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Cases, Regulations and Statutes

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doctrine was inapplicable to all escaped livestock cases. Rather, the Supreme Court stated that whether the doctrine should be invoked should properly depend upon whether the requirements of the doctrine were met— (1) whether "the occurrence was one which would not, in the ordinary course of things, happen in the absence of negligence," (2) whether the instrumentality was under the exclusive control and management of the defendant and (3) whether there was an explanation by the defendant of how the animals came to be on the highway. The Nebraska Supreme Court stated that the first two conditions were met and the third was a question of fact for the jury and the jury did not believe the defendant's explanation. Therefore, the doctrine was properly invoked.

• In the latest case, also in Nebraska,[21] the doctrine of res ipsa loquitur was invoked with the jury returning a verdict for the plaintiff in excess of $1 million. The case involved a collision of a car with a steer that had apparently escaped from a pasture and wondered onto a state highway.

Conclusion

Aside from the fact that leadership in the application of the doctrine of res ipsa loquitur has come from Nebraska, an important livestock-producing state, the broader issue is the range of consequences expected to flow from the Nebraska decision if followed in other jurisdictions. Certainly it will affect— (1) the level of insurance carried by livestock farmers and ranchers; (2) the cost of such coverage, in all likelihood; (3) the attention given to fences and gates, in terms of construction, maintenance and monitoring; and (4) the preparation of cases for trial.

FOOTNOTES

[1] See generally 2 Harl, *Agricultural Law,* Ch. 3 (1997); McEowen and Harl, *Principles of Agricultural Law* § 11.09[1] (1997).

[2] See, e.g., Hansen v. Kemmish, 201 Iowa 1008, 208 N.W. 277 (1926). See also, Prosser, *Law of Torts* § 39 (4th ed. 1971); Prosser, *Selected Topics on the Law of Torts*, Ch. 6 (1953).

[3] E.g., Roberts v. Weber & Sons, Co., 248 Neb. 243, 533 N.W.2d 664 (1995); Fisel v. Wynns, 667 So. 2d 761 (Fla. 1995).

[4] See Prosser, *Law of Torts* § 39 (4th ed. 1971), for a discussion of whether the concept is, indeed, a "doctrine."

[5] See, e.g., Blue Stem Feed Yards, Inc. v. Craft, 191 Kan. 605, 383 P.2d 540 (1963).

[6] E.g., Roberts v. Weber & Sons Co., 248 Neb. 243, 533 N.W.2d 664 (1995).

[7] Michigan, Pennsylvania and South Carolina do not allow a res ipsa loquitur pleading. See 57B *Am Jur. 2d* § 1819 (1989).

[8] E.g., Sweeney v. Erving, 228 U.S. 233 (1913).

[9] E.g., Barger v. Chelpon, 60 S.D. 66, 243 N.W. 97 (1932).

[10] Gray v. Baltimore & Ohio R. Co., 24 F.2d 671 (7th Cir. 1928).

[11] See n. 3 *supra.*

[12] 667 So. 2d 761 (Fla. 1995).

[13] See Selby v. Bullock, 287 So.2d 18 (Fla. 1973).

[14] Fla. Stat. §§ 588.14, 588.15 (1971).

[15] See n. 12 *supra.*

[16] See Selby v. Bullock, n. 13 *supra.*

[17] Fisel v. Wynns, n. 12 *supra*.

[18] Roberts v. Weber & Sons, Co., 248 Neb. 243, 533 N.W.2d 664 (1995).

[19] *Id.*

[20] See 248 Neb. 243, 246, 533 N.W.2d 664, 667 (1995).

[21] Landkamer v. Sherbeck, No. 3528-63-97 (Dist. Ct. for Custer County, Neb., 1997).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

HORSES. The plaintiff was a riding student of one defendant and was injured while riding a horse owned by the other defendant. The plaintiff alleged that the defendants were negligent in allowing the plaintiff to ride their horse in an unknown area with hunter-jumper tack instead of dressage tack. During a maneuver, the horse bucked and threw the plaintiff and then kicked the plaintiff. The defendants argued that the plaintiff assumed the risk of being thrown and kicked. The court found that, before the plaintiff got on the horse, the plaintiff was aware of the wrong tack being used and still rode the horse. The court also found that the plaintiff was an experienced rider, well aware of the risks involved in riding horses. The court held that the plaintiff had assumed the risk of the injury suffered and dismissed the suit. **Young v. Brandt, 485 S.E.2d 519 (Ga. Ct. App. 1997)**.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor filed for Chapter 13 and served notice of the filing on the IRS. After notice was served, the IRS served a levy on the debtor's bank account. The debtor informed the IRS about the bankruptcy filing but the IRS refused to return the levied funds. As a result of the levy, the debtor was unable to make mortgage payments and incurred legal fees charged by the mortgagee and legal fees to defend against the mortgagee and to bring the current suit against the IRS. The court held that, under Sections 106 and 362, the sovereign immunity of the IRS was waived and awarded recovery of the levied funds from the IRS plus the actually legal costs incurred by the debtor as a result of the levy. ***In re* Milto, 97-2 U.S. Tax Cas. (CCH) ¶ 50,670 (Bankr. D. Md. 1997)**.

DISCHARGE. The debtor failed to pay taxes and file returns for three tax years more than three years before the filing of the petition. During the three tax years, the debtor had sufficient funds to pay the taxes. The debtor argued that the taxes were dischargeable because the IRS failed to show that the debtor committed any direct fraudulent act in regard to the taxes owed, such as filing a false return. The court held that the debtor's knowing and intentional failure to file the returns and pay the taxes when the debtor had sufficient funds was sufficient to demonstrate willful attempt to evade the taxes. Therefore, the taxes owed were nondischargeable under Section 523. ***In re* Fegeley, 97-2 U.S. Tax Cas. (CCH) ¶ 50,544 (3d Cir. 1997)**.

The debtors, husband and wife, filed for Chapter 13 on April 9, 1993 and filed their 1992 return on April 15, 1993, showing taxes owed. The tax liability was listed as an unsecured priority claim of the IRS. No proof of claim was filed for the taxes and no payments were made under the Chapter 13 plan. The debtors were granted a discharge on April 14, 1996 after making all plan payments. The IRS then collected the taxes by levy against wages and an offset of a 1996 refund. The IRS argued that the 1992 taxes were a post-petition debt because the taxes, under Section 1305(a)(1), did not become due and payable until the 1992 tax return was filed. The court held that the 1992 taxes were a pre-petition debt, even though the return was not due or filed until after the petition was filed. The court held that the determination of whether a claim was post- or pre-petition was made, not under Section 1305, but under Section 101(5). The IRS claimed that it could not file a proof of claim until the debtor filed an income tax return, preventing the IRS from filing an accurate proof of claim in the case. The court noted that the IRS would have up to 180 days after the filing of the petition to file a proof of claim, well within sufficient time for a debtor to be required to file a tax return. Therefore, the court held that, even though the taxes were listed in the plan but were not paid, the taxes were discharged because no proof of claim was filed by the debtors or the IRS. ***In re* Dixon, 210 B.R. 610 (Bankr. W.D. Okla. 1997), *aff'g on reconsid*., 209 B.R. 535 (Bankr. W.D. Okla. 1997)**.

COOPERATIVES

PIERCING THE CORPORATE VEIL. The defendant was an independent non-profit corporation with five sugar producer cooperatives as equal shareholders. The plaintiff was employed as a truck driver for a third party and was injured while delivering molasses to a facility owned by the defendant. The defendant operated solely to market the sugar products produced by the five cooperatives. The plaintiff sought to include the five cooperatives as defendants by ignoring the corporate structure of the defendant such that all six organizations constituted a single business activity. The plaintiff first argued that the formation of the defendant corporation served no useful additional purpose because the five cooperatives needed to market their products anyway. The court held that the formation of a marketing corporation was allowed by La. Rev. Stat. § 3.121 et seq. which provided for the formation of marketing cooperatives. Therefore, the court held that the formation of the defendant had a valid business reason. However, the court held that, because the cooperative marketing statute did not override general corporation law, the doctrine of piercing the corporate veil would still apply to the defendant. The court found that the corporation had followed all of the corporate formalities of records, meetings, adequate and separate capitalization, and separate bank accounts. The plaintiff did not provide any evidence that the formation of the corporation was fraudulent or that the five cooperatives ignored the corporate structure in dealing with the defendant; therefore, the court held that the five cooperatives were separate entities without liability for the accident. **Hayseed v. Louisiana Sugar Cane Products, 692 So.2d 524 (La. Ct. App. 1997)**.

CRIMINAL LAW

HARASSMENT OF HUNTERS. The defendant was convicted of harassment of hunters under Ohio Rev. Stat. § 1533.03(A)(2). The defendant was hired by a rural land owner to patrol the owner's property line to prevent hunting on the property. A hunter had wounded a deer which ran onto the owner's property. When the hunters neared the property line, the defendant shouted and waved her hands in an attempt to prevent the deer from leaving the owner's property. The trial court ruled that, because the defendant's voice and actions could affect hunting on the neighboring property, the defendant was guilty of harassing the hunter. The appellate court reversed, holding that the statute applied only if the harassment occurred while a defendant was on property on which hunting was allowed. Because the defendant was legally on property which legally prohibited hunting, the harassment statute did not apply to her actions. **State v. Mueller, 681 N.E.2d 983 (Ohio Ct. App. 1997)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final regulations amending the brucellosis regulations by changing the classification of Tennessee from Class A to Class Free. **62 Fed. Reg. 48751 (Sept. 17, 1997)**.

The APHIS has adopted as final regulations amending the brucellosis regulations by changing the classification of Kentucky from Class A to Class Free. **62 Fed. Reg. 48475 (Sept. 16, 1997)**.

CROP INSURANCE. The FCIC has issued proposed regulations under the Common Crop Insurance Policy Basic Provisions to convert the canola and rapeseed pilot insurance program to a permanent insurance program for the 1998 and succeeding crop years. **62 Fed. Reg. 48956 (Sept. 18, 1997)**.

GROWTH RETARDANT. See summary of case under Products Liability, *infra*. **Didier v. Drexel Chemical Co., 938 P.2d 364 (Wash. Ct. App. 1997)**.

HERBICIDE. See summary of case under Products Liability, *infra*. **Barnes v. Sandoz Crop Protection Corp., 938 P.2d 95 (Ariz. Ct. App. 1997)**.

PEANUTS. The AMS has adopted a final interim rule which decreases the administrative assessment rate established for the Peanut Administrative Committee under Marketing Agreement No. 146 (agreement) for the 1997-98 and subsequent crop years. The assessment rate for the Committee for the 1997-98 and subsequent crop years decreases from $0.70 to $0.35 per net ton. **62 Fed. Reg. 48749 (Sept. 17, 1997)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff was a produce dealer licensed under the PACA. The plaintiff hired a person as supervisor of a packing crew. The USDA notified the plaintiff that the employee had been found to have been a person responsibly connected with another company which had committed frequent and flagrant violations of PACA; therefore, the person could not be employed with the plaintiff. The plaintiff claimed that the person was removed from the payroll, but the evidence showed that the person continued to work for the plaintiff and even signed checks and a lease for the plaintiff. The ALJ had imposed a 14 day suspension of the plaintiff's license for employment of the person, citing the mitigating factors of the good financial status of the plaintiff and the negative effect on the plaintiff's other employees of a long suspension. The JO, on review, rejected the mitigating factors claimed by the plaintiff and increased the suspension to 30 days. The court upheld the constitutionality of the employment prohibition provision of U.S.C. § 499a(b)(10). The court also held that the plaintiff had no standing to challenge the determination that the person was responsibly connected with the company which was found to have violated PACA. The court also upheld the JO's increasing of the suspension period to 30 days. **Bama Tomato Co. v. USDA, 112 F.3d 1542 (11th Cir. 1997)**.

TUBERCULOSIS. The APHIS has adopted as final regulations amending the tuberculosis regulations by changing the classification of Virginia from modified accredited state to accredited-free state. **62 Fed. Reg. 48165 (Sept. 15, 1997)**.

FEDERAL ESTATE AND GIFT TAX

ADMINISTRATION EXPENSES. The decedent's estate included a 150 acre residential property which was included in a marital trust for the decedent and over which the decedent had a general power of appointment. If the decedent failed to appoint the property to someone, the property passed to a residuary trust established by the decedent's predeceased spouse. The decedent did not appoint the property; however, the estate held the property until other assets were sold and until after the federal estate tax return was filed. The estate tax return included a deduction for the anticipated costs of maintaining and selling the property. The court held that the costs were not deductible because the estate gave no sufficient reason for holding the property so long and not transferring the property itself to the residuary trust where the costs would have been chargeable to the trust. On reconsideration en banc, the court discussed it's prior decision in *Estate of Park v. Comm'r, 475 F.2d 673 (6th Cir. 1973)*, which held that administrative expenses were deductible only if allowed by state law. The IRS argued that the term administrative expenses in I.R.C. § 2053(a) was not self-defining and that Treas. Reg. § 20.2053-3(a) provided the proper interpretation of deductible administrative expenses, requiring that the expenses be allowed by state law and be "actually and necessarily" incurred in the administration of the decedent's estate. The appellate court noted that the Tax Court had not made any determination as to whether the costs of maintaining and selling the property were actual and necessary for the administration of the estate. The court also noted that the estate had made plausible arguments for the necessity of holding the property until after filing the estate tax return; therefore, the case was remanded for findings and rulings on that issue. **Est. of Millikin v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 60,287 (6th Cir. 1997)*, rev'g on reconsid. en banc*, 106 F.3d 1263 (6th Cir. 1997), *aff'g*, T.C. Memo. 1995-288.**

VALUATION. Two days before the death of the decedent and when the decedent was terminally ill, the decedent's children, as co-trustees of two revocable trusts for the benefit of the decedent, transferred trust assets to a limited partnership in exchange for a 98 percent interest in the partnership. The children purchased the remaining 2 percent. The trustees then transferred two 30 percent interests in the partnership to themselves for $10,000 and promissory notes, leaving the decedent's trust holding a 38 percent interest in the partnership when the decedent died. The decedent's estate discounted the value of the estate's partnership interest. The effect of the discounting was that the trust transferred over $2 million in estate assets to the partnership in exchange for partnership interests which were valued by the estate for $1 million less, all within two days. The IRS ruled that the transfer would be disregarded for estate tax valuation purposes because the transfers did not change the testamentary passage of the assets, the co-trustees were related parties and were essentially dealing with themselves, and the notes were not bona fide because the children had no intention of making any payments. **Unpub. Ltr. Rul. (CCH Online, April 3, 1997)**.

FEDERAL INCOME TAXATION

BAD DEBT. The taxpayer facilitated the assignment of a partnership interest in a business to a third party. The taxpayer issued a personal check to the purchaser of the partnership interest in an amount equal to the purchase price. The taxpayer claimed that the check was a loan to the third party but did not produce any evidence of a note or repayment terms. The taxpayer also failed to provide evidence that the "loan" became worthless in the tax year for which a bad deduction was claimed. The court disallowed any bad debt deduction for the amount paid to the third party. **Paleveda v. Comm'r, T.C. Memo. 1997-416**.

DISASTER AREAS-*ALM* § 4.05[2].* The President has declared certain areas of Minnesota as disaster areas from a July 28, 1997 storm. Losses from these casualties may be deducted in taxpayers' 1996 returns.

HOBBY LOSSES. The taxpayers, husband and wife, purchased an 80 acre ranch, although the taxpayers had no farm or ranch experience. The husband worked as an engineering consultant. The wife worked full time on the ranch. The taxpayers made substantial improvements to the property, including remodeling of the residence and farm buildings and installing an irrigation system which made use of a reservoir located on the property. Without the irrigation system, the property would not support raising livestock. The taxpayers tried several unsuccessful animal raising activities before deciding to raise 25 cattle and 60 sheep on the property during the tax years involved in the case. The taxpayers filed several lawsuits to protect their water rights in the water in the reservoir and were generally successful in protecting those rights. The court held that the taxpayers did not operate the ranch with the intent to make a profit, based on examining the factors of Treas. Reg. § 1.183-2(b): (1) the taxpayers failed to expand the herds of livestock sufficient to operate the ranch at a profit; (2) the taxpayers had little ranch experience and, although they made attempts to become educated about livestock raising, they did not consult experts; (3) only the wife spent significant time on the ranch operations; (4) the taxpayers failed to take steps to make the ranch profitable within a reasonable time, although the long range plan was to provide a profitable business to allow the husband to retire from the consulting business; (5) most of the expenses were attributable to the ranch operation and not maintenance of the land; therefore, the appreciation of the land could not be included in the profit expectations of the investment; (6) the ranch never generated a profit; (7) the taxpayers had other income which was offset by the ranch losses; and (8) the taxpayers received substantial personal recreational enjoyment from the property. **Butler v. Comm'r, T.C. Memo. 1997-408**.

The taxpayers, husband and wife, were employed full time with General Motors and had both grown up working with horses on their family ranches. The taxpayers started a Tennessee Walking Horse breeding business on rural property which the taxpayers developed for the horse raising and training activity. The business was started without a specific plan but the taxpayer did talk with experts on the feasibility of such an operation. The taxpayers relocated the business when the taxpayers were transferred by their employer to another state. The taxpayers purchased, bred and sold several horses over the six tax years involved but did not show a taxable profit in any of the years. During the early years of operation, the taxpayers maintained a box of receipts as the only separate recordkeeping for the horse breeding activity, but they eventually kept separate ledgers for the activity. The court held that the taxpayers were allowed the deduction of business expenses in excess of income from the horse breeding activity based on the following factors: (1) the business was carried on in a business like manner with separate recordkeeping, use of advertising and discontinuance of non-profit activities; (2) the taxpayers had extensive personal experience with raising and training horses; (3) the taxpayers expended considerable effort on the activity; (4) the taxpayers realized profit from the sale of the first property, indicating that their improvement efforts resulted in appreciation of business assets; (5) many of the losses were caused by crop losses and market influences independent of the taxpayers' efforts; (6) although the business had no taxable profit, the business did realize a net profit in two years and substantial profit if the gain from the sale of the first property was included; (7) the taxpayers did not have substantial income from other sources; and (8) the taxpayers did not use the horses for personal pleasure. Also at issue was whether the holding of the land could be included in the horse breeding activity sufficient to include the land appreciation in determining whether the business was entered into with the intent to make a profit. The court held that the holding of the land was part of the horse breeding activity because (1) the land was purchased solely for its suitability for raising horses, (2) the land was improved only with buildings and crop tilling which were necessary for the horse breeding activity and the taxpayers lived on and operated the business solely on the land. **Hofer v. Comm'r, T.C. Memo. 1997-417**.

INTEREST RATE. The IRS has announced that for the period October 1, 1997 through December 30, 1997, the interest rate paid on tax overpayments is 8 percent and for underpayments is 9 percent. The interest rate for underpayments by large corporations is 11 percent. **Rev. Rul. 97-40, I.R.B. 1997-__**.

IRA. In 1994, the taxpayer requested a full distribution from a pension plan, paid by check directly to the taxpayer. The pension plan sent a check to the taxpayer but withheld 20 percent for federal taxes. The taxpayer was notified about this withholding in January 1995 by issuance of Form 1099-R from the pension plan. The taxpayer deposited the distribution check in an IRA. The taxpayer was younger than 59 1/2 years old at the time of the distribution and withholding. The court noted that, had the taxpayer requested distribution of the pension funds directly to the IRA, no withholding would have been required. The court also noted that, had the taxpayer contributed to the IRA an amount equal to the withheld funds, the withheld funds would not have taxable, nor would the withheld funds have been subject to the early withdrawal penalty. The taxpayer argued that the intent during the whole process was to effectuate a complete rollover to the IRA which was prevented only by the withholding. The court held that the statute was clear as to the withholding requirements which were avoidable by the taxpayer by the two methods noted by the court discussed above. **Moon v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50,668 (Fed. Cls. 1997)**.

MEDICAID AVOIDANCE TRUSTS. The 1997 Tax Act amended the criminal liability for assisting persons in disposing of assets in order to qualify for medical assistance to include person who "for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under title XIX, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1917(c) . . ." **1997 Act, Sec. 4734**.

PARTNERSHIPS-*ALM* § 7.03.*

LIMITED LIABILITY COMPANIES. Two limited partnerships were formed with the same partners and held real estate for development. As part of an attempt to streamline the management of the properties, the two partnerships were merged into a new limited liability company, with all members' shares equal to their interests in the partnerships. The mortgages on the properties were refinanced into one loan. Because one partnership owed more on its loans, the members' share of liability were equalized with distributions. The IRS ruled that the conversion would not cause recognition of loss or gain, would not affect the holding period of the assets, would not affect the partnership's basis in its assets or partners' basis in the partnership, and would give the LLC the Employer Identification Number of the partnership with the most assets. **Ltr. Rul. 9738013, June 18, 1997**.

PENSION PLANS. For plans beginning in September 1997, the weighted average is 6.84 percent with the permissible range of 6.15 to 7.31 percent (90 to 109 percent permissable range) and 6.15 to 7.52 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 97-51, I.R.B. 1997-__, _**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

DISCHARGE OF INDEBTEDNESS. During 1993, 1994, and 1995 the taxpayer was an S corporation. In each of these years a limited partnership of which the taxpayer owned an interest had discharge of indebtedness income. The taxpayer relied on a certified public accountant to prepare its Form 1120S for each year, but the accountant failed to make the election to treat the taxpayer's share of the discharge of indebtedness as qualified real property business indebtedness, under I.R.C. § 108(c)(3). The error was discovered in 1996 by an attorney hired to review the taxpayer's financial and tax situation. The attorney promptly filed for an extension of time to file the election. The taxpayer and accountant represented that the failure to file the election was not motivated by any tax planning or tax avoidance intent. The IRS ruled that the extension would be granted since no tax effect would result from the delay in making the election. **Ltr. Rul. 9738033, June 2, 1997**.

SALE OF RESIDENCE. The taxpayer was formerly married and as part of the divorce in 1989, sold the marital residence. The taxpayer elected to defer the taxpayer's share of the gain on the sale under I.R.C. § 1034 (repealed in 1997). In 1991, the taxpayer remarried and the couple purchased a home. The taxpayer and new spouse claimed the entire purchase price of the new residence in calculating whether the taxpayer was eligible to rollover the gain from the sale of the previous residence. The IRS argued that, under Treas. Reg. § 1.1034-1(f), the taxpayer was not eligible to claim the entire purchase price because the taxpayer did not reside in both residences with the same spouse. The IRS allowed only half of the purchase price, an amount less than the taxpayer's share of deferred gain from the first house. The court held that Treas. Reg. § 1.1034-1(f) was invalid insofar as it prevented remarried taxpayers from deferring gain when purchasing a second residence with a new spouse. **Snowa v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50,614 (4th Cir. 1997)**.

SAFE HARBOR INTEREST RATES
October 1997

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.84	5.76	5.72	5.69
110% AFR	6.44	6.34	6.29	6.26
120% AFR	7.03	6.91	6.85	6.81
		Mid-term		
AFR	6.34	6.24	6.19	6.16
110% AFR	6.98	6.86	6.80	6.76
120% AFR	7.63	7.49	7.42	7.38
		Long-term		
AFR	6.68	6.57	6.52	6.48
110% AFR	7.36	7.23	7.17	7.12
120% AFR	8.04	7.88	7.80	7.75

LABOR

AGRICULTURAL EXEMPTION. The defendant operated a greenhouse which employed the plaintiffs as laborers. The plaintiffs filed suit for violations of the

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.

FLSA for failure of the defendant to pay time and a half wages for overtime work. The greenhouse operation included the growing of plants from seed, cuttings, bulbs and seedlings and the receiving, care and shipping of plants grown by third parties. The plaintiffs were also required to carry, use and sell packaged planting soil, fertilizers and other “hard goods” which were sold, used and mixed by the greenhouse. Finally, the plaintiffs were occasionally required to perform yard work and other menial tasks at the residence of the owner of the greenhouse. The defendant argued that the plaintiffs were all agricultural laborers exempt from the FLSA because their work involved agricultural products. The defendant also argued that the work for the owner was minimal in respect to the other work and should not affect the plaintiffs’ status. The court held that the de minimis rule applied only within the general context of the labor performed within each category of work. Because the work for the owner was not part of the owner’s agricultural operations, none of the labor for the owner could be exempt from the FLSA as agricultural labor. The court held that the work performed in the greenhouse on plants grown by the defendant or shipped in from other growers was agricultural labor. The court did apply the de minimis rule to the work involving the “hard goods” because the percentage of sales involving the hard goods was insignificant to the total plant sales and the hard goods were integral to the care and production of the plants. **Adkins v. Mid-America Growers, Inc., 965 F. Supp. 1076 (N.D. Ill. 1997)**.

PRODUCTS LIABILITY

GROWTH RETARDANT. The plaintiffs were potato farmers who applied a growth retardant to their potatoes, resulting in the loss of the potatoes. The plaintiffs sued the manufacturer of the retardant under breach of warranty, negligence, and violation of the Washington Uniform Commercial Code and the Consumer’s Protection Act. The plaintiffs claimed that the manufacturer knew that the retardant should not be applied to a crop if the temperature exceeded 85 degrees on the day of application, but the manufacturer failed to notify the plaintiffs about this restriction. The found that all of the plaintiffs’ claims were based on the defendant’s failure to provide this information; therefore, the court held that all the claims were based on labeling requirements in addition to those required by FIFRA. Therefore, the court held that the plaintiffs’ claims were pre-empted by FIFRA. **Didier v. Drexel Chemical Co., 938 P.2d 364 (Wash. Ct. App. 1997)**.

HERBICIDE. The plaintiff was a cotton farmer and sued the defendant manufacturer of a herbicide for alleged damages to the plaintiff’s cotton crop. The plaintiff brought actions in breach of warranty, strict products liability and negligence. The defendant argued that the negligence and breach of warranty claims were pre-empted by FIFRA and that the strict liability claim failed for lack of evidence. The trial court had dismissed all claims because of pre-emption by FIFRA. The appellate court upheld the summary judgment on the strict liability action because the plaintiff failed to demonstrate that the herbicide was defective for all cotton crops. The plaintiff’s experts testified only that the herbicide should not have been used on the plaintiff’s crop because of the specific environmental conditions of the land. The experts acknowledged that the herbicide was effective for cotton crops on neighboring land because the owners compensated for the special condition of their land in formulating the amount of herbicide to use. The remaining claims were based on alleged design defects and the failure of the defendant to advise the plaintiff that the land conditions required different doses of the herbicide. The court held that these claims were pre-empted by FIFRA because the claims relied on the defendant providing information other than that required for the label by FIFRA. **Barnes v. Sandoz Crop Protection Corp., 938 P.2d 95 (Ariz. Ct. App. 1997)**.

ZONING

AGRICULTURAL USE. The plaintiffs were owners of residences neighboring a 72 acre farm located within a district zoned as residential. The farm land had been farmed for over 200 years and 32 acres were currently leased to a farmer who wanted to construct a retail farmstand on the edge of the property abutting a residential street. The land on which the stand would be located contained an underground aquifer. Under local zoning law, a special permit was required to build a structure or other improvement on land containing an aquifer. The plaintiffs argued that the stand was not an allowed structure because it was not an agricultural pursuit, since the stand would be making retail sales. The court held that the sale of produce grown on the land was sufficiently connected to farming to be allowed on land zoned for agricultural pursuits. The court acknowledged that agricultural uses could not generally be prohibited by zoning laws, but that reasonable and necessary restrictions could be placed on new agricultural uses. In this case, the special permit required only the reporting of chemicals to be used, sold and stored on the premises. The court held that such requirements were reasonable and necessary to protect the aquifer and were a valid zoning restriction on the produce stand construction. **Prime v. Zoning Bd. of Appeals of Norwell, 680 N.E.2d 118 (Mass. Ct. App. 1997)**.

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2d ANNUAL SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING by Dr. Neil E. Harl
January 5-9, 1998

Spend a week in Hawai'i in January 1998! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 5-9, 1998 at the spectacular ocean-front Hilton Waikoloa Village Resort on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar.

Here are the major topics to be covered:

• Introduction to estate and business planning.

• Liquidity planning with emphasis on 15-year installment payment of federal estate tax.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, family-owned business exclusion, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Using trusts, including funding of revocable living trusts.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

• Ethics (2 hours).

The Agricultural Law Press has made arrangements for **group discount air fares** on United Airlines, available through Sun Quest Vacations. In addition, attendees are eligible for **substantial discounts on hotel rooms at the Hilton Waikoloa Village Resort**, the site of the seminar. Early registration is important to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest* or the *Agricultural Law Manual*. The registration fee for nonsubscribers is $695.

If you have not yet received a registration packet call Robert Achenbach at 1-541-302-1958.

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