



WHEN YOUR CONTRACT ISN'T WHAT IT CLAIMS TO BE

Discover how tribunals can recharacterize contracts based on substance over form. Keep scrolling to learn from a real case.

Resource: <https://www.viac.vn/thu-tuc-trong-tai/067-%7C-xac-dinh-ban-chat-cua-quan-he-hop-dong-a210.html>

THE CASE BACKGROUND

1

2000

Companies T and S sign "Economic Cooperation Contract" where T contributes a building and S operates it.

2

2004

Second contract signed for 15 years. T receives fixed monthly "profit share."

3

LATER


Disputes arise, case brought to VIAC arbitration.



THE LEGAL QUESTION

When can an arbitral tribunal recharacterize a contract's legal nature when its title suggests one relationship but the parties' conduct suggests another?

THE TRIBUNAL'S DECISION

 Arbitrators have both the authority and responsibility to determine a contract's true legal nature based on:

- Substantive content
- Parties' actual conduct
- Not just the contract's title

If objective evidence shows a different arrangement, the contract may be recharacterized.

WHY IT WASN'T COOPERATION

MISSING ELEMENTS

No capital contribution ratios or proper legal basis for building contribution

PROFIT ISSUES

No mechanism for profit-sharing proportional to capital investment

TAX RESPONSIBILITY

Company T still paid property taxes, inconsistent with shared ownership



WHY IT WAS ACTUALLY A LEASE

- Company S had exclusive control of the building
- Fixed monthly payments regardless of business outcomes
- Relationship matched Civil Code's definition of a lease (Articles 480/472)

KEY LEGAL PRINCIPLES

SUBSTANCE OVER FORM

Real content and execution matter more than labels

CIVIL CODE PROVISIONS

Articles 480 (2005) and 472 (2015) define lease characteristics

TRIBUNAL AUTHORITY

Arbitrators can assess true legal nature based on objective evidence



PROTECT YOUR CONTRACTS

Ensure your contract's label matches its substance. Vague terms or missing statutory requirements can lead to recharacterization and unexpected legal consequences.

Remember: tribunals look at what you do, not just what you say.

Share this post with business partners who need to review their contracts!

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