

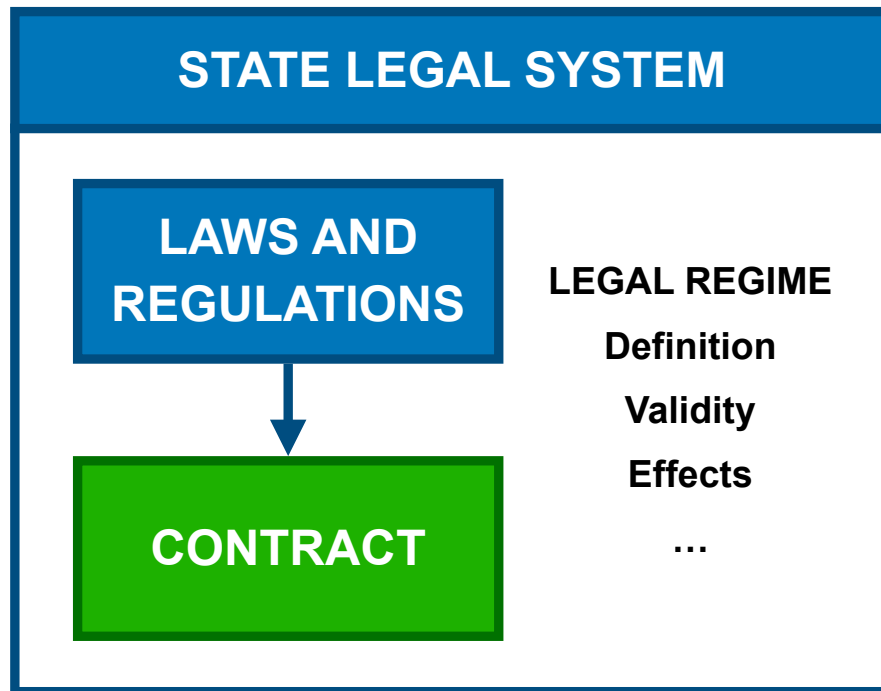
CONTRACT

**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).**

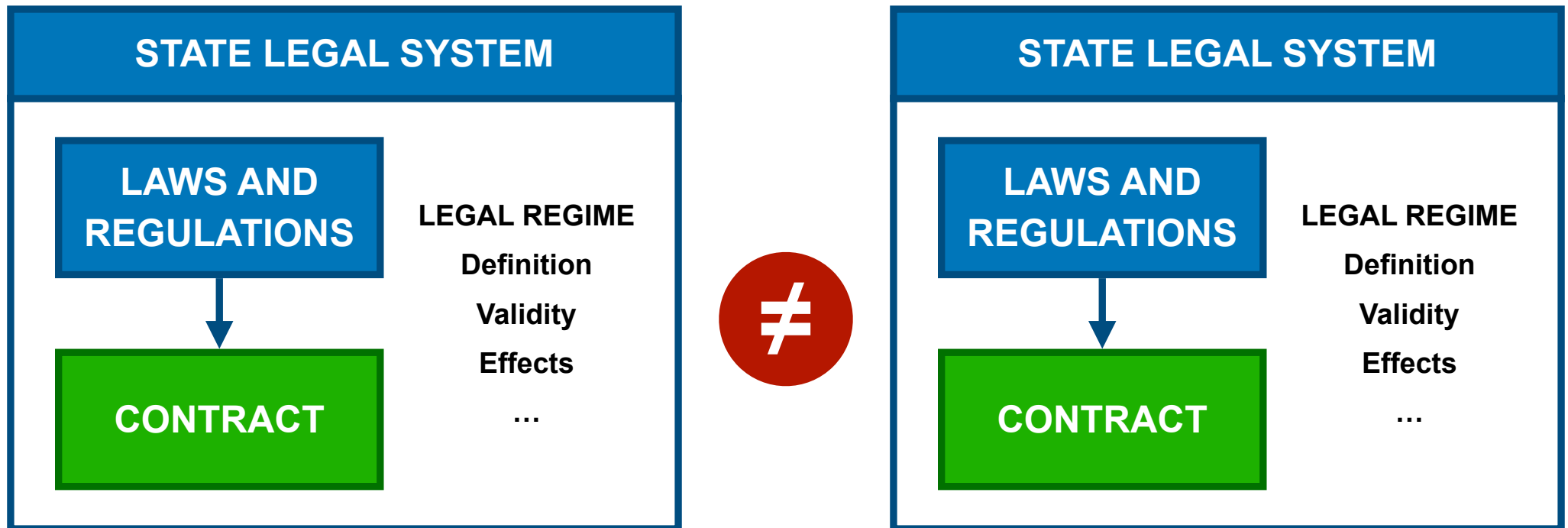
**OFTEN, A SPECIFIC FORM IS NOT IMPOSED:
AN ORAL AGREEMENT IS VALID.**

CONTRACT



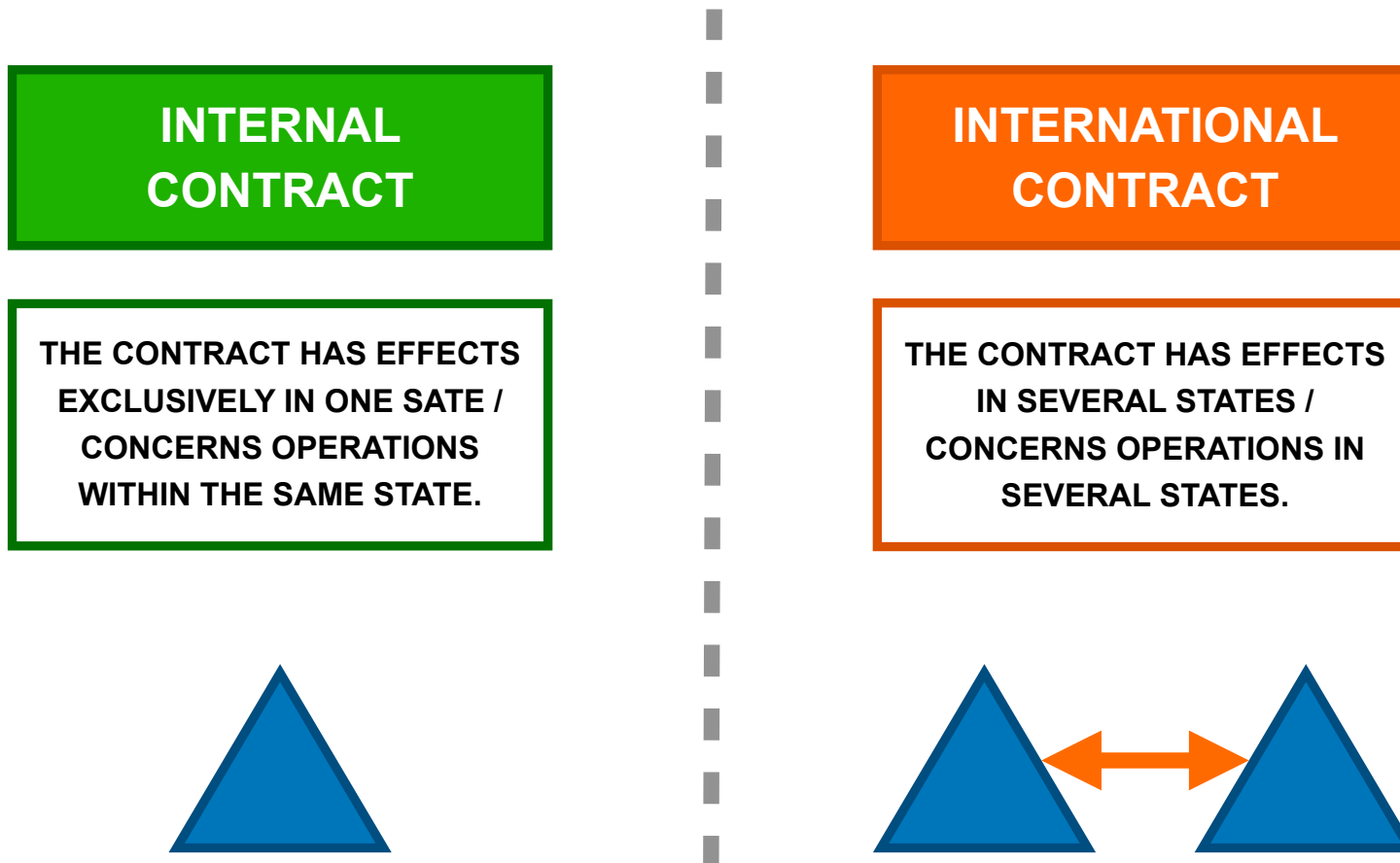
A CONTRACT IS A CONCEPT EXISTING WITHIN A LEGAL SYSTEM, THAT DEFINES ITS EXISTENCE, ITS VALIDITY, ITS EFFECTS (ITS LEGAL REGIME).

CONTRACT

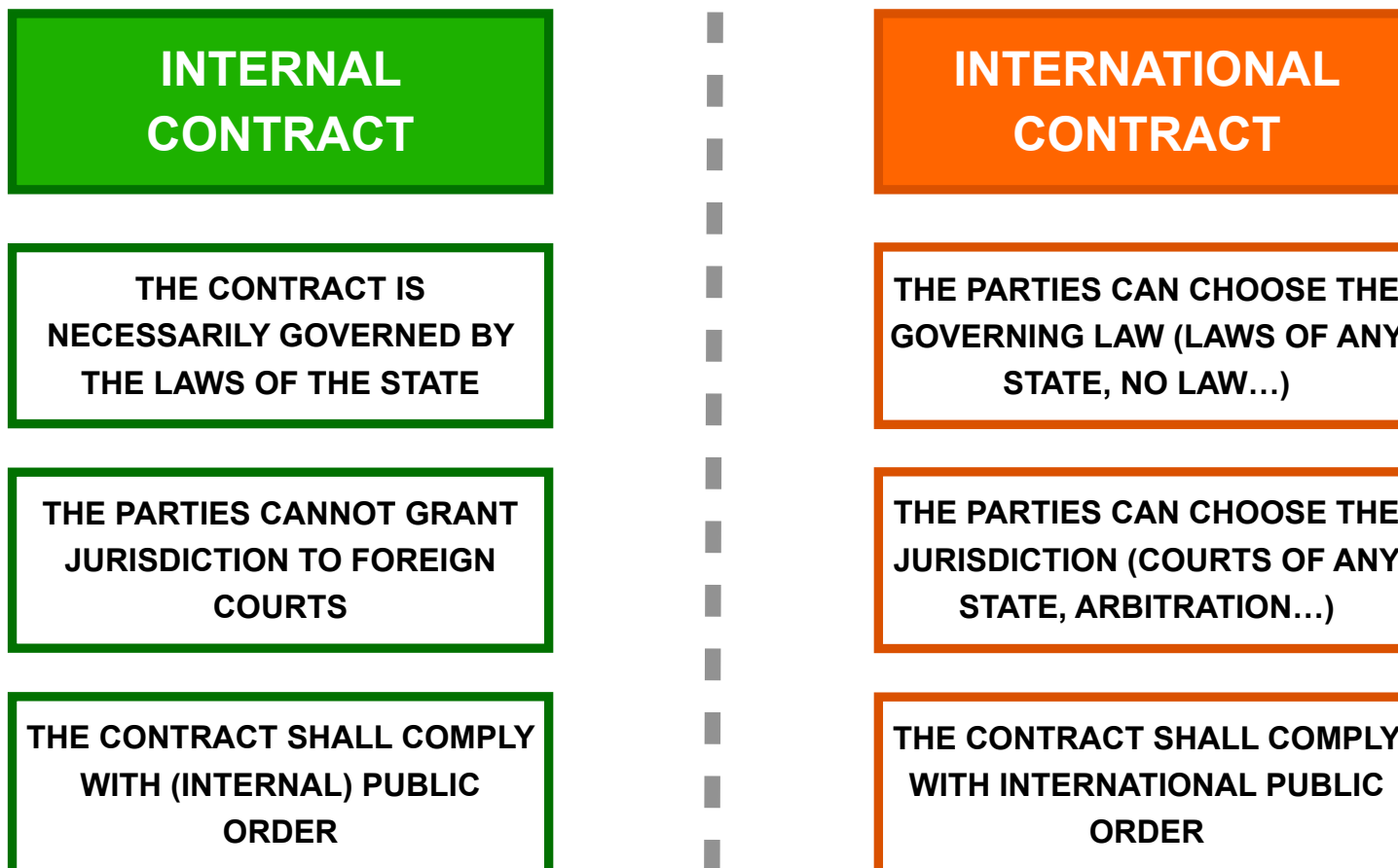


THE LEGAL REGIMES OF CONTRACTS MAY VARY DEPENDING ON THE STATES.

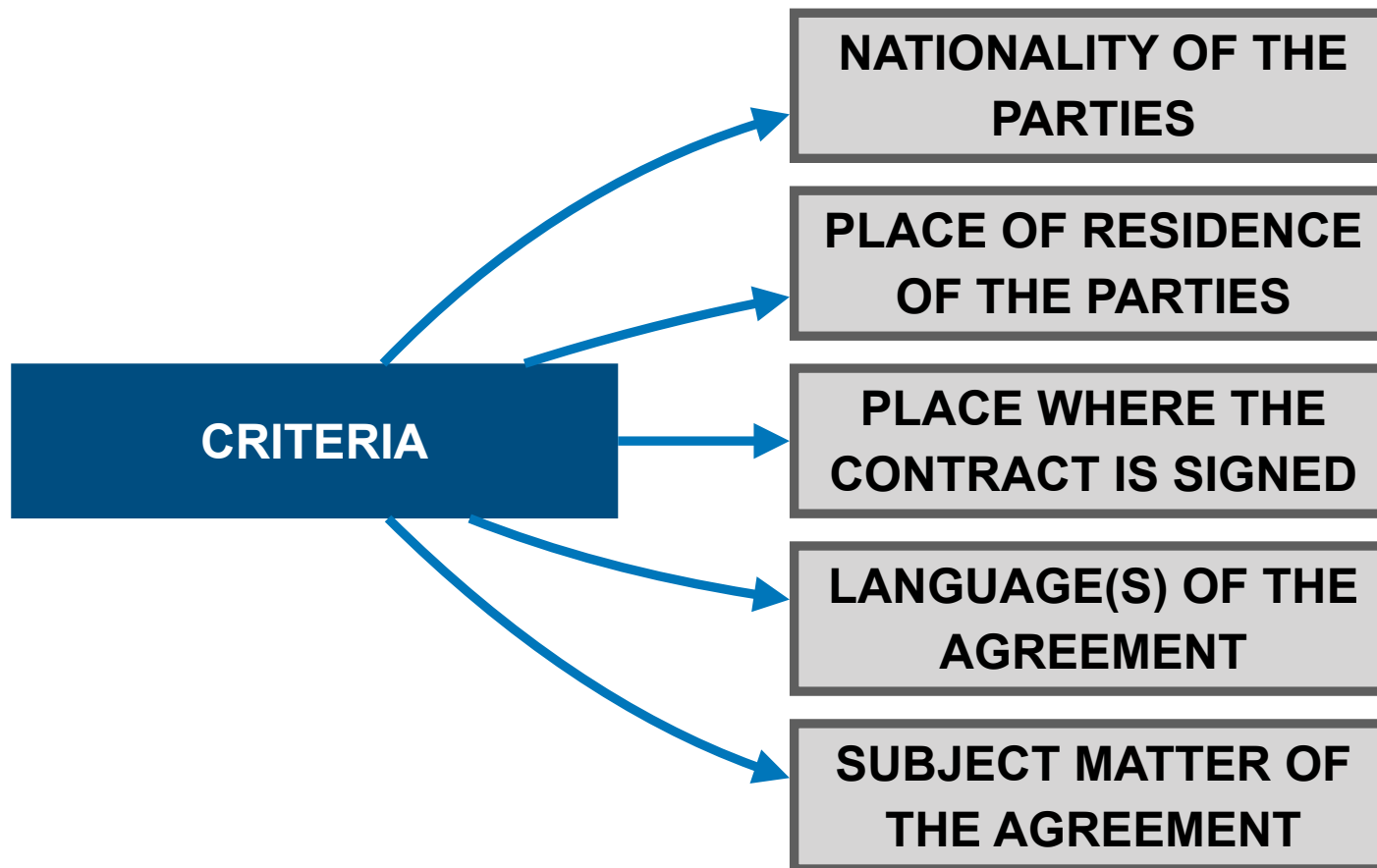
INTERNAL / INTERNATIONAL CONTRACT



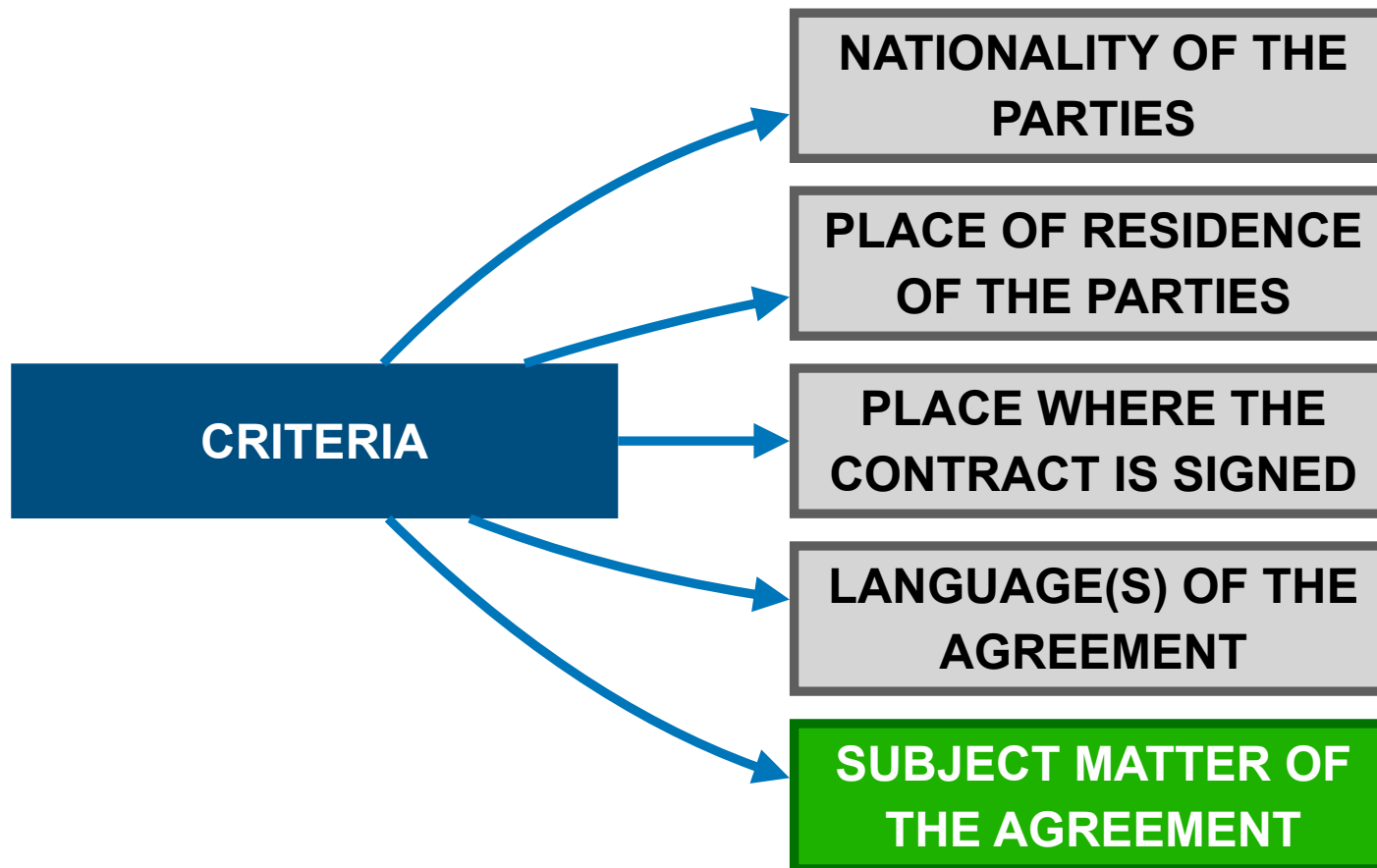
INTERNAL / INTERNATIONAL CONTRACT



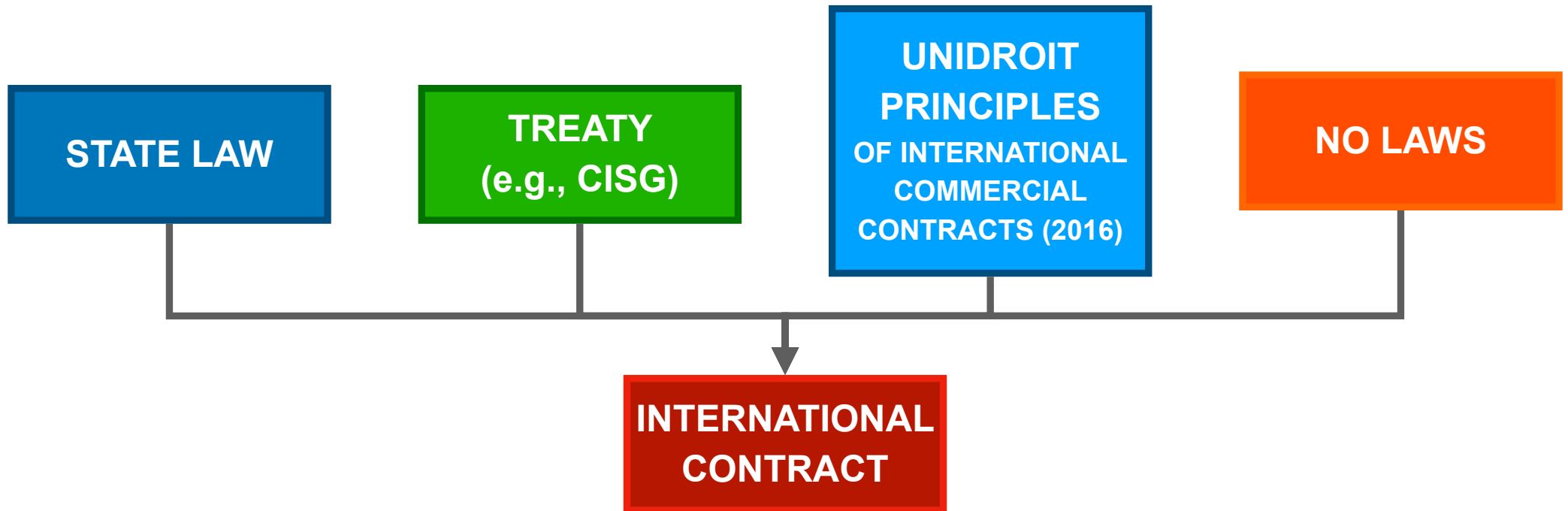
CRITERIA OF THE INTERNATIONAL AGREEMENT



CRITERIA OF THE INTERNATIONAL AGREEMENT



LAW GOVERNING THE CONTRACT



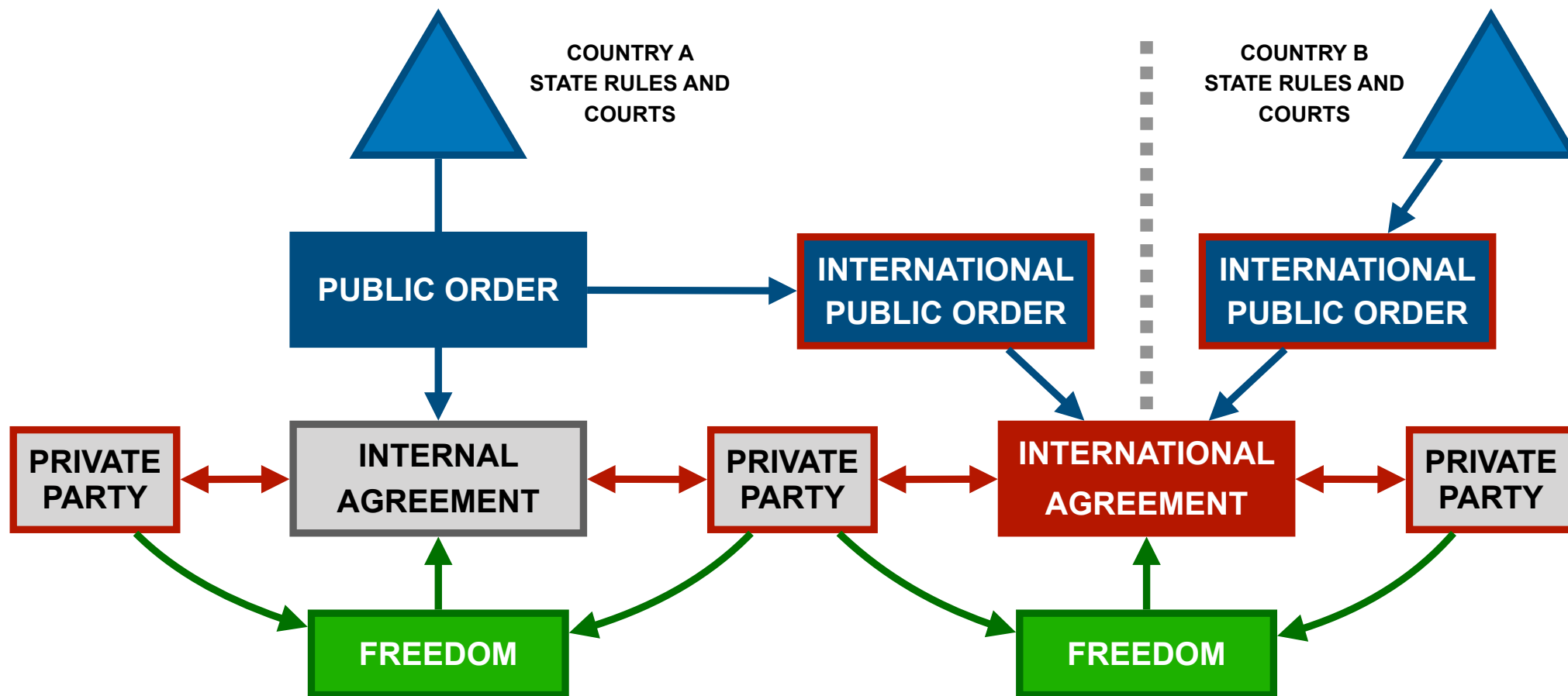
AN INTERNATIONAL CONTRACT MAY BE GOVERNED BY THE LAWS OF A STATE, OR A TREATY OR A LEGAL REGIME PROPOSED BY AN INTERGOVERNMENTAL ORGANISATION. IT CAN ALSO EXIST WITHOUT LAW.

LAW GOVERNING THE CONTRACT

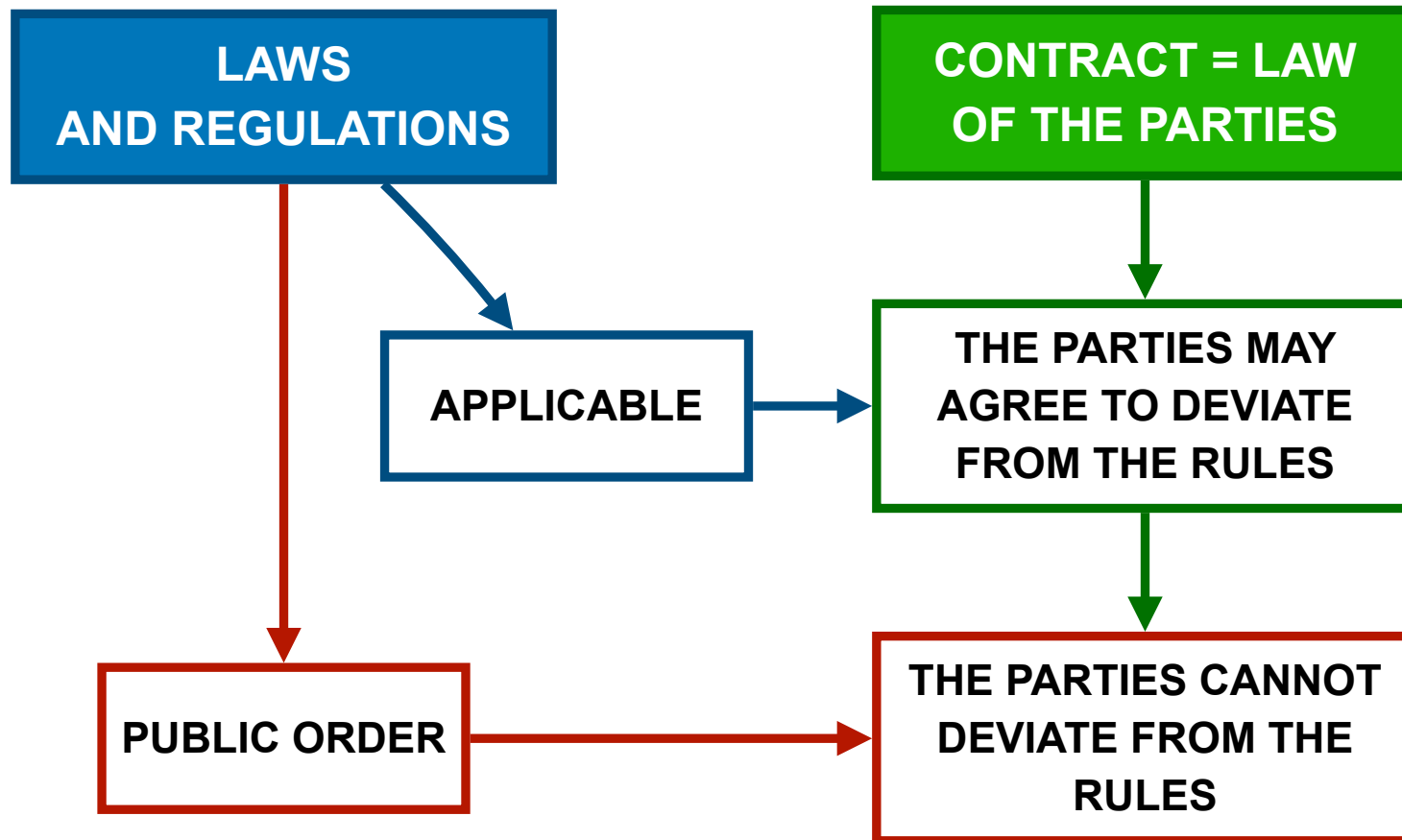


**THE GOVERNING LAW DEFINES THE LEGAL REGIME OF THE CONTRACT.
IT DOES NOT EXCLUDE THE APPLICATION OF THE LAWS OF PUBLIC ORDER THAT
APPLY TO THE OPERATIONS PROVIDED FOR IN THE CONTRACT.**

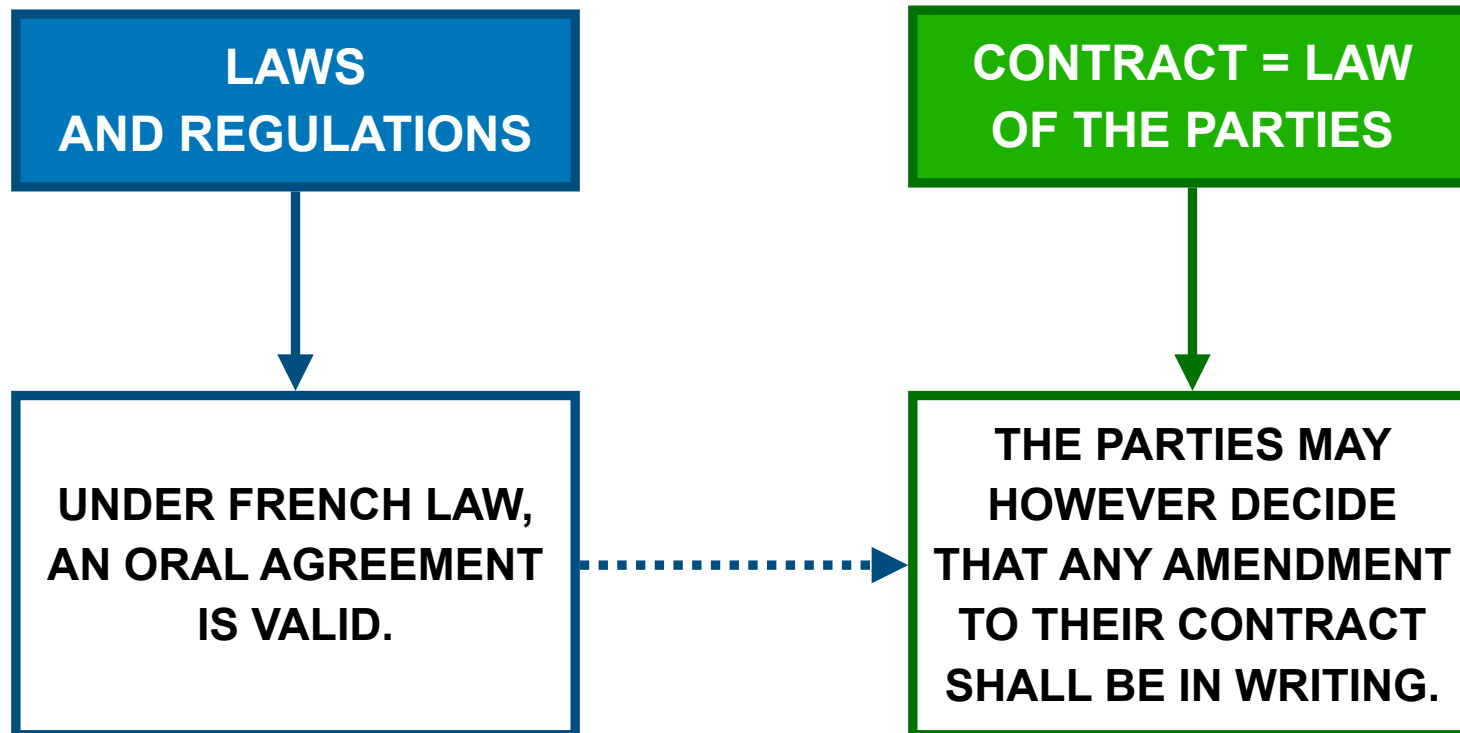
FREEDOM vs MANDATORY RULES



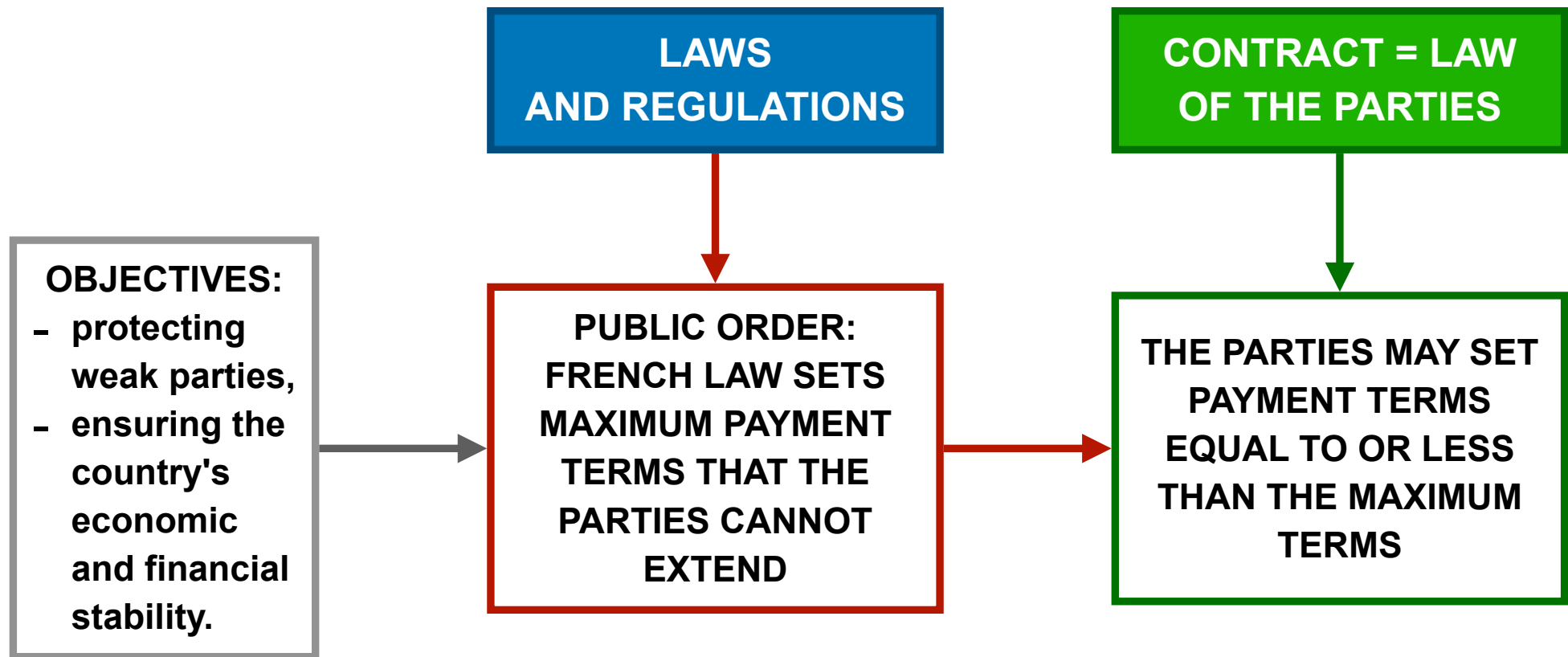
RULES / PUBLIC ORDER



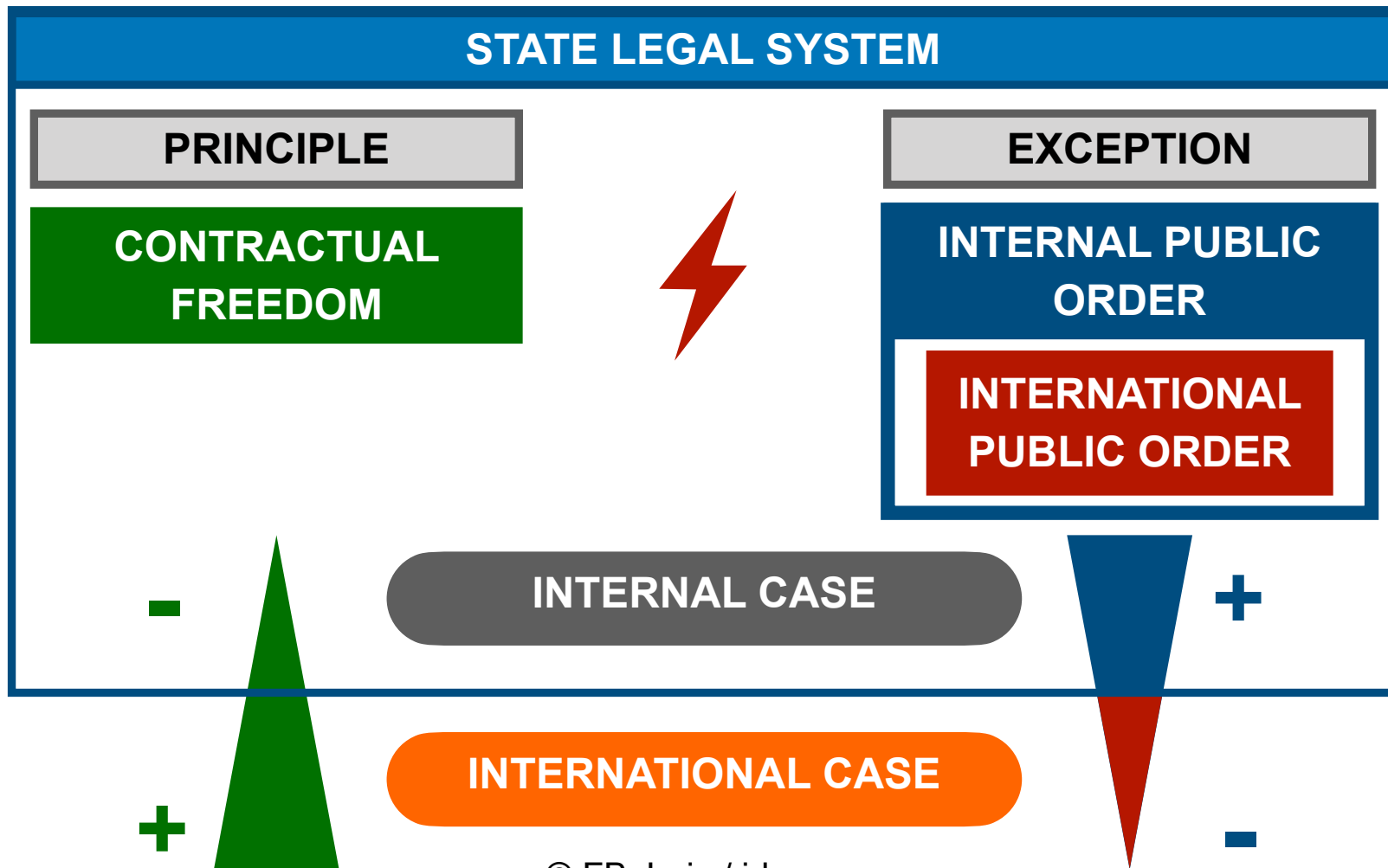
EXAMPLE: AGREEMENT DEROGATING FROM ORDINARY LAW



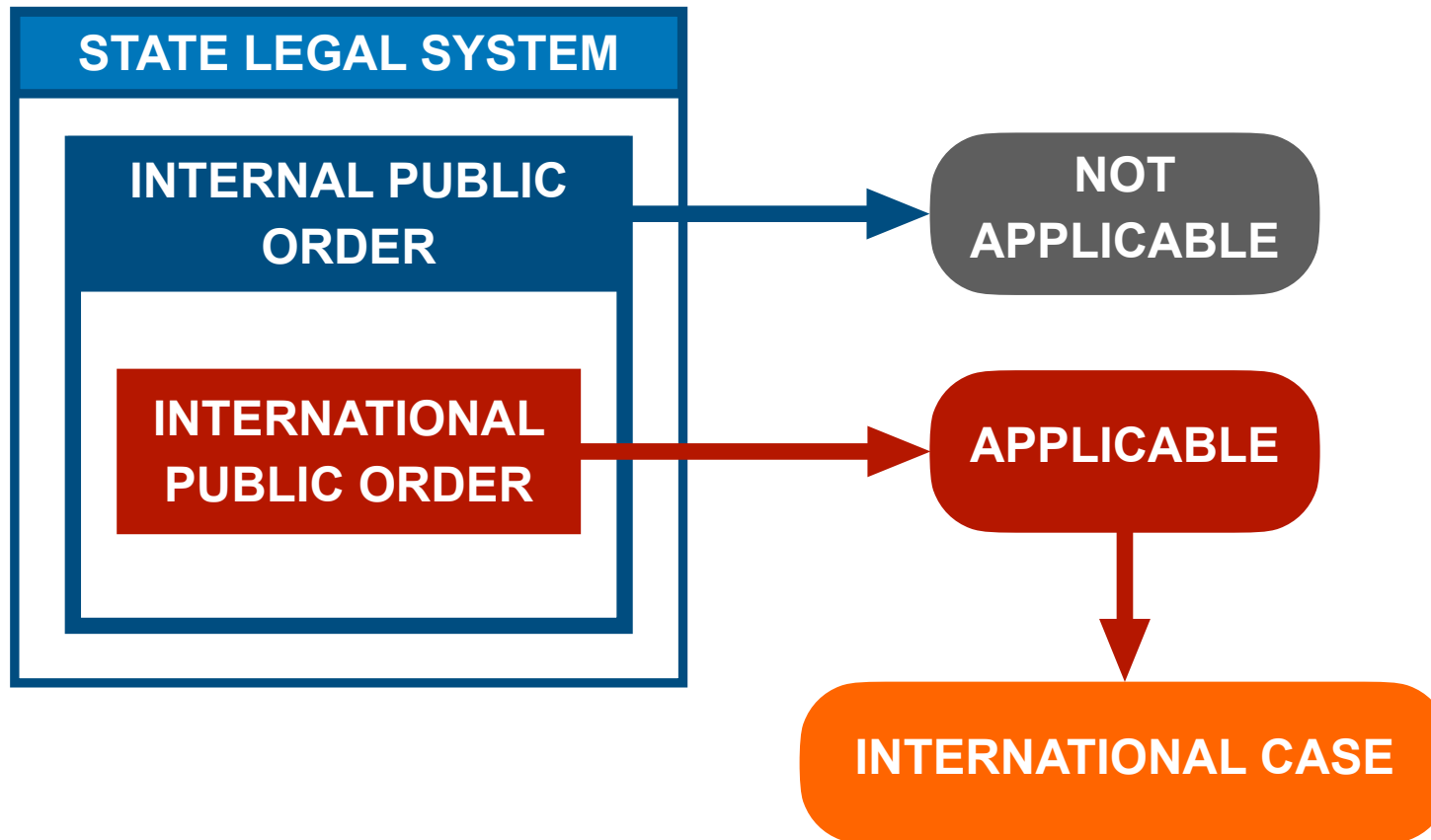
EXAMPLE: RULE OF PUBLIC POLICY



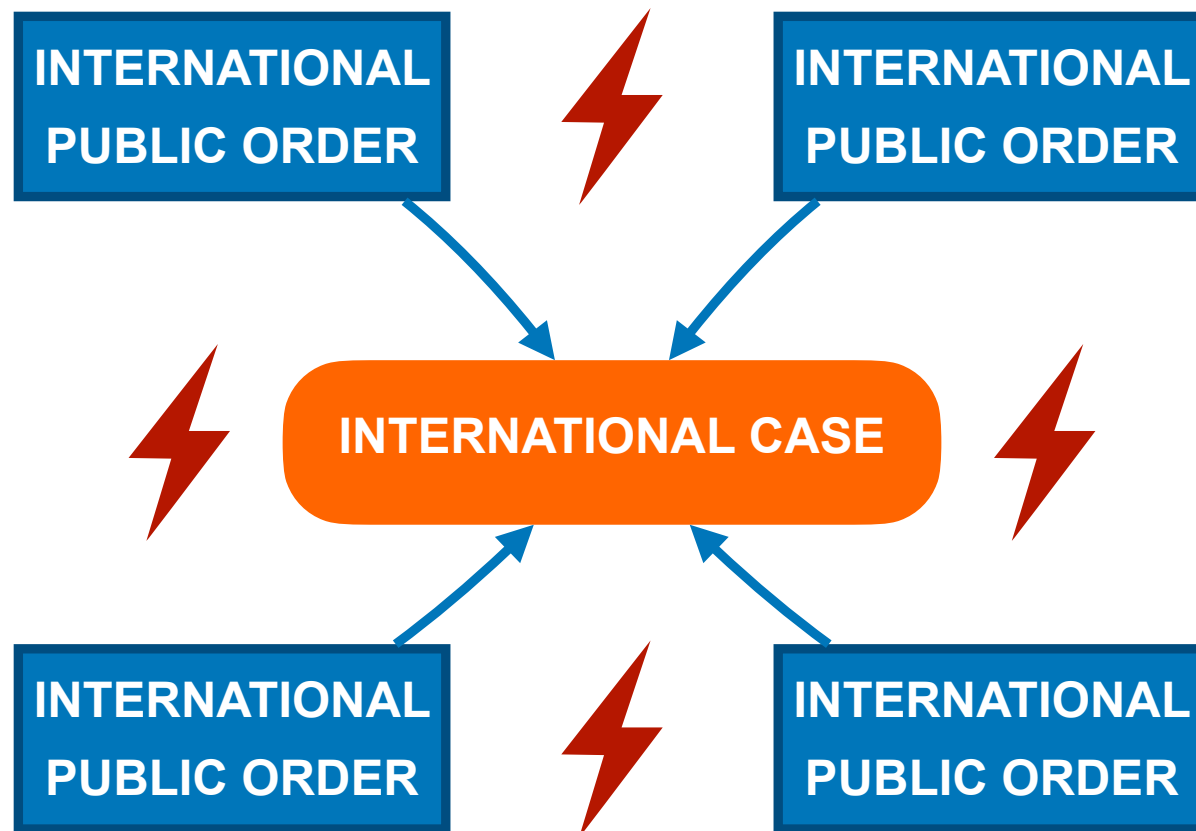
FREEDOM VS PUBLIC ORDER



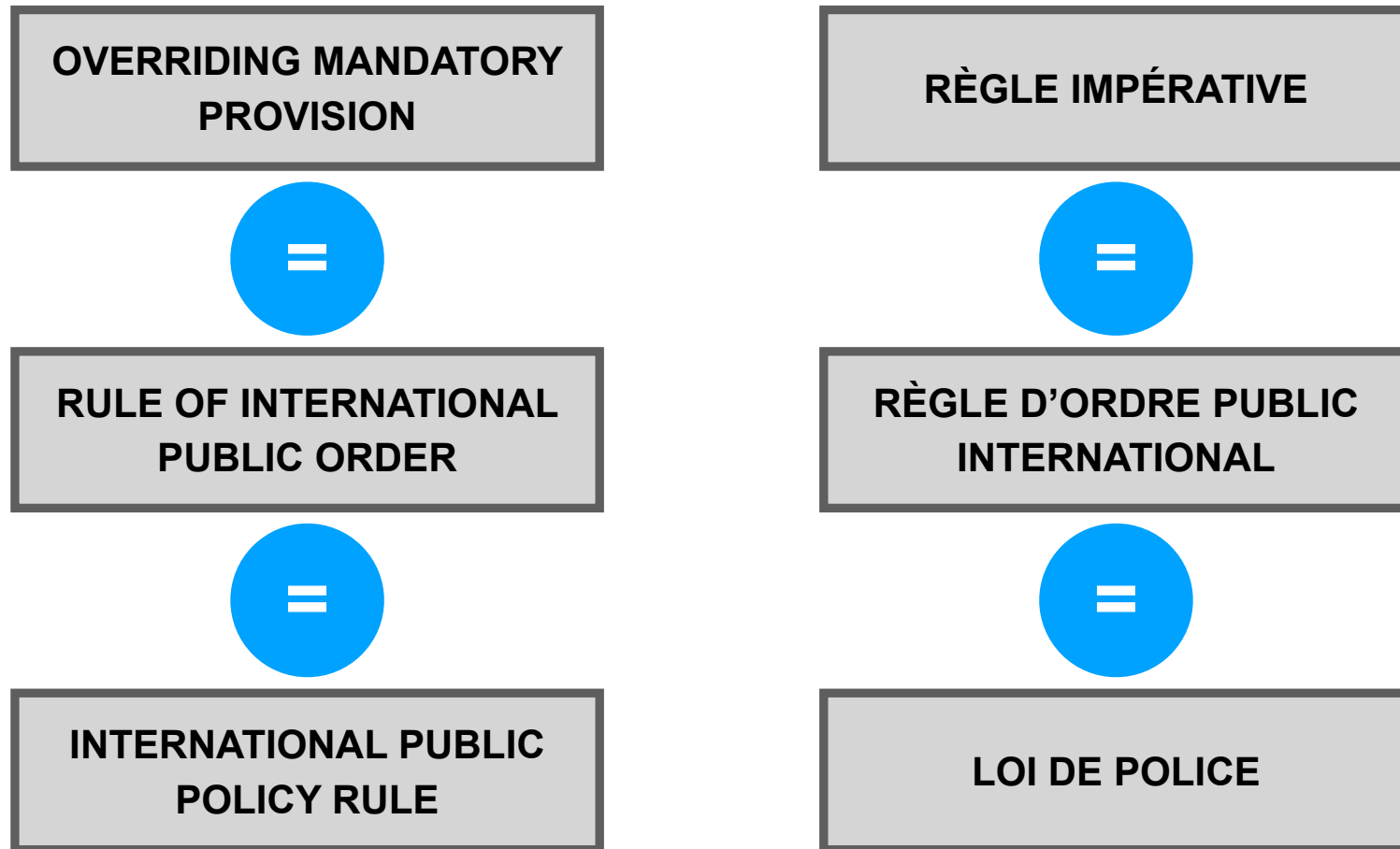
INTERNATIONAL PUBLIC ORDER



CONFLICTS



INTERNATIONAL PUBLIC ORDER

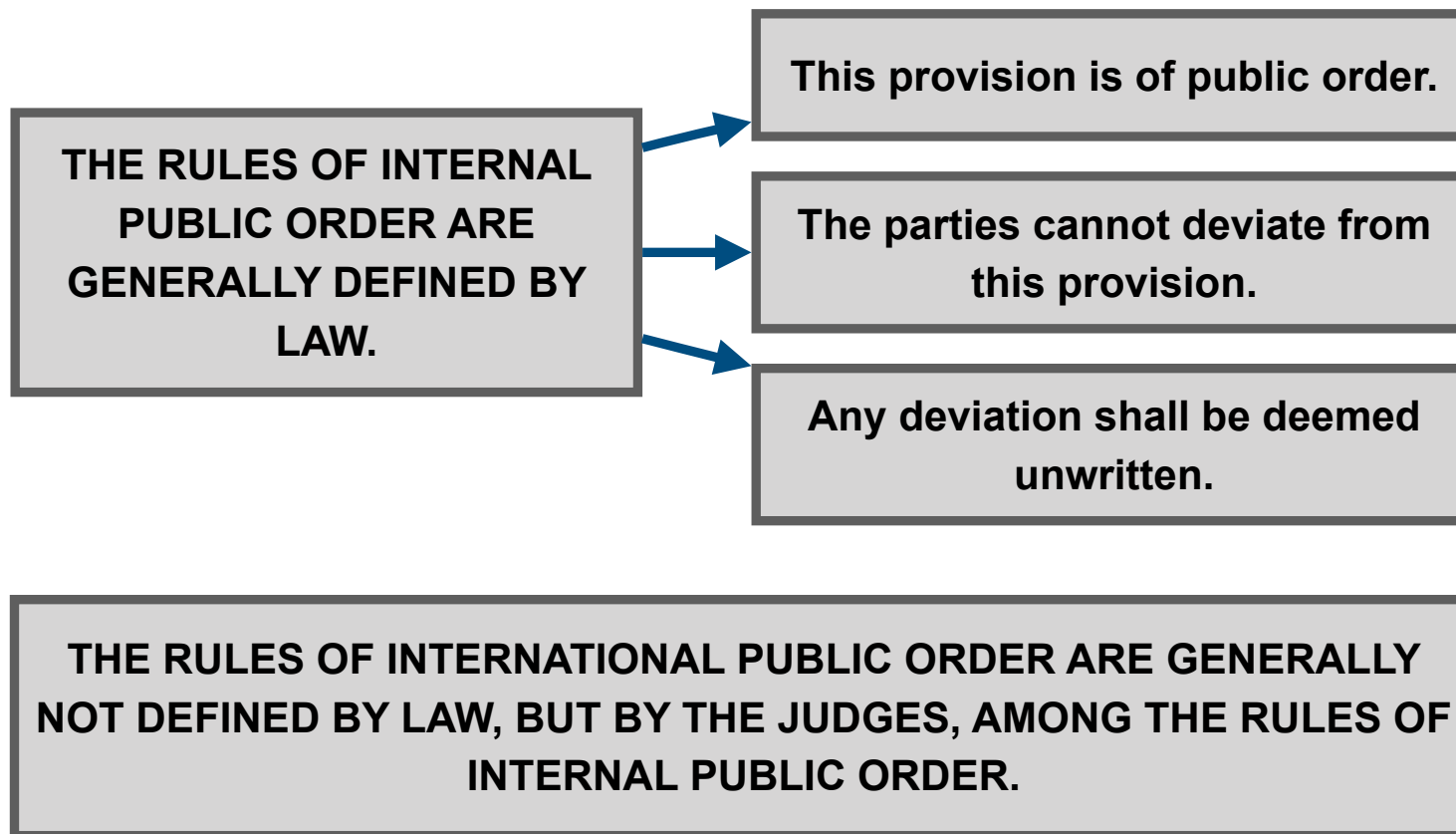


INTERNATIONAL PUBLIC ORDER

**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.**

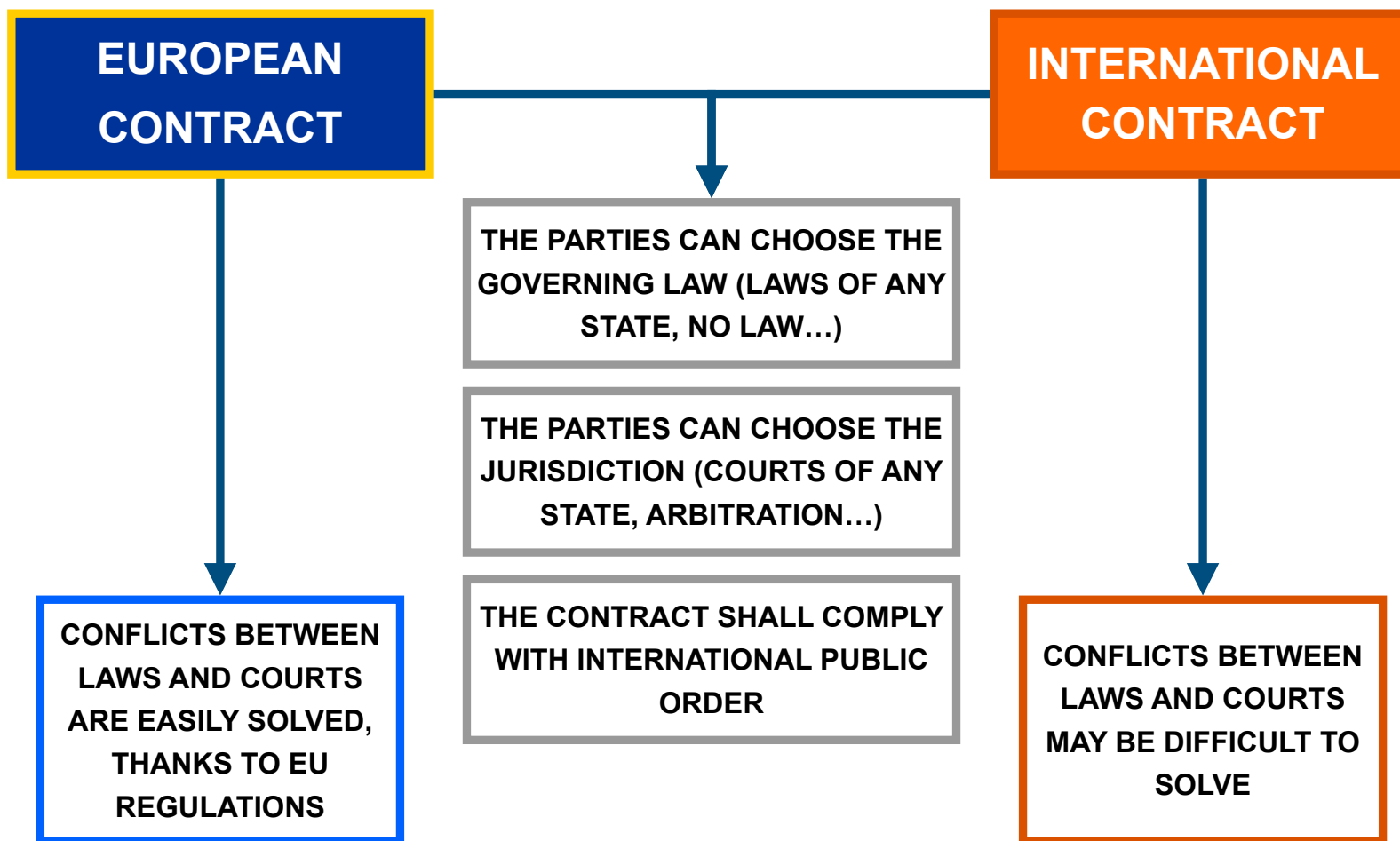
INTERNATIONAL PUBLIC ORDER



EUROPEAN / INTERNATIONAL CONTRACT



EUROPEAN / INTERNATIONAL CONTRACT



EU REGULATIONS

APPLICABLE LAW

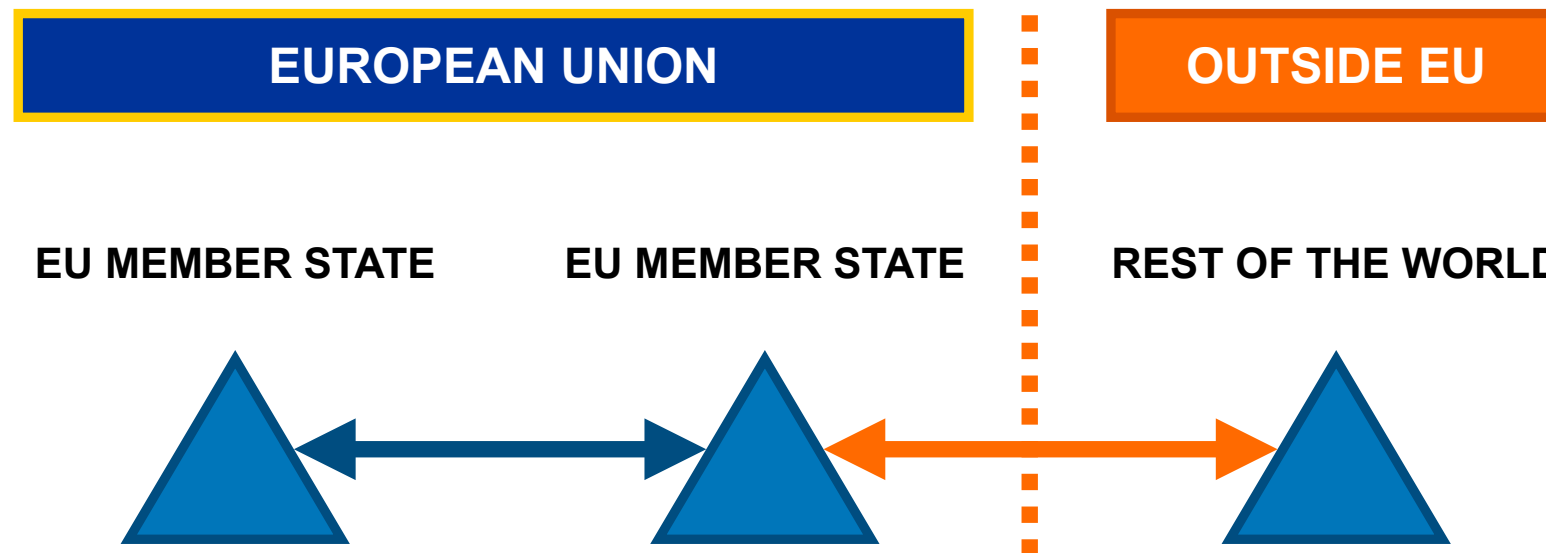
**REGULATION (EC)
No 593/2008 OF THE
EUROPEAN
PARLIAMENT AND
OF THE COUNCIL
of 17 June 2008
on the law applicable
to contractual
obligations (Rome I)
+ [Link](#)**

**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.

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.**

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.**

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



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.**

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.**