

# Use of Space VS Renting of Space



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## Introduction

An individual or Company can agree with a landlord for the usage of a specific space/area or shop either under Use of Space Scheme, or under renting the relevant property. A case can be found below explaining what Use of Space actually means and what is the main difference with the renting of a property.

## Recent Case Law - Civil Appeal 68/2013

Granting a license (**use of space**) without a consideration for conducting business under conditions that do not give rise to exclusive ownership of the premises is considered a simple (bare) or gratuitous license which may be revoked at any time at the discretion of the licensor without obligation to indemnify him. licensed.

The above principle was reaffirmed in a recent Supreme Court ruling issued on 18 December 2019 in the context of Civil Appeal 68/2013.

The case under discussion presents a common case in Cyprus, which can be provided without the appropriate or no response.

In the present case, the parent was the owner of a ground floor house which, because of his daughter's marriage, mainly erected/expanded, at his own expense, an upstairs residence which constituted the family home of his daughter and son-in-law. At a later stage, the parent, further downgrading his living conditions for the benefit of the children, moved to auxiliary facilities located at the back of the property, in order to give his groom, free of charge, the ground floor of the building for sale, and use as a store for the needs of his business.

Subsequently, his daughter's marriage resulted in a divorce that resulted in the parent terminating the estate's license/use of space, demanding that his ex-groom to release the relevant area, a claim the groom refused to obey.



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The Supreme Court upheld the first-instance ruling according to which the parent was recognized as the legal owner and beneficiary of the ground floor, while issuing a decree against the groom to surrender the vacant property within 30 days. It also ruled against the groom for damages translated into loss of market rent for the period of illegal use of the premises as well as lost profits (i.e., monthly market rent until surrender of possession).

The Supreme Court agreed with the Court of First Instance that the license was a bare license and could be revoked at any time without granting the licensee any compensation, despite the costs incurred in designing the site, which, however, according to the Court, they were made for the benefit of himself and his business and therefore could not claim ownership or other rights in respect of costs.

## Use of Space – Summary Analysis

Further analyzing the legal manifestation of the above decision related to the aspect of licensing law as it has been legally developed in Cyprus, we find it useful to refer very briefly to the three main categories of licenses recognized by law and therefore as part of Cypriot Law (under section 29 of the Courts Act):

1. Simple or deliberate license.
2. License coupled with interest on land (license coupled with grant of interest in land).
3. Contractual license.

The first category of "simple license" refers to cases where the landowner simply allows access to his property without any contractual or proprietary rights being granted. This license for use of space may be revoked at any time.

The second category of "license with an interest in land" relates to the granting of a license while granting some limited right to land. However, in view of the provisions of section 4 of the Property (Transfer, Registration and Evaluation) Law, the creation of such a right under Cypriot law is called into question, as has already been obitered in a Supreme Court decision.

The third category of "contractual license/use of space" has undoubtedly created most of the differences between owners and owners of real estate as well as legal concerns in particular as to the nature of the contractual and legal relationship created by the contract deriving from the right to own and use of an estate as well as the very nature and extent of the use, that is, whether it is a license or a rental.

First of all, it should be noted that although the law recognizes the right of the owner to revoke a license even if it was granted under a contract, for a specific purpose and for a certain period (third category), the law of lucidity invented ways to protect the licensee. whereas later English case-law states, inter alia, that the license cannot be separated from the contract in order to be separately revoked (therefore arbitrary revocation of the license cannot be without due reason).

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## Comparison with Rent

With regard to the distinction between renting and licensing, case law has the following parameters:

1. In order to classify an agreement into the category of rent or license, the general nature, purpose and purpose of the agreement and all its surrounding circumstances and the broader context within which it was concluded must be assessed.
2. In the evaluation, which is otherwise a delicate task with a potentially ambiguous effect, no absolute parameters can be set.
3. The parties' common intention to grant the tenant or licensee exclusive use is of particular importance but not decisive.
4. The description given to the agreement by the parties and / or the words used shall be taken into account but are not decisive in determining the nature of the use which shall be judged after an assessment of the general conditions and parameters of the transaction.
5. An important factor in the classification of the agreement is the nature of the transaction and the relationship it creates between the parties. If the agreement is inspired by a strong personal element, that is, it is impregnated by a distinct and special person-to-person relationship of particular importance in concluding the agreement, this component would be strongly in favor of the license.

Given the existence and application in many cases of the generally accepted confusion on the part of the tenants and the burden on the Landlord and the tenant institution resulting therefrom, the legal matter in the form of a 'license' may be assigned, where appropriate, to a transaction involving the grant of use of a property or part thereof, by lawfully circumventing the provisions of the Lease Law, acquiring particular importance and usefulness.

However, particular attention and consideration should be given to the overall parameters and elements of the transaction and to the way the underlying agreement is drafted so that its terms reflect the transaction on a practical basis, not just theoretically, focusing in particular but not exclusively, avoiding the exclusive use of the licensed property or part thereof and creating a distinct personal relationship (ie dependency or interaction) between the parties.



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