

## **CONTENTS: *CONCURRENT INTERESTS, LEASES, LICENSES AND TENACIES***

### **CONCURRENT INTERESTS**

Arise when two or more persons hold an **interest** in land in **possession** at the same time.

*Example:*

- a. Mulenga is granted land for life after which Simbangala is given a fee simple; No concurrent ownership they hold interests which are not in possession at the same time.
- b. Mulenga and Simbangala are simutenously granted fee simple; then Mulenga and Simbangala's interests are concurrent.

Co-ownership can take various forms namely **joint tenancy, tenancy in common, co-parcenary** and **tenancy by entireties**.

### **Joint Tenancy**

The distinguishing factors of a joint tenancy are as follows-:

- 1) The right of survivorship (i.e. ***Jus accrescendi***)- on death of one joint tenant his interests in the land passes to the other joint tenant and does not pass to the deceased descendants. The joint tenant who survives becomes the sole tenant and the right of survivorship operates not withstanding the existence of the will. The only way a joint tenant can alienate his interests to another is by reversing the tenancy by inter vivos (i.e. transfer of an interest in land whilst you are alive) [ converting the interest of a joint tenant to interests of tenants in common to allow your interest to pass to somebody upon death]

2) There must be the four unities in existence namely ***unity of interest, unity of possession, unity of time*** and ***unity of title***.

- a. ***unity of interest***- the co-owners must hold the same interest in the land
- b. ***unity of possession***- the property must be vested in possession to both of the parties at the same time. Common also to tenancy in common
  - i. Unity of possession exists when each co-owner is entitled to possession of the whole of the property: no one co-owner can claim possession of any part to the exclusion of others.
- c. ***unity of time***- Co-owners must be able to take possession at the same time.
- d. ***unity of title***- All the co-owners must acquire title to the land under the same document. Note that neither a corporation nor a limited company can have a joint tenancy with a natural person. Reason is because a company never dies and hence a natural person could have no effective right.

Note: Reversing the tenancy by intervivos is a person transferring his interests to another person, say while alive say X but X doesn't become a joint tenant but a tenant in common since the unities of title and time are not present.

### **Nature of Joint Tenancy**

The two partners are basically one and the same. As a separate individual he does not own anything at all but together with the other partners they own everything the result is that any joint tenant can occupy the whole premises or can be able to rent. Under the Particulars Act (1540) any joint tenant not happy with the way the joint tenancy is operating can bring an action to have the tenancy partitioned and thus destroy the joint tenancy.

## TENANCY IN COMMON

**Tenancy in Common** is a specific type of concurrent, or simultaneous, ownership of real property by two or more parties. This is a shared tenancy in which each holder has a distinct, separately transferable interest.

All **tenants in common** hold an individual, undivided ownership interest in the property. This means that each party has the right to alienate, or transfer the ownership of, her ownership interest. Each owner has the right to leave his share of the property to any beneficiary upon the owner's death.

A tenant in common holds any undivided share in a tenancy. It is differentiated from a joint tenant in that a tenant in common has undivided shares whilst a joint tenant has nothing at all or has everything. A Joint tenant has no right of survivorship compared to a joint tenant.

In a deed if the expression joint and severally is found the word joint is much adhered to, but in a will it is severally which is given word. The interests can exist both a common law, there was an inclination towards joint tenancies rather than common tenancies, the reason was because joint tenancies had certain advantages as regards land owners e.g.

1. It was easier for a landlord to collect the rent i.e. only from one tenant
2. Only one payment was made by the joint tenants whereas in common tenancies the tenants paid separately and hence paid more for one property.

There was a problem of conveyance. It was easier to investigate one title in a joint tenancy rather than titles of every one who was a tenant in common. The importance of investigating titles of tenants in common was because whereas in joint tenancy there was unity of title, tenants in common had no such unity.

Equity however created exemptions in this respect. Tenancy in common existed not only in those circumstances which tenants in common at common law existed but also in certain exceptions firstly, if money contributed is unequal they can not be joint tenants and tenants in common. If they contribute equal share equity presumes that they are joint tenants. Secondly, which refers to Partnership Act, they are held

by both parties as joint tenants and not as tenants in common. This is so irrespective of how much they contributed and it does not matter whether partnership is formal or not.

As regards determination of joint tenancies and tenancies in common this may be by partition, sale of premises, union in a sole tenant, the release by deed, and alienation by one joint tenant.

## **TENANCY BY CO-PARCENARY**

This arises by operation of the law i.e. it is not a deliberate action by one individual it arises where there is no male heir only female heirs available the partner will be parcenars and not joint tenants. This has certain characteristics of joint tenancies and some characteristics of tenancies in common e.g. the four units are normally present. It no longer exists.

## **TENANCY BY ENTIRETIES**

*These no longer exist* as from 1883, however prior to that a gift to a husband and a wife without words of limitation which could make them tenants in entireties and not joint tenants. Where there is a third person included in the grant the husband and wife will be tenants in the entireties but together will be joint tenants with the third person and hence they will get half and the third partner the other half. After 1883 any grant to the husband and wife makes them joint tenants. There are certain unique situations

1. A grant that creates a personal obligation on each of the partners creates a tenancy in common and not a joint interest in the debt although at law payment to one of them will be enough since they be regarded as joint tenancy.
2. Where a debt is owned to two partners who have a joint interest in the debt although at law payment to one of them will be enough since they be regarded as joint tenants this will not be the position in equity. In equity the partners will be regarded as tenants in common and not joint tenants both of the debt and hence the security held for it.

## Leases and Licences

A lease can mean the document or actually the interest that is being transferred. At common law there was no duration for the existence of a lease. In Zambia however, Section 5 of the Land (conversions of titles) Act 1975 converts all leases for the period over 100years to statutory leases of a 100years but the President can grant a lease for over 100years if it is an international interest relations.

### Terminology used in Leases

A *conveyance* is a transfer of a fee simple estate.

An *assignment* is a transfer of a leasehold estate. It is not all transfers which amount to leases. Sometimes it may amount to a mere **license**.

The test used to find out if it's a lease or license is one of exclusive possession. In a lease the tenant has the right to exclude the landlord from the premises in his possession. The landlord may have the right to inspect the land but if there is no such reserved right in the lease itself he becomes a trespasser. The exclusive right is derived from the construction of the document itself.

A **license** is a right or permission granted to a person to do certain things in the premises in the absence of which his business transactions whether or not a person was tenant or license depends entirely on existence of exclusive possession. In family relations the question of exclusive possession is not crucial or the mere fact there is exclusive possession does not make the landlord – tenant relationship.

Where a servant occupies his master's premises because that is regarded by the nature of his duties there is merely a service occupancy and the occupant is a license.

## Types of Licences

1. **Bare Licence:** This is one where no consideration has been given. It is always revocable and the revocation does not amount to a breach. However, the licensor has to give reasonable time to the licensee to clear off. It does not bind successors in title to licence.
2. **A Licence Protected by Estoppel or Equity**

The licensor is estopped from denying the type of a license he granted to a licensee i.e he had made a promise to the licensee. Such a licence is binding on successors' in title and whoever will be the purchaser.

A licence arising from *equity* is one in which the licensor is prevented from revoking the licence having regards to a promise he had earlier made.

The difference between equity and estoppel is that in equity there is a belief in the licensee that the licence will not be revoked and in estoppel the licensor is trying to back out from a promise he entered into with the licence.

A licensor is a constructive trustee. This arose in the case of *Binions Vs Evans* 1972 Chancery ) in the case a certain company owned land and on the land an employee resided there. The employee died leaving a widow. The company sold the land to the purchaser and the conveyance was a term that the widow was to have a life estate. The effect of the estate was to effect the price of the land. The purchaser wanted to evict the widow. The court held that there was a licence which could not be revoked and which was binding on successive purchase.

3. **Licence Coupled with an Interest**

This is the one exercised for the purposes of enjoyment of the interest which a licensee has on land of the licensor

### *Profits a prendre*

Here the licensee has profits on the land of the licensor, and you can only enjoy this profit when there is a condition to enter the premises for the purposes of enjoying the profits.

## **4. Contractual Licence**

There is a consideration here, and hence there is a binding contract that he won't revoke the licence whilst in all others the question of revocability is not discussed.

## **5. The Matrimonial Homes**

In a number of cases the court has held that the wife has a revocable licence in a house of her husband and the licence is binding on any purchaser of a house who has notice of the licence. The licence can be revoked on either divorce or commission of a matrimonial offence e.g. adultery. The case of *National Provincial Bank Ltd Ainsworth* 1965 AC P1175. This case overruled earlier decisions. In this case the husband had deserted a wife and later alone conveyed the house to a certain company. The company charged the house for a loan to the bank.

When the company failed to pay the loan the bank sued for possession of the house. It requested the wife to vacate the house so that it may sale the house to realise the unpaid loan. The court held that the bank was entitled to possession and the wife was not a licensee. She had no right either in the land or the house itself unless they had jointly contributed the money for the purchase of the house. A wife remains in a matrimonial home as a result of the status of marriage. She is not a trespasser. She is not a licensee of her husband. She is lawfully there as a wife. Providing the wife's marital rights and nothing safeguarded her in some way, the court would not refuse to evict the wife.

## Leases and Tenancies

At common law a lease could be created orally by parole agreement in writing or by deed. There was no requirement that a lease be in writing except in cases of incorporeal rights (easement e.g. right of way). By statute of frauds of 1677 every lease was requested to be in writing and signed by the parties creating it. Only exception is in case of a lease of less than 3 years period. This could be made orally. The real Property Act 1845 required all those leases frauds to be made by deed, non conformity with formalities rendered it void at law.

### Types of Leases

1. ***Leases for fixed period-*** Here the date of commencement and the date of determination of the lease are fixed. There must be certainty and if the duration of the lease depends on someone naming the term then the term must be named prior to commencement otherwise it will be void due to uncertainty.
2. **Leases for yearly period-** This continues from year to year and unless it is determined by notice, it will continue indefinitely. It arises where by express terms or by implication a lease has been entered into and payment of rent is calculated by reference of the term of months notice and its determined at the end of the year in which this lease is to finish.
3. **Periodical leases**

These continue from one time to another unless determined by notice which is of the duration of the lease itself. Weekly, monthly, quarterly

4. **Tenancy at will**

It arises whenever the tenant occupies the land with the consent of the landlord under the terms that a tenant or landlord may determine the tenancy any time. It is common that no rent is payable or else it will be converted into a different type of lease. The conditions which have to be fulfilled are that there must be consent of the landlord and the lease may be determined by either the tenant or the landlord depending on the terms of the tenancy. But tenant can pay some compensation to landlord for occupying of the premises.



## **5. Tenancy at sufferance**

Strictly this is no tenancy at all since there is no privity of tenancy. It is opposed to a tenancy at will since the land lord does not consent to a person's possession after the determination of the previous lease.

## **6. Lease by Estoppel**

Estoppel prevents someone from denying what he has already done.

## **ESTOPPEL**

(estopped) A bar which precludes someone from denying the truth of a fact which has been determined in an official proceeding or by an authoritative body. An estoppel arises when someone has done some act which the policy of the law will not permit her to deny.

In certain situations, the law refuses to allow a person to deny facts when another person has relied on and acted in accordance with the facts on the basis of the first person's behavior.

There are two kinds of estoppel.

*Collateral estoppel* prevents a party to a lawsuit from raising a fact or issue which was already decided against him in another lawsuit. For example, if Donna obtained a paternity judgment against Leroy and then sued him for child support, Leroy would be collaterally estopped from claiming he isn't the father.

*Equitable estoppel* prevents one party from taking a different position at trial than she did at an earlier time if the other party would be harmed by the change. For example, if after obtaining the paternity judgment, Leroy sues Donna for custody, Donna is now equitably estopped from claiming in the custody suit that Leroy is not the father.

A tenant is estopped from questioning the title of the landlord to the land or his own title to the land in the same way as the landlord is estopped from questioning the title of the tenant to the land. Lease by Estoppel only binds the parties to it and successors in title.

## **7. Perpetually renewable leases**

These renew themselves on certain conditions in English law they have cut down and may not exceed 21 years but in Zambia they may continue infinitum.

## **ESSENTIALS OF A LEASE**

Every lease must be in writing and signed. This is according to the statute frauds of 1677. The written agreement must include the following terms

- i) Names of the contracting parties
- ii) Property to be let
- iii) Length of the term for which the lease is granted and the date of commencement
- iv) The rent and preferably when it is to be paid
- v) Any special covenant (conditions)

## **William Jacks and Company against O'Connor 1967 ZLR**

As regards duration of leases in Zambia Section 5 of the Land (conversions of titles) Act provides for statutory leases of 100 years and any other leases for 99 years. A lease must exist for a time term certain or for a time which can be rendered certain. Hence it is not possible to create a lease for the duration of a war. The world's term of years certain were constituted in the case of S.J. Patel (Zambia) ltd against Bancroft pharmaceuticals ltd (1924 ZLR) to mean a term certain not exceeding 21 years and include a term certain of less than one year. Thus even a term certain of

less than a year is included. This is specifically for Business Premises. It can be for 99 years to 100 years for any other leases.

## **Rights and Obligation of Landlord and Tenant**

These can be considered fewer than 3 situations

- i) The parties have agreed upon express terms of the lease
- ii) Certain terms classified as usual covenants exist
- iii) Statutory terms exist e.g. under the rent Act

### **1) Where there are No Express Terms:-**

The landlord's obligation

#### **a) Implied covenant for quiet enjoyment**

There is an implied guarantee by the landlord that "no one is going to disturb the tenants in the enjoyment of the land. It's not personal enjoyment. The quiet refers to the tenants not being disturbed by someone claiming title to the land. It's not affected by noise and the covenant does not include the right of privacy. The question of quiet covenant only affects the landlord and those claiming lawfully under him. As a limitation the tenant has no complaint if he is evicted by someone with title paramount (one with a better title than him). The covenant may be broken if for instance the landlord tries to drive out the tenant by threats or breaking doors.

#### **b) Obligation not to derogate from the grant**

Derogation from the grant is doing something inconsistent with the existence of the grant. The landlord should not do something which will make the tenant unable to enjoy his property for instance cut off water or electricity supply. The right of privacy is not covered. Letting premises next door to a trade rival does not amount to a derogation from the grant.

**c) Implied covenant that the premises are fit for the purpose**

This is for situations where the premises are a finished house or lettings. It must be fit for human habitation. In the converse it can be said that the tenant has the right not to be derogate from the grant etc.

**The Tenants Obligation**

**1) Rent Payment**

If the tenant fails to pay rent the landlord may either sue for the money or he may distrain the rent. [The landlord seizing certain goods from the tenants premises] – this was the only thing to do at common law. The distress for Rent Act 1689 gave right in the landlord to sell the property after being in possession for five days. You could not seize growing crops perishables, tools of trade and clothes.

Impound breach – where the tenant interferes with the goods which have been seized the landlord could sue and the recovered money known as treble damages. A tenant has a right to rescue the goods after seizure [Replevin- this is paying so that the goods are recovered after they are impounded but before they are sold]

## 2) **Obligation not to commit waste**

There are various kinds of waste namely *ameliorating waste*, *permissive waste*, *voluntary waste*. Waste consists of any act or omission which alters the physical character of the land whether for the better or for the worse.

- a) *Ameliorating waste*- This is a change which amounts to the improvement in the physical character of the land. The landlord will not normally complain.
- b) *Permissive waste*- This is where the tenant has failed to do what he ought to have done, i.e he has permitted decay or disrepair of premises. There is an omission here.
- c) *Voluntary waste*- This is where the tenant has done something which deteriorates the condition of the premises or his act damages the premises. There is a commission here.
- d) *Equitable waste* This consists of acts of wanton destruction (eg. Stripping the roof, cutting of trees planted to provide shelter, pulling down the house etc). It is recognised under the law of equity that the tenant should keep the premises in the same way in which he would have kept them had he been the owner of the premises.

There is a distinction in how the law of waste affects the tenants. A tenant for a fixed period is liable both for permissive and voluntary waste unless there is a contrary term in the lease. A yearly tenant is obliged to keep the premises in tenants like manner or he will be liable for committing voluntary waste. For periodical tenancy the duty is on the landlord to keep the premises in repair, all the tenants does is to use the premises reasonably so as to prevent them falling under disrepair. Tenants at will and tenants at sufferance are only liable for voluntary waste. A tenant has an obligation to allow the landlord to come and review the state of repairs of the premises. The law on waste protects the interest of those who have remained in the reversion. This is so because if the land is changed for the worse the ones with the rights in reversion will not be able to enjoy the land or premises after the tenancy has expired. As a contrast to this, the law on emblement on the other hand is intended to safeguard the interests of the tenant after the determination of the lease so that he may invest in the land he will reap the benefits of his investment.

### 3) **Tenants right of emblements**

Emblement are growing of crops on the land of the landlord sown by the tenant. Since they are supposed to be part of the land if the tenancy ceases he is supposed to leave them when he vacates the land. The tenant has the right to remove the crops and reap the benefits of his investment. The tenant's right is however limited, firstly the tenant should not be the one responsible for the termination of the lease. Secondly, tenants at sufferance are not entitled to embracement and so are tenants for a fixed term of years. This is because they know when the tenancy will end.

### 4) **Estovers**

In English law, an **estover** is an allowance made to a person out of an estate, or other thing, for his or her support. **Estovers** for example may be wood, that a tenant is allowed to take, for life or a period of years, from the land he holds for the repair of his house, the implements of husbandry, hedges and fences, and for firewood.

A tenant for years and a tenant for life is entitled to estovers so long as the need or use is responsible and necessary. Estovers is wood which a tenant is permitted to make use of for instance for domestic purposes. The tenant also has the right to remove fixtures. Certain fixtures do not become part of the land as such and may be removed by the tenant e.g. if fixing it to the land was the only way it could be enjoyed, trade fixtures, domestic fixtures, agricultural fixtures and ornamental fixtures.

### **Usual Covenant**

In determining what is usual one looks at the agreement and the character of neighbourhood. The usual covenant on part of the landlord are as follows:-

- i) **A covenant of quite enjoyment-** This is usually in its qualified form i.e extending only to the acts of lessor or the rightful acts of any person claiming for or under him. One part of the tenant, there is firstly the covenant to pay rent. Rent must be certain although not necessarily at the date of the lease but rather at the time of payment.

The landlord may enforce payment directly by an action for money or distress and in directly by threat forfeiture close.

- ii) **Covenant to repair-** In long leases the tenant usually covenant is to do all repairs and in short lease the landlord assumes liability for external and structural repairs. Subject to this in every case the matter is one for negotiations. The state of repair is viewed at the time of entering. Fair wear and tear refers to the deterioration to premises as a result of ordinary use of the premises or natural causes. The tenant is not obliged to make repairs but is obliged to prevent consequences following natural causes factors like age, character and locality of premises, class of tenant are considered in determining whether have been kept in repair reasonably suitable for occupation.
- iii) **Covenant against assigning and subletting:** If the lease is silent on the matter tenant is NOT entitled to assign or sublet premises without landlords consent. However, a covenant against assignment is often inserted in a lease. If a tenant subleases, the landlord is entitled to determine the lease and can evict the subtenant but if the landlord consents to sublease he has only got a remedy against a tenant and not against a subtenant.

#### Determination of a lease

- i) **By effluxion of time**  
This only applies to leases for a fixed periods. No notice is needed unless otherwise express is provided.
- ii) **By notice**  
This is only relevant for yearly and periodic leases. In yearly tenancies six months notice is required, in periodic leases the period of a lease itself. Notice must be certain that is exact date of determination must be named
- iii) **Forfeitures**  
This arises by not fulfilling any of the conditions or covenant in a lease. The difference between a condition and a covenant is that a breach of a covenant gives rise to the right to claim damages whereas breach of a condition results in determination of a lease hence the question of adding a forfeiture clause will not arise where there is a breach of a condition

although it is necessary in relation to a covenant of rent as an exception. The landlord has to forfeit peacefully.

**iv) Merger**

This applies where tenant acquires the remaining extent of a lease. Other mode of determining the lease includes by surrendering, satisfaction of the term and by disclaimer.

**Distress for Rent**

At common law chattels remained as a pledge in the hands of the party making the distress and could not be sold. This is still valid law even at now although the statute has given the distrained power of sale if certain conditions are satisfied. These conditions are found in the Distress for Rent Act 1689. There are certain requisites for the landlord to levy distress firstly of the landlord –tenant agreement must exist at the time of distraining. Secondly, the rent must be certain and in arrear. Thirdly, the right to distrain may be prohibited by an agreement express or implied not to distrain by action amounting to estoppel on the part of the landlord. Fourthly, under section 14 of the Rent Act there must be leave of the court. As regards the procedure, distress can only be levied by the landlord personally or by a certified bailiff. And it may be done at anytime during the day. It is also confined on the land which is demised. Making a distress itself constitutes a demand hence actual previous demand is unnecessary. The distrainer may use any means to enter the premises although illegal entry renders the distress void. The tenant must be served with the notice of distress stating the rent due, the particular of goods seized, time and when the goods will be sold. This notice must be in writing.

**Goods to be Distrained**

At common law all goods and chattels on premises could be distrained. However, there were certain exceptions on personal chattels. There are certain goods which are absolutely privileged e.g state property, diplomatic property, trade goods, fixtures, perishables and goods in custody of law. Some goods were conditionally privileged, these include tools of trade, husbandry and livestock. Some clothes beddings and tools of trade must be left out.



## Remedies

If the distress is illegal due to distraining after tender of rent or distress at right, breaking open outer door or window or distraining things which are privileged the remedies available are

- an injunction to restrain the landlord
- Lawfully rescuing the goods impounded or sue the distrainor in damages for full value of the goods taken without deduction or rent due.

## Irregular Distress

This is constituted by selling without notice, selling for otherwise than the best price, selling before the statutory period of five days and where the distress is levied by anybody other than the landlord or bailiff. Here the remedy available for the tenant is to sue for damages and only proved special damage may be recovered.

## Excessive Distress

This is where the goods seized are disproportionate to the rent due to other words where there is no evaluation of the goods distrained. The remedy available is the fair value of the goods after deducting the rent due. Damages may also be awarded for loss of use and enjoyment of the excess taken away and any inconveniences caused.

## Leasing

**Leasing** is a process by which a firm can obtain the use of a certain fixed assets for which it must pay a series of contractual, periodic, tax-deductible payments.

The **lessee** is the receiver of the services or the assets under the lease contract and the **lessor** is the owner of the assets.

The relationship

between the tenant and the landlord is called a tenancy, and can be for a fixed or an indefinite period of time (called the term of the lease). The **consideration** for the lease is called **rent**.

Under normal circumstances, a freehold owner of property is at liberty to do what they want with their property, including destroy it or hand over possession of the property to a tenant. However, if the owner has surrendered posse

ssion to another (the tenant) then any interference with the quiet enjoyment of the property by the tenant in lawful possession is unlawful.

Similar principles apply to **realproperty** as well as to **personal property**, though the terminology would be different. Similar principles apply to sub-leasing, that is the leasing by a tenant in possession to a sub-tenant. The right to sub-lease can be expressly prohibited by the mainlease.

## **Term**

The term of the lease may be fixed, periodic or of indefinite duration.

If it is for a 'tenancy for years', the term ends automatically when the period expires, and no notice needs to be given, in the absence of legal requirements.

The term's duration may be **conditional**, in which case it lasts until some specified event occurs, such as the death of a specified individual.

A **periodic tenancy** is one which is renewed automatically, usually on a monthly, weekly or on annual basis.

A **tenancy at will** lasts only as long as the parties wish it to, and may be terminated without penalty by either party.

It is common for a lease to be extended on a "holding over" basis, which normally converts the tenancy to a periodic tenancy on a month by month basis.

## **Rent**

**Rent** is a requirement of leases in common law jurisdiction, but not in civil law jurisdiction. There is no requirement for the rent to be a commercial amount. "Pepper corn" rent or rent of some nominal amount is adequate for this requirement.

## **Real estate**

There are different types of ownership for land but, in common law states, the most common form is the '**Fee Simple absolute**', where the legal term *fee* has the old meaning of real property, i.e. real estate. An owner of the 'fee simple' holds all the rights and privileges to that property and, subject to the laws, codes, rules and regulations of the local law, can sell or by contract or grant, permit another to have possession and

control of the property through a lease or tenancy agreement. For this purpose, the owner is called the **lessor** or **landlord**, and the other person is called the **lessee** or **tenant**, and the rights to possess and control the land are exchanged for some payment (called '**consideration**' in English Law), usually a monthly rent. The acceptance of rent by the landowner from a tenant creates (or extends) most of the rights of tenancy even without a written lease (or beyond the time limit of an expiring lease).

Although leases can be oral agreements that are periodic, i.e. extended indefinitely and automatically, written leases should always define the period of time covered by the lease.

A lease may be:

- a fixed-term agreement, in other words one of these two:
  - for a specified period of time (the "term"), and end when the term expires;
  - conditional, i.e. last until some specified event occurs, such as the death of a specified individual; or
  - a periodic agreement, in other words renewed automatically
- usually on a monthly or weekly basis
- 
- *at will*, i.e. last only as long as the parties wish it to, and be terminated without penalty by either party.

Because ownership is retained by the lessor, he or she always has the better right to enforce all the contractual terms and conditions affecting the use of the land. Normally, the contract will be *express* (i.e. set out in full and, hopefully, plain language), but where a contract is silent or ambiguous, terms can be *implied* by a court where this would make commercial sense of the transaction between the parties. One important right that may or may not be allowed the lessee, is the ability to create a sublease or to assign the lease, i.e. to transfer control to a third party. Hence, the builder of an office block may create a lease of the whole in favour of a management company that then finds tenants for the individual units and gives them control.

Under common law, a lease should have three essential characteristics:

1. A definite term (whether fixed or periodic)
2. At a rent
3. Confer exclusive possession

## Real property

Whether it is better to lease or buy land will be determined by each state's legal and economic systems. In those countries where acquiring title is complicated, the state imposes high taxes on owners, transaction costs are high, and finance is difficult to obtain, leasing will be the best norm. But, freely available credit at low interest rates with minimal tax disadvantages and low transaction costs will encourage land ownership. Whatever the system, most adult consumers have, at some point in their lives, been party to a real estate lease which can be as short as a week, as long as 99 years, or perpetual (only a few states permit ownership to be alienated indefinitely). For commercial property, whether there is a depreciation allowance depends on the local state taxation system. If a lease is created for a term of, say, ten years, the monthly or quarterly rent is a fixed cost during the term. The term of years may have an asset value for balance sheet purposes and, as the term expires, that value depreciates. However, the apportionment of relief as between business expense and depreciating an asset is for each state to make (all that is certain is that the lessee cannot have a double allowance).

## Private property

Rental, tenancy, and lease agreements are formal and informal contracts between an identified landlord and tenant giving rights to both parties, e.g. the tenant's right to occupy the accommodation for an agreed term and the landlord's right to receive an agreed rent. If one of these elements is missing, only a tenancy at will or bare licence comes into being. In some legal systems, this has unfortunate consequences. When a formal tenancy is created, the law usually implies obligations for the lessor, e.g. that the property meets certain minimum standards of habitability.

A tenancy agreement can be made up of:

- *express terms*. These include what is in the written agreement (if there is one), in the rent book, and/or what was agreed orally (if there is clear evidence of what was said).
- *implied terms*. These are the standard terms established by custom and practice or the minimum rights and duties formally implied by law.

## **Comparison of buying and leasing**

There are many distinct differences between buying and leasing, regardless if such a transaction or agreement applies to property, machinery, equipment or other assets.

The difference lies in that a lease is conceptually very similar to the principle of “borrowing.” The ownership of the leased property (be it land, equipment, merchandise, or etc.) is not transferred under the terms of the lease agreement. The lease gives the lessee the right to use the assets covered under the agreement for the duration of the contracted term, however, upon the completion of said term the lessee is required to return the assets in question to the lessor, thereby completing the terms of the agreement. In a general example having to do with an automobile lease, the vehicle is due back to the dealership at the conclusion of the lease term. Once the vehicle is returned, the automobile lease agreement is completed and the parties (lessor and lessee) separate with no further obligations to each other (assuming there is no damage on the vehicle entitling the dealer to some further compensation). The lessee has no further claim or right to use the vehicle and the lessor, or car dealer no longer collects any payment from the former lessee – the previous driver.

Many lease agreements contain clauses and addendums that outline additional rights, or options for the lessee, to be exercised at will upon the conclusion of the lease (there are numerous equipment lease types with individual features). In automobile leases as a general example, a lessee may have an option to purchase the vehicle, thereby restructuring the agreement and ultimately obtain the ownership of the asset previously leased. In the example of a property lease, the renter (or lessee) may have the option to extend the lease, under pre-determined terms. Such scenarios are numerous and are typically pre-set during the initial creation and negotiation of the agreement between the parties.

Purchasing, on the other hand, involves an agreement that outlines the terms under which the purchaser acquires ownership of the desired item, property or asset. The purchase agreement delineates the purchase price and the terms under which it is to be paid for by the buyer. The overall purchase price can be amortized over a period of time as in the case of financing, or it can be paid in full, resulting in the instant transfer of ownership to the purchaser. In the event that the purchase is financed over a period of time, the ultimate price paid for the item or asset can be greater than the original price due to interest. For an individual deciding between buying or leasing, it is crucial to understand the pros and cons of each.