Michigan Law Review

Volume 69 | Issue 2

1970

Residential Tenants and Their Leases: An Empirical Study

Warren Mueller

RESIDENTIAL TENANTS AND THEIR LEASES: AN EMPIRICAL STUDY

*Warren Mueller**

I. INTRODUCTION

DISPARITY in bargaining power between parties to standard-form contracts is a universally recognized problem.[1] Scholars from many nations have advanced proposals intended to alleviate this disparity and thereby to eliminate the prejudicial effects on the public at large.[2] Although price and credit terms have received a

* Member of the Bar of the Province of Ontario, Canada. B.A. 1964, LL.B. 1967, University of Toronto; LL.M. 1970, University of Michigan.—Ed.

1. *See* particularly, in the context of landlord-tenant problems, AMERICAN BAR FOUNDATION, MODEL RESIDENTIAL LANDLORD-TENANT CODE § 2-203, comment, at 46 (Tent. Draft 1969) [hereinafter MODEL CODE]: "Since the landlord occupies an impregnable bargaining position, it may be assumed that any responsibility placed on the landlord which can be waived, will be waived." Moreover, "where residential printed lease forms are typical, the bargaining position of the landlord results in imaginatively oppressive lease forms, in which the tenant perforce agrees that any breach—such as carrying groceries up the front stairs, taking a vacation for longer than 10 days, or keeping a parakeet—will entitle the landlord to terminate the lease." *Id.* at 9-10. *See also* ONTARIO LAW REFORM COMMN., INTERIM REPORT ON LANDLORD AND TENANT LAW APPLICABLE TO RESIDENTIAL TENANCIES 11 (1968) [hereinafter ONTARIO REPORT]: "A further assumption which underlies this study is that the extent to which contractual provisions can equalize the position of residential tenants is limited by the disparity of bargaining power between the parties." In New Jersey the enforceability of a clause exculpating the lessor from responsibility for damage or injury to the tenant depends on whether the tenancy is residential, Kuzmiak v. Brookchester, Inc., 33 N.J. Super. 575, 111 A.2d 425 (L. Div. 1955), or commercial, Midland Carpet Corp. v. Franklin Associated Properties, 90 N.J. Super. 42, 216 A.2d 231 (L. Div. 1966), since only in the latter instance is parity of bargaining power likely to prevail.

2. The proposals for reform fall into five broad categories:

(1) The establishment of statutory terms for contracts. This approach has been followed most prominently in the case of insurance contracts. *See generally* Kimball & Pfenningstorf, *Legislative and Judicial Control of the Terms of Insurance Contracts: A Comparative Study of American and European Practice*, 39 IND. L.J. 675 (1964); Lenhoff, *Optional Terms (Jus Dispositivum) and Required Terms (Jus Cogens) in the Law of Contracts*, 45 MICH. L. REV. 39 (1946).

(2) Legislative prohibition of contracting out of long-established statutory terms, as in the current English proposal to ban contracting out of the warranties to title, description, and quality in consumer sales of goods. *See* SCOTTISH LAW COMMN., EXEMPTION CLAUSES IN CONTRACTS, FIRST REPORT: AMENDMENTS TO THE SALE OF GOODS ACT, 1893, at 26-32 (Scot. Law Commn. No. 12, 1969).

(3) The creation of an administrative agency to regulate the use of contractual terms limiting the responsibility of one of the parties. The best working example of this approach on a nationwide scale is the Israeli Standard Contracts Law of 1964 (Law of Feb. 12, 1964, Standard Contracts Law 5724-1964, 18 Laws of the State of Israel 51). *See* Diamond, *The Israeli Standard Contracts Law*, 14 INTL. & COMP. L.Q. 1410 (1965); Jacobson, *The Standard Contracts Law of Israel*, 1968 J. BUS. L. 325; Lando, *Standard Contracts: A Proposal and a Perspective*, in SCANDINAVIAN STUDIES IN LAW 127, 140-48 (F. Schmidt ed. 1966); Note, *Administrative Regulation of Adhesion Contracts in Israel*, 66 COLUM. L. REV. 1341 (1966).

good deal of attention,[3] there are, lurking in the shadows of fine print in standard-form contracts, other clauses which create onerous obligations for the unwary and provide inequitable exculpation for the dominant party. As a result of the disparity in bargaining power, it is commonly alleged that such fine-print terms are seldom seen, rarely understood, and almost never negotiated. True or not, this dismal picture has been painted by numerous legal analysts in their discussions of standard-form contracts.[4] Although these scholars were

(4) The American concept of "unconscionability." Of the abundant literature in this area, see especially Beaver, *The Uniform Commercial Code's Solution for Unconscionability*, 48 ORE. L. REV. 209 (1969); Cellini & Wertz, *Unconscionable Contract Provisions: A History of Unenforceability from Roman Law to the UCC*, 42 TUL. L. REV. 193 (1967); Loff, *Unconscionability and the Code*, 115 U. PA. L. REV. 485 (1967); Stuntebeck, *The Doctrine of Unconscionability*, 19 U. MAINE L. REV. 81 (1967); Comment, *Bargaining Power and Unconscionability: A Suggested Approach to UCC Section* 2-302, 114 U. PA. L. REV. 998 (1966); Comment, *Policing Contracts Under the Proposed Commercial Code*, 18 U. CHI. L. REV. 146 (1950); Note, *Unconscionable Sales Prices*, 20 U. MAINE L. REV. 159 (1968); Note, *Unconscionable Contracts Under the Uniform Commercial Code*, 109 U. PA. L. REV. 401 (1961); Note, *Unconscionable Business Contracts: A Doctrine Gone Awry*, 70 YALE L.J. 453 (1961); Note, *Unconscionable Contracts: The U.C.C.*, 45 IOWA L. REV. 843 (1960); Note, *Unconscionable Contracts and the U.C.C., Section 2-302*, 45 VA. L. REV. 583 (1959); Note, *Section 2-302 of the Uniform Commercial Code: The Consequences of Unconscionability in Sales Contracts*, 63 YALE L.J. 560 (1954); Case Note, 20 ARK. L. REV. 165 (1966). An interesting comparison can be made with the British Commonwealth's doctrine of fundamentality. *See* Coote, *The Rise and Fall of Fundamental Breach*, 40 AUSTL. L.J. 336 (1967); Devlin, *The Treatment of Breach of Contract*, 1966 CAMB. L.J. 192; Grunfield, *Reform in the Law of Contract*, 24 MODERN L. REV. 62 (1961); Guest, *Fundamental Breach of Contract*, 77 L.Q. REV. 98 (1961); Melville, *The Core of a Contract*, 19 MODERN L. REV. 26 (1956); Meyer, *Contracts of Adhesion and the Doctrine of Fundamental Breach*, 50 VA. L. REV. 1178 (1964); Montrose, *Some Problems About Fundamental Terms* (pts. 1-2), 1964 CAMB. L.J. 60, 254; Reynolds, *Warranty, Condition and Fundamental Term*, 79 L.Q. REV. 534 (1963); Treitel, *Fundamental Breach*, 29 MODERN L. REV. 546 (1966); Unger, *The Doctrine of the Fundamental Term*, 1957 BUS. L. REV. 30.

(5) "Form" requirements that onerous terms be printed in large or conspicuous type or that they be "specially signed." In American law see UNIFORM COMMERCIAL CODE § 2-316(2), and in Italian law, where this low-level protection is the backbone of the system, see Gorla, *Standard Conditions and Form Contracts in Italian Law*, 11 AM. J. COMP. L. 1 (1962).

3. *See, e.g.*, Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965), and Frostifresh Corp. v. Reynoso, 52 Misc. 2d 26, 274 N.Y.S. 2d 757 (Dist. Ct., Nassau County 1966), *revd.*, 54 Misc. 2d 119, 281 N.Y.S. 964 (Sup. Ct., App. Term 1967).

4. *See* ONTARIO REPORT, *supra* note 1, at 11: "Tenants do not often insist that changes be made in lease provisions . . . ." It should be noted, however, that the Commission did not attempt to verify this proposition in its tenant questionnaire (which may be found in *id.*, app. A, at 74-78). The one study directed to leases as adhesion contracts declares that "since landlords are unwilling to modify a form whose terms strongly favor them, many tenants have no choice but to sign the lease or reject the entire transaction." Note, *The Form 50 Lease: Judicial Treatment of an Adhesion Contract*, 111 U. PA. L. REV. 1197 (1963). The most significant treatise written on form contracts contains the statement that "in most [standard-form contracts] the person executing his signature will either not read or not comprehend the meaning of the individual clauses." O. PRAUSNITZ, THE STANDARDIZATION OF COM-

initially concerned with such Lilliputian contracts as baggage and cloakroom tickets, their analysis has a much broader application, and has accordingly been extended to discussions of more obviously contractual documents as well.

Of particular interest is the application of this theory to residential leases, a classic example of the standard long-form contract. An abundance of traditional legal research and commentary has been devoted to the problem of disparity of bargaining power between the parties to a standard-form residential lease.[5] The commentators have consistently called for reform measures to combat this problem. In order to adopt sensible and effective reform measures, however, it is first necessary to obtain factual data with which to test and clarify the reformers' underlying assumptions. Such data is virtually nonexistent, since, prior to the study described in this Article, no empirical research into the actual problems of the residential tenant had been reported.[6]

In order partially to correct this deficiency, and in order to test the reformers' assumptions about residential tenants and their leases, this writer recently conducted a survey of tenants in Ann Arbor, Michigan.[7] The survey was designed to provide basic data on tenant

---

MERCIAL CONTRACTS IN ENGLISH AND CONTINENTAL LAW 41 (1937). One writer has said that in the context of a sale of goods, "[w]hen handed a printed form to sign, the buyer will ordinarily concern himself only with the provisions to be filled in—those for which he has actually bargained—and will overlook or ignore the clauses governing the remedies available to him in the event the merchandise proves defective." Note, *Unconscionable Contracts Under the Uniform Commercial Code*, 109 U. PA. L. REV. 401, 412 (1961). An American judge once said of an insurance contract: "These provisions [of the insurance contract] were of such bulk and character that they would not be understood by men in general, even if subjected to a careful and laborious study: by men in general, they were sure not to be studied at all." De Lancy v. Insurance Co., 52 N.H. 581, 587 (1873) (Justice Doe). Note the following observation concerning the "ticket" cases by a prominent Canadian judge, Justice Riddell, in Spencer v. Canadian Pac. Ry., 13 D.L.R. 836, 843 (1913): "We were told that everyone should be held to have read his railway [baggage] check—that people generally did read their checks. Speaking for myself, I never read a check in my life till this one and never saw one read—nay, further, I have never heard of one being read until the argument of this case."

5. *See, e.g.*, the footnotes to the provisions and commentary of the MODEL CODE, *supra* note 1; Note, *The Form 50 Lease: Judicial Treatment of an Adhesion Contract*, 111 U. PA. L. REV. 1197 (1963); Note, *The Significance of Comparative Bargaining Power in the Law of Exculpation*, 37 COLUM. L. REV. 248, 262 (1937); Case Note, 16 ALA. L. REV. 189 (1963) (discussing Deen v. Holderfield, 275 Ala. 360, 155 S.2d 314 (1963), an exculpatory-lease-provision case); Annot., 175 A.L.R. 9, 83-86 (1948).

6. The ONTARIO REPORT, *supra* note 1, is a refreshing exception, but it focuses more on landlord-tenant relations after the lease is signed than on the more strictly "legal" orientation of this Article. In relation to business contracts, see Macaulay, *Contractual Relations in Business*, 28 AM. SOCIOL. REV. 55 (1963), and Evan, *Comment*, *id* at 67.

7. The locale of the study offered several difficulties which were at once drawbacks and advantages. With a major university and allied scientific disciplines at its geo-

attitudes and behavioral characteristics with respect to leases, including their comprehension of lease clauses and the negotiations they engaged in with their landlords.

II. Purpose and Scope of the Study

The logical first step in developing the survey program was the isolation of general subject areas for investigation. We selected several principal topics for study—the extent to which tenants read their leases before signing, the extent to which tenants understand the legal terminology contained therein, the assessment made by tenants of the equitableness of typical lease terms, the degree to which tenants seek to negotiate different lease terms, and the degree to which such negotiation is successful.

These topics emerged out of certain hypotheses that we formulated about the behavior of the average residential tenant. Our working hypotheses were (1) that few tenants do more than check the rent and occupancy dates before signing a lease; (2) that tenants would be unable to identify fine-print terms contained within their leases; (3) that tenants do not understand fine-print terms; (4) that tenants would view fine-print terms as inequitable; (5) that the standard-form lease is neither negotiated nor negotiable; (6) that most tenants would think exculpatory provisions to be legally enforceable. The basic objective of our survey was to test these hypotheses. Unfortunately, in order to pursue this objective it was necessary to make basic choices, ones severely limited by questions of time and money, with regard to the selection of a population-coverage objective and the necessarily related comprehensiveness of the study.

In making the choice concerning comprehensiveness of the questionnaire, consideration was given to the results of the Ontario Law Reform Commission's *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies*.[8] Those results—stemming from a large-scale investigation—showed ninety-two per cent of the ten-

graphic core, the city's population is on the average very highly educated and contains a high proportion of young persons. This in part accounts for the overrepresentation of the youthful and presumably intellectual elite in the 100 apartment units comprising the study, although the greater responsivity of such persons to requests for participation in such a study also played a large part in their numerical predominance; law student canvassers generally reported that older persons were on the whole more loath to take the time to complete the questionnaire. At the same time any cognitive problems and probably many difficulties at a level of negotiation experienced by such persons are likely to be magnified in the bulk of the population.

8. Ontario Report, *supra* note 1.

ants sampled to have "read" their lease prior to signing it[9] and eighty-two per cent of this ninety-two per cent to have declared they understood their lease;[10] yet the study concluded that "the majority of leaseholders do not, in fact, understand their leases with respect to basic covenants . . . ."[11] This disparity between direct tenant affirmations and the report's conclusions was attributed to responses to other questions; the responses indicated that tenants were largely unaware of the tenant's repair obligation contained in their leases and that many tenants thought leases should contain explanations, in layman's language, of the legal terminology.[12] It seemed apparent that many of the problems of the Ontario study stemmed from the simplistic nature of its questions.[13] Therefore, we designed a much more elaborate questionnaire for the present study, one based essentially on clauses taken directly from the leases to which the tenants surveyed were parties. With the exception of the initial letter of instruction, our entire questionnaire has been reprinted as Appendix C to this Article so that the reader can see exactly the form that confronted those tenants participating in the survey.

The next step in the development of the survey was the defining of the sample "population." The members of the group of 100 sample tenants were selected by reason of their residence in three large apartment complexes, each of which comprises numerous separate building units, approximating as a whole miniature communities. Law student canvassers systematically[14] approached—both

9. *Id.* app. A, at 18.

10. *Id.* app. A, at 18, 20; 26% of the tenants surveyed had "some difficulty in understanding" their lease. *Id.* app. A, at 19.

11. *Id.* app. A, at 21.

12. *Id.* app. A, at 20; 69% of tenants' responses denied the existence in their lease of a covenant placing repair responsibility on the tenant, a response contrary to the universal practice in Toronto standard lease forms (*id.*); the study's conclusion was reinforced by telephone calls from tenants to the Law Reform Commission indicating ignorance of lease terms. *Id.* app. A, at 21. In a sample comparison from the Ann Arbor study, one tenant, a "professional" over the age of thirty, stated he found all terms "fairly easy to understand" and yet, when questioned about the "fairness" of the term obligating the *tenant* to keep the premises in good repair, commented that it "depended on . . . how responsive the management may be to requests for alteration during occupancy." Unless this involves an implicit distinction between de facto and de jure situations, the tenant did not realize the state of his own ignorance. The latter explanation is more likely since the same tenant answered none of the three comprehension test questions correctly.

13. *Id.* app. A, at 74-78. *E.g.*, "Did you read the lease before signing it?"; "Did you understand it?" *Id.* app. A, at 74.

14. The objective was to give blanket coverage to the units in any particular building in order to minimize any "bias" in the sample. Whenever possible, the canvasser returned or phoned again if the tenant was absent on the canvasser's initial visit or phone call.

in person and by telephone—as many tenants as possible with an explanation of the basic scope of the questionnaire and a request for the tenant's participation. If the tenant was willing to cooperate, the questionnaire was left with him for several days to be completed without any assistance. While complete information is not available, approximately three quarters of the persons contacted participated in the survey.[15] Of the 100 tenants involved in the sample, twenty-three reside in what will below be referred to as the first apartment complex and are bound by the first lease. The comparable figures for the second and third building-lease combinations are, respectively, forty-four and thirty-three. The particular apartment complexes were chosen in part for their geographic distribution about Ann Arbor on the southeast, northeast, and western fringes of the city, but primarily because the lease forms used by the lessors of units in these buildings contained many of the stringent terms with which the legal practitioner specializing in real estate matters is only too familiar.[16] There was, in fact, a remarkable degree of verbatim duplication among the terms found in the standard-form leases used throughout the apartment complexes, despite the fact that these complexes are operated by different management companies.[17]

A. *The Format of the Questionnaire*

Although the reader may examine for himself the entire questionnaire as reproduced in Appendix C, a few comments on its structure may be helpful. The initial questions solicited background information such as the length of the lease, how recently the current lease had been signed, and whether the tenant had signed leases prior to his current one. There followed several questions dealing with the manner in which the lease was signed—with particular emphasis on the extent to which the tenant read the lease, both before and after

15. This statement is based on fragmentary returns from the canvassers. The writer's own experience suggests that many tenants found the questionnaire to have the following elements which contributed to a high rate of cooperation: stimulation of the tenant in an area affecting his daily life, the "game" or curiosity element, and assistance to a project exhibiting interest in the tenant.

16. The Off-Campus Housing Bureau of The University of Michigan lists for student distribution the names of only those management companies and related apartments whose leases have been approved by the Bureau. Approval is not given to those lessors using leases with onerous or restrictive terms of the nature found in Appendix A of this Article. Happily, the result has been to eliminate such terms from many of the leases used in predominantly student-occupied apartments located mainly in the core of the city near the university.

17. The lease terms selected for inclusion in the questionnaire are reproduced in Appendix A *infra*.

the lease was executed.[18] An explanation was sought for any failure to devote considerable care to the examination of the lease prior to its execution. Further questions sought information about tenant attempts to alter standard lease terms; once again, the questions distinguished requests for alteration made before and after execution of the lease. At the conclusion of the questionnaire, an attempt was made to compare recollections of lease terms before and after the tenant made reference to his lease to verify his initial response.

Separate attention was given to the terms of the lease dealing with the amount of rent, the prepayment of rent, damage deposits, and the length of the lease. Tenants were questioned concerning these terms only with respect to requests for alteration in the terms. We solicited responses concerning fairness and comprehensibility of lease terms solely with respect to the more complicated, "fine print" terms.

We devoted the bulk of the questionnaire to a series of typical fine-print lease provisions. With regard to each typical lease term, we posed standard questions dealing with the tenant's recognition of a particular term in his lease, his attempts to negotiate concerning the term and his degree of success in such negotiations, his views on the term's comprehensibility and fairness, and his estimation of the importance to him of the particular term.

The next segment of questions explored reasons for the tenant's failure to negotiate with regard to standard lease terms. There followed questions considering tenant awareness of and actual experience with personal-injury or property damage problems in a leasehold context. We solicited information about various forms of insurance protection used by the tenant, and we questioned his willingness to incur higher rental costs in return for the lessor's agreement to forego standard exculpatory provisions. The tenant was given a "true and false" test in order to measure his understanding of several lease provisions, and was then asked his opinion about the enforceability of the same provisions. Finally, the questionnaire terminated with several questions asking for personal data.

B. *Participation in the Study: The Sample "Population"*

Before the main findings of the study are discussed, basic socioeconomic data concerning the sample "population" will be presented so that the reader can base his understanding of the study's results

18. Lest any reference to "the lease" be misleading, it should be noted that throughout the quesionnaire responses were sought with respect to the tenant's first lease, his subsequent leases generally, and his current lease.

on an appreciation of the type of persons involved.[19] Ninety-two per cent of the tenants "felt more comfortable or at ease in English" than in any other language, but five per cent recorded a contrary reaction. Ninety-one per cent were born in the United States, three per cent in Canada, two per cent in Europe, and one per cent elsewhere.[20]

With regard to the age factor, only two per cent of the sample were in each of the extreme categories of under twenty-one and over fifty, whereas nineteen per cent fell into the thirty-one-to-fifty bracket, and seventy-five per cent were concentrated between the ages of twenty-one to thirty years. This apparent overrepresentation of youthful tenants is, as already noted, largely due to the dominant influence of the University of Michigan upon Ann Arbor; this explanation is fortified by the strong representation of university students in the sample.[21] The evident underrepresentation of older tenants can probably be accounted for in part by their apparent reluctance to cooperate with the canvassers, which in turn may be traced to limited responsivity to the requests of youthful canvassers, greater preoccupation with their own personal affairs, and a lesser social activism than those in the younger age groups. Many of the younger generation are either involved in or have had personal contact with studies of a comparable nature. Moreover, young adults are less likely to own homes of their own. Those older persons who do live in apartments may tend to prefer the quieter surroundings of an apartment complex occupied predominantly by retired persons; the presence in numbers of young persons may thus deter occupancy by older tenants.

From an occupational standpoint, the largest single groups represented in the study were "professionals" and "students" who accounted, respectively, for thirty-seven per cent and thirty-three per cent of the tenants surveyed.[22] As far as educational attainment is concerned, only one individual had not completed high school,[23]

19. At this point and throughout the remainder of this Article, great care has been taken to retain the precise language used in the questionnaire, aside from minor grammatical changes to fit the particular context. Much of the language of this Article, therefore, is in the colloquial form used to communicate with the tenants.

20. It should be noted at this point that failure of the data to total 100% in any case reflects a nonresponse from certain tenants to the particular question; if the deficiency is serious in any case it will be mentioned in the text or footnotes.

21. *See* note 22 *infra* and accompanying text.

22. *See* Appendix C *infra*, question 47. Five persons gave no "occupation"; the excessive number of responses, totalling 112%, is accounted for by the fact that some respondents answered as a husband-wife team and other persons fitted into more than one category, principally students holding down jobs on the side.

23. No person who was interviewed failed to complete his elementary-school education. *See* Appendix C *infra*, question 49.

while at the other extreme fully thirty per cent of the tenants had obtained a postgraduate university degree and an additional thirty per cent had been exposed to some graduate-school education.[24] Given the fact that seventy per cent of the tenants surveyed are either professionals or students, and that sixty per cent have obtained either some graduate-school education or a graduate degree, one would expect to find that such tenants would read, remember, and understand the terms of their leases to a greater extent than would persons without such backgrounds. As a result, whatever behavioral deficiencies characterize the sample tenants are likely to be magnified in the tenant population at large. However, it does not follow a priori that the same magnification would be as likely to exist in the case of "bargaining" proclivities.

As for the combined income of all the residents of individual apartments, the distribution was as follows: less than 5,000 dollars—four per cent; 5,001 dollars-8,000 dollars—eighteen per cent; 8,001 dollars-10,000 dollars—sixteen per cent; 10,001 dollars-15,000 dollars—twenty-eight per cent; 15,001 dollars-20,000 dollars—nineteen per cent; 20,001 dollars-50,000 dollars—five per cent; over 50,000 dollars—three per cent.[25] A cross check of the data revealed that the vast majority of the students in the sample population had incomes of below 10,000 dollars per year. While only one tenant declared that his monthly rent exceeded 400 dollars,[26] and again only one paid rent in the 201 dollars-225 dollars range, the bulk of the tenants are accounted for as follows: 121 dollars-140 dollars—six per cent; 141 dollars-160 dollars—fifty-one per cent; 161 dollars-180 dollars—twenty-eight per cent; 181 dollars-200 dollars—ten per cent.[27] The sample apartments were universally described as "unfurnished."[28] Eighty-five per cent of the leases were "yearly," two per cent were for two years, and nine per cent were monthly.[29]

---

24. *See* Appendix C *infra*, question 49. The nonresponse rate was 3%, and the excess of 7% is attributable primarily to the husband-wife team situation; at most, two tenants filled in both intermediate and final-attainment levels.

25. *See* Appendix C *infra*, question 48.

26. *See* Appendix C *infra*, question 46. The $400 rent in this case is so far out of line that one suspects an error or a combination of tenant gullibility and landlord chicanery; this interesting individual had a high-school education and an income beyond $50,000. His other responses indicate a high degree of both perception and familiarity with his lease.

27. *See* Appendix C *infra*, question 46.

28. *See* Appendix C *infra*, question 50. But 34% of the tenants gave no answer because the question was overlooked due to its placement on the page.

29. *See* Appendix C *infra*, question 7. An examination of other answers given by the (nine) "monthly" lease tenants reveals that five of them are in the second year of occupancy (during which "renewal" is by an agreement made "subject to the

III. The Reading of Leases

The first area of investigation involved the approach tenants take to the reading of leases.[30] Fifty-seven per cent of the tenants in the sample declared that, *before* they signed their first lease, they "read carefully all paragraphs in the lease," but only fifty per cent made this response with respect to their subsequent leases. As many as twenty-five per cent read carefully only the "typed in" or handwritten parts of their first lease before signing it, and merely scanned the remaining printed portion; the comparable figure for subsequent leases is nineteen per cent. The "first" and "subsequent lease" responses for those who read carefully the "typed in" or handwritten parts concerning the length of the lease and the amount of the rent, without examining anything else, were, respectively, seventeen and two per cent. Finally, the "first" and "subsequent lease" figures were an identical five per cent for those tenants who did nothing but scan the "typed in" and handwritten terms, and an identical one per cent for those who in no way examined any of the terms of the lease.[31]

When questioned about the reasons for not reading leases, thirty-three per cent of those tenants who did not read leases particularly carefully before signing them[32] pointed to the lease being a "take it or leave it" proposition from the landlord's standpoint; twenty-six

---

restrictions and covenants in the" original lease), one more is in the third year of occupancy under a "renewal" agreement, two more clearly held the belief that the phrase "term of the lease" referred to the schedule of rent payments, and a last one was one of the three tenants who claimed he had no "written" lease. A close scrutiny of the other answers of this last group indicates that two of them also are in occupation under either an oral or written renewal agreement subject to the terms of the original lease; there is some doubt whether this could be fairly said of the third tenant.

30. Other aspects of the signing process were as follows:

Aspect I: (1) lease signed in the presence of lessor or his agent—80%; (2) lease signed elsewhere but under "pressures" such as time—7%; (3) lease signed elsewhere but without any circumstances of pressure—11%. *See* Appendix C *infra*, question 16.

Aspect II: (1) those encouraged by the lessor's representative to read the lease before signing it—39%; (2) those to whom the lease was simply handed for signature upon completion of the oral negotiations—59%. *See* Appendix C *infra*, question 17.

Aspect III: (1) those who signed their current lease after moving into their apartment—25% (*see* Appendix C *infra*, question 2); (2) those who have *ever* signed a lease after moving into an apartment—31% (*see* Appendix C *infra*, question 3).

31 *See* Appendix C *infra*, question 12. While there was only a 5% nonresponse rate for the "first lease," it rose to 24% for "subsequent leases"; one could speculate that the persons who simply read the rent and duration provisions constituted the bulk of those tenants who failed to respond concerning the latter group of leases.

32. Since only 46% of those questioned failed to answer this question, and yet at least 50% of the tenants always carefully read all leases, a few tenants with strong reading proclivities answered this question.

per cent admitted finding the very length of the lease contract form to be discouraging and confusing; twenty per cent said they thought they would be unable to understand all the "legal language"; and only three per cent said they could not be bothered to take the time and trouble to read and examine the lease.[33]

With regard to those tenants who either did not examine their leases at all before signing them or only scanned the "typed in" terms,[34] eleven per cent examined their first lease as soon as it was convenient to do so after signing, ten per cent made such an examination only when a particular problem arose, and five per cent never did so. The corresponding figures for "subsequent leases" are seven, ten, and four per cent.[35]

A disturbing forty-six per cent of the tenants stated that they had found in their leases terms that were both significant and objectionable and yet that had not been mentioned in their oral discussions with the landlord or his agent.[36] More generally, sixty-nine per cent found the lease terms to be, on the whole, what they expected.[37] These two responses are by no means inconsistent. It is quite possible that a tenant may, as a result of prior experience or innate cynicism, expect that his lease will contain stringent terms to which his attention was not drawn. In fact, half of the forty-six tenants who discovered such objectionable terms also belonged to the group of sixty-nine tenants who found the terms to be basically what they had expected. It is also sobering to find that thirty-two of the forty-six tenants who, upon reading their leases, found previously unmentioned, yet objectionable, terms were among the fifty-nine tenants who were simply handed the lease for signature, upon conclusion of oral discussions, without being encouraged to read it. Fulminate as one will about the just deserts of carelessness, the lax reading habits of the public can lead to unexpected obligations on a scale large enough to require a re-examination of basic tenets concerning the efficacy of signing a form or the enforceability of onerous fine print.

---

33. *See* Appendix C *infra*, question 13.

34. Since, strictly speaking, only 6% of the tenants should have answered this question, the remaining responses must be attributed largely to persons who scanned the printed part of the lease and misread the question, or to persons who wanted to indicate the extent of their subsequent reference to their leases regardless of the question's wording.

35. *See* Appendix C *infra*, question 14.

36. *See* Appendix C *infra*, question 15. "Negative" response—28%; nonresponse—26%.

37. *See* Appendix C *infra*, question 15. "Negative" response—9%; nonresponse—22%.

IV. How Well Do Tenants Know the Contents of Their Leases?

We explored the tenants' powers of retentiveness and recognition by asking whether they had *ever* signed a lease containing any of the eleven terms set out below in Appendix A or containing terms "substantially identical" thereto. The participating tenants were requested, both orally and in bold print on the questionnaire, *not* to examine their leases before completing the questionnaire. In fact, at least with respect to their most recent leases, these tenants had signed leases containing terms identical or virtually identical to either nine or ten of the enumerated terms.[38] In order to understand the demands that were being placed on the tenants' powers of recollection, one should keep in mind two sets of partially offsetting data. When asked how recently they had signed their current leases, the tenants answered as follows: last month—four per cent; last three months—sixteen per cent; last six months—twenty-seven per cent; within the last twelve months—thirty-three per cent; last eighteen months—eight per cent; last twenty-four months—three per cent; more than two years ago—six per cent.[39] Since only twenty per cent of the tenants had signed their leases within the previous three months, it is not unreasonable to assume that the recollections of the other eighty per cent would be imperfect. Moreover, previous leases signed by the tenants sampled may have affected their answers. In only twenty-four per cent of the cases was the current lease the tenant's only lease; in twenty-eight per cent the current lease was the tenant's second; in twenty-one per cent, his third; in fourteen per cent, his fourth; in nine per cent, his fifth; in one per cent his sixth; and in one per cent of the cases, the tenant had signed more than six leases prior to signing his current lease.[40] There is, however, no assurance that these prior leases involved the *same* lease form as the tenants' current leases.

Perhaps the most striking results in the part of the survey designed to determine how well tenants know the contents of their leases are the high recognition rates for clauses creating a tenant's repair obligation (eighty-six per cent), restricting the tenant's right to sublet (seventy-six per cent), and requiring the tenant to give

38. *See* Appendix A *infra*. As indicated in Appendix A, the number of terms present in each tenant's lease depended on the apartment complex in which he resided.

39. *See* Appendix C *infra*, question 10. The variance of the periods is accounted for partly by the fact that data was accumulated over a six-month period and partly by the fact that the tenants either took up occupancy at different times of the year or were operating under renewals of leases.

40. *See* Appendix C *infra*, question 11.

notice of his desire to terminate the lease (sixty-two per cent).[41] Also noteworthy are the low definite *negative* responses given with regard to the first two of these high-recognition clauses (five and three per cent respectively).[42] While this high level of recognition is somewhat surprising, the most plausible explanation for that result is that questions of repair and subletting impinge more directly on the ordinary course of events in a landlord-tenant relationship than do questions that may arise in the context of any of the other selected terms.

The thirty-three per cent recognition rate recorded for the nonexistent third term—providing exculpation for the lessor for injury, damage, or negligent acts[43]—might be explained in part by its presence in earlier leases signed by the tenants, by the tenants' confusion of that term with actual exculpation clauses such as the eleventh term, or by a disillusioned tendency of tenants to concede that any provision favoring the lessor is likely to be in their leases. This last suggestion tends to be contradicted, however, by the complete lack of uniformity in the responses recorded for recognition of the various lease terms. One would expect glib admissions to form a more consistent pattern.

Relatively high recognition rates of fifty-eight per cent, fifty-two per cent, and forty per cent were registered, respectively, for the ninth clause—containing a tenant's repair obligation and exculpation of the landlord for damages to the tenant of his property—for the tenth clause—relieving the landlord from liability for failure to provide utilities—and for the eleventh clause—exculpating the landlord for any personal injuries in laundry, garage, or play areas.[44] The tenants were not afforded a "don't know" option with regard to these clauses. Given a chance to examine their leases at the end of the questionnaire, tenants revised their estimates for these last three terms to thirty-nine, thirty, and thirty-five per cent. The fact that only about half of the tenants responded to this "hide and seek" query suggests that their willingness to cooperate was overtaxed, and makes it impossible to draw conclusions from those who did answer.[45] Perhaps the most significant bit of usable data is that only forty per cent of the tenants realized that their leases contained an exculpatory

41. *See* Appendix B *infra*, table I, col. 1.

42. *Id.*

43. *Id.*

44. *See* Appendix C *infra*, question 41. The nonresponse rates were also high: 16%, 18%, and 16%.

45. *See* Appendix C *infra*, question 41. The nonresponse rates were 47%, 48%, and 50%.

clause with regard to injuries in the garage, laundry, or children's play areas.

We made a cross-check on the reliability of the recognition-testing responses by relating the various forms of declared pre-execution "reading" of "subsequent" leases to the number of clauses that each tenant claimed to have recognized in his lease. As can be seen from Appendix B, table II, those who stated that they read carefully their "subsequent" leases generally had high recognition scores. A high proportion of the puzzling combinations of cursory reading and high recognition can be explained by the fact that the persons involved stated that they had read their first lease carefully.

V. How Well Do Tenants Understand the Provisions of Their Leases?

In addition to examining whether tenants read their leases, our survey also explored the tenants' own estimations of the extent to which they comprehended lease terms, through questions relating to the first eight basic lease terms found in Appendix A.[46] As a cross-check on flippancy, self-protective intellectual bias, and failure to appreciate legal ramifications, a simple "true or false" test, designed around lease terms nine through eleven in Appendix A, was administered.[47] In this manner, we sought to obtain both a subjective and objective measure of comprehensibility. The declared comprehension scores were surprisingly high[48]—the lowest percentages were registered for the repair and delayed-occupation covenants, with sixty-seven and sixty-six per cent, respectively, while a very high eighty-eight per cent of the tenants found the concise subletting covenant "fairly easy to understand."[49]

Several considerations make it necessary to discount in part the professed ease of comprehension on the part of the tenants. First, it has already been noted that twenty-six per cent of those tenants who admitted that they do not generally read leases carefully before signing them stated that they found the very length of the lease form to be discouraging and confusing, and that twenty per cent thought

46. *See* Appendix C *infra*, questions 22-29.

47. *See* Appendix C *infra*, questions 40-42.

48. *See* Appendix B *infra*, table I, col. 2.

49. Two tenants, who collectively gave answers of "fairly easy to understand" in fifteen of the sixteeen cases of terms being considered by them, also added comments indicating a preference for "straightforward language" and for a "synopsis in laymen's terms of the legalology" in the lease; similar suggestions were made in response to an open-ended suggestion question in the tenant questionnaire of the Ontario Report *supra* note 1, app. A, at 21-22.

they would not be able adequately to understand all the "legal language."[50] In this respect it must be remembered that the tenants in the sample were asked to appraise double-spaced, large-print clauses one by one rather than a mass of undifferentiated microscopic print which is found in the typical form lease; part of the forbidding character of the fine-print terms was removed by our individualized treatment. Second, it is probable that some of the tenants who classified themselves as "students" or "professionals" are law students or lawyers. Third, unwillingness to admit one's ignorance was probably a substantial factor among a group of highly educated persons who would probably feel that they should be able to understand even a specialized vocabulary. Finally, and perhaps most important, the nonlegally trained tenant is not likely to be affected by the almost pathological pessimism that prompts the lawyer to visualize the unexpected as commonplace, nor will he share the lawyer's Pavlovian reaction to such precedent-encrusted expressions as "reasonable use and wear" and "acknowledges that he has examined."

With respect to sample clause nine, which combines a tenant's repair obligation with a clause exculpating the landlord from damages to the tenant's person or property, it was suggested to the tenants that "[r]ather than being intended simply to place all maintenance responsibility upon the Tenant, the primary purpose for making the Tenant responsible for repairs by the first sentence of [the] clause . . . is to permit the landlord to escape (by virtue of the second sentence of [the] clause . . .) all responsibility for personal injury or property damage caused by the negligent state of disrepair of the leased premises . . . ."[51] While there is a slight possibility that this may be one secondary effect of what are essentially two distinct provisions,[52] the obvious primary purpose of the repair clause is simply to relieve the lessor of the financial burden of repairs. Though they may have been misled by the blending of the two provisions,

50. *See* text accompanying note 32 *supra*.

51. *See* Appendix C *infra*, question 40. *See also* the ONTARIO REPORT, *supra* note 1, app. A, at 37, which indicates that 75%-80% of the 28% of tenants in the survey (under a written lease) whose apartments were in need of repair had their requests to their lessors in this regard completely ignored or refused by the landlord, and that a smaller number of certain geographic areas of the city of Toronto were told either that the repairs were too expensive or could not be made (5%-7%), or that the rent would have to be raised in consequence (13%-14%).

52. *Cf.* Powers v. Merkley, 293 Mich. 177, 291 N.W. 267 (1940), in which the court rejected the commercial tenant's argument of constructive eviction caused by nonrepair, since the lessee had covenanted to make the repairs. In residential tenancies it is unlikely that the court would countenance so facile an evasion of the public policy declared in Feldman v. Stein Bldg. & Lumber Co., 6 Mich. App. 180, 148 N.W.2d 544, *leave to appeal denied*, 379 Mich. 761 (1967). *See* note 101 *infra*.

the fifty-four per cent who gave a "true" answer to a question concerning the statement's validity and the additional ten per cent who "didn't know" the proper answer were considered as having answered incorrectly for purposes of our comprehension test. Only thirty-three per cent correctly responded "false."[53]

Sample clause ten relieves the lessor of liability for a breakdown of utilities. Tenants were asked to respond to the statement that "[o]ne of [its] effects [was] . . . to relieve the landlord of responsibility for damage to the tenant's household effects caused by water leaking from pipes . . . ." By their "true" or "don't know" responses, respectively forty per cent and eight per cent of the tenants showed that, unlike the more discerning forty-eight per cent who answered "false," they had not noted that the "damage" dealt with by the clause was related to a cessation of rather than a leakage of water.[54]

Clause eleven purports to relieve the landlord of liability for property damage or personal injury in the parking, laundry, and play areas. In response to the proposition that this clause's "essential purpose [was] . . . to show that the landlord is not really obligated to provide these special facilities (i.e., he provides them 'gratuitously') and hence as an economy measure . . . could close down these facilities without the tenant having any legal right to object because the tenant has assumed the risk of closure . . . ," fifty per cent of the tenants provided the correct answer of "false," thirty-one per cent replied "true," and fifteen per cent "didn't know."[55]

In an effort to better understand the relationship between persons who demonstrated a high comprehension level on the three test questions and those who declared the sample terms to be relatively easy to understand, we prepared a table which documented that relationship.[56] As would be expected, most persons with the higher test scores felt that the terms were "fairly easy to understand." While several of those with low scores but high declared-comprehension levels[57] were persons who had limited education and belonged to less prestigious occupational groups,[58] the bulk of the tenants in this self-inflated category were students[59]—almost all of whom had ob-

53. *See* Appendix C *infra*, question 40. The nonresponse rate was 3%.

54. *See* Appendix C *infra*, question 40. The nonresponse rate was 4%.

55. *Id.*

56. *See* Appendix B *infra*, table III.

57. This overconfident group is comprised of those tenants with test scores of zero or one and (high) declared-comprehension levels of eight or nine.

58. Four tenants in this group fit such a classification. In addition, one member of the group was not as comfortable using English as he was using another language.

59. Eight tenants in the overconfident group meet this description.

tained or were in the process of obtaining a postgraduate university degree. By way of contrast, persons engaged in professional or managerial pursuits were as well represented in the very cautious group —comprising those who scored well on the test but found the terms ambiguous or worse[60]—as in the group of the overly self-assured.[61] Since there were thirty-seven professionals and thirty-three students among the tenants sampled, one is tempted to suggest that the students were more self-assured, with less justification, than were the more mature and experienced professionals.

VI. How Tenants Evaluate the Fairness and Importance of Lease Terms

Our questionnaire also canvassed tenant opinions about the "fairness" of the sample lease terms.[62] The tenants reserved their greatest condemnation for term three—the exculpatory "negligence" term; sixty-seven per cent of the tenants found this term "grossly unfair" while only four per cent found this term "reasonably fair." The only other terms to attract even moderate levels of disapproval were term four, governing delayed occupancy (thirty-four per cent "grossly unfair" and forty-six per cent "somewhat unfair"), and term six, controlling the lessor's right to terminate the tenancy (thirty-six per cent "grossly unfair" and thirty-five per cent "somewhat unfair"). At the other extreme, almost seventy-five per cent of the tenants found terms two, five, and seven, creating a tenant's repair obligation,[63] prohibiting oral variations in the lease, and requiring the lessor's consent to subletting, respectively, to be "reasonably fair." Since the question of fairness is inextricably bound up with that of comprehension, it is possible that the tenants were unaware of the extent of the repair obligation or even that the repair obligation was imposed on *them*, and it is possible also that they were unaware that the consent of the landlord to a sublet arrangement can legally be *unreasonably* withheld.[64]

60. The cautious group comprises those tenants with test scores of two or three and (low) declared-comprehension ratings of twelve or above.

61. Four tenants engaged in these occupations fit into the cautious group, and four fit into the overconfident group.

62. *See* Appendix C *infra*, questions 22-29. The results are compiled in Appendix B *infra*, table I, col. 3.

63. Three tenants specifically inserted comments indicating they were mystified by the phrase "reasonable use and wear." Two tenants were concerned about how and by whom the determination of repair state is to be made and two more were concerned about how the condition of the premises at the commencement of the tenancy is to be proved after termination.

64. Jacobs v. Klawans, 225 Md. 147, 169 A.2d 677 (1961); American Book Co. v.

With regard to the importance to the tenant of lease terms,[65] tenant responses indicate that the terms found "most important" to the tenant (and also, from the opposite perspective, of the least "relative unimportance") were clause three, granting exculpation from negligence to the lessor (sixty-nine and five per cent at the two polar extremities) and clause four, governing delayed occupancy (sixty-three and eight per cent), while the figures for terms six, eight, and two, covering the lessor's right of termination, acknowledgment of the state of the premises, and the tenant repair obligation, respectively, showed that these terms were also considered to be of significant importance.

VII. The (Non-) Negotiation of Leases

The role of negotiation in the landlord-tenant relationship was examined in relation to the first eight sample lease terms in Appendix A and, in addition, in relation to the fundamental topics of rent, prepayment of rent, damage deposits, and length of leases. Other questions sought to determine the degree of persistence of the tenant in attempting to secure favorable alterations in lease terms. Finally, explanations were sought for any failure to attempt negotiation of terms other than the length of the lease and the amount of rent.

Only eight tenants ever asked that a change be made in the amount of the rent requested by the lessor although, because one tenant made such a request with regard to all three alternatives of the "first," "current," and "subsequent leases generally," a total of ten such requests were considered as having been made. Five of these requests were "completely refused," four produced agreement to "slight modification," and one resulted in "radical alteration."[66] Similarly, only five persons asked that a change be made in the term dealing with prepayment of the first and last month's rent. Of the seven total requests, four were completely refused, two resulted in slight modifications, and one succeeded in obtaining a "radical alteration or elimination."[67] Eight tenants at one time or another asked

Yeshiva Univ. Development Foundation, Inc., 59 Misc. 2d 31, 297 N.Y.S.2d 156 (Sup. Ct., Trial Term 1969). *See generally* Note, *Lessor's Arbitrary Withholding of Consent To Sublease*, 55 Mich. L. Rev. 1029 (1957).

65. *See* Appendix B *infra*, table I, col. 4.

66. *See* Appendix C *infra*, question 18. Although only six tenants answered "yes" to question 18A, our experience suggested that tenants may have ignored that question in answering question 18B. We chose to rely on the answers to 18B, in which eight tenants accounted for the total of ten affirmative answers.

67. *See* Appendix C *infra*, question 19. As with question 18 (*see* note 66 *supra*), we chose to rely on the answers to question 19B.

that a damage deposit provision be altered. The thirteen total requests on this subject yielded eight refusals, four radical alterations, and one slight modification.[68] Twenty-two tenants, on twenty-eight occasions, sought to have the length of a lease altered. There resulted thirteen complete refusals, eight slight modifications, and seven radical alterations.[69] In the case of both damage deposits and the length of leases, the discrepancy between total requests and the number of tenants making such requests is explained by the fact that several tenants requested a change with respect to more than one of their leases.

It is worth noting that more bargaining took place with respect to the length of the lease than took place concerning rent, prepayment, or damage deposit, and that this bargaining about the length of the lease was relatively successful. These facts are easily explained. Lease duration is the one term most conventionally surrendered by landlords in return for an increase in rent[70]; moreover, the length of the lease can be adjusted with less material sacrifice to the lessor than would be involved in the cases of the amount of rent, rent prepayment, or damage deposit.

In most cases two or three tenants asked that each of the first eight terms found in Appendix A be changed. Aggregating the figures, one finds that twenty-six requests for alterations were made before the lease was signed, and that thirteen requests were made after the lease was signed.[71] In response to a question about the success of their efforts, tenants who indulged in pre-execution bargaining reported nine "complete refusals," eight "slight modifications," and eight "radical alterations or eliminations," and tenants who reported postexecution bargaining gave answers of eleven, four, and one for the same categories.[72] The terms most bargained about were the first, dealing with the tenant's notice to the lessor of intent to terminate (nine declared requests, of which six preceded execution; there were seven complete refusals, two slight modifications, and one radical change),[73] and the eighth, stating the tenant's acknowledgement of the condition of the premises (eight declared

68. *See* Appendix C *infra*, question 20.

69. *See* Appendix C *infra*, question 21.

70. This is especially true in Ann Arbor, where many students desire an eight-month lease for the academic year. None of the tenants sampled was currently on such a lease.

71. *See* Appendix C *infra*, questions 22-29.

72. *Id.* These figures are not misprints. The total number of reported requests—thirty-nine—did not equal the total number of reported answers to the question of success.

73. *See* Appendix C *infra*, question 22.

requests, of which five preceded the execution; there were two slight and two radical alterations secured *before* execution).[74] Clause seven, requiring the lessor's consent to subletting agreements, was the target of the most attempts at postexecution bargaining—four—and these resulted in two slight modifications, one complete refusal, and one radical alteration.[75]

Both the fact that fewer requests for alteration of the lease occurred *after* the lease had been signed and the fact that these requests were fairly unsuccessful can be accounted for by the further fact that the lessor is under very little compulsion to accede to such requests. The lessor's only stimulus to accede, aside from altruism, would be the retention of the tenant's goodwill, with a view to renewal of the term and the avoidance of bad publicity. It is, in fact, somewhat surprising that any degree of receptiveness to change existed on the part of the lessor once the lease had been executed.

A comparison of the bargaining data recorded for the four rent and lease-length provisions with that recorded for the eight fine-print terms highlights a significant difference in these two groups of data. Prior to execution of the lease, tenants made fifty-eight requests for changes in terms involving rent, prepayment of rent, damage deposit, and lease length, but made only twenty-six requests for changes in the "fine print." Why should persons bargain more about the basic terms than about the fine-print terms? The answer to that question probably lies primarily in the immediacy of the tenant's pecuniary concern that is generated by the basic factors, and in the remote-contingency status of many of the fine-print terms. Further, a precondition to bargaining about a term is knowledge thereof; thus, the failure of many tenants to examine in any way the fine print of the lease form lessens the chance of bargaining about these less immediate terms. Third, the unsophisticated tenant may not realize the full extent of what he is surrendering, and thus he may not think it necessary to try to cope with the unappreciated ramifications of most fine-print terms. Finally, most of the primary terms involve homogeneous units such as dollars or years, so that comparisons, and hence competition, are more likely between different landlords with respect to these basic terms than with respect to fine-print terms which are less readily compared even when they are functionally and grammatically similar. From the landlord's standpoint, it may be preferable to stabilize the unpredictable risks in-

74. *See* Appendix C *infra*, question 29.

75. *See* Appendix C *infra*, question 28.

volved in negotiating fine-print terms, and adjust net return through the more precise calculus of price.

The most thought-provoking feature about our bargaining-process data is the moderate degree of success enjoyed by those tenants who did try to bargain about fine-print terms. Several factors may contribute to this phenomenon. As discussed below,[76] many of the "bargainers" have occupations which require them to engage in bargaining, and also have high incomes which could create in them a degree of resistance to any kind of coercion. Tenants without these personal characteristics may have neither the ability nor the resources to permit effective negotiation. Furthermore, the lessor might be less flexible in the face of widespread attempts to remove his protective covering of fine print than he is to occasional episodes of tenant reluctance that do not threaten his position.[77]

On the other hand, a closer look at the data shows that the bargaining success of our sample tenants was only relative. It must be remembered that the seventeen persons who at one time or another requested changes in a lease before execution thereof generated only twenty-six total requests for alteration. Thus, few of these persons tried to bargain about more than one fine-print term; those who tried to remodel or excise more than one term were often unable to achieve success in all cases.

The data derived from additional questions concerning "bargaining" is not entirely consistent internally, but three of eight persons whose requested changes in the terms listed in Appendix A were refused by the landlord stated that they refused to sign the lease and chose to look for another apartment.[78] Of these three persons who went elsewhere, four of an inflated five who responded to the following related question[79] indicated that they were thus able to get a lease without the offensive provisions contained in the lease they rejected. Of the thirteen persons who found the original prospective lessor willing to consent to changes in fine-print terms, eight declared that they would in fact have gone in search of another apartment had their requests been denied.[80]

Several possible reasons have been suggested for the differential

76. *See* text accompanying note 82 *infra.*

77. There may also be significant differences in the pliability of different landlords. For example, the ratios of tenants obtaining some degree of pre-execution bargaining success with respect to fine-print terms to those expriencing total failure are, for the three apartment complexes in the sample, 2:1, 10:4, and 4:4.

78. *See* Appendix C *infra,* question 31.

79. *See* Appendix C *infra,* question 32.

80. *See* Appendix C *infra,* question 33.

incidence of bargaining about basic and fine-print terms, but it is interesting to look at the factors that the tenants themselves selected as explanations for their general failure to bargain on any lease terms. Those tenants who, despite their preference for having changes made, never asked for such changes before they would sign the lease, were asked which one or more of five available responses explained their attitude.[81] Since a number of persons either had not made a request for a change or had not even desired any change, a total of thirty-nine tenants either ignored this question or deliberately selected the offered alternative of "not applicable." Twelve responses were allocated to each of the categories of "simply not thinking to ask" and thinking that the person with whom the tenant was dealing was not authorized to make the desired changes. The most statistically impressive responses were those of the thirty-five persons who thought such a request would have been immediately denied and the forty-three tenants who thought that they were not in a strong enough bargaining position to obtain any concession on the part of the lessor.

What are the personal characteristics of the seventeen persons who asked a lessor to "make changes in the terms of a lease (*other than* the length of [the] lease and the amount of rent) before [signing] the lease . . ."?[82] An examination of table IV in Appendix B reveals that six of the "bargainers" classified themselves occupationally as "professionals" and five classified themselves as either full-time or part-time salesmen; since there were only seven "salesmen" among the 100 tenants, this is indeed a remarkable concentration. It is submitted that this concentration is perhaps the key to the bargaining question. It would appear that persons accustomed to the process of negotiation as part of their occupational activities are inclined to transfer these bargaining skills to their private affairs. It may well be that most of the six "bargainers" who classified themselves vocationally as "professionals" are lawyers rather than doctors or teachers. Further, one "bargainer" was includable in the "managerial" class, and another, a person with a high income who described his "occupation" as "private income," may well have been an investor. While our sample is not large enough to permit a reliable generalization to be made, it would appear that the larger a person's income, the greater freedom he may have in the bargaining process. Over eighty per cent of the "bargainers" had annual incomes above 10,000 dollars, whereas only fifty-five per cent of the sample's popu-

81. *See* Appendix C *infra*, question 34.

82. *See* Appendix C *infra*, question 30.

lation as a whole had comparable incomes. The educational pattern of the "bargainers" seems to fit fairly well that of the over-all sample population; the slight relative overrepresentation of persons with postgraduate degrees seems more likely to be attributable to the occupational and income status of such persons than to their educational attainments.

One might suppose that a willingness on the part of a tenant to bargain would be closely tied to any legal advice that he may have obtained from an attorney. Yet only three of the nine persons who at one time or another consulted a lawyer before signing a lease ever bargained about fine print terms.[83] Furthermore, five of these nine tenants had high comprehension-test "scores,"[84] while at the same time three of these tenants scored "zero" on the test. All nine tenants, however, thought most of the sample fine-print terms were "fairly easy to understand."[85] Three tenants "always" had consulted a lawyer before signing a lease, three had consulted one on only their first lease, one tenant had consulted a lawyer only once, and two had done so "sometimes." The value of the legal advice thus obtained was classified as "very helpful" by one tenant and as "somewhat helpful" by four others.[86] Only four tenants had consulted a lawyer before signing their current leases.[87] Oddly enough, four of the nine tenants who sought legal advice have present annual incomes of less than 8,000 dollars—one wonders if the advice was the gratuitous offering of a friend or relative. In contrast to the nine persons who had sought legal advice prior to signing, eleven tenants had gone to a lawyer about a landlord-tenant problem arising subsequent to the signing of a lease.[88]

While one would not, as a matter of economics and human self-sufficiency, expect to find a lawyer involved in a large percentage of prospective residential tenancies, the low degree of consultation that seems to prevail surely contributes to the disparate bargaining power of landlord and tenant; after all, bargaining power is, in part, a function of the extent of one's knowledge of the particular subject matter that is being negotiated. It is disappointing, how-

83. *See* Appendix C *infra*, question 5; Appendix B *infra*, table V. It may be that some of the remaining six tenants distinguished between their own bargaining and bargaining done for them by their lawyers.

84. In this context, we are describing as high scorers those tenants who answered either two or three of the "true-false" questions correctly.

85. *See* Appendix C *infra*, questions 22-29.

86. *See* Appendix C *infra*, question 6.

87. *See* Appendix C *infra*, question 4.

88. *See* Appendix C *infra*, question 51.

ever, to see what little influence the lawyers actually consulted appeared to have had on negotiations about fine print, and how limited was the estimation given by the tenants of the worth of these legal services. Can it be that the lawyer does little more than convey knowledge and awaken anxiety in the tenant?

VIII. Exculpatory Clauses

A. *Background*

The declared importance of and dislike for the third term, which relieves the landlord of liability for "negligence," has already been noted.[89] The problems that are created by such exculpatory clauses were studied in greater detail. We first tested the tenants' awareness of the contingencies involved in such a broad exculpatory clause by asking whether they considered the possibility of personal injury or property damage before executing leases.[90] Second, we questioned the tenant about whether he had experienced such dangerously contingent situations as personal injury or property damage.[91] Finally, in order to test their willingness to mitigate the effects of contingent dangers, we questioned the tenants about the insurance protection that they maintained.[92]

Surprisingly, as many as twenty-five tenants said that, "before [signing] leases, [they] usually [gave] some time to thinking about whether [they] would be able to succeed in suing [their] landlord for damages in the courts if [they] were injured as a result of slipping in the common hallways on slippery substances or because of defective flooring, [had their] furniture or other personal property . . . damaged by water escaping from pipes or water closets, or . . . contracted influenza and lost time from [their] work because the [apartment's] heating equipment ceased working during the winter . . . ."[93] Although twenty-three of the tenants had in fact experienced a problem of the kind envisaged above, either personally or in the case of a family member or "roommate," there was an overlap between the fearful twenty-five and the unfortunate twenty-three to the extent of only six tenants.

Of those tenants subjected to either personal injury or property damage of the sort suggested by the above question, eight described

89. *See* text following note 62 *supra.*

90. *See* Appendix C *infra,* question 35.

91. *See* Appendix C *infra,* questions 36 & 37.

92. *See* Appendix C *infra,* question 38.

93. *See* Appendix C *infra,* question 35.

their problem as involving water backing up from drains, leaking in beneath doors and from ceilings, and bursting from waterpipes; the attendant damage was to rugs, furniture, draperies, and other personal property. The problems of another seven persons stemmed from the failure of the heating system, while in one additional case the breakdown resulted in excessive heat; ailments suffered in consequence of such failures ranged from a winter-long bout with influenza to contraction of pneumonia by a baby. Electrical failure, entailing various misfortunes from food spoilage to the bursting of a frozen water pipe, beset three different tenants. Three tenants slipped either in a vestibule or on icy walkways and steps. One tenant's car skidded on ice and collided with a garage. One individual complained that the negligence of his lessor's agents caused damage to luggage in a storeroom.[94]

Forty per cent of the tenants had third-party liability insurance covering their apartment premises, and fifty-six per cent had "all perils" personal-property insurance, but only about ten per cent definitely had some form of income insurance covering inability to work by reason of personal injury.[95] When they were asked how much, if anything, they would pay in the form of increased monthly rent in return for their lessor's willingness to eliminate injury and damage exemption provisions from their lease,[96] forty-five per cent of the tenants replied "nothing," sixteen per cent were willing to pay one dollar, another sixteen per cent answered "three dollars," eight per cent answered "six dollars," five per cent answered "ten dollars," and one per cent declared a willingness to pay more than ten dollars.[97] These statistics do not necessarily indicate that most tenants expect "something for nothing"; many may prefer to arrange their own insurance arrangements, particularly since standard "occupiers' insurance" would at the same time cover loss by accident or as a result of the improper actions of a third party. The fact remains that personal-injury and property damage situations are matters that many tenants have either considered or experienced, and yet the insurance protection of many tenants to cover these situations is totally inadequate. All six tenants who had both thought about and experienced such problems had at least two of the three

94. *See* Appendix C *infra*, question 37.

95. *See* Appendix C *infra*, question 38. The percentage of persons "not knowing" whether they had some form of income insurance was about 10%; about 25% of the tenants did not answer the questions related to income insurance.

96. *See* Appendix C *infra*, question 39.

97. The nonresponse rate was 11%; one tenant selected three figures. One tenant added a comment to the effect that he preferred to deal with his own insurer.

forms of insurance protection considered (*i.e.*, third-party liability, personal-property, and income),[98] while two thirds of those who had only experienced such problems and only one third of those who had merely thought about them were so heavily insured. Further, when these three groups of tenants are aggregated, they constitute a very substantial portion of the tenants who have similar insurance coverage. The old adage "once burnt, twice shy" would seem to apply.

B. *Tenants' Opinions on the Legal Validity of Exculpatory Clauses*

Our last area of research examined the extent to which tenants thought the ninth, tenth, and eleventh sample clauses from Appendix A would be "valid and enforceable in a court of law," both in Michigan and in the majority of the states in the United States. Those tenants who thought that each of the three clauses would be enforceable in Michigan numbered respectively fifty-seven, forty-four, and sixty per cent; the corresponding figures for the majority of the states were fifty-five, forty-four, and fifty-eight per cent.[99] While clauses such as these would have been enforceable in most states as recently as twenty years ago,[100] in Michigan and a growing number of states today they would be struck down, either as violative of a specific statutory prohibition or as contrary to public policy.[101] In addition, the drafters of the American Bar Foundation's *Model*

---

98. It should be noted that several of these six tenants were somewhat unsure of their coverage.

99. *See* Appendix C *infra*, question 42. The nonresponse rates for the six choices (three clauses applied to two jurisdictional alternatives) ranged from 21% to 24%.

100. *See* Annot., 175 A.L.R. 9, 83-86 (1948), and 6 S. WILLISTON, CONTRACTS, § 1751C, at 4968-69 (rev. ed. 1938). For Michigan see Tucker v. Gvoic, 344 Mich. 319, 74 N.W.2d 29 (1955), which may still be valid since it dealt with a commercial tenancy (a tavern); Feldman v. Stein Bldg. & Lumber Co., 6 Mich. App. 180, 181, 148 N.W.2d 544, 545, *leave to appeal denied*, 379 Mich. 761 (1967), which contains an express caveat that its holding is "limited to residential leases." *Cf.* the explicit distinction made between commercial and residential tenancies by New Jersey courts, *supra* note 1.

101. *See, e.g.*, Feldman v. Stein Bldg. & Lumber Co., 6 Mich. App. 180, 148 N.W.2d 544, *leave to appeal denied*, 379 Mich. 761 (1967) (tenant slips on ice of parking lot adjoining his apartment building). This case also contains an excellent survey of the continuing change in American law on this subject, a movement in which statutory stimulus has played no mean part. The Michigan court relied in its formulation of public policy on the obligation placed on the lessor by the Michigan Housing Law, MICH. COMP. LAWS ANN. § 125.474 (1967) to keep the areas connected with the apartment "free from . . . dirt . . . or other matter." *See* note 103 *infra*. The same statute, in § 125.471, contains a provision that would cover many of the fact situations that have led to tenant problems and yet have been within typical exculpatory clauses, providing that "[e]very dwelling and all the parts thereof including plumbing, heating, ventilating and electrical wiring shall be kept in good repair by the owner. The roof shall be so maintained as not to leak and the rain water shall be drained . . . into the sewerage system . . . ."

Residential Landlord-Tenant Code (*Model Code*) have taken a strong position against continued enforcement of such clauses.[102]

It is noteworthy that the tenants made almost no distinction between what they believed to be the legal position in Michigan and that in the majority of states; in reality, Michigan law concerning enforceability of such clauses is quite different from that of most other jurisdictions.[103] It would appear that, whatever their views with regard to enforceability, tenants do not think it likely that the situation would vary from state to state. Second, even though many tenants demonstrated by their comprehension test scores an inability fully to understand the terms in a significant number of questions, tenants still think it somewhat less likely that a lessor would be entitled to exempt himself from liability for the cessation of essential services (i.e., water, heat, or electricity) than from liability for personal injury or property damage due to nonrepair of the demised and adjoining premises. Any actual legal distinction in this respect would depend on state statutes or municipal bylaws, which may indeed create absolute and irreducible obligations more frequently in the former type of liability than in the latter.[104]

The most serious problem exposed by this final area of inquiry emerges from the fact that, considering the moderately high nonreponse rate to these "validity" questions, the bulk of tenants would not appear to question the validity of terms found in their leases.

---

102. MODEL CODE, *supra* note 1, § 2-406.

103. Michigan has allowed recovery on the basis of its housing code. MICH. COMP. LAWS ANN. § 125.474 (1967) provides:

> Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage or other matter in or on the same or in the yards, courts, passages, areas or alleys connected therewith or belonging to the same. The owner of every dwelling shall be responsible for keeping the entire building free from vermin. The owner shall also be responsible for complying with the provisions of this section except that the tenants shall be responsible for the cleanliness of those parts of the premises that they occupy and control.

In Feldman v. Stein Bldg. & Lumber Co., 6 Mich. App. 180, 148 N.W.2d 544, *leave to appeal denied*, 379 Mich. 761 (1967), the court relied on the above-quoted statute to hold void as against public policy an exculpatory provision in a residential lease to the effect that the landlord would not be liable for injury to persons or damage from any cause, including injury or damage occasioned by water, snow, or ice upon or near the premises. The court held that the statute imposed the duty of ice removal on the landlord. Many states, however, have statutes specifically voiding exculpatory clauses, thus obviating the necessity of reliance by the tenant on a general housing-code provision. *E.g.*, N.Y. GEN. OBLIGATIONS LAW § 5-521 (McKinney 1964): "Every covenant, agreement or understanding in or in connection with or collateral to any lease of real property exempting the lessor from liability for damages for injuries to person or property caused by or resulting from the negligence of the lessor, his agents, servants or employees, in operation or maintenance of the demised premises shall be deemed to be void as against public policy and wholly unenforceable."

104. *Compare, e.g.*, MICH. COMP. LAWS ANN. § 125.474 (1967), *supra* note 103, *with* MICH. COMP. LAWS ANN. § 125.471 (1967), *supra* note 101.

It is possible that the tenant, who may not be acquainted with the practice of legal draftsmen or shrewd (or, more generously, legally uninformed) lessors of inserting clauses in leases purely for their persuasive or *in terrorem* effect, finds it difficult to see any logic in filling a lease form with *legally* worthless verbiage.

IX. A Review of Our Initial Hypotheses

In order to place these results in perspective, it is worthwhile to review the working hypotheses of our survey, and to see how they were borne out in practice.

We surmised that few tenants do more than check the rent provision and occupancy dates of their leases before signing them; particularly, it seemed doubtful that tenants would take care to scrutinize the fine-print terms following these initial items of immediate economic concern. It was, therefore, somewhat surprising to find, as the data reveals, that about half of the tenants involved in the study declared that they had read carefully all paragraphs of any leases they had signed.[105] Related to the assumption about the intensiveness with which tenants peruse their leases before signing them was the further assumption that tenants would not be able to identify many of the "fine print" terms in their lease. The results of the study suggest a great degree of variance in this "recognition" factor, ranging from minimal awareness of protection afforded the lessor who is unable to give occupancy on the agreed date to widespread realization of the presence in one's lease of a tenant's repair obligation or a requirement of lessor's consent to subletting.[106]

Particular conviction lay behind our supposition that tenants have a very inadequate understanding of the terms of their leases; accordingly, it was somewhat perplexing to find tenants blithely professing that many selected fine-print terms were readily comprehensible. However, the accuracy of these expressions of self-assurance was brought into question by the somewhat poor comprehension of typical lease terms demonstrated by our sample tenants when they were asked to apply such terms to hypothetical fact situations.[107] In short, tenants, despite their declarations to the contrary, do not always appreciate the latent ambiguity of legal language.

One might imagine that tenants, even when urged to be as objective as possible, would condemn almost all fine-print terms as

105. *See* notes 30-31 *supra* and accompanying text.
106. *See* notes 38-40 *supra* and accompanying text.
107. *See* notes 46-55 *supra* and accompanying text.

substantially lacking in equitableness. A remarkably high percentage of the tenants in the sample, however, found certain conventional terms to be "reasonably fair,"[108] but at the same time almost unanimously stigmatized, as either somewhat or grossly unfair, a standard personal-injury exemption clause.[109]

A primary working hypothesis of the study was that the standard-form lease is neither a negotiated nor a negotiable document. The former of these twin aspects proved to be largely true; few persons tried to bargain about fine-print terms.[110] The latter assumption, on the other hand, was shown to be questionable; tenants who requested alteration in lease terms achieved a limited measure of success.[111] It is dangerous, however, to make broad generalizations from our data about the negotiability of leases. While there was some measure of negotiation on matters of immediate impact such as the amount of rent and the length of the lease, there proved to be little negotiation about more typical fine-print terms, especially when such terms dealt with remote, though serious, contingencies rather than problems of frequent occurrence.[112] One oddity in the data was the apparent, though limited, willingness of some lessors to alter fine-print terms after the lease had been executed.[113]

The preconceived notion that at first blush seems to be most in conflict with the empirical data is the belief that tenants will be unable to secure alterations in fine-print terms even if they attempt to negotiate. But when the data, which does reveal some bargaining success, is subjected to close scrutiny, it is evident that the small number of tenants who secured alteration in these terms had only a limited degree of success and are generally persons whose occupational skills make them better equipped than the average person for the bargaining process.[114]

A factor which may puncture the complacency of the legal practitioner is the apparent absence of any relation between bargaining about fine-print terms and consulting with a lawyer prior to signing one's lease.[115] Predictably, the lawyer would appear to enter the scene at least as frequently after something has gone awry as he does in a preventive role before a lease is executed.

108. *See* note 62 *supra* and accompanying text.
109. *Id.*
110. *See* note 76 *supra* and accompanying text.
111. *See* note 77 *supra* and accompanying text.
112. *See* notes 76-77 *supra* and accompanying text.
113. *See* note 72 *supra* and accompanying text.
114. *See* text between notes 81 & 83 *supra.*
115. *See* note 83 *supra* and accompanying text.

Finally, we speculated that most tenants would think that the exculpatory provisions of their leases would be legally enforceable since the lessor had taken the trouble of inserting them in the lease. The results show that an unfortunately large number of the tenants did share this questionable assumption.[116]

Despite the exploding of a few of the foregoing hypothetical bubbles, the departure from expected patterns is more a matter of degree than a fundamental inversion of fact and fancy. It can still be said that a substantial number of tenants do not read, remember, understand, approve of, or bargain about the fine-print terms in their leases. This situation has serious implications for a legal order imbued with the spirit of rationalism and only too slowly breaking away from a sanctification of the signed contract.

X. Conclusions and Recommendations

On the strength of the assembled data, what conclusions can be tentatively advanced about standard-form residential leases? In the first place, about half of a highly educated sample population never, in any meaningful sense, read the leases presented to them for signature, primarily because of a combined sense of powerlessness and frustration with the forbidding jungle of legal expertise.[117] As a result, a large number of tenants were unaware of the existence of numerous important printed terms in their leases. Second, while about seventy per cent of the tenants thought most of their lease terms were "fairly easy to understand," at best only fifty per cent were able to answer simple problems posed about typical lease terms. Third, many tenants felt that a number of typical lease terms were either "somewhat unfair" or "grossly unfair."[118] Fourth, and perhaps most important, the standard-form lease does not appear to be a negotiated document. While a few of the hardy souls who have swum against the current have achieved a modicum of success, it may well be that the lessor's iron gage will be exchanged for a velvet glove only so long as venturesome individuals remain a small minority.

116. *See* notes 100-02 *supra* and accompanying text.

117. With respect to this "sense of powerlessness and frustration," see Appendix C *infra*, question 13.

118. As for the significant exceptions of the fifth and seventh clauses, it is possible that the tenants did not understand these clauses. For example, they may not have realized that the "modifications" and "collateral agreements" mentioned in clause five related to those preceding as well as those following the signing of the lease, and that clause seven, "acknowledgment of inspection," was meant to be applicable whether or not the premises were actually inspected. Indeed, one reflective tenant added a comment to the effect that the clause was grossly unfair "if the tenant is not allowed to see the apartment."

Furthermore, even these individuals have bargained with regard to one or two fine-print terms at most. The single overwhelming fact is that the sample tenants were on the whole acutely conscious of their weak bargaining position. Finally, many tenants assumed that the fine-print terms were enforceable. There is only limited value in having a vigorous judiciary flexing the muscles of public policy unless the public itself, which has little contact with lawyers despite the frequency of personal injury and property damage in a leasehold context,[119] is aware of the unenforceability of many of the exemption clauses in typical leases.[120] It seems clear from the data collected that this sorry pattern of ignorance does prevail, even among the intellectual elite of contemporary tenants.

Our data seem to reflect a degree of tenant ignorance and weakness that might easily justify the imposition of stringent legislative restrictions on the content of standard-form leases. Unfortunately, such a legislative solution has a built-in inflexibility that would fail to allow the proper latitude for negotiation of leases appropriate to varying factual situations. For that reason, a conflict exists between the desire to have leases appropriate to individual situations and the desire to avoid emasculating ameliorative measures to the extent that the tenant's plight would be scarcely relieved. This type of conflict between the need for regulation and the inappropriateness of a rigid legislative solution often points the way for establishment of an administrative body with regulatory powers.

It is not, however, the purpose of this Article to suggest what provisions ought to be contained in leases or how compliance with such terms might be supervised, but the data compel those both concerned with injecting a degree of equitableness into the law of contracts and convinced of the possibility of establishing a fair allocation of responsibilities under leases to support at least the philosophy of the *Model Code*. Section 1-104 of the *Model Code* renders "unenforceable . . . any [lease] provision . . . [which] conflicts with any provision of [the Code] and is not expressly authorized"

119. Only five of the eleven persons who consulted lawyers about problems arising after the signing of their leases were among the twenty-three tenants who suffered some form of property damage or personal injury in a leasehold context.

120. *Cf.* MODEL CODE, *supra* note 1, § 3-404(2), which makes it a punishable misdemeanor for a lessor to include a (prohibited) confession-of-judgment clause in a lease; the commentary complains of the "'scare' function served by invalid clauses" (*id.* at 96) since "[a] bland claim in the lease that a particular duty or right exists or does not exist often serves to dissuade a tenant from pursuing legitimate rights he might have" (*id.* at 20). Three tenants in the present study added comments to their answers expressing surprise that a provision could be other than "valid and enforceable" if it appeared in an executed lease.

therein.[121] If the *Model Code* be taken as a first approximation to an equitable arrangement of the landlord-tenant relationship,[122] then the crucial fact to be faced is that with the exception of the fifth sample term (invalidation of oral agreements) and possibly of the first (notice of tenant's intention to surrender), all of the provisions contained in Appendix A clash moderately or, more usually, fundamentally with the provisions contained in the *Model Code*.[123] There is a considerable gulf between requiring leases to contain particular terms embodying a socially progressive viewpoint and merely preventing leases from containing socially retrogressive terms. Whether or not one chooses to establish covenants that must be inserted in residential leases, there is good reason for the statutory proscription of most of the fine-print terms studied in our survey.

APPENDIX A

TERM No. 1.

"At least thirty (30) days before the expiration of the term of the lease, the Tenant shall give the Landlord written notice of intention to surrender said premises at the expiration of said term, and if such notice is not given, the Tenant shall be liable for an additional monthly installment of rent at the same rate as for the last month of the term" OR (other leases provide this consequence) "this lease, including all conditions and covenants herein, shall continue from year to year until terminated by like notice in some ensuing year."

TERM No. 2.

"Tenant covenants and agrees during the continuance of his occupancy of the herein demised premises to keep same in as good repair and at the expiration of the term, yield and deliver up the same in the condition as when taken, reasonable use and wear thereof alone excepted."

---

121. MODEL CODE, *supra* note 1, § 1-104.

122. The draftsmen view the MODEL CODE as "a basis for discussion and not as a proposal ready for adoption as a model or uniform act." *Id.* at 1, 10.

123. The eleven terms found in Appendix A *infra* are in effect covered by the following provisions of the MODEL CODE, *supra* note 1: §§ 2-309, 2-310 (term No. 1); §§ 2-203, 2-303 to -304, commentary, at 54 (term No. 2); § 2-406 (term No. 3); § 2-202 (term No. 4); discussion at 37 (term No. 5); §§ 2-102, 2-304, 2-408 (term No. 6); § 2-403 (term No. 7); §§ 2-204, 2-205 (term No. 8); § 2-406 (term No. 9); § 2-207 (term No. 10); § 2-406 (term No. 11). For additional factual data on the subletting restriction, the use of self-help by landlords in obtaining possession, and the repair obligation, see the ONTARIO REPORT, *supra* note 1, app. A, at, respectively, 25-27, 27-29, and 33-38.

TERM NO. 3.

"Landlord or Landlord's agents shall not be liable for, and the lease shall not be construed to provide liability for, whether in tort, contract, or otherwise, any death, injury, loss or damage, to person or property, resulting from or connected in whole or in part with the use, rental of or access to the premises, whether caused by accident, collision, fire, falling plaster, explosion, snow, ice, dampness, water, theft, or the negligence, acts or failure to act of Landlord or Landlord's agents, other tenants or third persons, or defects of building, repairs, fixtures or equipment."

TERM NO. 4.

"If the tenant shall be unable to enter into and occupy the premises hereby leased at the time above provided, by reason of the said premises not being ready for occupancy, or by reason of the holding over of any previous occupant of the premises, or as a result of any cause or reason beyond the direct control of the Landlord, the Landlord shall not be liable in damages to the Tenant therefor, but during the period the Tenant shall be unable to occupy said premises as hereinbefore provided, the rental therefor shall be abated. The Landlord to be the judge when premises are ready for occupancy."

TERM NO. 5.

"Any modification of this agreement, or any collateral agreement with respect to the relationship between the Landlord and Tenant shall not be binding upon the Landlord unless the same be made in writing and signed by an authorized representative of the Landlord."

TERM NO. 6.

"If the Tenant shall make default in the payment of rent hereunder or any part thereof . . . the Landlord or the agent of the Landlord may immediately or at any time thereafter re-enter the demised premises and remove all persons and property therefrom, either by summary dispossess proceedings, or by any suitable action, or proceeding at law, or in equity, or by force or otherwise. . . . If the Tenant shall make default in fulfilling any of the covenants or conditions of this lease . . . or if the Tenant shall fail to comply with any of the Rules and Regulations herein referred to (e.g. no animals or birds shall be kept in or about the premises) or if the Landlord or his agent . . . shall deem objectionable or improper

any conduct on the part of the Tenant or any of those dwelling in or visiting the demised premises, the Landlord or his agent may give the tenant five days' notice . . . and at the expiration of said five days, the term under this lease shall expire. . . ."

TERM No. 7.

"The Tenant's leasehold interest may not be assigned or sublet in whole or in part without, in each case, having first obtained the written consent of the Landlord."

TERM No. 8.

"The Tenant acknowledges that he has examined the said demised premises prior to the making of this lease, and has known the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by the Landlord, or its agents, which are not herein expressed, and the Tenant hereby accepts the demised premises in their present condition at the date of the execution of this lease."

TERM No. 9.

"The Tenant . . . agrees . . . to keep the demised premises in as good repair and at the expiration of the term, yield and deliver up the same in the conditions as when taken, reasonable use and wear thereof alone excepted. . . . The Landlord and its employees or agents or any of them shall not be responsible or liable to the Tenant . . . for any loss or damage resulting to the Tenant or his property from bursting, stoppage, backing up or leaking of water, gas, electricity or sewers or caused in any other manner whatsoever."

TERM No. 10.

"Landlord shall not be liable for any injury or damage for any failure to furnish or interruption in the furnishing of water, heat or electricity."

TERM No. 11.

"The automobile parking space, laundry drying space, children's play areas, or other facilities . . . shall be deemed gratuitously furnished by the Landlord and . . . if any person shall use the same, such person does so at his or her own risk and upon the express understanding and stipulation that the Landlord shall not be liable for any loss of property through theft, casualty, or otherwise, or for any damage or injury whatever to person or property."

Note on the Source of Lease Terms

The terms in this Appendix numbered one, two, five, and seven were found in precisely this form in the leases used in all three apartment communities, the first term appearing in the leases only in its "additional month's rent" alternative. No term corresponding to the third numbered term, which was extracted from the lease used in a fourth large Ann Arbor apartment complex, can be found in any of the three apartment communities included in the survey. The fourth term appears, precisely as it reads in the Appendix, in two of the sample lease forms, but the third apartment complex uses a form in which the words "reason beyond the direct control of the landlord" are replaced by the broader phrase "reason whatsoever." The sixth and eighth terms are varied in only the second lease surveyed and there, respectively, by the elimination of the phrase "or by force or otherwise" from the end of the first sentence, and by the replacement of the clause "accept[ing] the demised premises in their present condition" by the clause "received the [premises] in good order and repair" inserted after the verbs concerning examination and knowledge. The ninth term, which is composed of two provisions welded together from different parts of the leases, appears in the third lease as it does in this Appendix, but in the first two leases studied appears subject to an exception for the case of the lessor's "wilful neglect" that is tied only to "other causes" in the case of the second lease ("other causes" being a substitution for "in any other manner whatsoever"), but is tied both to "bursting, stoppage, . . ." and to "any other manner whatsoever" in the case of the first lease.

The eleventh term is varied in the second lease, which omits the words "gratuitously furnished" and severs the clause after the word "risk" into a second sentence, leaving out the phrase, "upon the express understanding and stipulation," thus resulting in a much more general concluding part—more concise but similar in legal meaning to the more elaborate negligence clause (*i.e.*, the third term). The eleventh term is also varied in the third lease, which omits specific mention of "children's play areas" but by referential incorporation adds "swimming pools" and in the clause itself adds "any other facilities outside" the demised premises. The tenth term, as varied in the first and third leases, leaves out the words "interruption" and "electricity" as well as, in the case of the first lease, the word "heat"; in the third lease the same idea is conveyed in substantially different words: "Landlord agrees to furnish hot and cold water and

will furnish heat during the cold season of the year except when prevented by strike, accident, other cause beyond the reasonable control of the landlord, or during periods when the heating apparatus is being repaired."

For purposes of testing the recognition by tenants of the terms in their leases, it was assumed that, save for the third term in the case of all three apartments and this last-quoted (tenth) term in the case of the third lease, all of the terms in the Appendix were found in at least "substantially identical" form in all of the leases. On the basis of the description given of some of the variations in individual leases, the reader may quarrel with this assumption, but it must be remembered that no tenant is likely to recall the precise wording of any particular clause. What the tenant is likely to remember, if anything, is the essence of the clause and perhaps the flavour of its wording. Thus, if any objection to the approach be proper, it is more likely that it would be that no exception ought to have been made for the tenth term in regard to the third lease; it is submitted, however, that considerable force must be given to the words "substantially identical" used in all the lease-term identification questions posed to the tenants, and that this test of substantiality is clearly not satisfied in the case of this exception. In any event, this assumption only comes into play over a relatively restricted range of the questionnaire's scope—in fact, only in tables II and V of Appendix B.

APPENDIX B

TABLE I

Number of Lease Term Corresponding to Enumeration in Appendix A	COLUMN # 1 Recognition by Tenant of the Term as Being in a Lease He Has Signed			COLUMN # 2 Comprehensibility of the Language of the Term by the Tenant			COLUMN # 3 Fairness of the Term in the Tenant's Opinion, Taking into Account the Legitimate Interests of Both Parties			COLUMN # 4 Importance of the Term to the Tenant		
	Yes	No	Don't know	Fairly easy to understand	Confusing or ambiguous	Completely incomprehensible	Reasonably fair	Somewhat unfair	Grossly unfair	Very important	Of some importance	Relatively unimportant
Term # 1. (tenant's notice of surrender)	62	21	17	71	26	1	53	33	12	44	41	13
Term # 2. (tenant's repair obligation)	86	5	9	67	30	3	71	24	5	54	36	10
Term # 3. (exculpation for injury or damage)	33	37	30	71	25	4	4	29	67	69	26	5
Term # 4. (delay in giving occupancy)	13	54	33	66	31	2	18	46	34	63	28	8
Term # 5. (invalidation of oral agreements)	35	23	41	76	20	2	73	15	7	31	39	25
Term # 6. (termination by lessor for default)	49	27	20	72	24	0	25	35	36	61	21	14
Term # 7. (consent to subletting)	76	3	18	88	7	1	73	19	4	35	35	26
Term # 8. (acknowledgment of condition of premises)	36	34	27	72	24	0	48	33	15	59	27	10

TABLE II

Manner in Which the Tenant Has Read Leases	Roman Numerals at the Head of Each Column Indicate the Total Number of Terms (Out of the Eleven Terms in Appendix A) Which the Tenant Correctly Recognized as Being in His Present Lease									
	I	II	III	IV	V	VI	VII	VIII	IX	X
Read carefully all paragraphs in the lease	1	3	1	4	11 2	10	8 1	5	2	3
Read carefully only the "typed in" or handwritten parts about the length of the lease and the amount of rent, etc., but did not examine anything else	1					1 1	1	1		
Read carefully the "typed in" and handwritten parts, but only scanned quickly the rest (i.e. printed part) of the lease		2	1	2 3	5 2	2 1	2 1	1	1	
Scanned quickly the "typed in" and handwritten terms but did nothing else		1	1 1	1					1	
**In no way examined any of the terms of the lease		1							1	

** No entries in this category; the two entries shown are for tenants whose reading habits at the pre-execution stage were not disclosed.

Notes: (1) The figures inserted in the boxes represent numbers of tenants. (2) The lease term recognition figures are those associated with "subsequent leases" unless the tenant's present lease is his first one. (3) The narrow row forming part of each reading "category" above involves tenants who "read" their leases after executing them as well as examining them in the specified manner beforehand. (4) Since not all tenants answered all "recognition" questions, there was sufficient data to compile only 86 correlations. (5) Recognition scores are for "correct" identifications based on the assumptions set out in footnote 16. The only problem will be with those tenants who had an earlier lease containing a clause "substantially identical" to the third term from Appendix A, but this could at most alter some of the scores by "one."

TABLE III
COMPREHENSION INDEX

"Score" Achieved on the Comprehension Test (number of questions answered correctly out of a possible maximum of three)	Roman Numerals at the Head of Each Column Indicate the Tenant's Self-Declared "Comprehension Index" (The index is calculated by assigning each tenant one, two and three points, respectively, for every term from Appendix A designated by the tenant as being "fairly easy to understand," "confusing or ambiguous," or "completely incomprehensible." Thus a tenant who finds these terms generally easy to understand would have a low point score such as "VIII" or "IX" whereas a tenant who found many of the terms ambiguous or incomprehensible would have a high point score such as "XIV" or "XV".)									
	VIII	IX	X	XI	XII	XIII	XIV	XV	XVI	XVII
Zero	6	2	3	4	3	2	2	3		1
One	5	6	4	3	1		2	1		
Two	13	3	3	3	2	1		1		
Three	8	1	3	1	2					

Note: Figures inserted in the boxes represent numbers of tenants.

TABLE IV

"Score" Achieved on the Comprehension Test (number of questions answered correctly out of a possible maximum of three)	Recognition Index: Number of Terms (Out of the Eleven Terms in Appendix A) Which the Tenant Correctly Recognized as Being in His Present Lease (The arabic numbers inserted in the boxes are the comprehension index" scores computed as described in Appendix B, table III.)							
	III	IV	V	VI	VII	VIII	IX	X
Zero		10+ sales-student, some gr., $5-$8; 11− prof., post-grad., $15-$20.				11± unsk'd, cler., part time sales, less than h.s. & some beyond $10-$15; 13− prof., coll., $15-$20.		
One	12+ prof. post-grad. $10-$15.	14+ student some grad. $10-$15.				8+ manager post-grad. $15-$20.		11± student some beyond $10-$15.
Two			11±→ sales., post-grad., $20-$50; ?± prof., post-grad., $15-$20; 11+ prof., some grad., $10-$15.	10+ student some grad. $10-$15.	8+→ private inc. high sch. over $50. 10+ sales. post-grad. $15-$20.		8? sales., some beyond, $10-$15; 8+ clerical post-grad. $8-$10.	
Three			8+ prof., post-grad., $10-$15.					

Notes: (1) The plus and minus signs indicate, respectively, a success or a total failure in bargaining; if more than one bargaining attempt was made (as to different terms or on different occasions) and the results were mixed, both symbols are used. (2) A question mark indicates that the necessary data was not provided by the tenant. (3) An arrow pointing to the right indicates that not all the "declared comprehension" questions were answered so that the stated figure may be an underestimate. (4) All monetary sums are in thousands of dollars. (5) Principal abbreviations used: "post-grad." means that a graduate degree was obtained, whereas "some grad." means that such a degree has not (yet) been obtained; "some beyond" means that the tenant has obtained some formal education beyond high school and "coll." means a college degree was obtained; "prof." means that the tenant's occupation is that of a professional man.

TABLE V
LAWYER CONSULTATION CHART

Notes: (1) The roman numerals at the head of each column represent various "comprehension index" figures (computed as described in Appendix B, table III). (2) Each entry in one of the boxes represents the "comprehension test" score (see Appendix B, tables III & IV) of an individual tenant. (3) The plus and minus signs relate to success or failure in bargaining as described in Note 1 to Appendix B, table IV. (4) Only "lawyer consultation" prior to the lease's execution is included.

Combined Annual Income of All Residents of the Apartment	VIII	IX	X	XI	XII	XIII	XIV
less than $5,000							
5,001- 8,000	0, 3		3	?			
8,001-10,000			3				
10,001-15,000				0−			
15,001-20,000							
20,001-50,000				2±			
over $50,000	2−						
no available data			0				

APPENDIX C

THE QUESTIONNAIRE[1]

ANN ARBOR SURVEY OF TENANTS' LEASES

PAGE ONE

1. Do you have a written lease? YES 97, NO 3

2. Did you sign your current lease .... BEFORE 73, AFTER 25, you moved in? 2x

3. Have you *ever* signed a lease after moving in? YES 31, NO 69

4. Did you consult a lawyer before you signed your current lease? YES 4, NO 94, 2x

5. If you have signed leases other than your current one, did you consult a lawyer prior to signing ..... (A. always 3, (B. sometimes 2, (C. once 1, (D. only on the first lease 3, (E. never 77, 14x

6. If you have ever consulted a lawyer before signing a lease, did you find that whatever advice he gave you was ..... (A. very helpful 1, (B. somewhat helpful 4, (C. not at all helpful 0, 95x

7. Is the term of your lease .. (monthly 9, (six months 0, (eight months 0, (one year 85, (two years 2, (three years 0, (more than three years 0, 4x

8. Do you have an option to renew your lease? YES 56, NO 26, 18x

9. If you have an option to renew your lease, is the renewal at a monthly rent which is: (same as current rent 33, (about $5 more 8, (about $10 more 4, (about $15 more 0, (at an increase of more than $15 2, 53x

[1] Indicating the aggregate of all answers given. The symbol "x" indicates the total of nonresponses to a particular question.

10. Did you sign your current lease ....
(within the last month 4
(within the last 3 months 16
(within the last 6 months 27
(within the last 12 months 33
(within the last 18 months 8
(within the last 24 months 3
(more than 2 years ago 6
3x

11. Have you signed leases prior to your current lease .....
(one other time 28
(two other times 21
(three other times 14
(four other times 9
(five other times 1
(more than five other times 3
24x

		With Respect to Your First Lease	With Respect to Your Subsequent Leases
12. Before signing a lease, have you	(A. read carefully all paragraphs in the lease?	A. 57	A. 50
	(B. read carefully only the "typed in" or handwritten parts about the length of the lease and the amount of rent, etc., but not examined anything else?	B. 17	B. 2
	(C. read carefully the "typed in" and handwritten parts, but only scanned quickly the rest (i.e., printed part) of the lease?	C. 25	C. 19
	(D. scanned quickly the "typed in" and handwritten terms, but done nothing else?	D. 5	D. 5
	(E. in no way examined any of the terms of the lease?	E. 1	E. 1
		5x	24x

13. If you do not usually read leases particularly carefully before signing them, which *one or more* of the following factors best explain your approach:

A. you think it is a "take it or leave it" proposition as far as the landlord is concerned? A. 33
B. the very length of the lease-contract form is discouraging and confusing? B. 26
C. you do not think you could adequately understand all the "legal language"? C. 20
D. you cannot be bothered to take the time and trouble? D. 3
46x

PAGE TWO

	With Respect to Your First Lease	With Respect to Your Subsequent Leases
14. If you in no way examined the terms of your lease before signing it, or only scanned the 'typed in' terms beforehand, did you read it?		
(A. as soon as it was convenient afterwards	A. 11	A. 7
(B. only when a particular problem arose	B. 10	B. 10
(C. never	C. 5	C. 4
	74x	79x

15. Have you found, in the leases that you have read, terms which:

A. were both significant and objectionable and yet had not been mentioned in your oral discussions with the landlord or his agent? YES 46 NO 28 26x

B. were on the whole pretty much what you expected? YES 69 NO 9 22x

16. Generally speaking, have you signed leases
(A. in the presence of the apartment owner, manager or superintendent? A. 80
(B. elsewhere but under "pressures" such as time? B. 7
(C. elsewhere but without any circumstances of pressure? C. 11
2x

17. Generally speaking, have the landlord's representatives at the time you were negotiating the signing of a lease:
    (a. encouraged you to read the lease before signing it 39
    (b. simply handed you the lease to be signed after your oral negotiations were completed 59
    2x

18. A. In leases you have signed, have you ever asked the landlord's representative to change the term dealing with the *amount of rent*? YES 6
    NO 94

B. If you have made such a request, did the landlord's representative	Your First Lease	Subsequent Leases Generally	Your Current Lease
(a. completely refuse any alteration	0	1	4
(b. agree to slight modification	3	0	1
(c. agree to radical alteration or elimination	1	0	0
	96x	99x	95x

19. A. In leases you have signed, have you ever asked the landlord's representative to change the term dealing with *prepayment* of the first and last months' *rent*? YES 6
    NO 93
    1x

B. If you have made such a request, did the landlord's representative	Your First Lease	Subsequent Leases Generally	Your Current Lease
(a. completely refuse any alteration	3	0	1
(b. agree to slight modification	1	0	1
(c. agree to radical alteration or elimination	1	0	0
	95x	100x	98x

PAGE THREE

20. A. In leases you have signed, have your ever asked the landlord's representative to change the term dealing with the security (i.e. *damage*) *deposit*? YES 8
    NO 92

B. If you have made such a request, did the landlord's representative	Your First Lease	Subsequent Leases Generally	Your Current Lease
(a. completely refuse any alteration	2	4	2
(b. agree to slight modification	1	0	0
(c. agree to radical alteration or elimination	2	1	1
	95x	95x	97x

21. A. In leases you have signed, have you ever asked the landlord's representative to change the term dealing with the *length of the lease*? YES 22
    NO 78

B. If you have made such a request, did the landlord's representative	Your First Lease	Subsequent Leases Generally	Your Current Lease
(a. completely refuse any alteration	8	3	2
(b. agree to slight modification	3	3	2
(c. agree to radical alteration or elimination	3	2	2
	86x	92x	94x

22. Read carefully the following typical lease provision and then answer the questions in parts A-F below:

"At least thirty (30) days before expiration of the term of the lease, the Tenant shall give the Landlord written notice of intention to surrender said premises at the expiration of said term, and if such notice is not given, the Tenant shall be liable for an additional monthly installment of rent at the same rate as for the last month of the term" OR (other leases provide this consequence) "this lease, including all conditions and covenants herein, shall continue from year to year until terminated by like notice in some ensuing year."

A. Have you ever signed a lease containing this or a substantially identical provision?
YES 62
NO 21
DON'T KNOW 17

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?
a) before you signed the lease: YES 6, NO 55, 39x
b) after you signed the lease: YES 3, NO 37, 50x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	3	4
(b. agree to slight modification?	1	1
(c. agree to radical alteration or elimination?	1	0
	95x	95x

PAGE FOUR

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:
(a. fairly easy to understand? 71
(b. confusing or ambiguous? 26
(c. completely incomprehensible? 1
2x

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:
(a. reasonably fair? 53
(b. somewhat unfair? 33
(c. grossly unfair? 12
2x

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
(a. very important to you 44
(b. of some importance to you 41
(c. relatively unimportant to you 13
2x

23. Read carefully the following typical lease provision and then answer the questions in parts A-F below:

"Tenant covenants and agrees during the continuance of his occupancy of the herein demised premises to keep same in as good repair and at the expiration of the term, yield and deliver up the same in the condition as when taken, reasonable use and wear thereof alone excepted."

A. Have you ever signed a lease containing this or a substantially identical provision?
YES 86
NO 5
DON'T KNOW 9

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?
a) before you signed the lease: YES 2, NO 86, 12x
b) after you signed the lease: YES 1, NO 75, 24x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	2	0
(b. agree to slight modification?	0	0
(c. agree to radical alteration or elimination?	0	0
	98x	100x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:
   (a. fairly easy to understand? 67
   (b. confusing or ambiguous? 30
   (c. completely incomprehensible? 3

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:
   (a. reasonably fair? 71
   (b. somewhat unfair? 24
   (c. grossly unfair? 5

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
   (a. very important to you 54
   (b. of some importance to you 36
   (c. relatively unimportant to you 10

PAGE FIVE

24. Read carefully the following typical lease provision and then answer the questions in parts A-F below:

"Landlord or Landlord's agents shall not be liable for, and the lease shall not be construed to provide liability for, whether in tort, contract, or otherwise, any death, injury, loss or damage, to person or property, resulting from or connected in whole or in part with the use, rental of or access to the premises, whether caused by accident, collision, fire, falling plaster, explosion, snow, ice, dampness, water, theft, or the negligence, acts or failure to act of Landlord or Landlord's agents, other tenants or third persons, or defects of building, repairs, fixtures or equiment."

A. Have you ever signed a lease containing this or a substantially identical provision?
   YES 33
   NO 37
   DON'T KNOW 30

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?

a) before you signed the lease	YES 3	b) after you signed the lease	YES 0
	NO 33		NO 31
	64x		69x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	1	1
(b. agree to slight modification?	1	0
(c. agree to radical alteration or elimination?	1	0
	97x	99x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:
   (a. fairly easy to understand? 71
   (b. confusing or ambiguous? 25
   (c. completely incomprehensible? 4

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:
   (a. reasonably fair? 4

(b. somewhat unfair? 29
(c. grossly unfair? 67

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
(a. very important to you 69
(b. of some importance to you 26
(c. relatively unimportant to you 5

PAGE SIX

25. Read carefully the following typical lease provision and then answer the questions in part A-F below:

"If the tenant shall be unable to enter into and occupy the premises hereby leased at the time above provided, by reason of the said premises not being ready for occupancy, or by reason of the holding over of any previous occupant of the premises, or as a result of any cause or reason beyond the direct control of the Landlord, the Landlord shall not be liable in damages to the Tenant therefor, but during the period the Tenant shall be unable to occupy said premises as hereinbefore provided, the rental therefor shall be abated. The Landlord to be the judge when the premises are ready for occupancy."

A. Have you ever signed a lease containing this or a substantially identical provision?
YES 13
NO 54
DON'T KNOW 33

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?

	a) before you signed the lease	b) after you signed the lease
YES	2	1
NO	15	13
	83x	86x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	0	0
(b. agree to slight modification?	1	0
(c. agree to radical alteration or elimination?	0	0
	99x	100x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:
(a. fairly easy to understand? 66
(b. confusing or ambiguous? 31
(c. completely incomprehensible? 2
1x

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:
(a. reasonably fair? 18
(b. somewhat unfair? 46
(c. grossly unfair? 34
2x

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
(a. very important to you 63
(b. of some importance to you 28
(c. relatively unimportant to you 8
2x

PAGE SEVEN

26. Read carefully the following typical lease provision and then aswer the questions in parts A-F below:

"Any modification of this agreement, or any collateral agreement with respect to the relationship between the Landlord and Tenant shall not be binding upon the Landlord unless the same be made in writing and signed by an authorized respresentative of the Landlord."

A. Have you ever signed a lease containing this or a substantially identical provision?
YES 35
NO 23
DON'T KNOW 41
1x

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?
a) before you signed the lease: YES 3, NO 36, 61x
b) after you signed the lease: YES 1, NO 34, 65x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	0	1
(b. agree to slight modification?	0	0
(c. agree to radical alteration or elimination?	2	0
	98x	99x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:
(a. fairly easy to understand? 76
(b. confusing or ambiguous? 20
(c. completely incomprehensible? 2
2x

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:
(a. reasonably fair? 73
(b. somewhat unfair? 15
(c. grossly unfair? 7
5x

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
(a. very important to you 31
(b. of some importance to you 39
(c. relatively unimportant to you 25
5x

PAGE EIGHT

27. Read carefully the following typical lease provision and then answer the questions in parts A-F below:

"If the Tenant shall make default in the payment of rent hereunder or any part thereof . . . the Landlord or the agent of the Landlord may immediately or at any time thereafter re-enter the demised premises and remove all persons and property therefrom, either by summary dispossess proceedings, or by any suitable action, or proceeding at law, or in equity, or by force or otherwise. . . . If the Tenant shall make default in fulfilling any of the covenants or conditions of this lease . . . or if the Tenant shall fail to comply with any of the Rules and Regulations herein referred to (e.g. no animals or birds shall be kept in or about the premises) or if the landlord or his agent . . . shall deem objectionable or improper any conduct on the part of the Tenant or any of those dwelling in or visiting the demised premises, the Landlord or his agent may give the tenant five days' notice . . . and at the expiration of said five days, the term under this lease shall expire. . . ."

A. Have you ever signed a lease containing this or a substantially identical provision?
YES 49
NO 27
DON'T KNOW 20
4x

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?
a) before you signed the lease: YES 2, NO 48, 50x
b) after you signed the lease: YES 1, NO 44, 55x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	0	2
(b. agree to slight modification?	2	0
(c. agree to radical alteration or elimination?	1	0
	97x	98x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:

(a. fairly easy to understand?	72
(b. confusing or ambiguous?	24
(c. completely incomprehensible?	0
	4x

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:

(a. reasonably fair?	25
(b. somewhat unfair?	35
(c. grossly unfair?	36
	4x

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:

(a. very important to you	61
(b. of some important to you	21
(c. relatively unimportant to you	14
	4x

PAGE NINE

28. Read carefully the following typical lease provision and then answer the questions in parts A-F below:

"The Tenant's leasehold interest may not be assigned or sublet in whole or in part without, in each case, having first obtained the written consent of the Landlord."

A. Have you ever signed a lease containing this or a substantially identical provision?

YES	76
NO	3
DON'T KNOW	18
	3x

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?

a) before you signed the lease	YES	3	b) after you signed the lease	YES	4
	NO	69		NO	60
		28x			36x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	1	1
(b. agree to slight modification?	1	2
(c. agree to radical alteration or elimination?	1	1
	97x	96x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:

(a. fairly easy to understand?	88
(b. confusing or ambiguous?	7
(c. completely incomprehensible?	1
	4x

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:

(a. reasonably fair? 73
(b. somewhat unfair? 19
(c. grossly unfair? 4
4x

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
(a. very important to you 35
(b. of some importance to you 35
(c. relatively unimportant to you 26
4x

PAGE TEN

29. Read carefully the following typical lease provision and then answer the questions in parts A-F below:
"The Tenant acknowledges that he has examined the said demised premises prior to the making of this lease, and has known the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by the Landlord, or its agents, which are not herein expressed, and the Tenant hereby accepts the demised premises in their present condition at the date of the execution of this lease."

A. Have you ever signed a lease containing this or a substantially identical provision? YES 36
NO 34
DON'T KNOW 27
3x

B. If you answered "Yes" to Part "A," have you ever asked the landlord's representative to change this type of term?

a) before you signed the lease	YES 5	b) after you signed the lease	YES 3
	NO 31		NO 26
	64x		71x

C. If you have made such a request, did the landlord's representative:

	Before Signing Lease	After Signing Lease
(a. completely refuse any alteration?	2	2
(b. agree to slight modification?	2	1
(c. agree to radical alteration or elimination?	2	0
	94x	97x

D. Whether or not you have signed a lease containing such a provision, do you find the language of the clause quoted above to be:
(a. fairly easy to understand? 72
(b. confusing or ambiguous? 24
(c. completely incomprehensible? 0
4x

E. Whether or not you have signed a lease containing such a provision, do you, considering what you think to be the legitimate interests of both landlord and tenant, find the clause quoted above to be:
(a. reasonably fair? 48
(b. somewhat unfair? 33
(c. grossly unfair? 15
4x

F. If you were to give thought to the matter at the time you signed a lease, do you consider the clause quoted above to be:
(a. very important to you 59
(b. of some importance to you 27
(c. relatively unimportant to you 10
4x

PAGE ELEVEN

30. Have you ever asked the landlord to make changes in the terms of a lease (*other than* the length of lease and amount of rent) before you signed the lease? YES 17
NO 82
1x

31. If you answered 'Yes' to question *#30*, but the landlord *refused* to make the requested changes, did you refuse to sign the lease and go looking for another apartment building?
YES 3
NO 5
NOT APPLICABLE 43
49x

32. If you answered 'Yes' to question *#31*, were you eventually able by going elsewhere to get a lease without the terms you disliked?
YES 4
NO 1
95x

33. If you answered 'Yes' to question *#30* and the landlord *consented* to make the requested changes, would you in fact have gone looking for another apartment *if* the landlord had in fact refused to make the requested changes?
YES 8
NO 5
NOT APPLICABLE 29
58x

34. If you have never asked that changes be made in terms of any lease before signing, although you would have preferred to have had changes made in some lease, which *one or more* of the following explanations apply to you:
A. You thought that the person with whom you were dealing did not have authority to make the changes you wanted. A. 12
B. You thought that such a request would have been immediately denied. B. 35
C. You simply did not think to ask. C. 12
D. You thought you were not in a strong enough bargaining position to obtain any concession. D. 43
E. Question not applicable. E. 22
17x

35. Before you sign leases do you usually give some time to thinking about whether you would be able to succeed in suing your landlord for damages in the courts if you were injured as a result of slipping in the common hallways on slippery substances or because of defective flooring, or if your furniture or other personal property were damaged by water escaping from pipes or water closets, or if you contracted influenza and lost time from your work because the heating equipment ceased working during the winter?
YES 25
NO 74
1x

36. During the entire time you have lived in a rented apartment, has any problem listed in Question *#35* or any problem similar to those problems ever occurred to you or any member of your family or to any "roommate"?
YES 23
NO 76
1x

37. If you answered 'Yes' to Question *#36*, briefly describe in your own words the nature of the problem encountered: _____

PAGE TWELVE

		YES	NO	DO NOT KNOW OR HAVE NOT READ INSURANCE POLICY	
38. Do you have: (A.	Tenant's liability insurance to protect *you* if someone is injured while visiting your apartment?	A. 40	A. 45	A. 10	5x
(B.	personal property insurance to protect you against loss or damage occurring to your possessions as a				

result of fire, flooding or other calamity occurring in your apartment? B. 56 B. 36 B. 4 4x

(C. a type of insurance or other means to protect you against loss of income because of personal injury making it impossible for you to work: C.

a.) for *up to* 90 days

1.) at your full salary 1. 14 1. 53 1. 11 22x

2.) for at least 75% salary 2. 11 2. 47 2. 11 31x

b.) for *over* 90 days

3.) at your full salary 3. 9 3. 51 3. 12 28x

4.) for at least 75% salary 4. 14 4. 50 4. 11 25x

39. If your landlord had been willing to bargain for the elimination from your lease of terms dealing with his relief from responsibility in law to you for personal injury or property damage caused to you or members of your family by reason of maintenance defects of any sort or description, would you in return for this concession (remembering that this may mean your insurance needs are less) have been willing to pay an additional *monthly* rent of:

A. Nothing	45	C. $3	16	E. $10	5
B. $1	16	D. $6	8	F. more than $10	1

11x

WITHOUT FIRST READING YOUR OWN LEASE AND BEFORE ANSWERING QUESTIONS #40, #41, & #42, READ CAREFULLY THE FOLLOWING THREE SETS OF CLAUSES TAKEN FROM LEASES PRESENTLY BEING USED IN THE ANN ARBOR AREA:

#1 "The Tenant . . . agrees . . . to keep the demised premises in as good repair and at the expiration of the term, yield and deliver up the same in the conditions as when taken, reasonable use and wear thereof alone excepted. . . . The Landlord and its employees or agents or any of them shall not be responsible or liable to the Tenant . . . for any loss or damage resulting to the Tenant or his property from bursting, stoppage, backing up or leaking of water, gas, electricity or sewers or caused in any other manner whatsoever."

#2 "Landlord shall not be liable for any injury or damage for any failure to furnish or interruption in the furnishing of water, heat or electricity."

#3 "The automobile parking space, laundry drying space, children's play areas, or other facilities . . . shall be deemed gratuitously furnished by the landlord and . . . if any person shall use the same, such person does so at his or her own risk and upon the express understanding and stipulation that the landlord shall not be liable for any loss of property through theft, casualty, or otherwise, or for any damage or injury whatever to person or property."

PAGE THIRTEEN

40. Are the Following Statements True or False:

A. Rather than being intended simply to place all maintenance responsibility upon the Tenant, the primary purpose for making the Tenant responsible for repairs by the first sentence of *clause #1* above is to permit the landlord to escape (by virtue of the second sentence of clause #1) all responsibility for personal injury or property damage caused by the negligent state of disrepair of the leased premises:

TRUE 54
FALSE 33
DON'T KNOW 10
3x

B. One of the effects of *clause #2* is to relieve the landlord of responsibility for damage to the tenant's household effects caused by water leaking from pipes:

TRUE 40
FALSE 48
DON'T KNOW 8
4x

C. The essential purpose of *clause #3* above is to show that the landlord is not really obligated to provide these special facilities (i.e. he provides them "gratuitiously") and hence as an economy measure he could close down these facilities without the tenant having any legal right to object because the tenant has assumed the risk of closure:

TRUE 31
FALSE 50
DON'T KNOW 15
4x

	Your Opinion Before Having Checked Your Lease	Your Opinion After Having Checked Your Lease
41. Do you think your current lease contains clauses worded substantially identically to		
(clause #1 above	16x YES 58 NO 26	YES 39 NO 14 47x
(clause #2 above	16x YES 52 NO 42	YES 30 NO 22 48x
(clause #3 above	18x YES 40 NO 42	YES 35 NO 15 50x

	In the State of Michigan	In the Majority of the States in the United States
42. Place an "X" in the box beside those clauses (if any), reproduced at the bottom of page 12, which you think are valid and enforceable in a court of law:		
Clause #1	21x 1 57 22 NO	23x 1 55 22 NO
Clause #2	22x 2 44 34 NO	24x 2 44 33 NO
Clause #3	21x 3 60 19 NO	24x 3 58 18 NO

PAGE FOURTEEN 3x

43. YOUR AGE:
(less than 21 2
(21-30 75
(31-50 19
(over 50 2
2x

44. Do you feel more comfortable or at ease in some language other than English?
YES 5
NO 92
3x

45. PLACE OF BIRTH
(United States 91
(Canada 3
(Mexico 0
(South America 0
(Central America 0
(Europe 2
(Asia 0
(Africa 0
(Australasia 0
(Other 1

46. MONTHLY RENT:
3x
(less than $120 0
($121-140 6
(141-160 51
(161-180 28
(181-200 10
(201-225 1
(226-250 0
(251-300 0
(301-400 0
(over 400 1

47. OCCUPATION:
(unemployed 1
(unskilled labor 3
(skilled trades 2
(factory work 1
(clerical-secretarial 7
(white collar-office 7
(salesman 7
(managerial 5
(professional 37
(student 33
(other (specify) 4
5x

48. Combined Annual Income of All Residents of the
(less than $5,000 4
(5,001- 8,000 18
(8,001-10,000 16
(10,001-15,000 28
(15,001-20,000 19

49. EDUCATION:
A. (less than elementary A. 0
B. (completed elementary B. 0
C. (less than high school C. 1
D. (commercial diploma D. 0

Apartment (20,001-50,000 5
(over 50,000 3
6x

50. Did you rent your apartment as:
A. furnished 0
B. unfurnished 66
34x

E. (trade certificate E. 0
F. (completed high school F. 7
G. (some formal education beyond high school G. 21
H. (obtained college degree H. 15
I. (some "graduate school" university education I. 30
J. (obtained post-graduate university degree J. 30
3x

51. Have you ever consulted a lawyer about a landlord and tenant problem which has arisen after you have signed a lease? YES 11
NO 84
5x