

Business & Contract Law



Week 5

PART 2: CONTRACTUAL LAW

G/Premises

28. Tenancy Contracts

29. Work Contracts

36 – Tenancy Contracts

36-1/ A *lease agreement* – tenancy agreement, is a contract whereby the *lessor* (i.e. land-person) is bound to hand over the use of an asset to the *lessee* (i.e. tenant) in return for a rent.

The lease agreement applies to both movable and immovable assets.

A lease agreement (namable contract) is not to be confused with a leasing agreement (unnamable contract) involving sales.

36 – Tenancy Contracts

36-2/ Note that

- Rents are protected (CO art 253)
- Conditional transactions are void – clash with the freedom to contract (CO art 19)
- Lease agreement apply for rents lasting more than 3 months (CO art 253)

36 – Tenancy Contracts

36-3/ A lease agreement may be concluded for ([CO, art 255](#)):

1. Determined duration – fixed term: when it expires, without express notice, at the end of the agreed period.
2. Undetermined duration: when the expiry is not specified but the contract is renewed on a periodic basis.

Unlike employment contracts where duration is important, the focus of lease agreements is on the mode of termination which is conditioned on the availability of the object

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36-4/ Obligations - highlights

The lessor :

1. Delivers the asset the date mutually agreed and in a condition suitable to be leased (i.e. fit for habitation)
2. Communicates the previous rent as well as the report on the condition of the asset upon expiration of the previous lease.
3. Informs the lessee about maintenance works.
4. Undertakes renovation works during the lease period by taking into account the interests of the lessee.

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The lessee :

1. Uses the asset with care.
2. Lets the lessor visit the property in the cases of maintenance and subsequent lease.
3. Respects the neighborhood.
4. Hands back the asset in a condition fit to be leased.
5. Undertake works with the consent of the lessor.
6. Pays the rent even if the asset is not used.
7. Subleases with the consent of the lessor and remains liable for its use.

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36-5/ On the other hand, the lessee has a number of rights:

- Protection against abusive rents (CO art 269 *et seq*).
- To challenge rents (CO art 270 *et seq*).
- To challenge terminations are that are made against principles of good faith (CO art 271 *et seq*).
- To request that the rent be extended if its termination may have dire effects (CO art 272 *et seq*).

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36-6/ Noteworthy aspects:

- Non payment of the rent amounts to a breach of contract leading to expulsion (CO art 257)
- Renting immovable objects entails the constitution of security (CO art 257)
- Subleasing is possible on condition that the owner consents and that the conditions are the same (CO art 262)
- Minimal termination notice periods are set by law (CO art 266)

37 – Work Contracts

37-1/ A contract for work is a contract whereby the contractor (*entrepreneur*) undertakes to carry out work and the principal/customer (*maître*) undertakes to pay him for that work (CO art 363).

Work contracts are not to be confused with employment contracts.

It is to be noted that if the CO starts with outlining a relationship, norm SIA 118 art 1 puts emphasis on the work that has to be realized.

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SIA 118 art 2 then states that “a work of construction executed for a third party against payment is the object of a contract. The one who commands the work is the customer (master); the one who executes them, the entrepreneur in the sense of CO art 363”

The norm is important: “the content of CO art. 363 to 379 apply to the contract, unless the parties agree to apply other rules either by the adoption of the norm SIA 118, or of quite other contractual arrangement”.

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37-2/ Obligations - highlights

The contractor:

1. Uses care when executing the work ([CO art 364](#)).
2. Performs the work personally (CO art 364).
3. Provides the tools necessary for the performance of the work, unless otherwise agreed (CO art 364).
4. Is responsible for third parties involved with the work.
5. Uses good quality materials ([CO art 365](#)).
6. Begins the work in due time ([CO art 366](#)).
7. Cannot deviate from the sum agreed ([CO art 373](#)).

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The customer

1. Examines the work in question as soon as finished; if not there is tacit approval ([CO art 370](#)).
2. Does not interfere with the performance of work otherwise the rights of liability for defects is forfeited ([CO art 369](#)).
3. Pays the contractor on the due date ([CO art 372](#)).
4. Pays the contractor in installments if this is agreed ([CO art 372](#)) or according to the value of work ([CO art 374](#)).

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37-3, 4/ Dealing with Defects

In principle the contractor is responsible for any defects - since he has to deliver work without defects (SIA 118 art 166), or deviations from the contract (CO art 366).

The contractor has to take remedial action in case of defects (CO art 368).

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However, following CO art 367, the customer must inspect the condition of work in the normal course of business and not only at the end.

Visible defects must be notified within 2 years of completion of the work (SIA 118 art 172) and 5 years for hidden defects (SIA 118 art 180, CO art 371).

37 – Work Contracts

37-5/ Termination

Termination occurs normally on completion of the work.

However, the contract may be terminated by withdrawal when the estimate agreed is exceeded or by halting the works and paying only what was executed ([CO art 375](#)).