

Regarding Jack's agreement with Pets Bedding Ltd, the license agreement will be analysed as to whether it is a lease or a license, whether it is legal or equitable in nature, and any resulting forfeiture rights.

### **Lease Requirements**

Lease requirements are set out in s205(1) of the 1925 Law of Property Act. A lease must be:

- 1) "taking effect either in possession"
- 2) "or in reversion"
- 3) "whether or not at a rent", and
- 4) "subject or not to another legal estate".

In this case, Pets Bedding has physical possession (satisfying #1), is subject to a monthly recurring fee per section 3.1.1 of the agreement (which could be construed as a rent, per #3 above), and does not have any subleases, so #2 and #4 are not engaged here. As such, the Licence Agreement meets the statutory definition of a lease. This does not preclude it from being a licence.

### **Lease vs Licence**

In Jack's position, it would be in his favour for the agreement to meet the definition of a licence, not lease. This is because leaseholds provide more security of tenure by creating a proprietary right in land (per LPA 1925 s1(1)(b)). Leases require more due process (generally) to terminate, as Jack is seeking to do here.

### **Testing Lease vs Licence**

The appropriate test to apply is set out in Street vs Mountford. A document, even if called a licence agreement, will be considered a lease if all of the criteria are satisfied (and no exceptions apply). Further, this test primarily concerns the operation of the agreement in fact rather than what is strictly written in the agreement.

The first criteria is that the tenant must have exclusive possession of the land. This essentially means the tenant is the sole occupier. Rights of the Licensor to access the land for emergency repairs or similar will not invalidate exclusive possession. Jack's licence agreement has two clauses which would complicate Pets Bedding's exclusive possession, 3.3 and 6.3. Unfortunately, these clauses don't seem to be performing in fact. Jack is not providing security, since they have break-ins and Greta has hired her own security. Further, the warehouse is full so Jack is clearly not planning on enforcing 6.3. As such, these clauses would be counted as "sham clauses" per Aslan v Murphy, and would not invalidate Pets Beddings' exclusive possession.

The next requirement is certainty of term, determinable from the outset. The Licence Period is clearly defined as running until the third anniversary of the agreement,

so this requirement is satisfied. Next, as already discussed, the agreement is subject to a rent. Since the Licence Agreement satisfies all the Street v Mountford criteria, it will be a lease unless any exceptions apply.

### Exceptions

Leases can be downgraded to licences by intention. This mainly occurs with familiar arrangements, where the parties did not intend to create legal relationships (Fachinni v Bryson). While Greta is Jack's cousin, this exception likely would not apply, for two main reasons: 1) cousins may not be a sufficiently close relationship, compared to parent/child or spousal relations, and more importantly, 2) Jack and Greta have a signed legal document between them, which Greta signed in her professional capacity, not personal. It would be difficult to argue a lack of intent to create legal relations for a professional arrangement with a signed document.

Another exception is strictly commercial relationships, particularly where the parties acted on legal advice. In these cases, a court would consider the label of the document a more "material factor". While Jack was acting under legal advice, it is unclear if Greta did. Further, per Street v Mountford, the label is a material factor only "where the other terms of the agreement are not conclusive one way or another." In this case, the S v M test was very straightforward, so the commercial exception is less likely to work.

### Legal or Equitable Lease

Since the Licence Agreement satisfies the S v M criteria, and the possible exceptions were less than persuasive, we can conclude that the Licence Agreement is actually a lease. But is it a legal or equitable lease? A legal lease better benefits the tenant, having more ability to bind future purchasers of the freehold. To determine legal vs equitable, the necessary formalities must be examined. A legal lease will satisfy all required formalities to make it "official". As this lease is for a period of exactly 3 years, it would require a deed to be legal. Per s1 of the LP(MP)A, a deed is a document which is clear on its face that it's a deed, signed by the grantor, with a witnessed signature, and is delivered/dated. The Licence Agreement only satisfies the second and fourth of these criteria, so it is not a legal lease. Since the Licence Agreement is still a contract capable of specific performance (s2 LP(MP)A), the court would rule it an equitable lease (Walsh v Lonsdale).

### **Jack's Recourse: Forfeiture**

Landlords retain a right for forfeiture (i.e. to terminate a lease for breach) if there is an express provision for it in a legal lease. As this is an equitable lease, forfeiture is automatically implied (Shiloh Spinners v Harding). There are also clear termination clauses agreed in s11 of the Licence Agreement. As such, Jack clearly has the right to

terminate under 11.2.1, as we know the Licence Fee has been unpaid for several months. If Jack wishes to exercise this right, he should be mindful not to accidentally waive it (such as by accepting the rent, if paid). As the breach of the equitable lease is rent-related, there is no strict notice requirement in law. It is recommended that Jack forfeit via court action, as peaceable re-entry can accidentally incur criminal charges for Jack if done improperly. Jack should also be aware of Greta's automatic right to relief prior to date of court order, and a discretionary right of relief up to 6 months post-court order (s138 County Courts Act).