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Cases, Regulations and Statutes

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FOOTNOTES

1 See 4 Harl, Agricultural Law § 25.03 (1993).
2 See generally 8 Harl, Agricultural Law § 61.03 (1993).
3 See I.R.C. § 464.
4 Id.
5 I.R.C. § 464(c)(1). See Est. of Wallace v. Comm’r, 95 T.C. 525 (1990), aff’d, 92-2 U.S. Tax Cas. (CCH) ¶ 50,387 (11th Cir. 1992) (medical doctor who owned cattle feeding business was limited entrepreneur who did not actively participate in cattle feeding business and profit motive was irrelevant; only feed actually consumed during year was deductible).
8 I.R.C. § 464(d).
9 I.R.C. § 464(c)(2). The term "family" has the same meaning as in I.R.C. § 267(c)(4).

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

FENCE. In the 1950’s a fence was constructed between the parties’ pastures but from 11 to 30 feet onto the defendant’s property. The defendant had the property resurveyed and discovered the error and moved the fence to the correct boundary line. The plaintiff claimed title to the portion of the defendant’s property on the plaintiff’s side of the fence and sought damages for the defendant’s removal of a partition fence under Mo. Rev. Stat. § 537.350. The court reversed and remanded the trial court’s judgment for the plaintiff, holding that the plaintiff failed to present evidence that the plaintiff openly, notoriously, exclusively and continuously used the disputed land for at least ten years. The court held that the mere existence of a fence for almost 40 years was insufficient to establish title by adverse possession. Dorris v. Morgan, 852 S.W.2d 194 (Mo. Ct. App. 1993).

POSSESSION. A fence constructed between the parties’ properties was built 11.5 feet onto the defendant’s property. The plaintiff crop farmed the disputed strip from 1943 through 1987, when the defendant began clearing the crops from the strip each year. The court held that the plaintiff’s crop farming of the land for more than 20 years satisfied the requirements of open, notorious and actual possession sufficient to transfer title to the plaintiff by adverse possession. Cobb v. Nagele, 611 N.E.2d 599 (Ill. Ct. App. 1993).

This case involved two incidents of adverse possession. In the first incident, the defendant had raised hay for over ten years on a field which included land belonging to the plaintiff. The court held that the annual raising of crops on the disputed land was sufficient adverse possession to transfer title to the defendant. In the second incident, the defendant had erected a fence several feet onto the plaintiff’s land and grown crops on the defendant’s side of the fence. The plaintiff had helped maintain the fence. The court held that the defendant’s use of the disputed property was sufficient adverse possession to transfer title to the defendant. Forester v. Whitelock, 850 S.W.2d 427 (Mo. Ct. App. 1993).

ANIMALS

HORSES-ALM § 1.01[1]. The defendant owned a thoroughbred horse which escaped from a fenced pasture during a storm. The plaintiff’s car struck the horse on a highway and the plaintiff sued in strict liability the owner of the horse and the ranch on which the horse was pastured. The court held that an owner of an escaped domestic animal, such as a horse, was not strictly liable for injuries caused by the horse unless the animal was known by the owner to have a propensity to escape. Because no evidence was presented as to the propensity of defendant’s horse to escape, the defendant could not be held strictly liable for the plaintiff’s injuries. Briscoe v. Graybeal, 622 A.2d 805 (Md. Ct. App. 1993).

BANKRUPTCY

GENERAL

AVOIDABLE LIENS. The debtor was a produce handler who purchased agricultural products from several creditors. Each creditor had perfected its statutory producer’s lien after the filing of the petition. The trustee sought to avoid the creditors’ security interests. The creditors argued that Section 546(b) prevented the avoidance because the post-petition perfection of the statutory lien related back to a prepetition date. The statutory lien provided that if the lien was perfected within 60 days after delivery, the lien acquired priority over all other liens against the produce. The court held that because the statute did not expressly identify a date upon which the lien became perfected, Section 546(b) did not apply to prevent the avoidance of the liens. Matter of Peter J. Schmitt Co., Inc., 154 B.R. 47 (Bankr. D. Del. 1993).

EXEMPTIONS

AUTOMOBILE. The debtor had granted a security interest to the debtor’s father in the debtor’s automobile within one year of filing for Chapter 7 and had claimed the exemption for the automobile. The trustee sought to avoid the security interest and the debtor filed for dismissal of the case to prevent the loss of the security interest. The court held that because the debt secured by the automobile was voluntary and the security interest was avoidable, the exemption could not be allowed. The court also held that the threat of the avoidance was insufficient cause for dismissal. In re Baumgarten, 154 B.R. 66 (Bankr. S.D. Ohio 1993).

CHAPTER 12

SETOFF-ALM § 13.03[8]. Prior to filing bankruptcy, the debtor was indebted to the ASCS for the use of cash collateral in a previous bankruptcy case and had enrolled farm land in the conservation reserve program (CRP). The debtor had assumed the CRP contracts in bankruptcy as executory contracts. The ASCS sought to setoff the post-
petition CRP payments against the pre-petition cash collateral debt. The District Court held that the CRP contracts were executory with continuing obligations by both parties which gave rise to payments only after performance was complete; therefore, the CRP payment obligations arose post-petition and could not be setoff against the pre-petition cash collateral debt. The appellate court reversed, holding that the CRP contract’s continuing obligations were in the form of mutual promises and not conditions precedent; therefore, the rental payments arose post-petition and could be setoff against the debtor’s prepetition amounts owed to the ASCS. In re Gerth, 991 F.2d 1428 (8th Cir. 1993), rev’g, 136 B.R. 241 (D. S.D. 1991).

SETTLEMENT-ALM § 13.03[8].* A Chapter 12 debtor reached an agreement in settlement of claims by a creditor bank and had the agreement read into the court record. After the debtor learned that the bank official with whom the debtor negotiated was sued by the bank for wrongful acts, the debtor moved for withdrawal of approval of the agreement and dismissal of the case. The Bankruptcy and District Courts held that, although the wrongful acts of the bank official may have made the agreement unfair to the debtor, the substantial costs to the estate and other creditors from rejecting the agreement required that the agreement be enforced. The courts also found that the debtor had not shown actual or constructive fraud by the bank. The appellate court reversed, holding that the debtor had a right to immediate dismissal upon request, so long as no fraud by the debtor was shown. In re Cotton, 992 F.2d 311 (11th Cir. 1993), rev’g, 136 B.R. 888 (M.D. Ga. 1992), aff’g, 127 B.R. 287 (Bankr. M.D. Ga. 1991).

CHAPTER 13

PLAN. The debtor’s income included distributions from a pension plan and social security payments. The debtor’s nondebtor spouse also received social security payments. The debtor also had monthly business expenses from a business which had not yet produced any income. The debtor claimed the pension funds and social security payments as exempt, set an arbitrary amount for payment to unsecured creditors, included in the plan double monthly payments on a car loan and included in the monthly expenses the nondebtor spouse’s living expenses. Although the court held that the pension and social security payments were exempt under III. Rev. Stat. § 5 1/2 -1006(a), the payments must be included in the debtor’s disposable income for purposes of Section 1325(b). Also, the nondebtor spouse’s social security payments were required to be included in the debtor’s disposable income calculation because the debtor included the spouse’s living expenses in the plan. The double monthly payments on the debtor’s car loan were not allowed. In re Schnabel, 153 B.R. 809 (Bankr. N.D. Ill. 1993).

Creditors objected to the Chapter 13 plan as not meeting the Section 1325(a)(4) best interest of creditors test because the debtors had a substantial amount of equity in their home which was not applied toward the plan. The debtors argued that under a Chapter 7 liquidation, the proceeds from the sale of the residence would be reduced by capital gains taxes; therefore, the capital gains taxes should not be included in the best interest of creditors test calculations. The court held that the capital gains taxes were includible in the calculation because the capital gain taxes would be payable as a priority administrative expense of a Chapter 7 estate. Matter of Young, 153 B.R. 886 (Bankr. D. Neb. 1993).

FEDERAL TAXATION

AUTOMATIC STAY. Prior to filing for bankruptcy the debtor was assessed for income taxes, interest and penalties for willful failure to pay the taxes. The debtor made most of the payments on the taxes owed and the IRS allocated the payments to the taxes and interest, leaving some of the penalty portion unpaid. The debtor filed for bankruptcy and received a discharge of the penalties but not the taxes or interest. The IRS then reallocated the pre-petition payments primarily to the penalty portion and notified the debtor of the new deficiency on the tax. The court held that the post-discharge reallocation violated the discharge automatic stay. Langlois v. U.S., 93-2 U.S. Tax Cas. (CCH) ¶ 50,364 (N.D. N.Y. 1993).

COOPERATIVES

SECURITIES VIOLATIONS-ALM § 14.04.* The plaintiff was a member cooperative of the defendant cooperative and had liquidated. The plaintiff sought to recover its capital credits with the defendant and brought suit under the federal securities law for securities fraud. The defendant argued that it was exempt from the securities laws and that the capital credits were not securities. The court held that the plaintiff had stated a cause of action sufficient to deny the defendant’s motion to dismiss the action because (1) the defendant had admitted that the credits were securities by registering the credits with the SEC, and although cooperative securities are exempt from the filing requirements of 15 U.S.C. § 77b(1), the credits were not exempt from the anti-fraud provisions. Consumers Gas & Oil v. Farmland Indus., 815 F. Supp. 1403 (D. Colo. 1993).

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final the change of the classification of Mississippi and Missouri to brucellosis-free states. 58 Fed. Reg. 34700 (June 29, 1993).

The APHIS has adopted as final the change in classification of Oregon from a Class A to Class Free state. 58 Fed. Reg. 36593 (July 8, 1993).

CONTAGIOUS DISEASES ACT-ALM § 9.02[1].* The plaintiff had qualified as a "specifically approved stockyard" under the Contagious Diseases Act, but the status was withdrawn after USDA inspectors found violation of sanitation and identification requirements pertaining to cattle. After notice and an informal hearing, the status was withdrawn for five years. The plaintiff appealed the suspension, arguing that the informal hearing process violated USDA regulations, 7 C.F.R. § 1.131 et seq., requiring application of uniform rules of practice. The court held that the uniform practice regulations did not require application of the rules where the USDA had issued regulations for an informal hearing in such cases. The plaintiff also argued that the informal hearing violated the Administrative Procedures Act, but the court disagreed,
holding that the APA did not apply unless the statute involved required a formal hearing. The court reviewed the USDA decision using a rational basis standard and held that the findings of violations were supported by the evidence but that the six year suspension was too severe given the plaintiff’s improved sanitation and record of misidentification of cattle after the inspections. The suspension was decreased to six months. Moore v. Madigan, 990 F.2d 375 (8th Cir. 1993), aff’d, 789 F. Supp. 1479 (W.D. Mo. 1992).

CROP INSURANCE-ALM § 13.04[1]. The FCIC has issued interim regulations amending the regulations implementing the Disaster Assistance Act of 1988 to make the regulations applicable to disaster relief statutes passed after 1988. 58 Fed. Reg. 36592 (July 8, 1993).

The plaintiff were rice farmers whose rice crop was damaged by early heavy rains. In July the plaintiff notified the FCIC agent who inspected the crop and who filed a report in August listing the crop loss date as May. The plaintiff also applied to the ASCS for disaster payments. The local and state committees denied the disaster payments based on their finding that the plaintiff had not used “necessary farming practices” to produce a crop. The FCIC also denied insurance coverage because of “failure to follow good farming practices,” but eventually based denial on failure of the plaintiff to provide notice of the total crop loss within 10 days after the crop loss. The court held that the FCIC was not entitled to summary judgment because the FCIC regulations require the FCIC to make the determination of the total crop loss; therefore, the notice period could begin only after the FCIC had made a determination of the total crop loss. The court held that the ASCS determination was not arbitrary or capricious because it was supported by substantial, although controverted, evidence that the plaintiff did not follow the necessary farming practices for a good crop. Wilson v. U.S.D.A., 991 F.2d 1211 (5th Cir. 1993).

NATIONAL FORESTS. The plaintiff had contracted with the Bureau of Land Management (BLM) to partially cut four tracts of timber on federal land. A forest fire destroyed a portion of one tract and required the clearcutting of that tract in order to preserve the soil, to avoid insect infestation and to harvest the timber before it was destroyed by insects and disease. However, the plaintiff did not have the capacity to clear cut that tract while cutting on the other tracts. The BLM decided that the damaged tract should be removed from the contract and resold. The plaintiff reluctantly agreed and the tract was sold at a price per board foot greater than the plaintiff’s original contract price. The plaintiff sought recovery of the difference in price, alleging mutual mistake and government coercion in the plaintiff’s decision to allow withdrawal of the damaged tract from the contract. The court held that the forest fire made performance by both parties impossible and allowed rescission of the contract to the extent of the damaged tract. Spalding & Son, Inc. v. U.S., 28 Fed. Cl. 242 (1993).

SUGAR. The CCC has issued interim regulations governing the marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn, for fiscal 1992 through 1996. 58 Fed. Reg. 36120 (July 6, 1993).

TUBERCULOSIS. The APHIS has adopted as final amendments to the regulations to allow indemnity claims for cattle and bison which are destroyed because of tuberculosis after being added to a herd under quarantine. 58 Fed. Reg. 34697 (June 29, 1993).

The APHIS has issued interim regulations changing the designation of Hawaii from a modified accredited state to an accredited free state. 58 Fed. Reg. 34699 (June 29, 1993).

FEDERAL ESTATE AND GIFT TAX

CREDIT FOR PRIOR TRANSFERS-ALM § 5.04[5]. The decedent’s predeceased spouse’s estate consisted almost entirely of joint tenancy property which passed outside of probate to the decedent; therefore, the predeceased spouse’s estate was not probated. The decedent elected to pay the federal estate tax by installments, incurring interest on the deferred payments. At the decedent’s death the estate claimed a credit for prior transfers under I.R.C. § 2013. The IRS reduced the credit because the IRS subtracted the interest paid on the installment payments of federal estate tax as an administrative expense of the predeceased spouse’s estate. The court held that the interest paid was not an administrative expense because no estate was created since the predeceased spouse’s property all passed through the survivorship right. Therefore, the interest paid did not diminish the amount of property passing to the decedent and did not diminish the credit for prior transfers. Est. of Whittle v. Comm’r, 93-1 U.S. Tax Cas. (CCH) ¶ 60,141 (7th Cir. 1993), aff’d, 97 T.C. 362 (1991).

FAMILY TRUSTS-ALM § 8.08.* The taxpayer’s transfer of personal assets and compensation to two family trusts was disregarded for federal income tax purposes as a sham where the taxpayer continued to have possession and control over the property. Keefover v. Comm’r, T.C. Memo. 1993-276.

GENERATION SKIPPING TRANSFER TAX-ALM § 8.04[6]. In 1965, the taxpayers established trusts for their daughter and granddaughter. Before September 1985 and after another granddaughter and a grandson were born to the daughter, the taxpayers established identical trusts for these grandchildren. The taxpayers and beneficiaries amended the trusts to change the order of the successor cotrustees. The IRS ruled that the amendments did not subject the trusts to GSTT. Ltr. Rul. 9324007, Mar. 17, 1993.

The decedent’s will created two trusts, each with the surviving spouse as income beneficiary with the noncumulative right to withdraw 5 percent of the corpus from both trusts. At the death of the surviving spouse, the 5 percent amount for the year of the spouse’s death was included in the spouse’s estate. The trusts were each split into two trusts with one trust receiving 5 percent of the trust corpus and the other 95 percent. The IRS ruled that the surviving spouse would be considered the transferor of the 5 percent trusts and that the split of the trusts would not subject them to GSTT. In addition, the IRS ruled that no gain or loss would be recognized on the split of the trusts. Ltr. Rul. 9324014, Mar. 19, 1993.

The decedent’s 1953 will created a trust which had three classes of beneficiaries, a one-half interest to the issue of a

*Agricultural Law Manual (ALM), For information about ordering the Manual, see the last page of this issue.
predeceased son, a one third interest to a daughter, and a one-sixth interest to the issue of the daughter. The beneficiaries divided the trust into three trusts which continued all provisions of the original trust. The IRS ruled that the partition of the trust would not subject the trusts to GSTT or cause recognition of gain or loss to the trusts. *Ltr. Rul. 9324015, Mar. 19, 1993.*

The decedent’s will created a family trust, a portion of which was subject to GSTT because of post-1985 additions to corpus by the decedent. The decedent’s executor inadvertently allocated part of the decedent’s unused portion of the GSTT exemption to direct bequests which were not “direct skips” because the bequests were less than $2 million and were made before January 1, 1990. The IRS ruled that the erroneously allocated exemption would be allocated to the portion of the family trust subject to GSTT under the executor’s election and not under the automatic allocation rules in I.R.C. § 2632(c). *Ltr. Rul. 9324029, Mar. 23, 1993.*

MARITAL DEDUCTION-ALM § 5.04[3]. The taxpayer created a revocable trust which was named as the beneficiary of the taxpayer’s IRA. The taxpayer’s spouse was the beneficiary of the trust and the trust provided that the trustee was to distribute, at least annually, the greater of all of the income of the IRA or the IRA account balance payable over the life expectancy of the surviving spouse. The IRS ruled that the trust would be eligible for the marital deduction. The IRS also ruled that the passing of the IRA to the trust would not result in acceleration of income in respect of decedent under I.R.C. § 691(a)(2). *Ltr. Rul. 9324024, Mar. 22, 1993.*

The decedent’s revocable trust became irrevocable upon the decedent’s death and provided that a portion of the trust was to pass to a marital trust. The trust provided that the trustee could apply to a court for amendment of the trust provisions and granted the court the power to amend any portion of the trust. The IRS ruled that the power granted to a court was sufficient to withhold a portion of the trust income or principal from the surviving spouse; therefore, the trust was not eligible QTIP because the spouse could receive less than the full trust interest granted by the decedent. *Ltr. Rul. 9325002, Feb. 26, 1993.*

SALE OF STOCK TO ESOP. The executrix purchased stock with estate funds and sold the stock back to the corporation’s Employee Stock Ownership Plan (ESOP) and applied for a refund for the 50 percent deduction allowed at the time of the sale. The IRS had issued *Rev. Rul. 87-13, 1987-1 C.B. 20* interpreting I.R.C. § 2057 as requiring the decedent to own the stock prior to death. Congress retroactively amended I.R.C. § 2057 to require that the stock sold be owned by the decedent prior to death. The court upheld the constitutionality of the retroactive application of the amendment which denied the 50 percent deduction to the estate because the estate could reasonably foresee the amendment and the amendment was not a new tax but a change of tax benefits. *Ferman v. U.S., 93-1 U.S. Tax Cas. (CCH) ¶ 60,140 (5th Cir. 1993), aff’g, 92-1 U.S. Tax Cas. (CCH) ¶ 60,100 (E.D. La. 1992).*

VALUATION-ALM § 5.02[13][a]. The corporation had three types of stock: (1) voting preferred stock which had a right to annual dividends equal to a percentage of the liquidation value; (2) voting common stock; and (3) nonvoting common stock. Two brothers and their spouses each owned one fourth of the preferred shares; a child of each brother owned half of the voting common stock and nonparticipatory family members owned the nonvoting common stock. The children transferred some of their shares of voting common stock to their children by gift. The donees had the right to exchange the voting stock for nonvoting stock. The IRS ruled that the Section 2701 valuation rules applied to the stock transfers but that the preferred shares owned by the donee’s uncle and aunt would be valued at their fair market value because the aunt and uncle were not “applicable family members.” The IRS also ruled that because the preferred stock had a right of accumulated dividends of at least 6 percent, the dividend was a right to a qualified payment under Section 2701(c)(3). The shareholder agreement required an amendment to the agreement in order to transfer shares to persons other than the existing shareholders; therefore, the IRS ruled that the transfers and amendment of the shareholder agreement would subject all of the stock to the valuation rules of I.R.C. § 2703. *Ltr. Rul. 9324018, Mar. 19, 1993.*

FEDERAL INCOME TAXATION

DISCHARGE OF INDEBTEDNESS-ALM § 4.02[15]. The taxpayer owned a corporation and an interest in a partnership. The corporation forgave a portion of a debt owed to it by the partnership and increased the amount it owed to the taxpayer personally. The taxpayer argued that no income was realized because one debt was exchanged for another. The court held that the partnership realized discharge of indebtedness income separately from the taxpayer. *Lind v. Comm’r, T.C. Memo. 1993-286.*


LIMITED LIABILITY COMPANIES. The taxpayers formed a partnership under the state limited liability company statute. The partnership agreement and state LLC law provide that the bankruptcy or liquidation of a partner would cause the dissolution of the partnership. The IRS ruled that the partnership lacked the corporate characteristic of continuity of life. The partnership agreement and state LLC law provide that a partner may not transfer an interest in the partnership without the consent of the other partners. The IRS ruled that the partnership lacked the corporate characteristic of free transferability of interests; therefore, the partnership would be taxed as a partnership for federal tax purposes. *Ltr. Rul. 9325043, Mar. 29, 1993.*

The taxpayers formed a limited liability company. The LLC agreement and state LLC law provide that the bankruptcy or liquidation of a partner would cause the dissolution of the LLC. The IRS ruled that the LLC lacked the corporate characteristic of continuity of life. The LLC agreement and state LLC law provide that the management of the LLC is vested in all of the partners. The IRS ruled that the LLC lacked the corporate characteristic of
centralized management; therefore, the LLC would be taxed as a partnership for federal tax purposes. Ltr. Rul. 9325048, Mar. 30, 1993.

S CORPORATIONS-ALM § 7.02[3][c] *
ADMINISTRATIVE ADJUSTMENTS. The IRS had sent a final S corporation administrative adjustment (FSAA) concerning the corporation’s taxable years prior to January 1987 when regulations were promulgated excepting small S corporations from the unified procedures. The shareholders argued that the small partnership exception applied to small S corporations before the regulations were promulgated. The court held that I.R.C. § 6241 pre-empted application of the small partnership exception by providing no exception for S corporations unless and until regulations were promulgated. Beard v. U.S., 992 F.2d 1516 (11th Cir. 1993), aff’g, 92-1 U.S. Tax Cas. (CCH) ¶ 50,175 (N.D. Ala. 1992).

MORTGAGES
BORROWER’S RIGHTS. The plaintiff granted a mortgage on the plaintiff’s farm land to the defendant’s predecessor “subject to the Farm Credit Act of 1971.” The defendant sought foreclosure by advertisement of the mortgage and gave the plaintiff the 45 day notice for restructuring required by the Act; however, the defendant failed to suspend the foreclosure procedure during the 45 days. The defendant commenced a second foreclosure later but did not give the 45 day notice or otherwise provide the plaintiff with an opportunity to restructure the loan. The court held that although the defendant did not have a private right to enforce the Act, the plaintiff could use the lack of notice as a defense to a foreclosure action. The court held that the first 45 day notice was not sufficient because the defendant failed to suspend the foreclosure during the 45 days. Burgmeier v. Farm Credit Bank of St. Paul, 499 N.W.2d 43 (Minn. Ct. App. 1993).

REDEMPTION. The plaintiffs borrowed funds from the FmHA and granted a mortgage on their farm to secure the loan. After the plaintiffs defaulted and the FmHA provided loan servicing options, the FmHA sought foreclosure. The plaintiffs argued that the FmHA was required under Wis. Stat. § 864.10(2) to wait one year before selling the farm. The court held that the extensive loan restructuring rights and self-imposed delays provided by the FmHA regulations provided sufficient time for the plaintiffs to redeem their farm before foreclosure sale; therefore, the FmHA was not required to allow the state redemption period. Essentially, the court reasoned that the federal borrower’s rights statutes and regulations preempted the state borrower’s rights. United States v. Eenum, 992 F.2d 761 (7th Cir. 1993).

NEGLIGENCE
HERBICIDE SPRAYING-ALM § 1.02[3]. * In 1983, the plaintiff planted peach trees on land adjacent to the defendant’s land. In 1988, the defendant planted cotton on the land and had herbicide applied “over-the-top” on the cotton plants. The plaintiff alleged that the herbicide ruined the peach trees and caused a complete loss of production. The plaintiff produced evidence of loss of production by providing production records from other similar peach trees on the plaintiff’s property. The court held that the evidence was sufficient to allow the jury to award damages for the loss of future production and profits. Crosby v. Spencer, 428 S.E.2d 607 (Ga. Ct. App. 1993).

PARTNERSHIP
JOINT VENTURE-ALM § 7.03[1][a]. * After a bank had cancelled a farmer’s line of credit and seized the proceeds of the farmer’s crops, the farmer was unable to pay rent for equipment or rent for use of farm land. The equipment lessor and the landlord agreed to help the farmer continue farming for one more year and financed the farmer’s operation for the next crop year. The parties agreed that any profit would accrue solely to the farmer, but no discussion of loss liability was discussed. The crops for the next year were insufficient to pay both creditors and the equipment lessor sought recovery from the landlord based on shared liability through a joint venture. The court held that because the parties did not agree to share the profits, no joint venture was formed and no shared liability for losses could be enforced. L & H Leasing Co. v. Dutton, 612 N.E.2d 787 (Ohio Ct. App. 1992).

PARTNERSHIP PROPERTY-ALM § 7.03[1][d]. * The plaintiff and defendant, the plaintiff’s son, operated a construction business as a partnership. The plaintiff also owned a ranch and operated the ranch with the partnership. In order to obtain a low interest rate FmHA loan, the plaintiff deeded the ranch to the defendant without receiving any consideration in return. The ranch continued to be operated under the partnership with no change in either partner’s share of profits or expenses. The court held that the ranch remained partnership property because the parties did not intend to remove the ranch from the partnership. Holmes v. Holmes, 849 P.2d 1140 (Or. Ct. App. 1993).

PRODUCTS LIABILITY
HERBICIDE-ALM § 1.02[4]. * The plaintiff sued the manufacturer of the herbicide Prowl for damages to the plaintiff’s bean crop. The court held that the manufacturer could not be held strictly liable for the damages because no evidence was presented showing that the herbicide was unreasonably dangerous. The court held that the plaintiff had presented sufficient evidence of breach of warranty of merchantability by presenting expert testimony that the herbicide could cause the damage suffered by the beans. The defendant claimed that its disclaimer of express and implied warranty of merchantability relieved it of liability except for the cost of the product. The disclaimer was included in a 107 page manual on application of herbicides. The court held that the disclaimer was conspicuously refereed to as a matter of law but that further evidence was needed as to whether the plaintiff had an opportunity to read the disclaimer before purchase of the herbicide. The court also ruled that the disclaimer’s limitation of remedy to exclude consequential damages was unconscionable because the disclaimer left the plaintiff without effective recourse for a defective product and the plaintiff was not afforded an opportunity to bargain for the limitation because the herbicide was purchased through a third person. Adams v. American Cyanamid Co., 498 N.W.2d 577 (Neb. Ct. App. 1992).

PROPERTY
DRAINAGE EASEMENT. The plaintiff owned farmland through which the defendant owned a drainage easement. The defendant told the company which dredged the ditch that the defendant’s easement was 200 feet wide and that the company could use as much land as necessary to accomplish the dredging of the ditch. The dredging company cut the vegetation around the ditch and deposited the dredged silt on the plaintiff’s land. The dredging resulted in severe erosion along the ditch, resulting in a loss of 1.65 acres of the plaintiff’s farmland. The defendant failed to produce any evidence of the width of the easement originally granted and the court held that the easement was restricted to the extent of the defendant’s prior use of the ditch. The court also held that the defendant must compensate the plaintiff for the loss of land resulting from the dredging of the ditch. The court also required the defendant to properly maintain a bridge over the ditch which was built by the defendant to provide the plaintiff with access to land separated by the ditch. Peters v. Milks Grove Sp. Drainage Dist., 610 N.E.2d 1385 (Ill. Ct. App. 1993).

RIPARIAN RIGHTS

LACHES. In 1920, the defendant’s predecessor in interest filed a suit to establish its rights to store water from a creek. The plaintiff’s predecessor in interest was not made a party to that suit and had a prior right to draw water from the creek. In 1925, the defendant’s predecessor in interest entered into a stipulation with the named parties to allow it to store water from the creek during October through May each year. The defendant sought summary judgment in the plaintiff’s action to enforce its prior rights to draw water over the entire year, arguing that the action was barred by laches and res judicata. The court held that the doctrine of laches did not apply because the defendant failed to show any prejudice from being able to use more water than the defendant’s water right might allow under the plaintiff’s allegations. The court also denied the summary judgment for res judicata because the defendant failed to show that the plaintiff’s predecessor in interest had been named as a party to the 1920 suit, had signed the agreement or was served notice of the proceedings. Devil Creek Ranch v. Cedar Mesa Reservoir, 851 P.2d 348 (Idaho 1993).

SECURED TRANSACTIONS

CONVERSION. The plaintiff purchased several farm implements from the defendant and granted a security interest in the equipment to secure an installment note. The defendant assigned the note to a bank and negotiated with the plaintiff for payment of the note after the plaintiff’s default. The plaintiff agreed to allow the defendant to sell the equipment and to apply the proceeds against the note. The equipment was sold, the proceeds were paid on the note and the balance, after expenses of sale, was remitted to the plaintiff. The plaintiff sued for conversion because the defendant failed to obtain the plaintiff’s consent to the sale price of each piece. The jury found a conversion had occurred but awarded no damages. The plaintiff argued on appeal that the jury instruction was incorrect in that it allowed the jury to offset the proceeds of the sale against the conversion damages. The court held that where the converter applied the proceeds against a specific debt of the equipment owner, the converter’s liability for conversion would be offset by the proceeds actually paid. Seibert v. Noble, 499 N.W.2d 3 (Iowa 1993).

The debtor operated a farm equipment dealership and a used car dealership. The plaintiff had a priority security interest in the farm equipment sold by the debtor and the security agreement required the debtor to not commingle the equipment sale proceeds with other business assets. However, the plaintiff did not enforce this provision and the debtor commingled all business proceeds in one checking account. The debtor used the farm equipment proceeds to pay on a loan from the defendant bank which knew about the plaintiff’s security interest but did not know that the loan payments were partially from the equipment sale proceeds. The plaintiff sued the defendant for conversion and return of the proceeds. The court held that because the debtor had commingled the equipment proceeds with the other business funds in the checking account and had made the loan payments in the ordinary course of business, the bank took the proceeds free of the plaintiff’s security interest where it had no knowledge that the proceeds were from the equipment sales. J.I. Case Credit Corp. v. First Nat’l Bank, 991 F.2d 1272 (7th Cir. 1993).

FEDERAL FARM PRODUCTS RULE-ALM § 13.01[4][a].* The Packers and Stockyards Administration has certified the central filing system of Minnesota for a wide range of farm crops and livestock. 58 Fed. Reg. 36389 (July 7, 1993).

LANDLORD’S LIEN-ALM § 13.01[5].* In 1989 and 1990, the plaintiff leased farm land to a tenant who had granted a security interest to the defendant in crops planted in 1989 and harvested in 1990. The tenant delivered the crops to the defendant who used the proceeds to pay down a loan to the tenant. The defendant asserted a priority security interest based on a statutory landlord’s lien for unpaid rent for 1989. The trial court entered judgment for the defendant, holding that the statutory lien did not attach until the crops were harvested in 1990, a lease year for which the plaintiff had received the rent payment. The appellate court reversed, holding that the lien attached when the crop sprouted, in 1989. The court also held that the Federal Farm Products rule did not apply. Jenkins v. Missouri Farmers Ass’n, Inc., 851 S.W.2d 542 (Mo. Ct. App. 1993).

STATE TAXATION

AGRICULTURAL USE. The taxpayer farmed Arizona land by “dry planting” barley. The defendant county classified the property as vacant land for property tax purposes and the taxpayer challenged the classification, arguing that the land should be classified as agricultural, thus receiving a valuation based on income and not full fair market value. The court held that the evidence demonstrated that taxpayer had no reasonable expectation of profit from the “dry farming” of barley on the land where (1) no other land in the area was used to dry farm barley, (2) the taxpayer had only one of four years with a substantial profit, and (3) a prudent landowner with no expectation of selling the property for development would make use of irrigation to avoid the hazards of planting barley in an arid climate. Title USA v. Maricopa County, 851 P.2d 159 (Ariz. Tax. 1993).
TRESPASS

TIMBER-ALM § 1.02[6]. * The defendant cut timber on property owned by the plaintiff without the plaintiff’s permission. The plaintiff’s property line was marked by two three foot high stakes with red flags 173 feet apart. The defendant testified that one of its workers should have seen the stakes. The trial court awarded treble damages for the loss of the trees. The appellate court affirmed the damage award, holding that treble damages were warranted under La. Stat. § 3:4278.1C, treble damages are awardable where the trees are removed across a marked boundary. The plaintiffs had purchased the forested property to preserve the view from their residence. The court upheld an award of $1,000 for mental anguish because the plaintiffs testified that the loss of the trees greatly diminished the beauty of the forest land. Baglio v. Gulf Coast Cas. Ins. Co., 617 So.2d 197 (La. Ct. App. 1993).

CITATION UPDATES
Murphy v. U.S., 992 F.2d 929 (9th Cir. 1993) (futures contracts), see p. 98 supra.

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