In order to understand Vietnamese contract law, it is essential to understand the conception of law in Vietnamese society, in particular for western lawyers. The characteristics of this legal system are different, and even unusual, when compared to those of western countries. Looking into the history of Vietnamese law will help to understand the role of law in general and the role of contracts, especially in the Vietnamese social hierarchy. It can be said that the conception of law has not really reached the daily lives of Vietnamese people yet. For example, a party to a contract makes an effort to perform its contractual obligations because he fears to “lose his face” in his close community, not because he is afraid of breaching of contract laws and of legal consequences of that breach. The purpose of this article is to explain and analyse these aspects of Vietnamese law, based on its philosophy (§2) which can only be understood by looking at its entire history (§1).

§1. Vietnamese contract law: A long story?

The history of Vietnam’s contract law is a part of that of Vietnam’s civil law, of criminal law (during feudal dynasties) and administrative law (ruled by central planning). The terms of private law, civil law, obligations’ law, contract law, and commercial law have always been ignored and their history is only recent.

a- The feudal era- The Beginning of Contract Law

---

1 It should be noted that it is difficult to study the history of Vietnamese law as there is very little documentation on the topic in Vietnam. See especially the Ministry of Justice, Mô tả văn đề về pháp luật dân sự Việt Nam từ thế kỳ XV đến thời pháp thuộc (Vietnamese civil law in the XVLe droit civil vietnamien du XVe siècle jusqu’à l’époque coloniale française), (National Political Publishing House), Hanoi 1998; PHAM Duy Nghia, Chuyên khảo luật kinh tế (Treaty of economic law), (Publisher of Hanoi National University), 2004, pp.391-397, n°209-212. One study concerning Chinese contract law is worth mentioning: LECLERCQ Hervé, Introduction to Chinese contract law, Joly Publishing House, 1994. In this books, the various analyses of Chinese economic contracts will enable a good understanding of the same situation in Vietnam in the 50s-60s-70s-80s of the 20th century.
During the four thousand year long history of Vietnam, feudal dynasties ruled over the country throughout ten centuries, starting with the first emperor Ngo Quyen (939), until the last emperor NGUYEN in 1945.  

**Legislative progress under LE emperors.** Among Vietnam’s feudal dynasties, the LE emperors ruled for over three centuries (from 1428 to 1788). In the history of Vietnamese law, this period is known for its major legislative progress and is considered as an important period in the legislative history of Vietnam. Since the XVth century, legislative initiatives have been undertaken at a national scale, and in great consideration of LE’s Kings. They lead to the birth of the famous national penal Code in 1483 (known as the “Hong Duc Code”), an important text in the LE legal system. As a great codification of the rules declared by the first LE emperors the Code is highly appreciated by legal researchers for its importance, its abundant detailed rules which have great value in terms of history, humanity, and nationalism. The code also represents an accurate picture of the political, economical, and social situation of Vietnam in the 15th century.

**Under the NGUYEN emperors.** During this period the most important law is the Gia Long Code which was promulgated in 1812. Being different from the famous Hong Duc Code, the Gia Long Code (which is also called Hoang Viet - laws and customs) did not represent Vietnamese culture and traditional in its regulation as it was an identical copy of a Chinese Code (Dai Thanh - laws and customs). Most civil provisions had been removed, there are just a few left on land and

---

2 The Vietnamese national dynasties are: the NGO dynasty (939-967), the DINH dynasty (968-980), the early LE dynasty (980-1009), the LY dynasty (1009-1225), the TRAN dynasty (1225-1400), the HO dynasty (1400-1407), the late LE dynasty (1428-1788), the NGUYEN dynasty (1802-1945). 1776 to 1802 was the blurry period marked by the revolt of the Tay Son brothers as well as the fight between the Nguyen lords (in the North) and the Trinh lords (in the South) to take over the power. See De SACY Alain S., *Vietnam- le chagrin de la paix* (“Vietnam- the grief of peace”), Collection Gestion Internationale, Vuibert Publishing House, 2002, Appendix 1, pp.164-165.


7 The term «custom» («lê» in Vietnamese) should be understood in a wider sense: it not only addresses habits, usages but also case law. We hesitated between using “customs” and “case law” for the translation but finally chose the first term, taking into consideration the role of customs in Vietnamese society. We find that using the second term could lead to a false understanding. While there was a certain respect for case law at the time in China, this did not apply to Vietnam.
marriage. Major changes had been made to land value taxes and taxes on citizens as well.

**Did contract law exist at that time?** There are many provisions governing contractual relationships in the above quoted legislative texts. It is the first time in the history of Vietnam, under the LE emperors, certain aspects of law of contract could be found in the Hong Duc Code: (i) validity and nullity of the contract, (ii) form of contract, (iii) duty to perform contractual obligation, (iv) damages. Some general rules of contract law, which were hidden behind penal regulations, had been acknowledged: the freedom of contract, the written form of the contract, the customs to conclude a contract in the presence of witnesses, damages for breach of contract. In business, disloyalty was severely punished. It can be said that contract law had been slowly making an appearance.

**The definition of the contract.** analyzing some provisions governing specific contracts such as sales, loans, rental agreements, allows to find elements of “agreement to sell” or “intention to create a legal relation” -elements expressing the very nature of the contract- intention of both parties should be met.

**Fundamental principles of the law of contract.** It is surprising to find in the Hong Duc Code the various fundamental principles of contract law, since they were acknowledged in the 15th century statute. For example, the freedom of contract (Article 355 of the Code provides harsh punishments to people who, based on their superior position and their political influence, force other people to sell their land); the duty of performance of the contract (breach of contract is often punished by beating the offender with a stick, sometimes by paying damages, or by

---

9 *Ibid*, p.394, note n° 4: The Hong Duc Code (articles 187, 190, 191) specifies the sanctions for sales of meat marinated in water, or of rice mixed with sand to increase the weight. In the history of Chinese contract law there was no such progress of the codification, despite the fact that during this period Vietnam remained under the surveillance of the Chinese feudalism. There were no specifications on family, property, and taxes in the Chinese code at the time. However, in China the imperial case law shows that contracts were seen as instruments with an obligatory force and that, if necessary, it would be possible to force the other party to perform his part of the contract. There are adjudications of the QUING dynasty which deal with the universal principle of contract law according to which all agreements have to be honored (See LECLERCQ Hervé, *An Introduction to Chinese Contract Law*, op.cit., pp.3-8, n° 4-10, in particular n° 5, 6 et 7). Due to a lack of documentation, this study of case law is quite impossible in Vietnam.
10 It should be noted that there was no real “civil law” or “contract law” at the time. It was more of an administrative or criminal law and in the relation between legal persons the state was ubiquitous.
11 In the Gia Long Code, the importance of the parties’ intentions in a contractual relation is also indirectly specified by article 137 which punishes merchants who use their position for fraudulent sales.
returning the goods); equality between parties (the legislature means to punish Mandarins imposing contractual and disadvantageous conditions on peasants)\textsuperscript{12}; obligation to guarantee ownership of the goods (people selling other people’s good will be condemned to civil and criminal punishment: nullity of the contract, payment as damages for the same value of the goods\textsuperscript{13}.

**The formality of the contract.** General contracts such as contract for sale of house, land, garden, buffalos, must be made in writing, it is important evidence in case of dispute between the parties\textsuperscript{14}. If one or both parties are illiterate, then an educated person is asked to write the contract and at least one witness (who can read) is required in order to ensure that both parties agree with the terms and conditions of the contract. All parties as well as the witness have to sign in the contract; illiterates use their fingerprints as a signature). If there is no contract made in writing or no witness, the contract become null and void. Once again, the dynastic legislature uses this specification to emphasize the parties’ will. Certain types of contracts such as contracts to sell domestic workers must notarized or certified\textsuperscript{15}.

**Other rules on the contracts.** In the Code, there are also several provisions governing the performance, amendment, and termination of contracts. All amendments have to be agreed upon by all parties to the contract\textsuperscript{16}. Provision related to force majeure can already be found in the codes such as arson, piracy, epidemics (despite the fact that the legislature doesn’t exactly consider them as cases of relief of liability). There is no punishment in these cases\textsuperscript{17}. In the event of breach of contract, criminal sanctions were often to be used rather than civil sanctions and, in fact, they were not distinguished at that time. Fines and penalty fees were considered as civil sanctions. They were meant to punish the breaching party rather than to serve as a compensation for the party who suffered losses.

\textsuperscript{12}Art. 355 and 638 of the Hong Duc Code.
\textsuperscript{13}Art. 379 - Hong Duc Code.
\textsuperscript{14}It seems unreasonable to us that, at the time, bilateral contracts (such as contracts of sales or loan agreements) are drawn up in a single copy held by one of the parties. There are cases in which the latter intentionally destroys the contracts in order to benefit from it. See Ministry of Justice, *op.cit.*, p.51.
\textsuperscript{15}Art. 363 Hong Duc Code.
\textsuperscript{16}Ministry of Justice, *op.cit.*, p.68.
\textsuperscript{17}Art. 135- Gia Long Code.
This was the reason that penalties are usually twice, or even five, nine, or ten times (this depends on the severity of the offense) as high as the damages. Only if the offence was non-intentional, the penalty could be equal to the damages.\(^\text{18}\)

**The role of contract law.** Legislative rules still could not be considered as properly integrated in Vietnamese society. If there was such integration then it was only partial. The rationale behind the law of contract at this time was based on the Confucian customs and values which were derived from trust and social credit.\(^\text{19}\) This fact explains the trivial role of law in general and of contract law in particular in Vietnamese society. For example, when the parties to a contract perform their obligations, they do it not because the law forces them to but rather because both the community and the witnesses know of the contract. The parties perform their contract due to social pressure (close relatives, neighbors or representatives of the local administration witness the signing of the contract). The contract which is an agreement between the parties then becomes of interest to the entire community.

**b- The colonial period – Bringing in western codes**

**The first Civil Code.** In Vietnam, contract law could be officially recognized when the first civil Codes were promulgated during the French colonial period. This code was promulgated on March 10th, 1883 and applicable to the Southern provinces as well as to three big cities in the North and in the Center (Hanoï, Haiphong, Da Nang).\(^\text{20}\) It was actually a copy of the Napoleon Code. The colonial authority had not adjusted this Code to be suitable to the situation in Vietnam, which at the time was so much different from the “Mother Country” both in terms of politics and economy. For this reason, this Code hardly had an influence on the Vietnamese territories.


\(^{19}\) On the philosophy of Vietnamese law, v. *infra*, p.12 and following.

\(^{20}\) It should be specified that colonial Vietnam was divided into three territories: the North, the Center, and the South. The North and the Center were protectorates. The South was a colonial territory and the three great cities of Hanoi, Haiphong, and Danang were granted land.

\(^{21}\) A name for France at the time.
The northern civil codes. Promulgated on March 30, 1931, the Northern civil Code has greater historical value. In this Code, Colonial authorities had taken into account the Vietnamese people’s history, customs, and previous legislative successes. In the protectorate, it was the colonial authority’s legal policy to keep the feudal legislation, which was in accordance with the Vietnamese culture and customs, and to change it progressively toward its colonization objectives.

This Code is of value as it is mainly based on the legal principles and the modern lawmaking technique of the western codes (the 1804 Napoleon Code and 1912 Swiss civil Code) while respecting and keeping the customs and traditional rites of Vietnamese people. Several articles of this Code have been inspired by Vietnam’s dynastic codes. Five years after the promulgation of the Northern Code, the Central Code came into effect. The latter is a mere copy of the former, with a few changes.

A real contract law? In both these Codes, and for the very first time, the concept of “a contract” is legally defined. It is understood as an “agreement through which one or several people make a commitment to one or several people in order to transfer something, to do or not do something”. This definition is close to the one of the current civil Code of Vietnam.

There are a number of articles relating to the contract for sale, the most common type of contract, in both Codes (articles 877 to 892 of the Northern civil Code and articles 955 to 1116 of the civil Code of the Center). It is defined as a contract for sale is an agreement by which the vendor delivers or commits himself

---

22 There are 1455 articles in this Code, they are divided into four books: First book: The people; Second book: The goods; Third book: Obligations and contracts; Fourth book: Evidence. In terms of volume, it is the largest Code of Vietnam (this is also true if contemporary codes are taken in to consideration).

23 Article 676 of the civil Code of the North and article 716 of the civil Code of the Center specify that “depending on their nature, contracts not only have to comply with the specifications of the law but also with customs and anything that is considered as fair ...”. The terms of this article allow us to understand that the colonial legislature has been taken into consideration the values of Vietnamese society.

24 As well as this Code, the French authority in Vietnam promulgated four new laws: A law on judicial organization, a law on civil and commercial proceedings, a criminal law, and a law on penal proceedings. All four were promulgated on December 2, 1921. The very first implementation of procedural laws in Vietnam were registered as major successes: Vietnamese people also appreciated the modernism and effectiveness of the new judicial proceedings. See Ministry Justice, op.cit., p.19.

to delivering to the purchaser the good against a certain price, and the purchaser commits himself to paying\textsuperscript{26}.

The freedom of contract is recognized in these codes: The parties are free to agree on the content of the contract. As far as the contract for sale is concerned, the parties are free to determine and agree on the goods, the price, and their rights and obligations. All goods can usually be subjected to a sale, unless they are forbidden\textsuperscript{27}. There are some particular prerequisites for the sale of land or rice fields. An agreement cannot be against the law, customs, and public policy.

In these two Codes, a number of rules stem from the French Code. for instance, validity of the contract, nullity and void of the contract, the performance of the contract, and the remedies for breach of contract, or the cases of relief of liability. Despite the fact that a sight of these terms can already be caught in various provisions of the former feudal codes, it is only in these two codes of the colonial period that these terms and settlements of the contract are represented as a coherent whole, just like the western approach. Nullity of contract, for instance, are distinguished case by case by willful misrepresentation, or mistake, or fraud, or duress… These terms were based on the French law. The rights and obligations of the parties to the contract as well as the liability for breach of contract are quite accurately expressed. Civil (or contractual) liability is different from penal liability and its system is well determined as it is based on the progress made by the French legal science at the time\textsuperscript{28}.

**The limited value of colonial codes in contracting practices.** It should be noted that the French-inspired codes do not contribute to a radical change of contract law in the colonized country. Their impact on contracting practices and customs of most Vietnamese people living in villages is insignificant. They are soon forgotten and are only of historical value, especially since the Soviet system of contractual discipline was implemented.

c- Following the Independence - economic contracts

---

\textsuperscript{26} Art. 877- civil Code of the North; art. 995- civil Code of the Center.

\textsuperscript{27} Art. 896- civil Code of the North, art. 1022- civil Code of the Center.

\textsuperscript{28} For more information, see Ministry of Justice, *op.cit.*, pp.169-172.
After the 1945 August Revolution, Vietnam built a new legislation which was deeply inspired by the Soviet legal system.

**The Comecon.** It was the time when Vietnam completely and totally followed its “big brother”, the Soviet Union. The standardization of contractual terms was done as part of the Comecon (Council for Mutual Economic Assistance) which was founded in 1949. The Comecon was an economic mutual aid organization for the countries of the Eastern Bloc, of which the Soviet Union was the core.  

Vietnam became a member in 1978. The general terms of the Comecon were passed in 1958 and were automatically implemented, without exception, to all contracts for sale among Comecon parties. The general terms of sales were like a consistent instrument which specified rules on the formation of the contract, obligations of the vendor and of the purchaser, or even on breach of contract, sanctions, force majeure... The parties could not escape these rules. The purchaser was rarely allowed to refuse the goods.

**Economic contracts.** At a time of war in the South and of centrally planned and command economic regime in the North, contract law, which had no legal reference whatsoever, evolved with administrative standards. These were a true reflection of the political philosophy. These administrative standards were the interim status of the regime of economic contracts in January 1960 (replaced by the Status on the regime of economic contracts in 1975) and the Decree Nr. 200 of the council of state from December 1973 regarding the signing and performing of economic contracts.

---

29 At the time socialist countries were often called like brother countries as they provided very spontaneous mutual assistance.

30 At the time, the Comecon was considered as the counterpart of Western Europe which had been unified by the Marshall plan.

31 Apart from the USSR, the other members were firstly communist Eastern Europe countries: Bulgaria, Czechoslovakia, Hungary, Poland, Romania, East Germany, and Albania (from 1949 to 1961). Yugoslavia had an associate status. Other non-European countries later also became members: Mongolia from 1962 on, Cuba from 1972 on, and Vietnam from 1978 on. So called “satellite” states only had a minor role compared to the Soviet giant which, by founding this organization, provoked a major economical dependence of the satellite states on the USSR as well as an obligation to use the transferable ruble system in Comecon transactions.

32 There were four amendments and reviews in 1964, 1968, 1975, and 1979.

33 It is the first consistent treaty (and the only one to this day) Vietnam ever agreed to. It probably left traces in Vietnamese sales law. The system of damages and the formalistic requirements are two symbolic examples.
At the time, there was no such thing as “commercial contracts”\(^\text{34}\). Only the notion of the economic contract used to prevail: “Economic contracts are a legal instrument of the State to set up and develop a socialist economy. They play a major role in planning well the national economy. It makes sure that the interests of the economic entities are also those of the national economy… It sets up the cooperation between the contracting parties by determining their rights and obligations, and thus grants them a good preparation and realization of the economic plans, as effectively as possible”\(^\text{35}\). In the Status on the settlement of economic contracts in Vietnam, which was promulgated in 1975, it is said that: “It is usually the state who concludes economic contracts. Economic entities have to conclude economic contracts according to the provision made by the State”\(^\text{36}\).

Little space remained for freedom of contract. Contracts did not seem like the right instrument to express the parties’ willing in economic and commercial relations. The State’s plan imposed itself\(^\text{37}\). Contracts were considered as an administrative business. Its signature is sometimes an « obligation » of the economic entities\(^\text{38}\). Since contracts had to comply with the plan, changing this plan had a major impact on how the contract, which has to be amended, or even solved\(^\text{39}\), is performed.

**Settlement of the dispute between parties to a contract.** Due to the administrative aspect of contracts, the parties in dispute used to bring their contentious issues to their local administration rather than to tribunal. A conflict between two production units that depended on the same central administration was often settled in a non-jurisdictional manner by the regulatory administration.

\(^{34}\) Merchants making business in order to make profit were considered as capitalists and were not accepted in a socialist society in which the interests of the state and those of the community were more important than private interests.

\(^{35}\) Art.1 of the 1975 Status on the regime of economical contracts.

\(^{36}\) See article 2 of the precipitated Status.

\(^{37}\) The contract as well as its clauses are fully subjected to the plan. Quantitative data on contracts of sale should therefore comply with those of the plan. There were also the necessary requirement to set and to determine the other clauses of the contract price, which ensured in a very manner that the agreement of the parties complied with the state’s plan (articles 8, 9, and 13 of the precipitated Status).

\(^{38}\) Despite the fact that the socialist legislature wants to subject the economic contract to the plan, the contract still has an obligatory force. The rule of contractual responsibility is confirmed if the contract is not performed: If, for instance, the vendor is late to deliver the goods, the purchaser can claim damages and penalties based on the delay. However, it is difficult to know how this contractual obligation is implemented for there is no “case law” regarding this matter.

\(^{39}\) Just like force majeure in the modern system, amendments to the plan, when they make the contract incompatible with the new plan, mean that the debtor becomes exempt from any liability resulting from non-performance.
When these economic units were from different administrations, the governing bodies used to debate in order to settle the dispute according to simple guiding rules, such as carrying out the plan, respecting the administrative guidelines...

d- After the renovation- a new type of contract law emerges

« DOI MOI ». In December 1986, the Sixth Congress of the Communist Party of Vietnam brought a very important change: The introduction of a new policy called « DOI MOI »\(^4\). Not only is it a renovation on socio-economics grounds but also on legal grounds. The 1992 Constitution (the 4\(^{\text{th}}\) Constitution of Vietnam following its independence)\(^4\), describes the market-oriented economy with its necessary liberal consequences: Recognizing the freedom of business, the freedom of contract, of private property of capital goods...

The fundamental foundations of a new contract law were based on these important principles acknowledged by the 1992 Constitution.

The new law. The first civil Code of the Socialist Republic of Vietnam was promulgated on October 28, 1995 and became effective on July 1, 1996.\(^4\). Having a significant role in Vietnamese private law, this Code governed all types of civil activities among natural persons, legal entities, and other legal persons.\(^4\). It is the core of the new Vietnamese contract law, in which the fundamental rules of contract law (such as freedom of contract, the principle of bona fide…) have been recognized. How to conclude and perform a contract was also specified in a rather detailed manner. There were also the provisions which regulate the various types of common contracts (contract for sale, gifts, rental agreements, contracts of carriage, processing contracts, insurance contracts)\(^4\). It could be considered as a legally effective structure for civil activities in general and for contracts in particular,

---

\(^4\) Renovation, Reform.
\(^4\) The three previous ones were dated 1946, 1959, and 1980.
\(^4\) This Code resulted from fifteen years of work and enabled many new projects.
\(^4\) The civil Code does not deal with marriage or family issues, which is due to the structural Soviet influence. See NGUYEN Ngoc Dien, *The Vietnamese civil Code as an example of the adaptation of the Napoleon Code to the system of the public property of grounds*, in the “Recueil des Interventions”, at the “The bicentenary of the French civil Code” international symposium, held in Hanoi on November 3-5, 2004.
\(^4\) The Vietnamese legislature made a point to regulate contract law. Therefore, in terms of quantitative importance, the regulation of civil contracts is at the forefront, with 205 articles out of the 838 articles of the Code.
thus also contributing to protecting the lawful rights and interests of the parties to a contract. It is a rather solid legal foundation for the rules of civil litigations.

In 1997 the first commercial law of Vietnam was established and came into effect from January 1, 1998. This act has 264 articles, divided into 6 chapters, regulating the business activities of Vietnam. There was a special section in the second chapter regarding the sale of goods.

The success of these two codes and laws were much belittled due to the fact that two greatly obsolete texts –the OEC of 1989 and the Decision on the conclusion and performance of economic contracts according to the state plan of 1990- were still effective at that time.

After the promulgation of the 1997 LCV, Vietnamese contract law was thus composed of three texts which regulated all contracts.

The first thing that can be observed was a major risk resulting from one law encroaching on the other two. This encroachment was the unavoidable consequence of what is called “inflation of standards”, a phenomenon which has already been observed by foreign investors in Vietnam. When looking at the case of the contract of sale, it was hard to determine the governing law. Since there was no specific rules to determine the role of the civil Code in relation to the OEC (dated from 1989) and given the common law-special law relation between the two, Vietnamese contract law was divided into two types: law on civil contract and law on economic contract. It is not only unclear classification but also illogical relation between the two statutes, the civil Code would not be considered as the foundation of contract law as a whole. The context of Vietnamese law of contract even worsened after the LCV was introduced and the OEC remained, since no hierarchy between the OEC and the LCV or even a distinction between economic contracts and commercial contracts had ever been defined.

There were also many contradicting disposals in these three laws. They regulated all issues regarding the conclusion and performance of the contract. For instance, regard to the formation of the contract, the OEC demands the written form

---

45 Comment by Mr. Eric Le Dréau, Attorney, Head of the VOVAN & Associates law firm. See “Recueil des interventions”, “The bicentenary of the French civil Code” international symposium, held in Hanoi on November 3-5, 2004, p.69,
while it is free to determine the formation of a contract under the LCV). For content of a contract (the OEC determines that there are four compulsory clauses in a contract, while six under the LCV), penalty for breach of contract (according to the OEC, the penalty amount should not exceed 12 percent of the value of the portion of the contract that has been breached - whereas 8 percent under LCV. The limitation period is also different from one to another: six months for economic contracts and two years for commercial contracts, from the moment that legal rights or interests are infringed.

**e- The 2005 reform—modernizing contract law**

The economic integration of Vietnam, especially since the country became a member of the WTO in 2006, there is pressure of bringing the Vietnamese legal system up to international standards. Commercial law and contract law both required a radical reform. The Vietnam’s law of contract should be amended and reformed in order to bring Vietnam’s commercial law in compliance with international trade agreements (APEC, ASEAN, ASEM) and with an eye to Vietnam becoming a member of the WTO. The reform was finally accomplished in 2005 that is a milestone in the progress of Vietnam’s law reform, the new civil code 2005 and the new commercial law 2005 were promulgated. After these two codes and laws became effective on January 1, 2006 the OEC was completely eliminated. Both civil code and commercial law considerably changed the structure of Vietnamese contract law

This new structure shows a true modernization of Vietnamese contract law. It becomes similar to that of western countries: The new civil Code applies to all types of contracts, whether they are civil or commercial, and represents the foundation of Vietnamese contract law. Vietnamese contract law is thus standardized in a single code and there is no more encroachment of the OCE on the civil Code. Commercial contracts are considered as special contracts with specific rules which have to comply with the general principles and rules of the civil Code. When it comes to

---

46 Such a reform has been observed in many other sectors of commercial law. As well as the civil Code and the commercial law, important codes and laws were promulgated and amended like the new company law, the new law on investments, the law on intellectual property, the law on electronic transactions, the new maritime code, the customs law (amended)... Twenty-eight different codes and laws were newly introduced. The Vietnamese legislature worked very hard to achieve this admirable result.
questions the LCV does not address\(^{47}\), commercial contracts are therefore mainly ruled by commercial Law and only then by the civil Code. All types of civil or commercial contracts were based on the general principles stated by the civil Code\(^{48}\). Indeed, this amendment will allow for a greater clarity and security of contract law in Vietnam. Moreover, such a reform in favor of freedom of contract would allow Vietnam to meet the requirements of the economic development and integration.

§2- The philosophy of Vietnamese contract law

The above-mentioned presentation helps us understand how Vietnam’s law of contract came into existence, was developed, and completed. When reading these laws, it seems that Vietnamese law of contract is very similar to that of western countries. Nonetheless, the practices in Vietnam never fail to surprise western lawyers. In other words, studying these laws only allows to partially understand Vietnamese contract law: It is the tip of the iceberg. The part below (which is generally much greater than the tip) remains a mystery for lawyers from France or other countries. While the French civilization has a certain impact on Vietnamese law during the colonial period (c), it is also greatly inspired by other cultures and legal values present in its history, like that of the Chinese (a) or socialist society (b).

a- The philosophy of Confucianism

The rationale behind ideas or rules on which Vietnamese society has been organized for a long time are founded on the Confucian doctrine\(^{49}\).

Confucianism and the role of law. Long time before there was such a concept of law existed, Vietnamese people have been following and respecting

\(^{47}\) For example, the LCV does not mention the formation of commercial contracts, which is when the civil Code is required to find a solution (articles 388 to 411 address the formation of civil contracts). The principle regarding the performance of the contract or the principles of interpretation of the contract can only be found in the civil Code, too.

\(^{48}\) Art.4 to art.12 of the civil Code of 2005.

\(^{49}\) Confucianism is the legacy of China to Vietnam which was directly governed by China for thousand years (111 A.D. – 939 B.C.). In order to better understand Confucianism in Vietnam, see De SACY Alain S., Vietnam- le chagrin de la paix, - parcours d’une nation (“Vietnam- the grief of peace – the evolution of a nation”), La documentation française (“French documentation”), 1999, pp. 69-76.
fundamental values of society. These values are the following: “nhân” -humanity-, “lễ” -customs-, “nghĩa” -loyalty-, “trí” -spirit-, and “tín” -trust -. Founded on the Confucian doctrine, these values are no less important than the king’s laws. Vietnamese people being observant and moralizing, this led to the emergence of a great number of proverbs, sayings, and phrases which are constantly used and, just like customs, rules governing social life, for example, “law that would express morals”, lively, realistic, and often funny, full of rural energy. This “moral” law does and will always exist… In the Vietnamese language there are well-known proverbs mentioning the law: “The king’s law ends where the village hedge begins”, “Village customs win over the king’s law”… It is not to be forgotten that, in one way or another, these proverbs are and will always be true when it comes to modern Vietnamese society.

People have to follow the state’s laws, but their behavior is also governed by these ancient rules which have been rooted in Vietnamese everyday life for thousands of years. The rural population (which represents three quarters of the Vietnamese population) lives and behaves according to what they consider as good, true good. The conclusion and performance of contracts is controlled by customs and habits rather than by the rules of laws which generally never reach the villages.

Confucianism and the role of contracts. There are a few nuances to the nature of contracts, from its origin up until today, in Vietnam. Contracts are based on trust or loyalty, and respect among the parties. These elements are more important than the contract itself. Contracts are only a proof of a partnership and only have symbolic value. This partnership goes on and all problems can be solved thanks to trust, loyalty, and respect (not thanks to the contract). Vietnamese people do not consider the contract as an instrument to handle risks. When writing it down, they do not pay attention to the actual terms of the contract (this abstract conception greatly restrained Vietnamese people’s possibility to get involved in major long-term projects). It is also the reason why a written contract has never
been a legal and effective instrument on which people establish their relationships.\(^{50}\)

In practice, contracts are generally written very roughly, without much care. This is a worrying custom when it comes to international contracts as the parties will face major risks resulting from the uncertainty and unpredictability of the law in effect.\(^{51}\)

**The impact of Confucianism on dynastic codes.** The laws of the dynastic codes show us that Confucianism could not only be found in people’s social life but also in the political life of emperors and Mandarin people. The idea to rule with humanism and not with cruel sanctions was the guiding principle of several policies of some of the feudal kings. Specifications of great humanistic and moral value can therefore be found: The law punishes Mandarin people who force peasants to sell their land or lend money with unreasonable interest rates, a loan agreement is void if the interest rate is higher than the rate fixed by the Code. Such specifications find their roots in Confucianism and in the Vietnamese mentality which aims at building a human, moral, and just society.

Interestingly, it should be noted that Mandarins (people of great power in the monarchist society) were always subjected to the feudal codes. They had to comply with the rules of these Codes which stated that moral values such as equity, loyalty, and humanity were solid pillars of the good functioning and balance of society.\(^{54}\)

Among the sanctions defined by the feudal codes, there is one which aims at having a person “lose face”. Article 198 of the Hong Duc Code, for instance, punishes merchants who illegally speculate with goods or deal with customers in an illegal manner (imposing disadvantageous conditions to customers who are not in a position to argue) by forcing them to walk around the market for three days:

\(^{50}\) PHAM Duy Nghia, *op.cit.*, p.395.

\(^{51}\) Comment made by Mrs. NGUYEN Dao, Head of Johnson Stoke & Master, at the seminar on the new civil Code of 2005, held by the Ministry of Justice on December 17, 2005. Source: [http://vietnamese-law-consultancy.com](http://vietnamese-law-consultancy.com)

\(^{52}\) Art. 355- Hong Duc Code.

\(^{53}\) Art. 638- Hong Duc Code.

\(^{54}\) Articles 137, 183, 185, 186, and 336 of the Gia Long Code punish Mandarins abusing their power and position for immoral acts, or acts contrary to equity (for example: wrongly applying the law, wrongly measuring land or rice fields, corruption, accepting bribery).
People will recognize them as bad merchants, they will lose face, credibility, and it will be hard for them to do business anymore on that very market.

**The social power of contracts.** Despite the fact that contracts are normally signed by two parties, there is a social nature to their performance of contractual obligations. This particularity of contracts in Vietnamese society is based on the country’s culture, which values the family and village community. Both the contracting parties and the entire community around them are concerned by the contract. The witnesses’ signatures grant the contract a force that goes beyond the relationship of the two contracting parties. The duty to perform contractual obligations is only slight, compared to that coming from the recognition of the community for this contract. The consequences of such social pressure force the parties to honor the terms of the contract in order not to “lose face”. The trust, relationship, and loyalty of the parties are ruled by an obligatory social force.

**How to settle a dispute.** Like in many other Asian countries (China, Japan,…. Vietnamese (a country where morals, hierarchy, and trust are the foundation of a balanced society) try to settle a dispute based on these very foundations: Amicably, with the help of elders, a conflict between two families in a village, for instance, is resolved by the village headman who is always the most respected person due to his age, knowledge, and experience. Only if this fails do people resort to a judge or administration.

Indeed, Confucianism suppressed all possibilities for a new contract law to be developed by imposing its “natural” idea of the compromise.

**b- The philosophy of socialist law**

**Contract law – an implemented law.** For a long time, from the day Vietnam became independent, up until “DOI MOI”, contract law has always been planned by the state. At that time contract law was meant to regulate the special relations among socialist economic entities. The freedom of business was left aside in order to insist on a single fundamental principle: total and full respect of the state’s

---

55 See Yolanda EMINESCU and Tudor POPESCU, “the civil codes of socialist countries - a comparative study” (Edition academique de la Republic Socialiste de Roumanie (Romanian academic publishing company), 1980) which sheds a light on the legal situation of socialist countries in the 1980s. Despite the fact that Vietnam is not included in the study, at the time Vietnamese society had the special features and characteristics as those in these socialist countries.
objectives. Contracts became an economic management instrument: from quality, to defining prices, to payment method, rights and obligations of the parties up until resolutions on a dispute… Everything was organized by commands of government. There was no space for freedom of contract in this central planned and controlled economic system.

**When the state intervenes in contractual relations.** The administrative power could have a direct role in contractual relations by forcing the parties to amend or terminate an existing contract\(^5^6\). If the party refused to comply with the government’s command, the party was taken to the State’s economic court of arbitration\(^5^7\). This body supervised all economic contracts. In order to do that, this body had the right to intervene in all types of economic contracts. There have been cases in which this body forced the parties to make amendments in their contract, to complete this or that clause, in order for the contract to comply with the State’s planning scheme, even without the parties’ agreement. In the worst scenario, this body has a right to declare a contract void, despite the fact that the contractual parties wished to maintain it\(^5^8\).

Planned economic contracts generally disappeared after the economic reform. However, since these customs and principles have turned into a philosophy, it does take a lot of time to disappear completely.

**Administrative, judicial, and penal interventions.** There still are traces of this phenomenon in a great number of sectors of the state administration\(^5^9\). Today administrations often play a role in contractual relations. They currently have several possibilities to intervene: it may be at an administrative, legal, and even at a penal level.

\(^5^6\) *Ibid.*, art.15, 16.

\(^5^7\) See the status on the regime of economic contracts in Vietnam, *op.cit.*, art.5. See also art. 397 and 398 of the Polish code dated April 23, 1964: Quoted by EMINESCU Yolanda and POPESCU Tudor, *op.cit.*, p.237. The meaning of the term “state arbitration” should be looked at particularly carefully in order to avoid any misunderstandings: State arbitration in Vietnam just like in socialist countries, was like a court that resolved all conflicts related to economic contracts among socialist economic entities.

\(^5^8\) For example, if one of the parties was not actually able to contract, the contract automatically became void, even when the other party accepted this fact; if the contract did not comply with the form requirements, it was made void by the court, without even taking the parties’ will into consideration.

\(^5^9\) Pham Duy Nghia, *op.cit.*, p.277.
Administrative interventions, which used to be very frequent during the period of planned economy, fortunately greatly diminished. The fact that the state and public bodies use their power to intervene in contractual relations is no longer a problem for companies; however, it does not mean that this phenomenon does not exist in practice anymore.

This intervention may be requested by the parties’ notaries in order to adapt the contract for purely administrative reasons: It will either be an amendment of the contract clauses in order to comply with the rules of governmental agencies or to eliminate certain clauses which, according to the administration, are superfluous as the law has already adjudicated. A certain intervention by the vertical power in a public sector is likely for companies in this sector.\(^6^0\)

Judicial and penal interventions. Judicial and penal interventions are also still an obstacle to contractual relations. For example, Two companies go to a court for settling a dispute due to non-performance of a contract: Rather than adjudicating the contractual responsibilities of each party, the court analyzes the validity of the contract (a question the parties do not wish to subject to the judge) in order to finally conclude that the contract is void because it is not in accordance with the specific form which is required by the law, and consequently, it has no effect for either party. There were therefore no damages and no contractual liability! This was a surprising decision for the contracting parties themselves.\(^6^1\)

\(^6^0\) This happened recently, for instance, when a minister imposed on all entities a compatibility software developed by company X. From the purchaser’s viewpoint, they cannot freely choose a different supplier with better software at a cheaper price. From the suppliers’ viewpoint, the decision of this minister who promoted company X made it impossible for them to compete.

\(^6^1\) The case of Dung Tien is a good example of how a judge intervenes in a contractual relationship. A contract of sale for 50 cars signed in February 1996 between the VID company (a Vietnamese-Korean automobile joint-venture) and the Dung Tien company. The contract states a price of U.S. $810,000. It also states that it will be made in four payments from 1996 until 1998. The final payment would be made on July 15, 1998. VID, the vendor, performed its obligation to deliver but the purchaser made late payments for both price and interests. In 2000, VID sued its partner, demanding for the payment to be made. During the first trial and during the appeal, the judges declared the contract to be void. In order to deny the existence of the contract the judges agree with the reasoning of the respondent, who is represented by their chief executive, Mr. Pham Dung Tien, who objects to his assistant director’s M.Bui Ngoc Bich right to sign the contract while he was away. The retroactive effect of the nullity forces both parties to a mutual return: Dung Tien returns the 50 cars (which he has been using for four years) to VID, and VID pays back $469,000 (the amount of the contract minus $340,000, which according to the judge pays off 50 cars used for a period of four years). This shows how a debtor became a creditor with a « coup » of the judges, as academic writer’s comments.
Another currently rather frequent phenomenon in Vietnam are “penalties” in contractual relations in particular and in commercial relations in general. “Penalizing” means changing a civil or commercial conflict between contracting parties into a criminal case. This has become a dangerous phenomenon in economic life since it is too frequently implemented in Vietnam. The strictness of Vietnamese judges, as well as the desire to eliminate all intentions to impair the construction of the new market economy lead to serious mistakes by “punishing”, without it being legally justified, purely civil or commercial relations. There are serious consequences resulting from this: The contracting parties suffer losses, the legal system loses its credibility for companies and investors, the legal environment becomes less transparent …

**c- The philosophy of civil law**

When defining its legal rules, Vietnam chose a written legal system, obviously for historic reasons. It is essential to remind that the various Vietnamese dynasties tried to codify the laws. It should especially be taken into account that almost a century of French presence resulted in a certain impact of civil law on the Vietnamese system. During the colonial period the Napoleon Code was implemented in Vietnam, however, it took customs and traditions of the three Vietnamese regions (Bac Ky, Trung Ky, and Nam Ky which respectively comprised the provinces of the North, Center and South of Vietnam) into account. The laws implemented during this time combined both the western legal technique and the local customs. The Vietnamese legal system is consequently inspired by the French system and it is not wrong to say that civil law is the legal system of Vietnam (continental law). Several Vietnamese disposals have been taken from the French rules, like the merchant status, the concept of “commercial lease agreements”, of “general partnerships”, of “private company limited by shares” …

It is hard to imagine that the chief executive was not aware of this business. Dung Tien was delivered 50 cars which were used for a period of four years (from 1996 until 2000). It can be assumed that there has been an abuse of process by the Dung Tien company in order to be relieved from its obligations and contractual responsibility. In this case, the judges did not at all take into consideration the “true will” to contract of the two parties: they automatically applied article 8 of the OEC despite the fact that it put the innocent party in an extremely sensitive situation.

---

The reform of the Vietnamese legal system in the 1980s and 1990s encountered great difficulties. How could the Vietnamese legislation ensure the apparently rather sensitive compatibility of new liberal rules of a market economy and the rules of the great traditional principles of the Socialist Republic of Vietnam, which remain? This issue was exacerbated since Vietnamese lawyers, despite all their skills, had no theoretical and practical knowledge of the liberal system. In this context, and for various reasons, Vietnam resorted to foreign expertise.

When designing several Vietnamese codes and laws, foreign expertise, and especially the western one, intervened to help the Vietnamese lawmakers to improve the quality and effectiveness of Vietnamese legislation, especially those regarding the market economy.

Let's take a look at this expertise, especially when drawing up the first Vietnamese civil code. On their long road towards drawing up the civil Code and their desire to design a qualitative and modern law, Vietnamese authorities turned to western models. They translated and analyzed them in a serious manner. Foreign experts were called upon to explain certain sensitive issues. The French expertise was the most important. During the debates on the Vietnamese project of law reform, the solutions of the French civil Code were permanently mentioned. As far as contract law is concerned, during these debates, the French experts explained the terms and certain important aspects of contract law, the position of contractual relations in a liberal democracy, or the issues resulting from certain special contracts.

It should be emphasized that several Vietnamese lawyers and members of Parliament have studied in several universities in France or in other European

---

63 The French experts took part in symposiums and debates on various bills. Their expertise was particularly required for the texts of the civil and commercial law. They provided more or less important solutions for the following texts: the civil Code from 1995, the new civil Code from 2005, the 1997 commercial law, the new commercial law from 2005, the 1992 law on foreign investments in Vietnam, the new law on foreign investments from 2005, the law on intellectual property, the 2004 law on competition, the 2005 law on companies and more …

64 It should be noted that for various reasons no Code of the feudal era was taken into account, especially because this law does not meet the today’s modern needs. Regarding the contribution of the Napoleon Code and of French expertise in Vietnam, see Bézard Pierre, *Bicentenaire du Code civil : le Vietnam* (the “Bicentenary of the French civil Code: Vietnam”), at the “The bicentenary of the French civil Code” international symposium, held in Hanoi on November 3-5, 2004, p.217.
countries so that they were more or less influenced by the philosophy and legal spirit of civil law.