Introduction by s. 23(1) of Ita 1954.

Economics

IntroductionThe Landlordand Tenant Act 1954(LTA 1954) governs the rights and obligation of landlordsand tenants of premises which are occupied for business purposes. The purposeof the Act which the Parliament sought to address by its enactment, was toachieve a fair balance between the interests of landlords and tenants.

Therefore, provided that (i) the tenancy is within the terms of the Act1;(ii) was not contracted-out2;(iii) the tenant has complied within the prescribed time limits with thecomplicated and technical statutory notice formalities3; and (iv) the landlord cannot prove one of the statutory grounds of oppositionset out in section 30(1)(a)- (g) of LTA 1954, then the tenant is entitled to anew lease of that part of the holding which it actually occupies for thepurpose of its business at an open market. The first part of the discussion inthis paper will be discussing the first point stated above, whether the tenancyis within the terms of the Act and this is governed by s. 23(1) of LTA 1954. Inother words, this paper will be critically discussing the eligibility requirementsof s. 23(1) of LTA 1954, particularly occupation of the tenant, i. e. ‘ theholding’ and whether it applies to all types of commercial arrangement.

FirstPart. Theeligibility requirements of s. 23(1) of LTA 1954. S. 23(1) ofLTA 1954 sets out the terms where a tenancy would fall within the Act.

Theremust be a tenancy not a mere licence, a premise which are occupied by thetenant and it is for the purposes of a business carried on by him. TenancyThe ordinaryrule set out in Street v Mounford4to determine whether a lease or licence had been agreed applies here, i. e. ifthe agreement

satisfied all the requirements of a tenancy, the agreementproduced a tenancy, the label attached by the parties is not conclusive and will not beapplied if it is inconsistent with the other term of the agreement. As JenkinsLJ said in Addiscombe Garden Estate Ltd vCrabbe5, “ the whole of thedocument must be looked at; and if, after has been examined, the rightconclusion appears to that, whatever label may have been attached to it, it infact conferred and imposed on the grantee in substance the rights andobligations of a tenant, and on the grantor in substance the rights and obligationsof a landlord, then it must be given the appropriate effect, that is to say, itmust be treated as a tenancy agreement as distinct from a mere licence.

“ For example, in Esso Petroleum Co Ltd v Fumegrange Ltd6, the court heldthat the degree of control exercised by the licensor and the level of access tothe property which was reserved meant that the licensee did not have exclusivepossession and therefore no tenancy arose. However, the possibleissue arises here would be the existence of tenancy at will. As James Atkins inhis commentary of the case of BarclaysWealth Trustees (Jersey) Ltd v Erimus Housing Ltd7 that occupiersthat have built up anything other than a minimal period of undocumentedoccupation are sometimes told, with an overly optimistic degree of certainty, that they are likely to have acquired security of tenure.

He further mentionedthat these conclusions should be questioned and, while practitioners will stillneed to minimise the risks that their clients are exposed to in every case theymust recognise that there is certainly no automatic acquisition of LTA 1954protection by undocumented occupiers, i. e. tenants

at will. 8Some commentators had described it as a trap of a periodic tenancy. 9Nevertheless, it wasconfirmed by House of Lords in Wheeler vMercer10 that a tenancy atwill does not enjoy the protection of the LTA 1954 like a normal tenancy does. Although the Court of Appeal in that case held that a tenancy at will waswithin the protection of the LTA 1954. PremisesIn Bracey v Read11, it was held thatproperty may be " premises" of a lease of which is within s.

23(1) of LTA 1954 althoughit includes no building. In that case, a tenancy of land used for traininghorses was held within s. 23(1) of LTA 1954.

However, one must be aware that itwas mentioned in the case that the gallops were distinguishable from the restof the farm, though not fenced off. Otherwise, it would be a licence instead ofa lease. As in Clear Channel UK Ltd vManchester City Council12, the agreementbetween the parties held to be a mere licence rather than a tenancy because theagreement did not contain a sufficient definition of the land. Another examplein Cam Gears Ltd v Cunningham13, where a lease ofa car park was held within the LTA 1954. 1Landlord and Tenant Act 1954 (LTA 1954), s. 24 and s. 432 LTA1954, s. 38 and 38A3 LTA1954, s.

24 and s 2641985 A. C 80951958 1 Q. B 513, at 52261994 46 EG 19972014 EWCA Civ 303 8James Atkins, ' Erimus Housing re-visited: undocumented occupiers beware!' 2014L.

& T. Review, 18(3), 109-111 9Fiona Graham, ' The periodic tenancy trap.' 2014 P. L. J, 322 26-28101957 AC 416111963 Ch 88122006 L. & T. R.

7. 131981 258 EG 749.