

UNIT 8: LEASES



Contents

- Introducing leases
- Creating leases law and equity
- Differentiating leases and licences
- Leases characteristics
- Leasehold covenants
- Ending leases

UNIT 8: LEARNING OUTCOMES

- Differentiate between leases and licences
- Explain the essential characteristics of a lease
- Explain the routes to creating and ending leases
- Summarise key express and implied leasehold covenants

INTRODUCTION TO LEASES

- LPA 1925, s1 recognises two legal estates in land:
 - freehold estate (fee simple absolute possession)
 - leasehold estate (term of years absolute)
- Leasehold estate is created out of a freehold estate: entitle leaseholder to use and enjoyment for prescribed period (contractual relationship). Proprietary not personal.
- Leaseholders have right to use and enjoy land, transfer it and pass it under inheritance, but only within prescribed period (length of lease)
- Lease also contains rights and obligations
- Lease length immediately reduces, often difficult to obtain a mortgage on lease <80 years left
- Different context: commercial, agricultural, long-term domestic, short-term domestic, social housing, mixed use



LEASEHOLD V SHORT-TERM TENANCY

- Often confusion between leasehold ownership and short-term tenancy due to overlapping terminology
 - Freeholder/leaseholder
 - Landlord/Tenant
 - Lessor/Lessee
- A leaseholder, e.g. with 999-year lease, is still, technically, a tenant, with the freeholder as their landlord, despite this relationship appearing very different from a six-month rental property agreement between landlord / tenant.
- Key differences between leasehold ownership and short-term tenancy are the length and its governance

Leasehold ownership

Often runs for a minimum of 21 years, with any leases over seven years to be registered with HM Land Registry.

Formed under a long-term contract.

Contracts occasionally include restrictions on use, decoration, pet ownership, etc.

A breach of the lease is required for the freeholder to regain possession (which you'll learn about later in the unit). However, this is very rare.

Short-term tenancy

Length can be anything from days to months to years.

Primarily governed by assured short-term tenancy contracts (AST) so there is less long-term security for tenants.

Contracts often include restrictions on use, decoration, pet ownership, etc.

Can ordinarily be brought to an end through adherence to the notice period included in the AST.

LEASE CREATION

- Lease created out of freehold – initial first lease = headlease
- Freeholder = lessor; leaseholder = lessee for a defined period
- Subsequent leases can be created by leaseholder = subleases or underleases
 - must be for shorter duration than the headlease
- Each party has a proprietary right in land, enforceable and can bind third parties
 - If freeholder sells their interest in freehold, leases will bind purchaser
- Each lessor is said to own the 'reversion', which means that they hold the right to possession of the leased property once the lease comes to an end.
- Can be fixed or periodic:
 - fixed most common, term agreed at commencement
 - periodic lease, run over set period (week, month etc). Renewal continues until notice

LEGAL LEASES

- Legal lease must comply with formalities of LPA 1925 and LRA 2002
- Lease length influences formalities needed
 - **3 years or less (LPA 1925, s52(d) and s54(2))**
 - Must grant tenant immediate possession: *Long v Tower Hamlets* [1996] 2 All ER 683
 - No need for initial sum, but at best rent: *Fitzkriston LLP v Panayi* [2008] EWCA Civ 283
 - Oral, written or deed (if deed formalities)
 - **Longer than 3 years (LPA 1925, s52(1))**
 - No pre-requisites
 - Deed meeting LP(MP)A 1989 requirements
 - **Longer than 7 years**
 - As 3 years, but also must be registered, **LRA 2002, s4(1)**

EQUITABLE LEASES

- Most common way equitable lease created is through failure to comply with formality requirements for legal lease, e.g. over 7 years and omitted to register: **LRA 2002, s 27(1)–(7)**
- Two conditions that must be met for equitable lease (***Walsh v Lonsdale* (1882) 21 ChD 9; *Warmington v Miller* [1973] QB 877**)
 - There is a valid contract for the grant of lease, in compliance with the Law of Property (Miscellaneous Provisions) Act 1989
 - The remedy of specific performance is available, whereby parties are compelled to perform the contract.

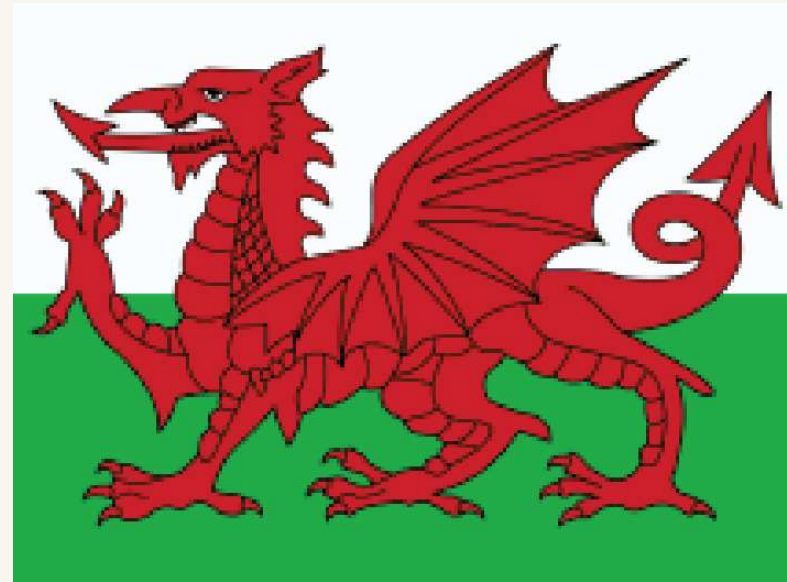


WHAT IS A LICENCE?

- Licence is simply a permission to use land but not as the owner
- For a period of time
- There may be contractual consideration (fee) but not essential, e.g. bare licence
- Any of the rights can be provided via a licence
 - e.g. where a right not meeting the requirements as an easement could be a licence
 - Right to short term occupation
 - visiting a friends house / commercial premise
 - staying overnight e.g. a friend's house, air bnb / hotel
- Critical difference:
 - Lease: proprietary entitlement: enforceable against subsequent owners
 - Licence: personal interest only: enforced only in contract only

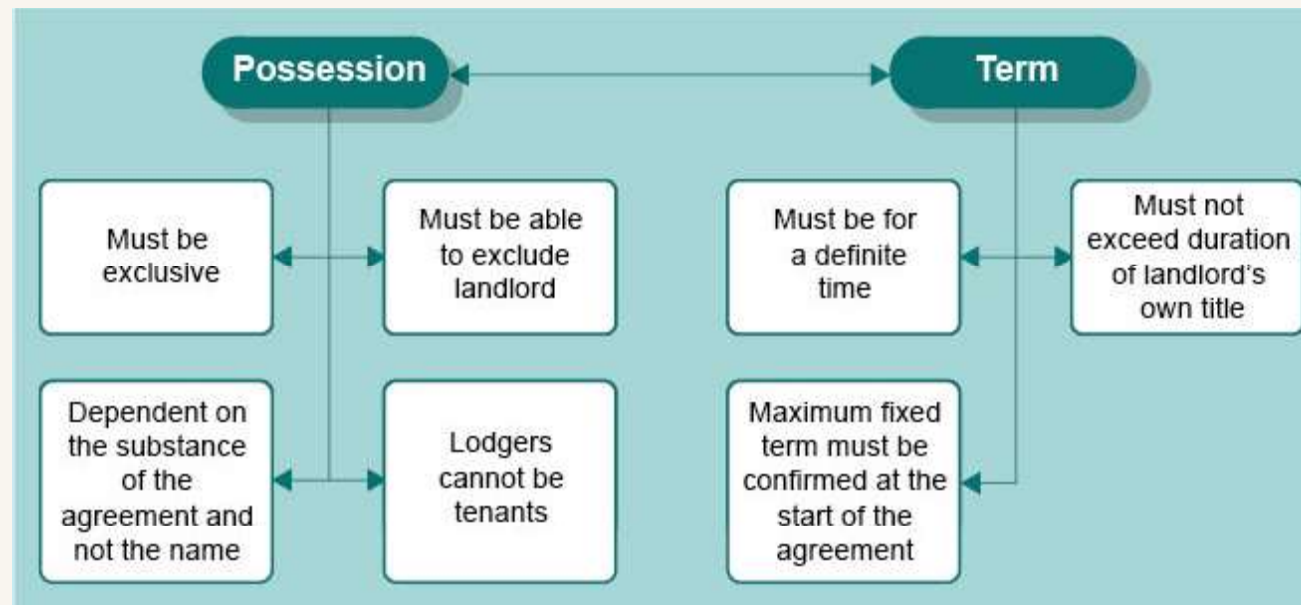
RENTING HOME (WALES) ACT 2016

- Occupation contracts for both leases and licences in residential renting (section 1)
- Leases and licences still exist in Wales under occupation contract
- Also, many types of rental arrangements excluded from the Act under Schedule



LEASES ESSENTIAL CHARACTERISTICS

- LPA 1925, s250(1)(xvii)
 - Term of year absolute
- ***Street v Mountford* [1985]**
AC 809
 - Exclusive possession
 - For a certain term
 - At a rent



EXCLUSIVE POSSESSION

- Whether the tenant has right to exclude others, including landlord from the property: ***Antoniades v Villiers* [1990] 1 AC 417**
- Without exclusive possession, licence.
- *Street v Mountford* developed the following principles with regard to exclusive possession:
 - It is determined by reference to all the facts of the case, the wider surrounding circumstances, the course of dealing between the parties, the nature of the land occupied and the manner of occupation
 - A tenant with exclusive possession has the control rights typically associated with ownership and is able to 'exercise the rights of an owner of land'
 - The label given to the agreement is not determinative of whether a lease exists (it may be called a licence). Instead, the nature and quality of the occupation, as well as the knowledge of the landlord to the agreement will be considered.
- Control over premises and use: ***Westminster City Council v Clarke* [1992] 2 AC 288**
- Retention of keys does not excluded exclusive possession: ***Aslan v Murphy* [1990] 1 WLR 767**

FOR A CERTAIN TERM

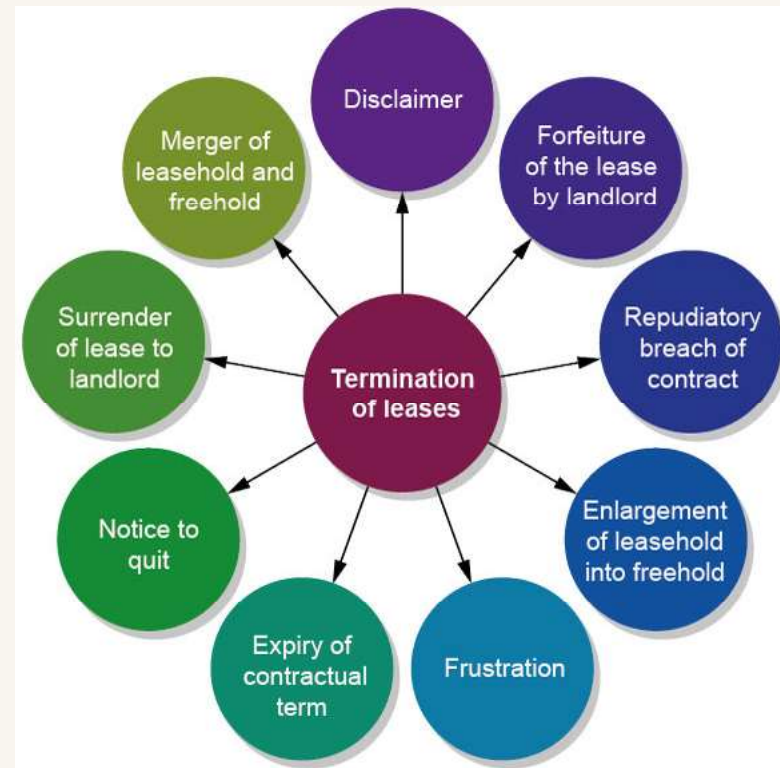
- Lease will be for a defined period of time, without this clarity, a lease will fail. This requires two aspects:
 - certainty of commencement (i.e. a fixed start date)
 - certainty of maximum duration (i.e. a fixed end date).
- *Mexfield v Berrisford* [2011] UKSC 52:
 - An agreement cannot give rise to a lease if the maximum term of the lease was uncertain at the inception of the agreement.
 - For centuries, it has been seen as fundamental to the concept of a lease that the term of the lease was certain from the date the lease was created.
 - To change the law might upset long-established titles.
 - The certainty of term requirement was confirmed in ***Prudential Assurance Co. Ltd v London Residuary Body* [1992] 2 AC 386.**

AT A RENT

- Though Lord Templeman in *Street v Mountford* indicated rent as an essential characteristic, refused by case law and statute.
 - Whether or not at a rent, **per s250(1)(xvii)**
 - ***Ashburn Anstalt v Arnold* [1988] EWCA Civ 14** (Fox LJ):
 - We are unable to read Lord Templeman's speech in *Street v Mountford* as laying down a principle of 'no rent, no lease'. In the first place, that would be inconsistent with section 205(1)(xxvii) of the Law of Property Act 1925, which defines 'Term of years absolute' as 'a term of years (taking effect either in possession or in reversion whether or not at a rent)...
- Payment of rent not irrelevant. Useful tool when determining the relationship between the parties to ascertain whether intention to create a landlord-tenant relationship
 - Absence of rent implies a licence: ***Booker v Palmer* [1942] 2 All ER 674**

TERMINATION OF LEASES

- When ends possession reverts back to freehold (reversion)
- Expiry of lease term:
 - required defined period of time comes to an end
- Surrender of lease:
 - Expressly (by deed) or by implication
 - Requires clear intention to surrender
- Forfeiture:
 - Enables a freeholder to bring the lease to an end at a point earlier than the expiration of the lease term. Right arises in circumstances where a tenant is in breach of leasehold covenants
- Enlargement of leasehold into freehold:
 - Where lease >300 years, with 200 years left, leaseholders have the right to enlarge their interests into freehold interests, ending lease



LEASEHOLD COVENANTS

- Covenants apply to both freehold and leasehold estate
- Potential benefits to leasehold covenants: easier to enforce and rely upon
- Covenant is essentially a promise to do something (positive) or not do something (negative)
- Covenants apply to all leasehold estates, whether they are residential or commercial.
- Can apply (limit) both landlord and tenant.
 - express covenants: stated in contract
 - implied covenants: implied by law



EXPRESS COVENANTS

- Specifically written into the terms of the lease and are, therefore, an explicitly stated agreement between the parties.
- They are often determined by the landlord, thus the tenant is presented with the deed and is expected to agree to the terms if they wish to proceed. These are standard clauses and, obviously, the tenant needs to agree with the terms of the leasehold.
- Express covenants may include an agreement to maintain the property, conduct repairs or not to use the premises for certain purposes. Some examples:
 - When leasing land for agricultural purposes, it would be usual to include a covenant not to build upon the land or to prohibit the erection of a certain type of building.
 - A promise not to open a certain type of retail outlet is common in commercial leases.
 - A clause stipulating the term 'not to sublet' is often included in both residential and commercial leases.
 - In a residential lease, an agreement not to run a business from the premises would not be uncommon.
- Reviewing the deed:
 - It is important to carefully consider the transfer deed when advising either party in a leasehold transaction.
 - Deeds contain the details of any express covenants, which solicitors are required to identify, review and advise upon regarding any future implications.
 - Issues often arise at some later stage in relation to covenants, whether it be an alleged breach or a request to comply, at which point the first thing to do is check the transfer deed

IMPLIED COVENANTS

- It is important to carefully consider the transfer deed when advising either party in a leasehold transaction. Deeds contain the details of any express covenants, which solicitors are required to identify, review and advise upon regarding any future implications.
- Landlord Implied covenants: those aspects of leasing that we expect to be adhered to by landlords.
 - right to quiet enjoyment – the landlord must not interfere with or enter the property without permission
 - repair – the landlord must make repairs in accordance with the terms of the lease
 - non-derogation from grant – the landlord may not change the terms of the lease where it is for a specific purpose.
- Tenants's implied covenants:
 - paying rent and taxes
 - minor repairs and not diminishing the value of the landlord's land by committing 'waste'. This is a general term which means allowing the property to deteriorate due to lack of upkeep and could include things such as allowing rubbish to pile up or the property falling into disrepair and appearing dilapidated.
 - There is some overlap between express and implied covenants. Some of the above examples are usually expressly provided for in the lease, but if they are not, the law provides that this is implied. One example of this is paying rent and taxes – if it is not expressly provided for, it is implied by law.

ALIENATION COVENANTS

- An alienation covenant is a covenant which prevents a tenant from subletting or parting with possession of a property without permission of the landlord.
- In most leases, there is a condition included which states that permission should not be unreasonably withheld or delayed
- Such a covenant means that if a tenant sublets without permission, then the landlord can take action to enforce the covenant and seek a remedy to rectify the breach. It also means a Landlord has to consider, and take a reasonable amount of in considering the request from the tenant



UNIT 8: LEARNING OUTCOMES

- Differentiate between leases and licences
- Explain the essential characteristics of a lease
- Explain the routes to creating and ending leases
- Summarise key express and implied leasehold covenants

RECAP

UNIT 8: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
- Bevan (2022) chapter 7, 9 and 10
- Dixon (2024), chapter 6 and 9

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
 - Barr, W. (2000) 'Lease or licence to occupy- exclusive possession – intention – significant factors – implications for charitable lettings' 22(1) *Journal of Social Welfare and Family Law* 77.
 - Biehler, H. (2015) 'Remedies in cases of proprietary estoppel: towards a more principled approach?' 54 *Irish Jurist* 79.
 - Davis, B.H. (1990) 'Leases, licences and constructive trusts: *Ashburn Anstalt v Arnold*' 20(1) *Victoria University of Wellington Law Review* 23.
 - Harpum, C. (1989) 'Leases, licences, sharing and shams.' 48 *Cambridge Law Journal* 19.
 - Hill, J. (1988) 'Leases, licences and third parties.' 51(2) *Modern Law Review* 226.
 - Low, K.F.K. (2012) 'Certainty of Terms and Leases: Curiouser and curiouser.' 75 *Modern Law Review* 401.
 - Oakley, A.J. (1988) 'Licences and leases: a return to orthodoxy.' 47(3) *Cambridge Law Journal* 353.
 - Sparkes, P. (1988) Leasehold terms and contractual licences. (104) *Law Quarterly Review* 175.
 - Vincent-Jones, P. (1987) 'Exclusive possession and exclusive control of private rented housing: a socio-legal critique of the lease-licence distinction.' 14(4) *Journal of Law and Society* 445.
 - Waite, A.J. (1987) 'Leases and licences: the true distinguishing test.' 50(2) *Modern Law Review* 22