

**Transfer of Property Act 1882 Chapter V - Of leases  
of immovable property**

**105. Lease defined:**

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

**Less or, lessee, premium and rent defined.** —The transferor is called the less or, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

**106. Duration of certain leases in absence of written contract or local usage:**

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either less or or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

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**(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.**

**(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.**

**107. Leases how made:**

**A lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.**

**All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.**

**Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the less or and the lessee:**

**Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered**

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instrument or by oral agreement without delivery of possession.

**108. Rights and liabilities of lessor and lessee:**

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

**(A) Rights and Liabilities of the Lessor**

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

**(B) Rights and Liabilities of the Lessee**

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law

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relating to alluvium for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the inquiry be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the less or;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the less or;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in, which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitle to all the crops planted or sown by the lessee and growing upon the property when the lease

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determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is and the lessor is not, aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by

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any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the less or;

(o) the lessee may use the property and its products (if any) as person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the less or, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

**109 - Rights of lessor's transferee:**

If the less or transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and if the lessee so elects, be subject to all the liabilities of the less or as to the property or part transferred so long as he is the owner of it; but the less or shall not, by reason only of such transfer cease to be subject to any of the

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liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the less or, the lessee shall not be liable to pay such rent over again to the transferee.

The less or, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.

**110. Exclusion of day on which term commences:**

Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is it named, the time so limited begins from the making of the lease.

Duration of lease for a year.—Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.—Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the less or, shall have such option.

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**111. Determination of lease:**

**A lease of immoveable property determines-**

- (a) by efflux of the time limited thereby:**
- (b) where such time is limited conditionally on the happening of some event-by the happening of such event:**
- (c) where the interest of the less or in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event:**
- (d) in case the interests of the lessee and the less or in the whole of the property become vested at the same time in one person in the same right:**
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the less or, by mutual agreement between them:**
- (f) by implied surrender:**
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the less or may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or(3) the lessee is adjudicated an insolvent and the lease provides that the less or may re-enter on the happening of such event; and in any of these cases the less or his transferee gives notice in writing to the lessee of his intention to determine the lease:**
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.**





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**Illustration to clause (f)**

**A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.**

**112. Waiver of forfeiture:**

**A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:**

**Provided that the lessor is aware that the forfeiture has been incurred:**

**Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.**

**113. Waiver notice to quit:**

**A notice given under section 111, clause (h) is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.**

**Illustrations**

**(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.**

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(b) A, the less or, gives B, the lessee; notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

**114. Relief against forfeiture for non-payment of rent:**

Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the less or sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the less or the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

**114A. Relief against forfeiture in certain other cases:**

Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the less or may re-enter, no suit for ejectment shall lie unless and until the less or has served on the lessee a notice in writing-

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach, and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the

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possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

**115. Effect surrender and forfeiture under-leases:**

The surrender, express or implied, of a lease of immoveable property does not prejudice an under lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the less or.

The forfeiture of such a lease annuls all such under-eases, except where such forfeiture has been procured by the less or in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

**116. Effect of holding over:**

If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the less or or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

**Illustrations**

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(a) A lets a house to B for five years. B underrates the house to C at a monthly rent of Rs.100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C.C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

**117. Exemption of leases for agricultural purposes:**

None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the State Government may by notification published in the Official Gazette declare all or any of such provisions to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

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