

TABLE OF CONTENTS	
ADMINISTRATIVE COURT MODEL AND JURISDICTION IN VIETNAM - FOREIGN EXPERIENCES AND NEW CHALLENGES	
ACRONYMS AND ABBREVIATIONS.....	12
ABSTRACT	13
INTRODUCTION	14
1. Background.....	14
2. Purposes, Previous Research & Current Research Questions.....	16
3. Main Contents	20
4. Methodology	25
5. Materials.....	25
CHAPTER I.....	27
ADMINISTRATIVE DIVISION COURT MODEL: THE START OF THEORETICAL CONTROVERSY.....	
Introduction	27
I. Overview of Administrative Disputes Resolution in Vietnam Prior to 1996 ...	28
1. Under Development of Vietnamese Administrative Law Regarding Judicial Review	28
1.1. Outlook of Comparative Studies of Administrative Law	29
1.2. Some Analyses on the Under Development of Vietnamese Administrative Law.....	33
2. Administrative Disputes Resolution Prior to 1996: Main Characteristics and Criticisms.....	39
2.1. Main Characteristics.....	39
2.2. Criticisms	42
2.2.1. Lack of Judicial Review	42
2.2.2. Imperfection of Legal Norms.....	43
2.2.3. Defect of Settlement Proceedings and Failure of Implementation	44
2.2.4. Capacity Limitation of State Officials and People's Legal Awareness.....	46
II. New Perception to Judicial Review of Administrative Action in Vietnam....	48

1. Whether Judicial Review of Administrative Action Existed Historically in Vietnam	48
1.1. Trace back to the Feudalism Regarding Settlement of People's Claims	48
1.2. Court Jurisdiction over Administrative Cases Prior to 1975	53
2. Looking for Model of Law-Based State and of Judicial Review of Administrative Action	57
2.1. From Socialist Legality to Socialist Law-Based State.....	57
2.2. Indispensable Need for Judicial Review of Administrative Action.....	60
2.2.1. Political and Democratic Aspects	61
2.2.2. Economic and Administrative Management Aspects.....	62
2.2.3. Legal and International Integration Aspects	63
2.3. Legal Perception to Judicial Review of Administrative Action.....	64
III. The Birth of Model of Administrative Division Courts: Interim or Eternal Solution	69
1. Proposed Models and Analyses: Theoretical Conflict and Divergence....	69
1.1. Model of Independent Administrative Court Formed by National Assembly.....	69
1.2. Model of Administrative Court as Independent System Attached to Government.....	70
1.3. Model of Semi-Independence Administrative Court.....	72
1.4. Model of Administrative Division within People's Courts (ADCs)	73
2. Choice of ADCs Model.....	74
2.1. Rationale.....	74
2.1.1. Issue of Constitutionality	74
2.1.2. Issues of Feasibility	75
2.2. Its Foundation and Operation (since July, 1 st 1996).....	76
2.2.1. Legal Basics	76
2.2.2. Court Organization	77
2.2.3. Trial Panel and Participation of Procurators	80
3. Theoretical Conflict and Controversy.....	84
3.1. Model of ADCs: Interim or External?.....	84
3.2. Taxonomy of Controversy Regarding Court's Models	88

Concluding Remarks	91
CHAPTER II	93
JURISDICTION OF ADMINISTRATIVE DIVISION COURTS:.....	
CONSTANT CONTROVERSY AND PRACTICAL REMAINS.....	93
Introduction	93
I. Administrative Division Court's Jurisdiction: Its Enlargement and Debates ...	94
1. Legal Concept	94
2. Grounds for Jurisdiction over Administrative Litigation	101
2.1. Principle of Legal Examination: Legality or Rationality	101
<i>2.1.1. Examination on Substantive Requirements</i>	<i>103</i>
<i>2.1.2. Examination of Procedural Requirements.....</i>	<i>107</i>
2.2. Non-Power of Inquiry in to Legal Norms	110
3. Objects to Judicial Review	114
3.1. Individual Administrative Decisions.....	115
3.2. Job Dismissal Disciplinary Decisions	118
3.3. Administrative Actions.....	119
4. Court's Jurisdiction: Classification and Analyses	120
4.1. Jurisdiction over Territorial Units	120
<i>4.1.1. Supreme People Court.....</i>	<i>120</i>
<i>4.1.2. Local Courts</i>	<i>120</i>
<i>4.1.3. Delimitation of Court's Jurisdiction</i>	<i>121</i>
4.2. Jurisdiction over Enumerated Administrative Matters	123
4.3. Jurisdiction over Trial Proceedings	129
<i>4.3.1. Examining the Standing.....</i>	<i>129</i>
<i>4.3.2 On Evidences.....</i>	<i>132</i>
<i>4.3.3. On Damage Compensation</i>	<i>132</i>
4.4. Judgment and Interim Relief.....	134
<i>4.4.1. Administrative Judgment – A Legislative Vacancy</i>	<i>134</i>
<i>4.4.2. Temporary Suspension and Suspension of Settlement of Administrative Cases</i>	<i>136</i>
<i>4.4.3. Temporary Urgent Measures</i>	<i>137</i>
4.5. Jurisdiction over Appeal and Supervisory, Review Trial	138

II. Vietnamese Case-Study Analyses: Current Controversies and Mistakes of Judgments.....	139
1. Whether Courts Can Review at Any Period of Administrative Complaints	139
1.1. Issue of Compulsory Pre-Litigation and Its Obstacles	139
1.2. Revocation of Judgment Regarding Land Dispute in <i>Dong Nai Province</i> (1999).....	144
1.3. Lawsuit Regarding Final Reconsideration Decision in <i>Can Tho Province</i> (2006).....	145
2. Whether Court Can Apply Retroactive Principle.....	148
2.1. Issue of Error of Law	148
2.2. A Case of Personal Income Tax Decision to Mr.K.S (Japanese) in <i>Hanoi</i> (1998).....	153
3. Whether Court Can Encroach upon Administration	157
3.1. Issue of Judgment's Defect and Discretionary Judgment.....	157
3.2. Annulment of Discretionary Judgment on Land in <i>Thai Binh Province</i> (1999)	161
3.3. Annulment of Illegal Judgments Regarding Tax Sanction in <i>Hai Phong</i> (2000)	164
4.Whether Scope of Accepting Cases Can Be Extended At Maximum.....	166
4.1. Issue of Scope of Judicial Review	166
4.2. Dismissal of Petition Regarding Land Recovery in <i>Hanoi</i> (2004).....	169
5. Whether Sanction Decision Violated Time Limit Can Be Wholly Quashed.....	171
5.1. Issue of Time Effect	171
5.2. Lawsuit Regarding Sanction on Intellectual Property in <i>HCM City</i> (2005)	172
6. Overview of ADCs's Adjudication Over Past Ten Years and Judgment's Mistakes.....	175
6.1. Statistical Data and Analyses	175
6.2. Some Main Mistakes of Judgments	179
Concluding Remarks	181

CHAPTER III.....	182
LESSONS FROM FOREIGN EXPERIENCES	
REGARDING ADMINISTRATIVE COURT MODEL AND JURISDICTION.....	182
Introduction.....	182
I. Motivations to Administrative Law Reform and Impacts of Foreign Experiences	183
1. Legal Transplant: Impacts of Foreign Experiences By Means of Foreign Legal Assistance	183
2. Motivations to Reform of Vietnamese Administrative Law.....	189
2.1. Self-Identity.....	190
2.2. Necessity of International Integration and Saving Time.....	193
II. Lessons from Oversea Experiences	196
1. Learning French Experiences	198
1.1. Structure of French Administrative Court System.....	198
1.1.1. Conseil d'Etat	198
1.1.2. Tribunaux Administratifs and Cours Administratives D'Appel	200
1.2. Some Experiences on Court's Jurisdiction.....	202
1.2.1. Objects subject to Judicial Review.....	202
1.2.2. Grounds for Judicial Review	205
1.2.3. Judgments, Decisions and Effects of Annulment of Administrative Acts	209
1.3. Introduction to French Sikh Schoolboys Lose Turban Case (2005).....	211
2. Learning from Chinese Experiences	214
2.1. Establishment of ADCs and an Administrative Litigation System.....	214
2.1.1. Constitutional Background: From Rule by Man to Socialist Rule of Law State	214
2.1.2. Administrative Litigation System and Model of ADCs	217
2.2. Some Experiences Regarding Jurisdiction of Administrative Division Court.....	221
2.2.1. Principle of Legal Inquiry and Scope of Accepting Cases	221
2.2.2. No Compulsory Requirement of Administrative Reconsideration	225

2.2.3. Judgment and Performance.....	227
2.3. Introduction to Some Administrative Lawsuits in China.....	229
2.3.1. Hepatitis B Carriers Case (2003)	229
2.3.2. Qiao Zhangxiang vs. Ministry of Railways Case (2001)	231
3. Learning from Japanese Experiences	233
3.1. Change from Model of Administrative Court to Ordinary Court	233
3.1.1. Meiji Constitution and Model of Continental Administrative Court ...	233
3.1.2. Japanese Constitution (1947) and Changes to Model of Ordinary Court	239
3.2. Some Experiences on Jurisdiction over Settlement of Administrative Cases.....	243
3.2.1. Scope of Judicial Review.....	243
3.2.2. No Compulsory Administrative Reconsideration.....	250
3.2.3. Categories of Administrative Litigation	251
3.2.4. Interim Relief, Judgment and Implementation.....	255
3.3. Introduction to Some Administrative Lawsuits in Japan	257
3.3.1. Revocation of Approval Disposition on Constructing Odakyu Line (2005)	257
3.3.2. Confirmation of Invalid Permission in Monju Case (2003)	261
III. Necessity of Foreign Legal Assistance Regarding ALRS.....	264
1. Administrative Law Review System: A Difficult but Potential Field....	265
1.1. Limitation of FLA Projects	265
1.2. Potential Development.....	270
2. Recommendations	271
2.1. Support for Improving Legal Framework.....	272
2.2. Support for Constructing Institutions.....	276
2.3. Support for Legal Training and Exchange of Legal Information	279
Concluding Remarks	282
CHAPTER IV	284
NEW CHALLENGES TO EXISTENCE OF CURRENT ADCs IN VIETNAM.....	284
Introduction	284

2.2.3. Judgment and Performance.....	227
2.3. Introduction to Some Administrative Lawsuits in China.....	229
2.3.1. Hepatitis B Carriers Case (2003).....	229
2.3.2. Qiao Zhangxiang vs. Ministry of Railways Case (2001)	231
3. Learning from Japanese Experiences	233
3.1. Change from Model of Administrative Court to Ordinary Court	233
3.1.1. Meiji Constitution and Model of Continental Administrative Court ...	233
3.1.2. Japanese Constitution (1947) and Changes to Model of Ordinary Court	239
3.2. Some Experiences on Jurisdiction over Settlement of Administrative Cases.....	243
3.2.1. Scope of Judicial Review.....	243
3.2.2. No Compulsory Administrative Reconsideration.....	250
3.2.3. Categories of Administrative Litigation	251
3.2.4. Interim Relief, Judgment and Implementation.....	255
3.3. Introduction to Some Administrative Lawsuits in Japan	257
3.3.1. Revocation of Approval Disposition on Constructing Odakyu Line (2005)	257
3.3.2. Confirmation of Invalid Permission in Monju Case (2003)	261
III. Necessity of Foreign Legal Assistance Regarding ALRS.....	264
1. Administrative Law Review System: A Difficult but Potential Field....	265
1.1. Limitation of FLA Projects	265
1.2. Potential Development.....	270
2. Recommendations	271
2.1. Support for Improving Legal Framework.....	272
2.2. Support for Constructing Institutions.....	276
2.3. Support for Legal Training and Exchange of Legal Information	279
Concluding Remarks	282
CHAPTER IV	284
NEW CHALLENGES TO EXISTENCE OF CURRENT ADCs IN VIETNAM.....	284
Introduction	284

I. Contemporary Legal Debates on Setting up Models Other than the Existing Model	285
1. Transplanting Rule of Law and Judicial Reform Regarding the Administrative Court Model.....	285
1.1. Informal Institutional Approach to Rule of Law.....	285
1.2. Judicial Reform and Vietnamese Communist Party's Points of View.....	290
2. Constant Debate on Looking for the Best Model	295
2.1. Whether to Form an Administrative Jurisdiction Body Attached to Government.....	295
2.2. Whether to Set Up Administrative Court Model like Current Military Courts	302
2.3. Whether to Establish a Model of Regional Administrative Courts.....	303
2.4. Whether to Introduce a Model of Administrative Tribunals	306
II. Theoretical Implications and Recommendations	312
1. Theoretical Implication for Future Development of Vietnamese Administrative Law.....	312
2. Recommendations on Improving the Court Model and Jurisdiction in Vietnam	316
2.1. The Ruling Party's Role and the State Mechanism.....	316
2.2. Legal Framework and Expansion of Jurisdiction	319
2.3. Court Model and Institutions	324
2.3.1. AJB attached to Government and New Appellate System	324
2.3.2. ADCs and Judicial Review System	328
2.4. Legal Human Resources	331
2.4.1. Appointment and Training Administrative Judges	331
2.4.2. Other Legal Posts	346
Concluding Remarks	350
CONCLUSION	351
BIBLIOGRAPHY	359