

PREFACE

The procedural activities of the Courts are expressed the most clearly at the court session. On behalf of the State, the Court shall adjudicate criminal, civil, administrative cases and the outcome that adjudication shall be expressed through the judgment pronouncement. Accordingly, the judgment is a very important procedural document, directly showing the attitude of the State toward the protection of State's property, collective's property as well as life, property, freedom, honor and human dignity of individuals. With such importance, the Constitution, Law on Organization of People's Courts, Criminal Procedure Code, and Civil Procedure Code all have provisions on the legal value of the judgments. According to these provisions, all legally effective judgments, decisions of the Courts must be enforced and observed by all citizens, agencies and organizations. Individuals, agencies and organizations that have obligation to execute the courts' judgments, decisions must strictly execute them. Within the scope of their respective tasks and powers, the People's Courts, agencies and organizations, which are assigned to execute the judgments, decisions of the Courts must strictly enforce them and take responsibility before law for the performance of such tasks.

With the legal significance and importance of this sort of document, the judgments must be accurate, clear, well-grounded and persuasive. Formerly, the Supreme People's Court has already issued some guiding documents of writing judgments such as:

- Circular No. 2386/NCPL dated 19 December 1961 issued by the Supreme People's Court guiding all levels of People's Courts on writing criminal, divorce and civil judgments;

- Circular No. 01/UB dated 3 March 1969 issued by the Supreme People's Court guiding the writing of the first instance and appellate criminal and civil judgments;

- Circular No. 607/NCPL dated 3 September 1973 issued by the Supreme People's Court disseminating and learning from experience of writing the first instance and appellate criminal judgments;

- Circular No. 96/NCPL dated 8 February 1977 issued by the Supreme People's Court guiding the writing of the first instance civil judgments;

- Official dispatch No. 612/NCPL dated 14 September 1973 of the Supreme People's Court disseminating and learning from experience of writing the first instance and appellate criminal judgments. After having issued this official dispatch, the Supreme People's Court promulgated the sample of first instance and appellate criminal judgment.

In general, those documents above have pointed out a number of essential requirements for the unification and consistency of judgment writing. However, these documents were guided long time ago. Therefore, some of instructions is not appropriate to the currently effective procedural provisions and they are just general, which do not satisfy practical demands in the improvement of judgment writing skill and the requirements of the persons to be entitled to reading judgments.

As we know, the Criminal Procedure Code in 2003 which has come into force since 1 July 2004 and the Civil Procedure Code in 2004 which has come into force since 1 January 2005 all have provisions on the first instance and appellate judgment. The Justice Council of the Supreme People's Court has promulgated a number of Resolutions guiding the application of these Codes to which the samples of judgments has been attached. However, the Resolutions of the Justice Council have just provided a general guidance on the use of judgment samples and have not instructed specifically how to write a judgment.

In order to write judgments consistently, assuring the requirements of accuracy, clearness, enough foundation and persuasiveness, the Supreme People's Court, with the support of Japanese Government within the scope of Technical cooperation project in legal and judicial field of JICA and Professor Iseki, has compiled the Judgment Writing Manual.

The purpose of this Manual is to help judges, especially newly assigned judges to acquire the essential skill in writing judgments.

This Manual also is a material for teaching and learning of judgment drafting skill in Judicial Academy and a useful reference material to be used in law schools.

To obtain these goals, the Editing group of Judgment Writing Manual tries to provide concrete examples, and based on that they analyze the shortcomings of previous judgments and point out the way to correct them.

However, due to the time limit, the members of the Editing Group have too much works so that they cannot satisfy sufficiently the readers' requirements and it is impossible to avoid shortcomings and weaknesses. Therefore, this Manual is just a testing document. After the Manual is disseminated, the Editing Group really appreciates to receive comments from the judges, researchers, lecturers and students in Judicial Academy etc. Based on those comments, the Supreme People's Court shall accomplish and build the Judgment Writing Manual to be an official material guiding judgment writing and become a handbook of the judges, lecturers and students in Judicial Academy indeed.

PART ONE

GENERAL MATTERS

1. CONCEPT, NATURE AND SIGNIFICANCE OF A JUDGMENT

1.1. Concept

Pursuant to Article 1 of the Law on Organization of the People's Courts "...The Courts adjudicate criminal, civil, marriage and family, labor, economic, administrative cases and settle other matters as prescribed by law ..."

According to Article 11 of the Law on Organization of the People's Courts and the correlative articles of the Criminal Procedure Code, Civil Procedure Code, and Ordinance on Procedures for Settlement of Administrative cases, "the Courts shall implement the two-level trial regime. First instance judgments, decisions of courts may be appealed, protested against according to the provisions of procedural law. The first instance judgments and decisions, which are not appealed, protested against within the law-prescribed time limit, shall take legal effect. For the first instance judgments and decisions which are appealed, protested against, the cases must be brought to appellate trials. The appellate judgments, decision shall take legal effect."

In accordance with the provisions above, the judgments in this manual include:

- a. First instance and appellate civil judgments (settle civil, marriage and family, business or trade, labor disputes);
- b. First instance and appellate criminal judgments;
- c. First instance and appellate administrative judgments.

1.2. Nature of a judgment

The judgment is a special kind of procedural document issued by People's Court in the name of The Socialist Republic of Vietnam after the trial finishes and has sufficient main contents as prescribed by procedural laws (Article 224 and Article 248 of the Criminal Procedure Code; Article 238 and Article 279 of the Civil Procedure Code; Article 49 and Article 65 of the Ordinance on Procedures for Settlement of Administrative cases).

The judgment is a kind of procedural documents; when it is issued and takes the legal effect, the decisions in the judgment shall lead to great and very important legal consequences. This is shown that "A person is only considered guilty and subjected to penalty when the judgment of the Court has taken the legal effect" (Article 72 of the Constitution in 1992); if a civil, economic or labor dispute is impossible to conciliate or an administrative complaint that parties cannot reach an agreement on the settlement and request the Courts to settle, such disputes and complaints are only settled and finish when the judgments of the Courts take the legal effect. The judgments of the Courts, which come into force, must be respected by state agencies, economic organizations, social organizations, people's armed

units and citizens; persons and agencies concerned must strictly implement (Article 136 of the Constitution in 1992).

The judgments are different from other documents by State agencies on the procedures and competence to correct and recover mistakes of the judgments. For other documents, if state agencies or persons competent to issue discover shortcomings or mistakes, such state agencies or competent persons can correct and recover those shortcomings and mistakes. The procedures for the correction and recovery of the judgments are very special. Depending on each situation, the mistakes of the judgment are recovered through the appellate or cassational procedures.

1.3. Significance of a judgment

A judgment has a deep educational and socio-political significance. According to Article 126 of the Constitution in 1992, “The People’s Courts, within the scope of their functions, have a task to protect the socialist legislation; the socialist system and people’s right to mastery; properties of the State, community; life, properties, freedom, honor and human dignity of citizens”. Pursuant to Article 1 of the Law on Organizations of the People’s Courts in 2002, “Through their activities, the Courts shall contribute to educating citizens to be loyal to the Fatherland, strictly abide by law, respect the rules of social life and the sense of struggle to prevent and combat crimes and other law offenses. The main function of the People’s Courts is to adjudicate and the trial often ends with the rendering judgments of the Courts on behalf of the Socialist Republic of Vietnam. So, by rendering judgments, the Courts shall implement the political function prescribed by law.

If being a criminal judgment, its’ socio-political significance is shown in the following aspects:

First, the judgment shall show the attitude of the State to offenses and offenders.

Second, the judgment shall be the application of concrete provisions of law with respect to offenders, expressing the criminal policy of the State in the struggle to prevent and combat crimes.

Third, the judgment shall have effect to admonish, educate the offenders and other procedural participating persons as well as all participants at the court session and other persons to know that judgment.

Fourth, the judgment shall be outcome of implementing the socialist legislation in general and the criminal procedural operations in particular.

If being a civil judgment, its’ socio-political significance is shown in the following aspects:

First, with the issuance of the judgment, civil disputes (or marriage and family disputes, or business or trade disputes, or labor disputes) among parties shall be settled.

Second, with the issuance of the judgment, the violation of law shall be determined and lawful rights, interests of subjects shall be restored and protected.

Third, with the issuance of the judgment, the Courts shall perform the function of educating and preventing similar violations.

If being an administrative judgment, its' socio-political shall be shown in the following aspects:

First, with the issuance of the judgment, the administrative complaints shall be settled.

Second, with the issuance of the judgment, if administrative petitions are accepted, the lawful rights and interests of plaintiffs shall be protected. At the same time, we discover and prevent a wrong administrative decision, act of State agencies, officials on public duties.

Third, with the issuance of the judgment, if administrative petitions are not accepted, it shall protect and raise the prestige of State agencies, officials and civil servants.

With such importance the judgment which is executed in accordance with law in the form and content shall have a great socio-political significance when it is publicized.

2. REQUIREMENTS FOR WRITING A JUDGMENT

2.1. To abide by the regulations of law on judgments

When writing a concrete judgment, it should be implemented in accordance with the provisions of law on judgment, specifically as follows:

- When writing a first instance criminal judgment, it must be implemented according to Article 224 of the Criminal Procedure Code;

- When writing an appellate criminal judgment, it must be implemented according to Article 248 of the Criminal Procedure Code;

- When writing a first instance civil judgment (on civil disputes or marriage and family disputes or business or trade disputes or labor disputes), it must be implemented according to Article 238 of the Civil Procedure Code;

- When writing an appellate civil judgment, it must be implemented according to Article 279 of the Civil Procedure Code;

- When writing a first instance administrative judgment, it must be implemented according to Clause 2 Article 49 of the Ordinance on Procedures for Settlement of Administrative Cases;

- When writing an appellate administrative judgment, it must be implemented according to Clause 1 Article 65 of the Ordinance on Procedures for Settlement of Administrative Cases.

2.2. To follow judgment samples and instructions for use of judgment samples

When writing a concrete judgment, it is necessary to check whether a judgment sample and the instructions for use that judgment sample exist or not (the judgment sample and instructions for use of judgment sample are issued by competent agencies). If the judgment sample and instructions for use of judgment samples exist, it must be written in accordance with the sample and instructions for use of sample. If the judgment sample or instructions for use of judgment samples have some unreasonable points, they should be informed to competent agencies without being changed according to opinions of oneself.

Up to this time, the Justice Council of the Supreme People's Court has issued the judgment samples and instructions for use of judgment samples as follows:

- The first instance criminal judgment sample and instructions for use of the first instance criminal judgment sample (issued together with the Resolution No. 04/2004/NQ-HDTP dated 5 November 2004 by the Justice Council of the Supreme People's Court);

- The appellate criminal judgment sample and instructions for use of the appellate criminal judgment sample (issued together with the Resolution No. 05/2005/NQ-HDTP dated 6 December 2005 by the Justice Council of the Supreme People's Court);

- The first instance civil judgment sample and instructions for use of the first instance civil judgment sample (issued together with the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People's Court);

- The appellate civil judgment sample and instructions for use of the appellate civil judgment sample (issued together with the Resolution No. 05/2006/NQ-HDTP dated 4 August 2006 by the Justice Council of the Supreme People's Court).

For the first instance and appellate administrative judgments, until now, the judgment sample has not been issued yet. According to the guidance in sub-section 17.1, section 17 of the Resolution No. 04/2006/NQ-HDTP dated 4 August 2006 by the Justice Council of the Supreme People's Court, the administrative judgment should be presented in similar form of civil judgment sample.

2.3. To express sufficiently, exactly and objectively the content of cases, documents, evidences that are considered and examined at court sessions and argument results

That the judgment must show sufficiently, exactly and objectively the contents of the cases does not mean listing all requirements, testimonies that have some changes then. In the judgment, it must include the summarization of documents, evidences already considered and examined at court sessions and the results of arguments to write the content of the cases. That summarization must

assure the accuracy and objectiveness of the content of the cases (see the instructions for each type of judgment).

The judgment must show sufficiently, exactly and objectively the documents, evidences that are considered and examined at court sessions and the result of arguments, based on which the Hearing Panel shall make decision.

2.4. To express sufficiently, exactly and clearly decisions of the Hearing Panel on each issue to be resolved in the cases

2.5. To ensure the form of judgments

The form of judgments not only abides by the judgment sample but it must also be shown clearly and cleanly.

When being presented, it must assure the unification of font (when using which size, when using bold style, when using italic style etc.) and grammar (regulations of new paragraph, capitalization etc.).

2.6. To ensure the logicity and closeness of judgments

When writing a judgment, it must be ensured the logicity in presenting the issues to be settled in the judgment; it must be ensured the logicity and closeness in the statement of the Hearing Panel.

PART TWO

WRITING OF CIVIL JUDGMENTS

1. WRITING OF THE FIRST INSTANCE JUDGMENTS

When writing a first instance judgment, it must be implemented according to Article 238 of the Civil Procedure Code; it must be written in accordance with the first instance judgment sample and instructions for use of the first instance judgment sample which is issued together with the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People's Court.

The following are concrete instructions to write a first instance judgment.

1.1. Writing of the introduction of judgments

Pursuant to Clause 3, Article 238 of the Civil Procedure Code, “the introduction part of a judgment must clearly state the name of the first-instance court; the serial number and date of the case acceptance; the serial number of the judgment and the date of judgment pronouncement; full names of the Hearing Panel's members, the court clerk, the procurators, expert-witnesses and interpreter; full name and address of the plaintiff, defendant, persons with related rights and obligations; agencies or organizations initiating the lawsuit; the lawful representatives, the defense counsels of the legitimate rights and interests of the involved parties; subject matter of the dispute; the serial number and date of the decision to bring the case to public trial or closed trial; time and place of trial”. This provision is stated in the first instance judgment sample and instructions for use of the first instance judgment sample (issued together with the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People's Court). Therefore, when writing the introduction of judgments, it is necessary to abide by the existing first instance judgment sample and instructions for use of the first instance judgment sample. However, it should be noticed the following points:

a. Sign of judgments

Since the civil cases and civil judgments, in broader sense, include the cases and judgments on civil disputes, marriage and family disputes, business or trade disputes or labor disputes; thus, stating the sign of judgment is very important. The kind of dispute that the Courts have to settle must be determined clearly to state the correlative sign (DS-ST; HNGD-ST; KDTM-ST; LD-ST).

b. Date of judgment pronouncement

Section (3) of Instructions for use of the first instance judgment sample provides that “State the date of judgment pronouncement without discrimination of the cases undergoing first instance trials and ending in one day or undergoing first instance trials and ending in several days”. These instructions should be understood

that when the trial and judgment pronouncement are in the same day, that day shall be stated in section (3). For example, the case was adjudicated and the Hearing Panel pronounced the judgment on 3 May 2005, the date of 3 May 2005 shall be stated in section (3). In cases where the trial happens in several days, the date of judgment pronouncement shall be stated in section (3). For example, the case was adjudicated from 10 May 2005 and on 15 May 2005 the judgment was pronounced, the date of 15 May 2005 should be stated in section (3).

c. Extract on disputed relationship in judgments

Section (4) of the Instructions for use of the first instance judgment sample provides that “follow the instructions for writing extract in section 2, Part I of the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 of the Justice Council of the Supreme People’s Court”.

In order to write the extract correctly as in section (4), first, the kind of dispute that the Courts have to settle must be determined: civil disputes prescribed in Article 25 of the Civil Procedure Code; marriage and family disputes prescribed in Article 29 of the Civil Procedure Code; labor disputes prescribed in Article 31 of the Civil Procedure Code. After determining the kind of dispute, that the disputes belong to which dispute group prescribed in the correlative Clause of correlative Article must be determined and the exact name of dispute in that clause must be stated. For example, “on a dispute on property inheritance”. For cases where the clause is general, the name of concrete dispute should be added according to the provisions of the law adjusting that relationship.

Example 1: In case of disputes on a contract, if it is a civil contract, what is the subject of dispute to be added in the extract? (On a dispute on a civil contract for purchase and sale of property; on a dispute on a civil contract for purchase and sale of residential house). If it is a business or trade contract, what is the subject of dispute to be added in the extract (On a dispute on a business or trade contract for purchase and sale of goods; on a dispute on a business or trade contract for purchase and sale of residential house etc.)

Example 2: In case of disputes on intellectual property rights, technology transfers, if it is not for profit, the subject of dispute to be added in the extract must be determined (On a dispute on intellectual properties rights of copyrights). If you want to make it clearer, it is possible to add the concrete subject in the brackets). For example, on a dispute on a civil contract for the lease of property (car, tractor).

d. Composition of the Hearing Panel, court clerk taking the minutes of a court sessions and representative of a People’s Procuracy participating at court sessions.

It is necessary to follow the first instance judgment sample (issued together with the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People’s Court) and the instructions in section (6), (7) and

(8) of the Instructions for use of the first instance judgment sample. The administration position of the judges, court clerk, and procurator should not be mentioned; the position, occupation of people's assessors should not be mentioned either.

e. Time of trial (from the date of opening trial to the date of judgment pronouncement)

Section (9) of the Instructions for use of the first instance judgment sample (issued together with the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People's Court) provides guidance for each case. The following are ways to state in each concrete case:

- In case the trial begins and finishes on the same day, state "on day ... month ... year ... at ... opens the first instance trial ..."

- In case the trial happens in 2 days and above, if the number of days is not so many, state all days: "on 2, 3 and 4 month ... year ... at ..., opens the first instance trial ..."

- In case the trial happens in continuous days in the same month, state "from day ... month ... year ... to day ... month ... year at ..., opens the first instance trial ..."

- In case the trial happens in several days in different months but they are not continuous, state "in the days from day ... month ... year ... to day ... month ... year ..., opens the first instance trial ..."

- In case the trial happens in several days in different months but they are not continuous (due to day-off or holiday), state "on 30, 31 March and 03, 04 April year ... at, opens the first instance trial ..."

f. Involved parties in the case

In case involved parties are individuals

If involved parties have other name, it is necessary to fill that name in the brackets; if they have a call-name, that name must be filled in the brackets. Regarding the address, it follows the full name without beginning a new paragraph and abbreviating.

Example:

Plaintiff: Mr. Nguyen Van Hoan (other name is Nguyen Van Hai) residing at No. 30 street X, district H, city H.

Defendant: Ms. Nguyen Thi Hanh (other name is Ms. Hai Hanh) residing in hamlet Northern, district Western, province Eastern.

If there are two or more involved parties and they have the same legal status and residential address, their names shall be written first and then the residential address shall be written together.

For example:

Plaintiff: Mr. Tran A, Ms. Le Thi X and Ms. Tran Thi H, residing at No. 25, street X, district Y, city H.

In case involved parties are agencies or organizations

It must be filled the full name of such agencies or organizations. If they have a transaction name, it must be filled in. It is unnecessary to fill the decision on establishment, certificate of business registration etc.

Example: Plaintiff: Ho Guom Xanh Company Ltd. (HOGUXA Company Ltd.) having address at No. 45, street L, district N, city M.

Note:

In the introduction of judgments, when filling the name of an involved party being an agency or organization, it must not be abbreviated but in the case's content and the court's assessment, it is possible to be abbreviated but it must be noted before abbreviation (hereinafter referred to as ...). However, in the decision part of judgments, it must be filled the full name in as in the introduction of judgments.

In case the agency or organization is a disputed party, it is necessary to consider whether law has other provisions on procedure participating status or not to fill in the part of involved party correctly.

For example, in case where a private enterprise is one of party in dispute, according to Clause 2 Article 101 of Law on Enterprises 1999 (Clause 3 Article 143 of Law on Enterprises 2005), "the owner of any private enterprise shall be plaintiff, defendant, or person with related rights, interests and obligations before Arbitrators or Courts in all disputes relating to the enterprise". Thus, if the private enterprise Hoang Long initiates a lawsuit and the owner of that enterprise is Mr. Nguyen Duc Long, the part of involved party must be written as follow:

Plaintiff: Mr. Nguyen Duc Long, owner of private enterprise Hoang Long, residing ...

In case the involved party has a lawful representative or person protecting involved party's lawful rights and interests, after the part of involved party, it must be filled the lawful representative and then the person protecting involved party's lawful rights and interests in.

1.2. Writing of the content of cases and the assessment of Courts

The section of the content and assessment of Courts prescribed in Clause 4 Article 238 of the Civil Procedure Code are shown in the acknowledging and considering part of the first instance judgment sample (issued together with the Resolution No. 01/2005/NQ-HDTP dated 31-3-2005 by the Justice Council of the Supreme People's Court); specifically, the content of cases shall be written in the "acknowledge" part and the assessment of Courts shall be written in the "consider" part of the first instance judgment sample.

1.2.1. Writing of the “acknowledge” part (the content of the case)

Pursuant to the spirit of Clause 4 Article 238 of the Civil Procedure Code, the “acknowledge” part (the content of the case) must state lawsuit claims of the plaintiff (the lawsuit of the agency or organization); requests, counter-claims of the defendant; independent claims of persons with related rights and obligations. This provision is shown in section 24 of the Instructions for use of the first instance judgment sample (issued together with the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People’s Court).

The requirement for writing this part is to summarize all claims and proposals of involved parties sufficiently and logically without describing the happenings in accordance with the statement of involved parties. In case where some involve party withdraws, supplements or changes their claims, proposals and they are accepted, they shall be summarized to state the final claims and proposals of involved parties to courts. It must be stated involved parties’ claims and proposals correctly and objectively. It is necessary to begin a new paragraph when finishing each kind of concrete claims and proposals.

The following is the way to write the “acknowledge” part (the content of the case) for each subject (involved party) in some concrete cases:

a. As to plaintiffs

** In case plaintiffs make claims and proposals in lawsuit petitions*

Example: In the lawsuit petition on day... month... year... and the statement in the course of settling the case as well as in the first instance trial, plaintiff - Mr. Nguyen Van A states that the plaintiff and defendant - Mr. Tran M have a civil contract for purchase and sale of property (car). The plaintiff has handed over the property (car) to the defendant but the defendant violates the obligation to perform the contract (obligation of payment). The plaintiff initiates a lawsuit to request the courts to:

- Force defendant – Mr. Tran A, to pay the deficit amount to purchase the vehicles being X dong.

- Force the defendant to bear the interest rate for delayed payment of deficit to purchase the vehicles being Y dong from ... to ...

** In case plaintiffs change or supplement requests after having submitted lawsuit petitions and they are accepted by the Hearing Panel.*

Example: In the lawsuit petition on ... and the petition to ask for change (supplementation) of lawsuit petition on ... as well as the statements (some statements) in the course of settling the case and at the court session, plaintiff - Toan Thanh Company Ltd. states ...(summarize the fact and disputed matters). The plaintiff initiates a lawsuit and requests the courts to settle:

-..... } (state concrete requests)
-..... }

** In case more than one plaintiff initiate a lawsuit at the same time*

Example: In the lawsuit petition on ... submitted by the involved parties who are Mr. Nguyen Van Nam, Mr. Nguyen Tran Bac and Ms. Nguyen Thi Xuan and the statements (some statements) in the course of settling the case as well as at the first instance court session, the plaintiffs state that the co-plaintiff's parents, Mr. Nguyen Van Dong and Ms. Le Thi Ut, have four children including Nguyen Van Nam, Nguyen Tran Bac, Nguyen Thi Xuan and Nguyen Chien Thang. Mr. Dong died on ...; Ms. Ut died on ... When they were alive, they had properties including ... When they died they did not leave any testament and their properties are managed by Mr. Nguyen Chien Thang. The plaintiffs initiate a lawsuit to request the courts to divide the inheritance according to the provisions of law (or divide the inheritance as follows: ...)

* In case plaintiffs initiate a lawsuit and authorize other persons to participate in the procedures in the course of settling the case

Example: In the lawsuit petition on ... and in the course of settling the case as well as at the first instance court session, plaintiff, Mr. Tran T, and the plaintiff's lawful representative, lawyer Pham M, (representative in accordance with authorization paper dated ...) all present... (Summarize the fact and disputed matters). The plaintiff initiates a lawsuit and the lawful representative of the plaintiff request the Court to settle:

- }
 - } (State concrete request)
 -

b. As to defendants

* In case defendants make counter-claims

In case the defendant agrees with requests of the plaintiff and makes counter-claims.

Example: In the counter-claim dated ... and the statements (some statements) in the course of settling the case as well as at the first instance court session, defendant, Ms. Tran Thi Thanh, agrees that requests of the plaintiff are correct but she also states the plaintiff borrows her 200,000,000 dong and promises whenever she requests the plaintiff shall pay her. She already requested but the plaintiff did not agree to deduct from the sum of money that she owed the plaintiff due to the liquidation of contract. Ms. Thanh requests the Court to:

- Force the plaintiff to pay her 200,000,000 dong back;
- Deduct the money that the plaintiff has to pay her from the sum of money that she has to pay the plaintiff back.

* In case the defendant does not agree with requests of the plaintiff and has counter-claims

Example: In the counter-claim dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, defendant, Ms. Le An, does not agree with the requests of the plaintiff for the reason of ...

(state the reason). Ms. An also presents the plaintiff himself bought a car from her but he just paid 150 million dong to her and promised to pay the rest after one month. Until now, it is 3 months but the plaintiff has not paid her back yet. Ms. An requests the Court to:

- Not accept the requests of the plaintiff;
- Force the plaintiff to pay her 100 million dong for buying-car loans and slowly paid interest in accordance with the provisions of law.

* *In case defendants agree with a part of plaintiffs' requests and make a counter claim*

Example: In the counter-claim dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, defendant, Mr. Nguyen Mai, agrees with the plaintiff's requests for... (State the plaintiff's requests recognized by the defendant) and do not agree with the plaintiff's requests for... (State the plaintiff's requests not recognized by the defendant). Mai also presents (State the matters that the defendant makes the counter-claim on). Mai requests the Court to settle:

-
 -
 -
- } (state concrete requirements)

* *In case defendants do not make a counter-claim*

- In case the defendant agrees with the plaintiff's requests, just state the reasons for not performing obligations.

Example: In the document dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, defendant, Ms. Van Anh, agrees that the plaintiff's requests are correct. The reasons for not performing obligations presented by Ms. Van Anh are ... (state the reasons).

- In case the defendant does not agree with the plaintiff's requests and states the reason for not approving.

Example: In the document dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, defendant, Mr. The Thai, does not agree with the plaintiff's requests (statements). He states that ... (state the reasons for not approving).

- In case the defendant agrees with a part of the plaintiff's requests.

Example: In the document dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, defendant, Ms. Thu Trang, agrees with the plaintiff's requests for ...(state the plaintiff's requests accepted by the defendant). For the plaintiff's requests for ... (state the plaintiff's requests not accepted by the defendant), she does not agree for the reasons ... (state the reasons for not approving).

c. As to persons with related rights and obligations

* In case persons with related rights and obligations make independent requests

Example: In the document dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, person with related rights and obligations in the case, Mr. Tran Mai, presents that ... (state the reasons for having independent requests). Mr. Tran Mai requests the court to settle:

-
- } (state concrete requests)
-

* In case persons with related rights and obligations do not make any independent requests

- In case the persons with related rights and obligations are on the side of the plaintiffs.

Example: In the documents dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, person with related rights and obligations in the case, Mr. Phan Binh, agrees with the statements and requests of the plaintiff. Mr. Phan Binh also additionally presents that ... (state the concretely additional statements of Phan Binh) and requests the court to settle:

-
- } (state concrete requests)
-

- In case persons with related rights and obligations are on the side of the defendants.

Example: In the document dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, person with related rights and obligations, Ms. Minh Nguyet, agrees with the statements and requests of the plaintiff. Ms. Minh Nguyet also presents ... (state the concretely additional statements of Ms. Minh Nguyet) and requests the court to settle:

-
- } (state concrete requests)
-

- In case persons with related rights and obligations do not agree with the requests of plaintiffs and defendants.

Example: In the document dated ... and statements (some statements) in the course of settling the case as well as at the first instance court session, person with related rights and obligations in the case, Mr. Tran Hoan presents ... (state Mr. Tran Hoan's statements) and requests the court to settle:

-
- } (state concrete requests)
-

1.2.2. Writing of the “consider” part (assessment) of Courts

a. Purposes and requirements

This is the part of analysis and assessment of the Hearing Panel on the details and evidences submitted by the involved parties, which is compared with the law to make a decision on accepting or not accepting the requests and proposals of involved parties and persons who protect rights and interests of involved parties.

Whether a judgment can persuade the involved parties or readers or not shall depend on this consideration part. Since it show the point of view, evaluation and assessment of the Hearing Panel toward the requests of involved parties. Therefore, it should be noted the following points:

First, only use the details, facts and evidences in the case file (submitted by the involved parties, verified and interrogated by the courts etc.)

Second, not miss the assessment of all details, facts being the grounds for the requests that the plaintiff has asserted. For example, in the dispute on a loan, if the involved party also has requests for payment of the interest arising from the delayed implementation of payment obligations in addition to requests for payment, this matter must be judged in the judgment.

b. Writing of the “consider” part

- Normally, the consideration part in the first instance judgments shall present the assessment of the Hearing Panel on each request of the plaintiff, then the counter-claim of the defendant, independent requests of the persons with related rights and obligations. However, depending on disputed legal relations, if the plaintiff has different requests as prerequisites for other requests and the requests if approved will affect the others, the assessment of the Hearing Panel on the requests before must be raised in the consideration part.

Example: In a divorce case, the plaintiff requests the Court to settle all three relationships including marriage, children and property. In this situation, the request for divorce of the plaintiff must be judged first because if the Court does not accept that request, the other ones for children and property shall not be accepted and judged.

If the Court accepts the plaintiff’s divorce, it is necessary to judge the requests for bring up the children because if the Court assigns someone to bring up the children, it will affect the division of common property. For example, if the children are brought up by the wife while the wife meets difficulties in setting up a new residence, the house shall be possibly shared for the wife etc. Or in a dispute on a contract for property loan, the plaintiff requests the defendant to pay the money borrowed from him/her and the interest of overdue loan. In this case, it is necessary to judge the original amount of money borrowed by the defendant, which the plaintiff requests for, exists or not; if any, how many it is. After that the request for paying interests by the defendant shall be judged.

- For cases with the defendants’ counter-claims, if accepting the defendants’

counter-claims, which leads to the elimination of the plaintiffs' requests, it must be judged the counter-claims of the defendants first.

Example: The plaintiff requests the defendant to return house, pay the deficit rent and compensate for damage due to demolishing the plaintiff's house. The defendant requests the court to recognize the contract for purchase and sale of that house.

In this situation, the consideration part must mention the assessment on the counter-claim of the defendant first because if the counter-claim of the defendant is accepted, obviously the requests of the plaintiff shall be rejected. If the defendant's counter-claim is rejected, at that time, the plaintiff's requests shall be judged in turn.

- For cases with disputes on procedures such as jurisdiction, statute of limitation etc, it must be judged the procedures before the content.

Example: The defendant requests the Court to suspend the settlement of the cases because the prescription has expired or they are not under the jurisdiction to settle of the Court. In this situation, the consideration part in the judgment, firstly, must mention the assessment of the Hearing Panel on the plaintiff's requests. Only when the plaintiff's requests are not accepted by the Hearing Panel, the requests of the defendant shall be considered. Where the trial opens in the involved parties' absence, the Hearing Panel must state the reasons in the judgment.

- In order to accept or not to accept the involved parties' requests, it must be based on truthfulness, clear grounds of details of the case and provisions of law regarding the concrete requests of involved parties.

Normally, in the consideration part of the judgment, it is necessary to state the assessment of the Hearing Panel on details of the cases first and then the application of law.

Regarding all details relating to the settlement, the consideration part of the judgment must state the assessment of the Hearing Panel on them. In the case, there are details and facts that involved parties have disputes and there are details and facts that involved parties do not have disputes. Therefore, the assessment on these details is different.

For details and facts that are not disputed by involved parties (the details and facts that are presented by one party and another party recognize or does not oppose), according to Clause 2 Article 80 of the Civil Procedure Code, such details are not required to be proved by evidences. Thus, although involved parties present evidences to prove such details, judges do not need to use those evidences to analyze and assess whether those details exist or not. For example, the plaintiff asks the defendant to return 100 million dong. The plaintiff presents a contract of money loan with the signature of the defendant and it is observed by the witness A that the defendant fully receives 100 million dong etc.

Where the defendant admits to borrowing 100 million dong with interest from the plaintiff but he/she does not accept the plaintiff's requests for the reason that he/she has paid that sum of money to the plaintiff and presents the witness Y and X

observing the defendant's payment, the judges shall not need to use the evidence, which is the debenture with the signature of the defendant and is certified by the witness A that the defendant has fully received the sum of money, to judge that the plaintiff has lent and received the sum of money from the defendant. At that time, the judges must use the evidence to judge whether the defendant already returns money to the plaintiff or not; for this reason, the consideration part just state as follows:

Considering the request for 100 million dong of the plaintiff that at the trial, the defendant did not protest the plaintiff's request. Pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court affirmed that the defendant had loaned and received sufficient 100 million dong. However, the defendant thinks that he/she already paid that amount to the plaintiff; but the evidences submitted by the defendant and collected by the Court show that ...

After that, the evidences submitted by the defendant shall be analyzed and assessed.

Note: Before the Civil Procedure Code comes into force, the Ordinances on procedures for settlement of civil cases, economic cases, and labor cases do not prescribe the details that are not required to be proved. So even in a case where the details are not in dispute, judges still have to use the evidences to determine such details. For those cases, the judgments are often written:

Based on the debenture with the defendant's signature in the records No....; based on the statements of the witness A in the records No.... it is well-grounded to conclude that the plaintiff lent the defendant 100 million dong ...

The assessment above not only makes the judgment longer but also makes readers feel the Court have used the documents, evidences collected before the trial, not the documents and evidences examined at the trial. And those documents and evidences submitted by the plaintiff have not shown whether the defendant opposes or not oppose such evidences. Now, this way of assessment is no longer consistent with the new provisions of the Civil Procedure Code.

For details in dispute, judges must present the assessment based on the documents, evidences submitted by the involved parties or collected by the Court.

In case where there is only one detail but the involved parties present more than one evidences to prove, in principle, it is possible to use all evidences. However, if the judges think some evidences among the evidences submitted by the involved parties are sufficient to prove whether that detail exists or not, the judges are not required to use all evidences for proof.

For example, in a dispute of ownership rights over residential house, the plaintiff requests the Court to recognize the plaintiff's ownership rights over residential house and force the defendant to return the house for the reason that the plaintiff does not have the household register, therefore, he/she asks the defendant to buy on behalf of him/her. The plaintiff presents the receipt for payment with the amount in accordance with the amount paid by the defendant to buy the house with

the defendant's signature. The written agreement states when the plaintiff has a household register, the defendant shall make procedures to transfer the ownership rights over residential house to the plaintiff.

The witnesses including Mr. A, B and C observe that the plaintiff hands money over to the defendant.

The defendant does not agree to return the house to the plaintiff for the reasons:

The defendant does not admit the buying of house on behalf of the plaintiff.

The defendant presents the contract for purchase and sale of house between the defendant and Mr. C certified by the public notary.

In this case, the detail that the defendant buys the house of Mr. C is the detail that is not disputed by the plaintiff; thus, pursuant to Clause 2 Article 80 of the Civil Procedure Code, it is not required to be proved. In the consideration part of the judgment, the assessment of the Hearing Panel on this detail must be written first. (See section 3.4 for the concrete writing method)

For the detail that the plaintiff asks the defendant to buy the house for him/her, in order to prove the truthfulness and clear grounds, it must be based on the evidences:

- Written agreement between the plaintiff and defendant on buying house for the plaintiff (Whether the signature in the written agreement is the defendant's one or not).

- Receipt for payment (Whether the signature in the receipt for payment is the defendant's one or not).

If it is well-grounded to determine the signature in the two documents above belongs to the defendant, for example, an expertise document concludes the signature in the two documents above is the defendant's one, it is enough to conclude that house is bought by the defendant by the plaintiff's money and with the purpose of buying that house for the plaintiff with those two documents. Therefore, the judges do not need other evidences. But if there is no receipt for payment of the defendant or that receipt is expertised that it is not the signature of the defendant, it must be used the statements of the witnesses.

In case of using the statements of the witnesses, the judges must assess the truthfulness and objectiveness of such statements, for example, the witness has what relation with the plaintiff, defendant; the statements of witnesses have some conflicting points or not; how the witness knows about the hand-over of money between the plaintiff and defendant etc. Assessing the truthfulness and objectiveness of the witnesses' statements is inner feelings of members of the Hearing Panel, it is unnecessary to show such assessment in the judgment.

- In case where the involved parties show different point of views on the same detail or fact, the consideration part must state clearly why the Court accepts the viewpoint of this involved party other than one of another involved party. The judges must analyze and assess the evidences submitted by both side of involved

parties and ones collected by the Court. Based on that, the Court's viewpoint shall be stated. It should not be shown only the viewpoint of involved parties and then assessed that the viewpoint of this side is well-grounded to be accepted and one of another side is not well-grounded to be accepted.

Example: In a labor case on labor discipline

The employer dismisses the employee who is absent without authorization from work for 28 days.

The plaintiff (employee) initiates a lawsuit to request the abrogation of dismissal decision and force the defendant (employer) to reinstate the employee. The reason raised by the plaintiff is that he/she already asks for the employer's permission to have unpaid vacation to take care of mother being ill. The employee submits the medical report book and discharge paper of the employer's mother, and the total number of the day in hospital is 25 days.

The defendant submits an official dispatch replying to the plaintiff that they do not allow taking unpaid vacation. At the trial, the defendant only agrees to pay the subsidy for the plaintiff.

In this case, it must be considered whether the employee violates point c Clause 1 Article 85 of the Labor Code or not (absent without authorization and without a plausible reason from work for five days in a month or 20 days in a year). Accordingly, it must be based on the evidences submitted by the involved parties to analyze whether the plaintiff being absent from work is accepted by the defendant or not.

On this point, it should be analyzed as follows: the plaintiff thinks that he/she has already asked to be absent from work without payment but he/she cannot prove that the defendant has agreed. While the defendant already proves that they have the official dispatch replying to the plaintiff that they do not allow being absent and the plaintiff already receives this document. Hence, the plaintiff is absent without authorization from work in 28 days.

The second point required to be proved is that the plaintiff is absent without authorization from work with or without a reason. This point must be based on the provisions of law to analyze. According to Clause 2 Article 1 of the Decree No. 33/CP dated 2 April 2003, that employees are absent from work to take care of relative being sick confirmed by lawful health establishments shall be considered as a plausible reason.

According to the medical report book and discharge paper submitted by the plaintiff, the defendant does not oppose, so it is well-grounded to conclude that the plaintiff is absent from work with a reason in 25 days. Therefore, the plaintiff just is absent from work without authorization and without a plausible reason in 3 days. Consequently, that the defendant decides to dismiss the plaintiff violates point c Clause 1 Article 85 of the Labor Code.

- In the case with many details and facts which relate to the settlement of the case, the judges must consider the evaluation and assessment on such details in the

consideration part of the judgment. If missing any detail, it may lead to wrong settlement of the case. For example, in a divorce case, when the wife asked for payment for her effort contribution in the common property of the family, the detail that the daughter-in-law helped the family to do sideline or the detail that the wife took care of children so that the husband could keep his mind on his main works in the family plays an important role in settling the woman's rights.

- The presentation of evidences should be brief and it does not require all cases to have sufficient content. For the evidences withdrawn from the materials or written documents such as on-site appraisal minutes, evaluation minutes, expertising minutes, confrontation minutes etc., it is just presented the name of written document (Record No.). These materials must be examined at the trial, thus, it must be stated clearly that they are checked at the trial already. If involved parties oppose but they cannot present evidences for the opposition, it must be stated clearly.

Where it is essential to cite the content of evidences to analyze, it must be cited briefly but sufficiently and accurately.

Example: At the trial, the defendant declares that he/she has never asked for borrowing money from the plaintiff but in the record No..., the defendant declares that he/she has asked for borrowing money from the plaintiff and the plaintiff has agreed but has not handed money over to the defendant ...

Or: In the on-site minutes (Record No...), the Court deems that it is possible to divide for each involved party a part of the house although its area is small...

c. Citation of laws

- After analyzing the details and facts submitted by the involved parties to prove their requests are lawful, the consideration part of the judgment must cite the legal norms adjusting the relationships.

If citing provisions of laws or ordinances it must be stated the point, clause and article of such legal documents. However, where involved parties also state such articles to prove their requests are right but in fact, they do not understand the content of the articles, which makes the court to explain them to understand the laws, it must be cited the content of such articles.

Where the same objects are prescribed by more than one law in different years (for example, the Labor Code in 1994, Labor Code amended and supplemented in 2002; Civil Code in 1995, Civil Code in 2005), when citing the articles in legal documents which were amended and supplemented by the following legal documents etc. it must be stated the year when such legal documents are issued. For example, Article 208 of the Civil Code in 1995, Article 108 of the Labor Code in 1994.

If citing by-law documents such as Decrees, Circulars, Resolutions etc. it must be stated the sign of documents, agencies issuing documents and titles of those documents. If those documents are not prescribed as points, clauses or articles

concretely, it should be cited the content that the Court uses to assess the involved parties' requests.

For example, the involved parties are in a dispute on property on land which is not granted certificate of land use rights. In order to settle this dispute, the Court must cite the Resolution of the Justice Council of the Supreme People's Court. In this situation, it must be stated clearly as follows:

According to point a, sub-section 1.4, section 1 Part II of the Resolution No. 02/2004/NQ-HDTP dated 10 August 2004 of the Justice Council of the Supreme People's Court guiding the application of law in the settlement of the civil, family and marriage cases, "Where involved parties have documents of the competent People's Committee ..., the Court must settle the request for inheritance division which is the property pertaining to land and use rights over that land".

Only the documents prescribed in the Law on legal normative document promulgation are cited. For the documents not prescribed in the Law on legal normative document promulgation, the Court can apply the spirit of such documents but must not cite them in the judgment. For example, the Annual summary report of the Court branch presents the direction to settle some kinds of case there, so the judges can apply it for the assessment in the settlement of concrete cases but in the judgment, it must not be written as according to the Report... or based on the Report...

- The provisions of law which do not have decisive significance for the settlement of the involved parties' requests must not be cited. For example, for disputes on contracts for property loan do not need citing the concept of a contract for property loan; disputes on contracts for purchase and sale of property do not need citing the concept of a contract for purchase and sale of property; disputes on labor contracts do not need citing the concept of a labor contract etc.

- For contracts signed between parties which are not legal document but they show the involved parties' will in accordance with the provisions of law, the parties must strictly comply with the provisions in the contract. In case of analyzing whether involved parties comply with the provisions in the contract or not, such provisions must be cited concretely.

- For disputes on labor outside labor contract, in many cases, the Courts must base on the collective labor agreement, labor regulations to settle the case. Where the regulations of the collective labor agreement or labor regulations must be applied to analyze or evaluate whether employees or employers violate the collective labor agreement or not; or the regulations of the collective labor agreement are applied to settle the rights and interests for involved parties it must be cited concretely the regulations of the collective labor agreement used by the Court.

Only provisions in the civil, commercial or trade, labor contracts, collective labor agreement, labor regulations should be cited when analyzing each concrete

action of involved parties or when applying them to settle each concrete request of involved parties. It should be avoided the situation that some judgments cite a series of regulations in contracts and collective labor agreements but they do not mention which action of involved parties violates which regulations in the contracts or collective labor agreement.

Note:

- In the case with lawyers protecting involved parties' rights and interests (not representatives); if the lawyers, at the trial, raise some points that have not been presented by the involved parties, it is necessary to analyze and assess such points. If the lawyers are the involved parties' representatives, their point of views are the involved parties' ones.

- If the procuracy participates in the court session, it must be assessed viewpoints of the procuracy, especially when the court denies viewpoints of the procuracy, it must be stated the reasons clearly.

- The consideration part of the judgment must state rights and obligations of involved parties specifically such as what properties to be received, quantity, weight, area etc. Fro example, the plaintiff is entitled to receive the following assets: bicycle worth...; motorbike... worth...; 100m2 of land... worth... The total value the plaintiff receives is... The defendant is entitled to receive the following assets: ... The plaintiff must reimburse the disputed amount of X dong to the defendant.

Or, the defendant has to compensate the plaintiff...for the hospital fees of X dong; for lost income of Y dong within ...days in hospital. The total amount the defendant must compensate the defendant is H dong.

- Regarding court fee:

Court fee shall be considered after rights and obligations of the involved parties are determined specifically.

Where involved parties are exempted from court fee, it must be stated the reasons clearly.

It must be stated what legal documents to be based on to calculate court fee and it must be calculated the level of court fee concretely that the involved parties have to pay.

d. Expression of the “consider” part in some concrete cases

The consideration part of the judgment must not summarize the content of the case but comes straight on the assessment on details and requests of involved parties.

For details, requests that are not disputed by involved parties, it must be shown the confirmation of the Court with respect to such issues immediately and then assessed the details in dispute according to the requests of the plaintiff, defendant and persons with related rights and obligations.

For example:

d.1. In a divorce case, if the parties do not dispute about the process of marriage, children the consideration part can be written as follows:

Today, at the trial, the plaintiff and defendant agreed on marital status and common children. In year..., the conflict appeared between the two parties. According to Article 80 of the Civil Procedure Code, the Hearing Panel confirms this is true.

Then the request for divorce of the plaintiff shall be assessed by analyzing the details presented by the plaintiff and defendant to conclude whether the request for divorce of the plaintiff satisfies the grounds for divorce as prescribed in Article 89 of the Marriage and Family Law or not.

Due to the conflict among details presented by the plaintiff and defendant, so, it must be used the evidences for the assessment.

Example: The plaintiff (husband) thinks the defendant often left home for pleasure and did not take care of their children; when the plaintiff commented, the defendant said crudely to him etc. The plaintiff's statement above is corresponding to the statement of the witness X and Y. Thus, it is possible to believe the plaintiff's statement is true.

It only should be assessed whether the details which are the grounds for the Court to conclude the spousal relation between the plaintiff and defendant

It only should be assessed whether the details being bases for the Court to conclude the spousal relation between the plaintiff and defendant are well-grounded for divorce as prescribed in Article 89 of the Marriage and Family law.

Note:

- Avoid writing words insulting the involved parties such as actions of ... expressing a depraved lifestyle etc. or the plaintiff (defendant) did not show parental morality to their children etc.

- Avoid quoting verbatim involved parties' statement which affects the honor, dignity of each other. If it is necessary to use these details to prove the conflict between the plaintiff and defendant to be serious etc., it is just written the plaintiff (defendant) had crude or inappropriate words which affect the honor, dignity of the defendant (plaintiff).

After finishing the analysis, the Court's conclusion shall be stated as:

- Spousal status between the plaintiff and defendant is serious, the couple no longer can live together and the marriage purposes cannot be achieved. Pursuant to Article 89 of the Marriage and Family Law, the request for divorce of the plaintiff shall be accepted.

- Although the plaintiff and defendant have some conflicts, it is just temporary; the defendant can resolve such conflicts. Moreover, the defendant still loves the plaintiff etc. Thus, the request for divorce of the plaintiff has not satisfied the provisions in Article 89 of the Marriage and Family Law; therefore, it shall not be accepted.

Where the Court permits a divorce they shall continue assess the requests of involved parties relating to children and property.

For request for raising children

- In case the parties have not reached an agreement on raising children.

In this situation, normally, Courts shall accept the agreement of involved parties if this agreement is in accordance with law and children's aspiration (the children aged full 9 years or older) but it must be considered the economic capacity of the person in charge of raising children. If the economic capacity of the person raising children has some difficulty, it must be forced the other party to support. In this situation, the consideration part can be written as follows:

Regarding the request for raising children of..., at the court session today, the involved parties have reached an agreement that the defendant... shall raise...; this agreement is corresponding to the aspiration of... Pursuant to Clause 2 Article 92 of the Marriage and Family Law, the Court accepts the involved parties' requests. Although defendant... did not request plaintiff... to support raising children, it deems that the economic capacity of defendant... is more difficult than plaintiff...; therefore, it should be forced plaintiff... to take responsibility to support the children ...dong per month.

- Where parties have dispute on raising children.

In this situation, it must be analyzed who raising children shall ensure the comprehensive interest of the children. For example, the economic capacity, profession, lifestyle etc. of the wife or husband, age of the children. For children aged full 9 years or older, it must be considered the children's aspiration to live with mother or father. Therefore, the consideration part can be written as:

At the court session today, plaintiff... and defendant... all request for raising children but deeming that the plaintiff often goes on business far from home while the defendant is a teacher of... and works stably. The child... aged 5 years need the supervision and care of parents. For the comprehensive of child..., according to Clause 2 Article 92 of the Marriage and Family law, the Court sees it is necessary for child... to be raised by the defendant...

Plaintiff... has economic capacity, so according to Article 92 of the Marriage and Family Law, he must be responsible to support child... ...dong each month. The plaintiff shall have right to visit the child.

Regarding requests for division of properties:

- Where parties can reach an agreement on the division of properties

In this situation, the consideration part just shall be written as:

At the court session today, plaintiff... and defendant... have reached an agreement on the division of properties as follows:

The plaintiff is entitled to own...

The defendant is entitled to own...

The agreement between plaintiff... and defendant... is totally voluntary and it does not violate the interest of the third party. Thus, pursuant to Article 95 of the Marriage and Family Law, the Court shall accept that agreement.

- Where parties have dispute on properties and labor contributing such properties.

In this situation, the consideration part, firstly, must state the assessment of the Hearing Panel on what properties are common properties and what properties are individual properties of husband and wife. Then, the Court shall assess the contributed labor of the wife and husband, from which the Court shall conclude to divide properties to each person.

It should be specifically stated each property, value of that property and the total value that each person is entitled to. If there is any disparity in property, it must be stated who has to compensate whom with a specific amount.

If the property is immovable one (house or land) it must be stated the area and boundaries clearly. The best thing is to have a map attached. In case where the land is divided to only one person, it must be stated the reason.

The consideration part of the judgment must present the assessment of the Hearing Panel on the properties which the parties agree as common properties and individual properties without dispute, and then the assessment on disputed properties.

Example: Both husband and wife recognized the properties such as bed, wardrobe, TV, fridge, motorbike etc. as common properties and car is husband's property. The two parties just have dispute on the residential house. The husband thinks the land was given by his own parents, the amount for building house was saved by him before getting marriage, thus he requests to own whole of the house. The wife thinks the land was given by her parents on law to both of them, the amount of money for building house was given by her own parents, and the land and house were under the name of husband and wife; thus, she requests to divide into halves for each person.

The consideration part of the judgment can be written as:

Regarding the properties: the plaintiff and defendant have agreed on the common properties of the two parties including... The defendant (wife) recognizes the car... is possessed by the husband. Pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court recognizes that is the truth.

Regarding the house No..., the plaintiff (husband) thinks the land is only given to him by his own parents and the amount of money for building house is the defendant's. However, according to the certificate of land use rights and housing ownership rights granted for the plaintiff and defendant, in legal field, the house must be considered as the common property of the plaintiff and defendant. Regarding the labor of each party in creation, maintenance and development of the properties, the two parties do not dispute, which is considered equal.

Regarding the need of residential house, working conditions of the plaintiff and defendant, and pursuant to Article 95 of the Marriage and Family Law, it must be divided as follows:

.....

(State specifically each kind of property, value of each kind of property, and house distributed to each person).

d.2. Disputes on a civil contract or commercial contract

If parties agreed with each other about details of the entry into the contract, the consideration part must state the confirmation of the Hearing Panel on such details according to Article 80 of the Civil Procedure Code. Then, the assessment on details disputed by involved parties shall be stated based on the evidences presented by involved parties.

Where the defendant does not recognize the entry into the contract, the consideration part shall jump to the assessment of the request of the plaintiff based on the analysis of the details presented by the plaintiff.

Example 1: Dispute on a contract for purchase and sale of rice

Contents of the case:

The plaintiff and defendant signed a contract No... date... month... year..., according to that the plaintiff sold 100 tons of rice to the defendant for 5,000,000 dong/ton. The amount of rice above was delivered in two times; each time was separated in one month. For the first time, the defendant received 40 tons and paid 200,000,000 dong to the plaintiff. For the second time, the defendant received 60 tons and he has not paid the plaintiff yet. The plaintiff initiated a lawsuit to ask the defendant to pay the sum of money for 60 tons of rice that is 300,000,000 dong. The defendant did not agree to pay with the reason for low-quality rice, which made him lost 150,000,000 dong and requested the plaintiff to be responsible for that loss.

The consideration part of the case above can be written as follows:

At the court session today, the defendant recognized signing the contract to buy 100 tons of rice from the plaintiff and already received the full amount of rice. The plaintiff also acknowledged the defendant already paid full amount of money for 40 tons on date... month... year... Pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court recognizes that is the truth.

The parties just dispute the amount of 300,000,000 dong for 60 tons of rice that the defendant received on date... month... year...

The defendant thinks the amount of rice delivered for the second time is low in quality but since the date of receiving rice to the time the plaintiff initiated the lawsuit it is 10 months and the defendant has not complained. While in the official dispatches in which the defendant replied to the plaintiff's request for the payment of the debt, the defendant just presented his difficult financial matter so that he could not pay the debt. Therefore, there is no evidence to conclude that the amount of rice for the second time is low in quality. Moreover, according to Clause 2 Article 241 of the Commercial Law, since the date of receiving goods, the purchaser shall have 3 months for lodging complaints about quantity of goods and 6 months for lodging complaints about quality of goods; when exceeding the time limit for lodging complaints, the party whose rights are violated shall lose rights to initiate lawsuit in court.

From that assessment, the Hearing Panel sees that the plaintiff requests the

defendant to pay 300,000,000 dong is well-grounded.

First instance court fee:

Example 2: Dispute on a contract for property loan

Contents of the case: The plaintiff stated he lent the defendant 100 kilograms of rice with the interest of 10% /month within 1 month. After 1 month, the defendant did not return. The plaintiff requested the defendant to return the original 100kg rice and more 10 kilograms of rice for the interest.

The defendant recognized receiving 100 kilograms of rice from the plaintiff but he bought from the plaintiff.

With the contents above, the consideration part of the judgment can be written as follows:

Based on the statements of the involved parties and witnesses at the court session today, the Hearing Panel considers:

The defendant recognized receiving 100 kilograms of rice from the plaintiff. Pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Hearing Panel determines that is the truth. However, the defendant thought that he bought from the plaintiff but not loaned and he already paid fully to the plaintiff; but, according to the statements of witness X (in the record No. 12), witness X only went with the defendant to buy rice but he/she did not come in the plaintiff's house with the defendant. While witness Y stated: when the defendant went home, witness Y asked where to buy rice, the defendant answered that he bought rice at the plaintiff's house (record No. 13). With such statements above, the witnesses showed that they did not observe the fact that the plaintiff and defendant made an entry of the contract for rice purchase. Moreover, the defendant was not able to prove that he already paid for buying rice to the plaintiff. Therefore, there is no ground to conclude that the defendant bought 100 kilograms of rice and already paid fully to the plaintiff. Consequently, that the plaintiff requested the defendant to return the original 100 kilograms of rice is well-grounded.

Considering the plaintiff' request 10 kilograms of rice of interest from the defendant, it deems that: the two parties did not have a written contract , thus, there is no ground to conclude the contract for rice loan between the plaintiff and defendant has an agreement on the interest. Therefore, the request of the plaintiff for 10 kilograms of rice for the interest is not well-grounded...

Regarding the first instance court fee, according to Article ... of the Ordinance on court fee ...

d.3. Labor cases

The labor cases today are mainly disputes on unilateral termination of labor contracts, dismissal and repayment of the training expenses. In these disputes, involved parties agree with each other on the date of signing labor contracts, jobs or salary etc. Thus, the consideration part of the judgment, first of all, must be briefing the details in the form as follows: At the trial today, the plaintiff and defendant

consistently state that... (Show the details presented by the plaintiff and defendant) and then there must be a conclusion: Pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Hearing Panel determines such details are the truth. Then, the requests of involved parties shall be analyzed.

Example: For a dispute on unilateral termination of the labor contract, the consideration part can be written as follows:

At the trial today, the involved parties consistently agree that on... the plaintiff and defendant signed a labor contract with indefinite duration (or contract with definite duration of X years) with the salary of ... dong/month. Pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Hearing Panel determines such details are the truth.

Considering the request for abrogating the decision on unilateral termination of the labor contract of the plaintiff (employee), it deems that:

- Regarding grounds to terminate the labor contract:

Analyze the grounds to terminate the labor contract. This is the matter disputed by the parties, so it must be based on the collected evidences to analyze and then come to the conclusion whether the employee frequently does not do under the contract or not.

- Regarding the procedures for terminating the labor contract:

The employer executes the procedure correctly or not.

It should be compared with the provisions of law to consider whether it violate the provisions of labor law or not.

The conclusion must determine clearly that the decision on unilateral termination of the labor contract is right or wrong.

- If the decision on unilateral termination of the labor contract of the employer is right:

The consideration part of the judgment must state: Through the analysis of the evidences in the case, it is fully well-grounded to confirm that the plaintiff violated point a Clause 1 Article 38 of the Labor Code. Thus, the decision on unilateral termination of the labor contract of the defendant with respect to the plaintiff is right.

- Where the decision on unilateral termination of the labor contract of the employer is illegal:

The consideration part of the judgment must state: Through the analysis of the evidences of the case, it deems that there has not been grounds (or no ground) to conclude the plaintiff violated point a Clause 1 Article 38 of the Labor Code; thus, the decision on unilateral termination of labor contract of the employer is illegal.

And then, the plaintiff requests shall be analyzed.

For the request for compensation for non-working days, it must be calculated based on the number of days that the employee is denied the right to work and the average salary in 6 months, from which the amount of money that the defendant has to compensate to the plaintiff shall be calculated.

When assessing the plaintiff's requests for settling the regimes, it should be cited the applicable article.

The court fee should be assessed.

1.3. Writing of the “decide” part of the judgment

1.3.1. Requirements

The decisions on the judgment are the specific confirmation about rights and obligations of involved parties in the case. These rights and obligations shall be executed when the judgment comes into legal force and it is compulsory for parties to execute. Consequently, the decision part in the first instance civil judgment must ensure that:

- It is appropriate to the assessment of the Hearing Panel. It is impossible not to have the assessment but have the decision or vice versa.

- The decisions in the judgment must not go beyond the request or miss the involved parties' requests. This is a very important requirement which has been mentioned in the principle of writing judgments (3.1.1).

- The decisions of the first instance judgment must be concrete, clear, accurate and unambiguous. For disputes on immovable property, the judgment must state the boundaries and it is necessary to have a division map attached to the judgment.

- The judgment should not have decisions not giving arise of rights and obligations of involved parties, for example, regarding the request for... the involved parties shall have right to initiate another lawsuit...

1.3.2. Writing of the “decide” part

According to Clause 5 Article 238 of the Civil Procedure Code and the Resolution No. 01/2005/NQ-HDTP dated 31 March 2005 by the Justice Council of the Supreme People's Court, the decision part of the first instance civil judgment must have the major contents as follows:

a. Applicable articles of laws

Regarding the position of applicable articles:

According to the instructions for use of the first instance judgment sample (section 26) of the Justice Council of the Supreme People's Court, the articles of laws shall be written in the decision part. Actually, there are many civil judgments stating the applicable articles before the decision part. Such writing the applicable articles before the decision part is not correct.

Regarding the citation of articles:

For the provisions of the Civil Procedure Code, if there are articles that all cases must base on to be settled, such as articles on jurisdiction, prescription, time limit for trial etc., it is unnecessary to be cited in the judgment. It shall only be cited the articles which the Courts must base on to make a decision to force involved

parties to execute the judgment in some particular situations. In case where there are some obligations that the Hearing Panel forces the involved parties to execute immediately, this decision must be stated clearly in the judgment. In this situation, it is necessary to cite Clause 2 Article 375 of the Civil Procedure Code.

Example: In a case of compensation for labor accident, the Court decided the employer (defendant) had to compensate the employee (plaintiff) 5 million dong for medical treatment following the labor accident and decided the defendant had to implement it immediately, it must be written clearly in the judgment as follows:

Pursuant to Article... of the Labor Code, Clause 2 Article 375 of the Civil Procedure Code, to force the defendant to compensate the plaintiff 5 million dong for medical treatment of the labor accident. This amount of money must be implemented immediately despite of having an appeal or protest.

Regarding the citation of laws on, in terms of content, it must be cited correctly, sufficiently as the guidance in section 3.3 (on the citation of laws).

b. Decisions of Courts with respect to the request of involved parties

This is the most important content in the decision part because it determine clearly the guideline to settle the case, based on that disputed parties must have obligations to abide by and implement the decisions of the Courts.

The contents of decisions in the judgment must be presented clearly concretely and in very detail each request of each involved party; avoiding the situation that many judgments pronounce in general and unclearly, which leads to the difficulty in executing judgment later. For example,

+ In a divorce case, the decision of the judgment cannot be written: “Mr. Nguyen Van B must support the children according to his capacity and the general situation in the locality”, but it must be written as “Mr. Nguyen Van B must monthly support the children with the amount of... dong until the children are full 18 years”.

+ In a dispute on dismissal, the decision of the judgment must not be written as “to force the employer to have obligations to restore all material rights to the employee according to the provisions of the Labor Code” but it must be written as “to force the employer to have obligations (state each concrete obligation clearly) such as:

- To reinstate the employee;
- To compensate the employee for the days that he/she is denied to work being... dong;
- To compensate 2 month salary being... dong;
-

In a case with more than one involved party and the involved parties have many more than one request, when writing the decision in the judgment, the judges should notice to write the decisions of the Court according to the order as follows:

- (1) Decision to the plaintiff’s requests;

(2) Decision to the defendant's requests;

(3) Decision to the requests of the persons with related rights and obligations who have independent requests.

Normally, for the requests of the involved parties, the Court's decision can occur one of the following situations:

- Accept all the requests of involved parties;
- Accept a part of the requests of involved parties;
- Not accept the requests of involved parties.

If the Court accepts a part or whole of requests of involved parties, it is not necessary to write the acceptance of a part or whole of requests of involved parties in the judgment. Because the acceptance of a part or whole of requests of involved parties is shown in the concrete decisions. For example, in a divorce case, the plaintiff requests for a divorce, right to rear the children and half share of the property. If the Court accepts whole of requests of the plaintiff, it is unnecessary to write as "Accept whole of requests of the plaintiff with respect to the defendant" in the decision part of the judgment; but it only shall be written:

1. Regarding the marriage relation

Plaintiff (Ms. ...) and defendant (Mr. ...) are divorced.

2. Regarding the common children

Plaintiff... is entitled to raise the common child who is... The defendant must contribute each month ...dong to raise the child until ... is full 18 years. The defendant shall have right to visit the children.

3. Regarding the properties to be shared

The plaintiff shall be shared... (State each kind of property and the value of each kind specifically).

The defendant shall be shared...

- Where the Court does not accept the involved parties' requests, it must be written to reject that request of the involved parties.

Example: In a divorce case, if the Court does not accept the request for a divorce of the plaintiff, the decision of the judgment must state:

To reject the divorce application of the plaintiff (...)

- Where the involved parties have more than one request and the Hearing Panel just accept some of them, for the involved parties' requests not to be accepted by the Hearing Panel, the judgment must state them clearly and sufficiently. It must not be written to reject the other requests of the involved parties in general.

Example: In a case requesting for compensation for damage beyond the contract, the plaintiff asks the defendant to compensate for hospital fees, money for buying medicine, lost income, compensation for damage of property. If the Hearing Panel just accepts the plaintiff's request for the hospital fees, money for buying medicine, the decision in the judgment must state:

+ To force the defendant to compensate the plaintiff:

- X dong of hospital fees

- Y dong of buying medicine
- Total amount of... dong
- + To reject the plaintiff requests for:
 - Compensation of... dong for the lost income
 - Compensation of ... dong for damage of the properties

The judgment must not state:

- + To force the defendant to compensate the plaintiff:
 -
 -
- + To reject other requests of the plaintiff.

- Where the Hearing Panel just accepts one certain request of the involved parties, the decision of the judgment must state clearly which part is accepted and which part is not accepted.

Example: The plaintiff asks the defendant to pay 100 million dong. If the Hearing Panel just accepts to force the defendant to pay 70 million dong, the judgment must state as:

- To force the defendant to pay 70 million dong to the plaintiff;
- To reject the plaintiff's request for 30 million dong paid by the defendant.

The writing above not only clearly shows the decision of the Hearing Panel to the request of the plaintiff but also relates to the rejection of the decision that the plaintiff has to bear the court fee of 30 million dong. Currently, most of the judgments just state the decision part of the Hearing Panel on forcing the defendant to compensate the plaintiff but do not state the decision part of the Hearing Panel on rejecting the plaintiff's request. But, regarding the first instance court fee, that the plaintiff is still forced to bear the court fee for the rejected part is insufficient.

+ In the judgment, it simply states the concrete obligations to be performed by the involved parties; it is unnecessary to write the respective rights of the involved parties who are entitled to such rights.

Example: If the Hearing Panel accepts that B has to pay A 5,000,000 dong, the decision of the judgment must be written: To force B to pay A 5,000,000 dong

Currently, many judgments write that:

- Accept A's request for 5,000,000 dong paid by B
- Force B to pay A 5,000,000 dong

Or:

- Force B to pay A 5,000,000 dong
- A is entitled to enjoy 5,000,000 paid by B

Both of writings are unnecessary. Because when B has to perform the obligations to A, naturally, A shall be entitled to those rights.

+ For cases with a counter-claim of the defendant, independent request of the persons with related rights and obligations, the expression of such rights in the judgment is similar to the expression of the plaintiff's rights.

Example: In a case, the plaintiff asks the defendant to pay for a debt of 10

million dong that the defendant used to purchase goods. The defendant makes a counter-claim to request the plaintiff to compensate 2 million dong for the reason that the plaintiff delivered goods late and the goods were not the right categories, which made the defendant lose 2 million dong. If the Hearing Panel accepts both the requests of the plaintiff and defendant, the decision part of the judgment must be written as:

- To force the defendant to pay the plaintiff 10 million dong for purchasing goods
- To force the plaintiff to return the defendant 2 million dong of compensation for damage.

In the mentioned situation, currently, the judgments often add: Setting of the obligations of the two parties to force the defendant to pay the plaintiff 8 million dong.

The judgment does not need to pronounce like that because the Court settles each request of the involved parties; thus, the judgment must state clearly the decisions of the Hearing Panel on the requests of each involved party. And the setting off of the obligations among between involved parties shall happen only when they have to perform the obligations.

In the period of judgment execution, the plaintiff requests the defendant to pay 10 million dong. If the defendant also requests the plaintiff to pay 2 million dong, obviously the defendant shall only pay 8 million dong to the plaintiff. And if the defendant does not request judgment execution or lets the time limit for judgment execution expire, he/she shall lose the right to request the plaintiff. Therefore, if announcing that the defendant must pay the plaintiff 8 million dong, it shall make the plaintiff to lose the right to request 2 million dong.

On the other hand, if announcing that the defendant must pay 8 million dong to the plaintiff, in principle, the defendant just must pay the first instance court fee for 8 million dong. But in this case, the defendant must pay the first instance court fee for 10 million dong and the plaintiff must pay the first instance court fee for 2 million dong.

Note:

1. The decision of the judgment does not state the details of the case because those details are determined in the consideration part. For example:

+ In a case of inheritance: the decision part of the judgment does not state the details:

- Determining the person leaving inheritance
- Determining the time for opening inheritance
- Determining the ranks of inheritance
- Determining the inherited properties

...

+ In a divorce case: the decision part of the judgment does not need to state:
- Determining the marriage relationship between... is lawful

- Determining the number of common children...
- Determining the spousal properties...
- ...

2. In a case where the plaintiff initiates lawsuit against more than one defendant and the Hearing Panel just force one or some defendant to perform the obligations to the plaintiff, the decision part of the judgment must state the defendants who do not have to perform the obligations.

Example: A and B came to C's house to steal properties together. C discovered and was beaten by A. C's child used a hammer to throw to A and B but it was unsuccessful. The hammer hit the water jar and made it broken. Mr. C initiated a lawsuit against A and B to claim for compensation for the injuries and the jar. The Hearing Panel just forced A to compensate for C's injuries and did not accept the claim for compensation for the jar.

In this situation, the decision of the judgment must be written as:

+ Mr. Nguyen Van A must compensate Mr. Tran Van C ... dong for causing injuries.

+ Not accept the request of Mr. Tran Van C for the compensation of ... dong equivalent to the value of the broken jar by Mr. Nguyen Van A and Mr. Nguyen Van B.

+ Mr. Nguyen Van B must not take responsibility for compensation for Mr. Tran Van C (or not accept the request of Mr. Tran Van C for compensation for injuries by Mr. Nguyen Van B).

3. In a case with a number of involved parties who are jointly responsible with respect to one or more than one involved parties, the decision of the judgment must state clearly the joint responsibility of such involved parties and clearly define responsibilities for each part of the involved parties at the same time.

Example: A and B must be jointly responsible for compensation for C 3 million dong, of which A's part is 2 million dong and B's part is 1 million dong. In this situation, the decision of the judgment must state:

To force A and B to jointly compensate C 3 million dong, of which A's part is 2 million dong and B's part is 1 million dong.

4. The writing of involved parties' names in the decision part of the judgment must be completed and accurate as the writing of their name in the introduction of the judgment.

- If the involved party is an individual, it must be written his/her surname, last name and real name.

Example: To force Mr. Nguyen Van A to compensate Ms. Luong Thi B with the amount of ... dong.

It must not be written: to force Mr. A to compensate Ms. B...

- If the involved party is an organization, it must be stated the full name of that organization.

Example: To force Ho Guom Xanh Company Ltd. – transaction name is HOGUXA Company Ltd. to pay Mr. Nguyen Van A ... dong.

It must not be written: to force Ho Guom Xanh Company to pay Mr. A ... dong.

It is not necessary to state the name of representative for the Company as the current judgments, for example:

To force Company..., represented by Director Nguyen Van A, to compensate...

The writing above is not necessary because the performance of obligations is the organization's duty, while the representative is not the person who has to perform the obligations. Moreover, the representative is often changed.

5. Regarding the first instance court fee, it must be stated the court fee level that the involved parties must pay as prescribed by law.

6. After the court fee, the decision part must state the right to make appeal of involved parties. If any involved party is absent, it must be stated the starting date for time limit for appeal.

Example: In a labor case claiming for compensation for damage due to labor accident, the defendant (employer) is absent. If the Hearing Panel accepts all requests of the plaintiff and forces the defendant to perform the obligation of allowance for labor accident, the decision of the judgment must be written as:

+ To force the defendant (...) to compensate the plaintiff (...):

- ... dong for hospital fee

- ... dong for medicine

- ... dong for the disability of the plaintiff

- The total amount of money that the defendant has to compensate the plaintiff is (...) dong

This decision shall take the effect immediately upon the plaintiff's request.

+ Defendant... must pay... dong of the first instance court fee

+ Since the date of receiving the application for judgment execution from the judgment creditor until finishing the implementation of all amounts of money, the judgment debtor monthly must bear the interest of the amount of money that he/she must execute according to the basic interest prescribed by the State Bank corresponding to the time that the judgment has not been executed.

+ The plaintiff shall have right to make appeal within the time limit of 15 days since the date of judgment pronouncement.

+ The defendant shall have right to make appeal within the time limit of 15 days since the date that the judgment is posted up at the head office of People's Committees ... where the defendant's head office locates.

7. The application for judgment execution, obligation of judgment execution and the prescription for judgment execution must be written (according to Article 26 of the Civil Judgment Execution Law), specifically:

“In case where the judgments and decisions are executed according to Article 2 of the Civil Judgment Execution Law, the civil judgment debtor shall have right to make agreement on judgment execution, right to request judgment execution, voluntary judgment execution or judgment execution enforcement according to Article 6, 7 and 9 of the Civil Judgment Execution Law; the prescription for judgment execution shall be implemented according to Article 30 of the Civil Judgment Execution Law”.

8. The last part of the judgment, if it is the original one, approved in the deliberation room must have the signature, full name of the Hearing Panel’s members; if it is an official judgment to be sent to involved parties, agencies, organizations who initiate a lawsuit and People’s Procuracies of the same level, it must be written as follows:

Receiver

-
-
-

For Hearing Panel

Judge – Presiding Judge

(Sign and seal)

(Full name)

2. WRITING OF APPELLATE JUDGMENTS

2.1. Determination of the scope of appellate trial and appellate jurisdiction

The appellate trial is that the Court of superior level directly adjudicates the case of which the judgment or decision of the first instance Court which has not come into legal force is appealed or protested.

While the first instance trial takes place based on the lawsuit initiation of the plaintiff, the appellate trial is based on an appeal of involved parties (plaintiff, defendant, persons with related rights and obligations) or protest of People's Procuracies.

The appellate trial not only bases on details, facts, evidences, materials submitted to the Court by involved parties at the first instance court session but also bases on details, facts, evidences and materials submitted to the Court by involved parties at the appellate court session. With this characteristic, the acknowledgement part of the appellate judgment must be written not only the details, facts presented by the involved parties at the first instance level but must supplement also the important details related to the settlement of the case that the involved parties already present at the appellate level.

Because the object of appellate trial is the appeal of involved parties or protest of the People's Procuracies, the scope of appellate trial is prescribed clearly in Article 263 of the Civil Procedure Code: "The appeal courts shall only review the parts of the first-instance judgments or decisions, which are appealed or protested against or related to the review of the appealed or protested contents".

Regarding the jurisdiction of the Hearing Panel, Article 275 of the Civil Procedure Code prescribes:

- a. To uphold the first instance judgments;
- b. To revise the first instance judgments;
- c. To abrogate the first instance judgments and transfer the case dossiers to the Court;
- d. To abrogate the first instance judgments and suspend the settlement of the cases;

The provisions above are specified in Article 276, 277, 278 of the Civil Procedure Code, thus, the appellate judgments must show sufficiently such provisions.

2.2. Requirements for appellate judgments

The appellate civil judgment is an important procedural document which is the legal basis to determine the rights and obligations of involved parties, the document to guide the behaviors of citizens, agencies and organizations in accordance with the provisions of law. Consequently, the appellate judgments are required to be accurate, lawful and persuasive.

a. Judgments must ensure the accuracy and legality

Firstly, the appellate trial must be implemented in accordance with the provisions of the Civil Procedure Code. The appellate judgments must show the serious procedural violations of the first instance level (if any). Unlike the review of the content, when reviewing the procedures, the appellate Hearing Panel shall have right to review the issues which are not appealed or protested. For example, the conciliation in civil procedures is prescribed as principles by the Civil Procedure Code: “The Courts have the responsibility to conduct conciliation and create favorable conditions for the involved parties to reach agreement with one another on the settlement of civil cases” under the provisions of the Civil Procedure Code (Article 10).

“The courts must, during the period of preparation for the first-instance trial of cases, carry out conciliations for the involved parties to reach agreement on the settlement of the cases, except cases which must not be conciliated or cannot be conciliated...” (Article 180 of the Civil Procedure Code)

So, the procedure for conciliation among parties to settle the case before the first instance trial is the obligatory principle. If the first instance Courts do not carry out the conciliation before the first instance trial, the involved parties do not make appeal, the People’s Procuracies do not protest but the appellate Courts finds out, they still have right to point out that violation. And in this situation, it can be regarded as serious procedural violation.

The appellate civil judgment must determine exactly the scope of trial according to Article 263 of the Civil Procedure Code which prescribes “The appeal courts shall only review the parts of the first-instance judgments or decisions, which are appealed or protested against or related to the review of the appealed or protested contents”.

This provision clearly shows the principle of “right to decision-making and self determination of involved parties”. Therefore, the appellate judgments only resolve the contents appealed by involved parties or protested by Procuracies and parts related to the appeals or protests. For the parts of the first instance judgment which are not appealed or protested, the appellate civil judgments must not resolve. For example, in a marriage and family case, the first instance Court resolve three relations including marriage, children and property. If the involved parties just make appeal on the relation of children, the appellate Court shall only review that appealed content. If the first instance Court assigns the wife to rear the children and forces the party who does not directly rear the children to support the children but the appellate Court amends the first instance judgment and assigns the husband to rear the children, the Court also shall have right to amend the part of supporting the children although the involved parties do not make appeal on this part because it relates to the settlement of the appealed content of assigning whom to rear the children.

An accurate and lawful judgment is the first important requirement for all first instance and appellate civil judgments.

Like the first instance judgment, the accuracy of the appellate judgments must be shown from the introduction to the decision part of the judgment. Alternatively, starting from the scope of appellate trial, the accuracy of the appellate judgments must show that they only reflect sufficiently and exactly the assessments, decisions of the Hearing Panel within the scope of the appeals or protests or related to the appealed or protested contents as mentioned in subsection 1 of this section II. And the decision part of the judgments, beyond citing sufficiently the content of articles, must cite the articles on jurisdiction of the appellate Hearing Panel sufficiently.

b. Decisions in appellate judgments must be well-grounded

The appellate judgments must be well-grounded and must show the concrete reasons to prove the decisions of the appellate judgments are right.

For cases where the appellate judgments reject the appeals or protests and uphold the decisions of the first instance judgments, the appellate ones must show clearly the grounds, reasons raised in the appeals or protests which are not well-grounded to change the decisions of the first instance judgments. Consequently, it must be shown that the first instance Court has assessed the evidences objectively and appropriately to the details of the cases and applied the law correctly or not.

For cases where the appellate Courts accept the appeals, protests and amend or abrogate the first instance judgments, the appellate judgments must show how the first instance Courts have collected the evidences; whether it violates the provisions of the Civil Procedure Code or not; what evidences still lack that the appellate Courts cannot overcome, the assessments of the evidences and the law application of the first instance Courts are not right in what points; the decisions of the first instance judgments have what points not appropriate to the objective details in the case etc. For example, in a case of inheritance division, if the involved parties just make an appeal on the division of exhibits and the first instance Court divides the persons entitled to inherit exactly and sufficiently, the appellate Court just shall review whether the divisions of exhibits is appropriate to the actual situation of the case or not..., whether it ensures the interests of co-inheritors or not. Specifically, the exhibits are divided or not or the persons who are shared the exhibits really need those exhibits or not. And for those reasons the appellate Courts accept the appeal or not, the judgments must show clearly these reasons.

2.3. Writing of the introduction of the judgment

Clause 3 Article 279 of the Civil Procedure Code prescribes:

“The introduction part must clearly state the name of the appeal court; the code number and date of the case acceptance; the serial number of the judgment and the date of judgment pronouncement; full names of the members of the Hearing Panel, court clerk, procurator, expert-witness and interpreter; full names and

addresses of the plaintiffs, defendants, persons with related rights and obligations; agencies or organizations initiating the lawsuit or their lawful representatives, the defense counsels of their legitimate rights and interests; names of appellants or protesting procuracy; public or closed trial, time and place of trial.”

Specifically, the writing of this part must be in accordance with the instructions for use of appellate civil judgment sample issued together with the Resolution No. 05/2006/NQ-HDTP dated 04 August 2006 by the Justice Council of the Supreme People’s Court.

Note:

- Re-check whether the first instance judgment states the surname, last name, date of birth, address of procedural participants exactly or not. If the first instance judgment states inexactly, it must be corrected.

- For the involved party being an organization, in many cases, the representative participating in the first instance and appellate court session is different (especially authorized representative), thus, it must be changed the full name of the representative properly to avoid copying the first instance judgment.

- In a case with lawyers and interpreters, it must be checked whether these persons participated in the first instance court session or they just participate in the appellate court session to state their full name properly.

- For cases where there are a number of involved parties but only some persons make appeals, it is just written the name of the involved parties involving in the settlement of the appeal. For the involved parties who do not make appeal and the settlement of the appeal which does not relate to their rights and obligations, it is not necessary to state in the appellate judgment.

Example: A labor dispute on “unilateral termination of the labor contract” has 15 plaintiffs (employees) and one defendant (employer). Only 5 plaintiffs make an appeal. When settling the appeal of the 5 plaintiffs, it does not affect other 10 plaintiffs. The appellate judgment just shall state 5 plaintiffs making appeal and then show that in the case, there are 10 other plaintiffs not making appeal.

2.4. Writing of the case contents and the assessment

Clause 4 Article 279 of the Civil Procedure Code prescribed “The section on the case contents, the appeal or the protest and assessment must summarize the contents of the case and decision of the first-instance court; content of the appeal or protest; assessment of the appellate trial panel; specific points, clauses and articles of the legal normative documents on which the appellate trial panel base to settle the case.

The assessment of the appellate trial panel must analyze grounds for accepting or not accepting the appeal or the protest.

From that provision of the Civil Procedure Code together with the reality of judgment writing and in order to unify the form of all judgments (criminal and civil), the Justice Council of the Supreme People’s Court issued the appellate judgment

samples (issued together with the Resolution No. 05/2006/NQ-HDTP dated 04 August 2006 by the Justice Council of the Supreme People’s Court), in which the contents of the case are divided into 2 part including acknowledgment and consideration part.

2.4.1. Writing of the “acknowledge” part (case contents)

Being different from the acknowledgment part of the first instance civil judgments, the acknowledgement part of the appellate judgments consists of two parts:

The summarization section of the case contents and the decision part of the first instance civil judgment, appeal or protest.

* The summarization section of the case contents:

Writing of this part is similar to the writing of acknowledgment part of the first instance civil judgment.

Note: If judges use the summarization of the case contents of the first instance judgment, it is necessary to check the accuracy of the first instance judgment. If the first instant judgment shows the details not related to the settlement of the case, it must be rejected. On the contrary, if it lacks the details related to the settlement of the case that the involved parties presented at the first instance court session and the details that the involved parties just present at the appellate period, it must be supplemented for the sufficiency.

* Present of the decision part of the first instance judgment

In principle, it must be presented sufficiently and exactly the decisions of the first instance judgment. In case where there are decisions of the first instance judgment which are not appealed or protested and the settlement of the appellate Court does not relate to those decisions, it must not be stated them. However, it is necessary to state “besides, the first instance Court also decides..., but they are not appealed or protested”.

Note: It must not be stated the summarization of the assessment of the first instance judgment before stating the decision of the first instance judgment. Because:

- Article 279 of the Civil Procedure Code does not prescribe this part.

- The consideration part of the appellate judgment, when analyzing whether the first instance judgment is right or wrong, must state the assessment of the first instance judgment. Therefore, if the acknowledgment part of the judgment also states it, it shall overlap the consideration part.

* When presenting the appeals or protests, it must be:

- Stated the date of making appeals or protests.

- Stated exactly the full name of the persons making appeals and the organizations making protests (procuracies of the same level or superior procuracies).

- Stated sufficiently the scope of appeals and protests (this is the most

important thing to decide the scope of appellate trial) .

The previous judgments often state: day... month... the plaintiff (defendant) makes an appeal against the first instance judgment. It does not state concretely the involved parties make appeals against the whole of judgment or which part of the judgment.

There are many appeals which do not state clearly the scope of appeals. Therefore, when receiving appeals against the first instance Court, it should be noticed to check the petition for an appeal and request the appellant to supplement the petition for an appeal in accordance with Article 244 of the Civil Procedure Code. The clear writing of the scope of the appeal not only ensure the appellate Court to adjudicate in accordance with Article 236 of the Civil Procedure Code but it is also the ground to perform in accordance with Article 256 of the Civil Procedure Code which prescribes that the appellant shall have right to supplement, modify appeals but it must not be beyond the scope of the original appeals if the time limit for an appeal expires.

- It is not necessary to have the reasons for appeals or protests because the reasons for appeals or protests shall be reviewed in the consideration part.

2.4.2. Writing of the “consider” part (assessment)

a. Requirements

The “consider” part of appellate judgments is the assessment of the appellate Hearing Panel. According to Article 279 of the Civil Procedure Code, “the assessment of the appellate Hearing Panel must analyze grounds for accepting or not accepting the appeal or the protest”. Therefore, the “consider” part must analyze each requirement of the appeal or protest. It shall be based on the evidences, provisions of law and details of the case to analyze, evaluate the assessment of the first instance judgment, whether the arguments of the appeal or protest are right or wrong, which point is right, which point is wrong, to reach a conclusion to accept or not accept the request for an appeal of the involved parties or a protest of the procuracy.

b. Notes

The “consider” part of the appellate judgment must clarify the grounds why the appellate Court accepts or does not accept the appeal or protest. The “consider” part of the appellate judgment must base on the evidences and legal grounds applied in the first instance judgment as well as the evidences and arguments presented in the appeal or protest to analyze whether the settlement of the case by the first instance Court is right or wrong. It should be avoided the situation that in some judgments currently, the “consider” part neither mentions that the assessment of the first instance judgment is right or wrong nor mention that the evidences, arguments of the appeal or protest are right or wrong. Thus, the judgment is not persuasive.

Like the consideration part of the first instance civil judgment, when assessing

the details that the involved parties already agree with each other, it is not necessary to use the evidences to prove but it just shall be stated that the Hearing Panel accepts the details above or the Hearing Panel confirms the details above are the truth based on Clause 2 Article 80 of the Civil Procedure Code.

For the details which raise different opinions among involved parties, the consideration part must state the evidences or the provisions of law to assess and conclude to accept or not to accept those details. (See the Writing of the consideration part of the first instance civil judgment – subsection I, section 3).

c. Some popular shortcomings in the “consider” part of the appellate judgment

- There are cases where the Hearing Panel assesses the validity of the petition for an appeal that as the petition for an appeal of Mr. ... is in the time limit prescribed by law, so it is acceptable.

The assessment above of the appellate judgment is unnecessary. The Court shall conduct the appellate adjudication only when the appeal which is in the time limit prescribed by law or the protest which has expires is reviewed and accepted by the appellate Hearing Panel including three judges of the appellate Court. Therefore, at the appellate court session, it is unnecessary to review whether the appeal is lawful or not. Consequently, it should be noticed that the “consider” part of the appellate judgment shall not assess the validity of the appeal.

- The “consider” part copies the summarization of the case contents that is presented in “acknowledge” part.

Example 1: In a dispute on dismissal, the employer decided to dismiss the employee because the employee embezzled more than 8 million dong. The employee initiated a lawsuit because he/she thought he/she did not embezzle and the prescription for discipline expired. The first instance judgment rejected the lawsuit petition of the employee and remained the decision on dismissal. So, the employee made an appeal. The beginning of the consideration part of the judgment states that:

Regarding the contents: Ms. PTL worked in Cho Lon bus station from month... On ... (date) the bus station signed an indefinite contract with Ms. L. On... the Director of the bus station assigned Ms. L to be deputy chief of accounting department. On... the Director of Department of Transportation and Urban Public Work Service made a decision to establish an inspection delegation of management and use of capital source of the bus station. On... the inspection delegation concluded that Ms. L embezzled more than 8 million dong...

The writing of the “consider” part above of the appellate judgment is redundant because this part is shown in the “acknowledge” part (case contents).

This “consider” part of the appellate judgment must analyze whether Ms. L embezzled or not. If she did, the prescription for discipline expires or not. Based on that, the Hearing Panel shall conclude whether the dismissal to Ms. L is right or wrong to accept or not to accept the appeal of the employer.

Example 2: In a divorce case between Mr. A and Ms. B, the first instance Court permitted A and B to divorce; assigned Mr. A to rear 16 year old child and Ms. B to rear 8 year old child; distributed whole of the house of 60 m² on the area of 100 m² to Ms. B; Mr. A should receive some properties such as motorbike, bed, wardrobe and the money difference.

Mr. A made an appeal to request the distribution of house for the reason that the land was given by his parents and he spent his effort to build that house with the support of his parents.

In this case, the “consider” part of the appellate judgment must come straight on assessing whether the appeal of Mr. A is accepted or not and why. If the “consider” part re-describes the marriage between Mr. A and Ms. B, the happenings leading to that Ms. B asks for a divorce, it shall be redundant and make the judgment longer. In this situation, it should be straight on the assessment on the appeal of Mr. A.

- The appellate judgment presents all the contents of the first instance judgment not to be appealed or protested and conclude those parts have come into legal force and the appellate Court shall not review.

Example: In the judgment No. 73/DSPT dated 15 May 2005 of the People’s Court of Province T, the beginning of the “consider” part states:

“Regarding the marital relation and children relations in the divorce between Ms. N.T.K.T and Mr. N.Q.C are not appealed or protested; thus the first instance judgment has already come into legal force.

Regarding the property relations:

The first instance judgment recognized the voluntary agreement between Ms. N.T.K.T and Mr. N.Q.C on the distribution of properties, specifically, Ms. T is entitled to own a motorbike branded Wave with license plate No. 8894-29H; Mr. C is entitled to own a 21” Sony TV and a Sony VCD. The voluntary agreement between Mr. C and Ms. T is not appealed or protested, thus, the appellate Court shall not review”.

According to Article 63 of the Ordinance on procedures for settlement of civil cases and Article 263 of the Civil Procedure Code on the scope of appellate trial, the appellate Court shall just review the contents of the first instance judgment which are appealed or protested or the contents related to the review of appealed or protested contents. Therefore, the “consider” part of the appellate judgment does not need to assess the decisions of the first instance judgment which are not appealed or protested.

- It does not combine the reviewing and evaluating of the reasons for the appeal or protest with the assessment of the first instance judgment, based on which to conclude the appeal or protest is right or the first instance judgment is right. But it just bases on the evidences and provisions of law to analyze and evaluate whether first instance Court adjudicates right or wrong. So the persuasiveness is not high.

- It confirms immediately that the first instance judgment is right without

analyzing why the first instance Court adjudicates right. It rejects the petition for an appeal of the involved party without analyzing why to reject.

Example: the appellate labor judgment No. 03/LDPT dated 15 December of the People's Court of Province P, the consideration part states as follows:

Considering that the first instance rejects the application of Mr. L.D.H requesting for abrogating the decision on dismissal of B.T.D.N Company Ltd. to him and compensating him 5 month salary was considered and evaluated exactly.

At the court session, Mr. H could not submit any other evidences and the Company side did not change their opinion; thus, there is no ground to accept the appeal of Mr. H.

The lawyer protecting the involved party's rights thinks that B.T.D.N Company Ltd. dismissed Mr. H, in terms of form and content, is not lawful. Considering that the lawyer's opinions about such request is not appropriate, so it is unacceptable.

Such kind of writing in the "consider" part of the appellate judgment has not clarified what ground the appellate Court based on to conclude that the first instance Court adjudicated wrong and why the involved party's appeal was not accepted.

- It does not assess comprehensively the appealed or protested issues.

If the involved party makes an appeal on more than one point, the court must assess all those points. If the court only assesses some points and immediately conclude that "the other appeals of the involved parties are not well-grounded to be accepted" without analyzing or commenting the other points, it is not sufficient.

d. Basic similarities and differences between the writing of the "consider" part of the first instance judgment and that of the appellate judgment

Similarities:

- The writing of the "consider" part of the first instance judgment and the appellate judgment must be based on the evidences, materials verified at the court session to analyze and evaluate the legality, well-groundedness of the evidences and at the same time based on the provisions of law to accept or not to accept the involved parties' requests.

- The "consider" part of the first instance judgment must assess all the requests of involved parties (lawsuit claims of plaintiffs, counter claims of defendants, independent claims of persons with related rights and obligations) while the consideration part of the appellate judgment must assess all the appeals or protests.

Differences

The consideration part of the first instance judgment is the analysis and evaluation of the Hearing Panel on the arguments of the plaintiff, defendant and persons with related rights and obligations who have independent claims and it bases on the provisions of law to accept or not to accept the arguments of the plaintiff, defendant or the persons with related rights and obligations; while the

consideration part of the appellate judgment is the analysis and evaluation of the Hearing Panel on the appeal or protest and the arguments raised in the first instance judgment. Based on that, the appellate judgment shall conclude whether the first instance Court adjudicated the appealed or protested parts (on the assessment on evidences, the application of law etc.) right or wrong; accept or not accept the appeal or protest.

e. Resolution order of the appeal

1. In the case where there is only one party, plaintiff side or defendant side, making an appeal, the “consider” part of the appellate judgment shall go right into analyzing that appeal is right or wrong.

Example: In a divorce case between Mr. A (plaintiff) and Ms. B (defendant), the first instance Court has settled all three relations including marriage, children and property. Ms. B makes an appeal to claim for rearing children. The “consider” part of the appellate judgment shall come straight to analyzing the appeal of Ms. B in comparison with the arguments of the first instance judgment. Based on that, it shall decide to accept or not to accept the appeal of Ms. B.

2. In the case where all parties (plaintiff, defendant, persons with related rights and obligations who have independent claims) make appeals.

In this situation, it is necessary to arrange which appeal is decisive. If accepting that appeal, it shall refuse the appeals of other involved parties. At that time, the “consider” part of the appellate court must settle that appeal first and then settle the appeals of other involved parties.

Example 1: In the divorce case mentioned in the example above, Mr. A (plaintiff) makes an appeal on property relations; Ms. B makes an appeal for disagreed divorce.

In this situation, if the appeal of Ms. B is accepted, it means that the appeal of Mr. A is not accepted. Therefore, the “consider” part of the appellate judgment must analyze and evaluate the appeal of Ms. B is right or wrong. If the appeal of Ms. B is not accepted, the “consider” part of the appellate judgment must analyze and evaluate the appeal of Mr. A.

Example 2: An individual labor dispute on unilateral termination of the labor contract.

The first instance court has abrogated the decision on unilateral termination of the labor contract of the employer (defendant) and forced the employer to reinstate the employee (plaintiff) and compensate the employer for the days when he/she is denied to work.

The plaintiff makes and appeal on compensation and the defendant makes an appeal because he/she thinks that the first instance Court abrogated his/her decision is wrong.

In this situation, if accepting the appeal of the defendant, it must be recognized that the decision on unilateral termination of the labor contract of the employer is

right; at the same time it shall refuse the appeal of the plaintiff (employee). Accordingly, the consideration part of the appellate judgment must analyze and evaluate the appeal of the defendant is right or wrong. Only when the appeal of the defendant is not accepted, it must be analyzed and evaluated the appeal of the plaintiff (employee) is right or wrong.

f. Expression of the “consider” part in case of upholding the first instance judgment

According to Article 275 of the Civil Procedure Code, the appellate Hearing Panel shall have right to uphold the first instance judgment.

This is the situation where the first instance Court evaluates the evidences, application of law correctly and the decisions of the first instance judgment are appropriate to the objective fact of the case. Consequently, in this situation, the “consider” part of the appellate judgment must thoroughly analyze the arguments of the appeal, protest to consider why it is not accepted. And it must be analyzed the first instance Court has evaluated the evidences objectively, applied law exactly and decided appropriately to the objective details of the case.

Example 1: In a case claiming for compensation for non-contractual damages, the first instance Court forces the defendant (person causing damage) to compensate for the whole damage to the plaintiff (victim). The defendant makes an appeal to request lower compensation level for the reason that the plaintiff also has fault.

It must be based on the details, evidences and materials verified at the court session to analyze the subjective consciousness of the plaintiff about the action and consequences happening to the plaintiff to conclude whether the first instance Court has evaluated exactly the fault of the plaintiff and defendant.

Example 2: In a divorce case, the first instance Court distributes the whole house to the wife while the husband receives money for the reason that the wife has to rear the children and cannot set up a new residence. The husband makes an appeal to claim for ½ of the house for the same reason that he cannot set up a new residence and the house still can be shared. In this case, if the appellate Court sees that the first instance Court adjudicated right, the “consider” part must analyze why the reason for appeal of the husband must not be accepted based on the materials, evidences collected by the Court to conclude that the husband can set up a new residence easier than the wife can, the amount of money that the husband is distributed can be used to set up a new residence and if the house is distributed to two persons, it shall not ensure the value in use etc. Thus, that the first instance Court distributes the whole house to the wife is reasonable.

g. Expression of the “consider” part in case of amending the first instance court

According to Article 276 of the Civil Procedure Code, the appellate Hearing Panel amends a part or the whole first instance judgment if the first instance Court

makes decisions illegal in the following cases:

- The proving and collecting of evidences are implemented sufficiently and in accordance with the provisions in Chapter VII of the Civil Procedure Code.

- The proving and collecting evidences are not implemented sufficiently at the first instance level but at the appellate court session they are supplemented completely.

With the provision above, the consideration part of the appellate judgment must analyze the application of law of the first instance Court is not right in what point.

The wrong application of law can be due to wrong understanding of the first instance Hearing Panel of the provisions of law or missing the provisions of law. Thus, the consideration part of the appellate judgment must analyze it specifically.

h. Expression of the “consider” part in case of abrogating the first instance judgment and suspending the settlement of the case

According to Article 278 of the Civil Procedure Code, the Hearing Panel shall abrogate the first instance judgment or suspend the settlement of the case if the case is under one of the situations prescribed in Article 192 of the Civil Procedure Code.

In this situation, the “consider” part of the appellate decision must present the grounds of the Civil Procedure Code that the first instance Court must apply to make a decision on suspending the settlement of the case but the first instance Court does not bring this case into trial.

According to Clause 2 Article 193, if the Court suspends the settlement of a civil case according to Clause 1 Article 192, the court fee advances paid by the involved parties shall be confiscated. Therefore, the appellate Court must point out what Clause of Article 192 of the Civil Procedure Code to be applied.

2.5. Writing of the “decide” part of the appellate judgment

2.5.1. Requirements

The decision part is the most important part of a judgment. The appellate judgment shall take the legal effect since the date of judgment pronouncement (Article 278 of the Civil Procedure Code). Thus, the decisions of the appellate judgment must be implemented and respected by all citizens, agencies and organization (Article 19 of the Civil Procedure Code). Therefore, the decisions of the appellate judgment must be sufficient, clear and accurate.

For disputes on house and land which the appellate Court amends the first instance judgment, it must be clearly stated the area, boundary attached with the diagram.

If the amendment of the first instance judgment leads to the amendment of the first instance court fee, it must be stated the first instance court fee that each involved party has to pay.

2.5.2. Some issues to be avoided in writing the “decide” part of the appellate judgment

- Do not state the issues which are meaningless to the settlement of the case and do not give a rise of the rights and obligations of involved parties. For example, it states that:

“The Hearing Panel reserves the right to make an appeal for the plaintiff if he/she requests by another civil case to request the three persons to pay both principal and interest as prescribed by the State Bank of Vietnam”.

Initiating a lawsuit or not is the right of involved parties. If the Court has not settled the case, the involved parties obviously have right to initiate a lawsuit. The Court does not need to pronounce that.

- Do not state the issues which are not under the scope of trial of the Court. For example, force Mr. A to move to live at... The Court should only decide to force A to return the house but where A shall move to is his right.

- Cite the laws sufficiently, not redundant and not missing. According to Article 279 of the Civil Procedure Code, the decision part must state the decisions of the appellate Hearing Panel on each issue to be settled in the case because of having appeals or protests; on the bearing of the first instance and appellate court fee. According to the instructions for use of the appellate judgment sample of the Justice Council of the Supreme People’s Court, the decision part of the appellate judgment must state the points, clauses and articles of the legal normative documents applied by the Hearing Panel to make decisions.

- Do not state “Other decisions of the first instance judgment, which are not protested, shall take legal effect” randomly in all situations.

According to Clause 2 Article 254 of the Civil Procedure Code, “The first-instance judgments, decisions or parts thereof, which are not appealed or protested against, shall take legal effect as from the date of expiry of the appeal or protest time limit”. For this reason, there are some opinions that the decisions of the appellate judgment do not need to state “Other decisions of the first instance judgment, which are not appealed or protested, shall take legal effect”.

However, today, when the first instance judgment is appealed or protested, the first instance Court shall affix a seal with the content of “appealed judgment”, “protested” on the first instance judgment although it is appealed or protested only one part. Thus, it is impossible to use that judgment to execute. It is advisable to distinguish that:

If all parts of the first instance judgment are appealed, the decisions of the appellate judgment must state all decisions of the appellate Hearing Panel on all requests of the involved parties that are adjudicated in the first instance Court. In this situation, the decision part of the appellate judgment do not need to state that the decisions of the first instance, which are appealed or protested, shall take legal effect because of the redundancy. However, if only one part of the first instance judgment is appealed or protested and some decisions thereof are not appealed or

protested but they are not stated in the decisions of the appellate judgment, the appellate judgment must state other decisions of the first instance judgment not appealed or protested which takes legal effect.

Example: the first instance judgment recognizes the divorce between Mr. A and Ms. B; assign Ms. B to rear the children, Mr. A must contribute ... dong each month to rear the children; Ms. B is entitled to own the entire house and must pay Mr. A ... dong (½ value of the house).

Mr. A makes an appeal to request the distribution of the house for the reason that the house still can be shared and he is not able to buy a new house. In case where the appellate Hearing Panel does not accept Mr. A' appeal, the decision part of the appellate judgment should write as follows:

Based on Clause 1 Article 275 of the Civil Procedure Code, remain the first instance judgment.

- Do not accept the request for distribution of the house No... of Mr. A.
- Ms. B is entitled to own the entire house No...
- Mr. B must bear the appellate court fee...

The other decisions of the first instance judgment on divorce and rearing of the children which are not appealed or protested shall take legal effect.

+ In case where the appellate Hearing Panel accepts the appeal of Mr. A, it should be written as follows:

Based on Clause 2 Article 275, Article 276, amend the first instance judgment.

- Mr. A is entitled to own ½ of the house No... with the area of...
- Ms. B is entitled to own ½ of the house No... with the area of... (Attached with the diagram)
- Mr. A must pay Ms. B ... dong
- First instance, appellate court fee... (if there is any change of court fee)

The other decisions of the first instance judgment on divorce and rearing of the children which are not appealed or protested shall take legal effect.

+ In case where the Hearing Panel accept the appeal of Mr. A but they cannot immediately decide the distribution of the house to Mr. A and Ms. B, which leads to the abrogation of the first instance judgment for first instance retrial, it should be written as follows:

Based on Clause 3 Article 275, Article 277 of the Civil Procedure Code, abrogate the first instance judgment No... dated... issued by the People's Court of... on the decision part on the distribution of property between Mr. A and Ms. B and the part of first instance court fee for distribution of property...; transfer the case dossier to the People's Court of... for first instance retrial according to the provisions of law. Mr. A must not pay the appellate court fee.

The other decisions of the first instance judgment on divorce and rearing of the children which are not appealed or protested shall take legal effect.

2.5.3. Writing of the “decide” part

According to Article 275 of the Civil Procedure Code, the appellate Hearing Panel shall have the following rights:

- Uphold the first instance judgment;
- Amend the first instance judgment;
- Abrogate the first instance judgment and transfer the case dossier to the first instance Court to re-adjudicate the case;
- Abrogate the first instance judgment and suspend the settlement of the case.

With the provision above, before move to the decision part of the appellate judgment, it must be cited the procedural law to declare to uphold, amend or abrogate the first instance judgment. The decision part must state the points, clauses and articles of the legal normative documents applied by the appellate Hearing Panel to make decisions specifically.

In case where the first instance Court upholds the first instance judgment, the decision part of the appellate judgment shall cite the provisions of substantive law that the first instance judgment has cited. However, if the first instance judgment just cites the articles but points or clauses of such articles, the appellate judgment should supplement. In contrary, if the first instance judgment cites the articles inappropriate to the settlement of the involved parties’ requests, the appellate level should cancel such articles.

For cases where the appellate Court amends the first instance judgment for the reason that the first instance Court applies incorrect articles, the decision part of the appellate judgment must cite the articles that the first instance Court applies to settle that case.

For cases where the appellate Court abrogates the first instance judgment so that the first instance Court re-adjudicates or abrogates the first instance judgment and suspends the settlement of the case, the decision part of the judgment shall not cite the substantive articles.

a. Cases of upholding the first instance judgment

Pursuant to Clause 1 Article 275 of the Civil Procedure Code,

Decides:

To uphold the first instance judgment, apply point... Clause... Article...

(Cite the provisions of the substantive law)

- To force Mr. (Ms.)... (State full name, if it is an organization, it must be written the completed name of the organization instead of the representative’s name)...

State sufficiently the decisions of the first instance judgment (what decision, which is appealed or protested, is rejected the appeal or protest by the appellate Court);

First instance civil court fee;

Appellate civil court fee.

b. Cases of amending the first instance judgment

- Pursuant to Clause 2 Article 275 and Article 276 of the Civil Procedure Code,
Decides:

To amend the first instance judgment, apply point... Clause... Article...
(Cite the provisions of the substantive law)

Where involved parties make an appeal against more than one decision of the first instance judgment, if it is only amended one or several decisions of the first instance judgment, it shall be considered that the first instance judgment is amended. Thus, it is just cited Clause 2 Article 275 without referring to Article 1 Clause 1 Article 275 of the Civil Procedure Code.

Example: In a business or trade case, the first instance Court forces the defendant to return the plaintiff the amount of money for construction, guarantee for contract performance and late payment for interest. The appellate Court just accepts the appeal for the overdue interest. There is an appellate judgment stating in the decision part as follows:

+ Apply Clause 1 Article 275 of the Civil Procedure Code:

- To reject the appeal and uphold the first instance business or trade judgment No... of the People's Court...

+ Pursuant to Article 9, Article 29 and Article 30 of the Ordinance of Economic Contract

+ Apply Clause 2 Article 275 of the Civil Procedure Code

- To amend the part of interest calculation of the first instance business or trade judgment on calculating the late paid interest for the amount of money for construction.

Pronounces that:

Force Company... to return the Company the following items:

+

+

In the case above, that the Court also applied Clause 1 Article 275 to pronounce rejecting the appeal... is redundant and it conflicts with the citation of Clause 2 Article 275 of the Civil Procedure Code.

In the case above, it should be written that:

Pursuant to Clause 2 Article 275 of the Civil Procedure Code,

Decides:

To amend the first instance judgment as follows:

Apply Article 9, Article 29 and Article 30 of the Ordinance on Economic Contract to force Company... to return Company... the following items:

- Construction amount of ... dong;

- Amount of guarantee for contract performance of ... dong

- Late paid interest of ... dong;

If there are many involved parties participating in the case, but only several

involved parties' appeals are accepted, it must be stated clearly the appeals of which involved parties are not accepted.

Example 1: Dispute on compensation for non-contractual damage

The plaintiff (victim) makes an appeal for increase of compensation level.

The defendant (persons causing damage) makes an appeal for disagreeable compensation.

If accepting the appeal of the plaintiff but not accepting the appeal of the defendant, it must be stated clearly that:

Pursuant to Clause 2 Article 275 and Article 276 of the Civil Procedure Code,

Decides:

To amend the first instance judgment as follows:

Accept the appeal of Mr. (Ms.)..., not accept the appeal of Mr. (Ms.)...

Apply Article... of the Civil Code, force Mr. (Ms.)... to compensate Mr. (Ms.)...

- amount

-amount

Total of...

The first instance civil court fee

The appellate civil court fee

Example 2: In a divorce case

- The first instance judgment assigns the husband to rear the children

- The wife is distributed the house

- The wife makes an appeal for rearing children

- The husband makes an appeal for half of the house

If only accepting the appeal of the wife, it should be stated that:

Pursuant to Clause 2 Article 275 and Article 277 of the Civil Procedure Code,

Decides:

To amend the first instance judgment as follows:

Accept the appeal of Mr. (Ms.)..., not accept the appeal of Mr. (MS.)...

- Apply Article... of the Marriage and Family Law to hear that:

Ms... is entitled to rear...

- Ms... is entitled to own the entire house No...; Mr.... must hand over the house to Ms...

First instance civil court fee

Appellate civil court fee

c. Cases of abrogating the first instance judgment and transferring the case dossier to the first instance Court for retrial

In this situation, the substantive law shall not be cited, thus, it is just written:

Pursuant to Clause 3 Article 275 and Article 278 of the Civil Procedure Code,

Decides:

To abrogate the first instance judgment No.../DSDT dated... by the People's

Court... on adjudicating the dispute on... between plaintiff... and defendant...; to transfer the case dossier to the Court... for first instance retrial in accordance with the provisions of law.

d. Cases of abrogating the first instance judgment and suspending the settlement of the case

In this situation, besides the citation of Clause 4 Article 275 of the Civil Procedure Code, it must also be cited points, clauses of Article 192 and the relevant articles of the Civil Procedure Code that the appellate Court based on the abrogate the first instance judgment.

For example, after the appellate trial; the plaintiff withdraws lawsuit petition and the defendant agrees that. In this situation, the decision of the appellate Court shall be written as follows:

Pursuant to Clause 4 Article 275, Article 278, point c Clause 1 Article 192 and point b Clause 1 Article 269 of the Civil Procedure Code,

Decides:

To abrogate the first instance judgment No.../DSST dated... of the People's Court... on adjudicating the dispute... between plaintiff... and defendant... and suspend the settlement of the case;

First instance civil court fee... (if any)

Appellate civil court fee... (if any)

Note:

At the end of the decision part of the appellate civil judgment, before stating: The appellate judgment shall take legal effect since the date of judgment pronouncement, It must be stated the request for judgment execution, obligation of judgment execution and statute limitations of judgment execution (according to Article 26 of the Civil Judgment Execution Law); specifically:

“Where the judgment, decision are executed according to Article 2 of the Civil Judgment Execution Law, the civil judgment debtor has right to reach an agreement on judgment execution, to request judgment execution, to voluntarily execute judgment or shall be coerced to execute judgment according to Article 6, 7 and 9 of the Civil Judgment Execution Law; the statute limitations of judgment execution shall be implemented according to Article 30 of the Civil Judgment Execution Law”.

The original judgment must state the full name and signature of members of the appellate Hearing Panel.

The official judgment to be sent to the involved parties, agencies, organizations initiating lawsuit and the procuracies must state:

Receiver

-

-

For the appellate Hearing Panel

Judge – Presiding Judge

(Signed and sealed by the Court)

(Full name)

PART THREE
WRITING OF CRIMINAL JUDGMENTS

1. WRITING OF FIRST INSTANCE CRIMINAL JUDGMENTS

1.1. Writing of the introduction of judgments

This part must state sufficiently the issues as prescribed in Clause 2 Article 224 of the Criminal Procedure Code. However, it should be noticed the following points:

a. As to the Hearing Panel: Where the Chief Justice, Deputy Chief Justice, Chief Judge or Deputy Chief Judge performs the adjudicating task, it is just written “The judge – presiding judge, Mr. (Ms.)...” without stating the title. Where the defendant is a juvenile, it must be stated the occupation and work place of the People’s Assessors. If the defendant is not a juvenile, it must not be stated the occupation and work place of the People’s Assessors.

b. As to procedure participating persons:

- As to defendants:

+ If defendants have more than one name, it must be stated all those names.

+ If defendants are just 20 years when committing a crime, it is essential to state all date, month and year of birth; if they are over 20 years, it is just stated the year of birth or age.

+ Regarding the previous offence, it shall be stated only when it is determined in accordance with the provisions of law that such settlement until the date of committing crime has not been over the time limit considered as not being subject to administrative handling or not being disciplined.

+ Regarding the previous conviction, it shall be stated only when it is determined in accordance with the provisions of law that such conviction until the date of committing a crime is not remitted.

+ Where defendants have been convicted but have their criminal records remitted or have been subject to administrative handling but considered as not being subject to administrative handling, it can be stated that “Regarding the personal identities: ...”.

+ If defendants previously have been in custody or temporary detention, it must be stated the date of being in custody or temporary detention and the date of being on bail.

+ If defendants have lawful representatives, it must be stated the full name of the lawful representatives of the defendants and the relationship with the defendants (For example: the lawful representative of defendant Nguyen Van A: Mr. Nguyen Van B..., the defendant's father).

- As to victims: If they are juveniles whose life, health, dignity and honor are infringed, it must be stated their date, month and year of birth.

- As to civil plaintiffs, civil defendants who are agencies, organizations, it must be stated names, addresses of the head offices of such agencies, organizations first and then full names and titles of the representatives for such agencies and organizations.

1.2. Writing of the case content and the assessment of the Court

This is the especially important part of a judgment. This part is prescribed in Clause 3 Article 224 of the Criminal Procedure Code and shown in the acknowledgement part and consideration part of the first instance criminal judgment sample (issued together with the Resolution No. 04/2004/NQ-HDTP dated 05 November 2004 by the Justice Council of the Supreme People's Court). Specifically, the content of cases shall be stated in the "Acknowledge" part and the assessment of Courts shall be stated in the "Consider" part as follows:

1.2.1. Writing of the "Acknowledge" part (case content)

This part presents the offence commission, criminal acts of the defendant (defendants) that are prosecuted by the Procuracy according to the content of indictment. It should be noted that only the criminal acts of the defendant (defendants) that are prosecuted by the Procuracy must be stated. Other acts, although, are described in the indictment but are not prosecuted by the Procuracy, they must not be stated.

Example: The indictment states that "Around 12 o'clock at noon, on 20 October 2004, Lam Van Phand Hoang Van E carried each other on Honda Motorbike 70 and ran along Lieu Giai Street. When passing the Military Commercial Joint Stock Bank, they saw Ms. Le Thi La wearing a small handbag on her shoulder. Lam Van Ph controlled the motorbike to press against Ms. Le Thi La's motorbike so that Hoang Van E could snatch the handbag and speeded up to swerve to Doi Can Street to run away. Ms. Le Thi La stated that there was 1 million dong in the handbag. After robbing the money from Ms. Le Thi La, Lam Van Ph and Hoang Van E went to Dau Cau Restaurant and spent 200 thousands dong for wine and meat. Then they spent the rest in Chua Hoa Restaurant for Karaoke".

It is not necessary to write the paragraph describing that "After robbing the money", Ph and E indulged in drink in the judgment because it is not meaningful to the settlement of the case.

Although this part is to summarize the content of the case as described in the indictment, it must be stated sufficiently the time and place of the commission of the criminal acts, happenings of the commission of the criminal acts, trick of the commission of the offence, consequence of the commission of the criminal acts, motive and purpose of the offenders.

1.2.2. Writing of the “Consider” part (the assessment of the Court)

This part just states the analysis and evaluation of the Hearing Panel, including:

- Analysis and evaluation on the issues which have been argued at the court session;

- Analysis and evaluation on the evidences which determine the defendant (defendants) guilty or innocent;

- Evaluation on whether the defendant has committed a crime or not; and if committing a crime, what crime he/she has committed according to what clause, article of the Penal Code;

- Evaluation on the nature, seriousness of the crime, circumstances aggravating and extenuating the criminal liabilities of the defendants;

- Evaluation on damage and determination of liability for compensation (if any);

- Settlement of evidences (if any).

It should be noted the following issues:

a. When reflecting whether the defendant confesses or not, it must be stated compactly: what points the defendant admits and does not admit; what evidences and arguments the defendant (lawyer) presents to defense. If the testimony of the defendant at the court session conflicts with the previous ones in the investigation agency, it must be stated the explanation of the defendant for the inconsistency in his/her testimony.

It should be avoided copying entire and verbatim testimonies of the defendant (defendants).

If many defendants state one or more than one matter consistently, it just shall be summarized the main content of testimonies of one defendant and supplemented that the other defendants also state similarly without mentioning all testimonies of the defendants.

b. When citing the testimonies of witnesses or victims etc. (as well as other materials in the case dossier), it must be cited the matter directly related the matter that is reviewed by the Court. It should be summarized compactly. After the citation, it is necessary to have a conclusion that such evidences prove what matter.

c. In case where the defendant is prosecuted for different offences, it must be analyzed each offence sufficiently. It should be avoided the analysis focusing only on the serious offence while the less serious crimes are analyzed sparsely or almost are not analyzed.

d. Raising of the lines for the settlement of the case must be consistent with the decision part of the judgment. It should be avoided raising the strict lines for the settlement of the case but applying the light punishments or vice versa.

e. If there is any difference between the Court's lines for the settlement of the case (Hearing Panel) and the prosecution of the Procuracy, it should be clearly argued why the Court (Hearing Panel) does not accept (or just accepts a part) the prosecution decision of the Procuracy.

1.3. Writing of the “Decide” part of the judgment

This part shall state the decisions of the Court and right to make an appeal against the judgment. It must be stated in accordance with the guidance in point c, subsection 2.1, section 2 of part IV and section 27 of the Instruction for use of the first instance criminal judgment and the Resolution No. 04/2004/NQ-HDTP dated 5 November 2004 by the Justice Council of the Supreme People's Court respectively.

It should be noted the following issues:

a. Where the defendant commits more than one offence, it must be written clearly the title of each offence and punishment term for each of them, for example:

- Declare that defendant Nguyen Van A committed the offence of stealing property and intentionally inflicting on other persons.

- Apply point... Clause... Article... of the Penal Code

- Hand down an imprisonment sentence of 15 (fifteen) months to defendant Nguyen Van A for stealing property and 24 (twenty four) months for intentionally inflicting injury. Augment the penalties..., force the defendant to serve 39 (thirty nine) month imprisonment for the two offences. The term of imprisonment penalty shall be calculated from the date...

b. Where the civil part cannot be verified (and can be separated), it should be stated separately the civil part to settle in a civil case according to the civil proceedings.

c. Regarding the compensation for damage:

- Where many defendants are accomplices, it must be clearly stated the joint liability for compensation of the defendants and then the part of each defendant (if it is possible to determine the liability of each defendant).

- It must be stated the full name and address of the person receiving damage compensation.

d. Regarding exhibit handling (if nay):

- It must be sufficiently stated the quality, size, volume, kind, preservation place, method of handling each exhibit.

- For exhibits in dispute on ownership right, it must be clearly stated that it shall be separated to settle in a civil case according to the civil proceedings (clause 4 Article 76 of the Criminal Procedure Code).

2. WRITING OF APPELLATE JUDGMENTS

2.1. Scope of appellate trial and appellate jurisdiction

- According do Article 230 of the Criminal Procedure Code, “Appellate trial means the re-trial of the cases or the review of first-instance decisions by immediate superior courts when the first-instance judgments or decisions in such cases are appealed or protested against before they become legally valid”.

- Regarding the scope of appellate trial, Article 241 of the Criminal Procedure Code prescribes: “The appellate courts shall consider the contents of appeals or protests. If deeming it necessary, they may examine other parts of the judgments, which are not appealed or protested against”.

- Clause 2 Article 248 of the Criminal Procedure Code prescribes: “The appellate courts shall have the right to decide:

a) To reject the appeal or protest and keep the first-instance judgment unchanged;

b) To amend the first-instance judgment;

c) To cancel the first-instance judgment and transfer the case file for re-investigation or re-trial;

d) To abrogate the first-instance judgment and suspend the case.”

This provision is concretized in Article 249, 250 and 251 of the Criminal Procedure Code.

Therefore, appellate judgment must present exactly and sufficiently those provisions of the Criminal Procedure Code on the scope and jurisdiction of appellate courts.

The writing must follow the Instructions for use of the appellate criminal judgment sample issued together with the Resolution No. 05/2005/NQ-HDTP dated 8 December 2005 by the Justice Council of the Supreme People’s Court.

2.2. Writing of the introduction of appellate judgments

The introduction of appellate criminal judgments, basically, shall be written as the introduction of first instance criminal judgments.

However, it should be noted to write as follows:

a. As to defendants:

- It must be sufficiently stated about the defendants who have appeals or are appealed.

- For the defendants who do not have appeal or are not appealed or protested but appellate courts have considered the part of first instance judgments with respect to them, it shall be written as the case where they have appeals or are appealed, protested. If the appellate courts have not considered the part of the first instance judgment with respect to them, it shall be written the number of defendants without writing their full name. In case where there is only one defendant, it should be written his/her full name.

b. As to other procedure participating persons: it just shall be stated the persons having appeals, relating to appeals or protests or defending the defendants. The writing is similar as to writing for defendants.

2.3. Writing of the case content and the assessment of the court

2.3.1. Writing of the “acknowledge” part (case content)

Being different from the acknowledgement part of first instance criminal judgments, the acknowledgement part of appellate judgments includes 3 small parts:

- Case content (summarizing the case according to the indictment of the procuracy and the first instance judgment which relates to the appeals, protests or does not relate to the appeals, protests but the appellate court has reviewed).

- Decisions of the first instance judgment (stating exactly and sufficiently the decisions of the appealed or protested first instance judgment and non-appealed or non-protested decisions which has been reviewed by the first instance court. For the decisions of the first instance judgment which are not appealed or protested, it just shall be written: Besides, the first instance court hands down a sentence from... to... to the other defendants and summarized the decisions such as compensation for damage, exhibit handling, court fee etc.).

- Appealed or protest content (this part must be clearly written the appealed or protested content requesting the appellate court to settle what matter; the reasons, grounds for such requirements. It should be noted to write briefly instead of literally write the arguments, analysis of such requirements)

2.3.2. Writing of the “consider” part (assessment of the court)

This part includes the following contents:

- Analyze, evaluate the issues argued at the court session;
- Evaluate the appealed or protested decisions of the first instance judgment or non-appealed or non-protested decisions which have been reviewed by the appellate court;
- Evidences proving the acceptance or non-acceptance of appeals, protests;
- Tentative decisions of the appellate court.

2.4. Writing of the “decide” part of the judgment

The writing must be in accordance with the Instructions for use of the appellate criminal judgment sample issued together with the Resolution No. 05/2005/NQ-HDTP dated 8 December 2005 by the Justice Council of the Supreme People’s Court.

PART FOUR

REFERENCE JUDGMENTS

Through the studies of the provisions of the procedure laws and issued judgment samples, the group of authors sees that many judgments are written in accordance with the provisions of procedure laws and the issued judgment samples. Hereinafter, the group of author would like to introduce some of those judgments for reference (after having been re-edited).

It should be noted that these judgments are used for reference to the writing other than the content.

Section I. First instance civil judgments

1. Judgment No. 1

PEOPLE'S COURT OF CITY H

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

Judgment No. : 15/2005/DSST

Rendering date: April 20, 2005

On a dispute on civil contract

ON BEHALF OF

THE SOCIALIST REPUBLIC OF VIETNAM

THE PEOPLE'S COURT OF CITY H

With the first instance Hearing Panel composed of:

Judge – Presiding Judge: Ms. Tran Thi H

People's assessors : 1. Mr. Nguyen Dinh T

2. Mr. Nguyen Quy L

Court clerk taking the minutes of the trial: Mr. Nguyen Thi L, staff of the People's Court of City H.

On April 20, 2005 at the head office of the People's Court of City H, holds a public trial to hear the case No. 260/TLST-DS dated February 10, 2005 “*on a dispute on civil contract*” according to the Decision No. 167/2005/QDXX-ST dated April 01, 2005 on bringing the case into trial between:

1. Plaintiff:

Mr. Do Ngoc A, born in 1963, living in the province X, the Republic of P

Lawful representative of the plaintiff: Mr. Pham Quang D, born in 1965, residing in hamlet Th, commune MT, district TL, City H (Authorization Document No. 026000, volume No. 04/LSCC/DS dated February 05, 2005 notarized in Vietnamese embassy in the Republic of P).

2. Defendant:

Dong Duong Joint Stock Bank (transaction name: Dong Duong Joint-Stock Bank – DJSB) locating at 37 Hang B, ward X, district K, city H.

Lawful representative of the defendant: Ms. Phan Thu H, born in 1964, residing in hamlet B, commune K, district D, city H. (Authorization Document No. 026015, volume No. 04/TP/CC-SCC/DS dated April 08, 2005 notarized in Hanoi Notary Public's Office No. 3).

3. Person with related rights and obligations:

Mr. Le Van D, born in 1965, residing at 166, street H, ward N, district B, city H.

ACKNOWLEDGES:

According to the lawsuit petition dated January 1, 2005 and the testimonies stated in the People's Court of City H, Mr. Pham Quang D (lawful representative of plaintiff Do Ngoc A) presents:

Since October 2, 1995 until July 13, 1996, Mr. Do Ngoc A (Director of Phuong Dong Star Private Enterprise) signed 5 contracts for a debt of 7 billion 3 hundred million dong with the interest of 0.8%/month with Dong Duong Joint Stock Bank (hereinafter referred to as Dong Duong Bank); term of payment is on January 1, 1997.

In order to ensure the loan, Mr. Do Ngoc A mortgaged the properties under his ownership including:

(1)- House at 21 Trinh Van C Street, ward M, district M, city C.

(2)- House at 58 Van H Street, ward H, district C, city H.

(The parties do not have any dispute on the two houses above)

(3)- Land of 4547 m² including 7 plots No. 76, 77, 78, 79, 80, 82, 155 of extract map No. 14 on hamlet K, commune L, district T, city H. Mr. Do Ngoc A was granted the Certificate of land use rights No. 1035 dated September 1, 1990 by the People's Committee of district T.

The contract for the mortgage of land use rights between Mr. Do Ngoc A and Dong Duong Bank was not notarized or certified by the People's Committee of district T, city H and the two parties did not do the procedures for registration of secured transaction.

On February 26, 2002 Dong Duong Bank put the land of 4576 m² in hamlet K, commune L, district T, city H on sale to recover the debt and Mr. Le Van D bought that land with 3 billion 240 million dong. Dong Duong Bank put the mortgaged property on sale without providing the starting price, declaring the auction to Mr. Do Ngoc A, publicly posting up the auction in accordance with the provisions of law. At the moment of signing the contract for property mortgage, Dong Duong Joint Stock Bank invited Vaco Audit Company to value the mortgaged property which is 12 billion dong. However, when putting on sale, the property was valued to be 3 billion dong, which causes loss to Mr. Do Ngoc A.

On September 20, 2002 Mr Le Van D was granted the Certificate of land use rights No. 1035/QSDD/52-11 to that land by the People's Committee of district T and built a 4-level house on that land.

Requirement of Mr. Do Ngoc A: Request the Court to abrogate the result of auction and the certificate of land use rights No. 1035/QSDD/52-11 in the name of Mr. Le Van D issued by the People's Committee of district t, city H dated September 30, 2002.

Ms. Phan Thu H (lawful representative of the defendant which is Dong Duong Bank) confirms: Dong Duong Joint Stock Bank lent Mr. Do Ngoc A 7 billion 300 million dong and accepted the mortgage of 3 blocks of properties as Mr. Do Ngoc A presented. Regarding the putting of mortgaged properties on sale, Dong Duong Joint Stock Bank presents as follows:

On December 17, 1998 Mr. Do Ngoc A received the Official dispatch No. 1284/CTAD on giving the mortgaged properties which are a temporary house and a land with pond and garden of 4547 m² in hamlet K, commune L, district T, city H as payment of a debt. The mortgaged properties were valued as 12 billion dong. Mr. Do Ngoc A and his wife, Ms. Nguyen Thi K, clearly wrote that *“voluntarily transfer all mortgaged properties to Dong Duong Joint Stock Bank to be free to use, exploit and sell to collect money as deduction of the debt. At the same time, Dong Duong Joint Stock Bank shall actively find clients to cooperate with the Bank to sell these properties”*. For that reason, pursuant to the Decision No. 149/2001/QD-TTg dated October 5, 2001 by the Prime Minister on approving the proposal process of outstanding debts of Commercial Banks and the Joint Circular No. 02/TTLT?NHNN-BTP dated February 5, 2002 by the State Bank of Vietnam – Ministry of Justice, Dong Duong Bank decided to auction the mortgaged properties to recover the debt of Mr. Do Ngoc A. Before deducting the property auction, Dong Duong Bank announced in two newspapers which are Vietnam Economic News and International Economic News issued on February 7 and 15, 2002 with the content: Dong Duong Joint Stock Bank should conduct the auction of the mortgaged property which was 4557 m² of land including pond and garden in hamlet K, commune L, district T, city H to recover the outstanding debts.

When carrying out the auction of properties, Dong Duong Joint Stock Bank invited judicial representative of the People's Committee of district T. The People's Committee of district T assigned Mr. Ta Ngoc H, Deputy Head of office of the People's Council and People's Committee of district T to be in charge of judicial works to attend.

On February 26, 2002 Dong Duong Joint Stock Bank publicly auctioned the mortgaged property and abided by the procedures in accordance with the provisions of the Joint Circular No. 02/2002 dated February 5, 2002 by the State Bank and Ministry of Justice and the Decision No. 149/2001/QD-TTg dated October 5, 2001 by the Prime Minister.

Dong Duong Joint Stock Company completed all procedures for sale of land area of 4547m² to Mr. Le Van D, residing at 166 Street H, ward N, district B, city H with the price of 3 billion 240 million dong. On September 30, 2002 Mr. Le Van Duc was granted the Certificate of land use rights by the People's Committee of district T.

The sum of money collected from the auction of mortgaged property is not enough to pay for the amount Phuong Dong Star Private Enterprise owed Dong Duong Joint Stock Bank. However, currently Phuong Song Star Private Enterprise has no longer existed, thus, the Bank does not claim for deficient amount in this case. The Bank shall sue in another case.

Dong Duong Joint Stock Bank did not agree with the requirements of the plaintiff.

The person with related rights and obligations, Mr. Le Van D, presents: He bought 4547 m² in hamlet K, commune L, district T, city H auctioned on February 26, 2002 from Dong Duong Joint Stock Bank for 3 billions 240 million dong and now he still manages that plot of land. On September 30, 2002 he was granted the Certificate of land use rights with respect to the plot of land No. 1035/QSDD/52-11 by the People's Committee of district T, city H. Since being entitled to manage that land area, he built a 4-level house to keep the land and poured more land. The purchase and sale between he and Dong Duong Joint Stock Bank are straightforward, so, he does not come to the Court for the settlement and does not have any requirement.

CONSIDERS:

After studying the documents in the case dossier which have been examined at the trial and based on the result of argument at the trial, the Hearing Panel assesses:

Regarding the proceedings:

Mr. Le Van D (the persons with related rights and obligations in the case) is summoned lawfully by the People's Court of city H for the second trial but he is absent. According to Clause 1 Article 201 and Clause 3 Article 202 of the Civil Procedure Code, the Court still continues to hear the case in his absence.

Regarding the content of dispute:

**** Reviewing the credit contracts between Mr. Do Ngoc A and Dong Duong Bank (Official contracts):***

Both Mr. Do Ngoc A and Dong Duong Joint Stock Bank admit that since October 2, 1995 to July 13, 1996 Mr. Do Ngoc A signed 5 contracts for a loan with Dong Duong Joint Stock Bank with the total amount of 7.3 billion dong with the interest of 0.8%/month and the term of payment is on January 13, 1997. The two parties were voluntary and abided by the provisions of law in terms of content and form of the contract. Thus, pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court recognizes the credit contracts between Mr. Do Ngoc A and Dong Duong Joint Stock Bank are real and lawful.

**** Reviewing the contract for property mortgage which is the right to use the land of 4547 m² in hamlet K, commune L, district T, city H (auxiliary contract):***

Article 731 of the Civil Code prescribes: *"A contract for the mortgage of land use rights must be writing form. A mortgage of land use rights must be filed and registered with the competent People's Committees according to the land law"*.

Clause 2 Article 400 of the Civil Code prescribes: *"In case where the law provides that the contract must be in writing or have certification of the State Notary Public, confirmation, registration or permission, the contract must abide by those provisions"*.

Clause 5 Article 403 of the Civil Code prescribes: *"with respect to contracts which require certification by the State Notary or must be confirmed, registered, or granted permission, the point of time for the execution of such contracts shall be the time at which they are certified, confirmed, registered or granted permission"*.

In this case, the contract for the mortgage of rights to use the land of 4547 m² in hamlet K, commune L, district T, city H between Dong Duong Joint Stock Bank and Mr. Do Ngoc A did not follow the provisions of the Civil Code on the form of contract for land use rights mortgage although it was made in writing because the procedures and registration of mortgage were not made in the People's Committee of district T (where the mortgaged property locates). Therefore, this contract for property mortgage does not have legal value; there is no arising rights and obligations between the two parties with respect to the property.

**** Regarding the handling of mortgaged property being land use rights:***

Since the mortgage of property which is the rights to use 4547 m² of land in hamlet K, commune L, district T, city H between Dong Duong Joint Stock Bank and Mr. Do Ngoc A violates the provisions of law on the form of contract, Dong Duong Joint Stock Bank shall not have right to request the competent State agencies to organize an auction of land use rights to recover the capital and interest according to Clause 2 Article 737 of the Civil Code if not doing the order of procedures as prescribed in point c Clause 3 Article 1 of the Decree 149/CP on the order of procedures for the auction of properties of which the contracts for mortgage have not been completed the legal procedures according to the provisions of law: *“With respect to the properties for assurance of a loan which have not completed the legal procedures and do not have dispute, Commercial banks must inform the State Bank of Vietnam to report to the Steering Committee to re-structure the finance of Commercial Banks, consider and request the Prime Minister to ask the relevant competent State agencies to complete the legal procedures so that the Commercial Banks...can put them up for sale soon to recover debts”*.

Pursuant to the documents in the case dossier, the Hearing Panel sees that the auction of properties of Dong Duong Joint Stock Bank has not been conducted the procedures; specifically:

- Before handling the mortgaged property which is the rights to use 4547 m² of land in hamlet K, commune L, district T, city H, Dong Duong Bank still conducted the auction of property without informing the State Bank of Vietnam to report to the Steering Committee to re-structure the finance of the Commercial Bank, consider and request the relevant competent State agencies to complete the legal procedures for the mortgaged contracts, which violates the provision in point c Clause 3 Article 1 of the Decree 149/Cp on the order of procedures for the auction of properties of which the mortgaged contracts have not been completed the legal procedures according to the provisions of law.

- Dong Duong Joint Stock Bank did not have an entrustment contract to auction the property of Mr. Do Ngoc A according to Article 7 of the Decree No. 86/CP dated December 19, 1996 of the Government on the issuance of property auction regulations: *“In case of auctioning land use rights, the entrustment contract for the auction of properties must be signed when relevant competent state agencies permit”*.

- Dong Duong Joint Stock Bank did not have a document which grants permission to auction the land use rights by the People’s Committee of district T (where the auctioned property locates) according to point a Clause 1 Article 3 of the Joint Circular No. 03/2001 dated April 23, 2001 by the State Bank – Ministry of Justice – Ministry of Finance – Directorate of Land Survey.

- Although Dong Duong Joint Stock Bank informed the auction of the property in two newspapers which are Vietnam Economic News and International Economic News, they did not determine the starting price. On the other hand, they did

not inform the auction of the property to Mr. Do Ngoc A and post up the auction (within 30 days with respect to immovable properties) in the auction place and the place where the auctioned properties locate.

- That Dong Duong Joint Stock Bank based on the provisions in the Joint Circular No. 02/TTLT/NHNN-BTP dated February 2, 2002 by the State Bank of Vietnam – Ministry of Justice to carry out the auction of the property is not correct. Because the Joint Circular No. 02/TTLT/NHNN-BTP just guides the implementation of the Decision No. 149/CP on the procedures for sale of secured properties, notarization for the document of property sale and transfer of properties to commercial banks in accordance with the judgments, decisions of Court but it does not guide the application for all cases of property mortgage.

From the analysis above, the Hearing Panel sees that the auction of the mortgaged property of Dong Duong Joint Stock Bank has violated the law. Therefore, it is well-grounded to accept the petition of Mr. Do Ngoc A: Abrogate the auction result on February 26, 2002 of Dong Duong Joint Stock Bank with respect to the land area of 4547m² in commune L, district T, city H.

As to Mr. Le Van D: During period of using such property, Mr. Le Van D has spent expenses, managed and renovated the land area of 4547m². However, because Mr. Le Van D does not come to the Court according to the summons, the Court cannot take his testimony and request. Consequently, if Mr. Le Van D has any request, it shall be settled in another case.

Regarding the amount of 3 billion 240 million dong that Mr. Le Van D pay the auctioned land area above, Dong Duong Joint Stock Bank and Mr. Le Van D shall discuss and agree with each other; if it is impossible to reach an agreement, it shall be settled in another case if the parties have lawsuit petition.

Regarding court fee: According to the provisions of law, Dong Duong Joint Stock Bank must bear 50,000 dong for the first instance civil court fee. Mr. Do Ngoc A must not bear the first instance civil court fee.

For those reason,

DECIDES:

Applying Clause 1 Article 400, Clause 5 Article 403, Article 731, Article 737 of the Civil Code; the Decree No. 165/ND-CP dated November 19, 1999 by the Government on secured transaction; the Decree No. 86/CP dated December 19, 1996 by the Government on the issuance of regulations of property auction; the Decree No. 149/CP on the order of procedures for the auction of properties; the Joint Circular No. 03/2001/TTLT/State Bank – Ministry of Justice – Ministry of Public Security – Ministry of Finance – Directorate of Land Survey dated April 23, 2001; Clause 1

Article 7 and Clause 1 Article 11 of the Decree 70/CP dated June 12, 1997 by the Government on court fee and charge.

To accept the petition of Mr. Do Ngoc A and hear as follows:

1. Annul the result of property auction on February 26, 2002 of Dong Duong Joint Stock Bank with respect to the area of 4547m² in commune L, district T, city H and Mr. Le Van D residing in 166 Street H, ward N, district B, city H.

2. The expenses for care, management and renovation of the land area of 4547 m² (if any) shall be settled in another case if Mr. Le Van D make request.

3. The payment of 3 billion 240 million dong for buying the land between Mr. Le Van D and Dong Duong Joint Stock Bank shall be agreed and solved by the two parties; if it is impossible to reach an agreement, they shall have right to request the Court to settle.

4. Court fee: Dong Duong Joint Stock Bank must bear 50,000 dong for the first instance civil court fee.

Return 20,000,000 dong (Twenty million dong) of court fee advances to Mr. Do Ngoc A in accordance with the Receipt No. 00689 dated January 21, 2005 of the Judgment Execution Agency of city H.

Since the date of receiving the request for judgment execution of the judgment creditor until the completion of all payments, the judgment debtor, each month, must bear the interest of the left amount to be executed according to the basic interest level prescribed by the State Bank, corresponding the time that the judgment has not been executed.

The present involved parties shall have right to make an appeal within the time limit of 15 days since the date of judgment pronouncement. Mr. Le Van D being absent shall have right to make an appeal within the time limit of 15 days since the date of lawful service of judgment.

Receiver:

- Mr. Do Ngoc A;
- Dong Duong Joint Stock Bank;
- Mr. Le Van D;
- People's Procuracy of city H;
- Saved: Office, Civil Court, Case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge – Presiding Judge**

Tran Thi H

Note: Since this case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and statue of limitations for judgment execution.

2. Judgment No. 2

PEOPLE'S COURT OF CITY H

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom - Happiness

Judgment No. : 09/2005/DSST

Rendering date: February 2, 2005

On a dispute on civil contract

(contract for sale and purchase of house)

ON BEHALF OF

THE SOCIALIST REPUBLIC OF VIETNAM

THE PEOPLE'S COURT OF CITY H

With the first instance Hearing Panel composed of:

Judge – Presiding Judge: Ms. Chu Thi T

People's Assessors : 1. Ms. Nguyen Thi Kim H

2. Mr. Nguyen Duc L

Court clerk taking the minutes of the trial: Mr. Tran Van N, staff of the People's Court of city H.

On February 2, 2005 at the head office of the People's Court of city H, holds a public trial to hear the case No. 55/2005/TLST-DS dated December 1, 2003 on a dispute on a contract for purchase and sale of house according to the Decision No. 20/2005/QDXX-ST dated January 13, 2005 on bring the case intro trial between:

1. *Plaintiff:* Ms. Nguyen Thi N, residing at No. 22 Alley 03 Lane 83 of Collective Zone of School L, ward Y, district C, city H.

Lawful representative of the plaintiff: Mr. Dao Ba D, residing in Room 306, Block C T1A-DN1 of Urban Area M, district TL, city H, is the representative according to the entrustment of the plaintiff (Entrustment document dated December 12, 2003)

2. *Defendant:*

- Ms. Dao Bich L, residing at No. 16 Street N, ward V, district D, city H.

- Ms. Thai H, residing at No. 102 Street MK, city V, province N.

Lawful representative of the defendant: Ms. Ho Thi V, residing at A5, wad Q, city V, province N (Entrustment document dated January 12, 2004)

3. *Persons with related rights and obligations:*

Mr. Nguyen Xuan B, Mr. Nguyen Duy D, Mr. Nguyen Bao N and Ms. Nguyen Thi Bich H, residing at No. 39 (old No. is 215) Street T, district D, city H.

CONSIDERS:

According to the lawsuit petition dated December 1, 2003 and the testimonies stated in the People's Court of city H, the plaintiff (Ms. Nguyen Thi N) presents as follows:

The house No. 215 Street T (now is No. 39), district D, city H belongs to the ownership right of the State and it had been rented to use by Ms. N's parents since 1950.

In 1972, Ms. Dao Bich L became a daughter-in-law. In 1993, Mr. A (Ms. L's husband) passed away, Ms. L became the owner of contract for renting that house with the Housing trade company No. 1 of city H. In the contract for renting house, there are 5 members (Ms. B, Ms. N and 3 children of Ms. L who are Nguyen Duy D, Nguyen Bao N and Nguyen Thi Bich H). The paper relating to the house states the area is 58.9m² but in the using period, Ms. L' family has built a 4.5-floor house inside and a 4-level house outside.

On December 12, 1997 Ms. L signed a contract to sell the House No. 215 Street T to Ms. Thai H (General Director of Bac A Joint Stock Commercial Bank) for 1,550,000,000 dong to pay for a debt to Bac A Bank and for the other debts. In the contract, there were the signatures of Ms. L and other 5 members. But Ms. N confirmed that Ms. N and Ms. H's signatures were forged by Ms. L. Ms. N totally did not know about the sale of the house to Ms. H because at that time, Ms. N moved to another place and did not live with the family at 215 Tay Son. Ms. N thinks that Ms. L sold the house without her permission is illegal.

Ms. N (plaintiff) requests the Court to abrogate the contract for selling the house No. 215 Street T between Ms. L and Ms. Thai Ha and requests Ms. Thai H to return the house.

Ms. Dao Bich L (defendant) presents:

She agrees with the plaintiff (Ms. N) about the origin and rights to use the house No. 215 Street T. Ms. L also admit the establishment of the contract for selling the house to Ms. Thai H and the forgery of Ms. N and Ms. H's signatures with the aim of completing the procedures for selling the house. Ms. L admits that Ms. Thai H already paid her 1,550,000,000 dong sufficiently. The two parties had an oral agreement that when Ms. L had money to pay the bank, she would take the house No. 215 Street T back. Therefore, the two parties just made a contract instead of doing the procedures according to the general provisions and Ms. L still paid for renting the house No,215 Street T to the Housing trade company until 2002.

After selling the house, Ms. L used a part of that amount to buy the house No. 16 Street N where her family has been living and transferred the house to Ms. Thai H.

Ms. L is aware of her wrong doing and hopes to take the house No. 215 Street T back because it is the property of her husband's family; thus, she agrees to request the Court to abrogate the contract for purchase and sale of the house dated December 27, 1997 with Ms. Thai H.

Ms. Thai H (defendant) presents:

The house No. 215 Street T belongs to the State ownership and Ms. L's family has a lease contract. She admitted that Ms. L and she signed a contract for purchase and sale of the house on December 27, 1997 with the area of 90m² stated in the contract and with the contents as Ms. N and Ms. L presented above but she did not know Ms. L forged the signature of the two family members including Ms. N. Now, she manages the documents relating to the house including Contract for renting house No. 2876 dated June 16, 1997 signed by Ms. L, the head of the family household with the Housing trade company; Contract for purchase and sale of the house No. 215 Street T dated December 27, 1997; Receipt for deposit and Receipt for the money of buying house written by Ms. L. She confirmed that as the procedures for signing contract, if the two parties already made a contract in writing and all members undersigned in the contract for renting house of the State signed in the contract for purchase and sale of the house, that contract for purchase and sale of the house must be legitimate. That Ms. L forged the signatures of Ms. N and Ms. H is Ms. L's fault. She did not know and have responsibility for studying that are real or faked signatures.

Ms. Thai Ha does not agree with the request of Ms. N and the opinions of Ms. L and she requests the Court to recognize the contract for purchase and sale of the house dated December 27, 1997 between Ms. L and her.

If Ms. N and Ms. L want to take the house back, Ms. L must pay her the amount of 6,433,395,000 dong valued by the Court, 1,550,000,000 dong of which is the money of selling house and 4,883,395,000 dong of which is the amount of slippage in prices.

Ms. L does not agree with the requirement of Ms. Thai H because Ms. L thinks that the area of corridor which is 1.4m x 5.4m = 7.56m² (bordering the pavement) of the house No. 215 Street T belong to the surface area of the whole residential area but it does not belong to the area of 90m² of the house No. 215 which was assigned to Ms. Thai H. Therefore, calculating this area to determine the value of the house is 6,433,395,000 dong is incorrect.

Mr. Nguyen Xuan B, Nguyen Duy D, Nguyen Bao N and Ms. Nguyen Thi Bich H are the persons with related rights and obligations agree with the viewpoints of the plaintiff.

CONSIDERS:

After studying the documents in the case dossier examined at the trial and pursuant to the results of argument at the trial, the Hearing Panel assesses:

1. Regarding the request of Ms. Nguyen Thi N (plaintiff)

Pursuant to the documents in the case dossier and statement of the parties, all parties agree: The house No, 215 Street T belongs to the State ownership and is rented to reside lawfully by Ms. L's family including 6 members among whom Ms. L is undersigned as the head of the household and Ms. N, Mr. Nguyen Xuan B, Mr. Nguyen Duy D, Ms. Nguyen Bao N and Ms. Nguyen Thi Bich H are members. On December 27, 1997, Ms. L made a contract in writing for selling the house to Ms. Thai Ha and received 1,550,000,000 dong from Ms. Thai H. The defendant does not oppose these details. Therefore, pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court recognizes these details are true.

According to provisions of the Resolution No. 01/2003/NQ-HDTP dated April 16, 2003 by the Justice Council of the Supreme People's Court guiding the application of law in the settlement of some civil, marriage and family disputes, the condition to assign a contract for renting house which belong to the State ownership is that all members having names in the contract agree with the assignment and have an application for assignment; the parties must have the certification of the local People's Committee and the approval of Housing Management Agency; the assignee must have household registration in city H. According to the evidences submitted by the parties and at the trial, Ms. N and Ms. L confirmed the signatures of Nguyen Thi N and Nguyen Thi Bich H in the contract for purchase and sale of the house dated December 27, 1997 were signed by Ms. L. The expertise document of signatures required by the Court in the period of trial preparation concludes that the signatures in the contract are not the real ones of Ms. N and Ms. H. Accordingly it is well-grounded to prove that the forgery of signatures as the testimony of Ms. L is true.

Ms. Thai H cannot prove that Ms. N knows the purchase and sale of the house between Ms. Thai H and Ms. L.

According to the testimonies of Ms. Thai H, she did not have the household registration in city H at the moment of buying the house. This testimony is appropriate to the verification of the Court in the police office in the locality where Ms. Thai H lives.

According to the results of investigation in Housing Trade Company No. 1 of city H, Ms. Thai H and Ms. L did not have any application for assignment of the

house between Ms. L and Ms. Thai H and did not have the certification of the People's Committee of the ward either.

Pursuant to the provisions in Article 131, 136 and 443 of the Civil Code 1995 and point c Article 3 of the Resolution No. 01/2003/NQ-HDTP dated April 16, 2003 by the Justice Council of the Supreme People's Court guiding the application of law in the settlement of some kinds of civil, marriage and family disputes, Ms. L and Ms. Thai H did not implement the provisions of law on the procedures for assigning houses under the ownership of the State. Therefore, the contract for purchase and sale of house between Ms. L and Ms. Thai Ha dated December 27, 1997 is invalid. According to Clause 2 Article 146 of the Civil Code, the parties must restore the original status quo; the party at fault must compensate.

Consequently, the request of Ms. N (*plaintiff*) and persons concerned on the contract for purchase and sale of the house between Ms. L and Ms. Thai H should be accepted.

2. Regarding the request of Ms. Thai H (defendant)

Since the contract for purchase and sale of the house dated December 27, 1997 between Ms. L and Ms. Thai H is invalid, pursuant to Clause 2 Article 146 of the Civil Code 1995, the party at fault must compensate for damage.

That Ms. L and Ms. Thai H did not implement exactly the provisions in Article 443 and 444 of the Civil Code on the form and procedures for signing a contract for purchase and sale of the house in the competent agency also is a fault. Ms. L has fault in forging the signatures of Ms. N and Ms. H in the contract for purchase and sale of the house while Ms. Thai H has fault in making the contract for purchase and sale of the house with Ms. L but Ms. Thai H herself did not have permanent household registration in city H. Generally, Ms. L's fault is worse than Ms. Thai H's one in this case. So it is well-grounded to determine that Ms. L must be responsible for 80% of the fault and Ms. Thai H must be responsible for 20% in the compensation for damage due to invalid contract according to Article 146 of the Civil Code.

Based on the determination of the parties' fault above, the compensation for damage due to invalid contract shall be settled as follows:

That Ms. L did not agree to calculate the corridor area of $1.4\text{m} \times 5.4\text{m} = 7.56\text{m}^2$ (bordering the pavement) of the house No. 215 Street T in the total surface area of the house is not well-grounded to be accepted. Since in the contract for assignment of the house dated December 27, 1997 Ms. L herself determined the total area of land and house was 90m^2 and the actual examination of the Pricing Council showed that the house area included the corridor area of 7.56m^2 .

Therefore, based on the minutes of pricing land and house dated December 14, 2004, it should be determined the price of the house including the value of land which is $89.14\text{m}^2 \times 70,000,000 \text{ dong/m}^2 = 6,239,800,000 \text{ dong}$; the value of construction which is $193,595,000 \text{ dong}$; the total is $6,433,395,000 \text{ dong}$. Deducting the money of selling the house in accordance with the market price in December 1997 when Ms. L

received 1,550,000,000 dong, 4,883,395,000 dong is the value of slippage in prices (the loss amount due to the invalid contract).

Ms. L must bear 80% of the loss equivalent to 3,906,716,000 dong

Ms. Thai H must bear 20% of the loss equivalent to 976,678,000 dong.

Because of the invalid contract, the two parties must return the amount which was handed over and received to each other and must be responsible for the loss. Specifically, Ms. Thai H must return the house No. 215 Street T to Ms. L and the members having names in the contract for renting house. Ms. L must pay 5,456,716,000 dong to Ms. Thai H (1,550,000,000 dong of which is the money of selling house received in 1997 and 3,906,716,000 dong of which is the loss due to slippage in prices according to the market).

*** Regarding court fee**

According to Clause 2 Article 7 of the Resolution No. 70/CP dated June 12, 1997 by the Government prescribing court fee and charge, Ms. L must bear the first instance court fee of 28,289,460 dong and Ms. Thai H must bear the first instance court fee of 5,143,540 dong. However, both Ms. L and Ms. Thai H have application for remission of court fee with certification of the local authority. Thus, pursuant to Clause 3 Article 13 of the Decree 70/CP dated June 12, 1997 by the Government prescribing court fee and charge, the Court should decrease half of court fee level for each person; specifically:

Ms. L must pay 14,144,703 dong of the first instance civil court fee.

Ms. Thai Ha must pay 2,571,770 dong of the first instance civil court fee.

Ms. N shall be returned the amount of 6,000,000 dong of court fee advances

For such reasons

DECIDES:

Applying Article 131, 136, 146, and 443 of the Civil Code 1995; point Article 3 of the Resolution No. 01/2003/NQ-HHTTP dated April 16, 2003 by the Justice Council of the Supreme People's Court guiding the application of law in the settlement of some kinds civil, marriage and family disputes; Clause 2 Article 7 and Clause 3 Article 13 of the Decree No. 70/CP dated June 12, 1997 by the Government on court fee and charge, announces:

1. The contract for purchase and sale of the house dated December 27, 1997 between Ms. Dao Bich L and Ms. Thai H with respect to the house No. 215 Street T, district D, city H is invalid.

2. Ms. Thai H must return the house No. 215 Street T, district D, city H to Ms. Nguyen Thi N and the members who have names in the contract for renting house, including Ms. Dao Thi Bich L, Mr. Nguyen Xuan B, Mr. Nguyen Duy D, Mr. Nguyen Bao N and Ms. Nguyen Thi Bich H.

3. Ms. Dao Bich L must pay Ms. Thai H the principal amount of selling house which is 1,550,000,000 dong and the amount of compensation for damage due to the

contract which is 3,906,716,000 dong. The total amount is 5,456,716,000 dong (five billion four hundred fifty six million seven hundred sixteen thousand dong) .

4. To reject the request of Ms. Thai H with respect to compensated amount of 976,679,000 dong.

5. Regarding court fee:

- Ms. Dao Bich L must pay 14,144,730 dong of the first instance civil court fee and Ms. Thai H must pay 2,571,770 dong of the first instance civil court fee.

- Return 6,000,000 dong of the first instance civil court fee advances to Ms. N according to the receipt No. 0776 dated March 25, 2003 in the Judgment execution squad, city H.

After the judgment take legal effect and the judgment creditor has an application for judgment execution while the judgment debtor does not implement, the judgment debtor must bear the interest for the amount which has not been executed the judgment equivalent to the time of late executing the judgment according to the basic interest prescribed by the State Bank since the date that the judgment creditor has an petition for judgment execution.

The involved parties present at the court session shall have right to make an appeal within the time limit of 15 days since the date of lawfully delivering or posting up the judgment.

Receiver:

- Ms. Nguyen Thi N;
- Mr. Dao Ba D;
- Ms. Dao Bich L, Ms. Thai H, Mr. Nguyen Xuan B, Mr. Nguyen Duy D, Mr. Nguyen Bao N and Ms. Nguyen Thi Bich H;
- Housing Trade Company No. 1 of city H;
- People's Procuracy of city H;
- Saved in: Office, Civil Court, Case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge – Presiding Judge**

Chu Thi T

Note: *Because this case was adjudicated in 2005, the decision part has not written the right to request the judgment execution, obligation of judgment execution and prescription for judgment execution.*

3. Judgment No. 3

PEOPLE'S COURT OF CITY H

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness

Judgment No.: 17/2005/DSST
Rendering date: April 14, 2005
On a dispute on civil contract for
transportation of goods

ON BEHLF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF CITY H

With the first instance Hearing Panel composed of:

Judge – Presiding Judge: Mr. Le Son H

People's Assessors : 1. Mr. Do Van N

2. Mr. Bui Quy T

Court clerk taking the minutes of the trial: Mr. Nguyen Van M, staff of the People's Court of city H.

On April 14, 2005 at the head office of the People's Court of city H, hold a public trial to hear the case No. 39/2004/TLST-DS dated June 1, 2004 on a dispute on a contract for transportation of goods according to the Decision No. 96/2005/QDXX-ST dated March 25, 2005 on bringing the case into trial between the involved parties:

1. *Plaintiff:* CH Company Ltd., head office at No. 16 Street N, ward V, district D, city H;

Lawful representative of the plaintiff: Mr. Vu Xuan N, residing at No. 95 Street V, ward Q, district D, city H, is the representative according to the entrustment (Entrustment document dated June 4, 2004).

2. *Defendant:* International Trading and Shipping Company, Head office at Room 402, IBC Building, No. 35 – 37 Street T, district K, city H.

Lawful representative of the defendant: Ms. Cao Thi Minh H – Director of the Company, residing at No. 34 Street P, district C, city H.

3. *Persons with related rights and obligations:*

- V.V Bridger Container Exploitation Joint-venture Company, Head office at No. 282 Street DN, city P and Branch at No. 74 Street B, city H.

Lawful representative of the person with related rights and obligations: Mr. Nguyen Xuan T, residing at No. 352 Street K, district C, city P, is the representative according to the entrustment (Entrustment document No. 257 dated June 8, 2004).

- Samyoung Epress Company Ltd. locating at Samyoung-371-20 Sinsoo Dong, Mapu-ku-Seoul, Representative office at No. 848, Lane 850, Street L, district D, city H; represented by Ms. Ha Thi Mai residing...; Mr. Tran Dai D residing... and Mr. To Quang residing... who are representatives according to the entrustment (Entrustment document dated...).

ACKNOWLEDGES:

According to the lawsuit petition dated May 28, 2004 and the testimonies stated in the People's Court of city H, CH Company Ltd. (plaintiff) presents:

CH Company Ltd. set a branch in commune H, district T, city H according to the license No. 03020000251. The branch's name is Sao Sang Gas lighter Factory.

V.V Bridger Container Exploitation Joint-venture Company is a joint-venture company between K-Line Shipping Firm and Vietnam National Shipping Lines. K-Line Shipping Firm has a representative office in Vietnam. Since the representative office is not allowed to perform commercial acts in Vietnam, they must be through their agency to perform them. All transactions in Vietnam are performed by Container Exploitation Joint-venture Company. K-Line Shipping Firm only issues receipts and other documents.

On June 30, 2002 Sao Sang Gas lighter Factory and Greentech Trading Company of the South Korea signed a foreign trade contract No. SS-020630. According to this contract, Sao Sang Gas lighter Factory should sell 970,000 gas lighters for 0.036 USD/unit to Greentech Trading Company. Such unit price is CIF price; it means the value of one lighter, transportation cost and insurance premium for a batch of goods. The total value of the batch of goods above is 34,920 USD. However, Sao Sang Gas lighter Factory did not take out insurance for such batch of goods.

In order to perform the contract, Sao Sang Gas lighter Factory sent a booking-note to hire International Trading and Shipping Company (hereinafter referred to as ITS Company – defendant) to transport that batch of goods to South Korea for Greentech Company. On July 17, 2002 ITS Company issued a bill of lading No. 1148 in which it was written the name of sender as Sao Sang Gas lighter Factory and the receiver as Greentech Company. The type of service of the bill of lading issued by ITS Company is CY/CY (it means transporting from the Container depot of port of arrival to one of port of departure) and that batch of goods was packed in the Container No. KKTU 7024964. On the same day of July 17, 2002 ITS Company hired Container Exploitation Joint-venture Company to transport the batch of goods to South Korea. According to the bill of lading issued by K-Line, the sender is ITS Company and the receiver is Samyoung Epress Company Ltd. (Samyoung Company). K-Line Shipping Firm transported that batch of goods to Pusan Port and ITS Company issued a receipt of shipping cost of 745 USD to Sao

Sang Gas lighter Factory. On July 25, 2002 the ship landed in Pusan port. Vietnam Container Exploitation Joint-venture Company delivered the goods to Samyoung Company. When transporting the batch of goods from the port to container depot of Pusan port, an explosion happened. According to the expertise result, the whole batch of goods was totally damaged and unable to be used.

On July 10th, 2002 Sao Sang Gas lighter Factory and Greentach Company signed a foreign trade contract No. 050701 for purchase and sale of gas lighters and the value of the goods and the instructions were similar as in the contract No. SS-020630 dated June 30, 2002. Sao Sang Gas lighter Company continued hiring ITS Company to transport that batch of goods and on July 24, 2002 ITS Company issued the bill of lading No. 1157 with the instructions similar to the bill of lading No. 1148 dated July 17, 2002. On July 29, 2002 when the ship landed in KaoShiung port of Taiwan, they heard the information about the previous batch of goods' explosion in South Korea. The authority of the South Korea required having a person acknowledging the goods at the foot of wharf. Therefore, K-Line Shipping Firm requested the receiver which is Samyoung Company to send a telegram or confirmation letter of receiving the goods at the boat-side, and then the ship shall continue to go to Pusan port. Because of not receiving any information from Samyoung Company, thus on August 3, 2002 K-Line Shipping Firm transported the goods back to Hai Phong port. In order to continue performing the foreign trade contract No. 050701 which was signed with Greentech Company, Sao Sang Gas lighter Factory has to transport that batch of goods to Khanh Hoi port and then to Pusan port.

Thinking that due to the fault of the transporter, the batch of good was exploded and another one was transported back to Hai Phong port, CH Company Ltd. made a lawsuit petition to the Court with the request to force ITS Company to pay the indemnification damages as follows:

1. With respect to the exploded bath of goods according to the bill of lading No. 1148, ITS Company must compensate for the whole value of the batch of goods which is 34,920 USD and must bear 5% of the shipping cost of 745 USD, which is 37.25 USD. The total is 34,957.25 USD.

2. With respect to the batch of goods which was transported back according to the bill of lading No. 1157, ITS Company must compensate the following amounts:

- The amount of 4,200 USD that Greentech Company fines Sao Sang Gas lighter Factory due to late delivery.

- Transportation cost from Hai Phong port to Khanh Hoi port is 5,500,000 dong.

ITS Company (defendant) presents:

ITS Company must not compensate CH Company Ltd. because ITS Company finished the liability as a transporter. The reason that ITS Company brings forward is there is no contract for transportation between ITS Company and Sao Sang Gas lighter Factory. That ITS Company issued the bill of lading is in accordance with the direction of Samyoung Company because ITS Company is an agent of Samyoung Company in Vietnam while Samyoung Company is an agent of ITS Company in South Korea. Actually, ITS Company has transported 11 batches of goods for Sao Sang Gas lighter Factory. Until 12th and 13th batches, the incidents above occurred.

With respect to the exploded batch of good, ITS Company has finished its liability for transportation. When the goods came to Pusan port, Samyoung Company delivered to Greentech Company and Greentech itself assigned a road transporter and stored.

For the transported-back batch, when the ship landed in Taiwan, they received the information about the explosion, thus the South Korean authority requested having some person to acknowledge the goods at the foot of wharf. K-Line Shipping Firm requested Samyoung to acknowledge the receiving of goods at the boat-side. Due to non-confirmation, K-Line had to transport the goods back. Therefore, this fault is not ITS Company's.

The person with related rights and obligations in the case, Samyoung Company, presents:

The Company did not sign a contract for transportation either with CH Company Ltd. (plaintiff) or Sao Sang Gas lighter Factory. The transportation was performed by ITS Company because ITS Company is the agency issuing the bill of lading.

For the exploded batch of goods, when the ship landed in Pusan port, Samyoung Company already delivered the goods to Greentech Company because Greentech Company moved the goods onto means of transportation and stored them according to their direction. The occurring of the explosion is the responsibility and damage of Greentech Company but not CH Company Ltd. because the goods had been transferred to the buyer. Therefore, CH Company Ltd. no longer has right to complaint.

For the returned batch of goods, Samyoung Company has never received the requirement of K-Line Company for the acknowledgment by the receiver at the boat-side. However, when K-Line Company agreed to transport the goods for ITS Company, they must have delivered to the end. That K-Line Company transported to goods back is unilateral act without the agreement of ITS Company.

However, if the request that CH Company Ltd. compensates ITS Company is accepted by the Court, Samyoung Company shall have responsibility to ITS

Company according to the agency contract signed between the two parties. If it is impossible to reach an agreement, it shall be settled in another case.

The person with related rights and obligations, V.V Bridger Container Exploitation Joint-venture Company, presents:

The Company must not be responsible in the case of CH Company Ltd. (plaintiff) because they did not have any fault. For the exploded batch of goods, when the ship landed in Pusan port, VV Bridger Container Exploitation Joint-venture Company delivered the goods to Samyoung Company. After that, Samyoung Company delivered the goods to whom, they did not know.

For the transported-back batch of goods, after having the direction of South Korean authority, the Company ordered Samyoung Company to have the acknowledgment of the receiver of goods; at the same time, the company sent this order to ITS Company. Until the day that the company did not received the acknowledgment of Samyoung Company, they had to transport the goods back to Hai Phong port.

CONSIDERS:

After having studied the documents in the case dossier which are examined at the trial and based on the results of arguments at the trial, the Hearing Panel assesses:

Sao Sang Gas lighter Factory locating in Industrial Zone P, city H is a branch directly under CH Company Ltd.. Hence, when the dispute on the contract for transportation of goods between Sao Sang Gas lighter Factory and International Trading and Shipping Company occurred, CH Company Ltd. initiated a lawsuit as a plaintiff, which is in accordance with law.

According to the provisions of Vietnamese law, the representative office of Samyoung Company in Vietnam must not participate in the commercial acts in Vietnam. Thus, the agency contract between Samyoung Company and ITS Company and other contracts of Samyoung Company in Vietnam are performed through the agency which is ITS Company.

Regarding the contract between CH Company Ltd. and ITS Company, the Court realizes that the arguments cited by ITS Company do not have any legal basis. With respect to the transportation of gas lighters for Sao Sang Gas Lighter Factory, the branch of CH Company Ltd. was in charge and ITS Company is the agent directly issuing the bill of lading and collecting the transportation cost. According to Clause 2 Article 539 of the Civil Code, “in case the property is transported with a bill of lading, then such bill of lading shall be the evidence of a contract between the parties”. In fact, ITS Company issued the bill of lading No. 1148 and 1157 and these are the grounds for a contract for transportation of goods between ITS

Company and CH Company Ltd.. When the dispute on the contract for transportation of goods occurred, CH Company Ltd. initiated a lawsuit against ITS Company. Thus, ITS Company must participate in the proceedings as a defendant.

Considering the request for compensation of CH Company Ltd. to ITS Company, the Hearing Panel realizes:

* Regarding the request for compensation for the whole damage of the exploded batch of goods of CH Company Ltd.

According to the bill of lading No. 1148 and the receipt of transportation cost, ITS Company has responsibility for transporting the container of goods of CH Company Ltd. from Hai Phong port to Pusan port in South Korea. The container of goods was exploded in the process of road transportation and outside the area of Pusan port. This is shown in the minutes on the scene and expertising conclusion of relevant competent agency of South Korea. According to the minutes of acknowledgment between Samyoung Company and Greentech Company, Greentech Company already acknowledge such batch of goods, which proves the completed liability for transportation of the batch of goods of ITS Company. At the trial, the plaintiff cannot present any evidence to prove the fault of the transport side in causing explosion. On the other hand, since gas lighter is an explosive goods, in the foreign trade contract signed between Sao Sang Gas Lighter Factory and Greentech Company, the two parties have agreed about the price of CIF, it means including the insurance premium in the price and the seller side must be responsible for taking out insurance for such batch of goods. If the plaintiff side takes out insurance, Insurance Companies shall be responsible for compensation when occurring any risk or damage. CH Company Ltd. acknowledges that the company has not taken out the insurance for such batch of goods according to the agreement between the two parties in the foreign trade contract. Thus when occurring damages or risks, the company itself must be responsible for. Consequently, it is not well-grounded to accept the request for compensation of 34,957.25 USD to CN Company Ltd. by ITS Company for this shipment.

*Regarding the request for compensation for the whole damage for the batch of goods transported back to Hai Phong port.

Considering that ITS Company is the agent transporting the goods, they must be responsible for transporting such batch of goods from Hai Phong port to Pusan port in South Korea. Samyoung Company who is an agent of ITS Company in South Korea must be responsible for receiving goods in Pusan port and delivering to the buyer side who is Greentech Company. When the transport of goods for CH Company Ltd. was accepted, there was no agreement including the acknowledgment of Greentech Company on receiving goods at boat-side between the transport lease side and transport side. At the trial, the representative of VV Bridger Container Exploitation Joint-venture Company which is the agent of K-

Line acknowledges that according to the bill of lading issued by the representative company of K-Line Company for Samyoung Company and ITS Company, the receiver in South Korea is Samyoung Company. Accordingly, when receiving the request from Pusan port in South Korea for transferring the goods at boat-side, K-Line Shipping Firm requested Samyoung Company to send the commitment of receiving the goods at boat-side to K-Line Shipping Firm. Since not receiving the acknowledgment of Samyoung Company, K-Line Shipping Firm transported such batch of goods to Hai Phong port. So, the transport side did not perform in accordance with the contract for transportation as agreed with the transport lease side to transport such batch of good to Pusan port, South Korea. ITS Company which is the agent transporting the goods is the agent at fault in not performing in accordance with the contract for transportation agreed with the branch of CH Company Ltd.. Therefore, they must be responsible for compensation for CH Company Ltd.'s damage due to the goods which was not transported to Pusan port, South Korea to deliver to the buyer, Greentech Company.

Since ITS Company did not transport the goods according to the bill of lading issued for CH Company Ltd., it leads to the fact that CH Company Ltd. could not deliver the goods to Greentech Company according to the foreign trade contract that the two parties had signed and CH Limited Company was fined 4,200 USD for the breach of contract by Greentech Company. CH Company Ltd. already paid this amount to Greentech Company, so ITS Company must be responsible for compensating CH Company Ltd. 4,200 USD equivalent to 66,313,800 Vietnamese dong (1 USD = 15,789 Vietnamese dong).

Since this batch of goods was transported back to Hai Phong port, ITS Company did not collect any expenses of transportation from CH Company Ltd.. On the other hand, ITS Company had to compensate CH Company Ltd. 4,200 USD; thus, ITS Company must not bear the fine for the breach of contract for transportation. For this reason, the requirement for the fine of 37.25 USD due to the breach of contract of CH Company Ltd. to ITS Company is not well-grounded for approval.

CH Company Ltd. also requests ITS Company to compensate for the expenses for transportation of such batch of goods to Khanh Hoi port and then to export to South Korea. Considering that in order to sell the goods, CH Company Ltd. must be responsible for transporting the goods to consuming destination and the expenses for transportation have been included in the selling price. Therefore, such requirement of CH Company Ltd. is not well-grounded for approval.

* Regarding court fee: Pursuant to Clause 2 Article 7, Clause 1 Article 11 of the Decree No.70/CP dated June 12, 1997 by the Government on court fee, CH Company Ltd. must bear ad-valorem court fee for the amount that is requested for compensation but not accepted by the Court. Specifically, CH Company Ltd. must

bear 19,050,000 dong of the first instance civil court fee and is deducted 10,400,000 dong of the paid court fee advances.

- ITS Company must bear the ad-valorem court fee for the amount that the company must compensate CH Company Ltd.. Specifically, ITS Company must bear 3,315,000 dong of the first instance court fee.

For such reasons,

DECIDES:

Applying Clause 2 Article 539 of the Civil Code, Clause 1 Article 11 of the Decree No.70/CP by the Government on court fee and charge,

1. To force International Trading and Shipping Company to be responsible for compensating CH Company Ltd. 4,200 USD equivalent to 66,313,800 dong.

2. Not to accept the request of CH Company Ltd. for compensation of 5,500,000 dong of transportation cost and 34.975,25 USD of the burnt batch of goods by International Trading and Shipping Company.

3. Regarding court fee

- CH Company Ltd. must bear 19,050,000 dong of the first instance civil court fee. Acknowledging that CH Company Ltd. already paid 10,400,000 dong of the court fee advances according to the payment paper dated April 29, 2003 in the Hanoi State Treasury and the receipt No. 006291 in Hanoi Judgment Execution Division. Thus, CH Company Ltd. has to pay 8,650,000 dong.

- International Trading and Shipping Company must bear 3,315,000 dong of the first instance civil court fee.

Since the date of receiving the petition for judgment execution of the judgment creditor (with respect to the amount to be paid to the judgment creditor) until completion of all payments, the judgment debtor must bear the interest of the left amount to be executed monthly according to the basic interest level prescribed by the State Bank, corresponding the time that the judgment has not been executed.

The first instance trial is adjudicated publicly with the presence of the involved parties; the involved parties shall have right to appeal within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- CH Company Ltd.;
- Mr. Vu Xuan N;
- International Trading and Shipping Company;

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge – Presiding Judge**

- VV Bridger Container Exploitation Joint-venture Company;
- Samyoung Epress Company Ltd.;
- People's Procuracy of city H;
- Saved in: Office, Civil Court, Case dossier.

Le Son H

Note: *Since this case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

4. Judgment No. 4

**PEOPLE'S COURT OF DISTRICT B
CITY H**

**SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness**

Judgment No.: 20/2005/DSST
Rendering date: April 21, 2005
On a dispute on land use right

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF DISTRICT B, CITY H**

With the first instance Hearing Panel composed of:

Judge – Presiding Judge: Ms. Nguyen Thi Hoai L

People's Assessors : 1. Ms. Nguyen Kim T
2. Mr. Pham Van C

Court clerk taking the minutes of the trial: Mr. Hoang Dinh T, staff of the People's Court of district B, city H.

Representative of the People's Procuracy of district B, city H: Mr. Nguyen Dinh M, prosecutor of the People's Procuracy of district B, city H.

On April 20 and 21, 2005 at the head office of the People's Court of district B, city H, holds a public trial to adjudicate the case No. 08/2005/TLST-DS dated January 25, 2005 “on a dispute on land use right” according to the Decision No. 03/2005//QDXX-ST dated March 15, 2005 on bringing the case into trial between the involved parties:

1. *Plaintiffs:* Ms. Nguyen Thi G and Mr. Tran Quang M, both residing at 116-C3, Collective Zone 34A, ward T, district B, city H.

Person protecting lawful rights and interests of the plaintiff: Mr. Ngo Ngoc T, lawyer of Lawyer's Office X under the Bar Association of city H.

2. *Defendants:* Mr. Phung Tat V and Ms. Tran Thi T, both residing in ward N, district B, city H.

Person protecting lawful rights and interests of the defendant: Mr. Pham Van P, lawyer of Lawyer's Office M under the Bar Association of city H.

ACKNOWLEDGES:

According to the lawsuit petition dated January 16, 2005 and the testimonies in the People's Court of district B, the plaintiffs present:

The plaintiffs have a thatched house with the area of 13m² on the land area of 2 perches and 8 meters (920m²) on the plot No. 12, map sheet No. 4 locating in hamlet G, commune N, district L, city H (now it is the plot No. 29, map sheet No. 2, ward N, district B, city H).

On December 20, 1991 the plaintiffs sold that house together with the land area of 1 perch and 8 meters (528m²) to the defendants. For the remaining land area of 392m², the plaintiffs did not sell but asked the defendants to guard for them.

In 2001, the plaintiffs were informed by some neighbor that the defendants had intention to sell the land including the plaintiffs' part. The plaintiffs made a petition to request the ward People's Committee to settle so that the defendants should return the land to the plaintiff. But the defendants did not return the land and admitted the whole land area of 920m² belonged to them.

The plaintiffs asked the Court to settle and force the defendants to remove the construction works and farm produce on the land and return to the plaintiffs the land area of 392m² on the plot No. 29, map sheet No. 2 mentioned above.

The defendants present:

The plaintiffs' document of selling house and farm produce to the defendants just stated the sale of the entire house and 1 perch and 7 meters of land. But, in fact, they sold all their house and land. The sale of house and land between the plaintiffs and defendants is fair with the document of purchase and sale certified by the local authority.

When transferring the land to the defendants, the plaintiffs themselves showed the house and garden but did not pointed out the boundary markers and did not tell how many the land area was.

The defendants confirmed that they already bought the entire house and the land plot No. 29, map sheet No. 2 from the plaintiffs.

If the current land area is bigger, it is due to the land lot next to a peck and uncultivated land. So, after buying the land and house from the plaintiffs, the defendants' family has renovated, filled in the pond, managed a larger land area as today and had use right over this territory.

In 1996, the defendants built a 4-level house in the west of the land and in 2000 the defendants' family also built a kitchen, a bathroom with a flat proof in the west of the land and now they built a wall fence surrounding the land.

In 1994, when the defendants brought the "Document of selling house and farm produce" for the certification of the communal People's Committee, they went

together with the plaintiffs and the defendants paid the fee for construction of roads of 2,400,000 dong (two million four hundred dong).

In 1995, city cadastral agency re-measured the map. The defendants stated they were the land use owner and the land area was 864m². Therefore, it can be said that the defendants have the land use rights over this entire land.

Accordingly, the defendants reject the whole requests of the plaintiffs.

Lawyer Ngo Ngoc T protecting the lawful rights and interests of the plaintiffs presents:

The initiation of lawsuit of the plaintiff is well-grounded because based on the “document of selling house and farm produce” the plaintiffs just sold the land area of 1 perch 7 meters equivalent to 528m² to the defendants. Meanwhile, the Land-itemizing books in 1960, 1986 and the extract cadastral map provided by the People’s Committee of ward N show that the plaintiffs had a land area of 920m².

Request the Court to force Mr. V to return to Ms. G the land part of 392m² that she did not sell and Mr. V is now appropriating.

Lawyer Pham Van P protecting lawful rights and interested of the defendants presents:

Although protecting the lawful rights and interest of the defendant, the lawyer also recognizes that the plaintiffs have a land area of 920m² and the two parties just purchased and sold 1 perch and 7 meters equivalent to 528m², the remaining area of 392m² was not sold by the plaintiffs.

However, the land area or 392m² has not been looked after and managed by the plaintiff for a long time. Thus, the plaintiffs gave up their land use rights.

On the other hand, on the minutes of verification of the commune People’s Committee as well as in the measurement map drawn in 1995, the defendants were the person declaring the land use owner.

Request the Court to consider rejecting the requirement of the plaintiff and recognizing the lawful land use rights of the defendants with respect to the land area of 392m².

In this situation, if the Court accepts the requirements of the plaintiff, request the Court to force the plaintiffs to compensate the defendants for the effort of renovation, preservation and management of the land according to the pricing result of the Court. This request of the lawyer is accepted by the defendants.

The representative of the People’s Procuracy requests to accept the plaintiff’s requirement to force the defendants to return the land area that the plaintiffs have not sold.

CONSIDERS:

After studying the documents in the case dossier examined at the trial and based on the results of arguments at the trial, the Hearing Panel assesses:

Through the documents in the dossier as well as the investigation and verification in the People's Committee of ward N, seeing that:

- The Land-itemizing book in 1960 stated the Land plot No. 266 was under the name of Ms. Hoang Thi D (Mr. K's wife) with the area of 2 perches and 8 meters. Then it was changed the name of Mr. Tran Quang M for the area of 1 perch and 7 meters and Ms. Tran Thi L (Mr. M's daughter) for the area of 262m².

- In the Land-itemizing book cum Land-surveying book in 1986, the land plot No. 12, map sheet No. 4 was under the name of Mr. Tran Quang M with the area of 917m² and noted buying from Tran Thi L.

- The extract map issued by the People's Committee of ward N dated July 7, 2003 (the map drawn in 1993 and completed in 1995) is under the use owner's name of Ms. Nguyen Thi G with the area of 920m².

(Mr. V bought the house and land from Ms. G in 1991 but it has not been transferred ownership. So it is under the name of Ms. G in the cadastral book).

In the minutes of verification dated August 30, 2004 the People's Committee of ward N shows the land area used by Mr. V currently was residential land before with the area of 920m² of Ms. G and Mr. M which is bounded by Ms. Gioi's house in the North, by the lane to Ms. Gioi's house in the West and by Mr. Mieu's house in the East. Only the front of the house (facing the dike of Red River in the South) is bounded by the path of hamlet. Consequently, there is no encroachment upon the adjacent households but there is an encroachment of about 0.5m upon the common path in front of the house.

Based in the documents above, it is well-grounded to determine that Ms. Nguyen Thi G (plaintiff) has the land area of 920m².

In the "Document of selling house and farm produce" dated December 20, 1991 Ms. G wrote: "...I have a thatched house of 13m² and some plants on the land area of 1 perch and 7 meters in hamlet G, commune N, district L, city H... Now I do not have the need to use the house and garden above, so I transfer them to my husband's nephew, Mr. Phung Tat V..." This shows the will of the seller to sell the part with the thatched house of 13m² on the land area of 1 perch and 7 meters equivalent to 528m² but not the whole area of 920m².

Mr. V thinks that he was the person declaring the land use owner in 1994, so the land use rights must belong to him. The results of verification in the People's Committee of ward N shows that since 1993 to 1995, the cadastral agency of city H

has surveyed and redrawn the map; at that time who was using the land should determine the boundary markers but not the origin of the land.

According to the results of verification in the People's Committee of ward N dated December 28, 1992 Mr. V declared to pay the land tax for the area of 528m². From that time until 2001, Mr. V had just paid the land tax for the area of 528m². Just from 2002 until now, Mr. V has paid the land tax for the area of 864m². The reason why Mr. V pays the land tax for the area of 864m² is that communal Cadastral office has requested him for many times because he has been using 864m². The paying of land tax does not mean Mr. V's family has lawful use rights on that land.

The defendants think that having the larger land area as today thanks to their family's effort to fill up and encroach because this land is near the peck and uncultivated land. However, according to the minutes of verification dated August 30, 2004 in the People's Committee of ward N as mentioned above, there is no uncultivated land so that the defendants' family could exploit and widen.

The lawyer of the defendants also recognizes that the plaintiff just sold the area of 528m² to the defendant but the lawyer thinks that the plaintiffs gave up their land use rights on the remaining land; the defendants has managed, used and declared to the State. So, he requests the Court to recognize the lawful land use rights for the defendants. This request of the lawyer is not well-grounded because the plaintiffs confirm that they just sold the area of 1 perch and 7 meters and for the remaining land area, the plaintiffs asked the defendants to guard for them. Whereas the lawyer cannot prove that the plaintiffs gave up their land use rights.

From the analysis above, it is well-grounded to accept the lawsuit claim of the plaintiff to force Mr. Phung Tat V and Ms. Tran Thi T to return the land area of 392m² that Mr. M and Ms. M did not sell to Mr. V and Ms. T. However, the two parties have not determined the boundary markers. Now, it shall be fixed as follows:

According to the extract map in 1995, the land plot has the area of 920m². According to the information of the People's Committee of ward N, the status quo of the land is 864m² because the People's Committee took a part of the land to build the hamlet's road. Thus, the area taken to build the road is: $920\text{m}^2 - 864\text{m}^2 = 56\text{m}^2$.

Based on the length of the land plot, the boundary markers have been determined from No. 4 to No. 7, bounded by the hamlet's path with the length of 30.9m. Based on the status quo of the land that Mr. M and Ms. G have not sold as well as the land area that Mr. V and Ms. T have bought, the part bounded by the hamlet's path is similar. Therefore, the land area taken to build the road by the People's Committee from the land part of Mr. V and Ms. T is 28m² and from the land of Mr. M and Ms. G is 28m².

*** The land part bought by Mr. V and Ms. T:**

- The land of 528m² according to the assignment document dated December 20, 1991, after deducting 128m² for building the road, remains 500m². The land part of Mr. V and Ms. T has been determined by the boundary markers (8, 2, 3, 4, 5 and 6) including:

+ The trapezium area S1 is determined by the boundary markers (2, 3, 4, 5) with the area $(33.2 + 36.6) \times 10 : 2 = 349\text{m}^2$.

+ The trapezium area S2 is determined by the boundary markers (8, 2, 5, 6) with the area $(32.2 + 27.2) \times 5 : 2 = 151\text{m}^2$.

The total area: $S1 + S2 = 500\text{m}^2$.

*** The land part that Ms. G and Mr. M have not sold remains:**

$920\text{m}^2 - 528\text{m}^2 - 28\text{m}^2 = 364\text{m}^2$ determined by the boundary markers (1, 8, 6, 7).

Based on the assessment above, the defendants built the house and other auxiliary constructions on the land part that the plaintiffs have not sold yet without their permission. At the trial, the two parties request to remain the purchase and sale and do not request other changes. Accordingly, the defendants must be responsible to remove the construction materials on the land that the plaintiffs have not sold.

* The land part that has not been sold by the plaintiffs has been determined, but because the defendants spent their effort to build the wall fence and renovate the land according to the pricing minutes dated March 3, 2005 recorded by the Court of district B, now the plaintiffs enjoying must pay the defendants as follows:

- Wall fence: Side 6 - 7 is 15.9m long.

Side 1 - 7 is 22.1m long.

And a part of side 1 - 2 is 4.8m long.

According to the minutes and actual survey on February 24, 2005 by the Court of district B, the total area is 42.8m long and the wall is 2m high and 110cm thick.

So the area is $42.8 \times 2 = 85.6\text{m}^2$.

The pricing minutes dated September 3, 2004 of the Pricing Council of district B determines that the 2m high and 110cm thick wall fence with attached column and plastering costs 110,000 dong and remains 80% of value. Thus the value of the wall fence on the land part of Ms. G and Mr. M that has not been sold to Mr. V and Ms. T is: $85.6\text{m}^2 \times 110,000\text{đ} \times 80\% = 7,532,800\text{đ}$.

The plaintiffs must pay the defendants 7,532,8000 dong and the plaintiffs shall be entitled to own this wall fence.

- Renovated part: During the time the defendants managed the plaintiffs' land part, the defendants renovated the land. According to the minutes dated September 3, 2004 the effort for renovation is calculated as 30,000 dong/ 1m². So,

the value of effort for renovation shall be: $364\text{m}^2 \times 0.7\text{m} \times 30,000 \text{ dong} = 7,644,000$ dong.

The plaintiff must be responsible for paying 7,644,000 dong for the defendants' effort for renovating the land part that the plaintiffs have not sold.

The total amount that the plaintiffs must pay the defendants is:

$$7,532,800\text{đ} + 7,644,000\text{đ} = 15,176,800 \text{ dong}$$

As to court fee: Pursuant to the Decree No.70/CP dated June 12, 1997 by the Government prescribing court fee and charge, the plaintiffs must pay the court fee with respect to the amount that they have to pay the defendants. For the defendants, on January 27, 2005 Mr. Phung Tat V and Ms. Tran Thi T had an petition for exemption from or reduction of court fee due to the difficult situation of revolutionary martyr's family that the husband and wife being workers have retired and been ill. The application is certified by the People's Committee of ward N dated January 27, 2005.

The Hearing Panel sees that the difficult situation of the involved parties is real and it is certified by the local authority. Therefore, it should be accepted the application for exemption from and reduction of court fee of the defendants and the level of court fee shall be reduce half of to-pay court fee.

At the trial today, the representative of the People's Procuracy of district B, city H also requests the Hearing Panel:

- To accept a part of the lawsuit claim of the plaintiff that is to force the defendants to return the land area of 392m^2 to the plaintiffs.

- To accept the application for exemption from and reduction of court fee for the defendants.

The request of the People's Procuracy of district B, city H is appropriate to the assessment of the Hearing Panel, thus it shall be accepted.

For such reasons,

DECIDES:

Applying Article 264 of the Civil Code, Clause 1 Article 136, point b Clause 1 Article 50 of the Law on Land 2003, Decree No.70/CP dated June 12, 1997 by the Government prescribing court fee and charge, to pronounce:

1- Force Mr. Phung Tat V and Ms. Tran Thi T to return Ms. Nguyen Thi G and Mr. Tran Quang M 364m^2 of the land plot No.29, map sheet No. 02 in the ward N, district B, city H.

The boundary markers are defined as follows:

1.1. The land part of Mr. Phung Tat V and Ms. Tran Thi T is determined:

+ Bounded by Ms. Gioi's house in the North from the boundary marker No. 8 to No. 2 with the length of 7.81m; from the boundary marker No. 2 to No. 3 with the length of 10.5m

+ Bounded by Mr. Mieu's house in the East, from the boundary marker No. 3 to No. 4 with the length of 36.6m

+ Bounded by the hamlet's path in the South, from the boundary marker No. 4 to No. 6 with the length of 15m

+ Bounded by Ms. Gai and Mr. Minh's land part in the West; from the boundary marker No. 6 to No. 8 with the length of 27.2m

The land area of Mr. V and Ms. T is 500m².

1.2. The land part of Ms. Nguyen Thi G and Mr. Tran Quang M is determined:

+ Bounded by Ms. Gioi's house in the North; from the boundary marker No. 1 to No. 8 with the length of 20m

+ Bounded by the path to the land part of Ms. Gioi in the West; from the boundary marker No. 1 to No. 7 with the length of 22.1m

+ Bounded by Mr. V and Ms. T's land part in the East; from the boundary marker No. 6 to No. 8 with the length of 27.2m

+ Bounded by the road in the South; from the boundary marker No. 7 to No. 6 with the length of 15.9m

There is a map surveying the land parts of Mr. V and Ms. T, Mr. M and Ms. G attached to the judgment and it is inseparable part of this judgment.

2- Mr. V and Ms. T must be responsible to withdraw all properties and farm produce under the ownership right on the land part of Ms. Nguyen Thi G and Mr. Tran Quang M.

3- Ms. Nguyen Thi G and Mr. Tran Quang M must pay Mr. V and Mr. T the amount of 7,532,800 dong that was spent to built the wall fence; and the amount of 7,644,000 dong that Mr. V and Ms. T spent their effort to renovate the land. The total amount is 15,176,800 dong.

- Ms. G and Mr. M shall have full ownership and use rights on the wall fence and the renovated land after the payment to Mr. V and Ms. T.

4- Court fee:

- Mr. Phung tat V and Ms. Tran Thi T must bear 29,184,000 dong of the first instance civil court fee which is reduced a half; Mr. V and Ms. T must bear 14,592,000 dong of the first instance civil court fee.

- Ms. Nguyen Thi G and Mr. Tran Quang M must bear 758,840 dong of the first instance civil court fee. Because Mr. M and Ms. G have paid 5,000,000 dong of the first instance court fee advances according to the receipt No. 6383 adted September 25, 2003 in the judgment execution agency of district B. Therefore, Mr. M and Ms. G shall receive 4,241,160 dong (5,000,000 dong – 758,840 dong).

Since the date of receiving the petition for judgment execution of the judgment creditor (with respect to the amount to be paid to the judgment creditor) until completion of all payments, the judgment debtor must bear the interest of the

left amount to be executed monthly according to the basic interest level prescribed by the State Bank, corresponding the time that the judgment has not been executed.

The involved parties shall have right to appeal within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- Ms. Nguyen Thi G and Mr. Tran Quang M;
- Mr. Phung Tat V and Ms. Tran Thi T;
- People's Procuracy of district B, city H;
- Saved in: Office, case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge – Presiding Judge**

Nguyen Thi Hoai L

Note: *Since this case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

5. Judgment No. 5
PEOPLE'S COURT OF CITY H

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness

Judgment No.: 26/2005/DSST
Rendering date: April 27, 2005
On a dispute on inheritance

ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF CITY H
With the first instance Hearing Panel composed of:

Judge –Presiding Judge : Mr. Le Van V
People's Assessors : 1. Mr. Dao Phong Nh
2. Ms. Nguyen Thi S

Court clerk taking the minutes of the trial: Mr. Le Nguyen T, staff of the People's Court of city H.

On April 27, 2005 at the head office of the People's Court of city H, hold an open first instance trial to adjudicate the case No. 73/205/TLST-DS dated January 16, 2004 on a dispute on inheritance according to the Decision No.150/2005/DQXX-ST dated March 30, 2005 on bringing the case into trial between the involved parties:

1. *Plaintiff:* Mr. Nguyen Van Q, born in 1940, residing at No. 16, Street A, district T, city H.

2. *Defendant:* Ms. Dam Thi H (i.e. R), born in 1925, residing at No. 40, group 22, ward N, district T, city H.

Person protecting the lawful rights and interests for the defendant: lawyer Le Thi Ngan P, Ngan P Lawyer's Office, Bar Association of city H.

3. *Persons with related rights and obligations:*

3.1. Persons with related rights and obligations in the plaintiff's side:

- Ms. Nguyen Thi L, born in 1922, residing in Group 29, ward N, district T
- Mr. Nguyen Van C, born in 1953, residing in Group No. 42, district T, city H

H

- Mr. Nguyen Anh T, born in 1945, residing in Group No. 50 An Thanh Street, city H.

- Ms. Nguyen Thi O (the wife of Mr. Nguyen Van C who was deceased), born in 1938, residing in hamlet K, commune X, district T, province HT

3.2. Persons with related rights and obligations in the defendant's side:

- Mr. Nguyen Van Ch, born in 1961, residing in Group No. 22, ward N. district T. city H
- Ms. Nguyen Thi B, born in 1959, residing in Group No. 23, ward Q, district T, city H
- Ms. Nguyen Thi P, born in 1954, residing in Group No. 22, ward N. district T, city H
- Ms. Nguyen Thi N, born in 1957, residing in Group No. 22, ward N, district T, city H

ACKNOWLEDGES:

According to the lawsuit petition dated January 15, 2003 and the testimonies stated in the People's Court of city H, Mr. Nguyen Van Q (plaintiff) presents:

Mr. Nguyen Van P (deceased in 1988) has 2 wives: the first wife is Ms. Do Thi C (deceased on 1946), the second wife is Ms. Dam Thi H (i.e. R) (defendant).

Mr. P and Ms. C have 5 common children: Mr. Nguyen Van Q (plaintiff), Mr. Nguyen Anh T, Ms. Nguyen Thi L, Mr. Nguyen Van C and Mr. Nguyen Van M. Mr. M (deceased in 1995) has a wife, Ms. Nguyen Thi O (representative).

Mr. P and Ms. H have 4 common children: Mr. Nguyen Van Ch, Ms. Nguyen Thi P, Ms. Nguyen Thi N and Ms. Nguyen Thi B.

Mr. Q (plaintiff) and the persons with related rights and obligations in the plaintiff side consistently state: Mr. Q's paternal grandparents (father and mother of Mr. P) left a house on the land area of 243m². In 1946, the house was burned due to war and Mr. T (Mr. P's own brother) rebuilt the house for Mr. Q's (plaintiff) brothers to use. In 1964, Mr. C (person with related rights and obligations in the plaintiff side) himself sold the land and house to Mr. P and Ms. H (defendant).

The plaintiff and the persons with related rights and obligations in the plaintiff side request to determine that the land area of 243m² was left by the paternal grandparents (Mr. P's parents) and request for inheritance division.

Ms. H (defendant) and the persons with related rights and obligations in the defendant side consistently state as follows:

In 1948, Ms. H (defendant) got married to Mr. P. In 1952, Ms. H's parents gave her money to buy a land and build a house in ward Q. In 1969, lands and houses in ward Q were cleared away and compensated by the Government. Ms. H used the compensated money to buy the house and land that she is living in from Mr. C.

In 2000, Ms. H allowed Mr. Ch (person with related rights and obligations in the defendant side) to sell 25m² of the house area on the land area of 122m² to Mr.

X and Ms. Y. In 2001, the local authority issued the certificate of ownership rights on house and user rights on the land which was sold (122m²) to Mr. X and Ms. Y, and certificate of ownership rights on house and user rights on the remaining land to Mr. C.

Ms. H (defendant) thinks that the house and land managed by her are her private properties and does not agree to distribute to the stepchildren of Mr. P)

In the first instance civil judgment No. 16/2004/DSST dated May 6, 2004 the People's Court of city H pronounced: Not to accept the request for inheritance division of the plaintiffs and the persons concerned in the plaintiff side. Within the limit prescribed by law, Mr. Q, Mr. X and Ms. Y made an appeal.

In the appellate civil judgment No. 183/2004/DSPT dated October 28, 2004 the Appellate Court of the Supreme People's Court in Hanoi pronounced:

- To recognize the purchase and sale of land and house between Mr. C and Mr. X, Ms. Y.

- To abrogate the first instance judgment No. 16/2004/DSST dated May 6, 2004 of the People's Court of city H on the part relating Mr. P's inheritance; to transfer the case dossier to the People's Court of city H for the first instance re-trial.

After the People's Court of city H re-handled the case, the plaintiff (Mr. Q) and the persons with related rights and obligations in the plaintiff side (Ms. L, Mr. C, Mr. T and Ms. O (Mr. M's wife) changed the request, specifically the request for division of the paternal grandparents' (Mr. P's parents) inheritance was changed in to the request for division of Mr. P's inheritance.

On December 16, 2004 Mr. C (person with related rights and obligations in the plaintiff side) had a petition to refuse the inheritance.

Ms. H (defendant) and her children still determined the disputed land and house were her own.

If it must be distributed the inheritance, the stepchildren of Mr. P shall be divided with money and it must be calculated for their effort to preserve and repair the common property for the defendant's family.

CONSIDERS:

After studying the documents in the case dossier examined at the trial and based on the results of arguments at the trial, the Hearing Panel assesses:

1. As to the inheritance:

Mr. Q (plaintiff), Ms. L, Mr. C and Mr. M's wife (persons with related rights and obligations) change to the request for division of Mr. P's inheritance and at the same time confirm that the disputed land and house are the common property of Mr.

P and Ms. H instead of the inheritance of Mr. P's parents as the request before. Ms. H thinks that the land and house are her own because they were bought with the compensated money for the house cleared away in ward Q while the house in ward Q was set up with her parents' money.

At the time that Ms. H and Mr. P bought the house and land from Mr. C in 1964, the common property of husband and wife system must follow the provisions of the Marriage and Family Law 1959. According to Article 15 of the Marriage and Family Law 1959, the property existing before or after the marriage and created by husband or wife shall be common property of husband and wife. Thus, the house and land that Ms. H bought with the money source given to her individually are still the common property of husband and wife.

Now, a part of the house and land has been sold to Mr. X and Ms. Y. The appellate judgment No. 183/2004/DSPT dated October 28, 2004 of the Appellate Court of the Supreme People's Court in Hanoi recognized the purchase and sale of the house based on the fact that the land part which has been sold does not surpass the property of Ms. H in the common property. Therefore, Mr. X and Ms. Y do not need to participate in the proceedings but the property which has been sold must be calculated in the common property of Ms. H and Mr. P in determining the inheritance part of Mr. P.

The time for opening Mr. P's inheritance is in 1988. At that time, the division of the common property of husband and wife when one party dies was prescribed in Article 17 of the Marriage and Family Law 1986. According to Article 17 above, the inheritance part of Mr. P is a half of the common property with Ms. H.

The old house which is the common property of Ms. H and Mr. P no longer exists; the involved parties do not request for the calculation of the house's value. Thus the common property of Ms. H and Mr. P just is the value of residential land use rights. However, Ms. H has contributed the great effort to preserve and repair the land since 1988 until now. So, it must be deducted $\frac{1}{4}$ of value of the land use rights for Ms. H's effort. According to this pricing result, the land's value consistently is 20,000,000 dong/m². Thus:

+ The value of the land area of 243m² is

$$243\text{m}^2 \times 20,000,000\text{đ} = 4,860,000,000 \text{ dong.}$$

+ Payment for Ms. H's effort is

$$4,860,000,000 \text{ dong} : 4 = 1,215,000,000 \text{ dong.}$$

+ The value of common property between Mr. P and Ms. H is

$$4,860,000,000 \text{ dong} - 1,215,000,000 \text{ dong} = 3,645,000,000 \text{ dong.}$$

+ The value of Mr. P's inheritance part is

$$3,645,000,000 \text{ dong} : 2 = 1,822,500,000 \text{ dong.}$$

2. As to the scope of inheritance and individual share:

The first rank of inheritance of Mr. P includes Ms. H, Mr. Q, Mr. C, Mr. T, Ms. L, Mr. M (Mr. M died in 1995; so the persons to be entitled to inheritance by substitution with respect to the individual share of Mr. M are Ms. O, Ms. Hien, Mr. Chung, Mr. Truong, Ms. Ngan and Ms. Thuy), Mr. Ch, Ms. B. Ms. P and Ms. N.

Mr. C refuses the inheritance (showed in the petition dated December 16, 2004). Consequently, the first rank of inheritance of Mr. P just includes 9 individual shares. The value of each individual share is $1,822,500,000 : 9 = 202,500,000$ dong.

3. As to the division of exhibits:

Mr. Q, Ms. L, Mr. T and Mr. M's wife request to divide the exhibits in common share. This request is well-grounded to be accepted because the total value of a common share is quite big, which is corresponding to an area to build a residential house. The disputed house and land have 2 sides bounded by the public path; so the parties can share to use together.

For the part of Ms. H and her children, it is requested for common division. Besides the part assigned to Mr. X and Ms. Y, the remaining value that Ms. H and her children are entitled to enjoy is corresponding to the area of the 2-floor house that has been built.

If just distributing the land area equivalent to the value to be entitled to enjoy to Ms. H and her children, it shall significantly reduce the use value of the house because it opens the door in the South (bounded by the land part divided to Mr. Q's group). Therefore, it is reasonable to distribute to Ms. H a land part which is 1m far from the veranda.

On the land part of 33m^2 (4.4m x 7.5m) divided to Mr. Q's group, there are some works (kitchen, tank, ground) built by Mr. Ch. They are valued 6,100,000 dong. It must be distributed these works to Mr. Q's group and Mr. Ch shall receive the amount of 6,100,000 dong.

- The value of the exhibits that Mr. Q's group is shared is:

$$33\text{m}^2 \times 20,000,000 = 660,000,000 \text{ dong}$$

- The value of individual share of Mr. Q's group is:

$$202,500,000 \times 4 = 810,000,000 \text{ dong}$$

- The different value that Mr. Q's group shall receive with money is:

$$810,000,000 - 660,000,000 = 150,000,000 \text{ dong}$$

4. As to court fee:

- Ms. H must bear the court fee according to the ad-valorem price for the value of the disputed property of 3,240,000 dong.

- Mr. M's wife must bear the court fee together with and equivalent to other defendants (heirs) according to the ad-valorem price for 202,500,000 dong of the value of the disputed property which she is entitled to enjoy.

For such reasons,

DECICES:

Applying Article 677, 678, 679, 680 and 688 of the Civil Code; Article 15 of the Marriage and Family Law 1959; Article 17 of the Marriage and Family Law 1986; the Decree No. 70/CP by the Government dated June 12, 1997 to pronounce:

1. Distribute to Mr. Nguyen Van Q, Ms. Nguyen Thi L, Mr. Nguyen Anh T, Ms. Nguyen Thi O, Ms. Nguyen Thi Hien, Mr. Nguyen Van Chung, Mr. Nguyen Van Truong, Ms. Nguyen Thi Ngan and Ms. Nguyen Thi Thuy the common use rights on the land area at No. 40, Group No. 22, ward N, district T, city H with four boundaries as follows:

- South: bounded by the public path, 4.4m long
- West: bounded by Mr. X and Ms. Y's land, 7.5m long
- North: bounded by Ms. H's land, 4.4m long
- East: bounded by the public path, 7.5m long

2. Mr. Q, Ms. L, Mr. T, Ms. O, Ms. Hien, Mr. Chung, Mr. Truong, Ms. Ngan and Ms. Thuy are entitled to commonly own the works on the land area of 33m² which has been distributed in section 1 (kitchen, tank and ground) and must jointly pay 6,100,000 dong (six million one hundred thousand dong) to Mr. Nguyen Van Ch.

3. Distribute to Ms. Dam Thi H (i.e. R), Mr. Nguyen Van Ch, Ms. Nguyen Thi B, Ms. Nguyen Thi P and Ms. Nguyen Thi N the common use rights on the land area of 88m² with four boundaries as follows:

- South: bounded by the land distributed to Mr. Q (and the persons in section 1)
- West: bounded by Mr. X and Ms. Y's land
- North: bounded by the public land
- East: bounded by the public path.

4. Ms. H, Mr. C, Ms. B, Ms. P and Ms. L must be jointly responsible for payment of 150,000,000 dong (one hundred fifty million dong) to Mr. Q, Ms. L, Mr. T and Ms. O.

5. As to the first instance court fee

- Ms. H must pay 30,240,000 dong
- Mr. Q, Ms. L, Mr. T, Mr. Ch, Ms. B, Ms. O, Ms. P and Ms. N must pay 9,125,000 dong each person.

Since the date of receiving the petition for judgment execution of the judgment creditor (with respect to the amount to be paid to the judgment creditor) until completion of all payments, the judgment debtor must bear the interest of the left amount to be executed monthly according to the basic interest level prescribed by the State Bank, corresponding the time that the judgment has not been executed.

The involved parties shall have right to appeal within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- Mr. Nguyen Van Q
- Ms. Dam Thi H
- Ms. Nguyen Thi L, Mr. Nguyen Van C, Mr. Nguyen Anh T, Ms. Nguyen Thi O
- Mr. Nguyen Van C, Ms. Nguyen Thi B, Ms. Nguyen Thi P, Ms. Nguyen Thi N
- People's Procuracy of city H
- Saved: Office, First instance court, case dossier

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge – Presiding Judge**

Le Van V

Note: *Since this case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

Section II. First instance marriage and family judgments

1. Judgment No.1

PEOPLE'S COURT OF CITY V

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness

Judgment No.: 08/2005/HNGD-ST
Rendering date: January 6, 2005
On division of property upon
divorce

ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF CITY V

With the first instance Hearing Panel composed of

Judge – Presiding Judge: Mr. Khuat Quang C

People's Assessors: 1. Mr. Vu Manh D
2. Ms. Nguyen Hoa N

Court clerk taking the minutes of the trial: Ms. Mai Van A, staff of the People's Court of city V.

Representative of the People's Procuracy of city V participating in the trial: Ms. Nguyen Thi Tuyet M, prosecutor.

On January 6, 2005 at the head office of the People's Court of City V, hold a first instance trial to adjudicate the case No. 168/2004/TLST-HNGD dated November 5, 2004 on "Division of property upon divorce" according to the Decision No. 98/2004/QDXX-ST dated December 15, 2004 on bringing the case into trial between the involved parties:

1. *Plaintiff:* Ms. Lai Thi B (i.e. Lai Thi M), residing at No. 107B Ton Duc Thang Street, ward N, district T, city V.

2. *Defendant:* Mr. Duong Viet D, residing at No.30, Kien Thiet Lane, ward N, district T, city V.

ACKNOWLEDGES:

1. *At the trial today, Ms. B (plaintiff) and Mr. D (defendant) consistently present that:*

They have the common properties including 01 old Max motorbike, 01 video player, 01 TV, 01 home theatre system, 01 fridge, 01 sofa, 01 jewelry set. These common properties were sold and the money earned from the sale was used by Mr. D to visit Ms. B during the time she was arrested from 1999 to 2000.

2. *The property that Ms. B and Mr. D have dispute is the amount of selling the house as follows:*

- The house No. 5, Lane 29, Nguyen Thai Hoc Street (under the name of Mr. Lai Thi K, Ms. B's sister) was sold by Mr. D and Ms. B in August 2001. The buyer is Ms. Nguyen Thi Thanh V and Ms. V already paid the amount of 220,000,000 dong to Ms. D.

- The house No. 35, Doan Thi Diem Street (under the name of Mr. Lai Van N, Ms. B's father) was sold by Mr. N and Mr. D for 28,000,000 dong.

- The house No. 113B, Ton Duc Thang Street was rent by Mr. D's parents from the State for Mr. D and wife to live. In November 1999, Mr. D and his family sold this house to Ms. Nguyen Thi D for 127,000,000 dong.

Ms. B states:

The house No. 5, Lane 29, Nguyen Thai Hoc Street and the house No. 35, Doan Thi Diem Street were build by Mr, D and her during the period of marriage; the house No. 113B, Ton Duc Thang Street was rent from the State by Mr. D's parents but it was left to them, so the money getting from selling that house must be the common property of husband and wife. Therefore, Mr. D now is keeping the total amount of 375,000,000 dong of which 248,000,000 dong is the amount getting from selling the house No. 5, Lane 29, Nguyen Thai Hoc Street and the house No. 35, Doan Thi Diem Street which the two parties do not have any dispute.

After selling the house, Mr. D gave her 40,000,000 dong and her parents (Mr. N) 10,000,000 dong.

During the time she was in prison, Mr. D just sent money to her twice, specifically 500,000 dong each time and gave the child 300,000 dong once time. Mr. D took care of her own daughter when she was ill and passed away; the total cost is 12,000,000 dong. Mr. D spent 62,000,000 dong in the total amount of selling the house that he keeps.

Thus, Mr. D is keeping 313,000,000 dong. So, Ms. B requests Mr. D to share a half of this amount to her, specifically 156,500,000 dong.

Mr. D states:

The house No. 113B, Ton Duc Thang Street is the house rent from the State by his parents and let him and his wife to live in; so the amount getting from selling this house is not common property of husband and wife.

The amount getting from selling the two houses: the house No. 35, Doan Thi Diem Street and the house No. 5, Lane 29, Nguyen Thai Hoc Street are common properties of Ms. B and him; and the amount getting from selling these houses is 248,000,000 dong which is managed by him. Then, he gave Ms. B 40,000,000 dong and Mr. N 10,000,000 dong. As to the remaining amount of 198,000,000 dong, he

spent to pay a debt of 52,000,000 dong to Mr. La Quang T, living in Room No. 124 A3, Tenement House G (the money spent to repair the house No. 29 Nguyen Thai Hoc Street); 40,000,000 dong to Ms. Dang Thi C living at No. 4 L Street and 33,500,000 dong to Ms. Nguyen Thi H living in Lane 1 Street T. The remaining amount spent on visiting 3 Ms. B's own children; burying G, Ms. B's own child; and expenditure for move Ms. B from the prison in Thanh Hoa to the one in Hanoi. Mr. D does not admit to spending the money getting from selling the houses on buying another house. Now, Mr. D stays at No. 30 Kien Thiet Lane.

The house No. 113B Ton Duc Thang Street was sold by Mr. D and his family because this is the property rent from the State by his parents. Mr. D and Ms. B just live there, so the money getting from selling this house is not the common property of Mr. D and Ms. B.

Consequently, Mr. D thinks that the common property between Ms. B and him no longer exists. Therefore, he does not accept Ms. B's request for a half of the amount getting from selling the house.

CONSIDERS:

After studying the documents in case dossier examined at the trial and based on the result of argument at the trial, the Hearing Panel assesses:

Ms. B and Mr. D agree the amount that Mr. D sold all common property is movables which were spent on visiting Ms. B in prison. Now the two parties do not have any opinion about this amount, just have dispute on the amount of selling the houses.

As to the house No. 113B Ton Duc Thang Street: After Mr. D and Ms. B got married (February 1999), Ms. B lived together with Mr. D at the house No. 113B Ton Duc Thang Street. One month later, they moved to another place. In May 1999, Ms. B was arrested for drug trafficking. Mr. D and Ms. B do not have dispute on the matters above, so pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court recognizes this is true.

Ms. B thinks that Mr. D's parents gave this house to Mr. D and her before but Mr. D does not admit. Whereas Ms. B could not submit any evidence showing that Mr. D's parents gave them this house. The Court has examined and clarified Ms. B did not have any effort in repairing the house No. 113B Ton Duc Thang Street. Therefore, it is not well-grounded to determine that this house belongs to the ownership of Mr. D and Ms. B, so the amount getting from selling this house is not the common property of Mr. D and Ms. B.

As to the house No. 5, Lane 29, Nguyen Thai Hoc Street and the house No. 35 Doan Thi Diem Street are the common property of husband and wife. The money of selling these houses is 248,000,000 dong which is managed by Mr. D. Ms.

B admits that Mr. D transferred 40,000,000 dong to her and 10,000,000 to Mr. N (Ms. B's father). Hence, the remaining amount is 198,000,000 dong. Mr. D and Ms. B do not have any dispute on the matters above; thus, pursuant to Clause 2 Article 80 of the Civil Procedure Code, the Court recognizes it is true.

Mr. D thinks that the amount of 198,000,000 dong was spent on repairing the house No. 5, Lane 29, Nguyen Thai Hoc Street; paying a debt to Ms. C and Ms. H; visiting Ms. B; nourishing Ms. B's 3 own children; moving Ms. B from the prison in Thanh Hoa to Hanoi.

Ms. B does not admit the debt and the amount of repairing houses; she just recognizes Mr. D spent about 12,000,000 dong on visiting her and her children and he spent the remaining amount on buying the house in Street LT, district D, city H.

Considering that Mr. D states using the amount of selling the house to pay a debt to Ms. H and Ms. C but Ms. B (plaintiff) does not admit. Although Ms. H and Ms. C state that Mr. D owed Ms. C 32,000,000 dong and Ms. H 33,500,000 dong at the end of May 1999 and now he already pays all debts; Ms. K (Ms. B's sister) also recognizes that Mr. D have debts; it deems that these debts does not belong to the responsibility of both husband and wife because at that time Ms. B was in prison. Whereas, Mr. D could not prove the borrowing amount was spent on family expenditure. Therefore, there is no ground to determine these debts are common ones of husband and wife.

As to the amount of repairing the house No. 5, Lane 29, Nguyen Thai Hoc Street, Ms. K confirms that Mr. D already repaired the house. Mr. La Quang T who is the persons directly in charge of repairing the house also states that he repaired the house No. 5, Lane 29, Nguyen Thai Hoc Street and Mr. D already paid him 52,000,000 dong for materials in 2001. Thus, it is well-grounded to accept that Ms. D spent money on repairing the house.

As to the amount that Mr. D spent to nourish Ms. B's 3 own children and visit Ms. B in provision, it is true. However, Ms. K thinks that the remaining amount of selling the house spent on visiting and nourishing Ms. B and her children is not well-grounded. Whereas Ms. B just admits the expenditure for her children and burying N costs about 12,000,000 dong.

At the trial today, Mr. D states the expenditure for medicine and burying N (Ms. B's own child) costs 20,000,000 dong (of which 5,000,000 dong was spent on the burial and 15,000,000 dong was spent on medicine and food, the amount for medicine particularly is 7,000,000 dong). But he cannot submit any evidence to prove and Ms. B does not admit it. Accordingly, there is no ground to accept the amount for burial and medical purpose for N. The amount of money for feeding is calculated in the amount of money that Mr. D had been nourishing Ms. B's children from May 1999 to May 2001 (the period that Ms. B was arrested in May 1999 until the time N passed away and 2 other children of Ms. B were re-educated in May

2001), specifically: 3 children x 300,000 dong/person/month x 24 months = 21,600,000 dong.

That Ms. B thinks Mr. D used the money of selling the house to buy the house No. 4 Lane 1 Street T, city H is not well-grounded because through the examination, the local authority shows that no one named Duong Viet D bought a house in the ward area. Ms. K, Ms. B's sister, herself also confirms Mr. D has not bought other house.

So, the common property of Mr. D and Ms. B is determined as follows: the money of selling the house No.35 Doan Thi Diem Street is 28,000,000 dong, the money of selling No.5 Lane 29 Nguyen Thai Hoc is 220,000,000 dong; the total amount is 248,000,000 dong managed by Mr. D.

- The money for repairing the house No. 5 Lane 29 Nguyen Thai Hoc Street is 52,000,000 dong (paid to Mr. T);

- The money for buying medicine and burying N is 12,000,000 dong;

- The money for nourishing Ms. B's 3 own children is 21,600,000 dong;

The total amount that Mr. D spent is 85,600,000 dong.

Now, Mr. D still manages the money of selling the house which is 163,400,000 dong (248,000,000 dong – 85,600,000 dong).

Pursuant to Article 95 of Marriage and Family Law 2000, Mr. D and Ms. B each are entitled to enjoy a half of 81,700,000 dong (163,400,000 dong : 2). Mr. D handed 40,000,000 dong over to Ms. B and 10,000,000 dong over to Mr. N. Mr. D still has to pay Ms. B 31,700,000 dong (81,700,000 dong – 50,000,000 dong).

As to the civil court fee:

Mr. D and Ms. B each must bear 4,085,000 dong of civil court fee.

At the trial today, the representative of the People's Procuracy of City V requests the Hearing Panel to determine the movables that were spent at the time Ms. B was arrested as she states in record No. 36 and 36. The common property just is the money of selling the house No. 35 Doan Thi Diem Street which is 28,000,000 dong and the money of selling the house No. 5 Lane 29 Nguyen Thai Hoc Street which is 220,000,000 dong. Deducting the money that Mr. D repaired the house No. 5 Lane 29 Nguyen Thai Hoc Street which is 52,000,000 dong, the remaining amount of money must be divided in two and deducts the amount of 50,000,000 dong that Ms. B and Mr. N have already received. Mr. D must be forced to pay Ms. B after deducting the expenditure that Ms. B has received.

The request above of the People's Procuracy of City V is appropriate to the assessment of the Hearing Panel, so it is acceptable.

For such reasons,

DECIDES:

Applying Article 95 of the Marriage and Family Law 2000;

Applying the Decree No. 70/CP dated June 12, 1997 by the Government prescribing court fee and charge,

1. To recognize the common property between Mr. D and Ms. B is 163,400,000 dong; force M. Duong Viet D to pay Ms. Lai Thi B 81,700,000 dong (eighty one million seven hundred thousand dong), it has been paid 50,000,000 dong (fifty million dong) and still remains 31,700,000 dong to be paid (thirty one million seven hundred thousand dong).

2. As to the civil court fee: Mr. D and Ms. B each must bear 4,085,000 dong of the first instance civil court fee.

Since the date that the judgment creditor makes a petition for judgment execution, the judgment debtor must bear the basic interest as prescribed by the State Bank for the amount of money not to be implemented until the implementation is complete.

Within the time limit of 15 days since the date of judgment pronouncement, the involved parties shall have right to make appeal.

Receiver:

- Ms. Lai Thi B;
- Mr. Duong Viet D;
- People's Procuracy of City V;
- Saved in: office, Civil Court, case dossier.

FOR THE FIRST INSTANCE HEARING

PANEL

Judge – Presiding Judge

Khuat Quang C

Note: *Since this case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

2. Judgment No. 2

PEOPLE'S COURT OF DISTRICT H,
CITY N

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness

Judgment No.: 20/2005/HNGD-ST

Rendering date: May 10, 2005

On divorce and division of property
upon divorce

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF DISTRICT H, CITY N**

With the first instance Hearing Panel composed of:

Judge – Presiding judge: Ms. Bui Thi T

People's Assessors : 1. Mr. Do Van N

2. Ms. Nguyen Thi Hoa N

Court clerk taking the minutes of trial: Ms. Nguyen Thi D, staff of the People's Court of district H, city N.

On May 10, 2005, at the head office of the People's Court of district H, hold a public first instance trial to adjudicate the case No. 120/2005/TLST-HNGD dated February 14, 2005 on divorce and division of property upon divorce according to the Decision No. 20/2005/QDXX-ST dated April 14, 2004 on bringing the case into trial between the involved parties:

1. *Plaintiff:* Ms. Tran Thi Tuyet M, residing at No. 352 Hoang Hoa Tham Street, ward T, district H, city N.

2. *Defendant:* Mr. Nguyen Sy L, residing at No. 352 Hoang Hoa Tham Street, ward T, district H, city N – absent.

ACKNOWLEDGES:

According to the petition for divorce dated February 8, 2005 and the statements at the People's Court of district H, Ms. Tran Tuyet M (plaintiff) presents:

1. As to the marriage

Ms. M and Mr. L got married voluntarily and have Certificate of marriage No. 25/2005 dated August 4, 1988 in the People's Committee of ward T, district D, city H.

Ms. M and Mr. L lived peacefully and happily until conflict happened in 2000.

The reason is that Mr. L did not care about wife and children, often played gambling and drank. Mr. L often suffered losses in business, so the family economy was very difficult and husband and wife often had different opinions.

Since 2000 until now, they have not lived together; sometimes, Mr. L visits the children and beats her.

Ms. M sees that the husband and wife sentiment no longer exists. Thus, she makes a petition for divorce from Mr. L to the Court.

In the writing document taking the opinions of Mr. L (defendant) about the plaintiff's request dated April 1, 2005 (Mr. L's office, Hanoi maritime transport Company determines this document is made by him). Mr. L admits the husband and wife sentiment no longer exists and agrees to divorce.

2. As to common children:

Ms. M states they have 2 common children:

- Nguyen Phi K, born in August 1988
- Nguyen Anh N, born in September 1995

Ms. M request to rear the two children and does not request Mr. L to contribute to rear the children.

Mr. L recognizes that they have 2 common children as Ms. M states and request for rearing Nguyen Anh N.

3. As to property:

Ms. M presents the common properties between husband and wife include:

- As to movables: 01 TV-set, 01 fridge, 01 motorbike and some other utensils. The two parties agree to transfer these properties to Ms. M and do not ask the Court to value.

- As to immovable properties: they have a house with the area of 35m² (1st floor) at No. 352 Hoang Hoa Tham Street, ward T, district H, city N (issued the Certificate No. 5814-2000/QDUB dated October 26, 2000 of ownership rights on residential house and land use rights by the People's Committee of city N). Ms. M requests for the house and shall pay ½ the value of the house to Ms. L.

At the trial today, Ms. M wants to withdraw the request for settling the properties of husband and wife because Mr. L is absent.

CONSIDERS:

After studying documents in the case dossiers examined at the trial, the Hearing Panel considers that:

1. As to proceedings: Mr. L has a petition to request the Court to adjudicate in his absence. Pursuant to Clause 2 Article 202 of the Civil Procedure Code, the Court still hears the case.

2. As to marriage: The marriage relation between Ms. M and Mr. L is lawful. During the marriage period, since the two parties have different viewpoints of living, which leads to conflict and loss of trust between them, the two parties determine that it is impossible to heal the sentiment between husband and wife. According to the verification in locality, the conflict between husband and wife is very serious and fighting happens; the local authority has advised but it is unsuccessful. This shows that the marital situation between Ms. M and Mr. L is in serious conflict, the couple can no longer live together and the marriage purposes cannot be achieved. Ms. M requests a divorce and Mr. L also agrees. The divorce by consent between the plaintiff and defendant is totally voluntary and well-grounded, which is appropriate to Article 89 and 90 of the Marriage and Family Law 2000; thus, the Hearing Panel shall accept.

3. As common children: Ms. M and Mr. L both have aspiration to rear the children. However, assigning who shall rear the children must be considered all aspects and interests of the juvenile children. Seeing that Mr. L is a sailor, so he has to go on business far from home and does not have conditions to directly rear and take care of the children everyday. Previously and now, the children have been reared and taken care of by Ms. M and ensured well all aspects. They also have aspiration to live with their mother. These details are obvious in accordance with the plaintiff's statements and the defendant does not oppose. Pursuant to Article 92 of the Marriage and Family Law 2005 it is well-grounded to accept Ms. M' aspiration that is directly taking care of, educating and rearing the two children.

4. As to supporting children: Ms. M does not request Mr. L to supporting children, so the Court shall not consider the expenses supporting the common children for Mr. Nguyen Sy L.

5. As to properties: That Ms. M withdraws a part of the request for division of properties is totally voluntary, which is appropriate to the provision in Clause 2 Article 218 of the Civil Procedure Code. Therefore, the Hearing Panel shall accept this request of Ms. M and suspend the adjudication of the request for division of common properties of Ms. M and Mr. L. Once the involved parties have further request, the Court shall settle the division of properties in another case.

6. As to court fee:

According to the Decree No. 70/CP dated June 12, 1997 by the Government on court fee and charge, Ms. M must pay 50,000 dong of the first instance court fee.

For such reasons,

DECIDES:

Applying Clause 1 Article 202; Clause 2 Article 218; Article 131 of the Civil Procedure Code; Article 89, 90, 92 and 94 of the Marriage and Family Law 2000; Clause 1 Article 7 of the Decree No. 70/CP dated June 12, 1997 by the Government on court fee and charge,

1 - To recognize divorce by consent between Ms. Nguyen Tuyet M and Mr. Nguyen Sy L.

2 - Ms. Nguyen Thi Tuyet M is entitled to rear the two common children:

- Nguyen Phi K, born in August 1988

- Nguyen Anh N, born in September 1995.

3 - Suspend the adjudication of the request for division of common property between Ms. M and Mr. L. Once the involved parties have further request, the Court shall settle in another case.

4 - As to court fee: Ms. Tran Thi Tuyet M must bear 50,000 dong of the first instance court fee which shall be deducted from 50,000 dong of the first instance court fee advances paid in accordance with the receipt No. 6964 dated February 14, 2005 of Judgment Execution team of district H.

Ms. Tran Thi Tuyet M shall have right to make appeal within the time limit of 15 days since the date of judgment pronouncement; Mr. Nguyen Sy L shall have right to make appeal within the time limit of 15 days since the date that the judgment is handed over to Mr. L or posted up.

Receiver:

- Ms. Tran Thi Tuyet M;
- Mr. Nguyen Sy L;
- People's Procuracy of district H, city N;
- Saved in: Office, Civil Court, case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge - Presiding Judge**

Bui Thi T

Note: *Since this case is adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

Section III. First instance business or trade judgments

1. Judgment No. 1

PEOPLE'S COURT OF PROVINCE Q

**SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness**

Judgment No.: 03/2005/KDTM-ST.

Rendering date: June 22, 2005

On a dispute on purchase and sale
of goods

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF PROVINCE Q**

With the first instance Hearing Panel composed of :

Judge - Presiding Judge: Mr. Nguyen Van A

People's Assessors : 1. Mr. Nguyen Minh B

2. Ms. Trieu Thi C

Court clerk taking the minutes of trial: Mr. Pham Quoc T, staff of the People's Court of province Q.

On June 22, 2005 at the head office of the People's Court of province Q, hold a public first instance trial to adjudicate the case No. 04/2005/TLST-KDTM dated April 28, 2005 on a dispute on purchase and sale of goods according to the Decision No. 09/2005/QDXX-ST dated June 2, 2005 on bringing the case into trial between the involved parties:

1. *Plaintiff:* Textile Company N, locating at No. 50 Ngo Thi Nham Street, ward H, district L, city D.

Lawful representative of the plaintiff: Mr. Nguyen Anh T, born in 1965, who is a legal officer, is the representative according to the entrustment of the Director of Company (entrustment document dated May 7, 2005).

2. *Defendant:* Textile business X, locating in town N, district D, province Q.

Lawful representative of the defendant: Mr. Mai Xuan Q, born in 1968, residing in My Hoa Zone, town N, district D, province Q (owner of the textile business).

ACKNOWLEDGES:

In the lawsuit petition dated March 21, 2005 and the statements taken in the period of settling the case, the representative of Textile Company N presents:

On May 31, 2002 and on August 5, 2002 Textile Company N sold 24 Chinese power-looms coded 1515A-180 to textile business X for the total value of 420,840,000 dong but has not been paid yet. Textile Company N requests the Court to settle the case and force Textile business X to pay the amount of 420,840,000 dong and the late paid interest according to the provisions of the State Bank of Vietnam.

In the written statement dated May 12, 2005 by Mr. Mai Xuan Q, lawful representative of the defendant, presents:

Textile business X bought 24 power-looms of Textile Company N for 16,700,000 per 1 machine (excluding VAT). However, Textile Company N did not transfer the machines with the quality as agreed and they still lacked some accessories. Textile business X agrees to pay the deficient money to Textile Company N after Textile Company N deducts the expenses that Textile business X spent to operate the machines (there is detailed list submitted to the Court).

ACKNOWLEDGES:

After studying documents in the case dossier examined at the trial and based on the results of arguments at the trial, the Hearing Panel assesses:

Textile Company N totally sold 24 power-looms to Textile business B for 400,800,000 dong (excluding VAT) (the plaintiff and the defendant both agree and do not have any dispute on this content).

Textile Company N transferred 24 power-looms to Textile business X but in comparison with the contract, it still lacked some parts; so the machines could not work. Textile Company N assigned Mr. Nguyen Van T who is staff of technology division KCS in charge of managing textile equipments to come to Textile business X to check the missing accessories and make a tally-sheet (Record No. 12, 13) to report to the leadership of Company. Based on the tally-sheet, Textile Company N made a list calculating the total value of missing accessories which is 144,326,760 dong (Record No. 14, 15). However, during the calculation, Textile Company N wrongly calculated the quantity and value of some accessories and did not calculate the value of useless accessories. Finally, the total value of missing accessories after being recalculated is 180,337,330 dong in accordance with the tally-sheet.

After the inventory is complete, it still remains shortcomings. So Mr. Nguyen Van T has added some missing accessories which are 144 standing knives 5130 with the value of 8,640,000 dong and 33,600,000 dong of wages of arranging machines (Record No. 16, 17). Thus, the total amount of the missing accessories after Mr. Nguyen Van T added more is 188,977,330 dong (180,337,330 dong + 8,640,000 dong).

After Textile Company N had come to Textile business X to check the missing accessories and made the tally-sheet, Company Ltd. P (in Hanoi) sent 11 kinds of accessories worth 32,882,000 dong to Textile Company N so that this company transferred to Textile business X. Textile business X admits that they already received sufficiently these accessories; thus the amount of money of these accessories must be excluded. Thus, the total amount of accessories that Textile Company N provided to Textile business X lacks 156,095,330 dong in comparison with the contract (188,977,330 dong – 32,882,000 dong). Textile business X had to buy this number of accessories by themselves to operate the machines. Therefore, Textile Company N must refund 156,095,330 dong of missing accessories to Textile business X.

According to the contract, Textile Company N must bear the cost of arranging machines. However, Textile Company N did not perform, so Textile business X had to hire some experts to arrange the machines. Textile business X requests Textile Company N to refund 33,600,000 dong (1,400,000 dong/ 1 machine) that Textile Business X spent to hire experts to arrange the machines. The representative of Textile Company N thinks that the cost for hiring experts to arrange the machines is 8,400,000 dong (350,000 dong/ 1 machine). Seeing that the quality of power-looms just is 80%; so that the cost for hiring experts to arrange machines is 19,200,000 dong (800,000 dong/ 1 machine) is well-grounded.

Textile Business X bought 24 power-looms for 400,800,000 dong (16,700,000 dong/ 1 machine) excluded VAT. Hence, Textile Business X must bear the VAT of 20,040,000 dong (5% x 400,800,000 dong). The total amount that Textile Business X must pay Textile Company N is 420,840,000 dong for buying 24 power-looms (400,800,000 dong + 20,040,000 dong). After deducting 175,295,330 dong (156,095,330 dong + 19,200,000 dong) that is the amount Textile Company N has not paid and the cost for hiring experts to arrange machines, Textile Business X must pay Textile Company N 245,544,670 dong (420,840,000 dong – 175,295,330 dong).

At the first instance trial, the representative of the plaintiff withdraws the request for calculating late-paid interest; so the Hearing Panel shall not consider it. At the same time, the plaintiff requests to add another request to ask Textile Business X to pay the amount of 106,840,000 dong for using machines in 2 years. Seeing that, Textile Company N sold 24 power-looms to Textile Business X and now forces Textile Business X to pay for these 24 power-looms. Therefore, it is not well-grounded to accept that request of the plaintiff's representative.

As to the number of useless accessories that Textile Business X received according to the tally-sheet of Textile Company X which includes 8 kinds, Textile Company N requires Textile Business X to return. Thus, the Hearing Panel thinks

that it is necessary to force Textile Business X to return these accessories to Textile Company N.

Textile Company N provided 24 power-looms with doobby and shuttle upturning set but some of them are useless; so the representative of the defendant requests Dong Nam Textile Company to deduct this amount of money of these accessories. But when Textile Company N checked and made the tally-sheet of missing and useless accessories, Textile Business X did not have any request for this matter. So it is not well-grounded to accept it.

The involved parties must bear the first instance court fee according to the provisions of the Decree No. 70/CP dated June 12, 1997 by the Government.

For such reasons;

DECIDES:

Applying Article 22, 23 and 31 of the Ordinance on economic contract, Decree No. 70/CP dated June 12, 1997 by the Government on court fee and charge, Decision No. 69/2004/QD-BTC dated August 24, 2004 by the Minister of Finance,

To accept a part of lawsuit claim of Textile Company N requesting Textile Business X to pay for 24 Chinese power-looms coded 1515A-180.

Textile Business X must pay 245,544,670 dong to Textile Company N (two hundred forty five million forty four thousand six hundred and seventy dong)

Textile Business X returns to Textile Company N 8 kinds of useless accessories that Textile Business X received (the tally-sheet attached).

Not to accept the request of Textile Company N to ask Textile Business X to refund the amount of 106,840,000 dong for using machines.

Since the date that Textile Company N submits the petition for judgment execution, if Textile Business X does not voluntarily refund that amount, Textile Business X monthly must bear the interest rate according to the rate of overdue debt prescribed by the State bank corresponding to the time of delaying judgment execution.

As to first instance civil court fee, Textile Company N must bear 11,464,000 dong. Excluding the first instance economic court fee of 7,512,000 which has been paid according to the Receipt No. 009407 dated April 28, 2005 issued by Judgment Execution Division of Province Q; Textile Company N still has to pay 3,952,000 dong.

Textile Business X must bear the first instance economic court fee of 10,366,300 dong.

The lawful representatives of the involved parties shall have right to make appeal against this judgment within the time limit of 15 days since the date of judgment pronouncement (June 22, 2005) to request the Appellate Court of Supreme People's Court in City D to retry according to the appellate order.

Receiver:

- Textile Company N;
- Textile Business X;
- People's Procuracy of Province Q;
- Saved in: Office, Economic Court,
Case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge - Presiding Judge**

Nguyen Van A

Note: *Since this case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

2. Judgment No. 2

PEOPLE'S COURT OF CITY H

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Judgment No.: 279/2005/KDTM-ST

Rendering date: September 21, 2005

On a dispute on joint-venture
contract

ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF CITY H

With the first instance Hearing Panel composed of:

Judge - Presiding Judge: Ms. Nguyen Thi M

People's Assessors : 1. Mr. Le Van T

2. Ms. Nguyen Thi H

Court clerk taking the minutes of trial: Mr. Nguyen Quang B, staff of People's Court of City H.

On September 21, 2005 in the People's Court of City H, holds a public trial to adjudicate the case No. 565/TLST-KDTM dated December 27, 1999 on a dispute on joint-venture contract according to the Decision No. 588/2005/QDXX-ST dated September 5, 2005 on bringing the case into trial between the involved parties:

1. *Plaintiff:* M Trade Company Ltd. , locating at No. 114/11C Street S, ward X, district Y, city H.

Representative according to entrustment of the plaintiff: Mr. Nguyen Van V and Ms. Nguyen Thi Lan N, according to the entrustment document dated September 21, 2005 (present).

Person protecting lawful rights and interests of the plaintiff: Lawyer Nguyen Van T of Bar Association of City H (present).

2. *Defendant:* Travel Service Company P, locating at No.2/15 Building L, ward P, district K, city H.

Representative according to entrustment of the defendant: Mr. Nguyen Chanh L, according to the entrustment document dated September 19, 2005 (present).

Person protecting lawful rights and interests of the defendant: Lawyer Huynh Q of Bar Association of City H (present).

ACKNOWLEDGES:

According to the lawsuit petition dated February 2, 1999 (supplemented in the document No. 02/CV/05 dated in September 19, 2005), the plaintiff is Chi Dat Trade Company Ltd. presents:

Between the plaintiff and defendant who is Travel Service Company P have a contract No. 22/HD-96 signed on October 12, 1996 on the establishment of Bowling Joint-venture Trade and Service Company Ltd. and the contract appendixes No. 01 signed on November 26, 1996; No. 2 signed on April 29, 1998; No. 3 signed on December 9, 1998 on the establishment of Bowling Joint-venture Trade and Service Company Ltd. at No. 3, Street H, ward Q, district T, city H to do joint-venture activities relating to Bowling and accompanied Services (including games, fast-food, souvenir, clothes, sport tools etc.). On June 1, 1997 Travel Service Company P and Joint-venture Company Ltd. M signed a contract No. 07/HD-97 on capital contribution for business cooperation in Bowling Trade and Service Center. On September 1, 1998 the parties including Travel Service Company P, Trade Company Ltd. M and Mr. Truong Chi D signed on an additional minutes for the contract on capital contribution for business cooperation. In the additional minutes, the parties agreed that the capital contribution part of Mr. Truong Chi D should be moved to the capital contribution part of Trade Company Ltd. M, which is mentioned in Article II of the contract No. 07/ HD-97 (it means that the capital of the two contract is equivalent to the amount of 1,680,000 USD, making up 70% in business cooperation between the two companies). Trade Company Ltd. M has performed its liability for contributing 15,829,726,860 dong as prescribed in the contract to invest in building Bowling Trade and Service Center S. However, Travel Service Company P could not establish the Joint-venture Company as the agreement in the contract. Trade Company Ltd. M initiates a lawsuit to request the Court to force Travel Service Company P to return the whole money of capital contribution for business cooperation of Trade Company Ltd. M that Travel Service Company P has received and must pay the interest according to the interest rate prescribed by the State Bank on the contributed capital of Trade Company Ltd. M, including: Contributed capital is 15,396,304,144 dong; interest (until September 21, 2005) is 11,438,702,942 dong; and to abrogate the contract of business cooperation No. 22/HD dated October 12, 1996.

In the explanatory documents and minutes of taking testimonies, Travel Service Company P confirms the signing of contracts and appendixes with Trade Company Ltd. M, specifically:

On October 12, 1996 Travel Service Company P signed a contract No. 22/HD-96 with Trade Company Ltd. M. Then the parties re-agreed and adjusted the form of contract between Travel Service Company P and Mr. Truong Chi D (date of signing contract, number of contract and basic contents are not changed in

comparison with the previous one). The second change is the contributed capital of Trade Company Ltd. M, increasing from 1,633,333 USD to 1,680,000 USD. After that, on September 1, 1998 Travel Service Company P, Trade Company Ltd. M and Mr. Truong Chi D signed an additional minutes for the contract of capital contribution for business cooperation. In there, Mr. Truong Chi D agreed to move all his contributed capital into the one of Trade Company Ltd. M. The liability for performing contract No. 22/HD-96 dated October 12, 1996 no longer relates to Mr. Truong Chi D himself.

As to the plaintiff's requests: Travel Service Company P confirms the receiving of investment capital from Trade Company Ltd. M including 70,000 USD in cash equivalent to 778,100,000 dong and 14,477,564,144 dong. Total number is 15,255,644,144 dong. However, Travel Service Company P has not agreed to pay Trade Company Ltd. M this amount of money because the construction work has not been audited yet. Trade Company Ltd. M is requested to submit the documents to carry out audit as the basis of payment between the two parties. In the sum of money above, it includes the money of 6.6 million dong that Travel Service Company P helps Trade Company Ltd. M to loan in the Bank.

CONSIDERS:

After studying the documents in the case dossier examined at the trial and based on the result of argument at the trial, the Hearing Panel assesses:

1. As to relation in dispute and jurisdiction to settle the case:

The contract No. 22/HD-96 signed on October 12, 1996 and the appendix No. 01 signed on November 26, 1996, No. 02 signed on April 29, 1998 and No. 03 signed on December 12, 1998 on the establishment of Bowling Joint-venture Trade and Service Company Ltd. at No. 3 Street H, ward Q, district T, city H to operate business cooperation on bowling sports and other services is an economic contract. The dispute on the contract above falls into the jurisdiction to settle of the People's Court of city H.

After handling the case, the Court has decided to temporarily suspend the case to wait for the result of settling the economic case of dispute on a financial leasing contract of bowling tools in Bowling Center S between Kexim Financial Leasing Company and Trade Company Ltd. M. Now, the Court realizes that it is not necessary to wait for the result of settling the dispute on financial leasing contract of bowling tools in Bowling Trade and Service Center S between Kexim Financial Leasing Company and Trade Company Ltd. M. Therefore, the Court shall continue settling the case.

As to the legal value of the contract No. 22/HD-96 signed on October 12, 1996 and the appendix No. 01 signed on November 26, 1996; No. 02 signed on

April 29, 1998 and No. 03 signed on December 9, 1998 on the establishment of Bowling Joint-venture Trade and Service Company Ltd. at No. 3 Street H, ward Q, district T, city H to operate business cooperation on sports, bowling entertainment and other services accompanied between Travel Service Company P and Trade Company Ltd., it is a joint-venture economic contract. According to Article 4 of the Decision No. 38/HDBT dated April 10, 1989 by the Council of Ministers (now it is the Government), each jointly economic organization has a particular name, separate operation system discussed and determined together by the member agencies based on the provisions of law and it must be authorized to operate by a competent State agency. In practice, Bowling Trade and Service Company Ltd. S has not received any authorization of a competent State agency for the establishment but only has the Decision No. 875/QD-UB_KT dated February 21, 1998 by the People's Committee of city H on authorizing Travel Service Company P as the investor to invest in the Project of Bowling Trade and Service Center S. Therefore, the contract No. 22/HD-96 signed on October 10, 1989 by the Council of Ministers does not satisfy the conditions prescribed by law in Article 4 of the Decision No. 38/HDBT dated April 10, 1989 and it shall be totally neutralized.

On the other hand, according to point 7 Article 1 Decision No. 875/QD-UB-KT dated February 21, 1998 by the People's Committee of city H, the invested capital source to do the project of Bowling Trade and Service Center S is a credit capital source according to the provisions in force. That Travel Service Company P signs the joint-venture contract to mobilize the capital from Trade Company Ltd. M to do the project of Bowling Trade and Service Center S is against the decision of the People's Committee of city H. This also leads to the fact that the contract No. 22/HD-96 signed on October 12, 1996 between Travel Service Company P and Trade and Service Company Ltd. M on the establishment of Joint-venture Bowling Trade and Service Company Ltd. shall be totally neutralized.

In reality, the parties have deployed the performance of contract; so the settling of properties when the contract is neutralized shall be based on the provision in Article 39 of the Ordinance on economic contract and legal documents in force concerned.

2. As to the involved parties' requests:

The plaintiff requests the Court to force the defendant (Travel Service Company P) to return the contributed capital for business cooperation of Trade and Service Company Ltd. M that Travel Service Company P has received and the interest of the State Bank, including:

+ Contributed capital: 15,396,304,144 dong

+ Interest (until September 21, 2005): 11,438,762,942 dong.

+ Abrogating the contract No. 22/HD-96 signed on October 12, 1996 between Travel Service Company P and Trade and Service Company Ltd. M.

According to the confirmation of the parties in the minutes on October 13, 2003 the sum of capital which Trade and Service Company Ltd. M has contributed to build Bowling Trade and Service Center S is 15,255,664,144 dong (including 70,000 USD equivalents to 778,100,000 dong and 14,477,564,144 dong). Whereas, Trade and Service Company Ltd. M must pay 15,396,304,144 dong, it means difference of 140,640,000 dong in comparison with the figures above. This is the amount of interest at Branch No. 12 of Vietnam Joint Stock Commercial Bank for Industry and Trade of Bowling Trade and Service Center S under Trade Service Company P and Trade Company Ltd. M has paid to the bank. Travel Service Company P has issue a receipt to Company M and it is considered as the contributed investment to build Bowling Trade and Service Center S of Trade and Service Company Ltd. M (shown in the receipt No. 49 dated September 30, 1998, No. 40 dated October 27, 1998 and No. 43 dated November 30, 1998). Therefore, it is well-grounded to accept the request of Trade and Service Company Ltd. M to force Travel Service Company P to return the contributed capital of 15,396,304,144 dong.

Travel Service Company P thinks that it is not well-grounded to wait for the audit of the construction work to pay Trade and Service Company Ltd. M such amount of money. Since the construction work of Bowling Trade and Service Center S is invested by Travel Service Company P and the audit belongs to the responsibility of Travel Service Company P, it does not affect the returning of all amounts that have been collected from Trade and Service Company Ltd. M in the settlement of the totally neutralized contract. The amounts of money that Travel Service Company P collected from Trade and Service Company Ltd. M have been shown in lawful documents with the confirmation of the two parties. Until now, there has not been any conclusion of a competent agency about the wrongness of such documents issued by Travel Service Company P to Trade and Service Company Ltd. M.

Travel Service Company P thinks that the contributed capital of 15,255,664,144 dong of Trade and Service Company Ltd. M includes the money of 6.6 million dong borrowed by Travel Service Company P for Trade and Service Company Ltd. M. This has not been shown in the evidences in the case dossier and at the trial Travel Service Company P does not have any additional evidence. On the other hand, according to the appendix No. 02 dated September 24, 1998 and appendix No. 3 dated December 9, 1998 the amount of 6.6 million dong borrowed from the bank just is the amount of money increasing the contributed capital of Travel Service Company P in business cooperation. Therefore, Travel Service Company P thinks that deducting the amount of 6.6 million dong from the contributed capital of Trade and Service Company Ltd. M is not well-grounded to be accepted.

As to the interest that Trade and Service Company Ltd. M requests Travel Service Company P to pay, it is not appropriate to Article 39 of the Ordinance on economic contract on the settlement of property in case where the contract is totally neutralized; so it shall not be accepted.

As to the request of Trade and Service Company Ltd. M for abrogating the contract for the establishment of Joint-venture Bowling Trade and Service Company Ltd. (No. 22/HD-96 signed on October 12, 1996) and the appendixes accompanied between Travel Service Company P and Trade and Service Company Ltd. M, this request is entirely appropriate to the provision in point b Clause 1 Article 39 of the Ordinance on economic contract on the settlement of the totally neutralized contract; so it shall be accepted.

Travel Service Company P made the document No. 147/CV-2005 dated September 21, 2005 submitted to the Court to request to bring Mr. Truong Chi D and Ms. Truong My H into the proceedings. As to this matter, the Hearing Panel realizes that according to the lawsuit petition of the plaintiff (Trade and Service Company Ltd. M), the dispute between Trade and Service Company Ltd. M and Travel Service Company P is the dispute on the contract for the establishment of Joint-venture Bowling Trade and Service Company Ltd. (No. 22/HD-96 dated October 12, 1996) and the appendixes accompanied. At that time, Travel Service Company P signed a contract of capital contribution to establish Bowling Trade and Service Center S with Mr. Truong Chi D. However, on September 1, 1998 Travel Service Company P, Trade and Service Company Ltd. M and Mr. Truong Chi D signed the additional minutes for the contract of capital contribution in which Mr. Truong Chi D agreed to move all his contributed capital to Trade and Service Company Ltd. M. So, the liability for performing the contract No. 22/ HD-96 dated October 12, 1996 no longer relates to Mr. Truong Chi D. In the minutes of conciliation dated August 3, 2005, Travel Service Company P also admitted the settlement of the lawsuit just related to two legal entities who are Travel Service Company P and Trade and Service Company Ltd. M. Thus, the request of Travel Service Company P in the official dispatch No. 147 on bringing Mr. Truong Chi D and Ms. Truong My H into the proceedings to settle the matters mentioned in the official dispatch No. 147 does not fall into the scope of the settlement of the case between Trade Company Limited M and Travel Service Company P.

3. As to court fee:

Travel Service Company P must bear the first instance economic court fee as stipulated in Clause 2 Article 15 and Clause 1 Article 19 of the Decree No. 70/CP dated June 12, 1997 by the Government. The to-be- paid amount of court fee is 42,396,404 dong.

Chi Dat Trade and Service Company Ltd. must bear the first instance economic court fee according to the provision in Clause 2 Article 15 and Clause 1

Article 19 of the Decree No. 70/CP dated June 12, 1997 by the Government. The to-be-paid amount of court fee is 38,438,702 dong.

For such reasons;

DECIDES:

Based on Clause 1 Article 29, Clause 1 Article 210, Article 236 and Article 239 of the Civil Procedure Code;

Applying Clause a Article 8, point b Clause 1 Article 39 of the Ordinance on economic contract; Decree NO. 70/Cp dated June 12, 1997 by the Government prescribing court fee and charge; Joint Circular No. 01/TTLT/TANDTC-VKSNDTC-BTP-BTC dated June 9, 1997 by the Supreme People's Court, Supreme People's Procuracy, Ministry of Justice and Ministry of Finance guiding the adjudication and judgment execution relating to property,

1. Accept a part of the request of Trade and Service Company Ltd. M; force Travel Service Company P to return the contributed capital of 15,396,304,144 dong (fifteen billion three hundred ninety six million three hundred and four thousand one hundred forty four dong) to build Bowling Trade and Service Center S.

2. Abrogate the contract for the establishment of Joint-venture Bowling Trade and Service Company Ltd. (no. 22/HD-96 signed on October 12, 1996) between Travel Service Company P and Trade and Service Company Ltd. M and the appendixes accompanied.

3. Since the date that Trade and Service Company Ltd. M makes a petition for judgment execution until the judgment execution completes, Travel Service Company P monthly must bear the interest for the amount that has not been executed according to the interest rate for overdue debt prescribed by the State Bank corresponding to the time of not executing judgment.

4. Court fee:

Travel Service Company P must bear the first instance court fee of 42,396,304 dong (forty two million three hundred ninety six thousand three hundred and four dong), paying in Judgment Execution Division of city H.

Trade and Service Company Ltd. M must bear the first instance economic court fee of 38,438,702 dong (thirty eight million three four hundred thirty eight thousand seven hundred and two dong) excluding the court fee advances of 22,624,000 dong (twenty two million six hundred twenty four thousand dong) according to the receipt No. 022091 dated December 24, 1999 issued by Judgment Execution Division of city H. The amount of court fee that Trade and Service Company Ltd. M must pay is 15,814,702 dong (fifteen million eight hundred fourteen thousand seven hundred and two dong).

5. The involved parties shall have right to make appeal within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- Trade and Service Company Ltd. M;
- Travel Service Company P;
- People's Procuralcy of city H;
- Saved in: Office, Economic Court,
Case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge - Presiding Judge**

Nguyen Thi M

Note: *Since the case was adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

Section IV. First instance labor judgments

1. Judgment No. 1

**PEOPLE'S COURT OF CITY P
PROVINCE B**

**SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness**

Judgment No.: 01/2005/LĐ-ST

Rendering date: June 11, 2005

On a dispute on labor contract

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF CITY P, PROVINCE B**

With the first instance Hearing Panel composed of:

Judge - Presiding judge: Mr. Nguyen Van A

People's Assessors : 1. Ms. Tran Thi H

2. Ms. Mai Thi M

Court clerk taking the minutes of trial: Mr. Nguyen Luu T, staff of the People's Court of city P, province B.

Representative of the People's Procuracy of city H, province B: Mr. Nguyen Quang D, prosecutor.

On June 11, 2005 at the head office of the People's Court of city P, province B, holds a public trial to adjudicate the case No. 01/2005/TLST-LD dated February 25, 2005 on a dispute on labor contract according to the Decision No. 65/2005/QDXX-ST dated May 20, 2005 between the involved parties:

1. *Plaintiff:* Mr. Do Dai L, residing in quarter 2, ward P, city P, province B

Person protecting the lawful rights and interests of the plaintiff: Mr. Nguyen Toan H, lawyer of Lawyer's Office TT under the Bar Association of province B.

2. *Defendant:* Construction Consultancy Company B, headquarters in ward C, city P, province B.

Lawful representative of the defendant: Mr. Tran Hieu T, representative according to the entrustment of the defendant (according to the entrustment document No. 63/TVXD-TC dated March 12, 2005)

ACKNOWLEDGES:

According to the lawsuit petition dated February 21, 2005, the plaintiff, Mr. Do Dai Loc, presents:

The plaintiff and Construction Consultancy Company B (defendant) sign a labor contract on March 1, 1995. According to the content of this labor contract, the plaintiff has worked in accordance with the labor contract with indefinite duration since March 1, 1995. The position is group leader; the job is professional experiment of soil mechanics; and the product salary is 366 dong/ month.

In 1998, the plaintiff was assigned to be Chief Officer of Soil Mechanics Laboratory. On August 18, 2000, the Ministry of Construction issued the decision No. 1154/QD-BXD to recognize the Soil Mechanics and Building Material Laboratory, the decision came into force since the date of being signed and its' valid was until August 15, 2003.

On October 21, 2001 Construction Consultancy Company B issued the decision No. 105B/QD-TVXD on the establishment of Soil Mechanics and Building Material Laboratory directly under Survey Enterprise which is directly under Construction Consultancy Company B. Although there was no new decision, the plaintiff was still assigned to be in charge of the laboratory.

On August 21, 2004 the Company issued the decision No. 130B/QD-TVXD to assign Mr. Pham Dinh T who is geological engineer, Deputy Director of Survey Enterprise to be the Chief Officer of Soil Mechanics and Building Material Laboratory of Survey Enterprise directly under the Company as from September 1, 2004.

On October 22, 2004 Survey Enterprise issued the decision No. 22/QD-XNKS. According to this decision, the plaintiff should transfer the responsibility for the laboratory to Mr. T to undertake another task.

On October 31, 2004 the plaintiff had an application for termination of labor contract as from December 16, 2004.

On December 1, 2004 the plaintiff wrote a written notice of continuing the performance of the labor contract. During this time, the plaintiff made an application for annual leave. On November 17, 2004 the Company allowed the plaintiff to take a leave from November 19, 2004 to January 7, 2005. During the leave time, on December 4, 2004 the Company issued the notice No. 452/TVXD-TC on the termination of labor contract with the plaintiff as from January 15, 2005.

On January 28, 2005 Construction Consultancy Company B issued the decision No. 22/QD-TVXD on the termination of labor contract to the plaintiff as from February 10, 2005.

According to the plaintiff, the decision No. 22/QD-TVXD dated January 28, 2005 is illegal; so on February 23, 2005 the plaintiff made a lawsuit petition to the People's Court of city P, province B to request the Court to force:

- Construction Consultancy Company B (defendant) to abrogate the decision No. 22 and reinstate the plaintiff;

- The defendant to compensate for the damages caused by the decision No. 22/QD-TVXD to the plaintiff, specifically:

+ Salary during the days of being denied to work as from February 10, 2005 including basic salary according to coefficient of 3.05 and function allowance of 0.3 until the date of the first instance trial.

+ Two-month salary and allowance due to the illegal unilateral termination of labor contract of the Company according to Clause 1 Article 41 of the Labor Code, which is 1,943,000 dong (290,000 dong/ month x (3.05 + 0.3)).

Construction Consultancy Company B (defendant) does not oppose the details presented by the plaintiff. However, the Company does not agree with the requests of the plaintiff and thinks that the termination of labor contract is legal for the reasons:

+ The plaintiff made the written notice of the termination of labor contract; so on November 17, 2004 the Leadership of the Company had a meeting and unified to terminate the labor contract according to the defendant's aspiration.

+ The plaintiff's working capacity is limited and he often causes discord in the Company. ;

+ The decision to assign the plaintiff to be Chief Officer in 1998 took effect until August 15, 2004. On October 22, 2004 the plaintiff transferred that task to another person, the plaintiff no longer held the title of Chief Officer; so he shall not be entitled to the coefficient for responsibility of 0.3.

CONSIDERS:

After studying the documents in the case dossier examined at the trial and based in the result of argument at the trial, the Hearing Panel assesses:

1. The details presented by Mr. L (plaintiff) such as date of signing labor contract, salary rate, time of being assigned to be the Chief Officer, time of not being Chief Officer, application for termination of labor contract on October 31, 2004; notice of the performance of labor contract of the plaintiff, decision on the termination of labor contract of the defendant are true and Construction Consultancy Company B (defendant) does not oppose. Pursuant to Article 80 of the Civil Procedure Code, the Court recognizes these details are true.

2. Considering the termination of labor contract of Construction Consultancy Company B (defendant) to Mr. Do Dai L (plaintiff)

+ The first reason that Construction Consultancy Company B adduces to terminate the labor contract is that Mr. L made the application for the termination of labor contract on October 31, 2004 (*Record No. 34*). The Company has considered the application and agreed to terminate the labor contract with Mr. L. However, Mr. L does not admit that he was noticed of the termination of labor contract by the

Company. During the case settlement and at the trial, Construction Consultancy Company B cannot show the evidences proving their acceptance for the termination of labor contract. Therefore, there is no ground to accept that there is an agreement on the termination of labor contract according to Clause 3 Article 36 of the Labor Code that Construction Consultancy Company mentions.

Moreover, according to Article 40 of the Labor Code “*each party may withdraw its unilateral termination of labor contract before the advance notice expires*”. The duration of labor contract that Mr. L signed with Construction Consultancy Company B is indefinite. According to Clause 3 Article 37 of the Labor Code, the advance notice for this kind of contract is 45 days. Whereas, on October 31, 2004, Mr. L made the application for the termination of labor contract after 45 days (*Record No. 34*), it means the advance notice should expire by December 16, 2004. In this time, Mr. L still continues working normally in the Company (*confirmed by Construction Consultancy Company B in the minutes of taking testimonies in the record No. 56*). However, on December 1, 2004, that Mr. L gave up his intention to terminate the labor contract is appropriate to the provisions of law. This detail is recognized by Construction Consultancy Company M; so pursuant to Clause 2 Article 80 of the Civil Procedure Code, it shall be considered as true. Therefore, that Construction Consultancy Company B terminated the labor contract with Mr. L is unilateral instead of the termination according to Clause 3 Article 36 of the Labor Code.

+ The second reason that Construction Consultancy Company B shows to prove its legal termination of labor contract is that Mr. L did not complete his mission, cause internal discord and he was punished by party and labor union. This reason is not well-grounded. According to point a Clause 1 Article 38 of the Labor Code, “*the employer is entitled to unilaterally terminate the labor contract in the following circumstances:*

a. The employee constantly fails to perform the duties set forth in the contract”

According to Clause 1 Article 12 of the Decree No. 44/2003/ND-CP dated May 9, 2003 prescribing in detail and guiding the implementation of some articles of the Labor Code, “the employee constantly fails to perform the duties set forth in the labor contract is not performing the labor standard or the assigned duties due to subjective elements and is recorded in writing or reminded in writing at least 2 times per month; but after that he/she does not overcome. The level of not performing the duties shall be recorded in the labor contract, collective labor accord or labor regulation”.

At the trial, Construction Consultancy Company B cannot submit the evidences to prove the constant non-performance of duties of Mr. L, specifically there is no document in writing expressing the duties that Construction Consultancy

Company B assigned Mr. L but he did not complete them. Construction Consultancy Company B does not have any document in writing expressing the reminding of duties to Mr. L. Thus, there are not enough grounds to determine that Mr. L constantly did not complete the duties.

+ Moreover, when unilaterally terminating the labor contract, Construction Consultancy Company B has not perform correctly and sufficiently the procedures as it discussed with the Executive Committee of Union Local of the Company and reported to Department of Labor, Invalids and Social Affairs of province B. Thus, the termination of labor contract of Construction Consultancy Company B has violated the provision in clause 2 Article 38 of the Labor Code.

With such reasons, the Hearing Panel thinks that Construction Consultancy Company B unilaterally terminates the labor contract with Mr. L (plaintiff) is illegal and it should be accepted the request of Mr. L for abrogating the decision No. 22/QD-TVXD dated January 28, 2005 and forcing Construction Consultancy Company B to pay Mr. L his salary during the days of being denied the right to work from February 10, 2005 until the date of the first instance trial (June 11, 2004) which means 4 months with the coefficient of 3.05 calculated according to the basic salary of 290,000 dong/month and 2 month salary. Specifically:

$290,000 \text{ dong/ month} \times 3.05 \times 4 \text{ months} + 290 \text{ dong/ month} \times 3.05 \times 2 \text{ months} = 5,307,000 \text{ dong}$

2. As to allowance for Chief Officer's responsibility

The decision on assigning Mr. L to be Chief Officer of Soil Mechanics Laboratory in 1998 of Construction Consultancy Company B is an administrative decision; it is not the amendment or supplementation of the labor contract that Mr. L signed with the Company in 1995. Moreover, this decision is invalid as from August 15, 2004. After that time, Mr. L was still assigned to be in charge of the laboratory due to the need of production and business. Construction Consultancy Company B has right to manage the operation of their production activities. In this circumstance, it is not the amendment or supplementation of the labor contract as prescribed in Article 33 of the Labor Code.

Therefore, the request of Mr. L (plaintiff) for being entitled to the allowance for Chief Officer's responsibility is not well-grounded.

As to the court fee, according to Article 21 of the Decree No. 70/CP dated June 12, 1997 by the Government prescribing court fee and charge, Construction Consultancy Company B must bear the first instance labor court fee of 159,000 dong.

For such reasons,

DECIDES:

Applying Clause 1 Article 38, Article 40 and Article 41 of the Labor Code; Clause 1 Article 12 of the Decree No. 44/2003/ND-CP dated May 9, 2003 prescribing in details and guiding the implementation of some article of the Labor Code on the labor contract; Decree No. 70/CP dated June 12, 1997 by the Government on court fee and charge, to pronounce:

1. Abrogate the Decision No. 22/QD-TVXD dated October 28, 2005 of Construction Consultancy Company B and force Construction Consultancy Company B to reinstate Mr. Do Dai L according to the labor contract signed on March 1, 1995;

2. Force Construction Consultancy Company B to compensate Mr. Do Dai L 5,307,000 dong.

Since the date that the judgment comes into force and the plaintiff has a petition for judgment execution but the defendant does not execute, the defendant must bear the interest of delayed payment for the amount of late judgment execution according to the basic interest prescribed by the State Bank;

3. Not accept the request of Mr. Do Dai L to Construction Consultancy Company for the allowance for the Chief Officer's salary coefficient;

4. As to court fee: Construction Consultancy Company B must bear 159,000 dong of the first instance labor court fee;

5. The involved parties shall have right to make appeal within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- Mr. Do Dai L;
- Construction Consultancy Company B;
- People's Procuracy of city P, province B;
- Saved in: Office, Labor Court, Case dossier

FOR THE FIRST INSTANCE HEARING PANEL

Judge - Presiding Judge

Nguyen Van A

Note: *Since this case is adjudicated in 2005, the decision part has not written the right to request judgment execution, obligations of judgment execution and prescription for judgment execution.*

2. Judgment No. 2

PEOPLE'S COURT OF CITY H

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Judgment No.: 04/2005/LĐ-ST
Rendering date: August 24, 2005

On a dispute on dismissal as a
disciplinary measure

ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF CITY H

With the first instance Hearing Panel composed of:

Judge - Presiding Judge: Mr. Le Son H

People's Assessors: 1. Ms. Dao Thi Th

2. Mr. Do Van N

Court clerk taking the minutes of trial: Mr. Nguyen Van Th, staff of the
People's Court of city H.

Representative of the People's Procuracy of city H participating in the trial:
Ms. Nguyen Thi X, prosecutor.

On August 24, 2005 at the head office of the People's Court of city H, holds
a first instance open trial to adjudicate the case No. 03/2005/TLST-LD dated April
7, 2005 on a dispute on dismissal as a disciplinary measure according to the
Decision No. 28/2006/QDXX-ST dated August 1, 2006 on bringing the case into
trial between the involved parties:

1. *Plaintiff:* Mr. Vu Trong Quoc H, residing in Room 403-A2 Collective
Building DK at No. 99, Street L, city H.

Person protecting lawful rights and interests of the plaintiff: Mr. Tran Hoang
A, lawyer of Lawyer's Office A under Bar Association of city H.

2. *Defendant:* Joint-venture Company VS, locating at No. 76, Street N,
district T, city H.

Representative under the entrustment of the defendant: Ms. Pham Huong T,
residing at No. 25 Street X, ward Y, district T, city H (Entrustment document No.
63/TVXD-TC dated March 12, 2004) .

ACKNOWLEDGES:

According to the lawsuit petition dated March 30, 2005 and the testimonies at the trial, the plaintiff, Mr. Vu Trong Quoc H, presents:

On May 24, 1996, the plaintiff and defendant (Joint-venture Company VS) signed a labor contract valid in 20 years as from July 1, 1995 to May 15, 2015. The position and to-do task is Chief of Office with the main salary of 900 USD/ month and function allowance of 100 USD/ month.

By the end of 1997, because of merging the office and Finance Department of the company into General Department and Mr. K who is Chief Accountant was assigned to be Chief of Office. Thus on December 26, 1997, The Director of Joint-venture Company VS issued the Decision No. 31/VP-TCNS to appoint the plaintiff to be expert of the Director instead of being Chief of Office and the plaintiff's duties should be directly appointed by the Director and the first Deputy Director with the salary of 302.4 USD/month. According to this decision, the plaintiff still; stayed in General Department and his duty is supporting the Director in terms of law; studying, supplementing and perfecting the regulations of the Company; settling the general tasks assigned by the Director and the first Deputy Director daily, weekly and monthly; studying the tasks and training courses, improving the standard of company members.

The plaintiff agreed with the duties set forth in the decision No. 31 above and as from January 1, 1998, the plaintiff changed into the new task.

On October 3, 2004, the company issued the Decision No. 188/VS/TCNS to appoint the plaintiff to be legal expert in charge of professional office tasks according to the appointment of the Chief of Office and to be entitled to the salary as before.

The plaintiff did not agree with this decision and thought that the Decision No. 188/VS/TCNS was illegal and it was in accordance with the labor contract signed with the company. However, the Company did not settle the plaintiff's complaint but issued the Decision no. 87/VS/VP dated December 2004 to blame the plaintiff as a discipline, the Decision No. 189/VS-VP dated January 24, 2005 to change the plaintiff into another task with the lower salary in 6 months as a discipline and the Decision No. 191/VS-VP dated March 23, 2005 to dismiss the plaintiff.

The plaintiff thinks that all decisions are illegal and requests the Court to force Joint-venture Company VS to:

- + Abrogate the decisions on disciplinary to the plaintiff, specifically the decision No. 87, 189 and 191 above;

- + Reinstate the plaintiff in accordance with the duties as agreed in the labor contract;

+ Compensate the plaintiff the salary for the days of being denied the right to work as from October 3, 2004 with the salary of 302.4 USD/month and increase the salary for the plaintiff according to the provisions of law.

At the trial, Joint-venture Company VS (defendant) admits the details presented by the plaintiff but it thinks that the decisions of the Company are rights for the reasons:

On October 3, 2004, the plaintiff made a petition to request the Conciliation Council of the Company to settle the labor dispute between the plaintiff and the Company. On October 9, 2004, the Conciliation Council of the Company organized a meeting to conciliate such dispute but it was not successful.

On October 12, 2004 the Director issued the Decision No. 82/VS-VP to request for the implementation of the Decision No. 188/VS/TCNS and the performance of assigned tasks appropriate to the ability during the time the plaintiff made complaint. If the plaintiff did not abide by the management of the Chief of Office, it should be considered as violation of labor discipline and he should be punished according to the provisions of law.

The plaintiff did not perform as the decisions above and continued not working under the assignment of the Chief of Office. On November 17, 2004, the Director continues to issue the Decision No. 84 VS/VP to request the plaintiff to perform strictly the Decision no. 188/VS/TCNS but the plaintiff did not. On December 4, 2004, the Disciplinary Committee of the Company organized a meeting to consider the disciplinary measure applied to the plaintiff. In this meeting, the Disciplinary Committee concluded that the plaintiff made mistake that he did not follow the order of controlling the production and business of the employer, violated the labor regulation of the company in 2 months without reporting the working outcome and requested to blame the plaintiff. On December 7, 2004 the Director issued the Decision No. 87/VS/VP to blame the plaintiff.

After being blamed, the plaintiff still did not perform the duties assigned by the Chief of Office. On January 22 and 23, 2005, the Disciplinary Committee of the company organized a meeting to consider the disciplinary measure applied to the plaintiff and the Disciplinary Committee request to change the plaintiff to do another job with lower salary in 6 months as a disciplinary measure.

On January 24, 2005, the Director issued the Decision No. 189 VS/VP to apply the discipline to Mr. H under the form of typing document in the Office under the General Department with the salary equivalent to 70% of the current salary in 6 months as from January 25, 2005. The reason for applying the discipline is that the plaintiff committed new offences while being subject to the discipline set forth in the Decision No. 87 VS/VP dated December 7, 2005 with the content of not abiding by the order of the Director, not reporting the working outcome and not follow the working assignment of the persons directly in charge of.

Implementing the Decision No. 189 VS/VP dated January 24, 2005 of the Director, Mr. Tran Chi C, the head of Office under General Department of the company, assigned tasks to the plaintiff according to the disciplinary decision No. 189 VS/VP but the plaintiff declined to do the tasks assigned by Mr. C. Since the plaintiff continued not implementing the assigned tasks, on March 20, 2005 the Disciplinary Committee issued the Decision No. 191 VS/VP on the dismissal as a disciplinary measure applied to Mr. H as from March 27, 2005 and allowance of 15,000,000 dong to Mr. H. The reason to apply the discipline mentioned in the decision is that the plaintiff committed new offences while being subject to the discipline set forth in the decision No. 189 with the content of not implementing the decision of the Director, not reporting the working outcome, and not following the decision of the person directly in charge of.

On March 28, 2005, the Director had the official dispatch No. 466 VS/VP to report the dismissal applied to the plaintiff as a disciplinary measure to Department of Labor, Invalids and Social Affairs of city H.

For such reasons, the Company does not accept the plaintiff's requests.

The company just can subsidize 15,000,000 dong to the plaintiff when terminating the labor contract.

CONSIDERS:

After studying the documents in the case dossier examined at the trial and based on the result of argument at the trial, the Hearing Panel considers:

1. As to the relation relating to the labor contract between the plaintiff and defendant

According to the labor contract signed on May 24, 1996 between the plaintiff and defendant, the position of the plaintiff is Chief of Office. Due to the change of organization system of the Company, on December 26, 1997, the Company issued the decision No. 31/VP-TCNS to change to plaintiff to another task of an expert of the Director and the plaintiff should be under the assignment of the Director and the first Deputy Director. In practice, as from January 1, 1998, the plaintiff's task had been changed and the plaintiff took a new task of an expert of the company. Both parties agreed about these details; so pursuant to Clause 2 Article 80 of the Civil Procedure Code, they are considered as true.

When changing into another task, the plaintiff did not oppose; thus, the plaintiff naturally accepted the change of the labor contract, from being a Chief of Office to an expert.

2. As to the request for abrogating the decision No. 188, 87, 189 and 191 of the plaintiff, the Court considers:

- As to the Decision No. 188/V?S?TCNS dated January 3, 2004

The Decision No. 188/V?S/TCNS just is a decision on changing task of the plaintiff and changing the manager to the plaintiff. This decision totally is not appropriate to Article 8 of the Labor Code “*The employer has the right... to assign labor and control its disposition as required by the need of production and business...*” This decision is not a disciplinary decision because Mr. H was still legal expert and was entitled to the salary as before. Thus, this request of the plaintiff for abrogating this decision is not well-grounded.

- As to the Decision No. 87 VS/VP dated December 7, 2004

The plaintiff admits not performing the Decision No. 188/V?S/TCNS dated October 3, 2004 of the Director and not working under the assignment of the Chief of Office. Thus, the Hearing Panel has the ground to conclude that he violated the labor disciplines. The reasons the plaintiff did not perform the Decision No. 188/V?S/TCNS is that this decision arranged wrong task as the labor contract, which does not have legal grounds. The Company discussed with the plaintiff about the arrangement of task for several times and requested the plaintiff to implement according to the assignment of the director, but the plaintiff did not implement (expressed in the Record No. 76, 77, 78, 79 and 80). Since the plaintiff intentionally violated the labor regulations in a long time, it means he violated the provision in Clause 1 Article 36 of Labor Regulations of the company; pursuant to Clause 1 Article 6 of the Decree No. 41/CP, point a Clause 1 Article 84 of the Labor Code, the Company issued the disciplinary decision No. 87 VS/VP dated December 7, 2004 to apply blaming discipline to the plaintiff. When conducting the discipline, the Company organized a meeting with the Disciplinary Council with the presence of the plaintiff and grassroots-level executive board. Thus, the Company performed correctly and sufficiently according to the provision in Article 87 of the Labor Code; the prescription for applying discipline still remains. Therefore, the decision No. 87 VS/VP issued by the Joint-venture Company VS is legal. There is no ground to accept the request of the plaintiff for abrogating this decision.

- As to the decision No. 189 VS/VP dated January 24, 2005

Since the plaintiff was blamed according to the decision No. 87 VS/VP but the plaintiff still had acts violating the labor discipline. The plaintiff still came to work but did not perform the assigned tasks, did not report the working outcome etc. The plaintiff himself admits that (Record No. 56). Thus, the plaintiff still violated the labor discipline. According to Article 9 of the Decree No. 41/CP, the plaintiff committed new offences while the term of the earlier disciplinary measure is still in effect. Therefore, the company issuing the decision No. 189 VS/VP is well-grounded and appropriate to the provisions of law.

- As to the decision No. 191 VS/VP dated March 22, 2005

In the time of being disciplined and transferred to another job, the plaintiff did not serve the working assignment of the company, which is admitted by the plaintiff. According to Clause 2 Article 80 of the Civil Procedure Code, it is considered as true; so it must be considered as the commitment of new offences. Hence, on March 22, 2005, that the Director of Joint-venture Company VS issued the decision No. 91 VS/VP on dismissal as a disciplinary measure to the plaintiff is appropriate to point b Clause 1 Article 85 of the Labor Code.

As to the order and procedures for the discipline, the company implemented correctly and sufficiently according to Article 84 and 87 of the Labor Code.

Therefore, the decision No. 191 VS/VP of the Joint-venture Company VS is appropriate to the provisions of law; so there is not ground to accept the request for abrogating this decision by the plaintiff.

With such assessments, considering the requests of the plaintiff, the Hearing Panel sees that it is necessary to reject the requests of the plaintiff and recognize the voluntary-ness of the Company VS on subsidizing 15,000,000 dong to the plaintiff. This is the voluntary-ness of the company, bringing benefit to the employee, which is not contrary to Article 5 of the Labor Code. It should be recognized.

As to court fee, according to Clause 3 Article 166 of the Labor Code, the employee shall be exempted from court fee in the procedural activities because of illegal termination of the labor contract. So, in this case, Mr. Hung shall be exempted from the court fee.

For such reasons,

DECIDES:

Applying Article 8, 82, 84, 85, 86, 87 and 88 of the Labor Code; Article 1, 3, 6, 9, 10 and 11 of the Decree No. 41/Cp dated June 6, 1995 by the Government prescribing in details and providing guidance of the application of some articles of the Labor Code on labor discipline and responsibility in terms of material:

1. Not to accept the requests of Mr. Vu Quoc Trong H for the abrogation of the decision No. 188, 87, 189 and 199 of the Joint-venture Company VS; request for compensation for salary during the days being denied the right to work and salary increase.

2. To recognize the voluntary-ness of Joint-venture Company VS on the subsidization of 15 million dong to Mr. Vu Trong Quoc H;

3. The involved parties shall have right to make appeal within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- Mr. Vu TRong Quoc H;
- Joint-venture Company VS
- People's Procuracy of city H;
- Saved in: Office, Labor Court, Case dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge - Presiding Judge**

Le Son H

Section V. First instance criminal judgments

1. Judgment No. 1

PEOPLE'S COURT OF PROVINCE B

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Judgment No.: 168/2005/HSST
Rendering date: December 28, 2005

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF PROVINCE B**

With the first instance Hearing Panel composed of:

Judge - Presiding Judge: Mr. Nguyen Van B
Judge: Mr. Nguyen Hai V
Assessors: 1. Mr. Nguyen Huy A
2. Mr. Nguyen Van C
3. Mr. Duong Ngoc N
All have been retired.

Court clerk taking the minutes of trial: Ms. Tran Thi H, staff of the People's Court of province B.

Representative of the People's Procuracy of province B participating in the trial: Mr. Dang The K, prosecutor.

On December 27 and 28, 2005, at the head office of the People's Court of Province B, holds a first instance criminal trial to adjudicate the case No. 166/2005/HSST dated November 11, 2005 against the defendant:

Hoang Van Q, born in 1973 in province B, residing in hamlet D, commune L, district T, province B; occupation: farming; education level: 4/12; ethnic group: Kinh; nationality: Vietnam; parents: Mr. Hoang Van C and Mrs. Diem Thi D; wife: Vu Thi H and 1 child born in 2002; arrested as from February 10, 2005.

+ Lawyer of defendant Hoang Van Q: Mr. Truong Anh T, Lawyer's Office Nguyen and colleagues under the Bar Association of Province B (present)

+ Victim:

1. Nguyen Tien H (deceased).

Lawful representative of the victim: Mr. Nguyen Tien M, born in 1947 (father of Nguyen Tien H), residing in hamlet D, commune V, district T, province B, present at the trial.

+ Person with related rights and obligations: Hoang Van B, born in 1983, residing in hamlet D, commune L, district T, province B, present at the trial.

+ Witness: Mr. Nguyen Tien L, born in 1982, residing in hamlet D, commune V, district T, province B, present at the trial.

+ Experts:

1. Mr. Tran Ngoc Son, doctor

2. Mr. Cao Xuan Quyet, doctor

(All are experts of Criminal Science Institute, Ministry of Public Security)

Both of them are present at the trial.

ACKNOWLEDGES:

Defendant Hoang Van Q is prosecuted by the People's Procuracy of province B for the criminal act as follow:

About 20.00 on February 9, 2005 (January 1, 2005 according to lunar calendar), Hoang Van B in hamlet D, commune L, district T, province D and his nephew, Giap Van N, in hamlet H, commune S, district T, province B drove a motorbike to visit hamlet D, commune S. When arriving at the chain-bridge of hamlet D, they met Ms. Hoang Thi T, born in 1984, who is an acquaintance of B in hamlet D. Hoang Van B visited Ms. T's house while Giap Van N came to Ms. TH, a friend of N. About 20,15 on the same day, Nguyen Tien H, Nguyen Tien L, Nguyen Tien H and Than Duc M in hamlet D visited Ms. T's house. Seeing B in Ms. T's house, Nguyen Tien H called L out and talked: "The guy sitting there named Ba in commune L often beat me when he was in secondary school. Once he threw my bicycle into the river. Today, I want to warn this guy. Call M out for me." L came into Ms. TH's house and said nothing with M and told everybody that: "H gets drunk and feels tired. I bring him back home". After that L and H together went to the entrance of Mr. Tan's house near there to wait for Hoang Van B to beat him.

About 20.45 on the same day, Hoang Van B asked leave to go home and asked Mr. T the way to Ms. TH's house to pick Giap Van N up. Seeing that, M told Ms. T that "Anyway I go home now. Let me take B to Ms. TH's house". Hoang Van B used motorbike to carry M; arriving at the entrance of Mr. Tan, he saw L and H stop on the way. H stopped B's motorbike and asked "Did you remember the old story?" Hoang Van B replied: "The old story passed, please ignore and let me say sorry". H did not say anything and punch straight B in the face, making B's nose bleed. B jumped out from the motorbike and took his face in hands; H grabbed his shirt and pushed him to the entrance of Mr. Tan's house. B pulled H's hands out and ran away into Mr. Tan's house. B met Mrs. Nguyen Thi Hao, Mrs. Tan's wife; Mrs. Hao saw B's face bleed and asked him the reason. Hoang Van B told Mrs. Hao

that he was in commune L and was beaten by young guys in the village beat. Mrs. Hao use a towel to clean the blood. After that Hoang Van B used Mrs. Hao's telephone to call home and informed his brother, Hoang Van Q: "I was beaten in hamlet D and could not go home. Ask someone to go to the chain-bridge of hamlet D to pick me up".

After hearing the news, Hoang Van Q came to the kitchen and took an iron tube which is often used as a hand of a tool repairing automobile with the diameter of 2cm; one head has symmetrical vacant drain with the same size of 0.9 x 0.6cm. Then he called his younger brother, Hoang Van P, and elder brother-in-law, Giap Ngoc T (father of Giap Van N) together went to hamlet D. Arriving at the chain-bridge of hamlet D, they met Ms. T waiting for them. At that time, Q concealed the iron tube in the right sleeve and all of them walked to Mrs. Hao's house. Arriving on Mrs. Hao's house, they met Hoang Van B and Giap Van N; and everybody went home.

When arriving at the head of hamlet D, they met Nguyen Tien H, Nguyen Tien L and Than Duc M sat playing at the house gate of Mr. Nguyen where there was a light pole. Hoang Van B recognized the guy beating him before and said: "This guy beat me last time". P and Q got off, P went ahead to the place where some guys in hamlet D were sitting and call a young man: "Please come here, I want to tell something".

Hearing Hoang Van Q's saying, Nguyen Tien L stood up, walked some steps and ran away. Seeing L ran away, P started running after without anything in hand. Then Nguyen Tien H ran after P, Hoang Van Q suddenly took the iron tube in his sleeve and ran after H. Running about 20m onto rice-field road closed to a pond, L took a false step and fell down the pond. P jumped into the pond and ran after L. H ran about 5m to Q and L and also fell down the pond. Q suddenly jumped into the pond and used the iron tube to beat on H's head, making H fall in the pond. Seeing that H could not resist any longer, Q pulled him to the bank and went back. At that time, P and L were running after in the pond (the water pond just flooded to knees). When L went to the bank, he saw Q going ahead. Q used the iron tube to beat one in head and one in back of L. After that, Q and P ran to the place where B. T and N were standing and together drove motorbike to Q's father's house.

In the morning February 10, 2005, the investigation agencies seized the iron tube that Q used as dangerous tool.

On February 10, 2005, the investigation agency let Giap Van T and Hoang Van Q identify the iron tube that Hoang Van Q used at night February 9, 2005. The result is that both Giap Ngoc T and Hoang Van Q recognized right iron tube used by Q to commit the offence.

On September 23, 2005, the investigation agency made defendant Q to react the action of using the iron tube long 72cm when he went and concealed it in the right sleeve. The result is that Q reacted as his testimony.

The scene is the path at edge of rice-field Goc which belongs to hamlet D, commune V, district T; far from Mr. Thong's house 180m in the North, far from joint hamlet path 25m in the South, far from Mr. Kiem's house 10m in the East, closed to water pond with the size of 30m x 3m 70cm in the West. The path at edge of the rice-field is 80cm wide and it is uneven. The rice-field is parallel to the irrigation canal in the East.

Nguyen Tien H was knocked down and died at the pond, everyone fished him up. The minutes of forensic examination No. 83 dated February 23, 2005 by the Organization of Criminal and Forensic Science Technology, Public Security of province B state H suffering from the following injuries:

- The left forehead 3cm towards the left eyebrow, 13cm towards the top of the left helix has torn-skin wound slanted according to the body axis with rough edge deep to the bone. Its size from top to bottom and from left to right is (7 x 0.6) cm, revealing the scalp with black congestion on the organs under the scalp. The cranium under the wound of frontal area cracks in zigzags from the upper orbit to cranium articulation 9cm long between frontal bone and parietal; the cracked line contains blood fluid. The sinciput area 6cm towards hair roots has torn-skin wound slanted according to the body axis with rough edge from top to bottom with the size of (6.3 x 0.5) cm. Heart-lung was bled, windpipe and bronchi consist of mud. Stomach has well-kneaded foods and pure fluid. Conclusion: the wounds on corpse's head is influenced by external force, the object must be a blunted-edge thing. The victim dies from suffocation, body trauma, and broken cranium. In order to clarify the wounds in the body of victim Nguyen Tien H due to what dangerous tool, on June 20, 2005 the investigation agency requested re-expertise at higher level. The minutes of forensic expertise No. 2070 dated July 29, 2005 of Criminal Science Institute of Ministry of Public Security concludes: "The wounds on the frontal area of victim Nguyen Tien H were caused by a blunted-edge object with small section. The iron tube sent for expertise could have caused such wounds with the characteristics appropriate to the wounds in the frontal area of victim Nguyen Tien H".

After Nguyen Tien H's death, Mr. Nguyen Tien M who is father of H states that his son, Nguyen Tien H, was cut with a knife, leading to his death. He spent 15,482,000 dong for the funeral. Besides, Mr. M also requests for compensation for H's income in 20 working years with the amount of 600 million dong. Total amount is 615,482,000 dong.

- For Nguyen Tien L, after being beaten, he was brought into health center of district T for treatment as from February 12, 2005; the notice of wound issued by the health center of district t, province B was written on March 1, 2005. The wound

on the sinciput area is 5cm long which has been sutured tightly and dry; the waist area has a grace trace which has already crusted over; other parts do not have anything special. The minutes of forensic expertise No. 1867 dated March 31, 2005 of Forensic Expertise Organization of province B concludes that Nguyen Tien L suffers from 4% health damage. On July 20, 2005, Nguyen Tien L made a petition to request for no-criminal treatment to the person causing injuries to him and did not request the defendant to compensate for damage.

The indictment No. 194 dated November 8, 2005 if the People's Procuracies of province B prosecutes Hoang Van Q for "Murder" according to point n Clause 1 Article 93 of the Penal Code.

After verifying the evidences in case dossier, listening to the defendants' testimonies, lawyer's defense, prosecutor's opinion, presentation of family representative of the victim, persons concerned and witnesses at the trial;

CONSIDERS:

After meeting Hoang Van B and Giap Van N, on the way to home, Hoang Van Q met the young people group in hamlet D sitting at the head of village by accident, Hoang Van B realized one of them was Nguyen Tien H who beat him before and pointed out to Hoang Van Q and Hoang Van P. When the young people group in hamlet D ran away, Hoang Van Q held the iron tube running after Nguyen Tien H. When Nguyen Tien H took a false step falling down the pond, the defendant jumped into the pond and beat two times on Nguyen Tien H's head. The victim had two wound on the head, one on the frontal area and one on the sinciput area, tearing the scalp with rough edge. The wound on the frontal area on the left of cranium cracked in zigzags; the result of wound expertise and experiment on animal's cranium confirm those wounds were caused by a blunt-edged object, appropriate to the iron tube 72cm long with diameter of 2cm that the defendant used to beat on the victim's head. Besides the two wounds above, the victim does not have any wound. Thus, it is possible to exclude the case that the wounds of victims may be caused by a blunt-edged object with sharp edge or an object of great, thin and sharp width such as knife or sword.

Considering the two beats on the victim's head one of which made the cranium cracked, it shows that the defendant spent a great effort making the victim shocked and fall down the pond 70cm deep; after that the defendant left away. The victim was not helped in time and died, which is the foreseeing and indispensable result. Although the victim died of suffocation, the main reason leads to his death is the two wounds on the head making the cranium cracked, making him shocked and fall down the pond and making him impossible to save himself. The action of the defendant is murder instead of intentionally inflicting injury leading to the death as the excuse of the defendant.

Considering only for a small conflict, the defendant ran after and beat Nguyen Tien H. When H fell down the pond and had nothing to self-defend, Hoang Van Q still beat two times on this head and left away although he saw the defendant falling down in the pond. Besides, when seeing Nguyen Tien L climb on bank after falling down the pond, the defendant beat two times on the head and back of L. The action of the defendant is in hooligan, violent manner, disregards the life and health of other person.

The Hearing Panel concludes that defendant Hoang Van Q commits “Murder” according to point n Clause 1 Article 93 of the Penal Code.

The defendant does not have aggravating circumstances. When committing the crime, the defendant has not had previous criminal record, truthfully reported, showed his repentance, voluntarily compensated the victim’s family; when committing the crime, the defendant was fretted because the victim beat the defendant’s brother on 1st night of Tet. They are the extenuating circumstances as stipulated in point h, n Clause 1 and Clause 2 Article 46 of the Penal Code.

As to the penal liability:

According to Article 42 of the Penal Code and Article 614 of the Civil Code and the request of family representative of the victim, the Hearing Panel considers the defendant must compensate the victim’s family represented by Mr. Nguyen Tien Mai the following items:

Direct expenses for the funeral: 10,000,000 dong.

Mental damage of victim’s family: 15,000,000 dong.

Total amount is 25,000,000 dong. It is confirmed that the victim’s family has handed 10,000,000 dong over to the judgment execution agency to compensate the victim’s family. The defendant now must compensate only 15,000,000 dong.

The requests for compensation of 5,482,000 dong for serving food and compensation of 600 million dong for the victim’s income in 20 years are not appropriate to the law. Thus, the Hearing Panel does not accept.

The exhibit which is the iron tube 72cm long with the diameter of 2cm used by the defendant to commit the offence no longer has use value, so the Hearing Panel considers to confiscate and destroy according to the provision in point a Clause 1 Article 41 of the Penal Code and point đ Clause 2 Article 46 of the Penal Code.

As to the court fee: the defendant must pay the first instance criminal court fee and the first instance civil court fee according to Article 99 of the Penal Code and the Decree No. 70/CP dated June 12, 1997 by the Government.

For such reason,

DECIDES:

Applying point n Clause 1 Article 93; point b and p Clause 1, Clause 2 Article 46 and Article 34 of the Penal Code; to announce Hoang van Q commits “murder”.

Sentence Hoang Van A to death; the term of imprisonment calculated as from February 10, 2005. Uphold the detainment order No. 176 dated November 11, 2005 by the People’s Court of province B with respect to the defendant to assure the judgment execution.

Applying Article 42 of the Penal Code and Article 614 of the Civil Code, force the defendant to compensate the victim’s family represented by Mr. Nguyen Tien M the amount of 25,000.000 dong. The defendant has compensated 10,000,000 dong, so he must compensate 15,000,000 dong more (fifteen million dong).

Applying point a Clause 1 Article 41 of the Penal Code and point đ Clause 2 Article 76 of the Criminal Procedure Code, confiscate and destroy the iron tube 72cm long with the diameter of 2cm.

Applying Article 99 of the Criminal Procedure Code and the Decree No. 70/CP dated June 12, 1997 by the Government, force Hoang Van Q to pay the first instance criminal court fee of 50,000 dong and the first instance civil court fee of 750,000 dong.

The defendant and the representative of the victim present at the trial shall have right to make an appeal against the first instance judgment within the time limit of 15 days since the date of judgment pronouncement.

Receiver:

- Detention Center of Public Security of province B (to hand over to defendant Hoang Van Q);
- People’s Procuracy of province B;
- Lawyer Truong Anh T;
- Public Security of province B;
- People’s Committee where the defendant resides;
- Saved in: Office, Criminal Court, Case dossier

**FOR THE HEARING PANEL
Judge - Presiding Judge**

Nguyen Van B

2. Judgment No. 2

PEOPLE'S COURT OF DISTRICT D,
CITY H

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Judgment No.: 253/2005/HSST
Rendering date: June 10, 2005

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM
THE PEOPLE'S COURT OF DISTRICT D, CITY H**

With the first instance Hearing Panel composed of:

Judge - Presiding Judge: Ms. Tran Thi Phuong H

Assessors : 1. Mr. Le Van K

2. Ms. Le Thi T

Court clerk taking the minutes of trial: Ms. Nguyen Thi N, staff of People's Court of district D, city H.

Representative of the People's Procuracy of district D, city H participating in the trial: Ms. Nguyen Nhu Q, prosecutor.

On June 10, 2005, at the head office of the People's Court of district D, city H, holds a first instance criminal trial to adjudicate the case No. 300/2005/HSST dated May 17, 2005 against the defendant:

Tran Song T, born in 1986; residing in hamlet N, commune M, district T, city H; career: none; education level: 12/12; son of Mr. Tran Huu Tri and Mrs. Nguyen Thi Phuong; not married; previous conviction: on June 20, 2004 sentenced 10-month imprisonment by the People's Court of district M, city H and handed down suspended sentence with the period under test in 20 months since the date of judgment pronouncement regarding to Stealing property; arrested as from March 18, 2005; present at the trial.

Victim: Mr. Dang Lam C, born in 1983; residing in Room No. 102 - C4, ward T, district D, city H; present at the trial.

Persons with related rights and obligations:

1. Mr. Dang Vu P, born in 1958, residing in Room No. 102 - C4, ward T, district D, city H; present at the trial.

2. Ms. Nguyen Kim D, born in 1977, residing in hamlet No. 18, commune C, district T, city H; present at the trial.

ACKNOWLEDGES:

The defendant Tran Song T is prosecuted by the People's Procuracy of district D for committing the crime as follows:

About 15.30 on March 15, 2005, at No. 20 Lane D, ward K, district D, city H, T borrowed a motorbike named Jupiter of his friend, Dang Lam C, to visit another friend in Chem wharf. On the way to home, about 17.00, when arriving in Co Nhue, T suddenly remembered there was a new opened gambling-den here. Because there was no money, T suddenly thought to pledge C's motorbike to get money to gamble. T brought the motorbike to Nguyen Kim D at No. 18 Street N, commune C, district T, city H and said to D that he had a friend involving in an accident so he needed money to arrange. Therefore, he left the motorbike as security and borrowed 6,000,000 dong. Then, the defendant escaped. On March 17, 2005, Mr. Dang Van Vu, father of Dang Lam C, had to pay 6,240,000 dong to redeem the motorbike of C from Nguyen Kim D. Mr. P requests T to compensate for the amount of money above.

In the indictment No. 285 dated May 16, 2005, the People's Procuracy of district D, city H prosecutes Tran Song T for abusing trust in order to appropriate property according to point a Clause 1 Article 140 of the Penal Code.

Pursuant to the documents and evidences examined at the trial and based on sufficiently and comprehensively considering the evidences, opinions of the prosecutor, testimonies of the defendant, the victim and the persons with related rights and obligations,

CONSIDERS:

At the trial today, defendant Tran Song T declared that: after borrowing the motorbike worth 28 million dong of Dang Lam C to use, Tran Song T did not return the motorbike to the owner but pledged it to get 6,000,000 dong to gamble and escaped from his residence. The statement of the defendant is appropriate to the indictment content, the statement of the victim, persons with related rights and obligations and the exhibit in the case. The Hearing Panel concludes that Tran Song T commits the crime of abusing trust in order to appropriate property according to provision in point a Clause 1 Article 140 of the Penal Code.

The defendant commits the crime in the period under test according to the judgment No. 101 dated June 20, 2004 of the People's Court of district M; so it belongs to the circumstance of recidivism and it shall be considered as an aggravating circumstance as stipulated in point g Clause 1 Article 48 of the Penal Code. Thus, the

Hearing Panel considers that it must be applied imprisonment penalty and sum it up with the 10-month imprisonment penalty set forth in the judgment No. 101 dated June 20, 2004 of the People's Court of district M to hand down a life sentence to the defendant as stipulated in Clause 5 Article 60 of the Penal Code.

That the defendant truthfully declared and showed his repentance is the extenuating circumstance under the provision in point p Clause 1 and Clause 2 Article 46 of the Penal Code.

As to the civil compensation: Mr. Dang Vu P, father of Dang lam C, had to pay 6,240,000 dong to redeem the motorbike. Thus the defendant must compensate for the amount to Mr. Dang Vu P according to Article 42 of the Penal Code. For Ms. Nguyen Kim D, the amount spent on receiving the motorbike has been settled; Ms. D does not have any request. Therefore, the Hearing Panel shall not consider.

The defendant must bear the first instance criminal and civil court fee according to the provision in Article 99 of the Criminal Procedure Code and the Decree No. 70/CP dated June 12, 1997 by the Government.

For such reasons,

DECIDES:

Applying point a Clause 1 Article 140; point g Clause 1 Article 48; point p Clause 1, Clause 2 Article 46; Clause 5 Article 60 and Article 51 of the Penal Code,

To announce Tran Song T commits the crime of abusing trust in order to appropriate property.

Hand down a sentence of 15 (fifteen) months to Tran Song T; sum it up with 10-month imprisonment penalty set forth in the first instance criminal judgment No. 101 dated June 22, 2004 of the People's Court of district M; force the defendant to execute the penalty of 25 (twenty-five) month imprisonment of the two judgments. The duration of the term of imprisonment penalty shall be calculated as from March 18, 2005.

Applying Article 42 of the Penal Code, force the defendant to compensate Mr. Dang Vu P (residing in Room No. 102 – C4, ward T, district D, city H) 6,240,000 dong.

Applying Article 99 of the Criminal Procedure Code and the Decree No. 70/CP dated June 12, 1997 by the Government, force the defendant to pay 50,000 dong of the first instance criminal court fee and 312,000 dong of the first instance civil court fee.

The defendant, victim and persons with related rights and obligation present at the trial shall have right to make an appeal within the time limit of 15 days since the date of judgment pronouncement.

The persons with related rights and obligations absent from the trial shall have right to make an appeal within the time limit of 15 days since the date of sending judgment.

Receiver:

- Detention Center of Public Security of City H (to hand over to defendant Tran Song T);
- People's Procuracy of district D, city H;
- Public Security of district D, city H;
- People's Committee where the defendant resides;
- Saved in: Office, Criminal Court, Case Dossier.

**FOR THE FIRST INSTANCE
HEARING PANEL
Judge – Presiding Judge**

Tran Thi Phuong H

PART FIVE
JUDGMENT SAMPLES

1. First instance civil judgment sample

(Issued together with the Decree No. 01/2005/NQ-HDTP dated March 31, 2005 by the Justice Council of the Supreme People's Court)

PEOPLE'S COURT.....⁽¹⁾

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness

Judgment No.:⁽²⁾...../□...../.....

Rendering date:⁽³⁾.....-.....-.....

On a dispute⁽⁴⁾.....

ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM

THE PEOPLE'S COURT ⁽⁵⁾.....

With the first instance Hearing Panel composed of:⁽⁶⁾

Judge – Presiding Judge: Mr. (Ms.).....

Judge: Mr. (Ms.).....

People's assessors:

1. Mr. (Ms.).....

2. Mr. (Ms.).....

3. Mr. (Ms.).....

Court clerk taking the minutes of trial: Mr. (Ms.).....

Staff of People's Court⁽⁷⁾.....

Representative of the People's
Procuracies⁽⁸⁾.....*participating in the trial:*

Mr. (Ms.)..... prosecutor.

On the days..... month..... year.....⁽⁹⁾ at.....

holds a public first instance trial⁽¹⁰⁾ to adjudicate the case

No.:...../...../TLST-.....⁽¹¹⁾ date..... month..... year..... on a

dispute.....⁽¹²⁾ according to the Decision

No.:...../...../Q\$XX-ST date..... month..... year..... on

bringing the case into trial between the involved parties:

1. Plaintiff:⁽¹³⁾

.....

Lawful representative of the plaintiff:⁽¹⁴⁾

.....

Person protecting the lawful rights and interest of the plaintiff:⁽¹⁵⁾

.....

2. Defendant:⁽¹⁶⁾

.....

Lawful representative of the defendant:⁽¹⁷⁾

.....
Person protecting the lawful rights and interests of the defendant.⁽¹⁸⁾

.....
3. Person with related rights and obligations.⁽¹⁹⁾

.....
Lawful representative of the person with related rights and obligations.⁽²⁰⁾

.....
Person protecting the lawful right and interest of the person with related rights and obligations.⁽²¹⁾

.....
Interpreter.⁽²²⁾

.....
Expert.⁽²³⁾

.....
ACKNOWLEDGES: ⁽²⁴⁾

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CONSIDERS:

After studying documents in the case dossier examined at the trial and based on the result of argument at the trial, the Hearing Panel assesses:⁽²⁵⁾

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-

For such reasons,

DECIDES:⁽²⁶⁾

.....
.....⁽²⁷⁾

Instructions for use of the first instance civil judgment sample:

The first instance judgment sample attached to the written instructions is drafted according to the spirit of Article 238 of the Civil Procedure Code. The first instance judgment sample attached to these instructions is used by all Courts in hearing civil, marriage and family, business, trade and labor disputes. However, it should be noticed the writing of number, sign and extract in a first instance judgment in accordance with section 2 Part I of the Resolution No. 01/2005/NQ-HDTP dated March 31, 2005 by the Justice Council of the Supreme People's Court.

Hereafter are the attached specific instructions for use of the first instance judgment sample:

(1) If it is a People's Court of a district, town or city under a province, it must be written the name of People's Court of what district, town, city under the province, city directly under the Central Government (for example, People's Court of Tu Liem District, Hanoi). If it is a People's Court of province, city directly under the Center Government, it must be written the name of People's Court of what province (city) (for example, People's Court of Ha Tay Province)

(2) The judgment number is written in the first blank; the year of rendering judgment is written in the second blank in accordance with the spirit of guidance of the Government on how to write judgment number; the sign of kind of a judgment is written in the third blank as the guidance in section 2 Part I of the Resolution No. 01/2005/NQ-HDTP dated March 31, 2005 by the Justice Council of the Supreme People's Court (for example, if it is a judgment settling a dispute on marriage and family in 2005 numbered 108, it shall be written as No.: 108/2005/HNGD-ST).

(3) Write the date, month, year of judgment pronouncement regardless of the distinction between a case adjudicated at first instance level in 1 day and in several days.

(4) Write the extract in accordance with the guidance in section 2 Part I of the Resolution No. 01/2005/NQ-HDTP dated March 31, 2005 by the Justice Council of the Supreme People's Court.

(5) Write as the guidance in point (1).

(6) If the Hearing Panel is composed of three persons, just write full name of the Judge – presiding judge, leave the line of “Judge...”. Regarding People's

Assessors, just write full name of two people's assessors. If the Hearing Panel is composed of five persons, write the full name of the Judge – Presiding Judge, Judge and all three People's Assessors. It should be noticed not to write the title of Judges, title and profession of People's Assessors.

(7) Write full name of the Court Clerk taking the minutes of trial and name of the Court where the Court Clerk works according to the guidance in point (1).

(8) If the People's Procuracy participates in the trial, write as the guidance in point (1) but change the phrase of "People's Court" into "People's Procuracy".

(9) In case where the case is adjudicated in one day, leave two words "On days" (for example, on March 15, 2005, at...)

In case where the case is adjudicated in two days and above, if the number of days is not too many, it is possible to write all the days (for example, on 3, 4 and 5th March ...); if the number of days is many and continuous, write from day to day (for example; from 7th to 11th March...); if it falls in different months but the adjudication is continuous, write from day... month... to day... month... (for example, from 28th February to 2nd March...); if the adjudication is not continuous, write the day of each month (for example, on 30th, 31st March and on 4th, 5th April...).

(10) If it is a closed door trial, change "public" into "closed door".

(11) The handling number is written in the first blank, the handling year is written in the second blank and in the third blank, if it is a civil dispute, write "DS"; if it is a business or trade dispute, write "KDTM"; if it is a labor dispute, write "LD" (for example, No. 18/2005/TLST-HNGD).

(12) Write as the guidance in point (4).

(13) If the plaintiff is an individual, write his/her full name and residence address. If the plaintiff is a juvenile, write his/her date of birth after the full name.

If the plaintiff is an agency, organization, write the name and address of that agency, organization.

(14) Just write only when there is a lawful representative of the plaintiff and write his/her full name and address; clearly state he/she is the representative according to the law or according to the plaintiff's entrustment. If he/she is the representative according to the law, it must be noted in the brackets the relation

between that person and the plaintiff. If he/she is the representative according to the plaintiff's entrustment, it must be noted in the brackets as "entrustment document date... month... year..."

Example 1: Mr. Nguyen Van A, residing ..., is the plaintiff's representative according to the law (Director of Thang Loi Company Ltd.).

Example 2: Ms. Le Thi B, residing ..., is the representative according to the entrustment of the plaintiff (Entrustment document date... month... year...).

(15) Just write only when there is a person protecting lawful rights and interests of the plaintiff. Write his/her full name and residence address (if he/she is a lawyer, write lawyer of what Lawyer's Office and under what Bar Association); if there is more than one plaintiff, concretely state the lawyer protects lawful right and interests of whom.

(16) and (19) Write as the guidance in point (13).

(17) and (20) Write as the guidance in point (14).

(18) and (21) Write as the guidance in point (15).

(22) and (23) Write full name and workplace address (if there is no workplace address, write residence address).

(24) In this part, write the relation among parties which leads to the disputes; specific matters that the plaintiff request the Court to settle; counter-claim (if any) and specific requests of the defendant; independent requirements and request of the person with related rights and obligations (it should be noticed not describing the happenings according to the statements of the involved parties).

Example 1: In the lawsuit petition on date... month... year... (Supplemented on date... month... year..., if any), plaintiff... presents between the plaintiff and defendant... there is a business or trade contract on transportation of goods. Since the defendant infringes the contract, the plaintiff requests the Court to force the defendant: ... (Specific requests)

In the counter-claim in writing on date...month... year (or in the document on date... month... year..., or at the first instance trial) the defendant makes a request to the Court for the settlement of (concrete requests, proposals).

In the document on date... month... year...(Or at the first instance trial) the persons with related rights and obligations in the case... (if any) have independent requests, proposals: ... (Concrete requests, proposals).

Example 2: In the lawsuit petition (application for divorce) on date... month... year... (Supplemented on date... month... year..., if any), plaintiff... presents that the plaintiff and defendant... registers for marriage on date... month... year... Because the situation is serious, the couple can no longer live together and the marriage purposes cannot be achieved, the plaintiff requests the Court to settle (concrete requests: divorce, rearing of children, division of common property etc.)

In the document on date... month... year (or at the first instance trial) defendant... requests, proposes the Court to settle (concrete requests, proposals).

In the document on date... month... year...(or at the first instance trial) the persons with related rights and obligations... (if any) make independent requests, proposals (concrete requests, proposals).

(25) In this part, write the assessment of the Court, analyze the grounds to accept or not to accept each concrete request, proposal of the involved parties, persons protecting lawful rights and interests of the involved parties, opinion of the representative of People's Procuracy (if any). It should be cited the point, clause and article of the legal normative document that the Court uses to accept or not to accept such requests.

(26) In this part, write the point, clause and article of the legal normative document that the Court applies to make a decision. Write the decisions of the Court on each issues to be settled in the case, regarding court fee and right to make appeal against the judgment; in case of having a decision to be executed immediately, that decision must be clearly stated.

(27) In the final part of the judgment, if it is the original judgment approved in the deliberation room, it must contain signatures and full name of the members of the Hearing Panel sufficiently (this judgment must be saved in the case dossier); if it is the principal judgment sent to the involved parties, agencies or organizations who initiate lawsuit and the People's Procuracy at the same level, it must be written as follows:

Receiver:

(Write the places that the first instance Court has to hand over or send the judgment according to Article 241 of the Civil Procedure Code and the places that save the original copy).

FOR THE FIRST INSTANCE

HEARING PANEL

Judge - Presiding Judge

(Sign and seal of the Court)

(Full name)

2. Appellate civil judgment sample

*(Issued together with the Resolution No. 05/2006/NQ-HDTP
Dated August 4, 2006 by the Justice Council of the Supreme People's Court)*

PEOPLE'S COURT.....⁽¹⁾

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Judgment No.:⁽²⁾/...../.....

Rendering date⁽³⁾-.....-.....

On a dispute⁽⁴⁾

ON BEHALF OF

THE SOCIALIST REPUBLIC OF VIETNAM

THE PEOPLE'S COURT⁽⁵⁾

With the appellate Hearing Panel composed of⁽⁶⁾:

Judge - Presiding judge: Mr. (Ms.):

Judges: Mr. (Ms.):

Mr. (Ms.):

Court clerk taking the minutes of trial: Mr. (Ms.):
..... staff of the People's Court⁽⁷⁾

Representative of the People's Procuracy⁽⁸⁾ Mr. (Ms.)....., prosecutor
participating in the trial (if any).

On the days⁽⁹⁾ at.....
holds a public appellate trial⁽¹⁰⁾ to adjudicate the case No. /..... /TLPT-....
on date... month... year... on a dispute on

Since the first instance judgment No. ... /... /... on date... month... year... of
the People's Court is appealed (or protested)

According to the Decision No. /..... /QDPT-..... on date... month...
year... between the involved parties:

1. Plaintiff:⁽¹¹⁾

Lawful representative of the plaintiff:⁽¹²⁾

Person protecting lawful rights and interests of the plaintiff:⁽¹³⁾

2. Defendant:⁽¹⁴⁾

Lawful representative of the defendant:⁽¹⁵⁾

Person protecting lawful rights and interests of the defendant:⁽¹⁶⁾

3. Person with related rights and obligations:⁽¹⁷⁾

Lawful representative of the person with related rights and
obligations:⁽¹⁸⁾

- Person protecting lawful rights and interests of the person with related rights and obligations:^(19)
- 4. Interpreter:⁽²⁰⁾
- 5. Expert:⁽²¹⁾
- 6. The person who make appeal ⁽²²⁾
- 7. The People’s Procuracy ⁽²³⁾

ACKNOWLEDGES:⁽²⁴⁾

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CONSIDERS: ⁽²⁵⁾

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For such reasons;

Pursuant to Clause... Article 275 and Article (articles)..... of the Civil Procedure Code ⁽²⁶⁾

DECIDES:⁽²⁷⁾

.....

Instructions for use of the appellate civil judgment sample:

(1) and (5) Write the name of an appellate Court. If it is a province-level People's Court, it must be written the People's Court of what province (city) (for example, People's Court of Ha Tay Province); if it is an appellate Court of the Supreme People's Court, it must be written the appellate Court of the Supreme People's Court in what city (for example, the Appellate Court of the Supreme People's Court in Da Nang City).

(2) The number of judgment is written in the first blank, the year of rendering judgment is written in the second blank according to the instructions for writing the sign of judgment in section 2 Part I of the Resolution No. 01/2005/NQ-HDTP dated March 31, 2005 by the Justice Council of the Supreme People's Court (for example, if it is a judgment settling a business or trade dispute in 2006 numbered 10, it shall be written No. 10/2006/KDTM-PT).

(3) Write date, month, year of judgment pronouncement regardless the distinction between a case adjudicated at appellate level in one day and the one in several days.

(4) Write as the guidance of writing extract in section 2 Part I of the Resolution No. 01/2005/NQ-HDTP dated March 31, 2005 by the Justice Council of the Supreme People's Court.

(6) It should be noted not writing the title of judges.

(7) Write full name of the court clerk taking the minutes of trial and name of the Court where the court clerk works as the guidance in point (1).

(8) If the People's Procuracy participated in the trial, write as the guidance in point (1) but change the phrase of "People's Court" into "People's Procuracy".

(9) In case the case is adjudicated in one day, remove "On the days" (for example, on December 5, 2006, at...)

In case where the case is adjudicated in 2 days and above, if the number of the day is not too much, it is possible to write all the days (for example, on 5th and 6th December...); if the number of days is many and continuous, write from day to day (for example; from 5th to 7th December...); if it falls in different months but the adjudication is continuous, write from day... month... to day... month... (for example, from 28th November to 2nd December...); if the adjudication is not continuous, write the day of each month (for example, on 30th, 31st March and on 4th, 5th April...).

(10) If it is a closed door trial, change "public" into "closed door".

(11) If the plaintiff is an individual, write his/her full name and residence address. If the plaintiff is a juvenile, write his/her date of birth after the full name. In case

where the plaintiff is an agency, organization, write the name and address of that agency, organization.

(12) Just write only when there is a lawful representative of the plaintiff and write his/her full name and address; clearly state he/she is the representative according to the law or according to the plaintiff's entrustment. If he/she is the representative according to the law, it must be noted in the brackets the relation between that person and the plaintiff. If he/she is the representative according to the plaintiff's entrustment, it must be noted in the brackets as "entrustment document date... month... year..." In case of representative of an agency or organization according to the law, write full name and title of such person.

(13) Just write only when there is a person protecting lawful rights and interests of the plaintiff. Write his/her full name and residence addresses (if he/she is a lawyer, write lawyer of what Lawyer's Office and under what Bar Association); if there is more than one plaintiff, concretely state the lawyer protects lawful right and interests of whom.

(14) and (17) Write as the guidance in point (11).

(15) and (18) Write as the guidance in point (12).

(16) and (18) Write as the guidance in point (13).

(20) and (21) Write full name and work place address (if there is no workplace address, write residence address).

(22) Write full name and legal status of the person making appeal.

(23) Write the name of the People's Procuracy making protest.

(24) In this part, write the summarization of case content, decisions of the first instance Court; content of appeal and protest.

(25) In this part, write the assessment of the Court, analyze the grounds to accept to not to accept the appeal of involved parties, protest of the People's Procuracy (if any). It should be cited the point, clause and article of the legal normative document that the appellate Hearing Panel bases on to settle the case.

(26) Write the clause (clauses) stipulated in Article 275 and the correlative article (articles) (276, 277, 278) of the Civil Procedure Code that the Hearing Panel bases on to make a decision.

(27) In this part, write the point, clause, article of the legal normative document that the Hearing Panel applies to make a decision. Write the decisions of the appellate Hearing Panel on each issue to be settled in the case due to appeals or protests, on the first instance and appellate court fee.

(28) In the final part of the judgment, if it is the original judgment approved in the deliberation room, it must contain signatures and full name of the members of the Hearing Panel sufficiently (this judgment must be saved in the case dossier); if it is the principal judgment sent to the involved parties, agencies or organizations who

initiate lawsuit and the People's Procuracy at the same level, it must be written as follows:

Receiver:

(Write the places that the first instance Court has to hand over or send the judgment according to Article 281 of the Civil Procedure Code and the places that save the original copy).

FOR THE APPELLATE HEARING

PANEL

JUDGE - PRESIDING JUDGE

(Sign and seal)

Full name

3. First instance criminal judgment sample

(Issued together with the Resolution No. 04/2004/NQ-HDTP dated November 5, 2004 by the Justice Council of the Supreme People’s Court)

PEOPLE’S COURT⁽¹⁾

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Judgment No.⁽²⁾ /...../HSST

Rendering date⁽³⁾-.....-.....

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM**

PEOPLE’S COURT⁽⁴⁾

With the first instance Hearing panel composed of⁽⁵⁾:

Judge - Presiding Judge: Mr. (Ms.)

Judge: Mr. (Ms.)

Assessors:⁽⁶⁾

1. Mr. (Ms.):

Occupation:

Workplace:

2. Mr. (Ms.):

Occupation:

Workplace:

3. Mr. (Ms.):

Occupation:

Workplace:

Court clerk taking the minutes of trial: Mr. (Ms.).....
staff of the People’s Court⁽⁷⁾

Representative of the People’s Procuracy⁽⁸⁾ participating in
the trial:

1. Mr. (Ms.) prosecutor.

2. Mr. (Ms.) prosecutor.

On the days...⁽⁹⁾ at
holds a first instance criminal trial to adjudicate the case No.⁽¹⁰⁾/...../HSST on
date..... month..... year..... against the defendants:

1. born in date..... month..... year... in
residing; occupation.....; education
level.....; child of Mr..... and Mrs..... ;
married to..... andchildren; previous conviction⁽¹¹⁾;
arrested for temporary detention as from⁽¹²⁾

2.

Lawful representative of the defendants:⁽¹³⁾
Mr. (Ms.)..... born in (or age).....; residing.....;
occupation.....is:⁽¹⁴⁾

Defense counsel of the defendant:⁽¹⁵⁾
Mr. (Ms.)
Victim:⁽¹⁶⁾
Lawful representative of the victim:⁽¹⁷⁾
Civil plaintiff:⁽¹⁸⁾
Lawful representative of the civil plaintiff:⁽¹⁹⁾
Civil defendant:⁽²⁰⁾
Lawful representative of the civil defendant:⁽²¹⁾
Person with related rights and obligations in the case:⁽²²⁾
Lawful representative of the person with related rights and obligations
in the case:⁽²³⁾
Person protecting rights and interests of the victim (civil plaintiff etc.)⁽²⁴⁾
Mr. (Ms.)

ACKNOWLEDGES:⁽²⁵⁾

- Defendant (defendants) is prosecuted by the People's Procuracy
for the criminal acts as follows:

*(Present the committing of crimes, criminal acts of the defendant
(defendants) prosecuted by the People's Procuracy according to the indictment).*

- In the indictment No. ... on date... month... year... prosecuted by the
People's Procuracy.....

*(Write the decision on prosecution of the indictment against each defendant
for the offence and applicable points, clauses, articles of the Penal Code).*

Based on the evidences and documents examined at the trial; based on the
result of argument at the trial and based on sufficiently and comprehensively
considering the evidences, opinions of the prosecutor, defendant, defense counsel (if
any) and other procedural participating persons,

CONSIDERS⁽²⁶⁾

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For such reasons,

DECIDES⁽²⁷⁾

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Instructions for use of the first instance criminal judgment sample:

The first instance criminal judgment sample attached to this guidance is edited according to the spirit of the provision in Article 185, 224 and 307 of the Criminal Procedure Code 2003. The first instance criminal judgment sample attached to this guidance shall be applied by all Courts in hearing the first instance criminal case. Here after are the specific instructions for use of the first instance criminal judgment sample:

(1) If it is a regional military court, write the military court of what region No. under what military zone (for example. Military Court of Region No. 1, Military Zone No. 4); if it is a military zone-level, write the military court of what zone (for example, Military Court of Capital Zone); if it is a people's court of a district, town, city under a province, write the people's court of what district (town, city) under what the province, city directly under the Central Government. (for example, People's Court of Nam Dan district, Nghe An Province); if it is a people's court of a province, city directly under the Central Government, write the people's court of what province (city) (for example, People's Court of Ha Noi).

(2) The judgment number is written in the first blank; the year of rendering judgment is written in the second blank according to the spirit of guidance of the Government on how to write judgment number (for example, Judgment No. 250/2004/HSST).

(3) Write the date, month, year of judgment pronouncement regardless the distinction of a case adjudicated at the first instance level in one day and the one in several day.

(4) Write as the guidance in point (1).

(5) If the Hearing Panel is composed of 3 persons, just write full name of the presiding judge, remove the line of "Judge"; for the assessors, just write full name of two assessors; if the first instance Hearing Panel is composed of five persons, write full name of the judge - presiding judge, judge and three assessors. In case where the defendant is a juvenile, it must be written the occupation and workplace of the assessors. In case where the defendant is an adult, it is not necessary to write the occupation and workplace of the assessors.

(6) If it is a people's court, write People's Assessors; if it is a military court, write Military Assessors.

(7) Write full name of the court clerk taking the minutes of trial and name of the court where the court clerk works as the guidance in point (1).

(8) Write as the guidance in point (1) but change the phrase of "People's Court" into "People's Procuracy" and "Military Court" into "Military Procuracy"; if there is only one prosecutor participating in the trial, it must be written full name of such prosecutor; if there are two prosecutors participating in the trial, it must be written full name of both prosecutors.

(9) In case where the case is adjudicated in one day, remove the phrase "on the

days” (for example, on April 12, 2004...).

In case where the case is adjudicated in two days and above, if the number of days is not too must, it is possible to write all the days (for example, in 3rd, 4th and 5th July...); if the number of days is many and continuous, write from day to day (for example, from 3rd to 7th July...); if it falls in different months but the adjudication is continuous, write from day... month... to day... month... (for example, from 30th July to 4th August...); if the adjudication is not continuous, write the day of each month (for example, from 29th, 30th, 31st July to 3rd, 4th August...).

(10) The first instance handled number is written in the first blank, the year of handling the case is written in the second blank in accordance with the spirit of guidance of the Government on how to write the document number and then write the date, month, year of handling the case (for example, criminal case No. 175/2004/HSST dated April 20, 2004).

(11) Write full name of the defendant and alias and daily be-called name (if any); if deeming the defendant is 20 years by the year of committing crime; it is necessary to write his/her date of birth; if he/she is more than 20 years, it is possible to write the year of birth or age; write the place of household registration and temporary residence. As to the criminal record, just write only when it is determined according to the provisions of law that by the day of committing crime, the term of not being administratively sanctioned or being disciplined has not expired. As to the previous conviction, just write only when it is determined according to the provisions of law that by the day of committing the crime, the criminal record has not been remised.

(12) Write the date that the defendant is kept in custody; if the defendant is arrested for temporary detention or kept in custody before write the date of being kept in custody, in temporary detention and on bail; if he/she is present at the trial, write “present” and if is absent from the trial, write “absent”.

(13) If who has a lawful representative, write the full name of such defendant (for example, lawful representative of defendant Nguyen Van A).

(14) After the word “is”, write the relation of such person with the defendant (for example: is father of the defendant); if he/she is present at the trial, write “present” and if he/she is absent from the trial, write “absent”.

(15) If who has a defense counsel, write the full name of such defendant; after the word Mr. (Ms.), write the full name of the defense counsel; if the defense counsel is a lawyer, write lawyer of what Lawyer’s Office under of what Bar Association (for example, Mr. Tran B, Lawyer of Van Xuan Lawyer’s Office under the Bar Association of province H); if he/she is not a lawyer, write his/her occupation and workplace (for example, Ms. Le Thi M, people’s assessors, working in Lawyer Association of province M); if he/she is present at the trial, write “present” and if he/she is absent from the trial, write “absent”.

(16), (17), (18), (19), (20), (21), (22), (23) If there is a procedural participating person, write the full name, age, residence of such person. In case

where the victim is the person being infringed life, health, dignity, honor and he/she is a juvenile, it must be written sufficiently the date of birth; if he/she is present at the trial, write “present” and if he/she is absent from the trial, write “absent”.

(24) If the victim, civil plaintiff, civil defendant, person with related rights and obligation in the case has a person protecting their rights, write his/her full name according to the order; after the word Mr. (Ms.), write the full name; if the person protecting the rights of the involved parties is a lawyer, write lawyer of what Lawyer’s Office and under what Bar Association; if he/she is not a lawyer, write the occupation and workplace of the person protecting rights of the involved parties; if he/she is present at the trial, write “present” and if he/she is absent from the trial, write “absent”.

(25) In this part, it should be noted that just write the criminal acts of the defendants prosecuted by the People’s Procurcy in the indictment; do not write the other acts described in the indictment but not prosecuted by the People’s Procuracy.

(26) In this part, just write the analysis and assessment of the Hearing Panel, including:

- Analysis and assessment on he issues argued at the trial;
- Analysis of the evidences determining as guilty and ones determining as not guilty;
- Assessment on whether the defendant commits the crime or not and if he/she commits the crime, what crime he/she commits, according to what clause, article of the Penal Code;
- Assessment on the nature, level of the seriousness of the offence, circumstances aggravating and extenuating criminal liability of the defendant;
- Assessment on damage and determination of responsible for compensation for damage (if any);
- Guidance of how to deal with exhibits (if any).

(27) In this part, write the decisions of the Court and the right to make appeal against the judgment as follows:

- a. In case where the defendant commits the crime:
 - Announce defendant (defendants)... commits the offence (offences)... (write what offence the defendant commits);
 - Apply point... Clause... Article... of the Penal Code; if there is more than one defendant committing different offences, write the point... Clause... Article... of the Penal Code applied to the defendant (defendants);
 - Punish defendants... (Write name and penalty for each defendant).Then write the time to calculate the term of serving penalty; if the defendant is subject to suspended sentence, let the agency, organization where that person works for or the local authority supervise and educate. In case where it is necessary to continue

keeping the defendant in custody to assure the execution of life penalty, write “continue keeping the defendant in custody to assure the judgment execution”.

- Compensation for damage: It must be written as applying Clause... Article... (correlative) of the Civil Code to force...;

- Exhibit handling (if any) should be in accordance with Article 76 of the Criminal Procedure Code 2003;

- First instance criminal court fee and first instance civil court fee;

- Right to make appeal against the judgment. As to the defendant subject to life penalty, it must be added that “if they do not appeal, they shall have right to make a petition to the President for commutation of their death penalty within the time limit of 7 days since the expiry date of making appeal”.

b. In case where the defendant does not commit the offence

Pursuant to Clause... Article 107 of the Criminal Procedure Code;

- Announce the defendant is not guilty;

- Deal with the restoration of his/her honor, legitimate rights and interests;

- Determine the responsible for compensation for damage (if any);

- Handle exhibits (if any);

- Court fee (if any);

- Right to make appeal against the judgment.

c. If the defendant is subject to expulsion penalty, the Hearing Panel must pronounce the time that the defendant must leave Vietnam.

In the last part of the judgment, if it is an original judgment approved in the deliberation room, it must contain the signature and full name of the members of the Hearing Panel sufficiently; if it is the principal copy, it must be written as follows:

Receiver:

(Write the places that the first instance Court has to hand over or send the judgment according to Article 229 of the Criminal Procedure Code and the places that save the original copy)

FOR THE FIRST INSTANCE

HEARING PANEL

Judge - Presiding Judge

Sign and seal of the Court

(Full name)

4. Appellate criminal judgment sample

*(Issued together with the Resolution No. 05/2005/NQ-HDTP dated December 8, 2005
by the Justice Council of the Supreme People’s Court)*

PEOPLE’S COURT⁽¹⁾

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Judgment No.⁽²⁾..... /...../HSPT

Rendering date⁽³⁾-.....-.....

**ON BEHALF OF
THE SOCIALIST REPUBLIC OF VIETNAM**

PEOPLE’S COURT.....

With the first instance Hearing panel composed of:

Judge - Presiding Judge: Mr. (Ms.).....

Judges: Mr. (Ms.).....

Mr. (Ms.)

Assessors..... *(if any):*⁽¹⁾

Court clerk taking the minutes of trial: Mr. (Ms.).....

staff of the People’s Court.....

Representative of the People’s Procuracyt *participating in the trial:*

Mr. (Ms.)..... prosecutor.

On the days at
holds an appellate criminal trial to adjudicate the case No...../...../HSPT on
date..... month..... year..... against the defendant(s):⁽³⁾
due to the appeal of:⁽⁴⁾
and the protest of:
against the first instance criminal judgment No...../...../HSST on date.....
month..... year..... of the People’s Court.....

The defendants having appeal, being appealed and protested:⁽⁵⁾

1. born in date month..... year.... in
residing; occupation.....; education
level.....; child of Mr..... and Mrs..... ;
married to..... andchildren; previous conviction.....; arrested
for temporary detention as from

2.

The defendant not having appeal and not being appealed and protested:⁽⁶⁾

.....

Other procedural participating persons having appeal or related to the appeal or protest:

Lawful representative of the defendants:⁽⁷⁾

Mr. (Ms.)..... born in (or age).....; residing.....; occupation..... is:⁽⁸⁾

Defense counsel of the defendant:⁽⁹⁾

Mr. (Ms.).....

Victim:⁽¹⁰⁾

Lawful representative of the victim:⁽¹¹⁾

Civil plaintiff:⁽¹²⁾

Lawful representative of the civil plaintiff:⁽¹³⁾

Civil defendant:⁽¹⁴⁾

Lawful representative of the civil defendant:⁽¹⁵⁾

Person with related rights and obligations in the case:⁽¹⁶⁾

Lawful representative of the person with related rights and obligations in the case:⁽¹⁷⁾

Person protecting rights and interests of the victim (civil plaintiff etc.)⁽¹⁸⁾

Mr. (Ms.).....

ACKNOWLEDGES:

According to the indictment of the People's Procuracy..... and the first instance criminal judgment of the People's Court..... the case content is summarized as follows: *(write the summarization of the case content relating to the appeal, protest or not relating to the appeal, protest but considered by the appellate Court).*

In the first instance criminal judgment No..... date..... month..... year....., the People's Court decides :⁽¹⁹⁾

On date.... month.... year,..... receives an appeal with the content.....⁽²⁰⁾

On date.... month.... year....., the People's Procuracy makes a protest No..... with the content.....⁽²¹⁾

Based on the evidences and documents examined at the appellate trial; based on the result of argument at the trial and based on sufficiently and comprehensively considering the evidences, opinions of the prosecutor, defendants, defense counsel (if any) and other procedural participating persons,

CONSIDERS:⁽²²⁾

.....
.....

For such reasons,

Pusuant to point(s).....Clause 2 Article 248 and Article(s).....⁽²³⁾
of the Criminal Procedure Code,

DECIDES:⁽²⁴⁾

.....
.....

The appellate judgment shall come into force since the date of judgment
pronouncement.

Instructions for use of the first instance criminal judgment sample:

(1) If the Hearing Panel is composed of two more assessors, write their full name, occupation and workplace.

(2) In case where the case is adjudicated in one day, remove the phrase “On the days” (for example, on May 25, 2005...)

In case where the case is adjudicated in two days and above, if the number of days is not too must, it is possible to write all the days (for example, in 3rd, 4th and 5th July...); if the number of days is many and continuous, write from day to day (for example, from 3rd to 7th July...); if it falls in different months but the adjudication is continuous, write from day... month... to day... month... (for example, from 30th July to 4th August...); if the adjudication is not continuous, write the day of each month (for example, from 29th, 30th, 31st July to 3rd, 4th August...).

(3) If there is one or two defendants making appeal or being appealed, protested in the case, write the full name of the defendants; if there are three and above defendants making appeal or being appealed, protested, write the full name of the defendants punished with the highest penalty by the Court and add the phrase “and other defendants”.

(4) Just write the legal status of the person making appeal in the proceedings (for example, due to the appeal of the defendant(s), victim and civil plaintiff).

(5) Do not write the defendants making appeal, being appealed or protested, all appeals, protests relating to whom are withdrew before the trial opens.

(6) If there is not defendant making appeal and being appealed or protested but the appellate Court considers the part of the first instance judgment relating to them, write as to the defendant making appeal, being appealed or protested; if the appellate Court does not consider the part of the first instance judgment relating to them, just write “Besides, there are (number) defendants not making appeal and not being appealed or protested”. In case where there is only one defendant not making appeal and not being appealed or protested, write “Besides, there is defendant (full name) not making appeal and not being appealed or protested”.

(7) to (18) Just write the persons making appeal, relating to the appeal, protest or defending the defendants. The way of writing is similar according to the guidance from section (9) to (24) of the instructions for use of the first instance criminal judgment issued together with the Resolution No. 04/2004/NQ-HDTP dated November 5, 2004 by the Justice Council of the Supreme People’s Court.

(19) Sufficiently write the decisions of the first instance judgment being appealed, protested and the decisions of the first instance judgment not being appealed, protested but the appellate Court still considers. As to the decisions of the first instance judgment not being appealed, protested, write as follows: “Besides, the first instance Court sentences the other defendant from... to... and ... (summarize the decisions such as compensation for damage; handling of exhibits, court fee, right to make appeal...)”.

(20) and (21) Write the content of appeals, protests (including the content amending or supplementing appeals, protests). If at the trial, there is some person withdrawing the appeal, People’s Procuracy withdrawing protest, then write the withdrawal of the appeal and protest at the trial.

(22) In this part, just write the analysis and assessment of the Hearing Panel, including:

- Analysis and assessment on the issues argued at the trial;
- Assessment on the decisions of the first instance Court being appealed, protested or not being appealed, protested but the appellate Court still considers;
- Evidences proving the acceptance or non-acceptance of appeals, protests;
- Orientation to make decisions of the appellate Court.

(23) Write the point(s) stipulated in Clause 2 Article 248 and correlative Article(s) (249, 250, 251, 252) of the Criminal Procedure Code that the Hearing Panel bases on to make decisions.

(24) Depending on each situation, write as follows:

a. Cases under point a Clause 2 Article 248 of the Criminal Procedure Code

1. Do not accept the appeal of ... (protest of...) and uphold the first instance judgment:

- Apply point... Clause... Article... of the Penal Code (if there is more than one defendant committing different offences, apply point... Clause... Article... of the Penal Code to the defendant(s)... and apply point... Clause... Article... of the Penal Code to the defendant(s).

- Punish defendant... (write the name of each defendant and penalty level; write the penalty level in number and in letters in blankets, for example, 03 (three) years). Then write the time to calculate the term of serving such penalty; if the defendant is subject to the suspended sentence, let the agency, organization where that person works for or the local authority supervise and educate. In case where it is necessary to continue keeping the defendant in custody to assure the execution of life penalty, write “continue keeping the defendant in custody to assure the judgment execution”.

- Compensation for damage (it must be written as applying Clause... Article (correlative) of the Civil Code to force...);

- Exhibit handling (if any) must be written according to the provision in Article 76 of the Criminal Procedure Code;

2. As to court fee:

3. Other decisions of the first instance on..... which are not appealed or protested come into legal force since the expiry date of making appeal or protest.

b. Cases under point b Clause 2 Article 248 of the Criminal Procedure Code

1. Amending a part of the first instance judgment:

- Apply point... Clause... Article... of the Penal Code (if there is more than one defendant committing different offences, apply point... Clause... Article... of the Penal Code to the defendant(s)... and apply point... Clause... Article... of the Penal Code to the defendant(s)...)

- Punish defendant... (write the name of each defendant and penalty level). Then write the time to calculate the term of serving such penalty; if the defendant is subject to the suspended sentence, let the agency, organization where that person works for or the local authority supervise and educate. In case where it is necessary

to continue keeping the defendant in custody to assure the execution of life penalty, write “continue keeping the defendant in custody to assure the judgment execution”.

- Compensation for damage (it must be written as applying Clause... Article... (correlative) of the Civil Code to force...);

- Exhibit handling (if nay) must be written according to the provision in Article 76 of the Criminal Procedure Code;

2. As to court fee.....

3. Other decisions of the first instance judgment on... which are not appealed or protested come into legal force since the expiry date of making appeal or protest.

c. Cases under point c Clause 2 Article 248 of the Criminal Procedure Code

Abrogate the first instance judgment No... on date... month... year... of the People’s Court.....

Transfer the case dossier to the People’s Procuracy..... (People’s Court..... for reinvestigation (retrial at the first instance level) according to the general procedure.

d. Cases under point d Clause 2 Article 248 of the Criminal Procedure Code

Abrogate the first instance judgment No.... on date... month... year... of the People’s Court..... and suspend the case to.....

e. Cases under at least 2 points stipulated in Clause 2 Article 248 of the Criminal Procedure Code

In this case, write the decision on each case according to the instructions for writing each correlative case guided in point a, b and c above.

In the last part of the judgment, if it is a original judgment approved in the deliberation room, it must contain signatures and full names of all members of the Hearing Panel; if it is a principal copy, it must be written as follows:

Receiver:

(Write the places that the first instance Court has to hand over or send the judgment according to Article 254 of the Criminal Procedure Code and the places that save the principal copy)

FOR THE APPELLATE HEARING PANEL

Judge - Presiding Judge

Sign and seal of the Court
(Full name)

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