Periodic Tenancies – Regulation by Statute

Philip Marcus
PERIODIC TENANCIES—REGULATION BY STATUTE

PHILIP MARCUS

In a previous article, the incidents of a periodic tenancy at common law were examined. In this article, a further examination is made in the light of statutes affecting this form of tenancy.

Periodic tenancies have been a favorite subject of statutory regulation. Justly so. The common law had many an obscure corner in its treatment of tenancies of indefinite duration. Moreover, the clarity of answer it gave to some of the problems arising from the indeterminate nature of a periodic tenancy created a paradox: the blurred outlines of uncertainty were, at times, more inviting than the clearly marked boundaries of certainty. Explanation lies in the axiom that a single rule is contemptuous of geography. But geographical units not infrequently have sufficient economic and social differences to warrant variant treatment of like problems.

The common law is rarely flexible enough to cope with local problems. The reverence the courts accord a judicial precedent may be contrasted with the irreverence with which one legislature regards the legislation of another. It is not surprising, therefore, to find statutes differing from the common law, and from one another, in respect to periodic tenancies.

1. Recognition of the Periodic Tenancy

In more than half of the states, in the District of Columbia and in Hawaii, statutes contain express reference to periodic tenancies and provide for some measure of regulation. As was pointed out in a previous article, there was a tendency on the part of some courts to regard periodic tenancies as a species of a tenancy at will. This judicial imprimatur has its counterpart in the legislation of several states.

In Florida, a Janus-headed statute first provides that a periodic tenancy, created by a writing, shall be a tenancy at will. In the next sentence, it is stated that such tenancies shall be from week to week, from month to month, from quarter to quarter, or from year to year.

† Member of the New York Bar.
2. What merit this article has lies mainly in the appendix. In the text certain problems of particular importance are discussed. But in the appendix will be found the statutes or summaries thereof and, it is hoped, some helpful interpretative material.
depending upon the rental period. Iowa,7 Kentucky,8 Massachusetts,9 Michigan,10 Minnesota,11 New Hampshire,12 and South Carolina,13 either directly or indirectly, treat periodic tenancies as tenancies at will.

Reference by implication usually takes the form of a prescribed time for a notice necessary to terminate a tenancy at will.14 While it by no means necessarily follows that statutory recognition of a tenancy at will, in absence of such recognition of periodic tenancies, should prevent the courts from distinguishing the two,16 the tendency is to use only the one category—tenancy at will.16 In absence of statute, common law rules would seem to obtain.17 Where only a tenancy at will statute exists, the courts may refuse to accord to the periodic tenancy the incidents of tenure which normally adhere to it.18

2. Restriction on Creation of a Periodic Tenancy

In some states, an evident intent to discourage the use of periodic tenancies is discernible. Suspect from birth, they are denied a periodic status. The holdover tenancy comes in for particular disapproval.19 In Florida, a holdover is liable to a criminal charge.20 In Arizona, the

8. Ky. STAT. (Carroll, 1936) § 2326.
14. Indirect treatment is a result of the courts' reaction to the presence of a statute relating to tenancies at will unaccompanied by one referring to periodic tenancies.
15. This distinction has been made in New York but even there the ghost has not yet been laid. See correspondence in New York Law Journal on editorial page (cited appendix, note 27, infra). Inasmuch as it was thought that at common law there was either no requirement of notice with respect to tenancies at will, or the question was in doubt, there was good reason for having a statutory provision concerning notice. But the essential difference of the periodic tenancy has always been that it is a substantial interest that requires a notice to quit for its termination.
16. See Appendix in which several cases are cited wherein the strange phrase "tenancy at will from month to month," or, "tenancy at will from year to year" is used.
17. See Appendix for states without statutes. A few illustrative decisions will be found under the headings of several of the states.
18. In Mentzer v. Hudson Savings Bank, 197 Mass. 325, 83 N. E. 1102 (1908), a common law tenancy from month to month was treated as a tenancy at will terminable upon sale of the premises by the lessor and it was held that the statute covering termination of tenancies at will was not exclusive as to methods of termination.
tenancy from year to year has been emasculated by a provision that "a tenancy from year to year terminates at the end of each year, unless written permission be given to remain for a longer period; such permission shall specify the time the tenant may remain, and upon the termination thereof the tenancy expires." Under this statute, the tenancy is really one for a year; neither party would have to give a notice to quit. The right of the tenant to another yearly term, if he holds over with the landlord's consent, would seem to be unaffected by the option given the lessor in the Arizona statute to extend the old term until a specified date, unless that option is exercised prior to the beginning of another year.

In a number of states, the wording of the statutes would seem to require the creation of a new tenancy each month or year for a definite period of a month, a year, or less. In Florida, most forms of periodic tenancy are treated as tenancies at sufferance. In Kentucky, a holdover for a considerable period is in no better position than a tenant at sufferance.

Wyoming has one of the drastic prohibitions: in this state, there does not exist the relation of landlord and tenant, by implication or operation of law, except a tenancy at sufferance. Yet, in the last mentioned state, a day to day tenancy has been recognized where the original letting was for an indefinite duration at $2.00 a day.

3. Presumptions and Definitions

Statutes in a number of states establish a presumption flowing from the nature of the premises occupied or from the circumstances under which the occupancy was initiated. In some states, a categorical classification is made. In the South, and west of the Mississippi, different presumptions with respect to urban and agrarian holdings not uncommonly recognize the variant problems attached to such tenancies. The nature of the use and economic set-up present in a city dwelling justifies

22. See Appendix.
a presumption of shorter holding than where the property involved is either agrarian or customarily used for other long-time purposes.

In Louisiana, "the lease of a predial estate, when the time has not been specified, is presumed to be for one year, as that time is necessary in this state to enable the farmer to make his crop and gather in all the produce of the estate which he has rented." In some states, statutes provide that, upon a holding over after a term of years, only a month to month tenancy may be implied. But this abbreviated periodicity has been avoided in a few states with respect to agricultural lands by express provision. A tenant holding over after a term of fixed number of years, or even after a year, is usually held subject to the landlord's option to treat him as a trespasser or as a tenant for another year. The New York Law Revision Commission felt that this rule was harsh in its operation upon a tenant. It, therefore, recommended to the New York Legislature of 1938 the following statute:

§ 230-a. "Effect of holding over by tenant after expiration of his tenancy. A tenant who with the consent of the landlord holds over after the expiration of the agreed term shall be a tenant from month to month unless the original tenancy was for a period less than one month in which event the tenant shall be a tenant for a period equal to the term of the original tenancy.

"If the holding over is without the consent of the landlord, the landlord may reenter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant; or the landlord may hold the tenant as a tenant from month to month, unless the original tenancy was for a period less than one month in which event the landlord may hold the tenant for a period equal to the term of the original tenancy."

The bill was not enacted because it was felt in the legislature that under its terms a farm tenant might be unduly prejudiced since he would normally expect to have a longer holding than one month.

4. Ambiguous Expressions

A fairly common provision, in a number of statutes, is that the length of the period shall be determined by the periods at which the rent is payable. Inasmuch as most leases from year to year have their rent "payable monthly," even though the rent is estimated on a yearly basis,
if this expression were literally construed, it would require almost all
year to year tenancies to be treated as tenancies from month to month.
The context of these statutes makes it fairly clear that no such con-
struction is meant. Nor have the courts followed the literal wording
of this legislation; yet a provision such as found in Alabama—"... is
presumed to have been made for such length of time as the parties adopt
for the estimation of the rent"—is a more accurate phraseology.

Inasmuch as a few courts have made a strained distinction between
tenancies by the month and tenancies from month to month,55 it might
be preferable to use "from month to month" wherever such tenancy is
meant.

5. Termination of Tenancies

Almost every statute touching upon periodic tenancies deals with
the problem of their termination. In a number of states, for purpose
of termination, they are treated as tenants at will subject to the stat-
utory requisite for excising such tenancy. This is effected either by
express statutory mandate or by implication in the absence of reference
to periodic tenancies.

There is a wide variation among the statutes of the various states
with respect to the length of notice required and whether it must be
in writing. In a few states there is found a statute similar to the
following:

"Where no time is specified for the termination of the tenancy, the law
construes it to be from December 1 to December 1."56

Such statutes are usually found in company with other statutes recog-
nizing a periodic tenancy. The usefulness of such statute may be
seriously doubted. When confronted with a situation which apparently
falls within its provisions the courts are acute to find it inapplicable.57

35. This is especially true in New York. See Marcus, Periodic Tenancies, (1938) 7
Fordham L. Rev. 167. See further in Appendix under Kentucky.
37. In Johnson v. Blocton-Cahaba Coal Co., 205 Ala. 373, 87 So. 559 (1921), this
section was denied application where the lease specified contingent occasions for termina-
tion (cessation of employment). In Eddins v. Galloway, 205 Ala. 361, 87 So. 557 (1921),
the court said: (1) that this section required a valid contract of lease; (2) if not, it
created only rebuttable presumption; (3) it was meant to limit and not to extend the
duration of indefinite tenancies.

In the following cases in New York, the argument was unsuccessfully advanced that
the case came within Real Prop. Law (1920) § 232: Stern & Co. v. Avendon & Co., 194
App. Div. 433, 185 N. Y. Supp. 392 (1st Dep't 1920), aff'd without op., 231 N. Y. 546
If a tenant would come under a section similar to that above quoted and hold over, the question might be raised whether he does not become a periodic tenant with December 1 as a starting point.

In Georgia, it has been held that such a tenant becomes a tenant from year to year. Where there are no other statutory provisions regarding periodic tenancies the normal periodic tenancy may be held to come within the terms of such statute.

Omission of the word "validly" before time specified might be held to withdraw from its operation leases within the Statute of Frauds in which a time for termination was specified.

In several states, statutes, in terms, require a notice to quit on the part of the landlord and are silent as to any reciprocal obligation upon the tenant. It is doubtful whether any statute should be construed to obviate notice on the part of the tenant. In one case, the court found no obligation on the part of the tenant but expressed its dislike of the result arrived at. Where the lessor's requirement of notice is coupled with the type of action permissible upon giving the notice, a strong argument may be given for believing that the legislature did not have the tenant's notice in mind but merely wanted to make certain that the lessor gave such notice before maintaining a summary action. Nevertheless, a bill on termination of tenancies failed to pass the New York Legislature because of opposition on the ground that it might impose a duty of notice upon tenants in New York City, which notice was thought not now to be required.

For instances in which the statute has been applied see: Sayles v. Lienhardt, 119 Misc. 851, 198 N. Y. Supp. 337 (Mun. Ct. 1922); Spies v. Voss, 16 Daly 171, 9 N. Y. Supp. 532 (1890).

In Georgia, the statute has been held inapplicable when by necessary implication the duration of the tenancy was for more than a year, although the agreement was otherwise silent in regard to the duration of the term. Sike v. Carter, 30 Ga. App. 539, 118 S. E. 430 (1923).


In Willis v. Harrell, 118 Ga. 906, 45 S. E. 794 (1903), an indefinite tenancy arising from an agreement to pay rent at $2.75 per month was said to be a tenancy by the month and held to terminate at the end of the calendar year without notice. After such time the tenant was said to hold at sufferance. Although the court calls it a tenancy by the month, it is doubtful whether it would permit such a tenancy to be terminated prior to the calendar year by a month's notice.

See Appendix.

Nelson v. Ware, 57 Kan. 670, 47 Pac. 540 (1897).

The Law Revision Commission has felt that this view is erroneous, and from the
6. Proposed Model Statute

The extent of divergence among the statutes of the various states upon the subject of periodic tenancies suggests that the part of Mr. Milquetoast is the proper role for one who suggests a model statute. The imprint of local conditions and local prejudices is clearly observable in the statutes. Yet one finds similar provisions in states markedly different in economic and social conditions. Turning a page, we find totally different provisions in states having much in common both economically and socially. It is believed that a model statute is possible to cover at least most of the problems involved in a periodic tenancy. Nor need such statute exclude attention to peculiar local conditions. But such attention should not lead to lack of uniformity where uniformity is both possible and advisable. The following statute is not presented under any halo of perfection. It is hoped that it will serve as a focus for some abler attempt at the hands of commissioners on Uniform State Laws or other body to whom the problem may seem worthy of attention. In the following statute, in one or two instances, alternative provisions are suggested.

Section 1. Except as otherwise provided, a hiring upon a periodic rent of real property without a date for termination validly fixed by contract, shall be deemed to be from period to period, the period being for such length of time as the parties adopt for the estimation of the rent. Tenancies from year to year shall be presumed in the following additional cases:

(1) in the case of lands so hired for agricultural purposes; (2) where the term is for a year or more, but is unenforceable because of the Statute of Frauds, and occupancy continues beyond a year with a right to further occupancy, not inconsistent with a year to year tenancy, recognized by the parties.

Section 2. A tenancy from year to year may be terminated at the end of each year by at least three months’ prior notice in writing, except that in a case of a tenancy for farm purposes a like notice of at least six months shall be required on the part of the lessor and three months on the part of the lessee (or alternatively to the except clause). In case of a tenant occupying and cultivating a farm, notice by the lessor must fix the date of termination of the tenancy to take place [at a named date]. Three months’ notice in writing by the lessee shall be given prior to the end of the year.

All other periodic tenancies may be terminated at the end of the period by notice equal in length to the interval between periods.

Section 3. A holding over with the consent of the lessor after a definite term shall be presumed to effect a tenancy from month to month, except correspondence appearing in the New York Law Journal (see appendix, note 27, infra), it would appear that the courts do not require notice on the part of the tenant.
when the nature of the tenancy and other circumstances are such as to clearly raise a presumption of an intent to create a longer period. Where the original hiring is for a term of less than a month a periodic tenancy for periods of like length shall be presumed.

It is not believed that Section 1 could be construed to include illegal contracts but if any fear on this score should be felt it could be provided in the section itself that it refers only to cases of contracts within the Statute of Frauds insofar as the reference to a validly fixed date is made.

The first section attempts to cover the creation of all forms of periodic tenancies except as affected by Section 3. The second sentence would make long term tenancies out of agricultural holdings, and, occupancy, under a statute, invalid because of the Statute of Frauds, would become a tenancy from year to year if it fell within the section. During the first year of occupancy under an invalid lease, it is felt, to give the Statute of Frauds effect, the tenant should be considered no more than a tenant at will where the Statute of Frauds permits oral leases of only one year. In states in which all leasings for a definite period must be in writing, an invalid agreement for a tenancy for six months at a monthly rental might be construed as being one from month to month after the first month. But, for the reason that it is believed such cases are rare, no attempt has been made to cover a situation of this sort in the statutes.

The writer favors Section 2 as it appears in the first sentence. In some states, however, it is known at what time crops will be gathered and, therefore, it is possible to fix a date which will give the tenant ample time to collect his harvest. For instance, in New York winter wheat and rye are the only crops sown in Fall and the crop is gathered about the middle of July. Alfalfa is normally cut in July and sometimes a second cutting is had in August, and rarely, a third cutting in September. Therefore, if September first were fixed as the date of termination for such tenancy at the option of the lessor, only in rare cases would any hardship occur. It is felt that the tenant should be required to give three months' notice, but this is open to argument where a definite date is fixed for termination by the lessor. The need of a definite date, however, is not apparent since a periodic tenant, especially one year to year, is entitled to emblements.

Section 3 attempts to do away with the common law rule that a tenant holding over after a term for years may be held for another year; but, at the same time, it is felt that in some cases a presumption of a tenancy greater than that of one from month to month may properly be raised.
APPENDIX

For convenience of presentation, the material in this appendix is divided into four divisions. The first division groups states having no statutory reference pertinent to periodic tenancies. The second division deals with statutes framed in terms which raise problems of construction and policy of sufficient interest to warrant setting out the language of such statutes and analyzing the implications inherent in the expressions used. The third division sets forth some typical statutes selected to illustrate how a particular state has emphasized regulation of certain incidents of a periodic tenancy and endeavored to cover those aspects. The fourth division summarizes the statutes of the states not dealt with in the above groups. In the second and third groups, where other relevant statutes exist in the particular state, they have been summarized in order to integrate the related enactments under one heading.

1.

Arkansas, Nebraska, Ohio, Tennessee and Texas lack statutory reference to periodic tenancies. In these states, it is believed that a periodic tenancy is recognized and will be given its normal common law incidents.

2.

ALABAMA:

§ 8797 of the Alabama Code of 1923 as amended in 1935 reads:

Where no time is specified for the termination of tenancy, the law construes it to be from December 1 to December 1, but if it is expressly a tenancy at will, then either party may terminate it at will by ten days’ notice in writing.

§§ 8821 and 8822 provide:

§ 8821. A hiring of lodgings or a dwelling house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

§ 8822. In all cases of tenancy by the month or for any other term less than one year, where the tenant holds over without special agreement, the landlord shall have the right to terminate the tenancy by giving the tenant ten days’ notice in writing of such termination, and the landlord upon giving said notice for said time shall be authorized without further notice to the tenant to recover possession of the rented premises in an action of unlawful detainer.

The amendment of 1935 substitutes for “from December 1 to December 1” “for the calendar year.” December 1 would seem to give a tenant time enough to gather his cotton or other drop.

As has been pointed out, the existence of the type of statute exemplified by § 8797 merits more condemnation than commendation. When read together with §§ 8821 and 8822, it might be construed to be limited to agricultural or undeveloped property. But, if it were a dwelling house on leased agricultural property for which no term was fixed, would § 8797 or § 8821 govern?


2. See p. 359, supra.
§§ 8821 and 8822 are couched in language which suggests a new tenancy recurrently created for a definite period.

Prior to 1932, it was held that two notices were necessary to maintain unlawful detainer: (1) the ten-day notice, and (2) a subsequent three-day notice which was a notice generally requisite for maintenance of the action.³ Under the 1932 amendment which brought in the present language of the last clause in § 8822, the extra three-day notice need not be given.⁴

§ 8822, as it appeared in the Code of 1923, contained a provision for written notice but earlier Codes contained no such requirement.⁵ Under the Code of 1923, this section was expressly made applicable to ejectment as well as unlawful detainer actions. The absence of this provision from the present statute raises some question whether a common law notice would be prerequisite to an ejectment action.

**California: (Civil Code)**

§ 1943. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

§ 1945. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

§ 1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month; but notice given on the first day of the term or of any renewal thereof shall be sufficient; provided, that it shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof.

California Civil Code § 1944 is the same as the Alabama Code § 8821. Under the Code of Civil Procedure § 1161, if a tenant of agricultural lands holds over sixty days without demand for possession or notice to quit, he is entitled to hold for a year under the terms of the lease and his assent is implied from such holdover.

The differing presumption in respect to urban tenancies and agrarian holdings recognize the variant problems attached to such tenancies. It is interesting to note that by the wording of the statute these presumptions are subject to a contrary usage.

Under § 1945 of the Civil Code, literally, it would seem that even though the rental was fixed on an annual base, if the rent were payable monthly, the presumption would be that of a monthly tenure rather than one from year to year.

Under § 1946, it would seem not difficult for a court to find a continuous tenancy even where the periodicity was the result of a holdover.⁶

The present language of § 1946 was inserted in 1937.

Occupation under a lease, invalid because of the Statute of Frauds, has been held to be

---

3. Myles v. Strange, 226 Ala 49, 145 So. 313 (1933); McDevitt v. Lambert, 80 Ala. 536, 2 So. 438 (1887).
5. Harris v. Hill, 190 Ala. 589, 67 So. 284 (1914) (oral notice of one month terminates month to month tenancy).
be a tenancy from year to year but, for purposes of notice to quit, merely a tenancy at will for which thirty days' notice is requisite to end the tenancy.\(^7\)

**Connecticut** (General Statutes of Connecticut 1930):

§ 5021. No holding over by any lessee, after the expiration of the term of his lease, shall be evidence of any agreement for a further lease; and parol leases of lands or tenements reserving a monthly rent and in which the time of their termination is not agreed upon shall be construed to be leases for one month only.

Under this statute, it would seem difficult for a court to find a continuous tenancy terminable monthly. § 5021 has been construed not to be applicable where a definite period was fixed in the agreement although the lease was within the Statute of Frauds.\(^8\)

This statute has been held to rebut the presumption of a renewal, by holding over, for a term as long as provided in a renewal provision of the original lease.\(^9\) A tenancy at monthly rent for as long as the tenant desires is within § 5021\(^2\)—time of termination not agreed upon—but not a tenancy per month until a certain date when the rate shall be seventy-five dollars per month—this is a tenancy from month to month.\(^10\)


§ 5431. Any lease of lands and tenements, or either, hereafter made, shall be deemed and held to be a tenancy at sufferance unless the same shall be in writing signed by the lessor.

§ 5432. Where any tenancy shall have been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which such tenancy is unlimited, such tenancy shall be a tenancy at will. If the rent is payable weekly, then such tenancy shall be from week to week; if payable monthly, then such tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

§ 5433 (Compiled General Laws of Florida 1927). A tenancy at will may be terminated by either party giving notice as follows: Where the tenancy is from year to year, by giving not less than three months' notice prior to any annual period; where the tenancy is from quarter to quarter, by giving not less than forty-five days' notice prior to the end of any quarter; where the tenancy is from month to month, by giving not less than fifteen days' notice prior to the end of any monthly period, and where the tenancy is from week to week, by giving not less than seven days' notice prior to the end of any weekly period.

§ 5434. When any tenancy shall have been created by instrument of writing and the term of which such tenancy is limited therein shall have expired and the tenant shall hold over in the possession of said premises without renewing the said lease by some further instrument of writing then such holding over shall be construed to be a tenancy at sufferance, and the mere payment or acceptance of rent shall not be construed to be a renewal of the said term, but if such holding over be continued with the written con-  

---

8. In Corbett v. Cochran, 67 Conn. 570, 35 Atl. 509 (1896), a written lease for years was prepared but not signed by lessee. The defendant occupied several months paying rent each month. Held, tenancy at will which by implication is from year to year. See also, Boardman Realty Co. v. Carlin, 82 Conn. 413, 74 Atl. 632 (1909), where no definite term was fixed the court held the tenancy to be a tenancy for a month and damages for breach of promise to repair limited to one month.
sent of the lessor then such tenancy shall become a tenancy at will under the provisions of this law.

These statutes seem to deny and to recognize the existence of periodic tenancies at one and the same time. §§ 5432 and 5433 especially seem to be Janus-headed.

These statutes seem to be indicative of considerable dislike for tenancies arising by implication or under leases invalid because of the Statute of Frauds.

Prior to 1931, § 5431 made such leases a tenancy at will. The courts have been unwilling to treat such tenancies as being identical with common law tenancies at sufferance; the landlord has been entitled to a lien for rent on a verbal leasing for a year, although under common law rent was not deemed recoverable.28

The present wording of § 5434 was introduced in 1927.

Fla. Compiled Laws (Ch. 18008, Acts of 1937 § 1-3)

§ 7395 (2) It shall be unlawful in counties having a population of not less than fifty-eight thousand and not more than sixty-four thousand according to the last State census, for any lessee to hold possession of lands or houses where his lease has expired, whether the lease was written or oral, and no new lease has been executed or agreed upon, after three days' notice in writing to vacate from the owner or his agent has been served upon said lessee—misdemeanor. § 7395 (3) in counties of not less than 180,000 re hotels, apt. houses etc. as above.

§§ 7395 (2) (3) have withstood constitutional attack.29 The transitory nature of many tenancies in a resort like Florida, the frequency of oral lettings, and the influx of irresponsible persons, may justify perhaps such a statute as § 7395.

INDIANA: (Burns 1935)

§ 3-1615. A tenancy at will cannot arise or be created without an express contract; and all general tenancies, except those tenancies covering lands used for agricultural purposes, in which the premises are occupied by the consent, either express or constructive, of the landlord, shall be deemed tenancies from month to month.

§ 3-1616. All tenancies from year to year may be determined by at least three (3) months' notice given to the tenant prior to the expiration of the year; and in all tenancies which, by agreement of the parties, express or implied, are, from one period to another, of less than three (3) months' duration, a notice equal to the interval between such periods shall be sufficient.

The present wording of § 3-1615 stems from Indiana Laws (1927) Ch. 87, § 1. At an earlier date, the predecessor of that section had no "except clause" and made such tenancies from year to year instead of from month to month.30

"General tenancies" have been defined as though tenancy not fixed and made certain as to duration by the agreement of the parties.31

KANSAS:

§ 67-505 . . . when premises are furnished or let by an employer to an employee, said tenancy shall cease and determine ten days after written notice to vacate.

§ 67-502 provides for a tenancy from year to year arising from a holding over after a term of a year or more.

Under § 67-503 where rent is payable at intervals of three months or less the tenant is deemed to hold from one period to another.

Tenancies under § 67-503 are determinable by thirty days written notice on the part of either party under § 67-504, but if the reserved rent is payable at intervals of less than

15. Ibid.
thirty days, the length of notice does not have to be greater than such interval.

Under § 67-505, tenancies from year to year are determinable by thirty days written notice given to the tenant prior to the end of the year. Under § 67-511, a periodic tenancy is not freely assignable.

The part of § 67-504 quoted above has few counterparts in the statutes of other states. A more involved provision is contained in § 1410 in the New York Civil Practice Act.

Under § 67-505, it has been held that no notice by the tenant is necessary.21

KENTUCKY: (Baldwin's Kentucky Statutes 1936 [Carroll's])

§ 2295. If, by contract, a term or tenancy for a year or more is to expire on a certain day, the tenant shall abandon the premises on that day, unless by express contract he secures the right to remain longer. If, without such contract the tenant shall hold over, he shall not thereby acquire any right to hold or remain on the premises for ninety days after said day, and the possession may be recovered without demand or notice, if proceedings are instituted within that time. But if proceedings are not instituted within said time, then none shall be allowed until the expiration of one year from the day the term or tenancy expired; and at the end of said year the tenant shall abandon the premises without demand or notice, or stand in the same relation to his landlord that he did at the expiration of the term or tenancy aforesaid; and so from year to year, until he abandons the premises, is turned out of possession, or makes a new contract.

§ 2296. If by contract a tenancy for less than a year is to expire on a certain day, the tenant shall abandon the premises on that day unless by express contract he secures the right to remain longer. If without such contract the tenant shall hold over he shall not thereby acquire any right to hold or remain on the premises for thirty days after said day, and the possession may be recovered without demand or notice if proceedings are instituted within that time. But if proceedings are not instituted within said time, then none shall be allowed until the expiration of sixty days from the days the tenancy expired, and at the end of said sixty days the tenant shall abandon the premises without demand or notice, or stand in the same relation to his landlord that he did at the expiration of the tenancy aforesaid, and so on from time to time until he abandons the premises, is turned out of possession, or makes a new contract.

§ 2326. Termination of tenancy; one month's notice. A tenancy at will or by sufferance may be terminated by the landlord giving one month's notice, in writing, to the tenant requiring him to remove. (1893, c. 141, p. 455, § 36.)

The one month's notice requisite under § 2326 to terminate a tenancy at will or by sufferance does not apply to a tenancy for five years converted into one from year to year by holding over more than ninety days.27 In Kentucky, an Indefinite tenancy where rent is paid monthly is called a tenancy at will terminable upon thirty days' notice.28 And a tenant holding over after the 90 days has been called a tenant by sufferance from year to year and not entitled to a notice to quit. Pontrich v. Neiman.29

These statutes are apparently a statutory resolution of the problem arising at common law upon a holding over. In most states, a notice to quit is required in case of a periodic tenancy arising from a holding over. Before the assent of the lessor to a continued occupation can be inferred, however, from his conduct, the tenant is a tenant at sufferance subject to summary removal; after the assent may be inferred, he becomes either a tenant at will or a periodic tenant removable only upon notice.30

17. Kentucky Fluorspar Co. v. Pierce, 197 Ky. 72, 245 S. W. 889 (1922).
The court may find the intention of the parties is to have a month to month tenancy upon a holding over rather than an occupation coming under § 2295. Even though the tenant is not in for the 90 days after the end of the term other circumstances may furnish a clear indication of an intent to effect a year to year tenancy.21

In Kentucky, probably, however, one in under an invalid parol lease will be regarded as a tenant at sufferance rather than from year to year.22

Up to 1873, a statute required year to year tenancies in the cities and towns to be ended by a three months' notice, elsewhere six months.

A tenancy from month to month may arise from a valid indefinite leasing and is terminable upon thirty days' notice.23

Montana: (Rev. Codes, 1935)

§ 6744. Notice of terminating tenancy at will. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by the Code of Civil Procedure, to remove from the premises within a period of not less than one (1) month, to be specified in the notice; but none of the estates or tenancies embraced by the provisions of division four (4) of § 6723 is a tenancy or estate at will.

§ 6746. Re-entry—when and how to be made. Whenever the right of re-entry is given to the grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' notice, as provided in the Code of Civil Procedure.

§ 6769. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

§ 7743. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

§ 7744. Hiring of lodgings for indefinite term. A hiring of lodgings or a dwelling-house for an unspecified time is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Under § 7744, a hiring of lodgings and dwelling houses for an indefinite time is presumed to be for rent period.

§ 7745. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts a rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month, when the rent is payable monthly, nor in any case one year.

§ 7746. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

§ 989. ... In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, and shall be entitled to hold under the terms of the lease for another full year ... and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

On the ground that the statutory definition of estates included estates at will, but not periodic tenancies, it has been said there is no such thing as a periodic tenancy in Montana; therefore, a common law month to month tenancy comes under §§ 6744 and 6746 requiring both a thirty day and three day notice on the part of the lessor. The court does not make any reference to § 6769 which appears to recognize a tenancy from month to month.

New York: (Real Property Law)

§ 228. Termination of tenancies at will or by sufferance, by notice.

A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may reenter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

§ 232. An agreement for the occupation of real estate in the City of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of October next after the possession commences under the agreement.

The above statute has had a chequered history having been altered in 1918 and 1920. The reports of the decided cases would indicate that the courts are loath to find a tenancy within its provisions when it is possible to find a periodic tenancy in its stead.

Since 1920, a "monthly tenant or tenant from month to month" in New York City may not be removed unless the lessor gives thirty days' notice.

This statutory set-up has little logic to support it. The question is still being argued whether § 228 excludes the necessity of notice on part of lessee and there is still some doubt as to whether a tenant from month to month in New York City need give notice.

24. Boucher v. St. George, 88 Mont. 162, 293 Pac. 315 (1930) (tenancy at will from month to month—the court does not refer to § 6769, which seems to recognize a tenancy from month to month). West v. Lungren, 21 Neb. 178, 31 N. W. 637 (1905); Bailey v. Lund, 278 N. W. 505 (Neb. 1935).


28. See p. 360, supra.
ARIZONA:

§ 1956. A tenancy from year to year terminates at the end of each year, unless written permission be given to remain for a longer period, the permission shall specify the time which said tenant may remain, upon the termination of which the tenancy expires. A lease from month to month may be terminated by the landlord giving at least ten days previous notice thereof. In cases of non-payment of rent no notice shall be required. A tenant who holds possession of property against the will of his landlord, except as herein provided, shall not be considered a tenant at sufferance or at will.

§ 1957. When the lessee holds over and retains possession after expiration of the term of the lease without express contract with the owner, such holding over shall not operate to renew the lease for the term of the former lease, but thereafter the tenancy is from month to month.

Despite the wording of § 1957, it is probable that the tenancy from month to month will be governed by consistent terms or conditions of original lease.

Under § 1956 it would seem that the tenancy would terminate without notice at the end of each year. This language might persuade a construction of a new tenancy each year while a periodic tenancy of lesser periods might still be considered a continuous tenancy.

The present language of § 1956 dates from 1937. Prior thereto, there was no clause (c) and the section contained the following sentence not now found: "A tenant who holds possession of property against the will of his landlord, except as herein provided, shall not be considered a tenant at sufferance or at will."

COLORADO: (Ann. Stats. 1935)

In all cases of tenancy from year to year, the same may be terminated by notice, in writing, to quit, duly served three months prior to the end of the year; a six months' tenancy may be terminated by service of a similar notice of one month; a monthly tenancy may be terminated by a similar notice of ten days; a tenancy at will may be terminated by a similar notice of three days; such notice shall describe the premises, the particular time when the tenancy will terminate, and be signed by the party giving such notice, his agent or attorney, provided no notice to quit shall be necessary from or to a tenant whose term is, by contract, to end at a time certain. Any person in possession of real property, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown.

DIST. OF COL.: (Code, 1929) Tit. 25

§ 312. A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days' notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run.

Bachelor or maiden employees of the Government living in the characteristic one room of a rooming house on a weekly basis might wonder why this statute does not make any reference to week to week tenancies. Apparently week to week and year to year tenancies in the District of Columbia would be governed by the common law.

It has been held that the thirty days' notice requirement includes holidays.29

GEORGIA: (Code Ann.)

§ 61-104. Where no time is specified for the termination of the tenancy, the law construes it to be for the calendar year; but if it is expressly a tenancy at will, either party may terminate it at will.

§ 61-105. Two months' notice is necessary from the landlord to terminate a tenancy at will. One month's notice is necessary from the tenant.

§ 61-104 has been held inapplicable when by necessary implication the duration of the tenancy is more than a year, although the agreement is otherwise silent in regard to the term.

HAWAI'I: (Rev. Laws 1935)

§ 4017. Notwithstanding other provisions of law to the contrary, when real property is rented for an indefinite time with monthly or other periodic rent reserved, such holding shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall only be terminated by written notice to vacate or of intention to vacate given ten days or more preceding the end of any of said months or periods by either landlord or tenant to the other; provided, that when any tenant, without such notice having been given by either landlord or tenant to the other, retains possession of rented premises for any period of time after the expiration of such month or period, a valid and enforceable tenancy shall be thereby created for an additional month or period, as the case may be.

§ 4017 would seem to deal only with the three types of indefinite tenancy other than that springing from a holdover. Yet, the statute might be construed to cover the latter. It appears to cover the holding over referred to in § 4013, although, perhaps, it is restricted to valid parol holdings.

LOUISIANA: (Civil Code, 1932)

§ 2685. If the renting of a house or other edifice, or an apartment, has been made without fixing its duration, the lease shall be considered to have been made by the month.

§ 2686. The parties must abide by the agreement as fixed at the time of the lease. If no time for its duration has been agreed on, the party desiring to put an end to it must give notice in writing to the other, at least ten days before the expiration of the month, which has begun to run.

§ 2687. The lease of a predial estate, when the time has not been specified, is presumed to be for one year, as that time is necessary in this State to enable the farmer to make his crop, and to gather in all the produce of the estate which he has rented.

§ 2688. If, after the lease of a predial estate has expired, the farmer should still continue to possess the same during one month without any stip having been taken, either by the lessor or by the new lessee, to cause him to deliver up the possession of the estate, the former lease shall continue subject to the same clauses and conditions which it contained; but it shall continue only for the year next following the expiration of the lease.

LA. GEN. STAT. (1932)

§ 6597. When any person having leased any house, store or other building, or landed estate, for a term of one or more years, or by the month or otherwise, either verbally or otherwise, shall be desirous of obtaining possession of the said leased premises upon the termination of the lease, either by limitation or by non-payment of the rent when due, or any other breach of the said lease, he shall demand and require in writing his tenant to remove from and leave the same, allowing him five calendar days from the day such notice is delivered.

A holding over after a nine months' letting has been held to create an indefinite tenancy. And a tenancy from month to month implied from holding over has been held to continue the lease rather than to effect a new leasing. A verbal lease to end on fifteen days' notice has been held to be a lease by the month.


§ 13492. All estates at will or by sufferance may be determined by either party by three (3) months' notice given to the other party; and when the rent reserved in a lease is payable at periods of less than three (3) months, the time of such notice shall be sufficient if it be equal to the interval between the times of payment and such notice shall not be held void by reason of its mentioning a day for the termination of the tenancy not corresponding to the conclusion or commencement of any such period, but in any case the notice shall be held to terminate the tenancy at the end of a period equal in time to that in which the rent is made payable. . . . And in all cases of tenancy from year to year a notice to quit, given at any time, shall be sufficient to terminate said lease at the expiration of one (1) year from the time of the service of such notice.

This statute does not require the notice to quit to be for the end of the term.

Under § 13492, the court has considered the holdover paying rent to be a tenant at sufferance whose tenancy is terminable by a notice equal to the interval between times of payment, and where rent is paid monthly, a notice to quit served on January 30 to quit on or before March 1, the anniversary of the monthly term, is effective. This statute does not preclude an express periodic tenancy.24

MISSOURI: (Ann. Stats., Vol. 7)

§ 2583. Either party may terminate a tenancy from year to year by giving notice, in writing, of his intention to terminate the same, not less than sixty days next before the end of the year.

§ 2584. A tenancy at will or by sufferance, or for less than a year, may be terminated by the person entitled to the possession by giving one month's notice, in writing, to the person in possession, requiring him to remove; all contracts or agreements for the leasing, renting or occupation of stores, shops, houses, tenements or other buildings in cities, towns or villages, not made in writing.

NEW JERSEY: (Comp. Stats. 1709-1910)

P. 3077

§ 29. That in all cases where any tenant is, or may be entitled by law to notice to quit the premises by him holden, in order to determine his tenancy, three months' notice to quit as aforesaid shall be deemed and taken to be sufficient.

§ 32. That in any letting where no term is agreed upon and the rent is payable monthly, so long as the tenant pays the rent as agreed, it shall be unlawful for the landlord to dispossess the tenant before the first day of April succeeding the commencement of such letting, without giving the tenant three months' notice in writing to quit. . . .

Periodic tenancies are recognized in New Jersey. In 1920, the three months' notice requirement came in. The court was confronted with an attack upon the constitutionality of the statute on the ground that it impaired the obligation of contract as to periodic leases begun prior to the statute. The court25 held each monthly letting was on a new contract and the statute was constitutional.

Despite § 29, it has been said that in a year to year tenancy arising from a holding


over six months' notice must be given.  

**Virginia:** (Code, 1936)

§ 5517. A tenant from year to year, month to month or other definite term, shall not, by his mere failure to vacate the premises upon the expiration of the lease, be held as tenant for another term when such failure is not due to his wilfulness, negligence or other avoidable cause, but such tenant shall be liable to the lessor for use and occupation of the premises and also for any loss or damage sustained by the lessor because of such failure to surrender possession at the time stipulated.

§ 5518. If any tenant from whom rent is in arrear and unpaid shall desert the demised premises and leave the same uncultivated or unoccupied, without goods thereon subject to distress sufficient to satisfy the said rent, the lessor or his agent may post a notice in writing, upon a conspicuous part of the premises, requiring the tenant to pay the said rent in the case of a monthly tenant within ten days, and in the case of a yearly tenant within one month from the date of such notice. If the same be not paid within the time specified in the notice the lessor shall be entitled to possession of the premises and may enter thereon, and the right of such tenant thereto shall thenceforth be at an end; but the landlord may recover the rent up to that time.

§ 5516. A tenancy from year to year may be terminated by either party giving notice in writing, prior to the end of any year of the tenancy, for three months of his intention to terminate the same. A tenancy from month to month may be terminated by either party giving thirty days' notice in writing, prior to the end of the month, of his intention to terminate the same. This section shall not apply where, by special agreement, no notice is to be given.

**Washington:** (Remington, 1932)

§ 812. Unlawful detainer, defined.

(2) When he having leased property for an indefinite time, with monthly or other periodic rent reserved continues in possession thereof, in person or by subtenant, after the end of any such month or period, in cases where the landlord, more than twenty days prior to the end of such month or period, shall have served notice (in manner in this act provided), requiring him to quit the premises at the expiration of such month or period.

§ 813. Tenancy upon agricultural lands—Effect of holding over.

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term, without any demand or notice to quit by his landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of his landlord or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

§ 10618. Tenancies from year to year are hereby abolished, except when the same are created by express written contract.

§ 10619. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other.

In Washington, the tenancy from month to month is considered continuous.  


lease within the Statute of Frauds provides for thirty days' notice, it was held it could be terminated upon twenty days' notice required under § 812.\(^3\)

**Wyoming:** (Rev. Stats. 1931)

§ 97-207. In this state, there shall not exist the relation of landlord and tenant, by implication or operation of law, except a tenancy by sufferance. Upon the expiration of a term created by lease, either verbal or written, there shall be no implied renewal of the same, for any period of time whatever, either by the tenant holding over or by the landlord accepting compensation or rent for or during any period of such holding over. Such holding over by the tenant and acceptance of rent by the landlord shall constitute only a tenancy by sufferance, with the rights, duties, obligations and incidents of such tenancy.

§ 97-208. No lease which shall have expired by its own limitation shall be again renewed except by express contract in writing, whether the original lease be written or verbal. Nor shall any other tenancy than that by sufferance exist after the termination of the original lease, unless created as aforesaid, by express contract in writing.

4.

**Alaska:**

§§ 5582, 5583 and 5585 of the Compiled Laws of Alaska deal with a forcible detainer action against a lessee. Under these sections, a ten days' written notice is necessary before bringing the action except when letting or occupation is for agricultural purposes, in which case ninety days' notice is necessary and the lessee is to have the right of access to cultivate and harvest crops sown before notice to quit was given.

**Delaware:**

Delaware has perhaps the most elaborate provisions concerning periodic tenancies which may be found in any state.

§ 4570 of the Revised Codes of Delaware (1935) provides for three months' notice before the end of the term to terminate the tenant's tenancy, whether such tenancy is so created in its origin or as the result of a holding over.

§ 4571 raises a presumption of a tenancy from year to year where a tenancy is not expressly limited, except of houses and lots usually let for less time than a year. No estate should be deemed to be an estate at will which could be held to be a tenancy from year to year.

§ 4987 provides that where no term is expressly limited a demise of a year shall be inferred, except as to houses and lots usually let for a less time.

§ 4989 provides that after the end of a term for one year leasing shall be by the month except as to leasing of farm lands used by the tenants. When a letting is by the month, a month's notice to quit is required and when the letting is by the week a week's notice is sufficient.

§§ 4987, 4990 and 4992 contain special provisions relating to New Castle County.

**Idaho:**

§ 54-307 of the Idaho Code (1932) provides that in month to month leasings the landlord by a 15-day notice prior to the end of the month may change the terms of the lease effective at the expiration of the month. This statute settles a point in Idaho which is not clear elsewhere.

**Maryland:**

§ 1 of Article 53 of the Annotated Code of Maryland (Bagby) provides for a month's notice on the part of the lessor to terminate a tenancy at will.

§ 7 of Article 53 (Flack, 1935 Supp.) makes the provisions of the preceding sections

---

38. Union Oil Co. v. Walker, 150 Wash. 151, 272 Pac. 74 (1928).
of this article applicable to periodic tenancies, but in cases of tenancies from year to year in the counties a six months' written notice prior to the end of the current year is required and in monthly or weekly tenancies a like notice respectively of one month or of one week must be given.

**Mississippi:**

§ 2224 of the Miss. Code (1930) provides for a two months' written notice to terminate a year to year tenancy, a one month's notice for one-half or one-quarter year tenancy, and a week's notice for a weekly or monthly tenancy.

The Mississippi Code of 1906 brought in the present language.

It is probable that the notice must be given for the end of the term. 23

**New Hampshire:**

§ 1 of Ch. 357 of the New Hampshire Pub. Laws (1926) creates a presumption of tenancy at will, unless a different contract is shown.

§ 3 provides that where rent is payable more often than once in three months a thirty days' notice suffices to terminate the tenancy.

§ 7 provides for seven days' notice upon a holding over.

Here again we meet that lowly hybrid—tenancy at will from year to year. 42

**New Mexico:**

Forcible entry and detainer action is maintainable against a tenant from month to month after a thirty days' written notice. 44

Another statute provides that in this and other situations a three days' written notice must be given to the tenant to quit. 45

**North Carolina:**

A year to year tenancy is terminable by one month's notice prior to the end of the current year. A like notice of seven days and of two days is required respectively to terminate tenancies from month to month and from week to week.

In Halifax County, seven days' notice is required to terminate a week to week tenancy. 46

Formerly, a three months' notice was required to terminate a year to year tenancy, and fourteen days to end a month to month occupation. 47

**North Dakota:**

§§ 6092-6094 of the Compiled Laws of North Dakota 1929 are similar to §§ 7743-7746 of Revised Codes of Montana, supra, except that the clause appearing before the last two clauses in § 7745 is not reproduced in the North Dakota Laws.

**Oregon:**

Under § 5-207 of the Oregon Code (1935 Supp.), where a monthly rent is reserved on an indefinite tenancy, it is considered to be a month to month tenancy terminable at any time by thirty days' notice.

One who enters with the consent of the lessor and without a time of duration mentioned but yearly rent reserved is deemed a tenant from year to year where tenancy is

39. Hamilton v. Federal Land Bank, 175 Miss. 462, 167 So. 642 (1936); Wilson v. Wood, 84 Miss. 728, 36 So. 609 (1904); Usher v. Moss, 50 Miss. 203 (1874).


44. Vinson v. Corbin, 85 N. C. 105 (1881).

terminable by a sixty days' notice. In other than month to month tenancies, the notice should be for the length of the rental period before the end of the period. § 5-202 includes in classification of estates in land tenancies from year to year and month to month.

**Pennsylvania:**

Under § 366 Penna. Stats. (Purdon's Tit. 68), indeterminate tendencies may be terminated by the landlord only by thirty days' notice.

A holding for years or at will may be determined by a three months' notice but in the case of a tenancy for years the tenant could not be removed before the end of his term. Where there is an indefinite letting at a monthly renting, it is not clear whether a court will find a tenancy at will terminable by a thirty day notice given at any time or a tenancy from month to month terminable by a thirty day notice ending with the expiration of the rental month.

The statute has been used in respect to a tenancy from year to year. *Phoenixville Borough v. Walters.* The tenant of a farm for agricultural purposes from year to year is entitled to emblements.

**Rhode Island:**

Under § 5863 of the Gen. L. of R. I. (1923) c. 385, parol tenants from year to year are to quit at the end of the year upon three months' prior notice. Parol tenants having terms of less than a year are to quit upon a notice equal to half of the period of the term but not to exceed in any case three months.

§ 5865 provides for similar notice on the part of the tenant. Rhode Island Laws (1926) c. 856 states that if no time of termination is agreed it shall be considered a tenancy from year to year. But, in the case of a letting by the month, the letting is deemed to be from month to month and in the case of a letting by the week, from week to week.

**South Carolina:**

Parol leases give a tenant the right to possession for a term no longer than twelve months under S. C. Code of Laws (1932) § 8806.

**South Dakota:**

§§ 1059-1062 of Comp. Laws are similar to §§ 7743-7746 of Montana.

**Utah:**

Under § 104-60-3, Utah Rev. Stats. (1933), 15 days' prior notice to the tenant is necessary to terminate a periodic tenancy.

**West Virginia:**

Under § 3655 of the West Virginia Code (1932), three months' notice prior to the end of a year terminates a year to year tenancy. A periodic tenancy of less than yearly periods is terminable by a notice equal to the length of a period. The statute uses the term "periodic tenancy".

**Wisconsin:**

Under § 234.03 Wis. Stats. (1935), tenancies at will or sufferance are terminable by thirty days' notice but where rent is reserved in a recent will at payable periods of less than a month, the notice is sufficient if equal to the interval between the times of payment.

---

47. Id., at § 5-226.
49. In Robinson v. Kuhnen, 83 Pa. Super. 337 (1924), the members of the court split on this question.
50. 147 Pa. 501 (1892).
Contributors to This Issue

EUGENE J. KEEFE, A.B., 1920, Holy Cross College; LL.B., 1923, Yale Law School. Member of Connecticut and New York Bars. Lecturer in Law, 1925-1934, Associate Professor of Law, 1934 to date, Fordham University, School of Law. Author of Provability of Contingent Claims in Bankruptcy (1937) 6 FORDHAM L. REV. 18.

REV. WALTER G. STRAUSS, S.J., A.B., 1914, M.A., 1915, Woodstock College, Md.; Ph.D. 1923, Gregorian University; Professor of Physics, 1915-1919, Georgetown University; Professor of Physiology, 1924-1930, Georgetown University, Medical School; Professor of Psychology, 1923-1925, Georgetown University; Director of Psychology Department, 1931-1938, Fordham University Graduate School.


SISTER M. ANN JOACHIM, O.P., LL.B., 1923, LL.M., 1924, University of Detroit, School of Law; Ph.D., 1936, International Catholic University, Fribourg. Member of Michigan and U. S. Supreme Court Bars. Professor of Business Law and Political Science, 1936 to date, Siena Heights College.

The views expressed in any article, note, comment or book review are those of the individual contributor and not those of the FORDHAM LAW REVIEW.