

Abstract

This paper seeks to analyze Leasing based on international principles of law such as Common law, Civil law and UNIDROIT Convention on International Financial Leasing 1988. This paper also analyses and compares these international principles with the Thai Law of Leasing based on the Revenue Department's Declaration number 53 about the Law Governing Turnover Tax. This Declaration covers Leasing principles, methods, conditions, and lease periods. The Declaration also deals with the calculation of value of certain leased properties based on both the Fiscal Code and the conditions laid out in the Ministry of Finance's Declaration on the Governing to permit capital companies to execute leasing contracts. Finally the Revenue Department's Declaration covers a Bill regarding Leasing which consists of Leasing principles, contract formation requirements, contractual formalities, qualifications of the parties to a contract, types of property of contract, duties and liabilities of parties, and termination of Leasing. In addition, this study compares Leasing with Purchase contracts, and Lease contracts with Hire purchase contracts based on the Civil and Commercial Code.

This paper argues that Leasing, the enforcement of Leasing, and the parties' rights and liabilities upon termination of a Leasing contract, should operate according to the intention of the parties. Moreover, this study uses Documentary Research to show current practical problems associated with drawing up Leasing contracts, and whether consumer protection laws should be available to protect parties to a Leasing contract.

Leasing is an innominate contract which is made by the leasing business. This business is a financing service, whereby under a finance lease, the asset owner or asset supplier allows the lessee to acquire the right to use the asset for most of its useful life in return for a rental payment or other benefits based on a stipulated lease period. The lessee finally has the option to buy, send back, or continue leasing at the end of the lease period.

Leasing is not a Lease and Hire Purchase, but rather it is a type of specific transaction generally involving three parties instead of two (the lessor, lessee and supplier or manufacturer).

Presently, the Thai court applies the law of Hire of Property and Hire Purchase found in the Civil and Commercial Code to resolve Leasing enforcement cases. The court may use the principles of contractual interpretation despite these principles having constraints and practical problems. Therefore, the government should legislate to control the leasing transaction for Standard Form Contract. The Law must have an express definition of Leasing. Furthermore, express formalities for Leasing contracts are not necessary.

Under Leasing, the lessor is the natural person or juristic person, and the lessee is the natural person or juristic person who wants to acquire the right to possess and use the leased property for personal use, or for family or economic objectives such as industry, agriculture, commerce and services. The types of property which can be leased are both properties and real properties. When Leasing commences, the lessor has to transfer the leased property without defects or disturbance of rights to the lessee. If the leased property has some defects or disturbance of rights before transfer of property, the lessor will bare liability for any damage caused by the relevant defect at the time of, or after transfer. However, the lessor has a right to claim for any unpaid rental payments by the lessee. Furthermore, the lessor has the right to terminate the Leasing contract if the lessee makes a fundamental breach of contract. The lessor also has a duty to transfer ownership to the lessee when the lessee evinces their intention to purchase the property. The lessee has the right only to use the leased property by him or herself. Moreover, the lessee cannot enter into a sublease agreement, and must preserve and fix the leased property including taking out insurance on the property. Finally, the lessee has an option to renew the Leasing contract, or buy or return the leased property at the end of the lease period.

The Leasing contract can be terminated as per the contractual terms, or by the lessor in the case that the lessee fails to make rental payments, the lessee makes a fundamental breach of contract, or, the lessee uses the leased property for a purpose which the lessor has expressly prohibited and so informed the lessee prior to conclusion of the contract. Furthermore, the lessor has the right to terminate if the lessee enters into a sublease agreement without the lessor's permission.

The lessee can invoke the right to terminate the contract in the case that the lessor fails deliver the leased property, the lessor delivers the leased property with delay, delivers a property other than that stipulated in the contract, or, delivers property that is unable to fulfill the lessee's purpose for leasing. Furthermore, the lessee can terminate the contract if the lessor delivers the property without repairing any known defects which were communicated to the lessee prior to transfer, including leased property that has broken or missing parts which render the property useless.

According to current law, termination of the contract in cases involving the natural person occurs at the end of the stipulated lease period without requiring any advanced communication between the parties. Additionally, termination will occur in the case that the leased property is lost by the lessor in its entirety at the time of delivery. In the case that the lessor is a juristic person, leasing contracts will terminate if the juristic person stops its business or goes bankrupt.

Due to the fact that Leasing is presently being made by Standard Form Contract, Leasing is governed by the definition of Standard Form Contract in section 3 paragraph 4 of The Unfair Contract Terms Act, B.E. 2540 (1997). In the case that the lessor is a business owner and the lessee is normally not a business owner, the Consumer Case Procedure Act 2551 (2008) will apply. However, if the lessee uses the leased property as part of their normal business which falls within the categories of industry, agriculture, commerce or other services, then the Consumer Case Procedure Act 2551 (2008) will not apply.

From this study, this paper asserts that the solution to the problems surrounding the enforcement of Leasing should come from the principles of contractual interpretation with respect to *bona fides* which business owners should be aware of and apply in their conduct with each other. Furthermore the government should legislate to stipulate the types of leasing transactions to be controlled by specific Leasing contract law, namely the enactment of the current Bill in Parliament regarding Leasing. Finally, the Standard Form Contract should particularly be applied to Leasing transactions in the future.