

Principles of Civil Law

Lecture Title: Lease

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Diploma in Law (Malta)



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LEASE

Lease as defined under the Civil Code

The letting of things is a contract whereby one of the contracting parties binds himself to grant to the other the enjoyment of a thing for a specified time and for a specified rent which the latter binds himself to pay to the former.



Lease as regulated under the Civil Code

A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January 2010 shall be in **writing**



With regard to the letting of an urban property, a residence and a commercial tenement made after the 1st January,2010, the contract of lease shall be made in writing and shall stipulate:

- (a) the property to be leased;
- (b) the agreed use of the property let;
- (c) the period for which that property will be let;
- (d) whether such lease may be extended and in what manner;
- (e) and also the amount of rent to be paid and the manner in which such payment is to be made

In the absence of one or more of these essential requirements, the contract shall be null



Rights and Obligations of Lessor under the Civil Code

The lessor is bound, by the nature of the contract, and without the necessity of any special agreement –

- (a) to deliver to the lessee the thing let;
- (b) to maintain the thing in a fit condition for the use for which it has been let;
- (c) to secure the lessee in the quiet enjoyment of the thing during the continuance of the lease

The lessor is bound to deliver the thing in a good state of repair in every respect.

Structural Repairs always the responsibility of the Lessor.



Right to access Property

During the running of the lease of an urban, residential or commercial tenement, the lessor has right of access to the tenement in such times and in such manner agreed upon with the tenant in order that the lessor may fulfil his duties or to verify whether the tenant is performing his obligations, as well as to show the tenement to prospective buyers.

Provided that in the absence of an agreement between the parties, the Rent Regulation Board may, if need be, after hearing the parties summarily, fix days, times and conditions, after an application filed by the lessor for that purpose.



Obligations of the Lessee under the Civil Code

The lessee is bound –

- (a) to make use of the thing let to him as a bonus paterfamilias, and for the purpose stated in the contract, or, in the absence of any agreement to that effect, for such purpose as may be presumed according to circumstances;
- (b) to pay the rent agreed upon, or fixed in accordance with the provisions established by law.

The lessee of an urban tenement is responsible for all repairs other than structural repairs.



The lessee shall in no case be responsible for the repair of damages caused by force majeure and without any fault of his own.

The cleansing of cisterns and sinks, of cesspits and of chimneys shall be at the charge of the lessee.

The lessee is liable for any deterioration or damage which occurs during his enjoyment, unless he proves that such deterioration or damage has occurred without any fault on his part.

The lessee shall be liable for any damage caused by fire, unless he proves that it occurred without any fault on his part, or on the part of any of the persons mentioned in the next following article, or through a fortuitous event, or an irresistible force, or through a faulty construction, or that the fire was communicated from a neighbouring tenement.

The lessee is liable for any deterioration or damage caused by any act or default of the members of his family, or of his servants, guests, or sub-lessee



Special Laws

Special laws regulating rent have been numerous. Originally, before the enactment of these special laws, many of which are Ordinances (old laws), the law of letting and hiring was found exclusively in the Civil Code. For social reasons, the need was felt for special laws to be enacted, intended to derogate i.e. Make exclusions from the otherwise general provision of the Civil Code.

Our Civil Code is based on the theory of will of the parties. Parties can agree on whatever they wish so far as that agreement is not illegal, and therefore under the general law of lease as set in the Civil Code, the lessor could impose whatever conditions he wished insofar as the market allowed him to find a lessee who accepted those conditions; and also could enforce his right to stipulate the rent he wished and take back possession of the premises as soon as the term of the lease was open.



The need was felt to introduce special legislation, which would afford some protection to the lessees of immovable property. We ended up with a situation where the provisions of lease in the Civil Code remained in force and applicable to contracts of lease but subject to the 'controls' of the special laws. The general provisions of lease in the Civil Code were not deleted but were subjected to severe controls curtailing the free will of the parties.



The first in the series of special laws controlling the rights of the parties in contracts of lease was originally enacted in 1931. This is Chapter 69 of the Laws of Malta, titled Reletting of Urban Property Regulation Ordinance. The general purposes behind this law were:

- To make sure that lessees enjoy total security of tenure in virtue of a right which this Ordinance introduced, and which entitled the lessee to the automatic reletting of the premises after the expiration of the original term.
- It secured the lessee the right to continue reletting at the same rent. It therefore provided not only his continuing in the lease beyond the original term, but also to continue reletting at the same rent that the parties would have agreed on in the original contract.
- The lessee was also afforded the protection that this continuous reletting would be on the same conditions as would have been agreed between the parties in the original contract of lease.



The control that this Ordinance introduced on the contracts of lease was extensive. Irrespective of what the parties would have agreed after the lapse of the term of the lease, the parties would automatically be subject to these rules and the lessor could not refuse to renew the lease, increase the rent or change the conditions, save as provided in the Ordinance.

Following the enactment of this Ordinance, other special laws were enacted, namely, the Rent Restriction (Dwelling Houses) Ordinance [Chapter 116 of the Laws of Malta] which determined what is known as the Fair Rent for dwelling houses and therefore introduced a further control on the amount of rent that could be agreed upon by the parties for dwelling houses.



Subsequently in 1958, the Housing Decontrol Ordinance, Chapter 158 of the Laws of Malta, was enacted aimed at reducing some of the control which had been introduced by the Reletting of Urban Property Regulation Ordinance and the Rent Restriction (Dwelling Houses) Ordinance. It was conceived at least in part as liberalizing the market of letting and hiring.

However, in 1979, Act XXIII of 1979, introduced new controls to those leases which had been liberalized (decontrolled), effectively a step backwards. Whilst there was always a social reason as to why these laws were enacted, principally the need for housing and security of tenure, especially in the case of residential tenements, these enactments created inequality of rights.



Equality and freedom of contracting was subsequently provided via the 1995 amendments which provided that all leases that were to be entered into after 1st June 1995 would be regulated only and exclusively by the provisions of the Civil Code.

Act X of 2009, amending certain provisions of the Civil Code, relative to letting and hiring, sought to introduce provisions to regulate the leases which were entered into before 1995, and which were therefore regulated by the special laws. Unfortunately, these amendments were not included in the special laws but were inserted solely in the Civil Code. Most importantly, Act X of 2009 shifted the jurisdiction for matters concerning leases of immovable property to the Rent Regulation Board, which prior to Act X of 2009 had its competence restricted to leases to which were regulated by the provisions of Chapter 69 of the Laws of Malta. The Rent Regulation Board is presently competent to hear all judicial actions having to do with the letting of urban property.



Chapter 69 - Reletting of Urban Property Regulation Ordinance

Article 15(1):

- **15. (1)** Any clause or condition excluding the tenant from any benefit conferred by this Ordinance whether such clause or condition has been stipulated prior to the commencement of this Ordinance or after such commencement, shall be considered as null and void.
- Any obligation which the lessee would have undertaken in favour of the lessor, even in a written contract, which in practice would have meant that the lessee was renouncing to some right or protection which this Ordinance affords him, is expressly deemed to be null and void. This shows the very important outreach of this law in regard to those leases which fall within its scope, even if the lessee had freely renounced to some right which this Ordinance affords him, that obligation would be deemed null and void, would be unenforceable and the lessee could still claim the protection which this law affords him.



Applicability of Chapter 69

- Only leases entered into before 1st June 1995 may be subject to the substantive provisions of Chapter 69.
- However, not all leases entered into before 1st June 1995 are necessarily or automatically subject to Chapter 69. One is to look at the term for which that lease was concluded in order to see whether the lease is still in its original term or whether the original term has expired. Chapter 69 is only applicable, as the name indicates, at the reletting stage. Thus, in order to see whether Chapter 69 is applicable to a particular lease at a particular moment in time, we have to determine whether the lease is still in its original term or whether the original period has expired.



The applicability of Chapter 69 of the Laws of Malta to leases is determined by reference to the definitions as found in Article 2 in relation to the 'premises' and the 'tenant', and as found in Article 44 in relation to the term 'letting'. In essence, only those leases which satisfy the afore-mentioned definitions would fall within the ambit of Chapter 69 and therefore subject to the obligation of reletting at the same rent and with the same conditions.

Interestingly, this piece of legislation also provided that a public deed of emphyteusis for a term of less than 17 years, if all of the requirements are satisfied, would be deemed to be a lease for the purpose of Chapter 69.



The crucial rule of Chapter 69, which affords the lessee this additional protection which we have been mentioning is found in Article 3:

3. It shall not be lawful for the lessor of any premises, at the expiration of the period of tenancy (whether such period be conventional, legal, customary or consequential on the provisions of this Ordinance), to refuse the renewal of the lease or to raise the rent or impose new conditions for the renewal of the lease without the permission of the Board.



What Article 3 is saying is that once the original term of the lease has expired, in regard to those leases which fall within the scope of this law, the lessor may not take back the property but is bound to renew the lease, at the same rate of rent and on the same conditions, unless the lessor is authorized not to renew by the Rent Regulation Board. Thus for the leases which fall under Chapter 69, when the original term lapses and subsequently, when each renewed term lapses, the lease must be renewed at the same rent and on the same conditions.

If the lessor does not want to renew the lease, wants an increase in the rent or wants a change in the conditions of the lease, he must first file an application before the Rent Regulation Board, obtain the permission of the Board and only then can he either repossess the property, or change the rent or change the conditions of the lease.



- Who is a tenant for the purposes of reletting?

Chapter 69 defines a tenant of a dwelling house as:

- i. A person who has been recognised as tenant
- ii. The widow/widower of the tenant (Provided that the widow or the widower shall not have the right to be considered a tenant if he did not inhabit the dwelling-house for four (4) out of the last five (5) years prior to the 1st June 2008 and did not continue living with the tenant until the date of his death
- iii. the siblings of the tenant who have continued the lease in solidum together with him (with the same proviso)



Grounds of Non-Renewal

Where the Lessor desires to resume possession of the premises at the termination of the lease, he is to seek the permission of the Rent Regulation Board which shall grant the permission in the following cases:

if the tenant has in the course of the previous lease:

1. failed to pay punctually the rent due by him,
2. has caused considerable damage to the premises,
3. failed to comply with the conditions of the lease,
4. has used the premises for any purpose other than that for which the premises were leased,
5. has sublet the premises or made over the lease without the express consent of the lessor.



The sixth ground for non-renewal is when the lessor requires the premises (other than a shop) for his own occupation or that of a member of his family. The bracket is very important. Not all premises fall under this ground for non-renewal. Shops, which are defined in Chapter 69, are excluded. After Act X of 2009, garages and summer residences are no longer subject to the obligation of renewal under Article 3. Therefore, following the amendments, shops, garages and summer residences are excluded and so that leaves us with only dwelling houses ie residential tenements.



The lessor needs to prove two elements for this ground to be successful:

1. The landlord must prove that he requires the premises let for his own occupation or for the occupation of any of his ascendants or descendants by consanguinity or affinity or for the occupation of his brother or sister. This reasonable need has been expressed by the court as *grad ragjonevoli ta' bzonn*.

2. The landlord must also prove, to the satisfaction of the Board, that the tenant has alternative accommodation which is reasonably suitable for his means and condition. This must be proved after proving the first element.

This alternative accommodation, in many instances, could be offered by the landlord himself. If the landlord, after proving that he requires the premises, is not in a position to prove this alternative accommodation requisite, he can prove that he would suffer greater hardship if the Board refuses him the permission not to renew the lease. What we have here is a comparison of hardships.



Competence of the Rent Regulation Board

Act X of 2009, insofar as the Board is concerned, greatly extended the Board's competence. One should keep in mind that despite the fact that it is presided over by a magistrate, the Board forms part of the Superior Courts of Malta.

This means that prior to Act X of 2009, the Board had its competence limited to leases which were entered into prior to 1st June 1995, while the ordinary courts were competent to hear and determine disputes involving leases entered into after 1st June 1995.

The Rent Regulation Board is now competent to decide all matters affecting the leases of urban property including residential as well as commercial property



Special Summary Proceedings - Giljottina

Article 16A of Chapter 69, which was added by Act X of 2009, introduces before the Rent Regulation Board, what in general civil procedure are known as special summary proceedings (proceduri bil-giljottina).

In practice, the defendant has no automatic right to reply and defend himself against the demand of plaintiff but he must appear during the first sitting and convince the Board that he has good grounds at law or in fact to be allowed to make his defence.

If the Board is satisfied that these grounds exist, it will allow the defendant to present a reply (risposta); if the Board is not satisfied that the tenant has a good ground of defence, it will immediately move on to deliver judgment.



Can this special summary proceeding be availed of in any case?

No.

This abridged procedure can only be availed of where plaintiff's demand is for the payment of a debt which is certain, liquid and due and/or for the eviction (żgumbrament) of defendant from the premises let.



Act XXIV of 2021

Possibility to increase the rent to a maximum of 2 per cent

The lessor shall be entitled to file an application before the Board requesting that the rent be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on 1st January of the year in which the application is filed and in order to establish new conditions regarding the lease.

Who establishes the value of the Property? Two Architects members of the Rent Regulation Board.



Test tal-Mezzi (Means Test)

At the initial stages of the proceedings, the Board shall conduct a means test of the tenant, which shall be based on the means test provided for in the Continuation of Tenancies(Means Testing Criteria) Regulations issued under article 1622A of the Civil Code and any regulations that may from time to time replace them. The means test shall be based on the income of the tenant between the 1st January and the 31st December of the year preceding the year in which the proceedings are commenced and the capital of the tenant on the 31st December of the said year.



The means test will determine the fate of the tenancy:

Where the tenant does not meet the income and capital criteria of the means test the Board shall, after hearing any evidence and submissions produced by the parties, give judgement allowing the tenant a period of two (2) years to vacate the dwelling-house. The compensation for occupation of the dwelling-house payable to the lessor during the said period shall be determined by the Board as the case may be.

Where the tenant meets the income and capital criteria of the means test the Board shall proceed according to the following sub-articles



The Means Test is both with respect to:

1. Earnings and
2. Capital

Spouses have to exhibit proof with respect to both of them, even if only one of them is the tenant.

The tenant has to satisfy both criteria to remain in the property.

Five years examination





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Private Residential Leases – Chapter 604 of the Laws of Malta

This piece of legislation was enacted in 2020, and may be considered as the latest of the special laws which derogate or otherwise supplement the provisions of the Civil Code in relation to letting and hiring.

This piece of legislation covers long or short private residential leases, including the letting of shared residential space, which is entered into after 1st January 2020, and any lease for a residential purpose entered into before the 1st January 2020, which would still be in its original or renewed period on the 1st January 2021.

The provisions of the Civil Code shall continue to regulate those leases which were granted after the 1st June 1995 and which are still in force after the enactment of Chapter 604, but shall equally be required to be registered as provided under Chapter 604.



This piece of legislations is intended to promote the development of the private rented sector by ensuring standards of fairness, clarity and predictability in contractual relations between lessors and lessees and to safeguard and protect the right to adequate accommodation.

Chapter 604 differentiates between:

- Long Private Residential Lease
- Short Private Residential Lease
- Letting of Shares Residential Space



- A long private residential lease is defined by Chapter 604 as any lease negotiated for a primary residential purpose and which is not a short private residential lease.
- Therefore, for the purposes of understanding what constitutes a long private residential lease one need to make reference to the definition of a short private residential lease which is defined as any lease, negotiated for a duration of six (6) months, which is meant to satisfy the need of the following categories of lessees:
 - (a) non-resident workers who are employed either for a period less than six (6) months or only to complete a specific task within a maximum period of six (6) months;
 - (b) non-resident students who are enrolled in courses for less than six (6) months;
 - (c) residents who need to rent an alternative primary residence for a period of less than six (6) months;
 - (d) non-residents who need to rent a tenement for a period of less than six (6) months, provided that they would not be seeking to establish their long residence in Malta:



Chapter 604 does not apply to:

- (a) tenements belonging to the Government of Malta
- (b) tenements let to any tourist, exclusively for tourism purposes
- (c) tenements which are not let for a primary residential purpose;
- (d) tenements let or granted on emphyteusis before the 1st June, 1995
- (e) leases which are regulated in accordance with Chapters 69 and 158 of the Laws of Malta.



Registration of leases

Private residential lease contracts entered into after the entry into force of the Act, including their renewal, whether express or tacit, require registration with the Housing Authority.

Contracts of private residential leases which are not registered in accordance with the provisions of the Act shall be deemed to be null and void.

It shall be the duty of the lessor to register, within thirty (30) days of the commencement of the lease, the private residential lease contract with the Housing Authority.

If the lessor fails to comply with the obligation stipulated above, the lessee may proceed to register the lease contract himself, at the expense of the lessor.



All private residential lease contracts made after the entry into force of the Act shall be made in writing and shall include the following details:

- a) the tenement to be leased;
- b) the agreed use of the tenement let;
- c) the period for which that tenement shall be let;
- d) whether such lease may be extended and in what manner;
- e) the amount of rent that shall be paid and the modality of payment;
- f) any amount deposited by the lessee by way of security for the performance of his obligations; and
- g) an inventory, in the form of documentary evidence, attesting the condition of the tenement as well as the state of any furniture and domestic appliances supplied by the lessor



The absence of any one or more of the said details shall cause the agreement to be considered null and void. Furthermore, the private residential lease agreement would consider the insertion of the following clause as being without effect:

- Clauses which provide for the automatic termination of the contract other than the non-fulfilment of the lessee's obligations under articles 1554, 1555, 1555A and 1614 of the Civil Code or the non-observance of any one (1) of the conditions of the lease for which termination had been expressly foreseen, provided that where the lessee fails to pay punctually the rent due, the lessor shall always call upon the lessee in accordance with article 1570 of the Civil Code
- Clauses which authorise the lessor to reduce, without equivalent consideration, any benefits stipulated in the contract
- Clauses that exempt the lessor from any of the responsibilities to which he is bound by law, including those foreseen in articles 1545 and 1546 of the Civil Code, without equivalent consideration



- Clauses which impose the payment of additional considerations, other than the rent, the deposit, the insurance on the contents of the tenement and any contributions foreseen in accordance with article 11(4) of the Condominium Act, provided that any expenses relating to the ordinary maintenance of the common parts of a condominium shall be limited to those duties which, in accordance with the Civil Code, are at the charge of the lessee
- Clauses which impose on the lessee any additional consideration for the use of the movables, beyond the payment of rent for the use of the dwelling
- Clauses which stipulate the payment of a fixed amount, separate from the rent, for the consumption of water, electricity or other utility service if such amount does not reflect the actual consumption of such utility services by the lessee calculated at the rate reflecting the primary residential use of the tenement and the total number of occupants residing therein
- Clauses which limit the use which one is expected to make of a residence, subject to the observance of the provisions relating to the maintenance and improvement contained in the Civil Code and the rules of good neighbourliness



Minimum Duration of Leases

A long private residential lease cannot have a duration of less than one (1) year. Any agreement stipulating a shorter duration shall be deemed to have been agreed for a period of at least one (1) year.



Termination or Automatic Renewal

A long private residential lease shall cease to have effect upon the expiration of its term, whether such term is conventional, legal or judicial, provided that the lessor gives notice to the lessee at least three (3) months before by registered letter:

If the lessor does not serve the lessee with a notice of termination within the specified time, the private residential lease shall be deemed to have been renewed for a further period of one (1) year and in the absence of a notice of termination by the lessor, the lease shall continue to be renewed.

If the lessor does not serve the lessee with a notice of termination within the specified time, but the lessee still decides to terminate the agreement on the date stipulated in the agreement, he shall give notice to the lessor at least one (1) month before by registered letter



Chapter 604 further provides that it shall not be permissible for a lessor to give any notice of termination with the aim of terminating the agreement before the period imposed by the law or stipulated in the agreement, saving for the provisions of articles 1573 and 1574 of the Civil Code.

A short private residential lease shall cease to have effect by operation of article 1566 of the Civil Code.



The lessee may not withdraw from a long private residential lease before the lapse of:

- (a) six (6) months in the case where the lease is for a period of less than two (2) years;
- (b) nine (9) months in the case where the lease is for a period of two (2) years or more but less than three (3) years; or
- (c) twelve (12) months in the case where the lease is for a period of three (3) years or more.

If the lessee withdraws from a long private residential lease before the periods stipulated above, the lessor may retain an amount not exceeding one (1) month's rent from the deposit left by the lessee by way of security, so however, that the lessor may still proceed against the lessee to collect any other amount due by him



The lessee may not withdraw from a short private residential lease before the lapse of one (1) month.

Following the lapse of the above-mentioned period, the lessee may withdraw at any time from a short private residential lease so long as he gives a prior notice to the lessor of at least one (1) week, by a registered letter.



- The manner in which Chapter 604 regulates rent:
 - The rent shall be freely stipulated between the parties
 - The rent increases may only take place once every year, and in the absence of any express agreement, the rent cannot be revised during the term of the lease
 - Yearly increases may not exceed the annual variations recorded in the Property Price Index published by the National Statistics Office. The annual variation shall be understood as the average of the previous four quarters recorded until the date of the increase, provided that the increase may never exceed five percent (5%)



Letting of Shared Residential Space

A shared residential space is any separate space in an apartment or building, with shared amenities, such as kitchen and bathroom facilities

Any contract entered into for the lease of a shared residential space shall have a duration of six (6) months.

The lessee may withdraw from the lease, at any time, by giving one (1) week prior notice to the lessor by a registered letter.





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