

UNIDROIT 1980  
Study LIX - Doc. 11  
(Original: English)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP

ON THE

LEASING CONTRACT

REPORT OF THE UNITED STATES ADVISORY COMMITTEE:

REVIEW OF THE REVISED TEXT OF THE UNIFORM RULES

Rome, September 1980

A. In General

A more favorable environment for the transnational leasing of equipment will be created by establishing adjective rules for the professionals involved in these transactions; the draft rules are a significant step toward realization of this goal.

B. Particular Comments

Article 1

The committee recommended that a paragraph be added to permit a "Contracting State" to adhere to the rules with the reservation that the rules would only apply to international transactions. Such transactions would be defined as those between parties two of whom have places of business in different States. This recommendation is based upon the experience that the United States and several other countries do not customarily adhere to conventions that govern private law transactions without international aspects. The United States and some other federal countries are, in particular, restrained from entering into conventions of such scope because internal commercial law is ordinarily left to the constituent governments, e.g., states, provinces.

The committee further recommended that the characteristics delineated for the transactions subject to the rules either be transferred from Article 1 to the Preamble or be modified to create increased flexibility. This recommendation would allow application of the rules to many standard types of leasing transactions, e.g., where equipment was acquired by the financier (prior to the leasing agreement) as inventory held for sale or lease.

Due to the vast number of leasing transactions engaged in by entities in the United States where the same entity is both supplier and financier, many members of the committee questioned whether the scope of the rules could be expanded to cover bilateral as well as trilateral leasing transactions. Otherwise, it was noted, more sophisticated lessors might create a subsidiary as a "third party"; this result seemed somewhat artificial and a less than wholly satisfactory solution.

It was also noted that a financier might frequently assign its interest in the leasing agreement to a third party, either as a sale or as transfer of security for a loan. It seemed desirable that the resulting "assignee-financier" be included within the scope of the rules, unless the contract of assignment should provide otherwise.

The committee also recommended the possibility of a general provision that the parties could vary the rules by agreement, subject to specified exceptions. Thus, for example, the parties might choose applicable law or vary rights and liabilities among themselves, but could not vary the rights of third parties.

#### Article 4

The committee remained concerned with the case of a country where there was no procedure for giving public notice. Some further provision addressed to this situation seemed desirable, either to the effect that a notice system would be established or specifying the enforcement of title and rights of the parties in the absence of a notice procedure.

It was also noted that, with mobile property, it may be difficult to determine the "place where the property is to be used". The committee, therefore, recommended that a separate rule be specified for mobile property.

#### Article 6

The committee suggested separate articles on liability between the parties and liability to third parties, with the thought that this might make the drafting somewhat clearer and simpler.

The concept and phrasing of paragraph 1 (paragraph 2 of the Leaseurope draft) was discussed at some length, as this was thought a fundamental point concerning the nature of the leasing transaction. Under United States law, one might say that the lessor was not liable in respect of the duties which ordinarily flow from "ownership", having transferred "possession and control" to the lessor. The present variants, referring to "supply" or to "purchase" as the source of ordinary duties did not seem to reflect this point clearly from the U.S. perspective, although it might be clear from the perspective of other legal systems.

#### Articles 7-9

The committee noted that these Articles should be considered in view of recently concluded Convention on Contracts for the International Sale of Goods. It was also noted that Articles 7 and 9 in particular might be considerably simplified by leaving more to the agreement of the parties and to local law.