



## BUREAU CENTRAL FRANCAIS

DES SOCIETES D'ASSURANCES CONTRE LES ACCIDENTS D'AUTOMOBILES

**French law on compensation for road traffic accidents**

**OFESAUTO**  
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**Xavier LEGENDRE**  
**Véronique COUFFET**

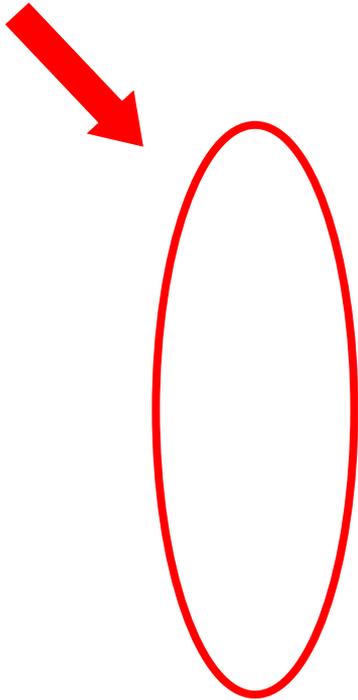
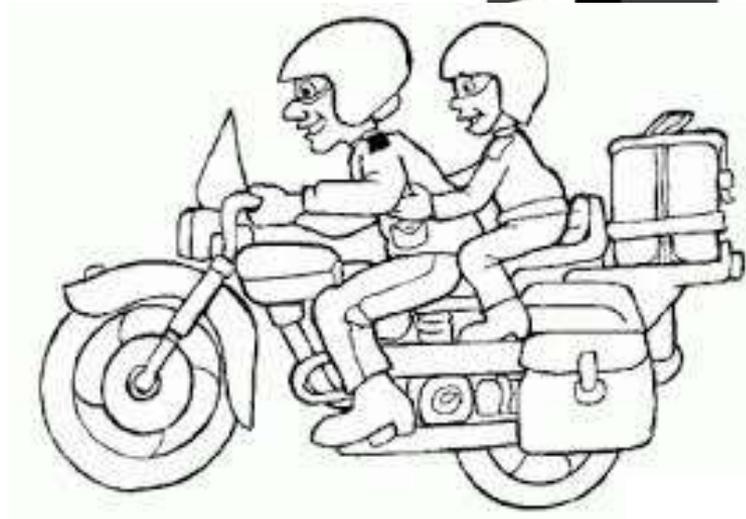
## Before 1985

### Civil law provisions:



- Presumption of liability of the driver on the basis of custody and control of the vehicle

God or act of third



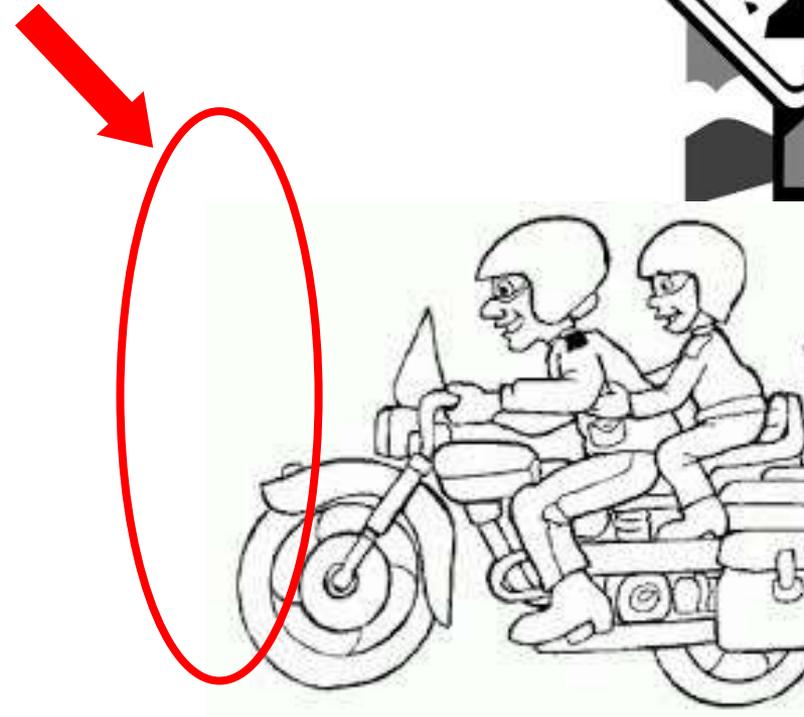
# Introduction

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1985

## „Badinter“ law:

- Autonomous law
- Full compensation of victims
- Neither act of God nor act of third party



**Most important point to bear in mind:**

the « Badinter law » does not deal with  
~~liability~~ but aims at

**compensating the victims**

# 1. Scope of the „Badinter“ law

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## 1) Accident



## 2) Land-borne motorised vehicle



## 3) Road traffic



# 1. Scope of the „Badinter“ law

## 4) Involvement of the vehicle

### ➤ Essential condition

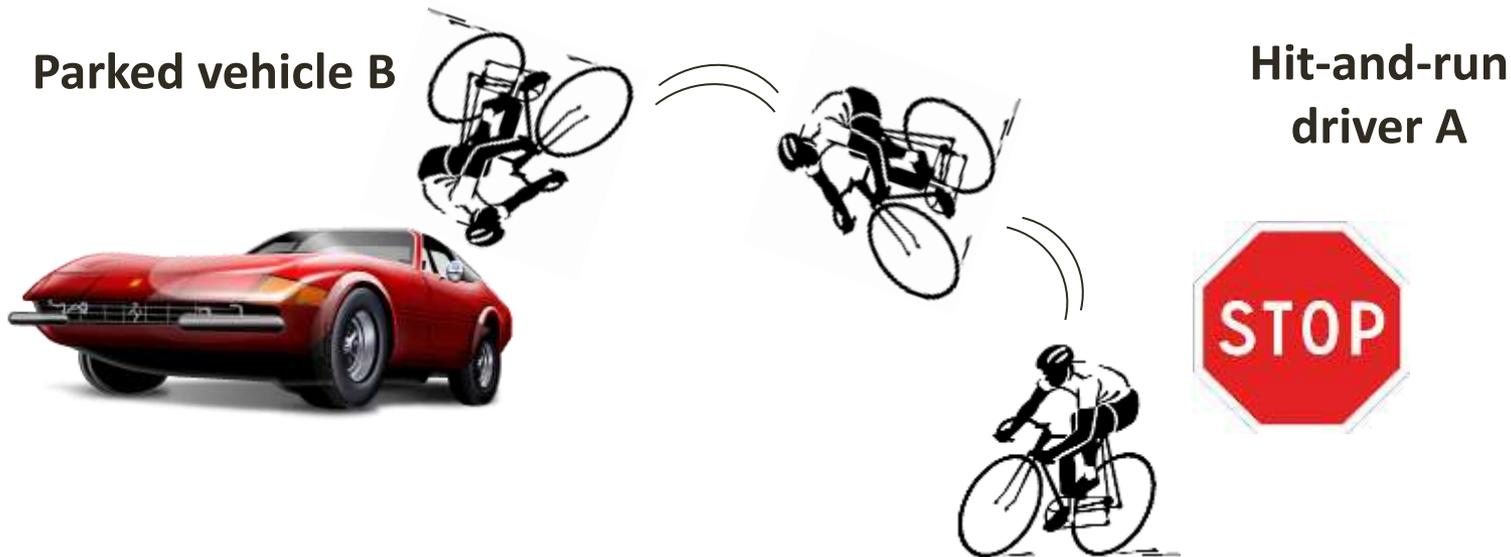
- Collision: the vehicle is necessarily involved.



- No collision: proof of the causal link between the vehicle and the damage incurred.
- A vehicle, which is involved in the accident, „in whatever capacity and at whatever moment, is considered to be involved“.

# 1. Scope of the „Badinter“ law

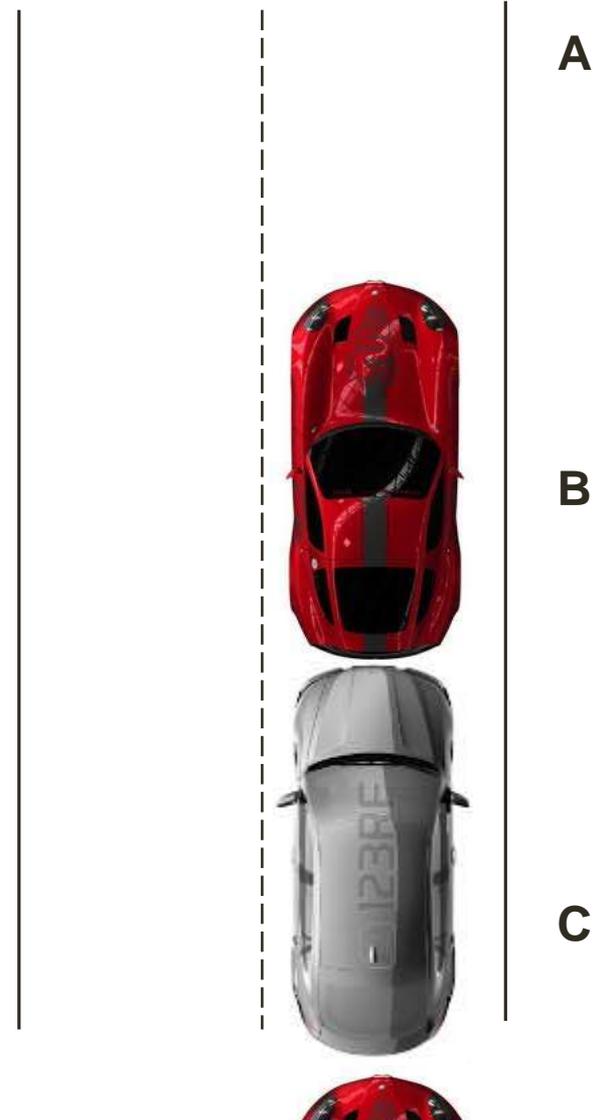
## ➤ Examples of involvement



# 1. Scope of the „Badinter“ law

## ➤ In case of a chain collision

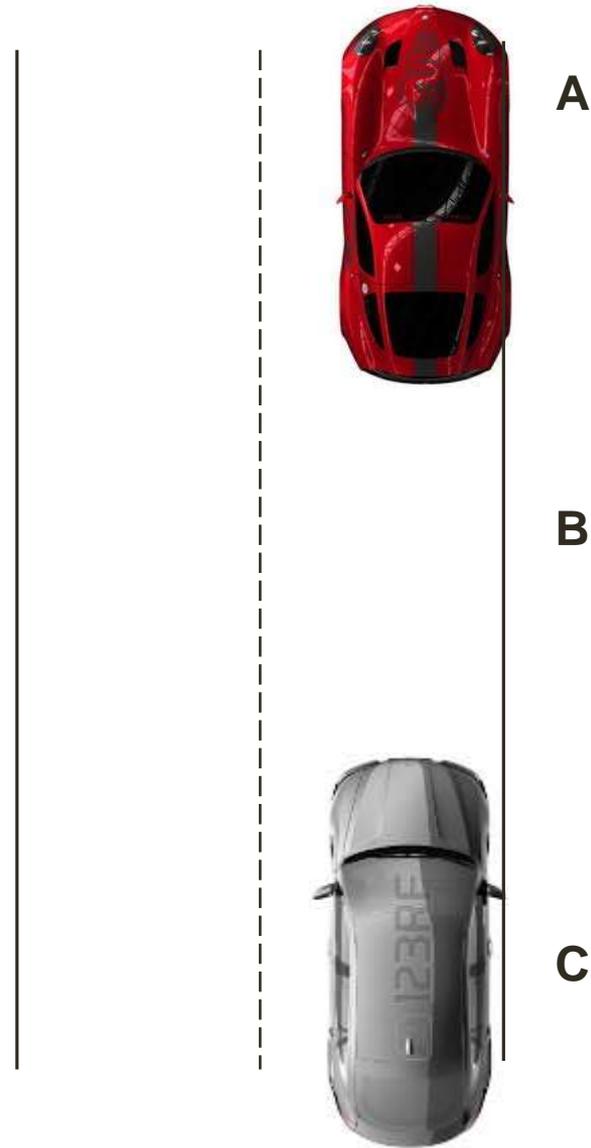
- Vehicles A and B involved in the first accident are also involved in the following one.



# 1. Scope of the „Badinter“ law

## ➤ In case of successive collisions

- Successive collisions within a certain period of time.
- All vehicles are involved.



# 1. Scope of the „Badinter“ law

## ➤ In case of an accident with a road train



The victim can act against the insurer of the truck or the insurer of the trailer

## 2. The victim compensation scheme

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### 1) Material damages

- Fault = right to compensation can be reduced or excluded.
- The quality of the victim has no importance (driver, pedestrian, cyclist...).

### 2) Bodily injuries

- Differences between non-drivers (passenger, pedestrian, cyclist...) and drivers.

## 2. The victim compensation scheme

### 1) Non-drivers

**For these Injured persons : all compensation or no compensation**

#### ➤ Protected victims

- They only shall be held liable in case of **deliberately seeking injury** (ex: suicide).



Under 16



Over 70



Invalidity or  
disability of more  
than 80 %

## 2. The victim compensation scheme

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### 1) Non-drivers

#### ➤ Other victims

- Only their **inexcusable negligence** can suppress their compensation,

It must be the sole cause of the accident  
Deliberate and exceptionally serious  
Committed for no justifiable reason  
Exposing the individual to a danger he should  
have been aware of



Very difficult to prove in Court

## 2. The victim compensation scheme

### 1) Non-drivers

#### ➤ Other victims

Some examples of inexcusable negligence **not recognized** by Courts :



## 2. The victim compensation scheme

### 1) Non-drivers

#### ➤ Other victims



## 2. The victim compensation scheme

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### 2) Drivers

- Principle: full compensation for bodily injuries.
- **Only the fault of the driver can reduce or exclude his compensation.**
- His fault has to be assessed regarding his own behaviour.



# 2. The victim compensation scheme

## 2) Drivers



### Before 1997

Fault of (A): 10 %  
Fault of (B): 90 %

} **100 %**



### Since 1997

Vehicle B ignores

a stop sign (A): 20 % reduction  
Attitude of (B): 60 % reduction

Right to compensation of (A): 80 %  
Right to compensation of (B): 40 % } **120 %**



## 2. Compensation scheme : summary

<b>STATUS OF THE VICTIM</b>	<b>COMPENSATION SCHEME</b>	<b>NO COMPENSATION</b>
Non-driver aged under 16 or over 70 or suffering 80% disability regardless of age.	Full compensation	No compensation if the victim causes the injury deliberately
Non-driver aged over 16 and under 70, not suffering 80% disability.	Full compensation	No compensation if the victim is guilty of gross negligence, which is the sole cause of the accident or has caused the injury deliberately
Driver regardless of age and physical capacity	Compensation according to fault	No compensation according to fault

# 3. Compensation of indirect victims

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- Death or severe bodily injuries suffered by the direct victim.
- They have their own right to compensation.
- The fault of the victim has to be taken into account.
- Pecuniary and non-pecuniary damages.

# 4. Assessment of material damages



## ➤ Role of the expert:

- Examine the vehicle.
- Evaluate the damage incurred in relation with the accident.
- Declare if the vehicle can be repaired or not.
- Report following the assessment.



## ➤ Quality of the expert:

- Specialist.
- Independant technician.
- State diploma.
- Listed on a national register.

# 4. Assessment of material damages



## ➤ Determination of damages:

- Vehicle to be repaired.
- Vehicle not to be repaired.
- Limit of damage = value of the replacement.

## ➤ Various damages:

- Towage, breakdown assistance...
- Replacement vehicle.
- Repatriation costs, depreciation.
- Costs for returning to circulation, destruction.
- Expert expenses, VAT.
- Vehicle repaired abroad.



# 5. Assessment of bodily injuries



## ➤ Proof of injuries:

- Medical examination of the victim by a physician as soon as possible after the accident (first medical certificate).

## ➤ Designation of a medical expert:

- Independent physician having received a special training.
- State diploma.
- Listed on a register.

## ➤ Role of the expert:

- Determine injuries to be compensated.
- Provide for an opinion on the injuries related to the accident.
- Report following the examination.

# 6. Bodily injuries: positions

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- **No definition by the law**
- **2005 : DINTHILLAC report**
  - A list of heads of prejudice use by everybody
  - Pecuniary loss and non pecuniary loss
  - Temporary prejudice and permanent prejudice
- **Importance of the notion of « stabilization »**

# 6. Bodily injuries: positions

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## Pecuniary loss

### Temporary loss

- Current health expenditure
- Various expenditure
- Current loss of professional earnings

### Permanent loss

- Future health expenditure
- Cost linked to the adaptation of the housing
- Cost linked to the adaptation of the vehicle
- Permanent assistance of a third person
- Future loss of professional earnings
- Professional consequences
- Damages related to school, university or training

# 6. Bodily injuries: positions

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## Non-pecuniary loss

### Temporary loss

- Temporary functional deficit
- Pain and suffering
- Temporary aesthetic damage

### Permanent loss

- Permanent functional deficit
- Loss of amenity
- Permanent aesthetic damage
- Sexual damage
- Difficulties to have a normal life
- Exceptional permanent loss

# 7. Offer to the victim

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## ➤ Who has to make an offer to the victim?

- The MTPL insurer of the responsible driver.

## ➤ What shall the insurer do?

- Send a questionnaire to the victim.
- Inform the victim.
- Appoint a medical expert.

## ➤ Does a specific time limit exist?

- 4th Motor Insurance Directive (material damages and bodily injuries)
  - ✓ 3 months as of the date of the victim's claim (liability is not disputed and the damage has been fully quantified).
  - ✓ If not, reasoned reply within 3 months.

# 7. Offer to the victim

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## ➤ Does a specific time limit exist?

### ▪ Badinter law (bodily injuries)

✓ Stabilisation of the victim's condition within 3 months as of the date of the accident:

➤ *8 months as of the accident.*

✓ No stabilisation within 3 months:

➤ *provisional offer within 8 months as of the accident.*

➤ *final offer within 5 months following the date on which the insurer was informed of the said stabilisation.*

# 7. Offer to the victim

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## ➤ Was does the offer contain?

- Offer for material damages and bodily injuries.
- It shall contain all areas of loss, position by position.
- The fault of the victim has to be taken into account.

## ➤ Are there some sanctions towards the insurer?

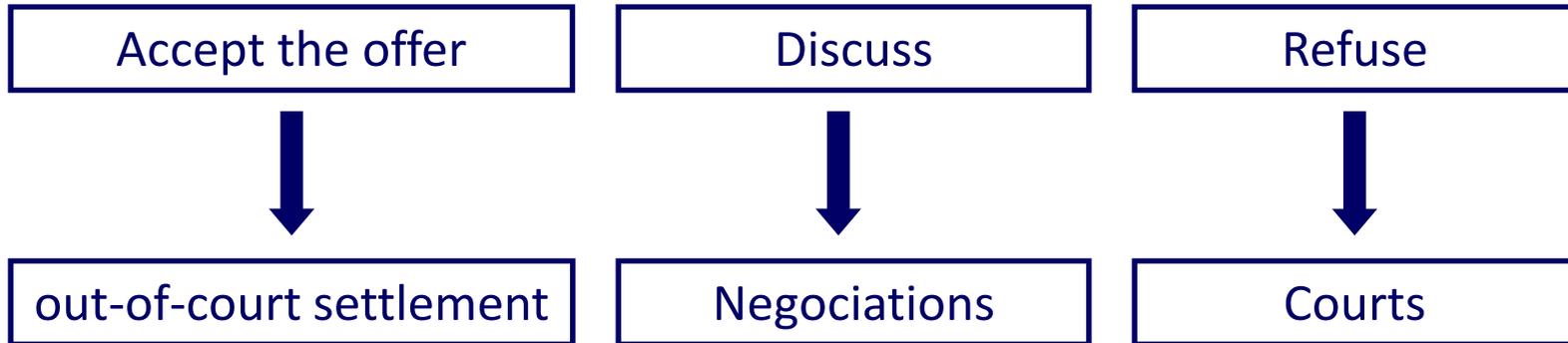
- Late offer.
- Inadequate offer.



# 7. Offer to the victim

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## ➤ What can the victim decide?



## ➤ Prescription: 10 years.

- Within 10 years as of the date of the accident.
- For bodily injuries: as of the date of the stabilisation of the victim's condition.

# 8. Recourse of the welfare bodies

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## ➤ What is a welfare body according to the law?

- Social organisms, social security funds, which provide for a compensation to the victims (treatment, hospitalisation...).
- Employers who pay the wages of the victim during illness or disability.
- These entities have a right to subrogation, which means that they should be treated equally.

## ➤ How is the recourse organised ?

- Since 2006, the recourse has to be made position by position.
- It only concerns the compensation that repairs the damages they have supported, with the exception of non-pecuniary loss.

# 8. Recourse of the welfare bodies

## ➤ What is the basis of the recourse?

- Since 2006, victims have priority right over welfare bodies for each position.
- The recourse can only be made if the compensation related to the specified positions has effectively been provided for by these bodies.
- The fault of the victim has to be taken into account.

Pecuniary loss		50 % reduction	Compensation from the social security	Priority to the victim	Reimbursement to the social security
Current loss of professional earnings	4 000 €	2 000 €	3 000 €	1 000 €	1 000 €

*Eg: the driver committed a fault, that reduces his compensation to 50 %.*

# 8. Recourse of the welfare bodies

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## ➤ Does a specific time limit exist?

- 4 months as of the request of the insurer.
- Or 4 months from the knowledge of the stabilisation of the victim's condition.
- Foreign welfare bodies have an extra month to present their claims.
- If the welfare bodies fail to present their claims within the 4 months time limit: loss of their right to recourse against the insurer and the person to be held liable for the accident.



# 8. Recourse of the welfare bodies

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## ➤ Recourse of the foreign welfare bodies

- European provisions and case-law.
- Calculation of the debt of the responsible person: law of the place of the accident.
- Conditions and extent of the recourse: law of the Member state to which the welfare bodies belong.
- Claim of the welfare bodies should not overlap the claim of the victim or the one of the survivors.

# 8. Recourse of the welfare bodies

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- Sanctions against the insurer who does not inform the social security of the injuries and of the out of court settlement with the victim :
  - compulsory information of the social security since 2004
  - if the information is not given : sanctions increased since october 2012
  - in case of repeated failure, sanction increased to 50% of the sums due to the social security



Difficulties for the correspondent in case of a delay in confirming the guarantees

# 9. Conclusions on the Badinter law

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- Implementing the Badinter law was not easy.
- More than 20 years of reflexions, reports etc...
- Insurers were reluctant to accept this law (costs...).
- But at the end, insurance premiums did not increase significantly.
- The Badinter law achieved its objectives:
  - **Extend the compensation to a larger number of victims.**
  - **Promote out-of-court settlement of claims.**
  - **Speed-up compensation of victims.**
- After 30 years of law enforcement nobody's wants to go back

**Thank you for your attention!**