

# PART I

## Private Law

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### CHAPTER I

## Property and Conveyancing

CORNELIUS J. MOYNIHAN

### A. REAL PROPERTY

§1.1. **Landlord and tenant.** The termination of a tenancy at will by reason of a conveyance of the fee by the landlord is frequently followed by the creation of a new tenancy at will between the former tenant and the new landlord. More often than not this new tenancy arises by implied agreement between the parties. Whether such tenancy has been created is a question of fact but the payment of rent in advance and the unqualified acceptance by the landlord are prima facie evidence of a new tenancy and, if nothing more appears, control the issue.<sup>1</sup> Moreover, if a new tenancy has been created by the conduct of the parties it has been said that by implication the terms are the same as those of the former tenancy.<sup>2</sup> The new landlord, it has been held, has no greater rights under the new tenancy than his predecessor had under the old.<sup>3</sup>

Cornelius J. Moynihan is Professor of Law at Boston College Law School. He is the author of *A Preliminary Study of the Law of Real Property* (1946) and a contributing editor of *American Law of Property* (Part 7, *Conveying Property*) (1957).

The author wishes to acknowledge his indebtedness to Wendell M. Butler of the Boston Bar for the material on legislative developments in this chapter. He is also indebted for research assistance to Thomas F. Murphy, a member of the Board of Student Editors of the *American Lawyer*.

§1.2. \* Although the conveyance of the structure is usually in fee, a transfer of a portion of the reversionary interest, as by a lease for years, also terminates the existing tenancy at will. *Pratt v. Farrow*, 15 Allen 712 (Mass. 1867).

\* *Maurillo v. Ryan*, 229 Mass. 653, 100 N.E.2d 480 (1952); *Seagle v. Collins*, 221 Mass. 425, 73 N.E.2d 729 (1947).

\* *Korvickowski v. Spillane*, 220 Mass. 282, 69 N.E.2d 370 (1946); *Seaton v. Seaton*, 222 Mass. 24, 18 N.E.2d 720 (1948).

\* *Korvickowski v. Spillane*, 220 Mass. 282, 69 N.E.2d 374 (1946) (new landlord denied right of inspection of premises because such right had not been a term of the former tenancy).

# Chapter 1 Property And Conveyancing

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