In auto racing circles, insiders joke that the quickest way to make a small fortune in the sport is to start with a large fortune. The same wry observation can be made of restaurants. They too are expensive and risky endeavors. Restaurants are labor-intensive, capital-intensive, and largely dependent on the whims of a capricious public. While these challenges are beyond the lawyer’s purview, there are two areas in which the lawyer can substantially increase his client’s chance of success or at least minimize the risk of failure. The first is the review and negotiation of the lease of the premises where the restaurant will operate. Unless the client is a strong national or regional operator, the client will be subject to the terms of the landlord lease, which, as might be expected, is oriented in favor of the landlord. In most states, the lease is the law, so the client will have to rely on the four corners of that document to enforce its rights and determine its obligations. It will be the lawyer’s job to read the lease carefully so he can identify and evaluate the risks that the client assumes by signing the lease, to explain these risks clearly and succinctly to the client, and then to attempt to negotiate changes to the landlord lease that will enable the tenant to maximize success.

The second area in which the lawyer can contribute is the review and negotiation of the franchise agreement if the client pursues that option. Many people prefer investing their time and money in a proven concept or one that is fastgrowing and offers the best potential return on investment. Purchasing a franchise can give restaurateurs a head start in terms of brand recognition, marketing, consistency of food quality, and service. Rather than relying on trial and error, the franchisee can tap the expertise of its franchisor to build a successful restaurant. The franchise agreement is, in essence, a business plan for the franchisee. However, signing a boilerplate franchise agreement is not necessarily a recipe for success. Much to their chagrin, individuals or retirees who dream of being their own boss may become disillusioned once the attorney explains the mandatory directives the franchisee must follow. In addition, there are royalties and other fees that must be paid to the franchisor. Often the franchise agreement is negotiated contemporaneously with the lease, but regardless, the attorney must harmonize the two documents so that adherence under one document does not cause a violation under the other.
This book is a guidepost for the lawyer who negotiates restaurant leases and franchise agreements. It identifies the major issues and potential resolutions for problems that both of the authors have faced in their combined seventy years of legal experience. It is the authors’ fervent hope that the clients of the attorneys who read this book can avoid the fate of Mike in Ernest Hemingway’s classic *The Sun Also Rises*, who, when asked how he lost his fortune, responded, “Two ways. Gradually and then suddenly.”