

Licences in land occur where the landowner provides another person permission to utilise the land for a specified purpose. It differs from a lease in that a lease grants exclusive possession for a specific time or term in exchange for rent. To ascertain the nature of an agreement whether it is a lease or a licence the actual circumstances should be examined, and not the title to the agreements established between the lessee and the lessor. Lord Templeman cautioned judges in *Street v Mountford* against sham agreements in which a lease is disguised as a service occupancy or a licence.

Lord Templeman stated further in the same case that a lease is presumed to exist whenever exclusive possession of premises is granted for a term in exchange for a rent. Therefore the initial step is to ascertain whether the occupier possesses exclusive possession. It is stipulated in section 3.3 of the licence document that the licensor shall possess authority to enter the licence area. This access will typically preclude a determination of exclusive possession and consequently prevent the finding of a lease (*Markou v De Silva*). However if the granted access is used only for emergencies or urgent matters that would not preclude this or, in this case, when in fact Jack never uses the access it shall remain that the occupier has exclusive possession.

The second factor to contemplate is the duration stipulated for the occupation. The commencement and the conclusion of the term should be unambiguous. If this stipulation is absent, the lease would essentially be void. In this case, the term is defined explicitly in Section 1 which reads as follows: the period beginning on April 2022 and terminated on the 3rd anniversary of that date. The lease is subject to a maximum duration and is a fixed term lease. Thus it fulfils 2 requirements of the lease.

The final thing to establish a lease is payment of rent. Even though it is not essential for the existence of a lease as affirmed in *Ashburn V Arnold* and section 205 Law of Property Act 1925. The absence of rent may give strong signals there is a lack of intention to create legal relations as a landlord and tenant relationship thus it leads to a finding of a licence. The payment section, however, tells us otherwise by stating the occupier should pay rent monthly to the landlord.

All three of the requirements are therefore met for the agreement to be classified as a lease rather than a licence. A lease enables the tenant to designate the transmission of his interest to a third party. In contrast a licensee whose right is purely personal is unable to do this. In the commercial sphere where business tenancies are safeguarded by the Landlord and Tenant Act 1954 the distinction between a lease and a licence continues to be of utmost importance. This means that the tenant retains the right to occupy the premises after the lease expires to request a renewal of the lease under the same conditions and to be compensated if the renewal is denied. This is a right restricted to business tenants and not to licensees.

In regards to the payment default, the initial consideration is whether the document contains a provision for forfeiture. We can see this in the termination clause 11.2.1 as the licensor may re-enter the premises and terminate the agreement if the licence fee remains unpaid 21 days after it becomes due. It appears that Pets Bedding Ltd has violated the covenant for payment of rent as it has not paid the licence fee for a number of months. There is no need for a formal demand if there are six months or more of arrears. As the premises is used for business purposes instead of residential purposes Jack could re-enter the premises peacefully. Since Pets Bedding Ltd has employed a security guard and it is therefore unlikely that Jack can re-enter the premises peacefully, it seems likely he will need a court order to obtain possession.