

Friedman on Leases

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FRIEDMAN ON LEASES by MILTON F. FRIEDMAN. New York: Practising Law Institute, 1974. Two Volumes. Index. \$75.00

*Donald J. Gralen**

Milton Friedman has produced in these two volumes an extremely practical yet scholarly tool for the practicing lawyer. This reviewer knows of no comparable work on leases and suggests that this work should be the keystone of any sound library on the subject.

At the outset of the work there is an exceptionally valuable discussion of the nature of a lease, distinguishing between a lease as a conveyance and a lease as a contract. It is illustrative of Friedman's effort that this subject is treated concisely but well in only ten pages.

Another fine example of good scholarship combined with valuable practical aid is the treatment of continuous operation clauses in commercial leases. Friedman, early in the discussion, presents two suggested clauses, both which illustrate the problem and provide a workable solution.

Illustrative of some very practical help for the working lawyer are the tables setting forth recommended figures for percentage rent clauses in different types of businesses. One of the tables encompasses cities across the entire United States, thus making this aid more universally helpful. Also, beginning on page 484, the author has included a set of cleaning specifications for office space, an item rarely found in other works on this subject. This information should prove very useful for a lawyer representing a tenant who has some bargaining power.

Mr. Friedman also includes several good examples of useful forms, such as non-disturbance agreements and waiver of subrogation clauses. These two problems areas always confront a lawyer negotiating a lease and the forms supplied provide excellent suggestions.

A paperbound volume, accompanying the two hardbound volumes, constitutes the index. Thus, if you find yourself somewhere with only one volume and you need the index, you are in trouble. This treatment probably is a result of the publisher's intention to issue a third volume, which will require a supplemented index. There are references in a number of

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footnotes to the third volume "to be published." One hopes that this will materialize.

There are some gaps in the scholarship caused perhaps by the arcane peculiarities of the local law. For example, on page 721, the author states: "[o]ccasionally a lease provides that any liability of landlord under the lease shall be limited to landlord's interest in the reality." The use of the word "occasionally" renders this statement questionable in Illinois since a substantial majority of commercial and industrial leases are signed by land trustees as landlords, and in almost all cases such leases contain exculpatory clauses which require the tenant to look only to the realty. Also, one might have hoped for a broader discussion of *Jack Spring, Inc. v. Little*, 50 Ill.2d 351, 280 N.E. 2d 208 (1972), a revolutionary case in Illinois landlord-tenant law. This case deals with the implied warranty of habitability in a residential lease and is an exception to the principle of independent covenants.

Notwithstanding these minor faults, this is a superior work and well-worth the investment by any lawyer practicing in the real estate area.