

# Lease

## DEFINITION

- a possessory estate, by which the landlord ('lessor') grants to the tenant ('lessee') the right to exclusive possession of the land for a specified period.
  - Exclusive possession : exclude everyone include the landlord
    - ! ▪ Under the K, LL can come into the land. - check the K for this.
  - LL in possession becomes the possession in reverse (Reversion in state, which could be sold).
  - ▶ ◦ Doesn't terminate the Fee simple.
  - Leaser have both the contractual obligation and PI.
    - ▶ ◦ T get the PI, which they can sell and give it someone else.
    - K and PI not always consistence with another.
- Sub-lease: Leaser can lease the land, but not have to exceed the time of the intuition lease.

## LEASE V LICENCE

- License:
  - K right: Can't pass or leave to someone else.
  - Legal significance of distinction.
    - Often applies only to Lease nut License.
  - No right to sue in trespass
  - Death terminates
    - ▶ ▪ Lease will be transfer to the heir; unless the lease said otherwise.
  - Creation
  - Generally not transferable; purely contractual.
    - Picton-Warlow v Allendale Holding.
- Lease: EP indicator for L.

- ! • CL overlay by E, and statute overlay both.

## STEP

- Is this a lease? \*\* ASSUME IT IS \*\*
  - Name of the parties;
  - Identify the land;
    - Enables the boundaries to be ascertained.
  - EP;
  - Duration;
  - Certainty of term; and
    - Know the end date at the start
  - Rent (not)
- What sort?
  - Legal: Reg lease [s58 TLA]
    - Only lease more than 3 yrs can be reg [s91 TLA]
  - Equitable
    - CL Implies PT; or
    - E enforceable lease.
      - Specific K [Walsh v Lonsdale; Chan v Cresdon]; or
      - Part performed [Lighting by Design]
- Type of Lease?
  - Fixed term: expressly created, fixed duration that is known at the beginning of L
  - Periodic Tenancy: Possession + permission + pay rent (regular and equal payment) [Moore v Dimond; Dockerill v Covanagh]
  - Tenancy at will: Possession + Permission (no trespass) + w/out rent [Lighting by Design]
  - Tenancy at sufferance: FT expires/ no CL L+ possession w/out LL consent (LL haven't said or no to them) [Clambake v Tipperary]
- Breach of obligation?
  - Express
    - Short Form
    - "Usual Cov"
  - Implied
- Advice and remedies

## ELEMENTS OF LEASE

- **IDENTIFICATION OF THE LAND LEASED**
  - Name of the L and T and the land that is leased must be clearly described.
  - The description of the land does not have to be exact, so long as it **enables the boundaries to be ascertained**.
- **EXCLUSIVE POSSESSION [EP]**
  - ▶ ◦ **EP to exclude everyone, including the LL unless agreed otherwise. - Q of facts**
  - WA Club (Crt): the grant of the right of sole and exclusive use and occupation of the relevant area' meant that is was a lease, so that a covenant of quiet enjoyment might be implied as a matter of 'common sense'.
    - Even if LL reserved right to enter = makes it more clear that T have EP to exclude everyone including the LL.
  - ▶ ◦ **Giving someone a right to exclusion possession for limited amount of time = Lease, despite what one would call it or thought it was** [Radaich v Smith]
    - Look at the substance not form.
- **ASCERTAINABLE COMMENCEMENT DATE**
  - ▶ ◦ **Must either specify a specific starting date; or a mean by which the commencement of the lease can be determined.**
  - Date must be certain or capable of being render certain, before the lease takes effect [Competitive Funerals v Gurmit; Harvey v Pratt]
  - w/out this, Lease void. [Dunlop v Ellis]
  - S74(3) PLA: it must start w/in 21 year period.
- **CERTAINTY OF TERM**
  - ▶ ◦ **Fixed start and end date before the lease start.**
    - NO lease 'for the duration of the war' (see Lace v Chantler) or 'until the land is required by the Council for the purposes of widening the highway' [Prudential Assurance Co v London Residuary Body]
  - So long as there is max. period is lease, doesn't matter terminated earlier.
    - LL can sue for the loss of bargain.
  - Doesn't apply to TW or TAS.
- **RENT (NOT)**
  - Not necessary [Ashburn v Arnold]
  - It no consideration at law = difficult to enforce it at law. [WA Club v Nullagine]
    - Look at other consideration.

## SORT OF LEASE

- **LEGAL/CL**
  - FT L > 3 yrs:
    - GL: Legal lease in form of deed [s33(1) PLA]
    - TS: reg lease [ss 58 and 91 TLA]
  - FT L < 3 yrs:
    - GL: T in possession + rent is paid: No formal Form of deed, can be created orally and take effect in possession [s33(2)(d) and 35(2) TLA]
      - Take effect in possession [s35(2) TLA] = Take immediate effect at same date as the agreement [Abjornson v Urban Newspapers]
    - TS: TLA no provision for reg.
      - Between 3 and 5 yr = reg = legal L = but don't have to reg. [s68 TLA]
- **EQUITABLE**
  - T in possession and paying rent, but lease is void,
    - **at CL implied PT;** or
      - ▶ ◦ **Possession w LL consent + Pay regular and equal rent + No CL L = Implied L** [Moore v Dimond; Dockerill v Covanagh]
    - **At E enforceable lease.**
      - E deems to be done what ought to be done.
      - ▶ ◦ **If there is a specific enforceable agreement = Enforceable lease with the term and condition as agreed.** [Walsh v Lonsdale; Chan v Cresdon]
        - ◆ Walsh v Lonsdale: Agreed to enter into L but never made it legal + T possession + T pay regular payment but not as they agreed. L enforceable; T pay rent as stated in L.
        - ◆ Chan v Cresdon: LL signed the lease to Chan's Company never reg. + Co default. No legal lease couz no reg [s58 TLA], applying Walsh v Lonsdale
      - **Specifically enforceable K:**
        - ◆ Signed evidence in written [s4 Statue of Fraud]; or
          - ◇ signed by the person seeking to enforce it or their agent [PLA s34(1)(a)]
        - ✕ ◆ Part performance
          - ?? ◇ acts "unequivocally" referable to some contract of the general nature of that alleged
            - ▶ ◦ **Unequivocal: No way the person would've performed the act or obligations unless there was a contract.**
            - ▶ Buss JA in Lighting by Design v Cannington Nominees

- ◇ Equivocal (Uncertain; Ambiguous) act: No sufficient PP [Secola v McCann (No2)]
- ◇ T possession + Pay regular rent [Brough v Nettleton]
- ◇ Handing over the key or paying security deposit [McMahon v Ambrose]
- ◇ Taking or giving of possession [Regent v Millet; Abjournsen v Urban Newspapers: T staying in possession was sufficient]
- ◇ Undertaking the obliged work [Kaufman v Michel: Doing alternative work as obliged was sufficient]
  - ▶ Doing everything T should've done.

## TYPE OF LEASE

### • FIXED TERM

- Must create expressly; never implied.
- ▶ ○ **Fixed duration; Can't terminate in-between.**
  - Not need to be one conti period [Smallwood v Sheppards: Three successive public holiday sufficient]
- **Duration** of the lease must be **known at the start** of the lease.
  - Lace v Chantler: PPL granted lease at the duration of the war; Not fixed duration = no FT.
  - Pemberton v Dimitrijevic: "until the property may be released for development" = no FT

### • PERIODIC TENANCY

- ▶ ○ "Automatically renewing" series of fixed term lease; which will be terminate by the notice of 1-2 weeks by either party.
  - Renew automatically unless someone say so.
- ★ ○ **P leases arise Four ways:**
  - **Express:**
    - In writing [deed]; or
    - orally.
      - ◆ L for 3 or <3, no need to be in writing [s33(2)(d) and 35(2)]
  - **Implies:**
    - Possession + Regular payment pursuant to FT which is invalid CL; or
    - FT expires + T in possession w LL consent + Pay rent regularly [Javid v Aqil]
    - ▶ ? ◆ **Possession w LL consent + Pay regular and equal rent + No CL/FT L/ express or orally agreement to create FT L = Implied L** [Moore v Dimond; Dockerill v Covanagh]
      - Once start paying rent = CL implied L.
      - **if there is no intention**, crt may infer the type of periodic lease from the manner and frequency in which rent is paid [Turner v York Motors: Possession w consent + no CL L + paid first weekly, than monthly. Monthly T]
        - ! ▶ **Check the intention of the party first.**
          - ▶ Rent paid weekly = Weekly T
          - ▶ Rent paid monthly = monthly T
          - ▶ Rent paid yearly (quarterly [Moore]) = Yearly T
        - ✗ – S71 PLA: Regular payment won't imply to yearly T.

! □ **Rebuttable.**

### • TENANCY AT WILL

- Created: expressly or implies (by operation of law)
  - ! ▪ **Usually implied.**
- ▶ ○ **Enter/remain in possession w LL consent w/out paying rent + negotiating L/FT expire.**
- **Lighting By design**: Before settlement of L, T remained in possession w/out paying rent. No fixed or PL, couz no regular paid rent.
  - At law: P in possession with consent and not paying rent = TW.
  - At E: E-able lease.
- **Termination at CL:**
  - W/out notice on demand at any time by either party [Cth Life v Anderson]
    - ✗ □ S72(1) PLA: T of uncertain duration termination need a month notice; unless expressly agreed otherwise.
  - By any act of LL that is inconsistent with her will that the T should conti.
    - Termination takes effect when the T has notice this.
  - Either Party died [James v Dean] or T leaves.
  - T damages the property/Committed voluntary waste [Countess of Shrewsbury's case]
    - even when LL don't know about this.
  - Not assigned - Not passed to anyone else or give away.

- **TENANCY AT SUFFERENACE**

- Happed before the LL give consent.
  - ▶ ▪ **FT expires/ no CL L+ possession w/out LL consent (LL haven't said or no to them)** [Clambake v Tipperary]
- Give permission = TW -> T pay lease = Implied PT.
- LL can sue for possession at any time [Natural Gas & Oil v Byrne]
  - **S72(1) PLA:** Month notice.
- **Can't sue for rent.**
  - May be liable to an action for use and occupation (compensation for unjust enrichment). [Clambake v Tipperary: T remained in possession after L expired. LL accepted some money for time to time that was given by T; no regular payment. T who remained in possession w/out consent or dissent of LL is T at sufferance, even if some \$\$ is given to the LL]

## **OBLIGATIONS/COVENANTS**

- The terms of a lease, and the duties and obligations of both parties to a lease, come from a variety of different sources
  - **COVENTS v CONDITIONS**
    - ” ▪ **Con: something which is so important that it goes to the essence or heart of the lease agreement itself.**
      - ▶ □ **Terminates the lease if breach.**
    - ” ▪ **Cov (Warranties): Term in the lease or other promises made in deed.**
      - Remedies: Damages/Injunction.
  - **EXPRESS TERM/COVENANTS;** or
    - **Construction of Covenants**
      - ▶ □ **Where there is Q. to whether the LL is entitle from breach of Cov, any ambiguity is to be resolved in favor of the T.** [Downie v Lockwood]
      - Term of the lease will be read in the light of the whole lease [Jggulden v May]; and
      - Last resort, a Cov will be interpreted strictly against the covenantor [LL] and in favor of the covenantee. [NSW Sport Club v Soloman]
    - **Short form cov (s 94 TLA)**
      - If use the certain words (as stated in 12 schedule) in the reg lease, it would be taken to mean the following.
        1. The lessee will not transfer and sublease
        2. The lessee will fence
        3. The lessee will cultivate
        4. The lessee will not cut timber
        5. The lessee will insure against fire in the name of the lessor
        6. The lessee will paint outside every 3rd yr.
        7. The lessee will paint and paper inside every 4th yr.
        8. The lessee will not use the premises as a shop
        9. The lessee will not carry out any offensive trade
        10. The lessee will carry on the business of publican and conduct the same in an orderly manner
        11. The lessee will apply for renewable of licence
        12. The lessee will facilitate the transfer of licence.
  - **"Usual Covenants":**
    - Create E-able L.
    - **Hampshire v Wickens; Lord Jessel MR** - "the usual covenants" are:
      - ◆ covenant **by the landlord** for quiet enjoyment;
      - ◆ covenants **by the tenant:**
        - ◇ to pay rent;
        - ◇ to pay rates and taxes, not expressly given to the lessor;
        - ◇ to keep and deliver up the premises in good and tenantable repair; and
        - ◇ to permit the landlord to enter to inspect;
      - ◆ a right of re-entry for breach of the covenant to pay rent.
        - ◇ T not pay the rent, LL can retake the possession.
  - **Cov against assignment and sublease:**
    - ” ◦ **Assign: selling the L /transfer of L.**
    - ” ◦ **Sub-lease: L to someone less than the head L.**
      - CL - can assign and sub-lease unless expressly states otherwise.
        - ✗ ▪ **Exception: TW + TAS** [Picone v Grocery & General; Martin v Elsasser]
      - LL is obliged to give consent in reasonable time when requested by T, if not there is a constructive refusal to it. [Provident Capital v Zone; Omar Parks v Elkington]
      - Breach only if VO dealing with their interest. Eg:
        - Interest involuntarily vest in trustee in bankruptcy [Marsh v Gilbert; Re Riggs]
        - Bequest {Heritage} of L [Deo d Goodbehere v Bevan]
        - e-able mtg created by dispose of deed [Deo d Pitt v Hogg]
  - ! ◦ **With the Cov, T still have PI that they can pass to someone else.**

- **Two types:**
  - Absolute (contractual) prohibition; and
    - May not A+S
      - ◆ If T A/S U, doesn't stop U from O L, only let LL terminate the lease with T. [\[Secure Parking v Wilson\]](#)
    - LL can - w/out challenge - refuse to consent (no need to give reason) [\[Tredegar v Harwood\]](#)
    - Wavier:
      - ◆ S73 PLA: One wavier does not amount to general wavier of benefit of cov.
        - If the LL wavier once - Cov is not void.
      - ◆ Accepting rent from Assignee or sub-T = implied wavier [\[Hyde v Pimley\]](#)
    - Licence (no EP) = not breach [\[Lam Kee Ying v Lam Shes Tong\]](#)
  - Qualified (contractual) prohibition
    - Unreasonably withholding consent
      - ◆ S81(1) PLA: LL shall not unreasonably withhold consent.
      - ◆ TEST:
        - ★ ◇ Something that does relate to their identity as T? [\[International Drilling Fluids\]](#)
          - ▶ Did it relate to the T's ability to pay rent or liability to take care of the land?
          - ▶ Detriment to T = Unreasonable.
            - ◆ Risk LL  $\propto$  Detriment T = un/reasonable.
        - ★ ◇ What reasonable LL would do when asked to consent in particular circumstance [\[Ashworth v Gloucester\]](#)
      - ◆ s82 PLA: certain assignments are not breach
        - ◇ by the official assignee of a bankrupt;
        - ◇ By liquidator of co.
        - ◇ by the sheriff or bailiff under an execution; or
        - ◇ by a personal representative pursuant to a bequest in a will.
      - ◆ When unreasonable T can: [\[Yard v Spier\]](#)
        - ◇ Apply for declaration; or
        - ◇ A+S and run the risk of LL suing.
- **Consequence:**
  - T A+S w/out prior consent
    - Breach - action against damages and exercise right of forfeiture (if L contain forfeiture cl) [\[Massart v Bight; Old Papa's Franchise v Camisa Nominees\]](#)
      - ◆ Get injunction [\[McEachern v Colton\]](#)
    - Voidable - LL may waive [\[Richardson v Somas\]](#)
      - ◆ Not automatically terminated, make it voidable
- **Enforceability of Cov:**
  - Assignment:
    - Assignment doesn't create new lease [\[Hamatan v Narracan\]](#)
    - Privity of estate: LL and Assignee.
      - ▶ Cov - which touch and concern the land - may be enforced by and against assignee.
    - Privity of K: LL and T liable for the remainder of the tem for the performance of Cov in L [\[Old Papa's Franchise v Camisa Nominees\]](#) that goes to the heart of the L.
      - ◆ Assignee don't pay rent: LL -sue-> T -sue-> A
      - ◆ T remains liable to LL for breach committed while s/he was T [\[Old Papa's Franchise v Camisa Nominees\]](#).
  - Sublease
    - Privity of estate: not against LL and Sub-lease.
- **"Touch and concern" the land**
  - » any covenant which affects the nature, quality, mode of user or value of the land... something which is so impt and closely connected with the land that it should pass from the orig tenant to the assignee [\[P and A Swift Investments v Combined\]](#)

T	L
To repair	Quite enjoyment
Pay rent	Not to derogate from grant
Insure against fire	Renew the L
Use land as private dwelling	Consent to A+S
Sell fixture	Not to build in certain part of the neighbouring property
Not ad.	Supply premises with good water
Not A+S	

- **LL's IMPLIED TERMS/COVENANTS**

- **To give business efficacy:**

- Liverpool CC v Irwin

- ▶ ◆ The term to be implied must be necessary to make the contract workable in a proper way.
      - ◆ Factual question: involving an examination of the type of lease + property involved.

- **Allow T quiet enjoyments:** LL promises T enjoy the exclusive possess or ordinary use , un-interruption from the LL or any person claiming thru the LL [Lavendar v Betts]

- Breach such that it interfere with T's possession/ordinary use [Glasshouse v MPJ holding]
    - Does not include trivial (of little value or importance) or accidental breach [Browne v Flower]
    - LL required to take all *reasonable* steps (NOT all possible steps) to avoid disturb T [Goldmile v Lechouritis]
    - Interference by 3P: LL not liable [Malzy v Eichholz]; LL not liable for loud auction near premises by 3P
      - ◆ Must be Unlawful; or
      - ◆ Lawful acts causing interference or nuisance
    - Interference by LL's other Ts.

- ▶ ◆ LL of two T + capacity thru L to stop one of T from behaving in such a way that interference with the quite enjoyment of another T + LL does nothing/refuse to do so = Breach [Aussie Traveler v Marklea]

- **Not to derogate from the grant.**

- ▶ □ LL give T1 permission to use the land in certain way or for certain purpose then give T2 permission to act in such a way or LL act in such a way that will take away or interfere with T1's permission. [Aldin v Latimer; Norden v Blueport]
    - Suing LL is failing to do one of the thing s/he is obligated/promises to do.
    - Act by party that LL have control over + capacity to stop through L but doesn't = liable.
    - Renting to T's Business rival
      - ◆ Port v Griffith: Does not render the premises less fit for use.
      - ◆ Can't sue, unless express term
    - Special Use: T's use is unusually sensitive /use that has unexpected requirement + LL is aware = Breach [Telex v Thomas Cook]

- **Provide Premises fit for Human Habitations.**

- ” □ "Unfit for human habitation": state of repair of premise such that ordinary use damage may be caused injury to life or limb or health [Summers v Salford Corp]

- Example:

- ◆ Cockroach
      - ◆ Broken Glass
      - ◆ Wiring
      - ◆ Step missing

- ▶ □ LL is **not obligation** to T to do repairs during the term of the lease or to put the premises into repair at the start of the lease [Cruse v Mount]

- ◆ If human habitation when go in, LL is not obligation by the L to keep to in that state, unless expressly stated.

- ✕ □ Exceptions

- ◆ L before the building is complete [Miller v Cannon Hill]; and
      - ◆ If furnish = implied Cov [Smith v Marrable]
        - ◇ If breach T terminates the L/Get something done.
        - ◇ Obligation to keep the premises in such a way that normal use will not endanger life or limb or heath

- **Take reasonable care to avoid foreseeable risk of harm to occupants.**

- ▶ □ The LL has duty to avoid foreseeable risk of harm or injury to the T or Occupier [Jones v Bartlett]

- ! Not a duty to make the premises as safe as can reasonably be made

- ★ □ LL Obligated to make the premises reasonably fit for occupation's safety.

- ◆ Breach if T is *injured* as a result of a "dangerous defect" on the premises; AND

- ” ◆ Dangerous defects = dangerous when being used in a regular fashion

- ◆ LL *knows or ought* to have known make the premises unsafe

- LL's duty Discharged:

- ◆ Known dangerous defect - remove
      - ◆ Latent (hidden) dangerous defect - take *reasonable* step to ascertain if exist
        - ▶ ◆ How likely/ reasonable was it for LL to assume that something that defect would occur.
        - ◇ LL's liability for latent defects is *not absolute*
      - ◆ Clambake v Tipperary.

- T's IMPLIED TERMS/COVENANTS
  - **To use to the premises in a "T-like manner"**
    - Warren v Keen:
      - ◆ Take proper care of the land
        - ◇ Do little jobs about the place which a reasonable T would do
      - ◆ Not damage the house, wilfully or negligently
  - **Not commit waste**
    - ☞ □ **Waste: harming the property by decreasing its value.**
      - VO waste (Things that T actively do and cause waste/Waste that T cause) = Liable [Warren v Keen]
      - Permissive waste - depend on the nature and length of L [Dayani v Bromley London]
        - ◆ Long L: liable.
        - ◆ Short L: T not liable
  - **To cultivate the property in a "husband-like manner"** [Powley v Walker]
    - In case of agriculture land
  - **To yield up possession to the landlord at the end of the lease** [Henderson v Squire]
    - The tenant will vacate the premises and ensure that the landlord can retake possession
- **STATUTES IMPLIED COVENANTS:** for L > 3yr, TS, reg
  - S92 TLA: Tenants
    - (a) Pay rent @ time mentioned; and
    - (b) Keep and yield up the land in good and t-able repair
      - ◆ "good and tenantable repair" is gauged by the condition of the premises at the start of the lease... and it takes into account the age, character and locality of the house. [Proudfoot v Hart]
  - S93 TLA - LL powers
    - (a) LL re-enter the land once each yr to inspect the state of repair
      - ◆ At reasonable time + no notice required.
    - (b) Re-enter + take possession when default if conti for a month
      - ◆ Default of express or implied by TLA cov.
      - ◆ NO demand or notice required.

## **TERMINATION**

- **EXPIRY**
  - FT L, automatically when end of the term arrives
    - No need for notice.
  - Sublease: automatically when the head L expire [Weller v Spiers]
- **VO BY NOTICE**
  - Notice required to be in writing or orally at CL [Roe ex d Dean v Pierce; Marshall v Burman]
    - ☞ □ **Express clearly and unequivocal given** [Gardner v Ingramu]
      - Contain either the date on which T should give up possession or method to calculate the date [Addis v Burrows]
      - **Validity of Notice:** Whether notice would be likely to mislead T [Carradine Properties v Aslam]
        - Proving Validity - person who gave notice [Lemon v Lardeur]
    - **FT:** GR - Cannot be terminated early by a notice to quit.
      - However, possible for parties to expressly agree that L may be determined early by notice.
    - ! Look at the K.
    - **PT:** By either party
      - Weekly T = Termination by week notice [Amad v Grant]
      - monthly T = Termination by month notice [Turner v York Motors]
      - Yearly T = Termination by 6 months' notice [Landale v Menzies]
    - ✗ S72(1) PLA: T of PT or uncertain duration termination need a month notice; unless expressly agreed otherwise.
- **SURRENDER**
  - ☞ ○ **Surrender: T give up the Land and LL accept it.**
    - Apply to FT + PT [Chelsea Investment v FCT]
  - ★ ○ **Elements**
    - Offer by the T to terminate Tenancy; and
    - LL accept it
  - **May be created:**
    - **Expressly;** or
      - S33(1) PLA: require deed even if L oral.
      - In E: effective if have part performance or specifically enforceable K [Walsh v Lonsdale]
    - **Operation of law.**
      - Based on est by conduct [Indian Taj v Gilany]
        - ◆ Conduct must be unequivocal [Konica Business v Tizine]
      - Arises where parties intended to terminated L and inequitable for them to treat L valid [Foster v Robinson]
  - S98(1) TLA: L may be determined by the word "Surrendered" and the date being endorsed on the dup and signed by LL and T.

- **MERGER**

- LL purchases the lease or T buy the fee simple estate.
  - ▶ **LL and T is the same person** [[Rye v Rye](#)] with same capacity [[Chambers v Kingham](#)]
    - Hold L as executor, hold reversal as executor.
    - Under the torrent system - the lease would be still conti. Couz it's reg. [under the act]
- CL: require the deed. [[s33\(1\) PLA](#)]

- **REPUDIATION**

- **LL may be comp for loss of future rent if:** T have rep L
  - T not breach essential term, but T's action amount to repudiation
- **Act amount to repu:**
  - Abandonment
  - Conti breach - indicating T has no intention to be bound by term of L
  - Not paying rent = not repu. [[Shevill](#)] unless it is part of course of conduct substantially inconsistent with T's obligation.
    - **4 months late on rent**, T was held to be **repu**. And LL can get the comp for loss of bargain [[Tabali](#)]
- ★ ○ **Test if act amount to repu** [[Laurinda v Capalaba](#)]
  - Don't look at the state of mind of default party rather their action.
  - Subjective test: Look at from the innocent party POV.
    - ▶ □ **Reasonable think in such a circumstance.**
- **If T rup LL can:**
  - Wavier;
  - Forfeit the L and re-enter.
  - Accept the repu and terminate the L.
- ! **Unless Wavier= LL can ask for loss of bargain.**
- Re-enter when T has repudiated, can sue for loss of profit.
  - Fix term lease: loss of bargain.
- Not Repudiation, LL would be taken to terminate the K.
  - Compensation: not Loss of bargain, but can get everything else.

- **FOREFEITURE**

- ☞ ○ **the right of LL to terminate L on the ground that T or his/her assignee has committed a breach of one or more of the terms of L**
- **Right to forfeiture**
  - **Express proviso for re-entry**
    - L contain express forfeiture cl for breach of covenant. Apply to both FT L and PT (Not yearly - require 6month notice)
      - ◆ Has to clear and unambiguous [[Richard Clarke v Widnall](#)]
      - ◆ renders the lease *voidable* when a breach of the lease occurs [[Massart v Blight](#)]
        - ◇ L remains in effect until LL exercises his/her right of re entry [[Global College v Sooncorp](#)]
    - When entitle to enter - election of exercise must be made orally or in writing - expressly or impliedly.
  - ▶ **Where there is no express provision, there is right @ CL to forfeit where T breaches an implied or express condition (NOT Covenant) of L** [[Doe d Lockwoods v Clarke](#)]
    - ✕ □ Re-enter breach of Paying rent Covenant is implied by **Equity**. [[Shiloh Spinners v Harding](#)]
    - ✕ □ **Statue:** LL an forfeit when T breach covenant. [[ss 92, 93 131 TLA](#)]
      - ◆ LL require to give T notice that include what T is required to do and detail about the breach [[Fox v Jolly](#)]
      - ◇ Give T reasonable time to remedy the breach and make reasonable comp [[s81\(1\) PLA](#)]
- **Relief against forfeiture:**
  - **E-able doc:**
    - ▶ □ **where LL is acting unconscionable** [[Stern v McArthur; Walton Stores](#)]
    - Relief will be granted unless there is reasons to believe that T will not meet their future obligation [[Kelly v Alternative Web](#)]
      - ◆ History of non-payment is only consideration.
    - ▶ □ **If T gave the \$ so that the LL would be in the same position as if the breach as occurred = court might stop the LL from using its right.**
  - **Statue:**
    - [S81\(2\) PLA](#): grant statutory relief where circumstance thinks fit
    - [S81\(9\) TLA](#): s 81(2) PLA Doesn't apply when not pain rent.
- **Wavier**
  - Wavier will only applies to that particular breach [[ss 73, 79 PLA](#)]
  - Can be:
    - Express; or
    - Implies
      - ◆ @ CL: LL know of breach and does unequivocal act that recognises conti of L [[Matthews v Smallwoods](#)]
      - ◆ Delay [[Selwyn v Garfit](#)] or inaction [[Perry v Davis](#)] = no wavier
      - ◆ Asking for rent after LL know of breach [[Gumland property v Duffy](#)]
  - When Q of wavier - crt favour wavier [[Moore v Ullcoats Mining](#)]



## **REMEDIES**

- **LL**
  - Peaceful re-entry
    - LL use no more force than reasonable necessary, can remove T and his good from the land.
  - Damages to comp for past breach and/or injunction on prohi further breach
  - Action for arrears of rent / loss of bargain.
  - Repu. And damages for prospective loss
- **T**
  - Injection in E; and/or
  - Damages for compensation.
  - Right of set off