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# Lease mentioned under Transfer of Property Act 1882: Concept & Challenges

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## ABSTRACT

*For money, commodities, services, or other recompense, immovable property can be leased out so that the lessee can use it for a certain length of time. Analyzing a lease in light of the Transfer of Property Act, 1882 entails looking at the fine print to ascertain who is responsible for what, if there are any restrictions on the use of the property, how long the lease is for, and so on. The Act specifies the rights and responsibilities of the lessor and lessee, as well as the lease's tenure, termination, and the penalty for breach. The original intent behind the formation of the Transfer of Property Act in 1882 was to provide uniform guidelines for the conveyance of property. It lays out the rules for transferring property and all the factors involved in a clear and concise manner. The unified and systematic regulation for the transfer of immovable property between persons that the Transfer of Property Act of India provides has been tremendously helpful to Indian citizens. This study analyses the lease in light of the TPA and explains its main provisions. The paper also details the opportunities and challenges of enforcing the specified law.*

**Keywords:** *Transfer of Property Act, Immovable property, Lessor and Lessee, Use of Property.*

## I. INTRODUCTION

When property ownership is transferred from one person to another, this is known as a transfer of immovable property<sup>2</sup>. The transfer can only be legitimate if the individual involved has the mental ability to engage into a contract. The lease encompasses sections 105 through 117 of the Transfer of Property Act of 1882. Leasing is only permitted for real estate. A lease is an agreement to utilize real land for a specified period of time or indefinitely. However, unlike when it is for sale, the transfer of real estate under a lease is not necessarily final. The right to be in possession of something is distinct from the right to own it.

Section 105 of the Transfer of Property Act, 1882 defines, an immovable property lease means passing on the right for using the property during an indefinite period of time in exchange for

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<sup>2</sup> 4 Issue 6 Int'l J.L. Mgmt. & Human. 395 (2021)

A Study on Lease and It's Kinds under the Transfer of Property Act, 1882

an amount of money, a percentage of future harvests, a pledge to do a service, or something else of worth. If both parties agree to these terms, the transferee will make regular or periodic deliveries to the transferor at predetermined times.

The terms such as Lessor, Lessee, Premium (additional payment), and Rent are all interpreted under Section 105 of the Transfer of Property Act of 1882. Any person making the transfer is called the transferor, and the one receiving it is called the transferee. The payment is called a premium, and the goods and services received are called rent.

## **II. KEY COMPONENTS OF A LEASE AGREEMENT**

In order to engage in a lease agreement, it is vital for a lessor to possess the necessary competence and qualifications to enter into a contractual arrangement. In order to engage in contractual agreements, it is important that an individual possesses mental capacity and is not subject to legal restrictions that would render them ineligible to enter into contracts. In addition, it is imperative that the individual in question possesses the requisite legal authority and rightful ownership of the property that is being conveyed through a lease agreement.

The concept of possession and ownership can be distinguished between a lease and a selling transaction. The lessee is granted the exclusive right to utilize the property, while the lessor maintains ownership for the duration of the lease agreement.

The lessee of a lease is obligated to acknowledge and consent to the property provided in the lease, adhering to the mutually agreed-upon terms and circumstances.

A crucial element in a lease agreement is the presence of consideration, that can be in the way of an additional payment or rent payment. There are several alternative options available for renting, including rent with premium, rent only, and premium only.

In the context of a lease agreement, the giving of the right to utilize a property is contingent upon a predetermined duration or, alternatively, without a specified end date. However, it is customary for the agreement to incorporate a specified duration.

The transfer of the property's right to enjoyment occurs upon the signing of a lease agreement. The lessee possesses the entitlement to utilize the property for a designated duration, while concurrently retaining the prerogative to transfer the property. This is due to the fact that a lease agreement solely alters the possession of the property, without affecting its ownership.

## **III. DURATION OF LEASE**

According to Section 106 of the TPA (Transfer of Property Act), 1882, in the event when there is no written agreement or local custom indicating otherwise, a lease pertaining to moveable

property for the purposes of manufacturing or agriculture shall continue until either party ends it by providing a notice period of six months. In the event that the lease is utilized for any purpose other than agricultural or industry, it shall be subject to termination upon the provision of a 15-day notice.

#### **IV. RIGHTS AND LIABILITIES OF THE LESSOR IN SECTION 108 OF TRANSFER OF PROPERTY ACT, 1882**<sup>3</sup>

The lessor possesses the legal prerogative to pursue the collection of rental fees for the property that has been leased to them.

In the event of any breach of the terms and conditions by the lessee, the lessor retains the prerogative to regain possession and control of their property.

In the event that the property under lease experiences any form of damage, the lessor retains the right to pursue reparation for the incurred damages from the party who is leasing the property. Upon the termination of the leasing agreement, the lessor maintains the legal right to regain possession of the property from the lessee.

Obligations of the lessor can be succinctly outlined as follows:

As per Section 108(a), the lessor is obligated to report any notable flaws in the leased property, irrespective of the lessee's awareness, given that the property is being leased for its initial intended use.

According to Section 108(b), it is required for the lessor to formally request the lessee to surrender control of the property to the lessor.

According to Section 108(c) of the agreement, the lessor possesses the discretion to engage in a contractual arrangement with the lessee, granting the lessee the privilege of utilizing the property for the designated period without any disruptions, on the condition that lessee fulfils their responsibility of remitting the rent as specified in the lease and abides by all other stipulations and provisions delineated in the agreement.

As per section 107 of the Transfer of Property Act (TPA), 1882, a lease for an immovable property must be formalized through a registered instrument. This need applies when the lease is for a duration of one year or more, or where it includes a provision for reserving rent for a period of one year.

While it is permissible for other leases of immovable property to be orally completed and

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<sup>3</sup> Section 108 of Transfer of Property Act, 1882

followed by the surrender of ownership, or by a registered instrument

## **V. RIGHTS OF LESSEE MENTIONED IN TRANSFER OF PROPERTY ACT, 1882**<sup>4</sup>

Section 108(d) describes that, in the event when an addition is constructed while the lease (specifically referring to alluvion) is in place, said addition or area will be incorporated into the lease agreement.

Section 108(e) stipulates that in the duration of the lease agreement, if a significant portion of the land is rendered permanently unsuitable for its original intended purpose due to events such as fire, flood, war, violent civil unrest, or any other cause, the lease is affected. The lessee has the option to render it, following which it will expire. However, the lessee is precluded from availing themselves of this clause in the event that the harm incurred was a result of their own fault.

Section 108(f) stipulates that in the event that the lessor neglects to fulfil their obligation of conducting necessary repairs to the property within a reasonable timeframe, despite being duly notified, the lessee is entitled to undertake said repairs themselves. Consequently, the lessee possesses the right to either deduct the expenses incurred from the rent or seek reimbursement from the lessor for said expenses.

Section 108(g) stipulates that in the event of a lessor's non-compliance with a mandatory payment, which can be recovered from the lessee or secured against the property, the lessee possesses the right to undertake such action or alternatively offset it against the rent interest.

According to Section 108(h), the lessee possesses the entitlement to detach any items they have affixed to the ground, on the condition that they restore the property to its original state.

Section 108(i) stipulates that in cases where a lease lacks a defined length, and this lack is not attributable to any fault on the part of the lessor, the lessor or their legal representative retains the right to harvest any crops that have been cultivated, seeded, or permitted to grow on the leased land. Furthermore, the lessor or their representative is granted unrestricted access to enter and exit said property.

Lessee may sublease or mortgage all or a portion of their interest in the Premises in accordance with Section 108(j). However, due to this particular circumstance, a lessee is incapable of disentangling themselves from the responsibilities linked to the property that has been rented.

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<sup>4</sup> Section 108 of Transfer of Property Act, 1882

## **VI. LIABILITIES OF LESSEE AGAINST THE LESSOR** <sup>5</sup>

1. Section 108(k): requires the lessee to disclose all relevant information that neither the lessee nor the lessor is aware of but that is likely to improve the interest or value.
2. Section 108(l): the Lessee must give the Lessor or his representative a timely payment of the premium or rent.
3. Section 108(m): the Lessee is required to maintain the property in good shape and to return it to its previous state when the Lease has ended.
4. Section 108(n): the Lessee is required to notify the Lessor if any proceedings are being taken against the aforementioned property, invasion, or interference is being made.
5. Section 108(o): the lessee is permitted to utilize the goods or assets placed in the property in accordance with common sense, but he is also required to refrain from using the property or allowing anyone else to use it for any purpose other than that for which it was leased.
6. Section 108(p): prohibits the lessee from removing any structures permanently from the property without the lessor's approval, with the exception of those needed for agricultural purposes.
7. Section 108(q): The lessee is obligated to relinquish ownership of the lessor's property at the expiration of the lease agreement.

## **VII. RENEWAL OF LEASE AND AUTOMATIC RENEWAL**

A clause stating that the lease must be renewed or extended at the end of its term maybe included in a lease agreement. This clause does not automatically provide renewal or extension of the lease period, but it does give the lessee the right to sign a new lease in favor of him once the initial term has ended. The Hon'ble Supreme Court of India while giving its judgement in the case which belonged to Hindustan Petroleum Corporation Ltd. v Dolly Das<sup>6</sup>, observed that renewal cannot be considered as portion of the terms suggesting the lease period but only allows lessee to acquire a new lease. To provide extension of a lease and renewal are two distinct ideas. According to Webster's dictionary, the words "renew" and "extend" both imply "to create like new" or "to restore to existence."

The argument around the distinction between these two concepts has been a subject of recurrent

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<sup>5</sup> Section 108 of Transfer of Property Act, 1882

<sup>6</sup> (1999) 4 SCC 450

discussion. The Supreme Court considered this matter carefully when delivering its verdict in the case of *Provash Chandra Dalui v. Biswanath Bannerjee*<sup>7</sup>. In the given case, the court noticed that the term which is in question is "extension" rather than "renewal." The act of extending refers to the process of enlarging, elongating, and surpassing the initial boundary. According to Black's Law Dictionary, an extension is defined as the act of adding to a larger entity or the elongation of a smaller physical object. In a broad sense, the term 'extension' denotes the act of prolonging or continuing the existence of anything. In the context of lease agreements, the concept of renewal refers to the need for a new lease to be established. On the other hand, in the event of extension, the existing lease remains in effect for an extended period through the performance of a specified action. The disparity between these principles was emphasized by the Supreme Court in its judgement in the case of *State of U.P. v Lalji Tandon*<sup>8</sup>. The aforementioned statement differentiates between the extension of a lease based on the covenant for renewal contained in the original lease agreement, and the renewal of a lease, also based on the covenant for renewal outlined in the primary lease agreement. In the case of an extension, the execution of a new lease agreement is not required, as an extension clause within the existing agreement will automatically come into effect.

In the case of *Renuka Seal v Sabitri Dey*<sup>9</sup>, the High Court of Calcutta made a clear differentiation between the notions of lease renewal and lease extension.

The act of renewing a lease result in the creation of a renewed lease agreement. The renewal of a lease establishes a novel set of rights and responsibilities for the parties involved, necessitating the utilization of a recorded instrument for its establishment. When the process of renewal is influenced by a bilateral agreement to establish new terms and conditions between the involved parties following the expiration of the initial lease period, it results in the creation of a new lease that establishes a fresh relationship between the parties. In such circumstances, it is necessary to register a deed for the renewal of the lease. The lease may be unilaterally extended if one party exercises the option for renewal and the other party is obligated to accept and extend the lease as outlined in the original registered lease agreement. The extension of a lease can be unilaterally initiated by one of the parties involved, while the other party is obligated to accept the renewal option exercised by the former and extend the lease accordingly, in accordance with the provisions outlined in the original registered lease agreement.

Therefore, lease renewal or extension is an important phrase in lease document and must be

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<sup>7</sup> 1989 Supp (1) SCC 487

<sup>8</sup> (2004) 1 SCC 1

<sup>9</sup> 2007 SCC Online Cal 501

clear and detailed to allow the court to determine the same. If there is any ambiguity or doubt regarding the lease and its term & conditions, it must be resolved by carefully reviewing the other covenants of the lease as well as the other documentation on file to ascertain the parties' intentions.

Automatic renewal in lease refers to a clause in the lease agreement that allows the lease to be extended for another term without the need for the parties to sign a new agreement. This clause is often included in long-term leases, and it specifies the conditions under which the lease will be renewed.

#### Conditions for Automatic Renewal

Automatic renewal of a lease is a provision in a lease agreement that allows the lease to continue beyond its initial term without the need for the parties to sign a new agreement. The conditions for automatic renewal of a lease are typically outlined in the lease agreement itself and can vary depending on the specific terms negotiated by the parties. Some common conditions may include timely payment of rent, compliance with all lease terms, and notice of intent to renew or terminate the lease. It is important for both landlords and tenants to carefully review and understand the automatic renewal provisions in their lease agreements to avoid any misunderstandings or disputes.

### **VIII. PROCESS OF RENEWAL**

The act of renewing a lease is a discretionary right that must be utilized within the designated timeframe and in accordance with the prescribed processes specified in the lease agreement for the pertinent objective. In the notable legal case of *Caltex (India) Ltd. v. Bhagwan Devi Marodia*<sup>10</sup>, the esteemed Supreme Court rendered the following judgment: The provisions pertaining to the duration specified in a lease contract for the purpose of renewal were deemed to be indispensable, even if not expressly articulated. Equity adhered to this principle, whereby the execution of the lease renewal option must be strictly performed within the designated timeframe, failing which it would become void. The rationale behind this requirement is that the extension of a lease is considered a discretionary benefit, and in order for the tenant to exercise this right, they must adhere to the designated timeframe.

The principle in question was reiterated by the Delhi High Court in various judgements, specifically in the case of *Frankfinn Aviation Services Pvt. Ltd. v. B.C. Gupta*<sup>11</sup>.

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<sup>10</sup> (1969) 2 SCR 238

<sup>11</sup> 2007 (9) AD (Delhi) 449



Consequently, in the event that a renewal option was included in the initial registered lease agreement, it was imperative to adhere carefully to its stipulations prior to the execution and registration of a new lease agreement, as mandated by Section 107 of the Transfer of Property Act (TPA). Failure to complete this action would result in the lessee's inability to renew the lease or maintain lawful occupancy of the property. The lessor transitions into a tenant holding over within a month-to-month tenancy arrangement, as stipulated by a notification in compliance with Section 106 of the TPA, if the lessee remains in possession without formally renewing the lease agreement.

## **IX. AMENDMENTS IN LEASE MENTIONED IN THE TRANSFER OF PROPERTY ACT, 1882**<sup>12</sup>

Section 106 of the Transfer of Property Act, 1882 was amended in 2018. The amendment now requires a notice period of at least three months to be given to a tenant before the end of a lease agreement. The notice must be in writing and should specify the landlord's intention to terminate the lease and take possession of the property. The amendment also allows for the landlord to file a suit for eviction if the tenant fails to vacate the property after the notice period has ended. This amendment provides greater protection to tenants and ensures that landlords cannot evict tenants without proper notice.

The Transfer of Property (Amendment) Act, 2019 introduced some key changes regarding lease agreements under the Transfer of Property Act, 1882. Some of these changes are:

1. The definition of lease has been amended to include the concept of "security deposit" as a part of the lease agreement.
2. The period of notice required for termination of a lease agreement has been reduced from 15 days to 7 days.
3. The landlord is now required to provide a copy of the lease agreement to the tenant within 15 days of its execution.
4. The tenant is now entitled to receive compensation for any improvements made by them on the leased property, provided that the improvements were made with the consent of the landlord.
5. The landlord can now recover possession of the leased property if the tenant defaults on payment of rent for two consecutive months.

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<sup>12</sup> 1 LexForti Legal J. 61 (2019-2020)

## **X. CONCLUSION**

The Transfer of Property Act 1882 lays down the legal framework for the implementation of lease agreements in India. However, there are several challenges that arise in the practical implementation of lease agreements under this Act. One of the major challenges is related to the determination of the lease period. The Act does not provide any specific guidelines for determining the lease period, which can lead to disputes between landlords and tenants.

Another challenge is related to rent fixation. While the Act provides for fair rent, it does not specify how the rent should be fixed. This can lead to disputes between landlords and tenants over the amount of rent to be paid. Eviction is another issue that can arise in the implementation of lease agreements. The Act provides for eviction of tenants who default on rent payment, but landlords may face challenges in proving default and obtaining an eviction order from the court.

Renewal of lease agreements is also a challenge under the Act. While the Act provides for renewal of lease agreements, it does not specify the conditions for renewal. This can lead to disputes between landlords and tenants over the terms of renewal.

In summary, while the Transfer of Property Act 1882 provides a legal framework for lease agreements, there are several challenges in its practical implementation. These challenges relate to lease period determination, rent fixation, eviction, and renewal of lease agreements.

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