Summary Methodology for foreign students

I. Short presentation of the French legal system

A. The sources of the law

Classically, the sources of law are presented in France as a hierarchy of norms with at its top the Constitution and texts of constitutional value such as the Declaration of Human and Civic Rights of 1789. Each layer of the hierarchy must not, in principle, contradict the layer(s) above it.

Formal sources of the law[1]:

Norms of constitutional value
International norms
(International treaties and European Union law)
Legislative norms
(*Statutes* of article 34 of the Constitution and *Ordinances* of article 38 of the Constitution)
Regulatory norms
(Agreements and collective labour agreements)

In addition to these formal sources, other sources of law include customs and usages (unwritten law resulting from a practice that is prolonged over time and recognised as mandatory by the population) and case law.

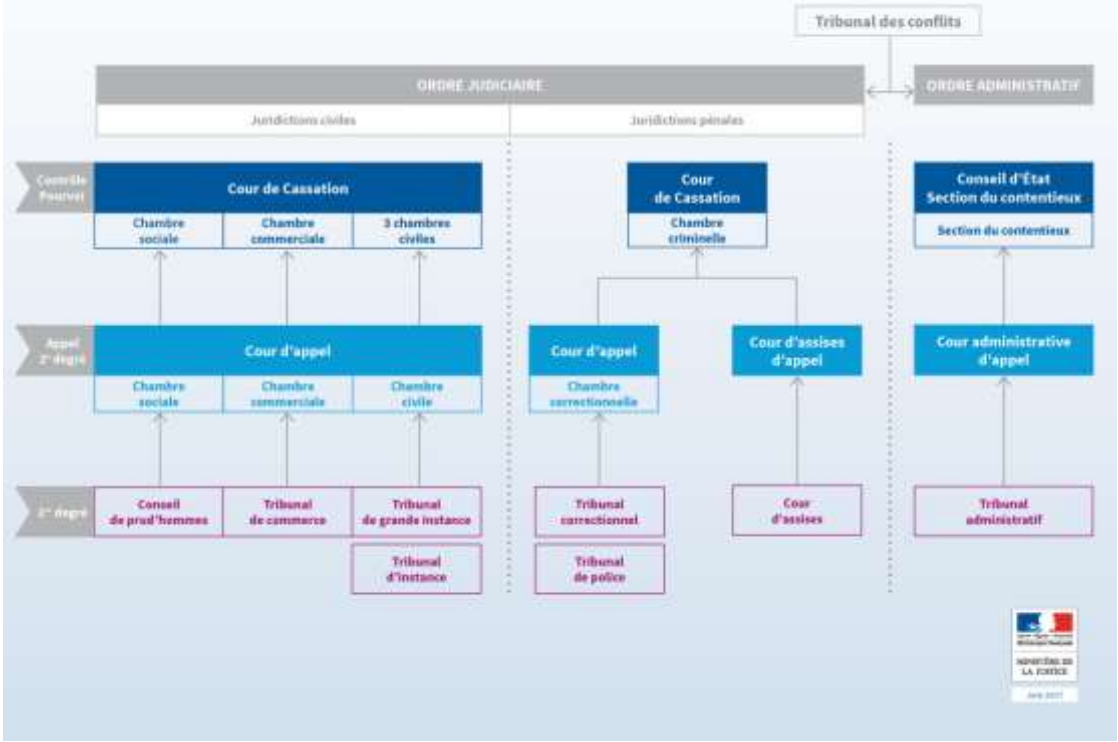
B. Organisation of the Judiciary in France

1. Until 1 January 2020

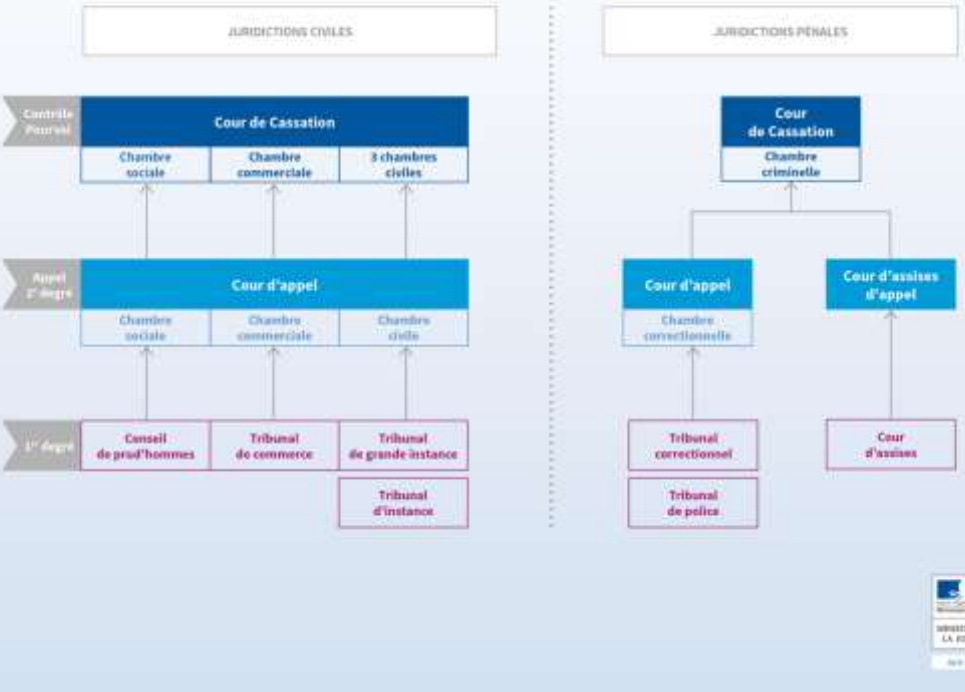
Source: www.justice.gouv.fr

[1] According to Dean Carbonnier, the formal sources of law cover all textual legal bases as opposed to so-called real sources that contribute to the spontaneous emergence of unwritten rules.

Organisation de la Justice française



Ordre judiciaire



First degree of jurisdiction

Civil courts

Tribunal de grande instance
Civil disputes involving claims in excess of €10,000 and cases concerning divorce, parental authority, inheritance, filiation, ownership of real property, civil status.

Tribunal d'instance
Civil disputes involving claims not exceeding €10,000 and consumer credit disputes.

Specialised courts

Conseil de prud'hommes
Disputes between employees or apprentices and employers concerning compliance with employment or apprenticeship contracts.

Tribunal de commerce
Disputes between private persons and traders or between traders and commercial companies.

Tribunal des affaires de sécurité sociale
Disputes between social security agencies and taxable persons.

Tribunal paritaire des baux ruraux
Disputes between owners and operators of land or farm buildings.

Criminal courts

Cour d'assises
Crimes (most serious offences) punishable by imprisonment to life.

Tribunal correctionnel
Major offences, known as *délits*, punishable by imprisonment for up to 10 years and other penalties (fines, additional penalties, community service).

Tribunal de police
Minor offences, known as *contraventions*, subject to fines up to €1500. The tribunal always consists of only one judge and sits on the *tribunal d'instance*. Since 1 July 2017, all minor offences, known as *contraventions*, are heard by the *tribunal de police*, which is part of the *tribunal de grande instance* by now.

Juge de proximité
In criminal matters, the *juges de proximité* have jurisdiction for minor offences, known as *contraventions*, subject to fines up to €750. Since 1 July 2017, the *juridiction de proximité* does not exist anymore. All cases concerning minor offences subject to fines up to €750 are heard by the *tribunal de police*, which is part of the *tribunal de grande instance* by now.

Juvenile Courts

Judge for juveniles
The judge takes protective measures for minors in danger. He has jurisdiction over offences committed by minors.

Juvenile Court
It has jurisdiction over petty offences and less serious offences committed by all minors and over more serious offences committed by minors aged under 16 at the time of the crime.

The juvenile formation of the *Cour d'assises*
Crimes committed by minors over 16 years of age.

Appeal (Second degree of jurisdiction)

Court of appeal
Any person who disagrees with the first judgment can submit an appeal. The Court of Appeal then re-examines the facts of the case and the legal bases of the judgment.
Since 1 January 2001, the verdicts of the *Cour d'assises* may be appealed to a different *Cour d'assises* composed of 3 professional judges and 12 jurors.

Judicial review of the *Cour de cassation*
(the process by which cases are referred to the *Cour de cassation* on appeal is known as a "*pourvoi en cassation*")

Cour de cassation

This *Cour de cassation* does not judge the case a third time. It does not look again at the facts of the case. It only re-examines the legal bases of judgments, checking that no errors have been made in law. The Court makes sure that the decisions of the lower courts are consistent with its previous decisions.

2. From 1 January 2020

On 8 April 2019, the Lord Chancellor and Secretary of State for Justice has presented the upcoming reform of the French Judiciary system.

"The legislation No. 2019-222 on programming for years 2018-2022 and reforming justice system, and constitutional law No. 2019-221 on the reinforcement of the court's organisation were promulgated on 24 March 2019. They implement a new organisation of the Judiciary with the union of the *tribunaux de grande instance* and *tribunaux d'instance* as from 1 January 2020 and create a new jurisdiction called *juge des contentieux de la protection*".

In a nutshell, the *tribunal de grande instance (TGI)* and most of the *tribunaux d'instance (TI)* are replaced by a new court called the *tribunal judiciaire*. It has all the jurisdictions previously vested in the *TGI* and *TI*.
If someone wants to challenge a decision of the *tribunal judiciaire*, he can submit an appeal but it has to involve claims in excess of €5,000.

As mentioned before, not all *TI* are supposed to be replaced by the *tribunal judiciaire*. It only has to happen when the *TGI* and *TI* share the same territorial jurisdictions. If this is not the case, then the *TGI* is replaced by the *tribunal judiciaire* but the *TI* becomes part of the *tribunal judiciaire* only as a distinct local chamber called *tribunal de proximité*.

The decree No. 2019-912 of 30 August 2019 confers to the *tribunal judiciaire*:

- A general jurisdiction over civil disputes
- A special jurisdiction over disputes mentioned at the article R.211-3-13 and following of the *Code de l'organisation judiciaire*

➢ **For those disputes, appeal is open**

- Jurisdiction over civil disputes
- An exclusive jurisdiction over disputes mentioned at the articles R.211-3-26 and R.211-3-27 of the *Code de l'organisation judiciaire* (Civil status, filiation, inheritance, commercial leases, etc).

➢ **For those disputes, appeal is open only for claims in excess of €5,000**

- Special jurisdiction over electoral disputes mentioned at articles R.211-3-13 of the *Code de l'organisation judiciaire*.

- **For those disputes, the decision of the *tribunal judiciaire* is final. Only a "*pourvoi en cassation*" is possible.**

II. Legal Syllogisms

In law, the most common way of reasoning is syllogism. It consists in drawing a conclusion from the combination of a general statement (the major premise) and a specific statement (the minor premise).

Aristotle has given the most famous example of what a syllogism is in his *Organon*:

1. ***Major premise (the rule)***

All men are mortal,

2. ***Minor premise (particular case)***

Socrates is a man,

3. ***Conclusion (result of the application to the particular case)***

Therefore, Socrates is mortal.

If syllogism is applied to a legal rule, it could be for example:

1. ***Major premise = rule of law:***

Article 144 of the Civil Code **provides**[2] that "Marriage may not be contracted before the age of eighteen years".

2. ***Minor premise = application to particular facts***

Manon and Dominique have just celebrated their 18th birthday.

3. ***Conclusion = result of the application to the facts***

Therefore Manon and Dominique have the right to marry.

III. Summary Methodology

A. Case study (*cas pratique*)

1. The statement of facts

The first mission is to identify precisely the key facts that will be relevant to decide which legal rule has to be applied to resolve the case. To do so, the best way is to start by presenting the legal status of all the persons involved. Is this person married, a client or a landlord? This is the kind of questions you will have to ask to yourself in the first place. Obviously, sometimes this task won't be easy to perform.

There is no specific methodological rule here to follow, but only practical guidelines that might help you complete this task:

On the draft version: selection of the relevant facts

On the final version: legal qualification + timeline of the relevant facts

2. The statement of the legal issue

The set of relevant facts identified is supposed to raise a legal issue that has to be resolved. The wording of the issue is fundamental. It is a way to show that you have been able to understand the legal stakes of the case. The legal issue is usually enunciated in the form of a short question.

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[2] Contrary to what a journalistic habit might suggest, a law does not stipulate (*stipule*), but provides (*dispose*)!!! Be careful about the words you use.

3. The application of legal syllogism

- **Major premise**

The relevant rules selected to solve the legal issue has to be presented in the following order: principles (+ conditions), exceptions (+ conditions), balanced principles (+ conditions).
For each rule (principles, exceptions, balanced principles) you have to mention in the following order: the corresponding statute law, regulatory rules and case-law (first, case of first impression, then precedent).
The major premise should always be presented this way: "by principle…", or even "by exception…" or "unless …", "except if…." or any similar expressions.

- **Minor premise**

The presentation of the minor premise is a way to explain **why** and **how** the legal rule should be applied to the facts ("in this case"). This stage could come down to a confrontation between the conditions of application of the legal rules set previously and the facts of the particular case studied.
"In this case, …", then checking of the conditions.

- **Conclusion**

The conclusion is the answer to the legal issue set previously.
"In conclusion..." = specific answer to the legal issue raised before.

B. Essay

The legal essay is supposed to be a true demonstration. It is by no means a way to repeat your lesson.
The work required to complete this exercise can be split in four stages:

Preparatory work: you should analyse every word of the test in order to list all the information you might need after. If the legal issue has not been framed explicitly, you should be able to find one yourself by identifying a paradox in the wording of the test.

The plan construction: The plan consists of two main parts, each composed of two subparts with apparent headings.

The plan construction supposes to spread out across the information drawn from your lesson in four parts. Those parts should represent an analytic answer to the legal issue identified previously. Formally, each part, each subpart, of your plan has to be summed up by a distinct heading. The heading is supposed to present the idea you'll work on. Headings should respond to each other. The plan has to be noticeable (e. g. I. The constitutional principle of legislative supremacy // II. The rise of judicial power). Heading cannot be composed of sentences.

I. …….
A……
B……
II. …….
A……
B……

The construction of the introduction: to build your introduction you should use historical context, comparative law and all the elements related to the topic in order to go from a general

perspective to the specific legal issue you'll deal with, and announce the plan chosen to answer the legal issue. The introduction should not exceed one-third of your essay.

Final writing: do not forget headings and transitions. Each part should correspond to an idea or an argument that contribute to answer the legal issue by using the following elements: legal principles/definitions, case law, scholar writings and examples.

C. The court decision report (*fiche d'arrêt*)

The court decision report is a thorough exercise. It is the preliminary stage of the decision's commentary. It has to be short and should contain the key elements necessary to understand the court decision studied.

The court decision report should always be executed according to the following steps:

- Presentation of the decision: decision references, type of decision and topic.
- Facts statement: summary of the situation that led the parties to bring the matter to the court. The presentation of the facts has to be chronological and requires a legal qualification.
- Reminder of the procedure: presentation of every legal stage from the first court which heard the case to the court that issued the decision you have to study.
- Arguments of the parties: presentation of the legal arguments submitted to the judge. This fundamental stage can be part of the previous one dedicated to the reminder of the procedure.
- Statement of the legal issue: the arguments of the parties are supposed to trigger the legal issue of the case studied.
- Decision of the court: which legal interpretation has been chosen by the judge and which arguments submitted by the parties finally convinced him.
- Scope of the decision: replace the decision studied in its legal context, including previous decisions.

D. The commentary of a court decision

This exercise consists in analysing the meaning and the scope of a court decision. It also involves a criticism of the decision. It is important to replace the decision in the context of previous decisions. The legal benefit of the decision has to appear clearly: is it a confirmation, a novelty, a clarification etc.… This exercise requires a true analysis. It should not be a hidden way to repeat your lesson or paraphrase what is written in the decision.

1. Introduction

The introduction of the commentary should follow the main steps of the court decision report (*fiche d'arrêt*):

- Catchy phrase
- Facts statement
- Reminder of the procedure
- Presentation of the arguments of each party
- Statement of the legal issue
- Decision of the court

2. The plan

The plan is usually divided into two parts, each consisting of two subparts.

I. ……..
A……
B……
II. ……..
A……
B……

The "classic" plan should in principle fit the court reasoning, but exceptionally you can use another type of plan called "emergency" plan.
Punctuation and conjugated verbs are not allowed in the headings.

a) The "classic" plan

Once you have completed a preliminary analysis of the court decision and gathered your ideas, then you'll have to present them in a binary way:

- Principle / exception
- Notion / legal implications (*régime*)
- Conditions / effects (implementation)
- Statement of the solution / Criticism of the solution (argument)
- Positive law / Prospective law
- In theory / in practice
- 1st condition / 2nd condition

Once the plan has been chosen, do not forget to incorporate in your headings those binary elements, as well as technical and dynamic elements:

- the technical elements will be provided by the matter of the legal solution;
- the purpose of dynamic elements is to highlight oppositions.

b) The "emergency" plan

Once the court decision report (*fiche d'arrêt*) has been completed, the "emergency plan" requires following this pattern:

I°/A) = statement of the legal context prior to the decision; the transition to I°/B) may consist in the announcement of the solution adopted by the judge[3];
I°/B) = explanation of the solution adopted by the judge (i.e. comparison of the solution with the legal context prior to the decision); possibly, elements regarding the scope of the decision;
II°/A) = confrontation between the solution and the arguments involved (i.e. analysis of the legal syllogism); elements regarding the scope of the decision;
II°/B) = critical assessment of the solution.
The headings are based on a summary of the ideas developed in each subpart.

The following trick might help you find the right heading: choose one type of plan (the "classic" or "emergency" one), add a key word related to the topic, institution or notion mentioned by the commented decision (technical element) and a dynamic adjective or adverb (dynamic element)[4]. This practical guideline is a good way to show that you are not just describing what is written in the decision, but that you proceed to a true demonstration.

[3] Each subpart, indeed, must refer to an element of the solution in order to avoid off topic.
[4] The dynamic nature of headings is generally triggered by a phenomenon of opposition: if, for example, the content of your II°/A) is more focused on the *theoretical* implications of the solution, it will be appreciated if, on the other side, the II°/B) is concerned with the *practical* applications of the solution.

3. The commentary

It is necessary to constantly move back and forth between your knowledge and the commented decision.
It is imperative not to deviate from the commented decision and to quote it regularly in your commentary.
It is necessary to pay attention to your writing, not forget the announcements of the plan and the subparts (*les chapeaux*), and transitions that together confer unity and consistency to the whole study.