

Formalities of leasehold estates

General Law Land

- ❖ Legal interests must be created by deed
 - **S 52** of *PLA*
 - **S 73** of *PLA* - must be signed
- ❖ Or by oral if requirements satisfied
 - **S 54(2)** of *PLA*
 - Term does not exceed 3 years
 - Lease takes effect in possession i.e. it is a lease that is to commence at or before the date it is made
 - It is at the “best rent” i.e. market rent
 - Without paying a “fine” i.e. a premium paid to the LL for the grant, renewal or transfer of the lease

Torrens System Land

- ❖ Interest in Torrens land can only be created by registration
 - **S 40** of *TLA*
- ❖ Those interests may only be registered if lease >3yrs
 - **S 66** of *TLA*
- ❖ **S 54(2)** also applicable here

Equitable Leases

- ❖ If formalities for legal lease not met, ‘agreement to/for lease’ may take effect in *equity* if it is specifically enforceable.
 - Requires to be one of the following (**Walsh v Lonsdale**):
 - Agreement is in writing
 - Sufficient note or memorandum in writing to comply with **s 126** Instruments Act
 - Oral contract plus acts of part performance
- ❖ AND (as it is an equitable remedy and discretionary) there must be no bars to relief – from Equity course
 - Person seeking to enforce lease must not be in breach of an essential term
- ❖ Third parties in equitable leases
 - In order for a third party (such as a guarantor, as in this case) to be sued in respect of any default by the tenant – the landlord & tenant need to have entered into a legal lease. Equity agreement insufficient (**Chan**)
- ❖ Equitable lease under TS is unregistrable but will still bind new RP to the lease
 - **S 42(2)(e)** of *TLA*

TOPIC 7 - Contractual Licences

Types of licences

	Bare licence	Licence coupled with a grant (profit a prendre)	Contractual licence
Description	Permission to enter land of another.	Right to enter on land and take something away from it.	Contractual right to enter the land of another and use or occupy it for a particular purpose.
Creation	Expressed/implied	Expressly	By contract or deed
Contract /deed	No.	Yes, but also sometimes orally.	Yes
Coupled with a proprietary interest?	No.	Yes.	No. <i>King v David Allen</i>
Consideration	No.	Not necessarily.	Yes, eg tickets to show
Revocable	Yes.	Once granted, not revocable.	Lots of different categories and we will deal with this in Week 5
Enforceable	Yes.	Enforceable against third parties	Against parties to the licence only. Privity of contract.
Assignable	No.	Yes	Depends on the terms of the contract
Exclusive possession	No.	No right to exclusive possession	No
Example	Dinner party invitation	Permission to collect pine cones from neighbour's land	Right to enter venue for concert

Potential exam issues re contractual licences

- ❖ Identifying the type of licence