



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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Lecture-27



LEASE

A lease is the transfer of a right to enjoy certain property. It is either for a certain period or perpetuity. It is an agreement by which the owner of the property or the lessor transfers his right of possession to the lessee. It is not an absolute transfer of all rights in the property. It is merely a partial transfer. what is transferred is merely the right of possession and the use of the property. It separates ownership from property. Ordinarily, a lease is with respect to land. However, every right that can be possessed can be made the subject of a lease. Thus there can be a list of Copyright, a patent, right of way, right to receive interest on government promissory notes.

Definition of Lease:

According to Sec. 105 of Transfer of Property Act

“A lease of immoveable 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 price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

In simple terms, lease is a kind of encumbrance on a property in the form of a right to possess and enjoy property owned by another person.

Lessor: The person who transfers the property (transferor) is known as the lessor.

Lessee: The person to whom the transfer is made (transferee) is known as the lessee.

Premium: The price here is known as the premium and the money, share, service or any other thing so rendered is known as the rent.

Essential Elements:

The essential elements of a lease are as follows:

1. **Parties-** The parties to a lease are the lessor and the lessee. The lessor is also called the landlord and the lessee the tenant. The parties should be competent to do agreement as under Indian Contract Act 1872.
2. **Subject matter of lease-** The subject matter of lease must be immovable property. The word "immovable property" may not be only house, land but also benefits to arise out of land, right to collect fruit of a garden, right to extract coal or minerals, rights of ferries, fisheries or market dues. The contract for right for grazing is not lease. A mining lease is lease and not a sale of minerals.
3. **Right of possession:** Ownership rights are not transferred in a lease, only the possession of the property is transferred.
4. **Duration of lease-** The right to enjoy the property must be transferred for a certain time, express or implied or in perpetuity. The lease should commence either in the present or on some date in future or on the happening of some contingency, which is bound to happen. Though the lease can commence from a past day, but that is for the purpose of computation of lease period, as the interest of the lessee begins from the date of execution. No interest passes to the lessee before execution. In India, the lease may be in perpetuity.
5. **Consideration-** The consideration for lease is either premium or rent, which is the price paid or promised in consideration of the demise. The premium is the consideration paid of being let in possession, such as Salami, even if it is to be paid in installments.

The duration of the lease in the absence of the lease agreement:

Section 106 provides for the **duration of the lease in the absence of the lease agreement**. It lays down that in the absence of a contract, lease can be ended by both parties to the lease by issuing a notice to quit. The prescribed time period always commences from the date of receiving the notice to quit. Following are the circumstances:

Purpose	Term (Deemed)	Notice	Prescribed End
Agricultural or manufacturing purpose.	Year to Year	6 month	1 year
Any other purpose.	Month to Month	15 days	1 month

In this table, there is a distinction of two purposes in regard to **Section 106** i.e. Agricultural or manufacturing and other purposes. Hence, two things can be derived from this table:

1. When a lease for Agricultural or manufacturing purpose is deemed to be of year to year, then it will attract a 6-month notice that the lease will end on the expiry of 1 year from the date of the commencement of the lease.
2. When a lease for any other purpose is deemed to be of the month to month, then it will attract a **15-day notice** that the lease will end on the expiry of 1 month from the commencement of the lease.

There is proviso to this section which states that the notice to quit in this section should be written and conveyed to the party who is required to abide by it. If this is not possible then it should be attached to a conspicuous place in that property.

MCQ

1. Which type of property may be used for lease?

- (a) Only movable
- (b). Only immovable
- (c) Movable and immovable both
- (d) None of these

2. Where a lease of immoveable property is made by a registered instrument such instrument shall be executed:

- (a) by lessor only
- (b) by lessee only
- (c) by either of the two
- (d) by both the lessor and the lessee

3. An instrument of lease of immovable property under the Transfer of Property Act is required to be executed by:

- (a) Lessor only
- (b) Lessee only
- (c) Lessor and lessee both
- (d) Either by lessor or by lessee

4. In which of the following cases, a transfer of immovable property can be made without writing

- (a) Sale of property of a value more than Rs. 100
- (b) Lease for a term of 11 months
- (c) Exchange
- (d) Actionable claim

5. Duration of Agriculture lease in the absence of written contract or local usage under Section 106 of Transfer of Property Act shall be deemed to be a lease

- (a) from month to month
- (b) of eleven months
- (c) from year to year
- (d) of twelve years