

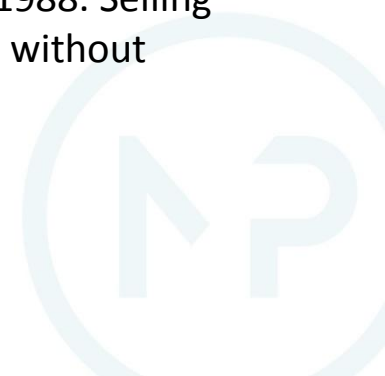
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SOME BASIC ISSUES



Sources of law



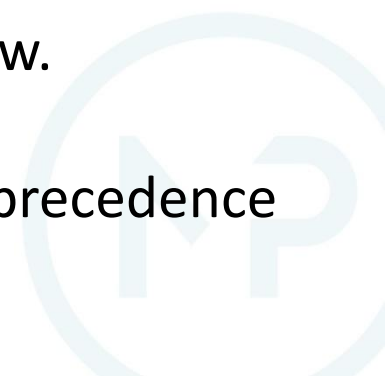
Legislation

- Acts of Parliament.
- Secondary legislation, e.g. Statutory Instruments.
- Since 1915, extensive regulation.
- Rights of tenants depends on particular statutory regime which applies.
- Main statutes:
 - Rent Act 1977
 - Housing Act 1985
 - Housing Act 1988

Common law



- Previous decisions of courts.
- Legislation takes precedence over common law.
- But courts interpret legislation.
- Precedent – judgments of higher courts take precedence over judgments of lower courts.



Another way of characterising sources of law governing rights of occupiers

- A tenancy is both:
 - A legal interest in land, and
 - A contract.



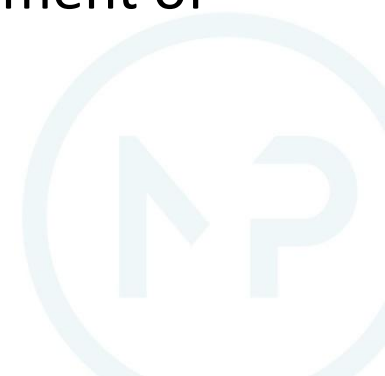
Land Law

- Principles governing creation and transfer of legal interests in land.



Law of contract

- Principles governing creation and enforcement of legally binding agreements.



Quick history lesson

- Before 1915:
 - Landlord and tenant relationship governed by court-made rules ('common law').
- Since 1915:
 - Acts of Parliament providing statutory regulatory relationships between landlords and tenants.
 - Generally provide protections for tenants.



Example:

- At common law:
 - Fixed term tenancy ends when term expires.
 - Periodic tenancy can be terminated by landlord's notice to quit.
- Statutory intervention:
 - Tenancy or right of occupation usually continues.

3 sources of law



CONTRACT

Legally binding agreement – supported by ‘consideration’



LEGISLATION

Acts of Parliament & secondary legislation (SIs, regulations) passed by Parliament



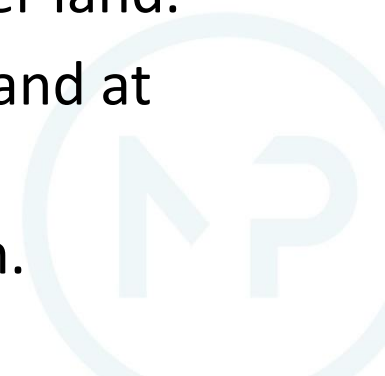
COMMON LAW

General legal principles governing rights over land developed by courts

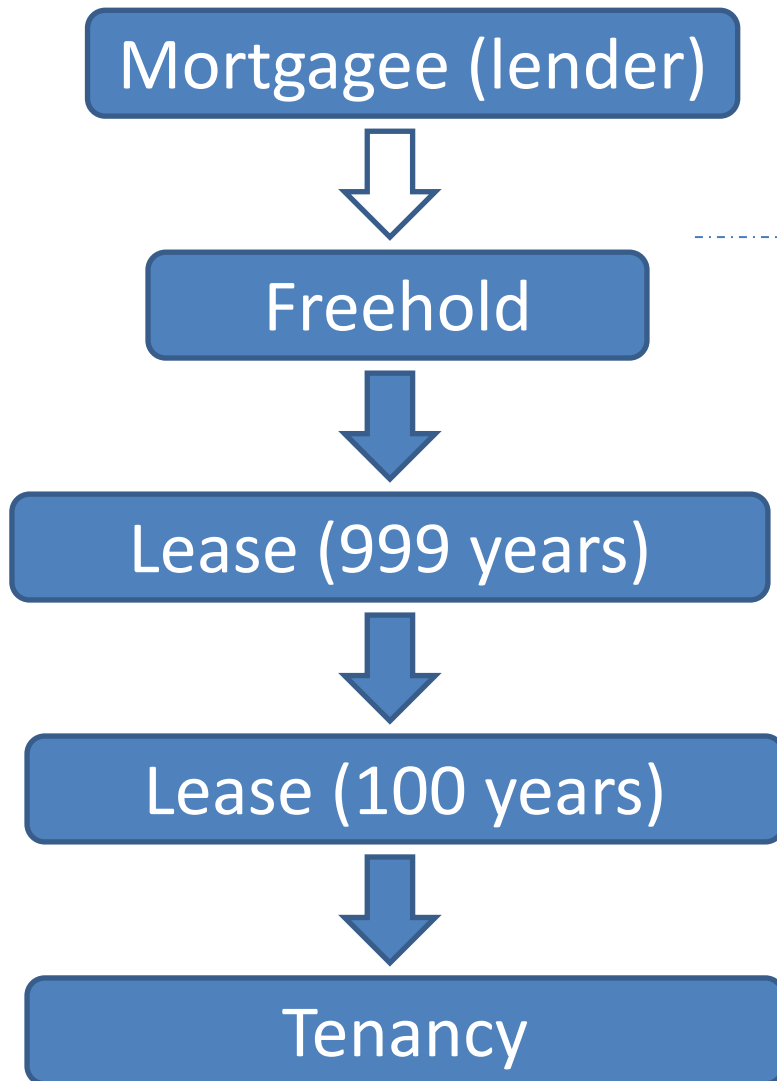
Interests in land



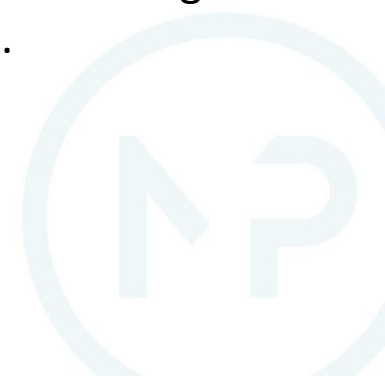
- English law does not recognise ‘ownership’ of land.
- True owner of land said to be the Crown.
- Rather person has a legal ‘interest’ or an ‘estate’ in land.
- Section 175 of Housing Act 1996:
 - “..no accommodation available...which he is entitled to occupy by virtue of an **interest** in it...”
- Own a period of time.
- Person owning an interest can create a lesser interest, or shorter period of time, and confer the benefit on others.
- Different interests give different levels of control over land.
- May be more than one interest in relation to same land at same time.
- All interests in land can be passed to another person.



Interests in land – example



- Loans may be secured by taking a legal charge on property owned by borrower.
 - Lender entitled to take possession if borrower defaults.
-
- Interest or estate for unlimited duration.
 - Nearest thing to outright ownership
-
- A person with a long lease may grant a shorter lease or assign the lease to another person.
 - ‘Lease’ and ‘tenancy’ is same thing.
 - However ‘lease’ generally used for ‘long leases’, i.e. those over 7 years.



4 common law ways of occupying land

Owner (of freehold)

Lease / tenancy

Licence

Trespasser



Security



What is a tenancy?

- Key distinction between:
 - **Tenancy** – legal interest that attaches to the land.
 - **Licence** – merely personal permission to occupy.



Terminology

“Lease / leasehold / long lease”

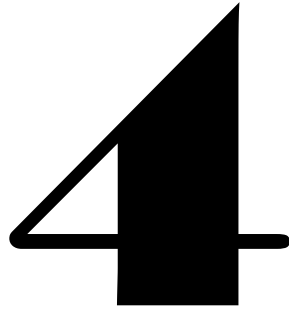
- Commonly used to describe a tenancy of **7 years’** duration or more.

“Tenancy”

- Commonly used to describe lease/tenancy of **under 7 years’** duration.



Tenancy – 4 requirements



- Identifiable parties.
- Identifiable premises:
 - Single room suffices.
- Certain period of time.
 - Fixed term or periodic.
 - Period can be implied where agreement to pay rent at intervals.
- Exclusive possession.



Exclusive possession

- Issue you usually look for to determine whether tenancy or licence
 - Control of premises.
 - Ability to exclude all others including the landlord.



Exclusive possession – substance not form

- Courts examine ***substance and reality*** of agreement and factual matrix in which it exists (*Street v Mountford* [1989] 1 AC 809):
 - Landlord asserted right to move in and share dwelling with the ‘licensees’, but never did and property too small (*Antoniades v Villiers* [1990] 1 AC 417).
 - Express right in agreement to enter for limited purposes (*Bruton v London & Quadrant Housing Trust* [1999] UKHL 26).



Labels and shams / pretences

- What's important is **intention of parties viewed objectively** at the time the agreement was made.
- **Not** how agreement is described or labelled.
 - *“The manufacture of a five pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade.” (Street v Mountford [1989] 1 AC 809 per Lord Templeman at 819E).*



Defeating exclusive possession

Examples

- Landlord provides attendance or services requiring landlord or agents to exercise unrestricted access to and use of premises (*Street v Mountford*).
- Genuine agreement that occupier will share use of dwelling together with others (not joint tenants) (*AG Securities v Vaughan* [1990] 1 AC 417).



Written tenancy agreements

- No requirement that grant must be in writing.
- Occupation agreements may misstate prevailing statutory rights, e.g in relation to:
 - Termination of right to occupy.
 - Visitors.
 - Rights to repair.
 - Utilities.



Period of time

- Tenancy may be:
 - **Fixed term.**
 - **Periodic** – automatically renews at end of each period.
- End of fixed term:
 - **Common law** – tenancy ends, but....
 - **Legislation** – regulates, e.g. what occurs at end of fixed term:
 - E.g. Housing Act 1988, s.5 – statutory periodic automatically arises
- Implied from rent period if no express provision as to period.



Rent?

- Payment of rent or money's worth ('consideration') supports argument that tenancy, since...
- Absence indicates lack of intention to create legal relations or non-commercial relationship (Law of Property Act s.205(1)(xxvii); *Ashburn Anstalt v WJ Arnold & Co* [1989] Ch 1).



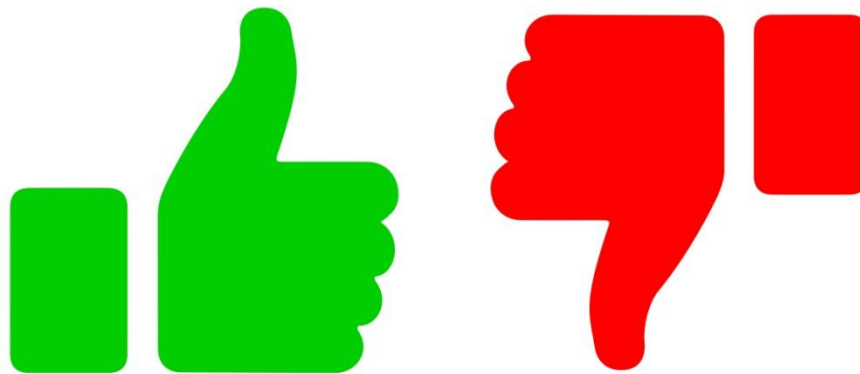
Exceptions to “exclusive possession = tenancy”

- Exceptions to general rule that exclusive possession = tenancy:
 - **No intention to enter into legal relations** – e.g:
 - Family arrangements.
 - Act of charity or generosity (*Street v Mountford*).
 - **Occupation required in connection with services provided or duties owed by occupier to landlord** – e.g. under contract of employment (*Street v Mountford*).
 - **No power to grant tenancy** (*Street v Mountford*).
 - **Other type of legal relationship** (not landlord & tenant).



Family arrangement

- **Presumption:**
 - No intention to create legal obligations.
 - Closer the relationship = stronger the presumption.
- **Presumption can be rebutted:**
 - If evidence of intention to be legally bound by agreement.
 - E.g. Formal tenancy agreement with market rent.
- Each case judged on particular facts.



Intention to be legally bound

- **Not** subjective intention of parties to create tenancy, i.e what parties:
 - *Thought* they were doing.
 - *Said* it was.
- But what agreement is objectively considered to constitute in law.
- Court will examine surrounding circumstances.



Legal intention ✓

No tenancy ✗

- Intention to be legally bound may:
 - Not indicate tenancy, but...
 - Another legal relationship
- *Example* - Allowing occupation pending agreement of terms of lease, e.g.
 - *Sopwith v Stutchbury* (1983) 17 HLR 50, CA.
 - *Javad v Aqil* [1991] 1 All ER 243, CA.



What is a licence?

- Occupier has **permission** to enter or occupy land.
- The permission (“licence”) to occupy is personal to the occupier, i.e:
 - Does not constitute a legal interest in the land.
 - Cannot be passed to a third party by being sold, assigned or inherited.

PERMISSION



Terminology

“Licensee”

- An occupier who has permission to occupy but is not a tenant .

“Lodger”

- A particular type of licensee.
- Occupies part of a house but occupation is under the control of a landlord (or landlord’s agent) who resides in and retains possession or control over the house (*Kent v Fittall (No 1)* [1906] 1 KB 60, CA).



Terminology (2)

“Contractual licence”

- Involves consideration by licensee.
- May be oral or in writing.
- Ends at end of fixed term (if any); no requirement for notice (*Sandhu v Farooqi* [2003] EWCA Civ 532).

“Bare licence”

- No consideration (money or “money’s worth”).



EXERCISE



Tenancy terms

Express terms

- Most commonly expressed in written agreement.
- But may be verbally agreed.
- May be overridden by statute.

**ASSURED SHORTHOLD TENANCY AGREEMENT
Housing Act 1988 (as amended by the Housing Act 1996)**
*Note: This agreement must only be used with the My Deposits
insured scheme only*

**National Landlord Accreditation
Scheme Reference**

**THIS AGREEMENT IS
MADE AS A DEED ON:**
[insert date of agreement]

Landlord Details

Landlord Name(s)

NOTICE for the purposes of
section 48 Landlord and Tenant
Act 1987 - Landlords address for
service in England or Wales

Tenant Names

Lead Tenant

2
3
4
5
6

Tenancy Address

Address

--

Fixed Term

From and including the

--

To and including the

--

Rent and Deposit

Rent

£

Payable in advance every (delete
as appropriate)

Calendar Month / Two Calendar Months / Quarter

The first FULL payment of rent
shall be paid on the

--

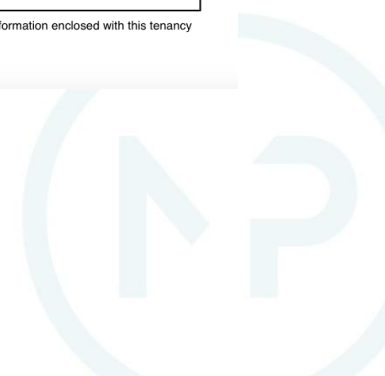
And thereafter shall be payable in
advance on the

day of every month / two months / quarter

Tenancy Deposit

£

The tenancy deposit will be protected by My Deposits. See the prescribed information enclosed with this tenancy agreement.



Implied terms

Implied terms

- Acts of Parliament provide that certain terms exist, irrespective of stated terms of any tenancy agreement,
- E.g. right to repair of:
 - Structure
 - Exterior
 - Installations for supply of water, gas, electricity, sanitation, space heating, heating water.(for tenancies of under 7 years; LTA 1985, s.11).



Landlord and Tenant Act 1985

1985 CHAPTER 70



Joint tenancies

Requirements

- 'Four unities':
 - Title (title arises under same document or act)
 - Time (starts at same time)
 - Interest (duration, nature and extent of interests are same)
 - Possession (each tenant entitled to possession of same premises).



Key characteristics

- Only one tenancy.
- Joint and several liability – landlord can sue every or each tenant for whole rent as he sees fit.
- Valid notice to quit from only one joint tenant operates to terminate joint tenancy (*Hammersmith & Fulham LBC v Monk* [1992] 1 AC 478).

3 ways tenancies end (at common law)

- Notice by tenant
- Surrender
 - Agreement between landlord & tenant that tenancy will end.
- Unilateral termination by landlord.
 - Written notice.
 - Court order required?



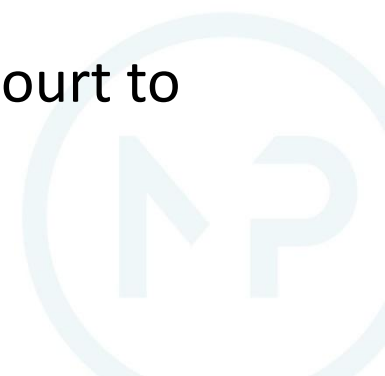
Notice to quit by tenant

- Periodic tenancy can be ended by tenant.
- Requirements:
 - In writing.
 - Must expire on last of first day of period of tenancy.
 - At least 28 days' notice (PEA 1977, s.5).
- Template: markprichard.co.uk/documents/notice-to-quit-by-tenant
- One tenant may end joint periodic tenancy by giving *valid* notice to quit (*Hammersmith & Fulham LBC v Monk* [1992] 1 AC 478).
- Other joint tenant(s) becomes trespasser upon expiry.
- What if sole tenant gives invalid notice to landlord?



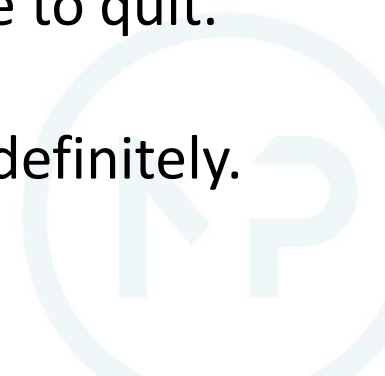
Surrender

- Agreement between landlord and tenant that tenancy will end.
- If joint tenancy, all tenants must agree.
- 2 types:
 - **Express** – must be by deed (written agreement, expressed to be a deed, properly executed, i.e. signed by all parties & witnessed).
 - **Implied** – unequivocal conduct by both parties as to:
 - Relinquishment (offer) by tenant.
 - Acceptance by landlord.
 - Other conduct consistent.
 - If disputed, ultimately question of fact for court to determine.



Handing back keys?

- Questions:
 - For what purpose did tenant give keys to landlord?
 - Joint tenancy – did other tenant agree?
 - Does landlord wish to end tenancy?
- *Laine v Cadwallader* (2000) 33 HLR 397, CA:
 - Tenant put keys through letterbox.
 - Landlord later claimed 4 weeks' rent because tenant obliged to give 4 weeks' notice
 - Held:
 - Return of keys constitutes *offer* of surrender.
 - Landlord entitled to treat as informal notice to quit.
 - Tenants therefore liable for 4 weeks' rent.
- Landlord entitled to treat tenancy as continuing indefinitely.



'Abandonment'

- Many social landlords have 'abandonment' procedures.
- Term has no legal meaning.
- Absence of tenant \neq surrender.
- Do tenant's actions = unequivocal relinquishment of tenancy?



'Abandonment' (2)

- Do tenant's actions = unequivocal relinquishment of tenancy?
- e.g. *Loveridge v Lambeth LBC* [2014] UKSC 65:
 - Secure council tenant physically absent but paying rent.
 - Failed to comply with contractual obligation to inform landlord if absent for more than 8 weeks.
 - LA took possession without court order, cleared possessions, and re-let.
 - Held to be unlawful eviction.
 - £90,500 statutory damages (HA 1988, ss.27 and 28).
- Statutory procedure allowing landlords to obtain possession without obtaining order not yet brought into force (ss57-62 Housing and Planning Act 2016).



Joint tenant vacates...

- Remains liable unless:
 - Assignment to sole tenancy.
 - Deed of release.
 - Notice to quit (new sole tenancy agreed?)
 - Transfer under Family Law Act 1996.



EXERCISE

