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U.S. Supreme Court rules on untimely objection to bankruptcy exemptions

On April 21, 1992, the Supreme Court issued its decision in *Taylor v. Freeland & Kronz*, No. 91-571, 1992 WL 77247 (April 21, 1992), a bankruptcy case appealed from the Third Circuit Court of Appeals. At issue in *Taylor* was a trustee's attempt to raise an untimely objection to one of the debtor's claimed exemptions. The facts in *Taylor* involved a debtor's claim of the proceeds from a pending employment discrimination suit as exempt from her Chapter 7 bankruptcy estate. Although no statutory basis existed for the exemption, and full disclosure of the asset was made, the trustee did not raise any objection until the requisite time period for objecting had expired. The Court held that a trustee may not contest an exemption after the time period designated by Rule 4003(b) has expired, regardless of whether the exemption claim has a proper legal basis. Although the *Taylor* case itself did not involve agricultural law, the issue presented will have an impact on a number of farm bankruptcy cases.

When a debtor files a bankruptcy petition, an estate is created consisting of all of the debtor's property, including "all legal and equitable interests." 11 U.S.C. § 541. There is no question that the rights to pursue a cause of action are included in this estate. The Code, however, allows the debtor to prevent the distribution of certain property by claiming it as exempt. 11 U.S.C. § 522(b). The procedures for claiming exemptions is set forth in section 522(l). This section provides that "[t]he debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section." 11 U.S.C. § 522(l). It further states that "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." The Bankruptcy Rules provide that "[t]he trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court." Bankruptcy Rule 4003(b).

In *Taylor*, the debtor claimed the proceeds from her employment discrimination lawsuit as exempt by listing them in the schedule that she filed under section 522(1). The parties acknowledge that she did not have a right to exempt more than a small portion of these proceeds either under state law or under the federal exemptions specified in section 522(d). Nevertheless, she claimed the full amount as exempt. It is not disputed that the trustee could have made a valid objection under section 522(1) and Rule 4003 if he had acted promptly. He did not raise a timely objection, however, but rather, sought turnover of the proceeds months after the time period for raising objections had past. The bankruptcy court ordered the turnover, finding that no

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ASCS failure to call witness at appeal hearing held abuse of discretion

The Claims Court has held that the failure of the Agricultural Stabilization and Conservation Service's (ASCS) Deputy Administrator for State and County Operations (DASCO) to call a witness requested by the aggrieved program participant at an administrative appeal hearing was an abuse of discretion. *Doty v. United States*, 24 Cl. Ct. 615, 631 (1991). Implicitly recognizing the significance of its decision, the court expressly limited its holding to the "special circumstances of this case" and cautioned that its holding does not "suggest that a reviewing authority must grant every request by a participant to call and cross-examine witnesses." *Id.*

At issue was James Doty's eligibility for dairy termination program (DTP) payments. Doty alleged that the ASCS's failure to make the payments due under his DTP contract and the government's demand for a refund of payments previously paid constituted a breach of contract. Additionally, Doty contended that he had been denied due process during his administrative appeals. *Id.* at 616-17.

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statutory basis for the exemption existed. The district court affirmed, but the Third Circuit reversed. The Supreme Court affirmed the Third Circuit, holding that the requirements of section 522 and Rule 4003 are absolute; if the objection is not raised within the appropriate time period, the claimed property is exempt.

The Court in *Taylor* based its decision on a clear reading of the statute and rule governing objections to exemptions. The trustee argued that the court could invalidate exemptions after the objection period if there was not a good faith or reasonably disputable basis for the exemption claimed by the debtor. The Court acknowledged that this good faith analysis has been adopted by several circuit courts. See *In re Peterson*, 920 F.2d 1389, 1393-1394 (8th Cir. 1990); *In re Sherk*, 918 F.2d 1170, 1174 (5th Cir. 1990); *In re Dembs*, 757 F.2d 777, 780 (6th Cir. 1985). Supporting this approach is the argument that a good faith test will discourage debtors from making meritless exemption claims.

The Court rejected this analysis, stating that it had "no authority to limit the application of section 522(1) to exemptions claimed in good faith." *Taylor*, at *5. As to the trustee's practical arguments on encouraging meritless claims, the Court noted that other avenues exist to prevent debtor misuse. As examples of these other avenues, the Court cited 11 U.S.C. section 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to "be verified or contain an unsworn declaration" of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not "well grounded in fact and . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"); and 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases). *Taylor*, at *5.

The *Taylor* decision did leave one unresolved exception to the finality of a claimed exemption. In the trustee's opening brief to the Court, he raised the argument that 11 U.S.C. section 105(a) authorized the court to disallow an exemption not claimed in good faith. This section provides that "[T]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). This provision supported the court's decisions in *Ragsdale v. Genesco, Inc.*, 674 F.2d 277, 278 (4th Cir. 1982); *In re Staniforth*, 116 B.R. 127, 131 (W.D. Wis. 1990); and *In re Budinsky*, No. 90-01099, 1991 WL 105640 (W.D. Pa. June 10,

1991). The Court declined to rule on this question, as it was an issue not raised before the lower courts.

Several agricultural cases have turned on the effect of an untimely objection to an exemption. For example, in a very recently decided (but pre-*Taylor*) decision involving a farm bankruptcy, the Tenth Circuit held that the lack of a timely objection to the exemption did not preclude the court's authority to deny the exemption. *In re Coones*, 954 F.2d 596 (10th Cir. 1992). The court held that the debtors' claim that crop proceeds were exempt as personal service income did not have a good faith basis under Wyoming law. Adopting the good faith test now rejected by *Taylor*, the court held that the exemption could be disallowed despite the running of the objection period.

Similarly, *In re Kingsbury*, 124 B.R. 146 (Bankr. D. Me. 1991), the bankruptcy court allowed the trustee's untimely objection to the debtors' claimed exemption of milk earnings held by third party. The court disallowed the exemption, holding that an objection to an exemption that is not filed within the proper time period will be considered only to determine whether a good faith statutory basis exists for the exemption. The court concluded that the exemption claim that had no statutory basis, and thus could be denied despite the untimeliness of the objection by the trustee.

As is exemplified in *Taylor* and *Kingsbury*, given the variety of properties unique to the agricultural industry, farmers have frequently used creative attempts to fit these properties into various categories of exemptions. It is likely that *Taylor* will both encourage these attempts and encourage trustees to make firm and timely objections.

—By Susan A. Schneider, of counsel,
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Claims Court addresses scope of review of ASCS decisions

THE United States Claims Court has construed 7 U.S.C. sections 1385 and 1429 as substantially restricting the scope of judicial review of final decisions made by the ASCS Deputy Administrator for State and County Operations (DASCO). *Simons v. United States*, No. 317-88 C, 1992 WL 55937 (Mar. 23, 1992). In relevant part, section 1385 provides that "facts constituting the basis for . . . any . . . price support operation, or the amount thereof, when officially determined in conformity with the applicable regulations . . . shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government." Section 1429, in relevant part, provides

that "[d]etermination made by the Secretary under [the Agricultural Act of 1949] shall be final and conclusive...."

In *Simon*, the Claims Court ruled that "both the literal language of § 1385 and the consistent case authority constituting binding precedent for the Claims Court require a holding that factual findings of DASCO are simply unreviewable under any standard, however narrow, or for any reason, however compelling, "when officially determined in conformity with the applicable regulations." *Id.* at *11.

The Court also held that section 1429 limited review to the issue of whether DASCO acted rationally, and that "the

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Doty operated a dairy farm in Minnesota and employed Lowell Siekmann as his herdsman. Siekmann kept heifers of his own on Doty's farm and elsewhere. A pivotal issue in the dispute was the number of Siekmann's heifers located on Doty's farm on or after January 1, 1986. The applicable regulations required that DTP participants include in their contracts all cattle located on their farm on or after January 1, 1986, and that all cattle subject to the contract be destroyed. *Id.* at 617-18, 619 n.8.

Doty entered into a DTP contract and certified the destruction of the cattle subject to the contract. Subsequently, after receiving a report that some of the cattle that should have been destroyed were still being milked, the ASCS began an investigation. When initially questioned by ASCS county executive director, Siekmann stated that all of his cattle that were on Doty's farm prior to 1986 had been destroyed. Accordingly, the county executive director concluded that there was no DTP violation. *Id.* at 617-19.

Several months later, Siekmann told the county executive director that he had lied in his earlier statement and that six of his cattle had been on Doty's farm in 1986 and had not been destroyed. Siekmann also indicated that one of the animals had been given to a third party, John Christianson, in 1986. When the county executive director sought to confirm the gift of the heifer to Christianson, Christianson contradicted Siekmann by telling him that the gift had occurred prior to 1986. *Id.* at 619.

After notifying Doty that a DTP violation may have occurred, the county committee met with Doty and his attorney. Subsequently, based on Doty's explanations, Siekmann's second statement, and other information, the county committee determined that six of Siekmann's cattle, two of which were branded, were subject to the DTP contract and had not been destroyed. It also found that Doty had acted in good faith because the cattle that should have been destroyed were Siekmann's and Doty was not involved in the day-to-day management of the herd. *Id.* at 620.

Nevertheless, the committee determined that Doty should be penalized for failing to destroy the two branded heifers and recommended that he be penalized for all six because of erroneous cattle numbers on Doty's contract and the failure to destroy the six animals. Later, after consultations between the local ASCS county committee and the national ASCS office, the state executive director advised the county committee that penalties should be assessed against Doty and Siekmann for all six cows and that "[p]rocedure . . . allows that he refund all DTP program benefits earned to date, plus interest." *Id.* at 620 (citation omitted).

Doty appealed the county committee's initial determination pursuant to 7 C.F.R. pt. 780, the ASCS administrative appeal regulations. After Doty had appeared before the county committee, the county committee met with Siekmann and his attorney and received an unsworn, written statement from Siekmann. *Id.* at 621-22. Based on Siekmann's written statement, the county committee reversed its finding that Doty had acted in good faith and determined that Doty should refund the previously paid DTP payments. Nevertheless, when it informed Doty of its new determination, the county committee neither provided Doty with a copy of Siekmann's written statement nor did it make clear to him "the precise allegations against him." *Id.* at 621 (citation omitted).

Doty appealed the county committee's determination to the state committee. Although the state committee gave Doty's attorney a copy of Siekmann's written statement prior to the hearing, it refused Doty's request that Siekmann be present and subject to examination at the hearing.

At the hearing, Doty submitted an affidavit from John Christianson and a statement from a person who assisted in branding two of the cattle in question. The Claims Court noted that each statement contradicted material parts of Siekmann's written statement and, when coupled with other information in the administrative record, "refuted the accuracy of Siekmann's written statement and . . . supported Doty's position and Siekmann's first (oral) statement." *Id.* at 622.

Without advising Doty of its reasons for doing so, the state committee denied Doty's appeal and increased the penalties assessed by the county committee. Doty appealed the state committee's determination to DASCO. *Id.* at 622.

Prior to his hearing before DASCO, Doty submitted additional documents challenging the accuracy of Siekmann's written statement. A telephone hearing was conducted, but DASCO refused to call Siekmann as a witness notwithstanding Doty's request that Siekmann be present. *Id.* at 623, 630. DASCO denied the appeal on the grounds that Doty had violated regulations proscribing false representations of fact and false statements as to the number of cattle sold for slaughter. *Id.* at 623.

After concluding that it had jurisdiction to review DASCO's decision under the Tucker Act, 28 U.S.C. § 1491(a), and the Commodity Credit Charter Act, 15 U.S.C. § 714b(c), the Claims Court first addressed Doty's argument that a de novo review standard applied because the action involved a breach of contract. In rejecting that argument and finding that the federal Administrative Procedure Act's (APA) standards of review applied, the court held that when Doty "entered into the DTP contract, he agreed

to be bound by the statutory and regulatory framework governing the dairy termination program which effectively limited the availability of de novo judicial review over a claim for breach of contract." *Id.* at 626 (footnote omitted).

Turning to Doty's due process claims, the court rejected Doty's argument that the APA's formal adjudication requirements applied to the administrative appeal process. *Id.* at 627-28. It also rejected Doty's constitutional due process claims. *Id.* at 628-29.

Nevertheless, the court accepted Doty's argument that DASCO had abused the discretion granted to reviewing authorities in the ASCS administrative appeal process by 7 C.F.R. § 780.8(c). Section 780.8(c) gives reviewing authorities the discretion to "request or permit persons other than those appearing on behalf of the participant to present information or evidence at such hearing and, in such event, [to] permit the participant to question such persons." *Id.* at 630 (Section 780.8(c) has subsequently been amended to appear at 7 C.F.R. § 780.9(g). 56 Fed. Reg. 59,209 (1991)(interim rule)).

The court noted that "[i]n a case such as this where there are conflicting versions of the facts and testimony which is in direct conflict, in order to discern the truth as accurately as possible, agency discretion to permit or deny cross-examination of a pivotal witness is subject to abuse to a much greater extent than in most other aspects of informal hearings." *Id.* at 630. It held that DASCO had abused its discretion by refusing to call Siekmann as a witness despite Doty's specific, timely requests for Siekmann presence before both the state committee and DASCO. Nevertheless, the court cautioned that its "holding is limited to the special circumstances of this case in which DASCO relied on the second version of events by a single witness with a possible motive to harm the participant when all other statements of persons with direct knowledge of relevant events were consistent with the participant's version of events and with the initial version of the single witness." *Id.* at 631.

The court also concluded that DASCO's abuse of discretion was not harmless error, and, because the administrative record was inadequate to support the penalties assessed against Doty, the court remanded the matter to the agency. *Id.* at 631-32. In contemplation of the remand, the court construed the regulations on which DASCO relied to require the participant's actual knowledge of an erroneous representation of facts or a false statement as to the number of cattle destroyed. *Id.* at 632-33.

—Christopher R. Kelley, Visiting Assistant Professor, University of North Dakota School of Law

Louisiana's implementation of UCC Article 9

By Frank Voelker, Jr. and David S. Willenzik

There has been a major change in Louisiana's Agricultural Credit Law, which should be beneficial to both "in state" and "out-of-state" lending institutions and creditors.

Requests for detailed information prompted AALA member Frank Voelker, Jr. to interview David S. Willenzik, one of his partners in the McGlinchey firm in New Orleans, who was prominently involved in every effort to enact UCC 9 and is the author of a Compliance Manual for Louisiana Lenders.

Mr. Voelker reports the questions directed by him to Mr. Willenzik were for the most part submitted by one lender, but they are typical of inquiries received from many. The responses given should permit lenders to move confidently to the perfection of security interests in growing agricultural crops in Louisiana, but more detailed information is available from counsel for lenders and borrowers. All parties to agricultural lending transactions are encouraged to take full advantage of this for the maximum protection of their interests.

With reference to agricultural security interests, what type of notification or filing system is used in Louisiana?

Louisiana uses a central filing system for perfecting security interests in agricultural crops, products, or other agricultural commodities. Filing procedures are set forth in the Louisiana Agricultural Central Registry Rules.¹ A Central Registry Master Index is maintained by Louisiana's Secretary of State personnel.

What form(s) does a creditor file with the Agricultural Central Registry to perfect a security interest in crops, farm products, or other agricultural commodities?

A creditor may file a UCC-1 Financing Statement and a UCC-1f Effective Financing Statement or may elect to file only the UCC-1f form in lieu of filing both the UCC-1 and the UCC-1f, when perfecting a security interest in crops, farm products, or other agricultural commodities in Louisiana. When filing a UCC-1f only, "BOTH" should be checked in the appropriate box on the form.

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**** NOTE:** In addition to the above, an agricultural secured creditor must file a multiple original or a certified true copy of the borrower's Agricultural Security Agreement along with the UCC-1f form. The security agreement is not required under the Louisiana UCC, but is mandated by the Louisiana Agricultural Central Registry Rules.²

To properly perfect an agricultural security interest, where must a creditor file the applicable UCC-1 and UCC-1f forms?

Under the State's "local filing/central registry" system, a creditor may file a UCC-1 Financing Statement or a UCC-1f Effective Financing Statement in any of the sixty-four (64) Parishes in Louisiana. All Parish filing is electronically transmitted to the Central Registry Master Index, in Baton Rouge. There is no requirement that a creditor file in the Parish where the secured collateral is located or where the borrower resides.

**** NOTE:** Security interest documents may not be filed directly with the Secretary of State.

What is a Form UCC-1f Effective Financing Statement and how is it used?

The Form UCC-1f Effective Financing Statement was adopted by the Louisiana Secretary of State to be filed with or in lieu of the Form UCC-1 when perfecting a security interest in crops, farm products, or other agricultural commodities. The UCC-1f Effective Financing Statement applies to specific types of crops and other agricultural farm products. The "Farm Products List and Codes" printed on the reverse side of the UCC-1f form provides a creditor with a list of approved crops and farm products.

**** NOTE:** To perfect a security interest in crops, farm products, or other agricultural commodities not listed on the UCC-1f form, a creditor must notify all potential third-party purchasers, commission merchants, and selling agents to or through whom the encumbered farm products or commodities may be sold.

What information should be provided on the UCC-1f Effective Financing Statement?

Each UCC-1f Effective Financing Statement should contain the following:

1. The name, address and Social Security/ Tax ID number of the creditor;

2. The name, address and Social Security/ Tax ID number of the debtor;

3. A description of the agricultural crop, product, or commodity subject to the security interest and the dollar amount of the security interest;

4. A reasonable description of the property, including the Parish, where the security interest is located;

5. Signatures of both the debtor and creditor;

The "Collateral Description" portion of the UCC-1f form is used to identify and designate each type of crop, farm product, or agricultural commodity the creditor is using as collateral, and should include:

- * Collateral product name;
 - * Collateral product code;
 - * Parish/produced code;
 - * Collateral quantity amount;
 - * Crop year (to the extent applicable);
- and

- * Total amount of security.

The proper place for a creditor to file a UCC-1f Effective Financing Statement is with the Clerk of Court of any Parish, except in Orleans Parish the form must be filed with the Recorder of Mortgages.³ An appropriate filing fee must also be paid at the time of filing, recording or canceling an Effective Financing Statement.⁴

Was the Agricultural Security Agreement especially designed for Louisiana transactions?

Yes. The Agricultural Security Agreement is a carry-over from the Louisiana Crop Pledge Act, and this specially designed form should be used when entering into a loan agreement secured by crops, farm products, or other agricultural commodities. Use of the Agricultural Security Agreement is necessary and appropriate in light of the differences in Louisiana's version of the UCC. Specifically, Louisiana did not adopt the self-help remedy provision of UCC Section 9-508, but instead enacted a non-uniform Section 9-508, which provides for executory process foreclosure remedies. Louisiana also enacted a non-uniform UCC Section 9-509, that provides for special default remedies applicable to security interests in growing crops, farm products, or other agricultural commodities.

**** NOTE:** The "Collateral Description" portion of the borrower's Agricultural Security Agreement should be produced

verbatim to the "Collateral Description" on the UCC-1f Effective Financing Statement.

Is the borrower/creditor required to identify the land owner or provide a detailed legal description of the farm property on the UCC-1f Effective Financing Statement?

No. Louisiana law does not require a borrower/debtor to identify third-party owner(s) of the land on which the secured crops or farm products are being grown.

The Louisiana Agricultural Registry Rules require only, "A reasonable description of the property, including the parish in which the property is located at the time the statement is signed by the debtor."⁵

Is it necessary for the creditor to include the number of acres of each crop being grown on either the UCC-1f Effective Financing Statement or the Agricultural Security Agreement?

Not in all instances. The instructions on the reverse side of the UCC-1f Effective Financing Statement indicate that information relating to the "Collateral Quality Amount" should be completed only when a creditor's security interest affects less than all of the borrower's particular type of crop or farm product. The Agricultural Security Agreement "Collateral Description" should be completed to agree with that of the UCC-1f form.

Are specialty crops or produce, such as "sunflowers," covered by the general term "crops" or should they be listed separately on the UCC-1f?

The definition of "farm product" under the Louisiana Agricultural Central Registry Rules⁶ is more inclusive than "crops" under Chapter 9 of the Louisiana Commercial Laws;⁷ the Registry Rules definition is used when establishing a creditor's security interest in farm products. "Farm Product" means any type of crop whether growing or to be grown, and whether harvested or unharvested, or any species of livestock, or any type of agricultural commodity or product raised or cultivated of every type and description, . . .⁸

Specialty crops and produce are subject to both Louisiana Agricultural Central Registry Rules and Chapter 9 of the Louisiana Commercial Laws. If a specific type of crop or farm product is not included in the "Farm Products Listing

Code" on the reverse side of the UCC-1f, the creditor is responsible for notifying potential third-party purchasers, commission merchants, and selling agents to whom or through whom the encumbered farm products or commodities may be sold.

Will it improve the lender's position to file a Supplier or similar type of lien in addition to the UCC-1f Effective Financing Statement?

No. Under applicable Louisiana law⁹ the statutory privilege afforded to a creditor furnishing supplies, money, water, and medical care to persons engaged in crop production activities, is inferior to that of other creditors having prior perfected security interests in a borrower's crops, agricultural products, or commodities.

What is the effective time period of a properly filed and perfected UCC-1f Effective Financing Statement? Can a UCC-1f Effective Financing Statement be renewed; if so, how?

Effective 1 January 1992 a properly filed Louisiana UCC-1f Effective Financing Statement will remain in effect for five (5) years from the date of filing, and may be continued over additional and successive five (5) year extensions by filing an appropriate UCC-3f Continuation Statement at any time within six (6) months prior to the expiration date of filing.¹⁰ The same criteria applies to Agricultural Security Agreements filed on or after 1 January 1992.

What procedure must a lender follow to perfect a security interest in farm machinery and equipment when used as additional collateral for a loan?

A security interest in agricultural purpose machinery and equipment is subject to Chapter 9 of the Louisiana Commercial Laws. To perfect a security interest in farm machinery and equipment, it is necessary to include a description of the machinery and equipment in the "Collateral Description" portion of the borrower's UCC-1f Effective Financing Statement.

**** NOTE:** It may be necessary to file a UCC-1 Financing Statement with the Louisiana Department of Safety and Corrections, Motor Vehicle Division, since certain types of motorized farm equipment are subject to the requirements of the Louisiana Motor Vehicle Certificate of Title Law.¹¹

Do labor liens or thresher's liens take priority over a prior perfected security interest in crops? If so, what are the time limitations for the above liens?

A prior perfected UCC security interest in a farmer's crops or farm products will be inferior in priority to a subsequent statutory lien and privilege of "laborers, threshermen, combinemen, grain dryers and overseers" and of any lessor of the land¹² on which the crops or farm products are being grown, *provided that* the statutory lienholder files an appropriate UCC-1f Effective Financing Statement with the Secretary of State Central Registry.¹³

The statutes do not impose a time limit on the lien creditor for asserting a statutory lien or privilege.

Does Louisiana have statutory landlord liens? If so, how do they affect a perfected security interest in growing crops?

Louisiana has statutory landlord liens. A Louisiana real estate lessor is granted a statutory lien to secure a lessee's obligation for rental payments under the lease. This lien is known as a "lessor's lien or privilege."

As a general rule, a properly perfected Louisiana UCC security interest will have priority over the rights of a third-party lien creditor acquiring only a statutory lien or privilege on the secured collateral.¹⁴ A lessor's lien and privilege additionally is deemed to be inferior to both prior and subsequently perfected UCC security interests.¹⁵

**** NOTE:** As an exception to the above, there is a special Louisiana statute¹⁶ that governs the ranking of statutory liens and privileges affecting a tenant farmer's crops. Under this special provision, the statutory lien of a real estate lessor who perfects the lien and privilege on a tenant farmer's crop by filing a UCC-1f Effective Financing Statement in the manner required by law will have priority ranking over the rights of a previously perfected UCC creditor.

Will the commencement of a foreclosure or forfeiture action affect a previously perfected security interest in crops grown on the same land?

Generally, a mortgagee foreclosing under a Louisiana real estate mortgage on land subject to cultivation may not adversely affect or prejudice the rights of

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another creditor with a prior perfected UCC security interest in crops, farm products, or other types of agricultural commodities.

Do IRS or Louisiana Department of Revenue crop liens take priority over prior perfected security interest on the same crops?

A prior perfected Louisiana UCC security interest in crops will generally have priority over a subsequently filed federal or state tax lien, subject to any after-acquired property and future advance exceptions under applicable law.

What is a rents and profits clause within a real estate mortgage and how may it affect a lender's security interest in crops?

A Louisiana real estate mortgage commonly includes collateral assignments of rents and profits. Such a perfected collateral assignment of real estate rents and profits will not ordinarily affect the rights of a lender with a perfected security interest in crops grown on the land. However, if the mortgagee of the land should succeed to the rights of the mortgagor/landowner, the mortgagee could enforce a lessor's lien against the encumbered crops with preference and priority over the rights of a prior perfected UCC secured creditor.

Does Louisiana have usury laws? If so, do they effect agricultural purpose loans?

Louisiana does have usury laws. The Louisiana Legislature amended its laws,¹⁷ effective 7 September 1990, to treat agricultural purpose loans, for all types of borrowers, in the same manner as business or commercial extensions of credit, resulting in agricultural purpose loans

being totally exempt from usury limitations under applicable law.

**** Note:** Certain interest and other fee related limitations do continue to apply to business, commercial, or agricultural purpose loans in favor of Louisiana borrowers.¹⁸

How do the state's usury law apply to those Louisiana farmers who farm land in an adjoining state?

Louisiana usury law and applicable exemptions apply when:

(1) the borrower is domiciled in Louisiana; (2) the loan is consummated in Louisiana; and (3) the borrower's promissory note contains a contractual "choice of law" covenant whereunder the parties agree that the borrower's loan and note will be subject to Louisiana law.

¹ La. Rev. Stat. Ann. §§ 3:3651, et seq. (West 1992)

² La. Rev. Stat. Ann. §§ 3:3651, et seq. (West 1992).

³ La. Rev. Stat. Ann. § 3:3656 A.(1) (West 1992).

⁴ La. Rev. Stat. Ann. § 3:3657 (West 1992).

⁵ La. Rev. Stat. Ann. § 3:3654 E (4)(e) (West 1992).

⁶ La. Rev. Stat. Ann. § 3:3652(10) (West 1992).

⁷ La. Rev. Stat. Ann. § 10:9-109(3) (West 1992).

⁸ La. Rev. Stat. Ann. § 3:3652(10) (West 1992).

⁹ La. Rev. Stat. Ann. § 9:4521 (West 1992).

¹⁰ La. Rev. Stat. Ann. § 3:3654 E.(6) (West 1992).

¹¹ La. Rev. Stat. Ann. §§ 32:701, et seq. (West 1992).

¹² La. Civ. Code Ann. arts. 3217-3219 (West 1991), and La. Rev. Stat. Ann. §§ 9:4521, -23 (West 1992).

¹³ La. Rev. Stat. Ann. §§ 3:3651, et seq. (West 1992).

¹⁴ La. Rev. Stat. Ann. §§ 10:9-201, -310 (West 1992)

¹⁵ La. Rev. Stat. Ann. § 9:4770 (West 1992)

¹⁶ La. Rev. Stat. Ann. § 9:4521 (West 1992).

¹⁷ La. Rev. Stat. Ann. § 9:3509(A) (West 1992)

¹⁸ La. Rev. Stat. Ann. § 9:3509(B) (West 1992) - limits post-default interest escalation clauses, and La. Rev. Stat. Ann. § 9:5324 (West 1992) - limits assessment of prepayment penalties on loans secured by mortgages on agricultural purpose rural properties

Sacred Cows and Hot Potatoes: Agrarian Myths in Agricultural Policy — a review

This is a book about the lack of accountability in American farm policy" is the opening statement in William P. Browne, Jerry R. Skees, Louis E. Swanson, Paul B. Thompson & Laurian J. Unneverhr, *Sacred Cows and Hot Potatoes: Agrarian Myths in Agricultural Policy* (Westview Press 1992). In a book certain to provoke debate, the authors develop their thesis by examining ten "myths" in agricultural policy including "Never Assume That Agrarian Values Are Simple," "Never Equate Good Farming With a Healthy Environment," and "Never Assume That a Government Program Will Do What It Says."

Characteristic of the style and approach of *Sacred Cows and Hot Potatoes* is its

assertion that "[F]arm policy should be taken for what it is, namely, industrial policy with some economic benefits for farmers and their industrial partners." *Id.* at 35. Arguing that agrarian myths can help policymakers find the "common good in agriculture" if those myths are applied critically, *Sacred Cows and Hot Potatoes* expressly attempts to "rebunk" instead of debunk those myths. *Id.* at 143. In the process, it offers a structure for reflecting on the past and current direction of American agricultural policy.

—Christopher R. Kelley, Visiting Assistant Professor of Law, UND School of Law

AG LAW CONFERENCE CALENDAR

Trends in Natural Resources Law and Policy

June 13, 1992, University of Colorado School of Law
Topics include: trends in oil and gas and mineral law; trends in public land law; trends in environmental law
Sponsored by: Natural Resources Law Center.
For more information, call 303-492-1288

Uncovering the Hidden Resource: Groundwater Law, Hydrology, and Policy in the 1990s

June 15-17, 1992, University of Colorado, Boulder.
Sponsored by: Natural Resources Law Center.
For more information, call 303-492-1288

Eighth Annual Farm, Ranch, and Agri-Business Bankruptcy Institute

October 8-11, 1992, Lubbock Plaza Hotel, Lubbock, TX
Sponsored by: West Texas Bankruptcy Bar Association, Texas Tech University School of Law, Association of Chapter 12 Trustees.
For more information, call 806-765-8851.

Fundamentals of Bankruptcy Law—In Depth

July 6-10, Stanford Law School, Palo Alto, CA
Sponsored by ALI-ABA
For more information, call 1-800-CLE-NEWS.

Environmental Litigation

June 22-26, University of Colorado School of Law, Boulder.
Sponsored by ALI-ABA.
For more information, call 1-800-CLE-NEWS.

Estates Planning in Depth

June 22-26, University of Wisconsin Law School, Madison, WI
Topics include: generation-skipping tax, estate freezing techniques, planning for Subchapter S corporations.
Sponsored by ALI-ABA.
For more information, call 1-800-CLE-NEWS.

Drake University Summer Agricultural Law Institute

June 8-11: Agricultural Taxation and Business Planning; June 15-18: The Law of Farmer Cooperatives, June 22-25: Legal Aspects of Livestock Production and Marketing; June 29-July 2: Migrant and Seasonal Farmworker Law; July 6-9: International Agricultural Transactions; July 13-16: Wetland Protection Law and Agriculture.
Sponsored by: Drake's University's Agricultural Law Center
For more information, call 1-515-271-2947 or 271-2065

Representing FmHA Borrowers—Solving Problems Under the New Law

June 5, North Carolina Central University School of Law, Durham, N.C.
Topics include: FmHA—primary loan servicing, preservation loan servicing, environmental and conservation issues, judicial issues; assisting farmers with discrimination claims.
Sponsored by: Land Loss Prevention Project, Inc.; FLAG; Farm Plan Associates, Inc.
For more information, call 919-682-5969.

Claims Court...ASCS decisions/continued from page 2
rationality review permitted despite § 1429 is lawfully limited to a comparison of an administrator's decision with the facts found by him." *Id.* In other words, the "test for rationality must be conducted by comparing DASCOS's legal conclusions and ultimate determination with the facts found by him rather than with the entire record." *Id.* at *12.

—Christopher R. Kelley

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If you desire a copy of any article or further information, please contact the Law School Library nearest your office.

—Drew L. Kershen, Professor of Law, The University of Okla., Norman, OK

Federal Register

The following matters were published in the *Federal Register* during the April, 1992.

1. USDA; Amendment of delegation of authority by the Secretary of Agriculture for adjudication of sourcing area applications; final rule; effective date 4/2/92. 57 Fed. Reg. 11261.

2. USDA; Immigration Reform and Control Act; SAWs; field work (sod); final rule; effective date 6/1/87. 57 Fed. Reg. 11905.

3. IRS; Special valuation rules; correction to final regulations; effective date 1/28/92. 57 Fed. Reg. 11264.

4. IRS; Definition of passive investment income. 57 Fed. Reg. 13676.

5. Commodity Futures Trading Commission; Revision of federal speculative position limits; proposed rule; comments due 6/12/92. 57 Fed. Reg. 12766.

6. FmHA; Amendments of Farmer Programs insured and guaranteed loan making regulations; interim rule. 57 Fed. Reg. 12991.

7. FmHA; Farmer Program account servicing policies and availability of loan servicing programs for delinquent farm borrowers for Section 1816 and other related sections for the "1990 FACT ACT"; interim rule with request for comments due 6/29/92. 57 Fed. Reg. 18612.

8. FmHA; Pledging all assets as collateral for insured farmer program loans; effective date 4/30/92. 57 Fed. Reg. 18674.

9. FCA; Eligibility and scope of financing; nondiscrimination in lending; final rule. 57 Fed. Reg. 13635.

10. FCIC; Request for comments on the insurability of acreage which is destroyed or put to another use to comply with other USDA programs. 57 Fed. Reg. 18462.

—Linda Grim McCormick, Toney, AL

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AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

1992 AALA Conference in Chicago

Plans are progressing for the 1992 AALA Annual Meeting and Educational Conference to be held at the Chicago Holiday Inn City Centre, September 25-26, 1992.

The program will be of a general nature to incorporate timely topics for a broad audience, and will follow the successful format of past years through an annual review of current significant topics, concurrent sessions to offer attendees a choice of topics, a reception, and breakfast groups.

Sessions topics include: Integrators and Contracts, International Legal Issues, Structuring International Business Transactions, Bankruptcy: Current Issues, Legislative Developments and Ethics, Taxation Issues, Producers' Rights of Recovery, Employing Farm Management Companies, Commodity Trading and Broker Responsibilities, Environmental Compliance, and Federal Farm Programs.

A preconference tour of the Chicago Mercantile Exchange has been arranged for Thursday afternoon (9/24/92). A copy of the full program should be available in July.

Terence J. Centner
President Elect