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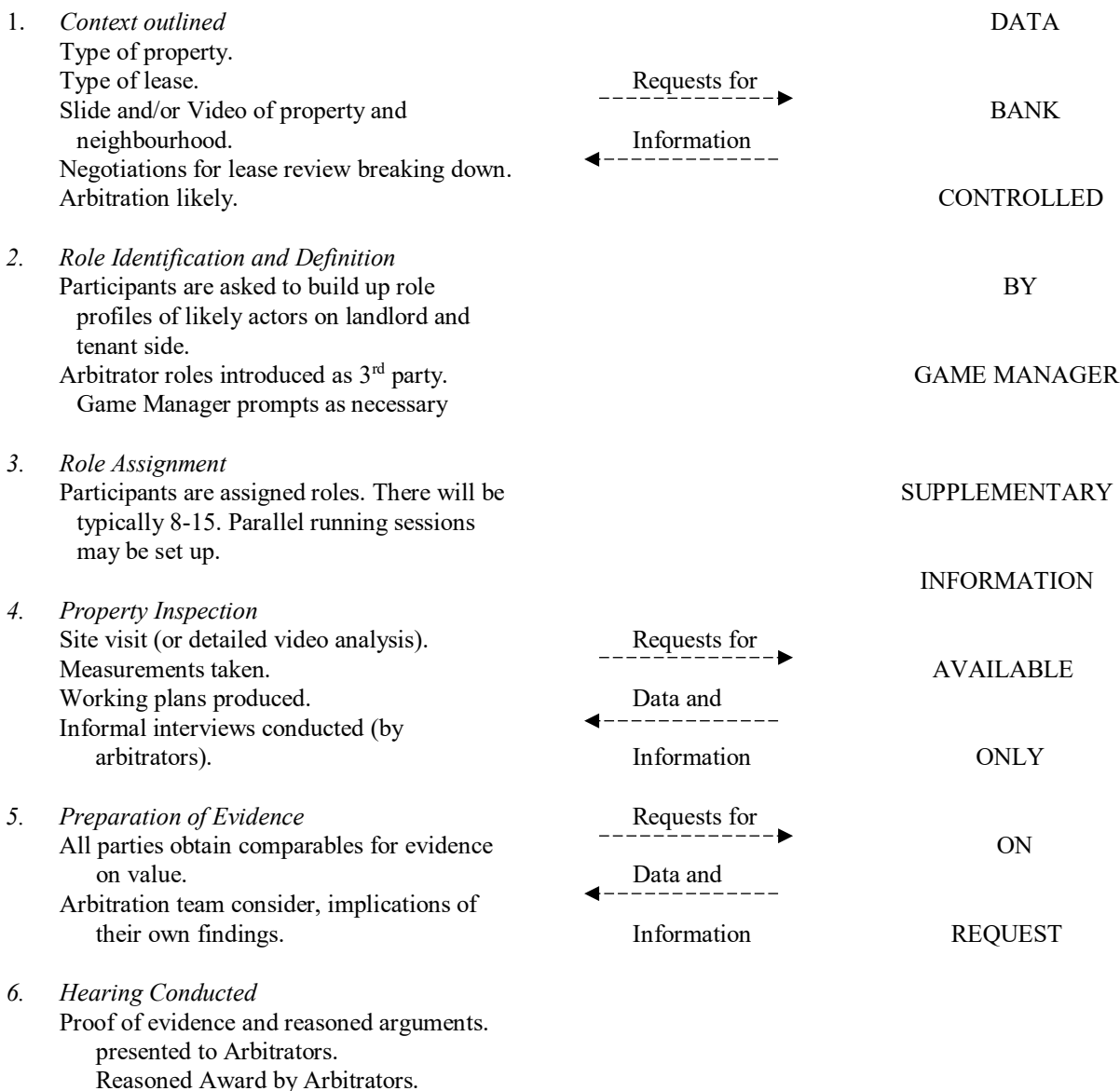
# Simulating Landlord and Tenant Negotiations

Eric Shapiro and Martin Wynn

The landlord-tenant relationship lends itself well to a variety of simulation exercises. Role-players generally have well-defined and conflicting interests and objectives, and the major pieces of legislation relating to landlord-tenant negotiations provide a concise legal framework. As many teachers have found, simple role-play games may be used in an almost ad hoc manner, particularly in smaller tutorial groups, to highlight central issues in landlord-tenant negotiations. By getting one group of students to take the 'landlord's side' and another the 'tenant's side', major issues which will arise in lease negotiations (e.g. user, review and sub-letting/assignment clauses) may be examined from different standpoints.

Clearly, there is a multiplicity of possible variations and adaptations of this simple model, in which more information and greater degrees of complexity may be introduced. One such variation currently being researched at North East London Polytechnic builds on the experience of Departmental staff in running case study simulations<sup>1</sup> and also borrows from formats devised by educational researchers for using Decision Packs in higher education.<sup>2</sup> It provides a basic structure which can be used by other teachers and trainers to draw out critical aspects of landlord-tenant negotiations relating to particular buildings, neighbourhoods and leases. At the same time, role-briefs can be moulded by game participants themselves, and the participatory nature of the simulation affords participants the educational benefits of heuristic and interactive learning.

**Figure 1**



## The basic format

The basic format outlined in Figure 1 requires that the particular premises in question be adequately researched to provide the data and materials which give substance to the game.

Similarly, a data bank must be compiled in which information pertaining to the case can be made available to game participants *on request only*. The data bank will be particularly important when the simulation is run without a site visit. In such circumstances, a wide range of data will be required, including such things as accommodation description, plans, building condition and uses, data on potential comparables, description of locality and situation.

This data can be stored in the form of a data-bank of documents and photos, or in a microcomputer with a listing of data types which may be retrieved.

From experience gained to date, the necessary research and preparation time for setting up such a simulation (excluding video) is approximately 100 man-hours, i.e. one researcher working for two or three days on the project.

## A case example

The following case example is based on one version of the landlord and tenant game currently run at NELP. It is hoped this will help put flesh on the bones of the structure outlined above and provide some insight into the type of exercises that can be designed.

### 1. The context

Negotiations to establish the rent payable under a rent review clause in commercial lease are under way but it looks as though arbitration will be necessary. The property in question is a shop and upper part in a local High Street, which I about to become partially pedestrianised and where a number of multiple retailers are carrying out developments which will change the existing pedestrian flow.

Site visits lasting approximately 1½ hours took place in the morning of the first day. In all, 22 students were involved.

### 2. Role identification and definition

Following group discussion, and bearing in mind student numbers, the following role profiles were agreed upon:

#### Landlords side

- a) Landlord – An individual who owns the property as an investment. He bought two years before the review with assistance from his bank and is currently receiving a deficit income because of the low initial yield. He bought with strong expectations of the review rent and wishes to maximise his income.
- b) Surveyor X (Expert Witness) – Acts for the landlord and previously sold the investment to him. He is a junior partner in a Central London firm of surveyors and has five years post-qualification experience in valuing and letting shops over the country as a whole. No specific local experience. Chartered surveyor and degree holder.
- c) Surveyor Y (Expert Witness) – Brought in to provide local knowledge. He is a senior partner of a local firm of surveyors and estate agents; is qualified as FRICS and has 20 years experience, mainly instructional surveys and building society valuations but does handle and manage a fair number of local shops. Acts mainly for private as opposed to multiple shop keepers.
- d) Legal Representative, Alpha – Solicitor of similar age and experience to Surveyor X. Brash, smart and supremely confident junior partner in City firm of solicitors.

#### Tenant's side

- a) Tenant – Old established family firm of men's outfitters. Used to doing business in a leisurely and gentlemanly fashion. However, high fashion does not cross its threshold. Before property was sold to the present landlord, there was a personal, generally amicable relationship between the tenant and the landlord. The rent level suggested by the landlord would put the tenant out of business.
- b) Surveyor P (Expert Witness) – Partner in local firm of surveyors and estate agents with extensive experience in landlord and tenant cases. The firm is departmentalised and he heads the professional department. Is qualified BSc, FRICS and has 15 years experience. Knows the area but also has had experience in other parts of the country.
- c) Surveyor Q (Expert Witness) – Junior member of West End firm of specialist shop agents. Unqualified, aged 22, but has been involved in letting a number of shops in the immediate vicinity to multiple tenants.
- d) Legal Representative, Beta – Sole practitioner in old established local practice. Has acted for the tenants for generations and something of a 'Rumpole' character, i.e. a bit short on law – but long on experience. The total antithesis of the landlord's solicitor.

### Arbitration panel

- a) Panel Member R – Designated by landlord. Senior Partner, BSc, FRICS, in medium-sized West End practice with known experience in the area. Aged 40.
- b) Panel Member S – Designated by tenant. Senior Partner, FRICS in well-respected local firm with mixed practice. Aged 55.
- c) Panel Member T – Appointed jointly by R & S. Very respected past president of the RICS.
- d) Legal Assessor – Barrister from chambers specialising in L & T Law.

### 3. Role assignment

Students were divided into two groups of 11, and roles assigned randomly, with the staff members playing the Legal Assessor roles in the Arbitration Teams.

### 4. Property inspection

Participant information requirements fell under the following headings:

- a) situation
- b) location
- c) age
- d) character and description
- e) accommodation
- f) uses
- g) improvements

### 5. Preparation of evidence

Proof of evidence prepared by the Experts in conjunction with their clients centred on:

- a) lease definition of rent
- b) matters in lease which affect rent – e.g. user and alienation clauses
- c) improvements, etc to be disregarded
- d) comparables
- e) valuation

### 6. Hearing

The landlord was assumed to be the plaintiff so Legal Representative Alpha opened with a summary of the area of dispute and an introduction of the legal points which were to be the subject of submissions. He asked for surveyors' reports to be exchanged, followed by a short adjournment to consult the landlord on the prospects of settlement, followed by sealed offers. The hearing resumed with the calling of Surveyors X and Y, who gave their evidence in chief, followed by cross-examination and re-examination.

Legal Representative, Beta, commenced with a summary and then called the tenant to give evidence on trading conditions, etc. He was followed by P and Q who presented their evidence in similar fashion to X and Y.

Beta then summed up his case, followed by Alpha.

Each arbitrator was then asked to present a 'reasoned award' (with a majority decision to apply in case of disagreement). Legal representatives may then consider whether any challenge of the award can be made in accordance with the Arbitration Acts.

### Concluding remarks

The recent RICS initiatives in the CPD field reflect the perceived need amongst many professionals to keep up with new developments and broaden their awareness of their own and others' roles in the land administration process. There is no doubt that landlord-tenant arbitration is one such area; indeed, one correspondent has recently noted that 'the level of competence and knowledge of some appointed surveyors (to act as arbitrators) is deplorable and, if ever there were an example of enforced post-qualification education (CPD), then it exists in this direction'.<sup>3</sup> At the same time, within an undergraduate education, there is always the danger that theory will not be linked to practice and that principles and professional code will not be adequately related to the real world.

By running mock hearings based on the format outlined above, using specific buildings and prepared evidence, participants may experience a form of training which is anchored to real life material and has an immediacy which is readily appreciated.

## References

1. See J. R. Overall, M.G. Wynn, et al. 'Teaching Surveying by Case Study Simulations', *Chartered Surveyor*, July 1980; and following operator's manuals available from the Department of General Surveying and Construction, North East London Polytechnic: 1. The Cofferridge Close Game (M.G. Wynn); 2. The Docklands Enterprise Zone Game (W. Rodney/M.G. Wynn); 3. The Hackney Partnership Game (R. Home/M.G. Wynn); 4. The buildings (Rehab. V Renewal) Game (M.G. Wynn).
2. See, for example, C. Athill and W. Dowdeswell, 'Simulation in Decision Making: an Experiment in Industrial Education', *British Journal of Educational Technology*, No. 3, Vol 9, October 1978.
3. Michael Lever, *Estates Gazette* (Correspondence Page), Vol 261, 27<sup>th</sup> February, 1981, p. 727.