

Law 2112 Property A

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8. Leasehold Estates

L'holds differ from freehold estates and are **limited by time**. The granting of a lease by a l'lord creates an estate for the term of the lease, in favour of the tenant.

- Person *granting* a l'hold → l'lord, grantor, lessor
 - Registered proprietor, w/ **reversionary interest** in the land
 - Does NOT have possessory title/rights
- Person *receiving* a l'hold → tenant, grantee or lessee
 - Has possessory title in the land
 - Proprietary interest *in rem*, stronger than a k ag/ment such as a licence
- 'Demise' another term for lease, demised premises = leased premises
- A lease can only exist at equity **if it has been more than 3y**
 - For a lease to exist there must be **BOTH certainty of duration** (clear end date) and **exclusive possession** (the tenant should have the power to exclude all incl the owner)
 - Without either, it becomes only a licence.

Types of Leases

The creation of the l'hold grants the tenant exclusive possession for a certain period of time.

- 1) Fixed Term Lease
- 2) Periodic Lease

Advising [Party], the ag/ment will constitute a lease where the essential requirements to establish a lease are satisfied, namely, certainty of duration and exclusive possession.

[Party arguing license] may contend that the ag/ment expressly characterises the arrangement as a license, refers to the occupier as a licensee and themselves as a licensor, and therefore, a leasehold interest is not created. However, as established in Radiach v Smith and Street v Mountford, courts look to substance rather than the form of the ag/ment. Merely labelling it a 'license' is not determinative; rather, the legal characterisation of the relationship depends upon the ag/ment's substance.

FIXED TERM TENANCY	<ul style="list-style-type: none"> ● Expires automatically at the end of an agreed period, w/o notice needed ● Maximum period of duration is certain (though, early termination is allowed)
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	<ul style="list-style-type: none"> ● Requires express ag/ment bt/wn parties (oral or written), and cannot arise by implication of law in absence of ag/ment (hence, it is likely a k) ● Tenants rights is enforceable <i>in rem</i> ● Tenant may also bring actions against 3Ps
PERIODIC TENANCY	<ul style="list-style-type: none"> ● Ongoing tenancy which continues indefinitely from one period to another until determined by the giving of proper notice. Is NOT a fixed term lease; <ul style="list-style-type: none"> ○ though its period of time may not have certainty, it is accepted that it's complying w/ rules b/c there is a definite period of time ○ E.g. weekly, monthly, yearly ● Can arise when a fixed term tenancy concludes but the tenant remains and continues paying rent ● To terminate, tenant must give notice in accordance w/ frequency of payment
TENANCY AT WILL	<ul style="list-style-type: none"> ● Tenant has the consent of the l'lord to live on the ppty w/o paying rent for an indefinite period and can be terminated at any time. Should the tenant start to pay rent, it becomes a periodic tenancy ● Rare type of lease involving exclusive possession without rent; due to the absence of rent, the lease is therefore 'at will' (determinable on giving reasonable notice) ● It is a personal right that does not provide a ppty interest in the land; terminates upon death of the lessor/lessee ● Expires 12 months after commencement unless it's previously determined that its earlier (LAA s13(1))
TENANCY AT SUFFERANCE	<ul style="list-style-type: none"> ● Possessory interest of a person occupying land w/o consent from the owner ● No rent (or it becomes PT) and no consent (or it becomes TaW) ● Determinable w/o notice ● E.g. AP → squatters have a TaS and can be removed by the owner w/o notice, within 15y of initial possession ● L'lord may bring an action for recovery of possession against the tenant, but cannot sue for damages in trespass

Characteristics of Leases

1) EXCLUSIVE POSSESSION

[Tenant] must establish that they hold exclusive possession of the ppty, that is enforceable against the world incl [opposing party, L'lord] as per Radiach. The [tenant] has [XYZ/factors indicating excl p]. As such, it is likely that they would be considered to have exclusive possession given the circumstances on which their tenancy has.

- **The occupier has physical control of entry** → suggests practical control over the land/ppty (*Radiach*)
- **The occupier can exclude others, including the owner** → e.g. sole access to keys, locks, gates, fences, enclosed premises, or control over who enters (*Street, Swan*)
- **The landlord must give notice or obtain permission before entry** → suggests the l'lord has carved-out inspection/access rights, rather than general possession.
- **The occupier has a right to quiet enjoyment** → supports the idea that the occupier has possession free from landlord interference, e.g. enclosed areas within a wall (*Street, Radiach*)
- **The rship is commercial or arm's length** → Courts are more likely to find exclusive possession in commercial arrangements than informal/domestic ones (*Radiach*)
- **Residential premises are involved** → strong presumption that residential premises require exclusive possession (*Street*)
- **The use of the premises requires control** e.g. securing stock, goods, chattels, or private belongings points toward exclusive possession

The substance of the arrangement shows possession, regardless of labels. Calling the ag/ment a 'licence' is not decisive if the occupier actually has exclusive possession (*Radiach, Street*)

Radiach v Smith

- S granted R rights via deed to conduct business on premises for 5y under a 'sole and exclusive licence' the deed used terms 'licensor' and 'licensee'
- Terms dictated that R is to pay an annual sum in weekly instalments + had the option to renew the arrangement
- Dispute arose re rent

Issue: whether Fair Rents Board had jurisdiction (as they only had it if arrangement was lease, not licence)

- **Held: arrangement was a lease despite being labelled a licence**
- Substance > form; wording/labels not determinative even if expressly part of documentation