Cours de 4ème année Sport
Amos
M1

Sports Agents and Contract Law

DROIT DU SPORT

Négociation de contrats

GESTION DE CARRIERE SPORTIVE

Agent sportif et manager

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Anthony Tarin – AT Group

SESSION 6 - CONTRACT LAW AND ITS APPLICATIONS TO SPORTS AGENTS

Contract law Essential
Contractual technique: analysis of a standard contract (the terms and clauses of the contract)
Contractual disputes of sports agents (sports attorneys) / players
1. Appendix contract law - nullity of the contract signs with the player for lack of power of the representative of the association
2. Appendix law of the contracts - serious challenges born of a double mandate and the absence of diligences of the sporting agent
3. Schedule of Contract Law - Dimitri payet's agent could not intervene for both the player and the club
4. Schedule contract law - abusive breach by Eurosport of its commercial relations with Ali Ouagueni (kickboxing)
5. Appendix law of the contracts - a sports agent's contract not dated and not transmitted to the FFF is null
6. Schedule of Contract Law - liability of a wrestling club due to a coach's breach of his safety obligation
7. Appendix law of the contracts - conclusion of a mandate between an agent company and a footballer: a CA declares the nullity!
8. Schedule contract law - the RCT condemns to pay 1.7 million euros to cougar for breach of contract of equipment supplier
9. Schedule of Contract Law - when 2 agents work on the basis of commissions, their contract must be well written. The case of the player Asamoah Gyan
10. Schedule contract law - yes, Neymar is worth 220 million euros
11. Appendix contract law - Neymar transfer: what is a discharge clause?
12. Schedule contract law - a law firm convicts a handball player for improper breach of a management mandate
13. Appendix contract law - the promise of employment was not worth cdd failed to be returned within the time by the player
14. Appendix contract law - breach of promise of employment: the court of cassation makes a distinction between offer and promise
15. Annex Law of Contracts - Damaging Consequences of Termination of Contract of Common Interest
16. Schedule contract law - conviction of a sports agent lawyer for infringing the image and name of his former client
17. Appendix contract law - nullity of the mandate concluded between a French agent not holding the FFF license and a footballer
18. Schedule Contract Law - Football, Transfers, Blur and DIY
19. Schedule contract law - the agent of Sofiane Boufal dismissed his claims for compensation against the player
20. Appendix contract law - extension of Payet's contract to the asse: the court of cassation allows the appeal of the agent
21. Schedule contract law - a former AJ Auxerre player sentenced to pay his agent more than 50 000 €
22. Schedule contract law - recognition of the legal value of e-mails as electronic records
23. Annex contract law - the "electronic" contract between an agent company and a football club was valid
24. Appendix law of the contracts - agents of player and lawyers proxies: a writing if nothing
25. Appendix contract law - sports agent lawyer: formalism of the contract

26. Schedule of Contract Law - the judgment of the Lyons TGI on the common interest between a football player and his agent
27. Schedule contract law - players at all costs: when clubs forget the rules ...
28. Schedule Contract Law - All Work Worth Pay ... Except For Football Player Agents Andy Delort Case
29. Schedule contract law - Nadal, Federer, Djokovic: how much does it cost to play a 250?
30. Appendix contract law - example transfer and loan agreement in football
Benfica & AS Monaco - Bernando Silva - Loan
Benfica & AS Monaco - Bernando Silva - Transfer
Monaco & Manchester United - Anthony Martial - Transfer
31. Appendix contract law - example contract manufacturer Nike has a football player
32. Contract Law Appendix - Sample Adidas OEM Dealer Proposal to a Young Football Player
ADDENDUM SESSION 03: Recognition of the Belgian agent license does not mean issuance of the French license.

Session 6 - Droit des contrats et ses applications aux agents sportifs

Droit des contrats Essentiel
Technique contractuelle : analyse d'un contrat type (les termes et clauses du contrat)
Les litiges contractuels d'agents sportifs (avocats mandataires sportifs) / joueurs

1. Annexe droit des contrats - nullité du contrat signe avec le joueur pour défaut de pouvoir du représentant de l'association
2. Annexe droit des contrats - contestations sérieuses nées d'un double mandat et de l'absence de diligences de l'agent sportif
3. Annexe droit des contrats - l'agent de Dimitri payet ne pouvait intervenir a la fois pour le joueur et pour le club de l'asse
4. Annexe droit des contrats - rupture abusive par Eurosport de ses relations commerciales avec Ali Ouagueni (kickboxing)
5. Annexe droit des contrats - un contrat d'agent sportif non date et non transmis à la FFF est nul
6. Annexe droit des contrats - responsabilité d'un club de lutte du fait du manquement d'un entraineur a son obligation de sécurité
7. Annexe droit des contrats - conclusion d'un mandat entre une société d'agent et un footballeur : une CA en prononce la nullité!
8. Annexe droit des contrats - le RCT condamne a payer 1,7 millions d'euros a puma pour rupture fautive de contrat d'équipementier
9. Annexe droit des contrats - quand 2 agents travaillent sur la base de rétrocessions de commissions, leur contrat doit être bien rédigé. Le cas du joueur Asamoah Gyan
10. Annexe droit des contrats - oui, Neymar vaut bien 220 millions d'euros
11. Annexe droit des contrats - transfert de Neymar: qu'est-ce qu'une clause libératoire?
12. Annexe droit des contrats - une société d'avocats fait condamner une handballeuse pour rupture abusive d'un mandat de gestion
13. Annexe droit des contrats - la promesse d'embauche ne valait pas cdd a défaut d'avoir été retournée dans le délai par le joueur
14. Annexe droit des contrats - rupture de promesse d'embauche : la cour de cassation opère une distinction entre offre et promesse
15. Annexe droit des contrats - des conséquences dommageables engendrées par la rupture du contrat de mandat d'intérêt commun
16. Annexe droit des contrats - condamnation d'un avocat mandataire sportif pour atteinte

CONTRACT LAW

Contract law is a branch of civil law. It was codified in 1804 according to the theory of lights under the philosophical influence of the autonomy of the will. Therefore, contract law in France is subject to three fundamental principles: contractual freedom, consensualism and the binding force of the contract.

FOREWORD

The law of contracts and obligations is a fundamental right. It is a key legal basis for all areas of law. Any contract and therefore any commercial relationship is subject in principle to general contract law.

Thus, the understanding of this material and all its terms is paramount. This is why it is important to define the specific vocabulary here beforehand.

In the first place, the central element of the course is the contract. A contract is composed of parties who can be called contractor and co-contractor. In contrast, there is the third party who is any individual who is not a party to a contract.

A contract has the effect of creating bonds. An obligation is a commitment to do, not to do or give. The parties are debtor and creditor of the obligations of a contract.

Example: in a sales contract, there is an obligation to pay the price of the thing on one side and an obligation to put the thing on the other side. The buyer is therefore creditor of an obligation to deliver the thing and debtor an obligation to pay the price. While the seller is creditor of an obligation to pay the price and debtor an obligation to deliver the thing.

Lastly, a contract is composed of clauses and stipulations. These terms refer to the content of the contract.

Example: the contract specifies in its stipulations ... / the clause of the contract imposes that ...

For all other terms of the course that you would think ambiguous or unknown, a lexicon is available at the end of the manual.

This course is complementary to the bibliography that has been communicated to you.

Attention, the matter was completely recast by the ordinance n ° 2016-131 of February 10th, 2016 carrying out reform of the law of the contracts, the general regime and the proof of the obligations. Coming into force on 1 October 2016, this ordinance, which notably modifies the numbering of the articles of the Civil Code, is fully applicable.

Be careful about the date of editing the manuals you will use to revise.

INTRODUCTION: THE CONCEPT OF OBLIGATION

The general system of obligations and contracts is provided for by Articles 1100 to 1303-4 of the Civil Code.

CHAP. I: THE SOURCES OF OBLIGATIONS

Section 1: Traditional classification: contract, pre-contract, tort, quasi-offense and law

Section 2: Renewed Classification: distinction between act and legal fact

A - Content of the distinction
B - Issues of distinction

Obligation is a legal bond created by the will of those who engage.

SECTION 1: Traditional classification: contract, pre-contract, tort, quasi-offense and law

The Civil Code releases several sources of obligations within it: the contract, the preliminary contracts, ...

SECTION 2: Renewed classification: distinction legal act / legal fact

A - Content of the distinction legal act / legal fact

The legal act is the intentional manifestation of will in order to achieve legal effects. It can be bilateral, unilateral, for a fee, free.

On the other hand, the legal fact is an act or an event carrying legal consequences without being intentionally sought such as willful misconduct, birth or death, ...

B - Issues of distinction between legal act and legal fact

Regarding the condition of validity of the legal act, it is based on the will, the party who commits must therefore be able. The legal fact meanwhile, engages independently of the will, therefore of the capacity, and by way of example, the minor can undergo the consequence of a legal fact such as the civil responsibility.

Regarding the role of the will in determining the effects of the commitment, the consequences of the legal fact are provided for by the law whereas the consequences of the legal act are freely determined by the will of the parties.

ESSENTIAL

The sources of the obligations are based on established classifications and in particular on the distinction legal act / legal fact. The contract is the classic form of bond source.

CHAP. II: PROOF OF OBLIGATIONS

Section 1: The proof in contractual matters
- A - General principles
- B - Principle of the burden of proof
- C - The exceptions

Section 2: The proof in writing
- A - The different writings
- B - The specific obligation to pre-constitute the literal proof

Section 3: Proof of Contract Without Written

Section 4: The electronic / dematerialized proof of the contract

SECTION 1: The proof in contractual matters

A - General principles

The system of proof obligations is dealt with in the Civil Code in Articles 1353 to 1386-1.

B - The principle of the burden of proof

Its principle is simple, the one who claims something must provide evidence of what he is saying to obtain it. Whoever claims to be free must also prove it.

C - The exceptions: legal presumptions

Statutory presumptions, as defined by law, have the effect of shifting / reversing the burden of proof. These are rare and necessarily based on a text such as an article of the Civil Code. These presumptions may be:

Simple, that is, they can be overthrown by contrary evidence.

Mixed, that is to say that they can be dismissed only within the framework of the law.

Irrefragable, that is, they can not be overthrown by any means except confession or oath. In this case, the question of the burden of proof is "eliminated", the presumption is sufficient to prove.

SECTION 2: The proof in writing, called literal proof

A - The different writings

Traditionally, there are authentic acts and private deeds. In recent years, electronic writings have been recognized by the law of 13 March 2000.

B - The specific obligation to pre-constitute the literal proof

The Civil Code (Article 1359) imposes a written proof for acts whose value exceeds € 1,500. Exceptions made, in case of fraud or fraud, the proof is free.

In addition, the proof can be provided without writing if the writing is impossible to constitute.

SECTION 3: Proof of the contract without writing

For acts whose value is less than 1 500 € (or for the acts of commerce) the proof is free.

Presumptions consist of considering a fact as proven despite the absence of evidence. They can be legal or because of the man.

Confessions are the recognition by one party of the existence of a situation constituting proof of the well-foundedness of the claim of his judicial adversary.

The oath is the affirmation by a party of a fact which is favorable to him. This is the opposite of the admission.

SECTION 4: The electronic and dematerialized proof of the contract

Electronic writing and electronic signature are allowed by civil law. The conditions for the admission of electronic evidence in relations between professionals and consumers are strictly regulated in the Consumer Code.

ESSENTIAL

The burden of proof of the obligations obeys to precise rules, it varies according to the object of the request before the judge.

TITLE 1: CONCEPT OF CONTRACT AND CLASSIFICATION

CHAP. I: THE CONCEPT OF CONTRACT

Section 1: The definition of the contract
Section 2: Neighboring Legal Concepts
A - The unilateral legal act
B - Quasi-contracts

SECTION 1: The definition

A contract is an agreement of will, that is to say the meeting of at least two wills.

This meeting of will is creating obligations. The legal obligation binds the parties to the contract.

SECTION 2: Neighboring legal concepts

A - The unilateral legal act

The unilateral legal act is the manifestation of the will of one person. It has a declarative effect.

Example: the will, it engages only the author of the act, it is therefore unilateral.

B - Quasi-contracts

The quasi-contract is not a contract, it is not a legal act. Quasi-contract is a legal fact producing legal effects. A purely voluntary act of man creates a commitment to a third party. The Civil Code provides for the regimes in Articles 1300 to 1303-4.

There are several kinds of quasi-contracts:

Case Management: A person voluntarily manages another person's case; it performs an act on behalf of a third party in the absence of any agency contract.

Example: after a storm, in the absence of the owner gone on vacation, a neighbor repairs the roof to protect the house.

The repetition of the undue: a person who thought he was debtor discharges a debt by mistake. She then has the possibility of exercising an action in repetition of the undue. This action corresponds to the request for refund of the sum paid.

Unjust enrichment: One person is enriched unjustly to the detriment of another. By an action called "de in rem verso", the victim can claim compensation from the judge. The reform of February 10, 2016 integrated this quasi-contract into

Civil Code and renamed it "unjustified enrichment".

In addition, the case law has admitted a sort of quasi-lottery contract. In situations where people received letters announcing the gain of a sum of money or property, the judges concluded that in the absence of an express mention of a hazard in the gain of the promised thing , the latter was due. This is to put an end to this practice of abusive advertising.

ESSENTIAL

The contract, a legal act creating obligations, must be distinguished from the unilateral legal act and quasi-contracts.

CHAP. II: CLASSIFICATION OF CONTRACTS

Synallagmatic contract: contract in which the parties bind each other to each other. Each party is a debtor and creditor of an obligation.

Example: in the sales contract, the seller must hand over the goods and the buyer must pay the purchase sum of the goods.

Unilateral contract: a contract that creates an obligation for a single party. Attention nevertheless, there are two parts in this typology of contract but only one of them is obligated.

Commutative contract: a contract for valuable consideration in which each party agrees to provide the other with an advantage which is regarded as the equivalent of the one it receives.

Random contract: a contract in which the parties agree to make the effects of the contract depend on an uncertain event.
Example: the insurance contract.

Stand-alone contract: existing contract independently of another.

Ancillary contract: a contract which supposes the existence of another contract, called framework contract, to which it is attached. Generally, the framework contract defines the main lines of the contractual relationship over time while the accessory contract specifies the details annually.

Contract named: contract expressly provided for by the Civil Code.

Contract unnamed: contract that is not described by the Civil Code, which does not have its own name. This is an unknown convention of legal classifications. Term destined to disappear with the reform of the order of February 10, 2016.

Contract for valuable consideration: a contract in which each party receives a benefit from the other in exchange for the benefit it provides.
The benefits provided to each other can be of different forms such as a sum of money, or a service delivery ...

Contract free of charge: a contract by which one of the parties deliberately gives, by generosity or disinterestedness, a benefit to the other, without receiving anything in return.

Instant Execution Contract: a contract whose obligations are instantly realized in a single service. This is particularly the case with the sales contract, the payment of the price and the delivery of the thing sold are made instantly, in a time line.

Contract with successive performance: contract whose obligations are spread out over time in several services. This is particularly the case with the lease contract in which the payment of rent and the provision of the property are spread over several months.

Contract by mutual agreement (or negotiated): contract whose stipulations are freely negotiated between the parties. This is particularly the case with the sales contract, the price is negotiated between the parties.

Membership contract: a contract whose general conditions are withdrawn from trading and determined in advance by one of the parties.

Example: the case with the mandatory vehicle insurance contract, or the contract of adhesion to an internet service provider.
Legally, membership contracts are strictly regulated by the Consumer Code in order to prevent the presence of unfair terms.

Consensual contract: contract that is formed by the only exchange of consents regardless of the mode of expression. This is the mode of formation of principle, in the absence of precision the contract is consensual.

Solemn contract: a contract whose validity is subject to forms determined by law.

Real contract: contract whose training is subordinated to the delivery of a thing.

ESSENTIAL

There are several qualifications to designate a contract. It is the characteristics of the contract as desired by the parties that determine the qualification to be adopted and thus the regime that is applicable to it.

TITLE 2: GENERAL PRINCIPLES AND RULES IN CONTRACT LAW

CHAP. I: THE FORMATION OF THE CONTRACT

Section 1: The Meeting of Wills
- A - The offer
- B - The acceptance

Section 2: The pre-contractual phase
- A - The pre-contractual talks
- B - The preliminary contracts
- C - Remote Contracts

SECTION 1: The Meeting of Wills

A - The offer

1. Definition

At the origin of any contract, there is an offer, also called "pollicitation", in which will manifest a desire to contract. The offer is a firm offer to conclude a contract on certain terms.

2. Features

To have a real offer, you have to combine two characteristics, firmness and precision.

3. Legal regime

For the withdrawal of the offer, the principle of free revocability applies. As long as it has not reached its destination, it can be retracted.

Once arrived at the addressee, two situations are possible. Either the offer is accompanied by a deadline, so it can not be retracted for the duration of the period. Either the offer is not accompanied by a deadline, so it can not be retracted until after a reasonable period of time. Note that the reasonableness of the deadline is appreciated by the judges.

In the event that the bidder does not maintain his bid during the period, the sanction imposed on him is the commitment of his extra-contractual liability. The judge can not force the execution of the envisaged contract.

For the expiry of the offer: the offer lapses at the expiry of the deadline fixed by its author or failing at the end of a reasonable period.

There is also a lapse of the offer in case of incapacity or death of the offeror.

B - The acceptance

1. Definition and characteristics

Acceptance is the expression by the recipient of the offer of his will to conclude the contract under the conditions of the offer. Acceptance must be pure and simple, ie there must be a concordance between the terms of the offer and those of acceptance. Otherwise, the answer will be considered as a counter-offer. Acceptance may be express or implied. Express acceptance results in an unambiguous desire to conclude. A tacit acceptance results in a gesture that induces the will to contract.

2. Specific case of silence

The principle is that silence is not worth acceptance.

There are exceptions, however.

SECTION 2: The pre-contractual phase

A - The pre-contractual talks

1. Good faith in the conduct of the talks

Thus, the new article 1104 of the Civil Code states that "Contracts must be negotiated, formed and executed in good faith. This provision is of public order ".

The negotiator of a contract must therefore behave in good faith, including during the talks. It is therefore not possible to enter into negotiations without the slightest intention of concluding a contract. Moreover, it is forbidden to maintain in the partner the illusion that the negotiations will succeed when they are doomed to failure. In this sense, it also constitutes a fault to conduct parallel negotiations and conclude with a company while letting his partner believe the conclusion of a future contract.

2. Good faith in breaking off the talks

The principle of freedom of contract is the basis of the principle of free rupture of the talks. This concept, both traditional and liberal is framed by jurisprudence and now by the Civil Code.

A party is free to contract or not, so it is free to break the talks.

Concerning the fault in the breakdown of the talks:

B - The preliminary contracts

1. The agreement in principle

2. The promises of contract

C - Remote Contracts

Contracts can be formed despite the physical absence of the parties at the conclusion. In this situation, the contracts concluded are referred to as distance contracts.

Very common in the age of the Internet, this situation was organized by the Civil Code.

It is important to determine where and when the contract was formed because it will be deduced including the applicable law, jurisdiction in case of dispute, etc.

The reform that took place in 2016 stipulates that the contract is formed when the person proposing the conclusion of a contract receives the positive response from his co-contractor. And the place of conclusion is the one where acceptance has reached

ESSENTIAL

The formation of a contract results from the meeting of an offer and a meaning within the meaning of the Civil Code.

The contribution of the order of February 10, 2016 is decisive in the field of preliminary contracts and negotiation.

The Civil Code now expressly provides for specific regimes for promises of contracts, for the preferential pact, for the talks, etc.

CHAP. II: THE VALIDITY OF THE CONTRACT

SECTION 1: Consent

A - The definition

Consent is the expression of the will to contract. He must be free and enlightened.

If the consent is tainted, that is to say altered, then the contract will be null and void.

B - The defects of consent

The defects of consent are now codified in Articles 1130 and following of the Civil Code. Error, fraud and violence vitiate consent when they are of such a nature that, without them, one of the parties would not have contracted or contracted on substantially different terms. Their decisive nature is assessed in the light of the persons and circumstances in which the consent was given.

1. The mistake

The error is the situation in which one of the contractors erred on one element of the proposed transaction. This is a false appreciation of reality.

a) Errors of consent

• The error on the substance

• The mistake on the person

• The specific case of the obstacle error

b) The indifferent errors

In the interests of stability and legal certainty, cases of cancellation are limited. Any error does not give rise to a cancellation of the contract.

• The error on the value

• Error on grounds outside the subject of the contract

• The hazard

c) The characters of the error of consent

For error to be accepted as a defect of consent, it must be decisive and excusable.

Error is decisive when it has convinced consent. The decisive nature of the error is assessed on the day the consent is given and not on the day when the judge rules on this vice of consent.

Example: I buy a football shirt because it was worn by Diego Maradona. It is for this criterion that there was conclusion of the contract so an error on this precise criterion makes it possible to invoke the vice of the consent.

The error is excusable when it results from a situation in which any person would have been mistaken too. On the other hand, where the error is inexcusable, such as that resulting from negligence, then the error of consent can not be invoked.

Conventionally, the error on the right is inexcusable because "no one is supposed to ignore the law".

d) The action in nullity for error

The sanction of the vice of the consent of a party is the nullity of the contract. The nullity of the contract entails its retroactive disappearance. All its effects are canceled and it is considered never to have existed.

This nullity is requested before the judge by the victim party. The burden of proof of error hangs over the person who invokes it.

The time limit for action in nullity runs only from the day the error is discovered.

2. The fraud

a) Definition

The fraud is now clearly defined in the Civil Code.

Article 1137 "Fraud is the act of a contractor obtaining the consent of the other by maneuvers or lies. It is also a willful intentional concealment by one of the contractors of information of which he knows the determining character for the other party. "

Article 1138 "Fraud is also constituted if it emanates from the representative, business manager, agent or carrier of the contractor. It still is when it comes from a third of connivance. "

Article 1139 "The error resulting from a fraud is always excusable; it is a cause of nullity even though it relates to the value of the service or a simple ground of the contract. "

b) Conditions of fraud

c) The action in nullity for fraud

The presence of a fraud allows to invoke before the judge a vice of consent to cancel the contract.

3. Violence

Article 1140 "Violence occurs when a party engages under the pressure of a constraint which inspires him with fear of exposing his person, his fortune or those of his relatives to considerable harm. The threat can be physical, moral or mixed, regardless of its form. Economic violence is also taken into account, it is exploiting a state of necessity.

In addition, violence is characterized by fear of danger. This fear must be a determinant of consent for violence to be characterized as a vice of consent.

SECTION 2: Capacity

Legal capacity is the ability of a natural person to enter into a contract. The Civil Code (article 1145 et seq.) Provides that any natural person may contract unless incapacitated. Legal entities are also endowed with legal capacity but they are governed by the law.

In case of incapacity, the contract concluded is sanctioned by the nullity. The law lays down two cases of incapacity, which are the unemancipated minor and the protected minor.

A - Inability to enjoy

B - Inability to exercise

SECTION 3: The object

A - The object and the suppression of the cause

B - The notion of "object" of the contract

The object of the contract is the legal transaction envisaged, it is the service that each party expects from the other. The Civil Code organizes the regime.

The object of the obligation of the contract must have several characteristics:

The object must exist, it can be present or future.

Example: the case of the sale of a building on plan, it is not yet built.

The object must be possible, the appreciation is done in concreto.

Example: A contract that aims at the resurrection of a person does not have a possible object.

The object must be determinable, as to its species and quantity. Even if the object is not determined, it must be able to be determined by the parties who commit themselves.

C - Uncertainties around the notion of object

ESSENTIAL

To be validly formed, a contract must contain the consent of the parties having the capacity to contract and have a lawful and certain content.

Thus, there must be no vice of consent, no disability, no illegal content.

CHAP. III: THE COMPULSORY CONTRACT FORCE

Section 1: The principle of the binding force of the contract
A - The content of the principle
B - The consequences of the principle
C - The obligation to perform in good faith, a corollary of the binding force

Section 2: Exceptions to binding force
A - The judicial review of the penal clauses
B - The unfair terms regime
C - The unforeseen

SECTION 1: The principle of the binding force of the contract

A - The content of the principle

The provisions relating to compulsory force are found in Articles 1193 et seq. Of the Civil Code.

As long as the contract complies with the conditions of validity imposed by law, it obliges the parties who have entered into it. On the other hand, if the contract is void, it has no binding force. The contract is presumed to be validly formed, the compulsory force is also valid until a possible nullity is established.

The foundation of this principle lies in the theory of the autonomy of the will. The contract obliges the one who wanted it, the contract is obligatory because it was wanted.

The contract is binding on the contracting parties, that is to say that the contract must be executed, respected by those who have concluded it. The Latin translation of this principle is "Pacta sunt servanda".

Article 1103 "Legally-formed contracts take the place of law those who did them. They want to mean that the contract forces the parties with the same force as the law.

Contractual freedom is the thread of contract law.

B - The consequences of the principle

Irrevocability of the contract: the contract is binding and the parties can not get rid of it. The only possibility to "get out" of the contract is mutuus dissensus, ie the mutual agreement of the parties or for the causes that the law authorizes. Contracts of indefinite duration can, exceptionally, be broken. Indeed, perpetual commitments are prohibited. This break, independent of non-performance, can be exercised without justification but notice must be respected.

Intangibility of the contract: the contract is in principle impermeable to external circumstances. It can not be modified according to evolutions
economic changes in the situation of the parties. The only way to change the contract is to have a new agreement from the parties. French law was isolated in Europe, refusing the revision of the contract in case of unforeseen circumstances. A major novelty introduced by the 2016 reform, an exception to binding force is now legally provided for (see section 2 below).

Prohibition of the denaturing of the contractual content: the judges of the bottom can not distort a contract whose stipulations are clear and precise. On the other hand, when the content of the contract is obscure or ambiguous, the judges have the sovereign power of interpretation.

C - The obligation to perform in good faith, a corollary of the binding force

Article 1104 of the Civil Code states that "contracts must be negotiated, formed and performed in good faith". The parties therefore have a duty to cooperate and cooperate with each other.

SECTION 2: Exceptions to binding force

A - The judicial review of the penal clauses

A penalty clause is a clause fixing the amount of the damages due in the event of non - performance of the contract.

The exception to binding force is that the judge can change the amount of this clause. The judge has a power of review, he can moderate or increase the amount of damages provided for by the penalty clause. His intervention is optional.

B - The unfair terms regime

C - The unforeseen

ESSENTIAL

All contractors must respect the principle of binding contracts. This binding force makes the contract intangible, irrevocable and impossible to misrepresent. The contract must always be performed in good faith. Exceptions to this binding force are accepted, notably through clauses.

CHAP. IV: THE PRINCIPLE OF THE RELATIVE EFFECT OF THE CONTRACT

SECTION 1: The relative effect of the contract

A - The principle of the relative effect

The principle of the relative effect of the contract is to consider that only the parties to the contract are likely to claim the benefit of the contract or to suffer the constraints resulting therefrom. The contract is understood as an individual standard, not a general standard. The contract only affects the parties. Third parties are therefore in principle foreign to the contract.

B - The exceptions

1. The promise for others

The promise for others or of stronghold is the act of promising in a contract the fact of a third party.

2. The stipulation for others

The stipulation for others is the operation by which the stipulator obtains from the promise that he will give or do something for the benefit of a third party beneficiary.

SECTION 2: The opposability of the contract

Despite the principle of relative effect, third parties may be subject to a contract or rely on the parties.

A - The opposability of the contract to third parties

The parties may require third parties that they do not ignore the existence of the contract, they do not go against it. The principle of opposability of the agreements to third parties was laid by the first civil chamber of the Court of Cassation. A third party informed of the existence of a contract and its obligations must not incite or be complicit in its non-performance.

Example: A sports agent must not "steal" a player from another sports agent.

B - Third-party effectiveness of the contract

She stated that third parties can avail themselves of a contract. More specifically, it was decided that a contractual default by one of the parties to a contract could allow a third party to seek compensation from the judge. "A third party to a contract may invoke, on the basis of tort, a breach of contract where the breach caused him injury. "

ESSENTIAL

In principle, contracts have a relative effect. That is, they only concern the parties who have contracted. Nevertheless, third parties to the contract may have an interest in taking action against or taking advantage of it.

CHAP. V: SANCTIONS OF CONTRACT NON-PERFORMANCE

Section 1: Forced Execution
Section 2: The exception of non-performance
Section 3: The Resolution for Failure
A - The judicial resolution
B - The resolutive clause
C - Unilateral resolution

SECTION 1: Forced execution

Forced execution is the sanction in principle of contractual non-performance.

In all cases, the execution must be preceded by a formal notice.

SECTION 2: The exception of non-performance

The exception of non-performance allows the creditor, faced with a non-performance attributable to the debtor, to suspend the performance of his obligations to him in such a way as to compel the debtor to execute. It is a kind of pressure, as long as the other party does not fulfill its obligations, the other party does not do it either.

SECTION 3: The resolution for non-performance

A - The judicial resolution

The judicial resolution is to ask the court to rescind the contract.

B - The resolutive clause

The clause resolutory is a stipulation introduced by the parties which provides that, failure of performance of an obligation by one of them, the contract can be unilaterally solved by the other.

C - Unilateral resolution

The unilateral resolution is the unilateral termination of the contract, without clause, without judge.

ESSENTIAL

In case of failure of one party to its obligations, the other party has several possibilities. He may apply for compulsory execution with the judge, he may also suspend his performance of the contract or he may implement the resolution of the contract.

For the resolution, it can be of different forms: provided by a resolutive, unilateral or judicial clause (asked to the judge).

CHAP. VI: NULLITY OF THE CONTRACT

SECTION 1: The system of nullity

A - Concept

Nullity is the sanction of a vice of formation of a legal act. When a contract does not fulfill all the conditions of validity published by the Civil Code, it is null and void.

B - Distinction

The nullity is to be differentiated from:

The lapse of time which sanctions a contract whose conditions of formation are no longer present but were at the time of its formation. While the nullity sanctions a contract whose conditions of form are absent from the beginning, from its formation. It is therefore the penalty attached to the disappearance, during execution, of one of the constituent elements of a legal act. Unlike nullity, the lapse does not have retroactive effect.

Non-existence, which is the sanction applied in cases where nullity has not been provided for by law. It is then considered that the contract does not exist, that it could not be concluded.

C - Declination

There are two forms of invalidity:

The relative nullity which is applied when the rule violated has for sole object the safeguarding of a private interest. It can only be requested by the party that the law intends to protect. If the action in relative nullity has several holders, the renunciation of one does not prevent the others from acting.

The absolute nullity which is applied when the rule violated has for object the safeguarding of the general interest. It may be requested by any person with an interest, as well as by the public prosecutor.

D - Confirmation

Confirmation is the renunciation of the right to criticize an act that is known to be invalid. This can be express, or tacit, and can only intervene after the conclusion of the contract. In case of violence, confirmation can only occur after the violence has ceased.

Confirmation is therefore a unilateral act abdicative of the action in nullity.

E - Prescription

The action in nullity is prescribed by 5 years. This period is that of common law since the reform of 17 June 2008 (article 2224 of the Civil Code).

SECTION 2: Restitutions resulting from invalidity

The principle is that following the pronouncement of nullity, a return to the situation prior to the conclusion of the contract is required. Retroactivity of invalidity justifies refunds.

The nullity has the effect, in principle, of returning the parties to the state in which they were prior to the conclusion of the contract. "What is void is supposed never to have existed" states the Court of Cassation in its judgments.

All that has been generated by the performance of the contract must be canceled, rendered.

ESSENTIAL

Nullity leads to a resetting of relationships, the contract is presumed never to have existed. This has the effect of physically delivering the parties as they were before the conclusion of the contract.

CHAP. VII: CONTRACTUAL LIABILITY

Section 1: The chargeable event: contractual non-performance
A - Breach of an obligation
B - Proof of breach of an obligation
Section 2: The damage
Section 3: The causal link
Section 4: Causes of Exemption from Contractual Liability

Contractual liability is the liability that is incurred against the co - contractor and which enables the injured party to obtain compensation for the damage which he has suffered by the award of damages.

In order to be able to engage the contractual liability of the contracting party, three elements must be met: a chargeable event, a damage and a causal link between the two.

SECTION 1: Generating event: contractual non-performance

A - Breach of an obligation

1. Common law obligation

The event giving rise to the contractual liability is a breach, a contractual breach.

2. Security obligation

3. Obligation to inform

B - Proof of breach of an obligation

The proof of the breach is made according to the distinction between obligation of means and obligation of result.

This distinction is based on the intensity of the obligation.

The obligation of means is the obligation to do everything possible to successfully execute the contract.
Example: the doctor must do everything to treat the patient but he has no obligation to do so.

The obligation of result is the obligation to arrive at a precise result.
Example: In the sales contract, the buyer must not only make every effort to pay the price, he is obliged to do so. In the presence of an obligation of means, the breach is demonstrated by proving that the contracting party has not made every effort to execute the contract.

In the presence of an obligation of result, the breach is demonstrated simply by proving that the expected result is not achieved.

SECTION 2: The damage

The damage caused by the contractual non-performance can be of any kind. Any type of damage is repairable in contractual matters. However, to be recoverable, the damage must be certain, direct, lawful and predictable. Anything that was not foreseeable in the contract can not be the subject of a claim for compensation.

SECTION 3: The causal link

For a damage to be repaired, it is essential that it has been caused by the breach complained of. The causal link therefore concerns the damage invoked and the alleged breach.

SECTION 4: Causes of Exemption from Contractual Liability

A cause of exemption is the situation where a contractor demonstrates that there is no causal link between his breach and the damage. The exemption therefore results from a questioning of the causal link.

There are different causes of exemption:

The force majeure. It is an unpredictable, irresistible and external event that frees the debtor of his contractual obligation.

It is centered on a character of unpredictability and irresistibility, the criterion of externality is appreciated very loosely. These characteristics are appreciated differently depending on the circumstances. Thus, the unpredictability is appreciated at the stage of the formation of the contract and the irresistibility at the stage of the execution of the contract. Force majeure has the effect of being totally exonerated for the debtor of the obligation. The new Article 1218 of the Civil Code (to be linked to Articles 1351 and 1351-1 of the said Code) summarizes the modern definition and considers the consequences of the impediment, according to whether it is temporary or definitive.

The fault of the victim. This is the situation in which the victim had a role in the occurrence of his injury.
If the fault of the victim assumes the characters of force majeure, the author's exemption is total.
If the fault of the victim does not assume the characteristics of force majeure, then the author's exemption is only partial. The responsibility will be shared.

The fact of the third. This is the situation in which a third party in the contract has behaved in such a way as to have contributed to the contractual default. Like the fault of the victim, the exemption is total or partial depending on whether the fact of the third party has the characteristics or not of the force majeure.

Beyond these three causes of exemption from contractual liability, there is specifically in sport the theory of risk acceptance. It is mainly invoked in tort (as opposed to contractual liability only in the presence of a contract) and is to exclude the liability of the athlete as long

as he has respected the rules of the game because his opponent has accepted them (cf: insurance law course).

ESSENTIAL

To seek the contractual liability of one of the parties it is necessary to: demonstrate the breach of a contractual obligation / prove the existence of damage / establish the causal link between them. That being done, the aggrieved party will be able to obtain damages provided that no cause of exemption is present.

TITLE 3: SPECIAL CONTRACTS

CHAP. I: THE CONTRACT

SECTION 1: Introductory remarks

The business contract which has for object a material thing. The Civil Code governs it under the name of quotations and contracts, which embraces all contracts having for object the manufacture / construction, the transformation or the maintenance of a thing.

The business contract which has for object an immaterial thing. These are the contracts used by doctors, lawyers, travel agencies, councils, show organizers, or teachers ...

SECTION 2: Definition of the business contract

In the company contract, a person (the entrepreneur) undertakes, for remuneration, to independently perform a service, for the benefit of another (the owner), without representing it.

SECTION 3: Formation of the enterprise contract

A - The substantive rules

The company contract is primarily a contract, so its training is subject to the rules of common law explained earlier in the course.

B - Rules of form and evidence

On the form, except special text (right of construction and consumption), the writing is not necessary to the formation of the contract of enterprise. Proof of the contract, for its part, is governed by common law.

SECTION 4: The Contractor's Obligations

A - Delivery of the service by the contractor

B - The Contractor's Counseling and Safety Obligations

C - The subcontracting hypothesis

Subcontracting is the operation by which a contractor entrusts under his responsibility to a sub-contractor the execution of all or part of the business contract concluded with the contracting authority.

SECTION 5: The obligations of the owner

A - The obligation to pay the price

B - Reception and withdrawal obligations

C - The obligation of cooperation

SECTION 6: The termination of the enterprise contract

Conventionally, the business contract is extinguished by the performance of the obligations by the contractor and the owner.

ESSENTIAL

The enterprise contract is a contract whereby one party (the owner) instructs another party (the contractor) to provide a physical service independently and for a fee. The price of the company contract does not have to be determined at the conclusion of the contract.

The owner: pays the price, receives, takes delivery of the thing and cooperates with the contractor. As for the contractor, he must perform the service and fulfill his obligations of advice, information and security.

CHAP. II: THE MANDATE CONTRACT

SECTION 1: The identification of the mandate

A - The definition

The mandate is the contract of trust. Etymologically, mandate comes from the Latin verb mando-are, itself derived from manum dare ie put your hand, entrust. The word "hand" is a symbol of strength and authority. With the sale, the mandate is at the origin of all the contracts; one allows the transmission of wealth, the other develops the legal activity. Thanks to the mandate, a person can do legal acts without actually being present, because it is represented, which confers multiple advantages. The warrant ensures the person a kind of ubiquity, because, by his agents, it can be present at the same time in several places.

B - Characteristics

The warrant is a contract whereby one person (the principal) gives another (the agent) the power to do something on his behalf and on his behalf.

The mandate is a contract relating to the performance of legal acts, such as the conclusion of a contract. If the main service is not the performance of legal acts but the performance of material acts, the contract must be reclassified as a company contract.

Two main elements thus make it possible to identify a mandate contract: a power to perform legal acts and to perform these acts in the name and on behalf of the principal.

The performance of legal acts on behalf of others is called representation.

The main purpose of the mandate is an "obligation to do" consisting of the agent to execute a legal act in the name and on behalf of the principal.

The agent must perform his mission independently, without any relationship of subordination with the principal. A "mandate" including a subordination relationship should be disqualified and reclassified as a work contract.

The mandate is a contract concluded in principle for free, but the parties can agree remuneration for the agent, this is clear from Article 1986 of the Civil Code. When the mandate is made with a person who makes it his profession, it is then presumed to be stipulated for value. In this hypothesis, it is thus to the one who claims to have concluded a

gratuitous warrant to bring proof of this gratuity. The mandate is also, in principle, a contract concluded intuitu personae. The use of a sub-agent is only possible if the contract between the agent and the principal is not marked by intuitu personae.

In addition, the Civil Code authorizes the removal of the agent in a discretionary manner by the principal and the substitution of agent, without the agreement of the principal.

C - Formation of the mandate

The mandate is subject to the rules of common law of contracts. It requires consent, a capacity and a certain and lawful content to form it. It can be express or designed in general terms. When the mandate is paid, the price does not have to be determined, with the exception of certain special contracts such as real estate agents.

Finally, the rules of form are provided for by article 1985 of the Civil Code. The mandate is not subject to any formalism ad validitatem, so it is consensual. The warrant may be tacit and result only from its execution by the agent or the absence of opposition from the principal to the performance of his mission by the agent.

Between the parties, the proof of the mandate and its content obeys the rules of common law..

SECTION 2: The Effects of the Mandate

The particularity of the mandate lies in the fact that, if it is concluded between two parties, the principal and the agent, its purpose is the conclusion of an act with a third protagonist, the contracting third party. The mandate can therefore produce effects between three people.

A - The effects between the parties

1. The obligations of the mandatary

The performance must be in accordance with the contract, diligent, efficient and fair.

Obligation to execute the mission: the mandatary must first carry out his mission. If the contract is concluded for a fee, a simple fault may incur contractual liability. If the contract is concluded free of charge, there must be gross or serious misconduct to engage the liability.

Obligation of loyalty: it imposes that the agent does not act in his personal interest or that of a third party. In this sense, he is obliged to inform or advise the principal. He must inform him of the usefulness of the legal act envisaged.

Accountability: the agent must report to the principal on the progress of his mission. It is an essential obligation, it runs the limitation period of the action in contractual liability against the agent.

2. The obligations of the principal

Obligation to pay: if the agent is an employee, the principal must pay the agent.

In addition, the principal must reimburse to the agent the advances and expenses that he has made for the performance of the mandate (subject to a clause to the contrary).

The principal also has to indemnify the agent for the losses he has suffered in the course of his management, without any imprudence due to him.

Obligation to cooperate: this is the duty of loyalty. It is reciprocal in the mandate. The principal must put the agent in a position to properly carry out his mission.

B - Effects on third parties

In principle, the agent is not committed to third parties, it is transparent.

As an exception, the agent may be bound by the act he has concluded under the mandate. This hypothesis is found in two situations:

When the mandatary does not reveal his quality, the mandate is imperfect, so it is not a mandate but a commission contract.

When the agent has exceeded the limits of his power granted in the contract of mandate. In the event of an overrun by the mandatary, the mandator is not engaged, unless he ratifies the act concluded or if the third party invokes successfully the theory of the apparent mandate.

SECTION 3: Extinction of the Mandate

The mandate may be for a fixed or indefinite period, but of course it can not be perpetual. The mandate is likely to be extinguished after a certain time. Termination may be the result of the application of the common law of contract and may result, for example, from the performance of the obligations or a resolution. It can also intervene because of the specific causes of expiry of the mandate provided for in the Civil Code.

A - The causes of voluntary extinction

1. Revocation of the principal

The principal may revoke his power of attorney whenever he chooses. The mandate is revocable ad nutum. The principal does not have to justify his decision, which is discretionary. For the principal, we therefore speak of revocation.

When the parties have entered into an irrevocable mandate for a certain period of time, the revocation may take effect but the principal will then have to indemnify the agent. If the mandate is of common interest (creation jurisprudential), the revocability is limited by adding compensation to the agent (the mandate remains revocable ad nutum).

2. The renunciation of the representative

the opposite, for the agent, we speak of renunciation. This waiver does not have to be motivated. Compensation of the principal is always possible if it proves a prejudice as a result of this waiver.

B - Involuntary causes of extinction

The Civil Code provides for the possibility of involuntary extinction.

The death of one of the parties extinguishes the mandate because it is an intuitu personae contract.

In the event of the death of the mandator, the mandatary is required to complete his mission "if there is peril in the house" or if the heirs agree. The incapacity of one of the parties, caused by guardianship or trusteeship for example, may also extinguish the mandate.

ESSENTIAL

The mandate is a contract the purpose of which is the performance of legal acts by the agent in the name and on behalf of the principal. The agent must act independently. The mandate may be general or special and express or designed in general terms.

CHAP. III: THE COMMISSION CONTRACT

The commission contract is mainly practiced in commercial matters, its regime is organized by the Commercial Code. It is concluded with an intermediary for the conclusion of another contract.

The commission agent acts in his own name but on behalf of the principal. He is not an agent, since he acts in his own name. Nor is it a loan-no, which is a convention that allows for the secret conclusion of an act.

Conversely, the commissionaire is ostensibly an intermediary. He declares that he acts in his name and on behalf of others, whose name he does not reveal. There is a legal screen between the principal and the third party, the principal and the third party can not act against each other.

Everyone knows only the commissioner. It is an imperfect representation, an imperfect mandate. If the agent has acted in the name and on behalf of the promisor, there is no more commission, but mandate with perfect representation.

Even if the third party discovers the identity of the principal, the contract remains a commission contract. If he discloses the commission, the principal has a direct right against the debtor of the commissionaire and vice versa. If he does not reveal it, the direct action is excluded because he had no representation.

In the relations between the principal and the commissionaire, the rules of the mandate apply, that is to say that the obligations of the commissionaire towards his principal are those of a salaried agent.

Conversely, the rules of the mandate do not apply to the revocation of the commission.

The commissionaire is not obliged to third parties. In general, the commissionaire does not undertake that the operation is actually carried out.

ESSENTIAL

The commission contract is the contract by which the principal instructs the agent to act on his behalf but in his own name.

CHAP. IV: THE BROKERAGE CONTRACT

The brokerage contract is the contract by which a client asks a broker to bring it closer to a person in order to conclude with it.

The broker must be distinguished from the commission agent and the agent.

The broker does not enter into the contracts, he merely brings the parties together and is not a representative, unlike an agent. He has two contractors, instead of one, and acts for both. It is therefore an intermediary that acts completely independently, unlike employees. Therefore, when a broker negotiates a contract, it is not final until after the parties have agreed, unless it had the mandate to conclude the transaction. The broker is required to seek a co-contractor, to inform the client of the circumstances relating to the execution of the transaction. He binds himself only and does not guarantee the performance of the contract.

The broker is entitled to a remuneration unlike the mandate.

This is not payable if the contract is not concluded. On the other hand, the remuneration is due even in case of bad execution of the concluded contract, which does not concern him.

Unless otherwise agreed, it has no customers, which reflects its absolute independence.

ESSENTIAL

The role of the broker is limited to bringing the parties (the principal and his potential co-contractor) together to conclude a contract, but without himself participating in the conclusion of the contract. He puts in relation.

CONTRACTUAL TECHNIQUE

Contractual structure

HEAD OF CONTRACT

Title of the contract
CONTRACT OF…
AGREEMENT OF ...
PROTOCOL OF ...
LETTER OF INTENT…
GUARANTEE LETTER…

I GENERAL

A Appearance

This contract is between:

<complete identification of part 1>
Company X, Company <A Responsabilité Limitée> with capital of 9999 €, whose head office is at <> - 69000 Lyonnais (FRANCE), registered with the Trade and Companies Register of <>, RCS <> n ° 999 999 999, a company whose object is notably <describe in 1 line>, represented by M. <> as manager / President, DG ....,
Hereinafter referred to as <abbreviated identification of Part 1; example: the Supplier>

Firstly,

And
<complete identification of part 2>
Hereinafter referred to as <abbreviated identification of Part 2; example: the Client>

On the other hand,

Ask for Kbis, check the Kbis

B Stipulation for others

X declares stipulate both for himself and for <beneficiary> within the meaning of Article 1121 of the Civil Code.
Consequently, <beneficiary> may ask Y to fulfill the obligations imposed on him by this contract.

In the interest of…
The "stipulation for others" referred to in Article 1121 of the Civil Code is the agreement by which the parties appearing in the act agree that it is a third person who is not the same person. signatory, who will benefit from the benefits of the contract. Upon acceptance, which is most often tacit, the third party has direct action against the promisor to compel him to perform his obligation.

C Promise of a strongbox

X is committed to himself and to Y of whom he is strong ...

The "safe harbor agreement" is a conventional provision by which a person commits himself to another to report the consent of a third party to the constitution of a given legal relationship. In the absence of ratification the safe will have to pay damages.

D Preamble

Prior to the signing of this contract, the Parties have stated the following:
...
In faith whereof, the Parties have agreed as follows:
...

Statement, state, for what and why it was established the convention.
Attention, as important as the actual articles of the contract, and hires.
For the understanding of convention in general.

E Purpose of the contract

Art.N - Object of the contract

The object of this contract is ...

The shortest and most concise possible.

F Correspondents

Art.N - Correspondents

Each Party shall appoint a Correspondent to monitor the performance of the contract:
-for <Part 1>: ...
-for <Part 2>: ...

All correspondence and notifications related to this contract may be validly made personally to the Correspondent of the Party concerned.
Each Party may, at any time, change the Correspondent, provided that the other Party is informed in advance.

Possible legal effects, in particular by sending e-mails to the correspondent, notification, relaunch, ...

G Appendices - Couple Contract / Appendices

Art.N - Appendices

The contract includes Annexes which have contractual value.
In case of contradiction, ... will prevail over ...

Importance because in the contract or not. They are sometimes even more important than the contract itself, because they are very technical.

H General Conditions and Special Conditions

Art.N - General Conditions and Special Conditions

The contract consists of Terms and Conditions and Special Conditions.

In the event of contradiction, the Special Conditions derogate from the General Conditions and prevail.

I. Completeness clause

Art.N - Completeness of the contract

This contract includes all the obligations of the parties between them.
This contract cancels and replaces <or not> any other previous agreement between the parties having the same purpose.

This allows for example to clear the pre-contractual exchanges, the talks, the negotiations and all the different existing writings before the signing of the contract.

This contract may be modified only by written amendment signed by both parties.

This locks the before and the after.

J. Title of articles

Art.N - Title of Articles

The titles of the articles are mentioned for descriptive purposes and are not contractual in nature.
In no case can they be used as part of the interpretation of the contract.

K. Definitions

Art.N - Definitions

For the performance of this contract, the Parties agree to give the following terms the meaning indicated below:
Contract: this Agreement, including its Annexes
...

Not automatic, especially if the contract has been written in a clear and precise way.
But how to be taken seriously by the contracting partner by demanding to define certain words.

II OBLIGATIONS OF THE PARTIES

A OBLIGATIONS OF "SUPPLIER"

1 Main obligations

a / Obligations of means or Obligations of result

Art.N - Scope of X's obligations

The parties expressly agree that X is bound only by a general duty of care and diligence. So he will have to make every effort to achieve the result.
In no case is it obliged to guarantee ...
Or

The parties expressly agree that X is bound by an obligation of result in respect of its contractual obligations. The mere fact of not reaching them leads to its failure in the result, and therefore its automatic contractual liability.
X is bound by the obligation to ... <describe with greater precision>

Essentially a problem of proof and of putting into play of the contractual responsibility. Interest really only in case of unknown cause. Risk of the unknown cause for the debtor of the obligation of result, and for the creditor with obligation of means.

The obligation of security will result.

This can be emptied of its meaning by accurately describing and defining what may correspond to the force majeure (event irresistible, unpredictable, and external to the person who invokes it). Total exemption - irresponsibility - or partial of contractual liability.
Same for the third party. Total exemption - irresponsibility - or partial of contractual liability.
Same for the fault of the victim. Total exemption - irresponsibility - or partial of contractual liability.

b / Deadlines

Art.N - Deadlines of rigor

The deadlines stipulated in this contract are deadlines. The Parties have committed to the stipulated deadlines.
Consequently, any delay in performance will constitute a default that may result in the termination of the contract, without prejudice to any damages.

Increasingly, judges use their moderating power. The contract is not made to crush either party. Failure to comply with the contract resolution unless expressly stated otherwise.
As a result, the time rule that the judge can not rule out.
In principle, this part of the resolution or termination, as well as the clause in general, will have to be made for all the principal and important obligations.

c / Monitoring Committee

The parties constitute a committee to monitor the execution of the contract. This Committee will be composed of the following persons:
for <Part 1>: ...
for <Part 2>: ...
The Committee will meet ...
The proceedings will be the subject of minutes drawn up by ... which will be circulated to all members of the Committee. In no case may the deliberations of the Committee have the effect of modifying the contract.

Do not modify the contract. So put it if possible; allows to have a pre-contentious, even contentious, litigation vision. Today, we find emails in litigation, hence the idea of locking, prevent drifts.

2 Additional obligations

a / Obligation to inform

Art.N - Obligation to inform

X undertakes to give to Y an account of the performance of the contract and to provide him with all information relating to the object of the contract.

It can be predicted bilaterally; contracts to be executed in good faith, it is automatic in reality.

b / Obligation of confidentiality

Art.N - Confidentiality

X undertakes to keep confidential any information it may collect in connection with the execution of the contract.
It also undertakes to enforce this obligation by its agents, its subcontractors, as well as any person acting on its behalf or in its stead.

This clause can be broken down into a whole series, especially subcontractors, ...

c / Non-compete clause

Art.N - Obligation of non-competition

During the term of the contract, X. refrains from competing with Y ..
This non-compete obligation will continue for a period of <to be completed> from the end of the contract.

To be limited in time (duration), space, and object (activity).

d / Obligation of insurance

Art.N - Obligation of insurance

Impose specific insurance under the contract.
Intervention of an expert in particular, even if he is not independent, his opinion remains credible.

3 Facilities and sanctions

a) Limitation of Liability

Art.N - Guarantees and liability

In no event shall X.'s liability be incurred beyond the total amount of the contract, ie the sum of <to be completed> €.

Different from the limitation clause of guarantee.
Valid unless gross negligence or willful misconduct, especially by the professional towards the unprofessional (professionals of the same specialty).
The best is to put a determined amount X.
Direct damage: amount of the damage.
Indirect damages: the judge can not retain them (loss of exploitation, ...).
No limitation clause of liability on the essential obligation of the contract.

b) Clause defining force majeure

Art.N - Force majeure

Force majeure will be defined by any event that is irresistible, unpredictable, and external to the person who invokes it.
Enter the field of force majeure, including:
...

We can define it and put what we want.

c) Criminal clause

Art.N - Criminal clause

In case of non-fulfillment of his obligations arising from the contract, Y. will have to pay X the sum of N. euros.

In case of non-fulfillment of his obligations arising from the contract, Y. will have to pay to X. the sum of N. euros per day of delay.

Technically, it is a penal clause because constraint.

Pay attention to the excessively disproportionate amounts that the judge can reduce (or increase more rarely).

d) Interest on late payment

Art.N - Interest on late payment

In case of delay in the payment of the, Y. will have to pay to X. penalties of N. euros per day of delay.

Pay attention to the excessively disproportionate amounts that the judge can reduce (or increase more rarely).
Stipulation of late interest;
Once a time has been set, it must be respected. Conventional interest rate (3 x the legal interest rate). But we can put the rate that we want. If too important, the clause switches to a penalty clause. If too much> wear and tear> criminal offense, even if little risk because they are not interests they generate.
Late penalties should not be unreasonably high.
Obligation to recover them. They tend to force the other party to perform.

B OBLIGATIONS OF THE "CUSTOMER"

1 Primary obligation

a) Price amount

Art.N - Price-Tariff

Price determined or determinable.
Free prices subject to abuse: abuse in pricing.

b) Indexing clause

Art.N - Price indexation

Except indexing technique: it must be related to the object of the contract, or to the activity of the parties.

c) Payment schedule

d) Terms of payment

2 Additional obligations

a) Obligation to collaborate

To detail it to make it opposable and operative.
If it is planned, then we must guard against evidence that the collaboration has taken place.

b) Obligation of confidentiality

c) Prohibition of dismissal of staff

Cases of unfair competition.
In general, one year of salary is provided for the person concerned.

3 Facilities and sanctions

a) Criminal clause

Art.N - Criminal clause

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penalty clause. If too much> wear and tear> criminal offense, even if little risk because they are not interests they generate.
Late penalties should not be unreasonably high.
Obligation to recover them. They tend to force the other party to perform.

III PROPERTIES

A BODY PROPERTY

1 Retention of title clause

Art.N - Retention of title

The property of the sold goods will not be transferred to the buyer until the complete payment of the price of the thing.
However the risks will be borne by the buyer upon delivery.

Prevention technique in the event of non-payment, especially in the area of collective proceedings (Claim to be claimed within 3 months from the opening of the judicial recovery / liquidation procedure). However, the recovery procedure is more interesting anyway.
Condition of retention of title:
Accepted by the buyer; attention, the notification is not an acceptance, even if the judge considers that the non dispute is worth acceptance.
Written established at the latest at the time of delivery.
Attention on what good (quantity, possibility of separating, etc ...).
Possible to publish a retention of title clause in the commercial court; it is automatically opposable.
On the equipment, it ensures the financing of the seller.
For a sub-purchaser in good faith, "in fact furniture, possession is worth title", unless the retention of title clause is published.
There may be n debt recovery directly on the sub-purchaser (Direct Action).
In material acquisition, this can be a legal engineering technique:
Possibility of leasing
Pledge by the bank
But the retention of title clause is simpler.
In the case of the loan, it must only be guaranteed by the retention of title clause. The judge accepted the retention of title clause as a security for a claim.
Concerning the transfer of risks on the thing: at the base, in principle to the owner, because in principle, the contract of sale implies the immediate transfer of ownership of the thing. Foresee the transfer of risks, even if no transfer of ownership.

2 Obligation of insurance

Art.N - Obligation of insurance

Impose specific insurance under the contract.
Intervention of an expert in particular, even if he is not independent, his opinion remains credible.

B INTANGIBLE PROPERTY

IV DUREE ET FIN DU CONTRAT

A DURATION

1 Entry into force

Art.N - Entry into force

This contract will come into force on the date of the signing of the last part.

One can delay or anticipate the entry into force of the contract.

2 Duration of the contract (indefinite)

Art.N - Termination on the initiative of one of the parties

Either party may terminate the contract at any time by registered letter with acknowledgment of receipt, with prior notice of <to be completed>.

Each party may leave at any time, subject to a reasonable time according to the case law; most precarious contract.

3 Contract duration (determined)

Art.N - Duration of the contract

The contract is concluded for an initial period of: <one> year.
Beyond this, it will continue, by <tacit renewal>, by <annual> periods, unless one of the parties notifies to the other, by registered letter with acknowledgment of receipt, its intention not to not renew the contract at least <one month> before the expiry of the current contract period.

Attention at the end, if ends or if continues and the way in which the contract is renewed, tacitly, express, with notification by simple letter or LRAR.

B FIN

1 Resolutive clause

Art.N - Termination

The contract will be terminated automatically in case of non-performance by one party or the other of its obligations.

Another wording:

Art.N - Termination

In the event of a breach by one of the parties, the other party may give notice to this effect by registered letter with acknowledgment of receipt.
If it is not remedied within one month, the party victim of non-performance may notify the defaulting party the termination of the contract without notice or compensation, by registered letter with acknowledgment of receipt .

Exception of non-performance or execution.

Ask the judge for a resolution for non-performance; if a request is made to the judge, he will appreciate supremely. It does not pronounce the resolution if beginning or beginning of execution, in the name of contractual solidarism.
The resolutory clause operates the resolution; attention in case of collective proceedings.

2 Consequences of the end of the contract

3 Clause deeming the term

Art.N - Forfeiture of the term

In case of non-performance by X. of its obligations at the agreed term, Y. may notify X. the forfeiture of the term of the set affecting all the obligations that the latter is held under this contract.
Forfeiture of the term immediately makes all X's obligations immediately payable.

4 Clause of intuitus personae

Art.N - Changes affecting the person of the contractors

The contract is concluded because of the person of the contractors.
Consequently, in the event of a modification directly or indirectly affecting the person of a party, the other party may notify by registered letter with acknowledgment of receipt that he intends to terminate the contract without notice or compensation.
This will be the case, in particular, in the event of a change in the person's management of a party, in the event of a change in the control of the latter, within the meaning of Article 233-3 of the French Commercial Code or in the event of a change in the holding. at least 10% of its share capital.

Importance of the contracting party.
When physical person: logical.
In fact it is to block the transfer of contract (problem in case of sale of the business in particular).

5 Clause of nullity

Art.N - Nullity of a clause of the contract

In no event shall the invalidity of a clause in the contract result in the nullity of the contract itself.
The scope of the cancellation will be limited to the only flawed clause.

6 indivisibility clause

Art.N - Indivisibility

All clauses of this contract are de rigueur, each one of them is determining condition of the present contract without which the parts would not have contracted.

7 Hardship Clause

Art.N - Changes to the circumstances of performance of the contract

In case of disruption of the circumstances in which the contract is to be performed, the parties undertake to renegotiate the content in good faith.

To this end, each party may invite the other party to this renegotiation by formulating the proposals it considers most appropriate to remedy this upheaval.

8 New law clause

Art.N - Occurrence of a new rule

In the event that a new rule of law, resulting in particular from a law or regulation or a change in case law, would modify the obligations of X., the latter could terminate the contract without notice or compensation.

9 Clause providing for the opening of collective proceedings

V MISCELLANEOUS

A CLAUSES FOR DISPUTE SETTLEMENT

1 Clause attributing territorial and material jurisdiction

ART.N - JURISDICTION

IN CASE OF DISPUTE, THE TRIBUNAL OF COMMERCE OF <A COMPLETER>, WILL BE ONLY COMPETENT, EVEN IN CASE OF CALL IN WARRANTY OR INTERVENTION.

2 Conciliation clauses

a) Conciliation between the parties alone

Art.N - Conciliation

In the event of a dispute, the parties bind themselves to seek reconciliation prior to any legal action.
For this purpose, the requesting party must notify the other party of the elements of the dispute by registered letter with acknowledgment of receipt. The conciliation phase will have a duration of (delay) from receipt of this letter. At the end of this period, the parties will be deemed not to have been able to conciliate unless evidence to the contrary is given.
During the conciliation period, the parties shall refrain from taking any legal action against each other under this agreement. However, by exception, even during the conciliation period, the parties may apply to the courts for investigative measures on the basis of Article 145 of the new Code of Civil Procedure.

Trap clause; seize the judge after an attempt at conciliation; some judges rejected because there was no attempt at conciliation; this is why it is a clause that differs the seizure of the judge. So plan a delay.

b) Conciliation by one or more conciliators

Art.N - Conciliation

In the event of a dispute, the parties bind themselves to seek reconciliation prior to any legal action.

CHOOSE according to the cases

(1 - designation of the conciliator (s) in the clause)
The parties designate as conciliator (s) (identifications of the conciliator (s)).
The conciliator (s) will be (are) seized by registered letter with acknowledgment of receipt of the plaintiff containing the elements of the dispute; copy of this letter will be sent on the same day and in the same form to the other party.
(2 - designation of a conciliator during the litigation)
For this purpose, the plaintiff will have to notify the other party of the elements of the dispute by registered letter with acknowledgment of receipt while proposing the name of a conciliator.
If the parties can not agree on the name of a conciliator or if the latter agrees with his / her mission within a (delay) period of the receipt of the letter referred to in the previous paragraph the most diligent party may request the appointment of a conciliator to the president of the (court identification) court ruling in the form of interim measures.
(3 - designation of several conciliators during litigation)
For this purpose, the plaintiff will have to notify the other party of the elements of the dispute by registered letter with acknowledgment of receipt, while proposing the name of the conciliator of his choice.
The other party must communicate the name of the conciliator of his choice within a (delay) period of the receipt of the letter referred to in the preceding paragraph.
The two conciliators so appointed shall appoint a third conciliator who shall accept the mission within a period of (time) from the acceptance of his mission by the conciliator appointed by the defendant.
In the event of non-observance of one or the other of the delays envisaged in the two preceding paragraphs, the most diligent party can ask the president of the court of (identification of the court) ruling in the form of the summonses to designate the conciliators missing.
CONTINUE then
The conciliation phase will have a duration of (duration), starting from the acceptance of its mission by the conciliator (or: the last of the conciliators having accepted).
At the end of the time allowed for conciliation, the parties will be deemed not to have been able to conciliate unless evidence to the contrary is reported.
During the conciliation period, the parties shall refrain from taking any legal action against each other under this agreement. However, by way of exception, even during the conciliation period, the parties may request a court of investigative measures on the basis of Article 145 of the new Code of Civil Procedure.
All disputes relating to the appointment of the conciliator (s) or the progress of the conciliation procedure will be settled by the president of the court of (identification of the court) in the form of interim.
Conciliation costs will be borne equally by each party.

3 Arbitration clause

Art.N - Arbitration

In case of dispute, the parties bind themselves to resort to arbitration.
For this purpose, the plaintiff will notify the other of its intention to provoke the constitution of the Arbitral Tribunal by indicating the name of the arbitrator it designates.
The other party will have to appoint its own arbitrator within the month of this notification.
In the month of this appointment, the two arbitrators will appoint a third to preside the Arbitral Tribunal.

The referees will rule as an amicable composer without possibility of appeal within 6 months after the acceptance of his / her mission by the third referee.
The difficulties relating to the constitution of the Arbitral Tribunal will be settled by the President of the Commercial Court of <to be completed>.

The favor of the judge because it eases the courts!
The referee is a real judge.
An appeal can be made to the Court of Appeal.
There remains the appeal for annulment if procedural irregularity.
If it lasts too long, we can seize the state judge in summary.
Also, the cost of arbitration (especially in the case of international disputes).

B OTHERS

1 Clause determining the applicable law

Art.N - Applicable law

This contract is subject to French law.

2 Clauses modifying the prescription

3 Election of domicile

Art.N - Election of domicile

For the execution of the contract each party elects domicile at its head office.

QUEUE OF CONTRACT

A copies

This contract is established in as many copies as parties having separate interests.
For Part X
For part Y
For part Z

B Date and Location

Done at N,

the NN / NN / NNNN,

C Block of signatures

Part X, represented by Mr / Mrs
Part Y, represented by Mr / Mrs
Part Z, represented by Mr / Mrs

ANNEX 1 CONTRACT LAW - NULLITY OF CONTRACT SIGNED WITH PLAYER FOR FAILURE OF REPRESENTATIVE OF ASSOCIATION

Wednesday, 03 February 2016 14:35 | | |

Following the agreement dated July 25, 2013, Alexandre N'KEMBE was hired from August 15, 2013 to June 15, 2014 by the association UNION DES CLUBS ANNECIENS DE BASKET (UCAB) as a basketball player, for a net monthly remuneration of 1,700 euros, in addition to a bonus of 80 euros per match won, the provision of an apartment type F2, a motor vehicle, two monthly flight tickets to and from Lyon-Nantes or Geneva-Nantes.
It was planned that in the event of a rise to the second division, the contract would be extended for two seasons under the same conditions.
By registered letter with acknowledgment of receipt dated October 17, 2013, Alexandre N'KEMBE gave notice to the UCAB association to pay him his salary.
In response on October 30, 2013, the UCAB opposed the nullity of the employment contract because of his status of amateur club division 3 not being entitled to hire a professional player and lack of quality to engage the association of the signatory of the convention.
Following a registered letter with acknowledgment of receipt dated November 7, 2013, Alexandre N'KEMBE, noting the refusal to execute the agreement and paying the salary, took note of the termination of his employment contract.
On November 22, 2013, Alexandre N'KEMBE appealed to the industrial tribunal of Annecy to obtain payment of salary and damages reminiscences.
By judgment dated September 9, 2014, the industrial tribunal of Annecy ruled that Alexandre N'KEMBE was bound to the association UCAB by a contract of employment and considered that the act made by Alexandre N KEMBE had to be requalified in a dismissal without real and serious cause.

Not satisfied with the sums awarded to him by the Labor Court of Annecy for the dismissal without any real and serious cause, the player appealed to the Chambéry Court of Appeal.
Badly it took, the Court of Appeal reversing the aforementioned judgment for the following reasons:

"Whereas in the absence of the power of the signatory of the contract on behalf of the legal person, who had neither the capacity nor the authority to recruit and the demonstration of an apparent mandate that had failed, the agreement dated 25 July 2013 can only be canceled; that in doing so the judgment referred will be reversed in all its provisions, Alexandre N'KEMBE will be rejected applications that were thus related to the existence of a valid employment contract
Whereas in the event of invalidity of an employment agreement, the compensation can relate only to the services provided, as well as if a fault is established, on the repair of the fault
That in this case, Alexandre N'KEMBE, who has provided training and competitive matches until 7 November 2013, is therefore entitled to claim compensation for his services valued at 5 572 , 20 € ».

CA Chambéry, 28-01-2016, No. 14/02373

APPENDIX 2 CONTRACT LAW - SERIOUS DISPUTES DUE TO A DUAL MANDATE AND LACK OF DILIGENCE OF THE SPORTS AGENT

Sunday, 20 March 2016 15:52 | | |

SAS CH Conseil and Management, represented by Christophe Hutteau, signed two sports agent contracts with SASP Orléans Loiret Football, one for Mr. Ligoule on May 2, 2012, the other for Mr. Brillault on November 1, 2012.
In application of these contracts, SAS CH Conseil and Management issued five invoices for a total amount of € 29,756 according to the scales set out in the contracts that SASP Orléans Loiret Football contested to settle.
Unable to obtain payment of the invoices relating to these sports agent contracts, SAS CH Conseil and Management had Orléans Loiret Football SASP summarily charged in payment of a provision.

By contradictory order of May 7, 2015, the Paris Commercial Court ordered SASP Orléans Loiret Football to pay to SAS CH Conseil and Management, as a provision, the sum of 28,758 euros, in addition to the sum of 1,200 euros of Article 700 of the Code of Civil Procedure and the costs.

SASP Orléans Loiret Football appealed this decision on 4 June 2015.
She contested the fact that the invoices were uninformed when the contracts were signed in 2012, contractual commitments binding SAS CH Conseil and Management and each of the athletes.
According to her, the sports agent acted at the same time on behalf of players and another club, a practice prohibited by article 6.2.1 of the Regulations of the sports agents of the French Football Federation.
It also considered that for one of the two transfers, CH Conseil and Management did not participate in the linking.

For the Court, "the challenge raised by the SASP Orléans Loiret Football on the validity of the contract with the SAS CH Conseil et Management is serious, and it is not for the judge of the interim, judge of evidence, to respond to average raised by the respondent relating to the knowledge by his co-contractor of the contract binding him to the player ".

It adds that the production of an attestation by Mr Brillaut by which he indicated that he had done himself and on his own initiative the merger with the Orleans Club constituted a serious challenge to the existence of the services invoiced.
The interim order is accordingly reversed.

CA Paris, 1, 3, 08-03-2016, No. 15/11707

APPENDIX 3 CONTRACT LAW - THE AGENT OF DIMITRI PAYET COULD NOT INTERVENE BOTH FOR THE PLAYER AND THE ASSE CLUB

Thursday, 08 September 2016 09:26 | | |

According to the contract of June 4, 2007, the company ASSE Loire wishing to see Dimitri Payet join his professional football team, has given a mandate to his agent to negotiate the terms of his engagement.
Dimitri Payet signed a player contract with ASSE on 1 July 2007.
By act of July 10, 2009, the ASSE entrusted to the agent of the player the mission to negotiate on his behalf the extension and the retention of the contract of Dimitri Payet until June 30, 2013.
By contract of 20 July 2009, Dimitri Payet extended his contract with ASSE until 30 June 2013.
On June 28, 2011, Dimitri Payet left ASSE to join the Lille football club.

By act of July 5, 2011, the agent and his company have assigned the company ASSE Loire for the purpose of condemnation to pay them various compensation for the fees provided for in the mandate contract of July 10, 2009 (€ 90,417.60 for the presence of the player at the club on 1 September 2010 in addition to the sum of € 717,600 as damages and interest in compensation for his loss resulting from the transfer of Dimitri Payet to Lille).
The company ASSE Loire raised an exception of nullity of the mandate of July 10, 2009 and subsidiarily concluded to the rejection of the requests due to the absence of diligences on the part of the sporting agent.

By judgment of December 10, 2014, the district court of Saint-Etienne condemned the company ASSE Loire to pay to the company TSM Communication, the sum of 75 600 € HT for the fees due in addition to that of 300 000 € for damages for loss of opportunity to receive remuneration for the transfer and rejected any other claim by the parties.

The company ASSE Loire has appealed this judgment by maintaining its application for nullity of the mandate signed between the Club and the agent on the basis of Article L.222-10 of the code of sport which prohibits the practice known as "double mandate ".

The Lyon Court of Appeal, pursuant to a judgment of 6 September 2016, accepts this plea of nullity after stating that the respondent was indeed the sports agent of Dimitri Payet since 2007, "and not only a friend of the family who would volunteer advice to this player ".

The Court infers that the agent "acted on behalf of both parties to the same contract, so that the contract is void".
As a result, the Lyon Court of Appeal declared the cancellation of the mandate contract of July 10, 2009 and dismissed the agent's requests as well as ASSE's request for refunds of sums paid.

The agent is also condemned to pay the company ASSE Loire the sum of 3 000 € under Article 700 of the Code of Civil Procedure.

CA Lyon, 06-09-2016, n° 15/00049

ANNEX 4 CONTRACT LAW - ABUSIVE BREAK BY EUROSPORT OF ITS COMMERCIAL RELATIONS WITH ALI OUAGUENI (KICKBOXING)

Monday, 31 October 2016 18:13 | | |

Mr. Ali Ouagueni, a former high-level sportsman and organizer of sports events, including "Kickboxing" fights and other combat sports, has reached an agreement with Eurosport to broadcast the events he is organizing. The first event broadcast was a boxing event "foot-fist" organized at the Zenith of Paris on September 25, 2004.
The retransmission of this type of event will continue until 2008.

On August 25, 2010, Mr. Ouagueni claimed from Eurosport the sum of two million euros for the rights of retransmission and broadcast that he considered due to him for the broadcast of thirteen of these sports events. By letter of 17 September 2011, Eurosport replied that such a request was inadmissible and indicated that it no longer wished, in these circumstances, to broadcast the evenings of Mr. Ouagueni.

After a long legal battle, the parties were heard in their explanations by the Paris Court of Appeal on 1 September 2016.

In particular, the Paris Court of Appeal had to rule on:
- the existence of a rights exploitation contract linked to the events organized by Mr Ouagueni and retransmitted by Eurosport
- a possible sudden break in the established commercial relationship

On the first point, the Court notes that no contract has been concluded between the parties and that Mr Ouagueni does not provide proof of his right to remuneration in respect of the transfer of his exploitation rights.

On the other hand, it accepts the plea of a sudden termination of the established commercial relationship after having noted that:
- the sports events organized by Mr Ouagueni and broadcast by Eurosport were at least 8, a significant number for sports events of this nature
- the break was without any notice
- Mr Ouagueni could hope for a continuation of the relationship, as promised by Eurosport a few days earlier by a letter of 19 August 2010.

The file is referred to the Commercial Court to assess the amount of compensation due by Eurosport for this abusive breach of commercial relations.

The company Eurosport is also ordered to pay Mr. Ouagueni the sum of 10,000 euros under Article 700 of the Code of Civil Procedure

CA Paris, 5, 11, 28-10-2016, n° 14/13658

ANNEX 5 CONTRACT LAW - SPORTS AGENT CONTRACT NOT DATE AND NOT SENT TO FFF IS VOID

Wednesday, 14 December 2016 12:43 | | |

In 2010, a licensed agent with the French Football Federation entered into a "management contract" with a professional Colombian football player.

In 2012, the agent summoned the player to the tribunal de grande instance of Valenciennes in order to see him ordered to compensate him for the damage resulting from a violation of the exclusivity clause of the warrant.
By judgment of 18 December 2014, the court found the nullity of the management contract, dismissed the agent and sentenced him to pay a sum of 5,000 euros pursuant to Article 700 of the Code of Civil Procedure.

The officer appealed this judgment and asked for its reversal in addition to the player's payment of damages of 500,000 euros for breach of the exclusivity clause of the contract of mediation.
The Court of Appeal of Douai, seized of this case, according to a judgment rendered on December 8, 20016, first recalls that at the time of the facts, the applicable regulation was that of the agents adopted on December 6, 2002 by the French Football Federation (FFF).
In accordance with Article 6.2 of the Regulation, agents were reminded that an agent's contract could not be concluded for more than two years and should include a number of mentions including the names of the parties, the duration of the mandate or whether the contract is exclusive or not.
In addition, it was intended that the sports agent's contract should be drawn up in three copies, duly signed by the parties, forwarded to the F.F.F. within one month of signing.
The Court goes on to say that the duration of the contract must be mentioned when the duration can not exceed two years and that the obligation imposed on one of the parties must have at least one thing at least determined as to its kind.
In the present case, the Court notes that on "the typewritten copy of the contract paid by the player in the proceedings, the location intended to accommodate the references to the duration of the contract and its dates of entry into force and 'expiration has been left blank'.
According to the Court, the determination of the duration of the contract was all the more important as the contract was exclusive to the agent.
The Court concludes that "the contract in question does not meet the requirements of Articles 1126 et seq. Of the Civil Code as regards the sufficient determination of the subject-matter of the agreements".
The Court notes, moreover, that the appellant does not justify a transmission of the contract to the F.F.F. in the month of its signature, before October 24, 2010, but only in April 2012.

For all these reasons, the Court of Appeal of Douai confirms the judgment rendered by the tribunal de grande instance de Valenciennes and declares the mandate signed by the parties void.
In addition, the agent is ordered to pay an additional € 3,000 to the player pursuant to Article 700 of the Code of Civil Procedure in question.

APPENDIX 6 CONTRACT LAW - CLUB RESPONSIBILITY DUE TO TRAINER FAILURE TO COMPLY WITH ITS SECURITY OBLIGATION

Wednesday, 22 February 2017 19:40 | | |

February 2, 2009, during a free wrestling training organized by Union Sportive d'Ivry (USI). club affiliated to the French Wrestling Federation (FFL), one was wounded while fighting against another licensee in a game called "Survivor" during which all participants competed successively and sought to eliminate one by one their opponents by dropping them to the ground to reach the final.
The victim had a rotational dislocation of the C3-C4 vertebrae that caused quadriplegia.

By an interim injunction, an expert opinion was given to several doctors in order to obtain their opinion on the dangerousness of the decision taken and / or to assess the mastery of it by its author and to say whether the application of it could become dangerous with regard to possible differences in levels / experience and weight.

By judgment of February 6, 2015, the Tribunal de grande instance of Créteil declared the French Wrestling Federation and the Union Sportive d'Ivry fully liable for the damage resulting, for the victim, from the loss of a chance of 70% of to take out personal injury insurance and to be indemnified, even in the absence of a responsible third party, of the harmful consequences not covered by a third-party payer, of the accident of which she was the victim on 2 February 2009,
The Court also ordered the French Wrestling Federation, Union Sportive d'Ivry and COVEA RISKS to pay to the victim the sums of € 400,000 as a provision for the compensation of his loss and the loss of his rights. € 000 under Article 700 of the Code of Civil Procedure.

The French Wrestling Federation, Union Sportive d'Ivry and COVEA RISKS have appealed this judgment.

Seizure of the appeal, the Paris Court of Appeal first recalls, in its judgment of 20 February 2017, that the legal test for the liability of a sports association is a violation of the rules. of the game by one or more of its members.
The Court then examines whether the complete seizure of the opponent's head by winding up both arms is prohibited.
To this end, it relies on diverging opinions of the experts and considers that proof that the seizure of the author of the decision constitutes an action prohibited by the federal regulation of the struggle is not reported nor that Therefore, the responsibility of the FFL and / or USI sports associations is engaged because of the licensee.
As regards the breach of the contractual obligation of security imputed to sports associations by the victim, the Court reiterates that under Article 1147 of the Civil Code as it read prior to Order No. 2016-131 of 10/02 / 2016, "the sports instructor is bound, as far as the safety of the participants is concerned, with an obligation of means, however appreciated with more rigor when it comes to a dangerous sport.
This reinforced contractual security of resources obligation is applicable to the monitor or the trainer of struggle, since the potentially dangerous nature of this sport has made it necessary to lay down precise rules, and in particular the prohibition of sports undermine the physical safety of wrestlers ".
In fact, there existed between the two licensees a large disparity of size (1.69 meters and 89 kg for the first, 1.75 meters and 65 kg for the second) and technical level (practice of 3 years and a half for author of the decision, 4 months for the victim).

The Court adds that "it is no more disputed that the organization, as part of a training and not a competition, a game opposing fighters of different stature and technical levels, does not is not prohibited by the federal regulations and may present pedagogical virtues, however, it imposes on the instructor (in this case the trainer acting as referee) a particular vigilance on the conditions of course of the wrestling game ".
She notes that at the time of the accident, "the coach had no other fight or wrestler to watch or guide, and could only focus all his attention and vigilance on the only fight in progress" .
It considers, therefore, that "the coach and wrestling teacher for 22 years at the time of the accident could not ignore, because of his experience, that the seizure operated with traction and rotation of the opponent's head, had a major risk of serious and irreversible cervical lesions, taking into account, moreover, the neophyte character of the victim depriving him of the capacity to adopt the appropriate reaction to the action of his adversary ".
According to the Court, "it was incumbent on the referee coach, in fulfillment of his enhanced security obligation, either to promptly notify the perpetrator to stop the seizure and to release his opponent, or to order instantly stopping the fight ".

Thus, the coach breached his obligation of enhanced security towards the victim, by not having prevented the action that caused the bodily harm suffered by the victim.
According to the Paris Court of Appeal, this breach entails the contractual civil liability of the Union Sportive d'Ivry and by ricochet vote that of its insurer, who is obliged to fully compensate the victim.

The first instance judgment is therefore confirmed and the Union Sportive d'Ivry and the company MMA both jointly and severally condemned to pay the victim a provision of € 400,000 as a provision for compensation for his loss.

CA Paris, 2, 3, 20-02-2017, n° 15/06105

APPENDIX 7 LAW OF CONTRACTS - CONCLUSION OF A MANDATE BETWEEN AGENCY COMPANY AND FOOTBALLER: A CA BENEFITS NULLITY!

Monday, 15 May 2017 15:14 | | |

A Guinean professional football player has signed an exclusive mediation contract with a Moroccan company of agents for a period of two years.
A penalty clause was inserted in the said contract in the event that the player signed a contract of employment on his own or in the presence of another agent in favor of a professional football club.

Some time after signing the exclusive representation mandate, the player signed a professional player contract for the benefit of a French club.

After formal notice (remained unsuccessful) to have to pay the amount of the penalty clause contained in the contract of mediation, the agent has assigned the player before the Tribunal de Grande Instance de Belfort.

By judgment of 16 June 2015, the district court of Belfort sentenced the player to pay the company agents the sum of € 100,800 as a penalty clause.

The player appealed this judgment.

On the basis of a completely surprising motivation, the Besançon Court of Appeal decided, by judgment of 19 May 2017, to reverse the judgment rendered at first instance by considering that the contract of mediation was null and void. effect as concluded between a legal person not holding the agent license and a professional football player.
This decision is all the more criticizable as the Court itself recalls in the terms of its judgment the provisions of Article L.222-8 of the Sports Code which provide that "the sports agent may, for the purposes of his profession, to constitute a society or to be a servant of a society. "

The agent company now has the power to appeal to the Supreme Court within two months of service from the judgment of the Court of Appeal of Besançon.

CA Besançon, 19-04-2017, No. 15/02440

SPORTS AGENT

ANNEX 8 CONTRACT LAW - RCT CONDEMNS TO PAY € 1.7 MILLION IN PUMA FOR FAILURE TO BREAK AN EQUIPEMENTIER CONTRACT

Tuesday, 09 May 2017 14:45 | | |

The RCT has concluded with PUMA FRANCE, successive contracts of partnership since the year 2002.

The last contract concluded is that of July 2010, for a duration of three sports seasons from July 1, 2010 to June 30, 2013.
Under the terms of these contracts, it was stipulated that in the event of a change of equipment supplier by the Club during the season, the latter would be liable for a maximum penalty of € 450,000 excluding taxes.

On March 3, 2011, the CTN terminated the July 2010 contract by June 30, 2011, citing:
- the non-payment of the 2008/2009 and 2009/2010 earnings bonuses
- non-payment of royalties
- failure to participate in the furnishing of a brewery operated by the club,
- the exploitation of the distinctive signs of the club belonging to third party partners of the RCT, other than on the shorts and jerseys.

By registered mail of March 11 following the company PUMA FRANCE contested the break and enjoined his co-contractor to perform its obligations.

By subpoena of 14 December 2012 PUMA FRANCE has made the company RUGBY CLUB TOULONNAIS before the Strasbourg Court of First Instance to have the judgment and judgment that the club has committed serious mistakes in the execution and termination of the sponsorship contract and see him condemn the payment of more than 6.5 million euros for damages suffered.

By judgment dated April 10, 2015 the court sentenced SASP RUGBY CLUB TOULONNAIS to pay to SAS PUMA FRANCE the sum of € 480,000 in damages, with legal interest capitalized from December 14, 2012, and 25,000 € under Article 700 of the Code of Civil Procedure.

PUMA France has appealed this judgment.

By judgment of May 3, the Court of Appeal of Colmar first of all held that the disputed clause between the parties concerning the option of early termination of the contract of equipment manufacturer must be analyzed "as constituting a penalty clause and could not open the possibility, for the company RCT, to invoke a faculty of deduction to break the contractual relations in advance. "
On the alleged breaches by the RCT to justify the early termination of the contract, the Court notes that PUMA:
- honored the payment of profit bonuses,
- has regularly requested the establishment of invoices in order to be able to pay what it owed for the royalties,
- had no obligation of result regarding the assistance in the installation of a brewery-shop,
- did not use distinctive signs over which she had no rights.

For all these reasons, the Court considers that the termination invoked by the company RCT is not in conformity with the contract.
On the faulty breach of the contract at the initiative of the Club, the Court notes that negotiations had been started between the companies RCT and BURRDA for the conclusion of a sponsorship / sponsorship agreement, "whereas the company RCT knew in this regard, be exclusively linked to PUMA until June 30, 2013 ".
According to the Court, these actions "characterize the intention of the company RCT, in disregard of its obligation of exclusivity towards the company PUMA, to conceal its dealings with a competing equipment manufacturer to obtain a more advantageous partnership, before denouncing its contract with PUMA society on the basis of fallacious motives. "
According to the Court, this "fraudulent mistake" gives the right, beyond the payment of the penalty clause to the tune of 450 000 €, to separate allowances.
Thus, the Court condemns the club Var to the payment of a sum of 730 000 € for the damage to the image of the company PUMA.
Concerning the loss of commercial margin suffered by the equipment manufacturer following the termination of the contractual relationship, the Court assesses the prejudice suffered by PUMA on this matter at € 489,492.
The RCT is also condemned to repay:
- the costs incurred for the realization of material endowments for the 2010/2011 season in the amount of € 8,954.13
- legal fees up to € 25,000.

The judgment of the Court of Appeal of Colmar will finally have to be published, with the advanced expenses of the RCT, on five supports at the choice of the company PUMA.

The RCT must also publish the judgment of May 3, 2017 on its website for 3 months.

CA Colmar, 03-05-2017, n° 15/02711

ANNEX 9 CONTRACT LAW - WHEN 2 AGENTS WORK ON THE BASIS OF RETROCESSIONS OF COMMISSIONS, THEIR CONTRACT MUST BE DRAWN UP. THE CASE OF THE PLAYER ASAMOAH GYAN

Thierry Granturco

May 18, 2017

All football fans remember it. The passage of Asamoah Gyan, the Ghanaian international striker, at the Stade Rennais from 2008 to 2010, made an impression. We also remember his departure from Ligue 1, in 2010, to join the Premier League, and the club Sunderland, in 2010.
To ensure the success of the transaction, the English club mandates, on August 31, 2010, the agent of French players Fabien Piveteau, manager of the company FP Sport. The latter negotiates, in return, a commission of 430,000 euros payable in three installments. Payments must be made on September 30, 2010, 2011 and 2012. Provided the player is still in the club membership on the date of payment.

The price of infidelity

This clause may be surprising, but it is standard in contracts of this type. The commission is, in general, calculated on the gross salary received by the player, over the entire duration of his contract. If the player does not go to the end of his contract, and therefore does not receive the totality of the gross salary initially envisaged, it is logical that the commission due to the agent be revised downward.
This principle is supposed to apply regardless of the number of authorized and cooperating agents on a given transfer. However, in this case, Fabien Piveteau intervenes on the transfer of Asamoah Gyan in collaboration with the English agent Michael Morris, leader of the Monegasque company World Football. He undertakes to pay him 80,000 euros in three deadlines set at 1 October 2010, 2011 and 2012.
The spirit of this second agreement is simple: Fabien Piveteau receives his commission in three payments, from which he pays back his English colleague in return, also via three payments. If the payments stop for one, because of the departure of the player of the English club, they are supposed to stop for the other one. But nothing goes as planned.

A contract can hide another

Asamoah Gyan leaves Sunderland very quickly for the Al-Ain club in the United Arab Emirates. January 1, 2011. The last two deadlines due to Fabien Piveteau on his commission, and to be paid on September 30, 2011 and September 30, 2012, are canceled. The French agent feels entitled, therefore, to refuse to honor the last two bills of his English counterpart, which are presented to him for payment on October 1, 2011 and October 1, 2012.
But Michael Morris does not hear it that way. His company seized the Nice Commercial Court. The latter, by a judgment of May 5, 2014, effectively sentenced the company FP Sport

Fabien Piveteau to pay the sum of 65 780 euros - Michael Morris having received advances from Fabien Piveteau - besides the legal interests, as well as 5,000 euros in damages.

FP Sport is appealing this decision. And it is by a judgment of May 4, 2017 that the Court of Appeal of Aix-en-Provence confirms the disputed judgment.

Laughing player, crying agent

The Court of Appeal notes, first, that the clause of the contract concluded on August 31, 2010 between the club of Sunderland and Fabien Piveteau, subordinating the payment of the three deadlines to the presence of the player within the club, is not resumed in the agreement signed on September 15 between his company, FP Sport, and World Football.
It notes, then, that the reference to the settlement in three installments of the 80 000 euros due to World Football concerns the terms of the payment of the sum, and not its amount.
Consequently, the Court concludes that if the payment of the commission of Fabien Piveteau by Sunderland is well conditioned to the presence of the player in Sunderland, that of Michael Morris is not.

Fabien Piveteau can console himself by noting that the Court of Appeal does not hold against him the payment of damages and interests. But in the end, for being imprudent in the drafting of his contract with his English counterpart, he will have received only one out of three of his commission, or 143 000 euros, and had to pay 65 780 euros to Michael Morris, increased the legal interest and costs of legal proceedings that led to the appeal.

Meanwhile, Asamoah Gyan quietly ends his career. To Dubai.

ANNEX 10 CONTRACT LAW - YES, NEYMAR WORTH € 220 MILLION
The 26/07/2017 - THIERRY GRANTURCO lawyer specialized in sports law

Neymar has announced his departure from FC Barcelona to his teammates. - Garcia / BPI / Shutterstock / SIPA

THE CIRCLE / POINT OF VIEW - The PSG would be ready to pay 220 million euros to recruit Neymar, a superstar of "football". Although this amount is controversial, it is entirely justified, according to our contributor.
It's "the" soap opera of the summer for football lovers. Since 9 June, football clubs have been hitting millions of the best players on the planet. And as every summer, the same question comes back: is it reasonable to spend astronomical sums to attach the services of a footballer?
To answer it, take the case of the Brazilian Neymar da Silva Santos Júnior - known as "Neymar" -, currently playing for the Spanish club FC Barcelona. He informed his teammates that he left the Catalan club to join, without a shadow of a doubt, the Paris-Saint-Germain. It is said that the PSG is ready to pay 220 million euros.
Some commentators believe that this potential transfer costs "too much". Too expensive, compared to who and what? Compared to the 64 million disbursed by the PSG to recruit Edison Cavani in 2013? Or too expensive compared to the 120 million lined up by Manchester United (Premier League, England) to "buy" French nugget Paul Pogba at Juventus Turin in the summer of 2016? If we follow this logic, is Neymar necessarily three times stronger than Cavani and two more than Pogba? The rationality of a transfer is elsewhere.

Criteria less and less decisive

First, leaders take into account the recent sports performance of the player. His age is also involved in setting the price. The older he is, the less expensive he will be. His job is important too. Offensive players, like Neymar, are more valued than defensive players. His nationality is important. The recruitment of foreign players is limited in some countries.
Its "administrative" ability to play a competition is also a criterion. A player may not, for example, be lined up in the Champions League with a club B if, during the same season, he has already made matches in this competition for a club A.
Lastly, we consider its contractual situation. The more a player has remaining contract years in the selling club, the higher the transfer premium to be paid. Whether framed or not by a so-called "discharge clause". All these criteria count. But they are no longer, for a long time, decisive. Because the world of football has changed considerably in recent years.

340 million over three years

To understand it, let's go back to the case of Neymar. Let's assume that PSG is really interested in this player. Suppose he is willing to pay 220 million euros to bring him to Paris. The player signs for four years. And it is guaranteed, for example, a gross annual salary and charged, 40 million euros.
The budget to be committed over four years by the PSG is, theoretically, transfer and salaries included, 380 million euros. Except that the player will, in fact, only three years to allow the PSG to touch, in turn, a transfer fee. The clubs try, in fact, never to sell a player free of rights. The three years of Neymar in Paris would therefore cost, in reality, "only" 340 million euros.
For the purposes of the demonstration, we will not take into account the indirect revenues: the competitions that the club could win thanks to him, the TV rights, the sponsors or the

attractiveness that the arrival of such a player could have for the Parisian club with VIPs. We will focus on the revenue generated directly by Neymar.

Merchandising and image rights

In terms of merchandising, first, it can be estimated that the player will sell 400,000 jerseys flocked to his name per year, or 1,200,000 over three years. The flocked jersey being sold 140 euros, sales could reach 168 million over three years and the net sum collected by the Parisian club thanks to Neymar could be valued at 56 million euros or about a third of the total price of sales in question. The remaining two-thirds usually go to the OEM. For the record, when he arrived at Manchester United, Paul Pogba has sold 220 million euros of jerseys flocked to his name.
To this amount should be added the other derivatives of the club and the other rights attached to the image of the player, that the PSG could cash and that we could evaluate to 15 million euros per year, to stay on low numbers. We would then get another 45 million euros over three years.

A necessarily profitable transaction

If we add to these sums the transfer indemnity that the PSG will receive for the resale of Neymar three years later, assessable at least 250 million euros at constant inflation, we understand that in total, Neymar will have cost 340 million euros to PSG and will have reported ... 351 million euros. Not counting indirect revenues. In other words, the player will certainly "cost" expensive at his redemption. But he will have also brought back a lot.
It is customary to say that if the expense is certain, the recipe is not. Perhaps. But in any case, we will understand that the investment in the transfer of a player is not what we believe. Because a transfer is not valued more than a decade ago. A player now represents, for a club, a salary cost, but also a source of income. Football has become a market. A global market.

Thierry Granturco, lawyer specialized in sports law

ANNEX 11 CONTRACT LAW - NEYMAR TRANSFER: WHAT IS A LIBERATIVE CLAUSE?

Brazilian striker Neymar has been playing at FC Barcelona since summer 2013.
REUTERS / Albert Gea

SOCCER. To recruit Neymar, PSG would be ready to pay the 222 million euros of the release clause of the Brazilian striker Barcelona. Decryption.
Beaten last summer with the transfer of Paul Pogba from Juventus to Manchester United for about 110 million euros, the record of the most expensive transfer in history could again fall in the coming days, with a potential arrival of Neymar at Paris Saint-Germain against 222 million euros. An operation made possible by the financial force of the Paris club, but especially by the release clause of the Brazilian striker FC Barcelona, which is activated automatically with an offer equal to the amount set at the signing of the contract.

A fruit from Bosman

"Before the 1995 Bosman decision, the players had firm contracts that had to be honored until the end, and footballers could only be released with the agreement of their club and the amount of the transfers corresponded to the years of salary remaining, "explained to the Express Master Thierry Granturco, a lawyer specializing in sports law.
But since the Bosman decision, the European Court of Justice has ruled that players can move freely, leading to more transfers. "The clubs have used these release clauses with pre-established amounts to block the players.This is a release clause, but it looks more like a jail term.This system with abominably high amounts violates the rights of players" , says the lawyer.

A one-billion clause for Ronaldo

Already courted by the PSG in the spring of 2016, Neymar had finally decided to extend his contract with FC Barcelona until 2021. By signing this new lease last October, Neymar had benefited from a significant salary increase, while the Catalan club took advantage of the negotiations to "lock" the star by setting its release clause to 200 million euros. The contract was to increase this clause to 222 million this summer and 250 million next July.

Real Madrid inserts release clauses just as exorbitant. In June, Madrid President Florentino Pérez confirmed that Cristiano Ronaldo's one billion euros. Ditto for Karim Benzema.

Not a reflection of the value of the player

If the PSG seems to consider Neymar "worth" the amount of its release clause, these clauses do not reflect, in the vast majority of cases, the value of the players. "It is rather to exclude some footballers from the market by making them not 'buyable', says Thierry Granturco, which quotes Jérémy Mathieu as an example. While the 33-year-old French defender was still under contract with Barça for a year, the Catalan club let him engage with Sporting Portugal without receiving a transfer fee at the start of the summer. "Sporting has put a $ 50 million release clause in its contract when it is not worth it at all.We are dealing with an off-market and wacky clause.Nobody will pay this amount and the player can not be transferred. This is a roundabout way of getting back to the pre-Bosman situation, "says the lawyer.
Managers work that way to be sure to stay in control of sales. Either they decide to accept an offer lower than the amount of the release clause but that suits them, or they are forced to sell but against the sum they initially estimated as allowing them to navigate. "Previously, a player was only a burden between the cost of the transfer and the salary.For a few years, it is also a product.With the rights to image transferred to clubs, derivatives and resale, some players bring in more money than they cost, like Neymar, Barcelona does not want him to leave because the Brazilian is a source of income, "decrypts Thierry Granturco.

Prohibited clauses in France

But if these release clauses exist in most major European leagues, they are prohibited in Ligue 1. "The Professional Football League (LFP) considers them illegal in relation to French social law, so it does not validate any contract containing such clauses, "reveals the lawyer.
In France, the duration of contracts can not exceed five seasons, but the labor code prohibits the unilateral termination of a fixed-term contract before its term. "On the other hand, the big clubs of Ligue 1 sometimes sign agreements under private seal, not subjected to validation of the LFP, with an agreement on a compensation of departure", still specifies Thierry Granturco. A privilege reserved for the stars of the French championship. Like Neymar in a few days?

APPENDIX 12 CONTRACT LAW - A LAWYERS 'COMPANY CONDEMNS A HAND-BALANCER FOR ABUSIVE BREACH OF A MANAGEMENT MANDATE

Friday, 08 September 2017 17:18 | | |

In October 2012, a law firm entered into an exclusive two-year term with a professional handball player to assist and advise her in the negotiation and drafting of the employment contract and any other contract that may be necessary to her or / and incidental in relations with his employer club.
In April 2013, the player entered into a fixed-term employment contract with a club.
In January 2014, the player terminated her mandate with the law firm before extending her employment contract with her club for one more year in March.
The law firm summoned the player to the Bordeaux magistrate's court in payment of various sums of money in the form of eviction compensation and compensation for her non-pecuniary damage.

By judgment of March 14, 2016, the Court dismissed the law firm considering that the contract concluded with the player did not meet the prescriptions of the article L222-17 of the sport code and "had to be considered null and not written in that the amount of the remuneration of the council could not be known precisely and that in addition the contract signed was silent on the point of knowing who remunerated the sports agent ".
The law firm appealed this judgment.

By judgment of 5 September 2017, the Court of Appeal of Bordeaux invalidates the judgment undertaken by retaining:
- on the one hand that the player had decided to revoke the exclusive mandate binding it to the law firm early without recourse to a fault of his co-contractor or a case of force majeure.
- on the other hand that the sanction provided for in case of unjustified termination of the mandate was perfectly clear and precise, namely the payment by the player of a percentage of 8% H .T. the amount of the contract concluded (on the basis of gross salary, annual bonuses and benefits in kind) and by year of contract.

The player is therefore ordered to pay the law firm the sum of € 7,027.20 for the eviction compensation in addition to € 3,000 under Article 700 of the Code of Civil Procedure..

CA Bordeaux, 05-09-2017, n° 16/02312

AVOCAT MANDATAIRE SPORTIF

APPENDIX 13 CONTRACT LAW - THE HIRING PROMISE DOES NOT VALUE CDD IN THE ABSENCE OF BEING RETURNED WITHIN THE TIME PERIOD BY THE PLAYER

Monday, 11 September 2017 17:17 | | |

In 2012, Deon FOURIE, professional rugby player, was approached by the professional sports company Rugby Club Toulonnais to sign a fixed-term employment contract.
The CTN sent a promise of employment to the player that the latter returned signed to the club on August 20, 2012.
By e-mail of 30/08/2012, the president of the club indicated to the agent of the player that he did not intend to give a favorable response to his proposal.

The player challenged this decision before the Labor Court of Toulon.

According to him, the promise of hiring signed and returned to the Club was worth a contract of employment to the extent that this promise specified the proposed employment and the date of taking office.

By judgment of 09/12/2014, the Labor Court of Toulon dismissed the player of all his claims.

The latter appealed against this judgment to the Social Chamber of the Court of Appeal of Aix en Provence and asked the club to pay the wages that should have been paid to him if his employment contract had come to an end, either € 127,600.

In defense, the CTN sought confirmation of the judgment undertaken, recalling that the period of validity of its proposal had a deadline of 24 August 2012.
According to the Club, the player did not report proof of having returned the proposal within the set deadlines.
She also pointed out that the player's agent made a counter-proposal on August 3 and 17, 2012, rendering the initial offer null and void.
In the alternative, the CTN stated that the proposal made to the player did not constitute a promise to hire in the absence of a clearly identified addressee.
After recalling that "the promise of hiring, since it is sufficiently precise and is addressed to a specific person with mention of the nature of the job and the date of taking office, is analyzed in a real unilateral commitment to provide employment that requires the employer to the recipient of the promise ", the Court of Appeal of Aix-en-Provence, according to a judgment of September 8, 2017 finds that in the the RCT had indeed sent a promise of employment to Deon Fourie insofar as the proposal (addressed to the agent of the player) included mention of the function performed, the duration of the contract, the remuneration but also the benefits in kind provided in return for the work provided.

The Court notes, however, that in order to be valid, this proposal must fulfill the following cumulative conditions:
- promise returned to the club signed by the player no later than August 24, 2012 inclusive,
- medical examination establishing a complete absence of cons-indication to the practice of rugby before the contract takes effect,
- player free of any commitment of the same nature for the proposed duration.
On the first of the conditions laid down by the Club, the Court notes that the player "does not provide evidence of the actual sending of this promise to hire before August 24, 2012 to the professional sports company Rugby Club Toulonnais".

As a result, the condition precedent of acceptance was not fulfilled within the contractual deadline, the promise of employment of the professional sports company Rugby Club Toulonnais ceased, according to the Court of Appeal, to produce its effects.

The judgment rendered by the Conseil de Prud'hommes is accordingly confirmed and the player sentenced to pay the Rugby Club Toulonnais the sum of € 2,500 under Article 700 of the Code of Civil Procedure.

CA Aix-en-Provence, 08-09-2017, n° 15/00871

ANNEX 14 CONTRACT LAW - BREAK OF HIRING PROMISE: COURT OF CASSATION OPERATES BETWEEN OFFER AND PROMISE

Thursday, 21 September 2017 18:00 | | |

In 2012, Messrs. Douglas FLETCHER and Adriu DELAI, professional rugby players, were approached by SASP Union Sportive Carcassonnaise.
In 2012, they received SASP Union Sportive Carcassonnaise, a contract offer for the 2012/2013 and 2013/2014 seasons.

These agreements, referred to as the "employment contract of a professional rugby player", provided:
- a commitment for two sports seasons: 2012/2013 and 2013/2014,
- gross monthly remuneration for the 2012/2013 and 2013/2014 seasons,
- the provision of housing and a vehicle for the duration of the contract,
- a start of activity fixed on July 1st, 2012.

However, they received from the president of SASP Union Sportive Carcassonnaise, a letter dated July 4, 2012, warning him of "the impossibility of following up this contact" and "the absence of a document signed by him certifying his commitment.

They then seized the industrial tribunal of Carcassonne to see that a promise of employment had been concluded with the SASP Union Sportive Carcassonne and to obtain the condemnation of the club to the payment of damages for the rupture of their employment contract.

In a judgment dated September 17, 2013, the labor court held that the document entitled "employment contract" was indeed a promise of employment which had however been broken by the rugby club for legitimate reason so that it was necessary to dismiss the players of all their demands.

Both players then appealed this decision arguing that the offer they had received from the club were firm offers of employment contract, specifying the proposed job, the compensation as well as the date of taking office.

By judgments of 1 June 2016, the Montpellier Court of Appeal allowed the appeals formed by the players and considered that the rupture of the promises of hiring had intervened at the initiative of the company, not important that the contracts of employment n have not started to run.
The Club appealed on points of law in both cases.

By judgments of 21 September 2017, the Social Chamber of the Court of Cassation breaks and annuls the judgments on the following grounds:
"Whereas to condemn the employer to the payment of a sum as an abusive breach of the employment contract the judgment holds that it results from an email sent, on May 25, 2012, by the secretariat of the club that a promise of employment was forwarded to the agent and representative of the rugby player, that the agreement provides for the proposed employment, the remuneration and the date of taking office, so that this writing is indeed a promise of hiring a contract of employment, that to the extent that the player accepted the promise of employment it resulted that a contract of employment had been formed between the parties and it does not matter that the rugby club has finally given up hiring the player, even before

the signing of the contract by the player, that the promise to hire binds the employer even if the employee has not shown his agreement.
That ruling in this way, without finding that the act of May 25, 2012 offered the player the right to opt for the conclusion of the employment contract whose essential elements were determined and whose formation lacked only his consent, the court appeal violated the abovementioned texts ".

The Social Chamber makes a distinction, under the prism of the ordinance n ° 2016-131 of February 10th, 2016 on the reform of the law of the obligations, between offer of contract of work and unilateral promise of contract of employment.
If the offer of employment contract can no longer be retracted once it has reached the addressee, the opposite is true of the unilateral promise of an employment contract which requires, in order to be valid, the consent of the beneficiary of the employment contract. offer.
It considers that in not making such a distinction, the Court of Appeal of Montpellier violated the provisions of the aforementioned ordinance.

These cases will be examined again by the Social Chamber of the Court of Appeal of Toulouse

ANNEX 15 CONTRACT LAW - CONSEQUENTIAL DAMAGES CAUSED BY THE BREACH OF THE MANDATE OF COMMON INTEREST CONTRACT

Thursday, 14 December 2017 12:20 | Written by Antoine SEMERIA | | |

A licensed agent licensed by the French Football Federation signed a mandate of common interest with a professional football player on May 2, 2011.
This mandate was regularly renewed on September 15, 2012 and on September 25, 2013.
The duration of this last term was fixed at two years.

On February 24, 2014, the player decided to prematurely terminate this mandate by reproaching the agent for a "lack of professionalism".

The agent applied to the Tribunal de grande instance Metz to try the abusive and unjustified breach of the mandate concluded on 25 September 2013.

By judgment of May 12, 2016, the District Court of Metz ruled that the early termination on February 24, 2014 of the contract of common interest of September 25, 2013 was abusive and sentenced the player to the payment of a sum of € 8,000 for the loss of opportunity suffered.

The officer appealed this judgment.

To confirm this judgment, the Court of Appeal of Metz, according to a judgment of December 7, 2017, considers that the player was assured of his situation with the FC Metz until June 30, 2016 (duration of three seasons of the 1st July 2013 to June 30, 2016) without having to resort to the intervention of his sports agent whose contract expired on September 25, 2015

The Court approves the first judges in that they considered that the abrupt termination of old and renewed contractual relations had caused the agent moral damage both because of its vexatious nature and in terms of undermining its image vis-à-vis other players and other French or foreign football clubs.

According to her, "the compensation of 8000 euros arbitrated by the court must be regarded as adequately compensating this type of damage".

The agent claimed the payment by the player of a sum of 130,000 €.

CA Metz, 07-12-2017, n° 16/02183

AGENT SPORTIF

SCHEDULE 16 CONTRACT LAW - CONDEMNATION OF A SPORTY ADVOCATE ATTORNEY FOR THE IMAGE AND ON BEHALF OF HIS OLD CUSTOMER

Thursday, 01 February 2018 12:45 | | |

In 2011, a professional football player signed an agreement with a sports representative to represent him and assist him in the study, writing and negotiation of all his contracts as a professional sportsman, in the whole world.
The effects of this agreement ended in 2012.

A dispute arose over the payment of fees claimed by the lawyer at the end of this contract.
Another dispute arose because of the use by the sports representative lawyer, after the expiry of the warrant, of the image and the name of the player on his website for promotional purposes.
In 2013, the player gave notice to his former sports representative lawyer to stop showing up and put an immediate end to "any step taken by fraudulently using this quality".
By bailiff's act of September 6, 2013 he ordered him to immediately and permanently remove from his website any image representing him and any direct or indirect reference to his person.
The player has sued his former sports representative attorney before the court of first instance of Nanterre for damages for his moral and pecuniary damages due to infringements of his right to the image and his name.

By judgment delivered on January 26, 2016, the tribunal de grande instance of Versailles sentenced the lawyer to pay the player the sum of 10,000 euros in compensation for the non-pecuniary damage suffered as a result of the infringement of the image right, the sum EUR 10,000 in compensation for the non-pecuniary damage suffered as a result of the infringement of the right to the name and the sum of EUR 5,000 pursuant to Article 700 of the Code of Civil Procedure,
The Sporting Lawyer appealed this judgment.

By judgment of 26 January 2018, the Court of Appeal of Versailles confirms the judgment on the main ground that the use of the image and the name of the player by the sports representative lawyer for personal purposes "have not been expressly authorized "and that" this exploitation was noted by the player while the mandate given to the lawyer had ended and that a serious dispute opposed them as regards the fees invoiced by the latter ".
The Court adds that the insertion on the website of the sports attorney hyperlinks allowing the reproduction, dissemination and exploitation of the image and the name of the player without his authorization "has infringed both the law which the latter has on his image that his right to the name ".
With regard to the compensation of the moral damages of the player, the Court considers that it was exactly evaluated by the court "with two sums of 10 000 euros".
The lawyer is ordered to pay 5000 € of additional irreversible costs to the player under Article 700 of the Code of Civil Procedure

CA Versailles, 26-01-2018, n° 16/00669

AVOCAT MANDATAIRE SPORTIF

ANNEX 17 CONTRACT LAW - NULLITY OF THE TERMS OF REFERENCE BETWEEN A FRENCH NON-OFFICER OF THE FFF LICENSE AND A FOOTBALLER

Tuesday, 20 February 2018 11:29 | | |

In 2014, a French national, holder of an agent's license issued by the Chadian Football Federation, concluded an exclusive mediation contract with a professional football player for a period of two years.
Prior to the signing of this contract, the holder of the Chadian agent's license concluded a partnership agreement with a licensed agent of the French Football Federation.
In 2015, the player signed a professional player contract with the Lille Olympic Sporting Club (LOSC) without the intermediary of the Chadian agent but through another agent.

The agent not holding the French agent's license then had the player summoned before the Lille District Court in order to see him ordered to compensate him for the financial loss resulting from the exclusivity clause of the contract of mediation.
By judgment of 8 September 2016, the court declared null and void the contract of mediation for lack of capacity for the applicant to subscribe a sports agent contract on French soil.

Appeal of this judgment was lodged.

By judgment of February 15, 2018, the Court of Appeal of Douai confirms the judgment undertaken for the following reasons:
"Article L.222-16 of the same Code, which is the subject of a long debate between the parties, provides that the national of a State which is not a member of the European Union or a party to the Agreement on the European Economic Area and which does not hold a sporting agent's license mentioned in Article L.222-7 must enter into an agreement with a sports agent whose purpose is to present an interested party the conclusion of a contract mentioned in the same article L.222-7.

(...)
It (this provision) therefore applies only to nationals of a non-member State of the European Union or of a State not party to the Agreement on the European Economic Area and does not concern Mr. Z who is of French nationality.
(...)

Mr Z, who is a French national and does not hold a sports agent license issued by the F.F.F. can not regularly exercise the activity of sports agent in France (...).
However, it was in France that he contracted with Mr Y and carried out a sporting agent activity for his benefit, even though, as he claims, it was likely to lead to a day on a contract with a foreign club. He was therefore not entitled to conclude a contract such as that which he had with Mr Y, which he declares to be in conformity with the provisions of Article L 222-7 of the Sports Code and therefore considers that he is subject to the French law, so that this contract must be held null and void, that it can not validly invoke it and that it is necessary to confirm the judgment undertaken in that it rejected all its requests " .

The solution would probably have been different if the agent had been a Chadian national and not simply the holder of an agent license issued by the Chadian Football Federation.

Sentenced in the first instance to the payment of a sum of € 3,000 under Article 700 of the Code of Civil Procedure, the Chadian agent is again appealing for € 3,500.

CA Douai, 15-02-2018, n° 16/06784

Football Agent sportif Mandat

Thierry Granturco 27 février 2018 27 Vues

Blur and DIY. These are the two udders of relations between football clubs, players and agents, in terms of transfers. Operations that give rise to the greatest contractual inventiveness in an otherwise uncertain regulatory framework, depending on whether the transfers take place in France or abroad. Explanations.

On November 1, 2011, Valenciennes FC (VAFC) mandated agent Christophe Mongaï to negotiate the contract of goalkeeper Nicolas Penneteau. The agent must receive a commission of € 84,800 each season, provided that the player signs an extension of contract, that this extension is validated by the Professional Football League (LFP) and the player remains well in the game. team of the Valenciennes club.
The 2013/14 season is going according to plan. But at the end of this season, the VAFC is brutally relegated to Ligue 2, and Nicolas Penneteau leaves Valenciennes for Sporting de Charleroi (Belgian Ligue 1). This does not dissuade Christophe Mongaï to send a bill to the club for the 2014/15 season, which the VAFC refuses to pay.
Duke contracts

The agent then assigns the club before the commercial court of Valenciennes who dismissed his claim by a judgment dated April 19, 2016. Christophe Mongaï appealed this decision before the Court of Appeal of Douai. Mal takes him since, on September 14, 2017, this last confirms the judgment of the court of commerce in all its provisions.
As a reminder, the practice is that an agent commission is due on the totality of the wages to be paid to the player, calculated on the total duration of his contract. As an illustration, if a player signs for 4 years in a club, he is a priori owed 48 monthly salary. The agent can therefore, in this case, claim a commission of 6%, for example, calculated on the totality of this sum.
The problem is that players are very rarely at the end of their contractual commitment, to be sold by their club against a transfer fee. A transfer fee that would not be due to the club if the player went to the end of his contract.

But contracts anyway

The consequence for relations between clubs and coaches is obvious: if a player signs for four seasons but leaves after the third, why pay the agent a commission calculated over four seasons? This opens the door to all sorts of challenges. This was the subject of the discussion between VAFC and the very experienced Christophe Mongaï.
In this case, the Douai Court of Appeal did not wish to depart from the provisions of the contract. Although the club has a certain power in the decision to transfer a player before the end of its contract, and even a financial interest in doing so, the court found that this decision

was also based on the player's wishes. And that there was therefore no abuse in the circumstances.

Christophe Mongaï was dismissed from his request. And meanwhile, Nicolas Penneteau continues to make the heyday of Sporting Charleroi

APPENDIX 19 CONTRACT LAW - THE SOFIANE BOUFAL AGENT DEBITS ITS CLAIMS AGAINST THE PLAYER

March 2, 2018

Thierry Granturco 2 mars 2018 74 Vues

The Court of Appeal of Douai delivered a judgment on February 15, 2018 which returns on the conditions of exercise of the profession of agent of players in France, when an agent holds a license delivered by a foreign federation. This judgment allows us, at the same time, to highlight the new legislation that governs the activity of agents of football players in France.
Frank Welfringer, agent of French nationality but holder of a license of agent delivered by the Chadian Federation of football, concludes in January 2014 a partnership agreement with a dismissed agent of the FFF to be able to sign, on April 5, 2014, a mandate exclusive two years with the player Sofiane Boufal, who then evolves at SCO Angers.

But in January 2015, everything collapses. Sofiane Boufal joins the Lille club (LOSC), accompanied by another agent dismissed by the FFF. Franck Welfringer then reacts by assigning the player for redress before the Tribunal de Grande Instance (TGI) of Lille.

A strict case law

In a judgment dated September 8, 2016, the TGI de Lille dismissed Frank Welfringer, on the grounds that the Sport Code does not allow him to subscribe a sports agent contract on French soil, even through an agreement concluded with an agent dismissed by the FFF, since the latter option is only available to citizens of non-member countries of the European Union (EU) or the European Economic Area (EEA).

Frank Welfringer appeals to the Douai Court of Appeal. The judges recall from the outset that, according to the Sport Code, the activity of sports agent can be exercised in France by any natural person, regardless of nationality, but on the condition that this person holds a license issued by the FFF.
Moreover, since Mr Welfringer is French, he can not avail himself of the exception reserved for non-EU and EEA citizens who can work with agents dismissed by the FFF. The judges therefore confirm the judgment of the TGI Lille and dismiss the agent of all his requests.

This case law may seem strict. But it aims to prevent French people from obtaining agent licenses abroad, from extremely undemanding federations, to actually practice in France, through agreements with agents dismissed by the FFF.

A possible exception

This position has, however, been eased since the vote on the law on the ethics, transparency and competitiveness of French professional sports of February 15, 2017, which inserted in the Sport Code a new article L 222-15-1 , stating that:

"A national of a Member State of the European Union or of a State Party to the Agreement on the European Economic Area authorized to carry on the activity of sports agent in one of those States may conclude a convention with a sports agent whose purpose is the presentation of an interested party to the conclusion of a contract mentioned in Article L. 222-7, within the limits of an agreement during the same sports season.
The presentation agreement referred to in the first paragraph of this article shall be sent without delay to the competent delegate federation. "

In other words, an agent holding a license issued by a foreign federation may only perform one mission in France. If he wishes to carry on his activity more widely in France, he will have to comply with the rules of the Sport Code and pass under the caudine forks of the FFF to obtain a license.

For its part, Sofiane Boufal is the heyday of the English club Southampton.

APPENDIX 20 CONTRACT LAW - EXTENSION OF THE CONTRACT OF D.PAYET TO THE ASSE: THE COUR DE CASSATION WELCOMES THE APENDMENT OF THE AGENT

Wednesday, 28 March 2018 11:16 | | |

According to the contract of June 4, 2007, the company ASSE Loire wishing to see Dimitri Payet join his professional football team, has given a mandate to his agent to negotiate the terms of his engagement.
Dimitri Payet signed a player contract with ASSE on 1 July 2007.
By act of July 10, 2009, the ASSE entrusted to the agent of the player the mission to negotiate on his behalf the extension and the retention of the contract of Dimitri Payet until June 30, 2013.
By contract of 20 July 2009, Dimitri Payet extended his contract with ASSE until 30 June 2013.
On June 28, 2011, Dimitri Payet left ASSE to join the Lille football club.

By act of July 5, 2011, the agent and his company have assigned the company ASSE Loire for the purpose of condemnation to pay them various compensation for the fees provided for in the mandate contract of July 10, 2009 (€ 90,417.60 for the presence of the player at the club on 1 September 2010 in addition to the sum of € 717,600 as damages and interest in compensation for his loss resulting from the transfer of Dimitri Payet to Lille).
The company ASSE Loire raised an exception of nullity of the mandate of July 10, 2009.
By judgment of December 10, 2014, the district court of Saint-Etienne condemned the company ASSE Loire to pay to the company agent, the sum of 75 600 € HT for the fees due in addition to that of 300 000 € to damages for loss of opportunity to receive remuneration for the transfer and rejected any other claim by the parties.

The company ASSE Loire has appealed this judgment by maintaining its application for nullity of the mandate signed between the Club and the agent on the basis of Article L.222-10 of the code of sport which prohibits the practice known as "double mandate ".

The Court of Appeal of Lyon, according to a judgment of September 6, 2016, accepted the Club's requests and pronounced the nullity of the mandate due to the intervention of the agent on behalf of both parties to the contract.
The agent company appealed on points of law, considering in particular that the Court of Appeal had ruled on grounds that were unfit to establish that it had been mandated by Payet for payment with the company ASSE Loire a contract relating to the paid exercise of a sports activity.
According to her, nothing allowed me to the Lyon Court of Appeal to retain the existence of a mandate between her and the player, the mere dissemination of images of the two parties on social networks not being likely to demonstrate the opposite.
The first civil chamber of the Court of Cassation, welcomes this argumentation and breaks in all its provisions the aforementioned judgment:

"Whereas, to pronounce the cancellation of the contract of mandate of July 10th, 2009, the judgment retains that it results from the communicated documents (file of press, Profile Linkedin ...), that M. ... is indeed the 'sports agent since 2007, not just a family friend who would volunteer advice to this player, so he acted on behalf of both parties to the same contract, in violation of Article L. 222-10 of the Sport Code "

That being determined thus, for motives improper to characterize the existence of a mandate entrusted for payment by M. to M. with a view to the conclusion of a contract relating to the paid exercise of a sports activity , the court of appeal deprived its decision of legal base with regard to the aforementioned texts "
The case will have to be examined again before the Paris Court of Appeal.

Cass. civ. 1, 21-03-2018, n° 16-23.985, F-D

Football Agent sportif Mandat

APPENDIX 21 CONTRACT LAW - A FORMER PLAYER OF AJ AUXERRE CONDEMNE TO PAY TO HIS AGENT MORE THAN 50 000 €

Wednesday, 10 October 2018 13:56 | Written by Antoine SEMERIA | | |

By a sports agent contract signed on October 30, 2013, a professional football player has entrusted to a company of agents, for remuneration and exclusivity, the management and defense of his interests for all that directly or indirectly concerns his football career.
This sports agent contract was for a period of 24 months, running from the date of its signature to October 30, 2015.

On July 22, 2014, the player notified the agent company that he was terminating with immediate effect the
contract concluded on October 30, 2013, on the grounds that she had not been able to submit an official work contract from a club, while he was at the end of the contract with AJ Auxerre.

By letter of 6 August 2014, the company heard its grievances, having communicated to it several offers of contracts.

The player has finally signed only a contract of employment for a Ukrainian club.

The agents' company then assigned the player as payment for the commission he would have had to collect if the contractual commitments had been respected.

By judgment of 16 January 2017, the tribunal de grande instance of Auxerre considered that the warrant signed on October 30, 2013 had been revoked by the player without a legitimate cause and consequently sentenced the player to pay to the agent company the sum of 53.053 euros, with interest at the legal rate as from 16 December 2014.

The player appealed to the Paris Court of Appeal to have the wrongful non-performance of the company in its obligations noted.

After having recalled that a mandate of common interest could be revoked only by the mutual consent of the parties, or according to the terms and conditions specified in the contract or for a legitimate cause recognized in court, the Court finds that the player "fails to demonstrate that the efforts and the steps of the agent to satisfy his obligation of means were insufficient and as such faulty ".

The Court accordingly confirms the unlawfulness of the Athlete's termination of the warrant and ordered him to pay a sum of € 53,053 in respect of the commission that the agent would have had to collect in addition to € 3,000 in additional costs. Article 700 of the Code of Civil Procedure.

CA Paris, 5, 5, 27-09-2018, n° 17/04616

ANNEX 22 CONTRACT LAW - RECOGNIZING THE LEGAL VALUE OF MAILS AS AN ELECTRONIC FRAMEWORK

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https://www.usine-digitale.fr/article/reconnaissance-de-la-valeur-juridique-des-mails-en-tant-qu-ecrit-electronique.N743534

This week, Eric A. Caprioli, a lawyer at the Court, talks about regulation and value legal electronic writings by exchange of mails.

Electronic transactions are in all areas of activity. And since the law of March 13, 2000, the electronic writing had the same strength as the one on paper. A new step was taken in a decision of the Court of Cassation (Cass Civ 1, July 11, 2018 n ° 17-10.458) concerning the recognition of electronic writing.

This judgment recognizes, on the one hand, the exchange of e-mails as proof of the meeting of the offer and the acceptance if the law does not impose a single legal act (in this case a contract relating to the exercise paid for a sports activity) and, on the other hand, the validity of the e-mail message may by nature constitute the writing that concentrates the respective commitments of the parties.

An e-mail exchange regarding sporting mandates

A company holding a sporting agent's license has assigned another company (a football club) in payment of a sum representing the amount of a commission that it considered to be due to it under a mandate from which this company to negotiate the transfer of a player. She also requested payment of damages. Article L. 222-17 of the Sport Code stipulates that the contract must be written and include certain mentions. Any agreement contrary to the text is deemed null and unwritten. In the present case, the mandate resulted from an exchange of e-mails between the sports agent and the professional sports company.

Dura lex, sed lex

On the merits, the 1st civil chamber of the Court of Cassation censored the appeal judgment in that it had retained that the emails exchanged are not grouped into one and the same document containing the mandatory information provided for in Article L. 222-17 of the Sports Code. According to it, that article does not require that the contract be established in the form of a single written act. "Whereas, in order to reject the applications of AGT UNIT, the judgment holds that e-mails exchanged by the parties, which do not include in a single document the mandatory particulars provided for in Article L. 222-17, are not not in accordance with the provisions of this text;
By ruling thus, while Article L. 222-17 of the Sport Code does not require that the contract whose legal regime it establishes be established in the form of a single written act, the Court of Appeal , adding to the law a condition that it does not include, violated the aforementioned text ".

The solution is absolutely right, let's not forget the famous saying "The law is hard, but it's the law". It is also a reminder of the content of e-mail that can characterize a legal commitment. The judgment of July 11, 2018 goes even further because it is not a question of one, but of several emails which make it possible to establish the legal act binding the parties.

The solution is also that in commercial (B2B), according to Article L. 110-3 of the Commercial Code, the proof can be reported by any means, including the content of several electronic writings. Lastly, with regard to the non-requirement of an electronic signature, the decision of 11 July 2018 draws attention.

Applying an electronic signature is not always necessary

In the judgment of 11 July 2018, the Court of Appeal held, on the other hand, that an electronic message could not by nature constitute the writing concerning the respective commitments of the parties. However, the Supreme Court, on the basis of Articles L. 222-17 of the Sport Code and 1108-1 (now Article 1174) of the Civil Code, considers that "it follows from the last text when a writing is required for the validity of the 'a legal act, it may be established and kept in electronic form under the conditions provided for in Articles 1316-1 and 1316-4 (now 1366 and 1367) of the then Civil Code' and to specify 'Whereas, in order to rule as it does, the judgment holds that an electronic message can not, by nature, constitute the writing concentrating the respective commitments of the parties; That ruling thus, the court of appeal violated the aforementioned texts ".

Therefore, according to the Court, the exchanged mails allow to fulfill the requirements of the writing: duly to identify the persons whose act emanates and to guarantee its integrity (article 1316-1 of the Civil Code, become 1366 of the Civil Code) .

The facts recall two judgments of the Court of Appeal of Caen of March 5, 2015 (n ° 13/03009 and 13/03010) which had dedicated the electronic mandate. However, the validity of the warrant was suspended on the validity of the signature of the latter.

This was not the case in the case of 11 July 2018. An email also fulfills the conditions of Article 1316-4 of the Civil Code (now Article 1367 of the Civil Code). "The signature necessary for the perfection of a legal act identifies its author. It manifests its consent to the obligations arising from this act. (...) When it is electronic, it consists of the use of a reliable identification process guaranteeing its connection with the act to which it attaches (...) ". But the contrary proof of the absence of the requirements of the writing and the signature could have been brought, which was not the case.

Adopt a prudent contractual policy

This judgment recalls the principle of probative equivalence between the media of writing (electronic and paper). They have the same probative force but also regarding the validity of a contract (all the conditions of article L. 222-17 of the Sport Code being fulfilled).

The Court of Cassation has been pragmatic. The decision finally encourages the use of electronic writing which is an asset in business relations (reliability, speed, simplified formalism ...).
However, to avoid being surprised by a business partner who is aware of the case law, vigilance must be exercised especially when contractual commitments are translated into e-mails. All interprofessional exchanges should be given special attention. Companies will have to raise their employees' awareness of this issue by providing a reasoned use of their electronic communication tools. A coherent archiving policy in order to keep all the proofs of the B2B exchanges (mails, establishment of files of proof) will also have to be put in place.

Eric A. CAPRIOLI, Attorney at Law, Doctor in Law, Member of the French Delegation to the United Nations, Vice-President of the FNTC and CESIN. Law firm member of the

Network JurisDefi.

Football Agent Sportif Mandat Mandat électronique

ANNEX 23 CONTRACT LAW - THE "ELECTRONIC" MANDATE CONCLUDED BETWEEN AN AGENT COMPANY AND A FOOTBALL CLUB WAS VALID

Wednesday, 25 July 2018 09:41 | Written by Antoine SEMERIA | | |

A sports agent company sued the company ASSE Loire for a certain sum representing the amount of a commission that it considered due to him under a mandate received from that company for the purpose of negotiating with the club Dortmund's German football transfer a player, as well as in damages allowance.

By judgment of 10 November 2016, the Lyon Court of Appeal rejected the claims of this agent company on the grounds that "an electronic message can not, by nature, not constitute the writing concentrating the respective commitments of the parties, required by Article L. 222-17 of the Sports Code.
According to the Court, e-mails exchanged by the parties did not consolidate in a single document the mandatory information provided for in Article L. 222-17, in violation of this text.

The agent company lodged an appeal on points of law arguing that the company ASSE Loire could not claim that the mandate in dispute did not comply with the rules set out in the sports code on the sole ground that it had been concluded by an exchange of documents. e-mails, provided that they included all the elements required by those provisions.

The appeal is allowed.

According to the judgment of 11 July 2018, the first civil chamber of the Court of Cassation breaks and annuls the judgment rendered by the Lyon Court of Appeal on the following two grounds:

- "That in so ruling, while Article L. 222-17 of the Sport Code does not require that the contract whose legal regime it establishes be established in the form of a single written act, the court of appeal, adding to the law a condition that it does not include, violated the text referred to above "
- "Whereas, to rule as it does, the judgment holds that an electronic message can not, by nature, constitute the writing concentrating the respective commitments of the parties;
That ruling thus, the court of appeal violated the aforementioned texts "

The case is referred to the Grenoble Court of Appeal.

Cass. civ. 1, 11-07-2018, n° 17-10.458

SCHEDULE 24 CONTRACT LAW - PLAYER AGENTS AND LAWYERS SPORTING OFFICERS: WRITTEN OR NOTHING

Thierry Granturco Il y a 3 heures 16 Vues

A long, intricate river Relations between professional football clubs and players' agents are often tumultuous. It happens regularly, for example, that the football clubs are solicited by several agents ... for the same player! Agents who are all competitors, and all of whom consider themselves to be duly mandated.
To distinguish true from false, clubs often require agents to prove the existence of their mandate by writing. But the question that immediately arises is: what form should this writing take to be valid?
This is the question just decided by the Civil Chamber of the Court of Cassation, in a judgment dated February 20, 2019, about another category of intermediaries, the attorneys sports, and concerning another sport: handball. But the solution adopted by the Court of Cassation can be extended to all intermediaries, and to all sports.

How did I argue ... with my agent

The story is simple. And, alas for the agents, relatively banal. A professional handball player terminates the contractual relationship with his attorneys sports agents, just a few days before extending his contract in his club.
His lawyers immediately summoned him to court to obtain an eviction indemnity. What they get before the Court of Appeal of Bordeaux, by a judgment dated September 5, 2017.
Tenacious, the player appeals in Cassation. On what basis? She considers that the sports contract concluded with her lawyer should have specified in a clear and precise manner, the remuneration of the agent.
However, the agreement concluded with his lawyer is limited to providing that "a fee agreement may be signed between the parties, by deed under separate private seal", and that "the cost of the intervention of the counsel shall be of a maximum 8% of the gross amount of the contract ". The player therefore considers that she is nil under article 10 of the law of 31 December 1971.
It is this argument that the Court of Cassation did not follow. For several reasons.

Whatever the form, a writing is a written

The Court of Cassation considers, in the first place, that if Article L. 222-17 of the Sports Code indeed requires a writing, on pain of nullity, thereby making the sports agent's contract of employment a solemn contract, the The form of this writing is not specified.
This decision is in accordance with its own jurisprudence. In the past, the Court has held that a mere exchange of e-mails may be sufficient to prove the existence of a warrant.
The Court of Cassation then considers that if the law of 6 August 2015, known as the "Macron Law", stipulates that, with some exceptions but not applicable in this case, "the lawyer concludes in writing with his client an agreement of fees, which specifies, in

particular, the amount or the method of determining the fees covering the foreseeable measures, as well as the various expenses and disbursements envisaged ", no form is, there either, required. The convention need not be concluded by a single act. It can be a succession of acts.

A situation that remains precarious

In conclusion, a sports intermediary agreement can therefore freely determine the obligations of the parties, while referring to another writing in terms of the amount of commissions or the method of calculation of the latter.
The legislator did indeed want to regulate the professions of agent and sports attorney. It certainly clarified the conditions of their interventions, demanding that the mandate giving them power to act be concluded in writing. But he did not go so far as to determine the form that this writing must take. For this reason, he agreed with the provisions of the Civil Code in contractual matters. With great wisdom.
Still, this situation should not continue. The hardening of the conditions of practice of the professions of agent and lawyer sports agent remains a trend of substance. It is likely that in the more or less long term, the form of the conventions will be regulated in a much more finicky way. It is therefore advisable for all agents to prepare themselves. In sports law, it is never too early to adopt good practice.

Tags AGENT AVOCAT CONTRACT FOOTBALL HISTOIRE JOUEUR JURISPRUDENCE RÉGLEMENT

SCHEDULE 25 CONTRACT LAW - ADVOCATE SPORTOR: FORMALISM OF THE CONTRACT

MARCH 14, 2019

AVOCAT

PASCALE BRETON
LAWYER

The sports agent contract entrusted to a lawyer need not be established in the form of a single written act.

By convention of October 20, 2012, a professional handball player entrusted to a law firm an exclusive mandate of two years with a mission of assistance and legal advice in the negotiation and drafting of a contract and any other contract that may be necessary to him or / and incidental in the relations with his employer club.
In April 2013, the handball player was hired by a club. By LRAR of January 29, 2014, she terminated the mandate with ten days' notice. The following year, she signed the extension of her employment contract with the same club. The law firm assigned her in payment of an eviction indemnity.
The Bordeaux Court of Appeal granted the request of the law firm on September 5, 2017.
The player appealed on points of law, arguing that on pain of nullity, the sports contract with a lawyer must clearly and accurately specify the remuneration of the agent, without referring to another agreement for that purpose. In the present case, however, the "exclusive intervention agreement" concluded on 20 October 2012 did not specifically mention the amount of the law firm's remuneration but merely provided, as regards the remuneration of the sports representative, that "a fee agreement may be signed between the parties, by separate private deed" and that "the cost of the intervention of the board will be a maximum of 8% of the gross amount of the contract". Therefore, according to the sportswoman, by admitting that a lawyer could validly fix the amount of his sports agent remuneration by reference to another agreement, the court of appeal violated Article 10 of Law no. 1130 of December 31, 1971.
In a judgment of 20 February 2019, the Court of Cassation rejected the arguments of the player: Article 10 of the Act of 31 December 1971 does not require that the sports agent contract entrusted to a lawyer be established in the form of 'a single written act.

ANNEX 26 LAW OF CONTRACTS - THE JUDGMENT OF THE COURT OF LYON ON THE COMMON INTEREST WHICH LINKS A FOOTPRINT PLAYER AND HIS AGENT

Thierry Granturco Il y a 5 jours 8 Vues

Player agent stories end badly, in general. The relationship between players and their agents, two figures who love and hate each other at the same time, feed a large part of the judicial chronicle related to football. Here is a new demonstration.

In March 2004, the footballer Rachid Ghezzal, who then evolves at Olympique Lyonnais, entrusted exclusively the management of his career to Sonia Souid, agent company CSM Sport Entertainment France.
Concluded for a period of 2 years, the agreement provides for the payment of a commission of 10%, which is calculated on the gross income paid to the player by his club. But on August 18, 2004, only a few weeks later and in full summer market, Rachid Ghezzal changed her mind and dismissed Sonia Souid. He terminates his mandate contract by mail, with immediate effect.

"Common interest" against contractual egoism

Furious, Sonia Souid and the company CSM Sport Entertainment France counterattack. They assign the player to the Tribunal de Grande Instance (TGI) of Lyon. With an argument-club. According to them, the mandate given by a player to his agent must be considered as a mandate of "common interest". This is a category of contracts that can not be interrupted unilaterally. As a result, the plaintiffs claim not less than ... 350,000 euros in damages.
The TGI of Lyon begins by recognizing that under the terms of article 2004 of the Civil Code, the revocation of the mandate of an agent is quite free, except when there exists a mandate of "common interest", which is characterized " when the fulfillment of the purpose of the mandate is of interest to both parties ". In this case, the contract can not effectively be revoked unilaterally, except in two cases: if the contract so provides, or for a legitimate cause.

Together, anything is possible

In its judgment, the TGI Lyon believes that the contract uniting Rachid Ghezzal and Sonia Souid enters well in this category. He notes that there is no provision in the contract that allows unilateral termination, and that there is no legitimate reason either. And therefore condemns Rachid Ghezzal to pay 25,000 euros to CSM Sport Entertainment France, and 5,000 euros to Sonia Souid. Sums, however, far removed from the amounts requested.
The player has appealed this judgment, and caution must be exercised with regard to the final decision. But the interpretation of the provisions of the Civil Code made by the TGI Lyon is interesting. It is difficult to see how the mandate given to an agent by a footballer might not be of "common interest". In the current state of things, a player and his agent must therefore say yes together, or say not together. Unless their contract provides otherwise.

APPENDIX 27 CONTRACT LAW - PLAYERS AT ANY COST: WHEN CLUBS FORGET THE RULES ...

THE ANALYSIS OF MASTER THIERRY GRANTURCO

A great football club, they are first and foremost great players. The financial results of clubs depending on their sports results, so it is not uncommon to see them compete fiercely to attract talent. At all costs. And even at the price ... of a conviction in court.

Because this competition between clubs to attract talent is exercised, among other things, through players agents. And that's the rub. Particularly in France, where the profession of agent is regulated, and where the clubs, the players and the agents are sometimes tempted to circumvent the rules in force. Demonstration.

(Occupational hazard

In 2006, the player Alain Traoré is transferred from his Burkina Faso club to AJ Auxerre (AJA). To facilitate his arrival, the Burgundy club undertakes by an agreement dated January 2, 2006 to pay in three installments a "training allowance" to the company Planète Champion International which must, moreover, obtain all the documents relating to to the player and allow his affiliation to the AJA.

A first payment of 120,000 euros was thus made in July 2006. Six years later, in 2012, the company Planète Champion International claims the payment of the two installments remaining due, the player having made 25 matches as a professional team holder. The AJA refuses the payment, on the grounds that Alain Traoré has just been transferred to FC Lorient. The club believes to be released from any obligation following his departure.

But Planet International Champion does not hear it that way. The company files suit with the Tribunal de Grande Instance of Paris (TGI) which, by a judgment dated November 20, 2018, dismissed it, and decided to cancel the agreement of January 2, 2006, considering it as unlawful.

Why ? The judges simply point out that any person engaged in the remunerated activity of linking clubs and players must hold a sports agent license. Otherwise, the agreement is struck by absolute nullity.

Judgment of Solomon

At first, Planète Football International tries to plead that it acts as a sports association specialized in training. And that it simply requires the payment of a lump sum compensation related to the training of the player, as provided by the rules of FIFA. But she must quickly resolve to recognize being an agent, whose agreement with the AJA is null, for lack of having held a valid license at the date of signing.

In the process, the judges conclude that the parties to the agreement have grossly attempted to circumvent the public policy regulation on players' agents, attempting to conceal officer's fees behind an improbable training allowance. The circle is complete.

In the case of an unlawful cause, the agreement is void and payments not made are not due.

As for the payment of 120 000 euros already made, the TGI considers - not without malice - that the AJA having not ensured the capacity of Planète Champion International to act as an agent, the money ... must not not be reimbursed.

In fact, AJ Auxerre wanted to enlist Alain Traoré. To recruit him, his "advisers" had to be financially disinterested. Who, being legally not allowed to intervene as agents, could block the arrival of the player. It was therefore necessary to resort to a sleight of hand.

The AJA magician's talents will not have convinced the judges who reminded the parties, as well as the entire world of football, that there are rules for player transfers. On and off the field. Rules that are absolutely not negotiable.

APPENDIX 28 CONTRACT LAW - ALL WORK MERIT SALARY ... EXCEPT FOR FOOTBALL PLAYER AGENTS ANDY DELORT CASE

03/20/2019

Thierry Granturco

We know the saying "All work deserves pay". But in the world of sport, and more particularly in the world of players' agents, this statement is not at all self-evident. Demonstration.
On July 1, 2013, a famous French agent signed a contract with FC Tours, with the objective of finding a new striker for the club, in return for a commission equivalent to 10% of the player's gross annual salary. This is in accordance with Article L. 222-17 of the Sports Code, which limits the amount of the sports agent's remuneration to 10% of the amount of the contract concluded by the parties he has put in contact with.
The contract specifies, however, that "in case of transfer of the player during the performance of his contract, the agent will receive a commission equivalent to 10% of the amount of the transfer". Clearly, it provides that if the player must leave Tours for another club while under contract with FC Tours, the agent must collect 10% of the amount of the second transfer. And that's the rub.

10 percent ... and that's it!

On 23 July 2013, at the signing of forward Andy Delort at FC Tours, the agent commission only amounts to 8,400 euros.
But in the summer of 2014, when the player leaves Tours for Wigan, the transfer this time on ... 4 million euros. The agent claims the club 400 000 €. What FC Tours refuses to pay. A refusal that earned him to be assigned by the agent before the Tribunal de Grande Instance (TGI) of Tours.
Alas for the agent, on February 28, 2017, the TGI declares "null and unwritten" the clause of the agreement providing for a commission on the subsequent transfer of the player. He dismissed the complainant. A judgment confirmed in all its provisions by the Court of Appeal of Orleans, March 4, 2019.

The agent advises the player. But who advises the agent?

The Court held that by asking for a "droit de suite" on the transfer of the player, the agent negotiated a remuneration exceeding the 10% authorized by article L. 222.17 of the Sport Code.
Moreover, the magistrates consider that, at the end of this same article L.222.17 of the Code of sport, the remuneration of the sports agent is only due on the contract concluded by the parts "that he put in relation" . The remuneration can not therefore be based on sums resulting from agreements concluded between parties not put in contact by the sports agent, and this, on pain of nullity.
From the point of view of the agent, injustice is important. This contractual "arrangement" would have enabled him to be compensated for the added value he had brought to FC Tours

by allowing him to recruit Andy Delort, whom the club had traded at a high price when he was transferred to Wigan, and to be rewarded by Andy Delort, whose career he had launched. It has not happened.

This episode illustrates the difficulty of the profession of player of football players. And the need for agents to get advice. In this case, it might simply have been enough for the agent to have two separate agreements signed at the time of Andy Delort's initial transfer. One to settle his arrival in Tours, the other to settle the conditions of his departure.

In any case, this error will have cost his agent very dearly.

APPENDIX 29 CONTRACT LAW - NADAL, FEDERER, DJOKOVIC: HOW MUCH MUST I PAY TO PLAY A 250?

FEBRUARY 10, 2019 14:00

by NICCOLO INCHES | LECTURES 9253

It's no secret that the best in the world receive very rich fees to play tournaments such as the ATP 250 or 500. Roger Federer himself confessed during the last Australian Open, speaking from his "lite" programming to minor events which has allowed him his extraordinary longevity: "In 2004, just after my first title in Melbourne, my physical trainer Pierre Paganini advised me not to let myself be seduced by the fees for participation in tournaments 250 or 500 ".

On the sidelines of the 250 tournament in Montpellier, journalist Benoit Maylin and former pro Arnaud Di Pasquale analyzed the issue during a recent meeting of the DiP Impact show on Eurosport: "1 million is for top 2-3 maybe ... Well, it's to have Federer.
Nadal, it costs around 800,000 euros. He and Djokovic do not fill a room as much as Federer. However, when you drop 1 million to have Federer, know that you are jeopardizing the survival of your tournament, economically speaking (...) Normally, [the proposal] is a year earlier with the agent of the player.
All posters and com 'focus on that. Except that the player can get hurt or lose entry, it can happen. It is a real economic disaster, although there are players who make the money, as in the case of Wawrinka or Pat Rafter.

There are many exceptions (confirming the rule): although he received a minute invitation in 2018 from Rotterdam tournament director Richard Krajicek, Federer had not received a bonus outside the reserved check to the champion, the resources of the budget of the organizers being from now on affected for a long time.

In 2015, Nadal had "contented himself" with 500,000 euros to participate in the tournament in Hamburg, having received an invitation just weeks before the event, whose financial effort was mainly aimed at countering the shortage of top players .

ANNEX 30 CONTRACT LAW - EXAMPLE TRANSFER AND LOAN CONTRACT IN FOOTBALL

Benfica & AS Monaco - Bernando Silva - Loan

Benfica & AS Monaco - Bernando Silva - Transfer

Monaco & Manchester United - Anthony Martial - Transfert

APPENDIX 31 CONTRACT LAW - EXAMPLE CONTRACT EQUIPEMENTIER NIKE HAS A FOOTBALL PLAYER

APPENDIX 32 CONTRACT LAW - EXAMPLE OF CONTRACT PROPOSAL EQUIPEMENTIER ADIDAS TO A YOUNG FOOTBALL PLAYER

ADDENDUM SESSION 03: RECOGNITION OF THE BELGIAN AGENT LICENSE DOES NOT MEAN THE ISSUE OF THE FRENCH LICENSE

Thursday, 16 February 2017 10:35 | | |

In July 2011, a players' agent holding a Belgian license signed a declaration with the sports agents commission of the French Football Federation in order to move to France to work as a sports agent.
Believing that the lack of response to his request was tacit recognition of his qualification, the agent requested in September 2011, the issuance of a sports agent license.

By letter of 21 November 2011, the French Football Federation informed the Belgian agent that the Federal Commission for Sports Agents had rejected his application for recognition of qualification.
The agent then challenged this decision before the Administrative Court of Cergy-Pontoise.

In a judgment of 4 December 2014, the court quashed the decision of 21 November 2011 and ordered the French Football Federation to reconsider the agent's application for professional qualification and its application for the issue of an agent's license athletic.

Not satisfied with this judgment, the Belgian agent applied to the Versailles Administrative Court of Appeal to:
- confirm the judgment in so far as it annulled the decision of 21 November 2011 rejecting his application for recognition of professional qualification;
- to note the tacit recognition of his professional qualification in order to settle in France to practice the profession of sports agent;
- to order the French Football Federation to issue him the sports agent license.

In a judgment of February 7, 2017, the Court decided to dismiss the appellant's motion on the following grounds:
"Considering that even assuming that A. ... would have benefited from a tacit decision of recognition of his professional qualification in order to settle in France to exercise the profession of sports agent, the cancellation of the decision of 21 November 2011 would not necessarily imply that the French Football Federation issues to MA..a sports agent license, but only that it reconsiders its requests ".
Recall that since an order of 22 December 2016, the activity of sports agent in France can be exercised by nationals of a Member State of the European Union or a State Party to the Space Agreement European economy:
1 ° when they are qualified to exercise it in one of the States mentioned in the first paragraph of this article in which the profession or training of sports agent is regulated;
2 ° Or, in the course of the previous ten years, during at least one year full-time or during a total period equivalent to part-time, the profession of sports agent in one of the States mentioned in the first paragraph in which neither the profession nor the training of a sports agent is regulated and they hold one or more certificates of competency or a training certificate issued by the competent authority of the State of origin.
This legislative novelty could therefore put an end to the dispute between the Belgian agent and the French Football Federation.

Case to follow.

CAA Versailles, 1ère, 07-02-2017, n° 15VE00456