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Reassessing redemption-clause transactions in Vietnam: A comparative study with French civil law

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Abstract: A sale with a redemption clause is commonly used when a property owner seeks immediate liquidity for financial purposes but does not intend to permanently transfer ownership of the asset. Functionally, this arrangement may operate as a de facto secured loan in which ownership temporarily shifts to the buyer as collateral. This article examines whether such transactions are legally recognized under current Vietnamese law as true sale contracts or whether their substance suggests a security device. Using qualitative doctrinal and comparative methods, the study analyzes Vietnamese legal practice and contrasts it with the French legal framework, which has historically shaped Vietnam's civil law tradition. The findings reveal a high incidence of disputes arising from redemption-clause

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transactions, largely attributable to ambiguities and gaps in statutory provisions, particularly those concerning the determination of the redemption price. These loopholes have enabled purchasers to take advantage of sellers, resulting in significant legal uncertainty. The article concludes that Vietnamese law would benefit from targeted reforms informed by comparative insights, especially from French experience, to ensure greater fairness, transparency, and legal coherence in transactions involving ownership rights used as collateral.

Keywords: Redemption Clause, Secured Transaction, Vente à Réméré, Fiducie, Dispute Resolution, Property Security

1. Introduction

The right of redemption, enabling a transferor to recover property upon repayment of a debt or fulfillment of agreed conditions, is a longstanding legal mechanism across numerous jurisdictions. Conceptually, it functions as a safeguard for property owners who temporarily part with their assets due to financial necessity but retain an opportunity to repurchase them. In many jurisdictions, this right is central to secured transactions law. Chand² describes redemption broadly as the “*buying back of property by paying off a loan*,” a notion that underpins the mortgagor’s right to redeem in India under Section 60 of the Transfer of Property Act, 1882. Comparable protections exist in Thailand, where the Civil and Commercial Code (CCC) recognizes sales with a right of redemption as a form of conditional transfer, frequently used as collateral in informal lending. Under Section 493 of the CCC, ownership is transferred to the buyer but may be reclaimed by the seller within statutory time limits³, providing a safeguard for borrowers experiencing temporary financial difficulty⁴. Similar principles appear in Singapore, where mortgagors retain an inherent right to redeem mortgaged property after settling their obligations⁵.

Vietnam’s civil law, shaped by a complex historical trajectory, shares this broader legal tradition. French colonial rule introduced the Napoleonic Code into Vietnamese legal culture⁶, and elements of this civil law foundation have been retained through successive reforms, even following the adoption of Soviet-inspired legal structures after 1945⁷. Contemporary Vietnamese civil law therefore reflects a hybrid model: it protects party autonomy while simultaneously authorizing strong

² M. Chand, Right of Redemption and Foreclosure-Under SARFAESI Act, Economic Laws Practice, 26 September 2025. Available at: <https://elplaw.in/leadership/right-of-redemption-and-foreclosure-under-sarfaesi-act/#:~:text=The%20right%20of%20redemption%20is,to%20reclaim%20the%20mortgage%20property> (accessed on 26 October 2025).

³ AKE & Associates, Sale with the Right of Redemption in Thailand, Golaw Phuket, 6 June 2023. Available at: <https://www.golawphuket.com/business-commercial/sale-with-redemption/> (accessed on 26 October 2025).

⁴ S. H. Brousseau, Sales with Rights of Redemption (Kaifak), ThaiLawOnline, 4 June 2025. Available at: <https://thailawonline.com/sales-with-rights-of-redemption/> (accessed on 26 October 2025).

⁵ Singapore Legal Advice, Getting a Mortgage Redemption in Singapore, 1 January 2024. Available at: <https://singaporelegaladvice.com/law-articles/mortgage-redemption/> (accessed on 26 October 2025).

⁶ T. T. Hoa, Tonkin Civil Code-A Combination Between Asian and European Laws, Vietnam Law Magazine, 11 June 2022. Available at: <https://vietnamlawmagazine.vn/tonkin-civil-code-a-combination-between-asian-and-european-laws-49180.html> (accessed on 12 December 2025).

⁷ D. T. Vu, Le droit français: une source d'inspiration pour la codification du droit civil vietnamien, Revue JADIE, no. 23, 2023. Available at: <https://revue-jadie.eu/article/view/7881> (accessed on 12 December 2025).

state intervention to maintain social order. This interventionist orientation, combined with low levels of legal literacy among the population, often leads to the mischaracterization of civil disputes as criminal matters,⁸ a phenomenon described as the “criminalization of civil relations”⁹.

Although Vietnamese law formally recognizes the sale with a right of redemption (bán và cho chuộc lại), significant controversy persists regarding its legal nature and regulatory framework. The central challenge does not lie in the recognition of the contract itself, but rather in the absence of clear, consistent rules governing the redemption price, the amount a seller must pay to reclaim the property. This legislative gap has produced several serious consequences. First, buyers frequently impose inflated redemption prices or interest-like surcharges, enabling the exploitation of financially vulnerable sellers. Second, courts often struggle to determine whether such transactions constitute genuine sales or disguised usurious loans, leading to inconsistent judicial outcomes. Third, ambiguities in the legal framework sometimes allow civil disputes to be recharacterized as criminal fraud or usury, reinforcing the broader problem of criminalizing civil transactions. Finally, the lack of statutory mechanisms for restoring ownership leaves many sellers without effective remedies when redemption terms become oppressive or abusive.¹⁰

Despite these recurrent problems, existing Vietnamese scholarship has not sufficiently articulated why these disputes arise, where the law is inadequate, or what comparative experience may offer by way of reform. France provides an especially relevant comparative benchmark due to its historical influence on Vietnamese civil law and its more developed jurisprudence regarding redemption clauses and transactions functioning as security devices. French law has long distinguished between genuine sales with *faculté de rachat* (right of repurchase) and transactions that are, in substance, security arrangements, applying nuanced doctrines to prevent unjust enrichment, protect borrowers, and ensure proportional redemption terms.¹¹ These mechanisms may offer valuable guidance for clarifying Vietnamese legal doctrine and reducing the misuse of redemption-clause contracts. This study therefore addresses the core research problem: although Vietnamese law recognizes the sale with a right of redemption, its regulation is insufficient, especially concerning the redemption price, leading to exploitation, legal ambiguity, and the criminalization of civil conduct. The objectives of the study are to analyze the legal nature and current regulation of sales with a right of redemption under Vietnamese law; to identify the specific legislative and doctrinal gaps, particularly regarding redemption price determination, that generate disputes and legal uncertainty; to examine how French law regulates similar transactions and prevents their misuse; and to propose how insights from French experience can inform reforms aimed at enhancing fairness, consistency, and legal stability in Vietnamese practice. This study contributes to the literature by clarifying the true nature of the legal problem, situating it within a comparative context, and offering evidence-based recommendations for strengthening Vietnam’s regulation of redemption-based secured transactions.

⁸ NAM, Vietnam: Crackdown on Civil Society Continues Unabated, FIDH Briefing Paper, July 2025. Available at: https://www.fidh.org/IMG/pdf/20250717_vietnam_eu_bp_en.pdf (accessed on 25 July 2025).

⁹ B. Khánh, Fast-Tracked: Việt Nam’s 2025 Constitutional Amendment Explained, Luật Khoa Magazine, 16 June 2025. Available at: <https://www.thevietnamese.org/2025/06/fast-tracked-viet-nams-2025-constitutional-amendment-explained/> (accessed on 12 December 2025).

¹⁰ S. H. Brousseau. 2025. Ibid.

¹¹ D. T. Vu. 2023. Ibid.

2. Methodology

This study adopts a qualitative legal research design that combines doctrinal analysis with a functional comparative approach. Doctrinal legal research provides the most appropriate framework for examining the relevant statutes, case law, and legal principles that govern these transactions in Vietnam. Additionally, the doctrinal method enables a systematic interpretation of the Vietnamese Civil Code and subordinate legislation, as well as judicial decisions that have addressed disputes arising from redemption-clause contracts. Particular attention is given to how courts characterize such transactions, the extent to which they differentiate genuine sales from disguised loans, and the ways in which existing legal provisions fail to regulate the determination of the redemption price. Through this analysis, the study seeks to expose the precise legislative gaps that give rise to exploitation, inconsistent adjudication, and, in some instances, the transformation of civil disputes into criminal investigations.

A comparative legal method complements this doctrinal inquiry. France is selected as the comparator jurisdiction due to its historical and structural influence on Vietnamese civil law, as well as its extensive jurisprudence on the sale with a right of redemption (*vente à réméré*). The comparative analysis follows a functional orientation. Rather than merely contrasting legal definitions, it examines how French law addresses the practical functions of redemption-clause contracts, particularly the mechanisms through which French courts regulate the redemption price, prevent unjust enrichment, and distinguish valid conditional sales from transactions that serve as *de facto* security arrangements. French legal sources, including provisions of the Civil Code, judicial decisions, and authoritative scholarly commentary, are examined to identify solutions that respond effectively to problems similar to those faced in Vietnam. By situating Vietnamese law within this broader doctrinal and functional context, the study identifies areas in which French experience may offer valuable insights for legal reform.

The methodology also incorporates an extensive review of secondary literature. Scholarly works from Vietnam and other jurisdictions that recognize redemption rights, including India, Thailand, and Singapore, are examined to situate the Vietnamese experience within comparative and theoretical debates about the nature of redemption-based security devices. This literature assists in interpreting primary materials and clarifying the broader implications of insufficient statutory regulation. The study draws on these materials to trace how the lack of clear rules governing redemption price determination, coupled with a broader trend of criminalizing civil transactions, has produced significant legal and social consequences in Vietnam.

The analytical process proceeds in several stages. First, Vietnamese statutory provisions and judicial decisions are scrutinized to determine the legal nature of sales with a right of redemption and to identify the specific gaps in regulation that contribute to recurring disputes. Second, the implications of these gaps are assessed in light of their practical consequences for contracting parties and the legal system. Third, the corresponding French legal framework is examined to understand how similar issues have been addressed within a jurisdiction that shares structural similarities with Vietnam. Finally, insights drawn from French doctrine and jurisprudence are synthesized and evaluated for their potential applicability in guiding Vietnamese legal reform.

3. Results and discussion

This section first presents the problematic situations that routinely arise in Vietnamese practice when sales with a right of redemption are used as collateral. It then subjects those problems to legal qualification, examines the practical and

social consequences that follow from legislative gaps, and compares Vietnamese outcomes with the French legal framework, identifying strengths and weaknesses in each system and evaluating how French solutions might be adapted to address Vietnamese deficiencies.

3.1. Problematic situations in Vietnamese legal practice and their legal qualification

Vietnamese legal practice in recent years reveals a recurrent and structurally problematic pattern: transactions that are drafted and formally registered as sales with a right of redemption are frequently used in substance as secured loan arrangements. This disconnect between form and substance generates chronic disputes regarding the true legal nature of the contract, the fairness and determination of the redemption price, and the remedies available when the buyer obstructs the seller's exercise of the redemption right. The case of Mrs. O and Mr. T, which has been reported¹² and analyzed in practice, provides a paradigmatic example of how these issues arise and how authorities address them in the absence of a clear, coherent legal framework.

In the transaction at issue, Mrs. O sold two real estate projects to Mr. T under an agreement granting her the right to redeem the property once she had sufficient funds. On paper, the arrangement appeared to fall within the statutory regime of Article 454 of the Civil Code¹³, which recognizes the seller's right to repurchase property within a contractually defined or legally default period. However, after the transfer was completed, the buyer was accused of having coerced the seller into accepting a suppressed price under duress. The dispute intensified when Mrs. O attempted to redeem the properties: Mr. T demanded what authorities later described as an exorbitant and unrealistic sum, purporting to represent the market value. Negotiations failed, and the seller filed a complaint accusing the buyer of misappropriating property.

3.1.1. Authorities' response and legal characterisation

The authorities' response illustrates how Vietnamese enforcement bodies often address these disputes when allegations of coercion or opportunistic behavior arise. Upon examining the complaint, investigators observed that the disparity between the original transfer price and the purported market value at the time of redemption was unusually large. This price discrepancy, coupled with evidence that the buyer had used his bargaining power to compel the seller into unfavorable terms, led authorities to conclude that the transaction was not a genuine sale with a redemption right, but rather a disguised loan secured by real estate, a common form of "*sham sale*" used to secure repayment of a loan under the guise of a transfer¹⁴. Although Vietnamese law does not prohibit loans secured by property, the use of a sham sales contract is deemed unlawful because it conceals the true nature of the transaction and creates risks of property misappropriation. Authorities determined that Mr. T had used the sham sale structure to obstruct the seller's ability to redeem the property, thereby misappropriating the asset. Consequently,

¹² D. Tuấn, Ông Trần Quý Thanh và 2 con gái bị đề nghị truy tố vì chiếm đoạt 1.048 tỉ đồng, Tuổi Trẻ, 24 February 2024. Available at: <https://tuoitre.vn/ong-tran-qui-thanh-va-2-con-gai-bi-de-nghi-truy-to-vi-chiem-doat-1-048-ti-dong-20240224154334489.htm> (accessed on 12 December 2025).

¹³ Vietnam, Civil Code (Bộ luật Dân sự), Article 454, promulgated under Law No. 91/2015/QH13, adopted 24 November 2015, in force from 1 January 2017. Available at: <https://thuvienphapluat.vn/van-ban/EN/Quyien-dan-su/Law-No-91-2015-QH13-The-Civil-Code/303230/tieng-anh.aspx> (accessed on 12 December 2025).

¹⁴ D. Tuấn. 2024. Ibid.

he was criminally charged with abuse of trust to misappropriate property, a form of property crime used in recent years to sanction behavior that goes beyond civil breach and enters the realm of intentional, exploitative obstruction. This outcome demonstrates the blurred boundaries between civil and criminal liability in redemption disputes. When buyers frustrate redemption, Vietnamese enforcement bodies frequently treat the conduct not as a contractual disagreement but as intentional misappropriation, particularly when the formal contract masks what appears to be a predatory loan with exploitative redemption conditions.

3.1.2. Legal framework and structural gaps

Understanding why such cases escalate into criminal matters requires close analysis of the legal framework governing redemption sales. Article 454 of the Civil Code recognizes sales with a redemption clause, stipulating that the seller may redeem the property within a period agreed upon by the parties, and if not specified, within five years for immovable property and one year for movable property. Importantly, these statutory periods are default provisions, not mandatory minimum or maximum limits. As the original passage correctly notes, parties are free to stipulate very short or extremely long redemption periods, even spanning ten or twenty years. However, while Article 454 formally recognizes redemption sales, other major property laws, the Law on Housing No. 27/2023/QH15¹⁵ and the Land Law No. 45/2013/QH13¹⁶, contain no specific provisions regulating redemption structures. This omission creates doctrinal uncertainty regarding the status of redemption clauses when the underlying asset falls under specialized statutory regimes. Moreover, Article 454(2) states that the redemption price is the market value at the time and place of redemption unless otherwise agreed. On paper, this prevents buyers from arbitrarily inflating prices to obstruct redemption. In practice, however, the rule is underspecified: it does not define valuation standards, procedures, or evidentiary requirements. Nor does it provide guidance on how to resolve disputes when parties disagree on the market value, leaving courts with limited tools and forcing sellers to obtain costly expert valuations. These structural gaps create incentives for buyers to insist on inflated “market” prices or to impose contractual redemption prices calculated by adding interest to the loan principal, a common feature of disguised secured loans. When the redemption price significantly exceeds the original transfer price, authorities often interpret the transaction as a usurious loan rather than a genuine sale.

3.1.3. Usury vs. Misappropriation: Divergent legal consequences

Assuming the buyer’s conduct had been deemed usurious rather than misappropriative, the legal consequences would have been substantially different. Under Article 201 of the 2015 Criminal Code (as amended in 2017)¹⁷, usurious lending in civil transactions can attract criminal liability when interest exceeds the statutory threshold. Yet, from a civil law standpoint, the underlying loan contract remains valid; only the interest rate is adjusted to comply with the Civil Code,

¹⁵ Vietnam, Law on Housing (Luật Nhà ở), Law No. 27/2023/QH15, adopted 27 November 2023, entered into force 1 January 2025. Available at: <https://thuvienphapluat.vn/van-ban/EN/Bat-dong-san/Law-27-2023-QH15-housing/597446/tieng-anh.aspx> (accessed on 12 December 2025).

¹⁶ Vietnam, Land Law (Luật Đất đai), Law No. 45/2013/QH13, adopted 29 November 2013, entered into force 1 July 2014. Available at: <https://english.luatvietnam.vn/dat-dai/land-law-2024-no-31-2024-qh15-296638-d1.html> (accessed on 12 December 2025).

¹⁷ Vietnam, Criminal Code (Bộ luật Hình sự), Article 201, promulgated under Law No. 100/2015/QH13, adopted 27 November 2015, as amended by Law No. 12/2017/QH14 on 20 June 2017. Available at: <https://thuvienphapluat.vn/van-ban/EN/Trach-nhiem-hinh-su/Law-No-100-2015-QH13-criminal-code/307009/tieng-anh.aspx> (accessed on 12 December 2025).

which caps interest at 20% per year unless otherwise provided by law. The excessive interest portion is simply reduced, not invalidated, and the lender retains ownership of the collateral unless and until a proper transfer is executed. This doctrinal structure reveals an asymmetry: even when the borrower repays the principal and all legally permissible interest, the property does not automatically revert. Ownership remains with the lender until a transfer, effectively a separate legal act, occurs. This point is crucial: sellers seeking redemption must not only tender the redemption price but also obtain an enforceable order compelling the buyer to return ownership, which is not guaranteed absent judicial intervention.

3.1.4. Remedies and the problem of obstructive buyers

The most challenging legal question concerns the seller's remedies when the buyer refuses to return the property despite full payment. Article 454 provides no explicit procedural pathway or substantive mechanism for compelling restoration of ownership. In practice, as noted in the original text and reflected in commentary from MINH THIEN LAW FIRM¹⁸, obstructive buyers are often treated as acting in bad faith, and enforcement authorities increasingly rely on Article 175 of the Criminal Code, which criminalizes abuse of trust to appropriate property¹⁹. This trend indicates a movement toward criminalization of what are, at their core, civil disputes, particularly when buyers exploit legal ambiguity to retain control of valuable assets. However, this approach is double-edged. While criminal prosecution may help deter egregious conduct and provide expedient relief for vulnerable sellers, it also risks over-criminalizing civil contractual behavior, expanding criminal law into areas traditionally governed by private law²⁰. This shift reflects the lack of clear civil mechanisms for restoring ownership once redemption is tendered.

3.1.5. Judicial solutions and the path forward

Given these deficiencies, current analytical approaches in Vietnamese legal scholarship suggest that sellers should have the right to file a civil lawsuit seeking (i) a declaration terminating the buyer's ownership, (ii) recognition or restoration of the seller's ownership, and (iii) an order compelling the buyer to return the property once payment of the redemption price has been proven. Courts can make such declarations only when the redemption price has been verified, either by agreement or, failing that, through court-appointed valuation experts. This underscores the critical role of official valuation, which becomes indispensable not only for determining the redemption price but also for protecting sellers from opportunistic inflation of "market value" by buyers. In cases where the redemption price has been clearly agreed upon in the original contract, and the seller tenders the correct amount, a judicial order remains necessary to restore ownership when

¹⁸ THIEN, P. B. Recent practices in legal interpretation and crime determination related to fraudulent misappropriation of assets and abuse of trust to misappropriate assets. Minh Thien Law, 2024. Available at: https://www.minhthienlaw.com/post/luadao_lamdungtinnhien_thuctien_2024 (accessed on 12 December 2025).

¹⁹ LawNet Vietnam, Lạm dụng tín nhiệm chiếm đoạt tài sản theo Điều 175 Bộ luật Hình sự 2015, 2024. Available at: <https://thuvienphapluat.vn/chinh-sach-phap-luat-moi/vn/ho-tro-phap-luat/tu-van-phap-luat/43095/toi-lam-dung-tin-nhiem-chiem-doat-tai-san-theo-bo-luat-hinh-su> (accessed on 12 December 2025).

²⁰ SGGPO. Còn khoảng trống trong việc bảo vệ doanh nghiệp trước hành vi nhúng nhieu, lạm quyền. 2025. Available at: <https://www.sggp.org.vn/con-khoang-trong-trong-viec-bao-ve-doanh-nghiep-truoc-hanh-vi-nhung-nhieu-lam-quyen-post810059.html> (accessed on 12 December 2025).

the buyer refuses to cooperate. Without such judicial intervention, the seller's right becomes illusory.

3.1.6. Broader implications

The practical and doctrinal problems identified here generate predictable social and economic consequences. Vulnerable individuals who resort to redemption-based arrangements to obtain liquidity are exposed to post-sale abuses. The lack of clear standards for valuation and enforcement increases transaction costs and discourages the use of redemption sales as legitimate financing instruments. Moreover, the blurred line between civil and criminal remedies results in inconsistent judicial outcomes, undermining legal certainty. These systemic weaknesses raise the question, pursued further in the comparative analysis, of whether other jurisdictions, particularly France, offer models that could help clarify Vietnam's approach to redemption sales, valuation standards, and ownership restoration procedures.

3.2. Comparative framework

To evaluate French solutions rigorously, the comparison applies four criteria: (i) the legal definition and formal conditions for redemption-based devices; (ii) the mechanisms for setting and contesting the redemption price; (iii) the rules governing enforceability against third parties and restoration of ownership; and (iv) procedural devices that prevent recharacterisation of sales as disguised loans or, alternatively, mitigate their abusive effects. These criteria reflect the twin policy goals of preventing creditor overreach and ensuring predictable, enforceable remedies for debtors/sellers. France is an apt comparator because its civil law lineage influenced Vietnam historically and because it provides two distinct instruments addressing similar problems: the *vente à réméré* (Articles 1659–1673 Code civil)²¹ and the *fiducie-sûreté* (Articles 2371–2488 Code civil)²². The following comparative analysis uses the four criteria above to identify convergences, divergences, strengths, weaknesses, and practical judicial outcomes.

3.2.1. The French experience: Vente à réméré and fiducie-sûreté, law, cases, and lessons

This section examines two complementary French legal mechanisms that permit transfer of ownership while preserving the possibility of reversion: the *vente à réméré* (sale with a right of redemption) and the *fiducie-sûreté* (fiduciary security). Both devices are deployed in France to provide liquidity or to secure obligations, yet they rest on different doctrinal foundations, possess different institutional features, and produce distinct practical outcomes. Analysing their statutory architecture, judicial treatment, and leading cases highlights both the protections and the vulnerabilities inherent in rights-of-redemption arrangements. These lessons are particularly salient when comparing France's more developed rules and enforcement practice to the lacunae documented in Vietnamese practice.

²¹ France, Code civil, Articles 1659–1673, enacted 1804 and maintained through subsequent reforms. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006150283/#LEGISCTA000006150283 (accessed on 12 December 2025).

²² France, Code civil, Articles 2371–2488, introduced by Law No. 2007-211 of 19 February 2007 and amended by Ordonnance No. 2009-112 of 30 January 2009 and Ordonnance No. 2016-131 of 10 February 2016. Available at: <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070721> (accessed on 12 December 2025).

Statutory architecture and doctrinal framing:

(1) Vente à réméré (sale with clause of redemption): statutory parameters and doctrinal logic.

The vente à réméré (sale with clause of redemption —now often called “vente avec faculté de rachat” (sale with right of repurchase), is codified in Articles 1659–1673 of the French Code civil. Article 1659 defines the pact of repurchase: the seller reserves the right to take back the thing sold in return for restitution of the principal price and other reimbursements defined by Article 1673; Article 1660 limits the repurchase term to five years; Article 1673 specifies that the repurchase requires reimbursement not only of the principal price but also of expenses reasonably incurred in establishing and performing the sale, repairs necessary for normal use, and improvements that increased the property’s value. These textual features establish three fundamental legal axes: (i) an objective baseline for the price that must be repaid, (ii) a clearly defined temporal limit, and (iii) an enumeration of recoverable costs. The statutory articulation gives the sale-plus-redemption device an identifiable legal identity rooted in the law of sale with a resolutive condition. Doctrinally, the vente à réméré operates as a sale subject to a resolutive condition: redemption is treated as retroactive annulment of the sale upon proper reimbursement rather than as an independent purchase contract. This doctrinal posture matters because it allows courts to restore property rights seamlessly, to frame the seller’s claim as one for restitution rather than fresh acquisition, and thereby to protect the seller’s pre-existing proprietary interest. Authors such as Gauchon²³ and commentators like Calley, Bailleul & Grégoire²⁴ emphasize this retroactivity and its practical consequences for possession and title.

(2) Fiducie-sûreté: A statutory, institutionalized security device.

The fiducie was introduced into French private law to provide a civil-law analogue to the Anglo-American trust. Article 2011 defines the fiducie as a transaction in which a settlor transfers present or future assets, rights, or security interests to a fiduciary, who holds them separated from their own estate for a specified purpose and for beneficiaries’ benefit.²⁵ The fiducie-sûreté, expressly addressed in Articles 2371–2372 (and related provisions), authorizes transfer of ownership to a fiduciary for the singular purpose of securing performance of an obligation.²⁶ Where the secured obligation is satisfied, ownership automatically reverts to the settlor (Article 2372-2)²⁷. Where the obligation is not performed, Article 2372-3²⁸ provides a path for the fiduciary (particularly when also the

²³ C. Gauchon, Sale with right of redemption: a legal and practical guide for professionals, Solent Avocats, 15 June 2025. Available at: <https://solent-avocats.com/en/vente-remere-practical-legal-guide/> (accessed on 25 October 2025).

²⁴ H. C. Calley, D. Bailleul and Grégoire, Chronique de contrats spéciaux (1re partie), Actu-Juridique, 19 August 2019. Available at: <https://www.actu-juridique.fr/civil/chronique-de-contrats-speciaux1re-partie> (accessed on 12 December 2025).

²⁵ France, Code civil, Article 2011, introduced by Law No. 2007-211 of 19 February 2007 and amended by Ordonnance No. 2016-131 of 10 February 2016. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006118476/#LEGISCTA000006118476 (accessed on 12 December 2025).

²⁶ France, Code civil, Articles 2371–2372, introduced by Law No. 2007-211 of 19 February 2007 and amended by Ordonnance No. 2009-112 of 30 January 2009 and Ordonnance No. 2016-131 of 10 February 2016. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006150367/#LEGISCTA000006150367 (accessed on 12 December 2025).

²⁷ France, Code civil, Article 2372-2, introduced by Law No. 2007-211 of 19 February 2007 and amended by Ordonnance No. 2009-112 of 30 January 2009. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006150367/#LEGISCTA000006150367 (accessed on 12 December 2025).

²⁸ France, Code civil, Article 2372-3, introduced by Law No. 2007-211 of 19 February 2007 and amended by Ordonnance No. 2009-112 of 30 January 2009. Available at:

creditor) to acquire or realize the asset in a regulated way. This statutory design deliberately creates a segregated patrimonial mass (*patrimoine d'affectation*), insulated from the fiduciary's personal creditors and governed by strict operational rules. The *fiducie-sûreté's* institutional features are significant: only regulated entities (credit institutions, investment firms, insurance companies, certain public institutions, and under particular conditions lawyers) may act as fiduciaries (Article 2015)²⁹. This professionalization aims to reduce opportunism and mismanagement but narrows the *fiducie's* accessibility for small, vulnerable debtors who lack access to financial intermediaries. The *fiducie* thus functions well in commercial and insolvency settings while being less suitable for the informal or consumer contexts where predatory repurchase arrangements commonly occur.

3.2.2. Leading French cases and practical judicial approaches

To appreciate how statutory law operates in practice, it is necessary to examine concrete decisions. French courts have consistently confronted attempts to use sale-plus-redemption structures as disguised loans or as tools of creditor overreach. The jurisprudence reveals a fact-sensitive balancing: courts protect distressed sellers in the presence of indicia of exploitation but also guard market security and third-party interests.

(1) Recharacterization, indicators of exploitation, and the 1990s jurisprudence.

Cour de cassation decisions in the early 1990s show an established reluctance to uphold sham transactions. The Court repeatedly confirmed that a sale with a *faculté de rachat* may be re-characterized where evidence shows the act functions as a pledge or an abusive transfer (see, for example, Cour de cassation, 12 June 1991; and related decisions from 1991).^{30,31,32} While the Court's precise holdings vary in procedural posture, the doctrinal throughline is that substance controls form: if a sale merely masks a loan with onerous redemption terms, requalification is permissible to protect the debtor/seller.

(2) Recent appellate guidance: Price adequacy and percentage thresholds.

Recent appellate and commercial commentary indicate that courts will scrutinize the relationship between sale price and market value. For instance, a Court of Appeal decision and practitioner summaries have treated a *réméré* sold at less than 60% of market value as *prima facie* problematic and a possible indicium of abuse. Although courts are reluctant to adopt bright-line rules, thresholds such as "under 60%" have emerged in practice as indicating manifest inadequacy that warrants requalification or annulment. Practitioners cite CA Paris and other appellate rulings emphasizing the price ratio and presence of leaseback or repeated acquisitions from the same distressed vendor as red flags.

(3) The 2014 and 2018 Cassation rulings: Requalification and procedural consequences.

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006150367/#LEGISCTA0000020192940 (accessed on 12 December 2025).

²⁹ France, Code civil, Article 2015, introduced by Law No. 2007-211 of 19 February 2007 and amended by Ordonnance No. 2016-131 of 10 February 2016. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006118476/#LEGISCTA000006118476 (accessed on 12 December 2025).

³⁰ *La vente à réméré*. 2024. Available at: <https://www.terrieravocats.fr/post/la-vente-a-remerere> (accessed on 12 December 2025);

³¹ Cour de cassation, *Chambre commerciale, financière et économique*, 7 juillet 1992, 90-19.994. Available at: <https://justice.pappers.fr/decision/071149e0cc1092777de023d8ea5509d65fc2eb91?utm> (accessed on 12 December 2025)

³² Intini, B. *Vente à réméré jurisprudence*. 2025. Available at: <https://www.praxifinance.fr/page/vente-a-remere-jurisprudence?utm> (accessed on 12 December 2025).

The Cour de cassation has iterated key delimiting principles in the 2010s. A 2014 decision of the third civil chamber³³ held that requalification into a prohibited *pacte comissoire* cannot rest on mere simultaneity of a loan and a sale, judges must look to concrete indicia of coercion, manifest inadequacy, or other exploitative circumstances. Similarly, another decision³⁴ clarified procedural conditions for exercising the redemption right when parties disagree on payment or possession. These rulings establish that while requalification is available, courts proceed cautiously and require robust evidence of abusive substance.

(4) *Fiducie-sûreté* in insolvency settings and the 2023 Bordeaux decision.

The *fiducie-sûreté* has been tested in insolvency contexts where its resilience matters most. The Court of Appeal of Bordeaux (18 December 2023) emphasized that a properly constituted *fiducie-sûreté* withstands collective insolvency proceedings: assets in the *fiducie* remain segregated, and the fiduciary's powers are preserved where the *fiducie* deed is properly drafted and disclosure/registration obligations met. Such decisions underscore the *fiducie*'s practical advantage: when used by regulated parties in commercial settings, it delivers enforceable, predictable outcomes that reduce litigation and insolvency uncertainty.

3.2.3. Practical vulnerabilities, where French law nonetheless leaves exposure

Despite its relative sophistication, the French landscape continues to present practical vulnerabilities that are instructive for comparative reform.

(1) Valuation disputes and evidentiary burdens.

Both the *vente à réméré* and the *fiducie* rely on valuation, to fix redemption price components and to determine whether sale price was manifestly inadequate. Article 1673 enumerates recoverable expenses and repairs, while *fiducie* realization rules require expert valuation except for publicly traded assets. Yet neither device eliminates contentious valuation disputes. Courts must often appoint experts, and litigation over valuation can be protracted and costly, creating barriers for vulnerable sellers who require cheap, speedy redress. The pragmatic lesson is that statutory clarity on valuation methodology and streamlined expert appointment mechanisms materially affect whether statutory protections are usable in practice.

(2) Third-party purchasers and transactional security.

Article 1664 of the Civil Code empowers sellers to reclaim property against subsequent purchasers, even when resale contracts omit the seller's right of redemption. This rule strongly protects sellers but can be harsh to bona-fide acquirers, particularly where registration regimes do not provide notice. Courts have attempted to temper the tension, but the fundamental conflict between retroactive seller protection and transactional fluidity persists. In practice this leads to a trade-off: strong pro-seller rules prevent opportunistic buyer behavior but raise the costs and risks for third-party purchasers, possibly chilling legitimate transfers.

(3) Accessibility and consumer protection limits.

The *fiducie*'s requirement that fiduciaries be regulated institutions provides quality assurance but excludes many non-commercial debtors from its benefits. Conversely, the *vente à réméré* is accessible to ordinary persons but is more exposed to predatory structuring. French law curtails this exposure by strictly policing sales that exhibit signs of exploitation and by prohibiting *pacte comissoire* in consumer credit. However, enforcement remains dependent on judicial

³³ Cour de cassation, civile, Chambre civile 3, 21 mai 2014, 12-23.607, Publié au bulletin. 2014. Available at <https://www.legifrance.gouv.fr/juri/id/JURITEXT000028977150> (accessed on 12 December 2025).

³⁴ Cour de cassation, Troisième chambre civile, 8 novembre 2018, n° 14-25.005, Publié au Bulletin. 2018. Available at https://archive.labase-lextenso.fr/jurisprudence/CC-08112018-14_25005 (accessed on 12 December 2025)

willingness to recharacterize transactions and on the litigant's ability to mount a factual case, resources many distressed debtors lack.

3.2.4. Case studies: Concrete examples and doctrinal takeaways

To ground the doctrinal discussion, three illustrative cases (and categories of rulings) are summarized below. Each demonstrates a different mode of judicial control and highlights particular policy tradeoffs.

Case study 1: Requalification where price was manifestly inadequate (appellate rulings)^{35,36}.

In multiple appellate decisions, French courts have annulled or requalified *rémeré* transactions where the sale price was grossly disproportionate to market value, commonly when the sale price falls below approximately 60% of market value and the buyer leased back the property or repeatedly acquired assets from the same seller. In such rulings, courts treated the arrangement as functioning like a secured loan or as a disguised pledge and either set aside the act or adjusted rights to prevent creditor windfall. This prosecutorial-like policing demonstrates judicial readiness to protect vulnerable sellers on price-adequacy grounds while demanding solid proof of the economic disparity and the buyer's predatory intent. This case study illustrates that statutory limits plus judicial fact-finding mitigate exploitation, but absence of bright-line valuation rules leaves outcomes variable and evidence-dependent.

Case study 2: Procedural protections for redemption³⁷.

The Cour de cassation has insisted on procedural safeguards when sellers assert redemption but buyers contest; notably, the Court has held that where parties disagree, redemption cannot confer possession until the price and costs are fixed or consigned. The 8 November 2018 decision—clarify that judicial fixation of the redemption price or judicial deposit can be required before the seller re-enters possession. These holdings temper opportunistic self-help and channel disputes into the civil process, where courts can balance contested claims. This case study shows that procedural requirements reduce self-help but risk delaying practical restoration, again underscoring the need for efficient judicial valuation mechanisms.

Case study 3: Fiducie resilience in insolvency³⁸.

The Bordeaux appellate decision illustrated the fiducie's strength in preserving segregation of assets in collective insolvency. Where the fiducie deed was properly framed and disclosed, the fiduciary's control and entitlement to realize assets were respected despite the settlor's insolvency proceedings. The decision confirms that, when used by regulated actors, the fiducie furnishes predictable outcomes that reduce estate-marshalling litigation and secure creditor expectations. This case study implies that institutionalization and professionalization (fiduciary requirement, disclosure, registration) make the fiducie an enforceable and dependable security device in the commercial arena.

³⁵ Cour de Cassation, Chambre civile 1, du 10 juillet 1995, 93-17.388, Inédit. 1995. Available at

<https://www.legifrance.gouv.fr/juri/id/JURITEXT000007262986/#:~:text=Attendu%20que%2C%20M.%20Z...,cent%20quatre-vingt-quinze> (accessed on 12 December 2025).

³⁶ Intini, B. 2025. Ibid.

³⁷ Pacte de rémeré : moment auquel s'opère le transfert de propriété en cas de désaccord. 2018. Available at <https://www.lexbase.fr/article-juridique/48806654-brevespactedederemeremomentauquelsopereletransfertdepropieteencasdedesaccord> (accessed on 12 December 2025).

³⁸ Variations sur l'efficacité d'une fiducie-sûreté immobilière. 2024. Available at: <https://www.labase-lextenso.fr/bulletin-joly-entreprises-en-difficulte/2024-n3/variations-sur-l-efficacite-d-une-fiducie-surete-immobiliere-BJE201m3> (accessed on 12 December 2025).

4. How France addresses the same problem and lessons for Vietnam

France provides one of the most mature and coherent legal architectures for regulating sales with a right of redemption, offering both statutory precision and institutional safeguards that reduce the inherent risks of asymmetry, opportunism, and disguised lending. French law addresses the redemption-price problem through a combination of detailed statutory norms, judicial doctrines for recharacterizing abusive transactions, and institutional mechanisms, most notably the *fiducie-sûreté*, that enhance enforcement predictability while protecting vulnerable parties. In contrast, Vietnam's current regulatory framework, centered on Article 454 of the Civil Code, remains both conceptually and operationally underdeveloped, resulting in legal uncertainty, widespread exploitation, and an increasing tendency to criminalize what are fundamentally civil disputes. A comparative analysis reveals that French practice offers not only discrete doctrinal tools but also a cohesive regulatory philosophy that could guide Vietnamese reform.

At the heart of French regulation is the principle of statutory clarity, especially regarding temporal limits, valuation rules, and the enumeration of permissible cost components in redemption. The French Civil Code sets a maximum five-year redemption period, establishing an administrable temporal boundary that prevents excessive prolongation of uncertainty for both seller and buyer. Likewise, Article 1673 delineates the precise components of the repurchase price, typically defined as the original purchase price plus enumerated expenses, taxes, and reasonable remuneration of the buyer. These rules drastically reduce ambiguity and prevent buyers from inflating the redemption price *ex post* in a manner that resembles disguised interest. Vietnamese law, by contrast, recognizes the right of redemption under Article 454 but does not prescribe any detailed methodology for redemption-price determination, leaving parties free to stipulate either an arbitrary contractual price or a market-based valuation at the time of redemption. This absence of statutory anchoring creates opportunities for manipulation, including the imposition of penalties, surcharges, or disguised interest exceeding reasonable limits. It also contributes to inconsistent judicial outcomes, as courts must infer valuation principles case by case rather than applying a standardized statutory formula.

French practice supplements these substantive rules with institutional solutions, especially the *fiducie-sûreté*, a fiduciary security institution in which ownership is transferred into a segregated patrimony managed by a regulated fiduciary. This model ensures that assets used as security are insulated from the personal creditors of the fiduciary, and that the fiduciary's powers are strictly circumscribed. For commercial actors, the *fiducie-sûreté* provides a more robust enforcement mechanism than the classical *vente à réméré*, while simultaneously protecting the debtor from abusive practices such as opportunistic resale or undervaluation. Vietnamese law currently lacks any institutional mechanism that separates ownership from enforcement authority in this way. As a result, buyers in redemption-based sales frequently acquire both formal ownership and unilateral control over disposition, thereby creating significant risks of abuse, particularly in contexts in which the sale functions as a disguised loan. Vietnamese reform could therefore benefit from the introduction of an institutionalized security device analogous to the *fiducie-sûreté*, limited to licensed banks, financial institutions, or designated legal professionals, and subject to strict fiduciary obligations. Such a mechanism would preserve flexibility for commercial transactions while providing vulnerable sellers with meaningful protection against exploitation.

An additional lesson from French practice concerns valuation and the role of judicial expertise. Although French courts regularly rely on expert valuation procedures to determine the fair market value of assets in redemption disputes, delays and inconsistencies in practice highlight the need for expedited and standardized valuation protocols. Vietnam faces similar challenges, but with far

more severe consequences given the absence of statutory valuation formulas. Implementing expedited judicial valuation mechanisms, such as prompt appointment of independent experts, provisional judicial fixation of value, and judicial deposit procedures to perfect redemption, would significantly reduce transaction costs and prevent disputes from escalating into protracted litigation. French practice demonstrates that valuation is not merely a technical issue but a structural safeguard against exploitation, and thus must be integrated into the core statutory framework.

Third-party protection also features prominently in French regulation of redemption-based transactions. Article 1664 of the French Civil Code provides that the seller's redemption right prevails against subsequent purchasers, but this rule assumes the existence of a well-functioning registration and disclosure regime. In practice, France relies on highly reliable land and property registries, ensuring that third parties are aware of redemption rights and can assess the risks associated with acquiring property encumbered by such rights. For Vietnam, the lesson is twofold. First, redemption clauses involving immovable property must be subject to mandatory registration. Second, the legal consequences of failing to register must be clearly defined to balance protection of the seller's redemption right against the legitimate expectations of bona fide purchasers. Absent such measures, Vietnam risks undermining the credibility of redemption instruments and generating conflicts between private parties and innocent third-party acquirers.

A further lesson from French practice lies in the calibrated use of criminal law. French courts generally treat defective redemption transactions as civil matters, applying doctrines of requalification, restitution, or nullity when contracts functionally resemble disguised loans or violate public policy. Criminal prosecution is reserved for clear cases of fraud, deception, or misappropriation. This stands in contrast to recent Vietnamese practice, exemplified in the widely discussed *Mrs. O / Mr. T dispute*³⁹, in which civil disagreements over redemption price and valuation escalated into criminal investigations and charges of abuse of trust. Such criminalization not only distorts civil law principles but also imposes significant social and legal costs, including inhibiting private contracting and undermining confidence in the rule of law. Lessons from the French experience strongly suggest that Vietnam should recalibrate its approach by strengthening civil remedies, providing clearer statutory rules, and reserving criminal sanctions for cases involving intentional wrongdoing.

French courts also offer substantive doctrinal criteria for identifying sham transactions, which are particularly relevant given Vietnam's widespread use of redemption-based sales as disguised lending arrangements. French judges examine factors such as the adequacy of consideration, the presence of lease-back arrangements, recurring transactions with the same counterparty, and the proportionality of any usage payments. These indicators help courts determine whether a transaction labeled as a sale with redemption is, in substance, a secured loan. Vietnamese courts urgently need similar criteria to prevent buyers from structuring transactions in ways that obscure usurious practices. Codifying such judicial tests would enhance consistency, prevent abusive recharacterizations, and provide clearer guidance to both parties and adjudicators.

Taken together, French practice offers a comprehensive set of design choices that could inform Vietnamese reform efforts. These include statutory clarity regarding temporal limits and valuation components, institutional devices like the *fiducie-sûreté* to manage enforcement, expedited judicial valuation procedures, reliable registration and disclosure systems, clearly defined third-party risk

³⁹ THUẦN, D. Tóm tắt diễn biến vụ án liên quan cha con ông Trần Quý Thanh, 2024. Available at: <https://tuoitre.vn/tom-tat-dien-bien-vu-an-lien-quan-cha-con-ong-tran-qui-thanh-20240423142122242.htm> (accessed on 12 December 2025).

allocation, and a restrained approach to criminal intervention. Vietnamese law can draw upon this integrated regulatory philosophy to correct current dysfunctions—particularly the exploitation of vulnerable sellers, manipulation of redemption price, and the inappropriate criminalization of civil disputes.

The reform agenda for Vietnam therefore begins with amending Article 454 to specify maximum redemption periods for all property types, enumerate recoverable cost items aligned with Article 1673 of the French Civil Code, and require both disclosure and mandatory registration for immovable property subject to a redemption clause. Such amendments would close governance gaps that currently invite opportunistic behavior. Vietnam should also establish a regulated fiduciary security option modeled on the *fiducie-sûreté*, ensuring that ownership transferred for security purposes remains within a segregated patrimony and is managed by licensed fiduciaries bound by strict duties. Expedited valuation procedures—including provisional judicial deposits to perfect redemption—should be integrated into the procedural framework to reduce delays and enhance enforceability. Additionally, a strengthened registration regime for redemption clauses would protect both sellers and bona fide purchasers, ensuring that rights are transparent and enforceable. Finally, criminal intervention should be restricted to cases involving clear evidence of fraud or deliberate misappropriation, with requalification, restitution, and valuation adjustment serving as the primary civil remedies.

Vietnam's path forward lies not in replacing its existing recognition of redemption rights but in refining the mechanisms that make those rights meaningful in practice. The French experience, characterized by clear statutory rules, institutional arrangements, and judicial doctrines, demonstrates that redemption-based transactions can function as legitimate financing tools when properly regulated. Without comparable safeguards, Vietnam risks perpetuating exploitation, generating unpredictable judicial outcomes, and allowing civil disputes to escalate into criminal cases, thereby undermining both private autonomy and the rule of law.

5. Comparative lessons and reform implications for Vietnam

French practice provides a structured and coherent menu of design choices that could inform Vietnamese reform efforts. First, statutory clarity on temporal limits and price components significantly reduces ambiguity. France's imposition of a five-year maximum repurchase window and Article 1673's detailed enumeration of reimbursable cost items offer clear, administrable rules that minimize opportunities for manipulation. Vietnam's Civil Code, by contrast, recognizes redemption rights but does not provide comparable detail on valuation methodology or the precise elements of the redemption sum, creating a governance gap that incentivizes exploitation. Second, institutionalized security devices with regulated fiduciaries, such as the *fiducie-sûreté*, demonstrate that segregated patrimony combined with professional fiduciary management enhances predictability and enforceability, especially in insolvency contexts. Vietnam could adopt a parallel instrument for commercial actors while implementing consumer safeguards to ensure that low-income sellers are not excluded from protective remedies. Third, valuation protocols and expedited expert appointment form a core component of operational efficiency in France. Although French courts rely on expert valuation, delays are not uncommon, revealing the importance of statutory mechanisms for prompt valuation and provisional judicial fixation of disputed values. Vietnam should therefore adopt similar protocols to reduce transaction costs and prevent disputes from escalating. Fourth, disclosure and registration regimes directly determine the allocation of third-party risk. France's strong protection of the seller's right of redemption against third-party acquisition only functions because registration systems reliably reveal encumbrances. Vietnam must accordingly strengthen its land and property

registration systems and introduce searchable encumbrance records for redemption clauses. Finally, French practice illustrates the importance of reserving criminal sanctions for exceptional cases. French courts rely primarily on civil doctrines such as requalification and restitution to correct defective private ordering. Vietnam's emerging tendency to escalate redemption disputes into criminal proceedings risks over-criminalization and worsens legal uncertainty. A recalibrated approach, prioritizing civil remedies and reserving criminal law for clear cases of fraud, would align Vietnam with comparative best practices. Policy proposals grounded in this comparative analysis therefore include amending Article 454 to codify detailed redemption rules; introducing a regulated fiduciary security option; establishing expedited valuation and judicial deposit procedures; strengthening registration and disclosure requirements; and restricting criminal intervention to cases involving demonstrable fraud or deliberate misappropriation. Each of these reforms would address structural deficiencies in Vietnam's current system and align domestic practice with established comparative standards.

6. Conclusion

France's dual regulatory framework, combining the accessible *vente à réméré* with the institutionally robust *fiducie-sûreté*, demonstrates how clear statutory rules, judicial requalification doctrines, institutional safeguards, and restrained use of criminal law can together mitigate the exploitation risks inherent in redemption-based transactions. In contrast, Vietnam's current framework, centered on Article 454 of the Civil Code, suffers from ambiguous valuation rules, inadequate protections during the redemption period, weak registration systems, and a troubling tendency to criminalize civil disputes. By drawing on French experience, Vietnam can reform its redemption regime through statutory clarification of redemption price and cost components, adoption of expedited valuation and judicial deposit mechanisms, strengthening of registration and disclosure systems, introduction of a regulated fiduciary security device, and limitation of criminal sanctions to genuine cases of fraud. Implementing these reforms would enhance legal certainty, reduce exploitation, prevent disguised usury, and restore the civil character of redemption-based transactions, thereby strengthening both private autonomy and the integrity of Vietnam's civil-law system.

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