

Leases are proprietary rights capable of binding third parties whereas licenses are personal rights only not binding 3rd parties. Leases can have security of tenure. They may be able to stay if they have a lease. This is how you were required to start.

Although the face of the agreement is labelled 'Licence to Occupy', but such label is not a decisive factor. We need to investigate the agreement and other related facts to determine the nature of the occupation.

- The Key elements for a contract to be a lease were established in the case of ***Street v Mountford* [1985]** provides common law definition:

1. Exclusive Possession
2. Certainty of Term

■ **Exclusive Possession: The test to see is if landlord has a unrestricted access or restricted access.**

As we can see mentioned under 3.3 The Licensee acknowledges that the Licensor will have access to the Licence area at all times to provide security services to the Licence Area and/or the Estate. This makes it very clear that the licensee has exclusive possession of the whole area without any interference from the Licensor fulfilling the element of Exclusive possession. To understand this better we will look into the case of Bruton v London and Quadrant Housing Trust Ltd [2000] 1 AC 406

Lord Hoffmann has pointed at the case of Street v Mountford explaining the part of Exclusive possession: Unrestricted access

- ***Street v Mountford*** is authority for the proposition that a lease is an agreement that gives another the right to exclusive occupation of land, an agreement having these characteristics is a lease notwithstanding the language indicating another kind of agreement such as a licence.
- The extent of possession an agreement grants depends on the intention of the parties, the language and relevant background.

= A similar situation can be seen in this scenario the language and intention of the contracting parties indicates towards a lease regardless of the document being titled as a license even though it could be contended using clause 6.3 which says that "The Licensor may, on 5 Working Days' notice, require the Licensee to share the Licence Area with another commercial occupier and the Licence Fee payable shall be reduced by the Licensor (acting reasonably) to reflect a fair proportion of the Licence Area that is being shared"

• See ***Aslan v Murphy* (1989)**

'Sham' clauses

- They included cleaning clauses to make it a license which were never provided. • In more extreme cases, landlords have included extreme terms to try and exclude the possibility of a lease as happened In this scenario looking at clause 15 **The Licensee**

acknowledges that this Licence does not confer a right of exclusive possession in respect of any part of the Estate or the Licence Area. Nothing in this Licence is intended to create a tenancy and at the end of the Licence Period the Licensee has no right to remain at, or trade from, the Licence Area.

- Another sham clause could be considered as clause 6. which says that “The Licensor may, on 5 Working Days' notice, require the Licensee to share the Licence Area with another commercial occupier and the Licence Fee payable shall be reduced by the Licensor (acting reasonably) to reflect a fair proportion of the Licence Area that is being shared” A similar clause was also seen in the case of *Dresdon Estates v. Collinson* talked about the same situation to move the licensee from a place to another but looking at the building it could be seen that the whole storage is occupied by the licensee company. This clause couldn't be made operational so it's nothing more than a sham clause.

- The case of *Street v Mountford* talked about the labels at first which was again seen in the case of *Antoniades v Villiers* [1990] the judgment says that the label is not important – you cannot exclude a leasehold relationship simply by calling the document a ‘licence’. They will look at substance of the arrangement and declare it a lease.

• Certain term:

- There need to be certainties for the starting date of the lease and the duration of the lease.
- On the top of page 1 of the Licence of Occupy – the commence date is 4 April, two years ago.
- In Section 1.1, ‘Licence Period’ is defined as ‘the period of 3 years from and including 4 April [two years earlier] (unless terminated under clause **Error! Reference source not found.**)’.
- There is a certain term.
- Implication of a periodic lease: if rent is being paid on a regular basis, court may imply a short periodic lease based on the calculated rental. This fulfils the conditions of a lease.

2nd test for lease Certainty of Term – means certain duration

- In this context, term means the duration of the lease
- Leasehold term can be any length of time, but must be a period which can be determined from the outset – i.e. cannot be based on uncertain end point, ***Lace v Chantler* [1944]**

- **They tried to get the lease till end of war. Held not certain.**

- Can be ‘periodic’ i.e., short periods, automatically renewed
- Can include a ‘break clause’ entitling one/both parties to terminate early

- -- If at the end of period no notice is served by landlord then the lease restarts again for the same period. They are considered to have a certain term as they are kind of short-term agreements. It needs to be provided overall term of the lease is certain.

Certainty of Term

Can a lease with an uncertain term be saved?

1. **Implication of a periodic lease**: if rent is being paid on a regular basis, court may imply a short periodic lease based on the calculated rental: *Prudential v London Residuary Body* [1992], *Ladies Hosiery v Parker* [1930], *Javad v Aqil* [1991]: In this case the parties attempted to get a lease until the land was needed for road driving but as the rent was paid on a regular basis. It was found certain of a periodic term. It was applied on the basis that where the parties have agreed for a certain period then it could be seen at least they have a certainty of time. Where the rent is paid monthly/ weekly/ annually and is paid no matter quarterly or annually but if its calculated periodically then its certain.

= In this case it could be seen that the rent is being paid monthly as license fee “the monthly sum of £15,999 plus any VAT payable on that sum”

Legal lease formalities:

- **3 years or less: no written requirement provided immediate possession; at best rent (Market rent); no premium (no large one-off payment) – s54(2) LPA 1925. They will also cover periodic tenancies, If it's for a short period of time as per S. 54(2) no writing, best rent; no premium paid and the lease is in possession- 3 requirements.**
- **Therefore, it could be seen that all the three requirements are met here concluding it as a lease. Hence, the company is protected by security of tenure enforced as a proprietary right.**

= The situation would have been different if it was proved as a license and the licensee would have to vacate the premises for non-payment as mentioned under sub clause 11.2.1 The Landlord may terminate this Licence and re-enter the Licence Area (or any part of the Licence Area in the name of the whole) at any time after any of the following occurs:

- the whole or any part of the Licence Fee is unpaid 21 days after becoming payable (whether it has been formally demanded or not);
- The Licensee's rights are personal rights. Hence, not protected by security of tenure.