**CASE LAW NO. 14/2017/AL**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 by the Chief Justice of the Supreme People’s Court.*

## Source of the case law:

Cassation Decision No. 02/2011/DS-GDT dated 17 January 2011 of the Civil Court of the Supreme People’s Court on the civil case *named “the Request to cancel the contract for transfer of land use rights”* in Dien Bien Province by and between the plaintiff being Mr. Quang Van P1 and the defendant being Mr. Quang Van P2 and Ms. Phan Thi V.

## Location of contents of the case law:

Paragraphs 10, 11 and 12 of the *“Findings of the Court”.*

## Overview of the case law:

### Background of the case law:

The contract for gifts of land use rights do not state any condition of gifts, but in relevant texts and documents there are indications that parties have mutually agreed on conditions of gifts, which are lawful under prevailing laws.

### Legal resolution:

In this case, the Court must recognize conditions of the contract for gifts of land use rights and regard such contract for gifts of land use rights as a contract for conditional gifts of the property.

## Applicable provisions of laws relating to the case law:

Article 125, Article 126 and Article 470 of the 2005 Civil Code (corresponding to Article 120, Article 121 and Article 462 of the 2015 Civil Code).

## Key words of the case law:

*“The contract for gifts of land use rights”, “Conditional civil transactions”, “Conditional gifts of property”.*

**CONTENTS OF THE CASE**

In the Statement of Claims dated 27 December 2006, on 10 January 2007, and in the process of handling the dispute, Mr. Quang Van P1 and Ms. Quang Thi N as the plaintiff presented as follows:

In 2003, the People's Committee of Dien Bien Province granted to Mr. Quang Van P1 an area of about 72m2 of the roadside land on the National Highway 279 (subject to Decision No. 1487 dated 25 September 2003). On 24 December 2003, he carried out procedures to transfer the land use rights of the land area to Mr. Quang Van P2 (his son) and Ms. Phan Thi V (his daughter-in-law). On December 6, 2003, again, he made a contract for the transfer of land use rights of the residential land – the said land area, certified by the People's Committee of T Ward, P City, Dien Bien Province, to Mr. Quang Van P2 and Ms. Phan Thi V.

In 2005, there was a dispute over the land area between him and Ms. Quang Thi N (his daughter). Subject to Appellate Civil Judgment No. 08/DSPT dated 24 August 2005, the People's Court of Dien Bien Province compelled Ms. Quang Thi N to return to him the land area.

On 12 June 2006, the People's Committee of P City, Dien Bien Province issued the certificate of land use rights to him.

On 27 October 2006, he made a contract for gifts to Mr. Quang Van P2 (his son) on the condition that Mr. Quang Van P2 had to build a house for Mr. Quang Van P1 to reside.

After he had completed the process of transferring land use rights under the contract for gifts, Mr. Quang Van P2 did not build the house as promised but also requested him to go live in M Town, G District. Because Mr. Quang Van P2 and Ms. Phan Thi V did not fulfill the conditions committed, he submitted a request to cancel the contract for gifts of the land area.

The defendants being Mr. Quang Van P2 and Ms. Phan Thi V presented as follows: Mr. Quang Van P1 (his father) gifted him and his wife the said land area when Mr. Quang Van P1 was still of sound mind and aware. At the present, Mr. Quang Van P1 was not of sound mind, so Ms. Quang Thi N (his older sister) forced Mr. Quang Van P1 to unilaterally cancel the contract for gifts. As his father gifted him the said land area without any condition and commitment, he did not accept the request of the plaintiff.

In First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007, the People's Court of Dien Bien Phu City, Dien Bien Province ruled as follows:

* To decline the request of Mr. Quang Van P1 to cancel the contract for transfer of the land use rights No. 82 dated 6 October 2006 by and between the transferor being Mr. Quang Van P1 and the transferee being Mr. Quang Van P2 and Ms. Phan Thi V.
* Besides, the first-instance Court in its judgment also ruled on court fees and rights to protest of concerned parties.

In Appellate Civil Judgment No. 14/2007/DSPT dated 28 August 2007, the People’s Court of Dien Bien Province ruled as follows:

* To amend First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007 of the People’s Court of Dien Bien Phu City, Dien Bien Province.
* To accept the request for appeal of Mr. Quang Van P1 and to cancel the contract for the transfer of land use rights No. 82 dated 6 October 2006 by and between the transferor being Mr. Quang Van P1 and the transferee being Mr. Quang Van P2 to the land area having the certificate of land use rights No. AD 762/197 at lot No. 2A, Map No. 289 IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province.
* To request the Division of Natural Resources and the Environment of P City, Dien Bien Province to correct and restore the certificate of land use rights No. AD 762/197, lot No. 2A, Map No. 289 IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province with Mr. Quang Van P1 as the land user in the certificate of land use rights.
* To request the Division of Natural Resources and the Environment of P City, Dien Bien Province to revoke the certificate of land use rights with Mr. Quang Van P2 as the land user in the certificate of land use rights, with the No. H 06445/QSDD recorded in the certificate issuing register. The Decision on land allocation No. 822/2006/QD-UBND dated 27 October 2006 of lot No.2A, Map No. 289-IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province.
* In addition, the appellate Court in its judgment also ruled court fees.

Upon the appellate hearing, Mr. Quang Van P2 submitted an appeal proposing cassation procedures against the aforementioned Appellate Civil Judgment.

In Decision No. 579/2010/KN-DS dated 26 August 2010, the Chief Justice of the Supreme People’s Court protested against Appellate Civil Judgment No. 14/2007/DSPT dated 28 August 2007 of the People’s Court of Dien Bien Province; requested the Civil Court of the Supreme People’s Court to handle the case according to the cassation procedures and set aside the aforementioned appellate Civil Judgment and First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007 of the People's Court of Dien Bien Phu City, Dien Bien Province; transferred the case to the People’s Court of Dien Bien Phu City, Dien Bien Province for conducting first-instance hearing in accordance with the prevailing laws with a finding that:

Based on documents contained in the dossier of the case, the land area of about 72m2, lot 2A, Map No. 289 IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province was granted by the local government authority to Mr. Quang Van P1 for the purpose of housing under the Decision on land grant No.1487 dated 25 September 2003.

On 6 December 2003, Mr. Quang Van P1 made a contract for the transfer of ownership of the said land area to Mr. Quang Van P2 and his wife, signed by Mr. Quang Van P1, Mr. Quang Van P2 and his wife with the witness of the Secretary of the Party Cell and the head of the residential Group and confirmed by the People's Committee of the local ward.

On 24 December 2003, Mr. Quang Van P1 submitted a *“Petition for the land use right transfer”*, with the contents of the transfer of land use rights for Mr. Quang Van P2 and his wife with the signature of Mr. Quang Van P1 and the confirmation of the head of residential Group.

Nevertheless, Mr. Quang Van P1 and Ms. Quang Thi N were in dispute over the said land area. In Appellate Civil Judgment No. 08/DSPT dated 24 August 2005, the People's Court of Dien Bien Province had compelled Ms. Quang Thi N to return the said land area to Mr. Quang Van P1 and Ms. Quang Thi N returned the said land area to Mr. Quang Van P1 according to the *“Minute on the enforcement of the judgment”* dated 22 March 2006.

Therefore, there is sufficient basis to assert that Mr. Quang Van P1 made the contract for the transfer of land use rights to Mr. Quang Van P2 and his wife since 2003, but Ms. Quang Thi N was the one who managed and used the said land area then. Mr. Quang Van P1 was legally recognized as the person who has land use rights with respect to the said land area (subject to the effective Judgment) since 24 August 2005 and up to 22 March 2006, Mr. Quang Van P1, in reality, acquired the said land area. Hence, before then, the contract for gifts of land use rights of Mr. Quang Van P1 to Mr. Quang Van P2 was not legally binding. Moreover, Mr. Quang Van P2 and his wife did not carry out procedures to change the name on the certificate of land use rights and had not acquired the said area land yet.

Upon acquiring the land, Mr. Quang Van P1 authorized Mr. Quang Van P2 to apply for a construction permit, to conduct site clearance, to build a house for Mr. Quang Van P1’s shelter, and to take care of Mr. K (Quang Van P1’s father) on 25 March 2006. On 12 June 2006, Mr. Quang Van P1 was granted the certificate of land use right.

On 3 June 2006, Mr. Quang Van P1 authorized Mr. Nguyen Viet H to carry out procedures for gifting to Mr. Quang Van P2 and his wife the said land area.

The Contract for the transfer of land use rights No. 82/HD-UBND (undated) that was entered at the People's Committee of T Ward, P City, Dien Bien Province indicated that Mr. Quang Van P1 gifted to Quang Van P2 the said land area. The contract had signatures of Mr. Quang Van P1, Mr. Quang Van P2, and Mr. Nguyen Viet H being the authorized person. The People's Committee of T Ward recorded it at 8 a.m. on 6 October 2006. On the basis of the aforementioned contract, Mr. Quang Van P2 was granted the certificate of land use rights.

In reality, since 17 February 2003, Mr. Quang Van P1 was hospitalized in Hanoi (having a stroke, resulting in his left side and central nervous system being paralyzed, etc.).

Therefore, in 2006, Mr. Quang Van P1 signed many documents to dispose of the land area of 72m2 which he was granted the certificate of land use rights on 12 June 2006. Nevertheless, at this time, Mr. Quang Van P1 was hospitalized in Hanoi for the purpose of treatment of paralysis of his left side and central nervous system and Mr. Quang Van P1 did not use the said land area in reality.

The court should have clarified and verified the intention of Mr. Quang Van P1 on the disposal of the said land area of 72m2 and found whether Mr. Quang Van P1 intentionally gifted to Mr. Quang Van P2 the said land area or whether Mr. Quang Van P1 only gave Mr. Quang Van P2 the said land area for the purpose of building the house to reside in. Simultaneously, it should have determined when and where the contract was signed by Mr. Quang Van P1, the validity of this contract under the law, and the reason why Mr. Quang Van P1 entered into this agreement but now wanted to cancel it. In the case where Mr. Quang Van P1 only gave the property Mr. Quang Van P2 to build a house for his residence

and Mr. Quang Van P1 still had a need for using the land area, then the contract must be cancelled and Mr. Quang Van P1’s land use right must be recognized. However, Mr. Quang Van P1 must pay all reasonable expenses in the procedure to transfer the land use rights from Mr. Quang Van P2 if he requests.

In the event that Mr. Quang Van P1 did not have a need to use and expressed his intention to gift to Mr. Quang Van P2, then Mr. Quang Van P1’s request must be dismissed.

The appellate Court and the first-instance Court did not verify and clarify the aforementioned issues, but the first-instance Court dismissed the request of Mr. Quang Van P1 on the basis of the documents signed by Quang Van P1 and the recognition of land use rights for Mr. Quang Van P2 while the appellate Court asserted that Mr. Quang Van P1 was sick and not cognizant of his actions when entering into the contract and the procedures for gifts also not comply with law, thereby setting aside the contract for transfer of the land use rights and recognized the land use rights of Mr. Quang Van P1. Both Courts’ decisions did not have sufficient basis.

In addition, the People's Committee is the competent State body for the issuance of the certificate of land use rights, the appellate Court requested the Division of Environment and Natural Resources to revoke the certificate of land use right of Mr. Quang Van P2, which is incorrect.

In the cassation hearing, the representative of the Supreme People’s Procuracy asserted that the protest of the Chief Justice of the Supreme People’s Court was necessary, because, in 2003, Mr. Quang Van P1 made a contract for the transfer of land use rights to Mr. Quang Van P2 and his wife, and in 2006, he again made a power of attorney to gift the land to Mr. Quang Van P2 and his wife. Although the documents were titled the transfer of land use rights, their contents expressed that Mr. Quang Van P1 gifted Quang Van P2 and his wife the land. Therefore, the Court must clarify whether Mr. Quang Van P1’s gift was conditional or not in order to resolve the case.

## FINDINGS OF THE COURT

1. When initiating the lawsuit and during the handling of the dispute, Mr. Quang Van P1 asserted that on 25 September 2003, the People’s Committee of Dien Bien Province granted the land area of 72m2 at lot 2A, Map No. 289 IV-D-d, residential Group 8, P City, Dien Bien Province subject to Decision No. 1487.
2. On 6 December 2003, Mr. Quang Van P1 made a contract on transfer of ownership of the land area to the couple Mr. Quang Van P2 and Ms. Phan Thi V with the witness of the Secretary of the Party Cell and the head of the residential group and the confirmation of the People's Committee of T Ward.
3. On 24 December 2003, Mr. Quang Van P1 again submitted a *“Petition for the land use right transfer”* certified by the head of residential Group to transfer land use rights to the couple Mr. Quang Van P2 and Ms. Phan Thi V.
4. However, the above-mentioned land area was still under the management a and use of Ms. Quang Thi N (the daughter of Mr. Quang Van P1). In 2005, Mr. Quang Van P1 initiated a

lawsuit against Ms. Quang Thi N requesting the return of the said land area. In Appellate Civil Judgment No. 08/DSPT dated 24 August 2005, the People's Court of Dien Bien Province compelled Ms. Quang Thi N to return the said land area to Mr. Quang Van P1.

1. On 12 June 2006, the People's Committee of P City, Dien Bien Province issued the certificate of land use rights to the said land area of 72m2 for Mr. Quang Van P1.
2. On 15 September 2006, Mr. Quang Van P1 submitted a request to confirm his authorization for Mr. Quang Van P2 and Ms. Phan Thi V to have full authority to *“own and use of the land”*.
3. On 3 October 2006, Mr. Quang Van P1 entered into the contract of authorization for Mr. Nguyen Viet H to carry out necessary procedures to gift Mr. Quang Van P2 the said land area with the certification by the State Notary Public No. 3, Hanoi.
4. On 6 October 2006, Mr. Quang Van P1 again made a contract for the transfer of land use rights to Mr. Quang Van P2 and Ms. Phan Thi V in which the transfer value section stated *“Father gifts child”,* On the same day, the People's Committee of Dien Bien Phu City also confirmed contract No. 82/HD-UBND, so this contract legitimated the gift for land use rights of Mr. Quang Van P1 to the couple Mr. Quang Van P2 and Ms. Phan Thi V.
5. On 27 October 2006, the People’s Committee of P City issued the certificate of land use rights for Mr. Quang Van P2 and Ms. Phan Thi V.
6. Therefore, if there is basis to determine that local government authorities have granted the land to Mr. Quang Van P1 since 2003 (because Courts at all levels have not yet collected the decision on land grant in 2003), Mr. Quang Van P1 will be entitled to legally use the land area since 2003, thus, Mr. Quang Van P1 has the right to dispose of his property.
7. However, Mr. Quang Van P1 asserted that his gift to Mr. Quang Van P2 and his wife (Ms. Phan Thi V) was conditional, that Mr. Quang Van P2 and Ms. Phan Thi V must build a house for his residence, care for him and his parents, but Mr. Quang Van P2 and his wife did not fulfil the commitment. Although Mr. Quang Van P2 did not acknowledge that Mr. Quang Van P1 made a conditional gift of land use rights \, in the power of attorney on 25 March 2006, Mr. Quang Van P1 authorized Mr. Quang Van P2 to obtain the construction permit…; to be responsible for building the house on land lot 379B for the purpose of Mr. Quang Van P1's residence and to be responsible for taking care of Mr. K and his wife (Mr. Quang Van P1’s parents). Under the Commitment dated 12 October 2006, Mr. Quang Van P2 recorded that, *“... I was given a piece of land... I make this commitment to the local government authority that I will build the house for my father and am not entitled transfer to anyone”*.
8. Although the contract for gifts of land use rights did not specify any condition, the aforementioned documents indicated that Mr. Quang Van P2 must build the house for Mr. Quan Van P1’s residence and must take care of Mr. Quang Van P1 and Mr. Quang Van P1’s parents.
9. Therefore, it is necessary to collect and ascertain whether Mr. Quang Van P2 fully satisfied the above-mentioned conditions or not? During the time Mr. Quang Van P1 was

hospitalized, who took care of him? Currently, Mr. Quang Van P2 and his wife are residing in Hanoi, so who is caring for Mr. K and his wife (Mr. Quang Van P1’s parents)? Based on the verification of the satisfaction of the conditions by Mr. Quang Van P2 and his wife, the court will determine whether the contract for gifts between Mr. Quang Van P1 and Mr. Quang Van P2 and his wife have been completed or not, in order to resolve the case in accordance with prevailing laws.

1. On the other hand, pursuant to Article 44 of the Land Law, the Division of Environment and Natural Resources does not have the authority to revoke the land, and thus, the request of the appellate Court to the Division of Environment and Natural Resources to revoke the certificate of land use rights of Mr. Quang Van P2 was incorrect.
2. The cassation council of the Civil Court of the Supreme People's Court finds it necessary to set aside the appellate and first-instance Civil Judgments in order to conduct first-instance procedures according to the provisions of law.
3. Protest Decision of the Chief Judge of the Supreme People’s Court has basis.
4. Pursuant to Article 291.2, Article 296, Article 297.3, Article 299 of the Code of Civil Procedure.

**RULES**

1. To set aside Appellate Civil Judgment No. 14/2007/DSPT dated 28 August 2007 of the People’s Court of Dien Bien Province and First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007 of the People’s Court of Dien Bien Phu City, Dien Bien Province on the *“Request to cancel the contract for transfer of land use rights”* by and between the plaintiff being Mr. Quang Van P1 and the defendant being Quang Van P2 and Phan Thi V.
2. To transfer the case to the first-instance court of the People’s Court of Dien Bien Phu City, Dien Bien Province to conduct first-instance procedures in accordance with prevailing laws.

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*“[10] Therefore, if there is basis to determine that local government authorities have granted the land to Mr. Quang Van P1 since 2003 (because Courts at all levels have not yet collected the decision on land grant in 2003), Mr. Quang Van P1 will be entitled to legally use the land area since 2003, thus, Mr. Quang Van P1 has the right to dispose of his property.*

1. *However, Mr. Quang Van P1 asserted that his gift to Mr. Quang Van P2 and his wife (Ms. Phan Thi V) was conditional, that Mr. Quang Van P2 and Ms. Phan Thi V must build a house for his residence, care for him and his parents, but Mr. Quang Van P2 and his wife did not fulfil the commitment. Although Mr. Quang Van P2 did not acknowledge that Mr. Quang Van P1 made a conditional gift of land use rights, in the power of attorney on 25 March 2006, Mr. Quang Van P1 authorized Mr. Quang Van P2 to obtain the construction permit…; to be responsible for building the house on land lot 379B for the purpose of Mr. Quang Van P1's residence and to be responsible for taking care of Mr. K and his wife (Mr. Quang Van P1’s*

*parents). Under the Commitment dated 12 October 2006, Mr. Quang Van P2 recorded that, “... I was given a piece of land... I make this commitment to the local government authority that I will build the house for my father and am not entitled transfer to anyone”.*

1. *Although the contract for gifts of land use rights did not specify any condition, the aforementioned documents indicated that Mr. Quang Van P2 must build the house for Mr. Quan Van P1’s residence and must take care of Mr. Quang Van P1 and Mr. Quang Van P1’s parents”.*