

# STUDY UNIT 6

①

↓ Lessor may not Disturb ↓ tenant in his possession — ↓ duty to give undisturbed use & enjoyment (commodus usus)

SISHEN HOTEL (EDMS) BPK V SUID-AFRIKAANSE YSTER EN STAAL INDUSTRIELE KORPORASIE BPK Respondent (lessor) / Appellant (lessee)

FACTS In terms of a contract of lease between ↓ lessor & ↓

(A) lessee, ↓ lessor rented certain land to ↓ lessee for a period of 20 years, a hotel had been erected on ↓ leased land by a previous tenant.

In ↓ lease agreement ↓ leased premises was described as a hotel site & a portion of ↓ rental consisted of a small % of ↓ gross proceeds of ↓ liquor sales of ↓ hotel.

↓ lessor conducted certain mining operations in ↓ district & to ensure ↓ hotel accommodation of a high standard was available for visiting officials he included in ↓ lease certain provisions obligating ↓ lessee to conduct its business according to certain high standards

(B) ↓ hotel was situated next to ↓ national road bet Kuruman & Upington & as a result of its situation attracted considerable custom. About six to 7 years after ↓ conclusion of ↓ lease ↓ lessor decided to extend its mining operations in ↓ district which necessitated ↓ diversion of ↓ route of ↓ National Road. After 8 years after ↓ conclusion of ↓ lease ↓ diversion was completed & as a result of ↓ diversion ↓ hotel attracted less custom than before ↓ lessee's profits declined & after 11 years after ↓ lease was concluded ↓ hotel was closed down

① The lessee instituted an action for damages as a result of breach of lease against the lessor. The lessee alleged that diversion of road by the lessor was a breach of lease. The lessee's claim was dismissed by the provincial division.

Decision

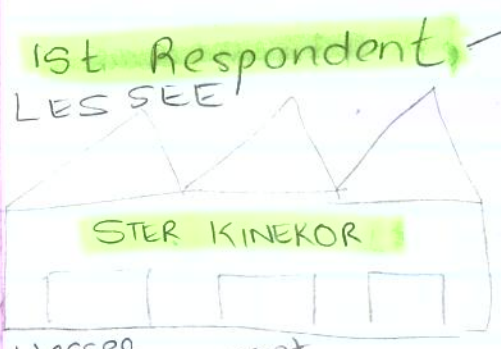
① In an appeal the court held that in terms of the contract of lease between the lessor and lessee, the lessor rented the premises to the lessee with a specific object to enable the lessee to conduct a hotel business. Held further it was clear from the contract that the lessee would conduct the business for the purpose of making a profit.

② Held that the diversion of the national road resulted in the commodus usus of the lessee being disturbed and the diversion of the national road indirectly hampered the lessee's commodus usus by restricting the flow of custom to the hotel.

③ Held further that the lessor had committed breach of contract in respect of the common law obligation of giving commodus usus to the lessee. The lessor on that ground was liable to pay damages to the lessee. Appeal allowed.

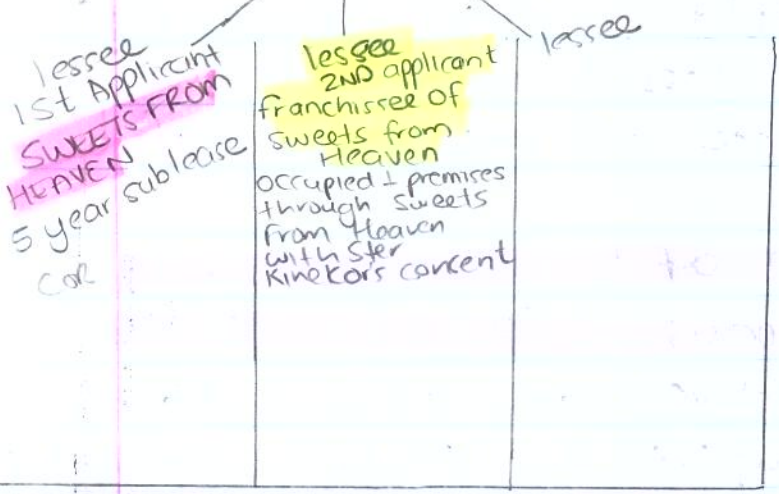
2.1 The lessor's breach of contract was of such a serious nature and extent that the lessee was entitled to terminate the lease.

# SWEETS FROM HEAVEN (PTY) LTD V STER KINEKOR FILMS (PTY) LTD 1999



dispute concerned Ster Kinekor's right to sublet to 2nd Respondent a shop situated virtually next door to 1st Respondent's sweet shop of 1st 2nd appellant

was 1 lessee of an entertainment centre → Ster Kinekor (lessor) sublet premises to 3rd Parties

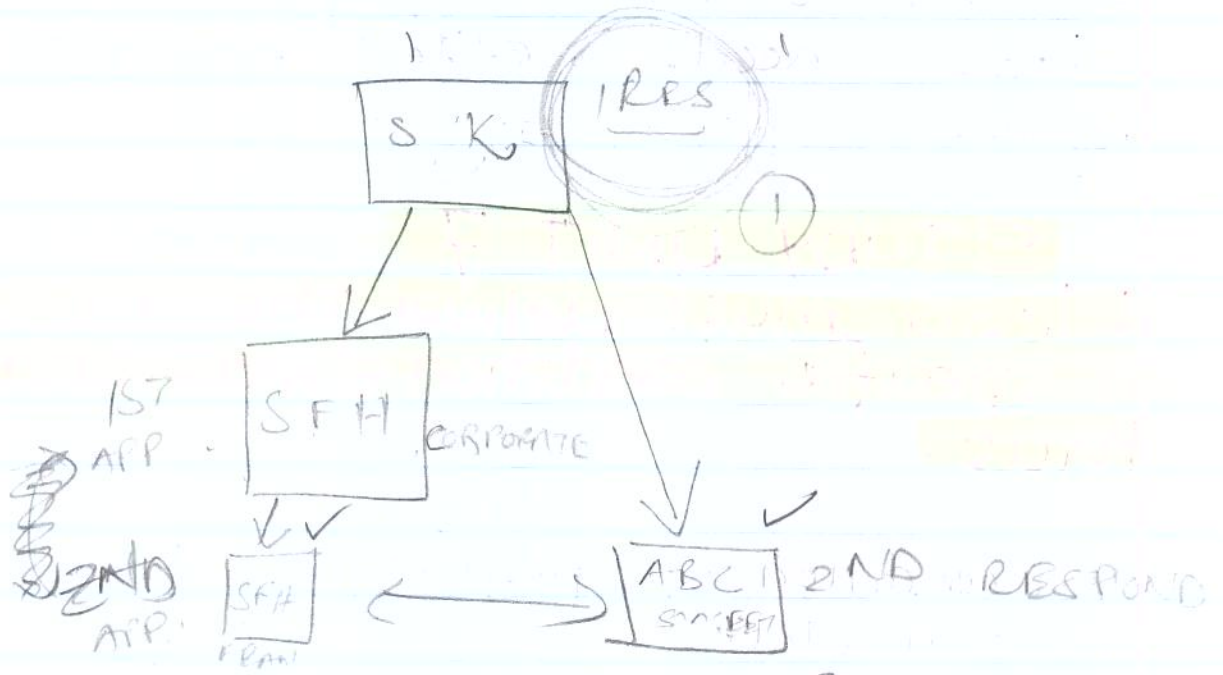


BOTH 2ND RESPONDENT & 2ND APPLICANT  
sell sweets, confectionary & related products.

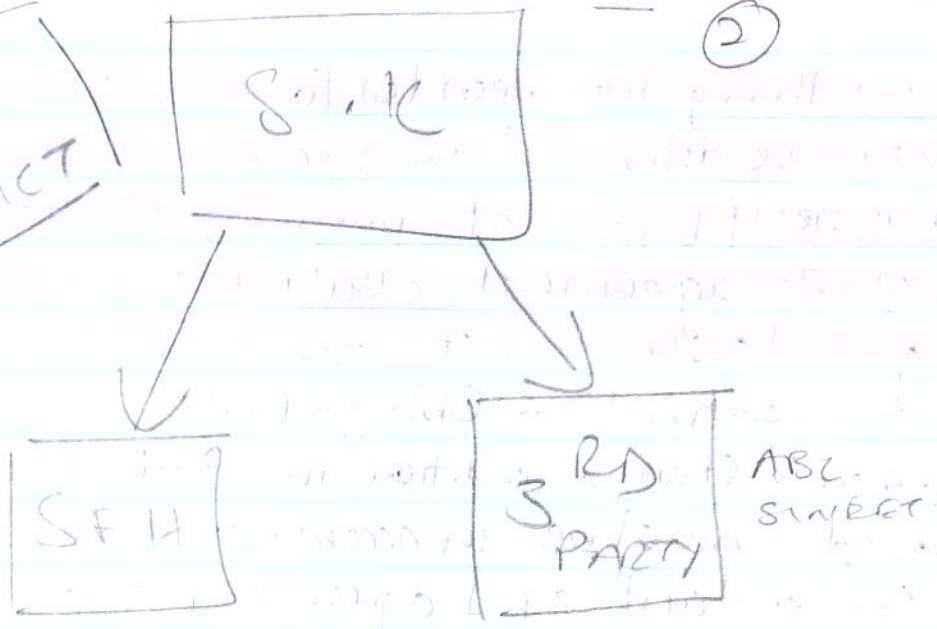
Decision: Court a quo granted an interim interdict prohibiting Ster Kinekor from giving 1 2nd respondent occupation of 1 premises. 1 Applicants based their claim on Ster Kinekor's failure to ensure free & undisturbed use & enjoyment of 1 leased premises in allowing 2nd respondent to compete with 2nd applicant. 1 Judge found 1 1 lessor had not breached its obligation of providing commodus usus. 1 lessor was entitled to let business premises to competitors virtually next door to 1 latter as no explicit terms to prohibit this were entered in 1 contract.

Thus in I case Sweets From Heaven I extension in Sishen was not regarded a naturalia of lease contract as one could have expected.

see study guide pg 22 very important



INTERIM INTERDICT



see study guide pg 22 very important

1)  $\perp$  lessor may not disturb  $\perp$  lessee in his possession

Once  $\perp$  property is delivered to  $\perp$  lessee  $\perp$  lessor may not disturb  $\perp$  lessee in his commodus usus unless lawfully eg if he is required to inspect  $\perp$  property or when  $\perp$  lessor needs to effect necessary repairs

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$\perp$  lessor must deliver the thing in a specific condition & maintain it thus.

1)  $\perp$  condition of  $\perp$  property @  $\perp$  time it is made available

• Where  $\perp$  thing has been let for a specific purpose it must be delivered in such a condition that it will be fit for that purpose. Where there is an express agreement about  $\perp$  condition of  $\perp$  thing  $\perp$  lessor must comply with it. A lease creates continuous Obligations

• Poynton v Cran  $\perp$  condition in which  $\perp$  thing is delivered must be in accordance with  $\perp$  provisions, express or tacit of  $\perp$  agreement. If  $\perp$  contract contains ~~no~~ no express agreement  $\perp$  lessor must deliver  $\perp$  thing in  $\perp$  condition it was when  $\perp$  contract was entered into.

Therefore when  $\perp$  thing is delivered there must