

# JURISDICTION OF THE COURT IN THE SETTLEMENT OF BUSINESS AND COMMERCIAL DISPUTES UNDER CURRENT LAW

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**Abstract:** *A frequent and common phenomenon occurring during the operation of a market economy is business and commercial disputes. Among effective dispute settlement methods, court litigation is one of the most common ones. Determining jurisdiction of the Court in dispute settlement clearly, accurately, legally helps to ensure the effective settlement of disputes. In fact, there are still deficiencies and limitations in the current law on the issue of determining first instance jurisdiction among courts. Therefore, it is necessary to clarify the Jurisdiction of the Court in resolving business and commercial disputes in accordance with applicable laws.*

**Keywords:** *Jurisdiction of the Court; business and commercial disputes.*

## 1. Introduction

In the period of openness and global economic integration, businesses and traders must always have a close connection with each other to make profits together when doing business. In accompanying with the cooperation and development, trade relations have become more and more diversified and complex. Enterprises can be established in different forms and operate in many different industries leading to the increase of cooperation, connection and even competition among them.

Among effective business and commercial dispute settlement methods, the Court litigation is one of the most popular ones. Jurisdiction of the Court in disputes resolution must be clearly and accurately defined to ensure the effective resolution of disagreement.

## 2. Research content

Commercial business disputes are those specified in Article 30 of the Code of Civil Procedure 2015; and grounds for jurisdiction of Courts to settle disputes specified in Articles 35, 36, 37, 38, 39 and 40 of the Code of Civil Procedure 2015.

### 2.1. Overview of business and commercial disputes and dispute resolution

Disputes in business and commerce are a common and indispensable phenomenon, frequently taking place during the operation of a market economy. Due to the nature of frequency, the consequences of the dispute have a great impact on the subjects involved in the dispute in particular and the economy in general.

In the Code of Civil Procedure 2015, disputes arise in business and commercial activities between individuals and organizations with business registrations and are for

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profit<sup>1</sup>. Also, it is stipulated in the Law on Commercial Arbitration that disputes arise between the parties in which at least one of the parties are engaged in commercial activities<sup>2</sup>.

In the curriculum of Hanoi Law University, the definition of commercial disputes is the conflicts (disagreements or conflicts) about rights and obligations between the parties in the process of commercial activities performance [3, pp.316].

From these bases, it might be understood that: Business and commercial disputes are major disagreements, conflicts or dissenting opinions about economic interests, rights and obligations among related subjects when engaging in business activities not prohibited by law and for profit purposes.

A business and commercial dispute is essentially a civil dispute in its nature and has the following characteristics:

*Firstly, causes of business and commercial disputes*

Business and commercial disputes are contradictions arising on rights and obligations between the parties in business and commercial activities. Conceptually, commercial activity is perceived as a profit-making activity including the sale of goods, provision of investment services, trade promotion and other profitable activities<sup>3</sup>. The ultimate goal of entities engaging in business and commerce is profitability, so the causes of the conflict in business and commerce are the profits and interests of the parties.

*Secondly, the subjects of business and commercial disputes*

Business and commercial disputes happen commonly between traders when participating in business activities. In some cases, other individuals and organizations operating in commerce and business but not being traders may also be the subject of business and commercial disputes. Stemming from the specific characteristics of each commercial business relationship, apart from traders being the main subject of business and commercial disputes, there are commercial business relations that can be entered between traders and non-business individuals and organizations defined in Clause 4, Article 30 of the Civil Procedure Code. It is a dispute between the company and its members; a dispute between a company and a manager in a limited liability company or a member of the Board of Directors, director, general director of a joint stock company, between members of the company regarding the establishment, operation, dissolution, merger, consolidation, division, splitting, transfer of company assets, transformation of organizational form of the company<sup>4</sup>. In certain cases, it is an activity that is not intended to generate a profit by a party in dealing with a trader in the event that the party performing such a non-profit activity chooses to apply commercial law<sup>5</sup>.

*Thirdly, content of business and commercial disputes*

Business and commercial disputes are often of great value, arising in the investment of capital and assets to earn profits, affecting the economic activities of both involved parties

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<sup>1</sup> Clause 1, Article 30 of the Code of Civil Procedure 2015

<sup>2</sup> Article 2 of the Law on Commerce 2010

<sup>3</sup> Clause 1, Article 3 of the Law on Commerce 2005

<sup>4</sup> Clause 4, Article 30 of the Code of Civil Procedure 2015

<sup>5</sup> Clause 3, Article 1 of the Law on Commerce 2005

and other business entities. Business and commercial relations are essentially property relations, so the content of business and commercial disputes is often directly related to the interests of the parties, specifically arising in the relationships:

Purchase and sale of goods, services provision; distribution; representatives, agents; deposit; rent, lease, hire-purchase; construction; technical advice; transport of goods and passengers by rail, road, inland waterway; transport of goods and passengers by air and sea; purchase and sale of stocks, bonds and other papers; investment in finance and banking; insurance; exploration and exploitation.

Disputes over intellectual property rights, technology transfer between individuals and organizations, and for profit.

Disputes between the company and its members, among its members related to the establishment, operation, dissolution, consolidation, merger, division, separation and transformation of organizational forms organization.

Other disputes on business and commerce as stipulated by law [5, pp.317].

#### *Fourthly, nature of business and commercial disputes*

Commercial business and commercial disputes are of a diverse and complex nature of economic relations between subjects with different interests in a market economy. When engaging in business activities, goods trading and goods exchange are regular and continuous activities, therefore subjects may establish many relationships with each other. A number of cases of disputes arising in one relationship will result in disputes in other commercial business relationships.

Settlement of business and commercial dispute is the method as well as activities to resolve and handle disputes arising from commercial business activities in order to protect rights and legal benefits of subjects participating in the economic market, to protect the social discipline and state laws.

Disputes and conflicts when engaging in business or commerce are inevitable. The measures of resolving disputes, ensuring the best rights and affecting relationships between the parties at the lowest level, time saving and cost saving are always concerned by stakeholders. Some accepted methods of settling business and trade disputes by state laws are as follows: *Negotiations, mediation, litigation and arbitration*.

In particular, resolving disputes at People's Courts at all levels is a method of resolving disputes at trial agencies in the name of the state power, conducted in strict order and procedures; without the voluntary compliance of the disputing parties, judgments and decisions of courts on the settlement of business and commercial disputes will be guaranteed to enforce judgments by the coercive force of the State.

## **2.2. Basic characteristics of methods of resolving business and commercial disputes by court litigation**

*Firstly*, the settlement of business and commercial disputes in a court is attended by a third party, which is the court, through the trial activities of a jury including judges and people's jurors. The people's courts are judicial organs of the state that conducts trials and settles business and commercial disputes without prior agreement of the parties to the dispute. When the parties in business and commercial dispute do not have any agreement on the mode

of dispute settlement or self-negotiation or mediation fails, the commercial dispute will be resolved in court. Similar to arbitration, the members of the jury must also meet the conditions prescribed by law. If these conditions are not met, they may not participate in the trial or the sentence declared by these persons may not come in to effect.

*Secondly*, the settlement of disputes in court must comply with the procedural principles prescribed by law. Any misconduct of the procedural rules may be appealed against according to the appellate procedure or the judicial review procedure.

*Thirdly*, the dispute settlement results in the judgment declared by the Jury which is of compulsory to the parties when it takes legal effect. This judgment may be appealed or protested. When the judgment takes effect, the parties must voluntarily execute it, otherwise they will be coerced in accordance with the law.

According to the Law on Organization of the People's Court 2014: “*The Supreme People's Court, the local People's Courts, the Military Courts and the other Courts prescribed by law are the judicial bodies of the Socialist Republic of Vietnam. The Court conduct trials of criminal, civil, marriage and family, labor, economic, administrative cases and settles other matters in accordance with the law*”<sup>6</sup>.

In order to determine the jurisdiction of the People's Court in resolving cases of business and commercial disputes, the People's Court should rely on the specific requirements of the petitioner to determine legal relations of the dispute. Thereby, it serves as a basis to determine whether the litigants' request for lawsuits is under the jurisdiction of the People's Courts after comparison with the provisions on jurisdiction of the People's Courts in accordance with the Civil Procedure Code.

In fact, it is not easy to determine legal relations on business and commercial disputes due to the following reasons:

At different times, depending on the political, economic and social situation, the legal provisions on social relations are governed by different rules of commercial business;

In the same social relationship but under the scope of regulation of different laws. Each branch of law has its own rules to distinguish social relations such as entities, objectives, subjects etc. but the determination of legal relations is still challenging;

There are legal documents on commercial business that generally stipulate the transactions under the scope of adjustment. Because of the openness of these regulations, when disputes occur, decision on which legal document covers the transactions still face some difficulties and problems.

In considering the jurisdiction of the Court, civil proceedings divide the Court's authority of commercial business requests into several categories. In particular, the jurisdiction of the Court is commonly divided into 4 categories, as follows:

Jurisdiction to deal with the case or the general jurisdiction of the Court. The jurisdiction by types of case is the delimitation between the jurisdiction of the Court and other agencies in the resolution of civil matters.

Jurisdiction at the trial level is the determination of which court has jurisdiction to handle the case according to the first instance procedure. Under current law, there are two levels of courts competent to adjudicating under first instance procedures: District-level

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<sup>6</sup> Article 1, Law on Organization of People's Courts 2014

people's courts include courts of district, towns and provincial cities and Provincial-level courts include provincial courts and municipality court.

Territorial jurisdiction specifies which Court is obliged to resolve commercial business cases at the request of the litigants when initiating lawsuits.

Jurisdiction to the plaintiff's choice. The involved parties may reach agreement with each other when signing a written contract to ask the court of the place of residence of the plaintiff to settle the dispute.

In order to accurately and clearly determine the competence to settle business and trade disputes and avoid confusion, it is necessary to follow the following principles:

*Based on the nature of the case (civil/ economic/ labor/ administrative/ criminal case...)  
to determine jurisdiction*

Based on the nature of the case, the competence to resolve business and commercial disputes under the jurisdiction of the People's Court can be determined. If it is under the court's jurisdiction, which court is competent to accept and handle it. In the organizational structure of our country's court system, beside the Supreme People's Court, the High-level People's Courts, and the Courts. Provincial-level People's Court and District-level People's Courts, specialized courts are also provided. The delimitation of such levels to determine the jurisdiction of the Court. Jurisdiction of the Court is specified in the Code of Civil Procedure 2015.

*Based on the complexity of the case to determine jurisdiction*

When a business dispute including civil disputes in general and business and commercial disputes in particular occurs, it is necessary to determine which jurisdiction of first instance the Court that civil disputes belong to. Depending on the nature of the case, the jurisdiction of first instance trial at a district court or a provincial court. The delimitation of jurisdiction at the judicial level to ensure professional ability, professional conditions, facilities and people to resolve the dispute effectively, quickly, accurately, and obey the law the law.

*Based on the place of residence or residence of the defendant to determine jurisdiction*

It is a specific determination of which court is competent to settle business and commercial disputes in the first instance. Territorial court jurisdiction is the division of jurisdiction between courts of the same level, in order to determine the most favorable court to resolve the dispute, to ensure the prompt settlement of the case, creating convenience for the parties to the proceedings, but at the same time ensuring the right of self-determination of the involved parties. In some cases, the determination of territorial jurisdiction is difficult, the Civil Procedure Code offered a number of cases where plaintiffs have the right to choose a court to resolve disputes.

Regarding the determination of jurisdiction to resolve business and commercial disputes by the Court, arbitration procedures arise only on the basis of the selection of the parties to the dispute. Dispute resolution in commerce and business at the People's Court or commercial arbitration are all forms of settlement that play a neutral role with the parties in the commercial and business dispute. The similarity of dispute resolution in people's courts and commercial arbitration. Thereby, they are different from other forms of commercial and business dispute resolution because they are based on legal provisions and appropriate content of the contract between parties involved in the dispute, to review, make a verdict and

ensure execution of sentence. The procedure of court and commercial arbitration is very strict because they are both competent to review and make decisions in accordance with the law. Although there are similarities, these are two separate types of dispute resolution, so there are basic differences between dispute resolution by court and commercial arbitration methods:

*The legal nature of both methods of dispute resolution*

The People's Court is essentially a state agency within the system of judicial agencies. When conducting legal proceedings, the People's Court shall, on behalf of the State, conduct judicial activities to consider and handle violations in order to maintain public order and protect the legitimate rights and interests of participating business entities. Unlike the People's Court, commercial arbitration centers are all non-governmental organizations with social and professional characteristics.

*Jurisdiction to resolve disputes*

Regarding jurisdiction over the case, the People's Court is awarded broader authority than commercial arbitration. While the People's Court is competent to resolve almost all business and commercial disputes, the jurisdiction of the arbitration varies depending on the arbitration center. When considered by territory, not all business and commercial disputes are settled by the Court. Disputes in business activities shall be handled by the Court with the law on the jurisdiction of the Territorial People's Courts. Meanwhile, the arbitration does not raise the issue of territorial jurisdiction. Parties of a commercial dispute have the right to choose any arbitration center to resolve the dispute.

### **3. Conclusion**

In the current period, together with acceleration of economic reform and national administration reform, judicial reform is also being actively implemented by the Party and the State. This is regarded as an important breakthrough, promoting the process of building and perfecting the Socialist Republic of Vietnam. In order to improve the effectiveness and efficiency of the court's judicial activities in dealing with business and commercial disputes, it is one of the basic and important contents in the reform. On that basis, perfecting the mechanism to protect the legitimate rights and interests of citizens, agencies and organizations, contributing to promoting economic development, maintaining political security and international integration.

The law is built on the generalization of the models of common behaviors in society, so law explanation is an evitable need that happens in the process of law application. When the law is applied, it is not possible to stiffly apply in different cases. The laws themselves are sometimes difficult to understand and not consistent in the content. Although the law is elaborately drafted and continuously issued, it is inevitable that there will be overlaps and gaps between regulations. That is even more true in case of our country's legislative activities today where many normative documents are still “framework”, “oriented” so that the management agencies can easily amend and supplement them by subordinate documents, easily leading to different interpretations in the process of applying the law.

There are cases of disputes occurring in judicial practice that are not currently anticipated by the law but need to be resolved. However, in the Code of Civil Procedure 2015, the Court must not refuse to resolve civil cases because there is no applicable law.

*“Article 4. Right to request the Court to protect legal rights and interests*

*The court must not refuse to resolve a civil case which related law is unavailable”.*

As a system of specialized agencies regularly resolving legal disputes affecting people's lives, the court, on behalf of the State, shall explain to stakeholders about the causes, meanings and purposes, the applicable value of each legal law, thereby classifying and determining jurisdiction to resolve the case. Each court judgment will harmonize and actualize specific laws, explain how to apply the law properly. All are aimed at building trust in justice and equality for not only each person involved in a case but also the whole society.

In fact, most of the law explanation needs arise and are associated with a specific case. In other words, most of the explanations of the law are explanations of the case and attached to the resolution of a certain dispute and according to the assignment of state power, the People's Court is the competent body to resolve this dispute.

Thus, the People's Court shall clearly understand and is attached to the law explanation; is the most objective, honest and practical interpretation of laws. It is necessary to recognize the form of factual interpretations alongside the current normative interpretation of the Standing Committee of the National Assembly. This is also one of the bases for determining the scope of the Court's jurisdiction and the form and legal validity of the explanatory content. That is, during the course of the court settling a specific case under its jurisdiction that arose the need to explain the law of application, the Judge need to explain the law. The explanations must be written in the relevant documents, especially the official explanation must be presented in the judgment or decision to resolve the case. The legal value of the explanatory content is the legal value of the declared judgment.

The Constitution should acknowledge the people's Court's right to interpret laws so that the People's Court can perform its functions more effectively, thereby helping the People's Court accurately determine the jurisdiction of the case. The Law on Organization of the People's Court must specify the authority and method of interpretation of law in the operation of the Court, through which the Court has the right to explain the Law when determining jurisdiction. The procedural law should supplement the provisions on the recognition of explanation rights for the People's Court in judgments and decisions by the Court which have come into effect.

## References

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