BDMA - Law & Intellectual Property

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This is a summary of the course *Law & Intellectual Property* taught at the Université Paris Saclay - CentraleSupélec by Professor Karim Tadrist in the academic year 23/24. Most of the content of this document is adapted from the course notes by Tadrist, [1], so I won't be citing it all the time. Other references will be provided when used.

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1 Introduction

Definition 1.1. Rule of Law
General rule imposed on human beings living in society and punished by public authority.

The *rule of Law* is a fundamental principle that governs how a society operates. It means that all individuals, institutions and entities, public or private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights principles.

Characteristics of the *rule of Law*:

- **Generality**: It targets everyone, or some specific kind of people, and it is applied equally.
- **Mandatory**: rules established by law must be followed, and there are consequences of not doing so. This happens regardless of the kind of rule:
  - Imperative rules: non-negotiable demands of the law. These define what must or must not be done. For example, criminal laws that prohibit theft.
  - Complementary rules: norms that can be modified or set aside by the parties involved, usually in the context of private law. For instance, parties entering into a contract can agree on terms that deviate from standard legal provisions as long as they do not violate imperative rules or public policy.

  Both types of rules are mandatory as they establish a framework of legal obligations, but they differ in how strictly they bind the parties and their flexibility.
- **Validity**: refers to the legitimacy or authority of the legal rule. For a law to be considered valid:
  - It must be created by a legitimate authority or legislator.
  - It must follow the proper procedure for legislation, which often includes debate, public consultation, and adherence to constitutional principles.
  - It must be promulgated or published, making it known to the public before it can be enforced.

  This characteristic ensures that laws are not arbitrary but are created through a recognized legal process that confers legitimacy and legal force.
- **Sanctionability**: once the rule is chosen, it will be applied with the risk of a sanction. Sanctions are the consequences or penalties for violating a law, and they serve as a deterrent against illegal behavior. This principle is crucial for the rule of law because it ensures that laws are not just theoretical but have practical effect.

While **legal rules** are formal, codified norms enforced by the state to regulate behavior and maintain order, **moral rules** are informal, subjective norms based on ethical principles and values that guide individual behavior. **Natural law**, meanwhile, is a philosophical theory suggesting the existence of universal, inherent moral principles that should underpin human-made laws and ethical behavior. Each of these norms plays a distinct role in shaping human conduct, societal norms, and legal systems.

1.1 Classification of Legal Rules

- **Public Law**: governs the relationship between individuals and the state, as well as the relationships between different branches of the state. It is subcaterogized as:
  - **Constitutional Law**: the foundation of the legal system of a country. It outlines the structure of the government, the distribution of powers among different branches (executive, legislative, judicial), and the fundamental rights and freedoms of citizens. It is the highest law, against which all other laws are evaluated.

  - **Administrative Law**: covers the rules and procedures that govern administrative agencies of the government. It deals with the actions and decisions of government departments and agencies, including rulemaking, enforcement of laws, issuing permits, and resolving disputes involving public administration.
  - **International Public Law**: governs the conduct of states and international organizations. It encompasses treaties, conventions, and customs that regulate interactions between sovereign nations, including issues related to war, diplomacy, human rights, and territorial boundaries.

- **Private Law**: deals with the relationships between private individuals or entities. It governs legal disputes that involve private parties and their rights and obligations. It is subcategorized as:
  - **International Private Law**: deals with cases where foreign elements are involved, determining which jurisdiction's law applies to a legal dispute and how judgements from one jurisdiction are recognized and enforced in another. For example, when two parties from different countries sign a contract, the matter of deciding which national law shall apply to the contract is a matter of international private law.
  - **Civil Law**: the core of private law. It covers non-criminal disputes between individuals and entities, including laws on contracts, property, family relations, and inheritance. It establishes the rights and duties of private parties in their interactions.
  - **Commercial Law**: it is a subset of civil law, that deals with issues related to commerce and trade between businesses and individuals, including contracts, transactions and business organization.
  - **Labor Law**: this area governs the relationship between employers and employees, including employment contracts, labor rights, working conditions and collective bargaining.

- **Mixed**:
  - **Procedural Law**: encompasses the rules that govern how courts and other legal institutions handle civil, criminal, and administrative proceedings. It includes the procedures for filing cases, conducting trials, and appealing decisions.
  - **Criminal Law**: governs crimes and punishments. It defines what constitutes criminal behavior and specifies the sanctions (punishments) for such behavior. While it primarily deals with offenses against the state or society at large, it has elements of both public law (the state prosecutes offenders) and private law (in aspects like victim compensation).

1.2 Sources of the Rule of Law

1. Before the French Revolution, local laws in what is now France were divided between the **Germanic customary laws** in the north and the **Roman laws** in the south. There laws were based on local customs and traditions, with Roman law influencing the legal systems due to the Roman Empire's historical presence.

2. **Ordinances and Edicts of the King** began to replace local customary laws. Ordinances were more general laws, while edicts could address specific issues or grant rights and privileges. This centralization of legal authority under the monarchy was a step towards a unified legal system.

3. In the *ancien régime* of France, there were **Parlements**, which were sovereign courts that registered the king's edicts and could protest against them, although they could not ultimately prevent their enforcement.

4. In addition, there was the **Canon Law**, the law governing the Church and its members, which was a significant source of law in Europe before the French revolution, especially in matters of marriage, legitimacy and inheritance.

5. Now, there are other sources of the contemporary law, divided into international and national sources:

   (a) **International Sources**: **treaties** are international agreements that countries are bound to follow. The article 55 of the French Constitution acknowledges the superiority of treaties over national laws, provided they are ratified according to the constitution. In addition, there is the **European**

Union Law, which is based on the Treaty of Rome (1957), that established the European Economic Community, now part of the European Union. EU law includes regulations and directives issued by EU institutions like the European Commision and the European Council, which have direct or indirect effect on member states' laws and take precedence over national legislation.

(b) **National Sources**: the **Law** referes to statutes passed by the Parliament, while **regulations** are issued by the executive branch (the government) and deal with matters not expressly reserved for law. In addition, there are **decrees** and **orders**, which are forms of regulation dealing with specific issues or individual matters, not considered as the law in the broader sense. For example, a decree might appoint public officials to certain administrative positions, or an order might impose temporary restrictions on water use in response to a severe drought in a department.

6. Finally, we find the **Constitution**, which is the supreme legal document, defining the fundamental principles and the organization of the state. It outlines the domain of laws passed by Parliament (matters of personal status, fundamental principles) and the Executive branch's authority to issue regulations on matters not covered by law, except as specified in articles 38 and 16 of the French Constitution. Article 38 allows the government to legislate by ordinance in areas delegated by Parliament, while Article 16 grants the President exceptional powers under certain crisis conditions.

1.3 Drafting of a Law

1. **Initiative**: the process of creating a new law begins with the initiative, which can be taken by the Prime Minister or member of the Parliament. This involves the drafting and proposal of a new law.
2. **Examination and voting**: the proposed law is examined, debated, and voted on by each assembly of Parliament (the National Assembly and the Senate).
3. **Promulgation**: after a law is passed by Parliament, it is promulgated by the President of the Republic through a decree. Promulgation is the formal declaration that the law is enforceable.
4. **Publication**: the law is then published in the official gazette, and it becomes enforceable the day after its publication.

In addition, it must be ensured that the law complies with higher sources of law:

- **Constitutionality**: the Constitutional Council examines the constitutionality of the new law before its promulgation. This can be requested as a preliminary ruling on constitutionality.
- **Review of legality**: there's also a mechanism for reviewing the legality of regulations, which can be challenged a posteriori (after the fact) by someone claiming a legitimate interest, either by *"voie d'action"* (direct action) or *"voie d'exception"* (as a defense in court proceedings).

1.3.1 Revoke of Laws and Regulations

Laws and regulations do not automatically fall into disuse: they must be explicitly or implicitly revoked. The principle is that law remain in force until revoked.

1.3.2 Case Law or Judicial Precedence

Judges in France are expected to enforce the law. However, judicial decisions can create law under certain conditions, such as when the law is unclear or when new, unforeseen situations arise. Article 4 of the Civil Code mandates that judges must make a decision even in the absence of clear, precise laws, under penalty of being charged with denial of justice.

However, according to Article 1355 of the Civil Code, a judgment only has authority in relation to the specific case it resolves and does not create regulatory judgments applicable to all.

Therefore... **do judges create the rule of law?**

While judges do not create laws in the legislative sense, their interpretations and decisions in unclear or new situations can influence the development of the law. They do not create rules that have general applicability like laws passed by Parliament, but can set precedents within the bounds of existing laws

1.3.3 Other Sources of Law

Customs are established practices that are considered legally binding, even though they are not formal laws. Customs can be used to interpret and complete the law, provided they are not *contra legem* (against the law).

Legal doctrine refers to scholarly legal writings that can influence legal interpretations and the development of the law. Legal doctrine is not binding like laws or regulations but can be persuasive in legal reasoning and decision-making.

1.4 The Applicability of the Rule of Law

1.4.1 The Applicability of Law in Space

French Law applies throughout the entire country to everyone living in the national territory, with the exception of local legal systems surviving in Alsace Lorraine and in some territories outside continental France.

1.4.2 The Applicability of Law in Time

The principle is the **non-retroactivity of Laws**. Article 2 of the Civil Code states that a new law applies only to the future and does not have a retroactive effect. This means that actions taken and situations that arose before the new law's enactment are governed by the law as it was at that time. The rationale behind this principle is to protect legal certainty and individual's trust in the law, ensuring that people can plan their actions according to the law without fear of future changes affecting them retroactively.

However, the new law may apply to ongoing legal situations without retroactive effect. For instance, a new law may apply to continuing contracts or relationships, affecting the rights and obligations of the parties from the date of the law's enactment forward, without altering the legal situation that existed before.

There are some **exceptions**:

- Retroactive laws by nature: certain types of laws are designed to have retroactive effects. These include:
  - More clement criminal laws: if a new criminal law is more favorable to the defendant, it can be applied retroactively to past actions. This exception is rooted in the principle of lenity (courts should interpret the law in the way most favorable to the defendant), which aims to ensure fairness in the administration of justice.
  - Interpretative laws: these laws clarify the intended meaning of previous legislation without changing the legal rule itself. Since they aim to explain what the law always meant, they can be applied to situations that occured before their enactment.
- Decision of the legislative power: the legislators may explicitly decide that a particular law should have retroactive effect. This is usually done in specific cases where the lawmakers deem it necessary for the law to address past situations, subject to constitutional and human rights considerations that may limit the ability to legislate retroactively.

1.5 Subjective Rights

Subjective rights are legal rights that belong to individuals or legal entities, granting them the authority to perform certain actions or to demand certain behaviors from others, based on the legal system's recognition of those rights. They are *subjective* because they are granted to individuals, the *subjects* of the law. They are considered subjective in contrast to *objective law*, which refers to the body of laws, norms, and statutes that govern society as a whole.

1.5.1 Patrimonial Rights

Patrimonial rights are economic in nature, can be assessed financially, and relate to an individual's assets and liabilities. They can be transferred, seized, and have commercial value. These rights can be subdivided into:

- **Patrimony (property)**: refers to the total sum of an individual's rights and obligations with economic value. It's a legal universality, distinct from the individual assets or liabilities it comprises. The key characteristics are:
  - Inalienability: it cannot be transferred except by death.
  - Singular nature: a person only has one patrimony.
- **Rights in Rem (real rights)**: these are rights directly over things, giving the holder a direct and immediate authority over the property. This includes:
  - **Principal rights in Rem**: concern the ownership and use of property, which itself can be broken down into the right of usus (use), fructus (enjoyment of fruits, i.e., rent), and abusus (disposition, including sale or destruction).
  - **Rights in Rem Accesories**: these are a type of right that serves as security interests. Unlike principal rights in rem, these are secondary rights that secure the performance of an obligation, usually the payment of a debt. They are *accessory* because their existence depends on a principal obligation. Therefore, these are guarantees for creditors, such as pledges (a right over a movable asset, which the creditor can sell if the debtor fails to repay the loan) and mortgages (a right over immovable property).
- **Intellectual Property Rights**: these are rights based on intangible assets, including:
  - Literary and Artistic Property: covers copyright.
  - Industrial property: includes patents, trademarks, designs and models.
  - Right of clientele: relates to the commercial exploitation of a business's customer base. This right refers to the value associated to the customer base of a business. It is specially relevant in commercial entreprises and professional practices where the ongoing relationship with customers or clients contributes significantly to the business's value.

Patrimonial rights can be commercialized (sold, leased, etc.), transmitted during the owner's lifetime or upon death, seized by creditors, and may become extinct.

1.5.2 Extrapatrimonial Rights

Extrapatrimonial rights are non-economic, related to personal and family dignity and integrity, cannot be commercialized, and are inalienable and imprescriptible. They include:

- **Family Rights**: such as parental rights, which govern the relationship between parents and their children.
- **Individual Rights**: including the right to one's name, honor, image rights, and the right to privacy.
- **Moral Rights of the Author**: protect the personal and reputational interests of creators, such as the right to be recognized as the author of a work and to prevent any changes in the work that harms the creator's honor or reputation.

The key features of extrapatrimonial rights are:

- Non-marketable: cannot be sold or bought.
- Cannot be included in one's patrimony.
- Inalienable: cannot be transferred, seized.
- Imprescriptible: not subject to expiration or limitation over time.

1.5.3 Sources of Subjective Rights

Legal Acts are actions taken by individuals or legal entities with the intention of creating, modifying, transferring, or extinguishing legal rights and obligations.

These can be:

- **Bilateral acts**: these involve two or more parties and include agreements or contracts, where each party, undertakes certain obligations towards the others. For example, a sales contract involves a buyer agreeing to pay a price and a seller agreeing to deliver goods.
- **Unilateral acts**: these are actions taken by one party that can create legal obligations or rights, even without the consent of others. For instance, a will is a unilateral act where a person decides the distribution of their estate after their death without needing agreement from the beneficiaries.

Legal acts are further categorized based on their nature and purpose:

- **Acts of disposal**: these involve transferring or renouncing a right or interest in property. Selling a piece of land is an act of disposal because it transfer the ownership from the seller to the buyer.
- **Acts of administration**: these are actions taken to manage and maintain an asset without altering its substance or ownership structure, like leasing a property.
- **Conservative acts**: these are measures taken to preserve the value or condition of an asset, such as repairs or maintenance work on a property.

Definition 1.2. Legal Facts refer to events or situations that create, modify, or extinguish legal rights and obligations, independent of the will or intention of the parties involved. These can be natural events (like birth and death) or human actions that are not intended as legal acts but still have legal consequences.

- **Article 1242-3 et seq.**: these are related to example of creation of a right in response to a fact. For example, when a person makes a payment thinking they are paying a debt, which did not exist (fact), they have the right to reclaim the payment from the recipient. A similar situation arises when someone pays intentionally someone else's debt.

Legal facts differ from legal acts in that they do not stem from the deliberate intention to bring about legal effects. For example, the death of a person is a legal fact that triggers the distribution of the deceased's estate according to their will (a unilateral legal act) or the law of succession if there is no will.

1.6 Proof of Subjective Rights

1.6.1 The Subject of the Proof

Principle *Actori Incumbit Probatio:* this latin maxim means 'the burden of the proof lies with the demander'. In legal disputes, the party making the claim (demander) must provide evidence to support their claim. Conversely, the defender may need to present evidence to refute the claim or support their defense.

The proof experiences a **back and forth movement**, because the burden of the proof may shift between parties during a trial, depending on the initial evidence presented and the legal context.

The judge's role is to remain neutral in the evidence-gathering process, not actively seeking proof but rather evaluating the evidence presented by the parties.

An exception to the standard proof requirement is the **legal presumption system**, where certain facts are presumed to be true unless proven otherwise. This includes simple presumptions (which can be rebutted) and irrefragable presumptions (which cannot be contested), as explained in Article 1351 regarding the authority of adjudicated cases.

1.6.2 Systems of Legal Evidence

There is **freedom of evidence** when evidence can be introduced in any form, as long as it is relevant and legally obtained. This is the case of criminal law.

In other cases, the system is **legally defined**, where proofs must follow specific rules for evidence, often requiring written form or other legally defined standards.

Civil law is a mixed system, where facts can be freely proved without strict formality, but legal acts must follow specific rules.

Written evidence Written evidence is crucial and often required for proving legal acts, with the law of March 13, 2000, and Article 1316 of the Civil Code defining what constitutes valid written evidence, in order to obtain its **binding nature**: *'a sequence of letters, numbers, printed or other symbols, a sequence that must be understandable and decipherable by others'*. The **function of the signature** is defined in Article 1316-4, as to identify the signer and express consent to the document's obligations: *'identifying the person who signs, expressing his or her consent to the obligations resulting from the document'*.

There are two essential conditions for the validity of written evidence:

1. The person must be identified.
2. The conservation of the document must guarantee its integrity.

Written evidence can be of several types:

- Authentic Acts: official documents prepared by public officers (like notaries or civil registrars) with legal power. These documents have a high degree of reliability and enforceability.
  - A notarial deed is comprised of a 'minute' kept by the notary and an authentic copy sent to the parties. When the copy is said to be enforceable, it authorizes the use of the enforcement agencies.
  - The document is considered valid until it is recorded as false for the observed information by the public officer and until the reality is proved for the other elements
- Private Deeds: documents signed by the parties involved, requiring a certain number of original copies and specific details:
  - Should be sign by the parties.
  - Be written with as many original copies as parties (Article 1325 of the Civil Code).
  - Commitment to pay should bear the amount of the quantity in numbers and letters.
  - Binding unless proved otherwise.

Electronic medium and signatures Electronic signatures and documents are **legally recognized**, with specific requirements for validity, identification, and integrity outlined in Articles 1367 and 1316-4 of the Civil Code, and enforced by the law of June 21, 2004.

There are **technical requirements**, and reliability and integrity of electronic signatures are ensured through technologies like asymmetric key encryption and third-party certifiers, as detailed in the Decre of March 30, 2001. The system must guarantee the document's unaltered state and authenticate the signer's identity.

The technical solution must not result in any alteration of the document.

The verification is based on an electronic qualified certificate, which guarantees the authenticity of the signature.

There is a large number of technical rules, and the qualification of the third party is equivalent to a presumption of respect of those rules.

1.7 Electronic Archives

Traditionally, and original copy is a document that is officialy signed by the parties involved in a legal deed. In the context of electronic documents, an **original copy** refers to a digital version that serves the same legal purpose as a paper document. The original copy has **legal importance ad probationem/ad validatem**, which are latin terms referring to the legal significance of documents for the purpose of the proof (ad probationem) and for fulfilling legal requirements to validate a deed or contract (ad validatem).

The Article 1375 of the Civil Code adapts the requirement for mutiple original copies to the digital age. It stipulates that for electronic contracts, the requirement is met if the deed is established and maintained in a way that complies with articles 1366 and 1367 of the Civil Code, ensuring that each party can access of obtain a copy of the document.

1.7.1 Validity of the Copy

The Article 1379 of the Civil Code says that a copy must be an identical and durable reproduction of the original, not signed (as that would make it another original), and must maintain the same legal value as the original. The copy must accurately reproduce both the form and content of the original document.

The **Afnor Z 42-013** standard specifies requirements for electronic archiving systems, ensuring that all necessary information is preserved accurately and reliably, making it retrievable for its intended purposes.

However, if the original copy exists, the judge may require it.

1.7.2 Other Forms of Evidence

- **Evidence through a witness**: witness statements are considered based on predetermined rules in the Code of Civil Procedure, with the judge assessing their admissibility and weight.
- **Evidence by the presumption of facts**: Article 1382 allows judges to consider presumptions based on serious, precise, and corroborating evidence, but it is not binding on them.
- **Proof of admission**: admission in judicial inquiries is considered irrevocable and binding, unlike admissions made outside of court, which are not binding. This is, if you admit to be guilty in front of the court, then you are legally guilty.
- **Proof by oath**: legal mechanism where a party to a legal proceeding is asked to affirm the truthfulness of their statements or claims under oath. This method of proof relies on the solemn declaration or affirmation made by a party or witness, asserting the truth of certain facts or denials in dispute. There are tipically two types of oaths used as proof:
  - **Decisive oath**: requested by one party for the other to take. Its probative strength is absolute.
  - **Additional oath**: may be requested by the judge to complement other evidence, not absolute in its probatory value.

1.7.3 Use of Evidence

Statutory facts are those that must be established or proven in court to meet the legal criteria set by statutes for various purposes, like determining legal rights or liabilities, qualifying for exceptions or exemptions, or triggering or preventing legal actions. For example, in the context of family law, statutory facts might include

the circumstances of a marriage or the parentage of a child, which are relevant to legal issues like custody, support, and inheritance.

The use of evidence in statutory facts is characterized by being free for civil status or filiation: this means that for matters concerning an individual's civil status (e.g., birth, marriage, death) or filiation (determining parent-child relationship), the law allows flexibility in the types of evidence that can be presented, except in certain cases where specific legal restrictions may apply.

Proof by legal documents (article 1341 of the Civil Code): legal documents are the primary source of evidence for asserting claims or defenses in court. These documents need to meet certain legal requirements to be considered valid.

In principle, documentary evidence is needed:

- In principle, **a legal document is necessary**: generally, a written document is required to prove a legal act or transaction, reflecting the principle that written evidence provides a clear and durable record of agreements, rights and obligations.
- Exceptions - **Oaths and Admission**: in situations where a legal document is not available, an individual's oath (solemn promise regarding the truth of the information provided) or admission (a party's acknowledgement of a fact) can be accepted as evidence. In commercial litigation, the rules are more indulgent, allowing a wider range of evidence to be used (free evidence).
- **Prima Facie Evidence** (Article 1347): refers to evidence that is accepted as sufficient to proof a fact unless contradicted and overcome by other evidence. It includes situations where:
  - It was materially or morally impossible to create a legal document at the time of the transaction.
  - A legal document was lost or destroyed due to force majeure (an unforeseeable and unavoidable event).

  A legally defined copy is a copy of a document that meets legal standards. This can serve as evidence in the absence of the original.
- Acts involving less than 1500€ can be proved by any means, offering flexibility in how evidence can be presented in smaller claims.
- Proof against or beyond a legal document: if evidence is presented that contradicts or extends beyond what is contained in a legal document, another document is required to support the new evidence, regardless of the monetary value involved.

1.8 The Legal System

In France, there is what is called a **Dual Jurisdiction**, which refers to the coexistence of two main types of jurisdiction: administrative and judicial:

- **Administrative Jurisdiction**: Deals with disputes involving public administration, government agencies, and the actions of the government. It is separate from the ordinary courts and has its own hierarchy, with the Council of State (Conseil d'État) at the top.
- **Judicial Jurisdiction**: Handles civil and criminal cases involving individuals and private law disputes. This jurisdiction is what most people typically encounter when they go to court.
- **Court of Jurisdictional Conflict**: A special court that resolves disputes over whether a case should be heard by the administrative or judicial courts, ensuring that there is a clear demarcation between the two jurisdictions.

The **principle of Double Degree of Jurisdiction** guarantees that most decisions from a first instance court can be appealed to a higher court. It's a fundamental right ensuring that parties have the opportunity for a

second hearing. However, there are exceptions for minor cases, where appeals may be limited to prevent an overload of the judicial system.

We also find a classification of courts, regarding their hierarchy and specialization. For instance, courts dealing with criminal matters are classified according to **criminal jurisdictions**:

- **Tribunal de police**: deals with minor offenses (contraventions).
- **Tribunal correctionnel**: handles more serious offenses (délits) but not crimes.
- **Cour d'assises**: deals with the most serious offenses (crimes) and includes a jury.
- **Exceptional jurisdictions**: includes a court for specific types of defendants or crimes, such as minors or members of the government.

In addition, there are **civil jurisdictions**, which handle disputes between individuals and organizations, and disputes not classified as criminal:

- **First instance court**: courts that hear a case for the first time, including the merged *"tribunaux de grande instance"* and *"tribunaux d'instance"*, and specialized courts for commercial disputes (whose decisions can be subject to appeal above 4000€), labor disputes (*Conseil de prud'hommes*), and others. Here, there is a judge in charge of the litigation of the protection.
- **Cour d'Appel**: the court that hears appeals from decisions of first instance courts, reviewing facts and law.
- **Cour de cassation**: the highest court in French legal system, which reviews lower court decisions to ensure they correctly applied the law. It does not retry cases but instead focuses on legal principles. Its decisions are final, and it can return cases for a new trial if it finds a lower court decision was based on a misinterpretation of the law.

1.9 Civil Proceedings

The Transaction (Article 2044 of the Civil Code) refers to a legal mechanism where parties in a dispute reach an agreement to resolve their issues without going to trial. It's a form of settlement that is legally binding and often used to avoid lengthy and costly proceedings.

The **judicial staff** is categorized into judges (magistrates) and prosecutors, with distinctions between their roles and personal status:

- **Judges/Magistrates**: can be non-professional (in commercial or labor courts, for example, it is possible that a matter is subject to a non-professional judge, who is an expert in the matter) or professional (people that have studied to be a judge), with the primary responsibility of resolving disputes by interpreting laws, assessing the facts of the case, and issuing judgements accordingly. They are part of the *"Siège"*, which means they cannot be removed from a case and their role is to judge and resolve disputes based on the law.
- **Prosecutors**: include the *"procureur de la République"* at the first instance level, *"procureur général"* at the appellate level, and *"procureur général auprès la Cour de Cassation"* at the Cour the Cassation. These officials are part of the *"Parquet"* and are responsible for leading prosecutions (i.e. charging someone with a crime and conducting the trial to prove they are guilty of that crimw), including the cross-examination of cases. Their role is to enforce the law and ensure public order. Prosecutors are legal officials who represents the state or the public in criminal trials.

In addition, there are various professionals who assist the functioning of the judicial system:

- **Greffiers (clerks of the court)**: responsible for maintaining the records of court proceedings and assisting with administrative duties.

- **Avocats (lawyers/barristers)**: legal professionals who represents and defend clients in court.
- **Avoués (solicitors)**: previously, these were lawyers with the exclusive right to represents parties in appellate courts, but their function has largely been merged with that of avocats.
- **Avocats du Conseil d'État et à la Cour de Cassation**: specialized lawyers who are permitted to represents clients in France's highest courts.
- **Huissiers de Justice (Bailiffs)**: officials responsible for serving legal documents and executing court orders.
- **Conciliateurs et Médiateurs (Conciliators and Mediators)**: professionals who assist in resolving disputes outside of court through mediation or conciliation.

Finally, we find the **Judicial Court**, which involves several aspects:

- **Geographical Jurisdiction**: refers to the territorial scope within which a court has authority to hear cases.
- **Attribution of competency**: determines which court has the legal authority to hear a specific case based on subject matter or the parties involved.
- **Voies de Recours (Right of Appeal)**: parties have several options for appealing decisions, including:
  - **Appeal**: a request to a higher court to review and change the decision of a lower court.
  - **Pourvoi en Cassation (Appeal in Cassation)**: this is a higher form of appeal to the Cour de Cassation, which can "break" the decision, send the case back to a lower court for re-examination, or reject the appeal. The decision to appeal must be made within two months after the notification of the decision.
  - **Plenary assembly**: in the Cour de Cassation, this is a full assembly of the court that may be convened for particularly important or complex cases.

1.10 Questions

1.10.1 Short Questions

Exercise 1.1. What is Natural Law?

Exercise 1.2. Historical sources of Law?

Exercise 1.3. Which are the rights in rem?

Exercise 1.4. What is the Patrimony?

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1.10.2 Long Questions

Exercise 1.7. What are the sources of law?

Exercise 1.8. What are the subjective rights?

Exercise 1.9. What are legal facts and legal acts?

Exercise 1.10. How are rights proved?

2 Contract Law

Contract Law is a fundamental aspect of legal studies that deals with the rules and principles governing agreements between parties.

2.1 Classification

Understanding the classification of contracts helps in grasping the legal implications and obligations that contracts impose on the parties involved.

2.1.1 Classification Depending on the Type of Contract

Named contracts have specific designations and are recognized by law, such as sales, leasing, service contracts, work, deposit, and company agreements. The advantage of named contracts is that they are already established by law, which can be either supplementary (optional) or mandatory (compulsory).

Unnamed contracts, on the other hand, are complex and unique (*sui generis*). These contracts do not fit into the predefined categories and may require special consideration and interpretation.

It's important to note that this classification does not bind judges: there is **judicial discretion**. In cases of mistakes or dissimulation (concealment of truth), a judge has the discretion to interpret the contract beyond its classification. For example, a contract may be classified as a service contract, while the reality behind the contract is a work relation. In this case, the judge can interpret the contract as a work contract, even if it classified by the parties as a service contract.

Contracts can also be classified as **general agreements** or **accessory agreements**, highlighting the primary versus supplementary nature of the contractual obligations.

2.1.2 Classification Depending on the Object

- **Bi-/Multi-Lateral (Synallagmatic) Agreements**: according to the Article 1106 of the Civil Code, synallagmatic agreements create recriprocal obligations for all parties involved. This means each party has duties towards the others, establishing a mutual dependency.
- **Unilateral Agreements**: conversely, Article 1106 of the Civil Code also mentions that unilateral agreements impose obligations on one party alone. This type of contract involves a single party's commitment without requiring a reciprocal promise from another party. For example, I can post an offer of a reward in exchange for a lost wallet, setting up an unilateral agreement that stipulates that the reward will be issued once my wallet is found.

This distinction is particularly relevant for mechanisms such as the *"exception d'inexécution"* (defense of non-performance), which includes suspension, resolution, and risk theory. These mechanisms allow parties to respond to breaches of contract in a manner that reflects the mutual or unilateral nature of their agreement.

The proof of contracts and their terms is subject to the dual original exigency, as stated in Article 1375. This means that establishing the existence and specifics of a contract often requires adherence to strict legal standards, emphasizing the importance of clear, mutual agreements and understanding.

2.1.3 Free-of-Charge Contracts or Contracts Drawn Up in Return for Payment

Contracts can be also classified based on the presence or absence of a financial consideration:

- **Free-of-Charge Contracts**: these are agreements where one party benefits without a requirement to provide a financial return to the other party. For example, in a donation, one party, the donor, transfers ownership of property or a sum of money to another party, the donee, without expecting anything in return.

- **Contracts Drawn Up in Return for Payment**: these involve transactions where services of goods are exchanged for payment. They can be either reciprocal or unilateral in nature, depending on whether both or one party is obligated to provide something of value.

Within the realm of return-for-payment contracts, further subdivisions include commutative and aleatory contracts, both of which are forms of synallagmatic agreements:

- **Commutative contracts**: these contracts involve exchanges where the reciprocal advantages are immediately known and can be evaluated. Each party knows what to expect and what is expected in return. For example, a sales contract, in which one party sells a product to the other party for a certain amount of money.
- **Aleatory contracts**: these are characterized by uncertainty. The advantages or obligations depend on an uncertain event (*aléa*). The risk can be inherent to the contract's nature or introduced by the parties' agreement. The principle here is that hazard nullifies tort (*"l'aléa chasse la lésion"*), meaning a contract cannot be nullified due to the absence of cause or because of an unfair disadvantage (*lésion*), except in specific cases related to the aleatory element, like in life-contingent annuities (*rente viagère*). These contracts reflects an economic application of game theory, where the principle of large numbers does not apply uniformly, affected by the parties' quality. An example of an aleatory contract is a life insurance policy, where the obligations of the parties involved depend on an uncertain event.

2.1.4 Instantaneous Contracts and Contracts of Continuing Performance

The execution timeline of contracts introduces another layer of classification:

- **Instantaneous contracts**: these are executed in a single action or step. Once the agreed exchange is made, the contract is considered fulfilled.
- **Contracts of continuing performance**: these require a certain period to be fully executed, establishing ongoing obligations over time.

The interest of distinguishing between these types lies in the implications for declaring invalidity. For contracts of continuing performance, rescinding or terminating the agreement can significantly impact the contractual relationship, affecting how and when parties can exit the contract.

The distinction between instantaneous and continuing performance contracts is **relative**. A series of instantaneous contracts can collectively resemble a continuing performance contract, especially in scenarios like a processing contract or in the event of bankruptcy, where the ongoing nature of obligations comes to the forefront.

2.1.5 Contracts That Are Limited in Time or With A Termination Date

Contracts of continuing performance often include provisions for **tacit renewal**. This means that even without explicit agreement, the contract can automatically renew under certain conditions. Such provisions allow for a seamless continuation of the agreement, provided both parties continue to fulfill their obligations without objection.

A contract might be set without a specific deadline, being its end dependent of a particular event. According to a ruling by the Cour de Cassation on October 28, 1992, the event triggering the contract's end must be independent of the parties' will. This ensures the contract's continuity is not arbitrarily controlled by either party, providing a fair and predictable framework for its duration.

For contracts without a fixed duration, unilateral termination is generally permissible at any time. However, this termination must not be abusive (*"in case of excess"*) and should be executed with a reasonable period of advance notice. The flexibility allows parties to exit agreements when they no longer serve their mutual interests, provided they do so considerately and fairly.

Article 1738 of the Civil Code provides a legal framework for tacit renewal, especially in the context of written leases. If, at the expiry of the lease, the lessee remains in possession of the property with the lessor's acquiescence, a new lease is formed under the conditions of an unwritten lease, unless specifically excluded by the initial agreement or by the contract's nature.

The general rule for renewed contracts is that they continue under the same conditions as the original, except for certain clauses that may be considered divisible or specific to the initial term. Each renewal is treated as a new contract, allowing for adjustments and updates to reflect the parties' current circumstances and intentions. Notably, unless explicitly agreed otherwise, a renewed contract under Article 1738 does not have a predetermined termination date, reinforcing the importance of specifying any desired changes or limitations during the renewal process.

All these rules are meant to protect the interests of the weaker party in contractual relationships, such as in rental agreements or employment contracts. By ensuring that renewals and terminations adhere to principles of fairness and reasonable notice, the law aims to maintain balanced and equitable agreements.

2.1.6 Classification Depending on the Status of the Different Parties

The *intuitu personae* (depending on the person) nature of certain contracts highlights the importance of personal considerations in the formation of agreements. In such contracts, the specific characteristics or qualifications of the parties involved are crucial, and a mistake regarding the identity or essential qualities of a party (*erreur sur la personne*) can be a reason for nullifying the agreement. However, the importance of personal considerations has diminished over time due to the growth and frequency of commercial exchanges, making it a less dominant factor in many contractual relationship.

The Status of *Consumer* and *Professional* The distinction between a consumer and a professional is objectively defined within consumer law, as demonstrated by the Cour de Cassation's decision on May 15, 1984, concerning a patient's relationship with a doctor. This distinction is pivotal in determining the applicability of specific protections and obligations.

Jurisprudence has further clarified this distinction, as seen in the case of May 3, 1998, where a priest purchasing a photocopier for parish use was not considered a professional act due to its linkage to the parish's activities. Conversely, acts directly related to professional activity are deemed *professional*. This was adjusted from earlier jurisprudence, which considered professional acting outside their area of expertise as consumers, as in the case of May 25, 1992, regarding a reseller buying an alarm.

Special rules apply to loans for consumers, where the object of the loan is a critical consideration. Since 1993, consumer rights have been codified, encompassing rules on advertising, information, cooling-off periods, and retraction, alongside mechanisms for control and enforcement against unfair terms.

The codification of consumer rights aims to balance interests and promote *legal solidarism*, though it also introduces some challenges. It disrupts traditional contract law principles, like consent, offer and acceptance, and can be seen as unstable, bureaucratic, formalistic, and rigid. Critics argue that the emphasis on consumer protection can hinder economic development by introducing additional costs and complexities. Special attention is given to adults incapable of managing their affairs independently, whose protection is considered very important.

2.1.7 Classification Depending on the Mode of Formation

- **Consensual contracts**: these are based on the simple agreement of the parties involved. The essence of consensual contracts is that they are formed by the mutual consent of the parties regarding the contract's terms, without the need for any formalities or the transfer of a thing. This principle is foundational in French law, as highlighted in Article 1172, which underscores the importance of consent in contract formation.
- **Real contracts**: real contracts require the transfer of a thing (an object or right) for the contract to be considered formed. Examples include loans (Article 1875), deposits (Article 1919), and pledges (Articles 2071). These contracts are not complete until the specified object has been transferred from one party to the other.

- **Solemn contracts**: solemn contracts require specific formalities to be fulfilled for the contract to be valid. These formalities could include written documentation, registration, or other legal procedures. The solemnity aspect underscores the contract's importance, ensuring clarity and legal compliance. For example, a real estate contract that requires a notarized deed to be legally valid.
- **Negociated contracts**: these contracts are the results of back-and-forth negotiations between the parties, allowing for terms and conditions to be discussed and agreed upon before the contract is finalized. This type reflects a social reality where parties have equal bargaining power to shape the contract's content.
- **Membership (adhesion) contracts**: membership contracts are standard form contracts where one party (typically a business or service provider) sets the contract terms, and the other party (usually a consumer) has little to no ability to negotiate. The consumer can aither accept the contract as is or reject it entirely.

Despite the foundational role of Common Law principles in contracts, the issue of "unfair terms" has gained prominence, addressing concerns over potential imbalances in membership contracts. This has led to specific regimes in some foreign legal systems to protect parties, particularly consumers, from unfair or abusive terms that one party might impose due to a superior bargaining position.

The distinction between

2.2 The Notion of Contract

2.2.1 Historical Review

Roman contracts and non-contractual obligations The Roman legal system introduced the notion of contracts with four primary consensual contracts: sale, mandate, rental, and company.

It also recognized non-contractual obligations such as guardianship and tort sources, expanding the scope of legal obligations beyond formal agreements.

Evolution from individualism to opposing interests In 1804, the notion of contract was heavily individualistic, anchored in the theory of free will (*autonomie de la volonté*). Over time, legal theory has shifted towards considering "opposing interests", acknowledging the dynamic and often conflicting nature of contractual relationships.

2.2.2 Unilateral Deed

A unilateral deed, or unilateral declaration, involves a situation where a single party's declaration or promise creates an obligation upon them, without requiring acceptance or an act of performance by another party for it to take effect. The obligation is self-imposed by the declarant's will alone, and it must be communicated to the person it affects, but it does not form an agreement between two parties. For example, a promise to make a donation to charity can be considered a unilateral deed. If an individual publicly announces their intention to donate a certain amount to a charity, they have created an obligation for themselves through their declaration.

A unilateral deed is distinguised from a unilateral contract by requiring only one party's will to create an obligation, while in a unilateral contract, the obligation is conditional upon the performance of a specified act by another party, essentially forming an agreement once the act is performed. However, for such a deed to be valid, the impacted individual must be informed, and there exists debate over the validity of self-imposed obligations. An example is a public promise to reimburse, which can be revoked until the promised act is accomplished.

2.2.3 Non-Mandatory Conventions

Non-mandatory conventions, such as debt forgiveness, do not create obligations and are theoretically distinct from contracts, despite being effective in practice.

Another example are acts of kindness and accommodation, which are actions taken out of goodwill or to accommodate someone else, such as providing a ride or assisting a third party withoyt expecting anything in return. Initially, these acts may not create legal obligations. However, if they lead to harm or loss, they could result in indemnity claims. Over time, such acts might be interpreted through a quasi-contractual lens, especially if they resemble actions typically covered by contracts, like providing services under a free services contract.

Gentleman's agreements are informal agreements based on the honor of the parties involved, rather than legal obligations. They are characterized by:

- **Basis in honor**: the primary foundation of a gentlemna's agreement is the personal integrity and honor of the parties. Such agreements are common between states or friends, where formal contracts are either impractical or deemed innecessary.
- **Legal enforceability**: while the legal doctrine often views these agreements as non-binding due to the lack of legal obligations, courts sometimes consider the common intentions of the parties involved. If it appears that the parties intended to create a binding commitment, a court may enforce the agreement based on those intentions, despite the informal nature of the agreement.

Letters of intent are documents used during the preliminary stages of negotitations to outline the key elements of a proposed agreement and the parties' intent to continue discussions. They serve several important functions:

- **Clarification of intentions**: they help both parties clarify their intentions and the main points of the deal under considetation, providing a roadmap for future negotiations.
- **Non-binding nature**: typically, they are non-binding regarding the final agreement, meaning they do not legally obligate the parties to finalzie the deal. However, certain parts of a letter of intention, such as confidentiality clauses or exclusivity agreements, may be binding.
- **Ambiguity and enforcement**: the notion of letter of intention is ambiguous because, while they signify a willingness to engage in negotiations, the extent to which they are enforceable varies. If a letter of intention is detailed and includes terms that suggest a commitment, courts may interpret it as binding, depending on the parties' apparent intent and the document's specific language.

2.2.4 Avant-Contracts (Preliminary Contracts)

Avant-contracts are preliminary agreements that outline the terms and conditions under which the parties intend to enter into a definitive contract in the future. They are binding to the extent that they commit the parties to continue their negotiations based on the terms outlined in the avant-contract.

There are several types:

- **Unilateral promise to contract**: gives one party, the beneficiary, the option to enter into a contract within a specified time frame. This promise grants the beneficiary a personal right against the promisor, which becomes enforceable once the option is exercised. Before acceptance, it's a personal right; after acceptance, it transforms into an indefeasible right subject to forced execution.
- **Synallagmatic promise**: involves mutual commitments from both parties to enter into a contract upon meeting certain conditions or formalities. This type of acant-contract is immediately binding as a promise of sale, effectively considered equivalent to a sale, as per Article 1589 of the Civil Code. However, the execution of the definitive contract may depend on completing specific formalities or conditions.
- **Crossed promises**: consist of two unlitateral promises that intersect; for example, one party promises to sell, and the other promises to buy under the same conditions. This arrangement is treated as a synallagmatic promise and is equivalent to a sales contract, although this interpretation has faced criticism.

Legal implications

- Contractual value of pre-contractual documents: even advertisements and pre-contractual documents can have contractual value, as seen in a 2004 ruling by the Cour de Cassation. Misrepresentations in such documents can lead to liability for misconduct.
- No constraining value after contract conclusion: once the definitive contract is concluded, the pre-contractual documents lose their binding force under specifically incorporated into the final agreement.
- Exceptions: there are exceptions where the promise of a contract does not equate to the contract itself, particularly in cases involving loans and where adamages are sought as a remedy.

Reiteraiton and consent Reiteration, the act of repeating the contract formalization process, typically in front of a notary, can sometimes be replaced by a court decision. Parties may also choose to include reiteration as an element of their consent, further solidifying the agreement's binding nature.

2.3 Formation of the Contract

The formation of a contract is a fundamental concept in contract law that outlines the conditions under which agreements become legally binding between parties.

The Article 1103 of the Civil Code establishes that contracts, once legally constituted, are binding upon the parties involved, acting as their law. This principle underscores the autonomy and the binding nature of contracts, highlighting the importance of agreements being formed in compliance with legal standards. It specifies four essential requirements for a contract's validity:

1. **Consent of the parties**: agreement must be made without coercion, mistake, or misrepresentation. Both parties must clearly and voluntarily agree to the contract terms.
2. **Capacity to contract**: parties must have the legal ability to enter into a contract. This typically means they are of a certain age (usually 18 or older) and of sound mind.
3. **Definite object**: the contract must have a clear subject matter or obejctive. This means the goods, services, or rights being exchanged are specified.
4. **Lawful cause**: the purpose and terms of the contract must be legal and not against public policy.

Notably, Article 1108 does not mandate a specific form for the contract, allowing for flexibility in how agreements are made, whether orally, in writing, or through conduct.

2.3.1 Voluntary Agreements

The formation process emphasizes the voluntary nature of agreements, detailing how parties should conduct negotiations:

- **Discussions**: the initial stage involves discussions, which are not the same as making a firm offer. It's an invitation to negotiate, marking the start of potential contract formation.
- **Invitation to start discussions**: this is distinct from a firm offer and serves as the initiation of negotiations, without committing either party.
- **Freedom to end negotiations**: parties are free to withdraw from talks at any time before an agreement is reached.
- **Obligations of good faith**: throughout the discussions, parties are expected to engage honestly and fairly, avoiding misleading or deceitful practices.

- **Informing and cooling off period**: parties should inform each other about the terms and conditions of the proposed agreement. A cooling-off period may be allowed, giving parties time to reconsider their commitment.
- **Effort to reach an agreement**: negotiations should aim to conclude with a mutual agreement, avoiding unnecessary delays or extensions.
- **Confidentiality**: respect for sensitive information shared during negotiations is crucial. Confidential details whould not be disclosed without consent.
- **Limited tort liability**: while parties may be held liable for certain costs incurred during the negotiation phase, such as preliminary studies, they generally cannot be held responsible for the loss of an opportunity that never materialzied into a contract.

Examples Example of consent: two businesses agreeing to terms for a supply of goods after negotiations, where both parties clearly accept the terms.

Example of capacity: an adult entering into a lease agreement for an apartment, having the legal age and mental ability to do so.

Example of definitive object: a contract for the sale of a car, where the make, model, and year of the car are specified.

Example of lawful cause: a service contract for landscaping work, where the services to be provided are legal and have a legitimate purpose.

2.3.2 Pollicitation

Pollicitation refers to the act of making an offer in the context of contract formation. It is a key step in initiating contractual negotiations, setting out the terms under which the offeror is willing to enter into a contract. Let's break down the essential characteristics of a pollicitation and provide some clarity on its implications:

- **Firmness**: an offer must be firm, indicating the offeror's clear intention to be bound by the offer if accepted by the offeree. This means the offeror cannot withdraw the offer arbitrarily before the specified time period for acceptance has elapse or, if no time is specified, within a reasonable period. For example, a car dealership places an advertisement offering a specific model at a stated price, indicated the offer is valid until the end of the month. This is a firm offer because the dealership commits to the terms provided until the specified expiration date.
- **Precision**: the offer must be precise, containing all the essential elements of the contract, notably the price. This precision ensures that, upon acceptance, there is a clear agreement on the contract's fundamental terms without the need for further negotiation. For example, an online retailer lists a product with a detailed description and price, making it clear what is being offered for sale.
- **Express nature**: pollicitation must always be express, regardless of its form. It can be communicated in various ways, including written, oral, or even through conduct, such as displaying goods for sale in a public space. The key is that the offer must unambiguously indicate the offeror's intention to be bound. For example, a company sends a proposal to provide IT services to another business, detailing the scope of services and associated costs.
- **Public offer**: a public offer, one made to an unspecified audience, holds the same legal weight as an offer directed at a specific individual. The first party to accept such an offer in accordance with its terms effectively enters into a contract with the offeror. For example, a restaurant displaying a sign outside offering a lunch special at a specific price. This is binding on the restaurant for anyone who enters and orders the special, fulfilling the conditions of the offer.
- **Reservations**: to mitigate the strictness of this rule, an offer can include certain reservations. For instance, the *intuitu peersonae* principle allows the offeror to stipulate that the acceptance must come from a party possessing specific qualities or qualifications deemed necessary for the contract's purpose.

For example, a job posting requires applicants to have certain qualifications or experience, indicating that only those who meet these criteria are eligible to accept the offer of employment.

- **Period of time**: an offer also includes a time frame for acceptance, which can be explicit or implicit, repending on the contract's nature or intended to be resonable. This period defines how long the offer remains open for acceptance, after which it may expire if not accepted. For example, the car sale previously mention.

2.3.3 The Regime Governing the Offer

The regime governing the offer outlines the conditions under which an offer can be made, modified, or withdrawn, and the consequences of these actions.

Retraction of the offer Generally, an offer is revocable, meaning the offeror can withdraw it before it is accepted. However, an offer becomes irrevocable if the offeror explicitly states the intention to not withdraw the offer for a certain period or under specific conditions.

If the offeror retracts an irrevocable offer, they may be liable for breach of the promise not to revoke the offer. This could lead to claims for damages by the offeree or enforcement of a penalty clause, if one was included in the offer.

If the offeror retracts the offer during the period it was supposed to remain open (or before the offeree has had a reasonable time to consider it, in the absence of a specified period), this action constitutes a fault. If the cancellation causes damages to the offeree, the offeror may be held liable under tort responsibility.

- Public offers: the offeror can freely revoke a public offer unless it has been accepted.
- Specific person: if the offer targets a specific person, the offeror must allow a reasonable period for the offeree to examine and consider the offer before revocation, as established in a 2005 decision by the Cour de cassation.

Lapse of termination of the offer An offer becomes **obsolete**, meaning it stops producing effects, under certain conditions, such as:

- The death of the offeror.
- The offeror undergoing bankruptcy.
- Sudden incapacity of the offeror.

If the offeree initially refuses the offer but then rapidly changes their mind, the initial refusal typically terminates the offer. However, the legal implications can vary based on the specifics of the situation and the timing of the change of mind.

Jurisprudence is not clear regarding the effect of the offeror'sdeath within the specified time period for acceptance. Generally, unless the offer is of a personal nature or the contract specifies otherwise, the death of the offeror does not automatically revoke the offer before its expiration.

2.3.4 Acceptance

Acceptance is a crucial step in the formation of a contract, indicating the offeree's agreement to the terms proposed by the offeror.

Enlightened (Wise) acceptance For acceptance to be valid, it must be informed. The offeree is presumed to be aware of and understand all clauses that are "readable" and "usual" within the context of the agreement. Clauses that fall outside of what's considered a tacit agreement are not deemed accepted unless proven otherwise. This ensures that acceptance is based on a full understanding of the terms.

For example, a person signing a lease agreement is presumed to understand and accept all standard clauses that are clearly presented and typical for such agreements.

Pure and simple Acceptance must be unconditional and unambiguous. If the acceptance alters any terms of the offer, it is not considered a true acceptance but a counter-offer, which effectively nullifies the original offer.

- **Tacit acceptance**: can be inferred from the actions of the parties, indicating agreement to the contract terms through conduct rather than explicit verbal or wirtten confirmation. For example, using a product or service without objection after receiving it can be interpreted as tacit acceptance of the sale terms.
- **Silence as acceptance**: generally, silence is not considered acceptance. This principle is particularly emphasized in consumer law to prevent practices such as forced sales at a distance. An exception exists when silence can be contextualized, such as in ongoing business relationships, or specific legal texts allow for it, or a letter confirms a previous verbal agreement.

2.3.5 Contracts Between Absents

Contracts between absents refer to agreements made when the offeror and offeree are not physically present together, often facilitated through communication technologies.

The **emission/reception theory** addresses how and when a contract is formed between absent parties. The focus is on:

- **Emission theory**: a contract is considered formed when the offeror sends the acceptance, regardless of whether the offeree has received it.
- **Reception theory**: a contract is only formed when the acceptance is received by the offeror. This approach is more common and practical, ensuring that the offeror is aware of the acceptance before being bound by it.

For example, if a freelancer sends an email accepting a project offer and the terms are received and acknowledged by the client, the contract is formed under the reception theory.

Practical implications

- **Jurisdiction**: the location where the contract is considered completed can affect legal jurisdiction, which is important for determining the applicable laws and where legal actions can be initiated.
- **Revocation of the offer**: challenges arise when an offer is revoked after acceptance has been sent but before it is received. The lack of clear jurisprudence on this matter requires judges to interpret the intent of the parties to determine if a contract was effectively formed.

2.3.6 Electronic Contracts

The French Law on Confidence in the Digital Economy (LCEN), dated June 4, 2004, and its subsequent modification on June 16, 2005, to transpose a European Directive from June 8, 2000, provide a regulatory framework for electronic contracts. These regulations are encapsulated within Articles 1369-1 to 1369-3 (and beyond) of the French Civil Code.

Electronic contracts are agreements where at least one party offers goods or services through electronic means, typically via the internet. This definition includes a broad range of commercial transactions conducted online, from e-commerce sales to service agreements.

Key provisions and requirements Article 1369-1: offer and technical conditions

The offer in an electronic contract must clearly detail the contractual terms and various technical conditions pertinent to digital transactions. These include:

- Contractual conditions: detailed description of goods or services, pricing, and terms of use.
- Technical conditions: steps for contract conclusion, mechanisms for identifying and correcting errors before submission, language of the contract, and rules regarding the archiving of contracts and commercial regulations.

Steps for contract conclusions

The law specifies that clear instructions must be provided on how to proceed through the different stages of entering into the contract. This ensures transparency and understanding for users navigating the contract formation process online.

Correction of errors

There must be be technical means available for users to identify and correct any errors in their inputs before the final submission of their agreement. This feature is crucial for preventing misunderstandings or unintentional commitments.

Contract language and archives

Specifications regarding the language used in the contract and how the contracts are archived offer additional clarity and security for both parties involved in the electronic transaction.

Professional and commercial rules

The offer must also include any relevant professional or commercial rules, ensuring that parties are aware of the regulatory environment governing the transaction.

Acceptance and the "*Double Click*" rule The acceptance of electronic contracts follows the general principles of contract law, requiring a clear and unequivocal agreement to the terms proposed by the offeror.

The **double click rule**, introduced in Article 1369-4, emphasizes the need for explicit confirmation of acceptance. Typically, this involves a process where the user must click once to select an option and again to confirm their choice, ensuring a deliberate and informed agreement to the contract terms.

For the purposes of evidence and certainty, and order, its acceptance, and the acknowledgment of receipt are considered received when they can be accesses by the intended recipients. This provisions addresses the unique aspect of electronic communication, where access equates to receipt. Article 1369-5.

For example, an online retailer's checkout process that requires customers to review their cart, confirm personal and payment information, and finally click a "Place Order" button, followed by a confirmation screen where they click "Confirm Order", exemplifies the double click rule. The retailer then sends an email acknowledgment that the customer can access, completing the transaction cycle as per Article 1369-5.

2.4 Defects in Consent

Defects in consent are critical considerations in contract law that can affect the validity of a contract. These defects arise when the agreement between parties is influenced by factors that compromise the free and informed consent of one or more parties.

2.4.1 Preliminary Remarks

For a contract to be valid, it must meet four fundamental conditions (Article 1108):

- **Consent of the obliging party**: the party agreeing to the contract must do so willingly and knowingly.

- **Capacity to contract**: parties must have the legal ability to enter into a contract, typically involving agre and mental competence.
- **Definite object**: the contract must have a clear subject matter.
- **Lawful cause**: the purpose of the contract must be elgal.

Consent is considered valid only if it is given freely and without any defects. If consent is flawed, the contract may be deemed void.

Certain individuals, such as those who are incapable (due to mental incapacity), dying persons, or illiterate individuals, may lack the ability to give valid consent. Originally, the concern oveer consent was particularly relevant to gifts but has been extended to all acts requiring legal capacity, as highlighted by Article 489, which states the necessity of being of sound mind to engage in valid legal acts.

Objectives of protection and contractual security The law aims to balance the protection of individuals with the need for contractual security. This includes safeguarding against *"lésion"*, where there's a significant imbalance between the obligations of the parties involved.

Consent is not considered valid if it is affected by any of the following defects (Article 1109):

- **Mistake**: an error by one or more parties about a fundamental aspect of the contract. For example, a person buys a painting believing it to be an original work of a famous artist, but it turns out to be a false copy. The mistake about a fundamental aspect of the contract (the painting's authenticity) could nullify the agreement.
- **Dol**: deception by one party to induce another to enter into the contract. For example, if a seller knowingly misrepresents a car's condition to a buyer, and the buyer relies on this misinformation when agreeing to the purchase, the contract could be voided due to fraud.
- **Violence**: coercion or undue pressure exerted on a party to force them into the contract. For example, threatening someone to sign a contract under threat of harm constitutes duress. Contracts signed under such conditions are voidable.

2.4.2 The Mistake

A **mistake** occurs when one or both parties hold an incorrect belief about a critical fact at the time of contract formation. It is a commong ground for disputing the validity of a contract, because it indicates that the parties may not have reached a genuine agreement due to the error.

Distinguishing between a mistake and a guarantee against hidden effects is crucial. A mistake pertains to an error in understanding or belief at the time of agreement, while a **guarantee against hidden effects** deals with undisclosed flaws in the subject matter, that were not known at the time of sale.

There are several types of mistake:

- **Mistake on the Substance** (Article 1133):
  - Objective and subjective evaluation: initially, the substance of a mistake was viewed objectively, focusing on whether a reasonable person would find the error significant. Over time, the assessment has become more subjective, considering whether the mistaken fact was a substantial quality important to the contracting party.
  - Concrete VS Abstract Evaluation: the debate centers on whether the significance of the mistake should be evaluated in the specific context of the contract (*in concreto*) or based on general standards (*in abstracto*), affecting the burden of the proof.

A notable case is *"Le Verrou"* case from March 24, 1987. In this case, the controversy involved the sale of an artwork attributed to Fragonard. The court ruled that the parties ahd accepted the risk of the painting's authenticity, and the heirs failed to prove that the seller has consented to the sale under a mistaken belief. This illustrates the complexity of proving a mistake in contracts involving art, where authenticity may be uncertain.

- **The obstacle mistake**: this refers to a fundamental misunderstanding where there is no true meeting of minds, often relating to the contract's object. It requires clarification or can lead to contract annulment if the mistake is about a central aspect of the agreement.

  A notable case is *"Le Poussin"* case. In this case, an amateur auctioned a painting believed to be by Poussin, a belief based on family tradition. However, after the Louvre won the auction and declared it a Poussin, the attribution was contested. This case highlights mistakes regarding the provision or attribution of an artwork, affecting the contract's validity.

- **Irrelevant mistake**: mistakes about a party's motivation or the value of the contract subject are generally deemed irrelevant, as they do not pertain to the contract's substance.

  The principle *"de non vigilantibus non curat praetor"* (the law does not protect those who are not vigilant) applies here, indicating that the law does not remedy mistakes due to a lack of diligence.

  The material mistake does not lead ot the annulment but has to be modified. This modification could be refused if it creates a prejudice and the victim has good faith.

2.4.3 The Dol

Dol refers to fraudulent behavior or deceit employed by one party to induce another to enter into a contract. Dol has characteristics of both a criminal offense, fue to the deceitful intent, and a civil one, as it pertains to the breach of contractual obligations. The modern perspective focuses on the vistim's experience, emphasizing the deceit's impact on their consent to the contract.

The criteria for dol are:

- **Intentional deceit**: dol is considered a cause for annulment of a contract when one party uses tactics so deceptive that it's evident the other party would not have consented without such deceit. This requires the victim to prove the presence of dol, as it is not presumed.
- **Dishonest tactics**: the essence of dol lies in the use of dishonest tactics, including lies or significant omissions, to mislead the other party.
- **Silence as dol (*réticence dolosive*)**: deliberately withholding crucial information that one has a duty to disclose can constitute dol. This is particularly the case when the omission manipulates the other party into entering the contract under false pretenses (Article 1139).

Some examples and jurisprudence are:

- Lies and exaggerations: while mere puffery or sales talk may not always constitute dol, outright lies or strategic omissions designed to deceive do. For instance, the case from the Cour de Cassation November 6, 1970, highlighted that even lies without accompanying actions could constitute dol.
- Employment applications: jurisprudence tends to be lenient towards misrepresentations made by job applicants unless they significantly impact the employment decision.

The determining factos and exceptions are:

- Determinant for consent: dol must be a determining factor in the victim's consent; otherwise, the remedy may be limited to damages rather than annulment of the contract.
- Proof of intention: proving dol requires showing intentional deceit.

- Source of dol: usually, dol originates from the other contractual party, but exceptions exist, such as in cases of fraudulent collusion or when dol is based on a unilateral document.

The practical implications of dol can be:

- Annulment and damages: if dol is proven, it can lead to the annulment of the contract, or in less clear-cut cases, victims may be entitled to damages for the deceit suffered.
- Responsibility to disclose: parties to a contract have a fundamental obligation to be honest and forthcoming about critical information related to the agreement.

2.4.4 Violence

Violence addresses situations where consent to a contract is obtained through undue pressure, whether physical, psychological, or economic.

The legal basis of violence are:

- Article 1111: this article establishes that violence, whether exerted by a party to the contract or a third party for their benefit, is a valid cause for annulment of the contract.
- Article 1112: defines violence as acts that would intimidate a reasonable person, causing fear of exposing oneself or one's property to significant and immediate danger.

The characteristics and scope of violence are:

- **Rarity**: it's less commonly invoked than mistake and dol.
- **Source and means**: the origin of the violence and the methods used are immaterial to its validity as a cause for annulment.
- **Exploiting weakness**: modern interpretations include exploting a party's weakness that leads to a significant mistake as a form of violence. For example, a case where an individual, knowing another person's desperate financial situation, offers a loan on extremely unfavorable terms. The lender exploits the borrower's vulnerability, which could be considered a form of violenve if it led to the borrower's consent.
- **Exclusions**: mere reverential fear, where respects or deference to another causes one to agree, does not constitute violence for the purpose of annulment.
- **Economic violence**: since 2002, the concept has expanded to include economic violence, where undue advantage is taken of another's economic dependence.

The conditions for violence are:

- **Determinant**: the violence must be a determining factor in the aggrieved party's decision to enter into the contract, assessed on a case-by-case basis (*in concreto*).
- **Human action**: violence must emanate from an action or threat by another person, directly or indirectly affecting the contract party.
- **Exceptional adjustments**: in specific situations, such as some maritime rescues, the agreement might be adjusted rather than annulled to reflect the circumstances. For example, imagine your boat breaks in the sea, and another boat passes by. They offer to rescue you for 1M€, and at the moment you accept. However, once you are in land, you think they took advantage of your desperate position.

2.4.5 The Lesion

Lesion refers to a situation where there is a significant imbalance between the performances of the parties involved in a contract, to the detriment of one party. Unlike classical defects in consent, lesion is considered a special cause for the annulment or adjustment of a contract.

Article 1118 specifies that the lesion vitiates contracts only under certain conditions, applicable to specific contracts or certain categories of people. It suggests that the principle of freedom of contract is paramount, but exceptions exist to protect parties from grossly unfair agreements.

The characteristics of the lesion are:

- **Not a general vice**: it's not recognized as a general ground for annulment across all contracts.
- **Security of contract principle**: underscores the importance of respecting agreements and ensuring that contracts are respected as binding obligations. Lesion is an exception to this principle, introduced to prevent exploitation and ensure fairness.
- **Applicability**:
  - Incapables: are protected against lesion.
  - Sales or real estate: transactions involving real estate may be scrutinized for lesion, given the significant value and potential for exploitation. For example if a person, taking advantage of another's urgent need for money, purchases their property at a price significantly below market value, this could be challenged as lesion, especially if the seller is considered incapable of fully understanding the transaction's implication.
  - Shares and other securities: deals involving shares, stocks, or other financial instruments may also be subject to review for lesion.

The courts have granted themselves the authority to adjust the remunerations of mandatory and liberal professions if they are deemed to involve lesion. For example, if a doctor charges a fee that is exorbitantly high compared to the standard rates for their services, and especially if the client is in a vulnerable position, the courts may decide to reduce the fee on the ground of lesion.

2.5 The Protective Legislation of the Consumer

The protective legislation for consumers is a critical component of modern legal systems, particularly in response to the complexities of a consumption-driven society. These laws aim to correct the imbalances between consumers and businesses by enrusing trasparency, fairness, and informed consent in transactions.

Businesses are obliged to inform their clients, and this has three branches.

1. **Commercial advertisement**
   (a) **False advertising**: any commercial advertisement found to be false is subject to sanctions. This protects consumers from being misled about the quality, nature, or price of goods and services. For example, a company advertises a weight loss supllement with unfounded claims about its effectiveness. Upon investigation, these claims are found to be false, leading to sanctions against the company.
   (b) **Comparative publicity**: allowed since 1992, provided it is fair and honers, comparative advertising helps consumer make informed decisions by comparing the attributes of different products or services. For example, an electronic retailer publishes an ad comparing the specifications and prices of laptops from different manufacturers. The comparison is factual and helps consumers make informed choices, so it is permitted.
2. **Information on the product**
   (a) **Mandatory disclosures**: this includes price labeling, quality labels, informative documents, and manual mentions, which ensure that consumers have access to essential informaiton about what they are purchasing.

(b) **Neiertz law generalization**: this law mandates that every professional seller of goods or service provider must, before concluding a transaction, enable the consumer to understand the main characteristics of the good or service.

3. **Personalized information**: this aspect is often emphasized by jurisprudence, requiring professional sellers to inform, advise, or recommend based on their duty towards the consumer. This personalized information helps consumers make choices that are best suited to their specific needs and circumstances.

2.5.1 Repent Cooling Off Withdraw

The objective is to reinforce the consumer's consent by providing a cooling-off period. This period allows consumers to reconsider their purchase decisions without pressure.

The right of cooling off are:

- **L121-6**: regulates any money given as a guarantee or payment during the cooling-off period. This provisions ensures that consumers can back out a transaction without financial penalty.
- **Anticipation and preservation**: the law provides for the anticipaiton of a cooling-off period or the preservation of a withdrawal right in specific transactions, such as distant sales or financial services.

For example, a consumer purchases a smartphone online and then decides it does not meet their needs. Thanks to the cooling-off period, they can return the phone within a specified timeframe for a full refund without needing to provide a reason.

2.6 Object and Cause

The concepts of object and cause are central to understanding the validity and enforceability of contracts under the French Civil Code. These elements ensure that a contract is formed based on clear, lawful, and achievable terms.

2.6.1 Object of the Obligation or Object of the Contract

The **object** refers to the subject matter of the agreement or obligation.

The **object of the obligation** refers specically to the performance that is due from the obligor to the obligee. This performance can be an action or an omission.

The **object of the contract** encompasses the broader subject matter of the contract itseld, including all the rights and obligations that the contract creates for the parties involved. It is more comprehensive than the object of the obligation, as it considers the overall purpose and scope of the agreement.

The Civil Code addresses both notions. While the doctrine emphasizes the *"object of the obligation"* as the primary valid notion (Article 1129), references to the *"object of the contract"* are found in Articles 1110, 1128 and 220, among others.

For example, in a contract for the sale of a house:

- Object of the obligation: for the seller, it's to transfer ownership of the house to the buyer and ensure the property is as agreed. For the buyer, it's to pay the agreed price to the seller.
- Object of the contract: the broader agreement that encompasses not only the transfer of property and payment, but any additional terms such as the timeline for the transfer, conditions for inspection, obligations for repairs, etc.

The conditions for the object are:

- **Existence**: the object must exist at the time of the contract, or at least its future existence is anticipated, making it valid for contracts involving future goods (Article 1130). An example is an agreement to purchase crops that are yet to be harvested.
- **Determined or determinable**: the specific items doesn't need to be identified at the contract's formation but must be identifiable in the future. For example, a contract for the delivery of 100 tons of wheat from the enxt harvest meets this condition.
- **Possible**: the object must be physically and legally possible to deliver. For example, a contract to sell a piece of land on the moon would be considered impossible.
- **Licit**: the object must be legal and not violate public policy or legal norms. For example, selling prohibited substances would constitute an illicit object.

Some restrictions are:

- **Future successions and work**: the law prohibits contracts based purely on speculative future successions or the global assignment of future work, ensuring contracts are based on concrete, definable object.
- **Price fixing and distribution framework agreements**: the Civil Code clarifies that while the determination of goods is essential, price-fixing within distribution agreements does not pertain to the object itself but to the terms of the contract.

2.6.2 The Cause

The **cause** refers to the underlying reason or purpose behind entering into an agreement. It represents the legal and motivational basis for the obligations that parties undertake through the contract.

In classical analysis, the cause is seen as the counterpart for each party's obligation, analyzed objectively to determine its legality and existence.

The cause must persist throughout the duration of the contract. If the underlying cause of one party's obligation ceases to exist, the principle of reciprocity may be compromised, potentially leading to the contract's resolution for non-performance.

In the modern conception, the existence of the cause is considered from an objective standpoint, separate from the parties' subjective motivations, yet crucial for the contract's validity. The cause must be lawful, meaning it cannot contravene legal norms or public policy. The assessment of whether a cause is licit involves considering the parties' intentions and the contract's circumstances.

For example, if the primary motivation for entering a contract is smuggling goods, the cause is deemed illicit, rendering the contract void.

A **false cause** occurs when a party is mistaken about the existence of a counterpart or benefit. For instance, entering a contract believing it grants exclusive rights to a product, only to find out such exclusivity doesn't exist, could constitute a false cause.

2.6.3 Function of the Cause

- **Legal requirement for effectiveness**: an obligation without a cause, based on a false cause, or founded on an illicit one, is ineffective. The typical remedy for contracts lacking a valid cause is relative annulment.
- **Judge's role**: the absense or inadequacy of a cause is subject to judicial review, ensuring that contracts are founded on legitimate bases.
- **Special consideration for aleatory contracts**: in contracts dependent on chance, the cause relates to the risk or chance of an event occurring, which constitutes the aagreement's basis. For example, in an insurance contract, the cause is the risk or chance involved. Participants enter these contracts accepting the uncertainty of outcomes as the cause.

Chronopost case: this case highlighted the judiciary's power to nullify clauses that eliminate a contract's fundamental obligation, demonstrating how the cause, or its violation, affects contractual obligations. Chronopost offered express delivery services. The company had contractsthat included clauses limiting its liability for delays in delivery. These clauses essentially exempted Chronopost from significant responsibility if it failed to meet its express delivery guarantees. The central issue was whether the limitation of liability clauses were enforceable, especially when the company failed to meet its guaranteed delivery times. The case reached the Cour de cassation, which held that the limitation of liability clauses were not enforceable to the extent that they nullified the essential obligation of the contract, which was timely delivery. The court reasoned that the main cause of the contract from the customers' perspective was the guarantee of express delivery. If Chronopost could limit its liability for not fulfilling this essential obligation, it would undermine the very purpose for which customers entered into the contracts.

2.6.4 The Proof of the Cause

The necessity to prove the existence of a cause is particularly emphasized for unilateral contracts with a financial basis, such as debt acknowledgments.

The Article 1132 of the Civil Code articulates that a contract remains valid even if the cause if not explicitly stated within the document. The obligation is presumed to be for a licit cause, and the burden of prood rests with the obligation holder to demonstrate this if challenged. However, if there is a claim that the cause is illicit, the proof can be provided by any means available, reflecting the flexibility in challenging the presumed legality of the cause.

2.6.5 The Good Faith

The Civil Code underscores the principle of good faith in the execution of contracts. The Article 1134, paragraph 3, states that contracts must be executed in good faith, aiming to ensure economic predictability and fairness in contractual relationships.

The objectives and implications of good faith are:

- **Economic predictability**: good faith execution supports the stability and reliability of commercial transactions by ensuring that contracts are carried out according to their agreed terms and spirit.
- **Adaptation to circumstances**: the principle may require parties to adjust the terms of a contract in response to unforeseen circumstances, facilitating the contract's continuity and preserving the parties' relationship.

The sanctions for breaching good faith can be:

- **Forced termination**: a contract may be terminated if one party violates the principle of good faith, undermining the contract's foundation.
- **Forced continuation**: conversely, a court may mandate a continuation of a contract, possibly under adjusted terms, to rectify a breach of good faith.

Relationship to abuse of right theory The principle of good faith is closely related to the theory of abuse of rights, where exercising one's contractual rights in a manner intended to harm the other party or in a way that is beyond the contract's purpose can be sanctioned.

Motivation control and limits While good faith imposes behavioral standards on contractual parties, it also respects the autonomy of the contract, implying that not all motivations or actions can be controlled or penalized under this principle. The application of good faith is contextual, considering the specifics of each case and the extent to which actions deviate from accepted standards of fairness and honesty.

2.7 Contractual Responsibility

Contractual responsibility is a fundamental concept that outlines the conditions under which a party may be held liable for failing to fulfill contractual obligations, This responsibility is determined by the nature of the obligations, the occurrence of damage, and the presence of fault.

Tort responsibility arises from damages caused by actions not bound by a contract, whereas contractual responsibility pertains to the failure to meet the obligations specified within a contract.

The elements of contractual responsibility are:

1. **Damage**: there must be a recognizable damage that is certain, direct, personal and foreseeable. This damage must result from the failure to fulfill a contractual obligation.
2. **Fault**: this involves the failrue to meet the agree standards or outcomes specified in the contract.

2.7.1 Obligations as to Results

In an oblifations as to results, the focus is on achieving a specific outcome promised in the contract.

- Fault: here, the fault is equated with the mere absence of the expected results, without needing to delve into the diligence or efforts of the debtor.
- Causes of exemption: the party bound by this obligation can be exempted from responsibility if they can prove that the failure was due to force majeure, a third-party action beyond their control, or the responsibility of the victim.
- Exception to the exception: even with these potential exemptions, certain guarantees may obligate the debtor regardless of these causes.

For example, a courier company promises to deliver a package by a certain date. If the package is not delivered on time, the company is in fault due to the non-achivement of the specified result, unless it can prove an exemption.

2.7.2 Obligations of Means

The debtor promises to exert all possible efforts and employ the necessary means to achieve a certain goal, but the specific result cannot be guaranteed.

- Evidence: the focus shifts to whether there was a failure to exercise the requisite level of care or effort. Establishing fault requires proving a breach in the standard of care or diligence expected under the circumstances.
- Appreciation of infringement: the assessment of whether the efforts were sufficient is generally more subjective and depends on the context of the obligation.

For example, a doctor treating a patient cannot guarantee recovery but is expected to provide competent and diligent medical care. Fault would be established if the doctor failed to provide the standard of care expected of a professional in similar circumstances

2.7.3 Relativity of Notions

This concept emphasizes the variability and context-dependency of obligations within contracts.

- Educational aspect: the relativity of notions serves as an educational tool in contract law.

- Multiplicity of obligations: each contract can contain a wide range of obligations, each with its own characteristics and requirements.
- Nature and degree: the nature of any given obligation often exists on a spectrum, with the specific details of the obligation and its enforcement being matters of degree.
- Uncertainty: the uncertain character of the notion points to the inherent ambiguities that can arise in interpreting and applying contractual obligations.
- Ineffectiveness in international contracts: the principle of the relativity of notions may have limited applicability in international contracts, where differing legal systems and cultural understanding can affect the interpretation and enforcement of obligations.
- Criterion of hazard: in some context, the concept of hazard (risk or chance) can serve as a criterion for determining the nature and extent of contractual obligations, especially in aleatory contracts.

2.7.4 Peculiar Attention

For contractual parties, it is crucial to precisely define their obligations to ensure clarity and enforceability.

- Define the mission: clearly articulating the objectives and scope of the contract.
- Time constraints: establishing deadlines and schedules for the performance of obligations.
- Means involved: specifying the resources and methods to be used in fulfulling the contract.
- Limiting liability: incorporating lcauses that limit liability under certain conditions can help manage risk, but must be carefully crafted to avoid undermining the contract's essential obligations, as highlighted in the Chronopost case.

2.7.5 The Fault

The Article 1150 of the Civil Code outlines the principle that a debtor is only liable for damages that were foreseen or could have been foreseen at the time the contract was made, unless the failure to execute the obligation was due to their fraud (dol).

Dolosive fault refers to intentional misconduct or fraud in the non-fulfillment of an obligation. It goes beyond mere negligence, indicating a deliberate intent to cause harm or not to perform a contractual duty.

When a fault is dolosive, any contractual limitations on liability are rendered inapplicable, allowing for claims exceeding the initially foreseeable damages.

Regarding jurisprudence, courts have nuanced the requirements for an intention to harm, recognizing that extremely grave behavior or gross negligence can be assimilated with dolosive fault, thus extending the scope of the liability.

For example, a contractor deliberately uses substandard materials in a construction project, knowing it will result in future structural failures, despite contractual specifications for higher quality materials.

2.7.6 Les Causes d'Exonération

A **fource majeure** is an unforeseeable, external, and irresistible occurrence that prevents the fulfillment of contractual obligations.

Parties can modify the application of force majeure within their contract, adjusting the standard for what constitutes such an event.

For example, a natural disaster that destroy's a supplier's warehouse, making it impossible to deliver goods on time.

2.7.7 La Clause Pénale

A **penalty clause** contractual determines the damages for breach of contract, typically setting the compensation above the actual loss to deter non-performance. The predetermined compensation applies regardless of whether actual harm occurs, simplifying the process of claiming damages.

Courts retain the power to adjust the penalty if it is deemed excessively burdensome or unjust, ensuring fairness in its application. Some jurisdictions impose legal limits on the application or enforceability of penalty clauses.

For example, a penalty clause may stipulate that for every day of delay beyond the agreed date, the seller will pay a fixed amount to the buyer as compensation.

2.7.8 The Quasi-Contracts

The **quasi-contract** occurs when a person, the manager, voluntarily takes charge of another person's affairs without their authorization. The manager is expected to manage these affairs with the diligence of a reasonable person (*bon père de famille*).

The master of the affair is obliged to fulfill the commitments made by the manager in the course of managing the affairs.

The quasi-contract of gestion d'affaires requires that the master was not initially involved in the business, and the manager intended to manage the affairs on behalf of the master, eprforming management actions in their interest.

For example, if a person notices that their neighbor's house is on fire while the neighbor is away and calls the fire department, incurring expenses, the neighbor is expected to reimburse those expenses, recognizing the actions taken in their interest without prior agreement.

2.8 Questions

2.8.1 Short Questions

Exercise 2.1. What are the essential elements of a valid contract?

Exercise 2.2. What are the contract classifications based on compensation?

Exercise 2.3. What are random contracts?

Exercise 2.4. Is lesion a vice?

2.8.2 Long Questions

Exercise 2.5. What are the vice of the contract?

Exercise 2.6. How is a contract formed?

Exercise 2.7. What are the different classifications of contracts?

Exercise 2.8. What are the object and cause of a contract?

3 Intellectual Property

Intellectual property law is designed to protect creators' rights to their works, balancing the interests of authors, intermediaries, and the public.

3.1 Introduction

Origins and Historical Background Intellectual property law has evolved significantly over time, tracing back to the Renaissance when the first copyright laws emerged to protect authors and inventors. The development of IP law reflects the changing societal views on creativity, innovation, and the dissemination of knowledge.

Theoretical foundations The core of IP law lies in recognizing and safeguarding the intellectual and creative labor of individuals, ensuring they can control and benefit from their creations. This legal framework seeks to stimulate crativity and innovation, while ensuring that the public can access and build upon existing works.

4 Industrial Property

4.1 What's A Patent

4.2 Object of the Patent Application

4.2.1 Patentability

4.2.2 Invention

4.2.3 Industrial Application

4.2.4 Novelty

4.2.5 Inventive Step

4.2.6 Non-Patentability

4.3 Rights Conferred by the Patent

4.3.1 Property of Who?

4.3.2 Rights of the Patentee

4.3.3 Obtaining the Property

4.3.4 Defining the Protection

4.4 The Patent Document

4.4.1 Specification

4.4.2 Claims

4.4.3 Multi-National Granting Processes: Timelines

4.4.4 Costs

4.5 Enforcing the Property Rights of Patents

4.5.1 Managing the Property Right - Proprietor

4.5.2 Managing the Property Right - Challenger

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