

BOOK REVIEW

Friedman on Leases. By MILTON R. FRIEDMAN. New York, N.Y. Practising Law Institute, 1974. pp. xix, 770, 2 Vols. with separate compilation of indices and tables.

At some point in his career a lawyer, whether experienced practitioner or novice attorney, is called upon to draft, review, or negotiate a commercial lease. The skills required to perform these tasks adequately and to serve a client competently are diverse and complex. Initially, it is necessary to ascertain exactly the client-tenant's or client-landlord's needs and desires with respect to the lease. Does the tenant want long term security at a stable price, or is his business the type which must follow rapidly shifting economic forces which are beyond his control? Will the landlord accept either of these alternatives and what price will the landlord demand for permitting the tenant to incorporate certain options in the lease? The next problem faced by the practicing attorney is the translation of his client's needs and desires into enforceable legal terminology. Finally, the attorney must establish, with the client, priorities and alternatives in preparation for the negotiating process. What clauses are absolutely essential and what clauses are less critical and therefore constitute primarily bargaining chips? Exactly how much is each clause worth to the client's business? This process is often long and complex and presents an attorney with many pitfalls.

Mr. Friedman's new book is structured as a definitive aid designed to avoid these pitfalls, which can be costly to clients and attorneys. As an expansion of his previous work, *Preparation of Leases*,¹ the current book provides the practitioner with step-by-step guidance in drafting a commercial lease. The organizational structure follows that of the original monograph, beginning with such basic principles as identifying the parties in the text of the lease by their correct names, and continuing through complex clauses for the method of surrender of premises upon termination of the lease. Although many sample clauses are presented, this two volume set is much more than a form book. In addition to the various lease clauses, the author provides useful checklists which point out a number of considerations that are often ignored in leases and are frequently the source of subsequent problems. For example, Mr. Friedman advises that a lease should expressly spell out how often common areas and elevators are to be cleaned by the landlord. While this may seem trivial and such clauses may clutter a lease, it is apparent that express provisions are preferable to general language or common law interpretations if the landlord-tenant relationship is to proceed smoothly.

Friedman on Leases is dominated by textual material which is

¹ M. Friedman, *Preparation of Leases* (1969).

amply cited to case authority. The thoroughness of coverage provides the practitioner with valuable insights into the numerous problems that can surface in a poorly drafted lease. An example of its completeness can be found in the section dealing with percentage leases, in which the author provides tables showing the amount of percentage rent paid by sixty-four different types of retail establishments in twenty different real estate markets.

Unfortunately, Mr. Friedman's work cannot aid a practicing attorney in making all the value judgments or planning a negotiating strategy for each possible lease, since such factors are determined by the client's personal needs and goals. However, this work can be an invaluable aid in helping the lawyer focus on critical values that must be considered as well as in preparing the proper clauses to insure that the language of the lease reflects the intent of the parties.

The table of cases in the supplement to the two volume set provides substantial evidence of its high level of scholarship and also serves a useful purpose for a practicing attorney. Although it would seem to be a rare instance when an attorney who knows the applicable case law would require Mr. Friedman's summary, it is equally clear that specific cases require carefully drafted clauses to avoid or lessen the impact of the holding on the parties. In this type of situation Mr. Friedman's clauses can be an invaluable aid to a busy practitioner.

It should be noted that the clauses contained in this book have generally not been interpreted by a court. The author asserts that when one of his clauses requires judicial interpretation it will be dropped from subsequent editions of the work. Despite Mr. Friedman's acknowledged expertise in the field of commercial leases some lawyers may be apprehensive about using clauses without the stamp of judicial approval. However, an attorney who knows what his client wants and can understand the carefully explained language can feel secure in using these lease provisions.

This two-volume treatise is the standard work on commercial leases. A lawyer who negotiates such leases can have no assistance more valuable than that furnished by this work. It is, in the tradition of Mr. Friedman's outstanding work demonstrated in *Preparation of Leases*² and in *Contracts and Conveyances of Real Property*,³ a book of great value to the conveyancer.

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² Id.

³ M. Friedman, *Contracts and Conveyances of Real Property* (2d ed. 1963).

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