# Urban Landlords and Tenants

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## Abstract and Keywords

This chapter examines legal and epigraphic sources devoted to the renting of mass housing in Rome and the other major cities of the Empire. Building on the pioneering work by Frier in 1980, it argues that the legal sources reveal a sophisticated system of subletting that was developed to accommodate the upper-class owners of these properties and left the daily management of them in the hands of venture capitalists. This was done not only to relieve these individuals of the stigma associated with commerce, but also to spread the financial risk of urban property investment among both owners and venture capitalists.

Keywords: letting and hiring, locatio conductio, subletting, insula, cenaculum

# 48.1 Introduction

WITH a population of close to a million inhabitants and a steady stream of itinerant visitors, the city of Rome was, by the end of the Republic, the largest of the ancient world by a considerable margin (Stambaugh 1988, 89). At this time, it was experiencing a wave of immigration, mainly from the Italian mainland, one of a number of successive waves of immigration that had taken place since the conclusion of the Second Punic War (Moatti 2013, 78). These intermittent population surges had a profound effect on the urban landscape of the city: the authorities had to reconsider fundamental issues of food supply, sanitation and, above all, housing, in order to accommodate new arrivals. In theory, several solutions to the housing problem were available, but in practice the preferred solution of the elite who owned the land was to create mass housing in the form of tenement buildings for Rome’s growing population. This choice, it will be argued, was not merely based on the topography of Rome and the physical constraints of the city, but was in fact rooted in economic concerns. This chapter will focus on the rise of mass housing as a form of habitation in Rome and in the cities of the Empire (although the focus will be on the former, for which most information is available, rather than the latter) (on the related issue of urbanism and the complex distinction between urban and rural more generally in the

Roman world see Erdkamp 2013, 241–242, 245–246). It will, like chapter 47 by Aubert, focus on the economics of such mass housing using legal and other sources in an attempt to provide a social context in which these rules operated. To that extent, the approach followed in this chapter in analysing the ancient city is both topographical and typological (Stambaugh 1988, 2).

At the start, the limits of this chapter should be made clear. First, there is an issue of terminology. While Roman legal sources use the term *insula* to describe such mass housing, the precise meaning of the term is open to interpretation (Morley 2013, 33). It was clearly not a technical term in law and the sources suggest that it had a spectrum of meanings, ranging from elegant "apartment buildings" with clearly identifiable apartments (*cenacula*) spread over a number of floors around an inner courtyard, to the much (p. 636) more squalid and dangerously unstable buildings inherited by Cicero from the banker M. Cluvius (*Att*. 14.9.1, discussed by Frier 1978). The latter buildings were often hastily and poorly constructed and housing the very lowest (often transient) members of society (for a cautious account of the height of [and therefore size of] *insulae* see Storey 2013, 156–159). In light of this, it is perhaps best to define an *insula* with reference to its alternative, the Roman *domus*. Whereas the *domus* was a single residential unit housing the *familia*, an *insula* was mass housing that could potentially house a number of *familiae* (see generally Wallace-Hadrill 1994; Storey 2013, 151; a useful comparison may drawn with the *fundus* as a legal concept with economic facets, on which see de Neeve 1984).

In second place, there is an issue of the volume and nature of the evidence. While writers such as Diodorus Siculus, Martial and Juvenal provide vivid accounts of the trials and inconveniences of city living, the typicality and representative nature of their experience should be approached with care. At the lower end of the social spectrum, city living was clearly an ordeal, and the sources suggest squalid, crowded conditions. This stands in sharp contrast to the elegant remains uncovered in locations like Ostia that were clearly inhabited by a better sort of tenant. It is therefore important to remember that mass housing did not come in only one size or form. It could consist of a number of different configurations depending on the size, location and geography of the town or city, and catered to a diverse group of tenants from different social groups.

Furthermore, with the exception of cities such as Pompeii, Herculaneum, Ostia and a few cities in the Greek East (e.g. Ephesus), it can be difficult to identify *insulae* from the archaeological record, especially at the lower end of the spectrum. It must not be forgotten that, at this lower end, domestic and industrial space was far more "fluid and dynamic" (and therefore less clearly demarcated: Storey 2013, 161). As Frier (1980) pointed out, archaeological remains tell us little about the legal rules that applied to such mass housing (for similar problems with commercial premises see Broekaert and Zuiderhoek 2013, 322). To understand these, we must look at the legal evidence as redacted in Justinian's compilation of the sixth century AD. But such evidence has its own problems. The legal material contained in Justinian's compilation is but a fraction of the original source material and is, as Frier has shown, more concerned with the upper end of the social spectrum than the lower. If, as Morley (2013, 32) has suggested, Rome during this pe-

riod alone had nearly 50,000 *insulae*, their footprint in Roman law (and its application) must have been far greater than is visible in the remaining legal sources. To that end, one must be aware that the legal sources present a "normative" picture of what *should* happen. The *insula* of the legal sources is therefore a construct, which in reality may not have existed in such form anywhere and at any time in the history of the Roman Empire, much like the idealised "ancient city" created by Moses Finley in his seminal, if controversial work *The Ancient Economy* (Finley 1973).

# 48.2 The Economics of Ownership of *Insulae*

This brings us to the law that applied to *insulae*, as can be gleaned from Roman legal sources. Given the normative nature of the legal rules in question, we will also employ (p. 637) a normative construction of an *insula*; that is, an average example of mass housing that contains both residential and commercial space. At the outset, it should be noted that the legal sources rarely mention commercial space in the discussion of *insulae*. This may be significant in itself, but more research is required to explain this absence. It seems fitting to start at the top, namely with the owners of such *insulae*, since it is here that issue of economics come to the fore most clearly. To that end, two examples from the personal life of Cicero are instructive (Frier 1978). The first is a cluster of properties that Cicero owned on the Argiletum and Aventine. His correspondence with Atticus (*Att*. 12.32.2) regarding these properties is mainly concerned with using the rental income from them to fund the studies of his son. As Frier has shown (Frier 1978, 1 n. 2), Cicero treated these properties, which were located in different parts of the city, as a single asset (compare the comment on *fundus* above). This grouping together may have been, as Frier surmised (Frier 1978, 1 n. 2), because the properties had originally formed part of his wife's dotal property, which he had retained after the divorce to provide maintenance for his son. The second property came from an inheritance. Cicero had accepted the inheritance and subsequently, upon visiting the property, had discovered that some parts of it were near collapse (*Att*. 16.1.5). Nevertheless, he remained optimistic that he could make a profit from the building through rental income.

So what do these to examples reveal? Cicero, a *novus homo* of some wealth, owned a number of these buildings. To him, they were primarily financial assets that could be utilised in order to draw rental income to fund other endeavours (such as the education of his son). As an owner, Cicero does not appear to have been particularly concerned with the welfare of the tenants living in the collapsing building he had inherited from M. Cluvius. His tone is completely business-like when he observes "*non solum inquilini sed mures etiam migraverunt*" (not only the tenants, but also the mice have run away) (*Att*. 14.9.1). One should not judge Cicero too harshly for his tone in this letter, though. After all, he had only recently inherited the property and, in reality, it will have been one of a number than he owned, therefore making any sentimental attachment to the property or its inhabitants unlikely. It was also not a very good neighbourhood. Nonetheless, his comment raises an important point. For most upper-class Romans who owned *insulae*, they were first and foremost economic assets to be utilised financially. Like other assets of this

stripe—warehouses, shops, ships and the like—their owners were mainly interested in the profit that these assets could make.

This then brings us neatly to the issue of the management of these assets rather than the details of how they operated etc. It is a well-established and often repeated *topos* that upper class Romans did not, as a rule, manage their assets personally. While a certain level of financial oversight concerning the accounts of the *familia* formed part and parcel of the responsibilities of a *diligens pater familias*, numerous sources reveal that these individuals used a number of strategies to manage their assets (and not only those located at a distance). One form of management was what might be termed in-house management. Here, the owner could use his slaves in one of two ways; first he could appoint a trusted slave as *institor* (a business agent) specifically to oversee the management of the *insula* and to deal with the tenants, or secondly the *insula* could be given to the slave as part of his *peculium* to manage for profit independently of the oversight of his master as the owner (compare the example of the slaves managing a warehouse on behalf of their owner in the Sulpicii tablets, discussed by Aubert, ch. 47). In both instances the slave would be termed (p. 638) an *insularius* (e.g. D.50.16.166; D.50.16.203). A wide range of possible motives for choosing one form of management over another exist (e.g. can we really envisage that large urban *familiae* all lived under one roof?), but legally the former exposed the owner to a greater level of financial risk than the latter, since in that case the owner's liability was limited to the extent of the *peculium* (see Aubert, ch. 47). It should also be remembered that *insulae* often came with staff (*instrumentum*) that the *insularius* was expected to oversee, as can be seen from Pomponius's definition of *familia urbana* in D. 50.16.166: *non multum abest a vilico insularius: autem urbanorum numero est* (an *insularius* is not vastly different from a *vilicus*, apart from the fact that he counts among the urban [*familia*]). The comparison between *vilicus* and *insularius* here is telling and suggests a management role. The presence of a servile *instrumentum* within an *insula* could give rise to added complications if they were not properly supervised, especially in relation to theft of the tenants' property, a delict for which their owner would be liable.

The second form of management consisted of using free persons (either free born or freed) to manage the *insula* on the owner's behalf. Again, the owner could appoint his freedmen as *insularii* of his properties. The legal ramifications of such an appointment would depend on the legal nature of it and whether the *operae* of the freedman formed part of the scenario. Far more interesting, from a legal perspective, was the indirect management of *insulae* using third parties, "venture capitalists", from out with the *familia* (a pattern also visible in other assets such as warehouses and ships) (Cardascia 1982; du Plessis 2006 and 2012). In this case, the relationship between the owner of the *insula* and the "venture capitalist" was purely commercial. The latter rented the tenement from its owner, usually for a period of five years, with a view to exploit it financially through subletting (du Plessis 2006). Indirect management of this kind had a number of legal advantages. First and foremost, it removed any legal liability of the owner of the building *qua* the tenants. His only legal obligations were towards the primary tenant and they extended primarily to ensuring that the building was and remained in a condition fit for purpose (along with making any necessary repairs during the primary tenant's contractual term).

An associated benefit of this type of arrangement is visible in the patterns of rental payment visible in the sources. As Frier has shown, primary tenants usually paid rent in five annual instalments at the start of each year (Frier 1977). They then recovered the initial financial outlay from their tenants (however they agreed to pay—daily, weekly etc.). Such an arrangement was beneficial to the owner for two reasons. First, it implied a steady fixed annual income at the start of each rental year for a period of five years; and second, it relieved the owner of the burden of having to chase after tenants for their rent. Given the amounts recorded in Cicero's correspondence as well as (seemingly fictional) amounts given in the Digest (e.g. D.19.2.30pr), it is clear that the primary tenant, who rented the entire *insula* from its owner with a view to exploiting it financially, required significant financial resources (du Plessis 2012, 158–159). Not only did he have to stump up the first rental instalment at the start of the contract, but the Digest also clearly implies that his prorated rental payments in instalments to the owner of the building was underwritten by real security (e.g. D.13.7.11.5). What form this real security took one can only speculate, but it has to be remembered that the object of the security had to be something that could sustain its value for the duration of the debt (compare here the rather exotic case mentioned in D.20.4.9, where someone who had rented baths used a single slave called Eros as security for the entire rent).

(p. 639) No contract detailing the letting of an *insula* to a primary tenant has been preserved. Although certain rental notices (collected in *FIRA* e.g. *FIRA* III 144, "This lodging is available for rent, it contains a dining room with three couches") exist, scholars are mostly reliant on individual texts from the Digest in which contract clauses that may have been included in such contracts are discussed. Given the normativity of many of these discussions, it is not really possible to draw many firm conclusions. What we can infer from the texts, however, is that a contract of this kind was first and foremost a commercial venture. To that extent, the owner (as landlord) had to ensure that the building was in a fit state of repair to enable the tenant to let out spaces within it. This also implies that the owner was responsible for maintenance. The primary tenant, on the other hand, was mainly obliged to pay the rent on time and according to the provisions stipulated in the agreement. He was also obliged to ensure that the building did not suffer any damage (normal wear and tear excepted) through the actions of the tenants (see below regarding conflagration). To what extent contracts of this kind were "relational" is difficult to tell, especially since we do not have any actual contracts for the letting of a tenement building. It stands to reason that such an arrangement would have been financially beneficial to the owner of the tenement. While this is not the place to enter into the debate about the liquidity of the upper classes and their lack of capital (despite having great landed wealth), it seems conceivable that the commercial arrangement between owner and primary tenant would have involved certain vested interests. If the owner, like Cicero in the example cited, was counting on the money for a number of years (since it was in a sense already pre-allocated for his son's education) his relationship with the primary tenant would have been more than strictly commercial (compare the discussion by Kehoe, ch. 49, about vested interests in agricultural tenancy).

This may also go some way to explaining the existence of a rather strange remedy, termed *deductio ex mercede*: D.19.2.27pr *Habitatores non, si paulo minus commode aliqua parte caenaculi uterentur, statim deductionem ex mercede facere oportet* (Inhabitants of an *insula*, ought not immediately make a deduction from the rent if their use of a part of the apartment has been slightly reduced). This remedy, which seems to have parallels in other areas of the contract of letting and hiring (e.g. *remissio mercedis* in agricultural tenancy, see extensively Capogrossi Colognesi 2005), seems to be based on a distortion of the contractual equivalence between use and payment of rent (du Plessis 2005). It catered for cases where the tenant's use of the property had been affected, but not to the point that it warranted the dissolution of the contract. By employing a deduction of rent, the contract could be salvaged through an adjustment of the rental price to reflect the disturbance. Who the "*habitatores*" in this text are, we cannot tell, but it seems inconceivable that they were low-status, itinerant tenants. The thought of them having the temerity to make a unilateral deduction of their rent is inconceivable in a system such as that of the Romans where status and social position had a profound impact on the availability of legal relief. Whoever these inhabitants were (possibly high-status tenants or even primary tenants), the owner wanted them to stay and was willing to accept a temporary reduction of rent to make that happen.

As for the contractual arrangements between primary tenants and those to whom he had let spaces within the *insula*, information is even scarcer since no contracts of this kind have survived. It is important to remember, as we move further down the contractual **(p. 640)** ladder, that much would have depended on the nature of the *insula* itself. Using Frier's premise concerning the "target audience" of the Roman law of letting and hiring, one must assume that better-off tenants would have utilised the law in a different way from those at the bottom of the social spectrum. We are therefore largely reliant on the matters raised in juristic discussions in the Digest, knowing full well that the lived reality, especially at the bottom end of the social spectrum, must have been very different.

Let us take the issue of the contract first. The Digest implies that the primary tenant contracted with each tenant living in the *insula*. Since we have no examples, it is difficult to speculate as to the form that such a contract would have taken, especially for short-term, transient tenants. I have argued elsewhere, using the mutilated inscriptions relating to the rental of warehouses (discussed by Aubert, ch. 47), that a similar regime may have been in use in *insulae*. Thus, the contract between primary and secondary tenants consisted of a set of "rules of the house" (a *lex contractus*) perhaps inscribed in stone and prominently displayed, supplemented by chirographs recording the fact of the lease and drawn up by the *insularius* (du Plessis 2012, 19–21). Such an arrangement, visible when comparing the epigraphic *lex horreorum* with the practice reflected in the Sulpicii tablets, has distinct practical advantages. The main one is that the "rules of the house" could contain all of the important provisions relating to the maintaining of the *insula* (issues regarding fires, sanitation, litter etc.), which could then be incorporated into the individual agreements. It also means that such individual leases could take on a standard "boilerplate" form.

There are three issues relating to such contracts that I wish to highlight specifically. The first relates to the ever-present danger of conflagration: D.19.2.11.1 *Si hoc in locatione convenit "ignem ne habeto" et habuit, tenebitur etiam si fortuitus casus admisit incendium, quia non debuit ignem habere. aliud est enim ignem innocentem habere: permittit enim habere, sed innoxium, ignem.* (If it has been agreed in the contract that "one shall not have a fire" and someone did have one, he will be held liable even if the conflagration occurred by accident, since he should not have had one. But the matter is different if it was agreed that he could have "an innocent fire", for then he is allowed to have one, provided it is harmless.) This enigmatic text contains two rules. The first, an absolute prohibition on having a fire, has the feel of a provision that would have been included in the "rules of the house" (the rather formal Latin is also indicative). Any tenant who contravened this rule would be liable even when a fire occurred accidentally. The legal effect of this provision is therefore to expand the tenant's usual contractual liability (*dolus* or *culpa*) also to include *casus fortuitus*. But why should this be so? If, as surmised above, the "rules of the house" contain "high-level" matters that could affect the liability of the primary tenant *qua* the owner of the building, any contravention would therefore imperil the contractual position of the primary tenant (du Plessis 2013). As for the final part of this text, it would appear that in certain circumstances, an owner might be willing to permit secondary tenants to have fires, provided they are "innocent fires". What lies behind this exception is anyone's guess. It may have something to do with the existence of commercial premises forming part of an *insula* or with the changes in building regulations after Nero's great fire (combined with the increased presence of fire-fighting personnel and equipment). The way in which fires are dealt with here again underscores the commercial nature of the *insula* as an asset to be exploited for economic gain.

(p. 641) The second issue relates to the payment of rent by individual tenants. As noted above, it was in the interest of the primary tenant to ensure full payment of the rent by his tenants to enable him to make the rental payment to the owner of the building. Roman law assisted the landlord in securing payment of rent by granting him a hypothec over the *invecta et illata* of the tenant (du Plessis 2012, 158–159). In a difficult text about when payment has legally been made, we are given the following information: D.13.7.11.5 *… Plane in eam dumtaxat summam invecta mea et illata tenebuntur, in quam cenaculum conduxi: non enim credibile est hoc convenisse, ut ad universam pensionem insulae frivola mea tenebuntur.* (Clearly my *invecta et illata* is only bound to the extent that I have rented the apartment, for it is inconceivable that it has been agreed that my "odds and sods" are bound in respect of the rent of the entire *insula*.) What this text clearly shows is that there was no direct relationship in law between the owner of the tenement and the secondary tenants. His only relationship was with the primary tenant who had rented the entire building from him. He had no interest in the secondary tenants (compare Cicero's statement above). Their goods were only deemed to be real security to the extent of their rent due to the primary tenant. He had no legal claim over them. The Latin *frivola mea* clearly implies that the stakes were high and the amounts large when it came to the primary tenant.

The final issue to note is that of security of tenure (du Plessis 2012, 160–161). In Roman law, letting and hiring as a consensual contract operated solely in the law of contracts (compare Epstein, ch. 39). A lease did not grant the tenant any limited real rights (possession) over the property as in many modern civil-law systems. The rights acquired by the tenant were solely contractual—use and enjoyment of the property in return for the payment of the agreed rent (a sort of dynamic equivalent *quid pro quo* expressed through the term *synallagma*). Since *insulae* were economic assets, they sometimes transferred from one owner to another with "sitting tenants". Take the example from Cicero's properties that he had inherited from M. Cluvius. Such a transfer could potentially imperil the primary tenant who had a lot invested in the property. Should the new owner decide to use the property for other purposes, the primary tenant had little protection at law. We see a good example of this in the following text: D.19.2.7 (Paul. 32 ad ed.) *Si tibi alienam insulam locavero quinquaginta tuque eandem sexaginta Titio locaveris et Titius a domino prohibitus fuerit habitare, …* (If I let an *insula* to you for 50, you then let it to Titius for 60 and he is prohibited from inhabiting it by the owner …). This very clearly shows the complications involved where absentee owners were involved. In law, the tenant who had been evicted had little recourse against the owner who evicted him. His main (nay only) remedy lay against his landlord, i.e. the primary tenant. It has been suggest by Kaser that this could be resolved by an ancillary *pactum* to the contract (see du Plessis 2012, 160–161 for a full discussion). This is based on a reading of D.19.2.25.1 (Gai. 10 ad ed. provinc.)

Thus, a primary tenant could protect himself against his lack of security of tenure by adding this *pactum* to his contract with the building owner. Should the tenement change hands during the term of his lease, the primary tenant could, if evicted, bring suit against the previous owner for the loss suffered through eviction of his tenants.

So, in the normative world of the law, the relationship between landlord and tenant was a harmonious one based on mutual rights and duties arising from their contract. To what extent the lived reality corresponded to this normative world is impossible to establish though the picture painted by the Latin authors of evicted tenants sleeping under a bridge, (p. 642) of belongings being turfed out onto the street unceremoniously (and then destroyed by an officious aedile) and of a tenant slinking off at night to avoid having to pay rent suggest something altogether different. Again, social status would have had a significant impact on the tenant's access to legal relief. Indeed, one gets the distinct impression that the only tenants that mattered were the better sort of tenant and, more importantly, primary tenants, since owners had a vested interest in their remaining.

# 48.3 Living in an *Insula*

This then brings us to the *insula* itself and the law applicable to such mass housing. We are again here largely reliant on a normative picture constructed from the legal sources. First, the issue of construction: the appearance of mass housing in Rome during the second half of the Republic must be read in the context of the general development of the ur-

ban landscape of Rome. Initially, many of these buildings were not made from the best materials, leading to both collapse and fire. Indeed, Cicero's comment about his inherited tenement is quite telling. The fact that parts of the building were teetering on the brink of collapse did not seem to worry him all that much. He remained confident that matters could be fixed by calling in the architects and that he could still generate a respectable income from it. He also did not seem to be overly concerned by the departure of the tenants, leading one to suspect either that there was a steady supply of willing tenants or that the matter was one to be dealt with by the primary tenant and therefore not really of concern to the owner. Building regulations seem to have improved as part of Augustus's city-wide programme of urban renewal, and further regulations, specifically related to conflagration, were progressively introduced during the course of the Empire (Dumser 2013, 139). Nevertheless, collapse and fire remain stock themes in Roman legal texts on the contract of lease, and Martial's quip about being able to touch his neighbour from the window of his apartment in the adjacent building across the road (Mart. 1.86) suggest that some buildings remained less than sturdy.

One final aspect to explore is how *insulae* and their inhabitants engaged with the civic administration of the city. The *Tabula Heracleensis* contains numerous provisions about the maintenance of streets in front of shops and *insulae*, and empowers aediles to let out the cleaning of said streets at auction should the inhabitants fail to clean said streets (Stambaugh 1988, 44, 114; Laurence 2013, 251). The cost of the contract had to be paid by the inhabitants. Apart from issues of cleaning and maintaining streets, they also crop up in relation to issues of "quasi-delictual" liability (the wording of the Praetorian provision is located in D.9.3.1pr). Take the following example: D.44.7.5.5 *Is quoque, ex cuius cenaculo (vel proprio ipsius vel conducto vel in quo gratis habitabat) deiectum effusumve aliquid est ita, ut alicui noceret, quasi ex maleficio teneri videtur* (He also, from whose apartment, whether it be his or which he has rented or in which he resides for free, something has been thrown down or poured out so that it has caused someone else damage, is deemed to be liable under quasi delict). If something has been thrown down or poured out from an apartment so as to harm another (*ut alicui noceret*), the inhabitant of the apartment is held liable under quasi-delict even if they did not personally throw down or pour out things. (p. 643) This text by Gaius implies a building of a better kind with clearly defined apartments, but as the legal texts demonstrate, it is not always possible to work out who did the throwing or pouring (D.9.3.1.1—D.9.3.5pr). This clearly shows that these rules were designed to apply not only to buildings housing the better sort, but also to those at the lower end of the social spectrum. (Compare the suggestion in Suet. *Caes*. 41 following the interpretation of Moatti 2013, 81–82 that registers of people living in *insulae* were taken by the authorities for the purposes of assessing liability for taxes.)

One final observation regarding conflagration is required. As part of the civic reorganisation of the city of Rome undertaken by Augustus, the office of the prefect of the city was created to oversee city administration (Robinson 1992). Given the preponderance of mass housing, it comes as little surprise that this office also had an impact on *insulae*. As already mentioned in relation to conflagration, matters of keeping fires in a building could be specifically prohibited by the "rules of the house". The motivations for doing so could

go further than merely preventing fire or protecting the asset. Take the following text: D. 1.15. 4 *Imperatores Severus et Antoninus Iunio Rufino praefecto vigilum ita rescripserunt: "insularios et eos, qui neglegenter ignes apud se habuerint, potes fustibus vel flagellis caedi iubere: eos autem, qui dolo fecisse incendium convincentur, ad Fabium Cilonem praefectum urbi amicum nostrum remittes* (The Emperors Severus and Antoninus to Iunius Rufus the prefect of the watch: you are permitted to beat with clubs or whips *insulariii* and those who have maintained fires carelessly; but those who are suspected of having caused a fire deliberately, you will remit them to our friend, Fabius Cilo the prefect of the city). Notice who could potentially be in trouble here: not only the tenants who kept fires carelessly, but also the *insularius*! Of course, given the dating of this text, one should not assume that beatings were meted out in all cases, since by this time the distinction between *humiliores* and *honestiores* had long since become entrenched in matters of punishment. Nonetheless, what we see here is another layer of civic oversight in the maintaining of an *insula*. It also shows quite deftly the interaction between the offices of the prefect of the watch (in charge of fire prevention) and the prefect of the city (in charge of general civic administration) (Lott 2013, 171, 175).

# 48.4 Conclusion

So what does this all amount to? In this chapter I have provided a brief overview of some of the main legal features of the letting of *insulae*. I have chosen this focus precisely because it demonstrates some of the most important economic aspects of the contract of letting and hiring as a commercial contract. This focus necessarily excluded other types of urban property such as "shop houses" (*tabernae*), probably the most common form of habitation in the ancient city, or inns of whatever description, but in fairness these deserve a proper treatment of their own, especially the latter (Frier 1977; Storey 2013, 154). This chapter has made two larger points. First, letting and hiring was a commercial contract. In the case of the letting of *insulae* (much like that of warehouses discussed by Aubert), it was utilised by the owners of these mass housing units as a means to generate an income in money. Urban properties such as these could produce a rental income that **(p. 644)** was on a par with, if not higher than, those produced from tenanted agricultural land. But unlike agricultural tenancy, the vested interests of the owner/landlord extended primarily to the primary tenant. The fate of secondary tenants was of little concern, perhaps reflecting the reality that many of them were transient. As Frier (1980) has already shown, the normative world of the Roman tenant only reflected reality to a certain extent. It is clear that the lived reality, especially at the lower end of the social spectrum, was very different, and one can but speculate whether these individuals would have had access to justice provided for by the contract of letting and hiring in the same way as financially wealthier tenants. One suspects not. Finally, it must not be forgotten that tenancy was an expression of power. The owner of the land on which the *insula* stood was the only person designated owner. Horizontal division of ownership was not a feature of Roman law, and tenants only acquired a contractual right through tenancy. Since so much of Roman prestige was attached to the ownership of land, it stands to reason that the law pro-

tected the interest of the owner, often at the expense of the tenant, even if (as has been argued) the law was written also with a better sort of tenant in mind.

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