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Friedman: Friedman on Leases

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BOOK REVIEW

FRIEDMAN ON LEASES. By Milton R. Friedman.[1] New York: Practising Law Institute. 1974. Pp. 955. Two volumes. Index. $75.00.

Rarely does there appear a law book that overnight gains the acclaim of the legal profession. Such a work, written over a century ago, was *Benjamin on Sales.* Others that come to mind are *Storey on Equity Jurisprudence, Williston on Contracts, Wigmore on Evidence,* and *Beale on Conflicts of Law.* Although few recent texts have gained similar acclaim it seems clear that *Friedman on Leases* will soon join this list of distinguished legal classics.

Most graduates of today's law schools have been exposed to at least a brief introduction to the system of feudal tenure, the basis of the modern law of leases. They are generally familiar with the leading cases in the law of landlord and tenant; occassionally, before entering the practice of law, they may have tried their hands at drafting a simple lease. With rare exceptions, however, the law student or neophyte lawyer knows little of the business problems confronting parties to a ninety-nine-year lease or to a shopping center lease. The sale and leaseback he may have heard of, but he has probably never examined the documentation of such a transaction, much less attempted to draft a leaseback. Since most law school training involves the analysis of appellate decisions, rather than the problems confronting the attorney in a complex lease of business property, the very young lawyer who may well be able to argue a case before the Supreme Court, is justly suspect in his ability to draft even the simplest of leases.

This reviewer and his generation were initiated into the art of lease drafting primarily through trial and error, but with some very valuable assistance from continuing legal education seminars taught by practicing attorneys specializing in the field. The best known of these specialists in lease law is Milton Friedman, who has given generously of his time and experience to seminars conducted by the Practising Law Institute.

Consequently, it is no surprise that the text of his treatise is sprinkled with information, some of which is familiar to experienced practitioners, but most of which is unknown to beginners. A rudimentary but helpful hint to draftsmen deals with the avoidance of the terms "lessor" and "lessee." On page 13 appears the following:

> Throughout this text the parties are invariably referred to as "landlord" and "tenant," rather than as "lessor" or "lessee." This usage may appear to have some feudal, or at least social, connotations. The reason for it is entirely prosaic. Neither the writer nor any of his secretaries, good or bad, nor any people with whom he has dealt, *e.g.,* other lawyers, their secretaries, or clients of any of them, have ever been able to complete a lengthy lease, using "lessor" and "lessee" without getting these terms transposed at least once.

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Commonplace as the above may seem, failure to follow the example may result in expensive litigation. Indeed, most experienced practitioners have examined leases, drawn by otherwise competent lawyers, in which burdens were imposed upon the "lessor" that would normally have been placed upon the "lessee." Even though these terms were probably transposed, if the language is specific and unambiguous, evidence cannot be introduced to contradict the clear wording of the lease. Scholarly treatises on the law are rarely studded with such pearls of practical wisdom.

Even if one reads all the cases digested under Landlord and Tenant, he is unlikely to gain the special knowledge required to properly represent the developer of an industrial park or a long-term tenant of space in an office building. While reading *Friedman on Leases* will not automatically convert one into an expert lease draftsman, any lawyer, experienced or novice, is bound to gain an increased understanding of the different problems presented by the many types of leases he will encounter in an everyday practice. This work discusses matters not touched upon in the cases and which the average practitioner learns only through long experience.

Moreover, Friedman takes his reader through the lease, clause by clause, beginning with the parties, the demised premises, the rent, and carries on through such matters as repairs and condemnation. His footnotes include not only citations to recent decisions but references to helpful law review articles. This is true of most scholarly works, but *Friedman on Leases* is unique in its explanation of the pitfalls that the draftsman should avoid. A typical example of his practicality is found on page 460 in Volume II:

> The repair clause should not overlook the necessity of replacement, as distinguished from repairs. If a tenant is required to "maintain and repair," in a jurisdiction where this does not require replacement, who does the replacing unless this is expressly required of landlord? If the floor is terrazzo, it will probably last a lifetime. This is not true of vinyl tile. "Replacement" should be used with care because the meeting point between repair and replacement is blurred. Repair of a furnace may involve replacement of part of the furnace. Most repairs involve some replacement.

Again, on pages 23 *et seq.* of Volume I he says:

> A luncheonette in the ground floor of an office building may have one entrance on the street and another leading to the building lobby, from which it draws many customers, particularly in bad weather. May the landlord lease lobby space for a cigar stand and thereby block the interior access to the luncheonette?
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> All these, and more, are too important to leave to the hazard of implication. They should be considered and made the subject of agreement when negotiating the lease. The only excuse for this section is the fact that these matters are generally not considered. Accordingly, it is necessary to consider the results where there has been no consideration and, also—and this may be worse—where there has been consideration of only part of the matter.

As a further aid, sample lease clauses are included in each chapter, illustrating solutions to the myriad problems discussed. Like the entire contents of the treatise, these forms are unique in their approach and utility to the practitioner. Indeed, as Friedman says in the *Foreword:*

> Some form books cite the cases from which their forms were taken, as if involvement in litigation gives them a cachet. The forms included here have, with rare exception, *not* been the subject of litigation. Whenever any of these forms needs construction by a court, it will be stricken from any future edition.

This unusually practical approach when combined with the undeniable scholarship evidenced throughout the work, leaves one with the feeling that the first two volumes of *Friedman on Leases* should be required reading for anyone who undertakes to draft or review a lease or to represent a tenant or a landlord. They are the last word on the subject and, when the work is completed, it should render obsolete all other textbooks on lease law.

A subsequent 3d volume is contemplated and the two volumes will be supplemented regularly at a price to be determined. A detailed brochure describing the nature and scope of the treatise is available upon request from the Practising Law Institute.

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