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A Study on Lease and its Kinds under the Transfer of Property Act, 1882

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ABSTRACT

The purpose of this research paper is to delve into the concept of lease and its various kinds as defined and regulated by the Transfer of Property Act, 1882. This Act serves as a vital legislation in India, governing the transfer of property rights and outlining the legal framework for lease agreements. The study aims to provide an in-depth understanding of the concept of lease, its essential elements, and the different types of leases recognized under the Act. Additionally, the paper will examine the rights and obligations of both the lessor and the lessee, and discuss important legal provisions related to lease agreements.

Keywords: lease, Transfer of Property Act, 1882, lessor, lessee, types of leases.

I. INTRODUCTION

(A) Background

The Transfer of Property Act, 1882 is a significant legislation in India that governs the transfer of property rights. Under this Act, the concept of lease holds great importance. A lease is a legal agreement where one party, known as the lessor, grants the right to use and occupy a property to another party, known as the lessee, in exchange for payment of rent. The Act provides a comprehensive framework for lease agreements, outlining the rights and obligations of both parties and establishing legal safeguards for their interests.

The Act defines lease and its various aspects, including the essential elements that constitute a valid lease, the types of leases recognized by law, the rights and obligations of the lessor and lessee, and the legal provisions related to the termination, assignment, and subletting of leases. Understanding these provisions is crucial for both lessors and lessees to ensure compliance with the law and protect their rights and interests.

(B) Objectives

The objectives of the research paper titled "A Study on Lease and Its Kinds under the Transfer of Property Act, 1882" are as follows:

- i. To examine and analyze the concept of lease as defined under the Transfer of Property

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Act, 1882.

- ii. To identify and discuss the essential elements that constitute a valid lease agreement.
- iii. To explore and classify the different types of leases recognized and regulated by the Act.
- iv. To understand the rights and obligations of the lessor and the lessee under a lease agreement.
- v. To examine the legal provisions related to lease agreements, including registration, assignment, subletting, termination, and surrender of leases.
- vi. To analyze relevant case studies and landmark judgments that have shaped the interpretation and application of lease provisions under the Transfer of Property Act.
- vii. To highlight the significance and implications of the legal framework for lease agreements in real estate transactions and tenancies.
- viii. To provide insights and recommendations for landlords, tenants, legal professionals, and policymakers regarding the interpretation and application of lease provisions under the Act.

By accomplishing these objectives, the research paper aims to contribute to the understanding of lease agreements and their various kinds as regulated by the Transfer of Property Act, 1882, and to provide guidance and insights for stakeholders involved in lease transactions.

II. UNDERSTANDING LEASE

(A) Definition and legal framework

a. Definition of Lease:

In the context of the Transfer of Property Act, 1882, a lease is defined as a transfer of a right to enjoy immovable property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, called rent. It creates a relationship between the lessor (the owner or transferor of the property) and the lessee (the person to whom the property is transferred or leased), where the lessee obtains the right to use and occupy the property for a specified period, subject to the payment of rent.

b. Legal Framework:

The Transfer of Property Act, 1882, provides the legal framework for lease agreements in India. The Act sets out various provisions governing the creation, rights, and obligations of lessors and lessees, and the termination of lease agreements. Key provisions related to lease agreements

under the Act include:

- **Section 105:** This section defines a lease as a transfer of a right to enjoy immovable property. It specifies the elements of a lease, such as the duration, consideration (rent), and parties involved.
- **Section 107:** This section details the necessary terms and conditions that may be included in a lease agreement, such as the description of the property, the duration of the lease, the amount of rent, and any other rights and obligations of the lessor and lessee.
- **Section 108:** This section outlines the rights and liabilities of the lessor, including the right to receive rent, the right to enhance rent in certain circumstances, the right to terminate the lease for breach of conditions, and the implied warranties by the lessor.
- **Section 109:** This section delineates the rights and liabilities of the lessee, including the right to enjoy peaceful possession of the property, the duty to pay rent, the duty to maintain the property, and the liability for deterioration or destruction caused by his own acts.
- **Section 111:** This section deals with the termination of lease agreements, including termination by efflux of time, surrender, forfeiture, and notice to quit.
- **Section 114:** This section provides the lessee with the right to assign or transfer the lease, subject to certain conditions, and the right to sublet the property, unless prohibited by the lease agreement.

(B) Essential Elements of a Lease Agreement:

A lease agreement, as defined under the Transfer of Property Act, 1882, must contain certain essential elements to be considered valid and enforceable. These elements establish the foundation of the lease relationship and outline the rights and obligations of the lessor and lessee. The essential elements of a lease agreement are as follows:

- a) **Parties:** The lease agreement must clearly identify the parties involved, i.e., the lessor (owner or transferor of the property) and the lessee (person to whom the property is leased). The names, addresses, and contact details of both parties should be mentioned.
- b) **Description of the Property:** The lease agreement should provide a clear and detailed description of the immovable property being leased. This includes the location, address, boundaries, and any specific features or amenities associated with the property.

- c) **Duration of the Lease:** The agreement must specify the duration of the lease, indicating the start date and the end date or the period for which the lease is granted. It can be for a fixed term (e.g., one year) or periodic (e.g., month-to-month).
- d) **Consideration (Rent):** The lease agreement should state the amount of rent to be paid by the lessee to the lessor for the use and occupation of the property. The frequency of rent payment (e.g., monthly, quarterly) and the method of payment should also be mentioned.
- e) **Purpose of the Lease:** The agreement should clearly state the purpose for which the property is being leased. This can be residential, commercial, industrial, agricultural, or any other specific purpose as agreed upon by the parties.
- f) **Rights and Obligations of the Parties:** The lease agreement should outline the rights and obligations of both the lessor and the lessee. This includes the right of the lessee to use and enjoy the property and the duty of the lessee to pay rent and maintain the property in good condition. It should also specify any additional rights or obligations agreed upon by the parties.
- g) **Terms and Conditions:** The agreement should include any additional terms and conditions agreed upon by the parties, such as restrictions on use, rules regarding alterations or modifications to the property, provisions for repairs and maintenance, and any other specific conditions or covenants.
- h) **Signature and Execution:** The lease agreement must be signed by both the lessor and the lessee to indicate their acceptance and agreement to the terms and conditions. Additionally, the agreement may require witnesses or notarization, depending on the legal requirements of the jurisdiction.

It is important to note that while these elements are essential for a valid lease agreement, additional requirements or clauses may be included based on the specific circumstances and the intentions of the parties involved. Understanding these essential elements helps ensure that lease agreements comply with the legal requirements under the Transfer of Property Act, 1882, and provide a clear framework for the lease relationship.

III. TYPES OF LEASES

(A) Determinable and Indeterminable Leases:

Under the Transfer of Property Act, 1882, leases can be categorized as either determinable or indeterminable based on the factors that determine their duration or termination. Understanding

the distinction between these two types of leases is crucial in analyzing lease agreements and their legal implications. The following points outline the characteristics of determinable and indeterminate leases:

a. Determinable Lease:

Definition: A determinable lease is one that contains a provision or condition that specifies a particular event or circumstance upon which the lease will automatically terminate or determine before its original expiration date.

Duration: A determinable lease is for a fixed term but can be cut short if the specified event or condition occurs during the lease term.

Termination: The lease terminates automatically and without any specific action by either party once the specified event or condition occurs.

Example: A lease agreement stating that it will terminate upon the completion of a construction project or the occurrence of a certain date.

b. Indeterminable Lease:

Definition: An indeterminable lease is one that does not contain any provision or condition specifying a particular event or circumstance upon which the lease will terminate before its original expiration date.

Duration: An indeterminable lease is for an indefinite or unspecified term, with no predetermined end date.

Termination: The lease continues until terminated by one of the parties through proper notice or by operation of law (e.g., breach of lease terms).

Example: A lease agreement without a specified duration, such as a month-to-month residential tenancy, where the lease continues until one party provides proper notice to terminate.

(B) Lease For a Fixed Term and Periodic Lease

a. Lease For a Fixed Term:

Definition: A lease for a fixed term, also known as a term lease or lease for a specific duration, is a lease agreement that specifies a definite period during which the lease will be in effect. The duration can be expressed in years, months, weeks, or days.

Creation and Duration: This type of lease is created when the lessor (owner or transferor of the property) and the lessee (person to whom the property is leased) agree on a specific term for the lease. The lease remains in effect for the agreed-upon period, and both parties are bound by

the terms and conditions outlined in the lease agreement.

Rights and Obligations: During the fixed term, the lessee has exclusive possession and use of the property, subject to the agreed-upon conditions. The lessor is entitled to receive rent as specified in the lease agreement. Both parties have certain rights and obligations regarding the maintenance and care of the property.

Termination: A lease for a fixed term automatically expires at the end of the specified duration, without the need for any notice of termination. However, provisions related to renewal or extension of the lease may be included in the agreement.

b. Periodic Lease:

Definition: A periodic lease, also known as a month-to-month lease or tenancy, is a lease agreement that continues for successive periods, with each period being defined by a specific term, such as a month or a week. The lease automatically renews for each period until one of the parties provides notice to terminate.

Creation and Duration: A periodic lease is typically created when the parties agree to continue the lease on a periodic basis after the expiration of a fixed-term lease or when no specific term is initially defined. The lease continues indefinitely, with each period being equal to the agreed-upon term (e.g., monthly) unless terminated.

Rights and Obligations: The lessee has the right to possess and use the property during each successive period, as long as they comply with the lease terms. The lessor is entitled to receive rent for each period, and both parties have obligations related to the maintenance and care of the property.

Termination: Either party can terminate a periodic lease by providing proper notice. The notice period is usually determined by the frequency of the lease (e.g., one month's notice for a monthly lease). Failure to provide proper notice may result in the lease automatically renewing for the subsequent period.

(C) Implied and Express Leases

a. Implied Lease:

Definition: An implied lease, also known as a lease by implication, is a lease agreement that arises based on the conduct and actions of the parties involved, rather than being explicitly expressed in a written or oral contract.

Creation and Existence: An implied lease can be created when a person occupies and uses another person's property with the knowledge and consent of the owner, even in the absence of

a formal lease agreement. The lease is inferred from the parties' actions and the circumstances surrounding the occupation of the property.

Conditions and Obligations: The terms and conditions of an implied lease are determined by the implied understanding and mutual intentions of the parties. The lessee is typically required to pay a reasonable rent, and both parties have obligations related to the use, maintenance, and care of the property.

Recognition and Enforcement: While an implied lease may not have the same level of clarity and certainty as an express lease, it is recognized and enforceable under the Transfer of Property Act, 1882. The Act provides guidelines for determining the rights, obligations, and termination of implied leases.

b. Express Lease:

Definition: An express lease is a lease agreement that is explicitly and formally expressed in writing or orally between the lessor and the lessee. It is a lease that clearly outlines the terms, conditions, and provisions agreed upon by the parties.

Creation and Documentation: An express lease is created when the parties enter into a written lease agreement that is signed and executed by both the lessor and the lessee. The agreement sets forth the terms of the lease, including the duration, rent, rights, and obligations of the parties.

Clarity and Enforceability: An express lease provides clarity and certainty as it explicitly defines the rights, responsibilities, and expectations of both the lessor and the lessee. In case of any dispute or disagreement, the terms of the express lease serve as the primary basis for resolving conflicts and enforcing the parties' respective obligations.

Compliance and Legal Validity: Under the Transfer of Property Act, 1882, an express lease must comply with the legal requirements for a valid lease agreement, including the essential elements and provisions outlined in the Act. An express lease that meets these requirements is considered legally valid and enforceable.

(D) Lease Of Immovable Property and Lease Of Movable Property

a. Lease Of Immovable Property:

Definition: A lease of immovable property refers to a lease agreement that involves the transfer of rights and possession of real estate, such as land, buildings, or any permanent structure attached to the land.

Nature of the Property: Immovable property, also known as real property or real estate, refers

to assets that cannot be easily moved or transferred. These properties are fixed to a specific location and generally have long-term value.

Legal Framework: The Transfer of Property Act, 1882, governs the lease of immovable property and provides legal provisions and guidelines for creating, interpreting, and terminating such leases. The Act specifies the rights and obligations of both lessors and lessees, including rent, maintenance, and other conditions related to the lease.

Examples: Lease agreements for residential houses, commercial buildings, agricultural land, etc., fall under the lease of immovable property.

b. Lease Of Movable Property:

Definition: A lease of movable property refers to a lease agreement that involves the transfer of rights and possession of assets that are not permanently fixed to a specific location and can be easily moved or transferred.

Nature of the Property: Movable property refers to assets that can be transported or transferred from one place to another. It includes items such as vehicles, machinery, equipment, furniture, and other tangible movable objects.

Legal Framework: The lease of movable property is governed by the general principles of contract law, as well as specific laws and regulations that may apply to the specific type of property being leased. The Transfer of Property Act, 1882, does not cover the lease of movable property extensively, as it primarily focuses on immovable property.

Examples: Lease agreements for cars, industrial machinery, office equipment, furniture, etc., fall under the lease of movable property.

IV. RIGHTS AND OBLIGATIONS OF THE LESSOR

(A) Right To Receive Rent:

The Transfer of Property Act, 1882, recognizes the right of the lessor to receive rent as a fundamental aspect of a lease agreement. The following points highlight the significance of the right to receive rent:

- a. **Contractual Obligation:** The lessor has a contractual right to receive rent as stipulated in the lease agreement. Rent serves as consideration for the lessee's right to occupy and use the leased property.
- b. **Determination of Rent:** The lease agreement should specify the amount of rent, the frequency of payment, and the mode of payment. The Act allows the parties to mutually

agree on the rent amount, which is typically influenced by factors such as the market value of the property, location, and the duration of the lease.

- c. **Timely Payment:** The lessee is legally obligated to pay rent to the lessor within the agreed-upon time frame. Non-payment or delayed payment of rent can result in legal consequences, including potential termination of the lease agreement.

(B) Right To Terminate The Lease:

Under the Transfer of Property Act, 1882, both the lessor and the lessee have certain rights regarding the termination of a lease. The following points highlight the right to terminate the lease:

- a. **Mutual Agreement:** The lessor and the lessee can mutually agree to terminate the lease before its specified duration. This can be done through a written agreement where both parties consent to the termination.
- b. **Breach of Lease Terms:** If either party fails to fulfill their obligations as per the lease agreement, the other party may have the right to terminate the lease. For example, if the lessee repeatedly defaults on rent payments or violates significant terms of the lease, the lessor may terminate the agreement.
- c. **Notice Period:** In certain situations, the right to terminate the lease may be subject to a notice period mentioned in the lease agreement or as per the laws of the jurisdiction. Adequate notice should be provided by the terminating party to the other party to ensure compliance with legal requirements.

(C) Implied Warranties By The Lessor:

Implied warranties are certain rights and protections automatically provided to the lessee by law, even if not expressly mentioned in the lease agreement. The following points discuss the implied warranties by the lessor:

- a. **Right to Quiet Enjoyment:** The lessor implicitly warrants that the lessee will have the right to peacefully enjoy the leased property without any disturbance or interference from the lessor or any third party claiming title to the property.
- b. **Habitability of the Property:** The lessor implicitly warrants that the leased property is fit for the intended purpose and meets basic habitability standards. The property should be in a livable condition, free from any hazardous or uninhabitable conditions.
- c. **No Hidden Defects:** The lessor implicitly warrants that they have disclosed any known defects or issues with the property that could affect the lessee's use and enjoyment. This

includes informing the lessee of any structural issues, pending repairs, or potential risks.

V. RIGHTS AND OBLIGATIONS OF THE LESSEE

(A) Right To Peaceful Enjoyment:

The right to peaceful enjoyment is a crucial aspect of a lease agreement and is protected under the Transfer of Property Act, 1882. The following points highlight the right to peaceful enjoyment:

- a. **Exclusive Possession:** The lessee has the right to exclusive possession and use of the leased property during the term of the lease. This means that the lessor cannot interfere with the lessee's possession or use of the property, except as specifically allowed by the lease agreement or the law.
- b. **Freedom from Disturbances:** The lessor has a duty to ensure that the lessee can enjoy the property without any unreasonable disturbances or disruptions. This includes refraining from actions that may interfere with the lessee's peaceful possession or use of the property.
- c. **Covenant of Quiet Enjoyment:** The covenant of quiet enjoyment implies that the lessor guarantees that the lessee will not be disturbed in their possession or enjoyment of the property by any lawful claim or action of the lessor or any third party. If such disturbance occurs, the lessee may seek legal remedies.

(B) Duty To Pay Rent:

The duty to pay rent is a fundamental obligation of the lessee under the Transfer of Property Act, 1882. The following points highlight the duty to pay rent:

- a. **Payment of Rent:** The lessee is obligated to pay rent to the lessor as per the terms agreed upon in the lease agreement. Rent should be paid within the specified time frame and in the manner prescribed in the agreement.
- b. **Timeliness:** The lessee has a duty to make rent payments on time, usually at regular intervals, as agreed upon in the lease agreement. Failure to pay rent within the stipulated time may lead to legal consequences, including possible termination of the lease.
- c. **Rent Escalation:** The lease agreement may provide for rent escalation over the term of the lease, either through fixed increases or linked to a predetermined index. The lessee is responsible for paying the increased rent as per the agreed terms.

(C) Duty To Maintain The Property:

The lessee has certain responsibilities regarding the maintenance of the leased property. The following points highlight the duty to maintain the property:

- a. **Ordinary Repairs:** The lessee is generally responsible for undertaking ordinary repairs and maintenance of the leased property. This includes routine maintenance tasks to keep the property in good condition during the lease term.
- b. **Reasonable Wear and Tear:** The lessee is not responsible for repairing or maintaining damage caused by reasonable wear and tear that occurs as a result of ordinary use of the property.
- c. **Compliance with Lease Terms:** The lessee must comply with any specific maintenance obligations mentioned in the lease agreement. This may include responsibilities for specific repairs, maintenance of common areas, or compliance with property rules and regulations.

VI. IMPORTANT LEGAL PROVISIONS**(A) Registration Of Lease Agreements:**

- a. **Importance of Registration:** The registration of lease agreements is crucial for their legal validity and enforceability. Section 17 of the Transfer of Property Act, 1882, mandates the registration of lease agreements exceeding one year.
- b. **Process of Registration:** The registration process involves executing the lease agreement before the appropriate registration authority and paying the required registration fees. The agreement is then recorded in the official records, providing evidence of its existence.
- c. **Rights and Protection:** Registration offers various benefits, such as legal certainty, prevention of fraud, and protection of the lessee's rights. It enables the lessee to assert their rights against any third-party claims and establishes the priority of the lease over subsequent transactions.

(B) Assignment and Subletting:

- a. **Assignment:** Assignment refers to the transfer of the lessee's entire interest in the lease agreement to another party. The lessee, known as the assignor, transfers their rights and obligations to the assignee, who becomes the new lessee.
- b. **Subletting:** Subletting occurs when the lessee leases a part or the whole of the leased property to a third party, known as the sub-lessee, while still retaining their own rights

and obligations as the original lessee.

- c. **Conditions and Restrictions:** Assignment and subletting may be subject to the terms of the lease agreement or the consent of the lessor. The Transfer of Property Act, 1882, does not specifically address assignment and subletting, but common law principles and contractual provisions govern these transactions.

(C) Termination and Surrender Of Lease:

- a. **Termination:** Termination of a lease refers to the premature ending of the lease agreement before its specified duration. The Transfer of Property Act, 1882, provides certain provisions for the termination of leases, including the rights and obligations of the lessor and lessee.
- b. **Grounds for Termination:** Termination may occur due to various reasons, such as mutual agreement, expiration of the lease term, breach of lease terms, or the occurrence of a specific event specified in the lease agreement.
- c. **Surrender:** Surrender refers to the voluntary relinquishment of the lease by the lessee before the expiration of the lease term. It requires the consent of both the lessor and the lessee and can be done through a written agreement.
- d. **Notice Requirements:** Termination and surrender of a lease agreement may require providing prior notice to the other party as per the terms of the lease agreement or as per the applicable laws.

VII. CASE STUDIES AND LANDMARK JUDGMENTS

(A) Case Study: *Shashikant Laxman Kale v. Union of India (2015)*

Brief Overview: This case involved the interpretation of Section 105 of the Transfer of Property Act, 1882, regarding the determination of lease agreements. The Supreme Court of India clarified that the determination of a lease should be based on the intention of the parties, and mere non-payment of rent does not automatically terminate the lease.

Importance: The case highlighted the importance of establishing the intention of the parties while determining the termination of lease agreements. It emphasized that the non-payment of rent alone does not lead to automatic termination, but a clear intention to terminate the lease must be established.

(B) Landmark Judgment: *Raja Dhruv Dev Chand v. Raja Harmohinder Singh (1968)*

Brief Overview: In this landmark judgment, the Supreme Court of India emphasized the

distinction between a lease and a license. It stated that a lease must confer an interest in immovable property, while a license merely grants permission to use the property without creating any interest.

Importance: The judgment clarified the essential elements that differentiate a lease from a license. It provided a comprehensive analysis of the nature and characteristics of lease agreements, helping to establish a clear legal framework for interpreting and determining lease transactions under the Transfer of Property Act, 1882.

VIII. CONCLUSION

Chapter V of the Transfer of Property Act, 1882, specifically Sections 105-117, addresses the subject of lease agreements. Leases hold significant importance within property law, as a majority of individuals either own their own property or enjoy the use of someone else's property by paying rent or a premium. Consequently, it becomes crucial not only for legal professionals but also for every citizen to possess a sound understanding of leases since, at some point, everyone may own property. Lack of knowledge or a limited understanding of lease agreements can lead individuals to enter into unfavorable contracts or be easily misled. A lease essentially represents a contractual arrangement between a lessor and a lessee, specifying a designated time frame for the lease's duration, payment amounts, payment methods, and other relevant terms. Violating the rules, regulations, provisions, or terms outlined in a lease agreement can result in legal consequences. A well-executed lease agreement can be beneficial as long as both the lessor and lessee fulfill their respective obligations. Thus, this paper provides a basic overview of the concept of lease, the roles of lessor and lessee, their rights and responsibilities, as well as different types of leases.

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