

Reflections on the Application of the English Law's Model of Constructive Trusts to the Handling of Specific Property Relations in Vietnamese Legal Practice*

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Abstract

Contemporary Vietnamese legal practice faces various complex scenarios regarding property relations, wherein equitable outcomes cannot be easily achieved solely through the application of existing civil law provisions. Two major issues that have recently garnered significant public attention are cases involving mistaken bank transfers and the recovery of State assets from corruption-related offenders. Current Vietnamese civil law fails to provide optimal protection for senders in mistaken transfers when funds are automatically deducted by banks to settle the recipient's debts. On the other hand, the confiscation of corrupt assets is frequently hindered by the transfer of ownership to third parties or the disguise of assets within business entities. English law offers an equitable solution through the mechanism of the constructive trust. This doctrine automatically regards the legal holder of property as a trustee holding it for the benefit of the true owner (beneficiary) to prevent unjust enrichment. In cases of mistaken transfers, the recipient holds only legal ownership, while equitable ownership remains with the sender, making the assets immune to seizure by the recipient's creditors. In corruption cases, this mechanism enables the State to trace and recover illicit proceeds, even when transformed or transferred. By adopting the principles of constructive trusts into Vietnam's civil law system, the national legal framework can be strengthened to enhance legal certainty, provide fair protection of property rights, and offer greater flexibility in resolving modern property disputes.

Keywords: Mistaken Transfer of Funds; Corruption; Unjust Enrichment; Abuse of Fiduciary Rights; Constructive Trust

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A. INTRODUCTION

Vietnam had once been a French colony from the second half of the 19th century until the end of the first half of the 20th century. Vietnamese law was profoundly influenced by French law and, generally speaking, by the civil law system. Notably, the Northern Civil Code (enacted in 1931) and the Central Civil Code (issued in parts from 1931 to 1936) were modelled on the Napoleonic Code, spreading the spirit of French law in Vietnamese society. In the field of property law, Vietnamese law adopted the French model.

The concepts of property, assets, ownership rights, possession, property classification, modes of ownership acquisition, and servitude were developed in the French style. After national independence was proclaimed in 1945, there was a period during which Vietnamese property law was influenced by Soviet law, characterised by restrictions imposed on private ownership. However, after implementing the *Đổi Mới* (Renovation) policy in the late 1980s, private ownership was officially recognised and encouraged. Contemporary Vietnamese law has returned to civil law traditions, especially in property law.

In the context of diverse and complicated civil transactions, practice has recognized certain specific situations in which the legal issues involved are addressed in Anglo-American legal systems using the tool of the trust. Meanwhile, Vietnamese law resolves such issues by applying provisions developed in the spirit of the legal culture of civil law countries. It is interesting to compare how Vietnamese law and English law address these same specific issues, and from there to consider the improvement of Vietnamese law.

B. METHODS

The article employs a qualitative research methodology grounded in a juridical-normative approach. Rather than gathering empirical numerical data, the research critically analyzes legal doctrines, statutory provisions, court precedents, and scholarly literature to address gaps in property relations within contemporary Vietnamese law. The normative framework centers on evaluating Vietnamese civil law, anti-corruption legislation, and penal codes alongside the principles of English equity. It incorporates a functional comparative law approach, examining how two distinct legal traditions, Vietnam's monistic civil law system and England's dualistic common law system, resolve identical practical dilemmas, specifically mistaken bank transfers and the recovery of embezzled public assets. Through conceptual and statutory analysis, the authors dissect the limitation of Vietnamese law, where absolute legal title often leaves

transferors and the State with inadequate personal claims (in personam) when funds are auto-deducted by banks or hidden by corrupt officials.

The study applies case-based analysis using landmark English precedents (such as *Chase Manhattan Bank and A.G. for Hong Kong v Reid*) to demonstrate how the equitable mechanism of constructive trusts separates legal title from beneficial ownership. Through qualitative deductive and inductive legal reasoning, the research formulates four normative conditions for adapting constructive trusts into Vietnam's legal system. Ultimately, this qualitative-normative methodology enables the study to propose an equitable legal remedy that prevents unjust enrichment, guarantees proprietary protection (in rem) for mistaken transferors, and provides robust asset-tracing mechanisms for state asset recovery.

C. RESULTS AND DISCUSSION

1. General Observation

Given the increasingly widespread expansion of the digital economy, cashless payment has become prevalent. The adoption of non-cash transactions accelerated significantly during the COVID-19 pandemic, as such methods allowed parties to conduct transactions with minimal risk to public health by avoiding direct contact. Even with the subsidence of the pandemic, these methods have continued to gain traction due to their convenience, particularly amid the rapid growth of e-commerce. Nevertheless, alongside the advantages, specific challenges and risks have emerged. One notable risk associated with cashless payments is the erroneous transfer of funds into incorrect bank accounts, constituting unjust enrichment. This issue arises from various causes, one of the primary ones being users' limited understanding of how to execute transactions on personal mobile devices properly. This is often exacerbated by user negligence, particularly when bank names and account holder names are similar or identical.

In recent years, the Vietnamese government has intensified its anti-corruption efforts in an attempt to streamline the state apparatus and particularly to improve the performance and efficiency of the public service system. Many public officials, including some holding senior positions, have been prosecuted for corruption. Numerous corruption cases have been exposed. In addition to the criminal condemnation of offenders, public concern has increasingly focused on the issue of remedial measures, particularly the recovery of misappropriated

assets. The process of recovering assets derived from corrupt activities poses considerable challenges to competent authorities, who must ensure fairness, equity, and the protection of the legitimate rights and interests of all concerned parties.

2. Specific Case of Unjust Enrichment: Mistaken Transfer of Funds into a Bank Account

According to Tú (2023), Mrs. C, residing in Da Nang city, erroneously transferred VND 3 billion into a bank account held in Mrs. H's name. This account was opened by Mrs. H to repay a loan to the bank. As per the agreement between the bank and Mrs. H, any funds deposited into the account may be automatically deducted by the bank to repay the outstanding loan. Mrs. H had a significant debt with the bank. Upon seeing the account had funds and that Mrs. H's loan was overdue, the bank automatically deducted VND 963 million to reduce the debt. Despite multiple complaints, Mrs H only refunded over VND 2 million to Mrs C, while the refund of the remaining amount of nearly VND 963 million has been claimed in vain.

In a similar case, Ms. T.V. from Bac Giang province mistakenly transferred VND 35 million into the credit card account of an individual named T (San, 2024) Ms. T.V. had previously transacted with this individual. She had saved the account number in her banking application. On the day of the incident, she intended to transfer money to a different person, also named T, but accidentally selected the wrong account. Unfortunately, T's account was tied to a credit card with bad debt status. As a result, when Ms. T.V. made the transfer, the bank automatically used the funds to repay T's credit card debt. Ms. T.V. contacted T to request a refund. However, T claimed to be financially incapable of returning the money and asserted that, since they had not directly used the money, they took no responsibility in the matter.

In both cases, the individuals who mistakenly transferred funds did not initiate judicial civil proceedings to claim reimbursement but instead submitted petitions for police intervention. This type of conduct is held to stem from the entrenched practice of criminalising civil wrong, a trend that has developed and persisted over many years in Vietnam. However, the police declined to intervene, citing that there was no sign of misappropriation of assets necessary for the initiation of criminal proceedings. The involved banks, on their part, stated that they just acted under their agreements with the account holders concerning automatic deductions. Regarding the origin of funds deposited into

the accounts, the banks asserted that they are not obligated to verify such origins and should be considered bona fide recipients. Specifically in Mrs. C's case, as mentioned above, the bank expressed willingness to refund the deducted amount on the condition that the account holder consents; However, the account holder has remained unreachable even by phone call (Cường, 2023).

3. Recovery of Funds Embezzled by a Corrupt Person

There are different remedial measures taken if an individual is found to have engaged in corrupt activities on multiple occasions, specifically embezzling State funds. Investigation results reveal that the individual used the illicitly obtained funds for various purposes, including acquiring assets. According to precedent-setting court rulings, in addition to criminal liability for corruption-related offenses, the individual is also held civilly liable to compensate the State for a substantial sum, deemed equivalent to the value of State assets lost due to the criminal acts.

Under Article 41, Clause 1, Point (b) of the Vietnamese Penal Code, any property or money derived from a criminal offense or obtained through the sale or exchange of such assets shall be confiscated and forfeited to the State. According to this provision, both the money gained from corrupt practices and the assets acquired using such money, including movable and immovable property, are subject to confiscation. However, a significant challenge arises while following the money trail for embezzled State funds. This is because the unscrupulous individuals often convert the funds into other assets such as foreign currency, real estate, gold, or precious stones. Establishing clear and direct evidence linking these assets to the corrupt proceeds is often tricky. On one hand, under the 2018 Law on Anti-Corruption, public officials are required to declare the status and origins of their assets and revenue; however, the law does not prescribe the systematic verification of such declarations. As such, the verification of a public official's asset and income declaration is conducted only in the cases mentioned in Article 41 of the Anti-Corruption Law (Law 36/2018/QH 14 on Anti-Corruption in Vietnam, ratified by the National Assembly), not in all cases. For example, when a person is about to be appointed to a high-level government position, or there are allegations of corruption made against a senior public official, the verification of personal income and asset declarations must be conducted to clarify the situation. On the other hand, individuals facing criminal prosecution are entitled to the presumption of

innocence, and thus are under no obligation to justify the trail of funds alleged to have been obtained through corruption.

4. Legislative approach in Vietnam to balance competing interests

Vietnamese lawmakers have adopted a reconciliatory approach. Initially, a person accused of corruption and required to return illicit assets may voluntarily remedy the consequences by surrendering the assets obtained through corrupt acts. In cases where the individual fails to voluntarily and satisfactorily remedy the situation, asset recovery shall be enforced in accordance with general enforcement procedures, which include asset inventory, seizure, and auction of the convict's property in execution of the court judgment.

In general, applying current Vietnamese law to the situations described above affords solutions that may be regarded as relatively satisfactory; however, such solutions do not comprehensively resolve the underlying legal issues. Notably, an individual whose interests are being enjoyed or utilised by another person is afforded protection only through a claim against that person, and does not possess any direct proprietary rights in the specific property concerned. Accordingly, it is necessary to consider legal mechanisms that offer more effective and comprehensive remedies than those presently available. Among such mechanisms, the trust—particularly the constructive trust—is regarded as a potentially appropriate legal device for addressing these and similar circumstances with greater adequacy.

5. Possibility of the Implementation of Constructive Trust in the Treatment of Specific Cases Relating to Property Rights in Vietnamese Law

According to Long (1922), the Uniform Trust Code Section 103 (19), Trust' means a fiduciary relationship concerning property, subjecting the person who holds title to the property to equitable duties to deal with the property for the benefit of another person. In English law, a trust is held as a legal relationship characterised by one person having and managing property in the capacity of the owner, but for the benefit of one or more other persons. The person who holds and manages the property is called the trustee; the person benefiting from the trustee's holding and management of the property is called the beneficiary. From the property law perspective, the trustee holds legal ownership, while the beneficiary holds beneficial ownership or beneficial interest in the trust property.

In a typical case, a trust involves three actors: (i) Settlor: This is the person who creates the trust. As the property's original owner, the settlor transfers the property to the trustee and sets out the terms under which the trust is to operate. (ii) Trustee: The trustee is the central figure in the trust. This person receives the property under the terms of the trust, holds and manages it as the legal owner, but must comply with the conditions laid out by the settlor, especially the requirement to use the property for the benefit of the beneficiary. (iii) Beneficiary: This is the person (or persons) for whose benefit the trust is established. As a general rule, a trust must serve clearly identified individuals, or at least identifiable ones. The certainty of the object (beneficiary) is one of the key elements of the principle of three certainties established in English trust law for the validity of a trust created by the act of a party (*Knight v Knight, 1840*; Williams, 1940). However, the law does recognise exceptions—such as trusts for the maintenance of graves or the care of pets (Virgo, 2020) which do not benefit specific individuals.

A remarkable characteristic of trust in property law is that the trust assets form a separate legal entity, distinct from the personal estate of the settlor, trustee, or beneficiary (Ugo Mattei, 1998). Personal creditors of any of these individuals cannot reach trust property to satisfy debts. Likewise, creditors of the trust itself cannot claim assets outside the trust that the trustee manages personally.

According to Costigan (1914), trusts are generally categorised into two types: trusts created by the act of a party and trusts created by operation of law. (i) Trust created by act of a party: This is a trust created according to the settlor's intention. The settlor's intent can be clearly expressed through written or spoken words, and such a trust is called an express trust. In some cases, the settlor's intent is not explicitly stated but can be inferred from conduct that establishes the essential characteristics of a trust relationship. Such trusts are called implied trusts. (ii) Trusts created by operation of law: These are trusts created usually through a court ruling. Unlike trusts created by the act of a party, these trusts do not involve a settlor. The trustee holds the property under special circumstances dictated by law. Depending on whether the trustee agrees with the imposed trust or not, these are divided into: (a) *Resulting Trusts*: Considered a type of implied trust by law, where the trustee does not object to the role and the arrangement preserves the typical features of a trust. (b) *Constructive Trusts*: These are imposed as a legal remedy, often against the trustee's will, aiming to restore justice and order. The law enforces this type of trust as a corrective measure. Among the various trust types, the constructive trust is regarded as a legal framework that

can potentially be applied to resolve disputes and legal issues arising in Vietnamese practice, particularly in specific situations as stated above.

A *constructive trust*, as mentioned above, is established as a legal remedy in situations where a person holds one or more assets through improper means. That person is aware of the irregular nature of their possession (Anthony, 2005). A constructive trust may also arise in cases where the holder of the asset is regarded by a third party as the owner, even though the holder personally acknowledges that the asset does not belong to them and has not undertaken any act to profit from it (Diplock, 1848; McLnnes, 2017). When imposed by a court, a constructive trust binds the asset holder to certain obligations toward another person, based on the rationale that the asset holder's possession causes detriment to that other person (Reynolds, 2018). This obligation arises *ex lege* (by operation of law), not by the mutual intention of the parties, especially not by the intention of the beneficiary (Thomas & Hudson, 2021). The rights granted to the beneficiary under a constructive trust are proprietary in nature and enforceable *erga omnes* (against all persons) (*Westdeutsche Landesbank Girozentrale v Islington LBC*, 1996) (*Shell Oil Co. v. Trailer & Truck Repair Co.*, 1987). Additionally, the beneficiary may have a personal right to demand payment from the constructive trustee; if this right is effectively exercised and the constructive trustee makes such payment, the trust relationship is considered terminated (Birks, 1989).

Unlike a resulting trust, a constructive trust does not merely give effect to the intention inferred from the parties' conduct. Instead, it alters the parties' legal position, particularly that of the asset holder, based on equitable principles and judicial intervention (Hudson, 2022). The court imposes a constructive trust to regulate the parties' behavior per legal norms. Therefore, some legal scholars view the constructive trust not as a genuine trust, but as a legal creation or fiction: the claimant is recognized as having an equitable interest in the asset held by the defendant; the defendant is then presented with a choice—either transfer the asset to the claimant, thereby avoiding the creation of any legal relationship between them, or accept the role of a trustee for the claimant's benefit (Penner, 2022).

In the case of common law jurisdictions, courts have recognized various circumstances under which constructive trusts may be established. According to legal doctrine, it is not possible to enumerate all scenarios where constructive trusts might arise (Virgo, 2020). However, common categories include: dishonest dealings involving property; unjust enrichment; breaches of fiduciary duty; and situations where there is a shared intention to create a constructive trust.

(i). *Dishonest transactions involving property.*

A constructive trust may arise where a person holds property in the name or on behalf of another, but subsequently uses that property for personal benefit or the benefit of a third party in a manner inconsistent with the purpose or understanding under which the property was initially entrusted. In such cases, the holder or the beneficiary of such a transaction may be deemed a constructive trustee.

Example 1 (*Foskett v McKeown*, 2001) (*United States v Carter*, 1910) X uses funds transferred by Y as a result of performance of an express trust, together with personal funds, to purchase a life insurance policy. Upon X's death, the insurance company pays out proceeds to X's family. In this case, Y may assert a claim to a constructive trust over a portion of the proceeds, with the trustees being those family members of X who received the insurance payout.

Example 2 (*Lloyds Bank plc v Rosset*, 1991) X and Y jointly contribute funds to purchase a property, although legal title is held solely in X's name. They both reside in the property and share expenses for its improvement. Later, X unilaterally mortgages the property without Y's knowledge. When X defaults and the bank forecloses, Y may assert a constructive trust over the property to recognize Y's beneficial interest arising from financial contributions and cohabitation. Some other relevant cases are (*Stack v Dowden*, 2007), (*Jones v Kernott*, 2011).

In some instances, a person may become a constructive trustee without dishonest intent, due to circumstances that equitably warrant such classification. For example, in *Rose* (1952) Mr. X lawfully transfers shares to his wife via a duly executed instrument, which is submitted to the company. Initially, the company refused to register the transfer, but later did so after the enactment of a new tax law. The tax authority seeks to apply the new law retroactively upon X's death. Given that X had already taken all necessary steps to effectuate the transfer, and the delay was solely due to the company, he is considered to have held the shares as a constructive trustee for his wife pending registration.

(ii). *Unjust Enrichment*.

Where a person knowingly receives a benefit to which they are not legally entitled, the rightful owner may seek a constructive trust over that benefit. Example (*Chase Manhattan Bank NA v Israel-British Bank (London) Ltd*, 1981) A bank mistakenly transfers a large sum to another bank. The recipient bank does nothing improper but accepts and uses the funds. Upon request by the transferor, the court declares the receiving bank a constructive trustee holding the funds for the benefit of the bank that made the mistaken transfer. If a person

who receives property without the legal capacity to hold it uses such property as a means to create another asset, the rightful owner of the original property may request the establishment of a constructive trust over the asset so created. Another example is where A erroneously transfers money into B's account, and B uses those funds to purchase real estate. A may petition the court to impose a constructive trust over the newly acquired property in place of seeking restitution of the mistakenly transferred funds.

(iii). Fiduciary abuse and constructive trust

In a case where a person abuses a position of trust to improperly benefit themselves, a constructive trust may be imposed over the acquired assets. For example, in *(Hong Kong (A.G.) v. Reid, 1993)* A former New Zealand prosecutor working in Hong Kong accepts bribes from specific individuals in exchange for granting them a non-prosecution. He uses the bribes to purchase a parcel of land in New Zealand. Upon conviction, the court imposes a constructive trust, recognizing the Hong Kong government as the rightful beneficiary of the land, because the funds used to purchase the land are proceeds of the abuse of power granted by the beneficiary for the exercise of their public functions. Although this is a contentious area, constructive trusts may also arise as an equitable remedy in commercial transactions involving a breach of fiduciary duties.

For example, in the case of *(Hospital Products Ltd v United States Surgical Corporation, 1984)*. Company A grants exclusive distribution rights for medical equipment in Australia to Company B. From the outset, B intends to use the contract to establish its own competing manufacturing operation. B delays performance under the contract and instead fulfils orders with its products. The appellate court finds that B abused A's trust, thereby breaching fiduciary duties, and imposes a constructive trust over the profits and enterprise. The higher court, however, reclassifies the breach as merely contractual, thus limiting the remedy to damages. Yet, given B's intent to exploit A's reputation from the start, some argue a constructive trust would be a more appropriate and proportionate remedy.

(iv). Constructive trust based on common intention

A constructive trust arising from the parties' common intention is a form of implied trust. This type of trust is established when it reflects the shared purpose of the parties involved. In the case of *(Stack v Dowden, 2007)*, A and B cohabited as husband and wife. They subsequently jointly acquired a house registered in both their names, without specifying their respective financial contributions. After a period of cohabitation, they separated. According to the

court's judgment, A moved out of the house, and B paid A a sum to secure alternative accommodation. A petitioned the court to recognise a constructive trust over the house they previously shared, with A and B both acting as trustees and beneficiaries of the trust.

A constructive trust based on common intention is a special type of trust that originates from the parties' mutual agreement to share the beneficial interest in real property, even though legal title is held by one or more of them. This usually occurs in relationships where a special bond exists, allowing the parties to jointly enjoy the property, such as between cohabiting partners, siblings, and similar close relations. In practice, this type of trust is established on real property, particularly on residential property used as a dwelling by the involved parties.

6. Conditions for constructive trusts

(i) All elements of a trust relationship are present.

A trust relationship established by operation of law under English law falls broadly into one of two categories, as mentioned above: *resulting trusts* or *constructive trusts*. The precise legal conditions for recognising such trusts are not rigidly codified; instead, they are subject to judicial discretion, evolving case law, and the equitable principles underpinning the trust doctrine. The core principle, as we can recognise from analyzing the above-mentioned cases, is that a trust may be implied by law where the person in possession of the property cannot, in the eyes of equity, be regarded as having complete and absolute ownership. Such possession may have arisen from a lawful origin, for instance, where a spouse manages the other spouse's assets—or from an improper one, such as when a person receives funds through a mistaken bank transfer. In these cases, the transferor does not intend to make a gift, nor do they necessarily seek to recover the property outright. Instead, they seek to assert a beneficial interest in the property or to require that it be held and managed for their benefit or another identifiable person's benefit. Accordingly, the recipient may be recognised only as holding legal title subject to a trust obligation to deal with the property in a manner that serves a specific equitable purpose.

(ii). There is a claim by a person with an equitable interest.

A constructive trust must typically be invoked through a claim brought by a person with an identifiable equitable interest. This may be the direct beneficiary, such as the person who mistakenly transferred funds into another's

account and who petitions the court to declare that the recipient holds the funds on constructive trust. Alternatively, the claimant may be a representative acting on behalf of a person entitled to the benefit—for example, a minor or an individual lacking mental capacity—according to rules governing litigation friends and representation in equity. Moreover, in certain circumstances, the beneficial interest may belong to the State, particularly where public assets have been misappropriated or wrongfully retained. In such cases, the competent public authority must bring proceedings on behalf of the State or the relevant government body to assert a trust over the property in question.

(iii). Necessity of a court decision.

A trust arising by operation of law—whether resulting or constructive—requires a court decision. Upon receipt of a properly filed claim, the court will evaluate the evidence in accordance with the civil procedure rules and the principles of equity. No resulting or constructive trust may be recognised unless and until the court delivers a judgment affirming the existence of such a trust and identifying the parties' respective interests.

(iv). Lack of a legitimate title to hold property.

A constructive trust, as known in common law, arises by operation of law, typically pursuant to a court judgment in cases where a person holds property improperly, causing harm to another individual or multiple parties. According to Section 53(2) of the Law of Property Act 1925, a constructive trust does not require the formalities applicable to an express trust. It may be established solely through a court judgment rendered at the request of a beneficiary, the plaintiff. However, for the court to issue a declarative decision of a constructive trust, a fundamental condition must be satisfied: the person designated as trustee must have been aware of the improper nature of their possession of the property (*Westdeutsche Landesbank Girozentrale v Islington LBC*, 1996). If the person was wholly unaware of their lack of entitlement to the property—in other words, if they acted in good faith—they cannot be bound by a constructive trust. Good faith is presumed in favour of the holder of the property; hence, the burden is on the plaintiff to prove that the defendant (i.e., the property holder) knew or ought to have known that their possession was unjustified, to establish a constructive trust over the relevant property.

In addition, in cases where the transferor unjustly holds property despite the regularity of the related transaction, a constructive trust may arise when the intended beneficiary, who usually is the transferee, has taken all necessary steps to effectuate the transfer of property to themselves. Still, the transfer fails for

reasons not attributable to the beneficiary (Rose, 1952). In such circumstances, the transferor is deemed to hold the property in trust, even if they are not at fault. This is because the transferor has voluntarily parted with the beneficial interest, and the transfer has, in substance, been completed.

In cases of unjust enrichment, the key factor is the lack of a legal basis for retaining the property. The person holding the property may or may not be aware that their possession lacks legal justification. Examples include mistakenly transferring funds into the wrong bank account or delivering goods to an incorrect address.

In cases involving abuse of position for illicit gain, it is essential that the advantage gained could only have been achieved due to the individual's particular position. Accepting a bribe is a classic example: absent their position of authority, the person would not have been in a position to solicit or receive the bribe. Another example includes using property entrusted by another as collateral for loans or investments to generate personal profit, such action would not be possible without access to or control over the entrusted property.

In the absence of a claim before the court by a person evoking a beneficial interest for the establishment of a constructive trust on the related property, the person in possession of the property remains a mere holder or *possessor*, without recognition as the complete owner. The reason is that the detention of property by the possessor is not based on a title regularly granted to them. Full ownership may be established anyway in cases where the rightful owner has effectively disclaimed their interest, or where the possessor acquires title through mechanisms such as adverse possession, provided the statutory and equitable requirements are met and there is no competing claim. In English law, If the property held is real property, the sufficient period is 12 years: Limitation Act 1980, Section 15(1). In the case where the property held is personal property, this period is 6 years: Section 3.

Constructive trusts arise in diverse circumstances, but they share the common feature of being non-voluntary: they are not created by the express intention of any party but emerge as an equitable remedy responsive to the situation. The trustee does not voluntarily assume the role but is imposed with fiduciary responsibilities as a form of legal sanction for misconduct or inequitable behaviour. Establishing a constructive trust offers significant practical benefits not only to the beneficiary but also to the parties engaged in transactions involving the trust property. While legal title to the property remains with the trustee, the equitable interest and benefit of ownership accrue to the beneficiary.

Since the legal ownership remains with the person in possession, transactions entered into by them concerning the trust property remain valid and enforceable. The beneficiary holds ownership-like rights over the property, including the right to receive any benefits from it, while, in principle, not being obliged to compensate the trustee with reasonable remuneration (Macadam, 1946). Importantly, the trustee's personal creditors have no preferential claim over the trust property as against the beneficiary's rights. In the event of conflict, the beneficiary's rights take precedence over claims by the trustee's creditors.

7. Use of Constructive Trusts Model for Treatment of Certain Property Relationship Issues in Vietnamese Practice

Remarks on the cases as mentioned above involving conflicts of interest over property

(i). Case of mistaken fund transfers

In cases where funds are erroneously transferred to another person's bank account, the situation is straightforward: the recipient has received a financial benefit without legal grounds and is unequivocally obligated to return the full amount to the sender. If the recipient is erroneous, they may be compelled to return the funds voluntarily through a court ruling or order in a lawsuit for recovery of property. Should the recipient intentionally appropriate the funds, such conduct may amount to the criminal offence of unlawful appropriation of property.

The matter becomes complicated when the erroneous recipient is indebted to the bank managing their account. Upon discovering that a debtor-client has a positive account balance, the bank may unilaterally deduct the funds to recover the debt. Consequently, the recipient may no longer have sufficient funds to return to the sender. If no prior agreement exists between the bank and the account holder permitting the bank to automatically deduct funds for debt repayment, the bank's unilateral action—even if it manages the account—is unlawful. The funds in a person's account are legally their property. If the account holder does not voluntarily repay the debt, any enforcement must be conducted under a court judgment or decision.

Even when a prior agreement permits automatic deductions, this particular deduction raises legal and ethical concerns because the funds do not belong to the account holder—they were transferred by another party erroneously. The question arises as to whether, in this case, the bank may be

regarded as a bona fide third party upon observing that the account of its customer—who is simultaneously a debtor—contains a credit balance. Is the bank entitled to refrain from inquiring into the origin of the funds received by the customer? Or, conversely, should the bank be considered to possess the means and, accordingly, bear the obligation to investigate the origin of the funds transferred into the account under its management?

(ii) Recovery of assets lost to a corrupt person.

The prevailing approach in Vietnam regarding recovering assets derived from corruption is generally consistent with the spirit of current legal norms, particularly in property law. However, in theory, if the corrupt individual does not voluntarily remedy the consequences of their corrupting acts, the recovery of assets derived from corruption is not easy. An example is noted in Vu (2024), where a Vietnamese Court sentenced a real estate tycoon, Truong My Lan (the chairperson of the real estate company Van Thinh Phat Holdings Group) to death in 2024 over her involvement in a 304-trillion-dong (approximately 12.5 billion USD) fraud scandal. The court found the defendant guilty of embezzlement, bribery, and violating banking rules. Owing to the magnitude of the crime, it has been noted as the biggest financial fraud scandal in Vietnam's history. The money was embezzled from the Saigon Joint Stock Commercial Bank (SCB), a financial institution she controlled illegally through proxies. Vietnam regulations limit large shareholding in lenders. She had, among other crimes, secured illegal loans to shell companies. As of the time of the court ruling, Vietnamese investigators were in the process of establishing the hundreds of assets used as collateral for loans and the bonds (the bonds alone were valued at 1.2 billion USD) issued by Van Thinh Phat Holdings Group (Vu, 2024).

Another highly publicized example, according to Reuters (2018), is the case of 71-year-old Hua Thi Phan, who embezzled 278 million USD from the Vietnam Construction Bank (formerly Great Trust Commercial Bank) where she had been a senior board advisor. In its judgement, the court sentenced Hua Thi Phan to 30 years in prison and to pay a further 700 million USD in damages. Hua Thi Phan was ordered to return the money as well as pay additional interest, compensation, and fines (Reuters, 2018).

These two cases are a clear indicator of how determined Vietnam is in fighting crimes related to embezzlement, bribery, and corruption. According to Wong (2024), Vietnam has been waging an aggressive war against corruption since 2016 in a bid to attract more foreign businesses. As the U.S.-China trade war intensified, multinational companies sought to diversify their supply chain. This

situation placed Vietnam in a pole position as a viable alternative to China as a manufacturing hub. However, some multinationals seeking to enter the Vietnamese market faced challenges such as cronyism, runaway corruption, bureaucracy, etc. However, quoting Dan The Duc (managing partner at Vietnamese law firm Indochinese Counsel), Wong (2024) notes that fighting corruption is crucial in enhancing the country's business environment.

According to McKenzie (2025), the National Assembly of Vietnam passed Law No. 86/2025/QH15 amending the 2015 Penal Code. The amended law came into force on 1st July 2025. The law brought about significant changes to the legislation dealing with embezzlement of property (Article 353) and receiving bribes (Article 354). The amendments marked a new progressive approach in combating corruption in Vietnam. McKenzie (2025) further underscores the key amendments included in the law, such as (i) the abolition of the death penalty for embezzlement and receiving bribes.

Clause 4 of Article 353 and Article 354, where the value of the embezzled assets or bribes is VND 1 billion (approximately USD 38,286) or more, or where the property damage caused is VND 5 billion (approximately USD 191,432) or more, the maximum penalty is now capped at 20 years' imprisonment to life imprisonment (McKenzie, 2025).

In the previous law, these offences carried the death penalty. Further, the convicted offender could be barred from certain jobs or holding certain positions for five years. In addition, all or part of their property could be confiscated, and they could also be fined between VND 60 million and VND 200 million. (ii) Vietnam's Law No. 86/2025/QH15, amending the 2015 Penal Code has also revised the previous sentencing regime regarding life imprisonment for corruption-related crimes. The new law stipulates that persons who were sentenced to life imprisonment on or after 1st July 2025 for embezzlement (Article 353), receiving bribes (Article 354) shall only be considered for the reduction of their sentences if they voluntarily surrender at least 75% of the illegally accumulated assets. *Further, they are required to have worked with the authorities in "detecting, investigating and prosecuting crimes, or performed significant meritorious acts"* (McKenzie, 2025). However, it is noteworthy that the amendment reducing life imprisonment to 75% of the original sentence excludes individuals who had been sentenced to life imprisonment for corruption and embezzlement charges before 1st July 2025. On the other hand, persons whose death sentences were commuted to life sentences must serve at least 25 years before they are considered for their first jail term reduction. Also, regardless of any reductions, the actual jail term served must not be less than 30 years. Finally, McKenzie (2025)

notes that Vietnam's Law No. 86/2025/QH15 amending the 2015 Penal Code provides that the new provisions that are favorable to persons found guilty of the crimes of embezzlement and receiving bribes will be applied retroactively. This implies that the favorable penalties effected in the law will be applied for crimes that occurred before 1st July 2025, provided they are *"discovered, investigated, prosecuted or brought to trial after the Amended Law takes effect. Conversely, any provisions of the Amended Law that are less favorable to offenders will not apply retroactively to acts committed before 1 July 2025"* (McKenzie, 2025).

In most cases, the authorities encounter difficulties in tracing the proceeds of corruption because such assets have been clandestinely transferred to others. Moreover, where the corrupt individual has multiple creditors, the determination of the State's rights—as a creditor—is unclear under the current legal framework. Theoretically, the State only assumes the position of an ordinary creditor. No legal provision grants the State priority in claiming assets lost to corruption when dealing with the corrupt individual's property. If the corrupt individual has multiple creditors, the State must share equally in any distribution of assets. This means that if the corrupt individual's assets are insufficient to cover all due debts, creditors, including the State, who claim payment at the same time are paid on a pro rata basis.

8. Trust Law Analogies in Asset Recovery

In the light of equity, which serves as the ideological basis of the English constructive trust doctrine, a person who receives funds by mistake is legally obligated to return the funds to the sender. If they intentionally retain the funds, they may be treated as a "constructive trustee" and held responsible for managing the funds in the best interests of the original owner. For example: (i). If the mistaken recipient deposits the funds in a savings account and earns interest, both the principal and the interest must be held for the sender. (ii). If the funds are used to purchase an asset, the recipient becomes a constructive trustee of the purchased property for the benefit of the sender.

A Constructive trustee may be entitled to reasonable compensation for their management, but ultimately, the property must be returned to its rightful owner. In cases where a third party, such as a bank, deducts erroneously received funds as part of debt collection, legal consequences depend on the third party's knowledge of the source of funds. Suppose the third party knew the funds were not legally the recipient's and still accepted or deducted them under an agreement. In that case, it may also assume the role of constructive trustee, jointly

with the recipient. If the third party acted in good faith without knowledge of the wrongful origin, they may not bear liability, and the mistaken recipient alone assumes full responsibility. It is possible to resolve legal issues arising in a specific situation recognized in Vietnamese legal practice in light of the above-mentioned principles without altering the overarching framework of the positive law.

9. Application of General Principles in the Case of Mistaken Transfer of Funds to a Bank Account

The recipient of mistakenly transferred funds is, or should be, aware that the funds do not belong to them. If such funds are used for any purpose other than returning them to the sender, the recipient may be deemed to have unlawfully appropriated the property. This principle remains true even if the funds were indirectly used, such as when a bank automatically deducts them to repay a loan under a prior agreement with the account holder. That said, the person who made the erroneous transfer also bears some responsibility for the resulting complications. They must take proactive steps to clarify the situation with all involved parties and seek cooperation in recovering the funds. If necessary, the sender should initiate legal proceedings to compel the return of the funds and bear all transactional costs incurred during the recovery process.

10. Application of General Principles in the Case of Recovery of Assets from Corrupt Individuals

The most crucial requirement in this matter is obviously to ensure equitable treatment. First of all, in handling assets derived from corruption, a preventive measure might be considered, according to which public officials must declare the origins of their assets and provide compelling supporting evidence. The law might prescribe that any asset for which no lawful source can be demonstrated is presumed to have been obtained through corrupt means. The corrupt individual has two options: (i) Allow the enforcement agency to seize and auction the asset; or (ii) Voluntarily sell the asset and use the proceeds to compensate for the damage caused. In all cases, the State, as the aggrieved party, is granted priority in receiving the proceeds from the sale of assets suspected to have been obtained from corrupt acts, ahead of any other creditors. Naturally, funds obtained through corrupt activities must be returned to the State. If investigations show that the funds were embezzled from public finances, they must be confiscated. Likewise, bribe proceeds are subject to forfeiture. However, suppose such funds were used to acquire other assets such as real or movable

property in good-faith civil transactions. In that case, the situation should be addressed using principles analogous to trust law under common law systems.

Key legal doctrines might be described as follows: The corrupt individual is obligated to compensate the State for the misappropriated funds; and Transactions that meet legal requirements in both substance and form are considered valid, even if tainted funds were used, provided the counterparty acted in good faith. Based on these doctrines, it is logically held that if the funds used to purchase an asset can be proven to have a legitimate, non-corrupt origin, the buyer retains full ownership; If the funds are presumed corrupt due to unclear origins, the asset remains legally owned by the buyer, assuming a lawful purchase. Still, the buyer, on account of their corruption conviction, is treated as a constructive manager of the asset concerning the State.

A defendant accused of corruption has the option to return the corrupt proceeds. If the corrupt assets are converted into money, the defendant may choose to repay the monetary equivalent. Upon full repayment, the individual may retain ownership of the physical assets derived from the corrupt proceeds. This approach ensures that third parties who enter into legitimate transactions with individuals later found to have committed corruption are not adversely affected, provided they acted in good faith and the transaction met all legal requirements (Son, 2021). These third parties are thus protected under the doctrine of good faith purchaser for value.

D. CONCLUSION

Situations in which an individual possesses or exercises control over one or more assets without holding the requisite legal capacity to be formally recognised as having full ownership rights are relatively prevalent in legal practice. Vietnamese law currently provides a range of traditional legal remedies to address such circumstances, enabling the legal system to achieve particular policy and doctrinal objectives. Representative examples include instances of mistaken payment transfers into bank accounts and efforts to recover assets illicitly acquired through corrupt conduct. However, comparative analysis reveals that applying the *constructive trust* doctrine, as developed within common law jurisdictions, produces substantively different legal outcomes in addressing analogous scenarios. These divergences highlight several jurisprudential and functional advantages associated with constructive trust mechanisms, particularly regarding asset tracing, unjust enrichment, and the imposition of equitable obligations on wrongful holders.

Given these distinctions, the incorporation or at least the critical examination of constructive trust theory within the Vietnamese legal context is essential. A thorough and systematic study of trust law, with particular emphasis on the principles, justifications, and operational structures of constructive trusts, is essential to inform the ongoing development and modernization of Vietnam's legal framework and to enhance its responsiveness to complex asset-holding disputes in both public and private law contexts.

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