

LEASES

- **lessor** = landlord → **lessee** = tenant → **reversion** = the landlord's interest (usually a fee simple, but sometimes a longer lease) → **covenant** = a promise made by the landlord or tenant under the lease; covenants are the terms of the lease → **assignment of the lease** = the tenant giving or selling the lease to another → **assignment of the reversion** = the landlord selling or giving their interest in land to another → **sublease** = a shorter lease carved out from a longer lease and given to the sublessee by the tenant
- The difference between a sublease and an assignment is simply mathematical: if the period granted by a tenant to another is shorter than their own lease, they have created a sub-lease and not an assignment.

Formal Requirements to Create a Lease

- **Section 53(1) Real Property Act (RPA)**: Leases exceeding three years must be registered. This statutory requirement ensures that longer-term leases are enforceable against new owners who acquire the fee simple title.
- **Section 42 RPA**: Under the Torrens system, registered proprietors are only bound by interests on the register.
- **Implications**: Failure to register leases exceeding three years can render them unenforceable against subsequent registered proprietors.
- This underscores the importance of registration for leaseholders seeking long-term security.

Creation of Leases

- Leases are contractual agreements that delineate the rights and obligations of landlords and tenants over a specified period. The process involves negotiation, formalisation through contract, and, crucially, compliance with legal formalities.

(a) The Contract

- **Negotiation**: Parties negotiate terms such as lease duration, rent, maintenance responsibilities, and clauses regarding use and occupation of the premises.
- **Covenants**: These are the formal promises made by each party within the lease agreement. Typically, tenants covenant to pay rent and maintain the property in a specified condition, while landlords may promise quiet enjoyment and compliance with property laws.
- **Statutory Regulation**: Residential leases are heavily regulated to protect tenant rights. For instance, the **Residential Tenancies Act 2010 (NSW)** imposes obligations on landlords regarding property maintenance and adherence to tenancy agreement terms.
- **Retail Leases**: Governed by the **Retail Leases Act 1994**, which provides additional protections for tenants, including transparency in lease terms and the right to a fair lease renewal process.
- **Commercial Leases**: Generally less regulated, allowing for more extensive negotiation and customization of lease terms to suit the specific needs of both parties.

(b) Formal Agreement

- **Writing Requirement**: **Section 54A of the Conveyancing Act 1919** mandates that lease agreements must be in writing to be enforceable. This requirement ensures clarity and prevents misunderstandings between parties.
- **Execution**: Parties sign identical copies of the lease agreement, usually electronically, and exchange them to indicate mutual acceptance and intention to be bound by its terms.
- **Registration** → **Process**: Leases are registered through the electronic conveyancing platform, PEXA. This process involves inputting lease details, uploading the lease document, and having it digitally signed by legal representatives of both parties → **Legal Effect**: Registration creates a legal interest in land, ensuring that the lease is enforceable against all subsequent owners of the property. This is crucial for protecting the tenant's rights in case of changes in property ownership.
- **Key Cases and Acts**
 - **Real Property Act**: Provides the legal framework for registration of leases and other property interests in NSW.
 - **Conveyancing Act 1919**: Sets out requirements for lease agreements, including the necessity for written contracts.

- **Chan v Cresdon Pty Ltd [1989] 168 CLR 242**: Establishes the legal principle that signing and exchanging lease agreements creates and Courts assess whether disturbances substantially impair the tenant's ability to conduct business as intended, emphasising the landlord's responsibility to maintain a suitable environment despite actions by third parties on or near the leased property.

Implied Leases at Common Law

1. **Conditions for Implied Lease:**
 - a. **Possession**: The tenant must be in possession of the premises
 - b. **Regular Payment of Rent**: Rent must be paid on a regular basis (e.g., weekly, monthly, quarterly).
2. **Historical Context:**
 - a. Implied leases originate from times when written agreements were uncommon due to illiteracy and expense of materials like paper.
 - b. Common law recognised these leases to honor practical arrangements where parties demonstrated their intentions through actions rather than formal documents.
3. **Modern Application:**
 - a. **Negotiations in Progress**: Even without a finalized written lease or while negotiations are ongoing, if possession and regular rent payment exist, a lease may be implied.
 - b. **Informal Agreements**: Handshake agreements or situations where parties have a written contract but have not registered it may imply a lease.
 - c. **Expired Lease**: If a tenant remains in possession after a lease expires and there's no "holding over" clause, an implied lease may arise if rent continues to be paid.
4. **Types of Implied Leases:**
 - a. **Week to Week**: Rent paid weekly allows for termination by either party with one week's notice
 - b. **Month to Month**: Rent paid monthly allows termination with one month's notice.
 - c. **Year to Year (Historical Preference)**: Rent paid monthly but expressed as an annual sum may imply a lease from year to year. Historically, such leases protected agricultural tenants with a termination notice of 6 months, running from the start of the next 6-month period.
5. **Legal Status and Termination:**
 - a. **Conversion by Law**: **Section 127 of the Conveyancing Act 1919** converts implied leases from year to year to month to month, allowing termination with one month's notice.
 - b. **Binding Effect on New Proprietors**: Implied leases bind new registered property owners despite their unregistered status. This is not due to their legality per se under the **Real Property Act (s42 RPA)**, which governs registered interests only, but because possession and rent payment establish an equitable interest enforceable against subsequent owners.
6. **Key Consideration:**
 - a. The critical factor making an unregistered lease binding on new proprietors is the **equitable interest** established through possession and regular rent payment, aligning with the principles of equity that transcend mere legal formalities under the Torrens system.
 - b. In summary, implied leases at common law ensure that tenants who possess and pay rent regularly have enforceable rights, providing a measure of security even in the absence of formal written agreements or registration.

Substantive Requirements

Certainty of Duration

- **Historical Requirement**: According to common law, leases must specify a certain or determinable duration to be valid.
- **Legal Precedent**: **Lace v Chantler [1944] KB 368; [1944] 1 All ER 305**: The court held that a lease for the duration of the war was too uncertain to be enforceable: "The lease must be for a term certain or capable of being rendered certain."
- **Wilson v Meudon [2005] NSWCA 448**: The Court of Appeal clarified that a right linked to ownership of shares lacked the necessary certainty of duration: "The right to occupy would last as long as a person owned a parcel of shares."

Periodic Tenancies:

- **Definition:** These are leases that automatically renew for specific periods until terminated by notice.
Certainty: Continual agreement to new fixed terms through holding over clauses ensures validity.
Example: Under statutory periodic tenancies (e.g., **s127 of the Conveyancing Act**), leases continue month-to-month unless terminated: "The common law had a distinct preference for tenancies from year to year."