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**PIERRE THOMAS LAW**

European personal injury & insurance solicitors

# Recent developments in the assessment of damages under French law: Pushing the boundaries of the Dintilhac classification

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The Dintilhac classification (2005)

- not a fixed set of rules
- soft law
- flexible?

Principle of full compensation

Conflict between principle of equality between victims (same damage = same compensation) and principle of individualisation of the compensation

➤ (Datajust project)

Aim: to reach the best possible compensation for your client in the English court, applying French law

## Why this webinar?

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# Dintilhac classification: Direct victims

## NON-FINANCIAL LOSSES

### Temporary (before consolidation)

- 1) Temporary functional incapacity (DFT)
- 2) Suffering endured (SE)
- 3) Temporary cosmetic damage (PET)

### Permanent (after consolidation)

- 4) Permanent functional incapacity (DFP)
- 5) Permanent cosmetic damage (PE or PEP)
- 6) Loss of amenity / loss of a particular leisure or activity
- 7) Sexual damage (PS)
- 8) Loss of chance to have a family life
- 9) Professional impact (IP)
- 10) Permanent exceptional damage
- 11) Evolving disease

## FINANCIAL LOSSES

### Temporary (before consolidation)

- 12) Past medical expenses (DSA)
- 13) Past loss of earnings (PGPA)
- 14) Miscellaneous expenses, inc. Past care and assistance

### Permanent (after consolidation)

- 15) Medical expenses
- 16) Future loss of earnings (PGPF) – [& Professional Impact - IP]
- 17) Future Care and assistance
- 18) Adaptation to home
- 19) Adaptation to vehicle
- 20) Damage to education, university and professional training



# Contents



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## Pushing the boundaries

1. Developments in the method of assessment of some heads of loss (ML)
2. Cases of French *Cour de cassation* 25 March 2022 (ML)
3. Illustrations of the Court's creative power (SLT)
4. Practical tips (ML & SLT)

# 1. Developments in the methods of assessment of some heads of loss

## 1.1 Permanent functional incapacity / impairment (DFP)

➤ Method using the point value

➤ 3 aspects of the DFP in Dintilhac:

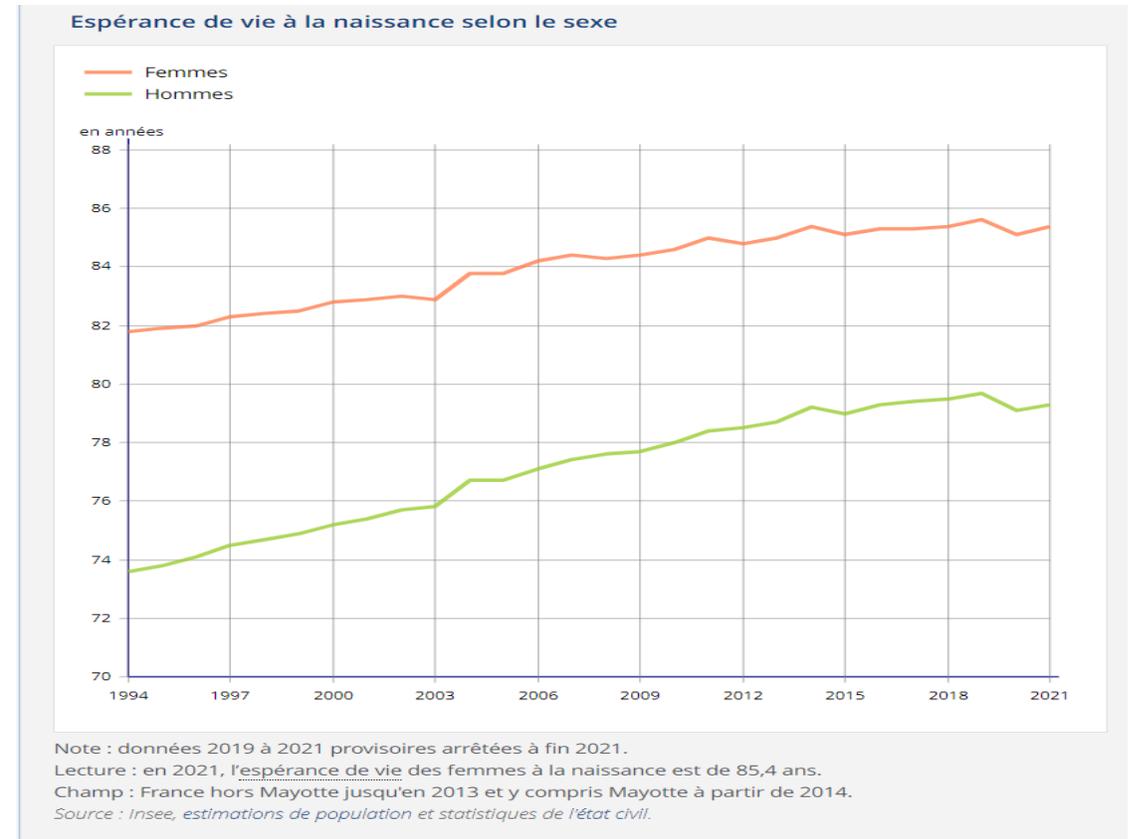
- The functional impairment (AIPP/GTP/DFP – rate set by expert)
- The permanent (post-consolidation) physical and psychical suffering
- The troubles in the living conditions

2020	0 à 10 ans	11 à 20 ans	21 à 30ans	31 à 40 ans	41 à 50ans	51 à 60 ans	61 à 70 ans	71 à 80 ans	81 ans et plus
1 à 5 %	2.310	2.150	1.960	1.770	1.580	1.400	1.210	1.050	880
6 à 10 %	2.670	2.475	2.255	2.035	1.800	1.560	1.320	1.130	935
11 à 15%	3.025	2.800	2.550	2.300	2.025	1.730	1.430	1.210	990
16 à 20 %	3.380	3.135	2.850	2.560	2.245	1.890	1.540	1.290	1.045
21 à 25 %	3.740	3.465	3.145	2.830	2.465	2.060	1.650	1.375	1.100
26 à 30 %	4.100	3.795	3.445	3.090	2.685	2.220	1.760	1.455	1.155
31 à 35 %	4.455	4.125	3.740	3.355	2.905	2.390	1.870	1.540	1.210
36 à 40 %	4.810	4.455	4.035	3.620	3.125	2.550	1.980	1.620	1.265
41 à 45 %	5.170	4.785	4.335	3.885	3.345	2.715	2.090	1.705	1.320
46 à 50 %	5.530	5.115	4.630	4.150	3.565	2.880	2.200	1.790	1.375
51 à 55 %	5.885	5.445	4.930	4.410	3.785	3.045	2.310	1.870	1.430
56 à 60 %	6.240	5.775	5.225	4.675	4.005	3.210	2.420	1.950	1.485
61 à 65 %	6.600	6.105	5.520	4.940	4.225	3.375	2.530	2.035	1.540
66 à 70 %	6.955	6.435	5.820	5.205	4.445	3.540	2.640	2.115	1.595
71 à 75 %	7.315	6.765	6.115	5.470	4.665	3.705	2.750	2.200	1.650
76 à 80 %	7.670	7.095	6.415	5.730	4.885	3.870	2.860	2.280	1.705
81 à 85 %	8.030	7.425	6.710	5.995	5.105	4.035	2.970	2.365	1.760
86 à 90 %	8.385	7.755	7.005	6.260	5.325	4.200	3.080	2.445	1.815
91 à 95 %	8.745	8.085	7.305	6.525	5.545	4.365	3.190	2.530	1.870
96 % plus	9.020	8.415	7.600	6.785	5.765	4.530	3.300	2.610	1.925

# 1. Developments in the method of assessment of some heads of loss

## 1.1 Permanent functional incapacity / impairment (DFP)

- Why is the point value method not satisfactory?
- What other methods?
  - Add something for SE and troubles in living conditions
  - Increase the point value, or the %
  - Work out a daily rate, adding up for the past and capitalising for the future



# 1.2 Capitalising non-financial losses

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**Permanent functional incapacity**

**Loss of amenity**

**Cosmetic damage**

**Moral damage of surviving spouse; sexual damage etc.**



Traditionally, compensation by way of a **lump sum**: not always satisfactory, not individualised enough but also wide discrepancies between local courts

**Method advocated by practitioners and academics:**

- Work out a daily rate
- For the past (post-consolidation until settlement/judgment):  
daily rate x number of days
- For the future : Capitalisation for life, using appropriate multipliers

# 1.2 Capitalising non-financial losses

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## Example:

\***DFP:** TJ Vannes 14 Jan 2022: rate set by expert 8%.

Method of point value not used. Instead: daily rate of €32 x 8% x multiplier for life

-> much higher amount than if point value used – victim 21y old



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## 1.3 Professional impact (IP)

- **‘Catch all’ head of loss** : *“peripheral effects of the damage affecting the professional sphere (...) including depreciation on the labour market, loss of opportunity, increased arduousness, social devaluation, pension loss etc.”*
- **Lump sum traditionally**
- **Recent method to calculate ‘arduousness’ (when victim can work but it is much more difficult)** (F Bibal; now seen in some cases): the ‘mathematical method’
  - Consider that the arduousness in a job represents a part of the salary.
  - If the arduousness increases after the accident, work out the part of the salary that represents that extra arduousness: daily or annual amount (‘rate of professional impact’)
  - Capitalise it using appropriate multiplier
  - This is not double compensation with a loss of earnings, as it compensates something else
  - Ex. **TGI Quimper 24 Nov 2020**: DFP 23%, rate of IP: 25% of the salary

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## 1.3 Professional impact (IP) (cont'd)

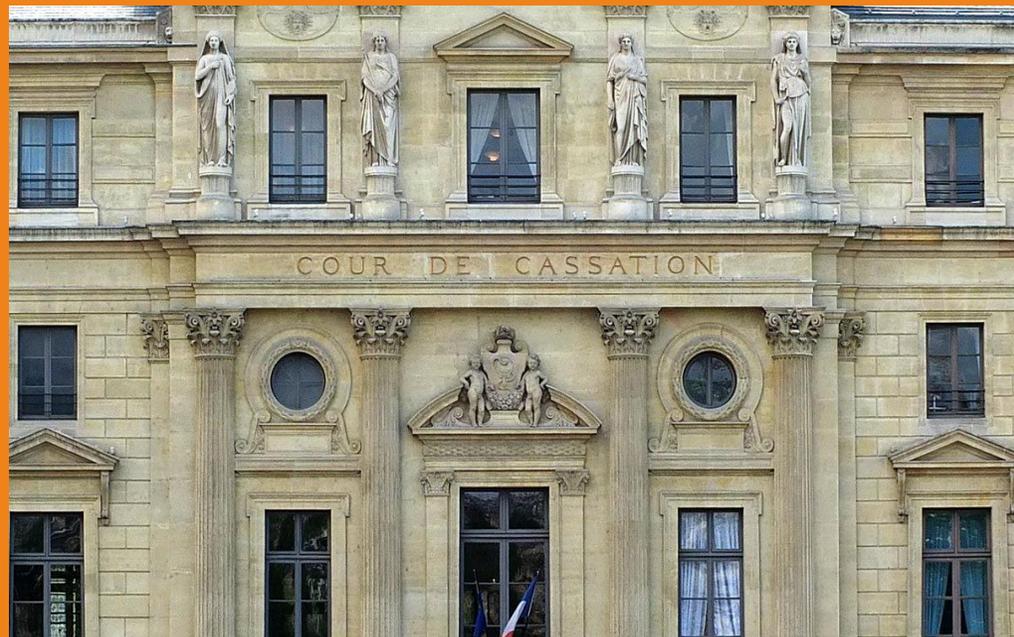
- **Social devaluation**: essentially when victim can no longer work at all
- Court of cassation's jurisprudence has varied a lot over last 10 years, but now seems stabilised (C Cass, 2e Civ 6 May 2021, no. 19-23173 and 20-16428)
- Still compensated by way of lump sum
- Example: CA Paris, 21 June 2018: €100,000 IP for loss of social aspect of work (in addition to loss of earnings) – victim aged 56 with a DFP of 100%
  
- + possibility to cumulate a lump sum for disadvantage on labour market and loss of chance of promotion (€50,000) + the mathematical method for the arduousness : TGI Thionville 30 July 2018, no. 11/00968

## 2. Cour de Cassation

25 March 2022  
(2 cases)

### Case no. 20-15.624

- Young man stabbed; died of his injuries a few hours later, being conscious of his imminent certain death.
- Question: 'is the anguish of imminent death part of 'suffering endured' (Dintilhac, temporary non-financial loss) or can it be subject to a separate award of damages?
- Previously conflicting case law -> *Chambre Mixte*
- Upheld the decision of the court of appeal which had made two separate awards
  - Pple of full compensation (no loss or gain)
  - 'Anguish of imminent death' now confirmed as an autonomous head of loss



## 2. Cour de Cassation 25 March 2022 (2 cases)

### Case no. 20-17.072

- Terrorist attacks in Nice July 2016; fatal injuries. Claim by indirect victims (*par ricochet*)
- Cf. heads of loss for indirect victims: essentially moral/bereavement damage (*préjudice d'affection*)
- Question: Did the 'waiting and worrying' for four days between the attack and the knowledge of the death of their loved-one constitute a separate compensable head of loss (or is it to be included and somewhat dissolved in the 'moral damage')?
- Case referred to *Chambre Mixte*: confirms the autonomy of the 'waiting and worrying' loss
- Both cases are now 'precedents' that lower courts must follow



- ANADOC vs AREDOC
- French law on assessment of damages (essentially Dintilhac) offers a lot of flexibility (soft law, creative power of courts)
- Tenacity and creativity of victim's lawyers to get things moving for their individual client and for compensation of personal injury generally
- Not fixed tariffs or mathematical formulae

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**Evolution in favour of  
victim's rights**

3. Further illustrations by Solenn Le Tutour

4. Conclusion: practical tips for you to optimise your case questions and discussion

