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An Agricultural Law Research Article

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Some Possible Factors**

by

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Originally published in SOUTH DAKOTA LAW REVIEW  
22 S. D. L. REV. 494 (1977)

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# PRINCIPLES OF FARM ENTERPRISE DEFINITION— SOME POSSIBLE FACTORS

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*This article surveys in broad terms the farming operation in light of various legal definitions. A large sample of judicial decisions is examined and analyzed for patterns and underlying principles. The purpose of the article is to classify possible defining factors of a farm enterprise to provide a point from which definitions can be built for appropriate purposes.*

## INTRODUCTION: THE CHANGING FACE OF AMERICAN AGRICULTURE

Changes in American agriculture during the first three-quarters of the twentieth century have been profound.<sup>1</sup> Indeed, the term "agricultural revolution" is appropriate to describe the transfiguration of the farming enterprise.

From the scientific revolution grew new technology. The agricultural revolution was manifested first in the field of mechanics,<sup>2</sup> a phase well along in development but still active.<sup>3</sup> Then came the development and use of chemistry, a phenomenon that has not yet achieved its full effect.<sup>4</sup> A third phase was the biological process that began with early man's attempts to cultivate, and especially to domesticate, both plants and animals,<sup>5</sup> a process that continues to the present day with promise of much to come in the future.<sup>6</sup>

The industrial revolution, borrowing from the technology of the new scientific discoveries, was a new economic order of resource use in industry. With it came a new social order. On the one hand,

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1. For summaries of trends in American agriculture see W. WILCOX, W. COCHRANE and R. HERDT, *ECONOMICS OF AMERICAN AGRICULTURE* 3-16 (3rd ed. 1974); E. Heady, *The Agriculture of the U.S.*, 235 *SCI. AM.* 106 (Sept. 1976); and W. Sundquist and H. Guither, *The Current Situation and the Issues, in NORTH CENTRAL REGIONAL EXTENSION, WHO WILL CONTROL U.S. AGRICULTURE?* No. 32-1 (undated).

2. D. PAARLBERG, *AMERICAN FARM POLICY: A CASE STUDY OF CENTRALIZED DECISION-MAKING* 37 (1964) [hereinafter cited as PAARLBERG].

3. See, e.g., H. DRACHE, *BEYOND THE FURROW* (1976).

4. PAARLBERG, *supra* note 2, at 38.

5. J. Harlan, *The Plants and Animals that Nourish Man*, 235 *SCI. AM.* 88 (Sept. 1976).

6. See, e.g., PAARLBERG, and L. BROWN, *SEEDS OF CHANGE* (1970).

agriculture borrowed heavily from the industrial revolution, and on the other hand, new levels of productivity released labor into industry. The agricultural sector has always been and will always be an integral part of the vitality of the American economy, whether industrial or "post-industrial." But through all political, economic, scientific and social transmogrifications, and though agriculture has been an active participant in all, one thing has been true. The bulk of this nation's food is produced by individual, independent farming units.

Farming continues to be subject to the same forces that have shaped the farming operation since cultivation began, depending as it does on weather, biological processes and the nature of the product. The economics of agricultural production and distribution have certain peculiarities that set it apart from other industries.<sup>7</sup> The general recognition of these differences and the belief that the individual, independent farming system will serve the American consumer best have led to legal distinctions between farming operations and other kinds of business enterprise.

A set of changes in the farming enterprise is now taking place that will demand a new look at exactly what the farming operation is. Through all the other phases of the agricultural revolution the farming operation was generally understood to be a particular combination of farmland and the economic organization of resources that draw the agricultural product from that land, combined in a relatively simple business organization. But a "managerial revolution" is taking place.<sup>8</sup> The managerial revolution indicates not only the increased expertise of farm management but also a more complicated business organization for each farm, development of complex relationships between farm and non-farm operations, and the extension of farm units beyond mere production of raw agricultural materials. With this revolution comes the absolute necessity to define the essence and bounds of the farming operation before critical distinctions in social structure, economics and law are lost by confusion.

The purpose of this article is to survey in somewhat broad terms the farming operation in light of various legal definitions.

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7. For examples of these differences see FCS-USDA response to the unofficial F.T.C. Bureau of Competition Staff Report, "A Report on Agricultural Cooperatives," Sept. 30, 1975, attached to letter of December 17 from Secretary of Agriculture Earl L. Butz to Lewis A. Engman, Chairman of the Federal Trade Commission; and *Tigner v. Texas*, 310 U.S. 141, (1940).

At the core of [special statutory treatment for agriculture] lies a conception of price and production policy for agriculture very different from that which underlies the demands made upon industry and commerce by antitrust laws. These various measures are manifestations of the fact that *in our national economy agriculture expresses functions and forces different from the other elements in the total economic process.* (emphasis added).

8. PAARLBERG, *supra* note 2, at 39.

The discussions of what constitutes a farming operation found in the sample judicial decisions are analyzed for patterns and underlying principles. The intent is not to arrive at a simple definition, but to provide a point from which definitions can be built for appropriate purposes. The classification of possible defining factors is the intended contribution of the article.

The method is that of survey. A relatively large sample of cases was surveyed, but the complement of judicial decisions cited in this article is just that—a sample—not the universe of all cases that discuss the nature of the farming enterprise. Many attributes that make an enterprise a farming operation have been discussed by the courts. These attributes or characteristics are classified, albeit in a somewhat arbitrary manner. Then the sample case law, including decisions of statutory interpretation, is summarized for each category. It is emphasized that the intent is not to pin definition to a category or to the legal principle that gave rise to the discussion of farm operation attributes, but to get an overall view of those characteristics of an enterprise that make it a farm enterprise.

Four basic factors are reviewed: (1) the product of the enterprise; (2) resources used in the process; (3) technical methods of production; and (4) the economic organization of resource use. Needless to say, a complete picture of the farm business cannot be encompassed in any one of these factors. Not only is each insufficient to define the farm operation individually, but the farm operation depends on the interaction of the factors, as frequently occurs where one factor suggests the presence or absence of farming enterprise depending on the status of other factors.

For several reasons, most decisions rest on less than the full complement of factors. First, the status of some factors is either assumed or is so clear from circumstances that it need not be discussed in the decision. Second, most decided cases arise from statutes that present to the court an issue limited in purpose. The court need not look beyond the factors circumscribed by the legal issues. Finally, the facts may make consideration of all factors unnecessary, and the court need not look beyond the factors circumscribed by the facts.

#### THE FARM PRODUCT

“Product” means that which is yielded from the activity in question. The product may assist in defining the farming operation under circumstances presenting the following questions. First, is the product one which may be, should be, or usually is a result of a farming operation? Second, is the product one that becomes part of another operation recognized to be farming, thus lending the product the character of a farm product? Third, at what point

in the total production process does the product cease to be a farm product and become part of a non-farming operation? Finally, lumping the factor interrelationships all into one question, what characteristics or other factors lend to a given product the character of a farm product?

With these four possibilities in mind, some items of particular interest are reviewed, recognizing of course the limits of atomized decisions to a broad picture.

### *The Usual Result of a Farming Operation*

Logically, there are finite numbers of products in our economy, and relatively few are on the borderline between farm and non-farm products. When a court decides one way or the other about a particular product the limits of what constitutes a farming operation are sometimes clarified, but not always. Generalized statements by courts may rely on a prerequisite definition of a farm, then define farm products as those which have "a situs of their production upon the farm and which are brought into condition for uses of society by those engaged in agricultural pursuits."<sup>9</sup>

General characteristics of farm products are sometimes offered. Agricultural products are those which are "a direct result of husbandry and the cultivation of the soil"<sup>10</sup> tied to skills or to the soil. Farm products have been said to be "seasonal,"<sup>11</sup> "that which the land yields annually in the form of crops or animals,"<sup>12</sup> eliminating forestry products when used in lumber operations,<sup>13</sup> though forestry may of course be included in statutory definitions.<sup>14</sup>

An "ordinary" or commonly understood meaning is frequently given to the terms, such as the "ordinary meaning" applied to nursery stock at the first stages of production.<sup>15</sup> Many products are ordinarily thought of as farm products, and their production is a farming operation. Besides the obvious domestic animals,<sup>16</sup> swine, horses, meat cattle, sheep,<sup>17</sup> poultry and poultry products,<sup>18</sup> dairy

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9. *In re Rodgers*, 134 Neb. 832, —, 279 N.W. 800, 802 (1938).

10. *Getty v. C. R. Barnes Milling Co.*, 40 Kan. 281, —, 19 P. 617, 618 (1888).

11. *Great Western Mushroom Co. v. Industrial Comm'n*, 103 Colo. 39, 82 P. 2d 751 (1938).

12. *Just-A-Mere Farm, Inc. v. Peet*, 247 Ore. 413, —, 430 P.2d 987, 989 (1967).

13. *Appleman v. Employment Div.*, 534 P.2d 218 (Ore. App. 1975).

14. As in *Northern Cedar Co. v. French*, 131 Wash. 394, 230 P. 837 (1924).

15. *City of Amarillo v. Love*, 356 S.W.2d 325 (Tex. Civ. App. 1962).

16. *Hagenburger v. City of Los Angeles*, 51 Cal. App. 2d 161, 124 P.2d 345 (1942); *Tucker v. Newman*, 217 Minn. 473, 14 N.W.2d 767 (1944).

17. See *Keeney v. Beasman*, 169 Md. 582, 182 A. 566 (1936); *Finger v. Northwest Properties*, 63 S.D. 176, 257 N.W. 121 (1934) (sheep); *Davis v. Indus. Comm'n*, 59 Utah 607, 206 P. 267 (1922) and *Porter v. Yakima County*, 77 Wash. 299, 137 P. 466 (1914) (stock farm).

18. *Keeney v. Beasman*, 169 Md. 582, 182 A. 566 (1936); *Benitez v. Bank of Nova Scotia*, 109 F.2d 743 (1st Cir. 1940); *Leonard v. Bennett*, 116

products,<sup>19</sup> fruit and citrus,<sup>20</sup> vegetables,<sup>21</sup> pasture and hay have been included,<sup>22</sup> as have fur-bearing animals.<sup>23</sup> One case includes manure and cordwood as farm products, and "provisions for the mouth."<sup>24</sup>

### *The Product as Part of Another Operation*

In *Appleman v. Employment Division*<sup>25</sup> the operation in question was an independent seedling nursery that supplied a timber operation, accepted as a non-farm operation. The court held that the nursery was not a farming operation because the product took on the character of the entire operation. The product, an input into a non-farming operation, was not independent enough to qualify as farming even though a sale terminated continued transformation into timber by the nursery producer. On the other hand, a first stage nursery product was a farm product where the second stage was only a non-farm transitional step to final consumer.<sup>26</sup> A product may also be a farm product in the hands of different businesses in the total process from planting to consumer.<sup>27</sup>

It would appear, therefore, that a product may suggest a farming operation at more than one stage of production, usually the earlier stages, but its classification as a non-farm product because of subsequent but related non-farm use may negate its ability to give the earlier stage a farming character.

### *The Total Production Process*

The point at which a product loses its identity as a farm product and takes on the attributes of an industrial product (common distinguishing terminology) is not necessarily an accurate measure of when the process creating, adding to or transforming the product ceases to be a farming operation and becomes an industrial one. Identification of a product as a farm product may continue long after the point at which the transformation process ceases to be farming. Correspondence is lacking particularly when the criteria for deciding the character of the product are based on the process, rather than vice versa. However, two attributes of the vertical pro-

F.2d 128 (9th Cir. 1940); and *Town of Lincoln v. Murphy*, 314 Mass. 16, 49 N.E.2d 453 (1943).

19. See *Keeney v. Beasman*, 169 Md. 582, 182 A. 566 (1936); *Leonard v. Bennett*, 116 F.2d 128 (9th Cir. 1940); and *Town of Lincoln v. Murphy*, 314 Mass. 16, 49 N.E.2d 453 (1943).

20. *Maryland Cas. Co. v. Dobbs*, 128 Tex. 547, 100 S.W.2d 349 (1937); *Keeney v. Beasman*, 169 Md. 582, 182 A. 566 (1936).

21. *Keeney v. Beasman*, 169 Md. 582, 182 A. 566 (1936); and *Township of Marple v. Lynam*, 151 Pa. Super. 288, 30 A.2d 208 (1943) ("market farms").

22. *Frazee v. Moffitt*, 18 F. 584 (Cir. N.D. N.Y. 1882); see *Dorsett v. Watkins*, 59 Okla. 198, 158 P. 608 (1916) (baled hay).

23. *In re Bridges*, 262 App. Div. 19, 28 N.Y.S.2d 312 (1941).

24. *Keeney v. Beasman*, 169 Md. 582, 182 A. 566, 569 (1936).

25. 534 P.2d 218 (Ore. App. 1975).

26. *City of Amarillo v. Love*, 356 S.W.2d 325 (Tex. Civ. App. 1962).

27. See *In re Horner*, 104 F.2d 600 (7th Cir. 1939).

gression of operations on a product may carry the definitions of farming operation beyond the initial production stages because of product identification.

First, the indivisibility of processing stages, based on what happens to the product, may extend the farming operation beyond initial production. In *American Sumatra Tobacco Corp. v. Tone*,<sup>28</sup> the question was whether workers in a farmer's tobacco warehouse were farm laborers exempt from wage assessments under applicable unemployment compensation laws. Though not deciding the classification of the product, it was the product that helped the court make its decision that this was exempted labor. After the tobacco was grown it was placed in a warehouse where a number of passive changes took place in the tobacco leaf. The court said there was no market for the product before warehousing and that there was a continuous physical process required which, if interrupted, would destroy the product. There was no break in the identity of the farm product during the production process, up to and including baling, that could transform it from a farm to a non-farm product. The identity of the product carried forward the farming operation concept beyond initial production, both because the economic realities prevented the sale of pre-warehouse tobacco and the physical processes were part of an ongoing transformation of the product.

A second attribute of the processing chain influencing the identification of a farming operation based on product character is the physical character of the product at distinctly different steps, based on how the operation changes the product. In a Fair Labor Standards Act agricultural labor exception question that combines elements of the process indivisibility and physical characteristics criteria, the court in *Brennan v. Gustafson's Dairy, Inc.*<sup>29</sup> held that a company associated with a dairy farm could not include exempted workers in its processing plant because it commingled milk from other farms, though if the milk was that produced on the company's farm it might well have been part of the farming operation as was held in another case.<sup>30</sup>

Where the statutory criterion is "manufactured" as opposed to agricultural products the physical transformation is sometimes specific. A number of statutes make manufacturing the criterion to decide whether a product is no longer agricultural.<sup>31</sup> Where milk was simply pasteurized, a court held that it was not a "manufactured product" within a municipal taxing statute be-

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28. 127 Conn. 132, 15 A.2d 80 (1940); and see *Holtville Alfalfa Mills, Inc. v. Wyatt*, 230 F.2d 398 (9th Cir. 1955).

29. 382 F. Supp. 964 (M.D. Fla. 1974).

30. *DeWeaver v. Jackson & Perkins Co.*, 271 App. Div. 119, 63 N.Y.S.2d 593 (1946).

31. See, e.g., *Benitez v. Bank of Nova Scotia*, 109 F.2d 743 (1st Cir. 1940).

cause "the milk, after the pasteurization is complete, contains the same ingredients as it had in it when it came from the cow."<sup>32</sup> In a similar legal situation it was held that baled hay was not a manufactured product because the "hay is the same article it was when it was stalks of grass with roots in the earth" and physical changes were mere incidents of storage preparation.<sup>33</sup>

### *Related to the Other Factors*

As mentioned, products are often given their character as farm products by the conclusion that a farming operation produced them. This is of little direct use in defining the farming operation from the identification of a farm product. In these cases the decision rests primarily or exclusively on the other factors defining the farming operation.

General definitions often include as a prerequisite to a farming operation resources used to produce,<sup>34</sup> technical methods of production,<sup>35</sup> economic organizations of resources<sup>36</sup> and some connection with recognized characteristics of farming.<sup>37</sup> Products that under some circumstances are farm products may become non-farm products because of how they are produced,<sup>38</sup> and numerous products are borderline and classed either way depending on how they were produced.<sup>39</sup>

### RESOURCES USED AND INCLUDED

A fundamental concept in any economic enterprise is that of resource use. The enterprise chooses resources with which to produce the final product and decides upon the combination best suited to production. This section surveys some characteristics of resources that courts have identified, directly and indirectly, with the farming operation as distinct from non-farming resource use.

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32. *City of Louisville v. Ewing Von-Allmen Dairy Co.*, 268 Ky. 652, 105 S.W.2d 801, 802 (1937).

33. *Frazer v. Moffitt*, 18 F. 584, 587 (Cir. N.D. N.Y. 1882).

34. See *In re Rodgers*, 134 Neb. 832, 279 N.W. 800 (1938) (situated on a farm, agricultural labor); see also *Great W. Mushroom Co. v. Industrial Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938) (also labor); and *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964); and the section on "Resources Used and Included," *infra*.

35. *In re Rodgers*, 134 Neb. 832, 279 N.W. 800 (1938) (agricultural as opposed to commercial or industrial); *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964) (sowing, grafting, using knowledge of an agricultural nature under natural conditions); and the section on "The Technical Process," *infra*.

36. See, e.g., *Campos v. Tomoi*, 175 Neb. 555, 122 N.W.2d 473 (1963), hay grinding for others; and *City of Amarillo v. Love*, 356 S.W.2d 325 (Tex. Civ. App. 1962).

37. *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P. 2d 492 (1939).

38. *Id.*

39. See *Great W. Mushroom Co. v. Industrial Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938); *In re Bronxville Nurseries*, 258 App. Div. 1019, 17 N.Y.S.2d 95 (1940); and *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964).



As with the product factor, resource use is often identified as a farm resource by the nature of its utilization in the farming process rather than as something giving an enterprise a farm character. This, of course, limits the usefulness of the reverse identification. There are, however, several situations where the courts' discussions of the character of the resource yield insight into the characterization of the total enterprise as a farming operation based on resources. In addition, some resources seem to be prerequisites, though not exclusive to farm production.

As an aid to analysis resources may be broken into different kinds. A useful breakdown might be: land, other natural resources, manufactured resources such as structures and machinery, and labor and skills. It should be noted that one resource, labor, is a special object of much legislation, and there is a heavy concentration of cases in this area. Because of the purposes and design of the statutory systems underlying the special treatment of farm or agricultural labor, not all cases suggest useful criteria for identifying farming operations.

### *Land*

Land is perhaps the most universal of all farming characteristics, though its presence alone is not sufficient to define farming. Land is treated in at least two ways by courts in the farm enterprise context.

First, land can have a territorial connotation. The fundamental idea of property as a territory over which some control can be exercised is inherent in this aspect of land as a defining factor in the farming enterprise. This transcends the idea of property as a mere economic resource, and the view of "the farm" as something beyond a physical means of production is evident in many cases.

A second attribute of land is that of a physical input into the farming operation, a concept of land as soil rather than territory, a growth medium and source of nutrients for plants and animals. These two views of land are closely associated, their separation and use depends heavily on the context and purpose of analysis.

The territorial attribute of land relates to farm operations by extending the limits of the farming enterprise beyond those resources directly used to produce the product, and by giving the use of individual parcels of land a unified, single operation character based on business organization.

As an example of the "extended enterprise," land and appurtenances are often included as farmland though they are used for residential purposes not directly devoted to the physical production

of farm products<sup>40</sup> where part of the land is directed to agricultural production.<sup>41</sup> Not all of the land need be used as actual farmland to include the entire tract in the farm.<sup>42</sup> Land as territory also may treat several separated parcels as part of the same farm enterprise where other features of the operation indicate that one enterprise exists.<sup>43</sup>

Finally, land as territory may help define a farming operation by giving the operation a particular situs. It identifies where production takes place and may help characterize the operation where the context lends significance to location.<sup>44</sup>

The resource use attribute of land is found in many cases where land is viewed as soil. Farming operation is then associated with this resource as relating either to what action is performed with or upon that resource or what the source of the final product is. As examples, farming is discussed frequently as tilling or cultivating the soil<sup>45</sup> or using the soil for grazing<sup>46</sup> or in some of the usually recognized ways of farming.<sup>47</sup> Soil as a source of the final product is cited as a material factor<sup>48</sup> but the mere fact that a product grows in the soil does not require that the operation involving such use of soil be classified as farming.<sup>49</sup>

### *Other Natural Resources*

In addition to land, a number of other natural resources are integral parts of a farming operation, though no single one is sufficient to define a farming operation. These resources include the wholly natural resources such as sunlight and air, natural resources that may undergo change in place or form such as water or natural fertilizer, and resources that are part of or become the product itself such as seeds, plants and animal inputs.

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40. See *Kaslovitz v. Reid*, 128 F.2d 1017 (10th Cir. 1942); and *State ex rel. Bissinger & Co. v. Hines*, 94 Ore. 607, 186 P. 420 (1920).

41. As an example, *Jones v. Holloway*, 183 Md. 40, 36 A.2d 551, 552 (1944).

42. *Jones v. Holloway*, 183 Md. 40, 36 A.2d 551 (1944), may include woodland as an example.

43. See *In re Assessment of Certain Livestock*, 172 Neb. 88, 108 N.W.2d 808 (1961); and *Dorsett v. Watkins*, 59 Okla. 198, 158 P. 608 (1916).

44. See *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P.2d 492 (1939); and *In re Rodgers*, 134 Neb. 832, 279 N.W. 800 (1938).

45. *Rodgers v. Caldwell*, 142 Ill. 434, 32 N.E. 691 (1892); *Getty v. C. R. Barnes Milling Co.*, 40 Kan. 281, 19 P. 617 (1888); and *Allstate Insurance Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 806 (1962).

46. See *Dorsett v. Watkins*, 59 Okla. 198, 158 P. 608 (1916); and *State ex rel. Wahluke Inv. Co. v. Superior Court*, 168 Wash. 142, 10 P.2d 986 (1932).

47. See *Mattison v. Dunlap*, 191 Okla. 168, 127 P.2d 140 (1942).

48. *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P. 2d 492 (1939); and *Unemployment Compensation Div. v. Valker's Greenhouses, Inc.*, 296 N.W. 143 (N.D. 1941).

49. *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P.2d 492 (1939); and *Hein v. Ludwig*, 118 Pa. Super. 152, 179 A. 917 (1935).

Natural resources such as sunlight have been mentioned as indicators of farm production as opposed to industrial production where the question is primarily one of natural conditions.<sup>50</sup> Water as an essential of certain kinds of production may require an operation that is part of the farming operation because of necessity,<sup>51</sup> since "no farm product could be produced or become a finished farm product without water."<sup>52</sup>

Natural resources that are or can themselves be farm products have been frequently mentioned as factors that help to define a farming operation. They include both those which eventually become the final product, and those that produce a final product.

The use of seeds has been a factor used to judge the farm nature of an operation<sup>53</sup> as has been the living material that becomes part of the product such as grafting material in nursery or grove operations.<sup>54</sup> However, seedling trees as a natural resource may not lend farming character to a non-farming tree farm operation,<sup>55</sup> and in the seedling operation they were the product, not a resource. But tomato plants sold to others as resource inputs were agricultural products.<sup>56</sup> Breeding stock is also a natural resource that helps define the operation.<sup>57</sup>

Some resources are continuous sources of the product of the farming operation. Examples are poultry for egg production, dairy cattle used for milk production and permanent fruiting trees and bushes. In these cases a considerable portion of the farming enterprise is directed toward the maintenance of the resource, even more than the product itself, and the farming operation is defined by the resource more than by the commodity harvested and sold.

### *Manufactured Resources*

Because of the nature of agriculture, natural resources are a more important part of any agricultural operation than are other resources and tend to do more to define the operation. However,

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50. See the subsections on "Natural Conditions" and "Artificial processes and Conditions," *infra*.

51. "In southern Idaho the water must be collected and applied artificially as distinguished from nature's method of supplying it by rainfall," *Big Wood Canal Co. v. Unemployment Compensation Div.*, 61 Idaho 247, —, 100 P.2d 49, 51 (1940); and see *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755 (1949).

52. *Big Wood Canal Co. v. Unemployment Compensation Div.*, 61 Idaho 274, —, 100 P.2d 49, 51.

53. See *Agricultural Transportation Ass'n of Texas v. United States*, 274 F. Supp. 528 (N.D. Tex. 1967); *In re Bronxville Nurseries*, 258 App. Div. 1019, 17 N.Y.S.2d 95 (1940); and *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964).

54. *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964).

55. *Appleman v. Employment Div.*, 534 P.2d 218 (Ore. App. 1975).

56. *In re Horner*, 104 F.2d 600 (7th Cir. 1939).

57. *Cedarburg Fox Farms v. Industrial Comm'n*, 241 Wis. 604, 6 N.W.2d 687 (1942).

the non-natural resources, here termed manufactured, are an essential part of farming, particularly in the modern farm enterprise. Manufactured resources may, as the natural resources, be divided into general classes. For purposes of this article manufactured resources are broadly classed as machinery, structures and manufactured resources directly associated with the farm product.

The "use of plows, cultivators and other farm machinery and equipment" is part of the farming operation.<sup>58</sup> Machinery may, however, be machinery normally used on the farm but because of incidental use its character may change. Thus a farm tractor may be used in such a manner that it is a piece of industrial or commercial machinery rather than farm machinery<sup>59</sup> and the farming operation does not extend to all uses of the equipment.<sup>60</sup> For registration purposes a machine may have a dual use, part farming and part non-farming<sup>61</sup> which makes it difficult to identify a farming operation with a particular machine. Use of very specialized machinery and equipment not normally associated with farming may suggest, on the other hand, that the operation is more industrial than farming as customarily understood,<sup>62</sup> and a machine with considerable excess capacity for a particular farming operation may be an indication that its purpose is industrial.<sup>63</sup>

Structure and improvements have two kinds of implication. First, the inclusion of certain structures ancillary to the technical farming process may extend the enterprise much as the case of land not directly used as an input.<sup>64</sup> Second, structures may be used or intended for use as part of the "farm plant."<sup>65</sup> There is no particular structure that lends the character of farming to its use, though the building may remove a process normally thought of as farming into an industrial type operation.<sup>66</sup> When a building is

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58. *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964).

59. *Booth v. Seaboard Fire and Marine Ins. Co.*, 285 F. Supp. 920 (D. Neb. 1968).

60. *Id.*

61. *State v. Devilbliss*, 177 N.E.2d 74 (Ohio C. P. 1961).

62. *See, e.g., Cedarburg Fox Farms v. Industrial Comm'n*, 241 Wis. 604, 6 N.W.2d 687 (1942). The court in *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254, (1955), however, looked to function. A large farmer had an on-farm railway to transport sugar cane. The court held that since on-farm transportation was a normal farm function, industrial type equipment was part of the farm operation. "There is no reason to . . . discourage modernization in performing this same function." *Id.* at 724. Similarly for specialized trucks, *N.L.R.B. v. Olaa Sugar Co.*, 242 F.2d 714 (9th Cir. 1957).

63. *See, e.g., Campos v. Tomoi*, 175 Neb. 555, 122 N.W.2d 473 (1963).

64. *See* subsection on "Land" *supra*; and *Fredrickson v. Burleigh County*, 139 N.W.2d 250 (N.D. 1965), as an example of a farm dwelling used partially by urban worker but still classified as a farm structure. *But see Maneja v. Waialua Agricultural Co.*, 349 U.S. 254 (1955).

65. *Eisenzimmer v. Bell*, 75 N.D. 733, 32 N.W.2d 891 (1948). In *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254 (1955), the question involved an entire village owned by the farming enterprise.

66. *See Maneja v. Waialua Agricultural Co.*, 349 U.S. 254 (1955) (repair shops on highly mechanized farm); and *Hein v. Ludwig*, 118 Pa. Super. Ct. 152, 179 A. 917 (1935) (artificial nature of cultivation and growth a deciding factor).

part of a farming operation those things necessary to construct and maintain the structure as a useful resource may become part of the farming operation<sup>67</sup> but occasional work in a farm building located on a farm does not necessarily become part of the operation.<sup>68</sup>

Fertilizer<sup>69</sup> use has been mentioned in connection with the farming enterprise but only in passing<sup>70</sup> and usually in association with other factors.

### Labor

A considerable number of cases deal with agricultural and farm labor, cases generated because of the important statutory special treatment of farm labor in major legal systems such as workmen's compensation, labor relations, bankruptcy, unemployment insurance, minimum wage and others. Labor has a special status that makes generalization from those cases quite risky. The specific purposes of each set of laws is distinct and every court pronouncement must be studied in that context. Additionally, the statutes themselves reflect varying intent in definitional distinctions critical to the holding of the specific case.

Despite these obstacles the collection of cases concerning the labor exemption in various laws is instructive. The labor practices employed are weighed where useful to define the farming operation.<sup>71</sup> Many factors that courts have considered as guides to classification of labor as agricultural or farm labor are important factors for enterprise classification also. Among these considerations are: location of the work, the resource or product with which the work is concerned, the purpose of the work, the skills utilized and the integrated character of labor resources in the farming enterprise.<sup>72</sup>

The dual meaning of a factor classification is especially important in the labor resource area, though it is not limited to labor. A holding that a particular activity is farm labor may say two things

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67. See as examples, *Latimer v. United States*, 52 F. Supp. 228 (S.D. Cal. (1943) (maintenance work in a farm packing house also agricultural labor); and *Allstate Insurance Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 806 (1962) (part time carpenter rebuilding a farmer's barn which had burned was a farm laborer).

68. *E.g.*, *Heffner v. White*, 113 Ind. App. 296, 45 N.E.2d 342 (1942) (construction worker on farm not a farm laborer); similarly, *Stanton v. Johnson*, 127 Ill. App. 2d 114, 262 N.E.2d 162 (1970).

69. Fertilizer is listed in manufactured resources though some is natural or mined from the natural state.

70. *E.g.* *Agricultural Transportation Ass'n of Texas v. United States*, 274 F. Supp. 528 (N.D. Tex. 1967).

71. See, *e.g.*, *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P.2d 492 (1939).

72. In the following discussion the rather broad assumption is made that when a particular activity is classed as farm or agricultural labor, as opposed to non-farm labor, something significant has been said about a farming operation definition. This would not be the case where, for example, an activity could be defined as farm labor when no farming enterprise was present.

about the definition of the farm enterprise. First, it may mean that the whole operation or enterprise is a farm enterprise, as opposed to manufacturing. It may also mean that not only is the enterprise farming, but the bounds of the enterprise extend to the particular action in question.<sup>73</sup>

Location of farm labor is not dispositive of the question of farm operation. The situs of the activity is not very helpful, though relevant, because the argument is usually reversed for farm definition purposes.<sup>74</sup> Additionally, "it is firmly established by judicial decision that a workman is not a farm laborer simply because at the moment he is doing work on a farm."<sup>75</sup> On the other hand, the spatial boundaries of the farming enterprise may extend the physical production process.<sup>76</sup>

The object upon which the workman is performing labor may be a point of connection between the physical activity and the farming enterprise. Replacement of a barn is part of the farming operation<sup>77</sup> and maintenance work in on-farm packing houses is farm labor<sup>78</sup> though in neither case is the nature of the work unique to that kind of operation. On the other hand, the labor directed toward use of specifically farm machinery does not bring that labor resource within the purview of the enterprise<sup>79</sup> and labor performed on a greenhouse was separate from the basic farm operation and not part of that farm operation.<sup>80</sup> Generally the fact that the specific object upon which or with which the labor is performed is a distinct part of the farming operation does not necessarily extend the farming enterprise to include that labor as part of the farming enterprise's collection of labor resources.<sup>81</sup>

Labor resources may also reflect something about the farming operation by the way purpose is measured. Labor may well further the purposes of the farming enterprise but not extend the enterprise to include that resource. The employee of a farm implement dealer, for example, does not become a farm laborer by operating the tractor on the farm for demonstration purposes, even though

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73. Integration of other factors is usually an important part of this logic.

74. If done on the farm, it is farm labor.

75. *Albin v. Hendrich Bros. Implement Co.*, 382 S.W.2d 734, 739 (Mo. App. 1964).

76. Especially where transportation is an essential part of the farm operation.

77. *Allstate Insurance Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 808 (1962).

78. *Latimer v. United States*, 52 F. Supp. 228 (S.D. Cal. 1943).

79. *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254 (1955) (full-time, large-scale repair of farm machinery); and *Albin v. Hendrich Bros. Implement Co.*, 382 S.W.2d 734 (Mo. App. 1964) (tractor driver).

80. *Dost v. Pevely Dairy Co.*, 273 S.W.2d 242 (Mo. 1954) (general maintenance).

81. *Albin v. Hendrich Bros. Implement Co.*, 382 S.W.2d 734 (Mo. App. 1964).

his labor helps the farm operation.<sup>82</sup> It is suggested that the purpose factor serves to show that the farming enterprise extends beyond the physical operations that create the product to include elements of control since it is necessary to treat a labor resource as a part of the farming enterprise, not an ancillary process.<sup>83</sup>

Another feature of the labor resource that goes into farming operations is that of skill. A laborer may have to possess a special set of skills peculiar to a farming operation, and this labor resource requirement may indicate something about the nature of farming.<sup>84</sup>

Agricultural labor has been termed the science and art of the production of plants and animals useful to man.<sup>85</sup> Specific knowledge may include that of plant germination, soil content and growing habits of plant life<sup>86</sup> and knowledge of modern scientific methods of farming,<sup>87</sup> though a wide variety of knowledge and skills is a requirement for a successful farming enterprise. Precisely what knowledge is required will of course depend on the level of workmanship and the particular type of operation in question.<sup>88</sup>

Finally, a continuity factor is inherent in the labor resource of a farming operation. When a workman's efforts become part of the labor resource, the farm enterprise extends to a variety of activities carried out on behalf of the enterprise. A farm laborer does not step out of his part as a labor resource though he performs a number of functions beyond cultivation of the soil or tending animals.<sup>89</sup> As a resource, the "nature of the employment is the test rather than the particular item of work he is doing."<sup>90</sup>

Regularity and continuity of labor use have been suggested as factors in characterizing farming.<sup>91</sup> This characteristic applies both to continuity of the labor resources as different functions are per-

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82. *Id.*

83. As has been mentioned labor has such special attributes that treatment as a resource is complicated. It could be, for example, that relationships that extend farming to certain activities are better defined by application of master-servant principles.

84. Consideration of skills also applies to the entrepreneur either as entrepreneur or laborer if he is both.

85. *Murphy v. Mid-West Mushroom Co.*, 350 Mo. 658, 168 S.W.2d 75 (1942).

86. Mentioned in *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964).

87. *Id.*

88. There is conflict among jurisdictions on the status of a farmer under the Uniform Commercial Code merchant provision when a farm enterprise extends to marketing the product.

89. As examples, *Peterson v. Farmers' State Bank of Eyota*, 180 Minn. 40, 230 N.W. 124 (1930) (carpentry work in the repair of farm buildings); and *Butterfield v. Brown*, 261 App. Div. 1022, 25 N.Y.S.2d 803 (1941) (carting firewood for domestic purposes).

90. *Hebranson v. Fairmont Creamery*, 187 Minn. 260, —, 245 N.W. 138, 139 (1932) (workmen's compensation case).

91. See *Adams v. Ross*, 230 App. Div. 216, 243 N.Y.S. 464 (1930); *Great Western Mushroom Co. v. Industrial Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938); and *Unemployment Compensation Div. v. Valker's Greenhouses, Inc.*, 296 N.W. 143 (N.D. 1941).

formed and continuity of a particular individual's participation as a labor resource in a farming enterprise.

### THE TECHNICAL PROCESS

The farming operation includes a technical process.<sup>92</sup> The details of the process of course vary from product to product, and no generalization can be expected from the judicial decisions.

The method and manner of production covers the breadth of the farming operation technical processes<sup>93</sup> and the extent of the operation includes "every process and step taken and necessary to the completion of a finished farm product."<sup>94</sup> As with other factors of production, a consideration of these technical processes of farming can be classified, though arbitrarily, to provide a framework for a judicial decision sample. From a case sample five features appear to be distinguishable: The dependence on a natural process, the presence of natural conditions, the use or creation of artificial processes or conditions, the use made of natural resources, and the changes in the nature of the farm product during the process.

#### *Dependence on Natural Processes*

Perhaps the most important of all factors that define the farming enterprise is seldom mentioned directly in judicial discussion—the presence of growing things. Farming is commonly and traditionally thought of as resource use that depends on nature itself for the fundamental productive process, whether growth of plants or animals.<sup>95</sup>

The variety of things done to husband the growth in an efficient, useful and economic manner that demonstrate how closely the farming enterprise is tied to growth is too numerous to list. They include tilling the soil in preparation for growth,<sup>96</sup> planting the seed or budding and grafting,<sup>97</sup> caring for the plant as it grows and harvesting the final product. Caring for livestock<sup>98</sup> and other

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92. Mere trading in a product is not farm production, as where ripe crops are purchased on the tree and resold. *See, e.g.,* *Chapman v. Durkin*, 214 F.2d 360 (5th Cir. 1954); and *Fort Mason Fruit Co. v. Durkin*, 214 F.2d 363 (5th Cir. 1954).

93. *See* *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P.2d 492 (1939).

94. *Cook v. Massey*, 38 Idaho 264, —, 220 P. 1088, 1091 (1923); and *Big Wood Canal Co. v. Unemployment Compensation Div.* 61 Idaho 247, 100 P.2d 49 (1940).

95. Growth is indirectly specified in a number of factors, the most obvious of which is probably identification of the farm product, always a product of some natural growing process.

96. Mentioned in *Allstate Ins. Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 806 (1962).

97. Important in *In Re Bronxville Nurseries*, 258 App. Div. 1019, 17 N.Y.S.2d 95 (1940).

98. *Allstate Ins. Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 806 (1962).



animals<sup>99</sup> are other examples. The central position of the natural process is reflected in some of the sections that follow.

### *Natural Conditions*

Broadly speaking, the farming enterprise is an organized modification of the conditions in which the processes of nature operate. Judicial decisions may look at the presence of natural conditions to decide if the efforts of the entrepreneur are indeed farming. A few examples demonstrate this inquiry, though frequently the argument is implicit rather than explicit.

In farming, "the raising of crops, the growing of fruit, and other similar agricultural activities are under natural conditions,"<sup>100</sup> made subject to the forces of nature usually encountered in agricultural production.<sup>101</sup> The natural origins of agricultural products may have a bearing on how conditions may be altered but still retain essential features of nature. In answer to a suggestion that mushrooms and flower cultivation are different because one is grown in the dark and the other in light, a court dismissed the technical distinction as immaterial because both are products of the earth, "and in their natural state, before being perfected by man, flourished naturally in the open field."<sup>102</sup>

### *Artificial Processes and Conditions*

Though some alteration of the natural conditions in which plants or animals grow is required to find a farming operation,<sup>103</sup> too much alteration of the natural conditions or natural processes may take the enterprise from a farming one to one with an industrial character, even where a growing plant or animal is the product of the enterprise. This section explores the consideration of artificiality to help define the farming enterprise, with mention of conditions under which the growth process takes place, specialization, and processes that involve the product itself.

Conditions under which plants and animals are grown in the farming operation vary widely. Close confinement for animals has not been fatal for a farm operation definition as where poultry is confined for growing or laying purposes.<sup>104</sup> Greenhouse cases have discussed artificial conditions in which plants are grown, and those judicial decisions have given weight to conditions modified to such

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99. See the subsection on "The Usual Result of a Farming Operation" *supra*.

100. *Hein v. Ludwig*, 118 Pa. Super. Ct. 152, 179 A. 917, 918 (1935).

101. See *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964).

102. *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P. 2d 492, 495 (1939).

103. Without some management only hunting is present in the case of animals, simple harvesting in the case of plants.

104. *Bennett v. Stoneleigh Farms*, 254 App. Div. 790, 4 N.Y.S.2d 255 (1938); and the integrated broiler and egg operations discussed in text accompanying notes 159-166, *infra*.

an extent that year round production is possible,<sup>105</sup> while farming normally depends on weather enough to make production seasonal, and to the fact that the artificial conditions within the greenhouse may be created practically anywhere a factory can be erected and operated,<sup>106</sup> and the fact that the artificial conditions modify the characteristics of resource use.<sup>107</sup> These artificial conditions make the operation take on an industrial or commercial character quite different from that customarily thought of as farming.<sup>108</sup>

Specialization, though not well defined, has been found to transform a particular process from farming to industrial activity. "By the evolutionary process attendant on our present-day business methods, many activities formerly embraced in farming operations or in intricate connection therewith have become specialized and removed from the farm, and when this is accomplished such work may properly be regarded as thereby becoming industrial in nature, rather than agricultural in the common conception of the term."<sup>109</sup> Specialization, however, does not necessarily destroy the farm character of an operation. In a workmen's compensation case the argument was rejected that the laborer had the "duties of a specialist" and thus "had been lifted above and out of the category of farm labor because his assigned task had been made less onerous by the availability and use of automatic milking machines."<sup>110</sup>

Finally, the conditions applied to a product may be non-natural to the point that changes in the product are non-natural, this factor being treated elsewhere.<sup>111</sup>

### *Treatment of Natural Resources*

Given the natural process, the conditions that surround the growth process and the modification of those conditions in the farming enterprise, it would be expected that what is done to natural resources to achieve the results desired would be helpful in defining the farming operation. Many aspects of this topic have been treated elsewhere.<sup>112</sup>

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105. *Great W. Mushroom Co. v. Industrial Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938), an unemployment compensation case where seasonality of labor was thought to be an important reason for the agricultural labor exemption; see also *Just-A-Mere Farm, Inc. v. Peet*, 247 Ore. 413, 430 P.2d 987 (1967).

106. *Hein v. Ludwig*, 118 Pa. Super. Ct. 152, 179 A. 917 (1935).

107. *Great W. Mushroom Co. v. Industrial Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938); *Unemployment Compensation Div. v. Valker's Greenhouses, Inc.*, 296 N.W. 143 (N.D. 1941).

108. *Id.*

109. *Park Floral Co. v. Industrial Comm'n*, 104 Colo. 350, 91 P.2d 492, 495 (1939); and see *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755 (1949).

110. *Selvey v. Robertson*, 468 S.W.2d 212, 215 (Mo. App. 1971).

111. Subsections on "The Total Production Process," *supra* and "Changes in the Product," *infra*.

112. Subsections on "Other Natural Resources," "Labor" and "Artificial Processes and Conditions," *supra*.

Land as a natural resource is a frequent object of comment. Tilling the soil,<sup>113</sup> cultivation of the ground,<sup>114</sup> and husbandry of the soil<sup>115</sup> are examples of natural resource treatment in the technical production process of farming that courts have mentioned as inherent in the farming operation. Such work with the soil may be part of the overall process of production, and the process is not limited to work with the plants or animals themselves.<sup>116</sup> However, mere manipulation of the soil around a plant does not give a farming character to the operation.<sup>117</sup>

### *Changes in the Product*

The technical processes in the farming operations cannot be divorced from the product itself. Modification of natural conditions around the farm product brings about or influences its growth, that growth being the essence of the technical process of farming. However, other conditions are also modified that do not pertain to the growth of the plant or animal but to some other change in its physical characteristics.

Processes of growth, guided by technical aspects of the farming operation, range from tree seedlings<sup>118</sup> to fattening cattle.<sup>119</sup> But these processes are many times continuous so that the extent of the farming operation must be defined on somewhat obscure grounds.<sup>120</sup> Where there is no change at all, even growth, the tendency is to find that no farm operation exists,<sup>121</sup> and where gross changes are made the farming operation may not be defined as the causal agent.<sup>122</sup> In the intermediate situations courts have looked at the nature of the physical process to see if it is a naturally occurring one<sup>123</sup> changed only in some physical or naturally occurring chemical form.<sup>124</sup>

113. *Shafer v. Parke, Davis & Co.*, 192 Mich. 577, 159 N.W. 304 (1916); *Allstate Ins. Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 806 (1962); and *State ex rel. Bissinger & Co. v. Hines*, 94 Ore. 607, 186 P. 420 (1920).

114. *Getty v. C. R. Barnes Milling Co.*, 40 Kan. 281, 19 P. 617 (1888); *Hein v. Ludwig*, 118 Pa. Super. Ct. 152, 179 A. 917 (1935).

115. *Getty v. C. R. Barnes Milling Co.*, 40 Kan. 281, 19 P. 617 (1888).

116. E.g., *Culpepper v. White*, 52 Ga. App. 740, 184 S.E. 349 (1936) (ditch digging).

117. *City of Amarillo v. Love*, 356 S.W.2d 325 (Tex. Civ. App. 1962) (temporary transplanting of nursery plants).

118. *Appleman v. Employment Div.*, 534 P.2d 218 (Ore. App. 1975).

119. *Baker Production Credit Ass'n v. Long Creek Meat Co.*, 266 Ore. 643, 513 P.2d 1129 (1973).

120. See subsection on "The Usual Result of a Farming Operation," *supra*.

121. *City of Amarillo v. Love*, 356 S.W.2d 325 (Tex. Civ. App. 1962).

122. See subsections on "Natural Conditions" and "Artificial Processes and Conditions," *supra*.

123. *Frazer v. Moffitt*, 18 F. 584 (Cir. N.D. N.Y. 1888).

124. See *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254 (1955); and *Holtville Alfalfa Mills, Inc. v. Wyatt*, 230 F.2d 398 (9th Cir. 1955), where perishability may make steps to protect the product, such as immediate transportation, a part of the farming enterprise. "Transportation of crops so that spoilage can be prevented is usually considered part of harvesting."

## ECONOMIC ORGANIZATION OF RESOURCES

It has been mentioned that some of the profoundest changes in the last several centuries of Western Civilization have been associated with the organization of economic enterprise, a transformation that continues to the present day. The "managerial revolution" continues, with agricultural enterprises in the stream of innovation and flux.

To this point the product of the farm has been considered, then resources were reviewed and finally the technical processes that make the resources perform a useful function were outlined, all with the purpose of listing factors useful to define a farming enterprise. One critical characteristic remains to be explored—the presence and essential features of economic organization.

The survey of economic organization of resources is necessarily broad and general, touching on only some basic principles. Again, the purpose is only to discover some characteristics of the economic organization of resources that may help define the concept of a farming enterprise. The types of business organizations that may engage in farming are not discussed.

The economic organization of resources in the farming enterprise may be roughly classified into five areas: The presence of organization, some features of the organizer, the importance of decision-making and supervision, the ownership of resources or product and the presence of economic risk.

*Organization of Resources*

The presence of some organization of resource use is generally considered a prerequisite to the existence of an enterprise, farming or otherwise. Application of this principle to the farming operation proves to be a bit more complex than expected. Several aspects of the farming enterprise lend themselves to some clarification when the presence of organization is considered, though as with other factors mentioned the dividing lines among factors are arbitrary, and organization principles could easily be expanded into other categories.

Organization itself may help define a farming enterprise in at least three ways. The very concept of production goes beyond mere purchase and resale in a commercial transaction.<sup>125</sup> Mere purchase

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*Id.* at 403. See also *Sancho v. Bowie*, 93 F.2d 323 (1st Cir. 1937); *Brennan v. Gustafson's Dairy Inc.*, 382 F. Supp. 964 (M.D. Fla. 1974); *American Sumatra Tobacco Corporation v. Tone*, 127 Conn. 132, 15 A.2d 80 (1940); *City of Louisville v. Ewing Von-Allmen Dairy Co.*, 268 Ky. 652, 105 S.W.2d 801 (1937).

125. Of course a considerable contribution to the flow of product from producer to consumer may be made by purchase and resale, particularly where something more is done such as aggregating quantities, transportation facilities, or just finding markets. At what point this becomes part

of agricultural products does not make a farming enterprise<sup>126</sup> where the purchase is simply for resale, and such contracts for ripe fruit on the tree are so treated.<sup>127</sup> Neither does a farming enterprise that purchases a quantity of product and passes it through part of its operation necessarily become a producer with respect to those products.<sup>128</sup> In these cases there is no organization of economic resources used in the production processes of farming.

Organization of resources has been indirectly considered where the identity of sideline or ancillary work was at question. Where a farm entrepreneur does work for others on their product and as part of their enterprise, the point at which the activity ceases to involve organization of production resources used to actually produce the farm product may cut off the character of farming operation.<sup>129</sup> Where the resource itself, however, such as a baling or harvesting machine, is an integral part of the resources used by the primary farming enterprise, and is used only incidentally outside that enterprise, the organization of the primary enterprise may be extended to include the incidental work.<sup>130</sup>

Organization may be present but not directed to farming, even though it deals with the farm product.<sup>131</sup> Organized threshing operations<sup>132</sup> do not organize the complement of resources used to produce the farm product.

Another feature that may yield some definitional information is continuity.<sup>133</sup> The presence of organization in the farm production operation implies a certain continuity in resource use, if not to the entire growing process then at least to enough of it to include some change in the product brought about by the resources so organized.

Continuity may be reflected in the use of a particular resource, such as labor attached to a farming operation.<sup>134</sup> The activities included in the farming operation may extend to all those "necessary for the continued operation of the farm."<sup>135</sup> As previously men-

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of the production process is a distinct question. See *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755 (1949).

126. *Agricultural Transportation Ass'n of Texas v. United States*, 274 F. Supp. 528 (N.D. Tex. 1967), where a farming operation does exist.

127. See, e.g., *Chapman v. Durkin*, 214 F.2d 360 (5th Cir. 1954); and *Fort Mason Fruit Co. v. Durkin*, 214 F.2d 363 (5th Cir. 1954).

128. *Agricultural Transportation Ass'n of Texas v. United States*, 274 F. Supp. 528 (N.D. Tex. 1967); *Brennan v. Gustafson's Dairy, Inc.*, 382 F. Supp. 964 (M.D. Fla. 1974).

129. *Campos v. Tomoi*, 175 Neb. 555, 122 N.W.2d 473 (1963).

130. *Partridge v. Blackbird*, 213 Minn. 228, 6 N.W.2d 250 (1942).

131. "The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity." *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755 (1949). This is true of "sideline" cases as well.

132. *In re Boyer*, 65 Ind. App. 408, 117 N.E. 507 (1917).

133. *Campos v. Tomoi*, 175 Neb. 555, 122 N.W.2d 473 (1963).

134. As in *Adams v. Ross*, 230 App. Div. 216, 243 N.Y.S. 464 (1930).

135. *Allstate Ins. Co. v. Kabes*, 17 App. Div. 2d 1015, 233 N.Y.S.2d 806,

tioned, the farming operation itself is continuous, given that character partly because of the growth process, necessarily time consuming, and because organization may include part of the continuous process beyond mere growth.<sup>136</sup>

### *The Organizer*

Organization of resources implies an organizer, in the case of farming, the farmer. Definition of the farming enterprise is not directly assisted much by a legal description of the characteristic of a farmer, primarily because the farmer is usually defined by his relationship to farming, a reverse definition for purposes of this survey, and because much of the useful information in judicial decisions about farmers has been placed in other categories.

No particular kind of entity is necessary to define a farming enterprise. The organizer can be any entity capable of organizing economic resources, including individuals, partnerships, corporations and joint ventures, though the "traditional" identity of a farmer has not included the full complement of possible entities.<sup>137</sup> Therefore the nature of the entity itself does not help with definition.

An aspect of the organizing entity may be of indirect help to define the farming operation. The necessary relation between the entity and the organization of resources comprising the farming enterprise has been the subject of numerous cases.<sup>138</sup> Ownership or operation of a farm, rather than mere association with the product, is required.<sup>139</sup> It may be necessary to be "personally engaged in" the farming operation<sup>140</sup> though the changing nature of the

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808 (1962). *But see* Farmers Reservoir and Irrigation Co. v. McComb, 337 U.S. 755 (1949).

136. *See* American Sumatra Tobacco Corp. v. Tone, 127 Conn. 132, 15 A.2d 80 (1940). The implication that some continuity of effort is necessary to a farming enterprise may also be inherent in the previous discussion of what the organization is directed toward. If the work on the product is not continuous it is not sufficient to find the necessary resource organization for that particular product, though present for some other farm product. *Holtville Alfalfa Mills, Inc. v. Wyatt*, 230 F.2d 398, 402 (9th Cir. 1955): "[M]owing, raking, and chopping the alfalfa and loading it on trucks, [were] parts of a continuous, synchronized, integral operation which began with the crop growing in the field and ended when the product appeared as chopped alfalfa on board a truck."

137. For strictly economic purposes there is little reason (though perhaps some) to favor the individual entity as a true "farmer" since the ability to organize resources is enough, but for social considerations a distinction may well be justified. Statutory wording may also use the term "producer" instead of "farmer," and a distinction, if any, has not been satisfactorily worked out in judicial decisions. *See, e.g., Case-Swayne Co. v. Sunkist Growers Inc.*, 389 U.S. 384 (1967); and *United States v. National Broiler Marketing Ass'n*, 1976-1 Trade Cases ¶ 60,801 (N.D. Ga. 1976).

138. Though usually in the "reverse" definition role.

139. *See* *Agricultural Transportation Ass'n of Texas v. United States*, 274 F. Supp. 528 (N.D. Tex. 1967); and the poultry integrator cases, note 159, *infra*.

140. *In re Davis*, 22 F. Supp. 12, 13 (N.D. Iowa 1938); and *In re Lindsay*, 41 F. Supp. 948 (S.D. Tex. 1941).

farming enterprise probably no longer mandates identity of the organization entity and the laborer. Merely collecting returns from a farming operation by virtue of resource ownership, however, is not enough involvement,<sup>141</sup> and ownership of the major resource is not required.<sup>142</sup> The organizer need not spend all his time engaged in farming or operate the farm without assistance, and he may engage in secondary activities.<sup>143</sup> Thus an analysis of an entity does not necessarily indicate that all its activities are farming ones, even if the primary one is.

### *Decision-Making and Supervision*

Organization of resources for production is not passive. It generally involves both a decision-making process and supervision of operations.<sup>144</sup> Decision-making and supervision are essential elements of the farming enterprise limits.

Decision-making may describe both those decisions that guide the overall character of the enterprise and those that are made on an everyday basis. The decision-making that assists most with farm enterprise definition is the broader meaning.<sup>145</sup> Directing the business of the farm<sup>146</sup> is a broad statement of decision-making, and the term husbandry also indicates elements of decision-making.<sup>147</sup> The presence of decision-making helps to indicate when the enterprise organizes resources to bring forth the farm product. A second aspect of decision-making is the exact nature of the decisions made, an analysis of which would certainly add definition to the nature of the farming operation.

Control of resources is another aspect of an enterprise inherent in the organization of economic resources. Physical resources may be controlled by ownership or other kinds of arrangement, such as the tenant managing the farm for the landlord.<sup>148</sup> Where labor resources are concerned the question is that of supervision. A wide range of circumstances must be considered to determine the requi-

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141. *Benitez v. Bank of Nova Scotia*, 109 F.2d 743 (1st Cir. 1940) (mere collection of dividends from ownership in corporate farm); see *Chapman v. Durkin*, 214 F.2d 360 (5th Cir. 1954); and *Fort Mason Fruit Co. v. Durkin*, 214 F.2d 363 (1954), where the product itself was involved.

142. See *California Employment Comm'n v. Butte County Rice Growers Ass'n*, 154 P.2d 892 (D.Cal. 1944). Other cases and statutes permit tenants to be farmers, probably based on their function as organizers of the operation.

143. Mentioned in *In re Lindsay*, 41 F. Supp. 948 (S.D. Tex. 1941).

144. Both of these are also elements that indicate the presence of organization. See subsection on "Organization of Resources", *supra*.

145. A detailed list of decisions made in everyday operations would of course define a farming operation in any specific fact situation but general principles would probably not be forthcoming from such an analysis.

146. See, e.g., *Stoner v. New York Life Ins. Co.*, 90 S.W.2d 784 (Mo. App. 1936).

147. *Getty v. C. R. Barnes Milling Co.*, 40 Kan. 281, 19 P. 617 (1888).

148. Ownership is considered specifically in the following section.

site supervision to incorporate the farming enterprise and the specific work performed.<sup>149</sup> These may be found in the way cases deal specifically with the nature of the master-servant relationship, and will not be discussed here.<sup>150</sup>

Supervision may go somewhat beyond labor supervision and become supervision of another entity's operations, as in integrated poultry operations.<sup>151</sup> When the identity of one or the other, or both entities as farming operations is at question judicial discussion of the issues can be very instructive.<sup>152</sup>

### *Ownership of Resources and Product*

Control of resources and products cannot be completely separated from their ownership. This section focuses on principles of ownership either of resources or the product to suggest another factor useful in the definition of the farming enterprise. Ownership carries with it an extensive and complex set of implications, and only a few are mentioned here, though in some way all can be useful for definitional purposes. Ownership is also indicative of resource collection, bringing resources sufficient to carry out the enterprise purpose together so the necessary reaction of ingredients can take place. The fact that resources are committed to the enterprise is also suggested by ownership patterns. Finally, resources and product ownership as an important indicator of the risk-bearing aspect of the farming enterprise is treated in the following section.

It is not necessary to possess all the attributes of resource ownership before the requisite organization is possible. A farming enterprise may be essentially that of a non-owner as where the organizer of resources is a tenant,<sup>153</sup> a restatement that the farming enterprise is something other than land ownership even where the land is used as part of a farming operation.<sup>154</sup> Additionally, the farming enterprise is not automatically extended to the owner though the owner necessarily maintains some broad control over his property.<sup>155</sup> The farming enterprise therefore falls somewhere along a continuum of control and ownership.

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149. See related subsections on "Labor" and "Treatment of Natural Resources," *supra*.

150. Finding a master-servant relation is not of course automatically helpful for definition purposes, but may be.

151. See *Wirtz v. Tyson's Poultry, Inc.*, 355 F.2d 255 (8th Cir. 1966); and cases mentioned in footnote 159, *infra*.

152. The cases that discuss poultry integration are good examples. See footnote 159, *infra*.

153. *E.g.*, *Kaslovitz v. Reid*, 128 F.2d 1017 (10th Cir. 1942); and *Fleckles v. Hille*, 83 Ind. App. 715, 149 N.E. 915 (1925).

154. See also, *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755 (1949); and *Benitez v. Bank of Nova Scotia*, 109 F.2d 743 (1st Cir. 1940).

155. Almost all ownership implies control of this kind. An absentee landlord who has no direct connection with land use still has both the right



The concept of ownership as a collection and concentration of resources is also instructive. As has been suggested, the passive collection of resources is not enough to define a farming enterprise.<sup>156</sup> Neither is ownership of specific individual resources, incapable of supporting more than a single isolated part of the whole enterprise, enough to extend the farming enterprise to that resource. The enterprise may not extend to a resource owned as part of one collection of resources when its major function is not to complement other resources used in the enterprise,<sup>157</sup> but such a resource may be temporarily used outside the primary enterprise if its ownership is basically intended for the primary enterprise.<sup>158</sup> Within the views of ownership as control of resources and ownership as collection and concentration is the concept of ownership as a commitment of resources, another feature that adds to the definition of the farming enterprise.

### *Risks of Farming*

The "managerial revolution" has given importance to a factor in the farming operation in recent years that has heretofore been only implicit in the ownership and organization factors. That factor is risk in the farming enterprise. The changing methods of doing business in the poultry industries, both egg and broiler, have been the primary sources of its articulation.<sup>159</sup>

Risk—the possibility of physical or economic loss—may exist in both the production process and the marketing aspect of the farming operation,<sup>160</sup> and can be associated with loss of either a resource or the product itself. Risk is especially important to the farming operation because of the nature of the resources and product, the technical processes and conditions inherent in the pro-

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to permit the land to be made a farming resource and the right to rescind that use.

156. Subsections on "Organization of Resources" and "Decision-Making and Supervision," *supra*.

157. See *Industrial Comm'n v. Shadowen*, 68 Colo. 69, 187 P. 926 (1920); *In re Boyer*, 65 Ind. App. 408, 117 N.E. 507 (1917); and *Campos v. Tomoi*, 175 Neb. 555, 122 N.W.2d 473 (1963).

158. See *Slycord v. Horn*, 179 Iowa 936, 162 N.W. 249 (1917); *Partridge v. Blackbird*, 213 Minn. 228, 6 N.W.2d 250 (1942); and *Steinmetz v. Klambunde*, 261 Minn. 487, 113 N.W.2d 444 (1962).

159. Several recent cases discuss the integrated poultry operation, both broiler and egg. Among these cases are *Bayside Enterprises, Inc. v. N.L.R.B.*, 97 S. Ct. 576 (1977), *aff'g*, *Bayside Enterprises, Inc.*, 216 N.L.R.B. 502, *enfd.* 527 F.2d 436 (1st Cir. 1975). The "integrator" supplies feed, medication, supervision, and the birds to the "grower." The grower cares for the birds in his own houses under contract. The integrator usually retains ownership of the birds and stands almost all risk of loss, including market risks. Practices of course vary from operation to operation. *N.L.R.B. v. Strain Poultry Farms, Inc.*, 405 F.2d 1025 (5th Cir. 1969); *Wirtz v. Tyson's Poultry, Inc.*, 355 F.2d 255 (8th Cir. 1966); *United States v. National Broiler Marketing Ass'n*, 1976-1 Trade Cas. ¶ 60,801 (N.D. Ga. 1976), and especially the partial summary judgment at 1975-2 Trade Cas. ¶ 60,509.

160. See *Wirtz v. Tyson's Poultry, Inc.*, 355 F.2d 255 (8th Cir. 1966); and *N.L.R.B. v. Strain Poultry Farms Inc.*, 405 F.2d 1025 (5th Cir. 1969).

duction process, and the nature of the market into which agricultural production flows. Two aspects of risk can be instructive. The kind of risks involved in an operation may show the enterprise is farming as opposed to non-farming, and the identity of the entrepreneurial effort might be found by analyzing where the risks fall.

Analysis of the place of risk in an economic enterprise is a field of study in itself, but several examples of risk sources will demonstrate that this factor of the farming enterprise has implications for definitional purposes. One source mentioned in judicial discussion is fluctuation in input costs such as feed and medication.<sup>161</sup> Second, failure of a resource to produce properly<sup>162</sup> or death of a living natural resource such as a layer<sup>163</sup> is a source of risk. Third, the product itself might die<sup>164</sup> or be destroyed.<sup>165</sup> Finally, the price received and the availability of a market for the product may fluctuate.<sup>166</sup> The judicial discussions of risk are of course more detailed, but this list suffices to show risk as an attribute of economic organization useful to the definition of the farming enterprise, a factor given some stature by recent court use.

#### CONCLUSION

"Agriculture, as an occupation, includes more than the elemental process of planting, growing and harvesting crops. . . . Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract."<sup>167</sup>

Just as the determination cannot be made in the abstract, so the factors upon which such a determination rest cannot be made in the abstract. The list of factors suggested here is only one of many possible systems of categorization. Much is left to be explored, not only as to the more important of the listed categories, but also as to other systems of categorization, all with a view to greater utility.

As American agriculture evolves and as society changes, the need to carefully analyze the basic issues of definition will become more important, and resolution of certain elemental questions will be demanded. It is hoped that this simple taxonomy of definitional factors is an initial contribution to this resolution.

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161. *Wirtz v. Tyson's Poultry, Inc.*, 335 F.2d 255 (8th Cir. 1966).

162. *Id.*

163. See cases listed in footnote 159, *supra*.

164. *United States v. National Broiler Marketing Ass'n*, 1976-1 Trade Cas. ¶ 60,801 (N.D. Ga. 1976).

165. *Wirtz v. Tyson's Poultry, Inc.*, 335 F.2d 225 (8th Cir. 1966).

166. See cases listed in footnote 159, *supra*.

167. *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755, 760-61 (1949).