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Cases, Regulations, and Statutes

Agricultural Law Digest

CASES, REGULATIONS AND STATUTES

ANIMALS

FENCES. The defendant had counterclaimed for personal injury damages resulting from a motorcycle collision with a heifer on a public highway in an "open range" area. The defendant argued on appeal that Ariz. Rev. Stat. § 24-502 was unconstitutional in that it limited the amount of damages and the right of recovery in a personal injury action. The court held the statute constitutional because no cause of action existed against livestock owners when the constitution was adopted. **Carrow Co. v. Lusby, 788 P.2d 1201 (Ariz. App. 1989)**.

BANKRUPTCY

GENERAL

AVOIDABLE LIENS. Prior to the debtor's filing of bankruptcy, the defendant vineyard sold to the debtor partially processed grapes. Under California law, Cal. Food & Agric. Code § 55631, a producer has a lien on any farm product grown by the producer. The bankruptcy trustee attempted to avoid the defendant's statutory producer lien under Section 545(2) as a good faith purchaser. The court held that the producer's lien would be valid against a bona fide purchaser from the debtor so long as the debtor had possession of the farm product. Because the debtor had possession of the grapes upon filing for bankruptcy, the defendant's lien was valid as against the trustee's interest in the grapes as a good faith purchaser. ***In re* Loretto Winery, Ltd., 898 F.2d 715 (9th Cir. 1990)**.

Chapter 7 debtors were allowed to avoid a mortgage against their homestead, under Section 506(a), to the extent the mortgage exceeded the value of the property. ***In re* Kostecky, 111 B.R. 823 (Bankr. D. Minn. 1990)**.

Debtors were not allowed to avoid judicial liens against their homestead where the debtors did not have any equity in the homestead even if the judicial liens were avoided. The debtors argued that they would have equity in the homestead if the judicial liens were avoided and the property appreciated in value above the amount of a mortgage against the property. The court rejected this argument because the determination of the debtors' equity is made as of the filing of the bankruptcy case. ***In re* Cheek, 111 B.R. 828 (Bankr. E.D. Mo. 1990)**.

DISCHARGEABLE DEBT. Debtor had signed sham contract to purchase farm machinery from debtor's son's farm equipment business in order to allow son to meet monthly payments to equipment supplier. Debtor had personally guaranteed the debts of the son's farm equipment business. Equipment supplier argued that the entire debt of the equipment business was nondischargeable because of the fraud committed by the sham contract. The lower courts held that the debt was dischargeable because the supplier could not prove the specific amount of loss attributable to the sham contract. The appellate court held that the debt was nondischargeable to the extent of the loss suffered by the supplier and that the bankruptcy court must make a reasonable estimation of the loss. ***In re* Gerlach, 897 F.2d 1048 (10th Cir. 1990)**.

EXEMPTIONS. The Chapter 7 trustee petitioned for rent from the debtors while they lived in their home during pendency of the bankruptcy case. The debtors claimed their aggregate $15,000 exemption in the homestead which was valued at more than $15,000. The court held that because the homestead became bankruptcy estate property subject to the monetary exemption of $15,000, the debtors were required to pay rent for the use of estate property. **Matter of Szekely, 111 B.R. 681 (N.D. Ill. 1990)**.

The Chapter 7 debtor died eight months after filing bankruptcy case in which a homestead exemption was claimed. The trustee argued that the homestead reverted back to the bankruptcy estate because the debtor left no surviving spouse or dependent child. The court held that the homestead did not revert back to the estate because on the date of bankruptcy filing the debtor lived in the residence with a dependent daughter. ***In re* Peterson, 897 F.2d 935 (8th Cir. 1990)**.

TURNOVER OF ESTATE PROPERTY. Debtors were ordered to turnover to the bankruptcy trustee all assets known or unknown by the trustee where the debtor had attempted to hide assets through failure to produce financial documents, false statements, confusion of goods and concealment. **Evans v. Robbins, 897 F.2d 966 (8th Cir. 1990)**.

CHAPTER 12

AUTOMATIC STAY. A creditor with a secured lien against the debtor's farm land was granted relief from the automatic stay "for cause" because the property could be sold for more than the lien and could be custom farmed by the debtor for income which could be used to finance the debtor's Chapter 12 plan. The Bankruptcy Court had also found that the property was worth more than the lien and that the creditor was adequately protected. Instead of allowing the creditor to pursue its state court remedy against the debtor's property, the lower court ordered the sale of the property for a minimum amount. The District Court reversed the Bankruptcy Court, holding that the possibility of selling estate property for more than the debt secured by it was not sufficient cause to lift the automatic stay. ***In re* Kerns, 111 B.R. 777 (S.D. Ind. 1990)**.

ELIGIBILITY. The debtor was a partnership owned by three sisters who all had nonfarm jobs and more nonfarm income than income from the farm partnership. The partnership farm was operated by one of the sister's sons and two unrelated helpers. The sister's father lived in the house on the partnership farm. The court held that the partnership was a family farm eligible for Chapter 12. **Matter of LLL Farms, 111 B.R. 1016 (Bankr. M.D. Ga. 1990)**.

PLAN. The debtor's Chapter 12 plan failed to specifically provide for a pre-petition priority lien of a bank on the debtor's farm equipment. The court held that the plan was ambiguous in that it provided that secured creditors would retain their liens until fully paid under the plan but the plan erroneously identified the FmHA as having a priority lien on the equipment. The court held that because the debtor should have known about the creditor's prior secured lien on the equipment and that the ambiguity of the plan would be resolved against the debtor, who drafted the plan, the creditor's lien was not extinguished by confirmation of the plan which did not specifically mention the lien. ***In re* Duplechain, 111 B.R. 576 (Bankr. W.D. La. 1990)**.

PLAN CONFIRMATION. A Chapter 12 plan provided that the debtors would retain crop land which had been purchased from a creditor on contract and payments on the contract would be made over the 15 years of the plan. The creditor argued that the 15 year payment under the plan was unfair because of the creditor's advanced age. The court held that the age of the creditor did not affect the fairness of the plan and that the plan was fair because the creditor received the same value as would have been received in a Chapter 7 liquidation. In addition, the creditor could still sell the creditor's interest in the property. The creditor's argument that the debtor's plan was unfeasible was rejected by the court because the creditor failed to provide current evidence that the debtor was not complying with the plan after 10 months of the plan had passed. **McCracken v. Brown, 111 B.R. 544 (W.D. N.C. 1989)**.

The debtor partnership borrowed the purchase price of the partnership farm from the Georgia Development Authority. The Chapter 12 plan provided for payment of this loan and defaults over the length of the 30-year plan at an interest rate of 10.2 percent, the current yield of U.S. Treasury bonds plus two percent. The GDA had argued that the payments should be amortized over 30 years but that a balloon payment should be required after 20 years because the GDA was prohibited from making loans longer than 20 years. The court confirmed the interest rate of the plan in the absence of evidence of a more appropriate rate from the GDA but allowed the balloon payment requirement because 20 years would provide the partnership with enough time to secure alternative financing. **Matter of LLL Farms, 111 B.R. 1016 (Bankr. M.D. Ga. 1990).**

CHAPTER 13

PLAN. Under *In re Houghland*, 886 F.2d 1182 (9th Cir. 1989), liens against a homestead may be bifurcated under Section 506(a) into unsecured and secured claims with the unsecured claim avoidable under the cram-down provision, section 1325(a)(5), and the bifurcation was not a modification of the lien prohibited by section 1322(b)(2). In the present case, the debtors argued that the Chapter 13 plan could provide for payment of the allowed secured portion of the lien against their residence over the length of the plan and that any defaults outstanding on the mortgage could be allocated to the unsecured portion of the lien and thus avoided. The court disagreed, holding that once the secured portion of the mortgage was determined (as of the date of bankruptcy filing), the mortgage could not be further modified. The court also held that because the cramdown provision requires the curing of all defaults, the debtors were required to cure the defaults as well as make payments on the allowed secured position of the mortgage. Because the interest rate and amount of each installment payment were to remain the same but the total amount to be paid was reduced, the only modification allowed was a shortening in the maturity date. ***In re* Hayes, 111 B.R. 924 (Bankr. D. Or. 1990)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS. The court allowed the debtor's Chapter 11 plan to allocate federal tax payments because IRS had not made any attempts to collect taxes other than filing a claim in bankruptcy and the best interests of all parties supported the plan's allocation. **Kare Kemical, Inc., 112 B.R. 38 (S.D. Fla. 1989)**.

AUTOMATIC STAY. The IRS was not prohibited by the automatic stay to investigate the debtor to determine the appropriateness of the taxpayer's tax exempt status. **U.S. V. Universal Life Church, 90-1 U.S.T.C. ¶ 50,230 (E.D. Cal. 1990)**.

AVOIDABLE TRANSFERS. The debtor made a federal quarterly estimated tax payment within 90 days before filing bankruptcy because of a sale of property which produced significant taxable capital gain. The debtor did not elect to treat the first year of bankruptcy as two taxable years. The bankruptcy trustee argued that the estimated payment was estate property because the payment was made in satisfaction of the debtor's personal income tax liability. The court rejected this argument because the bankruptcy estate consists of only property held by the debtor at the filing for bankruptcy. The trustee also argued that the payment was an avoidable preference under section 547(b). The court held that because the IRS did not receive more than it would have in a Chapter 7 liquidation, the estimated tax payment was not avoidable. The court also rejected the IRS argument that the tax payment was fraudulent, because the debtor received full credit for the payment against the debtor's federal income tax liability resulting from the capital gains recognized in the sale of the property. ***In re* Weir, 90-1 U.S.T.C. ¶ 50,229 (Bankr. D. Kan. 1990)**.

RESPONSIBLE PERSON. Debtor was president and sole shareholder in corporation which failed to make payments of withholding taxes. The debtor argued that he was unaware of the failure to make the payments and took steps to pay the deficiency as soon as he was aware of it. The court held that the debtor was a "responsible person" although payment of the withholding taxes was delegated to other employees and that the failure to make the payments was wilful in that the debtor continued to make payment of net wages to employees after the debtor was notified of the deficiency. ***In re* Vaglica, 112 B.R. 17 (Bankr. E.D. Tex. 1990)**.

TAXABLE YEAR. The debtor terminated a qualified retirement plan in 1986 prior to filing for bankruptcy and did not elect to end the taxable year as of the date of bankruptcy filing. The debtor argued that the federal income tax liability created by the termination of the plan should be an estate liability because the funds from the termination were in the bankruptcy estate. The court held that because the debtor had the statutory election to terminate the taxable year upon filing for bankruptcy, thus making the tax liability a claim against the estate, the entire 1986 income tax liability was not an estate liability. ***In re* Gonzalez, 112 B.R. 10 (Bankr. E.D. Tex. 1989)**.

CONTRACTS

CONFLICT OF LAWS. In an action for breach of implied warranty resulting from the sale of diseased cattle, the court held that Arkansas law was correctly applied to the action by the trial court where the plaintiffs were residents of Arkansas, the injuries and damages were sustained in Arkansas, the action was brought in Arkansas and some of the cattle were delivered by the sellers to Arkansas. The plaintiffs had traveled to Missouri and the sales were negotiated and consummated in Missouri. **Threlkeld v. Worsham, 785 S.W.2d 249 (Ark. App. 1990)**.

FEDERAL AGRICULTURAL PROGRAMS

ALIEN AGRICULTURAL WORKERS. Under the Department of Labor's H-2A program, nonimmigrant alien agricultural workers may be granted visas to work in the U.S. if the employers can demonstrate the need for the workers. Such employers are required to meet the "prevailing practices" in the employer's region as to worker housing, transportation advance, frequency of payment and use of farm labor contractors. The Department of Labor issued H-2A Program Handbook without public notice or comment and the handbook defined "prevailing practice" as that used by a majority of employers and employers employing a majority of employees in a similar occupation. The court held that this definition of "prevailing practice" constituted a new substantive rule in that the "double majority" requirement was not a restatement of Department of Labor policy or statute. Although the court did not enjoin application of the handbook definition, the court ordered the department to institute rulemaking procedures "with dispatch." **Comite de Apoyo Para Los Trabajadores v. Dole, 731 F. Supp. 541 (D. D.C. 1990)**.

CATTLE. The APHIS has affirmed an interim rule classifying Kentucky as a Class A state under the brucellosis regulations. **55 Fed. Reg. 19054 (May 8, 1990)**.

CHILD NUTRITION PROGRAMS. The Food and Nutrition Service has announced the annual adjustments to the income eligibility guidelines used to determine eligibility for reduced-priced meals or free milk for July 1, 1990 through June 30, 1991. **55 Fed. Reg. 18646 (May 3, 1990)**.

LOAN PROGRAMS. The FmHA has issued a proposed rule amending the eligibility requirements for emergency, farm operating, farm ownership and soil and water loans to require that the applicant--

> "Honestly endeavor to carry out the applicant/borrower's undertakings and obligations. This would include, but is not limited to, providing current and complete information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan."

55 Fed. Reg. 18607 (May 3, 1990), amending 7 C.F.R. §§ 1941.12, 1943.12, 1943.62, 1945.162.

MEAT AND MILK PRODUCTS. The APHIS has issued a proposed rule which would allow the importation of meat and milk products of ruminants and swine from countries free of rinderpest and foot and mouth disease through a country not free of those diseases if the products are kept in sealed containers, instead of requiring the sealing of an entire hold or compartment of the carrier. The proposed rules also allow importation of such products in some cases where the seals on the containers have been broken. **55 Fed. Reg. 18342 (May 2, 1990), amending 9 C.F.R. Part 94**.

MILK. The AMS has announced the suspension in the Great Basin milk marketing order of the requirement that a producer who was not a producer under the Great Basin order in a previous month would not be eligible to have milk diverted to a nonpool plant until after one day's production was received at a pool plant. **55 Fed. Reg. 18303 (May 2, 1990)**.

NATIONAL FORESTS. Several environmental groups sought review of a comprehensive land resource management plan for the Rio Grande National Forest. The court held that the plan was deficient (1) for failure to identify the technology which would prevent irreversible damage to soil resources, (2) for failure to adequately explain economic factors and provide an economic efficiency analysis, (3) for failure to adequately consider alternative plans, and (4) for failure to identify how the plan complied with the Clean Water Act. The court held that the plan adequately considered the environmental effects on visual resources and water quality and that the environmental impact statement in the plan was adequate because it provided for on-going, site specific impact studies. The plan was not required to consider the cumulative impacts in the environmental impact study. **Citizens for Environmental Quality v. U.S., 731 F. Supp. 970 (D. Colo. 1989)**.

A land resource management plan for the Bighorn National Forest was enjoined because the plan provided for a seven year regeneration standard instead of the five-year regeneration standard required by 11 U.S.C. § 1604(g)(3)(E)(ii). **Sierra Club v. Cargill, 732 F. Supp. 1095 (D. Colo. 1990)**.

SCHOOL BREAKFAST PROGRAM. The Food and Nutrition Service has issued a proposed rule requiring state agencies to (1) provide information to school boards and public officials concerning the benefits and availability of the program and (2) direct special informational efforts annually toward selected non-participating schools with a substantial low-income enrollment. **55 Fed. Reg. 18908 (May 7, 1990)**.

TREES. The CCC has adopted final regulations for the 1989 Tree Assistance Program for losses from earthquakes by commercial growers of trees for crops or timber. **55 Fed. Reg. 19053 (May 8, 1990), adding 7 C.F.R. § 1478.17**.

USDA. The USDA has added the position of Assistant Under Secretary for Small Community and Rural Development. **55 Fed. Reg. 18097 (May 1, 1990)**.

VIRUSES, SERUMS AND TOXINS. The APHIS has issued a proposed rule which removes the exemption allowing biological products prepared for intrastate distribution or export to be prepared without a USDA license. Except for products for which an extension of the exemption has been obtained, all such products must be prepared under a USDA license after January 1, 1990. Products produced before January 1, 1990, without a license may be distributed until January 1, 1991. **55 Fed. Reg. 18345 (May 2, 1990), amending 9 C.F.R. § 114.2(d)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS. At death, decedent owned U.S. savings bonds, some jointly with a surviving person and some individually, with the proceeds payable to the surviving person. IRS ruled that the survivor's written disclaimer of the interest in the savings bonds within nine months of the decedent's death was effective because the decedent held the power during life to cash in the bonds without the survivor's consent. **Ltr. Rul. 9017026, Jan. 26, 1990**.

GENERATION SKIPPING TRANSFERS. IRS has issued the following new forms:

706GS(D) Generation Skipping Transfer Tax Return for Distributions
706GS(D-1) Notification of Distribution from a Generation Skipping Trust
706GS(T) Generation Skipping Transfer Tax Return for Terminations

Trust distributions and terminations which occur after September 25, 1985 and before January 1, 1990, must be reported by August 15, 1990. **Ann. 90-54, I.R.B. 1990-16, 21**.

GIFTS. The decedent's transfers of stock to intermediate donees who accepted stock with the understanding that stock would be eventually transferred to decedent's heirs were held to be gifts from the decedent to the decedent's heirs. **Heyen v. U.S., 731 F. Supp. 1488 (D. Kan. 1990)**.

GROSS ESTATE. Decedent was a settlor of a revocable trust in which the decedent was the sole beneficiary and had the power to direct payment of trust income and principal. The decedent had directed the trustees to transfer trust property to several donees within three years before the decedent's death. IRS ruled that the transfers were includible in the decedent's gross estate because the transfers were a relinquishment of the decedent's power to revoke the trust as to those assets transferred. **Ltr. Rul. 9016002, Dec. 29, 1989**.

INSTALLMENT PAYMENT. At death, decedent held stock in a corporation which operated a hotel and was a partner in a partnership which owned stock in the corporation and which leased land to the corporation. The partnership only collected rent from the corporation which performed all management operations on the leased property. IRS ruled that the decedent's interest in the partnership was not an interest in a closely held business because the partnership was not an active enterprise producing business income for purposes of installment payment of federal estate tax. **Ltr. Rul. 9015009, Jan. 5, 1990**.

MARITAL DEDUCTION. The decedent's will created a marital trust under which the trustees

> "shall pay to [the surviving spouse] so much, or all, of the net income of the said trust as my trustees shall, in their sole discretion, deem necessary to provide for her care and support in the style and manner of living to which she has been accustomed, and to provide for her medical or other emergency needs."

The trust also provided for distribution of trust corpus for the surviving spouse's emergency needs and granted the surviving spouse a testamentary power of appointment over the trust corpus. A marital deduction for the property passing to the trust was denied because the trust did not provide for distribution of all of the income to the surviving spouse nor did it provide for distributions at least annually. The court rejected the estate's argument that extrinsic evidence should have been examined, because the will language was unambiguous. **Wisely v. U.S., 90-1 U.S.T.C. ¶ 60,017 (4th Cir. 1990), aff'g 703 F. Supp. 474 (W.D. Va. 1988)**.

The decedent was a recipient of a QTIP marital trust from a predeceased spouse. In an amended return, the estate of the predeceased spouse reduced the value of the estate's assets, resulting in a decreased value of the QTIP marital trust and marital deduction. IRS ruled that the decreased amount was includible in the decedent's estate. **Ltr. Rul. 9017001, Dec. 29, 1989**.

RETURNS. IRS has announced reminders that in filing Form 706 (1) for decedents dying after July 12, 1989, Question 5 in Part 3, Elections by the Executor, must be answered "No" because of the repeal of I.R.C. § 2210 and (2) for decedents dying after December 19, 1989, line 25 must equal the amount on line 20 of Schedule N and lines 21-24 should be left blank, because of repeal of I.R.C. § 2057. **Ann. 90-59, I.R.B. 1990-17, 19**.

TRANSFERS WITH RETAINED INTERESTS. The taxpayer transferred cash and securities to a trust for three years with the taxpayer to receive the income from the trust. The taxpayer was not the trustee and did not have the power to change or name successor trustees. IRS ruled that the trust was an enterprise for purposes of I.R.C. § 2036(c) and that the taxpayer's interest was a qualified trust income interest not includible in the taxpayer's gross estate under I.R.C. § 2036(c). **Ltr. Rul. 9016086, Jan. 26, 1990**.

TRUSTS. Two grantors established an irrevocable trust in which the grantors and a third party were trustees. The beneficiaries of the trust were the three trustees and several others. All distributions from the trust required a majority vote of the trustees. Upon the death of the grantors, the trust terminates with trust property to be distributed as appointed by will of one grantor, except that the grantor may not appoint the property to the grantor or the grantor's estate, creditors or estate creditors. IRS ruled that the trust was not a grantor trust with income taxable to the grantors because distributions could be made only with the consent of an adverse party and neither grantor retained more than a five percent reversionary interest in the trust. IRS also ruled that the transfer of property to the trust was not a taxable gift because the grantors retained dominion and control over distributions from the trust. Finally, IRS ruled that the property transferred to the trust by each grantor and the accumulated income attributable to that property will be includible in each grantor's respective estates. **Ltr. Rul. 9016079, Jan. 25, 1990**.

FEDERAL INCOME TAXATION

C CORPORATIONS

CONTRIBUTIONS**.** The taxpayer was a majority shareholder and chairman of the board of directors of a corporation. In order to meet a creditor's demands, the taxpayer agreed to transfer real property to the corporation to increase the corporation's equity. Although title to the property was transferred to the corporation and the corporation's board minutes authorized the sale of the property, the property was sold to a buyer who had agreed to purchase the property before the property was transferred to the corporation. IRS ruled that the form of the transaction had no business purpose, because the corporation needed the funds from the sale and the property was not related to the corporation's business. Therefore, the transaction was considered to be a sale of the property by the shareholder and a contribution of the proceeds to the corporation. **Ltr. Rul. 9016001, Dec. 28, 1989**.

DEFINITION. A corporation reorganized as a business trust with the shareholders receiving interests in the trust equal to their interests in the corporation. IRS ruled that the business trust would be treated as a corporation for federal income tax purposes. **Ltr. Rul. 9016033, Jan. 19, 1990**.

SALE OF STOCK. A shareholder of a corporation proposed to sell all stock to a son-in-law who was also a trustee of several trusts established by the shareholder for the son-in-law's children. IRS ruled that any loss from the sale of the stock would be deductible because the son-in-law was not a lineal descendant of the shareholder and the son-in-law was purchasing the stock with personal funds. **Ltr. Rul. 9017008, Jan. 24, 1990**.

CAPITALIZATION OF EXPENSES. The taxpayer invested unexpended funds from a construction loan during the construction period and attempted to net the interest income with the interest expense to reduce the amount of interest required to be capitalized. IRS ruled that for purposes of former I.R.C. § 189 and current I.R.C. § 263A(f), a taxpayer may not offset interest expense required to be capitalized under those sections with interest income generated by funds acquired through the same loan which produced the interest expense. **Rev. Rul. 90-40, I.R.B. 1990-18, 5**.

CASUALTY LOSSES. IRS has announced the areas of Alabama, California, Georgia, Mississippi and Washington which have been declared disaster areas in which taxpayers who suffer losses from the disasters may elect treatment under I.R.C. § 165(i). **Ann. 90-62, I.R.B. 1990-18, 12**.

S CORPORATIONS

BUILT-IN GAINS. An S corporation plans to terminate its I.R.C. § 444 election and change to a calendar taxable year, resulting in a short taxable year. IRS ruled that the short taxable year was a taxable year for purposes of the tax imposed by I.R.C. § 1374(a). **Ltr. Rul. 9016088, Jan. 26, 1990**.

An S corporation's first taxable year which was less than 12 months was ruled to be a taxable year for purposes of the tax imposed by I.R.C. § 1374(c)(1). **Ltr. Rul. 9017012, Jan. 25, 1990**.

ELIGIBILITY. Several S corporations proposed to purchase limited partnership interests in a partnership formed to own and operate restaurants. Each corporation would contribute cash for the partnership interest received. IRS ruled that the ownership of the partnership interests would not increase the number of shareholders in each corporation because the transaction has a valid business purpose, only cash will be contributed to the partnership and each corporation will continue to operate its own restaurant business. **Ltr. Rul. 9017057, Jan. 30, 1990**.

INADVERTENT TERMINATION. S corporation stock held in a Uniform Gifts to Minors Act account was transferred to a trust with the same beneficiary. However, the trust contained an after-born grandchild provision which under Rev. Rul. 89-45, 1989-1 C.B. 267 would disqualify the trust as an S trust. The corporation redeemed the stock immediately upon learning of the disqualification. IRS ruled the termination as inadvertent. **Ltr. Rul. 9017019, Jan. 25, 1990; Ltr. Rul. 9017017, Jan. 25, 1990; Ltr. Rul. 9017016, Jan. 25, 1990**.

STOCK BASIS. A shareholder was not allowed to include the value of corporation loans guaranteed by the shareholder where the loans were carried on the corporate books as corporate debt and the corporation paid all of the debt and took all of the interest deductions from the loans. **Russell v. Comm'r, T.C. Memo. 1990-217**.

SALE OF RESIDENCE. Taxpayers sold their residence, moved to another state to teach children of U.S. military personnel and purchased another home over two years later. The court held that the exception to the two-year repurchase rule for military personnel did not apply to taxpayers who provided services for the military. **Gantner v. U.S., 90-1 U.S.T.C. ¶ 50,220 (S.D. Ind. 1990)**.

TAX LIENS. The taxpayer purchased a house in his sole name at a time when IRS had valid liens against the taxpayer's property. Later on the same day, the taxpayer conveyed the house to himself and his spouse as joint tenants without receiving any consideration from the spouse. The court held that the IRS liens attached to the entire proceeds of the house when the taxpayer purchased the house in his name alone. The spouse did not acquire an interest in the house superior to the IRS because the spouse did not provide any consideration for her joint interest in the house. ***In re* Hamilton & Son, Inc., 90-1 U.S.T.C. ¶ 50,223 (Bankr. D. Me. 1990)**.

TRUSTS. Taxpayers were denied deductions relating to a foreign based trust which was held to be a sham. Taxpayers failed to provide any evidence to substantiate the validity of the trust or the deductions claimed. **Sandvall v. Comm'r, 898 F.2d 455 (5th Cir. 1990)**.

MORTGAGES

REDEMPTION RIGHTS. Debtor had mortgaged a farm with the Board of University and School Lands through a private bank. After default and foreclosure, the bank sold the sheriff's certificate of foreclosure sale to the junior lienholder before the period of redemption expired. The debtor filed an action for wrongful deprivation of the privilege to repurchase the farm. The court overturned the trial court's summary judgment for the bank, holding that sufficient factual issues remained as to whether the bank properly considered the debtor's statutory repurchase rights. **Lang v. Bank of North Dakota, 453 N.W.2d 118 (N.D. 1990)**.

PARTNERSHIPS

FIDUCIARY DUTY. Two brothers operated a milk hauling partnership. When the partnership terminated, the partners held a private auction of the partnership assets which included a milk hauling contract. The one partner purchased the partnership assets but the other partner was personally awarded the milk hauling contract. The court held that the partner who did not purchase the partnership assets violated the fiduciary duty to the partnership by applying for the milk hauling contract after selling it to the other partner. **Monin v. Monin, 785 S.W.2d 499 (Ky. App. 1990)**.

PRODUCTS LIABILITY

COMBINES. The plaintiff was injured when his hand was sucked into the engine fan while the plaintiff was repairing the water pump with the engine running. In an action in strict liability for failure to warn, the jury returned a verdict for the plaintiff with fault apportioned 63 percent to the manufacturer and 37 percent to the plaintiff. The defendant manufacturer argued that evidence of past similar accidents known to the manufacturer should not have been admitted because the other accidents were not similar. The court held that the trial court did not abuse its discretion in allowing the evidence. The defendant also argued that it had no duty to warn because the rotating fan was an open and obvious danger. The court ruled that the obviousness of the suction caused by the fan was a jury question. The court also held that the jury instruction, "a defective product is unreasonably dangerous if the danger would not be recognized by an ordinary person in similar circumstances," was proper. **Sandry v. John Deere Co., 452 N.W.2d 616 (Iowa App. 1989)**.

FERTILIZER SPREADER. Plaintiff's spouse was killed when a fertilizer spreader truck backed over him during a reloading procedure. The plaintiff alleged that the spreader was defective in that it did not have a back-up warning alarm. The court held that factual issues remained as to whether the absence of the back-up alarm was an open and obvious danger and as to whether the manufacturer of the spreader chassis had a duty to install the back-up alarm. **Ogletree v. Navistar Intern. Trans. Corp., 390 S.E.2d 61 (Ga. App. 1990)**.

RETAILERS. In a wrongful death action resulting from an accident involving a combine, the plaintiff sued the retail seller of the combine in strict liability. The court held that the retailer was not liable for the alleged defect in the combine, under Idaho Code § 6-1407(1), because the retailer did not discover the alleged defect and did not have sufficient ability to discover the alleged defect. **Hoopes v. Deere & Co., 788 P.2d 201 (Idaho 1990).**

STATUTE OF LIMITATIONS. In a wrongful death action resulting from an accident involving a combine, the plaintiff filed the action four days before the statute of limitations ran on the action. The defendant named in the petition was a subsidiary of the manufacturer and the petition was amended after the statute of limitation had run on the action to name the manufacturer as defendant. The court held that the amendment of the manufacturer as defendant did not relate back to the date of the filing of the action because the manufacturer did not receive any notice of the suit until process was served on the subsidiary which occurred after the statute of limitations had run. **Hoopes v. Deere & Co., 788 P.2d 201 (Idaho 1990)**.

SECURED TRANSACTIONS

AUCTIONEERS. Plaintiffs sold cows to a dairy farm on an installment contract and retained a security interest in the cows which allowed the buyers to "remove" unproductive cows from the herd but required written permission to sell any cows covered by the security agreement. The dairy farm sold the cows through the defendant auctioneer but failed to obtain written permission to sell the cows and failed to remit the proceeds to the plaintiffs. The court held that the authority to "remove" unproductive cows did not authorize the dairy farm to sell unproductive cows. Because the defendant auctioneer had knowledge of the plaintiff's security interest, both directly and through the filing of the security agreement, the auctioneer was liable for conversion of the cows under Idaho Code § 28-9-306. **Newgen v. OK Livestock Exchange, 788 P.2d 846 (Idaho App. 1990)**.

STATE REGULATION OF AGRICULTURE

MILK. Plaintiff challenged the Pa. Milk Marketing Board's increase in wholesale and retail minimum milk prices for (1) failure to require dealers and retailers to show the need for an increase, (2) failure to consider the differences in butterfat in milk, and (3) failure to consider evidence of in-store handling costs. In rejecting the plaintiff's arguments, the court held that (1) the PMMB's procedures adequately considered all factors for the increase, (2) the PMMB did consider the variances in butterfat, and (3) the PMMB did consider in-store handling costs but properly chose to reject the testimony of the retailers. **Finucane v. Commonwealth of Pa. Milk Marketing Bd., 572 A.2d 27 (Pa. 1990)**.

PESTICIDES. Plaintiff challenged a town ordinance prohibiting nonagricultural use of pesticides without prior town approval. The court held that the ordinance was not preempted by the Federal Insecticide, Fungicide and Rodenticide Act because the ordinance does not regulate packaging or labeling and FIFRA allows the states to more stringently regulate the use of pesticides. The court also held that the town ordinance was not preempted by the Maine Pesticide Control Act or the Pesticide Board Act. **Central Maine Power Co. v. Town of Lebanon, 571 A.2d 1189 (Me. 1990)**.

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