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Liability of Representatives in Civil Law: A Comparative Analysis of Vietnam and Germany

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The paper conducted a comparative analysis of the civil liability of representative persons under the provisions of the 2015 Vietnam Civil Codeand the 2002 German Civil Code. Both legal systems emphasized the importance of representatives acting within their authority, but they differed in the specifics of how authority was defined, the types of liability applied, and the provisions related to ratification. The study adopted a comparative legal research methodology proposed by Bhat (2020), analyzing the relevant provisions of both Codes, supported by case law and legal literature, to identify key similarities and differences. The results demonstrate that while both systems are based on the same fundamental principles, such as the requirement for representatives to act in good faith and within the scope of their authority, the German system provides more clarity and structure, particularly in defining authority and distinguishing between fault-based and strict liability. In contrast, Vietnam's legal framework, though modernized, lacks specificity in defining representative authority and faces challenges due to limited case law. The paper concludes by offering recommendations for Vietnam to improve its legal framework by clarifying the scope of authority, incorporating elements of strict liability, and expanding case law while suggesting that Germany consider flexibility in its liability framework to encourage more proactive decision-making in corporate contexts.

Keywords: Civil Liability, Fiduciary Duties, Representative Persons, Representative Liability, Liability Provisions

Under the Civil law system, representative persons represent natural persons, legal entities, or organizations. Their actions are deemed to cause profound legal consequences.[1,2] Accordingly, their civil liability means it has the role of a protection, ensuring they will be liable for their actions, especially if they act outside their authority or breach their duties. The nature and scope of this liability can vary between different legal systems. Comparing the civil liability of representative persons under the 2015 Vietnam Civil Code and the 2002 German Civil Code provides insight into how these two legal traditions address the responsibility of those acting on behalf of others.[3,4] Notably, the 2005 Civil Code was replaced by the 2015 Civil Code, which reformed Vietnam's legal system and harmonized it with international norms. The 2015 Civil Code also defined many concepts comprehensively, such as civil liability, agency, and representation, incorporating a more structured approach.[5-7] However, some provisions regarding the civil liability of representatives have yet to be fully developed and are subject to interpretation. This slow convertibility reflects Vietnam's transition from a socialist legal system to a market-driven legal framework. The German Civil Code (hereafter abbreviated as BGB), one of the oldest and most influential legal codes since the 1900s, has refined provisions concerning representation and civil liability through over a century of case law and legal scholarship.[8,9] The German legal system is known for its meticulous approach to civil liability, particularly in agency law, and for protecting third parties in contractual and tortious relationships. However, the BGB provides specific principles for holding representatives liable, distinguishing between strict and fault-based liability depending on the representative's act.[10,11]

Comparative legal research is extremely useful to gain a better perspective on various ways that legal systems address the same problems.[12]This study compares the civil liability of representatives in Vietnam and Germany, offering insights into how these cultures interpret and regulate their roles in society. Given the globalization of business and the subsequent demands for harmonization of legal practices internationally, this comparison is of

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practical importance.[13]Furthermore, understanding representative liability in different jurisdictions is necessary for cross-border transactions. The differences between Vietnam's reformed legal framework and Germany's long-established legal institutions highlight potential areas for development and motivation for both systems. While Vietnam's updated legal framework serves as an opportunity to refine the approach, Germany's well-established legal tradition provides certainty and consistency.[7] The 2015 Vietnam Civil Codewas a significant overhaul of the previous Code, and it was made with the desire to harmonize the regulations of the law of Vietnam to international standards while still ensuring the values of Vietnamese culture. Acknowledging extends to a broader range of rights and obligations for both people and organizations and emphasizes the protection of human rights and the legal rights of property.[2,14] The Code introduced provisions on the liability of representatives, which are consistent with international norms but require refinement. For instance, a representative is liable for damages to the extent that the representative's actions exceed the scope of the authority granted or violate the conditions of the mandate.[2,15] However, there is ambiguity in how these provisions should be applied in practice, particularly regarding whether a representative acted within their authority scope and if damages are directly attributable to their actions. The German Civil Code, or the 2002 BGB, is a comprehensive legal code in Europe that outlines the rights and obligations of individuals and entities, including representatives' liability. Generally, representatives are liable for damages caused by acts outside their authority or performed in violation of their duties.[16,17] The 2002 BGB distinguishes between liability based on fault and strict liability, which applies in cases where a representative's actions are deemed inherently risky or harmful. The German legal system ensures that representatives act within the authority and also have a fiduciary duty towards the principal.[8,18] The law emphasizes the protection of third parties who interact with representatives, allowing them to seek redress when necessary. The 2002 BGB provides a detailed system of remedies for injured parties.

This comparative study examines the civil liability of representative persons across two different legal systems, particularly in the areas of agency law and representative liability. As global integration grows, understanding the legal liability of representative persons across different systems becomes crucial.[9,10] Vietnam's modernized legal provisions harmonize with or diverge from Germany's long-standing traditions, emphasizing the importance of harmonizing legal standards between jurisdictions for ensuring legal certainty and protecting stakeholders in the context of international business transactions and cross-border relationships. This study compares civil liability provisions in the 2015 Vietnam Civil Code and the 2002 German Civil Code, focusing on how each legal framework defines representative liability for damages.[6,12,15] It examines case law from both countries to assess how courts interpret and apply these provisions in practice. The study shall offer suggestive ways to reform Vietnam's legal framework, drawing insights from the German system, to enhance legal certainty and business practices in the context of global integration. The findings will be helpful for legal scholars, legal practitioners, business professionals, and even policymakers trying to understand the practice of representative liability in different legal systems.[1,8,14] Therefore, this study will contribute to the ongoing experience of developing and harmonizing legal standards in the context of global business transactions by providing a comparative analysis.The following questions would be addressed implicitly as follows:

1 How do the civil liability provisions for representatives differ between the 2015 Vietnam Civil Code and the 2002 German Civil Code?
2 What are the key challenges in applying civil liability for representatives in Vietnam compared to Germany?
3 How does the concept of ratification affect the liability of representatives in both legal systems?

This research examines the differences and similarities in representative provisions in both legal systems with respect to their scope of authority, liability for damages, and remedies for harm caused by their actions. It discusses the practical implications of these provisions in modern legal transactions, addressing challenges faced by individuals, businesses, and professionals in applying these rules.

This research employs a qualitative research design, specifically comparative legal research, as proposed by Bhat.[19] This approach is well-suited for analyzing and comparing legal systems to identify similarities and differences in the civil liability provisions for representative persons under the 2015 Vietnam Civil Code,[20] and the 2002 German Civil Code (the 2002 BGB)[21] together with Directive (EU) 2020/1828.[22] This method consists of an in-depth study of current provisions in both Codes and the availability of secondary sources in the form of academic articles, case law, and legal literature. Thus,the secondary sourcesregarding legal documents shall be analyzed partly in this study so that this study aims to provide an in-depth comparison of civil liability provisions in two legal systems by applying this method and using these materials.

Results and Discussion

Brief Overview of the Civil Liability of Representatives in Vietnam Civil Code 2015

The Civil Code of 2015 of Vietnam (Law No. 91/2015/QH13) is considered a major milestone towards modernizing the legal system in Vietnam. It further regulates a broad range of civil issues, including contract law, torts, property rights, and family law. It also clarifies more clearly the rights and responsibilities of representatives who act on behalf of others, a concept that is central to civil law, especially in commercial and legal transactions. The 2015 Vietnam Civil Code covers the civil liability of representatives, outlining their obligations, authority scope, and legal consequences if they fail to fulfil their duties. Specifically, The provisions stipulating representation are primarily laid out in Chapter IX, Articles 134 to 143 in the 2015 Vietnam Civil Code. Representation is a legal relationship where a representative acts on behalf of a principal in civil transactions, enforcing the principal to the representative's actions. This can occur through the power of attorney or other legal mechanisms. Under the 2015 Vietnam Civil Code, agencies must work within the authority granted by the principal, which is a fundamental principle in agency law. This assures that representatives do not exceed their mandate or harm the interests of the principal or third parties. Further, Article 134 of the 2015 Civil Code stipulates the aforementioned general obligations of representatives, which must act in good faith and with care to protect the principal's own interest. Representatives must perform their duties within their authority and follow instructions unless they have the autonomy to act in the principal's best interest. Failure to do so may result in civil liability. The principle of liability under the 2015 Vietnam Civil Code is crucial when representatives exceed their authority. Article 135 of the 2015 Civil Code prescribes that a representative may be liable in tort if they act beyond the authority granted. The principal is generally not bound by the representative's actions unless they ratify them, making them legally binding. This highlights the importance of clearly defining the scope of authority when establishing a representative relationship. This statute does not give an exhaustive enumeration of the situations in which someone who represents another acts outside their authority, which opens the door to different interpretations and judicial discretion. This can create ambiguities that can result in inconsistent legal outcomes, especially when the scope of authority is not clearly outlined or the representative's actions are not explicitly defined in legal documents or agreements.

In addition to the responsibility of acting within the scope of authority, representatives in Vietnam also owe fiduciary duties to their principals. Section XIII, Articles 562 to 569 about mandate contracts establish that representatives must act in the best interests of the principal and avoid conflicts of interest. This duty of loyalty is a critical aspect of civil liability, as a representative who acts in their own interest or places their interests above those of the principal may be held liable for any resulting harm. Fiduciary duties prescribe that representatives shall act with the utmost good faith and ensure that they do not commit any actions which will harm the principal's interests. More importantly, this duty is liable for providing accurate information, making decisions with due care, and avoiding self-dealing or situations where personal interests could conflict with the duty to the principal. The 2015 Vietnam Civil Code consists of provisions that address the representative's liability for negligence or intentional misconduct. If a representative acts negligently or intentionally breaches their duties to the principal, they may be held liable for any damages that result from their actions. Articles 142 and 143 specify that if the representative's actions cause harm to the principal or third parties due to a failure to fulfil their obligations with the appropriate level of care, the representative will be liable for those damages. The 2015 Civil Code differentiates between intentional misconduct and negligence, with more severe consequences for intentional wrongdoing. A representative who deliberately acts contrary to the principal's interests or with fraudulent intent may be more liable, potentially including punitive damages in some cases. The distinction between negligence and intentional misconduct is essential because it helps to clarify the degree of fault and the appropriate level of liability.

As mentioned earlier, ratification is an important legal norm in the 2015 Vietnam Civil Code, permitting principals to retroactively approve acts that representatives have performed outside their competency limits and decrease their liabilities. The flexibilitymeans that principals can ratify actions that are in their best interests, even if there is no previous explicit authorization. However, ratification must be timely and unequivocal for it to be effective. If the principal does not ratify the unauthorized act, the representative can still be liable for damages. This illustrates the necessity of communication between the principal and representative regarding the need for timely decision-making in agency relationships. The civil liability of representatives, as prescribed by Articles 136 to 137 in the 2015 Vietnam Civil Code, is applicable in both contractual and tortious contexts. If a representative acts outside their authority and causes harm to the principal or a third party, they can be held liable for damages. The Code establishes a framework for tackling these situations, concurrently emphasizing that liability arises when the representative's actions cause harm, whether within a contract or as a result of tortious conduct. In the context of contracts, the agent might be liable for breaching the contract with a third party, and in tortious contexts, they might be claimed for torts committed by their actions. This dual applicability means that representatives can be held liable for a wide range of potential legal consequences. Currently, the civil liability of a representative in Vietnam has been revised in the 2015 Vietnam Civil Code with certain provisions under Articles 142 to 143, but challenges persist in applying provisions related to the civil liability of representatives. One of the main problems arises from the lack of specificity in that the Code does not precisely outline the scope of authority granted to the representatives, with many cases being decided in courts of law, which brings about real-life inconsistencies or ambiguities. Additionally, the lack of a well-developed body of case law makes it difficult for practitioners and judges to uniformly and predictably apply the provisions of the Code. As the Code evolves, expanding case law and judicial interpretation will be crucial for clarifying and refining provisions related to the civil liability of representatives. Despite providing clear guidelines on representatives' responsibilities, authority scope, and consequences of exceeding that authority, uncertainties persist in their application. As Vietnam continues to improve its legal system, the interpretation and application of judicial practice will have to be developed along with legislative clarification for the provisions on civil liability to be uniformly applied and implemented effectively. Despite these challenges, the 2015 Vietnam Civil Code represents a significant step forward in protecting the interests of principals, representatives, and third parties under the development of civil laws.

Brief Overview of the Civil Liability of Representatives in the 2002 German Civil Code

The German Civil Code (BürgerlichesGesetzbuch, or BGB), which has been in force since 1900, is one of the oldest and most influential Civil Codes in Europe. It provides a detailed and structured framework for civil relationships, including provisions on contract law, torts, family law, and property law. The 2002 BGB regulates representation, specifically the civil liability of representatives. It primarily focuses on Title 5 Agency and Authority - Sections 164 to 181, which address the authority granted to representatives, their duties, and legal consequences when they are breached. The German legal system emphasizes protecting the principal and third parties' interests. These principles are enforced through civil accountability and ensure that representatives are liable for the consequences of breaching their duties or exceeding their authority. In the 2002 BGB, representation is governed by Section 164, which outlines the concept of "acting on behalf of another." A representative is a natural person who has been authorized to represent a principal in legal transactions, such as entering into contracts or making binding decisions. Section 164 of the 2002 BGB defines representation as the act of acting on behalf of another, encompassing both individuals and legal entities. The authority of the representative is the most important part of its legal validity. Remarkably, the 2002 BGB defines two types of authority: specific authority, which gives representative permission to particular acts, and general authority, which holds broader powers like managing business activities. Hence, the competence of an attorney often specifies the extent of the authority, and it is important that the representative adhere to these limits.

Sections 177 to 179 of the 2002 BGB outline the liability of representatives for actions taken beyond their authority, particularly when they act without authorization. Section 177 of the 2002 BGB stipulates that an agent exceeds her authority, and the principal is not bound to that action unless the principal ratifies the action. This provision allows the principal to retain control over which transactions bind them, even if the representative oversteps their authority. The legal consequence of exceeding authority is that the representative is personally liable for any damage caused to third parties as a result of the unauthorized act. The 2002 BGB provides a clear framework for dealing with unauthorized actions by representatives. If a representative exceeds their authority but acts in good faith, they may still be liable to the principal for damages. In contrast, if a representative acts out of bad faith or fraudulent intent, they can incur additional legal consequences, including heightened liability for damages. Principals owe fiduciary duties to the representatives under the BGB, ensuring that representatives act in the best interests of the principal, do not engage in conflicts of interests, and that representatives fulfil their responsibilities with the utmost good faith. Violations of these duties may result in damages to the principal and, in some cases, to third parties. Section 164 of the 2002 BGB emphasizes the representative's duty to act in accordance with the principal's instructions and interests. It also imposes an obligation on the representative not to engage in self-dealing or using the position of representative to gain an advantage for themselves. If a representative breaches these, they can be liable to compensate the principal as well as any third parties in some cases. These duties protect the integrity of the agency relationship and ensure representatives do not act contrary to the principal's interests.

The 2002 BGB holds representatives accountable for damages caused by negligence or intentional misconduct. Section 280 addresses breach of duty in contractual relationships, including those involving representatives. If a representative acts negligently, and their negligent actions cause damage to either the principal or a third party, a representative is liable for the damages incurred. In intentional misconduct cases, representatives may be subject to additional liability, including punitive damages. The 2002 BGB distinguishes between different levels of fault, with more severe consequences for intentional wrongdoing compared to negligence, ensuring representatives are held accountable based on the severity of their actions. Under the 2002 BGB, strict liability applies to representatives where their actions create a risk of harm, even if they do not act negligently or intentionally. This is particularly relevant for corporate representatives, such as directors or officers, who may be held personally liable for certain acts, even if they are not based on fault. Section 179 of the 2002 BGB imposes strict liability on representatives when acting without authorization, holding them personally liable for damages resulting from unauthorized actions. This provision requires representatives to exercise due care in carrying out their duties and to be liable for damages caused by their conduct.

As mentioned earlier, ratification plays a central role in the German system of agency law. Section 177 of the 2002 BGB allows for the principal to ratify an act performed by the representative outside their authority, making the act legally binding. Ratification is most relevant when a representative as an agent acts in the best interests of the principal but exceeds their authority in the process. The 2002 BGB provides a comprehensive framework for addressing liability in both contractual and tortious contexts. An act becomes binding upon the approval of the principal, which ratifies unauthorized acts. However, ratification must be explicit, clear, and timely. If the principal fails to ratify the act promptly, the representative may remain liable for damages. This emphasizes the need for clear communication and timely decision-making in the agency relationship. The BGB addresses cases where an authorized representative exceeds their authority or breaches their fiduciary duties in contractual relationships. In tortious contexts, representatives may also be held accountable for the harm caused by their unauthorized actions. This dual applicability is particularly important in the business and corporate world. Overall, the 2002 German Civil Code provides a clear and detailed legal framework for the civil liability of representations. It includes scope of authority, fiduciary duties, liability for negligent and intentional misconduct, and ratification. The Code emphasizes fault-based and strict liability, establishing responsible action by representatives and protecting principals and third parties. This approach serves as a model for many judicial systems around the world because it creates a predictable balance of our interests. However, the system faces challenges, particularly in strict liability for corporate representatives, which can discourage proactive decision-making. Despite these challenges, the German Civil Code remains a cornerstone of civil law, ensuring effective regulation of representative relationships in Germany.

Some Takeaways Comparing the Civil Liability of Representative Persons between Two Legal Systems

The civil liability of representative persons is an important part of the general theory and practice of law. Representatives act for principals, and their actions can have far-reaching legal consequences. A representative may be liable for actions that exceed their authority or violate their duties, and the legal frameworks governing this liability differ between jurisdictions. This section compares representative persons with respect to their civil liability under two respective Codes: the 2015 Vietnam Civil Code and the 2002 German Civil Code (BGB). This comparative study emphasizes major conclusions about the authority, liability structures, ratification, fault and strict liability in the systems.

One of the key differences between the 2015 Vietnam Civil Code and the 2002 German Civil Code is the definition and scope of representation. While both legal systems agree that representatives must act within the scope of the authority granted by the principal, the frameworks in which they operate differ significantly in the clarity and structure of that authority. Under the 2015 Vietnam Civil Code, it stipulates a relatively broad understanding of the powers granted to representatives. Besides, it emphasizes the need for action based on the authority granted by the principal, but the provisions on this topic are less detailed compared to the German system.[14,20,24] The law specifies that when a representative exceeds their authority, they will be personally liable for the damages caused unless the principal ratifies the act. However, the 2015 Vietnam Civil Code does not fully elaborate on the different types of authority (e.g., specific or general authority), which can sometimes lead to ambiguity in practice.[3,17,23] This lack of precision may lead to confusion, particularly in the event of not well-defined expectations from the principal, leaving a more significant burden on the judiciary to define the bounds of representative authority. In comparison, the 2002 BGB provides a much more comprehensive and organized framework for the scope of authority.[9] It clarifies in terms of specific versus general representation, offering clear guidelines on what is authorized or not. Article 164 of the 2002 BGB establishes a detailed structure that governs agency, delineating the scope of authority for an agent.[10,11] By distinguishing between specific authority (for particular actions) and general authority (for broader powers), the 2002 BGB ensures clarity in agency relationships. Thus, the German system reduces the degree of uncertainty in the representation and liability context, allowing representatives and potential third parties who interact with them to expect more predictable results.[18,25]

Both the 2015 Vietnam Civil Code and the 2002 BGB recognize that a representative will be liable for actions taken outside the scope of their authority. However, there are notable differences in the legal treatment of such unauthorized acts, especially when considering the level of detail provided in each system and the remedies available.[5,26] Under the 2015 Vietnam Civil Code, when a representative exceeds their authority, they are personally liable for the resulting damages. However, this liability is contingent upon the principal's approval of the action. The representative is no longer held liable if the principal ratifies the act. While this provision allows for a great deal of flexibility, it also introduces a degree of uncertainty because it may not always be clear what the extent of a representative's authority really is.[12,27] The 2015 Vietnam Civil Code's framework can potentially lead to different interpretations of what constitutes an unauthorized act, especially when a representative's authority is implicit or not well-established. This means greater reliance on the principal to ratify the action, leading to inconsistency in the enforcement of the liability. In the German Civil Code 2002, the concept of liability for unauthorized actions is similarly structured but more clearly defined. Section 177 of the 2002 BGB specifies that acts performed beyond a representative's authority are not binding on the principal unless the principal ratifies them.[28] However, even if the principal does not ratify the act, the representative may still be held personally liable for any damages caused. Additionally, the German system pays greater attention to the interests of third parties when dealing with cases of overstepping an agent's authority where third parties may seek personal liability from the representative irrespective of the principal's breach. This strict approach to liability ensures that representatives act within their authority, minimizing the risk to third parties and providing greater legal certainty.[14,29]

The 2015 Vietnam Civil Code and the 2002 BGB emphasize the fiduciary duty of representatives, requiring them to act in the principal's best interests and avoid conflicts of interest, but their treatment of fiduciary duty and liability implications differs.[23,30] The 2015 Civil Code in Vietnam mandates representatives to act in good faith and in the principal's best interest. In contrast, fiduciary duty is less well defined so that breaches may be vague and inconsistently treated.[36,38] The lack of case law precedents and the relatively new nature of the Code make it difficult to apply the law consistently in cases of fiduciary duty breaches by representatives. This has resulted in a lack of jurisprudence, which has made it hard to apply the law uniformly in Vietnam. The German Civil Code, by contrast, provides a more established framework for fiduciary duties. Section 164 and subsequent provisions in the 2002 BGB require that representatives act in good faith and avoid conflicts of interest. The 2002 BGB emphasizes the duty of the representative to act in a transparent manner and to exercise due care. Damages to the principal may result from a breach of fiduciary duty by a representative. The German legal system has a rich body of case law on fiduciary duty, providing clearer guidance for legal practitioners and ensuring that breaches of this duty are more predictably enforced.[10,20] In Germany, a large volume of case law has developed around the fiduciary duty, which ensures greater standardization as representatives face accountability should they act in a manner that is contrary to the principal's interest.

Another key difference between the civil liability systems in Vietnam and Germany is the approach to fault and strict liability.[4,31] The 2015 Vietnam Civil Code is predominantly fault-based, meaning that liability arises when the representative acts negligently or intentionally in ways that cause harm to the principal or third parties. If a representative acts outside the scope of their authority but does so in good faith or without negligence, the principal may still choose to ratify the act, which would absolve the representative from liability.[11] It has, however, the emphasis on fault can sometimes complicate a determination of liability, especially where the representative's conduct, even acting outside their authority, was not negligent or malicious. The 2002 German Civil Code, on the other hand, established strict liability in certain situations. A representative shall be liable for damages caused towards a third party by actions executed without exchanging a real authority under Section 179 of the 2002 BGB.[10,32] This is particularly true in situations where the representative's actions inherently carry a risk of harm, such as in corporate governance. The German system combines fault and strict liability so that representatives are held accountable for acts either they themselves committed or those their offices were involved in without a finding of fault. The introduction of strict liability in the German system places greater responsibility on the representative to act within their granted authority, ensuring a higher standard of care in their actions. Another point of difference with respect to both Codes is ratification; however, the procedures and implications differ between the two Codesystems.[3,26,33] Both systems recognize the competence of a principal to ratify an act performed by the representative outside the scope of their authority so that the act becomes binding on the principal, thus absolving the representative from liability. However, the rules surrounding ratification are more clearly defined in the German Civil Code.[18] Subject to the German system, ratification must be explicit, clear, and timely. In particular, Section 177 of the 2002 BGB ensures that in order for ratification to take effect, it must be made promptly and unequivocally. This contributes to greater legal certainty, especially in business transactions, where swift decisions are often necessary. If the principal does not ratify the act in a timely manner, the representative may remain personally liable for the damages. In the 2015 Vietnam Civil Code, ratification is possible, but the provisions are less detailed.[15,34,35] Although the principal may ratify acts done by a representative outside the scope of authority, the lack of specific guidelines leaves room for interpretation. This flexibility can be beneficial in certain situations but can lead to uncertainty regarding when and how to ratify. The practical implications of the civil liability provisions in both legal systems reflect their respective levels of legal clarity and structure.[12,20] The detailed provisions and rich case law of the German Civil Code provide a more easily comprehensible and predictable framework for representatives and third parties. The distinctions between specific and general authority, fault-based and strict liability, and the requirements for ratification provide a solid foundation for the application of agency law.[14,17,20] In Germany, representatives are more aware of the limits of their power and the consequences of exceeding it. Meanwhile, the 2015 Vietnam Civil Code, while modern and evolving, still faces challenges in terms of legal clarity.[2,4,24] The lack of specificity regarding certain aspects of representative authority and the limited case law makes it more difficult for legal professionals to apply the law consistently. The lack of detailed guidance on fiduciary duties and ratification also creates uncertainty in applying the law.[6,8,36] As a result, representatives in Vietnam may experience more significant challenges in understanding the scope of their authority and the legal consequences of exceeding it.

Typical Challenges and Issues Existing in The 2015 Vietnam Civil Code and The 2002 German Civil Code Regarding Civil Liability of Representative Persons

The main limitations of the 2015 Vietnam Civil Code and the 2002 German Civil Code stem from ambiguities in legal provisions, particularly regarding the scope of authority granted to representatives. Despite emphasizing that representatives may only act within the limits of the principal's authority, there are still problematic issues surrounding the definitions and applications of authority.[1,8,20] Article 134 of the 2015 Vietnam Civil Code is a general legal provision stipulating that representatives of a principal shall act within the limits of authority granted by that principal. However, it lacks clarity on the scope of authority in all circumstances, creating a gap in legal certainty.[17]This is a problem, in particular, for representations involving complex or implied powers. For example, when a representative acts outside the explicitly outlined authority but in good faith or for the principal's benefit, the question arises whether such acts should still be considered exceeding authority. Such ambiguity can result in inconsistent judicial outcomes and make it challenging for businesses and legal practitioners to ascertain specific results of the case.[37] The 2002 BGB in Germany provides structured provisions for authority scope, but challenges persist in distinguishing between specific and general authority. The 2002 BGB distinguishes various types of representation, but determining authority limits remains complex, especially in implied authority cases.[10,11,18] When considering corporate representation, it can be more difficult to define the bounds of authority, especially if a representative's actions involve unclear discretion. This tension between strict compliance with the authority of laws and the flexibility of the discretion associated with representation makes it difficult to apply the framework of law uniformly.[25,27]

Another prominent issue in both legal systems is the tension between fault-based liability and strict liability, which can complicate the application of civil liability for representatives. The 2015 Vietnam Civil Code and the 2002 BGB follow a fault-based liability approach, where representatives are liable for actions beyond their authority only if they were negligent or intentional.[3,14,20] However, these legal systems face challenges in applying these liability concepts. In Vietnam, the 2015 Civil Code emphasizes fault-based liability, which requires the injured party to prove the representative's negligence or intentionality.[6,13] This burden of proof can place an undue burden on the injured party and may lead to legal uncertainty. Besides, Vietnam's legal system is still developing, and courts often lack the precedent needed to apply fault-based liability consistently.[2,15,35]In Germany, in some cases, this strict liability is established by the 2002 BGB, with particular reference to instances where the performance of a representative's actions would necessarily involve a risk of harm or violate his fiduciary duties.[8,18,25] Strict liability more broadly applies where the defendant's activities, even if authorized, cause foreseeable potential harm, irrespective of fault. This approach strengthens legal protections for third parties but raises issues, such as appearing overly harsh when a representative exceeds their authority in good faith and without fault.[11,17] The tension between protecting third parties whilst maintaining fairness to representatives presents challenges in balancing the demands of accountability with the need for flexibility, which may discourage proactive decision-making, particularly in the corporate context. Accordingly, the concept of ratification is a fundamental element in both the 2015 Vietnam Civil Code and the 2002 BGB, allowing principals to validate acts performed by representatives outside the scope of their authority.[9,28] For both legal systems, practical difficulties arise with respect to the process and implications of ratification. In Vietnam, it is relatively flexible for the ratification process, which can be beneficial in certain cases. This flexibility, however, leads to difficulties in establishing clear guidelines for ratification.[2,29,37] The 2015 Vietnam Civil Code does not include specific provisions on the timing and form of ratification, as well as specific requirements attached to the ratification.[2,3,38] Such vagueness can result in disparate applications of the ratification doctrine. For example, courts may struggle to determine whether the principal's actions constitute ratification, especially if the principal's approval was not formally expressed or occurred after a significant delay. This lack of legal clarity can hinder the effectiveness of ratification as a tool for resolving disputes between the principal and third parties, as it may not always be clear whether an act has been ratified.[2,6,17] In Germany, the 2002 BGB makes it clear that ratification must be clear, unambiguous, and in a timely manner to be effective. The requirement to obtain prior consent gives more legal certainty and predictability, but such legal clarity poses challenges in fast-paced business environments. For example, the time to obtain ratification may be impractical and possibly delay critical business actions in circumstances that require prompt decisions.[8] Moreover, the strict interpretation of ratification in Germany means that even small delays or ambiguities in the principal's actions could result in legal consequences for the representative, which could limit flexibility in decision-making. And in commercial settings, where business decisions need to be approved or acted on quickly, such rigidity might be an especially significant problem.[28]

Both Vietnam and Germany face challenges in terms of public awareness and legal education, particularly regarding the civil liability of representative persons. In Vietnam, despite the modernized legal framework introduced by the 2015 Vietnam Civil Code, there is still a lack of widespread understanding of the provisions related to representative liability.[2,15,35] This gap in legal education makes it difficult for businesses, legal professionals, and even government officials to fully comprehend the legal consequences of acting beyond authority or breaching fiduciary duties. Without education and awareness, representatives may not know what they need to do, and principals may not know what their rights and roles are in regard to a representative. This knowledge gap can lead to litigations, inconsistencies in applying the law, and poor business practices.[6,33] The problem is less severe in Germany, given the 2002 BGB's longer history and well-established body of case law. However, challenges remain in ensuring that legal professionals and business executives are fully educated on the nuances of representation and liability.[8,10,27] German legal education tends to focus heavily on the theoretical aspects of the law, which can sometimes lead to gaps in understanding how these principles are applied in real-world scenarios. As businesses become increasingly globalized, understanding the practical implications of representation and liability becomes essential.[8,24,30]Providing business leaders with accurate, appropriate education concerning the legal risks associated with representing relationships is crucial for legal clarity and avoiding future potential harm.

In both Vietnam and Germany, the evolving body of case law and jurisprudence presents challenges in interpreting and applying civil liability provisions. In Vietnam, the 2015 Civil Code is relatively new, and the judicial system has not yet developed a robust body of case law.[3,38] As a result, legal professionals and courts often encounter uncertainty when applying the provisions of the Civil Code, particularly in complex cases involving representative liability. The lack of precedents means that judges must interpret the law based on their understanding of legal principles, which can lead to inconsistent rulings.[7,15,34] With limited precedents or established jurisprudence, it is difficult for businesses and legal professionals to predict the legal outcomes of disputes concerning representative liability. In Germany, the situation is more stable due to the long history of the 2002 BGB and its extensive case law. However, even in Germany, new business practices and emerging legal issues challenge the application of the law.[14,28] For example, corporate governance structures and cross-border transactions may require adjustments to the existing framework. Although German courts have a wealth of precedents to draw from, the dynamic nature of modern business means that some issues may not be fully addressed by existing case law.[5,14,24] As the law and the principles underpinning it continue to evolve, it can present challenges to businesses and those working in the legal environment, who must stay updated on changes in the law to navigate complex legal issues effectively.

Conclusion

The study examines the civil liability of representative persons under the 2015 Vietnam Civil Code and the 2002 BGB, highlighting the differences between the two legal systems. Although both systems share common principles, such as the requirement for representatives to act within their authority and uphold fiduciary duties, there are marked distinctions between these systems in their application of liability, specificity of legal provisions, and mechanisms for ratification and legal clarity. These differences have practical impacts on businesses, legal professionals, and individuals regarding agency relationships. The German legal system provides clearer rules governing representative liability, distinguishing between types of authority and establishing a detailed approach to liability. This ensures and facilitates a consistent and predictable application of the law, so it is easier to structure relations when acting on behalf of others. The emphasis on strict liability in certain contexts offers additional protection for third parties, even without fault. Despite its modernization, the 2015 Vietnam Civil Code has encountered certain obstacles due to the general nature of provisions on the representative authority. The reliance on fault-based liability can create difficulties in cases where the representative acts without malice but exceeds their authority. The Vietnamese system's reliance on judicial interpretation and lack of extensive case law further complicates its application. According to both legal systems, the principle of ratification permits principals to ratify conduct that would otherwise be outside of the bounds of the representative authority. The German system prioritizes the timing and clarity of its ratification, while the Vietnamese system provides more flexibility. This can lead to ambiguity, especially in commercial settings. Both Vietnam and Germany face challenges in legal education and public awareness. In Vietnam, the 2015 Vietnam Civil Code requires further clarification to ensure business owners, legal professionals, and the general public understand the legal responsibilities and liabilities of representatives. In Germany, there is a need to ensure that legal professionals and business leaders are up-to-date with modern commercial practices and the practical application of the law in contemporary business environments. Some of the improvements that have been suggested include better legal definitions of representative powers, expansion of case law, and better public awareness efforts through legal educational initiatives. In Germany, introducing more flexibility into the strict liability framework and simplifying the distinction between contractual and tortious liability would make the system more adaptable to modern business practices. Both systems provide valuable lessons on how to enhance representative liability management to balance fairness, legal certainty, and stakeholder protection.

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