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## Editorial

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### Licence to Confuse

Landlord and tenant law has developed from the regulation of arrangements by which landowners could effectively manage and delegate the husbandry of their farmland, to incorporate a complex network of rules aimed at correction of injustice which may result from the imbalance of economic power between owners and occupiers of land.

The Rent Acts are intended to provide a regulatory framework within which parties to a lease can agree on their legal rights and obligations at the outset with a measure of certainty. The greater the complexity of the rules of statute, the less effective the law becomes in achieving this end. An equivocal interpretation of the statute by the courts must inevitably vitiate the success of the legislation even further. If the law is found deficient and ineffective to counter a particular (albeit contrived) situation, the protection conferred by the statute must be extended.

This view was upheld recently by the Court of Appeal in *Street v Mountford* (*The Times*, May 3, 1985). If the law denied occupiers protection in a manner not contemplated by the legislation, "this was a matter Parliament may have to consider". The statute could become more complex as a consequence, but at

least we are all clear as to what the words of the legislation mean.

The House of Lords has taken a different view. Despite the fact that Mrs Mountford signed a declaration at the foot of the agreement she had made, to the effect that she understood and accepted that "the . . . licence . . . does not and is not intended to give a tenancy protected under the Rent Acts", their Lordships decided that the agreement conferred a tenancy upon her. The loophole through which Mrs Mountford's agreement sought to slip was viewed as repugnant to the whole scheme and spirit of Rent Act protection. For, she had been granted a term at a rent with exclusive occupation, which amounted to the same "quality of occupation" as a lease. It is thus now necessary to look to the "quality of occupation" and determine whether, despite both parties having explicitly agreed to a licence, the occupier can be considered to enjoy the type of occupation of a tenant. On construction of the terms of the agreement the Court of Appeal had reached the conclusion that Mrs Mountford was not a tenant. The new principle to be applied "save in exceptional circumstances" is made even less clear as a consequence of Lord Templeman's adoption of the term "exclusive possession" in the leading judgment, in the sense that exclusive occupation has been used previously.