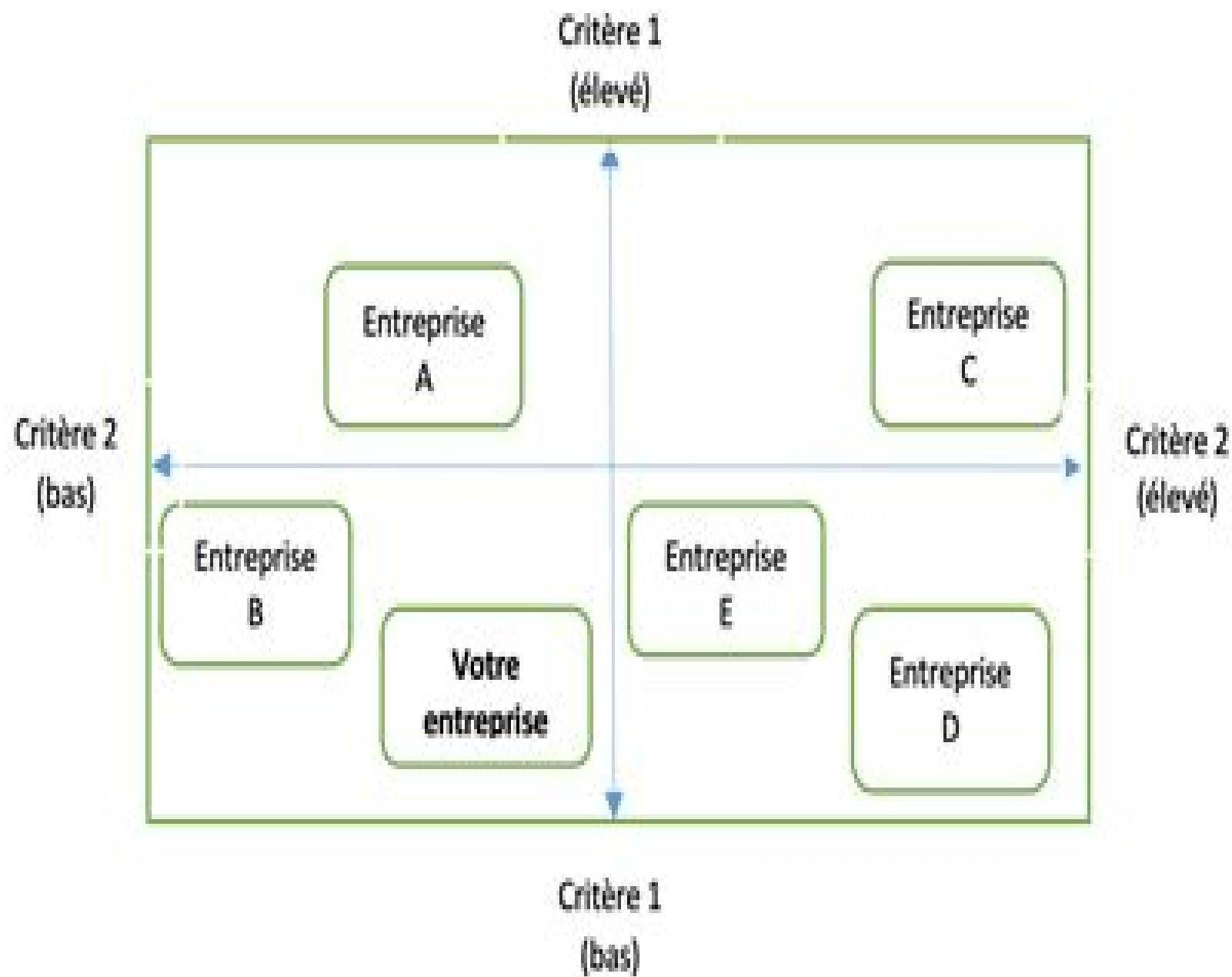




Clientele Et Concurrence Une Approche Juridique Du Marcha

Karounga Diawara



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Clientèle et concurrence Yves Chaput, Centre de recherche sur le droit des affaires, Claudine Alexandre-Caselli, 2000

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Diawara, 2008 **Concurrence et clientèle** Yvan Auguet, 1998 L'objet de cette thèse de droit privé est de démontrer que les limitations de concurrence sont des instruments de protection de la clientèle mais que la protection de la clientèle est une justification insuffisante des limitations de concurrence justifiées par d'autres nécessités. Cette thèse montre que le degré de concurrence détermine la stabilité de la clientèle. Les exceptions au principe de libre concurrence apparaissent comme autant de moyens de protection de la clientèle. Cette protection favorise la stabilité ainsi que le transfert de la clientèle. L'auteur insiste sur l'identité de définition de la clientèle qu'elle soit incorporée dans un fonds de commerce ou non. C'est dans le rapport une chose ou le rapport entre personnes que la clientèle prend sa consistance. Les limitations de concurrence donnent cette valeur économique une réalité juridique et excluent par là même la clientèle de la sphère patrimoniale. L'auteur critique l'analyse duale du droit positif propos des conventions visant à transférer une clientèle. Il souhaite une identité de régime précisément en ce qui concerne la non concurrence imposée à l'ancien titulaire de la clientèle. Cette thèse favorise également la mise en évidence de la prépondérance de la concurrence sur la clientèle. La liberté de la concurrence fixe les limites de la protection de la clientèle. La seule recherche de la protection de la clientèle ne justifie jamais qu'une atteinte soit portée à la liberté de la concurrence. Cette affirmation est vérifiée quelle que soit la source de la limitation de concurrence contractuelle, délictuelle ou légale. Cette dernière catégorie montre combien la concurrence reste fragile et combien il est nécessaire de rappeler sans cesse le principe de la liberté de la concurrence.

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