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INTRODUCTION TO FRENCH AND EUROPEAN BUSINESS LAW

Pr. D. Mainguy

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Introduction

The term "general commercial law" covers several subjects essential to business life, such as tax law, business criminal law, competition law, banking law, transport law and company law. This fields constitute the foundation of business law.

Commercial law has evolved in three main stages: origins, foundation, and expansion as we will see further.

What we call “commercial law” or “business law”, in French law, refers to domestic French law, even if a French commercial law issue is relevant to an international business law problem.

What we call European Business law is a complex whole of rules which have their sources in the European Union institutions, as the Commission of EU or the EUCJ (European Union Court of Justice). The aims of the EU rules are to harmonize laws of the stats members of the EU (by what we call European Directives) or to unify theses laws by what we call European Regulations (in French, “*Règlements européens*”).

The scope of European law is mainly business law, including some aspects of Tax Law like customs laws or VAT (TVA in French), or labour law, but not every aspect of domestic business law of states members of the EU.

So teaching French business law (or Italian, Spanish and so on) is relevant, even if some huge issues are now harmonized ou unified by Directives, Regulations or Cases from the EUCJ.

In this perspective, I will talk about French business law, including where European Law is effective, which suppose, from me, to develop, in this Introduction, some key and basic aspects of European Law for you to understand how it works.

So I will begin with an introduction to French business Law (Chapter 1), followed by an introduction to European business Law (Chapter 2).

Chapter 1. Introduction to French Business law

In this Chapter, we will consider the origin of commercial law (Section 1), The foundation of French commercial law (Section 2) and its transformation in a business and economic law (Section 3).

Section 1 The origins of commercial law

First, you must understand there exists a difference, in French law between what we call, in English, "Business law", *droit des affaires*, and what we call, in French law, Commercial law, *droit commercial*.

It is important to note that :

- France is known as a country of Laws (as Acts) and "Codes", one can count more than 50 codes in French law, against 5 after the French Revolution (Code civil, Civil Code, the most important in 1804, Code de commerce – Commercial Code in 1807, Code pénal, Criminal or Penal Code in 1810, Code de Procédure civile, Civil Proceeding Code and Code d'instruction criminelle, Criminal proceedings code in 1811), what we called the Fifth Codes, at this time and for more than a century.

- The words "Civil law", in English, are not equivalent to "*droit civil*" in French law :

- Case law is as important, if not more important, than the law. Case Law (*jurisprudence* come from the *Cour de cassation* in private Law, the *Conseil d'Etat,* in Public Law, and the *Conseil constitutionnel* regarding to the control of law upon the Constitution, which include substantial rules, and fundamental rights for example).

What common law systems name Civil Law is the contrary, or presumed contrary, to what they considered as "non common law, because it is laws which come from an Act of a Parliament, a Bill, whatever. So, main differences between the Civil Law and Common are ways to apply, interpret the Law and reasoning in Law. It is not true especially because, Civil law know the phenomenon of Case law (huge parts of Law in French Laws are mainly constituted of Case law).

In the Civil law systems, "*les pays de droit civil*", are presumably the heirs of the Roman system. It is not completely true, because, since the Fall of Roman Empire, during the Vè century, a lot a legal events affected the history of French law, composed, until the French revolution, by many customs, come from invasions (wisigoths and Francs), but also, from Brittons came from Wales and Cornwall, memories of roman law in the south of France, but also a new Roman Law after the XIIth century, and *droit canon,* the law of Church.

Some Roman legal institutions may however explain some modern French legal institutions.
In the Roman system, there exists a system of law for roman citizens, who where *civilians*. Their laws were called *jus civile, Citizens Law*. Whoever were not a roman citizen, where a stranger, a "barbarian", a "Métèque". It was not insulting words, but a qualification: whether you were an Roman citizen or a stranger (whatever you were a Greek citizens, a gallic citizen,

and so far. But Roma has to trade with strangers, but it cannot be based on the Civil law because of there were relationship or contract with a non-roman citizen. So they invented a new system of law, *jus gentium*, "Other People" Law if we can translate it. These laws were essentially what we could name today "commercial" or "business" and how to solve litigations of these relations. But il was a legal tool that romans used at this time because there were also trade between roman citizens, and at the end of the Roman Empire, everybody around the Mediterranean Sea were roman citizens, but the northern and eastern barbarians.

- After the Fall of the Roman Empire, there were a great confusion, invasions, destructions, constitution of new realms, in France, In England, and, after that, the Northmen, the Vikings, until the XIth or XIIth century, where peace came again, and with peace, trade.

  During this Dark Ages, there were no law, only Strength Law and Church Law and some kind of customs, *coutumes* (customary law, *droit coutumier*), came with the invaders which mixed with the local laws, were transformed in local customs, but no judges, no system of law, except from the local lords. Most oh these customs were tex customs, so the word became the same to designate some taxes in English.

  So, trade came again, in north of Italy, Genes, Milan Venise. They constituted themselves as independent republics, Res publica, *Common-wealth*, Merchants gave themselves what they called *Statuts* and Corporations, with systems of accountability, bank, companies, bankruptcy law.

  They came also from north of Europe, around the Hanse river, Hambourg, Brême, Lübeck in the same way.

  They trade each other and they joined in places, around the Champagne country, in what we call "*Foire*" ("Fairs") in Troyes, Provins, Lyon and in Germany, Francfort, Erfurt, Leipzig.

  So, all these people, merchants, had to experience what they called a common system of customs, or what we call today "*international law*". They called that *Lex mercatoria, Law of merchants.*

  They also had to create some new common tools, as the "*lettre de change*" (Bill of exchange"). So whether Commercial law was obviously born at the same time as trade, which itself appeared with the merchant civilizations. The Warka tablets (2000 B.C.) and the Code of Hammurabi (1700 B.C.) reveal that the economy was, at this time, mainly based on barter. They lacked an important tool : money, and political stability, and need for complex rules different than civil rules, mainly contract rules.

  Or, these facts, money, peace, political stability, goods production, trade, appeared from the XIIth century in western Europe.

  Fairs constitute the authentic origin of the construction of commercial law. They were held periodically and were a meeting place for various countries and regions, which gave rise to international commercial law.

"International" is not the relevant terms. Because you need "nations" to begin to think about inter-national issues. But nations raised only from the 17th Century (and "invention" of international l with the *Traité des Pyrénées* in 1648). Nonetheless, this term, "international", emphasizes the fact that, there were no "national" laws in the XIIth century. There were customs, law of the king (mainly regarding Tax or criminal law), of the lords of the territory where a fair gathered merchants from different realms or territories. So, in the XIIth century, they don't have legal tools like international private law to resolve legal issues which arise between these merchants.

This was the true origin of commercial law. This is not a French or one other domestic commercial law, but a *jus commune*, a *common law*, based on these legal innovations.

We can emphasize with examples.

1. Within the framework of these fairs, merchants got into the habit of settling their disputes before specialized jurisdictions called "Fair Conservations" ("Conservations de Foires"). Some procedures were created by these conservations, among which the procedure known as "bankruptcy" which sanctioned any merchant who did not honor his debts (the bench on which the merchant sat was broken, banca rota, bank rupture, bankruptcy, banqueroute in French). This procedure is the equivalent, very modernised now of the collective procedure today.

2. These fairs involved the movement of large sums of money for the merchants who travelled these routes in various currencies in their pockets. It is in this context that the merchants will have recourse to a new instrument of payment, the bill of exchange, which still exists today (a writing which establishes the existence of a sum of money for the benefit of a person). It is regulated in the Commercial Code (and his cousin, the *Code monétaire et financier,* Monetary and Financial Code), even if, today, nobody uses any bill of exchange in paper, but electronic bill of exchange.

3. Merchants already needed credit at that time. However, the loan at interest was prohibited by the Catholic Church under penalty of excommunication. Only those who were not subject to this prohibition, so which were not Catholics, could engage in it (Jewish merchants, nobles from the Lombardy region, the "*Lombards*"). To get around this prohibition, merchants resorted to the contract of *commande*, which is a sort of intermediary contract. The word *commande* come from the latin *commendare* which means "entrust". In this contract, one or many *commandatores* who have money are in relation with a *tractarore* who is a merchant, who often has boats. The former just give money to the latter who will carry out some business transactions, often over the seas, and they both share the benefits (customary, two third for the *commandator*, and one third for the tractator), and the risks, except that the *commandator*, in case of bad luck, risks at sea (*péril de mer*), the contributor of funds only loses the amount of his contribution. It can be considered as the ancestor of our company contract and especially the precursor of the limited liability partnership.

4. Towards the fourteenth century, trade tended to become more sedentary. The fairs lose their importance. Merchants used the legal inventions created during the previous period and organized their profession in a sedentary manner, grouping together in a quasi-administrative structure called Corporation. These Guilds regulated access to the profession, defended the interests of the merchants and were the privileged interlocutors of the royal power. These Guilds

had immense power. They were a factor in price increases and technical stagnation. Today these Corporations could be called “Cartels” and can be considered as illegal. They were forbidden during the French Revolution.
Despite a phase of stagnation in commerce, commercial law continued to develop between the twelfth and fourteenth centuries.

This commercial law evolves according to the needs in a relative freedom. From the sixteenth century onwards, a new era began in which merchants aspired to give more force to their practices.

This was the period of systematization and development of commercial law, and also the foundation of French commercial law.

Section 2. The foundation of French commercial law

Tree important dates are to be noted during this period (which is obviously richer and more complicated), than I will try to explain too quickly there.

Before these founding dates, as we have already seen, commercial law was the “property” of merchants, there were no “Bill”, nor “Act” or “Law” established by the king. It started with some tax laws, mainly to finance wars, at the end of 16th, and after that, because business became to be a political fact, especially after Christophe Collombus and the development of the New World. So, kings of all countries began to legislate on commercial matters, especially in the Realm of France.

1) The year 1563, when an edict (Edit) was issued by Charles IX in Paris, allowing merchants to create a “*juridiction consulaire*” (consular court, today the “*Tribunal de commerce*”). This Parisian example will quickly spread to other cities in France.

According to this Edict, the consular court was competent to hear disputes between merchants:

> *"The consular court and the merchants who plead before this court must negotiate together in good faith without being bound by the subtleties of ways and Ordinances".*

The merchants officially had their own jurisdiction, and, with the birth of this jurisdiction, commerce had its own law (*“Without subtleties of Ordinances”*), without consideration to other laws. It was the validation of practices on an alternative law, commercial law.

2) The year 1673 was the occasion of another edict, known as the "Ordonnance du Commerce de Terre", signed by the King Louis XIV. It is also called *Code Savary*, after the editor of this edict, a rich merchant to whom Colbert had entrusted the codification of commercial practices. To explain his code, he also wrote the first book on commercial law, entitled "Le parfait négociant".

In 1681, a second Ordinance on maritime trade appeared, added to the *code Savary*. This was the first commercial code, the first document that listed all the rules of commercial law in a logical perspective.

The *Code Savary*, which had 122 articles and known at this time a huge success with merchants, was not a perfect work, notably because it was written by a single person, who was certainly a practitioner but lacked wide legal vision, and which also suffered from serious shortcomings, since nothing was provided for in the area of company law or credit, for example. It was not until a hundred years later, in 1778, that a serious reform project saw the light of day: "the Miromesnil project". The problem was that it aimed at reducing the competence of the Parliament of Paris and that the latter was logically opposed to it. The project was buried.

3) Then came the French Revolution. From this revolutionary period, two major texts should be remembered:

– The "*Décret d'Allarde*", on March 2 and 17, 1791. It affirms the freedom of trade and industry. It is still in force today.

– The "*Loi Le Chapelier*" law, adopted on June 14 and 15, 1791. It abolishes the corporative system, Corporations.

The Revolution did not affect the commercial courts, probably because the consular judges were not professional judges, but merchants elected by merchants, which was conform to liberal ideas, a system that suited the revolutionaries.

On September 15, 1807, the Commercial Code was promulgated. From the point of view of content, it was mainly inspired by previous ordinances and especially by the *Code Savary*, which earned it some even more criticisms (it was said to be too old to give efficient rules). This Commercial Code suffers from not having been written by lawyers as great as those at the origin of the Civil Code and does not meet the same success. Very quickly, the Commercial Code was outdated because of development of new trade practices, and became international, hence a kind of gap between applicable law and practices.

Many reforms were introduced very early on, and were not included in the commercial Code :

– In 1817, a law reforming the law of the bill of exchange.

– In 1838, a law on bankruptcy.

– In 1840, a law relating to the commercial courts.

This habit was taken to legislate outside the Commercial Code. We speak of the *décodification* of commercial law. This trend increased after 1850 and lasted until the year 2000. However, even if it was decodified, even if it was incomplete, commercial law remained very vigorous during this period. From 1850, Commercial Code thickened, but commercial law spread, by laws out of the code, to all economic activities.

Section 3. The transformation of commercial law

We must explain that this transformation is not a global mutation, from a global notion of commercial law to another kind of notion. Rules from Commercial law were always actual and enforceable. For example, the notion of "*fonds de commerce*" which is a typical and specific

French notion, is always in the commercial Code. So this transformation is mainly an expansion of rules toward business contract law, or economic law for example, as competition law and consumer protection law, but also an expansion of the economic comprehension of business issues : company law mainly, and its derivatives, as bankruptcy, financial law, or stock exchange law for example.

It began after the beginning of the Industrial revolution, mainly after 1850. Two movements were successive : new rules (§ 1), new borders (§ 2).

§1 New commercial rules

Many reasons explain the transformation of rules in commercial law toward new rules.

They lie in industrial development and especially in the emergence of a capitalist economy which needs huge amounts of money to develop industries, banks, transportations, induestries, bank, and so on.

1. This type of capitalist economy gave rise to the appearance of tools that favoured such an economy, as the law of July 24, 1867, which authorized the formation of limited liability companies without the advice of the government for their incorporation, which was absolutely illegal before that in France.

Various other laws enshrined industrial property and authorized the transformation of an idea into private property, such as the law of July 5, 1844 on patents or that of June 28, 1857 on trademarks.

However, the effects of an economy based on capitalism became apparent after the First World War.

The legislator was wary of this and oscillated between two positions.

– Either it showed a desire to manage an economy, to socialize it: in this case, after the development of Labour Law and Welfare organisations (*Caisse mutuelle de sécurité sociale*, which some kind or cooperatives between workers to help them against deceases or accident at work and after that against unemployment), nationalization of companies appeared successively in 1936, with a first wave of nationalizations, then a second in 1945 and a third in 1982, and, but in a far narrower area, a forth on today, mainly to deal with a huge crisis, as with Peugeot or in 2022 EDF.

– Or the legislator can mark his will to protect the weakest of this capitalist system, as for example the small shopkeepers against the big stores (it is the object of the *Loi Royer* of 1973, a kind a small business act). Another weak party in a capitalist economy is the consumer. Numerous provisions have been made that have given rise to a real consumer law, which is still studied as a separate subject today. This subject was created recently, form the first law in 1972 against door-to-door selling or in 1978 in the area of credit to consumers or unfair terms in contracts with a consumer. It became a Code or consumer protection in 1992 and don’t stop to increase its rules.

Another purpose of the legislator was to modernize commercial law and make it more efficient, mainly by adopting new laws on companies, on bankruptcy and on banking (during the 1960s), or in competition (in 1986).

This attitude of the legislator can be summarized by a concept that appeared in 2000 : the concept of economic regulation. The legislator entrusts the economic operators, gives them a certain freedom on the one hand, but frames their freedom on the other. This concept of economic regulation came from the German idea of liberalism, the ordoliberalism.

It was formalized by the NRE law (New Economic Regulations Act) dated May 15, 2001.

2. The second cause of the development of commercial law is the influence of business practices.

The process of development of commercial law is a result of a confrontation. In commercial law, there is a constant confrontation between the proponents of legalism (advocates of a strict interpretation of the rule of law) and those promoting business practices (who cannot be satisfied with strict interpretations of the law and prioritize fair practices whether there are formalised in the law or not).

The practitioner will shape his behaviour to fill the gaps in the law, even by trying to go beyond limitations of the law : they call these practices “optimisation” especially in the scope of tax law. By the way, practitioners explain that they intend to resist the law by circumventing it (especially in tax matters). So the legislator, either to facilitate these practices or to limit them by legislation *d’ordre public* (Public policy rules) *:* practices against the law become avoidable.

Today, a business lawyer, when he elaborates a legal arrangement, cannot be a simple commercialist. He must not ignore all aspects of business law in the broad sense ; in other words, he must be familiar with general commercial law, company law, banking law, tax law, etc.

For this reason, the legal doctrine of commercial law has suggested going beyond the name of commercial law. We wish to teach the subject of business law (notion of multidisciplinarity). It could also be called economic law or business law.

3. Finally, the last cause of the development of commercial law is linked to external influences. Foreign laws propose institutional models that can be adopted in France.

Another external influence is the body of international treaties, international sources of law, which have a major influence, The Vienna Convention on International Sales of Goods (CISG), adopted in 1980, which influenced the European Union Directives on Sales of goods with consumers, and, in 2022, the project drafted by academics on main special contracts, especially sale contract, but also international conventions on transportation, and so on.

For these main reasons, commercial law took on a rather unexpected scope until the year 2000. It suffered from a dispersion of texts (phenomenon of *décodification*). This habit was established in the nineteenth century and continued until 2000. Among the 150 surviving articles of the 1807 Commercial Code, only 30 were not modified since 1807.

The ordinance of September 18, 2000 recodified the Commercial Code and results is today's Commercial Code.

It goes from 150 articles to more than 1600. This recodification was carried out according to the system known as "à droit constant", which means that the government took the scattered legislative provisions and compiled and numbered them, but did not add anything, as it the habit of the US Code for example.

The Commercial Code is also completed by the Monetary and Financial Code.

§ 2. New borders of business laws

Traders have always been concerned with efficiency and speed. They could not obtain this by applying the rules of civil law, hence their demarcation and the creation of a body of rules reserved for them. To formalize the existence of such a new area of law, they created the consular jurisdictions during the Middle Ages. At the beginning of the last century (the XXth), legal doctrine was engaged in a great dispute to know if the private law was not divided into two (civil law and commercial law). This question has faded over time and has completely disappeared today.

What is certain, however, is that commercial law has served as a laboratory for private law. An institution is created in commercial law, and if it works well, it is extended to the rest of private law.

For example, collective procedures (which aim to regulate the future of companies in difficulty) came form the old rules of bankruptcy. Originally, this law was strictly commercial (this is why the law of July 13, 1967 on the creation of collective procedures, was only applicable to merchants), but it was extended to other economic actors who were not subject to commercial law: craftsmen, farmers (1988), liberal professions (2005), and spread to consumers ("*faillite personnelle*" procedure).

For one another example, the law of 24 July 1966 on commercial companies has largely inspired the law of 1978 on civil companies (in the Civil Code). Another example is competition law, applicable between traders and more generally to all production and service activities, whatever the nature of the activity. Even public entities are subject to competition law under certain conditions (Article L 410-1 of the Commercial Code).

Last example, consumer protection law, which initially pitted consumers against merchants, now pits consumers against "professionals", which mean non merchant professionals, even lawyers.

Today, contemporary legal doctrine wonders about the future of commercial law: should it not be turned towards economic activities, regardless of whether they are carried out by a merchant or someone else.

At the end, originally, commercial law is a set of rules specific to merchants that aims at efficiency and rapidity, and these rules were placed under the aegis of a specialized jurisdiction. As a necessary tool of the capitalist economy, it developed during the middle of the nineteenth century and in the twentieth century, by propagation. Since, we may no longer speak of commercial law but of "business law". This would apply to all persons who carry out economic activities in an independent and professional capacity. Today, commercial law still exists. It is the result of a long historical tradition which has given the commercial world the habit of having its own laws and jurisdictions.

The commercial law divided between general commercial law and special commercial laws, as financial, law, monetary or banking law, Insurance law, competion law, transportation law, and so on.

What we will observ and study is mainly General commercial Law, which has three purposes:

– To identify, among all economic activities, what is commercial activity, to address the concepts.
– To apply the rules derogating from common law (civil) and substantive law (proof and prescriptions, procedural rules).

– To approach specific regimes necessary for commercial activity.

The three central themes are commercial activity, the trader and the business. These three themes together constitute what is called an *entreprise,* an undertaking (a structure that brings together a certain number of human or material means, intended for the exercise of an economic activity).

Chapter 2. Introduction to European Business law

European Union Law is based on a treaty, adopted in 2008, the TFEU (Treaty on the Functioning of the European Union) ant the TUE (Treaty on European Union), which succeeded the 1957 Treaty of Rome (which had been amended many times).

The main objective is to define the conditions for the existence and functioning of an "internal market" defined as "an *area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties".* There have been many other objectives, monetary, environmental, citizenship, etc., since then, but we will only deal with the aspects relevant to EU business law.

Although the term "*internal market"* is now enshrined in the Treaties on European Union (TEU) and on the Functioning of the European Union (TFEU), it is not the term that was originally contained in the 1957 Treaty of Rome.

Article 2.3 of the TEU states :

> *TUE, art. 2 (…)*
> *3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance (…).*

Terms “internal market” was preceded by the terms '*common market'* in 1957 and '*single market'* in 1986. The change of name can be seen as both a political and legal development.

Thus, the term "*common market"* evokes the idea that a European market is being formed but without replacing the various national markets, which it does not cause to disappear.

The term "*domestic market*" suggests a closed and unified space that is clearly distinct from the world market (the external market).

Whatever the term used, what Europe has been aiming for since 1957 is to make it possible for Europeans (workers, service providers, companies) to move around and carry out their economic activity in an enlarged territory. The gradual creation of an internal market is intended to free up trade and allow concrete, everyday mobility, for the greatest economic and human benefit of individuals.

The *internal market* is also the means chosen, in 1957, to bring together the peoples of Europe (who still had antagonistic thoughts at the end of the Second World War), to converge the actions of their governments and to approximate their legal systems. The history of the internal market thus goes back to the genesis of European

construction. Admittedly, there is a certain amount of mythology in the presentation generally given to the internal market project developed in the 1950s.

The redactors of Theses treaties are often described as devising a programme of economic prosperity and attempting to realise the dream of European unity through the project of an internal market.

The reality is undoubtedly less ideal, and the added value of the internal market has been contested repeatedly since 1957.

The fact remains that the internal market is one of the cornerstones of European construction, as a reading of the treaties reveals, if not the only actual aim of European Union.

In the 1957 EEC Treaty, the freedoms of movement were included in the second part of the Treaty, called *The Foundations of the Community, which* reflects the importance attached to the project.

Section 1: The choice of an internal market

The European Economic Community (EEC) was almost called *the* "*Common Market Community*", as Article 1 of the Treaty was only amended at the very last moment of the negotiations, in February 1957. Despite the terms chosen, the centrality of the market in the European construction project has never been contested. Article 2 of the TCEE, devoted to the objectives of the EEC, specifies that they will be achieved by "*the establishment of a common market*". It is important to understand why the common market project has taken such an important place in the European construction project. In choosing a common market, the signatories of the EEC Treaty were pursuing a triple objective: political, economic and methodological.

The internal market is primarily a project for economic prosperity in a unified territorial area of great economic integration.

It is also a political project, a guarantee of peace in Europe and a method that departs from the logic of traditional international treaties.

The idea was to bind States but also their citizens by means of an apolitical market construction that would not be dependent on the vagaries of international diplomacy.

Section 2: A market to complete

For decades there has been talk of the "*completion*" of the internal market.

This has never been fully achieved because the obstacles to free movement remain high. There are many reasons for this incompleteness.

First, national protectionism - expressed in various forms - remains an important reality, as we can observ during the Covid crises and the Ukrainian one.

It sometimes expresses ostensible resistance to a project that has been the subject of criticism and opposition since its inception because of its liberal orientation.

It is also not achieved because it has been presented as an *ideal*, which by hypothesis, cannot be achieved.

The Commission, in particular, has considered since 2015 that the priority is the completion of the digital single market.

So, this completion is stated by article 26 of the TFEU ans seq.

> *TFEU Article 26*
>
> (ex Article 14 TEC)
>
> 1. The Union shall adopt measures with the aim of establishing or **ensuring** the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
>
> 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.
>
> 3. The Council, on a proposal from the Commission, shall determine guidelines and conditions necessary to ensure balanced progress in all the sectors concerned

So this the premises of the freedoms in the EU.

Section 3 Organisation of European business law

From the outset, the Member States have resisted the full implementation of freedom of movement. Let us remember that their concerns about a free trade project were already present at the time of the negotiations on the Treaty of Rome.

Opposition to the development of the internal market has never really waned. During the debate preceding the referendum on 29 May 2005, which led 58.68% of French people to reject the ratification of the Treaty establishing a Constitution for Europe, the reluctance to pursue a project that was considered too liberal was clearly expressed. Many voices expressed their refusal to subject the cultural, health and education sectors (among others) to the logic of free trade.

Legal obstacles to freedom of movement are therefore very often protectionist measures taken by States in the name of the legitimate protection of a general interest in their *domestic scope*.

As for the Brexit, it is, to a negligible extent, linked to the British population's refusal to see EU citizens (especially those from Eastern Europe) access employment and social benefits on their territory. It was also the in France in 2005 (the so-called "Polish plummer issue")

The package of freedoms is therefore intended to establish several intra-European **freedoms** (in the business area, not including the Schengen process or the Euro process).

Several of these freedoms are addressed to States, and one is addressed to States and to nationals themselves, freedom of competition.

A. Freedoms regarding the States: they are very simple:

The freedom of movement of products, the freedom of movement of persons (workers) but also services (by services providers). the freedom of establishment of companies on the territory of the EU and the freedom of movement of capital within the EU.

1. Freedom of movement of products (or goods) : it is stated by article 28 of the TFEU regarding to products coming from a third country, but in the EU, it is stated in articles 34 to 36 int the Chapter which title is "*Prohibition of quantitive restrictions between Member States".*

> ***Article 29***
>
> (ex Article 24 TEC)
>
> Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

So it concerns for example products coming from the UK or from Russia, excepting products forbidden under Regulation n°833/2014, regularly completed since the Crimea affair. Recently, legal services to any Russian entities aimed by the Regulation n°833/2014 have been added.

So the Freedom of movement of products inside EU is stated therefore.

> ***CHAPTER 3 PROHIBITION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES***
>
> ***Article 34***
> (ex Article 28 TEC)
>
> Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

> ***Article 35***
> (ex Article 29 TEC)
>
> Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.
>
> ***Article 36***
>
> (ex Article 30 TEC)
>
> The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or gotods in transit justified on **grounds of public morality**, **public policy** or **public security**; the **protection of health and life of humans**, animals or plants; the **protection of national treasures** possessing artistic, historic or archaeological value; or the **protection of industrial and commercial property**. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

So you can imagine that most cases ruled by CJEU are related to *equivalent measures to a restriction on imports or exports* in relation to exceptions provided by article 36 especially grounds of *protection of health* and *Protection of industrial and commercial property* (patents, trademark and copyright, mainly).

Quantitative restrictions (article 34) are quotas of products from a industrial in one other state member. They disappeared for a long time.

Qualitative restrictions (in particular regarding standards of production), are more complex. For example, a qualitative restriction would be a ban on the import of sparkling wines into France from another state, not by naming a product, prosecco for example, but by denying the right to sale these products under the pretext of a question of quality or health issue. This would be measures with equivalent effect to a restriction of importation. It is here that the European dispute is the liveliest. For example, German car manufacturers could contest the fact that in one Member State a special, and very expensive, tax is imposed on large-capacity vehicles (and in that State, curiously, small and medium-capacity vehicles are produced). The measure is not a restriction, but it can be regarded as a measure having an effect equivalent to such a restriction, because it creates a discrimination between products, whether they are domestic or foreign. So this kind a measure, for example a similar tax for any vehicles is possible only if it creates an undetermined discrimination (vehicles/ non vehicles, cycles for example wherever they come from in the EU.

The same principles apply to all other freedoms, except for competition law, which we will consider later. Indeed, the prohibition of restrictions of competition is of less interest to States (but they cannot legislate to favour restrictions of competition) than to companies: the latter cannot establish anti-competitive agreements, abuses of a dominant position, mergers of companies aimed at creating a dominant position, or

receive State aid aimed at creating an advantage in competition.

2. Freedom of movement of persons concerns workers (article 45)

Article 45.3 states that :

> ***TFEU Article 45***
>
> 3. It shall entail **the right**, subject to limitations justified on grounds of public policy, public security or public health:
>
> (a) to **accept offers of employment actually made**;
>
> (b) to **move freely within the territory of Member States for this purpose**;
>
> (c) to **stay in a Member State for the purpose of employment** in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
>
> (d) to **remain in the territory of a Member State after having been employed** in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

It is completed by article 46 which give power to Council to legislate by Directive or Regulation on grounds abolishing administrative procedures which would obstacle to liberalisation of movement of workers

3. Freedom of establishment give to professional a right of establishment, in article 49.

> ***Article 49***
>
> Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.
>
> Freedom of establishment shall include the **right to take up and pursue activities as self-employed persons** and **to set up and manage undertakings, in particular companies or firm**s within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

And article 54 pursues regarding the right to set up enterprises to set up and manage enterprises :

Article 54

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, **be treated in the same way as natural persons who are nationals of Member States**.

'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

4. Freedom of services is guaranteed by article 56 and 57 of TFEU :

Article 56

Within the framework of the provisions set out below, **restrictions on freedom to provide services within the Union shall be prohibited** in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter.

Article 57

(ex Article 50 TEC)

Services shall be considered to be 'services' within the meaning of the Treaties where they are **normally provided for remuneration**, **in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons**.

'Services' shall in particular include:

(a) activities of an **industrial character**;

(b) activities of a **commercial character**;

(c) activities of **craftsmen**;

(d) activities of the **professions**.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

5. Freedom of capital, finally is guaranteed by article 63
Some exceptions remain as in the area of transportation, especially in the field of air or maritime transportation, in the banking or insurance sectors

B. Freedom of competition

The more global freedom, existing since 1957 and largely modernized since, is the freedom of competition.

There are stated by article 101, regarding anticompetitive agreements, article 102 regarding abuses of a dominant position. Both concerns rules applying to undertakings. Articles 107 and seq. stated on Aids granted by states (to undertakings, mainly domestic).

Article 101

(ex Article 81 TEC)

1. The following shall be **prohibited** as incompatible with the internal market: **all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market**, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. **Any agreements or decisions prohibited pursuant to this Article shall be automatically void**.

3. **The provisions of paragraph 1 may, however, be declared inapplicable** in the case of:

— any agreement or category of agreements between undertakings,
— any decision or category of decisions by associations of undertakings,
— any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, **while allowing consumers a fair share of the resulting benefit, and which does not**:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102

(ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly **imposing unfair purchase or selling prices** or other unfair trading conditions;

(b) **limiting production, markets or technical development to the prejudice of consumers**;

(c) **applying dissimilar conditions** to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) **making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts**.

Regarding, mainly application of article 101§3, article 103 states that Regulations or Directives can be adopted, especially (article 103§2, (b), "*to lay down detailed rules for the application of Article 101(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other"*.

Many Block Exemption Regulations (BER) have been adopted, especially regarding some horizontal restrictions and vertical restrictions. The most known are vertical bleck Exemption Regulations (VBER), adopted usually fort ten years, the n° 330/2010, adopted on 2010 ceased to be in force on may 2022, and replaced by VBER 720/2022, very similar except considerations on numeric trade.

C. Institutions

Institutions have been created, the specificity of which is that they are supranational and that the Member States have delegated to them, and therefore abandoned, a certain number of their regalian rights.

All the institutions, the European Council, the European Commission, the European Parliament and the European Court of Justice, have their own areas of competence which make them different sources of European law.

Another specificity is that these rules are also supranational but at the same time national law: the applicable European law is French law, of European source.

A distinction is thus made between the rules of original Community law and those of secondary Community law, which are incorporated into French law.

Original and derived legislation. The rules of original law come form the two treaties, of EU and FEU.

Secondary, or derived, legislation consists of acts issued by the various European institutions, the Council, the Commission or the European courts, the Court of Justice of the European Union (formerly the Court of Justice of the European Communities) and the Tribunal of First Instance of the European Union. The range of derived norms is particularly wide: regulation, directive, decision, recommendation, opinion ((TFEU, art. 288), and they do not have the same force. They are involved in the development of European law in a plethora of ways: almost 27 000 regulations or directives.

> ***TFEU, Article 288***
>
> (ex Article 249 TEC)
>
> To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
>
> A **regulation shall have general application**. It shall be binding in its entirety and directly applicable in all Member States.EN 7.6.2016 Official Journal of the European Union C 202/171
>
> A **directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods**.
>
> A **decision shall be binding in its entirety**. A decision which specifies those to whom it is addressed shall be binding only on them.
>
> **Recommendations and opinions shall have no binding force**.

European regulation resembles domestic laws to a large extent, with the difference that it emanates from a higher authority than the law and is not subject to the French

parliament, it is binding on all, Member States and nationals, and it is directly binding without having to be formally received by the authorities of the Member States. In the European Constitution, regulations become "laws". They are often very technical and aimed at implementing the main freedoms of EU law.

The **European directive** is addressed to the Member States only; it sets legislative results to be achieved by the States, often in terms of choice. It is therefore binding on the States, but not on their nationals, with certain exceptions.

Finally, **decisions**, for example decisions of the Court of Justice, are only binding on those to whom they are addressed, whether States or individuals: they do, however, create a body *of case law* of the Court of Justice which increases their authority. They will become "framework laws".

Integration of Community law into domestic law. Unlike the classic treaties, Community law has the particularity of aiming to unify domestic legislation. This is why transfers of competence are organised and why the Community authorities can issue binding rules.

The **principle of primacy of Community law** over national law means that the relevant Community law rules take precedence over any national rules. The Court of Justice recognised this very early on in a famous *Costa* v *Enel* judgment of 1964. If the international treaty, the Court of Justice of the European Communities and the domestic courts can review the conformity of the law with the treaty.

The question hardly poses any difficulty for the law prior to the Treaty of Rome by virtue of the principle according to which the new rule, even if it is international, abrogates the old rule.

On the other hand, it arises in the case of laws subsequent to the treaty that are contrary to it, because to admit a possible review of such a law by the judge would be tantamount to granting him or her a review of the conformity of the law that constitutional law denies him or her for their constitutionality.

Since the *Simmenthal* judgment, the Community courts have recognised that the national court, whoever it may be, is competent to ensure that national law complies with a higher standard (ECJ, 9 March 1978, case 106/77, *Simmenthal*.

As a result, the French judge (any competent judge, which is a colossal, quasi-constitutional power) would be obliged to set aside the later French rule in order to apply the European rule.

This is referred to as a **review of the conventionality** of the law by the national judge. This solution, taken from a constitutional point of view, is ambiguous because it means that individuals can invoke an *exception of unconventionality* to allow the judge to set aside a domestic law that is contrary to a Community rule, whereas he does not have the same favour, by an *exception of unconstitutionality* to set aside a law that is contrary to the Constitution.

However, it is in this sense that Community law is a *supranational* legal order - it is binding on national legal orders - and *transnational* - it is directly binding on them.

The rule of **direct effect of European law** means that one or more rules of European law are directly applicable in national law. If a domestic law is subject to European law, the question arises as to how, materially, this control can be carried out. A judge can review the conformity of a law with European law, but it is thus that a litigant can invoke a European rule against his opponent.

This is the question of the *direct effect of European law*. Treaty rules have direct effect when two conditions are met, i.e. when they are *clear* (e.g. there is no option) and *unconditional* (i.e. they are not subject to any condition or time limit), i.e. their application does not encounter any obstacle.

The same rule applies to European regulations.

Chapter 3. Sources of commercial law

Commercial law has multiple sources, both **national and international**, **written** and **customary.**

One must understand that, in French law, what one call "sources of law" (*les sources du droit*) is a specific legal vocabulary due to French private history oh theory of law. One can speak about legal rules, or legal norms (*norms juridiques).*

In French Law there are two authorized, or valid, frame of rules. First, law as the result of acts of the Parliament ou decrees from the government, both autonomous decrees (called *règlements*, regulations) regarding to French constitutional issues. Second Case law, *jurisprudence*, as decisions, *arrêts*, products by French sovereign Courts : *Conseil constitutionnel*, *Conseil d'Etat* and *Cour de cassation* and European Courts, CJUE and European Court of Human Rights. (*Cour européenne des droits de l'homme*).

Both constitute The French Law.

We can add customary law and *usages* because French law refers, sometimes, to *usages* or because, in international Business law, customary law is promoted as valid and applicable rules, both by international Law (international conventions) and French domestic law regarding international issues.

For example, article 1511 of the Civil Procedure Code states :

> ***CPC, art. 1511 :***
>
> *Le tribunal arbitral tranche le litige conformément aux règles de droit que les parties ont choisies ou, à défaut, conformément à celles qu'il estime appropriées.*
>
> ***Il tient compte, dans tous les cas, des usages du commerce.***
>
> ***CPC, art. 1511 :***
>
> *The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties or, failing that, in accordance with those it considers appropriate.*
>
> ***It shall in all cases take into account the usages of the trade.***

This diversity of sources of rules in French law reflects the complexity of the business world and its own diversity.

Some sources are traditional, as to be of statutory origin, as acts of parliaments *(lois*) and case law. Others are more specific to our field. The sources are either of **public** or **private origin.**

Section 1 Rules of law of statutory origin

This includes the law in the broad sense of the term and case law.

By the word "law", we mean domestic law and international law, and in the case of national law, civil law and commercial law, with civil law constituting the general law.

So, Commercial law appears to be specific (*loi spéciale*), compared to Civil law, general or principal applicable law.

It means that in any case, when commercial law applies, so, a specific law, the civil law will not, but if any issue is not rule by a peculiar provision on commercial law, then civil law will apply. For example, there is few provisions regarding to commercial contracts in commercial law. So beyond these laws, applying rules are civil contract law (see. Civil Code, art. 1105)[1]. The same rule applies on company law, with general provisions in the civil Code, and special ones in the commercial code.

Regarding **national law,** the main provisions sit on the Constitution on the French Republic and case law from the *Conseil constitutionnel*.

It determines the respective domains of the law and the regulations.

It being understood that in commercial matters, the law simply determines the fundamental principles of commercial obligations.

For the rest, reference is made to kind of texts with are designed as Decrees or Regulations. Then there are the general principles of law deriving from the Declaration of Human and Citizen Rights of 1789 and the preamble to the Constitution of 1946, to which the preamble to the Constitution of 1958 expressly refers. The Constitutional Council ensures that they are respected (and, interpreting the constitutional rules, creates new constitutional rules). In the scope of commercial law, principle of free trade is warrantied.

So, now I must explain how Commercial law can combine or not combine with other branches of French Law.

Since Kelsen (or Hart, in some main aspects, to English Law, or Troper, in French Law), almost every lawyers believe on the pyramids of rules.

On front of it, Constitutional Law

Below, International Convention and especially, UE

"Below" laws, with differences between Law form parliament and Decrees, not matter here.

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[1] *Art. 1105.* – "Whether or not they have their own denomination, contracts are subject to general rules, which are the subject of this sub-title.
Rules particular to certain contracts are laid down in the provisions special to each of these contracts.
The general rules are applied subject to these particular rules".

Besides, French laws, on the previous scope of Law, are divided between two orders : Administrative order, and judicial order, both with specific laws and courts.

– The judicial order contains *private* laws and courts.

Courts are from two types. The first level are *juridictions du fonds*, of substantive courts, usual courts.

For example, the main court in France is the *Tribunal judiciaire* which is the general court and the main civil court.

There are also specialised courts as the *Tribunal de commerce*, commercial court, and *Conseil des Prud'hommes*, labour court.

These courts are first degree jurisdictions.

An appeal can always be filed to the *Cour d'appel*, Court of appeal. These courts have to appreciate the case regarding to the appreciation of facts presented, included contracts, and apply the applicable law. Court of appeal is a second-degree jurisdiction.

The *Cour de cassation* is another kind of courts and, especially, is not a third degree of jurisdiction : it will not appreciate substance of cases, but only the correct application of the law. So it can either reject the file (a "*pourvoi en cassation*") when it considers that the court of appeal had correctly applied the law), or retain the file and break up the judgment of the court of appeal, in the contrary. But you must consider that the applicable law of a case is not the formal law, the article something of any Code or Law, but the interpretated law by the Court, and this interpretation can stand during the examined case.

So there is places to interpretations and re-interpretations and possibly overruled judgments of the Cour de cassation.

– The main laws are Civil Law, from the Code civil.

Originally, Civil law means citizen law. The Code civil begins by provisions on nationality for example. It also means "personal statute" (s*tatut personnel*), personal and family laws, regarding for example, issues on minority or majority, capacity and incapacity, relationship between parents and child, and so on, or wedding, filiation, divorce and so on, but also, patrimonial issues, matrimonial property regime and inheritance law.

The *Code civil* added property law and contract law, which was very innovant at this time.

So Civil law meant, in 1804 every legal issues regarding the life of a person who is not in another legal situation.

It is a larger comprehension of the article 1105 of the civil code.

Civil law is the common law, except if there is another law, a special law to rule the examined situation.

Commercial law, labour law, intellectual property law, corporate law, business contract law are in the same situation.

But it is not totally true because these special laws are, as named, special, so they give provisions on the special scope of their object, not an alternative general view and provisions.

Furthermore, many civil rules are prepared and voted as specifics.

So, we, French lawyer, feigned to believe that there is an ensemble, Civil law, or, any part of this ensemble, civil law of contrats for example, wicht is both common and special.

For example, contract law is a part of civil law. So it governs contracts concluded between people who are not employer and employee (where labour Law is applicable), or business men. In this case, commercial law must be applicable.

And, there exists some laws specially applicable regarding business contracts. Competition law for example, or international law of sale of good, or, some provisions on the commercial code regarding exclusivity clause (C. com., art. L. 330-1 and 2).

Let's see article L. 410-1 of the Commercial Code, first of the Book 4 concerning competition law :

> ***LIVRE IV : De la liberté des prix et de la concurrence. (Articles L410-1 à L490-14)***
> ***TITRE Ier : Dispositions générales. (Articles L410-1 à L410-6)***
> **Art. L. 410-1** : Les règles définies au présent livre s'appliquent aux entreprises entendues comme les entités, quelle que soit leur forme juridique et leur mode de financement qui exercent une activité de production, de distribution et de services, y compris celles qui sont le fait de personnes publiques, notamment dans le cadre de conventions de délégation de service public.
>
> ***BOOK IV: Freedom of Prices and Competition. (Articles L410-1 to L490-14)***
> ***TITLE I : General provisions. (Articles L410-1 to L410-6)***
> **Art. L. 410-1**: The rules defined in this book apply to ventures understood as entities, whatever their legal form and method of financing, which carry out an activity of production, distribution and services, including those carried out by public persons, in particular in the context of public service delegation agreements.

So you can see that, first, it is applicable to contracts concluded with a public entity (public service delegation agreement).

It also apply to *any enterprise* if it is an *economic entity*, so a civil activity, for example an activity of lawyers, physicians, and so on, which are *civil* entities, not commercial, are *economic entities,* subject to competition law (except about some rules only applying to *commercial* activities).

Second example : exclusivity clause and condition to conclusion of some business contracts. There is a Book 3 in the Commercial code (very thin truly), titled "On Certain forms of sales and exclusivity clauses", and, into this book tree provisions regarding these issues.

LIVRE III : De certaines formes de ventes et des clauses d'exclusivité. (Articles L310-1 à L341-2)

TITRE III : Des clauses d'exclusivité. (Articles L330-1 à L330-3)

Art. L. 330-1. Est limitée à un maximum de dix ans la durée de validité de toute clause d'exclusivité par laquelle l'acheteur, cessionnaire ou locataire de biens meubles s'engage vis à vis de son vendeur, cédant ou bailleur, à ne pas faire usage d'objets semblables ou complémentaires en provenance d'un autre fournisseur.

Art. L. 330-3. Toute personne qui met à la disposition d'une autre personne un nom commercial, une marque ou une enseigne, en exigeant d'elle un engagement d'exclusivité ou de quasi-exclusivité pour l'exercice de son activité, est tenue, préalablement à la signature de tout contrat conclu dans l'intérêt commun des deux parties, de fournir à l'autre partie un document donnant des informations sincères, qui lui permette de s'engager en connaissance de cause.

Ce document, dont le contenu est fixé par décret, précise notamment, l'ancienneté et l'expérience de l'entreprise, l'état et les perspectives de développement du marché concerné, l'importance du réseau d'exploitants, la durée, les conditions de renouvellement, de résiliation et de cession du contrat ainsi que le champ des exclusivités.

Lorsque le versement d'une somme est exigé préalablement à la signature du contrat mentionné ci-dessus, notamment pour obtenir la réservation d'une zone, les prestations assurées en contrepartie de cette somme sont précisées par écrit, ainsi que les obligations réciproques des parties en cas de dédit.

Le document prévu au premier alinéa ainsi que le projet de contrat sont communiqués vingt jours minimum avant la signature du contrat, ou, le cas échéant, avant le versement de la somme mentionnée à l'alinéa précédent.

BOOK III : On Certain forms of sales and exclusivity clauses

TITLE III : On exclusivity clauses

Art. L. 330-1 The period of validity of any exclusivity clause by which the buyer, assignee or lessee of movable property undertakes vis-à-vis his seller, assignor or lessor not to make use of similar or complementary objects from another supplier is limited to a maximum of ten years.

Art. L. 330-3. Any person who makes available to another person a trade name, a trademark or a sign, by requiring from him a commitment of exclusivity or quasi-exclusivity for the exercise of his activity, is required, prior to the signature of any contract concluded in the common interest of both parties, to provide the other party

> with a document giving sincere information, which allows him to engage with full knowledge of the facts.
>
> This document, the content of which is fixed by decree, specifies in particular, the seniority and experience of the company, the state and prospects of development of the market concerned, the importance of the network of operators, the duration, the conditions of renewal, termination and transfer of the contract and the scope of exclusivities.
>
> When the payment of a sum is required prior to the signature of the contract mentioned above, in particular to obtain the reservation of an area, the services provided in return for this sum are specified in writing, as well as the reciprocal obligations of the parties in case of withdrawal.
>
> The document provided for in the first paragraph and the draft contract shall be communicated at least twenty days before the signing of the contract or, where applicable, before the payment of the sum mentioned in the preceding paragraph.

We can see that these provisions regard issues very common in the area of business contract : it relies on issues of limitation of freedom of contract or duty to information before the conclusion of any contract, and there are provisions regarding freedom of contract and how to rule a case regarding an issue of a limitation of freedom of contract by an "clause abusive" (unconscionable clause in the US), or duty of information (C. civ., art. 1112-1).

So we can consider these provisions either as a special law regarding the application of article 1105 of the Civil Code or, a special law independent of any civil rules, without any link to the Civil code : how can we must interpret these provisions ? (answer : both).

To emphasize the issue let's see how the *Cour de cassation* interpretated article L. 330-1 for example. If we only read, as an *exegete*, this provision, we can see that it is mainly a question of validity of an exclusivity clause in a sale agreement and eventually in a lease agreement.

Such a clause in any other kind of agreement cannot be ruled by this provision, because it is an exception of the principle of freedom to contract. And exceptions must be strictly interpreted.

So this text should – or could – have been interpreted strictly, as most authors proposed in the 1950s or 1960s.

The extension of that text to exclusive purchase agreements, framework distribution contracts (*contrats cadres de distribution*) not having as their direct object purchases, would have been contrary to the letter of the text, even if these framework contracts have the object of creating implementation contracts that are sales.

This is the definition provided by article 1111 of the Civil Code (since 2016) :

> ***Civil Code, Art. 1111. –*** A framework contract is an agreement by which the parties agree the general characteristics of their future contractual relations. Implementation contracts determine the modalities of performance under a framework contract.

But even before 2016, case law knew the association framework contract/implementation contracts, especially in the field of distribution agreements.

So, in 1971, the *cour de cassation* decided that this provision must apply to framework distribution contracts.

After that, it was generalized by development of competition law, both French and europrean.

So, to understand commercial law you must understand the special commercial applicable law, and for that purpose, the most general commercial applicable law, and, *in fine,* civil law.

Same issue about **warranty Law**. No doubt it is a key issue for commercial law especially in the area of banking law, bankruptcy law, even corporate law.

The *Code civil* considers it is a part of civil law. To explain that, and it is exactly both the comprehension of civil law and commercial law.

Civil law, mostly patrimonial civil law is built around the question of patrimony (patrimoine), witch add the issue of "*droit de gage general*", general guarantee right. It could be easily explained.

If a person have a right of claim against a debtor, for example after the conclusion of a contract.

It is essential to consider three consequences.

– First, when you are in this position of a creditor, you don't have an immediate right to pursue the debtor.

It is a kind of o shortcrut, a false promise created by article 2284 of the Civil Code. It is, in French law a legal monument, as article 1104, 1240 and, among other, 2284, since 1804 and the promulgation of the French Civil Code. It is wrong, but beautiful.

> **Code civil, art. 2284** : Quiconque s'est obligé personnellement, est tenu de remplir son engagement sur tous ses biens mobiliers et immobiliers, présents et à venir.
>
> **Civil Code, art. 2284** : Anyone who has personally obligated himself is obliged to fulfill his commitment on all his movable and immovable property, present and future.

"Is obliged to fulfil his commitment" is not the equivalent of "there is a law which require the debtor to pay and if not…"

– That is the second consequence. If you cannot file a case in a court, to obtain a judgment to transform this claim in a right to enforce (*executer, exécution*), then you have nothing, a paper, a frustration, a damage, but no damages, etc.

So we need procedure rules to define the ways permitting to this person to file a case. It is rough rules. In France, prescription delay terminates after 5 years. After the expiration of the

prescription delay, you don't have any right at all. You can interrupt this delay by filing a file, even mistakenly in front of the wrong judge (there is domestic conflicts of competence between administrative or judicial courts and into judicial courts themselves).

But this step, file an application is binding because the debtor must protest : prescription period has passed, the contract is avoidable, the debtor has a claim against the creditor, etc.

– So third, once you have a judgment, a title, you must be able to execute it (the right word is "enforce" but enforcement is the second point, not the third). So the general guarantee right provision states that the creditor may execute/enforce his claim against every patrimonial real estate or goods.

This is the main sense of the article 2284 of the Civil Code. Every possession, huge or not, movable or immovable property, is a warranty of anyone who is on debt against another person.

So he can use every rules of "*procedures d'exécution*" (enforcement procedures) to seize any good of its choice of the debtor.

Of course, this general warranty of the article 2284 is the commun law, so a subsidiary rule, when any other way doesn't exist. Ans so, it exists a lot of warranty laws, real estate warranties, on mortgage on movable goods as, ships, planes cars, personal warranties, as *cautionnement* agreement, first demand warranty, and so on, the same as everywhere.

And this is the key question in commercial law because of the consequence of the article 2284, **patrimony, *patrimoine***.

This notion, patrimony is a key notion.

The notion of patrimony is a fundamental doctrinal construction formulated, starting from the rules laid down by article 2284 (ex-2092) of the Civil Code, by two famous jurists, Aubry and Rau at the end of the nineteenth century, who import it from german commentators of French civil Code (witch applied until 1900 in some part of Germany).

The word patrimony, and its regime is however unknown to the law, and adopted by case law.

It refers to all the *whole appreciable rights in money, property and obligations, of the same person by forming a universality in which assets and liabilities cannot be dissociated*.

It is the set of wealth (goods, claims...), which make up the assets of the patrimony, and the debts, which are the liabilities, of a person at a given time.

So patrimony is the economic projection of the legal personality. The legal concept is different from its common meaning. It is not a simple accumulation of goods but an abstract entity formed of all the goods of a person but also of all his debts.

This concept is characterized by four principles:

1° only persons can have patrimony ;

2° every person has a patrimony;
3° the patrimony is linked to the person for as long as the person lasts; it is therefore not transferable inter vivos but only by death (not totally true : also by a merger, but it is the "death" of one company);
4° a person has only one patrimony.

So, when a trader manages his enterprise, he has only *one* patrimony. There is not distinction between his professional patrimony and is personal patrimony. Thus, a professional debt he cannot pay is guaranteed by his personal assets.

Against this situation, many option are open this our trader : he can create a company, modern law try to help him, permitted to create a unipersonal limited liability company (EIRL, individual limited liability enterprise), par creating successive statutes, lately, in the beginning of 2022, the EI (*Entreprise individuelle*, individual undertaking) where he can affect his professional assets in the patrimony of his EI.

I could be, as the older statutes, a failure, for two reasons.

First, it is impossible to separate two patrimonies without any creation of a company.

Second even if our trader creates a limited liability company, the separation between these two patrimonies, his personal patrimony, including shares of the company, and the patrimony of the company, is very fragile.

His personal patrimony can escape his professional creditors, as his suppliers, but we can count on his most important creditor, his bank for example, to be extremely cautious and to have a warranty, mortgage or suretyship on his personal assets or his person.

So, we can consider that commercial law, is mainly the law of small businesses, a kind of huge small business act.

It is partially true and partially wrong.

Some commercial rules concern small businesses, the condition of the merchant, his wife if she works with him, and so on. All these rules do not concern you and this class.

Other rules concern more than the area of merchants, but all business issues. On that sense, commercial law is business law, better, economic law.

So, we will not visit the details of rules of commercial law but only the basics, the one witch interest every kind of business, especially the middle or large businesses.

So back to Commercial Law and its sources, law, cases, and some words about private sources of law

§2 Sources of private origin

There is a lot of rules which are made by private origin, especially in international business law. You certainly know the Unidroit Principles, regarding international business contracts, but also the Incoterms, made by the ICC, to govern international sales of goods and transportation.

But I would like to emphasize and hold your attention about It is essentially the uses and customs.

Classical civil law doctrine clearly distinguishes usage from custom and teaches that custom is always binding, unlike usages.

The distinction seems less clear-cut in commercial law in order to distinguish among usages between conventional usages and usages of law: usage of law is similar to custom, not the conventional ones.

This presentation does not alter the fact that usage or customs are essential in commercial law, whether it derives its force from the will of the parties, from the law or from case law. It is a judgment witch definitively define if a supposedly custom or usage is a legal usage or custom in the legal order of this judgment. If not, it is an usage, but it is not legal, it can be non-legal, or a-legal (beyond the law), but not illegal, it can be non-legal and become illegal. But you must consider that most usage are not legal. They lie beyond or beside the law.

Custom may be defined as practices which, through constant and repeated use, become rules of law.

Usages or customs correspond to need to businessmen, in a determined sector, to adapt their rules, to their commercial practices.

They may be conventional or professional or de jure, whatever, they correspond to rules usually followed by professionals. They are formed through practice and repetition.

They also are supposed to be known by all professionals concerned and are imposed without the need to include them in conventions. A practice becomes customary or usage when it acquires a general and constant character.

These clarifications are provided by case law, whose role in the consecration of usage should not be overlooked. Usage must be proved by the person who invokes it. To this end, certificates can be obtained from chambers of commerce and industry or from professional unions. We call that in French a *parère*, adorn in English.

An example of this practice is that prices between traders are to be invoiced "without tax" unless otherwise agreed (Cass. corn., 9 January 2001, CCC May 2001, p. 10). If the application of this practice is not debated between traders, it still raises some difficulties in the presence of non-trading professionals, because they can not have mentioned that you have to add t. The practical interest is important because it is a question of determining who will be responsible for paying the VAT. Putting these two decisions into perspective invites reflection on the definition of a professional and the extension of the commercial rule to all relations between professionals.

Law refers sometimes to usage.

Article 1194 of the Civil Code provides that:

> "*Contracts are binding not only* on *what is expressed in them, but also* on *all the consequences which equity, usage or the law give them"*.

The importance of usage in commercial law is very understand by professional witch is not surprising and they take usage, or customs or practices into consideration through the identification of "good practices", sometimes set up in guides, charters, codes of good practices, established by professionals or by authorities.

In international business law, les « usages du commerce international », customs in international trade, are very important, and can become the chosen law of a contract, especially in front of arbitrators. International arbitrators love customs in international trade, because it authorizes them to apply the chosen national law in consideration of these customs.

Chapter 4 Basics in commercial law

We will just been concerned by the first section.

Section 1 *Actes de commerce,* Commercial Acts

The general theory of commercial acts has been built up by legal writers on the basis of articles 632 and 633 of the Commercial Code, which became articles L. 110-1 and L. 110-2 of the current Code after the 2000 recodification.

These texts identify several practices to be ***commercial acts*** (*actes de commerce*) in order to determine the jurisdiction of the commercial courts.

There are not "acts" in the legal sense of the term (a legal act, in French law is defined in article 1100-1 of the Civil Code as follow "Juridical acts are manifestations of will intended to produce legal effects"), So commercial acts can be facts (the contrary of Act, See Art. 1100-2 : " Juridically significant facts consist of behaviour or events to which legislation attaches legal consequences".)

So there can be both acts or facts if there are in the scope of commercial practices or activities.

Commercial acts can be grouped into four main categories according to their nature or purpose, because of their form, by extension, and finally, a commercial act can be "mixed", i.e. commercial with respect to only one party.

§1. Commercial acts by nature or purpose and commercial activity

Commercial acts by nature serve as a basis for the general theory of commercial acts, the legal enumeration of which appears in Articles L. 110-1 and 110-2 of the Commercial Code.
We shall set aside the provisions of article L. 110-2 because of their specificity, since they concern maritime trade. A certain number of the acts listed in article L. 110-1 of the Commercial Code are cited in isolation, others are linked to the notion of undertaking. But all of them fall within the framework of the three main types of economic activity: trade or commerce, now called distribution, industry and services.

> ***C. com. Art. L. 110-1***
> *La loi répute actes de commerce :*
> *1° Tout achat de biens meubles pour les revendre, soit en nature, soit après les avoir travaillés et mis en oeuvre ;*
> *2° Tout achat de biens immeubles aux fins de les revendre, à moins que l'acquéreur n'ait agi en vue d'édifier un ou plusieurs bâtiments et de les vendre en bloc ou par locaux ;*
> *3° Toutes opérations d'intermédiaire pour l'achat, la souscription ou la vente d'immeubles, de fonds de commerce, d'actions ou parts de sociétés immobilières ;*
> *4° Toute entreprise de location de meubles ;*
> *5° Toute entreprise de manufactures, de commission, de transport par terre ou par eau;*
> *6° Toute entreprise de fournitures, d'agence, bureaux d'affaires, établissements de ventes à l'encan, de spectacles publics ;*

7° Toute opération de change, banque, courtage, activité d'émission et de gestion de monnaie électronique et tout service de paiement ;
8° Toutes les opérations de banques publiques ;
9° Toutes obligations entre négociants, marchands et banquiers ;
10° Entre toutes personnes, les lettres de change ;
11° Entre toutes personnes, les cautionnements de dettes commerciales.

Com. Code, art. L. 110-1 :
The law deems acts of commerce:
1° Any purchase of movable property for resale, either in kind or after having worked on and put it to use;
2° Any purchase of immovable property for the purpose of reselling it, unless the purchaser has acted with a view to erecting one or more buildings and selling them as a whole or by premises;
3° All intermediary operations for the purchase, subscription or sale of buildings, goodwill, shares or shares in real estate companies;
4° Any furniture rental company;
5° Any manufacturing, commission, transport company by land or water; 6° Any supply company, agency, business office, auction sales establishment, public entertainment; 7° Any foreign exchange, banking, brokerage, electronic money issuance and management activity and any payment service;
8° All operations of public banks; 9° All obligations between traders, merchants and bankers;
10° Between all persons, bills of exchange;
11° Between all persons, guarantees for commercial debts.

Simple comments for some of this list.

A Buying for resale

This includes purchases for resale of movable and immovable property (art. L. 110-1 1° and 2°) unless, for the latter, the purchaser has acted with a view to erecting one or more buildings and selling them en bloc or by premises. Real estate development is civil.

Generally speaking, it is the idea of speculation that underlies the system. It is the desire to make a profit from the resale operation that confers commerciality, so that in the absence of speculation, the sale will be civil in nature.

To be a commercial act, the sale must be **a resale** in the sense that it must be preceded by a purchase. Consequently, extractive industries are not subject to commercial law, except for the exploitation of coal, metal and hydrocarbon mines, as expressly provided by the legislator. Intellectual productions (patents, literary and artistic works) for creators and inventors are also not subject to commercial law, in the absence of purchase. Sales incidental to production operations are not covered by commercial law either.

B Intermediary operations

Article L. 110-1, 3° refers separately to intermediary transactions for the purchase, subscription or sale of real estate, business assets, shares or units in real estate companies. They can be compared to banking, foreign exchange and brokerage transactions, payment services and public banking transactions (Article L. 110-1, 7° and 8°). Case law adds insurance activities.

Brokerage is commercial, governed in its classic form by Articles L. 131-1 et seq. of the Commercial Code, in particular banking and insurance intermediary operations. It has a more modern form through the development of electronic platforms.
We will see later, differences between intermediary agreements.

C Commercial enterprises

Although it is difficult to give a legal definition of an *entreprise*, an undertaking, a commercial enterprise, a business, a shop, the Commercial Code deems a certain number of enterprises to be commercial acts. The expression must be taken in its economic sense; it implies a certain organization. It suggests the repetition of acts in order to fulfil an economic objective and the professional character of the activity.

1 – Furniture rental undertakings

The following are thus deemed to be commercial acts: companies renting furniture (art. L. 110-1,4° of the C. corn.), motor vehicles, equipment, television sets, etc.

This includes hotels and campsites. The rental of buildings is, by its very nature, a matter for civil law, unless the theory of accessory is applied (see below).

2 - Manufacturing, commission, land or water transport undertakings

They are grouped together in the 5th paragraph of Article L. 110-1. The activities covered are very diverse.

While manufacturing is related to industry, the other activities mentioned are more related to services. Manufacturing companies process raw materials into finished products, which may be purchased or supplied by the customer. The term "manufacturing" is nowadays widely interpreted and covers the industrial sector (iron and steel industry, metallurgy, food industry), the building construction and renovation sector, as well as book publishing and dyeing.

Carriage enterprises include passenger and freight transportation, whether by land, water or air. Removal companies and taxi companies are also included, except for activities carried out in the form of a craft industry.

Lastly, ***commission*** **agents** (agents who conclude contracts on behalf of their principal but in their own name) are referred to**;** they could undoubtedly have been included in the following paragraph with agencies. The commission agent concludes contracts in his own name on behalf of a principal (Art. L. 132-1 of the C. Corn.). There are various types of commission agents, such as transport commission agents whose activity is governed by Articles L. 132-3 et seq. of the Commercial Code. We can also mention customs agents and investment service providers. These are intermediaries.

3 - Supply undertakings, agencies, business offices, auction houses and public performances (art. L. 110-1, 6°)

Once again, the enumeration groups together very different activities: the supply of gas, water, electricity is a commercial activity and all activities which consist of the supply of goods or services for a specific period of time. It may involve purchase and resale, but it does not only involve movable goods.

This includes, for example, distribution contracts which are not limited to the resale of goods, agency undertakings and business offices are still considered as commercial acts.

This includes, in principle, "business agent" activities such as debt collection, travel and tourism agencies and art agencies.

Finally, **public entertainment establishments are** commercial. Leisure activities are not exempt from commercial law if they are carried out in the context of establishments. Purely individual activities or activities carried out within the framework of non-profit associations are not subject to commercial law.

§ 2. *Actes de commerce par la forme* Commercial acts by form

Commercial acts by form have the common characteristic of always being commercial, regardless of their purpose or the person performing them. They have the particularity of remaining subject to commercial law even if they are performed, in isolation, by a non-trading person.

This category includes trading and commercial companies by form.

A The bill of exchange

Its commerciality is set out in Article L. 110-1, 10°.

It is deemed to be a commercial act between all persons. As a result, any person who signs a bill of exchange performs a commercial act and thereby submits to commercial law and the courts that apply it. The bill of exchange is an ancient commercial mechanism, used since the Middle Ages.

This is a mechanism specific to commercial law, the subscription of which is prohibited for consumers in the context of consumer credit (cf. L. 313-13 of the C. conso. (repealed article) and Art. L. 511-5 of the C. corn.) The regime for bills of exchange is particularly strict. The bill of exchange is subject to precisely defined rules of form (Art. L. 511-1 et seq. of the C. corn.). It is an abstract act in the sense that the absence or illegality of its cause does not affect the validity of the exchange commitment. The draft, once drawn, must be paid. There is a principle of non-opposability of exceptions which reinforces the power of this instrument. A bill of exchange is a commercial document in its form and follows the regime of commercial law without any possible derogation, even if it is drawn on account of civil obligations.

It should be noted that such an act is commercial but does not confer the status of trader on its author.

It is here the nature of the document of title which determines the legal regime and not the nature of the obligation, unlike the case of cheques, for example, which will be civil or commercial depending on the nature of the obligation to which they relate.

B Commercial companies by form

Their commercial nature is set out in Article L. 210-1 of the French Commercial Code:

> *"General partnerships, limited partnerships, limited liability companies and joint stock companies are commercial by virtue of their form and whatever their purpose"* (i.e. public limited companies, limited partnerships with shares, simplified joint stock companies and European companies).

The fact of being incorporated in one of the above-mentioned forms confers commerciality on the legal person. Any company that takes one of the above forms is necessarily commercial, even if its object is civil.

It follows that all acts performed within the framework of such companies are commercial. This applies to acts performed at the time of their creation, operation, or dissolution. The same applies to transactions involving their securities.

All of them will be subject to commercial law and will fall under the jurisdiction of the commercial courts, even if the activities are commercial by nature, form exemple a Limited liability company set up for farmer activities or for legal activities. This is the case of a legal firm become commercial by form.

The Commercial Court is the natural judge for disputes relating to commercial companies. It has jurisdiction over any claim against a commercial company and over all facts or acts directly related to the management of commercial companies, regardless of whether or not the parties are merchants.

It should also be pointed out that, although acts performed within the framework of commercial companies by form are commercial, this does not necessarily imply that the members of such companies are themselves traders.

A distinction must be made here between partnerships and corporations.

Only the partners of commercial partnerships have the status of trader. This is not the case for the partners and managers of limited liability companies (SARL/ EURL) or joint stock companies (SA, SCA, SAS).

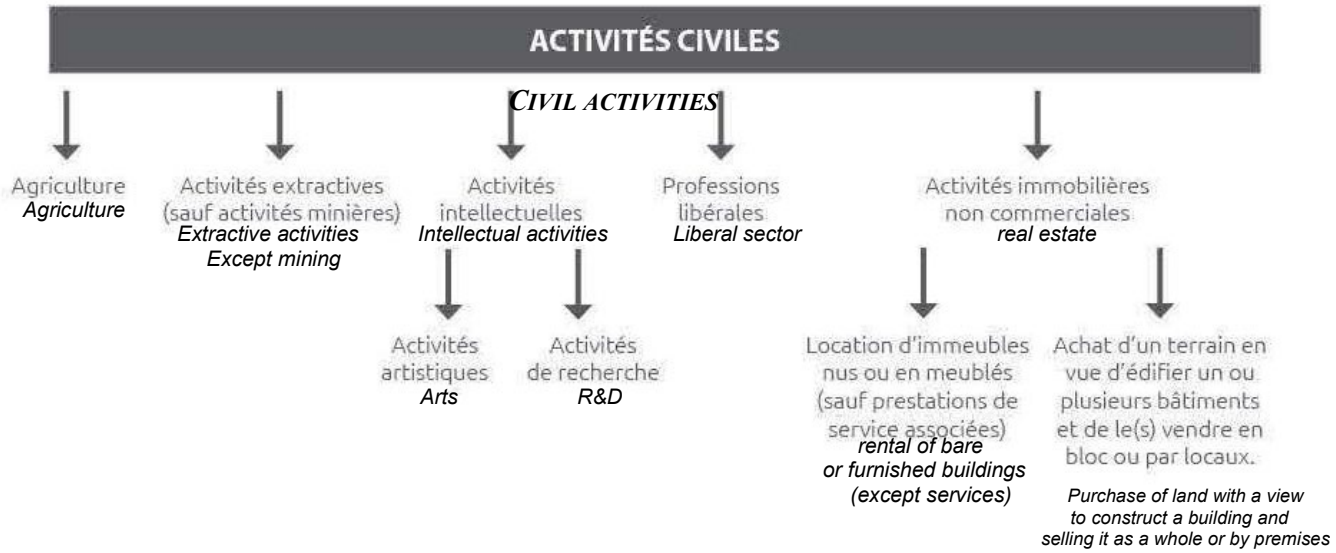
Thus, the partners of general partnerships are all merchants under Article L. 221-1 of the Commercial Code. However, the partners of SARLs and the shareholders of SAs or SASs are not merchants. Neither are the directors of these companies. It is important to keep this distinction in mind because it has important consequences.

Commercial companies by form are the main economic agents. It is true that there may be commercial companies by object, but this is a marginal hypothesis.

§ 3- Incidental (or accessory) business Acts

"Accessorium principale sequitur" (*The accessory follows the fate of the principal).* The rule is well known. It applies in commercial law as in other areas. It is reciprocal in the sense that a civil act may become commercial because it is performed by a merchant for the purposes of his trade or because it is connected with a commercial transaction.

A commercial act may be subject to civil law because it is accessory to a civil activity (e.g. acts of purchase for resale by a craftsman).



The accessory may be objective or subjective, or even have both characteristics.

§1 The objective accessory

The accessory may be objective or subjective, or even have both characteristics.

1 The objective accessory to a commercial act takes on the commercial character of the act which serves as their support.

This is the case, for example, of a guarantee which is commercial when it is made in connection with a commercial transaction.

In the same spirit, a commercial **act** is **any act relating to a transaction concerning a business.** Thus, the sale of a business is a commercial act, as is the management lease.

The fault by ***unfair competition*** by a merchant is a commercial act.

2 The subjective accessory to a commercial act takes on the purposes of his trade or during his business is commercial. A trader, acting as a natural person, buy for example a smartphone for his personnel or professional use. The latter made the contract a commercial act, not the former, certainly a mixerd act.

3 Commercial guarantee ("*cautionnemen*t"), the most widely used surety in practice, should escape commercial law, because of its civil contractual nature, in principle.

However, the question of the commerciality of suretyship arose and was approached from the angle of the theory of accessory, in the objective or subjective way.

Thus, case law considered that a guarantee given by a trader to secure a commercial debt in the exercise of his activity was commercial (objective accessory).

This solution is easy to understand. The *caution* (guarantor) and the commitment are commercial (Cass. corn., 7 February 2006, n° 05-13.613).

However, the case law went further and considered that the guarantee retained its commercial nature even if it was given by a non-trading person. It conferred commerciality on a guarantee given to secure a commercial debt even if it was given by non-traders: company directors, for example, who act as guarantors for their company's debts. To qualify the commitment as commercial, case law simply required that the guarantor had a personal patrimonial interest in the principal credit. However, difficulties as to the commercial nature of the guarantor remained, in particular in the case of a spouse who stood surety for the commercial debts of his or her businessman spouse.

This is also the case when a guarantee is given to secure a commercial debt even if it was given by non-traders: company directors, for example, who act as guarantors for their company's debts. To qualify the commitment as commercial, case law simply required that the guarantor had a personal patrimonial interest in the principal credit (Cass. corn., 3 Oct. 2018, n° 17-19.841).

Thus, if there is a jurisdiction clause in the main contract or, better, a arbitration convention, it must be applicable to the accessory contract of surety ship, but litigation arise because of the quality of non-merchant of the guarantor ("caution").

The reform carried out by Ordonnance n° 2021-1192 of 15 September 2021 reforming the law of sureties and amended Article L. 110-1 of the Commercial Code by adding an 11th paragraph deeming commercial acts "*between all persons, guarantees of commercial debts."* The civil or commercial nature of the guarantee depends on the nature of the guaranteed debt.

Thus, a guarantee given by the spouse of a trader to secure a commercial debt is a commercial act.

However, regarding to jurisdiction, the aforementioned order of September 15, 2021 amended the fifth paragraph of Article L. 721-3 of the Commercial Code:

> *"By way of exception,* ***where the guarantee for a commercial debt was not taken out in the context of the guarantor's professional activity, the arbitration clause cannot be set up against the guarantor****.*

Thus, although a guarantee given by a merchant's spouse to secure a commercial debt is qualified as a commercial act, an arbitration clause cannot be set up against this guarantor (contrary to the rule of accessory).

Concerning the validity of jurisdiction clauses, the case law prior to the Order of 15 September 2021 remains in place. This case law, while admitting the commercial nature of the guarantee because of the personal interest of the guarantor, had nevertheless considered that the clause attributing territorial jurisdiction should not apply on the grounds that the performance of an act qualified as an isolated act of a commercial nature did not confer on the guarantor the status of a merchant.

The guarantor does not commit himself as a trader, he does not have that status. However, the clause is only valid when it is stipulated in an act for which all the parties are merchants.

§ 4. ***Actes mixtes*** **(mixed acts)**

This is an act concluded by a trader and a non-trading person, an act described as a ***acte mixte*** by French doctrine, although this qualification may be debated.

The particularity of this type of act is that it gives rise to obligations of a commercial nature with regard to the trader and of a civil nature with regard to the non-trading party.

This is usually a dual system, but it can sometimes be uniform.

Duality : It is this latter solution that most often prevails. This is the case, for example, in matters of proof or solidarity. **There are also special rules on jurisdiction.**

With regard to proof, the non-trading creditor can rely on the principle of freedom of proof against the trader (see Cass. civ. 1ère, 2 May 2001, n° 98-23.080; Cass. civ. 1ère, 23 September 2020, n°19-11.443). In other words, when it comes to proving against the merchant, the rules of commercial law are applicable: proof is made by all means.

But the reverse is not true, the trader who intends to prove against the non-tradesperson must use the rules of civil law (see Cass. corn., 12 June 2019, 18-13.846).

Finally, while the trader must sue his non-trading co-contractor before the civil courts, the non-trading party has an option. He may decide to bring proceedings either in the civil courts or in the commercial courts. The existence of jurisdiction clauses may complicate the debate.

Uniformity ? For example, in order to protect non-traders, clauses attributing territorial jurisdiction are null and void in mixed deeds (art. 48 of the CPC).

As regards the arbitration clause, it must have been accepted by the party against whom it is set up.

> ***Code civil, art. 2061***
> La clause compromissoire doit avoir été acceptée par la partie à laquelle on l'oppose, à moins que celle-ci n'ait succédé aux droits et obligations de la partie qui l'a initialement acceptée.
> Lorsque l'une des parties n'a pas contracté dans le cadre de son activité professionnelle, la clause ne peut lui être opposée.
>
> ***Civil Code, art. 2061***
> **The arbitration clause must have been accepted by the party to whom it is opposed**, unless that party has succeeded the rights and obligations of the party that originally accepted it.
> **Where one of the parties has not contracted in the course of his professional activity, the clause cannot be invoked against him.**

The theory of mixed acts which opposes the trader to the non-trading person is tending to recede in the face of the imperialism of consumer protection law, the structure of which is based on the distinction between professionals and non-professionals or consumers. **Consumer law increasingly governs the activities of professionals.**

Section 2: The regime of the *actes de commerce,* commercial acts

The requirements of flexibility, speed and security which govern commercial law explain and justify the establishment of specific rules which most often derogate from ordinary law. The legal regime for commercial documents is a clear indication of the particular nature of commercial law, which is apparent both at the time the document is concluded and at the time it is executed. In case of conflict, the commercial court will have jurisdiction.

§ 1. The specificities of the commercial act

§ 2. Commercial justice

Structures for conflict resolution meet the need for security and speed that is essential for a functioning economy. There are several possibilities for settling commercial disputes.
The commercial court ("*Tribunal de commerce*") is the natural jurisdiction to deal with commercial disputes (A), in competition with arbitration institution (B and Chapter 6).

A Commercial courts

The nature of commercial law was reflected very early on in the establishment of specific jurisdiction. It will be remembered that the first text relating to consular jurisdictions is an edict of Charles IX of 1563. Despite the controversies surrounding this jurisdiction, and a few reforms or proposed reforms, the existence of commercial courts has never really been called into question.

To understand this jurisdiction, we must consider its organisation, its procedural specificities and its jurisdiction.

It is in fact a specialised court of the first degree of the judicial order competent to hear commercial disputes.

The commercial court hears claims up to the value of 5,000 euros as a last resort (art. L. 721-1 of the C. Com.).

1 - Organization

The main originality, in the French perspective, is based on the composition of *Tribunal de Commerce*, made up of :

- elected judges, traders (or representant of traders, including lawyers) among traders,
- the public prosecutor's office ("*Procureur de la République*", prosecutor, or a "*substitut du Procureur*", deputy prosecutor), mainly present in bankruptcy cases,
- a registry ("*Greffe*")
- and court officers.

2 - Proceedings before the Tribunal de commerce (Commercial Court)

3 - Competence

Regarding jurisdiction, it is usually a question of distinguishing the rules relating to material jurisdiction (ratione materiae) from those relating to territorial jurisdiction *(ratione loci), and* of considering the fate of any clauses conferring jurisdiction.

Articles L. 721-3 et seq. of the French Commercial Code define the jurisdiction of the *Tribunal de commerce,* commercial court.

It being understood that these are exceptional, id est *specialized*, courts whose scope of jurisdiction is strictly limited by the texts. The ordinary or principle court is, in French law, the *Tribunal judiciaire*.

Material competence. It is divided into a jurisdiction common to all commercial courts and a jurisdiction specific to certain commercial courts.

Regarding the jurisdiction common to all commercial courts, article L. 721-3 of the Code provides that commercial courts have jurisdiction over

- Disputes relating to commitments between merchants, between craftsmen, between credit institutions, between finance companies or between them ;
- Challenges relating to business corporations ;
- Those relating to commercial acts between all persons.

Generally speaking, the court is firstly competent because of the person insofar as he acts in his professional capacity, i.e. it is competent for all disputes relating to commitments between traders, whether natural or legal persons (commercial companies).

The question of whether a person is a trader or not is often raised in connection with the jurisdiction of the court. A person sued before the commercial court who does not consider himself to be a trader argues that the court lack jurisdiction ("*exception d'incompétence"*).

The judge must then decide on the quality of the parties before judging the dispute on the merits or sending the parties back to another court if he declares himself incompetent.

The Commercial Court then has jurisdiction over disputes relating to commercial companies. It gives jurisdiction to the commercial court for claims against a commercial company and for all facts or acts that are directly related to the management of commercial companies, regardless of whether or not the parties are merchants. Based on this new wording, the *Cour de cassation* is developing a particularly extensive case law which is in line with the movement towards specialisation of the courts and thus avoids the dispersal of litigation and heterogeneity of case law.

Thus, the *Cour de cassation*, in a decision dated July 10, 2007, considered that transfers of shares in commercial companies fall within the jurisdiction of the commercial courts without it being necessary to distinguish between a simple transfer, which is a civil act, and a transfer of control, which is commercial in nature (Cass. corn., July 10, 2007, No. 06-16548).

Finally, the court is competent because of the subject matter of the dispute, which concerns a commercial act between all persons. One thinks in particular of commercial acts by the form such as bills of exchange.

On the other hand, Articles L. 721-5 and L. 721-6 of the Commercial Code exclude this jurisdiction in the context of liberal professions in commercial form and in the agricultural sector (except if these activities developed by commercial companies, with a specificity for liberal professions in companies constituted under the law of liberal companies, witch are civil).

The jurisdiction of the commercial courts will be extended to artisans as of 2022 at the latest under the law of 18 November 2016 known as the "Justice of the XXlst Century".

Some commercial courts are **specialized**.

For example, some court have been given jurisdiction to hear important types of litigation, for example to hear collective and conciliation proceedings of important companies. Significance is defined by turnover and/or number of employees (over 20 million euros and over 250 employees).

The specialisation of jurisdictions also concerns competition law and restrictive competition practices (eight commercial court in France, and, the Court of appeal of Paris)

Territorial jurisdiction {rationae loci) is governed by Articles 42 to 48 of the Civil Procedure Code. The competent court is therefore that of the place of the defendant's domicile and in contractual matters the place of delivery of the goods or of the performance of the main service.

However, an old case law known as the "main station theory" ("*théorie des gares principals*") allows, when a company has multiple branches, to sue it before the court of the place of one of its establishments provided that the latter has sufficient autonomy and that the dispute concerns it.
These rules are mandatory and can only be derogated from under the strict conditions of Article 48, regarding jurisdiction clauses.

2 Jurisdiction clauses

In the case of clauses conferring *territorial jurisdiction*, the rules of Article 48 of the CPC apply. The principle is that of nullity.

Their validity is nevertheless admitted on the twofold condition that (1) they have been agreed between persons who have all contracted in their capacity as traders and (2) that they are specified in a very apparent manner in the undertaking of the party against whom they are opposed.

In practice, clauses conferring territorial jurisdiction inserted in mixed deeds shall be null and void. This rule is intended to protect the individual and more specifically the consumer, but it also applies to the person who, in isolation, has carried out a commercial act.

Regarding clauses conferring *substantive jurisdiction*, in the absence of a text, case law has accepted without any real difficulty the possibility of conferring jurisdiction on the (*Tribunal judiciaire* (judicial court), which is the court of general jurisdiction. In a mixed deed, it is also

the court with jurisdiction over the non-trading defendant. The civil co-contractor summoned to appear before the commercial court may, however, waive his right to raise the lack of jurisdiction of the court and agree to be tried by the commercial court seized. If the contract contains a clause conferring jurisdiction on the commercial court, this clause cannot be invoked against the non-trading party. He may therefore raise the lack of jurisdiction of the court.

The same applies when the dispute has an international dimension. Indeed, in international matters, Article 25 of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 (Brussels Ibis) recognises the validity of the jurisdiction clause only under the conditions that at least one of the parties is domiciled in a signatory State and that the designated court is that of a Contracting State.

So the jurisdiction clause agreed between a Luxembourg company and a French person, even a non-trading person, residing in London, granting jurisdiction to the commercial court of Paris, is valid.

B Other methods of dispute resolution (see chapter 6)

Section 3 : Commercial Activity and Traders

The theory of *actes de commerce,* commercial acts makes it possible to identify the specific acts performed by traders, but the performance of such acts is sometimes insufficient to confer commerciality on their author. According to Article L. 121-1 of the Commercial Code, a trader is someone who carries out commercial acts and makes them his usual profession. It is therefore the exercise of commercial acts in a professional capacity that leads to the status of trader. In fact, a private individual may perform commercial acts on an isolated basis without becoming a trader. Only the habitual and professional nature of the activity justifies the application of merchant status (§ 1).

The general criteria of commerciality (§ 2) are useful in determining the status of the merchant's auxiliaries (§ 3).

§ 1. The exercise of commercial acts, a criterion of commerciality

A The definition of a trader

As we saw, a trader or merchant is a professionnal who carries out acts of commerce.
We must emphasize the importance of two criterions, the repeated performance of commercial acts, so the habit, and the professional nature of these acts (the registration on the *Registre du Commerce et des sociétés* is a presumption of commerciality, but the tax system, the *Benefices Industriels et Commerciaux, BIC*, trade and industrial benefits).

B. Intermediaries

The practice of the profession must be personal and independent.
So there is a distinction between a trader and its representatives.

Agents. A person who performs commercial acts on behalf of others is, in principle not a trader. More specifically, there are many kinds of agent, in French law.

What we call in English “an agent”, is in French either a “*contrat de mandat*” or a *contrat de commission*”.

In a ***contrat de mandat*** **(“mandate contract”**, “un *mandataire*” (an agent) is a legal or physical person vested with the power to negotiate and/or conclude contracts *on behalf of another person* and *on the name of these person* (“*le mandant*” the principal).

It is mainly a civil contract, it can be a professional (an attorney is the “*mandataire*” of his client in court), but he is not a trader (so he do not possess a “*fonds de commerce*”, he do not be suited in commercial courts, civil proof rules apply, etc.).

This is particularly the case of the ***agent commercial*** (commercial agent), a specific “*contrat de mandat*”, in the commercial code (art. L. 132-1 and seq.), which is definite in the commercial code as a civil contract (except if the agent is a legal person as a commercial company).

This status ("*statut*") come from transposition in France, in 1991 of the Counsil Directive n°86/653, in 1986 *on the coordination of the laws of the Member States relating to self-employed commercial agents.* This agent is necessarily a agent (Dir. 1982? Art. 1.2) : *"who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person , hereinafter called the 'principal', or to negotiate and conclude such transactions on behalf of and in the name of that principal"*

In a **"*contrat de commission*"**, "*un commissionaire*" is a legal or physical person vested with the power to negotiate and/or conclude contracts *on behalf of* but *on his own name*, so the name of the principal ("*le commettant*") is unknown for the third party, the client. A person who performs such acts as a "*commettant*" is, in principle, a trader. The Commercial Code give provisions on some sort of "*contrats de commission*" as "*commission de transport*" agreements.

We also see the **brokerage contract** ("*contrat de courtage*") witch is not an agent, but an intermediary person who provides intermediary services in various areas, e.g., investing, obtaining a loan, or purchasing real estate, meeting of people, etc. A broker ("courtier") is an intermediary who connects a seller and a buyer to facilitate a transaction. So he ca not be the agent of either the seller or the buyer. He is a trader in French law.

There is also, the status of *independent home seller* ("*vendeur à domicile independent*"), created by the law of August 4, 2008, article L. 135-1 and seq. of the Commercial Code. It is a "*a person who sells products or services under the conditions provided for by the Consumer Code with regard to* door-to-door *sales under a written agreement as an agent, commission agent, reseller or broker, binding him or her to the company that entrusts him or her with the sale of its products or services".* The only interest of this status is to recognize this activity. He can be an agent.

Some status are very strange, for example the status of **"*gérant de succursales*"** (Branch manager).

This status is ruled under the terms of Article L. 7321-2 of the French Labour Code, as amended by the Act of 4 August 2008.

> **Code du Travail, art. L. 7321-2 :**
>
> *Est gérant de succursale toute personne :*
> *1° Chargée, par le chef d'entreprise ou avec son accord, de se mettre à la disposition des clients durant le séjour de ceux-ci dans les locaux ou dépendances de l'entreprise, en vue de recevoir d'eux des dépôts de vêtements ou d'autres objets ou de leur rendre des services de toute nature ;*
> *2° Dont la profession consiste essentiellement :*
> *a) Soit à vendre des marchandises de toute nature qui leur sont fournies exclusivement ou presque exclusivement par une seule entreprise, lorsque ces personnes exercent leur profession dans un local fourni ou agréé par cette entreprise et aux conditions et prix imposés par cette entreprise ;*
> *b) Soit à recueillir les commandes ou à recevoir des marchandises à traiter, manutentionner ou transporter, pour le compte d'une seule entreprise, lorsque ces*

personnes exercent leur profession dans un local fourni ou agréé par cette entreprise et aux conditions et prix imposés par cette entreprise.

Labour Law, ar. L. 7321-2 :

A branch manager is any person who :
1 ° Charged, by the head of the company or with his agreement, to make himself available to the customers during the stay of the latter in the premises or outbuildings of the company, in order to receive from them deposits of clothes or other objects or to render them services of any kind;
2 ° Whose profession consists essentially of :
(a) To sell goods of any kind supplied to them exclusively or almost exclusively by a single undertaking, where such persons practise their profession in premises supplied or approved by that undertaking and on the conditions and prices imposed by that undertaking;
(b) To collect orders or to receive goods to be processed, handled or transported, on behalf of a single enterprise, when such persons carry on their profession in premises supplied or approved by that enterprise and on the terms and prices imposed by that enterprise.

So a branch manager is any person whose profession, under a contract concluded with a supplier of product or services, consists either in selling goods of any kind supplied exclusively or almost exclusively by a single company, or in taking orders or receiving goods to be processed, handled or transported, on behalf of a single company, when such persons carry out their profession in premises provided or approved by that company and under the conditions and at the prices imposed by that company.

While the tenant-manager is a trader, branch managers have a somewhat hybrid status that allows them to combine a certain degree of independence with some of the advantages of salaried employment (Article L. 7321-3 of the French Labour Code as amended by the Act of 21 January 2008).

So this can become a legal “war machine” against certain business contracts and especially franchising contract because, every franchisee is under provisions of article L. 7321-2 of the Labour Code. And it is not sufficient to carry out one's activity in a form of company: the company may be bypassed by the mechanism of article L. 7321-2. I wrote a lot in French law journals against this provision, in vain.

This legislation shows the will of the legislator to protect the agent. Regarding third parties, the branch manager is an agent of the company whose products he distributes, and which provides him with supplies; with regard to the said company, he is considered as an employee purely and simply or he is treated as a head of establishment.

In this case, the provisions of the Labour Code applicable to heads of establishments, directors or managers who are employees are applicable to him (Art. L. 7321-3 of the Labour Code).

Regarding the employees placed under their authority, they are responsible instead of the head of the company with whom they have contracted (Art. L. 7321-4 of the Labour Code).

There is also a specific contract of **"*gérant-mandataire*"** (managing agent) under article 146-1 and seq. of the Commercial Code.

> **Code de commerce, art. L. 146-1 :**
>
> Les personnes physiques ou morales qui gèrent un fonds de commerce ou un fonds artisanal, moyennant le versement d'une commission proportionnelle au chiffre d'affaires, sont qualifiées de " gérants-mandataires " lorsque le contrat conclu avec le mandant, pour le compte duquel, le cas échéant dans le cadre d'un réseau, elles gèrent ce fonds, qui en reste propriétaire et supporte les risques liés à son exploitation, leur fixe une mission, en leur laissant toute latitude, dans le cadre ainsi tracé, de déterminer leurs conditions de travail, d'embaucher du personnel et de se substituer des remplaçants dans leur activité à leurs frais et sous leur entière responsabilité.
> La mission précise, le cas échéant, les normes de gestion et d'exploitation du fonds à respecter et les modalités du contrôle susceptible d'être effectué par le mandant. Ces clauses commerciales ne sont pas de nature à modifier la nature du contrat.
>
> **Commercial Code, art. L. 146-1 :**
>
> Natural or legal persons who manage a business or a craft fund, in return for the payment of a commission proportional to the turnover, are qualified as "managers-agents" when the contract concluded with the principal, on whose behalf, if necessary within the framework of a network, they manage this fund, who remains the owner and bears the risks associated with its operation, sets them a mission, leaving them full latitude, within the framework thus drawn, to determine their working conditions, to hire staff and to replace themselves in their activity at their expense and under their full responsibility.
>
> The mission shall specify, where appropriate, the standards of management and operation of the fund to be respected and the procedures for the control that may be carried out by the principal. These commercial clauses are not such as to modify the nature of the contract.

So this contract is the exact contrary of the "*location gérance de fonds de commerce*", where the owner of a *fonds de commerce* rents it to the *locataire gérant* (tenant manager), who manage the *fonds de commerce* as his own will, paying only rents (either fixed rent or proportional to the turnover).

It is understandable that it is a dangerous contract if not very clearly define and perform. It can be requalified very easily as employment contracts, especially when there are similarly agreements by an owner of a trademark, in a chain for example of a chain of hotels or of selling goods on retail, on the grounds that the managers had to respect the norms and standards of the chain according to the attached booklet without being able to deviate from them (Cass. soc., 8 June 2010, n° 08-44965).

On the contrary, **distributors, as franchisees are intermediaries in an economic sense, but are not agents of the franchisor**. They own their business and they just contracted with the Franchisor to benefit the use of his trademark, an assistance and the know-how of the franchise.

However, these contracts raise specific problems both in terms of Contract law and in terms of domestic and EU competition law.

With regard to general commercial law, the question that has been the subject of much debate in the case law is that of the ownership of the business, distributors or franchisees, who are traders, have their own *clientèle* (customers) so if they were, actually traders.

Clientèle may, for example, be attached to a trademark owned by a manufacturer or franchisor, and not to the person (legal or natural) of the distributor of franchisee.

The consequences are huge, and we will come back to this with the study of *fonds de commerce* and also with that of *bail commercial* (commercial lease). If the distributor has not a proper *clientèle*, he don't have any *fonds de commerce*, so he is not a trader, he can not have a *bail commercial* (commercial lease) and the protection of the law on commercial leases.

In order to save this business, the *Cour de cassation*, in 2002 decided to accord a part of the *clientèle* to the franchisee and the other to the franchisor : so both are traders.

In addition to the rules of general law, distribution contracts are governed both by general provisions applicable to all distribution contracts and by rules specific to each type of contract. Among the common rules, in addition to those relating to the necessary independence of the distributor, are the provisions relating to exclusivity or termination of the contract.

In this respect, the "Macron" law of August 2015 makes a radical change of direction in terms of post-contractual non-competition clauses and non-reaffiliation clauses; **instead of the principle of lawfulness under conditions established by case law, it substitutes a principle of nullity** or, more precisely, the new Article L. 341-2, 1° of the Commercial Code deems unwritten any clause that has the effect of restricting the freedom of exercise of the commercial activity of the operator at the end of the contract.

However, the text limits the scope of this rule. Taking over the conditions of Article 5, § 3 of the Vertical Block Exemption Regulation (VBER) on vertical restraints n° 330/2010 of 20 April 2010 (replaced by VBER n° 2022/720 whch contains the same provision), it states that such clauses are permitted when they meet a certain number of cumulative conditions. Thus, even though the network does not have a European dimension, post-contractual non-competition clauses and other non-reaffiliation clauses are subject to the same regime.

So we can compare article 5 of the VBER n° 2022/720 and article L. 342-2 of the Commercial Code :

VERTICAL BLOCK EXEMPTION REGULATION n° 2022/720

Article 5 Excluded restrictions

1. The exemption provided for in Article 2 shall not apply to the following obligations contained in vertical agreements:

(a) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds 5 years;
(b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services ;
(c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers,
(d) any direct or indirect obligation causing a buyer of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services ;
2. By way of derogation from paragraph 1, point (a), the time limitation of five years shall not apply where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer.
3. **By way of derogation from paragraph 1, point (b), the exemption provided for in Article 2 shall apply to any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services where all of the following conditions are fulfilled :**
(a) the obligation relates to goods or services which compete with the contract goods or services ;
(b) the obligation is limited to the premises and land from which the buyer has operated during the contract period ;
(c) the obligation is indispensable to protect know-how transferred by the supplier to the buyer ;
(d) the duration of the obligation is limited to a period of one year after termination of the agreement

CODE DE COMMERCE,

TITRE IV : DES RESEAUX DE DISTRIBUTION COMMERCIALE (ARTICLES L341-1 A L341-2)

Art. L. 342-2

I.-Toute clause ayant pour effet, après l'échéance ou la résiliation d'un des contrats mentionnés à l'article L. 341-1 [contrats de franchise], de restreindre la liberté d'exercice de l'activité commerciale de l'exploitant qui a précédemment souscrit ce contrat est réputée non écrite.
II.-Ne sont pas soumises au I du présent article les clauses dont la personne qui s'en prévaut démontre qu'elles remplissent les conditions cumulatives suivantes :
1° Elles concernent des biens et services en concurrence avec ceux qui font l'objet du contrat mentionné au I ;
2° Elles sont limitées aux terrains et locaux à partir desquels l'exploitant exerce son activité pendant la durée du contrat mentionné au I ;
3° Elles sont indispensables à la protection du savoir-faire substantiel, spécifique et secret transmis dans le cadre du contrat mentionné au I ;

4° Leur durée n'excède pas un an après l'échéance ou la résiliation d'un des contrats mentionnés à l'article L. 341-1.

TITLE IV : ON COMERCIAL DISTRIBUTION NETWORKS (ARTICLES L341-1 À L341-2)

Art. L. 342-2

I.-Any clause having the effect, after the expiry or termination of one of the contracts mentioned in Article L. 341-1 [franchise agreements], to restrict the freedom to exercise the commercial activity of the operator who has previously subscribed to this contract is deemed unwritten.
II.-Clauses which the person availing himself of it demonstrates that they meet the following cumulative conditions are not subject to I of this article:
1 ° They concern goods and services in competition with those which are the subject of the contract mentioned in I;
2 ° They are limited to the land and premises from which the operator carries out his activity during the duration of the contract mentioned in I;
3 ° They are essential for the protection of the substantial, specific and secret know-how transmitted within the framework of the contract mentioned in I;
4 ° Their duration does not exceed one year after the expiry or termination of one of the contracts mentioned in Article L. 341-1.

§3 Craft and agricultural activities
Section 4 : Access to commercial professions
Section 5: Traders' obligations
Section 6 Interference between the professional status and the private status of the trader
Section 6 "Fonds de commerce" : concepts and elements