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THE INFLUENCE OF ROMAN LAW ON GENERAL PROVISIONS ON CONTRACTS IN CURRENT VIETNAMESE CIVIL LAW

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Abstract

The contract regime is one of the important regimes of civil law, to better understand the origin of the contract. Through the article, the author clearly points out the inheritance of the concept of contract and the general provisions of the current Vietnamese Civil Code related to Roman Law. However, there have been adjustments in legal thinking to suit the culture, lifestyle, customs, and political institutions of Vietnam.

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Introduction

Roman law is the most valuable code in the history of world law, which is consulted and studied by many countries to build their own laws. In particular, the contract is a separate agreement between individuals (the subjects participating in the contractual relationship), it is almost a separate law between individuals, but it needs to be recognized by the state. The term "contract" has been around for a long time, it is difficult to know exactly when, only know that this term is derived from the Latin verb "contrahere" which means "to bind". First appeared in Rome around the V-IV centuries BC, along with the birth and development of the ancient Roman state, Roman Law was formed at this time. After the disintegration of the Roman kingdom (about the 5th - 4th centuries AD), European countries accepted the use of the term "contractus" or "contract".

Thus, it can be said that the origin of the first legalized contract into the law dates back to ancient Roman law. To this day, Roman Law is considered an influential law for many countries around the world, not only in Europe but also for countries in Asia, including Vietnam. The institution of "contract" in Vietnamese law through historical periods to the present day is stipulated in the Civil Code 2015 as a result of inheritance, development and adjustment to suit the culture. , traditions and way of life of Vietnamese people.

Overview of contract terms in Roman Law and Vietnamese Civil Law

The institution of contract formed in Roman Law was also established through the ages, many concepts were later codified.

In the early Roman times, when socio-economic life was simply a closed form, living mainly through farming and animal husbandry, the view of contracts was also limited, just The expression of the will of the parties together with the objects and interests that the subjects are aiming for, at this time, the complexity in the form of expression, the complex agreement hardly appeared.

Later, through the wars of territorial unification associated with the formation of feudal dynasties and state types were born. The last century of the Republic (1st century BC) and the first 2 centuries of the Empire (1st and 2nd centuries AD) were the cornerstone of Roman law. Before the far-reaching influence of Law XII, the Emperors and consuls did not advocate directly negating this Law, but in turn issued valid orders, the principles of equality, justice, and goodwill were inherited. formal acceptance including contractual provisions. At the same time, the contract gradually lost its previous religious character and gradually became a civil legal act.

Since then, the contract has been widely used, often and has become an important basis in daily life. Contracts are no longer a collection of specific and common contracts such as: sales contract (emption - venditio), loan

contract (mutuum), mortgage are no longer a collection of specific and common contracts such as sales contract (emotion - venditio), loan contract (mutuum), mortgage contract (fiducia), joint venture contract (societas)) ... which gradually becomes a relatively strict and complete contract concept: A contract is an agreement between parties to establish obligations. According to this provision, it can be seen that the nature of a contract is essentially an agreement of the parties in which there are at least two parties, the agreement can give rise to, change or terminate the obligations of the parties. For each other. Obligations terminate by the performance of the parties to fulfill their obligations when performing to the right subjects, on time, and at the right time. The subject matter of an obligation can be property or a work to be done or not done. This obligation is the voluntary agreement of the parties at least two parties to the contractual relationship to take effect.

In Vietnam, the first regulation on contract is stipulated in the Civil Code of Tonkin in 1931 in Article 644: "A contract is a contract between one person or persons who makes an undertaking to one or more other persons to give a gift to them. , to do or not to do something". And in Article 680 of the Civil Law of the Middle States of 1936, it was stated that: "A contract is an agreement by one person or persons to make an undertaking to one or more other persons to transfer, to do or not to do something". The concept of contract in these two codes lacks coverage when it comes to immediately referring to a classification of obligations based on the content of the obligation, which is to transfer the right, to do or not to do something. Particularly, the Tonkin Civil Code uses the term "donation" which seems to exclude cases of transfer of rights with compensation, which has a much narrower connotation than the term "transfer" in the Trung Ky Civil Code. The concept of contract of these two codes was deeply influenced by the French Civil Code of 1804, by the legal experts of the time who were either French or had acquired French legal science (Vu Van Mau, 1961, p.314-315).

In the 60s of the twentieth century, since the Supreme People's Court issued Directive No. 772 - CT/TATC dated July 10, 1959, on the suspension of the application of imperial laws to feudalism until the time of promulgation of the Civil Code 1995, the general concept of a contract no longer exists, but instead the concept of a contract is expressed in the form of a distinction between "economic contract" and "civil contract". This change was derived from the relationship between contract and plan in the centrally planned socialist economy of Vietnam at that time.

In 1972, the Civil Code of the Republic of Vietnam stipulates in Article 653 of a contract expressed in the form of a contract: "A contract or treaty is a legal act resulting from an agreement between two or more persons to create a contract. establish, move, transform or destroy an interest, person or thing". Starting from the point of view that economic contracts exist to ensure the "construction" and implementation of plans, and at the same time as tools for planning the socialist economy in this period, the Ordinance Economic Contract in 1989 was issued. In 1991, the Ordinance on Civil Contracts was promulgated, and regulated with a narrow scope, showing the characteristics of civil relations as consumption and daily life, so the concept of contract in this Ordinance is the concept of contract. Civil1.

By 1995, when the subsidized bureaucratic economic mechanism was transformed into a socialist-oriented market economy, the previous contract provisions were no longer suitable for the socio-economic form. It was necessary to make adjustments to suit the society and economic orientation of this period. The concept of a contract is defined in Article 394 of the 1995 Civil Code and Article 388 of the 2005 Civil Code, which both stipulate: "Civil contract is an agreement between parties on the establishment, change or termination of civil rights and obligations. the".

Up to now, the 2015 Civil Code is the currently effective Law that provides for Article 385 as follows: "A contract is an agreement between the parties on the establishment, change or termination of civil rights and obligations".

Thus, the term contract appears in the Roman Law and the Civil Law of Vietnam, although it was formed and developed in association with each historical period and experienced many different state and socio-economic forms. But when it comes to the concept of a contract, it is the agreement of the parties, the beliefs and beliefs of the parties to each other to perform or not to perform a specific job or act towards the other party again. It is this similarity in nature that can recognize the inheritance and development of the contract institution in the Vietnamese Civil Law which is derived from the Roman Code by the thousands of years of history of legislative thinking. expressed through this law.

Some general provisions on contracts of Roman Law and Vietnamese Civil Law

Conditions of validity of the contract

Contract law in the Roman judiciary had two systems of contracts (covenant and indenture). Covenants are contracts that are not listed by the law, so in principle they are not protected by law, while covenants are contracts that are listed in legal documents and are therefore protected. In the Roman judiciary, there is no provision to govern all contracts that arise in practice, but the new law only lists a few common contracts to govern contractual relations. However, in Some common contracts in Roman Law, to be valid, need to meet two conditions: First, the contract must have an agreement between the two parties, must not deceive, and must not use force. Second, the contract must be in accordance with the provisions of the law.

In addition to the above two conditions, depending on the type of actual contract, Roman Law also has conditions that apply separately to each specific type of actual contract. For example, in a contract of sale of goods of Roman Law, for a contract of sale of goods, Roman Law stipulates the conditions of validity of a contract consisting of three conditions:

First, as "thing", the term has many possible meanings: thing; object; work can also be furniture - this is a polysemy in English, especially used in legal jargon (Requirements for a Contract in Roman Law, 2019, p.2). It is this polysemy of the term that seems to be the intention of the Roman jurists because of its universality, its many values when it comes to the subject matter of a physical contract, be it a work or something depends on the context in which it is used.

Second, "Price", this term as defined in Roman Law also creates many different opinions. There is a view that: "price" means "price", must include "money", but there are also views that price may not be money but may be something chosen because The Romans argued that all trade had its origin in barter or barter. According to this provision, a valid condition in a contract of sale Roman law stipulates that an object has a value corresponding to the object used as the object of sale or exchange. Perhaps, it was because of this that contributed to the birth of money, when the Roman state made the decision to choose an object to mint "coins" to mark the suitability, use, and title of the "mint coin". ". At the same time, this provision also explains the point of view that a commodity exchange contract is a special form of a contract for the sale of goods today.

[1] Article 1 of the Ordinance on Civil Contracts 1991 stipulates: "Civil contract is an agreement between the parties on the establishment, change or termination of the rights and obligations of the parties in buying, selling, renting, borrowing or borrowing. , donate to the property; doing or not doing a thing, service or arrangement in which one or the other parties aim to satisfy the needs of activities, consumption"

Third, "Agreement/Consent" means agreement/Agreement, that is, the agreement expresses certainty between the parties sincerely in mind, this is necessary in a contract. This provision is also a provision that no matter what type of contract is established, it must have, expressing the will of the subject when establishing the contract not from deception or the interference of force. Which force causes the subject to enter into a contract.

The current Vietnamese law does not have specific provisions stipulating the conditions of validity of the contract, however, in Article 117 of the Civil Code 2015 stipulates the effective conditions for civil transactions, the conditions the validity of the contract specified in Article 117 is the valid conditions of the civil transaction, in which the contract is a civil transaction. Therefore, a contract that wants to be valid must also meet the conditions of a civil transaction. Accordingly, a contract to be valid must satisfy the following conditions:

Firstly, the subject has the civil legal capacity, the civil act capacity in accordance with the established and completely voluntary civil transactions. Subjects participating in civil legal relations, including individuals and legal entities, must have full subject status according to the provisions of civil law. For individuals, the contract is effective when it is consistent with the level of their civil behavior because the nature of the contract is the unity of will and expression of the will of the participating subjects. For legal entities, they must act as subjects when entering into contracts. When participating in these subjects through a representative (legal representative or authorized representative). In addition to the participating subject must be consistent with the established contract, the will of the participating subject must be based on a voluntary spirit, without any influence on the subject's behavior. If the subject performs the act of entering into a contract not based on this principle but may be coerced, threatened, coerced, mistaken, deceived, or at the time of the conclusion of the contract, the subject is not wise, wise, the contract will not come into effect. The subject's voluntariness can be understood as the unity of the subject's inner thoughts expressed through the outside through actions.

Second, the purpose and content of the contract must not violate the prohibition of the law, nor violate social ethics. The purpose of a contract is the benefit the parties want to achieve when it is established. The content of a contract is a summary of the terms committed in the contract, stipulating the rights and obligations of the subject parties. Determining whether a violation of a prohibition of the law or not is based on specific provisions of the law (for example, drug trafficking, rare animals, human organs, etc.) is the subject who is not allowed to perform the acts prohibited by the law, is allowed to do what the law allows. Contracts whose purposes and contents violate the provisions of civil law in particular, the law in general, or are contrary to social morality, shall not acknowledge or give rise to civil rights and obligations for the parties.

Third, the form of a civil transaction is the effective condition of a civil transaction in case it is provided for by law. The parties can agree on the form of the contract orally, in writing or by specific acts. When the parties agree to enter into one of the three forms above, the contract is considered to have been entered into and must comply with the provisions on the content of that form. In some specific cases, the law stipulates that the contract must be presented in writing and must be notarized and authenticated for example: house purchase and sale contract, land use right purchase and sale contract.

Thus, the conditions for the validity of the contract between the Roman Law and the Vietnamese Civil Law are basically the conditions of the participants, the subject's will and the legal provisions for the contract to be legally valid. Version is the same.

According to the provisions of Roman Law, the law stipulates that contracts are concluded in three forms: through ceremony; orally or in writing (The Influence of Roman Law on Vietnamese Civil Law Today, 2017).

Contract form

The contract through ceremony is Jusiurandum liberti which is a form of religious contract, established through oath. This oath is the oath of the free - not yet a slave, before being bought by the owner takes place between the owner and the liberated (freed slave). Means that when the slave is bought by the owner, the slave has to swear before the owner to perform certain duties and work and to work for the owner's benefit, in the case of If the slave violates the obligations sworn by the slave before the owner, the owner can use measures to punish them. When the slave was liberated, this oath created legal value (because the slave had no legal capacity) when they were liberated, these oaths were still valid to ensure what was swore. Before the owner, if there is a violation, the owner shall base on that to take measures to hold them responsible. Therefore, this oath is considered a double oath when bought into slavery and when the slave is liberated (Mihai Olariu, p.2).

Oral contract expressed in question and answer in the presence of witnesse (Mihai Olariu, p.3). Because of its abstraction, legislators have used it solemnly to combat vulgarity and at the same time, obligations expressed in words still have legal value.

Written contracts were sample documents relating to the Roman custom of recording incomes, expenses, and payments. The development of the Roman economy led to the increase of commerce and banking, so to prove legal forms, especially to be evidence, a written contract was born in the form of Sample documents are used mainly in lending activities and buying and selling activities.

The content in the text templates has two columns: registered income is shown in one column called "accepta" and other registered income in the other column is "expnsa". Corresponding to the popularity of the subjects involved in the Roman contractual relationship, the written contract was drawn up in the form of a single collated form called chirigrapha, and other forms were drawn up. With the same number of copies as the subject participating in that contractual relationship is called a syngrapha.

According to the provisions of the Civil Law of Vietnam 2015 in Article 119 stipulating that the actual form of a contract is expressed in three forms: oral (verbal), written, and acts.

Oral form (verbal): is a commonly used form, the parties entering into a contract agree with each other on the basic contents of the contract or implicitly perform certain acts towards the ward and the parties have a degree of trust for each other (friends lend money to each other) or trades and purchases made immediately after the contract is made and terminated.

Written form: In order to improve the authenticity of the committed contents, the parties can write down the contents of the written contract. In this written form, there are cases that are established in writing, the correct form, the notarized or authenticated document is applicable to contracts of a complicated nature, prone to disputes and Objects are assets that the State needs to manage and control when transferred from one subject to another. The contract expressed in this form has the highest evidentiary value, not the highest value. Today, technology 4.0 allows the law to allow contracts to be expressed through electronic transactions, having the same value as paper contracts (Law on Electronic Transactions, 2005) that the parties sign the document, however, for an electronic contract, the parties still have to sign the electronic contract with a digital signature applicable to individuals and organizations.

Form by behavior: The form of a contract entered into by specific acts is shown in a variety of ways. These behaviors are often used to establish common contracts, which are immediately implemented and become common habits in related activities and fields. At the place

where the transaction is established, or the specific behavior is also commonly used in the service activities for the masses for which the service provider has published clear operating regulations. In many cases, when one party is well aware of the content of the offer to enter into a contract from the other party, they show their agreement to enter into a contract by a specific act and have signaled their consent to the other party. If the other party knows, that particular act is also considered as a manifestation of the contract.

Contract classification

Roman law classifies contracts in many different ways, each specific type of contract is determined mainly by the nature of the act performed, and for each type of contract there are special rules and requirements. Its own (Graham Glover, p.3).

From the point of view of the Roman jurists, there were only four types of contract: contract of sale, contract of lease, contract of incorporation and power of attorney (Pham Ngoc Dien, 2006, p.45).

Classification of contracts can also be based on different grounds:

> On the basis of established Roman Law, there are actual contracts, oral contracts, written contracts, and consent contracts.
>
> Based on the characteristics of the sanction, we have a contract of law and a contract of good faith.

Based on the validity of the contract, we have a bilateral contract and a unilateral contract. This is also considered a contract of fact in Roman Law. In which, the bilateral contract includes: deposit contract; property loan contract; mortgage contract. As for the actual one-time contract, it is assimilated with the special one-party contract of real nature - the property loan contract (mutuum). Accordingly, the lender transfers the property to the borrower a number of properties of the same type on the condition that the borrower returns to the lender the number of properties of the same type in the same quantity at a time agreed by the two parties. However, the Roman Law also added that: children in the family are not allowed to borrow money from others, if the person has lent money to a child in a certain family, then there is no right to ask for money back, even does not have the right to ask the head of the household to reimburse him.

In adjudication practice, Roman jurists classified contracts into two types of contracts of fact and contracts of consent. The actual contract is the performance obligation and the liability arising from the moment of delivery. In the actual contract, there is a preservation contract and a loan contract. For a preservation contract, the time when the liability arises is from the date of receipt of the object. In the loan agreement, the borrower must return the same item. In a loan agreement, the borrower must return the borrowed object. Consent contracts, including many forms of legal relations such as purchase and sale, hire of labor, rent of animals, rent of houses, etc., the time when the rights and obligations of this type of contract arise immediately after signing the contract. copper rather than waiting until after giving the object.

Regarding the classification of contracts, according to the current provisions of Vietnam's Civil Law, Article 402 of the 2015 Civil Code on types of contracts mainly includes the following types of contracts:

> **First,** a bilateral contract is a contract where each party has obligations towards each other.
>
> **Second,** a unilateral contract is a contract to which only one party is obligated.
>
> **Third,** the main contract is a contract whose validity does not depend on the sub-contract.
>
> **Fourth,** a sub-contract is a contract whose validity depends on the main contract.
>
> **Fifth,** a contract for the benefit of a third party is a contract in which both parties to the contract must perform an obligation and the third party enjoys benefits from the performance of such obligation.
>
> **Sixth,** a conditional contract is a contract whose performance is contingent upon the arising, changing or termination of a certain event."

The classification of contracts in Roman justice as well as in Vietnamese civil law, although at different historical periods, has certain similarities. The classification of contracts depends on the views of the legislators in different historical contexts, so there are many different perspectives, based on different bases. However, it must be admitted that the classification in Vietnamese civil law also has certain inheritances from Roman law.

Conclusion

Vietnamese Civil Law through the periods up to now has certain inheritances of the contract system from Roman Law. However, it is only inheritance in general provisions, not all, but has certain adjustments. Due to the geographical location, historical development and socio-economic forms, as well as the political regime and policies of the Vietnamese State which are particularly different from the Roman State, there have been certain changes. However, it must be affirmed that the legal thinking in Roman Law is the foundation for Vietnamese lawmakers to base on to study, refer to, apply and adjust to have the current Civil Code.

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