Definition of a contract of lease
A contract of lease of a thing (a contract of letting and hiring) is a reciprocal agreement between one party (the lessor) and another party (the lessee), whereby the lessor binds himself to give, to the lessee, temporary use and enjoyment of a thing, in return for the payment of rent.

Requirements for a valid contract
1. Consensus or apparent consensus
2. Parties must have contractual capacity
3. Prescribed formalities must be complied with
4. Obligations created by the contract must be possible of performance
5. Contractual agreement must be legal
6. Performances must be determinable or determinable

Essential elements of a contract of lease
1. Lessor must deliver and lessee must receive a thing or property for temporary use and enjoyment of the thing or property
2. There must be a thing or property which is being let
3. An amount of rent must be paid for use and enjoyment of the leased thing

A contract which does not contain above 3 can still be a valid contract, but cannot be a contract of lease.
EG: ONE PARTY TO DELIVER A THING TO 1 OTHER.

1. CONTRACT < OTHER TO PAY A SUM OF MONEY IN RETURN.

* BUT DOES NOT PROVIDE IT IS ONLY FOR TEMPORARY USE OR ENJOYMENT.

IS A CONTRACT OF SALE NOT A LEASE.

2. CONTRACT TEMPORARY USE & ENJOYMENT.

* BUT DOES NOT PROVIDE IT INTENDED RECIPIENT IS TO PAY A SUM OF MONEY FOR USE/ENJOYMENT.

IS A CONTRACT OF LOAN AND NOT A LEASE.

REQUIREMENTS

1) Parties must agree to deliver & receive a specific Thing: i.e. performance must be possible when performance becomes impossible. General principles of S.I.O.P. & P.O.P. take effect.

Supervening Impossibility takes place when performance becomes impossible through no fault of lessor. Contract + obligations are terminated.

Prevention of Performance:

Absolute/Objective
Performance is prevented permanently as regards everyone.

Relative/Subjective
Only performance by debtor (lessor or c.s. see) which is rendered impossible constitutes B.O.C. Form of Repudiation.
2) Letting & hiring of leased thing must be temporary & not in perpetuity

Lease = Temporary if:
- I lease to continue For a definite period
- until I occurrence of a future event
- is @ I will of either lessor or lessee
- period is indefinite
- but rent is payable periodically

Requirement / contract of lease must be of limited duration
- If lease is to run for a definite period - Steyn v Fourie
- If lease is to run until I occurrence of an event which is sure to occur although I date of its occurrence may be uncertain - Davy v Walker & Sons
- If lease is @ I will of either lessor or lessee - Hart v Hart
- If lease is for an indefinite time with rent payable periodically (I lease may be terminated by either party by reasonable notice given to I other) - Fulton v Nunn

3) Thing subject to lease can be corporeal or incorporeal or an object still to come into existence

In case of contracts of sale, I concept thing includes incorporeal things too => rights may be also leased

Eg: it was contended @ a usufructuary can hire out his usufruct in Young v Smiths. Another it was argued on I strength of Graham v Local & Overseas Investors 

there is no doubt @ an incorporeal thing can form I subject of a lease. In this case I court said:
Facts oflease: Tenant was granted power to conduct a business on a particular piece of land.

What was let is not corporeal property but an incorporeal right to trade.

In contrast, granting of an exclusive right to do business on certain premises is not a loose of a thing but an innominate contract for granting of something similar to a personal servitude.

Unissa's opinion: The view that incorporeal things can be let is unconvincing. In above cases before corporeal things were being let, however, the use & enjoyment may be restricted by the contract.

Portion of an existing thing valid lease object. As long as I performances of I parties are ascertainable, there can be no objection to I landlords agreeing to deliver a portion of an existing thing, i.e. a lease.

E.g.: A let a flat to B, I flat is not an independent entity but forms part of I ground on which it was built.

Thing to still come into existence can be let. Under-taking to deliver such a thing does not automatically mean it cannot be a lease. This type called locatio conductio rei or locatio speratae. If I thing does not come into being I lessor's performance becomes impossible.

SI E P C P take effect

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A lease is a contract granting the lessee's powers limited.
In a genuine lease, parties will expressly or tacitly limit the powers which the lessee may exercise over the thing. Only use & fruits of the thing are granted to the tenant to a definite extent.

1. A lease must be for temporary use or enjoyment.
2. Leased article or premises must be returned to the lessor at the expiration of the lease period.
3. A leased thing must be identified or easily identifiable. In a contract, or a contract will be void for vagueness.

The lessee must pay rent for the leased thing.
This is a requirement for a valid lease.
Payment other than in money will not be a lease except for rural leases whose payment is in terms of an agreed proportion of the produce of the leased property.