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CONDITIONAL CIVIL TRANSACTIONS UNDER THE PROVISIONS OF CIVIL LAW OF VIETNAM

SUMMARY OF THE DISCUSSION OF LAW STUDY

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FOREWORD

1. URGENTITY OF THE SUBJECT RESEARCH

In civil law, civil transactions are an institution that appeared early and became an important institution. Because civil transactions are a rich form of civil exchange between people, it is one of the effective methods for the subjects participating in civil legal relations to exercise their rights and obligations. Disputes over civil transactions are also increasing and the level of complexity is increasing, requiring the law on civil transactions to be more complete. In general civil transactions, there is a conditional civil transaction, which is one of the special transactions and is frequently used by the contracting parties. Because the psychology of the parties is that the other party will break the transaction and lead to a dispute, therefore, the parties will often add additional conditions when signing a civil transaction. Therefore, the regulations on conditional civil transactions play an important role in regulating the civil relations of the market economy. However, with a few provisions in the Civil Code in 2015, the researcher found that the provisions on conditional civil transactions were still quite sketchy and showed the lack of interest from law makers on this content. Firstly, the concept of conditional civil transactions prescribed in the Civil Code 2015 is incomplete, contradictory and not logical with the concept of civil transactions. Secondly, at present, regulations on conditional civil transactions overlap with specific regulations related to conditional contracts, promised rewards, contests with prizes,... Third, regulations related to conditional civil transactions, there are still many regulations missing, such as how to be considered as a condition selected by the parties as a condition, or the rights and obligations of the parties to a transaction. Conditional civil service has not yet ensured fairness between the parties. Therefore, the study of the provisions on conditional civil transactions in the Civil Code in 2015 is an urgent issue in order to contribute to clarifying the provisions of the law related to this issue. Point out the problems and inadequacies in the implementation process and propose some solutions to overcome.

2. RESEARCH PURPOSE AND TASKS

- **The purpose of the study is** to clarify some theoretical issues of the law on conditional civil transactions and evaluate the current situation and practice of applying this type of transaction in Vietnam in recent years. On that basis, the thesis makes recommendations to contribute to building and perfecting the legal framework for conditional civil transactions in Vietnam.
- **Research tasks:** To achieve the above research purposes, the thesis must solve the following specific tasks:

❖ First, study some theoretical issues on conditional civil transactions.

❖ Second, analysis, assessment of the status of civil law of Vietnam and current legal documents on civil transactions with conditions on comparison and comparison with laws of a number of countries

❖ Thirdly, proposing improvement orientations and some specific recommendations to improve Vietnam's civil law on conditional civil transactions.

3. OBJECT AND SCOPE OF THE STUDY

- **The object of the study** is the theoretical viewpoints, the theories of civil transactions in general, and conditional civil transactions in particular; legal provisions on conditional civil transactions in Vietnam and some countries in the world; practical implementation of the law on conditional civil transactions in Vietnam; requirements to be applied to complete the legal framework on conditional civil transactions in Vietnam.
- **Research scope**
  - ✓ About content: (i) Theoretically: The researcher focuses on clarifying some theoretical issues about conditional civil transactions. Specifically: concepts, characteristics, effective conditions, conditions to become conditions in conditional civil transactions, classification of conditional civil transactions; (ii) In terms of practical conditions: the actual status of the law on civil transactions in vietnam, points to the limitations and shortcomings of the law and thereby provide proposals to contribute to the improvement of the law on civil transactions in Vietnam.
  - ✓ Regarding space: the thesis mainly focuses on studying domestic legal regulations, however, there are analysis and commentary on some foreign laws such as Japan, China, France, Thailand, etc. … to clarify a number of corresponding issues in the provisions of Vietnamese law on conditional civil transactions.
  - ✓ About time: the thesis focuses on studying the current legal regulations to accurately assess the current status of the law on conditional civil transactions. In necessary cases, expired regulations will be invoked to clarify the conformity of current regulations with requirements and requirements of practice.

4. METHODS AND RESEARCH METHODS

To clarify the issues that need to be studied above, the research method in the thesis is carried out on the basis of historical and dialectical materialism methods; on the basis of the political, economic, cultural and social viewpoints and guidelines of the Communist Party of Vietnam. Specifically:

- Firstly, the thesis uses primary and secondary data collection methods to find documents related to the law governing conditional civil transactions.

- Secondly, on the basis of the above data collection, the thesis continues to use data analysis methods towards the set objectives: such as the synthesis method, the comparative method, the systematic method, the method of situation analysis, the method of inference, the synthesis of opinions to orient the improvement and make recommendations to improve the law on conditional heritage education.

5. NEW CONTRIBUTIONS

- Firstly, the thesis systematically studies some theoretical issues related to conditional civil transactions.
- Secondly, the thesis contains scholarly researches and views of the researcher on conditional civil transactions in Vietnam.
- Third, the thesis delves into analyzing the contents related to conditional civil transactions, especially the enforcement of the provisions on conditional civil transactions.
- Fourth, on the basis of theory, the thesis analyzes in depth the current situation of Vietnam's civil legal system on conditional civil transactions through conditional contracts and conditional wills, promises of rewards, the competition has a prize to realize that the content of legal theory of Vietnamese civil law is not satisfactory enough to resolve disputes in practice.

6. THEORETICAL AND PRACTICAL MEANINGS OF THE THESIS

- The thesis is an in-depth, systematic and comprehensive scientific research work to solve theoretical and practical problems of conditional civil transactions in Vietnam.
- The thesis is a useful resource in evaluating the effectiveness of the provisions of the law on conditional civil transactions, as a basis and money for the improvement of the law on conditional civil transactions in next time.
- The thesis is a valuable source of documents for training and scientific research institutions in the process of teaching, studying, researching and understanding the law on conditional civil transactions.

7. CONCLUSION OF THESIS

In addition to the introduction, conclusion, list of references, the structure of the thesis includes:

The overview of the research situation related to the thesis topic.

Chapter 1: Some theoretical issues on conditional civil transactions

Chapter 2: Current status of Vietnamese law on conditional civil transactions

Chapter 3: Practical application and some recommendations to improve the law on conditional civil transactions

OVERVIEW OF RELATED RESEARCH THESIS SUBJECT

1. Some typical scientific research projects have been published in connection with dissertation topics

1.1. Some foreign projects

- The book " ***Conditions in the Law of Contract",*** Arthur L.Corbin, 1919. This is one of the books that has an in-depth analysis of the use of the term condition in contract law,
- *The book **"Soviet civil law** ", ONSadikov, 1988.* The term that the book refers to is "transaction" but not specifically a civil transaction. The contents of the book define a conditional transaction as one of the special transactions.
- *The book **"Introduction to Business Law in Russia",** Vladimir Orlov, 2011.* In the book about contracts, the book also has an analysis of conditional contracts or so-called conditional transactions.
- *The book **Contract as promise, a theory of contractual obligations,** Charles Fried, Oxford University Press, second edition, 2015.* The book refers to a conditional contract understood as a contract attached to a promise.
- *Article **Conditional contracts and caveatable interests: a mutual exclusion?** KL Liew, Assistant Professor of Law, Bond University, Vol 14 No 1.1995.* The book shows that if a contract of transfer is expressed under the consent of the government, or the consent of a third party, it is also considered a conditional contract.
- *Article **Conditional contracts for the sale of land in Canada** , Gwilym J.Davies, 2015.* The article has made an in-depth study of conditional contracts in a specific contract, namely a land sale contract. The author evaluates through cases and judgments related to land purchase and sale contracts.
- *Article **Conditional Sale Contracts in Indiana** ," Reeves, Ollie C. (1926) Indiana Law Journal: Vol. 1: Iss. 4, Article 2.* In this article, the author focuses on analyzing a type of contract in depth. Indiana's conditional sale and purchase In particular, in the contract of sale of goods with conditions, the buyer or the seller has the right to make conditions related to the obligations of the parties.

The works have identified the conditions established by the parties as the conditions occurring in the near future and the determination of the conditions in the contract is understood as the performance of the contract with the conditions of the parties. In particular, the work *"Conditions in the Law of Contract"* specifies the conditions established in the contract in the broadest sense, in which there is a conditional contract, including: conditions for arising, performance and cancellation or conditions are established in a bilateral contract or in a unilateral contract.

1.2. Some domestic projects

1.2.1. Monographs

- The book ***"Scientific commentary on the Civil Code",*** Dr. Editor-in-Chief Nguyen Minh Tuan, Judicial Publishing House, 2016. General comments on conditional civil transactions in the Civil Code 2015 but only generally

evaluates the law related to conditional civil transactions without analyze and evaluate the unreasonable content of the legal regulations.

- The book "***Scientific commentary on the Civil Code 2015",*** Assoc.Prof.Dr. Nguyen Van Cu and Assoc. Prof. Dr. Tran Thi Hue (co-editor), People's Public Security Publishing House, 2017. By commenting on the provisions on conditional civil transactions in the 2015 Civil Code, the authors mainly focus on the center analyzes the determination of conditions applied in conditional civil transactions.
- The book "***Scientific commentary on the Japanese Civil Code***"/Xaca Vacaxum, Tori Aritdumi; Translation: Nguyen Duc Giao, Luu Tien Dung; Edited by Hoang The Lien, 1995. The author has commented deeply on the provisions of the Japanese Civil Code related to conditional transactions.
- Textbook ***"Contract Law"*** of Assoc.Prof.Dr. Ngo Huy Cuong, in 2013 expressed his opinion that using the term "conditional transaction" should not use the term "conditional civil transaction" in the Civil Code.
- The book ***"Law on Contracts",*** Dr. Nguyen Manh Bach, National Political Publishing House, 1995, pp. 148-149. The book has an analysis and commentary on issues related to contracts, including conditional civil contracts.
- Monograph by author Do Van Dai, ***Vietnam Contract Law - Judgment and Judgment Comment,*** National Political Publishing House, Hanoi, 2010. This is a systematic study of judgments with relating to conditional civil contracts. In it, the author analyzes, evaluates and gives personal views on a number of cases related to conditional civil contracts.
- The book ***of Vietnam Inheritance Law – judgment and judgment commentary*** by Assoc.Prof.Dr. Do Van Dai, National Political Publishing House, 2009. The author believes that the Civil Code also has a "shadow" of the will with conditions for clearance. Point c, Clause 1, Article 653 of the Civil Code 2005: The will must clearly state…. Clearly define the conditions for individuals, agencies and organizations to enjoy the estate. With such a rule, we can infer that legislators "implicitly" accept wills with conditions.

1.2.2. Scientific article

- Author Pham Cong Lac's article on "***Comments on the draft Civil Code on conditional civil transactions",*** Jurisprudence Journal, No. 02/1995, pp. 52-53. In this article, the author clarifies two issues: (i) determination of conditional civil transactions; (ii) refers to a conditional will as a conditional unilateral legal act.
- The author's article Nguyen Nhu Bich on "***Talking about the validity of conditional contracts".*** Journal of People's Court, No. 19/2011, pp. 12-20. In this article, the author gives his personal opinion on determining the validity of conditional contracts in general and conditional land use right transfer contracts.
- Author Pham Cong Lac's article on "***Conditions in conditional contracts"***, Law School Journal, No. 01/1995, pp. 29-32. In this article, the author has given some views related to the concept of conditional contract, classification of conditions and how to determine conditions in civil contracts.

- Article by author Nguyen Nhu Bich on " ***Dispute settlement of conditional housing purchase and sale contracts*** ". The author points out that a conditional contract is a major type of civil contract with its own characteristics, so the application of the provisions of law to settle conditional contract disputes in some cases is different from that of the law. Dispute resolution of civil contracts.
- Article by author Phung Trung Tap on " ***Law on modern Vietnamese inheritance - some issues to be discussed"*** , Journal of the State and Law, No. 07/2008, pages 26-32. In this article, the content related to conditional wills, the author asserts that it is necessary to add the provisions on conditional wills and the validity of conditional wills to the inheritance law of our country. .
- Article by author Pham Van Tuyet on " ***Constraints of the Civil Code on Transactions, Contracts and Conditional Obligations*** ", Journal of Democracy and Law, October issue (235), page 20 First, the author defines a conditional transaction that is always accompanied by an event. Second, the author gives a way to define a conditional contract as a contract in which the parties have agreed on a certain event so that when that event occurs, the condition arises or cancels the contract.

1.2.3. Theses and theses

- Master thesis of Tran Thi Thu Quynh on " ***Conditional civil contract"***, Faculty of Law, Hanoi National University, 2011. The thesis has systematized the provisions of current law on conditional civil contract. Also through the analysis of conditional civil contracts put in comparison with the laws of some countries that regulate this issue to evaluate the effectiveness of the adjustment of Vietnamese law on conditional civil contracts.
- Doctoral thesis of Hoang Thi Loan: " ***Conditions for validity of wills in accordance with Vietnamese civil law"***, Hanoi Law University, 2019. The author clearly states that Vietnamese law does not There are specific provisions on conditional wills, but this content is similar to the part about conditional donation contracts. However, the issue of conditions in the contract is only a record, not really clear with this provision.

2. Evaluation of the research situation related to the thesis topic and the direction of research implementation of the thesis topic

2.1. Theoretical and practical results related to the thesis topic

(i) Theoretically

Some studies have mentioned theories that are applied to folk education in general, such as the theory of free will. However, there is no work that comprehensively deals with specific theories applicable to conditioned heritage education.

- First, the concept of conditional civil transactions: Only the author Pham Cong Lac has determined that the relationship between the concept of civil transactions and the concept of conditional civil transactions is not consistent.
- Second, the characteristics of the conditional civil transactions: the studies stopped to identify the conditional transaction with the general characteristics of the transaction in general, but did not introduce the specific characteristics of the conditional transaction.

- Third, the requirements for conditions in conditional transactions: there is no research submitted to clarify the requirements for determining conditions in conditional transactions. Such as determining what conditions need to be met, determining conditions arising, conditions for cancellation.
- Fourth, the classification of civil transactions is conditional. Author Pham Cong Lac identifies three types of conditional civil transactions: civil transactions subject to arising conditions, civil transactions subject to change, and civil transactions subject to termination. For conditional contracts, author Do Van Dai clearly defines the conditions applicable in conditional civil contracts, including arising conditions, performance conditions and conditions for canceling analysis through judgments of the Court.
- Fifth, the validity of conditional civil transactions. There are currently no studies on this subject. Through the conditional contract, a number of studies have mentioned the validity of the conditional contract.

(ii) In terms of practice

- General provisions on conditional civil transactions: Some graduate students refer to conditional contracts, conditional wills through analysis, evaluation of conditions or evaluation of specific related issues validity of the conditional transaction. However, at present, there is no research company that has gone into depth to assess the application of general regulations on conditional transaction population encountering any inadequacies and difficulties.
- Regulations on conditional contracts: Author Do Van Dai has analyzed and evaluated a number of judgments related to arising conditional contracts, performance conditional contracts and removing conditional contracts leave leave. However, the author's research mainly focuses on clarifying the conditions established in the conditional civil contract, specifically: related to the "condition" in the conditional civil transaction.
- Regulations on conditional will: Author Do Van Dai believes that the condition in the will is that the beneficiary of the estate must do something. However, in terms of the scope of cases in the conditional will, the grant application was not clearly met. Author Pham Cong Lac believes that the testator's rights include the right to set conditions for heirs or to prescribe conditions for inheriting inheritance.

2.2. Issues related to the thesis topic need to be further studied in the thesis

- Firstly, theoretically, some studies on the nature of conditional transactions have not yet comprehensively studied conditional transactions in Vietnamese civil law.
- Secondly, in terms of practice, a number of studies refer to the legal status of conditional transactions, but mainly in the form of conditional contracts. However, there has been no research and evaluation that comprehensively or fully and deeply pointed out the limitations and inadequacies of the current law on conditional transactions in Vietnam. On that basis, propose solutions to improve the legal framework for conditional transactions in Vietnam today.

In summary, the researches on conditional transactions from a legal perspective have only studied certain issues. This is an advantage but also a difficulty for researchers when implementing this topic. From the above observations, researchers need to continue to study and clarify the following issues:

- Conceptualize and define the characteristic features of conditional transactions.
- Adding criteria to define conditions in conditional transactions.
- Add the classification of conditional transactions in practice.
- Redefining the concept of a conditional contract.
- Determining and supplementing provisions on conditional wills in Vietnamese civil law.
- Add provisions on the liability of the parties in case the condition is not fulfilled or is partially fulfilled. Similar to a conditional will, the part that regulates the legal responsibilities of the parties in the performance of a conditional transaction is one of the contents that have not been mentioned.

3. Research theory, research question and research hypothesis

3.1. Research theory

Free Will Doctrine: This is the fundamental doctrine of trading. This doctrine allows the subjects participating in the transaction to freely express their will regardless of or hindered by any other factors, including the law.

The theory of the compromise between free will and social interests: derived from the doctrine of free will with the idea that unlimited individual freedom cannot regulate social relationships equitably. When people live too dependent on each other with many complex relationships intertwined.

The theory of civil transactions: subjects establish transactions to create binding relationships to achieve their goals.

3.2. Research question and research hypothesis

Doctoral Candidate identifies the main research questions and research hypotheses that need to be proven in the thesis as follows:

(i) Research question 1: What is a conditional civil transaction? What is the difference between the concept of a conditional civil transaction and the performance of a conditional obligation, and what is the difference between conditional contracts? What are the characteristics of conditional civil transactions compared to civil transactions?

Research hypothesis 1: Currently, there are different views and concepts about conditional civil transactions, performance of conditional obligations, and conditional contracts. From a research perspective, practice needs to be studied to find out the nature of conditional civil transactions.

(ii) Research question 2: What are the basic contents that need to be regulated by the law in conditional civil transactions?

Research hypothesis 2: Currently, there are many studies related to the basic contents that are regulated in the law on conditional civil transactions in Vietnam. The first view is that these contents are sketchy and do not cover the

issues of conditional civil transactions. But the second point of view is that these contents meet the needs of practice and warrant judgment.

(iii) Research question 3: What are the contents of the law on conditional civil transactions in Vietnam? Is the legal assessment for this issue reasonable and inadequate in practical application?

Research hypothesis 3: Currently, there are a number of studies related to the inadequacies in the law on conditional civil transactions in Vietnam. Inadequacies stemming from regulations on conditions are events in conditional transactions, the concept of conditional contracts, etc.

(iv): Research question 4: Given the shortcomings and problems that have been studied and evaluated, what requirements and recommendations should be made for solving the inadequacies in conditional civil transactions in Vietnam? Vietnam?

Research hypothesis 4: Currently, conditional civil transactions in Vietnam still have shortcomings that have not been effectively resolved. This has a great impact on the legal rights and interests of the subjects in conditional civil transactions; the court judgments also misjudged the conditional civil transactions.

CHAPTER 1
SOME THEORY ISSUES ABOUT CONDITIONAL CIVIL TRANSACTIONS

1.1. Overview of civil transactions

The first point of view is that there is no need to change the term civil transactions because the term has been used in Vietnam since the early 1995 promulgation of the Civil Code; people are familiar with the use of this term. This view holds that the uniformity and maintenance of the use of the term civil transactions in the 2015 Civil Code has taken effect.

The second point of view suggests that the term "legal act" should be used instead of the term civil transactions to match the general trend of the world. Because the use of the term "transaction" does not cover the connotation noted in Article 121 of the 2015 Civil Code. The use of the term "legal act" because of its compatibility with the world from which there is a way similar to legal terms.

The third point of view is that it is necessary to remove the word "civil" from "civil transactions" because the use of the term "civil transactions" does not exist in the world but only in Vietnam, which can be converted into civil transactions, “transactions” or “legal transactions” to cover commercial transactions.

Doctoral Candidate agrees that just calling it "transaction" is more reasonable. Because using the term like this will reconcile point one and point two above. On the other hand, the following requirements are also ensured: (i) the term "transaction" is familiar to Vietnamese people; (ii) the term "transaction" shows the orientation of our State to define the Civil Code as the original and common law.

Based on the analysis of basic characteristics of civil transactions, according to Doctoral Candidate, the concept of civil transactions *(transaction) is an act of expressing the will of participants with a definite purpose to generate, change, and change. Change or terminate rights and obligations.*

1.2. Concept, characteristics and classification of conditional civil transactions

1.2.1. The concept of conditional civil transactions

In Vietnam, conditional education is studied from two angles:

From the first perspective, the researchers expressed the view that clearly defining the event as a condition is considered as determining the conditional civil transactions. Therefore, researchers only focus on clarifying the conditions established in the conditional civil transactions. The determination of the conditional civil transactions from this point of view indirectly indicates the effect of the conditional event on the validity of the conditional civil transactions.

From the second perspective, researchers expressed the need to clarify the concept of conditional civil transactions. This determination refers to the condition established in the transaction as to happen or not to happen. However, according to Doctoral Candidate, the above determination causes an overlap between the determination of the conditional transaction and the performance of the conditional obligation. According to the above formulations, a condition is defined as an event arising or terminating.

Either way, a conditional civil transaction is formed or terminated in connection with the fact that the condition is established in that transaction.

Therefore, a conditional civil transaction (conditional transaction) is understood as a transaction with an event determined as a condition according to the will of a party or an agreement of the parties whereby when the event is when an event arises or cancels a civil transaction, such civil transaction arises or is cancelled.

1.2.2. Features of conditional trading

i. Conditional transactions are always associated with certain events.
ii. A conditional transaction depends on an event determined by the will of one party or objectively agreed upon by the parties.
iii. The conditional transaction will be generated or canceled depending on the arising or canceling condition.

1.2.3. Conditional transaction classification

1.2.3.1. Based on the subject of the conditional transaction

First, the contract is conditional

Second, the unilateral legal act is conditional

1.2.3.2. Based on the event

First, a conditional transaction arises

Second, the transaction has a cancellation condition

1.3. Theories affecting conditional civil transactions

1.3.1. The doctrine of free will

Firstly, free will is the basis for considering the voluntariness of the parties when entering into a conditional transaction.

Secondly, free will in conditional transactions is also reflected in the fact that the parties are allowed to make terms and conditions according to their wishes and aspirations.

Third, free will in a conditional transaction is expressed in the decision to enter into, perform and terminate such conditional transaction.

1.3.2. The doctrine of the compromise between free will and social interest

First, where the parties to a conditional transaction have the right to choose and establish conditions in the transaction that are irrational or paranoid events, the conditional transaction does not exist. This doctrine limits the options of the parties to ensure reasonableness and practicality

Second, if the condition is that the event established in the conditional transaction violates the prohibition of the law or is contrary to social ethics, the conditional transaction will not exist.

1.4. Effect of conditional civil transactions

1.4.1. Validity conditions of conditional civil transactions

Validity conditions of a conditional civil transaction are based on the transaction being a contract or the transaction being a unilateral legal act.

For civil transactions that are conditional on contracts: The order, conditions and time of entering into a contract also comply with the provisions of the contract in accordance with the Civil Code. However, a conditional civil transaction is a contract that depends on the fact agreed by the parties as a condition for arising civil rights and obligations or for termination of civil rights and obligations.

For a conditional civil transaction, it is a unilateral legal act: when one party unilaterally identifies an event as a condition for arising and terminating the transaction, when such condition occurs, the civil transaction will develop birth or termination.

A conditional transaction has been established and takes effect, but the rights and obligations can only be performed or canceled when the event agreed upon by the parties or proposed by one party is a condition for arising or canceling the transaction.

1.4.2. Legal consequences of an annulled conditional civil transaction

In this case, it is necessary to identify the terminated conditional transaction and the aborted conditional transaction.

The fact that the parties establish termination conditions in civil transaction is understood as the parties agreeing on the case to terminate the transaction.

For a conditional transaction that is cancelled, the conditions giving rise to the rights and obligations agreed upon by the parties in the conditional civil transaction should be cancelled.

In contrast, the legal consequences of the conditional contract and the unilateral legal act with the cancellation condition are shown in the following aspects:

- Consequences of conditional contract cancellation: the parties agree upon the event of contract cancellation and when the event that is the condition for contract cancellation occurs, the contract is canceled.

- Consequences of the cancellation of a conditional unilateral legal act*: in* the case of a conditional unilateral legal act because one party, the subject of the transaction determines that the event is a condition for the cancellation of the transaction, when Cancellation condition occurs, the transaction is aborted.

In this case, attention should be paid to protecting the interests of third parties. If a third party learns of a transaction with a cancellation condition and still conducts another transaction, when the cancellation condition occurs, the third party must bear the risk of this transaction. Because they had to anticipate the possibility of a cancellation condition. On the contrary, if the third party does not know or cannot know about the transaction, there is a cancellation condition. When the cancellation condition occurs, the third person in this case is also determined to be the third person in good faith. According to Doctoral Candidate, the occurrence of a conditional cancellation transaction does not mean that the second transaction with a bona fide third party is void and the interests of a bona fide third party are still protected.

1.5. Conditions in a conditional transaction

Determining the fact that is a condition in a conditional civil transaction needs to be determined based on:

i. Expressing the true will of the parties;
ii. Facts are objective;
iii. Do not violate the prohibition of the law and do not violate social ethics.

From the above analysis, Doctoral Candidate believes that *a condition in a conditional transaction is understood as an event arising or canceling, expressing the real will of the parties, being objective and not violating the terms of the contract prohibited by law, not contrary to social morality.*

1.6. A brief overview of Vietnamese law on conditional transactions

CHAPTER 2
THE STATUS OF VIETNAM LAW ON CONDITIONAL CIVIL TRANSACTIONS

2.1. General provisions on conditional civil transactions

2.1.1. Identification of conditional civil transactions

Firstly, Vietnam's civil law stipulates that the content of the law is for conditional contracts, but the name of the law is conditional civil transaction. This shows the inadequacy of Article 120 of the 2015 Civil Code. In particular, it becomes unreasonable for conditional unilateral legal acts, especially for conditional wills or promises of rewards conditional,.... That is, there are provisions on conditional civil transaction but the content of regulations is incomplete and there is a lack of unilateral conditional transactions.

Secondly, the law also clearly defines that the parties are entitled to establish the fact that the event is a condition that affects the validity of the conditional civil

rights education. In fact, this provision of Vietnamese civil law is quite abstract and difficult determine how it happens. How does the effect of the occurrence condition affect the validity of the conditional civil transaction?

Third, the provisions of Vietnamese law define two types of conditions: arising events or cancellation events. However, the content of the two conditions is that this fact has not been clearly codified. On the other hand, according to Doctoral Candidateo, when a cancellation event occurs, the conditional civil transaction is canceled. Therefore, the legal consequences of this transaction comply with the provisions on transaction cancellation. But with the current regulations on cancellation, the provisions of Vietnamese law currently apply to contracts but not to unilateral legal acts.

Fourth, the system of provisions of the Vietnamese Civil Code on conditions for the separation of conditional service people and the performance of conditional obligations. However, Clause 2, Article 284 stipulates: "If the condition does not occur or if there is an impact of one party, the provisions of Clause 2, Article 120 of the Civil Code 2015 shall apply". This indirect provision of a conditional enforcement obligation is an element of the conditional civil transaction. Other face, 1 Article 284. To do so, if it is unreasonable for a party to operate under Account 2 Article 120 to perform a conditional obligation. Therefore, it is necessary to redefine Clause 2, Article 120 of the Civil Code 2015.

2.1.2. Determining a condition is an event in a conditional civil transaction

In the Vietnamese civil law, conditions in the civil transaction have conditions to be defined as conditions for or conditions for cancellation. However, the new law stops in terms of the conditions that the parties are allowed to establish in the civil transaction condition, which have not yet clarified the conditions set by the parties in the civil transaction condition, which are subject to the effect of the transaction. Because the term 'conditions' are abstract and are relatively different depending on the circumstances. In fact, the civil law of some countries is clearly defined and different for this issue.

For Vietnamese law, regulations on this issue have not been mentioned directly in legal documents. The passage of Clause 2, Article 120 shows that indirectly stipulating the objectivity of the condition when there is an impact of a party in the conditional education. Specifically, if the event that is the condition giving rise to or cancel the civil transaction cannot occur due to the intentional act of direct or indirect obstruction of a party, such condition shall be considered as having occurred; where there is a direct or indirect influence of a party to intentionally promote the occurrence of a condition, such condition shall be deemed not to have occurred. Specifying the conditions established in the conditional civil transaction would clearly show the effect of this condition on the validity of that transaction.

2.1.3. Legal consequences of conditional civil transactions in some cases

a) Conditions affected by intentional acts of a party in the performance of conditional civil transactions

Regulations in Vietnamese law only define intentional or obstructed acts that directly or indirectly affect the condition. Because intentional or obstructed

behavior with good intentions, the consequences of such conditional civil transaction will be different from those of intentional or obstructed acts with bad intentions. This also affects the generation or cancellation of conditional civil transaction. According to the Doctoral Candidate, in order to determine whether an act of intentionally obstructing or intentionally promoting, it is necessary to consider the purposes of the parties towards it.

b) Conditions have arisen but the obligee refuses to transfer the rights under a conditional civil transaction

As for the provisions of Vietnamese civil law, it can be determined when the parties establish rights and obligations in a conditional contract. However, for a unilateral legal act with conditions, the basis for ensuring the interests of the party performing the conditions is difficult to determine. But for other transactions or conditional wills, there is no legal basis to ensure the interests of the person performing the conditions. Therefore, according to Doctoral Candidate, the clear regulation will partly limit the right to refuse of the party giving the condition in the conditional civil transaction and also ensure the peace of mind for the party performing the condition when it has been fulfilled without having to lose money work hard to reclaim the rights that we naturally enjoy.

c) Conditional transfer of civil transaction.

According to Doctoral Candidate, because related to the conditions established in the civil transaction, the condition is always associated with the rights of individuals. Therefore, like other rights of an individual, the individual is allowed to dispose of this right or, in the event of death, to transfer it to his or her heirs according to his will.

d) Protecting the interests of an honest third party when the civil transaction has conditions

The protection of a bona fide third party in the case of a conditional civil transaction cancellation has not been provided for. So in this case, it leads to the disadvantages that the honest third person will have to bear. Pursuant to Article 167 of the 2015 Civil Code, the owner - Mr. A has no right to reclaim the property from Ms. C because the contract between Ms. C and Mr. B is a contract of compensation. Therefore, Ms. C's interests in this case are determined to be sincere and protected by law. However, the current relevant provisions on protection of righteous third parties of Vietnam's civil law only consider invalid civil transaction.

2.2. Separate regulations on each type of conditional civil transaction

2.2.1. Conditional contract

The provisions of Vietnamese law do not clearly define the impact of the event on the validity of the conditional contract.

Specifically, according to Clause 6, Article 402 of the Civil Code 2015 stipulates: “Conditional contract is a contract whose performance depends on the arising, changing or termination of a certain event”. Compared with Article 120 of the Civil Code 2015 stipulates: "Where the parties have agreed on the conditions for arising or canceling a civil transaction, when such conditions occur, the civil transaction arises or is cancelled". If the contract is defined as a civil transaction, the issue that

needs to be clarified is whether a "certain event" in a conditional contract is a "condition of arising or cancellation" in a conditional civil transaction? The current regulation does not clarify these concepts, leading to confusion in the implementation process. From the point of view of Doctoral Candidate, these are two distinct concepts. Facts of nature may be objective or subjective, events may have the influence of a third party, and the parties, etc may create events. The fact that the parties agree in a conditional contract does not affect the validity of that contract. The event is considered a provision in the contract. On the contrary, “conditions of arising or cancellation” are established facts that affect the validity of a contract. Therefore, with the current way of building the provisions of the Vietnamese civil law, there are contradictions, illogicalities and no concept of a conditional contract.

2.2.2. Conditional Wills

The first view is that according to the inheritance law of our country, there is not any provision on conditional wills. That is, the 2015 Civil Code does not have any provisions on this issue

The second point of view is that conditional wills are recognized in the 2015 Civil Code but "indirectly" through general provisions. According to Article 116 of the Civil Code 2015, a civil transaction is a contract or unilateral legal act, that is, it includes a will and a conditional will.

Although the will is determined to be determined in any way, admittedly, the researchers are clearly determined that the regulation on the will is one of the contents that may not be thể in 2015. This has caused controversy, which is not consistent with this issue. Based on analysts' opinions, the doctoral student said that the nature of the will is the expression of the individual' s will to provide conditions that affect the benefits the beneficiary.

2.2.3. Conditional Promise

Like a conditional will, the promise of a conditional reward is not specified in Vietnamese civil law. A promise of reward is essentially a declaration of one's unilateral will on the part of the subject. Therefore, promised rewards can be classified into conditional promises and unconditional promises.

In case the promise of a conditional reward comes into effect, it creates the binding of the promiser for a certain period of time with the stated conditions. But the 2015 Civil Code also clearly states that before the implementation has started, the party promising the reward has the right to withdraw the promise of the reward. So the promise of reward will normally come into effect when someone performs the promised job. For a conditional promise, the bonus will come into effect when the condition occurs. In this case, the party that promises to reward has no right to withdraw the promise of reward because the binding of the promise of reward has come into effect. Doctoral Candidate believes that the binding of this statement is evident when the validity of the conditional promise comes into effect, the promiser may not withdraw the conditions or reduce the value of the prize that it has already awarded declare. The current law does not have regulations on the handling of the reward promiseor who does not pay any sanctions or legal responsibility?

CHAPTER 3
PRACTICAL APPLICATION AND RECOMMENDATIONS FOR COMPLETE CIVIL LAW OF VIETNAM ON CONDITIONAL CIVIL TRANSACTIONS

3.1. Practical application of the law on conditional civil transactions

3.1.1. Determining conditional civil transactions

The failure to clearly specify the criteria for determining the condition as an event in the conditional civil transaction is an omission in the 2015 Civil Code. This omission also leads to a "wrong" determination by the adjudicator in the Civil Code. Cases related to the conditional civil transaction. The reason for this misjudgment comes from: (i) it becomes difficult to identify the conditional heritage education because it is only based on the unclear definition of the law regulating the conditional heritage education; (ii) the way to determine the conditions is also not available, leading to many different judgments in the trial process.

In order to solve these problems, the Judicial Council of the Supreme People's Court approved (i) Case precedent 39/2020 on August 13, 2020 on determining that the conditional civil transaction is invalid because the condition does not occur and announced according to Decision 276/QD-CA dated October 2, 2020 of the Chief Justice of the Supreme People's Court. Some issues to consider in this case law:

Firstly, on what basis are the arising conditions defined in the Case Law determined?

Second, the Court declared that the transaction was invalid because the transaction between the parties had not yet arisen.

Third, the conditions in a conditional transaction show the need to be more clearly defined so that the parties have a basis to set the correct conditions and help the adjudicating authority to have a correct assessment of the transaction conditional translation, limiting the mistrial.

In addition, it is possible to consider the case in Decision 38/2017/DS-GDT dated 6/7/2017 on the dispute over the contract for the transfer of land use rights and the refund of the construction fee of the People's Court in Da Nang.

3.1.2. Types of conditions in conditional civil transactions

(i) Identifying arising conditions

The trial practice shows that the adjudicating agency also has a number of judgments that determine the existence of arising conditions. According to (ii) Judgment No. 161/2018/DS-PT dated September 12, 2018 on the dispute over the house purchase and sale contract of the People's Court of An Giang province. According to the Doctoral Candidate, there are several caveats to be drawn from these judgments:

First, clarify what is the condition in a conditional transaction?

Second, the condition arising in a conditional transaction is one of the conditions that are used relatively commonly in practice.

Third, transparency of property is established in conditional contracts.

(ii) Identification of cancellation conditions

Because the validity of the conditional transaction will arise when the condition arises and vice versa, when the condition is canceled, it means that the validity of the conditional transaction is canceled.

In Judgment No. 139/2019/DS-PT dated June 13, 2019 on the property inheritance dispute of the People's Court of Binh Duong province.

From the above judgment, the basis for determining the cancellation conditions in the conditional transaction should also be clarified to avoid confusion in the application process. Because at present, most individuals, organizations, and courts consider the determination of conditions in a conditional transaction to be any issue that only needs to be agreed upon by the parties or by one party.

3.1.3. Confusing conditional civil transactions with other issues

3.1.3.1. Confusion between conditional civil transactions with performance of conditional obligations

In which cases apply Article 120 on conditional civil transactions and in which cases apply Article 284 on performance of conditional obligations. Doctoral Candidate learns through some of the following judgments:

i. Judgment No. 51/2019/DS-PT dated November 8, 2019 on the dispute over the land use right transfer contract of the People's Court of Sa Dec city, Dong Thap province
ii. Judgment No. 458/2017/DS-PT dated September 27, 2017 on civil contract disputes of the People's Court of Thu Duc District, Ho Chi Minh City
iii. According to the Appellate Judgment: 28/2020/DS-PT dated April 28, 2020 on the dispute over the demand for housing by the People's Court of Ba Ria - Vung Tau province.

3.1.3.2. Confusion between conditional civil transactions and cancellation due to non-performance

For the case where one party violates the transaction, it is only considered as a condition for cancellation of the transaction if the parties have agreed in advance, therefore, in case, the transaction does not have an agreement on the conditions for cancellation of the transaction, the parties are not allowed to arbitrarily exercise their right to cancel the transaction.

Doctoral Candidate considers according to Judgment No. 42/2019/DS-ST dated August 28, 2019 on the dispute over property claim of Tay Ninh City People's Court.

3.1.4. Confusing a conditional will with the assignment of obligations to the heirs

A conditional will and the assignment of obligations to the heirs are two different matters. However, through the trial at the Court, the Court had confusion between these two issues.

i. Judgment No. 156/2017/DS-PT dated July 25, 2017 on the land use right inheritance dispute of the People's Court of Long An province.
ii. Judgment 135/2017/DS-PT dated 8/8/2017 on inheritance dispute of Tay Ninh Provincial Court.

3.1.5. Confusing a conditional contract with a conditional contract performance

Through the trial at the Court, the Court had confusion between these two issues. Doctoral Candidate learns through the following judgments:

i. Judgment No. 219/2018/DS-PT dated September 12, 2018 on the dispute over capital contribution contract of Hanoi People's Court.
ii. Judgment No. 35/2020/DS-PT dated June 11, 2020 on a property claim (land use right) of the People's Court of Phu Tho province.

3.2. Proposal to improve the civil law on conditional civil transactions

The specific regulation of the contents of the conditional transaction has certain practical significance.

Firstly, the concretization of conditional transactions clearly shows the role of civil law as the general law of the private law system.

Second, create a sufficient and favorable legal environment for the formation and development of market relations

3.2.1. Proposing to improve the general regulations on conditional transactions

3.2.1.1. Conditional trading concept

The provisions in Clause 1, Article 120 of the Civil Code need to be revised and supplemented in the general direction. Detail: "*A conditional civil transaction is a transaction in which one or the subject parties determine an event as a condition for the arising or cancellation of the transaction, and when the event is a condition, the transaction arises or cancels."*

3.2.1.2. Conditions in a conditional transaction

(i) Event is a condition of a transaction: according to Doctoral Candidate regulations on conditions in a conditional transaction, it may be additionally specified in Clause 1, Article 120 as follows: " *Conditions in conditional transactions are objective facts; uncertain. A condition established must not violate the prohibition of the law or be contrary to social morality".*

(ii) Add specific provisions on arising conditions, conditions for cancellation

In Vietnam, there are no specific regulations for this content. Therefore, if concretizing the regulations on events as conditions in conditional transactions, it will ensure:

Firstly, on the basis of analyzing legal issues and commenting and evaluating judgments resolved at the Court, there is still a subjective judgment about arising conditions or conditions for annulment but there is no basis for the judgments to be resolved legal department.

Second, the concretization of events that are conditions in a conditional transaction to clarify the impact of the condition on the validity of the conditional transaction is different from the validity of the normal transaction. .

This content can be specified in Clause 2, Article 120, specifically:*"A arising condition is where a subject or subject parties determine or agree on an event giving rise to a transaction, when such condition occurs, the transaction arises. The conditions for cancellation of transactions are cases where a subject or parties determine or agree on the event that the event is cancelled, when such events occur, the deal was cancelled."*

(iii) To clearly define the relationship between the condition and the term in a conditional transaction The provisions for this content can be supplemented with the provisions of Clause 4, Article 120 as follows: *"If the condition is an event that occurs within a specified period, when the time limit expires, the event does not occur, then the condition does not arise. If the condition is that the event does not occur within a specified period, when the time limit expires, the event does not occur, the condition will arise.*

3.2.1.3. Legal consequences of conditional transactions

(i) *Firstly, for the provisions related to the conditions affected by the intentional acts of one party in the conditional transaction, it is necessary to amend and supplement.*

In order to ensure the objectivity of conditional transactions, this provision may be amended and supplemented as follows: *"If a party for its own benefit unreasonably obstructs a condition from forming, it is considered that the condition has already occurred; if it unreasonably promotes a condition to form, it is considered as a condition that has not occurred".*

(ii) Second, the protection of the disadvantaged party's interests in the necessary conditional transaction is supplemented.

Regulations intended to control the actions of the party making the conditions would be reasonable. This content may be supplemented with the following provisions: *"Article….: 4. Neither party to a conditional transaction may reduce the benefit that the other party can obtain until the condition occurs. If conditions arise, the party that reduces the benefits must compensate double the value to the other party.*

(iii) Third, protect a bona fide third party in case the conditional transaction is invalidated

The provisions in Clause 2, Article 133 of the Civil Code 2015 are directed towards the property being land use rights. Therefore, the correction and addition will clarify the meaning of this provision. Specifically, this provision can be modified as follows:

In case a civil transaction is invalid but ***the object of the transaction is*** a property subject to registration, which has been ***granted a certificate*** at a competent state agency, then ***established and performed from*** a bona fide third party, the transaction with a bona fide third party will still be valid.

However, according to Doctoral Candidate, registering with a competent state agency and being certified and certified by a competent state agency are two different things. Therefore, in order to clarify this issue, it is necessary to add the following provisions: *"Unless there are grounds to prove that a third party knew or ought to know that the property subject to the transaction was illegally appropriated or against the will of the owner but still intentionally transacted".* "In case the property subject to registration has not been registered at a competent state agency, the civil transaction with a third party will be invalidated, unless the third party in good faith receives acquire this ***registered*** property through an auction at a competent organization or through a transaction with a person who, according to a

judgment or decision of a competent state agency, is the owner of the property, but then this subject is not the owner of the property due to the judgment or decision being annulled or corrected".

Add provisions related to transactions with cancellation conditions in Clause 4, Article 133 of the Civil Code 2015. That is, " *In case of termination conditions, the conditional transaction is terminated but the transaction established and performed with a bona fide third party is still valid. The third party does not have to return the property to the owner and regardless of the cause and origin of the rightful possession.*

At the same time, amending the provisions in Article 167 on objects to be consistent with the provisions of Article 133 of the Civil Code 2015. That is the right to reclaim *property* without registration of ownership from the bona fide possessor: *"The owner has the right to reclaim* ***the property*** *without having to register the ownership right from the bona fide possessor in the event that the bona fide possessor obtains* ***this property*** *through a no-compensation contract with an incompetent person. Seize property; where this contract is a contract of compensation, the owner has the right to reclaim* ***the property if such property*** *is stolen, lost or otherwise possessed against the will of the owner.*

And Article 168 of the Civil Code 2015 is revised to be consistent and consistent with the above laws: *"The owner who is entitled to claim back* ***the property*** *must register the ownership right or immovable property from the bona fide possessor, except for the case specified in Clause 2, Article 133 of this Code."*

3.2.2. Proposing to improve separate regulations on each type of conditional transaction

3.2.2.1. Conditional contract

The first option: to remove the provisions in Clause 6, Article 402 of the Civil Code 2015 to avoid confusion between the provisions on conditional transactions and conditional contracts. Because of the nature of the content in Clause 6, Article 402 of the Civil Code 2015 is the performance of a conditional contract, not a conditional contract. Therefore, this content is content in the performance of a conditional obligation. Duplicate content so this provision is not necessary.

The second option: This option is used if Vietnam issues specific legal documents on contracts such as China or the European Union…. On the basis of the concept of conditional transaction, the content of the provisions on the conditional contract in Clause 6, Article 402 should be amended and supplemented to suit the name. According to the Doctoral Candidate, the concept of a conditional contract can be defined as follows*: A conditional contract is an agreement between the parties on an event that causes a condition to arise or to cancel a contract, when that condition occurs the contract is performed or cancelled.*

3.2.2.2 Conditional Wills

According to Doctoral Candidate, the specific regulation of conditional wills is really necessary in the current period.

First, the legalization of conditional wills is considered a major step forward in Vietnamese legislative technique.

Second, the additional regulation of "conditional wills" partly controls whether the testator introduces conditions that affect other people or indirectly affect society or limit the testator's ability to may "manipulate" the beneficiary.

(i) The concept of a conditional will

According to Doctoral Candidate, the conditions specified in the conditional will need to be specified to ensure consistency with the conditional transaction. It is necessary to determine that the conditions established in the conditional will are objective facts and can be specified as follows: " *Article…: A conditional will is an expression of the will of the testator subject to the condition that an event is uncertain."*

(ii) Assign obligations to heirs

Therefore, for this content of a conditional will, the following provisions may be added: *"Article…: Assigning an obligation to an heir is determined to be fulfilled, then the beneficiary will receive the portion of the estate transferred according to the will. If the beneficiary fails to perform his/her obligations or fails to fulfill his/her obligations, he/she shall not be entitled to enjoy the estate, but the estate will be divided according to law.*

On the other hand, it is necessary to consider the changing circumstances, assigning obligations to the heirs in the will, causing obstacles and difficulties for the heirs. Therefore, according to Doctoral Candidate, this provision can be supplemented as follows*: "Article…..: Due to changing circumstances, the performance of the obligations in the will becomes especially difficult or causes serious damage to the beneficiary, this person may request the Court to reconsider the obligations duties and responsibilities attached to that will".*

(iii) Legal consequences of the parties in a conditional will

The first case, concerning the completion of condition determination. Doctoral Candidate considers it necessary to supplement this regulation. This issue can be supplemented with provisions in the Civil Code 2015 as follows: "*Article… The beneficiary may request a witness or a probate person or a third person to keep the estate and confirm that the conditions have been fulfilled in accordance with the conditional will".*

The second case, if the beneficiary of the estate has limited rights to enjoy the inheritance. This issue should also consider giving the Court the right to consider and decide to allow the beneficiary of the estate at an appropriate time to have the right to dispose of the inheritance and to prohibit the transfer of the inheritance under the will conditional is no longer needed.

3.2.2.3. Conditional Promise

Therefore, the promise to reward needs to be amended and supplemented with the provisions in Clause 1, Article 570 of the 2015 Civil Code to be clearer: *"First. Promise of reward is a commitment, public statement of a party to perform the obligation to pay reward if the promised party has performed the work proposed by the promised party. A conditional promise is a statement or undertaking by the promiser to award a reward if the condition is an event.*

Therefore, it is necessary to define the responsibilities of the parties in a conditional promise relationship because this makes the promiseor need to consider carefully before making a statement. According to Doctoral Candidate, Article 572 of the 2015 Civil Code should be added as follows: *"Clause… In case the promise of a conditional reward is a arising event, the person promising the reward must pay the bonus as declared."*

CONCLUDE

Conditional trading is an urgent issue today, setting requirements for the law to ensure its legitimacy, validity and enforcement in practice. Through the study of the thesis, the following conclusions can be drawn:

1. Vietnam's civil law basically has provisions on conditional civil transactions. However, on the basis of research on the theory and legal status of conditional civil transactions in Vietnam today, it shows that the legal framework for conditional transactions is still sketchy and inconsistent between the terms; there are provisions that cause difficulties in the actual settlement process.
2. The thesis has clarified a number of theoretical issues about conditional civil transactions through the study of legal perspectives of scientists and analysis of different perspectives, the law over time. Historical period, Doctoral Candidate pointed out that conditional transactions are free will of the subject in a harmonious relationship with social interests. From there, Doctoral Candidate explains the concept and characteristics of conditional civil transactions, deeply analyzes the validity of conditional transactions and how to establish conditions in conditional transactions to distinguish them from real ones performance of a conditional obligation or a conditional contract.
3. By studying the practical application through judgments adjudicated at the Court when settling disputes about conditional transactions, the thesis shows the current status of the application of the law on transactions with conditions. Conditions still have many shortcomings and shortcomings in confusing the conditional transaction with the performance of a conditional obligation, with a conditional gift, with cancellation due to non-performance of the obligation. Confusing a conditional will with the assignment of obligations to an heir, confusing a conditional contract with the performance of a conditional contract.
4. Combined with the legal situation mentioned before, the thesis makes a number of recommendations to improve the legal provisions for conditional transactions, conditional contracts, and conditional wills and promise conditional rewards. These recommendations and proposals partly help legislators have a more comprehensive view in the process of amending and supplementing the provisions of the law. At the same time, the thesis is also valuable as a reference for scientific researchers when studying the provisions of the law on conditional transactions.