

LEASE

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LEASING



LEASE

Section 105 of Transfer of Property defines Lease as

A lease of immovable property is a transfer of a right to enjoy such property made for a certain time (express or implied) , or in perpetuity , in consideration of a:

- (1) Price paid or promised , or
- (2) Money
- (3) A share of crops
- (4) Service, or
- (5) Any other thing of value

LESSOR , LESSEE , PREMIUM AND RENT

- The Transferor is called the lessor
- The Transferee is called the lessee
- The price is called the premium
- The money , share , service or other thing to be so rendered is called the rent

ESSENTIALS

- Immovable property ,
- transfer of interest((right to enjoy)
- For a specific period
- Consideration (rent) paid periodically or on the specified occasions.

KINDS OF LEASE

- **Perpetual lease:** A perpetual lease is an ongoing tenure over state land in accordance with the Urban Land (Ceiling & Regulation) Act, 1976. A landholder of a perpetual lease is responsible for complying with the term of the perpetual lease deed failing which the property/land may be revoked. Perpetual leases are issued for a specific purpose (e.g. agricultural or commercial). The lease must only be used for the purpose for which it was originally issued.
- **Tenancy at will :** Tenancy at will, also known as estate at will, is a property tenure — without a lease or written agreement — that can be terminated at any time by either the tenant or the owner (landlord). It exists without a contract or lease and usually does not specify length of a tenant's duration or the exchange of payment.
- **Tenancy at sufferance :** A tenant at sufferance is the situation when a tenant of real estate continues to occupy the premises without the landlord's consent after the original lease or rental agreement between the landlord and the tenant has expired. A tenant in this situation is also referred to as a holdover tenant. The tenant is responsible for payment of the monthly rental at the existing rate and terms, which the landlord may accept without admitting the legality of the occupancy. If a tenant at sufferance does not leave after a notice to quit (move out), he/she is subject to a lawsuit for unlawful detainer.
- **Tenancy by holding over :** A holdover tenant is a renter who remains in a property after the expiration of the lease. If the landlord continues to accept rent payments, the holdover tenant can continue to legally occupy the property, and state laws and court rulings determine the length of the holdover tenant's new rental term.
- **Periodic lease:** A lease from year to year or month to month
- **Lease for fixed period :** Here the period is fixed
- **Lease for life :** Lease for the life time of the lessee.

RIGHTS AND LIABILITIES OF LESSOR AND LESSEE

Section 108 of the Transfer of Property Act lays down the right and liabilities of Lessor and Lessee.

These rights and liabilities are applicable in absence of an agreement or a local custom to it's contrary

Rights and Liabilities of Lessor and Lessee are laid down from sub section (a) to subsection (q) of Section 108.

LIABILITIES OF LESSOR

The liabilities of lessor are –

- Duty of disclosure [Clause(a)]
- Duty to give possession [Clause (b)]
- Covenant for quiet enjoyment [Clause (c)]

LIABILITIES OF LESSOR

Duty to Disclosure [Section 108(m)]

- Clause (a) provides that the lessor is bound to disclose to the lessee any material defect in the property with reference to its intended use of which the lessor is aware but the lessee is not aware .
- Defects are of two types apparent and latent . The lessor is bound to disclose latent defects because such defects cannot be discovered with ordinary care.
- Duty of disclosure is especially important where defects affect right of enjoyment or use of the property

LIABILITIES OF LESSOR

To Give Possession [Section 108(m)]

- The lessor is under a duty, on the lessee's request, to put him in possession of the property.
- If he fails to deliver possession to the lessee, he cannot recover rent or enforce the obligations of the lessee under the agreement.
- However the duty of the lessor to deliver possession only arises when there is a request by the lessee in this request

LIABILITIES OF LESSOR

Covenant for Quiet Enjoyment [Section 108(m)]

- The clause provides that if the lessee pays rent reserved by the lease and performs the contract binding on him, he may hold the property during the time limited by the lease without interruption.
- What constitutes a breach of a covenant for quiet enjoyment is not always easy to determine. Some guidelines have been provided by the Madhya Pradesh High Court in *Daryao Singh v. Pramilabai* (AIR 1959 M.P 191)
- It was held in this case that “ no act of a lessor can be regarded as an actionable breach of a covenant for quiet enjoyment unless it involves some physical or direct interference with the enjoyment of the given premises and that in determining whether the enjoyment of the premises has been disturbed or interfered, one must look to the purpose for which the premises were granted.”

RIGHTS OF LESSEE

Right to Accretions [Sec. 108(d)]

- If during the continuance of a lease any accretion, accession or addition is made to property given by way of lease such accretion, accession or addition shall be deemed to be comprised in the original lease
- The addition may be natural, e.g.. by flood or alluvial activity or at the expense of the lessee or maybe a tree planted by the tenant.
- However lessee cannot have title to such accretion and lessee should surrender the accretion after the period of tenancy.

RIGHTS OF LESSEE

To Avoid Lease [Section 108(e)]

- In the case of the destruction of the subject-matter of lease, the lessee, if he is not to be blamed for such destruction, could avoid the lease at his option
- In cases where the whole rent has been paid in advance, and the property is destroyed before the period of lease expires the lessee has a right to recover the proportionate part of the rent already paid.
- The application of this Section has been clearly stated by the Supreme Court in the case *Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel (P) Ltd* [(2014) 14 SCC 1]
- It has to be ascertained whether the lease was created in the structure or both in the structure as well as the underlying land. If it was a lease of the structure alone, the mere destruction of the structure would not avoid it, unless it was due to some fault on the part of the lessee. Lease of building or structure, namely, house, shop, godown, etc. normally cannot be treated as mere lease of structure. It would also include lease of site, or land on which such structure is built unless the underlying land was specifically excluded

RIGHTS OF LESSEE

To Charge for Repair [Section 108 (f)]

- This clause provides that If the lessor neglects to make any repairs which he is bound to make to the property after notice within a reasonable time , the lessee may make the repair himself and deduct the expense of such repairs with interest from the rent or otherwise recover it from the lessor
- The lessor is not bound to make repairs but if he has agreed at the time of the lease with the lessee that he will make the necessary repairs then he becomes bound to make the repair.

RIGHTS OF LESSEE

Right to Make Payments [Section 108(g)]

This clause provides that if lessor neglects to make any payment which he is bound to make and which if not made by him , is recoverable from the lessee or against the property , the lessee may make such payment himself and deduct it with interest from rent or otherwise recover it from the lessor.

RIGHTS OF LESSEE

Right to remove fixtures Section [108(h)]

- The lessee may, even after the determination of the lease, remove, at any time while he is in possession of the property leased, but not afterwards, all things which he has attached to the earth. But he must leave the property in the state in which he received it.
- This clause provides an exception to the general rule that things attached to earth become part of it

RIGHTS OF LESSEE

Right to have benefit of Crops[Section 108(i)]

- When a lease is of uncertain duration and the interest of the lessee is determined otherwise than his fault, the lessee is entitled to the benefit of all crops growing, planted or sown by him.
- Lessee or his legal representative has been given the right to ingress and egress to visit the leased property to gather and carry the grown crops

RIGHTS OF LESSEE

Right to Assign his Interest [Section 108(j)]

- In absence of any contract to the contrary , this section empowers the lessee to transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property. His transferee or assignee may likewise, transfer his interest
- However , The lessee shall not by reason only of such transfer, cease to be subject to any of the liabilities attached to lease

LIABILITIES OF LESSEE

Duty to disclose material facts materially increasing the value of property [Section 108(k)]

- Under this clause the lessee is bound to disclose to the lessor any defect of which he is aware but lessor is not aware and which materially increases the value of such interest.
- Where the lessee fails to disclose the fact and the lessor suffers thereby, he can sue for compensation.
- He would have no right to avoid lease unless there is an express agreement to that effect.

LIABILITIES OF LESSEE

Duty to pay rent[Section 108(1)]

- A lessee is under a duty or obligation to pay or tender the premium or rent to the lessor or his agent at proper time or place.
- The obligation to pay rent arises as soon as the lessee has been put into possession
- Where the lessee fails to pay the rent and it has fallen into arrears, the lessor has two remedies against him. Firstly, he is entitled to file a suit for arrears of rent; or he can start ejectment proceeding on ground of non payment

LIABILITIES OF LESSEE

Duty to Maintain the property [Section 108(m)]

- The lessee is bound to keep on the termination of lease to restore the property in as good condition as it was when he was put into possession
- He is bound to allow the lessor and his agents at all reasonable to enter upon property and inspect its conditions
- Only the changes caused by reasonable wear and tear or irresistible force are allowed under this clause

LIABILITIES OF LESSEE

Duty to Give Notice [Section 108(n)]

- If the lessee becomes aware that any person has initiated any proceeding to recover whole or any part of the property, or has encroached upon it or has interfered with the right of the lessor, he must bring such a fact to the knowledge of the lessor
- Where the title of the lessor is endangered, he may sue for a declaration of his rights and for a decree giving him a formal possession as against the trespasser. (Raj Kumar v. Ali Mia ,AIR 1923 Cal. 192.)

LIABILITIES OF LESSEE

Duty to use Property in a Reasonable way [Section 108(o)]

- This Clause provides that the lessee may use the property and its products as a person of ordinary prudence would use them if they were his own.
- He must not cut down the trees or sell the timber , or pull down or damage the buildings belonging to the lessor
- Lessor must not use or allow others to use the property for a purpose other than that for which it is leased

LIABILITIES OF LESSEE

Duty not to erect permanent Structure [Section 108(p)]

- A lessee is under a duty not to erect any permanent structure on the property except for agricultural purposes or without the consent of the lessor.
- The restriction under this clause is only against a permanent structure
- What is a permanent structure is a question of fact depending on the nature of the structure and intention with which it is erected (Surya Properties Pvt. Ltd. v. Bimelendu Nath, (1963) 67 Cal. W.N. 977)

LIABILITIES OF LESSEE

Duty to restore possession [Section 108(q)]

- This clause provides that on determination of lease the lessee is bound to put the lessor into the possession of the property
- When the tenant does not vacate the tenanted premises even after the expiry of notice he becomes liable to pay damages as well as mesne profits to the lessor.
- This rule is known as the rule in Henderson v. Square

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DETERMINATION OF LEASE

- If the fixed the time over
- if the interest of lessor in the property terminates
- Surrender
- By forfeiture
- On the expiration of notice to determine the lease or to quit

Thank

You

