

NOTES

Lease under the Transfer of Property Act, 1882

Julie Nigam · 06 Oct 2026

Introduction

A person may need a house, shop or land without being able or willing to buy it. A lease solves this problem. For example, A allows B to use a shop for five years in return for monthly rent. B gets the right to possess and enjoy the shop, but A remains its owner.

Leases of immovable property are mainly governed by **Sections 105 to 117** of the **Transfer of Property Act, 1882 (TPA)**. These provisions explain the meaning of lease, its creation, duration, mutual rights and liabilities, termination, notice to quit and holding over. The lease agreement, local usage, rent-control laws and the Registration Act may also affect the parties' rights.

Meaning and nature of lease: Section 105

Section 105 defines a **lease** as a transfer of the right to enjoy immovable property for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, money, a share of crops, service or another thing of value. The transferor is the lessor, the transferee is the lessee, the one-time price is the premium, and the recurring return is the rent.

A lease transfers an interest in property, not ownership. It is therefore more than a licence. A licensee merely receives permission to do something on another's property, while a lessee normally receives possession and an enforceable interest. The Supreme Court in **Associated Hotels of India Ltd. v. R.N. Kapoor (1959)** has observed that the real intention of the parties and the substance of the document is more important than its name. A lease is indicated by exclusive possession but it is not the only test.

Parties and Essential elements

The **lessor** must have either the title or authority to lease. He must be competent to contract. The **lessee** shall also have capacity to take the transaction. Typically, the requirements for a valid lease include:

1. immovable property as the subject-matter,
2. transfer of right of use, not of ownership,
3. a certain time which may be fixed, implied or perpetual,
4. such consideration shall be lawful such as premium, rent, crops or services, and
5. acceptance of the terms by lessee.

The property and the extent of possession should be reasonably identifiable. The lessee's interest is ordinarily transferable and heritable, subject to the agreement, nature of the lease and applicable law.

Lease compared with gift and exchange

Lease vs Gift vs Exchange			
	 Lease	 Gift	 Exchange
 Nature of Transaction	Transfers a right to enjoy property for a period.	Transfers existing property voluntarily and without consideration.	Each party transfers ownership of one thing for ownership of another.
 Ownership	Ownership remains with the lessor.	Ownership passes to the donee.	Ownership passes mutually between the parties.
 Consideration	Rent or premium is the consideration.	No monetary consideration is required.	The other property is the consideration.
 Governing Provision	Mainly governed by Sections 105–117.	Mainly governed by Sections 122–129.	Defined in Section 118.

How a lease is created: **Section 107**

A lease of a term exceeding one year or from year to year or a lease reserving yearly rent shall be made only by a registered instrument. Both lessor and lessee must execute the registered document. Other leases may be made by a registered instrument or by an oral agreement

accompanied by delivery of possession, subject to local law and other statutory requirements.

An unregistered document that requires registration cannot create the long-term lease described in it, though it may sometimes be used for a limited collateral purpose or establish a month-to-month tenancy under **Section 106**. In ***Anthony v. KC Ittoop & Sons (2000)***, the Supreme Court explained that an unregistered lease requiring registration cannot operate as a valid term lease, but the parties' possession and conduct may create a tenancy recognised by law.

Duration when no period is fixed: Section 106

In the absence of a contract, local law or usage, a lease for agricultural or manufacturing purposes is presumed to be from year to year and terminable by six months' notice. A lease for any other purpose is presumed to be from month to month and terminable by fifteen days' notice. The notice period begins from its receipt.

The notice must be written, signed and properly served by post, personal delivery or delivery to a family member or servant at the residence. If these methods are impracticable, it may be affixed to a conspicuous part of the property. A notice is not invalid merely because the period falls short if the suit is filed after the statutory period has expired.

Lessor : Rights and Liabilities

The lessor is entitled to rent and premium, to enforce the conditions agreed upon, to claim compensation for damage and to recover possession at the expiration of the lease. The lessor may also seek eviction for a lawful breach subject to the lease, the TPA and rent-control legislation.

Section 108 requires the lessor to disclose material defects connected with the intended use that the lessor knows but the lessee could not discover with ordinary care. The lessor must put the lessee in possession when requested and must allow peaceful enjoyment during the term if the lessee pays rent and performs the lease obligations. This is sometimes called the **lessor's covenant** for quiet enjoyment.

Lessee : Rights and liabilities

- The lessee's principal right is to possess and enjoy the property without interruption during the lease. Under **Section 108**, an accession to the property ordinarily becomes part of the

lease.

- If fire, flood, violent force or another irresistible event destroys or substantially makes the property unfit for its purpose, the lessee may treat the lease as void, unless the damage resulted from the lessee's own wrongful act.
- If the lessor fails to make repairs after reasonable notice, the lessee may make repairs and deduct the cost with interest from rent or recover it from the lessor.
- The lessee may pay public charges that the lessor ought to pay and recover or deduct them in the legally permitted manner.
- The lessee may remove fixtures attached to the property during the lease if the property is substantially restored to its original condition.
- The lessee is to pay rent. He is to keep the property in good condition, use it prudently, inform the lessor of encroachments, and avoid destructive acts.
- The lessee must not use the property for an unlawful purpose or commit waste. Subletting, assignment or transfer is generally possible unless prohibited by the lease or the nature of the interest, but the original lessee may remain liable to the lessor.

Lease under the Transfer of Property Act, 1882

1. MEANING | SECTION 105



A lease transfers the right to enjoy immovable property for a certain time or in perpetuity, in return for rent, premium, crops, service or another thing of value.

Lessor = transferor | Lessee = transferee
Lease transfers an interest, not ownership.

2. ESSENTIALS



- 1 Immovable property
- 2 Right to use, not ownership
- 3 Certain duration
- 4 Lawful consideration
- 5 Acceptance by lessee

3. CREATION | SECTION 107



Lease over one year, year-to-year, or reserving yearly rent: registered instrument executed by both parties.

Other leases: registered instrument or oral agreement with delivery of possession, subject to law.

4. NO FIXED PERIOD | SECTION 106



- Agricultural/manufacturing: year to year + 6 months' notice.
- Other purposes: month to month + 15 days' notice.
- Notice must be written, signed and properly served.

5. RIGHTS AND DUTIES



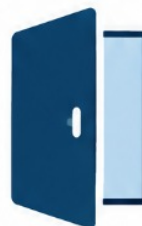
Lessor:

- disclose material defects
- give possession
- allow peaceful enjoyment
- claim rent and recover possession at end.

Lessee:

- pay rent
- maintain property
- use it lawfully
- avoid waste
- and may make permitted repairs.

6. ENDING + HOLDING OVER



Section 111:

- expiry
- specified event
- merger
- surrender
- forfeiture or valid notice to quit.



Section 116:

- holding over needs the lessor's consent, such as accepting rent.
- Mere continued possession is not enough.

How a Lease Ends: Section 111

Section 111 recognises several modes of determination:

- efflux of time, when the fixed term expires,
- happening of a specified event,
- termination of the lessor's interest,
- merger, when the lessor and lessee acquire the same interest in the same right,
- express or implied surrender,
- forfeiture for breach of an express condition, denial of the lessor's title or insolvency where the lease so provides, and
- a valid notice to quit.

Forfeiture is not favoured by courts. Sections 114 and 114A may give relief where rent arrears are paid or the breach is capable of remedy. The Supreme Court in the *State of U.P. v. Lalji Tandon (2004)* clarified that the primary criteria for renewal and continuation of a lease are the terms of the lease and the conduct necessary to validly renew a lease. Mere intention to renew is not enough.

Notice to Quit & Waiver

A notice to quit is a crucial way to end a periodic tenancy. It must clearly show the intention to terminate and comply with section 106 or the contract. In some cases, a defective notice can be cured if the suit is filed after the required period, but clear service and reasonable identification of the tenancy is still important.

A lessor may waive forfeiture by accepting rent with knowledge of the breach, or by performing something which shows that the lease is being treated as continuing. Section 113 also deals with the waiver of notice to quit. In *Sarup Singh Gupta v. S. Jagdish Singh (2006)* it was held by the Supreme Court that acceptance of rent after notice is not *ipso facto* a waiver and the intention and surrounding circumstances of the case must be looked into.

Doctrine of Holding Over : Section 116

Holding over occurs when a lessee remains in possession after the lease has ended and the lessor agrees to that continued possession. Acceptance of rent or another clear act of assent may create a fresh periodic tenancy, usually month to month or year to year according to [Section 106](#). Mere continued possession without the lessor's consent is not holding over, it may make the occupant a tenant at sufferance.

In [*Bhawanji Lakhamshi v. Himatlal Jamnadas Dani \(1972\)*](#), the SC has described holding over requires consent of the lessor. The parties' conduct, especially acceptance of rent, is relevant. A tenant cannot claim renewal merely by remaining in possession.

Conclusion

A lease is a transfer of the right to enjoy immovable property, not a transfer of ownership. For CLAT PG, remember the statutory sequence: [Section 105](#) defines lease, [Section 106](#) supplies duration and notice when the agreement is silent, [Section 107](#) prescribes creation, [Section 108](#) balances rights and liabilities, [Section 111](#) lists modes of determination, [Sections 112-114A](#) deal with waiver and relief against forfeiture, and [Section 116](#) governs holding over.

In short, a lease is both a property interest and a contractual relationship. Its validity and termination depend on the document, statutory formalities, lawful conduct and the parties' subsequent actions.