

UDC 347.453

DOI <https://doi.org/10.24144/2307-3322.2025.90.2.37>

## THE LEGAL CHARACTERISTICS OF THE CONTRACT OF HIRE (LEASE)

**Yurkevych Yu.M.,**

*Professor of the Department of Civil Law and Procedure*

*of the Law Faculty*

*of Ivan Franko National University of Lviv,*

*Doctor of Legal Sciences, Professor*

*ORCID: 0000-0002-4097-9925*

*e-mail: yuriy-yurkevych@ukr.net*

### **Yurkevych Yu.M. The legal characteristics of the contract of hire (lease).**

The relevance of legal research in the field of legal regulation of hire (lease) relations is due to a number of factors, including changes in legislation and law enforcement practice, economic factors and the growing popularity of this contractual institution. Scientific developments in this area may relate to various aspects and have been also driven by the novelisation of Ukrainian civil legislation. The expediency of a comprehensive study of this issue is also confirmed by the fact that the Economic Code of Ukraine, which largely has regulated lease relations in the business sector, will cease to be effective as of 28.08.2025.

Under a hire (lease) contract, the lessor transfers or undertakes to transfer property to the lessee for possession and use for a fee for a certain period of time. In the civil law doctrine, obligations under lease contracts are classified by their legal nature as bilateral, consensual, fixed-term and paid. This approach has been also supported by the practice of the Supreme Court.

An essential condition of hire (lease) contract is the condition on the subject matter. Despite the fact that this transaction is characterised as a paid and fixed-term one, the terms on its price and term are not considered to be material. The form of this contract may be determined by the type of object to be leased, the term, the identity of the parties, the form of ownership of the property, etc.

The Civil Code of Ukraine clearly has provided for the grounds for termination of a lease contract. In the article it has been concluded that a notice of objection to the automatic prolongation of a lease contract pursuant to the Article 764 of the Civil Code of Ukraine or a provision of a specific agreement is a transaction by its legal nature.

Despite the generally detailed regulation of hire (lease) relations in the civil legislation of Ukraine, law enforcement practice confirms the expediency of further research into the problems of their legal regulation. When entering into hire (lease) contracts, it is necessary to strictly comply with the principle of private law ‘*nemo plus iuris ad alium transferre potest, quam ipse habet*’, the rules for determining their subject matter and the other conditions which, once included in the text of the transaction, will acquire the nature of essential conditions, ensuring compliance with their form, etc.

**Key words:** contract, hire, lease, obligation, subject matter, price, term, termination of contract, penalty.

### **Юркевич Ю.М. Правова характеристика договору найму (оренди).**

Актуальність правових досліджень у галузі правового регулювання відносин найму (оренди) обумовлена цілою низкою факторів, включаючи зміни у законодавстві та практиці правозастосування, економічні чинники та зростання популярності застосування цього договірної інституту. Наукові розробки у цій сфері можуть стосуватися різних аспектів та обумовлені також новелізацією цивільного законодавства України. Доцільність комплексного вивчення цієї проблематики підтверджується також тим, що з 28.08.2025 втрачає чинність Господарський кодекс України, який значною мірою регулював орендні відносини у сфері господарювання.

За договором найму (оренди) наймодавець передає або зобов'язується передати наймачеві майно у володіння та користування за плату на певний строк. У доктрині цивільного права зо-

бов'язання з договорів оренди за правовою природою кваліфікують як двосторонні, консенсуальні, строкові та оплатні. Такий підхід підтверджується також практикою Верховного Суду.

Істотною умовою договорів найму (оренди) є умова про предмет. Незважаючи на те, що цей правочин характеризується як оплатний та строковий, умови про його ціну та строк не належать до істотних. Форма цього договору може обумовлюватися видом об'єкту, що передається в найм, строком, особою його сторони, формою власності на майно тощо.

Цивільний кодекс України чітко передбачає підстави припинення договору найму (оренди). У статті зроблено висновок, що повідомлення про заперечення щодо автоматичної пролонгації договору оренди на підставі ст. 764 Цивільного кодексу України чи положення конкретного договору за своєю правовою природою є правочином.

Незважаючи на загалом детальне врегулювання відносин найму (оренди) в цивільному законодавстві України, практика правозастосування підтверджує доцільність подальшого дослідження проблем їх правового регулювання. При укладенні договорів найму (оренди) необхідно суворо дотримувати принципу приватного права «*nemo plus iuris ad alium transferre potest, quam ipse haberet*», правил щодо визначення їх предмета та інших умов, які, після включення в текст правочину, набуватимуть характеру істотних, забезпечення дотримання їх форми тощо.

**Ключові слова:** договір, найм, оренда, зобов'язання, предмет, ціна, строк, припинення договору, неустойка.

**The statement of the problem.** The relevance of legal research in the area of legal regulation of hire (lease) relations is due to a number of factors, including changes in legislation and law enforcement practice, economic factors and the growing popularity of this contractual institution. Research developments in this area may relate to various aspects and are also driven by the novelisation of Ukrainian civil legislation. The expediency of a comprehensive study of this issue is also confirmed by the fact that the Economic Code of Ukraine, which largely regulated lease relations in the business sector, will cease to be in force on 28 August 2025.

**The state of the research on the issue.** The theoretical aspects of legal regulation of lease relations in Ukraine have been studied in the works of many legal scholars, including O. Dzera, V. Vasylieva, Yu. Zaika, V. Kossak, O. Kot, N. Kuznetsova, R. Maidanyk, Z. Romovska, R. Stefanchuk and many others.

**The purpose of the article is** to provide the legal description of the lease contract under Ukrainian legislation and to determine the prospects for law application in this area.

**The summary of the main material.** Pursuant to the part 1 of the Article 759 of the Civil Code of Ukraine, under a hire (lease) contract, a lessor transfers or undertakes to transfer property to the lessee for possession and use for a fee for a certain period of time [1]. In the civil law doctrine, the obligations under lease contract are classified by their legal nature as bilateral, consensual, fixed-term and paid. This approach has been also confirmed by the practice of the Supreme Court, in particular, by the resolutions of the Grand Chamber of the Supreme Court in case No. 357/8277/19 of 18.04.2023 [2] and in case No. 902/1207/22 of 06.03. 2024 [3], the Administrative Court of Cassation of the Supreme Court in case No. 808/4797/13-a of 05.02.2019 [4] and the Civil Court of Cassation of the Supreme Court in case No. 357/10393/19 of 09.08.2023 [5].

The essential term of hire (lease) contracts is the term of the subject matter. Despite the fact that this transaction is characterised as a paid and fixed-term transaction, the terms on its price and term are not considered to be material. In particular, as the Supreme Court has found, the Civil Code of Ukraine does not qualify payment for the use of property as an essential term of a property lease contract. If the lease contract does not specify the amount of the rent, it is determined taking into account the consumer quality of the thing; the other circumstances that are essential (the part 1 of the Article 762 of the Civil Code of Ukraine). Therefore, even if the parties have not agreed on the amount of payment in the lease contract, this does not 'destroy' such an agreement [6]. A similar conclusion can be drawn with regard to the term of the lease contract. If the term of the lease is not specified, the lease is deemed to be concluded for an indefinite period.

The subject matter of a lease contract may be a thing defined by individual characteristics and which retains its original appearance after repeated use (non-consumable thing); the subject matter of a lease contract may be property rights [1]. At the same time, it is important to comply with the well-known principle of private law '*nemo plus iuris ad alium transferre potest, quam ipse haberet*' – 'no one can

transfer more rights than he has'. In other words, it is impossible to lease an object that does not exist in nature. This is in line with the legal position of the Supreme Court set out in its decision of 06.09.2023 in case No. 906/452/22 [7], which concerned the vacating of retail outlets and the recovery of a double penalty under the lease contract. At the same time, the Grand Chamber of the Supreme Court and the Joint Chamber of the Civil Court of Cassation of the Supreme Court consistently adhere to the approach that the proper way to protect the rights of a lessor who did not sign the contract (additional agreement) is to demand that the person in whom the lease right is registered declare the lease right absent. The court decision declaring the lease right void is the basis for state registration of the termination of the lease right. Any other court decision (on cancellation of the state registration of the lease right, on the obligation to return the land plot) within the meaning of the paragraph 9 of the part one of the Article 27 of the Law of Ukraine 'On State Registration of Real Rights to Real Estate and Their Encumbrances' is not a ground for state registration of termination of the lease right [8].

Also, according to the conclusions from the court practice, the systemic correlation of premises and buildings as objects of civil rights – within the building as an independent real estate object, separate objects may also be formed – non-residential premises, which are relatively independent real estate objects that retain a connection with the building. The existence of non-residential premises as an object of civil rights does not exclude the existence of a building as an object of civil rights. In view of the above, the Economic Court of Cassation as part of the Supreme Court departed from the conclusion that since the disputed object of lease under the lease agreement - asphalt pavement is not a building by virtue of the law, and therefore does not fall under the subpara. 2 of the Part 1 of the Article 19 of the Law of Ukraine 'On Lease of State and Communal Property' [9].

The form of this contract may be determined by the type of the object leased, the term, the identity of the party, the form of ownership of the property, etc. For example, a vehicle lease contract involving an individual is subject to notarisation; a lease contract for a building or the other capital structure (or a separate part thereof) should be concluded in writing; a lease contract for a building or the other capital structure (its separate part) for a period of three years or more is the subject to the notarisation, except for an agreement the subject of which is the state or municipal property, which is the subject to notarisation if it is concluded for a period of more than five years [1].

At the same time, we consider the legal position of the Economic Court of Cassation as part of the Supreme Court in the paragraph 61 of the Resolution of 16.05.2024 in case No. 911/1755/22 to be controversial. In particular, in the said resolution, the Supreme Court, by analysing the provisions of the Part 2 of the Article 793 of the Civil Code of Ukraine and the provisions of the Part 3 of the Article 763 of the Civil Code of Ukraine (which boil down to the fact that a lease contract exceeding the maximum term established by law is considered to be concluded for the term corresponding to the maximum term), concluded that the maximum term for which a lease contract may be concluded without its notarisation is less than three years. Therefore, if the hire contract is concluded in a non-notarized written form without setting a term of employment or with a term of more than three years, it is terminated upon the expiry of three years [10]. However, pursuant to the part 1 of the Article 220 of the Civil Code of Ukraine, if the parties fail to comply with the requirement of the law on notarisation of a transaction, such a transaction is void [1]. Therefore, in our opinion, if a lease contract for a building or the other capital structure is concluded in a non-notarized written form with a term of more than three years, it should be considered void.

The Civil Code of Ukraine has clearly provided for the grounds for termination of a lease contract. The lease contract is terminated in the event of the death of the individual lessee, unless otherwise provided by the contract or law. Also, the lease contract is terminated in the event of the liquidation of the legal entity that was the lessee or the lessor. In addition, the lessor has the right to withdraw from the lease contract and demand the return of the item if the lessee fails to pay the lease fee for three consecutive months. Therefore, if the lessor withdraws from the lease contract, the contract is terminated from the moment the lessee receives the lessor's notice of withdrawal. It is worth noting that the lessor has the right to demand termination of the lease contract if: the lessee possesses and/or uses the thing contrary to the contract or the purpose of the thing; the lessee has transferred the thing to the possession and/or use of another person without the lessor's permission; the lessee creates a threat of damage to the thing by his/her negligent behaviour; the lessee has not started to carry out major repairs of the thing if the obligation to carry out major repairs was imposed on the lessee. In turn, the lessee has the right to demand termination of the lease contract if: the lessor has transferred the thing, the quality

of which does not comply with the terms of the contract and the purpose of the thing; the lessor does not fulfil its obligation to carry out major repairs of the thing [1].

On the other hand, if the lessee continues to own and/or use the property after the expiry of the lease contract, then, in the absence of objections from the lessor within one month, the contract is considered renewed for the term previously established by the contract [1]. At the same time, the Supreme Court in its decision of 26.02.2020 in case No. 910/4391/19 concluded that the cancellation of the hire contract is inherently a unilateral transaction and, given the grounds for such cancellation, is a way to protect the violated rights of the lessor, and therefore does not require the consent of the other party [11]. In our opinion, a notice of objection to the automatic prolongation of a lease contract under the Article 764 of the Civil Code of Ukraine or a provision of the specific agreement is also a transaction by its legal nature.

Pursuant to the Article 785 of the Civil Code of Ukraine, in the event of termination of the lease contract, the lessee is obliged to immediately return the thing to the lessor in the condition in which it was received, taking into account normal wear and tear, or in the condition agreed in the contract. If the lessee fails to fulfil the obligation to return the item, the lessor has the right to demand that the lessee pay a penalty in the amount of double the rental fee for the period of delay [1]. The Supreme Court in its ruling of 26.02.2020 in case No. 910/4391/19 stated that in order to apply the consequences provided for in the Part 2 of the Article 785 of the Civil Code of Ukraine, the person who breached the obligation must be guilty (intent or negligence) in accordance with the requirements of the Article 614 of the Civil Code of Ukraine. In other words, the courts need to establish the circumstances under which the lessee had the opportunity to transfer the property that was the subject of the lease, but deliberately failed to fulfil this obligation. The subject matter of proof in disputes on recovery of penalty under the part 2 of the Art. 785 of the Civil Code of Ukraine, as a double payment for the use of the leased property after the expiration of the lease contract, the circumstances of the lessee's failure to take appropriate measures to return the leased object to the lessor as a result of termination of the lease relationship in the absence of conditions that would prevent the lessee from returning the property to the lessor in a timely manner within the period specified in the lease contract are included; deliberate evasion by the lessee of the obligation to return the leased property to the lessor; retention of the leased property in the possession of the lessee and obstruction by the lessee of the lessor's access to the leased property belonging to him; absence of inaction on the part of the lessor and failure to take actions aimed at evading the obligation to accept the leased property from the lessee and to arrange for the return of the leased property by the lessee [11].

**Conclusions.** Summing up the above and specifying some issues, it is worth noting that despite the generally detailed regulation of hire (lease) relations in the civil legislation of Ukraine, law enforcement practice confirms the expediency of the further research into the problems of their legal regulation. When entering into hire (lease) contracts it is necessary to strictly comply with the principle of private law 'nemo plus iuris ad alium transferre potest, quam ipse haberet', the rules for determining their subject matter and the other conditions which, once included in the text of the transaction, will acquire the nature of essential, ensuring compliance with their form, etc.

#### REFERENCES:

1. Civil Code of Ukraine No. 435-IV of 16.01.2003. *Bulletin of the Verkhovna Rada of Ukraine*. 2003. No. 40. 3 October.
2. Resolution of the Grand Chamber of the Supreme Court in case No. 357/8277/19 of 18.04.2023. *Zakon Online*. URL: <https://zakononline.com.ua/court-decisions/show/110367952> (date of access: 09.07.2025).
3. Resolution of the Grand Chamber of the Supreme Court in case No. 902/1207/22 of 06.03.2024. *Zakon Online*. URL: <https://zakononline.com.ua/court-decisions/show/118036819> (date of access: 09.07.2025).
4. Resolution of the Administrative Court of Cassation within the Supreme Court in case No. 808/4797/13-a of 05.02.2019. *IpLex*. URL: <https://iplex.com.ua/doc.php?regnum=79757990&red=10000321f61e145d7b55066c1c503ea1cf47de&d=5> (date of access: 09.07.2025).
5. Resolution of the Civil Court of Cassation of the Supreme Court in case No. 357/10393/19 of 09.08.2023. *IpLex*. URL: <https://iplex.com.ua/doc.php?regnum=112845690&red=100003ae7f8bf74097be74cfbcb0b18502b4bf&d=5> (date of access: 09.07.2025).

6. Resolution of the Civil Court of Cassation within the Supreme Court in case No. 757/18462/21-ц of 07.08.2024. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/121003090> (date of access: 09.07.2025).
7. Resolution of the Economic Court of Cassation of the Supreme Court in case No. 906/452/22 of 06.09.2023. Ip Lex. URL: <https://iplex.com.ua/doc.php?regnum=113335899&red=100003f684970c7128c57e548e2aa3b9421e53&d=5> (date of access: 09.07.2025).
8. Resolution of the Joint Chamber of the Civil Court of Cassation of the Supreme Court in case No. 144/1440/22 of 02.06.2025. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/127900963> (date of access: 09.07.2025).
9. Resolution of the Economic Court of Cassation of the Supreme Court in case No. 921/144/24 of 17.04.2025. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/127322656> (date of access: 09.07.2025).
10. Resolution of the Economic Court of Cassation of the Supreme Court in case No. 911/1755/22 of 16.05.2024. IpLex. URL: <https://iplex.com.ua/doc.php?regnum=119308560&red=1000035a5695f5f48997d63a32f3dc986c5c63&d=5> (date of access: 09.07.2025).
11. Resolution of the Economic Court of Cassation of the Supreme Court in case No. 910/4391/19 of 26.02.2020. Zakon Online. URL: <https://zakononline.com.ua/court-decisions/show/87929205> (date of access: 09.07.2025).