

2006

## Is the Suite Life Truly Sweet? The Property Rights Luxury Box Owners Actually Acquire

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### Recommended Citation

Amanda Schlager, *Is the Suite Life Truly Sweet? The Property Rights Luxury Box Owners Actually Acquire*, 8 *Vanderbilt Journal of Entertainment and Technology Law* 453 (2020)  
Available at: <https://scholarship.law.vanderbilt.edu/jetlaw/vol8/iss2/6>

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# Is the Suite Life Truly Sweet? The Property Rights Luxury Box Owners Actually Acquire

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You have probably seen them at sporting arenas and entertainment arenas. You look up from your cramped bleacher seat and see a little piece of heaven: a box of seats. But not just any box – a luxury box. Places where spectators not only watch the game live, but can see it on large screen televisions. Catering services provide four-star food, brought by a personal waiter. Whereas you look down and see your knees touching your chest, they have enough foot space that people do not even have to get up for others entering the aisle. What are these beacons of excess and opulence? Luxury boxes. And they are the key word in sporting arenas today.

The bundle of property rights that a person has determines what interest he or she has in a piece of property. Important reasons to differentiate a license from a lease can include property taxation, revocation, eminent domain,<sup>1</sup> and tort liability, which can turn on possession and control.<sup>2</sup> The most important difference between the two is that a lease conveys an estate of exclusive possession<sup>3</sup> while a

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1. See JON W. BRUCE & JAMES W. ELY, JR., *THE LAW IN EASEMENTS AND LICENSES OF LAND* § 1:4, at 1-10 (4th ed. 2001) (“The notion that licenses are not interests in land is critical in eminent domain actions . . .”).

2. See 2 RICHARD R. POWELL, *POWELL ON REAL PROPERTY* § 16.02[3][a], at 10-14 (Michael Allan Wolf ed., Matthew Bender & Co. 2000).

3. 3 MILTON R. FRIEDMAN, *FRIEDMAN ON LEASES* § 37:1, at 37-1 (5th ed., Practising Law Institute 2005).

licensee only has a permission to enter for a particular purpose.<sup>4</sup> The differences can make it difficult to ascertain the status of a particular property interest and courts are usually guided by the parties' intentions and the circumstances surrounding the agreement.<sup>5</sup> Accordingly, an agreement's title does not necessarily dictate its categorization.<sup>6</sup>

Many luxury boxes are rented by corporations or firms and are commonly "leased" for five to ten years. However, simply referring to a legal agreement as a "lease" does not necessarily make it so. Luxury boxes commonly have regulations attached, such as a prohibition against providing one's own food, which imply a non-exclusive use of the property. This suggests that the property rights a luxury box "lessee" actually receives do not constitute a lease.

Luxury boxes are a fairly modern trend in professional and collegiate sports. There has not been much litigation that addresses the issues discussed in this note; however, such disputes are likely not too far over the horizon. As such, practitioners drafting arena contracts and those that represent possible luxury box "licensees/lessees" should have an understanding of what to look for in these contracts to ensure that what they see is what they get. Practitioners representing both sides will be in a better position to represent the interests of their clients if they understand exactly what property interest they are dealing with and what rights are affected by differences and misnomers the language creating those interests.

Part I of this Note offers a look at the rising trend of luxury boxes, with a discussion of what separates a license from a lease. Part II will look at the property rights frequently given to one who "leases" a luxury box and will analyze what interest in land he actually receives. Part III presents the implications of misnomers in luxury box leasing and presents possible repercussions for both luxury box owners and those to whom the owners would lease them. It also suggests a better method for creating and governing these arrangements. Finally, it asserts that because of the inherently temporary use of luxury boxes and the rights arenas tend to reserve, luxury boxes inherently cannot be leased and should be licensed. Consequently, arenas would benefit from the licensor's ability to revoke at any time. However, arenas would need to address the open issue of tort liability given their duty to repair and maintain safe premises for licensees.

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4. BRUCE & ELY, *supra* note 1, § 1:4, at 1-8.

5. See POWELL, *supra* note 2, § 16.02[3][a], at 16-17 to 16-18.

6. BRUCE & ELY, *supra* note 1, § 1:5, at 1-11 to 1-12.

## I. LUXURY BOXES AND PROPERTY RIGHTS

A. *The Rising Trend of Luxury Boxes*

While luxury boxes have been around in some form since the beginning of sports, with executive suites present at the Roman games,<sup>7</sup> their recent increase in demand is a direct result of teams needing to find additional revenue sources to cover the increased cost of free agent players.<sup>8</sup> While the suites were originally targeted towards big corporations that would pay more to entertain clients at events, team owners soon realized that there was also a market in the general public of people who were willing to pay premium prices for more amenities.<sup>9</sup>

Early attempts to meet demand by retrofitting existing facilities with skyboxes were rapidly dismissed in favor of the more profitable alternative of building new facilities that directly incorporated premium seating and luxury suites into the building plan.<sup>10</sup> Major revenue success stories, such as Baltimore's Oriole Park at Camden Yards, soon led to other sports teams demanding their own personal stadiums be built with as much premium seating as possible.<sup>11</sup>

Collegiate sports saw the revenue opportunities in luxury boxes too. Ohio State University's Schottenstein Center, also known as "The Schott," is almost "indistinguishable from any of the new NBA or NHL arenas," teeming with 52 luxury boxes (the most of any university arena in 2000), and 4,500 club seats.<sup>12</sup> The expectations for those premium seats are high considering the price of a luxury box for the year is up to \$65,000 and the purchase of a personal seat license, on top of the regular ticket price.<sup>13</sup> Luxury boxes at Louisiana State University require signed five-year leases and an agreement to donate between \$34,000 and \$95,000 to the Tiger Athletic Foundation.<sup>14</sup> In return, the box has "an outdoor television that's plugged into the main

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7. Katie Fairbank, *Cowboys Rush For Sales; Tickets Are Moving, But Not As Quickly As Some Might Expect*, THE DALLAS MORNING NEWS, Sept. 6, 2003, at 1D.

8. Mike Buzalka, *Catering to the Suite Life*, FOOD MGMT., July 1, 2000, No. 7, at 54.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Derrick Goold, *Suite Success; Luxury Boxes At Tiger Stadium Put LSU Fans On Cloud Nine*, THE TIMES-PICAYUNE, Aug. 31, 2000, at A1.

scoreboard video feed, . . . a floor-to-ceiling pane [that] allows a full view of the field, . . . six speakers [for] fans [to] hear play-by-play, . . . couches, oversized chairs, . . . refrigerators, ice boxes," black granite counter tops, chafing dishes, and, for a special touch, carpet in rich LSU purple and gold.<sup>15</sup>

Luxury boxes are popular in professional sports because their generated revenue "stay[s] with the home team[,] even [sic] in sports that have revenue sharing bylaws."<sup>16</sup> "If [a team does not] have a facility with luxury boxes, or the ability to build [them], it definitely impacts the team's bottom line."<sup>17</sup> Luxury boxes allow teams to keep the price of other tickets down and, therefore, affordable to the average fan.<sup>18</sup> However, it should be noted that some new arenas that are being built with more luxury boxes have increased average ticket prices.<sup>19</sup>

Amenities in luxury boxes include benefits such as gourmet buffets provided by in-house caterers, "wine and liquor, premium television sets, telephones, a fireplace, a personal humidifier for an after-dinner smoke" and private parking spots.<sup>20</sup> The new \$400 million Invesco Field at Mile High in Denver has luxury boxes that include "[g]ranite countertops, a mix of carpeted and hardwood floors, a computer monitor to provide instant player statistics, and televisions with access to other NFL games."<sup>21</sup> Companies have leased two thirds of the Broncos' luxury suites, while the remaining "one-third are leased mostly to groups of people that pool their money."<sup>22</sup> The suites "can be leased annually from \$80,000 up to \$125,000, depending on their size and location."<sup>23</sup> "They seat between 14, 16 or 18 people and come with preferred parking."<sup>24</sup>

In 2002, new arenas built for professional basketball and hockey teams had "an average of 90 luxury boxes, leasing for \$75,000

15. *Id.*

16. William D. Murray, *Sports Business: Cash-strapped Owners look to Stadiums*, UNITED PRESS INTERNATIONAL, Mar. 12, 1992, Financial Section.

17. *Id.* (quoting Steve Matt, "the partner in charge of professional sports franchise evaluation at Dallas's Arthur Andersen & Co.").

18. *Id.*

19. Gary Robertson, *Ticket Prices at Professional Games Following the Path of Luxury Seats*, RICHMOND TIMES DISPATCH, Jan. 14, 2002, at D-14. "For example, when the L.A. Lakers basketball team moved into a new arena, the average price for a family of four to attend a game climbed by 45% to \$427.57." *Id.*

20. *Id.*

21. Todd Hartman, *Broncos Fans Have a Suite Tooth: New Luxury Boxes Melting Away*, ROCKY MOUNTAIN NEWS, Dec. 29, 2000, at 36A.

22. *Id.*

23. *Id.*

24. *Id.*

to \$150,000 . . . .”<sup>25</sup> The professional baseball and football stadiums might be double those prices.<sup>26</sup> Arenas that do not have enough luxury boxes can sometimes find themselves without a team. In 2001, the NBA’s Charlotte Hornets began to consider relocating because Charlotte Coliseum did not have enough luxury boxes and voters rejected a referendum that would have built the team a new arena with more luxury suites.<sup>27</sup>

While luxury boxes may be a godsend to team owners, they are not always as luxurious to those who rent them. Luxury box owners may find themselves signing a five to ten year “lease,” but they do not always have the exclusive personal use that one would normally associate with a “lease.” At Arthur Ashe Stadium, Steve Levkoff, a Queens businessman, was “evicted from his high-priced luxury box . . . because he failed . . . to order the mandatory \$24,000 in refreshments required of box holders during the 14-day [United States Open tennis] competition.”<sup>28</sup> On one occasion, Levkoff was found bringing his own deli sandwiches into the box rather than rely on the tournament’s official caterer, Restaurant Associates.<sup>29</sup> Situations like this lead to an inquiry into what property rights luxury owners actually have.

### B. Licenses

“A license is the permission to do something on the land of another that, without such authority, would be unlawful.”<sup>30</sup> It is ordinarily revocable and not assignable because it is “a mere personal privilege to use another’s property for a particular purpose . . . .”<sup>31</sup> It

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25. Robertson, *supra* note 19.

26. *Id.*

27. Christopher Dinsmore, *Luxury Boxes Critical in Luring Major Teams; Lack of Sufficient Suites Main Reason Franchise is Relocating*, THE VIRGINIAN-PILOT, Dec. 28, 2001, at A1. The team eventually did relocate to New Orleans. *Id.*

28. *Topics of the Time: Tennis for the Well Heeled*, N.Y. TIMES, Aug. 15, 2001 (Late Edition – Final), at A22.

29. *Id.*

30. BRUCE & ELY, *supra* note 1, § 11:1, at 11-1 to 11-2 (citing, e.g., *Mumaugh v. Diamond Lake Area Cable TV Co.*, 456 N.W.2d 425, 430 (Mich. Ct. App. 1990) (“A license is merely authority or permission to do some act or a series of acts upon the licensor’s land without having any permanent interest therein.”)).

31. *Id.* at 11-2 (citing, e.g., *Contel of Indiana, Inc. v. Coulson*, 659 N.E.2d 224, 228 (Ind. Ct. App. 1995) (“[A] license merely confers a personal privilege to do some act or acts on land without conveying an estate in the land.”); *Millbrook Hunt, Inc. v. Smith*, 670 N.Y.S.2d 907, 909 (N.Y. App. Div. 1998) (defining a “license” as “a mere personal privilege to commit some act or series of acts on the land of another”)).

is generally "not viewed as an interest in the land."<sup>32</sup> Tickets to sporting events are a common type of license.<sup>33</sup>

Creating a license does not require formal language,<sup>34</sup> but conveying language can be interpreted as indicating that an interest in land was intended, rather than a license.<sup>35</sup> The grant of permission by the licensor to enter his land is the only requisite element.<sup>36</sup> "Since a license is generally not considered an interest in land, it may be created orally or in writing" and "may be [granted] with or without payment of consideration."<sup>37</sup>

"The scope of a license is determined by . . . the privilege[s] granted by the licensor," and, as a result, "the use of a license must be limited to authorized activities."<sup>38</sup> A license for a specified purpose cannot be used for other purposes; otherwise the licensee may be treated as a trespasser.<sup>39</sup> Licenses are not necessarily limited to sole use by the licensee because the nature of a permitted act might indicate a use appropriate to others.<sup>40</sup> And because "a license is not an interest in land, the licensor has no [duty] to repair the premises [for] the licensee."<sup>41</sup>

Licenses are personal in nature and are not assignable; some license agreements require the licensor's consent before the licensee can transfer the privilege.<sup>42</sup> However, "license[s are] generally

32. *Id.* at 11-3 (citing, *e.g.*, *Union Travel Assocs., Inc. v. Int'l Assocs., Inc.*, 401 A.2d 105, 107 (D.C. 1979) ("[A] license confers a personal privilege to act, and not a present possessory estate. . ."); *Branson v. Miracle*, 729 P.2d 408, 411 (Idaho Ct. App. 1986) ("No interest in property vests in the licensee.")).

33. *Id.* at 11-10 (citing, *e.g.*, *Soderholm v. Chicago Nat'l League Ball Club, Inc.*, 587 N.E.2d 517, 520-21 (Ill. App. Ct. 1992) (interpreting season tickets as a series of licenses); *Bickett v. Buffalo Bills, Inc.*, 472 N.Y.S.2d 245, 247 (N.Y. Gen. Term 1983) (holding that football tickets represented revocable licenses); *Boswell v. Barnum & Bailey*, 185 S.W. 692, 692 (Tenn. 1916) ("It is true under the great weight of authority that the right of the purchaser of a ticket to enter and remain at a . . . private park is a mere revocable license."); *Finnesev v. Seattle Baseball Club*, 210 P. 679, 681 (Wash. 1922) ("a ticket of admission is a mere license revocable at the will of the proprietor")).

34. *Id.* § 11:2, at 11-11 (citing, *e.g.*, *Smallwood v. Diz*, 245 S.W.2d 439, 440 (Ky. 1952) (stating that "[n]o formal language is necessary to create a license as long as the proper intent appears")).

35. *Id.* (citing, *e.g.*, *Tarlow v. Arntson*, 505 P.2d 338, 341 (Or. 1973) (The use of a commercial elevator was held to be an irrevocable license or easement that runs with the land as long as the licensee complied with the obligations of the agreement.)).

36. *Id.*

37. *Id.* at 11-12 to 11-13.

38. *Id.* § 11:3, at 11-14.

39. *Id.*

40. *Id.*

41. *Id.* at 11-14 to 11-15.

42. *Id.* § 11:4, at 11-15.

revocable at the will of the licensor.”<sup>43</sup> Admission tickets for sporting events, for example, are revocable, despite the fact that consideration was paid to obtain them.<sup>44</sup> This is not to say that there are no measures for relief; if a license were contractually created, a breach of contract cause of action would arise upon revocation.<sup>45</sup>

### C. Leases

The traditionally expressed distinction between a lease and a license is that “a lease is a conveyance of exclusive possession of specific property, for a term less than that of the grantor, usually in consideration of the payment of rent, which vests an estate [or interest] in the grantee.”<sup>46</sup> While a license merely allows a licensee to perform certain acts on the land of another, the “lessor has no right to enter [the property] during the [lease] term except to repair or to claim his rent.”<sup>47</sup> “Though the majority of relationships that are labeled leases confer an exclusive right of possession,” this is not always the case.<sup>48</sup>

Under a lease landlords are not required to repair, nor are they liable for injuries resulting from a lack of repair.<sup>49</sup> This is consistent with the premise that a lease is a conveyance rather than a contract.<sup>50</sup> Under that theory, the tenant is the owner of the leased property for the term of the lease and therefore the landlord is not responsible for the tenant’s abandonment of his own property or the rent accrued during the duration.<sup>51</sup>

“A lease transfers an ‘estate’ to [a] tenant, which gives the tenant a ‘possessory’ interest in the premises.”<sup>52</sup> Leases differ from licenses, which are nonpossessory interests, because leases involve the creation of an estate interest.<sup>53</sup> While licenses may resemble leases in certain aspects, such as “having a definite term and price,” they “do not create a right to possession in their holder, but only a privilege of use of property for limited purposes.”<sup>54</sup>

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43. *Id.* § 11:6, at 11-19.

44. *Id.* at 11-20.

45. POWELL, *supra* note 2, § 16.02[3][a], at 16-14.

46. FRIEDMAN, *supra* note 3, § 37:1, at 37-5.

47. *Id.* at 37-1 to 37-2.

48. *Id.* at 37-4.

49. *Id.* at § 10:1.1, at 10-3 to 10-5.

50. *Id.*

51. *See id.* § 1:2.2, at 1-18.

52. POWELL, *supra* note 2, § 16.02[3][a], at 16-13.

53. *Id.*

54. *Id.*



The implications of the possession versus use distinction are apparent in issues such as whether an owner has a responsibility to an occupant for the condition of the premises for purposes of determining tort liability. Traditionally, landlords "have no duty regarding conditions of the premises, while licensors do have a duty to provide premises safe for the uses authorized by the license."<sup>55</sup> Another issue where the distinction would matter is where fire or casualty destroys the premises; tenants may not be excused from further performance under the doctrine of frustration, while licensees would be excused.<sup>56</sup> And, a tenant's obligation under a lease to get landlord consent prior to subletting or assigning "is not violated by the tenant's creation of a nonpossessory interest in a third party;" however, it would be violated if a licensee or other such nonpossessory interest did the same without consent.<sup>57</sup>

In determining whether a transaction creates a possessory or nonpossessory interest, courts almost always conclude that the "touchstone" of the determination is the intent of the parties "gleaned from the instrument creating the interest, read in light of attendant facts and circumstances."<sup>58</sup> While the label parties give to transactions is relevant, it is not conclusive, as shown by cases finding "expressed 'leases' to be licenses and vice versa."<sup>59</sup> For example, in *Piper v. Central Louisiana Electric Co.*, the Louisiana Court of Appeals found that despite an agreement's clause stating, "Licensee's rights therein shall be and remain a mere license," the substance and content of the written contract, when interpreted under the state's property laws, showed an actual intent of the parties to create a lease.<sup>60</sup> While the court acknowledged the contract's use of the word "license," it determined that the drafting party's reservation of certain property rights and conditions upon the enjoyment or use conflicted with the label of "license."<sup>61</sup>

In *Loren v. Marry*, the Appellate Division of New York held that where a resident and prior homeowner entered into a 99-year "lease" of the premises solely for the life of his relationship with the

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55. *Id.* at 16-14 (internal reference omitted).

56. *Id.* at 16-15.

57. *Id.*

58. *Id.* at 16-18.

59. *Id.* (citing, e.g., *Southern Leisure Sys. v. Lantice & Ronnie Green, Inc.*, 453 So. 2d 112 (Fla. Ct. App. 1984); *Piper v. Cent. La. Elec., Co.*, 446 So. 2d 939 (La. Ct. App. 1984); *United Coin Meter Co. v. Gibsin*, 311 N.W.2d 442 (Mich. Ct. App. 1981); *Loren v. Marry*, 600 N.Y.S.2d 369 (App. Div. 1993); *Lee v. N.D. Park Serv.*, 262 N.W.2d 467 (N.D. 1977)).

60. 446 So. 2d at 942.

61. *Id.*

prior homeowner, the interest created was actually a license.<sup>62</sup> The payment of rent would have been evidence of a landlord-tenant relationship, but here the rent was nominal and not due until the expiration of the agreement.<sup>63</sup> The court then determined that the property was a license by looking at “ ‘the manifest intent of the parties, gleaned from a consideration of the entire contents of the instrument involved, [and] that exclusive control and possession of [the] specified space [were granted for a specified term], subject to reserved rights.’ ”<sup>64</sup> “[T]he nomenclature used by the parties [was] immaterial.”<sup>65</sup>

Although a “lease” may specify a term of duration or provide for compensation as “rent,” or use the terms “lessor” and “lessee” consistently, these facts are important but not conclusive because a nonpossessory interest can also be granted for a term and for value, and a lease can be revocable at will and transferred gratuitously.<sup>66</sup>

Similarly, the common “lease” provisions “– such as a provision that the occupant is entitled to quiet enjoyment during the term, or that the occupant shall not assign or sublet without the owner’s consent or commit waste, or that the occupant must return ‘possession’ at the end of the term – strengthens the argument that the agreement was intended to be a lease.”<sup>67</sup> While one factor would likely not be decisive, several factors combined would likely result in the classification of the interest as a lease.<sup>68</sup>

The main factors in determining the parties’ intentions are those that “speak directly to the questions of control and the power to exclude” because “ ‘possession’ is defined by the elements of control over a definite physical area and the power to exclude others from that area . . . .”<sup>69</sup> Consequently, a description of a specified area subjected to control suggests a lease, “while an imprecise reference suggests a license.”<sup>70</sup>

“The line between possessory and nonpossessory interests is not necessarily precise and clearly delineated.”<sup>71</sup> Some jurisdictions may, as a result, propose policy goals rather than categories in

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62. 600 N.Y.S.2d at 370.

63. *Id.*

64. *Id.* (quoting 74 N.Y. JUR., *Landlord & Tenant* § 8, at 41-42 (2005)).

65. *Id.*

66. POWELL, *supra* note 2, § 16.02[3][a], at 16-18 to 16-19.

67. *Id.* at 16-19.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

resolving the dispute.<sup>72</sup> However, in jurisdictions that use the categorization method, practitioners must attempt to assemble as many demonstrative factors as possible for their side's desired classification.<sup>73</sup>

## II. WHAT YOU SEE MAY NOT BE WHAT YOU GET: WHAT PROPERTY RIGHTS DO LUXURY BOX HOLDERS ACTUALLY HAVE?

The label that a party uses to describe a property right does not dictate its legal effect.<sup>74</sup> Reasons to differentiate a license from a lease can include property taxation, revocation, and eminent domain concerns.<sup>75</sup> The distinction is also important because the duty to repair, which is the key issue in tort liability, depends on possession and control.<sup>76</sup> The most important element distinguishing the two "is that a lease conveys exclusive possession of the premises to the tenant, and thus, the tenant [possesses] an estate."<sup>77</sup> A licensor, on the other hand, "retains legal possession of the land, and the licensee has only a privilege to enter for a particular purpose."<sup>78</sup> Though, the differences make it difficult to ascertain the status of a particular property interest, courts are guided by the parties' intentions and the circumstances surrounding the agreement.<sup>79</sup> Accordingly, an agreement's title, such as "lease," does not necessarily create a lease.<sup>80</sup> Similarly, an agreement that is characterized as a "license" might, in fact, be a lease.<sup>81</sup>

An analysis of a modern day arena contract for a luxury box makes it possible to see whether the interest is improperly named and is a lease rather than a "license." An entertainment arena that

72. *Id.*

73. *Id.* at 16-19 to 16-20.

74. See BRUCE & ELY, *supra* note 1, § 1:5, at 1-11 to 1-12 (citing, e.g., *Millbrook Hunt, Inc. v. Smith*, 670 N.Y.S.2d 907, 908-909 (N.Y. App. Div. 1998) (stating that "[t]o determine the true character of an interest, a court must examine the nature of the right rather than the name given to it by the parties")); see also *Am. Jewish Theatre, Inc. v. Roundabout Theatre, Inc.*, 610 N.Y.S.2d 256 (N.Y. App. Div. 1994) (holding that characterization of an instrument as a license does not preclude its existence as a lease).

75. *Id.* § 11:1, at 11-4 to 11-5.

76. POWELL, *supra* note 2, § 16.02[3][b], at 16-24.

77. BRUCE & ELY, *supra* note 1, § 11:1, at 11-5.

78. *Id.* at 11-5 to 11-6.

79. *Id.* at 11-6.

80. *Id.* at 11-6 to 11-7.

81. *Id.*

“licenses” its suites provided the following contract.<sup>82</sup> Clauses and provisions have been analyzed in the context of what property rights are given and what legal right that signifies for the licensor and licensee.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the mutual benefits to be derived therefrom, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **LICENSE:**

(a) **Location.** Subject to the terms and conditions of this Agreement, Licensor licenses to Licensee the right to use the following suite during the Term of this Agreement as such use is more particularly described in Exhibit A - Standard Terms and Conditions.<sup>83</sup>

As mentioned earlier, a description of a specified area subjected to control suggests a lease while a less precise reference suggests a license. The dedication of a specific area, i.e. “the following suite,”<sup>84</sup> would suggest something more than a license; if the arena were merely giving permission to do something on the land, it would not have to be location-specific. However, identifying the suite, arguably, could be said to determine the scope of the license and where ticket holders could watch the show. Arenas should avoid this by using a broad term such as “a luxury box,”<sup>85</sup> while still describing its amenities for purposes of identification of what the licensee is purchasing.

(b) **Tickets.** Licensee will receive tickets for each seat in the designated area referenced above and will have *exclusive use of the Suite* for each Covered Event at the Arena.<sup>86</sup>

Considering that the traditionally expressed distinction between a lease and a license is that a lease is a conveyance of exclusive possession of specific property for a term less than that of the grantor, the use of the term “exclusive use”<sup>87</sup> suggests a greater property interest than a license. However, as mentioned earlier, formal language is not necessary for a license. Nevertheless, a court could interpret this as formal language that gives more of a right than privately intended because the language of granting “exclusive use” is

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82. For purposes of confidentiality, all references to the name of the sporting arena have been removed, but a copy of the sample agreement is on file with the author [hereinafter ARENA CONTRACT].

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* (emphasis added).

87. *Id.*

that used in creating leases rather than licenses. Erring on the side of caution, an arena should try to avoid using a term of art that would suggest something other than what it intends to convey.

If the terminology used above is trying to convey the fact that no other people will be allowed to use the suite for the covered events, it should use the terminology “and no other entity will be permitted to use said space during the covered events.” This clarifies the type of use being permitted in the license without using a term of art that suggests a lease.

(c) ***Additional Tickets/Suite Access Passes.*** Licensee shall receive at no additional charge two (2) Suite Access Passes for each Covered Event. . . . In addition, subject to availability and on such terms and conditions that Licensor may reasonably require with respect to timing of such purchases, Licensee may purchase up to six (6) additional tickets (the “Additional Tickets”) in the Arena for each Covered Event at prevailing prices. The holders of such Additional Tickets, however, will not be able to access the Designated Seats or Suite . . . and the purchase thereof does not confer any greater or lesser rights and privileges with respect to admission to the Arena than afforded to other holders of tickets for admission.<sup>88</sup>

While this clause grants the “licensee” two rights, the right to bring two guests to the suite and the right to purchase six additional tickets, it raises an interesting issue of social host liability. While landlords traditionally have no duty to maintain the premises, licensees have a duty to provide premises “safe for the uses authorized by the license.”<sup>89</sup> If, in fact, the property rights granted by this agreement form a lease, the tenant (rather than “licensee”) could be liable for incidents occurring in the suite while under its exclusive control.

(d) ***Parking.*** Licensee will have the right to use \_\_\_\_\_ parking spaces at the Arena’s designated lots for Suite Holders for each Covered Event.<sup>90</sup>

While this parking clause could be considered a grant of permission to use the parking spaces in the parking garage, if the agreement were deemed a lease, the situation would be more complex. A tenant’s right to use parking areas owned by the landlord, usually include the “right to use the parking areas for itself and its invitees in common with other tenants and the landlord . . . with little exception, an interference with or reduction, or elimination of this right gives the tenant a right to damages, injunction, or cancellation.”<sup>91</sup> “This right does not fit the traditional concept of a lease as a transfer of a right to

88. *Id.*

89. POWELL, *supra* note 2, § 16.02[3][a], at 16-14; *see also supra* text accompanying note 55.

90. ARENA CONTRACT, *supra* note 82.

91. FRIEDMAN, *supra* note 3, § 37.2, at 37-7.

exclusive use of specific property . . . for a term less than that of the owner, usually in return for rent.”<sup>92</sup> “[A]pparently[,] no court has called the [parking] area a part of the premises leased. But the rights of the tenant in [parking] areas . . . are hardly different from their rights in the premises in which they enjoy exclusivity.”<sup>93</sup>

“Parking rights that are vested in a tenant in common with others are usually characterized as an easement . . .” and indicate an interest in land, as opposed to merely a license.<sup>94</sup> While that same right has been called a license, it is a license coupled with an interest.<sup>95</sup> The differences between the two however, are almost indistinguishable.<sup>96</sup>

2. **TERM:** The Term of this Agreement shall be for \_\_\_\_\_ years. The Term shall commence (“Commencement Date”) on September 1, 2004 and shall expire on August 31, \_\_\_\_\_, unless sooner terminated pursuant to the terms hereof.<sup>97</sup>

The use of a start and an expiration date, in terms of years, suggests that this is not a revocable license, despite the language “unless sooner terminated.”<sup>98</sup> While a document may give terms under which the licensee can terminate, the intent of the parties for the agreement to be for a period of years suggests something more permanent and suggests intent to lease. Arenas should use clear language that the agreement is “revocable,” rather than terminable, in order to clearly establish the intent to grant a license.

3. **LICENSE FEE:** For each License Year of the Term, Licensee shall pay Licensor a non-refundable annual fee (“License Fee”). The License Fee for the first License Year shall be \_\_\_\_\_ of which is due upon execution of this agreement. The License Fee for the second License Year shall be determined by multiplying the License Fee for the immediately preceding License Year by 104%. The License Fee for the second License Year shall be due and payable in two equal installments on or before April 1, 2005 and September 1, 2005.<sup>99</sup>

While, as mentioned before, consideration is not a determinative element of whether an agreement is a license or a lease, it can be a significant factor if the consideration is great enough. Given that the prices of luxury boxes are sometimes upward of \$50,000, the money a “licensee” might lose if the “license” were revoked is substantial. While some courts would merely find a breach of contract and allow recovery of damages, if enough elements were

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92. *Id.*

93. *Id.* at 37-7 to 37-8.

94. *Id.* at 37-8.

95. *Id.*

96. *Id.*

97. ARENA CONTRACT, *supra* note 82.

98. *Id.*

99. *Id.*

present to suggest that the right granted was an interest in land such as a lease, courts would likely find that the agreement created a lease or an easement in gross.

Here, the possible ambiguity is amplified by the fact that the payments are annual for the term of the "license," which in fact, looks more like rent than a license fee. In addition, the second year's payments are installments, which look even more similar to rent payments. However, arenas have a strong argument that sales would be impossible if the extremely high costs of luxury boxes were demanded up front.

#### EXHIBIT "A"

##### (STANDARD TERMS AND CONDITIONS)

1. **DEFINITIONS.** For the purposes of this Agreement, the following definitions shall apply:

(e) **Licensee.** Licensee, its permitted successors and assigns, and their respective officers, agents, employees, invitees, guests and visitors.

(f) **Licensor.** Licensor, its successors and assigns, and their respective officers, employees and agents, including any operator or manager of the Arena or the suites.<sup>100</sup>

Conversely, these two definitions seem to indicate the parties' intent to actually create a lease or easement. As discussed previously, licenses are ordinarily revocable and not assignable because they are only personal privileges to use another's property for a particular purpose, and not an interest in the land.

Here, while referring to the parties as "licensee" and "licensor," it refers to their "assigns," signaling that there is a property interest that can be conveyed. At a minimum, this property interest seems to be an easement; at most it is a lease that is not revocable at any time. Regardless of the title of the agreement, the parties' intent to be able to assign the suite to someone else suggests a lease with terms for ending it, rather than a revocable license.

##### 2. LICENSE AND RELATED RIGHTS.

(b) **Non-Covered Events.** To the extent that tickets are available in the Suite from the Event promoter, sponsor, or venue licensee (as the case may be) of a Non-Covered Event, Licensee shall have the right to use the Suite during any Non-Covered Event by purchasing from Licensor the Suite's full allotment of tickets therefore, at the prevailing prices. If the Suite is not available (because by way of example only, the NBA retains the right to use the suites for its own purposes for an All-Star game), Licensor will make commercially reasonable efforts to provide Licensee with a comparable number of tickets set forth in Paragraph 1(b) of the

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100. *Id.*

Suite License Agreement, to the Non-Covered Event as may be available for purchase in lower level locations in the Arena. Licensee acknowledges, accepts and agrees that the Suite may be used by others during a Non-Covered Event.<sup>101</sup>

Here, the agreement requires that the licensee acknowledge or accept that others will likely use the Suite during a non-covered event. While this would suggest a lack of exclusive use, leases do not have to be constant. Term leases could cover the times a suite “lessor” has exclusive possession of the lease and other times, the landlord would have the right to “sublet” the lease to individuals attending non-covered events.

**3. RENEWAL OPTION.** Unless Licensee is in default hereunder or this Agreement has been terminated, Licensee shall have the first right to re-license the Suite for a period of time beyond the expiration of the term and pursuant to the terms and conditions of Licensor’s agreement to effectuate such re-license (“Renewal Agreement”). Licensor will provide Licensee with a Renewal Agreement at least one hundred twenty (120) days prior to the expiration of the Term. Licensee shall have thirty (30) days following receipt thereof to exercise its renewal rights by executing the Renewal Agreement and returning it and any payment required thereby to Licensor. The Renewal Agreement shall become effective immediately upon the expiration of the Term. If Licensee does not exercise its renewal rights as set forth herein, then Licensee shall waive irrevocably such rights.<sup>102</sup>

Because licenses are temporary uses of one’s possessory interest, granting the first right to “re-license” suggests a greater interest than temporary use. By giving the “licensee” the first right to retain the box, the “licensor” suggests that the agreement cannot just be revoked at will, a factor many courts consider highly persuasive in determining an agreement is a lease and *not* a license.

**4. USE.** Except as provided in Section 2(a)(v) above (i.e., use during non-Event times), Licensee and Licensee’s guests shall be entitled to use the Suite only at times for which the appropriate tickets for admission to the Suite are presented and the Arena is intended to be open for use by the general public. Licensee and Licensee’s guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to the Arena have been issued by the sponsor or promoter of each event including, without limitation, policies with respect to the cancellation or postponement of a game or event. Licensor shall provide Licensee with access to the Suite at all times during which Licensee is entitled to use it. Such access to the Suite shall be governed by the rules and regulations established by Licensor from time to time (“Arena Rules and Regulations”). This Agreement provides Licensee only with the right and privilege to use the Suite in the manner set forth herein, and except as pertains to the special right and privilege to so use the Suite, this Agreement does not confer upon Licensee or Licensee’s guests any greater or lesser rights and privileges with respect

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101. *Id.*

102. *Id.*



to admission to the Arena than afforded to other holders of tickets for admission.<sup>103</sup>

This entire paragraph's purpose is to limit the use the "licensee" receives and make it clear that it is, in fact, a license and not an exclusive use. However, the clause is not determinative and must be taken into consideration with other clauses that reflect the overall intent of the document. For purposes of ensuring that the intent of the drafters is clear, arenas should include language that clearly addresses ambiguities, and states something to the effect of, "any terms or conditions set forth in this document that suggest an intent to grant anything other than a license shall be interpreted in favor of granting a license."

**6. FINISHING AND ALTERATIONS.** Licensor intends to have and maintain certain basic color and design schemes in the suites to ensure uniform aesthetics. Licensee acknowledges that all finishes, fixtures and other appointments in the Suite are the property of Licensor and shall not be removed from the Suite at any time. Licensee shall not make any additions or alterations to the interior or exterior of the Suite or the fixtures, furnishings and equipment therein, without the prior written consent of Licensor, which consent may be conditioned or withheld in Licensor's sole and absolute discretion. Any such additions or alterations permitted by Licensor shall be made by Licensor at Licensee's expense and must comply with all zoning laws and requirements of all governmental authorities having jurisdiction. With Licensor's prior reasonable approval in each instance, Licensee may supply articles of appointment, such as pictures, plants or insignia reasonable in size and in good taste, as determined by Licensor, and Licensee shall be responsible for removing all such property prior to the expiration of the Term.<sup>104</sup>

By limiting the ability of the "licensee" to make additions or alterations, the "licensor" limits the licensee's use. Accordingly, this is a persuasive factor because the "licensee" not only does not have "exclusive use," it also does not have exclusive possession if it is required to run all addition or alteration decisions through the "licensor." This is also an excellent way for an arena to prevent a licensee from making costly improvements and then claim an irrevocable license based on reasonable reliance.

**7. SERVICES AND MAINTENANCE.** During the Term, Licensor shall provide the following services to the Suite during or after all Events for which the Suite may be occupied by Licensee or Licensee's guests:

heating, air conditioning, ventilation, running water and electricity;

housekeeping services, including dusting, sweeping and cleaning the Suite and rubbish removal and disposal following each Event;

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103. *Id.*

104. *Id.*

food and beverage services through Licensor or its designated caterer at Licensee's order and expense; and

such other special services as Licensor, in its sole discretion, may offer at prevailing rates and terms established from time to time by Licensor.

The costs of the services in subparagraphs (a) and (b) shall be paid for by Licensor; the cost of all other services are the responsibility of Licensee, and Licensee shall pay forthwith to the supplier or Licensor the costs of such services upon presentation of invoices therefore. Licensee agrees to reimburse Licensor upon demand the costs of any necessary additional cleaning or maintenance of the Suite or to the fixtures, furnishings and equipment therein which result from any action, willful damage, neglect or omission by Licensee and/or those for whom Licensee is in law responsible. Licensee shall be responsible for cleaning and storing all property of Licensee utilized in the Suite after each Event.<sup>105</sup>

In rooming and lodging cases where the question is whether the property interest is a license or lease, "a right to enter for repairs[,] control over the mode of ingress and egress," and "the owner's provision of utilities and cleaning services[,] amenities . . . [and] furnishings," point toward a license agreement.<sup>106</sup> Here, the "licensor" has not only provided utilities and cleaning services, but has also reserved a right to enter for repairs. These factors would lead a court to believe the intent of the agreement was to create a license.

**8. FOODS AND BEVERAGE.** Licensee shall not bring or consume any food or beverage into the Suite from outside the Arena. Licensee must purchase food and beverage only from Licensor or such caterer (the "Caterer") as Licensor grants the right to service in the Suite. Licensee shall be solely responsible for and shall promptly pay all bills of food, beverages and services furnished, sold or rendered by Licensor or the Caterer (whether ordered by Licensee, its guests or other third parties) in connection with the use of the Suite, as well as all applicable taxes and late payment charges.<sup>107</sup>

This clause is one of the most relevant in the contract because so many arenas today have catering companies that luxury box "licensees" are required to use. Consequently, the use and possession of the suites are limited by the requirement that patrons must use the on-site caterers and are prohibited from bringing their own food. While that would not be a problem in an agreement such as this one that intends to be a license, it is an inherent problem in arena "leases" that, while containing other provisions that suggest it is a lease, make it difficult to show actual exclusive possession.

**9. REPAIRS.** Throughout the Term, Licensor shall be financially responsible for all repairs and maintenance of the interior of the Suite, including all furniture, fixtures and equipment (normal wear and tear excepted) whether supplied by Licensee or Licensor, excluding damages

105. *Id.*

106. POWELL, *supra* note 2, § 16.02[3][b], at 16-24.

107. ARENA CONTRACT, *supra* note 82.

**caused by Licensor, its employees, agents, or contractors. Such repairs will be done by Licensor at Licensee's expense in a good and workmanlike manner.** Upon making such repairs, Licensee agrees to promptly reimburse Licensor for the costs thereof. Licensor agrees at its cost and expense in a timely manner to repair and maintain the exterior walls, floor and ceiling of the Suite and to make all repairs due to inherent or structural defect, other than ordinary wear and tear, or unless such repairs were required because of the negligence or willful act of Licensee and/or those for whom Licensee is in law responsible. Licensor shall repair any damage to the Suite caused by its employees, agents, contractors or other licensees, and Licensee shall have no liability for such repairs.<sup>108</sup>

As mentioned earlier, a right to enter for repairs, control over the mode of ingress and egress, and the owner's provision of utilities and cleaning services, amenities, and furnishings, point toward a license agreement.<sup>109</sup> However, interestingly, the "licensor" has reserved a right to enter to make repairs earlier<sup>110</sup> but has later added a clause that "licensee" will be responsible for paying for them.<sup>111</sup> While a licensee may be responsible for damage that occurred during his use, common maintenance would not be a licensee's responsibility since the "licensor" has kept the property interest. This clause is contrary to the earlier clause that insinuated a license, proving the murky line between licenses and leases.

**13. ACCESS BY LICENSOR.** **Licensor, its officers, agents, employees and representatives shall be entitled to have access to the Suite to such extent as Licensor shall in its sole discretion deem necessary or appropriate** for the proper performance of the duties and obligations required or contemplated to be performed by Licensor under this Agreement and for ensuring compliance with the Arena Rules and Regulations.<sup>112</sup>

A right of access or a right to reenter for repairs is a common provision of licenses. However, in arena "lease" agreements, this provision would reinforce the intent to establish the landlord-tenant relationship.

**14. NO REPRESENTATIONS.** Licensor, its affiliated companies, and their respective officers, agents, directors, and employees have not made any representation or warranty regarding the Suite or the Arena or with respect to the suitability or fitness of the Suite or the Arena for Licensee's use, and have not agreed to undertake any improvement to the Suite or the Arena except as provided herein. Upon executing this Agreement, **Licensee will be deemed to have accepted the Suite "as is."** In entering this Agreement, Licensee is relying only on the express agreements of Licensor set forth herein and not on any representation or warranties by Licensor or its officers, directors, agents, employees or representatives not expressly set forth herein. Licensor, its officers, directors, employees, agents, and representatives have not made any

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108. *Id.*

109. *See supra* text accompanying note 106.

110. *See* ARENA CONTRACT, *infra* note 112, ¶ 13.

111. *See* ARENA CONTRACT, *supra* notes 105, ¶ 7 and 108, ¶ 9.

112. ARENA CONTRACT, *supra* note 82.

representations or warranties or provided any guarantees that any particular number or type of sporting or other event will be conducted or performed at the Arena, and this Agreement is not, in anyway, dependent upon the performance of any specified number of games or other events being performed at the Arena.<sup>113</sup>

Historically, leases are accepted “as is.” Because a license is a temporary use, it is difficult for a use to be “as is.” By referring to the “licensee’s” acceptance of the suite itself as “as is,” the “licensor” actually signifies that a real property interest is being transferred. However, the contract’s inclusion of the language denying any warranty is an attempt to distance itself from the warranties landlords make, such as habitability, when granting a lease.

#### 17. WAIVER, INDEMNIFICATION AND DAMAGE.

**(a) Licensor shall not be liable or responsible for any loss, damage or injury to any person or to any property of Licensee or Licensee’s guests in or upon the Suite or the Arena or any parking areas, resulting from any cause whatsoever, including but not limited to theft and vandalism, unless due to the willful misconduct or gross negligence of Licensor. Licensor shall use reasonable efforts to restrict unauthorized access to the Suite, but all personal property of Licensee and improvements installed on or located in the Suite by Licensee shall be at Licensee’s risk.** Licensee and its guests hereby assume all risks and dangers incidental to any Events at the Arena, whenever they occur, including without limitation, the danger of being injured by balls, pucks, sticks and other missiles, and agree that Licensor, any sports team or league, and their respective agents and players are not liable for injuries from such causes.

**(b)** Licensee agrees to indemnify and hold harmless Licensor, . . . from and against all, claims, demands, debts, obligations or charges (including reasonable attorney’s fees and disbursements) on account of or based upon any injury to person or loss of or damage to property sustained or occurring within or without the Suite or Arena (and in particular, and without limiting the generality of the foregoing, on or about elevators, stairways, public corridors, sidewalks, concourses, approaches, alleyways, parking lots, and other appurtenances and facilities used in connection with the Arena), arising out of the use or occupancy of the Arena or the Suite, by the Licensee or by any person claiming by, through or under Licensee, on account of the willful misconduct or gross negligence of the Licensee.

**(c)** In the event of any damage to or destruction of the Suite which renders the Suite unusable, if such damage or destruction is caused by any force or casualty beyond the control of Licensee and beyond the control of the guests of Licensee, Licensor may, at its option, repair or restore the Suite and in such event this License shall remain in full force and effect but the License Fee payable in the following year shall be reduced pro rata for the period of time that the Suite is unusable unless a reasonably comparable Suite is made available to Licensee. If Licensor elects not to repair or restore the Suite, this License shall terminate as of the date of such damage or destruction and Licensee shall be entitled to a refund of the pro rata License Fee paid, if any, applicable to the period of time the Suite is unusable, and payment of said amount by Licensor shall constitute full and final settlement and no further claim shall be made by Licensee.

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113. *Id.*

(d) The provisions of this Section shall survive the termination or expiration of this contract.<sup>114</sup>

In this clause, the implications of the possession versus use distinction are apparent in this issue as to whether an owner has a responsibility to an occupant for the condition of the premises for purposes of determining tort liability. Because landlords have traditionally not had a duty to maintain premises, while licensees have,<sup>115</sup> the contractual elimination here of the duty to provide safe premises looks more like a lease provision than that in a license.

**19. ASSIGNMENT AND SUBLETTING. Licensee shall not assign, sell, sublicense or otherwise transfer this Agreement or any of Licensee's rights and obligations hereunder unless: (i) Licensor shall give its prior written consent to such assignment, sale, sublicense or transfer which consent will not unreasonably be withheld or delayed; and (ii) Licensee shall continue to remain primarily liable and responsible to Licensor for the payments due and the performance and observance of all of the terms and provisions hereof. Any attempted assignment, sale, sublicense or transfer in contravention of the foregoing shall be an Event of Default under this Agreement and shall not relieve Licensee of its obligations hereunder.**<sup>116</sup>

As discussed previously, licenses are ordinarily revocable and not assignable because they are only personal privileges to use another's property for a particular purpose, and not an interest in the property. Here, while referring to the parties as "licensee" and "licensor," it refers to their "assigns," signaling that there is a property interest to be conveyed. At a minimum this property interest seems to be an easement; at most it is a lease that is not revocable at any time. Regardless of the title of the agreement, the parties' intent to be able to assign the suite to someone else suggests a lease with terms for ending it, rather than a revocable license.

### III. IMPLICATIONS OF WHAT PROPERTY RIGHTS LUXURY BOX "LEASES" ACTUALLY GIVE

Luxury boxes present a unique property issue because their "use" has features of both a license and a lease. However, because their very nature is temporary and limited to the events held at the arenas, they are not meant to be occupied at all times. In using the box as an owner would, lessees/licensees do not have to occupy the box at all times to enjoy the same rights or interest. But the question of whether a luxury box contract is a license or lease not only depends on

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114. *Id.*

115. See POWELL, *supra* note 2, § 16.02[3][a], at 16-14; see also *supra* text accompanying note 55.

116. ARENA CONTRACT, *supra* note 82.

the actual contract itself, but the nature of luxury boxes as a bundle of certain common property rights.

While most arenas may grant exclusive use of a box, it may not be for all events, and it may not be available outside certain periods of time. This non-exclusive use cuts against the idea that luxury boxes can be “leased.” Arenas should be cautious when drafting a licensing agreement that identifies a certain box since describing a specified area subject to control suggests a lease. A less precise reference, such as “the luxury box,” without mention of a particular box, would better signify an arena’s intent to create a license.

Furthermore, most arenas are infamous for requiring patrons to pay for food from their concession stands and patrons are forbidden from bringing outside food into the box.<sup>117</sup> Policies such as this, that restrict use of luxury boxes, would suggest they cannot be a “lease” and are in fact, licenses. If the only property right a luxury box owner receives is permission to use the property without exclusive use, then he has a license, and luxury boxes, then, inherently cannot be leases.

#### IV. CONCLUSION

Given the requirement that leases be a possessory interest in land that grants exclusive use, the nature of luxury boxes suggests that they cannot be leased, but merely licensed. Restrictions such as food and beverage limitations, exclusive use versus exclusive possession clauses, and the inability to use the area without permission during non-covered events suggest that a luxury box agreement is a license. However, long term durations and the right to sublet and assign would suggest that it is not a “pure” license either. And while this note does not offer an analysis on the property fixture “easement in gross,” one can conclude that luxury boxes in arenas are at most a complicated hybrid that practitioners should be cautious of - both in drafting the contracts that create this hybrid and in bringing them before a client.

The implications of the possession versus use distinction are apparent in issues such as whether an owner has a responsibility to an occupant for the condition of the premises for purposes of determining tort liability. Determination that a contract is a lease will usually not impute liability on a landlord since, traditionally, they have no duty regarding the conditions of the premises.<sup>118</sup> Licensors,

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117. See *supra* text accompanying notes 28-29, describing the eviction of Steve Levkoff for not purchasing the mandatory minimum food order.

118. POWELL, *supra* note 2, § 16.02[3][a], at 16-14.

however, do have a duty to provide premises “safe for the uses authorized by the license.”<sup>119</sup> Additionally, in the event that a fire or other casualty destroyed the premises, a licensee would be excused from further performance, while a tenant may or may not.<sup>120</sup> Finally, if a lease required landlord consent prior to a sublease or assignment, a tenant could give a license to a third party without getting landlord consent, while a licensee could not.<sup>121</sup>

Thus, from the study of luxury boxes and property rights a warning emerges to arenas: terminology is irrelevant. If you are not granting full and exclusive possession, there are no leases, merely licenses. This means the agreements are inherently revocable and not possessory interests or creations of an estate. Because a license is not an interest in land, the licensor has no duty to repair the premises for the licensee, whereas a landlord would have such a duty. This means that practitioners drafting arena contracts must contractually arrange for this so that in the event that there is a dispute as to property rights, regardless of whether it is determined to be a lease or a license, the arena or client will be protected in the event of litigation.

Furthermore, practitioners should use clear, unambiguous language that does not blur the lines between leases and licenses. Because nomenclature is not determinative, courts look at the parties’ intent. By drafting a contract that is unambiguous in its intent to create a license or lease, arenas will hopefully avoid contractual litigation battles in the future.

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119. *Id.*

120. *Id.* at 16-15.

121. *Id.*

Finally, because of the nature of luxury boxes and the arrangements arenas desire with those that purchase luxury boxes, practitioners should avoid drafting “leases” and draft only “licenses.” Aside from any other reason, licenses are revocable, do not convey an interest in land, and while they do impart a duty to repair on the part of the licensor, that duty can be contractually amended. Because the bundle of property rights arenas give to luxury box owners are inherently limited in use, for clarity and to avoid surprises in court, arenas should license their luxury boxes to ensure the “suite” life continues to be sweet.

*Amanda Schlager\**

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\* Amanda Elizabeth Schlager, J.D. Candidate, Vanderbilt University Law School, 2006. I would like to acknowledge and thank Professor James W. Ely, Jr., for his assistance and his amazing teaching ability, which truly inspired my love of property law. I would also like to acknowledge the arena that was willing to share its contract; though it wished to remain anonymous, this note could not have been written without its cooperation.



