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High School Legal Curricula: Landlord and Tenant

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LANDLORD AND TENANT

INTRODUCTION

Landlord-tenant law should be of interest to most students. Ghetto students are probably concerned with housing conditions in the slums; students living in apartments may be concerned about fixtures they attach to the premises; and students whose parents are landlords may be interested in the rights and duties of landlords.

The laws controlling landlord and tenant problems are derived from the law of real property, but the modern trend is to move away from real property concepts and to utilize the theories of torts and contracts when property laws do not provide viable solutions for modern problems. Thus, to fully acquaint students with landlord and tenant concepts, a fundamental understanding of at least real property, torts, contracts and constitutional law should be provided. So that students can appreciate how different areas of the law are related to each other, the landlord and tenant unit should be presented toward the end of the legal course. Students should be encouraged to apply the rules learned in torts, contracts and constitutional law to landlord and tenant problems.

LANDLORD AND TENANT

The fundamental principles of landlord-tenant law can perhaps be best understood from hypothetical situations.

Mrs. Jones, a widow with one school-aged child, is looking for an apartment in which to live. The owner of a building on the waterfront has placed a small "For Rent" sign in the window of an apartment for passers-by to see. Mrs. Jones sees the apartment and wants to rent it from Mr. Smith, the owner. They discuss such matters as how much the rent is; what comes with the apartment, e.g., a stove, a refrigerator, a dining room table, etc.; how long Mrs. Jones intends to stay; whether the landlord pays for the gas, electricity, and water; who besides Mrs. Jones will be living in the apartment; any other items that the parties wish to know about each other and the apartment. If Mrs. Jones is satisfied with the apartment and the rent she will have to pay, and if Mr. Smith feels that Mrs. Jones will pay the rent on time and keep the apartment clean with minimal damage, then they enter into an *rental arrangement*. When Mrs. Jones rents the apartment, she becomes the *tenant*, and Mr. Smith becomes the *landlord*. The legal agreement between the two parties is called a *lease*.

Any relationship between the owner of a building and a tenant involves basic contractual obligations and rights. The lease, which is a contract between the parties, contains the legally binding duties and rights of both parties. This contract gives the tenant the right of temporary possession and control of the landlord's property, and, in return, the tenant must pay the landlord rent.

Leases may be either oral or written. Most states have statutes that require contracts to be in writing if they involve time periods of a year or more. Therefore, an oral lease for a year or more will not be enforced

by the courts and will not adequately protect the rights of the parties. As a general rule, a lease for a year or more should be in writing.

Most leases fix the period of time that the *tenancy* or landlord-tenant relationship is to endure. Whenever there is no specific date mentioned in the lease, and either party has the right to terminate the tenancy at any time, it is a *tenancy at will*. Under this type of lease, the landlord can end the agreement merely by asking the tenant to vacate so that the landlord can repossess the premises, or the tenant can end the lease by vacating the premises.

If Mrs. Jones for some reason wishes to leave the apartment she has rented, she can move out at any time and Mr. Smith cannot require her to stay or pay rent after she has left.

When there is no specific date of termination in the lease, but the parties do not have a right to terminate at will, the lease is called a *periodic tenancy*. The period may be month to month, week to week, or year to year. In order to terminate, one must ordinarily give notice equal to the rental period. But many states such as California require no more than one month's notice for leases longer than one month. (California Civil Code §827).

Assume that Mrs. Jones enters into a written lease with Mr. Smith that does not have a termination date, but requires that either party give notice one month prior to vacating or requiring the tenant to vacate. A *periodic tenancy* is created.

If the lease entered into by the *lessor and lessee* (landlord and

tenant) has a specific termination date, then the lease is a *tenancy for years*.

If on August 15, Mrs. Jones signs a lease that is to terminate automatically on June 1 of the following year, neither party is required to give notice, and the tenant must vacate by that date.

If the tenant does not move out of the apartment on June 1 and the landlord does not sue to have the tenant evicted, then the landlord has the option of treating Mrs. Jones as a *holdover tenant*. In many states, this means that the landlord may treat Mrs. Jones' actions as an agreement to rent the apartment for another identical period. However, many other states' laws provide that the lease remains in effect on a month-to-month basis even though the original lease was for nine and one-half months.

Some states, such as California, have abolished tenancies at will for all intents and purposes, and require that notice be given to the other party in all situations except under a tenancy for years lease. Neither party has to have a specific reason for giving notice; the tenant can give notice to terminate the lease simply because he no longer wishes to live there, and the landlord can give the tenant notice to vacate merely because he wants to rent to another person. This requirement of notice allows the other party to prepare for the vacation of the premises.

QUESTIONS FOR DISCUSSION

1. What is a *tenancy at will* and what are the advantages and disadvantages of this type of *rental arrangement*?

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2. What is a *periodic tenancy* and when would you think this rental agreement generally is used?
3. What is a *tenancy for years*?
4. What is a *lease*?
5. Why should the *notice of termination* of the lease help the landlord?
6. Why should some *leases* be in writing?

There are certain advantages of one type of agreement over others. Naturally, a landlord seeks an agreement with the tenant that best suits his interests. The bargaining power of the respective parties varies greatly and usually favors the landlord. In the typical situation today with a shortage of apartments, a landlord is assured of renting his apartments, and he can carefully select his tenants. He can impose conditions upon the tenant that would be unacceptable to the tenant if the two parties were in more equal bargaining positions.

The lease that Mrs. Jones entered into with Mr. Smith provided that she could not have any pets in the apartment nor a phonograph. Mrs. Jones, upon signing the lease, had no intention of having pets, but she did enjoy listening to the records that her husband had given her prior to his death. She felt the restriction against having a phonograph unfair and unreasonable, but because she wanted an apartment near the beach so her son Dale could swim and because there were no other apartments available in that vicinity, she had to agree to the conditions. Had there been several vacant apartments within the same area, the landlord may not have insisted that she comply with his conditions. If she rented another apartment from another landlord, Mr. Smith's apartment would remain vacant until he found another renter, and that could take days or weeks.

If a landlord has an apartment building in an area where rents must be low to attract tenants and it is hard to make a profit on his investment, he might put few conditions in his leases to ensure continuous occupancy of the building. If the apartment building is in an area where apartments are in great demand, the landlord is able to charge higher rents and to put more conditions in the lease and still keep his apartments fully occupied. Frequently, a landlord, who has no difficulty renting, desires a *month to month tenancy* so that he can raise rents or acquire new tenants to ensure payment of the higher rent.

Mr. Smith's apartment building is in a fashionable beach resort area and he knows that he can rent the apartments easily during the summer months at exorbitant rates. However, during the remainder of the year, it is much more difficult to find tenants. Mr. Smith is in a greater bargaining position during the summer months. Therefore, he rents apartments for a maximum of nine months at a reasonable rate of \$200 per month. If the tenant rents an apartment after September, the lease period diminishes because all leases expire in June at the beginning of the busy summer months. Mrs. Jones must move out by that date or pay a higher rate for the three summer months. During the lucrative summer period, the rental rate for the same apartment may be as much as \$300 per week. It is easy for the landlord to rent the apartment during the summer, week by week, because there is a large demand for beach apartments during that time. The nine-month lease, although inconvenient for Mrs. Jones, is better than nothing at all.

QUESTIONS FOR DISCUSSION

1. What type of conditions do you think the landlord generally wants in the lease?

2. Do you think that the landlord should be able to select the tenants he wants to occupy his apartment or should any person be able to rent it.
3. Do you think the landlord should be able to charge such high rates during the summer months?

Once the parties have entered into the rental agreement, the rights and duties of each come into existence. In many instances, the duties of the landlord and those of the tenant are implied, i.e., not expressly written into the lease. Nevertheless, courts recognize their existence and require that parties follow them and, if necessary, will enforce the conditions.

In earlier times, the landlord had few if any duties imposed upon him by law. Generally the courts ruled that he had to allow the tenant to enter and occupy the premises, but beyond this he was required to do nothing else. That is still the rule in many states, but others have gone further, generally by legislative enactment, requiring the landlord to deliver the premises in a *tenantable condition*. There are subtle variations on these rules in all states. It is sufficient for our purposes that the students know that such rules exist.

There is an implied duty in every lease that the landlord will protect the tenant's *quiet enjoyment* of the premises. Although this sounds as if the landlord must ensure that the tenant is comfortable and is enjoying the apartment, the courts have interpreted *quiet enjoyment* to mean that the landlord cannot commit any act that would justify the tenant's abandoning the premises.

Mrs. Jones' apartment is located below another apartment occupied by six over-weight teen-agers. These young people continually jump up and down, claiming to be doing the latest dance.

Mrs. Jones cannot allege that Mr. Smith has breached his duty to protect her quiet enjoyment of the premises unless the teen-agers are his children. If the teen-agers were his, then Mrs. Jones could treat the noise as a *breach* of the implied *covenant of quiet enjoyment* that results in a *constructive eviction*. That means that Mrs. Jones has the right to vacate the premises without paying any further rent and without being liable to Mr. Smith for breach of the lease. If the teen-agers are not his, then Mr. Smith owes no duty to keep them quiet. If Mrs. Jones vacated the premises, Mr. Smith could sue her for breach of the lease.

QUESTIONS FOR DISCUSSION

1. If a landlord listens to his radio and it bothers the tenants living below him, are the tenants justified in abandoning the premises?
2. How much noise can the landlord make before his acts will justify the tenants' abandoning the premises?
3. What is the meaning of *constructive eviction*?
4. What things might a landlord do that could result in a *constructive eviction*?
5. Since the law does not require the landlord to quiet the "dancing" teen-agers, what do tenants usually do to stop the noise?
6. Do you think the police might aid Mrs. Jones in stopping the girls from dancing? How much noise would they have to make before the police would intervene?

Another implied duty (in some states codified into law) that the landlord owes to his tenant is to make necessary repairs to the property during the period of tenancy. However, that does not mean minor repairs, such as a leaky faucet, but only major ones that require extensive work or add to the value of the building.

The tenant, on the other hand, has always had an implied duty to make minor repairs, a duty that arose out of his duty not to commit waste. This duty required that the tenant make repairs in order to preserve the property in substantially the same condition as at the beginning of the lease period. This rule was probably quite fair years ago when the majority of tenants lived and worked on leased farms, but today, when the majority of tenants live in cities, it is not expected that tenants can make all the minor repairs.

Thus today the courts impose a lesser burden upon the tenant to make repairs than they would have only a few years ago. There is no rule declaring that a particular defect is major or minor or whether the landlord or the tenant should make the repairs. The courts must determine, based on the language of the statute that imposes a duty to repair on the landlord, whether the defect is one that the landlord should remedy or if the repairs should be made by the tenant.

After two months in her apartment, the light switch in Mrs. Jones' living room ceases to work.

Light switches are usually inexpensive to replace and can be expected to wear out through continuous use. Mrs. Jones must repair the switch,

rather than the landlord. Although not required by law, many landlords do these kinds of repairs or agree to pay for supplies. But, if after changing the switch, the lights still do not work and it is learned that an electrical wire is broken, Mr. Smith would be responsible for repairing the wire.

QUESTIONS FOR DISCUSSION

1. What type of repairs should the tenant make?
2. Should the landlord repair the faulty light switch? Would the result be different if the light failed to work the day after Mrs. Jones moved into the apartment?

The law also imposes duties on the tenant. He must pay rent to the landlord for the possession of the premises regardless of the absence of any express provision in the rental agreement. The amount of rent required, when not specified in a lease, is a *reasonable amount*. If the tenant fails to pay rent, the landlord may either sue for the reasonable rental value or have the tenant evicted. Eviction is a legal process; the landlord himself cannot forcibly evict a tenant or remove his belongings from an apartment. Only the sheriff can conduct the eviction and only after a court order.

Mrs. Jones, having paid her rent for the first two months, does not pay her third month's rent on the date it is due. Mr. Smith asks her when she will be able to pay and she replies that she does not know. Mr. Smith then gives her a written notice requiring her to pay her rent or leave the premises. After waiting the length of time required by statute (in California it is three days), the landlord files a complaint against Mrs. Jones at the county court house. If Mrs. Jones has not vacated the premises by the date of the trial, which is set on filing the complaint, then she must

have some reason for not paying Mr. Smith the rent. If there is no legal excuse for not paying the rent, then a *judgment* will be entered against Mrs. Jones and the sheriff will be ordered to evict her. After eviction, Mrs. Jones is still liable for the past rent owed Mr. Smith. The amount owed is based on the number of days she occupied the premises. The legal eviction will not excuse the past rent; it will only put Mrs. Jones out of possession.

As previously mentioned, the tenant has a *duty to make minor repairs* that stems from the *duty not to commit waste*. This duty means that the tenant cannot destroy property and cannot make changes to structures on the property without the landlord's permission. The tenant must return the property to the landlord at the termination of the lease period in the same condition that he received it at the beginning of the lease, minus the normal wear and tear.

Mrs. Jones has found that many people who come to the beach to swim want to try surfing. No one in the area rents surfboards so Mrs. Jones uses her apartment garage to store and rent surfboards. The surfboards are stored on racks that Mrs. Jones has had built and fastened to the wall.

Since she has changed the use of the leased property, the landlord has the right to stop her from using the garage for that purpose. Not only can the landlord stop her from using the garage as a store, but her remodeling and new use of the garage can be treated as a breach of an *implied duty not to commit waste*, a valid reason to evict Mrs. Jones.

If the apartment that Mrs. Jones leased had had six small rooms and she needed only five but wished the rooms were larger, she could not, without Mr. Smith's permission, knock out one of the walls in order to convert two

small rooms into one large one. This would be considered *waste* even though the construction job would cost Mrs. Jones a considerable amount of money, would make the apartment more pleasant, and would increase the value of the apartment.

QUESTIONS FOR DISCUSSION

1. If Mrs. Jones used the garage to store some of her belongings, would she be committing waste?
2. How many "improvements" can the tenant make before committing waste?

One problem that still faces tenants in many jurisdictions today is that of *caveat emptor* which means *let the buyer beware or take it as you find it*. For the tenant, this requires that once he has taken possession of the premises, he cannot complain that it is dirty or that something needs repairs. By renting the apartment, the tenant has accepted it as it existed. The landlord has the duty only to make subsequent major repairs and has no duty to free the premises from all defects that existed prior to the tenant's occupancy.

Many states, however, are changing this old law and are requiring the landlord to make all repairs in order to make the premises habitable before the tenant moves in, and to continue to make necessary repairs to ensure continued habitability. California Civil Code §1941 and §1942 provide that the tenant may use up to one month's rent to make a repair which the landlord has a duty to make, but failed to make, and may deduct the amount of the repair from the rent owed the landlord.

The legal problem of *fixtures* faces the tenant when he moves out of the premises.

Mrs. Jones' lease has terminated and she must move out. She packs her belongings and asks Mr. Smith to help remove her medicine cabinet that she embedded into the wall when she first moved into the apartment. Mr. Smith tells her that to remove the cabinet would damage the wall and that, even though Mrs. Jones has paid for the cabinet, she would have to leave it because it is now part of the apartment.

Many tenants find that personal property that they purchased for their own use and attached to the real property becomes a part of the real property and must remain with the premises once they vacate them. The personal property that becomes real property is called a *fixture*. Today, tenants are allowed to remove a great variety of items as long as the removal does not substantially damage the real property or the item. In the above situation, one must determine whether or not the removal of the medicine cabinet would substantially damage the wall or the cabinet. If the repair cost is minimal and the cabinet is not damaged, then Mrs. Jones can remove the cabinet and make the repairs. However, if the removal would damage the cabinet so much that it becomes useless and worthless, then she probably would have to leave it in the apartment as it has become a fixture.

QUESTIONS FOR DISCUSSION

1. If the tenant had fastened a pole lamp to the wall, would she be able to take it with her when she left? Discuss the problems.
2. If the tenant had put wall-to-wall carpeting in the apartment, would she be able to take it with her when she left?

The following can be reproduced for students and used to discuss further the landlord-tenant concepts and to test the students' understandings of them.

Mrs. Thomas stopped in front of a rental agency and quickly reread the newspaper ad that she brought with her. The article advertised a "4-room apartment, in the vicinity of schools and a shopping center, 3rd floor, available Sept. 1, \$125 per month, call Belton Realty."

Mrs. Thomas was very anxious to rent an apartment and hoped she could see the advertised apartment and arrange all the details as quickly as possible. She entered the Belton Realty offices and talked to Mr. Hunter, a rental agent, about the apartment. Mr. Hunter took Mrs. Thomas to another apartment in the same building as the one advertised. He explained that the apartment advertised in the paper was not available for inspection since the occupants were sick. Instead, he offered to show her the apartment directly below it on the second floor and assured her that it was exactly the same as the one listed in the paper. Mrs. Thomas agreed to look at it since this would give her an idea of the size of the rooms, etc. She liked the apartment. It was clean and cheerful and appeared to satisfy her family's needs. That evening, she and her husband went to the rental office, signed the lease and gave Mr. Hunter the first month's rent.

On the first of the month when the Thomases arrived at their new apartment, they were shocked by its condition. Even though the floor plan was the same, the rooms were filthy; the paint was peeling; the plaster, falling; and several windows were broken.

Naturally, Mrs. Thomas was extremely angry with the realtor and told him that she intended to move out as soon as she could find a decent place. Mr. Hunter explained to her that, since she had entered into a lease, she would be liable for the monthly rental price until he could find someone to take the apartment.

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QUESTIONS FOR DISCUSSION

1. What is a lease?
2. What are the duties of the landlord?
3. What are the duties of the tenant?
4. Did Mrs. Thomas rent the apartment that she moved into?
Explain your answer fully using ideas that were brought out in class.

Using the above hypothetical, the teacher should discuss with the class the various duties owed by each of the parties to the lease, and especially the landlord's duty to deliver the premises in a habitable condition. Whether or not Mr. and Mrs. Thomas would have to continue to pay rent cannot be conclusively determined from these facts alone, but they would have a strong argument that they had rented an apartment in a different condition than the one shown them by the landlord.

The following quiz can be given after presentation of the material in this unit.

1. Define the following:
 - a. landlord
 - b. tenant
 - c. rent
 - d. lease.
2. What are the duties of:
 - a. the landlord
 - b. the tenant?
3. What are the advantages and disadvantages of a lease for both landlord and tenant?
4. What is the difference between a *tenancy for years* and a *tenancy at will*?

5. Why is the national housing shortage particularly hard on the poor?
6. How would the implied duty of *quiet enjoyment* in any rental agreement apply to a situation like the following:

Tenant *A* has a rock band. Because he is a full-time student, he can only practice at night. Tenant *B* is a light sleeper and is constantly disturbed by *A*'s music. What can be done to accommodate both *A* and *B*?

7. You are a tenant and have continually asked your landlord for extra cabinets in the kitchen. He agrees that you need them, but has never installed them. You finally do it yourself. When you move, can you taken these cabinets with you? Explain.

CONCLUSION

Landlord-tenant law has deep historical roots; many of today's landlord-tenant laws were formulated as early as the 11th century. At that time, society revolved around landowners, and serfs had few legal rights. The landlords made laws that naturally favored the landlords' positions. Modern courts still seem to favor the landlord, but several states' legislatures, including California's, are enacting stronger tenant laws. These legislatures seem to feel that in strengthening the tenants position, the landlords will not be harmed. For example, by requiring the landlord to make repairs on his premises, the tenant is able to live more comfortably, and, although the landlord must assume the repair costs, his costs are offset by tax deductions and by increasing the life of the property. Landlord-tenant law is moving toward equalizing the rights of the landlord and the tenant, but tenants' rights are still not as extensive as those of the landlords.