

Leases

SUMMARY

SUBSTANTIVE requirements

FORMAL requirements

TYPES of tenancies

A leasehold interest is created and the relationship of LL and tenant arises whenever one person gives another **the legal right to exclusive possession – for a period** that is **certain**.

- Lease almost always gives the tenant a proprietary interest in the land, but can be otherwise ([Bruton v London](#))
- Usually leasehold interest granted in return for rent, **however it isn't essential** ([Burns v Dennis](#))

On creation of a leasehold interest – the LL **gains a reversion** ([Camphin](#))

SUBSTANTIVE Requirements

If told in exam that X and Y enter a lease – Assume lease meets substantive requirements of exclusive possession and certainty, if it isn't raised as an issue – most likely don't worry about it.

Certainty of term & duration

A lease without an ascertainable commencement date/duration is void ([Edelsten](#))

- Commencement date must be **certain** or **capable of being rendered certain** before the lease takes effect ([Marshall v Berridge](#))
 - NOT satisfied by 'within a **reasonable time**' ([Harvey v Pratt](#))

The maximum duration of a lease must be certain or capable of being rendered certain before the lease takes effect, however possibility it ends earlier doesn't render it void. **EXCEPTIONS:**

- Doesn't apply to **tenancies at will**, or **tenancies at sufferance**
- Doesn't apply to **periodic tenancies**, as the initial term is certain
- Doesn't apply to **leases for life** ([Haslam](#))

[Prudential](#) – Lease didn't specify an end time, said it was until the road was widened – court ruled it **didn't have certainty of duration**

Exclusive possession

A lease must give the tenant the right to exclusive possession, which includes the **right to exclude the LL** ([Inverugie Investments](#)) – subject to rights the LL has under the law or under the lease.

Lease **usually** gives tenant an interest in the land itself, while **licence gives a mere right to occupy**, and usually no interest in the land ([Re Toohey](#))

Boarders/lodgers = licence agreement, no exclusive possession.

Whether exclusive possession is granted – whether it is a licence or a lease – is determined by construing the contract:

- Whether a transaction gives exclusive possession is a matter of **substance NOT form**
- Courts can disregard a '**sham provision**' if it is satisfied that it is intended by either or both parties to disguise their real intentions, or the legal relations behind them ([KJRR](#))