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Editor's Introduction

Welcome to the Thirty-First Volume of *Journal of Law and Social Deviance* (*LSD Journal*), an independent, peer-reviewed journal. *LSD Journal* encourages submissions from a wide range of professionals, researchers, and scholars in a variety of fields. Within our broader interest in social deviance and the law, we are particularly interested in how law creates, inhibits, or challenges deviant behavior, especially as it evolves from, responds to, or inspires the animal kingdom, art, design, structure, pop culture, hate, religion, sex, illness, work, drugs, terrorism, and youth. Volume 31 is about getting in there. This Volume cancels stereotypes about getting in there and dissuades people from doing it. There is room to vary patterns when legal advice dictates when and where to piece together a plan. Being good is enough to get in sometimes, but going around the risky obstacles in other's forums can help to get others in and to control them. Participation puts one foot in front of the other; and can train the other party, like the government, litigants, and associates, to visualize their network through a risky path.

Contribution

Re: Submissions, Subscriptions, and Comments

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EDUCATED AMERICAN MEN AND THEIR FOREIGN VIEWS: EXAMPLES FROM THE LAW, LAWMAKERS, AND LEARNERS

Carmen M. Cusack and Matthew E. Waranius

I. INTRODUCTION

American men who examine the world through an alternate lens, discussed in this Paper, are not culturally offensive, yet are like assets in this country. They may be the type of individuals that rightfully merit encouragement, not pressure to assimilate. This Paper looks at examples of men sponsored by the highest seats of this country who have demonstrated an interest in other cultures affecting policies and procedure.

II. CULTURE CLASS

A. Immigration

The Fleuti Doctrine protecting lawful permanent residents (LPRs) avoiding being harmed when treated as seeking admission for casual, brief, and innocent

trips abroad, was followed by the enactment of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which seriously impacted it. The IIRIRA altered the language referring to "entry" or "admission" and listed conditions under which LPRs must be denoted as seeking admission, including committing crimes listed in INA Section 212 (a) (2).[1] It was held[2] that IIRIRA Section 301 (a) (13) reworded a portion of the Fleuti Doctrine. When LPRs meet any of the six criteria under INA Section 101 (a) (13) (C)—such as committing certain crimes or staying abroad for over 180 days—they must be treated as seeking admission. This is without regard for whether the trip abroad was brief or casual.[3]

The case of *Rosenberg v. Fleuti* is an example in the context of IIRIRA of how the Fleuti Doctrine was applied.[4] The Supreme Court's decision in *Fleuti* considered whether the wholly innocent intent of the departure weighed in favor of the immigrant and

[1] 8 USC § 1101, 1182, et seq.
[2] It is stated as The Board of Immigration Appeals (BIA).
[3] U.S. Department of Justice, doj.gov.
[4] Rosenberg v. Fleuti, 374 U.S. 449 (1963).

whether factors, such as the purpose of the trip violated the residency. Carbajal-Gonzalez v. Immigration & Naturalization Service[5] is about the winning party Carlos Alberto Carbajal-Gonzalez. He went to court at the Court of Appeals for the Fifth Circuit. Key statements are that the issue was deportation for smuggling aliens under 8 U.S.C. § 1251(a)(1)(E)(i). The case was the type that fell under immigration law.

The facts are that An Order to Show Cause was issued. The matter charged Carbajal-Gonzalez, who lacked documentation, with entry without inspection and smuggling aliens. Carbajal-Gonzalez and Rodriguez-Alvidrez walked across the border bridge without inspection. Border patrol arrested the two individuals on the United States' side.

Carbajal-Gonzalez, a lawful permanent resident of the U.S., traveled to Juarez, Mexico. While in Juarez, Mexico, Carbajal-Gonzalez and a companion, Rodriguez-Alvidrez, opted to purchase beer in the U.S. Carbajal-Gonzalez's wife taxied them to the Mexican

[5] Carbajal-Gonzalez v. Immigration & Naturalization Service, 1996 WL 107238 (1996).

border, keeping and storing Carbajal-Gonzalez's immigration document. Rodriguez-Alvidrez, not a U.S. citizen, did not have documentation to enter the U.S. legally.

The key to the holdings are that because there was no "entry" under the Act, there was neither an 8 U.S.C. § 1251(a)(1)(B) entry without inspection nor smuggling pursuant to 8 U.S.C. § 1251(a)(1)(E)(i). Carbajal-Gonzalez did not "enter" the U.S. within the meaning of 8 U.S.C. § 1101(a)(13) because his departure was not intended to be meaningfully interruptive of his permanent residence, applying the Fleuti doctrine.

The legal reasoning the court reasoned was that the Board of Immigration Appeals failed to properly apply the Fleuti doctrine, which requires factors to be balanced to determine whether a resident alien's departure was intended to be meaningfully interruptive of his permanent residence.[6] The court viewed in their totality that Carbajal-Gonzalez's actions did not

[6] Carbajal-Gonzalez v. Immigration & Naturalization Service, 1996 WL 107238, 1996 U.S. App. LEXIS 5636, 78 F.3d 194 (1996).

demonstrate such an intent. The court distinguished where the alien had a fully intended to smuggle undocumented aliens, in the case of *Laredo-Miranda v. Immigration and Naturalization Service (INS)*.[7] The court emphasized that Carbajal-Gonzalez's trip was brief and for a social purpose described below. The winning party believed his companion was a documented alien. Therefore, the court concluded that there was no "entry" under the Act. Thus, neither the charge of entry without inspection nor alien smuggling applied. The analysis outcome was that the Fifth Circuit vacated the deportation order and reversed the Board of Immigration Appeals' decision.

B. Background

The story documented in several forms presented details that were evaluated. The first detail is that the evening in question began with a cultural dance class in Mexico. The winner of the case went to the class held by the known proctor and then went for beer. The

[7] Laredo-Miranda v. Immigration and Naturalization Service (INS), 555 F.2d 1242 (5th Cir. 1977).

evening allegedly involved some disputes that were social in nature. The sobriety of the parties was discussed to examine their travel plans that included getting beer in the U.S. and some considerations for returning. The relevance to education is that it meets the legal standard for explaining why the parties may have left and tried to reenter.

III. BROTHERHOOD

Fraternities ask for members to be male. They are usually organized at universities. Students of either sex may know about the groups. The groups have private traditions and activities. The members may include guests and facilitators from either sex. This is done according to their traditions. Similarities with sororities, all-female, are that they are single-sex and devoted to friendship. The organizations of males sometimes socialize.

Group members often become leaders of all-male and mixed groups. For example, they may enter Congress. Reports about people attempting to interrupt single-sex activity by claiming legal violations, such as

discrimination, were addressed by Congress. Not only is same-sex fraternization legal, exclusion of non-members is also because that helps the groups. In that example, students were supported by legislators siding with all-male fraternity groups.

Reporter Adam Pack and the Senate provided numerous statements and interviews from key lawmakers about same-sex fraternities.[8] They gave their support. Arizona Senator Ruben Gallego said that critics come from "small little niche groups."[9] Those are not as supported.

Jim Banks, a U.S. Senator for Indiana, presented legal language preventing restrictions against same-sex groups on campus.[10] "Sec. 3 Freedom Of Association Protections For Students In Social Organizations" says in "Part B of title I of the Higher

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[8] Adam Pack, *EXCLUSIVE: Sens Unveil Bipartisan Bill To Save Greek Life*, THE DAILY CALLER (Apr. 01, 2025), https://dailycaller.com/2025/04/01/exclusive-sens-unveil-bipartisan-bill-to-save-greek-life-from-wokeness-on-college-campuses/.
[9] *Id.*
[10] Jim Banks, "Senators Banks and Gallego Introduce the Freedom of Association in Higher Education Act," Senate.gov (Apr. 3, 2025), https://www.banks.senate.gov/news/press-releases/senators-banks-and-gallego-introduce-the-freedom-of-association-in-higher-education-act/.

Education Act of 1965 (20 U.S.C. 1011 et seq.)" that it "is amended by adding at the end the following:

'SEC. 124. FREEDOM OF ASSOCIATION PROTECTIONS FOR STUDENTS IN SOCIAL ORGANIZATIONS."[11] Number (b)(3) proposes a counter to

> impose a recruitment restriction (including a recruitment restriction relating to the schedule for membership recruitment) on a single-sex social organization recognized by the institution, which is not imposed upon other student organizations by the institution, unless the organization (or a council of similar organizations) and the institution have entered into a mutually agreed-upon written agreement that allows the institution to impose such restriction.

The 119th Congress' 1st Session considered an amendment to the Higher Education Act of 1965.[12]

Senators Banks and Gallego introduced the Freedom of Association in Higher Education Act to demonstrate protection for college students.[13] They

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[11] *Id.* Higher Education Act of 1965 (20 U.S.C. 1011 et seq.).
[12] Higher Education Act of 1965 (20 U.S.C. 1011 et seq.).
[13] *See*, Banks, "Senators Banks and Gallego Introduce the Freedom of Association in Higher Education Act," Senate.gov; Pack, *Sens Unveil Bipartisan Bill To Save Greek Life*, THE DAILY CALLER.

have the right to be members of single-sex social organizations, like fraternities and off-campus clubs, without school discrimination and fear of punishment.[14] Senator Banks said "Students should be free to form and join single-sex organizations like fraternities."[15] Senator Gallego said "I cannot imagine my college experience without my fraternity brothers. As a first-generation student in a completely new environment, having a strong community to lean on was essential. I'm proud to support this bill to protect students' access to Greek life, since no student should be penalized for finding a home away from home."[16]

A man at Indiana State University honored the Senators and said a general truth:

> Defending the association rights of students is essential to the success of the collegiate experience in the United States. Specifically concerning Greek lettered fraternities and sororities, it is necessary that college students have a choice concerning who they associate with, as each organization holds different values

[14] *Id.*
[15] *Id.*
[16] *Id.*

> that an individual may or may not align with. Joining My chapter (Pi Kappa Alpha) at Indiana State has taught me valuable life lessons that I could never learn in a lecture hall while also teaching me vital life skills such as time management, professional & leadership development and more. Had I never been given the opportunity to surround myself with like-minded men, my life would be vastly different.[17]

This was backed by Jud Horras, CEO of North American Interfraternity Conference.[18] "The North American Interfraternity Conference commends Senators Banks and Gallego for their commitment to protecting students' rights to association on college campuses. Their leadership ensures that college men can continue to shape their futures and foster communities that enrich their educational experience."[19] Like the man, it referred to admiration.[20] Dani Weatherford, CEO of National Panhellenic Conference added, "The National

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[17] *Id.*
[18] *Id.*
[19] *See*, Banks, "Senators Banks and Gallego Introduce the Freedom of Association in Higher Education Act," Senate.gov; Pack, *Sens Unveil Bipartisan Bill To Save Greek Life*, THE DAILY CALLER.
[20] *Id.*

Panhellenic Conference (NPC) thanks Senator Jim Banks for his leadership in championing the freedom of association rights of students and organizations. The State of Indiana is home to a vibrant sorority community and his efforts to introduce legislation to address this important topic is very much appreciated."[21]

The Freedom of Association in Higher Education Act adopts protection for federally funded colleges and universities that have the right to form or join social organizations, including single-sex social organizations.[22] It prohibits discrimination at federally funded colleges and universities against single-sex social organizations or students.[23] Those seeking to join organizations because they are single-sex in nature are permitted without fear.[24] Protections extend to officially unrecognized groups.[25] Schools may take action, but not solely because a member is in a single-

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *See*, Banks, "Senators Banks and Gallego Introduce the Freedom of Association in Higher Education Act," Senate.gov; Pack, *Sens Unveil Bipartisan Bill To Save Greek Life*, THE DAILY CALLER.

sex fraternity or asks alumni and faculty for freedom to speak to the members on the topic of single-sex clubs and fraternities.[26]

IV. ENGINEERING AND LEGAL TRAINING

When schools allow a worldview to be a standard then a man's education can be religious or not. Offerings to males can include material that is sectarian, areligious, or interdisciplinary. Compatible paradigms that are not religious enter a worldview. A religious worldview tends to be singular. Yet it too can benefit from scholastic depth and resources.

Learning environments provide faculty and students with freedom to question studies, limit data, be guided by evidence and facts, and receive discipline. For example, legal education may question the inclusion of and can allow religion.[27] Engineering education may promote and include technology. In

[26] *Id.*
[27] (e.g., More than young students dining on a field trip in the area accidentally exposed to colorful, therefore revolting, paper lunch sacks).

Virginia v. Lynn, the state supreme court discussed the role that religion is to play in learning environments funded by the state and federal governments. The court produced a decision about the extent of the belief in Jesus as the basis for a school in a case about bonds. It held in favor of the school that Pat Roberton founded, a religious school with a bar-accredited law school in Virginia Beach, Virginia, receiving funds even though it teaches that the trinity is three persons: father, son and holy ghost.[28]

The U.S. Constitution and Article VIII, § 11 of the Constitution of Virginia state that aid is permitted to institutions "whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education."[29] The opinion states at (V)(B), "Assessment of whether an

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[28] Virginia College Building Authority v. Barry Lynn, No. 992099 (Sup. Ct. Va., Nov. 03, 2000); Va. College Bldg. Auth. v. Lynn, 260 Va. 608, 538 S.E.2d 682 (2000). The American Bar Association (ABA) accredited it and permitted licensure in 50 states finding no inhibition of the school's academic freedom. The law school's primary purpose is academic not divinity school. First year law students take Common Law, Contracts, Torts, Civil Procedure, Property, and Legal Research and Writing. Students in their second and third years can take First Amendment, legal philosophy, and religious law classes anywhere in the country (e.g., not a nearly lifeless fleur-de-lis crisis).
[29] Va. Const. art. VIII, § 11, Code § 23-30.41(e).

institution is pervasively sectarian requires consideration of 'a general picture of the institution, composed of many elements.'"[30] Factors proposed by districts persuade the Virginia Supreme Court. In cases about sectarian institutions, the Court has listed: (1) formal affiliation with a church and institutional autonomy; (2) purposeful indoctrination and activities that exert dominating influence over the curriculum; (3) atmosphere of academic freedom; (4) classroom-prayer policy or religion in classroom instruction; (5) religious qualifications for employment, membership, or admission; and (6) population and the religious composition. An examination of the litigant under the Establishment Clause and Article I, § 16 of the Constitution of Virginia considers the primary purpose not just the School of Divinity for religious training or theological education. Therefore, a Judeo-Christian worldview does not violate the Constitution of Virginia or the Establishment Clause.

[30] *Lynn* citing Roemer v. Bd. of Pub. Works, 426 U.S. 736, 758, 96 S.Ct. 2337, 49 L.Ed.2d 179 (1976).

A worldview must be attained before a professional standard can be achieved. Stanford University is a private school that teaches engineering and has high-tech facilities. Stanford classrooms are designed to be high-tech a method used throughout the school.[31] "Designed to help students expand their worldview and better evaluate their aptitude for engineering, it prioritized the creation of a new type of engineer: a highly skilled technical professional equally capable of managing, directing, and – perhaps most important – leading the innovation essential to the nation's economy."[32] They have invested in classrooms, for example, they are "optimizing usage."[33] Stanford "created a co-teaching model that brought together faculty and practitioners in the same

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[31] They could design tech programs to turn them on for certain reasons or in stages.
[32] Beth Jensen, "Business and Engineering Schools Mark Century of Shared Innovation," STANFORD REPORT (Dec. 10, 2025), www.news.stanford.edu/stories/2025/12/gsb-school-engineering-collaboration-century-innovation.
[33] "Learning Technologies & Spaces: Classrooms" https://lts.stanford.edu/classrooms; "Classrooms Reimagined Standards | Learning Technologies & Spaces," https://lts.stanford.edu/scr-standards.

classroom – many of whom had technology and engineering backgrounds themselves."[34] Classroom access and design are under Student Affairs to support students to learn, be comfortable and achieve careers.

V. CONCLUSION

This Conclusion asserts that men are interested in collective education. The deciding bodies of this land may note their behavior. They tend to reject judgments made against them. Their involvement in processes favor their intended outcomes. Usually they are born of the same.

[34] Beth Jensen, "Business and Engineering Schools Mark Century of Shared Innovation," STANFORD REPORT (Dec. 10, 2025), www.news.stanford.edu/stories/2025/12/gsb-school-engineering-collaboration-century-innovation.

BETWEEN SECURITY AND PRIVACY: LEGAL CHALLENGES IN ADMINISTRATIVE INSPECTIONS OF PERSONAL ELECTRONIC DEVICES UNDER VIETNAMESE LAW

Hao Van LE[*]

I. INTRODUCTION

The rapid development of digital technology has significantly impacted the collection, storage and sharing of personal information on electronic devices. In this context, many countries have regulations on procedures for item search, or search of electronic devices when the owner of a personal electronic device violates the law.

In Vietnam, the search of electronic devices according to administrative procedures raises several questions related to legality, mainly related to the protection of privacy and personal data. This study focuses on addressing significant gaps in the current regulations on these issues within Vietnam's legal

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framework. The primary research goal is to analyze how Vietnamese legislation regulates the search of electronic devices through administrative procedures, with a focus on issues related to privacy and data protection. The urgency of this study is underscored by the limited legal research on this issue in Vietnam. Despite the increasing use of electronic devices and concerns about data privacy, Vietnam's legal regulations in this area are still vague and underdeveloped[1]. The lack of clarity in legal provisions has practical implications for the legitimate rights and interests of individuals subject to electronic device searches, posing potential risks to their privacy and data security.

Currently, Vietnamese law is not clear and specific about the parameters and limitations of electronic device searches, leading to inconsistencies and the possibility of abuse in implementation. These shortcomings not only undermine the legal principles

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[1] Do Hai Ha & Le Thu Hien, *Privacy in Vietnam*, available at <https://www.mondaq.com/constitutional-administrative-law/106926/privacy-in-vietnam> (last visited August 01, 2024).

for protecting privacy and personal data but also reduce public confidence in the legal system's ability to protect individual rights. In the face of these challenges, it is essential to scrutinize existing legal norms, identify shortcomings, and propose comprehensive legislative reforms.

This Article aims to fill the existing research gap by providing a detailed analysis of Vietnamese legal regulations related to the searches of electronic devices according to administrative procedures, evaluating the effectiveness of these regulations in comparison with international standards in protecting privacy and personal data[2], and proposing comprehensive legislative reforms to effectively protect individual privacy in the digital era.

[2] P. Kimpian, *Rights to Privacy and to Personal Data Protection and Convention 108*, R. Atuguba Akongburo, P. Boshe, S. Dei-Tutu & M. Hennemann (Ed.), AFRICAN DATA PROTECTION LAWS: REGULATION, POLICY, AND PRACTICE (2024), 19-28.

II. THE TREND OF SEARCHING OF ELECTRONIC DEVICES FOR DIGITAL EVIDENCE

Technology has become even more entrenched in our personal lives[3], significantly transforming the way individuals communicate and behave[4]. People can communicate through the internet using various methods, such as texting, video calling, or online meetings, without the need for face-to-face interaction. As a result, people are increasingly reliant on electronic devices like smartphones, tablets, and laptops. Almost everyone uses them daily for communication, work, entertainment, and financial transactions.

In addition to their basic features, smartphones, tablets, or laptops integrate modern applications with various other functions to support daily life, education, health care, and work. These functions include reading

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[3] Canadian Bar Association (2022), at 1.
[4] Nguyen Thi Mai Anh, *The Impact of the Fourth Industrial Revolution on the Culture and Lifestyle of Vietnamese People*, available at https://www.tapchicongsan.org.vn/nghien-cu/-/2018/820810/tac-dong-cua-cuoc-cach-mang-cong-nghiep-lan-thu-tu-den-van-hoa%2C-loi-song-nguoi-dan-viet-nam.aspx (last visited July 01, 2024).

the news, learning online, drafting documents, transferring bank payments, booking a car, buying and selling items, investing in stocks, diary-keeping (storing information, images, etc.). For instance, the Zalo application (which includes messaging, calling, diary, and group discussion,…) has up to 74 million users in Vietnam, accounting for more than 74% of the population[5].

Nowadays, more private information is in a single device than used to be stored in briefcases, homes, offices or anywhere else. The private information includes current and historical data on a person's geo-location, call history, text messages, email, photos, contacts, calendar, physical activity, health, finances, shopping history, internet searches and more, which can provide insight into a person's preferences, habits, interests and values[6]. Personal electronic devices may contain more and more private information for the following reasons:

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[5] Pham Trung, *Zalo Continues To Be The Most Popular Messaging App In Vietnam*, available at https://nhandan.vn/zalo-tiep-tuc-la-ung-dung-nhan-tin-pho-bien-nhat-viet-nam-post741283.html (last visited July 01, 2024).
[6] Canadian Bar Association (2022), at 3.

- Personal electronic devices are widely used, with

- Personal electronic devices, especially smartphones, have many features including cameras, voice recording, GPS, and communication apps like email, social media, and messaging. These features allow for the storage and recording of a lot of personal information and users' daily activities, which in turn provides valuable data for investigations.

- The information storage capacity of electronic devices is constantly expanding and is completely different from physical storage vessels, enabling the storage of vast amounts of data, including images, videos, messages, emails, and various types of documents.

- Personal electronic devices are constantly connected to the internet and social networks, enabling authorities to monitor and gather information from the suspect's online activities, such as conversations, posts, and online transactions.

- Investigative tools of state agencies are becoming more and more modern, the development of digital forensic tools and techniques allows investigative

agencies to analyze and extract data from phones efficiently and quickly. These tools can recover deleted data, extract hidden information, and analyze online behaviors.

- Countries are increasingly cooperating internationally in the investigation of transnational violations and crimes, which has helped to share information and technology, thereby improving the ability to collect evidence from mobile phones.

The privacy concerns arising from them are completely different than those arising from physical storage vessels like luggage, which shaped the early principles of "briefcase law.

The intimate personal information on the device can date back to the purchase of the phone, or even earlier.

For many professionals – including doctors, lawyers, business executives, human rights activists and journalists – the devices may also contain highly sensitive information about others. Cloud services regularly synchronize significant data stores to one or

more devices and may be difficult or impossible to fully delete.

Therefore, protecting personal privacy is crucial. Mobile phone manufacturers also study how to protect the data in the phone, for example, Apple (USA), a leading electronic device manufacturer, has implemented measures such that if an iPhone or iPad is lost and the wrong password is entered too many times, all data in it will be disabled. At this time, the person who takes the phone can only take the "physical corpse", and the "soul" – the data and privacy inside the phone still belong to the owner. This is a controversial issue between Apple's privacy protection and the US Department of Justice, when in early 2020, US police seized two iPhones of the suspect but both were locked with a password, the US Department of Justice[7] asked Apple to unlock the iPhone to obtain information and data to help investigate the crime, but

[7] THE NEW YORK TIMES, *Magistrate Judge James Orenstein's Order*, available at https://www.nytimes.com/interactive/2016/02/29/technology/document-Orenstein-Order.html (last visited July 10, 2024).

Apple still stubbornly refused and thought that doing it was tantamount to betraying customers[8].

Individuals who violate the law often communicate using personal electronic devices. The information stored on these devices is vital for authorities to establish legal infractions. These types of evidence may include: (1) Text messages and emails: These evidences may contain information about plans, exchanges, or violations; (2) Calls and recordings: Call history and conversation recordings may be used to prove communications related to the violation; (3) photos and videos: photos and videos stored in the phone may contain evidence of criminal crimes or violations; (4) Browsing history: The visited websites can provide information about the intent or plan involved in the infringement; (5) Location data (GPS): Saved location information can help identify behavior or presence at a particular location in connection with the incident; (6) Apps and In-App fata: Messaging apps, social media, and other apps may contain

[8] Ha Van, *FBI mở khóa thành công iPhone và kết thúc vụ tranh chấp pháp lý với Apple*, available at https://nhandan.vn/post-258831.html (last visited July 10, 2024).

important information and data related to the violation; (7) Documents and files: Files and documents stored on a phone may include contracts, financial information, or other documents that may serve as evidence.

Evidence to handle violations increasingly uses electronic evidence, because when committing violations, according to the law of reflection, information and evidence of violations will leave traces in the physical world, including personal electronic devices. The nature of such information and data is evidence and can be used to prove violations. Currently, the electronic evidence required to be provided is shown through the contents, of which 54% are contact data, and 32% are emails[9].

In Vietnam, there is an increasing number of administrative violations occurring through social networks and the internet. These violations include actions such as insulting reputation, honor, and dignity,

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[9] Europol, *SIRIUS EU Electronic Evidence Situation Report 2023*, available at https://www.europol.europa.eu/publications-events/publications/sirius-eu-electronic-evidence-situation-report-2023 (last visited July 10, 2024).

spreading false information on social networks, and engaging in online fraud. It is important to clearly define what constitutes a violation, determine whether multiple individuals are involved, and must gather evidence from electronic sources such as messages and emails on personal devices. While science and technology bring great benefits, they also lead to increased reliance on computers, smartphones, and internet systems, causing a growing amount of violation data to be stored in electronic devices. As a result, there is a need for a specific legal framework to safeguard the privacy of personal information when examining personal electronic devices.

III. MEASURES TO SEARCH OBJECTS BEING ELECTRONIC DEVICES ACCORDING TO ADMINISTRATIVE PROCEDURES UNDER VIETNAMESE LAW

Vietnamese law does not have separate regulations on the search of personal electronic devices according to administrative procedures. All objects are covered within the legal framework of the search of objects according to administrative procedures, as specified in

Article 128 of the Law on Handling of Administrative Violations 2012 (amended and supplemented in 2020). This Article, titled *"Search of means of transport and objects according to administrative procedures"* does not distinguish between the search of means of transport and the search of objects. Therefore, the search of objects and means of transport is governed by the same regulations regarding competence and order of procedures.

Regarding establishments applying the measure of searching objects that are electronic devices according to administrative procedures, this measure is applied when *"there is a ground to believe that administrative violation material evidences are hidden in such means of transport and objects"* by a person with statutory authority. This basis can come from various diverse sources such as denunciations of citizens or through monitoring of subjects and subjects being searched focusing on electronic devices such as computers, phones, and other electronic devices that are considered administrative violations. Currently, Vietnam's law on the search of objects being electronic

devices is still bad in certain deficiencies and inadequacies in legal regulations. Accordingly, the Law on Handling of Administrative Violations 2012 does not distinguish between objects in the procedures for examining equipment according to administrative procedures. Specifically, the Law does not clearly distinguish between objects such as bags, suitcases, and objects containing the private life of individuals, electronic data such as phones, computers, and other electronic devices.

Objects are personal electronic devices that have more special properties and aspects when compared to ordinary objects for administrative procedures. Electronic means hardware, software, information systems, or other means operating based on information technology, electronic, digital, magnetic, wireless transmission, optical, electromagnetic or other similar technologies[10], and digital devices means electronic devices, computers, telecommunications, radio transmission, transceivers, and other integrated equipment used for producing, transmitting, collecting,

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[10] The Law on E-Transactions 2023, Art. 3(2) (2023).

processing, storing and exchanging digital information[11]. Thus, according to relevant regulations, electronic devices that can become the object of electronic device examination are extremely broad.

However, electronic devices that are the object of the electronic device examination measure also process and store other data, such as the personal data of the owner, personal data of others, inviolable private secrets, and various other data unrelated to the violations. The examination of electronic devices under administrative violations includes accessing and reviewing data that is not related to the violations on the devices, which may potentially intrude on the privacy of individuals and disrupt their normal activities. However, Vietnam's administrative law currently lacks provisions to address these concerns and ensure the stability of individuals' normal lives during electronic device examinations according to administrative procedures.

The search of electronic means according to administrative procedures shall only be conducted

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[11] The Law on Information Technology 2006, Art. 4(11) (2006).

when there are grounds to believe that there is material evidence of administrative violations. However, there is no document specifying which cases are considered *"grounded"* and which cases are *"unfounded"*, leaving the decision to the discretion of the competent person. This ambiguity in Vietnamese legal regulations may lead to potential misuse of power and unwarranted infringement upon individuals' privacy during electronic device examinations in administrative procedures.

Regarding the subject competent to perform the measure of electronic device examination according to the current administrative procedures, the law stipulates that only subjects such as the Head of the Ward Police, the Head of the District Police, the Head of the Police Division for Administrative Management of Social Order, the Head of the Road Traffic Police Division, etc.[12] shall have the authority to search electronic devices of citizens when there are grounds

[12] The Law on Handling of Administrative Violations 2012, Art. 123(1) (2012).

to believe that such objects are exhibits or are directly related to administrative violations.

It can be seen that the Law on Handling of Administrative Violations 2012 has listed a series of subjects who have the authority to search electronic devices. However, this Law has not clarified the specific fields and cases that each subject has certain authority. This, inadvertently, creates a statement that any of the subjects listed under the provisions of Clause 1, Article 123 of this Law can also search a citizen's electronic device without zoning for this search.

When conducting a search of electronic devices, a competent person needs to make a record, witnessed by the owner of the object and 01 witness; in case the owner of the object is absent, there must be (at least) 01 witness. The search of objects must be decided in writing unless there are grounds to believe that if the search is not carried out immediately, the material evidence of administrative violations will be dispersed and destroyed. All cases of search of means of transport or objects (including search of electronic

devices) must be recorded. The search decision and the record must be handed over to the owner of the means of transport or objects or the operator of the means of transport to keep 01 copy.

At first glance, the regulations related to the procedural order are relatively strict and ensure fairness because there is the witness of the owner of the electronic device or another witness. However, this regulation is only suitable for ordinary objects but does not ensure the suitability of electronic devices because electronic devices may have passwords and encryption to ensure the privacy of individuals electronically. Moreover, the law only stipulates that the owner of the witness device is not obliged to unlock or provide a password or encryption to open the device for a competent person to check. Hence, it is necessary for the appropriate authority to conduct a self-test on this electronic device. This prolongs the inspection time, leading to the owner of the electronic device also having to carry out supervision and hinders the normal operation of the person being examined for electronic equipment.

Currently, there is not much public data on the status of electronic device searches in Vietnam. However, based on reports and information from privacy and human rights organizations, searches of personal electronic devices are not uncommon. Many cases of electronic device searches are carried out without a clear legal basis, leading to concerns about the privacy and protection of people's personal data.

In general, based on the analysis and evaluation of current regulations, it is evident that Vietnamese law still has shortcomings and vague information concerning the search of electronic devices according to administrative procedures. Specific regulations for the search of electronic devices are lacking, which results in inadequate protection of users' privacy. The grounds for searching are qualitative, leading to the competent person being able to arbitrarily decide without clear criteria. Jurisdictional regulations are quite broad, allowing multiple competent subjects to search, which can lead to abuse of power and invasion of personal privacy. The specific order and procedures for conducting searches, especially in the case of

searching electronic devices containing sensitive personal data, have not been clearly outlined. In order to protect privacy and personal data in the context of increasingly evolving technology, comprehensive legal reforms are necessary. These reforms should aim to ensure privacy and protect personal data while minimizing the risk of abuse of power and infringement of people's legitimate rights.

IV. DISCUSSION ON THE CORRELATION BETWEEN REGULATIONS ON THE SEARCH OF PERSONAL ELECTRONIC OBJECTS ACCORDING TO ADMINISTRATIVE PROCEDURES AND CRIMINAL PROCEDURES

Unlike the search of electronic devices according to administrative procedures, when dealing with criminal cases, the search of electronic devices is a crucial investigative measure for gathering evidence. However, this measure directly impacts the constitutionally protected rights of citizens, such as the right to telephone conversations, telegrams and other forms of private communication. Therefore, without

legal grounds, no agency, organization, or individual is permitted to conduct this investigative measure.

For searches according to criminal procedures, the search of persons, residences, workplaces, places, and means shall be conducted only when there are grounds to identify in the persons, residences, workplaces, places and means of crime tools, means of crime objects, and assets obtained from the crime or objects, electronic data, and other documents related to the case. The search of residences, workplaces, places, and vehicles is also carried out when it is necessary to detect people who are wanted, trace, and rescue victims. Therefore, when there are grounds to judge that in letters, telegrams, parcels, postal items, and electronic data there are tools and means of crime, documents, objects, and assets related to the case, letters, telegrams, parcels, postal items, and electronic data can be searched. In case it is necessary to seize electronic means for exploitation of electronic data in the course of investigation, it must be carried out by a person competent to conduct the proceedings and may invite a person with relevant expertise to participate. In

case it cannot be seized, it must be backed up in the means of storage and confiscated as material evidence.

In Clause 1, Article 99 of the 2015 Criminal Procedure Code, the concept of electronic data is defined as symbols, writings, digits, images, sounds, or similar forms created, stored, transmitted, or received by electronic means. Article 107 of the 2015 Criminal Procedure Code stipulates: *"Electronic vehicles must be seized in a timely and complete manner, properly describe the actual situation and seal immediately after seizure. The sealing and opening of the seal shall be carried out in accordance with the provisions of law"*. From there, it can be seen that electronic means, if they want to be seized and searched, must be collected by the law, in the whole process of searching, seizing physical evidence, using technology (hardware and software) recognized by legal agencies, from which new electronic means can be used to exploit the electronic data that exists inside and carry out copying

data storage, preservation, recovery, analysis, search and examination of data as evidence[13].

The search of electronic devices according to criminal procedures aims to collect electronic data in such devices[14]. In the process of collecting, searching, and collecting electronic data from electronic means, it must be recorded in the record and sealed in accordance with the provisions of the criminal procedure law, then such electronic data can be considered as a lawful source of evidence in the process of settling criminal cases. Clause 2, Article 87 of the 2015 Criminal Procedure Code stipulates that what is real but not collected according to the order and procedures prescribed by the Criminal Procedure Code is not legally valid and cannot be used as a basis for settling criminal cases. So, when investigating, exploiting, and collecting evidence, the investigating agency must comply with the regulations on sealing immediately after collection, the sealing and opening

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[13] Hoang Trong Luc, *Collecting Electronic Traces From Mobile Phones In Criminal Investigation*, 01 JOURNAL OF PROCURATORATE STUDIES 6 (2022).
[14] Nguyen Duc Hanh, *Electronic Data And Electronic Evidence*, 01 PROSECUTORIAL MAGAZINE 37 (2019).

of the seal must be included in the case file, otherwise, such evidence will not be valid to prove the crime. At the same time, in the process of exploiting electronic data from electronic means, the investigating agency must not be affected to change the data since the seizure of the electronic means and take measures so that the electronic data cannot be tampered with.

In general, unlike criminal procedures, where specific regulations exist in the Criminal Procedure Code, administrative procedures do not provide a clear order and process for exploiting electronic data. The process of searching electronic devices according to administrative procedures lacks clear guidelines for sealing when seizing and exploiting electronic data in such electronic devices. This raises concerns about the arbitrary access to personal data and the potential infringement of individuals' privacy during electronic device searches conducted in the context of administrative violations. In criminal proceedings, investigating agencies have the responsibility to collect electronic data and exploit all available information on the device, including deleted information, to facilitate

the evidence-gathering process. This process is carried out by trained technical officers of the Ministry of Public Security to ensure data integrity and safety. For each type of electronic device, there will be a different method of data mining, depending on the type of electronic device, the technical officers will decide which method to exploit[15]. However, in administrative procedures, a wide range of personnel without expertise in electronic data exploitation, such as the Chairman of the commune-level People's Committee, the Head of the Forest Ranger District, the Captain of the Mobile Forest Ranger Team and Forest Fire Prevention and Fighting, etc. are authorized to conduct searches of electronic devices[16]. This may lead to the infringement of personal data privacy rights as it could potentially impact unrelated data on electronic devices, thereby undermining the data subject’s right to consent to the processing of their personal data.

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[15] Hoang Trong Luc, *Collecting Electronic Traces From Mobile Phones In Criminal Investigation*, 01 JOURNAL OF PROCURATORATE STUDIES, 6 (2022).
[16] The Law on Handling of Administrative Violations 2012, Art. 128(2) (2012).

V. DISCUSSION ON THE CORRELATION BETWEEN REGULATIONS ON THE SEARCH OF OBJECTS BEING PERSONAL ELECTRONIC DEVICES ACCORDING TO ADMINISTRATIVE PROCEDURES AND PRIVACY

The right to privacy is identified by United Nations, human rights agencies, and scholars around the world as a basic and essential right to autonomy and self-respect of individuals, protection of human dignity, etc. is a basic human right[17]. The issue of privacy is stipulated in Article 21 of the 2013 Vietnam's Constitution as follows:

> Everyone has the inviolable right to private life, personal secrets, and family secrets; have the right to protect their honor and reputation. Information about private life, personal secrets, and family secrets is guaranteed to be safe by law. Everyone has the right to keep confidential correspondence, telephone, telegraph, and other forms of private communication. No one is allowed to illegally open, control, and seize letters, telephones, telegrams, and

[17] Chu Hong Thanh, *The Law on Privacy Protection*, available at https://lsvn.vn/phap-luat-ve-bao-ve-quyen-rieng-tu.html (last visited June 26, 2024).

other forms of private information exchange.

The Law on Cyber Information Security 2015 also clearly stipulates the responsibilities of agencies, organizations, and individuals in collecting and using personal information. Accordingly, organizations and individuals that process personal information have the following responsibilities: collect personal information after obtaining the consent of the personal information subject on the scope and purpose of collecting and using such information; only use the collected personal information for purposes other than the original purpose after obtaining the consent of the personal information subject; not to provide, share or disseminate personal information that they have collected, accessed or controlled to third parties unless there is the consent of such personal information subject or at the request of competent state agencies. At the same time, state agencies are responsible for the confidentiality and storage of personal information collected by themselves and the personal information subjects themselves have the right to request

organizations and individuals processing personal information to provide their personal information that such organizations and individuals have collected, archives[18].

In addition, Decree 13/2023/ND-CP on personal data protection has just been promulgated, which also has strict regulations on personal data protection. This Decree stipulates 08 basic principles on personal data protection, which are the basic principles for personal data protection[19]. Decree 13/2023/ND-CP also has separated regulations on personal data processing activities to protect the rights of data subjects. However, Decree 13/2023/ND-CP is an exception for the processing of personal data of data subjects, in which the processing of data by competent state agencies for crime prevention and combat and in case of violation of the law in accordance with the provisions of the Basic Law to process personal data without consent[20].

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[18] The Law on Cyber Information Security 2015, Art. 17 (2015).
[19] Decree 13/2023/ND-CP on Personal data protection, Art. 3 (2023).
[20] Decree 13/2023/ND-CP on Personal data protection, Art. 17 (2023).

It can be seen that by regulating the search of objects that are electronic devices in the Law on Handling of Administrative Violations, the state has limited the privacy of individuals in some specific cases where this measure is applied. The state's limitation of the right to privacy of individuals has a legal basis from Clause 2, Article 14 of the Vietnam's Constitution 2013, according to which *"human rights and civil rights can only be restricted in accordance with the provisions of the law in case of necessity for national defense reasons, national security, social order, safety, social ethics, and community health"*. The widely accepted view is that most human rights are relative rights and may be limited. There are only a few absolute rights, that is, they are not infringed under any circumstances[21]. The right to respect human dignity, which includes the right not to be enslaved, and the right not to be tortured and ill-treated, is recognized by the majority as absolute and cannot be

[21] Vo Hong Phuong & Vo Minh Ky, *Individual Privacy and Special Procedure Investigation Measures*, 05 JOURNAL OF PROCURATORIAL SCIENCE (2018).

restricted. Thus, the restriction of rights is a normal and common phenomenon in every country[22].

According to the 2012 Law on Handling of Administrative Violations, when dealing with administrative violations, the authorized entity has the right to collect and process personal data (in electronic form) from the violator's electronic device without the consent of the data subject. The Law on Handling of Administrative Violations 2012 does not limit the scope and content of data collected in electronic devices. Competent agencies can completely intervene and collect a lot of data unrelated to administrative violations of individuals, thus leading to the invasion of the privacy of the violator. When examining electronic devices, state agencies may access and process almost all the data of electronic device owners to identify administrative violations. However, this often leads to state agencies processing unnecessary and non-infringing data of electronic device owners, violating the right to personal privacy outlined in the

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[22] Bui Tien Dat, *Constitutionalization of the Principle of Limitation of Human Rights: Necessary but Not Enough*, 6 JOURNAL OF LEGISLATIVE STUDIES 3 (2015).

Constitution and other legal documents in Vietnam. In addition, there is no mechanism to monitor whether the person performing the data check controls the data of the individual who is being searched for electronic devices (e.g., through video recording or having witnesses). This leads to the risk of unauthorized backup and dissemination of electronic device owner data for various purposes, resulting in privacy violations and could directly or indirectly affect the agency, other relevant organizations, and individuals.

The collection of evidence from electronic devices such as phones and personal computers to ensure that it does not infringe on human rights, privacy, and personal secrets is a controversial issue, especially if the violator is forced to provide a password to obtain data. Because the electronic device stores information such as images, documents, personal data, and unrelated content, it may include intellectual property or business secrets. Collecting evidence with caution, respect for privacy, and without infringement is challenging as extracting information related to a violation may lead to the disclosure of other personal

information, such as images, documents, and diaries. Currently, there are no specific regulations to protect personal data (such as the requirement to be confidential; the request to be copied to protect the data from being lost or illegally exploited), because the right to confidentiality of letters, telephones, telegrams and other forms of private information exchange is stipulated in the Constitution[23]. The issue of collecting and processing evidence through personal electronic devices is sensitive because it can infringe on human personal and private rights. Notably, even in criminal proceedings, the application of measures "to different extents restricts a number of human rights, certain citizenship"[24]. In Vietnamese laws that address privacy, there is a tendency to prioritize the protection of public order over personal privacy.

In the Anglo-American legal system, privacy is rooted in the values of liberty, especially individual freedom against state power. Privacy protection

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[23] Vietnam's Constitution 2013, Art. 21 (2013).
[24] Tran Dinh Nha, "Special Procedure Investigation Measures", Nguyen Hoa Binh (Ed.), NEW CONTENTS IN THE CRIMINAL PROCEDURE CODE 2015 (2016), at 291.

institutions in U.S. law often emphasize the intrusion of state power into an individual's private space because of the fear that an authoritarian, authoritarian state power will stifle an individual's life[25]. Therefore, in most countries around the world, the right to privacy has two main functions: to resist state intrusion into private life. However, this leads to a conflict between protecting privacy and ensuring that law enforcement agencies can obtain information that is critical to protecting national security and public safety. The relationship between protecting privacy and providing information to law enforcement is an ongoing challenge, especially in the context of rapidly evolving technology. Good regulation and proper protection measures can help minimize the risk of infringing on people's rights.

Privacy protection is an important element of protecting individual freedoms although the concept of privacy is becoming increasingly difficult to delineate in the digital age because, in certain situations, privacy

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[25] James Q. Whitman, *The Two Western Cultures of Privacy: Dignity versus Liberty*, 113 YALE LAW JOURNAL 1161 (2004).

may conflict with the right to access information[26] between personal interests and the interests of the community.

Collecting personal information without due process and proper consent may violate individuals' rights. Failing to disclose this violation contributes to a lack of transparency, and demanding passwords can also breach this principle. Nevertheless, law enforcement agencies may need access to information in order to ensure national security and public order, especially in cases of illegal acts such as riots and terrorist acts. Accessing information on a phone can help uncover crucial details, aiding law enforcement in preventing threats and handling emergencies to safeguard public safety. Therefore, requesting a phone password can be a justified action.

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[26] Thai Thi Tuyet Dung, ACCESS TO INFORMATION AND PRIVACY IN VIETNAM AND A NATION (2012), at 185.

VI. PRACTICES ON THE APPLICATION OF THE MEASURE OF SEARCHING OBJECTS BEING PERSONAL ELECTRONIC DEVICES ACCORDING TO ADMINISTRATIVE PROCEDURES IN VIETNAM AND SOME COMMENTS

In Vietnam, there are typical practical situations regarding the issue of searching objects that are electronic devices according to administrative procedures and this can be considered an infringement of privacy.

Case 01:

The Ministry of Health issued Decision No. 2666/QD-BYT dated 29/05/2021. In the content of this decision, it is proposed to sanction administrative violations of people who have smartphones but do not install the Bluezone app and turn on Bluetooth[27]. This is considered a measure related to prevention and control[28]. Regarding this issue, when going out in any

[27] Minh Chung, *Phạt người có smartphone không cài Bluezone: Chưa ổn!*, available at https://plo.vn/share629313.html (last visited July 23, 2024).

[28] Ngo Nguyen Thao Vy, *From Crisis to Control: ...Data Protection Concerns in Singapore and Vietnam through the Lens of Techno-*

case, it can be understood that the competent authority can ask citizens to prove that they have installed the Bluezone application on their phones and have Bluetooth enabled. However, in this case, if citizens do not clearly provide their phones, they will be considered a violation of regulations on prevention and control. In this case, no one wants the competent authority to open or be forced to open their phone to check whether the phone is installed with Bluezone, especially in today's phones contain many other private information and the provision of the phone for such a check will lead to the infringement of other confidential information of the citizen who owns it whether or not it is on the phone is a matter directly related to privacy and the right to protect personal data.

Case 02:

A citizen in Hanoi was recorded for violations related to security and order, the press reported that this person confirmed that, when invited by the police to the ward, this group of people had their mobile phones

Solutionism and Efficient Violation of Privacy Rights, 2 LAW AND DEVELOPMENT REVIEW (2024).

confiscated and were required to provide passwords to search objects[29]. Then there was a situation of revealing a sensitive video stored in the phone of an individual in the group on the Internet and this video was not related to the security and order issue that the police were investigating.

In the above two situations, issues such as sanctioning authority, procedures for searching objects that are personal phones and the requirement to provide phone passwords to ensure the process of searching phones to have grounds for sanctioning, have been facing many obstacles, especially the non-cooperation on the part of the searched person, as well as concerns about personal data being leaked during this procedure. However, with the current law, the procedure for searching a phone is no different from other ordinary objects such as bags and luggage. The law also does not take into account other legal issues such as the infringement of data and information

[29] Danh Trong, *Công an điều tra, truy nguồn phát tán vụ nữ diễn viên bị lộ 'clip nóng'*, available at https://tuoitre.vn/cong-an-dieu-tra-truy-nguon-phat-tan-vu-nu-dien-vien-bi-lo-clip-nong-20210528191203966.htm (last visited July 23, 2024).

contained in the phone and in fact, in case No. 02 has led to the problem of infringement on the privacy of the person being searched as well as other relevant persons whose data in the phone is searched by administrative procedures.

The situation that the Ministry of Health requires sanctions for not installing software on smartphones, this will lead to competent people having to analyze the procedures for sanctioning this behavior to ensure that it is implemented correctly and appropriately. Because, according to the provisions of the Law on Handling of Administrative Violations 2012, to determine the violation, there must be evidence, so to know whether the software is installed, it is necessary to check the phone according to administrative procedures, in practice it is not easy to do because the majority of phone owners refuse to open their phones for fear of revealing personal information. Therefore, if the phone cannot be opened, there will be no basis for sanctioning, which leads to the provision of sanctioning the above act is not feasible.

For the competent authority to temporarily seize the phone and request the password to search the object. According to the law, the search of objects must have a record, the presence of the owner and a witness. As for whether to provide a password or not, this depends on the point of view of each individual whether to provide it or not, but in terms of law, no regulation requires phone owners to provide passwords when searching phones according to administrative procedures. In principle, the competent authority has the right to oblige citizens to provide passwords for electronic devices. This issue existed in the 4th and 5th Amendments of the U.S. Constitution whereby citizens have the right to resist coercion of self-incrimination, so citizens have the right to refuse to provide passwords. Accordingly, if the competent authority wants to perform a search of mobile devices, they need to have a phone search warrant and they must extract it by themselves with their expertise and expertise.

Currently, there is no difference in the search of mobile phones compared to other normal objects such as bags, documents, etc. The same search procedure

has been facing obstacles in the current context, especially the function of the phone is not only a means of communication but also a secret of the private life and private life of each individual.

Meanwhile, on the same issue related to the search of places where material evidences are hidden, the law stipulates a very different difference between the search of places where material evidences are hidden and houses are also houses, and the search of places where material evidences are hidden are shops and warehouses. If it is a house, the house search must be carefully considered by the Chairman of the district-level People's Committee before deciding to search, due to the important nature of the house, it is the private space of all family members, which needs to be respected and protected, which is considered one of the basic rights, the inviolability of the individual, the search must follow very strict procedures to minimize the infringement of human rights to residence and private life. If it is a warehouse or shop, the authority to decide is made by many subjects, possibly the Head of the ward police, the Chairman of the commune-level

People's Committee, etc. Thus, it is necessary to search phones only in criminal cases, while administrative violations should only be searched in special cases to protect privacy and avoid wasting more social resources when settling disputes related to the protection of this right.

VII. SOME PROPOSALS FOR IMPROVING VIETNAMESE LAW ON THE SEARCH OF OBJECTS BEING ELECTRONIC DEVICES ACCORDING TO ADMINISTRATIVE PROCEDURES

Firstly, the measure of searching objects according to administrative procedures according to the provisions of Article 128 of the Law on Handling of Administrative Violations 2012 is time to add a separate legal framework for the search of personal phones, should not share the same authority and procedures as other ordinary objects to protect privacy. Specifically, Clause 6 is added to Article 128 in the case of searching objects being electrical or personal mobile devices, the district-level People's Committee presidents shall be the competent persons to consider

and decide. The owner of the personal mobile device has the right to provide or refuse to provide the password of the mobile device.

Secondly, it is necessary to supplement regulations on the search of letters, telegrams, parcels, and postal items to detect acts of administrative violations:

> When there are grounds to judge that there are tools and means of administrative violations in letters, telegrams, parcels, postal items, electronic data, objects, and assets related to acts of administrative violation may be searched for letters, telegrams, parcels, postal items, and electronic data.

Thirdly, it is necessary to supplement regulations on the right of electronic data owners to be requested to protect personal electronic data unrelated to administrative violations stored in confiscated electronic means; the right to copy personal data that is not related to the violation.

Fourth, it is necessary to take measures to cooperate with online service providers, especially for service providers with servers abroad. In addition to community standards, online service providers also

have provisions for cooperation with the judiciary of other countries with certain conditions.

Fifth, Vietnam needs to develop and promulgate a specific and detailed legal framework for the search of electronic devices according to administrative procedures to ensure the privacy and protection of citizens' personal data. This comprehensive legal framework will help protect privacy and personal data because electronic devices store a lot of important personal information such as emails, messages, photos, videos, and other private documents. Conducting searches without specific regulations can lead to abuse of power and infringement of personal privacy. Furthermore, this is in line with technological advancements, the rapid development of technology requiring the law to keep up with the protection of individual rights. The current legal framework is insufficient to address complex issues related to technology and digital information. A comprehensive legal framework will ensure transparency and accountability of parties involved in electronic device examinations by clearly outlining the responsibilities

of law enforcement agencies and the interests of the people. Thereby, the detailed legal framework could help prevent abuses of power by the authorities, and at the same time protect the legitimate rights and interests of the people during law enforcement processes.

VIII. CONCLUSION

This Article examines the current legal regulations in Vietnam regarding the search of electronic devices according to administrative procedures and evaluates the effectiveness of these regulations in protecting privacy and personal data. The Article highlights challenges and shortcomings in the current legal framework, especially the lack of specific regulations on the search of electronic devices, which poses a risk of violating personal privacy. This not only causes privacy issues but also creates difficulties in enforcing the law in a transparent and accountable manner. The rapid development of information technology and the widespread use of electronic devices have placed an urgent requirement on a comprehensive and clear legal framework for the protection of personal information.

From there, this Article proposes that Vietnam needs to make adjustments in legal policies concerning the examination of electronic device according to administrative procedures as well as develops a common legal framework for this purpose.

LEGAL MECHANISMS GUARANTEEING CONSUMER WITHDRAWAL RIGHTS IN E-COMMERCE CONTRACTS: A COMPARATIVE ANALYSIS OF VIETNAM AND SELECTED JURISDICTIONS

Vu Cao Ngoc Linh[1] and Le Lan Anh[2]*

I. INTRODUCTION

Amid digital transformation, e-commerce transactions are increasingly replacing traditional face-to-face commercial exchanges. While this shift offers significant convenience, it also introduces notable legal risks for consumers[3]. E-commerce often creates information asymmetry, as consumers lack detailed product or service information and cannot physically

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[3] Muhammad Nuruddeen and Yuhanif Yusof, *A Comparative Analysis of The Legal Norms For E-Commerce and Consumer Protection*, 26 (2021).

inspect goods before purchase. To address the imbalance between merchants and consumers, legal systems have recognized the right to withdraw, also referred to as a "cooling-off" period or the "right of regret"[4]. This right enables consumers to unilaterally terminate a binding contract within a short period after its formation, typically without providing a reason or incurring penalties. Such mechanisms are intended to mitigate psychological pressure and informational disadvantages inherent in online or distance transactions[5]. Internationally, the European Union (EU) has established a harmonized standard granting consumers a 14-day withdrawal period for distance and off-premises contracts[6].

By contrast, jurisdictions such as the United States adopt a more limited approach, with "cooling-off" regulations typically confined to specific high-pressure

[4] Ahmad Mahmoud Al Masadeh, Ahmed M. Khawaldeh, and Mohammad Assaf Al-salamat, *The Electronic Contract in Civil and Commercial Codes*, published online 17 May 2021, doi:10.5281/zenodo.4766801.
[5] Christian Twigg-Flesner (Ed.), RESEARCH HANDBOOK ON EU CONSUMER AND CONTRACT LAW (2016).
[6] Wolfgang Kilian, EU DIGITAL MARKETS LAW: A CONCISE GUIDE TO THE REGULATIONS AND DIRECTIVES ON IT AND MEDIA LAW (2025).

sales contexts and often permitting merchants to opt out by clearly posting return policies[7]. Vietnam is actively participating in this global trend, ranking highly in online shopping engagement within Southeast Asia and internationally[8]. In response, Vietnam has recently enacted the Law on Protection of Consumer Rights 2023 and the Law on E-Transactions 2023. Although the 2023 Law on Consumer Protection allows consumers to unilaterally terminate a contract within 30 days if a business fails to provide required pre-contractual information, it does not establish a comprehensive, unconditional withdrawal right comparable to the harmonized standard in the EU[9]. The absence of general "cooling-off" provisions in all e-commerce contracts may lead to disputes and impede the sustainable growth of the digital economy. Consequently, a comparative legal analysis between

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[7] Omri Ben-Shahar & Eric A. Posner, *The Right to Withdraw in Contract Law*, 40 THE JOURNAL OF LEGAL STUDIES 115 (2011).
[8] Thi Dung Nguyen, Thi Phuong Pham, & Huyen Mai Thi, *Research on Vietnam's E-Commerce in the Process of International Economic Integration*, 5 EUROPEAN JOURNAL OF DEVELOPMENT STUDIES 28 (2025).
[9] Lê Thị Vân Anh & Hoàng Văn Nhất, *Pháp luật về hợp đồng thương mại điện tử - Một số bất cập và kiến nghị hoàn thiện,* 422 TẠP CHÍ DÂN CHỦ VÀ PHÁP LUẬT (2025).

Vietnam and other jurisdictions is necessary to identify optimal legal frameworks for electronic contracts. By studying established legal mechanisms, Vietnam can refine its regulatory system, strengthen consumer confidence, and ensure its laws remain effective amid rapid technological advancement and international economic integration[10].

II. LITERATURE REVIEW

Scholarship on consumer withdrawal rights has shifted from an initial focus on doorstep selling to a primary emphasis on the digital transformation of the marketplace, where transactions are instantaneous and borderless. Researchers have examined this topic because traditional sales rules are increasingly obsolete and inadequate for addressing the complexities of e-commerce. The current landscape is characterized by a system in which only sophisticated consumers can obtain remedies, leaving the majority vulnerable to

[10] Zulfikar Satriatama & Budi Santoso, *Comparison of Legal Regulations on E- Commerce in Southeast Asia (Indonesia – Singapore)*, 6 INTERNATIONAL JOURNAL FOR MULTIDISCIPLINARY RESEARCH (IJFMR) (2024).

one-sided standard-form contracts[11]. Recent studies highlight information asymmetry and psychological pressures in online environments, including dark patterns and impulsive one-click purchasing.

The dominant research methodologies are doctrinal and comparative, analyzing legal texts across jurisdictions such as the European Union (EU) and the United States (US) to identify solutions for future development. Recent studies have also employed data-driven text mining to map e-commerce provisions in Regional Trade Agreements (RTAs)[12]. Theoretical frameworks include Legal System Theory, with frequent reference to Lawrence M. Friedman's model, which divides legal systems into structure, substance, and culture, to evaluate the effectiveness of e-commerce law enforcement. Behavioral Economics challenges the rational choice model by introducing bounded rationality and information overload, arguing that consumers are often conditioned to accept terms

[11] John A. Rothchild, RESEARCH HANDBOOK ON ELECTRONIC COMMERCE LAW (2016).
[12] Ines Willemyns, DIGITAL SERVICES IN INTERNATIONAL TRADE LAW (1st ed.) (2021).

without reading them. Law and Economics applies a breach-and-damage model to analyze withdrawal rights as a trade-off between allowing consumers to learn about a product and protecting sellers from depreciation.

Previous research has established that the EU model, particularly the Consumer Rights Directive (2011/83/EU), serves as the global benchmark for full harmonization, mandating a 14-day withdrawal period for distance contracts[13]. In contrast, studies on the US highlight a reliance on voluntary merchant policies and narrow cooling-off periods for high-pressure sales, rather than a general statutory right. Research also confirms that withdrawal rights function as a forcing rule, incentivizing merchants to offer more favorable contract terms to remain competitive.

A major contradiction in the literature concerns the mandatory nature of withdrawal rights. One school of thought contends that withdrawal must be mandatory to protect the weaker party, while economists such as

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[13] Lorenzo Sasso, *Certain Comparative Noteson Electronic Contract Formation*, 1 LAW JOURNAL OF THE HIGHER SCHOOL OF ECONOMICS 204 (February, 2016).

Ben-Shahar and Posner argue for a default (opt-out) rule, suggesting that mandatory rules may shrink the market by requiring all consumers to pay for insurance they may not desire. The information paradigm is also contested: although EU law relies on mandated disclosures to empower consumers, empirical behavioral studies (e.g., Bakos et al.) provide strong evidence that these disclosures are rarely read or used, challenging the foundation of current regulatory techniques.

Several research gaps remain. There is significant ambiguity in distinguishing between goods, services, and digital content (such as streaming versus downloads), which creates uncertainty regarding when a consumer unseals a product and loses the withdrawal right. While the EU is well-studied, there is a lack of comprehensive research on harmonized frameworks within ASEAN, where complicated return processes and inadequate delivery services remain significant barriers[14]. Additionally, there is an urgent need to

[14] Andrew Betlehn, *Harmonization of Laws on Electronic Contracts Based on International Instruments for the ASEAN Economic Community*, 1 GLOBAL LEGAL REVIEW 1 (2021).

analyze the practical implementation of Vietnam's Law on Protection of Consumer Rights 2023, particularly regarding whether it provides an unconditional right of regret comparable to international models such as those in Brazil or the EU.

This topic is critical because consumer trust is a primary driver for a sustainable digital economy[15]. Without robust withdrawal mechanisms, online fraud and information crime could impede international economic integration. Further research is necessary to adapt legal frameworks to emerging technologies, including AI-driven smart assistants and mobile applications, where the traditional click-to-agree paradigm is increasingly insufficient. The current research supplements previous studies by applying established theories of information asymmetry and behavioral bias to Vietnam's recently reformed legal landscape (2023 laws)[16]. It contributes to the global

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[15] Biswajit Tripathy & Jibitesh Mishra, *A Generalized Framework for E-Contract*, 8 INTERNATIONAL JOURNAL OF SERVICE SCIENCE, MANAGEMENT, ENGINEERING, AND TECHNOLOGY 1 (2017).
[16] Stijn Michielsen, Roel Gevaers, & Wouter Dewulf, *A Historical Overview and Analysis of E-Commerce's Milestones and Its Growing Connection with Air Transport*, 10 JOURNAL OF SHIPPING AND TRADE, 14 (2025).

comparative discourse by bridging the gap between the EU's rigid maximum harmonization and the US's self-regulation approach, using Vietnam as a case study of an emerging economy balancing consumer protection with digital growth.

III. METHODOLOGY

This study employs a qualitative research design, specifically utilizing a normative juridical approach to examine legal phenomena. This method is appropriate because legal studies achieve scientific rigor when they move beyond the interpretation of positive rules to investigate the underlying principles and social preconditions of those rules. The research integrates comparative law analysis, systematically juxtaposing different legal systems to identify more effective solutions to specific legal problems[17]. This qualitative approach facilitates a comprehensive understanding of the dynamics of contractual relationships and the situational imbalance characteristic of digital business

[17] Konrad Zweigert & Hein Kotz, AN INTRODUCTION TO COMPARATIVE LAW (Third, 1998).

transactions. The research relies on secondary data obtained through library-based research. Data collection tools include searches of academic databases, government portals, and legal repositories to retrieve two categories of materials. Primary legal materials include authoritative texts such as national statutes (e.g., Vietnam's Law on Protection of Consumer Rights 2023), international treaties, and official court decisions. Secondary legal materials consist of scholarly opinions, law books, journal articles, and Ph.D. dissertations that provide theoretical foundations and critiques of existing norms. Moreover, the research examines legislative frameworks and legal norms governing e-commerce in Vietnam and selected jurisdictions. Purposive taxonomic sampling is employed, with Vietnam serving as the primary case study representing an emerging economy undergoing international economic integration. The European Union and the United States are selected as benchmark jurisdictions. The European Union is included for its maximum harmonization model, exemplified by the Consumer Rights Directive,

while the United States provides a contrasting approach through its emphasis on self-regulation and specific cooling-off rules. The collected data is processed using content analysis and functional comparison. Analysis is conducted at two levels. Macrocomparison evaluates the general style, procedures, and methods of thought within the legal systems under review. Microcomparison focuses on the specific legal mechanisms and rules governing the resolution of conflicts of interest when a consumer seeks to withdraw from a contract. The principle of functionality is applied to ensure that only rules serving the same function, namely protecting the weaker party in a distance contract, are compared, regardless of their conceptual labels.

IV. RESULTS AND DISCUSSION

A. The Nature of the Right of Withdrawal

1. Definitions and origins

The right originated in national systems but was first codified at the EU level in the 1985 Doorstep

Selling Directive to protect consumers from aggressive marketing. It has since evolved into a horizontal standard under the Consumer Rights Directive (2011/83/EU), which provides a mandatory 14-day period for distance and off-premises contracts. The EU right of withdrawal is not a product of ancient contract law. Still, it is deeply linked to several pre-existing traditional EU principles and specific legislative developments that emerged during the integration of the internal market. While it is considered revolutionary because it restricts the traditional principle of pacta sunt servanda (contracts must be respected), it is grounded in the following EU rights and frameworks.

The right of withdrawal is fundamentally linked to the Free Movement of Goods and Services (Articles 34–35 and 56 TFEU)[18]. Initially, EU consumer protection was not an end in itself but an "annex" to market integration. The right to withdraw was created as an instrumental tool to foster the confident

[18] Vanessa Mak, *Redefining Equality in European Contract Law: Protecting Consumer Interests in a Post-Consumer Society*, 3 EUROPEAN LAW OPEN 561 (2024).

consumer who would be willing to engage in cross-border shopping within the Single Market without fear of being trapped in unfavorable contracts. Moreover, the right serves the principle of legal certainty by replacing fragmented national rules with a uniform standard (now 14 days under the CRD), removing barriers for businesses operating across borders[19].

The Principle of Freedom of Contract (Private Autonomy). Scholars argue that while withdrawal rights seem to limit contract stability, they are actually an extension of private autonomy in a modern context. In EU law, autonomy is framed—it is both guaranteed and limited to ensure it can be exercised effectively. The right to withdraw provides a cooling-off period that ensures the consumer's consent is free and rational, particularly when psychological pressure (doorstep selling) or information asymmetry (e-commerce) is present. It protects freedom of contract in a material

[19] María Campo Comba, THE LAW APPLICABLE TO CROSS-BORDER CONTRACTS INVOLVING WEAKER PARTIES IN EU PRIVATE INTERNATIONAL LAW (2021).

sense by allowing the weaker party to reconsider a commitment made under situational imbalances[20].

The right to withdraw is a specific manifestation of Article 38 of the Charter of Fundamental Rights of the European Union (CFREU), which mandates that Union policies ensure a high level of consumer protection[21]. Within the EU's constitutional framework, the right of withdrawal is often balanced against Article 16 CFREU (the freedom to conduct a business). It is also connected to the right to respect for private and family life (Article 7 CFREU / Article 8 ECHR), particularly in directives regulating doorstep selling where the element of surprise intrudes upon the home.

US law generally uses the term "cancellation" rather than withdrawal. Its origins are narrower, primarily in Federal Trade Commission (FTC) rules established to counter high-pressure sales,

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[20] HANDBOOK OF RESEARCH ON INTERNATIONAL CONSUMER LAW (Geraint G. Howells, Ed.), RESEARCH HANDBOOKS IN INTERNATIONAL LAW, 1 (2011).
[21] RESEARCH HANDBOOK ON THE PHILOSOPHY OF CONTRACT LAW (Mindy Chen-Wishart & Prince Saprai, Eds.) (2025).

which provide a 3-day cooling-off period for doorstep or home-solicited sales. The EU uses the term “withdrawal” to describe a “revolutionary” power that allows consumers to unilaterally terminate a binding contract without providing a legal reason or proving a breach and chose “withdrawal” as a neutral term to facilitate its goal of full harmonization across diverse national legal systems. The drafters of the Draft Common Frame of Reference (DCFR) intentionally avoided terms with specific national baggage such as “rescission” or “annulment”, opting instead for “unilateral withdrawal” as a term that could be easily translated and applied uniformly across Member States. In EU law, withdrawal is distinguished from traditional remedies because it does not require a breach or non-conformity. It is conceived as a power tool to protect the consumer's rational self-determination in situations of information asymmetry, effectively allowing them to go back on a decision within a cooling-off period. Under

the Consumer Rights Directive (2011/83/EU), withdrawal is an autonomous legal institution that allows a consumer to release themselves from a contract simply because they change their mind, a concept referred to in some jurisdictions as the right of regret. In the United States, the term “cancellation” is the predominant terminology used in federal and state regulations governing similar consumer rights. The term is most commonly associated with specific regulatory exceptions to the finality of a contract, such as the Federal Trade Commission (FTC) “cooling-off rule”. This rule allows for the cancellation of contracts in limited high-pressure sales environments, such as door-to-door or telemarketing sales, rather than serving as a generic horizontal right. In US law and the Uniform Commercial Code (UCC), “cancellation” is often defined as the termination of a contract by an aggrieved party specifically upon a material breach by the other party. While it is also used in

the context of cooling-off periods, the general common law of contract does not recognize a generic "right to withdraw" from a contract for conforming goods once it is executed. The US approach is market-oriented and sectoral[22]. Rights to cancel are often narrow and based on specific consumer vulnerabilities, such as the infancy doctrine, which allows minors to cancel or disaffirm contracts—or are offered voluntarily by merchants as return policies rather than mandated as a generic withdrawal right.

In Vietnam, the concept is relatively new and is identified in scholarly discourse as the "right of regret". Although traditionally absent from general contract law, this right has been incorporated into the Law on Protection of Consumer Rights 2023. Under this legislation, consumers may unilaterally terminate a contract within 30 days if the business fails to provide the required pre-contractual information. However,

[22] Caterina Gardiner, UNFAIR CONTRACT TERMS IN THE DIGITAL AGE: THE CHALLENGE OF PROTECTING EUROPEAN CONSUMERS IN THE ONLINE MARKETPLACE (2022).

consumers remain responsible for payment for goods and products used, and the seller is only obligated to return the amount for unused goods and products, along with late payment interest[23]. Within the context of e-commerce law in Vietnam, consumer rights remain limited, as consumers are not yet able to fully utilize the functions of e-commerce platforms. These functions constitute legally binding contracts, yet consumers often accept them without fully understanding their obligations, largely due to the rapid pace of digital transformation[24]. Many consumers assume they can withdraw from contracts at any time, even after receiving goods or losing interest in the product, which undermines the effectiveness of contractual agreements on e-commerce platforms. Consequently, Vietnam has implemented a stricter approach to the right of withdrawal, significantly restricting the right of regret. While this approach continues to provide consumers

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[23] Article 38, Clause 3 and 4, Law on Protection of Consumer Rights (2023).
[24] Nguyen Ngoc Minh. *Solutions for Protecting Consumer Rights on E-commerce Platforms under Vietnamese Law*, 12 INTERNATIONAL JOURNAL OF SCIENTIFIC RESEARCH AND MANAGEMENT 8113 (2024).

with certain protections, it also enables individuals and legal entities conducting business on e-commerce platforms to operate with greater confidence that their contractual rights are protected[25].

2. Constituent Factors and Legal Characteristics.

In the EU, the right is absolute and mandatory; traders cannot opt out, and it does not presuppose any mistake or misrepresentation by the seller. This mechanism is notable because it does not depend on consumer error, seller misrepresentation, or product nonconformity; rather, the contract's continuation depends exclusively on the consumer's decision[26]. The right of withdrawal operates through a defined

[25] L. T. Giang, *Electronic Contracts And Consumer Protection In Vietnam's E-Commerce: Legal Framework, Challenges, And Reform Directions*, 23 VEREDAS DO DIREITO DIREITO AMBIENTAL E DESENVOLVIMENTO SUSTENTÁVEL (2026).
[26] Steennot, Reinhard, *The Right Of Withdrawal Under The Consumer Rights Directive As A Tool To Protect Consumers Concluding A Distance Contract*, 29 COMPUTER LAW &; SECURITY REVIEW 105 (2013).

procedural framework, not as an automatic process[27]. It consists of three essential stages[28]:

- Legislative Requirements: The law presumes a situational imbalance in specific contexts, particularly in distance and off-premises contracts[29]
- Exercise of the Right: The consumer must actively communicate their intention to withdraw within a defined period.
- Occurrence of Effects: The legal extinction of the contractual relationship upon successful exercise.

In the US, the right is often a default rule or a matter of voluntary merchant policy rather than a

[27] Patricia S. Abril, Francisco O. Blázquez, & Joan M. Evora, *The Right of Withdrawal in Consumer Contracts: A Comparative Analysis Of American And European Law*, REVISTA PARA EL ANÁLISIS DEL DERECHO Nº1 - 2026 (2026), https://indret.com/the-right-of-withdrawal-in-consumer-contracts-a-comparative-analysis-of-american-and-european-law/.
[28] Nathalie Dreyfus, "Consumer Law: What Are The Rules Governing The “Three-Click” Right Of Withdrawal In The European Union?" Dreyfus Law Firm (2026), https://www.dreyfus.fr/en/2026/03/06/consumer-law-what-are-the-rules-governing-the-three-click-right-of-withdrawal-in-the-european-union/ .
[29] Elena Kantorowicz-Reznichenko, Adrianus v. Heusden, & Jaroslaw Kantorowicz, *Consumers' Rights in the Shadow of the Brand: A Conjoint Experiment on the Valuation and Trade-Offs of Contractual Rights*, JOURNAL OF CONSUMER POLICY (2026).

generic statutory right. This mechanism is known as cancellation or a cooling-off period. Instead of a universal statutory right for all e-commerce, it consists of specific federal mandates, default state rules, and judicial doctrines. The US right of cancellation is established through several distinct legal mechanisms, including statutory triggers such as sectoral mandates. At the federal level, the Federal Trade Commission (FTC) has introduced the "click-to-cancel" rule, which requires businesses to enable consumers to easily cancel unwanted subscriptions and memberships by ensuring transparent terms, obtaining consent prior to charges, and providing clear disclosures about the status of free trials or promotions .This right applies only in specific high-pressure situations, such as door-to-door sales or transactions away from a seller's permanent business location.

- Threshold Requirements: Federal protections generally apply only to contracts above a certain value, typically $25 for doorstep sales.

- Default Return Rights: Some states, including New York and California, have statutory default rules.

In New York, for example, consumers may return unused, undamaged goods within 30 days.

- State-Specific Sectoral Windows: Some states require longer cancellation periods for certain industries. For example, Alabama law grants buyers the right to cancel a home solicitation sale until midnight of the third business day after signing the purchase agreement, with cancellation becoming effective upon delivery or when mailed to the seller with proper address and postage.

- Procedural Formalities: Exercising this right requires submitting a formal notice of cancellation, which may be delivered directly or sent by mail. Consumer protection laws are designed to protect purchasers from deceptive, unfair, or fraudulent practices, and in many jurisdictions, the return of goods is recognized as an implicit withdrawal.

In Vietnam, under the Law on Protection of Consumer Rights 2023, the right is primarily triggered by a failure to fulfill the information duty. Unlike the EU's unconditional right, Vietnam's mechanism serves as a remedy for information asymmetry rather

than a general right to change one's mind for all e-commerce transactions. The operation of this right in Vietnam is governed by specific triggers, timeframes, and procedural requirements.

- Information-Triggered Mechanism: Unlike the unconditional right in the European Union, the primary trigger for the right of withdrawal in Vietnam is failure to fulfill pre-contractual information obligations. According to Article 38(3)(b) of the Law on Protection of Consumer Rights 2023, if a business does not accurately and fully provide required information, such as product utility, price, or contact details, the consumer acquires the right to terminate the contract[30].

- 30-Day Window for Remote Transactions: For online or electronic transactions where consumers cannot physically inspect goods, the law grants a 30-day period after contract conclusion during which unilateral termination is permitted[31].

[30] Article 38, Clause 3(a), Law on Protection of Consumer Rights (2023).
[31] Article 37, Clause 3(b), Law on Protection of Consumer Rights (2023).

- Reconsideration Periods for Direct Selling: In certain high-pressure sales environments, the law mandates shorter cooling-off periods. In door-to-door sales, Consumers are entitled to a minimum of 3 working days to reconsider and terminate the contract without incurring penalties[32]. Sales outside fixed locations, for transactions exceeding VND 10 million conducted outside the permanent business premises, consumers are provided with a three-working-day period to terminate the contract upon receipt[33].

- Restitution Obligations: Upon termination, the business must refund the consumer for the unused portion of the product or service within 30 days. The consumer remains liable only for the portion actually utilized[34].

3. The nature of the withdrawal right

The right to withdraw is not recognized as a property right (right in rem); rather, it is classified as a

[32] Article 44, Clause 2, Law on Protection of Consumer Rights (2023).
[33] Article 47, Clause 1, Law on Protection of Consumer Rights (2023).
[34] Article 37, Clause 4, Law on Protection of Consumer Rights (2023).

personal right or a legal faculty within the law of obligations. Property rights are considered real rights that an individual holds in relation to a specific object and can assert against all others. By contrast, the right to withdraw constitutes a personal power enabling a consumer to require a specific counterparty (the seller) to terminate a contract and return payments. The right of withdrawal as a "power tool" or "faculty" that permits one party to unilaterally extinguish contractual rights and obligations. This right serves as a procedural solution to eliminate commitments made under conditions of imbalance, rather than as a mechanism to establish a direct, absolute legal bond with a tangible object. Furthermore, during the cooling-off period, the consumer's status as a full owner is considered suspended or unstable[35]. Although the consumer may possess the item physically, genuine "ownership" or "mastery" is typically established only after the period expires or the right to withdraw is relinquished. In some interpretations, the purchase price paid is

[35] Hein Kötz, *Rights of Withdrawal*, EUROPEAN CONTRACT LAW (2017).

regarded merely as a deposit for the duration of the withdrawal window. Additionally, even legal theories that describe contract formation as a form of "transactional acquisition" limit this acquisition strictly to the relationship between the parties. Unlike the unilateral acquisition of property (such as first possession), contractual rights are representational and do not create the same type of real property interest as found in property law[36]. The right to withdraw also constitutes an exception to the principle of pacta sunt servanda (contracts must be respected), which is fundamental to contract law rather than property law[37]. This addresses psychological pressure or information asymmetry present in transactions, rather than the long-term control of an asset[38]. In summary, the right to withdraw functions as a remedial mechanism designed to protect contractual freedom and the

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[36] Molina, Crescente, *The Conceptual Foundations of Contract Formation*, REINACH AND THE FOUNDATIONS OF PRIVATE LAW (Marietta Auer, et al., Ed.), 305 (2025).
[37] Wolff, Lutz-Christian, *The Relationship Between Contract Law and Property Law*, 10 *SAGE Open* 1 (2020).
[38] Normann Witzleb, *Pacta Sunt Servanda – A Maxim and Its Exceptions in Comparative Perspective*, CONTRACT LAW IN CHANGING TIMES: ASIAN PERSPECTIVES ON PACTA SUNT SERVANDA (2023).

integrity of consent, operating within the domain of personal obligations rather than as a right of ownership over property.

The subjects of the right of withdrawal include tangible movable items, digital content, and services. Tangible movable items refer to physical goods purchased online, such as clothing, electronics, or furniture. These are classified as goods because they are physical objects that can be moved at the time the contract is concluded. Digital content encompasses data supplied in digital form, including computer programs, mobile applications, music downloads, videos, and e-books. Digital content not provided on a tangible medium, such as a DVD, is governed by a sui generis legal regime that is distinct from both sales and service contracts. Services comprise various intangible performances, such as internet access, streaming, or professional consulting (for example, legal or psychological advice) delivered online[39].

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[39] "Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services," OFFICIAL JOURNAL OF THE EUROPEAN UNION (2019), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770.

Within the context of the right of withdrawal, digital products are classified as intangible property rather than immovable property, since immovable property is expressly excluded from consumer withdrawal rights. Contracts involving immovable property, such as real estate, land, or long-term tenancies, are generally excluded because these transactions are closely tied to the jurisdiction where the property is located and are subject to specific local laws and registration requirements. Furthermore, contract finality is enforced more strictly for immovable property, reflecting its substantial value and the need for legal certainty in land registries. In contrast, most assets associated with e-commerce, including software, data messages, and digital content, are considered intangible due to their lack of physical form. These assets are typically classified as general intangibles or intangible property, as they grant a set of legal rights, such as a license to use, rather than ownership of a tangible object. Despite their intangible nature, e-commerce assets are regarded as movable property because they can be transferred electronically

across borders or through digital networks[40]. This feature of movability is essential to the operation of the right of withdrawal, which aims to address the inherent imbalance in remote transactions by allowing the return of goods or the termination of access to digital content.

The consequences of exercising the right of withdrawal differ substantially depending on whether the asset is a physical good, digital content, or a performance-based service. For tangible movable property (goods), the consumer must return the goods by communicating their decision to withdraw. The seller is required to reimburse all payments, including standard delivery costs, within the same timeframe. Regarding liability for diminished value, the consumer is generally responsible only for any reduction in value resulting from handling the goods beyond what is necessary to determine their nature, characteristics, and functioning, which corresponds to the level of inspection permitted in a physical store. In terms of

[40] Yurii Riabchenko & Andrii Onyshchenko, *Digital Assets And Property Rights: Regulation And Legal Implications Within The EU And Globally*, 46 STATUTE LAW REVIEW (2025).

risk transfer, the risk of loss or damage typically remains with the seller until the consumer or their agent acquires physical possession of the goods. The right of withdrawal is often lost if the consumer unseals certain types of goods, such as hygiene products or DVDs, or if the goods are personalized or perishable. For digital content not supplied on a tangible medium, the right to withdraw is typically excluded once performance has begun, provided the consumer has given express consent to start and acknowledged the loss of the withdrawal right. If the trader fails to obtain this express consent or does not provide confirmation on a durable medium, the consumer bears no cost for the digital content supplied, even if it has already been used. For service contracts, the withdrawal period generally begins on the day the contract is concluded. If a consumer requests that a service begin during the withdrawal period and subsequently withdraws before completion, they are liable to pay the trader a proportionate amount for the services actually rendered. The right to withdraw is permanently lost once the service is fully performed, provided the

consumer consented to the early start and acknowledged the loss of the right to withdraw. If the trader fails to provide the required pre-contractual information on the right to withdraw, the consumer incurs no costs for services performed during the withdrawal period.

B. Evaluation of Practical Application: Advantages and Disadvantages

The European Union offers a high degree of legal certainty for consumers. The widely recognized 14-day withdrawal period facilitates online shopping by reducing psychological barriers. However, this standard imposes high costs on traders, particularly small businesses, who must absorb the risk of returned and depreciated goods. It can lead to "showrooming", where consumers inspect goods in-store but purchase online to retain the right of withdrawal. For example, in *VKI v. Amazon*, the CJEU held that choice-of-law clauses in standard terms are unfair if they mislead

consumers regarding their mandatory protection rights under the law of their place of residence[41].

The United States system is characterized by flexibility and efficiency. Because return rights are typically voluntary, merchants use them as a competitive tool, leading to innovative return policies such as Walmart's 90-day period, which often exceed statutory requirements. However, this approach creates a system in which only informed consumers or those shopping at major retailers benefit from robust protections. There is no consistent safety net for consumers engaging with smaller or less reputable online merchants. For instance, *ProCD v. Zeidenberg* and *Hill v. Gateway* established the "rolling contract" doctrine, whereby a consumer's failure to return a product within a specified period, such as 30 days, constitutes acceptance of the enclosed terms, thereby creating a contractual withdrawal window.[42]

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[41] Campo Comba, *The Law Applicable to Cross-Border Contracts Involving Weaker Parties in EU Private International Law*. Verein für Konsumenteninformation (VKI) v. Amazon EU Sàrl (Amazon), Court of Justice of the European Union (CJEU) (2016).
[42] ProCD v. Zeidenberg, 86 F.3d 1447 (1996); Hill v. Gateway, 105 f.3d 1147 (2000).

In Vietnam, recent legal reforms enhance consumer protection by introducing a clear 30-day period for contract withdrawal when required information is not provided. These reforms establish a modern legal framework for online transactions and intermediary platforms. However, the absence of an unconditional "right of regret" for all distance contracts represents a shortcoming relative to international standards. Additionally, effective implementation is challenged by inadequate delivery services and complex return procedures throughout the ASEAN region. Although specific landmark cases are not extensively documented in the available sources, the Law on Consumer Protection 2023 explicitly shifts the burden of proof to businesses in consumer disputes, providing a significant practical advantage for Vietnamese consumers[43].

The comparative analysis reveals that while the EU, US, and Vietnam all recognize the consumer as the "weaker party" in e-commerce, their approaches to

[43] *Handbook on ASEAN Consumer Protection Laws and Regulations*, (Competition Policy and Law in ASEAN (CPL II), 2018).

withdrawal rights are fundamentally distinct. The EU model is characterized by mandatory, generic, and unconditional protection aimed at market harmonization. The US model favors market-driven, contractual, and default rules that prioritize economic efficiency and merchant flexibility. Vietnam is currently in a transitional state, using a conditional, information-triggered withdrawal mechanism to bridge the gap between traditional contract stability and modern digital protection.

V. CONCLUSION AND RECOMMENDATIONS

Comparative analysis indicates that the right of withdrawal has developed from a sector-specific remedy for high-pressure sales into a foundational instrument in modern e-commerce law. The European Union employs an absolute, mandatory 14-day withdrawal period to promote market harmonization and enhance consumer confidence. In contrast, the United States adopts a relative approach, providing narrow statutory cancellation rights for specific risks while voluntary merchant policies and market

competition govern broader return rights. Vietnam's Law on Protection of Consumer Rights 2023 marks significant progress but retains a remedial, information-triggered model. The 30-day termination right primarily serves as a sanction for businesses that fail to provide pre-contractual information, rather than establishing a general, unconditional right of regret as seen in international standards. In all three jurisdictions, the right of withdrawal is classified under the law of obligations as a legal faculty rather than a property right. Its application is limited to movable assets, including tangible goods, digital content, and services, while immovable property is excluded to maintain territorial legal certainty.

Drawing on identified legal gaps and the strengths of the EU and US models, several measures are recommended. First, to establish a valid unconditional right, Vietnam should move beyond the information-triggered mechanism and codify a clear, unconditional "right of regret" (recommended duration: 7 to 14 days) in the Law on Electronic Transactions or related decrees. This reform would align Vietnam with

international standards, such as Brazil's 7-day rule, and enhance trust in the digital economy. Second, to prevent consumer abuse and protect small traders, future regulations should clearly define consumers' liability for diminished goods value. Regulations should specify that consumers may inspect goods only as permitted in a physical store, without incurring depreciation costs. Third, consistent with the EU's horizontal approach, Vietnam should standardize intermediary platform responsibilities for managing returns and refunds, ensuring that platform terms and conditions do not circumvent mandatory consumer protections. Finally, within the context of ASEAN cooperation, Vietnam should actively lead or participate in developing a harmonized ASEAN framework for cross-border e-commerce to address the logistical and legal complexities of returns in international transactions.

This research provides a unique contribution by focusing on the 2023 legislative reforms. Unlike previous studies that examined Vietnam's 2010 Law, this analysis offers an up-to-date assessment of the

2023 Law on Protection of Consumer Rights and the 2023 Law on Electronic Transactions. The functional taxonomy introduced here compares the EU's "Market Integration" model with the US's "Efficiency/Learning" model, offering Vietnam a clear legislative direction.

With a methodological focus on doctrinal and comparative study, this research examines the "law in books". It may not fully capture the "law in action," particularly as Vietnamese courts interpret the 2023 Law amid increasing litigation. Due to limited data and the novelty of Vietnam's 2023 legal framework, there is a lack of domestic judicial precedents and empirical data on the practical impact of the 30-day termination right. Regarding Jurisdictional Scope, the analysis is confined to the EU, the US, and Vietnam. Other emerging digital markets with distinct right-of-regret models, such as Russia and Japan, were not examined in detail.

MODERN HEALTH CARE REFORM IN UKRAINE: LEGAL AND SOCIAL RESULTS

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I. PROBLEM STATEMENT

The comprehensive reform of the healthcare sector currently underway in Ukraine has fundamentally changed the organisational and economic principles of governance. "Reform in the field of healthcare is aimed, first of all, at modernising the processes of its public administration and improving the legal support of its state-administrative relations".[1] The main objective

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of the reform is to ensure equal access to high-quality medical services and to reformat the system with a patient-oriented focus, since "the safety and protection of human health is a prerequisite for sustainable development and economic growth".[2]

The Strategy for the Development of the Healthcare System up to 2030, approved in January

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[1] Yu. I. Senyuk & Z.O. Nadyuk, *Modern Public Policy In The Field Of Health Care: Analysis Of System Reform*, PRAVO TA DERZHAVNE UPRAVLINNYA (2020), available at http://pdu-journal.kpu.zp.ua/archive/2_2020/34.pdf [in Ukrainian].
[2] Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (2014), available at https://zakon.rada.gov.ua/laws/show/984_011#Text [in Ukrainian].

2025 and oriented toward leading international experience, defines that it is a constitutional obligation of the State to create proper conditions for effective and accessible medical services and care for citizens, while strengthening, protecting, and preserving health are key tasks and priorities.[3]

At the same time, the modern reform of the healthcare sector has become a "test" of resilience: in 2020, in 2022 – full-scale hostilities on the territory of Ukraine, which led to the destruction of civilian infrastructure and healthcare institutions, mass migration of medical personnel, revealed gaps, and created a number of new tasks for the healthcare system that are not limited to the fulfilment of existing functions and the need to respond to and minimise the consequences of armed aggression (increased workload on medical staff, rehabilitation care, development of forensic medical examination,

[3] Cabinet of Ministers of Ukraine, *Strategy For The Development Of The Healthcare System For The Period Until 2030*, Order No. 34-r of 17.01.2025 (2025), available at https://zakon.rada.gov.ua/laws/show/34-2025-p#Text [in Ukrainian].

reformatting of psychological and psychiatric care, etc.).

II. STATE OF RESEARCH ON THE ISSUE

Certain issues of healthcare reform have been studied by M. Zaiarskyi, K. Horbunova, V. Lekhan, V. Karlash, M. Kovalevskyi, L. Kriachkova, Z. Nadiuk, Yu. Seniuk, V. Stetsenko, S. Stetsenko, O. Ustinova, Ya. Shatkovskyi, R. Shevchuk, T. Yamnenko and others. At the same time, despite the significant contribution of scholars, a number of issues within the scope of the researched problem, as well as taking into account recent legislative changes, have remained insufficiently addressed.

III. OBJECTIVE

Analysis of the main achievements of healthcare reform from the end of 2016 to the present, outlining the problems and factors influencing the results of the transformation.

The completeness and comprehensiveness of the results were achieved through a combination of general scientific and special methods. The formal-legal method made it possible to analyse the main stages of healthcare reform, while the logical-semantic method was used to determine the main advantages and outline the problems of modern healthcare reform.

IV. MAIN BODY

The modern reform of the healthcare system can conditionally be divided into three stages. At the first stage (since 2016), the transformation affected primary care – the patient enrolment (attachment) campaign to physicians, the results of which revealed a number of problematic issues: imbalance between supply and demand, staffing issues (a significant number of physicians of retirement and pre-retirement age who are not ready to work with computers), problems with internet access and provision of computer equipment, organisational issues (home visits, servicing patients during

vacations, sick leave, maternity leave, medical examinations, certification of death, care for bedridden patients); transition to a new financing system and reorganisation of primary healthcare institutions from state to municipal ownership in order to obtain direct funding from the State Budget and the possibility of concluding contracts with the National Health Service of Ukraine (NHSU).

It should be noted that a significant advantage of healthcare reform is precisely the financing of healthcare institutions. The NHSU is the single purchasing entity in the healthcare sector. The financing procedure differs from the previous one in that currently funds are not allocated from the State Budget directly to healthcare institutions providing services free of charge; instead, a fundamentally new principle is applied – public procurement of the relevant services from healthcare institutions. Currently, competition for patients exists both among municipal non-profit enterprises and with individual entrepreneurs (self-employed physicians) and private institutions.

Changes at the first stage also affected certain legislative provisions regulating standards of medical care (uniform norms and protocols governing all stages of care) – a key mechanism for ensuring the provision of high-quality medical services. The system of standardisation of the Ministry of Health of Ukraine is regulated by the Laws of Ukraine "On State Social Standards and State Social Guarantees",[4] "Fundamentals of the Legislation of Ukraine on Healthcare",[5] as well as orders of the Ministry of Health. In the medical field, according to I. Ya. Seniuta, standards are regulatory legal acts that regulate the actions of providers of medical services, directly related to improving both physical and mental health in order to achieve a positive therapeutic result.[6] Three groups of

[4] Law of Ukraine, "On State Social Standards and State Social Guarantees" (2000, as amended). *Vidomosti Verkhovnoi Rady Ukrainy*, 2000, No. 48, Art. 409.
[5] Law of Ukraine, "Fundamentals of the Legislation of Ukraine on Healthcare" (1992, as amended), available at https://zakon.rada.gov.ua/laws/show/2801-12#n324 [in Ukrainian].
[6] I. Ya. Senyuta, *Healthcare Standards As A Source Of Legal Relations For The Provision Of Medical Care* (2022), available at https://medcom.unba.org.ua/publications/print/2975-standarti-u-sferi-ohoroni-zdorov-yayak-dzherelo-pravovidnosin [in Ukrainian].

standardisation objects are distinguished: resources (medical and pharmaceutical institutions, information institutions, personnel and their qualifications, material and technical equipment), processes (treatment, diagnostic, preventive, rehabilitation, organisational and medical technologies), and outcomes of medical interventions (treatment results, effectiveness of medicines).[7]

In 2016, by order of the Ministry of Health, the principles of "unified clinical protocols" were abolished, which allowed physicians, at their own discretion, to choose a clinical protocol from officially recognised electronic resources of various countries and apply it without adaptation as so-called new clinical protocols. This creates risks for the integration and continuity of healthcare delivery. As noted by K. Kosiachenko, Head of the Department of Standards in Healthcare of the State Expert Centre of the Ministry of Health of Ukraine, "in many

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[7] V.G. Ligvinskyi, V.O. Zhahovskyi, A.V. Shvets, & O.M. Ivanko, *Standardization In The Healthcare Sector Of Ukraine*, 3 UKRAINIAN JOURNAL OF MILITARY MEDICINE 5 (2022) [in Ukrainian].

developed countries standards are the foundation of the healthcare system, providing clear guidance for physicians and healthcare institutions. In Ukraine, however, standardisation has not yet reached an appropriate level due to a number of internal and external factors that hinder progress".[8]

The relevance of this issue is also determined by the fact that Ukraine is in a state of war, since the provision of medical care during hostilities differs significantly from its provision in peacetime conditions and is carried out with mandatory observance of the principles of timeliness, consistency, continuity, and staged provision. Accordingly, it is necessary to develop a system of standards for the defence healthcare sector that takes into account its specific functions (provision of medical care, medical evacuation and treatment procedures, sanitary-hygienic and anti-epidemic measures, medical supply, military-professional

[8] K. Kosyachenko, *Standardization Of Medical Care In Ukraine: Current Status, Problems And Development Prospects* (2021), available at www.umj.com.ua/uk/publikatsia-259695-standartizatsiya-medichnoyi-dopomogi-v-ukrayini-suchasnij-stan-problemi-ta-perspektivi-rozvitku [in Ukrainian].

training of medical personnel, etc.), which will contribute to its approximation to international medical standards in the field of defence.

In addition, according to legal scholars (M. Shkilnyak, K. Derpak, Yu. Derpak), a certain risk is also posed by the new Procedure for Accreditation of Healthcare Institutions, which at the legislative level (Article 16 of the Fundamentals of the Legislation of Ukraine on Healthcare) transformed accreditation from mandatory state to voluntary for healthcare institutions as of January 2018.[9]

The second stage (since 2020) extended the reform to secondary (specialised) care and other healthcare institutions: the Medical Guarantees Programme was introduced, electronic medical records, electronic sick leave certificates, and electronic prescriptions under the "Affordable Medicines" programme were implemented, and contractual relations between healthcare institutions

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[9] M. Shkilnyak, K. Derpak, & Yu Derpak, *Theoretical And Methodological Foundations Of State Policy Research On The Modernization Of The Primary Health Care System* (2023), available at https://family-medicine.com.ua/article/view/282490/277332 [in Ukrainian].

and the NHSU were realised. According to the report "Healthcare Financing Reform in Ukraine", prepared by the World Bank and the WHO Regional Office for Europe, by the end of 2020, 68% of total public healthcare expenditure had been consolidated within the framework of the Medical Guarantees Programme.[10]

In February 2023, the Cabinet of Ministers of Ukraine adopted the Resolution "Certain Issues Concerning the Organisation of a Capable Network of Healthcare Institutions"[11], which determined that each oblast shall constitute a separate hospital district, divided into relevant clusters. From this moment, the third — infrastructural — stage of the reform began. According to legislators, hospital planning will ensure accessibility, quality, and the

[10] World Bank & WHO Regional Office for Europe, *Healthcare Financing Reform In Ukraine: Progress And Future Directions* (2022), available at https://iris.who.int/bitstream/handle/10665/366374.pdf [in Ukrainian].
[11] Cabinet of Ministers of Ukraine, *Some Issues Of Organizing A Capable Network Of Healthcare Institutions* (Resolution No. 174 of 28.02.2023) (2023), available at https://zakon.rada.gov.ua/laws/show/174-2023-п#Text [in Ukrainian].

free-of-charge nature of medical care, and will also make it possible to define priorities for the restoration of the healthcare sector after the war.

At the same time, a certain negative impact on the implementation of healthcare reform was exerted by another reform — decentralisation of power, as a result of which amalgamated territorial communities were created. As a consequence, primarily in rural areas, certain healthcare institutions were optimised (liquidated), which caused difficulties in accessing medical services.[12] The liquidation of individual healthcare institutions contradicts Article 49 of the Constitution of Ukraine regarding the State's obligation to promote the development of healthcare institutions of all forms of ownership.[13]

In addition, the declarative nature of certain legislative provisions regulating activities in the healthcare sector remains problematic. In particular,

[12] O.A. Boiko & G.G. Kryvchyk, *Pros And Cons Of Medical Reform* (2023), available at https://archive.liga.science/index.php/conference-proceedings/article/view/308 [in Ukrainian].
[13] Constitution of Ukraine (1996), available at https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text [in Ukrainian].

the Law of Ukraine "On State Financial Guarantees of Medical Services for the Population"[14] has in practice implemented Article 49 of the Constitution of Ukraine with regard to effective, accessible, and free medical services ensured by state funding not only for state and municipal healthcare institutions but also through socio-economic, medical-sanitary, and preventive health programmes.

Moreover, owing to the above-mentioned law, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Legislation on the Activities of Healthcare Institutions" (on autonomisation)[15], the Order of the Cabinet of Ministers of Ukraine "On Approval of the Concept of Healthcare Financing Reform",[16] and

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[14] Law of Ukraine, "On State Financial Guarantees of Medical Care for the Population" (2017), available at https://zakon.rada.gov.ua/laws/show/2168-19 [in Ukrainian].

[15] Law of Ukraine, "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Legislation on the Activities of Healthcare Institutions" (2017), available at https://zakon.rada.gov.ua/laws/show/2002-19#Text [in Ukrainian].

[16] Cabinet of Ministers of Ukraine, *On Approval Of The Concept Of Reform Of The Healthcare Financing System* (Order No. 1013-r of 30.11.2016) (2016), available at https://zakon.rada.gov.ua/laws/show/1013-2016-p#Text [in Ukrainian].

other legal acts, the scope of the free-of-charge provision under Article 49 of the Constitution has in fact been expanded. It now applies not only to state and municipal healthcare institutions but also to private institutions that cooperate with the NHSU within the framework of the State Medical Guarantees Programme.[17] This is essentially a Beveridge-type model that integrates market mechanisms into the economic dimension of healthcare and allows private healthcare institutions to act as providers of medical services under the State Medical Guarantees Programme[18].

However, in practice these legislative innovations did not achieve significant success at first, as private healthcare institutions were unwilling to cooperate with the NHSU due to the low tariffs provided for medical services under the Programme.

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[17] M.A. Anishchenko, *Declarative Norms In The Legislation Of Ukraine On Health Care: Issues Of Implementation*, in AZOV LEGAL READINGS-2024: PROCEEDINGS, 12–14 (2024) [in Ukrainian].
[18] M.A. Anishchenko, *Legal And Organizational Issues Of Introducing Co-Payment Into The Program Of State Financial Guarantees For Medical Care For The Population* (2024), available at dspase.zsmu.edu.ua/bitstream/123456789/21259/1/c5-7.pdf [in Ukrainian].

In order to improve the situation in this area, in 2023 the Ministry of Health of Ukraine established and approved a working group to strengthen the role of private healthcare institutions in the restoration and development of the healthcare system.[19]

Strengthening public-private partnership in the healthcare sector will contribute to the revival of the somewhat forgotten concept of co-payment for medical services in contemporary administrative and legal practice. The provisions of the Concept of Healthcare Financing Reform stipulate that the cost of medical services may be covered fully or partially through an insurance system (i.e., official co-payment by the patient and the State for services and/or medicines).

Given that co-payment for medical services would contradict the requirements of Article 49 of the Constitution of Ukraine, its introduction in state

[19] Ministry of Health of Ukraine, On The Establishment And Approval Of The Composition Of The Working Group To Strengthen The Role Of Private Healthcare Institutions In The Restoration And Development Of The Healthcare System (Order No. 1245 of 10.07.2023) (2023), available at https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-10072023--1245 [in Ukrainian].

and municipal healthcare institutions is impossible, whereas this cannot be said of private institutions. For example, in a private medical facility the tariff for a particular medical service may be twice as high as under the Medical Guarantees Programme; accordingly, cooperation with the NHSU will be economically viable only if both the patient and the NHSU contribute to the payment. Thus, the introduction of co-payment is a rather promising development for the State, the healthcare business, and patients alike (the State will expand coverage of the Programme, the medical business will receive an additional source of financing, and the patient will obtain an additional option — to receive treatment free of charge in a state or municipal institution or at a significant discount in a private one), but its practical implementation requires corresponding amendments to national legislation.

Healthcare reform has also facilitated the effective implementation of the provisions regarding the choice of a physician and a healthcare institution, as provided for in Part 2 of Article 284 of the Civil

Code of Ukraine and Article 38 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Healthcare”. These provisions had long been declarative due to the absence of an effective implementation mechanism (citizens were generally treated according to their place of registration in outpatient and inpatient healthcare institutions). At the same time, this limited patients’ rights guaranteed by Article 49 of the Constitution of Ukraine.

The adoption of the Law of Ukraine “On State Financial Guarantees of Medical Services for the Population”, the Resolution of the Cabinet of Ministers of Ukraine “Certain Issues of the Electronic Healthcare System”, the Order of the Ministry of Health of Ukraine “On Approval of the Procedure for Choosing a Primary Care Physician and the Form of the Declaration for Choosing a Primary Care Physician”, and other regulatory legal acts regulating this area have improved the effectiveness of the mechanism for choosing a physician and, accordingly, citizens’ right to choose

a physician and a healthcare institution. As can be seen, "any democratic norm remains 'dead', unrealised, and declarative without an effective, legally enshrined mechanism for its implementation".[20]

Furthermore, modern healthcare reform has implemented the provisions of Part 4 of Article 13 of the Constitution of Ukraine, which stipulates that the State ensures the protection of the rights of all subjects of property and economic activity and the social orientation of the economy; all subjects of property rights are equal before the law. This constitutional norm has found vivid expression in the healthcare sector thanks to the reform. Under the Law of Ukraine "On State Financial Guarantees of Medical Services for the Population" and other regulatory legal acts adopted for its implementation, including Cabinet of Ministers Resolution No. 391 of

[20] D. Yu Gudimenko, *The Mechanism For Implementing The Choice Of A Doctor And Healthcare Institution: An Innovation In Modern Legislation* (2024), available at dspase.zsmu.edu.ua/bitstream/123456789/21259/1/c10-12.pdf [in Ukrainian].

28 April 2018 "On Approval of the Requirements for Providers of Medical Services to the Population with Whom Main Spending Units Conclude Contracts on Medical Services for the Population"[21], contracts under the Medical Guarantees Programme may now be concluded with healthcare institutions of state, municipal, and private ownership, as well as with individual entrepreneurs licensed to practise medicine.

Under the previous model of healthcare financing (the Semashko model), which used a budget-estimate method of financing, private providers could not claim budget funds; only state and municipal healthcare institutions were financed from the budget. In our view, this violated the equality of subjects of private ownership compared to subjects of state and municipal ownership in the healthcare sector and raised doubts about the full implementation of Part 4 of Article 13 of the

[21] Cabinet of Ministers of Ukraine, *On Approval Of The Requirements For Healthcare Service Providers Contracting With The Main Budget Administrators* (Resolution No. 391 of 28.04.2018) (2018), available at https://zakon.rada.gov.ua/laws/show/391-2018-п#Text [in Ukrainian].

Constitution of Ukraine. However, the regulatory legal acts implementing the modern healthcare reform have more fully realised this constitutional provision, at least in the healthcare sector.

This development has not only significant legal but also social importance. The State is not concerned with the form of ownership (state, municipal, or private) of the provider; what matters is that the healthcare services are high-quality, accessible, and fully satisfy citizens' constitutional right to health protection and medical care. This approach promotes both the quality and accessibility of medical care for the following reasons. First, accessibility improves due to the expansion of the network of institutions participating in the Medical Guarantees Programme through the inclusion of private healthcare institutions and licensed individual entrepreneurs. This was particularly evident when public healthcare in many Ukrainian cities could not cope with the large patient flow, and private practitioners, primarily general practitioners/family doctors, made a significant

contribution to overcoming the consequences of this socially significant infectious disease. Second, the introduction of market mechanisms and fair competition in healthcare practice contributes to improving the quality of medical services, as competing providers must demonstrate their advantages to attract patients (service quality, new equipment, highly qualified staff, comfortable conditions, etc.). Consequently, thanks to the implementation of many previously declarative provisions, modern healthcare reform has significantly improved both the quality and accessibility of medical services.

A separate issue in modern healthcare reform is digitalisation – the introduction of modern digital, information, and computer technologies into healthcare practice. Essentially, the electronic healthcare system, introduced by the Law of Ukraine "On State Financial Guarantees of Medical Services for the Population" and Cabinet of Ministers Resolution No. 411 of 28 April 2018 "Certain Issues

of the Electronic Healthcare System"[22], serves as the information, communication, and documentation basis for medical practice (electronic patient profiles, appointments and diagnoses, electronic referrals, electronic prescriptions, vaccination records, etc.). These tools significantly optimise the work of healthcare professionals and simplify patients' access to medical services. For example, an electronic referral for hospitalisation allows a patient to choose any facility of the corresponding specialisation throughout Ukraine.

The next stage of healthcare reform is expected to be the implementation of the declarative provision contained in Article 1 of the Law of Ukraine "On Compulsory State Social Insurance", which provides that health insurance is carried out within the framework of compulsory state social insurance.[23]

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[22] Cabinet of Ministers of Ukraine, *Some Issues Of The Electronic Healthcare System* (Resolution No. 411 of 28.04.2018) (2018), available at https://zakon.rada.gov.ua/laws/show/411-2018-п#Text [in Ukrainian].
[23] Law of Ukraine, "On Compulsory State Social Insurance" (1999), available at https://zakon.rada.gov.ua/laws/show/1105-14#Text [in Ukrainian].

Currently, health insurance in Ukraine is voluntary. It should be noted that since the beginning of the full-scale war, demand for health insurance has increased, as citizens need additional protection. For citizens residing in active combat zones, as well as displaced persons abroad, the possibility of online medical consultations is provided.

At the same time, the country's martial law status hinders healthcare reform. This concerns the delayed involvement of insurers in covering the cost of medical services at the secondary and tertiary levels of healthcare provision.[24] There is also a gradual increase in the implementation and realisation of corporate insurance programmes from employers, which significantly enhances the attractiveness of a company for both employees and job candidates. In some cases, corporate insurance may also cover family members of the employee.

Furthermore, in 2024 the Law of Ukraine "On Insurance" entered into force. It was adopted in 2021

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[24] European Business Association, *New Insurance Law: Key Changes* (2024), available at https://eba.com.ua/novyj-zakon-pro-strahuvannya-klyuchovi-zminy [in Ukrainian].

with the aim of reforming and aligning the insurance market with European standards. The main emphasis of the law is on ensuring the solvency, transparency, and integrity of insurers in relation to clients.[25] Amendments to subordinate legal acts regulating the procedures and conditions of insurance for specific classes of insurance were required to be implemented by 01.01.2024. However, as of May 2025, this task has not been fully completed, resulting in the insurance market, including in the healthcare sector, being in a state of regulatory uncertainty.

In December 2024, the Cabinet of Ministers of Ukraine approved the procedure for implementing the State Programme of Medical Services Guarantees for 2025, according to which:

– funding was increased by 16 billion UAH, including for primary healthcare with consideration of the rural coefficient, which will allow increasing payment per patient (Presidential Decree "On Measures to Ensure Access to Medical and

[25] Law of Ukraine, "On Insurance" (2021), available at https://zakon.rada.gov.ua/laws/show/1909-20#Text [in Ukrainian].

Rehabilitation Care, Medicines, and Medical Devices in Rural Areas")[26];

– all state and specialised healthcare institutions are included in the unified space of the Programme;

– three-year contracts with emergency care centres are provided, including special coefficients for providing medical care in territories of potential combat, active combat zones, and mountainous regions;

– additional funding for services for treating war injuries (within the packages "Inpatient Care for Adults and Children without Surgical Operations" and "Surgical Operations for Adults and Children in Inpatient Conditions"; additional coefficients for performing the most complex surgeries, intensive care treatment, performing dialysis interventions in acute conditions; within the framework of strengthened rehabilitation measures, the possibility for patients to receive up to 26 rehabilitation cycles

[26] President of Ukraine, *On Measures To Ensure Access To Medical And Rehabilitation Care, Medicines, And Medical Devices In Rural Areas* (Decree No. 483/2024 of 26.07.2024) (2024), available at https://zakon.rada.gov.ua/laws/show/483/2024#Text [in Ukrainian].

per year has been added, which is important for patients with amputations)[27];

– 44 medical service packages are provided, the new ones include radioisotope diagnostics (access to diagnostic methods for oncological diseases, including PET scans); psychosocial and psychiatric care (development of mental health centres and mobile multidisciplinary teams for adults and children);

– improved payment and working conditions (for resident doctors, a salary of at least 15,000 UAH is provided; for their mentors, additional payments are made from the Programme package “Ensuring the Human Resource Potential of the Healthcare System through the Organisation of Medical Care with the Involvement of Resident Doctors (Pharmacists)”);

– the “Affordable Medicines” reimbursement programme has been expanded, adding more than 30 new active substances (combined drugs for treating

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[27] O.V. Ustinov, *2025: What It Will Be Like For Doctors And Patients* (2024), available at www.umj.com.ua/uk/publikatsia-261871-2025-rik-yakim-vin-bude-chi-ne-bude-dlya-medikiv-i-patsiyentiv [in Ukrainian].

cardiovascular diseases, rheumatological, neurological, endocrine, and pediatric diseases). In addition, under this programme, citizens of rural areas and frontline communities are provided the opportunity to order free of charge via Ukrposhta over 500 prescription drugs and 10,000 non-prescription items; purchase medicines in Mobile Pharmacies (currently successfully operating in 13 regions of the country: Zhytomyr, Zaporizhzhia, Kyiv, Lviv, Mykolaiv, Odesa, Rivne, Ternopil, Kharkiv, Kherson, Cherkasy, Chernihiv, and Chernivtsi – 24 mobile pharmacy points covering 644 settlements)[28];

– liquidation of medical-social expert commissions and introduction of a digitalised system for assessing daily functioning of individuals at cluster and super-cluster hospitals (implementation of an electronic system integrated with eHealth and available to healthcare institutions; later

[28] *How To Use The "Mobile Pharmacies" Service* (2024), available at https://e-aid.diia.gov.ua/pages/shche-bilsh-dostupni-liky.html [in Ukrainian].

synchronized with the information systems of the Ministry of Justice, Ministry of Social Policy, Ministry of Economy, and Ministry of Education, allowing the support procedure for people with disabilities to become transparent and operational; funding for expert teams; granting authority to family or attending physicians to issue referrals; patient cases are assigned without transferring personal data);

– new tariffs for palliative care and expansion of rehabilitation services;

– provision of free mental healthcare services by all primary healthcare institutions[29].

The issue of transparency and the anti-corruption orientation of the modern healthcare reform is of particular importance for both the state and society. In addition to the above, several of the most striking examples should be mentioned in this context. Thus,

[29] Cabinet of Ministers of Ukraine, *Some Issues Of Implementing The Program Of State Guarantees Of Medical Care For The Population In 2025* (Resolution No. 1503 of 24.12.2024) (2024), available at https://www.kmu.gov.ua/npas/deiaki-pytannia-realizatsii-prohramy-derzhavnykh-harantii-medychnoho-obsluhovuvannia-naselennia-u-2025-rotsi-1503-241224 [in Ukrainian].

according to the amendments to the Law of Ukraine "On Prevention of Corruption", members of medical-social expert commissions, military-medical commissions, and medical-flight commissions became subjects of electronic declaration. Moreover, from the moment the expert teams for assessing daily functioning of a person were established (January 2025), members of these teams are also required to submit electronic declarations.[30]

In addition, in 2024, Article 78-1 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" titled "Restrictions established for medical, pharmaceutical workers and rehabilitation specialists during the performance of their professional activities" was improved, in particular with regard to the prohibition for healthcare workers to directly or indirectly request, demand, and/or receive for themselves or their close

[30] Law of Ukraine, "On Prevention of Corruption" (2014, as amended), available at https://zakon.rada.gov.ua/laws/show/1700-18#Text [in Ukrainian].

relatives souvenir or branded products from business entities that produce and/or sell medicines, medical devices, rehabilitation aids, or their representatives for the purpose of promoting samples of medicines, medical devices, and rehabilitation aids.

Legal professional restrictions for medical workers are limitations on the professional rights and duties of medical workers established by law in order to ensure state interests, prevent offences, and protect the rights and legitimate interests of the medical workers themselves.[31] These restrictions were introduced into legislation so that healthcare workers, motivated by material benefits, would not provide information about certain medicines or certain brands of medicines or other medical products that differs somewhat from accurate information. As Carmen M. Cusack and Matthew E. Waranius rightly point out in their works, "'No longer do consumers of information have to work to

[31] O. H. Aleksieiev & M. A. Anishchenko, *Legal Professional Restrictions Of Medical Professionals Under The Legislation Of Ukraine: Problems And Prospects*, 16 *Patologiya* 288 (2019) [in Ukrainian].

find information. The difficulty now lies in finding good information.'"[32].

V. CONCLUSION

The reform of the healthcare sector has significantly changed the organisational and economic principles of governance, which are aimed, first of all, at modernising public administration and improving the legal regulation of its state-administrative relations. However, despite the positive changes that have occurred as a result of healthcare reform, both the legislative framework regulating activities in the healthcare sector and the management mechanisms of the Medical Guarantees Programme require further improvement.

To ensure their effective implementation, it is necessary to develop a practical mechanism of interaction at both the national level (Ministry of Health, National Health Service of Ukraine, Ministry

[32] C. M. Cusack & M. E. Waranius, *Watering Down The Seventh Amendment: Will Trials Still Leave A Bad Taste In Your Mouth?*, 27 JOURNAL OF LAW AND SOCIAL DEVIANCE 39 (2024).

of Finance of Ukraine, Cabinet of Ministers of Ukraine) and the regional level (interregional departments of the NHSU, local administrations, councils of hospital districts). After all, only under conditions of proper legislative regulation of both theoretical and practical aspects of healthcare reform can its effective implementation be achieved, which is a guarantee of significant socially important results.

EXPERIENCES OF SEVERAL COUNTRIES IN SUPPORTING FOREIGN ENTERPRISES' ACCESS TO LAND FOR INVESTMENT ATTRACTION – LESSON FOR VIETNAM

Nguyen Ngoc Dien*

I. INTRODUCTION

Attracting foreign direct investment (FDI) has long been regarded as a central policy instrument for promoting economic growth, structural transformation, and technological upgrading. While developing and underdeveloped economies rely on foreign capital to supplement domestic resource constraints, advanced economies likewise view sustained inflows of foreign investment as an indicator of economic competitiveness and institutional credibility. The United States provides a

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salient example: according to official data from the Bureau of Economic Analysis, total inward foreign direct investment stock reached USD 5.39 trillion by the end of 2023, up USD 227 billion from the previous year.[1] This trend is reinforced by recent policy initiatives that emphasize the United States as a premier global investment destination, underscoring that competition for FDI is increasingly international and spans all levels of development.[2]

A growing body of literature recognizes that the success of FDI attraction strategies depends on a complex interaction of economic, institutional, and legal factors. While specific determinants, such as market size or labor costs, are country-specific, others are widely shared across jurisdictions. Among the latter, policies governing land access and legal frameworks regulating land-use rights are

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[1] Bureau of Econ. Analysis, U.S. Dep't of Com., *Direct Investment by Country and Industry* (2024), https://www.bea.gov/data/intl-trade-investment/direct-investment-country-and-industry.
[2] White House, *Fact Sheet: President…Encourages Foreign Investment While Protecting National Security* (Feb. 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president...encourages-foreign-investment-while-protecting-national-security

consistently identified as fundamental.[3] For foreign investors, particularly in manufacturing, real estate, and infrastructure-intensive sectors, secure and predictable access to land is a precondition for long-term investment decisions. Clear procedures, legal certainty, and protection against arbitrary interference are therefore critical. From the perspective of host states, land policy must simultaneously reconcile investment promotion with environmental protection, social stability, and national security considerations.[4] Despite the acknowledged importance of land governance, existing scholarship and policy discourse often address land access only indirectly, subsuming it under broader discussions of investment climate or property rights. Comparative, policy-oriented analyses focusing specifically on how states design institutional and legal mechanisms to facilitate foreign enterprises' access to land remain relatively

[3] Org. for Econ. Co-operation & Dev. (OECD), *FDI Qualities Policy Toolkit* (2019).
[4] United Nations Conference on Trade & Dev. (UNCTAD), *World Investment Report 2023: Investing in Sustainable Energy for All* (2023).

limited, particularly in the context of transitional economies. This gap is especially relevant for Vietnam, where land remains publicly owned and where regulatory complexity and fragmented administration have been identified as persistent challenges to investment attraction.[5]

Against this backdrop, the present study examines the experiences of several countries in supporting foreign enterprises' access to land as a strategic tool for attracting FDI. By analyzing selected legal frameworks, administrative arrangements, and practical implementation mechanisms, the study aims to identify common patterns and effective practices that enhance transparency, efficiency, and investor confidence. The objective is not only to contribute to the comparative literature on land governance and foreign investment but also to draw concrete policy lessons that can inform Vietnam's ongoing reforms in land management and investment promotion.

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[5] World Bank, *Vietnam: Improving Land Governance for Sustainable Development* (2022).

II. METHODOLOGY

This study employs a qualitative comparative research methodology to examine how selected countries facilitate foreign enterprises' access to land to attract foreign direct investment (FDI). Given the legal, institutional, and policy-oriented nature of land governance, a qualitative approach is appropriate for capturing the complexity of regulatory frameworks, administrative practices, and implementation mechanisms that shape investors' access to land.

A. Research Design and Case Selection

The research is based on a comparative case-study design, focusing on a group of representative countries that have demonstrated relative success in attracting FDI, particularly in land-intensive sectors such as manufacturing, infrastructure, and real estate. The selection of countries is guided by three criteria: (i) their relevance to Vietnam's development trajectory (including both developed and emerging economies); (ii) the existence of distinctive legal or

institutional arrangements governing foreign investors' land-use rights; and (iii) the availability of reliable legal and policy documentation. This purposive selection enables the study to identify both common approaches and context-specific practices without aiming for statistical generalization.

B. Data Sources

The study relies exclusively on secondary data, drawing from multiple authoritative sources to ensure analytical robustness and triangulation. These sources include national laws and regulations on land and investment, policy papers, government reports, investment promotion materials, and official guidelines issued by relevant public authorities. In addition, reports and analytical publications from international organizations, such as the World Bank, OECD, and UNCTAD, are used to contextualize national practices within broader global trends. Academic literature and selected case studies further support the interpretive analysis.

C. Analytical Framework

Data analysis is conducted through qualitative content analysis and comparative legal analysis. First, the study examines each country's legal framework governing foreign enterprises' access to land, focusing on key dimensions, including land tenure arrangements, land allocation and leasing mechanisms, procedural requirements, and legal safeguards for land-use rights. Second, institutional arrangements and administrative practices, such as land banks, industrial zones, and one-stop service mechanisms, are analyzed to assess how legal rules are implemented in practice. The findings from individual cases are then compared to identify recurring patterns, innovative instruments, and critical success factors.

D. Policy-Oriented Synthesis

The final stage of the methodology involves a policy-oriented synthesis that distills lessons relevant to Vietnam. Rather than mechanically transplanting

foreign models, the analysis assesses their adaptability to Vietnam's legal system, land-ownership regime, and administrative structure. This approach ensures that the study's recommendations are context-sensitive and aligned with Vietnam's ongoing reforms in land management and investment promotion.

III. RESULTS AND DISCUSSION

A. International Experiences: Analytical Framework and Rationale

Examining international experiences in facilitating foreign enterprises' access to land is a necessary step toward identifying policy options for Vietnam, particularly amid intensifying global competition for foreign direct investment (FDI). As emphasized in the manuscript's title and objectives, land access functions not merely as a technical issue of property law, but as a strategic governance instrument that shapes investor confidence, project feasibility, and long-term economic engagement. Comparative analysis allows policymakers to

distinguish between universally applicable principles, such as legal certainty and procedural transparency, and country-specific arrangements that reflect differing land regimes, security considerations, and development priorities.[6]

Existing studies underscore that countries that are successful in attracting land-intensive FDI typically adopt coherent land-access policies embedded within broader investment and national development strategies.[7] At the same time, international experience demonstrates that openness to foreign land access is rarely absolute. Even advanced economies with strong traditions of private property impose targeted restrictions based on national security, environmental protection, or strategic resource management.[8] This dual objective, facilitating investment while safeguarding sovereign interests, has become more pronounced in recent

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[6] UNCTAD, *World Investment Report 2023* (2023).
[7] OECD, *FDI Qualities Policy Toolkit* (2019).
[8] Sarah Bauerle Danzman & Geoffrey Gertz, *Why Land Matters in Foreign Investment Screening*, 46 REV. INT'L POL. ECON. 1 (2023).

years amid geopolitical tensions and concerns over foreign control of sensitive assets.[9]

For analytical clarity, this study groups national experiences into advanced economies and emerging or developing economies. Advanced economies are characterized by mature legal systems, high levels of institutional capacity, and predominantly private land ownership regimes. Their experiences are particularly relevant for Vietnam insofar as they illustrate how foreign investors' land-use rights can be secured through stable legal frameworks without compromising public interests. The United States and Australia are examined as representative cases, reflecting two different but influential approaches to balancing openness and regulatory control.

[9] Julien Chaisse & Mitsuo Matsushita, *Maintaining the WTO's Supremacy in the Age of Investment Screening*, 114 AM. J. INT'L L. 479 (2020).

1. Experience of Advanced Economies: Analytical Background

a. The United States: The Case of Texas

The United States is frequently characterized as one of the most open jurisdictions worldwide with respect to foreign investors' access to land. This openness is historically grounded in the country's development model, which has relied heavily on immigration, private property, and market-driven capital accumulation as engines of economic expansion. Unlike jurisdictions where land ownership is closely linked to nationality or sovereignty considerations, U.S. law treats land primarily as a monetary asset, governed by private law principles. As a result, foreign investors, whether individuals or corporate entities, generally enjoy the same rights as domestic actors to acquire, lease, and use land, subject to limited public-law constraints.[10] This non-discriminatory approach reflects a liberal

[10] James J. Park, *Foreign Investment and Property Rights in the United States*, 41 YALE J. INT'L L. 85 (2016).

investment regime that prioritizes market efficiency, capital mobility, and investor autonomy.

Texas provides a particularly instructive subnational case for comparative analysis. As one of the largest U.S. states by land area, with a diversified economy spanning manufacturing, agriculture, energy, and logistics, Texas has actively positioned itself as a destination for both domestic and foreign investment. From a policy standpoint, access to land in Texas is premised on the assumption that foreign investment contributes positively to regional economic development, job creation, technological diffusion, and integration into global value chains. Consequently, restrictions on land ownership or use are not framed in terms of investor nationality but somewhat justified on neutral, generally applicable grounds, such as land-use planning, environmental protection, and national security.[11] This regulatory philosophy is consistent with broader U.S. constitutional principles of equal protection and due

[11] U.S. Gov't Accountability Off., *Foreign Investment in Agricultural Land* (2024).

process, which limit the state's ability to impose arbitrary or nationality-based distinctions in property relations.

At the federal level, the legal framework governing foreign investors' access to land is best described as risk-based and supervisory, rather than restrictive. The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) exemplifies this approach. AFIDA does not prohibit or cap foreign ownership or leasing of agricultural land; instead, it requires foreign persons to disclose such transactions to federal authorities.[12] The primary objective of this mechanism is informational: by collecting data on foreign involvement in agricultural land markets, the federal government can monitor ownership patterns, assess potential policy implications, and respond if systemic risks emerge. Legal scholars have emphasized that AFIDA reflects a regulatory preference for transparency and oversight,

[12] Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. §§ 3501–3508.

intervening only when clear public-interest concerns arise.[13]

More robust intervention powers are conferred under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which expanded the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS). FIRRMA authorizes the review of certain real estate transactions involving foreign investors, particularly those involving land near military installations, ports, airports, or other critical infrastructure.[14] Importantly, FIRRMA does not operate as a blanket restriction on foreign land access. Instead, it adopts a transaction-specific and evidence-based assessment of national security risks. This individualized screening model is widely regarded in the literature as an effective mechanism for reconciling openness to foreign investment with legitimate security

[13] Neil E. Harl, *Foreign Ownership of Agricultural Land: Policy and Practice*, 18 DRAKE J. AGRIC. L. 1 (2013).
[14] Foreign Investment Risk Review Modernization Act of 2018, Pub. L. No. 115-232.

concerns, especially in an era of heightened geopolitical sensitivity.[15]

At the state level, Texas law essentially complements this federal framework. The Texas Property Code and related statutes do not impose general restrictions on foreign ownership or leasing of land, nor do they require prior approval based solely on foreign status. Land-use regulation is primarily exercised through zoning, environmental compliance, and infrastructure planning, all of which apply equally to domestic and foreign land users. Recent legislative developments, most notably Senate Bill 17, signal a growing sensitivity to geopolitical risks associated with investors from certain jurisdictions. However, such measures remain narrowly targeted, exceptional in scope, and politically contested, rather than constituting a systemic shift toward protectionism.[16]

From a comparative perspective, the U.S. experience, illustrated by the case of Texas,

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[15] Edward M. Graham & David M. Marchick, *US National Security and Foreign Direct Investment* (Updated ed. 2021).
[16] Texas S.B. 17, 88th Leg., Reg. Sess. (2025).

demonstrates that secure and attractive land access for foreign investors can be achieved through a combination of strong private property rights, low procedural barriers, and narrowly tailored security review mechanisms. For Vietnam, where land remains publicly owned and administrative discretion plays a significant role in land allocation, this experience suggests that improving transparency, legal certainty, and predictability in land-use rights may be more effective for investment attraction than broad nationality-based restrictions or ad hoc approvals. The U.S. model thus provides valuable insights into how investor confidence can be fostered without undermining the host state's capacity to protect essential public interests.

b. Australia's Experience

Australia presents a contrasting but equally instructive model of regulating foreign investors' access to land. While the country remains formally open to foreign capital and has long relied on external investment to support economic

development, its regulatory approach is characterized by centralized oversight and systematic pre-screening of foreign land transactions. This approach reflects a policy choice to treat land not merely as a market commodity, but as a strategic national asset closely linked to sovereignty, food security, environmental sustainability, and national security.[17] Unlike the largely decentralized, market-driven U.S. model, Australia places the state in an explicit gatekeeping role regarding foreign access to land.

The cornerstone of Australia's land-access regime is the Foreign Acquisitions and Takeovers Act 1975 (FATA), which establishes the legal basis for reviewing and approving foreign acquisitions of land and other significant assets. Administration of the regime is entrusted to the Foreign Investment Review Board (FIRB). This federal-level body advises the Treasurer on whether proposed transactions are consistent with the "*national*

[17] Andrew D. Mitchell & Elizabeth Sheargold, *Foreign Investment Screening and National Security in Australia*, 52 GEO. J. INT'L L. 1 (2021).

interest."[18] Under this framework, foreign investors are generally required to obtain prior approval before acquiring or leasing agricultural, residential, or commercial land above specified monetary thresholds. This ex ante approval requirement distinguishes Australia sharply from jurisdictions that rely primarily on post-transaction disclosure or monitoring.

The national interest test applied by FIRB is deliberately broad and flexible. In assessing applications, authorities may consider a range of factors, including national security implications, competition effects, impacts on local communities, consistency with government policy objectives, and the character of the investor.[19] While this breadth has attracted criticism for introducing uncertainty and administrative discretion, scholars note that it also allows the regulatory framework to adapt to changing economic conditions and geopolitical

[18] Foreign Acquisitions and Takeovers Act 1975 (Cth) (Austl.).
[19] Foreign Acquisitions and Takeovers Regulation 2015 (Cth) (Austl.).

risks.[20] Importantly, the test is not explicitly nationality-based; instead, it focuses on the nature of the transaction and its potential consequences for Australia's long-term interests.

Regulatory control over foreign land access has been further strengthened through recent legislative reforms, most notably the Foreign Investment Reform (Protecting Australia's National Security) Act 2020. These reforms expanded the government's powers to review transactions involving land located near sensitive infrastructure, military facilities, or other assets deemed critical to national security. They also introduced enhanced monitoring and enforcement mechanisms, including the ability to impose conditions on approved investments and to require divestment in exceptional circumstances. Academic analyses suggest that while these measures have increased compliance costs for foreign investors, they have also improved policy

[20] Luke Nottage & Elizabeth Sheargold, *The Rise of Foreign Investment Screening in Australia*, 44 MELB. U. L. REV. 1 (2020).

coherence and bolstered public confidence in the foreign investment screening system.[21]

From an institutional perspective, Australia's model is characterized by relatively high transparency. FIRB operates under published guidelines, statutory timeframes for review are clearly defined, and investors receive reasoned decisions when approval is granted subject to conditions. This procedural clarity mitigates some of the uncertainty inherent in a discretionary screening regime and contributes to the overall predictability of the investment environment. Land registration and reporting requirements, particularly for agricultural land, further enhance the state's capacity to monitor foreign involvement in land markets without resorting to outright prohibitions.

Compared with other countries, Australia's experience illustrates how a centralized, interventionist approach to foreign investors' access to land can coexist with a generally open investment

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[21] Kelsey Johnson, *Australia's National Security Test for Foreign Investment*, 45 MELB. U. L. REV. 612 (2022).

climate. For Vietnam, where land remains under public ownership and concerns over national security, environmental protection, and social stability are pronounced, the Australian model offers valuable insights. In particular, it demonstrates how a unified screening authority, a clearly articulated national-interest test, and transparent administrative procedures can be employed to reconcile the attraction of FDI with heightened regulatory oversight without undermining investor confidence.

2. Experience of Emerging Economies: Analytical Background

Examining the experiences of emerging economies in regulating foreign enterprises' access to land is particularly important for this study, given Vietnam's shared structural and institutional characteristics with this group of countries. Unlike advanced economies, where private land ownership and market-based allocation mechanisms dominate, most Asian emerging economies retain a strong public role in land governance. Land is frequently

regarded as a strategic national resource, closely tied to social stability, food security, industrial policy, and political legitimacy.[22] As a result, foreign investors' access to land is typically mediated through administrative approval, long-term land-use rights, or leasing arrangements rather than outright ownership. A recent study emphasizes that emerging economies face a dual, and often competing, policy imperative. On the one hand, they seek to attract foreign direct investment (FDI) to accelerate industrialization, infrastructure development, and technological upgrading. On the other hand, governments remain cautious about relinquishing control over land, particularly in sensitive sectors or locations, due to concerns over speculation, displacement, environmental degradation, and national security.[23] This tension has led to the development of hybrid land-access regimes that

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[22] Cotula, *Land, Property and Sovereignty in Emerging Economies*, 48 J. PEASANT STUD. 1 (2021.

[23] Sarah Bauerle Danzman & Geoffrey Gertz, *Why Land Matters in Foreign Investment Screening*, 46 REV. INT'L POL. ECON. 1 (2023)

combine openness to foreign investment with stringent regulatory oversight.

Comparative analysis of emerging economies is therefore especially relevant to Vietnam for three reasons. First, many such countries share a state-centered land ownership or management model, in which land-use rights are granted for limited terms and subject to administrative conditions. Second, they frequently employ industrial-policy instruments, such as investment encouragement lists, special economic zones (SEZs), and preferential land access for priority sectors, to steer foreign investment toward national development objectives.[24] Third, emerging economies tend to rely on discretionary approval mechanisms, which, if not carefully designed, can generate legal uncertainty and administrative fragmentation, undermining investor confidence.[25]

This section examines China, Thailand, and Malaysia as representative emerging economies in

[24] OECD, *FDI Qualities Policy Toolkit* (2019).
[25] Julian Arato, *The New Regulatory State and Foreign Investment*, 71 HASTINGS L.J. 1 (2020).

East and Southeast Asia that have adopted distinct yet comparable approaches to foreign investors' access to land. China exemplifies a model in which land remains publicly owned and foreign investors are granted time-limited land-use rights closely aligned with state planning priorities. Thailand illustrates a mixed regime combining private land ownership with strict nationality-based restrictions, mitigated by long-term leases and special investment regimes. Malaysia represents a relatively more liberal model among emerging economies, allowing foreign land ownership subject to state approval and sectoral conditions. Together, these cases provide a nuanced comparative foundation for identifying policy lessons applicable to Vietnam's ongoing land and investment reforms.

a. China's Experience

China's approach to foreign investors' access to land is particularly relevant to Vietnam, as both countries share the foundational principle of public ownership of land. Under the Chinese legal system,

land is owned either by the State or by rural collectives, and private parties, including domestic and foreign investors, may only obtain land-use rights for a fixed term. This principle, enshrined in the Constitution and operationalized through statutory law, fundamentally shapes the modalities through which foreign investors may access land and distinguishes China from jurisdictions that permit private land ownership by foreigners.[26]

China's policy on land access for foreign investors reflects a carefully calibrated balance between investment attraction and stringent state control over land as a strategic national resource. Rather than allowing foreign investors to acquire land-use rights through free market transactions, the Chinese system conditions land access on conformity with national and local socio-economic development strategies, industrial policies, and land-use master plans.[27] In practice, this means that

[26] Land Administration Law of the People's Republic of China (2020), art. 3.
[27] Minzi Su, *The Role of Foreign Investment in China's Land Use Policy*, 29 ASIAN PERSPECTIVE 63 (2005).

foreign investors may access land only when responding to investment opportunities identified or endorsed by competent authorities at the central or local level. A defining characteristic of China's policy framework is its sector-based differentiation. Foreign investors are encouraged to invest in industries aligned with national development priorities, such as high technology, clean energy, advanced manufacturing, healthcare, and modern services. They may receive preferential treatment with respect to land access, including reduced land-use fees, priority allocation, and infrastructure support from local governments.[28] By contrast, foreign investment in restricted or sensitive sectors, particularly commercial real estate development in major urban centers or areas linked to national security, is subject to heightened scrutiny or outright limitation. This selective openness reflects China's broader strategy of using land policy as an instrument

[28] Ministry of Commerce of the People's Republic of China, *Foreign Investment Guide of the PRC* (2022).

of industrial upgrading rather than as a neutral market mechanism.[29]

Importantly, foreign investors are not permitted to own land in China directly. Access is limited to long-term leases granting land-use rights (LURs), which are time-bound and purpose-specific. To obtain such rights, foreign investors must establish a legally recognized investment vehicle under Chinese law, either in the form of a joint venture (JV) with a domestic entity or a wholly foreign-owned enterprise (WFOE). The land-use right is thus structurally linked to the approved investment project, reinforcing the State's ability to supervise land use throughout the project lifecycle.

The legal framework governing foreign investors' access to land in China is anchored in three principal legislative instruments: the Foreign Investment Law (2020), the Land Administration Law (amended 2020), and the Urban Real Estate Administration Law (amended 2007). Together,

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[29] Xiaoyang Zhang, *Real Estate Investment in China: Legal Review and Analysis of Foreign Investors' Participation*, 6 MURDOCH U. ELEC. J. L. 1 (1999).

these statutes establish a comprehensive system governing the nature, duration, and procedural requirements of land-use rights available to foreign investors. The Foreign Investment Law (FIL) represents a significant milestone in China's investment regime. While the FIL does not regulate land access directly, it establishes the principle of national treatment for foreign investors at the entry and post-entry stages, including with respect to access to factors of production such as land.[30] Article 4 of the FIL affirms that foreign-invested enterprises shall enjoy equal treatment with domestic enterprises. In contrast, Article 28 introduces the Negative List System, under which foreign investment is prohibited or restricted in specified sectors or geographic areas. Where an investment project falls within the negative list, land access is correspondingly denied or limited, illustrating the indirect but consequential role of investment regulation in shaping land access outcomes.

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[30] Foreign Investment Law of the People's Republic of China (2020), art. 4.

The Land Administration Law (2020) provides the core statutory framework governing land ownership, land-use planning, and land-use rights. Article 3 reiterates the principle of public ownership of land, while permitting entities, including foreign-invested enterprises, to obtain land-use rights through lease arrangements. The Law specifies permissible methods for granting land-use rights, including public auction, tender, or listing, particularly for commercial and industrial land.[31] Lease terms vary according to land-use purpose, typically ranging from 40 years for commercial land to 50 years for industrial land and up to 70 years for residential land. The Law also imposes obligations relating to environmental protection, efficient land use, and compliance with urban and rural planning, reinforcing the regulatory nature of land-use rights.

The Urban Real Estate Administration Law further refines the regulatory framework for land access in urban areas, with particular relevance for

[31] Land Administration Law of the People's Republic of China (2020), art. 8.

foreign investors engaging in real estate development. The Law affirms that foreigners may not own urban land but may obtain land-use rights through leasing arrangements.[32] It requires foreign investors to establish a company under Chinese enterprise law before accessing land at the primary level. It grants local authorities broad supervisory powers to prevent speculation, hoarding, or misuse of land. Lease renewal upon expiry is not automatic and remains subject to government approval, a feature that has been identified as a source of legal uncertainty for long-term investors.[33]

In practice, foreign investors' access to land in China follows a multi-stage administrative process closely linked to investment approval. Before leasing land, a foreign investor must obtain an investment permit from the competent authority, which may include the Ministry of Commerce (MOFCOM), the National Development and Reform Commission

[32] Urban Real Estate Administration Law of the People's Republic of China (2007), art. 2.
[33] Wei Cui & Xue Bai, *Land Use Rights and Investment Certainty in China*, 54 J. COMP. ECON. 112 (2022).

(NDRC), provincial-level authorities, or special economic zone administrations, depending on the scale, sector, and sensitivity of the project. This approval process primarily focuses on whether the proposed investment aligns with national and local investment-promotion policies. Once the investment project is approved, the investor must identify a suitable land parcel that is consistent with the approved land-use plans. Local governments often play an active role at this stage, particularly in industrial parks and special economic zones, where land is pre-zoned, and infrastructure is ready. For high-value or large-scale projects, land-use rights are commonly allocated through competitive procedures such as auctions or tenders, ensuring transparency and enabling authorities to select investors capable of delivering the projected socio-economic benefits.[34]

After securing the right to lease land, the investor enters into a land-lease agreement with the local

[34] Ministry of Natural Resources (China), Circulars on Granting State-Owned Construction Land-Use Rights.

land-administration authority or, in some cases, with rural collectives authorized to lease construction land. The contract specifies the land area, lease term, rent, permitted land use, and obligations relating to environmental protection and construction standards. Registration of the land-use right with the local land registry is mandatory to secure legal recognition and enforceability. Throughout the lease period, the investor remains subject to regulatory oversight, and failure to comply with approved land use may result in penalties or revocation of the land-use right.

From an analytical perspective, China's land-access regime illustrates a model in which land policy is deeply integrated with industrial strategy and territorial governance. By conditioning land access on project approval and sectoral alignment, the State retains significant leverage over the direction and quality of foreign investment. Empirical studies suggest that this approach has been practical in channeling FDI toward manufacturing and infrastructure sectors that support long-term

development objectives.[35] At the same time, scholars have identified several challenges associated with this model. The heavy reliance on administrative discretion can lead to uneven implementation across localities, regulatory opacity, and uncertainty about the renewal and transferability of land-use rights.[36] These issues are particularly salient for foreign investors seeking long-term stability, as land-use rights remain inherently time-limited and contingent on continued policy alignment. For Vietnam, China's experience offers both positive lessons and cautionary insights. The use of land access as a tool of industrial policy and the integration of land-use planning with investment approval are directly relevant to Vietnam's development strategy. However, China's experience also underscores the importance of enhancing legal certainty, transparency, and uniform application of land regulations to sustain investor confidence while preserving state control over land resources.

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[35] OECD, *FDI Qualities Policy Toolkit* (2019).
[36] Lorenzo Cotula, *Land, Property and Sovereignty in Emerging Economies*, 48 J. PEASANT STUD. 1 (2021).

b. Thailand's Experience

Thailand provides a particularly instructive example among emerging economies because it combines a private land-ownership regime with a restrictive yet flexible approach to foreign investors' access to land. While Thailand shares essential similarities with Vietnam in terms of geographic location, development trajectory, and economic structure, its land regime is shaped by Western legal traditions that recognize private ownership of land. This structural difference makes Thailand a valuable comparative case, illustrating how an emerging economy reconciles openness to foreign direct investment (FDI) with concerns over land sovereignty and national control.[37]

Thailand's policy on land access for foreign investors is characterized by a dual objective: actively encouraging foreign investment in priority sectors, while retaining firm state control over land

[37] Natalya Scurrah & Philip Hirsch, *Foreign Direct Investment and Land Access in Southeast Asia*, Mekong Land Forum (2020).

ownership and long-term land use by foreigners. In principle, foreign investors are prohibited from directly owning land. This prohibition reflects longstanding political sensitivities surrounding land concentration, national identity, and rural livelihoods.[38] At the same time, Thailand has progressively introduced targeted exceptions and functional substitutes, such as long-term leases, joint ventures, and special economic regimes, to ensure that land policy does not become a barrier to investment attraction. Foreign land ownership is permitted only in narrowly defined circumstances, typically where the investment is deemed to deliver substantial economic or technological benefits. Such cases include large-scale investments, projects approved under special economic regimes, or investments in sectors aligned with national development strategies, such as high technology, renewable energy, green tourism, and infrastructure development. In ordinary circumstances, foreign

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[38] Teo Keang Sood, *Restrictions on Foreign Ownership of Land in Thailand*, 1992 SING. J. LEGAL STUD. 629.

investors rely on long-term leasehold arrangements, which have become the dominant mechanism for securing operational stability without transferring ownership.[39] This policy architecture reflects Thailand's broader investment governance strategy: land access is not treated as a standalone right but as a derivative privilege linked to investment quality, scale, and alignment with public policy objectives.

Thailand's legal framework governing foreign investors' access to land is relatively comprehensive and internally coherent. The principal statutes include the Land Code B.E. 2497 (1954), the Foreign Business Act B.E. 2542 (1999), and the Eastern Economic Corridor Act B.E. 2561 (2018), supplemented by the Civil and Commercial Code, the Investment Promotion Act B.E. 2520 (1977), and planning legislation. Together, these instruments define the permissible forms, duration, and conditions under which foreign investors may access land. The Land Code establishes the foundational

[39] Maya Ito, Jirapong Sriwat & Apinnya Sarntikassen, *Thailand: Land Ownership Rules and Common Questions Raised by Non-Thai Investors* (2021).

rule that foreigners may not own land in Thailand (Section 86). However, it also provides carefully circumscribed exceptions. Section 96 bis allows foreigners who invest at least 40 million baht in approved sectors to own up to 1,600 square meters of land for residential purposes, subject to the Ministry of Interior's approval. This ownership right is conditional upon maintaining the qualifying investment; if the investment falls below the statutory threshold, the land must be disposed of.[40] The Land Code also permits foreign land ownership where Thailand has entered into treaties granting reciprocal rights, though such cases are rare in practice.

The Foreign Business Act (FBA) regulates the establishment and operation of foreign-owned enterprises and indirectly structures land access. Under the FBA, a company with foreign ownership of not more than 49 percent is classified as a Thai company and may therefore own land.[41] This rule

[40] Land Code B.E. 2497 (1954) (Thai.), § 96 bis.
[41] Foreign Business Act B.E. 2542 (1999) (Thai.), § 4.

has made joint ventures a widely used mechanism for foreign investors seeking land ownership, though scholars have noted governance and control risks associated with minority foreign shareholding.[42] Where joint ventures are not feasible, foreign investors typically resort to long-term leases. Leasehold arrangements are governed by Sections 540–543 of the Civil and Commercial Code. The standard lease term is up to 30 years, renewable once for an additional 30 years. While renewability offers a degree of continuity, renewal is not automatic and depends on registration and compliance with legal requirements. Without registration at the Land Office, leases are legally enforceable for a maximum of 3 years, regardless of the contractual term, underscoring the importance of formal compliance.[43]

A distinctive feature of Thailand's approach is its use of special economic regimes to relax land-access restrictions in strategically important areas. The Eastern Economic Corridor (EEC) Act of 2018

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[42] Andrew Harding, *Foreign Investment, Law and Land in Thailand*, 43 J. CONTEMP. ASIA 1 (2019).
[43] Civil and Commercial Code (Thai.), §§ 540–543.

exemplifies this approach. Covering the provinces of Chonburi, Rayong, and Chachoengsao, the EEC aims to attract high-value foreign investment in advanced manufacturing, digital industries, and logistics. Under the Act, foreign investors may own land in Special Economic Promotion Zones (SEPZs) for business purposes and lease land for up to 50 years, with a possible extension of up to 49 years.[44] In addition, projects approved by the Thai Board of Investment (BOI) may be eligible for additional land-related incentives. For significant or priority projects, BOI approval may allow foreign investors to lease land for up to 99 years, coupled with tax incentives and administrative facilitation. Empirical studies suggest that these mechanisms have played a significant role in sustaining Thailand's competitiveness as an FDI destination despite restrictive baseline ownership rules.[45]

In practice, leasing land is the most common pathway for foreign investors. Investors must first

[44] Eastern Economic Corridor Act B.E. 2561 (2018) (Thai.).
[45] OECD, *Investment Policy Reviews: Thailand* (2023).

establish a legal entity under Thai law, identify suitable land, and conduct due diligence on ownership and zoning status. Where BOI approval is required, the lease agreement may be signed subject to a suspensive condition pending approval, which typically takes 30–90 days. Once executed, the lease must be registered to ensure enforceability and preserve its full term. Analytically, Thailand's experience demonstrates that restrictive land ownership rules do not necessarily deter foreign investment when accompanied by predictable leasehold rights, targeted exceptions, and strong investment-promotion institutions. For Vietnam, Thailand offers a model for strategically deploying long-term leases, joint ventures, and special economic zones to attract FDI while maintaining state oversight of land ownership and use.

c. Malaysia's Experience

Malaysia represents a distinctive model among emerging economies by combining a relatively open stance toward foreign land ownership with a

decentralized and approval-based governance structure rooted in federalism. Unlike China and Vietnam, Malaysia recognizes private land ownership as a core legal institution; unlike Thailand, it permits foreigners to own land directly, subject to regulatory safeguards. This hybrid approach makes Malaysia a particularly relevant comparator for Vietnam in assessing how an emerging economy balances investment openness, national interest protection, and subnational regulatory autonomy.[46] Malaysia's land-access policy for foreign investors is generally facilitative, reflecting the country's long-standing reliance on foreign direct investment as a driver of industrialization and export-oriented growth. At the same time, land is treated as a strategic and sensitive resource, particularly in relation to agriculture, national security, and socio-economic redistribution. Consequently, foreign investors' access to land is not

[46] Yuki Hashimoto & Najad Yulkipli, *Property Investment in Malaysia: The Procedures of Acquisition by Foreign Interest* (2022).

absolute but conditional upon state approval and compliance with development objectives.[47]

Foreign investors are, in principle, permitted to acquire land for commercial, industrial, and residential purposes. However, agricultural land, land located in border regions, and land situated near military or security installations are subject to stricter controls and, in some cases, outright prohibition. In addition, Malaysian states commonly impose minimum purchase-price thresholds for land transactions involving foreigners, especially in urban areas. These thresholds are intended to prevent speculative acquisitions and protect affordability for local populations, while still allowing foreign participation in higher-value segments of the property market.[48] Malaysia's policy framework is also explicitly sector-oriented. Priority sectors, including high technology, manufacturing, tourism, logistics, and renewable energy, benefit from preferential treatment in land access, often facilitated

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[47] Teo Keang Sood, Restrictions on Foreign Ownership under the National Land Code 1965, 1992 SING. J. LEGAL STUD. 629.
[48] Luther Law Firm, *Purchasing Land in Malaysia* (2023).

through investment incentives and expedited approval procedures. Special Economic Zones (SEZs) and industrial corridors play a central role in this strategy, offering foreign investors integrated access to land, infrastructure, and fiscal incentives.[49]

A defining feature of Malaysia's land regime is its federal constitutional structure, under which land administration falls primarily within the jurisdiction of state governments. While federal authorities formulate general investment policies, state authorities retain decisive power over land approvals involving foreign interests. This decentralized model introduces a layer of regulatory complexity but also allows for policy differentiation based on local development priorities.[50]

In practice, this means that a foreign investor's ability to acquire or lease land depends not only on compliance with federal guidelines but also on the discretion of the relevant State Authority. Scholars have noted that this approval-based system functions

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[49] OECD, *Investment Policy Reviews: Malaysia* (2023).
[50] Andrew Harding, *Federalism and Land Law in Malaysia*, 52 J. SOUTHEAST ASIAN STUD. 89 (2021).

as a flexible policy instrument, enabling states to screen investments for alignment with local economic, environmental, and social objectives.[51] However, it may also generate uncertainty and transaction costs for investors unfamiliar with state-level administrative practices. The legal framework governing foreign investors' land access in Malaysia is anchored in the National Land Code 1965 (NLC), supplemented by sector-specific statutes and administrative guidelines. The NLC establishes the core principles of land administration and delineates the conditions under which foreigners may acquire interests in land.

Section 433B of the NLC requires foreign purchasers seeking to acquire land or any interest therein, including ownership, transfer, or long-term lease, to obtain prior approval from the State Authority. Approval is discretionary and granted only where the transaction is deemed not to prejudice national or state interests. This provision reflects

[51] Lee Hwok Aun, *Foreign Investment, Property Markets and Regulation in Malaysia*, 47 THIRD WORLD Q. 1563 (2020).

Malaysia's preference for ex ante regulatory control rather than categorical prohibition. Section 433C introduces special categories of foreign ownership, particularly for land required for major development projects contributing significantly to the national economy. These provisions allow the State Authority to approve foreign ownership where broader economic benefits can be demonstrated. Transfers of land ownership must be registered under Section 205 to reinforce transparency and legal certainty. Section 204A further permits foreigners to use state-owned land through lease agreements with the State Authority, thereby expanding access without transferring ownership.[52] For stratified properties such as condominiums, the Strata Titles Act 1985 and the Building and Common Property Act 2007 apply. While foreigners may purchase strata units, restrictions often apply regarding ownership concentration and location, particularly in areas considered sensitive for security or social reasons. These constraints illustrate Malaysia's nuanced

[52] *Id.* §§ 204A, 205, 433C.

approach to balancing openness with risk management.[53]

Administrative guidance plays a crucial role in practice. The Guidelines on the Acquisition of Properties by Foreign Interests, issued by the Economic Planning Unit (EPU), consolidate statutory requirements and policy considerations, thereby enhancing regulatory transparency. Although not legally binding in the strict sense, these guidelines significantly shape approval decisions and investor expectations. Despite the permissibility of ownership, land leasing remains a prevalent mode of access for foreign investors, particularly for large-scale or long-term projects. Foreign investors may lease land from state authorities or private landowners, subject to any required approvals. Leasing agricultural land is subject to heightened scrutiny due to food-security and rural-development concerns. Lease agreements are governed primarily by the Contracts Act 1950 and the National Land Code 1965, with additional relevance of the

[53] Strata Titles Act 1985 (Malay.).

Investment Act 1986 and the Companies Act 2016 where the lessee is a foreign-invested enterprise. The maximum lease term available to foreigners is 99 years, providing substantial security and predictability for capital-intensive investments.[54] Registration of the lease with the Land Registry is mandatory to ensure enforceability against third parties and to enable state monitoring of foreign land use. Empirical studies suggest that Malaysia's long-term lease framework has been instrumental in attracting manufacturing and infrastructure investments while preserving regulatory oversight.[55]

Malaysia's experience demonstrates that foreign land ownership and long-term leasing can coexist with strong state control, provided that access is mediated through approval mechanisms, sectoral priorities, and subnational governance. For Vietnam, Malaysia offers valuable lessons on how conditional ownership rights, transparent approval procedures, and SEZ-based land policies can enhance investment

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[54] Contracts Act 1950 (Malay.); National Land Code 1965.

[55] World Bank, *Malaysia Economic Monitor: Investment and Growth* (2022).

attractiveness without relinquishing sovereign control over land resources.

B. Vietnam: General Legal Framework Governing Foreign Investors' Access to Land

1. Fundamental Principles of Land Ownership and Land-Use Rights

Vietnam's regime governing foreign investors' access to land is anchored in a distinctive constitutional and legal principle: land is owned by the entire people, with the State acting as the representative owner. Unlike jurisdictions that recognize private land ownership, whether with or without nationality-based restrictions, Vietnamese law categorically excludes private ownership of land by individuals, communities, or enterprises, regardless of nationality. Legal subjects may only acquire land-use rights, which are created and allocated through decisions of the State or derived through statutorily recognized transactions. Consistent with this ownership model, Vietnamese

law has never recognized foreign individuals as land users in their individual capacity. Article 4 of the 2024 Land Law exhaustively enumerates entities entitled to hold land-use rights, including domestic organizations and individuals, residential communities, certain foreign diplomatic entities, persons of Vietnamese origin residing overseas, and, most relevantly, economic organizations with foreign investment capital.[56] Notably absent from this list are foreign individuals, reflecting a deliberate policy choice to separate foreign land access from personal ownership and to embed it within regulated investment structures. Nevertheless, the exclusion of foreign individuals does not equate to a prohibition on foreign participation in land-based economic activities. By establishing an economic organization with foreign investment capital, foreign investors may lawfully acquire land-use rights under the legal personality of that enterprise. This approach mirrors, in structural terms, the Chinese model of land governance, while diverging significantly from the

[56] Land Law 2024, art. 4 (Viet.).

ownership-based systems observed in Thailand, Malaysia, and Australia.

2. Legal Framework Governing Foreign Investors' Access to Land

The legal framework regulating foreign investors' access to land in Vietnam is multi-layered and highly codified. The cornerstone is the 2024 Land Law, complemented by the 2025 Investment Law, the 2025 Enterprise Law, the 2023 Law on Real Estate Business, and the 2023 Housing Law, together with a substantial body of implementing decrees and ministerial regulations.[57] Under previous legislation, foreign investors were required to prepare an investment project and satisfy market-access conditions as a prerequisite for enterprise establishment and subsequent land access.[58] While the 2025 Investment Law has eliminated the formal requirement to submit an investment project in

[57] Land Law 2024 (Viet.); Law on Investment 2025 (Viet.); Law on Enterprises 2025 (Viet.); Law on Real Estate Business 2023 (Viet.); Housing Law 2023 (Viet.).
[58] Law on Investment 2020, art. 22(1)(c) (Viet.).

certain cases, the market-access regime remains intact. Foreign investors must continue to comply with sectoral restrictions, ownership caps, and other conditions specified in the List of Sectors and Trades Subject to Market Access Restrictions for Foreign Investors.[59] This regulatory design reinforces the principle that land access is derivative of lawful investment status, rather than an autonomous property right. In this respect, Vietnam adopts a control-oriented approach that prioritizes investment screening and regulatory coordination over transactional flexibility.

3. Permissible Forms of Land Access for Foreign-Invested Enterprises

Foreign-invested enterprises may acquire land-use rights only in the specific cases exhaustively enumerated in Article 28(1) of the 2024 Land Law. These include, inter alia: acquisition of land-use rights by transfer within industrial parks, industrial clusters, and high-tech zones; receipt of capital

[59] *Id.* art. 9.

contributions in the form of land-use rights or their value; allocation of land for housing development projects in accordance with housing law; and lease of land directly from the State.[60]

Among these mechanisms, land leasing constitutes the dominant, and in practice, the principal, form of land access for foreign-invested enterprises. Although the Land Law formally recognizes both land allocation and land lease, allocation with payment of land-use levy is permitted for foreign-invested enterprises only in narrowly defined circumstances, primarily involving commercial housing projects. Allocation without payment of the land-use levy is categorically unavailable to foreign-invested enterprises. Moreover, Vietnamese law imposes strict limits on secondary access to land. Foreign-invested enterprises are generally prohibited from acquiring land-use rights through private transfers from domestic individuals or organizations, except in explicitly authorized cases such as transfers within

[60] Land Law 2024, art. 28(1) (Viet.).

industrial parks or high-tech zones.[61] They are likewise prohibited from leasing land-use rights from private parties, being permitted only to sub-lease land in industrial parks and industrial clusters where infrastructure has been completed.

4. Land Lease Regime: Duration, Procedures, and Stability

Foreign-invested enterprises may lease land directly from the State through auctions or bidding procedures organized by competent authorities.[62] While foreign investors may participate in such procedures in their capacity as investors, successful bidders must establish an enterprise under Vietnamese law to serve as the land lessee. Where a foreign-invested enterprise acquires a real estate project implemented on leased land, it may succeed to the existing land-lease rights without undergoing a new auction or tender.[63] The duration of land leases is tied to the investment project's operational term

[61] Law on Land, No. 31/2024/QH15, art. 28(1)(c).
[62] Law on Land, No. 31/2024/QH15, art. 126(6).
[63] Law on Land, No. 31/2024/QH15, art. 124(7).

and is capped at 50 years, extendable to 70 years for projects of exceptional scale or significance.[64] Upon expiry, lease extensions are discretionary and subject to state approval, reinforcing the State's ongoing supervisory role over land use

In industrial parks and high-tech zones, sub-lease terms are determined contractually but may not exceed the land-use term granted by the State to the primary lessee. This layered tenure structure prioritizes flexibility within confined spatial and regulatory boundaries.

5. Analytical Observations

Vietnam's land regime reflects a highly centralized, lease-based, and investment-dependent model of foreign land access. While it offers legal certainty through detailed statutory enumeration, it also imposes rigid constraints on transferability and secondary market participation. Compared with Thailand and Malaysia, Vietnam provides less

[64] Law on Land, No. 31/2024/QH15, art. 172(1)(c)

flexibility in tenure and ownership structures; compared with Australia, it relies more heavily on categorical restrictions than on risk-based screening. At the same time, Vietnam's approach ensures a strong alignment between land governance, investment policy, and national development objectives. The challenge lies not in the absence of legal access mechanisms, but in enhancing their predictability, administrative efficiency, and long-term stability—a theme that emerges consistently from the comparative experiences examined in this study.

IV. RECOMMENDATIONS FOR VIETNAM ON FOREIGN INVESTORS' ACCESS TO LAND

Vietnam can derive substantial lessons from the experiences of other countries regarding foreign investors' access to land. A primary consideration is the need to facilitate investment while simultaneously safeguarding national sovereignty, security, and sustainable development objectives. In virtually all jurisdictions, whether developed or

emerging, the land-access regime for foreign investors balances incentives for capital inflows with the protection of core public interests. Foreign investment contributes to national wealth, technology transfer, and employment creation, yet unregulated land access can threaten national security, ecological integrity, and social stability. Vietnam's policy framework should therefore explicitly integrate principles of investor facilitation, environmental protection, and strategic control of sensitive land areas.

Experience from Thailand, Malaysia, and China demonstrates that a coherent legal and institutional framework is crucial. Foreign investors' land rights are most effectively governed through clearly delineated rules and competent authorities tasked with monitoring compliance and adjudicating disputes. For Vietnam, consolidating regulatory authority at the central level, while maintaining specialized oversight agencies, would reduce ambiguity, improve consistency in land-access decisions, and enhance legal predictability for

investors. The comparative analysis also emphasizes the necessity of linking investors' land rights to land classification and use. Commercial, industrial, and residential land should be accessible under transparent conditions, while agricultural land, border areas, and land near strategic infrastructure should remain strictly controlled. Agricultural land in particular presents unique national security and socioeconomic challenges. Large-scale agricultural investments often require extensive land areas, generate limited technological spillovers, and may employ labor in ways that do not substantially upgrade domestic skill levels. They may also trigger unintended migration or demographic pressures. Vietnam's current restrictions on foreign access to agricultural land are consistent with international practice; however, clearer legal articulation and robust monitoring mechanisms would improve enforcement and investor certainty.

Legal structures should link land rights to the investor's legal status. Foreign investors should be required to establish a domestic legal entity before

initiating land access procedures, thereby ensuring full compliance with domestic law. Land rights should be time-limited and conditional, with renewal linked to continued adherence to investment commitments and compliance with environmental, security, and planning regulations. Equal treatment with domestic investors should be guaranteed for access to commercial and residential land, while specialized procedures and restrictions apply to sensitive land categories.

The experiences of emerging economies such as Thailand and Malaysia highlight the importance of proactive, strategic planning in granting land access to foreign investors. Land allocation should occur strictly within the framework of approved socio-economic and land-use plans, ensuring that investment is consistent with long-term development strategies, sustainability objectives, and national priorities. Procedures for evaluating land-access applications should be transparent, efficient, and predictable, allowing investors to make informed decisions while safeguarding public interests.

Efficiency and protection of national interests must be achieved in tandem: administrative processes should be fast, accurate, and investor-friendly, while substantive review mechanisms ensure compliance with approved plans, environmental standards, and national security considerations.

A critical lesson from comparative experience concerns the management of planning errors. Even rigorously prepared plans may later be found inconsistent with sustainability, security, or social objectives. In such cases, projects lawfully implemented under previously approved plans should generally be respected. However, where continuation of a project poses significant risks to national security, environmental integrity, or public welfare, the state should retain the right to recover land, subject to adequate compensation and transparent communication. Vietnam can adopt these principles to create a predictable, fair, and legally defensible mechanism for land recovery, thus maintaining investor confidence while protecting national interests.

Finally, Vietnam should consider integrating incentives into the land-access framework to guide foreign investment toward priority sectors, such as high technology, renewable energy, green tourism, and infrastructure. Comparative experiences show that targeted incentives—including preferential lease terms, tax benefits, and support for project implementation in designated economic zones—can attract capital while ensuring alignment with strategic development objectives. At the same time, the overarching principle must remain clear: land access is a privilege linked to compliance with legal obligations, strategic planning, and sustainable development priorities, not an unfettered right. By synthesizing these lessons, Vietnam can build a land-access regime that balances investment facilitation with the protection of public interests. A transparent, legally robust, and strategically aligned framework will both attract high-quality foreign investment and reinforce national sovereignty, environmental stewardship, and sustainable economic growth.

V. CONCLUSION

In conclusion, the comparative analysis of land-access regimes in Vietnam, China, Thailand, and Malaysia underscores the critical balance between facilitating foreign investment and safeguarding national sovereignty, security, and sustainable development. Vietnam's unique legal framework, where land remains collectively owned by the people and foreign investors can access land only through economic organizations with foreign investment capital, reflects both historical principles and contemporary policy considerations. Experiences from other countries illustrate that transparent legal structures, clearly defined institutional responsibilities, conditional and time-limited land rights, and integration with strategic socio-economic and land-use planning are essential to attract high-quality investment while mitigating risks associated with national security, environmental impact, and social stability. Lessons from Thailand and Malaysia further demonstrate the benefits of special economic zones, preferential leasing arrangements, and

targeted incentives in channeling investment into priority sectors such as technology, renewable energy, and infrastructure. At the same time, rigorous planning, monitoring, and enforcement mechanisms are necessary to prevent misallocation of land, environmental degradation, or conflicts with national priorities. By synthesizing these international experiences, Vietnam can refine its land-access policies to create a legally robust, investor-friendly, and strategically aligned framework that promotes sustainable economic growth, ensures equitable treatment of foreign and domestic investors, and preserves long-term national interests, thereby reinforcing its position as an attractive and responsible destination for foreign investment in Southeast Asia.

PROSTITUTION ON THE FARM: FEMALE ATHLETES AFTER SCHOOL

Carmen M. Cusack

I. INTRODUCTION

Prostitutes were discovered to be farmers. This Article is about undercover operations and research showing a major trend. Law is discussed to demonstrate the kind of behavior discovered. The Conclusion discusses where to take the development of these issues.

II. LAW

Prostitution is illegal. The penal code prevents it. Each state provides a definition or elements. For example, the Texas Penal Code, in penal § 43.02 said that prostitution is "(a) A person commits an offense if the person knowingly offers or agrees to receive a

fee from another to engage in sexual conduct."[1] Arkansas adds that an expectation of or offer for also constitute in prostitution.[2] Prostitution sexual activity is a misdemeanor.[3] A victim of trafficking is not an offender.[4] These women should not be considered to be those women.

A man accused of soliciting a prostitute in Texas waived his right to a jury trial, was found guilty during a bench trial, and Sohrab Mehdi appealed.[5] His two-year imprisonment sentence was suspended, but he received community supervision for a three-year term.[6] The issue on appeal was that the factfinder was not rational since there was insufficient evidence beyond a reasonable doubt that Mehdi knowingly agreed to pay.[7] The appeals court affirmed the trial court's judgment.[8]

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[1] Texas Penal Code § 43.02(a) (2024).
[2] AR Code § 5-70-102(a) (2024).
[3] *Id.* at (b).
[4] *Id.* at (c). § 5-18-103.
[5] Mehdi v. State, No. 01-24-00279-CR (1st Dist. Ct. App. Texas) (2025).
[6] *Id.*
[7] *Id.*
[8] *Id.*

The facts explain how the evidence was collected.[9] In January 2023, Lieutenant David Hall, a county investigator for the District Attorney's office's human trafficking division deterred the culture of sexual massages with an undercover operation.[10] Trial evidence of a foot massage parlor in Sugar Land, Texas, which had been shut-down following prosecution, allowed undercovers to use the storefront to achieve the result of a prostitution case.[11]

Hall put an "open" sign on the door, decorated the business with pornography posters and women's lingerie, wired cameras/microphones, and kept the doors locked for discretion.[12] Undercovers posed as a receptionist and a greeter.[13] The undercovers wore lingerie to appear to be prostitutes.[14] Hall testified that Mehdi was then arrested.[15]

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[9] *Id.*
[10] *Id.*
[11] *Mehdi* (1st Dist., 2025).
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*

Detective Kiki Wang from the Houston Police Department's Human Trafficking Unit posed as the spa's manager.[16] Detective Melanie Jones with the Houston Police Department and Officer Tiffany Juarez with the Missouri City Police Department were decoy officers.[17] Wang would find out what kind of girl the defendant wanted.[18] Wang offered girls of different races.[19] Then a decoy would meet the defendant in the massage room.[20]

The defendant, Mehdi, arrived in the afternoon and was let in to the massage room.[21] He asked Wang for any black ladies.[22] He left soon after and told Wang that he would come back later.[23] County legal businesses cannot lock their doors during regular business hours, but might be allowed to in the county where he exited through the locking door.[24]

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16 *Id.*
17 *Mehdi* (1st Dist., 2025).
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Mehdi* (1st Dist., 2025).
24 *Id.*

He returned in the evening, was greeted by Wang and Jones, who walked him to the room.[25] He did not request any sexual services.[26] Jones of the vice division testified.[27] Jones invented, taught, and promoted classes for female undercovers to work in hotels and on pimp cases.[28] Low key clients avoid approaching sex workers on the street, and communicate using gestures or other nonverbal cues.[29]

Women on farms are subject to analysis of income.[30] In *WIFE*, Women Involved in Farm Economics (WIFE) sued the Department of Agriculture for their own payment.[31] The court of appeals held that they are not individual payees unless they had their own farms before marriage and

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[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Mehdi* (1st Dist., 2025).
[30] WIFE v. Dep't of Agriculture, 682 F.Supp. 599, 608 (D.D.C.1988) (reversed). Women Involved in Farm Economics v. U.S. Dept. of Agriculture, 876 F.2d 994 (D.C. Cir. 1989) (Women Involved in Farm Economics v. Clayton K. Yeutter, Secretary of Agriculture, et al., No. 89-366 (U.S. Sup. Ct., Oct., 1989) (cert. denied), *see* U.S. Department of Justice, justice.gov/osg/media/211896/dl?inline).
[31] *WIFE* (D.D.C.1988).

maintained the distinction.[32] The Court denied cert. to the group that did not maintain its own costs on the farm.[33] The husband/wife regulation was challenged on administrative law, equal protection, and due process grounds.[34]

The district court granted a motion for summary judgment by WIFE.[35] The court's holding was that the regulation was irrational.[36] The unconstitutional law was analyzed on appeal though the lower court avoided strict scrutiny because husband/wife did not "directly and substantially interfere[ ]" with the fundamental right to marry.[37] Lower court analysis used rational review because it believed the regulation to be unrelated to any legitimate governmental interest considered by Congress under the farm support programs at

32 *WIFE* (D.C. Cir. 1989).
33 *WIFE* (U.S. Sup., 1989).
34 *WIFE* (D.D.C.1988).
35 *Id.*
36 *Id.*
37 682 F.Supp. at 601 (quoting Zablocki v. Redhail, 434 U.S. 374, 387, 98 S.Ct. 673, 681, 54 L.Ed.2d 618 (1978)); *WIFE* (D.D.C.1988). *WIFE* (D.C. Cir. 1989).

bar.[38] Subsidies were legitimate concerns due to participation and allocation.[39]

III. WOMEN

Women around the world, like in the U.S. are in four groups: mothers with a certain child's well-being in mind; child athletes/farmers; schoolhouse teachers; and businesswomen. The groups are natural and legal. They are born into them. The groups are evenly distributed, and thus, they are expected to participate until they become adults. Some show certain talent and are selected for specific work. Throughout adulthood they are all bound to these roles by the social contract, and their bodily health.

Mothering is the norm, but when the girls in the group get strong messages throughout childhood (e.g., from school, religion, mental voices, etc.) regarding future events, they know they are part of this group. Typically, they do not have jobs outside the home. They almost all work fulltime for their

[38] *WIFE* (D.D.C.1988).
[39] *Id.*

families, and achieve the designated markers in rearing a child. Girls may play sports for up to one year, but those that play school sports for two years go on to become farmers with men. Most men, around three-quarters, farm in addition to their professional titles. The girls, as women, possess great strength and endurance. Schoolhouse teachers begin training after puberty to teach children basic language and culture. Men do not teach children at schoolhouses. Some chalk-board teaching in public school by males affects a small percentage of students. More than half of students exit education before the end of their first year of adulthood having received no personal attention scholastically from the schoolhouse teacher. Businesswomen usually inherit the trait from both parents or from a donor who replaces the parental inheritance biologically. This full membership in the group comes with financial perks, like not farming at all if male. No lawyers or medical doctors are professional businesswomen, yet many doctors of an advanced

sort are. They pair with each other or do not have children.

IV. FARMERS

In this Section, farmers are one-quarter of all females and three-quarters of males. Farmers produce food and substances. They contribute to the movement of materials and processes individually and in groups. Farmers that are male usually have other jobs that utilize the resources that they farm. Those are their professions.

Female farmers, like one-quarter of male farmers, live on or around farms. They share land with other families and individuals. The rights of the community members are developed in light of their needs and available lands. No farmers have extra rights to sell sex or human bodies.

A look at farms showed that many locations had sex workers. One female is the prostitute in the extra house, but the others use makeup while working around the shared farm to illegally promote prostitution at the extra house. They mainly targeted

men, but also women and children, rarely. The research avenues that observed, documented, and moved against them also rehabilitated them and saved farms.

V. CONCLUSION

Farms should eliminate sexual threats according to the undercover operation and guidelines imposed. Discoveries that are scientific should follow this study. The outcomes will aid legal research; reduce the potential case load; assist trafficking victims of the future; promote sports; and improve farming. The legal community should continue to expect academic normalcy while looking for alternate uses of the structure.