EXAMINING THE SIMILARITIES AND DIFFERENCES BETWEEN A LICENCE AND A LEASE AND THE LEGAL SIGNIFICANCE OF THE DISTINCTION

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Abstract

Licence and lease sound like the same thing, and both terms are often been used interchangeably although, they are two separate legal concepts that offer different rights and duties with little similarity. A lease is an agreement between a landlord and a tenant that gives the tenant an exclusive interest in a property. A license is permission from the owner to a licensee to do something on the owner's property. As with all things law-related, the distinction is never so simple. A good understanding of these two concepts is important in the determination of the rights and rules applicable to each of them. This paper therefore, examined the legal distinctions and similarities between leases and licenses in property law, emphasizing the significance of exclusive possession and the intention of the parties involved through a doctrinal research approach, particularly, by analyzing key case laws, which enabled the actualization of the distinctions. It was recommended that lawyers who draft tenancy agreements and licence agreements should read and explain the contents of the lease and licence agreements they prepared to their clients to enable them know the extent of their rights and liabilities. This will reduce litigations in court.

Key Words: Landlord, Lease, Licence, Rent, Tenant.

1. Introduction

Land is the most valuable physical possession of man. No man can live successfully without mingling with land in one capacity or the other. One can be an owner of landed property and another a seeker of same, thus creating a landlord and tenant relationship once they are at *consensus ad idem*[1]. There is no gainsaying the fact; therefore, that land being an essential commodity, and landlords being 'Lords' over their land may exercise their lordships to the detriment of not just their vulnerable tenants but also that of the society at large.[2] contractual agreements between a landlord and a tenant can be done in various ways. Lease and licence are two of such ideal ways.[3] The terms and conditions of a lease or licence agreement should be drafted in such a way so that it reflects the actual intention of the parties, whether they want the deed to be a lease agreement or a licence agreement. So, knowing the similarities and discerning differences between lease and licence is very crucial for a lawyer. Sometimes people get confused over the two terms.[4] Therefore, elimination of such confusion is very significant.[5] When a lawyer intends to draft an agreement on lease or licence, he/she must be

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1 Arinze V., 'Understanding the Legal Disparities Among Leases, Tenancies and Other Forms of Occupation: The Convolutional Conceptions of Tenancy Laws', *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)* , [2021], 3 (3)

2 *Ibid*

3 Jahangir H., "All you need to know about Lease and Licence", available at <https://blog.ipleaders.in/all_you_need_to_know_about_lease_licence_/>, assessed on 23/3/25.

4 *Ibid.*

5 *Ibid.*

concerned that the clauses of the agreement must comply with the discerning facts of the lease or licence so that the actual intention of the parties does not get hindered.[6]

2. Conceptual Clarifications

Landlord: This is a person entitled to the immediate reversion of the premises.[7] A landlord is any person receiving rent (whether in his own right or as an attorney or agent) from another for the occupation of any premises.[8]

Tenant: A tenant is a person who occupies any premises, whether on payment of rent or by operation of law.[9] The definition of the tenancy is extensive and includes all persons who occupy premises lawfully. Section 47 of the Tenancy Law of Lagos state defines a tenant to include a sub-tenant or any person occupying a premises whether by payment of rent howsoever or by operation of law[10]

Rent: Rent is a payment that a tenant is bound by his contract to make to the landlord.[11] Where rent is stated to be payable, but no date is given regarding when the rent should begin to count, the rent shall start to count from the day on which the tenancy is created.[12] Rent is also defined as the payment due to the landlord by the tenant in consideration for the use of the landlord's property. The tenant is bound by contract to make this payment at a specified time interval, for a specified amount. Depending on the nature of the commercial lease, Rent may include base rent, percentage rent, and additional rent, which may include operating costs, utilities, and taxes.[13] Provided that the lease states a fixed amount of rent to be paid by the tenant or provides a means of how to ascertain the fixed rent amount, the provision can meet the requirement for certainty as an essential term of the lease.[14] Tenancy relationships are acknowledged by payment of rent.[15]

3. The Nature of Lease

A lease, as generally understood today, is a document creating an interest in land for a fixed period of certain duration, usually in consideration of the payment of rent[16].It could also be seen as a conveyance by which the lessor grants to the lessee, an interest less than a freehold and less than that to which he himself is entitled[17]. The above definition was adopted in *Opara v D.S. NIG. LTD*[18] where a lease was described as a demise by the landlord of a less estate than that which himself possesses on the land. Oluyede submits that a lease is a demise of land by the lessor to the lessee for an interest which remains in the grantor being called a reversion[19]. According to Niki Tobi, a lease is an agreement or conveyance which gives rise to the relationship of landlord and tenant.[20] Thus, a lease is a conveyance or grant of the possession

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6 *Ibid.*

7 Ater, S. V., *An Examination of the Meaning, Types, and Nature of Tenancy under the Nigerian Law*, available at file:///C:/Users/USER/Downloads/ssrn-4682533.pdf, assessed on 22/3/25.

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 *Olaniyan v Shokunbi*[1997] 6 NWLR (Pt 509) 447.

12 *Property Holding Co. Ltd v Clarke* [1945] 1 All ER 165.

13 Alex C. K. and A. N., *Lease vs. License – What is the difference?,* available at https://www.mondaq.com /pdf/1295678.pdf, assessed on 22/3/25.

14 *Ibid.*

15 *Dimasa Property Ltd v Yusuf* [2009] LPELR – 8144 (CA).

16 Hayton, D.J., *Megarry's Manual of Law of Real Property*, 6th ed., London: Stevens & Sons, 1982, 332.

17 Adewale, T., *The Nigerian Land Law*, revised ed., Princeton & Associates Publishing Co. Ltd., Lagos, 2016, 63.

18 [1995] 4 NWLR (PT. 239) 440 at 459.

19 See Oluyede, P.A., *Nigerian Law of conveyancing,* University press, Ibadan, 1978, 200.

20 See Tobi, Niki, *Cases and Materials on Nigerian Land Law*, Mabrochi Books, Lagos, 1992, 97.

of property to last during the life of a person, or for a term of years or other fixed period, and usually with reservation of a rent.[21]

The grantor of a lease is known as "lessor", the person to whom it is granted is known as "lessee". In other words, the landlord is a lessor while tenant is the lessee. They could also be generally referred to as the grantor and grantee respectively.[22]

4. Creation of Leases

The requirements for the constitution of leases vary with law and equity[23]

4.1 Creation of a Lease at Law

Here, a distinction is made between leases exceeding three years and leases not exceeding three years. Leases for a term not exceeding three years may be created orally, provided the lease takes effect in possession and reserve the best rent reasonably obtainable. In this regard, the Statute of Frauds[24], provides: "The creation by party of leases taking effect upon possession for a term not exceeding three years at the best rent which can be reasonably obtained without a fine shall be valid"[25]. A similar provision is contained in *section 78(1)* of the Property and Conveyancing Law (PCL) which provides that all interests in land created orally shall take effect as interests at will only. This provision is qualified by *sub-section 2* which states: "nothing in the foregoing provisions of this part of this law shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years, parol at the best which can reasonably be obtained without taking a fine".[26]

However, for a lease which exceeds three years to confer the appropriate legal term on the tenant, it must be made by deed.[27]

4.2 Creation of Lease in Equity

Equity has no set form or formality for creating a lease of any duration and it may be created in any of these ways.

a. Oral lease coupled with part-performance:- oral contract to grant a lease of any duration is generally enforceable in equity and it is as good as a lease at law provided it is followed by a sufficient act of part performance which consists of entering into possession or part payment of money.[28]

b. Void lease for want of Deed:- a lease which is void at law for want of a deed is treated by equity as valid where it can specifically be enforced between the parties thereto.[29] The relevant maxims are: "equity looks as done that which ought to be done" and "equity looks at the intent of the parties rather than form." The case of *Walsh v Lonsdale*[30] illustrates the position. There the plaintiff agreed in writing to take a lease of a mill for seven years and part of the agreement was that a deed should be executed containing, inter alia, a provision that on any given day, the lessor might require the tenant to pay one year's rent in advance. No

21 See Bird, Roger, Osborn'sconcise law dictionary 7th ed., sweet & Maxwell, 1983, 119.
22 Tobi, *op. cit*., 97.
23 Onuoha, R.A., *Basic principles of Nigerian Land Law*, ANON Publishers, Owerri, 2010, 199.
24 1677
25 *Section 3* of the statute of frauds, 1677.
26 Adewale, T., *The Nigerian Land Law*, revised ed. Princeton & Associates Publishing co. Ltd, Lagos, 2016. 66.
27 *Section 1* of the statute of frauds, 1677.
28 Utuama, A.A., *Nigerian Law of Real Property, Sheneson C.I. Ltd., Ibadan, 1989, 63.*
29 Adewale T., *Op Cit.*, 68.
30 (1882) 21 ch.D., 9

deed was executed, and the plaintiff who was let into possession, paid rent quarterly, but not in advance and the tenant refused and he destrained. The tenant brought this action to challenge the distress as illegal. It was held that the distress was not illegal and that where there is an agreement for a lease under which possession has been obtained, the tenant holds in equity as if a lease had actually been granted.[31]

5. Validity of a Lease

A valid lease is that which is characterized by certain essentials and contains no vitiating elements either at common law or under the law of landlord and tenant applicable in the states. The essential requirements of a valid lease are as follows:

i. **Exclusive possession:** A lessee must be in exclusive possession of the lease. The occupier is entitled to exclusive possession, i.e. unless he has the right to exclude all other persons from the premises, any agreement under which he occupies another's property is a mere licence and not a lease[32]

ii. **Certainty of parties/expression of intention:** There must be a lessor who is capable of creating a lease and a lessee capable of taking the demise, parties must be of juristic persons.[33]

iii. **Certainty of property:** The demised property must be ascertainable and described with precision. It must be in existence at the commencement date, otherwise, nothing is demised and the agreement is void.[34]

iv. **Certainty of term:** A valid lease must be for a definite or fixed period with a fixed or ascertainable date of commencement; it cannot ensure in perpetuity. It must have a certain beginning and a certain end otherwise it is void.[35]

v. **Certainty of terms:** This relates specifically to covenants which must be spelt out since such covenants will not otherwise be implied.[36]

vi. **Formalities:** Where any law requires that a lease (sub-lease) shall be by deed or executed in a particular manner, it can only be valid if it is by deed or executed in that manner.[37]

6. Types of Leases

Type of lease taken by a tenant is an essential ingredient in a lease agreement so that each of the parties to the agreement will know his duties and rights, length of notice required before the lease could be determined and enforcement of the parties' rights whether legal or equitable. Below are some of the leases recognized by law:

i. **Lease of Reversion:** This type of lease exists where the original lease is subsisting but the lessor grants the same property to another for a term of years longer than longer than the duration of the original lease. The later lease will take effect after expiration of the duration of the first lease because of reversionary interest of the lessor without giving the lessee opportunity for renewal. Where the latter lease runs concurrently

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31 Onuoha, *R.A., op cit.,* 200.
32 Henderson, *op. cit*., 83.
33 *Idowu v Williams* [1974] 3 CHCJ 344.
34 *Scarfe v Adams* [1981] 1 ALLER 843 at 848.
35 Osimiri, U.J, *Modern Law of Landlord and in Nigeria,* Port Harcourt, Pam Unique Publishers, 1994, 268.
36 *Sections 1,2* of Statute of frauds 1677.
37 Osimiri, U.J, *Op.Cit.,* 6.

with the former one, the first tenant will be deemed to have stepped into the shoes of the lessor and the first tenant cannot be liable for the rent due after the lease.[38]

ii. **Lease in Reversion:** A lease in reversion arises at common law where a lease is granted with the right to actual possession postponed. A lease in reversion is therefore a future lease. Such a lease does not create an estate in land but gives the lessee a mere right to take possession[39]

iii. **Tenancy at Will:** Tenancy at will may be created expressly or by implication of law. It is expressly created where land or tenements are let by a landlord to a tenant to be the will of either party.[40]A tenancy at will may arise by implication where a tenant holds over with the consent of the landlord after expiration of the term granted, or where he goes into possession under a contract for a lease.[41]

iv. **Tenancy at sufferance:** A tenant at sufferance is one whose initial entry on the demised property is lawful and holds over after expiration of the lease wrongfully. Such a tenant is different from a tenant at will who holds over with the consent of the landlord. At common law, a tenant at sufferance has no liability to pay rent for the period of holding over but may be mesne profit.[42]

v. **Statutory Tenancy:** A Statutory Tenant is an otherwise tenant at sufferance but whose tenancy is protected by Rent Control and Recovery of Premises Law. Thus a statutory tenant is an occupier who, when his contractual tenancy expires, holds over, continues in possession by virtue of special statutory provision and holds the land of another contrary to the will of the other person who strongly deserves to turn him out. Such a tenant is thus protected tenant which can only be evicted after the service of statutory notice on him and if necessary, a writ of possession.[43]

vi. **Tenancy by Estoppels:** Tenancy by estoppels arises where a person grants a lease of property in respect of which he has no interest. Where this happens, there is said to be created a tenancy by estoppels. The lessor and lessee are precluded from denying the existence of landlord and tenant relationship. As between the parties estopped, the relationship has all the attributes of a true tenancy. The parties are bound by the stipulated covenants.[44]

7. Determination of Leases

A lease may be terminated by frustration, notice to quit, effluxion of time, surrender or merger.

i. **Frustration:** A lease may be determined by frustration. Where subsequent events after the parties had entered into the contract made the performance of the contract impossible or impracticable, the parties to the contract are discharged from their obligation.[45] It is also seen as the discharge of a contract, which rendered impossible the performance, by external causes beyond the contemplation of the parties.[46]

38 Adewale, T., *The Nigerian Land Law*, revised ed. Princeton & Associates Publishing Co. Ltd, Lagos, 2016. 76.
39 Onuoha, R.A., *op. cit.*, 203.
40 *Wheeler v Mercer* (1957) A.C. 416 at 427
41 Henderson, N., *Green and Henderson Land Law, 2nd ed. Sweet & Maxwell, London, 1988, 86 – 87.*
42 *Osarawu v Ezeiruka* (1978) 6-7 S.C. 135
43 Onuoha, R.A., *op. cit.*, 205.
44 *Ibid.*
45 Aluko, O., The Law of Real Property and Procedure, Brighter Star Publishers, Ibadan, 2003, 98.
46 See *Criclewood Property and Investment Trust Ltd v Leighton's Investment Trust Ltd* (1945) 1 All ER 252.

ii. **Notice to Quit**: A lease may be determined by the service of a notice on either party to determine the term. The notice must however, comply with the relevant statutory provision.[47]

iii. **Effluxion of Time:** A term of years may be determined without notice upon the expiration of the term granted.[48]

iv. **Surrender:** A lease or tenant may yield up the remainder of his interest in the land to his lessor or landlord. Surrender may be expressed where the surrender is affected by written instrument or by deed or by operation of law if possession is delivered by the lessor and accepted by him.[49]

v. **Merger:** Where the term of years and the reversion became aggregated in one person, there is said to be a merger. The effect of a merger at common law is to destroy the leasehold interest by operation of law. Thus, where a tenant of lessee acquires the title to the demised land, his leasehold interest becomes subsumed in the larger estate so acquired.[50]

8. Nature of a Licence

It is necessary to examine the meaning and categories of licence in order to appreciate the difference between it and a lease. A licence is the authority or permission to enter premises and perform some acts there, which would otherwise be wrongful or a trespass.[51]

It is also seen as a personal privilege in the form of authority or permission granted to a person to enter and use premises or perform some acts therein which would otherwise be wrongful or amount to trespass.[52]

It is of three kinds;

(i) **Bare Licence**: It is a gratuitous one without any consideration to support it[53] especially permission to reside in the premises by act of grace.[54]

(ii) **Licence Coupled with Grant:** This is one where the licensee is granted definite contractual interest in the land or chattel lying on the land or given interest to enter, exploit, enjoy etc, thereon.[55]

(iii) **Contractual Licence for Value**: Contractual licence for value is one not only coupled with a grant but also supported by valuable consideration.[56]

(iv) **Statutory Licence under the Land Use Act**[57]: The governor is empowered by the land use act to grant licence to any person to enter upon any land which is not the subject of any right of occupancy to remove or extract there from any stone, gravel, clay, etc

47 Onuoha, R.A., *op. cit.*, 216.
48 *Ibid.*, 215.
49 *Ibid.*
50 *Ibid.*
51 Osimiri, U.J, *Modern Law of Landlord and in Nigeria,* Port Harcourt, Pam Unique Publishers, 1994, 26.
52 *Mobile Oil Ltd v. Johnson* (1961)ALL NLR 93.
53 *Umezuruike v George* (1973) 3CCHCJ 62 at 63.
54 *Oduola v Ajanaku* (1963) 2 SCNLR 123 at 124.
55 *Umezuruike v George* (supra).
56 *Olowosho v Aremu* (1978) 1 CCHCJ 79 @ 83.
57 *Umezuruike v George* (1973) CCHCJ 62.

(excluding minerals) which may be required for building or for manufacture of building materials.

9. Form of Licence

A Licence may be created orally or in writing, the statutory requirement of writing for the creation or transfer of interest in land is inapplicable since a license creates a mere personal privilege in favour of the grantee without an estate in land. Even the creation of a licence coupled with grant of an interest in land does not imply the grant of an estate in land[58].

An agreement creating a licence would normally carry a 15k stamp but where a licence given for valuable consideration is coupled with grant of an interest in land to be enjoyed by the grantee, it attracts an ad valorem stamp as a conveyance on sale for the premium so paid or, where rent is paid by the licensee, as a lease at the rent so payable.[59]

10. Termination of Licence

Strictly speaking, if a licence is given gratuitously, it is revocable by notice at any given time and in such situation, the licensee must leave the premises if he does not want to constitute a trespasser[60].

A licence given for value and for a purpose require reasonable notice before revocation to enable the licensee remove his things from the premises, such revocation is subject to contract between the licensor and licensee[61].

If a license is granted for a limited purpose and limited duration of time and supported by consideration, it is irrevocable until the purpose is fulfilled.[62]

If a notice given is unreasonably shorter than the one contracted, the licensee can claim damages for loss of earning for the period[63]

11. Differences and Similarities between a Licence and a Lease

They are as follows:-

i. Statutory Protection: The essence of the distinction is that only the holder of a lease hold estate is entitled to claim or enjoy some degree of valuable statutory protection under the Rent Acts/Edicts or Laws[64]. Strictly, the purpose of property statutes is to control and regulate fair rents in premises and generally provide security of tenure only for leases of such premises to the exclusion of the licensees[65]. Significantly, the tenant cannot be ejected except by resort and compliance with the processes stipulated by Rents Acts.

In the same way, statutory protection cannot be invoked in favour of a licensee as there is no such obligation where there is no relationship of landlord and tenant[66]. In *Nmeregini v Port Harcourt Municipal Council*[67], it was held that the Recovery of premises Act cannot be invoked for the protection of a mere licensee as he is not a tenant within the meaning of the statute.

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58 Smith , I.O., *op. cit*., 325.
59 *Section 64* Stamp Duties Act Cap 58 LFN 2004.
60 Osimiri, U.J, *Modern Law of Landlord and in Nigeria*, Port Harcourt: Pam Unique Publishers, 1994, 27.
61 *Olowosho v Aremu* (supra)
62 Osimiri, U.J, *op.cit.*, 28.
63 *Ibid.*
64 *Sabamowo v Public Trustees* (1970)1 All NLR 257.
65 *Akpiri v Waac* (1952) 14 WACA 195 at 196.
66 *Odutola v Samuel* (1956) 1FSC 76.
67 (1959) SCNLR 140

ii. Covenants: A covenant is a promise under seal or a deed. It is usually applied in leases, the law implies certain covenants in order to regulate the relationship[68], but in the case of licence, the law does not imply any covenants and consequently, if the parties wish to make provisions to govern any particular matter in the contract they are free to do so expressly.[69]

iii. Remedy of Trespass: Since a lease gives the tenant an estate in land, if the landlord enters the demised property without the tenant's permission and authority, he commits tortuous act of trespass, the later is entitled to damages if the lease is undetermined[70]. Strictly if lawful possession has been proved, the tenant is entitled to damages where his possession is interfered with[71]. On the other hand, if the person occupying the property is only a licensee, the remedy of trespass is not available but the interfering is liable in damages for breach of contract or unlawful ejectment[72].

iv. Exclusive Possession: Exclusive possession means occupation of physical control of the land either personally or through an agent, proxy or servant. It means exclusive power of using the right given in the soil, retain same and be entitled undisputed enjoyment of it against all persons except the person who could establish a better title[73].

The right of exclusive possession distinguishes a lease from licence, for an arrangement to be construed as a lease, the lessee must be in full control but if the grantor retains greater degree of control, the transaction would be a licence[74].

v. Power to Sublet or Assign: Because a lease creates an estate in land, the tenant can sublet part thereof of assign his unexpired interest thereon subject to express restrictions imposed by the deed, if any. On the other hand, a licence is prima facie a right personal to the licensee, significantly, it does not give him any estate in land or proprietory interest which he could assign or sublet or transfer. In *Nmeregini v Port Harcourt Municipal Council*[75], it was held that a licensee cannot sublet and anyone who accepts a sublease from him did so at his own risk as the licensee has no transferable interest and cannot for any purpose sublet and the purported under licensee cannot occupy the market stall allotted to the licensee by the local Government Council.

vi. Lease Transmissible on the Death of the Lessee: A Lease is a valuable asset being an interest in land and forms part of the estate of a tenant which is transferable or transmissible to personal representatives on the death of the lessee[76]. A licence on the other hand only gives a personal right to occupy and terminable on the death of the licensee neither forming part of his estate in his life time nor is it transmissible on death[77].

vii. Lease Binding on Grantor and Third Parties: A lease is a legal estate binding on the third parties, the lessors and their successors-in-title. A licence on the contrary does not bind third parties due to its personal nature. However in some cases, owing to the intervention of

68 *Sections 100, 101, 156, 157* of Property & Conveyancing Law (1959).Conveyancing Act 1881.
69 *Ibid.*
70 *Ikomi v Cole* (1960) SCNLR 199 at 200.
71 *Ikomi v Nwosu* (1963)2 SCNLR 274 at 275.
72 Osimiri, U.J, *Modern Law of Landlord and in Nigeria*, 1994, Pam Unique Publishers, Port Harcourt, 23.
73 *Chiroma v Suwa* (1986) 3 NWLR (pt.26) 63.
74 *NCHC Ltd v Awoyele* (1988)4 NWLR (pt.90) 588 at 590.
75 (1959) SCNLR 140.
76 S.20 (4) LL. & T. Edict 1988.
77 *Olowosho v Aremu* (supra).

equity, some licenses coupled with interest have become virtually irrevocable and binding on third parties[78].

viii. Service Tenancy and Service Occupancy: A service tenancy is created where an employer provides accommodation for certain classes of their employees while making deductions of an agreed amount from their monthly earnings. A service occupancy takes place where a mercantile house lets out flats or rooms to the public (including any employees) at an economic rent, even if deductible from the monthly earnings of those who are also their employees[79].

The two tend to illustrate a distinction between lease and licence. Strictly, a service tenant is a lessee and enjoys all the rights and privileges of an ordinary tenant whereas a service occupant is a mere licensee and on the cessation of the employment by retirement, resignation, termination or dismissal or transfer to another station, his occupation of the premises would automatically determine and he must vacate and deliver possession[80].

Similarly, both parties in a lease and licence are bound by their agreement.

12. Legal Significance of the Differences and Similarities between a Licence and a Lease

Whether an occupier in a lease or licensee carries some legal significance which lies in the f following consequences:

1. A lease conveys an estate in land to the lessee but a licence passes no estate in the licence: it merely gives him right to the use of the premises for a given purpose and to do something rightfully on the land which would have otherwise amounted to trespass.[81]
2. The law implies certain covenants in regulating the relationship of landlord and tenant which is not the case with licence. Parties are bound by express terms contained in the licence.[82]
3. Because a lease gives the lessee an estate in land, entry into the demised premises by the lessor without the lessee's permission or authority amounts to trespass for which the lessee is entitled to damages. An unauthorized interference by the licensor in the land occupied by the licensee does not amount to trespass since the later, unlike the lessee has no exclusive possession of the demised property. The licensor may however be liable in damages for breach of contract or unlawful ejectment.[83]
4. A lease when granted cannot be revoked, but the grantor of a licence can revoke it upon giving a reasonable notice to the grantee notwithstanding that is made by Deed unless the licence is coupled with an interest, made by grant, or for valuable consideration[84]
5. A lease can be assigned to a third party or a sublease created out of a lease provided there are covenants against assignment or subletting in the lease agreement, while a

78 *Williams v Straite* (1978)2 WLR 825

79 Kamange S.N.C , *Law for all,* vol.1, Owerri, Mega Atlas Projects Publishers, 2012, 141.

80 Osimiri, U.J, *op.cit*., 36-38

81 see *Okoye v Dumez* [1981] 1 NWLR (pt. 4). 783.

82 Smith, I.O, *Practical Approach To Law Of Real Property in Nigeria*, revised ed., ECOWATCH publications Nig. Ltd, Lagos 2013, 253.

83 See *Segfa v Cotgas Ltd* [1981] OYSTC 49.

84 *Okoye v Dumez* (supra).

license is neither assignable nor can a sublicense be created out of it, and cannot be transferred in any form since it gives a mere personal right to the licensee.[85]

6. A lease is not determined by the death of the lessor or by assignment of the reversion while a licence is determined by the death or change in grantor since it merely gives a personal right to occupy.[86]

It is important to note that the distinction between a lease and licence is significant only at common law. Under the Law of landlord and tenant applicable in the various states and the Recovery of Premises Statutes applicable in different parts of Nigeria governing statutes, rights and liabilities of statutory tenants, no such distinction is recognized. The bottom line is 'lawful occupation of premises' which embraces all forms of actual use of the premises coupled with such degree of permanence and others who cannot, strictly speaking, be said to be in occupation, all other persons in occupation of premises including licensees qualify as 'tenants' under these Laws.

It is in this regard that the following guidelines were formulated in distinguishing a lease from licence:

1. That in distinguishing a lease from licence, the fact of exclusive possession is of importance. A lease is not created and a licence probable where the grantee has no exclusive possession.[87]

2. That the fact of exclusive possession is not conclusive of the existence of a lease if the intention of the parties gathered from the surrounding circumstances and their conduct show that a licence as opposed to a lease was created.[88]

3. That in applying the test, words alone may not suffice. Parties cannot turn a tenancy into a licence merely by calling it a licence as the court can go behind the façade of the document to ascertain the real intention of the parties from the circumstances.[89]

13. Conclusion/Recommendations

From the foregoing, I have dutifully undertaken a critical examination of the significance of the differences and similarities between licenses and leases. In essence, it can be seen that there are a plethora of legal significance of the distinctions between leases and licenses, the whole essence is to know when and where to invoke the statutory and common law protection by way of notices to terminate each relationship, the bottom line is lawful occupation of premises which embraces all forms of actual use of the premises which is lawful.

License agreements simply allow for the occupant to use the property for a fee and licensees are subject to the agreement being revocable with little to no notice. In contrast, lease agreements are subject established common law principles that govern the landlord-tenant relationship which provide each party with a more comprehensive set of rights and obligations. To determine the true nature of an agreement, the courts look at the intention of the parties and whether the agreement provides for exclusive possession of the property or an interest in the property to the occupant.

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85 *Nmerenini v Portharcourt Municipal Council* [1959] SCNR 140.

86 Smith, I.O., *Practical Approach To Law Of Real Property in Nigeria*, revised ed., ECOWATCH publications Nig. Ltd, Lagos 2013, 256.

87 *Ibid.,*. 253.

88 *Cobb v Lane* [1952] 1 all 1199

89 *Street v Mountford* [1985] 2 ALL ER 289.

While both agreements can serve the interest of parties in a commercial context, when advising a client on which agreement would serve them best, it is important to consider the duration of the term of the agreement, the rights that they are interested in retaining or conveying, and the ability to terminate the agreement.

Generally, for property owner clients, a license may be optimal in many scenarios. As a license does not provide exclusive possession to the licensee, the licensor is afforded the ability to revoke the license with little to no notice and the license is not subject to the common law principles. That being said, opting for a lease agreement may be beneficial to a property owner for longer term tenancies where more comprehensive rights are set out and tenure and financial certainty are more guaranteed.

For occupant clients, a lease may be most beneficial in providing certainty that they will be able to remain on the premises for a specified period of time or be entitled to receive reasonable notice from the landlord if they require the premises to be vacated. Further, a lease agreement provides dispute resolution mechanisms and through established common law principles. As such, this type of agreement provides a broader set of rights regarding the occupancy and possession of the property. For occupant clients that are looking for temporary space, want to avoid the greater costs of negotiating a lease, and are accepting of the risk that they may be asked to vacate the premises on short notice, a license agreement may be suitable.

Each potential landlord-tenant or licensor-licensee relationship is unique and will be guided by the needs and intentions of each party. While both a lease and a license can serve to meet the specific needs of a client, what is most important is to ensure that the form of the executed agreement makes it clear as to what type of relationship is being formed. If deciding to enter into a lease, it is important to include the essential elements to ensure enforceability of its terms. In contrast, if entering into a license, the agreement must make it clear that no exclusive possession or interest in land is being conveyed to the licensee, and for clarity, any termination rights, along with relevant notice requirements, are set out.

It is against this backdrop that the following recommendations are made to appreciate the distinction between lease and licence:

1. The Nigerian judiciary should play an important role in the form of organizing public seminars and lectures to educate people on the distinctions between lease and licence, this will go a long way in reducing litigations in court.
2. Agreements to enter into lease and licence should always be in writing, this will help in controlling controversies that may arise thereafter.
3. Lawyers who draft tenancy agreements and licence agreements should read and explain the contents of the lease and licence agreements they prepared to their clients to enable them know the extent of their rights and liabilities. This will also reduce litigations in court.
4. The three tiers of government should lead the enlightenment exercise by making funds available to the judiciary and other departments of government that will be involved in the enlightenment exercise.