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SESSION 6 - CONTRACT LAW AND ITS APPLICATIONS TO SPORTS AGENTS

Contract law
Contractual technique: analysis of a standard contract (the terms and clauses of the contract)

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

Droit des contrats
Technique contractuelle : analyse d'un contrat type (les termes et clauses du contrat)

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.

Obligation is a personal right characterized by a power exercised by one person over another.

A distinction is possible between the civil obligation and the natural obligation. Civil obligation is a legal bond, sanctioned by constraint if necessary. Whereas the natural obligation is not constrained.

Example: to host his brother, no law imposes it, its realization depends only on the will of its author.

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, ...

The traditional classification is disputed because perceived as relative, presenting the contract as a merely "voluntary" source of obligations.

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

Great authors such as Planiol and Carbonnier have studied the need to rehabilitate this distinction, by adopting a more contemporary classification. It consists of grouping bonds with common plan elements.

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.

The contract is based on the freedom of its content, which is limited only by public order and morality.

The system of proof of commitment is a major issue, because for legal acts, the principle is that of written evidence. For contracts worth more than € 1,500, their existence must be proven in writing. On the contrary, for the legal facts, the principle is that of the free proof, that is to say that one can prove them by any means.

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

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

The evidence relates to relevant facts. It must have been collected lawfully, that is to say without fraudulent processes. Substantial powers are given to the trial judges to assess the evidence but the parties may contractually assume the burden of proof.

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.

Concerning the application of the principle, to prove the formation of a contract, the creditor must prove the exchange of the consents by producing the private deed.

If a defect of consent is invoked, the rules are reversed, and in this case the person who invokes the defect must prove it.

With regard to the case, the Civil Code also reverses the burden of proof. The cause is presumed to exist in the contract, so it is for him who invokes his absence or his wrongfulness to prove it.

With regard to the execution of the contract, the Civil Code lays down the principle that it is the person who claims to be released from the performance who must prove it or the person who claims a contractual breach that must prove it. In practice, this is not always applied, for example when there is an obligation of information. In this case, the debtor of the information must prove that he has issued it. Example: the doctor must prove that he has informed the patient about the risks of a surgical operation.

To prove the termination of the contract, it is to prove the payment of the obligation. Payment is one of the ways to extinguish a contract. There are other modes but the rules of evidence remain the same.

Whoever claims that his debt is extinguished must prove it, for example through a limitation period.

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.

The authentic deed is an act drawn up by a public officer, for example, an act performed by a notary, or a judgment rendered by a judge. Its probative force is high, it is besides the act which offers the greatest number of guarantees. The authentic act is the subject of special formalities.

The private deed is defined as a written document drawn up by the parties themselves and signed by their signatures alone, without the intervention of a public officer. It only requires the signature of the parties to be valid and can be handwritten or electronic.

Other writings are more specific like copying titles, registers, or copies. (see Article 1378 and following of the Civil Code).

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.

Example: moral impossibility (relationship or trust) or material (lost writing).

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.

There are different modes of proof other than writing, such as the will, the testimony, the presumption ...

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

Example: Establishment by way of presumption of causal link between hepatitis B vaccine administration and multiple sclerosis.

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.

The contract must be distinguished from non-binding obligation agreements. Simple moral commitments, honors, complacency, can not in principle create obligations. This is particularly the case for a voluntary transport or in the case of a help from his neighbor.

In practice, French law qualifies these contracts as a voluntary assistance agreement. Although not creating obligations, these agreements may result in an obligation such as compensation to the victim of damage. Indeed, the case law infers a contractual liability despite the absence of a contract.

Example: one person, helping another, is injured in turn. She will then be able to obtain compensation from the person assisted despite the absence of a contract between them.

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.

Be careful, do not confuse a unilateral legal act with a contract in which only one of the parties agrees (an obligation is created at the expense of only one of the parties).

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

The Civil Code and the doctrine classify contracts into different categories according to their characteristics.

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.

As regards firmness, the case-law considers that the proposal with reservations can not be qualified as an offer. A firm offer is a definite commitment to contract.

Regarding precision, the case law requires that the offer relates to the essential elements of the contract to be concluded. An offer is accurate when its acceptance is sufficient to form the contract. The objectively essential elements of the proposed contract must be fixed. For example, for a sales contract the essential elements are the thing and the price. The parties may fix as essential element an element that is a priori subjective. In the absence of any of the features, no offer is present, it will be considered an invitation to the negotiations.

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.

There are legal exceptions such as, for example, the tacit renewal of the lease in which the silence of the insurer is acceptance of the amendment of the contract.

And there are jurisprudential exceptions, for example, the offer made in the exclusive interest of the recipient or the existence of previous business relations between the parties having already resulted in the conclusion of agreements of the same nature. nature and still the belonging of the two parties to the same professional environment recognizing a use granting the silence value of acceptance.

SECTION 2: The pre-contractual phase

A - The pre-contractual talks

1. Good faith in the conduct of the talks

Prior to the 2016 ordinance, there was no provision in the Civil Code on the "negotiation" phase of the contract. The legislator has therefore decided to codify established jurisprudential solutions to try to give more clarity and legal certainty to this period.

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 new Articles 1112, 1112-1 and 1112-2 of the Code specify this obligation of good faith.

Article 1112 of the Civil Code "The initiative, the progress and the breakdown of pre-contractual negotiations are free. They must imperatively meet the requirements of good faith. In the event of misconduct in the negotiations, the compensation for the damage resulting therefrom may not be intended to compensate for the loss of the benefits expected from the contract not concluded. "

Article 1112-1. of the Civil Code "That of the parties that knows information whose importance is decisive for the consent of the other must inform it as soon as it legitimately ignores this information or trusts its co-contractor. Nevertheless, this duty of information does not concern the estimation of the value of the service. The information that has a direct and necessary connection with the content of the contract or the quality of the parties is of decisive importance. It is incumbent on the person claiming that information was owed to him to prove that the other party owed it to him, on the charge of that other party to prove that he had provided it. The parties can neither limit nor exclude this duty. In addition to the responsibility of the one who was held, the breach of this duty of information may result in the cancellation of the contract under the conditions provided for in Articles 1130 et seq. "

Article 1112-2. of the Civil Code "Whoever uses or unauthorized disclosure confidential information obtained during the negotiations commits his responsibility under the conditions of common law. "

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:

The decision of rupture is never in itself constitutive of a civil fault.

It is only the circumstances of this rupture that can lead to the engagement of civil liability. It is the tort liability that is engaged and not the contractual civil liability, because if there was a break in the talks is that there was no conclusion of contract.

The circumstances of the break can therefore constitute a fault. The fault is generally characterized by intent to harm, bad faith or disloyalty.

Concerning the repairable damage in the event of a faulty rupture of the talks:

Repairable damage is limited. It is impossible to claim the expected gains from the unfinished contract or the loss of a chance to gain. This limitation is justified by the fact that the loss of chance loss is not directly related to the circumstances of the break. So without any link between the damage and the alleged fact, there can be no compensation. The only reparable prejudice lies in the expenses unnecessarily exposed for the negotiation, such as study fees, lawyers, or even of displacement ... In addition, the repair of the moral harm suffered by the victim can be requested, as in the case of image damage for the company that no longer concludes a promising contract.

B - The preliminary contracts

Ignored by the drafters of the Civil Code in 1804, the preliminary contracts developed in practice. Jurisprudence limits their binding force by limiting their forced execution. Faced with this situation of instability, the legislator incorporated the unilateral promise and the preferential pact in the Civil Code in 2016 in Articles 1123 and 1124.

The practice has developed several types of pre-contract.

1. The agreement in principle

The agreement in principle is a negotiating agreement of the parties. It is concluded in order to organize the negotiations of a future major contract. Failure to do so does not entail an obligation to enter into the future contract, but it is possible to engage the contractual liability (because it is a contract) of the offending party.

2. The promises of contract

The synallagmatic promise of a contract, in which the parties engage each other, is in principle a definitive contract. The meeting of the wills on the essential elements of the contract intervened. The definitive contract is concluded, a forced execution can be ordered in case of non-compliance, as for example for a promise of sale. This is not a pre-contract as such since the promise of contract is confused with the final contract. The synallagmatic promise of contract is, by exception, a true "pre-contract" only when it is not worth a definitive contract.

The synallagmatic promise is used for contracts requiring the completion of notarial formalities. As for example for a synallagmatic promise of sale of a house that will become a contract only when the parties are passed before the notary.

The preference pact is a contract by which one person commits himself to another, to give him priority in the event that he decides to conclude. Its regime is flexible, the predetermination of the price of the contract and the stipulation of a delay are not conditions of validity of the pact. If the one who is committed to the pact wants to conclude, he must first make the offer to the creditor of the preference, which has an option. If he accepts the contract is formed, if he refuses, the contract is not formed. When a contract is concluded with a third party in violation of a pact of preference, the beneficiary can obtain compensation for the damage suffered. Moreover, if the third party knew the existence of the pact and the intention of the beneficiary to use it, the latter can also act in nullity or ask the judge to substitute the third party in the contract concluded.

The unilateral promise of sale is a pre-contract by which a promisor undertakes to enter into a contract with the beneficiary, the latter being given the opportunity to conclude or not to conclude. All that remains is that the beneficiary of the promise gives his consent, in legal terms that he "lifts the option", for the promised contract to be concluded. The unilateral promise of sale is only binding. It offers an option to the beneficiary without requiring consideration.

If the promise is retracted, this does not prevent the formation of the contract in case of consent given by the beneficiary.

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

Consent is flawed when a contractor is the victim of an error in the substantive qualities of the thing that is the subject of the contract.

There are several conceptions of the error on the substance.

The objective design is the error on the subject matter. In case I want to buy a bronze candlestick and it is actually stainless steel.

The subjective conception is the error on the qualities considered substantial by the contracting party. Example: where I want to buy a painting by Picasso and finally it is only a reproduction.

The contract law reform of 2016 opts for the subjective conception, long adopted by the case law. Henceforth, the error accepted is that which concerns the qualities considered essential by the parties, in consideration of which they have contracted.

• The mistake on the person

The scope of this error is limited to intuitu personae contracts. These are the contracts concluded in consideration of the person of the other party. This error is not qualified as vice of consent "only if the qualities of the person are substantial, if they were part of the criteria of conclusion. There are different types of mistakes on the person, such as the misunderstanding of physical identity, or on civil identity such as professional status ...

• The specific case of the obstacle error

This case is not covered by the Civil Code, it has a doctrinal origin. According to the Planiol formula, "there was no contract but misunderstanding. The obstacle-slip is the situation in which the parties are faced with such an error that their consent could not be met. That is why the error-obstruction is not quite a vice of consent, it is rather a lack of consent. Example: the error on the nature of the contract, when one believes to sell an object, while the other believes in a gift.

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

According to J.Ghestin, the error in value is a "wrong economic assessment based on accurate data"

It is only an error in the value or profitability of the subject of the contract. It is not a cause of nullity of the contract.

Example: the contract does not bring me as much as hoped, I can not ask for cancellation on this simple reason.

• Error on grounds outside the subject of the contract

If a criterion has not been incorporated into the contract as a decisive element, then it can not serve as a justification for invoking an error.

On the other hand, in application of the principle of freedom of contract, the parties are free to decide that such a criterion will be a decisive element of the contract. They therefore incorporate it into the contract and this criterion can then be invoked in the event of a defect of consent.

• The hazard

Hazard drives the error, "as the saying goes. That is, if a hazard has been included in the contract, then no fault of consent for error can be invoked on the basis of this 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".

The error does not need to be present in both parties so that the nullity of the contract for vice of the consent is pronounced.

Indeed, the judges believe that the mistake for a single party is enough.

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

To be in the presence of a fraud, there are several conditions to fulfill.

There must be a material element, ie a fault, an action that leads to an error. It can be maneuvers, lies, acts to create false appearances, false documents, or dissimulations ...

The fraud can also result from a silence, this is called the dolosive reticence. It can distort the consent of a contractor. It is also linked to the obligation of information frequently found against professionals.

It also requires an intentional element that is an intention to deceive. Fraud is a tort that is based on the fault of its author, or his representative, or his accomplice ... The forgery is deliberate.

Moreover, the error caused by the fraud must have been decisive for the consent.

The error caused by the fraud must necessarily be decisive.

Whatever the purpose of the fraud, the error it causes causes the cancellation of the contract.

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.

The burden of proof of fraud, ie the burden of proof of fault and intent, rests on the victim who is the plaintiff in court. The fraud being a legal fact, its proof is free, it can be done by any means.

The fraud can only be requested by the victim or his heirs, and is prescribed after five years from the day of discovery of the vice. It's a tort. Beyond the cancellation of the contract, the victim may receive damages to repair his loss.

3. Violence

The new Articles 1140 to 1143 of the Civil Code provide for cases of 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.

The assessment is made "in concreto" that is to say according to subjective and specific criteria to the victim, like his age, his sex, or his family situation.

The burden of proof of violence rests with the plaintiff, and therefore the victim. He can prove it by any means, it is a legal fact.

Beyond the cancellation of the contract, the victim may receive damages to repair his loss.

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.

However, disability can be broken down into two different forms.

A - Inability to enjoy

Inability to enjoy is one that deprives an individual of his ability to hold rights.

This incapacity has a protective purpose.

Example: the inability to donate a minor.

B - Inability to exercise

Inability to practice is one that deprives an individual of his ability to exercise rights.

Minors have a general inability to exercise. For adults, it is those who are protected, such as guardianship or curatorship for example, who have an incapacity for exercise.

SECTION 3: The object

The new articles 1162 and following of the Civil Code brought a revolution in the French law of the contracts: an "official" suppression of the cause.

A - The object and the suppression of the cause

Since the 2016 reform, the existence of a lawful cause is no longer a condition of validity of the contract. Only the consent of the parties, their capacity and a legal and certain "content" are now sufficient (Article 1128).

note that if the word "cause" no longer appears in the Civil Code, the notion is not entirely denied. The regime of the cause has finally
attached to the concept of object provided for in the Civil Code.

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.

Thus, the contract can not derogate from public order either by its stipulations or by its purpose (Article 1162). The object of the contract thus makes it possible to verify its lawfulness. This is a general requirement of compliance of the contract with public order and morality. It is forbidden to enter into contracts whose object is to violate the law. Example: it is illegal to establish a contract for the sale of human, because the human being out of the legal trade, it can not be the subject of a contract of sale.

Moreover, in a contract for a consideration, the consideration agreed for the benefit of the debtor must not be illusory or derisory at the time of its formation under pain of nullity of the contract (article 1169).

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

A major concept of law, deprived of any legal definition, used by jurisprudence and doctrine, the cause could be defined as the reason why the parties engage in the contract. This notion, dual and disputed, is now removed.

Nevertheless, the concepts of contractual balance in value, protection of the weaker part, eradication of clauses that undermine the essential obligation of the contract are still effective

elements in contract law. The application by the courts of these principles is now uncertain. It is not possible for the moment to pronounce with certainty on these points.

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".

Contracts are classified as law by the drafters of the Civil Code:

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.

The contract is binding on the judge, ie the contracts are binding on the judges. The judge is outside the contract, he must ensure compliance with the contract, the effectiveness of its binding force. He can only impose the contract as the parties have intended.
However, the case law, and especially the contract law reform of 2016, multiply the assumptions of intervention of the judge on the contract.

As a corollary to the principle of binding force, there is freedom of contract. It consists in considering that the parties are free to contract or not, to choose their contractual partner, to choose the content of the contract.

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.

In addition, there is a duty of consistency or non-contradiction in the performance of the contract.

The obligation of performance in good faith complements the binding force. The content of the contract is binding on the parties, yet its execution must always be conducted in good faith.

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.

It is necessary to distinguish clause of deduction and clause penal. The clause of withdrawal allows to be released against the payment of a sum whereas the penal clause sanctions the existence of a breach

In order to implement the penalty clause, the creditor must simply establish the non-performance or the delay in the performance of the debtor's obligation.

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

In principle, the binding force prevents the judge from rebalancing the content of the contract. This was one of the issues in the reform of contract law, whether or not to give the judge the power of review. The prohibition of unfair terms, also set out in the Consumer Code and the Commercial Code, now exists in the Civil Code in Article 1171 but remains limited to the membership contracts defined in Article 1110. Abusive clauses can be judicially retouched. The judge may deem it unwritten but limit the invalidity to this clause, to avoid cancellation of the entire contract.

C - The unforeseen

The new Article 1195 of the Civil Code provides that: "If an unforeseeable change of circumstances at the conclusion of the contract renders the execution excessively costly for a party who has not accepted to assume the risk, the latter may request a renegotiation of the contract to his co-contractor. It continues to perform its obligations during the renegotiation.

In case of refusal or failure of the renegotiation, the parties may agree to the termination of the contract, on the date and under the conditions they determine, or ask the judge to agree to adapt it. Failing agreement within a reasonable time, the judge may, at the request of a party, revise the contract or terminate the contract, on the date and on the conditions it determines. Subject of a great debate jurisprudential and doctrinal, the revision of a contract for unforeseen is now legally admitted. It is also a "revolution" in French law. The party that undergoes a change in economic conditions, such as the cost of raw materials, may request the renegotiation of the contract with the other party. In case of refusal, he can then seize the judge who will have the opportunity to modify or put an end to the contract. This provision is denounced by some authors as an intolerable breach of the principle of contractual freedom and the binding force of contracts.

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.

However, there may be contractual interdependence between two or more contracts.

Example: when transferring a player, will be concluded a termination of the old employment contract, a new employment contract and an agreement between the two clubs. Then in this situation, a party to a contract may suffer the effects of an interdependent contract of his.

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.

The promisor undertakes to ratify the third party, in case of failure an indemnity will be due.

In this operation, only the promising is engaged by the promise, the third is not committed to anything.

If the third party ratifies the contract, the promisor is released and it is considered that the contract is concluded from the beginning with the third party.

If the third party does not ratify the contract, the promisor owes damages to the beneficiary and the promise of safe-haven is void.

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.

Example: the life insurance contract

Between the stipulating and the promising there is a contractual relation. The stipulator may act in contractual liability against the promisor if a breach of contract causes him harm.

Between the promising and the third, an action is possible. The third party is the creditor of the promisor, he can act if the promisor does not execute.

Between the third and the stipulator there is no legal connection.

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

The Court of Cassation in plenary session ruled on the opposability of the contract by third parties.

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

The 2016 contract law reform provides, in the new article 1217 of the Civil Code, all the shares at the disposal of the party who is subject to a contractual breach.

Thus, the party to whom the undertaking has not been executed, or has been imperfectly executed, may: refuse to execute or suspend the performance of his own obligation, continue the forced execution in kind of the obligation , solicit a reduction of the price, provoke the resolution of the contract, request repair of the consequences of the non-performance.

SECTION 1: Forced execution

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

The Civil Code provides for the possibility of obtaining a forced execution in kind for the creditor. He may also enforce the obligation himself or, with the prior authorization of the judge, destroy what has been done in violation of it. He may ask the debtor for reimbursement of the sums committed for this purpose (articles 1221 and 1222 of the Civil Code).

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.

The exception of non-performance only has an interim effect. If the defaulting debtor resumes execution, the contract resumes.

SECTION 3: The resolution for non-performance

A - The judicial resolution

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

It is possible to request the judicial resolution of a synallagmatic contract instead of its compulsory execution. This is permissible for unilateral contracts which (exceptionally) impose obligations on both parties. This is not possible for random contracts as a life annuity. This judicial resolution is pronounced by the judge at the request of a party. It may be claimed for total or partial non-performance, even if the non-performance does not cause prejudice to the creditor. If the resolution is pronounced, the contract is supposed never to have existed.

This retroactive effect obliges the restitution of everything that has been achieved during the contractual relationship. In a synallagmatic contract, the parties must be given the same status as if the obligations arising from the contract had never existed ".

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.

This clause does not always relieve the creditor of having recourse to the judge but it deprives the courts of their discretion. In fact, the judge finds in this situation that the resolutive clause is valid and that its conditions of application are fulfilled. It is therefore bound by the terms of resolution provided by the clause. While for the judicial resolution, the judge is free to appreciate the non-performance and its gravity. The resolutive clause by operation of law allows the parties to evade the judge's assessment.

The creditor must imperatively be in good faith. His loyalty in the process of implementing the clause will be monitored.

C - Unilateral resolution

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

The possibility of unilateral extrajudicial termination is allowed if a serious breach of the debtor is found. The party who breaks the contract does so at his own risk. Only a serious breach can justify its break. If finally the break is declared unfounded by the judge who has been seized by a disputing party, the contract remains broken but the contractor who has resolved the contract without a serious reason will have to pay damages.

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
- B - Distinction
- C - Declination
- D - Confirmation
- E - Prescription

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.

The nullity must be pronounced by the judge, unless the parties establish it by mutual agreement.

The canceled contract is supposed never to have existed, its annihilation is retroactive. The services performed give rise to restitution.

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.

The unenforceability that sanctions the failure to perform a formality for third parties. The unenforceability neutralizes the effects of the act with regard to third parties and only in respect of them.

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.

The Civil Code organizes these reciprocal restitutions, it sets several rules to help the judge to decide on the content of refunds. Certain limits are set on reciprocal refunds, as for contracts with successive execution, for example. In a lease contract, the refund is not possible, it is an allowance that is paid.

Or for the immoral contractor, the restitution is only in the direction of the victim.

Refunds do not exclude the liability of one of the contractors.

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.

Regardless of the cancellation of the contract, the aggrieved party may seek compensation for the conditions of the common law of contractual liability.

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.

This non-fulfillment of an obligation of the contract may be total, partial or only delayed.

Depending on the extent of the breach, the default, the amount of damages awarded will not be the same.

2. Security obligation

Case law has made certain contracts a security requirement. These are mainly for passenger transport contracts. For this obligation, case law has organized the burden of proof.

This obligation of security appeared in a very famous judgment (Cass Civ, 1st, November 21, 1911), in a contract of rail transport. An obligation of security of result is imposed on the contract of carriage, guaranteeing the passenger's physical safety. A simple infringement constitutes a failure of the carrier.

3. Obligation to inform

The information must be attached to the contract. This obligation first appeared in medical matters, and gradually extends to all professionals. In the event of default, contractual damages for damages, limited to the loss of a chance to make a more informed decision, are awarded.

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.

In addition, the victim is under no obligation to minimize the damage.

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.

It is up to the party seeking compensation to prove that causal link.

In some very specific cases, the case law has established presumptions of causation. Then the proof does not need to be constituted, it is estimated that the link is present. Example: The causal link between hepatitis B vaccine and multiple sclerosis is presumed in some cases

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
Section 2: The definition of the business contract
Section 3: The Formation of the Business Contract
- A - The substantive rules
- B - Rules of form and evidence

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

Section 5: The obligations of the owner
- A - The obligation to pay the price
- B - Reception and withdrawal obligations
- C - The obligation of cooperation
- D - The termination of the company contract

Section 6: The termination of the business contract

SECTION 1: Introductory remarks

The word "business" has, in law, several meanings, "business" can mean:

A service contract called a business contract

A commercial / industrial establishment

A working community formed by the employer and his employees

Any activity

In this case, the business contract is the subject of this course.

The enterprise contract is the former "hire of work" as it is still described in the Civil Code, of which it is the modern and diversified version.

There are different kinds of business contracts:

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.

The specific obligation of the business contract is imposed on the contractor who has to carry out a work, himself, or by the one he replaces by means of a subcontracting agreement.

This obligation places the business contract in relation to other contracts. Because it is a performance obligation, the company differs from sales and mandate. The contractor must perform this service in an independent manner, which distinguishes it from the employment contract.

The particularity of the business contract also lies in the fact that the obligation is a service, then a specific regime applies: no predetermination of the price, possibility to revise it if the contractor sets an excessive amount, attention attached to the receipt by the supervisor of the work done, special guarantees, the client's obligation to inform the contractor of particular expectations, the possibility for him to refuse to approve subcontractors when the contractor will have chosen, etc.

The remuneration of the entrepreneur is essential to the business contract. There is no business contract concluded for free
(However, the doctrine is not unified on this point).

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.

Other specific rules are added. The price must not be fixed and determined at the time of conclusion of the contract. It must be done at the latest after the performance of the contractor's obligations. In general, a quote is issued.

For public procurement, bidding procedures are mandatory. Just as the price is not necessarily determined by the contract, the scope of the contractor's performance does not have to be determined precisely either.

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

The contractor is required to perform the service provided by the company contract. He must therefore provide the service ordered. If the business contract is for one thing, the contractor must also deliver it to the owner within the specified time. Then, a contractor who delivered to the master, in time, an uncompleted property, would in no case be released from its obligation. This delivery would not be release. The judge has the possibility to pronounce the forced execution of the obligations of the contractor. In this sense, the contracting authority can assume the contractual responsibility of the contractor.

B - The Contractor's Counseling and Safety Obligations

The Contractor is bound by two ancillary obligations to the main service, an advisory and information obligation and a security obligation.

Regarding the obligation of advice and information, the entrepreneur is obliged to advise his co-contractor. The advice may sometimes be accompanied by information. The council corresponds to informing on the desirability of the works, whereas the information consists in informing on the nature of the works, the costs, the technical consequences.

The extent of the obligation to advise varies according to the degree of competence of the owner, the sector of activity ... It is up to the entrepreneur, who is the debtor, to report the proof, by all means, of its execution.

The obligation of security, as explained above, has been cleared by case law from the contract of carriage. The Contractor must ensure that the work will not adversely affect property or persons. This obligation borne by the contractor varies in intensity (means or result) depending on the active or passive role of the owner. The assessment will always be made "in concreto", that is, according to the circumstances of the case.

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.

The subcontractor has a privileged link against the owner, he has a direct action.

This direct legal action of the subcontractor against the contracting authority is effective on the condition that the latter has approved the subcontracting. In the absence of approval, the contractor will be liable to the subcontractor.

SECTION 5: The obligations of the owner

A - The obligation to pay the price

The main obligation of the owner is obviously to pay the price of the service to the contractor.

Either the price is fixed at the conclusion of the contract. This is called a fixed price contract.

In the event of a change in the cost of the service during the contract, the principle is that no revision is possible and the contractor therefore bears the contingencies.

Either the price is determined a posteriori. This is called a quote market. It is a security for the contractor who can impute any increases in the cost of the work. The price is determined by the contractor and in case of disagreement it is the judge who will decide.

The obligation to pay the price is in principle due only after the service performed, subject to a first payment of deposit or provisions to the contractor by the owner. The parties may provide in the business contract for payment splitting.

B - Reception and withdrawal obligations

The reception is, conversely, a legal act by which the master approves the work done. The form of the reception is free and can even be tacit.

The reception makes the price exigible and purges the thing of apparent defects except reservations.

The owner may express reservations if he considers that the service is not in conformity with the contract. He may even refuse to accept, if he justifies his refusal by the insufficiencies and breaches of contract he has found.

The obligation of retirement is the obligation for the client to take delivery of the thing. The business contract may provide for different arrangements and arrange the delivery of the goods by the contractor to the client.

C - The obligation of cooperation

Contractual good faith extends to all contracts including the specific company contract. Thus, the owner of the work must facilitate the realization of the mission of the contractor, abstain

from interfering in the performance of his performance. In the event of a breach, the Employer may incur civil liability.

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.

Once this work is completed, received and paid, the contract ends. The contract can also be solved (see - above, resolution of contracts). The Consumer Code provides for the possibility of a unilateral termination in case of delay exceeding seven days.

In an intuitu personae contract, the death of the contractor may terminate the contract, which lapses.

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
- B - Characteristics
- C - Formation of the mandate

Section 2: Effects of the Mandate
- A - The effects between the parties
- B - Effects on third parties

Section 3: Termination of the Mandate
- A - The causes of voluntary extinction
- B - Involuntary causes of extinction

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