

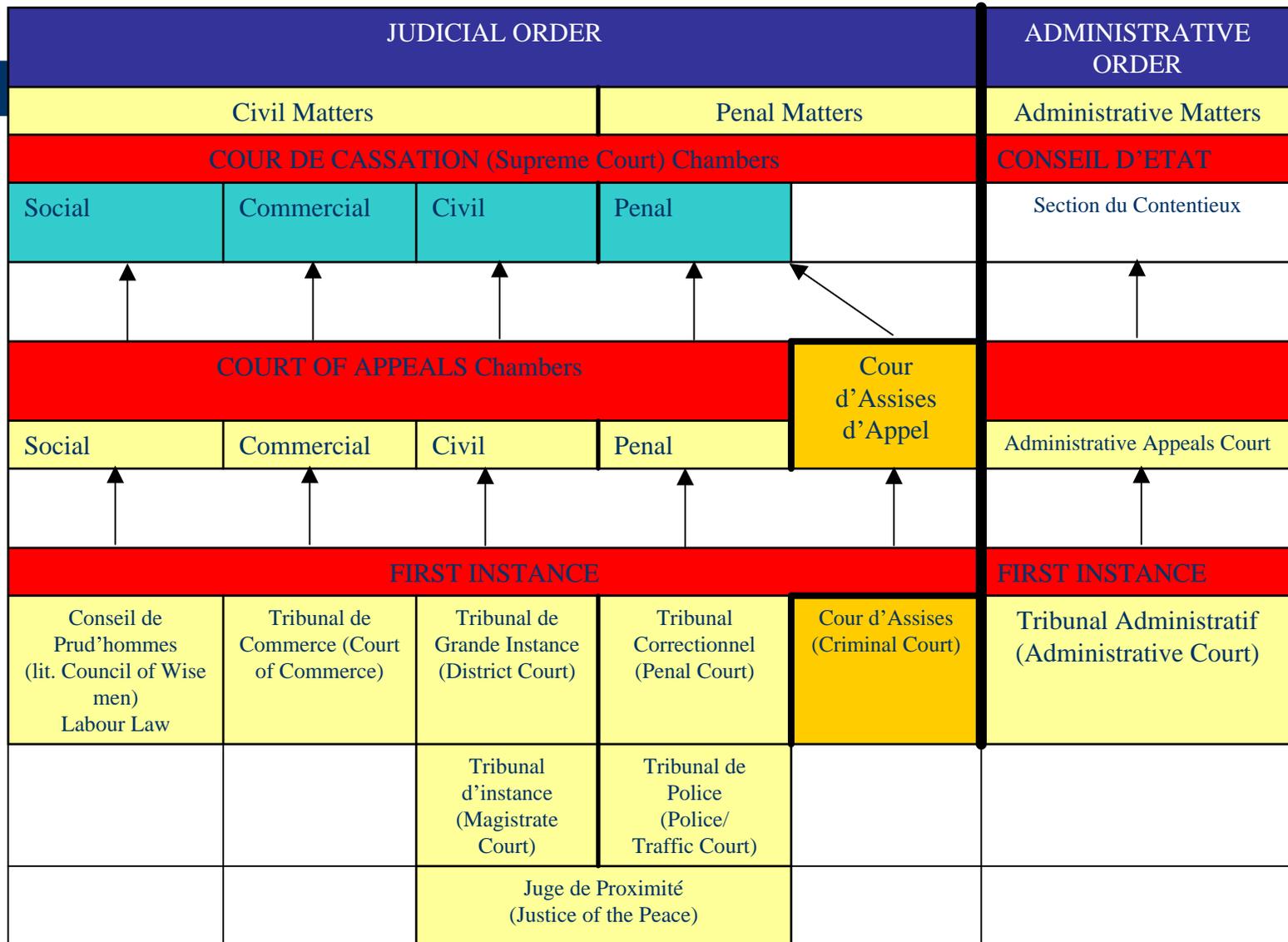
The Life of Civil Case in France

**International Law and
Litigation for US Judges
Comparative Judicial
Practice**

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The French Judicial System



General Considerations about the role of the Judge in the French system

- **Litigation of civil cases follow the accusatorial system**
- **Since 1970, the role of the Judge has been reinforced**
- **The Judge cannot overlap on the powers of the Legislative Branch**
- **The Court is composed of three professional judges**
- **Civil procedure is in theory an oral procedure, but in practice essentially written.**

The Pre-Trial Phase

- The President of the Court decides whether to send the case directly to the Court or to the pre-trial Judge (Mise en état)

- The Pre-Trial Judge may:

Hearing and conciliation of parties

- Hear the parties (a.764)
- Hear the lawyers and make any communication to them (a.764)
- Conciliate the parties and order the end of the case. (a.768)

Control of the unfolding of the pre-trial phase

- Summon the lawyers to submit pleadings, to submit a legal or factual explanation, to call in the case other parties (a.765)
- Establish time-limits in consideration of the nature, the complexity or the urgency of the case (a.764)
- Declare the pre-trial phase closed, which prohibits the later submission of briefs or new claims (a.779)

The Pre-Trial Phase

Building up of the case. The Pre-Trial Judge may:

- **Rule on procedural pleas:** parties are not allowed to make any claim on procedural grounds if they failed to do it at the pre-trial phase (a.771)
- **Order the parties to submit documents** and pieces of evidence (a.765)
- **Order provisional payments** to creditors or payment of legal costs
- **Order any provisional conservatory measure** (a.771)
- **Order an investigation measure**, at the request of parties or on his own:
 - Production of documents (a.771) (only at the request of the parties)
 - Hearing of the parties (a. 184 et seq.)
 - “personal verifications” (on-site visit) (a179)
 - Hearing of third parties, either through the submission of written testimonies, or through an investigation
 - Investigation: hearing of a witness (a.204)
 - Appointment of an expert (a.263)

The Trial Phase

- Hearings are
 - Public
 - Parties can request to be heard in a closed session
 - Oral
 - Parties make their arguments in oral, through the defense lawyer
 - Witnesses are not heard, unless otherwise decided by the Court
- The Court may order any further investigation as necessary
- Hearings can be made before the whole Court, or before one of the Judges who will report to the Court
- The Court fixes the date when the judgment will be issued
- The decision of the Court details the considerations for the decision, but does not report dissenting voices within the Court
- All decisions are subject to appeal

Mutual Legal Assistance in Civil Matters

- **No bilateral MLAT** in civil matters between France and the USA
- **MLA governed by 2 The Hague Conventions:**
 - Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
 - Convention of 18 March 1970 on the Taking of Evidence Abroad
- **10-15 requests from the USA** received by France every year
 - Generally to hear a witness or for the production of documents
- **Hearing of witness**
 - By a Judge
 - Or by a third party (US consul, lawyer)
 - May follow the procedural requirements by the requesting State (Cross examination, etc)
- **Prohibition of “fishing expeditions”**
- **Limits:**
 - Risk for sovereignty or security
 - Contrary to fundamental principles of law

Thank you !

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