

Property

- Module 14
- Leasing Real Property

The Lease

- Does a L/T relationship arise?
 - Rights/duties
 - Liabilities/remedies
- Contract versus conveyance
- Statute of Frauds
- Form contracting

Leasehold Interests

- Introduction: The Leasehold Estates; Compared to Other Interests
 - Leases vs. Licenses vs. Freehold Estates
 - The Three (four?) Leasehold Estates; *Numerus Clausus* redux?
- Landlord's Obligations
 - Delivery of Possession
 - Tenant Selection
- Exiting a Lease
 - Transfers by Landlord
 - Sublease and Assignment

Leasehold Interests

- Leases Compared to Other Interests
 - Leases vs. Licenses
 - Leasehold Interests
 - Tenancy for Years
 - Periodic Tenancy
 - Tenancy at Will
 - Leasehold vs. Freehold Interests: The "lease for life"
 - *Effel v. Rosenberg*
 - *Garner v. Gerrish*

Effel v. Rosberg (Tex. App. 2012)

- Dispute / issue?
- Lena Effel “shall continue to occupy the property for the remainder of her natural life, or until such time as she voluntarily chooses to vacate the premises.”
- Appeal of seventeen issues . . .
- Notice period (non) issue?

Garner v. Gerrish (NY Ct. App. 1984)

- Dispute / issue?
- “for and during the term of quiet enjoyment from the first day of May, 1977 which term will end – Lou Gerrish has the privilege of termination [sic] this agreement at a date of his own choice”
- Note 2, pg. 461

Leasehold Interests

● Lease Problems:

1. L and T sign an agreement that reads, "The term is one year, beginning September 1."
2. L and T sign a lease that reads, "This agreement lasts as long as the parties consent."
3. L and T sign an agreement that reads, "The lease will run from September 1 until the following August 31. One thousand dollars payable on the first of every month."
4. L and T enter a lease that reads in relevant part, "the rent is \$48,000 per year, payable \$4,000 on the first of each month."
5. L and T enter a lease that reads, "the rent is \$1,000 per month."
6. L and T enter a lease that reads, "the rent is \$1,000 per month and lasts until the tenant completes medical school."
7. L and T are negotiating on the phone over an apartment lease. At the end of the conversation L says, "Have we got a deal? Five years lease with rent at \$10,000 a year?" T replies, "Great. I accept. It's a deal."

Leasehold Interests

● The Problem of Holdovers:

● Landlord's Options with respect to the Holdover:

1. Treat the holdover as a trespasser (i.e., bring an eviction proceeding and sue for damages).
2. Act as if the holdover is bound to the lease for another term (the tenancy at sufferance).

● Mechanics:

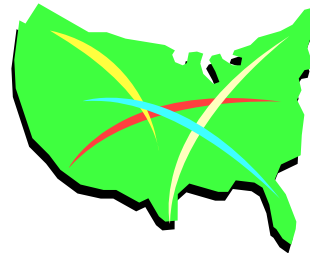
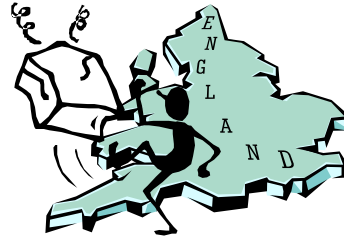
- The landlord must elect one of the two options; once she does, she can't change her mind
- The election may be implied rather than explicit. For example, accepting rent offered by the holdover will create a tenancy at sufferance.

● Landlord's Obligations to the Incoming Tenant:

- Hannan v. Dusch

Hannan v. Dusch (Virginia 1930)

- Dispute?
 - implied covenant to deliver possession?
- English rule
- American rule



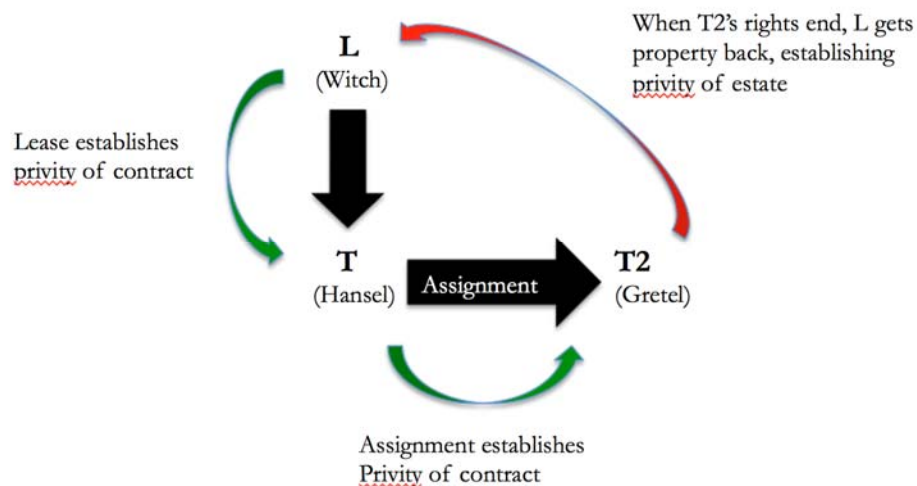
Exiting a Lease

- Transfer by Landlord:
 - Alienation of the Reversion
 - Contracting Around: Early Termination Clauses
- Transfer by Tenant: Assignment and Sublease
 - Assignment: Original tenant conveys her entire interest to a new tenant.
 - Sublease: Original tenant conveys part of her interest to a new tenant.
 - Reservation of a reversion, and/or
 - Right to cut short

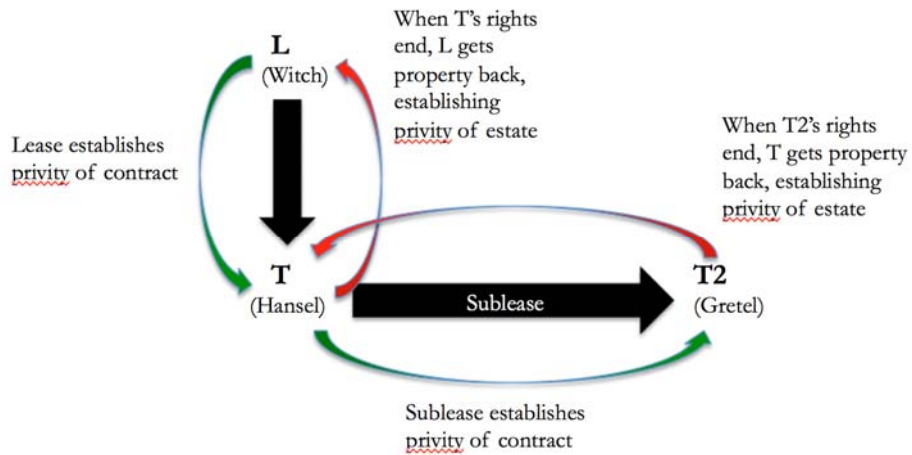
Exiting a Lease

- Assignment and Sublease: Privity
 - If the new tenant stops paying rent, who is on the hook? Who can sue whom?
 - The answer depends on privity: a plaintiff may only sue a defendant with whom he is in *either* privity of estate or privity of contract.
 - Privity of Contract: a relationship between two parties who have entered into a contract with one another.
 - Privity of Estate: A relationship between two parties who have successive possessory claims in the same property.

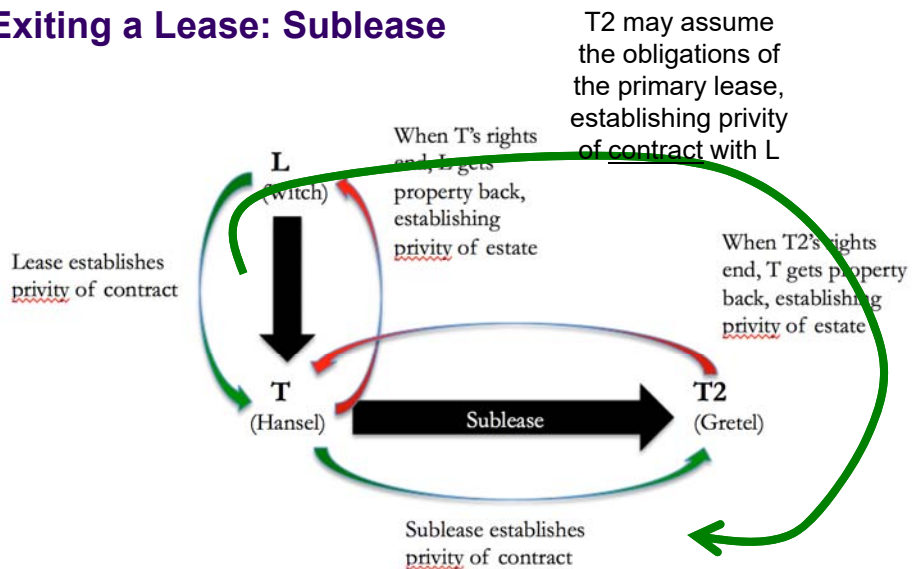
Exiting a Lease: Assignment



Exiting a Lease: Sublease



Exiting a Lease: Sublease



Problems – pg. 487-488

1. Landlord leases property to T1 from January 1, 2015 to December 31, 2015. On March 1, T1 sold T2 her remaining interest in the property. On October 1, T2 rented the property to T3 for two months. Describe the privity relationships between all of the parties. If T3 stops sending rent payments to Landlord, whom can the Landlord sue to recover the money?
2. Alger, a landlord, rents a commercial building to Brown for 5 years. Six months into the lease, Brown subleases his interest to Clancy for 3 years. Clancy then turns around and assigns his interest to Dahl. Describe the privity relationships between all of the parties. If Dahl stops sending rent checks to Alger, whom can Alger sue to recover the money.
3. Picasso, a landlord, rents an apartment to Renoir for one year. The lease contains a provision allowing the tenant to renew the leasehold for a second year on the same terms. Renoir assigns his interest in the lease to Seurat. Seurat then assigns his interest to Turner. What are the privity relationships between the parties? Can Turner exercise the renewal clause in the original lease? See *Castle v. Double Time, Inc.*, 737 P.2d 900 (Okla. 1987) (discussing renewal clauses).
4. Landlord leases a unit to T1 for ten years beginning in 2010. In 2012, T1 transfers all of his right to T2 “for a period of five” years. In 2013, T2 subleases to T3 for one year. What are the privity relationships and whom can the landlord sue if T3 stops paying rent?
5. L leases a commercial property to T1 for ten years beginning in 2010. In 2012, T1 assigns all of her interest to T2. A year later, T2 assigns all of her interest to T3. In 2014, T3 subleases to T4 for a term of four years. In the sublease contract, T4 agrees to assume “all of the covenants and promises” in the original lease between L and T1. In 2015, T4’s business fails and she ceases making paying rent. What are the privity relationships? Whom can L sue to recover the unpaid rent money?

Exiting a Lease: Sublease and Assignment

- Limits on the Right to Sublease or Assign
 - Julian v. Christopher
 - NY RPL § 226-b

Julian v. Christopher (Md. 1990)

In a "silent consent" clause requiring a landlord's consent to assign or sublease, there is no standard governing the landlord's decision. Courts must insert a standard. The choice is usually between 1) requiring the landlord to act reasonably when withholding consent, or 2) permitting the landlord to act arbitrarily and capriciously in withholding consent.

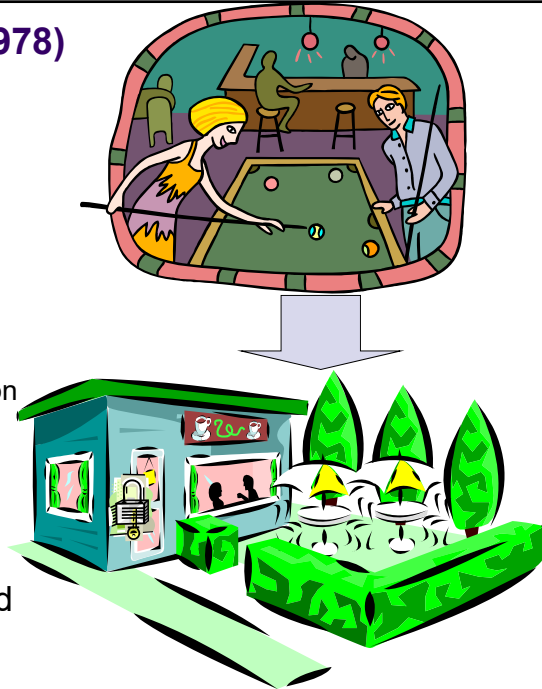
- Landlord right to . . . ?
 - "withhold their consent to a subletting or assignment even though the withholding of consent was arbitrary and unreasonable"
- Below . . .
 - "If you don't have the words that consent will not be unreasonably withheld, then the landlord can withhold his consent for a good reason, a bad reason, or no reason at all in the context of a commercial lease, which is what we're dealing with."
- Trend . . .
 - "The modern trend is to impose a standard of reasonableness on the landlord in withholding consent to a sublease unless the lease expressly states otherwise."
 - In a freely and explicitly negotiated way
- Why change?
 - RonA – a property law reason
 - "public policy which implies a covenant of good faith and fair dealing in every contract" – a contract law reason
- What qualifies as reasonable or unreasonable reasons to refuse a consent to sublet or assign?
- Prospective effect (except for parties to the case)

Exiting a Lease: Abandonment and Eviction

- Tenant Abandonment: *Sommer v. Kridel*
- Eviction
 - Procedures:
 - Self-Help: *Berg v. Wiley*
 - Judicial Process: The Summary Proceeding/Forcible Entry and Detainer

Berg v. Wiley (Minn. 1978)

- Dispute
- Did Berg abandon or surrender?
- Retaking rightful?
 - c/l rule
 - Legal right to possession
 - Peaceable retaking
 - Modern trend?
- Outcome for parties and for Minnesota law?



Sommer v. Kridel (NJ 1977)

- And . . .
 - Riverview Realty Co. v. Perosio
- Disputes
- Duty to mitigate?
- Pros and cons

