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**Analysis Of Lease as A Mode of Transfer**

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**Abstract**

*Depending on the type of arrangement, leasing and licencing a property include a temporary transfer of ownership or a temporary transfer of enjoyment for a certain amount of time. The study examines the provisions of many Indian statutes governing leasing and licencing, as well as the important differences and similarities between the two. The research was founded on a detailed assessment of the numerous precedents that primarily address this issue and its implications. Furthermore, the book explores the relevance of such distinctions in various contexts, and court rulings in such situations are contrasted to find essential aspects that may help distinguish the two clauses.*

**Keywords:** *Lease, Licence, Transferor, Transferee*

## **Introduction:**

Section 105 defines lease, lessor, lessee, premium and rent. It provides that a lease of immovable property is a transfer of a right to enjoy such property. The word "Lease" is frequently used in a variety of business transactions involving the transfer of property. It is a written contract designed to transfer an asset from one person to another. Both in the commercial and non-commercial or personal areas, it is utilised for the transfer of the asset. Section 105 of the Transfer of Property Act, 1882 defines lease in terms of Indian law. Depending on the terms of the contract, a person may use another person's property for a certain amount of time.

### **Essential elements of lease**

- ✦ Parties (Lessor and Lessee)
- ✦ Right to enjoy Immovable Property
- ✦ Consideration
- ✦ Term

### **Research Methodology**

Both doctrinal and non-doctrinal research approaches are available to researchers. While doctrinal research involves the analysis and application of previously published literary works to reach conclusions that are applicable to the research being conducted, non-doctrinal research involves the collection of "raw" data using a variety of sampling techniques and the use of field measurements to support studies.

For the current study, the researcher adhered completely to the Doctrinal research methodology while considering the time and cost constraints. The report will use the data once it has been examined and taken from both primary and secondary sources.

### **Objectives of Study**

- To fully comprehend the terms of S. 105 of the TOPA, (lease), as well as the main components of it.
- To fully appreciate the licence requirement of Section 52 of the Easement Act, as well as its key components.
- To discover the distinction between 'Lease' and 'Licencing,' go through a variety of situations and precedents.
- Make recommendations addressing any discrepancies uncovered following a comprehensive examination and analysis of the legal position.

## **Lease**

A lease of immovable property entails the transfer of the right to use and enjoy the property for a specific period, either expressly or impliedly, in return for payment or other valuable consideration. The transferee, who accepts the transfer under specified conditions, is obligated to provide periodic or specified occasion-based payments or services to the transferor.

The terms "lessor," "lessee," "premium," and "rent" are defined as follows: The lessor is the party who transfers ownership, while the lessee is the party who receives ownership. The amount paid for the transfer is the premium, and the payment made in the form of money, shares, or other items is the rent.

A lease is a contractual agreement that involves the transfer of ownership of real property from one individual to another for a specified duration in exchange for monetary payment, a share of agricultural produce, or other forms of services. The rights transferred in the form of a lease may be granted either explicitly or implicitly. To obtain a lease for immovable property, an individual can either pay the entire sum as a premium upfront or make monthly rental payments.

### **Lessor and Lessee**

In a lease agreement, the person who transfers the property is called the lessor, while the person who receives the property is called the lessee. Both the lessor and the lessee have the option to enter into a lease agreement for the transfer of ownership of real estate. The lessee has the privilege to cultivate the land and share any gains with the rightful landowner.

A lease is a legally binding agreement between a lessor and a lessee, as outlined in the Indian Contract Act of 1872. To be valid, a lease must fulfil all the necessary legal requirements for a contract, and the parties involved must be of legal age.

### **Duration of lease**

As a contractual arrangement, a lease specifies the date and duration of the contract. However, there are situations where local usages or customs do not indicate the length of the lease. In such cases, Section 106 of the Transfer of Property Act, 1882 is relevant, as it clarifies specific conditions and specifies the length of the lease. This section describes the length of a lease for purposes such as manufacturing or agriculture, or for other reasons.

### **Essential features of a valid lease**

**Immovable Property-** Only movable items or assets may be the subject of a lease agreement. For movable property, it cannot be done. The contract of lease between the lessor and lessee exchanges the ownership rights of the immovable property and governs how it will be used and worked on.

**Parties** -The proper transfer of ownership of the movable property under a Lease agreement requires the presence of two or more parties. Because it is a two-party system and cannot function without both participants, the lease agreement is void.

**Subject matter of lease-** The subject matter or the purpose of the lease agreement is compulsory and necessary to be mentioned in the contract. The purpose of transfer of the right of the immovable property, the services and profit decided, the details of the immovable property, and other important data is required to be written in the contract of lease.

**Duration** - The leasing agreement's duration is a crucial component that determines the start of the contract and how long the services and rights will be transferred through a legitimate legal contract. If it is not included in the lease agreement, section 106 of the Transfer of Property Act, 1882, is referred to.

**Possession of Property-** In the contractual agreement of lease, transfer of the right of property is made and the parties exchange the right of possession of the property for a certain period and do not exchange the ownership of the immovable property.

## **Types of leases**

There are different types of lease agreement for the transfer of the right of the immovable property, these are:

**Financial lease** - This kind of lease is unbreakable and perpetual. For a long time, the Lessor transmits the immovable property's rights while also making improvements to the property. All responsibilities and liabilities associated with the property are assumed by the lessee. A financial lease would be one in which a person delegated to another person the responsibility of caring for, cultivating crops on, and maintaining his agricultural land without defining how long the lease would last.

**Operating lease** - In this kind of lease, the lessor is responsible for maintaining the property, not the lessee. This kind of lease is only in effect for a little time. An operating lease, for instance, is when someone leases the right to use immovable property to another person in exchange for them performing services on it for a brief time.

**Sale and lease back** - leasing in this kind of lease, the lessee sells the asset to the lessor with an agreement in advance that the asset will be leased back to the lessee for a predetermined amount of time. Bipartite lease is another name for this type of lease.

**Single investor lease** -In this sort of lease, the lessor purchases the asset from the lessee with the understanding that the asset will be returned to the lessee for a certain period via leasing. This kind of lease is also known as a bipartite lease.

## **Creation of Lease**

Section 107 lays down various modes of creating leases. Broadly the section lays down the following modes of creation of lease.

### **Creation of lease**

Lease requiring compulsory registration

1. Lease from year to year.
2. Lease for a term exceeding one year.
3. Lease reserving permanent yearly rent.

Lease not requiring compulsory registration.

1. Lease from month to month.
2. Lease for a term of one year.
3. Lease a term if less than one year.

## **Right and Liabilities of Lessor and Lessee (Section 108)**

### **Liabilities of lessor**

1. Duty to disclose any latent material defect in the property.
2. Duty to give possession to the lessee of his request.
3. Duty for a covenant for quiet enjoyment of property by lease.

### **Right of Lessee**

1. Right to enjoy the accretion to the leased property.
2. Right to avoid the lease in case of destruction of property by fire, tempest, flood, violence of an army or any other irresistible force.
3. Right to repair the property.
4. Right to remove the fixtures made by him during tenancy.
5. Right to have benefit of crop growing on the land sown or planted by him.
6. Right to assign his interest in the leased property.

### **Liabilities of lessee**

1. Duty to disclose facts material increasing the value of property.
2. Duty to pay rent or consideration of lease.
3. Duty to maintain the property.

4. Duty to give notice to lessor of any encroachment on property.
5. Duty to retransfer the possession on determination of lease.

## **Analysis**

Lease is the transfer of right of enjoyment of property. It is not the transfer of ownership. The interest which is transferred is right to use or enjoy the immovable property. It contemplates the separation of right of ownership and right of possession. The phrases "lease" and "licence" have diverse meanings, and as a result, the rights and obligations of the parties involved vary. Legal practice frequently blurs the line between the two whenever particular principles that apply to one are applied to the other. In these circumstances, it is important to ascertain the parties' intentions to determine the nature of the transaction, which serves as the foundation for the parties' subsequent transfer of rights. However, if the stakeholders claim the document is a concealment, courts have demonstrated a pattern of looking beyond the box to ascertain the nature of the transaction.

### **In the case of Pradeep Oil Corporation v. Municipal Corporation of Delhi**

- In Pradeep Oil Corporation v. Municipal Corporation of Delhi, the Supreme Court of India reaffirmed that a licence received by an individual is unassignable, meaning it cannot be assigned, issued, or reassigned/reissued to anybody other than the parties to the licencing arrangement.
- The court also stated that the licensor does not have the right to sue anyone else in his name simply because his name appears on the licencing agreement. Simply put, this means that a licensee cannot file a lawsuit against a third party over a dispute involving a piece of property for which he has a licence. It also stated that a licence may be revoked at any time by agreement of the parties. When he or she decides to do so, the licence grantee would have all discretion over the license's revocation.
- An interest in the asset to which a licence is tied cannot be generated by the licence alone. Contrarily, a lease would be a transfer of property.
- Personal or contractual licenses are available.
- The right to enter and enjoy the land is granted to the licensor by a licensee who lacks the grant.
- A license does not create an estate or interest in the property.
- A licence, among other things, is determined when the grantor makes a later transfer, is revocable, is not assignable, and does not provide the licensee the right to sue the stranger in his own name.

### **In the case of Yazdani International Pvt. Ltd. v. Auroglobal Comtrade Pvt. Ltd**

- "The highest court declared that a simple lease does not generate any interest in the property by its core and natural definition.
- It essentially acts as a grant of the right to use the leased property to the lessor for the length of the lease agreement. When the lease period expires or is revoked, the lessor's interest in the property automatically ceases to exist, and ownership of the property returns to the lessee, who originally held the interest.

## **Association Hotel of India v. R.N Kapoor**

Held that to ascertain whether the transaction is one in the nature of lease or license the real test is the intention of the parties. If the instrument creates an interest in an immovable property, it is a lease whereas if it permits the grantee to make use of property while the possession continues with the owner, it is a license. Supreme court has further held that the substance of document must be seen and the form.

## **Conclusion**

The key distinction between a lease and a licence is made by considering the parties' intentions. Only when they reveal the parties' goals can factors like the transfer of interests and exclusive ownership have any real meaning. Even if complete possession is shown, the arrangement can still be regarded as a licence. These elements are important, yet they only really apply in certain situations. Exclusive possession may help establish tenancy in one context, but it may not be decisive in another. Each case's specific facts determine the genuine problem of purpose. Although it is fundamental to human existence, the right to enjoy one's property has become increasingly challenging and will likely continue to be so. It can be overwhelming to distinguish between the myriad varieties, kinds, and forms of qualities because they all seem to be the same no matter how hard you try. The major difference between the two is that lease constitutes a transfer of interest in the property whereas in licence there is no transfer of interest in immovable property. They both give the right to another person to enjoy the immovable property. To sum up, individuals entering contracts with implications this serious must understand and infuse a portion of reasonable care in the case of a document error and irregular stamp duty levying.

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