Principles of European Law

Study Group on a European Civil Code

Lease of Goods
(PEL LG)

prepared by
Kåre Lilleholt
Anders Victorin
Andreas Fötschl
Berte-Elen R. Konow
Andreas Meidell
Amund Bjøranger Tørum

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with advice from the Advisory Council on Lease of Goods
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Foreword

The Study Group on a European Civil Code has taken upon itself the task of drafting European principles (or 'model rules') for the most important aspects of the law of obligations and for certain parts of the law of property in moveables which are especially relevant for the functioning of the Common Market. It was founded in 1999 as a successor body to the Commission on European Contract Law, on whose work the Study Group is building.

The two groups pursue identical aims. However, the Study Group has a more far-reaching focus in terms of subject-matter, and as an ultimate goal it aspires to a consolidated composite text, now called the Draft Common Frame of Reference (DCFR), of the material cultivated by the Group itself, the Commission on European Contract Law and the Acquis Group. All three groups have undertaken to ascertain and formulate European standards of 'patrimonial' law for the Member States of the European Union. The Commission on European Contract has already achieved this for the field of general contract law (*Lando and Beale* [eds.], Principles of European Contract Law, Parts I and II combined and revised, The Hague, 2000; *Lando/Clive/Prüm/Zimmermann* [eds.], Principles of European Contract Law Part III, The Hague, 2003). These Principles of European Contract Law (PECL) are being adopted with adjustments by the Study Group to take account of new developments and input from its research partners. The Study Group is itself dovetailing its principles with those of the PECL, extending their encapsulation of standards of patrimonial law in three directions: (i) by developing rules for specific types of contracts; (ii) by developing rules for extra-contractual obligations, i. e. the law of tort/delict, the law of unjustified enrichment, and the law of benevolent intervention in another's affairs (*negotiorum gestio*); and (iii) by developing rules for fundamental questions in the law on mobile assets – in particular transfer of ownership, security for credit, and trust.

Like the Commission on European Contract Law's Principles of European Contract Law, the results of the research conducted by the Study Group on a European Civil Code seek to advance the process of Europeanisation of private law. We have undertaken this endeavour on our own personal initiative and merely present the results of a pan-European research project. It is a study in comparative law in so far as we have always taken care to identify the legal position in the Member States of the European Union and to set out the results of this research in the introductions and notes. That of course does not mean that we have only been concerned with documenting the pool of shared legal values or that we simply adopted the majority position among the legal systems where common ground was missing. Rather we have consistently striven to draw up "sound and fitting" principles, that is to say, we have also recurrently developed proposals and concepts for the further development of private law in Europe.

The working methods of the Commission on European Contract Law and the Study Group on a European Civil Code are or were likewise quite similar. The Study Group, however, has had the benefit of Working (or Research) Teams – groups of younger legal scholars under the supervision of a senior member of the Group (a Team Leader) which

undertook the basic comparative legal research, developed the drafts for discussion and assembled the extensive material required for the notes. Furthermore, a consultative body – an Advisory Council – was allocated to each Working Team. These bodies – deliberately restricted in size in the interests of efficiency – were formed from experts in the relevant field of law who are representative of the major European legal systems. The proposals drafted by the Working Teams and critically scrutinised and improved in a series of meetings by the respective Advisory Council, were submitted for discussion on a revolving basis to the actual decision-making body of the Study Group, the Co-ordinating Group. Until June 2004 the Co-ordinating Group consisted of representatives from all jurisdictions belonging to the EU immediately prior to its enlargement in Spring 2004 and in addition legal scholars from Estonia, Hungary, Norway, Poland, Slovenia and Switzerland. Representatives from the Czech Republic, Malta, Latvia, Lithuania and Slovakia joined us after the June meeting 2004 in Warsaw, representatives from Bulgaria and Romania after the December meeting 2006 in Lucerne. However, due to time and capacity constraints, a summary in the notes of the current legal position in the new Member States of the EU was not always possible.

Along with its permanent members, other participants in the Co-ordinating Group with voting rights included all the Team Leaders and – when the relevant material was up for discussion – the members of the Advisory Council concerned. The results of the deliberations during the week-long sittings of the Co-ordinating Group were incorporated into the text of the Articles and the commentaries, and returned to the agenda for the next meeting of the Co-ordinating Group (or the one following, depending on the workload of the Group and the Team in question). Each part of the project was the subject of debate on several occasions, some stretching over many years. Where a unanimous opinion could not be achieved, majority votes were taken. As far as possible the Articles drafted in English were translated into the other languages either by members of the Team or third parties commissioned for the purpose. The number of languages into which the Articles could be translated varies from volume to volume. That is in part a consequence of the fact that not all Working Teams were equipped with the same measure of financial support. We also had to resign ourselves to the absence of a perfectly uniform editorial style. Our editing guidelines provided a common basis for scholarly publication, but on peripheral issues had to accommodate preferences of individual teams. However, this should not cause the reader any problems in comprehension.

Work on these Principles had begun long before the European Commission published its Communication on European Contract Law (in 2001), its Action Plan for a more coherent European contract law (in 2003), and its follow-up Communication "European Contract Law and the revision of the *acquis*: the way forward" (in 2004). (All of these early documents concerning European contract law are still available on the Commission's website: http://europe.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/index_en.htm). These documents for their part were published before we formed the Network of Excellence, together with other European research groups and institutions, which will collaborate in the preparation of an Academic Common Frame of Reference with the support of funds from the European Community's Sixth Framework Programme. The texts laid before the public by the Study Group on a European Civil Code are therefore not necessarily identical with those which the Network of Excellence will propose to the European Commission. In some cases, the model

rules encountered by the reader in the forthcoming DCFR will deviate from their equivalent published in this PEL series. In drafting a self-standing set of principles for a given subject it sometimes proved necessary to have more repetition of rules which were already part of the PECL. Such repetitions will however become superfluous in an integrated DCFR text which states these rules already at a more general level.

In order to leave no room for misunderstanding, it is important to stress that these Principles have been prepared by impartial and independent-minded scholars whose sole interest has been devotion to the subject-matter. None of us have been remunerated for taking part or mandated to do so. None of us would want to give the impression that we claim any political legitimation for promoting harmonisation of the law. Our legitimation is confined to curiosity and an interest in Europe. In other words, the volumes in this series are to be exclusively understood as the results of scholarly legal research within large international teams. Like every other scholarly legal work, they restate the current law and introduce possible models for its further development; no less, but also no more.

Osnabrück, September 2007 *Christian von Bar*

Our Sponsors

The project of the Study Group on a European Civil Code represents a research endeavour in legal science of extraordinary magnitude. Without the generous financial support of many organisations its realisation would not have been possible.

Our thanks go first of all to the *Deutsche Forschungsgemeinschaft (DFG)*, which has supplied the lion's share of the financing, including the salaries of the Working Teams based in Germany and the direct travel costs for the meetings of the Coordinating Group and the numerous Advisory Councils. The work of the Dutch Working Teams was financed by the *Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO)*. Further personnel costs were met by the Flemish *Fonds voor Wetenschappelijk Onderzoek-Vlaanderen (FWO)*, the *Onassis-Foundation*, the Austrian *Fonds zur Förderung der wissenschaftlichen Forschung*, *Norges forskningsråd* (the Research Council of Norway) and the *Fundação Calouste Gulbenkian*. From the middle of 2005 onwards we have been able to rely on funds from the European Commission's Sixth Framework Research Programme.

In addition, we have consistently been able to fall back on funds made available to the respective organisers of the week-long sittings of the Coordinating Group by the relevant university or other sources within the country concerned. It is therefore with the deepest gratitude that I must also mention the *Consiglio nazionale forense* (Rome) and the *Istituto di diritto privato* of the *Università di Roma La Sapienza*, which co-financed the meeting in Rome (June 2000). The session in Salzburg (December 2000) was supported by the Austrian *Bundesministerium für Bildung, Wissenschaft und Kultur*, the *Universität Salzburg* and the *Institut für Rechtspolitik* of the *Universität Salzburg*. The discussions in Stockholm (June 2001) were assisted by the *Department of Law, Stockholm University*, the *Supreme Court Justice Edward Cassel's Foundation* and *Stiftelsen Juridisk Fakultetslitteratur (SJF)*. The meeting in Oxford (December 2001) had the support of *Shearman & Sterling*, the *Hulme Trust*, *Berwin Leighton Paisner* and the *Oxford University Press (OUP)*. The session in Valencia (June 2002) was made possible by the *Asociación Nacional de Registradores de la Propiedad, Mercantil y Bienes Muebles*, the *Universitat de València*, the *Ministerio Español de Ciencia y Tecnología*, the *Facultad de Derecho* of the *Universitat de València*, the *Departamento de Derecho Internacional*, *Departamento de Derecho Civil* and the *Departamento de Derecho Mercantil «Manuel Broseta Pont»* of the *Universitat de València*, the law firm *Cuatrecasas*, the *Generalitat Valenciana*, the *Corts Valencianes*, the *Diputación Provincial de Valencia*, the *Ayuntamiento de Valencia*, the *Colegio de Abogados de Valencia* and *Aranzadi Publishing Company*. The subsequent meeting in Oporto (December 2002) was substantially assisted by the *Universidade Católica Portuguesa – Centro Regional do Porto*. For the week-long session in Helsinki (June 2003) we were able to rely on funds from *Suomen Kultuurirahasto* (Finnish Cultural Foundation), the *Niilo Helanderin Säätiö* (Niilo Helander Foundation), the *Suomalainen Lakimeisyhdistys* (Finnish Lawyers Association), the *Ministry of Justice* and the *Ministry for Foreign Affairs*, the *Nordea Bank*, *Roschier Holmberg* Attorneys Ltd., *Hannes Snellman* Attorneys Ltd., the *Department of Private Law* and the *Institute of International Commer-*

cial Law (KATTI) of Helsinki University. The session in Leuven (December 2003) was supported by *Katholieke Universiteit Leuven, Faculteit Rechtsgeleerdheid*, and the *FWO Vlaanderen Fonds voor Wetenschappelijk Onderzoek* (Flanders Scientific Research Fund). The meeting of the Group in Warsaw (June 2004) was substantially assisted by the *Fundacja Fundusz Wspolpracy* (The Cooperation Fund) and the *Faculty of Law and Administration of Warsaw University*. The meeting in Milan (December 2004) was supported by the *Università Bocconi* and its *Istituto di diritto comparato*, by the Milan *Camera di Commercio*, by the *Associazione Civilisti Italiani* and by the *Comune di Milano*. The meeting in Berlin (June 2005) was made possible by *PricewaterhouseCoopers Deutschland AG*, Frankfurt/Berlin; *Sievert AG & Co.*, Osnabrück, and by *Verband deutscher Hypothekenbanken e. V., Berlin*. The meeting in Tartu (December 2005) was supported by the *University of Tartu*, its *Faculty of Law*, its *Institute of Law* and its *Institute of Private Law*, by the *Estonian Supreme Court*, the *Ministry of Justice*, the *Tartu City Government*, *Iuridicum Foundation*, the Law Offices *Concordia, Lepik & Luhaäär, Luiga Mody Hääl Borenius, Ots & Co, Aivar Pilv, Aare Raig, Raidla & Partners, Sorainen, Tark & Co, Teder Glikman & Partners, Paul Varul, Alvin Rödl & Partner* and *Lextal Law Firm*. The meeting in Oslo (June 2006) was made possible by the *kongelige Justis- og Politidepartement* (The Royal Ministry of Justice), by *Sigvald Bergesen d. y.*, by *hustru Nankis Almennyttige stiftelse*, *Storebrand* and the law firms *Wiersholm and BA-HR*. The meeting in Lucerne (December 2006) was sponsored by *Schulthess Publishing Company*, by *Schweizerischer Nationalfonds* and by the *Universität Luzern*, the meeting in Budapest (June 2007) by *Eötvös Loránd Tudományegyetem* (Eötvös Loránd University), by *Magyar Tudományos Akadémia* (the Hungarian Academy of Sciences), by *MOL Magyar Olaj- és Gázipari Nyrt* (the Hungarian Oil & Gas Company) and by *Szalma & Partnerei Ügyvédi Iroda* (Szalma & Partners Attorneys at Law). We thank all of these organisations and institutions for the funds which they made available to us and for the extraordinary warmth of hospitality with which our hosts received us.

Osnabrück, September 2007 *Christian von Bar*

Preface to this volume

This book has been prepared by a working team based at the University of Bergen, with the assistance of an advisory team and several national reporters. The names appear on page IV. The draft, at various stages of completion, was discussed by the Co-ordinating Group of the Study Group on a European Civil Code in Warsaw (June 2004), Milan (December 2004), Tartu (December 2005), Lucerne (December 2006) and Budapest (June 2007).

A grant from the Research Council of Norway financed the meetings of the working team and the advisory group, a full time researcher position for two years, and a part-time research assistant. The researcher position was held by Dr. Andreas Fötschl. He has prepared notes on Austrian, Belgian, French, German, Italian and Luxembourgian law and in addition to that collected information on several other national legal systems and participated in the discussions of the working team. The research assistants, Tarjei Ytrehus Bjørkly and Milagros Varela Choucino, have been responsible for administrative tasks as well as professional legal contributions, the latter also being a national reporter.

Research fellow Katherine Llorca has patiently given language advice at several stages of the work. She has also been a national reporter.

All the participants of the Study Group who have contributed with advice and encouragement in individual talks must be thanked collectively and cannot be mentioned by name here. Exceptions must be made for Professor Christian von Bar, Professor Hugh Beale and Professor Eric Clive, who have been consulted over and over again, in particular in the final phase of the work, on drafting and co-ordinating matters.

Professor Anders Victorin did not live to see the results of this project, in which he participated with so much enthusiasm from the very beginning. He died in February 2006 after some months' illness. We have all missed him both as an experienced and learned jurist and as a dear friend.

The book is the result of teamwork. The book is, however, not an anthology, and one person must have the last hand on the manuscript. The team leader has edited all of the text, sometimes quite extensively, and is solely responsible for remaining errors and misunderstandings.

An explanation of cross-references within the Draft Common Frame of Reference is found in paragraph *C15* of the Introduction.

Oslo, August 2007 *Kåre Lilleholt*

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Chapter 1:
Scope of Application and General Provisions

Article 1:101: Lease of goods

(1) This Part of Book IV applies to contracts for the lease of goods.
(2) A contract for the lease of goods is a contract under which one party, the lessor, undertakes to provide the other party, the lessee, with a temporary right of use of goods in exchange for rent. The rent may be in the form of money or other value.
(3) This Part of Book IV does not apply to contracts where the parties have agreed that ownership will be transferred after a period with right of use even if the parties have described the contract as a lease.
(4) The application of this Part of Book IV is not excluded by the fact that the contract has a financing purpose, the lessor has the role as a financing party, or the lessee has an option to become owner of the goods.
(5) This Part of Book IV regulates only the contractual relationship between lessor and lessee.

Article 1:102: Consumer leases

For the purpose of this Part of Book IV, a consumer lease is a contract under which a business leases goods to a natural person who is acting primarily for purposes which are not related to that person's trade, business or profession (the consumer).

Chapter 2:
Lease period

Article 2:101: Start of lease period

(1) The lease period starts:
  (a) at the time determinable from the terms agreed by the parties;
  (b) if a time frame within which the lease period is to start can be determined, at any time chosen by the lessor within that time frame unless the circumstances of the case indicate that the lessee is to choose the time;
  (c) in any other case, a reasonable time after the conclusion of the contract, at the request of either party.
(2) The lease period starts at the time when the lessee takes control of the goods if this is earlier than the time that would follow from paragraph (1).

Article 2:102: End of lease period

(1) A definite lease period ends at the time determinable from the terms agreed by the parties. A definite lease period cannot be terminated unilaterally beforehand by giving notice.
(2) An indefinite lease period ends at the time specified in a notice of termination given by either party.
(3) The time specified in the notice of termination must be in compliance with the terms agreed by the parties or, if nothing can be determined from such terms, a reasonable time after the notice has reached the other party.

Article 2:103: Tacit prolongation

(1) A lease period is prolonged for an indefinite period if:
  (a) the lessee, with the lessor's knowledge, has continued to use the goods after the expiry of the lease period;
  (b) the use has continued for a period equal to that required of a notice of termination; and
  (c) the circumstances are not inconsistent with the tacit consent of both parties to such prolongation.
(2) Either party can prevent tacit prolongation by giving notice to the other before tacit prolongation takes effect. The notice need only indicate that the party regards the lease period as having expired on the expiry date.
(3) Where the lease period is prolonged under this Article, the contract of lease is also prolonged accordingly. The other terms of the contract are not changed by the prolongation.
(4) Notwithstanding the second sentence of paragraph (3), where the rent prior to prolongation was calculated so as to take into account amortisation of the cost of the goods by the lessee, rent following prolongation must not be unreasonable with regard to the amount already paid. The parties cannot derogate from the rule of this paragraph to the detriment of a consumer in a consumer lease.
(5) Prolongation under this Article does not increase or extend security rights provided by third parties.

Chapter 3:
Obligations of the lessor

Article 3:101: Availability of the goods

(1) The lessor must make the goods available for the lessee's use at the start of the lease period and at the place determined by III. – 2:101.
(2) Notwithstanding the rule in the previous paragraph, the lessor must make the goods available for the lessee's use at the lessee's place of business or, as the case may be, at the lessee's habitual residence if the lessor, on the specifications of the lessee, acquires the goods from a supplier selected by the lessee.
(3) The goods must remain available for the lessee's use throughout the lease period, free from any right or claim of a third party that prevents or is otherwise likely to interfere with the lessee's use of the goods in accordance with the contract.
(4) The lessor's obligations when the goods are lost or damaged during the lease period are regulated by IV.B – 3:104.

Article 3:102: Conformity with the contract at the start of the lease period

To conform with the contract at the start of the lease period, the goods must:

(a) be of the quantity, quality and description required by the terms agreed by the parties;
(b) be contained or packaged in the manner required by the terms agreed by the parties;
(c) be supplied along with any accessories, installation instructions or other instructions required by the terms agreed by the parties; and
(d) comply with IV.B – 3:103.

Article 3:103: Fitness for purpose, qualities, packaging etc.

The goods must:

(a) be fit for any particular purpose made known to the lessor at the time of the conclusion of the contract, except where the circumstances show that the lessee did not rely, or that it was unreasonable for the lessee to rely, on the lessor's skill and judgement;
(b) be fit for the purposes for which goods of the same description would ordinarily be used;
(c) possess the qualities of goods which the lessor held out to the lessee as a sample or model;
(d) be contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods;
(e) be supplied along with such accessories, installation instructions or other instructions as the lessee could reasonably expect to receive; and
(f) possess such qualities and performance capabilities as the lessee may reasonably expect.

Article 3:104: Conformity of the goods during the lease period

(1) Throughout the lease period and subject to normal wear and tear, the goods must:
  (a) remain of the quantity, quality and description required by the contract; and
  (b) remain fit for the purposes of the lease, even where this requires modifications to the goods.
(2) Paragraph (1) does not apply where the rent is calculated so as to take into account the amortisation of the cost of the goods by the lessee.
(3) Nothing in paragraph (1) affects the lessee's obligations under IV.B – 5:104(1)(c).

Article 3:105: Incorrect installation in a consumer lease

Where, in a consumer lease, the goods are incorrectly installed, any lack of conformity resulting from the incorrect installation is deemed to be a lack of conformity of the goods if:

(a) the goods were installed by the lessor or under the lessor's responsibility; or
(b) the goods were intended to be installed by the consumer and the incorrect installation was due to shortcomings in the installation instructions.

Article 3:106: Limits on derogation in a consumer lease

In a consumer lease, any contractual term or agreement concluded with the lessor before a lack of conformity is brought to the lessor's attention which directly or indirectly waives or restricts the rights resulting from the lessor's obligation to ensure that the goods conform to the contract is not binding on the consumer.

Article 3:107: Obligations on return of the goods

The lessor must:

(a) take all the steps which may reasonably be expected in order to enable the lessee to perform the obligation to return the goods; and
(b) accept return of the goods as required by the contract.

Chapter 4:
Remedies of the lessee

Article 4:101: Overview of remedies
If the lessor fails to perform an obligation under the contract, the lessee is entitled, according to Book III, Chapter 3 and the rules of this Chapter:
(a) to enforce specific performance of the obligation;
(b) to withhold performance of the reciprocal obligation;
(c) to terminate the lease;
(d) to reduce the rent;
(e) to claim damages and interest.

Article 4:102: Consumer leases
(1) The parties cannot derogate from the rules of this Chapter to the detriment of a consumer in a consumer lease.
(2) Notwithstanding paragraph (1), the parties may agree on a limitation of the lessor's liability for loss related to the lessee's trade, business or profession. Such a term may not, however, be invoked if it would be contrary to good faith and fair dealing to do so.

Article 4:103: Lessee's right to have lack of conformity remedied
(1) The lessee may have any lack of conformity of the goods remedied, and recover any expenses reasonably incurred, to the extent that the lessee is entitled to enforce specific performance according to III. – 3:302.
(2) Nothing in the preceding paragraph affects the lessor's right to cure the lack of conformity according to Book III, Chapter 3, Section 2.

Article 4:104: Rent reduction
(1) The lessee may reduce the rent for a period in which the value of the lessor's performance is decreased due to delay or lack of conformity, to the extent that the reduction in value is not caused by the lessee.
(2) The rent may be reduced even for periods in which the lessor retains the right to perform or cure according to III. – 3:103, III. – 3:202(2) and III. – 3:205.
(3) Notwithstanding the rule in paragraph (1), the lessee may lose the right to reduce the rent for a period according to IV.B – 4:106.

Article 4:105: Substitute transaction
Where the lessee has terminated the lease and has made a substitute transaction within a reasonable time and in a reasonable manner, the lessee may, where entitled to damages, recover the difference between the value of the terminated lease and the substitute transaction, as well as any further loss.

Article 4:106: Notification of lack of conformity

(1) The lessee cannot resort to remedies for lack of conformity unless notification is given to the lessor. Where notification is not timely, the lack of conformity shall be disregarded for a period corresponding to the unreasonable delay. Notification will always be considered timely where it is given within a reasonable time after the lessee has become, or could reasonably be expected to have become, aware of the lack of conformity.
(2) When the lease period has ended the rules in III. – 3:107 apply.
(3) The lessor is not entitled to rely on the provisions of paragraphs (1) and (2) if the lack of conformity relates to facts of which the lessor knew or could reasonably be expected to have known and which the lessor did not disclose to the lessee.

Article 4:107: Remedies channelled towards supplier of the goods

(1) This Article applies where:
  (a) the lessor, on the specifications of the lessee, acquires the goods from a supplier selected by the lessee;
  (b) the lessee, in providing the specifications for the goods and selecting the supplier, does not rely primarily on the skill and judgement of the lessor;
  (c) the lessee approves the terms of the supply contract;
  (d) the supplier's obligations under the supply contract are owed, by law or by contract, to the lessee as a party to the supply contract or as if the lessee were a party to that contract; and
  (e) the supplier's obligations owed to the lessee cannot be varied without the consent of the lessee.
(2) The lessee cannot claim performance from the lessor, reduce the rent or claim damages or interest from the lessor, for late delivery or for lack of conformity, unless non-performance results from an act or omission of the lessor. This provision does not preclude the right of the lessee to reject the goods, to terminate the lease or, prior to acceptance of the goods, to withhold rent to the extent that the lessee could have resorted to these remedies as a party to the supply contract.
(3) The provision in paragraph (2) does not preclude any remedy of the lessee where a third party right or claim prevents, or is otherwise likely to interfere, with the lessee's continuous use of the goods in accordance with the contract.
(4) The lessee cannot terminate the supply contract without the consent of the lessor.

Chapter 5:
Obligations of the lessee

Article 5:101: Obligation to pay rent

(1) The lessee must pay the rent that is fixed by or determinable from the terms agreed by the parties or from II. – 9:103.
(2) The rent accrues from the start of the lease period.

Article 5:102: Time for payment

Rent is payable:

(a) at the end of each period for which the rent is agreed, or

(b) if the rent is not agreed for certain periods, at the expiry of a definite lease period, or

(c) if no definite lease period is agreed and the rent is not agreed for certain periods, at the end of reasonable intervals.

Article 5:103: Acceptance of goods

The lessee must:

(a) take all steps reasonably to be expected in order to enable the lessor to perform the obligation to make the goods available at the start of the lease period; and

(b) take control of the goods as required by the contract.

Article 5:104: Handling the goods in accordance with the contract

(1) The lessee must:

(a) observe the requirements and restrictions that follow from the terms agreed by the parties;

(b) handle the goods with the care that a reasonable lessee would exercise in the circumstances, taking into account the duration of the lease period, the purpose of the lease and the character of the goods; and

(c) perform all measures that must ordinarily be expected to become necessary in order to preserve the normal standard and functioning of the goods, insofar as is reasonable, taking into account the duration of the lease period, the purpose of the lease and the character of the goods.

(2) Where the rent is calculated so as to take into account the amortisation of the cost of the goods by the lessee, the lessee must, during the lease period, keep the goods in the condition they were in at the start of the lease period, subject to normal wear and tear for the kind of goods.

Article 5:105: Intervention to avoid danger or damage to the goods

The lessee must perform maintenance and repairs that would ordinarily be carried out by the lessor, if the measures are necessary to avoid danger or damage to the goods, and it is impossible or impractical for the lessor, but not for the lessee, to ensure these measures are taken. The lessee has a right against the lessor for indemnification or, as the case may be, reimbursement in respect of an obligation or expenditure (whether of money or other assets) insofar as reasonably incurred for the purposes of the intervention.

Article 5:106: Compensation for maintenance and improvements

The lessee cannot claim compensation for maintenance of or improvements to the goods. The preceding sentence does not exclude or restrict any claim the lessee may have for damages or any right or claim the lessee may have under IV.B – 4:103, IV.B – 5:105 or Book VIII.

Article 5:107: Obligation to inform

(1) The lessee must inform the lessor of any damage or danger to the goods, and likewise of any right or claim of a third party, if these circumstances would normally give rise to the need for action on the part of the lessor.

(2) The lessor must be informed within a reasonable time after the lessee knew, or could reasonably be expected to have known, about the circumstances and their character.

Article 5:108: Repairs and inspections of the lessor

(1) The lessee must tolerate performance of repairs and other work on the goods necessary in order to preserve the goods, remove defects and prevent danger. If possible, the lessor must inform the lessee a reasonable time prior to taking such measures. This obligation does not preclude the lessee from reducing the rent in accordance with IV.B – 4:104.
(2) The lessee must tolerate the performance of work on the goods, even that not falling under paragraph (1), unless there is good reason to object to such performance.
(3) The lessee must tolerate inspection of the goods for the purposes indicated in paragraph (1). The lessee must also accept inspection of the goods by a prospective lessee during a reasonable period prior to expiry of the lease.

Article 5:109: Obligation to return the goods

At the end of the lease period the lessee must return the goods to the place where they were made available for the lessee.

Chapter 6:
Remedies of the lessor

Article 6:101: Overview of remedies

If the lessee fails to perform an obligation under the contract, the lessor is entitled, according to Book III, Chapter 3 and the provisions of this Chapter:
(a) to enforce performance of the obligation;
(b) to withhold performance of the reciprocal obligation;
(c) to terminate the lease;
(d) to claim damages and interest.

Article 6:102: Consumer leases

The parties cannot derogate from the rules of this Chapter to the detriment of a consumer in a consumer lease.

Article 6:103: Right to enforce performance of monetary obligations

(1) The lessor is entitled to recover payment of rent and other sums due.
(2) Where the lessor has not yet made the goods available to the lessee and it is clear that the lessee will be unwilling to take control of the goods, the lessor may nonetheless proceed with performance and may recover payment unless:
  (a) the lessor could have made a reasonable substitute transaction without significant effort or expense; or
  (b) performance would be unreasonable in the circumstances.
(3) Where the lessee has taken control of the goods, the lessor may recover payment of any sums due under the contract. This includes future rent, unless the lessee wishes to return the goods and it would be reasonable in the circumstances for the lessor to accept their return.

Article 6:104: Substitute transaction

Where the lessor has terminated the lease and has made a substitute transaction within a reasonable time and in a reasonable manner, the lessor may, where entitled to damages, recover the difference between the value of the terminated lease and the value of the substitute transaction, as well as any further loss.

Article 6:105: Reduction of liability in consumer leases

(1) In a consumer lease, the lessor's claim for damages may be reduced to the extent that the loss is mitigated by insurance covering the goods, or to the extent that loss would have been mitigated by insurance, in circumstances where it is reasonable to expect the lessor to take out such insurance.
(2) The rule in paragraph (1) applies in addition to the rules in Book III, Chapter 3, Section 7.

Chapter 7:
New parties and sublease

Article 7:101: Change in ownership and substitution of lessor

(1) Where ownership passes from the lessor to a new owner, the new owner of the goods is substituted as a party to the lease contract if the lessee has possession of the goods at the time ownership passes. The former owner remains subsidiarily liable for the non-performance of the lease contract as a personal security provider.
(2) A reversal of the passing of ownership puts the parties back in their original positions except as regards performance already rendered at the time of reversal.
(3) The rules in the preceding paragraphs apply accordingly where the lessor has acted as holder of a right other than ownership.

Article 7:102: Assignment of lessee's right to performance

The lessee's rights to performance under the lease contract cannot be assigned without the lessor's consent.

Article 7:103: Sublease

(1) The lessee may not sublease the goods without the lessor's consent.
(2) If consent to a sublease is withheld without good reason, the lessee may terminate the lease by giving a reasonable period of notice.
(3) In the case of a sublease, the lessee remains liable for the performance of the contract of lease.

Catalan[1]
Llibre IV.B: Arrendament de Béns Mobles

Capítol 1:
Àmbit d'aplicació i normes generals

Article 1:101: Arrendament de béns mobles
(1) Aquesta Part del Llibre IV s'aplica als contractes d'arrendament de béns mobles.
(2) El contracte d'arrendament de béns mobles és aquell mitjançant el qual una part, l'arrendador, s'obliga a proporcionar a l'altra part, l'arrendatari, el dret temporal a usar un bé moble a canvi del pagament d'una renda. La renda pot consistir en el pagament de diner o en una altra contraprestació.
(3) Aquesta Part del Llibre IV no s'aplica als contractes en què les parts acorden que es transmetrà la propietat després d'un període amb dret a usar el bé moble, encara que les parts hagin descrit el contracte com d'arrendament.
(4) No s'exclou l'aplicació d'aquesta Part del Llibre IV pel fet que el contracte tingui una finalitat de finançament, que l'arrendador assumeixi el caràcter de part finançadora, o que l'arrendatari tingui l'opció d'esdevenir propietari dels béns.
(5) Aquesta Part del Llibre IV només regula la relació contractual entre l'arrendador i l'arrendatari.

Article 1:102: Arrendament de consum
Als efectes d'aquests Principis, un arrendament de consum és el contracte mitjançant el qual un empresari arrenda béns mobles a una persona física que actua primordialment dins de finalitats que no estan relacionades amb la seva activitat, negoci o professió (el consumidor).

Capítol 2:
Duració de l'arrendament

Article 2:101: Inici de l'arrendament
(1) El termini de l'arrendament comença:
  (a) en el moment que sigui determinable dels termes acordats per les parts;
  (b) si es pot determinar el període de temps durant el qual ha de començar el termini de l'arrendament, en qualsevol moment que elegeixi l'arrendador dins d'aquest període llevat que de les circumstàncies del cas es desprengui que és l'arrendatari qui ha d'elegir el moment;
  (c) en qualsevol altre supòsit, un temps raonable després de la conclusió del contracte, a instàncies de qualsevol de les parts.
(2) El termini de l'arrendament comença en el moment en què l'arrendador pren el control de les coses si és abans del moment que resulta del paràgraf (1).

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[1] Translated by Professor *Antoni Vaquer Aloy* (Lleida).

Article 2:102: Fi de l'arrendament

(1) El termini definit de l'arrendament finalitza en el moment que resulti determinable dels termes acordats per les parts. Un període definit d'arrendament no pot ser extingit anticipadament de forma unilateral mitjançant requeriment.
(2) El termini indefinit de l'arrendament finalitza en el moment que s'especifica en el requeriment d'extinció enviat per qualsevulla de les parts.
(3) El moment que s'especifiqui al requeriment s'ha de correspondre amb els termes acordats per les parts o, si no es desprèn d'aquests termes, ha de ser un temps raonable després que l'altra part hagi rebut el requeriment.

Article 2:103: Tàcita reconducció

(1) El termini de l'arrendament es prorroga per un termini indefinit si
  (a) l'arrendatari, coneixent-ho l'arrendador, ha continuat usant les coses un cop exhaurit el termini de l'arrendament;
  (b) l'ús s'ha prolongat durant el mateix temps que es requereix a un requeriment d'extinció; i
  (c) les circumstàncies no són contradictòries amb el consentiment tàcit d'ambdues parts a la pròrroga.
(2) Qualsevol part pot impedir la tàcita reconducció si requereix l'altra abans no es produeixi. El requeriment només ha d'indicar que la part té el contracte per extingit en la data final.
(3) Quan el termini de l'arrendament es prorroga d'acord amb aquest Article, igualment es prorroga el contracte d'arrendament. La resta de clàusules contractuals no es modifiquen.
(4) No obstant el que disposa el segon incís del paràgraf (3), quan la renda abans de la pròrroga es va establir tenint en compte l'amortització per l'arrendatari del cost de les coses, la renda després de la pròrroga no ha de ser irraonable amb relació a la quantitat que ja s'ha pagat. Les parts d'un arrendament de consum no poden excloure aquesta norma en perjudici dels consumidors.
(5) La tàcita reconducció d'acord amb aquest Article no incrementa ni estén les garanties atorgades per terceres persones.

Capítol 3:
Obligacions de l'arrendador

Article 3:101: Disponibilitat de les coses

(1) L'arrendador ha de fer disponibles les coses a l'arrendatari per al seu ús a l'inici del termini de l'arrendament i en el lloc que estableix III. – 2:101.
(2) No obstant el que disposa el paràgraf anterior, l'arrendador ha de fer disponibles les coses per a l'ús de l'arrendatari a l'establiment d'aquest o, si escau, a la residència habitual de l'arrendatari, quan, seguint les seves indicacions, adquireix les coses d'un proveïdor escollit per l'arrendatari.
(3) Les coses han de romandre disponibles per a l'arrendatari durant tot el termini de l'arrendament, lliures de qualsevol dret o pretensió de tercera persona que impedeixi o de qualsevol manera pugui interferir en l'ús de les coses per l'arrendatari d'acord amb els termes contractuals.
(4) Les obligacions de l'arrendador quan les coses es perden o deterioren durant el termini de l'arrendament es regulen a IV.B – 3:104.

Article 3:102: Conformitat amb el contracte a l'inici del termini de l'arrendament

Perquè siguin conformes amb el contracte a l'inici del termini de l'arrendament, les coses han de
(a) ser de la quantitat, qualitat i descripció que exigeixen els termes acordats per les parts;
(b) estar contingudes o embalades de la manera que exigeixen els termes acordats per les parts;
(c) lliurar-se amb tots els accessoris, instruccions d'instal·lació i altres instruccions requerides pels termes acordats per les parts; i
(d) complir amb IV.B – 3:103.

Article 3:103: Adequació a la finalitat, qualitats, embalatge, etc.

Les coses han de:
(a) ser adequades per a qualsevol finalitat particular que s'hagi fet saber a l'arrendador en el moment de la conclusió del contracte, llevat que les circumstàncies palesin que l'arrendatari no va confiar, o que no era raonable que l'arrendatari confiés, en l'expertesa i el criteri de l'arrendador;
(b) ser adequades per a aquelles finalitats per a les quals s'usen habitualment coses de la mateixa descripció;
(c) posseir les qualitats de les mostres o models que l'arrendador va presentar a l'arrendatari;
(d) estar contingudes o embalades de la manera habitual per a aquella mena de coses o, altrament, d'una manera adequada per a preservar-les i protegir-les;
(e) lliurar-se amb aquells accessoris, instruccions d'instal·lació i altres instruccions que l'arrendatari pot raonablement esperar de rebre; i
(f) posseir aquelles qualitats i capacitat de resultats que l'arrendatari por raonablement esperar.

Article 3:104: Conformitat de les coses durant el termini de l'arrendament.

(1) Al llarg del termini de l'arrendament, i llevat el deteriorament normal com a conseqüència del transcurs del temps, les coses han de:
  (a) conservar la quantitat, qualitat i descripció que exigeix el contracte; i
  (b) romandre adequades per a les finalitats de l'arrendament, fins i tot si això requereix modificacions en les coses.
(2) El paràgraf (1) no s'aplica quan la renda s'ha establert tenint en compte l'amortització per l'arrendatari del cost de les coses.
(3) El paràgraf (1) no afecta les obligacions de l'arrendatari que estableix IV.B – 5:105(1)(c).

Article 3:105: Instal·lació incorrecta en l'arrendament de consum

Quan, en un arrendament de consum, les coses s'instal·len incorrectament, qualsevol deficiència [manca de conformitat] que en resulti es considera manca de conformitat de les coses si la instal·lació forma part del contracte d'arrendament i
(a) les coses són instal·lades per l'arrendador o sota la seva responsabilitat; o
(b) es pretén que les coses les instal·li el consumidor i la instal·lació incorrecta és conseqüència de defectes en les instruccions d'instal·lació.

Article 3:106: Límits de caràcter dispositiu de les normes en l'arrendament de consum

En l'arrendament de consum, no vinculen el consumidor els termes o acords contractuals establerts amb anterioritat al descobriment de la manca de conformitat en virtut dels quals, de manera directa o indirecta, es lleven o es restringeixen els drets derivats de l'obligació de l'arrendador d'assegurar la conformitat de les coses.

3:107: Obligacions a la restitució de les coses

L'arrendador ha de

(a) prendre totes aquelles mesures que raonablement es pugui esperar per tal de permetre a l'arrendatari el compliment de l'obligació de restitució de les coses; i

(b) acceptar la restitució de les coses d'acord amb el contracte.

Capítol 4:
Remeis de l'arrendatari

Article 4:101: Enumeració dels remeis

Quan l'arrendador incompleix una de les seves obligacions contractuals, l'arrendatari està legitimat per, d'acord amb el Llibre III, Capítol 3 i les normes d'aquest Capítol:

(a) reclamar el compliment específic de l'obligació;

(b) suspendre el compliment de la seva obligació recíproca;

(c) resoldre l'arrendament;

(d) reduir la renda;

(e) reclamar danys i perjudicis i interessos.

Article 4:102: Arrendament de consum

(1) En l'arrendament de consum, les parts no poden apartar-se de les normes d'aquest Capítol en perjudici dels consumidors.

(2) No obstant el que disposa el paràgraf (1), les parts poden pactar una limitació de la responsabilitat de l'arrendador per pèrdua de les coses amb relació a l'activitat, negoci o professió de l'arrendatari, llevat que el pacte resulti contrari a la bona fe i a la honradesa en els tractes.

Article 4:103: Dret de l'arrendatari a que es remeï la manca de conformitat

(1) L'arrendatari té dret a que es remeï qualsevol manca de conformitat de les coses, i a ser indemnitzat de les despeses en què raonablement hagi incorregut, en la mesura que estigui legitimat per a exigir el compliment específic d'acord amb III. – 3:302.

(2) El que estableix el paràgraf anterior no afecta el dret de l'arrendador a corregir la manca de conformitat d'acord amb el Llibre III, Capítol 3, Secció 2.

Article 4:104: Reducció de la renda

(1) L'arrendatari pot reduir la renda dels períodes en què el valor de la prestació de l'arrendador disminueix com a conseqüència de retard o de manca de conformitat, sempre que la disminució de valor no l'hagi causat el mateix arrendatari.

(2) També es pot reduir la renda en els períodes en què l'arrendador manté el dret a complir o a corregir la seva prestació d'acord amb III. – 3:103, III. – 3:202(2) i III. – 3:205.

(3) No obstant el que disposa el paràgraf (1), l'arrendatari pot perdre el dret a reduir la renda d'un període d'acord amb IV.B – 4:106.

Article 4:105: Negoci substitutiu

Si l'arrendatari ha resolt l'arrendament i ha realitzat un negoci substitutiu en temps i manera raonables, l'arrendatari, si la indemnització de danys i perjudicis és procedent, té dret a reclamar la diferència entre el valor de l'arrendament resolt i el negoci substitutiu, així com qualsevol altre perjudici indemnitzable.

Article 4:106: Notificació de la manca de conformitat

(1) L'arrendatari no pot utilitzar els remeis contra la manca de conformitat si no ho notifica a l'arrendador. Si la notificació no es realitza tempestivament, no es tindrà en compte la manca de conformitat durant el període de retard irraonable. La notificació es considera sempre tempestiva quan té lloc dins d'un temps raonable d'ençà que l'arrendatari ha tingut coneixement, o es podia esperar raonablement que el tingués, de la manca de conformitat.
(2) S'apliquen les normes de III. – 3:107 si el termini de l'arrendament ha expirat.
(3) L'arrendatari no pot emparar-se en el que disposa el paràgraf (1) i (2) si la manca de conformitat es refereix a fets que l'arrendador coneixia o podia raonablement conèixer i que no va comunicar a l'arrendatari.

Article 4:107: Remeis disponibles contra el proveïdor de les coses

(1) Aquest article s'aplica quan:
  (a) l'arrendador, seguint les indicacions de l'arrendatari, adquireix les coses d'un proveïdor seleccionat per l'arrendatari;
  (b) l'arrendatari, en comunicar les seves indicacions sobre les coses i l'elecció del proveïdor, no confia essencialment en l'expertesa i el criteri de l'arrendador;
  (c) l'arrendatari aprova els termes del contracte pel qual es subministren les coses;
  (d) les obligacions del proveïdor derivades del contracte pel qual es subministren les coses es deuen, sigui per llei o contractualment, a l'arrendatari com a part en el contracte de subministrament o com si fos part d'aquest contracte; i
  (e) los obligacions del proveïdor amb l'arrendatari no poden ser modificades sense el consentiment d'aquest.
(2) L'arrendatari no gaudeix de pretensió al compliment forçós, a la reducció de la renda i a indemnització de danys i perjudicis o a interessos contra l'arrendador pel retard en el lliurament o la manca de conformitat, llevat que l'incompliment sigui resultat d'un acte o omissió de l'arrendador. Aquest precepte no exclou el dret de l'arrendatari a refusar les coses, a resoldre l'arrendament o, abans d'acceptar les coses, a suspendre el pagament de la renda sempre que hagués pogut valer-se d'aquests remeis en tant que part en el contracte pel qual es subministren les coses.
(3) El que disposa el paràgraf (2) no exclou cap dels remeis de l'arrendatari quan el dret o la pretensió d'una tercera persona impedeix, o pot interferir de qualsevol altra manera, l'ús continuat de la cosa d'acord amb el contracte.
(4) L'arrendatari no pot resoldre el contracte pel qual se subministren les coses sense el consentiment de l'arrendador.

Capítol 5:
Obligacions de l'arrendatari

Article 5:101: Obligació de pagar la renda
(1) L'arrendatari ha de pagar la renda determinada o determinable d'acord amb els termes acordats entre les parts o de II. – 9:103.
(2) La renda s'ha de pagar des de l'inici del termini de l'arrendament.

Article 5:102: Temps i lloc del pagament
La renda s'ha de pagar:
(a) al final de cada període per al qual s'ha pactat la renda, o
(b) si la renda no s'ha pactat per períodes determinats, quan expiri el termini definit de l'arrendament,
(c) si no s'ha pactat un termini definit de l'arrendament ni s'ha pactat la renda per períodes determinats, al final d'intervals raonables.

Article 5:103: Acceptació de les coses
L'arrendatari ha de
(a) dur a terme tots els actes que raonablement es puguin esperar a fi de permetre que l'arrendador compleixi la seva obligació de fer disponibles les coses a l'inici del termini de l'arrendament; i
(b) prendre el control de les coses de la manera que estableix el contracte.

Article 5:104: Ús de les coses d'acord amb el contracte
(1) L'arrendatari ha de:
  (a) observar les exigències i restriccions que deriven dels termes acordats per les parts;
  (b) usar les coses amb la cura que un arrendatari raonable exerciria en les circumstàncies, tenint en compte la duració i la finalitat de l'arrendament i la natura de les coses; i
  (c) prendre totes aquelles mesures que habitualment hom consideraria necessàries per tal de preservar l'estàndard normal i el funcionament de les coses, sempre que sigui raonable, tenint en compte la duració i la finalitat de l'arrendament i la natura de les coses.
(2) En el supòsit que la renda s'ha establert tenint en compte l'amortització per l'arrendatari del cost de les coses, l'arrendatari, durant el termini de l'arrendament, ha de mantenir-les en l'estat en què es trobaven a l'inici del termini, llevat el desgast natural que experimentin.

Article 5:105: Intervenció a fi d'evitar perill o danys a les coses
L'arrendatari ha de realitzar el manteniment i les reparacions que habitualment duria a terme l'arrendador, si són necessàries per evitar perill o danys a les coses, sempre que l'adopció d' aquestes mesures sigui impossible o impracticable per a l'arrendador però no per a l'arrendatari. L'arrendatari té dret a ser indemnitzat o a la restitució de les obligacions i despeses en què hagi incorregut (dineràries o en altres béns), segons escaigui, que hagin estat raonables atenent a la finalitat de la intervenció.

Article 5:106: Reemborsament de les despeses de conservació i millores
L'arrendatari no té pretensió per al reemborsament de les despeses de conservació i millores en les coses. No obstant, això no exclou ni restringeix cap pretensió per danys ni cap dret o pretensió que resulti de IV.B – 4:103, IV.B – 5:105 o Llibre VIII.

Article 5:107: Obligació d'informar
(1) L'arrendatari ha d'informar l'arrendador de qualsevol dany o perill per a les coses, així com de qualsevol dret o pretensió que al·legui una tercera persona, si aquestes circumstàncies determinarien habitualment l'exercici d'accions judicials per part de l'arrendador.
(2) S'ha d'informar l'arrendador en un temps raonable des que l'arrendatari conegui o pugui raonablement conèixer aquestes circumstàncies i la seva natura.

Article 5:108: Reparacions i inspecció de l'arrendador
(1) L'arrendatari ha de tolerar les reparacions i altres treballs necessaris en les coses a fi de conservar-les, reparar danys i prevenir perills. Sempre que sigui possible, l'arrendador ha d'informar l'arrendatari amb un temps suficient abans d'emprendre les reparacions. Aquesta obligació no exclou la reducció de la renda d'acord amb IV.B – 4:104.
(2) L'arrendatari ha de tolerar la realització d'altres treballs en les coses, fins i tot si són distints dels previstos al paràgraf (1), llevat que al·legui una bona raó.
(3) L'arrendatari ha de permetre la inspecció de les coses per a les finalitats del paràgraf (1). Igualment ha de permetre la inspecció de les coses pels hipotètics futurs arrendataris durant un temps raonable abans de l'extinció de l'arrendament.

Article 5:109: Obligació de retornar les coses
L'arrendatari ha de retornar les coses al final del període de l'arrendament en el lloc on l'arrendador les va posar a la seva disposició.

Capítol 6:
Remeis de l'arrendador

Article 6:101: Enumeració dels remeis
Quan l'arrendador incompleix una de les seves obligacions contractuals, l'arrendatari està legitimat per, d'acord amb el Llibre III, Capítol 3 i les normes d'aquest Capítol:
(a) reclamar el compliment específic de l'obligació;
(b) suspendre el compliment de la seva obligació recíproca;
(c) resoldre l'arrendament;
(e) reclamar danys i perjudicis i interessos.

Article 6:102 Arrendament de consum
En l'arrendament de consum, les parts no poden apartar-se de les normes d'aquest Capítol en perjudici dels consumidors.

Article 6:103: Dret a demanar el compliment d'obligacions dineràries

(1) L'arrendador té dret a reclamar el pagament de la renda i les altres quantitats degudes.
(2) Si l'arrendador encara no ha posat les coses a disposició de l'arrendatari i resulta evident que l'arrendatari no estarà disposat a prendre'n el control, l'arrendador pot tanmateix complir la seva obligació i reclamar totes les sumes degudes d'acord amb el contracte, llevat que
  (a) hagués pogut concloure un negoci substitutiu raonable sense un esforç o despesa significatius; o
  (b) l'oferiment del compliment de la seva obligació sigui irraonable ateses les circumstàncies.
(3) Si l'arrendatari ha pres el control de les coses, l'arrendador pot reclamar el pagament de totes les quantitats degudes d'acord amb el contracte, incloent-hi la renda futura, llevat que l'arrendatari vulgui retornar les coses i resulti raonable que l'arrendador accepti la restitució ateses les circumstàncies.

Article 6:104: Negoci substitutiu

L'arrendador que ha resolt l'arrendament i ha realitzat un negoci substitutiu en un temps i manera raonables pot reclamar, si la indemnització de danys i perjudicis és procedent, la diferència entre el valor de l'arrendament resolt i el valor del negoci substitutiu, així com qualsevol altre perjudici.

Article 6:105: Limitació de la responsabilitat en els arrendaments de consum

(1) En els arrendaments de consum, la pretensió indemnitzatòria de l'arrendador es pot reduir en la mesura que el dany resulti mitigat per l'assegurança de les coses, o en la mesura que resultaria mitigat en aquells casos en què hagués estat raonable esperar que l'arrendador hagués contractat l'assegurança.
(2) La norma del paràgraf (1) s'aplica addicionalment a les normes del Llibre III, Secció 7.

Capítol 7:
Canvi de parts i subarrendament

Article 7:101: Canvi en la propietat i substitució de l'arrendador

(1) El nou propietari de les coses esdevé part en el contracte d'arrendament si l'arrendatari té la possessió de les coses al temps de la transmissió de la propietat. L'antic propietari segueix essent responsable subsidiari de l'incompliment del contracte d'arrendament com un fiador.
(2) Les parts tornen a ocupar les seves posicions jurídiques originàries quan l'acte transmissiu de la propietat esdevé ineficaç, llevat pel que fa a les prestacions ja realitzades.
(3) Les normes dels paràgrafs anteriors s'apliquen analògicament quan l'arrendador era titular d'un altre dret distint de la propietat.

Article 7:102: Cessió del dret de l'arrrendatari

L'arrendatari no pot cedir els seus drets contractuals sense el consentiment de l'arrrendador.

Article 7:103: Subarrendament

(1) L'arrendatari no pot subarrendar les coses sense el consentiment de l'arrendador.
(2) Si es nega el consentiment al subarrendament sense una justa causa, l'arrendatari pot resoldre el contracte si requereix en un període de temps raonable a l'arrendador.
(3) En el subarrendament, l'arrendatari segueix essent responsable del compliment del contracte d'arrendament.

Dutch[2]
Boek IV.B: Huur van Goederen

Hoofdstuk I:
Toepassingsgebied en algemene bepalingen

Artikel 1:101: Huur van goederen
(1) Dit deel van Boek IV is van toepassing op overeenkomsten betreffende de huur van goederen.
(2) Een overeenkomst betreffende de huur van goederen is een overeenkomst waarbij één partij, de verhuurder, zich ertoe verbindt om aan de andere partij, de huurder een tijdelijk gebruiksrecht op goederen toe te kennen, tegen betaling van een huurprijs. De huurprijs mag in geld zijn of andere waarden.
(3) Dit deel van Boek IV is niet van toepassing op overeenkomsten waarbij partijen zijn overeengekomen dat een eigendomsrecht zal overgaan na een periode van gebruik, zelfs al hebben partijen de overeenkomst als een huurovereenkomst benoemd.
(4) De toepassing van dit deel van Boek IV wordt niet uitgesloten door het feit dat de overeenkomst een financieringsdoel heeft, de verhuurder als financier optreedt, of de huurder een optie heeft om eigenaar van de goederen te worden.
(5) Dit deel van Boek IV regelt enkel de contractuele verhouding tussen verhuurder en huurder.

Artikel 1:102: Consumentenhuren
Voor de toepassing van dit deel van boek IV is een consumentenhuur een overeenkomst waarbij een onderneming goederen verhuurt aan een natuurlijke persoon, die hierbij hoofdzakelijk handelt met een oogmerk dat geacht kan worden vreemd te zijn aan zijn handels-, ondernemings-, of beroepsactiviteiten (de consument).

Hoofdstuk 2:
Huurtijd

Artikel 2:101: Begin van huurtijd
(1) De huurtijd begint:
  (a) op het tijdstip dat kan worden bepaald volgens de bepalingen en modaliteiten overeengekomen door partijen;
  (b) indien er een tijdskader kan worden bepaald waarbinnen de huurtijd dient te starten, op elk door de verhuurder te kiezen tijdstip binnen dat tijdskader, behalve indien de omstandigheden van de zaak aangeven dat de huurder dit tijdstip mag kiezen;
  (c) in elk ander geval, binnen een redelijke termijn na het afsluiten van de overeenkomst op verzoek van elke partij.

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[2] Translated by Professor *Alain Verbeke* (Leuven, Tilburg and Harvard) and Research Assistant *Mathieu Muylle* (Leuven).

(2) De huurtijd vangt aan op het tijdstip dat de huurder controle over de goederen neemt, indien dit het tijdstip volgend uit paragraaf (1) voorafgaat.

Artikel 2:102: Einde van huurtijd

(1) Een bepaalde huurtijd eindigt op het tijdstip dat kan worden bepaald volgens de bepalingen en modaliteiten overeengekomen door partijen. Een bepaalde huurtijd kan niet voortijdig worden beëindigd door een eenzijdige opzegging.
(2) Een onbepaalde huurtijd eindigt op het tijdstip zoals bepaald door één van beide partijen in zijn opzegging.
(3) Het tijdstip bepaald in de opzegging moet in overeenstemming zijn met de bepalingen en modaliteiten zoals overeengekomen door de partijen, of indien niets kan worden bepaald op basis daarvan, binnen een redelijke termijn nadat de opzegging de andere partij heeft bereikt.

Artikel 2:103: Stilzwijgende verlenging

(1) Een huurtijd wordt voor een onbepaalde tijd verlengd indien:
  (a) de huurder, met kennis van de verhuurder, het gebruik van de goederen heeft voortgezet na het verstrijken van de huurtijd;
  (b) het gebruik werd voortgezet voor een periode gelijk aan deze die voor opzegging was vereist.
  (c) de omstandigheden niet in strijd zijn met de stilzwijgende toestemming van beide partijen in dergelijke verlenging.
(2) Elk der partijen kan een stilzwijgende verlenging vermijden door de ander hiervan in kennis te stellen vooraleer de stilzwijgende verlenging plaatsvindt. De kennisgeving moet enkel aangeven dat de partij de huurtijd als beëindigd beschouwt op de einddatum.
(3) Indien de huurtijd werd verlengd volgens dit artikel, is ook de huurovereenkomst dienovereenkomstig verlengd. De andere bepalingen en modaliteiten van de overeenkomst wijzigen niet door de verlenging.
(4) Indien de huurprijs was berekend, rekening houdend met de afschrijving van de kost van de goederen door de huurder, dan mag – niettegenstaande de tweede zin van paragraaf (3) – de huurprijs na verlenging niet onredelijk zijn rekening houdend met de som die al werd betaald. De partijen kunnen niet van de regel in deze paragraaf afwijken ten nadele van een consument in een consumentenhuur.
(5) Verlenging volgens dit artikel kan niet leiden tot vermeerdering of uitbreiding van zekerheidsrechten die door derde partijen werden verschaft.

Hoofdstuk 3:
Verbintenisen van de verhuurder

Artikel 3:101: Terbeschikkingstelling van de goederen

(1) De verhuurder moet de goederen ter beschikking stellen voor het gebruik door de huurder bij de aanvang van de huurtijd en op de plaats bepaald onder III. – 2:101.
(2) Onverminderd de bepaling in de voorgaande paragraaf, moet de verhuurder de goederen ter beschikking stellen voor het gebruik door de huurder in de onderneming van de huurder of in voorkomend geval in de gewone verblijfplaats van de huurder, indien de verhuurder de goederen verwerft, volgens de specificaties van de huurder, van een leverancier gekozen door de huurder.

(3) De goederen moeten voor gebruik door de huurder te zijner beschikking blijven, vrij van enig recht of aanspraak van een derde partij, dat het gebruik door de huurder in overeenstemming met de overeenkomst zou beletten of op enige andere wijze mogelijk zou hinderen.
(4) De verbintenissen van de verhuurder in geval van verlies of beschadiging van de goederen tijdens de huurtijd worden geregeld onder IV.B – 3:104.

Artikel 3:102: Overeenstemming met de overeenkomst bij de aanvang van de huurtijd

Om in overeenstemming te zijn met de overeenkomst bij de aanvang van de huurtijd moeten de goederen:
(a) van de kwantiteit, de kwaliteit en de beschrijving zijn zoals vereist volgens de bepalingen en modaliteiten overeengekomen door de partijen;
(b) bewaard of verpakt zijn op de wijze zoals vereist volgens de bepalingen en modaliteiten overeengekomen door de partijen;
(c) geleverd worden samen met alle bijhorigheden en accessoires, instructies voor installatie of andere instructies zoals vereist volgens de bepalingen en modaliteiten overeengekomen door de partijen;
(d) in overeenstemming zijn met IV.B – 3:103.

Artikel 3:103: Geschiktheid voor doel, eigenschappen, verpakking etc.

De goederen moeten:
(a) geschikt zijn voor elk specifiek doel waarvan op het tijdstip van het sluiten van de overeenkomst aan de verhuurder kennis is gegeven, behalve wanneer uit de omstandigheden blijkt dat de huurder niet vertrouwde op de vakbekwaamheid en het beoordelingsvermogen van de verhuurder, of dat het onredelijk was voor de huurder om daarop te vertrouwen;
(b) geschikt zijn voor de doeleinden waarvoor goederen van dezelfde soort normaal worden gebruikt;
(c) de eigenschappen bezitten van de goederen die de verhuurder als monster of model aan de huurder heeft getoond of gegeven;
(d) bewaard of verpakt zijn op de wijze die gebruikelijk is voor dergelijke goederen of, indien geen dergelijke wijze bestaat, op een wijze die adequaat is om de goederen te bewaren en te beschermen;
(e) worden geleverd samen met de bijhorigheden en accessoires, instructies voor installatie of overige instructies die de huurder redelijkerwijze mag verwachten te ontvangen; en
(f) die eigenschappen en prestatiemogelijkheden bezitten, die de huurder redelijkerwijze mag verwachten.

Artikel 3:104: Conformiteit van de goederen tijdens de huurtijd

(1) Gedurende de huurtijden, behoudens de normale slijtage, moeten de goederen:
  (a) van de kwantiteit, de kwaliteit en de beschrijving blijven zoals vereist door de overeenkomst; en
  (b) geschikt blijven voor de doeleinden van de huur, zelfs indien dit aanpassingen aan de goederen vereist.
(2) Paragraaf (1) is niet van toepassing indien de huurprijs is berekend rekening houdende met de afschrijving van de kost van de goederen door de huurder.
(3) Niets onder paragraaf (1) heeft enige invloed op de verbintenissen van de huurder onder IV.B – 5:104(1)(c).

Artikel 3:105: Niet correcte installatie bij consumentenhuur

Indien de goederen, bij consumentenhuur, niet correct werden geïnstalleerd, wordt elk gebrek aan conformiteit dat voortvloeit uit de niet correcte installatie, beschouwd als een gebrek aan conformiteit van de goederen indien:

(a) de goederen werden geïnstalleerd door de verhuurder of onder diens verantwoordelijkheid; of
(b) de goederen door de consument dienden te worden geïnstalleerd en de niet correcte installatie te wijten is aan tekortkomingen in de instructies van installatie.

Artikel 3:106 Beperkingen met betrekking tot de afstand van rechten bij consumentenhuur

In geval van consumentenhuur is niet bindend voor de consument, elke contractuele bepaling of overeenkomst afgesloten met de verhuurder alvorens een gebrek aan conformiteit onder de aandacht van de verhuurder werd gebracht, waarbij rechtstreeks of onrechtstreeks afstand wordt gedaan van rechten of rechten worden beperkt die voortvloeien uit de verbintenis van de verhuurder om de conformiteit van de goederen te garanderen.

Artikel 3:107: Verbintenissen met betrekking tot de teruggave van goederen

De verhuurder moet:

(a) alle stappen ondernemen die redelijkerwijze mogen worden verwacht om het de huurder mogelijk te maken zijn verbintenis tot teruggave van de goederen te vervullen; en
(b) de teruggave van de goederen aanvaarden zoals vereist door de overeenkomst.

Hoofdstuk 4:
Rechtsmiddelen van de huurder

Artikel 4:101: Overzicht van rechtsmiddelen

Indien de verhuurder in gebreke blijft zijn contractuele verbintenissen na te komen, dan heeft de huurder in overeenstemming met Boek III, Hoofdstuk 3 en de bepalingen van dit hoofdstuk het recht:

(a) de uitvoering in natura van de verbintenis af te dwingen;
(b) zich te onthouden van het presteren van de wederkerige verbintenis;
(c) de huur te beëindigen;
(d) de huurprijs te verminderen;
(e) schadevergoeding en interesten te eisen.

Artikel 4:102: Consumentenhuren

(1) De partijen kunnen niet afwijken van de regels van dit hoofdstuk ten nadele van een consument in een consumentenhuur.
(2) Niettegenstaande paragraaf (1), mogen de partijen overeenkomen om de aansprakelijkheid van de verhuurder te beperken voor verlies dat samenhangt met de handel, onderneming of beroep van de huurder. Een dergelijke bepaling mag echter niet worden ingeroepen indien dit in strijd zou zijn met de regels van de goede trouw en billijk handelen.

Artikel 4:103: Recht op verhaal van huurder bij gebrek aan conformiteit

(1) De huurder mag verhaal zoeken voor elk gebrek aan conformiteit van de goederen en elke uitgave verhalen die redelijkerwijze is gedaan, in zoverre de huurder gerechtigd is de uitvoering in natura af te dwingen overeenkomstig III. – 3:302.
(2) Niets in de voorgaande paragraaf tast het recht van de verhuurder aan om het gebrek aan conformiteit te remediëren overeenkomstig Boek III, Hoofdstuk 3, Sectie 2.

Artikel 4:104: Verminderen van huurprijs

(1) De huurder mag de huurprijs verminderen in de periode waarin het nut of de waarde van de prestatie van de verhuurder is gedaald te wijten aan vertraging of een gebrek aan conformiteit, op voorwaarde dat de nuts- of waardevermindering niet door de huurder werd veroorzaakt.
(2) De huurprijs mag worden verminderd, zelfs voor periodes waarin de verhuurder het recht behoudt om te presteren of te remediëren overeenkomstig III. – 3:103, III. – 3:202(2) en III. – 3:205.
(3) Niettegenstaande de regel in paragraaf (1), kan de huurder het recht verliezen om de huurprijs te verminderen voor een periode overeenkomstig IV.B – 4:106.

Artikel 4:105: Vervanging

Indien de huurder de huur heeft beëindigd en op redelijke wijze en binnen een redelijke termijn een vervangende verrichting heeft afgesloten, mag de huurder, indien hij recht op schadevergoeding heeft, het verschil tussen de waarde van de beëindigde huur en de vervangende verrichting, alsook enig ander verlies recupereren.

Artikel 4:106: Kennisgeving van gebrek aan conformiteit

(1) De huurder kan geen verhaal zoeken voor een gebrek aan conformiteit tenzij hiervan kennis werd gegeven aan de verhuurder. Indien deze kennisgeving niet tijdig gebeurde, zal met het gebrek aan conformiteit geen rekening worden gehouden voor de periode van deze onredelijke vertraging. De kennisgeving wordt steeds als tijdig beschouwd, indien ze werd gegeven binnen een redelijke termijn nadat de huurder op de hoogte was van het gebrek aan conformiteit, of redelijkerwijze kon worden verwacht daarvan op de hoogte te zijn.
(2) Indien de huurtijd is beëindigd, zijn de bepalingen van III. – 3:107 van toepassing.
(3) De verhuurder kan zich niet beroepen op de bepalingen van paragraaf (1) en (2), indien het gebrek aan conformiteit betrekking heeft op feiten die de verhuurder kende of die hij redelijkerwijze kan worden verwacht te hebben gekend, en die de verhuurder niet aan de huurder kenbaar maakte.

Artikel 4:107: Rechtsmiddelen in verband met de leverancier van de goederen

(1) Dit artikel is van toepassing indien:
   (a) de verhuurder, volgens de specificaties van de huurder, de goederen heeft verworven van een door de huurder gekozen leverancier;
   (b) de huurder, in het bepalen van de specificaties van de goederen en het kiezen van de leverancier, niet hoofdzakelijk vertrouwt op de vakbekwaamheid en het beoordelingsvermogen van de verhuurder;
   (c) de huurder de modaliteiten van het leveringscontract goedkeurt;
   (d) de verbintenissen van de leverancier volgens de leveringsovereenkomst verschuldigd zijn, bij wet of bij contract, aan de huurder als partij bij de leveringsovereenkomst of alsof de huurder een partij was bij die overeenkomst; en

(e) de verbintenissen die de leverancier aan de huurder verschuldigd is niet kunnen worden gewijzigd zonder toestemming van de huurder.

(2) De huurder kan geen uitvoering vanwege de verhuurder eisen, de huurprijs verminderen of schadevergoeding of interesten eisen, omwille van laattijdige levering of een gebrek aan conformiteit, tenzij de niet-uitvoering het gevolg is van een handeling of een nalaten van de verhuurder. Deze bepaling belet niet dat de huurder het recht behoudt de goederen te weigeren, de huur te beëindigen of, voorafgaand aan het aanvaarden van de goederen, de huurprijs achter te houden, in zoverre de huurder zich op deze rechtsmiddelen zou kunnen beroepen als partij bij de leveringsovereenkomst.

(3) De bepaling in paragraaf (2) belet geen enkel rechtsmiddel van de huurder indien een recht of een aanspraak van een derde partij, het onafgebroken gebruik van de goederen door de huurder volgens de overeenkomst, zou beletten of dat op enige andere wijze mogelijk zou hinderen.

(4) De huurder kan de leveringsovereenkomst niet beëindigen zonder de toestemming van de verhuurder.

Hoofdstuk 5:
Verbintenissen van de huurder

Artikel 5:101: Verbintenis tot betaling huurprijs

(1) De huurder moet de huurprijs betalen die werd bepaald of bepaalbaar is volgens de bepalingen en modaliteiten zoals overeengekomen door de partijen of volgens II. – 9:103.

(2) De huurprijs is verschuldigd van bij het begin van de huurtijd.

Artikel 5:102: Tijdstip van betaling

De huurprijs moet worden betaald:

(a) op het einde van elke periode waarvoor de huurprijs werd overeengekomen, of

(b) indien de huurprijs niet werd overeengekomen voor bepaalde periodes, bij het verstrijken van een bepaalde huurtijd, of

(c) indien geen bepaalde huurtijd werd overeengekomen en de huurprijs niet voor bepaalde periodes is overeengekomen, op het einde van redelijke tussenperiodes.

Artikel 5:103: Aanvaarding van goederen

De huurder moet:

(a) alle stappen ondernemen die redelijkerwijze kunnen worden verwacht om de verhuurder toe te laten zijn verbintenis te vervullen om de goederen ter beschikking te stellen bij de aanvang van de huurtijd, en

(b) de controle over de goederen nemen zoals de overeenkomst het voorschrijft.

Artikel 5:104: Gebruik van de goederen in overeenstemming met de overeenkomst

(1) De huurder moet:

(a) de vereisten en de beperkingen in acht nemen volgend uit de bepalingen en modaliteiten overeengekomen door de partijen;

(b) de goederen gebruiken en behandelen met de zorg die een redelijke huurder gezien de omstandigheden zou uitoefenen, rekening houdend met de duur van de huurtijd, het doel van de huur en de aard van de goederen; en

(c) alle maatregelen nemen die gewoonlijk noodzakelijk worden geacht om de normale standaard en functioneren van de goederen te waarborgen, voor zover dit redelijk is, rekening houdend met de duur van de huurtijd, het doel van de huur en de aard van de goederen.

(2) Indien de huurprijs wordt berekend rekening houdende met de afschrijving van de kost van de goederen door de huurder, moet de huurder, gedurende de huurtijd, de goederen bewaren in hun staat van bij de aanvang van de huurtijd, behoudens de normale slijtage voor die soort van goederen.

Artikel 5:105: Tussenkomst om gevaar en schade aan de goederen te vermijden.

De huurder moet onderhoud en herstellingen verrichten die gewoonlijk door de verhuurder worden gedaan, indien deze maatregelen nodig zijn om gevaar of schade aan de goederen te vermijden, en het onmogelijk of onpraktisch is voor de verhuurder, maar niet voor de huurder, om te verzekeren dat deze maatregelen worden genomen. De huurder heeft recht op schadeloosstelling vanwege de verhuurder, of in voorkomend geval, recht op terugbetaling ingevolge een verbintenis of uitgave (ofwel in geld of andere goederen), voor zover redelijkerwijze opgelopen met het oog op en in het raam van de tussenkomst.

Artikel 5:106: Vergoeding voor onderhoud en verbeteringen

De huurder kan geen vergoeding eisen voor onderhoud of verbeteringen aan de goederen. Het voorgaande belet noch beperkt enige eis die de huurder zou kunnen hebben voor schadevergoeding, of enig recht of aanspraak die de huurder zou kunnen hebben onder IV.B – 4:103, IV.B – 5:105 of Boek VIII.

Artikel 5:107: Informatieverplichting

(1) De huurder moet de verhuurder inlichten over elke schade aan of gevaar voor de goederen, en evenzeer van elk recht of aanspraak van een derde partij, indien deze omstandigheden normaliter zouden nopen tot actie vanwege de verhuurder.

(2) De verhuurder moet over de omstandigheden en hun aard worden ingelicht, binnen een redelijke termijn nadat de huurder dit wist of redelijkerwijze kon worden geacht te hebben geweten.

Artikel 5:108: Herstellingen en onderzoek door de verhuurder

(1) De huurder moet herstellingswerken en andere werken aan de goederen toelaten die nodig zijn om de goederen te bewaren, defecten op te lossen en gevaar te voorkomen. Indien mogelijk, moet de verhuurder een redelijke tijd voorafgaand aan het nemen van dergelijke maatregelen de huurder hierover informeren. Deze verbintenis belet de huurder niet om de huurprijs te verminderen overeenkomstig IV.B – 4:104.

(2) De huurder moet de uitvoering van werken aan de goederen, zelfs deze die niet onder paragraaf (1) vallen, toelaten, tenzij er een gegronde reden bestaat om bezwaren tegen dergelijke werken te maken.

(3) De huurder moet het onderzoek van de goederen voor doeleinden aangegeven in paragraaf (1) toelaten. De huurder moet ook het onderzoek van de goederen door een potentiële toekomstige huurder aanvaarden, gedurende een redelijke periode voor het verstrijken van de huur.

Artikel 5:109: Verbintenis tot teruggave van de goederen
Op het einde van de huurtijd is de huurder verplicht om de goederen terug te geven op de plaats waar zij aan de huurder ter beschikking werden gesteld.

Hoofdstuk 6:
Rechtsmiddelen van de verhuurder

Artikel 6:101: Overzicht van rechtsmiddelen
Indien de huurder in gebreke blijft zijn contractuele verbintenissen na te komen, dan heeft de verhuurder in overeenstemming met Boek III, Hoofdstuk 3 en de bepalingen van dit hoofdstuk het recht:
(a) de uitvoering in natura van de verbintenis af te dwingen;
(b) zich te onthouden van het presteren van de wederkerige verbintenis;
(c) de huur te beëindigen;
(d) schadevergoeding en interesten te eisen.

Artikel 6:102: Consumentenhuren
De partijen kunnen niet afwijken van de bepalingen van dit hoofdstuk ten nadele van een consument in een consumentenhuur.

Artikel 6:103: Recht om geldelijke verbintenissen af te dwingen
(1) De verhuurder is gerechtigd op de betaling van de huurprijs en andere verschuldigde sommen.
(2) Indien de verhuurder de goederen nog niet ter beschikking heeft gesteld van de huurder, en het duidelijk is dat de huurder onwillig zal zijn om controle over de goederen te nemen, mag de verhuurder niettemin doorgaan met de uitvoering van zijn verbintenis tot terbeschikkingstelling en betaling nastreven tenzij:
    (a) de verhuurder een redelijke vervangende verrichting had kunnen afsluiten, zonder betekenisvolle inspanningen of uitgaven; of
    (b) het nakomen van zijn verbintenis onredelijk zou zijn gelet op de omstandigheden.
(3) Indien de huurder de controle over de goederen heeft genomen, is de verhuurder gerechtigd op de betaling van gelijk welke som verschuldigd op basis van de overeenkomst. Dit omvat ook de toekomstige huurprijs, tenzij de huurder de goederen wenst terug te geven en het, gelet op die omstandigheden, voor de verhuurder redelijk zou zijn om de teruggave van de goederen te aanvaarden.

Artikel 6:104: Vervanging
Indien de verhuurder de huur heeft beëindigd en op redelijke wijze en binnen een redelijke termijn een vervangende verrichting heeft afgesloten, mag de verhuurder, indien hij recht op schadevergoeding heeft, het verschil tussen de waarde van de beëindigde huur en de vervangende verrichting, alsook enig ander verlies recupereren.

Artikel 6:105: Beperking van aansprakelijkheid in consumentenhuren

(1) In een consumentenhuur, kan de eis van de verhuurder tot schadevergoeding worden verminderd in de mate dat het verlies wordt beperkt door een verzekering die de goederen dekt, of in de mate dat het verlies zou beperkt geweest zijn door een verzekering, in omstandigheden waarin redelijkerwijze kan worden verwacht dat de verhuurder een dergelijke verzekering afsluit.
(2) De bepaling in paragraaf (1) is van toepassing naast de bepalingen van Boek III, Hoofdstuk 3, Sectie 7.

Hoofdstuk 7:
Nieuwe partijen en onderhuur

Artikel 7:101: Verandering van eigenaar en vervanging van de verhuurder

(1) Indien het eigendomsrecht van de verhuurder overgaat op een nieuwe eigenaar, treedt de nieuwe eigenaar van de goederen in de plaats van de verhuurder, als partij bij de huurovereenkomst, indien de huurder het bezit van de goederen heeft op het ogenblik dat het eigendomsrecht overgaat. De vorige eigenaar blijft in ondergeschikte orde aansprakelijk voor de niet-uitvoering van de huurovereenkomst, als een persoonlijke zekerheidssteller.
(2) Een vernietiging van de overgang van het eigendomsrecht plaatst de partijen terug in hun oorspronkelijke positie, behoudens voor uitvoering van verbintenissen en prestaties reeds geleverd op het ogenblik van de vernietiging.
(3) De bepalingen in de voorgaande paragrafen zijn eveneens van toepassing indien de verhuurder is opgetreden als houder van een recht anders dan het eigendomsrecht.

Artikel 7:102: Overdracht van het recht van de huurder op uitvoering

De rechten van de huurder op uitvoering volgens de huurovereenkomst kunnen niet worden overgedragen zonder de toestemming van de verhuurder.

Artikel 7:103 Onderhuur

(1) De huurder mag de goederen niet onderverhuren zonder toestemming van de verhuurder.
(2) Indien de toestemming voor een onderhuur wordt geweigerd zonder gegronde reden, kan de huurder de huur beëindigen door een redelijke opzegperiode te geven.
(3) In het geval van onderhuur, blijft de huurder aansprakelijk voor de uitvoering van zijn verbintenissen uit de huurovereenkomst.

Estonian[3]
IV raamat.B: Vallasasjade üürimine

1. Peatükk:
kohaldamisala ja üldsätted

Artikkel 1:101: Vallasasjade üürimine

(1) IV raamatu käesolevat osa kohaldatakse vallasasjade üürilepingutele.
(2) Vallasasjade üürileping on leping, millega üks pool (üürileandja) kohustub andma teisele poolele (üürnikule) õiguse ajutiselt kasutada asja üüri eest. Üür võib olla määratud rahas või muul viisil.
(3) IV raamatu käesolevat osa ei kohaldata lepingutele, kus pooled on kokku leppinud omandi üleminekus pärast kasutusõiguse lõppu, isegi juhul, kui pooled on lepingut nimetanud üürilepinguks.
(4) IV raamatu käesoleva osa kohaldamist ei välista asjaolu, et leping on sõlmitud finantseerimise eesmärgil, üürileandja on finantseerivaks pooleks või üürnikul on õigus saada asja omanikuks.
(5) IV raamatu käesolev osa reguleerib ainult lepingulisi suhteid üürileandja ja üürniku vahel.

Artikkel 1:102: Tarbijüür

Tarbijaüür IV raamatu käesoleva osa tähenduses on leping, millega majandus- või kutsetegevuses tegutsev isik üürib asja füüsilisele isikule, kes teeb tehingu peamiselt eesmärgil, mis ei seondu selle isiku ameti-, majandus- või kutsetegevusega (tarbija).

2. Peatükk:
üüriperiood

Artikkel 2:101: Üüriperioodi algus

(1) Üüriperiood algab:
  (a) ajal, mis tuleneb poolte vahel kokku lepitud tingimustest;
  (b) kui on kindlaks määratud ajavahemik, millal üüriperiood algab, sellel ajavahemikul üürileandja valitud ajal, välja arvatud juhul, kui asjaoludest tulenevalt on üürnikul õigus valida üüriperioodi alguse aeg;
  (c) muudel juhtudel mõistliku aja jooksul pärast lepingu sõlmimist üksõik kumma poole nõudel.
(2) Kui üürnik võtab asja oma valdusse enne lõikest 1 tulenevat aega, algab üüriperiood valduse ülemineku ajal.

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[3] Translated by *Karl Kull* in collaboration with Professor *Irene Kull* (Tartu).

Artikkel 2:102: Üüriperioodi lõppemine

(1) Tähtajaline üüriperiood lõpeb ajal, mis tuleneb poolte vahel kokku lepitud tingimustest. Tähtajalist üüriperioodi ei saa varem ühepoolselt avalduse tegemisega lõpetada.
(2) Tähtajatu üüriperiood lõpeb ükskõik kumma poole lõpetamisavalduses kindlaks määratud ajal.
(3) Lõpetamisavalduses kindlaks määratud aeg peab olema kooskõlas poolte vahel kokku lepitud tingimustega, kokkuleppe puudumisel mõistlik aeg lõpetamisavalduse teise poole poolt kättesaamisest arvates.

Artikkel 2:103: Vaikiv pikendamine

(1) Üüriperiood loetakse tähtajatuna pikenenuks, kui:
  (a) üürnik jätkab üürileandja teadmisel asja kasutamist pärast üüriperioodi lõppemist;
  (b) asja kasutamine on jätkunud sama ajavahemiku kestel, kui on nõutud lõpetamismisavalduse tegemiseks; ning
  (c) asjaolud vastavad kummagi poole vaikivale nõusolekule üüriperioodi selliseks pikendamiseks.
(2) Kumbki pool saab ära hoida üüriperioodi vaikiva pikenemise avalduse tegemisega teisele poolele enne, kui üüriperiood loetakse vaikivalt pikenenuks. Avalduses tuleb ainult ära näidata, et pool loeb üüriperioodi lõppenuks selle lõppemise kuupäevast.
(3) Kui käesoleva artikli alusel pikeneb üüriperiood, pikeneb vastavalt ka üürileping. Teised lepingutingimused pikendamise tõttu ei muutu.
(4) Vaatamata lõike 3 teisele lausele, ei tohi üüri suurus pärast pikendamist olla ebamõistlik eelnevalt tasutud üüriga võrreldes, kui pikendamisele eelnenud üüri arvutamisel võeti arvesse amortisatsioonist tulenevat asja väärtuse vähenemist. Tarbijaüüri korral ei või pooled tarbija kahjuks käesoleva lõike sätetest kõrvale kalduda.
(5) Käesoleva artikli alusel pikendamine ei suurenda ega laienda kolmandate isikute antud tagatisi.

3. Peatükk:
Üürileandja kohustused

Artikkel 3:101: Asja kasutamise võimalikkus

(1) Üürileandja on kohustatud tegema üürnikule võimalikuks asja kasutamise üüriperioodi alguseks ja kohas, mis on kindlaks määratud artikliga III. – 2:101.
(2) Vaatamata eelmises lõikes sätestatule, peab üürileandja tegema üürnikule võimalikuks asja kasutamise üürniku tegevuskohas või asjaoludest tulenevalt üürniku elukohas, kui üürileandja üürniku juhiste kohaselt omandab asja üürniku valitud müüjalt.
(3) Üürnikule peab olema tagatud asja kasutamise võimalus kogu üüriperioodi kestel ning kolmandal isikul ei tohi olla nõuet või muud õigust asja suhtes, mis takistab või muul viisil piirab üürnikul asja lepingujärgset kasutamist.
(4) Üürileandja kohustusi asja kaotsimineku või kahjustamise korral üüriperioodi kestel reguleerib artikkel IV.B – 3:104.

Artikkel 3:102: Asja vastavus lepingule üüriperioodi alguses

Asi vastab üüriperioodi alguses poolte vahel kokku lepitud tingimustele, kui asi on:
(a) koguse, kvaliteedi ja kirjelduse osas vastav lepingutingimustele;
(b) pakendatud või hoiustatud vastavalt poolte vahel kokku lepitud tingimustele;
(c) varustatud lisade, paigaldamisjuhendite või muude poolte vahel kokku lepitud juhenditega; ning
(d) vastavuses artiklis IV.B – 3:103 sätestatuga.

Artikkel 3:103: Otstarbe, kvaliteedi, pakendi jne sobivus

Asi peab:
(a) olema sobiv eriliseks otstarbeks, millest üürileandjale oli teatatud lepingu sõlmimisel, välja arvatud juhul, kui üürnik asjaoludest tulenevalt ei tuginenud või tal ei olnud mõistlik tugineda üürileandja oskustele ja teadmistele;
(b) olema sobiv otstarbeks, milleks seda liiki asju tavaliselt kasutatakse;
(c) omama näidise või mudelina üürnikule üürileandja poolt avaldatud asja kvaliteeti;
(d) olema pakendatud või hoiustatud seda liiki asjadele tavaliselt omasel viisil, sellise viisi puudumisel aga asja säilimiseks ja kaitseks vajalikul viisil;
(e) olema varustatud lisade, paigaldamisjuhendite ja muude juhenditega, mida üürnik võib mõistlikult eeldades oodata; ning
(f) olema kvaliteedi ja kasutusomaduste osas selline, nagu üürnik võib mõistlikult eeldada.

Artikkel 3:104: Asja vastavus üüriperioodi kestel

(1) Arvestades harilikku kulumist ja kahjustumist, peab üüriperioodi kestel asi:
  (a) jääma koguse, kvaliteedi ja kirjelduse osas lepingutingimustele vastavaks; ning
  (b) jääma sobivaks eesmärgipäraseks kasutamiseks, isegi juhul, kui see nõuab asja muutmist.
(2) Lõikes 1 sätestatut ei kohaldata, kui üüri arvutamisel võetakse arvesse amortisatsioonist tulenevat asja väärtuse vähenemist.
(3) Lõikes 1 sätestatu ei mõjuta üürniku punktis IV.B – 5:104(1)(c) sätestatud kohustusi.

Artikkel 3:105: Ebaõige paigaldamine tarbijaüüri korral

Kui tarbijaüüri korral asi paigaldati ebaõigesti, võrdsustatakse sellest tulenevat lepingutingimustele mittevastavust asjast tuleneva lepingutingimustele mittevastavusega, kui:
(a) asja paigaldas üürileandja või seda tehti tema vastutusel; või
(b) asja pidi paigaldama üürnik ja ebaõige paigaldamine tulenes puudulikust paigaldamisjuhendist.

Artikkel 3:106 Sätetest kõrvalekaldumise tarbijaüüri korral

Tarbijaüüri korral ei ole tarbijale siduv lepingutingimus või kokkulepe üürileandjaga, mis on sõlmitud enne üürniku teavitamist asja lepingutingimustele mittevastavusest ja millega otseselt või kaudselt välistatakse või piiratakse üürniku õigusi, mis tulenevad üürileandja kohustusest tagada asja vastavus lepingule.

Artikkel 3:107: Kohustused üüritud asja tagastamisel

Üürileandja on kohustatud:
(a) tegema kõik mõistlikult oodatava, et üürnikul oleks võimalik täita asja tagastamise kohustust; ning
(b) võtma asja lepingutingimuste kohaselt vastu.

4. Peatükk:
Üürniku õiguskaitsevahendid

Artikkel 4:101: Ülevaade õiguskaitsevahenditest
Kui üürileandja on lepingust tulenevat kohustust rikkunud, võib üürnik III raamatu 3. peatüki ja käesoleva peatüki sätete järgi:
(a) nõuda kohustuse täitmist;
(b) keelduda võlgnetava kohustuse täitmisest;
(c) lõpetada üürimine;
(d) alandada üüri;
(e) nõuda kahju hüvitamist ja intressi maksmist.

Artikkel 4:102: Tarbijaüür
(1) Tarbijaüüri korral ei või pooled tarbija kahjuks käesoleva peatüki sätetest kõrvale kalduda.
(2) Vaatamata lõikes 1 sätestatule, võivad pooled kokku leppida üürileandja vastutuse piiramises, kui kahju on tekkinud seoses üürniku ameti-, majandus- või kutsetegevusega. Sellisele tingimusele ei või tugineda, kui see on vastuolus hea usu ja ausa kauplemise põhimõtetega.

Artikkel 4:103: Üürniku õigus lepingutingimustele mittevastavuse kõrvaldamisele
(1) Üürnik võib asja lepingutingimustele mittevastavuse kõrvaldada ja nõuda selleks tehtud mõistlike kulutuste hüvitamist ulatuses, mis vastab üürniku õigusele nõuda kohustuse täitmist artikli III. – 3:302 järgi.
(2) Lõikes 1 sätestatu ei mõjuta üürileandja õigust heastada lepingutingimustele mittevastavus III raamatu 3. peatüki 2. jao sätete järgi.

Artikkel 4:104: Üüri alandamine
(1) Üürnik võib alandada üüri ajavahemiku eest, mil üürileandja täitmise väärtus on viivituse või lepingutingimustele mittevastavuse tõttu vähenenud, ulatuses, mis vastab väärtuse vähenemisele, mida ei ole põhjustanud üürnik.
(2) Üüri võib alandada ka ajavahemiku eest, mil üürileandjal on õigus oma kohustust täita või rikkumist heastada artiklite III. – 3:103, 3:202(2) ja 3:205 järgi.
(3) Vaatamata lõikes 1 sätestatule, võib üürnik kaotada õiguse alandada üüri vastavalt artiklile IV.B – 4:106.

Artikkel 4:105: Asendustehing
Kui üürnik lõpetas üürimise ja tegi pärast seda mõistliku aja jooksul ja mõistlikul viisil asendustehingu, võib üürnik juhul, kui tal on õigus nõuda kahju hüvitamist, nõuda üürileandjalt lepingujärgse hinna ja asendustehingust tuleneva hinna vahe, samuti muu kahju hüvitamist.

Artikkel 4:106: Mittevastavusest teatamine
(1) Üürnik ei või õiguskaitsevahendite kohaldamisel lepingutingimustele mittevastavusele tugineda, kui lepingutingimustele mittevastavusest ei ole üürileandjale teatatud. Kui üürnik ei teata sellest õigeaegselt, ei arvestata lepingutingimustele mittevastavust aja jooksul, mis on

võrdne ebamõistliku viivitusega. Teatamist loetakse alati õigeaegseks, kui see on tehtud mõistliku aja jooksul pärast seda, kui üürnik asja lepingutingimustele mittevastavusest teada sai või mõistlikult pidi teada saama.

(2) Pärast üüriperioodi lõppemist kohaldatakse artiklis III. – 3:107 sätestatut.

(3) Üürileandja ei või tugineda lõigetes 1 ja 2 sätestatule, kui lepingutingimustele mittevastavus oli tingitud asjaoludest, millest üürileandja teadis või mõistlikkuse põhimõttest lähtudes pidi teadma ning millest üürileandja üürnikku ei teavitanud.

Artikkel 4:107: Õiguskaitsevahendid müüja suhtes

(1) Käesolevat artiklit kohaldatakse juhul, kui:
   (a) üürileandja omandas üürniku juhiste kohaselt asja üürniku valitud müüjalt;
   (b) üürnik ei tugine asja omadusi kindlaksmäärates ja müüjat valides eelkõige üürileandja oskustele ja teadmistele;
   (c) üürnik kiidab heaks müügilepingu tingimused;
   (d) müüja müügilepingust tulenevad kohustused võlgnetakse seaduse või lepingu alusel üürnikule kui müüjaga lepingu sõlminud poolele või nagu oleks üürnik olnud müüjaga sõlmitud lepingu pool; ning
   (e) müüja ei või muuta üürnikule võlgnetavaid kohustusi ilma üürniku nõusolekuta.

(2) Üürnik ei või üürileandjalt nõuda täitmist, üüri alandamist või kahju hüvitamist või intressi maksmist hilinenud täitmise või asja lepingutingimustele mittevastavuse korral, välja arvatud juhul, kui mittekohane täitmine on tingitud üürileandja teost või tegevusetusest. Käesolevas lõikes sätestatu ei välista üürniku õigust asja mitte vastu võtta, üürimine lõpetada või üüri maksmisest enne asja vastuvõtmist keelduda ulatuses, millises saaks üürnik kasutada õiguskaitsevahendeid müügilepingu poolena.

(3) Lõikes 2 sätestatu ei välista üürniku õigust kasutada õiguskaitsevahendeid, kui kolmandal isikul on asja suhtes nõue või muu õigus, mis takistab või muul viisil piirab üürnikul asja lepingujärgset kasutamist.

(4) Üürnik ei või ilma üürileandja nõusolekuta müüjaga sõlmitud lepingut lõpetada.

5. Peatükk:
Üürniku kohustused

Artikkel 5:101: Kohustus maksta üüri

(1) Üürnik on kohustatud maksma kindlaksmääratud või poolte vahel kokku lepitud tingimustest või artiklist II. – 9:103 tulenevat üüri.

(2) Üüri arvestatakse üüriperioodi algusest alates.

Artikkel 5:102: Üüri maksmise aeg

Üüri tuleb maksta:

(a) pärast iga ajavahemiku möödumist, kui on kokku lepitud, et üüri arvestatakse ajavahemike järgi, või

(b) tähtajalise üüriperioodi lõppemisel, kui üüri ei arvestata ajavahemike järgi, või

(c) iga mõistliku ajavahemiku järel, kui üürileping on tähtajatu ja üüri ei arvestata teatud ajavahemike järgi.

Artikkel 5:103: Asja vastuvõtmine

Üürnik on kohustatud:

(a) tegema kõik mõistlikult oodatava, et üürileandjal oleks võimalik täita oma kohustus teha asja lepingujärgne kasutamine võimalikuks üüriperioodi alguseks; ning

(b) võtma asja lepingutingimuste kohaselt vastu.

Artikkel 5:104: Asja lepingujärgne kasutamine

(1) Üürnik on kohustatud:

(a) järgima poolte kokkuleppest tulenevaid nõudeid ja piiranguid;

(b) kasutama asja asjaoludest tulenevalt mõistlikult oodatava hoolega, arvestades üüriperioodi pikkust, üüri eesmärki ja asja iseloomu; ning

(c) tegema kõik tavaliselt vajaliku, et hoida asi sobivas seisundis ja tagada mõistlikkuse piires asja sihtotstarbelise kasutamise võimalus, arvestades üüriperioodi pikkust, üüri eesmärki ja asja iseloomu.

(2) Kui üüri arvutamisel võetakse arvesse amortisatsioonist tulenevat asja väärtuse vähenemist, peab üürnik hoidma asja seisundis, milles see oli üüriperioodi alguses, arvestades sellist liiki asja sihtotstarbelisest kasutamisest tingitud harilikku kulumist ja kahjustumist.

Artikkel 5:105: Sekkumine asja ähvardava ohu või kahju vältimiseks

Üürnik on kohustatud tegema hooldus- ja parandustöid, mida tavaliselt teeb üürileandja, kui need on vajalikud asja ähvardava ohu või kahju ärahoidmiseks ning nende tegemine on üürieandjale, kuid mitte üürnikule, võimatu või ebamõistlikult koormav. Üürnikul on õigus nõuda üürileandjalt asjaoludele vastavalt kohustuse täitmise või kantud kulutuste eest hüvitist (kas rahas või muul viisil) ulatuses, mis oli sekkumise eesmärkide saavutamiseks mõistlikult vajalik.

Artikkel 5:106: Asja hooldamisest ja parendamisest tingitud kulude hüvitamine

Üürnik ei või nõuda asja hooldamisest ja parendamisest tingitud kulude hüvitamist. Eelnev lause ei välista ega piira üürniku õigust nõuda kahju hüvitamist või muud üürniku õigust või nõuet, mis tuleneb artiklitest IV.B – 4:103, IV.B – 5:105 või VIII raamatust.

Artikkel 5:107: Teatamiskohustus

(1) Üürnik peab üürileandjale teatama kahjust või ohust asjale ning kolmandate isikute õigustest või nõuetest, kui need asjaolud nõuavad tavaliselt üürileandjalt teatud käitumist.

(2) Asjaoludest ja nende iseloomust tuleb üürileandjale teatada mõistliku aja jooksul pärast seda, kui üürnik neist teada sai või mõistlikult pidi teada saama.

Artikkel 5:108: Üürileandja parandustööd ja asja ülevaatamine.

(1) Üürnik peab taluma asja suhtes tehtavaid töid ja muid mõjutusi, mis on vajalikud asja säilitamiseks, puuduste kõrvaldamiseks ja kahju ärahoidmiseks. Võimaluse korral peab üürileandja teatama üürnikule tehtavatest töödest mõistlikul ajal ette. Asja suhtes tehtavate tööde ja muude mõjutuste talumise kohustus ei välista üürniku õigust alandada üüri artikli IV.B – 4:104 alusel.

(2) Üürnik peab taluma ka lõikes 1 nimetamata töid, välja arvatud juhul, kui üürnikul on mõjuv põhjus sellest keeldumiseks.

(3) Üürnik peab lubama üürileandjal lõikes 1 sätestatud eesmärgil asja üle vaadata. Mõistliku aja jooksul enne üüriperioodi lõppu peab üürnik lubama asja üle vaadata ka tulevasel võimalikul üürileandjal.

Artikkel 5:109: Asja tagastamise kohustus
Üürnik peab üüritud asja pärast üüriperioodi lõppemist tagastama kohas, kus tehti võimalikuks asja lepingujärgne kasutamine.

6. Peatükk:
Üürileandja õiguskaitsevahendid

Artikkel 6:101: Ülevaade õiguskaitsevahenditest
Kui üürnik on lepingust tulenevat kohustust rikkunud, võib üürileandja III raamatu 3. peatüki ja käesoleva peatüki sätete järgi:
(a) nõuda kohustuse täitmist;
(b) keelduda võlgnetava kohustuse täitmisest;
(c) lõpetada üürimine;
(d) nõuda kahju hüvitamist ja intressi maksmist.

Artikkel 6:102: Tarbijaüür
Tarbijaüüri korral ei või pooled tarbija kahjuks käesoleva peatüki sätetest kõrvale kalduda.

Artikkel 6:103: Õigus nõuda rahalise kohustuse täitmist
(1) Üürileandjal on õigus nõuda üüri ja muude võlgnetavate summade maksmist.
(2) Kui üürileandja ei ole veel üürnikule asja lepingujärgset kasutamist võimalikuks teinud ja on ilmne, et üürnik ei soovi asja oma valdusse võtta, võib üürileandja sellele vaatamata jätkata oma kohustuse täitmist ning nõuda maksmist, välja arvatud juhul, kui:
    (a) üürileandja oleks saanud teha mõistliku asendustehingu ilma oluliste kulutuste või pingutuseta; või
    (b) asjaoludest tulenevalt ei oleks täitmine mõistlik.
(3) Kui üürnik on võtnud asja oma valdusse, võib üürileandja nõuda kõigi lepingu järgi võlgnetavate summade tasumist. Nende hulka kuulub ka tulevane üür, välja arvatud juhul, kui üürnik soovib asja tagastada ja üürileandjal oleks asjaoludest tulenevalt mõistlik asi tagasi võtta.

Artikkel 6:104: Asendustehing
Kui üürileandja lõpetas üürimise ja tegi pärast seda mõistliku aja jooksul ja mõistlikul viisil asendustehingu, võib üürileandja juhul, kui tal on õigus nõuda kahju hüvitamist, nõuda üürnikult lepingujärgse hinna ja asendustehingust tuleneva hinna vahe, samuti muu kahju hüvitamist.
Artikkel 6:105: Vastutuse piiramine tarbijaüüri korral
(1) Tarbijaüüri korral võib üürileandjale hüvitatavat kahju vähendada kindlustuse poolt hüvitatud ulatuses või ulatuses, mille oleks hüvitanud kindlustus, kui asjaoludest tulenevalt oleks üürileandjal olnud mõistlik võtta kindlustushüvitis vastu.
(2) Lõikes 1 sätestatut kohaldatakse lisaks III raamatu 3. peatüki 7. jaos sätestatule.

7. Peatükk:
Uued lepingupooled ja allüür

Artikkel 7:101: Omaniku vahetumine ja üürileandja asendumine

(1) Kui üüritud asja omanik vahetub, lähevad üürilepingust tulenevad üürileandja õigused ja kohustused üle asja uuele omanikule juhul, kui asi oli üürniku valduses omandi ülemineku ajal. Eelmine üürileandja vastutab täiendavalt lepingujärgsete kohustuste täitmise eest nagu isikliku tagatise andja.
(2) Omandi tagasiandmine asetab pooled esialgsesse olukorda, välja arvatud omandi tagasiandmise ajaks juba täidetud kohustuste osas.
(3) Käesolevas artiklis sätestatu kehtib ka juhul, kui üürileandjal oli asja suhtes muu õigus kui omand.

Artikkel 7:102: Üürniku kasutusõiguse loovutamine

Üürnik ei või loovutada lepingust tulenevat õigust asja kasutada kolmandale isikule ilma üürileandja nõusolekuta.

Artikkel 7:103: Allüür

(1) Üürnik ei või anda asja allüürile üürileandja nõusolekuta.
(2) Kui üürileandja keeldub mõjuva põhjuseta andmast nõusolekut asja allüürile andmiseks, võib üürnik üürimise lõpetada sellest mõistliku aja jooksul ette teatades.
(3) Allüüri korral jääb üürnik vastutavaks üürilepingu täitmise eest.

French[4]

Livre IV.B: Location de meuble

Chapitre 1:
Champ d'application et dispositions générales

Article 1:101: Location de meuble

(1) Cette partie du livre IV est applicable aux contrats de location de meuble.
(2) Un contrat de location de meuble est un contrat par lequel une partie, le bailleur, s'engage à procurer à l'autre partie, le locataire, la jouissance temporaire d'un bien meuble en contrepartie d'un loyer. Le loyer peut être stipulé en argent ou en nature.
(3) Cette partie du livre IV ne s'applique pas aux contrats par lesquels les parties sont convenues du transfert de la propriété du bien meuble au terme de la mise à disposition du bien, même si les parties ont qualifié le contrat de contrat de location.
(4) Le fait que le contrat poursuive un but financier, que le bailleur assume un rôle de financier ou que le locataire ait une option pour devenir propriétaire du bien meuble, n'exclut pas l'application de cette partie du livre IV.
(5) Cette partie du livre IV ne régit que la relation contractuelle entre le bailleur et le locataire.

Article 1:102: Location de bien de consommation

Pour l'application de cette partie du livre IV, une location de bien de consommation est un contrat par lequel un professionnel donne en location un bien meuble à une personne physique qui agit principalement à des fins n'ayant pas de lien avec son activité commerciale, ses affaires ou sa profession.

Chapitre 2:
Durée de la location

Article 2:101: Point de départ de la location

(1) La location prend effet:
  (a) à un moment déterminable en fonction de ce qui a été convenu par les parties;
  (b) si une période pendant laquelle la location doit commencer peut être déterminée, à tout moment choisi par le bailleur durant cette période, à moins que les circonstances n'indiquent que le choix de ce moment appartient au locataire;
  (c) dans tous les autres cas, à un moment raisonnable après la conclusion du contrat, à la requête de l'une des parties.
(2) La location prend effet au moment où le locataire prend le contrôle du bien si ce moment est antérieur à celui qui résulterait du paragraphe (1).

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4 Translated by *Centre de droit des obligations* (Université Catholique de Louvain) and Professor *Jérôme Huet* (Paris).

Article 2:102: Fin de la location

(1) Une location à durée déterminée prend fin au moment déterminable en fonction de l'accord des parties. On ne peut pas mettre prématurément fin de manière unilatérale au contrat de location à durée déterminée.
(2) Une location à durée indéterminée prend fin au moment indiqué dans la notification faite par l'une ou l'autre des parties.
(3) Le moment indiqué dans la notification doit être conforme à ce qui a été convenu par les parties ou, si rien ne peut être déterminé dans l'accord des parties, il doit laisser un délai raisonnable à compter du moment où la notification est parvenue à l'autre partie.

Article 2:103: Tacite reconduction

(1) Le contrat de location est reconduit pour une durée indéterminée lorsque:
  (a) le locataire a continué à utiliser le bien à l'expiration de la durée de la location, au vu et au su du bailleur,
  (b) la jouissance du bien s'est poursuivie pendant une durée équivalente à celle du préavis requis pour y mettre fin; et que
  (c) les circonstances ne sont pas inconciliables avec le consentement tacite des parties à une telle reconduction.
(2) Chacune des parties peut s'opposer à la reconduction tacite en le notifiant à l'autre partie, avant l'entrée en vigueur de cette reconduction. La notification doit seulement indiquer que son auteur considère que la location prend fin à son échéance.
(3) La location dont la durée est prolongée en application de cet article est reconduite dans les mêmes conditions. Les autres dispositions de la convention ne sont pas modifiées par l'effet de la reconduction.
(4) Nonobstant la seconde phrase du paragraphe (3), lorsque le loyer afférent à la période antérieure à la reconduction a été fixé en tenant compte de l'amortissement du coût du bien par le locataire, le loyer afférent à la période postérieure à la reconduction ne doit pas être déraisonnable par rapport au montant déjà payé. Les parties ne peuvent déroger au présent paragraphe au détriment du consommateur dans une location de bien de consommation.
(5) La reconduction en application de cet article n'augmente, ni n'étend les sûretés consenties par des tiers.

Chapitre 3:
Obligations du bailleur

Article 3:101: Mise à disposition du bien

(1) Le bailleur est tenu de mettre le bien loué à disposition du locataire au plus tard au moment où la location prend effet et au lieu déterminé par l'article III. – 2:101.
(2) Nonobstant la règle exprimée au paragraphe précédent, le bailleur doit mettre le bien loué à la disposition du locataire au lieu où le locataire exerce son activité ou, le cas échéant, au lieu de la résidence habituelle du locataire si le bailleur, à la demande du locataire, acquiert le bien auprès d'un fournisseur choisi par le locataire.
(3) Le bien loué doit demeurer à la disposition du locataire pendant toute la durée de la location, libre de tout droit ou de toute réclamation émanant d'un tiers, qui empêche son utilisation conforme au contrat par le locataire ou peut interférer avec cette utilisation;

(4) Les obligations du bailleur en cas de perte ou de dégradations du bien loué en cours de contrat sont régies par l'article IV.B – 3:104.

Article 3:102: Conformité du bien au moment où la location prend effet

Pour être conforme au contrat au moment où la location prend effet, le bien doit:
(a) répondre exigences de quantité et de qualité et aux spécifications prévues par le contrat;
(b) comporter l'emballage ou le conditionnement prévu par le contrat;
(c) être fourni avec les accessoires, instructions d'installation ou autres instructions requises par le contrat; et
(d) respecter les exigences de l'article IV.B – 3:103.

Article 3:103: Adaptation aux besoins, qualités, emballage, etc.

Le bien doit:
(a) être adapté au besoin particulier du locataire s'il a été porté à la connaissance du bailleur au moment de la conclusion du contrat, excepté lorsque les circonstances démontrent que le locataire ne comptait pas, ou qu'il n'était pas raisonnable pour le locataire de compter sur la compétence et le jugement du bailleur;
(b) être adapté aux besoins pour lesquels un bien ayant les mêmes caractéristiques est habituellement utilisé;
(c) posséder les qualités du bien dont le bailleur a montré au locataire un échantillon ou un modèle;
(d) être conditionné ou emballé de la manière habituelle pour un bien de ce type ou, à défaut, d'une manière adéquate pour conserver et protéger le bien;
(e) être fourni avec les accessoires, instructions d'installation et autres instructions que le locataire peut raisonnablement s'attendre à recevoir: et
(f) posséder les qualités et le degré de performance que le locataire peut raisonnablement attendre.

Article 3:104: Conformité du bien pendant la location

(1) Pendant la location et sous réserve de l'usure normale, le bien doit:
  (a) conserver les quantité, qualité et caractéristiques requises par le contrat; et
  (b) demeurer en état de répondre au besoin convenu par les parties, même lorsque le respect de cette condition nécessite que des modifications soient apportées au bien.
(2) Le paragraphe 1 ne s'applique pas lorsque le loyer est calculé en tenant compte de l'amortissement du coût du bien par le locataire.
(3) Aucune disposition du paragraphe 1 ne peut porter atteinte aux obligations du locataire prévues à l'article IV.B – 5:104(1)(c).

Article 3:105: Installation défectueuse dans une location de bien de consommation

Lorsque, dans une location de bien de consommation, le bien n'est pas correctement installé, tout défaut de conformité résultant de l'installation défectueuse est considéré comme un défaut de conformité du bien lui-même si:
(a) le bien a été installé par le bailleur ou sous sa responsabilité du bailleur; ou si
(b) le bien devait être installé par le consommateur et que l'installation défectueuse est due à des lacunes dans les instructions d'installation.

Article 3:106: Limites aux clauses supprimant ou restreignant les droits du locataire dans une location de bien de consommation

Dans une location de bien de consommation, toute clause contractuelle ou accord avec le bailleur conclu avant qu'un défaut de conformité ne soit porté à la connaissance du bailleur, qui, directement ou indirectement, supprime ou restreint les droits du locataire résultant de l'obligation du bailleur de fournir un bien conforme au contrat, ne lie pas le consommateur.

Article 3:107: Obligations lors de la restitution du bien

Le bailleur doit:

(a) prendre toutes les mesures qu'on peut raisonnablement en attendre pour permettre au locataire d'exécuter son obligation de restitution du bien; et
(b) accepter la restitution du bien dans les conditions requises par le contrat.

Chapitre 4:
Droits du locataire

Article 4:101: Aperçu des droits

Si le bailleur manque à l'une de ses obligations, le locataire peut, dans le respect du livre III, chapitre 3, et des règles du présent chapitre:

(a) exiger l'exécution en nature de l'obligation;
(b) suspendre l'exécution de l'obligation réciproque;
(c) mettre fin à la location;
(d) réduire le loyer;
(e) réclamer des dommages et intérêts.

Article 4:102: Location de bien de consommation

(1) Les parties ne peuvent pas déroger aux règles du présent chapitre au détriment d'un consommateur dans une location de bien de consommation.
(2) Nonobstant le paragraphe (1), les parties peuvent s'accorder pour limiter la responsabilité du bailleur concernant des pertes liées au commerce, aux affaires ou à la profession du locataire. Néanmoins, une telle limitation ne peut pas être invoquée si elle s'avère contraire à la bonne foi et aux pratiques loyales.

Article 4:103: Droit du locataire à la réparation du défaut de conformité

(1) Le locataire peut obtenir que soit porté remède à tout défaut de conformité du bien et que lui soient remboursés tous les frais raisonnables qu'il aura exposés, dans la mesure où le locataire est autorisé à mettre en œuvre l'exécution en nature conformément à l'article III. – 3:302.
(2) Aucune disposition du paragraphe précédent porte atteinte au droit du locataire de faire remédier au défaut de conformité conformément au livre III, chapitre 3, section 2.

Article 4:104: Réduction du loyer

(1) Le locataire peut réduire le loyer pour la période pendant laquelle la valeur de la prestation du bailleur est diminuée en raison d'un retard ou d'un défaut de conformité, pour autant que cette diminution de valeur ne soit pas due au locataire.

(2) Le loyer peut être réduit même pour des périodes pendant lesquelles le bailleur conserve le droit d'exécuter ou de porter remède conformément aux articles III. – 3:103, III. – 3:202(2) et III. – 3:205.
(3) Nonobstant le paragraphe (1), le locataire peut être déchu de son droit de réduire le loyer pour une certaine durée, en application de l'article IV.B – 4:106

Article 4:105: Contrat de remplacement

Lorsque le locataire a mis fin au bail et a conclu une location de remplacement dans un délai raisonnable et d'une manière raisonnable, et s'il est fondé à demander une indemnisation, il peut obtenir le paiement de la différence entre la valeur de la location qui a pris fin et la valeur du contrat de remplacement, ainsi que tout autre dédommagement.

Article 4:106: Notification du défaut de conformité

(1) Le locataire ne peut pas recourir aux sanctions du défaut de conformité sans avoir notifié ce défaut au bailleur. Lorsque la notification est tardive, le défaut de conformité ne sera pas pris en compte pour la période correspondant au retard, si celui-ci est déraisonnable. La notification est toujours considérée comme ayant lieu à temps lorsqu'elle est faite dans un délai raisonnable à partir du moment où le locataire a eu, ou à partir du moment où l'on peut raisonnablement s'attendre à ce qu'il ait eu, connaissance du défaut de conformité.
(2) Lorsque la location a pris fin, les règles de l'article III. – 3:107 sont applicables.
(3) Le bailleur ne peut invoquer les dispositions des paragraphes (1) et (2) si le défaut de conformité concerne des faits qu'il connaissait, ou dont on peut raisonnablement s'attendre à ce qu'il les ait connus, et qu'il n'a pas révélés au locataire.

Article 4:107: Actions dirigées contre le fournisseur du bien

(1) Cet article s'applique lorsque:
  (a) le bailleur, suivant les spécifications du locataire, acquiert le bien auprès d'un fournisseur sélectionné par le locataire;
  (b) le locataire, en donnant les indications concernant le bien et le fournisseur, ne se repose pas principalement sur la compétence et le jugement du bailleur;
  (c) le locataire approuve les conditions du contrat de fourniture;
  (d) les obligations du fournisseur issues du contrat de fourniture sont contractées, par l'effet de la loi ou du contrat, envers le locataire en qualité de partie au contrat de fourniture ou comme si le locataire était partie à ce contrat; et que
  (e) les obligations du fournisseur envers le locataire ne peuvent être modifiées sans l'accord du locataire.
(2) Le locataire ne peut réclamer l'exécution au bailleur, réduire le loyer ou réclamer des dommages et intérêts au bailleur, pour une livraison tardive ou un défaut de conformité, à moins que l'inexécution résulte d'un acte ou d'une omission du bailleur. Cette disposition ne porte pas atteinte au droit du locataire de refuser le bien, de mettre fin à la location ou, avant l'acceptation du bien, de suspendre le paiement du loyer dans la mesure où il aurait pu faire valoir ces droits en qualité de partie au contrat de fourniture.
(3) La disposition du paragraphe (2) ne porte pas atteinte aux prérogatives dont dispose le locataire lorsqu'un droit ou une réclamation d'un tiers empêche, ou est de nature à interférer avec, l'usage du bien par le locataire conformément au contrat.
(4) Le locataire ne peut mettre fin au contrat de fourniture sans l'accord du bailleur.

Chapitre 5:
Obligations du locataire

Article 5:101: Obligation de payer le loyer
(1) Le locataire doit payer le loyer qui est fixé dans l'accord parties, ou qui est déterminable à partir de ce dernier, ou sur la base de l'article II. – 9:103.
(2) Le loyer est dû à partir du début de la location.

Article 5:102: Moment du paiement
Le loyer est payable:
(a) à l'échéance de chacune des périodes pour lesquelles le loyer a fixé, ou
(b) si le loyer n'est pas fixé par périodes déterminées, au terme de la location à durée déterminée, ou
(c) si la location n'est pas à durée déterminée et que le loyer n'a pas été fixé pour des périodes déterminées, à la fin d'intervalles raisonnables.

Article 5:103: Acceptation du bien
Le locataire doit:
(a) prendre toutes les mesures qu'on peut raisonnablement attendre de lui pour permettre au bailleur d'exécuter son obligation de mettre le bien loué à sa disposition au début de la location; et
(b) prendre le contrôle du bien conformément au contrat.

Article 5:104: Du maintien du bien dans un état conforme au contrat
(1) Le locataire doit:
  (a) observer les exigences et les restrictions qui résultent du contrat conclu par les parties;
  (b) traiter le bien avec le soin qu'un locataire raisonnable apporterait dans ces circonstances, compte tenu de la durée du contrat, du but de la location et des caractéristiques du bien; et
  (c) prendre toutes les mesures qui, d'ordinaire, doivent être considérées comme nécessaires pour préserver la qualité normale et le fonctionnement du bien, dans une mesure raisonnable compte tenu de la durée du contrat, du but de la location et des caractéristiques du bien.
(2) Lorsque le loyer est calculé en tenant compte de l'amortissement du coût du bien par le locataire, ce dernier doit, pendant la durée du contrat, conserver le bien dans l'état où il se trouvait au début de la location, sous réserve de l'usure et des détériorations normales pour un bien de ce type.

Article 5:105: Intervention en vue d'éviter un danger ou des dommages au bien
Le locataire doit assurer l'entretien et les réparations qui seraient ordinairement effectués par le bailleur, si ces mesures sont nécessaires pour éviter un danger ou des dommages au bien et s'il est impossible ou irréalisable pour le bailleur, mais non pour le locataire, de prendre ces mesures. Le locataire est en droit de demander une indemnité au bailleur ou, le cas échéant, un remboursement corrélatif à l'exécution d'une obligation ou à la réalisation d'une dépense (que ce soit en argent ou en d'autres valeurs), dans la mesure où cela a été réalisé de manière raisonnable pour les besoins de l'intervention.

Article 5:106: Indemnisation pour l'entretien et les améliorations
Le locataire ne peut prétendre à indemnisation à raison de l'entretien ou des améliorations apportées au bien. Cela toutefois n'exclut ni ne limite le droit du locataire à l'indemnisation de ses dommages, ou tout autre droit que le locataire peut avoir en application des articles IV.B – 4:103, IV.B – 5:106 ou du Livre VIII.

Article 5:107: Obligation d'information
(1) Le locataire doit informer le bailleur de tout dommage ou danger pour le bien, ainsi que de tout droit ou prétention d'un tiers, si ces circonstances rendent normalement nécessaire l'intervention du bailleur.
(2) Le bailleur doit être informé de ces circonstances et de leurs particularités dans un délai raisonnable suivant le moment où le locataire en a pris connaissance, ou aurait pu raisonnablement en prendre connaissance.

Article 5:108: Réparations et inspections incombant au bailleur
(1) Le locataire doit tolérer la réalisation sur le bien de réparations ou d'autres travaux nécessaires pour préserver le bien, supprimer des défauts et prévenir un danger. Si possible, le bailleur doit en informer le locataire dans un délai raisonnable avant la réalisation de ces mesures. Cette obligation n'empêche pas le locataire de réduire le loyer conformément à l'article IV.B – 4:104.
(2) Le locataire doit tolérer la réalisation de travaux sur le bien, même s'ils ne tombent pas sous le coup du paragraphe (1), à moins qu'il n'y ait de bonne raison de s'opposer à leur réalisation.
(3) Le locataire doit tolérer l'inspection du bien à l'une des fins visées au paragraphe (1). Le locataire doit aussi accepter l'inspection du bien par un candidat locataire pendant une période raisonnable précédant l'échéance de la location.

Article 5:109: Obligation de restituer le bien
A la fin de la location, le locataire doit restituer le bien au lieu où celui-ci avait été mis à sa disposition.

Chapitre 6:
Droits du bailleur

Article 6:101: Aperçu des droits
Si le locataire manque à l'une des obligations qui découlent du contrat, le bailleur peut, dans le respect du livre III, chapitre 3 et des dispositions du présent chapitre:
(a) exiger l'exécution en nature de l'obligation;
(b) suspendre l'exécution de l'obligation réciproque;
(c) mettre fin à la location;
(d) réclamer des dommages et intérêts.

Article 6:102: Location de bien de consommation
Les parties ne peuvent déroger aux règles prévues sous ce chapitre au détriment d'un consommateur dans un contrat de location de bien de consommation.

Article 6:103: Droit à l'exécution des obligations de somme d'argent

(1) Le bailleur peut poursuivre le paiement du loyer et des autres sommes exigibles.
(2) Lorsque le bailleur n'a pas encore mis le bien à disposition du locataire et que, selon toute apparence, le locataire ne voudra pas prendre le contrôle du bien, le bailleur peut néanmoins recourir à l'exécution et poursuivre le paiement sauf si:
   (a) le bailleur aurait pu procéder à une location de remplacement sans effort ou dépense significative; ou si
   (b) l'exécution serait déraisonnable compte tenu des circonstances.
(3) Lorsque le locataire a pris le contrôle du bien, le bailleur peut poursuivre le paiement de toute somme qui est due en exécution du contrat. Ces sommes comprennent le loyer futur, à moins que le locataire ne souhaite restituer le bien et qu'il serait raisonnable pour le bailleur, compte tenu des circonstances, d'accepter cette restitution.

Article 6:104: Contrat de remplacement

Lorsque le bailleur a mis fin au contrat et a conclu une location de remplacement dans un délai raisonnable et d'une manière raisonnable, et s'il est fondé à demander une indemnisation, il peut obtenir le paiement de la différence entre la valeur de la location qui a pris fin et la valeur du contrat de remplacement, ainsi que tout autre dédommagement.

Article 6:105: Limitation de la responsabilité dans la location de bien de consommation

(1) Dans la location de bien de consommation, la demande d'indemnisation du bailleur peut être réduite dans la mesure où la perte est prise en charge par une assurance couvrant le bien, ou dans la mesure où la perte aurait pu être prise en charge par une assurance si les circonstances sont telles qu'il aurait été raisonnable pour le bailleur d'en souscrire une.
(2) La règle prescrite au paragraphe (1) est applicable, outre celles prévues par le livre III, chapitre 3, section 7.

Chapitre 7:
Parties nouvelles et sous-location

Article 7:101: Changement de propriété et substitution de bailleur

(1) Lorsque la propriété du bien est transmise du bailleur à un nouveau propriétaire, celui-ci se substitue à l'ancien en qualité de partie au contrat si le locataire est en possession du bien au moment du transfert de la propriété. L'ancien propriétaire demeure responsable, à titre subsidiaire, de l'inexécution du contrat de location à titre de sûreté personnelle.
(2) Un anéantissement du transfert de propriété a pour effet de remettre les parties dans leur situation originaire sauf en ce qui concerne l'exécution à laquelle elles ont déjà procédé au moment de cet anéantissement.
(3) Les règles prescrites au paragraphe précédent sont applicables de la même manière lorsque le bailleur agit en qualité de titulaire d'un droit autre que la propriété.

Article 7:102: Cession des droits du locataire

Les droits du locataire à l'exécution du contrat de location ne peuvent être cédés sans l'accord du bailleur.

Article 7:103: Sous-location

(1) Le locataire ne peut sous-louer le bien sans l'accord du bailleur.
(2) Si le bailleur refuse la sous-location sans bonne raison, le locataire peut mettre fin à la location par une notification adressée avec un préavis raisonnable.
(3) En cas de sous-location, le locataire demeure responsable de l'exécution du contrat de location.

German[5]

Buch IV.B: Miete beweglicher Sachen

Kapitel 1:
Anwendungsbereich und allgemeine Vorschriften

Artikel 1:101: Mietverhältnisse über bewegliche Sachen

(1) Die Vorschriften dieses Teils von Buch IV finden Anwendung auf Verträge über die Miete beweglicher Sachen.
(2) In einem Vertrag über die Miete von Sachen verpflichtet sich eine Partei, der Vermieter, der anderen Partei, dem Mieter, ein zeitlich begrenztes Nutzungsrecht an einer Sache gegen Miete einzuräumen. Die Miete kann in Form von Geld oder anderen Werten entrichtet werden.
(3) Dieser Teil von Buch IV findet keine Anwendung auf Verträge, in denen die Parteien den Übergang des Eigentums nach dem Ende des zeitlich begrenzten Nutzungsrechts vereinbart haben, auch wenn die Parteien ihren Vertrag als Mietvertrag bezeichnet haben.
(4) Die Anwendung dieses Teils von Buch IV wird nicht dadurch ausgeschlossen, dass der Vertrag einer Finanzierung dient, der Vermieter die Rolle einer finanzierenden Partei übernimmt oder der Mieter das Recht hat, Eigentümer der Sachen zu werden.
(5) Dieser Teil von Buch IV regelt ausschließlich die vertraglichen Beziehungen zwischen Vermieter und Mieter.

Artikel 1:102: Verbrauchermietverträge

Für die Zwecke dieses Teils von Buch IV sind Verbrauchermietverträge solche Verträge, in denen ein Unternehmer Sachen an eine natürliche Person vermietet, die hauptsächlich für Zwecke handelt, die nicht mit ihrer gewerblichen oder beruflichen Tätigkeit zusammenhängen (Verbraucher).

Kapitel 2:
Mietzeit

Artikel 2:101: Beginn der Mietzeit

(1) Die Mietzeit beginnt:
  (a) zu dem Zeitpunkt, der sich aus den Parteivereinbarungen ergibt;
  (b) wenn ein Zeitrahmen, innerhalb dessen die Mietzeit beginnen soll, bestimmbar ist, zu jedem vom Vermieter in diesem Zeitrahmen gewählten Zeitpunkt, es sei denn, aus den Umständen ergibt sich, dass der Mieter den Zeitpunkt bestimmen soll;

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5 Translated by *Frauke Albrecht* in collaboration with Professor *Helmut Grothe* (Berlin).

(c) in allen anderen Fällen eine angemessene Zeit nach Vertragsschluss auf Verlangen einer der Parteien.

(2) Die Mietzeit beginnt mit der Übernahme der Sachen durch den Mieter, wenn dies vor dem sich aus Absatz (1) ergebenden Zeitpunkt ist.

Artikel 2:102: Ende der Mietzeit

(1) Eine bestimmte Mietzeit endet zu dem Zeitpunkt, der sich aus den Parteivereinbarungen ergibt. Eine bestimmte Mietzeit kann vorher nicht einseitig durch Erklärung gekündigt werden.

(2) Eine unbestimmte Mietzeit endet zu dem in der von einer Partei abgegebenen Kündigungserklärung genannten Zeitpunkt.

(3) Der in der Kündigung bestimmte Zeitpunkt muss den Parteivereinbarungen entsprechen, oder muss, in Ermangelung entsprechender Parteivereinbarungen, eine angemessene Zeit nach Zugang der Kündigung bei der anderen Partei liegen.

Artikel 2:103: Stillschweigende Verlängerung

(1) Eine Mietzeit wird für eine unbestimmte Zeit verlängert wenn:

(a) der Mieter die Sachen nach dem Ablauf der Mietzeit mit dem Wissen des Vermieters weiter benutzt hat;

(b) die Dauer der fortgesetzten Nutzung der für eine Kündigung nötigen Zeit entspricht; und

(c) die Umstände der Annahme einer stillschweigenden Zustimmung beider Parteien zu einer Verlängerung nicht entgegenstehen.

(2) Jede Partei kann eine stillschweigende Verlängerung vor deren Wirksamwerden durch Anzeige gegenüber der anderen Partei verhindern. Die Anzeige braucht nur zu erkennen zu geben, dass die Partei die Mietzeit als mit dem Ende der Laufzeit abgelaufen ansieht.

(3) Wird die Mietzeit nach diesem Artikel verlängert, so verlängert sich auch der Mietvertrag entsprechend. Die restlichen Vertragsbestimmungen bleiben von der Verlängerung unberührt.

(4) Abweichend von Absatz (3) Satz 2 darf in den Fällen, in denen bei der Berechnung der Miete vor Verlängerung die Amortisation der Kosten für die Sachen durch den Mieter berücksichtigt worden war, die Miete nach der Verlängerung nicht unangemessen im Hinblick auf den bereits gezahlten Betrag sein. Von der Vorschrift dieses Absatzes darf in einem Verbrauchermietvertrag nicht zum Nachteil eines Verbrauchers abgewichen werden.

(5) Sicherheitsleistungen Dritter werden durch eine Verlängerung nach diesem Artikel weder erhöht noch verlängert.

Kapitel 3:
Pflichten des Vermieters

Artikel 3:101: Verfügbarkeit der Sachen

(1) Der Vermieter hat die Sachen für die Nutzung durch den Mieter am Beginn der Mietzeit und an dem nach III. – 2:101 bestimmten Ort zur Verfügung zu stellen.

(2) Abweichend von Absatz (1) hat der Vermieter die Sachen für die Nutzung durch den Mieter an dessen Niederlassung oder gegebenenfalls an dessen gewöhnlichem Wohnort zur Verfügung zu stellen, wenn der Vermieter die Sachen nach den Angaben des Mieters von einem von diesem gewählten Lieferanten erwirbt.

(3) Die Sachen müssen während der gesamten Mietzeit für die Nutzung durch den Mieter zur Verfügung stehen und frei sein von Rechten oder Ansprüchen Dritter, die die vertragsgemäße Nutzung der Sachen durch den Mieter verhindern oder sonst voraussichtlich beeinträchtigen werden.
(4) Die Pflichten des Vermieters bei Verlust der Sachen oder Schäden an ihnen während der Mietzeit richten sich nach IV.B – 3:104.

Artikel 3:102: Vertragsmäßigkeit zu Beginn der Mietzeit

Um dem Vertrag bei Beginn der Mietzeit zu genügen müssen die Sachen:
(a) in Menge, Qualität und Art den Parteivereinbarungen entsprechen;
(b) hinsichtlich Verpackung oder Behältnis den Parteivereinbarungen entsprechen;
(c) mit Zubehör, Montageanleitungen oder sonstigen Anleitungen geliefert werden, die den Parteivereinbarungen entsprechen; und
(d) den Regelungen in IV.B – 3:103 entsprechen.

Artikel 3:103: Eignung für Zweck, Eigenschaften, Verpackung etc.

Die Sachen müssen:
(a) sich für einen bestimmten Zweck eignen, der dem Vermieter bei Vertragsschluss zur Kenntnis gebracht wurde, sofern sich nicht aus den Umständen ergibt, dass der Mieter nicht auf die Sachkenntnis und das Urteilsvermögen des Vermieters vertraute oder vernünftigerweise nicht darauf vertrauen konnte;
(b) sich für die Zwecke eignen, für die Sachen der gleichen Art gewöhnlich gebraucht werden;
(c) die Eigenschaften von Sachen besitzen, die der Vermieter dem Mieter als Probe oder Muster vorgelegt hat;
(d) in der für Sachen dieser Art üblichen Weise oder, wenn es eine solche Weise nicht gibt, in einer für die Erhaltung und den Schutz der Sachen angemessenen Weise verpackt sein;
(e) mit Zubehör, Montageanleitungen oder sonstigen Anleitungen geliefert werden, die der Mieter vernünftigerweise erwarten konnte; und
(f) die Eigenschaften und die Leistungsfähigkeit besitzen, die der Mieter vernünftigerweise erwarten kann.

Artikel 3:104: Vertragsmäßigkeit der Sachen während der Mietzeit

(1) Vorbehaltlich üblicher Abnutzung müssen die Sachen während der Mietzeit:
  (a) durchgehend in Menge, Qualität und Art den Anforderungen des Vertrages entsprechen; und
  (b) für die Zwecke der Miete geeignet bleiben, auch wenn dies Veränderungen an den Sachen erfordert.
(2) Absatz (1) ist nicht anwendbar, wenn bei der Berechnung der Miete die Amortisation der Kosten für die Sachen durch den Mieter berücksichtigt wird.
(3) Absatz (1) lässt die Pflichten des Mieters nach IV.B – 5:104(1)(c) unberührt.

Artikel 3:105: Unsachgemäße Montage bei einem Verbrauchermietvertrag

Werden die Sachen bei einem Verbrauchermietvertrag unsachgemäß montiert, so ist jede sich hieraus ergebende Vertragswidrigkeit als Vertragswidrigkeit der Sachen anzusehen, wenn:
(a) die Sachen vom Vermieter oder unter seiner Verantwortung montiert wurden; oder
(b) die Sachen vom Verbraucher montiert werden sollten und die unsachgemäße Montage auf Mängeln der Montageanleitung beruhte.

Artikel 3:106: Grenzen der Abweichung in Verbrauchermietverträgen

In einem Verbrauchermietvertrag ist eine vertragliche Bestimmung oder eine Abrede, die unmittelbar oder mittelbar die Rechte des Verbrauchers wegen der Pflicht des Vermieters, die Vertragsmäßigkeit der Ware sicherzustellen, ausschließt oder beschränkt, für den Verbraucher nicht bindend, wenn sie mit dem Vermieter geschlossen wurde, bevor eine Vertragswidrigkeit dem Vermieter angezeigt worden ist.

Artikel 3:107: Pflichten bei Rückgabe der Sachen

Der Vermieter hat:

(a) alle Maßnahmen zu ergreifen, die vernünftigerweise erwartet werden können, um dem Mieter die Erfüllung der Pflicht zur Rückgabe der Sachen zu ermöglichen; und
(b) die Sachen dem Vertrag gemäß anzunehmen.

Kapitel 4:
Rechtsbehelfe des Mieters

Artikel 4:101: Überblick über die Rechtsbehelfe

Erfüllt der Vermieter eine seiner vertraglichen Pflichten nicht, so kann der Mieter nach Buch III, Kapitel 3 und den Vorschriften dieses Kapitels:

(a) Erfüllung dieser Pflicht geltend machen;
(b) die Erfüllung der Gegenleistung verweigern;
(c) das Mietverhältnis kündigen;
(d) die Miete mindern;
(e) Schadensersatz und Zinsen verlangen.

Artikel 4:102: Verbrauchermietverträge

(1) In einem Verbrauchermietvertrag kann von den Vorschriften dieses Kapitels nicht zum Nachteil des Verbrauchers abgewichen werden.
(2) Abweichend von Absatz (1) können die Parteien eine Beschränkung der Haftung des Vermieters für Verluste vereinbaren, die im Zusammenhang mit der gewerblichen oder beruflichen Tätigkeit des Mieters stehen. Der Vermieter kann sich jedoch auf eine solche Vereinbarung nicht berufen, wenn Treu und Glauben und der redliche Geschäftsverkehr dem entgegenstehen.

Artikel 4:103: Recht des Mieters zur Beseitigung der Vertragswidrigkeit

(1) Der Mieter kann eine Vertragswidrigkeit beseitigen und Ersatz der erforderlichen Aufwendungen verlangen, soweit er ein Recht zur Geltendmachung vertragsgemäßer Erfüllung nach III. – 3:302 hat.
(2) Das Recht des Vermieters zur Beseitigung der Vertragswidrigkeit nach Buch III, Kapitel 3, Abschnitt 2 bleibt von Absatz (1) unberührt.

Artikel 4:104: Mietminderung

(1) Der Mieter kann die Miete für einen Zeitraum mindern, in dem der Wert der Leistung des Vermieters wegen Verzögerung oder Vertragswidrigkeit vermindert ist, soweit die Wertminderung nicht vom Mieter verursacht wurde.

(2) Die Miete kann auch für Zeiträume gemindert werden, in denen dem Vermieter das Recht auf Leistung oder Heilung nach III. – 3:103, III. – 3:202(2) und III. – 3:205 zusteht.
(3) Abweichend von Absatz (1) kann der Mieter das Recht auf Mietminderung für einen Zeitraum nach IV.B – 4:106 verlieren.

Artikel 4:105: Deckungsgeschäft

Hat der Mieter das Mietverhältnis gekündigt und in einem angemessenen Zeitraum auf angemessene Weise ein Deckungsgeschäft vorgenommen, so kann er, wenn er Schadensersatz verlangen kann, den Unterschied zwischen dem Wert des gekündigten Mietverhältnisses und dem Deckungsgeschäft sowie jeden weiteren Schaden geltend machen.

Artikel 4:106: Anzeige der Vertragswidrigkeit

(1) Der Mieter kann keine Rechtsbehelfe wegen Vertragswidrigkeit geltend machen, sofern diese dem Vermieter nicht angezeigt wird. Erfolgt die Anzeige nicht rechtzeitig, so wird die Vertragswidrigkeit für einen der unangemessenen Verzögerung entsprechenden Zeitraum außer Acht gelassen. Die Anzeige gilt immer als rechtzeitig, wenn sie innerhalb einer angemessenen Zeit erfolgt, nachdem der Mieter die Vertragswidrigkeit bemerkt hat oder dies vernünftigerweise von ihm erwartet werden konnte.
(2) Nach dem Ende der Mietzeit finden die Regelungen des III. – 3:107 Anwendung.
(3) Der Vermieter kann sich auf die Vorschriften der Absätze (1) und (2) nicht berufen, wenn die Vertragswidrigkeit auf Tatsachen beruht, die er kannte oder deren Kenntnis vernünftigerweise von ihm erwartet werden konnte und die er dem Mieter nicht offenbart hat.

Artikel 4:107: Gegenüber dem Lieferanten geltend zu machende Rechtsbehelfe

(1) Dieser Artikel ist anwendbar wenn:
  (a) der Vermieter die Sachen nach den Angaben des Mieters von einem von diesem ausgewählten Lieferanten erwirbt;
  (b) der Mieter bei Beschaffung der Angaben über die Sachen und bei der Auswahl des Lieferanten nicht vornehmlich auf die Sachkenntnis und das Urteilsvermögen des Vermieters vertraut;
  (c) der Mieter die Bestimmungen des Liefervertrages billigt;
  (d) die Pflichten des Lieferanten nach dem Liefervertrag aufgrund von Gesetz oder Vertrag auch dem Mieter gegenüber entweder als Partei des Liefervertrages bestehen, oder als ob der Mieter Partei des Liefervertrages wäre; und
  (e) die dem Mieter gegenüber bestehenden Pflichten des Lieferanten nicht ohne Zustimmung des Mieters geändert werden können.
(2) Der Mieter kann nicht Erfüllung vom Vermieter verlangen, die Miete mindern oder Schadensersatz oder Zinsen vom Vermieter wegen Verzögerung oder Vertragswidrigkeit verlangen, sofern nicht die Nichterfüllung auf einer Handlung oder Unterlassung des Vermieters beruht. Diese Vorschrift schließt nicht das Recht des Mieters aus, die Sachen zurückzuweisen, das Mietverhältnis zu kündigen oder, vor Annahme der Sachen, die Miete zurückzubehalten, wenn der Mieter diese Rechtsbehelfe als Partei des Liefervertrages hätte geltend machen können.
(3) Die Vorschrift des Absatzes (2) schließt keine Rechtsbehelfe des Mieters wegen Rechten oder Ansprüchen Dritter aus, die die ununterbrochene vertragsgemäße Nutzung der Sachen verhindern oder sonst voraussichtlich beeinträchtigen werden.
(4) Der Mieter kann den Liefervertrag nicht ohne Zustimmung des Vermieters kündigen.

Kapitel 5:
Pflichten des Mieters

Artikel 5:101: Pflicht zur Zahlung von Miete
(1) Der Mieter hat die Miete zu zahlen, die in den Parteivereinbarungen oder nach II. – 9:103 festgelegt oder danach bestimmbar ist.
(2) Die Miete fällt ab dem Beginn der Mietzeit an.

Artikel 5:102: Zeitpunkt der Zahlung
Die Miete ist fällig:
(a) am Ende jedes Zeitabschnitts, für den die Miete vereinbart ist, oder
(b) wenn die Miete nicht für bestimmte Zeitabschnitte vereinbart worden ist, am Ende einer bestimmten Mietzeit, oder
(c) wenn weder eine bestimmte Mietzeit noch die Miete für bestimmte Zeitabschnitte vereinbart ist, am Ende angemessener Abschnitte.

Artikel 5:103: Annahme der Sachen
Der Mieter hat
(a) alle Maßnahmen zu ergreifen, die vernünftigerweise erwartet werden können, um dem Vermieter die Erfüllung der Pflicht zu ermöglichen, die Sachen zum Beginn der Mietzeit zur Verfügung zu stellen; und
(b) die Sachen dem Vertrag gemäß zu übernehmen.

Artikel 5:104:Vertragsgemäßer Umgang mit den Sachen
(1) Der Mieter hat
  (a) die sich aus den Parteivereinbarungen ergebenden Anforderungen und Beschränkungen zu beobachten;
  (b) die Sachen mit der Sorgfalt zu behandeln, die ein vernünftiger Mieter unter den gleichen Umständen bei Berücksichtigung der Länge der Mietzeit, des Zwecks des Mietverhältnisses und der Beschaffenheit der Sachen anwenden würde; und
  (c) alle Maßnahmen zu ergreifen, deren Notwendigkeit für den Erhalt des gewöhnlichen Zustands und der Funktionsfähigkeit der Sachen üblicherweise erwartet werden muss, soweit dies unter Berücksichtigung der Länge der Mietzeit, dem Zweck des Mietverhältnisses und der Beschaffenheit der Sachen angemessen ist.
(2) Wird bei der Berechnung der Miete die Amortisation der Kosten für die Sachen durch den Mieter berücksichtigt, hat der Mieter die Sachen während der Mietzeit in dem Zustand zu erhalten, in dem sie, abgesehen von bei Sachen dieser Art üblicher Abnutzung, zu Beginn der Mietzeit waren.

Artikel 5:105: Geschäftsbesorgung zur Vermeidung von Gefahren für die Sachen oder Schäden an ihnen

Der Mieter hat gewöhnlich vom Vermieter durchzuführende Erhaltungs- und Instandsetzungsmaßnahmen selbst zu ergreifen, wenn diese zur Vermeidung von Gefahren für die oder Schäden an den Sachen notwendig sind und es für den Vermieter, nicht aber für den Mieter, unmöglich oder unzweckmäßig ist, ihre Vornahme sicherzustellen. Der Mieter kann vom Vermieter Entschädigung oder gegebenenfalls Freistellung von einer eingegangenen Verbindlichkeit und Ersatz seiner Aufwendungen (in Geld oder anderen Vermögenswerten) verlangen, soweit diese für die Zwecke der Geschäftsbesorgung erforderlich gewesen sind.

Artikel 5:106: Entschädigung für Erhaltungs- und Verbesserungsmaßnahmen

Der Mieter kann keine Entschädigung für Maßnahmen der Erhaltung oder für Verbesserungen der Sachen verlangen. Schadensersatzansprüche sowie Rechte oder Ansprüche, die dem Mieter nach IV.B – 4:103, IV.B – 5:105 oder Buch VIII zustehen, werden von Satz (1) weder ausgeschlossen noch beschränkt.

Artikel 5:107: Informationspflicht

(1) Der Mieter hat den Vermieter über einen Schaden an den oder eine Gefahr für die Sachen ebenso zu informieren wie über ein Recht oder einen Anspruch eines Dritten, wenn diese Umstände üblicherweise Handlungsbedarf auf Seiten des Vermieters zur Folge haben.
(2) Der Vermieter muss innerhalb einer angemessenen Zeit informiert werden, nachdem der Mieter Kenntnis über diese Umstände und deren Art erlangt hat oder Kenntnis vernünftigerweise von ihm erwartet werden konnte.

Artikel 5:108: Instandsetzung und Besichtigung durch den Vermieter

(1) Der Mieter hat die für Erhaltung der Sachen, Mängelbeseitigung und Vermeidung von Gefahren notwendige Durchführung von Instandsetzungsmaßnahmen und anderen Arbeiten an den Sachen zu dulden. Nach Möglichkeit hat der Vermieter den Mieter eine angemessene Zeit vor der Vornahme dieser Maßnahmen zu informieren. Diese Pflicht schließt nicht eine dem Mieter nach IV.B – 4:104 mögliche Mietminderung aus.
(2) Der Mieter hat die Durchführung von Arbeiten an den Sachen zu dulden, auch wenn diese nicht unter Absatz (1) fallen, es sei denn es gibt wichtige Gründe, der Durchführung zu widersprechen.
(3) Der Mieter hat die Besichtigung der Sachen für die in Absatz (1) erwähnten Zwecke zu dulden. Er hat auch die Besichtigung der Sachen durch einen künftigen Mieter innerhalb einer angemessenen Zeit vor Ablauf der Mietzeit hinzunehmen.

Artikel 5:109: Pflicht zur Rückgabe der Sachen

Am Ende der Mietzeit hat der Mieter die Sachen an dem Ort zurückzugeben, an dem sie ihm zur Verfügung gestellt wurden.

Kapitel 6:
Rechtsbehelfe des Vermieters

Artikel 6:101: Überblick über die Rechtsbehelfe
Erfüllt der Mieter eine seiner Pflichten nach dem Vertrag nicht, kann der Vermieter nach Buch III, Kapitel 3 und den Vorschriften dieses Kapitels:
(a) Erfüllung dieser Pflicht geltend machen;
(b) die Erfüllung der Gegenleistung verweigern;
(c) das Mietverhältnis kündigen;
(d) Schadensersatz und Zinsen verlangen.

Artikel 6:102: Verbrauchermietverträge
In einem Verbrauchermietvertrag können die Parteien von den Vorschriften dieses Kapitels nicht zum Nachteil des Verbrauchers abweichen.

Artikel 6:103: Recht auf Geltendmachung von Geldschulden
(1) Der Vermieter kann die Zahlung von Miete und anderen fälligen Beträgen verlangen.
(2) Hat der Vermieter die Sachen dem Mieter noch nicht zur Verfügung gestellt und ist offensichtlich, dass der Mieter zur Übernahme der Sachen nicht bereit ist, so kann der Vermieter gleichwohl mit der Erfüllung fortfahren und Zahlung verlangen, es sei denn:
   (a) der Vermieter hätte ohne wesentlichen Aufwand oder wesentliche Kosten ein angemessenes Deckungsgeschäft vornehmen können; oder
   (b) Erfüllung wäre unter den Umständen nicht angemessen.
(3) Hat der Mieter die Sachen übernommen, so kann der Vermieter Zahlung jedes nach dem Vertrag fälligen Betrags verlangen. Dies schließt künftige Miete ein, es sei denn der Mieter möchte die Sachen zurückgeben und es ist unter den Umständen für den Vermieter angemessen, ihre Rückgabe anzunehmen.

Artikel 6:104: Deckungsgeschäft
Hat der Vermieter das Mietverhältnis gekündigt und in einem angemessenen Zeitraum auf angemessene Weise ein Deckungsgeschäft vorgenommen, so kann er, wenn er Schadensersatz verlangen kann, den Unterschied zwischen dem Wert des gekündigten Mietverhältnisses und dem Wert des Deckungsgeschäfts sowie jeden weiteren Schaden geltend machen.

Artikel 6:105: Haftungsbeschränkung in Verbrauchermietverträgen
(1) In einem Verbrauchermietvertrag kann sich der Schadensersatzanspruch des Vermieters soweit mindern wie der Schaden von einer die Sachen abdeckenden Versicherung verringert wird oder soweit der Schaden durch eine Versicherung verringert worden wäre, wenn es vom Vermieter unter den Umständen vernünftigerweise erwartet werden kann, eine solche Versicherung abzuschließen.
(2) Die Regelung des Absatzes (1) ergänzt die Regelungen in Buch III, Kapitel 3, Abschnitt 7.

Kapitel 7:
Parteiwechsel und Untermietverhältnisse

Artikel 7:101: Eigentumswechsel und Wechsel des Vermieters
(1) Geht das Eigentum vom Vermieter auf einen neuen Eigentümer über, so ersetzt ihn dieser als Partei des Mietvertrags, wenn der Mieter zum Zeitpunkt des Eigentumsübergangs im Besitz der Sachen ist. Der vorige Eigentümer haftet als persönlicher Sicherungsgeber weiterhin subsidiär für die Nichterfüllung des Mietvertrags.
(2) Wird der Eigentumswechsel rückgängig gemacht, nehmen die Parteien ihre vorherigen Positionen wieder ein, soweit nicht Leistungen betroffen sind, die zu diesem Zeitpunkt bereits erbracht worden sind.
(3) Die Regelungen der vorstehenden Absätze gelten entsprechend, wenn der Vermieter als Inhaber eines anderen Rechts als Eigentum gehandelt hat.

Artikel 7:102: Abtretung des Erfüllungsanspruchs des Mieters
Das Recht des Mieters auf Erfüllung nach dem Mietvertrag kann nicht ohne Zustimmung des Vermieters abgetreten werden.

Artikel 7:103: Untermiete
(1) Der Mieter darf die Sachen nicht ohne Zustimmung des Vermieters untervermieten.
(2) Wird die Zustimmung zur Untermiete ohne wichtigen Grund verweigert, kann der Mieter das Mietverhältnis unter Einhaltung einer angemessenen Frist kündigen.
(3) Bei einer Untermiete bleibt der Mieter für die Erfüllung des Mietvertrags haftbar.

Greek[6]

Βιβλίο IV.Β: Μίσθωση κινητού πράγματος

Κεφάλαιο 1:
Πεδίο εφαρμογής και γενικές διατάξεις

Άρθρο 1:101: Μίσθωση κινητού πράγματος

(1) Το παρόν Μέρος του Βιβλίου IV εφαρμόζεται σε συμβάσεις μίσθωσης κινητού πράγματος.

(2) Σύμβαση μίσθωσης κινητού πράγματος είναι η σύμβαση κατά την οποία το ένα μέρος, ο εκμισθωτής, αναλαμβάνει έναντι μισθώματος την υποχρέωση να παράσχει στο άλλο μέρος, το μισθωτή, προσωρινό δικαίωμα χρήσης κινητού πράγματος. Το μίσθωμα μπορεί να συνίσταται σε χρήματα ή άλλη αξία.

(3) Το παρόν Μέρος του Βιβλίου IV δεν εφαρμόζεται σε συμβάσεις στις οποίες τα μέρη έχουν συμφωνήσει ότι η κυριότητα θα μεταβιβαστεί μετά περίοδο με δικαίωμα χρήσης, ακόμα και αν τα μέρη έχουν χαρακτηρίσει τη σύμβαση ως μίσθωση.

(4) Η εφαρμογή του παρόντος Μέρους του Βιβλίου IV δεν αποκλείεται από το γεγονός ότι η σύμβαση έχει χρηματοδοτικό σκοπό, από το ότι ο εκμισθωτής αναλαμβάνει ρόλο χρηματοδότη ή από το ότι ο μισθωτής έχει το δικαίωμα να αποκτήσει την κυριότητα του πράγματος.

(5) Το παρόν Μέρος του Βιβλίου IV ρυθμίζει μόνο τη συμβατική σχέση μεταξύ εκμισθωτή και μισθωτή.

Άρθρο 1:102: Μίσθωση με καταναλωτή

Για το σκοπό του παρόντος Μέρους του Βιβλίου IV, μίσθωση με καταναλωτή είναι η σύμβαση κατά την οποία επιχείρηση εκμισθώνει κινητό πράγμα σε φυσικό πρόσωπο που ενεργεί πρωταρχικά για σκοπούς που δεν εντάσσονται στο πλαίσιο της εμπορικής, επιχειρηματικής ή επαγγελματικής του δραστηριότητας (τον καταναλωτή).

Κεφάλαιο 2:
Μισθωτική περίοδος

Άρθρο 2:101: Έναρξη της μισθωτικής περιόδου

(1) Η μισθωτική περίοδος αρχίζει:

(α) κατά το χρόνο που μπορεί να προσδιορισθεί από τη συμφωνία των μερών·

(β) αν μπορεί να προσδιορισθεί χρονικό πλαίσιο έναρξης της μισθωτικής περιόδου, σε οποιοδήποτε χρονικό σημείο επιλεγεί από τον εκμισθωτή εντός αυτού του χρονικού πλαισίου, εκτός αν οι συγκεκριμένες περιστάσεις υποδεικνύουν ότι ο μισθωτής επιλέγει το χρόνο·

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6 Translated by *Georgia Pontikakou* in collaboration with Professor *Eugenia Dacoronia* (Athens).

(γ) σε κάθε άλλη περίπτωση, σε εύλογο χρόνο μετά τη σύναψη της μίσθωσης, μετά από αίτηση οποιουδήποτε των συμβαλλομένων.

(2) Εάν ο μισθωτής αποκτήσει τον έλεγχο του πράγματος πριν από το χρόνο που θα προέκυπτε από την παράγραφο (1), η διάρκεια της μίσθωσης αρχίζει από το χρόνο αυτό.

Άρθρο 2:102: Λήξη της μισθωτικής περιόδου

(1) Η μίσθωση ορισμένου χρόνου λήγει κατά το χρόνο που μπορεί να προσδιορισθεί από τη συμφωνία των μερών. Η μίσθωση ορισμένου χρόνου δεν μπορεί να λήξει μονομερώς με καταγγελία πριν από το χρόνο λήξης της.

(2) Η μίσθωση αορίστου χρόνου λήγει κατά το χρόνο που ορίζεται σε καταγγελία που ασκείται από οποιονδήποτε των συμβαλλομένων.

(3) Ο χρόνος που ορίζεται στην καταγγελία πρέπει να συνάδει με τη συμφωνία των μερών ή, εάν τίποτα δεν μπορεί να συναχθεί από αυτήν, πρέπει να είναι ένας εύλογος χρόνος αφότου η καταγγελία περιέλθει στο άλλο μέρος.

Άρθρο 2:103: Σιωπηρή παράταση

(1) Η μισθωτική περίοδος παρατείνεται για αόριστο χρόνο εάν:

(α) ο μισθωτής, εν γνώσει του εκμισθωτή, εξακολουθήσει να χρησιμοποιεί το πράγμα μετά τη λήξη της μισθωτικής περιόδου·

(β) η χρήση εξακολουθήσει για περίοδο ίση με αυτή που απαιτείται για την καταγγελία και

(γ) οι περιστάσεις δεν είναι ασυμβίβαστες με τη σιωπηρή συναίνεση και των δύο μερών σε μία τέτοια παράταση.

(2) Οποιοσδήποτε των συμβαλλομένων μπορεί να αποτρέψει τη σιωπηρή παράταση προβαίνοντας σε σχετική δήλωση προς τον αντισυμβαλλόμενό του πριν η σιωπηρή παράταση αποκτήσει ισχύ. Η δήλωση αυτή αρκεί απλά να υποδηλώνει ότι ο συμβαλλόμενος θεωρεί ότι η μισθωτική περίοδος έληξε κατά το χρόνο λήξης της.

(3) Εάν η διάρκεια της μίσθωσης παραταθεί σύμφωνα με το παρόν Άρθρο, η σύμβαση της μίσθωσης επίσης παρατείνεται αντίστοιχα. Οι υπόλοιποι όροι της σύμβασης παραμένουν αναλλοίωτοι.

(4) Κατ' εξαίρεση από το δεύτερο εδάφιο της παραγράφου (3), σε περίπτωση που το μίσθωμα πριν από την παράταση υπολογιζόταν κατά τρόπο ώστε να ληφθεί υπόψη η απόσβεση του κόστους του πράγματος από το μισθωτή, το μίσθωμα μετά την παράταση δεν πρέπει να είναι δυσανάλογα μεγάλο σε σχέση με το ποσό που έχει ήδη καταβληθεί. Σε σύμβαση με καταναλωτή τα μέρη δεν μπορούν να αποστούν από τον κανόνα αυτής της παραγράφου εις βάρος του καταναλωτή.

(5) Παράταση σύμφωνα με το παρόν Άρθρο δεν επαυξάνει ούτε επεκτείνει ασφάλειες που έχουν παράσχει τρίτοι.

Κεφάλαιο 3:
Υποχρεώσεις του εκμισθωτή

Άρθρο 3:101: Διαθεσιμότητα του πράγματος

(1) Ο μισθωτής έχει την υποχρέωση να θέσει το πράγμα στη διάθεση του μισθωτή προς χρήση κατά την έναρξη της μισθωτικής περιόδου και στον τόπο που ορίζεται στο III. – 2:101.

(2) Κατ' εξαίρεση του κανόνα της προηγούμενης παραγράφου, ο εκμισθωτής έχει την υποχρέωση να θέσει το πράγμα στη διάθεση του μισθωτή προς χρήση στον τόπο της επαγγελματικής εγκατάστασης του μισθωτή ή, ανάλογα με την περίπτωση, στον τόπο της συνήθους διαμονής του, αν ο εκμισθωτής, σύμφωνα με τις υποδείξεις του μισθωτή, αποκτά το πράγμα από προμηθευτή που έχει επιλεγεί από το μισθωτή.
(3) Το πράγμα πρέπει να παραμείνει στη διάθεση του μισθωτή προς χρήση καθ' όλη τη διάρκεια της μισθωτικής περιόδου, ελεύθερο από κάθε δικαίωμα ή απαίτηση τρίτου που παρακωλύει ή είναι πιθανόν κατ' άλλον τρόπο να παρεμποδίσει τη χρήση του πράγματος από το μισθωτή σύμφωνα με τη σύμβαση.
(4) Οι υποχρεώσεις του εκμισθωτή σε περίπτωση καταστροφής ή βλάβης του πράγματος κατά τη διάρκεια της μισθωτικής περιόδου ρυθμίζονται στο IV.B – 3:104.

Άρθρο 3:102: Ανταπόκριση στη σύμβαση κατά την έναρξη της μισθωτικής περιόδου

Για να ανταποκρίνεται στη σύμβαση κατά την έναρξη της μισθωτικής περίοδου, το πράγμα πρέπει:
(α) να είναι της ποσότητας, ποιότητας και περιγραφής που συμφωνήθηκε από τα μέρη·
(β) να περιέχεται ή να έχει συσκευασθεί κατά τον τρόπο που συμφωνήθηκε από τα μέρη·
(γ) να παρέχεται με κάθε εξάρτημα, οδηγίες εγκατάστασης ή άλλες οδηγίες που συμφωνήθηκε από τα μέρη και
(δ) να ανταποκρίνεται στο IV.B – 3:103.

Άρθρο 3:103: Καταλληλότητα για το σκοπό, ιδιότητες, συσκευασία κλπ.

Το πράγμα πρέπει:
(α) να είναι κατάλληλο για κάθε ειδικό σκοπό που γνωστοποιήθηκε στον εκμισθωτή κατά το χρόνο σύναψης της σύμβασης, εκτός εάν συνάγεται από τις περιστάσεις ότι ο μισθωτής δεν στηρίχθηκε ή ότι δεν θα ήταν εύλογο γι' αυτόν να στηριχθεί στην ικανότητα και κρίση του εκμισθωτή·
(β) να είναι κατάλληλο για τους σκοπούς για τους οποίους πράγματα της ίδιας περιγραφής συνήθως προορίζονται·
(γ) να διαθέτει τις ιδιότητες των πραγμάτων που ο εκμισθωτής παρουσίασε στο μισθωτή ως δείγμα ή υπόδειγμα·
(δ) να περιέχεται ή να έχει συσκευασθεί κατά το συνήθη για τέτοιου είδους πράγματα τρόπο ή ελλείψει τέτοιου τρόπου, κατά τρόπο πρόσφορο για τη διατήρηση και προστασία του·
(ε) να παρέχεται με τα εξαρτήματα, οδηγίες εγκατάστασης ή άλλες οδηγίες που ο μισθωτής εύλογα θα προσδοκούσε να λάβει και
(στ) να διαθέτει τις ιδιότητες και την απόδοση που ο μισθωτής μπορεί ευλόγως να προσδοκά.

Άρθρο 3:104: Ανταπόκριση του πράγματος κατά τη διάρκεια της μισθωτικής περιόδου

(1) Καθ' όλη τη διάρκεια της μισθωτικής περιόδου και με την επιφύλαξη της φυσιολογικής φθοράς, το πράγμα πρέπει:
  (α) να παραμείνει στην ποσότητα, ποιότητα και περιγραφή που ορίζει η σύμβαση και
  (β) να παραμείνει κατάλληλο για τους σκοπούς της μίσθωσης, ακόμα και αν αυτό απαιτεί τροποποιήσεις στο πράγμα.
(2) Η παράγραφος (1) δεν εφαρμόζεται σε περιπτώσεις που το μίσθωμα υπολογίζεται κατά τρόπο ώστε να λαμβάνεται υπόψη η απόσβεση του κόστους του πράγματος από το μισθωτή.

(3) Τα οριζόμενα στην παράγραφο (1) δεν επηρεάζουν τις υποχρεώσεις του μισθωτή κατά το IV.B – 5:104(1)(γ).

Άρθρο 3:105: Πλημμελής εγκατάσταση σε μίσθωση με καταναλωτή

Σε περίπτωση που σε μίσθωση με καταναλωτή, το πράγμα είναι πλημμελώς εγκαταστημένο, κάθε έλλειψη ανταπόκρισης που απορρέει από την πλημμελή εγκατάσταση θεωρείται πως συνιστά έλλειψη ανταπόκρισης του πράγματος εάν:

(α) το πράγμα εγκαταστάθηκε από τον εκμισθωτή ή υπό την ευθύνη του εκμισθωτή ή

(β) το πράγμα επρόκειτο να εγκατασταθεί από τον καταναλωτή και η πλημμελής εγκατάσταση οφειλόταν σε ελλείψεις των οδηγιών εγκατάστασης.

Άρθρο 3:106: Συμφωνία για μη ευθύνη σε μίσθωση με καταναλωτή

Σε μίσθωση με καταναλωτή, οποιοσδήποτε συμβατικός όρος ή συμφωνία με τον εκμισθωτή, που άμεσα ή έμμεσα περιέχει παραίτηση ή περιορίζει τα δικαιώματα που απορρέουν από την υποχρέωση του εκμισθωτή να διασφαλίσει ότι το πράγμα ανταποκρίνεται στη σύμβαση και συνήφθη πριν η έλλειψη ανταπόκρισης περιέλθει σε γνώση του μισθωτή (καταναλωτή), δεν δεσμεύει τον τελευταίο.

Άρθρο 3:107: Υποχρεώσεις κατά την επιστροφή του πράγματος

Ο εκμισθωτής έχει την υποχρέωση:

(α) να προβεί σε όλες τις ενέργειες που μπορεί εύλογα να αναμένονται ώστε να δοθεί η δυνατότητα στο μισθωτή να εκπληρώσει την υποχρέωση επιστροφής του πράγματος και

(β) να αποδεχθεί την επιστροφή του πράγματος όπως απαιτείται από τη σύμβαση.

Κεφάλαιο 4:
Δικαιώματα του μισθωτή

Άρθρο 4:101: Επισκόπηση των δικαιωμάτων

Αν ο εκμισθωτής δεν εκπληρώσει κάποια υποχρέωση σύμφωνα με τη σύμβαση, ο μισθωτής δικαιούται, σύμφωνα με το Βιβλίο III, Κεφάλαιο 3 και τους κανόνες του παρόντος Κεφαλαίου, να:

(α) απαιτήσει την εκπλήρωση της υποχρέωσης αυτής·

(β) αρνηθεί την εκπλήρωση της αντίστοιχης δικής του υποχρέωσης·

(γ) καταγγείλει τη μίσθωση·

(δ) μειώσει το μίσθωμα·

(ε) απαιτήσει αποζημίωση και τόκο.

Άρθρο 4:102: Μίσθωση με καταναλωτή

(1) Σε μίσθωση με καταναλωτή οι συμβαλλόμενοι δεν μπορούν να αποστούν από τους κανόνες του παρόντος Κεφαλαίου εις βάρος του καναλωτή.

(2) Κατ' εξαίρεση από όσα ορίζονται στην παράγραφο (1), τα μέρη μπορούν να συμφωνήσουν τον περιορισμό της ευθύνης του εκμισθωτή για ζημία που εντάσσεται στο πλαίσιο της εμπορικής, επιχειρηματικής ή επαγγελματικής δραστηριότητας του μισθωτή. Δεν μπορεί, όμως, να γίνει επίκληση τέτοιου όρου αντίθετα στην καλή πίστη και τις συναλλακτικές συνήθειες.

Άρθρο 4:103: Δικαίωμα του μισθωτή σε αποκατάσταση της έλλειψης ανταπόκρισης
(1) Ο μισθωτής μπορεί να αποκαταστήσει κάθε έλλειψη ανταπόκρισης του πράγματος και να απαιτήσει τις δαπάνες στις οποίες εύλογα υποβλήθηκε, στο βαθμό κατά τον οποίο ο μισθωτής έχει δικαίωμα να απαιτήσει εκπλήρωση σύμφωνα με το III. – 3:302.
(2) Τα οριζόμενα στην προηγούμενη παράγραφο δεν επηρεάζουν το δικαίωμα του εκμισθωτή να θεραπεύσει την έλλειψη της ανταπόκρισης σύμφωνα με το Βιβλίο III, Κεφάλαιο 3, Τμήμα 2.

Άρθρο 4:104: Μείωση μισθώματος
(1) Ο μισθωτής μπορεί να μειώσει το μίσθωμα για την περίοδο κατά την οποία η αξία της παροχής του εκμισθωτή μειώθηκε εξαιτίας καθυστέρησης ή έλλειψης ανταπόκρισης, στο βαθμό κατά τον οποίο η μείωση στην αξία δεν προκαλείται από το μισθωτή.
(2) Το μίσθωμα μπορεί να μειωθεί ακόμα και για περιόδους κατά τις οποίες ο εκμισθωτής διατηρεί το δικαίωμα να εκπληρώσει ή θεραπεύσει σύμφωνα με τα III. – 3:103, III. – 3:202(2) και III. – 3:205.
(3) Κατ' εξαίρεση από τον κανόνα της παραγράφου (1), ο μισθωτής μπορεί να απολέσει το δικαίωμα μείωσης του μισθώματος για περίοδο σύμφωνα με το IV.B – 4:106.

Άρθρο 4:105: Σύμβαση κάλυψης
Εάν ο μισθωτής καταγγείλει τη μίσθωση και προβεί σε σύμβαση κάλυψης μέσα σε εύλογο χρόνο και κατά εύλογο τρόπο, ο μισθωτής μπορεί, σε περίπτωση που δικαιούται αποζημίωση, να απαιτήσει τη διαφορά ανάμεσα στην αξία της μίσθωσης που κατήγγειλε και της σύμβασης κάλυψης, όπως επίσης και κάθε περαιτέρω ζημία.

Άρθρο 4:106: Ειδοποίηση για την έλλειψη ανταπόκρισης
(1) Ο μισθωτής δεν μπορεί να επικαλεστεί τα δικαιώματα για έλλειψη ανταπόκρισης, εκτός εάν ειδοποιήσει τον εκμισθωτή. Αν η ειδοποίηση δεν γίνει εγκαίρως, η έλλειψη ανταπόκρισης δε θα ληφθεί υπόψη για όση περίοδο αντιστοιχεί στη μη εύλογη καθυστέρηση ειδοποίησης. Η ειδοποίηση θεωρείται πάντοτε ότι είναι έγκαιρη εάν ο μισθωτής προβεί σ' αυτήν σε εύλογο χρονικό διάστημα αφότου αντιλήφθηκε ή θα μπορούσε εύλογα να αναμένεται ότι αντιλήφθηκε την έλλειψη ανταπόκρισης.
(2) Όταν η μισθωτική περίοδος έχει λήξει, εφαρμόζονται οι κανόνες του III. – 3:107.
(3) Ο εκμισθωτής δεν έχει δικαίωμα να επικαλεσθεί τις διατάξεις των παραγράφων (1) και (2) εάν η έλλειψη ανταπόκρισης σχετίζεται με γεγονότα, τα οποία ο εκμισθωτής γνώριζε ή θα μπορούσε εύλογα να αναμένεται ότι γνώριζε και τα οποία ο εκμισθωτής δεν αποκάλυψε στο μισθωτή.

Άρθρο 4:107: Δικαιώματα έναντι του προμηθευτή του πράγματος
(1) Το παρόν Άρθρο εφαρμόζεται όταν:
(α) ο εκμισθωτής, καθ' υπόδειξιν του μισθωτή, αποκτά το πράγμα από προμηθευτή, που έχει επιλεγεί από το μισθωτή·
(β) ο μισθωτής, παρέχοντας τις προδιαγραφές για το πράγμα και επιλέγοντας τον προμηθευτή, δεν βασίζεται κατά κύριο λόγο στην ικανότητα και κρίση του εκμισθωτή·
(γ) ο μισθωτής εγκρίνει τους όρους της σύμβασης προμήθειας·

(δ) οι υποχρεώσεις του προμηθευτή από τη σύμβαση προμήθειας υπάρχουν, κατά το νόμο ή τη σύμβαση, έναντι του μισθωτή ως μέρους στη σύμβαση προμήθειας ή ως εάν ο μισθωτής ήταν μέρος στη σύμβαση αυτή και

(ε) οι υποχρεώσεις του προμηθευτή έναντι του μισθωτή δεν μπορούν να αλλάξουν χωρίς τη συναίνεση του μισθωτή.

(2) Ο μισθωτής δεν μπορεί να απαιτήσει εκπλήρωση από τον εκμισθωτή, να μειώσει το μίσθωμα ή να απαιτήσει αποζημίωση ή τόκο από τον εκμισθωτή για καθυστερημένη παράδοση ή για έλλειψη ανταπόκρισης, εκτός εάν η μη εκπλήρωση οφείλεται σε πράξη ή παράλειψη του εκμισθωτή. Η παρούσα διάταξη δεν αποκλείει το δικαίωμα του μισθωτή να μη δεχθεί το πράγμα, να καταγγείλει τη μίσθωση ή, πριν από την αποδοχή του πράγματος, να παρακρατήσει το μίσθωμα, στο βαθμό κατά τον οποίο θα παρέχονταν αυτά τα δικαιώματα στο μισθωτή ως μέρος στη σύμβαση προμήθειας.

(3) Η διάταξη της παραγράφου (2) δεν αποκλείει οποιοδήποτε δικαίωμα του μισθωτή στην περίπτωση που δικαίωμα ή απαίτηση τρίτου παρακωλύει ή είναι πιθανό με άλλο τρόπο να παρεμποδίσει την αδιάλειπτη χρήση του πράγματος από το μισθωτή σύμφωνα με τη σύμβαση.

(4) Ο μισθωτής δεν μπορεί να καταγγείλει τη σύμβαση προμήθειας χωρίς τη συναίνεση του εκμισθωτή.

Κεφάλαιο 5:
Υποχρεώσεις του μισθωτή

Άρθρο 5:101: Υποχρέωση καταβολής μισθώματος

(1) Ο μισθωτής έχει την υποχρέωση να καταβάλλει το μίσθωμα που έχει οριστεί ή μπορεί να προσδιοριστεί από τη συμφωνία των μερών ή από το II. – 9:103.

(2) Το μίσθωμα οφείλεται από την έναρξη της μισθωτικής περιόδου.

Άρθρο 5:102: Χρόνος καταβολής

Το μίσθωμα καταβάλλεται:

(α) στο τέλος κάθε περιόδου για την οποία έχει συμφωνηθεί μίσθωμα, ή

(β) εάν το μίσθωμα δεν έχει συμφωνηθεί για συγκεκριμένες περιόδους, κατά τη λήξη της μίσθωσης ορισμένου χρόνου, ή

(γ) εάν η μίσθωση δεν είναι ορισμένου χρόνου και το μίσθωμα δεν έχει συμφωνηθεί για συγκεκριμένες περιόδους, στο τέλος εύλογων διαστημάτων.

Άρθρο 5:103: Αποδοχή του πράγματος

Ο μισθωτής πρέπει:

(α) να προβεί σε όλες τις ενέργειες που εύλογα αναμένονται ώστε να δοθεί η δυνατότητα στον εκμισθωτή να εκπληρώσει την υποχρέωση να καταστήσει το πράγμα διαθέσιμο κατά την έναρξη της μισθωτικής περιόδου και

(β) να αποκτήσει τον έλεγχο του πράγματος όπως απαιτείται από τη σύμβαση.

Άρθρο 5:104: Χρήση του πράγματος σύμφωνα με τη σύμβαση

(1) Ο μισθωτής πρέπει:

(α) να τηρεί τους όρους και περιορισμούς που απορρέουν από τη συμφωνία των μερών·

(β) να μεταχειρίζεται το πράγμα με την επιμέλεια που ένας συνετός μισθωτής θα επιδείκνυε σύμφωνα με τις περιστάσεις, λαμβάνοντας υπόψη τη διάρκεια της μισθωτικής περιόδου, το σκοπό της μίσθωσης και το χαρακτήρα του πράγματος και

(γ) να λαμβάνει όλα τα μέτρα που κανονικά αναμένεται ότι θα καταστούν αναγκαία ώστε να διατηρηθεί η κανονική ποιότητα και λειτουργικότητα του πράγματος, στο μέτρο που είναι εύλογο, λαμβάνοντας υπόψη τη διάρκεια της μισθωτικής περιόδου, το σκοπό της μίσθωσης και το χαρακτήρα του πράγματος.

(2) Στην περίπτωση που το μίσθωμα υπολογίζεται κατά τέτοιο τρόπο ώστε να ληφθεί υπόψη η απόσβεση του κόστους του πράγματος από το μισθωτή, ο μισθωτής έχει την υποχρέωση, κατά τη διάρκεια της μισθωτικής περιόδου, να διατηρεί το πράγμα στην κατάσταση στην οποία βρισκόταν κατά την έναρξη αυτής, με την επιφύλαξη της φυσιολογικής για το είδος του πράγματος φθοράς.

Άρθρο 5:105: Επέμβαση προς αποφυγή κινδύνου ή βλάβης στο πράγμα

Ο μισθωτής έχει την υποχρέωση να προβαίνει στη συντήρηση και τις επισκευές στις οποίες κανονικά θα προέβαινε ο εκμισθωτής, αν τα μέτρα είναι αναγκαία προκειμένου να αποφευχθεί κίνδυνος ή βλάβη στο πράγμα, και είναι αδύνατο ή μη ευχερές για τον εκμισθωτή, αλλά όχι για το μισθωτή, να διασφαλίσει τη λήψη αυτών των μέτρων. Ο μισθωτής έχει κατά του εκμισθωτή δικαίωμα αποζημίωσης ή, ανάλογα με την περίπτωση, δικαίωμα απόδοσης δαπανών αναφορικά με υποχρέωση ή ανάλωση (χρημάτων ή άλλων περιουσιακών στοιχείων) για τους σκοπούς της επέμβασης, εφόσον αυτές ήταν εύλογες.

Άρθρο 5:106: Αποζημίωση για συντήρηση και βελτιώσεις

Ο μισθωτής δεν μπορεί να απαιτήσει αποζημίωση για συντήρηση ή βελτιώσεις στο πράγμα. Το προηγούμενο εδάφιο δεν αποκλείει ούτε περιορίζει οποιαδήποτε απαίτηση που ο μισθωτής μπορεί να έχει για αποζημίωση ή οποιοδήποτε δικαίωμα ή απαίτηση που ο μισθωτής μπορεί να έχει κατά το IV.B – 4:103, το IV.B – 5:105 ή το Βιβλίο VIII.

Άρθρο 5:107: Υποχρέωση ενημέρωσης

(1) Ο μισθωτής έχει την υποχρέωση να ενημερώνει τον εκμισθωτή για κάθε ζημία ή κίνδυνο στο πράγμα, και ομοίως για κάθε δικαίωμα ή απαίτηση τρίτου, αν οι συγκεκριμένες περιστάσεις θα υποχρέωναν κανονικά τον εκμισθωτή να προβεί σε κάποια ενέργεια.

(2) Ο εκμισθωτής πρέπει να ενημερώνεται σε εύλογο χρονικό διάστημα αφότου ο μισθωτής έμαθε, ή θα μπορούσε εύλογα να αναμένεται ότι έχει μάθει, σχετικά με τις περιστάσεις και το χαρακτήρα τους.

Άρθρο 5:108: Επισκευές και έλεγχοι του εκμισθωτή

(1) Ο μισθωτής έχει την υποχρέωση να ανέχεται τη διενέργεια επισκευών και άλλων εργασιών στο πράγμα που είναι αναγκαίες για τη διατήρησή του, την εξάλειψη ελαττωμάτων και την αποτροπή κινδύνου. Αν είναι δυνατόν, ο εκμισθωτής πρέπει να ενημερώνει το μισθωτή ένα εύλογο χρονικό διάστημα πριν από τη λήψη τέτοιων μέτρων. Η υποχρέωση αυτή δεν εμποδίζει το μισθωτή να μειώσει το μίσθωμα σύμφωνα με το IV.B – 4:104.

(2) Ο μισθωτής έχει την υποχρέωση να ανέχεται τη διενέργεια εργασιών στο πράγμα, ακόμα και αν δεν εμπίπτουν στην παράγραφο (1), εκτός εάν υπάρχει επαρκής λόγος να εναντιωθεί σε τέτοιου είδους εργασίες.
(3) Ο μισθωτής έχει την υποχρέωση να ανέχεται έλεγχο στο πράγμα για τους σκοπούς που αναφέρονται στην παράγραφο (1). Ο μισθωτής έχει επίσης την υποχρέωση να δέχεται έλεγχο στο πράγμα από έναν ενδεχόμενο μελλοντικό μισθωτή κατά τη διάρκεια εύλογου διαστήματος πριν από τη λήξη της μίσθωσης.

Άρθρο 5:109: Υποχρέωση επιστροφής του πράγματος

Κατά τη λήξη της μισθωτικής περιόδου ο μισθωτής έχει την υποχρέωση να επιστρέψει το πράγμα στον τόπο όπου αυτό είχε τεθεί στη διάθεσή του.

Κεφάλαιο 6:
Δικαιώματα του εκμισθωτή

Άρθρο 6:101: Επισκόπηση των δικαιωμάτων

Αν ο μισθωτής δεν εκπληρώσει κάποια υποχρέωση σύμφωνα με τη σύμβαση, ο εκμισθωτής δικαιούται, σύμφωνα με το Βιβλίο III, Κεφάλαιο 3 και τις διατάξεις του παρόντος Κεφαλαίου να:

(α) απαιτήσει την εκπλήρωση της υποχρέωσης αυτής·
(β) αρνηθεί την εκπλήρωση της αντίστοιχης δικής του υποχρέωσης·
(γ) καταγγείλει τη μίσθωση·
(δ) απαιτήσει αποζημίωση και τόκο.

Άρθρο 6:102: Μίσθωση με καταναλωτή

Σε μίσθωση με καταναλωτή οι συμβαλλόμενοι δεν μπορούν να αποστούν από τους κανόνες του παρόντος Κεφαλαίου εις βάρος του καναλωτή.

Άρθρο 6:103: Αξίωση εκπλήρωσης χρηματικών υποχρεώσεων

(1) Ο εκμισθωτής έχει το δικαίωμα να απαιτήσει την καταβολή του μισθώματος και άλλα οφειλόμενα ποσά.
(2) Σε περίπτωση που ο εκμισθωτής δεν έχει ακόμα θέσει το πράγμα στη διάθεση του μισθωτή και είναι προφανές ότι ο μισθωτής δεν θα θελήσει να αποκτήσει τον έλεγχο του πράγματος, ο εκμισθωτής μπορεί εντούτοις να προβεί σε εκπλήρωση και να απαιτήσει καταβολή, εκτός εάν:
   (α) ο εκμισθωτής θα μπορούσε να είχε προβεί σε εύλογη σύμβαση κάλυψης χωρίς σημαντική προσπάθεια ή δαπάνη ή
   (β) η εκπλήρωση θα ήταν αδικαιολόγητη υπό τις συγκεκριμένες περιστάσεις.
(3) Σε περίπτωση που ο μισθωτής έχει αποκτήσει τον έλεγχο του πράγματος, ο εκμισθωτής μπορεί να απαιτήσει την καταβολή οποιωνδήποτε ποσών οφείλονται κατά τη σύμβαση. Σε αυτά περιλαμβάνονται μελλοντικά μισθώματα, εκτός εάν ο μισθωτής επιθυμεί να επιστρέψει το πράγμα και θα ήταν εύλογο υπό τις συγκεκριμένες περιστάσεις για τον εκμισθωτή να αποδεχθεί την επιστροφή του.

Άρθρο 6:104: Σύμβαση κάλυψης

Εάν ο εκμισθωτής καταγγείλει τη μίσθωση και προβεί σε σύμβαση κάλυψης μέσα σε εύλογο χρόνο και κατά εύλογο τρόπο, ο εκμισθωτής μπορεί, σε περίπτωση που δικαιούται αποζημίωση, να απαιτήσει τη διαφορά ανάμεσα στην αξία της μίσθωσης που κατήγγειλε και της σύμβασης κάλυψης, όπως επίσης και κάθε περαιτέρω ζημία.

Άρθρο 6:105: Περιορισμός ευθύνης σε μίσθωση με καταναλωτή

(1) Σε μίσθωση με καταναλωτή, η απαίτηση του εκμισθωτή για αποζημίωση μπορεί να μειωθεί στο μέτρο που η ζημία καλύπτεται από ασφάλιση του πράγματος, ή στο μέτρο που η ζημία θα μπορούσε να είχε καλυφθεί από ασφάλιση, στις περιπτώσεις που είναι εύλογο να αναμένεται ότι ο εκμισθωτής θα είχε προβεί σε τέτοια ασφάλιση.
(2) Ο κανόνας της παραγράφου (1) εφαρμόζεται πλέον των κανόνων του Βιβλίου III, Κεφάλαιο 3, Τμήμα 7.

Κεφάλαιο 7:
Νέα συμβαλλόμενα μέρη και υπομίσθωση

Άρθρο 7:101: Μεταβολή στην κυριότητα και υποκατάσταση του εκμισθωτή

(1) Σε περίπτωση μεταβίβασης της κυριότητας από τον εκμισθωτή σε νέο κύριο, ο νέος κύριος του πράγματος υποκαθίσταται ως συμβαλλόμενο μέρος στη σύμβαση της μίσθωσης, αν ο μισθωτής έχει την κατοχή του πράγματος κατά το χρόνο που η κυριότητα μεταβιβάζεται. Ο προηγούμενος κύριος εξακολουθεί να ευθύνεται επικουρικά για τη μη εκπλήρωση της σύμβασης της μίσθωσης ως παρέχων προσωπική ασφάλεια.
(2) Σε περίπτωση που ανατραπεί η μεταβίβαση της κυριότητας, τα μέρη επανέρχονται στην αρχική τους κατάσταση, με εξαίρεση παροχή ήδη εκπληρωθείσα κατά το χρόνο αυτής της ανατροπής.
(3) Οι κανόνες των προηγούμενων παραγράφων εφαρμόζονται αναλόγως στην περίπτωση που ο εκμισθωτής έχει ενεργήσει ως δικαιούχος δικαιώματος άλλου, διαφορετικού από την κυριότητα.

Άρθρο 7:102: Εκχώρηση του δικαιώματος του μισθωτή να απαιτήσει εκπλήρωση

Το δικαίωμα του μισθωτή να απαιτήσει εκπλήρωση σύμφωνα με τη σύμβαση της μίσθωσης δεν μπορεί να εκχωρηθεί χωρίς τη συναίνεση του εκμισθωτή.

Άρθρο 7:103: Υπομίσθωση

(1) Ο μισθωτής δεν μπορεί να υπομισθώσει το πράγμα χωρίς τη συναίνεση του εκμισθωτή.
(2) Αν ο εκμισθωτής αρνείται χωρίς επαρκή λόγο να συναινέσει στην υπομίσθωση, ο μισθωτής έχει το δικαίωμα να καταγγείλει τη σύμβαση αφού παράσχει εύλογη προθεσμία.
(3) Σε περίπτωση υπομίσθωσης, ο μισθωτής εξακολουθεί να έχει την ευθύνη για την εκπλήρωση της σύμβασης της μίσθωσης.

Italian[7]

Libro IV.B: Locazione di cose mobili

Capitolo 1:
Ambito di applicazione e disposizioni generali

Articolo 1:101: Locazione di cose mobili

(1) La presente Parte del Libro IV si applica ai contratti di locazione di cose mobili.
(2) La locazione di cose mobili è il contratto con il quale una parte, il locatore, si obbliga a far godere all'altra, il locatario, una cosa mobile per un dato periodo di tempo in cambio di un determinato corrispettivo. Il corrispettivo può essere in denaro o altro valore.
(3) La presente Parte del Libro IV non si applica ai contratti in cui le parti hanno concordato che venga trasferita la proprietà dopo un periodo di utilizzo della cosa, anche qualora le parti abbiano descritto il contratto come una locazione.
(4) L'applicazione della presente Parte del Libro IV non è esclusa quando il contratto ha uno scopo di finanziamento, il locatore assume il ruolo di parte finanziatrice o il locatario può avvalersi dell'opzione di acquistare la proprietà della cosa.
(5) La presente Parte del Libro IV regola esclusivamente la relazione contrattuale tra il locatore ed il locatario.

Articolo 1:102: Locazione tra professionista e consumatore

Ai fini della presente parte del Libro IV, la locazione tra professionista e consumatore è il contratto con cui un imprenditore concede in locazione una cosa mobile ad una persona fisica che agisce prevalentemente per scopi estranei all'attività imprenditoriale o professionale eventualmente svolta (consumatore).

Capitolo 2:
Durata della locazione

Articolo 2:101: Inizio della locazione

(1) La locazione ha inizio:
  (a) nel momento determinabile dagli accordi delle parti;
  (b) se viene individuato un arco temporale durante il quale la locazione debba avere inizio, in qualsiasi momento scelto dal locatore all'interno di quel medesimo arco temporale, salvo che le circostanze indichino che sia il locatario a dover scegliere il momento iniziale;
  (c) in qualsiasi altro caso, dopo un ragionevole lasso di tempo a seguito della conclusione del contratto, a richiesta di una delle parti.

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7 Translated by Dr. *Margherita Magillo* (Milan) in collaboration with Professor *Giovanni Iudica* (Milan).

(2) La locazione ha inizio nel momento in cui il locatario inizia a detenere la cosa, se ciò avviene prima del momento indicato in virtù del paragrafo (1).

Articolo 2:102: Fine della locazione

(1) La locazione per un tempo determinato cessa con lo spirare del termine determinabile dagli accordi delle parti. La locazione per un tempo determinato non può essere cessata unilateralmente prima della scadenza mediante disdetta.
(2) La locazione senza determinazione di tempo cessa con lo spirare del termine indicato nella disdetta presentata da una delle parti.
(3) Il termine indicato nella disdetta deve essere conforme agli accordi delle parti, oppure, se nulla si evince da questi, deve essere fissato entro un ragionevole periodo di tempo dal momento in cui la disdetta è stata notificata ad una delle parti.

Articolo 2:103: Proroga tacita

(1) La durata della locazione viene prorogata a tempo indeterminato, se:
  (a) il locatario, con l'assenso del locatore, continua ad utilizzare la cosa dopo lo spirare del termine finale;
  (b) l'utilizzo della cosa è proseguito per un periodo di tempo equivalente a quello che sarebbe stato richiesto dal preavviso; e
  (c) le circostanze del caso non escludono il tacito consenso di entrambe le parti ad una proroga tacita.
(2) Ciascuna delle parti può evitare la proroga tacita comunicando all'altra parte la disdetta prima che la proroga tacita abbia effetto. Nella disdetta, la parte deve soltanto indicare che reputa la locazione cessata nella data prevista come termine finale.
(3) Qualora la durata della locazione venga prorogata ai sensi del presente Articolo, il contratto di locazione continua ad essere regolato alle stesse condizioni.
(4) Nonostante la regola del paragrafo (3), quando il corrispettivo viene calcolato tenendo conto dell'ammortamento del costo della cosa da parte del locatario, il corrispettivo dovuto in seguito alla proroga deve essere calcolato in maniera non irragionevole considerato l'ammontare già pagato. Le parti non possono derogare alla previsione del presente paragrafo in modo da causare pregiudizio al consumatore in una locazione conclusa tra professionista e consumatore.
(5) Le garanzie prestate da terzi non si estendono alle obbligazioni derivanti dalla proroga ai sensi del presente articolo.

Capitolo 3:
Obbligazioni del locatore

Articolo 3:101: Disponibilità della cosa

(1) Il locatore deve porre il locatario nella disponibilità della cosa all'inizio della locazione e nel luogo determinato ai sensi di III. – 2:101.
(2) Nonostante la regola del paragrafo precedente, il locatore deve porre il locatario nella disponibilità della cosa presso la sede di attività o, nel caso, presso la residenza abituale del locatario qualora il locatore, su indicazioni del locatario, acquisti la cosa da un fornitore individuato dal locatario stesso.

(3) La cosa deve rimanere nella disponibilità del locatario per tutta la durata della locazione, libera da diritti o pretese di terzi che impediscano o comunque ostacolino l'uso della cosa da parte del locatario in conformità del contratto.
(4) Le obbligazioni del locatore in caso di smarrimento o danneggiamento della cosa durante la locazione sono regolate da IV.B – 3:104.

Articolo 3:102: Conformità al contratto all'inizio della locazione

Per essere conforme al contratto all'inizio della locazione, la cosa deve:
(a) essere della quantità, qualità e tipo richiesti dagli accordi delle parti;
(b) essere disposta o imballata nel modo richiesto dagli accordi delle parti;
(c) essere corredata degli accessori, delle istruzioni per l'installazione o delle ulteriori istruzioni richieste dagli accordi delle parti; e
(d) rispettare la previsione di IV.B – 3:103.

Articolo 3:103: Idoneità all'uso, qualità, imballaggio etc.

Salvo diverso accordo delle parti, la cosa deve:
(a) essere idonea allo specifico uso portato a conoscenza del locatore al momento della conclusione del contratto, salvo che le circostanze dimostrino che il locatario non ha fatto affidamento sulla competenza o sulla capacità di valutazione del locatore o che non era da parte sua ragionevole farvi affidamento;
(b) essere idonea all'uso al quale servono abitualmente cose dello stesso tipo;
(c) possedere le qualità della cosa che il locatore ha presentato al locatario come campione o modello;
(d) essere disposta o imballata secondo il modo usuale per cose dello stesso tipo o, in difetto di un modo usuale, in un modo adeguato per conservare e proteggere la cosa;
(e) essere corredata degli accessori, delle istruzioni per l'installazione o delle ulteriori istruzioni che il locatario possa ragionevolmente aspettarsi di ricevere; e
(f) possedere quelle qualità o specifiche di funzionamento che il locatario possa ragionevolmente attendersi.

Articolo 3:104: Conformità della cosa nel corso della locazione

(1) Per tutta la durata della locazione e tenuto conto della normale usura, la cosa deve:
  (a) rimanere della quantità, qualità e descrizione prevista dal contratto; e
  (b) rimanere idonea allo scopo della locazione, anche quando questo preveda che la cosa venga sottoposta a modifiche.
(2) Il paragrafo (1) non si applica quando il corrispettivo viene calcolato tenendo conto dell'ammortamento del costo della cosa da parte del locatario.
(3) La previsione del paragrafo (1) non influisce sulle obbligazioni del locatario derivanti da IV.B – 5:104(1)(c).

Articolo 3:105: Installazione scorretta nella locazione tra professionista e consumatore

Qualora, nella locazione tra professionista e consumatore la cosa venga installata in maniera scorretta, qualsiasi difetto di conformità che derivi dalla scorretta installazione costituisce un difetto di conformità della cosa se la procedura di installazione è prevista dal contratto di locazione e:
(a) la cosa sia stata installata dal locatore o sotto la sua responsabilità; oppure

(b) la cosa doveva essere installata dal consumatore e la scorretta installazione è dovuta a deficienze nelle istruzioni di installazione.

Articolo 3:106: Limiti alle deroghe in una locazione tra professionista e consumatore

In una locazione tra professionista e consumatore, qualsiasi condizione contrattuale o altro accordo preso con il locatore prima che un difetto di conformità sia notificato allo stesso, che direttamente o indirettamente elimini o restringa i diritti risultanti dall'obbligazione del locatore di assicurare che la cosa sia conforme al contratto, non è vincolante per il consumatore.

Articolo 3:107: Obbligazioni nella fase di restituzione della cosa

Il locatore deve

(a) adottare tutte le misure che è ragionevole attendersi al fine di consentire al locatario di adempiere l'obbligazione di restituire la cosa; e

(b) accettare la restituzione della cosa in conformità del contratto.

Capitolo 4:
Tutele a disposizione del locatario

Articolo 4:101: Mezzi di tutela

Se il locatore non adempie una delle obbligazioni previste dal contratto, il locatario, secondo il Libro III, Capitolo 3 e le regole di questo Capitolo, può:

(a) ottenere l'adempimento dell'obbligazione;

(b) rifiutarsi di adempiere la sua obbligazione;

(c) risolvere il contratto di locazione;

(d) ottenere la riduzione del corrispettivo;

(e) ottenere il risarcimento del danno e gli interessi.

Articolo 4:102: Locazione tra professionista e consumatore

(1) In una locazione tra professionista e consumatore le parti non possono derogare alle previsioni del presente Capitolo in modo da causare pregiudizio al consumatore.

(2) Nonostante il paragrafo (1), le parti possono accordarsi per una riduzione della responsabilità del locatore per i danni connessi all'attività imprenditoriale o professionale eventualmente svolta dal locatario. Tale clausola, in ogni caso, non può essere invocata qualora la sua applicazione sia contraria al principio di buona fede nelle contrattazioni.

Articolo 4:103: Tutele a disposizione del locatario per il difetto di conformità

(1) Il locatario può ottenere che il difetto di conformità della cosa venga sanato ed ottenere la ripetizione di qualsiasi spesa ragionevolmente sostenuta, nel caso in cui egli abbia diritto ad ottenere l'esecuzione in forma specifica ai sensi di III. – 3:302.

(2) La disposizione del paragrafo precedente non influisce sul diritto del locatore di sanare il difetto di conformità secondo quanto previsto dal Libro III, Capitolo 3, Sezione 2.

Articolo 4:104: Riduzione del corrispettivo

(1) Il locatario ha diritto alla riduzione del corrispettivo relativo al periodo durante il quale il valore della prestazione del locatore sia diminuito a causa del ritardo o del difetto di conformità, salvo il caso in cui tale diminuzione di valore sia causata dal locatario.

(2) La riduzione del corrispettivo può essere accordata anche nei periodi durante i quali il locatore conserva il diritto di adempiere oppure di sanare il difetto ai sensi ai sensi di III. – 3:103, III. – 3:202(2) e III. – 3:205.
(3) Nonostante quanto previsto dal paragrafo (1), il locatario può perdere il diritto alla riduzione del corrispettivo per il periodo di tempo previsto da IV.B – 4:106.

Articolo 4:105: Accordo sostitutivo

Il locatario, ove abbia risolto il contratto di locazione ed abbia concluso un accordo sostitutivo entro un ragionevole periodo di tempo ed in una maniera per lui ragionevole, può, quando ha diritto al risarcimento del danno, recuperare la differenza tra il valore del contratto risolto ed il valore dell'accordo sostitutivo, insieme ad ogni altra perdita subita.

Articolo 4:106: Notifica del difetto di conformità

(1) Il locatario non può avvalersi delle tutele previste per il difetto di conformità senza darne notifica al locatore. Quando la notifica non è tempestiva, il difetto di conformità non può essere fatto valere per il periodo di tempo corrispondente al ritardo che sia irragionevole. La notifica è sempre tempestiva quando viene data entro un ragionevole lasso di tempo dopo che il locatario è venuto a conoscenza, o ci si poteva ragionevolmente aspettare che venisse a conoscenza del difetto di conformità.
(2) Qualora la locazione sia terminata si applicano le regole previste da III. – 3:107.
(3) Il locatore non può fare affidamento sulle previsioni di cui ai paragrafi (1) e (2) se il difetto di conformità deriva da fatti da lui conosciuti o ragionevolmente conoscibili e i quali il locatore stesso aveva taciuto al locatario.

Articolo 4:107: Tutele nei confronti del fornitore della cosa locata

(1) Il presente Articolo si applica quando:
  (a) il locatore, su indicazioni del locatario, acquista la cosa dal fornitore scelto dal locatario stesso;
  (b) il locatario, nel fornire le indicazioni riguardanti la cosa e nel selezionare il fornitore, non si affida principalmente alla competenza od alla capacità di valutazione del locatore;
  (c) il locatario approva le clausole del contratto di fornitura;
  (d) le obbligazioni del fornitore derivanti dal contratto di fornitura, secondo quanto previsto dalla legge o dal contratto, sono dovute al locatario in quanto parte effettiva del contratto o, comunque, come se egli fosse parte di quel contratto; e
  (e) la prestazione dovuta dal fornitore al locatario non può essere modificata senza il consenso del locatario stesso.
(2) Il locatario, in caso di ritardo nella consegna o difetto di conformità della cosa, non può chiedere l'adempimento al locatore, ottenere da lui la riduzione del corrispettivo, né comunque chiedergli il risarcimento del danno e gli interessi, salvo che il mancato adempimento derivi da un'azione od omissione del locatore. La presente disposizione, tuttavia, non esclude il diritto del locatario di rifiutare la cosa, risolvere il contratto di locazione oppure, prima dell'accettazione della cosa, di trattenere il corrispettivo, nel caso in cui egli possa avvalersi di queste tutele in qualità di parte del contratto di fornitura.
(3) Quanto previsto al paragrafo (2) non impedisce al locatario di avvalersi di qualsiasi tutela a cui abbia diritto qualora un diritto o una pretesa vantata da terzi gli impedisca, o altrimenti ostacoli, l'utilizzo continuo della cosa in conformità al contratto.
(4) Il locatario non può risolvere il contratto di fornitura senza il consenso del locatore.

Capitolo 5:
Obbligazioni del locatario

Articolo 5:101: Pagamento del corrispettivo
(1) Il locatario deve pagare il corrispettivo determinato o determinabile dagli accordi delle parti oppure da II. – 9:103.
(2) Il corrispettivo è dovuto a partire dall'inizio della locazione.

Articolo 5:102: Tempo del pagamento
(1) Il corrispettivo è pagabile:
  (a) al termine di ciascuna unità di tempo a cui è commisurato il corrispettivo, oppure
  (b) se il corrispettivo non è commisurato ad un'unità di tempo, allo spirare del termine pattuito, se la locazione è per un tempo determinato, oppure
  (c) se non vi è determinazione del tempo di locazione ed il corrispettivo non è commisurato ad un'unità di tempo, al termine di ragionevoli frazioni di tempo.

Articolo 5:103: Accettazione della cosa
Il locatario deve
(a) adottare tutte le misure ragionevolmente prevedibili affinché il locatore adempia l'obbligazione di fornire la disponibilità della cosa all'inizio del periodo di locazione; e
(b) detenere la cosa in conformità del contratto.

Articolo 5:104: Utilizzo della cosa in conformità del contratto
(1) Il locatario deve:
  (a) osservare i requisiti e le restrizioni che derivano dagli accordi delle parti;
  (b) utilizzare la cosa con la cura che, avuto riguardo alle circostanze, adopererebbe un locatario ragionevole, tenuto conto della durata della locazione, dello scopo della locazione e della natura della cosa locata; e
  (c) adottare tutte le misure necessarie a garantire il normale utilizzo e funzionamento della cosa, secondo la ragionevolezza richiesta dalla durata della locazione, dallo scopo della locazione e dalla natura della cosa locata.
(2) In particolare, quando nel calcolare il corrispettivo si tiene conto dell'ammortamento del costo della cosa da parte del locatario, lo stesso deve, nel corso della locazione, mantenere la cosa locata nello stato medesimo in cui era all'inizio del periodo di locazione, tenuto conto della normale usura a cui sono soggette cose dello stesso tipo.

Articolo 5:105: Interventi atti ad evitare la messa in pericolo o il danneggiamento della cosa
Il locatario deve eseguire la manutenzione e le riparazioni che di regola spetterebbero al locatore nel caso in cui tali misure siano necessarie per evitare la messa in pericolo o il danneggiamento della cosa e l'adozione di tali misure sia impossibile o poco agevole per il locatore, ma non per il locatario. Il locatario ha diritto a ricevere dal locatore, a seconda dei casi, l'indennizzo o il rimborso per le misure ragionevolmente adottate o le spese (in denaro o altra utilità) ragionevolmente sostenute per l'intervento.

Articolo 5:106: Compenso per manutenzione e miglioramenti

Il locatario non ha diritto al compenso per la manutenzione della cosa od i miglioramenti apportati alla stessa. Questa disposizione non esclude né diminuisce il diritto del locatario al risarcimento del danno né ogni suo ulteriore diritto o pretesa in virtù di IV.B – 4:103, IV.B – 5:105 oppure in virtù del Libro VIII.

Articolo 5:107: Obblighi di informazione

(1) Il locatario deve informare il locatore di qualsiasi danneggiamento o messa in pericolo della cosa, come di qualsiasi diritto o pretesa che un terzo vanti sulla stessa, quando queste circostanze rendano necessario l'intervento del locatore.
(2) Il locatore deve essere informato entro un lasso di tempo ragionevole dal momento in cui il locatario ha scoperto, o ci si poteva ragionevolmente aspettare che scoprisse le circostanze e la loro natura.

Articolo 5:108: Riparazioni e ispezioni del locatore

(1) Il locatario deve tollerare l'effettuazione di riparazioni ed altri lavori necessari per preservare la cosa, rimuoverne i difetti e prevenirne la messa in pericolo. Se possibile, prima di procedere ai lavori il locatore deve informare il locatario con ragionevole anticipo. Questa obbligazione non impedisce al locatario di ottenere la riduzione del corrispettivo ai sensi di IV.B – 4:104.
(2) Il locatario deve altresì tollerare l'effettuazione sulla cosa di lavori che non siano previsti dal paragrafo (1), salvo che vi sia una valida ragione per obiettare all'effettuazione degli stessi.
(3) Il locatario deve tollerare l'ispezione della cosa per i fini indicati dal paragrafo (1). Il locatario deve altresì accettare l'ispezione della cosa da parte di un eventuale futuro locatario durante un periodo ragionevole prima del termine della locazione.

Articolo 5:109: Obbligo di restituzione della cosa

Alla fine della locazione il locatario deve restituire la cosa nel luogo dove era stato messo nella disponibilità della stessa.

Capitolo 6:
Tutele a disposizione del locatore

Articolo 6:101: Mezzi di tutela

Se il locatario non adempie una delle obbligazioni previste dal contratto, il locatore, ai sensi del Libro III, Capitolo 3 e delle disposizioni di questo Capitolo, può:
(a) ottenere l'adempimento dell'obbligazione;
(b) rifiutarsi di adempiere la sua obbligazione;
(c) risolvere il contratto di locazione;
(d) ottenere il risarcimento del danno e gli interessi.

Articolo 6:102 Locazione tra professionista e consumatore

In una locazione tra professionista o consumatore le parti non possono derogare alle regole del presente Capitolo in modo da causare un pregiudizio al consumatore.

Articolo 6:103: Diritto di ottenere l'adempimento delle obbligazioni pecuniarie

(1) Il locatore ha diritto ad ottenere il pagamento del corrispettivo e delle altre somme a lui dovute.
(2) Quando il locatore non ha ancora messo il locatario nella disponibilità della cosa, ed è chiaro che il locatario non intenderà detenerla, il locatore può comunque adempiere la sua prestazione e recuperare il pagamento del corrispettivo, salvo che:
   (a) il locatore abbia l'opportunità di concludere un accordo sostitutivo senza incorrere in sforzi o spese considerevoli; oppure
   (b) l'adempimento del locatore sia irragionevole tenuto conto delle circostanze del caso.
(3) Ove il locatario abbia iniziato a detenere la cosa, il locatore può recuperare qualsiasi somma dovuta in conformità del contratto. Si considera incluso il corrispettivo futuro, salvo che il locatario preferisca restituire la cosa e, tenuto conto delle circostanze, fosse ragionevole per il locatore accettarne la restituzione.

Articolo 6:104: Accordo sostitutivo

Il locatore, ove abbia risolto il contratto di locazione ed abbia concluso un accordo sostitutivo entro un ragionevole periodo di tempo ed in una maniera per lui ragionevole, può, quando ha diritto al risarcimento del danno, recuperare la differenza tra il valore del contratto risolto ed il valore dell'accordo sostitutivo, insieme ad ogni altra perdita subita.

Articolo 6:105: Riduzione della responsabilità nella locazione tra professionista e consumatore

(1) Nella locazione tra professionista e consumatore, la richiesta di risarcimento del danno da parte del locatore può essere ridotta nella misura in cui il danno è limitato dall'assicurazione che copre la cosa locata, oppure nella misura in cui il danno sarebbe stato limitato dall'assicurazione, in circostanze nelle quali ci si poteva ragionevolmente aspettare che il locatore si avvalesse di tale assicurazione.
(2) La regola del paragrafo (1) si applica in aggiunta alle regole previste dal Libro III, capitolo 3, Sezione 7.

Capitolo 7:
Nuove parti e sublocazione

Articolo 7:101: Trasferimento della proprietà e sostituzione del locatore

(1) Quando la proprietà viene trasferita dal locatore ad un nuovo proprietario, il nuovo proprietario della cosa subentra come parte nel contratto di locazione se il locatario ha il possesso della cosa nel momento in cui la proprietà viene trasferita. Il vecchio proprietario rimane responsabile in via sussidiaria per la mancata esecuzione del contratto di locazione come prestatore di garanzia personale.
(2) L'annullamento del trasferimento della proprietà riporta le parti nelle loro posizioni originarie, salvo per quanto concerne le prestazioni già eseguite nel momento in cui si è verificato tale annullamento.
(3) Le regole del paragrafo precedente si applicano altresì quando il locatore era titolare di un diritto diverso dalla proprietà.

Articolo 7:102: Cessione del contratto

Il locatario non può cedere il contratto di locazione senza il consenso del locatore.

Articolo 7:103: Sublocazione

(1) Il locatario non può sublocare la cosa senza il consenso del locatore.
(2) Qualora il consenso alla sublocazione venga rifiutato senza una ragione valida, il locatario può risolvere il contratto di locazione dando un ragionevole preavviso.
(3) In caso di sublocazione, il locatario rimane responsabile per l'adempimento del contratto di locazione.

Norwegian[8]
Bok IV.B: Leige av lausøyreting

Kapittel 1:
Verkeområde og allmenne føresegner

Artikkel 1:101: Leige av lausøyreting
(1) Denne delen av bok IV gjeld avtalar om leige av lausøyreting.
(2) Ein avtale om leige av lausøyreting er ein avtale der den eine parten, utleigaren, tek på seg å skaffe den andre parten, leigaren, ein mellombels rett til bruk av lausøyreting mot eit vederlag, leiga. Leiga kan vera i pengar eller andre verdiar.
(3) Denne delen av bok IV gjeld ikkje avtalar der partane er samde om at eigedomsretten skal gå over etter eit tidsrom med rett til bruk, enda om partane har kalla avtalen eit leigeforhold.
(4) At avtalen har eit finansieringsføremål, at utleigaren har ei rolle som ein finansierande part, eller leigaren har ein rett til å bli eigar av tingen, hindrar ikkje bruken av denne delen av bok IV.
(5) Denne delen av bok IV regulerer berre avtaleforholdet mellom utleigar og leigar.

Artikkel 1:102: Forbrukarleigeforhold
Eit forbrukarleigeforhold er i høve til denne delen av bok IV ein avtale der ein næringsdrivande leiger ut lausøyreting til ein fysisk person som hovudsakleg handlar for føremål som ikkje knyter seg personens yrkes- eller næringsverksemd (forbrukaren).

Kapittel 2:
Leigetida

Artikkel 2:101: Leigetida tek til
(1) Leigetida tek til:
  (a) på det tidspunktet som kan fastsetjast ut frå avtalevilkåra;
  (b) på det tidspunktet utleigaren vel innafor eit fastsett tidsrom, om det ikkje går fram av tilhøva at det er leigaren som skal velje tidspunkt innafor tidsrommet;
  (c) i alle andre tilfelle, ei rimeleg tid etter at avtalen er gjord, når ein av partane krev det.
(2) Leigetida tek til når leigaren tek over kontrollen med tingen, dersom dette er før det tidspunktet som ville følgje av første ledd.

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8 Translated by Professor *Kåre Lilleholt* (Bergen and Oslo).

Artikkel 2:102: Leigetida tek slutt

(1) Ei bestemt leigetid tek slutt på det tidspunktet som kan fastleggjast ut frå avtalevilkåra. Ei bestemt leigetid kan ikkje avsluttast tidlegare ved einsidig oppseiing.
(2) Ei ubestemt leigetid tek slutt på det tidspunktet ein av partane seier opp til.
(3) Oppseiing kan skje med den fristen som går fram av avtalevilkåra, eller, om ingen frist kan fastsetjast ut frå dei, med ein rimeleg frist frå oppseiinga kom fram til den andre parten.

Artikkel 2:103: Stillteiande lenging

(1) Leigetida blir lengd på ubestemt tid dersom:
  (a) leigaren, med utleigarens kjennskap, har halde fram med å bruken tingen etter at leigetida var slutt;
  (b) denne bruken har vart eit tidsrom som svarar til oppseiingsfristen; og
  (c) omstenda ikkje er uforeinlege med eit stillteiande samtykke frå begge partar til ei slik lenging.
(2) Ein part kan hindre stillteiande lenging ved å gje melding til den andre før lenging skjer. Meldinga treng berre gå ut på at parten ser det slik at leigetida er avslutta til fastsett tid.
(3) Dersom leigetida blir lengd etter denne artikkelen, blir leigeavtalen lengd tilsvarande. Dei andre avtalevilkåra blir ikkje endra med lenginga.
(4) Utan omsyn til andre punktum i tredje leddet må leiga etter lenginga ikkje vera urimeleg ut frå det som alt er betalt, dersom leiga før lenginga var fastsett med tanke på at kostnaden med tingen skulle nedbetalast av leigaren gjennom leiga. Partane kan ikkje gjere avvik frå dette leddet til skade for forbrukaren i eit forbrukarleigeforhold.
(5) Lenging etter denne artikkelen fører ikkje til auke eller lenging av trygd gjeven av tredjepartar.

Kapittel 3:
Utleigarens skyldnader

Artikkel 3:101: Stille tingen til disposisjon

(1) Utleigaren skal stille tingen til disposisjon for leigarens bruk når leigetida tek til, og på den staden som går fram av III. – 2:101.
(2) Utan omsyn til regelen i førre leddet må utleigaren stille tingen til disposisjon for leigarens bruk på leigarens forretningsstad, eller i tilfelle på leigarens vanlege bustad, dersom utleigaren etter spesifikasjonar frå leigaren skaffar tingen frå ein leverandør som er vald av leigaren.
(3) Tingen skal vere til disposisjon for leigarens bruk i leigetida, utan rettar eller krav frå ein tredjepart som kan hindre eller innverke på leigarens bruk av tingen i samsvar med avtalen.
(4) Utleigarens skyldnader når tingen går tapt eller blir skadd i leigetida, blir regulert av IV.B – 3:104.

Artikkel 3:102: Samsvar med avtalen når leigetida tek til

For å samsvare med avtalen når leigetida tek til, skal tingen:
(a) oppfylle dei krava til mengd, kvalitet og slag som går fram av avtalevilkåra;
(b) vere oppbevart eller pakka på det viset som går fram av avtalevilkåra;
(c) stillast til disposisjon med slik tilhøyrsle og slike monteringsrettleingar eller andre rettleiingar som går fram av avtalevilkåra; og
(d) oppfylle krava i IV.B – 3:103.

Artikkel 3:103: Føremål, kvalitet, pakking m. m.

Tingen skal:

(a) passe for bestemte føremål som var gjorde kjende for utleigaren på avtaletida, om ikkje omstenda viser at leigaren ikkje bygde på, eller det ikkje var rimeleg for leigaren å byggje på, utleigarens sakkunnskap og vurdering;
(b) passe for dei føremåla som ting av same slaget til vanleg blir brukte til;
(c) ha dei eigenskapane som utleigaren har vist til ved å leggje fram ein prøve eller ein modell;
(d) vere oppbevart eller pakka på det viset som er vanleg for slike ting, eller om det ikkje er noko slikt vanleg vis, på det viset som skal til for å bevare og verne tingen;
(e) stillast til disposisjon med slik tilhøyrsle og slike monteringsrettleiingar og andre rettleiingar som leigaren rimeleg kunne vente å få; og
(f) ha slike eigenskapar og slik yteevne som leigaren rimeleg kunne vente.

Artikkel 3:104: Samsvar med avtalen i leigetida

(1) Med unntak for vanleg slit og elde skal tingen gjennom heile leigetida:
  (a) oppfylle dei krava til mengd, kvalitet og slag som følgjer av avtalen; og
  (b) passe for føremålet med leigeforholdet, enda om dette krev endring av tingen.
(2) Første ledd gjeld ikkje der leiga er fastsett med tanke på at kostnaden med tingen skal nedbetalast av leigaren gjennom leiga.
(3) Første ledd endrar ikkje dei skyldnadene leigaren har etter IV.B – 5:104(1)(c).

Artikkel 3:105: Urett montering i eit forbrukarleigeforhold

Dersom tingen ikkje er montert rett i eit forbrukarleigeforhold, skal ein samsvarsmangel som kjem av den urette installeringa, reknast som ein samsvarsmangel ved tingen om:

(a) tingen vart montert av utleigaren eller på utleigarens ansvar; eller
(b) tingen skulle monterast av forbrukaren, og den urette monteringa kom av svikt i monteringsrettleiingane.

Artikkel 3:106 Grenser for avvikande avtale i eit forbrukarleigeforhold

Avtalevilkår eller avtalar gjorde med leigaren før ein samsvarsmangel er gjord kjend for utleigaren, og som direkte eller indirekte går ut på å fråfalle eller minke rettar som følgjer av utleigarens skyldnad til å syte for at tingen er i samsvar med avtalen, er ikkje bindande for forbrukaren i eit forbrukarleigeforhold.

Artikkel 3:107: Skyldnader ved tilbakelevering av tingen

Utleigaren skal:

(a) gjere alt som det er rimeleg å vente, for å setje leigaren i stand til å oppfylle skyldnaden til å levere tingen tilbake; og
(b) ta imot tingen slik det følgjer av avtalen.

Kapittel 4:
Leigarens krav som følgje av avtalebrot

Artikkel 4:101: Oversyn over leigarens krav
Dersom utleigaren misheld ein skyldnad etter kontrakten, kan leigaren på grunnlag av bok 3, kapittel III og reglane i dette kapitlet:
(a) krevje tvangsfullføring av skyldnaden;
(b) halde attende oppfyllinga av den gjensidige skyldnaden;
(c) avslutte leigeforholdet;
(d) setje ned leiga;
(e) krevje skadebot og renter.

Artikkel 4:102: Forbrukarleigeforhold
(1) Partane kan ikkje gjere avvik frå reglane i dette kapitlet til skade for forbrukaren i eit forbrukarleigeforhold.
(2) Utan omsyn til første ledd kan partane avtale ei avgrensing av utleigarens ansvar for tap som knyter seg til leigarens yrkes- eller næringsverksemd. Eit slikt avtalevilkår kan likevel ikkje gjerast gjeldande i strid med heider og god tru.

Artikkel 4:103: Leigarens rett til å få samsvarsmangel retta
(1) Leigaren kan få ein samsvarsmangel retta og krevje dekt rimelege kostnader som er pådregne, så langt leigaren har krav på tvangsfullføring etter III. – 3:302.
(2) Førre leddet grip ikkje inn i utleigarens rett til å rette ein samsvarsmangel på grunnlag av bok III, kapittel 3, avsnitt 2.

Artikkel 4:104: Leigenedsetjing
(1) Leigaren kan setje ned leiga for eit tidsrom der verdien av utleigarens yting har minka på grunn av forseinking eller samsvarsmangel, så langt verdiminken ikkje er valda av leigaren.
(2) Leiga kan setjast ned også for tidsrom der utleigaren framleis har rett til å yte eller rette på grunnlag av III. – 3:103, III. – 3:202(2) og III. – 3:205.
(3) Utan omsyn til regelen i første ledd kan leigaren på grunnlag av IV.B – 4:106 miste retten til å setje ned leiga for eit tidsrom.

Artikkel 4:105: Dekningstransaksjon
Dersom leigaren har avslutta leigeforholdet og har gjennomført ein dekningstransaksjon innan rimeleg tid og på rimeleg vis, kan leigaren ta med i eit eventuelt skadebotkrav skilnaden i verdi mellom det avslutta leigeforholdet og dekningstransaksjonen, til liks med anna tap.

Artikkel 4:106: Melding om samsvarsmangel
(1) Leigaren kan ikkje gjera gjeldande krav på grunn av samsvarsmangel utan at det er meldt frå om det til utleigaren. Er det ikkje meldt frå i tide, skal ein sjå bort frå samsvarsmangelen for eit tidsrom som svarar til den urimelege forseinkinga. Meldinga skal alltid reknast som gjeven i tide dersom ho er gjeven innan rimeleg tid etter at leigaren vart, eller rimeleg kunne reknast å ha vorte, merksam på samsvarsmangelen.

(2) Når leigetida er ute, gjeld reglane i III. – 3:107.
(3) Utleigaren kan ikkje vise til føresegnene i første og andre leddet dersom samsvarsmangelen knyter seg til omstende som utleigaren kjende til eller rimeleg kunne ventast å ha kjent til, og som utleigaren ikkje opplyste om til leigaren.

Artikkel 4:107: Krav kanaliserte mot leverandøren av tingen

(1) Denne artikkelen gjeld dersom:
  (a) utleigaren etter spesifikasjonar frå leigaren skaffar tingen frå ein leverandør som er vald av leigaren;
  (b) leigaren i utarbeidinga av spesifikasjonane og i valet av leverandør ikkje byggjer på utleigarens sakkunnskap og vurdering;
  (c) leigaren godkjenner vilkåra i leveranseavtalen;
  (d) leverandøren er forplikta etter leveranseavtalen i høve til leigaren som part, eller som om leigaren hadde vore part, i den avtalen, anten denne retten byggjer på avtale eller anna grunnlag; og
  (e) leverandørens skyldnader mot leigaren ikkje kan endrast utan samtykke frå leigaren.
(2) Leigaren kan ikkje krevje oppfylling frå utleigaren, setje ned leiga eller krevje skadebot eller renter frå utleigaren for sein levering eller for samsvarsmangel, om ikkje mishaldet kjem av ei handling eller unnlating frå utleigaren. Denne føresegna hindrar ikkje at leigaren kan avvise tingen, avslutte leigeforholdet eller, før overtaking av tingen, halde att leige i den mon leigaren kunne ha gjort gjeldande slike krav som part etter leveranseavtalen.
(3) Føresegna i andre leddet avskjer ikkje krav frå leigaren dersom rettar eller krav frå ein tredjepart hindrar eller på anna vis kan ventast å påverke leigarens samanhengande bruk av tingen i samsvar med avtalen..
(4) Leigaren kan ikkje avslutte leveranseavtalen utan samtykke frå utleigaren.

Kapittel 5:
Leigarens skyldnader

Artikkel 5:101: Betale leige

(1) Leigaren skal betale den leiga som er fastsett i eller kan fastsetjast ut frå avtalevilkåra eller frå II. – 9:103.
(2) Leige blir pådregen frå leigetida tek til.

Artikkel 5:102: Tid for betaling

Leiga skal betalast:
(a) etterskotsvis for kvart tidsrom leiga er avtala for, eller
(b) dersom leiga ikkje er avtala for visse tidsrom, når ei bestemt leigetid tek slutt, eller
(c) dersom ei bestemt leigetid ikkje er avtala, og leiga ikkje er avtala for visse tidsrom, etterskotsvis med rimelege mellomrom.

Artikkel 5:103: Ta over tingen

Leigaren må:
(a) gjere alt som det er rimeleg å vente for å setje utleigaren i stand til å oppfylle skyldnaden til å stille tingen til disposisjon når leigetida tek til; og
(b) ta over kontrollen med tingen i samsvar med avtalen.

Artikkel 5:104: Fare med tingen slik avtalen krev

(1) Leigaren skal:
   (a) rette seg etter dei krava og avgrensingane som går fram av avtalevilkåra;
   (b) fare med tingen med slik omtanke som ein forstandig leigar ville vise etter omstenda, når det blir teke omsyn til lengda av leigetida, føremålet med leigeforholdet og karakteren av tingen; og
   (c) gjennomføre alle tiltak som til vanleg må reknast å bli nødvendige for å halde oppe normal standard og verkemåte for tingen, så langt det er rimeleg, når det blir teke omsyn til lengda av leigetida, føremålet med leigeforholdet og karakteren av tingen.

(2) Dersom leiga er fastsett med tanke på at kostnaden med tingen skal nedbetalast av leigaren gjennom leiga, skal leigaren i leigetida halde tingen i den stand han var i da leigetida tok til, med unntak for slit og elde som er vanlege for ting av dette slaget.

Artikkel 5:105: Gripe inn for å avverje fare for eller skade på tingen

Leigaren skal utføre vedlikehald og reparasjonar som til vanleg ville ha vore utførte av utleigaren, dersom tiltaka trengst for å avverje fare for eller skade på tingen, og det er umogleg eller upraktisk for utleigaren, men ikkje for leigaren, å syte for desse tiltaka. Leigaren har krav mot utleigaren på å bli halden skadeslaus eller i tilfelle få dekning for skyldnader eller utlegg (anten det gjeld pengar eller andre formuesgode) så langt dei er pådregne på rimeleg vis på grunn av inngripinga.

Artikkel 5:106: Kompensasjon for vedlikehald og forbetringar

Leigaren kan ikkje krevje kompensasjon for vedlikehald eller forbetringar av tingen. Det førre punktumet avskjer eller avgrensar ikkje krav som leigaren kan ha på skadebot, eller andre rettar eller krav leigaren kan ha etter IV.B – 4:103, IV.B – 5:105 eller bok VIII.

Artikkel 5:107: Plikt til å varsle

(1) Leigaren skal varsle utleigaren om all fare for eller skade på tingen og likeeins om alle rettar for eller krav frå ein tredjepart, dersom desse omstenda normalt ville gjere det nødvendig for utleigaren å handle.

(2) Utleigaren skal varslast innan rimeleg tid etter at leigaren vart eller rimeleg kunne ventast å ha vorte kjend med omstenda og karakteren av dei.

Artikkel 5:108: Reparasjon og tilsyn frå utleigaren

(1) Leigaren må finne seg i at det blir utført reparasjonar og anna arbeid på tingen som trengst for å ta vare på tingen, fjerne feil og hindre fare. Dersom det er mogleg, skal utleigaren varsle leigaren i rimeleg tid før tiltaka blir gjennomførte. Denne skyldnaden hindrar ikkje leigaren i å setje ned leiga etter IV.B – 4:104.

(2) Leigaren må finne seg også i utføring av anna arbeid enn det som går inn under første ledd, om det ikkje er god grunn til å motsetje seg slik utføring.

(3) Leigaren må finne seg i inspeksjonar av tingen for føremål som nemnde i første ledd. Leigaren må òg finne seg i inspeksjon av tingen frå ein eventuell ny leigar i eit rimeleg tidsrom før leigetida tek slutt.

Artikkel 5:109: Gje tingen tilbake

Når leigetida er ute, skal leigaren gje tingen tilbake på den staden der han vart stilt til disposisjon for leigaren.

Kapittel 6:
Utleigarens krav som følgje av avtalebrot

Artikkel 6:101: Oversyn over utleigarens krav
Dersom leigaren misheld ein skyldnad etter kontrakten, kan utleigaren på grunnlag av bok 3, kapittel III og reglane i dette kapitlet:
(a) krevje tvangsfullføring av skyldnaden;
(b) halde attende oppfyllinga av den gjensidige skyldnaden;
(c) avslutte leigeforholdet;
(d) krevje skadebot og renter.

Artikkel 6:102: Forbrukarleigeforhold
Partane kan ikkje gjere avvik frå reglane i dette kapitlet til skade for forbrukaren i eit forbrukarleigeforhold.

Artikkel 6:103: Rett til tvangsfullføring av pengeskyldnader
(1) Utleigaren kan krevje betaling av leige og andre forfalne pengesummar.
(2) Dersom tingen enno ikkje er stilt til disposisjon for leigaren, og det er klårt at leigaren ikkje vil ta over kontrollen med tingen, kan utleigaren likevel halde fram med oppfyllinga og krevje betaling, om ikkje:
    (a) utleigaren kunne ha gjennomført ein rimeleg dekningstransaksjon utan nemnande innsats eller kostnad; eller
    (b) oppfylling ville vere urimeleg etter omstenda.
(3) Dersom leigaren har teke over kontrollen med tingen, kan utleigaren krevje betaling av leige og andre forfalne pengesummar etter kontrakten. Det gjeld òg framtidig leige, om ikkje leigaren ønskjer å gje tingen tilbake, og det ville vere rimeleg for utleigaren etter omstenda å godta tilbakegjevinga.

Artikkel 6:104: Dekningstransaksjon
Dersom utleigaren har avslutta leigeforholdet og gjennomført ein dekningstransaksjon innan rimeleg tid og på rimeleg vis, kan utleigaren ta med i eit eventuelt skadebotkrav skilnaden i verdi mellom det avslutta leigeforholdet og dekningstransaksjonen, til liks med anna tap.

Artikkel 6:105: Nedsetjing av ansvar i forbrukarleigeforhold
(1) I eit forbrukarleigeforhold kan utleigarens krav på skadebot setjast ned så langt tapet er avgrensa av forsikring som omfattar tingen, eller så langt tapet ville ha vore avgrensa av forsikring, i tilfelle der det er rimeleg å vente at utleigaren teiknar slik forsikring.
(2) Regelen i første ledd gjeld i tillegg til reglane i bok III, kapittel 3, avsnitt 7.

Kapittel 7:
Nye partar og framleige

Artikkel 7:101: Eigarskifte og endring av leigar

(1) Dersom eigedomsretten går over frå utleigaren til ein ny eigar, blir den nye eigaren av tingen part i leigeavtalen dersom leigaren sit med tingen når eigedomsretten går over. Den førre eigaren er framleis subsidiært ansvarleg som ein kausjonist for avtalebrot.
(2) Ei omgjering av eigarskiftet set partane tilbake i den opphavlege stillinga med unntak for oppfylling som alt er skjedd på omgjeringstidspunktet.
(3) Reglane i dei førre ledda gjeld tilsvarande der utleigaren har handla på grunnlag av annan rett enn eigedomsrett.

Artikkel 7:102: Avhending av leigarens rett til oppfylling

Leigarens rett etter leigeavtalen til oppfylling leigeavtalen kan ikkje avhendast utan samtykke frå utleigaren.

Artikkel 7:103 Framleige

(1) Leigaren kan ikkje framleige ut tingen utan samtykke frå utleigaren.
(2) Dersom samtykke til framleige blir nekta utan god grunn, kan leigaren avslutte leigeforholdet ved å seie opp med rimeleg frist.
(3) I tilfelle framleige er leigaren framleis ansvarleg for oppfyllinga av leigeavtalen.

Polish[9]
Księga IV.B: Najem rzeczy

Rozdział 1:
Zakres zastosowania i zasady ogólne

Artykuł 1:101: Najem rzeczy
(1) Niniejsza część Księgi IV znajduje zastosowanie do umowy najmu rzeczy.
(2) Umowa najmu rzeczy jest umową w której jedna ze stron, wynajmujący, zobowiązuje się zapewnić drugiej stronie, najemcy, czasowe prawo do korzystania z rzeczy w zamian za czynsz. Czynsz może mieć postać pieniężną lub innych wartości.
(3) Niniejsza część Księgi IV nie znajduje zastosowania do umów których strony uzgodniły przejście własności po okresie korzystania z rzeczy, nawet jeżeli umowa taka została określona jako najem.
(4) Zastosowania niniejszej części Księgi IV nie jest wyłączone jeżeli umowa ma cel finansowy, wynajmujący pełni rolę finansującego lub umowa zawiera opcję pozwalającą najemcy stać się właścicielem rzeczy.
(5) Niniejsza część Księgi IV reguluje jedynie stosunki zobowiązaniowe pomiędzy wynajmującym i najemcą.

Artykuł 1:102: Najem konsumencki
Dla potrzeb niniejszej części Księgi IV najem konsumencki oznacza umowę na mocy której przedsiębiorca wynajmuje rzecz osobie fizycznej, jeżeli umowa zawarta jest dla głównie dla celów nie związanych z działalnością zawodową lub gospodarczą tej osoby (konsument).

Rozdział 2:
okres najmu

Artykuł 2:101: Początek okresu najmu
(1) Okres najmu rozpoczyna się:
  (a) w momencie wynikającym z warunków uzgodnionych przez strony umowy;
  (b) jeżeli na podstawie umowy możliwe jest dookreślenie przedziału czasowego w którym rozpocząć ma się okres najmu rozpoczyna się on w momencie wskazanym przez wynajmującego w ramach uzgodnionego przedziału czasowego, chyba że okoliczności sprawy wskazują, że wyboru dokonać ma najemca;
  (c) w każdym innym przypadku w rozsądnym terminie po zawarciu umowy, na żądanie jednej ze stron.
(2) Okres najmu rozpoczyna się w chwili gry najemca uzyska kontrolę nad rzeczą oddaną w najem, jeżeli nastąpi to wcześniej niż wynikałoby to z paragrafu (1).

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[9] Translated by *Przemysław Sobolewski*.

Artykuł 2:102: Zakołczenie okresu najmu

(1) Umowa najmu zawarta na czas oznaczony kołczy się w momencie określonym przez strony umowy. Umowa najmu zawarta na czas oznaczony nie może zostać rozwiązana jednostronnie.
(2) Umowa najmu zawarta na czas nieoznaczony kołczy się w po upływie okresu oznaczonego w zawiadomieniu dokonanym przez którakolwiek ze stron.
(3) Okres oznaczony w zawiadomieniu o rozwiązaniu umowy musi być zgodny z warunkami uzgodnionymi przez strony, jeżeli umowa nie zawiera wskazówek co do długości terminu powinien być to termin rozsądny od chwili gdy zawiadomienie dotrze do drugiej strony.

Artykuł 2:103: Przedłużenie najmu

(1) Okres najmu ulega przedłużeniu na czas nieokreślony jeżeli:
  (a) najemca za zgodą wynajmującego korzysta z rzeczy po upływie okresu najmu;
  (b) korzystanie trwa przez okres równy okresowi wypowiedzenia; i
  (c) okoliczności nie budzą wątpliwości co do zgody stron umowy na jej przedłużenie.
(2) Każda ze stron może zapobiec przedłużeniu wysyłając drugiej stronie zawiadomienie zanim przedłużenie nastąpi. Wystarczające jest, aby zawiadomienie wskazywało, że strona uważa najem za zakołczony.
(3) Jeżeli okres najmu ulega przedłużeniu według niniejszego artykułu, przedłużeniu podlega też umowa najmu. Przedłużenie nie wpływa na inne warunki umowy najmu.
(4) Niezależnie od treści zdania drugiego paragrafu (3) jeżeli czynsz przez przedłużeniem obliczany by z uwzględnieniem amortyzacji rzeczy czynsz wysokość czynszu po przedłużeniu nie powinna być nierozsądna biorąc pod uwagę sumę już zapłaconą. Strony nie mogą zmodyfikować zasady wyrażonej w tym paragrafie na niekorzyść konsumenta w umowie najmu konsumenckiego.
(5) Przedłużenie najmu na zasadach niniejszego artykułu nie zwiększa ani nie rozszerza zabezpieczeł udzielonych przez osoby trzecie.

Rozdział 3:
Zobowiązania wynajmującego

Artykuł 3:101: Udostępnienie rzeczy

(1) Wynajmujący musi udostępnić rzeczy najemcy w momencie początku biegu okresu najmu w miejscu oznaczonym przez III. – 2:101.
(2) Niezależnie od zasady wyrażonej w poprzednim paragrafie wynajmujący musi udostępnić rzecz najemcy w miejscu prowadzenia przez najemcę działalności gospodarczej albo w miejscu jego zamieszkania jeżeli wynajmujący nabywa rzecz od dostawcy wybranego przez najemcę.
(3) Rzeczy wynajęte muszą pozostać w dyspozycji najmującego przez okres najmu, wolne od wszelkich praw I roszczeł osób trzecich, które mogłyby ograniczyć prawo najemcy do korzystania z rzeczy zgodnie z treścią umowy.
(4) Zobowiązania wynajmującego w przypadku utraty lub uszkodzenia rzeczy w trakcie trwania okresu najmu regulowane są przez IV.B – 3:104.

Artykuł 3:102: Zgodność rzeczy z treścią umowy na początku okresu najmu

W celu zadośćuczynienia umowie na początku okresu najmu rzecz musi:
(a) odpowiadać jakością i ilością warunkom i opisowi uzgodnionemu przez strony;
(b) być zapakowane w sposób odpowiadający warunkom uzgodnionym przez strony;
(c) być dostarczone ze wszystkimi akcesoriami, instrukcją instalacji albo innymi instrukcjami uzgodnionymi przez strony; i
(d) spełniać wymogi IV.B – 3:103.

Artykuł 3:103: Przydatność dla oznaczonego celu, jakość, opakowanie, etc.

Rzecz musi:
(a) być przydatna dla celu który był wiadomy wynajmującemu w chwili zawarcia umowy, chyba że okoliczności wskazują, że najemca nie polegał lub byłoby nierozsądne gdyby polegał na wiedzy i ocenie wynajmującego;
(b) być przydatna dla celów dla których rzecz odpowiadająca opisowi jest zwykle;
(c) posiadać właściwości rzeczy którą wynajmujący przedstawił najmującemu jako próbkę lub model;
(d) być zapakowana w sposób w jaki zwykle pakowane są rzeczy tego rodzaju, a jeżeli brak jest ustalonego zwyczaju w sposób wystarczający aby zabezpieczyć rzecz;
(e) być dostarczona z takimi akcesoriami, instrukcjami instalacji oraz innymi instrukcjami jakich otrzymania najemca mógł rozsądnie oczekiwać; oraz
(f) posiadać takie cechy i wyniki jakich najemca mógł rozsądnie oczekiwać.

Artykuł 3:104: Zdatność rzeczy podczas okresu najmu

(1) Przez czas najmu z uwzględnieniem normalnego stopnia z użycia rzecz powinna:
  (a) zachować jakość, ilość i cechy wymagane przez umowę; oraz
  (b) pozostać przydatna dla celu najmu, nawet jeżeli wymaga to jej modyfikacji.
(2) Paragraf (1) nie znajduje zastosowania w sytuacji gdy czynsz jest obliczany z uwzględnieniem kosztów amortyzacji rzeczy przez najemcę.
(3) Paragraf (1) nie wpływa na zobowiązania najemcy wymienione w IV.B – 5:104(1)(c).

Artykuł 3:105: Wadliwa instalacja w najmie konsumenckim

Jeżeli w najmie konsumenckim rzecz została wadliwie zainstalowana niezgodność wynikająca niewłaściwej instalacji jest uważana za niezgodność rzeczy jeżeli:
(a) rzecz została zainstalowana przez wynajmującego albo wynajmujący ponosił odpowiedzialność za instalację; albo
(b) rzecz została zainstalowana przez konsumenta oraz wadliwa instalacja spowodowana została brakami w instrukcji montażu.

Artykuł 3:106 Ograniczenia w umowie konsumenckiej

W umowie najmu konsumenckiego jakiekolwiek postanowienie umowne uzgodnione z wynajmującym zanim wynajmujący został powiadomiony o niezgodności rzeczy z umową, które bezpośrednio lub pośrednio ograniczają zobowiązania wynajmującego do zapewnienia zgodności rzeczy z umową nie są wiążące dla konsumenta.

Artykuł 3:107: Zobowiązania w momencie zwrotu rzeczy

Wynajmujący musi:

(a) podjąć wszelkie kroki, jakich można rozsądnie oczekiwać aby umożliwić najemcy wykonanie zobowiązania zwrotu rzeczy; oraz

(b) zaakceptować zwrot rzeczy zgodnie z treścią umowy.

Rozdział 4:
Środki Prawne przysługujące najemcy

Artykuł 4:101: Zarys środków prawnych najemcy

Jeżeli wynajmujący nie wypełnia zobowiązał wynikających z umowy najemca jest uprawniony, zgodnie z Rozdziałem 3 Księgi III oraz zasadami niniejszego Rozdziału:

(a) zażądać wykonania zastępczego

(b) wstrzymać się z wykonaniem swojego zobowiązania;

(c) rozwiązać umowę;

(d) ograniczyć czynsz;

(e) żądać odszkodowania albo odsetek.

Artykuł 4:102: Najem konsumencki

(1) Strony umowy nie mogą modyfikować zasad niniejszego Rozdziału na niekorzyść konsumenta w umowie najmu konsumenckiego.

(2) Niezależnie od paragrafu (1) strony mogą zgodzić się na ograniczenie odpowiedzialności wynajmującego za straty związanych z działalnością gospodarczą lub zawodową najemcy. Nie można się jednak powoływać na takie postanowienie umowne jeżeli byłoby to sprzeczne z dobrą wiarą.

Artykuł 4:103: Prawo najemcy do żądania usunięcia niezgodności rzeczy z umową

(1) Najemca może żądać usunięcia niezgodności rzeczy z umową i pokrycia rozsądnych wydatków poniesionych w tym celu włącznie z prawem żądania wykonania zastępczego zgodnie z III. – 3:302.

(2) Poprzedni paragraf nie wyłącza prawa wynajmującego do usunięcia niezgodności rzeczy z umową Sekcją 2 Rozdziału 3 Księgi III.

Artykuł 4:104: Obniżenie czynszu

(1) Najemca może obniżyć czynsz za okres w którym wartość świadczenia wynajmującego uległa zmniejszeniu z powodu opóźnienia albo niezgodności rzeczy z umową, pod warunkiem, że zmniejszenie wartości nie zostało spowodowane przez najemcę.

(2) Czynsz może zostać obniżony także za okresy w których wynajmujący zachowuje prawo wykonania albo uzdrowienia wykonania zgodnie z III. – 3:103, III. – 3:202(2) i III. – 3:205.

(3) Najemca może jednak utracić prawo do redukcji czynszu za okres zgodnie z IV.B – 4:106.

Artykuł 4:105: Substytucja

Najemca, który wypowiedział najem i zawarł podobną umowę w rozsądnym czasie I na rozsądnych warunkach uprawniony jest, jeżeli może żądać naprawienia szkody, pokrycia różnicy miedzy wartością wypowiedzianej umowy a nową umową, jak również naprawienia późniejszych szkód.

Artykuł 4:106: Powiadomienie o niezgodności rzeczy z umową

(1) Najemca nie może skorzystać ze środków prawnych w przypadku niezgodności rzeczy z umową, jeżeli nie powiadomił wcześniej wynajmującego. Jeżeli powiadomienie nie nastąpi wystarczająco szybko niezgodność rzeczy z umową będzie pominięta w okresie nierozsądnego opóźnienia. Powiadomienie będzie zawsze uważane za dokonane we właściwym czasie, jeżeli zostanie dokonane w rozsądnym czasie od chwili gdy najemca powziął wiedzę się albo można było oczekiwać, że rozsądna osoba powzięłaby wiedzę o niezgodności rzeczy z umową.
(2) Jeżeli okres najmu zakołczył się zasady z III. – 3:107 znajdują zastosowanie.
(3) Wynajmujący nie może powoływać się na postanowienia paragrafu (1) i(2) jeżeli niezgodność rzeczy z umową wynika z okoliczności o których wiedział lub można rozsądnie oczekiwać, że powinien był wiedzieć i o których nie poinformował najemcy.

Artykuł 4:107: Środki prawne przeciwko dostawcy rzeczy

(1) Ten artykuł znajduje zastosowanie:
  (a) wynajmujący, na podstawie wskazówek najemcy, nabywa rzecz od dostawcy wybranego przez najemcę;
  (b) najemca, oznaczając cechy rzeczy i wybierając dostawcę nie polegał na głównie na wiedzy i ocenie wynajmującego;
  (c) najemca zaakceptował warunki umowy;
  (d) na podstawie ustawy lub umowy n dostawcy ciążą obowiązki względem najemcy jako stronie umowy albo tak jakby najemca był stroną umowy; oraz
  (e) obowiązki dostawcy względem najemcy nie mogą być zmienione bez zgody najemcy.
(2) Najemca nie może żądać wykonania od wynajmującego, obniżenia czynszu albo odszkodowania lub procentów za opóźnione dostarczenie rzeczy albo niezgodność rzeczy z umową, chyba że niewykonanie wynika z działania albo zaniechania wynajmującego. Ten przepis nie wyłącza prawa najemcy do odmowy przyjęcia rzeczy, wypowiedzenia najmu albo wstrzymania zapłaty renty przed przyjęciem dóbr w zakresie w jakim prawo takie przysługiwało najemcy jako stronie umowy dostawy.
(3) Postanowienia paragrafu (2) nie wyłączają środków prawnych najemcy w sytuacji gdy prawo lub roszczenie osoby trzeciej stoi na przeszkodzie lub wpływa na nieprzerwanemu korzystaniu przez najemcę z rzeczy.
(4) Najemca nie może wypowiedzieć umowy dostawy bez zgody wynajmującego.

Rozdział 5:
Zobowiązania Najemcy

Artykuł 5:101: Zobowiązanie do zapłaty czynszu

(1) Najemca musi zapłacić rentę w wysokości ustalonej lub możliwej do na podstawie warunków uzgodnionych przez strony albo na podstawie II. – 9:103.
(2) Czynsz liczony jest od momentu rozpoczęcia okresu najmu.

Artykuł 5:102: Okres zapłaty

Czynsz jest płatny:
(a) na koniec każdego okresu za który jest liczony albo

(b) jeżeli czynsz nie jest liczony za poszczególne okresy w chwili zakołczenia umowy najmu zawartej na czas oznaczony albo
(c) jeżeli umowa nie została zawarta na czas oznaczony i czynsz nie uzgodniono długości okresów za które czynsz jest płatny jest on płatny w rozsądnych odstępach czasowych.

Artykuł 5:103: Przejęcie rzeczy

Najemca powinien:
(a) podjąć wszelkie kroki których rozsądnie można oczekiwać w celu umożliwienia wynajmującemu realizacji zobowiązania udostępnienia rzeczy w momencie rozpoczęcia okresu najmu; oraz
(b) przejąć posiadanie rzeczy zgodnie z warunkami umowy.

Artykuł 5:104: Postępowania z rzeczami zgodnie z postanowieniami umowy

(1) Najemca musi:
  (a) stosować się do wymagać i ograniczeł wynikających z warunków uzgodnionych przez strony;
  (b) postępować z rzeczą w sposób jakiego można oczekiwać od rozsądnego najemcy w podobnych okolicznościach, biorąc pod uwagę długość okresu najmu, cel najmu oraz charakter rzeczy; oraz
  (c) przedsięwziąć wszystkie kroki jakich można normalnie oczekiwać celu zachowania normalnego standardu i funkcjonalności rzeczy, w zakresie jakim jest to rozsądne biorąc pod uwagę długość okresu najmu, cel umowy i charakterystykę dóbr.
(2) Jeżeli czynsz jest obliczany biorąc pod uwagę koszt amortyzacji rzeczy przez najemcę, najemca powinien utrzymywać rzecz w stanie w jakim była ona na początku okresu najmu z uwzględnieniem normalnego stopnia zużycia.

Artykuł 5:105: Interwencja w celu uniknięcia niebezpieczeństwa lub uszkodzenia rzeczy

Najemca musi dokonywać przeglądów i napraw jakie normalnie byłyby dokonywane przez wynajmującego, jeżeli środki takie są niezbędne dla uniknięcia niebezpieczeństwa uszkodzenia rzeczy i jest niemożliwe albo niepraktyczne aby przedsięwziął je wynajmujący. Najemca ma prawo żądania od wynajmującego odszkodowania albo zwrotu rozsądnych kosztów (pieniężnych albo innych) poniesionych w celu zapobieżenie uszkodzeniu rzeczy.

Artykuł 5:106: Zwrot kosztów utrzymania i ulepszenia rzeczy

Najemca nie może żądać zwrotu kosztów utrzymania I ulepszenia rzeczy. Zdanie pierwsze nie wyłącza ani nie ogranicza roszczeł jakie mogą przysługiwać najemcy z tytułu szkód ani praw albo roszczeł jakie mogą przysługiwać najemcy na podstawie IV.B – 4:103, IV.B – 5:105 albo Księgi VIII.

Artykuł 5:107: Obowiązek udzielenia informacji

(1) Najemca musi poinformować wynajmującego o jakichkolwiek uszkodzeniach albo niebezpieczeństwie dla rzeczy oraz o jakichkolwiek prawach albo żądaniach osób trzecich, jeżeli takie okoliczności prowadziłyby do konieczności działania ze strony wynajmującego.
(2) Najemca powinien być poinformowany w rozsądnym terminie od chwili gdy najemca dowiedział się albo można było rozsądnie oczekiwać, że dowie się o okolicznościach i ich charakterystyce.

Artykuł 5:108: Naprawy i inspekcja rzeczy przez wynajmującego

(1) Najemca musi tolerować naprawy i inne prace niezbędne do utrzymania rzeczy, usunięcia uszkodzeł i uniknięcia niebezpieczełstwa. Jeżeli to możliwe wynajmujący powinien poinformować najemcę w rozsądnym terminie przed powzięciem takich środków. To zobowiązanie nie wyłącza prawa najemcy do obniżenia czynszu na podstawie IV.B – 4:104.
(2) Najemca musi tolerować wykonanie prac na rzeczy, nawet nie wynikające z paragrafu (1), chyba że istnieje dobry powód uzasadniający sprzeciwienie się takim pracom.
(3) Najemca musi tolerować inspekcję rzeczy przeprowadzaną dla celów wskazanych w paragrafie (1). Najemca musi także zaakceptować inspekcję rzeczy dokonaną przez przyszłego spodziewanego najemcę w rozsądnym terminie przed upływem okresu najmu.

Artykuł 5:109: Obowiązek zwrotu rzeczy

Po zakołczeniu okresu najmu najemca musi zwrócić rzeczy do miejsca w którym zostały najemcy udostępnione.

Rozdział 6:
Środki prawne wynajmującego

Artykuł 6:101: Przegląd środków prawnych

Jeżeli najemca nie spełnia zobowiązał wynikających z umowy wynajmujący jest uprawniony, zgodnie z Rozdziałem 3 Księgi III i postanowieniami niniejszego Rozdziału:
(a) egzekwować wykonanie zobowiązania;
(b) wstrzymać się z wykonaniem własnych zobowiązał;
(c) rozwiązać umowę najmu;
(d) żądać odszkodowania i procentów

Artykuł 6:102: Najem konsumencki

Strony nie mogą odstąpić od zasad tego Rozdziału na niekorzyść konsumenta w umowie najmu konsumenckiego.

Artykuł 6:103: Prawo wyegzekwowania zapłaty zobowiązał pieniężnych

(1) Wynajmujący jest uprawniony do uzyskania zapłaty czynszu i innych zaległych świadczeł.
(2) Jeżeli wynajmujący nie udostępnił jeszcze rzeczy najemcy i jasne jest, że najemca nie przejmie posiadania rzeczy, wynajmujący może kontynuować wykonywanie umowy i może żądać zapłaty, chyba że:
    (a) wynajmujący mógł zawrzeć podobną umowę na rozsądnych warunkach bez nadmiernego wysiłku lub wydatków; albo
    (b) w okolicznościach sprawy wykonanie byłoby nierozsądne.
(3) Jeżeli najemca uzyskał posiadanie rzeczy wynajmujący może dochodzić zapłaty wszystkich zobowiązał. Obejmuje to także przyszły czynsz, chyba że najemca gotowy jest wcześniej zwrócić rzecz a w okolicznościach sprawy nieprzyjęci rzeczy byłoby nierozsądne.

Artykuł 6:104: Umowa substytucyjna

W sytuacji gdy wynajmujący wypowiedział umowę najmu i zawarł podobną umowę w rozsądnym terminie (umowa substytucyjna) i na rozsądnych warunkach może, jeżeli jest uprawniony do odszkodowania, żądać zapłaty różnicy między wartością wypowiedzianej umowy a nową umową, jak również wynagrodzenia innych szkód.

Artykuł 6:105: Ograniczenie odpowiedzialności w umowach konsumenckich

(1) W umowie najmu konsumenckiego roszczenie odszkodowawcze wynajmującego może być ograniczone w zakresie, w jakim szkoda pokryta jest przez ubezpieczenie albo w zakresie w jakim szkoda zastałaby pokryta przez ubezpieczenie jeżeli rozsądnym był oczekiwać, że wynajmujący ubezpieczy rzecz.
(2) Zasada z paragrafu (1) znajduje zastosowanie łącznie z zasadami z Sekcji 7 Rozdziału 3 Księgi III.

Rozdział 7:
Nowa strona umowy i podnajem

Artykuł 7:101: Zmiana własności i substytucja wynajmującego

(1) W przypadku przejścia własności z wynajmującego na nowego właściciela nowy właściciel rzeczy staje się stroną umowy najmu, jeżeli najemca był w posiadaniu rzeczy w chwili przejścia. W przypadku przejścia własności rzeczy z wynajmującego na inną osobę nowy właściciel staje się stroną umowy najmu, jeżeli rzecz jest w posiadaniu najemcy w chwili przejścia własności. Dawny właściciel pozostaje osobiście subsydiarnie odpowiedzialny za niewykonanie umowy najmu.
(2) Powrót własności do pierwotnego wynajmującego powoduje, że strony wracają na swoje oryginalne pozycje, nie dotyczy to jednak świadczeł spełnionych przed powtórnym przejściem własności.
(3) Zasady wyrażone we wcześniejszych paragrafach znajdują zastosowanie jeżeli wynajmującemu przysługiwało prawo inne niż własność.

Artykuł 7:102: Przeniesienie praw z umowy

Prawo najemcy do wykonania umowy najmu nie mogą być przeniesione bez zgody wynajmującego.

Artykuł 7:103 Podnajem

(1) Najemca nie może podnająć rzeczy bez zgody wynajmującego.
(2) Jeżeli zgoda na podnajem zostanie cofnięta bez dobrego powodu najemca może wypowiedzieć umowę najmu z rozsądnie długim terminem wypowiedzenia.
(3) W przypadku podnajmu najemca pozostaje odpowiedzialny za wykonanie umowy najmu.

Spanish[10]

Libro IV.B: Arrendamiento de bienes muebles

Capítulo 1:
Ámbito de aplicación y disposiciones generales

Artículo 1:101: Arrendamiento de bienes muebles

(1) Esta parte del Libro IV se aplica a los contratos de arrendamiento de bienes muebles.
(2) El contrato de arrendamiento de bienes muebles es aquél mediante el cual una parte, el arrendador, se obliga a proporcionar a la otra parte, el arrendatario, el derecho temporal a usar un bien mueble a cambio del pago de una renta. La renta podrá consistir en el pago de dinero o en otra contraprestación.
(3) Esta parte del Libro IV no se aplica a los contratos en que las partes acuerdan que la propiedad será transmitida tras un período con el derecho a usar el bien mueble, aunque las partes hayan descrito tal contrato como de arrendamiento.
(4) No se excluye la aplicación de esta Parte del Libro IV por el hecho de que el contrato tenga una finalidad de financiación, de que el arrendador asuma el carácter de parte financiadora o de que el arrendador tenga la opción de convertirse en dueño de los bienes.
(5) Esta Parte del Libro IV regula sólo la relación contractual entre arrendador y arrendatario.

Artículo 1:102: Arrendamiento de consumo

A los efectos de esta Parte del Libro IV, un arrendamiento de consumo es el contrato mediante el cual un empresario arrienda bienes muebles a una persona física que actúa primordialmente con fines que no están relacionados con su actividad, negocio o profesión (el consumidor).

Capítulo 2:
Duración del arrendamiento

Artículo 2:101: Inicio del arrendamiento

(1) El plazo de vigencia del arrendamiento comienza:
  (a) en el momento determinable según los términos acordados por las partes;
  (b) si es posible determinar un período de tiempo dentro del cual ha de comenzar el plazo del arrendamiento, en cualquier momento elegido por el arrendador dentro de aquél, salvo que de las circunstancias del caso resulte que es el arrendatario quien ha de elegir dicho momento;
  (c) en cualquier otro caso, en un tiempo razonable tras la conclusión del contrato, a petición de cualquiera de las partes.
(2) El plazo de vigencia del arrendamiento comienza en el momento en el cual el arrendador toma control de los bienes si éste es anterior al momento que resulta del párrafo (1).

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10 Translated by *Milagros Varela Choucino* in collaboration with Professor *Antoni Vaquer Aloy* (Lleida).

Artículo 2:102: Fin del arrendamiento

(1) Un plazo definido de arrendamiento finaliza en el momento determinable según los términos acordados por las partes. Un plazo definido de arrendamiento no puede ser extinguido anticipadamente de forma unilateral mediante requerimiento.
(2) Un plazo indefinido de arrendamiento finaliza en el momento especificado en el requerimiento dado por cualquiera de las partes.
(3) El momento especificado en el requerimiento debe corresponderse con los términos acordados por las partes o, si nada determinan estos términos, un tiempo razonable después de que el requerimiento haya llegado a la otra parte.

Artículo 2:103: Tácita reconducción

(1) El plazo del arrendamiento se prolonga por un período indefinido si:
  (a) el arrendatario, con el conocimiento del arrendador, ha continuado usando las cosas tras la extinción del período de arrendamiento;
  (b) el uso ha continuado por un período igual al requerido a un requerimiento; y
  (c) las circunstancias no son consistentes con el consentimiento tácito de ambas partes para dicha prórroga.
(2) Cualquiera de las dos partes puede impedir la tácita reconducción requiriendo a la otra antes de que la tácita reconducción tenga efecto. El requerimiento sólo necesita indicar que la parte da el contrato por finalizado en la fecha de extinción.
(3) Cuando el período del arrendamiento se prorroga de acuerdo con este artículo, el contrato de arrendamiento se prorroga de la misma manera. La prórroga no altera el resto de cláusulas contractuales.
(4) No obstante lo dispuesto en la segunda frase del párrafo (3), cuando la renta anterior a la prórroga se calculó teniendo en cuenta la amortización del coste de los bienes por el arrendatario, la renta tras la prórroga no debe ser irracional en relación con la cantidad ya pagada. Las partes de un arrendamiento de consumo no pueden excluir la norma de este párrafo en perjuicio de los consumidores.
(5) La tácita reconducción de acuerdo con este artículo no incrementa ni extiende las garantías otorgadas por terceras personas.

Capítulo 3:
Obligaciones del arrendador

Artículo 3:101: Disponibilidad de los bienes

(1) El arrendador debe poner las cosas a disposición del arrendatario para su uso al inicio del plazo del arrendamiento y en el lugar que establece III. – 2:101.
(2) A pesar de lo dispuesto en el párrafo anterior, el arrendador debe poner a la disposición del arrendatario los bienes para su uso en el establecimiento de éste o, según el caso, en la residencia habitual del arrendatario, si el arrendador, siguiendo las indicaciones del arrendatario, adquiere los bienes de un proveedor seleccionado por el arrendatario.
(3) Los bienes deben permanecer disponibles para su uso por el arrendatario durante todo el plazo del arrendamiento, libres de cualquier derecho o reclamación de terceros que impidan o interfieran en el uso de los bienes por el arrendatario de acuerdo con los términos contractuales.
(4) Las obligaciones del arrendador cuando los bienes se pierden o deterioran durante el plazo del arrendamiento se regulan en IV.B – 3:104.

Artículo 3:102: Conformidad con el contrato al inicio del periodo del arrendamiento

Para que sean conformes con el contrato al inicio del plazo del arrendamiento, los bienes deben:
(a) ser de la cantidad, calidad y descripción acordadas por las partes;
(b) estar contenidos o embalados de la manera acordada por las partes
(c) suministrarse con todos sus accesorios, instrucciones de instalación y otras instrucciones acordadas por la partes; y
(d) cumplir con IV.B – 3:103.

Artículo 3:103: Adecuación a la finalidad, calidad, embalaje, etc.

Los bienes deben:
(a) ser adecuados para cualquier finalidad particular que se haya hecho saber al arrendador en el momento de la conclusión del contrato, excepto cuando las circunstancias indiquen que el arrendatario no confió, o que no era razonable que le arrendatario confiara, en la aptitud y el criterio del arrendador;
(b) ser adecuados para las finalidades para las cuales se usan habitualmente cosas de la misma descripción;
(c) poseer las cualidades de las muestras o modelos que el arrendador presentó al arrendatario;
(d) estar contenidos o embalados de la manera habitual para aquel género de bienes o, si no existe tal manera, de una manera adecuada para preservar y proteger el bien;
(e) entregarse con los accesorios, instrucciones de instalación y otras instrucciones que el arrendatario pueda razonablemente esperar recibir; y
(f) poseer aquellas cualidades y capacidad de resultado que el arrendatario puede razonablemente esperar.

Articulo 3:104: Conformidad de las cosas durante el plazo del arrendamiento

(1) A lo largo del plazo del arrendamiento, y salvo el deterioro normal a consecuencia del transcurso del tiempo, los bienes deben:
  (a) conservarse en la cantidad, calidad y descripción que exige el contrato; y
  (b) permanecer adecuados para las finalidades del arrendamiento, incluso si esto requiere modificaciones en los bienes.
(2) El párrafo (1) no se aplica cuando la renta se ha calculado teniendo en cuenta la amortización del coste de los bienes por parte del arrendatario.
(3) El párrafo (1) no afecta a las obligaciones del arrendatario establecidas por el IV.B – 5:105(1)(c).

Artículo 3:105: Instalación incorrecta en un arrendamiento de consumo

Cuando en un arrendamiento de consumo los bienes se instalan incorrectamente, cualquier falta de conformidad resultante de su incorrecta instalación se considera una falta de conformidad de los bienes si:
(a) los bienes fueron instalados por el arrendador o bajo su responsabilidad; o
(b) si se pretendió que los bienes los instalara el consumidor y la incorrecta instalación es consecuencia de defectos en las instrucciones de instalación.

Artículo 3:106: Límites al carácter dispositivo de las normas en el arrendamiento de consumo

En un arrendamiento de consumo, cualquier término o acuerdo contractual concluido con el arrendador con anterioridad al descubrimiento de una falta de conformidad que, de manera

directa o indirecta, priva de o restringe los derechos derivados de la obligación del arrendador de asegurar la conformidad de las cosas, no vincula al consumidor.

Artículo 3:107: Obligaciones de devolución de los bienes

El arrendador debe

(a) tomar todas aquellas medidas que razonablemente se puedan esperar para permitir al arrendatario el cumplimiento de la obligación de devolución de las cosas; y
(b) aceptar la devolución de los bienes de acuerdo con el contrato.

Capítulo 4:
Remedios del arrendatario

Artículo 4:101: Enumeración de los remedios

Si el arrendador incumple una de sus obligaciones contractuales, el arrendatario está facultado para, de acuerdo con el Libro III, Capítulo 3 y las normas de este capítulo:

(a) reclamar el cumplimento específico de la obligación;
(b) suspender el cumplimento de la obligación recíproca;
(c) resolver el arrendamiento:
(d) reducir la renta;
(e) reclamar daños y perjuicios e intereses.

Artículo 4:102: Arrendamientos de consumo

(1) En un arrendamiento de consumo, las partes no pueden derogar las normas de este capítulo en perjuicio de un consumidor.
(2) A pesar de lo dispuesto en el párrafo (1), las partes pueden pactar una limitación de la responsabilidad del arrendador por un daño relacionado con el comercio, negocio o profesión del arrendatario. Dicho acuerdo no puede ser invocado si resulta contrario a la buena fe y la honradez en los tratos.

Artículo 4:103: Derecho del arrendatario a que se remedie la falta de conformidad

(1) El arrendatario tiene derecho a que se remedie cualquier falta de conformidad de los bienes y a recuperar los gastos en los que razonablemente incurra, en la medida en que el arrendatario está facultado para reclamar el cumplimiento específico de la obligación de acuerdo con III. – 3:302.
(2) Nada de lo establecido en el párrafo anterior afecta el derecho del arrendador a corregir la falta de conformidad de acuerdo con el Libro III, Capítulo 3, Sección 2.

Artículo 4:104: Reducción de la renta

(1) El arrendatario puede reducir la renta de un período durante el cual el valor de la prestación del arrendador disminuya a consecuencia del retraso o la falta de conformidad, en la medida en que la disminución de valor no la cause el mismo arrendatario.
(2) También es posible reducir la renta en períodos durante los que el arrendador mantiene el derecho a cumplir o corregir su prestación da acuerdo con III. – 3:103, III. – 3:202(2) y III. – 3:205.
(3) A pesar de lo dispuesto en el párrafo (1), el arrendatario puede perder el derecho a reducir la renta de un período de acuerdo con IV.B – 4:106.

Artículo 4:105: Negocio sustitutivo

Cuando el arrendatario ha resuelto el arrendamiento y ha realizado un negocio sustitutivo en un tiempo y en una manera razonables, el arrendatario puede, cuando le correspondan daños y perjuicios, recuperar la diferencia entre el valor del arrendamiento resuelto y el negocio sustitutivo, así como cualquier otro perjuicio.

Artículo 4:106: Notificación de la falta de conformidad

(1) El arrendatario no puede utilizar los remedios contra la falta de conformidad si no lo notifica al arrendador. Si la notificación es intempestiva, no se tendrá en cuenta la falta de conformidad durante dicho período de retraso irrazonable. La notificación se considera siempre tempestiva cuando se envía dentro de un tiempo razonable después de que el arrendatario haya tenido conocimiento, o pueda esperarse razonablemente que lo hubiera tenido, de la falta de conformidad.
(2) Cuando el plazo del arrendamiento haya finalizado se aplican las normas de III. – 3:107.
(3) El arrendador no puede ampararse en lo que disponen los párrafos (1) y (2) si la falta de conformidad está relacionada con hechos que el arrendador conocía o podía razonablemente esperarse que conociera y que no comunicó al arrendatario.

Artículo 4:107: Remedios disponibles contra el proveedor de los bienes

(1) Este artículo se aplica cuando:
  (a) el arrendador, siguiendo las especificaciones del arrendatario, adquiere las cosas de un proveedor seleccionado por el arrendatario;
  (b) el arrendatario, al comunicar sus especificaciones sobre los bienes y la elección del proveedor, no confía en primer lugar en la aptitud y el criterio del arrendador;
  (c) el arrendatario aprueba los términos del contrato de suministro;
  (d) las obligaciones del proveedor derivadas del contrato de suministro se deben, por ley o por el contrato, al arrendatario por ser parte del contrato de suministro o como si fuese parte de este contrato; y
  (e) las obligaciones del proveedor con el arrendatario no pueden ser modificadas sin el consentimiento de éste.
(2) El arrendatario no puede reclamar el cumplimiento del arrendador, la reducción de la renta o la indemnización de daños y perjuicios o intereses por el retraso en la entrega o la falta de conformidad, a no ser que el incumplimiento se deba a un acto u omisión del arrendador. Este precepto no excluye el derecho del arrendatario a rechazar los bienes, a resolver el arrendamiento o a suspender el pago de la renta antes de la aceptación de los bienes, en la medida en que el arrendatario podría valerse de estos remedios como parte en el contrato de suministro.
(3) Lo dispuesto en el párrafo (2) no excluye ninguno de los remedios del arrendatario cuando un derecho o una pretensión de un tercero impida, o pueda de cualquier otra manera impedir, el uso continuado de los bienes de acuerdo con el contrato.
(4) El arrendatario no puede resolver el contrato de suministro sin el consentimiento del arrendador.

Capítulo 5:
Obligaciones del arrendatario

Artículo 5:101: Obligación de pagar la renta
(1) El arrendatario debe pagar la renta determinada o determinable de acuerdo con los términos acordados por las partes en II. – 9:103.
(2) La renta debe pagarse desde el inicio del plazo del arrendamiento.

Artículo 5:102: Tiempo del pago
La renta debe pagarse:
(a) al final de cada período para el que se haya pactado la renta, o
(b) si la renta no se ha pactado por períodos determinados, cuando expire el plazo definido del arrendamiento,o
(c) si no se ha pactado un plazo definido de arrendamiento ni se ha pactado la renta por períodos determinados, al final de intervalos razonables.

Artículo 5:103: Aceptación de los bienes
El arrendatario debe:
(a) tomar todas las medidas que razonablemente se pueden esperar a fin de permitir que el arrendador cumpla su obligación de hacer disponibles los bienes al inicio del plazo del arrendamiento; y
(b) tomar control de los bienes de la manera que exige el contrato.

Artículo 5:104: Uso de los bienes de acuerdo con el contrato
(1) El arrendatario debe:
  (a) observar los requisitos y restricciones que deriven de los términos acordados por las partes;
  (b) usar las cosas con el cuidado que un arrendatario razonable ejercería en las circunstancias, teniendo en cuenta la duración y la finalidad del arrendamiento y la naturaleza de los bienes; y
  (c) tomar todas aquellas medidas que habitualmente se consideran necesarias para preservar el estándar normal y el funcionamiento de los bienes, siempre que sea razonable, teniendo en cuenta la duración y la finalidad del arrendamiento y la naturaleza de las cosas.
(2) En el supuesto de que la renta se calcule teniendo en cuenta la amortización por el arrendatario del coste de los bienes, el arrendatario debe, durante el período del arrendamiento, mantenerlos en el estado en que se encontraban al inicio del plazo, sujetos al desgaste natural que experimenten esa clase de bienes.

Artículo 5:105: Intervención con el fin de evitar peligro o daños a las cosas
El arrendatario debe realizar el mantenimiento y las reparaciones que habitualmente llevaría a cabo el arrendador, si dichas medidas son necesarias para evitar peligro o daños a los bienes, y si resulta imposible o impracticable para el arrendador adoptarlas, pero no para el arrendatario. El arrendatario tiene derecho a ser indemnizado por el arrendador o, según el caso, tiene derecho al reembolso de las obligaciones y gastos (tanto pecuniarios como en otros bienes) en los que haya incurrido, si ello ha sido razonable para los fines de la intervención.

Artículo 5:106: Reembolso de los gastos de conservación y mejoras
El arrendatario no puede reclamar el reembolso de los gastos de conservación y mejoras en los bienes. No obstante, lo dicho no excluye ni restringe las pretensiones por daños ni tampoco cualquier derecho o reclamación que el arrendatario pueda tener de acuerdo con IV.B – 4:103, IV.B – 5:105 o Libro VIII.

Artículo 5:107: Obligación de informar
(1) El arrendatario debe informar al arrendador de cualquier daño o peligro a los bienes, así como de cualquier derecho o pretensión de cualquier tercero, si estas circunstancias normalmente darían lugar al ejercicio de acciones judiciales por parte del arrendador.
(2) El arrendador debe ser informado en un tiempo razonable después de que el arrendatario conozca o pueda razonablemente esperarse que conozca estas circunstancias y su naturaleza.

Artículo 5:108: Reparaciones e inspecciones del arrendador
(1) El arrendatario debe tolerar las reparaciones y otros trabajos necesarios en los bienes a fin de conservarlos, reparar defectos y prevenir peligros. Siempre que sea posible, el arrendador debe informar al arrendatario con un tiempo suficiente de antelación antes de emprender dichas medidas. Esta obligación no excluye la reducción de la renta de acuerdo con IV.B – 4:104.
(2) El arrendatario debe tolerar la realización de otros trabajos en los bienes, incluso si son distintos de los previstos en el párrafo (1), a no ser que se alegue una buena razón para tal objeción.
(3) El arrendatario debe tolerar la inspección de los bienes para las finalidades del párrafo (1). Igualmente debe aceptar la inspección de los bienes por futuros hipotéticos arrendatarios durante un tiempo razonable antes de la extinción del arrendamiento.

Artículo 5:109: Obligación de devolver los bienes
El arrendatario debe devolver las cosas al final del plazo del arrendamiento en el lugar donde el arrendador las puso a su disposición.

Capítulo 6:
Remedios del arrendador

Artículo 6:101: Enumeración de los remedios
Si el arrendador incumple una de las obligaciones contractuales, el arrendador está facultado para, de acuerdo con el Libro III, Capítulo 3 y las normas de este Capítulo:
(a) reclamar el cumplimento específico de la obligación;
(b) suspender el cumplimento de su obligación recíproca;
(c) resolver el contrato;
(d) reclamar daños y perjuicios e intereses.

Artículo 6:102 Arrendamiento de consumo
En el arrendamiento de consumo, las partes no pueden derogar las normas de este Capítulo en perjuicio de un consumidor.

Artículo 6:103: Derecho a demandar el cumplimento de obligaciones pecuniarias

(1) El arrendador está facultado para reclamar el pago de la renta y cualquier otra cantidad debida.
(2) Si el arrendador aún no ha puesto las cosas a disposición del arrendatario y resulta evidente que el arrendatario no estará dispuesto a tomar el control de las mismas, el arrendador puede también cumplir su obligación y recuperar las sumas debidas de acuerdo con el contrato a no ser que:
   (a) el arrendador haya podido concluir un negocio sustitutivo razonable sin un esfuerzo o gasto significativo; o
   (b) el cumplimiento de su obligación sería irracional dadas las circunstancias.
(3) Si el arrendatario ha tomado el control de los bienes, el arrendador puede reclamar el pago de todas las cantidades debidas de acuerdo con el contrato. Esto incluye la renta futura, a no ser que el arrendatario desee devolver los bienes y resulte razonable que el arrendador acepte la devolución dadas las circunstancias.

Artículo 6:104: Negocio sustitutivo

El arrendador que ha resuelto el arrendamiento y ha realizado un negocio sustitutivo en un tiempo y de una manera razonables puede, cuando está legitimado para reclamar daños y perjuicios, recuperar la diferencia entre el valor del arrendamiento resuelto y el negocio sustitutivo, así como cualquier otro perjuicio.

Artículo 6:105: Limitación de la responsabilidad en los arrendamientos de consumo

(1) En los arrendamientos de consumo, la pretensión indemnizatoria del arrendador puede ser reducida en la medida en que el daño resulte mitigado por el seguro de los bienes, o en la medida en que la pérdida hubiera sigo mitigada por el seguro de los bienes, en aquellas circunstancias en que fuera razonable esperar que el arrendador hubiera contratado tal seguro.
(2) La norma del párrafo (1) se aplica adicionalmente a las normas del Libro III, Capítulo 3, Sección 7.

Capítulo 7:
Cambio de partes y subarrendamiento

Artículo 7:101: Transmisión de la propiedad y sustitución del arrendador

(1) Cuando la propiedad pasa del arrendador al nuevo propietario de los bienes, el nuevo propietario de los bienes deviene parte del contrato de arrendamiento si el arrendatario tiene la posesión de los bienes al tiempo de la transmisión de la propiedad. El antiguo propietario permanece como responsable subsidiario del incumplimiento del contrato de arrendamiento como un fiador.
(2) Las partes vuelven a ocupar sus posiciones jurídicas originarias cuando el acto de transmisión de la propiedad sea ineficaz, excepto en lo que se refiere a las prestaciones ya realizadas en el momento de declararse la ineficacia.
(3) Las normas de los párrafos anteriores se aplican por analogía cuando el arrendador es titular de otro derecho distinto a la propiedad.

Artículo 7:102: Cesión del derecho del arrendatario

El arrendatario no puede ceder sus derechos contractuales sin el consentimiento del arrendador.

Artículo 7:103: Subarrendamiento

(1) El arrendatario no puede subarrendar los bienes sin el consentimiento del arrendador.
(2) Si se niega el consentimiento al subarrendatario sin una justa causa, el arrendatario puede resolver el contrato requiriendo al arrendador en un período de tiempo razonable.
(3) En el caso de subarrendamiento, el arrendatario sigue siendo responsable del cumplimiento del contrato de arrendamiento.

Principles of European Law on Lease of Goods

Introduction

A. Contract principles and specific contracts

1. Specific contracts For the purposes of the present project, the lease contract is a specific contract, in line with sales, services, loans etc. The division between general contract law (or law of obligations) and the law of specific contracts has long traditions in Europe as has the typology of specific contracts. This kind of systematisation has naturally been most accentuated in jurisdictions where patrimonial law is codified. The criteria for categorising contracts are several (socio-economic function, type of asset involved, character of performance, payment or not, etc.) and may vary from jurisdiction to jurisdiction. The starting point for this Part of Book IV is the observation that a categorisation based on the criteria of (a) temporary (b) use of (c) movable (d) tangible property against (e) payment, based on (f) contract, is commonly recognised to a degree that makes it meaningful to operate with "lease" as a specific contract. This holds true even if these contracts belong to different categories in the systems found in the legislation, court practice, and doctrine of the different jurisdictions.

2. Atypical contracts, mixed contracts, border cases etc. Contract rules on leases, sales, services etc. may seem to presuppose that every contract must belong to one of the categories and to one only; the contract is *either* a lease, *or* a sale, *or* a service, etc. This is not so. It is generally accepted that there are valid contracts not falling under any of the pre-established categories. The principle of freedom of contract implies that there is no *numerus clausus* in contract law. In practice, contracts are found that are not easily categorised under a specific type of contract. Further, a contract may combine elements from several specific contract types, without any one of the elements dominating. Even though contract practice "gravitates" towards well-established types of contracts, experience shows that varieties are found, sometimes with common traits stable over time, justifying the introduction of a new category. Also, some of the criteria used to categorise different types of contracts may raise doubts in the concrete case. It is, for example, not possible to express simple and unambiguous criteria to distinguish between movable and immovable property.[1] Mixed contracts are generally dealt with in II.–1:109 (Mixed contracts).

3. Contract types and regulation The formulation of rules on specific contracts is based on the idea that it is inappropriate to have entirely the same rules for all types of contracts. Rules should be chosen that are *typically* the best for contracts meeting the criteria of a specific type. There may sometimes be room for sub-categories, allowing diversified regulation of certain aspects of a specific contract. However, individual con-

1 See in general, *Sacco and de Nova,* Il contratto II[3], 439–469; cf. for example *Huet,* Contrats spéciaux, nos. 11–12; *Medicus,* Schuldrecht II[13], nos. 585–595; all with further references. See also notes to II.–1:109 (Mixed contracts).

tracts will still be found where the rules intended for "normal" contracts of a certain type may have unfortunate effects. As far as non-mandatory rules are concerned, solutions may be found based on the individual agreement, supplemented by general contract principles and perhaps rules from different specific types of contracts to which the concrete contract is related. The situation is different where mandatory rules apply to a certain category of specific contracts. It must be decided whether or not the concrete contract belongs within the category or not, *as far as the relevant mandatory rule is concerned*. This means, of course, that the scope of application of mandatory rules must be formulated with great care.

4. Contractual relationship, third parties, public law etc. The categorisation of a contract as a lease may now and then be difficult and even controversial. In particular, there are contracts which by form, intention or effect have elements of a lease and sale, lease and credit, or lease and service. As background to the discussion of some of these problems it must be recalled that the categorisation in contract law is not decisive with respect to rules regarding third parties' rights, public law etc. Lease rules may, for example, apply to the contractual relationship even if it follows from rules on security rights or rules on transfer of ownership that the lessor's right to the goods in certain cases is not protected against the lessee's general creditors or is protected only if registered. This is no different from the application of sales rules, irrespective of the protection of the buyer's right against third parties. Further, lease rules may apply whether or not the leased goods belong on the lessee's balance sheet according to accounting rules, and whether or not the lessor is accorded tax deductions for depreciation of the goods. It may even happen that the *term* lease is used in other fields of law with a meaning different from the one found in contract law.

5. Agreement, intention, effects, re-characterisation The parties are, in most cases, free to decide which type of contract to enter into. If the parties choose to make a lease contract, rules on lease contracts will normally be the rules to supplement the agreement. The words used by the parties may not, however, be decisive in all respects. Mandatory rules on leases cannot be circumvented just by use of other language. Also regarding non-mandatory rules, it would in many cases be fictional to see lease terminology as wholesale acceptance of lease rules otherwise unrelated to the contract. An example: if the parties have agreed that the lessee becomes the owner as soon as the agreed rent is paid in full, there should be a presumption that sales rules apply (cf. A6 below). This kind of "re-characterisation" should, however, be exercised with care. It is for example far from evident that the mere *intention* (if it can be proved at all) of the lessee to use an option to buy the goods should make the sales rules applicable. Also, an analysis of the economic function of the contract or of the effects of the contract may lead to rather ambiguous results. A lease contract may serve several purposes in addition to the acquisition of a right to use the goods: a lease of goods has some of the effects of a credit contract (the alternative is to pay at once or get credit from the seller or a loan from a third party); a lease may have the same function as a sale in the sense that the lessee has a right to use the goods for their entire economic life span against payment of the full price of the goods; a lease may have favourable tax effects compared with a sale; the effects on accounting may be advantageous to the parties; a lease may make it easier to employ the latest technology at any time; and so on. The parties to the contract in question may

have attached weight to some of these effects while remaining indifferent to others, whether because outweighed by the former or simply unknown. At the same time, other parties concluding a contract on exactly the same terms may appreciate very different effects of the lease model.

6. **Scope of this Part of Book IV** This Part of Book IV applies to contracts for the lease of goods, and a contract for the lease of goods is defined as a contract under which one party undertakes to provide the other party with a temporary right of use of goods in exchange for rent (see IV.B – 1:101(1) and (2)). If the parties have agreed that ownership is transferred after a period with right of use, the contract is regarded as a contract for sale, and this Part of Book IV does not apply (see IV.B – 1:101(3)). This Part of Book IV applies even when the lease contract has a financing purpose or when the lessor has the role of a financing party ("finance leases", "financial leasing", see IV.B – 1:101(4)). Only the contractual relationship between lessor and lessee is dealt with (see IV.B – 1:101(5)). Protection of the lessee's right against the lessor's general creditors and other questions concerning competing interests in the goods are dealt with in other Books, in particular Book VIII (Acquisition and loss of ownership of movables) and Book IX (Proprietary security rights in movable assets). There are, however, provisions in Chapter 7 of this Part of Book IV on the contractual relationship between the lessee and a new owner of the leased goods. For details, see Comments to IV.B – 1:101.

B. Lease contracts in national law

7. **Roman law background** A contract granting the use of a thing, movable or immovable, in return for money, was in Roman law an example of *locatio conductio*, a contract type that included contracts for services and for work as well. A distinction between leases of things (*locatio conductio rei*) and other leases (*locatio conductio operae*, or, with a further grouping, *locatio conductio operarum* and *locatio conductio operis*) was drawn by the pandectists.[2] The wider concept of *locatio conductio* is still found in some civil codes, like the French, the Maltese and the Spanish.

8. **Lease contracts in the civil codes** The civil codes normally have general provisions on leases of things, comprising both leases of immovable property and leases of goods. In addition, there are often separate titles with special rules on different types of lease contracts. Leases of immovable property have been and still are the most important form of lease contract in practice. A recurring methodological problem is to decide which rules are applicable, directly or per analogy, to leases of goods, and doubt will sometimes be expressed in the notes on national law.

9. **Overview of lease law in the civil law countries** The Austrian Civil Code defines *Bestandvertrag* as a contract for a certain time and for a fixed price for the use of a thing that cannot be consumed (art. 1090). If the thing can be used without further processing (*Bearbeitung*) the contract is a lease contract (*Miete*), while it is a contract for use and profits (*Pacht*) if the thing can only be utilised by diligence and labour (*Fleiß und Mühe*,

2 *Zimmermann*, Law of obligations, 338 – 340.

art. 1091). There is special legislation on residential leases. Czech law introduces one general regulation of the lease contract, arts. 663–684 of the Civil Code, covering both movable and immovable property, and two special regulations: the first concerning business leases of movables (arts. 721–723 of the Civil Code), which applies where the lessor is a business, irrelevant of whether the lessee is a business or a consumer; and the second concerning leases of a means of transportation (arts. 630–637 of the Commercial Code) which applies only between professionals. In Estonia, the law on leases is found in the Law of obligations (§§ 271–367). Several special rules concerning residential leases and leases of registered ships and aeroplanes are integrated in this part of the code, as well as provisions on contracts for use and profits (*rendileping*, official translation "commercial lease contract") and provisions on (financial) leasing contracts (*liisinguleping*). The provisions of the French Civil Code on leases of things (*louage des choses*, arts. 1713–1778) deal mainly with immovable property. It is held, however, that general rules on leases of immovable property apply also to leases of goods as far as the rules are compatible with the nature of the objects.[3] The German Civil Code has general provisions on leases of things (*Miete*, §§ 535–548) and special provisions on residential leases and on leases of other objects, goods included. Contracts granting both use and profits are defined as *Pacht* (§ 581). Most of the provisions of chapter 15 (arts. 574–618) of the Greek Civil Code apply to lease contracts in general, with the exceptions of some articles referring to immovable property only. The Civil Code contains special rules on leases of agricultural land or other fruit-bearing property (arts. 619–640) and leases of land against a share in the produce (arts. 641–647). There is special legislation on residential and professional leases, on time-sharing and on (financial) leasing. In Hungarian law, the rules on lease contracts *(bérlet)* are found in Chapter XXXVII, i. e. §§ 423–434 (Lease) of Title III (Specific Contracts) of Part IV (Law of Obligations) of the Civil Code. Subsequent to the rules on lease, the Civil Code also contains rules on contracts for use and profits *(haszonbérlet)* in §§ 452–461. There is special legislation on leases of residential and commercial premises, including rules on alienation of apartments belonging to local authorities or the State (Act LXXVIII of 1993 on the Lease of Apartments and Other Premises and their Alienation). The rules of the Italian Civil Code on *locazione* (arts. 1571–1614) apply to both immovable property and goods, and there are special provisions on leases of "productive" things, *affitto* (arts. 1615–1654). The Latvian Civil Code chapter 14 (arts. 2112–2177) deals with contracts for use and profit and with lease contracts (*nomas un īres līgums*, officially translated as "lease and rental contracts", the first being contracts for use and profit). Title IX of the Maltese Civil Code deals with "contracts of letting and hiring", with a sub-title II (arts. 1526–1622) "on the letting of things". In the Netherlands, title 7.2 of the Dutch Civil Code contains general rules on leases (arts. 7:201–230) that are applicable to all contracts of lease, regardless of the object (leases of farms and land excluded), and special provisions for the lease of housing (arts. 7:232–282), the lease of business accommodation such as retail, catering establishments etc. (arts. 7:290–310) and that for other (commercial) purposes such as offices and industrial premises (art. 7:230a). There are no special provisions on the lease of goods. In the Polish Civil Code, the rules on contracts of lease (*najem*) are found in Section I (lease) of Title XVII (lease and tenancy) of Book III (law of obligations), arts. 659–692, and apply to both movable and immovable property. However, some rules on the lease of

3 *Huet*, Contrats spéciaux, no. 21800.

dwellings are found in a specific statute (Tenants Protection Act). In the Portuguese Civil Code, general rules on leases are found in arts. 1022–1063; there are special rules on leases of immovable property to be found partly within the Civil Code, partly outside.[4] The general rules of the Slovak Civil Code concerning lease contracts ("nájomná zmluva", arts. 663–684) apply to leases of goods as well as leases of immovable property. There are special rules on commercial leases of movables, in addition to special rules on certain types of leases of immovable property. In the Spanish Civil Code, the first chapter of Title VI of Book IV (art. 1542–1582) has general provisions, applicable to all forms of leases of things, and is followed by two sections containing special rules on leases of dwellings and leases of agricultural holdings. The main regulation of these two areas is, however, found in special statutes, Urban Leases Act and Land Leases Act. The provisions of the Civil Code, then, are applicable to leases that do not fall under the scope of special legislation, but the Civil Code also serves as residual regulation of issues not dealt with in the special legislation.[5]

10. U. K. and Irish law There is no general legislation on leases of goods in the U. K. or in Ireland. Case law is also relatively scarce, although a number of leading authorities do accord a separate heading to contracts of bailment. A bailment denotes "a separation of the actual possession of goods from some ultimate or reversionary possessory right",[6] under which the bailee is generally subject to certain obligations owed to the bailor. The bailment relationship therefore comprises, but is not limited to, contracts for the lease of goods. A person who voluntarily assumes possession of goods belonging to another will be held to owe at least the principal duties of the bailee at common law (obligations to return the goods, not to convert the goods, to exercise a duty of care). The bailor is also under an obligation not to interfere with the bailee's possessory interest during the term. Recent statutes deal specifically with the lease relationship: the Supply of Goods and Services Act 1982, the Unfair Contract Terms Act 1977 and the Consumer Credit Act 1974 in particular have imposed numerous obligations on lessors, particularly where consumers are involved. Hire-purchase contracts may be considered as bailments combined with the option to return or purchase the goods at some point in time. They are subject to a separate (and more stringent) legal regime in the U. K., as a popular vehicle of instalment credit. The common law principles which apply are numerous (given the more abundant case law) and statutory controls may be found *inter alia* in the Supply of Goods (Implied Terms) Act 1973, the Consumer Credit Act 1974 and the Hire Purchase Act 1964. The lack of statutory protection for lessees in IRELAND was remedied in 1980 by sec. 38 of the Sale of Goods and Supply of Services Act 1980 which afforded to the lessee similar rights to those previously enjoyed by hirers of goods under hire-purchase contracts. Section 38 has now been replaced by Part VII of the Consumer Credit Act 1995. However, these rules apply only to consumer leases.

11. The Nordic countries None of the Nordic countries (Denmark, Finland, Iceland, Norway, Sweden) has a civil code. Neither is there general legislation on lease of goods in any of these countries. Case law concerning this subject is scarce and solutions must

4 *Teles de Menezes,* Direito das obrigações III[4], 298.

5 *Bercovitz,* Manual, Contratos 168.

6 *Palmer,* Bailment, 2.

mainly be built on general contract law, i. e. in particular analogies from other types of contracts and considerations of what is the best rule.[7] All the countries have legislation on lease contracts for houses and rooms in houses; there exists legislation on some (other) leases of land as well (leases for agricultural purposes, leases of ground for houses etc.). To what extent such legislation may serve as a basis for analogy in lease contracts for goods, is debatable. Finland, Iceland, Norway and Sweden all have codes of recent date on the sale of goods that are inspired by CISG,[8] and traditionally the regulation of sales contracts has had a considerable impact on general contract law.

12. EC legislation There is no Community legislation on lease contracts in particular. The Consumer Credit Directive (87/102/EEC) applies to "hiring agreements" only where the agreement provides "that the title will pass ultimately to the hirer" (art. 2(1)(b)). Several consumer contract directives with general scope also affect lease contracts. Among the most important is the Directive on Unfair Terms in Consumer Contracts (93/13/EC).

C. Survey of this Part of Book IV

13. Scope of application This Part of Book IV applies to contracts concerning a temporary right of use of goods against payment, cf. *A1* above and IV.B – 1:101 (Lease of goods). These are typical elements of contracts that for systematic and practical purposes have been dealt with as a specific type of contract throughout Europe, even though these contracts are grouped together with contracts for use of immovable property in most Civil Law countries. No attempt has been made to fine-tune the definition of leases of goods to solve all borderline problems regarding the scope of application, e. g. concerning rights of use as opposed to services, temporary rights as opposed to permanent rights, tangible property as opposed to intangible, etc. Such questions must be answered partly on the basis of II. – 1:109 (Mixed contracts), partly on the basis of more general principles of contract law. A couple of clarifications have been made, however. Firstly, this Part of Book IV.B does not apply where the parties have agreed that ownership will be transferred, even if this is to happen after a period of use, cf. IV.B – 1:101(3). Such contracts fall under the definition of a sale, cf. IV.A – 1:101. Secondly, the fact that the contract has a financing purpose does not exclude the application of the rules of this Part of Book IV, cf. IV.B – 101(4). This means that the financing purpose is not in itself a sufficient criterion for classifying the contract as belonging to another category of contracts or as a contract *sui generis* if the elements of a lease are present. Some special provisions are included for contracts that are typically regarded as having a financing purpose.

14. Structure This Part of Book IV contains supplements, adaptations and deviations from the general parts of the Draft Common Frame of Reference (Books I – III) to the extent necessary due to the characteristic traits of lease contracts. Some references to

7 On Finnish lease law in particular, see *Saarnilehto,* Vuokraoikeus.

8 Finnish Sale of Goods Act; Icelandic Sale of Goods Act and Consumer Sales Act; Norwegian Sale of Goods Act and Consumer Sales Act; Swedish Sale of Goods Act and Consumer Sales Act.

provisions of the general parts have been included for the sake of clarity but, as a general rule, the provisions of the general parts apply, in the absence of any reference, unless it would be inconsistent with the provisions of this Part of Book IV. Definitions of leases and of consumer leases are found in Chapter 1. Chapter 2 contains provisions on the lease period. The obligations of the lessor and the lessee's remedies for non-performance of these obligations are regulated in Chapters 3 and 4. Correspondingly, the obligations of the lessee and the lessor's remedies for non-performance are found in Chapters 5 and 6. Chapter 7 (New parties and sublease) contains rules covering the situation where ownership in the goods passes from the lessor to the new owner, as well as cases of sublease and the lessee's assignment of the rights to performance under the lease contract.

15. Internal references In this volume, there are cross-references to other parts of the Draft Common Frame of Reference: capital Roman numbers indicate books, capital letters indicate parts of books, and Arabic numbers indicate articles, with numbers of paragraphs and sub-paragraphs added in round brackets, where relevant. A cross-reference to "IV.A – 2:101(2)(a)" thus means Book IV, Part A, Article 2:101, paragraph 2, sub-paragraph a. This model is applied for cross-references within this Part B of Book IV as well. The *titles*, however, of articles in the "black letter rules" here start with the word "Article" and not with "IV.B". Now and then, comments refer to the "Definitions" in one of the annexes to the Common Frame of Reference. The first publication of the Draft Common Frame of Reference will take place early in 2008. In the meantime, the reader might find the following overview useful:

Book I. General provisions
Book II. Contracts and other juridical acts
Book III. Obligations and corresponding rights
Book IV. Specific contracts and rights and obligations arising from them
- A. Sale
- B. Lease of Goods
- C. Services
- D. Mandate
- E. Commercial Agency, Franchise and Distribution
- F. Loan
- G. Personal Security
- H. Insurance
- I. Gratuitous Contracts

Book V. Benevolent intervention in another's affairs
Book VI. Non-contractual liability arising out of damage caused to another
Book VII. Unjustified enrichment
Book VIII. Acquisition and loss of ownership in movables
Book IX. Proprietary security rights in movable assets
Book X. Trusts

Chapter 1:
Scope of application and general provisions

Article 1:101: Lease of goods

(1) This Part of Book IV applies to contracts for the lease of goods.
(2) A contract for the lease of goods is a contract under which one party, the lessor, undertakes to provide the other party, the lessee, with a temporary right of use of goods in exchange for rent. The rent may be in the form of money or other value.
(3) This Part of Book IV does not apply to contracts where the parties have agreed that ownership will be transferred after a period with right of use even if the parties have described the contract as a lease.
(4) The application of this Part of Book IV is not excluded by the fact that the contract has a financing purpose, the lessor has the role as a financing party, or the lessee has an option to become owner of the goods.
(5) This Part of Book IV regulates only the contractual relationship between lessor and lessee.

Comments

A. General

1. **Scope of application** This Part of Book IV applies to what can be regarded as the "core" field of leases of assets other than immovables, namely contracts granting a temporary right of use of goods against remuneration. Goods are defined (in Definitions) as corporeal movables, including ships, vessels, hovercraft or aircraft, space objects, animals, liquids and gases. No doubt other legal relationships may be found that have some but not all of these elements or similar elements or functions to those referred to in the present Article, but it is not recommended that this Part of Book IV be given the widest possible scope of application. A menu of specific contracts can never be exhaustive or cover every possible contract. Neither is it possible to draw sharp lines between different specific contracts. There will be contracts with elements of two or more types. A negative definition of lease, excluding the application of other principles is hardly possible or desirable. One exception has been made: this Part of Boook IV does not apply to contracts where the parties have agreed that ownership is transferred after a period with right of use, cf. Comment 14.

B. Contract

2. **Contractual relationship and relationship to third parties** In the main, this Part of Book IV deals with the contractual relationship between lessor and lessee. In national law, protection and priority in relationship to third parties may be decisive for distin-

guishing leases from other legal relationships that include use of goods, for example the right of usufruct that is employed in several jurisdictions. In most cases these rights will be more comprehensive than the right based on a lease contract and for that reason fall outside the scope of application of this Part of Book IV. In other cases national law must determine to what extent this Part of Book IV is applicable to such rights.

C. Right of use

3. **Benefits and physical control** The essential meaning of "use" of goods is so evident in everyday language that it is difficult to give a definition that is not circular. Right of use implies that the lessee may enjoy the benefits that normally flow from having physical control of the goods: driving a car, sailing a boat, digging with an excavator, wearing a suit, watching programmes on a TV, etc. The lessee can do more than a pledgee or a person looking after the goods, but less than the owner, who may destroy the goods or make changes to them or establish rights related to the goods (the lessee's rights concerning changes to, or the sublease of the goods will be dealt with later). The more exact limits within which the lessee may utilise the goods must be determined by the individual agreement, the purpose of the lease and the default rules in this Part of Book IV (Chapter 5).

4. **Fruits** This Part of Book IV makes no distinction between the right to use the goods and the right to "fruits". For goods, as opposed to immovable property, this distinction is normally of little relevance. Whether or not the lessee may keep natural fruits like the foal of a leased horse or the tomatoes from a leased tomato plant must be determined from the purpose of the lease and other circumstances. It has not been deemed useful to formulate a meaningful default rule. Fruits understood as income from a new lease are possible if the lessee may sublease the goods, an issue that will be dealt with in Chapter 7.

5. **Consumable goods, fungible goods, aggregates** The right to consume goods belonging to another person or to return objects other than those originally made available is usually seen as something different from "use", in everyday language as well as in legal language. This Part of Book IV does not apply to contracts concerning such rights. On the other hand, there seems to be no reason to exclude leases of aggregates of goods, for example a set of tools for computer repairs. To what extent the lessee may replace parts of the aggregate will depend on the individual agreement and the circumstances.

6. **Intellectual property rights** The purpose of leasing a book or a DVD (etc.) is normally to get access to the contents – reading the verses, listening to the music, watching the film etc. This Part of Book IV deals with the individual copy of the work, not with questions regarding intellectual property rights. If, however, the law on intellectual property should require an illegal copy to be returned immediately or to be destroyed or at least not used by the lessee, this has consequences also for the lease agreement, as the good cannot be used for the purpose for which it was intended.

D. Temporary right

7. **The right of use is not permanent** The lessee's right under a lease contract is not permanent. A contract permanently dividing the interests in the goods in a way that gives one party a right of use while the other party is left with a right of payment should not be regarded as a lease contract. However, this Part of Book IV contains no maximum lease period and the difference between a right of use under a contract for a very long period on the one hand and a permanent right of use on the other may be rather formal (cf. Chapter 2). For leases of goods this will probably not be a problem of practical significance in any case.

E. Goods

8. **Meaning of "goods"** The meaning of the word "goods" is determined by a series of definitions (see Definitions): "'Goods' means corporeal movables. It includes ships, vessels, hovercraft or aircraft, space objects, animals, liquids and gases." "'Movables' means corporeal and incorporeal property other than immovable property." "'Immovable property' means land and anything so attached to land as not to be subject to change of place by usual human action." "'Corporeal', in relation to property, means having a physical existence in solid, liquid or gaseous form."

9. **Movables** This Part of Book IV applies to movables and not to immovable property. Objects that form part of immovable property, as well as fixtures and accessories to immovable property, should be regarded as immovable property in this respect, unless such property is leased with a view to separating it from the immovable property. Hence a contract concerning the right to utilise a pipeline or a cable fixed to an immovable does not fall within the scope of this Part of Book IV.

10. **Corporeal movables** This Part of Book IV applies to leases of corporeal movables only, i. e. movables with a physical existence. In practice, it will be movables in solid form, but it has not been found necessary to make exceptions for liquids or gases. Electricity, information and data are not covered by the definition of goods, neither are financial instruments, even in the form of negotiable documents.

11. **Ships, aircraft etc.** The word "goods" includes "ships, vessels, hovercraft or aircraft" (see Definitions) and this Part of Book IV applies to leases of such objects. In most, if not all, jurisdictions, there are registers for several of these objects, registers that also allow for the registration of rights attaching to such objects. Rights relating to ships, aircraft etc. are to a certain extent governed by rules similar to rules on immovable property, which is also registered. It has not been found necessary to exclude ships, aircraft etc. from the scope of application of this Part of Book IV, nor to include special rules on leases of such objects. For leases of ships and aircraft of some size, there are standardised contract terms, and in any case the parties to the contract will make individual agreements covering all important aspects of the contractual relationship. This Part of Book IV is non-mandatory where the lessee is not a consumer. However, there are lease contracts, typically con-

cerning smaller boats for leisure purposes, where standardised terms are not relevant and individual agreements often less elaborated. For such leases there is no reason to have special rules.

F. In exchange for money or other value

12. Gratuitous contracts excepted This Part of Book IV applies only where the right of use is provided in exchange for money or other value. Contracts concerning gratuitous use of goods have traditionally been regarded as a contract type different from the lease contract and the typical interests involved in such a relationship are not the same as for leases. These contracts are dealt with in Book IV. I. However, where remuneration is owed and it is not purely symbolic, this Part of Book IV applies. Contracts with a low rent are not excepted from the scope of application of this Part of Book IV, but the fact that the rent is low may in some circumstances be relevant (for example in deciding the standard of quality of the goods that may reasonably be expected by the lessee).

13. Money or other value In most cases the lessee is obliged to pay money, but this Part of Book IV applies also where the right of use is provided in exchange for other value, such as work, services, ownership or use of property etc. The rules in Chapter 5 concerning payment apply with appropriate adaptations in such cases. Leases with remuneration in value other than money are so rare that it has not been found advisable to burden the text with special rules. Sometimes the right of use must be seen as an element of another contract, e. g. an employment contract, and in such cases this Part of Book IV does not apply.

G. Leases and sales

14. Sales rules have priority This Part of Book IV does not apply to contracts where the parties have agreed that ownership is to be transferred after a period with right of use, cf. the third paragraph of the present Article. If the parties have already agreed on the transfer of ownership, and this transfer is not just an option for one or other of the parties, the contract falls under the definition of a sale in IV.A – 1:101(2). The agreed transfer of ownership may take place at once or after a certain period, normally on the condition of full payment of the price. The most important example is a sale with reservation of title. It sometimes happens that lease terminology is used in agreements of this kind; the lessee becomes owner when the agreed rent is paid in full. The contract is still covered by the definition of a sale. The language of such contracts (hire-purchase, conditional sale, sale with retention of title) may differ without corresponding real differences in the obligations undertaken by the parties, and it would be arbitrary to apply lease rules for the period up to transfer of ownership just for some of the contracts. In general, it is not always clear to what extent the applicability of rules concerning one type of contract excludes the applicability of rules concerning other types of contracts. Sometimes the rules may be applied in combination, each to different elements of the same contract; in other cases, obligations characteristic of one specific contract are just accessory elements in a contract that is governed by the rules of another type of contract.

This may depend on the circumstances of the case, see also II. – 1:109 (Mixed contracts). However, for lease contracts a clarification should be made in relation to the sale contracts mentioned here. The question remains whether the use of lease terminology should mean that lease rules apply *by agreement*. This is a question of interpretation of the individual agreement, but in most of these cases the use of lease terminology can simply be seen as a matter of form.

15. Lessee's option to buy A mere option for the lessee to buy the goods, either at the end of the lease period or at any other point in time, does not make the contract a sale under the definition in IV.A – 1:102(2) and neither does it exclude the contract from the lease definition. This is the case even if it can be proved that the lessee has an intention to use the option, as long as this is not a contract term. The same holds true where the price is so low that it would be obviously irrational *not* to use the option; this Part of Book IV still applies.

16. Sale and lease back Sometimes one person (A) sells goods to another person (B) with the purpose of leasing the goods from that person. Depending on the circumstances, B's right may be regarded as a security right and A's right as ownership, cf. Book IX. Also as between A and B, the contracts for sale and for lease may be seen as simulations, again depending on the circumstances, and if so, this Part of Book IV will not apply. In other cases, this Part of Book IV should apply for the part of the contract concerning the lease.

H. Contracts where goods are supplied for the particular lease ("financial leasing" etc.)

17. The contracts It is quite common that the lessor has more of a role of credit provider than that of an ordinary lessor: the prospective lessee finds a supplier who can provide goods conforming to the lessee's specification; the goods are then bought by another party, typically a financial institution, who leases the goods to the lessee; a rent and a minimum lease period are fixed such that the cost of the goods, plus interest, may be recovered by the lessor at the end of the lease period. The lessee may have a right to buy the goods at expiry of the lease period at a nominal price or a right to continue the lease at a substantially lower rent. Such contracts are often referred to as "financial leasing contracts" (cf. Comment *H18* regarding the Unidroit Convention). Similar transactions may be defined in national legislation under various names. One should be aware that the English term "leasing", as well as more or less analogous terms in other languages, is frequently used for transactions that have only some of the characteristics here mentioned or important additional traits.

18. The Unidroit Convention The Unidroit Convention on International Financial Leasing was adopted in Ottawa 28 May 1988 and entered into force on 1 May 1995, following three ratifications. To date (2007), the Convention has been ratified by nine states (Belarus, France, Hungary, Italy, Latvia, Nigeria, Panama, Russia and Uzbekistan). According to article 1 the Convention applies to international lease contracts (contracts "granting to the lessee the right to use the equipment in return for the payment of rentals") where (a) the lessee controls acquisition of the goods (the lessor buys the goods

on specifications by the lessee and on terms approved by the lessee, from a supplier selected by the lessee; and the lessee specifies the goods and selects the supplier "without relying primarily on the skill and judgement of the lessor"); (b) the goods are acquired by the lessor in connection with the lease agreement and this is known to the supplier; (c) the rent is "calculated so as to take into account in particular the amortisation of the whole or a substantial part of the cost".

19. Essential rules of the Unidroit Convention The essence of the regulation of the Convention is the following: (a) protection of the lessor's rights against creditors (art. 7); (b) protection of the lessor, in his capacity as such, against tort law claims from third parties resulting from "death, personal injury or property damage" (art. 8(1)(b)); (c) the supplier's duties under the supply agreement "shall also be owed to the lessee as if it were a party to that agreement" (art. 10); (d) the lessor "warrants" against third party rights in the goods (art. 8(2)); (e) all maintenance and repairs lie on the lessee and the goods must be returned in the original condition, normal wear and tear excepted (art. 9); (f) in the case of non-conformity or delay, the lessor must accept termination (or rejection of delivery) and, prior to acceptance of the goods, withholding of rent, but is not required to pay damages, except for loss resulting from the lessee's reliance on the lessor's skill and judgement or the lessor's intervention in the choice of supplier or in specifications (art. 12 and art. 8(1)); (g) provisions on damages etc. relating to termination as a result of the lessee's non-performance (art. 13); (h) regulation of the right to transfer ownership of the goods or the right of use (art. 14).

20. The Unidroit Convention and this Part of Book IV The contracts described in the Unidroit Convention form one group of lease contracts containing elements of credit and security. The lease form is chosen by the parties. Little seems to be won by defining these contracts as contracts of their own kind, different from lease contracts and thus falling outside the scope of application of this Part of Book IV. Defining the contracts as sale contracts would certainly be contrary to the wishes and intentions of the parties, and there is not sufficient reason to go against such intentions. This Part of Book IV should apply in general. Nevertheless, some special rules must be included as it would be unsatisfactory to have all of the lease rules apply as default rules to a – more or less – distinct and important group of contracts where some of the general rules do not fit. Such special rules are included in IV.B – 2:103, IV.B – 3:101, IV.B – 3:104, IV.B – 4:107, and IV.B – 5:104 and reference is made to Comments to these Articles.

I. Lease contracts and service contracts

21. Right of use combined with services The right of use of goods may be combined with services from the party providing the right of use. There is a wide spectrum of possible combinations. At one end of the spectrum, work to be performed by the lessor in the form of maintenance and repairs is an integral part of a great many lease contracts and such work is normally not considered a "service" at all. This Part of Book IV will apply. At the other end of the spectrum, there are contracts where there "use" of goods has no independent character and is merely accessory, such as the passenger's "use" of a car or a boat under a transportation contract. The categorisation is more doubtful where

for example a party has the right of use of advanced industrial equipment and the owner provides a mechanic to take care of the equipment throughout the period of use.

22. **Applicability of this Part of Book IV** A general rule on mixed contracts is found in II. – 1:109 (Mixed contracts). Rules applicable to each relevant category may apply to the same contract, unless *(inter alia)* one part of the mixed contract "is in fact so predominant that it would be unreasonable not to regard the contract as falling primarily within one category". Both sets of rules may apply. Where the services to be performed and the right of use are only loosely connected and there is no practical risk of incompatible regulation, for example where surfing lessons are included in the lease of a surfboard. In other cases, different sets of rules cannot easily be combined as they may regulate more or less the same elements of the contract, and rules may be conflicting. In such cases, one part of the contract may often be regarded as predominant. Where the owner or the owner's representative has control of the use of the goods, the service element will normally be predominant. A contract concerning a bus with driver will for example normally imply that the driver decides *how* to drive, while the client decides *where* to drive and *when*. This should not be regarded as a lease. A parallel distinction between "nautical" control and "commercial" control is well known from charter parties. Where the control aspect does not give sufficient indication, the extent and intensity of the service element and the qualifications required to provide such a service should be weighed in the balance. Furthermore, the value of the different elements of the contract may be relevant.

J. The parties

23. **Lessor need not be the owner** In most cases the lessor is the owner of the goods. There may be situations, however, where the lessor may rightfully enter into a lease contract without being the owner. Such may be the case for the holder of a usufruct right, a right acknowledged in several jurisdictions. Further, where the lessee can sublease the goods, the lessee in the role of sub-lessor is not the owner of the goods.

24. **Lease-and-lease-back etc.** In principle, one person (A) may lease the goods to another person (B) and then lease the goods back from B. Such transactions are now and then seen for immovable property, but are probably of small practical interest as far as goods are concerned.

Notes

I. Contract

1. In most civil law countries, a lease has traditionally been regarded as a contractual and merely obligatory relationship, see for AUSTRIAN law, Rummel (*-Würth*), ABGB I[3], §§ 1092 – 1094, nos. 1 ff. (see, however, for some proprietary remedies, Schwimann (*-Binder*), ABGB V[3], § 1096, no. 117); for FRENCH law, *Huet*, Contracts spéciaux, nos. 21112 ff.; for GERMAN law, MünchKomm (*-Schilling*), BGB III[4], Einl. vor § 535 nos. 6 ff. In GREEK law, a lease is a bilateral contract (GREEK CC art. 574), which creates ob-

ligations and does not confer real rights. However there are several provisions (such as GREEK CC art. 614) which render the contractual rights active not only *inter partes*, but also *erga omnes*. A lease is a contract in SPANISH law, cf. the heading of CC Title VI of Book IV. The nature of the lessee's use has been debated; the majority view seems to be that the lessee only has a right through the conduct of the lessor, and that the lessee's right is not a proprietary right, despite any possibility of entering it into the Land Register (*Lete del Rio*, Derecho de Obligaciones, II, 332). In CZECH law, the lease is regarded as a simple contractual relationship between the lessor and the lessee (cf. Švestka *(-Novotný)*, Civil Code, 1171), but it nevertheless resembles proprietary rights in a number of aspects (e. g. CZECH CC art. 680(2): every owner of the leased goods is bound by the lessee's rights, and CZECH CC art. 126(2): the lessee may proceed against third party interferences). A lease only creates an obligatory relationship in HUNGARIAN law also. For many years a "right of lease" could be transferred, but not the ownership itself, and to a certain extent this remains the situation even after the transition in 1989/90 (cf. § 42 of the Act LXXVIII of 1993 on the Lease of Apartments and Other Premises and their Alienation; see also *Besenyei*, A bérleti szerződés, 14–15; see also on the proprietary rights of a registered lessee before 1940, Szladits, Magyar magánjog (*-Újlaki*), 502). For DENMARK, NORWAY and SWEDEN, see notes 4 and 6 to Article 7:101. In the U. K., it is debatable whether or not a lease of goods creates property rights. It has often been speculated that the lessee acquires a proprietary interest in the leased goods via possession (*Palmer*, Bailment, 81–82, 86–87; *AL Hamblin Equipment Pty Ltd v. Federal Commissioner of Taxation* (1974) 131 CLR 570, 581–582 per Mason J), in particular because of the possibility that the lessee will be protected against interference by third parties with knowledge, once in possession of the goods (*Port Line Ltd v. Ben Line Steamers Ltd* [1958] 2 QB 146, 151 per Diplock J). The question has never been directly addressed in U. K. law (*Birks*, English Private Law I, para. 4.195).

II. Right of use

2. In several jurisdictions, a distinction is made between a right of use and a right of use and fruits of the thing: AUSTRIAN CC § 1091 (distinction between *Miete* for use and *Pacht* where the object can be used only through hard work; cf. Schwimann (*-Binder*), ABGB V[3], § 1091 nos. 1 ff.); ESTONIAN LOA § 339 ("commercial" leases include the right to fruits); GERMAN CC § 535 (*Miete*) and art. 581 (*Pacht*); GREEK CC arts. 619 and 638 (special rules for leases of fruit-bearing things); for HUNGARIAN law, see Introduction, *B9*; ITALIAN CC art. 1571 (*locazione*) and art. 1615 (*affitto* for "productive" things); LATVIAN CC art. 2112; POLISH law distinguishes between *najem* (right of use) and *dzierżawa* (right of use and fruits), rules on *najem* are applicable also to *dzierżawa* (POLISH CC art. 694); for SWISS law, see BSK (*-R. Weber*), OR I[3], Vorbem. zu Art. 253–274g, no. 4. In SPANISH law, the lessee may have a right of "use" or a right of "use and enjoyment", but these two types of lease contract are not treated differently in law (cf. *Albaladejo*, Derecho Civil, II[12], 622). For some jurisdictions, it is explicitly said that the lessee's right may include the fruits: CZECH CC § 663 (cf. Knappová *(-Salač)*, Civil Law, II, 240); DUTCH CC art. 7:202; LITHUANIAN CC art. 6.488 (unless otherwise provided for by the contract); SLOVAK CC art. 663; SLOVENIAN LOA art. 587(2) (unless otherwise agreed or customary). At common law in the U. K., the progeny of livestock born during the lease period may belong to the lessee unless the contract

provides to the contrary. The same is true of livestock leased under a hire-purchase contract. See *Tucker v. Farm and General Investment Trust Ltd.* [1966] 2 QB 421, and Chitty (*-Beale*) on Contracts II[29], paras. 33–063 and 38–385). In several jurisdictions, the distinction seems to be of no relevance, at least not for leases of goods; this seems to be the case for example in BELGIAN, FRENCH, DANISH, FINNISH, MALTESE, NORWEGIAN, PORTUGUESE and SWEDISH law.

III. Temporary right

3. Legal definitions of a lease contract regularly include a reference to the temporary character of the contract (see also notes to IV.B–2:102): AUSTRIAN CC § 1090 (a certain period; lease contracts may not last forever, see Schwimann (*-Binder*), ABGB V[3], § 1092, no. 88); CZECH CC § 663; DUTCH CC art. 7.201; for ENGLAND, WALES & N. IRELAND, see Chitty (*-McKendrick*), On Contracts II[29], para. 33-063; for SCOTLAND, see *Walker,* Principles of Scottish Private Law III, 398; FRENCH, BELGIAN and LUXEMBOURGIAN CC art. 1709 (*certain temps*); for GERMAN law, see MünchKomm (*-Schilling*), BGB III[4], Einl. Vor § 535, no. 5; GREEK CC art. 574 (cf. also art. 610 on lifetime leases); HUNGARIAN CC § 423; ITALIAN CC art. 1571; LATVIAN CC art. 2112; LITHUANIAN CC art. 6.477(1); MALTESE CC art. 1526; POLISH CC art. 659(1); SLOVAK CC art. 663; SLOVENIAN LOA art. 587(1); SPANISH CC art. 1543 (the lease must be for a determined time, i. e. a determined or determinable period, cf. *Bercovitz,* Manual, Contratos, 169; the intention is to prevent perpetual bonds on property, cf. TS 26 Oct 1998, RAJ 1998, 8237); for SWISS law, see BSK (*-R.Weber*), OR I[3], art. 253, no. 1. There are exceptions, though; for example the definition in ESTONIAN LOA art. 271 does not refer to the temporary character of the contract.

IV. Goods

4. See Comment *E9* to IV.B–1:101 concerning the distinction between leases of immovable property and leases of movables. For practical purposes, rules on the lease of movable property are important primarily for corporeal movables. For some jurisdictions, it is held that a *right* or "immaterial goods" may be the object of a lease: AUSTRIAN CC § 1093; DUTCH CC art. 7:201(2); for FRENCH and BELGIAN law, see Rép.Dr.Civ. (*Groslière*), v° Bail, no. 128; *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 58; GREEK CC art. 638 (on fruit-bearing property, cf. *Georgiadis,* Law of Obligations, § 23, no. 6, fn. 3; *Georgiadou,* art. 638, no. 2); for HUNGARIAN law on contracts for use and profit (*haszonbérlet*), see Gellert, Commentary (*-Besenyei*), 1726; for ITALIAN law, see *Cian and Trabucchi,* Commentario breve[8], art. 1571, no IV7; LATVIAN CC art. 2113 (tangible property and rights).
5. As for the possible lease of consumable goods, formulas differ. For some jurisdictions, lease rules apply explicitly only to durable goods (AUSTRIAN CC § 1090, LITHUANIAN CC art. 6.477(2)). For HUNGARIAN law, it is held that only durable goods may be leased, *Besenyei,* A bérleti szerződés, 23. For other jurisdictions, it is said that lease rules apply only to non-consumable goods in principle, but that exceptions are possible (see for FRENCH law, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 133; for ITALIAN law, *Cian and Trabucchi,* Commentario breve[8], art. 1571, no. IV3). Then there are jurisdictions which do not exclude consumable goods, even if consumption of the goods may not

feature amongst the lessee's rights: for BELGIAN law, see *La Haye and Vankerckhove*, Le Louage de Choses I[2], no. 66; for CZECH law, see Holub *(-Balík, Piková, Pokorná)*, Civil Code, II, 1031; DUTCH CC art. 7:224 (same object must be returned); for GERMAN law, see MünchKomm (*-Schilling*), BGB III[4], § 535, no. 68 (e. g. fruits are leased for decoration); for GREEK law, see *Filios* (1981), § 25 B II; for SLOVAK law (*Lazar*, OPH, 146; Svoboda (*-Górász*), OZ, art. 663, 610; rules on leases do not apply where use of the goods will lead to consumption of the goods); SPANISH CC art. 1545 (not lease of goods where goods are consumed through their use); for PORTUGUESE law, see *Romano Martinez*, Direito das obrigações[2], 175 (same object must be returned). This rule will generally follow from the obligation to return the goods at the end of the lease period.

6. It seems that in most jurisdictions, the general rules on lease of goods also apply to contracts for the lease of ships or aircraft. There are, however, special rules on such leases in several countries. In both CZECH and SLOVAK law, general provisions on leases of goods apply also to ships and aircraft. There are, however, special rules on commercial leases of a means of transportation (see CZECH Ccom arts. 630–637; SLOVAK Ccom arts. 630–637). For ESTONIAN law see LOA §§ 291(1) and 312(1). For GERMAN law see CC § 578a for lease of registered ships. In GREEK law, a ship or an aircraft may be the object of a lease contract. The lease of aircraft is specifically regulated by the Code of Air Law (arts. 80–82) and the provisions of GREEK CC (arts. 574 ff.) apply to matters which fall outside the Code. The GREEK Code of Private Maritime Law regulates only the contract of affreightment and the lease contract is regulated by the Civil Code. For details and discussion, see for ship leases *Deloukas*, 253–254, 259; *Georgakopoulos*, 166 ff., and for aircraft leases *Chatzinikolaou-Aggelidou*, 230 ff. The general rules in POLISH law on leases of goods apply also to ships and aircraft; for special rules on contracts concerning both ship and crew, see the POLISH Sea Code 2001. In PORTUGUESE law, the general rules of the Civil Code apply, cf. PORTUGUESE Ccom art. 482. There exists special legislation as well, Decree on Contract of Affreightment; Decree on the Rules on Non-Regular Air Transport. In SPANISH law, the general rules on leases in the Civil Code apply to leases of ships or aircraft, but analogy with the rules on freight contracts in the Commercial Code has been recommended for the lease of ships (*J.L Gabaldón*, Manual de derecho de la navegación maritíma, 455).

V. *In exchange for money or other value*

7. Remuneration is usually regarded as a prerequisite for a lease contract: AUSTRIAN CC § 1090, § 1092 (for a fixed price); CZECH CC § 663; DUTCH CC art. 7:201(1) (determinable remuneration); ESTONIAN LOA § 271; FRENCH, BELGIAN and LUXEMBOURGIAN CC art. 1709; GERMAN CC § 535(2); GREEK CC art. 574; HUNGARIAN CC § 423; ITALIAN CC art. 1571; LATVIAN CC art. 2112; LITHUANIAN CC art. 6.477(1); MALTESE CC art. 1526(1); POLISH CC art. 659(1), cf. *Panowicz-Lipska*, System Prawa Prywatnego VIII, 14; PORTUGUESE CC art. 1022, cf. *Romano Martinez*, Direito das obrigações[2], 167; SLOVAK CC art. 663; SLOVENIAN LOA art. 587; SPANISH CC art. 1543 (the contract is a lease only if there is a certain and determinable rent; TS 2 May 1994, RAJ, 1994, 3557); SWISS LOA art. 253; for the U. K., see Chitty (*-McKendrick*), on Contracts II[29], para. 33-063 (with reference to *McCarthy v. British Oak Insurance Co Ltd* [1938] 3 All ER 1).

8. It seems generally accepted that the rent need not be monetary; for AUSTRIA, see Schwimann (*-Binder*), ABGB V[3], § 1092 no. 66 ff.; OGH 24 Mar 1998 SZ 71/55; for BELGIAN law, see *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 825; for GERMAN law, see Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 535 no. 49. In GREEK law, the rent is usually paid in money, but may also consist in any other value (e. g. work, services, other fungible objects etc.) (*Georgiadis,* Law of Obligations, § 23, no. 8; see also *Rapsomanikis,* art. 574, no. 17). To the same effect for DUTCH law, see *Asser and Abas,* Huur[8], no.17. This is also the rule in ESTONIAN law, even if it is not stated explicitly, in CZECH law (see Knappová *(-Salač),* Civil Law, II, 240), and HUNGARIAN law (Gellert, Commentary (*-Besenyei*), 1675 and 1686–1687). For a similar rule in FRENCH law, see Rép.Dr.Civ. (*Groslière*), v° Bail, no. 467; for ITALIAN law, see *Alpa and Mariconda,* Codice Civile Commentato, Art. 1571, no. 12; LATVIAN CC art. 2119; LITHUANIAN CC art. 6.487(3); MALTESE CC art. 1533(1). In POLISH law, rent may be monetary, non-monetary or both, cf. CC art. 659(2) and *Panowicz-Lipska,* System Prawa Prywatnego, VIII, 14. It is held for SLOVAK law that remuneration may be in money or other value (Svoboda (*-Górász*), OZ, art. 663; *Lazar,* OPH, 146). In SPANISH law, the rent need not be in the form of money; rent may be paid in kind, by services or even repairs (*Albaladejo,* Derecho Civil, II[12], 627; *Bercovitz,* Manual, Contratos, 170; *Díez-Picazo and Gullón,* Sistema II[9], 331; *Sánchez Calero,* Curso de Derecho Civil II[4], 378). For SWISS law, see BSK I[3] (*-R. Weber*), § 257 no. 3. In the U. K., both at common law and under statute, the rent may be either money or some other valuable advantage, see Supply of Goods and Services Act 1982, s. 6(3) (ENGLAND, WALES & N. IRELAND) and s. 11G(3) (SCOTLAND). The valuable advantage may, for example, take the form of work performed by the lessee for the lessor, whether with or without the leased goods (*Derbyshire Building Co Pty Ltd v. Becker* (1962) 107 CLR 633) or an 'exchange bailment'.

VI. *Leases and sales*

9. In the NORDIC countries, a lease is regarded as a sale in relation to rules on credit sales if the intention is that the lessee will become owner of the goods (DANISH Credit Contract Act § 6(2); FINNISH Instalment Sales Act § 1(3); FINNISH Law on Consumer Protection 7. ch. § 3 no. 2; NORWEGIAN Credit Sales Act § 3 no. 1 litra c, SWEDISH Instalment Sales Act § 1(3) and SWEDISH Consumer Credit Act § 3(2)); see for a discussion e. g. *Persson,* Förbehållsklausuler, 298–312. For CZECH law, such leases are regarded as sales with reservation of title (CZECH CC art. 601) or financial leases if the lessee (the buyer) bears the risk of accidental damage; thus an agreement that ownership will pass should not be decisive (but detailed court practice is missing). There are rules covering contracts called "purchase of a leased thing" in CZECH Ccom arts. 489–496. The rules concentrate on the sales part of the transaction, and the lessee's right to buy may be part of the original lease contract or agreed upon later. For details see Štenglová *(-Plíva),* Commercial Code, 1211–1218. In PORTUGUESE law, a contract for *locaçaõ-venda* ("lease-sale") implies that the lease contract is automatically transformed into a sale when the full rent is paid, cf. PORTUGUESE CC art. 936(2) and *Galvão Telles,* Manual, 398. SLOVAK law has special rules concerning commercial lease contracts which include a right for the lessee to purchase the goods (SLOVAK Ccom arts. 489–496); lease law applies to the lease element of the contract and sales law to

the purchase element. Under U. K. law, a 'hire-purchase' agreement implies a lease of the goods to the lessee, accompanied by an option to return or to purchase the goods at some time or other (Chitty (*-Beale*) on Contracts II[29], para. 38–270). Under IRISH law, the same 'hire-purchase' agreement implies a lease of the goods to the lessee, under which the lessee may buy the goods or under which property in the goods will pass to the lessee if the terms of the agreement are complied with (sec. 2, Consumer Credit Act 1995). The agreement may be in the form of one or more agreements, which will be considered for the purposes of the Act as a single (hire-purchase) agreement at the time the last agreement is made.

VII. Leases with a financing purpose

10. The UNIDROIT Convention on International Financial Leasing (Ottawa 1988) came into force on 1 May 1995 and has been ratified by nine states (Belarus, France, Hungary, Italy, Latvia, Nigeria, Panama, Russia and Uzbekistan). The characteristics of the contracts governed by the Convention are these (art. 1): they are lease contracts where the lessor buys goods on specifications made by the lessee and on terms approved by the lessee; the goods are acquired by the lessor in connection with the lease agreement, and this is known to the supplier; the rent is "calculated so as to take into account in particular the amortisation of the whole or a substantial part of the cost". The essence of the regulation in the Convention is this: protection of the lessor's rights against creditors (art. 7); protection of the lessor, in this capacity, against tort law claims from third parties resulting from "death, personal injury or property damage" (art. 8(1)(b)); supplier's duties under supply agreement "shall also be owed to the lessee as if it were a party to that agreement" (art. 10); the lessor "warrants" against third party rights in the goods (art. 8(2)); all maintenance and repairs are on the lessee who must return the goods in the original condition, normal wear and tear excepted (art. 9); in case of non-conformity or delay, the lessor must accept *termination* (or rejection of delivery) and *withholding of rent*, but need not pay *damages* (except for loss resulting from the lessee's reliance on the lessor's skill and judgement or lessor's intervention in choice of supplier or in specifications) (art. 12 and art. 8(1)); provisions on damages etc. in connection with termination as a result of lessee's non-performance (art. 13); regulation of right to transfer goods (lessor) or right to use (lessee) (art. 14). A draft model law on leasing was submitted to the General Assembly of UNIDROIT on 30 Nov 2006. In UNIDROIT's presentation of the model law, it is stressed that the model law is targeted in particular at developing countries and countries in transition, and the preamble points out that the "model for legislators in the general context of contract law as opposed to the specific area of that law reserved to leasing" is the Unidroit Principles of International Commercial Contracts.
11. AUSTRIAN law has no special private law rules on leases with a financing purpose. So-called *Finanzieriungsleasing* is described as one of several types of lease contracts, characterised *inter alia* by specification of the goods by the lessee, risk on lessee as in a sale, maintenance on lessee, liability for non-conformity directed against supplier (see in general Schwimann (*-Binder*), ABGB V[3], § 1090, nos. 71 ff. and 82; *Fischer-Czermak*, Mobilienleasing, 48 ff. and 163 ff). Some options to buy the goods could make the contract a sale (*Fischer-Czermak*, loc. cit., 162).

12. Lease contracts with a financing purpose are well known in DENMARK, but there is no legislation on these contracts. There is, however, case law concerning various aspects of financial leases, and the contracts are discussed in legal literature, see for all e. g. *Gade*, Finansiel leasing and *Andersen and Werlauff*, Kreditretten, 256–279. – In DUTCH law, acquisition of ownership is regarded as an important element of financial leases, and this may lead to application of the rules on hire-purchase (DUTCH CC art. 7A:1576h–x), a sub-category of instalment sales (DUTCH CC art. 7A:1576–1576g).
13. ESTONIAN LOA chapter 17 (§§ 361–367) includes several articles on leasing, described as a lease contract where the lessor undertakes to acquire an object from a seller determined by the lessee (art. 361). The rules correspond generally with the UNIDROIT Convention. A corresponding regulation is found in LITHUANIAN CC Ch. XXX (arts. 6.567–6.574).
14. In FRENCH law, *crédit-bail* is defined in the Monetary and Financial Code art. L313-7 as an operation where (*inter alia*) equipment, supplied for this transaction, is leased to a professional with a right for the lessee to buy the equipment. The code deals mainly with public law aspects of such operations (and barely makes *crédit-bail* a *contrat nommé*; *Huet*, Contrats spéciaux, no. 23002). Other long-term lease contracts where the goods are acquired by the lessor at the lessee's demand, but where the lessee has no right to buy, have been named *location financière* (*Huet*, Contrats spéciaux, no. 21801). General rules on leases apply to a wide extent (*Huet*, Contrats spéciaux, no. 23002). See also *Bénabent*, Contrats spéciaux[6], nos. 881 ff. and Rép.Dr.Com. (*Duranton*), v° Crédit-bail nos. 38 ff. For comparable legislation (arrêté royal no. 55, 10 Nov 1967) and similar discussions under BELGIAN law, see *La Haye and Vankerckhove*, Louage de chose I[2], nos. 30 ff.; *Philippe*, Guide Juridique de l'entreprise[2], Leasing nos. 030, 050). For LUXEMBOURGIAN law, see decision of the Cour Supérieure de Justice (Appel commercial) of 25 May 1977 (Pas. luxemb. 23 [1975–1977], 533, note by *Mousel*, JT 1977, 694), lease not sale if the lessee is not bound to buy.
15. In GERMAN law, financial leasing contracts are regarded as atypical lease contracts (*atypischer Mietvertrag*). Characteristics are, *inter alia*, that the lessee specifies the goods and owes the full amortisation of their value (MünchKomm (*-Habersack*), BGB III[4], Leasing, no. 1), by paying rent or by other performance (Derleder/Knops/Bamberger (*-Mankowski and Knöfel*), Bankrecht, § 14 nos. 6 ff.). Risks (*Sach-* and *Preisgefahr*) are by agreement transferred to the lessee and the latter has no remedies for lack of conformity against the lessor. As a counterpart, the lessor's remedies against the supplier are assigned to the lessee (*Abtretungskonstruktion*); the legal relationship between lessee and supplier is restricted to these remedies and is not regarded as a contractual relationship (Staudinger (*-Stoffels*) (2004) Leasing, nos. 9–15; *Oetker* and *Maultzsch*, Vertragliche Schuldverhältnisse[2], 734 ff.). The notion of financial leasing contracts in GERMAN law is wider than under the UNIDROIT Convention (Kramer (*-Ebenroth*), Neue Vertragsformen[2], 194).
16. The GREEK Law on Financial Leasing Contracts, as subsequently modified, regulates some aspects of leasing contracts between financial institutions and professional lessees. Characteristics are, *inter alia*, that the goods are selected by the lessee; the lessee bears the expenses of maintenance and repairs, as well as the risk of accidental damage to the goods; the lessor cannot be held liable for non-conformity of the goods, but assigns to the lessee his claims against the supplier; the lessee has the right at the expiration of the leasing contract to either purchase the leased goods or renew the leasing contract for a

fixed period of time (see *Georgiadis*, New Contractual Forms of Modern Economy, 33 ff.). – There is no legislation on (domestic) financial leasing in HUNGARY, except a lengthy definition of financial leasing in Appendix 2 to the Act CXII of 1996 on Credit Institutions and Financial Enterprises (relevant in deciding if an activity is subject to authorisation by the Financial Supervisory Authority or not), see also a rather similar statutory definition of financial leases in the Act C of 2000 on Accounting. On financial leases regarded as contracts of transfer of ownership, see Gellert, Commentary (*-Besenyei*), 1677; *Besenyei*, A bérleti szerződés, 18; on financial leases regarded as contracts with elements of sale and lease, BH 1999. 468. Legf. Bír. Gf. I. 30.985/1989; see also BH 1996. 257. Legf. Bír. Pf. V. 20. 531/1995 (must be decided from case to case); elements of credit, risk of loss decisive: BH 1998. 496 Legf. Bír. Gfv. I. 31. 135/1997; see also BH 1994. 97. Gf. I. 33.682/1992; BH 1998. 242. Legf. Bír. Gfv. X. 33. 402/1996 (financial lease as instalment sale).

17. There is no contract legislation on leases with a financing purpose in NORWAY, but the lessor's right under a lease contract implying (in real terms) total amortisation of the cost is to a certain extent regarded as a security right in the goods (NORWEGIAN Mortgages and Pledges Act § 3–22; Rt. 2001, 232; *Skoghøy*, Panterett, 115–122).

18. POLISH law distinguishes a contract of lease (POLISH CC arts. 659–692) and a contract of leasing (POLISH CC arts. 709^1–709^{18} – added 26 July 2000). Under a contract of leasing the financing party assumes an obligation to acquire goods from another party and allows the user to use those goods for a rent at least equal to the remuneration paid for the acquisition of the goods. After the leasing period the user may have an option to buy the goods.

19. SLOVAK law has no special legislation on leases with a financing purpose. Contracts with relevant characteristics (goods supplied according to the lessee's choice, risk and maintenance duties borne by the lessee, transfer of ownership after a lease period) are regarded as mixed contracts (or innominate contracts) with elements of lease, sale and credit, cf. Patakyová (*-Blaha*), Commercial Code. Commentary, art. 489. – Recent CZECH court practice obviously also prefers the innominate contract approach (Supreme Court 30 Cdo 2033/2002).

20. In SWEDEN, rules on financial leasing have been proposed by a governmental committee, but the proposal has not led to legislation so far (SOU 1994: 120). For existing legislation and case-law, see e. g. *Möller*, Civilrätten vid financiell leasing; *Håstad*, Den nya köprätten, 300–307.

21. For SWISS law, it has been said that financial leasing contracts should be regarded as mixed contracts with more elements of a lease than of a sale (*Honsell*, OR-BT^7, 417). A consensus over definitions has not been reached, but elements such as transfer of risk, maintenance by lessee and amortisation of value have been mentioned (BSK (*-Schluep and Amstutz*) OR I^3, Einl. vor Art. 184 ff. nos. 81, 84).

22. Under U. K. law, equipment or finance leasing contracts are described as a type of bailment, but essentially amount to long-term financing contracts. Such contracts arise where the lessee selects the equipment to be supplied by a manufacturer or dealer and the lessor provides the funds, acquires title to the equipment and allows the lessee to use the goods for all (or most) of their expected useful life. The usual risks and benefits of ownership are substantially transferred to the lessee. During the initial lease period, the rent is calculated to amortise the lessor's investment and financial charges. During the common secondary lease period, the lessee may opt to continue the lease at a nominal

rent or the equipment may be sold and a proportion of the sum returned to the lessee as a rebate on the rental payments. The common law rules of contract apply. See Chitty (*-Beale*) on Contracts II[29], para. 33–081.

VIII. Leases and services

23. The distinction between lease contracts and service contracts is sometimes commented upon for national law. The common approach seems to be that there are *either* two contracts (one lease contract and one service contract), *or* the parties intention, the dominating element etc. is decisive. See for example for AUSTRIAN law Schwimann (*-Binder*), ABGB V[3], § 1090 nos. 10, 34, 104 ff., for service contracts see nos. 41, 47 (the intention of the parties, the economic purpose and the main object of the contract); for BELGIAN law, *La Haye and Vankerckhove*, Le Louage de Choses I[2], nos. 15 ff. (dominant element; contract for a crane with an operator may be a lease); for FRENCH law, *Huet*, Contrats spéciaux, no. 21124 (dominant element, also mixed application of lease rules and service rules possible); for GERMAN law, (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], vor § 535, no. 16 (use of machines in a fitness center regarded as a lease), MünchKomm (*-Schilling*), BGB III[4], vor § 535, no. 20 (contract for a machine that is to be controlled by the owner is not a lease); for HUNGARIAN law, BH 2005. 357. Legf. Bír. Gfv. IX. 30. 018/2005 (contract on integrated hospital information system regarded as mixed contract combining elements of service, lease and financial lease contracts). See also the general rule on mixed contracts in ESTONIAN LOA art. 1(1); there is, however, a mixed contract only when there are obligations distinct from the ordinary obligations of a lease (general maintenance is not a service). – For CZECH law, see *Pelikánová*, Commercial Code, IV, 513; in commercial relations, CZECH Ccom § 275, according to which all interconnected contracts shall be regarded as separate.

24. In the U. K., the mixed application of supply of service and supply of goods rules is possible. Thus, a contract for the hire of goods remains such whether or not services are included and a contract for the supply of services remains such whether or not goods are also hired: see Supply of Goods and Services Act 1982, secs. 6(3) and 12(3) (ENGLAND, WALES, & N. IRELAND) and sec. 11G(3) (SCOTLAND).

IX. The parties

25. It is commonly held that the lessor need not be the owner of the goods, see for example AUSTRIAN CC § 1093, cf. Schwimann (*-Binder*), ABGB V[3], § 1092, no. 22; for BELGIAN law, see *La Haye and Vankerckhove*, Le Louage de Choses I[2], no. 121; for CZECH law, see Švestka *(-Novotný)*, Civil Code, 1173 (the lease is binding on the owner); for DUTCH law, see *Asser and Abas*, Huur[8], no. 18; for FRENCH law, see *Huet*, Contrats spéciaux, no. 21132; for GREEK law see *Georgiadis*, Law of Obligations, § 23, no. 7; A. P. 108/2003 EllDik 2003, 976; 272/1981 NoB 29, 1492; for ITALIAN law, see *Cian and Trabucchi*, Commentario breve[8], art. 1571, no. II2; LATVIAN CC art. 2115; LITHUANIAN CC art. 6.477(4); MALTESE CC art. 1530; for POLISH law, see *Pietrzykowski*, KC. Komentarz, art. 659, Nb. 9, 199; for PORTUGUESE law, see *Romano Martinez*, Direito das obrigações, 173; for SLOVAK law, see Svoboda (*-Górász*), OZ, art. 663; for SPANISH law, *Bercovitz*, Manual, Contratos, 171; for SWISS law, see BSK (*-R.Weber*), OR I[3], art. 253, no. 9.

Article 1:102: Consumer leases

For the purpose of this Part of Book IV, a consumer lease is a contract under which a business leases goods to a natural person who is acting primarily for purposes which are not related to that person's trade, business or profession (the consumer).

Comments

A. Consumer rules and structure of the draft

1. Consumers and lease contracts Lease contracts to which consumers are parties require special attention. Consumers typically have less bargaining power and less information concerning the leased goods, the law and the circumstances of the contract than professionals. Rules protecting consumers' interests as contracting parties are common both in national law and Community legislation. Consumers may be parties to lease contracts as lessors, as lessees or both. Constellations in which the consumer is lessor and the professional lessee ("consumer-to-business") are probably not very frequent as far as goods are concerned and it has been deemed unnecessary to include particular rules for these situations. Lease contracts where both parties are consumers ("consumer-to-consumer") are more common, but consumer protection rules are not needed here either as the typical element of inequality of the parties is not present. It should, however, be considered whether certain rules may create problems where both parties are non-professionals. Consumer protection rules should apply to contracts where the lessor is a professional and the lessee is a consumer. This is comparable to consumer protection rules already in existence in national law, Community legislation and other parts of the DCFR.

2. General principles and consumer contracts Several consumer protection rules are found in general parts of the DCFR that apply to several or even all contracts between professionals and consumers. Examples are rules on non-discrimination and information duties at the pre-contractual stage, the right to withdraw from certain contracts, and rules on unfair terms. Some of these rules apply to contracts between professionals as well. It is not necessary to repeat general protection rules in this Part of Book IV.

3. Consumer protection in this Part of Book IV The consumer rules of this Part of Book IV are found in the relevant chapters according to their content. Two alternative structures were considered but rejected. One was to gather all special rules concerning consumers in one chapter. This would have had the advantage of making it easier to get an overview of consumer protection. However, it would also have had negative effects, insofar as obliging the reader to consult both the relevant substantive chapter and the consumer chapter in order to get the full picture. A second alternative was to have a separate set of principles for consumer leases, setting out all the applicable rules, whether deviating from or identical to the rules concerning business-to-business leases (and consumer-to-consumer leases). This would have allowed the consumer to consult just one set

of principles. Rules dealing with consumer leases in particular are, however, rather few, and a separate set of principles would have implied extensive repetition of general provisions. It must also be borne in mind that it would have been necessary for the consumer to consult general parts of the CFR in any case, it not being feasible to gather under one heading absolutely all rules that might affect a consumer lease.

4. Mandatory rules Consumer protection rules may not normally be derogated from by the parties to the detriment of the consumer. Where, however, the consumer has notified the other party of a non-performance, the parties are free to make a settlement concerning the effects of the non-performance within the ordinary frame of freedom of contract applicable also to consumer contracts. In other words, the consumer may not as a rule waive rights *beforehand*. Further, the parties are in most cases free to decide whether or not to enter into a contract and to agree on what is to be leased, when, for how long and at what price. Some restrictions, though, follow from rules on information duties, unfair terms etc. The mandatory rules found in this Part of Book IV mainly concern the effects of non-performance. This holds true also for IV.B – 3:106, a provision limiting the possibility to include terms which waive or restrict the rights resulting from the lessor's obligation to ensure that the goods conform to the contract.

B. Definition of consumer lease

5. Consumer contract definition for the purpose of this Part of Book IV Under Definitions, both "consumer" and "business" are defined. These definitions are included in the definition of a consumer lease. The definition covers only business-to-consumer contracts, not consumer-to-business or consumer-to-consumer contracts; cf. Comment *A1*. The provision in IV.A – 1:204 (Consumer contracts for sale) has a corresponding definition of a consumer sale.

6. Consumer Under the definition of the present Article a consumer is a "natural person", i. e. legal persons (associations, companies, public law entities etc.) are not consumers. Further, the person must act "primarily for purposes which are not related to that person's trade, business or profession". The lessee's intended use of the goods is irrelevant as long as the lease is not for trade, business or professional purposes. If, for example, the lessee intends to sublease the goods, the lease remains a consumer lease as long as the sublease is not primarily related to the lessee's trade, business or profession.

7. The lessor The lessor may be a natural or a legal person. The lessor does not have to be a full-time professional, but the activities must be of a kind that would normally be qualified as a "business".

Notes

I. EU legislation

1. Present EU legislation on consumer contract law is fragmented and not fully consistent. Some of the legislation is of a general character, e. g. the Unfair Contract Terms Directive (93/13), while other parts of legislation concern specific contracts, e. g. the Consumer Sales Directive (99/44). The latter deals with lack of conformity of the goods, but not with delay, and not all effects of lack of conformity are covered. There is no instrument dealing with the lease contract in particular.
2. The EU legislation on consumers' rights is by its character mandatory, i. e. as a rule the protection given to the consumer's interests cannot be excluded. On the other hand, amicable settlements of conflicts must normally be allowed. Such principles are expressed explicitly in art. 7(1) of the Consumer Sales Directive: "Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from this Directive shall, as provided for by national law, not be binding on the consumer."
3. A more general rule is found in the Unfair Contract Terms Directive. Terms that are not individually negotiated and that are *unfair* shall not be binding to the consumer (art. 3(1), cf. art. 6(1)). One term in a list of terms that "may be regarded as unfair" (art. 3(3)) concerns exclusion or limitation of liability: "(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him." As will be seen, this is not an absolute prohibition of limitations to or exclusion of remedies.

II. Definition of consumer contract

4. There is no uniform definition of consumer contracts in Community legislation. In particular, there are nuances regarding contracts for mixed purposes (partly for professional purposes, partly for non-professional purposes (on either side). An initiative has been taken to harmonise the definitions of "consumer" and "professional", cf. Green Paper on the Review of the Consumer Acquis (Com (2006) 744 final). Normally, Community legislation on consumer contracts applies to business to consumer contracts ("b2c"), and not to contracts where both parties are consumers ("c2c").

III. National law

5. EU legislation on consumer contracts is implemented in national legislation in various ways. As the relevant EU legislation has the character of "minimum" directives, some jurisdictions have more extensive consumer protection. One example is the "total" regulation of consumer sales in FINLAND, NORWAY and SWEDEN, i. e. a general regulation of the contractual relationship, not only the issues dealt with in the Consumer Sales Directive (FINNISH Law on Consumer Protection chapter 5, NORWEGIAN Consumer Sales Act, SWEDISH Consumer Sales Act). The regulation of consumer sales in

these countries may not, as a general rule, be derogated from to the detriment of the consumer. The SWEDISH Consumer Sales Act § 32(3) allows agreements excluding liability for the consumer's loss related to trade or profession; liability under the NORWEGIAN Consumer Sales Act does not include the consumer's loss related to trade and business, see § 52(2)(b). These countries have "total" legislation on some service contracts as well where the same model is found (FINNISH Law on Consumer Protection chapter 8, NORWEGIAN Consumer Craft Services Act and Housing Construction Act, SWEDISH Consumer Services Act). This legislation does not cover lease of goods. – In CZECH law, consumer contracts are defined as "sales contracts, services contracts and other contracts whose parties are a consumer on one side and a supplier on the other side" (CZECH CC art. 52(1)), i. e. a lease contract may easily qualify as a consumer contract. The definition of "supplier" corresponds to EU legislation; the definition of "consumer" is not restricted to natural persons. CZECH CC art. 55(1) states that "provisions of consumer contracts cannot be derogated from to the detriment of the consumer and that, especially, the consumer cannot waive his statutory rights or otherwise undermine his legal position"; the scope of the rule is discussed, see Švestka *(-Hulmák)*, Civil Code, 376. See also CZECH CC art. 56, forbidding limitation of liability against consumers for defects and damage. The general rules on leases under DUTCH law are influenced by the provisions on consumer sales, but a distinction between consumer leases and other leases is not made. Consumers are generally protected against unreasonable non-negotiated contract terms (DUTCH CC arts. 6:231–247). For financial leases, there are protective rules under the Statute on consumer credit (*Huls*, Wet op het consumentenkrediet).

6. In some countries parts of the general rules on non-performance of sales are made mandatory in consumer sales, even to a greater extent than required by the Consumer Sales Directive. Examples are the AUSTRIAN Consumer Protection Act § 9 and GERMAN CC § 475 (both with a reservation for agreements limiting liability for damages, insofar as the agreement is not contrary to rules on unfair standard terms). In AUSTRIA this technique is also used for lease contracts, as the provision just referred to comprises remedies regarded as special rules concerning non-conformity, i. e. rent reduction (Schwimann (*-Binder*), ABGB V[3], § 1096, no. 5) and termination (loc. cit., § 1117, no. 3).

7. Certain rules of the FRENCH Consumer Code apply to lease contracts, especially those concerning price-information or the obligation to provide information and advice; a legal person cannot have the quality of being a consumer (see *Collart Dutilleul* and *Delebecque*, Contrats civils et commerciaux[7], no. 422). Rules on abusive contract clauses also apply (see in detail, JClCiv (*-Cayron*), art. 1708–1762, fasc. 660, nos. 44–49). The same model is found in PORTUGUESE and SPANISH law; general rules e. g. on information are applicable also to leases, see PORTUGUESE Law on Consumer Protection and SPANISH General Law for the Protection of Consumers. Some special rules on consumer leases are found in LITHUANIAN CC arts. 6.504 ff. There are rules on extraordinary termination of consumer leases in SWISS LOA art. 266k and ESTONIAN LOA § 322. The GREEK Law on the Protection of the Consumers, art. 2, which regulates general terms of transactions and unfair contract terms, applies to consumer lease contracts; according to art. 1(4) both natural and legal persons can have the quality of a consumer if they are the final recipients of a product or service.

8. In the U.K., the Consumer Credit Act 1974 (amended by the Consumer Credit Act 2006) imposes specific rules on 'consumer hire agreements'. Consumer hire agreements are defined in sec. 15(1) (as amended) as being any lease of goods to an individual which is not a hire-purchase contract and which is capable of subsisting for more than three months. These agreements are regulated where they are not exempted agreements (secs. 16(6), 16A and 16B); agreements entered into wholly or predominantly for the purposes of business and under which the lessee is required to make lease payments exceeding £25.000 are exempted. In the case of regulated 'consumer hire agreements', the Act requires that information be provided to the lessee prior to concluding a regulated agreement (sec. 55); controls the form and content of such agreements (secs. 60–61); imposes a duty on the lessor to supply copies of the agreement on request (secs. 62–64); allows the lessee a right to cancel within a certain 'cooling off' period (secs. 64, 67–73) and the right to terminate at any time 18 months after the making of the agreement (sec. 101); and imposes a duty of notice on the lessor before certain actions may be taken to enforce the terms of the contract (sec. 76); amongst other things. The Act imposes similar rules on 'consumer credit agreements' (including hire-purchase agreements). The Supply of Goods and Services Act 1982 applies to all leases, but provides for more stringent protection for consumer lessees (as defined in the Unfair Contract Terms Act 1977, sec. 12 with respect to ENGLAND, WALES and N.IRELAND and sec. 25(1) with respect to SCOTLAND) insofar as remedies and exclusion of liability are concerned. In all cases the burden of proof lies on the lessor/creditor to prove that the lessee/debtor does not deal as a consumer.
9. In IRELAND, the Consumer Credit Act 1995 imposes certain conditions on 'consumer hire agreements' where the lease subsists for more than three months. Such agreements must be in writing, contain certain information, provide for a ten-day 'cooling off' period and be signed by the consumer (sec. 84). If these provisions are not complied with, the lessor risks not being able to enforce the contract at all. The consumer is also entitled to terminate the contract at any time, by giving three months notice (or less if specified otherwise in the contract) (sec. 89). The same Act precludes a lessor from excluding or limiting liability with regard to title and quiet possession (absolutely), and with regard to correspondence with description and/or sample, quality and fitness for purpose (unless the exclusion is fair and reasonable) (sec. 88). It should be noted that whilst the definition of a consumer is similar ("a natural person acting outside his trade, business or profession", sec. 2) judicial interpretation has tended to be more restrictive in IRELAND than in the U.K. (cf. *Cunningham v. Woodchester,* unreported, HC, 16 Nov 1984 in IRELAND and *R & B Customs Brokers v. UDT Ltd.* [1988] 1 All ER 847 in the U.K.). However, this IRISH case was based on the definition of a consumer used by the Sale of Goods and Supply of Services Act 1980 (sec. 3) and not the more recent definition found in the Consumer Credit Act 1995, sec. 2(1).
10. A range of models is applied for implementing the Unfair Contract Terms Directive in different countries (general clauses covering all contracts, general clauses for all consumer contracts, general clauses only for non-negotiated terms, binding lists of unfair terms, non-binding lists of unfair terms). Examples of application of such rules to consumer leases may be found in case law and are also discussed in legal literature. It has not been found necessary to refer to such examples here. According to SWISS OR art. 256(2) agreements deviating from art. 256(1) (transfer of object in suitable condition for the predetermined use and maintain in such condition) to the detriment of the

lessee are null and void if they are included in pre-formulated general business conditions. This rule applies also for consumer leases. As a consequence of this provision the lessee's rights in case of defects (*Mängelrechte*) cannot be excluded or restricted in standard contract forms.

IV. Financial leases in particular

11. It is not unusual that consumers lease goods for financing purposes. In such cases the models of financial leasing etc. may be influenced by consumer protection rules. In AUSTRIAN law, the Consumer Protection Act § 9 may make it impossible for example to limit the lessor's liability for lack of conformity (*Fischer-Czermak*, Mobilienleasing, 253 ff., in special 255). For CZECH law, the general rule in CZECH CC art. 55 against derogation to the detriment of a consumer (see note *III5*) would create problems if the general lease rules were to apply to financial leases. In ESTONIAN law, there is no difference between consumer and non-consumer contracts concerning remedies for lack of conformity in financial lease contracts. The FRENCH Consumer Code applies to *location-vente* contracts, i. e. lease contracts with an option to buy, as credit operations (art. L311-2). In a consumer contract, a clause that puts all risks in connection with the goods on the lessee would be abusive (*Huet*, Contrats spéciaux, nos. 23007 ff., *Bénabent*, Contrats spéciaux[6], no. 895). According to GERMAN CC § 500, certain rules on consumer credit contracts are also applicable to financial leasing contracts between a professional and a consumer (e. g. right to withdraw, right to terminate). Concerning remedies for lack of conformity, there is in general no difference between consumer and non-consumer contracts (MünchKomm (*-Habersack*), BGB III[4], Leasing, no. 35). However, the consumer lessee's objections against the supplier may be turned against the lessor (*Einwendungsdurchgriff*, see Staudinger (*-Stoffels*) (2004) Leasing, nos. 262 ff.). Consumer sales rules are not applicable to consumer financial leasing contracts (MünchKomm (*-Habersack*), BGB III[4], Leasing, nos. 38 ff., see also BGH 21 Dec. 2005, NJW 2006, 1066, see also *Stoffels*, LMK 170499: the typical construction of assignment of remedies is no circumvention of the rules on consumer sales; where assignment fails, the remedies of lease law apply between the lessee and the lessor). The GREEK Law on the Protection of the Consumers is applicable to financial leasing, as for the purpose of this law "consumer" is broadly defined as the final recipient of a product or service (art. 1(4)); accordingly terms included in leasing contracts are subject to the control of their legality according to art. 2 on unfair contract terms. Under the NORWEGIAN Credit Sale Act § 29 (and a regulation), consumer leases of movables that in fact secure a credit or have this function can always be terminated with one month's notice, given that the lease period will be at least three months. The agreement may give the lessor a right to charge "general" rent for the period which has lapsed in such a case instead of the agreed rent. The SWISS Consumer Credit Act applies to some lease contracts, concerning e. g. right to termination and remedies against the lessor (see BSK (*-Schluep* and *Amstutz*) OR I[3], Einl. vor Art. 184 ff., no. 110; *J. Roth*, AJP 2002, 968, 975, 976; *Honsell*, OR-BT[7], 420 ff.). In the U. K., the Consumer Credit Act 1974 imposes similar rules to those listed above for 'consumer hire agreements' to 'consumer credit agreements' (including hire-purchase agreements). Once again the agreement must be a regulated agreement (sec. 8(3)). In addition, certain terms (concerning description, quality, fitness for purpose, sample, etc.) are implied into hire-purchase contracts by the

Supply of Goods (Implied Terms) Act 1973 (secs. 9–11). None of these terms may be restricted or excluded as against a person "dealing as a consumer" (Unfair Contract Terms Act 1977, sec. 6(2)). Breach of one of these conditions entitles a consumer to elect to terminate or affirm the contract and claim for damages (Supply of Goods (Implied Terms) Act 1973, sec. 11A in ENGLAND, WALES and N. IRELAND and sec. 12A(2) in SCOTLAND). In IRELAND, similar protection to that mentioned above with respect to consumer hire agreements is afforded to consumer hire-purchase agreements (defined in sec. 2) by the Consumer Credit Act 1995. See further, secs. 58–83.

Chapter 2:
Lease period

Article 2:101: Start of lease period

(1) The lease period starts:
  (a) at the time determinable from the terms agreed by the parties;
  (b) if a time frame within which the lease period is to start can be determined, at any time chosen by the lessor within that time frame unless the circumstances of the case indicate that the lessee is to choose the time;
  (c) in any other case, a reasonable time after the conclusion of the contract, at the request of either party.
(2) The lease period starts at the time when the lessee takes control of the goods if this is earlier than the time that would follow from paragraph (1).

Comments

A. Lease period and contract

1. **Performance during a period of time** It is a characteristic trait of the lease contract that it is performed over a period of time. During this *lease period* the lessor has an obligation to make the goods available for the lessee's use and the lessee has corresponding obligations to pay the rent and take care of the goods. The lease period does not necessarily start immediately on the conclusion of the *contract*, and the contractual relationship may also continue after the lease period has ended. The lease contract is different from contracts that are performed "momentarily", like sales contracts, but it differs also from many contracts that are performed over time. The lessor's main performance consists in making the goods available for the lessee's use *for a period of time* and the remuneration is normally calculated for a certain period or per time unit. It is not a question of paying for work done or a quantity supplied, as in many service contracts.

2. **Model of regulation** The present Chapter defines the lease period by fixing the start of the lease period (IV.B – 2:101) and the end of the lease period (IV.B – 2:102). In addition, prolongation of the lease period based on continued use after expiry is dealt with in IV.B – 2:103. Defining the lease period means introducing a notion required for regulation; the obligations of the parties are thus decided only indirectly by the present Chapter. Rather, the lease period is an important element of rules found in other chapters: normally the lessor has an obligation to make the goods available for the lessee's use during the lease period, normally the rent must be paid for the lease period, normally the lessee must take care of the goods during the lease period, etc. An alternative model would be to regulate each issue separately, independently of the notion of a lease period, with provisions on the time at which performance can be claimed, provisions on the time

when the duty of care starts, provisions on the time when the goods must be returned, etc. In national legislation the notion of a lease period is common, in most cases the length or the end of the lease period being fixed. Provisions on the start of the lease period are more unusual.

B. Non-mandatory character

3. **The rules are non-mandatory** In the main, the rules of the present Chapter are non-mandatory. However, it would be contrary to fundamental principles to bind the parties to a contract for an indefinite period without the possibility to terminate. This also applies to agreements concerning the lease period, but it has not been found necessary to spell it out in the present Chapter. Paragraph (4) of IV.B – 2:103, on rent for a period after tacit prolongation of certain contracts, cannot be derogated from to the detriment of a consumer in a consumer lease. Consumer leases are further discussed under G.

C. Start of lease period

4. **Significance** The start of the lease period signifies the point in time from which the lessor is obliged to make the goods available for the lessee's use and from which the lessee is obliged to pay the rent. Depending on the agreement and the circumstances, it may be that the lease period starts although the lessee has not accepted the goods and even if the goods are not made available as a result of the lessor's non-performance.

D. Time determinable from the contract

5. **Time determinable from terms agreed by the parties** In many cases the start of the lease period is agreed upon explicitly by the parties – in a written document or in some other form, cf. II. – 1:107 (Form). It may be a precise date or hour, but the time can also be fixed in other terms, e. g. linked to a future event. In other cases, the beginning of the period can be determined from the circumstances, e. g. where it is obvious that the lessee will receive the goods immediately.

6. **Start within a time frame** There may be situations in which no fixed start time for the lease period can be determined, even if it is agreed that the lease period is to begin within a specified time frame or by a certain time. The rule in III. – 2:102(2) is that performance may be effected by the debtor "at any time within that period" unless the circumstances show that the other party is to choose the time. In other words, the party owing performance has the choice if the circumstances do not show otherwise. In more specific provisions for a certain type of contract, such as lease contracts, it is better to clarify which party has the choice as a default rule. It is not possible to say that one of the parties *typically* needs the benefit of choice more than the other. In many cases the lessor must acquire the goods and make them ready for the lessee's use. On the other hand, the lessee will often have to make some preparations for receiving the goods. The default rule in paragraph (1)(b) of the present Article is that the lessor determines the start of the

lease period within the agreed interval. It should be noted, however, that the lessee has no onerous burden of proof in showing that the choice lies on the other side. In many cases it is a matter of taste whether one considers the start of the lease period to be determinable from the contract or whether it is a question of choice by one of the parties within a specified time frame.

Illustration 1
A plans to go to Paris next week and leases a car for that purpose. The parties agree that A will pick the car up at the lessor's business place. The circumstances indicate that the lease period starts when A picks up the car some time during the following week.

E. Time not determinable from the contract

7. **Start within a reasonable time** Where no time or time frame for the start of the lease period is determinable from the terms agreed by the parties, the lease period starts at the request of either party within a reasonable time after the conclusion of the contract. This corresponds to III. – 2:102(1), with the difference that the start of the lease period must be *requested*. Without this prerequisite, there would be a risk of starting the lease period before both parties are aware of it, e. g. in a case where the goods have been made available for collection by the lessee. Even if the request is made a reasonable time after the conclusion of the contract, it may be that the other party still needs reasonable time after the request has been made in order to prepare to make the goods available or to take control of the goods. What is reasonable depends on the kind of goods leased, the intended length of the lease period, whether the goods are available at the conclusion of the contract etc., cf. also "reasonable" in the Definitions. Should the case be that no party requests the start of the lease period and no such start time is given by the terms of the contract, the outcome must depend on the circumstances. If the lessee takes control of the goods, this is decisive (second paragraph of the present Article). It may also be that the contract has fallen away – the lessee no longer needs the goods and the lessor does not insist on performance.

F. The lessee takes control of the goods

8. **The lease period starts when the lessee takes control of the goods** The lease period starts when the lessee takes control of the goods, even if this happens earlier than the time specified as the start of the lease period, e. g. earlier than the time fixed by the agreed terms or, if no such time follows from the terms, the time that would be considered reasonable. In most cases such early acceptance is based on an explicit agreement to start the lease at this point in time. The second paragraph of the present Article states a default rule for situations where there is no such agreement. The rule is non-mandatory and the parties may agree – or it may follow from the circumstances – that the lease period shall start at a later point in time. It is not sufficient for an early start of the lease period that the lessor has done what is necessary to make the goods available (e. g. by making the goods available for the lessee to pick up), if the lessee does not take physical

control of the goods. This may be the case even where the goods are brought to the lessee. The term "take control" in the present article refers only to the passing of the goods from the lessor to the lessee and does not in itself imply any approval of the conformity of the goods. It should also be noted that the lessee has no duty to accept early performance (III. – 2:103(1)).

Illustration 2
The lessor brings the leased tractor to the lessee's farm and leaves it there one week earlier than the agreed start of the lease period. The lessee is not at the farm and finds the tractor on returning home a couple of days after the agreed start of the lease period. The lessee has not taken control of the goods and the lease period starts at the time previously agreed.

9. Lessee's obligations affected by early acceptance of the goods The general principle in III. – 2:103(2) is that a party's acceptance of early performance by the other party does not affect the time fixed for the performance of the party's own obligation. Paragraph (2) of the present Article represents a deviation from this principle as acceptance of an earlier start of the lease period has consequences for the lessee's obligations as well. The lessee's obligation of care is performed continuously and performance should start from the moment control of the goods is taken. The rent should also accrue from acceptance of the goods. Whether or not the *time of payment* is affected depends on the agreement. If rent is payable for example every seven days, early acceptance will have an effect on the time of payment. The situation may be different if rent is to be paid on certain dates, for example at the end of each calendar month.

10. Effects on length of lease period Early acceptance of the goods will have no direct consequences on the length of an indefinite lease period. In other cases the effects of early acceptance will depend on the circumstances. If it is agreed that the lease period will end at a certain hour or date, early acceptance of the goods will normally not imply any change to this and the lease period will then be longer than originally agreed. If, on the other hand, the lease period is agreed to be so many days (hours, years), early acceptance will normally mean that the lease period *ends* earlier as well, and that the length of the period is not affected.

G. Consumer leases

11. No need for consumer rules The rules of the present Article are of a general kind and should not give rise to any need for special regulation of consumer leases. This is true also for limb (b) of the first paragraph, which leaves it to the lessor to determine the exact start of the lease period within an agreed time frame unless the circumstances indicate otherwise. There is no reason to believe that this rule will lead to abuses. Cases where the lessor has this option for an unreasonably long period must be dealt with under general rules on unfair terms.

Notes

I. Start of lease period

1. It is not common in national law to include a provision concerning the start of the lease period. If the time cannot be determined from the terms agreed by the parties, there are default rules on time of performance. See notes to III. – 2:102.
2. The text of the AUSTRIAN Civil Code has no rules on time and place of making the leased goods available. It is held that the lessor has to hand over the leased goods at the beginning of the lease relationship (*Apathy and Riedler,* Schuldrecht BT, no. 8/19). No distinction is drawn between start of contract and start of lease period. The rule in AUSTRIAN CC § 904(1) is general: if the parties have not agreed on a certain time, the creditor can demand performance immediately (that is, without unnecessary delay). General rules apply in CZECH law. Unless otherwise agreed, the lessor must perform on the first day after the lessee's request (CZECH CC art. 563) or without undue delay after the lessee's request (CZECH Ccom art. 340(2). If a time frame is set for the start of the lease period, the lessor will normally have the choice according to general rules (CZECH CC art. 561). In DANISH law, the lessor must make the goods available at the agreed time or, if no time is agreed upon, at the lessee's demand (*Gade,* Finansiel leasing, 101). For FRENCH law, it is simply said that the lessee is allowed to enter into possession at "the agreed date" (*Malaurie/Aynès/Gautier,* Contrats spéciaux[14], no. 680, *Huet,* Contrats spéciaux, no. 21161, Collart *Dutilleul and Delebecque,* Contrats civil et commerciaux[7], no. 493, 429, with further references). If no time is agreed, delivery should take place on the next day established by usage for the beginning of leases of that kind of goods. If such usage does not exist, it appears that delivery should take place immediately. But the judge has the power to fix the date of delivery (Rép.Dr.Civ. (*Groslière*), v° Bail, no. 174: *libre pouvoir d'appréciation*). According to ESTONIAN LOA § 276(2) the goods must be delivered at the agreed time; if no such time is agreed upon the general rules in ESTONIAN LOA art. 82(3) apply. According to GERMAN CC § 535(1) 1. sent., the lessor is obliged to allow the use during the *Mietzeit*. If no day is agreed, the handover must be done immediately at the agreed start of the contract (*Blank and Börstinghaus,* Miete-Komm[2], § 535, no. 194; this also follows from the general rule in GERMAN CC § 271(1). It is observed that the point in time at which the leased goods must be left to the lessee does not necessarily correspond with the beginning of the lease relationship; the time of making the goods available will follow from the contract or other agreements (Schmidt-Futterer (*Eisenschmid*), Mietrecht[9], § 535, no. 3). In GREEK law the general rule under GREEK CC art. 323 applies: if the time of performance can be determined neither by the contract nor the circumstances of the case the creditor (here: the lessee) is entitled to demand and the debtor (here: the lessor) must render performance immediately. The start of the lease period is in principle not determined by the delivery of the leased object to the lessee: delay in delivery may not postpone the start of the lease period, but instead generates liability for non-performance on the part of the lessor. Similarly, early delivery may not bring about the early start of the lease; if early delivery takes place without remuneration, the contract concluded between the parties is a loan for use (*Filios* (1981), § 25 E II). For HUNGARIAN law, the general rule is performance at the time agreed and otherwise on request (HUNGARIAN CC § 280). A general rule on time for performance is found in the ITALIAN CC art. 1183, and this

rule applies also for leases. According to SPANISH law, the goods must be made available at the time and place agreed by the parties. If no such time is agreed upon, it can be determined according to the characteristics and the nature of the goods, and the usage of the place (*Sánchez Calero*, Curso de Derecho Civil II[4], 380). In POLISH law, it follows from general rules that the lessor must transfer the goods immediately after being called by the lessee, if nothing else is agreed, cf. POLISH CC art. 455 and Bieniek (*-Ciepła*), Komentarz do Kodeksu Cywilnego, 242, *Panowicz-Lipska*, System Prawa Prywatnego VIII, 25. It has been held for SWEDISH law that the lessor, by analogy with the SWEDISH Sales Act § 9(1), must make the goods available within a reasonable time, if nothing else can be determined from the agreed terms or the circumstances (*Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 194).

Article 2:102: End of lease period

(1) A definite lease period ends at the time determinable from the terms agreed by the parties. A definite lease period cannot be terminated unilaterally beforehand by giving notice.
(2) An indefinite lease period ends at the time specified in a notice of termination given by either party.
(3) The time specified in the notice of termination must be in compliance with the terms agreed by the parties or, if nothing can be determined from such terms, a reasonable time after the notice has reached the other party.

Comments

A. Definite or indefinite lease period

1. Two main types Generally speaking, there are two main types of agreements concerning the lease period: leases for a *definite period* of time and leases for an *indefinite period*. A lease for an indefinite period can be terminated by giving *notice of termination*. Normally, a lease for a definite period cannot be terminated unilaterally beforehand by either one of the parties giving notice.

2. Combinations Combinations of definite and indefinite lease periods are common. The parties may agree, for instance, that the lease period will end in any case at a fixed point in time, but that one or other of the parties may terminate the lease prior to this date by giving notice. One also finds agreements such that the lease period may end for example at the expiry of each year (every second year, third year etc.), but only if notice of termination has been given by one or other of the parties by a certain date. This may be regarded as a lease for an indefinite period under which notice of termination may be given only at certain intervals.

B. Non-exhaustive regulation

3. Rules on ordinary termination The expiry of a definite lease period and termination by giving notice according to the rules of the present Chapter amount to ordinary termination of the lease period. A party does not need to have a special reason to give notice and has no duty to explain to the other party why notice is given. Termination of the contract, and thus also the lease period, may in other cases be the result of *non-performance*. This is dealt with in other chapters. Termination can result from other general rules as well, e. g. rules on changed circumstances. Some national systems have general rules allowing each party to terminate long-term contracts "for an important reason". There is no general provision on such extraordinary termination under this Part of Book IV. Neither has it been found necessary to include rules on extraordinary termination in the case of the lessee's death. Such rules are found in some jurisdictions, but under this Part of Book IV general rules on termination by notice and on specific performance will apply.

4. No protection against ordinary termination This Chapter contains no provision allowing the courts to avoid or set aside a notice of termination on the grounds that it is unreasonable. In national legislation it is quite usual to have rules concerning leases of dwellings and even business premises protecting the lessee against termination of the contract by the lessor. This is, however, not the case when it comes to the lease of goods.

5. Non-mandatory character The parties may derogate from the rules of this Article, with a reservation for agreements implying extremely long lease periods, cf. Comment *C10*.

C. Definite lease period

6. Time determined from the contract A time for expiry of the lease period may be determinable from the contract. An agreement on a definite lease period may have various forms. The simplest form is to agree that the lease period ends on a future day or at a certain hour of day. It is also possible to agree upon the *duration* of the lease period, so many hours, days etc. counted from the start of the lease period. Expiry of the period may further be defined as a future *event* that will normally occur sooner or later. The event might for example be the fulfilment of the lessee's *purpose* of leasing the goods, e. g. where equipment is leased for a specific building project. A contract for a person's lifetime is a contract for a definite period. If the parties have agreed that the lease period will end upon occurrence of an event that is *not* certain to happen, this agreement is effective, in the sense that the lease period expires on occurrence of the event (resolutive condition). However, in relation to the second sentence of paragraph (1) of the present article, stating that a definite period cannot be terminated beforehand by giving notice, a period ending on occurrence of an uncertain event cannot be considered an agreement to a definite lease period (see Comment C9).

Illustration 1
A and B agree that A shall have a right to use B's car until B is back from holiday. The lease period ends at a certain point in time, even though there always is a risk that B could have an accident and never return.

Illustration 2
C leases scaffolding for a construction project. The lease period ends when the project is completed or has reached a stage where the scaffolding is no longer needed.

7. A definite lease period ends without notice If expiry of the lease period is fixed by or determinable from the contract, the period ends at this time without any prior notice. The lessee has no right to use the goods after the end of the lease period and continued use will normally amount to non-performance on the part of the lessee. Continued use may, however, lead to prolongation of the lease period (IV.B – 2:103).

8. Definite lease period cannot be terminated unilaterally beforehand Where expiry of the lease period can be established from the contract, the parties have in most cases intended that there be no right to terminate the lease unilaterally before that time by giving notice. This is the default rule in the second sentence of the first paragraph of the present Article. The parties may, on the other hand, agree that the lease period is to end at a fixed time *or* by notice given by either party. Agreements to this effect may take various forms, e. g. that notice may be given only for certain reasons or only by one of the parties.

9. Notice of termination if end of lease period is an uncertain event The parties may have agreed that the lease period will end upon occurrence of a future event that is not certain to occur (something that may or may not happen). If the agreed event occurs, the lease period will end (Comment C6). In these cases, however, both parties should have the right to terminate the lease period by giving notice of termination. If not, the lease period could in principle be permanent, which is not acceptable. This means that the lease period is not seen as definite in this respect.

Illustration 3
A, a building contractor, leases a machine to B. The parties agree that B will return the machine if A gets the town hall contract that has been tendered for. If A gets the contract, the lease will end without notice. Both parties have, however, a right to end the lease period unilaterally by giving notice as it is not certain whether A will obtain the contract or not.

10. No maximum period There is no provision on the maximum length of the lease period. Such rules are found in some national systems. It is not always clear what the background to such rules on maximum lease periods is. They may be inspired by related restrictions concerning leases of immovables whose purpose is, for example, to secure certain ownership structures, preventing feudal ownership etc. The rules may also originate from a wish to clarify the systematic and practical line between leases and transfer of ownership. It might further be noted that a principle of disallowing permanent contrac-

tual relationships, without exit clauses, is of limited significance if very long lease periods are permitted. A lease of goods for 100 years or 1000 years is of course equal to a permanent contract. On the other hand, fixing a maximum length for lease periods would be somewhat arbitrary; it is not easy to find criteria based on legal, economic or practical arguments as to what the maximum length should be. If the length of the lease period makes the contract obviously unreasonable, recourse should be had to more general principles of immorality, hardship etc., cf. II. – 7:301 (Contracts infringing fundamental principles). It must also be mentioned that IV.B – 6:103, corresponding to III. – 3:301 (Monetary obligations), limits the extent to which performance can be enforced. According to this principle, the performance of a more or less permanent contract may be transformed into a monetary settlement.

D. Indefinite lease period

11. Definition A lease period that does not end at a time fixed by or determinable from the contract is an indefinite lease period. This definition in itself bears no significance except for the rule in paragraph (2) of the present Article that either party may terminate the lease period by giving notice. As stated in Comment C9, the lease period is seen as indefinite in this respect even if it is agreed that the lease period will cease on occurrence of an uncertain event.

12. Right to terminate the lease period by giving notice Either party has the right to terminate an indefinite lease period unilaterally by giving notice, cf. paragraph (2) of the present Article. An agreement preventing one or other party from terminating an indefinite lease period would be contrary to general principles, see Comment C10. Should the parties agree that a notice of termination will only have effect after a significant lapse of time, the same questions arise as for agreements for very long definite lease periods.

13. Notice General rules on notice are found in II. – 1:106 (Notice). There are no requirements of form for a notice of termination: it may be given in writing or otherwise. Form requirements may, however, follow from the contract. Notice becomes effective when it reaches the addressee. Normally, the lease period does not end immediately, but only after an agreed lapse of time or after a reasonable time. The calculation of this interval starts when the notice has reached the addressee, cf. paragraph (3) of the present Article. The notice may specify a lapse of time longer than that required by the contract.

Illustration 4
It follows from the contract that either party may terminate the lease period with one week's notice. Notice of termination is mailed on Friday and reaches the lessor on a Monday. The lease period ends the following Monday.

Illustration 5
It is agreed that either party may terminate the lease period at the end of the following calendar month by giving notice. A notice of termination is mailed on 31 January and reaches the addressee at 2 February. The lease period ends on 31 March.

Illustration 6
As illustration 5, but it is specified in the notice that it takes effect from 30 April The lease period ends on 30 April.

14. Period of notice of agreed or reasonable length The lapse of time between the giving of notice and the end of the lease period may be specified in the contract or otherwise determinable from the terms agreed by the parties. See illustrations 4, 5 and 6 above. If no such time can be determined from the terms, the period of notice must be reasonable. According to the Definitions, "what is 'reasonable' is to be objectively ascertained, having regard to the nature and purpose of what is being done, to the circumstances of the case and to any relevant usages and practices". More specific factors are listed in IV.E – 1:302 (Unilateral ending contract for indefinite period) concerning notice of termination in commercial agency, franchise and distribution contracts. The factors there listed are to some extent relevant for lease contracts as well: the time the contract (here, the lease period) has lasted, reasonable investments made by either party, the time it will take to find alternatives, and usages. For lease contracts, in particular, regard should in addition be had to the period according to which the rent is calculated. The period for calculation of rent often reflects the time horizon of the contract. A fishing boat at a hotel is leased by the hour, a car by the day, a truck by the week, etc. If rent is agreed for very long periods (several months, a year), it may be that other circumstances indicate that a shorter priod of notice must be allowed. Likewise, it may be that the rent period is too short to indicate the period of notice, for example where day rates are agreed in a ship lease. Another factor relevant to lease contracts is the character of the goods leased. A reasonable period of time for giving notice to terminate will typically not be the same in a contract for the lease of a bathing suit at a holiday resort as for, say, equipment for building construction. The examples also illustrate that the purpose of the lease must be taken into account. See also III. – 1:109.

E. Consumer leases

15. Unreasonably long lease period A maximum length for the lease period is not specified by this Part of Book IV, cf. Comment *C10*. Consumer leases will normally not be entered into for very long periods, but there may be exceptions, for example where a contract is functionally an alternative to sale and the lease period equals the expected useful lifetime of the goods. The problems with setting a maximum period are the same for consumer leases as for lease contracts in general, cf. Comment *C10*. A possible right to extraordinary termination of the contract will be dealt with in Comment *E16*.

16. Extraordinary right to terminate lease period? It is explained in Comment *C10* that IV.B – 6:103, corresponding to III. – 3:301 (Monetary obligations), limits the right to enforced performance: future rent cannot be claimed if the lessee wants to return the goods and it would be reasonable for the lessor under the circumstances to take the goods back. The lessor can still claim damages for the loss caused by the lessee's non-performance, but the lessor must take reasonable steps to reduce the loss, cf. III. – 3:705 (Reduction of loss), including leasing or selling the goods to another customer. Thus, the lessee will still have to put the lessor "as nearly as possible into the position in which the

creditor would have been if the obligation had been duly performed", III. – 3:702 (General measure of damages), but the cost for the lessee will in most cases be substantially reduced compared with the ordinary payment of rent over a long period. These rules in combination work in fact as a right of termination, and in consumer leases the rules on remedies cannot be derogated from to the detriment of the consumer, cf. IV.B – 4:102. In deciding whether or not it is reasonable to take the goods back, it must normally have some weight that the lease is a consumer lease. There may, however, be cases under these rules where a consumer will have to pay substantial amounts under a lease contract that the lessee wants to terminate, for example for goods that are no longer needed or that the lessee for one reason or other cannot afford to lease any more. An additional rule allowing a consumer to terminate the lease for certain "important reasons" etc. has though not been deemed necessary. It would be contrary to the fundamental principles of freedom of contract and market mechanisms to try to eliminate all risks and all liability involved in most contracts. Terms concerning the lease period and the right to terminate the lease are often decisive with regard to the rent paid. A higher rent can in some cases be the "insurance premium" that must be paid for the right to terminate the contract early. Rules on extraordinary termination should not distort this type of ordinary risk distribution in a contract, even where the lessee is a consumer.

17. Automatic prolongation etc. It may be agreed by the parties that a lease contract for a fixed period will be prolonged for a new fixed period unless the lessee indicates otherwise within a certain deadline. If this deadline is very early, and there is no requirement that the lessee be reminded of the deadline, it may happen that lessee does not react in time, with the result that the lease period is prolonged for a fixed period. Clauses of this kind are included in the "grey list" of terms that may be unfair under the Unfair Terms Directive (93/13). The protection given by the general principles on unfair terms are deemed sufficient, and no provision covering such clauses is included in this Part of Book IV.

18. Consumer credit and right to terminate lease The Consumer Credit Directive (87/102) applies to "hiring agreements" where "these provide that the title will pass ultimately to the hirer" (article 2(1)(b)). Under the directive the consumer has a right to "discharge his obligations under a credit agreement before the time fixed by the agreement" and, in this event and according to national law, "shall be entitled to an equitable reduction in the total cost of the credit" (article 8). It is explained in Comment G*14* to IV.B – 1:101 that lease contracts where the parties have agreed that ownership shall pass to the lessee are covered by the definition of sale and fall outside the scope of application of this Part of Book IV. A rule corresponding to article 8 of the Consumer Credit Directive is thus not included here.

Notes

I. Lease for a definite or indefinite period

1. Some jurisdictions only allow leases for a definite period. If the parties have not agreed on a definite period, the duration of the lease is established by law. In other jurisdictions the lease may be made for a definite period or an indefinite period.
2. According to ITALIAN CC art. 1571, a lease is per definition for a definite period (*Cian and Trabucchi,* Commentario breve[8], art. 1574, no. I1). The parties may agree upon the duration of the lease contract (art. 1574). If they have not done so, the contract is *regarded* to be for certain periods stipulated by the code, for movables it is the period used for calculation of the rent. In these cases, i. e. where the parties have not agreed upon the duration, the contract will not end without one of the parties having given notice – with a period that is agreed or established by usage – before expiry of the lease period thus stipulated by the law (art. 1596(2)). The SPANISH Civil Code only recognises leases for a definite period. A definite term is said to be the opposite of a perpetual or indefinite term (*Díez-Picazo and Gullón,* Sistema II[9], 331) and the latter are regarded as being against the obligatory character of a lease (TS 7 Jun 1979, RAJ 1979, 2344, and many others). The parties have to fix a certain and definite period or have to refer to a future event that is certain to occur (TS 21 May 1958, RAJ 1958, 2094). At the expiry of the period the lease ends without notice (if it is not prolonged by continued use, see notes to IV.B – 2:103 about CC art. 1566). A similar system is found in the PORTUGUESE CC art. 1026: if a lease period is not agreed upon, duration of the contract is equal to the period for which the rent is paid The contract ends at the expiry of the period (art. 1051 no. 1.a), and a notice of termination is not necessary. See also MALTESE CC art. 1567: a lease of goods is, in the absence of agreement to the contrary, deemed to be made for "the period for which the rent has been calculated" (art. 1532).
3. In jurisdictions that also accept lease for an indefinite period, the general rule is that the parties are allowed to agree on a definite period, and that such a definite lease period ends without notice. This is often laid down in legislation: AUSTRIAN CC § 1113; BELGIAN CC art. 1737 (if in writing); CZECH CC art. 676(1); DUTCH CC art. 7:228(1); ESTONIAN LOA § 309(1); FRENCH CC art. 1737 (applicable also to leases of goods, *Malaurie/Aynès/Gautier,*Contrats spéciaux[14], no. 601); GERMAN CC § 542(2); GREEK CC art. 608(1); HUNGARIAN CC § 430(1); LATVIAN CC art. 2165; LITHUANIAN CC art. 6.479 and art. 6.496; POLISH CC art. 659(1)); SLOVAK CC art. 676(1); SLOVENIAN LOA art. 614(1); SWISS LOA art. 255(2). In other jurisdictions it follows from general principles that a contract may be made for a fixed period, and that this is valid also for lease of goods as long as no exception is made.

II. Terminating the lease contract within the agreed period

4. The general rule seems to be that a party cannot, unless otherwise agreed, and subject to rules on ending the contract for extraordinary reasons, unilaterally terminate the contract within the period if the contract is made for a definite period. This could be said to follow *e contrario* from the legislation mentioned in note *II2* or could be seen as a default construction of a term stipulating a definite period. See for AUSTRIAN law Rummel (*-Würth*), ABGB I[3], § 1113, no. 1, *Stabentheiner,* Mietrecht, no. 79 (parties are bound for

the agreed period; if there is no other agreement, neither party can terminate the contract); CZECH CC art. 677(1); for DUTCH law, see Hoge Raad 10 Aug 1994, NJ 1994, 688 (Aerts/Kneepkens); ESTONIAN LOA § 309(2), cf. § 313 on extraordinary termination; for FRENCH law Cass.Civ. 22 Feb 1968, JCP 1969.II15735, note R. D. (if the lease is for a definite period, the lessor is denied the possibility of giving notice of termination), Paris, 13 Oct 1973, GazPal. 1975.1.Somm., 155 (if the lessee gives notice before the expiration of a fixed lease, the lessor has a right to payment of the rent until the agreed end of the contract); for GREEK law, *Filios* (1981), § 40 Γ II (lessee must pay until agreed end of lease period even if the goods are returned earlier); for GERMAN law Emmerich and Sonnenschein (*-Rolfs*), Hk-Miete[8], § 542, no. 58; for ITALIAN law Cass. 15 Oct 1971, no. 2919, Giur.it. 1972, I, 1, 292; for HUNGARIAN law, *Besenyei,* A bérleti szerződés, 42 ff. (only extraordinary termination, in cases of non-performance and some cases of new parties); PORTUGUESE CC art. 1055 number 2, for SWISS law, BSK (*-R. Weber*) OR I[3], Art. 255, no. 2 (ordinary notice of termination excluded).

5. It is widely accepted that the parties may agree that one or other of the parties may terminate the contract within the period even if the contract is made for a definite period. See e. g. for AUSTRIAN law Rummel (*-Würth*), ABGB I[3], § 1113, no. 2; for FRENCH law, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 542; for GERMAN law, Emmerich and Sonnenschein (*-Rolfs*), Hk-Miete[8], § 542, no. 56. POLISH CC art. 673(3) allows clauses that specify circumstances under which the lease may be terminated within the fixed period (Bieniek (*-Ciepła*) Komentarz do Kodeksu Cywilnego, art. 673, 258, *Radwałski, Panowicz-Lipska,* Zobowiązania, 82; likewise CZECH law: cf. § 667(1) CC and the Supreme Court practice – e. g. 20 Cdo 2685/99 and 26 Cdo 2876/2000 SLOVAK CC art. 676(1).

6. Even if the parties do not stipulate that termination before the end of the lease period is possible, such a right may sometimes be implied. In the U. K.(including SCOTLAND), 'regulated consumer hire agreements' allow the lessee the right to terminate after 18 months minimum by giving notice (see Consumer Credit Act 1974, sec. 101). Note that this right only applies to those lessees whose contracts involve hire payments of less than £1500 per year (sec. 101(7)(a), though the monetary limit may be amended under sec. 181) and who are not hiring for certain business purposes (sec. 101(7)(b)). Certain lessors may also be exempted from this provision by the Director General of Fair Trading (sec. 101(8)). A similar right applies to consumer hire-purchase agreements (sec. 99), as long as the lessee makes up the difference between the rent already paid and half the total hire-purchase price (sec. 100). In IRELAND, more extensive provisions in the Consumer Credit Act 1995 allow the lessee to terminate the lease contract at any time by giving three months notice (or less if the contract so specifies) (sec. 83). The right to terminate is also available within the context of consumer hire-purchase agreements (sec. 63), with the same proviso that the lessee make up the difference to half of the total hire-purchase price (or less if specified by the contract) or that the lessee purchase the goods by paying the full purchase price less a reduction for early payment (secs. 52 and 53).

III. Various stipulations of a definite period

7. Where legislation provides for the ending of the lease contract at the expiry of an agreed period, expressions corresponding to "definite" or "fixed" are common: AUSTRIAN CC

art. 1113 (*ausdrücklich oder stillschweigend bedungener Verlauf der Zeit*); BELGIAN CC art. 1737 (*term fixé*); CZECH CC § 676(1) (translation: "period for which the lease has been agreed"); DUTCH CC art. 7:228 (*bepaalde tijd*); ESTONIAN LOA § 309(1) (*tähtajaline üürileping*, translation: "lease contract entered into for specified term"); FRENCH CC art. 1737 (*terme fixé*); GERMAN CC § 542(2) (*bestimmte Zeit*); GREEK CC art. 608(1) (translation: "specified term"); ITALIAN CC art. 1596 (*tempo derminato*); LATVIAN CC art. 2165 (translation: "specified term"); LITHUANIAN CC art. 6.479 (translation: "fixed-term"); MALTESE CC art. 1566 (*term expressly agreed upon*); POLISH CC art. 659 (*czas oznaczony*, specified period of time); SLOVENIAN LOA art. 614 (translation: "stipulated period"); SLOVAK CC art. 676(1) (translation: "period for which the lease was concluded"); SPANISH CC art. 1565 and 1543 (*tiempo determinado*); SWISS LOA art. 255(1) (*befristetes Mietverhältnis, vereinbarte Dauer*).

8. It is generally accepted that the period may be defined by naming a future point in time or by specifying a fixed duration. In these cases the exact time of expiry is known or can be computed in advance. It is less obvious that naming a future event should suffice as a stipulation of a definite period if the exact time of the occurrence of the event is not known. For AUSTRIAN law it is said that objective determinability of the definite period is sufficient; a lease for a lifetime or until a (even uncertain) future event is made for a definite period; the period can also be deducted from the purpose of the contract, the needs of the lessee or the period can depend on another legal relationship of the parties (Rummel (*-Würth*), ABGB I[3], § 1113, no. 3). To the same effect for DUTCH law, see Rueb/Vrolijk/Wijkerslooth-Vinke (*-de Wijkerslooth-Vinke*), Huurrecht, art. 7:721, no. 53. A certain future event is sufficient in CZECH law (Supreme Court 31 Cdo 513/2003); whether or not an uncertain event is enough to define a fixed period is debatable, cf. also CZECH CC art. 37(1) on time determination. In ESTONIAN law, the parties may agree on a fixed period or a period defined by a certain future event. In FRENCH law also, the period may be defined by reference to a certain future event (*Malaurie/Aynès/Gautier*, Contrats spéciaux[14], no. 667 with reference to Cass.Civ. 3er, 18 Jan 1995, Bull. Civ. 1995.III, no. 16: *événement certain*). In GERMAN law an event that is certain to occur is regarded as *bestimmte Zeit*; if the event is uncertain, it still counts as a resolutive condition, cf. GERMAN CC § 163, but the lease period is not definite in this case (Emmerich and Sonnenschein (*-Rolfs*), Hk-Miete[8], § 542, no. 54, cf. no. 55: a lease contract for the lessee's lifetime is a contract for a definite period). The specified term of GREEK CC art. 608(1) may be defined by a specific date, a fixed period of time, the fulfilment of the lease's purpose, the occurrence of a future event that is certain to take place (*Antapasis*, art. 608 nos. 5, 6; *Filios* (1981), § 25 E I 2; *Georgiadis*, Law of Obligations, § 27, no. 4; *Kornilakis*, 192–193). Under HUNGARIAN law, the parties are free to set the duration of the lease contract by reference to circumstances described in their contract – instead of specifying a future date or the exact length of the lease (HUNGARIAN CC § 430(1)). For a discussion of uncertain events as resolutive condition, see *Filios* (1981), § 25 E I 3; *Antapasis*, art. 608, no. 12. The LATVIAN CC art. 2165 expressly mentions that a contract "limited only to a goal to be reached" ends when the goal has been reached. In POLISH law a lease contract is concluded for a definite period of time if it is to expire at a future event that may be reasonably expected to surly occur; Supreme Court judgement from 30 Oct 1990. In SLOVAK law, the lease period may be agreed with reference to a specific future date or as a unit in time, but it is also possible to determine the duration of the lease period by a future event. If the

occurrence of the event is certain in time the lease is regarded to be made for a definite period. If the lease is made for a lifetime or limited in time by an uncertain future event (the lease is under resolutive condition) it is regarded as a lease for an indefinite period. (Svoboda (*-Górász*), OZ, art. 663, 610). The period can also be specified by reference to the purpose of the contract; in this case the period of lease is regarded as definite (*Lazar,* OPH II, 146). As mentioned in note II2, for SPANISH law, the parties may refer to a future event that is certain to occur (TS 21 May 1958, RAJ 1958, 2094). The agreed period in the sense of SWISS LOA art. 255 is not only any unit in time or a specific date, but also an event (HandKomm OR (*-Permann*), art. 255, no. 2) that is certain to occur (loc. cit., art. 266, no. 2, BGE 56 II, 190: a contract for a lifetime is concluded for a definite period). If the occurrence of the agreed event is uncertain, then the lease is under a resolutive condition, but is still regarded as a lease for a definite period even if the event cannot be expected to occur in the unforeseeable future (BSK (*-R. Weber*) OR I[3], Art. 255, nos. 4 ff.). Only if it becomes clear that the event will not occur is the lease transformed into a contract for an indefinite period (loc. cit.).

IV. *Maximum period*

9. Four systems can be found concerning maximum periods for lease contracts: 1) no maximum period; 2) no explicit maximum period, but permanent leases inadmissible; 3) explicit maximum period and reduction to maximum period if the agreed period is longer; 4) maximum period and transformation into contract for indefinite period or right to extraordinary termination if the agreed period is longer.

10. AUSTRIAN law has no maximum period for lease contracts; the wording *gewisse Zeit* in AUSTRIAN CC § 1090 is interpreted in the sense that the lessee must be bound for at least some time; any binding in time of the lessee suffices to fulfil the criteria (Rummel (*-Würth*), ABGB I[3], § 1090, no. 4). Similarly, there is no maximum period under HUNGARIAN law, but a "perpetual" lease – a lease *ad infinitum* –, i. e. which has no limit in time and is not terminable, is inadmissible, see Gellert, Commentary (*-Besenyei*), 1675, *Besenyei,* A bérleti szerződés, 40.

11. In FRENCH law, a lease cannot be permanent, cf. CC art. 1709; there is, however, no explicit maximum period for leases of movables (*Huet,* Contrats spéciaux, no. 21145). In SPANISH law a permanent lease is regarded as inadmissible (*Díez-Picazo and Gullón,* Sistema II[9], 331). According to SWISS LOA arts. 2 and 27 a permanent lease is inadmissible; a lease is regarded as permanent when it has no limit in time and is not terminable. An excessively long binding period is partially void and has to be reduced to an admissible extent (BSK (*-R. Weber*) OR I[3], Art. 255, no. 8). In some codes the lease is described as being temporary or for a certain time, and this could be understood as excluding permanent leases (MALTESE CC art. 1526; SLOVAK CC art. 663). CZECH law does not stipulate a maximum lease period, but e. g. an inadequately long lease period may be regarded as an indefinite period and thus terminable upon notice of the default length (cf. Švestka *(-Jehlička)*, Civil Code, 1189 and Supreme Court 28 Cdo 2187/2001). In DUTCH law, there is no maximum period for leases or prohibition against permanent leases, but the rule on *imprévision* (DUTCH CC art. 6:258) allows the judge to adjust or terminate the contract (*Rueb/Vrolijk/Wijkerslooth-Vinke,* De huurbepalingen verklaard, 3).

12. According to ITALIAN CC art. 1573, a contract for the lease of goods cannot be stipulated for a period exceeding thirty years. If a contract is stipulated for a longer period or permanently, it is reduced to the duration of thirty years. The parties cannot agree on a clause providing the possibility for the lessee to renew the contract if the period is going to exceed thirty years (*Cian and Trabucchi*, Commentario breve[8], art. 1573, no. I3, Cass. 56/2900). Corresponding rules are found in PORTUGUESE CC art. 1025 (*Teles de Menezes*, Direito obrigações III[4], 302). According to LITHUANIAN CC art. 6.479, a definite or indefinite lease period may not exceed one hundred years; nothing is said with regard to agreements for longer lease periods.
13. The ESTONIAN LOA § 318 stipulates that either party may cancel a lease contract after thirty years if the contract is entered into for more than thirty years (with an exception for contracts for the lifetime of a party). According to GERMAN CC § 544, either party has a right to extraordinary termination after thirty years if the lease is agreed for a longer period (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 544, no. 5). There is an exception for contracts for the lessor's or the lessee's lifetime. According to GREEK CC art. 610, a lease contract can be terminated after the lapse of thirty years by notice in conformity with the provisions on leases for an indefinite period, if the contract was concluded for a period longer than thirty years or for the lifetime of one of the parties. The POLISH CC art. 661 allows leases to be concluded for a defined period longer than ten years, however after ten years have passed the lease is to be regarded as concluded for an indefinite period of time.

V. *Right and need to give notice*

14. It is held for DANISH law that either party may terminate the lease period with reasonable notice, subject to the terms of the contract, *Gade*, Finansiel leasing, 265. FRENCH CC art. 1736 allows for either party to terminate the contract by notice with a period according to local usages (*Huet*, Contrats spéciaux, no. 21199). The rule in GERMAN CC § 542 (1) is that either party may terminate a contract that is not made for a definite period by giving notice according to statutory provisions. For U. K. law, it is held that the question whether a contract with no provision for its determination may be terminated by reasonable notice, depends on construction of the agreement (Chitty (*-McKendrick*) on Contracts II[29] para. 13–026). SCOTTISH law holds that lease contracts for an indefinite duration are subject to termination by reasonable notice by either party (*Walker*, Principles of Scottish Private Law III, 398). According to SLOVAK CC art. 677(1), a lease for an indefinite period can only be terminated by notice, unless otherwise agreed; no reason is required (Svoboda (*-Fíger*), OZ, art. 677, 622). For SWEDISH law, a right to terminate with reasonable notice has been based on an analogy from SWEDISH Commissions Act § 46 (*Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 194); cf. NJA 1992, 168. See also AUSTRIAN CC § 1116; CZECH CC art. 677(1); DUTCH CC art. 7:228(3); ESTONIAN LOA § 311; GREEK CC art. 608(2); HUNGARIAN CC § 431(1); LATVIAN CC art. 2166; LITHUANIAN CC art. 6.480; POLISH CC art. 673(2); SLOVENIAN LOA art. 616(1); SWISS LOA art. 266a.

VI. *Period of notice*

15. In some systems the rule is that the period of notice must be that agreed upon by the parties or else a period in line with usage (FRENCH CC art. 1736, ITALIAN CC art. 1596(2)).

16. In other systems default rules on the period of notice for termination are included in legislation: the rule in GERMAN CC § 580a is that notice may be given each day with effect from the end of the following day if the rent is measured per day. If the rent is measured for longer time, notice may be given at the latest the third day before the day the contract is to end. For registered ships the rule is the same as for other movables if the rent is measured per day. If the rent is measured per week, notice must be given at the latest on the first workday of a week with effect from the following Saturday. Other examples are AUSTRIAN CC § 1116 (24 hours); CZECH CC art. 677(2) (one month for leases of goods; the parties may agree that no period is required, Supreme Court 28 Cdo 1313/2001); DUTCH CC art. 7:228(2) (at least one month); ESTONIAN LOA § 312 (for contracts for an unspecified term: three months for registered ships and aeroplanes and three days for other movables); GREEK CC art. 609 (depends on the agreed period of rent calculation); HUNGARIAN CC § 431(1) (fifteen days); LATVIAN CC art. 2166 (notice for a lease contract with monthly or weekly rent payment must be given one month or one week in advance); LITHUANIAN CC art. 6.480 (one month); POLISH CC art. 673(2) (three months in advance at the end of a calendar quarter if rent is payable for periods longer than one month; one month before end of a calendar month if the rent is payable per month; three days in other cases); SLOVAK CC art. 677(2) (one month for leases of goods); SLOVENIAN LOA art. 616(2) (eight days if no other period follows from contract, special legislation or local practice); SWISS LOA art. 266f (three days) and art. 266k (special rule for consumer goods, 30 days if the lease is to last for at least three months, see HandKomm. OR (*-Permann*), art. 266k, no. 1 ff.).

VII. *Right to extraordinary termination*

17. In some countries, continuous contracts may be terminated for "an important reason" (etc.) and this then applies also to lease contracts. The rule in AUSTRIAN CC § 1117 on lease contracts is regarded as an expression of a general rule that continuous contractual relationships can be ended for an important reason (Schwimann (*-Binder*), ABGB V^3, § 1117, no. 2); ESTONIAN LOA § 313 allows for termination of a lease contract "with good reason" (i. e. where the party "cannot be presumed to continue performing the contract taking into account all the circumstances and considering the interests of both parties"); the general rule on termination for *wichtiger Grund* in GERMAN CC § 314 is concretised for leases in GERMAN CC § 543(2)(1). According to SWISS OR art. 266g a lease can be terminated for an important reason.

Article 2:103: Tacit prolongation

(1) A lease period is prolonged for an indefinite period if:
  (a) the lessee, with the lessor's knowledge, has continued to use the goods after the expiry of the lease period;
  (b) the use has continued for a period equal to that required of a notice of termination; and
  (c) the circumstances are not inconsistent with the tacit consent of both parties to such prolongation.
(2) Either party can prevent tacit prolongation by giving notice to the other before tacit prolongation takes effect. The notice need only indicate that the party regards the lease period as having expired on the expiry date.
(3) Where the lease period is prolonged under this Article, the contract of lease is also prolonged accordingly. The other terms of the contract are not changed by the prolongation.
(4) Notwithstanding the second sentence of paragraph (3), where the rent prior to prolongation was calculated so as to take into account amortisation of the cost of the goods by the lessee, rent following prolongation must not be unreasonable with regard to the amount already paid. The parties cannot derogate from the rule of this paragraph to the detriment of a consumer in a consumer lease.
(5) Prolongation under this Article does not increase or extend security rights provided by third parties.

Comments

A. Prolongation of the lease period

1. Explicit and tacit prolongation Sometimes the lessee continues to use the leased goods after the expiry of the lease period, without objections from the lessor. This may be a mere non-performance of the lessee's obligation to return the goods to the lessor, giving rise to remedies on the part of the lessor. However, the situation might also be such that both parties intend to prolong the lease period: the lessee wishes to use the goods, and the lessor welcomes extra revenue from goods that are not needed for other purposes for the time being. A prolongation may of course be expressed in a new agreement, comprising explicit terms as to the length of the new lease period, the rent to be paid etc. Sometimes the parties explicitly agree that the lease period shall be prolonged, without saying for how long or on what terms. In still other cases it follows from the circumstances that each party has reason to believe that the other party agrees to a prolongation of the lease period. This "tacit" prolongation is in principle nothing more than what follows from general law on the conclusion of contracts (see II.–4:102 (How intention is determined)). However, supplementary rules are needed as it is not always clear *what* amounts to tacit prolongation (what circumstances may give the party reason to believe that the period is prolonged), and neither is it necessarily obvious on what *terms* the lease period is prolonged. Supplementary rules of this kind are "objective" law and do not presuppose an examination of what was meant or believed by the parties in each case. Such rules are found in this Article.

B. Tacit prolongation

2. **Overview** In paragraph (1) of the present Article a *presumption* is established that the lease period is prolonged for an indefinite period if the lessee continues to use the goods for a period equivalent to the period of notice required for termination and the lessor has knowledge of this use. The said presumption is rebutted if, in the meantime, either party gives notice that the lease period is regarded as expired (paragraph (2)). It is also sufficient to show that other circumstances are not consistent with tacit consent to a prolongation of the lease. If, based on this rule, the lease period is prolonged, the contract is prolonged correspondingly with other terms unchanged (paragraph (3)). This means, for instance, that the rent for the prolonged period depends on the earlier terms. There are two exceptions: the rent should not be unreasonable, considering the amount already paid, if the original rent was calculated so as to amortise the cost of the goods (paragraph (4)), and security rights provided by third parties should not be increased or extended (paragraph (5)). Both parties are bound to perform until the lease period is terminated by agreement or by one party giving notice of termination.

3. **Non-mandatory character** The parties may agree that the rules on tacit prolongation shall not apply to their contract. This is an alternative in cases in which the parties know from the beginning that prolongation will not be an issue. In other cases both parties may want to have supplementary rules on tacit prolongation even if expiry of the lease period on a certain day or at a certain hour is foreseen as the normal development of the contract. The rule in IV.B – 2:103(4) on unreasonable rent after prolongation of certain contracts cannot be derogated from to the detriment of the consumer in a consumer lease.

4. **No exception for consumer leases** Rules on tacit prolongation should apply to consumer leases as well as other leases. This is obvious insofar as the rules work in favour of the consumer. However, even where the effect of the rules is such that the lessee is bound by the tacit prolongation, this will normally be no excessive burden on the consumer, as the contract may be brought to an end by giving notice.

C. Prerequisites of tacit prolongation

5. **Continued use** The first prerequisite for tacit prolongation is that the lessee continues to use the goods after expiry of the lease period. In most cases it will suffice that the lessee has not performed the obligation to return the goods to the lessor; it is not normally necessary that the lessee make active use of the goods. The circumstances may show, however, that the lessee means to make the goods available for the lessor to collect, whether based on a correct understanding of the contract or not. If this is the case, there is no tacit prolongation (see limb (c)).

6. **Lease period has expired** It is continued use after expiry of the ordinary lease period that leads to prolongation. In most cases it will be the expiry of a definite lease period, but it can also be, albeit less practical, expiry of the lease period as a consequence of a notice

of termination. In the latter case, the circumstances will normally be inconsistent with consent to prolongation.

7. Length of continued use Prolongation will not be the effect unless the continued use lasts for a period equal to the period of notice required to terminate the lease period. If the ordinary lease period expires on a fixed date, as will often be the case here, the period of notice required for termination will normally not be specified in the contract, since the contract is not intended to be terminated by notice. The relevant period of continued use is then what is reasonable (IV.B – 2:102(3)). The period of notice required to terminate the lease period, whether determinable from the contract or reasonable given the kind of goods, purpose of the lease etc., normally reflects the time required by the parties to prepare to return the goods on the one hand and to accept return and find alternatives on the other. It is realistic to expect reactions to continued use within the same period of time.

8. Lessor's knowledge Continued use without the lessor's knowledge will not lead to prolongation of the lease period. This corresponds to one of the underlying ideas of the rules on tacit prolongation, namely to clarify what circumstances should typically be regarded as giving one party reason to believe that the other consents to prolongation. The lessee will sometimes encounter difficulties in proving that the lessor knew of the continued use, as it is not a question of what the lessor *ought to* have known nor is it a question of what the lessor *could not have been unaware of*. The lessee may have an obligation for example to leave the goods at an agreed place to be picked up by the lessor, and the lessor may have believed that the goods were there, without having checked. Such cases must be decided on the basis of ordinary rules on proof and probability. The lessor's lack of knowledge may admittedly be caused by circumstances that are not apparent to the lessee, and this could be seen as a deviation from the principle, in II. – 4:102 (How intention is determined), that the intention of a party is "to be determined from the party's statements or conduct as they were reasonably understood by the other party". The lessee's interests must, however, be balanced against the lessor's interests, the situation arising as it does through non-performance of the lessee's obligation to return the goods. Any doubts on the part of the lessee can normally be cleared with a simple inquiry addressed to the lessor.

9. Circumstances not inconsistent with consent Prolongation as an effect of continued use of the goods is based on the presumption of the other party's consent, and prolongation will not result if the circumstances are inconsistent with such consent.

Illustration 1
When A leased B's shovel for 20 days at a daily rate, A was informed that B needed the machine for B's own purposes immediately after this period. At the end of the period, A by e-mail apologises that the shovel will be returned some days late. Even if B does not answer this message, continued use for some days will not lead to prolongation, as the combination of A's knowledge of B's plans for the machine and A's own explanation concerning the continued use shows that consent cannot be presumed.

10. **Notice preventing prolongation** If notice is given according to paragraph (2) of the present Article, this will always prevent prolongation of the lease period. The provision makes it clear that such notice is a circumstance that is always inconsistent with the party's tacit consent. Notice must be given before tacit prolongation takes effect according to paragraph (1) and no earlier than expiry of the lease period (cf. the words "the lease … period having expired" in the second sentence of paragraph (2)). There are no formal requirements concerning the notice and it may be given in writing or in any other form. The notice must make it clear that the party regards the lease period as having expired. A notice with this content, given at this time, always prevents tacit prolongation according to this provision. However, it should be borne in mind that any other notice, for example given before expiry of the lease period or with less explicit wording, may perfectly well be regarded as a circumstance that prevents tacit prolongation because it is inconsistent with consent.

D. Effects of tacit prolongation

11. **Prolongation for an indefinite period** The lease period is prolonged for an indefinite period, implying that the lease period cannot be terminated unilaterally without notice of termination being given, with effect after an appropriate period of time. This implies that rent must be paid for this period even if the lessee wishes to return the goods earlier and that the lessor has no right to have the goods returned immediately. The rule also implies that the lease period is *not* prolonged (or renewed) for a period of same length as the original period, unless otherwise specified in the contract.

12. **Prolongation takes effect from expiry** The prolongation is seen as an unbroken continuation of the original lease period. This means that there is an intermediary period where continued use will be treated as non-performance of the lessee's obligations if the lease period is *not* prolonged, but as ordinary use if prolongation takes effect.

13. **The contract is prolonged accordingly** The continued use of the goods is based on the same contract as the former use. It is not a new contract. This also implies that the terms of the contract are unchanged, except for the terms concerning the lease period (and two exceptions that will be explained in Comments *D14* and *D15*). The rent to be paid depends on the contract. Where the rent is set at a fixed amount per week, month etc., the same amount must be paid after prolongation of the lease period. In other cases there may be a regulation clause, e. g. giving the parties a right to index regulation each year. Such a clause will also be effective after prolongation.

14. **Exception where the cost of the goods is already amortised** For some contracts, the rent is calculated so as to take into account the amortisation of the cost of the goods during the agreed lease period. These contracts are often three-party transactions involving a lessor, a lessee and a supplier of goods, where the lessor is a financial institution (etc.). However, the rent may also be calculated in this way in some two-party contracts. The contract may stipulate that the lessee has an option to buy the goods at the end of the lease period or a right to prolong the lease period at a substantially reduced rent. Where prolongation – or the terms of such prolongation – is not regulated by the in-

dividual contract, the rent for the prolonged lease period should not be unreasonable, given the amount already paid. In most cases this implies a substantial reduction in rent if the whole cost of the goods has already been paid. This rule is mandatory, in the sense that it cannot be derogated from to the detriment of a consumer in a consumer lease, cf. the definition in IV.B – 1:102.

15. No increase or extension of security rights The present provision applies to the relationship between lessor and lessee and has no direct effect against third parties, for example an individual having provided a personal or a proprietary security right for the payment of rent (paragraph (4)). Whether or not the security right is prolonged will depend on the terms of the security contract. If the security right is not prolonged, the lessee may be under an obligation to establish a new security.

Notes

I. Overview

1. Several European legal systems have provisions on tacit prolongation or renewal of a lease. The common feature is that continued use of the goods without objection from the lessor leads to a prolonged or new lease period without need for explicit agreement. The details vary, concerning both the requisites for and the effects of prolongation.
2. Overview of provisions on prolongation or renewal, in most cases for an indefinite period, where the use continues without objection from the lessor: AUSTRIAN CC § 1114 (tacit renewal if use continues without objection); BELGIAN CC art. 1738 (wording changed 1991, now only immovable property); DUTCH CC art. 7:230 (prolongation for an indefinite period in case of continued use with (tacit) permission of the lessor); ESTONIAN LOA § 310 (the lessor must object within two weeks after having learnt of the continued use); FRENCH CC art. 1738 (new lease governed by rules on leases not in writing if use continues after a written lease has expired and no notice to quit is given; applicability to movables debated, see (*Huet*, Contrats spéciaux, no. 21202 and 21802, footnote 27 and *Malaurie/Aynès/Gautier*, Contracts spéciaux[14], no. 601); GERMAN CC § 545 (prolonged if neither party protests within two weeks, the lessor's two weeks running from the time of getting knowledge of the continued use; the wording was amended in 2001, but not the substance, Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 545, no. 1); GREEK CC art. 611 (renewal if the lessee continues to use the leased object with the knowledge of and without objection from the lessor); HUNGARIAN CC § 431(2) (lessor must object within fifteen days; no formal requirement, see Gellert, Commentary (*-Besenyei*), 1694); ITALIAN CC art. 1597 (renewal for indefinite period if use continues without objection); LITHUANIAN CC art. 6.481 (ten days, see also art. 6.481 on termination); MALTESE CC art. 1536 (lease renewed for a period corresponding to period for which the rent is agreed, if use continues without objection); POLISH CC art. 674 (presumption of prolongation for indefinite period if use continues with lessor's consent); PORTUGUESE CC art. 1056 (renewal for new period if use continues without objection for one year; only for lease of immovables); SLOVAK CC art. 676(2) (court petition for surrender of the goods must be filed by the lessor within thirty days); SLOVENIAN LOA art. 615) (new lease if use continues with-

out opposition); SPANISH CC art. 1566 (continued use for 15 days leads to renewal for another fixed period; applicability to leases of movables is debated, see *Díez-Picazo and Gullón,* Sistema II[9], 337; *Bercovitz,* Manual, Contratos, 181, TS 21 Feb 1985, RAJ 1985, 737); SWISS LOA art. 266 (if a lease for a definite period continues *stillschweigend,* it becomes a lease for an indefinite period, *Honsell,* OR-BT[4], 207).

II. The notion of tacit renewal

3. In some countries the rules on tacit prolongation are seen as *objective rules,* or consequences of law, working independently of the parties' will. This is the situation in GERMAN law. As the prolongation does not depend on the parties' will, a mistake of either party as to the consequences is irrelevant (GERMAN CC § 119, see for example Palandt (*-Weidenkaff*), BGB[66], § 545, no. 10). To the same effect, see CZECH CC art. 676(2). Tacit renewal (prolongation for an indefinite period) is also an objective rule under HUNGARIAN law.
4. In several countries the behaviour of the parties is deemed to be a declaration of intention, and the provisions on prolongation are then rebuttable presumptions of such will. This can be illustrated by the AUSTRIAN CC § 1114, according to which there is a tacit renewal (*stillschweigende Erneuerung*) of the lease contract if the use is continued and the lessor does not object. The conduct of the lessor is interpreted as a declaration of contractual intention with certain content (so-called *normierte Willenserklärung,* OGH 30 Aug 2002, JBl 2003, 182; see also *Stabentheiner,* Mietrecht, no. 80, 26). According to DUTCH law, the prolongation takes place "unless an other intention is shown". If the lessee stays on with the (tacit) permission of the lessor, it is for the lessor to prove that the intention was different. The lessee cannot invoke this legal presumption if the continued use was not known to the lessor or if the lessor protested the continued use (Rueb/Vrolijk/Wijkerslooth-Vinke (*-de Vries*), Huurrecht, art. 7:230), no. 4).Under ESTONIAN law also, each partiy's behaviour can be regarded as a declaration of contractual intention (*vaikiminsi tahtevaldus*). A further illustration is the *tacite reconduction* found in the FRENCH CC art. 1738 and 1739 which is regarded as a presumption of the will of the parties (Rép.Dr.Civ. (*Groslière*), v° Bail, nos. 659 and 665, on the foundations in detail *Amar-Layani,* D. 1996, chr., 143 and 144); the simple absence of opposition by the lessor is not sufficient (Cass.Civ. 1 Feb 1949, RTD civ. 1950, 72, note *Carbonnier*). See also on the ITALIAN CC art. 1597, *Rescigno,* Codice Civile I[5], arts. 1596–1597, no. 2, 1958.
5. The expression *relocatio tacita* is foreign to U.K. law. No special instrument for the situation of continued use after expiration of the contract can be found. Moreover, there seems to be no case law directly dealing with this situation for contracts on movables (although there is case law on similar situations for leases of land, see *Roberts v. Hayward* (1828 3 C. & P. 432) – critical remarks Chitty (*-Treitel*), on Contracts I[29], para. 2–074, and *Western Electric Ltd v. Welsh Development Agency* [1983] Q.B. 796). Under special circumstances inactivity can be seen as an offer, although the hurdle in this respect seems to be a high one (Chitty (*-Treitel*), loc. cit., para. 2–005) and most of the potential cases would probably be seen as a mere breach of the lessee's duty to return the goods, leading to damages for wrongful detention (Chitty (*-McKendrick*), on Contracts II[29], no. 33–080: "measure of damages is the full market rate of hire for the whole period of the detention if the hirer has made beneficial use of the chattel"; for a po-

tential remedy on excessive benefits in restitution, see Chitty (*-Virgo*), on Contracts I[29], no. 29–145). But nevertheless, the discussion about "silence" or "tacit" reflects to a certain extent the scope of solutions in the Civil Law jurisdictions. Some of the cases of non-return and ongoing use of the leased object by the lessee may be covered by the tort of conversion according to sec. 2(2) of the Torts (Interference with Goods) Act 1977. The ongoing use could be seen as a definite act of conversion. Whether the bailor must demand the return of the goods before he can rely on the mentioned provision is not clear (Chitty (*-McKendrick*), on Contracts II[29], para. 33–010 ff., fn. 60). For NORWEGIAN law, it has been said that a possible rule on *relocatio tacita* should not apply to leases of ships, *Falkanger,* Leie av skib, 423.

III. Tacit prolongation only where the lease is for a definite period?

6. In several jurisdictions, the rules on tacit prolongation apply only for leases for a definite period. This follows explicitly from AUSTRIAN CC § 1114 (Rummel (*-Würth*), ABGB I[3], § 1114, no. 4), CZECH CC art. 676 (cf. Supreme Court 28 Cdo 2253/2003), ESTONIAN CC LOA § 310, GREEK CC art. 611, HUNGARIAN CC § 431(2), LITHUANIAN CC art. 6.481, SLOVAK CC art. 676, SLOVENIAN LOA art. 615, SWISS LOA art. 266 (BSK (*-R. Weber*) OR I[3], Art. 255, no. 5).
7. Some provisions exclude tacit prolongation in cases where a notice of termination is given. This will normally mean that there can be no tacit prolongation of leases for an indefinite period, as such leases are ordinarily terminated by notice. See for example BELGIAN CC art. 1739, FRENCH CC art. 1739, SPANISH CC art. 1566. The interpretation of ITALIAN CC art. 1597 is not quite clear in this respect (*Cian and Trabucchi,* Commentario breve[8], arts. 1596–1597, no. II3). However, if a party that has given notice of termination later changes its mind, it may follow from general contract law that the parties' conduct is sufficient for the conclusion of a contract (the discussion in ITALIAN law is illustrative, see Cass. 23 Aug 1990/no. 8621, Giu.it. 1991, I, 1, 692, Cass. 12 Aug 1988/no. 4936, Giust.Civ.Mass. 1988, fasc. 8/9, *Rescigno,* Codice Civile I[5], arts. 1596–1597, no. 2, 1958).
8. In GERMAN jurisprudence and legal literature there is no doubt that CC § 545 is applicable to leases for an indefinite period (BGH, NJW 1980, 1577,1878, for the former § 568), even where the contract is brought to an end by extraordinary notice of termination given by the lessor (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 545, no. 2, *Gitter,* Gebrauchsüberlassungsverträge, 53, with critical remarks on this point *Medicus,* Schuldrecht BT[11], no. 215). The POLISH CC art. 674 explicitly says that both forms of leases are covered.

IV. Continued use

9. The *quality* of the continued use leading to tacit prolongation is sometimes discussed. For GERMAN law it is held that it must involve *use,* not merely a failure to return the goods (Hk-BGB[2] (*-Eckert*), § 545, no. 3). Use by a sub-lessee is sufficient (BGH, NJW 1986, 1020), and tacit prolongation may be the result even when the lessee did not know that the lease period had expired (Emmerich and Sonnenschein (*-Emmerich*), Hk-Mietrecht[8], § 545, no. 7). For FRENCH law it is said that the lessee must remain in

possession of the object and that use must be continued as if the lease period had not expired (*Amar-Layani,* D. 1996, chr., 143 and 144).

10. In many countries the duration of use is specified, either directly or indirectly, in the latter case by specifying a time for the lessor's objection to the use (see note I2). Even if no period is specified, a short delay only in returning the goods may be irrelevant (see for FRENCH law, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 662; for GREEK law, *Antapasis,* art. 611, no. 8).

V. *Lessor's knowledge of continued use*

11. The lessor's knowledge of the continued use may be a prerequisite for tacit prolongation, either directly or indirectly. It may be an indirect condition of prolongation insofar as the lessor, to avoid prolongation, must object within a certain time after leraning of the use (see for example ESTONIAN LOA § 310, GERMAN CC § 545, GREEK CC art. 611; see also for DUTCH law, note *II4*). In SPANISH law acquiescence is needed (CC art. 1566), but it has been held, though not unanimously, that there is a presumption of acquiescence to prolongation if the lessor does not request return of the goods (*Díez-Picazo and Gullón,* Sistema II[9], 337). In PORTUGUESE law, the requirement is "no opposition" from the lessor (CC art. 1056). According to POLISH CC art. 674, the lessor's consent (direct or indirect) is a prerequisite for the presumption of prolongation. In other provisions, where knowledge is not mentioned (see for example CZECH CC art. 676, FRENCH CC art. 1738, HUNGARIAN CC § 431, SLOVAK CC art. 676), the solution is not obvious. It is sometimes held that knowledge is requisite (see for FRENCH law, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 663; for HUNGARIAN law, the time-limit of fifteen day for objections to a prolongation has been regarded as a prescription period, cf. Gellert, Commentary (*-Besenyei*), 1694, probably implying a requisite of knowledge).

VI. *Objection to prolongation*

12. All systems seem to allow a party to prevent prolongation by objecting to the continued use or expressing in some other way that prolongation or renewal is not desired. A court petition is required according to SLOVAK CC art. 676(2), but in most cases no formalities are required. The question of *when* the objection must be expressed is sometimes discussed. For AUSTRIAN law it is held that there must be a close link in time between the objection and the expiry of the lease period (OGH 9 Oct 1986, JBl 1987, 659 note *Böhm,* Rummel (*-Würth*), ABGB I[3], § 1114, no. 4). The objection can, however, be expressed even before the lease period expires (OGH 15 Dec 1992, JBl 1993, 587, note *Watzl*: requesting return two months before expiry still fulfils the stated close link in time). The situation in GERMAN law is similar (see Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 545, no. 8). For GREEK law it has been maintained that the objection must be made within a reasonable time after the expiry of the lease period (*Georgiadis,* Law of Obligations, § 28, no. 12; cf. *Antapasis,* art. 611, no. 13b). Under HUNGARIAN law, the objection must be made within fifteen days of expiry of the lease period, HUNGARIAN CC § 431 (2).

VII. New lease period for a definite or indefinite period

13. In some countries, tacit prolongation leads to a new definite lease period, although not necessarily of the same length as the expired period. The interpretation of AUSTRIAN CC § 1115 is that the lease is prolonged for a new definite period of the same length as the period for which the rent is calculated (*Stabentheiner,* Mietrecht, no. 81, OGH 9 Apr 1992, JBl 1993, 584, Rummel (*-Würth*), ABGB I[3], § 1115, no. 2, *Apathy and Riedler,* Schuldrecht BT, no. 8/66). Essentially the same solution is found in ITALIAN CC arts. 1597 and 1574; MALTESE CC arts. 1536 and 1532. According to CZECH CC art. 676(2), the new period is of the same length as the former period, but leases for more than one year are prolonged only for one year. The rule is the same under SLOVAK law, SLOVAK CC art. 676(2), (Svoboda (*-Fíger*), OZ, art. 676, 620).
14. The most common solution seems to be a prolongation or renewal for an indefinite period, whether this is expressed positively in the provisions (see note 2) or not (as in FRENCH law, see Rép.Dr.Civ. (*Groslière*), v° Bail, no. 671, with further references; the rule is the same in ESTONIAN law).

VIII. Other terms of the contract

15. When the consequences for other terms of the contract are dealt with at all, the common view seems to be that these terms remain unchanged: AUSTRIAN CC § 1115 (Rummel (*-Würth*), ABGB I[3], § 1115, no. 1: except parts in no direct connection with the lease contract); DUTCH CC art. 7:230 (as a consequence of the prolongation); FRENCH CC art. 1738 (Cass. Soc. 29 Jan 1959, Bull. Civ. 1959.IV., no. 135, except for *clauses occasionnelles,* see Cass.Civ. 15 Jun 1960, Bull.civ. 1960.III, no. 232); GERMAN CC § 545 (BGH, NJW 2002, 2170, 2171); GREEK CC art. 611 (*Antapasis,* art. 611, no. 17; Athens Court of Appeal 1548/85 EllDik 26, 710); ITALIAN CC art. 1597; MALTESE CC art. 1536; SLOVAK CC art. 676; SLOVENIAN LOA art. 615. For POLISH law, see Bieniek (*-Ciepła*), Komentarz do Kodeksu Cywilnego, 258.
16. It is sometimes said explicitly that a guarantee from a third party is not extended to cover the prolonged lease period: FRENCH CC art. 1740 (guarantee to be distinguished from joint responsibility, Cass.Civ. 28 Oct 1889, D. P. 1899.1, 129); ITALIAN CC art. 1598; MALTESE CC art. 1538; SLOVENIAN LOA art. 615; SPANISH CC art. 1567; likewise for GERMAN law, Staudinger (*-Emmerich*), BGB (2006), § 545, no. 16 and for GREEK law *Antapasis,* art. 611, no. 18.

Chapter 3:
Obligations of the lessor

Article 3:101: Availability of the goods

(1) The lessor must make the goods available for the lessee's use at the start of the lease period and at the place determined by III. – 2:101.
(2) Notwithstanding the rule in the previous paragraph, the lessor must make the goods available for the lessee's use at the lessee's place of business or, as the case may be, at the lessee's habitual residence if the lessor, on the specifications of the lessee, acquires the goods from a supplier selected by the lessee.
(3) The goods must remain available for the lessee's use throughout the lease period, free from any right or claim of a third party that prevents or is otherwise likely to interfere with the lessee's use of the goods in accordance with the contract.
(4) The lessor's obligations when the goods are lost or damaged during the lease period are regulated by IV.B – 3:104.

Comments

A. General

1. Characteristic obligations In a lease contract, the lessor makes goods available temporarily for the lessee's use against remuneration. The lessee's use typically implies physical control of the goods. Further, the goods shall normally be returned to the lessor at the end of the lease period. As the contract is made for a period of time, questions arise concerning maintenance of the goods and repairs during this period. To the extent that the goods are not to deteriorate, the obligation to maintain and repair the goods must be borne by one of the parties or distributed between them. All this means that the lessor typically has obligations concerning 1) the availability of the goods at the start of the lease period, 2) the availability of the goods during the lease period, 3) the conformity of the goods at the start of the lease period, 4) the conformity of the goods during the lease period to the extent that this is not a part of the lessee's obligations, and 5) the return of the goods at the end of the lease period. In the present Article, availability of the goods at the start of the lease period and during the lease period are dealt with.

B. Time of performance

2. Start of the lease period The lessor must make the goods available at the start of the lease period. The time at which the lease period starts may be determined from IV.B – 2:101. In the situations dealt with in IV.B – 2:101(1) the lease period starts even if the goods are not available to the lessee at the relevant point in time, or the lessee has not

accepted the goods. These are questions of non-performance of the lessor's or the lessee's obligations. Where the lessee has taken control of the goods earlier than the time that would follow from IV.B – 2:101(1), the lease period starts on acceptance of the goods (IV.B – 2:101(2)).

C. Place of performance

3. Reference made to general rules The first paragraph of the present article refers to III. – 2:101 (Place of performance). This reference is made only for clarity's sake.

4. Place of performance in lease contracts The place of performance is often agreed upon expressly by the parties or can be determined from the agreed terms. If this is not the case, it is stated in III. – 2:101(1) that the place of performance should be the debtor's – that is the lessor's – place of business at the time of conclusion of the contract. If the lessor has more than one place of business, performance shall take place at the one that "has the closest relationship to the obligation", cf. III. – 2:101(2). In lease contracts, the relevant place of business will often be the place where it is most convenient for the lessee to pick up the goods, provided that the lessor's business at that place includes lease activities.

> *Illustration 1*
> A lessee orders by telephone a car to be leased one week in Rome. The lessor has several places of business in Rome, and the car is ordered through a general office serving all these places of business. If the lessee e. g. arrives in Rome by aeroplane, and this is made known to the lessor, one may presume that the relevant place of business is the one at the airport of arrival. If the lessee, for example, is resident in Rome, one may presume that the relevant place of business is the one located nearest the habitual residence of the lessee.

5. Goods acquired from a supplier selected by the lessee The rule in paragraph (2) applies to situations in which the lessor acquires the goods on the lessee's specifications from a supplier selected by the lessee. Typically, these are contracts of a kind often referred to as "finance leases". The goods are normally not brought to the lessor's place at all in these situations, and the general rule in III. – 2:101 would not be the best one. The parties may agree that the goods are made available for the lessee at the supplier's place. However, as the default rules of this Part of Book IV deal only with the contractual relationship between lessor and lessee, the fall-back rule for these contracts should be that the goods are made available at the lessee's place of business.

D. Availability of the goods

6. Availability at the start of the lease period Normally, the contract requires that the lessee obtain physical control of the leased goods. The lessor must do what is needed to enable the lessee to obtain such control and the lessee must co-operate by accepting the goods. In this respect there is a parallel to sales contracts. A simple handing over of the

goods is illustrative: the lessor offers the goods and the lessee accepts them at once. Control over the goods may also be transferred by giving the lessee a key or a code; the goods may be made available by the lessor at some agreed place for the lessee to pick up; the goods may be transported by an independent carrier which is instructed to deliver the goods to the lessee, perhaps against documents made available by the lessor; etc. As use of the goods is the purpose of the lease contract, and as the lessor will still be the owner of the goods, at least during the lease period, there is no need to regulate situations where the goods are to remain in the hands of the lessor. It could be, however, that the lessee already has physical control over the goods at the start of the lease period, as is occasionally the case in a sale.

7. Acceptance by employees etc. The goods may be accepted by someone on behalf of the lessee, typically by the lessee's employees. Depending on the agreement and the circumstances, the goods must also be regarded as made available for the lessee where they are given directly to a sub-lessee. It has not been found necessary to regulate explicitly this special situation.

8. Availability during the lease period The lessor's obligations also include keeping the goods available for the lessee's use throughout the lease period. This normally implies that it will amount to non-performance if the lessor makes use of the goods for his or her own purposes or lets third parties use the goods if such use hinders the lessee's use in accordance with the contract. Further, it will be non-performance if the lessor sells or otherwise disposes of the goods if such disposition collides with the lessee's use. Where the rights of the lessor's creditors affect the lessee's use, this also amounts to non-performance by the lessor. These observations relate to the contract between lessor and lessee. The extent to which the lessee's rights have priority over creditors' and other third parties' rights in the goods will be commented upon in Chapter 7.

E. "Risk"

9. Availability and conformity Normally, the lessor has not only an obligation to keep the goods available for the lessee, in the sense that the lessor's dispositions and personal use of the goods must not interfere with the lessee's use according to the contract (cf. Comment *D*8), but also an obligation to keep the goods in conformity with the contract by performing maintenance and repairs. The latter obligation is regulated by IV.B – 3:104. This obligation includes repair of goods that are damaged by chance. If the damage is total – the goods are "lost" – it may be that the lessee has no right to enforce performance, cf. III. – 3:302 (Non-monetary obligations), but other remedies for non-performance may still be available. Theft of the goods should be dealt with in the same way as total loss; theft is not a question of a third party's right in the goods. One could ask if the goods are "available" to the lessee if they are totally damaged or lost. To make it clear that damage to or loss of the goods is dealt with as a question of non-conformity and not as a question of availability, a reference is made in the fourth paragraph of the present Article to IV.B – 3:104. The difference is important in particular in contracts where the lessee has the full burden of maintenance and repairs, by contract or by law, see IV.B – 5:104(2), referred to in IV.B – 3:104. In such contracts, damage or loss will not lead to non-per-

formance of the lessor's obligation to keep the goods in conformity with the contract, while interference with the lessee's use caused by third party rights or by the lessor's dispositions or personal use of the goods is still non-performance of the obligation to keep the goods available.

10. No passing of risk For sales, there are rules on "passing of risk", including an explanation of "risk" in IV.A – 5:101 (Effect of passing of risk): "Loss of, or damage to, the goods after the risk has passed to the buyer does not discharge the buyer from the obligation to pay the price, unless the loss or damage is due to an act or omission of the seller." Corresponding rules are not needed for lease contracts. Damage to or loss of the goods is dealt with as a question of non-conformity, cf. Comment *E9*. It would be incongruous to regulate the consequences for rent payment independently of other remedies for non-performance. See also Comment *B6* to IV.B – 5:104 on "risk" and the lessee's obligation to return the goods.

F. Non-availability due to need for repairs by lessor etc.

11. No exception for repairs etc. The lessor is in many cases obliged to perform repairs and maintenance work on the goods during the lease period. The lessor also has a right to perform certain actions with regard to the goods, whether or not this is part of the lessor's obligation. The lessee's obligation to tolerate such measures is regulated in IV.B – 5:108. The lessor's work on the goods may affect the lessee's use, and the goods may even be totally unavailable for the lessee while the work takes place. This is non-performance of the lessor's obligation to keep the goods available for the lessee's use. At first sight this can seem inconsequent: actions that the lessor has a right to take, result in non-performance, i. e. non-availability. The explanation is found in the definition of "non-performance". "Non-performance" covers any failure to perform, for whatever cause. However, the remedies available to the lessee will vary according to the cause of the non-performance. If repairs are necessary due to non-performance of the lessee's obligations, e. g. the obligation of care, the lessee cannot seek a remedy in the courts with regard to the consequent suspension of availability, cf. III. – 3:101(3). If, on the other hand, the non-availability is made necessary for other reasons, the lessee has a right to rent reduction, withholding of rent, damages as the case may be, and even termination should the non-performance be fundamental. Ordinary maintenance by the lessor, typically made necessary by accidents or normal use, will give the lessee a right to rent reduction – a remedy in line with the purpose of balancing the performances of the parties – but not to damages, as these measures cannot be avoided.

Illustration 2
The leased washing machine breaks down and must be taken to lessor's premises to be repaired. The repairs take one week. The washing machine is old and the breakdown was caused by normal deterioration. The lessee may claim a reduction in the rent for one week but not damages, as the repairs could not be avoided.

Illustration 3
The facts are the same as in Illustration 2, except that the work takes three weeks because the lessor carelessly damaged other parts of the machine while repairing it. The lessee may claim a reduction in the rent for three weeks and damages covering expenses for the use of laundrettes during the two last weeks.

Illustration 4
The facts are the same as in Illustration 2, except that the breakdown was caused by the lessee's careless use of the machine. No remedies are available to the lessee with regard to the unavailability of the machine.

G. Third parties' rights or claims

12. Rights or claims that interfere with the lessee's use The lessee's use must not be affected by third parties' rights. Some third party rights will not affect the lessee's use of the goods at all. A third party's security right will typically not affect the use as long as the lessor is not in a position where the security right becomes effective. This is different in contracts for sale, where the buyer does not have to tolerate any rights of this kind. If the lessor was not the owner of the goods and had no right to enter into a lease contract, the true owner's right will typically affect the lessee's use. Whether a later sale or a second lease of the same goods will affect the lessee's use, depends on the rules on priority of the lessee's rights over third parties' rights. To what extent the lessee must accept transfer of ownership, when the use is not affected, is dealt with in IV.B – 7:101.

13. Rights or claims that are likely to interfere with the lessee's use The existence of a third party right that is likely to interfere with the lessee's use amounts to non-performance by the lessor. The lessee does not have to wait until the goods are in fact taken away. A security right can create a threat to the lessee's use if the lessor becomes insolvent or the creditors have taken steps to utilise the security right. Also a third party claim that is contested by the lessor may interfere with or threaten to interfere with the lessee's use. It will depend on the circumstances whether this kind of claim is sufficiently grounded to create a threat to the lessee's use. Allegations that are clearly unjustified are irrelevant. The lessee should not, however, be obliged to tolerate being involved in disputes between the lessor and third parties.

H. Contract and default rules

14. Non-mandatory rules The parties may derogate from the provisions of the present Chapter unless otherwise provided. In normal situations the parties agree amongst themselves the basic elements of the contract: which object is to be leased, for how long and at what price. Often the parties also specify the required quantity and quality of the goods, where and when the goods are to be delivered, the distribution of obligations concerning maintenance and repairs etc. The rules of the present Chapter are merely supplementary insofar as they do not apply to issues sufficiently regulated by the parties. At the same time the rules of the present Chapter are objective rules that are applicable to the lease

contract – in the supplementary fashion just described – without any act of inclusion or acceptance and independently of the parties' will.

15. **Consumer leases** Consumer protection rules may not normally be derogated from by the parties to the detriment of the consumer. On the other hand, the parties are in most cases free to decide whether or not to enter into a contract and to agree on what is to be leased, when, for how long and at what price, cf. Comment *A4* to IV.B – 1:102. It is specified in IV.B – 3:106, however, that the parties may not describe the goods in a way that it is, in real terms, a derogation from the lessor's obligation to ensure that the goods conform to the contract. See Comments to IV.B – 3:106.

Notes

I. Overview of the lessor's obligations

1. The structure of legislation on lease contracts varies among the jurisdictions. Sometimes the obligations of the lessor – or of both parties – are enumerated in general provisions, in many cases in "introductory" provisions. In other jurisdictions there is no such overview. The extent to which extent the obligations of the lessor are divided into separate obligations or treated more or less as one overarching obligation (making the goods available for the lessee's use) also varies. The difference between the GERMAN and the FRENCH Civil Codes is illustrative. The highest level of abstraction is found in the GERMAN Civil Code: the main obligation is to allow use of the goods; making the goods available and maintaining them are regarded as the means of fulfilling this obligation (GERMAN CC § 535(1) 1. sent.). The lessor is obliged to allow the lessee the use of the leased goods during the lease period (*Mietzeit*). Therefore the lessor has to hand over the leased goods (*Gebrauchsüberlassungspflicht*), may not disturb the agreed use and must prevent disturbance from third parties, insofar as this is possible and reasonable (*Gebrauchserhaltungspflicht*, see *Larenz*, Schuldrecht II/1[13], § 48, no. II, 219; *Brox and Walker*, Schuldrecht BT[31], § 11, no. 1). Sentence 2 of GERMAN CC § 535(1) specifies that the lessor has to turn the leased goods over to the lessee in a state suitable for the agreed use and must maintain the goods in that state during the lease period (*Instandhaltungspflicht*; for an overview of the principal obligations of the lessor see for example *Oetker and Maultzsch*, Vertragliche Schuldverhältnisse[2], 278). Sentence 3 of the same provision mentions the obligation of the lessor to bear costs and charges connected with the leased goods, which is regarded as a repetition of the obligation to allow the agreed use (Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 535, no. 570) or as clarification of the idea that the lease contract does not lead to a new distribution of these costs (*Blank and Börstinghaus*, Miete[2], § 535, no. 376). On the other hand, the FRENCH CC art. 1719 enumerates the principal obligations of the lessor (the obligations are specified in arts. 1720–1727): to deliver the leased goods to the lessee (no. 1), to maintain the leased goods in a state fit for the use for which the have been leased (no. 2), to secure a peaceful enjoyment by the lessee for the duration of the lease (no. 3; a special provision for plantations is found in no. 4). This enumeration follows a chronological order (*Huet*, Contrats spéciaux, no. 21160, *Malaurie/Aynès/Gautier*, Contrats spéciaux[14], 427). The enumeration has been described as deceptive in two ways:

first, it is not complete (missing the guarantees and the security); second, it suggests that the obligations are parallel and independent of each other. In reality there is only one essential obligation of the lessor: to ensure that the lessee has the peaceful enjoyment of the goods. All other obligations can be regarded as being just different means of contributing to this objective (cf. *Bénabent,* Contrats spéciaux[6], no. 334-3).

II. Obligation to make the goods available (transfer of physical control)

2. To the extent that the issue is regulated or discussed in national law, it seems to be generally agreed that making the goods available implies giving the lessee physical control over the goods. In AUSTRIAN law (AUSTRIAN CC § 1096), the lessor has to hand over the leased goods, together with accessories, to the physical possession (*physischer Besitz*) of the lessee at the beginning of the lease relationship (*Apathy and Riedler,* Schuldrecht BT, no. 8/19, Rummel (*-Würth*), ABGB I[3], § 1096, no. 1, 3). Under DUTCH CC art. 7:203, the goods must be put at the lessee's disposal; physical control is not required (Rueb/Vrolijk/Wijkerslooth-Vinke (*-Huydecooper*), Huurrecht, art. 7:203, no. 4). According to ESTONIAN LOA § 276(1), the lessor is required to deliver the goods, together with accessories, to the lessee, i. e. to transfer the possession of the goods, which means physical control of the goods or the means to enable control, cf. ESTONIAN Law of Property Act arts. 33(2) and 36. In FRENCH law, the lessor has to put the goods at the disposal of the lessee (*Huet,* Contrats spéciaux, no. 21161: *possession physique*). This act of putting at disposal is fundamental and cannot be excluded by contract, because it is imposed by the nature of the lease contract (Cass.Civ. 11 Oct 1989, Bull.Civ. 1989.I, no. 317). The goods must be free of any other *occupation* (Cass.-Civ. 16 Jan 1980, Bull.Civ. 1980.III, no. 13), but it may be stipulated that the lessee has to suffer certain inconveniencies without a remedy (*Bénabent,* Contrats spéciaux[6], no. 334-4). The lessor has to deliver accessories which are necessary for normal use (*Huet,* Contrats spéciaux, no. 21162) and has to bear the costs of delivery (loc. cit., 653). In GERMANY, the lessor is obliged to ensure that the lessee has the use of the leased goods; thus the lessor must leave or hand over the leased goods to the lessee. In general it is not clear if this demands transfer of possession in the sense of GERMAN CC § 854 (*Besitzverschaffung,* BGHZ 65, 137, 139 ff.: no prerequisite in general, making accessible is sufficient). For movables, the "handing over" demands in case of doubt the physical handing over, that is *unmittelbarer Besitz,* but other agreements are possible (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 535, no. 7). Under GREEK law the lessor is obliged to provide the lessee with the use of the leased object (GREEK CC art. 574) and to hand it over to the lessee in a condition fit for the agreed use (GREEK CC art. 575); it suffices that the leased goods become available to the lessee (*Rapsomanikis,* art. 575, no. 1). In HUNGARIAN law, according to the definition of a lease contract in HUNGARIAN CC § 423, the lessor is obliged to provide the lessee with the use of the leased object. Pursuant to HUNGARIAN CC § 424 (2), the lessor ensures that the leased object is free from any third party right that would prevent or limit the lessee's use of the leased object. In ITALIAN law, as a general rule, the obligation to make the goods available (*consegnare* the leased goods to the lessee) presupposes an act on the part of the lessor that comprises all acts, material and judicial, which are necessary for the commencement of use by the lessee. If the details of this obligation are not stipulated by the contract, default rules apply (ITALIAN CC

art. 1182, 1183). Together with the goods, accessories must also be delivered (Cass. 61/229). If the goods are in the *detenzione* of a third person, the lessor is obliged to get *detenzione* and transfer it to the lessee (Cass. 55/2181). The provision in ITALIAN CC art. 1575 no. 1 does not apply to financial leasing contracts which stipulates that the supplier is to make the goods available (see *Cian and Trabucchi,* Commentario breve[8], art. 1575, no. I). See also CZECH CC art. 664; HUNGARIAN CC § 423; LATVIAN CC art. 2130; LITHUANIAN CC art. 6.483(1); MALTESE CC art. 1539; POLISH CC art. 662(1) (lessor must transfer the goods in a suitable condition; the lessor should also make available all accessories required for normal use of the leased goods, *Pietrzykowski,* KC. Komentarz, art. 662, Nb. 1, 207); PORTUGUESE CC art. 1031 lit. a; SLOVAK CC art. 664 (obligation to make the goods, together with accessories, available in a condition fit for the agreed use or normal use; Svoboda (*-Górász*), OZ, art. 664, 611). SLOVENIAN LOA art. 588; SPANISH CC art. 1554 no. 1; SWISS LOA art. 256(1).

III. Time of performance

3. See notes to IV.B – 2:101.

IV. Place of performance

4. It seems that national legislation normally has no separate provisions on the place where leased goods should be made available. One explanation could be that legislators have mainly been preoccupied with immovables (where the place is no problem). General rules may apply, see CZECH CC art. 567(1) (place of business or residence of the debtor); ESTONIAN LOA art. 85(1) (agreed place, or place determined by nature of the contract, or the place where the goods are at the conclusion of the contract); GREEK CC art. 320 (agreed place, place determined by circumstances, otherwise the debtor's place); ITALIAN CC art. 1182 (place where the goods are when obligation arises); or POLISH CC art. 454 (debtor's place).

V. Availability during the lease period

5. In AUSTRIAN law, the lessor must make the goods available for the lessee's use in accordance with the contract and ensure that they remain available for such use; this obligation is seen as a unity and AUSTRIAN CC § 1096 contains parts of it (Rummel (*-Würth*), ABGB I[3], § 1096, no. 1). According to art. 1096(1) 1. sent., the lessor must not interfere with the lessee's agreed use or enjoyment of the leased goods; the lessor must allow the agreed use and abstain from all activities which the lessee need not tolerate; the lessor must perform all act necessary to ensure that the lessee has use of the goods (Rummel, loc. cit., no. 7). The lessor must prevent interference with the agreed use originating from third persons (OGH 20 May 1970, JBl 1970, 523; *Apathy and Riedler,* Schuldrecht BT, no. 8/21). Third parties must not be given rights that are likely to interfere with the lessee's use. The lessor must take the steps necessary to avoid interference by third persons, even if this is connected with financial burdens for the lessor (Rummel, loc. cit., no. 9). – In DUTCH law, the obligation to make the object available is likewise combined with an obligation to leave it at the disposal of the lessee for the duration of the contract (DUTCH CC art. 7:203).

6. Under DANISH law, the lessor has an obligation to maintain the goods and to ensure that third parties' rights do not interfere with the lessee's use (*Gade,* Finansiel leasing, 113–125).
7. According to ESTONIAN LOA art. 276(1), the lessor must deliver the goods in a condition suitable for contractual use and ensure that the goods are maintained in such condition throughout the lease period. This means that the goods must have the characteristics agreed upon and be free from defects that restrict or preclude their use during the lease period. The lessor must, upon demand, remove defects or obstacles or take over a dispute with a third party, except for defects and obstacles for which the lessee is responsible and that must be removed at the lessee's cost, LOA art. 278.
8. According to FRENCH CC art. 1719 no. 3, the lessor is obliged to ensure the lessee's peaceful enjoyment of the goods for the duration of the lease. Normally this obligation is split up into two components (some authors include a third component: the guarantee of the lessor against hidden defects, see Rép.Dr.Civ. (*Groslière*), v° Bail, no. 234). The first component is that the lessor must abstain from acts that interfere with the lessee's use (*Bénabent,* Contrats spéciaux[6], no. 336). This is regarded as an obligation not to do (*Collart Dutilleul and Delebecque,* Contrats civils et commerciaux[7], no. 496) or as a prolongation of the obligation to deliver (loc. cit., 497), and constitutes the dynamic element of a lease, an *obligation essentielle du contrat* (*Huet,* Contrats spéciaux, no. 21164). The second element concerns protection against interference from third persons (arts. 1725 to 1727). If factual interference, without a claim to have a right to the leased goods, makes the lessee's use impossible, this is covered by the *garantie* of the lessor (*Bénabent,* loc. cit.; *Groslière,* loc. cit., no. 297, *Huet,* Contrats spéciaux, no. 21164, 660: to assure enjoyment is an *obligation de résultat*). Where the lessee's use has been (partially) disturbed by an action relating to ownership (*troubles de droit*), the lessee is entitled to a proportionate reduction in rent, if the lessor has been notified of the interference and of the impediment (art. 1726; but in most cases simple *troubles de droit* do not lead to any loss for the lessee, see *Groslière,* loc. cit., no. 304). The lessee may withdraw from a legal action by third parties claiming rights in the goods, by naming the lessor and making the lessor a party to the action (art. 1727). Another specification of quiet enjoyment is mentioned in art. 1723: the lessor may not change the form or the destination of the leased object (see *Groslière,* loc. cit., no. 264 ff.). For BELGIAN law, see *La Haye and Vankerckhove,* Baux en général[2], no. 619 ff.
9. In the GERMAN Civil Code, the principal obligation of the lessor is found in § 535(1) 1. sent.: the lessor is obliged to grant (*gewähren*) the lessee the use of the leased goods during the lease period. This is not merely an obligation to hand over and to leave the goods to the lessee (MünchKomm (*-Schilling*), BGB III[4], § 535, no. 71); ensuring use of the goods goes beyond this. The lessor must ensure the contractually agreed use for the lessee during the whole lease period (Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 535, no. 1). This *Gebrauchsbelassungspflicht* includes that the lessor is obliged to tolerate the contractually agreed use by the lessee (*Dauerschuldcharakter der Miete*) and to prevent loss or disturbance of the use caused by third persons (*Oetker and Maultzsch,* Vertragliche Schuldverhältnisse[2], 279 ff., Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 535, no. 13).
10. In GREEK law the lessor is obliged to allow the lessee to use the leased goods for the whole term of the lease (GREEK CC art. 574). This obligation entails not only positive action but also omissions on the part of the lessor (e. g. abstaining from acts that would

disturb the lessee's use and preventing third parties from disturbing such use) (*Georgiadis*, Law of Obligations, § 24, no. 5; *Kornilakis*, 195). GREEK law – which distinguishes between factual defects (GREEK CC art. 576(1)), agreed qualities (GREEK CC art. 576(2)) and legal defects (GREEK CC art. 583) – classifies third party claims under legal defects. More specifically, a legal defect exists when the stipulated use of the leased object is either entirely or partially taken away from the lessee through the right of a third party. Contrary to contracts for sale (GREEK CC art. 514), the notion of legal defect in the lease contract presupposes that the object is taken away from the lessee (GREEK CC art. 583); the mere existence of a third party right does not suffice if it does not affect the use of the leased object. The oncoming danger of the object being taken away does not suffice either (Thessaloniki Court of Appeal 570/1966 Arm 21, 116). Only when third party rights offend the stipulated use are they considered to be legal defects of the leased goods (*Filios* (1981), § 27 Γ I; *Georgiadis*, Law of Obligations, § 25 nos. 12–13; *Kornilakis*, 220–221; *Rapsomanikis*, art. 583, no. 2).

11. According to ITALIAN CC art. 1575 no. 3 the lessor is obliged to *garantire* the lessee's peaceful enjoyment during the lease period. Factual and legal interferences with use are distinguished (ITALIAN CC art. 1585). The lessee has to inform the lessor promptly of any claim from third parties; the lessor must take over litigation, and the lessee is discharged from the proceedings by indicating the identity of the lessor (art. 1586); see *Rescigno*, Codice Civil I[5], arts. 1585 and 1586, 1947 ff.
12. According to SPANISH CC art. 1554 no. 3 the lessor is obliged to ensure the lessee's quiet enjoyment of the goods during the whole period of the contract (*Albaladejo*, Derecho Civil, II[12], 639). It has been characterised as the principal obligation of the lessor (*Bercovitz*, Manual, Contratos, 175). The lessor may not change the form of the goods (art. 1557) and has to abstain from all conduct which interferes with the lessee's possession. With regard to acts of third persons, SPANISH law also distinguishes between factual and legal interferences (*Sánchez-Calero*, Curso de Derecho Civil II[4], 383). According to art. 1559 the lessee is (*inter alia*) obliged to inform the lessor about any *usurpación*. The lessor is not responsible for mere factual interference with use by third persons (art. 1560); but the lessee has a direct action against the disturber (art. 446). It is not regarded as factual interference if a third person has acted by virtue of a corresponding right (art. 1561(2)). See further *Díez-Picazo and Gullón*, Sistema II[9], 335.
13. Under SWEDISH law, the common view seems to be that the lessor has an obligation to maintain the goods, even where the goods are damaged without fault on the side of the lessor, but this view is challenged by *Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 194–197. The lessor has no such obligation if the goods are lost or becomes totally damaged. The lessor must not alienate the goods without reserving the lessee's right. See *Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 194–197 with further references.
14. In SWISS law, the lessor has an obligation to maintain the goods, SWISS LOA art. 256. This obligation includes that the lessor must ensure the usability of the goods during the whole lease period (BSK (*-R. Weber*) OR I[3], Art. 256, no. 2). Further, the lessor must abstain from interfering with the use and must prevent interference by third parties where appropriate (BSK (*-R. Weber*) OR I[3], Art. 256, no. 1). If a third person has sued the lessee, the lessee can demand that the lessor take over the proceedings (art. 259a); the lessor is correspondingly obliged.

15. According to POLISH CC art. 662, the lessor must sustain the goods in a condition suitable for use throughout the lease period. The lessor is liable for legal interferences by third parties, but not factual interference.
16. According to SLOVAK CC art. 664, the lessor must maintain the leased goods in the state agreed by the parties or in a state allowing the normal use of the goods. This obligation relates to the quality as well as to the quantity of the leased goods (Svoboda (*-Górász*), OZ, art. 664, 611). Another aspect of the lessor's obligation is that the lessee is to be protected against disturbances by third persons, including an obligation on the lessor to take necessary legal steps if a third person vindicates rights over the leased thing incompatible with the lessee's rights (SLOVAK CC art. 684).
17. Under U. K. law, the obligation to ensure the availability of leased goods throughout the lease period is regulated by the Supply of Goods and Services Act 1982. In ENGLAND, WALES and N. IRELAND, sec. 7(2) implies into all contracts for the hire of goods a warranty that the lessee will enjoy "quiet possession" of the goods for the period of hire. An exception is however made for "disturbance" of quiet possession by the lessor, or by a third party with a charge or encumbrance over the goods made known to the lessee prior to conclusion of the contract. Non-performance with regard to this implied warranty gives the lessee the right to damages reflecting the extent of the injury to the lessee's (possessory) interest in the goods and may be set in diminution or extinction of the rent payments due (Chitty (*-Beale*) on Contracts II[29], § 33-073). Further, if the lessor wrongfully retakes possession of the goods, the lessee may seek the exercise of the court's discretion to order specific delivery of the goods (sec. 3 of the Torts (Interference with Goods) Act 1977). It will generally not give the lessee a right to terminate the contract (see Chitty (*-Beale*) on Contracts II[29], § 33-074 and *Treitel,* The Law of Contract[11], 804–805 more generally). It should be noted that the law also imposes an implied condition that the lessor holds the right to transfer possession of the goods for the period of the lease (Supply of Goods and Services Act 1982, sec. 7(1)). Liability for non-performance of obligations implied by law may be excluded or restricted by a party acting in the course of business (Unfair Contract Terms Act 1977, sec. 1(3)) only insofar as the exclusion or restriction fulfils the requirement of reasonableness (Unfair Contract Terms Act 1977, sec. 7(4)). Section 11H(1) and (2) of the Supply of Goods and Services Act 1982 contains the corresponding provisions concerning title and "quiet possession" in SCOTLAND. In this case however the implied term as to quiet possession is not classified as a warranty or a condition, the distinction bearing a different meaning under SCOTTISH law. Attempts to exclude or restrict liability for non-performance of the statutory obligations to ensure quiet possession have effect only insofar as incorporation of such terms is fair and reasonable (Unfair Contract Terms Act 1977, s. 21(1)(b)). In IRELAND, the corresponding implied warranty (which covers charges and encumbrances, as well as quiet possession) is to be found in sec. 88 of the Consumer Credit Act 1995. Further, a term attempting to exempt the agreement from these implied provisions shall be void (sec. 79(2)).
18. See also CZECH CC art. 664 (maintain the leased goods in the state agreed by the parties or in a state allowing the normal use of the goods) and art. 684 (protect the lessee against third parties asserting rights in the goods); LITHUANIAN CC arts. 6.485, 6.486; MALTESE CC art. 1539 litra c; PORTUGUESE CC art. 1037; SLOVENIAN LOA art. 592 (material defects) and art. 599 (legal defects).

Article 3:102: Conformity with the contract at the start of the lease period

To conform with the contract at the start of the lease period, the goods must:
(a) be of the quantity, quality and description required by the terms agreed by the parties;
(b) be contained or packaged in the manner required by the terms agreed by the parties;
(c) be supplied along with any accessories, installation instructions or other instructions required by the terms agreed by the parties; and
(d) comply with IV.B – 3:103.

Comments

A. Conformity at the start of and throughout the lease period

1. Conformity The condition of the goods regarding quality and quantity is normally a crucial issue in any lease contract. The lessee's use of the goods and the benefits gained by this use depend heavily on the condition of the goods. The word "conformity", together with its antonym "lack of conformity", is used to denote the relationship between the lessee's justified expectations under the contract and the factual state of the goods. The condition of the goods, in terms of both quality and quantity, can be determined by the parties in their individual agreement. Default rules on conformity of the goods at the start of the lease period are found in the present and the following Article. The rules are parallel to the rules on sales contracts (Book IV.A).

2. Distinguishing conformity at the start of the lease period and during the lease period The lessor typically has obligations concerning the condition of the goods both at the start of the lease period and during the lease period. This is a significant difference in comparison with sales contracts, where conformity as a rule is established upon delivery (the time when risk passes). One might ask whether it is necessary to distinguish between the lessor's obligation concerning conformity at the start of the lease period and the obligation concerning conformity during the lease period. A distinction should be made for at least two reasons. First, the requirements concerning the condition of the goods are normally not exactly the same during the lease period as they are at the start of the lease period. This is obvious in contracts where the duty to repair and maintain the goods is shared between the parties. Even where the lessor is obliged to keep the goods in the original condition throughout the lease period, the lessee must normally tolerate some discrepancies due to ordinary wear and tear. Second, the remedies for non-performance can be influenced by differences in factual situations: during the lease period it is quite possible that non-conformity is caused by factors beyond the lessor's control and even by the lessee's own non-performance.

B. Conformity at the start of the lease period

3. **Individual agreement and default rules** The parties normally agree at least on the basic requirements of quantity and quality of the leased goods. In some cases the goods are described in great detail, either directly in one or more contract documents or by referring to certain technical standards etc. In other cases the goods are not described at all beyond the identification of a certain thing or of goods of a certain kind. It may, however, be possible to determine the quantity and quality of the goods to some extent by taking into consideration the lessor's knowledge of the lessee's intended use of the goods and other circumstances. Sometimes one has to look at default rules – objective law regulating the contract where the parties have not agreed otherwise. The default rules may be more or less specific. In their most general form the default rules refer to reasonableness and other abstract principles. For lease contracts, the present Article refers to the individual agreement, while some default rules are found in the next Article, even if referred to already in the present Article. In addition, the general rules in Book II and Book III apply. It should be noted that it is not necessary – and not always possible – to distinguish strictly between individual requirements and requirements in default rules.

Illustration 1
Lessee A agrees to lease a computer that lessor B will build based on the specifications of A's IT expert. When the computer is delivered, A discovers that it has insufficient capacity for the intended use. As the computer has been built in accordance with the specifications, it conforms to the contract and there is no non-performance.

Illustration 2
The construction business enterprise A agrees with B, a professional provider of construction equipment, to lease a building fence for a particular building site. Even if the contract has no specifications, it can be determined from the contract that B must deliver a fence that is long enough for this building site, and as B knows that the site is located in the centre of the town, it must conform to public requirements regarding traffic, pedestrians etc.

4. **Elements of agreed condition of the goods** The present article, that has a parallel in IV.A – 2:301 (Conformity with the contract), describes the elements of the agreed condition of the goods. The expression "quality, quantity and description", cf. limb (a), is wide enough to cover all aspects of the agreement concerning the condition of the goods. Limb (b) specifies that the goods must be contained and packaged in the manner required by the contract. These requirements may be relevant for lease contracts as well as for sales contracts, typically when the lessee picks up the goods and trusts that they are protected by proper packaging (cf. Illustration 3 to IV.B – 3:103 concerning default rules). Accessories and instructions are dealt with under limb (c); these elements may be specified in the parties' agreement. Limb (d) refers to the default rules in IV.B – 3:103. This means that, technically, the present Article includes requirements based both on the individual agreement and the default rules.

5. No provision concerning specifications etc. For sales contracts, IV.A – 3:102 deals with situations in which the buyer is to determine the form, measurements and other features of the goods and fails to provide such specifications. Under certain conditions, the specifications may be made by the seller and these specifications will then be binding for the buyer. It has not been found necessary to include a corresponding provision for leases, as the situation is less practical here than it is for sales contracts.

6. Relevant point in time for establishing conformity This Article fixes the relevant point in time for establishing conformity with the contract, namely the start of the lease period. Further, it follows from the Article that the condition of the goods *prior* to the start of the lease period, for example at the time when the agreement was concluded, is *not* relevant for establishing conformity with the contract – that is, of course, unless the parties have agreed otherwise. It is explained in Comment A2 that the distinction between requirements at this point in time and the requirements for the subsequent lease period may be of importance. A lack of conformity that was present at the start of the lease period, but unknown to both parties ("hidden defects"), is treated as a lack of conformity at the start of the lease period even if the effects become apparent only later. Thus, this may be non-performance of the lessor's obligations even in a contract placing the obligation of maintenance on the lessee.

7. Agreements on quality etc. compared with exemption clauses Rules on conformity and rules on remedies for non-conformity are closely related. The present Article states that the goods must meet the requirements of the contract to be in conformity with the contract. Lack of conformity is non-performance of the lessor's obligations. This could also be put another way: the lessee is entitled to remedies for non-performance if the goods do not meet the requirements of the contract. The model chosen in this Part of Book IV, operating with conformity as the link between the requirements of the contract on one hand and remedies on the other, is the same as in other Parts of Book IV and in many national systems. Sometimes, it may be difficult to distinguish between exemption clauses and description of the goods. If the goods are described only vaguely, or if the lessor is explicitly given a wide range of choice concerning what kind of goods are to be leased and the quality of the goods, this may have the same effect as a contract term limiting the lessor's liability. As a rule, this Part of Book IV is non-mandatory, even where remedies for non-performance are concerned, and the distinction between exemption clauses and description is not important. In consumer contracts, however, rules on remedies are designed to be mandatory. In these cases, a line must be drawn between description of the goods and derogation clauses. This is a problem common to several types of contract; it is hardly possible to give general guidelines as to how the line should be drawn. Further, giving the lessor a wide range of choice in defining the quality and quantity of the goods may be regarded as an unfair term, cf. Book II, Chapter 9, Section 4 and the EC Directive on Unfair Terms in Consumer Contracts (93/13) with annex.

Illustration 1
Lessor A and lessee B agree that B will, starting next month, lease a car of a certain brand and model with ten seats. However, it is a term of the contract that B shall have no remedies if the car provided does not conform to the contract. If the contract is a consumer contract, this is an invalid exemption clause, cf. IV.B – 4:102.

Illustration 2
The situation is the same as in Illustration 1, but this time there is a term allowing the lessor to provide a car of another brand or model or with fewer seats. Depending on the circumstances (the lessee's needs, the planned use of the car etc.) this term may be treated as an exemption clause which is invalid in a consumer contract, cf. IV.B – 3:106.

Notes

See notes to IV.B – 3:103

Article 3:103: Fitness for purpose, qualities, packaging etc.

The goods must:
(a) be fit for any particular purpose made known to the lessor at the time of the conclusion of the contract, except where the circumstances show that the lessee did not rely, or that it was unreasonable for the lessee to rely, on the lessor's skill and judgement;
(b) be fit for the purposes for which goods of the same description would ordinarily be used;
(c) possess the qualities of goods which the lessor held out to the lessee as a sample or model;
(d) be contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods;
(e) be supplied along with such accessories, installation instructions or other instructions as the lessee could reasonably expect to receive; and
(f) possess such qualities and performance capabilities as the lessee may reasonably expect.

Comments

A. Default rules on conformity

1. General The present article has default rules that supplement the individual agreement regarding the condition of the goods at the start of the lease period. Some of the provisions are closely connected to the individual agreement (particular purpose, sample or model), while others are more general (fit for ordinary purposes). Corresponding rules on sales contracts are found in IV.A – 2:302 (Fitness for pupose, qualities, packing etc.).

2. Fit for particular purposes Where the lessee has leased the goods for particular purposes and the purposes are known to the lessor, the goods should be fit for these purposes unless otherwise agreed. Often, the lessor is a professional and the lessee is a person without any special knowledge of the kind of goods in question. The lessor is then expected to either supply goods fit for the purposes or else warn the lessee that the goods are not fit for the purposes. However, this applies only where the lessee may reasonably rely on the lessor's expertise. The lessee cannot rely on the lessor's expertise if the par-

ticular purposes are not sufficiently made known to the lessor. The situation may also be such that the lessor's knowledge of the lessee's purposes is not sufficiently detailed. The lessee is typically in a better position to know about the intended use of the goods. Further, it may be that the lessee has more expertise concerning the particular kind of goods than the lessor. If both the lessor and the lessee are amateurs, and the lessee has no reason to expect more, the lessee can consequently not rely on any expertise on the lessor's side.

Illustration 1
A leases a small car from B, in order to drive from Amsterdam to Brussels. This qualifies as ordinary use of a small car, and does not constitute a particular purpose. However, when driving back from Brussels to Amsterdam, A is to tow another car. The small car is not capable of towing another car. If A has made the towing purpose known to B, and B has not informed A to the contrary, the car is required by the contract to fulfil this purpose.

3. Fit for ordinary purposes A more general rule is found in limb (b): the goods must be fit for the purposes for which goods of the same kind would ordinarily be used. This is, together with limb (f), a requirement of "ordinary standard". The basic requirement is that the goods can be used for their ordinary purpose. It must also be possible to obtain the normal benefit and results of use without extraordinary costs or difficulties. The goods must further comply with relevant legislation or other public or private requirements concerning for example safety. Technical standards etc. may be relevant. The provision refers to the ordinary purposes of use for goods of the "same description", irrespective of the actual contract. However, the reference to an ordinary standard must be seen in connection with the circumstances of the particular case. The requirements may vary according to the agreed rent, the agreed lease period, time available to prepare delivery, etc.

4. Sample or model Where the lessor has held out a sample or a model prior to conclusion of the contract, the leased goods must normally conform to the quality of this sample or model, cf. limb (c). The lessor may, however, have informed the lessee of differences to be expected, and the circumstances may also allow for certain discrepancies, e. g. a different colour.

Illustration 2
B leases a computer from A. The model demonstrated at the business premises of the lessor has a 19-inch screen, but the leased computer comes with a 15-inch screen. It does not conform to the contract, as the computer screen should be equal to that demonstrated at the premises of the lessor.

5. Packaging etc. The goods must be packaged or contained in an adequate way, cf. limb (d). This may be of importance for the lessee in connection with transport, storage and return of the goods. If goods of the relevant kind are normally contained or packaged in a certain manner the lessor has an obligation to make the goods available contained or packed in this manner – or to a higher standard. This applies even if there are terms in the individual agreement regarding packaging. When there is no standard manner of

containing or packing the goods, the standard required to preserve and protect the goods is decisive. These rules are of particular importance for contracts in which the burden of maintenance falls on the lessee.

Illustration 3
When the lessee arrives at home with the 48 crystal glasses leased for a wedding party, six of them are broken. The glasses were transported in the lessee's car with normal care taken. No instructions for transport were given. The glasses should have been packed so as to protect them from breakage in normal conditions of transport. The glasses did not conform to the contract.

6. **Accessories and instructions** The accessories, instructions etc. which the lessee may reasonably expect, cf. limb (e), depend on the circumstances. Instructions for maintenance may be needed if the goods are leased for a long period, but not if the goods are leased just for a few days or hours. The accessories necessary for normal use and safety must sometimes come with the goods, while the circumstances may indicate that accessories required for the lessee's particular purposes must be provided by the lessee.

Illustration 4
A copier is leased for two years and is installed by the lessor. The lessee can expect that the first toner cartridge is in place – but not necessarily included in the agreed rent – such that the copier is ready for use. Subsequent replacements must be ordered by the lessee. However, the situation may be different if the copier uses generic cartridges, not usually supplied by the lessor; in such cases it may be that the lessee cannot expect the copier to be installed with a cartridge.

Illustration 5
X leases a cabin cruiser for three weeks. The lessee can reasonably expect that there is a fire extinguisher on board when the boat is made available for the lessee's use.

7. **What the lessee may reasonably expect** A general provision is included in limb (f): the goods must possess such qualities and performance capabilities as the lessee may reasonably expect. This rule overlaps with several of the other rules of the present paragraph, but it expresses a general principle that may supplement the former limbs. As already noted in Comment A3, this rule, together with the rule in limb (b), expresses the requirement of "ordinary standard". The rule in limb (f) is closely connected to the rule in II. – 9:108 (Quality): if the quality cannot be determined from the terms agreed by the parties, from a rule of law or from usages or practices, "the quality required is the quality which the recipient could reasonably expect in the circumstances".

Notes

I. Overview

1. Legislation in European jurisdictions varies regarding the condition of the leased goods at the start of the lease period. The starting point is that the goods must conform to the

individual agreement. Some, but far from all, jurisdictions also have explicit provisions as to objective requirements on quality etc. Questions of conformity are usually addressed in connection with the lessor's obligation to make the goods available for the lessee's use, cf. notes to IV.B – 3:101.

II. Provisions explicitly dealing with objective standards

2. Requirements of conformity concerning the quality and quantity of the goods at the start of the lease period are mainly parallel with corresponding rules for sales contracts. In CISG art. 35(1) it is stated that the seller must deliver goods "which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract". Article 35(2) then has default rules – objective rules – on conformity. The most general requirement is that the goods must be "fit for the purposes for which goods of the same description would ordinarily be used". The same structure is found in national legislation on sales law based on CISG. For consumer sales there are corresponding rules in article 2 of Directive 1999/44/EC.

3. According to FRENCH CC art. 1720(1), the lessor has to deliver the goods "in a good state of repair in all respects" (*en bon état de réparations de toute espèce*, see also BELGIAN CC art. 1720(1)); regard must be had to usages and the nature of the goods (Rép.Dr.Civ. (*Groslière*), v° Bail, no. 184, with further references.); in practice the standard stipulated in the law (to deliver in a good state of repair) is often excluded by contract (*Huet*, Contrats spéciaux, no. 21163, 656, *Collart Dutilleul and Delebecque*, Contrats civil et commerciaux[7], no. 493, 429 ff.). In DUTCH law, there is a *gebrek* (a defect), implying non-performance of the lessor's obligations, if the object does not provide the enjoyment that a lessee may expect of a well-maintained object of the kind concerned (DUTCH art. 7:204 (2)). See also ITALIAN CC art. 1575 no. 1 (*in buono stato di manutenzione*); MALTESE CC art. 1540(1) (in a good state of repair in every respect). It has been pointed out that these standards are higher than those stipulated in sales law (see *Rescigno*, Codice Civile I[5], art. 1575, no. 3) and higher than for the maintenance of the goods (*Groslière*, loc. cit., no. 193). The provision in ITALIAN CC art. 1575 no. 1 is (in spite of the objective formula) understood as a concept referring to the agreed use (*Catelani*, Locazione[3], 196; *Cian and Trabucchi*, Commentario breve[8], art. 1575, no. II1). For BELGIAN law it is said that the obligation to maintain the goods in a state fit for contractual use implies delivering them in the same state (*La Haye and Vankerckhove*, Baux en général[2], no. 575). According to POLISH CC art. 662(1), the lessor should transfer the goods in a condition suitable for the agreed purpose, *Pietrzykowski*, KC. Komentarz, art. 662, Nb. 2, 207. If no particular purpose is known to the lessor, the goods should be of "average quality" (general rule from POLISH CC art. 357).

4. U. K. law deals explicitly with the condition of leased goods in the Supply of Goods and Services Act 1982. As a consequence, common law rules as to the quality and fitness of leased goods have become practically redundant (see Chitty (*-Beale*) on Contracts II[29], para. 33-068). Sections 8 – 10 (concerning ENGLAND, WALES and N. IRELAND) and secs. 11I – 11K (concerning SCOTLAND) set out the terms, regarding correspondence with description or with a sample and quality or fitness for a particular purpose, which will be implied into a contract for hire, by law. Under these provisions, the goods must correspond to their description (if leased by reference to a description); be of satisfactory quality (insofar as concerns fitness for all the purposes for which such goods are normally

supplied, appearance and finish, freedom from minor defects, safety and durability, as set out in sec. 18(3) (see Chitty (*-Beale*) on Contracts II[29], para. 33-070, no. 371); be reasonably fit for any particular purpose made known to the lessor expressly or by implication; and conform to the sample (if leased by reference to a sample). The above terms are implied by law as conditions in ENGLAND, WALES and N. IRELAND (theoretically giving the lessee the possibility of terminating the contract on breach). As against a consumer, a lessor contracting in the course of business may not exclude or restrict liability with regard to the above (Unfair Contract Terms Act 1977, sec. 7(2) in ENGLAND, WALES and N. IRELAND and sec. 21(1)(a)(i) in SCOTLAND). In other cases, exclusion or restriction of liability will have effect only to the extent that it satisfies the requirement of reasonableness in ENGLAND, WALES and N. IRELAND (Unfair Contract Terms Act 1977, sec. 7(2)) and only if it is fair and reasonable to incorporate such a term in SCOTLAND (Unfair Contract Terms Act 1977, s.21(1)(a)(i)). Similar terms are implied into hire-purchase contracts by the Supply of Goods (Implied Terms) Act 1973 (secs. 9–11), regardless of the amount financed and the status of the lessee. The Unfair Contract Terms Act 1977 further renders ineffective (absolutely or subject to certain conditions) any attempt to exclude these terms or the liability of the lessor for breach of such terms (cf. Chitty (*-Beale*) on Contracts II[29], para. 38–346). In IRELAND, terms regarding correspondence with description or with a sample and quality or fitness for a particular purpose, will also be implied into a lease contract by law (Consumer Credit Act 1995, sec. 88). A term of a lease which attempts to exempt application of sec. 88 will be void and unenforceable unless it can be shown that it is fair and reasonable (sec. 79(3)). Terms excluding or restricting liability with reference to these implied terms may also be struck out by the court.

5. The provision in SPANISH CC art. 1554 no. 1 is silent as to the standard required at the time of delivery of the leased goods. In the legal literature it is held that the lessor must deliver the goods in a state fit for the use they are destined for; that is the same state as for maintenance (art. 1554 no. 2). The law presumes that the lessee has received the goods in a good state, if nothing else is expressed, and the burden of proof shifts to the lessee to prove non-conformity (art. 1562). Also TS 25 Jun 1985, RAJ 1985, 3313).

III. Standard set by agreed use

6. Some legislation requires that the goods must meet the standard necessary for the agreed use: AUSTRIAN CC § 1096 (in useful state, cf. *Apathy and Riedler,* Schuldrecht BT, no. 8/19); ESTONIAN LOA § 276 (suitable condition for contractual use); GERMAN CC § 535(1) sent. 2 (*zum vertragsgemäßen Gebrauch geeigneten Zustand,* cf. MünchKomm (*-Schilling*), BGB III[4], § 536, no. 4); GREEK CC art. 575 (condition suitable for the agreed use); see also SWISS LOA art. 256(1) and note *II3* concerning POLISH CC art. 662(1). For SWEDISH law, it is held that the goods must be fit for the agreed use, *Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 194.

7. Under U.K. law, where the lessor leases goods "in the course of a business" and the lessee "expressly, or by implication, makes known … any particular purpose for which the goods are being [leased]", there is "an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied" (except where it would be unreasonable for the lessee to rely on the lessor's skill and judgement). This provision is implied by

sec. 9(4)–(7) of the Supply of Goods and Services Act 1982 into lease contracts in ENGLAND, WALES and N. IRELAND (see further, Chitty (*-Beale*) on Contracts II[29], para. 33-071). The same provision is extended to SCOTLAND by sec. 11J(5)–(8) of the Supply of Goods and Services Act 1982. An equivalent provision is implied into hire-purchase contracts by sec. 10(3) of the Supply of Goods (Implied Terms) Act 1973. IRELAND implies similar provisions into lease contracts under sec. 88 of the Consumer Credit Act 1995 and into consumer hire-purchase contracts under sec. 76(3) of the same Act, but only where the lessee is a consumer.

IV. Mixed approach

8. Some jurisdictions have a mixed subjective/objective approach: SLOVENIAN LOA art. 592 (agreed or customary use); LITHUANIAN CC art. 6.483(1) (in a state corresponding to the conditions of the contract and designation of the property, lessor can inform of defects at conclusion of the contract); see also PORTUGUESE CC arts. 1027 and 1032 1. sent.; SLOVAK CC art. 664 (fit for agreed use, or if no particular use is agreed, normal use (Svoboda (*-Górász*), OZ, art. 664, 611); cf. SLOVAK CC art. 496(2) with default rule on average quality); the rule is the same for CZECH law, cf. CZECH CC art. 664. Under HUNGARIAN law, there are general rules on conformity in HUNGARIAN CC §§ 277–311/A. The Consumer Sales Directive (1999/44/EC) was also implemented by amendment of these rules, affecting not only the rules on the sale and supply of goods, but also the rules on the lease of goods. The general requirements apply also to lease contracts, both at the time of delivery of the goods and during the whole period of lease; HUNGARIAN CC § 424 (1) – as a special rule for lease contracts – extends the applicability of the general requirements in § 277 to the entire duration of the lease.

Article 3:104: Conformity of the goods during the lease period

(1) Throughout the lease period and subject to normal wear and tear, the goods must:
  (a) remain of the quantity, quality and description required by the contract; and
  (b) remain fit for the purposes of the lease, even where this requires modifications to the goods.
(2) Paragraph (1) does not apply where the rent is calculated so as to take into account the amortisation of the cost of the goods by the lessee.
(3) Nothing in paragraph (1) affects the lessee's obligations under IV.B – 5:104(1)(c).

Comments

A. General

1. **Models** Regarding the condition of the goods during the lease period, different models are possible: the lessor may be obliged, throughout the lease period, to keep the goods more or less in the same condition as that required at the start of the period. The

opposite solution is to impose these obligations on the lessee. In principle, it could also be that neither party has obligations concerning maintenance and repairs, the situation then being that the lessee must tolerate deterioration or damage during the lease period and the lessor must accept the condition in which the goods are recovered at the end of the lease period. Intermediate solutions are more common: in such cases, the lessee must usually perform some maintenance and repair and the lessor must do the rest. The situations vary a lot. Typically, the obligation of maintenance etc. may be borne by the lessor alone in contracts for very short periods (some hours or days), while – at the opposite end of the scale – all work is left to the lessee where the lease period covers the entire economic lifespan of the goods and the lease contract in fact has the same function as a sale. The present Chapter is based on a mixed model where the obligations regarding maintenance etc. are distributed between the parties. The rules must be accompanied by a test of reasonableness, taking into account the circumstances of each case. A particular rule is included for contracts where the rent is calculated so as to take into account the amortisation of the cost of the goods, i. e. the intention is that the goods are leased to only one lessee. In these cases, the lessor should have no obligation to repair or maintain the goods, cf. paragraph (2) and Comment C9.

2. Conformity and availability It is noted in Comment *E9* to IV.B – 3:101 that loss of or damage to the goods – including theft – is regarded as a question of conformity and dealt with in the present Article.

3. Repairs, maintenance, wear and tear, duty of care Some activities are normally required to keep up the standard and functioning of goods that are leased. For most lease contracts it is therefore necessary to establish, by individual agreement or by default rules, to what extent each of the parties – lessor and lessee – must carry the practical and economic burden of such activities. There exist a wide range of possible options. Use of a leased gold bracelet hardly involves any costs at all, even if the lease contract should last for years, while use of a leased machine for heavy outdoor construction work may entail considerable costs each day. In national legislation, as in lease contracts and in everyday language, different expressions are used – expressions that normally have no precise meaning. Roughly, 'repairs' typically denotes measures taken to re-establish the normal condition after some damage to the goods, breakdown of vital parts etc., while 'maintenance' typically refers to ordinary activities – often at certain intervals – that are necessary to avoid deterioration and damage. By 'wear and tear' is normally meant ordinary and often inevitable traces of use that are typical for most goods that are not new any more, even if they are treated with care and properly maintained. The latter expression is found in the present Article, while the expressions 'repairs' and 'maintenance' are not used or defined in the provision. The activities are described in a way that does not necessitate a clear distinction between 'repairs' and 'maintenance'. It should also be noted that it is not always possible to distinguish a duty of maintenance from the duty of handling the goods with care or even from the daily operation of some devices. Necessary oiling of parts of a machine illustrates this as well. It is not necessary to distinguish between maintenance and duty of care for the purposes of the present Article.

B. Lessor's obligation

4. **Obligation to keep the goods in the original condition** The starting point concerning the lessor's obligations is found in the first paragraph of the present article: the goods must remain fit for the purpose and remain of the quality and quantity initially required. This means that the lessor must repair any damage to the goods and perform the necessary to maintain the original standard and functioning of the goods – with the exceptions commented below. The lessee must tolerate that the lessor's activities in this respect are likely to have some consequences on the normal use of the goods, cf. IV.B – 5:108.

5. **Fit for purposes – the dynamic aspect** At the start of the lease period the goods must normally be fit for the lessee's particular purposes, if known to the lessor, and for the purposes for which goods of the same kind would ordinarily be used, cf. IV.B – 3:103(2)(a) and (b). Conformity during the lease period should include that the goods remain fit for such purposes, even under changed circumstances. Typically, public security requirements may change during the lease period. Unless the parties have agreed otherwise, the lessor should be obliged to keep the goods fit for the relevant purposes. Sometimes this may imply repairs; in other cases the situation may be such that the goods can no longer be used at all.

Illustration 1
A farmer has leased a tractor for two years. After six months public safety requirements are amended, such that all farm tractors must now have a new type of steel frame protecting the driver. If the lessor will not – or cannot – install such a frame, this is non-performance of the contract.

6. **Wear and tear** The lessee must accept normal wear and tear for the kind of goods. The meaning of this expression is dealt with in comment *A3*. Normal wear and tear will typically not affect the functioning of the goods at all or at least not significantly. An example might be scratches to the paintwork of a construction machine. Minor deteriorations occurring during the intervals between regular maintenance measures work can also be regarded as normal wear and tear.

Illustration 2
A pair of alpine skis is leased for the season. At the end of the season, the steel edges of the skis are not as sharp as they were at the beginning of the lease period, to some extent reducing their performance capabilities. The skis still conform to the lease contract as long as the use is not significantly affected.

7. **Lessor's obligation negatively defined** Besides tolerating normal wear and tear the lessee may also be obliged to perform some activities necessary to maintain the standard and functioning of the goods, cf. the third paragraph of the present article and comments below. In addition, the lessee must handle the goods with care and in some exceptional cases intervene to take care of the lessor's interests, cf. IV.B – 5:104 and IV.B – 5:105. Unless otherwise agreed, the lessee has no other obligations to repair or maintain the goods than those stated in these provisions. The exceptions to the lessor's obligation to

keep the goods in the same condition as they were in at the start of the lease period are thus exhaustive and the lessor's obligation as stated in the first paragraph is negatively defined.

C. Lessee's obligation

8. General The second and third paragraphs of the present article are formulated as exceptions to the lessor's obligation stated in the first paragraph. The first exception applies where the rent is calculated so as to take into account the amortisation of the cost of the goods, typically in a lease for financing purposes, cf. Comment C9. The second and more general exception refers to the obligation of the lessee stated in IV.B – 5:104(1)(c) to preserve the normal standard and functioning of the goods. The lessee's obligation – and the corresponding exception to the lessor's obligation – will be commented upon here.

9. Leases with full amortisation of the cost In many cases, a lease contract is more or less functionally equivalent to a contract of sale. This is typically the case where it is intended that the cost of the goods will be amortised through one lease contract, the lease period then regularly covering the entire expected economic lifespan of the goods. Important examples are three-party transactions of the type covered by the Unidroit Convention on International Financial Leasing. The lessor has the role of a financing party and acquires the goods on the lessee's specifications from a supplier chosen by the lessee. The lessor's ownership of the goods serves the purpose of securing the claim for full payment of the rent for the entire lease period. As the full interest in the quality and functioning of the goods is vested in the lessee, it is usual to leave all maintenance to the lessee. On the other hand, the lessor normally cannot tolerate that the lessee be free to let the goods deteriorate, as the value of the goods during the lease period is decisive for the lessor's security interest in the goods. The lessee should, therefore, have a positive obligation to keep the goods in the condition they were in at the start of the lease period, subject to normal wear and tear for the kind of goods, cf. IV.B – 5:104(2). These observations are relevant not only to the three-party transactions referred to, but also to two-party transactions, often quite similar to conditional sales, with the exception that it is not agreed that ownership will pass. The criterion for relieving the lessor of the obligation of maintenance etc. (second paragraph of the present Article) and for placing a corresponding burden on the lessee (IV.B – 5:104(2)) should be the calculation of the rent, not whether it is a three-party or a two-party transaction. The formula chosen is amortisation of "the cost", meaning the total cost of the goods. Expressions like "the substantial part" of the cost (as the formula is in the Unidroit Convention) have been avoided as they are ambiguous (is more than half of the cost sufficient or must it be almost the total cost?). If the parties want to achieve the same regulation for a contract where only a part of the cost is amortised through rent payments (leases with "residual value" etc.) they must include this in their individual agreement. It should also be noted that the regulation in the second paragraph of the present Article and in IV.B – 5:104(2) implies that the lessee will bear the "risk" in case of damage to the goods by chance, theft of the goods etc., as the lessor has no obligation to repair or replace the goods, cf. also IV.B – 3:101(4), and the lessee has a positive obligation to keep the goods in the condition they were in at the start of the lease period, subject to wear and tear.

10. Measures ordinarily to be expected For lease contracts other than those discussed in Comment C9, the lessee's obligation concerning maintenance etc. is defined in IV.B – 5:104(1)(c), and a corresponding exception is included in the third paragraph of the present Article. The activities falling under the lessee's obligation include measures that must ordinarily be expected to become necessary during the lease period. What is to be expected depends on the character of the goods, the intended use of the goods and the length of the lease period. Taking the lease of a car as an example, no measures are to be expected, apart from refilling with fuel, if an ordinary car is leased for a weekend. If the car is leased for several months or for years, on the other hand, ordinary service checks, change of oil etc. must be expected, perhaps even a change of tyres. Repairs, such as installing a new windscreen or replacing parts of the engine, are not to be expected even within the scope of a long lease period. The situation may be different where a machine or vehicle is leased for rough or taxing use over a period of some weeks – in such cases, even a change of parts may become a measure to be expected. Whether or not the measures must ordinarily be expected is decisive in each case. Statistics may show that there are defects now and then in goods of the kind leased and that repairs are necessary in such cases. These are not, however, measures that must ordinarily be expected. The same is true for accidental damage to the goods, cf. the windscreen example.

11. Preserving normal standard and functioning The measures to be taken by the lessee are measures that are necessary to preserve the normal standard and functioning of the goods. Upgrading and renewal of the goods are not covered by the lessee's obligation. Repairs made necessary by damage to the goods are not measures required to preserve the normal standard and functioning of the goods. Thus, these measures are normally excluded from the lessee's obligation as not ordinarily to be expected, cf. Comment *C10*. It is irrelevant whether the damage is caused by a third party or by the lessee. In the latter case it may be that the lessor can claim damages, but the obligation to repair remains on the lessor's side.

12. Test of reasonableness The measures referred to in IV.B – 5:104(1)(c) and indirectly in the third paragraph of the present Article are only included in the lessee's obligation – and excluded from the lessor's obligation – to the extent that it is reasonable, taking into account the duration of the lease period, the purpose of the lease and the character of the goods. This test of reasonableness is required as a result of the wide spectrum of contracts covered by the provision. One example of the need for such a test might be a situation in which ordinary maintenance must be performed at certain intervals and the goods are leased just for short periods by subsequent lessees. Here it may be unreasonable to hold the particular lessee, at the time maintenance becomes due, responsible for the costs.

13. Co-operation with lessor The lessee's obligations under IV.B – 5:104(1)(c) may sometimes imply alterations to the goods that should not be performed without consulting the lessor. As a rule, the lessee has a right to perform what is necessary under IV.B – 5:104(1)(c). Should the situation be, however, that a reasonable lessee would understand that the lessor might have preferences concerning the measures to be taken, it follows from the lessee's general duty of care that the lessor must be consulted if possible.

Notes

I. Overview

1. In some jurisdictions the rule is that only the lessor has obligations of maintenance and repair of the leased goods. In other jurisdictions the obligations of maintenance and repair are divided between lessor and lessee. In addition it should be noted that the lessee's duty of care in using the goods cannot always be distinguished clearly from maintenance of the goods.

II. Lessor alone has obligations of maintenance and repair

2. According to AUSTRIAN CC art. 1096(1) the lessor is obliged, at his or her own expense, to maintain the leased object in a useful state (the code does not differentiate between maintenance and the standard at the start of the lease period; at the outset no duty to maintain is on the lessee). The lessor's obligation to maintain is limited to that which is possible and economically feasible. The obligation to maintain is independent of the lessor's fault and can be excluded by contract or transferred to the lessee (*Apathy and Riedler,* Schuldrecht BT, no. 8/20, Rummel (*-Würth*), ABGB I[3], § 1096, no. 5 ff.). If the goods become unfit for use due to an extraordinary event (fire, war, etc.) the lessor is not obliged to restore them (art. 1104).
3. Under DANISH law, the lessor has an obligation to maintain the goods througout the lease period (*Gade,* Finansiel leasing, 113–116).
4. According to GERMAN CC art. 535(1) 2. sent. the lessor must maintain the leased object during the lease period, in a state enabling the contractually agreed use (*Instandhaltungs- und Instandsetzungspflicht*). If the agreed use makes repairs necessary, the obligation of the lessor also includes those repairs (see MünchKomm (*-Schilling*), BGB III[4], § 535, no. 108). If the leased goods are destroyed without any fault of the lessor, the lessor is not obliged to restore them (Palandt (*-Weidenkaff*), BGB[66], § 535, no. 37). The obligation to maintain can be contracted out (MünchKomm, loc. cit., no. 114). Minor repairs in principle also lie on the lessor but in practice are often placed upon the lessee by standard contract forms (with limitations) or explicit agreement (MünchKomm, loc. cit., no. 130 ff.).
5. According to GREEK CC art. 575, the lessor is obliged to keep the leased object suitable for the agreed use during the whole term of the lease. This obligation entails: a) measures of maintenance and b) repairs in case of damage to the goods (*Filios* (1981), § 26 Δ II). Correspondingly, GREEK CC art. 591(1) provides that the lessor is obliged to reimburse the lessee for any necessary expenses, i. e. expenses required to keep the goods suitable. However, expenses directly connected with the exploitation and use of the leased goods (e. g. refilling a leased car with fuel) must be borne by the lessee. The lessee cannot demand reconstruction of a leased object that is totally destroyed by accident; in such a case the contract is terminated (*Georgiadis,* Law of Obligations, § 24, no. 10, fn. 7; *Rapsomanikis,* art. 590–592, no. 4). Furthermore, according to GREEK CC art. 592 the lessee is not liable for wear and tear brought about by stipulated use; again this is a provision which denotes that expenses of covering maintenance and repair as required by the agreed use fall to the lessor. These obligations of the lessor can be excluded by contract.

6. Under NORWEGIAN law, it is held that the lessor has an obligation to maintain the goods, with a possible exception for long-term leases, see *Falkanger,* Leie av skib, 347–349, *Hagstrøm,* Obligasjonsrett, 383.
7. According to SPANISH CC art. 1554 no. 2, the lessor must make all repairs during the lease period which are necessary to keep the goods fit for the destined use (*Díez-Picazo and Gullón,* Sistema II[9], 334), whether they have become necessary by the mere passing of time, ordinary use by the lessee or an accidental event or *fuerza mayor* (TS 9 Mar 1964, RAJ 1964, 1365). The lessor is only obliged to remedy damage, not to reconstruct (TS 16 Dec 1986, RAJ 1986, 7447). According to some authors, repairs caused by ordinary daily usage must be borne by the lessee, and special legislation has provided some support to this thesis (i. e. Urban Leases Act art. 21.4), cf. *Bercovitz,* Manual, Contratos, 174. PORTUGUESE CC art. 1036 refers to "urgent" repairs or other expenses, but seems to imply that repairs and expenses must be borne by the lessor. The article provides that if the lessor does not undertake repairs or cover other expenses, and these were urgent, the lessee may carry out such repairs with a right to reimbursement of expenses.
8. As referred to in the notes to IV.B – 3:101, the previously common view in SWEDISH law – that the lessor had an obligation to maintain the goods during the lease period – has met with opposition: *Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 194–197 (although the authors hold that the lessee may reduce the rent in case of deterioration or damage to the goods). The lessee only has an obligation of care (op.cit.).
9. Under U. K. law, unless special obligations are undertaken within the context of the contract, the lessee is not responsible for fair wear and tear (*Blackmore v. Bristol & Exeter Ry* (1858) 8 E & B 1035), nor is the lessee under any obligation to do repairs (*Sutton v. Temple* (1843) 12 M & W 52), except those which are naturally incidental to the due performance of his obligation to take reasonable care. Further, the lessee has no right to deliver the goods to a third party for repair, unless such a right has been expressly agreed in the contract (see Chitty (*-Beale*) on Contracts II[29], para. 33-079). The express reference to "durability" in sec. 18(3) of the Supply of Goods and Services Act 1982 as among the factors to be taken into account in deciding whether or not goods are of a "satisfactory quality" (sec. 9(2)) seems to confirm the idea that the terms implied by the Act continue to apply to the leased goods after possession has been transferred to the lessee (see Chitty (*-Beale*) on Contracts II[29], para. 33-072). There is some suggestion then that "satisfactory quality" (allowing for normal wear and tear) will be the standard of maintenance demanded of the lessor. The lessee under a hire-purchase contract is not responsible for fair wear and tear, unless the contract specifies the contrary. However, most hire-purchase contracts require the lessee to keep the goods in good order, repair and condition. The courts have held such clauses to imply a duty to keep the goods in such a condition as they may reasonably be expected to be in if the hirer looks after them properly (*Brady v. St. Margaret's Trust Ltd* [1963] 2 QB 494). See further Chitty (*-Beale*) on Contracts II[29], para. 38–285. Under SCOTTISH law, the lessor is liable for all major repairs and maintenance, and for any exceptional outlays incurred on the lessee, provided they were necessary, not due to the fault of the lessee, and notice is given by the lessee as soon as reasonably possible (*Bell,* Principles, § 145). By contract or by custom the lessee may be liable for ordinary running costs.
10. See also CZECH CC art. 664 (the lessor must maintain the goods in a condition appropriate to the agreed or normal manner of use), art. 721 (business leases, also rule on

substitute goods) and CZECH Ccom art. 633(1) (lessee must maintain a leased means of transportation); HUNGARIAN CC § 424 (minor costs of maintenance to be borne by the lessee); MALTESE CC art. 1539 lit. b (exception in arts. 1540, 1556 only for urban tenements); SLOVAK CC art. 664 (cf. *Lazar,* OPH II, 150).

III. Maintenance obligations also on lessee

11. According to FRENCH CC art. 1719 no. 2, the lessor is obliged to maintain the goods so they are fit for the use for which they have been leased. The lessor has to carry out all repairs that become necessary during the lease period and which are not borne by the lessee (FRENCH CC art. 1720(2), *réparations locatives*). Court cases concerning which repairs are to be borne by the lessee are numerous (*Malaurie/Aynès/Gautier,* Contrats spéciaux[14], no. 681). For immovables, FRENCH CC art. 1754 contains a specific list of repairs to be borne by the lessee, and the basic idea of this provision is also applicable to movables (*Bénabent,* Contrats spéciaux[6], no. 339). Generally speaking the repairs borne by the lessee's side are those corresponding to the current use of the goods (*Bénabent,* loc. cit., nos. 334–335 and 339). On the other hand, all repairs of importance and connected with the structure of the goods fall to the lessor (Rép.Dr.Civ. (*Groslière*), v° Bail, no. 196: *grosses réparations ou de réparations au gros œuvre*; see also no. 384 and *Huet,* Contrats spéciaux, no. 21166). For example, the lessee of a car has to bear costs for fuel, oil and a puncture, but a breakdown of the engine must be borne by the lessor; the lessee of an animal must feed and take care of it; but an operation should be covered by the lessor (*Bénabent,* loc. cit., no. 339, 247). According to FRENCH CC art. 1755, the lessee does not have to carry out repairs, even if they are of the kind usually borne by the lessee, if they have become necessary by *force majeure,* dilapidation or old age of the goods. The lessor is not obliged to reconstruct of the goods when they are destroyed by accident (FRENCH CC art. 1722). In other cases, the reason why reparations are necessary is of no relevance; if a third party damages the leased goods by delict, the lessor still has an obligation to maintain (Cass.Civ. 25 Feb 2004, Bull. Civ. 2004.III, no. 36). For similar discussion in BELGIAN law, see *La Haye and Vankerckhove,* Baux en général[2], nos. 588 ff. – DUTCH law distinguishes between repairs in general and minor repairs. The latter are the responsibility of the lessee according to DUTCH CC art. 7:217. As usual, the article is not mandatory.
12. According to ITALIAN CC art. 1575 no. 2, the lessor is obliged to maintain the leased goods in a state fit for the agreed use, and it is stated in ITALIAN CC art. 1576(1) that the lessor shall make all necessary repairs during the lease period, apart from minor maintenance. According to ITALIAN CC art. 1576(2), concerning movables, the lessee must bear the costs of conservation and ordinary maintenance of the goods (*le spese di conservazione e di ordinaria manutenzione*), subject to contrary agreement. The obligation to maintain ends when the goods are totally or partially destroyed (Scialoja and Branca (*-Provera*), Codice Civile, art. 1576, no. 3, 201, with further references).
13. In SWISS law, the lessor is obliged to maintain the leased goods (LOA art. 256(1), *in einem zum vorausgesetzten Gebrauch tauglichen Zustand*). According to SWISS LOA art. 259, the lessee must, corresponding to local usages, remove any minor lack of conformity during the lease period at his or her own expense, if this can be done by cleaning or small repairs necessary for ordinary maintenance. Concerning derogation in non-negotiatied terms, see BSK (*-R. Weber*) OR I[3], Art. 259, no. 4).

14. According to POLISH CC art. 662(1) the lessor must keep the goods fit for the agreed purpose. However, there is no obligation to restore the goods if they are destroyed by a casual event (POLISH CC art. 662(3). Minor repairs resulting from ordinary use must be borne by the lessee (POLISH CC art. 662(2)).
15. See also ESTONIAN LOA § 280 ("minor" defects must be borne by the lessee, i. e. "defects [that] can be removed by light cleaning or maintenance which is in any case necessary for the ordinary preservation of the thing"; for commercial leases also the lessee must carry out "customary small repairs" and replacing of "equipment and tools of low value if, due to their age or use, they have become unusable" (LOA § 345) and "feeding and caring for leased animals" (LOA § 347)); LITHUANIAN CC art. 6.492 (capital repairs on the lessor) and art. 6.493 (obligation of the lessee to maintain in a proper state and make "current" repairs); SLOVENIAN LOA art. 589(3) ("costs for minor repairs caused by the customary use of the thing and the costs of use itself shall be charged to the lessee").

IV. Leases with a financing purpose

16. It is stated for several countries that agreements are usual, under which the lessee has obligations of maintenance and repair in so-called leasing contracts, often justified by the lessor's interest in keeping up the value of the goods as a security: for AUSTRIAN law, *Fischer-Czermak,* Mobilienleasing, 66; for BELGIAN law, *Philippe,* Guide Juridique de l'entreprise[2], Leasing, no. 070; for CZECH law, CZECH law, Švestka *(-Novotný),* Civil Code, 1179 ff.; for DANISH law, *Gade,* Finansiel leasing, 117–119; ESTONIAN LOA § 363(2); for FRENCH law on *crédit-bail,* Ripert and Roblot (*-Delebecque and Germain*), Droit Commercial II[17], no. 2422; see also Rép.Dr.Com. (*Duranton*), v° Crédit-bail, no. 135; for GERMAN law, Staudinger (*-Stoffels*) (2004) Leasing, nos. 210 ff.; MünchKomm (*-Habersack*), BGB III[4], Leasing, no. 76; for GREEK law, *Georgiadis,* New Contractual Forms of Modern Economy, 67–68; LITHUANIAN CC art. 6.571(2)(4); for LUXEMBOURGIAN law, Cour Supérieure de Justice (Appel commercial) of 25 May 1977 Pas. luxemb. 23 (1975–1977), 533, note by *Mousel,* Journal des Tribunaux 1977, 694; POLISH CC art. 709[7]; in SWISS law, there is discussion (see *Honsell,* BT-OR[7], 420, *Tercier,* Les Contrats spéciaux[3], nos. 6928 ff. (result: lessee); different BSK (*-Schluep* and *Amstutz*) OR I[3], Einl. vor Art. 184 ff., nos. 93, 104 (lessor)). In the U. K., the usual risks and rewards of ownership are substantially transferred to the lessee under a finance leasing contract, including the risks of loss, destruction, depreciation, obsolescence and malfunctioning. The lessee also bears the costs of maintenance, repairs and insurance. Finance leasing contracts with non-consumers inevitably exclude the terms implied by the Supply of Goods and Services Act 1982 (with the reasonableness requirement generally fulfilled, see *R & B Customs Brokers Ltd. v. United Dominions Trust Ltd.* [1988] 1 WLR 321, at 331–332). See further, Chitty (*-Beale*) on Contracts II[29], para. 33-081.

Article 3:105: Incorrect installation in a consumer lease

Where, in a consumer lease, the goods are incorrectly installed, any lack of conformity resulting from the incorrect installation is deemed to be a lack of conformity of the goods if:
(a) the goods were installed by the lessor or under the lessor's responsibility; or
(b) the goods were intended to be installed by the consumer and the incorrect installation was due to shortcomings in the installation instructions.

Comments

A. Installation and lack of conformity

1. Overview The purpose of this Article is to make the rules on lack of conformity applicable to situations where the goods are installed incorrectly after the goods have been made available to the lessee and the installation is performed by the lessor or by the lessee according to the lessor's instructions. A parallel rule is found in the Consumer Sales Directive and in IV.A – 2:204 (Incorrect installation in a consumer contract for sale). For lease contracts the rule will apply to situations where installation is performed at the beginning of the lease period as well as situations where the installation is performed later, typically in the course of repairs or improvements to the goods. "Installation" should be read in its broadest sense, as covering both assembly of the parts made available to the lessee, the fitting of the goods to other objects and subsequent adjustments (e. g. connecting a leased washing machine) and the replacing or supplementing of parts.

2. Installation by the lessor The installation may be performed by the lessor or under the lessor's responsibility, for example where a safety seat is installed in a car or additional memory is installed on a leased computer, in both cases either at the beginning of the lease period or later on. If the installation is incorrect (the safety seat is not properly attached, the new memory does not function), this is deemed to be a lack of conformity under the contract, and the remedies for lack of conformity apply. There is then no need to discuss whether or not the installation should be seen as an "accessory" obligation, the non-performance of which would lead to consequences other than non-performance of the ordinary obligations under the contract. Normally, the negative effects caused by the installation are also to be treated under the rules on lack of conformity, as for example where ordinary car seats are torn up during installation of a safety seat or where additional memory installed on a computer causes a conflict with other functions.

3. Installation by the lessee If installation is to be performed by the lessee, the lessor is normally not liable for incorrect installation. An exception is made under limb (b) for situations in which incorrect installation is due to shortcomings in the installation instructions. Instructions that should have been provided by the lessor may be totally lacking or the instructions may be incomplete or misleading. In the absence of this Article it might be argued that the lessor is liable only for damages. The Article applies even where someone else, for example a household member, a friend or a professional,

performs the installation for the lessee, as long as the incorrect installation is a direct result of shortcomings in the installation instructions.

4. The installation must form part of the contract The present Article applies only where installation forms part of the contract, either as an obligation on the lessor or as an intention that installation is to be performed by the lessee. If installation becoms necessary because of repairs that are part of the lessee's obligations under the actual contract or because of improvements initiated by the lessee (with or without the lessor's consent, as the case may be), general rules should apply even where the lessee engages the lessor to perform the work or where new parts are bought from the lessor with installation instructions. This should not be seen as non-performance of the lease contract.

Notes

I. General

1. See in general notes to IV.A – 2:204 (Incorrect installation in a consumer contract for sale). See also notes to IV.B – 1:102 concerning the implementation of EU consumer protection rules in the field of leases. National law concerning installation and lease contracts in particular seems to be uncommon.

Article 3:106: Limits on derogation in a consumer lease

In a consumer lease, any contractual term or agreement concluded with the lessor before a lack of conformity is brought to the lessor's attention which directly or indirectly waives or restricts the rights resulting from the lessor's obligation to ensure that the goods conform to the contract is not binding on the consumer.

Comments

A. General

1. Mandatory rules in consumer leases The parties to a consumer lease are in most cases free to decide whether or not to enter into a contract and to agree on what is to be leased, when, for how long and at what price. On the other hand, the consumer's rights resulting from the lessor's non-performance may not, as a rule, be waived beforehand, cf. Comment *A4* to IV.B – 1:102 and Comment *B7* to IV.B – 3:102. The purpose of the present Article is to specify that derogation to the consumer's detriment cannot be achieved indirectly, for example by describing the goods in a way that it is, in real terms, a derogation from the lessor's obligation to ensure that the goods conform to the contract.

Illustration 1
X wishes to lease a suit for a wedding and contacts Y, a professional who leases wedding suits. The contract is concluded after X has seen a sample suit and measures have been taken. The contract includes a term in which the lessee accepts that size and colours may vary, depending on availability of suits in Y's shop on the relevant date. This term is not binding on X, as its effect is to waive the rights resulting from the lessor's obligation to ensure that the goods conform to the contract.

Notes

I. General

1. See notes to IV.B – 1:102 on the mandatory character of consumer protection rules. The present Article has parallels in IV.A – 2:309 and in the Consumer Sales Directive 99/44 art. 7(1).

Article 3:107: Obligations on return of the goods

The lessor must:
(a) take all the steps which may reasonably be expected in order to enable the lessee to perform the obligation to return the goods; and
(b) accept return of the goods as required by the contract.

Comments

A. Separate obligation to take goods in return

1. Lessor's obligation The lessor's obligation to accept the goods at the end of the lease period corresponds to the lessee's obligation to return the goods. The obligation implies for example informing the lessee of details concerning the place for return of the goods and accepting the goods. Normally, it is in the lessor's own interest to have the goods returned. Co-operating to make the performance of the lessee's obligation possible is, however, seen as an obligation in its own right, and if the lessor does not accept return of the goods, this amounts to non-performance on the lessor's side. It is not only in the lessor's interest that the goods are returned; it may be essential for the lessee as well to dispose of the goods and of the responsibility for keeping them. For environmental and security reasons goods should not normally be left unattended.

2. Right not to accept the goods? The situation may be that the lessee wishes to return goods that are not in the condition the lessor might expect, as a result of non-performance of the lessee's obligations of care and maintenance. The question of whether the

lessor may refuse to accept the goods and resort instead to remedies for delay must be answered on the basis of general rules of non-performance and remedies. It has not been found necessary to deal with this issue in the present article.

B. Remedies

3. **Remedies for non-performance** If the lessor fails to perform the obligation to accept the goods, general rules on remedies for non-performance apply. In this situation the practical remedy is damages for loss caused by the lessor's non-performance.

4. **Protection of the goods etc.** In addition to general rules on remedies for non-performance, III. – 2:111 (Property not accepted) applies. This means that the lessee has duties to protect and preserve the goods if the lessor does not accept them and further that the lessee may deposit, sell or dispose of the goods, as the case may be, and claim damages for loss incurred by such actions.

Notes

I. General

1. A general reference is made to the notes to III. – 1:104 (Co-operation) concerning the obligation to co-operate. National law on contracts of lease does not explicitly regulate the obligation to take the goods in return. It depends on the general approach under the relevant national law whether or not the lessor's co-operation in relation to return of the goods is regarded as a separate obligation. The parallel issue for sales contracts is taking delivery. According to CISG art. 60, the buyer is obliged to co-operate and to take delivery, and corresponding rules on sales are found in several jurisdictions.
2. In the U. K., there is a wide statutory power conferred on lessees to sell the goods if a lessor is in breach of his obligation to accept return of the goods (secs. 12 and 13 of the Torts (Interference with Goods) Act 1977). See further, Chitty (*-Beale*) on Contracts II[29] paras. 33-092 – 33-097.

Chapter 4:
Remedies of the lessee

Article 4:101: Overview of remedies

If the lessor fails to perform an obligation under the contract, the lessee is entitled, according to Book III, Chapter 3 and the rules of this Chapter:
(a) to enforce specific performance of the obligation;
(b) to withhold performance of the reciprocal obligation;
(c) to terminate the lease;
(d) to reduce the rent;
(e) to claim damages and interest.

Comments

A. Overview

1. **Relationship to the general rules in Book III** General rules in Book III, Chapter 3 on non-performance and remedies apply also to non-performance of obligations under a contract of lease of goods. Some derogations or additions are needed due to the characteristic traits of lease contracts. In the present Article a general reference is made initially to Book III, Chapter 3, while derogations and additions are found in subsequent provisions. Rules already found in Book III, Chapter 3 are thus not repeated.

2. **Lessee's remedies only** The present Chapter deals with the lessee's remedies only. Provisions on the lessor's remedies for non-performance of the lessee's obligations are found in Chapter 6.

3. **Listing of remedies** The list of remedies in this Article is exhaustive, but the remedies are described in general terms, while more specific rules are found in Book III, Chapter 3 and in the subsequent provisions of this Chapter. The term "reduce the rent" is used instead of the more general term "reduce the price", but the term "rent" is wide enough to cover any remuneration from the lessee, whether it is seen as an ordinary rent payment or a payment for additional services included in the contract.

B. Right to enforce performance

4. **Enforce specific performance** It follows from III. – 3:302 (Non-monetary obligations) that the creditor is entitled, subject to certain prerequisites, to enforce specific performance of the debtor's non-monetary obligation, including the remedying free of charge of a performance that is not in conformity with the contract. A lessee has this

right where the goods are not made available at all, where only some (or some part) of the goods are made available, where the quality of the goods does not conform to the contract, where third parties' rights interfere with the lessee's use of the goods, where the goods become unavailable for the lessee's use during the lease period, and where the lessor does not accept the goods at the end of the lease period. The lessee may further be entitled to enforce specific performance of other obligations undertaken by the lessor in the individual contract. Specific performance may, depending on the circumstances, entail making available unique goods under the contract, replacing goods, repairing non-conforming goods, eliminating third party rights and accepting goods that are returned by the lessee.

5. Exceptions There are several exceptions to the creditor's right to enforce specific performance, cf. III. – 3:302(2) and (3). Specific performance cannot be enforced where performance would be unlawful or impossible, unreasonably burdensome or expensive, or of such a personal character that it would be unreasonable to enforce it. For lease contracts the exception of unreasonably burdensome performance holds particular interest as the leased goods still belong to the lessor and often will be returned at the end of the lease period for the lessor's own use or for new lease contracts. The lessor may have good reasons to object to more or less irreversible modifications to the goods even where such modifications are not unreasonably expensive.

Illustration 1
X leases an antique bride's crown to wear on her wedding day. The crown has been in the lessor Y's family for centuries. By mistake, Y gives X incorrect information on the size of the crown, and it does not fit. This amounts to a lack of conformity under the contract, but the lessee is not entitled to have the crown altered, whether by the lessor or someone else, as it would be unreasonable to make changes to an heirloom like this, irrespective of any loss of economic value that might result from the change.

C. Right to withhold performance

6. General rules According to III. – 3:401 (Right to withhold performance of reciprocal obligation), a party who is to perform "at the same time as, or after, the debtor performs has a right to withhold performance of the reciprocal obligation until the debtor has tendered performance or has performed". This rule applies also where the other party has performed, but the performance is not in conformity with the contract. Further, the above-mentioned Article states that the performance which may be withheld is "the whole or part of the performance as may be reasonable in the circumstances". Withholding performance is also allowed where the creditor "reasonably believes that there will be non-performance by the debtor when the debtor's performance becomes due". Thus the rule is made applicable even in certain cases where the withholding party is to perform first.

7. **Purposes of withholding performance** A distinction should be made between the rule on withholding performance and rules on the time for performance: in many cases it is agreed, or there is a presumption, that the parties are to perform simultaneously. In such cases, waiting for the other party's performance is not, strictly speaking, a remedy for non-performance. The party's performance is simply not due. The right to withhold performance – in the strict sense – has two main purposes, namely to protect the withholding party against granting credit and to give the other party an incentive to perform. The first of these purposes – protection against granting credit – has various aspects, depending on the type of contract and on the circumstances. If a lessee pays the rent before the goods are made available the lessee takes the risk of ending up with an unsecured claim in the lessor's insolvency proceedings. However, withholding performance with the aim of securing claims arising from the other party's non-performance can also be seen as protection against granting credit: a party having for example a right to claim damages for non-conforming performance should not be obliged to perform the full amount, and in so doing take the risk that the other party will not be able to pay the damages. This may also provide a guideline for the test of reasonableness in III. – 3:401: the party should normally be allowed to withhold so much as is needed to secure the party's remedies for non-performance.

8. **Withholding performance distinguished from set-off** The provision in III. – 3:401 establishes no right to withhold performance after the other party has performed and therefore does not cover the situation where the aggrieved party wants to withhold performance in order to secure remedies for non-performance at a stage where the other party has performed, as for example where the performance was late and the aggrieved party may claim damages for consequential loss. This is a question of set-off, cf. Chapter 6 of Book III.

9. **Withholding of performance and rent reduction** As will be discussed in Comment *E13,* rent reduction is seen as a remedy for non-performance, not as a question of whether rent has been incurred or not. Hence, suspending rent payment because of non-performance is a question of withholding performance (or of set-off, as the case may be).

10. **Withholding rent** Rent is in most cases payable at the end of certain intervals or at the end of the entire lease period, cf. IV.B – 5:102. If the goods are not available for the lessee's use at the time for payment or the goods still do not conform to the contract, the lessee may withhold the whole payment or parts of it. Where the goods have been delayed, but have already been made available at the time established for payment, the lessee may – according to the rules in Book III, Chapter 6 – set off a claim for rent reduction or for damages against the lessor's claim for payment, cf. Comments C8 and C9.

D. Right to terminate the contract for fundamental non-performance

11. **Fundamental non-performance** The lessee may terminate the contract if the lessor's non-performance is fundamental, cf. III. – 3:502(1). A definition of fundamental non-performance is found in III. – 3:502(2), where the general criterion is the following (limb (a)): the non-performance is fundamental if it "substantially deprives the creditor of what

the creditor was entitled to expect under the contract …" According to limb (b), intentional or reckless non-performance is fundamental if it gives "the creditor reason to believe that the debtor's future performance cannot be relied on". In lease contracts the prospects of future performance will typically be crucial in judging whether non-performance is fundamental under limb (a), and whether or not non-performance is intentional or reckless under limb (b).

12. **Termination of a part or rent reduction?** According to III. – 3:506 (Scope of right when obligation is divisible), termination will in many cases affect only a part of the contract where the obligations under the contract "are to be performed in separate parts or are otherwise divisible", if there is a "ground for termination … of a part to which a counter-performance can be apportioned". As applied to leases, this rule implies that the lease contract can be terminated for example for a period of time where the goods have not been available for the lessee's use, or where the goods have been available but only with a serious lack of conformity, even if this period is in the middle of the lease period. The idea of a termination which does not bring the obligations under the contract permanently to an end may be regarded as surprising in some national systems, at least as far as leases are concerned. For all practical purposes a rent reduction for the relevant period of time, cf. Comment *E13,* will lead to the same results. As the creditor can choose between partial termination and rent reduction, no exception to the rule in III. – 3:506 has been found necessary.

E. Right to rent reduction

13. **Rent reduction or rent not incurred?** According to III. – 3:601 (Right to reduce price), non-performance may give a creditor a right to a proportionate reduction in the price. This rule should obviously apply to lease contracts in situations where the goods are made available for the lessee's use, but at a reduced value because of quality defects, third party rights etc. However, for periods where the goods are not available for the lessee's use at all, it may be questionable whether any rent has been incurred. Under this Part of Book IV, the rent reduction rule is meant to apply also to periods in which the goods are not available. There are two reasons for this. First, this rule makes it unnecessary to make a sharp distinction between lack of conformity and non-availability. It may well be that the goods are made available to the lessee, but in a condition entirely unfit for use. In other situations the value of the goods may be substantially reduced for a period, even if the lessee can still make some use of the goods. The right to rent reduction is flexible enough to permit reduction to zero. Second, application of the rent reduction rule makes the system of remedies more consistent and simple, as there is no need to distinguish between "off-hire" periods and rent reduction. It must be added that other solutions may follow from the individual contract. A rule on rent reduction is included in IV.B – 4:104 to avoid misunderstandings on this and other points concerning the application of the general rules on price reduction. As discussed in Comment *D12,* the creditor may have a choice between price reduction and partial termination.

Illustration 2
A leased computer breaks down one month after it has been made available to the lessee. The computer is brought to the lessor for repair, which takes one week. Rent is paid in advance every month. The lessee has a right to reduce the rent by one fourth of the monthly rent and can set off this amount against the rent for the following month.

14. **Proportionate reduction** According to III. – 3:601(1), the price reduction "is to be proportionate to the decrease in the value of what was received by virtue of the performance at the time it was made compared to the value of what would have been received by virtue of a conforming performance". If the rent is agreed for certain periods, the agreed rent will normally indicate the proportionate reduction in value for periods where the goods have not been available. In other cases the reduction in value must be established using other criteria.

F. Right to damages and interest

15. **General rules apply** Rules on damages for loss caused by non-performance and on interest for delay in payment of money are found in Book III, Chapter 3, Section 7. These rules also apply to lease contracts. Reference to interest is made in the present Article, even though the lessor's obligations are normally non-monetary. For reasons that will be explained in the comments to IV.B – 4:105, a small derogation has been found necessary concerning substitute transactions.

16. **Lease period and liability** If the lessee terminates the contract for fundamental non-performance the general measure for calculation of loss is the following: the lessee must be put "as nearly as possible into the position in which the creditor [here: the lessee] would have been if the obligation had been duly performed", III. – 3:702 (General measure of damages). For lease contracts for an indefinite period, it should be noted that the lessor is not bound for a longer time than the required period for notice of termination. The lessee must accept that the lessor could have given notice of termination at the time the lessee terminated the contract.

G. Preconditions of remedies

17. **Cure of non-performance** The lessor must in many cases be given a chance to cure non-performance, typically by remedying lack of conformity. The rules in Book III, Chapter 3, Section 2 apply without derogation.

18. **Notification of remedies, knowledge of non-performance etc.** IV.B – 4:106 deals with a further precondition for remedies, namely notification within a reasonable time, including a rule on the consequences of the lessor's knowledge of the lack of conformity at the time of conclusion of the contract.

Notes

I. Non-performance and remedies in general

1. The general rules in Chapter 3 of Book III apply also to lease contracts. The corresponding rules in national law – concerning e. g. non-performance as a unitary concept, excused non-performance and cumulation of remedies – differ, and these differences are of course found in national law on lease contracts as well. A general reference is therefore made to the notes to Chapter 3 of Book III. The following notes refer to lease contracts in particular.

II. Enforce specific performance

2. For general information on enforcing specific performance, see notes to III. – 3:302 (Non-monetary obligations). In some countries the creditor has, as a rule, a right to enforce specific performance, although with important exceptions; in other countries enforcement of specific performance is a discretionary remedy. In accordance with III. – 3:302, exceptions from the right to specific performance may be grouped as (i) cases of impossibility or unlawfulness, (ii) cases where specific performance is unreasonable, (iii) cases where performance is of a personal character or depends on a personal relationship. Note that in the U. K. and IRELAND, the remedy of specific performance will always be at the discretion of the court and is generally only available where damages are not adequate, quantifiable, or appropriate (see *Treitel,* The Law of Contract[11], 1019 – 1040 and *Keane,* Equity and Law of Trusts, §§ 16. 01 ff. respectively). In SCOTLAND, the remedy of specific implement is closer to the continental right, but has nevertheless been significantly influenced by ENGLISH law in this area to the extent that grant of the right is subject to equitable control and many of the rules restricting use of this remedy now apply in SCOTLAND.
3. The effects of *impossibility* (or unlawfulness) of performance may differ: the contract may be void, enforcement of specific performance may be denied, and there may be effects concerning liability for damages as well. The information here is concentrated on enforcement of specific performance. For AUSTRIA, see in general Rummel (*-Würth*), ABGB I[3], § 1096, no. 6. According to AUSTRIAN CC § 1112, the lease contract is terminated *ipso-iure* if the goods are destroyed, i. e. the leased object perishes totally (Koziol (*-Iro*), ABGB, § 1112, no. 1) or is finally lost (OGH 4 Nov 1980, EvBl 1980/70: destruction of an excavator; for an example of final loss, see OGH 17 Jun 1919, SZ 1/45). The rule is interpreted restrictively and does not apply if the lessor has an obligation towards the lessee to restore the leased object; such a duty can also result from requirements of good faith; as long as the reconstruction is legally and economically possible, the lessee can claim performance of the lessor's obligation (OGH 22 Jun 1994, SZ 67/112). AUSTRIAN CC art. 1112 can be regarded as a special rule within lease law for subsequent impossibility and is therefore regarded as an expression of what is economical and reasonable (*Riss,* Erhaltungspflicht, 187, 191). – Under CZECH law, the lease is terminated if the goods are totally destroyed, CZECH CC art. 680(1). Where the lessor is a business, the rule in CZECH CC art. 721 on substitute goods may also apply to such cases. – Under DUTCH law, *verhelpen* (remedying) of a *gebrek* (defect) cannot be claimed if it is impossible or requires expenditures which in all reasonableness cannot

be required of the lessor, or if the gebrek was caused by the lessee or concerns a minor repair, DUTCH CC art. 7:206(1). According to FRENCH CC art. 1722), the lease is terminated *ipso jure* (*résilié de plein droit*) if the leased object is destroyed entirely by a fortuitous event during the lease period (loss of the object is also mentioned in FRENCH CC art. 1741 as a cause of termination); in cases of partial destruction, the lessee may choose termination or price reduction. The courts have extended the rule to cases where the object is destroyed by the fault of one of the parties; although there will be a difference concerning liability for damages (*Huet*, Contrats spéciaux, no. 21157). For goods, interpretation of the contract may show that the lessor is obliged to replace destroyed goods (*Huet*, Contrats spéciaux, no. 21155). MALTESE CC art. 1571 also has a rule on termination *ipso jure* in case of total destruction of the object. – Under GERMAN law, if the leased object is totally destroyed the general rules on impossibility apply, which means that the lessee cannot claim specific performance (see Palandt (*-Weidenkaff*), BGB[66], § 535, no. 37 and (MünchKomm (*-Schilling*), BGB III[4], § 535, no. 112). The lessor is not obliged to invest insurance compensation in the reconstruction of leased goods (Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 536, no. 499). The general rule of GREEK CC art. 380 on impossibility of performance leads to *ipso jure* termination of the contract when the goods are totally destroyed by a fortuitous event. Depending on the circumstances, claiming repair of partially destroyed goods may be contrary to good faith (GREEK CC arts. 288, 281), destruction then being treated as total (Athens Court of Appeal 1022/2002 EllDik 43, 1485; 5178/1992 EllDik 34, 1097; *Filios* (1981), § 26 Δ II; *Georgiadis*, Law of Obligations, § 24, no. 10, fn. 7; *Kornilakis*, 217; *Rapsomanikis*, art. 575, no. 14 and arts. 590–592, no. 4). Under SWISS law, a claim for performance is limited by objective impossibility (arts. 97 and 119, BSK (*-R. Weber*) OR I[3], § 259b, no. 4). – Under HUNGARIAN law, the lease contract is also terminated *ipso jure* if the goods are destroyed, HUNGARIAN CC § 430(2). In ITALY, the obligation to maintain ends when the thing is totally or partially destroyed and the rules on subsequent impossibility apply (CC arts. 1463–1466, Scialoja and Branca (*-Provera*), art. 1576, no. 3, 201 ff.). Deteriorations, even substantial, must be repaired. In cases of partial destruction the lessee may choose to reduce the rent or to terminate the contract (art. 1464, Scialoja and Branca, loc. cit., 203). In SPANISH law, the lessor's obligation is extinguished and the contract comes to an end if the goods perish or have been lost without the lessor's *culpa*, cf. CC art. 1568, referring to art. 1182 and 1183; TS 17 Mar 1952, RAJ 19532, 499; TS 3 Mar 1951, RAJ 1951, 604. Note that the contract also comes to an end if the leased goods are lost due to the *culpa* of the lessor. In such cases, the lessee is entitled to claim for damages (*Bercovitz*, Manual, Contratos, 182). The lessor is only obliged to remedy damage, not to reconstruct (but see, for rules concerning urban dwellings, *Bercovitz*, Comentario, no. 1, 1849). According to SLOVAK CC art. 680(1) the lease is terminated if the goods are totally destroyed, irrespective of the cause of destruction. If the leased thing perishes totally, the lessor has no obligation to reconstruct the leased object; even where the the leased thing is restored, the lease contract is not renewed (*Lazar*, OPH II, 156). According to POLISH CC art. 662(3), if the leased goods have been destroyed as a result of circumstances for which the lessor is not liable, the lessor shall have no obligation to restore the goods and the lease agreement comes to an end. If the lessor is responsible for impossibility, the lessee may claim for damages. Under ENGLISH and WELSH law, where provision is not made in the lease contract (*force majeure* or hardship clauses), a lease which becomes impossible to per-

form (cf. *Taylor v. Caldwell* (1863) 3 B & S 826) through no fault of the lessee is discharged. Both parties are discharged of their obligations from the date of impossibility, without incurring any liability for breach. The financial consequences of frustration are taken care of by the Law Reform (Frustrated Contracts) Act 1943: a frustrated contract may either be unwound where sums have been paid (sec. 1(2)) or restitution awarded to the party which has provided a valuable non-monetary benefit (sec. 1(3)). In N. IRELAND, the same provisions are contained in sec. 1(2) and 1(3) of the Frustrated Contracts Act (Northern Ireland) 1947. In SCOTLAND, if a contract is frustrated, the obligations of the parties under the contract cease but there may be an equitable adjustment of the rights of the parties under the principles of unjust enrichment (*Cantiere San Rocco v. Clyde Shipbuilding and Engineering Co* 1923 SC (HL) 105). In IRELAND, the common law of frustration still applies.

4. Situations where performance by the lessor would be *unreasonably burdensome* are also sometimes regulated or commented upon particularly for lease contracts. For AUSTRIAN law it is said in general that the lessor's obligation of maintenance is limited where performance would be unreasonable or inefficient from an economic point of view (Rummel (*-Würth*), ABGB I[3], § 1096, no. 6, *Riss,* Erhaltungspflicht, 173 ff.). The burden of proof in these instances is on the lessor (*Riss,* loc. cit.). If the goods become entirely or partially unusable by an extraordinary event, the lessor is not obliged to restore them (CC § 1104; Rummel (*-Würth*), ABGB I[3], § 1104, no. 3). This can be seen as a special rule on changed circumstances within lease law (*Riss,* Erhaltungspflicht, 197). For DUTCH law, see note *113.* In FRENCH law, it is regarded as partial loss, and thus a cause for termination (or price reduction, see previous note) if the object has deteriorated to a degree where the cost of repairs would be disproportionate (*Huet,* Contrats spéciaux, no. 21166, Cass.Civ. 12 Jun 1991, Bull.civ. 1991.III, no. 169, *Collart Dutilleul and Delebecque,* Contrats civils et commerciaux[7], no. 468). The lessor is not obliged to reconstruct, even if the cost is covered by an insurance company (*Bénabent,* loc. cit., no. 355). Where the deterioration is merely the result of the lessor's non-performance of the obligation to maintain the object, the lessor must still perform (Rép. Dr.Civ. (*Groslière*), v° Bail, no. 210, *Bénabent,* Contrats spéciaux[6], nos. 334-5 and 355). If the agreed use becomes unlawful this is also seen as partial destruction. The lessor's loss of property in the object may also lead to termination (*Bénabent,* loc. cit., no. 355). – GERMAN law now has a provision in CC § 275(2) that corresponds to PECL art. 9:102(2)(b) (see explicitly Palandt (*-Heinrichs*), BGB[66], § 275, no. 26). For lease contracts (as before the *Schuldrechtsmodernisierung*), the so called limit of sacrifice applies (*Opfergrenze,* Palandt (*-Heinrichs*), loc. cit., no. 28) but has its basis now in GERMAN CC art. 275(2) (BGH 20 July 2005, NJW 2005, 3284, following MünchKomm (*-Schilling*), BGB III[4], § 535 no. 110). The cost of repairs must not be manifestly disproportionate bearing in mind the benefit of the repairs for the lessee, the worth of the leased object and the achievable earnings (BGH, loc. cit.). The issue of defects and impossibility remains as before (*Emmerich,* JuS 2006, 81, 82). If, in case of partial destruction, reconstruction is not reasonable for the lessor for financial reasons, the rule on changed circumstances applies (CC art. 313, Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 535, no. 90). For ITALIAN law, the rules on subsequent impossibility (see previous note) also take into account also economic criteria (Scialoja and Branca (*-Provera*), Codice Civile, art. 1576, no. 3, 201). The same applies for GREEK law (see previous note). In SPAIN, the lessor is only obliged to remedy damage, not to recon-

struct (TS 16 Dec 1986, RAJ 1986, 7447). The general rules in POLISH CC art. 357[1] on extraordinary change of circumstances apply also to lease contracts.

III. Withholding performance of the reciprocal obligation

5. A general reference is made to the notes to III. – 3:401 (Right to withhold performance of reciprocal obligation) concerning the rules on withholding performance of the reciprocal obligation in cases of non-performance of the other party's obligations. For lease contracts, a distinction must sometimes be made between the situations before and after the goods are made available to the lessee.
6. A general rule on the right to withhold reciprocal performance in cases of non-performance is found in CZECH CC art. 560. To the same effect, see DUTCH CC art. 6:262. The general rule in GERMAN CC § 320 applies also to lease contracts, both in cases of delay and of lack of conformity. In the latter case a claim for rent reduction may be combined with withholding of (parts of) the remaining rent to put pressure on the lessor (BGH 7 May 1982 BGHZ 84, 42, 45). For all see MünchKomm (*-Schilling*), BGB III[4], vor § 536, no. 15 ff., Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 536, no. 34 ff. The right to withhold rent is always connected with a claim for removal of non-conformity and has to be directed against the person responsible for such removals (BGH 19 June 2006, LMK 2006, 189.670, note *Blank*). The general rule on *exceptio non adimpleti contractus* in POLISH CC art. 488 applies also to lease contracts (*Panowicz-Lipska,* System Prawa Prywatnego, VIII, 9). In SCOTLAND, the principle of mutuality allows the lessee to withhold performance of a reciprocal obligation in response to the lessor's breach as long as there is a link between the breach and the performance withheld (*Bank of East Asia v. Scottish Enterprise* 1997 SLT 1213). The consequence is suspension of the contract until the breach has been cured. There is no precise equivalent amongst the available remedies in ENGLAND, WALES and N.IRELAND. However, the same result may be achieved in practice. Where there is a contractual breach giving rise to a right to terminate and the lessee elects to terminate (see further notes on termination below), the lessee is entitled to claim damages and, where there is a total failure of consideration (e. g. the equipment leased does not function), restitution. It is submitted that where the lessee would be entitled to restitution, on termination, of monies paid prior to the breach, he should also be relieved of liability to pay sums which have become due prior to termination (*Treitel,* The Law of Contract[11], 850). In this sense, he may refuse to tender performance of the reciprocal obligation. Under PORTUGUESE law, the lessee may suspend the payment of rent, totally or partially, if the goods are not made available or there is a lack of conformity (*Lima and Varela,* Código Civil Anotado, II, 375). In SLOVAK law, non-performance of the lessor's obligation may entitle the lessee to withhold the rent (Svoboda (*-Švecová*), OZ, art. 673, 618), even partially, cf. SLOVAK art. 674. In SPANISH law, non-performance leading to disturbances of the lessee's use of the goods may entitle the lessee to terminate the contract or to withhold rent for the period of the disturbances (SPANISH CC art. 1556; *Bercovitz,* Comentario, no. 1, 1839). The same solution can be reached through CC art. 1558 per analogy if it is not possible to use the goods according to the agreed contractual terms (*Bercovitz,* Manual, Contratos, 176).
7. For AUSTRIAN law it has been argued that the lessee cannot withhold the whole rent if the greater part of the leased object is being used (Rummel (*-Würth*), ABGB I[3], § 1096,

no. 10a, cf. no. 2). It is held that the *ex lege* rent reduction in the sense of CC § 1096 excludes a right to withhold in the sense of CC § 1052 (OGH 29 Mar 2004, SZ 2004/47, Koziol (*-Iro*), ABGB § 1096, no. 9 at the end); see for strong arguments in favour of withholding rent in addition to rent reduction, Schwimann (*-Binder*), ABGB V[3], § 1096, no. 97; cf. also *Riss*, Erhaltungspflicht, 232. It is debatable whether the lessee can withhold rent with reference to the general rule in SWISS OR art. 82 (on order of performance) or whether the SWISS art. 259d (rent reduction in cases on non-conformity during the lease period) is a *lex specialis* (see for all BSK (*-R. Weber*), OR I[3], art. 259d, no. 8).

8. For GREEK law, authors have argued that the general rule of CC art. 374, which covers cases of non-performance, as well as of improper performance (*exceptio non rite adimpleti contractus*, for which see *Stathopoulos*, § 17, no. 62), applies to lease contracts (*Dacoronia*, The plea of 374 CC as to the lease of a thing, 218 ff.; *Filios* (1981), § 29 Δ I; *Georgiadis*, Law of Obligations, § 25, no. 20). However, GREEK case law does not accept its application, as it has held that the lessee, if partially hindered in using the leased goods, is entitled only to rent reduction and not to withholding of the rent (A. P. 1557/1983 EEN 51, 624) and furthermore that the application of CC arts. 373 ff. is excluded by the specific provisions on leases (A. P. 83/2002 ChrID 2002, 214).
9. In FRENCH law, the lessee is in principle not allowed to resort to the (general) *exception d'inexecution* in cases of non-performance of the lessor's maintenance obligations, i. e. non-performance during the lease period. Exceptions to this principle can be made if it is impossible or almost impossible to use the object or there is a prolonged refusal by the lessor to perform necessary repairs (*Huet*, Contrats spéciaux, no. 21179, *Collart Dutilleul and Delebecque*, Contrats civils et commerciaux[7], no. 488, *Bénabent*, Contrats spéciaux[6], no. 334-5, 241). For the comparable discussion in BELGIAN law see *La Haye and Vankerckhove*, Baux en général[2], nos. 400 and 830, 559: suspension of rent payments only in exceptional cases, such as important impediments to use due to lack of maintenance; in general suspension must conform to rules on good faith. The rule in ITALIAN CC art. 1460 on *eccezione d'inadempimento* in principle applies also to lease contracts (see Scialoja and Branca (*-Provera*), Commentario del codice civile, art. 1571, 17). However, the prevailing part of doctrine and jurisprudence allows withholding of rent only where performance by the lessor is missing in its entirety (*Cian and Trabucchi*, Commentario breve[8], art. 1587, no. V5). The situation seems not altogether clear (see for example Cass. 11 Feb. 2005, 2855/2005, Giust.Civ.Mass. 2005, fasc. 4).

IV. *Termination of the contract*

10. Termination of a lease contract normally has effect only for the future, see e. g. for AUSTRIAN law, Rummel (*-Würth*), ABGB I[3], § 1117, no. 1, § 1118, no. 2; for FRENCH law *Bénabent*, Contrats spéciaux[6], no. 356; for GERMAN law, MünchKomm-BGB III[4] (-Schilling), loc. cit., § 542 no. 8; see also GERMAN CC § 543(1); for GREEK law, CC art. 587 sent. 1; for ITALIAN law *Rescigno*, Codice Civile I[5], § 1458, no. 3; for SPANISH law *Díez-Picazo and Gullón*, Sistema II[9], 338.
11. In GERMAN law, a long-term contract may be terminated without a period of notice if there is an important reason, GERMAN CC § 314, and non-performance of contractual obligations can, as the case may be, provide sufficient reason for termination. This principle is concretised for leases in CC § 543(2)(1). A similar rule is found in AUS-

TRIAN law: the lessee may terminate the lease without a period of notice if the lease object or a considerable part of it is not (or no longer) fit for the agreed use (AUSTRIAN CC § 1117). This is an expression of the general rule that continuous contractual relationships can be ended for an important reason (Schwimann (*-Binder*), ABGB V[3], § 1117, no. 2). According to SWISS OR art. 259b litra a, the lessee may give notice of termination with immediate effect if a defect reduces the suitability of a movable for its predetermined use. This rule is a *lex specialis* to SWISS OR art. 266g (termination of a lease for an important reason, see BSK (*-R. Weber*) OR I[3], art. 266g, no. 3 ff.). See also ESTONIAN LOA § 313 and Comment *D16* to IV.B – 2:102.

12. CZECH CC art. 679(1) contains a rule on termination of the lease for non-performance, termination here implying the the lease contract ceases to exist with effect from the beginning. A subsidiary rule of CZECH CC art. 517(1) on termination for delay may also apply. The right to terminate the lease cannot be contracted out (Švestka *(-Jehlička)*, Civil Code, 1191). According to the general rule in DUTCH CC art. 6:265, a contract may be terminated for non-performance of sufficient importance. A rule allowing for termination for non-performance of obligations under a lease is found in FRENCH CC art. 1741. According to general contract law, a court must decide whether there is sufficient reason for termination (CC art. 1184), see *Huet*, Contrats spéciaux, no. 21208 (see also note *IV14* below). Parties often agree on a resolution clause, but such clauses are interpreted restrictively (*Bénabent*, Contrats spéciaux[6], no. 356, *Collart Dutilleul and Delebecque*, Contrats civils et commerciaux[7], no. 490). GREEK CC art. 585 allows for termination of a lease contract where the goods are totally unavailable or only partially available for the lessee's use. Concerning the requirement of setting a reasonable time-limit for performance, see GREEK CC art. 585 sents. 1 and 2. For an exception to the right of termination in cases where the obstacles to use are insignificant or unimportant, see *Georgiadis*, Law of Obligations, § 25, no. 28; A. P. 633/2003 ChrID 2003, 519 cmt. by *E. Nezeriti*; cf. also *Kornilakis*, 249). For HUNGARIAN law, general rules on termination of contracts are found in HUNGARIAN CC §§ 319 – 323; for lease contracts, HUNGARIAN CC § 424 allows for *ex nunc* termination in cases of lack of conformity or conflicting third party rights. A general rule allowing termination for non-performance (that must not be of merely minimal importance) is also found in ITALIAN CC art. 1453, cf. 1455. A rule on termination of leases due to considerable non-conformity of the leased object is found in ITALIAN CC art. 1578. According to MALTESE CC art. 1570, a lease contract may be terminated for reasons of non-performance. According to POLISH CC art. 664(2), the lessee may terminate the contract if the goods cannot be used for the agreed purpose because of lack of conformity and the lessor fails to repair them. PORTUGUESE CC art. 1050 allows for termination of a lease contract in cases where the lessee is prevented from using the goods and where the goods have dangerous defects; it is held that this is not an exhaustive list of grounds for termination (*Lima and Varela*, Código Civil Anotado, I, 387). In SLOVAK law, the lessee may terminate the lease contract for non-performance, see CC art. 679(1); for termination where third parties' rights interfere with the lessee's use, see Svoboda (*-Fíger*), OZ, art. 684, 625. Under SPANISH law, termination is also one of the remedies for non-performance of a lease contract, see CC art. 1556 and 1568, the latter with a reference to the general rule in art. 1124.

13. Under U. K. law, the right to terminate the contract depends both on the nature of the contractual term breached and (where innominate terms are concerned) the conse-

quences of breach. The breach of a condition will always give rise to an option to terminate the contract. The breach of a term which is neither a condition nor a warranty (i. e. an innominate term) will give rise to an option to terminate the contract if the breach is both 'serious and substantial'. In SCOTLAND, the breach must merely be 'material', meaning that it must go to the root of the contract. In both cases, these breaches are called 'repudiatory'. An anticipatory breach of contract which is repudiatory has the same effect as an actual breach throughout the U. K. (*Hochster v. de La Tour* (1853) E & B678, QB; *Universal Cargo Carriers Corp v. Citati* [1957] 2 QB 401, QB), entitling the innocent party to elect to immediately terminate the contract. In none of these cases is termination on repudiatory breach automatic. The innocent party may elect to terminate the contract or may instead affirm the contract and claim damages. An election to terminate following breach must generally be notified and has only prospective effect. A termination clause is often inserted into commercial contracts but recently such clauses have been interpreted strictly (*Rice (t/a The Garden Guardian) v. Great Yarmouth Borough Council,* unreported, CA, 26 July 2000). IRISH law is similar.

14. For some jurisdictions (*inter alia* AUSTRIA, GERMANY, GREECE, HUNGARY, SLOVAKIA), the lessee may terminate the contract without intervention from the court; for other jurisdictions (*inter alia* FRANCE, ITALY, MALTA) such intervention is required.

V. Rent reduction

15. See notes to IV.B – 4:104

VI. Claiming damages and interest

16. See notes to III. – 3:701 (Right to damages) for general rules on contractual liability in different jurisdictions. In several jurisdictions there are, in addition to the general rules, particular rules concerning liability for loss caused by defects (lack of conformity) in leased objects.

17. The basis of a claim by the lessee for damages in cases of lack of conformity in AUSTRIAN law is CC § 933a (Schwimann (*-Binder*), ABGB V^3, § 1096, no. 110 f.), i. e. fault liability (see also note *II3* above) and no *Garantiehaftung* for defects present at the time of conclusion of the contract (*Riss,* Erhaltungspflicht, 239 fn. 780). The lessor is further liable for losses caused by his omission to repair as soon as possible (see OGH 4 Mar 1993, SZ 66/26, where delay seems to be the relevant criterion). Under CZECH law, the general rule in CZECH CC art. 420 applies (fault liability; see also the special rule concerning leases of a means of transportation, CZECH Ccom art. 631(2)). Fault liability is the main rule in DANISH law, also for leases, cf. *Gade,* Finansiel leasing, 147 – 151; *Bryde Andersen and Lookofsky,* Obligationsret, 315. A rule on damages for loss caused by a *gebrek* that was known to or is imputable to the lessor, is found in DUTCH CC. art. 7:208 (on DUTCH art. 7:209 and the possibility of derogating from the liability rule, see *Rueb/Vrolijk/Wijkerslooth-Vinke,* De huurbepalingen verklaard). According to ESTONIAN LOA art. 278 no. 3, the lessee has a claim for damages in cases of lack of conformity; cf. the general rules on excused non-performance (art. 103) and compensation for damage (art. 115). The general rule in FRENCH law is that the lessor is liable for non-performance with the exception of *force majeure,* see notes to III. – 3:701 (Right to damages). Liability for defects (*vices ou défauts*) of a leased object is dealt with in

FRENCH CC art. 1721: the lessor is normally liable for defects which affects the use or cause damage; for defects arising during the lease period, this rule must be seen in connection with the lessor's obligation of maintenance (*Huet*, Contrats spéciaux, no. 21170 ff.). For the corresponding rule in BELGIAN law, see *La Haye and Vankerckhove*, Louage de choses I[2], no. 660 ff. The main rule in GERMAN contract law is liability based on fault, meaning wilful or negligent non-performance, and this is the starting point if the leased goods are delayed or performance of repairs and maintenance is delayed, see GERMAN CC arts. 280, 286 and 276 and the particular rules for leases in art. 536a(1) second and third alternatives. For a lack of conformity already present at the time of conclusion of the contract there is a strict liability (*Garantiehaftung*) according to GERMAN CC art. 536a(1) first alternative, even if it was not possible for the lessor to know of the non-conformity (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 536a, no. 3: risk of hidden defects is on the lessor). This rule is applied accordingly where goods are to be produced (BGH 29 Apr. 1953, BGHZ 9, 320). The rule also covers losses caused as a consequence of the defect (*Mangelfolgeschaden*, BGH 21 Feb. 1962, NJW 1962, 908: bodily injury and loss of income). In GREEK law the lessee is entitled to damages in the following cases: (1) the agreed quality of the leased goods is lacking at the time of conclusion of the lease contract (GREEK CC art. 577 sent. 1, strict liability, Athens Court of Appeal 2647/1997 EllDik 39, 650); (2) lessor had or ought to have had knowledge of factual or legal defects existing at the conclusion of the lease contract (GREEK CC art. 577 sent. 2 and 583 sent. 1, fault-based liability); (3) a later lack of conformity (legal or factual defects, lack of agreed quality) due to the lessor's fault (GREEK CC arts. 578(1), 583 sent. 1); or (4) the lessor does not remedy (CC arts. 578(2), 583 sent. 1). The right to compensation covers any damage causally linked to the defect or the lack of the promised quality (i. e. positive damage and loss of profit), as well as further damage caused to the legal goods of the lessee as a consequence of the defect, e. g. bodily injury (*Georgiadis*, Law of Obligations, § 25, no. 25; *Kornilakis*, 227; *Rapsomanikis*, arts. 577–578, no. 8). A particular rule on liability for loss caused by defects (*vizi*) in leased goods is found also in ITALIAN CC art. 1578(2): if the lessor, without fault, was unaware of the defect when the goods were delivered, liability is avoided, cf. *Alpa and Mariconda*, Codice Civile Commentato, art. 1578, no. 6. It is held that the rule covers not only damage as a consequence of the defect but also loss as a consequence of the deprivation or diminution of the use (Scialoja and Branca (*-Provera*), Commentario del Codice Civile IV, art. 1578, 216 f.). According to MALTESE CC art. 1546 the lessor is liable for damage caused by hidden defects existing at the time of the contract, but only if the lessor knew of the defects or had "a reasonable suspicion thereof". Liability for delayed maintenance is governed by MALTESE CC art. 1542 (see also art. 1544). For SLOVAK law, see the general rule in SLOVAK CC art. 420 on fault liability. According to SPANISH CC art. 1556, the lessee can claim compensation for loss in case of non-performance by the lessor. It is held that this rule is applicable also to cases of hidden defects in the leased goods (*Díez-Picazo and Gullón*, Sistema II[9], 333 and 335). Consequential losses seem to be covered by SPANISH CC art. 1553, according to which the rules on elimination of defects in sales law (SPANISH CC art. 1474 ff.) are applicable to leases (subject to the necessary adjustments, see *Lacruz Berdejo*, Derecho de obligaciones II[2], no. 439, 128, also *Albaladejo*, Derecho Civil, II[12], no. 12, 640). Liability is dependent on the lessor's fault (*Lacruz*, loc. cit.). For SWEDISH law, a presumption of fault has been recommended (*Hellner/Hager/Persson*, Speciell avtalsrätt II/

1[4], 202–203). For lack of conformity during the lease period, fault is presumed under SWISS OR art. 259e, cf. Handkomm. OR (*-Permann*), art. 259e, no. 5. Under U.K. and IRISH law, all non-excused breaches by the lessor will automatically give rise to a claim in damages, contractual liability being strict. In the U.K. (including SCOTLAND), defects in title and in conformity (with description, sample, satisfactory quality, and fitness for particular purposes) of the goods are treated as breaches of conditions under the Supply of Goods and Services Act 1982. The lessee therefore has a right to elect to terminate or to affirm the contract and claim damages. This remedy is only limited by sec. 10A of the same Act, which specifies that where the lessee is not a consumer and the breach is so slight that it would be unreasonable to treat it as repudiatory, the breach will be treated as a breach of warranty (giving rise to a claim in damages only). A breach of the implied warranty concerning quiet possession will give rise to a claim in damages only. In IRELAND too, defects in conformity (with description, sample, merchantable quality, and fitness for particular purposes) of the goods are treated as breaches of conditions under the Consumer Credit Act 1995. Where the lessee is a consumer, he therefore has a right to elect to terminate or affirm the contract and claim damages. A breach of the implied terms as to charges and quiet possession gives rise to a claim in damages only. The U.K. rule is that damages for late or non-payment do not include interest. This rule is modified by the Late Payments of Commercial Debts (Interest) Act 1998, sec. 1(1) and (2), but only with regard to two parties acting in the course of business. Section 35A of the Supreme Court Act 1981 also gives the court a discretionary right to award interest on debts or damages. This provision applies to all contracts, but is subject to a number of limitations. In IRELAND, it appears that the court may order interest on damages for contractual breach to be paid from the date of judgment or from the date on which notice of interest accrual is given (Ireland (Debtor's) Act 1840), but there is no general duty on the lessee to pay interest on unpaid sums during the period of delay.

Article 4:102: Consumer leases

(1) The parties cannot derogate from the rules of this Chapter to the detriment of a consumer in a consumer lease.
(2) Notwithstanding paragraph (1), the parties may agree on a limitation of the lessor's liability for loss related to the lessee's trade, business or profession. Such a term may not, however, be invoked if it would be contrary to good faith and fair dealing to do so.

Comments

A. Mandatory rules on remedies

1. **Agreements excluding or restricting remedies** According to III.–3:105 (Term excluding or restricting remedies), the general rule is that remedies for non-performance may be excluded or restricted by a term in the contract, with the qualification, though,

that such a term may not "be invoked if it would be contrary to good faith and fair dealing to do so". For consumer leases (as defined in IV.B – 1:102) the main rule should be the opposite: agreements to the detriment of a consumer should not be allowed. Consumer protection is based mostly on the rules on remedies, while the parties are normally free to agree on performance: what is to be leased, at what price and for how long (but see IV.B – 3:106). An alternative could be to rely on general rules on unfair terms. This might, however, mean that the outcome would depend on the circumstances of the particular case. Making the rules on remedies mandatory offers a greater legal certainty in consumer contracts. The parties may, however, agree on derogations from the rules on remedies as long as the agreement is not to the detriment of the consumer. Further, an exception should be made for agreements limiting the lessor's liability for losses related to the lessee's trade, business or profession, cf. Comment *A4*. Agreements settling claims based on non-performance are also allowed, cf. Comment *A2*.

2. Settlement agreements What may undermine consumer protection is agreements made *beforehand*, i. e. before the consumer lessee knows of non-performance. The typical imbalance between the professional lessor and the consumer lessee with regard to bargaining power and information could, if derogations were allowed, lead to the exclusion of or restrictions to remedies in situations where the lessee has no real choice or is blind to the consequences of the derogation. This holds true both for the initial contract and later amendments. However, where the lessee is aware of non-performance and invokes one or more remedies, the parties should be free to agree on a settlement. In this situation, the lessor is already bound by the contract, and it is normally much easier for the lessee to appreciate the consequences of a settlement than those resulting from a prior agreement. Admittedly, there may be cases where a consumer for various reasons accepts a settlement that a professional party would have rejected, but this must be dealt with under the general rules on validity. It would be going to too far to restrict all possibilities of settling an actual claim. It is not always easy to distinguish settlement agreements from agreements excluding or restricting remedies. In most cases an agreement concerning non-performance cannot be made prior to the lessee's notification of the non-performance, unless it is clear that the lessee, without having notified, nonetheless knows that there is non-performance. A settlement agreement can typically not comprise future non-performance (as where the lessee is offered compensation "once and for all").

3. Relevant remedies It must be discussed with regard to each type of remedy whether or not a rule making the remedy mandatory is called for. As for the right to *enforce specific performance* of the relevant obligation, this remedy is already limited by general rules in order to avoid imposing an unreasonable burden on the debtor, cf. III. – 3:302 (Non-monetary obligations) and Comments *B4* and *B5* to IV.B – 4:101. Normally, a professional lessor has no need to limit even more the lessee's right to enforcement of specific performance. On the other hand, it may be said that enforcement of specific performance is in many cases a rather cumbersome remedy to pursue, in particular for a consumer, and that a limitation to this remedy would often be of small practical importance. However, in the situations where the remedy is most needed, for example where repair of the goods by someone other than the lessor is hard to obtain, the consumer should be protected against derogations in the contract. The best practicable solution seems to be that the remedy generally cannot be excluded by contract in consumer leases. The *right to withhold*

performance of the reciprocal obligation will protect the lessee from granting unsecured credit to the lessor and further give the lessor an incentive to perform. In particular the former of these effects is important to a consumer lessee. There is reason to believe that possible derogations from this right would lie precisely in those situations where the remedy was most needed. A consumer may not always appreciate beforehand the effects of a derogation clause. Both the right to *terminate the contract* and the *right to reduce the rent* are at the heart of the reciprocity of the contractual obligations: non-performance of the lessor's obligations has direct consequences regarding the lessee's obligations under the contract. Termination of the contract can sometimes be a drastic measure, entailing grave consequences for the lessor. It is, however, hard to see that there should be a legitimate need on the part of the lessor for derogation from a consumer lessee's right to terminate the contract in the case of fundamental non-performance, or to limit the effects of such a termination. As for *rent reduction*, derogations are hardly justifiable in consumer leases; they would imply that the lessee was obliged to pay full rent for a counterperformance of reduced value. The remedies just discussed should be mandatory, in the sense that they cannot be derogated from to the detriment of the consumer. The lessee's claim for damages, however, raises some particular problems, cf. next comment.

4. Limitation of liability for certain losses The lessee is entitled to damages for loss caused by the lessor's non-performance, III. – 3:701 (Right to damages), and the damages must as a rule "put the creditor as nearly as possible into the position in which the creditor would have been if the obligation had been duly performed" (Article 3:702 of Book III). The loss must, however, be foreseeable: "The debtor in an obligation which arises from a contract or other juridical act is liable only for loss which the debtor foresaw or could reasonably be expected to have foreseen at the time when the obligation was incurred as a likely result of the non-performance, unless the non-performance was intentional, reckless or grossly negligent", III. – 3:703 (Foreseeability). Even with this foreseeability test the lessor may want to limit liability for losses related to the lessee's trade, business or profession. Such losses may occur for example where the breakdown of a leased car causes the lessee to return late from a holiday. The loss is foreseeable, but it is still different from the typical losses suffered in consumer relationships and more difficult to calculate from the lessor's point of view. Agreements limiting liability for these kinds of losses should be allowed. The term cannot be invoked, however, if it would be contrary to good faith and fair dealing to do so. The term can, for example, normally not be invoked if the non-performance was intentional, reckless or grossly negligent.

5. Non-professional lessor The definition in IV.B – 1:102 of consumer leases does not include contracts between two non-professionals (consumer-to-consumer) or contracts between a non-professional lessor and a professional lessee (consumer-to-business). It should be considered whether or not there is a need for special rules on remedies in contracts where the lessor is a consumer (i. e. where the lessor is a natural person acting primarily for purposes which are not related to that person's trade, business or profession). There seems to be no reason to derogate from the general rules on remedies implying a temporary or permanent loss of income for the lessor, i. e. withholding of rent, reduction of rent and termination. These are remedies resulting from the reciprocity of the obligations and restricting the lessee's right to pursue them would mean an unacceptable imbalance in the contractual relationship. Normally, a non-professional lessor will not have

relied on the income from the lease to an extent that makes such remedies unreasonable. As for the lessee's right to enforce specific performance, including by remedying a lack of conformity, this may in some cases entail considerable costs for the lessor, in particular for a non-professional lessor often dependent on professional assistance from third parties. However, specific performance cannot be enforced where performance would be unreasonably burdensome or expensive, and this flexible rule makes it possible to take the lessor's situation into consideration. Thus, no particular rule for non-professional lessors seems to be necessary. Liability for damages may in some cases be burdensome for a non-professional lessor, in particular where the lessee is a professional who has suffered losses related to trade, business or profession. In IV.A – 4:203 (Limitation of liability for damages of non-business sellers), there is a rule limiting – with some exceptions – the liability of a non-professional seller to the contract price. It does not, however, seem appropriate to include such a rule for lease contracts. Where the lease period can be terminated by notice, the total rent amount may be very small compared with the loss normally to be expected as a result of non-performance, and the rule could put the other party in a most unsatisfactory position. The parties are free, within the general frame of good faith and fair dealing, to agree on limitations of liability, cf. III. – 3:105 (Terms excluding or restricting remedies). Further, the prerequisite of foreseeability, III. – 3:703 (Foreseeability) and the lessee's duty to reduce the loss, III. – 3:705 (Reduction of loss) will work in favour of the non-professional lessor as much as the professional lessor. In some cases, a non-professional lessor may invoke the excuse of impediment, cf. III. – 3:104 (Excuse due to an impediment), even if a professional lessor would not be in a position to do so in a corresponding situation (e. g. where the non-professional lessor could not reasonably have been expected to have taken the impediment into account or to have overcome its consequences). The conclusion is that there is not sufficient need to include special rules on remedies against non-professional lessors.

B. Non-mandatory rules on performance

6. Quality, quantity and price It follows from the principle of freedom of contract that the parties, consumers as well as professional parties, are free to agree on what goods are to be leased, their quantity and quality and the rent to be paid. Rules concerning these issues (cf. Chapters 3 and 5) are default rules intended to supplement the individual agreement. This is also the case for consumer leases: the lessee may well agree to lease goods of substandard quality or to pay more than the market price. Consumer protection is concentrated on remedies, cf. Comment *A1*, in addition to rules on pre-contractual information, the right to withdraw etc.

7. Descriptive terms restricting remedies Sometimes the terms of a contract are formulated as general descriptions of the performance while the real effect is to restrict remedies. This may be the case if the lessee agrees to "accept" the goods as they are at the time when the contract is made or declares to "know" the quality of the goods. Such terms may for example serve as a warning that the goods are not new, and that traces of earlier use of the goods must be expected. However, if the goods are in a condition worse than the lessee would reasonably expect under the circumstances, despite the above-mentioned contractual term, there is a lack of conformity and the ordinary rules on

remedies apply to a consumer lease (and often to other leases as well). Mandatory rules on remedies can of course not be circumvented just by the use of other words. This issue is dealt with in IV.B – 3:106 (see Comments to that Article). As a guideline, specific descriptions and warnings may be accepted while broad reservations regarding quality and quantity may be without effect.

Notes

I. General

1. See notes to IV.B – 1:102.

Article 4:103: Lessee's right to have lack of conformity remedied

(1) The lessee may have any lack of conformity of the goods remedied, and recover any expenses reasonably incurred, to the extent that the lessee is entitled to enforce specific performance according to III. – 3:302.
(2) Nothing in the preceding paragraph affects the lessor's right to cure the lack of conformity according to Book III, Chapter 3, Section 2.

Comments

A. Right to have lack of conformity remedied

1. Need for rules on lessee's own remedying of lack of conformity In Book III, Chapter 3, there are no rules explicitly dealing with the creditor's right to have a lack of conformity remedied and recover the costs from the debtor. In most cases this is a matter of damages: the cost of remedying the lack of conformity is part of the loss that the creditor can claim damages for, cf. III. – 3:702 (General measure of damages). The situation may even be such that the debtor is not liable for the loss that can be *reduced* by such remedying, cf. III. – 3:705 (Reduction of loss). In lease contracts there is an additional problem: the goods do not belong to the lessee, and it must be decided to what extent the lessee may be permitted to have work done to the leased goods. For this reason a provision on the lessee's right to have the lack of conformity remedied is introduced in the present Article. According to the first paragraph, the lessee may have the lack of conformity of the goods remedied and may recover reasonable expenses incurred, to the extent that the lessee is entitled to specific performance. This rule limits the lessee's right to remedy the lack of conformity both with regard to the kind of work that may be performed and with regard to the costs that may be recovered.

2. **Work that may be performed** The lessee may not claim specific performance – and therefore may not remedy a lack of conformity – where such performance would be unreasonably burdensome or expensive, cf. III. – 3:302(3)(b). "Unreasonably burdensome" may cover situations where the lessor has good reason to object to work necessary to remedy the lack of conformity, cf. Illustration 1 to IV.B – 4:101.

3. **Unreasonable costs** The lessee is not entitled to enforcement of specific performance – or to have a lack of conformity remedied – if it would be unreasonably expensive, cf. III. – 3:302(3)(b). This rule applies whether the remedying is to be performed by the lessor, by the lessee or by a third party. Should the lessee be willing to bear some of the costs, and claim refund only of reasonable costs, the lessee may have the work done, if it would not be unreasonable for other reasons, cf. Comment *A2*. The first paragraph of the present Article allows for recovery of expenses "reasonably incurred". This rule overlaps with the rule on limitations to the right to specific performance where the work will lead to unreasonable expenses in any case. However, the rule also applies where the lessee has chosen an unnecessarily expensive means of remedying the lack of performance, even if the costs are not disproportionate *per se*.

4. **Lessee's duty of care** The lack of conformity may be remedied by the lessee or the lessee's employees or by a third party. The lessee must handle the goods with care, cf. IV.B – 5:105. If the lessee plans to have work performed on the goods by someone that lacks the necessary qualifications, the lessor may object, as this will normally be unreasonable from the point of view of the lessor. The lessor can also claim damages for loss caused by the lessee's carelessness in this respect.

5. **Lessor's right to cure unaffected** The lessor normally has a right to cure if the lessee wants to exercise a remedy for non-performance, cf. Book III, Chapter 3, Section 2. In such cases, the lessor must be allowed the opportunity to remedy the lack of conformity before the lessee does so of his own accord.

Notes

I. Lessee's own remedying of non-conformity – general rules

1. Where the lessee performs work on goods belonging to the lessor this is sometimes seen in connection with the rules on benevolent intervention in another's affairs (*negotiorum gestio*), even if the work is performed predominantly in the lessee's own interest (see von Bar, *PEL Ben. Int.*, 64 and 67). According to AUSTRIAN CC art. 1097 second sentence a lessee who makes disbursements which the lessor was obliged to make (or useful disbursements) is regarded as an intervener in another's affairs (cf. AUSTRIAN CC art. 1036). The work does not have to be urgent; the lessee can even act against the wishes of the lessor (OGH 26 Apr 1961 EvBl 1961/295). It is sufficient that the expenditures were useful from an *ex-ante* perspective (OGH 31 Mar 1989, JBl 1989, 527), a final benefit for the lessor being no prerequisite for the claim (OGH 17 Sep 1974, EvBl 1975/122). A (mandatory) rule allowing the lessee to remedy a lack of conformity where the lessor is in default, and to recover reasonable costs, is found in DUTCH CC

art. 7:206(3). In FRENCH law, where the main rule is that the lessee needs a court order before performing work on the goods, it is also held that the rules on benevolent intervention in another's affairs may justify the lessee making necessary repairs (*Huet*, Contrats spéciaux, no. 21168; Rép.Dr.Civ. (*Groslière*), v° Bail, no. 223).

2. Some jurisdictions explicitly allow the lessee to remedy lack of conformity, and claim reimbursement, without reference to the rules on benevolent intervention in another's affairs. Thus according to ESTONIAN LOA § 279(3) the lessee may remedy if the lessor is late "or if the defect or obstacle only restricts the possibility of using the thing for the intended purpose to an insignificant extent". According to GERMAN CC § 536a(2) the lessee can remedy non-conformity and recover the costs as damages if the lessor late in remedying (no. 1) or if immediate remedying is necessary for preservation or restoration of the goods (no. 2). The alternative in no. 1 requires delay, which normally presupposes a reminder (see GERMAN CC § 286 sect. 2, in particular no. 3 and 4, Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 536a, no. 116 f.). For *other* disbursements, GERMAN CC § 539(1) refers to the rules on benevolent intervention in another's affairs, including the requirement of an intention to benefit another. According to GREEK CC art. 578(2), the lessee can remedy non-conformity and claim the costs as damages if the lessor is late in remedying. The lessor is also obliged (GREEK CC art. 591) to reimburse the lessee for any necessary expenses, i. e. expenses required to keep the goods suitable, while useful expenses, i. e. expenses which result in an increase in value of the leased goods, are reimbursed according to the provisions on *negotiorum gestio*. If there is no urgent need, the lessee is entitled to remedy the lack of conformity only after having notified the lessor (CC art. 589) and only if the latter is late in remedying (CC art. 578(2)) (*Georgiadis*, Law of Obligations, § 24 nos. 10–11). Under HUNGARIAN law, the general rules on remedies for defective performance apply. According to HUNGARIAN CC § 306 (3), the creditor, in this case the lessee, is entitled to repair the leased goods or have them repaired at the expense of the lessor, if the lessor does not undertake or does not accomplish the repairs within a reasonable time. It is stated in ITALIAN CC art. 1577(2) that the lessee may perform urgent repairs, with a right to reimbursement, provided that the lessor is notified. The consequences of an omission to notify are debated (*Alpa and Mariconda*, Codice Civile, art. 1577, no. 4: no consequence or application of CC art. 1227). According to POLISH CC art. 663, if the lessor does not repair defects that make the goods unfit for the agreed purpose the lessee may have the defects repaired and claim reimbursement of expenses. According to the SLOVAK CC art. 669, the lessee may perform repairs that were to be made by the lessor. The lessee has a claim for reimbursement if repairs were made with the lessor's consent or where the lessor has not performed the repairs in good time despite notification. If repairs were made without the lessor's consent or without notifying the lessor, the lessee's claim is limited to the lessor's enrichment (Svoboda (*-Švecová*), OZ, art. 669, 615). There is a similar rule in CZECH law.

3. The main rule in several jurisdictions is that the lessee's own remedying of non-conformity is allowed only after a court order. Thus, in FRENCH law the *droit commun* rules apply (FRENCH CC art. 1144, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 223). The lessor must be late; and the lessee requires the authorisation of a court to carry out remedies; under these conditions the lessee has a claim for reimbursement of expenditures (*Bénabent*, Contrats spéciaux[6], no. 334-5, 240 f.). A court order is generally also required by SWISS OR art. 98, but in lease contracts the lessee can within certain limits have non-con-

formity remedied without a court order (OR art. 259b(b), see Guhl (*-Koller*), OR[9], § 44, no. 41 and 42). The necessity of a court order for the lessee's own remedying of non-conformity is disputed in SPANISH law, cf. *Albaladejo,* Derecho Civil, II[12], 638 (court order required; cited by *Sánchez Calero,* Curso de Derecho Civil II[4], 382) and *Díez-Picazo and Gullón,* Sistema II[9], 334 (court order not required).

II. Right to enforcement of specific performance as limit

4. It is sometimes explicitly stated in national law that the right of the lessee to have non-conformity remedied against reimbursement presupposes that the lessor (still) has an obligation to remedy the non-conformity in question (for AUSTRIAN law, Rummel (*-Würth*), ABGB I[3], § 1096, no. 2; for GERMAN law, (indirectly) *Blank and Börstinghaus,* Miete[2], § 536a, no. 36; for FRENCH law, *Huet,* Contrats spéciaux, no. 21168; for ITALIAN law, *Alpa and Mariconda,* Codice Civile, art. 1577, no. 5). It is not always clear whether this refers to the right to reimbursement or to the right to have the work performed as well.

III. Lessor's right to cure not affected

5. General comments on the debtor's right to cure are found in the comments to Book III, Chapter 3, Section 2. Regarding the lessor's right to cure where the lessee wishes to remedy the non-conformity, it seems that the lessee does not necessarily have to give the lessor a chance to cure under AUSTRIAN law, as the lessee can take such steps without notifying the lessor and without the lessor even having knowledge of the work (Schwimann (*-Binder*), ABGB V[3], § 1097, no. 1). Nevertheless, under certain circumstances the lessee may be held liable for the negative effects of an omission to notify (Schwimann, loc. cit., no. 15: higher costs for the lessee than for the lessor; see also on legal defects, no. 8). Similar results seems to follow from CZECH CC art. 668. In ESTONIAN law (main rule), DUTCH law, GERMAN law, GREEK law, and FRENCH law, a certain delay is required before the lessee acquires a right to act. In FRENCH law, a court order is required in addition (see above), and this normally implies that the lessor has had a chance to cure. According to SWISS OR art. 259b(b), the lessor's knowledge is a precondition, and in legal writings it is said that a time limit given by the lessee is indispensable (Guhl (*-Koller*), OR[9], § 44, no. 41), thus giving the lessor a chance to cure.

IV. No right to remedy non-conformity

6. Since specific performance is a discretionary equitable remedy under U.K. law, the lessee has no legal right to independently remedy non-conformity and subsequently recoup expenses. The lessee may however elect to affirm the contract on breach and claim damages to cover the costs of remedying the non-conformity.

Article 4:104: Rent reduction

(1) The lessee may reduce the rent for a period in which the value of the lessor's performance is decreased due to delay or lack of conformity, to the extent that the reduction in value is not caused by the lessee.
(2) The rent may be reduced even for periods in which the lessor retains the right to perform or cure according to III. – 3:103, III. – 3:202(2) and III. – 3:205.
(3) Notwithstanding the rule in paragraph (1), the lessee may lose the right to reduce the rent for a period according to IV.B – 4:106.

Comments

A. Rent reduction

1. Clarification of the general rule The first paragraph of the present article clarifies the general rule on price reduction (III. – 3:601 (Right to reduce price)) for the purposes of lease contracts. Firstly, the lessee may reduce the rent as a consequence of delay or lack of conformity, i. e. for periods during which the goods are still not available and for periods during which non-conforming goods are accepted by the lessee, cf. Comments *D12* and *E13* to IV.B – 4:101 on rent reduction as opposed to an "off-hire" model. Secondly, it is made clear that rent may be reduced for the entire period during which the value of the lessor's performance is deminished. This means that the lessee may reduce the rent even for periods where the lessor has still not had a chance to cure a lack of conformity, for example by way of repairs. Whether or not it was possible for the lessor to cure is relevant to a claim in damages, but not to rent reduction. However, to the extent that the lessee caused the decrease in value, the lessee cannot reduce the rent. This rule, stated in III. – 3:101(3), is included in the present provision, as the wording might otherwise be regarded as too wide.

2. Derogation from general rules The second paragraph of the present article, in combination with the wording of the first paragraph, makes it clear that the lessee may reduce the rent even if the lessee has given notice allowing the lessor an additional period for performance. Under the general rule in III. – 3:103(2), the creditor may withhold performance during the additional period "but may not resort to any other remedy". This rule would lead to unfortunate results in lease contracts, where the lessee's performance is normally directly related to a period of time. For this reason, the lessee may also reduce the rent during the period allowed for cure. According to the general rule found in III. – 3:204 (Consequences of allowing debtor opportunity to cure), the creditor may withhold performance during this period "but may not resort to any other remedy".

Illustration 1
The engine of a leased boat breaks down. The lessor wants to replace the engine, and this can be done in one week. The lessee did not intend to use the boat much during the relevant week anyhow and cannot resort to termination of the contract. As the boat cannot be used at all while the engine is being replaced, the lessee can claim a rent reduction equal to one week's rent.

3. **Late notification** The third paragraph of the present article refers to the notification rule in IV.B – 4:106, according to which the lessee, in case of late notification, may lose the right to rely on non-performance for a period corresponding to the unreasonable delay to notification.

Notes

I. Non-performance and rent reduction

1. Rent reduction as a consequence of non-performance of the lessor's obligations is known to numerous jurisdictions throughout Europe. The scope and content of rent reduction rules vary. There is a close relationship between a claim for rent reduction and the content of the lessor's obligations. If a certain disturbance of the lessee's use of the goods does not amount to non-performance of the lessor's obligations, there is normally no rent reduction. Comparative notes on the lessor's obligations are found in Chapter 3.
2. In several jurisdictions there are general rules on rent reduction in cases of lack of conformity. According to AUSTRIAN CC art. 1096(1) 2. sentence, the lessee is entitled to a proportionate reduction in the rent for periods where the goods are *Mangelhaft* and thus not (fully) fit for the agreed use. The rule applies where the goods are not available for the lessee's use or the use is disturbed, even where the physical condition is not affected (*Stabentheiner,* Mietrecht, no. 61). The effect of the rule is that the lessor bears the risk where use is affected by a casual event (Rummel (*-Würth*), ABGB I[3], § 1117, no. 2); the fault of the lessor is not a prerequisite. For similar results under DANISH law, see *Gade,* Finansiel leasing, 136–137. Rules on rent reduction are found in CZECH CC art. 673 (the goods cannot be used in the agreed or normal manner), art. 674 (the goods can be used only to a limited extent), and art. 721 (corresponding rule for business leases). In DUTCH law, the lessee has a right to reduce the rent from the day that the lessor had sufficient information to take measures (or the day when the lessee informed the lessor of the *gebrek*) and up until the day the *gebrek* is remedied, DUTCH CC art. 7:207(1). According to ESTONIAN LOA § 296, the lessee may reduce the rent for any period where the goods have not been in conformity with the contract or not available for the lessee's use. The general principles of price reduction in ESTONIAN LOA § 112 apply as to the extent of the reduction (Estonian Supreme Court decision no. 3-2-1-84-05. RT III 2006, 39, 326). In GERMAN law the lessee is entitled to rent reduction where the goods presented a *Mangel* (lack of conformity) when they were made available to the lessee or where a *Mangel* arises during the lease period, GERMAN CC art. 536(1), regardless of fault on the part of the lessor. The rule also applies where a promised quality is or becomes lacking (GERMAN CC § 536(2)) or where use is affected by a third party right (GERMAN CC § 536(3)). An insignificant lack of conformity will

be disregarded (GERMAN CC § 536(1) last sentence). The relevant lack of conformity (*Mangel*) may relate to circumstances other than the condition of the goods; it may also be a legal, factual or economic condition that interferes with the lessee's use (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 536, no. 3 and 14, BGH 23 Sep 1992 NJW 1992, 3226, 3227: obstacles to use by public authorities). According to GREEK CC arts. 576(1) and (2) and 583 sent. 1, the lessee has a right to rent reduction for lack of conformity (legal or factual defects, lack of agreed quality), either at the start of the lease period or later. Fault is not a requirement, and the rule also applies when repairs and maintenance affect the lessee's use (*Filios* (1981), § 39 B II 2). Under HUNGARIAN law, general rules on price reduction for non-conforming performance, HUNGARIAN CC § 306(b), also apply to lease contracts. For a discussion of the right to rent reduction under NORWEGIAN law, including for periods during which the lessor repairs the goods, see *Falkanger,* Leie av skib, 438–439. In POLISH law, the lessee has a right to an appropriate (*odpowiedniego*) reduction in the rent if lack of conformity makes the goods unfit for the agreed use, POLISH CC art. 664(1). There is no fault requirement, Bieniek (*-Ciepła*), Komentarz do Kodeksu Cywilnego, art. 664, 260. According to SLOVAK CC art. 674, the lessee has the right to an adequate reduction in rent in cases of lack of conformity not caused by the lessee. A claim for rent reduction, regardless of fault, because of reduced usability follows also from SWISS OR art. 259d. The rule applies even where the lessor has no influence over the situation (Basler-Komm. OR I[3] (*R. Weber*), art. 259d, no. 1).

3. In other jurisdictions legislation on rent reduction is less general. Rules on rent reduction may be found in FRENCH CC art. 1722 (partial destruction of the leased object by fortuitous event), CC art. 1724 (repair work lasting for more than forty days) and CC art. 1726 (disturbance due to legal action concerning ownership). It is, however, held that rent reduction may also be claimed in (other) cases of non-conformity (Rép.Dr.Civ. (*Groslière*), v° Bail, no. 251, *Huet,* Contrats spéciaux, no. 21271, 670 with reference to sales). For BELGIAN law see *La Haye and Vankerckhove,* Baux en général[2], no. 424, 438, 1127. According to ITALIAN CC art. 1584, if repair work lasts for more than one-sixth of the duration of the lease and, in any case, for more than twenty days, the lessee is entitled to a reduction of the rent in proportion to the duration of the entire period of repairs and to the extent of his impaired enjoyment. A rule on proportionate rent reduction in cases of non-conformity (*vizi*) at the time the goods were made available to the lessee is found in ITALIAN CC art. 1578(1), and this rule applies correspondingly to non-conformity during the lease period. Where the usability of the goods is affected by external events, rules on supervening partial impossibility (ITALIAN CC art. 1463) can lead to a corresponding rent reduction (see *Alpa and Mariconda,* Codice Civile commentato, IV, art. 1581, no. 2). The application of the latter rule seems, however, to be disputed (see *Cian and Trabucchi,* Commentario breve[8], art. 1587, no. V5, but compare for example Cass. 11 Feb 2005, 2855/2005, Giust.Civ.Mass. 2005, fasc. 4). New judgments seem to allow application of ITALIAN CC art. 1584 *per analogiam* and to allow a general right to rent reduction in cases of non-performance (see Cass. 13 Jul 2005, no. 14739, Giust.Civ.Mass. 2005 fasc. 7/8). According to MALTESE CC art. 1545, the lessee has a claim for rent reduction (abatement) if there are "faults or defects which prevent or diminish the use of the goods", and the rules also applies where "such faults or defects … have arisen after the stipulation of the contract". Other rules on rent reduction are found in MALTESE CC art. 1548(2) (repair work lasting for more than forty

days), art. 1551 (use disturbed by third party actions concerning rights in the goods) and art. 1571(2) (partial destruction by fortuitous events). SPANISH CC art. 1558(2) allows for rent reduction in cases of urgent repair work lasting longer than forty days. The code seems to contain no general rule for the case of limited usability not imputable to one of the parties. According to the TS, such circumstances do not lead to the extinction of the contract, but to a proportional reduction in the rent (TS 26 Dec 1942, RAJ 1942, 1547). It is held that the rule in SPANISH CC art. 1558(2) on rent reduction is to be extended to disturbances to use that are independent of the lessor's will (*Díez-Picazo and Gullón*, Sistema II[9], 336).

II. Implementation of rent reduction

4. In AUSTRIAN law rent reduction takes place *ex-lege*; no declaration or lawsuit is necessary (*Stabentheiner*, Mietrecht, no. 60). The lessee may claim back rent already paid, under the conditions of AUSTRIAN CC § 1431 (payment of a non-existing debt, *Stabentheiner*, loc. cit.). Under DUTCH law, the reduction of rent has to be claimed in court to prevent improper use of the (general) option for partial termination out of court (DUTCH CC art. 6:265 CC). According to ESTONIAN LOA § 112(2), a price reduction requires a declaration to the debtor; a refund may be claimed for money already paid (§ 112(3)). Under GERMAN law rent reduction also takes place as a result of law (*ipso iure*, without a declaration of the lessee), Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 536, no. 30 (but see also GERMAN CC § 536c(2)(1): limitation of the lessee's right in case of late notification). Rent already paid can be claimed back under GERMAN CC § 812(1) sentence 1 alt. 1 (MünchKomm-BGB III4 (*-Schilling*), § 536, no. 27). The lessee has no claim, though, if excess rent is paid for a longer time with knowledge of the lack of conformity and without any reservations (BGH 18 Jun 1997, NJW 1997, 2674). In GREEK law there seems to be no unanimity as to the implementation. It has been asserted that rent reduction takes place *ex lege* (*Mantzoufas*, § 44 II 2, 339–340; *Tousis*, § 67, 217); that it is exercised by the lessee's unilateral declaration addressed to the lessor (*Filios* (2005), § 30b B); and that it may be exercised either extra-judicially or via lawsuit (*Georgiadis*, Law of Obligations, § 25, no. 22; *Rapsomanikis*, art. 576, no. 12). Rent already paid can be claimed back according to the provisions on unjust enrichment (*Rapsomanikis*, art. 576, no. 10). According to POLISH CC art. 664(1), the lessee may only demand reduction of future rent and may not claim back rent already paid. According to SLOVAK CC art. 675, the lessor must notify the lessor of a claim for rent reduction without undue delay and no later than six months after the claim arises. There is a similar rule in CZECH law. The nature of the rent reduction is controversial in SWISS law (Basler-Komm. OR I[3] (*R. Weber*), art. 259d, no. 3: *Gestaltungsrecht* or *ex-lege* reduction). In several countries explicit statements concerning the start of rent reduction are not easily found.

III. No explicit right to rent reduction

5. Under U. K. and IRISH law, there is no explicit legal right to rent reduction as a remedy. The *actio quanti minoris* of the civil law is unknown to common law. It would be more natural in these cases to see the remedy of rent-reduction as a form of damages for non-performance of the contract. If the goods are defective, the lessee may recover damages

equal to the difference between the value of the goods actually delivered and the value which the goods would have had if they had been in accordance with the contract. Further, where performance is incomplete and the price can easily be apportioned, it seems that the lessee may treat the contract as apportionable and pay only for the units delivered (e. g. *Dawood Ltd. v. Heath Ltd.* [1961] 2 Lloyd's Rep. 512, Q. B.). Finally, the aggrieved party may also set off claims arising out of the same transaction against sums he would otherwise have to pay (*Beale*, Remedies, 50–52).

Article 4:105: Substitute transaction

Where the lessee has terminated the lease and has made a substitute transaction within a reasonable time and in a reasonable manner, the lessee may, where entitled to damages, recover the difference between the value of the terminated lease and the substitute transaction, as well as any further loss.

Comments

A. Calculation of loss

1. **Price and value** A rule on calculation of loss caused by termination for non-performance is found in III. – 3:706 (Substitute transaction). If the aggrieved party makes a reasonable substitute transaction, the party may – in addition to further losses – "recover the difference between the contract price and the price of the substitute transaction". This formula may lead to misunderstandings in lease contracts. Rent may be agreed as an amount per day, per month etc., while the lease period may be much longer or indefinite. A mere comparison of agreed rent for two contracts will not directly indicate the loss suffered by termination of the contract. What must be compared are the values of the two contracts, normally established by means of a cash flow analysis. This allows for comparison between lease contracts and sales contracts as well, see Comment *A2*. A parallel provision is found in IV.B – 6:104 regarding non-performance of the lessee's obligations.

2. **Substitute transaction other than a lease** A substitute transaction resulting from termination for non-performance of a lease contract is not always a new lease contract. In the circumstances it may be necessary, or at least more practical, to buy goods serving the same purposes as those for which the leased goods were intended. The value of the lease contract must be compared with the value of the sales contract (in practice a comparison of net present values of costs if the expected income is unchanged).

Notes

I. Calculation of loss after substitute transaction

1. On calculation of loss and substitute transactions in general, see notes to III. – 3:706 (Substitute transaction). A substitute transaction may give an indication when calculating the loss (lessee's economic interest in performance) even for lease contracts. It has, however, been hard to find comments in national law regarding in particular the principles of comparison between the contract and the substitute transaction.

Article 4:106: Notification of lack of conformity

(1) The lessee cannot resort to remedies for lack of conformity unless notification is given to the lessor. Where notification is not timely, the lack of conformity shall be disregarded for a period corresponding to the unreasonable delay. Notification will always be considered timely where it is given within a reasonable time after the lessee has become, or could reasonably be expected to have become, aware of the lack of conformity.
(2) When the lease period has ended the rules in III. – 3:107 apply.
(3) The lessor is not entitled to rely on the provisions of paragraphs (1) and (2) if the lack of conformity relates to facts of which the lessor knew or could reasonably be expected to have known and which the lessor did not disclose to the lessee.

Comments

A. Notification within a reasonable time

1. Purpose The lessee must notify the lessor of a lack of conformity within a reasonable time. Notification may be necessary to give the lessor a chance to cure the lack of conformity, and in any case the lessor has a legitimate interest in knowing whether or not the lessee will make a claim based on non-performance. This is important in particular for reductions in rent. The lessor should have the opportunity to earn the full rent by remedying the lack of conformity. With regard to damages, the situation may be such that the lessor's non-performance is excused for a period if the lessor could not have known of the lack of conformity, but even in this respect there is a need for a rule on notification to avoid doubt. The lessor should also be given a chance to cure or to take other measures before the lessee is allowed to terminate the contract for fundamental non-performance.

2. Reasonable time Notification may always be given within a reasonable time after the lessee has become, or could reasonably be expected to have become, aware of the lack of conformity. What is a reasonable time will depend on the circumstances, for example the kind of goods that are leased, the parties involved, the lease period, the actual phase of the contract, and the nature of the lack of conformity. A notification can be too late even if it is given immediately after the lessee has become aware of the lack of conformity

if the lessee could reasonably have been expected to have become aware of it earlier. It has not been deemed necessary to include a provision concerning the lessee's examination of the goods. A duty to examine would only refer to the situation at the start of the lease period, but the notification rule also relates to a lack of conformity arising during the lease period. In any case, where the lack of conformity could have been discovered by normal examination, this should be taken into consideration when establishing what the lessee should reasonably have been aware of. When the lease period has come to an end, the general rule in III. – 3:107 (Failure to notify non-conformity) applies, cf. paragraph (2) of the present Article. The difference between the two provisions lies in the cut-off effect, cf. Comment *B4*.

3. Informing of lack of conformity The lessee must give sufficient information to enable the lessor to identify the lack of conformity. Without such information the notification cannot serve its purpose, cf. Comment *A1*. Often it is sufficient to explain the incorrect functioning, as the lessee cannot be expected to know why the goods do not function properly.

B. Effect of late notification

4. Cut-off effect The effect of late notification is that the lessee cannot resort to remedies – typically rent reduction – for the lack of conformity in question for a period corresponding to the unreasonable delay. The lessee may, however, still resort to remedies with regard to the period which follows and of course with regard to other occurrences of lack of conformity for which notification is given in time. It has been found too harsh to leave the lessee without *any* remedies for the lack of conformity, including subsequent periods, as the lack of conformity continues to be a non-performance of the lessor's obligations. Also it has been considered preferable not to cut off remedies for the entire period prior to notification; this would lead to a loss of remedies for a period longer than the actual delay. The question of remaining remedies for subsequent periods does not arise when the lease period has come to an end, and in this situation the general rule in III. – 3:107 (Failure to notify non-conformity) applies.

5. No absolute time limit For some types of contracts there are absolute time limits for notification of a lack of conformity, implying a cut-off effect for remedies irrespective of whether the aggrieved party had – or could have – discovered the lack of conformity. Thus there is an absolute limit of two years from – in practice – delivery in IV.A – 4:302(2). No such absolute limit is found in this Part of Book IV. In a lease contract lack of conformity is an issue both at the start of the lease period and during the entire lease period. Each instance of lack of conformity must be notified within a reasonable time.

C. Notification of remedy

6. Specific performance and termination for non-performance According to III. – 3:302(4) and III. – 3:508 (Loss of right to terminate), a party may lose the right to enforce

specific performance or the right to terminate the contract if enforced performance is not sought or notice of termination not given within a reasonable time after the party has become, or could reasonably be expected to have become, aware of the non-performance. These rules apply in addition to the rule in paragraph (1) of the present Article. Specific performance, along with remedying of a lack of conformity, and termination, are remedies that directly affect the lessor's performance. They must therefore be claimed within a reasonable time. A "neutral" notification according to paragraph (1) will not give the lessor sufficient information in this respect. A claim for performance or a notice of termination may be given in the first notification of lack of conformity, but the situation may also be such that there is still time after the first notification to claim performance or to give notice of termination.

7. **Other remedies** There are no separate rules on notification regarding withholding of rent, claims for rent reduction or damages if notification of lack of conformity is given according to paragraphs (1) and (2) of the present Article. The lessee may, however, lose such claims according to general rules on passivity and prescription.

D. Exception to cut-off effect

8. **Knowledge and non-disclosure** Comment *A1* describes the purposes of the notification rule: the lessor needs information concerning the facts discovered by the lessee and concerning the lessee's assessment of the performance. If the facts that the lack of conformity relates to are already known to the lessor, or the lessor can reasonably be expected to know the facts, notification is not necessary regarding these facts. The lessor still needs to know however whether or not the lessee wants to pursue remedies (it might also be that the lessee approves of the goods). This interest is protected by the notification requirement, but only insofar as the lessor has disclosed the relevant facts to the lessee. There is no good reason to protect the lessor through a notification rule if the lessor knew that the performance did not conform to the contract but failed to disclose this information to the lessee. A corresponding provision is found in III. – 3:107(3).

Notes

I. Overview

1. For notification as a prerequisite to enforcement of specific performance and to termination for non-performance, see notes to III. – 3:302(4) and III. – 3:508 (Loss of right to terminate). See also notes to III. – 3:107. The importance of notification may vary according to different concepts of obligations and non-performance. Where an obligation is regarded as a duty of best efforts, not a duty to achieve a specific result, the lessor's knowledge of the actual situation, for example a need for repair of the goods, is typically a precondition for non-performance. Also where liability is based on fault, knowledge of the situation is typically necessary. But notification may be a prerequisite for remedies even where there is an obligation to achieve a specific result and where there is liability without fault.

II. Notification and cut-off effect in lease contracts

2. In AUSTRIAN law, late notification may lead to loss of the lessee's right to rent reduction and of the lessee's right to terminate the contract (OGH 17 Dec 1985, RdW 1986, 208, see also Koziol (*-Iro*), ABGB, § 1097, no. 1) but the lessee does not lose a claim for specific performance (OGH 29 Jun 1971 MietSlg 23.209, obiter) or a claim for reimbursement of the costs of having non-conformity remedied (OGH 15 Sep 1972, EvBl 1972/74, Schwimann (*-Binder*), ABGB V^3, § 1097, no. 15). Payment of full rent with knowledge of counterclaims may be regarded as a waiver of rent reduction (Rummel (*-Würth*), ABGB I^3, § 1096, no. 11). Further, the right to terminate may be regarded as waived if it is not invoked without undue delay (Schwimann (*-Binder*), ABGB V^3, § 1117, no. 13). Under CZECH law, there is a notification requirement for rent reduction, CZECH CC art. 675 (for more detail see Knappová *(-Salač)*, Civil Law, II, 245 and Supreme Court 20 Cdo 2295/99), cf. also special rules for business leases, CZECH CC art. 721(2) and for leases of a means of transportation, CZECH Ccom art. 635(2). If notification is given in time, rent reduction may be claimed with retroactive effect. A claim for damages or specific performance is not due without a request from the creditor, CZECH CC art. 563, cf. CZECH Ccom art. 340(2), and the lessee may not withhold the rent without notifying the lessor (Švestka *(-Škárová)*, Civil Code, 996). Prior notification seems to be no formal requirement for termination under CZECH CC art. 679. For DANISH law, it has been argued that late notification of lack of conformity at the *start* of the lease period may prevent the lessee from claiming rent reduction, withholding rent and claiming damages, but not from claiming specific performance. There is however no cut-off effect of late notification of lack of conformity during the lease period, see *Gade*, Finansiel leasing, 160–161. In DUTCH law, there is a general obligation for the lessee to report a *gebrek* to the lessor (DUTCH CC art. 7:206(3)). Some claims have their own notification-rules, for instance the claim for *verhelpen* (remedying the *gebrek*) requires a *verlangen* (an express wish) of the lessee, and the claim for rent reduction requires adequate notification. The right of the lessee to remedy the gebrek (DUTCH CC art. 7:206 (3)) and some kinds of damage compensation require a default, brought about, in principle, by a written warning. For the latter requirement there are many statutory and case-law exceptions (DUTCH CC art. 7:208). In ESTONION law, late notification results in extra time for the lessor's cure, ESTONIAN LOA § 282(3). Notification is required according to FRENCH CC art. 1726 for rent reduction where the lessee's use is affected by third parties' rights, but the lessee may show that late notification was without importance, as where the lessor had the information anyhow or where the lessor could not have remedied the lack of conformity (Rép.Dr.Civ. (*Groslière*), v° Bail, no. 303). The lessor's obligation to maintain the goods is not dependent on formal notification (*mise en demeure*, see FRENCH CC art. 1146, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 220). It may, however, under the circumstances be necessary to make the lessor aware of the need to maintain the goods (Cass.Civ. 15 Jul 1963, D. 1964, 5, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 208) or to make clear what the claim of the lessee is (Cass.Civ. 21 Feb 1984, Bull. Civ. 1984.I, no. 68). According to GERMAN CC § 536c(1) the lessee has a duty to notify of a lack of conformity arising during the lease period. The same is true of the need to protect the goods and claims of third parties. To the extent that late notification has impeded the lessor's remedying of the non-conformity, the lessee's claim for rent reduction or damages may be reduced, and the lessee cannot terminate without giving the lessor a chance to

cure (GERMAN CC § 536c(2)). Other remedies are unaffected, such as a claim for specific performance, withholding of rent (see Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 536c, no. 35 and 37),a claim for reimbursement of costs for remedying non-conformity (GERMAN CC § 536a(2)) and claims based on non-contractual liability; late notification can in these cases be regarded as contributory negligence (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 536c, no. 10). After notification the lessee is once again entitled to rent reduction (Emmerich and Sonnenschein, loc. cit., § 536c, no. 11). For GREEK law, it has been argued that a failure to notify can lead to loss of the rights to rent reduction and termination of the lease contract (*Kafkas*, arts. 585–586 § 4 and art. 589 § 7; *Tousis*, § 69, 229; *contra Zepos*, § 7 IV, 212 and fn. 2). Under HUNGARIAN law, the general rule in HUNGARIAN CC § 307 applies (notification as soon as possible in the circumstances; late notification may result in liability for damage caused by the delay, not loss of remedies; in consumer contracts notification within two months is always timely). According to ITALIAN CC art. 1577, the lessee must notify the lessor of the need for repairs not falling under the lessee's obligations. The lessor's obligation to perform repairs and the lessor's liability for non-performance are dependent on knowledge of the need for repairs (see *Alpa and Mariconda*, Codice Civile, art. 1577, no. 1 and *Cian and Trabucchi*, Commentario breve[8], art. 1577, no. II1). Failing to give notification of third parties' claims may lead to liability for the lessee but not to loss of remedies (*Alpa and Mariconda*, loc. cit., art. 1586, no. 1, *Cian and Trabucchi*, Commentario breve[8], art. 1586, no. 3). According to POLISH law, notification is a prerequisite for rent reduction, cf. note *II4* to IV.B – 4:104. Termination also presupposes that the lessor has been given a chance to remedy the lack of conformity, cf. POLISH CC art. 664(2) and *Panowicz- Lipska*, System Prawa Prywatnego VIII, 27. Further if the lessee does not notify the lessor of a lack of conformity, the goods are presumed to be in conformity with the contract, cf. POLISH CC art. 675(1). Under SLOVAK CC art. 668(1), the lessee must notify the lessor without undue delay of the need for repairs that are to be made by the lessor. In breaching this duty, the lessee loses the rights to withhold rent, reduce rent or terminate the contract without notice (Svoboda (*-Górász*), OZ, 614). Lack of notification of the need for repairs may also lead to a loss of claims for reimbursement of costs spent by lessee on these repairs; in this case the lessee may only demand reimbursment limited to the lessor's enrichment (see CC art. 669). In SPANISH law the lessee must inform the lessor as soon as possible of claims and disturbances by third parties and also of the need for repairs (SPANISH CC art. 1559). Such notification is a prerequisite for remedies for non-performance of the obligation to repair (*Bercovitz*, Manual, Contratos, 179). SWISS law does not recognise a cut-off effect for late notification in lease contracts (Guhl (*-Koller*), OR9, § 44, no. 37; BG 22 Oct 1981, BGE 107 II 426, 429: different from sales law), but the lessor's knowledge of non-conformity is a prerequisite for certain remedies (*inter alia* SWISS OR art. 259b litra a for termination, art. 259b litra b for self-help, art. 259d for rent reduction). The way in which the lessor learns of non-conformity is irrelevant (BSK (*-R. Weber*), OR I[3], § 257g, no. 7). Standard contract forms may not establish a cut-off effect for late notification (BSK, loc. cit., no. 9). Under U. K. and IRISH law, where the lessee chooses to affirm the contract despite lack of conformity or the lessee is not a consumer and the lack of conformity is slight (not giving rise to the right to terminate), the lessee must inform the lessor of the lack of conformity and allow the lessor a reasonable time to remedy the breach. Notice is not required where the lessor has knowledge or is deemed to have knowledge of the lack of conformity.

Article 4:107: Remedies channelled towards supplier of the goods

(1) This Article applies where:
  (a) the lessor, on the specifications of the lessee, acquires the goods from a supplier selected by the lessee;
  (b) the lessee, in providing the specifications for the goods and selecting the supplier, does not rely primarily on the skill and judgement of the lessor;
  (c) the lessee approves the terms of the supply contract;
  (d) the supplier's obligations under the supply contract are owed, by law or by contract, to the lessee as a party to the supply contract or as if the lessee were a party to that contract; and
  (e) the supplier's obligations owed to the lessee cannot be varied without the consent of the lessee.

(2) The lessee cannot claim performance from the lessor, reduce the rent or claim damages or interest from the lessor, for late delivery or for lack of conformity, unless non-performance results from an act or omission of the lessor. This provision does not preclude the right of the lessee to reject the goods, to terminate the lease or, prior to acceptance of the goods, to withhold rent to the extent that the lessee could have resorted to these remedies as a party to the supply contract.

(3) The provision in paragraph (2) does not preclude any remedy of the lessee where a third party right or claim prevents, or is otherwise likely to interfere, with the lessee's continuous use of the goods in accordance with the contract.

(4) The lessee cannot terminate the supply contract without the consent of the lessor.

Comments

A. Overview

1. "Financial leasing" and remedies This Article applies mainly to contracts that correspond to the contracts dealt with in the Unidroit Convention on International Financial Leasing (Ottawa 1988). In these transactions the lessor has the role of a financing party, and the parties regularly seek to channel some of the lessee's remedies towards the supplier of the goods, past the lessor. This is the same rule established by the Unidroit Convention. Other special rules concerning the contracts described in the Convention are found in IV.B – 2:103(4), IV.B – 3:101(2), IV.B – 3:104(2), and IV.B – 5:104(2). The criteria for applying special rules are not the same for every one of these provisions, as different aspects of the contracts justify different rules. It should be noted that it is not a requirement for the application of this Article that the entire cost be amortised by rent payments. Thus the Article also applies to certain leases with so-called residual value.

B. Scope of application

2. Prerequisites The above Article applies where certain prerequisites are met. These prerequisites depend partly on the factual situation in which the contract is concluded

and partly on the terms of the individual contract. The prerequisites are cumulative; it is therefore not sufficient that only some of them are met.

3. Goods supplied for the particular lease The Article applies only where the lessor has acquired the goods on the basis of specifications provided by the lessee, from a supplier selected by the lessee. For practical purposes this means that the goods are acquired solely for the lease contract in question. This reflects the role of the lessor in such contracts: the lessor is typically a financing institution without supplies of goods for lease purposes and without any interest in purchasing goods that are not already intended for a particular client. The goods are normally meant for a single lease contract and not for several subsequent contacts with different lessees.

4. Specification of goods The goods must have been acquired on the basis of specifications provided by the lessee. This means that the goods are acquired for the purposes and needs of the lessee, and that the lessor cannot unilaterally specify the goods to be acquired and their qualities. This element in particular justifies the fact that liability for lack of conformity is channelled past the lessor. It is not necessary that the specifications be drawn up by the lessee exclusively. Nor is it necessary that the lessee has had the last word in all respects. The lessee may have consulted an independent expert, the supplier, and even the lessor, but the specifications must be drafted for the lessee and to satisfy the lessee's own purposes. The lessor is of course free to abstain from the transaction if the specifications drawn up by the lessee are thought to be inappropriate.

5. Selection of supplier The supplier must be selected by the lessee. Once again, this is a result of the characteristic role of the lessor in these contracts. In ordinary lease contracts the lessor will decide where to source goods for the lease business. It is not necessary that the lessee choose freely, independently of the lessor. The lessor will normally want to approve the supplier, as the supply contract is made between the lessor and the supplier. It is not unusual that the supplier co-operates with a financing institution that will offer lease contracts to the supplier's customers. Thus it can be said that the supplier has selected the lessor. However, with regard to the *lease* contract, the supplier is still selected by the lessee. This, too, is part of the justification for channelling liability to the supplier, past the lessor.

6. Specification of goods and selection of supplier The rules apply only where the lessee has not primarily relied on the lessor's skill and judgement in specifying the goods and selecting the supplier. This is another element of the justification for relieving the lessor of some of the normal liability under the lease contract. As already mentioned in Comments *B4* and *B5*, the lessor may want to approve the specification of the goods and the selection of the supplier, and the lessor may also give advice in this matter. It is only when the lessee has *primarily* relied on the lessor's skill and judgment that the lease contract will fall outside the scope of the present Article. If that is the case, the lessor has an active role not typical of the transactions dealt with here, and there is a presumption that the general lease rules apply.

7. Other elements of the transaction The lessor may have given advice concerning other elements of the transaction, besides the specification of goods and the selection of a

supplier, for example concerning the costs of the transaction, lease period and profile of rent payments, tax and accounting effects, etc. This is not incompatible with application of this Article.

8. Approval of the terms of the supply contract The lessee must have approved the terms of the supply contract. This is essential, as the supply contract will to a great extent determine the lessee's rights in the case of non-performance. Normally, however, the parties to the supply contract will only be the lessor alone and the supplier and the terms will be agreed by these two parties. It is not a prerequisite that the lessee have any influence on the terms; approval is sufficient. There are no formal requirements concerning the lessee's approval of the terms of the supply contract and proof of approval may be provided by any means, (cf. II. – 1:107 (Form). In most cases the parties will prefer to have the lessee's approval in writing, cf. II. – 1:108 ("Meaning of "writing").

9. Supplier's obligations owed to lessee The rules contained in the present Article apply only where the supplier's obligations under the supply contract are owed to the lessee as a party to the contract or as if the lessee were party to the supply contract. This is why the lessor may be partly relieved of liability for non-performance. In the Unidroit Convention, the lessee's rights under the supply contract are a *result* of the application of the Convention (or rather the national law implementing the Convention). Here, another solution is chosen: the lessee's rights under the supply contract are a *prerequisite* for applying the rules of the present Article. The supplier's obligations may be owed to the lessee as a result of a rule of law (national law) or as a result of the contract itself, where a stipulation in favour of the lessee as a third party is included.

10. Rules of law If a rule of law, applicable to the relationship between supplier and lessee, provides that the supplier's obligations under the supply contract are owed to the lessee as if the lessee were a party to the contract, then the prerequisite for application of the present Chapter is met. It has not been deemed necessary to examine national law to establish whether or not such rules exist (apart from rules implementing the Unidroit Convention). It should be mentioned that rules on "direct action" found in some jurisdictions are normally subject to certain limitations, so that the supplier's obligations are not owed to the lessee entirely as if the lessee were a party to the contract.

11. Contract with lessee The lessee may be a party to the supply contract, together with the lessor, to the effect that the supplier's obligations are owed to the lessee. Whether or not this is the case must be established by ordinary interpretation of the contract.

12. Stipulation in favour of the lessee as a third party Supplier and lessor may stipulate in the supply contract that the supplier's obligations shall be owed to the lessee as if the lessee were party to the contract, cf. the general rules on stipulation in favour of a third party in Book II, Chapter 9, Section 3. If it is further agreed that the supplier's obligations cannot be varied without the consent of the lessee (cf. Comment *B13*), the rules of the present Article will apply (provided the other prerequisites are also met).

13. Supplier's obligations cannot be varied without lessee's consent It is not sufficient that the supplier's obligations under the supply contract are owed to the lessee; it must

also be ensured – whether via application of a rule of law or under the contract – that these obligations may not be varied without the lessee's consent. In particular, this qualification is important with regard to a stipulation in favour of the lessee as a third party in the contract between lessor and supplier, as the contracting parties may in many cases remove, revoke or modify the third party's right, cf. II. – 9:303 (Rejection or revocation of benefit), unless otherwise agreed.

C. Effects

14. Channelling liability past the lessor The effect of the present Article is such that liability for non-performance on the part of the lessor is, to a certain extent, channelled past the lessor. Some of the normal remedies cannot be pursued against the lessor, and in such instances the lessee is left with the sole option to pursue the supplier. The remedies will mainly depend therefore on the supply contract, rather than the lease contract. The precise scope of the supplier's liability to the lessee is not expressed in the present article, such liability being a prerequisite for applying the Article at all.

15. Overview In the case of late delivery, including non-delivery, and lack of conformity the lessee cannot claim performance from the lessor, reduce the rent, or claim damages. Such non-performance is normally caused by the supplier. The lessor must, however, accept rejection of the goods, termination of the lease contract, or withholding of rent prior to acceptance of the goods, as the case may be, but only to the extent that the lessee may resort to these remedies as a party to the supply contract. In such cases, the lessor will normally have a corresponding right to terminate the supply contract or to recover from the supplier loss caused by late payment. Where non-performance is the result of an act or omission of the lessor, remedies against the lessor will be available according to the general rules.

16. Purpose of the rules The reasoning behind these rules is based on the special role of the lessor in the transaction, normally that of a financing institution. The supplier controls availability and conformity of the goods, and the lessor's main interest is to recover what is generally in real terms a credit granted to the lessee. If the ordinary lease rules were to apply, the lessor would be liable to the lessee and would then have to recover from the supplier any loss caused by the supplier. The effect of the rules contained in the present Article is such that the lessee must pay the rent to the lessor and may then recover any loss sustained from the supplier. The lessee will thus to a certain extent bear the risk of the supplier's insolvency and take the burden of litigation, something that can be justified by the lessee's having selected the supplier.

17. Specific performance The lessee cannot enforce specific performance by the lessor, whether in the form of claiming the goods in cases of late delivery or in the form of remedying lack of conformity by substitution or repair. Normally the lessee can enforce specific performance by the supplier, based on the supply contract.

18. Reduction of rent The lessee cannot reduce the rent for late delivery or lack of conformity (prior to acceptance of the goods rent may, however, be withheld). In ordin-

ary leases, the lessee may reduce the rent to zero for periods where the goods have not been made available at all and reduce the rent proportionally where the goods do not conform to the contract. Under the contracts dealt with here, the lessee will have to pay the rent and then claim rent reduction or damages from the supplier.

19. Damages and interest The lessee cannot claim damages (or interest, if relevant) from the lessor. Damages obtained from the supplier under the supply contract may, however, compensate the loss.

20. Termination of the contract The lessee may terminate the lease contract if such termination would be allowed under the supply contract. Termination may take place before or after acceptance of the goods. If the contract is terminated, the lessor will not receive future rent, while the lessee cannot claim the goods or must return the goods if they have already been accepted. The lessor may in turn terminate the supply contract, and is thus relieved of the obligation to pay for the goods, or granted the right to claim for recovery of sums already paid, in addition to other losses incurred. Should the supplier be unable to pay, the goods may serve as security for the lessor.

21. Withholding of rent, rejection of goods Prior to acceptance of the goods, the lessee may withhold rent because of late delivery or the tender of non-conforming goods, to the extent that the supply contract allows for payment to be withheld in such situations. The lessee may also reject non-conforming goods if this is allowed under the supply contract. After acceptance of the goods, however, rent may not be withheld because of lack of conformity of the goods.

22. Hidden lack of conformity The effects of the rules in the second paragraph of the present Article can be illustrated by a case of a hidden lack of conformity. In the case of a lack of conformity which the lessee could not have been expected to be aware of on acceptance of the goods, rent may not be withheld. The reason given is that the lessor, typically a financing party, would be left with a claim against the supplier for rent unpaid by the lessee, but no way of securing this claim as long as the lessee is allowed to keep the goods under the lease contract. However, the lessee may terminate the contract, if termination is allowed under the supply contract. The lessor may then take back the goods and terminate the supply contract, the goods serving as security for claims against the supplier. The lessee may not reduce the rent because of a hidden lack of conformity or claim damages from the lessor, for the same reasons. Such remedies would also leave the lessor with an unsecured claim against the supplier.

23. Non-performance resulting from lessor's act or omission If late delivery or lack of conformity results from an act or omission of the lessor, the general rules on remedies for non-performance apply, and the lessee may resort to any remedy relevant, including rent reduction, withholding of rent, even after acceptance of the goods, and a claim against the lessor for damages.

24. Third parties' rights The rules contained in the present Article do not relieve the lessor of liability for non-performance resulting from a right or a claim of a third party that is likely to prevent or otherwise interfere with the lessee's use of the goods in ac-

cordance with the contract. The general rules apply, irrespective of the non-performance being related to the supplier or the lessor: the lessor may have bought goods that did not belong to the supplier, or it may be that dispositions of the lessor or rights of the lessor's creditors interfere with the lessee's use.

25. **Lessee's termination of the supply contract** The rules of the present Article apply only where the supply contract imposes obligations on the supplier with regard to the lessee (as a party to the supply contract or as if the lessee were a party to that contract). This means that the lessee can also terminate the supply contract where termination is foreseen by the contract or is permitted under the general rules on non-performance. A limitation is made in the fourth paragraph of the present Article: the lessee may not terminate the supply contract without the consent of the lessor. The lessor will typically want to have some say in situations where the lessee's obligation to pay rent is terminated and the goods are returned to the supplier. Termination may also lead to disputes concerning the lessor's rights under the supply contract. It is therefore appropriate that termination take place only with the lessor's consent. The lessee may in any case resort to the right to terminate the *lease* contract if the lessor's consent is for some reason denied.

Notes

I. Scope of application

1. For definitions and a description of contracts often referred to as leasing, financial leasing, financial leases etc., see notes to IV.B – 1:101.

II. Excluding remedies against lessor for delay or lack of conformity

2. In AUSTRIAN law, remedies against the lessor can be excluded if and insofar as the lessee is authorised to claim such remedies in the name of the lessor against the supplier or the corresponding rights have been assigned to the lessee (Schwimann (*-Binder*), ABGB V[3], § 1090, no. 82). However, the lessee may reject the goods because of lack of conformity (Rummel (*-Würth*), ABGB I[3], § 1090, no. 32); under certain conditions the lessee may withhold rent (Schwimann (-Binder), ABGB V[3], § 1090, no. 85); and termination for an important reason cannot be excluded (Schwimann (*-Binder*), ABGB V[3], § 1090, no. 96; *Fischer-Czermak,* Mobilienleasing, 259). The lessee is left with the remedies that the lessor would have under sales law (*Fischer-Czermak,* Mobilienleasing, 258). For the consequences of the execution of these sales law remedies on the lease contract see Schwimann (*-Binder*), ABGB V[3], § 1090, no. 86.
3. Where rules in line with the UNIDROIT Convention have been codified, they include both exclusions of the lessor's liabilities – with certain exceptions – and a right for the lessee to pursue claims against the supplier. See ESTONIAN LOA ch. 17 (§§ 361–367); LITHUANIAN CC arts. 6.567–6.574; POLISH CC art. 709.
4. Exclusion of the lessor's liability and assignment of the lessor's claims against the supplyer and the limits to such agreements under DANISH law are discussed in *Gade*, Finansiel leasing, 167–197.

5. In FRENCH *crédit-bail* contracts, exclusion of the lessor's liability and assignment of the lessor's claims against the supplier are usual and in principle possible. For details and discussion, see Rép.Dr.Com. (*Duranton*), v° Crédit-bail nos. 114, 112, 192 ff.; *Bénabent*, Contrats spéciaux[6], nos. 898 ff.; *Huet*, Contrats spéciaux, no. 23006. For corresponding rules in BELGIAN law, see *Philippe*, Guide Juridique de l'entreprise[2], Leasing, no. 070
6. In GERMAN law, the exclusion of remedies against the lessor and assignment to the lessee of the lessor's remedies against the supplier are in principle possible. The obligation to make the goods available cannot be contracted out, and the lessee must have a right to withhold rent, to terminate the contract, and to claim damages (Staudinger (*-Stoffels*) (2004) Leasing nos. 188 ff., MünchKomm (*-Habersack*), BGB III[4], Leasing, nos. 65 ff.; *Oetker* and *Maultzsch*, Vertragliche Schuldverhältnisse[2], 737). Concerning the lessee's pursuing the lessor's remedies under the contract of sale, see MünchKomm (*-Habersack*), BGB III[4], Leasing, nos. 79 ff.; Staudinger (*-Stoffels*) (2004) Leasing nos. 213 ff.
7. In GREEK law, exclusion of the lessor's liability and assignment of the lessor's claims against the supplier (for damages, rent reduction, termination of the contract) are usual and in principle possible. The lessor's liability as an importer of the goods cannot be contracted out, in which case the liability is governed by the provisions on the liability of the producer (art. 6(3) and (12) of L. 2251/1994). For details see *Georgiadis*, New Contractual Forms of Modern Economy, 67–68, 71–73.
8. In SWISS law, limitation of the lessor's liability and assignment of the lessor's claims against the supplier are in principle possible, but not without certain exceptions, see BSK (*-Schluep* and *Amstutz*), OR I[3], Einl. vor Art. 184 ff. nos. 100, 103; *Tercier*, Les contrats spéciaux[3], no. 6918. It has been observed that the UNIDROIT convention is more favourable to the lessee (Kramer (*-Stauder*), Neue Vertragsformen[2], 104).

III. Liability for third parties' rights

9. For several jurisdictions, exclusion of liability for third parties' rights interfering with the use seems possible: for AUSTRIAN law, *Fischer-Czermak*, Mobilienleasing, 258 ff.; for GERMAN law, MünchKomm (*-Habersack*), BGB III[4], Leasing, no. 104; for SWISS law, BSK (*-Schluep* and *Amstutz*), OR I[3], Einl. vor Art. 184 ff., no. 101. For a different solution, see ESTONIAN LOA § 362(1).

IV. Lessee's right to terminate the supply contract

10. For several jurisdictions, the right to terminate the supply contract without the lessor's consent may also be assigned to the lessee: for AUSTRIAN law, Schwimann (*-Binder*), ABGB V[3], § 1090, nos. 85 and 86; for FRENCH law on *crédit-bail*, Rép.Dr.Com. (*Duranton*), v° Crédit-bail, no. 122 (but duty to inform the lessor); for GERMAN law, MünchKomm (*-Habersack*), BGB III[4], Leasing, nos. 86, 91, 95; for SWISS law, *Tercier*, Les contrats spéciaux[3], nos. 6915 ff.; Kramer (*-Stauder*), Neue Vertragsformen[2], 106. For a different solution (consent of the lessor), see ESTONIAN LOA § 365(2); LITHUANIAN CC art. 6.573(1); POLISH CC art. 709[8](4).

Chapter 5:
Obligations of the lessee

Article 5:101: Obligation to pay rent

(1) The lessee must pay the rent that is fixed by or determinable from the terms agreed by the parties or from II. – 9:103.
(2) The rent accrues from the start of the lease period.

Comments

A. Reference to the contract and default rules

1. **The contract** Normally, the parties have agreed on the rent to be paid. The rent may be agreed as an amount for the entire lease period. More often though the rent is agreed as an amount per interval of time (rent per hour, day, month, etc.). In some cases the amount to be paid is not spelt out in the contract, but can be determined via a reference to price lists etc. In particular for long term leases, there may be rent regulation clauses of various kinds, for example a clause allowing one or each of the parties a right to claim adjustments to rent based on an index.

2. **Default rule** Occasionally, the rent cannot be determined from the contract, even if it is agreed that a rent is to be paid. In such cases the rent must be determined by the rules in II. – 9:104 (Determination of price). If the rent cannot be determined from agreed terms, from any other applicable rule of law or from pertinent usages and practices, "the price payable is the price normally charged in comparable circumstances at the time of the conclusion of the contract or, if no such price is available, a reasonable price". Often there will be no sharp distinction between the agreement and the pertinent usages and practices established by the parties, or between common usages and practices and the rent normally charged ("market price"). If the rent cannot be determined from such criteria, the lessee must pay a rent that is reasonable. According to the Definitions, what is "reasonable" is to "be objectively ascertained, having regard to the nature and purpose of what is being done, to the circumstances of the case and to any relevant usages and practices". Hence there is a certain overlap between reasonableness and the guidance that can be garnered from usages and practices.

B. Rent from the start of the lease period

3. **Accrual and payment** Where rent is agreed for certain intervals, the period during which the rent accrues must be established. This must be done irrespective of the time agreed for payment, which may be at certain intervals or may not.

4. **Accrual from the start of the lease period** As discussed in Comment *E13* to IV.B – 4:101, rent in principle accrues even for parts of the lease period during which the goods have not been available for the lessee's use. Unavailability must be dealt with as a question of rent reduction (or partial termination, which will lead to the same result). The consequence of this is that the rent accrues from the start of the lease period, not from the time when the goods are made available, even where performance is late. The lessee can in most cases claim reduction of the rent to zero for the period of delay. If the delay was caused by the lessee, however, there is no claim for rent reduction, cf. III. – 3:101(3).

Notes

I. Obligation to pay rent

1. In general, the obligation to remunerate the right of use of the goods is a characteristic trait of the lease contract. An agreement on gratuitous use of goods is normally not regarded as a lease (though it falls under the general category of bailments in the U. K.). Correspondingly, the obligation to pay rent is included explicitly in legislation in several countries: AUSTRIAN CC §§ 1090, 1092, 1100 ff.; BELGIAN CC art. 1728(2); CZECH CC art. 671(1); DUTCH CC art. 7.212; ENGLAND, WALES, and N. IRELAND Supply of Goods and Services Act 1982, sec. 6(3) and SCOTLAND Supply of Goods and Services Act 1982, sec. 11G(3); ESTONIAN LOA § 271, 292(1); FRENCH CC art. 1728(2); GERMAN CC § 535(2); GREEK CC arts. 574, 595; HUNGARIAN CC §§ 423 and 428(1); ITALIAN CC art. 1587(1); LATVIAN CC art. 2141; LITHUANIAN CC art. 6.487; MALTESE CC art. 1526(1), 1533; POLISH CC art. 659(1), 669(2); PORTUGUESE CC arts. 1022 and 1038(a); SLOVAK CC art. 671; SLOVENIAN LOA art. 587(1), 602; SPANISH CC arts. 1543 and 1555(1); SWISS LOA art. 257.

II. Determined or determinable rent as requirement

2. In several systems it is a more or less general requirement for a valid contract that the price must be determined by the parties or at least be determinable from the contract (see notes to II. – 9:104 (Determination of price)). This requirement is often made explicit for lease contracts in particular. It implies that determination of future rent may not be left to the courts. See AUSTRIAN CC § 1090, cf. Schwimann (*-Binder*), ABGB V[3], § 1092, no. 66 ff.; for BELGIAN law, *La Haye and Vankerckhove*, Le Louage de Choses I[2], no. 825; DUTCH CC art. 6:226 (obligations have to be determinable), cf. *Asser and Abas*, Huur[8], no. 16; for FRENCH law, *Huet*, Contrats spéciaux, no. 21143; for ITALIAN law, *Alpa and Mariconda*, Codice Civile, art. 1571, no. 14; for POLISH law, *Pietrzykowski*, KC. Komentarz, art. 659, Nb. 22, 394; for PORTUGUESE law, *Lima and Varela*, Código Civil Anotado, II, 370; for SPANISH law, TS 2 May 1994, RAJ, 1994, 3557 (*Bercovitz* Comentario, no. 1, 1840); SWISS BGE 119 II 347 (15 Sep 1993). If the object has already been used payment may be owed under the rules on unjustified enrichment (for AUSTRIAN law, see Rummel (*-Würth*), ABGB I[3], §§ 1092 – 1094,

no. 14) or as a contractual obligation (for SWISS law, see Guhl (*-Koller*), OR[9], § 44, no. 12, *faktisches Vertragsverhältnis*, *Honsell*, OR-BT[7], 203, *Huguenin*, OR-BT[2], no. 471, *mietvertragsähnliches Verhältnis*).

III. Fixing a rent that is "usual", "reasonable" etc.

3. Other systems allow the courts to supplement the contract by fixing a rent or, in some systems, to appoint independent experts to fix the rent. It may be a rent that is "usual" (CZECH CC art. 671(1); SLOVAK CC art.671(1)) or "reasonable" (U. K., by analogy with contracts for services, Supply of Goods and Services Act 1982, sec. 15, Chitty (*-McKendrick*, Contracts II[29], no. 33-076, 33-047); for SWEDEN, see *Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 197, analogy to sales law), or such criteria in combination (GERMAN CC §§ 612(2) and 632(2) per analogy, determination by the lessor according to GERMAN §§ 315 and 316 is a last resort, Emmerich and Sonnenschein (*-Emmerich)*, Hk-Miete[8], vor § 535, no. 29). See also ESTONIAN LOA § 28(2) (general rule, price generally charged, or else reasonable price); GREEK CC arts. 371–373, 379 (general rules); LATVIAN CC art. 2123 (rent in previous contract or else fixed by discretion); LITHUANIAN CC art. 6.487(2) (determination by independent experts); MALTESE CC art 1534 (current price, if any, or valuation by independent experts).

III. Accrual of rent

4. The question concerning the time from which rent accrues is closely connected to the rules on reduction of rent, and a general reference is made to the notes to IV.B – 4:104.

IV. Rent in the form of money or other value

5. See notes to IV.B – 1:101.

Article 5:102: Time for payment

Rent is payable:
(a) at the end of each period for which the rent is agreed, or
(b) if the rent is not agreed for certain periods, at the expiry of a definite lease period, or
(c) if no definite lease period is agreed and the rent is not agreed for certain periods, at the end of reasonable intervals.

Comments

A. Time for payment

1. **End of period for which rent is agreed** The parties normally agree on the time for payment. If the time of payment is not fixed by or determinable from the terms agreed by

the parties, it is determined by the default rules found in the present Article. Where the rent is agreed for certain periods, for example a certain amount per month, the rent must be paid at the end of each month. The rent may be agreed for the entire definite lease period. In such cases the rent must be paid at the end of the lease period (it might be considered that this is also a period for which the rent is agreed, and that there is overlap between limbs (a) and (b) in the first paragraph of the present Article). The default rule may admittedly lead to rather cumbersome results where the rent is agreed for very short periods (hours, days), but the parties are free to agree on another time for payment even after conclusion of the contract.

2. **End of reasonable intervals** Where no definite lease period is agreed and the rent is not agreed for certain periods, the rent must be paid at the end of reasonable intervals. Guidelines for judging reasonableness are found in the definition of "reasonable" under Definitions.

B. Place of payment

3. **Lessor's place of business** The place of payment may be fixed by or determinable from the terms agreed by the parties. If not, III. – 2:101 (Place of performance) determines the place of payment. As a rule, money is to be paid at the creditor's place of business as at the time of conclusion of the contract. If the creditor has more than one place of business, the place of payment is the place of business with the closest relationship to the contract. Money must be paid at the creditor's habitual residence if there is no business address. In practice, the lessor instructs the lessee to transfer money to a specified bank account in the country of the place of business or habitual residence, as the case may be.

Notes

I. Time for payment

1. The common rule throughout the European legal systems is that rent is payable at the time determined by the terms agreed by the parties. This is often stated explicitly in legislation, sometimes also with a reference to usages in particular, see for example AUSTRIAN CC § 1100,DUTCH CC art. 7:212; PORTUGUESE CC art. 1039; SPANISH CC arts. 1555(1) and 1574; SWISS LOA art. 257c. Rules on time for payment in the absence of agreement or usages vary to some extent.
2. In some systems the default rule is that rent is payable at the end of periods for which the rent is agreed or, if no such periods are agreed, at the end of the lease period, for DANISH law, *Gade,* Finansiel leasing, 198–199; ESTONIAN LOA § 294; GERMAN CC § 579(1) first and second sentence; GREEK CC art. 595; for NORWEGIAN law, see *Falkanger,* Leie av skib, 429; for SWEDISH law, see *Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 197–198.
3. The time for payment of rent, in the absence of agreement or usages, may be fixed in relation to certain periods: according to AUSTRIAN CC § 1100, rent must be paid at the end of every half year if the lease period is one year or longer. If the lease period is

shorter than one year, the rent must be paid at the end of the lease period. The same rule is found under SLOVENIAN LOA art. 602(2). Under CZECH law, the rent must be paid at the end of each month of the lease, CZECH CC art. 671(2). A special rule applies to leases of a means of transportation, CZECH Ccom art. 634(2): the rent must be paid at the end of the lease period, or at the end of each calender month if the lease period exceeds three months. According to SLOVAK CC art. 671(2), the rent must be paid at the end of each month of the lease. This is the rule also in SWISS LOA art. 257c (if the lease period exceeds one month).

II. Payment in advance

4. In some systems, rent must be paid in advance, unless otherwise agreed, see HUNGARIAN CC § 428(1) (periodically in advance)); LATVIAN CC art. 2142(2) (six months in advance for contracts for a year or more, or else at the end of the lease period); POLISH CC art. 669(2) (in advance for the entire period if the lease period is up to one month; monthly in advance if the period is longer, but no later than on the tenth day of the month).

III. Place of payment

5. A reference is made to the notes to III. – 2:101 (Place of performance). In some systems the general rule is that money must be paid at the creditor's place, thus for rent payments this means the lessor's place. In other systems, the creditor (here the lessor) must accept that money be paid at the debtor's place, sometimes with the distinction that the debtor must transfer the money to the creditor (the creditor must suffer the loss of a delay in transit). It seems that these rules are normally applied also to lease contracts.
6. According to PORTUGUESE CC art. 1039, rent must be paid at the lessee's domicile if nothing else follows from agreement or usages.
7. If there is no agreement on the rent, according to SPANISH art. 1574, art. 1171 applies (place of the goods at the constitution of the obligation, else debtor's place). The provision has raised doubt and lead to contradictory case law. However, most of the authors prefer the solution of the lessee's place (*Albaladejo,* Derecho Civil, II[12], 641; *LaCruz Berdejo,* Derecho de obligaciones, II[2], 123; *Bercovitz,* Manual, Contratos, 170).

Article 5:103: Acceptance of goods

The lessee must:
(a) take all steps reasonably to be expected in order to enable the lessor to perform the obligation to make the goods available at the start of the lease period; and
(b) take control of the goods as required by the contract.

Comments

A. Separate obligation to accept the goods

1. **Obligation to co-operate and to take control of the goods** The lessee has a separate obligation to co-operate in order to enable the lessor to make the goods available (III. – 1:104 (Co-operation)) and then to take control of the goods. This obligation is a parallel to the lessor's obligation to accept the goods at the end of the lease period. Reference is made to IV.B – 3:107 and the comments to that Article.

B. Remedies

2. **Protection of the goods etc.** The lessor can resort to ordinary remedies for non-performance of the lessee's obligations under the present Article. In addition there are rules in III. – 2:111 (Property not accepted) on preservation of the goods etc., cf. comment *B4* to IV.B – 3:107.

Notes

1. Obligation to co-operate and to take control of the goods

1. A general reference is made to the notes to III. – 1:104 (Co-operation) concerning the obligation to co-operate; see also notes to IV.B – 3:107.
2. According to CISG art. 60 the buyer is obliged to co-operate and to take delivery, and corresponding rules on sales are found in several jurisdictions.
3. Corresponding rules in national law on lease contracts are not common. According to ITALIAN CC art. 1587(1), the lessee must (*deve*) take control of (*prendere in consegna*) the goods, but it is debated whether or not this is a contractual obligation, the non-performance of which entails remedies (*Alpa and Mariconda,* Codice Civile commentato, art. 1587 nos. 2 and 3). HUNGARIAN legislation in force does not expressly regulate the lessee's obligation to take delivery of the goods, whereas the draft of the new CC (published in 2006) contains such an obligation in § 5:311(1). However, legal literature affirms that the lessee is obliged to take delivery (accept) the goods. See *Besenyei,* A bérleti szerződés, 30–31. In a case where the lessee returned the leased goods to the lessor one month earlier than the expiry of the lease period, the Supreme Court ordered the lessee to pay the rent for the last month nonetheless. (BH 1996. 640. Legf. Bír. Pfv. II. 23. 285/1995.) On the basis of this decision, *Besenyei* argues that the lessee is under an obligation to take delivery of the goods. It has been argued that the lessee has an obligation to accept the goods, at least in long-term leases, under NORWEGIAN law, *Falkanger,* Leie av skib, 229. Under SCOTTISH law, the lessee must take possession of the goods leased, or will be liable in damages for non-acceptance (*Walker,* Principles of Scottish Private Law III, 399). Under a hire-purchase contract in the U. K., the lessee is under a duty to accept delivery of the goods leased. If the lessee does not do so, the lessor may bring an action in damages for the whole of future unpaid instalments

less the value of the goods at the time they are refused and a discount in respect of early return of the goods (see Chitty (*-Beale*) on Contracts II[29], para. 38-283).

4. For some jurisdictions it is explicitly said that the lessee is not obliged to take control of the goods: for AUSTRIA see Schwimann (*-Binder*), ABGB V[3], § 1094, no. 1; for GERMANY see Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 535, no. 52 (*Annahmeverzug*, but not *Schuldnerverzug*). For GREEK law, it is unanimously held that the lessee is not obliged to take control of the goods (see *Filios* (2005), § 32; *Kornilakis*, 203; *Rapsomanikis*, art. 575, no. 3; GREEK CC arts. 349 ff. on creditor's default apply).

Article 5:104: Handling the goods in accordance with the contract

(1) The lessee must:
  (a) observe the requirements and restrictions that follow from the terms agreed by the parties;
  (b) handle the goods with the care that a reasonable lessee would exercise in the circumstances, taking into account the duration of the lease period, the purpose of the lease and the character of the goods; and
  (c) perform all measures that must ordinarily be expected to become necessary in order to preserve the normal standard and functioning of the goods, insofar as is reasonable, taking into account the duration of the lease period, the purpose of the lease and the character of the goods.

(2) Where the rent is calculated so as to take into account the amortisation of the cost of the goods by the lessee, the lessee must, during the lease period, keep the goods in the condition they were in at the start of the lease period, subject to normal wear and tear for the kind of goods.

Comments

A. Overview

1. Obligation to handle the goods in accordance with the contract It is characteristic of lease contracts that the lessee's right – as opposed to the owner's right – to benefit from the goods by use or by disposition is "positively" limited, i. e. the lessee may only use and dispose of the goods within the limits that follow from the contract. The lessee further has a general duty to handle the goods with care. This obligation can be seen as including everything that the lessee is obliged to do, not to do, or to tolerate concerning the goods during the lease period. The present Article refers to the individual agreement in limb (a) of the first paragraph and then states a general obligation of care in handling the goods in limb (b). Obligations with regard to maintenance etc. are dealt with in limb (c). A special rule on contracts where the rent is calculated so as to amortise the entire value of the goods is contained in the second paragraph of this Article.

B. Restrictions and requirements following from the contract

2. **Express terms, purpose of use etc.** The parties may have agreed on specific restrictions on and requirements for handling of the goods, including maintenance, safety measures, areas of use, cleaning etc. Even if there are few express terms, restrictions and requirements may follow more or less directly from the purpose of the contract.

Illustration 1
B is going to move from one apartment to another and leases a small van for that purpose. The car must not be used for transporting stones from B's quarry.

3. **Handle the goods with care** The lessee has a general obligation to handle the goods with care. It is impossible to define in detail and exhaustively what this obligation implies. What is required will depend on the circumstances, including the length of the lease period, the purpose of the lease and the character of the goods. The lessee's acts and omissions must be judged against what a reasonable lessee would have done in the circumstances. Regard must also be had to obligations of repair and maintenance: if the consequences of the lessee's lack of care must be carried by the lessee and not by the lessor, this should influence the intensity of the lessee's obligation of care in handling the goods.

4. **Maintenance etc.** The obligations to repair and maintain the goods during the lease period are discussed in the comments to IV.B – 3:104. As mentioned there, the lessee's obligation to maintain the goods should be complementary to the lessor's obligations. The obligations on the lessee stated in paragraph (1) limb (c) and paragraph (2) of the present Article condition the lessor's obligation of maintenance, see also IV.B – 3:104(3). Any obligations placed on the lessee under limb (c) are consequently excluded from the lessor's obligations under IV.B – 3:104. Reference is therefore made to the comments to IV.B – 3:104.

5. **Leases with full amortisation of the cost** The second paragraph of this Article includes special rules on contracts where the rent is calculated so as to take into account the full amortisation of the cost of the goods. The provision is formulated as a specified application of the first paragraph. In these cases the lessee must keep the goods in the condition they were in at the start of the lease period, subject to normal wear and tear. The reason is that these lease contracts in real terms have the same function as a sale. The rule covers both three-party transactions (often referred to as "financial leasing" etc.) and two-party long-term leases. Details are dealt with in Comment C9 to IV.B – 3:104.

6. **"Risk" and lessee's obligation to return the goods** Loss of, or damage to, the goods can raise questions concerning the lessee's obligation to return the goods. In such cases it is not a question of non-performance of the lessor's obligations, but of non-performance of the lessee's obligations. The rules on the lessee's obligations to return the goods, including the rules on the condition of the returned goods, should ideally be a mere function of the rules concerning the lessee's obligations of care, maintenance and repair. In other words, if the lessee has performed the obligations concerning care, maintenance

and repair, the returned goods should generally conform to the rules on the condition of returned goods. The lessee is not, however, responsible for the consequences of loss or damage *not* caused by non-performance of the lessee's obligations concerning care, maintenance and repairs (unless the contract states otherwise). In such cases then, the lessor must accept that the goods cannot be returned or that they can only be returned in damaged condition. There is no need here to formulate this as the "owner's risk", as it is sometimes done. On the other hand, where the lessee has a positive obligation to keep the goods in the condition they were in at the start of the lease period, the lessee must bear the consequences of accidental damage to the goods, either by repairing the goods or by paying damages, subject to relevant excuses based on impediment, cf. III. – 3:104 (Excuse due to an impediment). Regarding contracts where the rent is calculated so as to amortise the entire cost of the goods, the expected value of the goods at the end of the lease period is usually low, cf. the exception for normal wear and tear in the second paragraph of the present Article. This will for practical purposes limit the lessee's liability when the goods are lost by accident.

7. Agreements on "risk" It is not unusual to find contract clauses to the effect that the lessee must bear the "risk" while in possession of the goods. This is typically the case in lease contracts covering the entire economic lifespan of the goods, or contracts where the intention is to make the lessee owner of the goods at the end of the lease period. Similar clauses can, however, also be found in other contracts. The meaning of such clauses must be determined by interpretation in each case. Whether the clause deals with the lessor's obligations, the lessee's obligations or both can hardly be determined on a general basis. It is recommended that the parties agree on something more specific than the distribution of "risk".

Notes

I. Requirements and restrictions following from the contract

1. In several systems, a reference is made to the purpose of the contract, either negatively, restricting the lessee's right to use the goods, or positively, defining the lessee's obligation regarding the handling of the goods: AUSTRIAN CC § 1098; CZECH CC art. 665 (agreed use or use conforming to the nature and destination of the goods; sometimes even duty to use the goods). ESTONIAN LOA § 276(2), cf. § 344 (commercial leases) and § 363 (financial leasing); HUNGARIAN CC § 425(1) (use the goods according to the terms of the contract and according to the destination of the goods; i. e. for the purposes goods of the same kind would ordinarily be used for); LATVIAN CC art. 2151. For some systems it is said explicitly that the purpose of the lease may also be presumed given the circumstances, usages, the nature of the goods etc.: BELGIAN CC art. 1728 (cf. *La Haye and Vankerckhove,* Baux en général[2], no. 792 ff.); FRENCH CC art. 1728, ITALIAN art. 1587(1) cf. *Alpa and Mariconda,* Codice Civile commentato, art. 1587, no. 8 ff.; LITHUANIAN CC art. 6.489(1); MALTESE CC art. 1554(a); POLISH CC art. 666(1); PORTUGUESE CC art. 1038(c); SLOVAK CC art. 665 (agreed use or use conforming to the nature and destination of the goods; sometimes even duty to use the goods, Svoboda (*-Górász*), OZ, 612); SLOVENIAN LOA art. 600(2).

2. Some systems have rules on remedies for use at odds with the contract; what is at odds with the contract must be decided on the basis of legislation, the contract itself and usages. See CZECH CC art. 679(3) (termination); GERMAN CC §§ 538, 541 and 543(2), cf. Staudinger (*-Emmerich*) BGB (2006) § 541 nos. 2–4; GREEK CC art. 594 (termination and damages), see *Rapsomanikis*, art. 594.
3. Under U. K. law, the leased goods may only be used for the purpose for which they were leased (*Palmer*, Bailment, 1270–1275; *Burnard v. Haggis* (1863) 14 CB (NS) 45 and *Walley v. Holt* (1876) 35 LT 631; and in SCOTLAND, *Bell*, Principles, § 143). Where the lessee uses the goods for a purpose not contemplated by the contract, the lessee is liable both in contract and in tort for any loss caused by such use. However the right to use the goods confers on the lessee the authority to do anything "reasonably incidental to its reasonable use", unless there is express provision to the contrary in the contract. See further, Chitty (*-Beale*) on Contracts II[29], para. 33-077.

II. Obligation of care

4. An obligation for the lessee to handle the goods with care is expressed in legislation in several countries, see for example CZECH CC art. 670; DUTCH CC art. 7:213 (as a good lessee); ESTONIAN LOA § 276(2) (with prudence and according to the intended purpose), cf. § 344 (commercial leases) and § 363 (financial leasing); FRENCH CC art. 1728 (*user de la chose louée en bon père de famille*; cf. *Huet*, Contrats spéciaux, no. 21183); GREEK CC art. 594 (translation: "with care and as agreed", see *Georgiadis*, Law of Obligations, § 24 nos. 46–47; *Rapsomanikis*, art. 594, nos. 2–4); HUNGARIAN CC § 4(4) (general principle on a standard of care "to be expected in the given circumstances"); ITALIAN CC art. 1587(2) (*osservare la diligenza del buon padre di famiglia*, cf. *Alpa and Mariconda*, Codice Civile commentato, art. 1587, no. 4 ff.); LATVIAN CC art. 2150 (translation: "properly and as a good manager"); MALTESE CC art. 1554(a) ("make use of the thing as a *bonus paterfamilias*"); to the same effect, PORTUGUESE CC art. 1038(d); SLOVENIAN LOA art. 600(1) (translation: "use the thing with the diligence of a good businessperson or with the diligence of a good manager"); SPANISH CC art. 1555(2) (use the thing as a *diligente padre de familia*); SWISS LOA art. 257f (*die Sache sorgfältig gebrauchen*, cf. BSK (*-R.Weber*), OR I[3], § 257g, no. 1). Under POLISH law the lessee should use the goods in a manner specified in the contract and, if the contract does not provide any guidelines, in a manner which corresponds to the nature or designation of the goods.
5. A duty of care is commonly held even without express legislation, see for example for AUSTRIAN law, Rummel (*-Würth*), ABGB I[3], § 1098, no. 1; for DANISH law, *Gade*, Finansiel leasing, 213–214; for GERMAN law, Staudinger (*-Emmerich*) BGB (2006) § 535 nos. 93–96; for ENGLISH, WELSH and N. IRISH law, *Sanderson v. Collins* [1904] 1 KB 628, CA; for NORWEGIAN law, see *Falkanger*, Leie av skib, § 25, in particular 232–235; for SCOTTISH law, *Campbell v. Kennedy* (1828) 6 S 806 (*Bell*, Principles, § 145). According to POLISH CC art. 667, the lessee's neglecting the goods amounts to non-performance. For SWEDISH law, see *Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 198.

III. Liability for damage or deterioration

6. A duty of care may follow indirectly from the lessee's liability for damage to or deterioration of the goods, sometimes even to the extent that the burden of proof lies on the lessee to show that there is no negligence on the lessee's part, see for example ESTONIAN LOA §§ 334(2), 358 (commercial leases) and 347(2) (animals in particular); FRENCH CC art. 1732, cf. Rép.Dr.Civ. (*Groslière*), v° Bail, no. 347, *Huet,* Contrats spéciaux, no. 21190; ITALIAN CC art. 1588; SPANISH CC art. 1563, cf. *LaCruz Berdejo,* Derecho de obligaciones, II[2], no. 437, 121; for NORWEGIAN law, see *Falkanger,* Leie av skib, 226 and 283–288; SLOVAK CC art. 670; for SWEDISH law, see *Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 204–205.
7. At U. K. common law, the lessee is bound to take reasonable care of the goods hired, but is not liable for damage to the goods if it can be proved that he or she was not negligent in causing the damage (see Chitty (*-Beale*) on Contracts II[29], para. 33-076, with reference *British Crane Hire Corp. Ltd. v. Ipswich Plant Hire Ltd.* [1975] QB 303, at 311–312). Under SCOTTISH law, the lessee is not liable for loss due to natural causes, pure accident, theft or other causes for which he is not responsible, nor for ordinary depreciation or fair wear and tear (*Walker,* Principles of Scottish Private Law III, 400). A special clause may vary the lessee's liability at common law, but this will be subject to statutory controls found in the Unfair Contract Terms Act 1977.

IV. Obligation of maintenance etc.

8. See notes to IV.B – 3:104.

Article 5:105: Intervention to avoid danger or damage to the goods

The lessee must perform maintenance and repairs that would ordinarily be carried out by the lessor, if the measures are necessary to avoid danger or damage to the goods, and it is impossible or impractical for the lessor, but not for the lessee, to ensure these measures are taken. The lessee has a right against the lessor for indemnification or, as the case may be, reimbursement in respect of an obligation or expenditure (whether of money or other assets) insofar as reasonably incurred for the purposes of the intervention.

Comments

A. Measures ordinarily to be taken by the lessor

1. Purpose of the rule The lessor often has an obligation to repair and maintain the goods during the lease period, see IV.B – 3:104. Normally, the lessor will also have an interest in having the goods properly maintained and protected against damage even where the measures are not covered by a contractual obligation. Sometimes it is not possible or at least not practical for the lessor to take action, for example where the goods

are located far from the lessor's business place or where repairs must be done immediately. This might be the case, for example, where repairs to the keel of a sailing boat are urgently required but the lessee has taken the boat to faraway waters, or where there is an urgent need to secure the counterweights of a building crane. According to the present Article, the lessee has an obligation to take measures to avoid danger or damage to the goods. To a certain extent one could rely on the rules on benevolent intervention in another's affairs (Book V), but the position here is that the lessee should have a contractual obligation to intervene.

2. **Limitation of lessee's obligation** The obligation is limited in several respects: the intervention must be necessary to avoid danger or damage to the goods; it must be impossible or impractical for the lessor to take care of the matter; and it must not be impossible or impractical for the lessee to act.

3. **Indemnification and reimbursement** The right to indemnification or reimbursement is a parallel to the corresponding right under Book V, Chapter 3. The rules in Book V may provide guidance in answering other questions concerning intervention and the consequences. The present Article should also be seen in connection with the lessee's obligation to notify the lessor, cf. IV.B – 5:108.

4. **Lessee's right to have a lack of conformity remedied** The lessee's obligation to intervene must not be confused with the lessee's *right* to have a lack of conformity remedied, see IV.B – 4:103. The lessee has a right to have lack of conformity remedied even where there is no danger to the goods. On the other hand, the lessee must respect the lessor's right to cure the lack of conformity.

Notes

1. Obligation to intervene

1. A contractual obligation for the lessee to intervene to avoid danger or damage to the goods is known in some systems. A similar rule for the lease of immovable property in the NORWEGIAN Landlord and Tenant Act § 5-5 may also apply to the lease of movables (see for the situation prior to this act, *Falkanger,* Leie av skib, 231). An obligation to intervene may also follow from the general rule in CZECH CC art. 419. In the U. K., the lessee must take reasonable care to protect leased goods against any imminent danger (*Brabant & Co v. King* [1895] AC 632) and foreseeable hazards, including against theft, fire, floods, or vandalism by third parties (*Birks,* English Private Law II, para. 13.49). See further Chitty (*-Beale*) on Contracts II[29], para. 33-048. It is held for SWISS law that the lessee is obliged to remove damage to the goods in cases of emergency (BSK (*-R.Weber*), OR I[3], § 257g, no. 1).
2. For most systems, there are no explicit provisions implying an obligation to intervene.
3. In several systems, the lessee has a *right* to remedy lack of conformity and have reasonable expenses recovered, thus having a right to perform work that is included in the lessor's obligations, see notes to IV.B – 4:103. Further, the lessee normally has an obligation to take care of the goods, sometimes expressed indirectly as a liability for damage or

deterioration, see notes to IV.B – 5:104. The question then arises, whether or not the duty of care may go so far as to imply that the lessee must perform work generally falling under the lessor's obligations (with a right to recover costs). There seems to be no single answer to this question throughout the jurisdictions. For GERMAN law it has been argued that an obligation to intervene may be seen as a result of a tacit mandate or as a duty to make use of the lessee's right to "self help" under GERMAN CC art. 536a(2)(2), see MünchKomm (*-Schilling*) BGB III[4] § 535, no. 192 and § 536a, no. 30. On the other hand, it is also said for GERMAN law that the duty of care does not imply a duty of repair (Staudinger (*-Emmerich*) BGB (2006) § 535, no. 96, but see also op. cit. § 536a, no. 25 on lessee's possible duty to remedy lack of conformity). For GREEK law the lessee is entitled to and not obliged to perform repairs (*Rapsomanikis*, arts. 590 – 592, no. 2); it has, however, been argued that the lessee's duty of care and of appropriate use of the goods may include an obligation to avert danger (*Filios* (1981), § 37 A, B III, with reference to GREEK CC arts. 173, 200, 288). For ITALIAN law, it is held that the lessee may have an obligation to perform urgent repairs, cf. *Cian and Trabucchi*, Commentario breve[8], art. 1587, no. III1, *Rescigno*, Codice civile I[5], art. 1587, no. 2. For DUTCH law, it is not impossible that an obligation to perform urgent repairs might be construed as a consequence of DUTCH CC art. 7:213, the general obligation to act as a good tenant.

Article 5:106: Compensation for maintenance and improvements

The lessee cannot claim compensation for maintenance of or improvements to the goods. The preceding sentence does not exclude or restrict any claim the lessee may have for damages or any right or claim the lessee may have under IV.B – 4:103, IV.B – 5:105 or Book VIII.

Comments

A. Improvements etc. to the goods by lessee

1. Introduction Actions taken by the lessee, or on behalf of the lessee, may lead to improvements to the goods, or at least enhance the value of the goods compared with a situation in which no such action is taken. The present Article deals with the question of possible compensation for costs or for value added. As a rule, the lessee cannot claim such compensation, but there are several exceptions.

2. Performance of lessee's obligation of maintenance etc. Depending on the individual agreement and on IV.B – 5:104, the lessee may have an obligation to maintain the goods. In most cases maintenance will preserve the value of the goods and often the work will also lead to improvements, e. g. when worn parts are replaced with new parts. The lessee cannot claim compensation for such actions, unless otherwise agreed.

3. Improvements made with lessor's consent The lessee may have the goods improved by having work performed or by replacing or supplementing parts etc. with the consent of the lessor. The parties may agree on compensation to be paid (or deducted from the rent) at once or at the end of the lease period, perhaps including the calculated depreciation of the improvements. Where a claim for such compensation cannot be based on the contract, including the circumstances of the consent given by the lessor, the present Article states that the lessee is not entitled to compensation. This rule should encourage the parties to consider the question of compensation when the agreement on improvements is made. A default rule giving the lessee a claim for compensation would be more complicated, as several factors would have to be considered, such as the lessee's costs and the value and depreciation of the improvements. If the lessee terminates the contract for fundamental non-performance of the lessor's obligations, the fact that the benefit of any such improvements is withdrawn from the lessee may form part of the loss covered by a claim for damages. Should the contract be terminated by the lessor for fundamental non-performance of the lessee's obligations, the residual value of improvements may be taken into account as gains to be offset against the lessor's loss (*compensatio lucri cum damno*).

4. Improvements made without lessor's consent If the improvements are made without the lessor's consent, and they are not part of the lessee's obligations under the contract, there is even less reason to compensate the lessee. This should be the rule whether or not the lessee is allowed to make the relevant alterations to the goods without the prior consent of the lessor. To what extent the improvements may have effects on the damages available where the contract is terminated by one party or the other for fundamental non-performance must be determined by general rules.

5. Lessee has remedied lack of conformity The lessee may, under certain conditions, remedy a lack of conformity and recover the costs from the lessor, cf. IV.B – 4:103. The present article does not detract from the lessee's rights under this rule.

6. Lessee's intervention The lessee must in some cases perform maintenance and repairs to avoid danger or damage to the goods even if these measures should ordinarily be taken by the lessor, cf. IV.B – 5:105. The present article does not affect the lessee's right to indemnification or reimbursement under IV.B – 5:105.

7. Property law rules There may be situations in which the lessee's obligations under the lease contract concerning return of the goods are fulfilled even if improvements are "reversed", for example by replacing a new part with the old one. However, this may sometimes be contrary to the rules on accession, cf. Book VIII, Chapter 5 and the policies behind theses rules. Under these rules, the result may be that the lessor may keep the improvements by compensating the lessee. The present Article does not derogate from such rules.

Notes

I. Interplay of different sets of rules

1. Only contractual claims for compensation for the lessee's improvements to the goods will be dealt with here. It should be borne in mind that these rules must be supplemented in several – perhaps most – systems with rules of property law concerning combination, processing etc. (see Book VIII, Chapter 5). Rules on unjustified enrichment (Book VII) and rules on benevolent intervention in another's affairs (Book V) may in some systems also supplement contract law in this respect.
2. The lessee's right to remedy lack of conformity against recovery of costs may sometimes in real terms imply compensation for improvements. See notes to IV.B – 4:103 concerning these rules. A similar situation may occur if the lessee performs an obligation to intervene to avoid danger or damage to the goods, see notes to IV.B – 5:105.

II. Lease law referring to rules on benevolent intervention

3. In some systems, there are references in lease law to rules on benevolent intervention in another's affairs (*negotiorum gestio*) or a modified version of these rules. According to AUSTRIAN CC § 1097(2) a lessee is regarded as a benevolent intervener in another's affairs in relation to expenses concerning the goods that are included in the lessor's obligations or are useful. This is seen as so called applied *negotiorum gestio* (*angewandte Geschäftsführung ohne Auftrag*), which *inter alia* means that no intention to benefit another is required. On the requirement of advantage to the lessor of expenses that were not included in the lessor's obligations, see *Apathy and Riedler,* Schuldrecht BT, no. 8/35; for AUSTRIAN CC § 1097 in connection with § 1037 see Schwimann (*-Binder*), ABGB V[3], § 1097, no. 11. GERMAN CC art. 539 (1) refers to the rules on benevolent intervention in another's affairs (*Geschäftsfürung ohne Auftrag*) concerning expenses related to the goods if recovery cannot be claimed under the rules in GERMAN CC art. 536a(2) on the lessee's remedying of lack of conformity. The lessee may further claim compensation for unjustified enrichment, and this may even include compensation for improvements which the lessee was obliged to make, if the lessor benefits from a premature termination of the lease (Staudinger (*-Emmerich*) BGB (2006) § 539, nos. 11–18). Installations made by the lessee may be removed, GERMAN CC art. 539(2); the right for the lessor to keep the installations against payment, GERMAN CC art. 552(1), does not apply to movables (Staudinger (*-Emmerich*) BGB (2006) § 539, no. 23). For GREEK law, see CC art. 591(2): useful expenses shall be reimbursed in conformity with the provisions governing *negotiorum gestio*. The lessee has the right to remove an installation added to the goods. HUNGARIAN CC § 427(3) entails a claim for reimbursement of necessary expenditures and refers to *negotiorum gestio* for other expenditures; the lessee must remove changes to which the lessor has not consented, § 425(3).

III. Lessor's consent to improvements as a central requirement

4. In other systems, the main rule is that compensation may be claimed only for improvements to which the lessor has consented, sometimes with modifications to this main

rule. For DANISH law, it is held that the lessee cannot claim compensation for improvements made without the lessor's consent, *Gade,* Finansiel leasing, 272. Under ESTONIAN LOA § 286(1), if improvements or alterations were made with the lessor's consent, the lessee may claim reasonable compensation for a considerable increase in the value of the goods; for other expenses (requirement of consent is questionable), the lessee is compensated pursuant to the provisions regarding *negotiorum gestio*. Such compensation is not a remedy for non-performance (Estonian Supreme Court Civil Chamber's decision from 23.02.2006, civil matter no. 3-2-1-3-06; RT III 2006, 8, 74). Consent must not be refused "if the improvements and alterations are necessary in order to use the thing or manage the thing reasonably". See also more detailed rules for commercial leases, ESTONIAN LOA § 359. In ITALIAN law, a difference is made between improvements to the goods and additions, ITALIAN CC arts. 1592 and 1593 (for the difference see *Alpa and Mariconda,* Codice Civile commentato, art. 1592–1593, no. 2). As a principle the lessee has no claim for reimbursement of improvements or additions (*Alpa and Mariconda,* loc. cit., no. 1, *Cian and Trabucchi,* Commentario breve[8], art. 1592, no. I1). The lessee may, however, claim compensation (for expenses or value, whichever is the lower amount) for improvements if the lessor has consented to the improvements (*Cian and Trabucchi,* Commentario breve[8], art. 1592, no. III1: implied consent or simple tolerance is not sufficient). Even without such consent, the lessee may offset the value of the improvements against the lessor's claim for damages for loss or damage, unless loss or damage is caused by gross negligence (*colpa grave*), ITALIAN CC art. 1592(2). Additions to the goods may be removed by the lessee, but the lessor may choose to keep them against compensation, ITALIAN CC art. 1593(1). If the addition cannot be removed without harm (*nocumento*) to the goods and amounts to an improvement, the rules on improvements apply. To the same effect (with variations concerning calculation), see MALTESE CC art. 1564. According to LITHUANIAN CC art. 6.501(1) the lessee may claim compensation for necessary expenses if improvements are made with the lessor's consent. Improvements made without consent may be removed if this can be done without harm to the goods and the lessor does not want to compensate for them, LITHUANIAN CC art. 6:501(2). The lessee has no claim for compensation for inseparable improvements made without consent, LITHUANIAN CC art. 6:501(3). According to SWISS LOA art. 260a(3) the lessee may claim a corresponding compensation for improvements if the goods have a significant added value due to renovation or modification agreed to by the lessor. If these requirements are not met the lessee's expenses are not compensated (see Guhl (*-Koller*), OR[9], § 44, no. 234: also no claim under unjustified enrichment). According to SLOVAK CC art. 667(1), the lessee may require reimbursement of costs if the lessor has agreed to provide such reimbursement. If the lessor has consented to the modifications but not to any reimbursement, the lessee may claim reimbursement only of the relevant value. There is a similar rule in CZECH law, cf. also the special rule of CZECH Ccom art. 633 concerning leases of a means of transportation: the lessee must maintain the object at the lessor's expense. Under U. K. law, the lessee has no authority to deliver the goods to a third party for repair, except where the circumstances show implied authority from the lessor. In such circumstances, the repairer acquires a lien over the goods (Chitty (*-Beale*) on Contracts II[29], para. 33-079). The same is true of a lessee under a hire-purchase contract (Chitty (*-Beale*) on Contracts II[29], para. 38-387).

IV. Other solutions

5. In DUTCH law, the lessee has a claim under the rules of unjust enrichment where the improvements were approved by the lessor, DUTCH CC art. 7:216(3). LATVIAN CC art. 2140 refers to general rules in art. 866 ff. concerning reimbursement of necessary and useful expenditures to "a property". In POLISH law, the lessor may either keep the improvements against remuneration or demand that the lessee removes them, POLISH CC art. 676. This provision is *lex specialis* and the lessee may not demand remuneration under the rules of unjustified enrichment, *Pietrzykowski*, KC. Komentarz, art. 676, Nb. 3, 414. In PORTUGUESE law, a lessee who makes improvements to the goods (if the rules on urgent repairs do not apply) is in the same position as a possessor in bad faith, PORTUGUESE CC art. 1046 implies that useful improvements may be compensated for (cf. PORTUGUESE CC arts. 1273 and 1275). The lessee may also remove the improvements if this can be done without harm to the goods. SLOVENIAN LOA art. 604(5): "The lessee may take any additions added to the thing if such can be separated without damaging the thing; however the lessor may keep them by compensating the lessee for their value upon return" (translation). Under SPANISH law, the lessee may remove improvements if this can be done without harm to the goods, but there is no right to compensation, SPANISH CC art. 1573, referring to art. 487 concerning usufruct. For SWEDISH law, it is held that the lessee, "according to common rules", may claim compensation for costs necessary to avoid loss of or damage to the goods, but not for other costs (*Hellner/Hager/Persson*, Speciell avtalsrätt II/14, 198).

Article 5:107: Obligation to inform

(1) The lessee must inform the lessor of any damage or danger to the goods, and likewise of any right or claim of a third party, if these circumstances would normally give rise to the need for action on the part of the lessor.
(2) The lessor must be informed within a reasonable time after the lessee knew, or could reasonably be expected to have known, about the circumstances and their character.

Comments

A. Obligation to inform

1. General The present article concerns the obligation of the lessee to inform the lessor of damage and danger to the goods arising during the lease period, and likewise of third party rights, that become known to the lessee. The purpose of the rule is to make it possible for the lessor to defend his or her own interests. Non-performance of the lessee's obligation to inform may give rise to remedies, even if the lack of notification does not lead to actual loss. The lessor has a legitimate interest in relying on the lessee to give notification in these situations.

Illustration 1
The lessee notices that a leased car leaks brake fluid. This constitutes an immediate danger to the car (and to the driver as well as to third parties). The lessee is obliged to inform the lessor. The same will be the case if the lessee notices that the level of brake fluid has decreased considerably, without being able to spot any leak.

Illustration 2
The lessee has rented a boat for a trip up the river. Due to heavy rain the river becomes a torrent and the lessee does not dare to continue and needs help and perhaps salvage in order to get back. In such a case the lessor should be informed.

2. Third party claims and rights The obligation to inform also encompasses situations in which the lessee learns that a third party has a claim or right to the object. An example might be a case in which someone claims to be the rightful owner of the goods and wants to recover them.

3. Information within reasonable time The lessee must provide such information a reasonable time after the lessee knew or could reasonably be expected to have known about the damage, claim etc., and that the circumstances required the lessor's attention.

4. Non-conformity not relevant The lessee must inform the lessor according to this Article even if the danger or damage does not affect the lessee's use or in any way amount to non-performance.

Notes

1. Duty to inform

1. A duty on the lessee to inform the lessor of facts that may require action from the lessor is found in various forms in national law. The rules may concern third party claims, physical damage to the goods (or danger of such damage), or both. The character of this duty is not always clear. In some systems, the duty is coupled with liability for damages where information is not given in time. A duty of information may also be seen as a part of the general obligation to handle the goods with care, but it may further be regarded as an independent contractual obligation. In the following, no attempt has been made to decide the character of the duty in national law. Rules on notification as a precondition for remedies are not dealt with here, see notes to IV.B – 4:106.
2. A duty to inform the lessor of both physical damage and danger and of claims by third parties is found in several systems: DUTCH CC arts. 7:222 (*gebrek*) and 7:211 (third party claims); ESTONIAN LOA § 282 (damages as sanction); GERMAN CC § 536c (damages as sanction); GREEK CC art. 589 (damages as sanction); ITALIAN CC art. 1577(1) for repairs (damages as sanction, *Alpa and Mariconda,* Codice Civile, art. 1577 nos. 1 and 2) and ITALIAN CC art. 1586(1) for third party claims; MALTESE CC art. 1565 ("any encroachment or damage affecting the thing let"); for NORWEGIAN law, see *Falkanger,* Leie av skib, 230; POLISH CC art. 665 (third party claims)

and art. 666(2) (necessity of repairs; no duty to notify of factual danger to the goods); PORTUGUESE CC art. 1038(h); SPANISH CC art. 1559 (damages as sanction).

3. According to AUSTRIAN CC § 1097(1) the lessee must notify when repairs by the lessor become necessary. A duty to notify of claims by third parties may be deduced from the more general obligation of the lessee to take care of the goods. Under SCOTTISH law, the lessor is only liable for repairs if notice is given by the lessee as soon as reasonably possible (*Bell,* Principles, § 145). It seems likely that this is also true of U. K. lease contracts in general.
4. FRENCH CC art. 1726 deals with the duty to notify if the lessee's use is affected by an action relating to ownership and liability in damages for non-compliance (Rép.Dr.Civ. (*Groslière*), v° Bail, nos. 301 and 302). It is also held, however, that the lessee must notify of the need for repairs (*Groslière,* loc. cit., nos. 220 and 221). For BELGIAN law, see *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 808 ff. (the lessee's obligation to notify is based on his position as a *gardien*).
5. In several systems, the rule seems to be concentrated on physical damage or danger to the goods: CZECH CC art. 668 (need for repairs), cf. art. 722 for business leases. HUNGARIAN CC § 427(2); LITHUANIAN CC art. 6.493(2); SLOVAK art. 668(1) (need for repairs); SLOVENIAN LOA art. 596; SWISS LOA art. 257g (damages as sanction).

II. Time for information

6. It is common that the lessee has a duty to notify "without delay", "immediately", etc.: AUSTRIAN CC § 1097(1); CZECH CC art. 668(1) and art. 722(2), both: without undue delay; DUTCH CC art. 7:222; ESTONIAN LOA § 282(1); GERMAN CC § 536c(1); GREEK CC art. 589; LITHUANIAN CC art. 6.493(2); MALTESE CC art. 1565; POLISH CC art. 665 and art. 666(2), both *natychmiast,* "immediately"; SLOVAK CC art. 668(1) (without undue delay); SLOVENIAN LOA art. 596(1); SPANISH CC art. 1559 (cf. TS 10 Jun 1987, RAJ 1987, 4272). For ITALIAN law, it is explained that the notification must be given at such a time and in such a way as to avoid unnecessary or further deterioration or damage to the goods (*Alpa and Mariconda,* Codice Civile, art. 1577, no. 1). For SWISS law the time within which notification must be given depends on the circumstances of the case, i. e. the knowledge of the lessee, the kind of damage and the extent of the damage (BSK (*-R.Weber*) OR I[3], § 257g, no. 3).

III. Positive knowledge, negligence

7. It is not always clear to what extent the liability of the lessee requires positive knowledge of the facts or whether negligence is sufficient. For example, gross negligence seems to be the requirement in GERMAN law (the lessee may not overlook what everybody would see, BGH 4 Apr 1977, NJW 1977, 1236, 1237, Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 536c, no. 3), while positive knowledge is required under SWISS law (BSK (*-R.Weber*) OR I[3], § 257g, no. 3). Negligence is sufficient under GREEK law (*Rapsomanikis,* art. 589, no. 5).

Article 5:108: Repairs and inspections of the lessor

(1) The lessee must tolerate performance of repairs and other work on the goods necessary in order to preserve the goods, remove defects and prevent danger. If possible, the lessor must inform the lessee a reasonable time prior to taking such measures. This obligation does not preclude the lessee from reducing the rent in accordance with IV.B – 4:104.
(2) The lessee must tolerate the performance of work on the goods, even that not falling under paragraph (1), unless there is good reason to object to such performance.
(3) The lessee must tolerate inspection of the goods for the purposes indicated in paragraph (1). The lessee must also accept inspection of the goods by a prospective lessee during a reasonable period prior to expiry of the lease.

Comments

A. Necessary repairs etc.

1. The lessee must tolerate repairs The rule in paragraph (1) reflects the lessor's maintenance and repair obligations. The lessee must tolerate such work. The lessee has, however, the right to rent reduction for periods during which the goods are not available for the lessee's use or where use of the goods has been affected by the work, see the discussion in Comment *F11* to IV.B – 3:101. Non-availability of the goods is non-performance of the lessor's obligations even if the lessor has a right to perform the repairs etc. Correspondingly, the lessee has an obligation to tolerate the work in the sense that the lessee cannot prevent the work being done. The lessee's obligation to tolerate such work is, however, restricted to work and repairs that are necessary to preserve the goods, remove defects, and prevent danger. The lessee does not have to tolerate other work or repairs (unless there is no good reason to object, see Comment *B2*). Otherwise it would be too easy for the lessor to interfere with the exclusive right of use of the lessee.

B. Other work

2. Obligation not to obstruct other work without good reason The lessee's right under a lease contract constitutes an exclusive right of use. The lessor in principle has no right to use the goods or take them away. This also applies to third parties. However, it would be unreasonable to completely bar the lessor from performing other work, e. g. updates to computers. The lessee therefore has an obligation to tolerate this kind of work where there is no good reason to protest. In deciding whether the lessee has good reason to object to such work, one must take into consideration both the consequences the work may have on the lessee and the lessor's interest in having the work done before the expiry of the lease.

C. Inspections

3. **Inspections by lessor and by prospective lessees** Naturally, the lessee must tolerate inspection of the goods for the purposes indicated in paragraph (1). The lessee must also tolerate inspections by prospective lessees during the final period of the lease. In practice, this obligation will probably only arise in leases of durable and expensive goods (boats, cars, etc.).

Notes

I. Necessary repairs etc.

1. It seems to be generally accepted that the lessee must tolerate performance of work on the goods that the lessor is obliged to perform under the contract. It is sometimes said explicitly that the lessee must tolerate work that is necessary for the preservation of the goods etc., irrespective of the lessor's obligation to perform such work, see for example for AUSTRIAN law, Schwimann (*-Binder*), ABGB V[3], § 1098, no. 10 ff., see also *Koziol* (*-Iro*), ABGB, § 1098, no. 4; CZECH CC art. 668(2); DUTCH CC art. 7:220(1), cf. *Rueb/Vrolijk/Wijlkerslooth*, De huurbepalingen verklaard, 43; ESTONIAN LOA § 283(1); PORTUGUESE CC art. 1038(e); SLOVAK CC art. 668(2); SWISS LOA art. 257h(1).
2. In many systems, the right to rent reduction is general and also covers interference with the lessee's use due to maintenance and repairs by the lessor. There are, however, systems where the lessee has only a limited right to rent reduction in such cases, see note *I3* to IV.B – 4:104.
3. Rules allowing not only rent reduction but termination of the lease as a result of interference with the lessee's use due to repair work etc. are also found: LITHUANIAN CC art. 6.492; SLOVENIAN LOA art. 590.

II. Other work

4. In some jurisdictions, the lessee must to some extent tolerate modernisation of the goods or other work, i. e.work that is not necessary and not included in the lessor's obligations. Under AUSTRIAN law, a test of balance of interests applies both for necessary work and for other work (see references in note *I1*). ESTONIAN LOA § 284 has detailed rules: a lessee must tolerate improvements and alterations, unless the work and effects are unfairly burdensome. There are rules on prior notification, and the lessor must take the lessee's interests into account. The lessee may claim compensation for expenses and may in some cases terminate the lease; rent reduction and damages are not precluded. For GERMAN law, it is indicated by some authors that the lessee must tolerate modernisations, see (MünchKomm (*-Schilling*), BGB III[4], § 535, no. 97, 99, Schmidt-Futterer (*-Eisenschmid*), Mietrecht[9], § 535, no. 59 (GERMAN CC § 554(2) does not apply to movables). For GREEK law, the lessee is obliged to tolerate improvements and alterations to the leased goods only in exceptional cases, when required by *bona fides* and business usages (*Georgiadis*, Law of Obligations, § 24, no. 55). According to SWISS LOA art. 260(1), the lessor may renovate or modify the object if the work may

reasonably be imposed upon the lessee and if notice of termination has not been given. ITALIAN CC art. 1582 forbids *innovazioni* that diminish the lessee's use; other work seems to be allowed, *Alpa and Mariconda,* Codice Civile, art. 1582, no. 4.

5. Some systems do not allow modernisation etc. of the goods by the lessor. According to FRENCH CC art. 1723, the lessor may not change the form of the thing leased during the lease period. FRENCH CC art. 1724 applies exclusively to urgent repairs and is not applicable to improvements to the goods (for FRANCE see Rép.Dr.Civ. (*Groslière*), v° Bail, no. 261, for BELGIUM see *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 679). See to the same effect, MALTESE CC art. 1547 and SPANISH CC art. 1557. According to SLOVENIAN LOA art. 591(1) the lessor may not make any changes to the goods that interfere with the lessee's use. Under LITHUANIAN CC art. 6.492(4), capital repairs that are not urgent may be authorised by the court.

III. Inspections by lessor or by prospective lessees

6. It seems to be generally accepted that the lessee must tolerate inspections concerning work which must be tolerated. See as examples of positive regulation, ESTONIAN LOA § 283(2) and SWISS LOA art. 257h(2).
7. In some systems, the lessor has a more general right to inspect the goods, see for example CZECH CC art. 665(1); HUNGARIAN CC § 425(2)(a); LITHUANIAN CC art. 6.489(5); PORTUGUESE CC art. 1038(b) SLOVAK CC § 665(1)(2).
8. There are also examples of legislation allowing inspections in preparation for a new lease contract (or a sale): ESTONIAN LOA § 283(2), HUNGARIAN CC § 433(1); LITHUANIAN CC art. 6.489(5); SWISS LOA art. 257h(2).
9. In other systems, the lessor's right to inspect the goods has been developed in case law and doctrine. For AUSTRIAN law, see *Apathy and Riedler,* Schuldrecht BT, no. 8/31, for example, concerning visits by prospective buyers, see OGH 11 March 1961, EvBl 1961/223. For FRENCH law it is held that the right to necessary repairs under FRENCH CC art. 1724 implies a right to access, see *Huet,* Contrats spéciaux, no. 21167; for BELGIAN law, see *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 687 ff. (also control of lessee's performance); for DUTCH law, see *Rueb/Vrolijk/Wijkerslooth-Vinke,* De huurbepalingen verklaard, 43, with reference to DUTCH CC art. 7:220(1). For GERMAN law, see Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 535, no. 56, with reference to GERMAN CC § 242 (inspections in individual cases and for particular reasons). For GREEK law, see *Filios* (1981), § 39 A (the lessee must tolerate inspections only in exceptional cases according to *bona fides*). For ITALIAN law, inspections for control and by prospective lessees and buyers may be possible, see for details *Cian and Trabucchi,* Commentario breve[8], art. 1587, no. V8; Scialoja and Branca (*-Provera*), Commentario del Codice Civile, art. 1585, 237.

Article 5:109: Obligation to return the goods

At the end of the lease period the lessee must return the goods to the place where they were made available for the lessee.

Comments

A. Obligation to return the goods

1. **The obligation** The lessee has only a temporary right to use the goods, and at the end of the lease period the goods must be returned to the lessor. The parties may derogate from this rule, for example by giving the lessee a right to buy the goods at the end of the lease period or a right to prolong the lease period.

2. **Time for return of the goods** The time for return of the goods is at the end of the lease period. The time at which the lease period ends follows from IV.B – 2:102.

B. Place for return of goods

3. **Place where the goods were made available** The goods must be returned to the place where they were made available for the lessee's use. As a rule, the goods are made available at the lessor's place of business, cf. IV.B – 3:101(1). The rule in the present Article is a deviation from III. – 2:101 (Place of performance), which fixes the debtor's place of business as the place for performance of obligations other than paying money. In a lease contract it will normally be more convenient to return the goods to the lessor's place of business. The lessor may have facilities for storing the goods; the goods will be repaired here before they are leased to another person; the goods will be made available here under a new lease contract; etc. If it has been agreed that the goods will be made available for the lessee's use at a place other than the lessor's place of business, this will also be the place to which the goods should be returned according to this rule. Even where the goods were made available at a place different to that originally agreed, this will be the place for return of the goods. It might be discussed whether the lessee is obliged to accept this: the place originally agreed upon is the place the lessee expects to return the goods to. Nevertheless, if the lessee has accepted the goods at a different place, it should normally be possible to return the goods to the same place. In this way the rule is also simpler and less ambiguous.

Notes

I. Obligation to return the goods

1. In legislation on lease contracts, it is common to include the lessee's obligation to return the goods; the provisions are not listed here.
2. In some systems, it is said explicitly that the lessor may demand the goods directly from a sub-lessee: ESTONIAN LOA § 334(5), cf. § 358(1) for commercial leases; GERMAN CC art. 546(2); GREEK CC art. 599(2); POLISH CC art. 675(2) (sub-lessee or other person to whom the lessee has transferred the goods); SWISS court practice allows a direct claim for return by the lessor against the sub-lessee (BSK (*-R.Weber*), OR I^3, art. 267, no. 1).
3. In particular, the extent to which the lessee may withhold the goods because of counterclaims etc. is sometimes regulated (a question that is not regulated in this Part of Book IV but left to general rules): under AUSTRIAN CC § 1109, the lessee must return the goods irrespective of counterclaims or security rights in the goods; under ESTONIAN LOA § 334(3), the lessee of a movable may withhold until expenses are reimbursed; the latter solution is accepted in DUTCH case law as well, cf. Hoge Raad 4 Apr 1997, NJ 1997, 608 (Pilgram/Vastgoed).

II. Place of return

4. The place of return is mostly the lessor's place (unless otherwise agreed): for AUSTRIAN law, see Koziol, (*-Iro*), ABGB, § 1109–1110, no. 3; ESTONIAN LOA § 334(6) (the place at which the goods were delivered). Under FRENCH law the place of return is in principle governed by FRENCH CC art. 1247: the place of the goods at the time of performance of the obligation; in practice the contract often stipulates the place of the lessor and it is said that this may be presumed also without agreement (*Huet*, Contrats spéciaux, no. 21195; for BELGIUM see *La Haye and Vankerckhove*, Le Louage de Choses I^2, nos. 1240: place of return is the place where the lessee received the goods). For GERMAN law it is held that movable goods must be returned to the place of the lessor (Emmerich and Sonnenschein, (*-Rolfs*), Hk-Miete^8, § 546, no. 15). In GREEK law the prevailing view is that, in regard to movables, the place of return is the lessor's place (*Filios* (2005), § 35 B 2; *Georgiadis*, Law of Obligations, § 27, no. 49). According to ITALIAN CC art. 1590(4), movables must be returned to the place where they were made available to the lessee, normally the lessor's place (*Alpa and Mariconda*, Codice Civile, art. 1590, no. 3). According to POLISH CC art. 454, the goods are to be returned to the lessee's place. SLOVENIAN LOA art. 604(2): goods must be returned to the place where the goods were made available to the lessee. Under SWISS law, the goods must be returned to the place where they were at the time of the conclusion of the contract, unless otherwise agreed (SWISS LOA art. 74(2)(2), BSK (*-R.Weber*), OR I^3, art. 267, no. 1). Under U. K. law, the lessee must return the goods to the lessor (or a nominee) at the expiration of the hire period and must bear the costs of returning the goods (*British Crane Hire Corp. Ltd. v. Ipswich Plant Hire Ltd.* [1975] QB 303, 311–313), but no specific place for return is specified by law. For CZECH law, the general rule of the debtor's (i. e. the lessee's) place applies, with the exception of leases of a means of transportation, CZECH Ccom art. 637: the place where the object was accepted by the lessee.

III. Condition of the goods

5. Rules concerning the condition of the goods on return are common. Such rules will not be dealt with here. Under this Part of Book IV, the required condition of the goods at the end of the lease period is regarded as a function of the lessee's obligation of maintenance and care etc.
6. In some systems, a description of the goods and their condition at the time they were made available to the lessee (*inventarium*) may play a certain role at the return of the goods, see for example AUSTRIAN CC §§ 1109 and 1110; ESTONIAN LOA § 334(1); FRENCH CC art. 1730; ITALIAN CC art. 1590(1); PORTUGUESE CC art. 1043(2); SPANISH CC art. 1562.

IV. Lessor's right to reject the goods

7. It is held for ITALIAN law that the lessor may refuse to accept the goods if they are not in the required condition, apart from minor variations (*Alpa and Mariconda,* Codice Civile, art. 1590, no. 7).
8. For AUSTRIAN law it is held that the lessor cannot refuse the proffered return even if the goods are damaged; the lessor's claim for damages must be pursued under CC § 1111 (OGH 3 nov 1987 SZ 60/229). To similar effect under GERMAN law, see BGH 10 Jan 1983, BGHZ 86, 204, 209; Emmerich and Sonnenschein (*-Rolfs*), Hk-Miete[8], § 546, no. 9; and for GREEK law, see G*eorgiadis,* Law of Obligations, § 24, no. 51, fn. 71; *Rapsomanikis,* art. 599, no. 2; A. P. 907/1996 EllDik 38, 117; Athens Court of Appeal 3401/2002 EllDik 44, 849.

Chapter 6:
Remedies of the lessor

Article 6:101: Overview of remedies

If the lessee fails to perform an obligation under the contract, the lessor is entitled, according to Book III, Chapter 3 and the provisions of this Chapter:
(a) to enforce performance of the obligation;
(b) to withhold performance of the reciprocal obligation;
(c) to terminate the lease;
(d) to claim damages and interest.

Comments

A. General

1. Scope of this Chapter The provisions of the present Chapter apply where "the lessee fails to perform an obligation under the contract". Thus the scope is limited to non-performance of the lessee's obligations; cf. the parallel provisions in Chapter 4 concerning remedies of the lessee.

2. Reference to general rules The lessor is entitled to the listed remedies according to Book III, Chapter 3 and the provisions of the present Chapter. This formula implies that the general rules are partly supplemented, and partly derogated from, by the provisions of the chapter.

3. Listing of remedies The list of remedies is exhaustive, but the remedies are described in a general way and more specific rules are found in Book III, Chapter 3 and the subsequent provisions of the present Chapter.

B. Right to enforce performance

4. Enforced specific performance of non-monetary obligations Some of the lessee's obligations are non-monetary, for example the obligation to maintain the goods and the obligation to return the goods at the end of the lease period. The main rule, following from III. – 3:302 (Non-monetary obligations), is that the lessor is entitled to enforce specific performance of such obligations. Several exceptions are, however, mentioned in the Article referred to: specific performance cannot be enforced where performance would be unlawful or impossible; where performance would be unreasonably burdensome or expensive; or where performance would be of such a personal character that it would be unreasonable to enforce it.

5. **Enforced specific performance of monetary obligations** The creditor is entitled to enforce performance of monetary obligations according to III. – 3:301 (Monetary obligations). This general rule has, however, important exceptions in cases where the other party is unwilling to receive performance. The rule on specific performance is restated in IV.B – 6:103 in terms specific to the continuous performance of a lease contract.

C. Withholding performance

6. **Goods are not made available** It follows from III. – 3:401 (Right to withhold performance of reciprocal obligation) that a creditor who is to perform simultaneously or after the other party may withhold performance until the other party has tendered performance or has performed. If it is clear that there will be non-performance by the other party, even a creditor who is to perform first may withhold performance. These rules apply to lease contracts as well as other contracts. The observations made in Comment C7 to IV.B – 4:101, regarding the lessee's right to withhold performance, are also relevant to the lessor's right to withhold performance: withholding of performance serves two purposes, namely to protect the withholding party from granting credit and to give the other party an incentive to perform. If the lessee is to pay rent before or at the start of the lease period, the lessor may withhold the goods in the sense that they are not made available to the lessee. In some cases the lessee may have other obligations that are to be performed before the goods are made available, for instance to make specifications or to provide necessary certificates for use of the goods.

7. **Goods have been made available** The lessor's obligation to keep the goods available for the lessee's use is a continuous obligation. However, the performance of this obligation cannot be withheld after the goods have been made available to the lessee. The lease contract implies that the lessee is given physical control of the goods, and to take the goods back would be to reverse a part of the performance, not to withhold it. Whether or not a lessor that has for some reason regained physical control of the goods may keep the goods because of non-performance of the lessee's obligations will depend on the rules in Book VIII. The lessor is entitled to withhold performance of other obligations, for example the lessor's obligation to repair the goods, as a remedy to the lessee's non-performance.

D. Termination

8. **Fundamental non-performance** The lessor is entitled to terminate the obligations of both parties under the contract if the lessee's non-performance is fundamental, cf. the rules in Book III, Chapter 3, Section 5. Fundamental non-performance is defined in III. – 3:502(2) and may relate both to monetary obligations (typically late payment of rent) and non-monetary obligations (typically the obligation to handle the goods with care).

9. **Effects of termination** Termination implies that the lessor no longer wants performance by the lessee and that the lessor is no longer obliged to perform the corresponding

obligations. As the lessor's obligation to ensure that the goods remain available for the lessee's use is also terminated, the lessor is entitled to have the goods returned. This follows from IV.B – 5:109.

E. Damages and interest

10. **Damages if non-performance is not excused** The lessor is entitled to damages for loss caused by the lessee's non-performance, unless the non-performance is excused, cf. III. – 3:701 (Right to damages). Non-performance of the obligation to pay rent will in most cases not be excused, but exceptions may occur, e. g. payment delayed due to a bank strike (see also Comment *E14* on interest). Regarding non-monetary obligations, such as the obligation to handle the goods with care or the obligation to return the goods at the end of the lease period, excuses may be more relevant in practice.

11. **Measure of damages** Damages may be claimed for actual loss as well as for future loss, and for both economic and non-economic loss, cf. III. – 3:701(3). As a rule the creditor is entitled to a sum that "will put the creditor as nearly as possible into the position in which the creditor would have been if the obligation had been duly performed", cf. III. – 3:702 (General measure of damages). If the lease is terminated the lessor is normally entitled to the rent for the remaining lease period, or put more precisely: the rent for the remaining time of a fixed leased period or for the time until the lessee could have terminated the lease by giving notice in the case of an indefinite lease period. The lessor must reduce the loss by taking reasonable steps, cf. III. – 3:705 (Reduction of loss), typically by entering into a new lease contract. Further, the lessor may suffer loss because the goods are damaged or reduced in value for other reasons as a result of non-performance of the lessee's obligations to handle the goods with care or to maintain the goods.

12. **Benefits to lessor** The termination may in some cases mean that the lessor is left with a benefit that must be taken into consideration when recoverable loss is calculated. As already mentioned, the lessor must take reasonable steps to reduce the loss, typically by leasing the goods to another lessee. If the lessor chooses to use the goods for the lessor's own purposes instead of entering into a new lease, the value of this benefit should be seen as a reduction of the loss. Unless otherwise agreed, the lessee is not entitled to compensation for improvements made to the goods, cf. IV.B – 5:106. If, however, the lease is terminated and the improvements make it possible to achieve a higher rent than would otherwise be the case, this will reduce the loss. Accordingly, the improvements should also be taken into account if the lessor chooses to utilise the goods for the lessor's own purposes.

13. **Option to buy the goods** Some contracts give the lessee an option to buy the goods at the end of the lease period or even earlier. If the rent is calculated so as to take into account the amortisation of the cost of the goods, the option to buy can often be exercised at a nominal price. Also where rent payments amortise less than a substantial part of the value, the rent already paid may influence the price at which the option can be exercised. If the option to buy is lost because the lease is terminated as a result of the

lessee's non-performance, the lessor may be left with a benefit that the lessor would not have possessed had the option been exercised. However, as long as there is no agreement that ownership will pass, it remains hypothetical to say that the lessee would have exercised the option if the lease had not been terminated. The result is that the lessee will only be compensated for the benefit obtained by the lessor insofar as the lessor disposes of the goods up until the end of the agreed lease period.

Illustration 1
The lessee has leased a machine for three years with an option to purchase at a nominal price on the expiry of the lease period. After two and a half years, the lessee cannot pay the rent any more, and the lessor terminates the lease. It turns out that the goods have a much higher value than the option price at the end of the original lease period. The lessor's loss is reduced by the possibility of leasing or using the goods for the remaining half-year, but not by the difference between the value of the goods and the option price.

14. **Interest** The lessor is entitled to interest on any sum of money that is paid late, and the lessee cannot invoke excuses. The relevant interest rate is "the average commercial bank short-term lending rate to prime borrowers prevailing for the contractual currency of payment at the place where payment is due", cf. III. – 3:708 (Delay in payment in money). Interest is added to the capital every twelve months, cf. III. – 3:709 (When interest to be added to capital). For loss not covered by the interest, the lessor is entitled to damages according to the general rules on damages, cf. III. – 3:708(2).

F. Non-mandatory rules

15. **Non-mandatory rules except for consumer leases** The rules of the present Chapter may be derogated from by agreement, except in the case of consumer leases, where the rules cannot be derogated from to the detriment of the consumer, cf. IV.B – 6:102. The parties may agree on prerequisites for remedies, e. g. on conditions for termination, and on the effects of the remedies. The parties may for example agree that a party who fails to perform an obligation is to pay a specified sum to the other party. Such an agreement is valid, although an excessive sum may in some instances be reduced, cf. III. – 3:710 (Stipulated payment for non-performance).

Notes

I. Non-performance and remedies in general

1. The general rules in Book III, Chapter 3 apply also to lease contracts. The corresponding rules in national law – concerning e. g. non-performance as a unitary concept, excused non-performance and cumulation of remedies – differ, and these differences are of course also found in national law on lease contracts. A general reference is therefore made to the notes to Book III, Chapter 3.

II. Enforcement of performance

2. Rules on enforced performance of monetary obligations are found in IV.B – 6:103, see notes to that Article.
3. The general rules in III. – 3:302 (Non-monetary obligations) on the right to enforce performance of non-monetary obligations also apply to lease contracts, and reference is made to the notes to that Article. There are, however, some rules in national law dealing with enforcement of the lessee's non-monetary obligations in particular. Only such rules will be commented upon here.
4. Under GERMAN CC § 541, the lessor has a procedural remedy (*Unterlassungsklage*) to stop the lessee from using the goods in a way not conforming with the contract if the use continues even after a warning from the lessor. A warning is, however, not necessary in some cases where it would have no purpose (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 541, no. 4). In AUSTRIAN law the lessor has procedural remedies under general law in the case of use at odds with the contract (Rummel (*-Würth*), ABGB I[3], § 1098, no. 1) and the lessor may also make use of remedies as a possessor and as an owner (Koziol (*-Iro*), ABGB, § 1098, no. 3). The situation is similar in ESTONIAN law and in GREEK law (for the latter, see *Georgiadis*, Law of Obligations, § 25, no. 53). The right to choose between enforcement of the contract and termination is present in several jurisdictions (e. g. DUTCH CC art. 3:296; FRENCH CC art. 1184, ITALIAN CC art. 1453) and is included in the lease provisions of the MALTESE CC (art. 1570), PORTUGUESE CC (art. 1041) and SPANISH CC (art. 1556). Under ENGLISH, WELSH and N. IRISH law, the court may order specific performance under a claim in conversion (sec. 3, Torts (Interference with Goods) Act 1977). Thus, the lessee is precluded from wrongfully detaining the goods or using the goods in a way inconsistent with the lessor's right of property in the goods. (Sufficient encroachment on these rights is necessary for an action in conversion: *Marcq v. Christie, Manson & Woods Ltd.* [2003] EWCA Civ 731, [13]–[24]). Detention of the goods after a request by the lessor for return of the goods may also be construed as conversion. In the case of 'regulated consumer hire agreements' and 'regulated consumer hire-purchase agreements' under the Consumer Credit Act 1974 (sec. 92(1)), the lessor is not allowed to enter the lessee's premises to take possession of the goods without an order of the court. If the lessor ignores this rule, the lessee may apply to the court for an order that the whole or part of any sum paid to the lessor in respect of the goods be repaid and that the obligation to pay the whole or part of any sum owed shall cease (sec. 132(1)). Under HUNGARIAN law, the lessor may demand that use contrary to the contract or the purpose of the goods stops (HUNGARIAN CC § 425(2)(b)). The lessee is obliged to restore the goods if they have been transformed without the lessor's consent (HUNGARIAN CC § 425(3)). According to Gellert, Commentary (*-Besenyei*), 1683, all transformations of the leased property require the prior consent of the lessor. In one of its judgments, the Supreme Court held that in the case of transformations of the leased property without the consent of the lessor, the latter is only entitled to *restitutio in integrum*, but not to termination with immediate effect (BH 1993. 49. Legf. Bír. Gf. IV. 32. 817/1991).

III. Withholding of performance

5. It seems to follow from general rules that the lessor, in cases of non-performance of the lessee's obligations, may withhold the goods before they are made available to the lessee, but not afterwards. These rules are sometimes commented upon for lease contracts explicitly (for AUSTRIAN law, see *Riss*, Erhaltungspflicht, 226; for GERMAN law, see Schmidt-Futterer (*-Blank*), Mietrecht[9], § 543, no. 149; for SWISS law, see BSK (*-R. Weber*), OR I[3], § 257f, no. 2). Performance of other obligations, e. g. maintenance, may be withheld because of the lessee's non-performance (see e. g. for FRENCH law, *Huet*, Contrats spéciaux, no. 21179, 680).

IV. Termination for non-performance

6. The general rules in Book III, Chapter 3, Section 5 on termination of the contract also apply to lease contracts, and a reference is made to the notes to that Section. Only rules concerning lease contracts in particular will be dealt with here.

7. As for *grounds* for termination, harmful use and late payment may, on certain conditions, be grounds for termination according to AUSTRIAN § 1118. It is debatable whether or not the provision is exhaustive (see Schwimann (*-Binder*), ABGB V[3], § 1118, no. 15, 17 ff., Rummel (*-Würth*), ABGB I[3], § 1118, no. 3). Under CZECH law, the lessor may terminate the lease contract (with effect *ex tunc*) on the basis of a sublease in violation of the contract (CZECH CC art. 666(2)), harmful alterations to the goods (CZECH CC art. 667(2)), or harmful use of the goods (CZECH CC art. 679(3)). The general rule on termination for non-performance (CZECH CC art. 517(1)) may also apply. ESTONIAN LOA §§ 315 and 316 contain rules on termination in cases of use contrary to the contract and cases of delayed payment, cf. also the general rule in ESTONIAN LOA § 116(2) on fundamental non-performance. GERMAN CC § 543 (cf. § 314) allows either party to terminate a lease contract without notice for an important reason (*fristlose Kundigung*), in particular in specified cases of lack of care, entrustment of the goods to third parties, and late payment. Further, in SWISS law, either party may terminate the lease contract extraordinarily for an important reason, LOA art. 266g, here with notice as fixed by law (*mit der gesetzlichen Frist*). There are special rules on termination because of the lessee's bankruptcy (SWISS LOA art. 266h), late payment (SWISS LOA art. 257d), and lack of care (SWISS LOA art. 257d). According to BELGIAN, FRENCH and LUXEMBOURGIAN CC art. 1729, use contrary to the purpose of the goods or in a way that may result in damage to the goods may, depending on the circumstances, give the lessor a right to terminate the contract. Late payment may lead to termination under general rules (*Huet*, Contrats spéciaux, no. 21178). In ITALIAN law, important non-performance may lead to termination of the contract, cf. for lease contracts in particular, cf. *Alpa and Mariconda*, Codice Civile, art. 1587, no. 7. In GREEK law, use contrary to the contract, lack of care and late payment may give reason to termination by giving notice (GREEK CC arts. 594, 597). Rules on extraordinary termination because of delayed payment, non-conforming use, or subleasing without consent are found in HUNGARIAN CC § 428(2), § 425(2) and § 425(4). Under MALTESE CC art. 1555(1), use contrary to the purpose of the goods or in a way that may result in damage to the goods may, according to the circumstances, give the lessor a right to terminate the contract. See also MALTESE CC art. 1570 on termination in cases of non-performance of either party's obligations. According to

POLISH CC art. 672, the lessor may terminate the contract if rent is delayed for two periods. The lessor may also terminate the agreement if the lessee uses the goods in a manner inconsistent with the contract or designation of the goods and despite a warning from the lessor does not cease to use them in such a way (POLISH CC art. 667(2)). Thirdly the lessor may terminate the agreement if the lessee neglects the goods (POLISH CC art. 667 (2) CC). A particular rule on late payment is found in PORTUGUESE CC art. 1048, cf. art. 1041(1): the lessee may prevent termination by paying within eight days (*Lima and Varela*, Código Civil Anotado, I, 386). According to SLOVAK CC § 679(3), the lessor may terminate the lease contract at any time if the lessee uses the leased thing or admits use of the leased thing in a way resulting in rise of damage or in danger of a considerable damage. Termination is also available where the lessee does not pay rent for three months (if the rent period is shorter than three months) or fails to make a rent payment until the following rent payment is due (where the rent period is longer than three months. The lessor may also terminate the contract if the lessee subleases the thing contrary to the lease contract (CC art. 666(2)) or if considerable danger threatens the leased goods due to modifications made without the lessor's consent (CC art. 667(2); *Lazar*, OPH II, 155. According to SPANISH CC art. 1556 (cf. art. 1555), the lessor may terminate the lease contract for non-performance of the obligation to pay rent or the obligation to use the goods with care and in conformity with the contract or custom. The normal rules on termination for repudiatory breach apply (see notes to IV.B – 4:101) in the U. K. and IRELAND. However, in the case of breach by the lessee under a 'regulated consumer hire agreement' or a 'regulated consumer hire-purchase agreement' under the Consumer Credit Act 1974, the lessor must serve a 'default notice' on the lessee, allowing 14 days for compliance, before enforcing certain rights (including the right to terminate) (secs. 87–89). Similar provisions are in force in IRELAND under the Consumer Credit Act 1995: the lessor may not terminate the contract following breach by the lessee before giving notice and allowing the lessee 21 days to remedy the situation (sec. 54(2)).

8. In some systems, termination must as a rule be decided by a court, see notes to III. – 3:502 (Termination for fundamental non-performance), but even in these systems contract clauses allowing automatic termination may be permitted, see for lease contracts in particular, *Huet*, Contrats spéciaux, no. 21178 and 21209.

V. *Damages*

9. The general rules in Book III, Chapter 3, Section 7 on damages and interest also apply to lease contracts, and a reference is made to the notes to that Section.

10. The lease contract normally implies that the lessee uses and has physical control over goods belonging to another person, and the question often arises of liability for *deterioration of or damage to the goods*. This is regularly regarded as a question of non-performance of the lessee's obligation to use the goods (only) in conformity with the contract and to handle the goods with care. The burden of proof may lie on the lessee, as it is often difficult for the lessor to prove the causes of deterioration and damages while the goods were under the lessee's control. Rules on vicarious liability for the acts of third persons permitted by the lessee to use the goods are often found; some of these rules are of particular interest to leases of immovable property, but may be relevant to leases of goods as well. According to AUSTRIAN CC § 1111, the lessee is liable for damages and deterioration caused by the lessee's own fault or the fault of family members etc. (Schwi-

mann (*-Binder*), ABGB V[3], § 1111, no. 8). It follows from the general rule in AUSTRIAN CC § 1298 that the lessee must prove that the loss was not caused by fault. See primarily to the same effect, ESTONIAN LOA § 334(2). According to CZECH CC § 683 (1), the lessee is liable for damage or inadequate wear of the leased thing resulting from use inconsistent with the contract. The lessee is vicariously liable for persons allowed access to the goods by the lessee, but not for fortuitous events. Special rules are found in CZECH CC art. 722 (business leases) and CZECH Ccom art. 632 (leases of a means of transportation). In DUTCH law, the lessee is liable in damages for non-performance, and with the exception of damage by fire, all damage is presumed to be imputable to the lessee (DUTCH CC art. 7:218, cf. art. 7:219 on vicarious liability for persons allowed to use the goods. In GERMAN law, the lessee's liability for non-performance of the obligations concerning use of the goods is based on the general rules in GERMAN CC §§ 276, 280 and 249 on liability for fault, but the discussion is often linked to the rule in GERMAN § 538 stating that the lessee is *not* liable for deterioration of and changes to the goods caused by use consistent with the contract (see e. g. Emmerich and Sonneschein (*-Emmerich*), Hk-Miete[8], § 538). Liability for performance entrusted to another, cf. GERMAN CC § 278, extends to persons that the lessee has allowed to come into contact with the goods (Staudinger (*-Emmerich*) BGB (2006) § 538, no. 6). It is up to the lessee to prove that there was no fault, if the lessor succeeds in proving that the damage or deterioration was not there already at the start of the lease (Staudinger (*-Emmerich*) BGB (2006) § 538, no. 13). Fault liability for damage caused by lack of care or by use inconsistent with the contract is the rule under GREEK CC art. 594, whether or not termination follows (*Kornilakis,* 237; *Rapsomanikis,* art. 594, no. 10); the burden of proof is on the lessee (Athens Court of Appeal 1139/2000 EllDik 43, 226; 3799/1998 EllDik 40, 182; *Filios* (2005), § 33 II). Concerning vicarious liabiliy for sublessees and other third parties, see GREEK CC art. 593. Under SWISS law, the lessee is liable for fault. The lessee may have to prove that there was no fault if the lessor proves that the damage was caused by the lessee (SWISS LOA art. 97; see further BSK (*-R.Weber*), OR I[3], § 267 nos. 4 and 5). According to FRENCH, BELGIAN and LUXEMBOURGIAN CC art. 1732, the lessee is liable for damage to or deterioration of the goods during the lessee's use unless it is proved that the deterioration or damage was caused without the lessee's fault (see the even stricter liability for fire in art. 1733, applicable also to movables, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 423). The lessee is vicarious liable for household members and sub-lessees (see further *Huet,* Contrats spéciaux, nos. 21190–21193). Under HUNGARIAN law, the lessee is liable for any damage resulting from use inconsistent with the contract or the purpose of the goods, see HUNGARIAN § 425(1). The lessor may claim compensation (damages) – in addition to termination with immediate effect, HUNGARIAN CC § 425(2). In ITALIAN law, the lessee is responsible for deterioration and damage to the goods, fire included, during the lease period, unless it is proved that the deterioration or damage was due to a cause not attributable (*imputabile*) to the lessee, ITALIAN CC art. 1588(1). This implies that it must be proved that the damage or deterioration was caused without the lessee's fault (*Cian and Trabucchi,* Commentario breve[8], art. 1588, no. I1). The liability extends to loss caused by persons that have been permitted by the lessee to use the goods, ITALIAN CC art. 1588(2). In MALTESE law, the lessee is also liable unless it is proved that the damage or deterioration is caused without the lessee's fault (MALTESE CC art. 1561; see also the rule in art. 1562 on damage caused by fire), and the lessee is

vicariously liable for family members etc. (art. 1563). In PORTUGUESE law, the lessee is liable for damage or deterioration that is not caused by ordinary use or by casual events, but the burden of proof is on the lessee (PORTUGUESE CC art. 1044, cf. art. 1043). According to SLOVAK CC § 683 (1), the lessee is liable for damage or inadequate wear of the leased thing resulting from use inconsistent with the contract. The lessee is vicariously liable for persons allowed access to the goods (e. g. family members, household members, sub-lessees, guests), however, the lessee is not liable for *casus* (Svoboda (*-Fíger*), OZ, 625). The lessee's liability under SPANISH CC art. 1556 (cf. art. 1568) includes loss caused by lack of care or use inconsistent with the contract or custom. For SWEDISH law, the lessee must prove that damage was not caused by the lessee's fault (*Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 204–205). Under U. K. law, the onus of proof is on the lessee to show that loss of or damage to the goods whilst in the lessee's possession was not caused by any failure on the lessee's part to take reasonable care (Chitty (*-Beale*) on Contracts II[29], § 33-049, with reference to *Brook's Wharf and Bull Wharf Ltd v. Goodman Bros* [1937] 1 KB 534, 538–539 and in SCOTLAND: *Walker*, Principles in Scottish Private Law III, 399). The lessee will not be liable for damage or loss caused by the fault of persons, other than the lessee's own employees, to whom the lessee properly entrusts the goods (*Smith v. Melvin* (1845) 8 D 264). Where damages are available, the lessee will be liable for the diminution in value of the goods or for the actual value of the goods (if they have been lost). Damages for consequential loss are only available where this was within the reasonable contemplation of the parties at the time the lease was made (Chitty (*-Beale*) on Contracts II[29], § 33-050, with reference to *Anderson v. NE Ry* (1861) 4 LT 216).

11. Some rules are found in national law regarding liability for the lessee's continued use after the expiry of the lease period (where there is no prolongation of the period). According to CZECH CC art. 723, on business leases, the lesse must pay the rent, along with an additional statutory delay payment. ESTONIAN LOA § 335 states that the lessee must pay the rent agreed or the rent that is usual; this does not preclude a claim for compensation for further loss. According to GERMAN § 546a(1), the lessor may claim the agreed rent or the rent that is normally paid for such goods. It is a precondition that return of the goods is possible (Staudinger (*-Emmerich*) BGB (2006) § 546a nos. 22–27). Damages for additional loss is not excluded, GERMAN CC § 546a(2). For a comparable rule in GREEK law, see *Rapsomanikis*, art. 601; and in SWISS law, see BSK (*-R.Weber*), OR I[3], § 267, no. 2. In HUNGARIAN law, the lessee is obliged to pay damages for delayed return of the leased goods after the expiry of the lease period (BH 1982. 528. Legf. Bír. Gf. III. 30.176/1981); see Gellert, Commentary (*-Besenyei*), 1688. In a case where the contract of lease was void, the Supreme Court ordered the party who used the leased property on the basis of the void contract to pay a "fee for use" *(használati díj)*. See BH 1987. 364. Legf. Bír. GF. I. 31.456/1986. According to ITALIAN CC art. 1591, a lessee must pay the agreed rent in cases of delayed return of the goods, and damages for additional loss, as may be. This amounts to a form of minimal damages, available without the lessor having to prove any loss (*Cian and Trabucchi*, Commentario breve[8], art. 1591, no. III1). A rule to the same effect is found in PORTUGUESE CC art. 1045, but here the liability is fixed as the double of the agreed rent if the lessee is late both in returning the goods *and* in paying the rent. SLOVAK CC art. 723(1) applies to business leases of goods, and states that the lessee must pay the agreed rent in case of delayed return of the goods, in addition to a "charge".

Article 6:102: Consumer leases

The parties cannot derogate from the rules of this Chapter to the detriment of a consumer in a consumer lease.

Comments

A. Mandatory rules on remedies

1. Agreements on remedies The parties may, at the outset, derogate from the rules of the present Chapter by agreement, see Comment *F15* to IV.B – 6:101. An exception must be made, however, for consumer leases, i. e. lease contracts between a business and a non-professional lessee, cf. the definition in IV.B – 1:102. Derogations to the detriment of the consumer should not be allowed. As discussed in Comment *A2* to IV.B – 4:102 on the corresponding rule concerning the lessee's remedies, agreements settling a dispute must be accepted. Further, it must be kept in mind that the parties are free to form the obligations of the contract; the rules in Chapters 3 and 5 are non-mandatory (but cf. IV.B – 3:106).

2. Standardised damages, fees etc. Remedies are now and then agreed on in the contract as standardised damages, for example a fixed sum of money per day for delayed return of the goods or fixed "prices" for damaged parts of the goods. Other clauses may have the same effect: a "cancellation fee" may for example be compared to damages for fundamental non-performance. In such cases, the agreed remedy amounts to a derogation to the detriment of the consumer to the extent that the effect of the agreed clause in the particular case is less favourable to the consumer than would have been the effect of the remedies described in this Part of Book IV. It is not considered necessary to add a rule allowing for agreed remedies that are *typically* equal to or more favourable to the consumer than the rules contained in this Part of Book IV, even if the remedy is less favourable in the particular case.

3. Other remedies The rules on the lessor's right to *enforce specific performance* of the lessee's obligations are flexible. For non-monetary obligations the rules are found in III. – 3:302 (Non-monetary obligations). These rules exclude for example enforcement of specific performance where performance would be impossible or unreasonably burdensome. It has not been found appropriate to allow agreements derogating from such limitations of the lessor's right. As for monetary obligations, there are rules specifically designed for lease contracts in IV.B – 6:103. These rules are flexible, referring to a great extent to reasonableness, and there should be no legitimate need to derogate from the rules to the detriment of a consumer. Agreements extending the lessor's right to *terminate* the contract, e. g. contracts terms to the effect that any delay in payment or any use which does not accord with the contract shall be regarded as fundamental non-performance, can have unexpected and unreasonable effects, and there is hardly a strong need to apply such clauses in consumer leases.

Notes

I. Consumer legislation and contractual remedies

1. The models of EU consumer contract legislation and the different models of consumer contract legislation found in national law, are commented upon in the notes to IV.B–1:102, and general reference can be made to those notes.
2. According to AUSTRIAN Consumer Protection Act § 6(1), clauses shifting the burden of proof to the consumer (no. 11) and clauses on excessive interest rates in cases on late payment (no. 13) are not binding. An agreement making the lessee liable for casual damage would in effect be contrary to the rule in AUSTRIAN Consumer Protection Act § 6, under which the lessee's remedies for lack of conformity cannot be contracted out (see *Fischer-Czermak*, Mobilienleasing, 315).
3. According to ESTONIAN LOA § 322 the lessee may, without liability for loss, always terminate the lease by giving thirty day notice if it is (in broad terms) a lease between a consumer lessee and a professional lessor. General rules in ESTONIAN LOA §§ 35–45 on unfair standard terms also apply to lease contracts.
4. The FRENCH Consumer Act L132-1 on unfair terms (*clauses abusives*) also applies to lease contracts. See for example Cass.Civ. 17 Mar 1998, Bull.civ. 1998.I, no. 116: in the case of a lease of a vehicle a clause shifting the risk of *cas fortuit* or *force majeure* to the lessee was regarded as a *clause abusive*.
5. In GERMAN law, the lessee is protected by rules concerning non-negotiated terms (GERMAN CC §§ 305–310) against e. g. terms making the lessee liable for casual damage or terms expanding the lessee's vicarious liability (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 538, no. 7; Schmidt-Futterer (*-Langenberg*), Mietrecht[9], § 538, no. 17; BGH 1 Apr 1992 NJW 1992, 1761), or terms deviating from the rules on termination to the detriment of the lessee (Schmidt-Futterer (*-Blank*), loc. cit., § 543, no. 209; MünchKomm (*-Schilling*), BGB III[4], § 543, no. 75).
6. According to art. 2(7) of the GREEK Law on the Protection of the Consumers, terms allowing the supplier to terminate the contract with no specific or significant cause (no. 5), or to terminate a contract for an indefinite period without setting a reasonable term (no. 6), terms shifting the burden of proof to the consumer (no. 27), and terms imposing an excessive financial burden on the consumer in the case of non-performance (no. 30) are regarded as abusive and thus not binding. Under HUNGARIAN law, a consumer lessee is protected by the general rule against unfair non-negotiated terms in consumer contracts, see HUNGARIAN CC § 209/A (2).
7. The prohibition of abusive clauses under POLISH law also applies to lease contracts (POLISH CC art. 385^3).
8. The general provisions of SLOVAK CC art. 53 on unfair terms apply to lease contracts.
9. In SWISS law, certain rules concerning lease contracts may not be derogated from to the detriment of the consumer, partly where the terms are non-negotiated (LOA art. 256(2)), but partly also in individual agreements (LOA art. 267(2), art. 257d, cf. BSK (*-R.Weber*), OR I^3, art. 257d, no. 1).
10. Under U. K. law, the Unfair Contract Terms Act 1977 deals specifically with exemption clauses in lease contracts. As against an individual "dealing as a consumer" (sec. 12(1)(a) and (b)), a business (sec. 1(3)) cannot exclude or restrict liability in respect of the failure of the leased goods to correspond with their description or with a sample,

or in respect of their quality or fitness for particular purposes (sec. 7(2)). As far as title and quiet possession are concerned, these may only be restricted or excluded insofar as it is reasonable to do so (sec. 7(4)). The Unfair Terms in Consumer Contracts Regulations 1999 also apply to lease contracts insofar as the terms are not individually negotiated. Terms which are "contrary to the requirement of good faith" and cause "a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer", are not binding on the consumer (Reg. 5(1)). Both the Act and the Regulations apply equally to SCOTLAND. In IRELAND, the Consumer Credit Act 1995 deals with exemption clauses in a comparable way: sec. 79 ensures that any term attempting to restrict or exclude the rights and/or liability implied by law into contracts of hire-purchase (and contracts of hire, sec. 88) involving consumers shall be void (in the case of title and quiet possession) and shall be void unless "fair and reasonable" (in the case of correspondence with description or sample and in respect of quality and fitness for purpose).

11. For CZECH law, the definition of 'consumer contracts' (CZECH CC art. 52) applies whether the consumer is a lessor or a lessee. The rules on business leases (CZECH CC art. 721–723) do not apply where the lessor is a consumer. See also DUTCH CC art. 6:233(a) on unreasonable contract terms.

Article 6:103: Right to enforce performance of monetary obligations

(1) The lessor is entitled to recover payment of rent and other sums due.
(2) Where the lessor has not yet made the goods available to the lessee and it is clear that the lessee will be unwilling to take control of the goods, the lessor may nonetheless proceed with performance and may recover payment unless:
  (a) the lessor could have made a reasonable substitute transaction without significant effort or expense; or
  (b) performance would be unreasonable in the circumstances.
(3) Where the lessee has taken control of the goods, the lessor may recover payment of any sums due under the contract. This includes future rent, unless the lessee wishes to return the goods and it would be reasonable in the circumstances for the lessor to accept their return.

Comments

A. General

1. **Relationship with III. – 3:301** The present Article is an adaptation of III. – 3:301 (Monetary obligations) for the purposes of lease contracts. Performance of obligations to pay sums due can as a rule be enforced. However, where the other party does not want performance, or further performance, the situation may change and the obligation to pay sums due may, under certain conditions, be replaced by an obligation to pay damages. Rules to the same effect are found in IV.C – 1:115 (Cancellation of the service contract).

B. Goods have not yet been made available

2. **Enforced performance** Where the lessor has not yet made the goods available for the lessee's use and it is clear that the lessee will be unwilling to take control of the goods, the lessor may proceed with performance and recover sums due. Enforced performance of the lessee's obligation to accept the goods is in principle possible, but is rather impractical in most cases. The lessor may also handle the goods according to the rules in III. – 2:111 (Property not accepted). In both cases the lessor may enforce payment of rent that is due and continue to do so throughout the lease period. There are, however, important exceptions to these rules, cf. the subsequent Comments.

3. **Substitute transaction** If the lessee is unwilling to receive performance, the lessor may not proceed to tender performance in cases where a substitute transaction may be made without significant effort or expense. A substitute transaction will typically be a new lease contract. The lessor is entitled to have reasonable expenses covered, cf. Comment *D7*, but may fear that the lessee will not be able to pay. The lessor is therefore not obliged to make a substitute transaction if the expenses are significant.

4. **Performance would be unreasonable** The lessor may not proceed to tender performance and enforce payment of sums due if this would be unreasonable under the circumstances. It may be the case that performance will incur unnecessary costs where the lessee can no longer make use of the goods. The lessor should for example not be allowed to enter into a contract for the supply of goods with a view to tendering performance if it is clear that the lessee is unwilling to receive performance.

C. Lessee has accepted the goods

5. **Enforced performance** Where the lessee has taken control of the goods, the situation is different. The lessor may enforce payment of the rent that is due, at intervals throughout the lease period as the case may be, cf. the second paragraph of the present Article. However, even in this situation an exception should be made, see Comment C6.

6. **Reasonable to take the goods back** If the lessee wishes to return the goods and it is reasonable for the lessor to accept return of the goods, the obligation to pay rent for the future period should be replaced by an obligation to pay damages. What is reasonable will depend on the situation of the parties, the kind of goods leased, the proportion of the agreed lease period remaining, etc. For a professional lessor there are in many cases few problems with accepting return of the goods, and the goods can in many cases be leased to new customers. In other situations, the lessor may have entered into the lease contract so as to dispose of the goods for a certain period, and accepting return of the goods in such cases may cause practical problems and expenses. It may also be unreasonable to accept return of the goods even if the costs can be recovered from the lessee.

Illustration 1
Lessee X has leased a horse for a four-week holiday. After one week X falls ill and cannot use the horse or look after it. Lessor Y, whose business is to lease horses, must agree to take the horse back and to claim damages instead of the weekly rent.

Illustration 2
Lessor X, who lives in Piraeus, is stationed for one year in the organisation's branch office in Norway. X owns a cabin cruiser and leases the boat to Y for one year before leaving for Norway. After a couple of months Y is tired of being seasick and wants to return the boat. X no longer has a place for the boat and at this time of year it is difficult to find a new lessee. X may still enforce payment each month under the contract.

D. Effects

7. Damages covering lessor's loss The lessor can claim damages if performance of the obligation cannot be enforced according the rules of the present Article, cf. III. – 3:303 (Damages not precluded). The damages "will put the creditor as nearly as possible into the position in which the creditor would have been if the obligation had been duly performed", in terms of losses suffered and gains not obtained, cf. III. – 3:702 (General measure of damages). In these situations the general rule on reduction of loss applies, cf. III. – 3:705 (Reduction of loss). To what extent a substitute transaction will reduce the loss depends on the circumstances. If the lessor can supply goods to any new customer, the lessor may recover loss of gains, even if the goods are leased to a new customer for the same rent. The idea behind allowing the lessee the right to refuse performance is partly that the lessor may save costs by not proceeding with the performance, and partly that payment may be settled at once as damages in lieu of future performance.

Notes

I. General

1. The present provision is an adaptation of III. – 3:301 (Monetary obligations) and a reference is made to the notes to that Article. In lease contracts, limitations to the right to enforce payment apply also to the situation where the lessee has already taken control of the goods but wishes to return them to the lessor.
2. In some systems, a reduction of the lessee's obligation to pay rent for the rest of the lease period is to some degree accepted even if premature return of the goods is caused by events on the lessee's side. In AUSTRIAN law, rent must be paid even if a casual event on the lessee's side prevents the use or limits the usefulness of the goods. The lessor must, however, deduct what is saved or gained because of this, the lessor may also under the circumstances have to make a substitute transaction (AUSTRIAN CC § 1107, see Schwimann (*-Binder*), ABGB V[3], § 1107 nos. 1 and 4, Koziol (*-Iro*), ABGB, § 1107, no. 1). The rule is rarely applied, perhaps because the lessee is allowed to sublease the goods. Refused consent to assignment of the lessee's right may also under the circum-

stances lead to a reduction of the lessee's liability (cf. AUSTRIAN CC § 1295(2), see *Schwimann,* loc. cit., § 1107, no. 3). According to ESTONIAN LOA § 296(3), the lessee must pay rent for periods during which the goods cannot be used because of circumstances depending on the lessee, but sums saved and benefits gained by the lessor are deducted from the rent. In GERMAN law too, the point of departure is that rent must be paid even if use of the goods is prevented by causes on the lessee's side, GERMAN CC § 537(1). If the lessee proposes an acceptable new lessee for the rest of the period on unchanged terms and the lessee has an outstanding interest in returning the object, the lessor may have to accept the substitution, at least for leases of immovable property (see in general, Staudinger (*-Emmerich*) BGB (2006) § 537, no. 1). As the underlying rule is GERMAN CC § 242, the same principle should be relevant also to leases of goods. In GREEK law, whatever the lessor has gained by alternative use may be deducted from the rent (GREEK CC art. 596), and it is held that the same applies where the lessor by fault omits to utilise the goods (*Rapsomanikis,* arts. 595–596, no. 7). For SWEDISH law, it is held that the lessee has a right to "cancellation", in consumer leases perhaps even without having to indemnify the lessor (*Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 197–198). According to SWISS LOA art. 264, the lessee may be discharged by proposing an acceptable substitute lessee. If not, the lessee must pay the rent for the rest of the lease period if the goods are returned prematurely, with a reduction, however, for sums which it is possible for the lessor to save or gain through early return of the goods. See in general, BSK (*-R.Weber*), OR I[3], art. 264.

3. Under U.K. and IRISH law, where there is an anticipatory repudiatory breach by the lessee (i.e. an anticipatory breach which gives the lessor the right to terminate), the lessor may elect to terminate and claim damages or to affirm the contract. In the former case, damages may be claimed immediately (*Hochster v. De la Tour* (1853) 2 E & B678). In the latter case, the lessor may choose to tender performance in the hope that the lessee will withdraw his repudiation. If an actual breach occurs, the lessor will have a claim in damages. If the breach is sufficiently serious, the lessor may also elect to terminate at this later date. The rules on specific performance of monetary obligations (in the form of an action for an agreed sum) are less strict than for specific performance. However, the lessor will not be able to secure performance by the lessee against his wishes where damages would be an adequate remedy. Where, on the other hand, the contract is frustrated through no fault of the lessee, all obligations on both sides are discharged and the lessee is under no further obligation to pay rent (see notes to IV.B–4:101).

4. In other systems, there seems to be no reduction of the lessee's obligations in such situations. This follows from general rules in CZECH law. This is true also for DUTCH law, with the possible exception of the application of rules on reasonableness and fairness (DUTCH CC arts. 6:248 and 6:258) and on creditor's fault (DUTCH CC art. 6:102(2)). In FRENCH law, it seems that rent must be paid for the rest of the period even if the lessee wishes to return the goods (Cass.Civ., 10 Jan 1990, Bull.Civ. 1990.III, no. 7; *Bénabent,* Contrats spéciaux[6], no. 354; Cass.Civ. 3[e], 3 Apr 2001, Loyers et copr. 2001, no. 167, note *Vial-Pedroletti*). For BELGIAN law it is said that the impossibility to use the goods caused by events on the lessee's side is of no impact whatsoever (*La Haye and Vankerckhove,* Le Louage de choses I[2], no. 425). Similar statements are found in SPANISH law (see TS 16 Mar 1944, RAJ 1944,112; *LaCruz Berdejo,* Derecho de obligaciones, II[2], 123). For PORTUGUESE law, see in particular CC art. 1040.

Article 6:104: Substitute transaction

Where the lessor has terminated the lease and has made a substitute transaction within a reasonable time and in a reasonable manner, the lessor may, where entitled to damages, recover the difference between the value of the terminated lease and the value of the substitute transaction, as well as any further loss.

Comments

A. Calculation of loss

1. **Price and value** Calculation of loss caused by termination for non-performance followed by a substitute transaction is covered in III. – 3:706 (Substitute transaction). If the aggrieved party makes a reasonable substitute transaction, the party may – in addition to further losses – "recover the difference between the contract price and the price of the substitute transaction". This formula may lead to misunderstandings in lease contracts. Rent may be agreed as an amount per day, per month etc., while the lease period may be much longer or indefinite. A mere comparison of the level of agreed rent for two contracts will not directly indicate the loss suffered by termination of the contract. What must be compared are the values of the contracts, normally established by means of a cash flow analysis. A substitute transaction is typically a new lease, but it may also be a sale of the goods. A parallel provision may be found in IV.B – 4:105 regarding non-performance of the lessor's obligations.

Notes

I. Reference to IV.B – 4:105

1. The Article implies a deviation or clarification of the general rule in III. – 3:706 (Substitute transaction) of the same kind as is found in IV.B – 4:105. See notes to the latter Article.

Article 6:105: Reduction of liability in consumer leases

(1) In a consumer lease, the lessor's claim for damages may be reduced to the extent that the loss is mitigated by insurance covering the goods, or to the extent that loss would have been mitigated by insurance, in circumstances where it is reasonable to expect the lessor to take out such insurance.
(2) The rule in paragraph (1) applies in addition to the rules in Book III, Chapter 3, Section 7.

Comments

A. Insurance and leases

1. **No obligation to take out insurance covering contractual liability** No obligation to insure the goods is included in this Part of Book IV, whether on the side of the lessor or the lessee. Such obligations are often found in contract clauses. Normally, a party to a contract will prefer to take out insurance covering the party's liability against the other party, e. g. liability under the contract for damage to or loss of the goods. (Sometimes a party will want insurance covering liability against third parties as well, e. g. liability for damage caused by the goods, liability for pollution etc.) It has not been deemed necessary to include an obligation to provide insurance of this kind. Further, it may be in the interests of one party to the contract that the other party has insurance covering that other party's liability under the contract. The reason for this is typically a fear that the liable party will be unable to pay damages. For business-to-business contracts, as well as for consumer-to-consumer contracts, the evaluation of the other party's ability to perform the contract and meet claims arising from non-performance is one element in the complex decision to enter into a contract with that person. For business-to-consumer contracts a mandatory rule on insurance on the side of the professional could be discussed. This is, however, a general issue which concerns several contract types, not lease contracts in particular, and such a rule is not included in this Part of Book IV.

2. **No obligation to insure the goods** It is a characteristic element of the lease contract that the lessee has control over and care of goods belonging to another person. Non-performance of the lessee's obligations may lead to liability for loss resulting from damage to or destruction of the goods. In many cases this loss – and the corresponding liability – is mitigated by ordinary insurance covering physical damage to the goods. It would hardly be possible to establish as a general rule that normal insurance should always be provided by the owner or always by the user. The cost – and even the availability – of insurance may vary according to the character of the goods, the length of the lease period, the planned use, the professionalism of the parties etc. As a rule then, it should be left to the parties to agree on the question of insuring the goods.

B. Consumer leases

3. **Lessee's reasonable expectations** It seems impossible even for consumer leases to say that insurance should be provided by one of the parties in all cases. Consumer protection is, however, required to the extent that a lack of insurance coverage should not come as a surprise to the consumer. In situations where the consumer had reason to believe that the goods were insured by the lessor, and therefore did not take out insurance, the lessee's liability for loss or destruction of the goods should be reduced correspondingly. It may be that this result can be based on general rules on relevant loss and reduction of loss, but it seems appropriate to express it explicitly for consumer lease contracts, where the question is most likely to arise in practice.

4. Existing insurance or expected insurance Reduction of the lessee's liability should be available in two different situations. If the loss is in fact covered, partially or totally, by existing insurance, this may lead to reduced liability whether the existence of insurance coverage was reasonably to be expected or not. If the loss is *not* covered by insurance, liability may be reduced to the extent that the loss would have been mitigated had the lessor taken out insurance where such an action could reasonably have been expected. It must be determined from the circumstances whether the lessor could reasonably have been expected to provide insurance and, if so, in what form. The answer is obvious if the lessor is obliged by the agreement to insure the goods. The lessor may also be expected to take out insurance where this is mandated by law. In other situations, regard must be had to insurance coverage that is commonly provided. The character of the goods and the length of the lease period may also be relevant.

Illustration 1
Consumer A leases a rather new car for the weekend from B, a business. The lessee drives too fast and loses control of the vehicle, which is severely damaged when it hits a road fence. Since it is usual to insure new cars against such loss, and the lessee was offered no short-time insurance when entering into the contract, the lessee's liability may be reduced by an amount corresponding to normal insurance coverage even if the car was not insured.

5. Coverage of insurance Under the default rules of this Part of Book IV, the lessee is not liable for destruction or loss of the goods by fortuitous events: repair in such cases will normally go beyond the lessee's obligations under IV.B – 5:104, and the lessee is not obliged to return the goods in a condition better than that which follows from the obligation to maintain etc. The parties may, however, have agreed to impose more extensive obligations of maintenance and repair on the lessee. Further, the goods may be damaged as a result of non-performance of the lessee's obligation to handle the goods in accordance with the contract (IV.B – 5:104). It must also be determined from the circumstances to what extent it may be expected that insurance provided by the lessor will cover loss caused by the carelessness or negligence of the lessee.

C. Lease contracts other than consumer leases

6. General rules apply The rule in paragraph (1) of the present provision applies in addition to the general rules in Book III, Chapter 3, Section 7 on damages, see paragraph (2) of the present provision. Situations may vary to a considerable degree, and it is not advisable to try to establish one rule for all cases concerning the effects or availability of insurance. Neither should the rule in paragraph (1) give rise to conclusions *a contrario*.

Notes

I. Insurance and lease contracts

1. In national law, questions concerning insurance and leases are dealt with sporadically. In GERMAN law, the lessee's liability for damage not caused intentionally or by gross negligence may be limited if the cost of insurance of the goods is borne by the lessee, directly or indirectly (see Staudinger (*-Emmerich*) BGB (2006) § 538, no. 9). In FRENCH law, there is no obligation to insure leased goods. It may lead to reduction of the lessee's liability if the lessor gives the false impression that risks are covered by insurance (*Huet,* Contrats spéciaux, no. 21196). Under U. K. law, the lessee owes no obligation to the lessor to insure the leased goods (*Lockspeiser Aircraft Ltd. v. Brooklands Aircraft Ltd.,* unreported, 7 Mar 1990), but such a duty may arise through agreement, trade custom or other special circumstances (*Birks,* English Private Law II, § 13.51). The lessee may choose to insure the goods however, and if a payment is made, may retain so much as would cover the lessee's own (possessory) interest, holding the balance on trust for the lessor (Chitty (*-Beale*) on Contracts II[29], § 33-025). It is commented upon in BELGIAN law that contract clauses stating that the lessor will insure the goods often include the relinquishing of the insurer's recourse against the lessee (*La Haye and Vankerckhove,* Le Louage de choses I[2], no. 1041, 1043 ff.). ITALIAN CC art. 1589 has rules on the reduction of lessee's liability for destruction of the goods by fire when the goods are insured by the lessor. According to GREEK CC art. 600, if insured goods are damaged by fire, the lessee is liable only if fault is proven. See for a discussion of possible reliance on usual insurance coverage under NORWEGIAN law, *Falkanger,* Leie av skib, 413.

Chapter 7:
New parties and sublease

Article 7:101: Change in ownership and substitution of lessor

(1) Where ownership passes from the lessor to a new owner, the new owner of the goods is substituted as a party to the lease contract if the lessee has possession of the goods at the time ownership passes. The former owner remains subsidiarily liable for the non-performance of the lease contract as a personal security provider.
(2) A reversal of the passing of ownership puts the parties back in their original positions except as regards performance already rendered at the time of reversal.
(3) The rules in the preceding paragraphs apply accordingly where the lessor has acted as holder of a right other than ownership.

Comments

A. Overview

1. Lease contracts and change in ownership Generally, a party to a contract may assign the right to performance under the contract (III. – 5:105 (Assignability. general rule)), but the party will not be discharged of contractual obligations without the other party's assent (III. – 5:301 (Transfer of a contractual position)). For lease contracts, a change in ownership of the leased goods raises some special questions. The lessor's position as owner of the goods (or holder of a comparable right) and as a party to the contract are closely connected. In order to perform the obligations under the contract the lessor must be able to make the goods available for the lessee's use and in most cases must also be able to carry out work on the goods in the form of maintenance and repairs. This normally presupposes that the lessor is the owner of the goods. Rules are needed concerning the consequences of a change of ownership regarding both the contractual relationship between the lessee and the original lessor and the relationship between the lessee and the new owner.

2. Contractual claims and protection of possession The rule under this Article is that a new owner is substituted as a party to the lease contract. Even without this rule the lessee's possession of the goods may be protected to a certain extent under the rules on transfer of ownership, see Book VIII. To the extent that the lessee's possession is protected against a new owner this can be regarded as a "negative" duty on the side of a new owner, a duty to tolerate the lessee's use; while a substitution as a party to the lease contract implies that the new owner has a "positive" duty to perform the obligations under the contract.

B. Models and policy issues

3. **Lessor's right to dispose of the goods** It follows indirectly from the present Article that the lessor is allowed to dispose of the goods, including by transferring ownership of the goods. Such a change in ownership is not regarded as non-performance *per se*, and the lessee cannot object to the transfer of ownership or stop it by claiming specific performance. This is also the situation for a change in ownership resulting from a forced sale or from actions by the lessor's general creditors. If, however, the change in ownership is likely to interfere with the lessee's use of the goods in accordance with the contract, this amounts to non-performance of the contract, cf. IV.B – 3:101(3). Given that the new owner is normally substituted as party to the contract and the former lessor remains liable for the performance of the contract, a change of ownership will in most cases not interfere with the lessee's use. The situation may be different if the goods are sold after the conclusion of the contract but prior to the lessee's taking possession of the goods, or where rules on registration of rights result in a change of ownership without a duty on the new owner to respect the lease contract.

4. **Enforceability against new owner** As for the relationship between the lessee and a new owner of the goods, there are two possible main models: the lease contract may be regarded merely as a contractual relationship that does not affect third parties at all, or the lessee's right may have some protection in relation to other interests in the goods, including the interests of a new owner. Both models are found in national law. As long as the rules are transparent and relatively simple, prospective lessees or buyers of goods as well as security right holders and the lessor's general creditors can adjust their behaviour to the consequences of the rules. Arguments pointing to one model as the most fair or most economically efficient are hardly sustainable. The model chosen here, protecting a lessee that has taken possession of the goods, is likely to create fewer situations of non-performance and conflict than a model where the lessee has no protection against third parties at all. A change in ownership will not automatically lead to non-performance of the lease contract, and a prospective buyer or lender of money is warned by the fact that the owner of the goods is not in direct possession. The same kind of reasoning justifies the rule that a new owner is substituted as party to the lease contract. If a new owner were only to have the passive duty of respecting the lessee's possession and use of the goods the rule could still lead to non-performance of the lease contract in many cases. Another reason for choosing this model is that some lease contracts have more or less the same function as a sale of goods. A lease contract may be chosen primarily to establish a security right in the goods, in particular where the contract confers on the lessee full use of the goods for their entire economic lifespan. In such cases the protection of the lessee should not differ too much from the protection afforded a buyer. If the lessee is to be protected in some lease contracts of this type, the simplest solution is to apply the same rule to all leases. Otherwise it can be difficult to find exact criteria for differentiating between contracts.

5. **New owner in good faith** A buyer of the goods with knowledge of the lease has normally accepted the substitution as a party to the lease, and the price agreed is normally influenced by this knowledge. As the rule in the present Article applies only when the lessee has possession of the goods, the buyer in most cases knows or ought to know of

the lease. The owner's lack of direct control of the goods should alert the buyer to the fact that other interests in the goods may exist, and the buyer can make further investigations. If the buyer does not know of the lease despite the fact that the lessee has possession of the goods, the unexpected lease contract will often amount to non-performance of the sales contract, cf. IV.A – 2:305 (Third party rights or claims in general). The lessee's right is still protected, but the lessee must accept a reversal of the substitution of the buyer as a party to the lease contract, cf. Comment C9. The individual lease agreement is decisive as to the terms of the lease contract. There may be cases where the terms of the agreement are less favourable to the lessor than the buyer expected, even if it was known that a lease existed. It has not been found necessary to introduce an exception to the lessee's protection for these situations. Depending on the sales contract, the buyer is entitled to remedies against the seller, including termination of the sales contract, entailing a reversal of the change in ownership. A lessee lacking possession of the goods is not protected, irrespective of the buyer's knowledge. In this situation, the sale of the goods amounts to non-performance of the lease contract, unless the buyer voluntarily takes on the obligations of lessor, perhaps as a result of an agreement between buyer and seller. A possible claim by the lessee against a buyer in bad faith is regulated by the rules in Book VI.

6. Protection against the lessor's general creditors The rule in the present Article also applies where ownership is transferred to a new owner as a result of the lessor's general creditors satisfying their claims, through bankruptcy proceedings or individually. Protection against the lessor's general creditors can be justified in a situation where the lessee has possession of the goods. Rules of national bankruptcy law have priority over the present rules, however, and may lead to other results. In particular this is the case when it comes to rules on avoidance in bankruptcy.

C. The lessee has possession of the goods

7. New owner as lessor If the lessee has possession of the goods at the time ownership passes the new owner is substituted as a party to the lease contract, see the first sentence of the first paragraph of the present Article. This means that the lessee is entitled to claims and remedies against the new owner to the same extent as against the former owner, including enforcement of specific performance. The new owner, as a result of the substitution as party to the contract, has the rights under the lease contract and can collect the rent. It must be decided according to the rules in Book VIII at what time ownership passes. The rules in Book VIII also define the prerequisites of the lessee's possession. The present Article applies where the new owner's right is derived from the former owner's right ("ownership passes from the lessor to a new owner") and thus not where the new owner has acquired rights in good faith under a transaction with a possessor not being the owner.

Illustration 1
X leases to Y five containers for industrial waste for a period of one year and the containers are brought to Y's premises at the start of the lease period and remain there. After six months, X sells the containers to Z without informing Z of the lease

contract. Z is substituted as a party to the lease contract and must tolerate that Y uses the containers for the rest of the lease period. Z must also repair one of the containers, which is damaged after eight months, as this falls under the lessor's obligations according to the lease contract. On the other hand, Z can claim payment of rent directly from Y.

8. Former owner's liability The former owner remains subsidiarily liable for non-performance of the lease contract as a personal security provider, cf. the second sentence of the first paragraph of the present Article. The former owner may be discharged only with the lessee's assent, cf. III. – 5:301(Transfer of a contractual position). Several of the lessor's obligations under a lease contract cannot be performed by a person not being the owner of the goods or not having at least the owner's consent. Under these circumstances, the best practicable solution is to make the former owner subsidiarily liable as a personal security provider. For the purposes of Book IV.G, the former owner becomes a provider of a dependent personal security, i. e. the former owner's obligation secures the new owner's obligations owed to the lessee. Before demanding performance from the former owner, the lessee must have made appropriate attempts to obtain performance from the new owner, IV.G – 2:106(2). In practice, the only performance possible for the former owner is payment of money, either as performance of a claim for money or as damages for non-performance of a non-monetary claim.

Illustration 2
The facts are the same as in Illustration 1. Due to Z's weak financial situation, the damaged container is not repaired, and Y has to lease an extra container elsewhere. Y's claim for damages from Z receives no answer. Y can claim damages from X.

9. Reversal of the passing of ownership The passing of ownership may be reversed, and then the parties are put back in their original position, see the second paragraph of the present Article. It follows from the rule in paragraph (1) that the former owner has the position of a lessor when ownership passes back. The point of the second paragraph, however, is to clarify that the new owner (who is now no longer an owner) is discharged. The rule will typically apply when the sales contract is terminated, perhaps for the very reason that the lease contract was an unexpected burden on the buyer, implying a substantial non-performance of the seller's obligations. The right to terminate the contract could lose much of its effect if the buyer were held liable to the lessee even after termination. The rule also applies where the seller agrees to termination of the contract, irrespective of the buyer's right to terminate. The term 'reversal' is chosen in order to indicate that there must be a close connection, as to both time and motivation, between the first and the second change in ownership. If the new owner, after some time, re-sells the goods to the former owner there is no reason why the main rule in the first paragraph should not apply. A qualification is made concerning performance already rendered at the time of reversal. It would in many cases be too complicated to put the parties back into their original positions regarding such performance. Obliging the lessee to compensate for or return performance rendered by the new owner during the period of change of ownership up until reversal, leaving the lessee with recourse to the original lessor, would further entail an unacceptable risk on the side of the lessee.

Illustration 3
The facts are the same as in Illustration 1, except that after two weeks the new owner Z terminates the sales contract for fundamental non-performance, on learning of the lease between X and Y. Z has no liability under the lease contract and Y has no claim against Z even if it later turns out that X is unable to perform the obligation to repair the damaged container.

D. The lessee does not have possession of the goods

10. **Possible claims against the new owner** The rule under paragraph (1) of the present Article applies only when the lessee has possession of the goods at the time ownership passes. If the lessee does not have such possession no claim against the new owner can be based on this provision. However, there may be a stipulation in the sales contract in favour of the lessee as a third party to the effect that the lessee has the same rights and claims against the new owner as the lessee has under the lease contract with the former owner. A seller of goods will often be interested in including a stipulation like this in the sales contract in order to avoid non-performance of the lease contract. A possible claim under the rules on non-contractual liability against a new owner in bad faith depends on the provisions in Book VI. Where ownership of the goods is transferred before the lessee has possession of the goods and the new owner does not agree to be bound by the lease contract, this will normally amount to non-performance of the lease contract, and the lessee may pursue the ordinary remedies for non-performance against the lessor, i. e. the former owner.

Illustration 4
X leases to Y five containers for industrial waste for a period of one year. Before the containers are made available to Y, X sells the containers to Z. The containers are brought to Z's premises. Z is not substituted as a party to the lease contract. Y can terminate the lease contract for fundamental non-performance and may also claim damages from X.

E. Registration of rights

11. **Priority of rules on registration** For some categories of goods, typically aircraft and ships, there are registers of rights in the goods. Registration may have effect with regard to good faith acquisition of rights, protection of rights, and priority between conflicting rights. Such rules have priority over the rules of the present Article. This follows directly from the rules concerned, and it has not been found necessary to state this explicitly in the present Article.

F. Lessor is not owner

12. **The rules apply accordingly** This Part of Book IV applies also where the lessor is not the owner of the goods but has some other right to enter into a lease contract, cf.

Comment *J23* to IV.B – 1:101. The lessor may for example be the holder of a usufruct right. The rules in the present Article apply accordingly if the lessor's right in the goods is transferred to someone else. The rules also apply if a lessor has subleased the goods and then transfers the original lease contract. This follows from the third paragraph of the present Article.

Notes

I. Protection of lessee's right

1. In most Civil Law jurisdictions, an important distinction is made between proprietary rights in goods and non-proprietary (obligatory) rights. This distinction relates *inter alia* to the position of the holder of the right in goods when ownership of the goods passes, as a result for example of a sale of the goods or of the owner's general creditors satisfying their rights. See for these issues in general, the Introduction to Book VIII and notes to the relevant Articles there. Traditionally, the lessee's right has been regarded as a non-proprietary right, implying in principle that the lessee has only a claim against the lessor for performance, not a right that must be respected by a new owner. The rules are, however, complex, and the lessee is in many cases protected at least to a certain extent against a new owner. This is the case first of all for leases of immovable property, but also to some extent for leases of goods.
2. The situation may be that the new owner of the goods must tolerate the lessee's possession of the goods for the rest of the lease period or until the new owner terminates the lessee's right by notification. This means that the new owner has a "negative" duty not to interfere with the lessee's use of the goods. Whether or not the new owner – without agreement to this effect – must perform also the contractual obligations of maintenance etc. ("positive" duties) is in principle a different question. If the new owner – without agreement – is bound by the lease contract, and thus has both negative and positive duties, this may be characterised as a rule on *ex lege* transfer of the contract. Such a rule may be combined with a right of extraordinary termination of the contract for the new owner.
3. Special rules apply to goods that must or may be registered, in particular ships and aircraft. The effect of registration regularly relates to the protection of registered rights against colliding interests in the goods. These rules will not be dealt with here.

II. Ex lege transfer of the lease contract

4. For AUSTRIAN law, it is held that AUSTRIAN CC § 1120 implies an *ex lege* transfer of the lease contract if the lessee has possession of the goods when ownership is transferred (Schwimann (*-Binder*), ABGB V[3], § 1120, no. 13; Rummel (*-Würth*), ABGB I[3], § 1120, no. 1). The original lessor remains bound as a co-debtor (Schwimann, loc. cit., § 1120, no. 14). In principle, the new owner may terminate the lease by normal notice (Schwimann, loc. cit., § 1120, no. 41; Rummel (*-Würth*), loc. cit., § 1120, no. 5), but with reference to AUSTRIAN CC § 1401(1) it is argued that for movables the original lease period is upheld (*Apathy and Riedler*, Schuldrecht BT, no. 8/79). In DANISH and NORWEGIAN law, it is held that the lessee's right is protected against a new owner (and the

owner's general creditors) at least in cases where the lessee has taken control of the goods (*Gade,* Finansiel leasing, 387–388; *Falkanger and Falkanger,* Tingsrett[6], 622; *Lilleholt,* Godtruerverv[3], 201). It is not quite clear to what extent the new owner is bound by the "positive" contractual obligations (*Falkanger,* Leie av skib, 596–604; *Krag Jespersen* i Festskrift Brækhus; *Gade,* Finansiel leasing, 389–390). In DUTCH law, the transfer of ownership includes ex lege the transfer of the lease contract to the new owner, with the exception of clauses that do not concern the use of the goods against the agreed rent (agreements of a strictly personal kind). According to HUNGARIAN CC § 432(2), the buyer (the new owner) of the leased object is not entitled to terminate a lease for a definite period before the expiry of the period, except in the case of a misrepresentation by the lessee regarding the length or any other essential term of the lease. The new owner is bound by the lease contract for a definite period. The principle of *Kauf bricht nicht Miete* is found in the draft of the new Civil Code as well (§ 5:322(2) and (3)), and the draft introduces a new rule under which the former owner remains liable as a solidary surety provider. In ITALIAN law, a new owner has to "respect" (*rispettare*) the lease, but only as a lease for an indefinite period, if the lessee has control (*dentenzione*) of the goods, ITALIAN CC art. 1600 (cf. *Cian and Trabucchi,* Commentario breve[8], art. 1600, no. I1). MALTESE CC art. 1574 states that a new owner cannot "dissolve" the lease unless such a right was reserved in the lease contract. In POLISH law, a new owner becomes a new lessor (POLISH CC art. 678). The new owner may always terminate the contract by giving notice unless the lease contract is in writing and with an authenticated date, and, in addition, the goods have been made available to the lessee. According to PORTUGUESE CC art. 1057 an acquirer of the lessor's rights succeeds the lessor in rights and obligations (*Romano Martinez,* Direito das obrigações III[4], 205; *Lima and Varela,* Código Civil Anotado, I, 400–401). According to CZECH CC art. 680(2) and (3) and SLOVAK CC art. 680(2) and (3), the contract is transferred to the new owner, but the new owner (as well as the lessee) may terminate the contract with a normal period of notice (but see CZECH Supreme Court 26 Cdo 866/2002 – "an obligation of the former lessor which goes beyond the framework of the lease relationship, as e. g. the obligation to tolerate the change of the substance of the leased goods, does not pass to the new owner"). The rule under SLOVENIAN CC arts. 610, 612 and 613 seems to be that a new owner is bound by the lease contract if the lessee has possession or the new owner knows of the lease (the former owner remains solidarily liable to the lessee), but the new owner may terminate the contract by giving notice. In SPANISH law, a new owner may terminate the lease contract, cf. SPANISH CC art. 1571, but the contract does not end automatically as a result of a sale (*Bercovitz,* Comentario, 1851). According to SWISS LOA § 261, the lease is transferred to a new owner *nach Abschluss des Mietvertrags,* but the new owner may terminate the lease by giving notice. It has been held that *Abschluss des Mietvertrags* refers to delivery (BSK (*-R.Weber*), OR I[3], § 261, no. 2).

III. Protection of lessee's possession only

5. In GERMAN law, the lessee's possession is protected under GERMAN CC § 986(2), but for goods there is no *ex lege* transfer of contractual obligations (different for lease of immovable property, GERMAN CC § 566), cf. MünchKomm (*-Schilling*), BGB III[4], § 566 nos. 2 and 3; *Gitter,* Gebrauchsüberlassungsverträge, para. 3 B VI 3, 48. In GREEK

law, the new owner is not subrogated as lessor into the lease contract, which still binds the original parties. The lessee is protected against the new owner as a possessor (GREEK CC arts. 1095, 463) and retains the rights provided by GREEK CC art. 583 with regard to legal defects as against the lessor (*Filios* (1981), § 51 Γ; different for lease of immovable property, see GREEK CC arts. 614–615: subrogation of the new owner when the contract bears an authenticated date and it has not been agreed otherwise therein; right to terminate the contract if it is so agreed or if the contract does not bear an authenticated date). In the U.K., in cases, at least, where the lessee goes into possession of the leased goods, the lessee may be protected against eviction from the goods by a purchaser or other alienee of the lessor, where that alienee knew of the pre-existing hire and its terms (*Birks*, English Private Law II, § 13.61 with reference to *Port Line Ltd v. Ben Line Steamers Ltd.* [1958] 2 QB 146, 151 per Diplock J). However, the existence of a lessee proprietary right is still highly debatable.

IV. No protection against new owner

6. It is held that FRENCH CC art. 1743 (purchaser may not evict the lessee who has an authentic lease or one whose date is indisputable) is applicable only to immovable property, and that a lessee of goods is not protected (*Huet*, Contrats spéciaux, nos. 21206 and 21800; Rép.Dr.Civ. (*Groslière*), v° Bail, no. 599). The rule has been criticised (see *Huet*, Contrats spéciaux, no. 21800 for references). For corresponding rules in BELGIAN law, see *La Haye and Vankerckhove*, Le louage de chose I[2], nos. 1224 ff. In SWEDISH law, the lessee's right is not, in principle protected as a proprietary right. It may be, however, that the lessee's right is protected against a new owner with knowledge of the lease, and protection of the lessee has been advocated for financial leases (*Håstad*, Sakrätt, 426–427; cf. SOU 1994: 120, 440–442; see further *Hellner/Hager/Persson*, Speciell avtalsrätt II/1[4], 208–210).

Article 7:102: Assignment of lessee's right to performance

The lessee's rights to performance under the lease contract cannot be assigned without the lessor's consent.

Comments

A. Lessee's right not assignable

1. **Exception from the general principle** According to III.–5:105 (Assignability: general rule), all rights to performance are assignable except where otherwise provided by law. The rule in the present Article is an exception to the general principle, as the lessee's rights to performance under the lease contract cannot be assigned without the lessor's consent. There are two different reasons for this exception, both of them related to the lessee's obligation of care, maintenance etc. Firstly, the lessor may rely on the lessee's

personal qualifications in many lease contracts. The lessor may have interests in the goods beyond the mere economic value and hence does not want to see the goods left in the hands of persons who do not have the professional or personal ability to handle the goods appropriately. There may also be situations where the lessor remains liable as an owner towards third parties for damage caused by the goods. This makes the interest in having control over who is using the goods even more acute. Secondly, several of the obligations regarding care, maintenance etc. can only be performed by a person having physical control of the goods. An assignment of the lessee's rights under the contract without a corresponding substitution of the assignee as a debtor could therefore imply a problematic division of the contractual position as lessee. A general rule allowing for the substitution of a third party as lessee without the lessor's consent is not acceptable. One alternative could be to differentiate the rule and accept assignment in lease contracts where the lessor's interests are predominantly of an economic character, but such a rule would be more complicated. It is thought better to leave it to the parties to include a right of assignment in their contract where this right is required by the lessee and is acceptable to the lessor. An agreed right to assignment can be fine-tuned, including for example a requirement that the lessor's consent must not be withheld without good reason.

Notes

I. Right to assignment without consent

1 In AUSTRIAN law, assignment of the lessee's right is in principle possible without the lessor's consent, as the right of use is not regarded as personal. It is, however, debated what effects an assignment has against the lessor (obligations owed directly to new lessee or not), see Schwimann (*-Binder*), ABGB V[3], § 1094, no. 26; *Apathy and Riedler,* Schuldrecht BT, no. 8/45; Koziol (*-Iro*), ABGB, § 1098, no. 9; Rummel (*-Würth*), ABGB I[3], § 1098, no. 15. FRENCH CC art. 1717 allows assignment of the lessee's rights; it is recommended that the former lessee is regarded as discharged of the obligations if the lessor accepts payment from the new lessee (*Huet,* Contrats spéciaux, nos. 21803 and 21207; Rép.Dr.Civ. (*Groslière*), v° Bail, nos. 488 ff.); for the same results for BELGIAN law, see *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 1221. Assignment without consent is accepted also in GREEK CC art. 593 combined with arts. 455 ff. (see *Dacoronia,* Sublease of a thing, 26–28); MALTESE CC art. 1614.

II. Assignment requires lessor's consent

2. For CZECH law, it is held that the right to sublease the goods (CZECH CC art. 666(1)) is a special rule, and that assignment is allowed only with the lessor's consent (see Švestka, J. a kol. Občanský zákoník. Komentář. 10. vydání. Praha, 937). Under DANISH law, the lessee's rights are not assignable without the lessor's consent, see *Gade,* Finansiel leasing, 219–220. According to ESTONIAN LOA § 290, the lessee's transfer of the "rights and obligations" under the lease contract requires the lessor's consent (rules also on period of solidary liability of former and new lessee). GERMAN CC § 540 states that the use of the leased object cannot be transferred to others without the lessor's consent, and it is held that this rule applies to assignment of the lessee's rights under the contract as well;

the lessee has a right to extraordinary termination if consent is withheld without important reason (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 540, no. 22 ff.). Consent is required in HUNGARIAN law, CC § 426(1); ITALIAN law, CC art. 1594(1); LATVIAN law, CC art. 2115; LITHUANIAN law, CC art. 6.491; NORWEGIAN law, *Falkanger,* Leie av skib, 215; PORTUGUESE CC art. 1038(f); SPANISH law (*Albaladejo,* Derecho Civil, II[12], 661); SWEDISH law, *Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 198–200 (with possible right of extraordinary termination by the lessee if consent is withheld); and SWISS law, Guhl (*-Koller*), OR[9], § 44, no. 83. Under ENGLISH, WELSH and N. IRISH law, a distinction is drawn between the assignment of contractual rights and the assignment of contractual liabilities. In theory, assignment of the contractual rights under a lease is possible. In practice, however, the right to assign the benefits of the contract will generally be excluded. Where consent of the lessor and the assignee is obtained, both contractual benefits and liabilities may be transferred. This process is known as 'novation'. Novation involves the creation of a new contract where an existing party (the lessee) is substituted by a new party (the assignee). Consent may be express or inferred by conduct, but must be clearly established on the evidence. (See summary of novation in *The Tychy (No 2)* [2001] 1 Lloyd's Rep 10, at 24, per David Steel J). The statutory assignment of contractual rights alone is possible under the Law of Property Act 1925, sec. 136(1). Assignment of the contractual rights to possess and use leased goods must be made in writing, with express notice (in writing) given to the lessor. Under SCOTTISH law, the lessee may not assign the benefit of a lease contract unless contractually permitted to do so (*Walker,* Principles of Scottish Private Law III, 400, with reference to *Lamonby v. Foulds* 1928 SC 89, 95).

Article 7:103: Sublease

(1) The lessee may not sublease the goods without the lessor's consent.
(2) If consent to a sublease is withheld without good reason, the lessee may terminate the lease by giving a reasonable period of notice.
(3) In the case of a sublease, the lessee remains liable for the performance of the contract of lease.

Comments

A. Right of use and the lessee's person

1. General The importance of the lessee's person varies considerably from contract to contract. The lessee is liable as a party to the contract even if other persons use the goods. In some cases, however, the lessor's interest is not merely a matter of economic claims against the lessee (see also Comment *A1* to IV.B – 7:102). The lessor may for example fear damage to unique goods or wish to avoid time-consuming repair work or conflict with the lessee as a result of careless or unqualified use. An owner leasing a precious heirloom to a relative to wear at a wedding is unlikely to accept that the lessee hand the object over to some other person, unknown to the owner. On the other hand, a business enterprise

leasing bicycles to tourists will as a rule not put much weight on the lessee's person. The parties may agree on who may use the goods or the qualifications required to make use of the goods, e. g. that a car must not been left to a person without a driver's license. It may also follow from the circumstances that the lessee will not use the goods personally, e. g. where a machine is leased by a large business enterprise. Normally, the situation will be that the goods are used under the lessee's control, whether it is by the lessee personally or the lessee's family members, employees etc. It is not considered necessary to express this in a separate provision.

B. Sublease

2. Sublease only with consent If the lessee enters into a contract with a third party making the goods – partly or wholly – available for this party's use against remuneration, it is a sublease. The lessee should not be allowed to sublease the goods without the lessor's consent, unless agreed otherwise at the time of conclusion of the contract or at a later date. The sublease typically implies that the goods will no longer be under the lessee's control, as the sub-lessee is independent in relation to the lessee. The lessor may have objections to such a lack of control over and supervision of the use of the goods, notwithstanding the fact that the lessee remains liable as a party to the original lease contract. Further, the lessor may see the sublease as not conforming with the purpose of the lease contract: the lessee was given a right to use the goods; now the lessee benefits not from the use, but from the income raised by the sublease transaction. In some cases a sublease may even be in competition with the lessor's own lease business.

3. Withholding of consent and extraordinary right of termination The lessee can have a legitimate interest in subleasing the goods, for example where the lease contract is made for a long period and the lessee can no longer use the goods due to changed circumstances. Subleasing may be the only way to benefit from the goods – goods which the lessee must still pay rent for. At the outset the consequences of such a development must be borne by the lessee. However, if the lessor has no good reason to withhold consent to a sublease, the balancing of the parties' interests should lead to an extraordinary right for the lessee to terminate the lease contract. This is the rule stated in the second paragraph of the present article. The lessee may terminate the contract by giving reasonable notice, thus being freed from the obligations under the contract for the remaining period. The lessor has no claim for damages for early termination. On the other hand, the lessee's termination is not a remedy for non-performance. The lessor is under no obligation to consent to a sublease, with or without good reason. Some typical objections to a sublease are mentioned under Comment *B2*, justifying the general requirement of consent. If, in a particular case, such objections are not relevant or only of limited importance, it may be that there is not suffciently good reason to withhold consent to sublease under this rule. The relative weight of the inconveniences to the lessor compared to the benefits to the lessee of a sublease should also be taken into account.

C. Sublease, assignment of rights and transfer of the contract

4. **Sublease distinguished from assignment and transfer** A sublease does not bring new parties into the contractual relationship between lessor and lessee. Obligations and rights under the lease contract still lie between lessor and lessee. The situation is different where the lessee wants to assign the rights under the contract or wishes to transfer the contract, obligations and rights included, to another person. These questions are dealt with in IV.B – 7:102.

5. **Lessor remains liable in case of sublease** For pedagogical reasons, it is stated in the third paragraph of the present article that the lessee, in the case of a sublease, remains liable for performance of the lease contract.

Notes

I. Right to sublease without lessor's consent

1. In AUSTRIAN law, the main rule is that the lessee may sublease the goods without the lessor's consent, cf. AUSTRIAN CC § 1098; Schwimann (*-Binder*), ABGB V[3], § 1098, no. 82. To the same effect, see CZECH CC art. 666(1), cf. opposite rule for leases of a means of transportation, CZECH Ccom art. 632(2); FRENCH (and BELGIAN) CC art. 1717; GREEK CC art. 593 (the lessee is entitled to sublease, unless otherwise stipulated in the individual contract); MALTESE CC art. 1614(1), POLISH CC art. 668(1) (the lessee may sublease all or some of the goods leased or enable a third party to use them on the basis of a gratuitous contract, unless the lease agreement directly forbids a sublease); SLOVAK CC § 666; SLOVENIAN LOA art. 605; SPANISH CC art. 1550 (*Sánchez Calero,* Curso de Derecho Civil II[4], 386; *Bercovitz,* Comentario, 1836). In SWISS law, consent is required, but consent may nonetheless be withheld for certain reasons, SWISS LOA art. 262; BSK (*-R.Weber*), OR I[3], § 262, no. 1. A similar rule is found in ESTONIAN LOA § 288 (see also the rule in § 288(4) on increased rent as a condition for consent) and LITHUANIAN CC art. 6.490. According to the DUTCH CC art. 7:221, the lessee is entitled to sublease the goods "unless he has reasons to suppose that the lessor would have reasonable objections to the other party having use of the goods".

II. Consent required for sublease

2. In several countries, the lessee cannot sublease without the lessor's consent: for DANISH law, *Gade,* Finansiel leasing, 219 – 220; ESTONIAN LOA § 288(1); GERMAN CC § 540 (Emmerich and Sonnenschein (*-Emmerich*), Hk-Miete[8], § 540, no. 1); HUNGARIAN CC § 426(1); ITALIAN CC art. 1594(2); NORWAY, see *Falkanger,* Leie av skib, 215; SWEDEN, see *Hellner/Hager/Persson,* Speciell avtalsrätt II/1[4], 199. In the U.K., the lessee may not sublease the goods without the actual or "ostensible" consent (*The Pioneer Container* [1994] 2 AC 324, PC) of the lessor. Authority to sublease may be inferred from the parties' knowledge of ordinary commercial practices (see Chitty (*-Beale*) on Contracts II[29], § 33-026). Where the lessee subleases without such consent,

the lessor may have an action in tort for conversion both against the third party and the lessee. If the goods are lost or damaged as a result of the sublease, the lessor may have an action in tort for negligence against the third party. In SCOTLAND, the lessee may not sublease the goods unless contractually permitted to do so (*Walker,* Principles of Scottish Private Law III, 400, with reference to *Lamonby v. Foulds* 1928 SC 89, 95).

III. Right to extraordinary termination if consent is withheld

3. Several jurisdictions have rules according to which the lessee is given a right to extraordinary termination of the lease if the lessor's consent to sublease is withheld without sufficiently good reason: ESTONIAN LOA § 288; GERMAN CC § 540; LITHUANIAN CC art. 6.490(2).

IV. Lessee remains liable

4. It seems to be generally accepted that the lessee remains liable for the performance of the obligations under the contract, see for example for BELGIAN law, *La Haye and Vankerckhove,* Le Louage de Choses I[2], no. 258; for CZECH law, Švestka *(-Jehlička),* Civil Code, 1183; for FRENCH law, Rép.Dr.Civ. (*Groslière*), v° Bail, no. 528, *Huet,* Contrats spéciaux, no. 21136; ITALIAN CC art. 1595(1); for SLOVAK law, Svoboda (*-Górász*), OZ, art. 666; SPANISH CC art. 1550 (*Díez-Picazo and Gullón,* Sistema II[9], 340). The lessee's liability for the sublessee's use is sometimes mentioned explicitly, see for example ESTONIAN LOA § 288(5); HUNGARIAN CC § 426(2) (see also § 426(3) on granting of use to other persons *without* lessor's consent); GERMAN CC § 540(2); GREEK CC art. 593; LITHUANIAN CC art. 6.490(6); POLISH CC art. 668; SLOVENIAN LOA art. 605(2); SWISS LOA art. 262(3). In POLISH CC art. 668(2) it is also stated explicitly that a sublease (or similar relationship) expires at the termination of the lease.

V. Direct action

5. In some countries, it is accepted that the lessor has claims directly against the sub-lessee, for payment of rent or for other performances. These rules will not be dealt with here, but see as an example FRENCH CC art. 1753 (applicable to leases of immovable property) and for case law and discussion, *Huet,* Contrats spéciaux, no. 21136, 625, *Groslière,* loc. cit., nos. 531 and 532; cf. different results for BELGIAN law, *La Haye and Vankerckhove,* Le Louage de Choses I[2], nos. 278 ff. See also GREEK CC art. 599(2) (right of the lessor to claim return of the leased object from the sub-lessee at the end of the lease period), as well as LITHUANIAN CC art. 6.490(7) on the right of the sublessee to submit claims on behalf of the lessee. See also note *12* to IV.B – 5:109 on the lessor's right to claim return of the goods from the lessee. In the U. K., where the lessor has given actual or ostensible consent to a sublease, a direct lease relationship will arise between the lessor and the sub-lessee, provided the sub-lessee received the goods knowing another "is interested in the goods" (*The Pioneer Container* [1994] 2 AC 324, at 336 – 338, 340 – 342). Thus, "all the terms agreed between the [lessee] and the [sub-lessee], in so far as these are applicable to the relationship of the [lessor] and the [sub-lessee], apply as between the [lessor] and the [sub-lessee]" (*Sandeman Coprimar SA v. Transitos y Transportes Integrales SL* [2003] EWCA Civ 113, at [62]; see further *Palmer,* Bailment, 1329).

Annexes

Abbreviations

AA	Ars Aequi Juridisch Studentenblad (Zwolle [later Nijmegen], 1.1951/1952 ff., cited by year and page)
AB	Wet algemeene bepalingen (Act of 15 May 1829 on the general provisions for the legislation of the kingdom, The Netherlands, Stb. 28)
AB	Alkotmàrybiròsàg hatàrozat (Decisions of the Constitutional Court of Hungary; cited by number and year)
ABGB	Allgemeines Bürgerliches Gesetzbuch (Civil Code, Austria, 1 June 1811, JGS 1811 no. 946)
AC	Law Reports, Appeal Cases (House of Lords) (London, 1.1875/76 ff.; the older part of the collection up to 1890 cited as Appeal Cases; from 1891 the abbreviation AC is used; cited by year, book, and page)
ACLR	Australian Current Law Review (Sydney 1969–1971)
AcP	Archiv für die civilistische Praxis (Tübingen 1.1818-50.1867; N. F. 1.=51.1868-49=99.1906; 100.1906-120.1922; N. F. [= 3.F.] 1.=121.1923-29.=149.1944; 30.=150.1948/49-53=173.1973; 174.1974 ff.; incorporating Archiv für bürgerliches Recht; cited by volume, year, and page)
AD	South African Law Reports, Appellate Division (1910–1946; cited by year and page)
ADC	Annuario de Derecho Civil (Madrid 1.1948 ff.; cited by year and page)
A & E	Admiralty and Ecclesiastical Cases (London 1865–1875; cited by year, book, and page; see LR)
affd	affirmed
AfP	Archiv für Presserecht (Düsseldorf 1.1953 ff.; cited by year and page)
AG	Amtsgericht (Local Court, Germany and Austria); Aktiengesellschaft (joint-stock company, plc)
A-G	Advocaat-Generaal (The Netherlands); Avocat-Général (Belgium, France); Attorney-General (England)
AGBG	Gesetz v. 9. 12. 1976 zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (Act on General Contract Terms, Germany, 9 Dec. 1976, BGBl. 1976 I p. 3317) repealed (1. 1. 2002) by the Schuldrechtsmodernisierungsgesetz and inserted into the BGB
AID	Archeion Idiotiku Dikaiu (Triminiaia nomiki epitheorisis; Civil Law Archive, Athens 1.1934-17.1954/59; cited by volume, year, and page)
AJP / PJA	Aktuelle juristische Praxis / Pratique Juridique actuelle, (Lachen/Switzerland 1.1992 ff.; cited by year and page)
AK	Astikos Kodikas (Civil Code, Greece, 23. Feb. 1946, A. N. 2250/1940, FEK A 91/1940 p. 597)
AllER	All England Law Reports (London 1.1936 ff.; cited by year, book, and page)
ALJR	Australian Law Journal Reports (Sydney 1958 ff., cited by volume and page)

ALR	Allgemeines Landrecht für die preußischen Staaten (Civil Code, Prussia, 1 June 1794)
A. L. R.	The Australian Law Reports (Sydney 1.1973 ff.; cited by volume, year, and page)
alt.	alternative
AMG	Arzneimittelgesetz. Gesetz zur Neuordnung des Arzneimittelrechts v. 24.8.1976 (Act on Medication Reform, Germany, 24 Aug. 1976, BGBl. 1976 I p. 2995)
AmJCompL	The American Journal of Comparative Law (Baltimore 1.1952 ff.; cited by volume, year, and page)
A. N.	Anagastikos Nomos (Emergency laws, Greece)
AnDerCiv.	Anuario de Derecho Civil (Madrid 1.1948 ff.; cited by volume, year, and page)
AnfO	Anfechtungsordnung v. 10.12.1914 (contesting act, Austria, RGBl. 1914/337)
AngG	Angestelltengesetz v. 11.5.1921 (employees' act, Austria, BGBl. 1921/292)
Ann. Louv.	Annales de Droit de Louvain (Brussels 41.1981 ff.; previously Annales de droit et de sciences politiques; cited by year and page)
Ann.Dr.Liège	Actualités du droit: Revue de la Faculté de droit de Liège (Luik 1.1956 ff., since 1986 Brussels; until 1990 Annales de droit de Liège; cited by year and page)
Annal.prop.industr.	Annales de la propriété industrielle, artistique et littéraire (Paris 1.1855 ff.; cited by year and page)
Anst	Anstruther's Exchequer Reports (145 ER) (London 1792–1797; cited by year, volume, and page)
ANWB	Algemene Nederlandse Wielrijdersband (General Cyclists Association)
AP	Audiencia Provincial (Court of Appeal, Spain)
A. P.	Areios Pagos (Greek Supreme Court in civil matters)
App	Corte d'Appello (Court of Appeal, Italy)
App.Cas.	see AC
appr.	approximate
APR	Annual percentage of rate
Apygardu teismai	Regional Court, Lithuania
Apylinkiu teismai	Local Court, Lithuania
AR	Arrêté Royal (Royal decree, Belgium)
Aranzadi Civil	Repertorio Aranzadi de Jurisprudencia Civil (Navarra 1.1992 ff.; cited by year, volume, number, and page)
Arch.civ.	Archivio civile (Piacenza, 4th Series 1.1958 ff.; cited by year and page)
Arch.Giur.circolaz.	Archivio Giuridico della circolazione e dei sinistri stradali (Piacenza, 4th series 1.1955-22.1976 ff.; cited by year and page)
Arch.resp.civ.	Archivio della responsabilità civile e dei problemi del danno (Piacenza 1.1958 ff.; cited by year and page)
ArchN	Archeion Nomologicas (Athens 1.1949 ff.; cited by volume, year, and page)
ARIL	Annual Review of Irish Law (Dublin and London 1.1987/1988)
Arm	Armenopoulos miniaia nomiki epitheorisis (Thessaloniki 1.1946/47 ff.; cited by year and page)
Arr.Cass.	Arresten van het Hof van Cassatie (Brussels 1967 ff.; from 1937–1961 published as "Arresten van het Hof van Verbreking"; the collection did not appear 1962–1966)
art(s).	article(s)

ASA	Advertising Standards Authority
ASVG	Allgemeines Sozialversicherungsgesetz (General Social Insurance Act, Austria, BGBl. 1955/189)
AT	Audiencia Territorial (Court of First Instance, Spain)
AtomG	Gesetz über die friedliche Verwendung der Kernenergie und den Schutz gegen ihre Gefahren, Atomgesetz (Law on the peaceful use of nuclear energy and the protection against its dangers, Germany, 31. Oct. 1976, BGBl I p. 3035)
AtomHG	Atomhaftpflichtgesetz (Nuclear Liability Act, Austria, BGBl. 1964/117)
A & V	Aansprakelijkheid en Verzekering (Deventer 1.1993 ff.; cited by year, and page)
Avd	Avdeling (Part)
Avv. e proc.	Avvocato e procuratore
AWSt-A	Reference term used in the publications of the BfAI; see BfAI
B	Baron
B & Ad	Barnewall & Adolphus' King's Bench Reports (ER 109–110) (London 1.1830-11.1840; cited by volume and page)
BAG	Bundesarbeitsgericht (Federal Labour Court, Germany)
BAGE	Entscheidungen des Bundesarbeitsgericht (Decisions of the Federal Labour Court, Berlin 1.1955 ff.; cited by volume and page)
B & Ald	Barnewall and Alderson's Reports, King's Bench (ER 106) (London 1817–1822)
BankFin	Bank- en Financiewezen / Revue de la banque (Brussels 1.1936/37 ff.)
Banque	Revue banque (Paris 1926–1998)
BAnz	Bundesanzeiger (Federal Gazette, Köln 1.1949–42.1990)
BB	Der Betriebs-Berater (Heidelberg 1.1946 ff.; cited by year and page)
BBTC	Banca, borsa e titoli di credito = rivista di dottrina e giurisprudenza (Milano 1.1934–8.1941, 11.1948 ff.; cited by year, book, and column)
B & C	Barnewall & Cresswell's King's Bench Reports (ER 107–109) (London 1822–1830; cited by year, volume, and page)
BCLC	Butterworths Company Law Cases (London 1.1983 ff.; cited by year, book, and page)
BD	Byretsdom (local court judgment, Denmark)
BDA	Decisions of Spanish Courts: BDA JUR = Base de datos Aranzadi (Westlaw) BDA AC = Base de datos Aranzadi (Aranzadi Civil) RJ = Repetorio de Jurisprudencia Aranzadi
Beav	Beaven's Rolls Court Reports (ER 48–55) (London 1838–1866; cited by year, volume, and page)
BfAI	Bundesstelle für Außenhandelsinformation (Federal Information Centre on Foreign Trade Law; Köln, Germany)
BFD	Universidade de Coimbra. Boletim da Faculdade de Direito (Coimbra 1.1914/15-9.1925/26 = Nr. 1-90; 10.1926/28 ff.; cited by volume, year, and page)
BG	Bundesgericht (Supreme Court of Switzerland); Bezirksgericht (Court of Appeal, former German Democratic Republic; partly also Germany; Court of First Instance, general jurisdiction, Austria)
BGB	Bürgerliches Gesetzbuch (Civil Code, Germany, 18 Aug. 1896, RGBl. p. 195)

BGBl.	Bundesgesetzblatt (Official Gazette, Germany) 1950; then in parts: BGBl. part I (1951 ff.), BGBl. part II (1951 ff.), BGBl. part III = Sammlung des Bundesrechts (Collection of Federal Statutes, Köln, Bonn 1.1958 ff.)
BGE	Entscheidungen des schweizerischen Bundesgerichtes (Decisions of the Swiss Supreme Court; can also be referred to as Arrêts du Tribunal Fédéral Suisse, Lausanne 1.1875 ff.; from 23.1897 2 books without special titles; separation from 40.1914; cited by volume, book, and page)
BGH	Bundesgerichtshof (Federal Court of Justice, Germany – before 1990 only for West Germany)
BGHR	BGH-Rechtsprechung Zivilsachen (Decisions of the German Supreme Court in civil matters, Köln 1987, CD-ROM; cited by § and keyword)
BGHZ	Amtliche Sammlung der Entscheidungen des Bundesgerichtshofes in Zivilsachen (Decisions of the German Federal Court of Justice in civil matters, Köln, Berlin 1.1951 ff.; cited by volume and page)
BH	Bírósági Határozatok (Reported Cases, Court Decisions, Hungary)
Bing	Bingham's Reports, Common Pleas (ER 130–131) (London 1822–1834; cited by year, volume, and page)
BinnSchG	Binnenschiffahrtsgesetz (Inland Waterways Act, Austria, RGBl. 1898, p. 369, 868); Gesetz über den gewerblichen Binnenschiffsverkehr (Act on industrial inland waterway traffic, Germany, as amended on 8 Jan. 1969, BGBl. I p. 66)
BJagdG	Bundesjagdgesetz (Federal Hunting Act, Germany, as amended on 29 Sep. 1976, BGBl. I p. 2849)
BJC	Boletín de Jurisprudencia Constitucional (Bulletin of the Constitutional Court, Spain; Madrid 1.1981 ff.; cited by volume, year, and page)
BJIB & FL	Butterworths Journal of International Banking and Financial Law (London 1986 ff.; cited by year and page)
Bligh NS	Bligh's Reports, New Series (ER 4–6) (London 1827–1837; cited by year, volume, and page)
BOE	Boletín Oficial del Estado (Official Gazette, Spain; Madrid 1.1936 ff.; cited by year, number, and date)
BolMinJus	Boletim do Ministério da Justiça (Bulletin of the Ministry of Justice, Portugal; Lisboa 1.1940/41 ff.; cited by volume, year, and page)
BR	Tijdschrift Bouwrecht (Deventer 1.1972 ff.; cited by year and number)
BRats-Drucks.	Bundesratsdrucksachen. Verhandlungen des Bundesrates (Proceedings of the 2nd Chamber of the German Federal Parliament; Bonn 1949 ff.; cited by volume, year and, if necessary, by page)
BrB	Brottsbalk (Criminal Code, Sweden, 21 Dec. 1962, SFS 1962:700)
B. R. H.	Belgische Rechtspraak in Handelszaken / Jurisprudence commerciale de Belgique (Antwerp 1968–1982)
Brussels Convention	Brussels Convention. Convention on Jurisdiction and the Enforcement of Judgments in civil and commercial matters, 27 Sep. 1968 (OJ 1978 L 304, p. 77)
BS	Belgisch Staatsblad; see Monit. belge
B & S	Best & Smith Queen's Bench Reports (London 1.1861–5.1865; cited by year, volume, and page)

BT-Drucks.	Bundestagsdrucksachen. Verhandlungen des Bundestages (Proceedings of the 1st Chamber of the German Federal Parliament; Bonn 1949 ff.; cited by volume, year, and if necessary by page)
Build LR	Building Law Reports (London 1976–1998; cited by volume and page)
Bull.Ass.	Bulletin des Assurances (Brussels 1.1921 ff.; cited by year and page)
Bull.civ.	Bulletin des arrêts de la Cour de cassation rendus en matière civile (Bulletin of the decisions of the Court of cassation in civil matters, France; Paris 12.1804/05, 128.1926 ff.; cited by year, book, and number)
Bull.com.	Bulletin des arrêts de la Cour de cassation rendus en matière commerciale (= Book IV [formerly Book III] of Bull.civ.)
Bull.crim.	Bulletin des arrêts de la Cour de cassation rendus en matière criminelle (Bulletin of the decisions of the Court of cassation in criminal matters, France; Paris 9.1804 ff.; cited by year, book and number)
BullEU	Bulletin of the European Union (before 1993, Bulletin of the European Communities; Luxembourg 1.1968 ff.; cited by year and number)
Burr	Burrows King's Bench Reports tempore Mansfield (ER 97–98) (London 1757–1771; cited by year, volume, and page)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court of Germany)
BVerfGE	Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts (Decisions of the Federal Constitutional Court of Germany; Tübingen 1952 ff.; cited by volume and page)
BVerfGG	Bundesverfassungsgerichtsgesetz (Statute of the Constitutional Court of the Federal Republic of Germany, as amended on the announcement of 12 Dec. 1985, BGBl. I p. 2229)
BW	Burgerlijk Wetboek (Civil Code, The Netherlands) (Boek 1: Stb. 1969, no. 167 in conjunction with Stb. 1969 no. 259, in force since 1 Jan. 1970; Boek 2: Stb. 1976 no. 228 in conjunction with Stb. 1976 no. 342, in force since 26 July 1976; Boek 3, 5, 6 and 7: Stb. 1991 no. 600 in conjunction with Stb. 1989 no. 616 and 290, in force since 1 Jan. 1992; Boek 4: Stb. 1999 no. 300, in force since 1 Jan. 2003; Book 7A, Stb. 1989 no. 378, in force as Book 4 of the old BW since 18 Oct. 1838; Book 8: Stb. 1991 no. 126, in force since 1 Apr. 1991)
BW (old)	Burgerlijk Wetboek (Civil Code, The Netherlands, 1 Sep. 1838, Stb. 1831 nos. 1 and 6 in conjunction with KB, 10 Apr. 1838, Stb. 1838 no. 12)
CA	Audiencia Provincial (Spain); Corte d'Appello (Italy); Cour d'Appel (Belgium, France); Court of Appeal (England); Efeteion (Greece); High Court (Ireland; in its appellate jurisdiction); Hof (The Netherlands); Hovrätt (Finland, Sweden); Inner House (Court of Session, Scotland); Kammergericht (Berlin, Germany); Krajsky sùd (Slovakia); Lietuvos apeliacinis teismas (Lithuania), Megyei birosàg (Hungary); Oberlandesgericht (Austria, Germany); Østre Landsret (Denmark); Relação (Portugal); Ringkonnakohus (Estonia); Sąd Apelacyjny (Poland); Søndre Landsret (Denmark), Vestre Landsret (Denmark); Visje Sodisce (Slovenia); Vrnchi soud (Czech Republic)
CAA	Cour d'appel administratif, France
Cal 3d	California Reports, Third Series (San Francisco 1974 ff.; cited by volume, year, and page)
CAP	British Code of Advertising and Sales Promotion

Cass.	Hof van Cassatie/Cour de cassation (Belgium); Cour de cassation (France), Corte Suprema di Cassazione (Italy, when none other specified: sezione civile) (Court of Cassation)
Cass.ass.plén.	Cour de cassation, Assemblée Plénière (France)
Cass.ch.mixte	Cour de cassation, Chambre Mixte (France)
Cass.ch.réun.	Cour de cassation, Chambres Réunies (France)
Cass.civ.	Cour de cassation, Chambre Civile (France)
Cass.com.	Cour de cassation, Chambre Commerciale et financière (France)
Cass.crim.	Cour de cassation, Chambre criminelle (France)
Cass.pén.	Cour de cassation, Chambre pénale (France); see Cass.crim.
Cass.req.	Cour de cassation, Chambre des Requêtes (abolished) (France)
Cass.sez.lav.	Corte di Cassazione, sezione lavoro (Italy)
Cass.sez.pen.	Corte di Cassazione, sezione penale (Italy)
Cass.sez.trib.	Corte di Cassazione, sezione tributaria (Italy)
Cass.sez.un.	Corte di Cassazione, sezione unite (Italy)
Cass.soc.	Cour de cassation, Chambre Sociale (France)
CB	Common Bench Reports (ER 135–139) (London 1845–1856)
CB (N. S.)	Common Bench Reports, New Series (ER 140–144) (London 1857–1866)
CBR Jaarboek	Centrum voor Beroepsvervolmaking in de Rechten. Universiteit Antwerpen. Jaarboek (Antwerp and Apeldoorn 1.1996/97 ff.; cited by year and page)
CC	Civil Code Civil Code (Malta), 22 Jan. 1874 (Ordinance VII of 1868); Code Civil (France, Luxembourg), 21 Mar. 1804; Burgerlijk Wetboek/Code Civil (Belgium); Codice Civile (Italy) (Gazz. Uff, 4 Apr. 1942, no. 79 and 79bis; edizione straordinaria); Código Civil (Spain), 24 July 1889 (Gaceta de Madrid no. 206, 25 July 1889); Código Civil (Portugal) (Decreto-Lei no. 47–344, 25 Nov. 1966) See also ABGB, AK, BGB, BW, CK, EOA/VÕS, KC, ObcZ, OCA, OZ, Ptk
CC Introd.Act	Civil Code Introductory Act (Eisagogikos nomos, Greece; A. N. 2783/1941 FEK A 29/1941 p. 145) (Einführungsgesetz zum Bürgerlichen Gesetzbuch, Germany, see EGBGB)
CCC	Contrats, concurrence et consommation (Paris 1.1991 ff.)
CCJC	Cuadernos Civitas de Jurisprudencia Civil (Madrid 1.1983 ff.; cited by year and page)
CCLT	Canadian Cases on the Law of Torts (Toronto 1976 ff.; cited by volume and page)
Ccom	Commercial Code Código comercial (Portugal), 28 June 1888 (Diário do Governo no. 203, 6 Sep. 1888); Código de comercio (Spain), 22 Aug. 1885 (Gaceta de Madrid no. 289–328, 16 Oct.–24 Nov. 1885); Code de commerce (France) 1808; Wetboek van Koophandel/Code de commerce (Belgium) 10 Sep. 1807; Handelsbalken (Sweden) 1734 *See also HGB*

CCP	Code on Civil Procedure Act 1/2000 on Civil Procedure (Spain), 7 Jan. 2000 (BOE no. 7, 8 Jan. 2000) See further Code jud.; CPC; C.proc.civ., GerW, KPolDik, Rv, ZPO
Cdo	In references to cases from Czech Supreme Court, designates that the case concerns civil appeal to the Supreme Court (dovolání), in distinction to "Odo" (commercial cases) and "Tdo" (criminal cases)
CE	Consticución Española (Constitution of Spain, 27 Dec. 1987, altered 27 Aug. 1992 (BOE no. 311.1., 29 Dec. 1978)
cf.	confer
CFI	Court of First Instance, general jurisdiction See further AG, Apygardu teismai, Apylinkiu teismai, AT, BD, BG, Civ., Conc., Corr, HC, Helyi birosàg, JP, Kerülti birosàg, KS, Ktg, LG, Linnakohus, Maakohus, MPr, OH, Okj, Okz, ØL, OS, PPr, Pr, Pret., Rb, Sąd grodzki, Sąd okręgowy, SH, Sh.Ct., TGI, TI, Trib., Trib.com., Trib.Corr., Trib.enfants, Varosi birosàg, VL, Vred
Ch	The Law Reports. Chancery (London 1.1891 ff.; cited by year, volume, and page)
chap.	chapter
Ch.App.	Chancery Appeals (London 1865–1875; cited by year, volume, and page; see LR)
Ch.D	The Law Reports, Chancery Division (London 1.1875/76-1890; cited by year, volume, and page; see LR)
ChrID	Chronika Idiotikou Dikaiou (Annals of Private Law, Greek legal journal, Athens 1.2001 ff.)
CICR	Comitato interministeriale per il credito e il consume (The Interministerial Committee for Credit and Savings, referred also as the Credit Committee, Italy)
CIM	Convention internationale concernant le transport des marchandises par chemins de fer (International agreement of 7 Feb. 1970 on rail freight, BGB1. 1974 II p. 381)
Cir.	Circuit
CISG	Vienna UN-Convention on the International Sale of Goods of 11. Apr. 1980 (http://www.uncitral.org/uncitral/en/index.html)
Civ.	Tribunal de première instance, Chambre civile, Belgium
CJ	Colectânea de Jurisprudência (Coimbra 1.1976 ff.; cited by year, volume, and page)
CJ (ST)	Colectânea de Jurisprudência. Acórdãos do Supremo Tribunal de Justiça (Coimbra 1.1993 ff.; cited by year, volume, and page)
C. J.	Lord Chief Justice (England)
CK	Lietuvos civilinis kodeksas (Civil Code, Lithuania)
CLC	Commercial Law Cases (London 2002 ff.)
CLJ	The Cambridge Law Journal (Cambridge 1.1921/23 ff., parts without volume numbers; cited, as far as possible, by volume, year, and page)
CLR	Commonwealth Law Reports (Melbourne 1.1903 ff.; cited by volume, year, and page)
CLY	Current Law Yearbook (London 1.1947 ff.; cited by year and issue)

CMLR	Common Market Law Reports (London 1.1963 ff.; cited by volume, year, and page)
Cmnd	Command Papers (London; cited by year and page)
CMR	Convention relative au Contrat de transport international de marchandises par route (Convention on the Contract for the International Carriage of Goods by Road, 19 May 1956, UNTS volume 399 p. 189)
Code jud.	Code judiciaire (Code of civil procedure, Belgium, 10 Oct. 1967, Monit. belge, 31 Oct. 1967)
col	colona
Col.Leg.Esp.	Colección Legislativa de España. First series, third part: Jurisprudencia civil (Madrid 1.1889 ff.; cited by volume, year, book, number, and page)
Coll. Arb.	Collegio Arbitrale (Italy)
COM	Publications of the European Commission (Brussels 1.1968 ff.)
CompLYB	Comparative Law Yearbook ('s-Gravenhage/The Hague 1.1977 ff.; cited by year and page)
Conc.	Conciliatore (Justice of the Peace, Italy)
concl.	conclusio
Cons. Stato	Consiglio di Stato (Supreme Court in administrative matters, Italy)
ConsC	Code de la consommation (Consumer Code, France), Loi n° 93-949 du 26 juillet 1993, relative au code de la consommation (partie Législative) (Journal officiel de la République Française of 27 July 1993, 10538)
ConsCredA	Consumer Credit Act (Belgium: law of 12 June 1991 as amended in 2003 "Loi relative au crédit à la consummation/Wet op het consumentenkrediet", BS 9 July and 6 Aug. 1991; England/Scotland 1974 c. 1939; Germany: law of 17 December 1990 „Verbraucherkreditgesetz", BGBl. III 402-6; Portugal: DL 359/91 of 21 September 1991 "Establece normas relatives ao credito ao consumo", Diário Rep. 3,2 no. 218, Serie I-A of 21 September 1991, 4998–5003; Spain: law no. 7/1995 of 23 March 1995 "Ley de credito al consumo", BOE no.72 of 25 March and no. 113 of 12 May 1995; Sweden: "Konsumentkreditlag", SFS 1992:830)
ConsProtA	Consumer Protection Act (Austria: law of 8 March 1979 „Konsumentenschutzgesetz", as amended in 1983, 1984, 1985, 1993, 1996, 1997 and 2001, BGBl. 1979 no. 140; England/Scotland: Consumer Protection Act 1987 c. 43; Finland; Greece: (former) law no. 1961/1991 and law no. 2251/1994 on Consumer Protection "Prostasia ton Katanaloton", ΦΕΚ A' 191 as amended in 1999; Luxemburg: law of 25 August 1983 «Loi relative à la protection du consommateur», Memorial 1983, 1494, as amended in 1986, 1987, 1993, 1997 and 2000; Portugal: Law no. 24/96 of 31 July 1996 "Estabelece o regime legal aplicável à defesa dos consumidores. Revoga a Lei n/ 29/81 do 22. 8. 1981" commonly called "Lei de Defesa do Consumidor", Diário Rep. no. 176, Serie I-A of 31 July 1996, 2184–2189; Spain: law 26/1984 of 19 July 1984 "General Ley para la Defensa de los Consumidores y Usuarios", BOE no. 176 of 24 July 1984)
Const LJ	Contruction Law Journal (London 1984 ff.; cited by volume and page)
Const LR	Construction Law Reports (London 1984 ff.; cited by volume and page)
Const.	Verfassung (Constitution)
Contr. Impr.	Contratto e Impresa (Padova 1.1985 ff.; cited by year and page)

ContrA	Contract Act (Denmark: Aftaleloven, no. 242 of 8 May 1917, lovbekendtgørelse om aftaler og andre retshandler på formuerettens område no. 781 of 26 August 1996; Finland: Lag om rättshandlingar på förmögenhetsrättens område of 13 June 1929 no. 228; Sweden: Lag om avtal och andra rättshandlingar på förmögenhetsrättens område, SFS 1915:218)
Corr	Correctionnel (Court of First Instance in criminal matters, Belgium)
Corr.giur.	Corriere giuridico (Milano 1.1984 ff.; cited by year and page)
Corte Cost.	Corte Costituzionale (Constitutional Court of Italy)
Cost.	Costituzione of 27 Dec. 1947 (Constitution of Italy; Gazz. Uff no. 298, edizione straordinaria)
COTIF	Convention relative aux transports internationaux ferroviaires of 9 May 1980 (Convention concerning International Carriage by Rail)
Cour	Cour Supérieure de Justice (in its function as Cour d'assises, Cour de cassation or Cour d'appel, Luxembourg)
Cox Eq Cas	Cox's Equity Cases (London 1745–1797; cited by year, volume, and page)
CP	Code Pénal (Penal Code, France, Luxembourg), 16 June 1879 (Mémorial 1879 p. 589); Code Pénal/Strafwetboek (Penal Code, Belgium), 8 June 1867 (Monit. belge 9 June 1867); Codice Penale (Penal Code, Italy), no. 1938, 19 Sep. 1930 (Gazz. Uff no. 253 Suppl. 28 Sep. 1930); Código Penal (Penal Code, Spain), 14 Sep. 1973 (BOE no. 297–300, 12–15 Dec. 1973); Código Penal (Penal Code, Portugal), Decreto 16 Sep. 1886
C. P.	Common Pleas Cases (London 1865–1875; cited by year, volume, and page; see LR)
C & P	Carrington and Payne's Reports (ER 171–173), 1823–1841)
CPC	Codice di procedura civile (Italy)
C. P. D.	Common Pleas Division (London 1875/76–1890; cited by year, volume, and page; see LR)
CPR	Civil Procedure Rules 1998 (England, S. I. 1998/3132)
C.proc.civ.	Code de Procédure Civile of 1. Jan. 1976 (Code of civil procedure, France; décret n° 75–1123, 5.12.1975); Codice di procedura civile of 21 Apr. 1942 (Code of civil procedure, Italy; RD, 28 Oct. 1940, no. 1443 Gazz. Uff no. 253, 28 Oct. 1940); Código do Processo Civil of 28. Dec. 1961 (Code of civil procedure, Portugal; Decreto Lei Nr. 44129)
C.proc.crim.	Code d'instruction criminelle (Wetboek van Strafvordering, Belgium, 17 Apr. 1878, Monit. belge, 25 Apr. 1878)
C.proc.pen.	Codice di procedura civile (Code of criminal procedure, Italy, 1 July 1931, RD, 19 Oct. 1930 no. 1399: Gazz. Uff 28 Oct. 1930 no. 253 Suppl.); Código de processo penal (Code of criminal procedure, Portugal, Decreto Lei no. 16489, 15 Feb. 1929 Diário do Governo)
C.proc.pén.	Code de procédure pénale (Code of criminal procedure, France, law no. 2000-516 of 15 June 2000)
CrimLR	Criminal Law Review (London 1.1954 ff.; cited by volume, year, and page)
Cro Jac	Croke's King's Bench Reports tempore James I (1603–1625)

CRvB	Centrale Raad van Beroep (Administrative Court, The Netherlands)
ctr.	contra
CuadCivJur.	Cuadernos Civitas de Jurisprudencia Civil (Madrid 1.1983 ff.; cited by year and page)
CurrLegProbl.	Current Legal Problems (London 1.1948 ff.; cited by volume, year, and page)
D	Décret (decree, France)
D	Digesten
D	Dunlop's Session Cases (1838–1862)
D.	Recueil de jurisprudence Dalloz (Paris; with different forms and titles: D. A. (Recueil analytique Dalloz [1941–1944]); D. C. (Recueil critique Dalloz [1941–1944]); D. H. (Recueil hebdomadaire Dalloz [1924–1940]); D. P. (Recueil périodique et critique mensuel Dalloz [1924–1940]); Recueil Dalloz, Recueil Sirey, combined since 1955; Recueil Dalloz et Recueil Sirey; from 1965: Recueil Dalloz-Sirey; appearing in sections: D. Chron./Jur. [Chronique/Jurisprudence], D. I. R./Légis. [Informations Rapides/Législation], D. Somm.Comm. [Sommaires Commentés]; cited by year, book, and page) (older forms and titles omitted)
Danno e resp.	Danno e responsabilità. Problemi di responsabilitá civile e assicurazioni (Milano 1.1996 ff.; cited by year and page)
Danske Lov	Kong Christian den Femtes Danske Lov af 15. april 1683 (Danish Code of King Christian the fifth of 15 April 1683)
DAOR	Le droit des affaires/Het ondernemingsrecht (Gent 1.2000/01 ff.)
DAR	Deutsches Autorecht (München 1.1926 ff.; cited by year and page)
DB	Der Betrieb. Wochenschrift für Betriebswirtschaft, Steuerrecht, Wirtschaftsrecht, Arbeitsrecht (Düsseldorf 1.1948 ff.; cited by year and page)
D, B & M Rep.	Dunlop, Bell & Murray's Reports, Session Cases, Second Series (Scotland 1838–1862)
D. C.	see D.
DCFR	Draft Common Frame of Reference
DCI	Diritto del commercio internationazionale (Milano 1.1987 ff.)
DDike	Dioikitiki Dike (Athens 1.1989 ff.; cited by year and page)
De G. F. & J.	De Gex, Fisher and Jones's Reports, Chancery (ER 45) (London 1859–1862)
De Verz	Tijdschrift voor Verzekering / Bulletin des Assurances (formerly De Verzekering) (Brussels 1.1921 ff.; cited by year and page)
DEE	Dikaio Epicheiriseon kai Etairion (Enterprises and Company Law; Athens 1.1995 ff.)
D. H.	see D.
DHG	Dienstnehmerhaftpflichtgesetz. Bundesgesetz v. 31.3.1965 über die Beschränkung der Schadensersatzpflicht der Dienstnehmer (Federal Law on the Limitation of Personal Liability of Employees, Austria, 31 Mar. 1965, BGBl. 1965/80)
Diário Rep.	Diário da República (Government gazette, Portugal; Lisboa 1.1976 ff.; cited by year and number)
Dir.fam.pers.	Il diritto di famiglia e delle persone (Milano 1.1972 ff.; cited by year, and if necessary, by part and page)

Dir.inf.	Diritto dell'informazione e dell'informatica (Milano 1.1985 ff.; cited by year and page)
Dir.just.	Direito e justicia (Lisboa 1.1980 ff.; cited by year and page)
diss.	Dissertation
DJ	Deutsche Justiz (Berlin 1.1933-13.1945; cited by year and page)
DJT	Deutscher Juristentag (German Lawyers' Forum)
DL	Decreto legge, decreto ley (Decree-law, Greece, Italy, Portugal)
DLgs	Decreto legislativo (Legislative Decree, Italy)
DLR	Dominion Law Reports (Aurora, Ontario: First Series 1.1912-70.1922; 1923–1955; Second Series 1.1956-70.1968; Third Series: 1.1969-150.1984; Fourth Series 1.1984 ff.; cited by year, volume, and page)
DM	Deutsche Mark (Former German currency)
DNotZ	Deutsche Notarzeitschrift (München, Berlin 1.1901-33.1933 Magazine of the German Association of Public Notaries; 33.1933 ff.; cited by year and page)
Dow	Dow's Reports, House of Lords (ER 3) (England 1812–1818)
Dow & RyKB	Dowling and Ryland's Reports, King's Bench (ER 171) (England 1822–1827)
D. P.	see D.
DPIJ	Doyle's Personal Injury Journal (1990–2000)
DPR	Decreto Presidente della Repubblica (Presidential decree, Italy)
Dr.prat.com.int.	Droit et pratique du commerce international (Paris 1975–1994; cited by year and page)
Droit soc	Droit social (Paris 1.1938 ff.; cited by year and page)
DStR	Deutsches Steuerrecht (München 1.1962/63 ff.; cited by year and page)
DTI	Department of Trade and Industry (United Kingdom)
DULJ	Dublin University Law Journal (Dublin 1976–1981; New series from 1982; cited by year, volume, and page)
Dz. U.	Dziennik Ustaw Rzeczypospolitej Polskiej (Official Gazette, Poland)
EAL	Erstatningsansvarsloven (Damages Liability Act, Denmark, Lovbekendtgørelse om erstatningsansvar, no. 885, 20 Sept. 2005)
East	East's Term Reports, King's Bench (102–104 ER) (London 1801–1812; cited by year, volume, and page)
E & B	Ellis and Blackburn's Reports (ER 118–120) (London 1852–1858; cited by year, volume, and page)
EBLR	European Business Law Review (London 1.1990 ff.)
EC	European Commission
EC	European Community
ECE	Economic Commission for Europe
ECHR	European Court of Human Rights (Strasbourg)
ECJ	Court of Justice of the European Communities (Luxembourg)
ECJ Rep.	European Court of Justice Reporter
ECLR	European Competition Law Review (Oxford 1.1980 ff.; cited by volume, year, and page)
ecolex	Fachzeitschrift für Wirtschaftsrecht (Wien 1.1990 ff.; cited by year and page)

ECR	European court reports. Reports of cases before the Court of Justice and the Court of First Instance / Court of Justice of the European Communities (Luxembourg 1.1954 ff.) (until 1989 Reports of cases before the Court; cited by volume, year, and page)
ECU	European Currency Unit
ed.	edition, editor(s)
Edinburgh LRev	The Edinburgh Law Review (Edinburgh 1.1997 ff.; quoted by volume, year, and page)
EEB-Newsletter	The European Environmental Bureau Newsletter (http://www.eeb.org/publication/general.htm)
EEC	European Economic Community
EED	Epitheorissis Egatikou Dikaiou (Review of Commercial Law, Athens 1.1941 ff.; cited by volume, year, and page)
EEN	Ephimeris Ellinon Nomikon (Journal of Greek Jurists, Athens 1.1934 ff.; cited by volume, year, and page)
Ef	Efeteion (Court of Appeals, Greece)
EFSlg	Ehe- und familienrechtliche Entscheidungen (Decisions on marriage and family law, Austria; Wien 1.1965 ff.; cited by the number of the decision)
e. g.	exempli gratia (for example)
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuche (BGB Introductory Act, Germany, 18 Aug. 1896, RGBl. p. 604)
Eis.	Eisagogi (introduction)
EKHG	Eisenbahn- und Kraftfahrzeughaftpflicht-Gesetz (Rail and Road Traffic Liability Act, Austria, 21 Jan. 1959, BGBl. 1959/48)
El.Bl. & El.	Ellis, Blackburn & Ellis' Queen's Bench Reports (120 ER) (London 1858; cited by year, volume, and page)
EllDik	Elliniki Dikeosini (Athens 1.1960 ff.; cited by volume, year, and page)
EMLR	Entertainment and Media Law Reports (London 1998 ff.; cited by year and page)
EntgFG	Gesetz über die Zahlung des Arbeitsentgelts an Feiertagen und im Krankheitsfall, Entgeltfortzahlungsgesetz (Act on Workers' Remuneration for Public Holidays and the Continued Payment of Employees Absent due to Illness, Germany, 26 May 1994, BGBl. I p. 1014)
EOA	see VÕS
EPA	Employment Protection Act 1990 (United Kingdom)
EpTrAksXrD	Epitheoresis Trapeziku Aksiografiku kai Xrimatistiriakou Dikaiou (Review of Banking, Negotiable Instruments and Capital Market, Greece)
EpTrD	Epitheoresis Trapeziku Dikaiou (Review of Banking Law, Greece)
ER	The English Reports (London 1.1900-178.1932; cited by volume and page)
ErmAK	Ermineia tou Astikou Kodikos (Commentary to the Greek Civil Code)
ERPL	European Review of Private Law (Deventer 1.1994 ff.; cited by volume, year, and page)
estab.	established
et al.	et alii (and others)
etc.	et cetera

ETS	European Treaty Series of Agreements and Conventions of the Council of Europe (Strasbourg 1.1949-3.1949, 4.1950 ff./61.1971 ff.; cited by volume and number)
EU	European Union
EuGRZ	Europäische Grundrechte-Zeitschrift (Strasbourg 1.1974 ff.; cited by year and page)
Eur.Conv. Hum.Rights	European Convention on the Protection of Human Rights, 4 Nov. 1950
Eur.Transp. L.	European Transport Law (Antwerp 1.1966 ff.; cited by volume, year, and page)
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (München, Frankfurt/Main 1.1990 ff.; cited by year and page)
EvBl	Evidenzblatt der Rechtsmittelentscheidungen (Wien 1.1934 ff.; included in the ÖJZ [since 1946]; see there; cited by year and page)
EWCA Civ	Approved Judgment of the Court of Appeal, Civil Division, England and Wales
EWHC	Approved Judgment of the High Court, England and Wales
EWiR	Entscheidungen zum Wirtschaftsrecht (Köln 1.1985 ff.; cited by §, number, year, and page)
EWS	Europäisches Wirtschafts- und Steuerrecht (München 1.1990 ff.; cited by year and page)
Ex.	Exchequer Cases (London 1865–1875; cited by volume, year, and page; see LR)
Exchq	Court of the Exchequer
ExchqCh	Exchequer Chamber
F	Fraser's Session Cases, 5th Series (Scotland 1898–1906)
FAL	Forsikringsaftaleloven (Denmark: Law on Insurance Contracts; no. 129, 15 Apr. 1930, lovbekendtgørelse om forsikringsaftaler no. 726 of 24 October 1986; Finland: Lag om Försäkringsavtal [Law on Insurance Contracts] of 28 June 1994 no. 543; Sweden: Lag om Försäkringsavtal [Law on Insurance Contracts], SFS 1927:77)
Fallim	Fallimento e le altre procedure concorsuali (Milano 1.1979 ff.)
Fam	The Law Reports, Family Division (London 1972 ff.; formerly: The Law Reports, Probate, Divorce and Admiralty Division 1.1865/1869 ff.; cited by year and page)
FamRZ	Zeitschrift für das gesamte Familienrecht (Bielefeld 1.1954 ff.; until 9.1962: Ehe und Familie im privaten und öffentlichen Recht [Marriage and Family within Private and Public Law]; cited by year and page)
FamZ	Interdisziplinäre Zeitschrift für Familienrecht. Beratung – Unterbringung – Rechtsfürsorge (Wien 1.2006 ff.; cited by year and page)
fasc.	fascicule
FED	Forsikrings- og Erstatningsretlig Domssamling (Copenhagen 1.1994 ff.; cited by year and page)
FEK	Fyllo Ephimeridas Kyberniseos (Government Gazette, Greece; Athens 1.1833; cited by year, volume, and if necessary, book, and number)
F & F	Foster & Finlason's Nisi Prius Reports (ER 175–176) (London 1856–1867; cited by year, volume, and page)
f(f)	following page(s)

FFR	Försäkringsjuridiska föreningens rättsfallsamling (Stockholm 1939–1984; cited by year, volume, and page)
FFS	Finlands Författningssamling (Official Gazette; Finland; Helsingfors 1.1860 ff.; cited by year, number, and page)
Fin LR	Financial Law Reports (Brentford 1982 ff.; cited by volume, year, and page)
FL	Færdselsloven (Act no. 149 on road traffic, Denmark, 20 Mar. 1918, Lovtidende A 1918 p. 578–592)
fn.	footnote
Foro it.	Il Foro italiano: raccolta di giurisprudenza civile, commerciale, penale, amministrativa (Roma, 1.1876 ff.; cited by year, book, and column)
Foro it. Mass.	Massimario del Foro italiano (Roma 1.1930 ff.; cited by volume, year, number, and column)
Foro pad.	Il Foro padano (Milano 1.1946 ff.; cited by year, book, and column)
FP6	Sixth Framework Programme on Research
FS	Festschrift
FSA	Financial Services Authority (United Kingdom)
FSMA	Financial Services and Markets Act 2000 (United Kingdom)
FSR	Fleet Street Patent Law Reports (London 1.1963 ff.; cited by year and page)
FSupp	Federal Supplement (St. Paul/Minnesota 1.1932/33 ff.; cited by volume and page)
FTLR	Financial Times Law Reports (Brentford 1982, 1986–1988)
FuR	Familie und Recht (Neuwied 1.1990 ff.; cited by year and page)
GazPal	La gazette du palais: feuille officielle d'annonces légales (Paris 1.1886 ff.; cited by year, book, and page)
Gazz. Uff	Gazzetta Ufficiale della Repubblica Italiana (Official Gazette, Italy; Roma 1.1860 ff.; cited by year, number, and page)
GenTG	Gentechnikgesetz. Gesetz zur Regelung der Gentechnik v. 20.6.1990 (Act on the Regulation of Genetic Engineering, Germany, 20 June 1990, BGB1. I p. 1080)
GerW	Gerechtelijk Wetboek (Code of Civil Procedure, Belgium)
GG	Grundgesetz (Basic Law, Constitution of Germany)
GGSt	Gefahrgutbeförderungsgesetz. Bundesgesetz v. 23.2.1979 über die Beförderung gefährlicher Güter auf der Straße und über eine Änderung des Kraftfahrgesetzes 1967 und der Straßenverkehrsordnung (Federal Act on the Transportation of Dangerous Goods, Austria, 23 Feb. 1979, BGBl. no. 209/1979)
Giff	Giffard's Chancery Reports (ER 65–66) (London 1857–1865)
Giur.cost.	Giurisprudenza costituzionale (Milano 1.1956-20.1975; then: Parte 1 = Corte costituzionale 21.1976 ff.; Parte 2 = Ordinanza di rinivio ed i ricorsi 21.1976 ff.; Parte 3 = Quaderni della giurisprudenza costituzionale 1.1964-7.1968; new series 1.1972 ff.)
Giur.it.	Giurisprudenza italiana (Torino 14.1862-25.1873; 3rd series 26.1874-32.1880, 4th series 33.1881-43.1891, 5th series 44.1892-64.1912, 110.1958 ff.; cited by year, part, and if necessary, section and column)
Giur.it.Mass.	Massimario della Giurisprudenza italiana (Torino 1.1931 ff.; cited by year, number, and page)

Giur.mer.	Giurisprudenza di merito (Milano 1.1969 ff.; cited by year, book, and page)
Giur.tosc.	Giurisprudenza toscana (Milano et al. 1.1950 ff.; cited by year and page)
Giust. Pen.	Giustizia penale. Rivista critica di dottrina, giurisprudenza, legislazione (Roma 1.1895 ff.; cited by year, book, and page)
Giust.civ.	Giustizia civile. Rivista bimestrale di giurisprudenza (Milano 1.1951 ff.; cited by year, book, and page)
Giust.civ.Mass.	Giustizia Civile Massimario; Massimario annotato della cassazione (Milano 5.1955 (1955/56)-7.1957 (1957/58); [8.]1958-[31.]1981; 32.1983 ff. (Giustizia civile)
GlU	Sammlung von Civilrechtlichen Entscheidungen des kk Obersten Gerichtshofes, begründet von Glaser und Unger (Collection of Civil Law cases, established by Glaser and Unger, Wien 1898–1915; cited by the number of the decision)
GlUNF	Neue Folge der Sammlung von Civilrechtlichen Entscheidungen des kk Obersten Gerichtshofes, begründet von Glaser und Unger (New collection of civil law cases, established by Glaser and Unger, Wien 1898–1915; cited by the number of the decision)
GmbH	Gesellschaft mit beschränkter Haftung (private company limited by shares)
GmbHR	GmbH-Report. Gesellschafts- und Steuerrecht der GmbH und GmbH & Co (Köln 1.1963 ff., until 75.1985: GmbH-Rundschau; cited by year and page)
GPCCA	General Part of the Civil Code Act (Estonia)
GRom.	Giurisprudenza Romana (Milano 1.1997 ff.)
GRUR	Gewerblicher Rechtsschutz und Urheberrecht (Weinheim 1.1896-49.1944, 50.1948 ff.; cited by year and page)
GRUR Int	Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil (Weinheim 1.1980 ff.; from 1966 to 1980 Auslands- und internationaler Teil; cited by year and page)
GrW	Grondwet (Constitution of The Netherlands, 17 Feb. 1983, Stb. p. 70)
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against restrictions to competition, Germany, 27 July 1957, BGBl. I p. 1081)
H	Danish Højesteret (Supreme Court of Denmark)
HaftPflG	Haftpflichtgesetz (Liability act, Germany, 4 January 1978, BGBl. I p. 145)
Harv.LR	Harvard Law Reports (1.1887/1888 ff.)
HBl	Henry Blackstone's Common Pleas Reports (126 ER) (London 1788–96)
HC	High Court (Court of Appeal, Ireland)
H & C	Hurlstone and Coltman's Exchequer Reports (1862–1866)
HD	Redogörelser och meddelanden angående högsta domstolens avgöranden (Collection of Judgments by the Finnish Supreme Court, Helsinki 1.1926 ff.; cited by year, number, and page)
HD	Højesteretsdom (Denmark); Høyesterettsdom (Norway); Högsta domstolens domar (Sweden, Finland) (Judgment of the Supreme Court)
Hdst.	Hoofdstuk (Chapter)
Helyi bíróság	Local Court (Court of First Instance, Hungary)
HGB	Handelsgesetzbuch (Commercial Code, Germany and Austria, 10 May 1897; RGBl. p. 219, BGBl. III 4100-1)
HK	Højesterets kendelse (Supreme Court Decisions, Denmark)

HKLR	Hong Kong Law Reports (1.1905/06-40.1956; 1957–1995)
HL	House of Lords (United Kingdom)
HLC	Clark's House of Lords Cases (ER 9-11) (London 1.1847-10.1866; cited by volume, year, and page)
HL(E)	See LR
HL(Ir)	See LR
HL(Sc)	See LR
HLR	Housing Law Reports (London 1.1967 ff.; cited by year, volume, and page)
H & N	Hurlstone and Norman's Reports (ER 156–158) (London 1856–1862, cited by volume, year, and page)
Hof	Gerechtshof (Court of Appeal, The Netherlands)
HovR	Hovrätt (Court of Appeal, Finland and Sweden)
HR	Hoge Raad (Supreme Court, The Netherlands)
HRR	Höchstrichterliche Rechtsprechung (Berlin, book 4 [1928]-book 18 [1942]; formerly: Juristische Rundschau [Suppl.], Die Rechtsprechung der Oberlandesgerichte and Höchstrichterliche Rechtsprechung auf dem Gebiet des Strafrechts; cited by year and number)
H&Tw	Hall & Twell's Chancery Reports (ER 47) (London 1849–1850; cited by volume, year, and page)
ICC	International Chamber of Commerce, Paris
ICCLR	International Company and Commercial Law Review (London 1990 ff., cited by year and page)
ICLQ	International and Comparative Law Quarterly (London, 1952 ff.; cited by year, number, and page)
ICLR	Irish Common Law Reports, 2nd Series (1850–1866)
ICR	Industrial Cases Reports (London 1.1975 ff.; cited by year and page)
ICSTIS	Independent Committee for the Supervision of Telefone Information Services (United Kingdom)
i. e.	id est (that is to say)
IECL	The International Encyclopedia of Comparative Law (Tübingen, New York 1.1970 ff.; cited by volume, chapter, and margin number)
IEHC	Approved Judgment of the High Court, Republic of Ireland
IESC	Approved Judgement of the Supreme Court, Republic of Ireland
IHR	Internationales Handelsrecht, Zeitschrift für das Recht des internationalen Warenkaufs und -vertriebs (München 1999 ff., cited by year and page)
ILRM	Irish Law Reports Monthly (Dublin 1.1981 ff.; cited by year and page)
ILT	Irish Law Times (New Series, Dublin 1.1983 ff.; cited by year and page)
ILTR	Irish Law Times Reports (Dublin 1.1867 ff.; cited by year, book, and page)
Incoterms	International Commercial Terms
Inf AuslR	Informationsbrief Ausländerrecht (Frankfurt/Main 1.1979 ff.; cited by year and page)
Inf. prev.	Informazione e previdenziale. Rivista bimestriale dell'avvocatura dell'Istituto Nazionale delle Previdenza Sociale (Roma 1.1985 ff.; cited by year and page)
Inner House	Inner House (Court of Session, Scotland)
IntBusLawyer	International Business Lawyer (London 1.1973 ff.; cited by year and page)
Inv.	Invoering (promulgated)

IPRax	Praxis des Internationalen Privat- und Verfahrensrechts (Bielefeld 1.1981 ff.; cited by year and page)
IPRE	IPR-Entscheidungen 1–3, Österreichische Entscheidungen zum Internationalen Privatrecht bis 1993
IPRG	Bundesgesetz über das Internationale Privatrecht (Act on Private International Law, Austria, 15 June 1978, BGBl. 304)
IR	The Irish Reports (Dublin 1.1894 ff.; including the sub-series Common Law Series [1.1867 (1868)-11.1877 (1878)] as well as Equity Series [1.1867 (1868) ff.]; cited by year, book, and page)
I. R.	Informations rapides du recueil Dalloz, France; see D.
Ir.Jurist	Irish Jurist (Dublin 1.1935 ff.; cited by year and page)
Ir.Jurist R.	Irish Jurist Reports (Dublin 1.1935 ff.; cited by volume, year, and page)
IrEqR	Irish Equity Reports (Dublin 1838–1850; cited by year and page)
IRLR	Industrial Relations Law Reports (London 1.1972 ff.; cited by year and page)
IrLR	Irish Law Reports, 1st series (Dublin 1.1838-12.1850; cited by year, book, and page)
IT-law	The law related to Information Technology
J	Juristen (Copenhagen 1.1919 ff.; cited by year and page)
J.	Judge (High Court, United Kingdom)
JA	Juristische Arbeitsblätter (Bielefeld 1.1969 ff.; cited by year and page)
Jahrb. f.ital. R.	Jahrbuch für italienisches Recht (Heidelberg 1.1988 ff.; cited by volume, year, and page)
JAR	Jurisprudentie arbeidsrecht ('s-Gravenhage/The Hague 1.1992 ff.; cited by year and page)
JBl	Juristische Blätter (Wien 1.1872 ff.; cited by year and page)
JbOstR	Jahrbuch für Ostrecht (München 1.1960 ff.; cited by volume, year, and page)
JC	Justiciary Cases
JClCiv	Collection des Juris-Classeurs. Juris-Classeur Civil. Directeurs à partir de 1980 Pierre Catala and Philippe Simler (Paris 1962 ff.)
JCP	Juris-Classeur périodique; see Sem.Jur.
JCP éd. E	Semaine Juridique édition entreprise (France); see Sem.Jur.
JCP éd. G	Semaine Juridique édition générale (France); see Sem.Jur.
JCP éd. N	Semaine Juridique éditions nouvelles (France); see Sem.Jur.
JDI	Journal du droit international (Paris 1874 ff.; cited by year and page) (also known as Clunet)
J.Environ. L.	Journal of Environmental Law (New York 1.1974/75 ff.; cited by volume, year, and page)
JFT	Tidskrift utgiven av Juridiska Föreningen i Finland (Helsingfors 1.1936 ff.; cited by year and page)
JGG	Jugendgerichtsgesetz (Juvenile Court Act, Germany, 4 Aug. 1953, BGBl. I p. 751)
JGS	Justizgesetzsammlung. Gesetze und Verordnungen in Justizsachen (Collection of Statutes, Austria; Wien 1780–1848; cited by year and number)
JhJb	Jherings Jahrbücher für die Dogmatik des bürgerlichen Rechts (Jena 1.1857-90.1943; until 37.1897 Jahrbuch für die Dogmatik des heutigen römischen Rechts und deutschen Privatrechts; cited by volume, year, and page)

JIBFL	Butterworths Journal of International Banking and Financial Law (London 1986 ff.)
J. Int'l Fin. Mkt.	Journal of International Financial Markets (Amsterdam, 1994 ff.; cited by year, volume, and page)
JL	Jurisprudence de Liège (83.1978-93.1986, afterwards published as JLMB [see JLMB])
JLMB	Revue de jurisprudence de Liège, Mons et Bruxelles (Liége, 94.1987 ff.)
JO	Journal Officiel de la République Française. Lois et Décrets. (Official gazette of the French Republic. Acts and Decrees, Paris 1.1869 ff.; cited by date of issue)
John	Johnson's Chancery Reports (ER 70) (London 1859)
JöR	Jahrbuch des öffentlichen Rechts der Gegenwart (Tübingen 1.1907-25.1938; NS 1.1951 ff.; cited by volume, year, and page)
JP	Juge de Paix (Justice of the Peace, Belgium and Luxembourg)
JR	Juristische Rundschau (Berlin 1.1947 ff.; cited by year and page)
JT	Juridisk tidskrift vid Stockholms universitet (Stockholm 1.1989/90 ff.; cited by year and page)
JT	Journal des Tribunaux (Brussels 1.1881-96.1981; 101.1982 ff.; 97–100 not produced; cited by year and page)
JT (Lausanne)	Journal des Tribunaux (Lausanne 1.1929 ff.; cited by year and page)
Jur.	Jurisprudence
Jura	Jura. Juristische Ausbildung (Berlin et al. 1.1979 ff.; cited by year and page)
JuridRev	The Juridical Review (Edingburgh, London 1.1889-67.1955; New Series 1.1956 ff.; cited by year and page)
JuS	Juristische Schulung (München, Frankfurt/Main 1.1961 ff.; cited by year and page)
JUS	Rivista di scienze giuridiche (Milano 1.1940-4.1943; NS 1.1950-20.1969; 21.1974 ff.; cited by year and page)
JW	Juristische Wochenschrift. Organ des Deutschen Anwaltsvereins (Bulletin of the German Lawyers' Association, Leipzig 1.1872-68.1939, 1940 merged with Deutsches Recht as the A ed.; cited by year and page)
JZ	Juristenzeitung (Tübingen 1.1945 ff.; Continuation of the German Rechtszeitschrift and the South German Juristenzeitung, volume 6.1951 ff.; cited by year and page)
KB	King's Bench
KB	The Law Reports. King's Bench Division (London 1.1875/76 ff.; cited by year, book, and page)
KB	Koninklijk Besluit (Royal decree, Belgium and The Netherlands)
KC	Kodeks cywilny (Civil Code, Poland)
Kerülti birosàg	District Court (Court of First Instance, Hungary)
KF	Karlsruher Forum. Supplement to VersR (Karlsruhe 1.1959 ff.; cited by year and page)
KFG	Kraftfahrgesetz (Act on Road Traffic, Austria, 23 June 1967, BGBl. 1967/267)
KG	Kort Geding (from 1.1981 contained in Rechtspraak van de Week; see RvdW)
KG	Kammergericht (Court of Appeal, Berlin, Germany)
KIR	Knight's Industrial Reports (London 1.1966-10.1975; cited by year, volume, and page)

KO	Konkursordnung (Bankruptcy act, Austria, 20 May 1898, RGBl. p. 369)
KPD	Kodikas Pinikis Dikonomias (Code of Criminal Procedure, Greece, Act no. 1493, 17 Aug. 1950, FEK 182/1950 p. 1004–1074)
KPolDik	Kodikas Politikis Dikonomias (Code of Civil Procedure, Greece, Royal Decree 657/1971, FEK 219/1 Jan. 1971 p. 75)
KritE	Kritiki Epitheorisi Nomikis Theorias kai Praxis (Revue of Legal Theory and Practice, Athens 1.1994; cited by year and page)
KS	Krajsky soud (District Court, Court of First Instance, Czech Republik); Krajsky sùd (District Court, Court of Appeal, Republic of Slovakia)
KSchG	Konsumentenschutzgesetz (Consumer Protection Act, Austria, 8 Mar. 1979, BGBl. 1979/140)
Ktg	Kantongerecht (Local Court, The Netherlands)
KTS	Konkurs-, Treuhand- und Schiedsgerichtswesen (Köln et al. 1.1939-52.1991; cited by year and page)
KunstUrhG	Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie (Act on Copyright on Works of Fine Art and Photography, Germany, 9 Jan. 1907, RGBl. 1907 p. 7)
L	Loi (France); Lov (Denmark); Lag (Finland, Sweden)
LA	Legge 22 Apr. 1941, no. 633, Protezione del diritto d'autore e di altri diritti connessi al suo esercizio (Act on copyright, Italy, Gazz. Uff 16 July, no. 166)
La Ley	Revista jurídica española de doctrina, jurisprudencia y bibliografía (Madrid 1.1980 ff.; cited by year, book, and page)
Lav.prev.oggi	Lavoro e previdenza oggi (Milano 1.1974 ff.; cited by year and page)
Lavoro 80	Lavoro 80 – Rivista di diritto del lavoro pubblico e privato (Milano 1.1981 ff.; cited by year and page)
Law Com.	Law Commission Report, England and Wales
LC	Lord Chancellor (United Kingdom)
LCD	Spanish Ley de Competencia Desleal (Act against Unfair Competition, 3/1991, 10. January)
LDC	Spanish Ley de Defensa de la Competencia (Act against restrictions to competition, 16/1989)
LDepGuar	Finnish Law on Dependent Guarantees of 1999 (L om borgen och tredjemanspant, 19 Mar. 1999/361)
LEC	Ley de Enjuiciamiento Civil, act 1/2000 of 7.1.2000, put into force 1.1.2001 (Code of Civil Procedure, Spain, BOE no. 7, 8 Jan. 2000 p. 575, adjusted by BOE no. 90, 14 Apr. 2000 p. 15278)
LECr	Ley de Enjuiciamiento Criminal, 14 July 1882 (Code of Criminal Procedure, Spain. Gaceta de Madrid no. 260–283, 17 Sep.–10 Oct. 1882)
Legal Studies	Legal Studies. The Journal of the Society of Public Teachers of Law (London 1.1947 ff.; cited by volume, year, and page)
Legf. Bir.	Legfelsöbb Birosàg (Supreme Court of Hungary)
LEX	System informacji prawnej LEX (Legal Information System LEX, Poland)
l.fall	Legge fallimentare (Italy, RD 16 Mar. 1942, no. 267)
LFZG	Lohnfortzahlungsgesetz. Gesetz über die Fortzahlung des Arbeitsentgelts im Krankheitsfalle (Act on Continued Payment of Wages for Employees Absent due to Illness, Germany, 27 July 1969, BGBl. 1969 I p. 946)

LG	Landgericht (Germany); Landesgericht (Court of First Instance, general jurisdiction, also Court of Appeal for Local Courts, Austria)
LGDJ	Librairie Générale de Droit et de Jurisprudence (French publishing company)
LGR	Local Government Law Reports (London 1.1911 ff.; cited by volume, year, and page)
Lietuvos apeliacinis teismas	Court of Appeal, Lithuania
Lietuvos auksciausiasis teismas	Supreme Court of Lithuania
Limb. Rechtsl.	Limburgs Rechtsleven (Beringen 1.1958 ff.; cited by year and page)
Linnakohus	City Court, Estonia
lit.	litera
LJ	Lord Justice (Court of Appeal judge, United Kingdom)
LJAdm(NS), LJCP, LJCh(NS), LJExch(NS), LJKB(NS)	Law Journal Reports, London. Various series 1831–1946, decisions cited with indicator of competent jurisdiction: Adm (Admiralty), CP (Common Pleas), Ch (Chancery), Exch (Exchequer), KB / QB (King's or Queen's Bench) (NS: New Series)
LJG	Lord Justice-General (Presiding Judge in the High Court of Justiciary, Scotland)
LJN	Landelijk Jurisprudentie Nummer (National case database serial number, http://www.rechtspraak.nl)
Lloyd's List Law Rep	Lloyd's List Law Reports (London 1.1919-32.1950; cited by volume, year, and page)
Lloyd's Rep	Lloyd's Law Reports (London 1.1968 ff.; cited by volume, year, and page)
Lloyd's Rep Med	Lloyd's Reports: Medical (London 1.1968 ff.; cited by volume, year, and page)
LM	Lindenmaier-Möhring, Nachschlagwerk des Bundesgerichtshofs (Reference book of the Federal Court of Justice in civil cases, München 1.1951 ff.; cited by act, paragraph, and number)
LNTS	League of Nations Treaty Series (Geneva 1.1920-205.1944/46; cited by volume and page)
loc. cit.	loco citato (the place already cited)
LOTC	Ley Orgánica del Tribunal Consticucional (Statute of the Constitutional Court of Spain, 3 Oct. 1979, BOE no. 239, 5 Oct. 1979)
Loyers et copr.	Loyers et copropriété (Paris 1.1987 ff.)
LPC	Loi sur les pratiques du commerce (Belgium)
LPCC	Loi sur les pratiques du commerce et sur l'information et la protection du consommateur (Belgium)
LQR	The Law Quaterly Review (London 1.1885 ff.; cited by volume, year, and page)
LR	Law Reports. Publications of the Incorporated Council of Law Reporting (1865–1875 [the year of foundation of the High Court] in 11 series [here cited with the A & E, Ch.App., the C. P., the Eq., the Ex., the H. L.(E), H. L.(Ir), H. L.(Sc), P. C. and the Q. B.]; usually LR is put at the head of citations of decisions of the series up to 1875. 1875 the 11 series were reduced to 6

	[App.Cas., Ch. D., Q. B. D., C. P. D., Ex. D., P. D.]. Since 1881 the Law Reports are published in 4 series [App.Cas., Ch. D., Q. B. D., P. D.]. Since 1890 cited in a different way: the volume does not appear any more, but the year, put at the head within brackets; in case the reporting took more than one volume, the volume appears behind the year)
LRCP	Ley de Responsabilidad Civil por Daños causados por Productos Defectuosos (Product Liability Act, Spain, 22/1994, 6 July)
LREx	Law Reports, Exchequer Division (London 1.1875/76-5.1879/80; cited by year, book, and page; see LR)
LRIr	Law Reports, Ireland (Dublin 1878–1893; cited by year, book, and page)
LSG	Law Society Gazette http://www.ucc.ie/law/irlii/periodicals/12lsgdisp.php?yr=2004
LT	Law Times Reports (London 1859–1947; cited by year, book, and page)
Ltd	Limited
LuftVG	Luftverkehrsgesetz (Air Traffic Act, Germany, 14 Jan. 1981, BGBl. I p. 61; Austria, RGBl. 1936 I p. 653)
M	Macpherson's Session Cases, 3rd series (Scotland 1862–1873; cited by year, book, and page)
Maakohus	County Court, Estonia
Macn & G	Macnaghten & Gordon's Chancery Reports (ER 41–42) (London 1848–1851; cited by year, book, and page)
MB	Megyei birosàg (Court of Appeal, Hungary)
McGill LJ	McGill Law Journal (Montreal 1.1952/55 [1954]; cited by volume, year, and page)
MDR	Monatsschrift für Deutsches Recht: Zeitschrift für die Zivilrechts-Praxis (Köln, Hamburg 1.1947 ff.; cited by year and page)
MedienG	Mediengesetz (Media Act, Austria, 12 June 1981, BGBl. 1981/314)
MietSlg	Mietrechtliche Entscheidungen (Wien 1.1951 ff.)
MJ	Maastricht Journal of European and Comparative Law (Antwerp, Baden-Baden 1.1994 ff.; cited by volume, year, and page)
ML	Myndighedsloven (Act on minors and guardianship, Denmark, 30 June 1922, no. 277 Lovtidende A p. 1379–1389)
MLR	The Modern Law Review (London 1.1937/38 ff.; cited by year and page)
M & M	Moody and Malkin's Nisi Prius Reports (173 ER) (London 1826–1830; cited by year and page)
MonC	Code monétaire (ordonnance relative à la partie législative du code monétaire et financier, France: since government act no. 2000–1223 of 14 December 2000)
Monit. belge	Moniteur belge des arrêtés des secrétaires généraux: journal officiel (Official gazette, Belgium; Brussels 1.1831 ff.; cited by date)
Mon.Trib.	Monitore dei Tribunali, giornale di legislazione e giurisprudenza civile e penale (Milano 1.1859/60-1977; cited by year and page)
Mor	Morison's Dictionary of Decisions, Court of Session (Scotland 1540–1808)
Mot II	Motive (Explanatory Report on the Draft of a Civil Code for the German Reich. Volume II: Law of Obligations, Berlin, Leipzig 1888)
MPr	Monomeles Protodikio (One-member first instance court, Greece)

MR	Master of the Rolls (Member and President of the Court of Appeal, United Kingdom)
M & S	Maule & Selwyn's King's Bench Reports (105 ER) (London 1813–1817; cited by volume and page)
MuSchG	Gesetz zum Schutz der erwerbstätigen Mutter (Act on the protection of working mothers, Germany, 18 Apr. 1968; BGBl. I p.315)
MvA	Memorie van Antwoord. Parlementaire Geschiedenis (Ministerial Statements on Draft Laws, The Netherlands)
MvT	Memorie van Toelichting. Parlementaire Geschiedenis (Explanations of Draft Laws, The Netherlands)
M & W	Meeson and Welsby's Reports, Exchequer (ER 150–153) (London 1.1836-16.1847; cited by year, volume, and page)
NBW	see BW
NCP	Nuevo Código Penal (New Penal Code, Spain, Ley Orgánica 10/1995, 23 Nov. 1995, BOE no. 281, 24 Nov. 1995)
NCPC	Nouveau Code de procédure civile (Code on procedural law, France)
ND	Neon Dikaion (New Law, Greece)
NDS	Nordisk Domssamling (Oslo 1.1958 ff.; cited by year and page; in Scandinavia the NDS is often cited by the year of the judgment, which is often one year prior to the year of publication)
NdsRpflege	Niedersächsische Rechtspflege (Celle 1.1947 ff.; cited by year and page)
Ned. Rechtspraak	Nederlandsche Rechtspraak of verzameling van arresten en gewijsden van den Hoogen Raad der Nederlanden en verdere rechtscollegien ('s-Gravenhage/The Hague 1.1838 ff.; cited by volume, year, and page)
NedJur	Nederlandse jurisprudentie (Zwolle 1913 ff.; until 1935 cited by year and page, then by year, number, and page)
NedJur (kort)	See NedJur (supplementary collection of judgments that have not entered into effect; cited by year and number)
NedTIR	Nederlands Tijdschrift voor International Recht (Leiden 1.1953/54 with various titles; Nederlands International Law Review 22.1975 ff.; cited by volume, year, and page)
New LJ	New Law Journal (London 1.1850 ff.; cited by volume, year, and page)
NFT	Nordisk forsikringstidsskrift (Danish ed.); Nordisk försäkringstidskrift (Swedish ed.) (Copenhagen 1.1921 ff.; cited by year and page)
NGCC	Nuova Giurisprudenza Civile Commentata (Padova 1.1984 ff.; cited by year, book, and page)
NGO	Non-governmental organisation
NIJR	New Irish Jurist Reports (1900–1905)
NILQ	Northern Ireland Legal Quaterly (Belfast 1.1936/37-14.1960/61; NS 1 = 15.1964 ff.; cited by volume, year, and page)
NILR	Netherlands International Law Review; see NedTIR
NJ	Nederlandse Jurisprudentie – Uitspraken in burgerlijke en strafzaken (Zwolle 1.1913 ff.; cited by year and page)
NJA	Nytt Juridiskt Arkiv (Stockholm 1.1874 ff.; as of 1876 separation into two divisions: division 1: Rättsfall från högsta domstolen, cited by year and page; division 2: Tidskrift för lagstiftning; cited by year, division, and page)

NJB	Nederlands Juristenblad (Zwolle 1.1926 ff.; 1936–1943; same contents as Weekblad van het recht (see W); cited by year and page)
NJW	Neue Juristische Wochenschrift (München et al. 1.1947 ff.; previously: Juristische Wochenschrift (see JW); cited by year and page)
NJW-RR	NJW-Rechtsprechungsreport (München 1.1986 ff.; cited by year and page)
no(s).	number(s); margin number(s)
NoB	Nomiko Bima; miniaion nomikon periodikon (Law Tribune; Athens 1.1953 ff.; cited by volume, year, and page)
Notiziario giur. lav.	Notiziario giuridico. Diritto del lavoro, diritto civile e commerciale, diritto amministrativo e costituzionale, diritto communitario (Torino 1.1970 ff.; cited by year and page)
Nouva giur. civ. comm.	La Nuova giurisprudenza civile commentata: rivista bimestrale delle nuove leggi civili commentate (Padova 1.1985 ff.)
Nov.Dig.it.	Nuovissimo Digesto italiano (Torino 1957 ff.)
NPC	New Property Cases (London 1.1998 ff.; cited by year and page)
NRt	see Rt
NS	New Series
NS	Nejvyssi soud (Supreme Court of the Czech Republic)
NS SR	Najvyssi sùd Slovenskej Republiky (Supreme Court of the Republic of Slovakia)
NSWLR	New South Wales Law Reports (Sydney 2001 ff.)
NTBR	Nederlands Tijdschrift voor Burgerlijk Recht (Deventer 1.1984 ff.; cited by year and page)
NuR	Natur und Recht (Hamburg, Berlin 1.1979 ff.; cited by year and page)
NVwZ	Neue Zeitschrift für Verwaltungsrecht (München, Frankfurt/Main 1.1988 ff.; cited by year and page)
NY	New York Court of Appeals Reports (Albany, New York, 1893 ff.; cited by number, year, and page)
NZLR	New Zealand Law Reports (Wellington 1.1883 ff.; cited by year, section, and page)
NZV	Neue Zeitschrift für Verkehrsrecht (München, Frankfurt/Main 1.1988 ff.; cited by year and page)
ÖBA	Österreichisches Bankarchiv (Wien 1.1953 ff.; cited by year and page)
ObcZ	Obcansky zakonik (Civil Code, Czech Republic)
Öbl	Österreichische Blätter für gewerblichen Rechtsschutz und Urheberrecht (Wien 1.1952 ff.; cited by year and page)
obs.	observations
OCA	Obligations and Contracts Act, Bulgaria (Law no. 275, 22 Nov. 1950; amendment no. 36, 2. May 2006)
OGH	Oberster Gerichtshof (Supreme Court of Austria)
OGH BritZ	Oberster Gerichtshof für die Britische Zone (Supreme Court for the British Zone, Germany)
OH	Outer House (Court of Session, Scotland)
OJ	Official Journal of the European Communities (Brussels 1.1958 ff.; from 11.1968 ff.: issue C [Communication]: Information and Notice; Issue L [Législation]: Legislation; cited by issue, number, date, and page)

ÖJZ	Österreichische Juristenzeitung (Wien 1.1946 ff.; cited by year and page)
Okj	Okrajno sodisce (District Court, Court of First Instance, Slovenia)
Okz	Okrozno sodisce (Regional Court, Court of First Instance, Slovenia)
ØL	Østre Landsret (Eastern High Court, Denmark)
ØLD	Østre Landsrets Dom (Judgments of the Eastern High Court, Denmark)
OLG	Oberlandesgericht (Court of Appeal, Austria, Germany, Greece)
OLGR	OLG-Report. Zivilrechtsprechung der Oberlandesgerichte (Decisions of the Court of Appeal in civil matters, Germany; Köln 1.1997 ff.; cited by year and page)
OLGZ	Entscheidungen der Oberlandesgerichte in Zivilsachen einschließlich der freiwilligen Gerichtsbarkeit (Decisions of the Court of Appeal in civil matters including jurisdiction over non-contentious matters, Germany; München, Berlin 1.1965 ff.; cited by year and page)
ØLK	Østre Landsrets Kendelse (Decisions of the Eastern High Court, Denmark)
Ont HCJ	Ontario High Court of Justice
op. cit.	opera citato (work already cited)
OR	Obligationenrecht, Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches: 5th part: Obligationenrecht, 30 Mar. 1911, SR 220 (Code of Obligation, Switzerland, 30 Mar. 1911)
OR (2d)	Ontario Reports, 2nd Series (Toronto 1882 ff.; cited by year, number, and page)
ÖRZ	Österreichische Richterzeitung (Wien 1.1908-3.1909, 7.1914-12.1919, 19.1926-31.1938, 32.1954 ff.; cited by year and page)
OS	Okrajno sodisce (District Court, Court of First Instance, Slovenia); Okresni soud (District Court, Court of First Instance, Czech Republic); Okresny súd (District Court, Court of First Instance, Republic of Slovakia)
OSA	Orzecznictwo Sądów Apelacyjnych (Collection of Courts of Appeal's Decisions, Poland)
OSNC	Zbiór Orzeczeł Sądu Najwyższego. Orzeczenia Izby Cywilnej (Collection of Supreme Court Decisions. Civil Chamber, Poland)
OSNCP	Zbiór Orzeczeł Sądu Najwyższego. Orzeczenia Izby Cywilnej i Administracyjnej oraz Izby Pracy i Ubezpieczeł Społecznych (Collection of Supreme Court Decisions. Civil and Administrative Chamber and Chamber of Labour and Social Insurance Law, Poland)
OSPiKA	Orzecznictwo Sądów Polskich i Komisji Arbitrażowych (Jurisprudence of the Polish Courts and Arbitration Tribunals)
OVG	Oberverwaltungsgericht (Administrative Court of Appeal, Germany)
Ow	(Rijks-) Octrooiwet (Patent Act, The Netherlands, 7 Nov. 1910, Stb. 313 and 15 Dec. 1995, Stb. 51)
OZ	Obcansky zakonik (Civil Code, Czech Republic and Republic of Slovakia); Obligacijski zakonik (Law of Obligations, Slovenia)
P	President (official name, United Kingdom)
P	Law Reports. Probate, Divorce and Admiralty Divison (London 1.1891 ff.; cited by year, volume, and page)
p(p).	page(s)
Pan.	See under SemJur
para(s)	paragraph(s)

Parl. St. Kamer	Parlamentaire Stukken Kamer (Publications of the committee of the chamber of the Belgian parliament, Brussels)
Pas. belge	Pasicrisie belge (Recueil général de la jurisprudence des cours et tribunaux de Belgique. I = Arrêts de la Cour de cassation 3rd Series 1865–1924; 112.1925 ff.; II = Arrêts de la Cour d'Appel 3rd Series 1865–1924; 112.1925 ff.; III = Jugements des tribunaux 3rd Series 1865–1924; 112.1925 ff.; IV = Jurisprudence étrangère 3rd Series 1893–1924; 112.1925 ff.; V = Revue de droit belge 3rd Series 1893 ff.; cited by year, book, and page)
Pas. luxemb.	Pasicrisie luxembourgeoise (Recueil de la jurisprudence luxembourgeoise en matière civile, commerciale, criminale, de droit public, fiscal, administratif et notariel; Luxembourg 1.1881 ff.; cited by volume, year, and page)
Pasin belge	Pasinomie belge ou Collection complète des lois, décrets, arrêtés et règlements généraux qui peuvent être invoqués en Belgique (Brussels 1.1788 ff.; cited by year and page)
PC	Privy Council (United Kingdom)
PC	Privy Council Appeals (London 1865–1875; cited by year, volume, and page; see LR)
PD	Probate Division (London 1875/76-1890; cited by year, volume, and page; see LR)
PECL	Principles of European Contract Law
PEL	Principles of European Law
PEL Ben.Int.	Principles of European Law – Benevolent Intervention in Another's Affairs
PEL Unj.Enr.	Principles of European Law – Unjustified Enrichment
PflVG	Gesetz über die Pflichtversicherung für Kraftfahrzeughalter (Act on Compulsory Insurance for the Keeper of a Motor Vehicle, Germany, 5 Apr. 1965, BGBl. I p. 213; BGBl. III p. 925-1)
PHI	Produkthaftung International (Karlsruhe 1.1981 ff.; cited by year and page)
PK	Penikos Kodikas (Criminal Code, Greece. Act no. 1492/1950, FEK 182/1950 pp. 963–1003)
plc	public limited company
PNLR	Professional Negligence and Liability Reports (London, 1.1999 ff.; cited by year and page)
Poder Judicial	Conseijo General del Poder Judicial (Madrid 1.1981 ff.; cited by year and page)
POS Regulations	The Public Offers of Securities Regulations (United Kingdom)
poz.	pozycja (Number in a collection of decisions, Poland)
PPr	Polymeles Protodikio (Multi-member first instance court, Greece)
Pr	Protodikio (First instance court, Greece)
pr.	principium
Pret.	Pretura (Local Court, Italy)
Prg	De Praktijkgids. Tijdschrift gewijd aan de rechtspraktijk en aan de jurisprudentie van de kantongerechten (Arnhem 1.1980 ff.; cited by year and number)
ProdHG	Produkthaftungsgesetz. Gesetz über die Haftung für fehlerhafte Produkte (Product Liability Act, Germany, 15 Dec. 1989, BGBl. I p. 2198)
Prop	Proposition (Official proposal for a statute, Sweden)

Prot II	Protokolle (Reports of the Commission for the Second Reading of the Draft Civil Code, Germany; Prepared by Order of the Reich Ministry of Justice by Achilles, Gebhard and Spahn. Volume II: Law of Obligations, Berlin 1898)
Ptk	Polgári Törvénykönyv (Civil Code, Hungary)
QB	The Law Reports. Queen's Bench Division (London 1.1890 ff.; cited by year, book, and page, additional LR cited: London 1865–1875)
QB (ComCt)	Queen's Bench Division, Commercial Court
QBD	Queen's Bench Division (London 1875/76–1890; cited by year, book, and page; see LR)
QC	Queen's Council
R	Rettie's Session Cases (Edinburgh 1873–1898)
R.	Regina or Rex
R.	Règlement (order, France)
RÅ	Regeringsrättens årsbok (Yearbook of the Supreme Administrative Court, Sweden)
RabelsZ	Zeitschrift für ausländisches und internationales Privatrecht (Berlin, Tübingen, 1.1927 ff.; from volume 26.1961: Rabels Zeitschrift für ausländisches und internationales Privatrecht; cited by volume, year, and page)
RAJ	Repertorio Aranzadi de Jurisprudencia (Pamplona 1.1930/31, 2.1934 ff.; cited by year, number, and page)
RAJ (TSJ y AP)	Repertorio Aranzadi de Jurisprudencia. Sentencias de Tribunales Superiores de Justicia y Audiencias Provinciales y otros Tribunales (Pamplona 1.1996 ff.; cited by year, number, and page)
Rass.Avv.Stato	La Rassegna mensile dell' Avvocatura dello Stato (Roma 1.1948 ff.; cited by year, book, and page)
Rass.dir.civ.	Rassegna di diritto civile (Napoli 1.1980 ff.; cited by year and page)
Rass.Giur.Umbra	Rassegna Giuridica Umbra (Perugia 1.1955 ff.; cited by year and page)
Rb	Arrondissementsrechtbank (District Court, Court of First Instance, general jurisdiction, The Netherlands), Rechtbank van eerste anleg (Court of First Instance, Belgium)
RCJB	Revue critique de jurisprudence belge (Brussels 1.1947 ff.; cited by year and page)
RCR	Relazione della Commissione Reale al progetto del libro 'obbligazioni e contratti' (see Pandolfelli et al., Codice civile, in the Table of Literature Cited in an Abbreviated Form)
RD	Regio Decreto (Royal decree, Italy)
RD banc	Revue de droit bancaire et de la bourse (France 1.1987 ff.)
RdA	Recht der Arbeit (München 1.1948 ff.; cited by year and page)
RDBB	Revista de derecho bancario y bursatil (Madrid 1.1981 ff.)
RDE	Revista de Direito e Economia (Coimbra 1.1975 ff.; cited by volume, year, and page)
RdM	Recht der Medizin (Wien 1.1994 ff.; cited by year and page)
RdS	Recht der Schule (Wien 1.1979 ff.; cited by year and page)
RdW	Österreichisches Recht der Wirtschaft (Wien 1.1983 ff.; cited by year and page)

Recht	Recht. Zeitschrift für juristische Ausbildung (Bern 1.1983 ff.; cited by year and page)
ref.	reference
Rel.Guard.	Relazione del Guardasigilli al progetto ministeriale delle obbligazioni (see Pandolfelli et al., Codice civile, in the Table of Literature Cited in an Abbreviated Form)
Rép.Dr.Civ.	Répertoire de droit civil (Paris 1.1951-5.1955; 2nd ed. 1.1970 ff.; see details in the table of literature)
Rép.Dr.Com.	Répertoire de droit commercial (Paris 1.1972 ff.; see details in the table of literature)
Rep.Foro it.	Repertorio del Foro italiano (legislazione, bibliografia, giurisprudenza; Roma 1.1878 ff.; previously: Repertorio generale annuale di giurisprudenza, bibliografia e legislazione; cited by volume, year, and column)
Rep.gen.	Repertorio generale della Giurisprudenza italiana (Torino 1.1890 ff.; previously: Repertorio generale annuale della Giurisprudenza italiana; cited by year, column, and number)
Rep.Giur.it.	Repertorio generale della giurisprudenza italiana (Torino 1.1848 ff.; cited by year, key word, and number)
resp.	respectively
Resp. civ. et assur.	Responsabilité civile et assurances. Revue mensuelle (Paris 1.1988 ff.; cited by year and page)
Resp.civ. e prev.	Responsabilità Civile e Previdenza (Milano 1.1930 ff.; cited by year and page)
Rev.Crit.Der.Inm.	Revista Crítica de Derecho Inmobiliario (Madrid 1.1925 ff.; cited by year and page)
Rev.crit.dr.int.pr.	Revue critique de droit international privé (Paris 1.1905 ff.; cited by year and page)
Rev.crit.jur.belge	Revue critique de jurisprudence belge (Brussels 1.1947 ff.; cited by year and page)
Rev.crit.légis. et juris.	Revue critique de législation et de jurisprudence (Paris 1.1851 ff.; cited by year and page)
Rev.dr.int.dr.comp.	Revue de droit international et de droit comparé (Brussels 1.1924 ff.; 1940–48 not published; cited by volume, year, and page)
Rev.dr.publ.	Revue de droit public et de la science politique en France et à l'étranger (Paris 1.1894 ff.; cited by volume, year, and page)
Rev.dr.sanit.soc.	Revue de droit sanitaire et social (Paris 1.1965 ff.; cited by year and page)
Rev.dr.uniforme	Revue de droit uniforme. Uniform Law Review (Roma 1.1973 ff.; cited by year, part, and page)
Rev.gén.dr.	Revue générale du droit, de la législation et de jurisprudence en France et à l'étranger (Paris 1.1877-62.1938; cited by year and page)
Rev.Hell.	Revue Hellénique de droit international (Athens 1.1948 ff.; cited by volume, year, and page)
Rev.int.dr.comp.	Revue internationale de droit comparé (1.1869/72-71.1947/48; previously: Bulletin de la Société de législation comparée; Paris 1.1949 ff.; cited by volume, year, and page)
Rev.jur.pol.Ind. Coop.	Revue juridique et politique, Indépendance et Coopération (Paris NS 1.1946 ff.; cited by volume, year, and page)

Rev.not. b.	Revue du notariat belge (Brussels 1.1896 ff.; until 1970 Revue pratique du notariat belge and Annales du notariat et de l'Enregistrement)
Rev.soc.	Revue de sociétés (Paris 1.1883 ff.; cited by year and page)
Rev.trim.dr.civ.	Revue trimestrielle de droit civil (Paris 1.1902-38.1939, 39/40.1940/41-78.1979 = tome 39–77, 79.1980 ff.; until 1977 by volume, then by year, and page)
Rev.trim.dr.com.	Revue trimestrielle de droit commercial (Paris 1.1948 ff.; cited by year and page)
RFDA	Revue Française de Droit Administratif (Paris 1.1946/47 ff.; cited by year and page)
RG	Reichsgericht (Supreme Court of the German Reich, Germany)
RGAR	Révue générale des assurances et des responsabilités (Brussels 1.1927 ff.; cited by year and number)
RGBl.	Reichsgesetzblatt (Government Gazette of the German Reich; Berlin 1871–1945, since 1922 divided into parts I and II)
RGD	Revista general de derecho (Valencia 1.1945 ff.)
RGDC	Revue générale de droit civil / Tijdschrift voor Belgisch Burgerlijk Recht (Antwerp 1.1987 ff.)
RGZ	Amtliche Sammlung der Entscheidungen des Reichsgerichtes in Zivilsachen (Decisions of the German Imperial Court in civil matters, Berlin 1.1872-172.1945; cited by volume and page)
RH	Rättsfall från Hovrätterna (Decisions of the Swedish court of appeal, changing places of publication, usually Stockholm, 1.1980 ff.; cited by year and number)
RHG	Reichshaftpflichtgesetz (Imperial Third Party Liability Act, Austria, RGBl. 1871/201)
Riigikohus tsiviilkollegium	Supreme Court Civil Chamber, Estonia
Ringkonnakohus	District Court, Court of Appeal, Estonia
RIS-Justiz	Austrian internetpublication of OGH-decisions, (http://www.ris.bka.gv.at/jus/; decisions are cited by date, number of legal subject and keyword)
Riv.crit.dir.priv.	Rivista critica del diritto privato (Bologna 1.1989 ff.; cited by year and page)
Riv.Dir.Civ.	Rivista di Diritto Civile (Padova 1.1955 ff.; cited by year, book, and page)
Riv.Dir.Com.	Rivista del Diritto Commerciale e del Diritto generale delle obbligazioni (Milano 1.1903 ff.; cited by year, book, and page)
Riv.dir.eur.	Rivista di diritto europeo (Roma 1.1961 ff.; cited by year and page)
Riv.dir.ind.	Rivista di diritto industriale (Milano 1952–2000; cited by year and page)
Riv.dir.int. priv.proc.	Rivista di diritto internazionale privato e processuale (Padova 1.1969 ff., cited by year and page)
Riv.dir.lav.	Rivista di diritto del lavoro (Milano 1.1949-32.1980; cited by year and page)
Riv.dir.sport.	Rivista di diritto sportivo (Milano 1.1949 ff.; cited by year and page)
Riv.giur.circ.trasp.	Rivista giuridica della circolazione e dei trasporti (Roma 1.1947 ff.; cited by year and page)
Riv.giur.lav.	Rivista giuridica del lavoro e della previdenza sociale (Roma 1.1954 ff.; part 1: Dottrina; part 2: Giurisprudenza; part 3: Previdenza; part 4: Diritto penale del lavoro; cited by year, book, and page)
Riv.giur.pol.	Rivista giuridica di polizia locale (Rimini 1.2000 ff.; cited by year and page)
Riv.it.med.leg.	Rivista italiana di medicina legale (Milano 1.1979 ff.; cited by year and page)

Riv.pen.	Rivista penale (Roma 1.1952 ff.; cited by year and page)
Riv.trim.dir. proc.civ.	Rivista trimestrale di diritto e procedura civile (Milano 1.1947 ff.; cited by year and page)
RIW	Recht der Internationalen Wirtschaft (Heidelberg 1954–1957 and 1975 ff.; from 1958 to 1974 Außenwirtschaftdienst des Betriebsberaters [AWD]; cited by year and page)
RJDA	Revue de jurisprudence du droit des affaires (Paris 1.1991 ff.; cited by year and page)
RLJ	Revista de Legislação e Jurisprudência (Coimbra 1.1868/69 ff.; cited by volume, year, and page)
RLR	Restitution Law Review (London 1.1993 ff.; cited by year and page)
RM	Rechtsgeleerd magazijn: tijdschrift voor binnen- en buitenlandsche rechtsstudie (Haarlem 1.1882-58.1939; cited by year and page)
RM-Themis	Rechtsgeleerd magazijn Themis. Tijdschrift voor publiek- en privaatrecht (Zwolle 1.1939 ff.; cited by year and page)
RN	Rivista del notariato (Milano 1.1947 ff.; cited by year and page)
ROA	Revista da Ordem dos Advogados (Lisboa 1941 ff.)
Roll Abr	Rolle's Abridgment of the Common Law 1668
RP	RP 189/1998 rd – Regeringens proposition till Riksdagen med förslag till lagstiftning om borgen och tredjemanspant (Government bill to the Riksdag proposing legislation on surety and security pledged by a third party, Finland)
RPC	Reports of Patent, Design & Trade Mark Cases (London 1.1884 ff.; cited by year and page)
RPDB	Répertoire pratique du droit belge – Encyclopédie Reeks (Brussels and Paris 1.1928 ff.)
RPL	Retsplejeloven (Rules of Procedure, Denmark, no. 90, 11 Apr. 1916, lovbekendtgørelse no. 815 of 30 Sept. 2003)
RRJ	Revue de la Recherche Juridique. Droit Prospectif (Aix-en-Provence 1.1974/75 ff.; cited by year and page)
RS	See RIS-Justiz
r+s	Recht und Schaden (Kippenheim 1.1974 ff.; cited by year and page)
RSC	Rules of the Supreme Court (England)
RSCOrd	Rules of the Supreme Court, Order (England)
RT	Revista dos Tribunais (Sao Paulo 1912 ff.)
RT	Riigi Teataja (Official Journal, Estonia; cases published there are also available on http://www.riigikohus.ee)
Rt	Retstidende (Publishing the decisions of the Høyesterett, Supreme Court of Norway)
RTD civ	Revue trimestrielle de droit civil (Paris 1.1902 ff.); see Rev.trim.dr.civ.
RTD com	Revue trimestrielle de droit commercial (Paris 1.1948 ff.); see Rev.trim.dr.com.
RTR	Road Traffic Reports (London 1.1970 ff.; cited by year and page)
Rv	Wetboek van Burgerlijke Rechtsvordering (Code of civil procedure, The Netherlands, Stb. 1828 no. 14)
RvdW	Rechtspraak van de Week (Zwolle 1.1939 ff.; cited by year and number)
RvT	Raad van Toezicht op het Verzekeringswezen (Council for the Supervision of the Insurance Sector, The Netherlands)
RW	Rechtskundig Weekblad (Antwerp 1.1931/32 ff.; cited by year and page)

S	Shaw's Session Cases, First Series (Scotland 1821–1838)
S.	Recueil général des lois et arrêts resp. Recueil Sirey; 1801/02 ff.; see D.
s(s).	et sequential
Sąd okręgowy	Circuit Court, Court of First Instance, Poland
Sąd Najwyższy	Supreme Court of Poland
Sąd pierwszej instancji	Court of First Instance, Poland
Sąd grodzki	Polish District Court
Salk	Salkeld's Reports (ER 91) (London 1689–1712; cited by year, volume, and page)
SALR	South Australian Law Reports (Melbourne 1869 ff.; cited by number and page)
SAP	Sentencia de la Audiencia Provincial (Decision of a Court of Appeal, Spain)
SavZ Rom.Abt.	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (until volume 31 divided into Germanist.Abt., Romanist.Abt. and Kanonist.Abt. each department has its own system of numbering volumes. Rom.Abt.: 1. = 14.1880-65 = 78.1947 ff.; cited by volume, year, and page)
SC	Session Cases. New Series. Cases decided in the Court of Session, and also in the Court of Justiciary (J. C.) and the House of Lords (H. L.) (Edinburgh 1.1907 ff.; cited by year and page)
SC	Supreme Court
ScanStudL	Scandinavian Studies in Law (Stockholm 1.1957 ff.; cited by volume, year, and page)
sch.	schedule(s)
Scientia jurídica	Scientia jurídica. Revista de direito comparado português e brasileiro (Braga 1.1951/52 ff.; cited by volume, year, and page)
SCLR	Scottish Civil Law Reports (Edinburgh 1987 ff.; cited by year and page)
Scot CS	Approved judgment of the Court of Session, Scotland
Scot.Law Com.	Scottish Law Commission Report (Edinburgh 1966 ff.; cited by number, year, and paras.)
SDR	Special Drawing Rights
sec(s).	section, sections
SEK	Reference of the Commission General Secretary's Office and of the Council of the European Union
SemJur	La Semaine Juridique. Edition Entreprise. Cahiers de Droit de l'entreprise (Paris 1.1966 ff.; cited by year, part, and number), Edition Générale (also Juris Classeur Périodique; Paris 1.1927 ff.; cited by year, part, and number), Edition Nouvelles, Panorama (Pan.), Sommaire (Som.), also quoted as JCP, see there
sent.	sentence(s)
SeuffArch	Seuffert's Archiv für Entscheidungen der obersten Gerichte in den deutschen Staaten (1.1847-98.1944; from 1.1847-11.1857: Archiv für Entscheidungen der obersten Gerichte in den deutschen Staaten; cited by volume, year, number, and page)
SFS	Svensk författningssamling (Official gazette, Sweden; Stockholm 1.1825 ff.; cited by year and number)
SGB	Sozialgesetzbuch (Social Security Code, Germany, 11 Dec. 1975, BGBl. I p. 3015)
SGECC	Study Group on a European Civil Code

SH	Sø- og Handelsretten (Maritime and Commercial Court Copenhagen, Denmark)
ShApp	Shaw's Appeals (Scotland 1821–1824; cited by year, book, and page)
Sh.Ct.	Sheriff Court (Court of First Instance in civil and criminal matters, Scotland)
SHD	Sø- og Handelsretsdom (Judgement of the Maritime and Commercial Court Copenhagen, Denmark)
S. I.	Statutory Instrument
SJ	Solicitor's Journal (London 1.1857 ff.; cited by year and page)
SJZ	Schweizerische Juristenzeitung (Zürich 1.1904/1905 ff.; cited by year and page)
SKL	Skadeståndslag (Damages Liability Act, Sweden: SFS 1972:207; Finland: 31 May 1974 no. 412)
skr	Svensk krona (Swedish currency)
SLD	Søndre Landsrets Dom (Decisions of the southern court in Denmark)
SLPQ	Scottish Law and Practice Quarterly (London 1.1995 ff.; cited by year, number, and page)
SLR	Scottish Law Reporter (1865–1925)
SLT (Rep)	The Scots Law Times. News and Reports, the latter with separate pagination (Edinburgh 1.1893/94 ff.; Sheriff Court reports 1.1922 ff.; cited by year and page)
SmLC	Smith's Leading Cases in Various Branches of the Law (13th ed. London 1929)
SN	Session Notes (Edinburgh 1925–1948)
SN	Sąd Najwyższy (Supreme Court of Poland)
Som.	See under SemJur
SOU	Statens offentliga utredningar (Government gazette, Sweden; Stockholm 1.1939 ff.; cited by year, number, title, and page)
Sr	Wetboek van Strafrecht (Penal Code, The Netherlands, Stb. 1881 p. 40 [Nr. 35])
SR	Systematische Sammlung des Bundesrechts (Switzerland, since 1970; cited by number)
SR NSW	New South Wales, State Reports (1.1901 ff.)
S & S	Schip en Schade. Beslissingen op het gebiet van zee- en binnenvaartrecht en brandverzekeringsrecht (Zwolle 1.1957 ff.; cited by year and page)
STA	Supremo Tribunal Administrativo (Supreme Court in administrative matters, Portugal)
Stark	Starkie's Nisi Prius Reports (171 ER) (London 1814–1823)
StAZ	Das Standesamt. Zeitschrift für Standesamtswesen: Personenstandsrecht, Ehe- und Kindschaftsrecht, Staatsangehörigkeitsrecht (Neue Folge Frankfurt/Main 1.1948 ff.; cited by year and page)
Stb.	Staatsblad van het Koninkrijk der Nederlanden (Official Gazette, The Netherlands; Zwolle 1.1813 ff.; cited by year and page)
StGB	Strafgesetzbuch (Penal Code, Germany, 15 May 1871, RGBl. p. 127) formulation of the bulletin of 13 Nov. 1998, BGBl. I p. 3322; Bundesgesetz vom 23 Jan. 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Penal Code, Austria, 23 Jan. 1974, BGB1. no. 60)
STJ	Supremo Tribunal da Justiça (Supreme Court of Portugal). The judgements of the Portuguese Supreme Court of Justice after September 2000 are unpublished, as the publication of the periodical BolMinJus came to an end.

	The same judgements may be, nevertheless, consulted in http://www.dgsi.pt, which corresponds to the juridical-documentary basis of the Institute of Technologies of Information in Justice, belonging to the Ministry of Justice
StPO	Strafprozeßordnung (Code of Criminal Procedure, Germany, as amended by Act of 7 Apr. 1987, BGBl. I p. 1075)
STRFL	Borgerlig Straffelov (Civil Penal Code, Denmark, Act no.126, 15 Apr. 1930, Lovtidende A 1930, p. 697–752)
STS	Sentencia del Tribunal Supremo (Decision of the Supreme Court of Portugal)
Stud.Iuris	Studium Iuris. Rivista per la formazione nelle professioni giuridiche (Padova 1.1995 ff.; cited by year and page)
StVG	Straßenverkehrsgesetz (Road Traffic Act, Germany, 19 Dec. 1952, BGBl. I p. 832)
StVO	Straßenverkehrsordnung (Road Traffic Regulation, Germany, 16 Nov. 1970, BGBl. I p. 1565)
SUBB Iur.	Studia Universitatis Babeş-Bolyai. Iurisprudentia (Cluj-Napoca 1.1955 ff., until 1975 Studia Universitatis Babeş-Bolyai. Series Jurisprudentia; cited by issue, year, and page)
subs.	subsections
Sup.Ct.	Supreme Court (Ireland)
Suppl.	Supplement
Suppl.ord.	Supplemento ordinario (Part of the government gazette, Italy)
Sv	Wetboek van Strafvordering (Code of Criminal Procedure, The Netherlands, Stb. 15 Jan. 1921, p. 14)
SvJT	Svensk Juristtidning (Stockholm 1.1916 ff.; cited by year and page)
Swiss LOA	Law of Obligations Act (see OR)
SZ	Entscheidungen des österreichischen Obersten Gerichtshofs in Zivilsachen (Wien 1.1919-20.1938; 21.1946 ff.; with changing titles; until volume 34.1961: Entscheidungen des österreichischen Obersten Gerichtshofs in Zivil- und Justizverwaltungssachen; cited by volume, number, and page)
SZIER	Schweizerische Zeitschrift für internationales und europäisches Recht (Zürich 1.1991 ff.; cited by year and page)
SZW / RSDA	Schweizerische Zeitschrift für Wirtschaftsrecht / Revue suisse de droit des affaires (Zürich 62.1990-77.2005, fortgesetzt als Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht; cited by year and page)
tab.	tabulae
TAgrR	Tijdschrift voor agrarisch recht / Revue de droit rural (Brussels 1.1979 ff.; cited by year and page)
TBBR	Tijdschrift voor Belgisch Burgerlijk Recht; see RGDC
TBH	Tijdschrift voor Belgisch handelsrecht / Revue de droit commercial belge (Antwerp 1.1967-29.1996; 103.1997 ff.; continuation of the Jurisprudence commerciale de Belgique)
TBP	Tijdtschrift voor Bestuurswetenschappen en Publiekrecht (Brussels 1.1946 ff., from 1.1946 to 6.1951 under the title Tijdtschrift voor Bestuurswetenschappen; cited by year and page)
TBR	Tijdschrift voor Brugse rechtspraak (Brugge 1.1983 ff.; cited by year and page)
TC	Tribunal Constitucional (Constitutional Court of Spain)

TDG	Gesetz über die Nutzung von Telediensten, Teledienstgesetz (Law on the Use of Teleservices, Germany, 22 July 1997, BGBl. I, p. 1870)
Tel Aviv UnivStudL	Tel Aviv University Studies in Law (Tel Aviv 1.1975 ff.; cited by volume, year, and page)
Temi	Temi. Rivista di giurisprudenza Italiana (Parma, Milano et al. NS 1 = 22.1946 ff.; cited by year and page)
Temi nap.	Temi Napoletana (Milano 1.1958 ff.; cited by year and page)
Temi rom.	Temi romana (Milano 1.1929-5.1933; NS 1.1952-40.1991; cited by year and page)
Term Rep	Dunford & East's Term Reports (ER 99–101) (London 1785–1800)
TfR	Tidsskrift for Rettsvitenskap (Oslo 1.1888 ff.; cited by year and page)
TGI	Tribunal de grande instance (Court of First Instance, France)
Themis	Hebdomacliaia dikastike ephemeris ekdiclomene en Athenais (Athens 1.1890/91-65.1954/55; cited by volume, year, and page)
TI	Tribunal d'instance (Court of First Instance, France)
TKKST	Tweede Kamer Kammerstukken (Parliamentary Deliberations of the Second Chamber, The Netherlands; The Hague; cited by year, number of bill, and page)
TLR	Annual Digest of the Times Law Reports (London 1.1884 ff.; cited by volume, year, and page)
TMA	Tweemaandelijks tijdschrift voor milieu aansprakelijkheid. Environmental Liability Law Review (Lelystad 1.1987 ff.; cited by year, and page)
ToΣ	To Syntagma (Athens 1.1975 ff.; cited by volume, year, and page)
TPR	Tijdschrift voor Privaatrecht (Ghent 1.1964 ff.; cited by year and page)
TR	Durnford & East's Term Reports, King's Bench (ER 99–101) (London 1785–1800; cited by volume, year, and page)
TranspR	Transportrecht (Frankfurt/Main 1.1978 ff.; cited by year and page)
Trb	Tractatenblad van het Koninkrijk der Nederlanden (Official Gazette recording treaties in force in the Netherlands, 's-Gravenhage/The Hague 1.1951 ff.; cited by year and page)
Treaty of Rome	Treaty establishing the European Community, 25 Mar. 1957
Trib.	Tribunale (Court of First Instance, general jurisdiction; Court of Appeal in small claims matters; Italy); Tribunal de première instance (Court of First Instance; Belgium, France); Tribunal d'arrondissement (Court of First Instance, general jurisdiction, Luxembourg)
Trib.enfants	Tribunal pour enfants (Youth Court, France)
Trib.com.	Tribunal de Commerce (Commercial Court, Belgium and France)
Trib.Corr.	Tribunal Correctionnel (Criminal Court, Belgium)
TS	Tribunal Supremo (Supreme Court of Spain – if not specified: senate for civil matters)
TSJ	Tribunal Superior de Justicia (Supreme Court of the autonomous regions, Spain)
TSL	Trafikskadelag (Traffic Damages Act, Sweden, SFS 1975: 410)
TulCivLaw Forum	Tulane Civil Law Forum (New Orleans, 1.1973-1977; NS 1.1987 ff.; cited by volume, year, and page)
TulLRev	Tulane Law Review (New Orleans, 1.1916 ff.; cited by volume, year, and page)

TvC	Tijdschrift voor Consumentenrecht (Deventer 1.1985 ff.; cited by year and page)
UfR	Ugeskrift for Retsvæsen (Copenhagen 1.1867 ff.; as of 1902 division into: A = Danks domssamling; B = Juridiske afhandlinger, meddelelser; C = Abstracts; cited by year and page)
UIC	Ufficio Italiano dei Cambi (Italian Foreign Exchange Office)
UKHL	Approved judgment of the House of Lords (United Kingdom)
Ulp.	Ulpian
UmweltHG	Umwelthaftungsgesetz (Environmental Liability Act, Germany, 10 Dec. 1990, BGBl. I p. 2634)
UNCITRAL	United Nations Commission for International Trade Law
UnfContTA	Unfair Contract Terms Act (France: Law no. 95–96 of 1 Feb. 1995 art. 1 consolidated in ConsC art. 132-1; United Kingdom: Unfair Contract Terms Act 1977)
UnifLRev	Uniform Law Review / Revue de droit uniforme; see Rev.dr.uniforme
UNTS	United Nations Treaty Series. Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations (Washington DC 1.1946/47 ff.; cited by volume and page)
UrhG	Gesetz über Urheberrecht und verwandte Schutzrechte v. 9 Sept. 1965 (Act on copyright and related patent rights, Germany, BGBl. I p. 1273, formulation of 1 Sept. 2000, BGBl I p. 1375); Urheberrechtsgesetz v. 9 Apr. 1914 (Copyright-act, Austria, BGBl. 1936/111)
UTR	Umwelt- und Technikrecht (Düsseldorf 1.1986 ff.; cited by volume, year, and page)
UWG	Gesetz gegen den unlauteren Wettbewerb (Act against Unfair Competition, Germany, 7 June 1909, RGBl. p. 499; 3 July 2004, BGBl. I p. 1414; Austria, BGBl. 448/1984, BGBl. 106/2006)
V°	Verbo
v.	versus
Varosi birosàg	City Court (Court of First Instance, Hungary)
V-C	Vice-Chancellor (United Kingdom)
Vern	Vernon's Chancery Reports (ER 23) (London 1680–1719)
VersR	Versicherungsrecht. Juristische Rundschau für die Individualversicherung (Karlsruhe 1.1950 ff.; cited by year and page)
VersRAI	Versicherungsrecht. Beilage Ausland (Karlsruhe 1.1959/60, 2.1961 ff.; cited by year and page)
VfGH	Verfassungsgerichtshof (Constitutional Court of Austria)
VfSlg	Verfassungssammlung. Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes (Collection of cases before the Austrian Constitutional Court, Wien 1.1919 ff., NS 33.1968 ff.; cited by the number of the decision)
VG	Verwaltungsgericht (Administrative Court, Germany)
Vita not.	Vita notarile (Palermo 1.1949 ff., cited by year and page)
VL	Vestre Landsret (Western High Court, Denmark)
VLD	Vestre Landsrets dom (Judgments of Western High Court, Denmark)

VLK	Vestre Landsrets kendelse (Decisions of Western High Court, Denmark)
vol(s).	volume(s)
VÕS	Võlaõigusseadus (Estonian Law of Obligations Act of 1 July 2002; Official Journal I 2002, 53, 336)
VR	Verkeersrecht ('s-Gravenhage/The Hague 1.1953/54 ff.; cited by year and page)
Vrb	Verzekeringsrechtelijke berichten (Zwolle 1.1989 ff.; cited by year and page)
Vred	Vredegerecht (Magistrates court, Belgium)
VS	Visje sodisce (Court of Appeal, Slovenia); Vrnchi soud (Court of Appeal, Czech Republic)
VS RS	Vrhovno sodisce Republike Slovenije (Supreme Court of Slovenia)
V. T.SV.	Voorafgaande Titel Wetboek van Strafvordering (Preliminary Title to the Penal Code, Belgium)
VVDStRL	Veröffentlichungen der Vereinigung Deutscher Staatsrechtslehrer (Berlin 1.1924 ff.; cited by volume, year, and page)
VVG	Gesetz über den Versicherungsvertrag (Law on Insurance Contracts, Germany, 30 May 1908, RGBl. p. 263)
Vw	Versicherungswirtschaft (Karlsruhe 1.1946 ff.; cited by year and page)
VwGH	Verwaltungsgerichtshof (Supreme Court in administrative matters of Austria)
W	Weekblad van het Recht (Zwolle et al. 1.1839-105.1943; from 1936 contents the same as Nederlands Juristenblad [see NJB]; cited by year, number, and page)
WAM	Wet betreffende de verplichte aansprakelijkheidsverzekering inzake motorrijtuigen (Act on Compulsory Insurance for Keepers of a Motor Vehicle, Belgium, 1 July 1956; BS 15 July 1956; as amended by Act of 21 Nov. 1989, BS 8. Dec. 1989)
Warsaw Convention	Warsaw Convention, 12 Oct. 1929 (Convention for the Unification of Certain Rules Relating to International Carriage by Air [as amended])
WBl	Wirtschaftsrechtliche Blätter (Wien 1.1987 ff.; cited by year and page)
WHG	Wasserhaushaltsgesetz. Gesetz zur Ordnung des Wasserhaushalts (Water Budget Act, Germany, 23 Sep. 1986, BGBl. III p. 753)
WiB	Wirtschaftsrechtliche Beratung (München, Frankfurt/Main 1.1994 ff.; cited by year and page)
WiRO	Wirtschaft und Recht in Osteuropa. Zeitschrift zur Rechts- und Wirtschaftsentwicklung in den Staaten Mittel- und Osteuropas (München 1.1992 ff.; cited by year and page)
WL	West Law
WLR	The Weekly Law Reports (containing decisions in the House of Lords, the Privy Council, the Supreme Court of Judicature, Assize Courts; London 1.1953 ff.; cited by year, book, and page)
WM	Wertpapier-Mitteilungen. Zeitschrift für Wirtschafts- und Bankrecht (Frankfurt/Main et al. 1.1947 ff.; cited by year and page)
Wm Bl	Sir William Blackstone's King's Bench Reports (ER 96) (London 1746–1780)
WPNR	Weekblad voor privaatrecht, notariaat en registratie ('s-Gravenhage/The Hague 1.1870 ff.; cited by year, number, and page)
WR	The Weekly Reporter (London 1.1852/53 [1853]-54.1905/06 [1906])
WRG	Wasserrechtsgesetz (Water Act of 1959, Austria, BGBl. p. 215)

WRP	Wettbewerb in Recht und Praxis (Frankfurt/Main 1.1955 ff.; cited by year and page)
WVW	Wegenverkeerswet (Road Traffic Act, The Netherlands, 13 Sep. 1935, Stb. 554 and 21 Apr. 1994, Stb. 475)
WWR	Western Weekly Reports (Calgary 1.1911/12 (1912)-10.1916; 1917–1950; NS 1.1951 ff.; cited by year, book, and page)
YAR	York Antwerp Rules (London 1996)
Y & J	Younge and Jervis' Exchequer Reports (ER 148) (London 1826–30; cited by volume, year, and page)
Zacchia	Zacchia. Archivio di medicina legale, sociale e criminologica (Roma 1.1921-13.1934; 2nd series 1.1937 ff.; cited by year and page)
ZBB	Zeitschrift für Bankrecht und Bankwirtschaft (Köln 1.1989 ff.; cited by year and page)
ZBernJV	Zeitschrift des Bernischen Juristenvereins / Revue de la société des juristes bernois (Berne 1.1864/65 ff.; cited by volume, year, and page)
ZEuP	Zeitschrift für Europäisches Privatrecht (München 1.1993 ff.; cited by year and page)
ZEV	Zeitschrift für Erbrecht und Vermögensnachfolge (München, Frankfurt/Main 1.1994 ff.; cited by year and page)
ZfRV	Zeitschrift für Rechtsvergleichung (Wien 1.1960 ff.; cited by year and page)
ZfS	Zeitschrift für Schadensrecht (Essen 1.1980 ff.; cited by year and page)
ZfU	Zeitschrift für Umweltpolitik und Umweltrecht. Journal of Environmental Law and Policy. Revue de la politique et du droit d'environnement (Frankfurt/Main 1.1978 ff.; cited by year and page)
ZfVB	Zeitschrift für Verwaltung (Supplement: decisions of the VfGH and VwGH, Wien 1.1976 ff.; cited by year and page)
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (Heidelberg 1.1858-110.1944, 111.1948 under different titles: until volume 60: Zeitschrift für das gesamte Handelsrecht, until volume 124 (1962): Zeitschrift für das gesamte Handels- und Wirtschaftsrecht; cited by volume, year, and page)
ZIP	Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis (previously Insolvenzrecht, Köln 1.1980 ff.; cited by year and page)
ZPO	Zivilprozeßordnung (Code of civil procedure, Germany, 12 Sep. 1950, BGBl. 1950 I p. 533; Austria, 1. Aug. 1895, RGBl. 1895/113)
ZRP	Zeitschrift für Rechtspolitik (München 1.1968 ff.; cited by year and page)
ZSR	Zeitschrift für Schweizerisches Recht (Basel NS 1.1882 ff.; cited by volume, year, and page)
ZVersWiss	Zeitschrift für die gesamte Versicherungswissenschaft (Karlsruhe 1.1901 ff.; 43.1943, 56.1967 ff.; cited by year and page)
ZVglRWiss	Zeitschrift für vergleichende Rechtswissenschaft (Heidelberg 1.1878 ff.; cited by volume, year, and page)
ZVR	Zeitschrift für Verkehrsrecht (Wien 1.1956 ff.; cited by year, number of the decision, and page)
ZZP	Zeitschrift für Zivilprozeß (Köln et al. 63.1943, 64.1950/51, 65.1952 ff.; cited by volume, year, and page)

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