



## Les Notions de la Corpo

Chers étudiants, ça y est, le semestre touche à sa fin. Mais pour bien profiter de l'été et éviter les rattrapages, la case des partiels semble inévitable !

Depuis maintenant 85 ans la Corpo Assas accompagne les étudiants dans tous les domaines de la vie universitaire, et pour la première fois cette année vous propose des fiches notions, ces fiches sont écrites par nos membres dans le but de favoriser l'entraide étudiants ainsi que de vous aider dans l'apprentissage de certaines notions clés d'une matière, sans

reprendre le cours du professeur.

Effectivement, ces fiches sont là pour vous orienter, elles sont faites par des étudiants et ne sont en aucun cas un substitut à ce qui a été enseigné en TD ou en cours car elles ne se basent que sur les recherches et l'apprentissage personnelles de nos membres.

Si jamais il vous venait des questions, n'hésitez pas à nous envoyer un message sur la page Facebook Corpo Assas ou à contacter Iris de Laporte, Apolline Thevaux, Pauline Deslandes et Erykah Il

➤ **Comment valider votre année ?** Pour les L1 :

Il faut tout d'abord rappeler que toutes vos notes se compensent. Pour valider de la manière la plus simple votre année, il vous faut valider vos blocs de matières fondamentales mais aussi vos blocs de matières complémentaires. Cependant, le calcul peut s'avérer plus complexe...

Chaque fin de semestre est marquée par des examens qui constituent l'épine dorsale de la validation de votre année. Bon nombre d'autres possibilités vous sont proposées pour engranger un maximum de points et limiter ainsi l'impact de vos partiels. Chacun de vos chargés de TD va vous attribuer une note sur 20 à l'issue du semestre. Vos TD de matières fondamentales comptent donc autant que l'examen écrit, lui aussi noté sur 20. Cet examen s'effectue en 3h et nécessite un exercice de rédaction. Sur un semestre, une matière fondamentale peut donc vous rapporter jusqu'à 40 points. Seuls 20 points sont nécessaires à la validation de la matière. Pour valider votre bloc de fondamentales, il vous faut donc obtenir 40 points en additionnant vos notes de TD et vos notes aux partiels. Si toutefois vous n'obtenez pas ces 40 points, vous repasserez en septembre, lors de la session de rattrapage, la ou les matières que vous n'auriez pas validée(s).

**Attention** : le passage par septembre annule votre note de TD obtenue dans la matière. Pour les L2 :

Le principe est similaire, à la différence qu'il y a plus de matières

fondamentales et plus de matières complémentaires.

Conclusion simple : travailler toutes les matières un minimum en mettant l'accent sur les TD et les matières fondamentales (les plus gros coefficients) vous permettra de maximiser vos chances de valider votre année du premier coup et ainsi éviter l'écueil des rattrapages de septembre.

➤ Système de compensation et session de septembre

Si, au sein même des unités d'enseignement, les matières se compensent, les blocs peuvent aussi se

compenser entre eux à la fin de l'année. Ainsi, si vous obtenez une moyenne générale sur l'année de 10/20, votre passage est assuré.

En cas d'échec lors des sessions de janvier et de juin, une seconde chance vous est offerte en septembre.

**Attention**, contrairement aux idées reçues, les rattrapages ne sont pas plus faciles, ils sont connus pour être notés plus sévèrement. Toutes les matières des blocs non validés où vous n'avez pas eu la moyenne sont à repasser. S'il s'agit d'une matière à TD, la note de TD est annulée (même si vous avez été défaillant), de sorte que la note obtenue en septembre compte double (8/20 revient à 16/40). Les points d'avance acquis lors de l'année (points au-dessus de la moyenne lors de la validation d'un bloc) sont valables après les rattrapages et permettent donc la compensation finale comme décrite précédemment.

A noter que le jury peut vous accorder quelques points pour l'obtention de votre année, notamment dans le cas d'un étudiant sérieux en TD... A bon entendeur !

Pour les L1, le passage en deuxième année peut aussi se faire en conditionnel, pour cela il vous faut valider les deux unités d'enseignement fondamental et une unité d'enseignement complémentaire tout en sachant que l'autre unité complémentaire sera à repasser en L2.



# DUALITIES AND OTHER SPECIFICITIES OF THE FRENCH COURT SYSTEM

## French courts (in general):

They are independent institutions constituted of **judges**. Institutions that **only** aim at giving advisory opinions aren't considered as courts.

## The distinctions between some type of French courts:

- Those who do not belong to one of the two system/those who do belong to these

This is about the duality of the system : the separation between the judicial court system and the administrative court system. The courts that don't belong to either system are, for instance, the Constitutional council or the Conflict court.

- 1<sup>st</sup> instance/appellate courts

The first court you go to and which hear the first about the factual and legal issues raised in a litigation, is the first instance court ("jurisdiction de 1<sup>ere</sup> instance"). An appellate court ("jurisdiction d'appel") reconsiders the issues raised in a litigation if at least one of the parties thinks that the 1<sup>st</sup> instance court erred ("commis une erreur"). If the litigant is unsatisfied with the decision of the 1<sup>st</sup> instance court, he **can lodge an appeal**. The appellate courts are higher in the hierarchy than the 1<sup>st</sup> instance ones.

- Juges du fond/cassation

1<sup>st</sup> instance courts and appellate courts consider **the factual and legal issues** before they hand down a ruling. But that's not the case of the judicial Supreme court and the Council of state that consider whether the 1<sup>st</sup> instance/appellate courts applied the law properly. If not, they can break the decision they have rendered before. They don't judge the facts but **only consider legal issues**. That way, they are not considered as a third-tier court.

- Juges du fond/juge des référés

The « référés » judge deals with applications that are urgent, that aim at stopping an illegal activity, that don't have a major dispute on the merits, and when an application on the merit has also been made before the same court in the past. The référé judge (who doesn't look at the merits of the case) judges alone whether courts judging on the merit (who, indeed, looks at the merits of the case) usually have a collegiate form. The référé judgment is **provisional** and very fast (hours or days) and do not coerce the court that will look at the merits of the case and whose judgement is binding, and which can take years before handing down its decision. Decisions rendered by both are subject to an **adversarial system** so both sides can explain their own point of view. → regarding the judicial court system, a decree of 2019 presented a new accelerate procedure "procédure accélérée du fond".

- General/specific jurisdiction

→ compétence de droit commun/compétence spéciale



Some courts have a specific jurisdiction, and they deal exclusively with litigations related to its specificity. On the other hand, courts of general jurisdiction can deal with all the disputes that are not referred to any court of specific jurisdiction. We can take for example for the latter the 1<sup>st</sup> instance judicial court (former “tribunal d’instance” et “tribunal de grande instance”).

## Examples of basic French courts:

- **The first instance judicial court:**

→ created by a statute of 2019

**a) Its role:**

This court deals with **civil matters**. And there must be at least 1 instance judicial court per Court of appeal jurisdiction. Has an exclusive jurisdiction for matters such as family law, things related to immovables and inheritance laws, or with commercial disputes when there aren’t any commercial courts in the near area. It also has a residual jurisdiction for every civil dispute that does not fall under a particular court.

**b) Its aims:**

- To make justice simpler
- To make justice easier of access (by having a single civil court)
- To save money

**c) Its composition:**

Its panel is composed by at least 3 (must be an odd number, for the possibility of a tie-break vote) professional judges (= judges who followed a specific legal education). Recently, to save money, there has been a trend to resort to a single judge. Each first instance judicial court has its own clerk. It is split in divisions. For example, Paris first instance judicial court has 27 “chambres”.

**d) Its procedure:**

They adjudicate disputes during public trials. Nevertheless, a hearing or a trial may be **held in chambers** (“huis clos”): as of right when judges deal with a non-contentious application; or when the judges deal with a dispute within it is necessary to do so (to protect a weaker party), unless a text provides otherwise.

**e) Its president:**

He deals with emergency applications (“demandes en référé”) (which exist before most courts). He can also adjudicate disputes such as insolvency procedures affecting farmers.

**f) Some specificities:**

**a) Proximity court divisions**

→ Chambre de proximité

They are not a full judicial court. They are made for people living in extensive geography areas which are not populated and where there is no first instance judicial court. One of the divisions of an existing first instance judicial court is exported to that area, in order to bring justice closer to the people living there. Each proximity court has a specific **court clerk**.

**b) Specific subject-matter jurisdiction (“compétence matérielle”)**

Some first instance judicial courts are granted it. Indeed, Paris’s as the privilege to deal with applications for damages lodged by victims of terrorist attacks.



- **The commercial court:**

→ a specialized court of the judicial court system  
→ tribunal de commerce

- a) What is it?**

It is a **consular court** (“jurisdiction consulaire”) ruled by the principle of “échevinage” (judges come from a mixed background of lawyer and non-lawyer judges). Commercial courts are businesspeople (managers of company or retailers) thus, they are not required to study law.

- b) Its composition:**

The judges are volunteers and are not paid. They must take **an oath** though. Since a statute of 2016, they must not have conflicts of interests with any litigant appearing before them, so they don't take anyone's side. To deal with these kinds of breaches, in 1987 a disciplinary committee was set up. It is composed of 4 professional lawyer judges and 4 commercial (non-lawyers) judges elected by the presidents of all the commercial courts.

- c) Its role:**

It deals with commercial disputes. In January 2022 their jurisdiction. In January 2022 their jurisdiction is extended to disputes between “artisans”. The president deals with emergency application. The “juge commissaire” oversees supervising **insolvency proceedings** (for companies' financial difficulties).

- d) The procedure beforehand:**

- It is divided into divisions
- The trial is public
- There is a panel of judges (odd number + at least three)

- e) Some issues**

It is managed by people who know what they are dealing with : they know mostly the commercial and business problems. However, the commercial judges are not familiar with the law nor the procedure : they are not legally qualified. So, they get some training and are assisted by administration staff.

- **The employment/industrial tribunal :**

→ conseil des prud'hommes  
→ a specialized court of the judicial court system

- a) The objectives:**

They organize a mediation between the parties to an employment conflict, in order to reach an agreement so the conflict doesn't have to go before the court. But if they don't succeed to reach it, the dispute goes before the employment tribunal.

- b) Characteristics:**

Thus, it has a two-stage process: 1<sup>st</sup> a conciliation/mediation (which is an ADR/“MARL”), it is a non-judicial way **to render justice** and it is mandatory , 2<sup>nd</sup> if there is no settlement, an ordinary court.

- c) Its organization:**

- 1 employment tribunal/geographical area where there is one judicial court



- It is divided in sections (commerce/trade/industry...), which are composed of advisers (1<sup>st</sup> stage) and **lay judges** (pas de formation en droit) (2<sup>nd</sup> stage); they are nominated, from a list of proposals made by professional organizations and trade unions, by the minister of justice and the labour minister, for 4 years. They both take an oath, are impartial and ensure the secrecy of the deliberations. If they don't respect that they must appear before a disciplinary commission (presided by a senior judge from the Supreme court).
- The one who presides is in rotation between and employee or an employer and the vice president is from the other profession.
- All professions are covered except the civil service ("fonction publique") → these people are heard before administrative courts
- Emergency application ("référé") are possible
- Equal representation of employers and employees

#### **d) Its functioning:**

There is always an even number of employees and employers represented:

- 1<sup>st</sup> stage/emergency applications: 1 employer + 1 employee
- 2<sup>nd</sup> stage: 2 employers + 2 employees

The rotation of the President is annual. The tie-breaking vote is given to a judge from the 1<sup>st</sup> instance judicial court. Since 2015, there is a procedure before the 1<sup>st</sup> stage: a case management procedure ("procédure de mise en état") just like any ordinary court. The judge, now, must check the progress of the case regularly, help the progression of the case by ordering specific steps that the parties have to take and take strategic decisions such as deciding when the case is ready for a trial.

#### **e) Its jurisdiction:**

##### **a) Subject matter jurisdiction**

→ compétence matérielle

They take care of any dispute related to employment, between two employees or an employer and an employee, without looking at the amount of the case.

##### **b) Personal & territorial jurisdiction**

→ compétence territoriale et personnelle

The tribunal which has the personal jurisdiction is the one that is located in the geographical area where the employee works or if he doesn't work in a specific location, the tribunal which has the jurisdiction is the one the employee lives in. In that last case, the employee can also choose the closest court where he was hired or the place the employer is settled.

## **The judges of these courts:**

"A judge resolves disputes arising from the application, or non-application of legal rules whilst resorting to a range of protective measures aimed at safeguarding the interests of the parties to the dispute."

#### **• The family judge:**

In the first instance judicial court, they oversee:

- Issues of guardianship of minors (tutelle de mineurs)
- Divorce
- Parental custody (garde des enfants)
- Alimony (pension alimentaire)
- Change of 1st name



- **The judge in charge of enforcing court decisions:**

→ juge de l'exécution

They deal with:

- Freezing order applications (geler les actifs d'un débiteur « debtor's assets »)
- Any application meant to assist with enforcing a court decision

- **The judge in charge of protecting people in general:**

→ contentieux de la protection

They take care of:

- Consumer litigations
- Guardianship of adults (Britney Spears)
- Litigations relating to non-commercial leases

- **The commercial judge:**

- a) The characteristics:**

- elected for 2 years, renewable for 5
- after 5 times, can be reelected with another court
- retires at the age of 75

- b) The process of the election:**

- Vote by retailers, managers of companies and people running businesses for the members of the local chamber of commerce and industry
- These members then, elect commercial judges
- To vote, you must:
  - Be 30 years old or over
  - Have been trading for at least 5 years

- **The judge in charge of expropriation:**

→ Juge de l'expropriation

→ Expropriation : French concept consisting in legally depossessing people of their property/real estate

- 1<sup>st</sup> instance judge, separated from the traditional 1<sup>st</sup> instance judicial court
- Shares the court clerk (greffier), w/ ordinary 1<sup>st</sup> instance judicial court

Their role:

- Expropriation
- Transfers the title to property from the owner to the authority depossessing them
- Assess the amount of financial compensation to be awarded to the depossessed owner, (if there is a disagreement between the administration and the former owner
- Advised by an independent expert "commissaire du gouvernement" (recently replaced w/ "les rapporteurs publics"/advocate general)

- **The judge in charge of freedom and detention:**

→ Juge des libertés et de la détention

→ Can exercise this position for a maximum of 10 years



- Created by a statute of 2000
- Deals w/ the civil aspects of the detention of foreigner (except for migrants)
- Deals w/ the civil aspects of the detention of people alleged to have psychiatric issues
- Criminal aspect: order the renewal of a detention decision, or a release from prison

- **Judges nowadays:**

There are essential to the country and their main role is to produce precedents, case law (“jurisprudence”). The higher the position of a judge is in the hierarchy of courts; the more weight case law has. Since the beginnings of the modern French justice system, judges seemed satisfied with it. However, nowadays, French judges, in particular the judicial ones, look like they’re going through some crisis.

- **Identity crisis:**

- a) pressure:**

Currently, they seem to be under a lot of pressure to render decisions “asap” with a decrease of in staff and money. Regarding the law-making process of the judge, through case-law/precedents, it increases in difficulty. In 1917 there were around 6k judicial judges and now less than 9k (due to the population increase) but for 2 800k cases (in 2010) when in 1977, judicial judges had to deal with only 845k new cases.

- b) The criticism:**

They are also often subject to criticism. Indeed, it can be due to the decisions they render in financial/political litigation. In these cases, their independence is questioned, and the media may describe them as an abusive power as opposed to an authority. But they are also criticized because of the miscarriages of justice they can occasionally cause.

- **Financial crisis:**

→ Would judicial miscarriages happen if judges had more money to investigate properly?

Indeed, Justice needs money to work well and if it cannot function properly you can either increase its budget or reform the role of judges to decrease their workload (“charge de travail”). For instance, “filtrage des pourvois” before they went to the judicial Supreme court was set up, in 2016, in order to reduce the judicial Supreme court’s workload. A governmental commission decided that “un filtrage des pourvois” would be in breach of the right to an equal access of justice, though. Therefore, this formal filter was abandoned. Nevertheless, as the judicial Supreme court isn’t a third level of court, one way or another, a selection is made to determine which cases the judicial Supreme court will hear. The same statute of 2016 imposed the Supreme court to have a more detailed legal reasoning, which increased its workload.

→ it shows that the Supreme court has the “power” to decide which cases are worthy for judges to spend more time on.