

Answers to end of chapter Q&A

Question 1: If A makes a contractual agreement to allow B to occupy land, why might B want to claim that the agreement gives him or her a lease?

This question is examined on pp 716-730. The best way to approach it is to compare the effects of B's having a lease with the effects of B's having a licence. First, if B has a lease, this can give B particular rights against A, in addition to the rights that A has expressly agreed to give B. For example, in *Street v Mountford*, which is discussed on pp 717-721, the House of Lords found that Mrs Mountford (B) had a lease: as a result Mr Street (A) was under certain statutory duties to Mrs Mountford. Those duties would not have arisen had the agreement between A and B given B a contractual licence. Moreover, if B has a lease, then B, unlike a licensee, is in a landlord-tenant relationship with A: the consequences of this, many of which benefit B, are discussed on p 730 and examined in more detail in Chapter 25.

Second, if B has a lease, B has a property right in A's land. This gives B important additional protection against third parties. As shown by the decision of the House of Lords in *Hunter and others v Canary Wharf Ltd* (discussed on pp 722-725), if B has a lease, B may be able to sue a third party in nuisance if that third party interferes with B's enjoyment of land; but no such nuisance action will be available to B if B has only a contractual licence. Further, as shown by the decision of the Court of Appeal in *Ashburn Anstalt v Arnold* (discussed on pp 726-727), a lease, unlike a contractual licence, is capable of binding a third party who later acquires A's land.

Question 2: In *Street v Mountford*, the House of Lords held that A's contractual agreement with B can give B a lease even if A clearly did not intend the agreement to have that effect. Can that aspect of the decision be defended, either from a doctrinal or policy perspective?

This aspect of the decision in *Street v Mountford* is discussed on pp 730-735. In the extracts set out on p 731 and pp 732-733 respectively, each of Street and Hill expresses concerns about the approach of the House of Lords. Nonetheless, it may be possible to defend the decision. First, Hill suggests that a policy in favour of protecting vulnerable occupiers, who are not in practice free to negotiate the terms of their occupation, may mean it is 'reasonable to look at the lease/licence distinction from the consumer law perspective rather than purely as an aspect of the law relating to real property'. Second, in the extract set out on p 734, McFarlane suggests a doctrinal argument in favour of the decision, pointing out that it simply returns to the traditional test for a lease: if A gives B a right to exclusive possession of land for a limited period, then B has a lease even if A intended to give B some other type of right.

Question 3: In *Antoniades v Villiers*, the House of Lords, in deciding that Mr Villiers and Miss Bridger had a joint right to exclusive possession, disregarded a term in an agreement signed by both Mr Villiers and Miss Bridger. Can that aspect of the decision be defended, either from a doctrinal or policy perspective?

The decision in *Antoniades v Villiers* is discussed on pp 740-750. In that case, the House of Lords held that Mr Villiers and Miss Bridger had a joint right to exclusive possession, even though a term of their agreement with Mr Antoniades stated that he had a right to force Mr Villiers and Miss Bridger to share occupation of the flat with further occupiers. In effect, that term was ignored in deciding if the agreement gave the couple a joint right to exclusive possession of the flat.

It may be possible to defend the decision on policy grounds. In part of his speech set out on p 742, Lord Templeman notes that, if the term in question prevented the couple from having a lease, it would be very easy for a party such as Mr Antoniades to deny an occupier the statutory protection given, by the Rent Acts, to those with a lease. From this perspective, the decision in *Antoniades* can perhaps be seen as part of the 'consumer protection' approach discussed in the answer to Question 2 above (see p 750). This view raises the question of whether the *Antoniades* approach is still relevant today, given that the Rent Acts no longer apply to new tenancies, and very little statutory protection is now given to residential tenants renting from private landlords.

It may also be possible to defend the decision on doctrinal grounds. One means to do so is to argue that the decision is not dependent on a special policy applying to residential occupiers, but instead flows from a general principle that states that apparent contractual terms have no effect if they are 'pretences': that is, if neither party intends that the term will, in practice, be enforced. This argument is made by Bright in the extract set out on pp 748-749. That approach is doubted by McFarlane & Simpson: as seen from the extract set out on pp 746-747, they do not accept that there is a principled basis for the 'pretence' test. Nonetheless, they suggest a different doctrinal justification for the particular decision in *Antoniades*: as suggested in Lord Oliver's speech, it may be that, due to the very cramped nature of the flat, it simply was not reasonable for Mr Antoniades to believe that the couple were genuinely agreeing to share occupation with a further occupier.

Question 4: In *AG Securities v Vaughan*, the House of Lords assumed that it is impossible for B1 and B2 to acquire a lease as tenants in common. Is that assumption correct?

The difficulties arising where multiple occupiers claim a lease are discussed on pp 750-755. For example, as shown by *Mikeover v Brady* (see pp 751-753), if B1 and B2 wish to claim that they have a lease from A, they need to show that they have unity of possession; unity of interest; unity of time; and unity of title. This is due to the assumption, made by the House of Lords in *AG Securities v Vaughan*, that it is not enough for B1 and B2 simply to show that they have unity of possession, and are thus tenants in common of a lease. In the extract set out on pp 753-754, Sparkes suggests that the assumption is mistaken: there is no doctrinal reason why B1 and B2 should have to show anything more than unity of possession. As noted on p 754-755, Smith and McFarlane take the opposite view, each

for different reasons. It is also important to consider the issue from the policy perspective: it may seem strange that, given the support for occupiers shown by the decisions in *Street v Mountford* and *Antoniades v Villiers*, a technical approach should be taken to deny a lease in a case such as *Mikeover v Brady*.

Question 5: Are there any genuine exceptions to the rule that, if A gives B a right to exclusive possession of land for a limited period, B has a lease?

This question is discussed on pp 760-762. As noted by Millett LJ in the extract set out on p 761, Lord Templeman, in *Street v Mountford*, set out a number of situations in which B has a right to exclusive possession of A's land, but does not have a lease. These situations were described by Lord Templeman as exceptions to the general rule that exclusive possession constitutes a lease. Millett LJ, however, queries whether all these situations are true exceptions to the rule. Certainly, as noted in the text on p 761, it may be that some of the cases can be explained by the fact that a lease consists of exclusive possession of land *for a limited period*; and that some other cases depend on the fact that, for a lease to exist, B must have a *right* to exclusive possession of A's land. On this view, it may be that the cases of a charitable or service occupier are the only true exceptions; and, as noted on pp 761-762, it can be argued that those exceptions should be rejected.

Question 6: Do you agree with Lord Browne-Wilkinson that the result reached by the House of Lords in *Prudential Assurance Ltd v London Residuary Body* had a 'bizarre' practical outcome?

This case is discussed on pp 755-758. In 1930, Mr Nathan sold a strip of his land to the London City Council, subject to an agreement that he could continue to have exclusive possession of that land, in return for an annual rent of £30, until the council needed to use the strip of land in order to widen the adjacent public road. The intentions of the parties were clear: Mr Nathan's right to use the land would end only if that land was needed by the council for road-widening. However, the rule that a lease consists of a right to exclusive possession of land *for a limited period* meant that the intentions of the parties were frustrated. Mr Nathan's successor in title, Prudential Assurance Ltd had only a yearly periodic tenancy, thanks to its rent payments and possession of the land: as a result, the successor in title to the council, the London Residuary Body, could remove Prudential Assurance from the land even if it was *not* needed by them for road-widening.

The 'bizarre' aspect of this result came from the fact that Prudential Assurance now owned a building, on a shopping street, but could potentially have no right to use the land connecting that building to the public road. Lord Browne-Wilkinson considered this to be an 'unsatisfactory outcome', out of step with the intentions of the original parties to the agreement. Yet it should be noted that this does not mean the rule applied in the case is necessarily defective: as noted on p 758, there are a number of ways around the rule; and, in the extract set out on p 759, McFarlane argues that it has a sound doctrinal justification. Moreover, in the extract set out on pp 759-760, Bright argues that the result in *Prudential Assurance* is not necessarily bizarre: it would perhaps have been more odd if

Prudential Assurance had been allowed to continue using a valuable piece of land, owned by the London Residuary Body, for a fixed rent agreed over sixty years earlier.