

## Lease

Definition: A lease is a contractual arrangement calling for the lessee (user) to pay the lessor (owner) for use of an asset.

Interests in land:

Freehold -> Last forever (with exception of life estate)

Leasehold -> Fixed duration

### 1) Formalities of a lease:

#### Requirements of Writing

Leases of more than 3 years require a deed to convey a legal estate

**(Law of Property Act 1936 (SA) s 28)**

#### Requirements of Registration

Lease of more than one year must be registered to convey a legal estate

**(Real Property Act 1886 (SA) s119) + s 67**

**(\*) Exception to indefeasibility: S 69 (h) RPA**

Lease for one year or less (Possession)

#### a) Legal lease:

A legal lease is indefeasible:

- The concept of indefeasibility (**s 69 RPA and Frazer v Walker and Breskvar v Wall**)
- Not all the covenants and terms in a lease are protected by principle of indefeasibility:
  - + An option to purchase is (**s 119 RPA**).
  - + An option to renew is (**Mercantile v Shell**).

#### b) Equitable lease:

- Unregistered leases (more than a year) are equitable (**Barry v Heider; Bahr v Nicolay; s 71(d) RPA**)
- Equitable leases are in personam (no privity of estate)

**(\*)** An equitable lease may result where the requirements of writing are not met (**Walsh v Lonsdale**).

- An equitable lease holder will lose in priority to a legal title holder (who is a bona fide purchaser for value)

### 2) Lease and license:

Exclusive Possession: A key indicator of a lease

The distinguishing feature between leases and licences.

**Street v Mountford:** Mr Street, by an agreement which stated that it was a licence, granted Mrs Mountford the right to occupy rooms 5 & 6 of the property 5 St Clements Gardens in Boscombe for a

rent of 37.00 per week. The question for the court was whether the agreement was, as expressed in the agreement, a licence, or whether it was in fact a lease. The terms of the agreement included that Mr Street could enter the rooms at any time to inspect, to read the meter, to carry out maintenance and install or replace furniture or for any other reasonable purpose. No one other than Mrs Mountford could occupy or sleep in the room without permission. No children or pets were allowed. The licence could be terminated by 14 days written notice. The agreement also stated that the licence did not and was not intended to give a tenancy and conferred no protection from the Rent Acts.

Held: "any express reservation to the landlord of limited rights to enter and view the state of the premises and to repair and maintain the premises only serves to emphasise the fact that the grantee is entitled to exclusive possession and is a tenant. In the present case, it is conceded that Mrs. Mountford is entitled to exclusive possession and is not a lodger. Mr. Street provided neither attendance nor services and only reserved the limited rights of inspection and maintenance and the like set forth in clause 3 of the agreement. On the traditional view of the matter, Mrs. Mountford not being a lodger must be a tenant."

**(\*) Consider the role of Landlord.**

(\*) The period of a lease must be certain:

Not valid: - For duration of war (**Lace v Chantler**)

- Until the land is required by the Council for road widening (**Prudential Assurance**)

**3) Lease covenants:**

- An agreement in a deed between 2 people, agree to do something or refrain from doing something
- In lease context – simply refers to the terms of the contract between LL and T.

**a) Express Covenants:** Based on freedom of contract (Must be written in the deed).

- Rent reviews: interval and formula
- Rent indexation (CPI)
- Insurance
- Arbitration
- Opening hours
- Restrictive use
- Allocation of repair responsibility
- Restrictions on assignment and subletting

**b) Implied Covenants:**

- LL to give quiet enjoyment

**Southwark London Borough Council v Mills [1999]:** Mills & Baxter were tenants in council properties owned by the defendants. Their complaints related to the lack of soundproofing in the flats which meant they could hear the day to day activities of their neighbours such as walking across the floor, using the toilet, watching television. They brought actions in nuisance against the Council.

