User and alienation

Lease clauses and case law – user

- ‘Not to use the premises other than as a single private dwelling house’
  - Barton and Keeble [1928] – prevents sub-division and multiple occupation
- ‘Not to use or permit to be used the property for any purpose other than that of a private dwelling-house’
  - Caradon District Council v Paton [2000] – Although owners let property on short holiday lets during the summer months this was not deemed to breach the covenants of the lease as it does not require the occupier to use the premises as his or her home, which carries with it a sense of permanence, personal attachment

Lease clauses and case law – user...(cont'd)

- 'Not without the Lessors consent to use or occupy the flat otherwise than as a single private residence in one occupation only'
  - Falgor Commercial SA v Alsabahia inc [1986] – 999 year lease, defendant granted occupational licences to visitors in return for payment. Flat was equipped/furnished by defendant. No consent was requested to grant the licences. User covenant was breached, ie, was not a residence user but was the business of providing service accommodation
- 'Not to use the premises for any trade or business but keep the same as a private-dwelling house only'
  - Tendler v Sproule [1947] – two paying lodgers breach of 'not to use premises for any business,' and breach of 'keep the premises as a private dwelling house only'
  - Basettes Ltd v G P Estates Co Ltd [1956] – sub-letting constitutes a business

Lease clauses and case law – alienation

- ‘Not at any time to assign or underlet any part of the premises’
  - Field and Barkworth [1986] – restrains assignment or underletting of the whole: the practical point for landlords is to prove the let, not merely the advertisement
  - Short stays would be viewed as giving rise to a licence and therefore not a breach of covenant against underletting. Monthly lets would be

  And:
- ‘Not at any time to assign or part with possession of the premises’
  - Akici v LR Butlin [2005] – subletting the whole will be a breach but the grant of a licence would not as it does not amount to the grant of exclusive possession