WORKING PAPER 8

N.B. This is a working paper of the Law Commission's Working Party on the Codification of the Law of Landlord and Tenant; it is being circulated for comment and criticism, and does not represent the concluded views of the Working Party or the Law Commission.

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PROVISIONAL PROPOSALS RELATING TO OBLIGATIONS OF LANDLORDS AND TENANTS

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OBLIGATIONS OF LANDLORDS AND TENANTS

PART I – INTRODUCTION

1. The Working Party, which is studying the law of landlord and tenant under Item VIII of the Law Commission's First Programme, has considered what obligations incident to the relationship could be provided by law, either in a mandatory form or so as to take effect in the absence of express agreement to the contrary between the parties.

2. The common law recognised certain obligations of general application, e.g., a landlord's covenants implied on a demise, and a tenant's obligations in respect of waste. The Leases Act, 1845, provided a framework for the standardisation of obligations, though practically no use was made of its provisions. More recently, the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948,[1] made under the Agriculture Act, 1947, in the case of agricultural lettings imposed upon landlords and tenants respectively specific responsibilities for repair and maintenance in so far as they are not imposed upon the other party by express agreement in writing. The Leasehold Committee presided over by Lord Justice Jenkins, in its Final Report (1950, Cmd. 7982 Paragraphs 266 to 273), concluded that the same principle might well be extended to give landlords and tenants of other types of property a similar code which should govern their respective obligations. Accordingly, its recommendations contain a table of covenants (facing page 118 of the Report) to be implied in lettings at rack rents other than furnished lettings in the absence of agreement to the contrary. In October 1966, the Solicitors' Law Stationery Society Limited published the first edition of "National Letting Provisions" in order to meet a demand for a form containing provisions in common use between landlords and tenants. The object of this publication is to enable tenancy agreements and some leases to be shortened in the interests of saving time and labour. The parties can, by reference to numbered clauses set out in the National Letting Provisions, and not as under the Leases Act, 1845, by the employment of formulae in pursuance of that Act,

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[1] S.I. 1948, No. 184.

incorporate such of the standard conditions as they agree upon with such variations as they desire. It is, however, too early to gauge the success of this enterprise.

3. The Working Party considers that there is considerable scope for clarifying and standardising the respective obligations of landlord and tenant. It is proposed that obligations should be treated in the code in four different ways. First, there are certain obligations which are so fundamental to the relationship of landlord and tenant that they should be provided by law either in relation to all, or to certain categories of lettings, whenever the relationship exists, and should permit of no exclusion or variation. Secondly, there are obligations (e.g. repairing obligations) which should be imposed on one party, but which should be susceptible of transfer in whole or in part to the other party by express agreement of the parties in writing. Thus, whilst the parties would remain free to redistribute the burden of such obligations between themselves, it would necessarily fall upon one or the other; and if one can judge from the results of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1948, this would bring about greater uniformity. Thirdly, there are obligations which should be susceptible of variation or exclusion by express agreement of the parties in writing. Fourthly, it is thought that even as regards obligations falling outside these three categories, it would be possible to reduce the length and complexity of the terms of lettings and bring about greater certainty, by setting out in the code certain obligations which could, if the parties so agreed, be incorporated into the terms of the letting by reference to the code; cf. beneficial owner covenants, Law of Property Act, 1925, s. 76. Such matters as insurance might be suitable for treatment in this way. Thus, for example, where the letting contained obligations regarding insurance, the parties could, if they so desired, adopt the code provisions which would regulate the rights and duties of the parties in respect of the insurance itself, re-instatement of the premises, cesser or reduction of rent, option to terminate, etc.

4. This paper is, however, limited to the first three groups of obligations:

A. Obligations imposed by the code which cannot be varied or excluded.

B. Obligation imposed by the code upon one party in so far as they are not transferred in whole or in part to the other by express agreement of the parties in writing.

C. Obligation imposed by the code which can be varied or excluded by express agreement of the parties in writing.

5. The substance of the obligations which the Working Party considers to fall within Groups A, B and C above is set out in a series of propositions in Parts II, III and IV of this paper. The propositions are not intended to be drafts of the proposed statutory obligations, but should be read in conjunction with the comments on the nature and extent of each obligation and the notes on the remedies available for breach of it. Landlords' obligations in Part II of the paper are numbered L 1-7, Tenants' obligations in Part III are numbered T 101-112 and Repairing Obligations are numbered consecutively 201-205 in Part IV. The letters A, B and C denote the classification discussed above (para. 4). References are made in the comments, where relevant, to the Table of Covenants contained in the Jenkins Committee Report, which is reproduced in Appendix A of this paper. Appendix B shows to what extent those recommendations have been adopted in this paper. It will be observed that this paper contains no statement of the existing law which in a number of respects is uncertain or obscure, and gives no indication of the changes in the law which would be effected by the proposed obligations. Since the paper is being published with a view to attracting comment and criticism from professional and other organisations intimately concerned with landlord and tenant problems, the Working Party has felt that those consulted would prefer to have the propositions thus barely stated. When the stage of consultation has been completed, the preparation of Code provisions will be accompanied by a commentary setting out the Law Commission's view of the existing law and of the effect of the changes which will result from the adoption of the Code.

Treatment of Repairing Obligations

6. Disputes commonly arise, especially in the case of dwelling-houses, as to liability for repairs, because the obligations expressed in the terms of the letting are incomplete or obscure. It is proposed therefore that the code should set out a comprehensive scheme of repairs obligations applicable to unfurnished dwelling-houses (except where the Agriculture Regulations apply). Under the proposed

scheme (see Part IV below), the burden of all repairs is distributed between the parties. With the exception of "running repairs" for which responsibility is always imposed upon the tenant (T 201 A below), liability for repairs is, broadly speaking, imposed upon landlords in short lettings, and upon tenants in long lettings. Some of the repairing obligations imposed by the code would be susceptible of variation by express agreement of the parties, but others (e.g. the landlord's liability for structural repairs in short lettings) would not. The pattern of the scheme is that in lettings for less than 14 years the landlord would be responsible for all except "running repairs"; in lettings for less than 7 years, this obligation would be mandatory (L 203 A), whilst in lettings for 7-14 years, the obligation would be imposed subject to transfer in whole or in part from landlord to tenant by express agreement of the parties (L 204 B). In lettings for 14 years or more (with the exception of buildings in multiple occupation), the tenant would be liable for all repairs subject to transfer to the landlord by express agreement of the parties (T 205 B). Thus, liability for every repair would be imposed upon one party or the other, either by the code, or by express agreement of the parties, provided that difficulties of definition can be overcome.

7. In this respect, it is appreciated that certain general expressions have been used in this paper (e.g. "structure" and "exterior"), and that these will require definition. Where on the other hand the substance of a proposed obligation is set out in detail (e.g. T 201 A below), such detail is intended to be purely illustrative.

Furnished Lettings

8. Repairing obligations in furnished lettings do not, it is suggested, present any serious difficulties. Subject to the imposition upon the tenant of obligations to use the premises in a tenant-like manner and to repair wilful and accidental damage, it is felt that the landlord should be liable for all repairs.

Remedies

9. On the assumption that the correct approach is that breaches of such obligations will give rise to contractual remedies, certain points should be borne in mind in considering the notes upon remedies for breach of the proposed obligations.

First, it is felt that there is no case for departure from the principle that a party innocent of a breach of obligation is entitled, if he so elects, to stand by his bargain and to resort to appropriate remedies (e.g. injunction of specific performance) to secure its enforcement, whilst at the same time seeking to recover damages for any injury he may have suffered by the breach. Secondly, the nature of the remedy will depend upon the nature of the obligation broken, i.e. whether it is one fundamental to the landlord-tenant relationship (such as the landlord's obligation to put the tenant into possession or the tenant's obligation to pay the rent due) or whether it is merely regulatory (such as the landlord's obligation to notify the tenant of a transfer of the reversion, or the tenant's obligation to notify the landlord of adverse claims), and upon the quality of the breach (i.e. its gravity and reparability). Not every breach, even of a class A obligation, should give the innocent party the right to terminate the relationship; e.g. the tenant's failure to pay rent on the due date.

10. In commenting upon the obligations in the following propositions, it is assumed that these general considerations apply in determining what remedies are available, so that the comments are limited to the special features in each case which qualify the application of the general principles, and which call for individual treatment by way of addition to or subtraction from the remedies generally available.

PART II – LANDLORDS' OBLIGATIONS

L1 A. The landlord should in all lettings be under an obligation to put the tenant into possession of the subject-matter of the letting at the commencement of the term. Possession of the subject-matter means vacant possession unless the circumstances indicate otherwise.

Comment: It is desired in effect to give the tenant a remedy if at the commencement of the term he is not put into possession in accordance with the terms of the letting for whatever reason, unless performance becomes impossible through some supervening event which attracts the doctrine of frustration. (The application of the principle of frustration to tenancies will be the subject of a later paper.) Although this obligation would not prevent the creation of tenancies by estoppel, it would provide a remedy if the tenant were not put into posses- for lack of title, just as in other cases.

Remedies: It is in relation to remedies that the cause of the breach may be relevant. Thus, where the landlord cannot put the tenant into possession for lack of title, the tenant should be able to rescind, and recover damages; but if the landlord could have put him into possession, the tenant, if he elects to do so, should be entitled to seek specific performance and to recover damages, but he should only be liable to pay rent as from the date he is put into possession.

L2 A. The tenant should in all lettings have a remedy against the landlord, if his occupation or enjoyment is interrupted or disturbed during the term granted, or the purpose for which the tenancy was known by the parties to have been granted is substantially defeated:-

(a) by the landlord;

(b) by the lawful act of any person claiming through him;

(c) by the lawful act of any person having title paramount to that of the landlord where that act is occasioned by any breach of the landlord's obligations under his tenancy;

(d) by reason of the termination of the landlord's tenancy in cases other than forfeiture (e.g. by effluxion of time or expiration of notice to quit) at a time earlier than the expiry of the term granted by the landlord to the tenant; or

(e) by reason of any defect in the landlord's title (but not in any title superior to that of the landlord of which the landlord does not know at the time of the letting) other than a defect which was within the tenant's knowledge or was brought to his attention by written notice given to him before the tenancy was granted.

But, acts done on the premises in performance of the landlord's rights and obligations under the terms of the letting, or acts done on neighbouring premises specifically authorised under the terms of the letting, will not constitute a breach of this obligation.

Comment: See Jenkins Table Col. 1, Landlords' Obligations 1 + 2. This is a single obligation intended to protect the tenant against disturbance or interruption or substantial defeasance of the purpose for which the tenancy was known by the parties to have been made, during the currency of the tenancy it being irrelevant whether the breach if caused through the landlord's lack of title, his failure to perform covenants in his own lease, through his own or permitted activities on land which he has retained, or for other similar reasons. Thus the obligation covers the present covenants of quiet enjoyment and non-derogation from grant, and hence also the covenants recommended by the Jenkins Committee (Col. 1, LL 2) to pay the rent reserved by, and observe and perform the covenants contained in, any lease under which the landlord holds. As formulated, the obligation provides a remedy where the disturbance or interruption is caused by defects in the landlord's own title or those of which he knows at the time of the letting. Disturbances by title paramount are however only covered where the factors in (c), (d) or (e) are operative. "Defect" in (e) above should be taken to cover restrictive covenants affecting the freehold title of which in a chain of tenancies a lessor or sub-lessor may be ignorant, but which nevertheless may prevent a lessee or sub-lessee from using the premises for the purpose for which he took the tenancy. In this sense, therefore, the "defect" is in the title of the freeholder or sub-lessor who does not impose upon the lessee or sub-lessee the restriction upon user which is binding upon himself by virtue of his own title. Liability under this obligation would not arise if the tenant were dispossessed in

consequence of a compulsory purchase order or requisitioning. His proper remedies then would in the former case be compensation available by virtue of that order, and in the latter case, any compensation available upon requisitioning and the exercise of the rights conferred by the Landlord & Tenant (Requisitioned Land) Act, 1942.

Remedies: Breaches of this obligation will clearly possess different qualities varying, at the one extreme, from eviction of the tenant through a defect in the landlord's title to a mere temporary disturbance of enjoyment (e.g. by an unauthorised entry into the premises let) at the other. The remedies available to the tenant affected by a breach must, therefore, be various and fall to be considered by reference to the kind of features discussed in Part I, Paragraph 9, above. In the extreme case, eviction, this may well fall to be regarded as a terminating event, which entitles the tenant to treat the tenancy as ended and gives him, in addition, a right to damages. It is proposed that the consequences of eviction should be dealt with in the context of the termination provisions of the code.

L3 A. The Landlord should in all lettings be under an obligation to notify the tenant of the name and address of any other person who during the currency of the tenancy becomes entitled to the rent and to enforce the obligations of the letting.

Comment: This is designed to supplement the provisions now contained in s. 151 Law of Property Act, 1925, and is required so that the tenant may know not only to whom he is to pay his rent, but also to whom his statutory and other obligations are owed and to whom he may look for performance of the obligations imposed by law or by the terms of the tenancy upon the landlord.

Remedy: Unless and until the tenant receives notice that the person formerly entitled to the rent has ceased to be so entitled, and also of the name and address of the person who has become entitled, the original landlord should remain liable to the tenant in respect of the obligations under the tenancy, (cf. Landlord and Tenant Act, 1927, s. 23).

L4 B. Subject to the express terms of the tenancy and to provisions of statutes such as those referred to in the commentary, the landlord should in all lettings, as between himself and the tenant be under an obligation to discharge assessments, charges, impositions and outgoings payable in respect of the premises other than general rates or water rates, save in

so far as the tenant's rent is expressed to include general rates or water rates.

Comment: (1) This statutory obligation is thought necessary in order to clarify as between landlord and tenant the liability of each for charges not mentioned in the tenancy. But it is a matter upon which the parties should be free to reach their own bargain, and the obligation will only apply in so far as there is no express agreement to the contrary in writing.

(2) The obligation is qualified by reference to statutory provisions to the contrary effect. This qualification is necessary in the light of such legislative provision as is made regarding apportionment of expenditures between landlord and tenant arising for example under s. 170 of the Factories Act, 1961 and s. 73 of the Offices, Shops and Railway Premises Act, 1963.

Remedies: Since the proposed obligation affects the liability to pay moneys which, in many cases, may fall initially upon the tenant, it would be desirable to provide a special remedy for the tenant who has discharged the liability. Merely to entitle him to claim reimbursement from the landlord would, it is felt, be insufficient. He should be entitled to deduct the amount of his payments from rent falling due.

L5 A. In short lettings of dwelling-houses, (i.e. monthly or less) the landlord should, except where the terms of the tenancy are in writing, be under an obligation to provide the tenant with a rent book containing space for the rent paid and the names and addresses of the parties, a description of the premises and the duration of the term.

Comment: This is an extension of the provisions of the Landlord & Tenant Act 1962 in respect of rent books, to all residential lettings other than these under written agreement. Whilst it might be thought desirable that the rent book should set out the statutory obligations of both landlord and tenant, this would not be practicable; there would be little advantage in having the Group A obligations set out in the rent book unless all the other terms of the tenancy were also included, which would in effect preclude the creation of tenancies by oral agreement: s. 52 L.P.A. 1925. Further, rent books are

notoriously unreliable, even as to the names of tenants. It should be noted that if the tenancy falls within the Rent Acts, the Rent Books (Forms of Notice) Regulations 1965, S.I. No. 1933, apply under which certain information must be given concerning the tenant's right to contest the rent, notices of disrepair and rights to protection against eviction.

Remedies: It is thought that only a penal sanction would be appropriate to ensure compliance with this requirement. (cf. s. 4. Landlord & Tenant Act 1962).

L6 B. The landlord should in all lettings be under an obligation to maintain safe and fit for use means of access over which he retains control.

Comment: Breaches of this obligation might in certain cases constitute also what is at present considered a derogation from grant (L2 A above). It has been separated from L7 A (means of access in multi-let buildings) because it applies to all lettings, and also because it is thought that the parties should be free to reach their own bargain; in many cases, for example, the tenant might be expected to contribute towards the cost.

Remedy: See under L202 A below.

L7 A In all lettings comprising parts of buildings, the landlord should be under an obligation to maintain fit for use, clean, in good order and condition, and with provision for adequate lighting, the common parts of the building, to keep the lifts (if any) in good and safe working order and to maintain safe and fit for use any means of access to the building or the units let therein which are within the curtilage of the building.

Comment: (1) This is regarded as an essential obligation to be imposed mandatorily for all buildings in multiple occupation. The term "common parts" is here used to mean those parts of the whole building to which the tenants have access in common.

(2) In respect of lighting, it is not intended that the landlord should be in breach of this obligation if the common parts are lit not permanently but during reasonable hours only, or by minuterie, or from the

tenants' wiring circuits, as is often the case in converted property.

Remedies: See under L202 A below.

PART III – TENANTS' OBLIGATIONS

T101 A. The tenant should in all lettings be under an obligation to pay the rent and other sums due under the terms of the letting.

Comment: See Jenkins' Table Col 1 T.1. See also Obligation T102 C below.

Remedies: Remedies for non-payment of rent will be discussed in a later paper.

T102 C. The tenant in short periodic tenancies (i.e. quarterly or less) should be under an obligation to pay in advance the rent to which the landlord is entitled for the period.

Comment: The obligation to pay rent (Tenants' obligation in T101 A above) is fundamental to the relationship, but the parties should be free to reach their own agreement as to when rent is to be payable. Is the absence of express agreement in writing to the contrary, rent would be payable in advance under this obligation.

T103 A. The tenant should in all lettings be under an obligation to take reasonable steps to protect the property let against physical encroachments of third parties and to notify the landlord of adverse claims and of any notice affecting the landlord.

Comment: This is a corollary of the landlord's obligation in respect of the tenant's enjoyment and possession of the property let for the duration of the term. The tenant must (a) take reasonable steps to prevent encroachments and (b) give the landlord the opportunity immediately to challenge third party claims of which he might otherwise have no notice (see s. 145 of the Law of Property Act 1925); what steps are reasonable will depend upon the facts.

Remedy: The landlord's remedy for breach of this obligation must depend upon the factors discussed in Part I, paragraph 9 above. But it is suggested that the penal provisions of s. 145 Law of Property Act 1925 (treble rent) should be abandoned.

T104 A. The tenant should in all lettings be under an obligation to notify the landlord of the name of any other person who during the currency of the tenancy becomes liable vis-à-vis the landlord under the obligations of the letting.

Comments: This obligation is a corollary of Landlords' Obligation L3 A above.

Remedy: See under Obligation L3 A above. Unless and until the former tenant notifies the landlord that he has ceased to be tenant, and the name of the person who has become tenant, the original tenant should remain liable to the landlord in respect of the obligations under the tenancy.

T105 A. The tenant should in all lettings be under an obligation to the landlord to observe any Statute, Regulation or Order affecting the user of the premises.

Comment: See Jenkins Table Col. 1 T.6. The landlord is free to include a term in the letting relating to user in addition to those which are binding upon the tenant by virtue of the landlord's or a superior title. The obligation proposed is intended to provide the landlord with a remedy if the tenant fails to observe restrictions or fulfil duties in respect of user which are imposed, for example, under Planning or Public Health (including Housing Acts) legislation.

Remedy: It is in the landlord's interest that such public controls or restrictions should be complied with, since if they are not, not only may the landlord in certain circumstances incur liabilities but the letting value of the premises may be diminished. The right to terminate and damages should therefore be available to the landlord as remedies, though whether or not the tenant's breach is remediable will be relevant in deciding whether or not "forfeiture" should be granted.

T106 A. The tenant should in all lettings be under an obligation not to cause or permit or suffer acts or omissions which are or may constitute a nuisance or annoyance to persons occupying neighbouring property or to the landlord, or to use or permit the premises to be used for illegal or immoral purposes.

Comment: In the formulation proposed, the obligation extends to acts which would not constitute an actionable nuisance, which is important to the landlord whether or not adjoining occupiers are his tenants. It takes into account the state of the law as to the liability of a landlord for nuisances upon premises let and would enable a landlord to take steps (e.g. by way of quia timet injunction) to deal with an anticipated nuisance. It can be said that the some extent this obligation overlaps the tenant's obligation to use the premises in a tenant-like manner, where this is imposed (see T110 A below). The difference is between acts or omissions, which adversely affect the premises let, and those which do, or may, take effect upon neighbouring premises. See also Jenkins Table Col. 1 T.8.

Remedy: The nature of landlord's remedy for breach of this obligation must, again, depend upon the factors discussed in Paragraph 9 above.

T107 C. Unless the letting is for more than [14] years, the tenant should be under an obligation not to assign, sublet or part with possession of the whole or part of the demised premises without the consent of the landlord, such consent not to be unreasonably withheld.

Comment: See Jenkins Table, Col. 1, T.4. Covenants against assignment, sub-letting etc. are not under the present law classed as "usual covenants" for the purpose of an agreement which is expressed to include "common and usual covenants". Nevertheless, it is the general practice to include them; and this obligation reproduces them in the qualified form, requiring the landlord's consent, as supplemented by s. 19 of the Landlord and Tenant Act, 1927, so that consent is not to be unreasonably withheld. It is generally agreed that the treatment by the courts of the question whether consent has been unreasonably withheld has been satisfactory;

(see for example Pimps v. Tallow Chandler Co. [1964] 2 Q.B. 547, where the aspirations of a prospective designee speculator were defeated).

The inclusion of this obligation in Class C leaves it open to the parties to vary or exclude it if they wish. In so far as the landlord may be willing to dispense altogether with the necessity for consent, this is clearly desirable; but, to take the converse case, it is debatable whether the landlord should be able to impose an absolute prohibition against assignment or sub-letting. The Jenkins Committee (at page 118) recommended that absolute prohibitions should be ineffective, and the Working Party is inclined to agree in respect of assignment or sub-letting of the whole of the premises let, but to think that there may be some justification for such prohibitions as regards assignment etc. of part of the premises. The best course is thought to be to include this obligation in Class C of the standard obligations but to consider whether, elsewhere in the code, some limit should be placed on absolute prohibitions in this field. At the same time it would be appropriate to consider how far a landlord should be able to achieve substantially the same result by means of devices such as that used in Adler v. Upper Grosvenor St. Investments Ltd. [1957] 1 W.L.R. 229, where an apparently qualified covenant was subject to a condition precedent that if the tenant wishes to assign or sub-let, he must first offer to surrender the lease.

Remedy: See note following T109 C below.

T108 C. In lettings including buildings, the tenant should be under an obligation not to change the user of any building without the landlord's prior consent, consent not to be unreasonably withheld.

Comment: See Jenkins Table, Col. 1, T. 10 and 11, and under Obligation T107 C above. Consideration will be given in a later paper to the question whether absolute obligations against change of user should be permitted.

Remedy: See under Obligation T109 C below.

T109 C. In lettings including buildings, the tenant should be under an obligation not to make any physical alteration or addition to any buildings on the

premises without the landlord's prior consent (consent not to be unreasonably withheld), statutory authority, or order of the court.

Comment: See Jenkins Table, Col, 1, T 5 and under Obligations T107 C and T108 C above.

Remedy: In respect of Obligations T107 – T109 C, it is not considered that any special provision should be made. The nature of the obligation and the character of the breach concerned, in these cases, will be discussed in a later paper dealing with termination.

T110 A. The tenant should in all letting be under an obligation to use the premises in a tenant-like manner.

Comment: This is based upon the obligation implied at common law that a tenant should use the premises in a "tenant-like manner". The content of this obligation was discussed by Lord Denning in Warren v. Keen [1954] 1 Q.B. 15 at p.20. Obligations T110 A and T111 A in effect replace the law of waste as between landlord and tenant, and in the case of dwelling-houses, T201 A takes this obligation still further.

Remedy: It is not considered that any special remedy is required to supplement those normally available to a landlord.

T111A. The tenant should be under an obligation:

(a) not to destroy or demolish the whole or part of any building included in the letting, except in so far as he has undertaken to demolish or rebuild under the terms of the letting; and

(b) to make good any wilful damage or any defect caused by the tenant, his family, servants, agents or visitors.

Comment: As regards lettings including buildings, T111(a) together with T110 are intended to replace the doctrine of waste, T111(b) imposes an obligation to make good any damage caused in breach of T110 or T111(a). The imposition of liability for wilful damage caused by the tenant's visitors raises some difficulties. But to make distinctions between different types of damage or

between guests and other visitors would probably create confusion. It is a question of policy as to what limitations should be imposed upon a tenant's liability for wilful damage.

Remedy: It is suggested that a new remedy by order for restoration should be provided to supplement those normally available to a landlord in the event of a breach of T111(a) or alternatively that the landlord should be permitted to enter upon the premises to restore them. (Remedies in contract are being considered by the Commission, and if specific performance were to be more widely available, an order for restoration would be possible). In respect of T111(b) it is not considered that any special remedy is required to supplement those normally available.

T112 A. Where by virtue of the code or the terms of the tenancy agreement, the landlord is under repairing obligations, the tenant should be under an obligation to permit the landlord to enter upon the premises at reasonable times and upon reasonable notice to inspect them from time to time and to carry out such repairs as he is obliged or entitled to undertake.

Comment: Jenkins Table Col. 1, T.3. This obligation is a statement of the licence now implied in favour of the landlord to enter to carry out repairs for which he is responsible. It is felt that if the landlord wishes to reserve to himself the right to enter in order to carry out repairs to adjacent property, he should do so expressly.

Remedy: It is not thought that any special remedy would be required.

PART IV – REPAIRING OBLIGATIONS

T201 A. In lettings of dwelling-houses, the tenant should be under an obligation:

(a) to carry out "running repairs" which could include e.g.,

(i) repairing or replacing stop-cocks, ball-valves, tap-washers, plugs, sockets, fuses and loose flexes;

(ii) repairing or replacing glass, locks, fastenings and sashcords; and

(iii) mending burst pipes, clearing stop-pages in pipes and drains, and cleaning flues; and

(b) to maintain the dwelling in a reasonable state of internal decorative repair, having regard to its age, character and locality, and the state of the premises at the commencement of the tenancy.

Comment: It is thought that the tenant should be under an obligation to do "running repairs", i.e. the sort of repairs that in practice a reasonable tenant at present undertakes even though there might be no express agreement in respect of them. They are in fact the sort of repairs which should be done to prevent damage or deterioration of the premises, or for the convenience of the tenant, and often repairs which would be effected more economically by the tenant than by the landlord. Rent Officers already take into account the burden of the respective repairing obligations of landlord and tenant in fixing a fair rent; and therefore the imposition of an obligation in respect of "running repairs" and minimum decorative repairs can be supported by this consideration as well as for practical reasons.

Remedy: It is not considered that any special remedy is required to supplement those normally available to a landlord.

L202 A. In lettings for any period of dwelling-houses comprising parts of buildings, the landlord should be under an obligation to put and keep in repair the structure and exterior of the whole building including boundary walls and fences and service installations other than those serving single units in the building.

Comment: (1) L202 is regarded as an essential obligation for buildings containing more than one dwelling in the light of modern developments and in particular the manifest shortcomings of leasehold flat schemes, see Wilberforce Report (1965, Cmnd. 2719) Paragraph 52, and also under Remedies below.

(2) For the purposes of L212 it would be desirable to have a definition of "structure and exterior".

Remedies: L6, L7, L203 and L204. Whether in extreme cases the tenant might be justified in treating the landlord's breach as a repudiation of the tenancy will be extended in a later paper. The question arises for consideration whether in addition to the normal remedies available to a tenant for breach of the obligations he should be entitled to special remedies, e.g. a proportionate reduction of the rent until the defect is made good, the right to have the relevant repairs carried out and deduct its cost from the rent as it falls due, or power given to the court to appoint a receiver or manager (see Wilberforce Report): and if so, what machinery should be imposed.

L203 A. In lettings of dwelling-houses for less than [7] years the landlord should be under an obligation to put and keep the premises let, including boundary walls and fence and service installations other than those installed by the tenant, in tenantable repair, having regard to their age, character, prospective life and locality, save in so far as the tenant is under an obligation to do particular repairs by virtue of obligations T111 and T202 below.

Comment: (1) L203 adopts the provisions of the Housing Act, 1961, s. 32, which, it is now proposed, should be applied to all residential lettings (including local authority lettings) whether of single houses or parts of buildings for terms of up to [7] years. And since it is proposed as a mandatory obligation, contracting out would not be permissible either generally or under provisions similar to s.33.

(2) S.6 of the Housing Act, 1957, should, it is thought, no longer figure in the law of landlord and tenant (as it does at present by imposing a term of fitness by reference to the s. 4 standards). It is the view of the Working Party that the standards of fitness laid

down by s. 4 of the Act, in so far as they are imposed as contractual obligations in lettings by s. 6, are unrealistic, since they are unrelated to age, character, probable life and locality of the premises. It is accepted that local authorities must have power under Housing and Public Health legislation to deal with unfit dwellings, and their powers to act under the relevant statutory provisions would not be affected.

(3) Tenants' Obligations T110, T111 and T201 which in effect qualify the landlord's obligation in T203 are considered equivalent to s. 32(2)(a) of the Housing Act, 1961.

(4) For the purpose of this proposition, an obligation to put and keep in repair should not be regarded as including an obligation to re-build or re-instate the premises.

Remedies: See under L202 above.

L204 B. In lettings of dwelling-houses for less than 14 years but not less than 7 years, the landlord should be under an obligation to carry out all repairs other than those for which liability is imposed upon the tenant by Tenants' Obligations T111 and T201 above.

Comment: See under Landlords' Obligation L203 above and Tenants' Obligations T111, T201 and T205.

Remedies: See under Landlords' Obligation L202 above.

T205 B. The tenant should in lettings of dwelling-houses for 14 years or more be under an obligation to carry out all internal and, except in the case of multi-let buildings, all structural and external repairs including boundary walls and fences.

Comment: This completes the framework of repairing obligations. The effect of classifying L204 and T205 as B obligations is to leave the parties free to transfer the obligation in whole or in part to the other party by express agreement in writing (sec paragraph 3 above).

31st march 1967

TABLE SHOWING COVENANTS WHICH IT IS PROPOSED SHOULD BE IMPLIED IN THE ABSENCE OF WRITTEN AGREEMENT TO THE CONTRARY IN LETTINGS AT A RACK RENT OF ALL TYPES OF PREMISES (FURNISHED LETTINGS EXCLUDED)

1.	2.	3.	4.	5.	6.	7.
Covenants common to all lettings	Covenants additional to those shown in Column 1					
	Where whole building is let for:—			Where part of building is let for:—		
	Term of more than 14 years	Term of more than 3 and not more than 14 years	3 years or less	Term of more than 7 years	Term of more than 3 but not more than 7 years	3 years or less
				Exception and reservation in favour of landlord in respect of passage of gas, water, electricity and drainage	Exception and reservation in favour of landlord in respect of passage of gas, water, electricity and drainage	Exception and reservation in favour of landlord in respect of passage of gas, water, electricity and drainage
TENANTS 1. To pay rent. 2. To keep garden (if any) in good order. 3. To permit landlord to enter and view and to make good defects after giving notice. 4. Not to assign or underlet without consent. 5. Not to make alterations or additions without consent. 6. To comply with the requirements, so far as they affect the tenant or occupier, of any competent authority and with the provisions of the Town and Country Planning Act, 1947. 7. Not to allow encroachments. 8. Not to cause a nuisance or annoyance to owners or occupiers of adjoining property. 9. Not to break covenants in head lease. 10. (Where premises or part thereof are residential at time of letting) To use the premises or that part as the case may be for residential purposes only. 11. (Where premises or part thereof are used for business at time of letting) Not to use the premises or that part thereof as the case may be as a dwelling house or permit persons to sleep or reside therein without consent. 12. Proviso for re-entry.	1. To pay rates and taxes. 2. To repair including boundary walls and fences, and yield up in repair (exception of trade and tenant's fixtures and fittings). To paint internally in every 7th and externally in every 3rd year. 3. To insure and reinstate.	1. To pay rates and taxes. 2. To make good malicious damage and "unfair" wear and tear inside and out and to keep interior of premises in good and tenantable repair and condition including decorative repairs and glass and to yield up in such condition (exception of trade and tenant's fixtures and fittings): provided that tenant be not obliged to keep or yield up premises in better condition than that on entry. 3. Not to do anything to avoid landlord's insurance policy or increase premium thereon. 4. Proviso for cesser of rent and option to determine where premises are destroyed.	1. Covenant to pay rent to be inclusive of rates and water rate. 2. To repair glass and make good malicious damage and "unfair" wear and tear inside and out. 3. Not to do anything to avoid landlord's insurance policy or increase premium thereon. 4. Proviso for cesser of rent and option to determine where premises are destroyed.	1. To pay rates and taxes. 2. To keep interior (including glass) in repair (exception of trade and tenant's fixtures and fittings). To paint internally in every 7th and externally in every 3rd year. 3. Not to do anything to avoid landlord's insurance policy or increase premium thereon. 4. Not to damage or obstruct common passages, entrances, etc. 5. Proviso for cesser of rent and option to determine if premises destroyed.	1. To pay rates and taxes. 2. To make good malicious damage and "unfair" wear and tear inside and out and to keep interior of premises in good and tenantable repair and condition including decorative repairs and glass and to yield up in such condition (exception of trade and tenant's fixtures and fittings): provided that the tenant be not obliged to keep or yield up premises in better condition than that on entry. 3. Not to do anything to avoid landlord's insurance policy or increase premium thereon. 4. Not to damage or obstruct common passages, entrances, etc. 5. Proviso for cesser of rent and option to determine if premises destroyed.	1. Covenant to pay rent to be inclusive of rates and water rate. 2. To repair glass and make good malicious damage and "unfair" wear and tear inside and out. 3. Not to do anything to avoid landlord's insurance policy or increase premium thereon. 4. Not to damage or obstruct common passages, entrances, etc. 5. Proviso for cesser of rent and option to determine if premises destroyed.
LANDLORDS 1. Quiet enjoyment. 2. To pay rent reserved by, and observe and perform the covenants contained in, any lease under which the landlord holds.	1. Not to build so as to obstruct tenant's right to access of light and air.	1. To keep structure and outside of premises in repair including boundary walls and fences.	1. To pay rates and taxes. 2. To keep the premises internally and externally including boundary walls and fences in good and tenantable condition.	1. To keep structure and exterior in repair including boundary walls and fences. 2. To keep in repair parts of building used in common with others. 3. To keep common passages, etc., properly cleaned and lighted and lifts in good and safe working order. 4. To insure and reinstate.	1. To keep structure and exterior in repair including boundary walls and fences. 2. To keep in repair parts of building used in common with others. 3. To keep common passages, etc., properly cleaned and lighted and lifts in good and safe working order.	1. To pay rates and taxes. 2. To keep the premises internally and externally including boundary walls and fences in good and tenantable condition. 3. To keep in repair parts of building used in common with others. 4. To keep common passages, etc., lighted and lifts in good and safe working order.

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APPENDIX B

Cross references showing where the covenants recommended by the Jenkins Committee have been included in the propositions contained in this paper:

Jenkins Table	Obligation	Jenkins Table	Obligation
Col. 1, T1	T 101A, T 102C	Col.5, T1	L 4B
T2	T 105A	T2	T 111a, T 201A
T3	T 112A	T3	-
T4	T 107C	T4	L 6B
T5	T 109C	T5	(b)
T6	T 105A	L1	L 204B
T7	T 103A	L2	L 7A
T8	T 106A	L3	L 7A
T9	L 2(e)A	L4	(b)
T10	T 108C	Col.6, T1	L 202a
T11	7 108C	T2	T 111A, T 201A
T12	(a)	T3	-
L1	L 2A	T4	T 110A
L2	L 2A	T5	(b)
Col. 2, T1		L1	L 202A
T2	T 205B	L2	L 7A
T3	-	L3	L 7A
L1	-	Col 7, T1	T 101a, T 102C
			L 4B
Col. 3, T1	L 4B	T2	T 111A, T 201A
T2	T 111A	T3	-
T3	-	T4	T 110A
T4	(b)	T5	(b)
L1	L 204B	L1	L 4B
Col. 4, T1	T 101A, T 102C, L 4B	L2	L 202A
T2	T 111A	L3	L 7A
T3	-	L4	L 7A
T4	(b)		
L1	L 4B		
L2	L 203A, T 201A		

(a) This will be dealt with in later paper on termination of tenancies.

(b) See Part I, paragraph 3 of this paper.