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Arnold G. Gough, Jr.**

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Suzanne Pepe & Daniel Kiely***

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Preface

This treatise surveys all of the major issues arising in the context of leasing transactions. The goal of the treatise is to be useful to everyone involved in leasing transactions, whether beginner or expert, and whether the leased asset is as small as an office copier or as large as a multibillion-dollar facility. This Fifth Edition is organized into four parts in order to assist the reader in locating the relevant material. Beginners (as well as those with leasing experience) will find Part I most helpful in analyzing the basics of why leasing is a desired form for acquiring the use of an asset, how to structure and draft a lease transaction, and what legal, economic, and accounting issues typically arise out of a lease transaction. Parts II through IV focus on issues of relevance to particular types of lease transactions. Experts will find this work a source for understanding many of the nuances of most types of lease transactions and for tracking down useful citations to other sources for further detailed research of complex issues.

Part I of this treatise begins with a short chapter on the most basic description (and a brief history) of leasing transactions. Leasing novices should find it a very useful introduction to the field as this chapter gives a broad overview of many of the major leasing issues and describes the most typical overall structures. The balance of Part I analyzes a lease transaction from five fundamental perspectives: Uniform Commercial Code Article 2A (the set of general commercial laws governing leases of personalty), tax analysis, accounting analysis, economic analysis, and basic documentation. The documentation chapter examines in detail virtually all of the clauses that find their way into a single-investor lease or a leveraged lease transaction for a generic asset subject to a “plain vanilla” lease structure. Documentation issues unique to certain types of leases (such as those described in the following paragraphs) are dealt with in chapters dealing with those types of leases. The documentation chapter has as appendices a sample set of leveraged lease papers as well as a sample small-ticket lease. For the lawyer, these may be the five most important chapters in the treatise since they set forth the motivations for an enormous number of lease transactions and the principal concerns of most clients.

Part II deals with the unique issues that arise in leases of particular types of assets: aircraft, rolling stock, vessels, real property,

power-generation equipment, and computers and related software. The nature of the asset will often dictate the maintenance, return, and other operational covenants most appropriate for a lease of that type of asset, as well as the regulatory concerns that must be addressed.

Part III analyzes the most common leasing structures—if a lease is a synthetic lease, a cross-border lease, a lease to a consumer or a municipality, in the middle market, or subject to a securitization, still other concerns arise with which all the lease participants must be familiar.

Part IV focuses on the regulatory environment. Some of these chapters are relevant in every lease—all lease practitioners must be familiar with bankruptcy risks, third-party-liability exposure, insurance needs, and risks of doing business in the jurisdiction where the asset is used. Other chapters will be relevant for only some leases, such as those with leverage, those involving the lease of real estate or environmentally risky equipment, leases with regulated investors that need special authorization to engage in the transaction, including under ERISA, and leases for which the offering of the lessor's or lender's interests implicates federal securities laws.

Finally, an expanded glossary of frequently used terms unique to leasing appears in Volume 3, following the last chapter, along with an extensive table of the authorities cited throughout this treatise and an index to aid in your research.

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