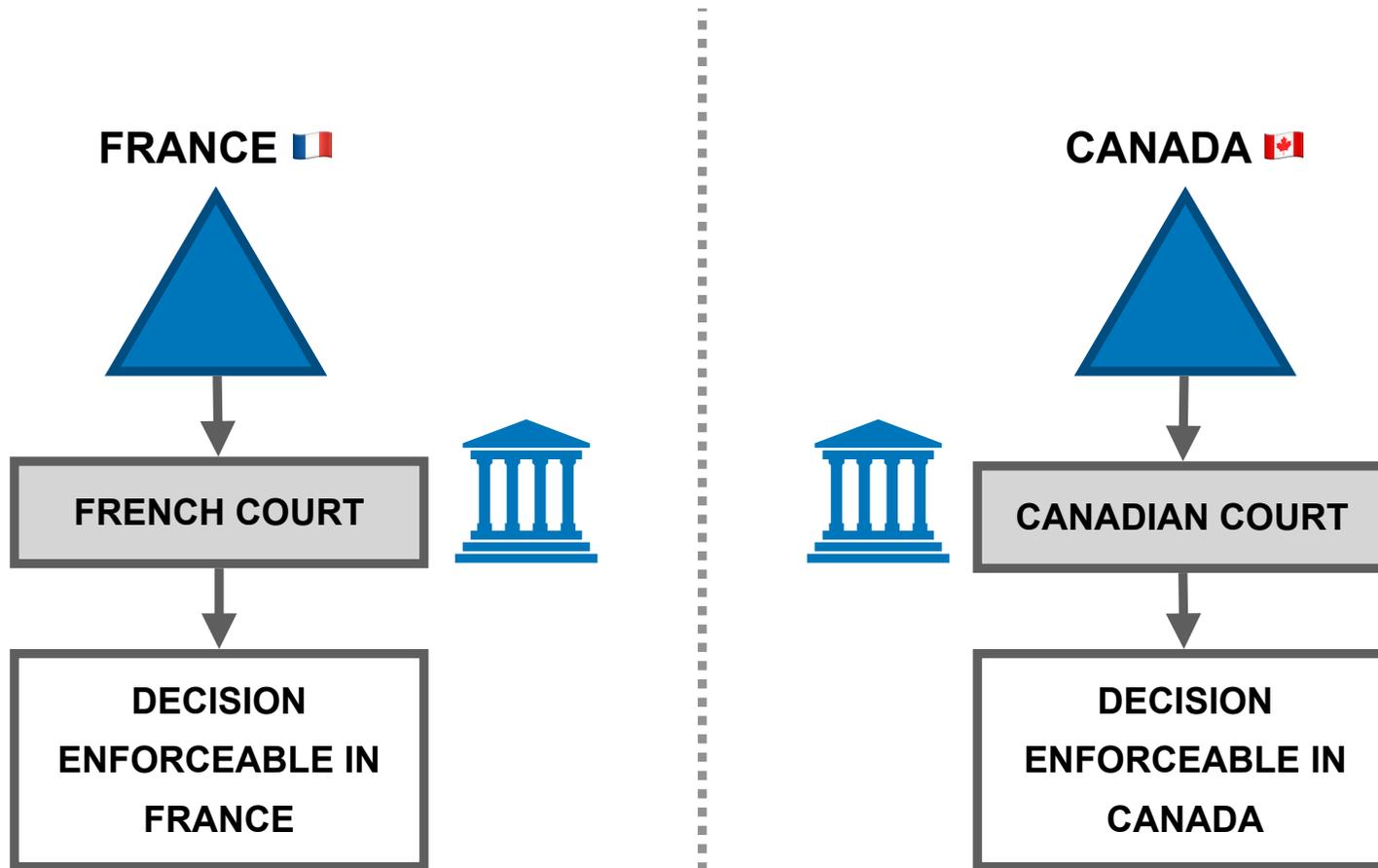
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Which courts have jurisdiction in international disputes?

INTERNATIONAL LITIGATION

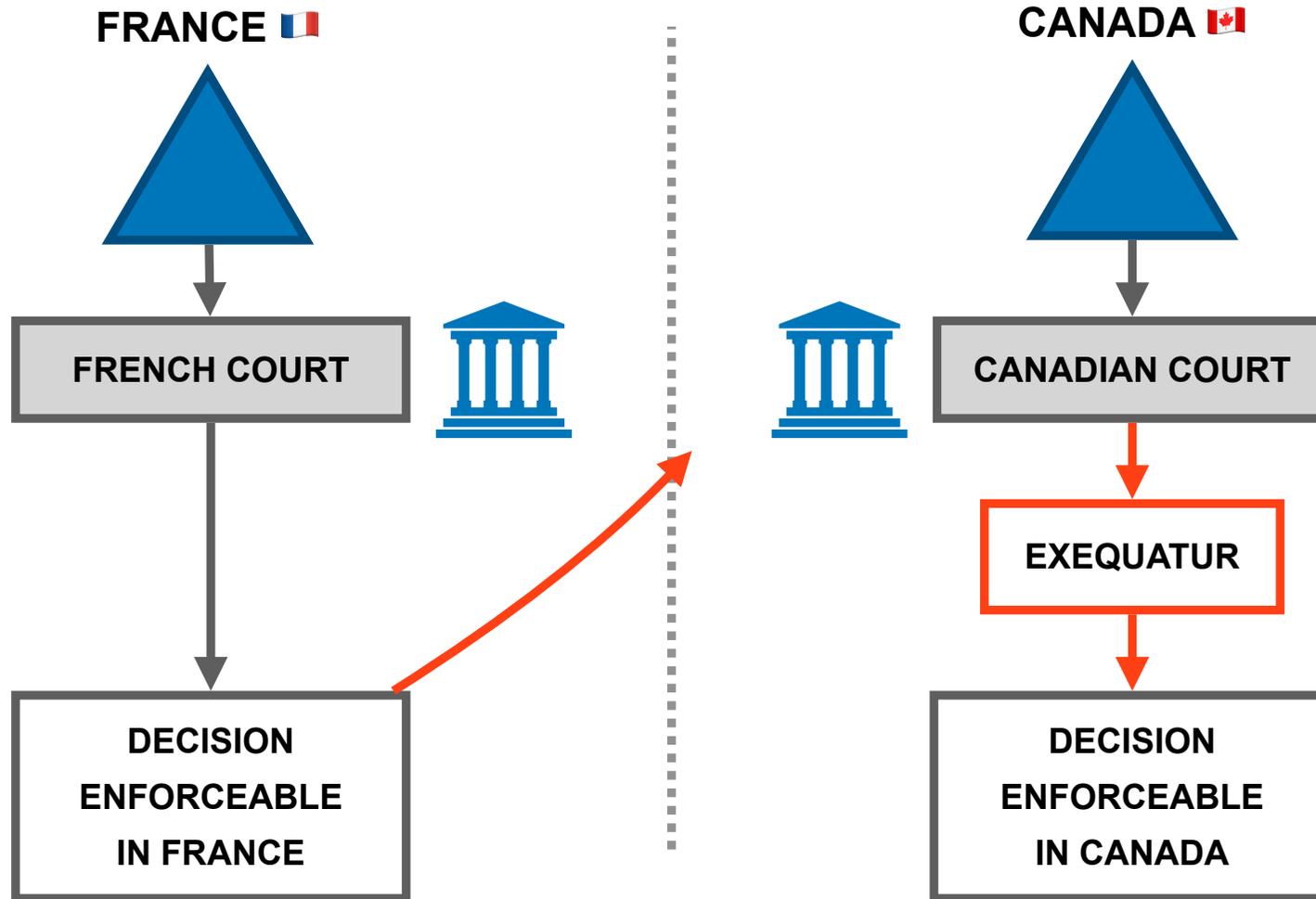
**Private international litigations are judged by
State courts or by arbitral tribunals.
Key issues are jurisdiction and the
enforcement of decisions.**

INTERNATIONAL LITIGATION



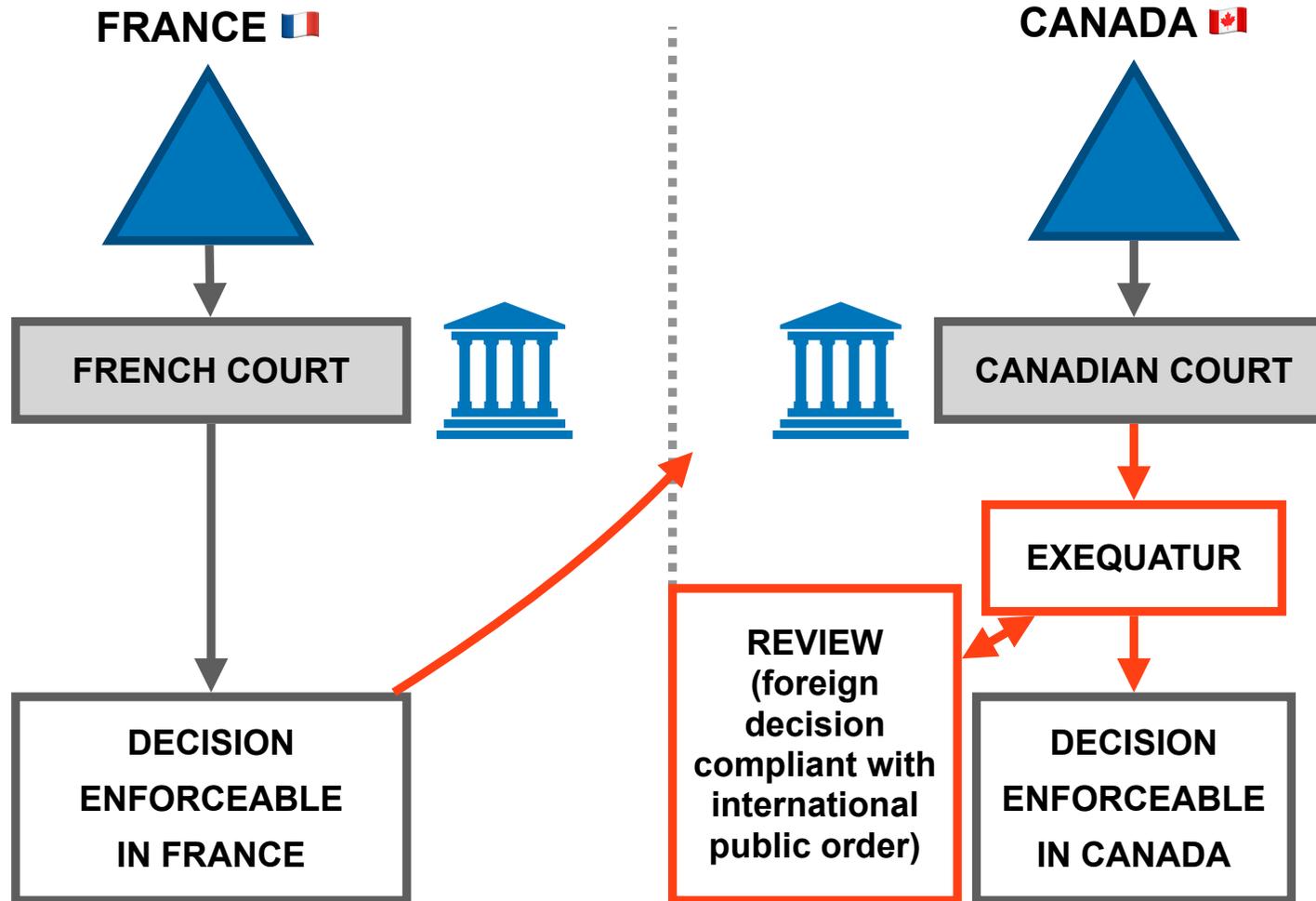
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INTERNATIONAL LITIGATION



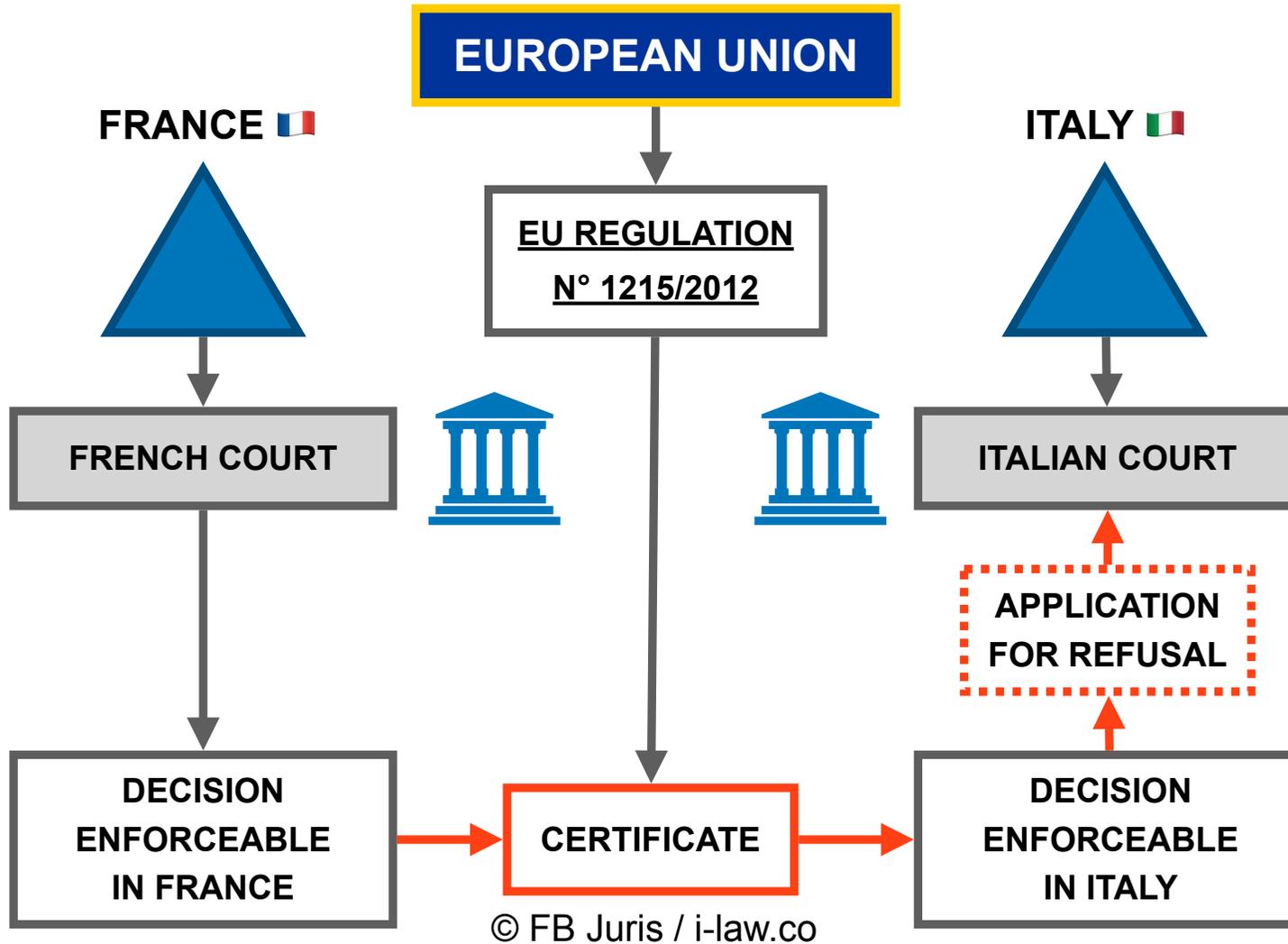
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INTERNATIONAL LITIGATION

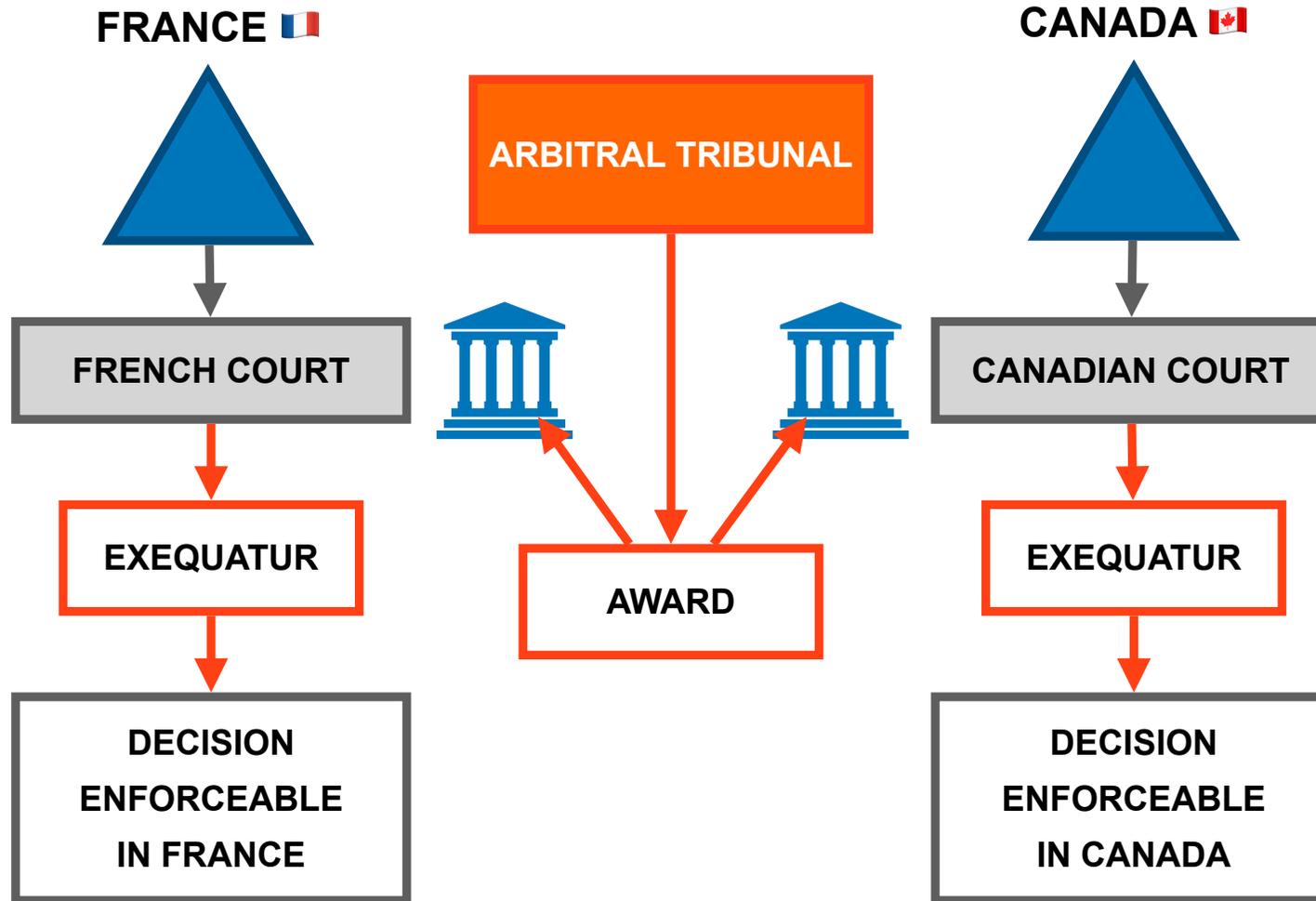


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EUROPEAN LITIGATION

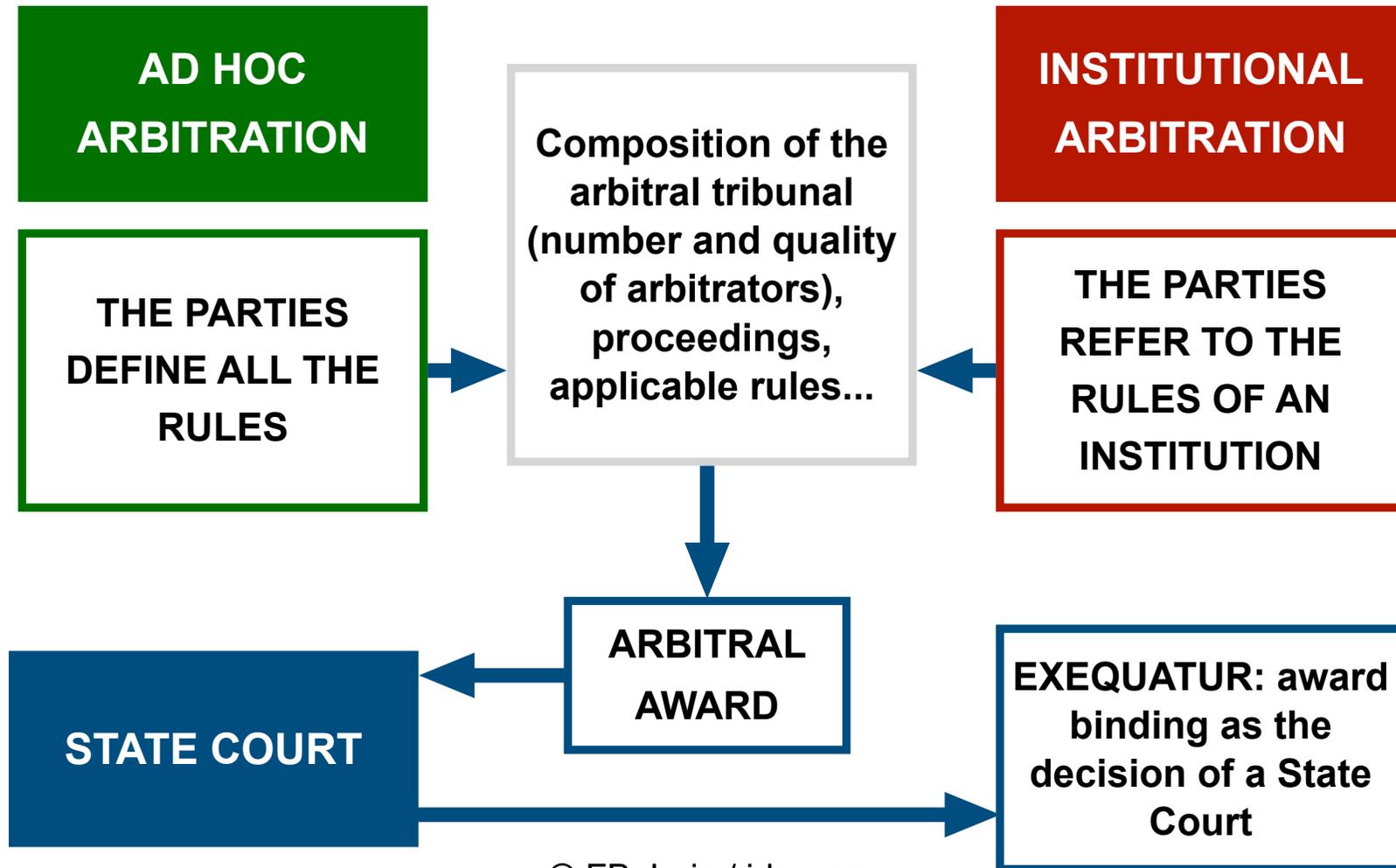


INTERNATIONAL ARBITRATION



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INTERNATIONAL ARBITRATION



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STATE COURT / ARBITRATION

STATE COURT (PUBLIC JUSTICE)

STATE JUSTICE

THE JUDGES MAY NOT
KNOW THE TECHNICAL
ASPECTS OF THE CASE

THE HEARINGS AND THE COURT
DECISION ARE IN PRINCIPLE
PUBLIC

JUSTICE IS NORMALLY FREE
(WITHOUT CONSIDERING
LAWYERS AND EXPERTS)

ARBITRATION (PRIVATE JUSTICE)

NEUTRALITY / INDEPENDANCE
FROM STATES

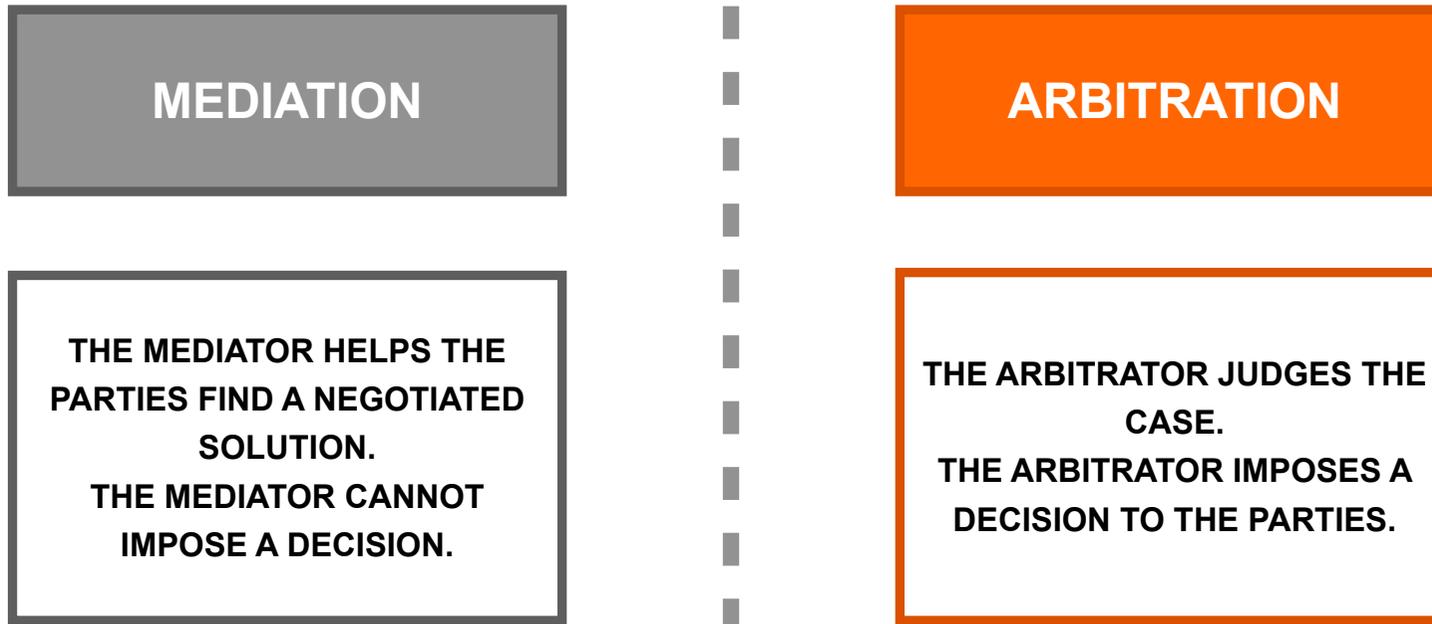
THE PARTIES CAN CHOOSE THE
ARBITRATORS (THEY MAY
APPOINT EXPERTS)

THE ARBITRATION AND THE
AWARD MAY BE CONFIDENTIAL

THE PARTIES HAVE TO PAY THE
ARBITRATORS IN ADDITION TO
LAWYERS AND EXPERTS

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MEDIATION / ARBITRATION



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COMPETENT COURTS IN THE EUROPEAN UNION

**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](#)

**GENERAL
PROVISIONS**

**SPECIAL
JURISDICTION**

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COMPETENT COURTS IN THE EUROPEAN UNION

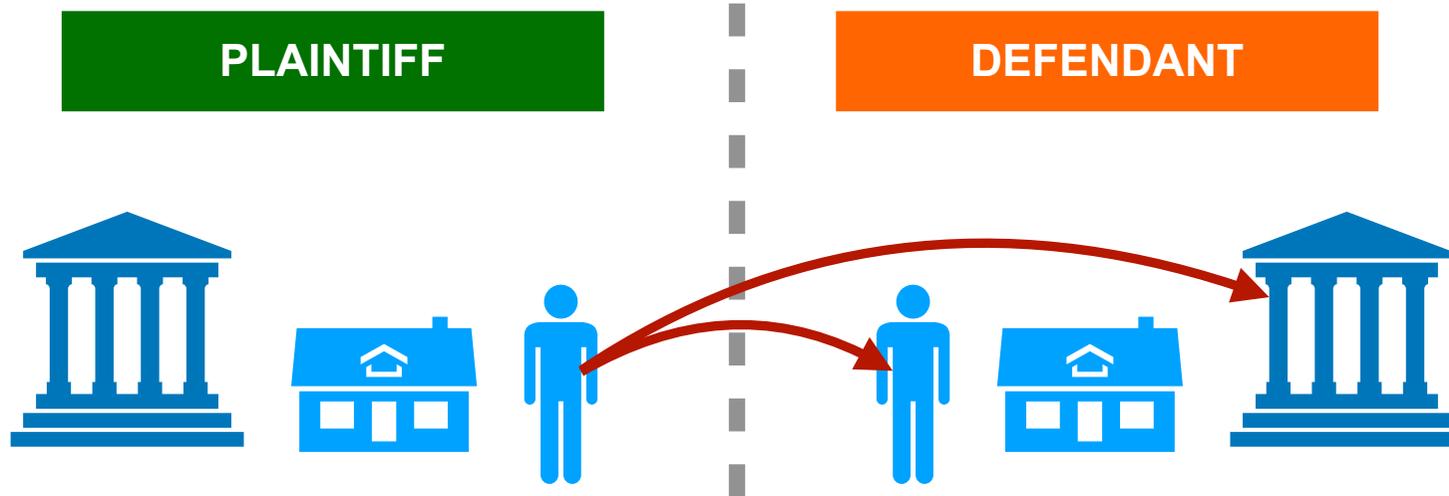
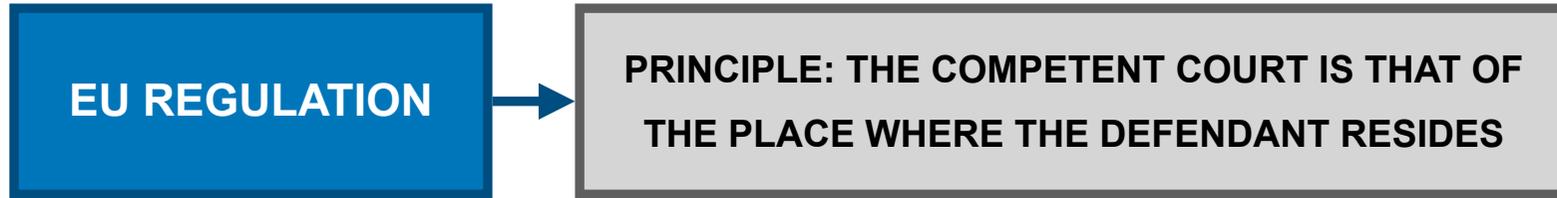
GENERAL PROVISIONS

PERSONS DOMICILED IN A MEMBER STATE SHALL, WHATEVER THEIR NATIONALITY, BE SUED IN THE COURTS OF THAT MEMBER STATE.

PERSONS WHO ARE NOT NATIONALS OF THE MEMBER STATE IN WHICH THEY ARE DOMICILED SHALL BE GOVERNED BY THE RULES OF JURISDICTION APPLICABLE TO NATIONALS OF THAT MEMBER STATE.

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TERRITORIAL JURISDICTION



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COMPETENT COURTS IN THE EU

SPECIAL JURISDICTION

A person domiciled in a Member State may be sued in another Member State

CONTRACT

Courts for the place of performance of the obligation in question

TORT, DELICT, QUASI-DELICT

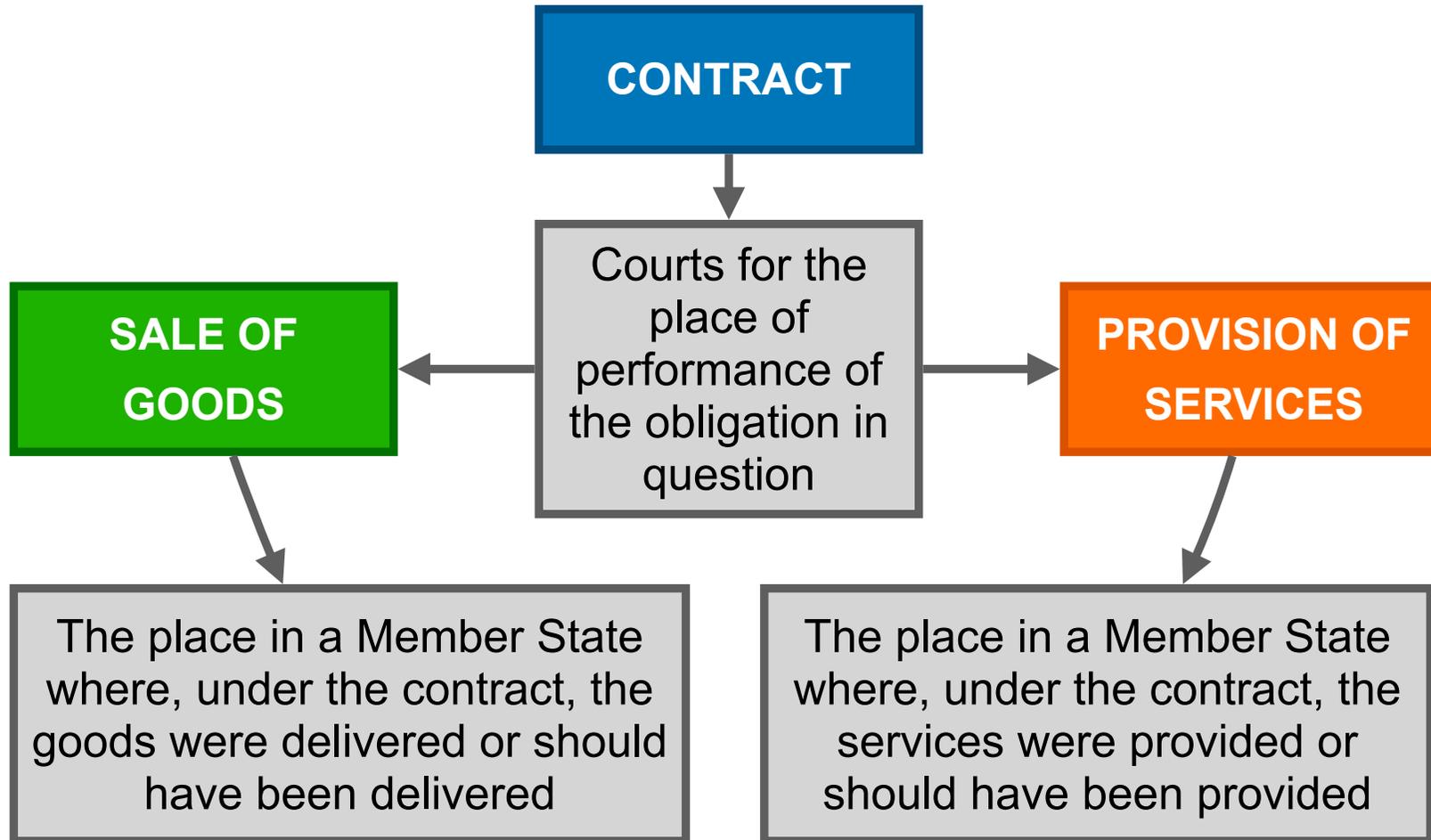
Courts for the place where the harmful event occurred or may occur

OTHER

Companies, insurance, employment contract, immovable property, IP...

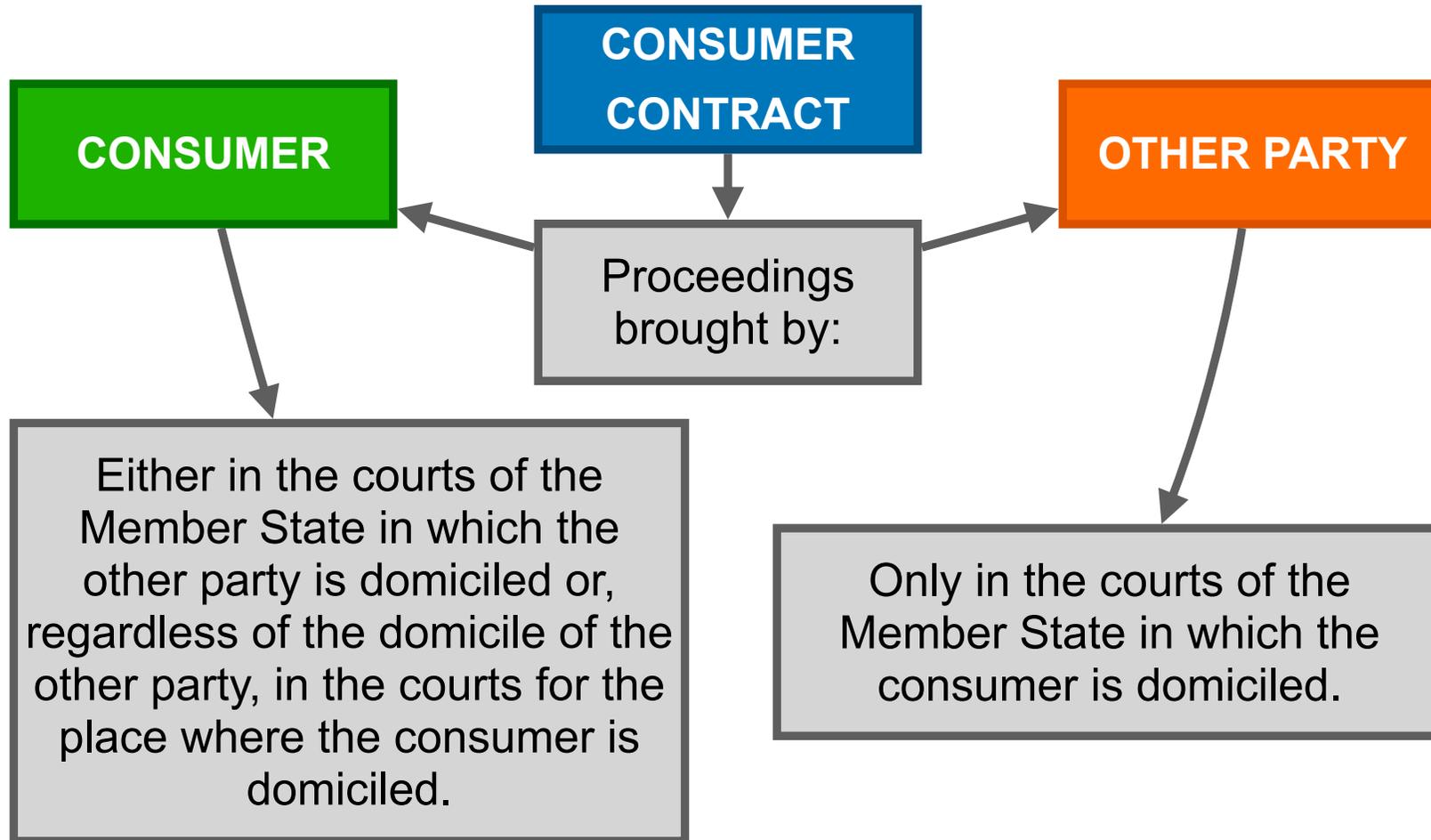
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COMPETENT COURTS IN THE EU



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COMPETENT COURTS IN THE EU



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COMPETENT COURTS IN THE EU

PROROGATION OF JURISDICTION (article 25 of EU REGULATION No 1215/2012)

If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

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PRACTICAL CASE



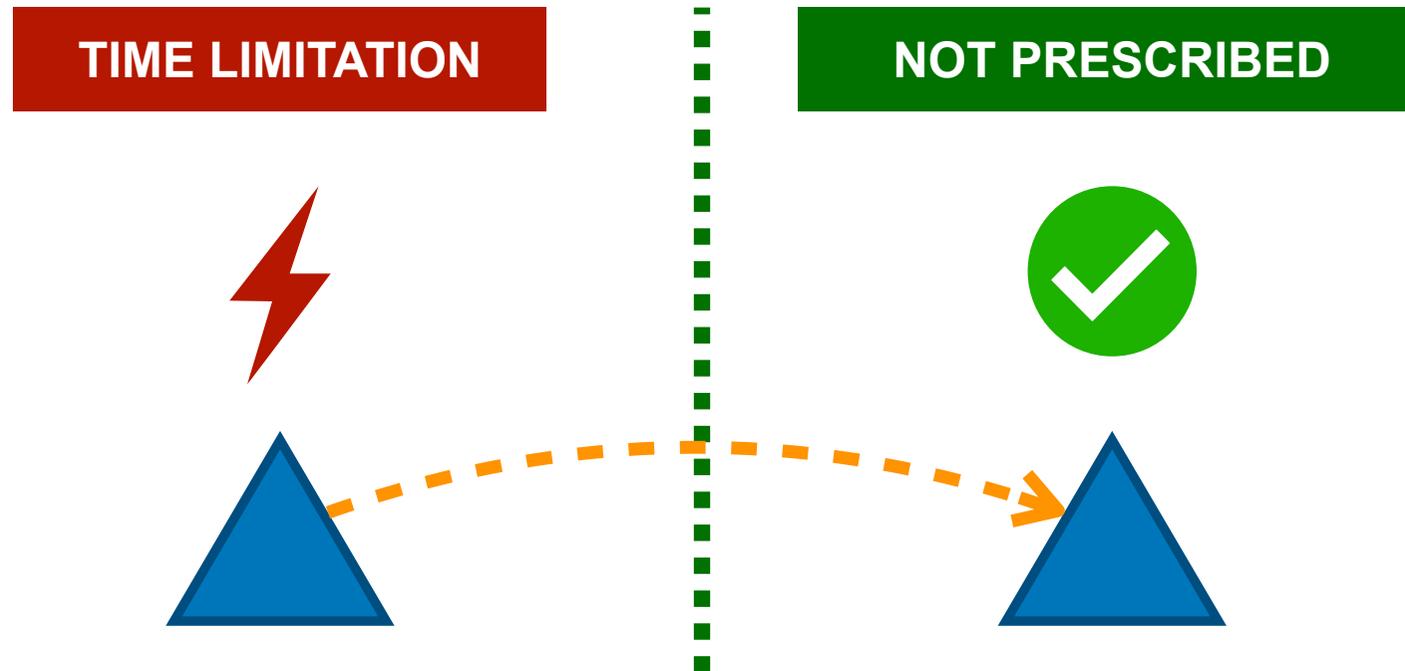
An Italian company and a Portuguese company entered into a contract under which the Italian company shall sell products to the Portuguese company. The products shall be delivered in Spain.

In case of litigation, before which courts can the Italian company sue the Portuguese company?

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FORUM SHOPPING



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

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What are the important terms in any international business agreement?

INTERNATIONAL BUSINESS 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.

- 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.
- PAYMENT TERMS MUST BE REASONABLE AND COMPLIANT WITH IMPERATIVE RULES.
- IF APPLICABLE, THE CONTRACT SHOULD LIMIT THE RISK OF EXCHANGE RATE FLUCTUATIONS.

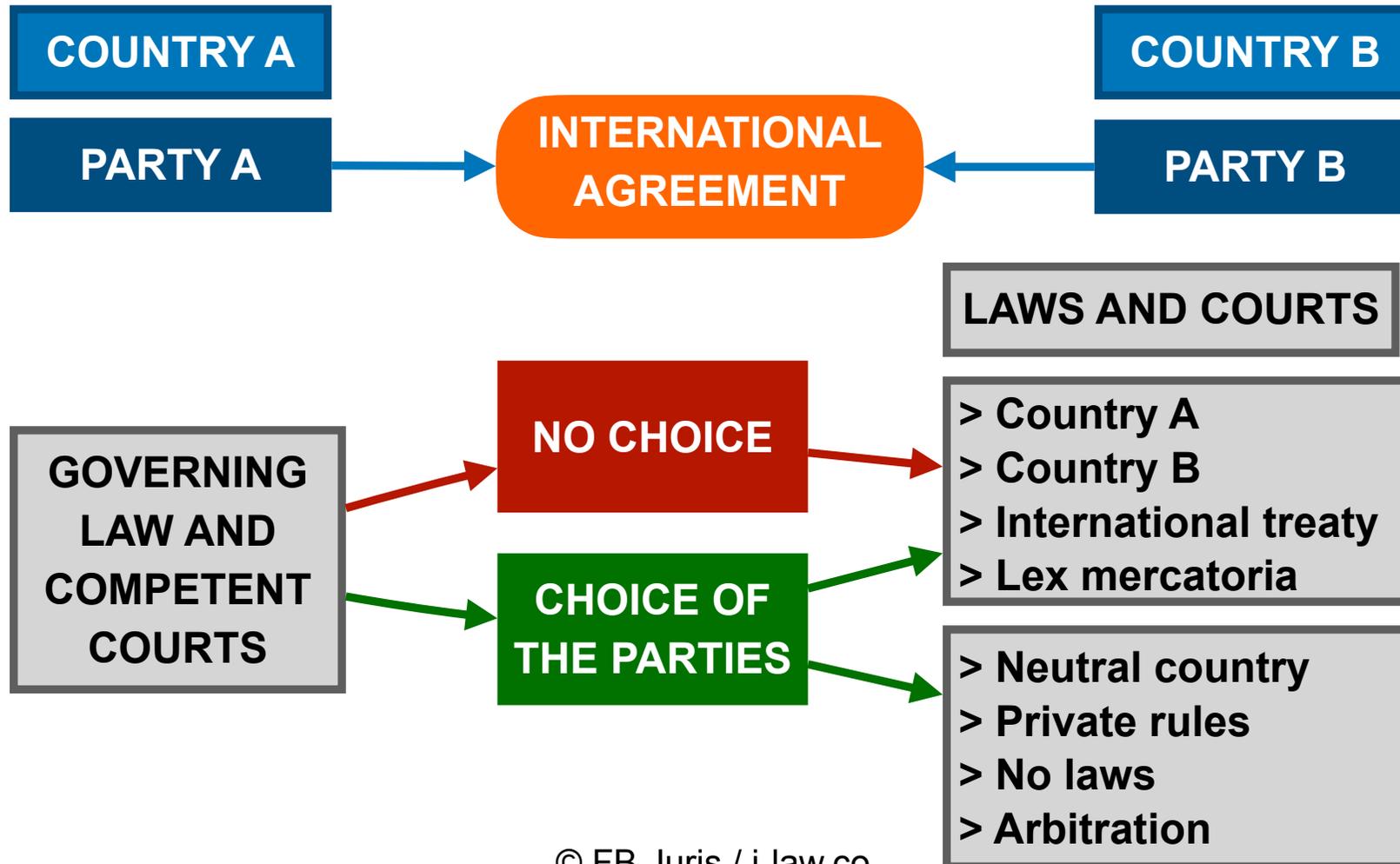
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INTERNATIONAL BUSINESS CONTRACT: CHECK LIST - RED FLAGS

- 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.**

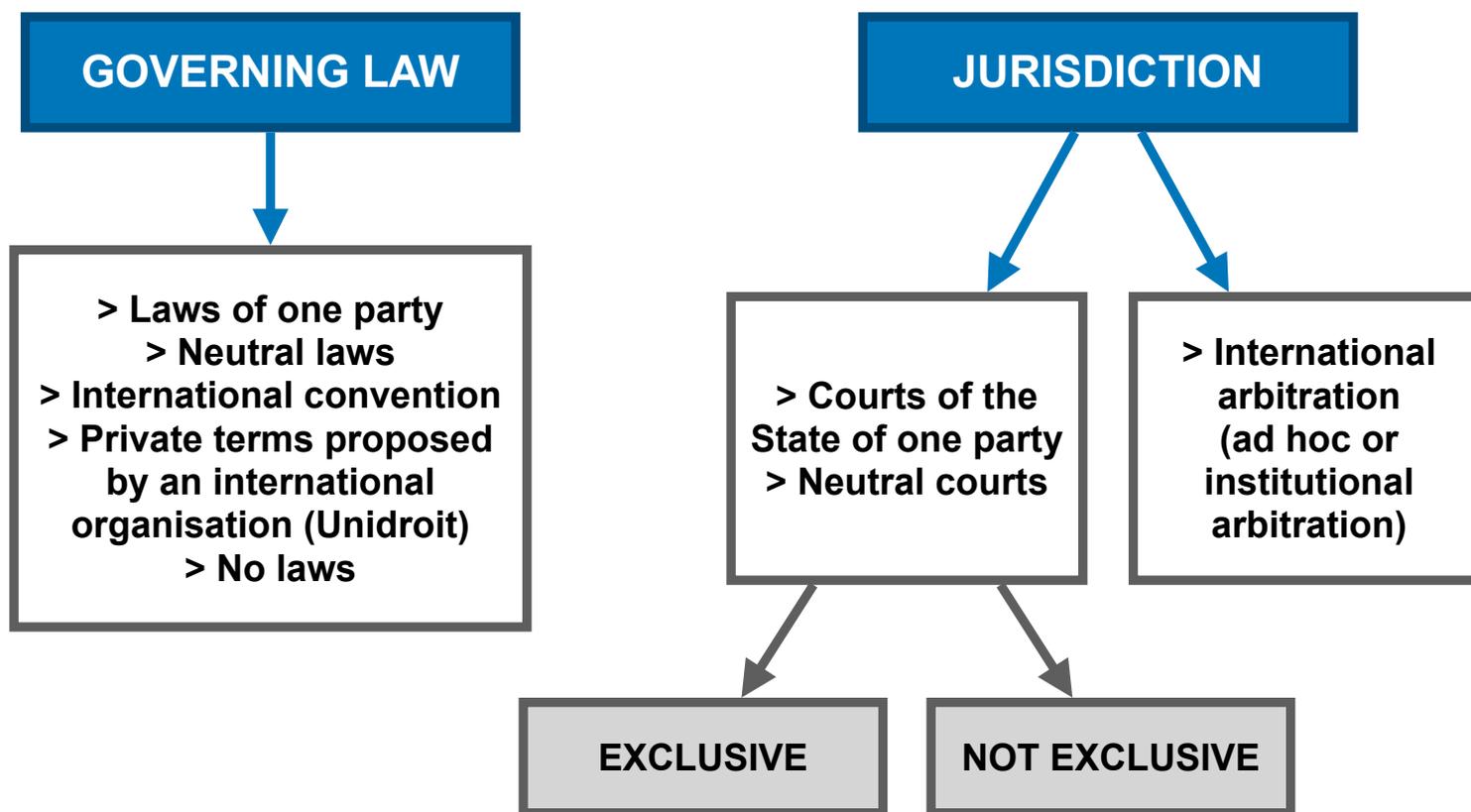
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INTERNATIONAL AGREEMENT



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INTERNATIONAL CONTRACT: GOVERNING LAW AND JURISDICTION



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CLAUSE: GOVERNING LAW

**THIS CONTRACT IS GOVERNED BY THE LAWS OF FRANCE.
IT SHALL BE ENFORCED AND INTERPRETED PURSUANT TO THESE
LAWS.**

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CLAUSE: GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

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CLAUSE: GOVERNING LAW AND JURISDICTION

THE AGREEMENT FORMED BY ACCEPTANCE OF THIS LETTER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA IN THE UNITED STATES OF AMERICA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WITHIN SUCH STATE AND SUCH COUNTRY. EACH PARTY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION IN ANY ACTION BROUGHT IN ANY FEDERAL OR STATE COURT WITHIN THE STATE OF CALIFORNIA HAVING SUBJECT MATTER JURISDICTION IN THE MATTER FOR PURPOSES OF ANY ACTION ARISING OUT OF THIS AGREEMENT.

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CLAUSE: GOVERNING LAW AUTONOMOUS INTERNATIONAL CONTRACT (CONTRACT WITHOUT LAW)

THE PARTIES EXPRESSLY STATE THAT THE CONTRACT, WHICH GOVERNS INTERNATIONAL RELATIONSHIPS AND OPERATIONS, SHALL BE CONSTRUED AND INTERPRETED AS AN INDEPENDENT INTERNATIONAL CONTRACT, GOVERNED EXCLUSIVELY BY THE RULES EXPRESSLY DEFINED BY THE PARTIES, AS FAR AS POSSIBLE.

THUS THE PARTIES INTEND THE CONTRACT TO BE PERFORMED, ENFORCED, INTERPRETED AND JUDGED EXCLUSIVELY PURSUANT TO ITS PROVISIONS, EXCLUDING AS FAR AS POSSIBLE ANY PROVISIONS WHATSOEVER, NOTABLY STATE OR REGIONAL OR INTERNATIONAL PROVISIONS, NOT EXPLICITLY MENTIONED BY THIS CONTRACT, EXCEPT IN CASE OF OBVIOUS GAP IN THE CONTRACT, IN WHICH CASE THE PARTIES EXPRESSLY ACKNOWLEDGE THAT EXCLUSIVELY FRENCH LAW SHALL APPLY TO FILL IN THE GAP ONLY TO THE EXTENT THAT IS NEEDED, THIS NOTWITHSTANDING THE PLACE WHERE THE CONTRACT MAY HAVE EFFECTS, WITH THE SOLE EXCEPTION OF THE IMPERATIVE RULES OF THE STATE WHERE THE CONTRACT MAY HAVE EFFECTS.

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CLAUSE: EXCLUSIVE JURISDICTION

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS CONTRACT, THE PARTIES HEREBY GRANT EXCLUSIVE JURISDICTION TO THE COURTS OF PARIS (FRANCE).

THIS CLAUSE PROVIDING FOR AN EXCLUSIVE JURISDICTION SHALL BE GIVEN THE BROADEST EFFECT AND SHALL APPLY IN ANY CASE, INCLUDING IN CASE OF LITIGATION RELATING TO THE PRE-CONTRACTUAL PHASE OR IN CASE OF EMERGENCY OR PROTECTIVE PROCEEDINGS, AND NOTWITHSTANDING THE EXISTENCE OF OTHER DEFENDANTS OR GUARANTEES.

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CLAUSE: PROROGATION OF COMPETENCE

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS
CONTRACT, THE PARTIES HEREBY GRANT **XXX**

OPTION 1: EXCLUSIVE JURISDICTION

OPTION 2: JURISDICTION

OPTION 3: NON-EXCLUSIVE JURISDICTION

TO THE COURTS OF PARIS (FRANCE).

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CLAUSE: PROROGATION OF COMPETENCE

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS CONTRACT, THE PARTIES HEREBY **GRANT JURISDICTION** TO THE COURTS OF PARIS (FRANCE).

IN THE EUROPEAN UNION, THE JURISDICTION IS PRESUMED EXCLUSIVE (article 25 of EU Regulation n° 1215/2012)



WHERE THE EU REGULATION N° 1215/2012 IS NOT APPLICABLE, THE PROROGATION OF COMPETENCE IS NORMALLY NOT EXCLUSIVE

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CLAUSE: PROROGATION OF COMPETENCE

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS CONTRACT, THE PARTIES HEREBY **GRANT EXCLUSIVE JURISDICTION** TO THE COURTS OF PARIS (FRANCE).

THE CASE MAY STILL BE REFERRED TO THE COURT OF JUSTICE OF THE EUROPEAN UNION AND/OR TO THE EUROPEAN COURT OF HUMAN RIGHTS (REFERENCES FOR PRELIMINARY RULINGS)



THESE COURTS ARE INTEGRATED TO THE JUDICIAL SYSTEMS OF THE STATES MEMBERS

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ICC ARBITRATION CLAUSE

All disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by XXX [OPTION 1: one or more // OPTION 2: three] arbitrators appointed in accordance with the said Rules.

The place of the arbitration shall be XXX [TO BE SPECIFIED].

The language of the arbitration shall be XXX [TO BE SPECIFIED].

The law applicable to the merits shall be XXX [TO BE SPECIFIED, FOR EXAMPLE: the governing law specified above].

No award or procedural order made in the arbitration shall be published.

<https://iccwbo.org/publication/standard-icc-arbitration-clauses-english-version/>

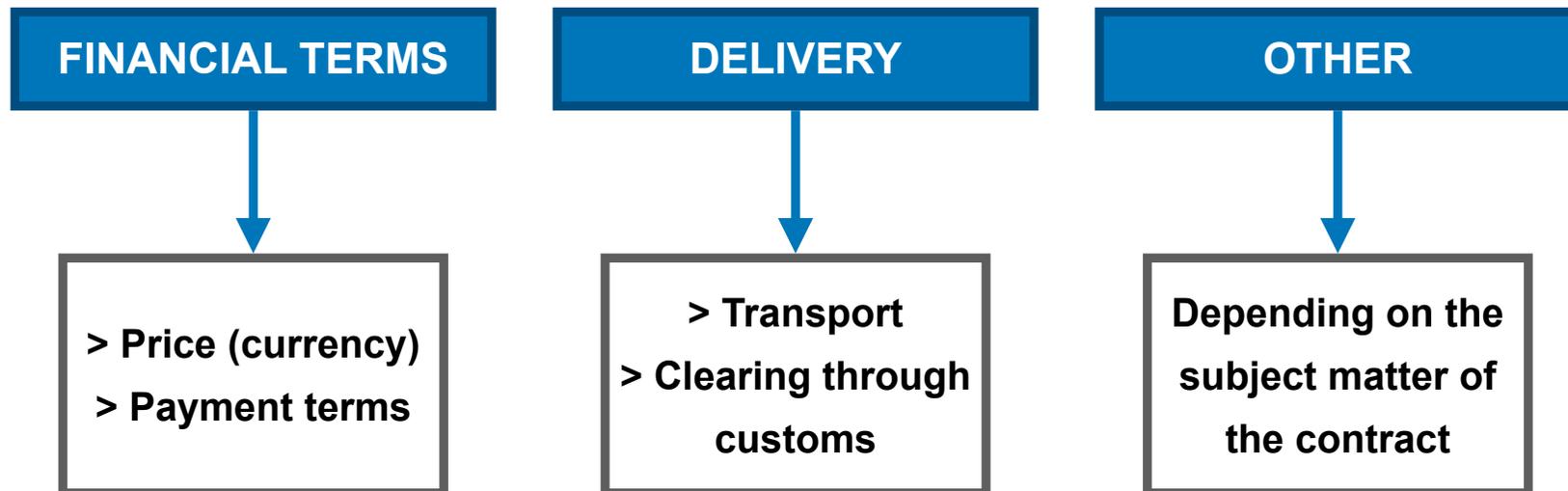
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INTERNATIONAL BUSINESS CONTRACT: SPECIFIC CLAUSES



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INTERNATIONAL BUSINESS CONTRACT: SPECIFIC CLAUSES



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**What are the important additional terms
in a contract for the international sale of
goods?**

CONTRACT FOR THE INTERNATIONAL SALE OF GOODS

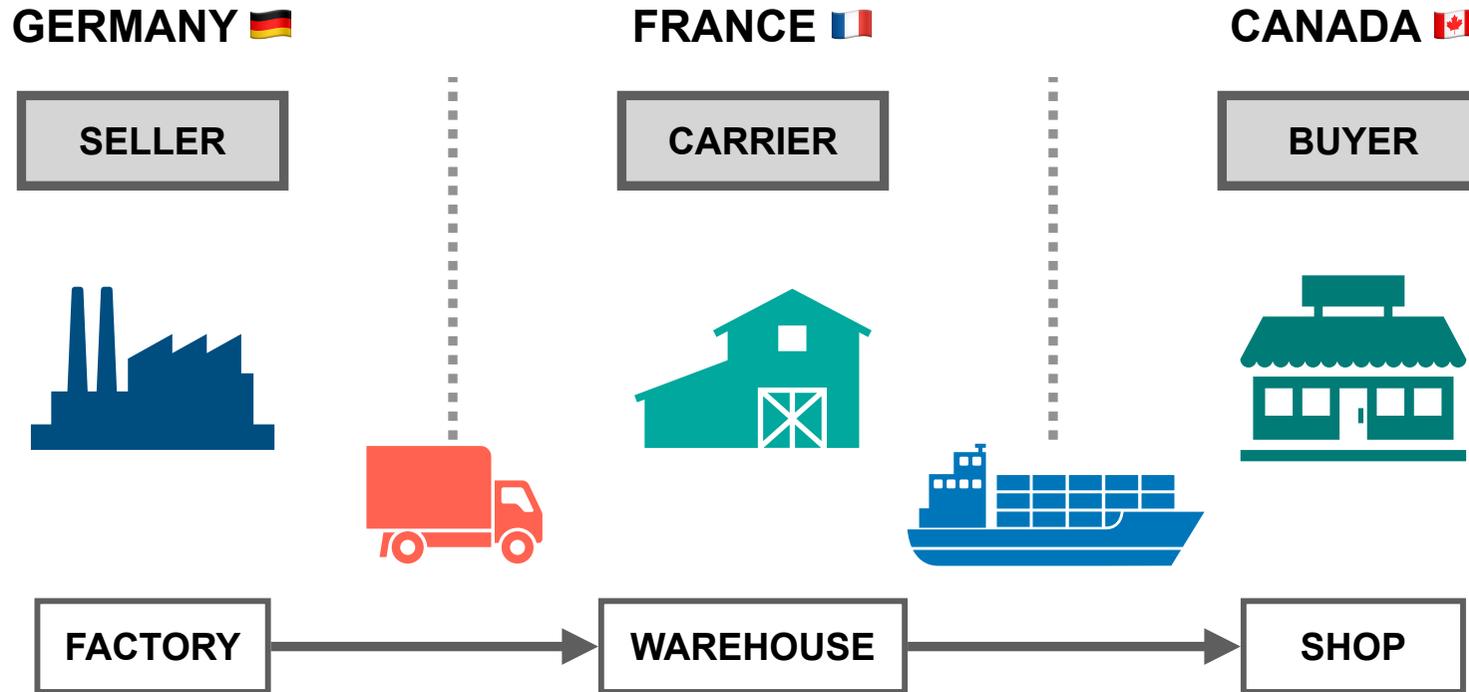
CHECK LIST - RED FLAGS

**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).**

**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.)**

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INTERNATIONAL SALE OF GOODS



**WHEN OCCURS THE TRANSFER OF RISKS / OWNERSHIP?
WHO ATTENDS TO INSURANCE, COSTS, FORMALITIES?**

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INTERNATIONAL SALE OF GOODS

GOVERNING LAW (substantive rule)

UNCITRAL

97 STATES
(2023)

CISG (treaty)

APPLICABLE as of right between parties whose places of business are in different contracting States

UNIDROIT

UNIDROIT
PRINCIPLES OF
INTERNATIONAL
COMMERCIAL
CONTRACTS (2016)
+ Link

OPTIONAL (applicable if the parties so decide)

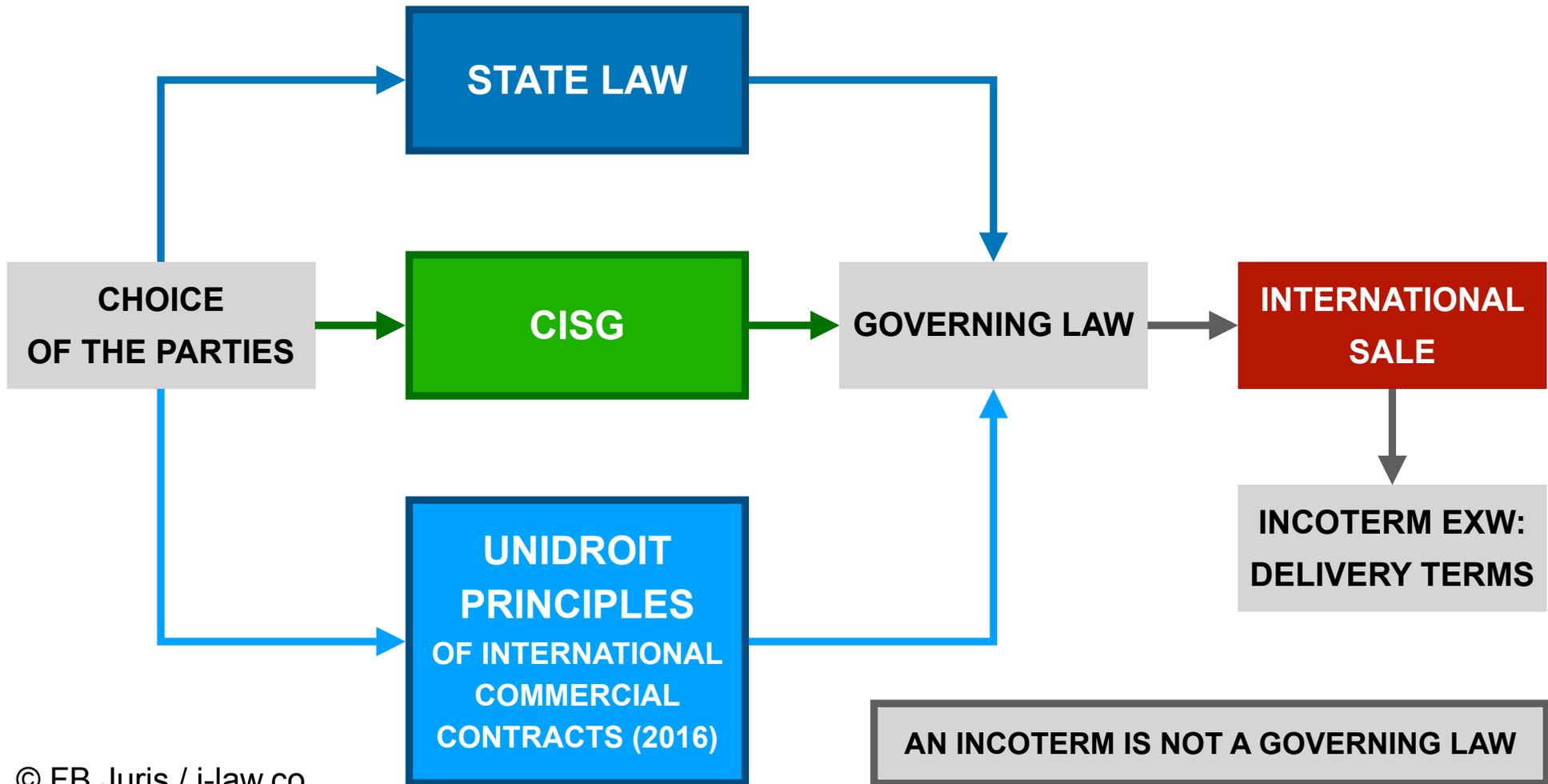
DELIVERY TERMS

ICC

INCOTERMS
Incoterms rules

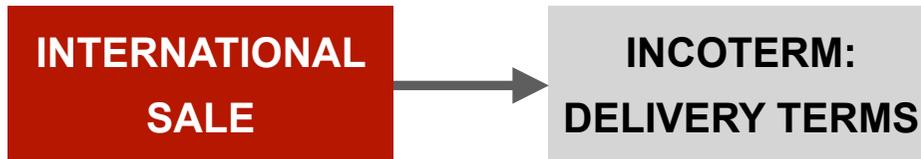
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GOVERNING LAW AND INCOTERMS



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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

INCOTERMS 2010

EXAMPLE OF INCOTERMS

EXW – Ex Works

“Ex Works” means that the seller delivers when it places the goods at the disposal of the buyer at the seller’s premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.

Source: <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010>

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INCOTERMS 2010

EXAMPLE OF INCOTERMS

DDP – Delivered Duty Paid

“Delivered Duty Paid” means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

Source: <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010>

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PREVENTING THE RISKS / GUARANTEES

Client information (KYC)

Bank guarantee

Payment terms

Personal surety

Retention of title clause

Company surety

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PRACTICAL CASE



Your client asks a supplier credit: he will pay you 30 days after delivery of the goods.

What cost-free guarantees can you ask?

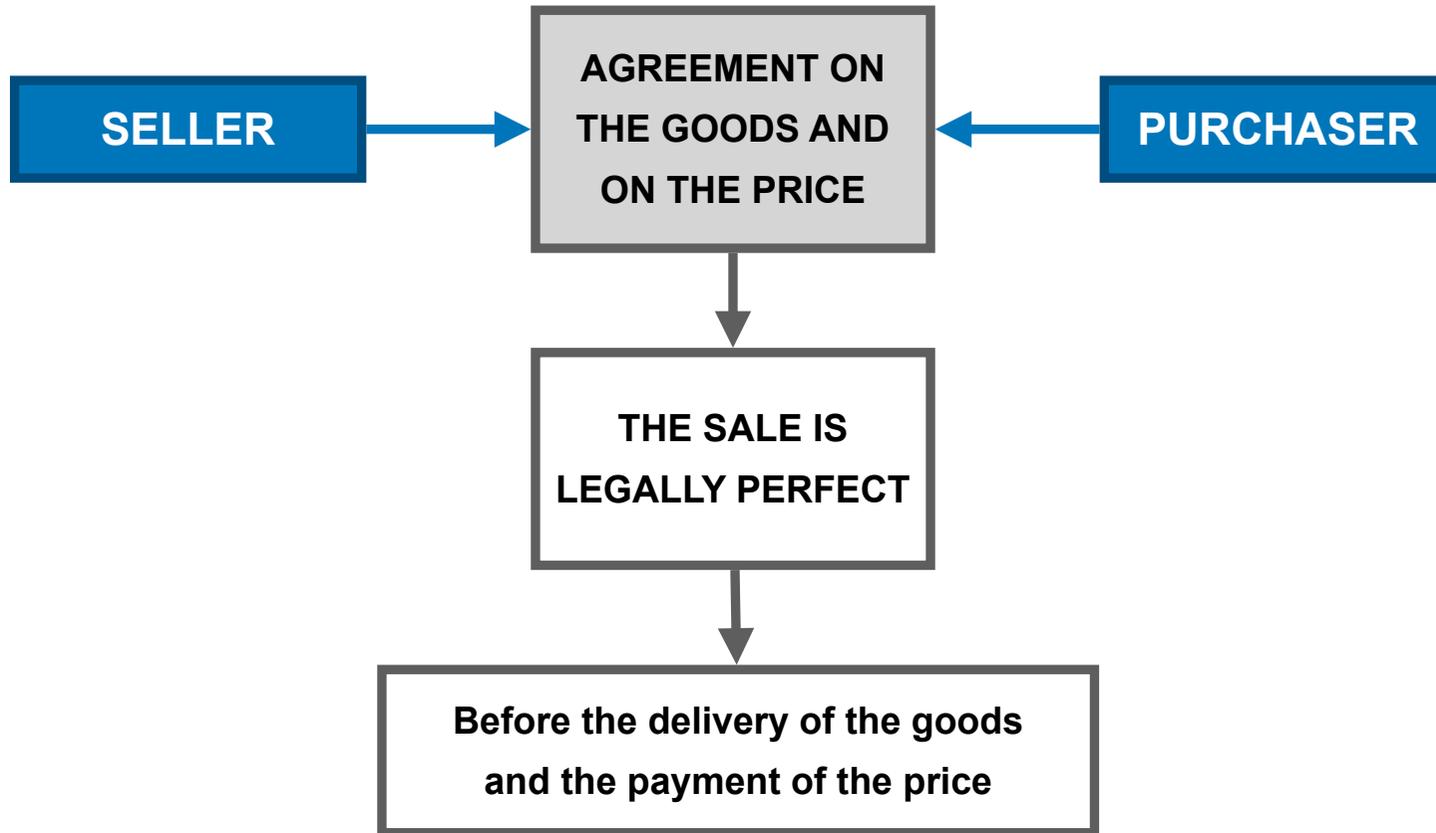
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CLAUSE: RETENTION OF TITLE

**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.**

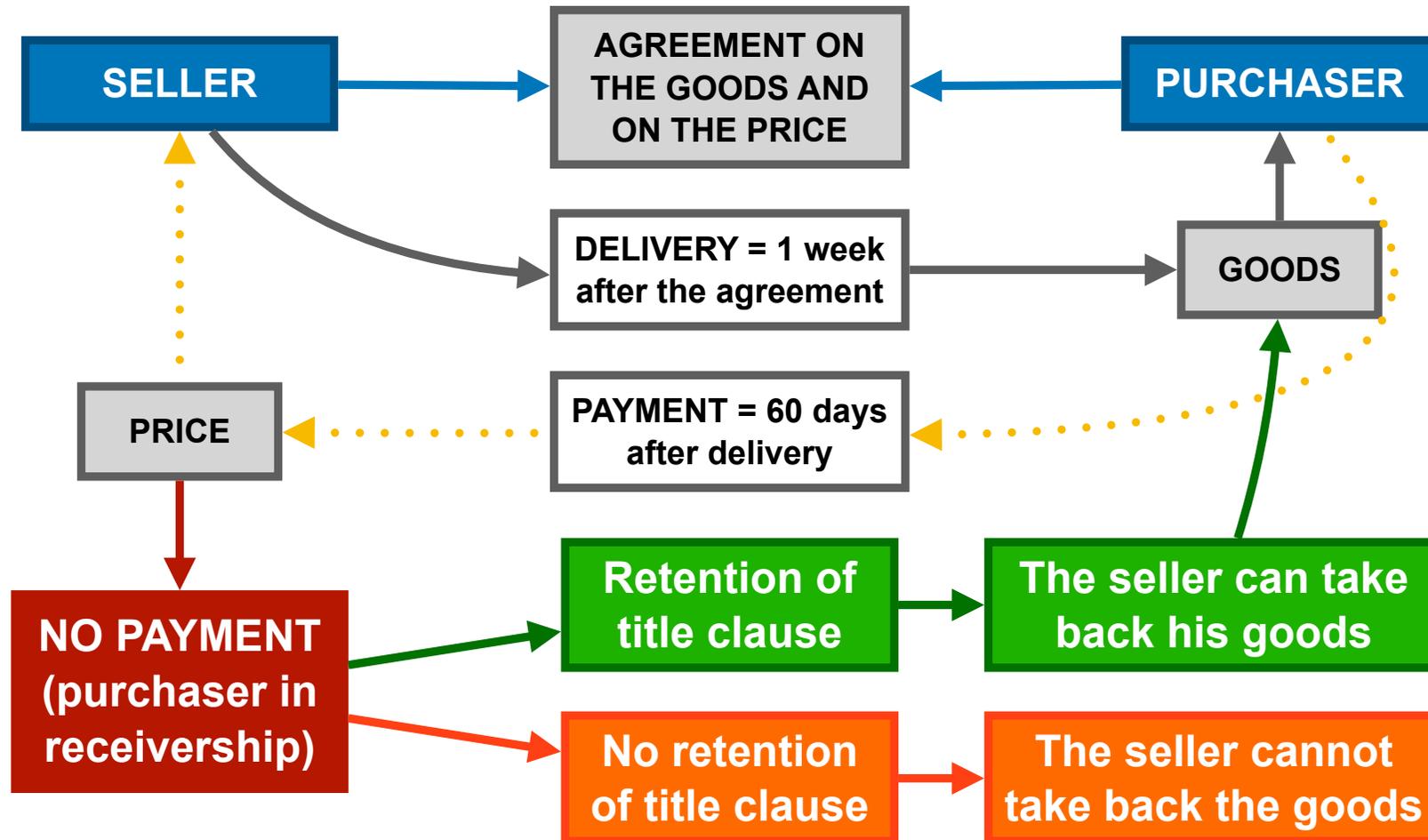
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SALE OF GOODS



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SALE OF GOODS

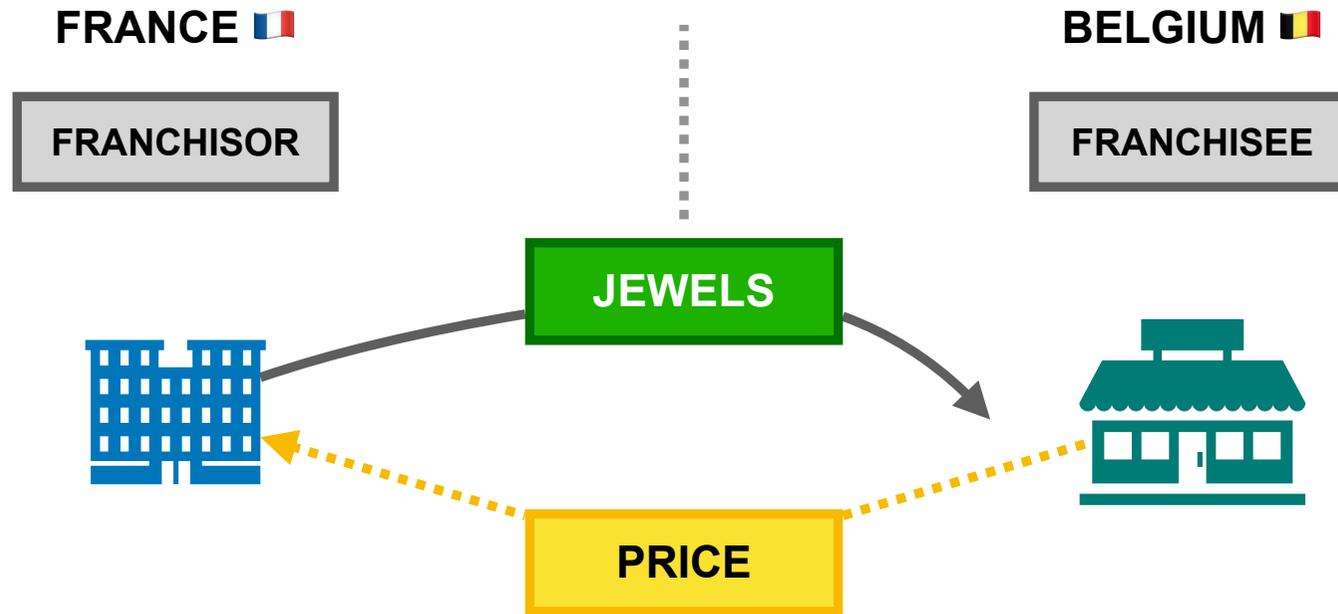


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PRACTICAL CASE



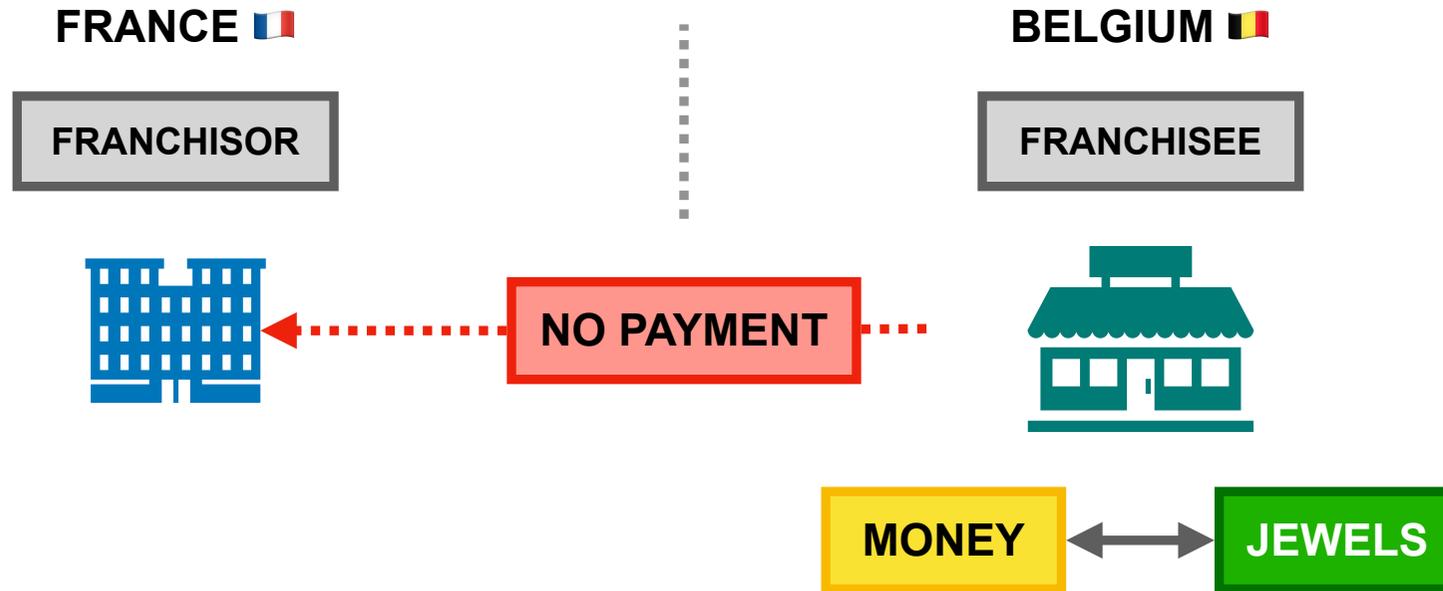
DISTRIBUTION / LITIGATION



Generally, the products are provided to the distributor before payment.
In order to reduce the risks, the franchisor needs guarantees.
At least, a retention of title clause should be inserted in the contract.

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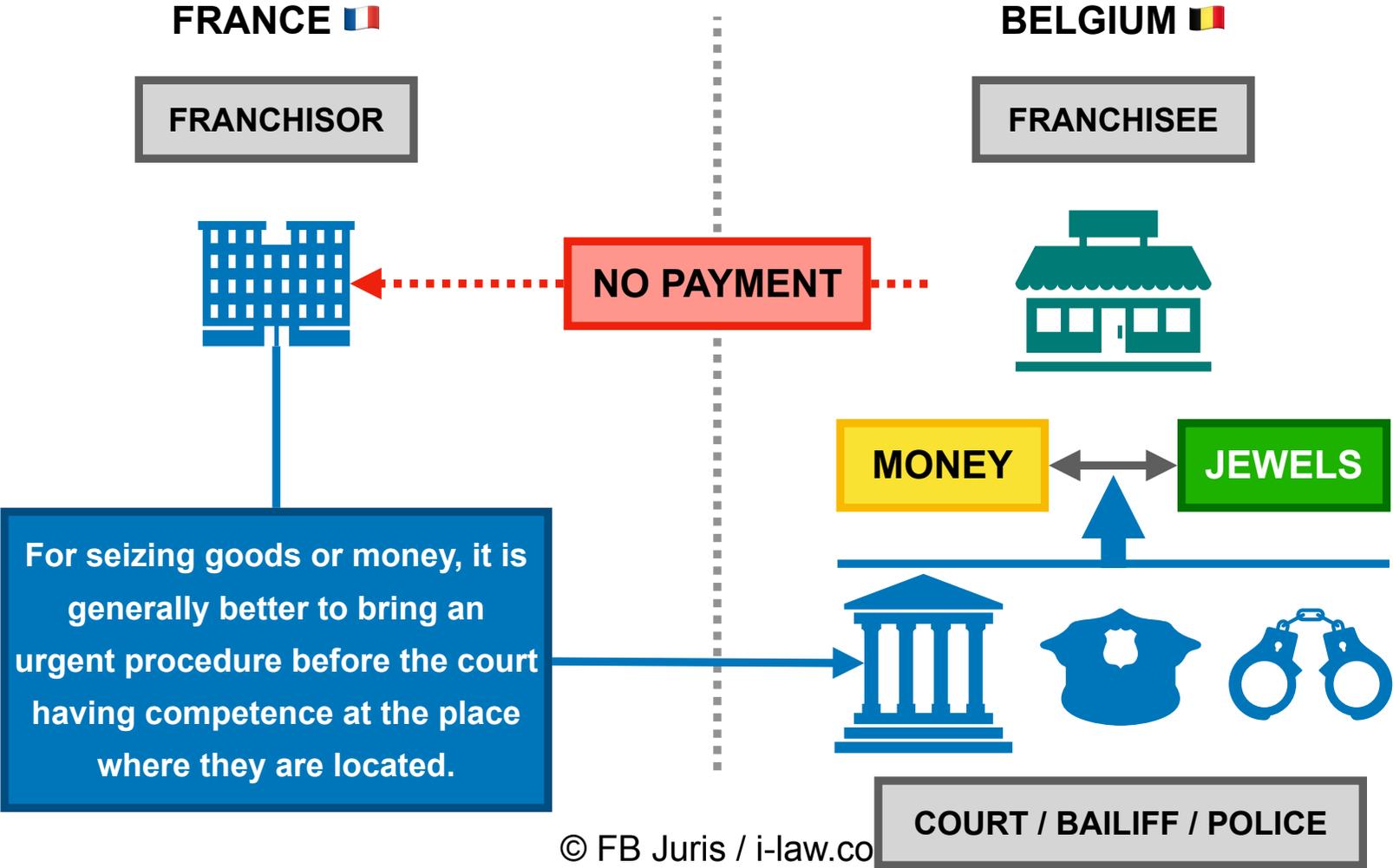
DISTRIBUTION / LITIGATION



If the franchisee does not pay the price, the franchisor should try to seize the remaining products and/or their resale price and/or the insurance indemnity held by the franchisee. An urgent procedure is needed for this.

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DISTRIBUTION / LITIGATION



PRACTICAL CASE



Draft a very simple international contract for the sale of goods.

Focus on the main terms and conditions (your contract should be less than one page).

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What are the specific terms that are important in an international contract for the manufacture and purchase of goods (supply agreement)?

INTERNATIONAL CONTRACT FOR THE MANUFACTURE AND PURCHASE OF GOODS (SUPPLY AGREEMENT)

- **SUBCONTRACTING**
- **COMMENTARY OF AN INTERNATIONAL CONTRACT FOR THE
MANUFACTURE AND PURCHASE OF GOODS.**

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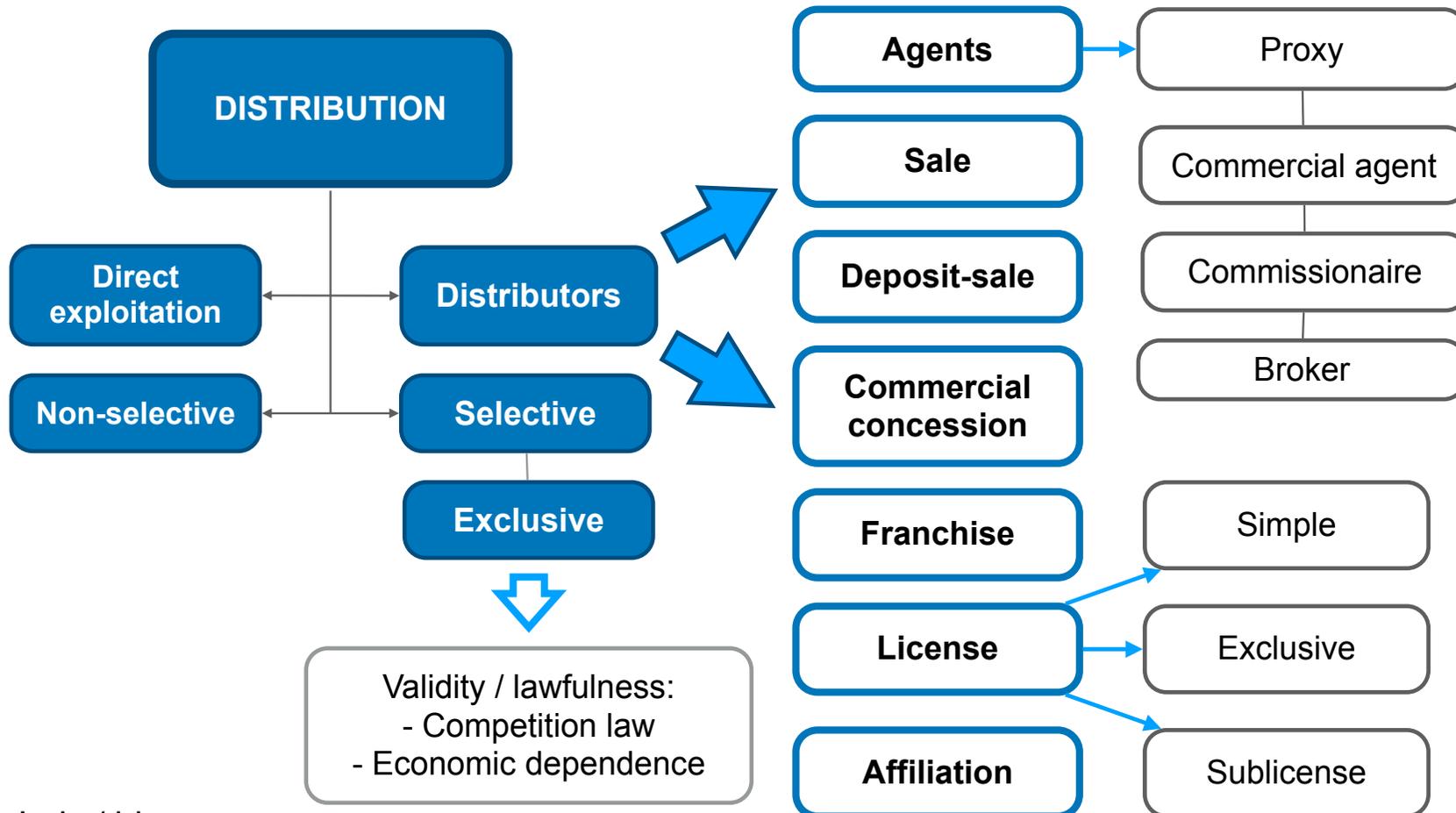
What are the specific terms that are important in a selective distribution agreement?

INTERNATIONAL CONTRACT FOR THE MANUFACTURE AND PURCHASE OF GOODS (SUPPLY AGREEMENT)

- **DISTRIBUTION CONTRACTS**
- **FRANCHISE**
- **SELECTIVE DISTRIBUTION NETWORK**
- **EXCLUSIVITY (PRODUCTS EXCLUSIVITY / TERRITORIAL EXCLUSIVITY)**
- **COMPETITION LAW**
- **ACTIVE SALES / PASSIVE SALES**
- **TRADEMARK LICENCE**

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DISTRIBUTION CONTRACTS



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PRACTICAL CASE



You are a distributor.

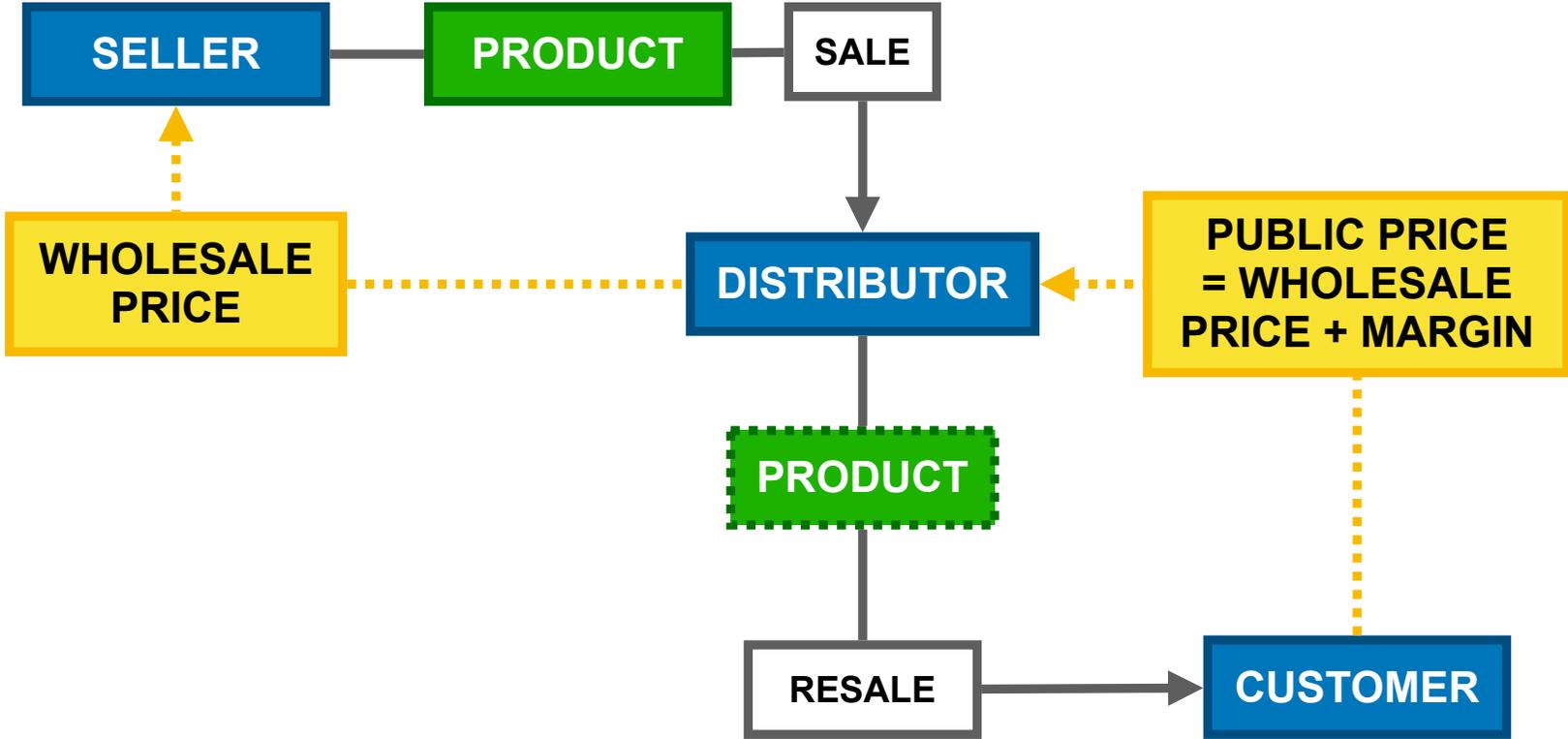
Which distribution contract would you prefer?

Firm purchase for resale or commissionnaire agreement?

Why?

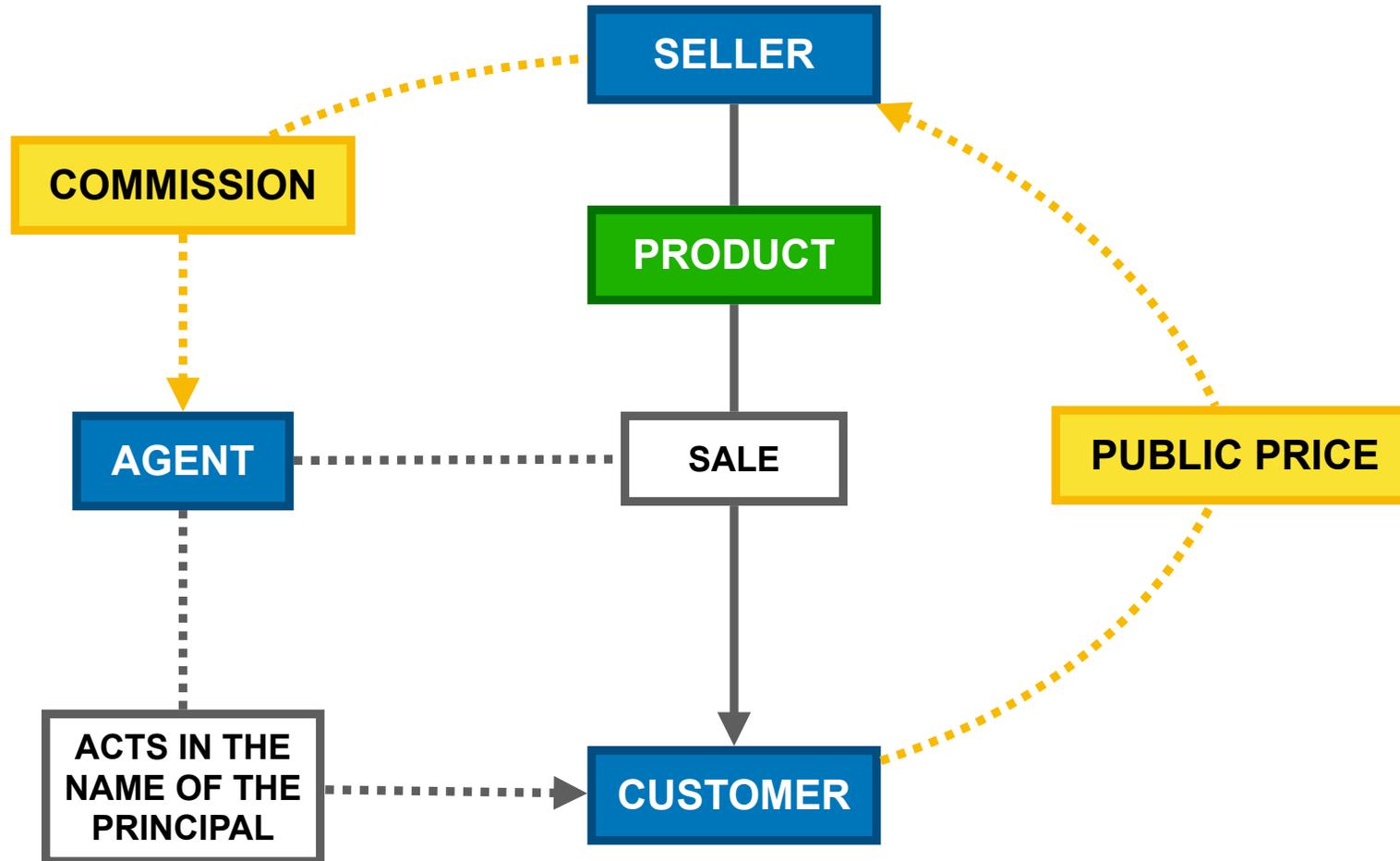
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PURCHASE AND RESALE



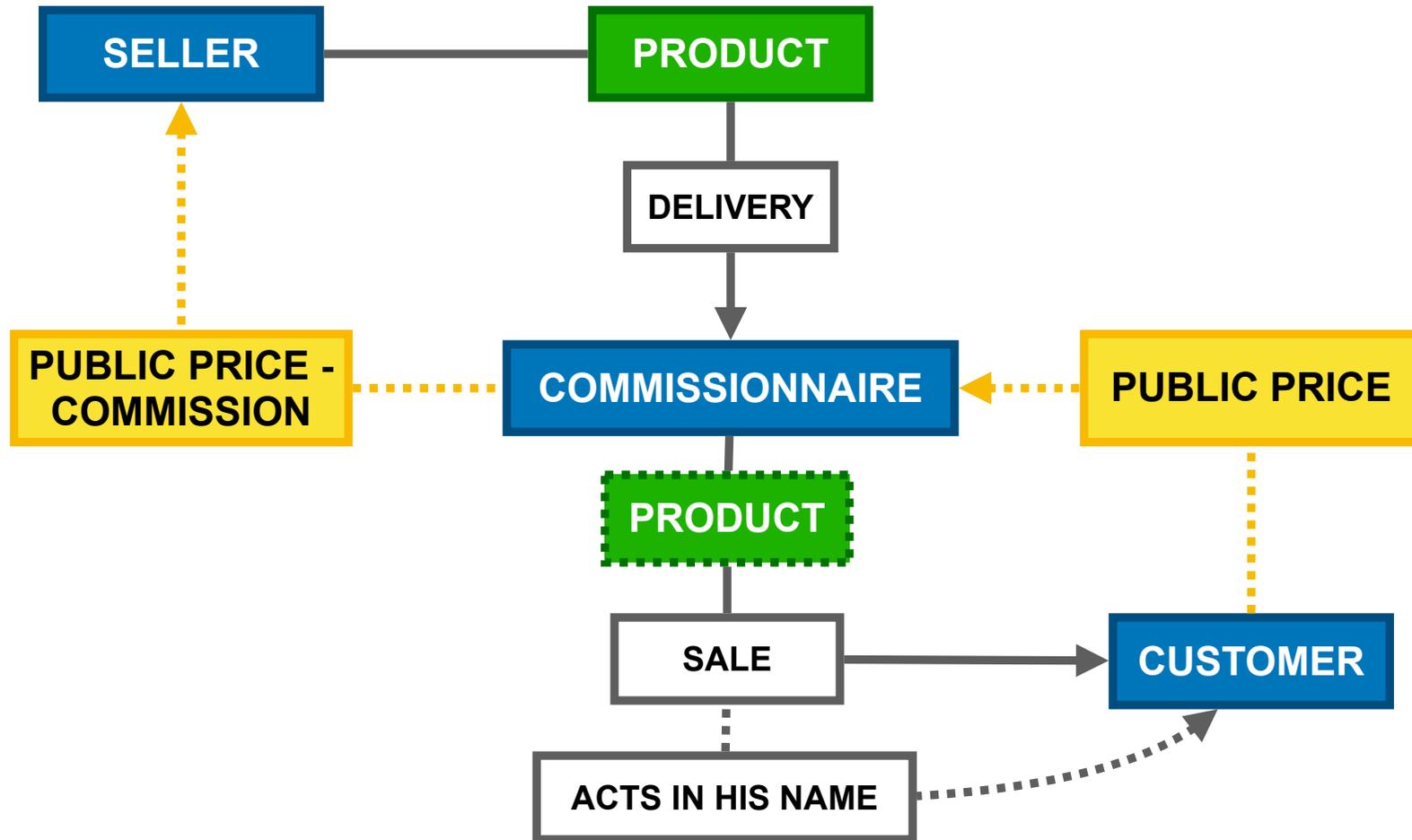
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COMMERCIAL AGENT



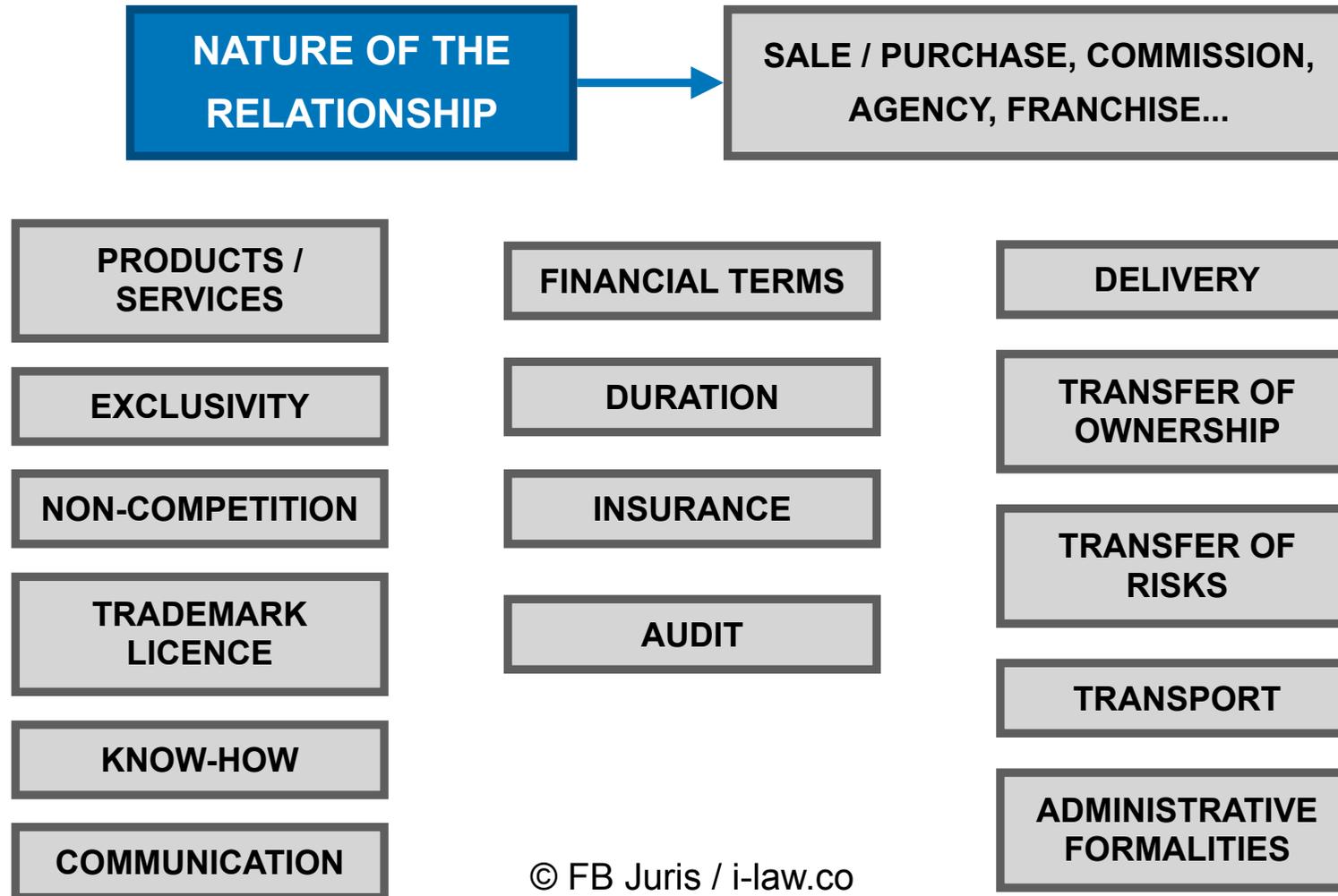
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COMMISSIONNAIRE



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DISTRIBUTION CONTRACT: CLAUSES



PRACTICAL CASE



Franchise agreement in the luxury sector.

A famous luxury French brand wants to appoint a distributor to distribute its products in south Korea.

Why appointing an independent distributor, instead of setting-up a subsidiary?

What is important for the brand?

What is important for the distributor?

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