

# INVALID CONTRACTS DUE TO BREACH OF LEGAL PROHIBITIONS OR CONTRAVENTION OF SOCIAL ETHICS IN THE CONTEXT OF VIETNAMESE LAW

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## Abstract:

Regulations concerning the objective and content of transactions that breach legal prohibitions or contravene societal ethics still suffer from numerous inadequacies and lack of uniformity, which has led to a situation where their interpretation and application do not align with their nature. This paper addresses how to appropriately understand the legal prohibitions, provides certain assessments, and identify challenges from practical law enforcement. Based on these considerations, the paper put forth recommendations to enhance the legal provisions related to the conditions, objectives, and contents of transactions in general and contracts in particular.

*Keywords* —**Contract; transaction; invalid; prohibition; societal ethics**

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## I. INTRODUCTION

Civil contracts and transactions with objectives and contents which violate legal prohibitions or contravene societal ethics will be rendered void regardless of the judgment of the court.

Interpreting and applying the provisions regarding the objective, content of transactions that violate legal prohibitions or contravene societal ethics to declare their invalid or valid is not fully consistent. This leads to two issues: firstly, the rights and interests of the entities participating in the transaction, and secondly, the interests of the societal community. Fundamentally, engaging in establishing civil transactions is a private interest, but declaring a invalid transaction due to breach of legal prohibitions or societal ethics always affects to the public interest. Therefore, both the regulation and the application of regulations concerning the conditions, objectives, and content of the civil

transactions need to ensure correctness, appropriateness, and harmony between public interest and private interest.

Consequently, it is necessary to research the conditions, objectives, and content of civil transactions that breach legal prohibitions or contravene societal ethics, along with addressing practical enforcement issues within the framework of the 2015 Civil Code. Based on that, potential solutions can be proposed to enhance the legal regulations concerning the invalidation of transactions due to breach of legal prohibitions or contravention of social ethics.

## II. EVALUATIONS OF THE PROVISIONS IN THE 2015 CIVIL CODE REGARDING CIVIL INVALID TRANSACTIONS DUE TO BREACH OF LEGAL PROHIBITIONS OR CONTRAVENTION OF SOCIETAL ETHICS

In comparison to the 2005 Civil Code, the 2015 Civil Code introduced specific changes regarding the conditions, objectives, and content of civil transactions. The 2005 Civil Code deemed that not to breach legal prohibitions or contravention of societal ethics was a valid condition when considering the objective and content of a civil transaction [1]. In the case of the 2015 Civil Code, it narrowed down this scope by restricting the objectives and contents that breach legal prohibitions or contravene societal ethics [2].

The changes introduced by the 2015 Civil Code provide a better assurance for the mechanism of implementing the rights of entities within civil relationships. In essence, the utilization of the concept of legal prohibitions runs the risk of limiting the freedom of individuals in civil relationships. It is evident that when a state or authorities impose numerous binding regulations, prohibitions, and restrictions that are not truly fitting, it may significantly impact the freedom of will of individuals and indirectly hinder societal development, especially business freedom. Adjusting the conduct of individuals within legal relationships, both in general law and specifically civil law, should only aim to uphold the principles of public order and the legitimate interests of the societal community, as enshrined in Clause 2 Article 14 of the 2013 Constitution and Article 2 of the 2015 Civil Code.

While there have been changes in the provisions regarding the objective and content of transactions, it is essential to establish a correct and unified understanding of the following elements:

**A. Firstly, the legal prohibitions.**

The perspective on the constituent parts of legal norms includes assumptions, provisions, and sanctions [11, pp.318]. Among these, provisions constitute the segment that outlines the behaviors that entities are permitted, not permitted, or obligated to engage in when confronted with situations specified in the assumption segment [5]. The commands and instructions of the state presented in the provisions of legal norms

encompass behavioral acts that are allowed, not allowed, or required to be performed. Prohibitive provisions exist in the form of prohibitions; the behavioral acts of entities within a legal relationship do not encompass these acts. If entities undertake prohibited acts, it leads to unfavorable legal consequences for them. Legal norm documents do not explicitly specify how prohibited acts are defined, whether they correspond with the understanding of prohibitions. In civil legal relationships, Article 123 of the 2015 Civil Code stipulates: “*Legal prohibitions are provisions of the law that do not permit entities to engage in certain actions.*” With this concept, the interpretation of legal prohibitions is as follows:

- In cases where the law stipulates actions that are strictly prohibited for entities to undertake if an entity enters into an agreement to establish a transaction with a specific objective and content falling under these instances of strict prohibition, it will result in a invalid transaction due to the breach of legal prohibitions or contravening societal ethics. For example, transactions involving the sale of narcotics, the sale of human body parts, or the sale of weapons...

- In cases where the law stipulates actions that entities are not allowed to undertake, most provisions of civil law adequately reflect the freedom of agreement among entities. However, there are instances where the law regulates the disallowance of certain actions by an entity to safeguard the rights and interests of other entities based on principles of equity or public order. If an entity still engages in these actions despite such legal disallowance, the transaction is still considered invalid due to the breach of legal prohibitions or contravening societal ethics. These actions are not explicitly listed in the category of strictly prohibited actions but are scattered across various other regulations. For instance, the 2015 Civil Code stipulates: “*In cases where the parties have agreed on interest rates, the interest rate agreed upon shall not exceed 20% per annum of the loan amount, except where other related laws provide otherwise*”.

In practice, it is evident that the definition of legal prohibitions in Article 123 of the 2015 Civil Code can easily lead to confusion, blending into violations of general legal provisions. Additionally, most of the conditions used to assess the validity of transactions are scrutinized against the backdrop of legal prohibitions. For example, when an entity establishes a transaction that entails certain actions that are not allowed, the form of the transaction, the objective, and the content of the transaction all need to be examined in accordance with the legal prohibitions.

It is important to understand that legal prohibitions apply specifically to the objective and content of a transaction, not to all conditions in general. Article 123 of the 2015 Civil Code defines legal prohibitions in general, and when determining the invalidity of transactions due to a breach of legal prohibitions, it explicitly states: *“Civil transactions with objectives and contents that violate legal prohibitions or contravene societal ethics shall be invalid.”* Therefore, in correspondence with this condition, it is crucial to comprehend legal prohibitions as *“behaviors exhibited by entities through the objective and content of a transaction that must ensure they do not fall under instances where the law does not permit.”*

**B. Secondly, the societal ethics.**

Societal ethics refer to the common standards of behavior among individuals within a community that are acknowledged and respected by society. Translating these societal ethical values into legal norms can be challenging due to the fact that each type of government, legal system, and law is constructed upon a different foundation of societal ethics. Additionally, various nations will have distinct behavioral norms, ethical codes, and ways of life. However, the legal provisions of any state at a given point in time undoubtedly encompass elements of societal ethics that align with the objective of establishing the laws of that state.

Societal ethics is a challenging factor to quantify as it does not exist in the same structured manner as

legal provisions. In legal science and application, there has not been clear independence in determining the content of transactions that go against societal ethics without violating legal regulations. This can be attributed to the fact that the legal regulations of a nation always distinctly reflect its economic, political, cultural, ethical, and moral aspects. Therefore, the legal provisions in Vietnam largely reflect the societal ethical appropriateness of Vietnamese people. Hence, when a civil transaction is declared to have content that violates legal prohibitions, it also implies that it contradicts societal ethics. Even if these transactions are determined to have objectives and content contrary to societal ethics, they are not separately invalidated. For example, an agreement to pay a reward under conditions that involve starving elderly parents killing someone, or causing harm to someone...

While there have been certain changes in the provisions regarding the objective and content of transactions in the 2015 Civil Code compared to the 2005 Civil Code, there still exist certain limitations and shortcomings, specifically:

Firstly, the term “not allowed” or “prohibited” in legal documents primarily appears in the form of actions, which often leads to confusion with the concept of the legal capacity of the entity. When referring to the legal capacity of an entity, it considers the ability to exercise rights while also shouldering responsibilities. The notion of an entity not being allowed to do something, for example, a guardian not being allowed to transfer the property gifted by the person under guardianship to someone else (Article 59 of the 2015 Civil Code) [2], or in contracts, where one party is not allowed to perform certain actions, is significantly different. For instance, the holder of collateral is not allowed to sell, exchange, gift, or use the collateral to secure other obligations; not allowed to lease, lend, exploit, benefit from, or gain profit from the collateral, except in the case of other agreements... the holder of collateral is not allowed to transfer, use, etc. These are provisions related to the legal capacity of the entity, specifically the legal capacity of the

entity. However, many perspectives still interpret the legal prohibition of certain actions as the objective and content of transactions violating legal prohibitions or contravening societal ethics. The root cause of this situation lies in the definition of legal prohibition in Article 123 of the 2015 Civil Code, which exclusively focuses on regulating the behavior of entities when engaging in transactions rather than the objective and content. It can be asserted that the conditions for violating legal prohibitions are quite narrow. Most prohibition regulations are established to safeguard the public interest and the interests of society at large. The not allowed or prohibited aspect concerning the content of transactions needs to be understood as the actions of entities demonstrated through the clauses of transactions that violate legal prohibitions rather than the act of establishing transactions in general. For example, clauses related to parties, rights, and obligations... agreed upon in breach of legal regulations not allowing their execution.

*Secondly*, it is challenging to determine which legal documents create confusion in their application.

What constitutes a legal document? Are ordinances and resolutions generally considered legal documents? In the legal system of Vietnam, the definition of law and what constitutes a legal document is not explicitly provided. Instead, the legal framework includes a list of legal normative documents encompassing various types. However, there is a consistent understanding that legal documents are documents enacted by the National Assembly. Therefore, legal documents include the Constitution, laws, codes, and resolutions of the National Assembly. This means that decrees or resolutions of the Standing Committee of the National Assembly are not considered legal documents. For example, the Foreign Exchange Law prohibits conducting transactions using foreign exchange. Thus, according to the provisions of the 2005 Civil Code, if parties carry out settlements using foreign exchange, the transaction would be declared void due to violating the prohibition of

legal regulations. However, under the provisions of the 2015 Civil Code, declaring void due to violating legal prohibitions would no longer be appropriate. This issue also creates several challenges in the application of the law in dispute resolution activities.

*Thirdly*, the provisions regarding the objective of transactions in the 2015 Civil Code are not entirely suitable.

One of the reasons leading to confusion is the overlap between transactions established due to breach of the legal capacity conditions of the parties, violations of the voluntary nature of the parties, transactions established with objectives and content violating legal prohibitions, and contravention of social ethics. This overlap is primarily related to the condition of the objective of the transaction. The explanation regarding the objective of a transaction is provided by Article 118 of the 2015 Civil Code: *“The objective of a civil transaction is the benefit that the parties intend to achieve through the establishment of that transaction.”* Clearly, setting a condition that the objective does not breach legal prohibitions would lead to difficulties in determination, and the broad scope of the benefits that parties intend to achieve could easily overlap with other effective conditions of the transaction, causing confusion. For instance, in a case mentioned in official letter No. 02/2021/TANDTC-PC regarding answering certain questions in trial activities, a situation where a husband forged the signature of his wife to execute a land use right transfer is essentially a partially invalid transaction due to breach the legal capacity conditions of the parties. However, since the legal consequences for transactions violating the legal capacity conditions of the parties are not clearly stipulated, and the interpretation of the intended benefit of the husband in establishing the transaction breaches prohibitions, the Court determined this to be an invalid transaction due to breach the objective and content prohibitions of the law, contravention of the social ethics.

The provision regarding the objective of a transaction represents the benefits that the involved parties intend to achieve when establishing a transaction with an excessively broad scope. This provision can be easily confused with the motive for engaging in the transaction. The motives of transaction participants are numerous and often beyond control. Furthermore, understanding and applying the regulation regarding the benefits sought by the parties without breaching legal prohibitions is challenging to quantify, potentially even overshadowing all other valid conditions of the transaction.

Therefore, the provision regarding the objective of the transaction needs to be revised in two directions. First, to clearly stipulate: *“The objective of the transaction is to establish the rights and obligations of the entities participating in the transaction.”* Second, to eliminate this provision altogether.

**C. Thirdly, the regulation lacks clarity in defining the capacity of the involved entities, especially their legal capacity, leading to ambiguity when determining breach conditions that render the transaction invalid.**

The objective and content are independent conditions, but they can be easily confused with the capacity conditions of the entities, especially their legal capacity when participating in establishing a transaction.

Even the definition of prohibition also refers to the capacity of the entities: *“The law prohibition refers to the legal provision that does not allow an entity to perform certain actions.”* [3] When examining whether the content conditions breach legal prohibitions or not, it is about observing the outward manifestation of the transaction through its terms. Therefore, these terms that the parties agree upon or set forth are what determine whether a breach of law prohibition exists or not, and this is the crux of the matter. Other prohibition cases will connect with the conditions of breaching legal capacity, the capacity of conduct of the entities. For example, in the case where the law stipulates that a collateral holder is not allowed to sell, exchange, or gift the pledged property, except as agreed upon by

the receiving party of the collateral or as regulated by the law. Therefore, if the collateral holder sells, it would breach the condition of legal capacity.

There is a need to clearly distinguish the objective and content of the breaching of law prohibition as the benefits and the terms of the transaction that breach the actions not allowed by law. On the other hand, the law capacity of the entities refers to their ability to establish rights and assume obligations that have been formed. In legal normative documents, particularly in the Civil Code, numerous actions are prohibited for the entities. However, many cases mistakenly interpret the prohibition as a violation due to a lack of rights or inability to perform, even though there is no actual legal breach. It is evident that this understanding is problematic. Therefore, it is necessary to establish more precise regulations regarding the legal capacity conditions of the entities participating in transactions and the legal consequences of violating these conditions.

### III. SOME ISSUES RAISED FROM PRACTICAL PERFORM

*Firstly*, understanding the conditions, purposes, and content that violate the prohibition of the law, and are against social morality is not correct, which leads to the situation where the Courts declare differently concerning the content of the cases that have similar circumstances.

General case: Establishing and performing a contract for transferring land use rights without a Certificate of land use rights. There is a Court that declares it invalid due to a violation of a prohibition of the law, but some Courts that declare it invalid. Article 123 of the Civil Code 2015 stipulates that if a contract has a purpose and content that violates a prohibition of the law, it will be invalid. Conversely, if the contract is valid, the purpose and content of that contract will not be violated. There cannot exist a contract that violates the prohibition that can be legally enforceable [4].

Perspective 1, identifies and declares that a land use right transfer contract without Certificates of land use rights is not void due to a violation of the

prohibition for the following reasons: Firstly, the Land Law does not clearly state that the transfer with a Land use right certificate is a mandatory act. Specifically, Article 168 of the 2013 Land Law stipulates: “*Land users may exercise the rights to transfer, lease, sublease, donate and mortgage land use rights and to contribute land use rights as capital upon receipt of a certificate. In case of exchanging agricultural land use rights, land users may exercise their rights upon receipt of a decision on land allocation or land lease. In case of inheritance of land use rights, land users may exercise their rights upon receipt of a certificate or when they are eligible to be granted a certificate.*” [8] According to this provision, the performance of a contract for the transfer of land use rights without a land use right certificate is not a violation of the prohibition. Second, the Resolution of the Council of Judges 02/2004/NQ-HDTP stipulates: “*The settlement of disputes over land use right transfer contracts established after October 15, 1993:*

a) *Conditions for recognition of land use right transfer contracts.*

*The transferred land has been granted a certificate of land use right by a competent authority by the 1987 Land Law, the 1993 Land Law, and the 2003 Land Law.*” This is not a Law writing, so it is no longer suitable to apply the invalidation declaration.

Viewpoint 2 identifies and declares that the land use right transfer contract without a land use right certificate is invalid because of a violation of the prohibition stemming from the provisions of Clause 4, Article 12 (prohibited acts): “*Failing to comply with law when exercising the rights of land users.*” Article 168 of the 2013 Land Law stipulates: “*Land users may exercise the rights to transfer, lease, sublease, donate and mortgage land use rights and to contribute land use rights as capital upon receipt of a certificate.*” [9]. Thus, when the parties performing the transfer do not have a certificate of land use right, it is clear that it is a violation of the failure to comply with regulations when exercising the rights of land users.

In the author's opinion, when the land law stipulates that transactions of land use rights are required to have a land use right certificate, the parties must comply. The fact that the parties do not comply with regulations on the rights of land users when performing transactions is a violation of the prohibition of the law (Article 12). Therefore, the land use right transfer contract without a land use right certificate is void because it violates the prohibition of the law.

**Second**, confusion between the content of a contract that violates the prohibition and a contract that violates the subject's capacity: The Civil Code 2015 stipulates that when participating in transactions, the subject must have legal capacity; but does not stipulate the consequences of a violation of the transaction capacity which is declared invalid because the purpose and content violate the prohibition of the law, contrary to social ethics but in fact violate the legal capacity of the subject. For example: The case is mentioned in Official Letter No. 64/2019/TANDTC98 and Official Letter No. 02/2021/TANCTC with the content: Husband (A) forged his wife's signature (B) to transfer the land use right to another person (C). This type of contract for transferring land use rights in this situation is considered to be a violation of the prohibition of the law and against social ethics. However, considering the nature of the matter, forging someone else's signature to dispose of their property, leading to the formation of a transaction, the established transaction will be invalidated because the originator has no rights, not content that violates the prohibition of the law [10].

Because the Civil Code and other legal documents do not stipulate the legal consequences of transactions established by persons without legal capacity, they are invalid and the ambiguity between the term "purpose of the transaction" and "capacity of the transaction" is invalid. legal force of the person who established the transaction", the Court often declares in the direction of violating the prohibition of the law to ensure clear legal consequences when settling disputes.

#### **IV. SOME PROPOSALS TO IMPROVE THE LEGAL PROVISIONS**

*Firstly*, to build more clearly the legal capacity conditions of the subject when participating in the transaction. At the same time, it stipulates in more detail the legal consequences of violations of the subject's ability to exercise rights and shoulder obligations in civil transactions. Specifically: which agency has the authority to process this type of transaction request when there is a violation? Who is the subject of the claim? How will the consequences of the violation be handled? The clarity of the legal capacity condition of the subject will not cause confusion with the condition of the purpose and content of the civil transaction.

*Second*, limit the prohibition regulations and properly understand the regulations on prohibitions. Prohibiting regulations are necessary, but only aiming at ensuring public order is appropriate. Because, the violation of the prohibition that only affects the rights and interests of one of the parties to the transaction or other subjects should consider the will of the subjects before concluding to invalidate the transaction. If the prohibition is too rigidly applied to civil relations, it will lose the nature of respecting the supreme principle of civil "agreement" [12].

For transactions with purposes and content that violate the prohibition of the law, against social ethics is a type of transaction that is absolutely invalid (no time limit for requesting a court to declare nullity). Therefore, the incorrect understanding of the nature can seriously affect the rights and interests of the subjects. Therefore, the determination of the purpose and content of a transaction that violates the prohibition of the law and is against social morality should only be set when it is impossible to conclude that the violation of other valid conditions is not possible. That is, a civil transaction is declared invalid, directly affecting the rights and interests of the parties, or the consequences are only to settle the rights and interests of the parties to the transaction. Therefore, it is necessary to be cautious when concluding that such transaction has the purpose and content of

violating the prohibition of the law, contrary to social ethics.

#### **V. CONCLUSION**

In fact, civil transactions clearly reflect the needs of people's lives, issues related to the interests of individuals and organizations, even higher, the promotion of the development of the economy. The over-regulation of cases does not allow the subject to perform certain acts or imposes too strict compliance on inherently flexible regulations, the legal consequences are too strict for violations will lead to unconvincing, unfair. In civil transactions, it is also possible to take advantage of these regulations to break the covenant or to take advantage of one party. Understanding the nature, transactions stemming from private interests, handling the consequences of violating the prohibition of the law, against social ethics also need to consider the seriousness of the violation or not, to what extent are the interests of the parties affected, how do the parties want about the established content that violates the prohibition... In case of not violating public order, the interests of the social community must respect the interests that the parties wish to achieve. Only in this way can civil life be guaranteed its true value.

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