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SUMMARY OF THE DOCTORAL DISSERTATION

*"The legal status of the finance party as a party to the leasing agreement
according to the Civil Code"*

prepared under the direction of

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The prepared doctoral dissertation is devoted to the issues of legal status of the finance party as a party to the leasing agreement according to the Civil Code. Despite the 18 years of validity of Title XVII¹ (Articles 709¹-709¹⁸) of the Civil Code¹, the lease agreement has not been formed as a full civil law monograph yet.

The analysis of the finance party's status as an entrepreneur (lessor), as well as its obligations and rights, the counterparts (correlates) of which are the defined rights and obligations of the beneficiary (lessee), turned out to be an interesting research task. In order to fully describe the position of the finance party, the analysis of the rules of its contractual liability² was required. The legal status of the finance party as a professional entity is unusual and therefore extremely interesting. Its legal situation is complicated, in many cases unclear and open to debate. The reason for choosing the subject matter was also the common practical use of the leasing agreement.

The purpose of this doctoral dissertation was to present which of the rights, obligations and principles of contractual liability of the finance party constitute a fundamental, unchanging element of its legal position, and which of them can be excluded or formed differently. In the case of rights, obligations and rules of liability that may be subject to change, the issue addressed in the work is the determination of limits of permissible modifications, covered by the content of the freedom of contract rule (Article 353¹ of the

¹ Act of 23 April 1964 - Civil Code (consolidated text: Journal of Laws of 2017, item 459, as amended). Title XVIII was added by the Act of July 26, 2000 amending the Civil Code (Journal of Laws No. 74, item 857).

² The lack of reference to the tortious liability (Article 415 and the ECC) results from the fact that in this regime compensation for damage is the main provision of the debtor. Before the damage is done, there is no obligation between the creditor and the debtor, the violation of which would result in compensation debt. Only the damage is the source of the obligation. This means that the liability for damages between specific entities arises outside the existing legal leasing relationship.

Civil Code). **Based on that, it is possible to specify the fundamental ways of forming the statutory position of the finance party, namely its legal status as a model and its acceptable modified versions (varieties), which can be described as a "contractual" status.** Regulations contained in Title XVII¹ of the Civil Code form the basis for the parties accepting the statutory status of the finance party set by imperative, semi-imperative and dispositive legal norms. Within the limits of the freedom of contract, the parties may modify the provisions that create the statutory legal position of the finance party through their different shaping, supplementation or rejection. **The status of the finance party is therefore dynamic and of heterogeneous nature. It may take the form of a statutory status when the leasing agreement does not provide for any changes in its form resulting from the act. It may also undergo conventional modifications resulting in its strengthening or weakening compared to the statutory model. It is also possible to shape it by stipulating the clauses in the contract that introduce additional rights and obligations of the finance party.** An important modification is the forming of legal situation of the finance party in the leasing agreement with the transfer of ownership or perpetual usufruct to the benefit party. The status of the finance party constructed in this way can be called **contractual with the option of transferring the ownership.** The basis for qualification is the provision in the leasing agreement which provides the transfer of ownership or perpetual usufruct to the benefit party. Other modifications of the statutory status of the finance party analyzed in the dissertation, as well as its diversification may also be reflected in the identification of further types (variations) of the leasing agreement.

The dissertation is divided into four chapters. Each chapter contains paragraphs and subparagraphs, due to the multiplicity of topics discussed. All subparagraphs are marked with upper-case letters. In order to summarize the considerations, each chapter consists of conclusions that have been formulated at the end of the chapter. The culmination of the work is the content of the final part of the dissertation.

The first chapter presents the status of the finance party in the context of what constitutes the essence of the leasing agreement. It refers to its legal situation resulting from the definition of a leasing agreement. Subsequently, the objectives and the resulting functions of the leasing agreement are analyzed, as well as the way they have a determining influence on accepting the statutory or contractual legal position of the finance party. Next, the analysis of the finance party status is performed, corresponding to the legal character of the leasing agreement. The party's legal situation with reference to the structure of the leasing relationship is also discussed. The issue of the impact of benefiting party's status on the legal

position of finance party is also addressed. The finance party's relationship with chosen entities referring to the leasing agreement such as a seller, an insurer, a lender, a guarantor, has been subject to analysis as well. Next, the impact of the leasing agreement's subject on the finance party's status is addressed.

The second and the third chapter refer to the impact of shaping the content of legal relationship of leasing on the legal position of the finance party. The second chapter discusses the problems concerning the finance party's obligations that determine its status. The third chapter presents the issue of the rights of the finance party that define its status.

The fourth chapter presents the problem of legal status of the finance party resulting from its liability due to non-performance or improper performance of the leasing agreement. A concise presentation of the issue of shaping the finance party's contractual liability has been laid out, that results from general principles (Article 471 et seq. of the Civil Code). Subsequently, the statutory modifications of the rules have been analyzed which, within a specific scope, complement or otherwise shape its contractual liability in comparison to the general rules. Then the analysis of contractual modifications of principles has been presented, regarding the finance party's responsibilities for violating its duties. The subsequent research task was to investigate the influence of modifications of the statutory obligations and rights of the finance party on the extent of its contractual liability. The issue of finance party's liability rules for defects in the leased asset is also discussed in the work, as well as which of the rules complement the general principles of its contractual liability. The reference has been made to forming the liability under the statutory warranty (Article 709⁴ § 2, Article 709⁸ § 1 of the Civil Code and Article 664 in conjunction with Article 709¹⁷ of the Civil Code), and then the specific rules for liability for material defects in consumer leasing and leasing of premises are presented.

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