

# Legal Problems Of Liability Under The Civil And Commercial Code: Case Study Subleasing Of Land Of Thai Temples Which Have Been Visungcamasima In Kingdom Of Thailand

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## *Abstract*

The purposes of this research were 1) to study the concepts and theories. Civil Procedure, and Civil and Commercial Law leasing and sublease of temples in Thailand that is a juristic person who has been granted Visungcamasima in bringing the land of temples in Thailand to sublet, what are the legal effects?, 2) to study the problem of the practice of using the land of the temple that is a juristic person who has been enlightened in the use of the temple's land in Thailand to be sub-leased as legally voidable, 3) to study the civil and commercial law on the lease and sublease of Thailand and foreign laws in order to analyze and compare with the Thai law regarding the sublease of the land of temples in Thailand that has been sought, and 4) to analyze the legal problems and suggested the solutions that relate with the lease and sublease of the temple's land in the Kingdom of Thailand. This research was qualitative research. The researcher used the information obtained from the study and gathered from the above documents to analyze the suitability of the land of temples in Thailand for renting or subletting. Results of the research showed that the temple is a juristic person according to the Sangha Act, B.E. 2505, as amended. By the Sangha Act (No. 2) B.E. 2535, the temple must comply with the law, ministerial regulations, resolutions of the Supreme Sangha Council; order of the Sangha Council when the

temple wishes to take out the land for rent or sublet. It is necessary to comply with the relevant laws. 1. The Civil and Commercial Code of Property Lease. If there is no written evidence of any kind signed by the party liable, it is important that you cannot prosecute the case. 2. Ministry Regulations on Preservation and Management of Religious Properties of the Temple, B.E.2564, Lease of a temple set aside for the purpose of arranging benefits, the monastic ground, the Kalpana, or the building for the abbot of the temple to arrange for the Vaiyavachakorn or monk's lay attendant; temple affairs manager; the utilitarian of the temple appointed by the abbot make a registration of the assets that provide the benefits of registration. 3. Resolution of the Sangha Supreme Council of Thailand. Council No. 15/2521 dated May 30, 1978 concerning renting at temples or at the monasteries to build commercial buildings. Any temple has a tenant request at the temple or at the soil of the monks to build a commercial building or any other building for use in the pursuit of benefits, the abbot of the temple shall submit a plan, plan for the construction of the budget including land rent, building, land lease agreement through the approval of the clergy of the Sangha, respectively Draft a construction contract to the National Buddhism Office to propose to the committee considers it first. 4. For recommendations, those involved must follow the guidelines strictly according to the law. Any amendment to that law or regulation must find out how it applies to current law enforcement. 1. Should amend the provisions of the Civil and Commercial Code, Section 545 to make it clear that the sub-lessee is directly liable to the original tenant for both the sublease and the damage caused to the sublease property. 2. In any case, there are people who ask for rent at the temple or at the monastic ground to build a commercial building or any other building for use in exploitation to propose to the Religious Property Budget Review Committee to consider the budget of the central religious treasures for consideration first, by the Religious Property Budget Review Committee to consider the budget of the central religious properties regularly. 3. Those involved must strictly comply with the law, rules and orders. In the case of a new lease hire of successor or transfer of the right to lease, sublease, Religious Property Budget Review Committee must inspect the parties at the end of every calendar year whether the leased property has the tenant brought it to another person

to sublease without permission?, and where there are benefits such as from renting out commercial stalls for no more than three years in general. which the measure can be done by temple affairs manager. 4. All suggestions that proposed by the researcher shall be taken to correct the legal issues of the civil law and liability that in the case of lands sublease of Thai Temple which had been granted Visungcamasima in the Kingdom of Thailand.

Keywords: Legal Problems of Liability, Civil and Commercial Code, Subleasing of Land, Thai Temples, Visungcamasima

## 1. INTRODUCTION

The lessee making a lease of any property is so that the tenant can use the property. A lease is a type of contract. In which there will be 2 parties such persons involved in agreeing to enter into a lease agreement for any property. renting the property is a contract in which a person called the lessor OK for another person It is called that the tenant has used or received benefits in either property for a limited period of time and the tenant agrees to pay rent for that [1] renting that property. Unless there is any written evidence signed by the liable party, he cannot bring a lawsuit to enforce the case. If the lease is for more than three years or determine the lifetime of the tenant or lessor know. If not made in writing and registered with the competent official, he said that the lease can be sued for execution, but only three years. [2] The property that was leased. The lessee shall sublet or transfer his or her rights in the property, whether in whole or in part, to third parties. He said he couldn't find it unless agreed otherwise. [3] Sublease is the tenant taking the property he leased from the lessor to others. [4] The transfer of leasehold means that the tenant has assigned the rights that they have in order to continue to use or receive benefits under the lease agreement to a third party. [5] Leasehold assignee which became the new tenant when the leasehold assignee has not yet taken possession of the leased property Will not be able to sue to evict other people who already occupy the leased property, [6] legal problems in liability under the Civil and Commercial Code; A study of the case of sublease of land of Thai temples granted Visungcamasima in Thailand.

The Sangha Act, 1962, amended by statute the Sangha (No. 2), 1992, Section 31, stipulates that there are 2 types of

temples: (1) temples that have been bestowed with Visungcamsima (2) monasteries. Let the abbot be a representative of that temple as well. The temple is a juristic person under the Sangha Act, B.E. 2505, amended. According to the Sangha Act (No. 2), 1992, it must comply with the law, ministerial regulations, resolutions of the Sangha Supreme Council, orders, announcements of the Sangha Supreme Council. When the temple wishes to rent out the land belonging to the temple, it must comply with the relevant laws.

1. Ministerial Regulations for the Preservation and Management of Temple Treasures B.E. 2564.

Article 2 in this Ministerial Regulation, "Construction" means a house, building or other structure that a person may live in or use or used as a warehouse used for industrial, commercial or service purposes, as well as all properties that are an integral part of or attached to the land as a pavement or as an integral part of that land.

Article 3 Acquisition of property as religious property of the temple register that property as evidence and when disposing of that property for any reason to be sold out of the register by specifying the reason for the sale as well.

Acquisition of land or land-related rights once the legal acquisition has been registered, temples in Bangkok shall submit evidence of acquisition to the National Buddhism Office, while temples in other provinces shall be sent to the Provincial Buddhism Office. Temple land reserved for utilization can only be made with the approval of the National Office of Buddhism and has been approved by the Sangha Council.

Article 5 The rental of the temple that is set aside for the utilization of the temple, the monastery, the Kalpana (temple property), or the building shall be arranged by the abbot of the temple for Vaiyavachakorn or the utilitarian of the temple appointed by the abbot, register useful assets. The tenant or resident registration must be correct and the temple shall keep the registration and the lease agreement as evidence or deposit it with the National Office of Buddhism for temples in Bangkok or the Provincial Office of Buddhism for temples in the province, any other.

Renting under the first paragraph; If the period is more than three years can be done only when the National Office of Buddhism approves and approved by the Sangha Association.

Article 11 The utilization of the temple's religious treasures that have not been completed before the date this

Ministerial Regulation comes into force continue to proceed in accordance with the Ministerial Regulations No. 2 (BE 2511) issued under the Sangha Act B.E. 2505 until the process is completed.

2. Resolution of the Sangha Sangha Council No. 15/1978 dated 30 May 1978 concerning the rental of the temple or the monastery for the construction of commercial buildings for use in the pursuit of benefits. The abbot of that temple shall submit a plan of the construction plan of the budget for the benefits that the temple will receive, including the temple's upkeep and the rent of land, buildings, letter of consent to rent land through the approval of the monastic lords respectively, draft a construction contract to the National Office of Buddhism to propose to the Board 2.2; The committee shall consider it first and the CCA shall complete the consideration within 30 days from the date the National Office of Buddhism receives the matter and promptly notify the temple of the result. The CCP has considered and approved.

The temple is a legal entity. Therefore, any action must be performed by an authorized person according to the Sangha Act, 1962, amended by statute. The Sangha (No. 2), 1992, Section 31, the abbot of the temple shall be the representative of the temple in general affairs and the Ministerial Regulations for the Preservation and Management of the Temple's Treasures, B.E.2564, Abbot appointed register useful assets. The tenant or resident registration must be correct and the temple shall keep the registration and the lease agreement as evidence or deposit it with the National Office of Buddhism for temples in Bangkok or the Provincial Office of Buddhism for temples in the province, any other renting under the first paragraph. If the period is more than three years can be done only when the National Office of Buddhism approves or approved by the Sangha Association.

Problems that occur regularly include: 1. The temple lessor, tenant, sub-lessee shall enter into a contract of not more than three years in order to avoid seeking approval from the National Buddhism Office and obtaining approval from the Sangha Association; going out to sublet with the sub-lessee without notice or consent from the temple, the lessor causes the temple to lose benefits from sub-leasing the property. Therefore, it is an issue for researchers to study which will benefit the Sangha society and Thai society in the future.

## **2. RESEARCH OBJECTIVES**

The purposes of this research study were as follows:

1. To study the concepts and theories. Civil Procedure and Civil and Commercial Law leasing and sublease of temples in Thailand that is a juristic person who has been granted Visungcamasima in bringing the land of temples in Thailand to sublet, what are the legal effects?

2. To study the problem of the practice of using the land of the temple that is a juristic person who has been enlightened in the use of the temple's land in Thailand to be sub-leased as legally voidable.

3. To study the civil and commercial law on the lease and sublease of Thailand and foreign laws in order to analyze and compare with the Thai law regarding the sublease of the land of temples in Thailand that has been sought.

4. To analyze the legal problems and suggested the solutions that relate with the lease and sublease of the temple's land in the Kingdom of Thailand.

### **3. DEFINITION OF THE TERM USED IN THE RESEARCH**

1. A juristic act is any act done in accordance with the law or action that causes legal movement. There may be both unilateral juristic acts such as wills or bilateral juristic acts. such as a contract. [7]

2. Lease juristic act is a contract in which a person called the lessor OK for another person It is called that the lessee has used or received benefit in either property for a limited period of time. and the lessee agrees to pay rent for that purpose. [8]

3. Sublease act is the tenant taking the property he leased from the lessor to others, it can be all or part of the lease. [9]

4. Voidable acts are juristic acts that the law considers valid as long as it has not been cleared. [10]

5. Leasehold right transfer is the tenant who has transferred the right to be a tenant to a third party for third parties to use or benefit from the leased property. [11]

6. A monastery (Samnaksong) is a temple that has not been bestowed with Visungcamasima. [12]

### **4. RESEARCH METHOD**

This research is qualitative research. The researcher used the information obtained from the study and gathered from the above documents to analyze the suitability of the land of

temples in Thailand for renting or subletting. This research is qualitative research by researching documents by studying data from academic textbooks civil and commercial law About renting, sublease, as well as information from all academic research, from textbooks, from Google computers, from theses. Including as well as Supreme Court judgments law about The Sangha Act, 1962, amended (2<sup>nd</sup> edition), 1992, and various documents were analyzed in-depth is a descriptive form by analyzing the laws relating to lease and sublease, especially in case of legal problems in liability under the Civil and Commercial Code: A study of only the case of sublease of land of Thai temples granted Visungcamasima in the Kingdom of Thailand. This makes us aware of the problems in both the leasing and subleasing provisions, which found that at present there is an advantage in the sublease of the temple caused by the flaws of the provisions of the law, which the researcher has used to solve, provisions of the law including analyzing practical and legal problems, problems can be found for solutions and suggestions with efficiency and efficiency regarding legal problems in liability under the Civil and Commercial Code: A study of only the case of sublease of land of Thai temples granted Visungcamasima in the Kingdom of Thailand.

## **5. RESEARCH RESULTS**

This research conducted on Legal Problems of Liability under the Civil and Commercial Code Case Study Subleasing of Land of Thai Temples which have been Visungcamasima in Kingdom of Thailand. Results were shown as follows:

1. The temple is a juristic person according to the Sangha Act, B.E. 2505, as amended by the Sangha Act (No. 2) B.E. 2535, the temple must comply with the law, ministerial regulations, resolutions of the Supreme Sangha Council, Order of the Sangha Council when the temple wishes to take out the land for rent or sublet It is necessary to comply with the relevant laws. 1. The Civil and Commercial Code of Property Lease. If there is no written evidence of any kind signed by the party liable, it is important that you cannot prosecute the case. If the lease is for a period of more than three years or specified throughout the life of the tenant or the lessor. If not made in writing and registered with the competent official, he said that the lease will be prosecuted for execution for only three years.

The leased property, the lessee will sublease or transfer his or her rights in the property, whether in whole or in part, to a third party. He said that he might not be able to do it, unless otherwise agreed.

2. Ministry Regulations on Preservation and Management of Religious Properties of the Temple, B.E. 2564. Lease of a temple set aside for the purpose of arranging benefits, the monastic ground, the Kalpana, or the building for the abbot of the temple to arrange for the Vaiyavachakorn or the utilitarian of the temple appointed by the abbot, make a registration of the assets that provide the benefits of registration. The tenant or the resident shall be valid and the temple shall keep the registration and the lease agreement as evidence or deposit it with the National Buddhism Office for temples in Bangkok or the Provincial Buddhism Office for temples in the province renting if the term is more than three years. This can be done only when the National Buddhism Office is approved or was approved by the Sangha Supreme Council of Thailand. The utilization of the religious property of the temple which has not been completed before the date this Ministerial Regulation comes into force to proceed in accordance with the Ministerial Regulation No. 2 (B.E. 2511) issued under the Sangha Act, B.E. 2505 until the completion of the process.

3. Resolution of the Sangha Supreme Council of Thailand. Council No. 15/2521 dated May 30, 1978 concerning renting at temples or at the monasteries to build commercial buildings. Any temple has a tenant request at the temple or at the soil of the monks to build a commercial building. or any other building for use in the pursuit of benefits, the abbot of the temple shall submit a plan, plan for the construction of the budget. including land rent, building, land lease agreement through the approval of the clergy of the Sangha, respectively draft a construction contract to the National Buddhism Office to propose to the committee considers it first. The temple can only enter into a lease agreement when the committee has considered and approved. Comparing the sublease with the United States, it is found that the tenant's right to sublease the leased property, part of Germany must obtain consent from the landlord first but tenants can demand their consent. Land lease of temples in Thailand must be done in accordance with civil and commercial laws, ministerial Regulations on

Preservation and Management of Religious Properties of Temples, B.E. 2554 which must comply with the rules correctly.

4. For recommendations, those involved must follow the guidelines strictly according to the law. Any amendment to that law or regulation must find out how it applies to current law enforcement. 1. Should amend the provisions of the Civil and Commercial Code, Section 545 to make it clear that the sub-lessee is directly liable to the original tenant for both the sublease and the damage caused to the sublease property. 2. In any case, there are people who ask for rent at the temple or at the monastic ground. to build a commercial building or any other building for use in exploitation To propose to the Religious Property Budget Review Committee to consider the budget of the central religious treasures for consideration first, by the Religious Property Budget Review Committee to consider the budget of the central religious properties regularly The consideration must be completed within 30 days from the date the Department of Religious Affairs receives the matter and promptly notifies the temple of the result of the consideration. It was deemed appropriate to allow the temple to appeal the results of Religious Property Budget Review Committee. In the case of Religious Property Budget Review Committee consider and disagree. 3. Those involved must strictly comply with the law, rules and orders. In the case of a new lease hire of successor or transfer of the right to lease, sublease, Religious Property Budget Review Committee must inspect the parties at the end of every calendar year whether the leased property has the tenant brought it to another person to sublease without permission, isn't it? and where there are benefits such as from renting out commercial stalls for no more than three years in general which the measure can be done by temple affairs manager. No need to go through National Office of Buddhism to approve and receive approval from the Sangha Supreme Council of Thailand should the administrative department from the district sheriff upwards or the person assigned by the sheriff together with the police officers from the police station superintendent upwards or the person who supervising the police station in the area assigns to inspect and allow the rental accordingly. Lease agreements are made by temple affairs manager to ensure transparency and fairness with temples and contract parties. 4. All suggestions that proposed by the researcher shall be taken to correct the legal issues of the Civil law and liability that in the case of land

's sublease of Thai Temple which had been granted Visungcamasima in the Kingdom of Thailand.

## 6. RECOMMENDATIONS

From the study of information in accordance with the Civil and Commercial Code, the Sangha Act, B.E. 2505 (1962) Amendment (2<sup>nd</sup> edition) B.E.; Regulations or orders of the National Office of Buddhism, the researcher has suggestions to improve the following laws or regulations.

1. The Civil and Commercial Code, Section 545, states that "If the lessee legally sublets the property he has leased to others. He said the sublessee would be liable to the original lessor directly. In such a case, if the sub-lessee will be able to pay the rent to the lessee first. He said that the sub-lessee could not raise it as a defense against the lessor." The provision under this section, the researcher found that it did not clearly specify the liability of the sub-lessee and the lessor. For example, in the event that the leased property is damaged in whole or in part, or in the case of sublease only part of it but the damage, happens with all the leased properties. How should the sub-lessee or lessee be liable? For example sublease a plot of land or only part of it for residential purposes, and the sub-lessee takes the land to build a factory or bury the body in the sub-lease land. In such a case, how will the sub-lessee be liable to the lessor?

The researcher is of the opinion that the provisions of this section should be amended to make it clear that the sub-lessee is directly liable to the lessor both sub-leasing and damages caused to the sub-leased property, therefore it should be amended. Civil and Commercial Code, Section 545 is as follows: "If the lessee legally sublets the property, he has leased to others. The sublessee shall be liable directly to the former lessor in the event that the sublessee misuses the leased property for purposes specified in the original contract or is caused by the sublessee's negligence. In such a case, the lessor may cancel the lease and claim for damages incurred as a result unless the sublessee can prove that the damage is caused by force majeure or caused by the fault of the lessor."

2. According to the order of the National Office of Buddhism No. 355/2556 dated April 4, 2013 (1) any temple where there is an applicant for rent at the temple or at the monastery to build commercial buildings or any other buildings for use in exploitation to the abbot of that temple Submit a construction plan, estimating the benefits to be measured.

Both money for temple maintenance including rental of land, buildings, draft construction contracts to the Department of Religious Affairs to present to the board (2) Have the NESDB committee complete its consideration within 30 days from the date the Religious Affairs Department receives the matter and promptly notify the temple of the result of its consideration. (3) The temple will make a contract rentable When the NESDB committee has considered and approved.

The researcher saw that Resolution of the Sangha Council No. 14/2521 dated May 30, 1978, there was a flaw in the case of the committee CCP considered and did not approve. The researcher agrees to allow the temple to submit an appeal to the National Office of Buddhism to balance the power of the Board of Directors by amending the order allowing an appeal in the case of the committee CCP considered and did not approve.

3. According to the Ministerial Regulations, Maintenance and Management of the Temple's Religious Properties, B.E.2564. The abbot shall arrange for Vaiyavachakorn or the benefit manager of the temple appointed by the abbot to register the property for utilization, tenant or occupant registration correctly and the temple shall keep the registration and the lease agreement as evidence or deposit it with the National Buddhism Office for temples in Bangkok or the Provincial Buddhism Office for temples in other provinces renting under the first paragraph If there is a time limit of more than three years, it can only be done with the approval of the National Office of Buddhism and approved by the Sangha Association.

The researcher saw that the measure has benefits such as from renting commercial stalls for less than three years, generally collecting daily-weekly rent which can be measured by the virtue of the temple. Readers don't have to go through the National Buddhism Office to approve and get approval from the Sangha Council. There is a gap for fraud to occur by virtue with tenants or lessees with sub-tenants. The researcher agrees to amend the Ministerial Regulations for the Preservation and Management of Religious Properties of the Temple, B.E.2564 which the sheriff assigns together with the police officers from the superintendent of the police station in the area or the person assigned by the superintendent of the police station in the area to inspect and allow the lease to be made according to the lease agreement done by Vaiyavachakorn for transparency and being Dhamma with

temples and contract parties and the researchers saw. The tenant should be inspected at the end of every year to see if the leased property is sublet or not.

## **7. CONCLUSION**

Legal Problems of Liability under the Civil and Commercial Code: Case Study Subleasing of Land of Thai Temples which have been Visungcamasima in Kingdom of Thailand was studied. Results of the research showed that the temple is a juristic person according to the Sangha Act, B.E. 2505, as amended. By the Sangha Act (No. 2) B.E. 2535, the temple must comply with the law, ministerial regulations, resolutions of the Supreme Sangha Council; order of the Sangha Council when the temple wishes to take out the land for rent or sublet. It is necessary to comply with the relevant laws. 1. The Civil and Commercial Code of Property Lease. If there is no written evidence of any kind signed by the party liable, it is important that you cannot prosecute the case. If the lease is for a period of more than three years or specified throughout the life of the tenant or the lessor If not made in writing and registered with the competent official, He said that the lease will be prosecuted for execution for only three years. The leased property the lessee will sublease or transfer his or her rights in the property, whether in whole or in part, to a third party. He said that he might not be able to do it unless otherwise agreed. 2. Ministry Regulations on Preservation and Management of Religious Properties of the Temple, B.E.2564, Lease of a temple set aside for the purpose of arranging benefits, the monastic ground, the Kalpana, or the building for the abbot of the temple to arrange for the Vaiyavachakorn or monk's lay attendant; temple affairs manager; the utilitarian of the temple appointed by the abbot make a registration of the assets that provide the benefits of registration. The tenant or the resident shall be valid and the temple shall keep the registration and the lease agreement as evidence or deposit it with the National Buddhism Office for temples in Bangkok or the Provincial Buddhism Office for temples in the province. Renting if the term is more than three years. This can be done only when the National Buddhism Office approves and was approved by the Sangha Supreme Council of Thailand. The utilization of the religious property of the temple which has not been completed before the date this Ministerial Regulation comes into force to proceed in accordance with the Ministerial Regulation No. 2 (B.E. 2511) issued under the Sangha Act, B.E. 2505 until the completion of the process. 3. Resolution of the

Sangha Supreme Council of Thailand. Council No. 15/2521 dated May 30, 1978 concerning renting at temples or at the monasteries to build commercial buildings. Any temple has a tenant request at the temple or at the soil of the monks to build a commercial building. or any other building for use in the pursuit of benefits, the abbot of the temple shall submit a plan, plan for the construction of the budget including land rent, building, land lease agreement through the approval of the clergy of the Sangha, respectively Draft a construction contract to the National Buddhism Office to propose to the committee considers it first. The temple can only enter into a lease agreement when the committee has considered and approved. Comparing the sublease with the United States, it is found that the tenant's right to sublease the leased property; part of Germany must obtain consent from the landlord first. However, tenants can demand their consent. Land lease of temples in Thailand must be done in accordance with civil and commercial laws. Ministerial Regulations on Preservation and Management of Religious Properties of Temples, B.E. 2554 which must comply with the rules correctly. 4. For recommendations, those involved must follow the guidelines strictly according to the law. Any amendment to that law or regulation must find out how it applies to current law enforcement. 1. Should amend the provisions of the Civil and Commercial Code, Section 545 to make it clear that the sublessee is directly liable to the original tenant for both the sublease and the damage caused to the sublease property. 2. In any case There are people who ask for rent at the temple or at the monastic ground to build a commercial building or any other building for use in exploitation to propose to the Religious Property Budget Review Committee to consider the budget of the central religious treasures for consideration first, by the Religious Property Budget Review Committee to consider the budget of the central religious properties regularly. The consideration must be completed within 30 days from the date the Department of Religious Affairs receives the matter and promptly notifies the temple of the result of the consideration. It was deemed appropriate to allow the temple to appeal the results of Religious Property Budget Review Committee. In the case of Religious Property Budget Review Committee consider and disagree. 3. Those involved must strictly comply with the law, rules and orders. In the case of a new lease hire of successor or transfer of the right to lease, sublease, Religious Property Budget Review Committee must

inspect the parties at the end of every calendar year whether the leased property has the tenant brought it to another person to sublease without permission?, and where there are benefits such as from renting out commercial stalls for no more than three years in general which the measure can be done by temple affairs manager. No need to go through National Office of Buddhism to approve and receive approval from the Sangha Supreme Council of Thailand should the administrative department from the district sheriff upwards or the person assigned by the sheriff together with the police officers from the police station superintendent upwards or the person who supervising the police station in the area assigns to inspect and allow the rental accordingly, lease agreements made by temple affairs manager to ensure transparency and fairness with temples and contract parties. 4. All suggestions that proposed by the researcher shall be taken to correct the legal issues of the civil law and liability that in the case of land 's sublease of Thai Temple which had been granted Visungcamasima in the Kingdom of Thailand.

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