

LEASES TENANCIES AND LICENCES

OBJECTIVE:

Students should seek to be able to:

1. Explain a lease
2. Distinguish a lease, tenancy and licence
3. Explain varying requirements to create leases
4. Explain registration of leases under the Real Property Act
5. Describe implied covenants in leases and tenancies
6. Give examples of and recognise licences.

A. LEASEHOLD ESTATES

A lease is a contract between lessor and lessee whereby the lessor of the property grants exclusive possession of it to the lessee for a fixed period in exchange for the payment of rent by the lessee or some other valuable reward.

The lease for a fixed period creates a leasehold estate in the land. However, unlike freehold estates in land, a leasehold estate is not inheritable. The right to exclusive possession for a fixed period indicates the leasehold estate.

A tenancy for no fixed period (e.g. from week to week) is only a tenancy and does not constitute a lease.

B. LEASES IN WRITING

1. Under Section 26 of the Law of Property Act, leases must be evidenced in writing.
2. Leases for a period of more than 3 years must, by Section 28 and 30 of the Law of Property Act, be created by deed (i.e. in writing and under seal).
3. Leases under the Real Property Act must be in the form of the 8th Schedule to the Act. This form, in itself, is not a deed (for it is not under seal) but Section 57 of the Real Property Act enacts that it "shall have the effect of and be deemed to be a deed", when it is registered.

C. REGISTERED LEASES

The Real Property Act provides for the registration of leases on the Certificate of Title of the leased land:

S. 116. When any land is intended to be leased for a life or lives, or for any term of years exceeding one year, the registered proprietor shall, or for any less term may, execute a lease in the form of the eighth schedule hereto.

The provision does not mean that all leases for a term exceeding one year must be registered. What it does mean, though is that all leases for a term exceeding one year which are not registered will not receive any

unregistered instrument for a longer term, but that, in my opinion, was the plain intention of the legislature in enacting the placitum mentioned. If a tenant in occupation for a long term desires security of tenure, the legislature requires him to execute an instrument in the form prescribed by S. 116 and to register it in accordance with the provisions of the statute.

It appears to me that the provisions of s. 69 (VIII) are a necessary corollary to S. 119 which provides that "every registered dealing with land shall be subject to any prior unregistered lease or agreement for lease or for a letting for a term not exceeding one year to a tenant in actual possession thereunder". This section does not operate to prevent the making of short leases, but it recognises only leases for a term not exceeding one year. In enacting the section, the legislature has provided protection for a lessee in actual occupation under an unregistered lease for a term not exceeding one year, and by the proviso to the section it has also provided that "a right or covenant of renewal for such lease" may be protected by caveat. To my mind, therefore, the language of s.119 conveys the implication that if a lessee in actual occupation under a lease for a term in excess of one year is to have the benefit of the Act, that lease must be registered. Accordingly, I take the view that upon registration of the transfer by the Karasavases to the plaintiff, its title to the land became paramount over the interest of the defendants under the unregistered lease, and that the covenants contained in the lease, including the covenant granting the option for renewal, were not preserved."

The position can be thus summarized:

1. Leases for a period greater than one year must be registered to be protected by the Act from other dealings with the land;
2. Leases for a period of less than one year need not be registered (although they can be) because they are protected by the Real Property Act from other dealings with the land.

D. PLANNING AND DEVELOPMENT ACT

Section 44(1)(c) of the Planning and Development Act provides that the approval of the Director of Planning must be obtained for a lease of land, other than an allotment, for a period greater than five years. The five year period also includes periods of renewal of the lease.

Planning and Development Act S.44(1)(c):

A person shall not lease or grant a licence to use or occupy any land, other than an allotment or an undivided share of an allotment, for a term that -

- (i) exceeds five years
- (ii) together with the term or terms for which the lease may be renewed in pursuance of an option or right of renewal granted by the lessor, may exceed five years, without the approval in writing of the Director.

E. TENANCIES

Leases expire at the completion of the period contracted for. Commonly, however, tenancies are created on weekly, fortnightly, monthly or other like periodic basis. These continue from period to period unless determined by notice in accordance with the tenancy period: that is to say for example, that, unless there is a written agreement containing a contrary provision, to terminate a fortnightly tenancy two weeks notice in writing must be given; to terminate a monthly tenancy one month's notice in writing must be given. But for a tenancy from year to year, in the absence of express stipulation, unlike the above, only half a year's notice is required to expire at the end of the current year of the tenancy. This is explained by the longer period involved.

F. IMPLIED COVENANTS

In the absence of alternative arrangements the law implies certain obligations into the landlord-tenant relationship. On the part of the landlord his obligations are, inter alia, to allow the tenant quiet and full enjoyment of the leased premises. The tenant is under an obligation to pay the rent, to use the premises in a "tenant-like" manner, and to allow the landlord to enter and view the state of repair from time to time.

The tenant's obligation to repair was considered in Warren v. Keen (1954) 1Q.B. 15 where it was stated:

"Apart from express contract, a tenant owes no duty to the landlord to keep the premises in repair. In short he must do the little jobs about the place which a reasonable tenant would do... But apart for such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it".

It is clear that the court had in mind that the tenant was under an obligation to do such things as: turning off the water when on holiday; mending fuses; cleaning the windows and unstopping sinks blocked by waste.

G. LICENCES

A licence is a permission granted by the occupier of land which allows the licensee to do some act on the land which would otherwise be a trespass. But it does not create any interest in the land. It is purely a permission which can at any time be revoked by the grantor, subject to binding agreements between the parties.

Common examples of licences are:

1. Permitting a visitor to enter the premises;
2. Permitting the playing of sport on the land;
3. Allowing a sign to be erected on the land.

The basic distinction between a lease or tenancy, on the one hand and a licence on the other, is that a licence confers no right to exclusive possession of the land concerned.

Example: Pepper v. District Council of Stirling (1948)S.A.S.R.344

By an agreement in writing the Committee of an Institute granted to a motion picture exhibitor the sole right of

showing pictures in the Institute Hall for fifty one Saturday nights in every year. The Committee were described in the agreement as "the landlord" and the exhibitor as "the tenant"; and the agreement referred to the payment of "rent" by the tenant, and contained obligations by the landlord, and by the tenant similar to obligations normally found in a lease. The agreement was for a term of three years in the first instance, and this term was subsequently twice renewed for further periods of three years each.

The court was called upon to determine whether the agreement conferred a lease or a licence.

It was held that although the agreement was in the form of a lease, the agreement was merely the grant of a licence to show pictures in the hall, and did not give the exhibitor a tenancy of any part of the hall. The court reached its decision on the basis that the Committee had not granted exclusive occupation of any definite part of the Institute for a definite period of time. The rooms available to the exhibitor were not specified nor were the times fixed. The Committee were entitled to attend by an appropriate officer, which they did in the person of their caretaker.

RESIDENTIAL TENANCIES ACT

Students should note this Act regulates the relationship of landlord and tenant under residential tenancy agreements whether written or implied.

The Act requires certain periods of notice to be given by the Landlord and Tenant to terminate residential tenancy agreements.

SUMMARY

1. A lease creates a leasehold estate in land
2. A tenancy does not constitute a lease
3. Leases for more than 3 years must be created by deed
4. Leases may be registered
5. Leases for more than a year must be registered to be protected
6. Leases for less than a year need not be registered
7. Certain leases of land for more than five years require the approval of the Director of Planning
8. The law implies certain obligations into landlord-tenant relationships
9. A licence is only a permission and does not create any interest in land
10. Unlike a lease, a licence confers no right to exclusive possession of the land
11. A licence may be withdrawn at any time subject to binding agreements between the parties.