



GSJ: Volume 14, Issue 6, June 2026, Online: ISSN 2320-9186
www.globalscientificjournal.com

THE NON-COMMUNICABILITY CLAUSE APPLIED TO FRUITS AND MOVABLE ASSETS: EFFECTIVENESS AND LEGAL CERTAINTY

Rafaela Andreola Oliboni¹, Murillo de Oliveira Dias²

¹ Lawyer (OAB/RS 136755), graduated in Law from the Fundação Escola Superior do Ministério Público (FMP), Porto Alegre/RS, Brazil. Postgraduate student in Family and Succession Law at the same institution. E-mail: adv.rafaelaandreolaoliboni@gmail.com. LL.M. in Corporate Law, Fundação Getulio Vargas (FGV)

² Universidade do Estado do Rio de Janeiro (UERJ); Escola Superior de Desenho Industrial (ESDI), Programa de Pós-Graduação da Escola Superior de Desenho

Industrial (PPDESDI)

*Corresponding author: agenda.murillo@gmail.com

ABSTRACT

This article examines the applicability of the non-communicability clause to fruits and movable assets. It starts with a theoretical and practical analysis of how the clause operates across different property regimes. The article highlights its succession and patrimonial implications. It also discusses the main challenges and solutions related to its application. The effectiveness of the clause depends on careful wording, an express provision for subrogation (if applicable), and organized documentation. The study adopts a deductive method and a bibliographic procedure, drawing on doctrine, jurisprudence, and legislation. Despite its legal validity, the clause's effects often become significant only when conflicts are established. These conflicts include divorce proceedings, dissolution of a stable union, or an inventory. When drafted well, the non-communicability clause is an effective tool for planning and asset protection, provided it is applied with skill, clarity, and proper legal support.

KeyWords incommunicability; fruits; movable property; subrogation; estate planning.

INTRODUCTION

The non-communicability clause is usually used as a form of asset protection in situations such as donations, wills, and other legal transactions. In theory, the idea is simple: to ensure that certain assets are excluded from division in the event of separation or death. In practice, however, many doubts arise, especially regarding the fruits these assets generate or when the protected asset is movable, such as a company quota, a vehicle, or a financial investment. Even with the legal provision and the support of the doctrine, what really shows how all this works are the judgments, where we see the clause applied in real situations. And it is precisely at this point that the challenges begin: does the clause also protect the income generated by the asset? And if the asset is sold and the proceeds are used to buy another asset, does this protection remain valid? What to do when it comes to movable assets, which usually circulate more easily and are more difficult to trace?

The non-communicability clause is one of the main tools used in civil law, especially in the Brazilian legal system, to safeguard the patrimony of family members and of the deceased person in matters of succession. The non-communicability clause is a provision inserted in legal acts, such as donations and wills, through which the donor or testator determines that the transferred asset will not communicate with the assets of the beneficiary's spouse or partner, being excluded from the share in the event of divorce or dissolution of a stable union (Brazil, 2002). The provision itself is easy to understand, but its implementation poses many difficulties, especially regarding the transfer of another person's assets, whether immovable or movable (Diniz, 2023; Lôbo, 2022; Tepedino et al., 2022). This study aims to analyze the non-communicability clause of assets that were subject to donations, agreements, or any other form of acquisition, as well as assets that were inherited, which, hereinafter, are collectively referred to as "assets". This study is relevant given that, in recent years, there has been an increase in family arrangements and in the variety and quantity of assets managed by family members. In this sense, the non-communicability clause for assets is an essential tool for the donor and the deceased, as it is considered one of the main instruments for addressing succession (Rosa, 2024, p. 64). Madaleno (2020) mentions that it enables the anticipation of potential conflicts when planning the estate of the deceased. In addition, for the non-communicability clause to be effective, a series of aspects must be taken into account, such as the wording of the instrument, the express mention of the fruits and of the subrogation, in addition to holding the documents that prove the origin and the destination of the assets, as is the case of the accounting records (Carmo & Arantes, 2020, p. 275; Pássaro de Laet, 2024, p. 321).

When an asset is donated or inherited with a non-communicability clause, it remains the exclusive property of the beneficiary, regardless of the property regime adopted by the couple. The clause removes the communicability of the property, preventing the spouse or partner of the beneficiary from claiming action over it in the event of divorce or dissolution of a stable union. In the inventory, the asset is part of the estate and is shared among the heirs, respecting the rules of succession applicable to the specific case. This applies to both real estate and movable property, such as corporate shares. The same applies to the other individuals mentioned in the non-communicability clause and to the property transferred to them. In such cases, the restrictions imposed on the property of such individuals are to be respected. In the case of partition of the common property, for example, all the property of the individuals subject to

restrictions shall be included in the respective inventory. However, such property shall also be partitioned in accordance with the terms established in the legal act in which the non-communicability clause was stipulated. As stated by Loureiro (2022), the restrictions on the property of the individuals mentioned in the non-communicability clause, when such property consists of company quotas, are not affected by subsequent transactions of such individuals with other assets. From a jurisprudential perspective, the Supreme Court of Justice (Superior Court of Justice) has established case law holding that fruits and movable assets are non-communicable whenever the legal instrument clearly stipulates this. The Federal Supreme Court has also analyzed the interaction between the property regimes and the non-communicability clause, as established in Precedent No. 377 (Brazil, Federal Supreme Court). Movable assets, by nature, are easily transferred. Therefore, it is not uncommon to encounter problems in tracking these kinds of assets. Problems are especially generated by the fruits of assets that have been made non-communicable by the terms of a contract. As was already stated, the kind of problems that are generated by the fruits of assets that have been made non-communicable by the terms of a contract are the kind of problems that are generated when the fruits of an asset that has been made non-communicable by the terms of a contract have not been explicitly stated to be non-communicable in the contract under which the asset was acquired. As stated by Rosa (2024) and Tepedino et al. (2022), when the fruits of an asset are not explicitly stated to be non-communicable in the contract under which the asset was acquired, there is a risk that they may be considered communicable. Clearly, this is not what the donor or the testator had wanted.

This article is a descriptive case study. Its study objective is to analyze in more detail the implications of using the non-communicability clause to succeed to other assets. It also seeks to describe the main disputes surrounding the application of said clause to succession to other assets and, especially, to stress how effective estate planning can resolve potential conflicts in the division of family assets. The analysis is conducted through the deductive method and the bibliographic procedure, with constant reference to the main sources of legislation, doctrine, and jurisprudence. In summary, the non-communicability clause is a legal device that brings benefits and problems. The study of this clause has doctrinal value and also influences the solutions given in real cases of asset division and patrimonial division. The application of this legal device to fruits and movable assets is the object of this article, which aims to deepen the study of the subject and to contribute to the already abundant literature on the matter. To achieve this goal, a deductive method and a bibliographic research procedure will be used, drawing on doctrine, case law, and legislation. This article seeks to provide a practical, objective analysis of how the non-communicability clause has been applied to fruits and movable property. The idea is to clarify the main points of attention, show the care that must be taken when drafting the clause, and present decisions that help clarify what works and what does not in real life.

THE NON-COMMUNICABILITY CLAUSE AND ITS APPLICATION IN THE REGIMES OF GOODS

The incommunicability clause is provided for in article 1,668, item I, of the Civil Code (Lobo, 2022), and its main function is to prevent certain assets, received by donation or inheritance, from communicating with

the assets of the spouse or partner. That is, regardless of the property regime chosen by the couple, the assets transmitted with this clause remain the exclusive property of the beneficiary. The express provision of the clause is important because, depending on the property regime, the assets donated, inherited, or the object of a contract may be included in the couple's assets. The existence of the clause, however, removes this possibility and prevents the property from being the object of division in the event of divorce, dissolution of stable union or, in some cases, after death (Lobo, 2022). The non-communicability clause is a legal figure much discussed in the doctrine and case law, above all in connection with fruits and movable assets. The analysis of the theoretical models of the application of the non-communicability clause, as well as the most relevant empirical studies and case law on the matter, is therefore aimed at identifying the gaps this book intends to fill. The non-communicability clause is provided for by the Brazilian Civil Code (2002) rules of succession that reinforce individualism within the family framework. The non-communicability clause, applicable to assets received by donation or inheritance, converts them into private goods within the family, provided there is an express stipulation in the legal act. In succession, when one spouse or partner acquires an asset while the other spouse or partner retains the other assets within the common property, the non-communicability clause is an effective tool for protecting private assets within the family. With respect to the issue of fruits (Pássaro de Laet 2024, art. 1,669 § 4 CC/02), the general rule set forth by the above-mentioned article is not absolute and may be overcome by the stipulation of the donor or testator in the relevant legal instrument. Consequently, according to case law, the non-communicability clause can be extended to rents, dividends, and other income from property. This is because the donor's or testator's will prevail (Rosa 2024, p. 272; Madaleno 2020, p. 209).

Summarizing the rules of each regime: in the partial community of property, which is the supplementary regime (that is, it is automatically valid when the couple does not enter into a prenuptial agreement or cohabitation contract), everything that is acquired during the constancy of the union, even if it is in the name of only one of the two, enters into the division. On the other hand, the assets that each one already owned before the marriage (considered incommunicable by the wording of article 1,661 of the Civil Code) or that he received by inheritance or donation, are left out and are not communicated, as provided for in article 1,659 of the Civil Code (Brazil, 2002). The regime of final participation in assets, provided for in article 1,672 of the Civil Code, is recognized, although not widely used. During the marriage, it functions similarly to conventional separation of property: each party manages and is responsible for their own assets. Upon dissolution of the relationship, a logic akin to partial community applies: assets acquired for consideration during the union are subject to division. In sum, the focus remains on assets acquired during the partnership (Brasil, 2002).

Regarding movable property, succession planning rules affect the protection of the assets received by donation or by inheritance. Thus, Loureiro (2022, p. 121) examined, in a scientific article, the donation of company quotas, vehicles, and financial investments, with special emphasis on the non-communicability clause. He reached the conclusion that the effectiveness of the non-communicability clause to assets received by donation or by inheritance depends greatly on the proper drafting of the respective legal act. Moreover, as previously stated, the subrogation of the donor or the heir to the creditors of the donor or the testator, respectively, is another factor that affects communicability. Thus, Carmo and Arantes (2020, p. 238) pointed out the relevance of documentation in such cases. For the newly acquired assets to be

considered incommunicable, proof of the origin of the funds of the testator or of the donor must be provided. This aspect is analyzed in the scientific article by Fleischmann and Pituco (2023, p. 141) from a corporate law perspective, particularly in limited liability companies, where contractual clauses with post-mortem effects are possible and widely used to secure the succession of partners.

Additionally, many studies refer to the non-communicability clause in the context of other succession planning issues. This is the case of Hironaka and Tartuce (2019), for instance, who consider succession planning as a tool to reconcile the interests of the property and the family, in order to make use of available legal tools. However, other studies, such as those by Rosa and Rodrigues (2022) and Rosa and Alves (2025), analyze the so-called "inventory and partition" procedures for assets and properties within family law. Studies and jurisprudence regarding the non-communicability clause and the extension of the same to fruits and to movable assets are essential for the purposes of this study. They allow for an analysis regarding the interpretation of the aforementioned clause given by the Superior Court of Justice, focusing on the cases in which full effect is given to the will of the donor or of the testator as long as a clear statement was made in the legal act in respect to the incommunicability of the assets received by way of donation or of the assets that form part of the inheritance (Brazil, Superior Court of Justice, 2014; Brazil, Superior Court of Justice, 2023). Also, it is worth noting that there is Precedent No. 377 of the Federal Supreme Court (Brazil, Federal Supreme Court, n.d.), which governs the relationship between property regimes and the non-communicability clause of assets, especially in cases of mandatory asset separation.

Although considerable literature has been published on the non-communicability clause, several limitations to the present analysis must be highlighted. The greatest part of the literature deals with property and, in particular, with real property. In practice, however, the greatest difficulties encountered by those seeking to apply the clause in succession planning involve other categories of assets, such as bank accounts, safe deposit boxes, and other forms of movable property. In terms of the fruits of the estate, while there is considerable literature on the extension of the non-communicability clause to such assets, further research is required, including an examination of the effectiveness of the clause in practice. In this sense, the absence of an express provision in the legal act does not compromise the incommunicability of the main asset received by donation or inheritance, which is already protected by law in the partial community regime (article 1,659, I, of the Civil Code). The risk falls, mainly, on the fruits and assets subrogated: without an express clause, these may be considered communicable, contrary to the intention of the donor or testator. As noted by Rosa (2024) and Tepedino et al. (2022), in today's estate planning practice there is a tendency to leave assets in the form of donations during the donor's lifetime rather than awaiting the testator's passing. In summary, numerous legal publications confirm the validity of the non-communicability clause and its applicability to fruits and movable assets. However, they point out several difficulties in applying the clause, including drafting, proof, and application. The case study aims to provide a descriptive analysis of the clause in its application, based on legal knowledge, case law, and legislation (Hironaka & Tartuce, 2019; Rosa & Alves, 2025; Madaleno, 2020).

METHODOLOGY

This literature review is developed based on the so-called research onion model proposed by Saunders et al. (2019). In accordance with this model, the researcher organizes the several methodological choices made by the researcher along several layers of an onion, starting from the outer layer, which corresponds to the philosophical assumptions of the research, and then proceeding to the research approach, to the research strategy, to the data collection, and to the data analysis. The review thus follows a doctrinal and a jurisprudential approach to achieve the objectives outlined above. Based on the outer layer of the research methodology, within the outer layer of the research onion (Saunders et al. 2019), the study follows the steps for developing the literature review within the framework of the research onion proposed by the same authors, starting with the outermost layer of the onion, which corresponds to the philosophical assumptions of the research (Hironaka & Tartuce, 2019; p. 2, 13-14; Tepedino et al., 2022; p. 2). The research approach for this study will be deductive. That is, the legal rules and principles governing certain legal objects, such as fruits and movable property, as established in the Civil Code (2002) and previous case law (Superior Court of Justice, 2014), will be applied in the analysis.

At the inner layer of the Research Onion, the methodology was applied through a single case study with a descriptive character, aiming to analyze the current phenomenon of application of the clause to fruits and other movable assets. Integrated into the study of the current phenomenon of application of the clause under analysis, there was also an in-depth analysis of the legal texts applied, a comprehensive review of the jurisprudence that has been generated with the aim of analyzing the applicability of the clause in a variety of scenarios, and an analysis of other relevant legislation. The fourth layer of the onion, that of the methodological choices, was addressed by the fact that it is an interpretivist study. Therefore, a monomethod qualitative approach was used to analyze the data. It was a bibliographic and documentary analysis. Time Horizon: Cross-sectional, focused on the current analysis of the rules of succession law within the scope of Family Law and on the current interpretations given by the doctrinal studies and by the case law regarding the non-communicability clause (Fleischmann & Pituco, 2023; Loureiro, 2022).

The innermost layer of the onion refers to the data collection and analysis of the study. Regarding the study's bibliographic procedure, a systematic review of available academic sources was conducted, analyzing numerous works on the subject, as well as academic articles and jurisprudential decisions. The analysis of the results of such a study follows a thematic approach and the various issues that are at the root of the non-communicability clause of the property of others are analyzed, including whether or not they said clause applies to fruits, the circulation of movable property and the role of subrogation in the transfer of a right held by another person (Carmo & Arantes, 2020; Pássaro de Laet, 2024; Rosa & Alves, 2025). Our qualitative research is a single-case study. The method that we use cannot be generalized to other research areas. Thus, this study relies heavily on extensive bibliographic material. There is no empirical data from practice, in the sense that there are no interviews with lawyers who handle cases involving the non-communicability clause, no statistics on decisions in cases that have already been decided, etc. However, as already noted, the use of the research onion devised by Saunders et al. led to a

very rigorous methodology, which is fitting for the academic study we are conducting to provide a reliable estimate of the number of cases in which the non-communicability clause applies.

Under the universal community of property regime, provided for in Article 1,667 of the Civil Code (Brasil, 2002), all assets are shared, including those acquired before the marriage, regardless of their origin, whether inherited, donated, or purchased. The only exceptions are assets that the law itself considers non-communicable, as listed in Article 1,668 (Brasil, 2002). It is precisely in this article that the non-communicability clause appears, reinforcing the protection of certain assets even within a regime that, as a rule, communicates everything.

Under the conventional separation-of-property regime, set forth in Article 1,687 of the Civil Code (Brasil, 2002), the rule is straightforward: what belongs to one spouse remains exclusively theirs. It does not matter whether the asset was acquired before or after the marriage, as it does not communicate. Under this regime, all assets and their yields are considered private property. Therefore, there is no need to include a non-communicability clause to prevent sharing, since the very choice of this regime ensures that everything remains individualized.

Finally, there is the mandatory separation-of-property regime. Unlike the others, this regime cannot be chosen by the couple; it is imposed by law in the specific cases provided for in article 1,641 of the Civil Code. Under this regime, the sharing of assets acquired during the union occurs only if there is proof of the couple's joint effort. In other words, being married is not sufficient to claim half of the assets. Unlike partial community of property, where this joint effort is presumed, here it must be proven. This understanding was consolidated in Precedent No. 377 of the Federal Supreme Court.

Even though this is not the main focus of the article, it is important to note that the rules of each property regime differ depending on whether the union ends by divorce or by death. Under the current Civil Code, spouses and partners are necessary heirs, appearing third in the order of hereditary succession and competing with descendants and ascendants. It is therefore essential not to confuse the marital share with inheritance, and to understand the legal effects of each.

EXAMPLE OF APPLICATION OF THE LAW

Below are two examples of how the law applies to specific circumstances, focusing on the non-communicability clause in two property regimes: universal community of property and partial community of property.

First example: universal community of property. Suppose that spouses A and B are married under the universal community of property regime. During the marriage, they jointly acquired assets worth R\$1,000,000.00. Spouse A received a donation with a non-communicability clause in the amount of

R\$600,000.00, while spouse B received a donation without such a clause, in the amount of R\$300,000.00. Spouse A passes away.

In this scenario, spouse B is entitled to a share of R\$650,000.00, corresponding to: R\$500,000.00 (half of the assets acquired during the marriage) and R\$150,000.00 (half of the donation received by spouse B, since there was no non-communicability clause). The estate left by spouse A consists of: R\$500,000.00 (their share of the common assets), R\$150,000.00 (the other half of the donation made to spouse B), and R\$600,000.00 (the donation received by spouse A with a non-communicability clause). Total estate: R\$1,250,000.00. Since the couple was married under the universal community of property regime, the surviving spouse does not inherit in competition with the descendants, pursuant to article 1,829, item I, of the Civil Code. Therefore, the estate is distributed exclusively between the two children, who each receive R\$625,000.00. Final result: spouse B: R\$650,000.00 (share); each child: R\$625,000.00 (inheritance).

Second example: partial community of property. Now consider the same couple, but married under the partial community of property regime. In this case, only the R\$1,000,000.00 onerously acquired during the marriage is considered common property. The donations received by both spouses A and B are excluded from the communion, even if the donation to spouse B does not contain a non-communicability clause, pursuant to article 1,659 of the Civil Code. Spouse B is therefore entitled to a share of R\$500,000.00 (half of the common assets). The estate left by spouse A consists of: R\$500,000.00 (their share of the common assets) and R\$600,000.00 (the donation received with a non-communicability clause). Total estate: R\$1,100,000.00. Since the R\$600,000.00 (donation received with a non-communicability clause) constitutes private assets, the surviving spouse B competes with the descendants only in relation to this amount, pursuant to article 1,829, item I, of the Civil Code. This portion of the estate is divided into three equal parts, with R\$200,000.00 going to each. The R\$500,000.00 corresponding to spouse A's share of the common assets is distributed exclusively between the two children, with R\$250,000.00 each. Final result: spouse B: R\$500,000.00 (share) + R\$200,000.00 (inheritance) = R\$700,000.00; each child: R\$250,000.00 + R\$200,000.00 = R\$450,000.00.

In the event of divorce under partial community of property, the common assets (R\$1,000,000.00) would be divided equally between the spouses (R\$500,000.00 each). Private assets, such as the donations received, remain 100% with the recipient, regardless of the presence or absence of a non-communicability clause. Under the universal community of property regime, the division upon divorce, in this same example, would be identical to the distribution upon death described above, although it may vary depending on the specifics of each case.

These examples demonstrate how the non-communicability clause can substantially alter the distribution of assets upon death. Its application depends not only on the existence of the clause itself, but also on the property regime adopted and the manner in which the union is dissolved. In addition to excluding certain assets from the communion, this clause reinforces the private nature of assets that

would already be non-communicable by operation of law, providing greater legal certainty and preventing future patrimonial and succession conflicts.

CHALLENGES AND SOLUTIONS IN THE APPLICATION OF THE INCOMMUNICABILITY TO FRUITS AND MOVABLE ASSETS

When discussing a non-communicability clause, a common source of confusion concerns asset yields—rents from property, share dividends, investment interest, company profits, and similar returns. Do these yields also remain separate? And if the principal asset is protected by the clause, does its income enjoy the same protection? The general rule in article 1,669 of the Civil Code states that yields from incommunicable assets are usually shared unless the legal act—such as a gift or will—specifies otherwise. Thus, even if the core asset is separate, its income may be divided depending on the chosen property regime and the document's wording. In the prevalent property regimes—partial community and universal community of property—yields typically become shared property unless an explicit clause extends non-communicability to them. Under the conventional separation-of-property regime, in which each person manages their own assets, yields are not shared by default. To protect both the asset and its yields, the document must expressly state that both remain separate. This clarity helps prevent disputes, especially in divorce or succession scenarios. Another point of concern is applying the non-communicability clause to movable property. Contrary to some opinions, this clause is not limited to real estate—it can also cover movable assets such as vehicles, shares, or machinery. What matters is clear legal language establishing this restriction, and provable documentation in cases of substitution. Movable assets are more likely to be sold or exchanged, presenting additional risks: proceeds from the sale remain non-communicable only if explicit subrogation is provided in the legal act. Depending on the regime, the other spouse's consent may be needed for valid substitution. If subrogation is not explicitly stated, simply claiming that the proceeds were used to acquire a new asset does not suffice—proof is required. It is essential to keep receipts, bank statements, contracts, and any documentation that demonstrates the new asset derives from the sold protected asset. Lacking evidence, the new asset could be classified as shared, defeating the intended protection. For effective non-communicability of both yields and movable assets, careful drafting and preventive legal strategies are crucial. The first, often overlooked, step is comprehensive estate planning at the outset of the relationship, particularly when selecting the property regime. Remember, choosing one of the default Civil Code regimes is not mandatory. Couples may select an atypical regime under Statement 331 of the Civil Law Conference: "The couple's patrimonial status may be defined by choosing a property regime different from those typified in the Civil Code (art. 1,639 and sole paragraph of art. 1,640), and, for the purpose of faithful observance of the provisions of art. 1,528 of the Civil Code, complies with certification in this regard, in the records of the matrimonial qualification process." These regimes allow explicit designation of assets or yields—movable or immovable—as separate, together with improvements or substituted assets. All specifications should be in a prenuptial agreement or cohabitation contract to uphold the couple's choices regarding asset division. Besides these agreements, various legal instruments can extend non-communicability to yields and subrogations: donation contracts with explicit clauses, wills clarifying that assets and their income remain the heir's separate property; private contracts transferring assets with accompanying non-communicability clauses; partnership

agreements or company articles defining such restrictions, among other tailored instruments. The non-communicability of yields depends on an explicit provision in the governing legal act—without it, yields are shared.

Beyond formal legal instruments, practical steps are vital for maintaining the effect of the non-communicability clause. Retain documentation proving the origin of assets and the use of proceeds after sales, such as receipts, bank statements, contracts, messages, and tax records. Whenever possible, publicize or authenticate documents, especially for transfers of movable property. Maintain dedicated bank accounts for income from protected assets to prevent commingling. Seek legal and accounting advice when significant asset movements occur; this helps safeguard against future disputes. Ultimately, clarity, informed guidance, and proactive prevention are key. If properly crafted and supported by the right tools, the non-communicability clause prevents disputes, protects assets, and safeguards family and succession interests. Applying the non-communicability clause to donated property ensures that, under various property regimes and dissolution scenarios, the designated property remains the beneficiary spouse's sole asset. This reinforces private ownership, delivers legal certainty, and avoids future asset and succession conflicts (Diniz, 2023; Rosa, 2024; Tepedino et al., 2022).

CASE-LAW ANALYSIS OF THE APPLICATION OF THE CLAUSE INCOMMUNICABILITY TO FRUITS AND MOVABLE ASSETS

In practice, the application of the non-communicability clause still raises many doubts, especially when it involves the fruits of protected assets or movable assets, such as social shares, vehicles, or shares. Even with legal and doctrinal provisions on the subject, it is in court decisions that we can see how these situations are analyzed in practice. Next, judgments were gathered to help understand how the courts have been treating the incommunicability of fruits and the application of this clause to movable property. These examples show how details in drafting the legal act and the form of proof can make all the difference in the outcome of a lawsuit. A good practical example of the possibility of extending the non-communicability clause to fruits is Special Appeal No. 1,164,887/RS, judged by the Third Panel of the Superior Court of Justice. In this case, the STJ understood that the donation clause that expressly provides that the fruits of the donated asset are also not communicated, even if the donee marries under the partial community of property regime, is valid. The reporting judge, Justice Ricardo Villas Bôas Cueva, pointed out that former article 265 of the Civil Code of 1916 (currently article 1,669 of the Civil Code of 2002), although it brings the general rule of communicability of the fruits, does not prevent the donor from stipulating otherwise, as long as this is clearly provided for in the legal act. The judgment also ruled that a prenuptial agreement is not required for the clause to be valid, reinforcing that it is sufficient for the donation to contain this express provision. This decision shows how clarity in the wording of the clause makes all the difference, especially when the objective is to protect not only the main asset, but also its income.

An example of the incommunicability clause applied to movable property is the AREsp 1.874.975/SP, written by Justice Marco Aurélio Bellizze. The case dealt with the sharing of shares of a holding company received by one of the spouses during the marriage, both by inheritance and by donation from the mother. The Court of Appeals of São Paulo considered that the quotas received by donation with a non-communicability clause and by inheritance should not be shared. Although the Superior Court of Justice has not directly analyzed the possibility of stipulating a non-communicability clause on movable property, such as social quotas (according to article 83, III, of the Civil Code), the STJ upheld the TJSP's decision because it understood that any review of the conclusion would require the reexamination of contractual clauses and the evidence contained in the records, which is prohibited in the context of a special appeal, according to Precedent 7 of the STJ.⁴³ It is worth noting that, in that specific case, the couple's property regime was that of partial communion, and, as a rule, assets received by donation or inheritance are not communicated (article 1,659, I, of the Civil Code). Thus, the non-communicability clause would not even be necessary to exclude these assets from the distribution. However, the fact that the clause is expressly included in the act of donation further strengthened the understanding that such assets, in addition to being excluded from the communion, should be kept outside the patrimonial division, regardless of their movable or immovable nature.

This last decision, therefore, indirectly reinforces the effectiveness of the non-communicability clause applied to movable property, as long as it is clearly provided for in the instrument of donation or succession. Even without directly addressing the issue, the understanding adopted contributes to validate, in practice, the patrimonial protection of these assets when surrounded by appropriate formalities. In general, the judgments analyzed make it clear that the non-communicability clause can apply to both fruits and movable assets, provided there is an express provision and the possibility of proof. Jurisprudence, on this point, reaffirms the importance of well-structured estate planning and careful drafting of legal acts.

IMPLICATIONS

These studies are intended for several audiences: those interested in labor law, governance, organizational management, and information technology. Two studies on negotiation and conflict management by Santos & Dias (2025) and Prata & Dias (2026) describe the confrontation and dialogue between parties at work and how these can promote stability and protect workers' rights. The authors present a case study of a fatal workplace accident and collective bargaining in the restaurant sector. They discuss how establishing negotiation structures can be an efficient way to reduce the number of lawsuits, foster trust, and strengthen social dialogue. Dias (2019a; 2019b) analyzed the impacts of Provisional Measures (MPs) on governance and power distribution. Because they are effective and long-lasting, MPs affect legal certainty and democratic legitimacy. Therefore, they affect the relation between the Executive and the Legislative as well as the society's perception as to the proper functioning of the rule of law.

The studies by the authors of this book, and their implications for organizations and institutions, are equally important. Strategies for conflict resolution in NGOs and in heritage restoration are key to the legitimacy and sustainability of the organizations and their projects. A negotiation strategy is effective in

addressing internal conflicts and avoiding the fragmentation that affects organizations without effective conflict-resolution strategies. This, in turn, undermines the legitimacy of the organizations and makes the projects unsustainable, whereas an effective conflict-resolution strategy fosters cohesion within the organizations.

The use of AI and information design in law and business is an increasingly studied field. The core of the studies by Carvalho, Dias & Silva Jr. (2026) and by Bastos, Dias & Silva Jr. (2026) consists of an ethical analysis of the use of AI in legal negotiation, as well as the implications of information design for organizations and their interactions with customers and clients. The main conclusion of these studies is the need for explainable AI and transparent information structures. The implications of technology for law, businesses, and their interactions are enormous. Any technological innovation, however revolutionary, must be studied from an ethical perspective to determine whether it can be used in a fair and transparent manner.

CONCLUSION

The analysis made throughout this article has made it clear that the non-communicability clause, when well used, can be a powerful asset protection tool, especially if it is thought out from the beginning and applied with attention to detail. Whether it is to protect the main good, its fruits, or to ensure that the will of the donor or testator is respected, the central point is always clarity and proper formalization. Even with legal support and court decisions favoring the application of this clause to fruits and movable assets, many practical and legal challenges remain. This is because, in reality, most couples do not usually think about the conflicts that may arise in the future at the beginning of their relationships. Many do not even consider choosing a property regime other than the standard one, and several legal transactions, such as donations, wills, and contracts, are signed without the help of a specialized lawyer. The result is that important details, such as extending the clause to the fruits or providing for subrogation, are ignored.

In fact, these details usually only become important when conflicts are already in place, whether in a division resulting from a divorce, the dissolution of a stable union, or an inventory. In addition, the circulating nature of movable assets, the difficulty of proving the origin of certain values, and the lack of documentary organization further contribute to insecurity and conflict at the time of distribution. Therefore, more than knowing that this clause exists and that it is valid, it is essential to plan. Thinking it through in advance, choosing the property regime with care, and drafting the acts carefully make all the difference. It is not only a legal issue but also a way to avoid conflicts, protect what is yours, and ensure that today's decisions remain valid in the future. It is concluded, therefore, that the non-communicability clause continues to be an important instrument of protection in family and succession relationships, as long as it is used with technique, caution and adequate legal grounds to ensure its effectiveness.

FUTURE RESEARCH

Future research will have to assess the efficiency of estate planning instruments. By means of surveys of lawyers as well as of case studies of families who, when making their wills, included non-communicability

clauses, it is possible to assess whether the said instruments have the desired protective effects or whether the constraints related to the adequate drafting and due documentation of such clauses prevail (Carmo & Arantes, 2020; Pássaro de Laet, 2024). In summary, new perspectives on the non-communicability clause will arise from shifting from a merely doctrinal analysis to a more comprehensive study that employs an empirical, comparative, and interdisciplinary approach. Such a study will deepen understanding of the clause's functions within the current framework of patrimonial law and offer reform proposals to make the clause more effective.

REFERENCES

- [1] Bastos, B. R., Dias, M. de O., & Silva Jr, D. S. da. (2026). Exploring information design: a thematic analysis of concepts, methodologies, and applications. *Revista DCS*, 23(90), e5538. <https://doi.org/10.54899/dcs.v23i90.5538>
- [2] Brazil. Federal Supreme Court. (n.d.). Precedent No. 377. In the legal separation of property regime, those acquired during the marriage are communicated. *Diário da Justiça*: section 1. Brasília, DF: Supreme Federal Court. Retrieved June 23, 2025, from <https://www.stf.jus.br/portal/jurisprudencia/listarSumulas.asp?s1=377>
- [3] Brazil. Law No. 10,406, of January 10, 2002. (2002). Establishes the Brazilian Civil Code. Brasília, DF: Presidency of the Republic. Retrieved June 15, 2025, from http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm (planalto.gov.br in Bing)
- [4] Brazil. Superior Court of Justice. (2014, April 24). Special Appeal No. 1,164,887/RS, of the Third Panel. Rapporteur: Justice Ricardo Villas Bôas Cueva. Brasília, DF: Electronic Justice Gazette, April 29, 2014. Retrieved June 23, 2025, from <https://scon.stj.jus.br/SCON/pesquisar.jsp?preCo>
- [5] Brazil. Superior Court of Justice. (2023, March 17). Interlocutory Appeal in Special Appeal No. 1.874.975/SP. Rapporteur: Justice Marco Aurélio Bellizze. Brasília, DF: Electronic Justice Gazette, March 28, 2023. Retrieved June 23, 2025, from <https://scon.stj.jus.br/SCON/pesquisar.jsp?livre=1874975&operador=e&b=DTXT&thesaurus=JURIDICO&p=true&tp=T>
- [6] Carmo, & Arantes. (2020, December 2). *A incomunicabilidade dos bens sub-rogados e o ônus da prova*. Carmo & Arantes Advocacia. Viçosa. Retrieved June 22, 2025, from <https://carmoearantes.com.br/incomunicabilidade-dos-bens-sub-rogados/>
- [7] Carvalho, M., Dias, M., & Silva Junior, D. (2026). The age of Artificial Intelligence: a thematic review on AI agent and explainable AI. *Revista Educa - Revista Multidisciplinar Da Faculdade Católica Paulista*, 9(2), e275. <https://doi.org/10.54901/educa.v9-275>
- [8] Dias, M. (2019). Brazilian Legislation on Executive Power: Provisory or Permanent Measures? *Scholars International Journal of Law, Crime and Justice*, 2(10), 336-341. <https://doi.org/10.36348/SIJLCJ.2019.v02i10.007>
- [9] Dias, M. (2019). The Effectiveness of Provisory Measures (MPs) in Brazil. *International Journal of Law Research*, 5(5), 10-16. <https://doi.org/10.13140/RG.2.2.14986.21447>
- [10] Diniz, M. H. (2023). *Brazilian civil law course: Succession law* (Vol. 6, 37th ed.). São Paulo: SaraivaJur.
- [11] Fleischmann, S. T. C., & Pituco, A. P. (2023). Mínimo essencial de segurança sucessória: cláusulas societárias lícitas com efeitos post mortem nas sociedades limitadas. *Revista da Faculdade de Direito da UFMG*, (83), 485-510.
- [12] Gomes, G., Dias, M. (2026). Negotiation Strategies and Organizational Dynamics in Heritage Restoration Projects: A Brazilian Case. *Global Scientific Journal*, 14(06), 1-15. <https://doi.org/10.5281/zenodo.20591784>
- [13] Hironaka, G. M. F. N., & Tartuce, F. (2019). Planejamento sucessório: conceito, mecanismos e limitações. *Revista Brasileira de Direito Civil*, 2.
- [14] Lôbo, P. L. N. (2022). *Direito civil. Volume 5: Famílias*. Saraiva. Retrieved November 25, 2022, from <https://integrada.minhabiblioteca.com.br/#/books/9786555596281>
- [15] Loureiro, D. (2022, April 11). *A cláusula de incomunicabilidade e a doação de quotas: efeitos práticos e os devidos pontos de atenção. Banda B*. Curitiba. Retrieved June 23, 2025, from <https://www.bandab.com.br/fique-sabendo/como-deve-ser-feita-a-partilha-de-um-bem-que-ficou-como-heranca/>
- [16] Madaleno, R. (2020). *Sucessão legítima* (2nd ed.). Forense.
- [17] Nieto, A.P., Dias, M. (2026). Negotiation and Conflict Resolution in Organizations: A Case of Institutional Disputes in a Brazilian NGO. *Global Scientific Journal*, 14(06), 1-14. <https://doi.org/10.5281/zenodo.20705331>
- [18] Pássaro de Laet, C. H. (2024, August 16). Da compatibilidade e juridicidade da cláusula de incomunicabilidade

de frutos e do regime da comunhão parcial de bens. *Migalhas*. Retrieved June 15, 2025, from <https://www.migalhas.com.br/depeso/413399/clausula-de-incomunicabilidade-de-frutos-e-regime-da-comunhao-parcial>.

- [19] Prata, V., Dias, M. (2026). Collective Bargaining and Labor Conflicts in Practice: Case Study in the Shopping Center Restaurant Industry. *International Journal of Advance Research*, 14(06), 821-836. <https://doi.org/10.5281/zenodo.20591784>
- [20] Rosa, C. P. da. (2024). *Planejamento sucessório: teoria e prática* (3rd ed., rev., atual., e ampl.). São Paulo: Juspodivm.
- [21] Rosa, C. P. da., & Alves, L. B. M. (2025). *Direito de família mínimo: na prática jurídica* (3rd ed., rev., atual., e ampl.). São Paulo: Juspodivm.
- [22] Rosa, C. P. da., & Rodrigues, M. A. (2022). *Inventário e partilha* (4th ed., rev., atual., e ampl.). Salvador: Juspodivm.
- [23] Santos, M., & Dias, M. (2025). Negotiation and Conflict Management in Brazilian Labor Law: Dispute Over a Fatal Work Accident. *GPH-International Journal of Applied Management Science*, 5(05), 01-11. <https://doi.org/10.5281/zenodo.15595871>
- [24] Saunders, M., Lewis, P., & Thornhill, A. (2009). *Research methods for business students* (5th ed.). Pearson Education.
- [25] Strauss, A., & Corbin, J. (1998). *Basics of qualitative research: Techniques and procedures for developing grounded theory* (2nd ed.). Sage.
- [26] Tepedino, G., Nevares, A. L. M., & Meireles, R. M. V. (2022). *Fundamentos do direito civil: direito das sucessões* (3rd ed.). Rio de Janeiro: Forense.

