**Chapter Seven**

**Types of Contracts**

**Suggested answers to the review questions and case problems**

**1. Explain why the law requires a special form for the sale of immovable property.**

**Answer:** The provisions of the Civil and Commercial Code on acquisition of rights operate a main distinction based on the movable or immovable nature of the property. Even though stock held by shareholders gain increasing importance and value, immovable property, and in particular land and buildings, plays a major role in the business environment and requires particular attention by the legislator. Its importance is based on the fact that Thailand’s traditional economy is still based largely on the exploitation of agriculture.

**2. Discuss how many types of sale contracts are regulated in the Civil and Commercial Code.**

**Answer:** There are some particular kinds of sale contracts with their own specific regulations. The Civil and Commercial Code provides the following types of sale contract: sale with right of redemption, sale by sample, sale by description, sale on approval and sale by auction.

**3. Suppose that your company is in the business of manufacturing and selling roofing tiles, ceilings, and other accessories. Draft a sale contract for customers to sign.**

**Answer: SALE AGREEMENT**

 **THIS AGREEMENT** (this “Agreement”) is made as of this \_\_ day of \_\_\_\_\_\_\_\_\_\_, 200\_, (the “Effective Date”) by and between\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Customer”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Company”).

**W I T N E S S E T H:**

 **WHEREAS**, The customer wishes to purchase \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from the Company; and

 **WHEREAS**, The Company is willing to sell such \_\_\_\_\_\_\_\_\_\_\_\_\_ to the Buyer;

 **NOW, THEREFORE**, in consideration of the covenants, conditions and payments hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Price, Quantity, Shipping Instructions, and Payment Terms. The Company will sell to the Customer \_\_ (the “Goods”) pursuant to the terms of this Agreement and the price, payment, delivery, and other terms set forth in the Appendix attached hereto and made a part hereof (the “Appendix”). The Goods will be shipped \_\_\_, in accordance with the details specified in the Appendix.
2. Term. The term of this Agreement shall begin on the Effective Date, and shall end on \_\_\_\_\_\_\_\_\_\_\_ (the “Term”) unless earlier terminated in accordance with this Agreement.
3. Cancellation of orders and returns. The Company may accept the cancellation of orders of the return of goods in exchange for credit, subject to the Company being indemnified against all loss suffered by said cancellation or return. Unless prior notification in writing has been given, the Company will not accept the return of any goods obtained or manufactured to the Customer's specifications.
4. Title and Risk of Loss. Title to and risk of loss of all Goods furnished hereunder shall remain with the Company until receipt, inspection, and acceptance of the Goods by the Customer. The Company warrants that it has clear title to the Goods and that there is no outstanding hostile claim against or security interest in the Goods held by a third party.
5. Inspection and Acceptance. It is the responsibility of the Customer to ensure that they have examined and are satisfied in all respects with the Goods before installation and fixing commences as the Company will not accept any claim for materials once they are fixed.
6. Liabilities of the customer. The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim. In respect of all sums that are overdue the Customer shall be liable to pay to the Company interest calculated at 4%.
7. Responsibilities specifically accepted by the customer. Ultimate responsibility for ordering the correct quantities, sizes or dimensions of Goods required for any specific job rests with the Customer. The Company, its employees or agents do not accept any responsibility whatsoever for incorrect measurements or any consequences arising from purchase of incorrect quantities, sizes or types of Goods.

**IN WITNESS WHEREOF**, each party has caused this Agreement to be properly executed on its behalf as of the date first written above.

 **COMPANY:**

 By:

 Name:

 Title:

 **CUSTOMER:**

By:

 Name:

 Title:

**4. Discuss the causes of termination of a hire of property contract.**

**Answer:** Under Section 564 of the Civil and Commercial Code, the contract of hire is extinguished at the end of the agreed period without special cancellation notice. In case no period is agreed upon or presumed, either party may terminate the contract at the end of each period for the rental payment, provided that notice of at least one rental period is given (Section 566, Civil and Commercial Code).

Other causes of termination of the contract of hire of property include the death of the lessee, the loss of the whole property hired and the transfer of ownership in case the property hired is movable.

**5. Discuss the similarities and differences between a contract of hire of immovable property and a lease for use of immovable property.**

**Answer:** The Civil and Commercial Code defines the contract of hire of property as an agreement where one party agrees to let the other party to use and enjoy the property for a limited period of time in exchange of the rent and a contract of loan for use as an agreement in which one person delivers property to another person with the understanding that the borrower will return the same property at a future time without compensation for its use. Although both contracts provide that one party has the right to use and enjoy the property for a limited period of time, the nature of such contracts is different. More precisely, a contract of hire of property is consensual, bilateral and non-gratuitous while a lease for use contract is real, unilateral and gratuitous.

**6. Assume that you are the owner of an upscale two-bedroom apartment in Nakhon Pathom and you rent it out to two students. Draft a hire of property contract for the students to sign and explain whether hire of property contracts need to be made in writing.**

 **Answer: Lease Agreement**

This Agreement is made at …………………. on ………………………., between ….............................., residing at ………………………… (hereinafter called the “Lessor”) and ….............................., residing at ………………………… (hereinafter called the “Lessee”) in accordance with the following terms:

1. The Lessor agrees to lease out and the Lessee agrees to take on lease of Room No ……………………… of the ……………………….. building located at …………………………… for a period of ……. years, commencing on ………..
2. The Lessee agrees to pay a monthly rent of ……………………. baht (baht………………………………….) to the Lessor.
3. On the date of this Agreement, the Lessor has received a security deposit from the Lessee for an amount of ……………………….……………………… baht (baht………………………………..).
4. The Lessee shall pay the rent to the Lessor by or before the 5th of every month. If the payment is not made within such period, the Lessee agrees that the Lessor shall have the right to repossess the leased property and seize or remove property of the Lessee and lock the Lessee’s room or change the key, and lease it to another person without violating any civil or criminal laws.
5. The Lessee agrees to be responsible for paying the house and land tax.
6. The Lessee agrees to maintain the room in its original condition. Should the Lessee wish to make any adjustments or extensions, a prior written approval from the Lessor must be obtained. Any damage incurred shall be compensated by the Lessee.
7. All things constructed for or repaired within the area of the room shall not be removed from the room or destroyed when the Lessee vacates the room; and all such things shall become the property of the Lessor and the Lessee shall not claim any compensation or damages from the Lessor.
8. The Lessee shall always permit the Lessor or his agents to inspect the room, upon request.
9. The Lessee shall not sublease or assign any rights of the property to any other persons, unless with the prior written permission of the Lessor.
10. The Lessee shall keep the leased room clean and refrain from any noisy activity which may be a nuisance to others and shall not keep inflammable substances nor undertake activities which may frighten or be harmful to the neighbors.
11. If the Lessee infringes any provision of this agreement or breaches any part of this Agreement, the Lessee agrees that the Lessor shall have the right to immediately seize and repossess the leased property as well as terminate this Agreement and claim for damages.

The parties to this Agreement having read and understood the entire substance hereof, therefore sign their names in the presence of witnesses.

 Signed………………………..Lessor

 ( )

 Signed………………………..Lessee

 ( )

 Signed………………………..Witness

 ( )

 Signed………………………..Witness

 ( )

**7. Explain which formalities are required to enter into a loan for use contract.**

**Answer:** The loan for use contract is a real contract meaning that the contract between the borrower and the lender is only complete on delivery of the property (Section 640, Civil and Commercial Code). Apart from delivery, the Civil and Commercial Code does not require any specified form or formality for its validity.

**8. Distinguish between a contract of loan for use and a contract of loan for consumption.**

**Answer:** Under Section 640 of the Civil and Commercial Code, a contract of loan for use is defined as an agreement in which the lender delivers property to the borrower with the understanding that the borrower will return the same property at a future time without compensation for its use. This implies that the loaned property must be non-consumable property (i.e., property that can be used without being consumed, such as a book, a laptop, or a house).

The loan for consumption contract is the second type of loan contract regulated under Book III, Title IX, Chapter II of the Civil and Commercial Code. In a contract of loan for consumption, the borrower has the right to consume the loaned property and the obligation to return a property of the same kind, quality, and quantity. This means that the loaned property must be consumable (i.e., property that cannot be used without being consumed, such as money, food, gasoline, and the like) and fungible (i.e.,property for which a substitute can be found by quality and measure or weight such as textile materials, gold, wheat, and the like).

**9. What is the maximum interest rate on loans that can be charged by private lenders to individuals?**

**Answer:** In any loan of money, parties may provide the payment of interest from the borrower to the lender. In order to protect borrowers from usurious lending practices, there is a legal limit to the interest rate that can be charged on a loan. Specifically, Section 654 of the Civil and Commercial Code provides that interest shall not exceed 15% per year. A loan contract on higher interest rate is void as to the excess. In other words, if parties stipulate a higher rate, the interest will automatically be reduced to 15% per year. It must be mentioned, however, that by virtue of specific laws, financial institutions may have the right to charge an annual interest rate higher than 15%.

**10. Peerapat is about to set up an ice-cream business in Ko Samui and asks a loan from his friend Tangmo of 100,000 baht. Help Tangmo to draft a loan contract.**

**Answer: LOAN AGREEMENT**

This Agreement is made at …………………. on …………………… by and between:

1. ………………, residing at ……………………………………………………

…………………………… (hereinafter called the “Lender”), and

1. ………………, residing at ……………………………………………………

…………………………… (hereinafter called the “Borrower”).

Both parties have mutually agreed as follows:

1. The Lender agrees to lend and the Borrower agrees to borrow an amount of ……………… baht (baht …………………) which the Borrower has already received such amount from the Lender on the date of this Agreement (being the check of ……………..…… bank, …………………… branch, check no. ……………., dated ……………, amount of ………………….. baht).
2. The Borrower agrees to pay a loan interest to the Lender at the rate of 15% per year, by paying interest monthly at the monthly amount of …………….. baht (baht ………………….) within the 5th of every month. For the principal, the Borrower agrees to pay it back to the Lender within …………. days from the date of this Agreement.
3. In case the Borrower pays the principal back to the Lender before the time set in this Agreement, the parties agree that the interest shall be calculated only up to the date of payment of the principal.
4. The Borrower agrees that if the Borrower moves from its address stated in this Agreement, the Borrower shall notify the Lender within ten days from the date the Borrower moves. In case the Borrower does not comply with this Clause, it shall be deemed that the Borrower breaches this Agreement.
5. The Borrower agrees that if the Borrower breachesany conditions of this Agreement, the Borrower agrees to immediately pay all debts to the Lender including the payment of damages, due interests, expenses incurred in claiming for the debts, court fees, and lawyers fees.

This Agreement is made in duplicate having identical contents. Each party has read and understood all contents and therefore has signed its name in the presence of witnesses.

Signed…………………….Lender Signed……….…………….Borrower

 ( ) ( )

Signed…………………….Witness Signed……….…………….Witness

 ( ) ( )