

# LEASE

ESSENTIAL ELEMENTS OF LEASE

RIGHTS AND DUTIES OF LESSEE  
AND LESSOR

TERMINATION OF LEASE

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## LEASE UNDER TPA

(Section 105 - 117)

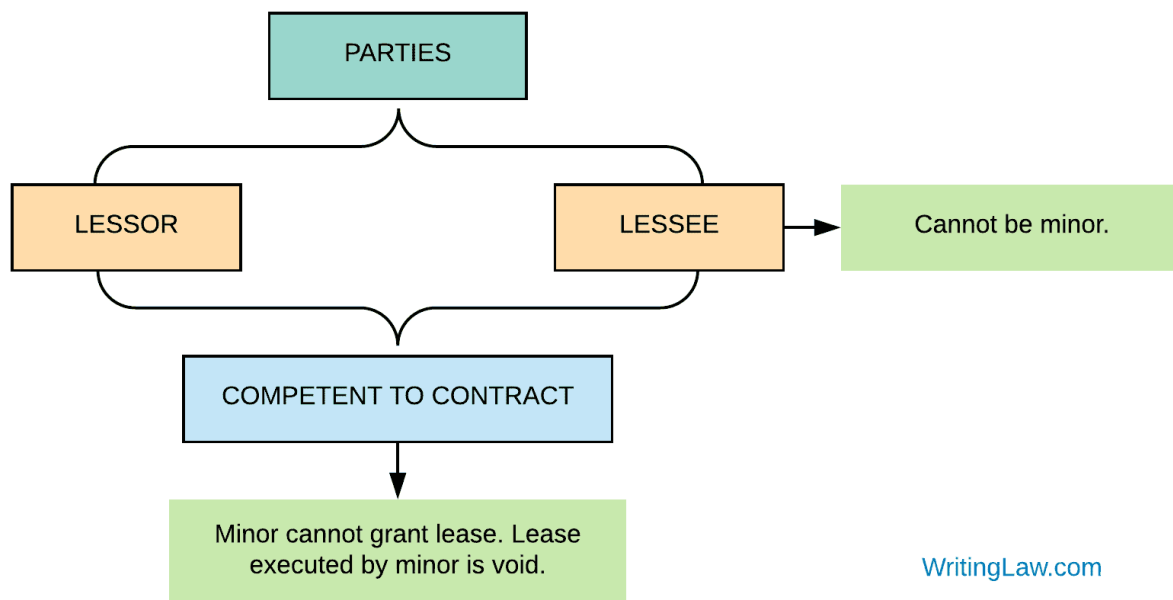
### LEASE IS TRANSFER OF POSSESSION

**Section 105** defines lease. Lease is a transfer of right of enjoyment of an immovable property made for a certain period, in consideration of a price paid or promised to be made or money, share of crops, service or any other thing of value to be given periodically or on specified occasions by the transferee to the transferor.

Lease is not transfer of ownership of property, only possession is given.

The transferor is called **Lessor** (Landlord) and the transferee is called **Lessee** (Tenant)

## ESSENTIAL ELEMENTS OF LEASE



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### 1. Parties

The guardian of the minor may grant lease for the period of 5 years (with additional period of 1 year once the child **attains majority**) (reference made to **section 8 of Hindu Minority and Guardianship Act**), for more than this permission of court is required.

### 2. Possession

(only immovable) (only usufruct is transferred)

### 3. Premium

### 4. Period

## **PREMIUM**

The contract of lease must be supported with some consideration. The consideration in lease may be premium or rent.

Where the whole amount to be recovered as a consideration from the lessee in **lump-sum** (onetime) is called **Premium**. When consideration is paid periodically is called **rent of the lease**. Rent need not be necessarily in the form of money, it may be services, share or other thing so rendered.

## **PERIOD**

The right of use and enjoyment must be given to the lessee for a certain period of time and this time is called the **term of the lease**.

The term may be any period of time, longer or shorter even for perpetuity but it must be specified in the deed.

## **RIGHTS OF LESSEE**

1. Right of accretions.
2. Right to avoid lease on destruction of property.
3. Right to deduct cost of repair.
4. Right to deduct outgoings.
5. Right to remove fixtures.
6. Right to remove crops.
7. Right to assign the interest.

## **DUTIES OF LESSEE**

1. Duty to disclose facts.
2. Duty to pay rent.

3. Duty to maintain the property.
4. Duty to give notice of encroachment.
5. Duty to use the property reasonably.
6. Duty not to make permanent structure.
7. Duty to restore possession.

## **RIGHTS OF LESSOR**

**Section 108** does not provide for any specific right of the lessor but, because the rights and duties are **co-relative**, the liabilities of the lessee which are given under this section, are the rights of lessor.

## **DUTIES OF LESSOR**

1. Duty to disclose any material defects in the property.
2. Duty to give possession to the lessee at his request.
3. To provide by covenant a quiet enjoyment of the property to the lessee.

## **TERMINATION OF LEASE**

### **(SECTION 111)**

There are following ways where a lease is terminated.

1. **By lapse of time.**
2. **By happening of specified event.**
3. **By termination of lessor's interest.**

Where the lessor's own interest in immovable property is

limited, lease comes to an end upon the termination of the lessor interest.

#### **4. By Merger.**

Meeting of one interests with another interests. When a limited interest becomes absolute interest, there is a merger.

*For Example-*

*If the landlord makes gift or sells the tenanted house to the tenant. The tenant does not remain a tenant, he becomes the owner of the house.*

This rule is based on the maxim-

**“Nemo Potest esse tenens et dominus”**

It means no body can be both a landlord and a tenant of the same property.

#### **5. By express surrender.**

Surrender is opposite of merger. In a merger a larger interest is merged with smaller interest.

*For Example-*

*Where a tenant vacates the premises before expiry of the term, the lease ends.*

#### **6. By implied surrender.**

When a lessee accepts from the lessor a new lease of the same property which is already leased to him, there is implied surrender of the earlier lease and a new lease is formed.

## **7. By forfeiture.**

Means loss of the right of the lessee to use the property by some fault on his part. Lease is terminated by forfeiture on following grounds-

- a.** Breach of express conditions by lessee.
- b.** Denial of the title of landlord.
- c.** Insolvency of the lessee.

## **8. By expiry of notice to quit.**

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