




TOPIC

LEASE VS LICENSE

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INTRODUCTION

Lease and License are two Separate legal concepts that offer different rights and duties.

A Lease is an agreement between a landlord and a tenant that gives the tenant an exclusive interest in a property, A license is a permission from the owner to a licensee to do something on the owner's property.



LEASE AND LICENSE

The term lease defined under section 105 of Transfer of Property Act and license defined under section 52 of The Indian Easement Act.

SECTION 105 OF TRANSFER OF PROPERTY ACT

Lease Defined- A Lease of Immovable Property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in a 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.

SECTION 52 OF EASEMENT ACT

License defined- Where one person grants to another, or to a definite its number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor something which would, in the absense of such right, be unlawful, and such right does not amount to an esement or an interest in the property, the right is called a license.



**DIFFERENCE BETWEEN LEASE
AND LICENSE**






AGREEMENT

A Lease Requires a written or an oral agreement between two parties, the landlord and the tenant.

A license does not always requires a written agreement.



INTEREST IN REAL PROPERTY

A lease is a transfer of an interest in a specific immovable property. A lease creates an interest in a favour of the lessee with respect of that property.

For the term of the lease, you have some ownership rights in the property as agreed in to the contract. You have the right to keep anybody, even the landlord, out of the property.

License is a bare permission, without any transfer of an interest. A license does not create any right.

A license does not grant any interest in the property.


Example- a ticket for cricket match.

TRANSFERABILITY



A lease is transferable and heritable. You can transfer your lease to another person. A sub tenancy can be created by the tenant and on the tenant, the tenancy can be inherited by his/her legal heir.

License is neither transferable nor heritable. You can not transfer a license.



REVOCABILITY

Lease can come to an end only in accordance with the terms and conditions stipulated in the contract of tenancy agreement. (a lease is not revocable without giving prior notice as per section 107 TPA.)

A license can be withdrawn at any time at the pleasure of the grantor. (Except section 60 exception.)

EFFECT OF TRANSFER/WHAT HAPPENS WHEN THERE IS A SALE OF PROPERTY

A lease is unaffected by the transfer of the property by sale in favour of a third party. It continues and the purchaser has to wait till the time period for which the tenancy was created is over before he can get the possession.


In a License, if the property is sold to a third party, it comes to an end immediately.



POSSESSION RIGHT

A lessee has a right to protect the possession in his own right. Possession of lessee is exclusive.

A licensee can not defend his possession in his own name as he does not have any proprietary right in the property.






EXCLUSIVE RIGHT

Lease create exclusive and all right of lessee.

But license does not create any right.



WHAT HAPPENS WHEN THERE IS DEATH OF THE PARTY/PARTIES


Lease does not come to an end either the death of grantor or grantee.

A license comes to an end with the death of either the grantor or the grantee, since it is a personal contract.

ENTITLEMENT FOR IMPROVEMENT


A lessee in possession of the property is entitled to any improvement or accessions made to the property.

A licensee is not entitled to any improvement or accessions made to the property.



CASE LAW

Honble Supreme Court in C.M. Beena vs P.N. Ramchandra Rao on 22 march 2004 held That-
"The difference between a lease and a license is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document, if any, executed between the parties and the surrounding circumstances."



CASE LAW

In Associated Hotels of India Ltd. V R.N. Kapoor, [1960] 1SCR 368, Honble supreme court in para 27 discuss the difference between lease and licence.

In case of Municipal corporation of delhi vs. Pradip oil corporation and Anr. The Delhi High court, made an important observation that a mere license does not create interest in the property to which it relates. Lease on the other hand, would amount to transfer of property. Licence may be personal or contractual. A licensee without the grant creates a right in the licensor to enter into a land and enjoy it. Because of a licence, no estate or interest in the property is created.



In Khalil Ahmad basher ahmad v tufel hussein sans bhai sarangpurwala AIR 1968 SC 184 Honble supreme court held that – if an interest is created in an immovable property which entitles a transferee to enjoy it without any interference, the document should be construed as that of a lease agreement.



THANK YOU

