

INTRODUCTION

This paper discusses in detail the statement that

The theory of tenure requires that all land that is held for any estate shall be held of a lord. It was on this premise that the relationship of landlord and tenant for a term of years that had no place in the old feudal land law was brought into the category of estates and came to be based upon tenure. A lease is construed as both a contract and an estate. Today, it is the only form of tenure that retains any practical importance.¹

With the aid of barons, William the Duke of Normandy invaded and conquered England in 1066. He became William I. All land belonged to the crown. One quarter was treated by William as personal property and the rest was leased out under strict conditions. The country was split into manors which were given to Barons by the King. In return the Baron and his Knights had to serve on the royal Grand Council, pay various dues and provide the King with military service when required. The Baron kept as much land as he wished for his own use, then distributed the rest among his Knights who were thereby bound to meet the Baron's military needs, when either he or the King called for them. The knights in turn allocated sections of their lands to villeins (serfs) who had to provide free labour and food and service whenever, with or without warning, it was demanded.²

For several centuries after William the Conqueror initiated the feudal system in England (1066), all that existed in common law England relating to the ownership of land were the concepts clustering around the idea of feudal tenure which would evolve into legal title. During this time there was considerable evolution as to the scope of power assertable by the private owner (legal title holder). The law slowly shifted away from the king having primary control over the use of and title to land to the private individual (lords and knights) having primary control. After the Statute Quia Emptores (1290), the English land laws began to take a form that we would recognize today, with the individual able to make an inter vivos transfer of interest in land without having to have the permission of the king or an overlord.

THEORY OF TENURE

A feudal pyramid with the King at the top and the actual occupants of land at the base was thus constructed. Each of the sets of services provided to the King was known as a tenuere, for it showed upon what terms land was held. This has shown that land was held for a variety of services. But whatever the nature of the services, all tenants had one thing in common, namely that they held land of a

¹ Megarry and Wade **The Law of Real Property**, 6th ed London, .2000

² J.G.Riddall **Introduction to Land Law** 5th ed.London,1988

superior lord. Tenure connotes not merely the holding of land but also the holding of land from a superior lord and that the land is held in return for certain services by the tenant to his lord.

The two most fundamental doctrines of land law emanated from this. The first doctrine is tenure as discussed above. The other doctrine is of estate. That land held in tenure is also held for an estate. That is, for some period of time. Estate therefore is concerned with the length of time for which land is held. It is an interest in land of defined duration.³

CATEGORIES OF ESTATES

Estates were divided into two categories:

- (a) Freehold Estates
- (b) Estates Less than Freehold or Leasehold Estates

Freehold Estate was one whose duration was uncertain. There were three estates of freehold. They included:

- Fee simple, which was near to absolute ownership;
- Fee tail, which continued for as long as the original tenant or any of his lineal descendants survived.
- Life Estate, which lasted for life only.

Estates less than Freehold or Leasehold Estates have one marked distinction. Which is that the maximum duration is fixed with time. They can be divided into three principal categories:

- A fixed term of certain duration in which a tenant may hold the land for a fixed term of certain duration, as under a lease for 99 years.
- A fixed term with duration capable of being rendered certain as for a lease of land to someone from year to year.
- Tenancy at Will is a type of leasehold, which may continue indefinitely or may be determined by either party at any time.

LEASE TODAY

A lease is an estate or interest in land of defined duration. It is sometimes called a term of years or demise. A lease has both a contract and in most cases an estate. Further a lease has two essentials namely exclusive possession and certainty of duration.

³ William Howarth **Land Law in a Nutshell**, 3rd ed. London. 1994

LEASE AS CONTRACT

A lease is a contract for the exclusive possession and profit of land for some determinate period. The consideration in the contract is usually but not always the payment of rent. Rent is regarded as a contractual payment for the use of the land. Many have defined the word "rent" and it is taken to include the performance of services. In *Knights case* (1588) 5 Co.Rep.54b at 55a. it was settled that there can be a valid lease even though no rent is payable.

The consideration furnished by the tenant may include

- the payment of a premium; remission of interest on a debt owed to him by the landlord;
- his undertaking to perform the covenants in the lease;
- the mere acceptance of the lease by the tenant.

Like a contract, a lease may be frustrated. In *National Carriers Ltd v Panalpina (Northern) Ltd* (1981) AC.675

In *Hussein v Mehlman* (1992) 2 E.G.L.R 87 the tenant treated the lease as at an end because of landlord's failure to carry out repairing obligations. Furthermore, the courts are willing to imply terms in the lease as they do for contracts. The court will set aside a lease induced by fraud of one of the parties as was held in the case of *Killick v Roberts*(1991) 1 W.L.R. 1146.

Under the Statute of Frauds 1677 a contract for the sale or other disposition of land or any interest in land is unenforceable unless evidenced in writing or by a sufficient act of part performance. The granting of a lease and assignment of a lease whether legal or equitable is a disposition of an interest in land. Thus any contract for the assignment or granting of a lease, legal or equitable, must comply with the requirements of the statute of Frauds.⁴

LEASE AS ESTATE

A lease is an estate in land of defined duration. It is capable of subsisting; as a legal estate, but it must be created in the manner required by the law and satisfy the definition of a 'term of years absolute' otherwise it is an equitable interest.

There are two important characteristics of an estate. A lease has the two important characteristics of an estate and these are

- Indication of the duration of the holder's interest in the land
- The holder is able to recover the land from anyone who dispossesses him.

⁴ Introduction to land Law Ridall JG (1988) 4th Edition London

ESSENTIALS OF A LEASE

A lease has two essentials to be satisfied for it to be valid namely exclusive possession and certainty of duration

EXCLUSIVE POSSESSION

This right involves excluding all others, including the landlord, from the premises. If the lease does not have the right to exclusive possession, it is likely that one holds merely a license.

A license is also inferred if the landlord remains in general control of the property (for example in an inn or a boarding house) In *Wells v Kingston Upon Hull Corp.* (1875) a graving dock was 'let' but the corporation retained the right to open and shut gates and clean the docks. It was held that only a license and not a lease had been created because general control remained with the corporation.

More recently in *Somma v Hazelhurst* the court applied the test of the intention of the parties as inferred from the parties and surrounding circumstances, when determining whether a license or lease had been created.

However the decision in *Street v Mountford* had it that the intention of the parties is no longer essential. In deciding or examining agreements, the courts have to establish the element of exclusive possession.

A license rather than a lease may be inferred in exceptional circumstances even where exclusive possession exists. This may be in the case of family arrangements. In *Cobb v lane* it was held that the existence of family relationships does not prevent a tenancy. In *Nunn v Dalrymple*. Acts of friendship and charity. A license may be inferred.

CERTAINTY OF DURATION

The date of commencement of the lease and the duration of the lease must be either fixed or ascertainable before the lease takes effect. If only one of the two requirements above is complied with, it is not a lease. In *Lace v Chantler*, a lease for the duration of the second world war would have been void had it not been for the provisions of the Validation of Wartime Leases Act, 1944 which converted such leases into terms of 10 years.

CONCLUSION

The first thing to note about land law is that no subject can own land. Theoretically all land belongs to the Crown and the **only** person who is capable of owning land is the monarch. This is an idea which dates from the Norman conquest in 1066 and which persists even **today**. The subject cannot therefore own the land upon which he lives or runs his business, but he is allowed the use of the land by the Crown.

What the subject owns is a series of rights and duties in relation to that piece of land. Understandably lawyers have given a name to the interest in land which the subject holds, and that name is an 'estate in land'. So the land belongs to the Crown and the subject owns an estate in the land, which gives him certain rights in relation to it. Thus a freehold owner is said to 'hold land of the Crown'. At one time it was usual for an estate owner to render services to the Crown in return for the right to use the land, but these services are now performed **only** in the rarest of cases and tend to be regarded as an honor rather than as an obligation (for example, the duty to supply a pair of gloves for the monarch to wear at his coronation).

The relationship between the freehold owner and the Crown is called '**tenure**' (from the Latin word 'tenere' which means 'to hold'). At one time there were many types of freehold **tenure**, classified according to the nature of the services to be rendered by the estate owner. **Today only** one of these forms of **tenure** remains and that is called 'free and common socage'. For all **practical** purposes the doctrine of **tenure** has little modern significance, and most freehold owners are completely unaware of their tenurial relationship with the Crown.

In the case of leasehold property, the relationship between a landlord and his tenant is also one of **tenure**, although it usually involves the payment of rent rather than the performance of services.

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