

LE & TRAN  
Vietnam's Premier Boutique Litigation Firm

LE & TRAN

— Vietnam's Premier Boutique Litigation Firm —

LE & TRAN Building  
No.9, Area 284 Nguyen Trong Tuyen Street  
Ward 10, Phu Nhuan District, Ho Chi Minh City

T (+84 28 ) 38 42 12 42  
F (+84 28 ) 38 44 40 80  
E [info@letranlaw.com](mailto:info@letranlaw.com)

[www.letranlaw.com](http://www.letranlaw.com)

©2017 LE & TRAN. All rights reserved.



asiaLaw  
PROFILES

ASIAN  
LEGAL  
BUSINESS ALB

## BRIEF NOTICE :

LE & TRAN - Vietnam's Premier Boutique Litigation Firm is a winner in **Annual Global Law Experts Awards 8th Awards:**

## Dispute Resolution Law Firm of the Year in Vietnam

LE & TRAN is in the shortlist of **AsiaLaw Profiles** for the following **dispute resolution awards 2017:**

- National Law Firm of the Year - Vietnam
- Dispute Boutique of the Year  
(sole representative of Vietnam in the list)
- Dispute Star of the Year  
(for **Stephen Le Hoang Chuong**)

LE & TRAN - Vietnam's Premier Boutique Litigation Firm was a finalist in **SE Asia Law Award 2017** held by **Asian Legal Business (ALB)**.

- Vietnam Law Firm of the Year
- Regional Litigation Law Firm of the Year
- Dispute Resolution Boutique Law Firm of the Year
- Rising Law Firm of the Year
- Regional Managing Partner of the Year  
(for **Stephen Le Hoang Chuong**)
- Young Lawyer of the Year  
(for **Stephen Le Hoang Chuong**)

# LE & TRAN

— Vietnam's Premier Boutique Litigation Firm



**Dispute Resolution Law Firm**  
of the Year in Vietnam



Event

## Evidence in Commercial Dispute Resolution

Speaker:

**Stephen Le Hoang Chuong**  
Le & Tran  
Litigator - Managing Partner



Date: 20/07/2017  
8:30 am - 10:30 am

Place: Park Hyatt Saigon  
2 Lam Son Square, Dist.1  
Ho Chi Minh City



# Table of contents



1. Key rules on evidence
2. Electronic evidence
3. Competence and compellability of witnesses
4. Evidence obtained by unlawful or unfair means
5. Inferences from silence
6. Opinion evidence
7. Privilege

# 1. Key rules on evidence



## 1.1. What is evidence?

Evidence in a civil/commercial case is any matter of fact:

- Handed over or produced to the Vietnamese court by the parties, agencies, organizations or individuals during the litigation process; or  
Collected by the Vietnamese court according to the order and procedures prescribed by the Code of Civil Procedure; and
- Is used by the Vietnamese court as the basis for ascertaining objective details of the case as well as whether or not the parties' claims or protests are well-grounded and lawful.

# 1. Key rules on evidence



## 1.1. What is evidence?

- Almost everything can be submitted to the Vietnamese court and be labeled “evidence”.
- However, the evidence may very well be considered unreliable by the Vietnamese court (even though the evidence is submitted, the Vietnamese court may decide not to consider this evidence when rendering a decision).

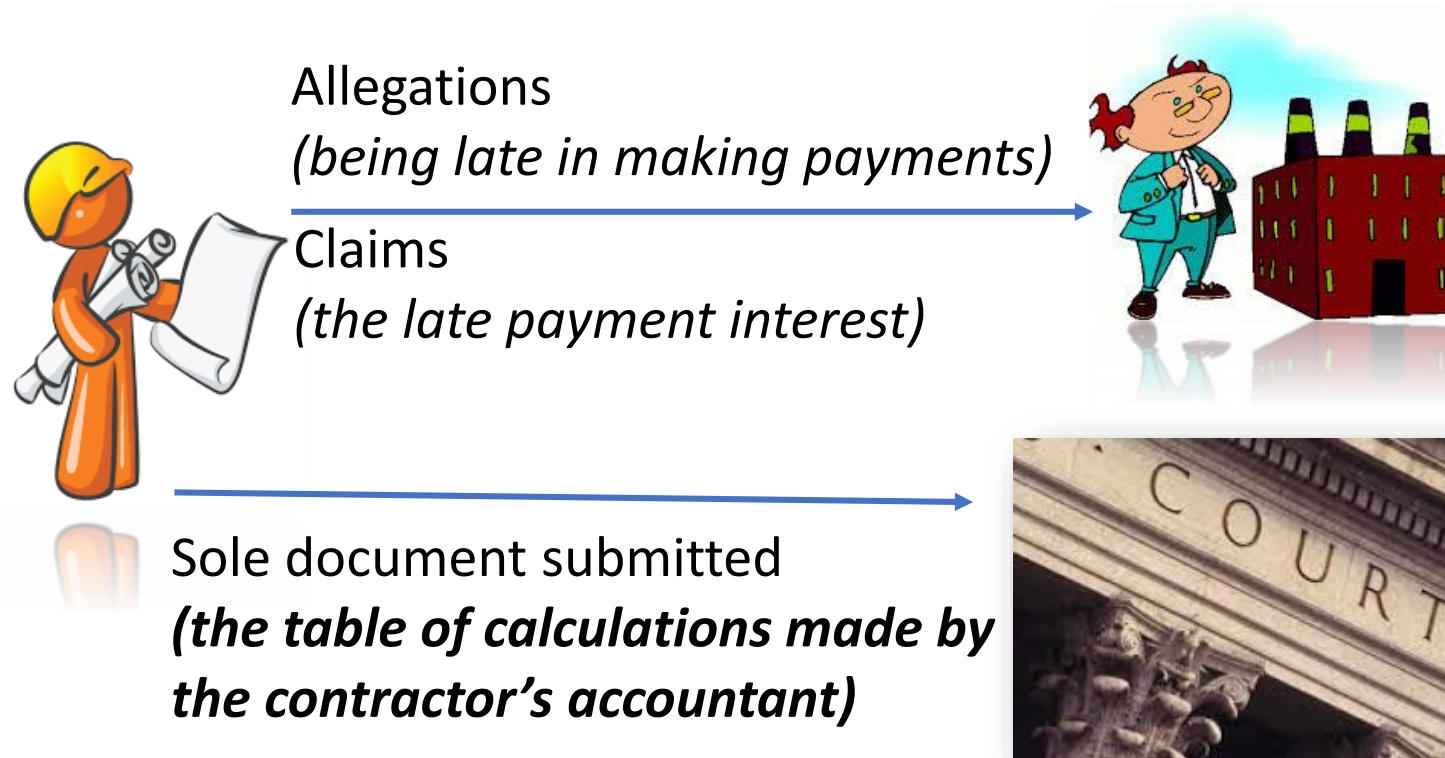


# 1. Key rules on evidence



## 1.1. What is evidence?

Example: In a construction dispute



1. Is such table of calculations evidence under the law?
2. Is such table of calculations reliable?

# 1. Key rules on evidence



## 1.1. What is evidence?

Decisive evidence is the evidence that can convince the judge and affect the judgment.



# 1. Key rules on evidence



## 1.2. What usually becomes decisive evidence?

Decisive evidence usually are documents that are:

\* Signed by the concerned parties

*E.g.: Meeting minutes,  
Contracts,  
etc.*

or

\* Certified by the competent authorities

*E.g.: Records made by the bailiff,  
Statements of the notary public,  
etc.*





# 1. Key rules on evidence



## 1.3. Compulsory disclosure

- In some countries, there are regulations on compulsory disclosure, at a party's request, of information that relates to the litigation, which is called "discovery".
- In Vietnam, effective means for requesting compulsory disclosure only exist in criminal proceedings (with assistance of the police). There is no such effective discovery process in civil/commercial proceedings.

# 1. Key rules on evidence



## 1.3. Compulsory disclosure

Therefore:

- Do not submit anything unnecessary to the court.
  - It will waste the court's time and distract the court from noticing the other important evidence;
  - Such unnecessary evidence may be used against you.
- Evidence should be prepared at the time of the business transaction in anticipation of litigation because it is very difficult to collect evidence when a dispute arises.

## 2. Electronic evidence



### 2.1. Email



An email sent from [A@gmail.com](mailto:A@gmail.com) to [B@gmail.com](mailto:B@gmail.com) mentions that Company A owes Company B USD20,000,000. Is this email decisive evidence in the lawsuit filed by Company B against Company A?

There are some issues that should be considered:

- a. Does [A@gmail.com](mailto:A@gmail.com) really belong to Company A?
- b. In the assumption that [A@gmail.com](mailto:A@gmail.com) really belongs to Company A:
  - Did the legal representative of Company A send this email?
  - Could it be a staff who sent the email without authorization?
  - Could it be an outsider who sent the email (by illegally accessing the email)?



## 2. Electronic evidence



### 2.1. Email

Email is usually unreliable. Exception: Electronic/digital signature.

Are the below email signatures considered as electronic signature?



Kind regards,  
Name here



business  
name

slogan here

Business Name Here  
Address: 17 Main Street, Brisbane QLD 4000  
PO Box 123, Brisbane QLD 4000  
Phone: (07) 5484 4444  
Mobile: 0400 000 000  
Email: [name@domainname.com.au](mailto:name@domainname.com.au)  
Website: [www.domainname.com.au](http://www.domainname.com.au)

## 2. Electronic evidence

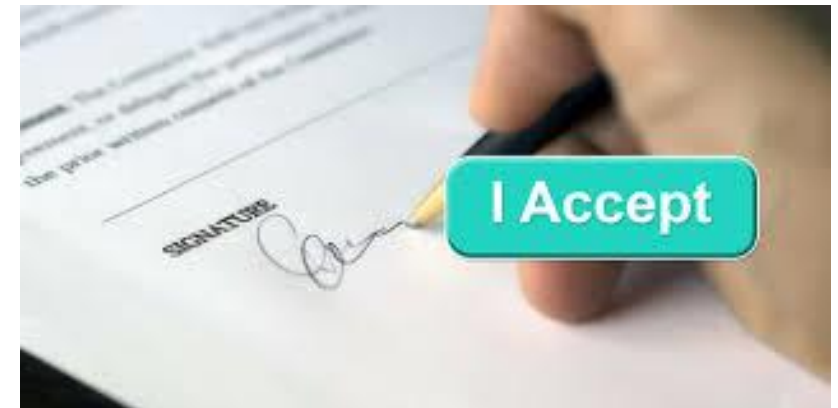


### 2.1. Email

What is the “electronic/digital signature”?



Legal validity



## 2. Electronic evidence



### 2.2. Audio recording and video recording

Can be submitted to the Vietnamese court if being enclosed with a document explaining where such audio recording, video recording come from?

However, audio recording and video recording usually raise the following issues:

- How to identify where and when the audio or video was recorded?
- How to identify whose voice it is in the audio recording or video recording?
- Expert voice analysis can help to identify whose voice it is, but what if the concerned person refuses to give his/her voice as sample for the analysis?



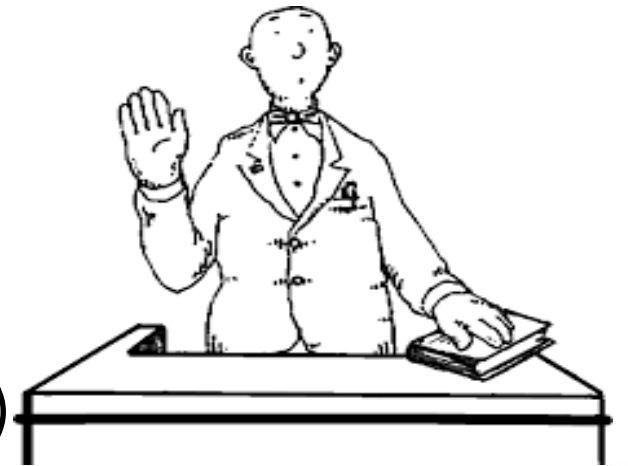
### 3. Competence and compellability of witnesses



#### 3.1. Witnesses are not preferred by Vietnamese courts

Because:

- Most Vietnamese courts believe that witnesses may lie, but written documents (contracts, invoices, etc.) will not lie.
- No prosecutor will pursue the perjury of witnesses in normal commercial cases.
- No compensation from the court for witnesses (so it is difficult to believe that the witnesses will be objective)



### 3. Competence and compellability of witnesses



#### 3.1. Witnesses are not preferred by Vietnamese courts

Example:

Company A buys goods from Company B. When the delivery deadline is about to expire, Company B does not have enough goods to deliver so:

- Company B
  - Sales Director calls Company A to inform of the shortfall.
- Company A
  - Sues Company B for damages.
  - Submits the **testimony of the Sales Director** of Company B as evidence.
- The court → Such testimony is **not reliable** because:
  - \* The Sales Director is not the legal representative of Company B; and
  - \* There is no other evidence supporting the testimony of the Sales Director.

### 3. Competence and compellability of witnesses



#### 3.2. Written testimony and verbal testimony

When a witness comes to a Vietnamese court to testify:



The Vietnamese court requires

*(Usually, after providing the written testimony, the witness often requests and is granted leave to be absent from the trial.)*



The Vietnamese court rarely requires



### 3. Competence and compellability of witnesses



#### 3.2. Written testimony and verbal testimony



**What is the difference between written testimony and verbal testimony?**

- Verbal testimony
  - ✓ easier to detect/prove lies
  - ✗ high possibility of inconsistency
- Written testimony
  - ✓ reduces the possibility of inconsistency
  - ✗ difficult to detect/prove lies

**Vietnamese courts prefer written testimony.**

### 3. Competence and compellability of witnesses



#### 3.2. Written testimony and verbal testimony



##### **Why do Vietnamese courts prefer written testimony?**

- In Vietnam, before the trial, the judge usually has already studied the evidence submitted by the parties and already has a preliminary ruling.
- The written testimony can be stored in the case file for the judge's review at any time.

### 3. Competence and compellability of witnesses



#### 3.2. Written testimony and verbal testimony

Preferring written testimony is the Vietnamese' mindset:



In a case at VIAC, when we asked to summon a witness at the hearing, the arbitrators (who are senior attorneys in Vietnam) refused.

The arbitrators replied that everything the witness wanted to say could be made into written testimony and submitted, so it was not necessary for him to be present at the hearing.



### 3. Competence and compellability of witnesses



#### 3.2. Written testimony and verbal testimony

Preferring written testimony is the Vietnamese' mindset:

➔ However, litigators can change this mindset because it can be strongly argued that verbal testimony is more reliable (you need to directly hear and question the witness before trusting his/her testimony).

In the mentioned case, after receiving our explanation about the importance of verbal testimony, the arbitrators did change their mind and agreed to summon the witness.

## 3. Competence and compellability of witnesses



### 3.3. Compellability of witnesses

- No effective means to compel witnesses to give testimony in commercial cases.
  
- ➔ Concerned parties: ☒ Rely on the Vietnamese court.  
☒ Find their own ways to summon witnesses or to get the witnesses' statement.

## 3. Competence and compellability of witnesses



### 3.3. Compellability of witnesses

- No requirement of cross-examination (i.e. in some countries, written testimony is not reliable because the opposing party cannot cross-examine it).
- ➔ The written testimony can be made and submitted to the Vietnamese court (even though the witnesses may be absent at trial).

## 4. Evidence obtained by unlawful or unfair means



- The law prioritizes the truth.
  - ➔ **Evidence obtained by unlawful or unfair means can still be used by Vietnamese courts, as long as it provides truthful information.**

*(Violations of the law during the collection of evidence shall be considered in a separate case).*





## 5. Inferences from silence



### Silence from any party: shall not mean an acceptance

- Unless:
- \* It is previously agreed by the parties that silence means acceptance; or
  - \* It is the common practice between the parties.

However, unreasonable silence is usually understood by Vietnamese courts as a “sign of fault”. It will not be the main grounds for the judgment but it may support other evidence of the opposing party and cause you to lose the case.

SILENT

EVIDENCE

## 5. Inferences from silence



Example: In a dispute over a sales contract, the seller accuses the buyer of failing to make the payment.

The seller submits the following evidence:

1. The contract signed between the parties (the buyer also agrees with this evidence).
2. The confirmation of receiving the goods, confirmation of the unsettled payment signed by A, a staff of the buyer (the buyer disagrees and states that A is not the legal representative and does not have the right to sign such documents).
3. Many requests for payment were sent to the buyer but the buyer did not reply.

And during the court proceedings:

4. The buyer is absent during the court meetings and trial without any reason.

- Evidence (1) and (2) alone are not enough to prove the claim of the seller.
- Evidence (3) and fact (4) cannot be concluded as the buyer's acceptance of the seller's claim.
- However, combining (1), (2), (3) and (4), the court accepts the seller's claim.

## 6. Opinion evidence



### 6.1. Expert opinion evidence

#### a. Juridical expert opinion

- Must be obtained under the procedures provided by the law.

*E.g.: A party must make a request to the Vietnamese court and the Vietnamese court will appoint an agency of expertise, e.g. Forensic Science Division – Department of Public Security of Ho Chi Minh City.*

- A party can only make a request to the agency of expertise on its own initiative if the Vietnamese court has refused to appoint the agency of expertise.
- Expert opinion is provided in writing and the expert will only be summoned at trial in case of necessity (e.g. there are unclear points or doubt of illegal acts).

## 6. Opinion evidence



### 6.1. Expert opinion evidence

#### a. Juridical expert opinion

Juridical expert opinion is strong evidence but it is only obtainable when the lawsuit has already been filed, which may be too late (i.e. the status quo has already been compromised).



## 6. Opinion evidence



### 6.1. Expert opinion evidence

#### b. Commercial expert opinion (hired by the parties)

- Commercial expert opinion can be obtained from any service provider (which is licensed to provide the expertise services).
- It can be obtained without a lawsuit at the Vietnamese court.

However, this is only binding upon the parties if it was agreed to in the contract (i.e. the contract stipulates the agency of expertise).

## 6. Opinion evidence



### 6.2. Non-expert opinion

- Non-expert opinion is not reliable and will not be considered by Vietnamese courts.

~~NON-EXPERT WITNESSES~~

## 7. Privilege



- Privilege is a special legal right, exemption or immunity granted to a person or class of persons.
- Privileged communication means a communication that is protected by law from compelled disclosure in a legal proceeding, or that cannot be used against the person who made it.

Example: attorney-client privilege, the client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney.

## 7. Privilege



- The Vietnamese court can still request and use privileged communications.
- The law does require the Vietnamese court to not disclose such communications.

However, this is only a theory. There is nothing to ensure that the Vietnamese court officers will not accidentally disclose them.

The most suitable way to protect privileged communications is by not providing it to the Vietnamese court.




## 7. Privilege



- It is very difficult to compel the submission of privileged communications (and any other information) of other parties.

Because:

- ✓ The requesting party must prove that it has taken all necessary measures but has failed to collect the information before requesting the Vietnamese court for its assistance.
- ✓ The Vietnamese court is usually reluctant to assist because it would cause the Vietnamese court trouble if the other parties refuse to provide the information. The easier option for the Vietnamese court in this situation will be to reject the claim on the grounds of “lack of evidence”.



LE & TRAN

Vietnam's Premier Boutique Litigation Firm

THANK YOU FOR LISTENING