

# DEFINITION & ESSENTIAL ELEMENTS

## STUDY UNIT 2

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### Definition of a contract of Lease

A contract of lease of a thing (a contract of letting and hiring) is a reciprocal agreement bet one party

→ & lessor and another party & lessee, whereby & lessor binds himself to give to & lessee &

S temporary use & enjoyment of & thing, in return for & payment of rent ✓

### ✓ Requirements for a valid contract

W

(1) Consensus or apparent consensus ✓

→ (2) & parties must have contractual capacity ✓

A (3) Prescribed formalities must be complied with ✓

(4) & obligations created by & contract must be possible of performance

(5) & contractual agreement must be legal ✓

T (6) Performances must be determined or determinable. ✓

### Essential elements of a contract of lease

\* ✓

(1) & lessor must deliver & lessee must receive a thing or property for & temporary use &

→ enjoyment of this 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 & 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 ± 1 INTENDED RECIPIENT IS TO PAY A SUM OF MONEY FOR 1 USE / ENJOYMENT

IS A CONTRACT OF LOAN / AND NOT A LEASE

REQUIREMENTS

1) Parties must agree to deliver & receive a specific

Thing: ie. 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 1 debtor (lessor or lessee) which is rendered impossible

constitutes B.O.C ⇒ FORM OF P.O.P.

constitutes B.O.C ⇒ FORM OF Repudiation

2) Letting & hiring of a leased thing must be temporary & not in perpetuity

Lease = Temporary if:

- Lease to continue for a definite period ✓
- until occurrence of a future event ✓
- is @ will of either lessor or lessee ✓ OR
- 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 Fournie
- If lease is to run until occurrence of an event which is sure to occur although date of its occurrence may be uncertain - Davy V Walker & Sons
- If lease is @ will of either lessor or lessee - Hart V Hart
- If lease is for an indefinite time with rent payable periodically (lease may be terminated by either party by reasonable notice given to the other see - Fulton V Nunn)

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

In case of contracts of sale, a corporeal thing includes incorporeal things too ⇒ rights may be also leased  
Eg: it was contended a usufructuary can hire out his usufruct in Young v Smith & Another it was argued on the strength of Graham v Local & Overseas Investment & there is no doubt an incorporeal thing can form a subject of a lease. In this case the court said:

Fact of I case: Tenant was granted I power to conduct a business on a particular piece of land.

what was let is not corporeal property but I incorporeal right to trade.

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

UNISA'S OPINION: The view that incorporeal things<sup>rights</sup> can be let is unconvincing. In I above the cases before corporeal ~~the~~ things were being let, however the use & enjoyment may be restricted by the contract.

E.T.

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.

eg: 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 I undertaking to deliver such a thing does not automatically mean it cannot be a lease. This type called locatio conductio rei sepe speratae. If I thing does not come into being I lessors performance becomes impossible

SI E PCP take effect pg 8 SG

~~Abang~~

A fungible thing @ a price cannot qualify as a lease eg: a bag of sugar cannot be let  
Characteristic of a lease is  $\perp$  use or enjoyment of  $\perp$  thing & not using up  $\perp$  thing.

lessee's powers limited.

In a genuine lease parties will expressly or tacitly limit  $\perp$  powers which  $\perp$  lessee may exercise over  $\perp$  thing. Only  $\perp$  use & fruits of  $\perp$  thing are granted to  $\perp$  tenant to a  $\gamma$  or  $\angle$  extent

- ✓  $\perp$  lease must be for temporary use or enjoyment
- ✓  $\perp$  leased article or premises must be returned to  $\perp$  lessor @  $\perp$  expiration of  $\perp$  lease period
- ✓  $\perp$  leased <sup>thing</sup> must be identified or easily identifiable in  $\perp$  contract or  $\perp$  contract will be void for vagueness.

The lessee must pay rent for  $\perp$  leased thing & this is a requirement for a valid lease payment other than in money will not be a lease except for rural leases where payment is in terms of an agreed proportion of  $\perp$  produce of  $\perp$  leased property