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**EXCLUSION OF LIABILITY FOR BREACH OF CONTRACT
UNDER VIETNAMESE CIVIL LAW**

DOCTORAL DISSERTATION ABSTRACT

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INTRODUCTION

1. Rationale for the dissertation research

Contracts are the principal legal instrument through which parties establish and perform rights and obligations. Respect for contractual commitments is therefore a foundational requirement of contract law. However, the binding force of a contract does not mean that liability must be imposed absolutely in every case of breach. During contractual performance, the parties may be affected by natural events, socio-economic fluctuations, decisions of state authorities, or conduct of the aggrieved party. At the same time, by virtue of freedom of contract, the parties may proactively anticipate and allocate risks through agreement. The law must therefore identify circumstances in which the breaching party is not required to bear all or part of the liability. Exclusion of liability for breach of contract accordingly lies at the intersection of the binding force of contract, freedom of agreement, and the requirement of reasonable risk allocation.

From a theoretical perspective, this issue has been addressed in numerous studies on civil liability, liability for breach of contract, and specific grounds for exclusion. The existing findings, however, remain fragmented and have not yet produced a systematic and coherent approach capable of clarifying the concept, nature, and operative mechanisms of the grounds for exclusion.

From the perspective of law and practice, the 2015 Civil Code, the 2005 Commercial Law, and several sector-specific instruments recognize circumstances in which a breaching party is not liable and acknowledge the parties' freedom of agreement. Nevertheless, the relevant provisions are not fully coherent, and the approaches adopted by general law and specialized legislation are not entirely consistent. The law on contractual exclusion of liability continues to raise issues concerning scope, limits, and validity, while statutory grounds still require clarification as to their conditions of application and legal consequences. Dispute-resolution practice likewise reveals divergent interpretations regarding both the applicable grounds and the scope of liability excluded.

The need for further legal reform in this field is also associated with Resolution No. 66-NQ/TW dated 30 April 2025 and Conclusion No. 09-KL/TW dated 10 March 2026 of the Politburo, which call for innovation in law-making and law enforcement, improvement of the structure of the legal system, and the preservation of an appropriate sphere for agreement and private autonomy in private law.

From an academic perspective, within the body of literature reviewed, no doctoral dissertation has yet undertaken a specialized and comprehensive study of exclusion of liability for breach of contract under Vietnamese civil law. For these reasons, the topic “Exclusion of Liability for Breach of Contract under Vietnamese Civil Law” is both theoretically and practically necessary.

2. Research purpose of the dissertation

The purpose of the dissertation is to clarify the theoretical foundations, the current state of the law, and the practical application of the law on exclusion of liability for breach of contract. On that basis, the dissertation proposes recommendations for legal reform and measures to improve the effectiveness of legal application, while ensuring a balance among the principle of respect for contractual commitments, freedom of agreement, and the requirement of reasonable risk allocation.

3. Research tasks of the dissertation

To achieve the research purpose, the dissertation undertakes four principal tasks:

First, to clarify the theoretical issues concerning exclusion of liability for breach of contract.

Second, to analyze and assess Vietnamese law on exclusion of liability by agreement and by operation of law, with reference to international and foreign law.

Third, to examine practical application through judgments and dispute-resolution decisions in order to identify achievements, limitations, difficulties, and their causes.

Fourth, to propose recommendations for improving the law and measures to enhance the effectiveness of applying the law on exclusion of liability for breach of contract.

4. Research subject matter and scope of the dissertation

** Research subject matter:*

The dissertation examines theoretical issues, legal provisions, and legal practice concerning exclusion of liability for breach of contract, with particular focus on the legal mechanism by which the breaching party is relieved from all or part of liability when a ground for exclusion arises.

** Scope of research:*

In terms of subject matter, the dissertation examines the theory, law, and practical application of exclusion of liability for breach of contract, taking the 2015 Civil Code as the central legal framework while also examining the 2005 Commercial Law and relevant sector-specific instruments.

Geographically, the dissertation focuses on Vietnamese law and legal practice, while also drawing on the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG), the UNIDROIT Principles of International Commercial Contracts, and the laws of Germany, France, Russia, China, and the United States insofar as they directly relate to the research topic.

Temporally, the dissertation focuses on current law and published judgments and decisions issued since the 2015 Civil Code entered into force, while also referring to selected historical doctrines and provisions in order to clarify the origins and development of the research issue.

5. Methodology and research methods

** Methodology:* The dissertation is conducted on the basis of the dialectical materialist and historical materialist methodology of Marxism-Leninism. This methodological foundation guides the research process and is applied throughout the examination of theoretical issues, positive law, and legal practice.

** Research methods:*

The dissertation combines analytical and commentary methods to clarify theoretical, legal, and practical issues; synthesis and systematization to generalize scholarly views and research findings; comparative legal analysis to compare Vietnamese law with international and foreign law; and case-study analysis to examine judgments and dispute-resolution decisions. In addition, the dissertation employs historical, inductive, deductive, and theory-practice comparative methods.

6. Novel contributions of the dissertation

The research is expected to make the following novel contributions:

First, the dissertation systematizes relevant legal theories and clarifies their relationship with the conditions giving rise to liability, freedom of agreement, and the requirement of risk allocation in contractual relationships.

Second, the dissertation formulates a concept of exclusion of liability for breach of contract, clarifies its nature and characteristics, distinguishes it from related legal mechanisms, and develops a classification of the grounds for exclusion based on different criteria.

Third, the dissertation establishes an approach to the study of the law on exclusion of liability based on the two sources from which grounds for exclusion arise: agreement of the parties and provisions of law. Within this framework, agreements excluding liability are examined as contractual terms and as instruments for risk allocation.

Fourth, the dissertation systematically analyzes the grounds for exclusion of liability, clarifies the conditions of application, scope, legal consequences, and operative mechanism of each ground, and examines a state of necessity as a ground for exclusion of liability for breach of contract.

Fifth, the dissertation systematically examines legal practice through judgments and dispute-resolution decisions, identifies limitations and difficulties, and proposes a coherent set of recommendations for legal reform and measures to improve the effectiveness of legal application.

7. Theoretical and practical significance of the dissertation

Theoretically, the research findings contribute to supplementing and refining the theoretical foundations of exclusion of liability for breach of contract and establish a systematic approach to its concept, nature, grounds, and legal mechanism. The dissertation's analysis clarifies the relationship between exclusion of liability and the conditions giving rise to liability for breach of contract, freedom of agreement, and the requirement of reasonable risk allocation between the parties. In this way, the dissertation provides a scholarly basis for further research and legal reform in this field.

Practically, the dissertation's assessment of the law and its application, together with its recommendations, may serve as a reference for law-making, legal reform, and legal application. The research findings may also be useful to contracting parties in the negotiation, performance, and risk allocation of contracts, as well as in the resolution of disputes arising therefrom.

8. Structure of the dissertation

In addition to the Introduction, Literature Review, Conclusion, Bibliography, and Appendices, the substantive content of the dissertation is organized into three chapters:

Chapter 1: Theoretical Issues Concerning Exclusion of Liability for Breach of Contract

Chapter 2: Current Legal Framework on Exclusion of Liability for Breach of Contract

Chapter 3: Judicial Practice on Exclusion of Liability for Breach of Contract, Recommendations and Measures for Legal Improvement

LITERATURE REVIEW ON ISSUES RELATED TO THE DISSERTATION

1. Overview of published research relevant to the dissertation topic

The dissertation reviews a body of domestic and foreign literature, specifically as follows:

The domestic literature comprises 3 monographs, 13 doctoral dissertations and master's theses, and 10 articles published in specialized journals and conference proceedings. These studies approach the subject from a range of perspectives, including contract law, liability for breach of contract, liability for damages, agreements excluding liability, force majeure events, and other grounds under which the breaching party is not liable.

With respect to monographs, exclusion of liability for breach of contract is generally addressed within the broader fields of contract law, remedies for non-performance, or liability for breach of contract. These works have begun to clarify the use of the terms "exemption from liability" and "not liable," as well as contractual and statutory grounds for exclusion, with particular attention to force majeure, decisions of competent state authorities, and fault of the aggrieved party. Some studies also recognize that grounds for exclusion may affect not only liability for damages but also contractual penalties and other forms of liability. However, because exclusion of liability has not been treated as an independent object of study, the findings remain fragmented by particular grounds or types of liability.

With respect to doctoral dissertations and master's theses, some studies examine exclusion of liability within the broader frameworks of civil liability, liability for damages, or liability for breach of contract, while others address exemption from or exclusion of liability more directly. These studies have begun to formulate concepts and identify characteristics, grounds, conditions of application, and legal consequences. Nevertheless, the predominant approach remains the sequential analysis of individual grounds, with the parties' agreement often placed alongside statutory grounds. No doctoral dissertation has yet specifically examined exclusion of liability for breach of contract through the

mechanism by which grounds for exclusion affect the conditions giving rise to liability while simultaneously systematizing those grounds according to the two sources from which they arise: party agreement and provisions of law.

With respect to journal articles and conference papers, the research is relatively diverse, ranging from the concept and nature of exclusion of liability, exclusion agreements and the limits of freedom of agreement, to specific statutory grounds. Force majeure is the most extensively studied issue, particularly with regard to objective occurrence, foreseeability, avoidability or remediability, causation, and notification duties. Some studies also address decisions of competent state authorities, states of necessity, and fault of the aggrieved party. Most articles, however, focus on a single issue or individual ground.

Among the 12 foreign works reviewed, exclusion of liability is examined from theoretical, comparative-law, and practical perspectives. One group focuses on the foundations of exceptions to the principle that agreements must be kept, particularly where performance is impeded by events beyond the obligor's control. Another examines exclusion clauses, freedom to allocate risk, and the limits of that freedom. Studies of statutory grounds focus primarily on force majeure while also addressing acts of public authorities, conduct of third parties, fault of the obligee, and circumstances in which conduct is not unlawful. Overall, however, these works are generally confined to particular legal systems, international instruments, or specific grounds and do not develop a unified approach encompassing both contractual and statutory grounds.

2. Assessment of the findings of published research relevant to the dissertation topic

Theoretically, the existing literature provides important foundations for the study of exclusion of liability for breach of contract. The studies generally recognize that, although a breach has occurred, the breaching party may in certain circumstances be relieved from all or part of liability, and that the basis for this result may arise from agreement or from law. Some works also distinguish exclusion of liability from exemption from liability and related legal phenomena.

However, views on the nature of exclusion of liability remain inconsistent. Many studies explain the exclusion mechanism primarily by the absence of fault on the part of the breaching party and do not encompass grounds that affect unlawfulness or other conditions giving rise to liability. Nor has a comprehensive classification of grounds based on different criteria yet been developed.

As to the current state of the law, studies on contractual exclusion recognize the parties' right to determine in advance circumstances in which liability will not arise and have begun to address limits on that right. Nevertheless, an exclusion agreement is still commonly treated merely as one ground alongside statutory grounds and has not been fully examined as a contractual term and an instrument for risk allocation. Consequently, issues concerning formation, content, validity, interpretation, and limits of such agreements have not been comprehensively systematized.

Regarding statutory grounds, force majeure has been studied most extensively, yet divergent views remain concerning foreseeability, the standard of remedial efforts, notification duties, and the scope of liability excluded. Compliance with decisions of competent state authorities has been discussed, but its relationship with force majeure has not been addressed consistently. Breach wholly attributable to the fault of the aggrieved party has also been examined, but the boundary between total and partial fault, and between exclusion and reduction of liability, requires further clarification. In particular, a state of necessity has not been directly and systematically studied as a ground for excluding liability for breach of contract.

As to practical application, existing works have used a number of cases, judgments, and dispute-resolution decisions to assess the identification and application of grounds for exclusion. Most studies, however, remain limited to individual cases or particular grounds and do not examine the practical application of the law on exclusion of liability as an integrated whole so as to systematically identify achievements, limitations, difficulties, and their causes.

As to recommendations for legal reform, existing works have proposed harmonizing terminology, improving the conditions of application, defining the

limits of party agreements, and amending provisions concerning particular grounds. These recommendations, however, primarily address isolated issues and do not constitute a comprehensive set of solutions extending from overall legislative structure and general provisions to contractual exclusion and individual statutory grounds. These are issues that the dissertation continues to examine and address.

3. System of issues addressed by the dissertation

Theoretically, the dissertation clarifies the concept, nature, characteristics, foundations, functions, and legal mechanism of exclusion of liability for breach of contract. Building on theories of freedom of contract, the limits of *pacta sunt servanda*, risk allocation, and the conditions giving rise to liability, the dissertation develops a classification of grounds, distinguishes exclusion of liability from related legal mechanisms, and establishes an approach based on the two sources from which grounds arise: agreement of the parties and provisions of law.

As to the current law, the dissertation examines agreements excluding liability as contractual terms and as instruments for risk allocation, focusing on their formation, content, validity, and limits. With respect to statutory grounds, the dissertation clarifies the conditions of application, scope, legal consequences, and mechanism by which each ground affects the conditions giving rise to liability, including *force majeure*, decisions of competent state authorities, states of necessity, and breach wholly attributable to the fault of the aggrieved party.

As to practice and recommendations, the dissertation systematically examines judgments and dispute-resolution decisions in order to assess achievements, limitations, difficulties, and their causes in legal application. On the basis of its theoretical analysis, assessment of the current law, and examination of legal practice, the dissertation develops recommendations for improvement extending from the overall structure and general provisions to specific groups of grounds, and proposes measures to enhance the effectiveness of applying the law on exclusion of liability for breach of contract.

Chapter 1

THEORETICAL ISSUES CONCERNING EXCLUSION OF LIABILITY FOR BREACH OF CONTRACT

1.1. Concept and nature of exclusion of liability for breach of contract

Exclusion of liability for breach of contract arises where a contractual obligation has not been performed or has been improperly performed, but the effect of a particular ground prevents liability from being constituted. A ground for exclusion may be established by agreement of the parties or by law and may affect all or part of the liability arising from the breach.

Exclusion of liability must be distinguished from the terms “not liable,” “no liability,” and “exemption from liability.” Its defining feature is the existence of a ground that affects a condition giving rise to liability, with the result that liability is not constituted. On that basis, the dissertation defines:

“Exclusion of liability for breach of contract is the legal consequence of applying a ground for exclusion established by agreement or by law, whereby, although a breach of contract has occurred, the effect of that ground means that a condition giving rise to liability is no longer satisfied, and the breaching party is therefore not required to bear all or part of the liability toward the aggrieved party.”

In essence, exclusion of liability is a legal mechanism that neutralizes adverse legal consequences for the breaching party: liability does not arise because one or more of the conditions for liability are no longer satisfied. A ground for exclusion may affect fault, unlawfulness, or other conditions specific to a particular form of liability.

1.2. Characteristics of exclusion of liability for breach of contract

First, exclusion of liability for breach of contract arises only where a breach of contract has occurred.

Second, exclusion of liability operates so that liability for breach of contract is not constituted.

Third, the ground for exclusion must be recognized or established before the breach occurs.

Fourth, a ground for exclusion may be established by agreement of the parties or by provisions of law.

Fifth, the party invoking a ground for exclusion bears the burden of proving the existence of that ground, satisfaction of the applicable conditions, and the connection between the ground and the breach.

1.3. Foundations for recognizing exclusion of liability for breach of contract

The recognition of exclusion of liability is grounded first in the doctrine of freedom of contract and in the limits of the principle *pacta sunt servanda*. Freedom of contract allows parties proactively to allocate risk, including by agreeing on circumstances in which liability will not arise. At the same time, the very principle that agreements must be kept secures the binding force of a lawfully established risk-allocation agreement.

However, *pacta sunt servanda* cannot be applied absolutely in all circumstances. Doctrines concerning impossibility, impediments beyond a party's control, and interference by the obligee provide a basis for recognizing exceptions where imposing liability would no longer be reasonable. From a law-and-economics perspective, exclusion of liability also functions as a mechanism of risk allocation, under which risk should be placed on the party able to control, prevent, or bear it at the most reasonable cost.

In addition, the theory of the conditions giving rise to liability provides the direct basis for explaining the nature of exclusion of liability. Liability for breach of contract arises only where specified conditions are satisfied. Where a ground for exclusion affects a condition such as unlawfulness or fault so that it is no longer satisfied, the corresponding liability is not constituted. This approach permits a coherent explanation of grounds for exclusion that differ in origin and characteristics.

1.4. Roles and functions of exclusion of liability for breach of contract

Exclusion of liability performs three basic functions:

First, it ensures fairness in determining liability by avoiding the mechanical imposition of liability where the necessary legal basis is absent.

Second, exclusion of liability allocates risk and contributes to the stability of contractual relationships by enabling the parties to anticipate the scope of risks and legal consequences when entering into and performing contracts.

Third, recognition of agreements excluding liability promotes freedom of contract while also encouraging good faith, cooperation, and proactive risk management by the parties.

1.5. Classification of grounds for exclusion of liability for breach of contract

Grounds for exclusion of liability may be classified according to several criteria. By source, they may be divided into contractual grounds and statutory grounds. By the condition for liability affected, they may be distinguished as grounds affecting unlawfulness and grounds affecting fault. By the nature and origin of the event, grounds may arise from objective events, acts of state authorities, conduct of the aggrieved party, or other circumstances. By the scope of liability excluded, they may be classified as total or partial exclusion of liability. Among these criteria, classification by source provides the principal basis for the legal analysis developed in Chapter 2.

1.6. Distinguishing exclusion of liability for breach of contract from related legal mechanisms

Exclusion of liability differs, first, from release from performance of an obligation in terms of the object affected. Release from performance extinguishes all or part of the obligation itself, whereas exclusion of liability affects only the consequences of non-performance or improper performance; the underlying obligation may therefore continue to exist.

Exclusion of liability also differs from exemption from liability and waiver of the right to claim liability. In exclusion of liability, liability is not constituted because of the effect of a ground for exclusion. In exemption from liability or

waiver of a claim, liability or the right to claim has already arisen, but the entitled party subsequently decides not to enforce it.

In cases of limitation or reduction of liability, liability arises but the extent of the burden is capped or reduced. By contrast, under exclusion of liability, liability does not arise to the extent affected by the ground for exclusion. Exclusion of liability for breach of contract also differs from exclusion of tortious liability for damages with respect to the source of the obligation, the scope of freedom of agreement, and the regulatory purpose.

1.7. Approach to the study of the law on exclusion of liability for breach of contract

On the basis of the theoretical findings, the dissertation adopts an approach to the law on exclusion of liability based on the two sources from which grounds arise: agreement of the parties and provisions of law. This approach replaces the conventional method of examining individual grounds sequentially and in isolation.

Accordingly, an agreement excluding liability is examined as a contractual term and as an instrument through which the parties allocate risk; its formation, content, validity, limits, and operation must therefore be considered. For exclusion of liability by operation of law, each ground is examined in terms of its conditions of application, scope, legal consequences, and mechanism of effect on the conditions giving rise to liability.

This approach both systematizes the grounds for exclusion and clarifies the distinctions and areas of overlap between contractual and statutory grounds, thereby providing a theoretical foundation for assessing the current law in Chapter 2. It is also one of the principal findings of Chapter 1 and provides the organizing basis for the dissertation as a whole.

Chapter 2

CURRENT LEGAL FRAMEWORK ON EXCLUSION OF LIABILITY FOR BREACH OF CONTRACT

2.1. Current legal framework on exclusion of liability for breach of contract by agreement

2.1.1. Current legal provisions on exclusion of liability for breach of contract by agreement

Vietnamese law recognizes the parties' right to agree on liability for breach of contract on the basis of the principles of freedom and voluntariness of commitment and agreement, and party autonomy in contractual relations. The dissertation approaches an agreement excluding liability as a contractual term and as an instrument through which the parties proactively allocate risk. Accordingly, the analysis extends beyond the mere right to agree and focuses on the parties, form, content, time of formation, and validity of the agreement.

First, as to parties and form, an agreement excluding liability is generally concluded by the parties to the contract or their lawful representatives. Because the exclusion agreement is linked to the contractual relationship, its form must be considered in connection with the form of the contract. The agreement may be included in the original contract or in a written amendment or supplement. In practice, written form is predominant because it facilitates proof of the risk allocation agreed by the parties.

Second, as to content, an agreement excluding liability must address two essential matters: the ground for exclusion and the corresponding legal consequence. The parties may specify particular events or circumstances while also identifying the type and scope of liability to be excluded. The agreement must be sufficiently clear to determine when the ground arises and what legal consequence the parties intend. Merely listing an event without specifying its consequence may not be sufficient to constitute a complete agreement excluding liability.

Third, as to time of formation and validity, an agreement excluding liability may be concluded when the contract is formed or during its performance, but it must exist before the breach falling within its scope occurs. If, after liability has already arisen, the parties agree that the breaching party will not be required to bear liability, this is in substance an exemption from liability. An exclusion agreement must satisfy the validity requirements applicable to civil transactions and, in principle, takes effect together with the contract or from the effective date of the relevant amendment or supplement.

2.1.2. Assessment of the legal provisions on exclusion of liability for breach of contract by agreement

The current law provides a relatively broad basis for parties to allocate risks proactively and has begun to control agreements that may disadvantage one party, particularly in standard-form contracts, general terms and conditions, and consumer relationships. However, the law has not established a direct and systematic framework specifically governing agreements excluding liability. Issues concerning minimum content, interpretation, limits, and the relationship between an exclusion agreement and the contract must largely be inferred from general rules of contract law.

Moreover, the limits on the freedom to agree on exclusion of liability remain incomplete. Current law contains no general rule preventing a party from relying on a pre-existing agreement to exclude liability for an intentional breach. With respect to standard-form contracts and general terms and conditions, the current control mechanism also requires refinement so as both to protect the weaker party and to avoid invalidating reasonable risk-allocation arrangements between parties with relatively balanced bargaining power. The assessment of an exclusion clause should therefore take account of good faith, the balance of rights and obligations, and the overall benefits each party derives from the transaction.

2.2. Current legal framework on statutory exclusion of liability for breach of contract

2.2.1. Current legal provisions on statutory exclusion of liability for breach of contract

Vietnamese law currently recognizes several circumstances in which a party in breach may not be liable. Building on the theoretical framework developed in Chapter 1, the dissertation focuses on four principal grounds: breach caused by force majeure; breach resulting from compliance with a decision of a competent state authority; breach resulting from compliance with the requirements of a state of necessity; and breach wholly attributable to the fault of the aggrieved party.

First, with respect to force majeure, Article 156(1) of the 2015 Civil Code requires the event to occur objectively, be unforeseeable, and be irremediable despite the application of all necessary and possible measures. For liability to be excluded, the event must not only satisfy these identifying criteria but must also be directly connected to the failure properly to perform the obligation. Accordingly, the mere occurrence of a natural disaster, epidemic, or other objective event does not automatically exclude liability where the breaching party remained capable of performing the obligation or the breach resulted from another cause.

The requirement of objective occurrence is assessed in relation to the parties to the contractual relationship.

The criterion of “unforeseeability” must be assessed in the particular circumstances and concerns not only whether the event itself could be anticipated but also whether its extent and impact on the obligation could reasonably be foreseen.

The criterion of “irremediability” requires the obligor to have taken measures that were necessary and appropriate in light of its actual capabilities but nevertheless to have been unable to prevent or overcome the consequences. The party invoking force majeure bears the burden of proving these conditions. The duty to notify serves important functions in promoting cooperation and mitigating loss, but it should not in every case be equated with a constitutive condition of force majeure.

The law provides a relatively clear basis for force majeure, but several issues still require improvement. The statutory criteria remain broadly formulated, particularly foreseeability, the standard of remedial efforts, and the scope of liability excluded. In addition, force-majeure rules are dispersed across Articles 156 and 351 of the Civil Code and sector-specific legislation, while the burden of proof and certain notification issues are not regulated consistently.

Second, with respect to breach resulting from compliance with a decision of a competent state authority, Article 294(1)(d) of the 2005 Commercial Law recognizes this as an independent ground for exclusion of liability. In the dissertation's view, this ground should be distinguished from force majeure in two principal respects. Regarding foreseeability, the fact that state intervention may be foreseeable in general does not mean that the parties could know in advance the content, date of issuance, and scope of application of the particular decision that directly causes the breach. Regarding remediability, such a decision may be reconsidered, amended, suspended, challenged, or annulled and therefore is not necessarily "irremediable" in the same sense as force majeure. The distinctive feature of this ground is that, while the decision remains in force, it is mandatory and directly creates a legal impediment to performance.

At present, however, this ground is primarily regulated by the Commercial Law and has not been recognized as a general ground under the Civil Code. The provision refers only to a "decision" and does not fully encompass other lawful acts of state administration that may directly impede performance. Moreover, using the time of contract formation as the sole reference point for assessing prior knowledge may be inappropriate where a particular obligation is created or modified during contractual performance.

Third, with respect to a state of necessity, the 2015 Civil Code does not directly identify it as a ground for excluding liability for breach of contract. Nevertheless, the provisions on necessity indicate that conduct undertaken within what is necessary to avert an actual danger threatening a greater interest is not regarded as unlawful. On this basis, the dissertation argues that compliance with

the requirements of a state of necessity may negate the unlawfulness of the breach and thereby exclude liability for breach of contract. This also demonstrates that grounds for exclusion do not operate solely by affecting fault.

The current limitation is that a state of necessity is not expressly recognized among the provisions governing liability for breach of obligations, leaving its application to contractual relations insufficiently clear. Because the law addresses necessity mainly in provisions on the protection of civil rights and compensation for damage, it may also be misunderstood as relevant only to liability for damages, whereas in substance it may affect other forms of liability arising from breach of contract.

Fourth, with respect to breach wholly attributable to the fault of the aggrieved party, Article 351(3) of the 2015 Civil Code provides that an obligor is not liable where the breach is entirely due to the fault of the obligee. This ground reflects the principle that an entitled party cannot require the other party to bear liability for consequences decisively caused by its own conduct.

A critical condition is that the fault of the aggrieved party must be the exclusive cause of the breach. If the aggrieved party is only partly at fault, total exclusion of liability should not, in principle, apply; instead, a corresponding reduction of liability should be considered. It is therefore necessary to distinguish clearly between exclusive fault of the aggrieved party and contributory fault, the duty to mitigate loss, and cases where one party withholds performance because the other party has failed to perform a reciprocal obligation.

2.2.2. Assessment of the law on statutory exclusion of liability for breach of contract

Overall, Vietnamese law recognizes the principal grounds under which a breaching party is not liable, but the rules lack systematic coherence. The Civil Code expressly recognizes only certain grounds in Article 351, while force majeure is defined in Article 156; decisions of state authorities are primarily regulated by the Commercial Law; and a state of necessity is not expressly recognized in the law on contractual liability. Terminology also varies across the

Civil Code, the Commercial Law, and sector-specific instruments. These drafting and coordination shortcomings, together with unclear application criteria, reduce legal coherence and predictability.

Chapter 3

JUDICIAL PRACTICE ON EXCLUSION OF LIABILITY FOR BREACH OF CONTRACT, RECOMMENDATIONS AND MEASURES FOR LEGAL IMPROVEMENT

3.1. Judicial practice on exclusion of liability for breach of contract

Based on its review of judgments and dispute-resolution decisions, the dissertation finds that grounds for exclusion of liability are increasingly invoked in practice, particularly agreements excluding liability, force majeure, and breach attributable to the fault of the aggrieved party. Where contracts contain clear agreements, dispute-resolution bodies generally tend to respect the risk allocation established by the parties. For statutory grounds, the invoking party is generally required to prove the existence of the ground and the connection between that ground and the failure properly to perform the obligation.

Notwithstanding these achievements, several limitations remain in practice. In some cases, the distinction between contractual and statutory grounds is unclear. With respect to force majeure, some cases fail to assess all three identifying criteria or to establish the causal relationship between the event and the breach. The distinction between force majeure and decisions of competent state authorities is also applied inconsistently. Regarding fault of the aggrieved party, difficulties remain in drawing the line between exclusive fault, which may exclude liability, and partial fault, which may reduce liability. A state of necessity has rarely been identified and directly applied as a ground for exclusion of liability for breach of contract. In addition, the duty to notify is in some cases treated as if it were itself a condition for entitlement to exclusion of liability.

These limitations arise from the complexity and overlap of the grounds, the fragmented and inconsistent nature of current law, and shortcomings in the review of adjudicatory practice, guidance on legal application, and the parties' capacity to anticipate and allocate risks when entering into contracts.

3.2. Recommendations for improving the law on exclusion of liability for breach of contract

3.2.1. Directions for improving the law on exclusion of liability for breach of contract

Reform of the law on exclusion of liability for breach of contract should be situated within the broader direction of improving Vietnam's legal system and should rest on a coherent understanding of the nature and mechanism of exclusion of liability. The law should ensure consistency and coordination, reinforce the Civil Code's role as the general law, and clearly define its relationship with specialized legislation. At the same time, reform should respect freedom of agreement while ensuring reasonable risk allocation and a proper balance of interests between contracting parties.

3.2.2. Recommendations for improving the overall structure and general provisions on exclusion of liability for breach of contract

First, the provisions on exclusion of liability for breach of contract should be consolidated and systematized within the Civil Code. The dissertation recommends restructuring Section 4 of Chapter XV of the Civil Code by creating a distinct group of provisions on exclusion of liability for breach of obligations. Under this approach, Article 351 would state only the general principle of liability for breach of obligations, while subsequent provisions would separately regulate the grounds for exclusion and the burden of proof borne by the party invoking them. This structure would address the current fragmentation of the rules and establish a coherent legal framework for governing exclusion of liability.

Second, terminology concerning exclusion of liability for breach of contract should be harmonized between the Civil Code and specialized legislation. The inconsistent use of the terms "not liable" and "exemption from liability" should be corrected in favor of terminology that accurately reflects the fact that liability does not arise when a ground for exclusion applies.

3.2.3. Recommendations for improving the law on exclusion of liability for breach of contract by agreement

First, the parties' agreement should be more clearly recognized as a ground for exclusion of liability, and the required content of such an agreement should be

clarified. The dissertation proposes wording along the following lines: “A circumstance occurs in which the parties have agreed that civil liability shall not arise.” This formulation requires the agreement to identify both the triggering event and the consequence of non-liability, rather than merely listing possible events.

Second, the law should provide that an agreement excluding liability cannot be invoked where the breach results from intentional fault. Codifying this limitation would safeguard good faith and the binding force of contract and prevent a party from deliberately breaching while nevertheless relying on a pre-existing agreement to exclude liability.

Third, the limits applicable to exclusion clauses in standard-form contracts and general terms and conditions should be refined. The law should differentiate appropriately according to the nature and degree of imbalance in the particular contractual relationship and should clarify the exception “unless otherwise agreed” in Article 405(3) and Article 406(3) of the 2015 Civil Code.

3.2.4. Recommendations for improving the law on statutory exclusion of liability for breach of contract

First, the rules on exclusion of liability for breaches caused by force majeure should be improved. First, the Civil Code should contain a separate provision on force majeure rather than locating the definition in the provision on limitation periods. Second, the identifying criteria should be clarified: foreseeability should be assessed at the time the breached obligation is established, while, for the criterion of irremediability, the breaching party should not be required to undertake futile measures where it can prove that no necessary and feasible measure existed to overcome the effects of the event. Third, sector-specific legislation should adopt a consistent drafting approach by referring to the Civil Code definition rather than continuing to enumerate or redefine force majeure independently.

Second, the rules on exclusion of liability resulting from decisions or acts of competent state authorities should be supplemented and improved. The Civil Code

should expressly recognize this as an independent ground for exclusion and should broaden the formulation from a “decision” to include both decisions and lawful acts of state authorities where they directly impede performance of an obligation.

Third, the law should expressly recognize compliance with the requirements of a state of necessity as a ground for exclusion of liability for breach of contract. The dissertation recommends recognizing the circumstance in which “the breach of an obligation results from compliance with the requirements of a state of necessity,” while determining liability for compensation in respect of damage caused beyond what the state of necessity required in accordance with Article 595 of the Civil Code. This amendment would accurately reflect the exclusion mechanism where the conduct constituting the breach is not unlawful.

Fourth, terminology should be harmonized where a breach is wholly attributable to the fault of the aggrieved party. The Civil Code’s term “obligee” and the Commercial Law’s term “the other party” should be replaced by the uniform term “aggrieved party,” which more accurately identifies the party’s legal position within liability for breach of contract.

3.3. Measures to improve the effectiveness of applying the law on exclusion of liability for breach of contract

First, understanding and approaches to exclusion of liability should be harmonized, particularly in distinguishing contractual from statutory grounds, force majeure from decisions of competent state authorities, and exclusion of liability from exemption, reduction, or limitation of liability.

Second, adjudicatory practice should be reviewed more systematically, and relevant judgments should be organized by ground, application conditions, and method of legal reasoning.

Third, parties’ contractual risk-management capacity should be strengthened.

Fourth, negotiation, mediation, and arbitration should be promoted in disputes concerning exclusion of liability.

CONCLUSION

Exclusion of liability for breach of contract is an important mechanism of contract law, balancing respect for contractual commitments, freedom of agreement, and reasonable risk allocation between the parties. By examining theoretical issues, positive law, and legal practice, the dissertation clarifies the nature of exclusion of liability for breach of contract and develops a coherent approach to this legal institution.

Theoretically, the dissertation defines exclusion of liability for breach of contract as the legal consequence of applying a ground established by agreement or by law, whose effect is that one or more conditions giving rise to liability are no longer satisfied, so that the breaching party does not bear all or part of the liability. It distinguishes exclusion of liability from exemption, limitation, and reduction of liability and related legal phenomena, and classifies grounds for exclusion according to their two sources: agreement of the parties and provisions of law.

As to the current law, the dissertation analyzes contractual exclusion and the statutory grounds of force majeure, breach resulting from a decision of a competent state authority, a state of necessity, and breach wholly attributable to the fault of the aggrieved party. Vietnamese law provides the necessary foundations for exclusion of liability, but the relevant rules remain fragmented and inconsistent in terminology, structure, and conditions of application. Dispute-resolution practice likewise reveals divergent interpretations and methods of assessment for certain grounds.

On that basis, the dissertation proposes improvements to the overall structure and general rules on exclusion of liability, refinement of contractual exclusion, clarification and supplementation of statutory grounds, and measures to enhance effective legal application. These findings strengthen the theoretical and legal foundations of exclusion of liability for breach of contract and promote greater transparency, predictability, and stability in contractual relations.