

**ALL ABOUT LEASE AND GIFT UNDER TRANSFER OF  
PROPERTY ACT, 1882**

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**LEASE**

**Introduction:**

Transfer of immovable property will take place by transferring it from one person to another. To make the transfer valid it is very essential that the person should be competent to make a contract and it should not be forbidden by law.

Lease under Transfer of Property Act, 1882 deals with section 105 to section 117. A lease can be done only of immovable property. A lease is the enjoyment of immovable property for a certain period of time or in perpetuity. But, in lease transfer of immovable property is not absolute like there it is in sale. The right of possession is separated from the right of ownership.

**Q1- According to section 105 of TPA, 1882 what does lease means?**

Lease is defined as, 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 consideration of price or promised, or of money, a share of crops, service or any other thing, of value, to be rendered periodically or on specified occasion to the transferor by the transferee who accepts the transfer on such terms.

**Q2- Where does the lessor, lessee, premium and rent is defined. And what does those terms mean?**

Lessor, lessee, premium, and rent are defined under section 105 of TPA, 1882. One who transfers the property i.e. transferor called Lessor, one who accept it i.e. the transferee called lessee, the price is called the premium and services and other things which is rendered is called rent.

### **Q3- What are the essentials of Lease?**

- 1. A lessor must be competent:** To make a lease a lessor must be competent to make a contract. He must be of sound mind and should not be disqualified by the contracting law. And also he must be the true and absolute owner of the property which is grant in a lease.
- 2. Ownership and possession:** lease is different from a sale. In lease there is only a transfer of possession to the lessee whereas the ownership is still remained to the lessor.
- 3. Acceptance:** A property which is granted in a lease must be accepted by the lessee on the terms and conditions which are agreed between the parties.
- 4. Consideration:** A lease must be made of consideration which may be in the form of premium or rent. It can be rent with premium or rent alone or premium alone.
- 5. Certain period or in perpetuity:** In a lease the right to enjoy the property is given for a certain period or in perpetuity. However, generally the time period is mentioned in the agreement.
- 6. Right to enjoy the property:** In a lease, right to enjoy the property is transferred. A lessee having a right to enjoy the property at certain period of time but he does have right to further transferred that property because in lease merely possession is transferred not the ownership.

### **Q4- What can be the duration of a certain lease, if there is an absence of written contract or local usage?**

According to section 106 of TPA, 1882, if there is an absence of a written contract or a local usage to the contrary then in the case, a lease of immovable property for manufacturing and agriculture purpose will be valid till the time until it was terminated by either of the party, by six months notice and if there is a lease any other purpose except agriculture or manufacturing then it will be terminated by 15 days notice.

### **Q5- What are the rights and liabilities of lessor mentioned under section 108 of TPA, 1882?**

**Rights of the lessor are:**

1. A lessor will have a right to recover its rent from the property which is leased by him.
2. Lessor having a right to take back his property's possession from the lessee, if any breach of condition is done by lessee.
3. If there is a damaged to the property which is leased, then the lessor having a right to recover the amount of damages from the lessee.
4. On the termination of the contract of the lease, the lessor having a right to take back his possession from the lessee.

**Liabilities of the lessor:**

1. **Section 108(a):** The lessor is bound to disclose all the material defect relating to the property which are lease with the former intended use, of which the former is and later is not aware.
2. **Section 108(b):** Lessor is bound to request the lessee, to put him in a possession of his property.
3. **Section 108(c):** Lessor can make a contract with the lessee that, if he pays the rent later on which is reserved by the lease and performs all the terms and conditions mentioned under the contract which binds the lessee, and then the lessee may hold the property during the specified time without the interruption.

**Q6- How lease can be made?**

According to section 107 of TPA, 1882, a lease can be made, if there is a lease of immovable property for a year, or for a term which may be exceeding one year or may be reserving a rent for a year, then it can be made only by the registered instrument.

Whereas. All other lease of immovable property can be by the registered instrument or by an oral agreement which is accompanied by the delivery of possession.

**Q7- What are the rights of the lessee mentioned under TPA, 1882?**

**Rights of the lessee are mentioned under section 108(d) to 108(j) of TPA, 1882 are:**

1. **Section 108(d):** During the continuing period of lease if any accession is made ( alluvion for the time being in force) then that accession or area will be taken under such lease.

**2. Section 108(e):** During the continuing period of lease, if the material part of the property is destroyed wholly or partly through by fire, or by flood, or by war or by the violent act of the mob or by any other means and it becomes permanently unfit for the use for which it is to be rendered, then it becomes void at the option of the lessee.

However, if the injury is caused due the default act of the lessee, then he cannot avail himself from the benefit of the provision.

**3. Section 108(f):** During the continuing period of lease, if the lessor avoids to make any repairs to the property which he is obliged to do on a reasonable time even after notice, and if such repairs is done by the lessee himself, then he has a right to deduct such expenses from the rent or can recover from the lessor.

**4. Section 108(g):** If the lessor avoids making any such payment which a lessor is bound to make and if such payment is recoverable from the lessee or recovered against the property, then the lessee have a right to recover it from the lessor or can deduct it from the interest of the rent.

**5. Section 108(h):** Lessee having a right to remove all such things which he has attached himself to the earth provided that lessee has to leave the property in such a state in which he has received it.

**6. Section 108(i):** When a lease is of such duration which is not specified by any means, except the fault of the lessee, he or his legal representative having a right to collect all the crops which is planted, sown or growing by the lessee at the lease property and they are free to ingress and egress from such property.

**7. Section 108(j):** Lessee having a right to transfer the property absolutely or any part of his interest by the way of sub-lease or through mortgage. But, by such reason a lessee cannot by any means ceases himself from the liabilities which are attached to the leased property.

**Q8- What can be the liabilities of the lessee towards the property or against the lessor?**

**1. Section 108(k):** Lessee is under obligation to disclose all the material facts which likely to increase the interest or the value which the lessee and the lessor is not aware about.

**2. Section 108(l):** Lessee is under obligation to pay the premium or the rent to the lessor or his agent on a reasonable time.

3. **Section 108(m):** Lessee is under obligation to keep the property in a proper condition and on the termination of the lease restore all such good in such a way as it was at the time when he was in possession.
4. **Section 108(n):** if lessee is aware about any proceedings against the property or any encroachment or any interference is done, then lessee is under obligation to give notice to the lessor.
5. **Section 108(o):** Lessee having a right to use the assets or goods which are placed in the property as a ordinary prudence men and use it as it his own but, he is under obligation that he should not use or allow any other person to use the property in any other way or purpose other than the purpose for the property is leased.
6. **Section 108(p):** Lessee cannot without the consent of the lessor taken out any structure permanently of or on the property except in the case of agriculture purpose.
7. **Section 108(q):** On the termination of the lease, lessee is bound to give the possession back to the lessor.

**Q9- How a lease can be determined or terminated under the Transfer of Property Act, 1882?**

According to section 111 of TPA, a lease gets determined or terminated by various ways are:

1. When the time of the lease is expired.
2. Where such time is limited which is based on the happening of some event.
3. When the interest of the lessor gets terminated or his power disposed of towards the property.
4. Gets terminated by the way of implied surrender.
5. When the expiration notice is given by one party to the another or where there is an intention to quit the property leased.
6. It gets terminated when the interest of the lessee and lessor gets vested on the one person at the same time.
7. Gets terminated by the way of forfeiture like if there is a breach of any condition on the part of the lessee or like lessee given or setting the title in the name of third person or by himself.

## GIFT

**Introduction:** Gift under Transfer of Property Act deals with section 122 to section 129. “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called Donor, to another, called the Donee and accepted by and behalf of the Donee.

Every transfer of property will take effect only when it is considered by both the parties. However, gift is an exception to section 25 of Indian Contract Act, 1872. Where a contract or an agreement without consideration is void to which gift is an exception. Gift is transfer of both existing movable and immovable property with the transfer of ownership without consideration. A gift can only be made in favour of an ascertainable person means it cannot be in favour of an idol or public. Under the transfer of property act it is essential that gift must be accepted by the donee though it could not be necessary to be expressly accepted.

### **Q1- Where is the definition of “Gift” is defined?**

The definition of “Gift” is defined under section 122 of Transfer of Property act which states that “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called donor, to another, called the donee and accepted by and behalf of the donee.

### **Q2- When an acceptance of a gift to be made?**

An acceptance of a gift is to be made only when a donor is still capable of giving or during the lifetime of the donor.

### **Q3. What can be the essentials of gift?**

- 1- There must be two persons:** to make a gift there must be two persons i.e. donor and the donee. The donor must be of sound mind, competent to make a gift, must have attained the age of majority, and should not be disqualified by law.
- 2- Gift should be made voluntarily:** Gift should be made out of free wish and will and it should not be under any undue influence, coercion etc.

- 3- **Transfer of ownership:** When a gift is to be made, the property transfers with the transfer of ownership with all the rights and liabilities.
- 4- **Gift must be existing and transferable:** Gift cannot be made of uncertain property or of future property. The property must be existed and must be transferable.
- 5- **Donor and Donee must be living:** A gift is an intervivos i.e. between two living persons. It is necessary that donor and donee must be living at the time of transfer and acceptance. If the Donee dies before the acceptance then the gift become void.

#### **Q4- What are the void gifts under Transfer of Property act, 1882?**

Void gifts means a gift which is not enforceable by the law due to the incompetence of a person or both the persons i.e. donor or donee.

#### **Void gifts can be:**

1. Donee died before the acceptance of a gift.
2. When a gift is made for unlawful purpose.
3. When a condition which is impose is forbidden by law or unlawful
4. When a person is incompetent to make a gift i.e. minor or lunatic

#### **Q5- What do you understand by universal donee?**

Universal donee is defined under the section 128 of Transfer of Property Act,1832 which means that when the transfer is made, whole donor's property of is being transferred to the donee with all the debts due by and with the liabilities of the donor at the time when the gift is made and the donee is personally liable.

#### **Q6- Where the onerous gift is defined and what do you understand by it?**

Onerous gift is defined under section 127 of Transfer of Property Act which stated that when a gift is in a form of single transfer and is to be made to the same person with several things where one or two can be and others are not, created a burden on the donee that the donee can take nothing until he has accepted it fully.

Whereas, a gift is in a form of two or more separate transfers, which is made to the same person with several things then in this situation a donee is under liberty to accept the one of them and rejects the other.

**Q7- What is the principle on which the onerous gift is based upon?**

Onerous gift is based upon the maxim “Qui Sntit Commodum Sentire Debet Et Onus”. It means that one who receives the advantage must have to bear the burden.

**Q8- What do you understand by the onerous gift to the disqualified person?**

When a donee is not competent to make a contract and accepted the property which is burdened by and that time he is not bound by his obligation. But, as soon as he becomes competent to make contract and being aware about his obligation, he can retain back his property and becomes bound of it.

**Q9- What can be a mode of creating a gift to make it effective according to section 123 of Transfer of Property Act, 1882?**

According to section 123, Transfer of immovable property through gift will be effective only by a registered instrument which is signed by or on behalf of the donor, and it should be attested by at least two witnesses. But, if the instrument is not registered then the title of the immovable property to the donee cannot pass.

However, transfer of movable property will be effective either by the registered instrument which is signed by or on behalf of the donor and attested by at least two of the witnesses or merely delivery of possession is sufficient. And such delivery will take place in the same way as the goods sold may be delivered.

**Q10- What are the grounds of revocation or suspension of gift under section 126 of TPA, 1882?**

Section 126 of Transfer of Property Act states the ground of revocation and suspension of gifts:

1. A gift can be revoked if there is a failure of consideration and if it were a contract then it might get rescinded.

2. If the validity of a gift is dependent on any specified event, and that of such specified event is not depend on the will of the donor then the gift can be suspended or revoked,