TO The Honourable Audrey Eu Yuet-mee ,S.C.,J.P
From David S.H.WOO
Date 30th November 2001.
Subject: Comments on the Landlord and Tenant (Amendment) ~~Ordinance~~ Bill 2001.

I am pleased to submit for your information the background of past legislation (Hong Kong Hansard session 1980/81) and the UK law on the subject(Halsbury"s Laws of England Vol 27(1)).

(1)I believe that prior to the Landlord and Tenant (Consolidation) (amendment)Bill 1981, there was no control over the rent for post war domestic premises. For most of the domestic premises in HK,upon renewal of the lease, the landlord can ask for whatever the traffic can bear. Speculation .in the property market was at its peak in 1981 and there was not only a shortage of rental properties but an acute shortage existed. In other words there was only security of tenure when the tenant is willing to pay the rent demanded by the landlord.

(2)The debate continued on the 24th June 1981. and the attached pages will form informative reading.

(3)At Page 168 of Vol 27(1) of Halsbury, mention is made of the duration of the tenancy and the various forms of it I note with particular interest para 172 at page 161 on the subject of termination of tenancy at will. A tenant who with the landlord's consent,remains in the premises after his lease has expired is tenant at will. A tenancy at will is determinable by either party on his expressively or impliedly intimating to the other party his wish that the tenancy should be ended. It is also interesting to note about the creation of tenancy from year to year. The tenancy may be determined at the end of the first year or any subsequent year.

(3) it is clear that even in the UK the legal concept of security of tenure has been modified to entertain certain request of landlords in respect of their property rights,.In fact, as I have mention in the Seminar on the 29th Nov 2001, there was a provision for repossession of the premises after a term of five years at fixed rent. However, the terms for repossession must be specific and the lease should be endorsed by the Commissioner of Rating and valuation. Non Payment of rent leading to automatic Repossession should be very carefully looked at. This is because,there will always be arguments as to whether rent was in fact paid. In a simple case, the non production of rental receipts will be self evident .In complicated cases where the right of set off is claimed. The matter has to be resolved by the Land Tribunal.

(4) I am pleased if you will supply to me the amendment Bill for my perusal so that

detailed scrutiny of the bill with my comments may be helpful.
(5) I am not a legal practitioner. However, I am a professional person and I graduated from the University of HK in the year 1967. I feel that I am obliged to give you some sensible feed back in view of your great and heartfelt contribution to the general public in the area of general legal education and in many other areas

Sincerely,

David S.H. WOO

PS as this is a matter of public interest, a committee should be formed at the Legislative Assembly so that debates and further discussions should be carried out I shall research into the present Ordinance when the Bill is available.

Motion made. That the debate on the second reading of the Bill be adjourned—THE LAW DRAFTSMAN.

Question put and agreed to.

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1981

THE SECRETARY FOR HOUSING moved the second reading of:—'A bill to amend the Landlord and Tenant (Consolidation) Ordinance'.

He said:—Sir, I move the second reading of the Landlord and Tenant (Consolidation) (Amendment) Bill 1981, which contains proposals in respect of rent controls for post-war domestic premises.

As Members are aware, in February of this year the Committee of Review, Landlord and Tenant (Consolidation) Ordinance, submitted its recommendations for the future of rent increase control legislation. Foremost among these recommendations was that as soon as circumstances permit, and subject to economic and social conditions, rent control should be phased out. As has been publicly stated before, while the Government accepts this recommendation in principle it does not think that present circumstances are right for a major step in this direction.

However, as Part II of the present Ordinance is due to expire on 18 December this year, it is necessary now to submit proposals for the immediate future.

The establishment of the Committee of Review was announced on 16 January 1980 when my predecessor introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 1980 to this Council. While the 1980 Bill was enacted with the principal object of stabilizing the volatile rental situation that developed in 1979, it was also decided that a comprehensive study should be undertaken on the entire question regarding the rent control legislation and the underlying policies.

The areas covered by this review were manifold, including such important aspects as security of tenure; the system for controlling rent increases; the protection of sub-tenancies; exemptions from control; the effect of controls on repairs and redevelopment; and the rationalization of judicial functions. Despite the breadth of the review, the Committee took into account the widest possible spectrum of public interest and opinion in its search for a balanced approach to the questions under study. The Committee carefully examined the economic and the social arguments in favour of and those against rent control.

I do not propose to burden Members with an exhaustive list of the recommendations made by the Committee, but would draw attention to the basic philosophy espoused that, in view of the distortions they cause rent controls should be phased out eventually, notwithstanding the short-term need for such measures on social grounds.

Rent control clearly does not provide an answer to the problem of ensuring an adequate supply of rented housing at affordable prices. Nevertheless, it has a stabilizing role in a situation of rapidly rising rents such as occurred in 1979, but if maintained too rigidly for too long, any system of rent controls is likely to create long-term difficulties which outweigh the original intent. Experience elsewhere has shown that such controls can become a long-term or even permanent feature, and in this connection it will be noted that our own current system of control of post-war premises dates back to 1973.

Although it has been accepted that, as soon as circumstances permit, efforts should be made to phase out rent controls, it would clearly be wrong to take a decision to remove them so rapidly that chaos would result. Government, after careful study of all the factors has concluded that the existing rent control system, with minor modifications, should be retained for the time being. However, the situation will be kept under constant review, and the future direction of Government policy will be decided in the light of the effect of the measures now proposed. It is against this background that the Bill now before Council has been drafted.

The main provision of the Bill is to extend Part II of the Ordinance for two further years beyond the present expiry date of 18 December 1981. In extending the life of the legislation, a number of amendments along the lines of the Committee's recommendations are also introduced. These include:

(*a*) the raising of the biennial percentage ceiling on rent increases from 21% to 30%;

(*b*) the exclusion from the provisions of Part II of

(i) tenancies of premises in respect of which an occupation permit is first issued on or after Friday, 19 June 1981, and

(ii) after 18 December 1981, tenancies of premises having a current rateable value (based on 1976 rental levels) of $80,000 or more; and

(iii) after 18 December 1982, tenancies of premises having a current rateable value of $60,000 or more.

The Committee of Review noted that in early 1980 the controlled rent for the average tenancy stood at about 40% of the fair market rent. However, the latest analysis of rent increases reported to the Rating and Valuation Department under the Ordinance shows that the average has fallen further, to about 35% of market rents. This level of controlled rent relative to the fair market rent is expected to continue to decline if the present rent increase ceiling is maintained at 21% every two years. By raising the ceiling to 30%, it is hoped that the rate at which the controlled rents have been falling behind market rents will be slowed down.

Here, however, I should like to emphasize that the proposed limit of 30 per cent, as against the existing limit of 21%, is the *maximum* by which a landlord will be permitted to increase the rent of a controlled premises —there is, of course, no bar on landlord and tenant agreeing on a smaller percentage increase.

And in cases where the existing rent stands at more than 62½ per cent of market rent the tenant will continue to benefit from the factor system which has the effect of reducing the size of increase permitted by law in such cases to less than 30%.

Most of the new tenancies which have been agreed since controls were last extended in December 1979, will benefit from the factor system, which limits the increase to half the difference between current rent and market rents, since these tenancies will have been entered into at the market rents then prevailing. The maximum increase of 30 per cent will apply mainly to tenancies entered into before that time and which will have enjoyed rents well below market rents for a considerable period—perhaps since 1973 when the present controls were introduced.

The ultimate solution to the problem lies in measures to increase production of flats for the rental market, and this in turn depends on greater supply of land. The proposed exclusion from control of new buildings and luxury premises is intended to achieve this, by encouraging developers to build more flats for the rental market, and to induce owners to rent out their flats instead of holding them vacant for speculative or other reasons. By thus helping to stimulate the supply of rented flats these measures are expected to have a positive stabilizing effect on the movement of rent.

The Bill also deals with block tenancies of two or more dwellings with an aggregate rateable value of $80,000 (from December 1982, $60,000) or more, the level which would otherwise qualify them for exclusion as luxury premises. The intention is that exclusion should apply by reference to the rateable value of each individual dwelling and not to the total of the rateable values of all the dwellings. Therefore, it is now proposed that individual dwellings with rateable values below the specified cut-off points will continue to enjoy the protection afforded by Part II of the Ordinance whether they are subject of individual tenancies or form part of a tenancy comprising several dwellings. It has to be pointed out that this proposal involves a change from the concept of the control of tenancies to the concept of the control of dwellings. It is evidently impracticable to predict at this stage all the possible ramifications of this adjustment but Members are assured that its application will be closely monitored to determine whether any further amendment is necessary.

The Bill has three provisions which aim at providing greater protection to existing tenants. These are:

(*a*) an extension of the maximum period of stay of execution of a possession order from three to six months;

(*b*) the prohibition of persons who acquire tenanted premises under Part II controls from obtaining an order for possession to take effect earlier than 12 months from the date of acquisition; and

(*c*) the imposition of a requirement to give a minimum six-month's notice of termination in redevelopment cases affecting premises excluded from Part II controls.

Finally, the Bill also proposes the following amendments to the main Ordinance,

(*a*) the exclusion of tenancies held from the Hong Kong Settlers Housing Corporation Ltd. from the further application of controls under Part II;

(*b*) the relaxation of time limit imposed in cases of landlords seeking rent increases by agreement; and

(*c*) the imposition of a uniform requirement of giving a minimum six-month notice as the sole channel for terminating most tenancies excluded from Part II controls.

Apart from the provisions included in the Bill, Members may wish to note that detailed study on the other recommendations made by the Committee of Review is also under way. Priority will be given to the examination of the recommendation relating to the future role of the Lands Tribunal in the mediation between landlords and sitting tenants of premises to be excluded from the Part II controls. The purpose of such a measure would be to ensure a reasonable degree of security for a sitting tenant who wishes to extend his tenancy and is prepared to pay a fair market rent, and it is the intention that proposals in this regard shall be presented to this Council by the end of this year.

Sir, I hope my explanation on the Bill will set clear the direction of Government's policy regarding the future of rent control, a complex subject on which it is unlikely that there will ever be a consensus among the different sectors of the community involved. The aim must be to strike a reasonable balance between the interests of the parties concerned, and Members may be assured that full consideration will be given to representations received since the announcement of Government's intentions in early May and the publication of this Bill last Friday.

Sir, I move that the debate be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SECRETARY FOR HOUSING.

Question put and agreed to.

ROAD TUNNELS (GOVERNMENT) BILL 1981

THE SECRETARY FOR THE ENVIRONMENT moved the second reading of:—'A bill to provide for the control and regulation of vehicular and pedestrian traffic in road tunnels managed by the Government'.

He said:—Sir, I move the second reading of the Road Tunnels (Government) Bill 1981.

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1981

Resumption of debate on second reading (24 June 1981)

Question proposed.

MR. OSWALD CHEUNG:—Sir, I declare an interest in this Bill as director of a company that owns residential accommodation.

18 months ago, when there was a strong imbalance between supply and demand for residential accommodation, the Government appointed a Committee, with wide terms of reference, to look into all aspects of control of rents and security of tenure.

I can say with confidence that the Committee consisted of persons who had no particular bias one way or the other.

Members of the public were urged to submit their views and suggestions, and, as the Report of the Committee verifies, they received an encouraging response from a wide spectrum of the community. Individuals, trade organizations, some specially established for the purpose, and others came forward, and sent in nearly 200 letters to the Housing Branch, the Secretariat and the Rating and Valuation Department, and many expressed their views in the media.

Moreover the Committee formed three sub-groups to interview organizations and individuals who put forward interesting ideas and specific proposals. These have been considered by the Committee and, so far as I am aware, no suggestion or proposal went by default. The Committee also studied a wide range of subjects to get the necessary background information.

Having considered all the representations and sifted the facts, they have produced a report which was thorough, and, in my judgment, impartial.

The Administration in putting forward this Bill has selected to implement those of the Committee's recommendations which are feasible and not unduly disruptive. This is purely an interim measure whilst the main problem is being tackled.

The Committee recognized that it was impossible to make recommendations which would please all sectors of the community; they made a judgment as to what was good for the community as a whole.

In the circumstances and for those reasons, I consider it right that we support the Bill, and I commend it to honourable Members.

MR. S. L. CHEN:—Sir, when the Landlord and Tenant (Consolidation) (Amendment) Bill 1980 was last debated in this Council in January 1980, I made the points that the imposition of a 21% biennial rent increase ceiling was arbitrary and unrealistic and that the protection extended to luxury premises

was unjustified. I am therefore glad to learn that these are being rectified by the Bill now before Council. Although these changes come two years later than I expected, nevertheless it is better late than never.

It is evident that increased supply of domestic accommodation is the only genuine solution to Hong Kong's housing problem. While I welcome Government's announcement that as soon as circumstances permit, efforts should be made to phase out rent controls, I must reiterate here that measures aiming at achieving a balance between the supply and demand of domestic premises should be taken without delay. These should include increases in land supply and public housing production, an expanded home ownership scheme with private sector participation and, if necessary, appropriate anti-speculation actions in the property market.

Turning now to the provisions of the Bill, I would like to comment that while it is practically impossible to arrive at a rate of rent control increase that will be favourably accepted by all, the proposed 30% ceiling is more realistic given the present state of economic conditions. We are told that factors including the bank interest and inflation rates, the nominal average daily wage index and the likely future rates of increase in fair market rents had all been taken into consideration by the Committee of Review in recommending a suitable rent increase ceiling. Although the 30% proposal is slightly below that recommended by the Review Committee, it is still a desirable step in restoring the balance of interests between landlords and tenants. The raising of the percentage ceiling to keep in line with the rate of inflation in general will give landlords and potential landlords a fair deal and subsequently encourage them to let their flats out.

Sir, I do not wish to repeat the arguments against the extension of rent controls to luxury premises which I have outlined in this Council previously. The Committee of Review had made it clear that, and I quote, 'the reasoning behind the exclusion was that Government should seek to intervene only to assist those considered to be in need of protection, namely the middle and lower income groups'. Luxurious flats in my opinion, are just like many luxurious commodities, people who cannot afford them will simply either have to do without or accept a drop in standard. The proposed exclusion of these premises in two stages should, in my opinion, provide sufficient time for those affected to make the necessary adjustments.

One more point that I would like to make on this Bill concerns the repossession of rented accommodation by landlords. In the debate of the 1980 Bill, I suggested that tenants who themselves are property owners should not be given protection against repossession. I am therefore very glad to see that the Review Committee's recommendation that where the landlord offers suitable alternative accommodation under continued protection or where the tenant owns suitable available accommodation, the landlord should be entitled to recover possession of his premises. It is only fair to the landlords that the above circumstances should be included as an additional ground for repossession, and

I would like to urge Government to put this into legislative effect as soon as possible. Moreover I would also like to ask Government to consider extending this principle to public housing sector so that those well-off tenants who are enjoying subsidized public housing and at the same time be fortunate enough to be property owners themselves must be required to vacate their units and to release them to more needy tenants. This is not only in line with the principle that subsidized public housing units should only be provided to the lower income group, but it will also help to a certain extent relieving the high pressure on the demand for public housing.

Sir, I have said in this Council before that rent control legislation should be a temporary measure only and should not be allowed to perpetuate. I am glad that Government has at last proposed a reasonable degree of relaxations. This, in my opinion, is a step in the right direction, and I hope it is just the first step. With these remarks, Sir, I support the motion.

REVD. MCGOVERN:—Sir, in December 1977 and in June 1979, by a lone vote I opposed any relaxation of rent control for post-war domestic premises, and gave my reasons. In winding up the debate in June 1979 the acting Secretary for Housing said 'I believe that Government policies are along the right lines in recognizing the realities of the situation and I think a continuation of these policies is in the long-term public interest'. That was in June. In October the same year on the occasion of the vote of thanks I repeated my side of the argument and stated that we needed more rent control and not less. On that occasion someone must have been listening. Three months later in January 1980 a Bill was introduced which extendedrent control by slapping a blanket ceiling on rent increases of all post-war domestic premises, including those which had been previously excluded.

I do not intend to repeat the arguments put forward in earlier debates. The present Bill has been thoroughly discussed among Unofficial Members and with officials. The media have also extensively aired all sides of the difficult problems involved. I may be prejudiced in favour of my own point of view, but my reading of the predominant segment of public opinion reflected in the media seems to me to be in favour of no relaxation of rent control at this time. That remains my position too.

My reasons, without repetition, are easily gathered together by saying that the situation in housing which in January-February 1980 prompted Government to control all domestic rent increases is still the same today. It could be argued that the situation is worse today than it was then. Our hillsides are covered more thickly than ever with squatters, our rooftop huts are going up from single storey to two or even three storeys. Flats are not available for rent at prices which people can afford.

I therefore agree with Government that now is not the time to phase out rent control. For the same reasons I have to go further and say that now is not the time for any relaxation of rent control. As this Bill is a package with a variety of contents my only way of disapproving of the package of the unacceptable parts of it, is to oppose the whole package.

I agree with the extension of Part II for another two years. I disagree with raising the biennial ceiling on rent increases from 21% to 30%, and I disagree with all the proposed exclusions, especially the exclusion of new premises getting first occupation permits. First lettings of new buildings, and new lettings of old buildings are already excluded under the present law. The further exclusions are both unnecessary and harmful. I predict that just as the situation got out of hand in 1979 forcing the law to include all that had previously been excluded, so too in a short time today's relaxations will have to be included in a further amendment. By that time of course the damage will have been done and rents will have risen to a new high level platform even further out of reach of those who are already paying too high a proportion of their income on rent.

In conclusion, because of the change from 21% to 30% and because of the unnecessary exclusions, and because the housing situation is now at least as bad as it was in 1980, and because the unfair market rent is still as unfair as ever, I oppose the motion.

MR. WONG LAM delivered his speech in Cantonese:—

督憲閣下：隨著觀點與角度的不同，自然有人支持亦有人反對放寬租管，各持己見，全不把對方的利益當作一回事。本人認爲政府在處理這一影響民生極重大的問題時，不必強求市民意見的一致，而應當義無反顧地以本港社會的安定，及大多數市民的利益爲依歸，作出適當的決定。以目前本港的情況而論，全面放棄租管，極有可能引致租金劇烈的波動和迫遷的現象，從而引起社會不定，實在並不適宜。政府有責任爲市民提供適度的租住權保障，使市民因此能夠安居樂業，所以雖然有人以自由經濟的觀點，鼓吹立即全面放棄租管，但本人認爲把租管維持至一九八三年底，不失爲一明智的決定。不過，必須指出的是全面租管絕非長遠之策，因爲這樣必然扼殺商人建屋的意願，從而加速屋荒現象的形成。長遠之策，明顯地在於政府以有效的方法鼓勵商人興建更多樓宇，令供求達至平衡，使市民能夠以合理的價錢，租到屋宇居住。目前的全面租管，不獨使商人興建住宅的意願減低，也使業主不肯隨便租出樓宇，引致「有人無屋住」及「有屋無人住」的畸型現象，肯定並非香港之福。

如今政府提議把一九八一年六月十九日或以後獲發入伙紙的樓宇豁免管制，本人認爲此乃放寬租管非常恰當的第一步，能夠刺激商人興建樓宇的意願，也使業主放心將樓宇租出。另一方面，因爲舊有樓宇仍受租管限制，原有住戶居住權仍獲得保障，故這項提議對民生的影響利多於弊。

至於政府提議准許業主每兩年加租之百分率，由原來的百分之廿一增至百分之三十，本人並不清楚政府以甚麼方法計算出這個新的百分率。當然，不少住戶會感到此百分率過高，而業主則覺得過低。平心而論，部分香港人雖然在衡量本身工資收入時，瞭解到雇主必須顧及通貨膨脹而提高薪金，但在計算各項支出時，往往忽略或不肯承認提供服務者亦受通貨膨脹的影響，而被迫把服務費用提高的事實。在談論租金問題時，部份人士亦有相同的論調，認爲近年來工資的提高應該用來改善其本人生活的享受，業主擁有物業，既然是有錢人，則應當少收租金以免影響住戶生活的水準。本人無意批評這樣看法，因爲冀求提

高個人生活水準，也是自然不過的事。不過，不能忽略的是目前本港只擁有一層或半層樓宇的小業主數目不少，他們同樣地受通貨膨脹的影響，而所購置的樓宇所繳納的是幾乎達到年息二分的分期付款。購置樓宇收租是正當投資之一，而正如其他投資一樣，政府既無責任保障其絕不虧損，也沒有理由規定其不應獲得收益。本人支持政府以安定民生爲理由，來限定業主每年加租不能超過某一百分比，因爲這到底是從本港社會整體安定方面著眼，但認爲這個百分比，因爲實際經濟環境、市面租值及通貨膨脹等因素有相當程度的關連，例如通貨膨脹率只是一位數字時，則每年加租率大抵不應達到兩位數字，又例如真正租金與市面租值相近時，則此百分比更應減少。故此本人認爲這個准許加租的百分比，應該用一套較有系統的方法計算出來，隨便地規限於每年某一百分比而長時間地一成不變，未必是最適當的安排，應當每隔相當時間便因時制宜，向上或下調整，才是較適當的做法。此次政府提議把每兩年加租之百分比提高至百分之三十，未知如何計算得來，很難隨便置評。

最後要提及的，是最高差餉估值的樓宇應否豁免租管的問題，本人認爲政府應同樣地以此舉對民生及本港經濟的影響而作決定。一般普通收入人士，相信沒有能力入住這類樓宇，既已入住這二千餘高差餉估值單位者，自非泛泛之輩，大部分應該有能力，或其僱主有能力，支付較大幅度的租金調整，而不願繼續住此類龐大樓宇者，亦不難找到略小的樓宇來居住，從而避免所謂「貴租」之苦。既然豁免此類樓宇的租管，引致民生波動及影響經濟的可能性不大，故此本人樂於支持政府這方面的建議。

督憲閣下，本人謹此陳辭，支持這項法案。

(*The following is the interpretation of what Mr. WONG Lam said.*)

Sir, through different points of view, it is only natural that some people support rent control whilst some others are opposed to it. Each side insists on their own opinion with complete disregard to the interests of the other side. I think in dealing with such an issue which seriously affects the well-being of the people, the Government need not seek the consensus of the people. It should make appropriate decisions without fear, bearing in mind the social stability of Hong Kong and the interests of the majority of the people. In the present circumstances of Hong Kong, a complete abandonment of rent control could very possibly lead to violent fluctuations in rents and evictions which would precipitate social unrest and is thus extremely undesirable. The Government has the duty to provide suitable security of tenure to the people so that they can live and work happily. In spite of some advocates of doing away all rent control immediately on the ground of free economy, I still think it is wise to maintain the rent control until the end of 1981. However what must be pointed out is that a comprehensive rent control is by no means a long-term solution, because this would certainly kill the incentives of developers to build, thus accelerating the housing shortages. The long-term solution obviously lies in the Government devising ways and means to encourage developers to build more houses in order to achieve a balance, so that people are able to purchase living quarters at reasonable prices. The present comprehensive rent control does not only dampen the incentive of developers, but also makes landlords reluctant to

release their holdings easily. This has given rise to the unhealthy situation where 'some people have no house to live in' whilst there are 'houses which have no people to live in'. This is certainly not to Hong Kong's best interest.

The Government now proposes to exempt houses from control for which occupation permits are granted on or after 19 June 1981. I think this is a very appropriate step towards the relaxing of rent control, and will certainly stimulate the willingness of developers to build more, and allow landlords let out their holdings without worry. On the other hand, as old houses are still subject to rent control, the tenure of the sitting tenants are protected. This proposal will, therefore, do more good than evil to the livelihood of the people.

As to Government's proposal that the rate of increase at which landlords are allowed to raise the rents from 21% to 30% every two years, I am at a loss to understand how Government arrived at this new percentage. Of course many tenants will find this percentage to be too high, whilst landlords find it too low. To be fair, some people in Hong Kong, although in assessing their own wage incomes, realize that employers must raise their wages in view of inflation, nevertheless, in calculating various outlays, often ignore or refuse to recognize that providers of services are just as much affected by inflation and are thus compelled to raise the cost of services. When discussing rent problems, some people show the same reasoning, saying that the increases in wages during the recent years should be devoted to improving their own standard of living, and since landlords who own property are rich people, the latter should receive less by way of rents in order to eliminate the effects on the standard of living of the tenants. I do not intend to criticize this way of thinking, because it is only natural that one seeks to improve his standard of living. Yet owners with title to only one flat or half a flat number by the thousands. They are also subject to the effects of inflation. Their purchases are often financed by mortgages for which they have to bear close to 20% interest per annum. Buying property to derive a rent income is a proper form of investment. As with all other forms of investments, the Government is neither obliged to ensure an absolute profit nor justified in providing that there should be no return to the capital.

I support the Government's proposal to fix a percentage ceiling for rent increases which is conceived with Hong Kong's overall social stability in mind. However the percentage must be in keeping with economic reality, market rents and inflation. For instance inflation at single-digit would never justify double- digit rent increase. Also the percentage ceiling should be reduced when the real rent is approaching the market rent. I am therefore inclined to the view that the permitted percentage should be arrived at by a more systematic method of calculation. It would not be the most suitable arrangement to fix some random percentage and apply it as an immutable rate over a long time. A better way is to revise it upwards or downwards where appropriate at proper intervals. It would be rash of me now to comment on the Government's proposed biennial increase of 30% not knowing how it has been arrived at.

Finally, on the question of whether premises with top rateable values should be exempted from rent control, I think the Government should also make the decision in the light of its possible social and economic impact. Flats under this category number about 2,000 and they are not readily affordable by all and sundry. Most of the tenants, or their employers, should be able to take substantial rent increases in stride. It would not be too difficult for them, should they be unwilling to go on paying exorbitant rents, to find smaller alternative accommodation. Since the social and economic repercussions arising out of exemption of such premises are slight, I am glad to support this proposal of the Government.

Sir, with these remarks I support the motion.

DR. HO:—Sir, the Government is well advised to extend Part II of the Landlord and Tenant (Consolidation) Ordinance for two further years. This decision is consistent with the present social and economic conditions and is in the best interest of the community as a whole.

In extending the life of this legislation, the Government proposed certain amendments. One of these is the exemption from rent control of those domestic premises for which occupation permits are issued on or after 19 June 1981. The arguments for the exemption are to encourage developers to produce more flats for the rental market and to induce owners of new premises to let out their flats and subsequently to bring about a stabilizing effect on the present rental levels. However, I have great doubt about the rent stabilizing role of this exemption provision.

In a free market, the price of a commodity is to a great extent determined by the forces of supply and demand. Statistics in the Report of the Committee of Review showed a shortfall in housing of about 204,000 flats in 1980 (page 37). This shortfall will still remain at a high level of 137,000 in 1985 (page 217). Given housing shortage of this magnitude, it is very unlikely that rents for domestic accommodation can be stabilized in the near future despite an improved supply that may result from this decontrol measure. Instead, the great discrepancy between the supply and demand in housing, coupled with the absence of rent control for newly completed premises will tend to set the movement of domestic rents upwards.

Furthermore, the proposed exemption of new premises will create two different categories of private rented accommodation unnecessarily. While sitting tenants continue to enjoy protection and security of tenure, tenants of the exempted premises will simply live at the mercy of their landlords. Some avaricious landlords may take advantage of the unbalanced situation of supply and demand in housing to impose ever-increasing rents on their tenants when their leases are due for renewal. This will seriously affect the security of their accommodation on which their peace of mind largely depends. In the end, a proportion of the tenants in these unprotected premises will find themselves unable to afford the rents demanded and may be forced to squat. They will

exacerbate the situation of public housing and will put undue pressure on the Government to accelerate its building programme beyond its capacity.

Given the fact that supply perpetually lags behind demand, removal of rent control for new premises will enhance the speculative appeal of these properties. It is therefore not unreasonable to expect speculative activities to become intensified. However, the Government did not make any attempt to curb speculation in this review exercise. As a result, the end-users of domestic accommodation will be victimized.

In the light of the above discussion, I would therefore suggest that the Government should seriously reconsider applying the biennial 30% rent increase ceiling to newly-built premises after the fresh or first lettings. Given the fact that the level of demand for domestic accommodation will continue to be high for several years and fresh or first lettings are free from any rent control, developers should have adequate incentives to build for rental or selling purposes.

Sir, I hope that the concern expressed by various sectors over this piece of legislation will be seriously taken into consideration.

MR. ALLEN LEE:—Sir, I live in my own flat, I do not own any other flat nor am I a tenant who has to pay rent to a landlord. Therefore, in reviewing the Landlord and Tenant (Consolidation) (Amendment) Bill 1981, I do not really have an interest to declare. I consider a roof over one's head as a necessity in life, however, in Hong Kong, people like myself consider it as a luxury to own a flat. I praise our Government which I believe during the past years has done its very best to provide as many flats as possible to enable the less privileged people to live in decent accommodations instead of squatters. Unfortunately, due to the rapid increase in population, we still have many residents living in not so desirable environments. Even though the public housing programme is vividly pursued, the housing problem will still be with us for a long time.

I am somewhat surprised after only 18 months of the introduction of the existing legislation on rent control, it needs to be changed. Some of my colleagues may recall during the last round, the bosses of the land developing companies swamped the U.M.E.L.C.O. Office and gave various justifications why rent control should not be introduced. However, after the current rent control legislation came into effect, during 1980 all the land developing companies recorded their highest profits in history and their stocks soared to an all time high recently in the Hong Kong Stock Exchange. What a strange phenomenon! Who is being hurt by rent control? Certainly it cannot be the land developers. I often ask who can afford to purchase a medium size flat at the current market value. People earning an income of $10,000.00 per month would have a hard time paying for the down payment. Needless to say, at the current interest rate, very few can afford to purchase a flat, therefore they have to rent a place to live. What is wrong with the current rent control scheme? Why raise the maximum allowable increase from 21% to 30% biennially? Is Government

projecting the inflation rate for the next two years at 14% per annum? Since landlords can ask for the fair market rent in the first letting, why are there so many empty flats in the private sector? I can only come to the conclusion that it is not a problem of supply and demand in the private sector. It has nothing to do with rent control nor security of tenure. It is simply the price to either rent or purchase is too high. I believe these empty flats are in the hands of developers and speculators. If any legislation is needed, it is to legislate against people who leave the flats empty and to discourage speculation activities.

I had the opportunity of joining the Legislative Council Housing Panel which was convened by Father MCGOVERN. On two occasions, I have put several questions to the representatives merely to seek their opinion on rent control and it turned out that their opinion is the same as mine. I cannot suport the proposed rent increase from 21% to 30% biennially because it concerns the interest of the general public. I respect the findings of the Review Committee, however I feel personally it is not necessary at this point in time to amend the current legislation. With due respect to our Senior Member Mr. Oswald CHEUNG, I hope my colleagues will consider my remarks.

MR. SO delivered his speech in Cantonese:—

督憲閣下：本人曾經重溫政府提出「一九八〇年業主與住客（綜合）（修訂）法案」時的背景及當時社會人士所提出的贊成與反對的理由，又細讀「業主與住客（綜合）條例檢討委員會」二百六十九頁的英文版本報告書，和研究社會各方面對現在所辯論的法案的意見後，覺得以目前屋荒和土地荒仍然存在的情況下，就社會整體利益而言，修訂租務管制｛A「使有關階層的利益獲得合理均勢」，乃屬權宜之計，有操之過急的弊端，一旦付諸實行，將產生連鎖反應，影響基本民生。故本人認爲「一九八〇年業主與住客（綜合）（修訂）法案」應原封不動，再實施最少兩年，使一般的住客，包括在本港投資的外商在昂貴的租金壓力下，有較長的喘息機會。

若謂放寬租管可吸引一些業主將其樓宇租出，則無疑是縱容囤積居奇的投機者。權宜之策一般都不是上策，既然大家都瞭解問題最終的解決辦法，就是增加土地供應和樓宇的產量，便應積極從這方面着手工作。

本人並無資格建築樓宇，連買樓的經驗也沒有，但聞說目前一般樓宇的成本，地價佔了八成，材料和人工只佔其餘二成。此說若然屬實，則政府必要徹底檢討高地價的政策，免被指爲「只許州官放火，不許百姓點燈」。

督憲閣下，本人謹此陳辭，反對本法案內所作放寬租管的條文。

(*The following is the interpretation of what Mr. SO said.*)

Sir, I have reviewed the background in which the Government presented the Landlord and Tenant (Consolidation) (Amendment) Bill 1980 and the pros and cons expressed by the public then. I have also read carefully the English version of the 269-page Report of the Committee of Review, Landlord and Tenant (Consolidation) Ordinance and studied the views of various sections on the Bill which is now before this Council. After all these efforts, I feel that in view of the current shortage of both housing and land and in the overall interest of the community, amending rent control to 'attain a reasonable balance on the benefits of the sectors concerned' is only an expediency which has the

disadvantage of rashness. If it is implemented, a chain reaction will be set off, resulting in the basic livelihood of the general public being adversely affected. SO I think the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980 should remain as it is for at least two more years. This will give a longer breathing-space to tenants, including foreign investors in Hong Kong who are under great pressure of high rent.

If it is argued that relaxation in rent control will encourage landlords to let out premises, then we are actually giving a free hand to speculators who have been manipulating the market. Expedient measures are bad measures. Since everybody knows that the ultimate solution to the problem is to increase land supply and house production, we should work positively in this direction.

I am no estate developer. Nor do I have the experience in buying a flat. However, I have heard that land cost now constitutes about 80% of the price of a flat, whereas materials and labour take up the remaining 20%. If this is true, the Government should review its high land cost policy thoroughly, so as to avoid being labelled as a government which permits itself to uphold high land costs but does not allow landlords to increase rents.

Sir, with these remarks, I oppose the motion.

MR. BROWN:—Sir, rent control is a subject which demands the careful deliberation. The pros and the cons of such controls were debated at great length in this Council in January and February last year, and many of the arguments put forward on that occasion have been recapitulated today. As a late speaker in this debate I do not intend to waste Members' time by repeating what has already been said, but I must add my voice to those who believe that it is normally futile, and damaging to the growth rate of an economy, to allow the operation of market forces to be frustrated.

Notwithstanding this belief I recognize that there are times when rent control must be tolerated on social grounds whilst the root causes of our housing problems are being tackled. It is not possible to divorce consideration of rent control from our housing and land policies and in this connection I would observe:—

First: Our housing problems are not likely to be resolved within the nexttwo years and it would be naive to believe that these temporary measures will not require further extension. If complete decontrol is not going to be possible for some time, then it is even more necessary to adjust the system at each extension to slow down the rate at which controlled rents fall behind market rents, and to encourage developers to maintain production and place flats on the rental market. The importance of this is illustrated by the fact that controlled rents today only average about 40% of market rents—and the percentage is only 20% in the case of pre-war premises. In March 1980 of the 620,000 households in private housing 311,000, or about 50%, were tenants, and the important role played by the private landlords in our overall housing situation is self evident.

Secondly: I think we are all agreed that our main effort must be directed at assisting the middle and lower income groups, and it is encouraging that the reconvening of the Working Party to review the Home Ownership Scheme, envisaged in the budget speech, has now taken place. In the expansion of this scheme lies one of our best hopes for solving the problems of the middle class within a reasonable time frame, and it is perhaps pertinent to note that the financial community will need to support this scheme on a much larger scale than hitherto. It is to be hoped that the many new financial institutions in the market will come forward to join the established banks in backing the Home Ownership Scheme, and thus illustrate their long-term commitment to the community from which they all derive much profitable business.

*Thirdly:*On the subject of land I would make two points. Although it sounds attractive to suggest that cheap land be made available to reduce the cost of housing (actually any such subsidy would more likely finish up as additional profits in the pockets of developers) it should not be overlooked that in the period upto 1985 Government expenditure on capital account will be largely financed by the revenue yield from land sales. Any significant reduction in the price of land must result in expenditure on capital account becoming more dependent on the surplus on recurrent account. The consequences to our tax structure and growth rate would be severe.

The second point relates to the role of the private sector and I hope the recommendation of the Special Committee on Land Production that the role of the private sector should be examined more closely will be taken seriously and lead to positive results. There is obviously a need to balance the desire of the private sector for profits and the responsibility of Government to protect the public interest, but if the will exists this can surely be achieved.

Sir, I do not like rent controls, nor do I like to see so many of our community suffer from housing problems. The Bill before us does not please everyone, but it is in my view a sensible attempt to balance the interests of all concerned whilst the problems are still being tackled. It is for this reason, Sir, that I support the motion.

MR. CHAN KAM-CHUEN:—Sir, I rise to support the Landlord and Tenant (Consolidation) (Amendment) Bill 1981.

Before commenting on this Bill, I wish to take this opportunity to congratulate the Chairman and his Committee of Review for the thoroughness of their report and the wealth of information contained therein.

It brought back to me vivid memories of the housing shortage which Hong Kong suffered even before the war. This shortage became acute whenever war drove large numbers of refugees across our border. Since childhood, I learned of such terms as shoe money, key money and construction money. These were commissions or premia which one had to pay for a roof over one's head.

After the war, the situation was no better as quite a number of houses were destroyed by bombing and shelling. Up to the 1950s I had to share a small cubicle of 70 sq.ft. with a friend, and owing to harassment, had gone through all the time-consuming processes of the Tenancy Tribunal, the Police and the District Court. Finally with some savings I managed to buy my first flat. To plan for my retirement, I even bought a second flat but on learning that there would be rent control on post-war premises, I subsequently sold both of them as I did not want my investment to be frozen and controlled (*laughter*). At present I have no personal interest to declare on domestic premises as my residence is subsidized by my employer. With these varied experience, I share the feeling of a wide spectrum of conflicting interests on this issue.

The Landlord

There is always the extreme view in some countries that the landlord is a parasite of society. This might be true in the days when a landlord might hold large pieces of land and either left them unproductive or exploited their tenant farmers to the detriment of society.

Let us take a look at the landlords (or landladies as they may be the majority due to longevity) (*laughter*) in Hong Kong.

For *pre-war premises,* both corporations and individual landlords usually own the whole building instead of individual flats. Because of unrealistic controlled rents, most of these buildings were demolished and redeveloped into uncontrolled premises at that time and tenants were given adequate compensation. For those landlords owning controlled pre-war premises which constitute a 2% minority of the total private domestic stock, over 30 years of rent control has made some died with regret.

For *post-war premises,* corporations usually own buildings and flats in the upper rental bracket and their tenants are generally employees of multi-national firms or governments. In the late 1950s, Chinese tenement flats of about 500 sq. ft. and under $8,000 which could be paid by instalments with quite low interest rates appeared on the market. This opened up an opportunity for man of small means to own property. In fact, this new group of landlords mainly consisted of employees like their tenants such as technicians, clerks, blue collar workers and domestic servants. Of course, there were also hawkers and the self-employed. Those who jumped on this bandwagon were workers who followed faithfully the old Chinese virtues of diligence and thrift and had some savings for the downpayment. Then followed several years of compulsory savings to achieve their goal. As not many workers in Hong Kong are fortunate enough to have a pension or gratuity when they retire, buying a small flat or two with savings from a whole life time of work would ensure shelter and living expenses when old age compel them to retire.

In 1980, there were 460,500 units of domestic premises in the private sector and 258,000 owners, averaging 1.8 units per owner. This is a good even spread

of private property ownership and the allegation that most private property is in the hands of a small number of rich people is a myth.

Landlord is therefore too glorified a name for these owners of one or two flats who are entitled to only 1/x hundredths of the land on which the building stands. Furthermore, due to the fragmentation of ownership of the building and land, it is very difficult for a developer to get consent from several hundred flat owners of a building to sell it for demolition and redevelopment unless it became a dangerous building. Rent control may be unlimited but these owners' lives and leases are limited.

A piece of legislation is only good when it is fair to all parties as far as possible.

The Tenants

The tenants of the upper rental bracket are usually subsidized by multi-national firms or governments. There is no sound economic reason why Hong Kong's corporations or individuals should subsidize them. There are many management techniques in budgetary control which can be used to cut down expenses, e.g. employ more local staff, rent a slightly smaller flat or build their own estates. Even as late as 1974, they could almost buy a flat with a year's rent which they are now asked to pay in the free market. This opting out is either due to a policy of not planting their roots in Hong Kong or a lack of understanding of the strength of the property market in Hong Kong.

There are pros and cons in setting up one's business in Hong Kong but on weighing all the factors, one would find Hong Kong a better place, especially if one trades with China. There is no other place in the world geographically located to give the best of two worlds. The rent factor is seldom a decisive factor by itself and the 'invisible' queue of corporations from other countries to set up business here is long and I regret that only the fittest survives. Conversely, if business opportunities here are not good, would businessmen come here even if we reduce our existing run by half? In fact, decontrol of luxury and new premises may help to increase the supply and stabilize the rental levels so that time may again be right for purchases.

According to the Report of the Review Committee, private rented accommodation provides 311,000 households with home and shelter, affecting about 1.2 million people, most of whom are in the lower rental bracket. For this group of tenants, security of tenure is more important for the time being.

As earnings of employee-tenants have made actual gains above inflation, I believe that employee-landlords should be given a fair deal having regard to rampant inflation caused by the oil crisis. Otherwise, their loaf of bread would be reduced into slices and then to crumbs on retirement.

It is of interest to note that in most workplaces, one can find examples of early flat owners who are colleagues with medium or lower pay. Those on higher pay but still without their flats should ask themselves the soul searching question of where their income had gone. The presumption that tenants are of lower income than flat-owners is not necessarily true.

Rent Control

A total vacancy of 17,000 flats at the end of 1980 and the demolition of a new and unoccupied building just for the sake of changing from domestic use to commercial use show that rent control is against human nature and investment principles resulting in a dwindling supply of rental accommodation.

Rent control only benefits the sitting tenants in providing them with security of tenure and a rent lower than the fair market rent. To those who doubt the fairness of the 'Fair Market Rent', they are advised to enquire on the asking rent of a similar flat which is in the same building or estate.

The piecemeal and incoherent nature of the present rent control legislation leads to the illusion that if one holds on to something which one does not rightfully own, in this case, tenants of protected premises, one could manage to get some advantage or compensation out of it. Hence unnecessary confrontations are created between landlords, principal tenants and tenants and these add unnecessary load to the work of all parties concerned.

My view is that rent control is justifiable for small flats in the short term to stop step increases in rent owing to sudden increase in demand. In the longer term, it is justifiable after the war as a means to ask landlords to help the public in rehabilitation. But this should be phased out when people are employed and the economy started to take off.

In conclusion, I believe that the final solution to our housing problem is the building of more public housing and home ownership flats rather than rent control which should be phased out as soon as possible taking the socioeconomic factors into consideration. Luxurious flats as well as new domestic premise should be decontrolled. Otherwise the phasing out of rent control in ten years would be a runaway target.

Sir, with these remarks, I support the motion.

SECRETARY FOR HOUSING:—I should like to thank those Members who have spoken on this Bill and for Mr. CHAN's kind words for the Committee of Review. Their speeches summarize the wide divergence of views held on the subject of rent control, and demonstrate once again how difficult it is to strike an acceptable balance between conflicting interests. But all, I am happy to note, support the main provision in the Bill, which is the extension of the basic rent control mechanism for most post-war premises for a further two years, until December 1983.

In imposing rent controls the Government has always considered them essentially a temporary measure, and that as soon as circumstances permit they should be phased out. It is important, as Mr. BROWN has pointed out, that periodically, during the life of our rent control legislation, amendments be made to ensure that eventual phasing out remains a realistic long-term objective. If rents for premises under control are allowed to fall too far below market rents for too long, the social consequences of closing the gap at a later date will render difficult, or even impossible, any move in that direction. The results of too rigid a system of control are to be seen in the state of many pre-war buildings in Hong Kong, and in the urban decay that is so characteristic of some cities where insufficient regard has been paid to the long-term consequences of rent control.

Maximum Permitted Increase

Father MCGOVERN and Mr. LEE disagree with the raising of the biennial ceiling on rent increases from 21 per cent to 30 per cent. I have already pointed out the disadvantages of allowing controlled rents to fall too far behind market rents, and when I last addressed this Council I pointed out that if no adjustment is made, the level of controlled rents relative to market rents would continue to decline. Mr. WONG Lam queried the choice of 30 per cent as the new maximum permitted increase. The raising of the percentage ceiling to 30 per cent is not expected to narrow this gap within the foreseeable future—unless there is a significant falling off in the rate of increase in market rents—but it is hoped that it will cause the relationship between the two levels of rent to stabilize somewhat.

Here, perhaps, it will be useful to look briefly at the maximum increases permitted under previous post-war rent control legislation. In 1963 the maximum permitted increase was set at 10% biennially, and remained at this level until 1966 when the controls were allowed to lapse. In 1970, when rent control was reintroduced the limit was set at 15%, subsequently raised to 21% in 1973, and this has remained unchanged to date.

I believe it is also important to appreciate how this proposal relates to current market rent. For example, as the rent for a typical controlled premises now stands at about 35% of market rent, the raising of the maximum increase from 21% to 30% will mean that, *at the next increase*, the rent may be raised to 45.5% of the market rent instead of 42.3%. In dollar terms, if a controlled rent is $1,000 where the market rent is about $2,800, the new rent, with the maximum increase, will be $1,300, rather than $1,210.

New Buildings

Father MCGOVERN, Dr. HO and Mr. SO have spoken against the exclusion from Part II controls of premises in buildings issued with an occupation permit after 19 June this year.

I believe it is generally accepted that the only long-term solution to the problem of high and increasing rents is the production of more housing for the rental market. The most recent relevant statistics on construction of private housing are far from encouraging. In the first six months of 1980 the number of units in new private residential building projects with consents to commence work was almost 18,000. The figure for the same period this year was just over 13,000 units—a drop of nearly 27%. Although the reasons for this drop cannot be pinpointed it is clear that every opportunity must be taken to remove possible constraints on the production of new flats. Similarly, every encouragement must be given to the owners of new flats to put them on the rental market, and the best incentive is surely their removal from the ambit of the rent control legislation.

Luxury Premises

Although no Member has spoken specifically against the two-stage exclusion from control of premises with very high rateable values, there has been a great deal of publicity surrounding this aspect of the proposals, and I think it right that I should speak briefly in this regard.

The most relevant statistics which I can quote are the actual supply of large units—that is those with a covered area of 160 square metres and more—over the past ten years, and the forecast for this year and next. The average annual production of such large flats from 1971 to 1980 was 608 units. This year the forecast is that 1,455 will be produced, next year a further 1,635, and present indications are that the higher output of large units will continue. Clearly, production of well over twice the number of large units as in previous years must have a retarding effect on the upward movement of rents for such premises; but it must also be pointed out that the trend is for more such flats or houses to be built in what used to be considered 'outlying areas', and that if prospective tenants are to benefit from more favourable rents then they must be prepared to live in the New Territories rather than in the traditional luxury housing enclaves of Hong Kong Island.

Security of Contractual Tenancies

Much of the public comment since this Bill was published demonstrates a widely held misconception that all tenancies of flats with a rateable value of $80,000 or more will cease to have any form of protection with effect from 19 December. This is certainly not the case. Clause 9 of the Bill specifically protects existing contractual tenancies, and clause 12 provides that the minimum of six months' notice to quit such premises cannot be served before 19 December 1981.

There has hitherto been some doubt as to whether the statutory grounds for possession apply during the term of a contractual tenancy. A further effect of clause 9 is to make it clear that they cannot, so that if a landlord wishes to recover possession on any of the grounds specified in section 53(2), he can only do so after the expiry of an existing lease.

The Lands Tribunal

In his speech Dr. HO expressed concern for the position of tenants of premises to be excluded from the legislation, and on this point too there has been widespread public comment.

This concern is shared by Government, and thus, in introducing this Bill I stated that priority will be given to the examination of the recommendation of the Committee of Review that the jurisdiction of the Lands Tribunal be expanded to provide for mediation between landlords and sitting tenants of such premises, and that it is the intention that proposals in this regard shall be presented to this Council by the end of this year.

Although this recommendation of the Committee of Review, and the exact nature of the powers to be conferred on the Lands Tribunal must clearly be carefully considered, in outline the proposed system will be designed to ensure that normally any sitting tenant of a premises excluded from the rent control legislation will be entitled to a further tenancy at the expiry of his contractual tenancy *provided* he is prepared to pay a fair market rent. It will be the task of the Lands Tribunal, within guidelines to be provided by the Legislature, to determine what that rent should be in cases where no agreement is reached between landlord and tenant.

The Rent Officer Scheme

In an area so complex as rent control legislation, it is incumbent on the Government to ensure that the fullest possible information is available to all those affected. To this end the Rent Officer Scheme was introduced in April 1978. The service has recently been expanded so that Rent Officers now attend all ten City District Offices for one half-day each week, and also attend to give advice at the Kwai Chung and Tsuen Wan Town Management Offices.

Although during the period from April 1980 to March this year Rent Officers gave advice in response to over 26,000 enquiries, clearly there is scope for expansion of the service, particularly in its mediatory role, and this too was recommended by the Committee of Review. The Rating and Valuation Department is moving ahead with plans to increase the number of officers available to give advice, but any expansion will depend on the department's ability to recruit more staff of the right calibre for this important work.

Four Members have referred to the harmful effects of speculation on the domestic property market.

In early 1980, following the introduction of the present rent control legislation, it was noted that the excessive speculation that had characterized the market in the previous year had diminished. The Government will continue to keep the situation under constant review, and if at any time it is considered that there is a harmful resurgence of speculative activity appropriate measures will be taken to counteract this.

Mr. CHEN referred to one of the recommendations of the Committee of Review concerning additional ground for possession of rented accommodation. I can assure Mr. CHEN that this and a number of other recommendations will be examined further and his suggestion that the principle be extended to the public sector will be put to the Housing Authority.

Future Housing Supply

I should like to end this address by referring to the points made by Mr. BROWN, Mr. CHEN and Mr. SO, and also figuring largely in public debate on this issue, regarding the future supply of land and housing.

Production of public housing, both for rental and for home ownership, has reached a record level of 35,000 flats per annum and this will not only be maintained but will be increased when possible. It is also intended that additional flats will be produced by expanding the Private Sector Participation Scheme, and sites are now being identified to increase production through this arrangement.

The report of the Special Committee on Land Supply indicates that there will be a steady supply of sites for private high density housing over the next few years, and it goes without saying that a continued high level of production by the private sector is vital to meeting the housing needs of Hong Kong's people.

Mr. SO suggested that in general land accounts for 80 per cent of the cost of a flat. This certainly is not borne out by analysis of a number of recent flat sales, which shows that the cost of land accounts for well under half the cost of flat production. As Mr. BROWN pointed out, if land were in some way to be made available more cheaply, the end result would probably be additional profit in the pockets of developers.

Sir, in speaking at such length I hope I have been able to provide adequate answers to those Members who have expressed doubts on various aspects of the Bill, and that I have managed to correct some of the more widely held misconceptions regarding the Government's proposals. I should also like to thank those members of the public who have provided valuable information and views since the Government's proposals were first announced in May.

Sir, I beg to move.

(At this point, the Secretary for Social Services, Mr. F. W. LI, Dr. Harry FANG, Mr. Francis TIEN, Mr. S. L. CHEN, Miss Lydia DUNN, Mr. Peter C. WONG, Mr. Charles YEUNG and Mr. F. K. KU declared their interests.)

Question put and agreed to.

Bill read the second time.

holding or of the landlord is not confined to encroachments on land immediately adjacent to the demised premises. It is enough if the encroachment is so near that by reason of its nearness the tenant gained the opportunity of making it, and the landlord might have tacitly acquiesced in it[1]. Thus, the presumption is not rebutted by the intervention of a small river and fence and a narrow strip of waste[2], or of a road[3].

1 *Earl Lisburne v Davies* (1866) LR 1 CP 259 at 268 per Willes J; *Kingsmill v Millard* (1855) 11 Exch 313.
2 *Earl Lisburne v Davies* (1866) LR 1 CP 259.
3 *Andrews v Hailes* (1853) 2 E & B 349; *Doe d Lloyd v Jones* (1846) 15 M & W 580.

167. Rebuttal of presumption. The presumption that an encroachment by the tenant enures for the landlord's benefit may be rebutted by proving that the landlord and the tenant so conducted themselves as to show that the landlord treated the encroachment as not enuring for his benefit[1]. Thus, if the landlord on application refuses his consent to an encroachment and the tenant nevertheless incloses and builds, the presumption is rebutted[2]. Again, if, after an encroachment has been made, the land encroached upon is severed from the demised premises by a conveyance to a third person and the severance is brought to the landlord's knowledge, the presumption is rebutted; but, if the landlord is allowed to remain under the belief that the encroachment is part of the holding, the tenant is estopped from denying it[3]. The fact that an encroacher in adverse possession of land takes a lease of adjoining land from the owner of the land encroached upon does not raise the presumption that after the date of the lease the land encroached upon was occupied as part of the demised premises[4].

1 *A-G v Tomline* (1877) 5 ChD 750; *East Stonehouse UDC v Willoughby Bros Ltd* [1902] 2 KB 318; *King v Smith* [1950] 1 All ER 553, CA.
2 See *Doe d Baddeley v Massey* (1851) 17 QB 373.
3 *Kingsmill v Millard* (1855) 11 Exch 313; *Doe d Lloyd v Jones* (1846) 15 M & W 580 (tenant made an indorsement on his lease that inclosures made by him were to be delivered up at the end of the term, but subsequently executed a conveyance of them to his son, which was not delivered nor followed by any possession).
4 *Dixon v Baty* (1866) LR 1 Exch 259.

5. DURATION OF TENANCY

(1) TENANCY AT WILL

168. Nature of tenancy at will. A tenancy at will is a tenancy under which the tenant is in possession, and which is determinable at the will of either the landlord or the tenant[1]. Although on its creation such a tenancy is expressed to be at the will of the landlord or, as the case may be, the tenant only, the law implies that it is to be at the will of the other party also, because every lease at will must in law be at the will of both parties[1]. As in other tenancies, a tenancy at will arises by contract binding both the landlord and the tenant[2]; and the contract may be express or implied[3]. An express tenancy at will may have effect as such even though an annual rent is reserved[4]. The use of the words 'tenant at will' in

an agreement does not create a tenancy at will where the remainder of the agreement is inconsistent with such a tenancy[5].

1 Littleton's Tenures ss 68, 69; Co Litt 55a.
2 *Ley v Peter* (1858) 3 H & N 101 at 107.
3 For examples of express tenancies at will see *Richardson v Langridge* (1811) 4 Taunt 128; *Morgan v William Harrison Ltd* [1907] 2 Ch 137, CA; *Young v Hargreaves* (1963) 186 Estates Gazette 355, CA; *Manfield & Sons Ltd v Botchin* [1970] 2 QB 612, [1970] 3 All ER 143; *Hagee (London) Ltd v A B Erikson and Larson (a firm)* [1976] QB 209, [1975] 3 All ER 234, CA.
4 *Hagee (London) Ltd v A B Erikson and Larson (a firm)* [1976] QB 209, [1975] 3 All ER 234, CA; *Manfield & Sons Ltd v Botchin* [1970] 2 QB 612, [1970] 3 All ER 143; and see *Doe d Bastow v Cox* (1847) 11 QB 122; *Walker v Giles* (1848) 6 CB 662 at 702; *Doe d Dixie v Davies* (1851) 7 Exch 89. In some of these cases the tenancy was between mortgagee and mortgagor since, formerly, tenancies at will were often created by the attornment clause in mortgage deeds. See also *Pinhorn v Souster* (1853) 8 Exch 763; *Turner v Barnes* (1862) 2 B & S 435; *Morton v Woods* (1869) LR 4 QB 293, Ex Ch; *Re Stockton Iron Furnace Co* (1879) 10 ChD 335, CA. Such attornment clauses are now of less frequent use: see para 3 ante.
5 *Binions v Evans* [1972] Ch 359, [1972] 2 All ER 70, CA (person allowed to occupy a cottage 'as tenant at will free of rent for the remainder of her life or until determined as hereinafter provided'; not a tenancy at will).

169. Implied tenancy at will. A tenancy at will is implied where a person is in possession by the owner's consent[1], and his possession is not as employee or agent[2] or as a licensee holding under an irrevocable licence[3], and is not held in virtue of any freehold estate or of any tenancy for a certain term[4]. Such a tenancy is implied accordingly in cases of mere permissive occupation without payment of rent[5], for example the occupation of a house by a nonconformist minister under trustees in whom the property in the house is vested[6].

Such a tenancy is also implied upon a mere general letting, unless there are circumstances from which the court may infer that the tenancy is to be a periodic one[7]. The payment of a periodic rent is only one, albeit an important one, of the circumstances to consider[8].

1 *Doe d Hull v Wood* (1845) 14 M & W 682 at 687. It has been said that this must be an affirmative consent, and not a mere negative or silent consent (*Ley v Peter* (1858) 3 H & N 101 at 108 per Bramwell B); but it seems to be sufficient if the circumstances show assent by the owner (see *Wheeler v Mercer* [1957] AC 416 at 423, [1956] 3 All ER 631 at 632, HL per Viscount Simonds and 432 and at 638 per Lord Cohen, agreeing with the county court judge that positive assent could and must, in that case, be implied from the circumstances). Cf *Wheeler v Mercer* supra at 427, 428 and at 635 per Lord Morton of Henryton, who inclined to the view that the tenancy was a tenancy at sufferance. As to tenancies at sufferance see paras 176, 177 post.
2 An employee may well occupy only as licensee: see para 15 ante.
3 *Errington v Errington and Woods* [1952] 1 KB 290, [1952] 1 All ER 149, CA; *DHN Food Distributors Ltd v London Borough of Tower Hamlets* [1976] 3 All ER 462, [1976] 1 WLR 852, CA. As to the distinction between licensee and tenant see para 7 et seq ante.
4 See *Doe d Rogers v Pullen* (1836) 2 Bing NC 749. Where a rent is reserved the landlord may distrain for it: see DISTRESS vol 13 para 208. Where no rent is fixed, the landlord may bring an action for use and occupation: see para 257 post.
5 *Doe d Groves v Groves* (1847) 10 QB 486; *Smith v Seghill Overseers* (1875) LR 10 QB 422 at 429; *Woodhouse v Hooney* [1915] 1 IR 296; *R v Collett* (1823) Russ & Ry 498; cf *R v Jobling* (1823) Russ & Ry 525; *Buck v Howarth* [1947] 1 All ER 342, DC (oral permission to occupy for life created tenancy at will); *Young v Hargreaves* (1963) 186 Estates Gazette, CA (permission to live in house for 'as long as you wish, and I hope it will be for the rest of your lives' held to be a tenancy at will converted into a yearly tenancy where rent by reference to a year was paid); but see *Bannister v Bannister* [1948] 2 All ER 133, CA (oral undertaking to allow persons to live rent-free in cottage created life interest); applied in *Binions v Evans* [1972] Ch 359, [1972] 2 All ER

70, CA. See also *Hughes v Griffin* [1969] 1 All ER 460 at 465, [1969] 1 WLR 23 at 31, CA. A beneficiary in actual occupation is in law a tenant at will to the trustees (*Garrard v Tuck* (1849) 8 CB 231); but, if he is receiving the rents, he does this as the trustees' agent (*Melling v Leak* (1855) 16 CB 652 at 669). Cf *Morgell v Paul* (1828) 2 Man & Ry KB 303; *Vallance v Savage* (1831) 7 Bing 595. A tenancy at will without any consideration is not enlarged into a tenancy from year to year by the Agricultural Holdings Act 1986 s 2: see *Goldsack v Shore* [1950] 1 KB 708, [1950] 1 All ER 276, CA and AGRICULTURE vol 1(2) (Reissue) para 304.

6 See ECCLESIASTICAL LAW vol 14 para 1408.

7 *Richardson v Langridge* (1811) 4 Taunt 128 at 132 per Chambre J; *Doe d Hull v Wood* (1845) 14 M & W 682; *Doe d Roberton v Gardiner* (1852) 12 CB 319; and see *Roe d Bree v Lees* (1777) 2 Wm Bl 1171 at 1173; *Re Stroud and East and West India Docks and Birmingham Junction Rly Co* (1849) 8 CB 502; *Bayley v Fitzmaurice* (1857) 8 E & B 664 at 679 (on appeal sub nom *Fitzmaurice v Bayley* (1860) 9 HL Cas 78); *Hunt v Allgood* (1861) 10 CBNS 253; cf *Doe d Martin v Watts* (1797) 7 Term Rep 83 at 85 (a 'general occupation' said to be an occupation from year to year, but in that case rent had been paid).

8 *Javad v Aqil* [1991] 1 All ER 243, [1991] 1 WLR 1007, CA (entry into occupation pending negotiation for the grant of a lease held to be a tenancy at will notwithstanding payment of a quarterly rent); *Cardiothoracic Institute v Shrewdcrest Ltd* [1986] 3 All ER 633, [1986] 1 WLR 368 (tenant holding over after expiry of a business tenancy excluded from the Landlord and Tenant Act 1954 ss 24–28 (as amended) (see para 567 et seq post) pending negotiations for the grant of a new lease held to be a tenant at will notwithstanding payment of a monthly rent). See also the cases cited in note 7 supra which must be considered in the light of the modern tendency to inquire as to the correct inference to be drawn from the circumstances of the case as to the parties' intentions, rather than applying any presumption which is said to arise from the mere payment and acceptance of a periodic rent; and see para 179 post.

170. Possession pending completion. A person who enters on land with the owner's consent under a contract which does not immediately give him a definite interest in the land enters as tenant at will. For example, a purchaser who enters into possession of land pending the completion of the purchase is generally a tenant at will[1]. This is so where the consideration is the payment of sums for use and occupation[2] or where there is no special stipulation[3]. If, however, a purchaser enters into possession of land pending the completion of the purchase on the terms that his right to possession is to cease if he defaults in payment of sums which are not payable for use and occupation but are payable in respect of the purchase price, interest and outgoings on the property, the purchaser is not a tenant at will[4]. Entry into occupation by a prospective purchaser prior to exchange of contracts but with an intention to purchase may, however, give rise to a periodic tenancy[5].

Entry into occupation of land pending negotiation for the grant of a lease[6] or pursuant to an agreement for a lease[7] gives rise to a tenancy at will, unless there are circumstances from which the court may infer that the parties intended to grant a periodic tenancy[8]. The payment of periodic rent, even in advance, is not inconsistent with the grant of a tenancy at will, it being merely one, albeit an important one, of the circumstances to consider in determining the fair inference to be drawn as to the parties' intentions[9]. Similarly, entry under a lease which is void gives rise to a tenancy at will[10], subject to the subsequent payment of rent giving rise to a periodic tenancy[11].

1 *Right d Lewis v Beard* (1811) 13 East 210; *Doe d Newby v Jackson* (1823) 1 B & C 448; *Ball v Cullimore* (1835) 2 Cr M & R 120; *Doe d Tomes v Chamberlaine* (1839) 5 M & W 14; *Howard v Shaw* (1841) 8 M & W 118; *Doe d Stanway v Rock* (1842) 4 Man & G 30; *Doe d Parker v Boulton* (1817) 6 M & S 148. Consequently the tenancy cannot be determined without demand of possession (see *Pollen v Brewer* (1859) 7 CBNS 371), although in *Doe d Leeson v Sayer* (1811) 3

Camp 8 this was not considered necessary; cf *Doe d Moore v Lawder* (1816) 1 Stark 308; *Doe d Hiatt v Miller* (1833) 5 C & P 595. While the purchaser is thus in possession, he is not bound to pay rent and an action for use and occupation does not lie against him (*Winterbottom v Ingham* (1845) 7 QB 611; and see *Hearn v Tomlin* (1793) Peake 191; *Kirtland v Pounsett* (1809) 2 Taunt 145; *Corringan v Woods* (1867) 15 WR 318; cf *Tew v Jones* (1844) 13 M & W 12), save by virtue of special agreement (*Saunders v Musgrave* (1827) 6 B & C 524); although, if he remains in possession after the purchase has been abandoned, the action does lie (*Howard v Shaw* supra; *Markey v Coote* (1876) IR 10 CL 149 at 155); and a vendor who remains in possession after the time for completion may be liable for use and occupation (*Metropolitan Rly Co v Defries* (1877) 2 QBD 387, CA). Contracts for the sale of land often expressly provide that, if the purchaser is allowed into possession in advance of completion, he takes possession as the vendor's licensee; and see the Standard Conditions of Sale (2nd Edn) condition 5.2 which expressly provides that the purchaser is to occupy as licensee and not as tenant pending completion.

2 See eg *Francis Jackson Developments Ltd v Stemp* [1943] 2 All ER 601, CA.

3 *Wheeler v Mercer* [1957] AC 416 at 425, [1956] 3 All ER 631 at 633, 634, HL per Viscount Simonds (disapproving the observation of Denning LJ in the lower court [1956] 1 QB 274 at 284, [1955] 3 All ER 455 at 457, CA, and, on this point, *Errington v Errington and Woods* [1952] 1 KB 290, [1952] 1 All ER 149, CA (irrevocable licence)); and see para 10 ante.

4 *Dunthorne and Shore v Wiggins* [1943] 2 All ER 678, CA.

5 *Bretherton v Paton* [1986] 1 EGLR 172, CA (prospective purchaser held to be a periodic tenant where she contributed by way of weekly payments to the insurance premiums for the property); cf *Sharp v McArthur and Sharp* (1987) 19 HLR 364, CA (occupation pending sale by the owner, although not to the occupier, created a temporary licence).

6 *Javad v Aqil* [1991] 1 All ER 243 at 254, [1991] 1 WLR 1007 at 1019, CA per Nicholls LJ ('entry into possession while negotiations proceed is one of the classic circumstances in which a tenancy at will may exist' (citing *Hagee (London) Ltd v A B Erikson and Larson (a firm)* [1976] QB 209 at 217, [1975] 3 All ER 234 at 237 per Scarman LJ); *British Railways Board v Bodywright Ltd, British Railways Board v Hayward* (1971) 220 Estates Gazette 651); *Coggan v Warwicker* (1852) 3 Car & Kir 40 (where the intending tenant was held liable for use and occupation). Cf *Doe d Knight v Quigley* (1810) 2 Camp 505 (intending tenant said to be a tenant at sufferance).

7 *Hamerton v Stead* (1824) 3 B & C 478 at 483; *Braythwayte v Hitchcock* (1842) 10 M & W 494 at 497; *Anderson v Midland Rly Co* (1861) 3 E & E 614; *Coatsworth v Johnson* (1886) 55 LJQB 220, CA. If specific performance is obtainable, the tenant holds for the terms agreed to be granted: see paras 52, 53 ante.

8 *Javad v Aqil* [1991] 1 All ER 243 at 247, 248, [1991] 1 WLR 1007 at 1011–1013, CA.

9 *Javad v Aqil* [1991] 1 All ER 243 at 247, 248, [1991] 1 WLR 1007 at 1011–1013, CA; *Cardiothoracic Institute v Shrewdcrest Ltd* [1986] 3 All ER 633, [1986] 1 WLR 368.

10 *Goodtitle d Gallaway v Herbert* (1792) 4 Term Rep 680; *Denn d Warren v Fearnside* (1747) 1 Wils 176; *Anderson v Midland Rly Co* (1861) 3 E & E 614 at 621.

11 *Doe d Rigge v Bell* (1793) 5 Term Rep 471; and see para 179 post.

171. Possession after expiry of lease. A tenant who, with the landlord's consent, remains in possession after his lease has expired is tenant at will until some other interest is created[1], either by express grant or by implication by the payment and acceptance of rent[2]. Thus, where a lease of war damaged premises was disclaimed and so deemed to have been surrendered[3] and the landlord and the tenant were willing that the tenant should remain in occupation as a trespasser, in law the tenant continued in possession as tenant at will[4]. The terms of a tenancy at will which arises in this way will be those of the expired lease unless inconsistent with the nature of a tenancy at will and unless there is evidence of a contrary intention[5]. A tenant who remains in possession after his lease has expired and who is entitled to the protection of the Rent Act 1977 or Part I of the Housing Act 1988[6] is, however, a statutory tenant or statutory periodic tenant and not a tenant at will[7]; and a tenant of a business tenancy under the Landlord and Tenant Act 1954[8] remains in possession after the expiry of the term specified in his lease not as a tenant at will but because by the Act the term is

continued unless and until the landlord or the tenant serves the notice or request prescribed[9].

1 See para 179 post; *Cardiothoracic Institute v Shrewdcrest Ltd* [1986] 3 All ER 633, [1986] 1 WLR 368. See also *Doe d Hollingsworth v Stennett* (1799) 2 Esp 717 at 719. Cf *Morgan v William Harrison Ltd* [1907] 2 Ch 137, CA. In *Simkin v Ashurst* (1834) 1 Cr M & R 261, however, a holding over by a subtenant with consent was said to make him tenant at sufferance only. A notice to quit the premises, stating that the term has long since expired, does not recognise a yearly tenancy, but is a mere demand of possession: *Doe d Godsell v Inglis* (1810) 3 Taunt 54.

2 As to the circumstances justifying the implication of a periodic tenancy see *Javad v Aqil* [1991] 1 All ER 243, [1991] 1 WLR 1007, CA; *Right d Flower v Darby and Bristow* (1786) 1 Term Rep 159; *Longrigg, Burrough and Trounson v Smith* (1979) 251 Estates Gazette 847, CA; *Cardiothoracic Institute v Shrewdcrest Ltd* [1986] 3 All ER 633, [1986] 1 WLR 368; cf *Dougal v McCarthy* [1893] 1 QB 736, CA (application of presumption as to the creation of a yearly tenancy by the payment of rent by reference to a year). See also paras 179, 182 post.

3 Ie under the Landlord and Tenant (War Damage) Act 1939 s 8(2): see para 539 post.

4 *Meye v Electric Transmission Ltd* [1942] Ch 290.

5 *Morgan v William Harrison Ltd* [1907] 2 Ch 137, CA.

6 Ie the Housing Act 1988 Pt I (ss 1–45) (as amended): see para 878 et seq post.

7 See paras 677, 917 post.

8 See the Landlord and Tenant Act 1954 Pt II (ss 23–46) (as amended) and para 558 et seq post.

9 See ibid ss 24–27 (as amended) and para 567 et seq post.

172. Determination of tenancy at will. A tenancy at will is determinable by either party on his expressly or impliedly intimating to the other his wish that the tenancy should be at an end[1]. Until the intimation is thus given, the tenant is lawfully in possession; and accordingly the landlord may not recover the premises in an action for recovery of land without a previous demand of possession[2] or other determination of the tenancy. A demand for possession by the landlord which determines the tenancy at will is not a notice to quit[3]. The issue of a writ claiming possession is a sufficient demand for possession to bring the tenancy to an end[3]. The statutory minimum period of four weeks' notice to quit in respect of premises let as a dwelling[4] does not apply to a tenancy at will[5]. Where rent is payable under a tenancy at will and the tenancy is determined between the rent days, the rent is apportioned[6].

1 A tenancy at will, whether created expressly or by implication, is not a tenancy within the meaning of that term in the Landlord and Tenant Act 1954 s 69(1) for the purposes of the provisions of that Act (see para 564 note 2 post) giving security of tenure for business, professional and other tenants: *Wheeler v Mercer* [1957] AC 416, [1956] 3 All ER 631, HL; *Manfield & Sons Ltd v Botchin* [1970] 2 QB 612, [1970] 3 All ER 143; approved in *Hagee (London) Ltd v A B Erikson and Larson (a firm)* [1976] QB 209, [1975] 3 All ER 234, CA. A tenancy at will is, however, within the provisions of the Rent Act 1977 and the Housing Act 1988 Pt I (ss 1–45) (as amended) provided the rent is a monetary one (see paras 708, 893 note 4 respectively post) and is not a low rent within the meaning of those Acts (see paras 707, 895 respectively post): see *Chamberlain v Farr* [1942] 2 All ER 567,CA; *Francis Jackson Development Ltd v Stemp* [1943] 2 All ER 601, CA (cf *Dunthorne and Shore v Wiggins Ltd* [1943] 2 All ER 678, CA).

2 *Goodtitle d Gallaway v Herbert* (1792) 4 Term Rep 680. Receipt of rent under a void lease, although in such circumstances as not to imply a yearly tenancy, is such a recognition of the tenant's lawful possession as to prevent his being a trespasser until after notice to quit: *Denn d Brune v Rawlins* (1808) 10 East 261.

3 *Martinali v Ramuz* [1953] 2 All ER 892, [1953] 1 WLR 1196, CA.

4 See the Protection from Eviction Act 1977 s 5 (as amended) and para 184 post.

5 *Crane v Morris* [1965] 3 All ER 77, [1965] 1 WLR 1104, CA.

6 See the Apportionment Act 1870 ss 2, 3 and para 245 post. In *Manfield & Sons Ltd v Botchin* [1970] 2 QB 612 at 618, [1970] 3 All ER 143 at 147 it was said obiter that, where rent was

payable in advance under a tenancy at will and the tenancy was determined during a period for which rent had been paid, an appropriate adjustment would have been made. In *Ellis v Rowbotham* [1900] 1 QB 740, CA it was, however, held that, in the absence of special statutory provisions or express covenants, the Apportionment Act 1870 did not apply to rent payable in advance. Formerly it was otherwise, and a tenant at a quarterly rent determining the tenancy during a quarter paid the rent for the quarter, but the landlord determining the tenancy lost it: *Leighton v Theed* (1701) 2 Salk 413; and see *Disdale v Iles* (1673) 2 Lev 88.

173. Determination by landlord. Anything which amounts to a demand of possession, although not expressed in precise and formal language, is sufficient to indicate the determination of the landlord's will[1]. Thus, the landlord may expressly demand possession[2], or state that the tenant is in against his, the landlord's, will[3], or send for the keys[3]. If the notice states terms and intimates that, if they are not accepted, the landlord will take steps to recover the premises, and the terms are rejected, this is a sufficient notice to determine the tenancy[4]. The landlord is not required to allow the tenant a reasonable time within which to vacate the premises[5].

The tenancy is impliedly determined by the landlord when he does any act on the premises which is inconsistent with the continuance of the tenancy, as, for example, when he re-enters to take possession[6], or puts in a new tenant[7], or cuts down trees or carries away stone[8], the trees and stone not being excepted from the demise[9], and also when he does an act off the premises which is inconsistent with the tenancy, as, for example, when he grants a lease of the premises to commence forthwith[10]. An act done off the premises does not, however, determine the tenancy until the tenant has notice of it[11].

1 *Doe d Price v Price* (1832) 9 Bing 356 at 358; and see *Locke v Matthews* (1863) 13 CBNS 753.

2 Previous notice to quit is unnecessary: see *Doe d Jones v Jones* (1830) 10 B & C 718; *Doe d Nicholl v M'Kaeg* (1830) 10 B & C 721 at 723; *Doe d Rogers v Pullen* (1836) 2 Bing NC 749 at 753; *Doe d Tomes v Chamberlaine* (1839) 5 M & W 14; *Coatsworth v Johnson* (1886) 55 LJQB 220, CA.

3 *Pollen v Brewer* (1859) 7 CBNS 371 at 373.

4 *Doe d Price v Price* (1832) Bing 356; *Fox v Hunter Paterson* [1948] 2 All ER 813.

5 *Doe d Nicholl v M'Kaeg* (1830) 10 B & C 721. If, however, 'the tenant, after the determination of his tenancy ..., by a demand of possession, had entered on the premises for the sole purpose of removing his goods and continued there no longer than was necessary for that purpose, and did not exclude the landlord, perhaps he might not have been a trespasser': *Doe d Nicholl v M'Kaeg* supra at 723–724 per Lord Tenterden CJ.

6 Co Litt 55b. Entering for the purpose of doing repairs does not determine the tenancy: *Lynes v Snaith* [1899] 1 QB 486, DC.

7 *Wallis v Delmar* (1860) 29 LJ Ex 276.

8 *Turner v Doe d Bennett* (1842) 9 M & W 643, Ex Ch.

9 If the trees and stone are excepted, the act is lawful and hence is not an implied determination of the tenancy: Co Litt 55b.

10 *Disdale v Iles* (1673) 2 Lev 88; *Hogan v Hand* (1861) 14 Moo PCC 310; *Farrelly v Robins* (1869) IR 3 CL 284.

11 *Doe d Davies v Thomas* (1851) 6 Exch 854; *Pinhorn v Souster* (1853) 8 Exch 763 at 770. Similarly, an oral notice given off the premises must be shown to have reached the tenant: Co Litt 55b. A tenant is presumed to have notice of any act done openly on the premises: *Pinhorn v Souster* supra. Cf *Ball v Cullimore* (1835) 2 Cr M & R 120.

174. Determination by tenant. A mere notice by the tenant to determine a tenancy at will is not effectual unless he actually gives up possession[1]. The tenancy is impliedly determined on his part when he usurps the landlord's rights, as when he cuts down timber trees or pulls down houses[2].

1 Co Litt 55b note (15).
2 Co Litt 57a. As to what trees are timber see FORESTRY vol 19 para 33.

175. Tenancy at will is personal relationship. A tenancy at will is a personal relationship between the original landlord and tenant, and is determined by the death of either of them[1]. It is also determined if the landlord conveys away his reversion[2] or the tenant assigns[3] or sublets[4] the premises and the assignment or subletting comes to the landlord's notice[5].

1 Co Litt 57b; *James v Dean* (1805) 11 Ves 383 at 391; *Doe d Stanway v Rock* (1842) Car & M 549 at 553; *Turner v Barnes* (1862) 2 B & S 435; *Scobie v Collins* [1895] 1 QB 375. In *Morton v Woods* (1869) LR 4 QB 293 at 306, Ex Ch, it was, however, intimated that a tenancy at will might continue to subsist after the death of one of the parties unless the successor in title manifested his intention to determine it. See also *Re Manser, Killick v Manser* [1910] WN 61 (administrator of a deceased tenant at will accepted as tenant at will; her tenancy held to be on behalf of the deceased's estate). On the death of one of two joint tenants at will the tenancy at will subsists and vests in the surviving tenant: see REAL PROPERTY vol 39 para 531.
2 *Doe d Davies v Thomas* (1851) 6 Exch 854 at 857; *Doe d Dixie v Davies* (1851) 7 Exch 89 at 93; and see *Daniels v Davison* (1809) 16 Ves 249 at 252. An involuntary alienation, such as a vesting in a trustee in bankruptcy, has the same effect: *Doe d Davies v Thomas* supra. A feoffment with livery of seisin on the land determined the tenancy, even though the tenant was off the land and had no notice: *Ball v Cullimore* (1835) 2 Cr M & R 120.
3 *Pinhorn v Souster* (1853) 8 Exch 763 at 772.
4 *Birch v Wright* (1786) 1 Term Rep 378 at 382. Cf *Day v Day* (1871) LR 3 PC 751 at 760 (where it was suggested that acts of subletting and assignment which are impliedly authorised by the character in which, and the circumstances under which, the tenant occupies at will do not determine the tenancy).
5 *Pinhorn v Souster* (1853) 8 Exch 763 at 772.

(2) TENANCY AT SUFFERANCE

176. Nature of tenancy at sufferance. A person who enters on land by a lawful title[1] and, after his title has ended, continues in possession without statutory authority and without obtaining the consent of the person then entitled, is said to be a tenant at sufferance[2], as distinct from a tenant at will who is in possession with the landlord's consent. This is so whatever the nature of the tenant's original estate, whether he was tenant for years[3], or the subtenant of a tenant for years[4], or a tenant at will[5]. A tenancy at sufferance arises by implication of law and may not be created by contract between the parties.

A tenancy at sufferance does not arise upon the holding over by one whose title was created by act of law[6]; and there can be no tenancy at sufferance against the Crown[7]. In these cases the person holding over is a mere trespasser[8]. One tenant at sufferance cannot make another[9]; but it seems that, on the death of a tenant at sufferance, the like tenancy will continue in favour of a person claiming under him[10]. A release from the landlord to the tenant at sufferance does not operate to enlarge the tenant's estate[11].

1 A person who, in expectation of being granted a tenancy when a prospective landlord (as purchaser of the freehold) is in a position to grant one, pays 'advance rent' may find that he obtains no tenancy at all, but is only an occupier on sufferance and liable to eviction at the instance of mortgagees: see *Hughes v Waite* [1957] 1 All ER 603, [1957] 1 WLR 713. A tenant who pays rent in advance and goes into possession or occupation will, however, have a title

good as against a mortgagee when the entry into possession was earlier than the date of the mortgage: *Grace Rymer Investments Ltd v Waite* [1958] Ch 831, [1958] 2 All ER 777, CA; and see *Abbey National Building Society v Cann* [1991] 1 AC 56, [1990] 1 All ER 1085, HL (cited in para 32 note 4 ante).

2 Co Litt 57b. Any assent by the landlord to the holding over constitutes a tenancy at will, although a written acknowledgment that the tenant holds 'on sufferance only' has been held to be a mere acknowledgment and not to require to be stamped as an agreement for a tenancy: *Barry v Goodman* (1837) 2 M & W 768. A tenant who holds over after the expiry of a protected tenancy of premises by virtue of the provisions of the Rent Act 1977 is, however, a statutory tenant and not a tenant at sufferance: see para 677 post. Similarly, a tenant who holds over after the expiry of an assured tenancy by virtue of the provisions of the Housing Act 1988 Pt I (ss 1–45 (as amended): see para 878 et seq post) or a business tenant who holds over by virtue of the provisions of the Landlord and Tenant Act 1954 Pt II (ss 23–46 (as amended): see para 558 et seq post) is not a tenant at sufferance. Once the landlord indicates his dissent at the holding over, the tenant at sufferance becomes a trespasser.

3 Co Litt 57b, 270b; and see *Bayley v Bradley* (1848) 5 CB 396; *Doe d Patrick v Duke of Beaufort* (1851) 6 Exch 498, 503. This applies also where the tenant under a landlord who was only tenant for life holds over after the landlord's death: *Roe d Jordan v Ward* (1789) 1 Hy Bl 96 at 99.

4 *Simkin v Ashurst* (1834) 1 Cr M & R 261.

5 *Doe d Bennett v Turner* (1840) 7 M & W 226; *Turner v Doe d Bennett* (1842) 9 M & W 643, Ex Ch (where it was left open whether he would be a trespasser or tenant at sufferance); *Doe d Goody v Carter* (1847) 9 QB 863 at 868; *Day v Day* (1871) LR 3 PC 751 at 760.

6 Eg where a guardian in socage held over after the heir had come of age: Co Litt 57b.

7 Co Litt 57b.

8 The recognition of a tenancy at sufferance in other cases probably arose from a desire to prevent the person holding over from being a disseisor and, therefore, in a position to acquire a title by adverse possession. The revision of the doctrine of adverse possession has rendered this use of the tenancy obsolete: see LIMITATION OF ACTIONS vol 28 para 601 et seq.

9 *Thunder d Weaver v Belcher* (1803) 3 East 449. He may create a licence by admitting another person as his lodger: *Bensing v Ramsay* (1898) 62 JP 613.

10 See *Doe d Burrell v Perkins* (1814) 3 M & S 271.

11 A tenant at sufferance has possession, but no privity of estate, and thus a release to him is void; but it is otherwise with a tenant at will: Co Litt 270b; *Butler v Duckmanton* (1607) Cro Jac 169. Such an instrument might, however, be held to operate as a grant: see DEEDS vol 12 para 1471.

177. Rights of tenant and landlord. A tenant at sufferance may maintain an action of trespass by virtue of his possession[1], and, like any other person holding without title who is deprived of possession, he may bring an action for recovery of possession against a mere wrongdoer[2].

The tenancy requires no notice to determine it; and consequently the landlord may enter, or the tenant may leave, at any time without notice[3]. A tenant at sufferance is not entitled to emblements[4].

The landlord may sue the tenant at sufferance for use and occupation[5], but he may not distrain[6].

1 See *Graham v Peat* (1801) 1 East 244.

2 *Asher v Whitlock* (1865) LR 1 QB 1; *Perry v Clissold* [1907] AC 73, PC.

3 *Doe d Bennett v Turner* (1840) 7 M & W 226 at 235; and see *Doe d Godsell v Inglis* (1810) 3 Taunt 54; *Doe d Moore v Lawder* (1816) 1 Stark 308; *Doe d Rogers v Pullen* (1836) 2 Bing NC 749; *Randall v Stevens* (1853) 2 E & B 641; contra *Doe d Harrison v Murrell* (1837) 8 C & P 134 (where Lord Abinger CB considered that trespass would lie against a landlord who turned out his tenant at sufferance without notice). The landlord immediately on entry is, however, lawfully in possession: *Jones v Chapman* (1849) 2 Exch 803, Ex Ch. As to a landlord's right of re-entry see para 545 post. Tenants at sufferance of premises to which the Increase of Rent and Mortgage Interest (Restrictions) Act 1919 (expired) applied were protected by the Act (*Artizans, Labourers and General Dwellings Co Ltd v Whitaker* [1919] 2 KB 301; *Hunt v Bliss* (1919) 89 LJKB 174, DC; *Dobson v Richards* (1919) 63 Sol Jo 663; *Epsom Grand Stand Association Ltd v Clarke* (1919) 35

TLR 525, CA), and became statutory tenants (see para 677 post). See also *Remon v City of London Real Property Co Ltd* [1921] 1 KB 49, CA.

4 *Doe d Bennett v Turner* (1840) 7 M & W 226. As to the right to emblements see AGRICULTURE vol 1(2) (Reissue) para 382.

5 *Bayley v Bradley* (1848) 5 CB 396 at 406; and see *Hellier v Sillcox* (1850) 19 LJQB 295.

6 *Jenner v Clegg* (1832) 1 Mood & R 213; *Alford v Vickery* (1842) Car & M 280; and see DISTRESS vol 13 para 265.

(3) TENANCY FROM YEAR TO YEAR

(i) Creation of Tenancy from Year to Year

178. Nature of tenancy. A tenancy from year to year[1] arises either by express agreement or by implication of law or by statute[2]. It differs from a tenancy at will in that it may be determined only by notice duly given[3] except where there is a stipulation for determination without notice[4]. The appropriate words for the express creation of the tenancy are 'from year to year'. The agreement may stipulate the time and length of any notice required to determine the tenancy[5]; but, in the absence of any such stipulation and of any statutory provision preventing determination[6], the tenancy may be determined at the end of the first or any subsequent year[7], unless the parties use further words showing that they contemplate a tenancy for two years at least[8]. Thus, where the lease is 'for one year certain and so on from year to year', the notice may not be given in the course of the first year[9]. A yearly tenancy does not become a tenancy for two years at least merely by the inclusion of expressions showing that the parties contemplated that it would last for more than one year[10]; and the lease may be so worded that it will be for one year only unless there is a further agreement between the parties[11]. A perpetual right of renewal is repugnant to a tenancy from year to year; but, where the tenant was given the right to renew by notice, the tenancy operated as a contract to create a succession of reversionary terms, each for one year certain, provided that the requisite notice was given[12]. A tenancy for 364 days and thereafter for successive periods of 364 days does not create a term of years or a tenancy from year to year[13].

Where a tenancy from year to year continues beyond the first year, it is not treated as a tenancy determining and recommencing with every year. The tenant has a lease for one year certain, with a growing interest during every year thereafter, springing out of the original contract and parcel of it[14]. The tenancy does not determine with his death, but passes to his personal representative[15]. The tenancy may be assigned by the tenant unless there is an express provision to the contrary[16]. Where the lease is for a year[17], or for one year and no longer, it expires at the end of the year without notice to quit[18].

1 This tenancy is correctly described as a tenancy for a term (*Hammersmith and Fulham London Borough Council v Monk* [1992] 1 AC 478, [1992] 1 All ER 1, HL; *Doe d Hull v Wood* (1845) 14 M & W 682 at 686 per Parke B), and is included in the definition of 'term of years absolute' in the Law of Property Act 1925 s 205(1)(xxvii) (see para 2 note 3 ante).

2 Thus, an agreement to let agricultural land for a period of less than one year takes effect as a tenancy from year to year: see the Agricultural Holdings Act 1986 s 2 and AGRICULTURE vol 1(2) (Reissue) para 304. See also *Epsom and Ewell Borough Council v C Bell (Tadworth) Ltd*

[1983] 2 All ER 59, [1983] 1 WLR 379 (illustrating the exception where the Minister approves the letting before the agreement is made).

3 See para 183 post.

4 *Re Threlfall, ex p Queen's Benefit Building Society* (1880) 16 ChD 274, CA.

5 *Godfrey Thornfield Ltd v Bingham* [1946] 2 All ER 485; *Wembley Corpn v Sherren* [1938] 4 All ER 255; *H and G Simonds Ltd v Heywood* [1948] 1 All ER 260.

6 Unlike a tenancy at will, a tenancy from year to year attracts the protection of the Agricultural Holdings Act 1986 (see AGRICULTURE vol 1(2) (Reissue) para 303) and the Landlord and Tenant Act 1954 Pt II (ss 23–46 (as amended): see para 558 et seq post). It is often, therefore, the case that the common law rules discussed in the text have to be applied with the addition of the relevant statutory provisions.

7 *Mayo v Joyce* [1920] 1 KB 824, DC.

8 *Doe d Clarke v Smaridge* (1845) 7 QB 957 at 959; *Doe d Hogg v Taylor* (1837) 1 Jur 960.

9 *Doe d Chadborn v Green* (1839) 9 Ad & El 658; *R v Chawton Inhabitants* (1841) 1 QB 247; *Cannon Brewery v Nash* (1898) 77 LT 648, CA (a lease for six months and so on from six months to six months until six calendar months' notice is given is for a year at least); *Herron v Martin* (1911) 27 TLR 431 (a lease for three years and so on from year to year is properly terminated by notice to quit at the end of the fourth year); *Re Searle, Brooke v Searle* [1912] 1 Ch 610 (a lease for two years certain and after that from year to year, until either party gives three months' notice to determine, is a lease for three years at least terminable at the end of the third or any subsequent year); *Re John Brinsmead & Sons Ltd* (1912) 56 Sol Jo 253; and see *Birch v Wright* (1786) 1 Term Rep 378 at 380; *Doe d Monck v Geekie* (1844) 5 QB 841; *British Iron and Steel Corpn Ltd v Malpern* (1946) KB 171, [1946] 1 All ER 408. The position is similar where the tenancy is 'not for one year only, but from year to year': *Denn d Jacklin v Cartright* (1803) 4 East 29 at 33.

10 *Doe d Plumer v Mainby* (1847) 10 QB 473.

11 *Harris v Evans* (1756) Amb 329; cf *Bishop of Bath's Case* (1605) 6 Co Rep 34b at 36a; *Austin v Newham* [1906] 2 KB 167, DC.

12 *Gray v Spyer* [1922] 2 Ch 22, CA; *Northchurch Estates Ltd v Daniels* [1947] Ch 117, [1946] 2 All ER 524. As to perpetually renewable leases see paras 452–454 post.

13 *Land Settlement Association Ltd v Carr* [1944] KB 657, [1944] 2 All ER 126, CA. A tenancy for such a curious period was created in order to avoid the provisions of the Agricultural Holdings Act 1923 (repealed). Such a device would not now avoid the provisions contained in the Agricultural Holdings Act 1986: see s 2 and AGRICULTURE vol 1(2) (Reissue) para 304.

14 *Oxley v James* (1844) 13 M & W 209 at 214; *Cattley v Arnold, Banks v Arnold* (1859) 1 John & H 651 at 660; *R v Thornton Inhabitants* (1860) 2 E & E 788 at 792; *Gandy v Jubber* (1865) 9 B & S 15 at 18, Ex Ch; cf *Hayes v Fitz-Gibbon* (1870) IR 4 CL 500. As to the application of this principle to weekly and other periodic tenancies see para 203 post.

15 *Mackay v Mackreth* (1785) 4 Doug KB 213; *Doe d Shore v Porter* (1789) 3 Term Rep 13; and see *Parker d Walker v Constable* (1769) 3 Wils 25.

16 *Allcock v Moorhouse* (1882) 9 QBD 366, CA; *Botting v Martin* (1808) 1 Camp 317.

17 See *Messenger v Armstrong* (1785) 1 Term Rep 53 at 54; *Right d Flower v Darby and Bristow* (1786) 1 Term Rep 159 at 162.

18 *Cobb v Stokes* (1807) 8 East 358 at 361.

179. Tenancy from year to year by presumption of law. The old common law presumption of a yearly tenancy arising by entry upon premises with payment of rent by reference to a yearly holding seldom now arises[1]. The fundamental question in each case is with what intent the rent was received and what was the real intention of both parties[2]. It is unclear whether subjective evidence of the intention of the parties is admissible in determining this question[3].

If one party permits another to enter into[4] or remain in possession of[5] his land upon payment of rent[6] with reference to a yearly holding, failing more, the inference reasonably to be drawn is that the parties intended a yearly tenancy[7]. A typical case, however, involves more than the simple facts of possession and unexplained payment of rent[8]. Where there is more than the simple situation, the inference sensibly and reasonably to be drawn as to the intention of the

parties depends upon a fair consideration of all the circumstances of which the payment of rent on a periodical basis is one, albeit a very important one[9].

Where the tenant has a statutory right to remain in possession of the premises after expiry of the lease and he does so, paying rent, the fair inference to be drawn is that he does so in pursuance of his statutory rights and not under any new periodic tenancy[10]. Alternatively, where the tenant has no statutory right to remain in possession, the circumstances may show only an intention that the occupier should be a tenant at will[11], or that no tenancy was intended to be granted[12]. Where a person is in possession under an agreement for a lease, he acquires a legal estate from year to year as soon as he pays rent on a yearly basis[13]. Where the agreement is specifically enforceable, the tenant is, in equity, entitled to hold for the term specified in the agreement[14]. The equitable rule prevails in all courts[15] and the tenant's equitable rights prevail over the position at common law[16]. The common law position is, however, still of importance where the agreement for lease is not specifically enforceable, as, for example, where the tenant has not performed a condition precedent[17]. A tenant who enters under a void lease and pays rent on a yearly basis similarly acquires a legal tenancy from year to year[18]; and in addition the void lease may be construed as an agreement for a lease[19] and may, therefore, be enforceable in equity[20].

A tenancy from year to year is implied only where the rent paid is a yearly rent, even though it may be payable quarterly or at any other intervals constituting an aliquot part of a year. Thus payment of £100 under an agreement reserving a yearly rent of £1200 payable monthly will create a yearly tenancy, but payment of £100 under an agreement reserving a rent of £100 per month will create only a tenancy from month to month[21]. A tenant holding over after a term of years at a weekly rent acquires only a weekly tenancy[22]; and a tenant holding over after the expiration of a term which was for less than one year is only a tenant at will or a weekly tenant, or possibly not a tenant at all[23].

1 *Longrigg, Burrough and Trounson v Smith* (1979) 251 Estates Gazette 847 at 849, CA per Ormerod LJ, who was of the view that the presumption was 'unsound and no longer holds'; *Javad v Aqil* [1991] 1 All ER 243 at 252, [1991] 1 WLR 1007 at 1017, CA per Nicholls LJ.

2 *Doe d Cheny v Batten* (1775) 1 Cowp 243 at 245 per Lord Mansfield CJ, cited in *Javad v Aqil* [1991] 1 All ER 243 at 248, 249, [1991] 1 WLR 1007 at 1013, CA; *Dealex Properties Ltd v Brooks* [1966] 1 QB 542 at 550, [1965] 1 All ER 1080 at 1082, CA per Harman LJ; *Clarke v Grant* [1950] 1 KB 104 at 106, [1949] 1 All ER 768 at 769, CA; *Land v Sykes* [1992] 1 EGLR 1 at 4, CA. See also *Longrigg, Burrough and Trounson v Smith* (1979) 251 Estates Gazette 847, CA and *Cardiothoracic Institute v Shrewdcrest Ltd* [1986] 3 All ER 633, [1986] 1 WLR 368.

3 *Maconochie Bros Ltd v Brand* [1946] 2 All ER 778; *Clarke v Grant* [1950] 1 KB 104, [1949] 1 All ER 768, CA; *Legal and General Assurance Society Ltd v General Metal Agencies Ltd* (1969) 20 P & CR 953; *Sector Properties Ltd v Meah* (1974) 229 Estates Gazette 1097 at 1103, CA per Edmund Davies LJ (judge entitled to hear evidence from the landlord as to the animus with which he received rent); *Baron v Phillips* (1978) 38 P & CR 91 at 104, CA (concession by counsel that evidence of subjective intention was admissible); *Longrigg, Burrough and Trounson v Smith* (1979) 251 Estates Gazette 847, CA (facts indicate that evidence of subjective intention admitted); *Land v Sykes* [1992] 1 EGLR 1 at 4, CA per Scott LJ (grave reservations expressed as to whether evidence of the subjective intentions of the parties was admissible; the intention should be ascertained objectively).

4 See para 170 ante and *D'Silva v Lister House Development Ltd* [1971] Ch 17, [1970] 1 All ER 858; *Bretherton v Paton* [1986] 1 EGLR 172, CA (payment pending entry into contract of sale gave rise to a weekly periodic tenancy); cf *Sharp v McArthur and Sharp* (1987) 19 HLR 364, CA.

5 This may be because his lease has expired by effluxion of time (*Digby v Atkinson* (1815) 4 Camp 275; *Bishop v Howard* (1823) 2 B & C 100; *Finch v Miller* (1848) 5 CB 428; *Hyatt v Griffiths* (1851) 17 QB 505; *Dougal v McCarthy* [1893] 1 QB 736 at 740, CA) or because the landlord's title was

determined (*Doe d Martin v Watts* (1797) 7 Term Rep 83; *Doe d Tucker v Morse* (1830) 1 B & Ad 365 at 369; *Cornish v Stubbs* (1870) LR 5 CP 334; *Wyatt v Cole* (1877) 36 LT 613; and see *Nixon v Darley* (1868) IR 2 CL 467). Payment of rent under attornment to a person claiming by title paramount has been held to create a yearly tenancy: see *Doe d Chaumer v Boulter* (1837) 6 Ad & El 675.

6 It has been held to be sufficient that the rent has been charged in an account and the charge admitted although no rent has actually been paid (*Cox v Bent* (1828) 5 Bing 185; cf *Vincent v Godson* (1854) 4 De GM & G 546 at 552, 553) or that there has been a tender in the nature of rent (*Doe d Tucker v Morse* (1830) 1 B & Ad 365). There may, however, be evidence of a yearly tenancy where there has been no payment of rent: see *Taylor v Young* (1837) 6 LJKB 141; *Fahy v O'Donnell* (1870) LR 4 CL 332; *Neall v Beadle* (1912) 107 LT 646.

7 *Javad v Aqil* [1991] 1 All ER 243 at 248, [1991] 1 WLR 1007 at 1012, CA; *Doe d Bastow v Cox* (1847) 11 QB 122 at 123 per Lord Denman CJ; *Doe d Lord v Crago* (1848) 6 CB 90 at 98, 99 per Wilde CJ; *Lewis v MTC (Cars) Ltd* [1975] 1 All ER 874 at 878, [1975] 1 WLR 457 at 462, CA per Russell LJ. A notice to 'quit the premises which you hold under me, your term therein having long since expired' was held to be a mere demand of possession, and did not recognise a subsisting tenancy from year to year subsequent to the term: *Doe d Godsell v Inglis* (1810) 3 Taunt 54.

8 See *Javad v Aqil* [1991] 1 All ER 243 at 248, [1991] 1 WLR 1007 at 1012, CA; *Longrigg, Burrough and Trounson v Smith* (1979) 251 Estates Gazette 847 at 849, CA per Scarman LJ; *Sopwith v Stutchbury* (1983) 17 HLR 50 at 74, CA per Stephenson LJ.

9 *Javad v Aqil* [1991] 1 All ER 243 at 248, [1991] 1 WLR 1007 at 1012, CA.

10 *Dealex Properties Ltd v Brooks* [1966] 1 QB 542, [1965] 1 All ER 1080, CA; *Marcroft Wagons Ltd v Smith* [1951] 2 KB 496, [1951] 2 All ER 271, CA; *Harvey v Stagg* (1977) 247 Estates Gazette 463, CA; *Baron v Phillips* (1978) 38 P & CR 91, CA; *Sopwith v Stutchbury* (1983) 17 HLR 50 at 74, CA. The continuation of a business tenancy under the Landlord and Tenant Act 1954 s 24 (as amended) (see para 567 post) effects a continuation of the common law tenancy with a statutory variation of the mode of determination: *Bowes-Lyon v Green* [1963] AC 420, [1961] 3 All ER 843, HL, approving the dictum of Denning LJ in *H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd* [1957] 1 QB 159 at 168, [1956] 3 All ER 624 at 626, CA; and see *Weinbergs Weatherproofs Ltd v Radcliffe Paper Mill Co Ltd* [1958] Ch 437 at 445; sub nom *Re Bleachers' Association's Leases, Weinbergs Weatherproofs Ltd v Radcliffe Paper Mill Co Ltd* [1957] 3 All ER 663 at 667. A change in the terms of the occupation agreed between the landlord and a statutory tenant within the meaning of the Rent Acts (see para 677 post) may be evidence of the creation of a new tenancy: see *Bungalows (Maidenhead) Ltd v Mason* [1954] 1 All ER 1002, [1954] 1 WLR 769, CA; *Isherwood v Currie* 1954 SLT 61. A new tenancy was created on the conditions of the former lease where the landlord sued for possession after the expiry of a notice to quit and an order for possession was suspended by consent: see *Edmunds v Driver* [1949] WN 111, CA.

11 See *Cardiothoracic Institute v Shrewdcrest Ltd* [1986] 3 All ER 633, [1986] 1 WLR 368 (tenant holding over after expiry of term which was excluded from protection of the Landlord and Tenant Act 1954 Pt II (ss 23–46 (as amended): see para 558 et seq post) by court order, held to be tenant at will notwithstanding periodic payment of rent in advance). As to entry into occupation pursuant to an agreement for lease or pending negotiations for the grant of a lease see para 170 ante.

12 *Land v Sykes* [1992] 1 EGLR 1, CA (acceptance of cheque tendered as rent did not give rise to a periodic tenancy where the acceptance was necessitated by the personal circumstances of the owner the nature of which was fully explained to the occupier and the owner had repeatedly requested the delivery up of possession); *Westminster City Council v Basson* (1992) 62 P & CR 57, CA (no tenancy granted where payment of charges for use and occupation requested and made during period that possession proceedings afoot); *Bramwell v Bramwell* [1942] 1 KB 370, [1942] 1 All ER 137, CA (husband deducting sums from maintenance on account of the wife's occupation of the matrimonial home; no intention to create a tenancy), considered in *Pargeter v Pargeter* [1946] 1 All ER 570, CA. See also para 181 post.

13 *Knight v Benett* (1826) 3 Bing 361; *Mann v Lovejoy* (1826) Ry & M 355; *Doe d Westmoreland and Perfect v Smith* (1827) 1 Man & Ry KB 137; *Cox v Bent* (1828) 5 Bing 185; *Doe d Thomson v Amey* (1840) 12 Ad & El 476; *Chapman v Towner* (1840) 6 M & W 100; *Braythwayte v Hitchcock* (1842) 10 M & W 494; *Doe d Bailey v Foster* (1846) 3 CB 215; *Bennet v Ireland* (1858) EB & E 326.

14 See paras 52, 53 ante.

15 See the Supreme Court Act 1981 s 49(1) and EQUITY vol 16 (Reissue) para 739.

16 *Walsh v Lonsdale* (1882) 21 ChD 9, CA. It is not necessary for a lease to have been tendered by the landlord or demanded by the tenant: *Weakly d Yea v Bucknell* (1776) 2 Cowp 473. For the

agreement to be specifically enforceable it must be in writing in order to comply with the Law of Property (Miscellaneous Provisions) Act 1989 s 2: see para 56 ante.

17 *Cornish v Brook Green Laundry Ltd* [1959] 1 QB 394, [1959] 1 All ER 373, CA; and see *Bell Street Investments Ltd v Wood* (1970) 216 Estates Gazette 585 (duly executed deed of lease had been prepared but it did not include any dates; rent had in the past been paid and accepted on a yearly basis; incomplete deed held to have created no interest, but a yearly tenancy had been created).

18 *Rhyl UDC v Rhyl Amusements Ltd* [1959] 1 All ER 257, [1959] 1 WLR 465; and see *Doe d Rigge v Bell* (1793) 5 Term Rep 471; *Doe d Martin v Watts* (1797) 7 Term Rep 83; *Clayton v Blakey* (1798) 8 Term Rep 3; *Richardson v Gifford* (1834) 1 Ad & El 52; *Doe d Pennington v Taniere* (1848) 12 QB 998 at 1013; *Doe d Brammall v Collinge* (1849) 7 CB 939 at 960; *Doe d Davenish v Moffatt* (1850) 15 QB 257; *Lee v Smith* (1854) 9 Exch 662; *Tress v Savage* (1854) 4 E & B 36; *Martin v Smith* (1874) LR 9 Exch 50 at 52. Thus, where, prior to the Corporate Bodies' Contracts Act 1960 (see CORPORATIONS vol 9 paras 1370–1373), a corporation purported to grant a lease by an instrument not under seal, a tenant who entered under the instrument and paid rent on a yearly basis became a tenant from year to year: *Re Northumberland Avenue Hotel Co Ltd* (1886) 33 ChD 16 at 20, 21, CA. See also *Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd* [1977] QB 580, CA; *Prudential Assurance Co Ltd v London Residuary Body* [1992] 06 EG 145, CA (overruled [1992] 2 AC 386, [1992] 3 All ER 504, HL on the basis that a provision fettering the right of the landlord to determine the tenancy before the occurrence of an event, the time of which was uncertain, was repugnant to the notion of a tenancy from year to year: see para 208 post).

19 See para 52 ante.

20 See para 53 ante.

21 *Richardson v Langridge* (1811) 4 Taunt 128; *Braythwayte v Hitchcock* (1842) 10 M & W 494 at 497; *Doe d Hull v Wood* (1845) 14 M & W 682 at 687; *King v Eversfield* [1897] 2 QB 475, CA.

22 *Ladies' Hosiery and Underwear Ltd v Parker* [1930] 1 Ch 304, CA; *Pope v Garland* (1841) 4 Y & C Ex 394 at 399; *Adler v Blackman* [1953] 1 QB 146, [1952] 2 All ER 945, CA, overruling *Covered Markets Ltd v Green* [1947] 2 All ER 140.

23 *Swift v Ambrose* (1931) 47 TLR 594.

180. Terms of yearly tenancy implied by law. Where there is an instrument of tenancy with reference to which possession is taken or retained, the yearly tenancy implied by law is deemed to be upon such of the terms of the instrument as are applicable to a yearly tenancy. Thus, upon an entry under an agreement for a lease, followed by payment of rent, the tenant becomes a yearly tenant upon such terms of the agreement as are consistent with that tenancy[1]; and the agreement so far controls the implied tenancy that the tenancy ceases without notice to quit at the end of the agreed term[2]. Similarly, a tenant who holds over after the expiration of the term and pays rent[3] in circumstances where the court implies the grant of a yearly tenancy[4] will, in the absence of facts pointing to a contrary conclusion, be held impliedly to have agreed to hold as tenant from year to year upon such terms of the old lease as are applicable to such a tenancy[5]. The applicable terms are not confined to those necessarily incident to a yearly tenancy, but include those terms which may be incident to such a tenancy[6].

Certain terms are regarded as inconsistent with the nature of a yearly tenancy and they will not govern an implied yearly tenancy, for example a covenant to paint every three years[7], a provision for two years' notice to quit[8] and an option to purchase the reversion[9]. Certain provisions, although not in their nature consistent with a yearly tenancy, bind the tenant if the implied yearly tenancy lasts long enough for them to apply[10]. The general principle is that, where a tenant has entered under an agreement for a lease and becomes a yearly tenant by reason of the payment of rent without the lease being granted, he is bound by all the

covenants of the proposed lease if he actually occupies the premises for the term proposed[11].

In the case of agricultural tenancies, the tenant does not hold over; his tenancy is continued from year to year on the terms incident to his tenancy[12] as modified by statute[13].

1 *Roe d Jordan v Ward* (1789) 1 Hy Bl 96; *Doe d Rigge v Bell* (1793) 5 Term Rep 471; *Mann v Lovejoy* (1826) Ry & M 355; *Richardson v Gifford* (1834) 1 Ad & El 52; *Beale v Sanders* (1837) 3 Bing NC 850; *Doe d Thomson v Amey* (1840) 12 Ad & El 476; *Tress v Savage* (1854) 4 E & B 36; *Elliott v Johnson* (1866) LR 2 QB 120 at 124; *Wyatt v Cole* (1877) 36 LT 613. Before payment of rent, and while the tenant is tenant at will, he is subject to the terms of the agreement (*Richardson v Gifford* supra at 56), and the doctrine applies equally to assignees of a void lease (*Beale v Sanders* supra), and to tenants who continue in occupation after the term under an express agreement that they are to be tenants at will (*Morgan v William Harrison Ltd* [1907] 2 Ch 137, CA). It follows that reference may be made to the instrument to ascertain the terms of the holding (*De Medina v Polson* (1815) Holt NP 47; *Lee v Smith* (1854) 9 Exch 662 at 665, 666; *Tress v Savage* supra); and reference may be made to it also to ascertain the commencement of the year of the tenancy (*Roe d Jordan v Ward* (1789) 1 Hy Bl 96; *Kelly v Patterrson* (1874) LR 9 CP 681).

2 *Doe d Tilt v Stratton* (1828) 4 Bing 446; *Berrey v Lindley* (1841) 3 Man & G 498 at 513; *Doe d Davenish v Moffatt* (1850) 15 QB 257; *Tress v Savage* (1854) 4 E & B 36; and see *Sauvage v Dupuis* (1811) 3 Taunt 410.

3 *Digby v Atkinson* (1815) 4 Camp 275; *Bishop v Howard* (1823) 2 B & C 100; *Finch v Miller* (1848) 5 CB 428; *Hyatt v Griffiths* (1851) 17 QB 505; *Dougal v McCarthy* [1893] 1 QB 736 at 740, CA. This is so also where a bankrupt tenant continues to hold after his discharge: *Ponsford v Abbott* (1884) Cab & El 225.

4 See para 179 ante.

5 *Wedd v Porter* [1916] 2 KB 91 at 98, CA per Swinfen Eady LJ; *Cole v Kelly* [1920] 2 KB 106 at 132, CA per Atkin LJ; and see para 182 post. Payment of rent for lodgings for a year is not evidence of a tenancy from year to year, as this would be contrary to the general usage in letting lodgings: *Wilson v Abbott* (1824) 3 B & C 88 at 90.

6 *Hyatt v Griffiths* (1851) 17 QB 505 at 509. Of this nature are provisions for payment of rent in advance (*Finch v Miller* (1848) 5 CB 428; *Lee v Smith* (1854) 9 Exch 662) or for payment of rent, damage by fire excepted (*Bennett v Ireland* (1858) EB & E 326); covenants to keep the premises in repair (*Digby v Atkinson* (1815) 4 Camp 275; *Richardson v Gifford* (1834) 1 Ad & El 52; *Beale v Sanders* (1837) 3 Bing NC 850; *Arden v Sullivan* (1850) 14 QB 832; *Ecclesiastical Comrs v Merral* (1869) LR 4 Exch 162; *Wyatt v Cole* (1877) 36 LT 613); covenants relating to the user of the premises, such as to carry on a particular trade (*Sanders v Karnell* (1858) 1 F & F 356); provisos with respect to the determination of the tenancy by a specified notice (*Bridges v Potts* (1864) 17 CBNS 314; *Godfrey Thornfield Ltd v Bingham* [1946] 2 All ER 485; *Wembley Corpn v Sherren* [1938] 4 All ER 255); and provisos for re-entry on non-payment of rent or breach of covenant (*Doe d Thomson v Amey* (1840) 12 Ad & El 476; *Thomas v Packer* (1857) 1 H & N 669; *Crawley v Price* (1875) LR 10 QB 302). If the lease was subject to determination on a given event, so also is the yearly tenancy arising on holding over: *Johnson v Reardon* (1839) 2 I Eq R 123.

7 *Pinero v Judson* (1829) 6 Bing 206. A further example is a covenant to build or to do substantial repairs such as are not usually done by yearly tenants: *Doe d Thomson v Amey* (1840) 12 Ad & El 476 at 479; *Bowes v Croll* (1856) 6 E & B 255.

8 *Tooker v Smith* (1857) 1 H & N 732.

9 *Re Leeds and Batley Breweries Ltd and Bradbury's Lease, Bradbury v Grimble & Co* [1920] 2 Ch 548. As to stipulations in respect of notice to quit which are avoided for repugnancy see also para 183 post.

10 Thus a covenant to paint the premises every three or seven years of the term will be imported into the yearly tenancy if the tenant occupies that long: *Martin v Smith* (1874) LR 9 Exch 50.

11 *Pistor v Cater* (1842) 9 M & W 315; *Adams v Clutterbuck* (1883) 10 QBD 403 at 406. The same result will be achieved if the agreement is specifically enforceable: see para 53 ante.

12 Eg covenants with respect to the cultivation of the land (*Roe d Jordan v Ward* (1789) 1 Hy Bl 96 at 99; *Doe d Thomson v Amey* (1840) 12 Ad & El 476; *Tooker v Smith* (1857) 1 H & N 732 at 736); and provisions as to the tenant's liabilities and rights at the end of the tenancy, such as liability to leave manure on the farm (*Roberts v Barker* (1833) 1 Cr & M 808) or the right to be paid for tillages or to have away-going crops (*Boraston v Green* (1812) 16 East 71; *Hutton v Warren* (1836) 1 M & W 466; *Brocklington v Saunders* (1864) 13 WR 46) or (probably), in a lease

of nursery gardens, to be paid for fruit trees (*Oakley v Monck* (1866) LR 1 Exch 159 at 164, Ex Ch); or to use the land after the end of the term (*Hyatt v Griffiths* (1851) 17 QB 505).

13 See AGRICULTURE vol 1(2) (Reissue) paras 305, 376 et seq.

181. Effect of payment of rent. Payment of rent with reference to a yearly holding is not conclusive as to the creation of a tenancy from year to year; it is only evidence of such a tenancy. The fundamental question is always with what intention was the rent paid and received[1]. Accordingly, it is competent for either the payer or the receiver of rent to prove the circumstances in which the payment was made, and by those circumstances to rebut the inferences which would otherwise be drawn from the receipt of rent unexplained[2]. Whether the circumstances exclude the implication of a yearly tenancy is a question of fact to be decided on the circumstances of the case[3]. Thus, it is excluded where the parties have expressly created a tenancy at will[4], or where the rent has been received in ignorance that the former tenancy has expired[5] or that the tenant has died[6]. In the case of a holding under a void lease, the yearly tenancy may be excluded if there is a great disproportion between the rent reserved by the void lease and the real value[7].

1 *Doe d Cheny v Batten* (1775) 1 Cowp 243 at 245 per Lord Mansfield; and see para 179 note 2 ante; *Holder v Holder* [1968] Ch 353, [1968] 1 All ER 665, CA. See also *Doe d Tucker v Morse* (1830) 1 B & Ad 365; *Doe d Pennington v Taniere* (1848) 12 QB 998 at 1013; *Finlay v Bristol and Exeter Rly Co* (1852) 7 Exch 409 at 420; *Smith v Widlake* (1877) 3 CPD 10, CA. Thus, the payment may be made in the course of negotiations for a new lease (*Caulfield v Farr* (1873) IR 7 CL 469); and mere payment of rent is not proof of a demise from year to year from a particular date (*Phillips v Mosely* (1824) 1 C & P 262). In the case of joint tenants the payment must be with the consent of all: *Doidge v Bowers* (1837) 2 M & W 365.

2 *Doe d Lord v Crago* (1848) 6 CB 90 at 98; *Right d Dean and Chapter of Wells v Bawden* (1803) 3 East 259; *Mildmay d Lord Digby v Shirley* (1806) cited in 10 East at 164; *Doe d Harvey v Francis* (1837) 2 Mood & R 57; *Woodbridge Union Guardians v Colneis and Carlford Hundreds Guardians* (1849) 13 QB 269; *Marquis of Camden v Batterbury* (1860) 7 CBNS 864. As to the admissibility of evidence of the subjective intention of the parties see para 179 note 3 ante.

3 *Finlay v Bristol and Exeter Rly Co* (1852) 7 Exch 409 at 417, 420; and see *Jones v Shears* (1836) 4 Ad & El 832.

4 *Doe d Bastow v Cox* (1847) 11 QB 122; and see *Doe d Dixie v Davies* (1851) 7 Exch 89.

5 *Doe d Lord v Crago* (1848) 6 CB 90 at 98.

6 *Tickner v Buzzacott* [1965] Ch 426, [1965] 1 All ER 131.

7 *Roe d Brune v Prideaux* (1808) 10 East 158; *Denn d Brune v Rawlins* (1808) 10 East 261; *Smith v Widlake* (1877) 3 CPD 10, CA.

182. Holding over. A tenancy which arises by implication in favour of a tenant who holds over after the expiration of his lease and pays rent is only deemed to be on the terms of the old lease in the absence of evidence of a different understanding[1]. The question is one of fact; and, in the absence of any facts excluding an implied agreement between the parties to hold upon the terms of the old lease, so far as they are applicable to an annual tenancy, the law implies a new agreement to that effect between them[2]. Where nothing has been said by landlord or tenant with reference to any terms of tenancy, such an agreement is implied as a matter of law[3]; but, where there have been negotiations after the expiration of the old lease with regard to the terms of a tenancy, it is a question of fact whether there has been a consent by both parties to a continuance of the old tenancy and, if so, upon what terms[4]. The terms may be implied from the

parties' relationship, as in the case of a landlord and tenant of an agricultural holding, from the use of certain words, such as the word 'demise', and from the surrounding circumstances existing at the time when the parties consent to the continuance of the tenancy; and what terms are to be implied is in each case an inference of fact[5]. Thus, where there have been negotiations for a letting at an increased rent, and the tenant stays on, it is not a necessary inference that he is liable only for the former rent[6]; although, if a different rent has been in fact agreed upon, this does not prevent the new tenancy being upon the old terms in other respects[7].

The implied tenancy operates as a new contract and has reference to the state of affairs existing at its commencement, so that a covenant to repair and to leave premises in the same state as at the beginning of the lease, if imported into the new tenancy, has reference to the state of the premises at the commencement of the new, not of the old, tenancy[8]. The presumption that the former terms are incorporated in the new tenancy does not apply where the new tenancy is under a different landlord, as, for example, where the lease is by a tenant for life and then after his death the reversioner receives rent, so as to bind the new landlord by a term which is unusual and which was in fact unknown to him[9].

1 *Thetford Corpn v Tyler* (1845) 8 QB 95 at 101; *Wedd v Porter* [1916] 2 KB 91, CA (where it was agreed that the tenant should not hold over on the terms of the expired lease, and the tenant was held to hold on such terms as the law implies into a yearly tenancy); *Mitchell v Turner* (1919) 63 Sol Jo 776.

2 *Hyatt v Griffiths* (1851) 17 QB 505; *Dougal v McCarthy* [1893] 1 QB 736 at 742, CA per Lopes LJ; *Morgan v William Harrison Ltd* [1907] 2 Ch 137 at 143, CA; *Wedd v Porter* [1916] 2 KB 91, CA; *Cole v Kelly* [1920] 2 KB 106 at 125, CA per Bankes LJ; *Lowther v Clifford* [1927] 1 KB 130, CA.

3 *Wedd v Porter* [1916] 2 KB 91, CA; and see *Oakley v Monck* (1866) LR 1 Exch 159 at 167, Ex Ch.

4 *Cole v Kelly* [1920] 2 KB 106, CA.

5 *Cole v Kelly* [1920] 2 KB 106 at 126, CA per Bankes LJ. For examples of terms which have been implied see para 180 note 6 ante. As to the use of the word 'demise' see para 409 post.

6 *Thetford Corpn v Tyler* (1845) 8 QB 95; and see *Elgar v Watson* (1842) Car & M 494.

7 *Digby v Atkinson* (1815) 4 Camp 275; *Doe d Monck v Geekie* (1844) 5 QB 841.

8 *Johnson v Churchwardens of St Peter, Hereford* (1836) 4 Ad & El 520; and see *Felnex Central Properties Ltd v Montague Burton Properties Ltd* (1981) 260 Estates Gazette 705.

9 *Oakley v Monck* (1866) LR 1 Exch 159, Ex Ch.

(ii) Determination of Tenancy from Year to Year

A. NOTICE TO QUIT

183. How tenancy is determined. A tenancy from year to year is determinable by notice to quit[1], and the parties may enter into special stipulations both as to the length of the notice and the time when the tenancy may be determined under it[2]. In the absence of special stipulation or of special custom[3] or statute[4], a yearly tenancy may be determined by a half-year's notice, expiring at the end of some year of the tenancy[5]. Where there is a term specifying the length of notice required, then, in the absence of any provision to the contrary, that notice must be given so as to expire at the end of some year of the tenancy[6]. A notice to quit must be given by an existing landlord to an existing tenant. It cannot, therefore, be given so as to determine a tenancy before that tenancy has commenced[7].

The right to determine a yearly tenancy by service of notice to quit is an essential characteristic of such a tenancy. If a provision of the tenancy purports

wholly to deprive one or other party of the right to end the tenancy by notice to quit, that provision is void for repugnancy[8]. Although the parties may agree that a notice to quit cannot be given before a specified time, an agreement fettering the right of one or both of the parties to serve notice to quit before the occurrence of an event, the time of which is uncertain, is repugnant to the notion of a periodic tenancy and the term granted is void for uncertainty[9]. Thus a provision fettering the landlord's right to serve a notice to quit until the premises were required for road-widening purposes was void[10].

Where a tenancy is for a year or years certain and thereafter from year to year, notice to quit cannot, unless there is a stipulation to the contrary[11], be given so as to determine the tenancy at the end of the fixed term[12].

The effect of a term that the tenancy is to be terminable 'at any time' by notice of a certain length is that the notice may be given for any date, notwithstanding that the date is not an anniversary of the commencement of the tenancy or a quarter day[13]; but, if the tenancy is a yearly one, such a term does not justify the termination of the tenancy before the expiration of the first year[14].

If, on the construction of the tenancy agreement, the tenancy is not a yearly tenancy[15], the notice must be given so as to expire at the end of any complete period of the tenancy[16], and, in the absence of any stipulation as to its length, must be equal to the length of the period[17].

1 A subtenant is not entitled to leave without notice because he anticipates a distress by the superior landlord: *Rickett v Tullick* (1833) 6 C & P 66. A tenancy from year to year may also be terminated by surrender (see the cases cited in para 202 note 3 post) or other appropriate means.

2 *Bridges v Potts* (1864) 17 CBNS 314 at 333; *Re Threlfall, ex p Queen's Benefit Building Society* (1880) 16 ChD 274 at 281, CA; *Herron v Martin* (1911) 27 TLR 431; *Mitchell v Turner* (1919) 63 Sol Jo 776: *Artizans, Labourers and General Dwellings Co Ltd v Whitaker* [1919] 2 KB 301 (quarter's notice to be confirmed by the half-quarter day); *H and G Simonds Ltd v Heywood* [1948] 1 All ER 260 (tenancy determinable on three months' notice at any time). The parties may, however, agree that on a specified event (*Bethell v Blencowe* (1841) 3 Man & G 119), or on a date following a specified event, such as the sale of a farm (*Allison v Scargall* [1920] 3 KB 443), the tenancy is to determine without notice, or that the tenant may quit without notice (*Bethell v Blencowe* supra), or that he may quit on payment of an agreed sum by way of rent in advance (*Florence v Robinson* (1871) 24 LT 705).

3 *Doe d Dagget v Snowdon* (1779) 2 Wm Bl 1224 at 1225. There must be clear evidence of the custom: *Roe d Henderson v Charnock* (1790) Peake 5; Co Litt 270b note 228; *Tyley v Seed* (1696) Skin 649; *Vint v Constable* (1871) 25 LT 324. Cf *Brown v Burtinshaw* (1826) 7 Dow & Ry KB 603.

4 See para 184 post.

5 Ie at the end of the first or any subsequent year, unless the tenancy is for two years certain, when it may be given only for the end of the second or some subsequent year: see para 178 ante. In the absence of express stipulation, the notice must be a reasonable notice: *Doe d Martin v Watts* (1797) 7 Term Rep 83 at 85. In the case of a tenancy from year to year, half a year's notice is a reasonable notice: *Right d Flower v Darby and Bristow* (1786) 1 Term Rep 159 at 163; *Birch v Wright* (1786) 1 Term Rep 378 at 379; *Doe d Shore v Porter* (1789) 3 Term Rep 13 at 17. This does not depend on the rent being reserved half-yearly, and it is the same where the rent is payable quarterly: *Shirley v Newman* (1795) 1 Esp 266. The rule applies where a minor becomes entitled to the reversion (*Maddon d Baker v White* (1787) 2 Term Rep 159) and where the tenancy devolves upon an executor (*Gulliver d Tasker v Burr* (1766) 1 Wm Bl 596).

6 *Doe d Pitcher v Donovan* (1809) 1 Taunt 555 (letting from year to year to quit at a quarter's notice); *Dixon v Bradford and District Railway Servants' Coal Supply Society* [1904] 1 KB 444 (letting at an annual rent, 'three months' notice on either side to determine this agreement'); and see para 178 ante.

7 *Lower v Sorrell* [1963] 1 QB 959, [1962] 3 All ER 1074, CA.

8 *Prudential Assurance Co Ltd v London Residuary Body* [1992] 2 AC 386, [1992] 3 All ER 504, HL;

TO The Honourable Audrey EU,S.C.,J.P.
From David S.H.WOO
Date 5th ~~November~~ Dec 2001
Subject: Your note dated 4th Dec.2001

Thank you very much for your note which is most encouraging. The Hong Kong Hansard is a public record of the proceedings of the LegCo meetings and forms part of the public record.Halsbury Laws of England is a standard work of law in the UK. Members of the bills committee would have a legitimate expectation and right of access to such materials. As to my humble comments,I have no objection that it be released to members of the Bills Committee for their information.

Your staff Peter ,has kindly sent the amendment bill to me by post. I shall comment on the proposed amendments and shall make a submission to your goodself later. From the attached document ie L.S. no 2 To Gazette No 33/1982 the Landlord and Tenant(Consolidation) Ordinance has gone through a few major amendments ie 1981, 1972,1974,1976. up to 1982. It is interesting to see the rationale of each amendment .We have to look at the present proposed amendment bill from the socio-economic and legal perspective in order to strike a balance between the rights and obligations of landlords and tenants and also in the light of protection of private property rights

Thank you for your kind attention.

David Sai Hong WOO

L.N. 322 of 1982

REVISED EDITION OF THE LAWS ORDINANCE 1965
(No. 53 of 1965)

ANNUAL REVISION 1981

In accordance with the provisions of section 16 of the Revised Edition of the Laws Ordinance 1965, a list of the titles of all Ordinances in force in Hong Kong as at 1 January 1982 and the year of the last published edition thereof is hereby published—

Chapter	*Short title or Citation*	*Page*	*Edition*
—	**Revised Edition of the Laws Ordinance 1965**	—	1971
1	**Interpretation and General Clauses Ordinance**	—	1975
	Administrative Appeals Rules	A	1971
	Definition of "British Territory"	B	1980
	Definition of "Commonwealth"	C	1980
	Fees for Official Signatures and Miscellaneous Services Notice	D	1980
	Change of Title of Public Office, Public Body or Person	E	1981
	Specification of Public Offices	F	1981
	Change of Titles (Consolidation) Notice	G	1981
	Resolutions under section 54A	H	1981
	Deputy Director of Immigration (Powers and Duties) Notice	J	1971
3	**Jury Ordinance**	—	1979
	Allowances to Jurors Order	A	1979
4	**Supreme Court Ordinance**	—	1975
	Rules of the Supreme Court	A	1981
	Supreme Court Suitors' Funds Rules	B	1979
	Supreme Court Fees (In Prize) Order	C	1967
	Supreme Court Fees Rules	D	1981
5	**Official Languages Ordinance**	—	1980
6	**Bankruptcy Ordinance**	—	1977
	Bankruptcy Rules	A	1977
	Bankruptcy (Forms) Rules	B	1977
	Bankruptcy (Fees and Percentages) Scale	C	1981
	Meetings of Creditors Rules	D	1977
	Proof of Debts Rules	E	1977
7	**Landlord and Tenant (Consolidation) Ordinance**	—	1981
	Tenancy Tribunal Rules	A	1976
	Tenure and Rent of Domestic Premises Rules	B	1974
	Landlord and Tenant (Consolidation) Ordinance (Application in New Territories) Order	C	1972
	Tenancy (Notice of Termination) (Exclusion) (Consolidation) Order	E	1972
8	**Evidence Ordinance**	—	1979
	Evidence (Authorized Persons) (Consolidation) Order	A	1981