LANDLORD & TENANT

THE RELATIONSHIP OF LANDLORD &TENANT

The relationship of landlord and tenant arises where a person who has an estate in real property grants or is deemed to have granted to another an estate which is less than that of the grantor.

A lease is an estate less than the freehold so there is always a reversion on a lease. The relationship is also a contractual one; thus the creation of such a relationship will be affected by the fundamental requirements of a contract as to capacity, offer and acceptance, misrepresentation, privity etc. Now it may even be possible for a contract of landlord and tenant to be frustrated, at least in theory.

Subject to any statutory provisions, the rights and obligations of the parties will be only those which the parties have agreed on. And in the absence of specific provision in the agreement, will be determined with reference to practice and common law e.g. a landlord cannot unreasonably withhold consent even without statutory provision setting this out.

However, because this contract confers on the tenant an estate in land, which may exist at law or in equity, it is a unique form of contract e.g. the court of equity may grant relief in forfeiture, even though there is no such common law right.

Thus a *lease arises where a landlord confers on a tenant, by way of a contract, the right to exclusively possess land for a period which is either subject to a definite term or can be made subject to a definite term by either party*.

Consequences of an Estate being Created

1. The relationship is one of tenure and therefore the covenants that touch and concern the land and run with the land will bind the assignees of the lease and of the reversion.
2. Payment of rent is deemed to be made for the land and arising from this is the right to distress i.e. the right of the landlord to levy distress on the goods of the tenant to recover rent. The right to distrain on the goods of a tenant is no longer available in Jamaica.
3. The tenant is estopped from denying the landlord's title and vice versa. There is no requirement in law for the landlord to prove title, but this can be made a term of the agreement to lease.
4. There can exist concurrent interests on the same land i.e. freehold and leasehold.
5. The duration of the tenure must be certain or capable of being made certain before the commencement. **Lace v Chantler** and **Prudential Assurance v London Residuary Body**.
6. Sub-tenancies can be created and a tenant can assign a lease unless otherwise stated in the lease.
7. The estate ends on the expiry of the contract. A statutory tenant has no estate in the land because of the purely statutory nature of the right i.e. irremovability until statutory conditions are met.
8. Tenancies at will and at sufferance are not real tenancies, although the relationship of landlord and tenant exists.

Creation of the Relationship

A tenancy may arise in one of three ways:

1. It may be created by an express or implied agreement between the parties. This may be by way of a simple oral agreement with the most elementary terms, i.e. the parties, the property, the rent and the

period. Or it may be a formal document by way of a deed, which runs into many pages and which deals with every possible eventuality from responsibility for cleaning windows to liability in the event of destruction, by hurricane, aircraft or civil commotion.

2. It may be created by **attornment** i.e. an acknowledgement by the tenant that s/he is in fact a tenant e.g. where a mortgagee forecloses under a mortgage and the tenant acknowledges the mortgagee as the landlord (cf. Dorchester dispute where the tenants are likely to have to take out inter-pleader proceedings).
3. It may be created by statute, e.g. where a dependent of the tenant on the tenant's death becomes a tenant by express statutory provision.

Two stages to the creation of a lease:

1st – the agreement for a lease – By an agreement for a lease the parties agree that the landlord will grant and the tenant will take a lease.

2nd – the grant of a lease – the subsequent granting of a lease is the realisation of the lease previously agreed.

However, it is not necessary that there be both an agreement for a lease and the lease itself. Often the parties will proceed to the lease without an agreement. More often they will not proceed beyond the agreement; i.e. is to say having agreed the tenant will enter into possession of the premises. The legal effects of the two steps are however, different.

AGREEMENT FOR A LEASE

- By this, the parties agree that the landlord shall grant and the tenant shall take a lease.
- Often a document entitled a tenancy agreement is often not an agreement for a lease at all but an actual lease.
- Whether there is a binding agreement for a lease or not is to be decided by reference to the ordinary rules of the law of contract –

  Rossiter v Miller. *The action was brought to compel the specific performance by the respondent of an agreement to purchase plots of land belonging to the appellants, and the main question was whether letters which had passed between the agent of the vendors and the respondent constituted a binding contract within the meaning of the Statute of Frauds. Held: It is a necessary part of a claimant's case to show that the 2 parties had come to a final and complete agreement. If not there was no contract. So long as the parties are only in negotiation either may retract. Though the parties may have agreed on all the cardinal points, if some particular essential to the agreement still remains to be settled afterwards, there is no contract.*
- In the case of an agreement for a lease, the offer will be to let or demise the land
  - (i) at a certain rent
  - (ii) for a certain period and
  - (iii) from a certain date.
  - (iv) Under the best rent possible without taking a fine
- A formal written document is not necessary to bind the parties and the agreement may be formed equally by word of mouth or by an exchange of correspondence. However, while a formal written agreement is not necessary, it has the practical advantage of reducing possible disputes between the parties because it will be clear that there is an agreement upon specified terms.

- Although an agreement for a lease need not be in writing to be valid it might nevertheless be unenforceable because of the provisions of the **Statute of Frauds** or similar successor provisions. The object of that statute was to prevent fraudulent practices in relation to various sales including the disposition of land. The difficulty facing the courts at that time was that in the absence of evidence such as a document the parties were willing to perjure themselves in order to establish or avoid an oral contract. The Statute therefore required that the party seeing to enforce an agreement had to produce some evidence in writing of the agreement signed by the other party, i.e. "the party to the charge".
- If the parties do not yet wish to bind themselves it is sometimes the practice to add the words "subject to contract" to their negotiations and correspondence. If the agreement is "subject to contract" there is a risk that at the end of the day, either side may back out: **Derby & Co. Ltd. v ITC Pension Trust**

  Tiverton Estates Ltd v Wearwell *[A document setting out the terms of the alleged contract which was expressed to be, or formed part of correspondence expressed to be "subject to contract" would not constitute a sufficient memorandum in writing of the agreement.]*

Essentials for memorandum in writing to establish an agreement for a lease:

1. It must be in writing **Burgess v Cox; North v Loomes**
2. It must contain the material terms of the agreement i.e.
   - A full description of the parties
   - The consideration i.e. the rent and any premium
   - A description of the property adequate for its clear identification
   - The period of the tenancy:

     Harvey v Pratt [Was not a valid agreement, as the document did not specify any date from which the lease was to commence. Therefore it failed for certainty.]

     Jaigobin v Dias [The plaintiff was held to be in a position of a person who had a mere permission or licence to go on the land because the duration of the lease, not being stated, the document was not effective as an agreement for a lease,]

     Chew v Richmond [Memo was insufficient, as it contained no provisions with regard to the commencing date of the term or with respect to the rent, the consideration.]

     Knight v Pratt [Held: the agreement lacked 3 of the requisites of a lease: (i) a definite or ascertainable period; (ii) a definite thing demised; (iii) exclusive possession.]
4. It must be signed by the parties especially the party to be charged. **Statute of Frauds**
5. It must contain an express or implied recognition that a contract in fact had been entered into. **Tiverton Estates v Wearwell**

   Analogous situation of contract for sale of land where the purported agreement contained the phrase "subject to contract". Held to be insufficient memorandum even when read in conjunction with other documents.

   In practice a memorandum may be derived from a letter setting out the terms or a receipt or even a note of a conversation or from several documents, provided there is some link between them.

   Timmins v Moreland Street Property Co. Limited: *Analogous situation of a contract for sale. Purchasers argued that the documents, a cheque and a receipt, were insufficient to constitute a*

memorandum because they omitted a material term, property subject to a lease. Held: the omission to refer to the lease did not vitiate the memorandum.

Doctrine of Part Performance

Where there is an oral agreement for a lease but there is no memorandum in writing, the agreement may still be enforceable if there are acts of part performance of the agreement.

- In order to establish this the parties seeking to enforce the agreement must show:
  - that there is a binding agreement
  - there have been sufficient acts of part performance
  - those acts of part performance indicate the existence of an agreement and are consistent with the agreement alleged, i.e. referable to the agreement.
  - The plaintiff must show that he had acted to his detriment and that the acts in question were such as to indicate on a balance of probabilities that they had been performed in reliance on a contract with the defendant and were consistent with the contract alleged:

    Steadman v Steadman: *Husband and wife agreed to transfer of her interest in house to him for a specified sum, for discharge of her maintenance proceedings against him for herself and her child and husband to pay arrears in maintenance. Agreement confirmed by court and husband performed as promised. On an application by the wife to repudiate the agreement because of insufficient memorandum in writing and no act of part performance, Held: the husband's payment plus actions were sufficient. It would be inequitable for wife to rely on defence.*
  - The courts have sometimes said that a condition is that it would be a fraud for the defendant to rely upon the absence of the contract being in writing: **Brough v Nettleton**

The principle underlying the doctrine of part performance is that where 1 party to an agreement has carried out whether in whole or in part, the contract, it would be inequitable to allow the other party to rely on the **Statute of Frauds**.

Wakeham v Mackenzie [Woman moved out of her house and into the deceased's to take care of him because he promised to leave her the house and contents when he died. Held: sufficient acts of part performance that must be and were referable to some contract.]

Cf. *Maddison v Alderson (HL)* *[Woman worked as deceased's housekeeper without pay for many years because he promised orally to leave her a life estate in is will. Held: her actions did not unequivocally point to a contract.] Lord Selbourne also said that part payment of purchase money is not enough as the payment of money is an equivocal act in the absence of parol evidence indicative of a contract concerning land.*

However the House of Lords, in **Steadman v Steadman,** subsequently said that there was no general rule that the payment of money could never constitute part performance.

- If there are sufficient acts of part performance, the court will grant specific performance.
- **Examples:**
  - Taking possession of the premises by one party with the consent of the other:

Morphett v Jones:: *The Defendant J agreed to lease land to the Plaintiff M. He then authorised the plaintiff to enter into possession, which later took place. Held A party who has; permitted another to perform acts on the faith of an agreement is not allowed to insist that the agreement is bad and that he is entitled to treat acts partly performing it as if they never existed. Between landlord and tenant admission into possession, having unequivocal reference to the contract, has always been considered an act of part performance.*

- Carrying out of repairs and alterations to the premises to be leased at the specific instruction/suggestion of the other party:
  Rawlinson v Ames *[The defendant frequently visited the flat and made suggestions for further alterations which were carried out by the plaintiff at her request. When the defendant repudiated the contract the plaintiff sued for specific performance. Held: the acts done at the request of the defendant were acts of part performance taking the case out of the Statute of Fraud]*
- The payment of rent in advance *may* constitute an act of part performance: **Steadman v Steadman** overruling **Chaproniere v Lambert** and **Maddison v Alderson**
- The payment of and acceptance of a higher rent where the plaintiff was a previous tenant who merely continued in possession: **Miller & Aldworth Ltd v Sharp:** *The landlord verbally agreed with tenant to grant a lease at an increased rent. Held: the payment of the extra rent was a sufficient part performance to take the case out of the Statute of Frauds.*

Remedies for non-performance

If either party refuses to go ahead with the lease agreement the other party has two remedies

1. **Specific performance** – an equitable remedy by which the court orders that the party shall perform his/her side of the agreement.
   - Because of its equitable nature specific performance is a discretionary remedy.
   - In exercising its discretion the court has regard to a number of matters:
     (i) The conduct of the parties e.g. if the party seeking specific performance is guilty of bad conduct or has delayed unreasonably in enforcing his rights the court is not likely to grant the decree.
     Pillersdorf v Denny 1975 *Plaintiff sought specific performance of a contract for sale of land. The land purchase was delayed because of delay in getting planning permission. Held: contract was conditional on the permission. Without the condition precedent there was no right of performance on either side.*
     (ii) whether the order would cause undue hardship; thus the court will not grant specific performance where it would result in a course of action not permitted by the lease held by the landlord: ***Warmington v Miller*** *[Defendant's lease contained covenant against assignment or parting with possession. Court would*

not enforce an oral agreement for the defendant to grant a lease to the plaintiff. Held: the plaintiff was not entitled to specific performance since the court would not order the defendant to do that which he could not do under the terms of his lease under which he held the premises and which, if he did, would expose him to proceedings for forfeiture.]

2. **Damages** – Where there is non-performance by the landlord due to a defective title, the tenant cannot recover damages for loss of his bargain but only to the actual expense that he has been put.

If, however, landlord's default is wilful then tenant can recover damages directly resulting from the default.

Note: *In* ***Broughton v Snook*** *it was held that the first step is to prove the existence of an oral contract. If there was evidence of such a contract then the plaintiff can enforce the contract unless the defendant sets up the* ***Statute of Frauds****. If this is done then the plaintiff relies on the doctrine of part performance.*

LEASES

A lease is created when the landlord grants to the tenant the right of exclusive possession of land or buildings for a definite term or for a period which can be made definite by either party and if for more than 3 years or otherwise provided by statute complies with certain formalities.

CHARACTERISTICS OF LEASES

1. **Exclusive possession**
   - Definition: The right to control the demised property and to exclude all persons from it including the landlord. If landlord wishes to enter, he must specifically reserve the right to do so.
   - Where a person is granted the right to use premises without the right to exclusive possession, the grant is a licence and not a lease. Although the right to exclusive possession does not necessarily preclude the existence of a licence. Street v Mountford

2. **Definite period**
   - This requirement is not always free of difficulty. In the vast majority of cases the period is clear and definite. Occasionally however, persons enter into unusual agreements that make the period of the tenancy uncertain e.g. a demise "until the river changes its course". This kind of situation, however, should not be confused with the situation where a grant is made for a definite period, but there is provision for termination at an earlier time upon the occurrence of a specific event e.g. a diplomat's period of service in a jurisdiction until recalled or declared persona non grata or e.g. a person working in the jurisdiction on contract, if their contract is terminated earlier.

FORMALITIES:

At common law a lease can be validly created by a purely oral transaction. Nevertheless there are statutory provisions which require that certain formalities be established.

1. Except in the case of Barbados, all leases of unregistered land over 3 years must be by deed i.e. under seal. In the case of Barbados, leases of unregistered land for more than one year need only be created by an instrument in writing.
2. Once however a lease has been validly created, whether oral or written, it must be assigned by deed

or by transfer for there to be a valid legal assignment.

3. In the case of registered land, a lease for more than 2 years, except in the case of Jamaica, where it is one year, must be in writing and noted by the Registrar of Titles. **S. 70 Registration of Titles Act.** The various registered land statutes provide a pro forma example of a basic lease that can be used as is or modified to suit the particular circumstances.
4. With the exception of Barbados, leases for more than 21 years are entitled to be evidenced by way of a certificate of lease as distinct from the lease merely being endorsed on the title or lodged in the registry or titles office

Lack of Formalities

Prior to the Judicature Act 1873 a tenant under an informal lease would have different rights depending on whether the matter was before the courts of law or equity. The Judicature Act of 1873, applicable in all Commonwealth Caribbean jurisdictions, resolved this conflict by providing that "where there was a conflict between law and equity the equitable rules or principles should prevail." This was confirmed in **Walsh v Lonsdale**.

- Thus a lease which is void at law because it fails to comply with the requirements of formality, if sufficiently evidenced in writing or supported by acts of part performance is treated by equity as a tenancy at will where the tenant is in possession or as an agreement for a lease for which specific performance might be granted.
- Further where the tenant has the right to apply for specific performance the lease will be deemed to be granted whether or not the tenant asserts specific performance.

Nixon v Richards *[Held: In the absence of a special agreement, a purchaser of land let into possession thereof under a contract of sale but who has not paid the purchase money and to whom no conveyance has been executed is a tenant at will to his vendor. If however, purchase money paid then equitable agreement for a lease arises.]*

- Further, if tenant pays rent, a periodic tenancy is created.
- As a result of **Walsh v Lonsdale** it is often said that an agreement for a lease is as good as a lease and generally speaking this is so. But there are instances where an equitable lease is not as good as an actual lease.

Reasons why an equitable lease is not as good as an actual lease

- An equitable lease is dependent on the equitable remedy of specific performance which is discretionary. Thus a tenant guilty of breaches under the lease would not be granted this remedy. **Coatsworth v Johnson:** *The plaintiff entered into possession of land under an agreement for a lease, but no rent was paid and a covenant to cultivate the land was broken. The defendant gave notice to quit and turned the plaintiff out of possession. On an action for damages for trespass it was held the plaintiff would not have a remedy because he was only a tenant at will. He could not have sought specific performance because of his breach of covenant.*
- En equitable lease not enforceable against 3rd parties acting in good faith and without notice, especially the *bona fide purchaser for value without notice i.e. "equity's darling".* **Metcalfe v Edgehill**

Creation of a lease:

A lease may therefore be validly created as follows:

(1) If it is for registered land and more than a year, it must be in writing: See however, **section 70 Registration of Titles Act** "*...the proprietor of any estate in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title...*"

(2) If it is for less than 3 years and it is unregistered land – may be made orally or in writing or by deed

(3) If it is for more than 3 years and is unregistered land it must be by deed.

(4) If it is for more than 3 years and is made orally but there are sufficient acts of part performance – equitable lease

(5) If it is for more than 3 years and there is sufficient memorandum in writing – equitable lease

(6) If it falls under (4) or (5), but tenant has been guilty of bad conduct or 3rd party rights will be affected which will prevent the grant of specific performance there will be no equitable lease

(7) If it is for more than 3 years and no sufficient memo or acts of part performance, specific performance will not be granted BUT if tenant enters into possession and pays rent – periodic tenancy will arise.

LEASES AND LICENCES

- The distinction between a lease and a licence is very important today particularly in jurisdictions with rent restriction legislation that is designed primarily to protect tenants against exploitation by landlords. **Rent Restriction Act** applies only to tenancies and not licences.
- Thus in recent times attorneys, particularly in Jamaica and Trinidad and Tobago, have been called on to address agreements purporting to create licences meant to avoid the effect of legislation for the protection of tenants.
- In England such a practice has been taking place for a long time now as evidenced by the number of decisions in this area.
- More recently in **Street v Mountford** the court had to construe a document described as a licence to determine whether in fact it was what it said it was. The House of Lords held that it was in fact a tenancy agreement. Since **Street v Mountford** there have been a number of decisions which have applied that case, including in the Caribbean.

  Ramnarace v Lutchmann: *plaintiff occupied land on understanding she could live there until she could afford to buy it. She was served a notice to quit but it was not enforced. She claimed a declaration of tenancy. PC held that she had entered the land as a tenant at will, not a licensee, because of the agreement to eventually sell. Under Trinidadian legislation the notices to quit without more were insufficient to stop time running on adverse possession, extinguishing the respondent's title.*

DISTINCTION BETWEEN A LEASE AND A LICENCE

- In order to determine whether the relationship between the parties is that of landlord and tenant or licensor it is necessary to consider a number of factors

I. Primary consideration: whether exclusive possession has been granted to the occupiers. If it is has not there cannot be a lease.

At one time the law was that if exclusive possession had been granted then this was conclusive of a lease. But this was later modified. In **Street v Mountford** Lord Templeman said that where exclusive possession is granted a tenancy arises unless there are special circumstances which negative the presumption. Then it may be necessary to consider the intention of the parties.

Isaac v Hotel de Paris: *The respondent let the appellant into occupation of a separate property in order for the appellant to run a bar there on behalf of the respondent. They later signed an agreement, "subject to contract" involving a share swap for a lease agreement. The agreement was never executed and the respondent gave the appellant notice to quite. He remained in occupation paying expenses and taking profits. Held by the PC: the circumstances in which the appellant was allowed to occupy show he was never intended to be a tenant, and that he was aware of this.*

Thereafter the position was that even if exclusive possession was granted you had to consider all the other relevant factors and decide whether these pointed to a lease or not. It is arguable today that some of these are still relevant in certain circumstances, the most important of which is the nature of the relationship between the parties.

II. Whether the terms of the agreement are such as are normally found in a lease e.g. covenant to repair:

Addiscombe Estates v Crabbe *The trustees of a tennis club took occupation of tennis courts and a club house the activities of the club were held to be business purposes. The agreement which was termed a licence contained covenants of insurance, delivery of premises, and quiet enjoyment. Held: tenancy.*

III. Relationship between the parties - if arms length or commercial. The latter suggests a lease, whereas if the relationship is personal, employer-employee, long friendship or between family then suggests licence: **Ramnarace v Lutchman;**

Romany v Romany: *A mother allowed her son and his wife to remain on premises after their marriage until they found alternative accommodation. Court found that a licence existed.*

In family situations where one member helps another in a period of difficulty over accommodation there is usually no intention to create legal relations so that there is no tenancy at will but merely a licence. *NB:* The fact that the mother repeatedly protested their possession after a while revoked the licence and her mere inaction after every protest did not serve to extend the licence.

The general rule is that a tenancy-at-will exists when a person occupies the land of another on the understanding that he may go when he likes and that the owner may terminate his interest at any time. To distinguish this tenancy from a licence, Court looks to the intention, i.e. whether the occupier was intended to have an interest in the land or merely a personal privilege without any such interest.]

The more formal the agreement the more likely that is a lease

IV. Amount of money involved – whether commercial rate

V. Whether the occupant has previously occupied the premises or is being let in *de novo:*

Dean v Mahabir *[Held: where exclusive possession is given to a new occupant, it is almost decisive of the creation of a tenancy so that special circumstances/conduct must be shown in order to negative a tenancy. As there were no special circumstances here, the appellant was allowed to live rent free in the respondent's dwelling house for a period while the former's house was being constructed it was a tenancy*

Sylvestre v Cyrus: *Cyrus, the tenant of a house moved out taking her telephone and electric meter and let Sylvestre into exclusive possession for payment of a premium and at a monthly rent. When Cyrus moved back in two years later, Sylvestre brought an action in trespass. The court held that in the absence of special circumstances the exclusive possession was sufficient to establish a tenancy.*

VI. the capacity of the grantor to grant the tenancy:

Spencer v Esso Standard Oil *[Arrangement between parties that the respondent company would erect a service station and the appellant should manage it accordance with various terms and restrictions. Held: Licence. The respondent had sued for "rent due" but he should have sued for damages for use and occupation of its station, which ran from the time when the appellant should have yielded up the premises under a notice to do so.]*

VII. Whether a joint tenancy exists

AG Securities v Vaughan *[4 separate agreements granted on 4 different dates to 4 different persons where each was granted the exclusive right to use a 4 bedroom flat in common with 3 other persons who had or who might from time to time be granted the same right. Each agreement also differed in the amount payable. Held: not a joint tenancy. If this were so, then on the death of 1 occupant the remaining three would be entitled to joint and exclusive possession and could exclude a 4th person nominated by the grantor. This was not the case.]*

Cf. Antoniades v Villiers *[L, by separate but identical agreements entered into contemporaneously with a couple, granted a "licence" to occupy flats whereby it was provided that the rooms were to be used in common with L and such other licensees or invitees that L may permit. Held: was a joint tenancy – the agreements were interdependent as both would have been signed or neither. Was clear from negotiations that L did not intend to share occupation or to authorise any other person to deprive the parties of exclusive possession. However the tenancy could have been converted into a licence as soon as L exercised his power to share occupation.]*

Licences

A licence does not create any estate in the property (just like a tenancy at will) **Thomas v Sorrel** {liquor licence case]

Types of licences:

I. **Bare licence** – Granted without valuable consideration so that it does not even amount to

a contract. **Cherrington v Hoare** (Belizean case)

Plaintiff purchased lot from D's father with D living in smaller of 2 houses on the lot. P claimed D was a tenant-at-will and claimed possession following notice to quit, while D claimed proprietary estoppel granting him tenancy-for-life. Held: D only held a bare licence, despite his expenditure on the house, he had not met a prior condition and therefore could not expect to have the property for life or as long as he wished. Condition that the defendant should "command respect" not specifically met. ☺

However, the licence is revocable subject to the limitation that the licensee must be given a reasonable time to vacate the premises:

Singh v Singh *[Licensee could maintain an action for trespass because he was given no time at all in which to cut his rice and quit the land. Here the licensor had entered onto the land and reaped the licensee's crops.]*

Where the licensee was not given reasonable time in which to vacate the premises, then the court will not grant the licensor an injunction to prevent the licensee from occupying it: **Crawford v Ramnarine**

II. **Licence coupled with an interest** – such as the right to enter land and enjoy an incorporeal heridatement e.g. easement or profits a prendre. Here, the licensor cannot revoke the licence if the licensee is thereby prevented from exploiting the interest which the licensor has granted: **Binyon v Evans, Cherrington v Hoare**

III. **Contractual licence** – any licence that is not coupled with a grant but which is supported by valuable consideration e.g. right to enter a cinema. This is terminable upon the contractual terms. If no express terms are discoverable then reasonable notice is implied. Contractual licences are by far the most important types of licences in matters relating to landlord and tenant law, because property owners sometimes in trying to avoid the consequences of rent restriction legislation attempt to create contractual licences. These are governed by the law of contract only.

IV. **Licence by estoppel**: **Clarke v Kellarie** [Plaintiff assured the defendant that he had use of the premises until his death. Defendant erected buildings and the Plaintiff acquiesced. Held: plaintiff estopped from defeating defendant's expectations by dispossessing him of the property.]

Licence Arrangements

1) Employees –

- May involve an employee such as a caretaker, farm overseer, or university warden. It is a service licence where occupation is for the better performance of employee's duties.
- The requirement to occupy may be contained in the employee's contract of employment or implied from the circumstances of his employment.

R v Spurrell *[The essential question was whether or not the servant simply occupied as part of remuneration for his services, or whether the occupation was subservient to and necessary to the service. If the occupation is not necessary to the service, then the fact that the advantage of the occupation is part of the remuneration for*

the service will not render the occupation less an occupation qua tenant.]

Thompsons (Funeral Furnishers) Ltd v Phillips *[Respondent lived at his employer's premises. He agreed that either he or someone would always be there to take orders and answer messages and enquiries for the employer. Held: the substance of the agreement was for the respondent to occupy in order to perform his services in part in those premises. Thus not a tenancy but a service occupancy.]*

Langley v Appleby *[Held: a policeman occupied special housing not as tenant but as a licensee not because it was essential to the performance of his duties, but because it was an essential term of his employment that he should occupy the premises. Failure to do so would have meant termination.*

- An employee may however be a service tenant, in which case he would be in the same position as a legal tenant. The test to distinguish the two categories is whether the employee is required to occupy the premises for the better performance of his duties as an employee. **Torbett v Faulkner**
- Whether the test has been met must always be determined by a consideration of the substance of the agreement and not by use of particular terms. **Glasgow City Corporation v Johnstone**
- In many cases if the right to occupy is not required for the better performance of the employee's duties, but is in reality a part of the remuneration for his services then a tenancy is prima facie created.
- The relationship of licensor/licensee terminates upon the entering of an agreement between the parties to purchase the premises and the licensee thereafter becomes a tenant at will: **Bertram Palmer v James**

2) Lodgers/Boarders

- The word lodger is used in cases where the landlord lives in the same house as the occupier. A lodger who has no separate apartment is generally a licensee.
- Whether the occupier of a single room in a house is a licensee/tenant is dependent on the quality of the occupancy.
- If it is intended that the occupier should have exclusive possession in the room then he will generally be a tenant. However, if it was intended that he should merely have personal permission to occupy the room he will generally be a licensee.
- Lord Templeman in illustrating the meaning of exclusive possession in **Street v Mountford** explained the lodger as against the tenant in the following way, *"In the case of residential accommodation there is no difficulty in deciding whether the grant confers exclusive possession. An occupier of residential accommodation at a rent is either a lodger or a tenant. The occupier is a lodger if the landlord provides attendance or services that require the landlord or his servants to exercise unrestricted access to and use of the premises. A lodger is entitled to live in the premises but cannot call the place his own. If on the other hand residential accommodation is granted for a term at a rent with exclusive possession the landlord providing neither attendance nor services the grant is a tenancy. Any express reservation to the*

landlord of limited rights to enter and view the state of the premises and to repair and maintain the premises only serves to emphasise the fact that the grantee is entitled to exclusive possession and is a tenant."

- Landlords wishing to avoid the statutory protection offered to tenants have attempted to draft lodging agreements.

  2 such agreements came before the court in **Crancour Ltd v DaSilvaesa:** The UK Court of Appeal held that the following variables pointed to lodgings:

  1) fact that occupant had right to the room only during a certain time;
  2) provision of attendance and services meant unrestricted access was reserved and exclusive possession destroyed;
  3) right was reserved whereby occupant would have to move out of his flat into any other of comparable size in the building.]

  The courts lean in favour of tenancy especially because of protection offered by Rent Restriction Acts.

TYPES OF TENANCIES

1) Where a lease takes effect in the future it is called a reversionary or future lease.

2) A lease may also be granted for a term that commences before a previous lease expires or is otherwise determined. This type of lease is known as a concurrent lease. Such a lease operates as a lease of the reversion and has the effect of substituting the new tenant of the reversion as landlord in relation to the existing lease as long as the 2 interests subsist concurrently.

3) Tenancy for a fixed term

- The simplest kind of term is a lease for a fixed period, whether a week, month or a number of years. It may be made to begin immediately or at some time in the future or at a date earlier than that of its execution. The term must however be certain.
- The test of certainty will be satisfied if the period is capable of being rendered certain before the lease takes effect.
- A lease for a fixed term comes to an end automatically without notice when the term expires. It should be noted however that in practice, notice is usually given with respect to property subject to rent restriction legislation when let for a fixed term. The usual reason given is that if the tenant holds over as a statutory tenant, the statutory provisions require that notice be given. Rowe J was [persuaded to this view at least in respect to commercial lettings in **Yap Young v Reynolds**. However the more recent decisions of **Crampard v Thomas** and **Dabdoub v Saba** have overruled **Yap Young**. Nevertheless the practice continues.
- Fixed term tenancies may be made terminable before the expiration of the term on
  - notice being given by one party, or the other, to terminate the tenancy at given intervals during its currency i.e. a break clause.
  - the happening of some specified event e.g. the tenant ceasing to reside on the premises.
- Fixed term leases raise difficulties particularly when the term is very long. There is a need to moderate that but not by converting it to a monthly tenancy.

4) Periodic tenancies

- These continue automatically from period to period until they are determined by a valid notice to quit

given by one party to the other. A periodic tenancy therefore differs fundamentally from a fixed term tenancy in that in the latter the total duration is fixed from the outset.

- The usual periods for periodic tenancies are a week or month or quarter or year, but any period may be chosen.
- Whatever period is chosen, that is the minimum duration of the tenancy, but until notice is given its total duration will not be certain. As the tenancy progresses from one period to another the tenancy is regarded as one continuous tenancy without break or renewal.
- The important thing to remember with respect to periodic tenancies is that the parties must avoid any provision that is repugnant to the nature of such a tenancy and would therefore make it void and unenforceable i.e. either party restricting his right to terminate. If the periodic tenancy is not capable of termination it cannot be said to be for a definable period and therefore cannot be a tenancy at all.

  Centaploy Ltd. v Matlodge; *A term in a periodic lease which permitted only the tenant to terminate the lease was held to be void by the CA*

5) Yearly tenancies

- Tenancies from year to year may be created by express agreement or by implication and may be determined at the end of the first or any subsequent year by service of a valid notice to quit.
- A yearly tenancy may be created by the parties agreeing to "a tenancy from year to year" or that "the tenant shall be a yearly tenant", or words of similar effect. However a tenancy for "1 year and so on from year to year" is a tenancy for a fixed term of 1 year followed by a yearly term. Such a tenancy cannot be terminated before the end of the 2nd year.
- A yearly tenancy will arise by implication whenever the following conditions are satisfied:
  a) A person occupied land with the owner's permission but not as a licensee and not for an agreed period and rent is paid and accepted and is expressed to be or calculated as a yearly sum
  b) A tenant holds over after the expiry of a fixed term tenancy as a tenant at will or at sufferance but subsequently pays or agrees to pay rent on the same terms as under the expired lease in so far as they are not inconsistent with a yearly tenancy.
  c) The lease granted to the tenant is in fact void because it was not made by deed or in writing, as the case may be. In such instances if the tenant can show that he has in fact entered into possession of the premises and has paid a yearly rent he becomes a tenant from year to year upon such terms of the lease agreement as are applicable to a yearly tenancy.
  d) The tenant has entered into possession and paid part of a yearly rent but there is nothing in writing. The mere fact of payment of the rent and acceptance of it will, if not otherwise explained be admission of the fact that a tenancy exists. In the absence of any evidence to the contrary, this would be deemed to be a tenancy from year to year.
- The requirement that there be a yearly rent is satisfied if the rent figure is expressed as an annual sum. It does not matter by what instalments the annual sum is payable e.g. "rent = $12,000.00 per