

TEXT BOOK NOTES REAL PROPERTY

LEASES CHAPTER 8

Four Certainties

- The parties of the lease
- The property being leased
- The period of the lease
- The price (rent) to be paid

Where the date of commencement cannot be ascertained from the provisions of the lease, it is void ab initio. (Caboolture Park Shopping Centre v Edelsten (1987) Q Conv

The commencement date may be implied (Jopling v Jopling (1909) CLR

i.e. A lessee entered into possession and began paying rent from a particular date: the term of the lease must be certain.

A firm date or at least a precise method by which the term can be ascertained at the time of entering into the lease is required (Prudential Assurance Co Limited v Lodon Residuary Body [1992] WLR

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Tenancy at will or Sufferance

- With Landlord's consent, tenant occupies land on the basis that either party can terminate at any time, can terminate at will without notice.
- Sufferance, remains on property after expired lease without landlord's consent, arises through operation of law, tenant at sufferance will be liable to pay for 'use and occupation' distinguished from rent.

Requirement of Exclusive Possession

- A Lease confers on the lessee a right to exclusive possession of the land. (Radaich v Smith (1959) CLR)
- This is contrasted with the earlier approach of the English Courts where a test based on the intention of the parties was applied (Booker v Palmer [1942] All ER

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Equitable Leases

- Lease in writing that do not satisfy s23D CA (Walsh v Lonsdale (1882) Ch - Lessee argued that since there was no formal lease, the agreement for the lease was unenforceable at law. Under common law, where lease is unenforceable the lessee is regarded as yearly tenant.
- Court of appeal rejected lessee's argument, and held that the parties had entered into a binding contract to enter into a lease. Equity would enforce this agreement.

- Where such a lease has not been registered equity will regard the lease as an equitable lease (*Chan v Cresden Pty Limited (1989) CLR*)

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- In *Chan* the high court was required to determine whether or not the appellants, who had to guarantee the performance by their company of its obligations as a lease under a five year lease, were personally liable. Mason CJ, Brennan, Deane and Mchugh JJ; 'Obvious that the parties intended that the lease was to be registered'

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- *Walsh v Lonsdale (1882) per Sir George Jessel at 14-15* 'The tenant holds under an agreement for a lease he holds, therefore, under the same terms in equity as if a lease had been granted, it being a case in which both parties admit that relief is capable of being given by specific performance.'

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- *Chan per Mason CJ, Brennan, Deane and Mchugh JJ at 250* 'this Court, while acknowledging that an agreement for a lease will be treated as giving rise to a lease in equity in accordance with the doctrine in *Walsh v Lonsdale*, has always rejected the notion that the lease has a legal interest in the term.
- *Chan per Mason CJ, Brennan, Deane and Mchugh JJ at 252-3* 'For present purposes these authorities establish two propositions. First, the court's willingness to treat the agreement as a lease in equity, on the footing that equity regards as done what ought to be done and equity looks to the intent rather than the form, rests upon the specific enforceability of the agreement. Secondly, an agreement for a lease will be treated by a court administering equity as an equitable lease for the term agreed upon and, as between the parties, as the equivalent of a lease at law, though the lessee does not have a lease at law in the sense of having a legal interest in the term.
- *Chan per Mason CJ, Brennan, Deane and Mchugh JJ at 256-8* 'The respondent's failure to register, or procure registration, of the lease... was a factor which would require to be taken into consideration in deciding whether to award or refuse specific performance.
- 'In our view only a lease at law would meet this description for the purposes of the guarantee.'

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- Unless there were sufficient acts of past performance to establish a contract for a lease, an oral agreement for a lease or oral lease not satisfying s23D CA would be unenforceable. *Regent v Millet (1976) ALJR*; *Steadman v Steadman [1976] AC*

Privity of estate and Privity of contract

- Privity of contract exists between the original lessor and lessee, as well as the original covenants enforceable. These covenants remain enforceable between