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Lease of Immovable Property: Essentials of Lease; How Lease Made; Determination of Lease

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Abstract

The concept of a lease and its essentials. A lease refers to the transfer of the right to use real estate for a specific period in exchange for payment. The abstract explains that a lease involves the transfer of an interest in immovable property from a lessor (owner) to a lessee (tenant) through a legally binding agreement. The transfer of an interest, competent parties (lessor and lessee), a defined object (immovable property), the length or scope of the lease, and consideration (money) are all necessary components of a lease. The abstract also highlights the differences between leasing and renting, the requirements for making a lease, and the rights and liabilities of both the lessor and the lessee. Additionally, it explains the various methods through which a lease can be terminated or determined. A key component of a lease is the transfer of property interest. It denotes that during the lease term, the lessor permits the lessee to own and use the property. This transfer of interest distinguishes a lease from other forms of agreements or licenses. The lessor must have a valid interest in the property and the legal capacity to grant the lease, while the lessee must be capable of entering into a contract. The duration or determination of the lease can be defined by the terms of the agreement, local laws, or customary practices. It is essential to have a definite duration specified in the lease to avoid uncertainty or confusion regarding the period of occupancy. In some cases, leases may include provisions for renewal or extension if both parties agree. Consideration, typically in the form of money, is another essential element of a lease. The lessee pays rent to the lessor as a consideration for the use of the property. The consideration can also include other forms of payment or benefits, such as a share in crops produced on the leased land, services rendered by the lessee, or valuable items provided in exchange. One key distinction between leasing and renting is the duration involved. Rental agreements usually cover shorter periods, such as weeks or months, while leases are intended for longer-term arrangements. Additionally, the responsibilities for repairs and maintenance may vary between leases and rentals, with the lessee often bearing those costs in a finance lease and the lessor in an operating lease. To create a valid lease, it is generally required to have a registered instrument, such as a written lease agreement. However, certain jurisdictions may recognize oral agreements accompanied by the delivery of possession as sufficient. It is advisable to have a written lease agreement to clearly outline the rights and obligations of both parties and avoid potential disputes. The rights and liabilities of the lessor and lessee are governed by applicable laws and regulations, as well as the terms of the lease agreement. The lessor is in charge of preserving the building's structural integrity and seeing that all applicable laws are followed. On the other hand, the lessee may be subject to limitations on repairs or modifications and is normally responsible for keeping the property in good shape. Lease agreements can be terminated or determined through various means. Common termination methods include mutual agreement, expiration of the lease term, breach of the lease terms by either party, or the occurrence of certain events specified in the agreement. The lease agreement may outline the notice period required for termination and any penalties or consequences for early termination. In conclusion, a lease is a legally binding agreement that allows the lessee to use immovable property in

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exchange for a consideration paid to the lessor. The transfer of a property interest, qualified parties, a particular topic, a time period or other determination, and a consideration are the key components of a lease. Understanding these essentials is crucial for both lessors and lessees.

Keywords: A legally binding agreement, competent parties, immovable property, lease agreements, forms of agreements or licenses

INTRODUCTION

What is Lease? What are Its Essentials?

Immovable property leases can be described as transfers of the right to use real estate for a specific period of time, expressly or implicitly, or in perpetuity, in exchange for money, a share of future crops, services, or other valuables that the transferee agrees to provide to the transferor on a regular basis or on specific occasions. In other terms, a lease is a legal agreement that grants one party the right to use another party's real estate or property in return for money and for a specific period of time.

"A lease contemplates a demise or a transfer of a right to enjoy property, for a term or in perpetuity and in consideration of a price paid or promised, or of money, a share of crops or services, or other things of value to be rendered periodically or on specified occasions to the transferor" [1]. Both parties enter into a lease agreement specifying the terms and conditions of the agreement. The party who owns the leased premises or property is the lessor. The party accepting the leased property is the lessee. The price that is paid as a consideration is called a premium.

Lease agreements, which are legally binding instruments, bind the lessee and lessor to the terms and conditions laid out in them. Both residential and commercial properties may be covered under a lease agreement. Commercial property lease agreements may contain complicated terms and conditions. A commercial lease may include provisions for both the use of the property's fixtures and furnishings. The contract may cover a longer time frame than usual. There can be other restrictions on how the property can be used, including no subletting. The delivery of the lease grants the lessee the interest necessary for him to possess and use the property.

The essentials of a lease are as follows:

Transfer of An Interest

A lease is a deal involving real estate that gives the parties involved the right to use the property for a specified period of time in exchange for fulfilling the terms of the lease. It is possible for him to transfer the interest obtained through the conveyance of the lease to another party, such as a sublessor or a subtenant. The link between the lessee and the property is established, not just with the owner. A tenant or subtenant has the right to remain in possession of the property after the creation of the interest until the lease is properly ended and eviction occurs in line with the law. The relationship between landlord and tenant can only come into existence through the transfer of an interest [2] in immovable property pursuant to a contract [3] and the creation of a right in *rem* [4].

Parties to the Lease

"The parties to the lease are the transferor, who is called the lessor or landlord, and the transferee, who is called the lessee or tenant. Since both parties executed the lease, the lessor and the lessee must be competent to contract" [5]. The lessor and the lessee cannot be the same person, but a contract between a person with himself and others is valid. A transfer by way of the lease must be made by a person who holds the interest that is to be transferred. A lease is void when purportedly lessor does not have any interest in the property sought to be released. A lease may be granted to any person who is competent to contract at the date of execution. Minors or unregistered associations cannot be lessees A person would qualify to be a landlord within the meaning of this act if he is entitled to evict the tenant.

Subject Matter of Lease

The subject matter of lease is specific immovable property such as land, houses, factories, shops, minerals, and buildings, including the external walls enclosing or not enclosing the part so demised, or even the benefits arising out of lands such as fisheries, factories, and market dues, sandmines, or mineral land. A right to carry on mining operations in the land to extract a specified mineral and to remove and appropriate that "mineral" is a "right to enjoy immovable property" within the meaning of section 105 of the act.

Few Exceptions:

a. A contract for grazing grass [6]
b. A transfer of a right to pluck trees for fruits [7]
c. Royalty [8]
d. Sale of trees with the object of being cut and removed within a reasonable time [9]

Duration/Determination of Lease

Section 106 of the TOPA states that in the absence of a formal contract or local law or usage, a lease of immovable property (excluding agricultural and manufacturing) is presumed to be a month-to-month lease, terminable by 15 days' notice on the part of either lessor or lessee. In *Siri Chand (Deceased) thr. L.Rs. v. Surinder Singh* [10], the Supreme Court observed that in cases where a lease deed does not mention the period of tenancy, other conditions in the lease deed as well as the parties' intentions must be gathered to determine the true nature of the lease deed. The lease need not be for a fixed period but its duration should be definite. An uncertainty as to the duration offer term will be fatal to a lease. A lease for 'till suitable land is provided for and 6 months' notice is given' [11] is not valid for uncertainty.

In *Anthony v. KC Ittoop and Sons and Others* [12], the Supreme Court held that an unregistered instrument cannot create a contractual lease exceeding one year due to the three-pronged statutory restrictions under the law (i.e., under Sections 17 and 49 of the Registration Act and Section 107 of TOPA). However, it also held that "the presumption, that a lease not exceeding one year stood created by the conduct of parties, was unrebutted."

This principle was reiterated by the Supreme Court in *Park Street Properties (Pvt.) Ltd. v. Dipak Kumar Singh and Ors* [13] wherein it was inter alia held that 'in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from the other evidence on the record as well as the conduct of the parties. The duration of such a lease shall be on a month-to-month basis as provided under Section 106 of the Transfer of Property Act.

Consideration of Lease

There must be a consideration in the form of:

a. Money; or
b. Money's worth such as a share in crops; or
c. Service or any other thing of value, is to be rendered periodically or on specified occasions to the transferor by the transferee.

Consideration may be termed as rent plus premium as well as rent alone or premium alone. The term "money advanced" does not include the amount of security deposit as it is adjustable towards unpaid rent and the lessor is not bound to pay stamp duty on it.

How is Leasing Different from Renting?

The main difference between a lease and a rent agreement is the period of time they cover. A rental agreement tends to cover a short term—usually 30 days—while a lease contract is applied to long periods—usually 12 months, although 6 and 18-month contracts are also common.

Once the lease term is up, it usually extends to a month-to-month rental. The expenses for repairs and maintenance are borne by the lessee when there is a finance lease, but in the case of an operating lease, such expenses are borne by the lessor. On the other hand, the landlord bears the cost of repairs and maintenance of the asset.

The terms and conditions of the lease cannot be changed until it ends. As opposed to renting, the landlord can change the terms and conditions of the rental agreement but before giving prior notice to the tenant.

At the end of the lease, the lessee gets the option to buy the asset at a residual price. However, this option is not available in the case of rent.

How is Lease made?

As per Section 105 of the Transfer of Property Act of 1882, a lease of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. A decree operating to create a lease is not exempt from registration.

The rule stated herein does not apply to a lease of government lands, to a lease granted by the government, or to a lease for agricultural purposes. The subject matter of property and leasing is covered by a field assigned to the state legislature and thus, outside the purview of the central legislature.

"A lease required to be registered is void if the unregistered [14]" and "the document can neither be used as a piece of evidence in proof of all the terms of the lease [15]," "nor would entitle the claimant for a permanent lease to secure a permanent injunction restraining the lessor from dispossessing him [16]." When the lease is required to be registered but it is not, then it can be admitted as evidence for a collateral purpose but would not be admissible in evidence.

Rights and Liabilities of Lessor and Lessee

The rights and liabilities of the lessor and lessee are provided under section 108 of the Transfer of Property Act of 1882.

Duties of lessor

1. Duty to disclose any material defect in the leased property
2. Duty to put the lessee in possession
3. Covenant against interruption of enjoyment of lease

Rights and Liabilities of Lessee

1. Right to enjoy accretions to the property
2. Right to revoke lease in the event of destruction of property by fire and so on.
3. Right to repair property and chain costs in the event of its neglect by the lessor
4. Right to make payments obligatory on lessor
5. Right to remove fixtures
6. Right to the benefit of crops grown by him
7. Right to assign the lease

Duties or Liabilities of Lessee

1. Lessee's duty of disclosure
2. Obligation to pay rent
3. Duty of maintaining the property
4. Duty to give notice of any encroachment on the property

5. Duty to use the property in a reasonable manner
6. Use of property for a different purpose
7. Duty not to erect permanent structures on the property
8. Duty to Re-transfer the possession of property on the determination of tenancy

Determination of Lease

With the exception of a single instance of damage to the leased property brought on by the lessee's violation of section 108(e) of the Transfer of Property Act of 1882, Section 111 of the Transfer of Property Act of 1882 specifies eight other methods in which a lease may be terminated or considered to have ended. The different ways a lease can be cancelled are outlined in Section 111. In the case of a lease, only the right to enjoy the property is transferred in the lessee's favor; as a result, the lessee is required to give the lessor possession of the property after the lease expires.

The modes in which lease can be terminated are as follows:

1. *Efflux of time [Section 111 (a)]:* When the duration of the lease is fixed by a valid lease, the lease can be determined by efflux of time. Time cannot be used to determine an unregistered lease deed. When tenancy is defined by the passage of time, no notice to quit is required. No notice is required for the filing of an eviction suit where the agreement stipulates the length of tenancy.
2. *The happening of a future event [Section 111 (b)]:* Where the lease contains a condition that the lease will expire upon the occurrence of some event, the lease will terminate upon the occurrence of such event.
3. *Termination of the interest or power of the lessor [Section 111 (c)]:* Clause (c) states that a lease of immovable property indicates where the lessor's interest in the property expires or his ability to dispose of the same extends only to the occurrence of any event. If a lessor only has a limited interest or ability to grant a lease, the lease is determined by the loss of that interest.
4. *Merger [Section 111 (d)]:* Clause (d) states that a lease of immovable property decides whether the lessee's and lessor's rights in the entire property become vested in the same person at the same time. A merger requires that two immediate estates pass into the hands of the same person at the same time and in respect of the entire property. If an intermediary estate exists with another person at the time of the merger, the merger is prevented.
   The merger doctrine is founded on the notion of combining two opposing interests that cannot be held by the same individual at the same time. As a result, the appellants' leasehold rights are extinguished; *Ramesh Kumar Jhambh v. Official Assignee, High Court of Bombay* [17].
5. *Express surrender [Section 111 (e)]:* The surrender consists of giving up the lease term, escorted by an attender, at some future period. In fact, surrender is the inverse of merging. Surrender results in the extinction of the lease, such that the relationship of the lease parties is that the tenant obtains the reversion, whereas in merger, the landlord acquires the lease.
6. *Implied surrender [Section 111 (f)]:* An implied surrender occurs when the lessor and lessee enter into a new relationship, or when the lessee relinquishes ownership and the lessor takes over.
   The implied surrender principle states that when a certain relationship existed between two parties regarding a subject matter and a new relationship regarding the same subject matter, the two sets cannot coexist because they are incompatible and inconsistent with each other, so the former is deemed to have terminated in order for the latter to operate.
7. *Forfeiture [Section 111 (g)]:* This clause states that a lease terminates by forfeiture if the lessee violates an express condition that provides that upon breach, the lessor may re-enter the property, or, the lessee renounces his character as such by establishing a title in a third person or claiming title in himself, or, the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the occurrence of such event.
8. *On expiration of notice to quit [Section 111 (h)]:* The lease of immovable property may be terminated at the expiration of a notice to terminate the lease, or to quit, or to intend to quit, the leased property, lawfully given by one party to the other [18].

When the notice to quit or determine expires, the lease expires. Periodic leases, such as leases from month to month or year to year, are cancelled by notice to quit under Section 106. In the event of fixed-term leases, no notice is required.

CONCLUSION

Property transfer is not possible in India for everyone due to financial constraints. For some, a permanent or absolute transfer is a luxury, yet a temporary transfer has given every citizen the right to enjoy any property. Lease is one method of transferring property for a set length of time. People nowadays are career-oriented; thus, they must leave their hometown and go to a new city or state. People are emotionally tied to their property and are therefore unable to sell it. People prefer to lease out their property rather than sell it in order to protect it or because they are in desperate need of money at the time. Simultaneously, there may be occasions when people who have relocated to a new location require a place to live or land to produce, in which case taking a property on lease may be a viable alternative for them. Lease may now play a vital function in today's world.

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