Relações Internacionais do Mundo Atual – unicuritiba

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

REFLECTIONS ON APPLYING ENGLISH LAW'S RESULTING TRUST MODEL IN SPECIFIC PROPERTY-RELATED SITUATIONS IN VIETNAMESE LEGAL PRACTICE

REFLEXÕES SOBRE A APLICAÇÃO DO MODELO DE TRUST RESULTANTE DA LEI INGLESA EM SITUAÇÕES ESPECÍFICAS RELACIONADAS À PROPRIEDADE NA PRÁTICA JURÍDICA VIETNAMITA

NGUYEN NGOC DIEN
Associate Professor of the University of Economics and Law, Vietnam National University HoChiMinh City (VNU-HCM), Vietnam. Corresponding author: nguyenngocdienuel@gmail.com https://orcid.org/0000-0002-7589-8295

LE BICH THUY
PhD student at the University of Economics and Law, Vietnam National University HoChiMinh City (VNU-HCM), Vietnam. E-mail: thuylb@uel.edu.vn Orcid id: https://orcid.org/0000-0002-5726-7799

ABSTRACT

Objective: This article examines the applicability of the English law model of resulting trusts to specific property-related situations in Vietnamese legal practice, aiming to address deficiencies in the current system.

Methods: The study utilizes a comparative legal analysis, reviewing English resulting trust principles and Vietnamese property law to identify potential enhancements through the adoption of trust models.

Results: The analysis identifies key differences between English and Vietnamese legal practices regarding property management and trust applications, highlighting the challenges and opportunities for integrating resulting trust models into Vietnamese law.

Conclusion: The paper suggests that adopting the resulting trust model could offer a more flexible and equitable approach to property management in Vietnam, particularly in cases involving indirect contributions to property ownership or management..

Keywords: Trust; Resulting trust; Transfer of property; Fiduciary duties.

RESUMO

Objetivo: Este artigo examina a aplicabilidade do modelo de trust resultante da lei inglesa para situações específicas relacionadas à propriedade na prática jurídica vietnamita, com o objetivo de abordar deficiências no sistema atual.

Métodos: O estudo utiliza uma análise legal comparativa, revisando os princípios de trust resultante da lei inglesa e a lei de propriedade vietnamita para identificar melhorias potenciais por meio da adoção de modelos de trust.

Resultados: A análise identifica diferenças chave entre as práticas legais inglesas e

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

vietnamitas em relação à gestão de propriedades e aplicações de trust, destacando os desafios e oportunidades para a integração de modelos de trust resultante na lei vietnamita.

Conclusão: O artigo sugere que a adoção do modelo de trust resultante poderia oferecer uma abordagem mais flexível e equitativa para a gestão de propriedades no Vietnã, particularmente em casos envolvendo contribuições indiretas para a propriedade ou sua gestão.

Palavras-chave: Trust; Trust resultante; Transferência de propriedade; Deveres fiduciários.

1. INTRODUCTION

Vietnamese law has been influenced by French law due to Vietnam being a French colony for a long period, from the mid-19th century to the mid-20th century (Phan 2008). The civil codifications enforced during the colonization allowed the Vietnamese people to experience a legal environment deeply rooted in Latin culture and to become familiar with concepts such as ownership rights, contracts, quasi-contractual relationships, unjust enrichment, etc., in the French style (DARRAS 1934).

After the Revolution of August 1945, the colonial regime was replaced by the democratic republic regime imbued with communism. That explains why the contemporary Vietnamese legal system was designed following the Soviet model, characterized by the dominance of public ownership and the restriction of private ownership. After the policy of renovation (Đổi Mới) was adopted and implemented at the end of 1986, this model was adjusted to promote the development of a market economy. In the process of adjusting the running model, Vietnamese lawmakers have restored the traditional values originating from French legal culture and still preserved in customs as well as popular practices (VU 2023).

Like in other countries, the legal practices in Vietnam recognize various situations involving the creation and running of relationships and eventually disputes over property, independently from the related parties' will: managing other's assets; managing assets owned by multiple persons; receiving assets transferred by others without fully grasping the intentions of the transferors. These situations are handled in Vietnam in a manner consistent with the spirit of the current statutory law, legal doctrine, case law or jurisprudence, and national customs. In many cases, however, the solutions adopted are not satisfactory to the parties involved and legal experts.

In this paper, the author deals with some situations handled under Vietnamese

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

law, but which could have been resolved more reasonably by implementing the spirit of the resulting trust as developed in Anglo-American law.

2. RESULTS AND DISCUSSION

2.1. Some notable property-related situations in Vietnamese practices

2.2. Purchase of real estate and having another person hold the title

Situation's particularities (Cao n.d.)**:** Mrs Thảnh, a Vietnamese expatriate in the Netherlands, intended to acquire land use rights in Vietnam. On August 10, 1993, she got a land transfer from Mr. Hêng Tính and Mrs. Lý Thị Sà Quênh for an area of 7,595.7 m² of rice land in Phường 7, Sóc Trăng Town, at the price of 21.99 gold taels. She was the one who directly negotiated the transfer, agreed on the terms, and paid the price in gold to Mr. Hêng Tính and Mrs. Lý. Mrs. Thảnh's purpose was to transfer the land to her brother, Mr. Nguyễn Văn Tám, and his wife, Mrs. Nguyễn Thị Chính Em, for farming to care for her parents. Since Mrs Thảnh was a Vietnamese citizen residing abroad and was not allowed by Vietnamese law in force at the time to acquire land use rights, she let her brother, Mr. Tám, hold the title. After the transfer, Mrs Thảnh allowed her brother and his wife to cultivate the land, but in 2004, without her consent, Mr Tám transferred the entire 7,595.7 m² of land to Minh Châu Limited Liability Company for the land use rights value of 1,260,000,000 VND. Consequently, Mrs. Thảnh petitioned the court, demanding that Mr. Tám return the money obtained from the land transfer.

Jurisprudence No. 2 based on a court decision (Luật n.d.)**:** The Supreme People's Court ruled as follows: In the case of a Vietnamese citizen residing abroad who has paid to acquire land use rights and has asked someone in Vietnam to hold the title to the land on their behalf, the court must consider the labour done by the person holding the title to maintain, preserve, and enhance the value of the land for the person who asked them to hold the title. If the exact labour of the title holder cannot be determined, it is reasonable to establish that both the person who paid for the transfer of land use rights and the person who held the title for them made equal contributions to the increased value of the land, determined by the deduction of the original amount paid for the acquisition of land use rights from the amount get of the last transfer.

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: 2316-2880

Commentary. Through the court's handling of the case, it is observed that when one person holds the title on behalf of another to acquire a property and the latter seeks to reclaim the sum of money paid to the title holder for his transfer of the said property, the latter should be recognized as the actual owner. The title holder, in turn, is seen as someone managing another person's property without explicit power of attorney.

If the title holder has invested in increasing the property's value, they should be reimbursed for real investment. That merely results from the application of the doctrine of unjust enrichment. The delicate element in this case law is the assumption that the title holder contributed to the increase in the value of the land. This person is implicitly recognized as having invested in the land and, thus, entitled to half of the difference between the transfer price and the amount formerly paid by the person who asked them to hold the title. The dispute resolution recorded in this case seems to be a compromise to maintain stability in society, given that legal practitioners have no other legal tools to use.

2.3. Management of Spousal Property under the statutory matrimonial regime

2.3.1. Upgrading individual property by using common funds

Situation. A and B are a married couple living under the statutory matrimonial regime[1]. In this regime, there are three categories of property acknowledged during marriage: separate property for each spouse and common property for the couple. A has a house acquired before marriage and recognized as separate property; A uses a significant amount of money saved from their salaries and other income to repair and upgrade this house. It is noted that in the statutory matrimonial regime, salary and other income earned during marriage are considered common property. The question is what rights B has concerning this house, given that B has a right to a portion of the common property (sum of money) used for the repairs and upgrades.

Solution under current Vietnamese law. Regarding Vietnam's property law, once a property is recognized as separate for one spouse, the fact it is repaired or

[1] The statutory matrimonial regime in the Vietnamese current law is alike the community reduced to the after-acquired properties (community of gains) which is the statutory matrimonial regime in French law (Điện 2024).

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

upgraded by the use of common funds does not change its nature. The property remains personally owned. However, the contribution of common property to the repairs and upgrades, which increases the value of the separate property, is recognized. When the statutory matrimonial regime is liquidated, the value of this contribution is included in the common property for division. The repaired and upgraded property itself, as an asset, still belongs to the spouse who owns it. In contrast, the other spouse can ask for monetary compensation for the portion of the value contributed by the common property to the enrichment of the separate property.

Commentary. The solution in Vietnamese law is based on real and personal rights theories (*res in re and res personal*)[1]. The owner has exclusive rights on the object of ownership and does not have to share these rights with anyone else.

In the case where the common property contributed to repairing and upgrading a separate property, the owner of the separate property might be obliged to pay a sum of money to the owner of the common property for compensation for this contribution. The owner of the common property, on their part, only has a personal right to claim such compensation against the owner of the separate property. They have no real right on the separate property benefiting from the contribution.

This solution may not be reasonable in case of divorce: the spouse owner needs to compensate the other spouse the value of the common property's contribution. The owner will retain full ownership of the property and thus have the right to enjoy all its fruits and revenue. However, these fruits and revenue are considered common property if collected during marriage, per the statutory matrimonial regime.

2.3.2. Management and exploitation of common properties used in one spouse's own business

Situation's particularities. Aand B are a married couple living under the statutory matrimonial regime of community of gains. A is a medical doctor, and B is a high school teacher. During their marriage, A established a private clinic and invested in building and improving its facilities using common funds. The question is whether the general regulations on the management of spousal property, especially the management of common property, can be effectively applied in this case; if not, what

[1] As for a description of the theory of real right and that of personal right in French law: (Similer 2006); As for the acknowldgement of real right in English doctrine: (Rudden 2002).

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

specific regulations should be applied to ensure the balance of rights and interests for A and B?

Solution under current Vietnamese law. The principles related to the management of joint property are stated in the Marriage and Family Law, Article 35. According to this provision, spouses may agree on how to manage the common property. This agreement can be explicit or implicit, for example, once one spouse does not oppose the other spouse carrying out a transaction involving the common property. However, in cases involving real estate, movable property subject to ownership registration, or property that generates the primary income for the family, the agreement must be in writing.

Specifically, according to Article 36 of the Marriage and Family Law, in cases where spouses agree to use common property in business conducted by one of them, the spouse involved in business is entitled to make transactions related to common property without asking the other spouse's consent. Such an agreement must be in writing.

With such regulations, A, in the above-mentioned case, must make a written agreement with B if A wants to have more extended management rights, including the right of disposal, on the common property that constitutes the clinic's facilities. This agreement must be made before the clinic is operational.

Commentary. In practice, the provisions of Article 36 are rarely applied, especially regarding agreements between spouses. The main reason for this is the lack of an effective transaction recordation system allowing the communication of personal agreements to third parties. In the absence of such a system, the agreement mentioned in the above-cited articles is only enforceable between the spouses and unenforceable against third parties. Meanwhile, for a business to run well, it is indispensable that its manager is invested with the most extended rights to all assets used for this business. When a common property is managed or exploited by one spouse within a business activity, all. All parties must recognize the manager as having full rights over the property, including the right to dispose. Creditors of the managing spouse must have the right to seize their business property without concern for the rights of the manager's spouse.

Overall, the application of current Vietnamese laws in the aforementioned situations allows for solutions that are considered relatively satisfactory but do not completely resolve the related issues. In particular, the person deemed to have

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

interests being enjoyed by someone else is only protected by a claim against the person using those interests and does not have any rights to specific property.

It is necessary to seek legal devices that are better than those already familiar to address the described situations and similar ones more satisfactorily. Trusts, including resulting trusts, are considered such devices.

3. POSSIBILITY OF IMPLEMENTATION OF RESULTING TRUST IN THE TREATMENT OF SPECIFIC CASES RELATING TO PROPERTY RIGHTS IN VIETNAMESE LAW

3.1. Trust and Resulting Trust

3.1.1. Trust

Definition and characters (Long 1922). Trust in English law is held to be a special legal relationship established as a result of the fact that one person receives one or more assets and, by the way, becomes the owner of those assets and, at the same time, is bound by an obligation to exercise ownership rights for the benefit of another person or to achieve a specified purpose of a communal, public, or charitable nature. To a certain extent, a trust is considered a special property relationship involving three parties: the settlor, also known as the person transferring the assets; the trustee, also known as the person receiving the assets; and the beneficiary, who gets benefit from the trustee's exercise of ownership rights on the property under commitments regularly taken or the statutory law.

In the point of view of property law (Seipp 2011), a trust is held as a fragmentation of ownership rights in which the ownership of an asset is conferred upon one person, known as the trustee, while the beneficial interest of the asset is recognized to another person, known as the beneficiary.

The ownership held by the trustee over the asset is referred to as legal ownership, while the beneficiary's rights over the trust asset are called equitable interest. The terms "legal" and "equitable" are tied to the historical origins of the legal framework[1]: the trustee assumes and manages the asset in the capacity of an owner recognized by law; meanwhile, the beneficiary acquires rights to the asset through

[1] About the origin of trust in English law: See (Ames 1907) pp. 261-274.

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

legal efforts to have their rights recognized based on principles of equity.

Creation of a trust. A trust may be created either by the intention of the parties or by operation of law. The conditions for a trust to be effectively created depend on whether it is formed intentionally or under legal provisions.

According to classic doctrine, a trust formed by intention is valid if it satisfies three certainties (Williams 1940) (Wilde 2020): certainty of intention, certainty of subject matter, and certainty of objects. Except for charitable trusts, an intentional trust must meet these three conditions; failing to satisfy any of them renders the trust void from the outset, and the person holding the asset retains it as a regular owner, not bound by the commitments characteristic of a trustee.

A trust established by operation of law arises independently of the intentions of the involved parties, particularly those of the transferor and the trustee. Once the conditions prescribed by law are met, the trust is automatically created, and the parties must assume their roles without choice.

Doctrinal classification of trusts created by operation of law. There are two categories of trusts created by the operation of law (Costigan 1914): resulting trusts and constructive trusts. The resulting trust is used to regulate a relationship with all characteristics of a trust but is not intentionally held to be a trust by the involved parties. The constructive trust is a remedy imposed by the court to benefit a party wrongly deprived of its rights or interests due to unjust enrichment, interference, or breach of fiduciary duties.

Among the two above-mentioned trusts created by the operation of law, the resulting trust is suitable for the conception of reasonable solutions to the issues raised in the situations stated in this paper's first section.

3.1.2. Resulting Trust

3.1.2.1. Overview

Definition (Waters 1970) (Chambers 2013)**:** A resulting trust, as its name suggests, is a trust that arises as a consequence of an event or action in which the involved parties voluntarily and lawfully transfer assets without the intention of establishing a trust relationship. However, under certain circumstances, a trust relationship is created between the parties, which they must accept unwillingly.

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: 2316-2880

Example. A wants to purchase a villa in a residential development project designed for individuals 55 years of age and above. Since A is only 50 years old, A asks B, who is 56, to purchase the villa in his name. In this case, B becomes the legal owner of the villa. However, B is considered the trustee who holds and manages the property for the benefit of A, the beneficiary.

Characteristics. To some extent, a resulting trust is held to be created when ownership is legally recognized for an individual due to the validity of an act or lawfulness of event transferring the asset. However, this individual only holds the property as a trustee because they have no real contribution to the creation of its value acknowledged at the time of transfer.

A resulting trust, created by the operation of law, is also referred to as an implied trust in legal doctrine (Costigan 1914). An implied trust arises in specific circumstances where all the elements characteristic of a fiduciary relationship are present. Still, the parties involved do not explicitly use the term "trust" to describe the arrangement.

In the case of a resulting trust, the fiduciary relationship is established in alignment with the parties' positions and reflects their intentions. The law—specifically, the court, through the application of legal principles—simply formalizes the arrangement by designating it as a "resulting trust."

3.1.2.2. Types of Resulting Trusts

Practical and doctrinal analysis identifies three types of resulting trusts (Waters 1970):

1. Trusts arising from the creation of assets in another person's name or jointly with another.
2. Trusts arising from the transfer of non-monetary assets to another person.
3. Trusts arising from the failure or impossibility of an express trust.

Trusts arising from the creation of assets in another person's name or jointly with another. According to a principle established in the 18th century (Dyer v Dyer 1788) (Waters 1970), if a person uses their own money to purchase an asset but registers it in another person’s name or jointly with another person, the individual whose name appears on the title without contributing funds becomes a trustee. This

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

trustee holds the asset for the benefit of the person who provided the money.

For example, in the case where A provides money to B to purchase a villa in the residential development project, as mentioned earlier, this scenario falls under this type of resulting trust. B receives the funds from A but gives nothing in return, and A does not intend to gift the money to B. Thus, B's use of A's money to buy the villa establishes a trust over the purchased property, where B is the trustee, and A is the beneficiary.

For a resulting trust to be established in this case, the following requirements must be satisfied (Waters 1970).

First of all, the plaintiff must show evidence of the fact that he or she provided the funds for the purchase of the property**.** If the registered owner admits that the money used to purchase the property came from the plaintiff but claims it was a gift, he or she must provide evidence. If they cannot prove the transfer was a gift but insist the funds were transferred in full ownership without conditions, he or she must show consideration.

Secondly, the plaintiff must show evidence of his or her intention to purchase the property and, by the way, to benefit from it. In some cases, the financial contributor may fund the purchase of an asset for someone else but show no interest in the property itself and only expect repayment. In such situations, the transaction is treated as a loan.

In another scenario, if two people jointly contribute funds to buy an asset but only one person's name is mentioned on the title, the named individual is deemed the trustee for the portion of the property acquired with the other's money (Pettit 2012). For example, if a husband and wife jointly fund the purchase of an asset but only the husband's name appears on the title, the husband is regarded as the trustee for the wife's share. If the husband refuses to act as trustee for the wife's benefit, the trust is imposed to remind him of the appropriate conduct in managing the asset.

Trusts arising from the transfer of non-monetary assets. Another type of resulting trust arises when an individual voluntarily transfers an asset (other than a sum of money) to another person or jointly holds the title with another person without intending it as a gift, and the recipient does not provide consideration (anything of value in return)[1].

[1] See (Waters 1970) pp 189-262.

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

Under case law, if such a transfer is lawful, the recipient of the asset is presumed to hold it as a trustee for the benefit of the transferor or another person (Dyer v Dyer 1788). This is a rebuttable presumption and can be overturned if the recipient proves that they received the asset as a gift.

Similarly, suppose a person transfers a portion of his asset to another person and jointly registers ownership without the other person providing consideration. The latter becomes a trustee for the portion of the asset transferred. Full ownership rights are granted to the recipient only if they can prove that the transferor gifted them the portion of the asset.

Proof of a gift can be provided through written or verbal evidence or even by pointing out specific circumstances that indicate a gift. For example, (Pettit 2012)[1], B, who is married, enters into a relationship with A, and B buys a house, registering it in their name while A pays for it. Upon B's death, B's heirs claim the house as part of B's estate, but A contests, claiming a resulting trust. The court dismisses A's claim, reasoning that B's actions and A's continued payment, despite knowing B was married constitute evidence of a gift.

Exceptions in family relationships. The presumption of a resulting trust does not apply in certain family relationships where a presumption of advancement (gift) is recognized (Chevalier-Watts 2016). However, this presumption can also be rebutted by evidence showing that the transfer was intended to benefit the transferor or another person rather than the recipient.

For instance, the presumption of advancement typically applies in transactions between a parent and child. Historically, courts were hesitant to apply this presumption to mothers and children but assessed cases individually (Bennet v Bennet 1879). In transactions between spouses, case law often recognizes that the spouse whose name is on the title but did not contribute to the purchase is a trustee for the share of the asset funded by the other spouse. This trust serves as a reminder of proper conduct in managing and benefiting from the asset.

Trusts arising from the failure of an express trust. A third type of resulting trust emerges when an express trust is created but cannot operate as intended. In such cases, the trustee holds the trust property but cannot claim full ownership. The question arises: what legal role does the trustee assume concerning the property? Recognizing

[1] See (Pettit 2012) pp 190-191.

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: 2316-2880

a resulting trust is often considered the appropriate solution.

Example (Burns 1992) (R. Balani 2021). The Company Rolls Razor borrows money from Quistclose Ltd. to pay dividends to its shareholders. Under the loan agreement, the money must be used for this purpose by July 24. The funds are deposited into Rolls Razor's account at Barclays Bank. However, before the payment deadline, Rolls Razor was declared bankrupt and liquidated. The question arises: can the creditors of Rolls Razor treat the money as part of the company's assets to satisfy its debts?

According to (Pettit 2012)two successive trust relationships should be acknowledged.

1. A primary trust, where the lender (Quistclose) is the settlor, Rolls Razor is the trustee, and the shareholders are the beneficiaries.

2. A secondary trust, arising logically due to the failure of the primary trust, where Barclays Bank becomes the trustee, and Quistclose becomes the beneficiary.

If this view is accepted, the primary trust is an express trust, while the secondary trust is a resulting trust created due to the failure of the express trust. However, another perspective rejects the possibility of a secondary trust, reasoning that Barclays Bank's role as trustee for any purpose is unclear[1]. The only reasonable solution is to allow Quistclose to reclaim its funds, restoring full ownership. Until the bank returns the funds, it is deemed a trustee under a resulting trust. Nonetheless, the court's recognition of the secondary trust in this case has established the "Quistclose principle" as a foundational precedent (Barclays Bank Ltd v Quistclose Investments Ltd 1968).

In practice, (Bowman versus Official Solicitor 1957) (Sheridan 1993) was a case where a trust was established following an appeal from city authorities to support the burial and provide assistance to the victims of a serious traffic accident. After the trust's purpose was fulfilled, there remained several assets within the trust. The court decided to establish a resulting trust for the benefit of those who had contributed to the fund, even though many of the contributors were anonymous.

There are situations where an express trust cannot fully or partially take effect for various reasons: errors made by the settlor, fraud, coercion, or undue influence on the settlor; unclear identification of the beneficiaries; an unlawful or socially

[1] See (Pettit 2012) p. 177.

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

unacceptable trust purpose; the lack of written documentation for a trust involving real property; and so on. When a trust is deemed invalid, the assets transferred under the invalid trust are either returned to the settlor, reverting to their original state, or, if retained by the trustee, the trustee becomes the holder of a resulting trust, with the settlor as the beneficiary.

In another case (Waters 1970) (Powell v. City of Vaticouver 1912), a person transferred a parcel of land to the city authorities to construct the city's administrative center. The authorities accepted the land, built the center, and used it for administrative purposes for many years. Later, they decided to construct a new administrative center elsewhere and repurposed the original building for other uses. The settlor objected to the continuation of the trust for the new purpose and demanded a resulting trust to serve his interests. However, the court rejected this request and allowed the original trust to continue under its revised purpose.

3.1.3. Conditions for establishing a resulting trust

3.1.3.1. General conditions for establishing a trust by operation of law

A trust created by operation of law, as mentioned above, falls into one of two categories: resulting trusts or constructive trusts. The specific conditions for establishing a trust by operation of law are not fixed or restricted and they can be adjusted or extended, up to the judge's discretion in resolving the plaintiff's claims.

According to a principle established in doctrine (Costigan 1914)[1], a trust can be established by operation of law when the asset holder is in a situation where he or she cannot be recognized fully as the owner of the asset. The possession of the asset by this person might originate from a legitimate source, such as in the case of spouses managing each other's assets or a person entrusted with managing an asset. It could also arise from an illegitimate source, such as someone who received funds transferred mistakenly into his or her account. On the other hand, the person transferring the asset does not intend to gift the asset, nor do they intend to reclaim it, but merely wishes their interests associated with the asset to be respected. As a result, the asset holder can only be recognized as having legal ownership for managing the asset to fulfill a specific purpose identified in each case, serving the benefit of a specified individual.

[1]See (Costigan 1914) pp 437-263.

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: 2316-2880

There must be a complaint from an interested party. The interested party may be a direct beneficiary of the interest. A typical example is when someone mistakenly transfers funds into another person's account and requests the court to declare the recipient as a trustee.

The plaintiff may also represent the party deemed to have an interest. A common example is a guardian filing on behalf of a beneficiary who is a minor or deprived of civil capacity.

In some cases, the interested party may be the State, as the asset in question is public property. In this case, the plaintiff must be a representative of the prosecution agency filing a claim on behalf of the State.

There must be a court judgment. When a claim is made to establish a trust, the court accepts the case and examines the related evidence. The examination and evaluation of evidence are conducted according to general procedural rules. No resulting or constructive trust can certainly exist without a court judgment confirming the trust relationship between the parties involved.

3.1.3.2. Specific conditions for resulting trusts

To a certain extent, a resulting trust is a trust relationship established as an inevitable consequence of an act or an event. Regarding property law, a resulting trust is held to be a relationship arising from the transfer of an asset to an individual, whereby the recipient becomes a trustee for that asset, even if they do not wish to assume this role. However, the trust relationship can only be established and function with the beneficiary's consent.

A common feature of all recognized resulting trusts, as emphasized in the previous chapter, is that the asset is legitimately transferred to the trustee. However, the trustee does not voluntarily assume the role or, at least, does not willingly take on the role to benefit an unexpected beneficiary.

3.2. Use of resulting trusts model for treatment of certain property relationship issues in Vietnamese practice

3.2.1. Challenges for the current legal system

3.2.1.1. The rigidity of the theory of estate

Characteristics of the theory of estate. The theory of estate (*théorie du*

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: 2316-2880

patrimoine in French, theory of estate in English) is said to be built by Aubry and Rau, two celebrated French legal scholars[1]. This theory serves as the foundation of France's property law system, which has deeply influenced the property laws of many countries, including Vietnam.

The central ideas of this theory include two key principles: first, the link between the estate and the person; second, the uniqueness of the estate. The estate is held to be a universality consisting of both assets (*actifs*) and liabilities *(passifs),* with a close connection between the two: every asset guarantees all liabilities, and every liability is secured by the entirety of the assets.

According to French legal doctrine, only a person (natural person or legal entity) can hold an estate. An animal, even a pet, cannot inherit the estate of its owner[2]. Similarly, a group of individuals without legal entity status cannot have an independent estate, such as a class of students or a family.

Furthermore, each person can have only one estate. The estate holder is not allowed to divide his or her single estate into multiple independent estates for various purposes, such as civil, business, or charitable activities[3]. Creditors, in principle, have the right to seize any asset that is part of the debtor's estate, regardless of the nature of the debt—commercial, civil, or administrative.

3.2.1.2. Rigidity of the concept of ownership

[1] The theory of estate was proposed in the first half of the 19th century by two French jurists, Charles Aubry and Charles Rau, often referred to as 'Aubry and Rau' (*Aubry et Rau*). They wrote the book *Cours de droit civil français*, published in 1839, in which they introduced this famous theory.

[2] Therefore, when Karl Lagerfeld, the owner of the luxury fashion brand Chanel, passed away and left a will stating that a part of his estate would be transferred to his beloved cat, Choupette, the will was not executed in accordance with his wishes. (Davis 2019) To ensure that the cat would not be disadvantaged, the authorities required an organization to take responsibility for managing the assets that Karl Lagerfeld intended to give to his beloved cat under a trust arrangement *(fiducie*), to serve the cat in accordance with the deceased owner's wishes. (Andasmas 2024) (Schiavi 2019).

[3]Realizing that the theory of estate built by Aubry and Rau is too rigid and creates obstacles for implementing the diverse business plans of individuals, French legal experts and lawmakers have made efforts to seek flexible solutions for managing private property. Contemporary French law has developed the doctrine of "specifically assigned estate" (*patrimoine d'affectation)* as an exception to the principles of the aforementioned theory of estate: see, for example, (Similer 2006) pp.3-10.

Specifically assigned estate is held as a distinct universality of assets and liabilities separate from the normal estate. It is established to serve a specific purpose such as business or professional operations. The doctrine of specifically assigned estate was officially recognized and codified by French legislators in 2010 in the domain of commerce (Code de commerce Art L 526-6 to 526-21). According to the French current law, an individual is allowed to create a limited liability sole proprietorship (*entreprise individuelle à responsabilité limitée – EIRL*). With this entity, the natural person can manage two distinct patrimonies simultaneously — civil patrimony under general law and the EIRL patrimony dedicated to business activities — without needing to create a legal entity to manage the business patrimony.

The exception of specifically assigned estate is applied only in a very narrow scope, specifically in the business activities of micro, small, and very small enterprises. In contrast, in Anglo-American law, it is considered normal for an individual to manage multiple trusts, each corresponding to independent trust estate.

It is noted that the institutionn of EIRL is replaced by that of "Entrepreneur individuel" (EI) since the enforcement of Law dated May 15, 2022. The creation of an EI is done just by way of simple declaration.

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

Exclusivism and absolutism of ownership rights. Vietnamese law, influenced by French law, recognizes the owner's exclusive and absolute rights to his or her property. There can only be one singular ownership right over any given property. In the light of property law theory, ownership rights are primary rights (*droit réel principal*). In contrast, other property rights are secondary and derived from the division of ownership rights in various ways.

The division of ownership to create other property rights can only be done with the owner's consent or under legal provisions. In cases where no one holds secondary property rights, those rights revert to the primary owner. Conversely, if no one claims ownership, the property belongs to the State; secondary property right holders cannot automatically assume ownership of an unclaimed property.

In contrast, the rights of trustees and the rights of beneficiaries in trust property are two independent rights. These rights cannot merge into each other in the same way ownership rights encompass other property rights in French law. If there are no beneficiaries of the trust, the trust reverts to the trustor. If no one assumes the role of the trustor's beneficiary, the rights revert to the State. Trustees cannot automatically become beneficiaries of the trust.

Some researchers impregnated by the civil law tradition argue that a trust results from a conventional division of ownership into two separate ownership rights (Y. Emerich 2009): legal ownership and equitable ownership. The notion of a property having two owners with inherently different types of ownership rights is unacceptable in both French and current Vietnamese law.

3.2.1.3. Efforts for adaptation of trust in civil law systems

Facing the inconveniences caused by the rigid classical concept of ownership as well as the classical theory of estate, which hinders transactions in civil life, French lawmakers considered incorporating the trust concept into their current legal system. In 2007, the fiducie was officially introduced into the Civil Code (Y. Emerich 2009). Similar to the trust, the fiducie allows subjects to manage multiple independent estates simultaneously and acknowledges fiducie ownership rights, which bear some resemblance to legal ownership granted to trustees under Anglo-American law.

Like France, countries following the civil law tradition have also made certain

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

efforts to adopt the trust concept. German law has long developed the treuhand, characterized by the transfer of one or more assets to an individual for independent management, separate from their personal property, to serve various purposes (Beijer 2018); over time, this mechanism, though not explicitly codified, has been gradually refined in practice and doctrine. Quebec law has gone even further, formally recognizing trusts in its Civil Code under Articles 1260 to 1263 (Caron 1980) (Zenaty-Castaing 2015). Louisiana law established the Trust Code as early as 1964 to facilitate the implementation of trusts within the civil law framework (Martin 1989).

3.2.2. Applying resulting trusts for the treatment of specific issues

3.2.2.1. Purchase of real estate by using the name of another for holding title

The fact of one person using another as a nominee to purchase real estate can take place in various circumstances under the current legal framework. For example, a person with financial resources might be a foreigner who cannot legally acquire land use rights in their name and, therefore, needs someone else to act as a nominee. Similarly, an agricultural entrepreneur may want to accumulate farmland for large-scale operations but faces constraints due to land possession limits.

Using a nominee is not inherently illegal. However, if the nominee attempts to usurp the property, the person who arranged for the nominee might face difficulties in defending their rights. In cases where the nominee sells the property and receives payment, the distribution of such funds would be resolved according to a precedent set by the Supreme People's Court, as previously discussed[1].

It would be better to apply the resulting trust model in such cases. The property in question would be considered trust property, with the nominee acting as a trustee who holds all the rights of ownership while being responsible for managing the property for the benefit of the trustor, who is the person who paid the purchase of the property. The trustee may receive remuneration for his or her management role, with the amount either determined by the trustor or mutually agreed upon. In case of disagreement and the trustor demands the property be returned but the trustee refuses due to unpaid remuneration, the court would determine the appropriate amount of remuneration case

[1] Supra 1.

Relações Internacionais do Mundo Atual – unicuritiba
Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: 2316-2880

by case.

3.2.2.2. Using common funds for upgrading separate property

In practice, it is customary that one spouse use marital assets to repair or/and upgrade their separate property. Under current legal provisions, the related property remains separate; however, the contribution of the marital assets is recognized and memorized, and the other spouse is entitled to claim a portion of the common funds used in this operation when liquidation of matrimonial regime.

The trust framework could be applied in this situation. For the portion of marital assets deemed to belong to the other spouse and now integrated into the separate property as a result of funding the repair and/or upgrading of the separate property, the owner of the improved property could manage it as a trustee. The property would still be recognized as separate property of the owning spouse. During the marriage, the legal regime governing the property remains the same: the owner has full authority to manage and dispose of the property, and any income from the property belongs to both spouses. Upon the termination of the marriage, the property remains with the original owner. However, by applying the trust model,he other spouse could be granted the right to claim benefits from the property corresponding to his or her contribution to the repair or upgrade of the separate property. The beneficiary may also terminate the trust relationship and demand payment for their share of the marital contribution in the related property.

3.2.2.3. Using common properties for individual business

As previously discussed, one spouse may conduct business activities by using common assets while the other engages in a different occupation. Article 36 of the Law on Marriage and Family stipulates: "In cases where the spouses agree to allow one party to use common assets for business purposes, that party has the right to independently engage in transactions related to professional exploitation of related common assets. Such an agreement must be documented in writing."

In practice, this provision is rarely applied, especially concerning agreements between spouses. The main reason is likely its inefficiency: there is no registration system to publicize the agreement, so, it cannot be enforced against third parties, on

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

account of their ignorance, and is only effective between the spouses.

Anyway, when common assets are managed or utilized for business activities, the managing spouse must be recognized as having full authority over the assets, including disposal rights. Creditors of that spouse must have the right to seize the business assets as if they were individual assets, without concern for the rights of the other spouse.

All these objectives could be achieved by applying the resulting trust model to the situation. Specifically, the spouses could agree that the business assets, originally part of the marital estate, would be treated as the separate property of the managing spouse. Recognizing business assets as separate property allows the managing spouse to exercise broad rights over the assets during the marriage. Creditors involved in the business would face no difficulties in enforcing debt claims against the assets during the marriage. However, the income and profits generated from the joint assets used in the business would still belong to the marital estate. In the event of divorce, the assets would remain under a trust arrangement: the managing spouse would continue to manage the assets for their benefit and the benefit of the ex-spouse. The non-managing ex-spouse could also terminate the trust relationship and request payment for his or her share of the joint assets.

To ensure this agreement is enforceable against third parties, it is essential to register the agreement with a public service authority, such as a civil registry service or property registration office.

4. CONCLUSION

The development of trust law, as a tool for regulating property relations in a legal system inspired by civil law tradition like that of Vietnam, first requires a fundamental revision of the doctrinal foundation regarding property. However, this could be highly challenging for many reasons, particularly due to differences in cultural, historical traditions, and national characteristics that make Vietnamese people find it difficult, if not impossible, to accept changes to adopt cultural achievements in general and legal achievements from other countries in particular. For the time being, the spirit of trust, including resulting trust, can be applied to devise solutions for certain specific issues observed in practice without disrupting the current theoretical foundation of the legal framework. The adoption of a trust institution to modernize Vietnamese law

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

comprehensively is a task that must be considered carefully and carried out over a long period.

Acknowledgment: This research is funded by Vietnam National University HoChiMinh City (VNU-HCM) under grant number C2023-34-03.

REFERENCES

Ames, J. B. (1907). Origin of Uses and Trusts. *Harv. L. Rev.* 21, 261.

Andasmas, L. (2024). *Les successions et les animaux de compagnie.* Prod. Woopets. 11 25. https://www.woopets.fr/auteur/lalia-andasmas/.

Balani, R. (2021). Abandoning the' Quistclose' trust in insolvency. *The ADELAIDE Law Review,* 42 (1), 259-291.

Balani, R. (2021). Abandoning the'Quistclose'trust in insolvency. *The adelaide Law Review,* 42 (1), 259-291.

Barclays Bank Ltd v Quistclose Investments Ltd. (1968). A.C. 567 (842, 10 31). Accessed 11, 27. https://uollb.com/blogs/uol/barclays-v-quistclose-1970?srsltid=AfmBOoqJ_m4cDlEliPCyL8PDUw9Ks7WGLy8MJxQ7DY_Vy5RAeqeZOOjR.

Beijer, T. A. (2018). Trust law in the process of reunifying East and West Germany. *Utrecht Law Review,* 14(1), 128-142.

Bennet V.B. (1879). 10 Ch. D. 474 Accessed 11 27, 2024. https://www.lawteacher.net/cases/bennet-v-bennet.php.

Bowman versus Official Solicitor. (1957). 1957 LawSuit(UKHC) 251 (11 27). Accessed 12 16, 2024. https://lawsuitcasefinder.com/casedetail?id=U2FsdGVkX182Xj9zFjplo2ppl0yZMMVDzoRWKPCTrSNlFQMgs5,.

Burns, F. R. (1992). The Quistclose trust: intention and the express private trust. *Monash UL Rev. 18 (1992), 147.* 18 (2), 147-168.

Cao, Tòa Án Nhân Dân Tối. n.d. *Án lệ số 02/2016/AL về vụ án "Tranh chấp đòi lại tài sản.* Prod. Trang Tin Điện Tử Về Án Lệ. Accessed 11 26, 2024. https://anle.toaan.gov.vn/webcenter/portal/anle/chitietanle?dDocName=TAND014298.

Caron, Y. (1980). The Trust in Quebec. *McHill Law Journal,* 25 (4): 421-444.

Chambers, R. (2013). The Presumption of Resulting Trust: Nishi v. Rascal Trucking Ltd. Alta. L. Rev. 51, 667.

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

Chevalier-Watts, J. (2016). The Presumption of Advancement: Is It Time to Relegate This Doctrine to the Annals of History. *Lakehead LJ,* 2, 15.

Costigan, G. P. (1914). The Classification of Trusts as Express, Resulting, and Constructive. *Harvard Law Review,* 27 (5), 437-463.

DARRAS, M. (1934). Le nouveau Code du Tonkin. PhD Thesis Paris.

Davis, J. (2019). *Karl Lagerfeld's Cat Choupette Could Inherit Some Of His Fortune.* Prod. BAZAAR. 2, 24. https://www.harpersbazaararabia.com/fashion/featured-news/karl-lagerfelds-cat-choupette-could-inherit-some-of-his-fortune.

Điện, N. N. (2024). *Giáo trình Luật Hôn nhân và gia đình (Textbook on Marriage and Family Law).* HCM: Trường ĐH Mở TP.HCM (Open University of HoChiMinh City).

Dyer V.D. (1788). 2 Cox Eq Cas 92 (Exchequer Court, 11 27). http://www.bailii.org/ew/cases/EWHC/Exch/1788/J8.html.

Emerich, Y. (2009). Les Fondements Conceptuels de la Fiducie Française Face au Trust de la Common Law: Entre Droit des Contrats et Droit des Biens." *Revue Internationale de droit comparé,* 61 (1), 49-71.

Emerich, Y. (2009). Les fondements conceptuels de la fiducie française face au trust de la common law: entre droit des contrats et droit des biens. *Revue internationale de droit comparé,* 61 (1), 49-71.

Long, J. R. (1922). The definition of a trust. *Virginia Law Review,* 426-433.

Luật, Thư Viện Pháp. n.d. *Án lệ số 02/2016/AL về vụ án "Tranh chấp đòi lại tài sản".* Accessed 11 26, (2024). https://thuvienphapluat.vn/chinh-sach-phap-luat-moi/vn/an-le/13194/an-le-so-02-2016-al-ve-vu-an-tranh-chap-doi-lai-tai-san.

Martin, E. F. (1989). Louisiana's Law of Trusts 25 Years After Adoption of the Trust Code. *La. L. Rev,* 50, 501.

Pettit, Philip H. (2012. Equity and the Law of Trusts, *OUP Oxford.*

Phan, H. D. (2008). La colonisation française, et le droit vietnamien| Theses. fr (Doctoral dissertation, Perpignan). Perpignan University. Accessed January 22. 2025. https://www.village-justice.com/articles/droit-colonial-indochine-travers-andre-malraux-paul-monin-avocat-barreau-saigon,25773.html.

Powell v. City of Vaticouver. (1912). 3 W.W.R. 108, (1912), 8 D.L.R. 24, (Supreme Court of Canada).

Rudden, Frederick Henry, L. B. (2002). *The Law of Property.* Oxford University Press.

Schiavi, N. (2019). *Qui est Françoise, la gouvernante de Choupette qui gère son héritage?* Prod. Gala. 3 1. Accessed 11 25, 2024.

Submetido em: 19/06/2024
Aprovado em: 11/09/2024
Avaliação: Double Blind Review
ISSN: **2316-2880**

https://www.gala.fr/l_actu/news_de_stars/qui-est-francoise-la-gouvernante-de-choupette-qui-gere-son-heritage_426407.

Seipp, David. J. (2011). Trust and fiduciary duty in the early common law. *BUL Rev,* 91, 1011.

Sheridan, LEE. (1993). Charitable Trust ((Validation) Act 1954: A Case for Reform. *The Charity Law&Practice Review,* 2 (1), 1-8.

Similer, Francois Terré and Philippe. (2006). *Droit civil. Les Biens,* Dalloz.

VU, T. (2023). Le droit français: une source d'inspiration pour la codification du droit civil vietnamien. *Journal d'Actualité du Droit International et Européen,* 23. Accessed January 22, 2025. https://revue-jadie.eu/article/view/7881.

Waters, Donovan W.M. (1970). The Doctrine of Resulting Trusts in Common Law Canada. *McGill LJ,* 16, 187.

Wilde, D. (2020). The three certainties required to declare a trust- Or is it four?"Distributional Certainty. *The Cambridge Law Journal,* 79 (2), 349-359.

Williams, G. L. (1940). The Three Certainties. *The Modern Law Review, 4,* 4 (1), 20-26.

Zenaty-Castaing, F. (2015). Entre Trust et Fiducie, le malenetndu québecois. *revue Internationale de Droit Copmparé,* 23-43.