**Civil law**

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DOI <https://doi.org/10.5281/zenodo.17598449>**Comparative Analysis of Compulsory Heirship Independent of Will Content in Vietnamese and French Law: Key Differences and Proposals for Enhancing Vietnamese Regulations****Do Cong Nam,**

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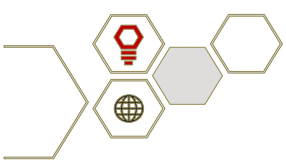
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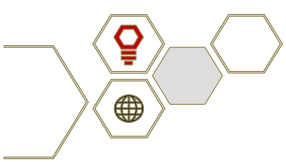
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Abstract: **Purpose** of this study aims to clarify the basis for determining individuals entitled to the compulsory portion of the estate independent of the will's content under Vietnamese and French law, through analysis and comparison of relevant provisions. Specifically, the article focuses on protecting the rights of vulnerable family members, while proposing recommendations to improve Vietnamese law to better align with modern social realities, balancing the testator's freedom to dispose of property and family moral obligations. This stems from the observation that Vietnam's current regulations are narrow in scope, not covering common cases such as adopted children, economically dependent persons, or long-term caregivers, whereas French law has a more flexible mechanism, profoundly influencing Vietnam's civil system. **Method** of the article employs a comparative legal method, focusing on analyzing Article 644 of the Vietnamese Civil Code 2015 and Articles 912-930 of the French



Civil Code. Contents are contrasted by each group of subjects (parents, children, spouse, and fetus), including provisions on intestate and testate succession. Additionally, the research references practical cases (such as the Johnny Hallyday case in France), reference materials, and recent legal reforms (such as the 2007 amendment in France removing parents from compulsory heirs). Based on differences, the article proposes improvement recommendations, combined with sociological analysis to ensure feasibility and humanity. **Results** The comparative results show that both systems aim to protect vulnerable family members, but the scope and mechanisms differ markedly. Vietnamese law specifies four groups entitled to the compulsory portion (minor children or adult children without labor capacity, parents, spouse), emphasizing blood ties and legal nurturing relationships, but lacks flexibility and does not cover legally adopted children, economically dependent persons, or actual caregiving relationships. In contrast, French law focuses on protecting children (*réserve héréditaire* occupying a large ratio depending on the number of children), prioritizes the spouse with lifetime usufruct rights, and eliminated parents from compulsory heirs since 2007 to enhance the testator's dispositive rights. For the fetus, France applies the principle beneficial to the child, while Vietnam emphasizes proof conditions (conceived before death, alive for at least 24 hours after birth). The differences reflect France's orientation towards nuclear families and greater flexibility, while Vietnam maintains tradition but is not suited to diverse modern family relationships. From this, the study proposes expanding subjects in Vietnam: adding legally adopted children, economically dependent persons, long-term caregivers; flexibly adjusting compulsory ratios based on economic conditions; and perfecting mechanisms for managing the fetus's estate portion (temporary suspension of division, appointment of manager). **Conclusion** Improving Vietnamese law by expanding the scope of compulsory heirs will contribute to ensuring fairness, humanity, and alignment with social realities, reducing family disputes and harmonizing individual rights with moral obligations. The recommendations not only draw from French experience but also need to integrate with Vietnam's cultural context, through



amending Article 644 of the Civil Code and issuing detailed guidelines on proving relationships, temporary estate management, to better protect vulnerable subjects without weakening the freedom to dispose of property.

Keywords: Compulsory heirship; Heirs not dependent on the content of the will; Réserve héréditaire.

Порівняльний аналіз обов'язкового спадкування незалежно від змісту заповіту у в'єтнамському та французькому законодавстві: ключові відмінності та пропозиції щодо вдосконалення в'єтнамського законодавства

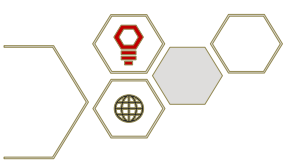
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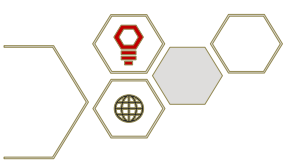
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Анотація: Мета Це дослідження спрямоване на уточнення підстав для визначення осіб, які мають право на обов'язкову частку спадщини, незалежно від змісту заповіту, відповідно до в'єтнамського та французького законодавства, через аналіз та порівняння відповідних положень. Зокрема, стаття зосереджується на захисті прав вразливих членів сім'ї, пропонуючи рекомендації щодо вдосконалення в'єтнамського законодавства для кращого узгодження з сучасними соціальними реаліями, балансуючи свободу заповідача розпоряджатися майном та моральні сімейні зобов'язання. Це впливає з спостереження, що чинні положення В'єтнаму обмежені в охопленні, не охоплюючи поширені випадки, такі як усиновлені діти, економічно залежні особи чи довгострокові доглядачі, тоді як французьке законодавство має гнучкіший механізм, який суттєво впливає на цивільну систему В'єтнаму. **Метод**



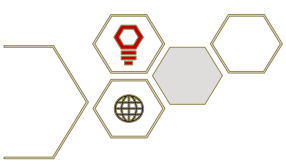
Стаття використовує порівняльний правовий метод, зосереджуючись на аналізі статті 644 Цивільного кодексу В'єтнаму 2015 року та статей 912-930 Цивільного кодексу Франції. Зміст протиставляється за кожною групою суб'єктів (батьки, діти, подружжя та плід), включаючи положення щодо спадкування за законом і за заповітом. Крім того, дослідження посиляється на практичні випадки (наприклад, справа Джонні Холлідея у Франції), довідкові матеріали та недавні правові реформи (наприклад, поправка 2007 року у Франції, яка виключає батьків з обов'язкових спадкоємців). На основі відмінностей стаття пропонує рекомендації щодо вдосконалення, поєднані з соціологічним аналізом для забезпечення здійсненності та гуманності. **Результати** Порівняльні результати показують, що обидві системи спрямовані на захист вразливих членів сім'ї, але обсяг і механізми суттєво відрізняються. В'єтнамське законодавство визначає чотири групи, які мають право на обов'язкову частку (малолітні діти або повнолітні діти без працездатності, батьки, подружжя), наголошуючи на кровних зв'язках і правових відносинах виховання, але бракує гнучкості і не охоплює законно усиновлених дітей, осіб, які економічно залежать, або фактичні відносини догляду. Навпаки, французьке законодавство зосереджується на захисті дітей (*réserve héréditaire*, яка займає великий відсоток залежно від кількості дітей), надає пріоритет подружжю з правами довічного користування, і усунуло батьків з обов'язкових спадкоємців з 2007 року для посилення прав розпорядження заповідача. Щодо плода, Франція застосовує принцип, корисний для дитини, тоді як В'єтнам наголошує на умовах доказування (зачатий до смерті, живий щонайменше 24 години після народження). Різниці відображають орієнтацію Франції на ядерні сім'ї та більшу гнучкість, тоді як В'єтнам зберігає традиції, але не підходить для різноманітних сучасних сімейних відносин. З цього дослідження пропонує розширити суб'єктів у В'єтнамі: додати законно усиновлених дітей, осіб, які економічно залежать, довгострокових доглядачів; гнучко коригувати обов'язкові коефіцієнти на основі економічних умов; і вдосконалити механізми управління часткою спадщини плода (тимчасова



призупинення поділу, призначення керуючого). **Висновок** Покращення в'єтнамського законодавства шляхом розширення кола обов'язкових спадкоємців сприятиме забезпеченню справедливості, гуманності та відповідності соціальним реаліям, зменшенню сімейних суперечок та гармонізації індивідуальних прав з моральними обов'язками. Рекомендації не тільки спираються на французький досвід, але й повинні інтегруватися з культурним контекстом В'єтнаму через внесення змін до статті 644 Цивільного кодексу та видачу детальних рекомендацій щодо доведення родинних зв'язків, тимчасового управління спадщиною, щоб краще захищати вразливі суб'єкти без послаблення свободи розпоряджатися майном.

Ключові слова: Обов'язкове спадкування; спадкоємці, не залежні від змісту заповіту; *réserve héréditaire*.

Problem statement and relevant. The right to inheritance and the right to freely dispose of property are fundamental rights of individuals, recognized in the Vietnamese Civil Code of 2015 as well as in many legal systems worldwide. However, this right is not absolute, as the disposition of property after death must be placed in relation to moral obligations and responsibilities of the testator toward close relatives. Therefore, many countries have established the compulsory heirship regime to ensure that certain close relatives—often those who are vulnerable or economically dependent—receive a certain portion of the estate, regardless of the content of the will. In Vietnam, Article 644 of the Civil Code of 2015 provides for "heirs not dependent on the content of the will," including minor children, adult children without labor capacity, parents, and spouse of the testator. This provision embodies the spirit of humanity and ensures fairness in family relations, but in practice, the scope of beneficiaries is still narrow, not covering common cases such as adopted children, economically dependent persons, or long-term caregivers for the testator. Meanwhile, French law—considered one of the systems with profound influence on Vietnamese civil law—also regulates a similar regime in Articles 912 to 930 of the Code civil, under the name "*réserve héréditaire*"



(compulsory portion of the estate). Although the scope of beneficiaries in France primarily focuses on children, this system has a flexible mechanism and is stably applied in practice. From comparing the two legal systems, it can be seen that Vietnam's regulations, while humane, lack flexible criteria and are not suitable for the diversity of family relations today. Therefore, research to recommend expanding the category of compulsory heirs is necessary to harmonize the individual's right to freely dispose of property with the requirement to protect vulnerable persons in the family and better suit modern social realities.

Results and Discussion.

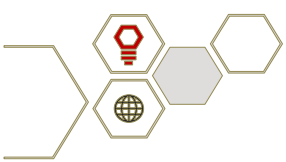
Category of Heirship Not Dependent on the Content of the Will under French Civil Law

Parents of the Testator

The law of the French Republic has a different approach, often prioritizing descendants (children) and spouses over parents in inheritance. If the deceased has children, parents are not in the priority heir category. In cases where the deceased has no children, parents then inherit, but their share is also reduced in the presence of a spouse. Specifically, if there is a spouse but no children, the spouse in France inherits at least 1/2 of the estate, with the remainder shared by the parents (each 1/4) [1]. If only one parent survives, the spouse inherits 3/4, and the surviving parent inherits 1/4 of the estate. Notably, French law abolished the provision that parents are heirs who cannot be disinherited (reserved heirs) since 2007, to increase the testator's right to prioritize the spouse. This means that currently, if the deceased has a will, parents can be completely disinherited to transfer assets to others (e.g., to the spouse). Before this reform, each parent was reserved 1/4 of the estate when the child dies without children; but now, the testator in France has the right not to leave any portion to parents if the will so desires.

Children of the Testator

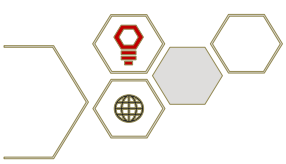
French law has a strong tradition of protecting the inheritance rights of all children—the concept of the "compulsory portion for children" (*réserve héréditaire*) is



very prominent in French civil law. Specifically, regardless of the child's age or wealth, parents upon death cannot disinherit their children from the estate. Therefore, in France, even adult children with labor capacity or those estranged from parents automatically have the right to a portion of the parents' estate. A famous example is the case involving the late singer Johnny Hallyday: he resided in the US, made a will under US law leaving all assets to his wife and young children, excluding his two adult children (from a previous marriage). The two adult children sued in France, invoking French law to claim their *réserve*, as under French law they cannot be completely excluded. That dispute shows France's firm protection of children's inheritance rights, to the extent that even if the father chose foreign law, French law in 2021 amended (Article 913 Code Civil) to allow that if there are assets in France, children still have the right to claim an equivalent *réserve* from that asset block.

Spouse of the Testator

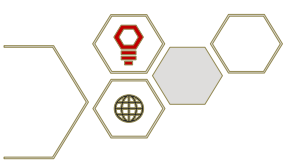
In the French legal system, the rights of the spouse upon death are also protected, but the method is not entirely similar to Vietnam. First, under French intestate succession law, the surviving spouse is placed in the priority heir category, even before parents or siblings. Specifically: if the deceased has children, the estate is divided between the spouse and children. By law, the spouse in France has the option to receive one-quarter (1/4) of the estate in full ownership or enjoy the entire property in the form of usufruct (lifetime usufruct right [2]). This option applies when all children are common with the surviving spouse; if there are separate children (not of the surviving spouse), the spouse automatically receives only 1/4 of the estate in full ownership. In cases where the deceased has no children but parents survive: the spouse inherits one-half (1/2) of the estate if both parents are alive, or 3/4 if only one parent survives. If the deceased has no children and both parents are deceased, the spouse inherits the entire estate, prioritized over siblings of the deceased. It can be seen that French law grants the spouse a priority share, often larger than that of each child or parent. Regarding wills, French law treats the spouse as a "protected heir" when there are no children. Article 914-1 of the French Civil Code (amended in 2001) provides that if a



person dies without children, they cannot completely deprive the spouse of the estate - in other words, a childless spouse has a reserved portion. This reserved portion is 1/4 of the estate value in cases with parents or siblings, ensuring the spouse has at least one-quarter of the assets, regardless of the will's content. In cases with children, as mentioned, French law prioritizes protecting children with the *réserve* occupying up to 1/2, 2/3, 3/4 of the assets depending on the number of children, so the spouse with children does not have a separate reserved portion like children, but still enjoys special rights. Specifically, such as the lifetime right to housing (*droit viager au logement*) and the right to use household items in the first year after the spouse's death, under Articles 764 and 765 Code Civil. This right allows the surviving spouse to continue living in the shared home, avoiding situations where children co-heirs force the sale of the house to divide assets. In summary, French law provides the spouse with considerable guarantees: if there are children, they inherit at least 1/4 of the assets or full usufruct; if no children, they have at least 1/4 of the assets even with a will; and in all cases, they have housing rights.

Regarding the Fetus

In comparison with foreign law, French law clearly protects the inheritance rights of the fetus. Article 725 of the French Civil Code provides: “Pour succéder, il faut nécessairement exister à l’instant de l’ouverture de la succession; cependant, l’enfant simplement conçu est tenu pour né chaque fois qu’il y va de son intérêt...”, meaning to inherit, the person must exist at the time of opening the succession; however, if considering the conceived child as born is beneficial to it, the law will recognize that. This means if the fetus was conceived before the testator's death and is born alive, the fetus has full heir status, including in the *réserve héréditaire* (compulsory portion of the estate). The French legal system even specifies precise ratios for the compulsory portion that the testator cannot dispose of, to protect the rights of children, including the fetus if subsequently born alive.

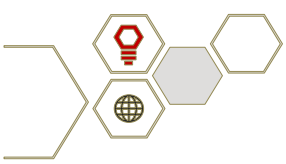


Category of Heirship Not Dependent on the Content of the Will under Vietnamese Civil Law

Parents of the Testator

The inheritance relationship between parents and children is a two-way legal relation, in which both parents and children can be testators or heirs to each other. The concepts of "parents" and "children" in this relation are not limited by blood factors but include legal nurturing relations. The Civil Code does not specifically provide for "biological parents" or "adoptive parents," and the determination of the status of related subjects must be based on the provisions of the current Marriage and Family Law as well as the Adoption Law. Two basic forms of relations that can give rise to the right to inheritance not dependent on the content of the will are blood relations (in which parents and children are those with direct blood ties in two consecutive generations) and legal nurturing relations. In blood relations, biological parents are those who gave birth to the child and are recognized by law according to legal procedures. Conversely, biological children include both children born in wedlock and out of wedlock both recognized as heirs at law in the first rank when parents die. The establishment of parent-child relations under current law is carried out through two mechanisms. In cases without disputes, recognition of parents or children is registered through administrative procedures at the People's Committee at the communal level where one of the parties resides, provided the parties are alive, consensual, and voluntary at the time of registration [3]. In cases with disputes or where the person requested to establish parent-child relation is deceased, the authority to determine the relation belongs to the People's Court according to civil procedural order. Article 101 of the Marriage and Family Law of 2014 clearly provides for the competent authority in these cases [4].

In the context of modern medical advancements, forms of childbirth through assisted reproductive techniques or surrogacy are also recognized by law under certain conditions. For childbirth through assisted reproductive techniques, the law does not recognize parent-child relations between sperm, egg, or embryo donors and the child

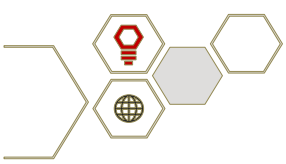


born from such reproductive materials. Clause 3 Article 93 of the Marriage and Family Law of 2014 clearly provides for this [4]. In cases of surrogacy for humanitarian purposes, the born child is established as the common child of the couple requesting surrogacy from the time of birth, according to Article 94 of the Marriage and Family Law [4]. Thus, only those with blood relations or legal nurturing relations according to legal provisions can be established as heirs not dependent on the content of the will.

Nurturing relations are legal relations arising between the adopter and the adoptee. Adoption must meet legal conditions: the adopter must have full civil act capacity, be at least 20 years older than the adoptee, have good material conditions and morals, and not fall under prohibited cases in Clause 2 Article 14 of the Adoption Law [5]. The adoptee must be a child under 16 years old or a person from 16 to under 18 in special cases. Additionally, consensus between the parties is a mandatory condition, ensuring voluntariness, not for profit, not coerced or bribed. Adoption is only recognized by law if registered at the competent state authority according to Article 9 of the Adoption Law [5].

Besides legal adoption, legal practice also recognizes "de facto adoption" that is, establishing parent-child relations in fact, without registration but with existing care, education, and nurturing between parties similar to a family. This form is accepted by law provided: the adoption arose before January 1, 2011; at the time the Adoption Law takes effect, the parties are still alive; and between the parties exists a factual relation of care and education like parents and children [6]. De facto adoption, though not automatically recognized by law, can be formalized if meeting legal conditions.

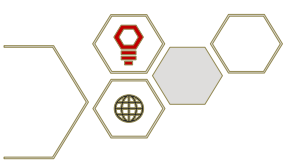
One issue raised is whether the separate child of a spouse can inherit not dependent on the content of the will from the stepfather or stepmother? Article 679 of the Civil Code 2005 (still of reference value) provides that if between the separate child and stepfather, stepmother there is a relation of care and nurturing like parent-child, they can be determined as first-rank heirs. However, this provision only applies in cases of intestate succession or substitutionary inheritance, and does not regulate compulsory heirship not dependent on the content of the will. Currently, there is no legal document



specifying legal criteria to evaluate what constitutes "care and nurturing like parent-child," leading to difficulties in practical application. From an academic argument perspective, heirs not dependent on the content of the will are often determined as close blood relatives or those with strong legal ties to the deceased. The law grants them a certain portion of the estate to protect essential rights, while reflecting respect for traditional morals and social ethics. Conversely, relations between separate children and stepparents are mainly based on emotional factors—not sufficient legal basis to extend the application of compulsory heirship not dependent on the content of the will. This is also the view supported by many scholars, as such expansion would undermine the necessary limitations of the regime and weaken the testator's right to freely dispose of property [7].

Children of the Testator

According to Clause 1 Article 644 of the Civil Code 2015, "minor children" or "adult children without labor capacity" are compulsory heirs. Based on Point a Clause 1 Article 651 of the Civil Code 2015, the first rank of heirs includes "biological children, adopted children of the deceased." Thus, "children" in Article 644 must be understood to include both biological children (in wedlock, out of wedlock) and legally adopted children. For biological children, compulsory heirship not dependent on the will is automatic due to blood ties. For adopted children, the Adoption Law 2010 (Clause 3 Article 3) defines them as those received as adoptees upon legal registration, with the purpose of establishing sustainable parent-child relations for the child's best interests. Article 24 of this Law also affirms that from the time of handover, adoptive parents and adopted children have full rights and obligations like biological parents and children. Thus, adopted children also enjoy compulsory inheritance rights. Article 653 of the Civil Code 2015 further allows adopted children to inherit from both adoptive parents and possibly biological parents, strengthening the adopted child's status. For separate children, Article 654 of the Civil Code 2015 provides: if there is a factual care and nurturing relation with the stepfather or stepmother, this relation gives

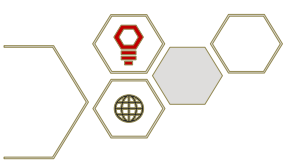


rise to inheritance rights. Then, the separate child is determined as a first-rank heir and has the right to the compulsory portion under Article 644.

Spouse of the Testator

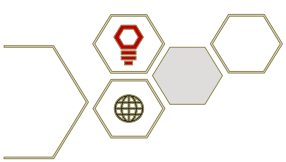
In 1981 when Circular 81/1981/TANDTC was issued, the inheritance relation between spouses was added a new right—the right to inheritance not dependent on the content of the will. Circular 81/1981/TANDTC recorded that “The testator must reserve a portion of assets for compulsory heirs (if any). Compulsory heirs include: Widow or widower, minor children or adult children without labor capacity, elderly and needy parents.”. From Circular 81/1981/TANDTC to now, the law has always recognized the right to inheritance not dependent on the content of the will for spouses. The basis for arising inheritance relations between spouses is the marital relation, when a man and a woman establish spousal relations through marriage and their marriage is recognized by law, then they can inherit from each other. In Vietnamese law, those entitled to inheritance not dependent on the content of the will include spouses, parents, minor children, and adult children without labor capacity of the deceased; these persons have equal status in enjoying inheritance not dependent on the content of the will, equal in position and in the portion of estate they receive. Unlike Vietnamese law, French law does not place the spouse in the same rank as those entitled to inheritance not dependent on the content of the will like ascendants and descendants. The French Republic only allows the surviving spouse who has not divorced, has no effective separation judgment, and has not initiated divorce or separation proceedings to inherit one-quarter of the estate if the deceased has no one in the ascendant or descendant lines [8].

Determining the status of legal spouses for the parties is very important, not only meaningful in exercising spousal rights and obligations in marriage and family relations but also in exercising inheritance rights. The provisions of the Marriage and Family Law 2014 quite completely regulate the determination of spousal relations between men and women established from January 1, 2015. To be considered legal spouses, the Marriage and Family Law 2014 provides that men and women wanting to



marry must meet marriage conditions [4, Art 8] as prescribed by law and must register marriage at the competent state authority [4, Art 9]. If men and women live together as spouses but do not register marriage at the competent authority, the relation between them will not be recognized by law as spousal.

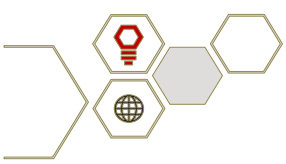
Before the Marriage and Family Law 2014, the Marriage and Family Laws of 2000 and 1986 also recognized the monogamous marriage regime and set marriage conditions for men and women; marriages not meeting conditions were considered illegal. However, the Marriage and Family Law 1986 did not clearly provide for cases where men and women live together as spouses, meeting marriage conditions but not registering marriage, whether the law recognizes that marriage as legal or illegal. To resolve consequences from the incomplete provisions of the Marriage and Family Law 1986 and guide the application of the Marriage and Family Law 2000, the National Assembly issued Resolution 35/2000/NQ-QH. According to Resolution 35/2000/NQ-QH, spousal relations established before January 3, 1987 (effective date of the Marriage and Family Law 1986) without marriage registration are encouraged by the State to register. Cases where men and women live together as spouses from January 3, 1987 to January 1, 2001, meeting marriage conditions under this Law, are obligated to register marriage within two years; if after this period they do not register, the law does not recognize their marital relation. For marriages conducted before January 13, 1960 in the North (effective date of the Marriage and Family Law 1959) or before March 25, 1977 in the South (date of announcing unified legal documents nationwide), during this period one person could have multiple spouses, all such marital relations are recognized by law as *de facto* marital relations. When the husband dies first, all surviving wives at the time of opening succession are first-rank heirs and all belong to the category entitled to inheritance not dependent on the content of the will of the husband. If the wife dies first, all surviving husbands at the time of opening succession are first-rank heirs of that wife and all belong to the category entitled to inheritance not dependent on the content of the will of the wife. According to guidance in Circular 60/DS dated February 22, 1978 of the Supreme People's Court, cases where cadres,



soldiers already have spouses in the South, after regrouping to the North, remarry are special cases due to war consequences and the country's historical conditions; although these marriages violate marriage conditions, they are not considered illegal marriages, and the rights and obligations of the parties are protected by law. Cadres, soldiers already having spouses in the South, after regrouping to the North, remarrying, if the subsequent marriage is not annulled by an effective court judgment, all such spouses are first-rank heirs and belong to the category entitled to inheritance not dependent on the content of the will of the husband or wife. Or cases where spouses have divorced but later cohabit before the effective date of the Marriage and Family Law 1986 and such cohabitation is not annulled by an effective court judgment, their spousal relation is recognized and they are entitled to inheritance not dependent on the content of each other's will. The above cases are considered legal marriages or de facto marriages recognized by law. In these cases, when one spouse dies, the survivor will inherit according to legal provisions, i.e., inherit by will, at law, and not dependent on the content of the will. Additionally, in cases where spouses divide common property during marriage or are petitioning for divorce but not yet granted by the court, or granted but the decision or judgment has not taken legal effect, when one dies, the survivor still inherits not dependent on the content of the will because at the time of opening succession, their marital relation still exists. [9, Art 655].

Regarding the Fetus

With the group of fetuses, the law sets strict conditions that the fetus must be proven to have been conceived before the testator's death and alive after birth. If the fetus dies before or during birth, it will not qualify as an heir. To determine the conception time, the law may invoke Article 88 of the Marriage and Family Law 2014, which provides: "Children born during marriage or conceived by the wife during marriage are common children of spouses. Children born within 300 days from marriage termination are considered conceived by the wife during marriage,...". Applying this in inheritance, it can be understood that if the child is born within 300 days from the testator's death, it is considered conceived before death. If born after this

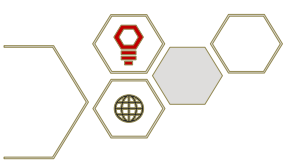


period, to establish inheritance rights, clear evidence that the child is the testator's is needed. Additionally, to determine if the born child is considered "alive," current law has no specific criteria in the Civil Code, but reference can be made to Article 23 of Decree No. 158/2005/ND-CP (now replaced by Decree No. 123/2015/ND-CP), which provides: "Children born alive for 24 hours or more then die must register birth and death,...". This leads to the practical understanding that the child must live at least 24 hours after birth to be recognized as "having lived" and qualify as an heir. If not living to 24 hours, no birth registration, not recognized by law as "alive," thus cannot be an inheritance subject. In cases where the child lives over 24 hours but is minor, the estate is managed by parents or guardians under current civil law provisions [10, Art 58, 141].

Differences in the Category of Heirship Not Dependent on the Content of the Will between French Law and Vietnamese Law

Parents of the Testator

It can be seen that Vietnamese law protects parents' inheritance rights more strongly than French law. In the Vietnamese system (as well as some countries influenced by classical Civil Law), parents are first-rank heirs and always have a guaranteed estate portion. Conversely, in France, parents' role in inheritance significantly decreases when the deceased has a spouse or children. Modern French law has removed the "compulsory heirship" regime for parents to prioritize protecting the spouse. Vietnam (and somewhat France before 2007) emphasizes filial obligations and blood ties, thus automatically reserving portions for parents. Additionally, in intestate division: Vietnam divides equally among all parents, spouse, children; French law prioritizes spouse/children, parents only inherit when not competing with those subjects. For example, a deceased with spouse and children in Vietnam, parents will inherit equally with each child and spouse (each one equal share); but in France, parents get nothing if there are children, and if spouse but no children, parents' share is less than the spouse's (France: spouse at least 1/2, parents each 1/4). This difference shows Vietnamese law is more traditional family-oriented, while French law tends to nuclearize family relations, focusing on protecting spouse and children first.

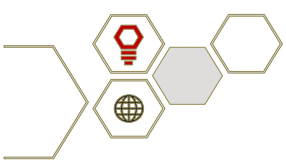


Children of the Testator

The difference between Vietnamese law and French law regarding children's inheritance rights lies in the degree of restricting parents' disposition rights and protecting children's interests. French law represents strong protection for children: all children have rights to a large fixed asset ratio that cannot be deprived. Regarding "disinheritance"—in France, parents can hardly disinherit children; in Vietnam, adult self-sufficient children can be disinherited. Protection levels also differ: France fixes ratios for children in law; Vietnam combines fixed law (2/3 share for minors/disabled) and leaves open for adults. Another practical difference: since French law strongly protects children's rights, some French parents seek ways to circumvent like transferring assets abroad or choosing other laws—leading to international legal conflicts and France amending law in 2021 to limit avoidance of *réserve*. In Vietnam, with more flexible law, disputes often focus on interpreting will intent or demanding fairness in rights.

Spouse of the Testator

Vietnamese and French laws both recognize the spouse as an important heir, but methods and priority levels differ. First, in intestate succession (no will): Vietnam gives spouse one share equal to children's or parents'; France gives spouse a share often larger than each child's or parent's. The difference is clearest in scenarios: deceased with parents but no children Vietnam: spouse 1/3, each parent 1/3; France: spouse 1/2, parents each 1/4. Similarly, with spouse and children: Vietnam spouse 1/(n+1) (equal with n children); France—spouse at least 1/4, children share 3/4. Clearly, Vietnamese law places spouse equal with children and parents, while foreign laws elevate spouse's position, especially over parents. Second, in testate succession: both Vietnam and France protect spouse from complete disinheritance, but degrees differ. Vietnam ensures spouse 2/3 of their legal share, France ensures childless spouse 1/4 assets (regardless of other relatives) and spouse with children has usufruct or at least 1/4 if choosing ownership. Third, specific rights: France has unique rights like lifetime housing and use of common assets after spouse's death, Vietnam has no such automatic



provisions. Vietnam may achieve this through heir agreements or court division, England through court order if spouse requests to keep house. Fourth, spousal property regime context also influences: Vietnam and France apply default community property, so spouse often already owns 1/2 common assets before inheritance division. Overall, French law tends to prioritize ensuring the widowed spouse's living more than Vietnam - shown through division ratios and protection mechanisms. Vietnam maintains a more "balanced" approach between spouse and other family members (parents, children).

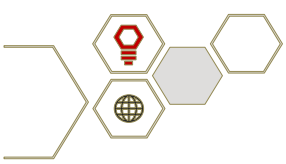
2.3.4. Regarding the Fetus

The basic difference in scope and method of protecting this right in French law and Vietnamese law. French law, under Article 725 Civil Code, clearly affirms that the fetus is considered born if beneficial to the child, provided conceived before the testator's death and born alive. This approach embodies absolute protection of the fetus's interests, focusing on the child's benefit in both ordinary and compulsory estate portions (*réserve héréditaire*). Conversely, while Vietnamese law also recognizes the fetus's inheritance rights, provisions lean more toward conditional and legal technical aspects than absolute interest protection. Specifically, Vietnamese law requires proving the fetus was conceived before the testator's death and the child born alive, even invoking marriage and family provisions to determine conception time and 300-day limit as legal presumption basis. Additionally, Vietnam sets practical criteria of minimum 24-hour survival after birth [3] (under Decree 158/2005/ND-CP, now 123/2015/ND-CP) to be considered "having lived" and heir-qualified. Thus, if French law centers on the fetus's benefit, Vietnamese law emphasizes proof conditions and administrative-technical provisions—reflecting two different approaches to protecting the fetus's inheritance rights.

Some Lessons from Experience and Recommendations for Improving Vietnamese Law First, regarding parents of the testator

First, about the parents of the person leaving the legacy:

Need to consider adjusting the scope and conditions for parents' compulsory heirship. Currently, under Vietnamese law, parents are first-rank heirs and inherit when



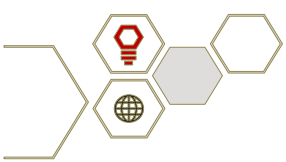
the child dies, but the law has not set conditions on economic dependency or labor capacity (Civil Code, 2015). Meanwhile, French law before 2007 provided parents as "compulsory heirs" (*héritiers réservataires*), but the 2006 amendment effective from January 1, 2007 abolished parents' compulsory inheritance rights, retaining only for children [11]. Vietnam can reference this approach, protecting compulsory heirship for parents only if they are elderly, disabled, or without income, to ensure fairness between the testator's intent and children's filial obligations.

At the same time, need to prioritize protecting the spouse's rights in special cases. Experience from France shows that abolishing parents' compulsory inheritance rights ensures the spouse a higher estate ratio—especially without children, the spouse may inherit most or all assets depending on circumstances [12]. Meanwhile, in Vietnam, if the deceased has no children, only spouse and parents, the estate is currently divided into three equal parts (Civil Code, 2015), potentially causing difficulties for the spouse in ensuring life. Therefore, need to consider amending the law to increase the spouse's estate portion, like France's flexible approach. In summary, lessons from France show the need to balance family morals and legal fairness in estate division. Vietnamese law can maintain the filial principle while being more flexible on conditions and compulsory inheritance ratios, to suit modern social context and international practices.

Second, regarding children of the testator:

Expand or narrow the category of children protected compulsorily: Currently, Vietnamese law only protects minor children or adult children without labor capacity. French law's experience shows protecting all children has advantages in ensuring fairness and limiting deep family conflicts, avoiding complete exclusion of children [13]. However, the downside is restricting property disposition rights and potential injustice to parents' intent, especially with unfilial or self-sufficient children. Vietnam can consider adjusting protection scope: whether to protect adult children in some cases, e.g., low income or caregiving contributions to parents [14].

Ensure nurturing and education rights for minor children: Though Article 644 Civil Code 2015 protects minor children's estate portion, Vietnam should continue



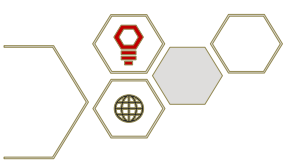
improving related provisions on guardianship and inheritance asset management for under-18 children, to ensure assets are used properly for nurturing and educating the child until adulthood [9].

Harmonize with international factors: In the context of increasing Vietnamese families with foreign elements, potentially influenced by other laws (e.g., French applying English law to avoid "réserve héréditaire"), Vietnam should learn France's experience in prioritizing child interests even in legal conflicts [15]. Finally, need to strengthen public education on fair will-making, avoiding emotion-driven conflicts among children [16].

Regarding the spouse of the testator: Strengthen the spouse's position in intestate succession: As analyzed, currently if the deceased has parents, children, the spouse's portion in Vietnam is quite small (only equal to one child or one parent). Practice has many cases where widows (or widowers) face difficulties as estate must be shared with many, especially if main asset is residence or production means. French experience shows reserving priority for spouse is necessary to prevent sudden living decline. Vietnam can consider amending law to: if deceased has elderly parents and spouse, give spouse double one inheritance share compared to others, or move parents to second rank when deceased has children and spouse like many countries. This helps spouse have higher asset ratio for stable life, while still protecting parents in second rank if no one in first.

Protect housing and common asset rights: Though marriage law protects 50% common assets for spouse, Vietnam can reference French provisions on widowed spouse's residence rights. Currently, if husband dies and estate is shared house titled to husband, wife inherits portion but may negotiate with children to stay, or even sell to divide. Vietnamese law could add spouse's right to prioritize receiving in-kind (house), paying difference to other heirs if needed, or lifetime right to stay if desired. This aligns with morals and avoids disputes, similar to France's *droit viager au logement*.

Improve testate succession mechanism for spouse: Though Article 644 protects minimum for spouse. Lessons from France 2015-2021 on citizens using foreign law to

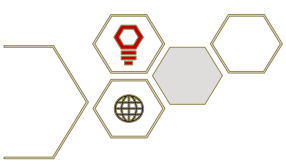


deprive children's inheritance also warn reversely: cases of foreigners residing in Vietnam, assets in Vietnam but willing under their law not protecting spouse. Vietnam should prepare provisions on when Vietnamese law applies to protect spouse, e.g., if asset is real estate in Vietnam, prioritize applying Vietnamese law on compulsory heirship for spouse). In summary, foreign experience affirms spouse as subject needing special priority in inheritance policy, as they often depend much on built common assets and are most affected by the other's death. Vietnam has tradition valuing spousal affection, so adopting progressive points—like priority estate portion, ensuring residence and living needs—will make inheritance law more humane and practical, reducing disputes and risks for widowed spouses in society. Third, regarding the spouse of the testator:

Strengthen the spouse's position in inheritance: Currently, if the deceased has parents and children, the spouse's portion under the Vietnamese Civil Code 2015 is not larger than other heirs' shares in the same rank, so in practice the widowed often faces difficulties if estate must be shared with many. Foreign experience (e.g., French law) has supplementary protection mechanisms for spouse to ensure maintaining residence and living level of the surviving spouse [17]. Vietnam can consider adjustments (e.g., priority or increased ratio for spouse in some circumstances) to ensure social security for the spouse while protecting other entitled persons according to inheritance order.

Protect housing and common asset rights: Though marriage law recognizes common asset portion, when dividing estate the spouse may lose residence without specific priority regime. In France, provisions on *droit viager au logement* (*droit d'usage et d'habitation* under Articles 764–765-1 Code civil) allow spouse to request right to stay in shared home [8] (with certain conditions and duration). Vietnam can research applying mechanism allowing priority in-kind receipt (residence) or residence rights to ensure ability to stay without unreasonableness to other heirs.

Improve testate succession mechanism for spouse: International law on conflicts of laws and national practices show need for minimum protection provisions when assets in multiple countries or testator applies foreign law to deprive spouse. In Europe,



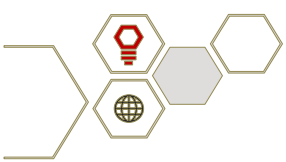
there are developments on protecting reserved heirs and considering ordre public in international inheritance cases; Vietnam should consider clearly providing when Vietnamese law applies to protect spouse's rights on assets in Vietnamese territory [18].

Fourth, regarding the fetus

Clearly define in law the fetus's status in testate inheritance: Recommend directly supplementing Article 644 Civil Code 2015 (or in guiding documents) a provision affirming the fetus also belongs to "minor children" entitled to inheritance not dependent on will content. For example, phrase: "Minor children (including cases where the fetus was conceived before the testator's death and born alive)" in Clause 1 Article 644. This supplement will ensure uniform understanding and avoid future disputes, that the fetus also enjoys the compulsory portion like other minor children.

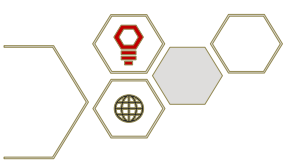
Provide mechanism to protect the fetus's estate portion: Law needs to issue guidance on asset management for the fetus. Specifically, recommend granting courts authority to appoint a guardian or manager for the fetus's reserved estate portion during waiting period, to ensure no asset loss and use for the child's benefit after birth. This manager could be the fetus's mother or suitable relative, under functional agency supervision. This provision will create clear legal framework for handling assets in interim period, instead of fully depending on voluntary agreements.

Improve law on determining parent-child relation for fetus: To facilitate proceedings, recommend supplementing in Marriage and Family Law or Civil Status Law provisions on recognizing paternity for fetus. Currently, parent-child relation is only registered after birth and survival, but if father deceased, need special mechanism allowing courts to handle paternity determination requests while still in womb (based on fetal DNA evidence, relatives' statements, ...). This shortens time and ensures timely inheritance rights for the child. If amendment difficult, at least clearly provide courts temporarily suspend estate division until paternity determination in fetus dispute cases, to avoid dividing assets then determining child's rights. Research supplementing provisions on childbirth through assisted techniques after testator's death: This is a new, complex issue requiring careful consideration. However, law should lay foundation by



recognizing principle: if before death, testator consented in writing to using their embryo or sperm after death for childbirth, the born child may inherit like ordinary biological children. This principle of course with strict conditions (e.g.: born within reasonable time after testator's death, not contrary to their intent). The supplement will fill current legal gap and anticipate reproductive technology trends, ensuring rights for children born in special circumstances.

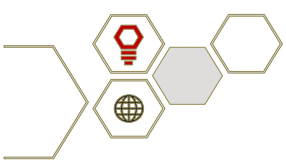
Conclusion. The article has pointed out both Vietnamese and French laws recognize the principle of protecting vulnerable relatives before the testator's disposition intent, but the two systems differ clearly in beneficiary scope and protection techniques. French law prioritizes protecting children through clear and flexible *réservé héréditaire* mechanism, while protecting spouses with usufruct/residence rights; conversely, Vietnamese law expands the protected list (minor children, adult children without labor capacity, parents, spouse) but lacks criteria, procedures, and mechanisms suitable for diverse modern family realities. Regarding fetuses, France applies beneficial principle for the child, while Vietnam leans toward proof conditions and administrative procedures (e.g., applying 300-day rule, birth registration criteria). Based on comparison and practical analysis, need to amend and improve Vietnamese law toward selectively and conditionally expanding compulsory heirs: add legally adopted children, recognize factual economically dependent persons, long-term caregivers, and disabled without labor capacity; while clarifying fetus's legal status (including provisions on managing fetus's estate portion, proof criteria, and temporary estate division suspension mechanism). Expansion must accompany clear determination criteria, evidence mechanisms, and abuse control, along with protective measures (appoint management/hold assets, guiding Decrees/procedural judgments) to both protect vulnerable, not reasonably erode testator's free disposition rights. In summary, selectively adopting French experience—not mechanical copying—and applying legislative techniques (amend Article 644 Civil Code, supplement implementation guidance, provide economic dependency determination procedures, fetus estate management mechanism) will help Vietnamese law both humane and



practical: ensure vulnerable rights, reduce disputes, and better suit modern social realities.

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