UNIVERSITÉ PARIS 1

PANTHÉON SORBONNE

CORPORATE LAW

Session 2: The Company Contract and Partner Contributions

LLM in French and European Business Law 2026

Université Paris 1 Panthéon-Sorbonne

Session 2 Roadmap: Two Foundational Pillars of Company Formation

PILLAR I: THE COMPANY CONTRACT

- **Contractual Base:** Deconstructed through Civil Code Article 1128 general conditions.
- **Mutual Consent:** The reality of intent, the risk of simulation, and straw-man nominee [prête-nom] structures.
- **Vices of Consent:** Vitiating factors: Error [l'erreur], Fraud [le dol], and Duress [la violence].
- **Legal Capacity:** Rules governing minors, protected adults, and spouses.
- **Lawful Content:** Deconstructing the corporate object [l'objet social] and corporate interest [l'intérêt social] under the 2019 PACTE Law.

PILLAR II: PARTNER CONTRIBUTIONS

- **The Contribution Duty:** Essential condition under Article 1832 Code civil; no partner status without an 'apport'.
- **Cash Contributions:** Distinguishing subscription [souscription] and release [libération], and immediate payment thresholds.
- **Sanctions for Default:** Automatic interest, court-ordered summarily called funds, and immediate acceleration.
- **Current Accounts:** Advances in current accounts [compte courant d'associé] as debt/loans, not corporate equity.
- **In-Kind & Industry:** Rigid valuation rules for physical assets vs. work/services [apport en industrie] which cannot form share capital.

PART I

THE COMPANY CONTRACT

Deconstructing General Contract Validity and the Vices of Consent under Article 1128 of the French Civil Code

Dual Legal Regimes Govern the French Company Contract

COMMON CONTRACT LAW baseline

Contractual Identity

Historically, partnerships and corporate forms are built on a contractual foundation [le contrat de société].

Article 1128 civil Code

Three general conditions are essential for validity:

1. Mutual Consent of the parties [le consentement]
2. Legal Capacity to contract [la capacité]
3. Lawful & Certain Content [un contenu licite et certain]

Remedy Baseline

A failure to meet these general standards triggers relative or absolute nullity under civil rules.

SPECIAL CORPORATE REGIMES

Special Public Order

Company contracts are heavily regulated by corporate public order [ordre public sociétaire], restricting absolute freedom of contract.

Layered Conditions

In addition to general contract law, a company must meet specialized conditions, such as contributions [apports] and the mutual intent to associate [affectio societatis].

Modification of Nullity

Corporate law significantly alters the ordinary civil nullity regime to protect commercial security and third parties in good faith.

Simulation and Straw-Man Nominees Destroy Legal Consent

THE REALITY OF CONSENT

[L'existence du consentement]

In a classical sense, consent raises the question of its existence, but also its integrity.

Existence of consent requires that the partners genuinely intend to associate and form a real company. Under Article 1129, they must be of sound mind. If they sign a company contract without a genuine intention to collaborate, the consent is insincere, masking a hidden operation.

SIMULATION AND THE 'PRÊTE-NOM'

- **The Sham Company [La société fictive]:** A company contract is insincere when it lacks genuine corporate reality. The company is created merely as a front or facade to hide something else.
- **The Straw-Man Nominee [Le prête-nom]:** One of the partners acts as a nominee or front, concealing the identity of the true owner who operates behind the scenes.
- **Illicit Motives:** Simulation is frequently utilized for tax evasion [la fraude fiscale] or to conceal personal assets from personal creditors by disguising them as corporate holdings.

SCI Novalem (2017) Establishes Limits of the Corporate Shield

COURT OF CASSATION, 3RD CIVIL CHAMBER, MAY 18, 2017, NO. 16-14.750

The Background & Facts: Mr. X controlled both Novalem and a newly created SCI (holding 99% of its capital). The SCI acquired a commercial property from Novalem. The tax authorities questioned the legitimacy of the transaction, claiming the SCI was merely acting as an insincere front [prête-nom] for Mr. X to avoid tax obligations and shield his personal assets.

The Court's Diagnostic Indicators: The court found that the SCI was indeed a nominee [prête-nom] for Mr. X because:

1. The SCI did not generate any rental income; the property was used exclusively by Mr. X without compensation.

2. The SCI lacked sufficient independent funds to acquire the property and did not take out a bank loan to fund the purchase.

The Ruling and Legal Significance: The Court of Cassation upheld the lower court's decision, allowing the tax authorities to treat the property as part of Mr. X's personal assets. Key Takeaway: French courts can disregard the formal separation of assets [la personnalité morale distincte] when a corporate entity is used solely as an insincere front to evade statutory or tax obligations.

The Vices of Consent Vitiate Corporate Agreements

1. ERROR [L'erreur]

Article 1132 Civil Code
A mistake concerning an essential quality of the agreement.
Must be decisive in obtaining consent.
May concern the company's ability to carry out its intended activity.
Mere disappointment about profitability is insufficient.
Example: A partner invests believing that a factory can legally operate, but existing regulations prohibit its prohibit its activity.

2. FRAUD [Le dol]

Article 1137 CC:
Fraud is a deliIntentional deception inducing another party to contract.
May involve lies, fraudulent manoeuvres or deliberate concealment.
Must concern information decisive to the other party's consent.
Can justify annulment of the affected agreement.
Example: A founder deliberately conceals substantial company debts to persuade another investor to become a partner.
berate maneuver, lie, or intentional concealment of information by one party to deceive another.

Commonly occurs when a founding partner conceals critical regulatory restrictions, financial debts, or material barriers, inducing other partners to invest based on falsified premises

3. DURESS [La violence]

Article 1143 CC:
Duress includes physical or moral tConsent obtained through illegitimate pressure or threats.
May involve physical, psychological or economic pressure.
Abuse of dependency can constitute duress.
Requires exploitation of dependency to obtain a manifestly excessive advantage.
Example: A founder exploits another partner's financial dependency to force acceptance of highly disadvantageous terms.
hreats, but also the abuse of dependency [l'abus de dépendance].
This occurs when one party exploits the vulnerable economic or structural dependency of their co-contractor to force a commitment

Sud Métaux (1961) Defines the Scope of Substantial Error

COURT OF CASSATION, 3RD CIVIL CHAMBER, JUNE 29, 1961, NO. 61-13.451 (BULLETIN NO. 173)

The Background & Facts: The Société Sud Métaux (SSM) operated metal refining plants in Marseille and Chapareillan. Mr. X (President of SSM) signed a contract with Mr. Y to establish a new joint company. SSM committed to transfer its Marseille plant's industrial refining equipment to Chapareillan within six months. However, regulatory zoning and administrative restrictions discovered after signing made the physical relocation of the Marseille plant legally impossible.

The Legal Dispute: SSM sued Mr. Y seeking contract execution and damages for non-performance. Mr. Y counterclaimed for the complete nullification [la nullité] of the agreement, arguing that his consent was vitiated by a fundamental, substantial error regarding the core purpose of the joint venture.

The Ruling & Takeaway: The Court of Cassation upheld the nullification of the contract. The court established that a partner's consent is vitiated by a substantial error [erreur sur la substance] when they agree to form a new company to simply continue an existing business, but regulatory or physical barriers make it impossible to carry out that commercial activity. Key Takeaway: Impossibility of operation at the time of contract formation represents a valid defect of consent, triggering relative nullity.

Special Legal Capacity Rules Govern Diverse Partner Statuses

1. MINORS [Les mineurs]

• Unemancipated: Can be partners, provided the company form does not require the status of a merchant [le statut de commerçant] (such as partnerships/SNC).

2. PROTECTED ADULTS [Les majeurs protégés]

• Curatorship/Guardianship: Regulated by Decree No. 2008-1484.

3. SPOUSES [Les époux]

• Modern Equality: Spouses can be sole partners or manage a company together, even using joint community property [les biens communs].

4. INCOMPATIBILITIES [Les incompatibilités]

• Civil Servants [Fonctionnaires]: Prohibited from engaging in commercial activities. They cannot be partners in partnerships [sociétés de personnes] requiring merchant status.

Corporate Purpose Must Conform to Lawful Content Rules

LAWFUL CONTENT & OBJECT
[Un contenu licite et certain]

A New Formulation

Article 1128 CC replaces the former 'object' and 'cause' with 'lawful and certain content', simplifying contract theory but preserving the core substance of legality.

The Statutory Object [L'objet social]

Article 1833 CC: Every company must have a lawful object and be formed in the common interest of the partners [l'intérêt commun].

Public Order Boundaries

The company's statutory purpose and actual business operations cannot violate public order [ordre public] or moral standards (e.g. running an unauthorized casino or trafficking illicit goods).

THE RE-SHAPING OF GOVERNANCE
[Loi PACTE 2019]

The Corporate Interest [L'intérêt social]

Article 1833 was modified in 2019: 'The company must be managed in furtherance of its corporate interest, taking into consideration the social and environmental issues arising from its activity.'

The Social Purpose [Raison d'être]

Under the Loi PACTE, companies can include a broader social purpose or mission [raison d'être] in their bylaws, binding directors to sustainable objectives.

Standard Liability Governs

Failure to consider social/environmental issues does not lead to company nullity. Traditional tort liability rules apply: claimants must establish a specific fault, direct damage, and causal link.

Statutory Purpose Precedes Actual Operations in Nullity Claims

MARLEASING SA (ECJ 1990)

EU Statutory Object Limits

Case Citation: ECJ, 13 Nov. 1990, Marleasing, C-106/89

• Background: A Spanish company sought the nullity of another company on the ground that it was created in fraud of creditors, claiming its purpose was illegal.

• The EU Directive Rule: Under the 1st Company Law Directive (68/151/EEC), the grounds for corporate nullity must be strictly limited to protect legal certainty and good-faith third parties.

• Court's Ruling: The European Court of Justice established that a company's nullity based on the illegality or public policy violation of its purpose should only be evaluated with respect to the official statutory purpose [l'objet social], as formally outlined in its founding statutes or bylaws.

URBAT PROMOTION v. G SPORT (2015)

Actual vs. Statutory Activity

Case Citation: Cour de cassation, Nov. 10, 2015, No. 14-18.179

• Background: Urbat Promotion sought the nullity of G Sport, alleging that G Sport's actual, real-world activity was to engage in systemic blackmail through abusive legal actions against competitors.

• The French Interpretation: The Court of Cassation interpreted Articles 1833 and 1844-10 CC in light of the EU Directive as clarified by the Marleasing ruling.

• Court's Ruling: The court rejected Urbat's claim for nullity. The alleged wrongdoing concerned G Sport's actual activities, not its formal, perfectly lawful statutory purpose. Wrongful actual operations do not trigger nullity.

Article L. 235-5 Severely Restricts the Annulment of Companies

THE STATUTORY DEFENSE SYSTEM: CONSTRAINING THE REGIME OF NULLITY

- **The Commercial Security Axiom [L. 235-1 C. com]:** The invalidity of a company or of an act amending the articles of association may only result from an express statutory provision of the Commercial Code or the laws governing the invalidity of contracts.
- **Excluding Vices of Consent and Incapacity:** With regard to limited liability companies (SARL) and joint-stock companies (SA, SAS, SCA), the invalidity of the company cannot result from a defect in consent [vice du consentement] or from incapacity, unless this defect or incapacity applies to all the founding partners. (Article L. 235-1, paragraph 2).
- **Protecting Good-Faith Third Parties [Article L. 235-5]:** The annulment of company acts or decisions cannot jeopardize or invalidate the legal rights acquired by third parties in good faith. A company contract might be voided, but its past commercial transactions with third parties remain fully valid.
- **Statute of Limitations:** The limitation period [la prescription] for nullity actions in corporate law is extremely short (3 years under Article 1844-15 CC), compared to the general 5-year ordinary contract rule, further prioritizing commercial security.

PART II

PARTNER CONTRIBUTIONS

Deconstructing the Three Types of Apports: Cash, In-Kind, and Industry under Article 1832 and 1843-3 of the Civil Code

No Corporate Entity Can Be Formed Without Partner Contributions

1. CASH APPORT

• Definition: The contribution of a specified sum of money, transferring legal ownership to the company.

• Returns: The partner receives social shares [parts sociales / actions] representing their stake.

• Two Key Stages: Requires careful distinction between subscription [la souscription] and actual release of funds [la libération].

2. IN-KIND APPORT

• Definition: The contribution of any asset other than money, transferring ownership or use rights to the entity.

• Diversity of Assets: Tangible (real estate, vehicles, inventory) or Intangible (trademarks, patents, client bases, receivables).

• Valuation Control: Requires strict valuation protocols to prevent capital watering and protect third-party creditors.

3. INDUSTRY APPORT

• Definition: The contribution of personal work, technical expertise, commercial influence, or professional credit.

• Legal Nature: Unique and personal. It does *not* contribute to the formation of the formal share capital [le capital social].

• Constraints: Prohibited in public corporations (SA) but allowed in partnerships and simplified joint-stock companies (SAS).

Subscription and Release Govern Cash Funding

1. SUBSCRIPTION [La souscription]

- Legal Commitment: The formal, binding pledge of a partner to invest a specific sum of money into the company.
- Legal Effect: Grants immediate status of partner [associé] or shareholder [actionnaire] from day one, carrying voting and dividend rights.
- Simultaneous Payment: Can occur at the same moment as subscription, which is standard in French SAs, SASs, and SARLs where no rigid minimum legal capital is required.

2. RELEASE [La libération]

- Physical Release: The actual payment and transfer of funds to the company's designated corporate bank account.
- Partnerships [SNC/SCS]: No strict statutory deadline. Governed by bylaws or gradual administrative calls.
- Limited Liability [SARL]: Must release at least 1/5th (20%) of the cash immediately; the remaining 80% must be paid within 5 years.
- Corporations [SA / SAS]: Must release at least half (50%) of the cash immediately; the balance is due within 5 years.

State Coercion Enforces the Timely Release of Promised Funds

1. AUTOMATIC INTEREST

• Article 1843-3, Para 5:
If a partner fails to pay their subscribed contribution on time, they are automatically liable for interest.
• No Demand Required:
The interest is calculated automatically from the day the payment was due, without requiring a formal demand [mise en demeure] from the company, without prejudice to further damages.

2. COURT INJUNCTION

• Summary Proceedings:
If the legal or statutory payment deadlines are breached, any interested party can initiate a summary proceeding.
• Penalty Fine [Astreinte]:
The president of the commercial court can order the directors or managers to call the unpaid funds under a daily penalty fine, or appoint a legal representative to force the payment.

3. ACCELERATION IN INSOLVENCY

• Collective Procedures:
If the company falls into bankruptcy and a court opens an insolvency procedure [procédure collective].

• Immediate Payability:
Under Article L. 624-20 of the Commercial Code, the opening judgment of bankruptcy automatically renders the unpaid amount of the share capital immediately payable by all default partners.

Current Account Advances Represent Short-Term Debt, Not Equity

CASH CONTRIBUTION [L'apport]

• Nature: Permanent equity capital. The money belongs to the company; it cannot be withdrawn at will.

• Returns: The contributor receives corporate shares [actions / parts sociales], giving voting rights and dividend rights.

• Risk Status: Paid back only during corporate liquidation, after all ordinary creditors are satisfied.

VS

CURRENT ACCOUNT ADVANCE [Le compte courant]

• Nature: A commercial loan [un prêt d'associé] granted by a partner to help the company's short-term cash needs.

• Repayability: The partner is a creditor of the company. They can request full repayment at any time (Cass. 3rd Civ, May 3, 2018), unless restricted by bylaws.

• Regulated Status: Classified as a regulated agreement [convention réglementée] in SARLs to prevent self-dealing (Cass. Com, April 10,

Rigid Valuation Protocols Protect the Integrity of In-Kind Capital

1. THE THREE FORMS OF IN-KIND APPORTS

An asset can be contributed in three legal forms:

• Full Ownership [En pleine propriété]: The company becomes the sole owner of the asset. The contributor is liable like a seller (Art. 1843-3).

• Enjoyment [En jouissance]: The partner retains ownership but allows the company to use the asset. Contributor is treated as a lessor.

• Dismembered Right [Démembrement]: Contribution of usufruct [usufruit] or bare ownership [nue-propriété].

2. HARM OF OVERVALUATION

• Capital Watering Danger:
If an in-kind contribution is overvalued, the contributor receives an unjustified, excessive share of capital and voting rights, diluting others.

• Landmark Case (Cass. Com, June 28, 2005):
The Court of Cassation established that overvaluing an in-kind contribution directly causes financial harm to the other partners, who are entitled to seek personal tort compensation.

3. AUDITOR CONTROLS

• Mandatory Expert Audit:
To protect creditors and partners, an independent Contribution Auditor [commissaire aux apports] must value the assets.

• Legal Exceptions:
In SARLs and SASs, partners can unanimously decide to bypass the auditor if:
1. No single asset exceeds 30,000 Euros AND
2. The total in-kind assets do not exceed 50% of the share capital.

Industry Contributions Create Social Rights but Cannot Form Share Capital

THE LEGAL REGIME

[L'apport en industrie]

Definition & Scope

The contribution of work, specialized technical expertise, professional credit, or commercial influence to the service of the company.

No Subordination Link

The work must be executed under conditions that exclude any relationship of subordination [lien de subordination] to the company; otherwise, it is legally reclassified as an employment contract.

Strict Exclusivity Duty

Under Article 1843-3, Para 6 CC, the contributor must account to the company for all gains and financial revenues made through the activity that is the subject of their contribution.

CAPITAL AND STRUCTURE LIMITS

No Capital Contribution

Because industry/expertise is an intangible, non-seizable asset [un bien insaisissable] that cannot be sold to satisfy creditors, Article 1843-2, Para 2 CC dictates that contributions of industry do *not* contribute to the formal share capital.

Prohibited in Public Corporations [SA]

Because SAs require solid, realizable assets to protect public markets, industry contributions are strictly prohibited. However, they are allowed in simplified joint-stock companies (SAS) and partnerships.

Social Rights Granted

Despite not forming part of the share capital, the contributor of industry is a full partner, receiving shares that grant voting rights and the right to participate in profits.

Core Vocabulary: French-English Corporate Legal Glossary

FRENCH LEGAL TERM	EXACT ENGLISH EQUIVALENT & DOCTRINAL DESCRIPTION
Droit des sociétés	Corporate Law / Company Law (the system governing corporate entities).
Apport	Contribution (assets, cash, or services allocated by a partner to the company).
Objet social	Corporate Purpose / Statutory Object (the company's official legal activities in bylaws).
Raison d'être	Company Purpose / Social Mission (broader environmental and social goals under PACTE).
La souscription	Subscription (the legal commitment to contribute a specific sum of money).
La libération	Release / Payment (the actual physical transfer of the committed cash funds).
Compte courant d'associé	Shareholder Current Account (a loan or advance granted by a partner, not equity).
Commissaire aux apports	Contribution Auditor (the independent professional verifying in-kind asset values).
Majeur protégé	Protected Adult (an adult under curatorship or guardianship requiring protective consent).
La prescription	Statute of Limitations (the restricted legal timeframe for bringing court nullity actions).