

Land formative

50 marks

1. Whether it is a license or a lease – what the resulting consequences are

The distinction between a lease and license is important in respect to the rights that Pets Bedding Ltd has in the Mallory Estate. A lease is a proprietary right and can bind a third party as per S1(1)(b) of the LPA 1925, meaning that PB Ltd could assert these rights against new potential tenants as per the clients wishes. Tenants are afforded protection against eviction in a license arrangement as they have security of tenure, including businesses under the LTA 1925 - meaning Pets Bedding Ltd may have the right to stay at the end of the lease if it is found. On the other hand, a license only gives rights in personam **King v David Allen & Sons Billposting 1916** and licensees do not enjoy the same statutory protection as offered under the LTA 1925 for licensees. This is important to distinguish as a label is not important – you cannot exclude a leasehold relationship simply by calling the document a license **Antonides v Villiers**.

Street v Mountford sets out the test to find a lease – where the occupier must have exclusive possession, the agreement must contain certain terms and the agreement is remunerated by a rent. Firstly, PB Ltd must have exclusive possession, which is territorial control' conferred onto the occupier and the right to exclude everybody else, including the landlord from the premises. Clause 3.1 states that the licensor grants the licensee a non-exclusive license to use the license area for storage of the permitted areas, implying a lack of territorial control of the area. Clause 3.2.1 further states that the PB Ltd's rights are granted in common with anyone else who are entitled to similar rights, meaning that the possession is not exclusive.

On the other hand, in **Aslan v Murphey** demonstrates that are not conclusive in a finding of exclusive possession. The land lord in **Aslan** wanted to create license arrangements by including cleaning services into the agreement. Similarly, clause 3.3. states the licensor will have access to the land at all times to provide security services. As shown on the facts, PB Ltd have employed security guards themselves due to numerous break-ins. As held in **Aslan**, the court will ignore sham clauses and will instead examine the reasons why the landlord retains keys and this retention will not preclude the occupier from enjoying exclusive possession.

Moreover, Clause 6.3 states that the licensor can require the licensee to share the license area with another occupier. In **Aslan**, the agreement set out that the licensor was not willing to grant the licensee exclusive possession of the room and was able to permit others to use the room. It was held that the agreement was wrongly described as a license. Depending on the facts, PB Ltd may be able to argue they have exclusive possession if in practice no others were permitted to enter the premises and no services were actually provided, which seems to be the case.

The second requirement for a lease is the certainty of terms, meaning the duration of a lease. In clause 1, the period is stated from the start date ending on the third anniversary, meaning three years. This is a certain term as it is not an uncertain end point **Lace v Chantler**. Lastly, there is a remuneration of rent as shown in the agreement.

Next we must establish if there anything to convert the lease into a license. Some arrangements may have the features of a lease but are still not proprietary for other reasons. The first exception is a service occupancy - occupying the property for the better performance of your job, established in **Norris v Checksfield**. Although PB Ltd are occupying the premiss for their business, the facts of the

case are different as the occupier in Norris was employed by the licensor directly. The second exception is a family relationship as established in ***Facchini v Byrson***. Although Jack and Greta are cousins, this is irrelevant to the principal that a family arrangement or act of generosity will negate an intention to create a tenancy. This agreement was clearly not an act of generosity as PB Ltd is using the premises for the purposes of their business in return for a monthly rent – there was clear intention to create legal relations.

The formality requirements for leases of three years or less require no written requirement provided there is immediate possession, at the best rent and there is no upfront premium payment as governed by s54(2) of the LPA 1925. If the court finds that PB Ltd do not in fact have immediate possession, an equitable lease will be found where there is a contract capable of specific performance ***Walsh v Lonsdale***, as per s3 LP(MP)A. This condition is satisfied on the facts as the agreement is enforceable in contract law and the court could order specific performance of it. An equitable lease has therefore been created despite the agreements attempt to create a license arrangement.

2. Whether Jack (the licensor) can remove the licensees from the warehouse on the basis of non-payment

As it has been established that a license has been created, we can now look at the law of covenants and the obligations it imposes on landlord and tenants – specifically the Landlord and Tenant Covenants Act 1995. Covenants are the promises made by the parties to the lease, creating binding obligations on either side. These obligations include breaches such as non-payment of rent.

As per Clause 1 of the agreement, the license fee is explicitly stated and in clause 4.1 which states that the license fee must be paid in advance of each month. In the event of breach of a primary tenant obligation to pay rent, the client will have a number of remedies available against Pb Ltd such as specific performance Rainbow Estates, damages and debt action. The client would like to remove PB Ltd from the warehouse, therefore the method of forfeiture would be most suitable.

Forfeiture is a legal right in land which the landlord will have if there is express provision for it in the legal lease (s1(2)(e) LPA 1925). In the agreement, clause 11.2 and 11.2.1 state that the landlord may terminate the agreement and re-enter if any of the license fee is unpaid 21 days after becoming payable. Although there is no mention of 'forfeiture' in the provision, forfeiture clauses are automatically implied into an equitable lease.

As previously mentioned, there has been a breach of the agreement specifically clause 4.1. Next, we must ensure that the right for forfeiture has not been waived. The two elements combined will mean the landlord has waived his right to forfeit – if they are aware of the breach and performs some unequivocal act recognising the continued existence of the lease. I advise to the client to not demand or accept any rent as this is a recognition of the tenants continuing status as per ***Central Estates v Woolgar***.

For a rent breach, there are commonly no formal requirements – the old common law rule which is a formal demand for payment of rent – meant to give tenant one last opportunity to pay rent. However, most leases will exclude this requirement 'with or without demand'. In the agreement, clause 11.2.2 states that the agreement can be terminated with or without formal demand. Next, the client must forfeit using the appropriate methods.

There are two available methods available – a court action to obtain possession, which is more favourable, but as the property is occupied there is risk of s6 of the Criminal Law Act 1977 being triggered. This can also be more time consuming and expensive but cannot be challenged. Secondly, the client can peacefully re-renter the property. For commercial properties, this must be done when nobody is there or there is a risk of breaching s7 of the Protection from Eviction Act 1977.

Lastly, we must consider if PB Ltd can be relieved from forfeiture. For rent breaches, there is an automatic right to relief up until the date of a court order and a discretionary right to relief up to 6 months after a court order or peaceable re-entry as governed by S.138/139 of the County Courts Act 1984. This relief will only be granted when it is clear the tenant can pay, therefore, the client should be sure that PB Ltd cannot pay the rent before pursuing action to forfeit the lease. PB Ltd would have to pay all rent arrears to the landlord or into court, not less than 5 clear days before the first hearing of the client's court proceedings.