

Question 19

When Sandro retired, he used a lump sum from his pension to buy a small cottage in a seaside town in Wales, where he had always wanted to live. Having decided to keep his properties in London, Sandro made the following arrangements:

- (a) Sandro allowed his nephew, Jules, and Jules' best friend, Karen, to live in his two-bedroomed house in Bow. Sandro was relieved that he was going to have people he trusted taking care of his house. Before moving in, Jules and Karen each signed identical documents with Sandro. Each document was headed, "Residency Agreement". Its terms included the following clauses:
 - i. the resident has the right to live in the house on a monthly basis;
 - ii. Sandro will retain a key;
 - iii. Sandro reserves the right to sleep on the sofa bed in the study whenever he is visiting London to visit the theatre or check on the house; and
 - iv. the resident is liable to pay £200 per month to live in the house.

- (b) Sandro entered into a deed with Horticulture plc, giving it exclusive use of the plot of land that Sandro held on licence from the London Borough Council. Sandro had used the plot to grow his own produce. The deed provided that Horticulture plc could stay on the plot for "three years or until such time as I decide to return to live in London".

- (c) Sandro agreed that Colin could have a two-year legal lease of Sandro's lock-up garage in the East London Arches for him to use for his car repairing business. They agreed that Sandro could terminate the lease by giving Colin six months' notice. Sandro and Colin settled on the amount of rent for the garage by following the advice of a local estate agent who regularly takes his car to Colin for maintenance and repair. Sandro did not finalise the grant of Colin's lease before he left for Wales, and he later forgot all about it. Colin was not bothered because he had already moved into the garage and was paying rent each month into Sandro's bank account.

Advise Sandro about the legal effect of the arrangements he has made with Jules, Karen, Horticulture plc and Colin. 2022B

Introduction

This is an advice for Sandro about the legal effect of the arrangements he has made with Jules, Karen, Horticulture plc and Colin. The distinction between lease and license is not always obvious. A lease will give the tenants the proprietary right to hold exclusive possession of the property, as a lease creates an estate in the land. Alternatively, a license only provides permission to inhabit the property; it does not generate an interest in the land, but is instead merely a personal right. Tenants, not licensees, are the only parties who can enforce their rights against the landlord. Licensees do not possess the same security of tenure offered to tenants. As such, landlords have traditionally preferred licenses over tenancies, avoiding the security of tenure provided by the Rent Act 1977.¹

Jules, and Jules' best friend, Karen

Sandro arranged for Jules and Karen to live in his two-bedroom house in Bow. Before moving in, Jules and Karen each signed identical documents with Sandro. Each document was headed, "Residency Agreement". These separate documents were titled Residency Agreement which suggests a license, and gave them both the right to occupy the house in return for monthly payments of £200.

The clause which allows Sandro will retain a key and the clause that reserves the right of Sandro to sleep on the sofa bed in the study whenever he is visiting London to visit the theatre or check on the house shows us that Jules and Karen do not have exclusive possession. Exclusive possession means absolute territorial control – able to eject other parties and transfer the interest. This has to be distinguish from mere exclusive occupation (factual presence). There cannot be exclusive possession for example where the agreement allows cleaner into room and in **Westminster CC v Clarke** – Lord Templeman said that a claim of independent possession on the part of a resident in a hostel is incompatible with the exercise of far reaching supervisory control by the owner. One must determine whether Jules and Karen can still have exclusive possession and a lease when there are at least two people sharing the residence.

Jules and Karen will have a lease if they are legally permitted to reject their landlord, Sandro from staying. One must determine whether they hold multiple individual leases, or one single lease, otherwise known as a 'joint tenancy'. The residents of the flat are required to show the four unities required for a joint tenancy, if they are to have a single lease. Joint tenancy exists when a group of co-owners are regarded as a single unit. It allows multiple people to co-own a property; no single individual owns a specific part of the land.² Instead, each co-owner is jointly and severally liable for the terms outlined in the agreement. If Bella and Charles wish to show possession of a single lease, they must demonstrate the following:

1. Unity of possession – Bella and Charles must have the right to reside in any part of the property. Bella and Charles share common areas of the flat, but have private use of their individual bedrooms.

¹ Bevan, Catherin, Leases and Licenses, (1987) 19 B. L. J. 53

² Sparkes, Peter. "Co-Tenants, Joint Tenants and Tenants in Common." Anglo-Am. L. Rev. 18 (1989): 151

2. Unity of interest – Bella and Charles must possess a leasehold interest for equal amounts of time. Charles’ term is unknown, despite sharing an interest. There cannot be unity of interest if Charles’ term is different than Bella’s.
3. Unity of time – Both individuals’ interests needed to have started at identical times. However, Bella’s occupation began one day before Charles’; as such, there can be no unity of time.
4. Unity of title – For unity of title to exist, both parties’ interests must stem from identical documents, or the same single document.

Jules and Karen do not have a joint tenancy, as they do not possess the four necessary unities. However, they could possess individual leases if they are able to prove exclusive possession of a specific area of the residence, such as their bedrooms.³ Jules and Karen only have individual licenses if they do not have individual or joint tenancy. This is underscored by **Hadjiloucas v Crean**⁴, where two people sharing a flat were given identical documents, which granted a six month term, stating it was a licence. The two persons were each responsible for their rent. In this case, the Court of Appeal identified, the residents had licenses; they did not possess the exclusive possession required for any form of tenancy, let alone the unities required for a joint tenancy.⁵ The court arrived at a similar verdict in **Stribling v Wickham**.⁶ The present facts, despite lacking some information, indicate the likelihood that Jules and Karen have licenses that offer a revocable right to occupy the property. As such, Sandro would retain some control over the house.

Jules and Karen are lodgers. The authority for this is **Street v Mountford**⁷ where it was stated there is a lodger if the landlord (L) provides services “which require L or his servant to exercise unrestricted access to and use of the premises”. i) retaining a key means the absence of any right of occupier to resist intrusion (not the provision of services itself); ii) Mere promise by L of such services is not enough to generate a lodging agreement (licence); they must actually be provided – **Markou v Da Silva**;⁸ iii) Very minimal services may constitute shams – and this can be argued; and iv) express reservation by L to enter and view the state or repair and maintain may serve to emphasize the fact that grantee is entitled exclusive possession. There is no clear answer here with the information we have been provided.

Horticulture plc

Sandro entered into a deed with Horticulture plc, giving it exclusive use of the plot of land that Sandro held on licence from the London Borough Council. If the tenant enters into possession and pays rent by reference to a period, in accordance with s54(2) LPA 1925, the

³ Sparkes, Peter, "Breaking flat sharing licences." (1989) 11(5) The Journal of Social Welfare & Family Law 293-307

⁴ [1987] 3 All ER 1008

⁵ Dawson, Monica, and Janine Midgley-Hunt, "Temporary forms of occupation—the role of licences to occupy", (1995) 13(2) Property Management 32-35

⁶ 1989 2 EGLR 35

⁷ [1985] UKHL 4

⁸ (1986) 52 P & CR 204

common law may recognise a legal periodic tenancy (**Prudential Assurance Co Ltd v London Residuary Body**) instead of a longer fixed term lease. This will not always be the case however. There appears to be the situation where Sandro is creating a legal interest but he does not have a legal interest to give. Sandro held on licence from the London Borough Council this is similar to the situation in **Bruton v London and Quadrant Housing Trust** [1999] UKHL 26 case that examined the rights of a 'tenant' in a situation where the 'landlord', a charitable housing association had no authority to grant a tenancy. If the person granting the lease only holds an equitable estate in land then he can only grant an equitable lease. A person cannot grant more than he himself has.

However this will not be a lease because the deed provided that Horticulture plc could stay on the plot for "three years or until such time as I decide to return to live in London". A lease must start at a clearly defined moment and the length must be certain. The classic principle is it must be possible to define the maximum duration of the lease, even if it is possible to end the lease at some time before this (e.g. break clauses). This Principle is seen in: **Lace v Chandler** [1944] KB 368 – a lease for the duration of WW2 was void for uncertain maximum duration.

Colin

Sandro agreed that Colin could have a two-year legal lease of Sandro's lock-up garage but have not complied with the formalities. If the parties have tried to create a legal lease but have failed because they have not complied with the formal requirements for a legal lease, equity will only step in and recognise an equitable lease where there exists a document which constitutes a valid contract to create a lease.

If Sandro and Colin have tried to create a legal lease but have failed because they have not complied with the appropriate formalities. Equity will recognise an equitable lease where the document the parties have used complies with the requirements of s2 LP(MP)A 1989. A document or contract mentioned above must conform with the general law regarding contract formation, as well as s2 LP(MP)A 1989. So, for example, a complete agreement must have been reached. In particular, it must not be void for uncertainty and, in the case of a lease, must include at least the following:

1. the parties;
2. the premises;
3. the rent;
4. the duration of the lease;
5. the date of commencement or the event on which the lease is to commence, if contingent; and
6. any other material terms agreed by the parties.

Provided the purported grant of the lease satisfies s2 LP(MP)A 1989, equity will treat it as an agreement to grant a lease of which it will normally allow specific performance for the

execution of a proper legal lease. 'Equity looks upon that as done which ought to be done', **Walsh v Lonsdale** (1882) 21 Ch D 9, so in the eyes of equity a lease, for the term of the intended lease, has already been granted.

Question 15

To what extent do you think Lord Templeman's speech in *Street v Mountford* [1985] UKHL 4 and subsequent case law help to clarify the distinction between a lease and a licence? 2021A

I want you to write this answer for homework. Read the extract from the case of **Street v Mountford**. Your answer should consider the following questions:

1. In particular, beyond the consistent reference to the agreement being a 'licence', which clause(s) within the agreement might have supported Mr Street's argument that he had only granted a licence?
2. What was Lord Templeman's view as to why this did not support this argument?
3. With the above answer in mind, on what basis did Lord Templeman feel *Murray Bull & Co Ltd v Murray* [1953] 1 QB 211 was wrongly decided?
4. What important concession did Counsel, on behalf of Mr Street, make?
5. What test did this lead Lord Templeman to state will determine whether an agreement is a lease?
6. With the above answer in mind, and with reference to the statutory definition of a lease, which part of the test is not essential for a lease to exist?
7. What analogy did Lord Templeman draw to illustrate when a lease is a lease regardless of its title?