

## Conditions of Validity of the Lease Agreement and its Possibility in the Case of the Arrangement

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**Abstract:** At first glance, reading only the provisions of art. 1836-1850 Civil Code regarding agricultural lease contract, it can be concluded that, apart from a few special provisions about the derived object, the conclusion of an agricultural lease agreement would not involve specific issues in relation to the conditions of validity. But at a more careful assessment, including a corroboration of specific legal provisions of the agricultural lease contract with those set out in the matter of the lease, it appears that, at least on the capacity, scope, and form, there are specific legal requirements that circumstantiates the conditions of the analyzed contract in terms of validity. In the material presented, I shall try, after a brief overview of the concept and legal features of agricultural lease agreements, to identify key elements, specific and exceptional provisions of this contract in terms of its conditions of validity by exposing problems of interpretation that may arise about the issues mentioned. We will also analyze the conditions under which the rentable lease agreement concluded against the new owner works in the case of the alienation of the leased property.

**Keywords:** *agricultural lease contract; agreement; rent; lease agreement; conditions of validity; consent; object; form; rights; obligations; penalties; opposability.*

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## 1. Introduction

Pending the entry into force of the new Civil Code, the legal regime of the lease agreement was established by the general provisions of the old Civil Code which were supplemented by the special law in question, namely the lease Law No. 16/1994 [1].

With the entry into force of the new Civil Code, the law of Lease No. 16/1994 was repealed and the lease agreement was included in the regulation of the tenancy contract of the new Civil Code, as a private application of this agreement.

As the provisions established by the new Civil Code of the lease agreement do not contain a definition of this agreement, corroborating the legal provisions specific to the lease agreement with those laid down in the matter of the contract of tenancy, in my opinion, the contract of the lease can be defined as representing the contract whereby a party, called a renter, undertakes to provide the other party, called landholder, the use of an agricultural good for a certain period, in exchange for a price, called lease. Of course, confusion should be avoided between bilateral legal acts and bilateral contracts. The difference is essential because the distinction of unilateral and bilateral legal acts is based on the number of parties, while in the case of contracts, they are unilateral or bilateral (called by the Civil Code Synallagmatic) by reporting to the extent to which the contract gives rise to reciprocal and independent obligations. For details, see Boroi G. *Civil law. The general part. People*, Ed II. Bucharest: Ed. All Beck; 2002: 141 [6].

Knowing the conditions in which the lease contract is valid is essential, but in addition to this, we will also treat the hypothesis of the resolvability of the valid lease agreement concluded with the new owner in the case of the alienation of the leased property, such analysis being necessary having regard the frequency of such a situation in the immediate social reality.

## 2. Theoretical Background

In the doctrine [8] the conditions of validity of the contract were considered to be those conditions whose non-compliance draws the penalty of the invalidity of the contract, as opposed to the conditions of effectiveness which do not imply nullity, but other sanctions, such as for example unenforceability .

Also, depending on the aspect to which it relates, the conditions of the legal act may be classified under fund conditions, which concern the content of the legal act and the formal conditions which are related to the form of manifestation and outreach of the parties' will.

Like any contract, the lease agreement must comply with the general conditions of validity laid down in article 1179 C. Civ. relating to: the capacity of the parties, consent, object, cause and form.

The specialized literature [5], [10] deals with the issue of the lease contract but does not undertake a detailed examination of the conditions of validity of this contract, by sending only the considerations regarding the lease. Also, the question of the resolvability of the lease to the new acquirer in the case of the alienation of the leased property is not sufficiently analyzed, which needs to be clarified given its importance.

Therefore, in this paper we will try to bring some clarifications and additional clarifications regarding some conditions of validity of the lease contract and on the opposability of this contract in the case of the alienation of the leased property.

### **3. Argument of the paper**

Although the provisions of art. 1836-1850 C.civ., Which specifically refers to the lease, contain no provisions regarding the impossibility of the parties to conclude the contract under consideration, I consider that the incapacity created by the provisions of art. 1784 C.Civ. must be taken into account when considering the condition of capacity validity in the lease contract.

Regarding the resilience of the lease to the new owner in the case of the alienation of the leased property, we appreciate that the concrete situations arising in practice must be analyzed in nuance with respect to the assumptions provided by art. 1811 par. 1 lit. a and b C.civ. (the real estate hypothesis).

So, in my opinion, if the land leased is alienated, the lessee's right is opposed to the acquirer if the lease was recorded in the land book for land entered in the land book, but such a hypothesis is applicable only if the land was entered in the Land Book at when the lease was concluded and not in other cases where the land was entered in the land registry later. If the land was not entered in the Land Book, the landlord's right is opposed to the new owner if the date of registration of the lease in the special register of the local council is prior to the date of the alienation, so the provisions of Art. 1811 par. 1 lit. b C.civ.

## 4. Arguments to support the thesis

### 4.1. *The Main Legal Characteristics of the Lease Agreement*

The lease agreement has the following legal features:

- is a **contract for pecuniary interest** - the parts of this agreement also aim to procure their own advantage in exchange for the obligations assumed;
- is a **mutually binding contract** – the lease agreement is a bilateral contract, mutually since the obligations borne by this contract are reciprocal and interdependent;
- is a **successive performance contract** - in the sense that the fulfilment of the obligations laid down by contract does not occur *in actu*, but extends over time for a certain period of time determined by the parties at the conclusion of the contract
- is a **commutative contract** - whereas, since its conclusion, the existence of rights and obligations is certain, and their scope is determined or determinable date;
- is a **non-transferring contract of ownership** - since the leaseholder or lessor is always obliged to ensure only the use of a good for a certain period of time;
- is an **intuitu personae contract** - as it is concluded by the renter in consideration of specific qualities of the leaseholder;
- is a **solemn agreement** - in the sense that the mere manifestation of the will of the parties is not sufficient for the validity of the contract, but it is necessary to fulfil formal requirements, namely the contract must be concluded in written form, under absolute invalidity penalty, according to art. 1838 para. 1 C. Civ.

### 4.2. *Conditions of Validity of the Lease Agreement*

In the doctrine [1] the conditions of validity of the contract were considered to be those conditions whose non-compliance draws the penalty of the invalidity of the contract, as opposed to the conditions of effectiveness which do not imply nullity, but other sanctions, such as for example unenforceability.

Also, depending on the aspect to which it relates, the conditions of the legal act may be classified under *fund* conditions, which concern the content of the legal act and the formal conditions which are related to the form of manifestation and outreach of the parties' will.

Like any contract, the lease agreement must comply with the general conditions of validity laid down in article 1179 C. Civ. relating to: the capacity of the parties, consent, object, cause and form.

### ***Ability to conclude the lease contract***

As it has been retained [2], the capacity to contract is only part of the civil capacity, bringing together in its structure a part of the capacity to use the natural or legal person, as well as its capacity for exercise, general institutions onto which I shall not insist, but I shall only try to identify their special application in the matter of lease.

As with the other contracts, in the case of the lease agreement it must be left from the principle of capacity set out in the provisions of art. 28 and 29 C. Civ. According to which the capacity to conclude a lease agreement is assigned to any physical or legal person, unless the law expressly provides for a limitation to that effect.

The provisions of art. 1836-1850 C. Civ., which relates specifically to the lease, does not contain any provision relating to the establishment of incapacity of the parties at the conclusion of the contract considered, only that the legal provisions set out are not sufficient to draw a thorough conclusion on this issue.

Indeed, I believe that when it comes to the capacity of the parties to conclude the lease agreement, we must also take into account the relevant provisions in the matter of the contract of tenancy, as according to article 1778 para. 2 C. Civ.

The legal provisions relating to the contract of tenancy are appropriately applicable to leasing contracts if they are compatible with the particular rules laid down for that contract.

However, I have not been able to identify certain particular rules laid down in the matter of lease which would entail incompatibility in the case of the contract of leasing the general rules of the tenancy contract on capacity, but on the contrary, I consider that reason and the finality of the legal provisions established in the matter of capacity fully justifies the application of the same rules and the lease contract.

Thus, we can appreciate that the incapacity imposed by the provisions of art. 1784 C. Civ must be taken into account when examining the validity condition of the capacity in the case of the lease agreement.

### ***Incapacity regarding the landholder***

Under art. 1784 para. 1 reported in art. 1654 para. 1 C. Civ., there is a special inability to conclude lease contracts as landholder for certain

physical or legal persons that legislator has clearly and expressly provided for.

Thus, they are incapable of concluding lease contracts as landholder, directly or through interposed persons, even by public auction:

a) The trustees, for the agricultural goods they are responsible for renting;

b) Parents, guardian, curator, provisional administrator, for the agricultural goods of the persons they represent;

c) Civil servants, judges-trustee, insolvency practitioners, enforcers, and other such persons, who may influence the conditions of the lease made through them or which concern the goods they administer or which the administration supervises.

The penalties involved in the lack of capacity to conclude the above-mentioned leasing contract differ depending on the interest protected by the establishment of the legal regulation.

According to art. 1654 para. 2 C. Civ., in the cases referred to at points a) and b) the penalty for which the intervening is relative nullity, while in the case of point c) the penalty which intervenes is absolute nullity.

### ***Incapacity regarding the renter***

According to art. 1784 para. 1 reported in art. 1655 para. 1 C. Civ. However, there is also an inability to conclude the lease contract as a renter, so that they are unable to lease the persons referred to in article 1654 para. 1 C. Civ. With regard to its own goods but for a price consisting of a sum of money derived from the sale or exploitation of the property or property it administers or whose administration is supervised.

The same limitation shall apply accordingly to contracts in which, in return for a benefit promised by the persons referred to in article 1654 para. 1 the other party shall undertake to pay a sum of money.

Although the law no longer expressly provides for the penalty which intervenes in the event of failure to comply with these legal provisions, I consider that the distinctions previously held according to the interest protected by the establishment of the rule must also be applied in this case, intervening absolute nullity where civil servants, judges-trustee, insolvency practitioners, enforcers, and other such persons were those who had the quality of renters in such contracts, and the nullity relative will apply in other cases.

With regard to the capacity of exercise necessary to conclude the lease agreement, it should be noted that this agreement is regarded by the

legislator as, in principle, an act of administration so that it can also be concluded by persons who have not full exercise capacity.

Therefore, a lease contract may be concluded in so far as it has no injurious character, and to the minor with restricted capacity of exercise without the need for prior enforceability of legal provider [3]. However, the interpretation of the provisions of art. 1784 para. 3 C. Civ. it is apparent that not all lease contracts are considered as administrative acts but only those which are concluded on a period which cannot exceed 5 years. In those circumstances, if the lease contract is designed by the parties for a period of longer than 5 years, this contract becomes an act of provision, so that at the conclusion of this contract on its own behalf, each of the parties must have full exercise capacity.

### ***Consent to the conclusion of the lease agreement***

Consent has been defined as the manifestation of will for the purpose of concluding a contract [7] or exteriorization the decision to conclude a contract [2].

The condition of consent is an essential, substantive and valid condition of the lease agreement, and according to art. 1204 and the following. C. Civ. The consent, in turn, must fulfil certain conditions of validity, namely: to come from a person with discernment, to be expressed with the intention of producing legal effects and not to be affected by any vice of consent.

### ***Subject of the lease agreement***

As noted in the doctrine [4], the lease agreement has a double object: On the one hand, the good leased, and on the other hand, the price of the contract, called a lease.

### ***The leased goods***

The good rented consists of a certain category of goods specific to agricultural activity, such as: land with agricultural destination, land occupied with constructions and agricultural and zootechnical installations, fisheries and land improvement, technological roads, platforms and storage areas that serve the needs of agricultural production and non-productive land that can be arranged and used for agricultural production.

It should also be noted that not only the land with agricultural destination may be subject to the lease but also animals, constructions of any kind, tools, machinery and other such goods intended for agricultural exploitation.

What essentially customizes the lease agreement, as a specific application of the tenancy contract, is precisely the nature and destination of the goods subject to the contract, namely the agricultural commodity.

As with the other contracts, the subject-matter of the lease agreement must comply, in accordance with art. 1225 para. 2 and art. 1226 para. 2 C. Civ., the following conditions of validity: The object is determined or determinable, to be lawful, to exist, to be possible and to be in the civil circuit.

According to the same articles, the penalty which intervenes in the event of failure to fulfil the conditions of validity relating to the subject of the lease agreement is absolute nullity.

### ***The Lease***

The second facet of the leasing contract shall be represented by the price set by the parties in exchange for which the leaseholder yields to the use of the goods for a given period, which, in the case of the contract considered, will bear the specific name of rental.

According to art. 1780 para. 1 C. Civ. the lease may consist of a sum of money or in any other goods or benefits, provided that it is determined or determinable date, sincere and serious [3], the legal provisions concerning the fixing of the sale price being properly applicable and lease, according to art. 1780 para. 2 rap. to art. 1778 para. 2 C. Civ.

### ***Case of the lease contract***

As defined in art. 1235 C. Civ. As the reason for each party to conclude the contract, the cause of the lease agreement, according to the general rules, must exist, be lawful and moral.

In my view, the conclusion is that by the leaser of a new lease agreement after already concluded another lease agreement on the same good but with another landholder, does not automatically mean that the contract subsequently had an illicit cause.

Of course, at the same time, I cannot exclude the planning and such a solution, however, I believe that a number of issues should be taken into account before concluding such a result, as according to art. 1238 para. 2 C. Civ. The illicit cause draws absolute nullity only if it is the joint work of the parties, or otherwise, if the other party has known it or, by circumstances, it should have known it.

### ***Form of the lease contract***

In contrast to the contract of tenancy in the case of which the legislator has not provided for any condition of formality for the valid conclusion of the contract, the agreement of the parties on the goods and the rent is sufficient, art. 1838 para. 1 C. Civ. expressly and categorically provides for the necessity of concluding the lease contract in written form, under the sanction of absolute invalidity.

I emphasize that the requirements of validity of the lease agreement do not establish the obligation to conclude this contract in genuine form but, as validity, the lease agreement must be concluded only in written form.

However, although it is sufficient for the valid conclusion of the lease agreement, the mere written form of the contract does not automatically attract the enforceable title character, but art. 1845 C. Civ. Assign this character only to contracts concluded in genuine form and to those in the form of privately signed but registered at the local council.

### ***4.3. THE OPOSABILITY OF THE RENTER'S RIGHT TO THE LANDHOLDER IN THE CASE OF SELLING THE LAND***

Article 1811 paragraph 1 C.civ. appears to provide the solution to the lessee's right to oppose the lessee's right if the lessee alienates the leased land by providing that if the leased property is alienated, the lessee's right is against the acquirer as follows:

a) in the case of real estate registered in the land book, if the lease was recorded in the land book;

b) in the case of immovable property not inscribed in the Land Book, if the certain date of the lease is earlier than the actual date of the alienation;

At first glance, the legal provision mentioned can be considered as clear enough without a place of interpretation, but its application without taking into account the necessary nuances imposed by the particular situations can lead to disputable solutions.

We consider that, in application of Art. 1811 C.civ., It is necessary to distinguish between two hypotheses, depending on the existence of the land book for the land leased at the conclusion of the lease, as follows: 1. the land leased was recorded in the land book when the lease was concluded and 2. the land leased was not included in the Land Book when the lease was concluded.

If the land was entered in the Land Book at the time of conclusion of the lease, the things are quite clear in the sense that the lessee's right will be opposed to the new acquirer only if the lessee has been diligent enough

and has noted in the Land Book the existence of the lease agreement according to art. 902 par. 2 pt. 6 C.civ. However, in the second situation, if at the time of conclusion of the lease, the land leased was not entered in the land book, so there is no land book in which to write, but after the conclusion of the lease, without the lessee's knowledge, the lessee registered the land in the Land Book and alienated, we appreciate that the provisions of Art. 1811 par. 1 lit. and C. Civ. since the lessee could not record the existence of the lease for the mere fact that at the time of the lease, there was no land book for the land in which the lease was recorded.

## **5. Arguments to argue the thesis**

In practice, there were situations when at the time of the lease agreement the land had no open land so that the lessee could not record the existence of the lease contract but made the formalities of advertising the lease by signing the lease in the special register of the council local.

Subsequently, during the execution of the lease contract, the lessee owner, wanting to alienate the land and being constrained in the sense of Art. 36 of the Law no. 7/1996, without the lessee's knowledge, registered the land in the land book and later alienated it, the new owner invoking the ineligibility of the lease because of his lack of marking in the land book.

In such a case, the case-law [9] provided, in our opinion, a questionable solution, considering that "Although at the time of conclusion of the lease - March 2015 - the lessee fulfilled the conditions of publicity by signing the contract at the Local Council giving a certain date to the contract on a land not inscribed in the land book [ within the meaning of Art. 1811 lit. b) C. civ.], at the date of sale of the land (15.08.2015) the land had a land register opened and the opposability of the contract to the acquirers is analyzed by reference to the requirements regarding the buildings registered in the land register, namely those provided by art. 1811 lit. a) C. civ. The repudiation of the lease is analyzed in relation to the legal status of the building at the time of sale, after the distinctions in art. 1811 lit. a) and b) C.civ., since the acquirer also has the obligation to verify the status of the real estate acquired by consulting the open land book on the building. The lessee was obliged to follow the legal status of the real estate in respect of which a land book was opened during the lease and to require the lease to be recorded in the land book as a necessary and natural measure for the preservation of its rights derived from the lease".

Thus, the court notes that the existence or not of the land book must be reported at the time the sale is concluded and not at the moment of the conclusion of the lease.

## 6. Dismantling the arguments against

In my opinion, the interpretations of the case-law are not sufficiently convincing because if the existence of the land book was reported at the time of the land sale, then Art. 1811 par. 1 lit. b C.civ. would never apply because the effect of art. 36 of Law 7/1996 the pre-existence of the land registration is a condition of authentication of the sale-purchase contract. So, the provisions of art. 1811 par. 1 lit. b C.civ. regarding the situation in which the land is not included in the land register would never find application, a situation that we can not agree with the principle of *actus interpretandus est potius ut valeat quam ut pereat*.

On the other hand, the landlord's lack of diligence can not be imputed to the lease contract in the Land Book, as long as he can not exercise this right simply because at the time of the lease agreement there is no land book for the land in which the lease contract is to be recorded.

We consider it excessive to require the lessee to pursue permanently if the rented landlord has opened a land book for the leased land and immediately requesting the lease, especially since no legal provision provides for such an obligation on the lessee. So, in our opinion, in the context of art. 1811 paragraph 1 C.civ., The existence of the land book for the leased land can be reported only at the moment of the lease contract and not at the time of the alienation so that if at the moment of the lease agreement the land leased was not included in the land book , so there is no land book in which to make the mark, but after the conclusion of the lease, without the lessee's knowledge, the lessee registered the land in the land book and alienated it, we consider that the provisions of art. 1811 par. 1 lit. and C. Civ. but the provisions of art. 1811 par. 1 lit. b C. Civ.

## 7. Conclusions

In this study, I tried that after a brief presentation of the concept and legal character of the lease agreement, to identify the essential, specific and derogatory elements of this agreement in the light of its validity conditions.

At a closer analysis, including a corroboration of the legal provisions specific to the lease agreement with those laid down in the matter of the tenancy contract, it may be noted that, at least with regard to capacity, object

and form, there are legal requirements which take into account the circumstances of the contract being analyzed from the perspective of the conditions of validity.

Thus, I found that the conclusion of the lease agreement is conditional on the fulfilment of special requirements of the parties' capacity, established both in respect of the renter and the leaseholder whose non-compliance is penalized with absolute or relativenuility, depending on the express legal provisions or the interests protected by the establishment of the rules.

Also, on the subject of the lease agreement, I noticed that what essentially customizes the lease contract as a specific application of the tenancy contract is precisely the nature and destination of the goods which are subject to the contract.

At the same time, the second facet of the object of the contract, the lease, must be determined in compliance with the requirements laid down by law for pricing in the contract of sale, so the lease, in any form is agreed, must be determined or determinable date, sincere and serious.

As regards the lease contract, the legislator has imposed the written form as a condition of validity of the contract.

Regarding the manner in which the lessee's right to oppose the new owner of the estranged land and the manner of interpretation of art. 1811 C.civ., We have found that some distinctions have to be made depending on the existence or not of the land book at the moment of the lease contract and we conclude that this is the moment when the land book is to be analyzed or not. Finally, we appreciated that if at the time of conclusion of the lease the land leased was not inscribed in the land book, so there is no land book in which to make the mark, but after the conclusion of the lease, without the lessee's knowledge, the lessee registered land in the Land Book and alienated, we appreciate that the provisions of Art. 1811 par. 1 lit. a C. Civ. but the provisions of art. 1811 par. 1 lit. b C. Civ.

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