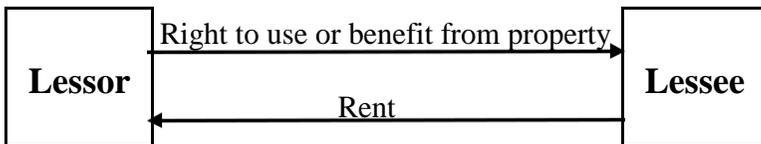


Chapter 5

LEASE OF PROPERTY

1. What is a Lease of Property Contract ?



Section 537 of the Civil and Commercial Code provides:

“A lease of property is a contract whereby a person, called the lessor, agrees to let another person, called the lessee, have **the use or benefit of a property for a limited period of time**, and the lessee agrees to pay a rent therefore.”

The **main characteristic** of a lease of property contract is that it is a contract of 2 parties:

- (a) Lessor = a person who has ownership title or has possessory right of the lease property.
- (b) Lessee = a person who receives possessory right or right to use or benefit from the lease property.

A lease of property contract has the following characteristics:

1.1 A contract with obligations from both parties

The lessor and lessee of the lease of property contract have obligations. The lessor must **let the lessee use or benefit from the lease property**. The lessee must pay the rent to the lessor.

1.2 A contract with **no** transfer of ownership title of property

The lessor is the owner of the lease property (i.e. has ownership title) or has possessory right of the property and agrees to let **the lessee use or benefit from the property**.

1.3 A contract with **a limited lease period**

For a lease of movable property contract (For example, lease of car contract) the lease period can be agreed by the contractual parties for any length of lease period.

For a lease of immovable property or real estate or real property contract (For example, lease of land contract) the prescribed lease period cannot exceed 30 years.

Note: Under the Lease of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), the lease period for leasing immovable property for commercial and industrial purposes can exceed 30 years but cannot exceed 50 years.

A lease of immovable property or real estate or real property contract can also be made for **the duration of the life** of the lessor or the lessee.

1.4 A contract whereby the qualifications of the lessee is important.

Given that the lessee must be able to pay the rent throughout the lease period and at the end of the lease period, stop possessing the lease property and return it to the lessor, the lessee's qualifications are important considerations for the lessor prior to letting the property for lease.

As a result, the right to lease a property is a *personal right* of the lessee only and **cannot** be succeeded by the lessee's heir or appointee. When the lessee dies, the contract is extinguished.

1.5 A contract that give rise to *personal rights*. (See **4. Sale of Leased Property** below)

2. Lawful Form of a Lease of Property Contract (538)

Lease of **movable** property contract

Does not have any specific form i.e. the lease of movable property contract can be made verbally or in writing.

Lease of **immovable** property or real estate or real property contract

If the lease period is **3 years or lesser**, the contract must be **evidenced in some written form** and it is signed by the lessor **or** the lessee, if not, the contract is **not enforceable in court***.

Note: "**Not enforceable in court**" here does **not** mean that the lease contract is void or invalid. It means that there is **no evidence to**

prove to the court that a lease contract was formed. Such evidence may be a receipt for the payment of rent, a written letter referring to the lease etc.

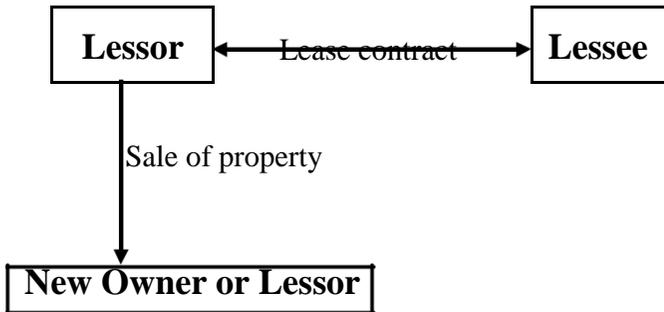
If the lease period is **more than 3 years i.e. a long term lease**, the contract must be **in writing, signed by the lessor and lessee and the lease is registered by a government official** i.e. an official of the Land Office. If the lease is not registered, it is enforceable in court for only 3 years.

Note: If the lease of immovable property contract is made verbally and accordingly cannot be evidenced by any written form, the contract is still **a valid contract and not void**. This is because a lease contract has already been formed. (See **2. Formation of a Contract** in Chapter 3).

3. Lease Period (540 – 541)

See 1.3 of **1. What is a Lease of Property Contract ?** above.

4. Sale of Leased Property (569)



4.1 Lease of Movable Property

When a leased movable property is sold to another new owner, the new owner does **not** have to be binding to the conditions of the lease contract. **The rights and duties that arise from the lease of movable property contract are *personal rights* between the lessor and the lessee only.** Therefore, the lease contract is extinguished upon the sale of the movable property to the new owner.

For example, A entered into a lease of car contract with B. A agrees to let B have possession of and use his car for 1 year at a monthly rent amount. 5 months after entering into the lease contract, A sells the car to C. The lease of car contract between A and B is now extinguished and the rights and duties of the lease of car contract do **not** bind C. If C does not want B to continue leasing the car, B has to return the car to C. B's recourse may be to claim A for breaching the lease of car contract.

4.2 Lease of Immovable Property or Real Estate or Real Property

The rights and duties that arise from a lease of immovable property contract are also *personal rights* between the lessor and lessee.

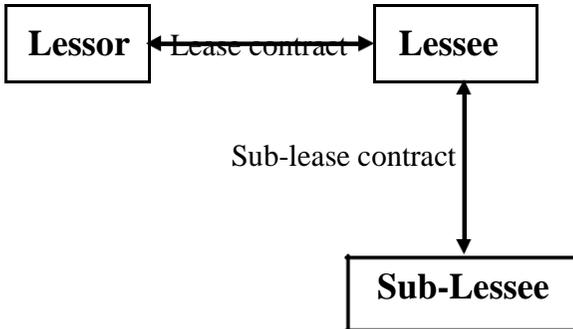
When a leased immovable property is sold to a new owner, the sale of the leased immovable property **transfers its immovable property rights of the lease contract** to the new owner. The immovable property rights means **the *real rights* of the lessor and lessee as provided by the written lease contract or written lease contract with lease registration before an official of the Land Office**, for example, right to lease an immovable property for a lease period of 10 years.

For example, A entered into a written lease of land contract with B and registered the contract at the Land Office. A agrees to let B use and benefit from the plot of land for 15 years. A monthly rent amount is payable by B. 5 years after the commencement of the lease, A sold the plot of land to C and C is registered at the Land Office as the new land owner. The lease of land contract for 15 years is **not** extinguished and **the immovable property rights and obligations of the contract (*real rights*) are transferred to C**. This means that C will have to let B lease the land for the remaining 10 years and B shall pay the monthly rent to C.

However, **the *personal rights*** that arise from the lease of land contract between A and B prior to the sale of property **do not get transferred to C**. An example of a *personal right*, A promises to renew the lease period for B for another 5 years upon the completion of the 15 years lease period. This is only a promise to renew the lease made by A to B, it does not bind C. The promise is a *personal*

right binding between A and B only and does not get transferred to C.

5. Sub-Lease (544 – 545)



Unless otherwise provided by the lease of property contract or a prior approval is granted by the lessor, a lessee cannot sub-lease in whole or in part the lease property to a third party i.e. a sub lessee. If the lessee acts contrary to this, the lessor has the right to terminate the lease of property contract.

If a sub-lease of property contract is made as according to the lease of property contract or with the prior approval of the lessor, the effects of a sub-lease are:

- (a) The sub-lessee should pay rent directly to the lessor because if the sub-lessee pay rent to the lessee, **the lessor may not receive rent.** Therefore, if the lessor does not receive rent, the lessor shall request the sub-lessee to pay rent again directly to the lessor. Thereafter, the sub-lessee has the right to claim for damages from the lessee for the additional rent paid.

For example, A entered into a lease of property contract with B. In this contract it is stipulated clearly that A allows B to sub-lease the property. B sub-leased the property to C. B and C entered into a sub-lease of property contract. C paid the rent to B but, B did **not** pay his rent to A. A shall request C to pay the rent again directly to A. After C made the rent payment (second time rent payment) to A, C can then claim from B for the additional rent paid;

- (b) The conditions of the sub-lease of property contract cannot be contrary to the conditions of the lease of property contract; and
- (c) If the lease period of the lease of property contract lapsed, the sub-lease of property contract is then void. This means that if the lease period of the Lease of Property Contract ends on January 30, the sub-lease of property contract also ends on January 30 regardless of the agreed upon ending date of the lease period in the sub-lease of property contract.