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An Agricultural Law Research Article

Introduction: Agricultural Law Symposium

by

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INTRODUCTION

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This issue marks the end of a decade of the *South Dakota Law Review's* annual symposium devoted to agricultural law.¹ This period coincides with the evolution of agricultural law as a significant and major area of scholarship. The past decade has also witnessed the increased recognition of agricultural law as a substantive area of study within educational institutions—both law schools and colleges of agriculture.² But, what is included in the subdiscipline of agricultural law?

Of the topics previously covered in the symposium issues, the greatest number have dealt with agricultural policy or government regulation in a broad sense. Water issues, as might be expected in South Dakota, have captured the attention of an equal number of writers. The remaining articles deal with agricultural land use, cooperatives, taxation and estate planning, commercial law, agricultural finance, environmental law and the futures market. This array illustrates the range of agricultural law problems that have demanded attention in the past ten years. This range of interests is also reflected in the membership of the relatively new organization—the American Agricultural Law Association.

The formation of the American Agricultural Law Association (AALA), in 1980, served as a vehicle for information dissemination among those interested in agricultural law. The association membership, now nearing 500, includes practitioners, teachers, extension specialists, government workers and students from throughout the country.

The AALA has undertaken two major educational efforts—publication of a periodic newsletter and the sponsorship of an annual educational conference. The current version of the newsletter is *Agricultural Law Update*, a monthly source of agricultural law information. The papers that follow are those from the fourth annual educational conference.

The first conference, in 1980, was primarily organizational although significant educational time was devoted to a focus on commercial law. No proceedings were published from that meeting although one of the speakers

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1. Actually, volumes 19-25 and 27-28 contain agricultural law symposium issues. Volume 26 featured an issue devoted to Indian law. One of those articles, Torgerson, *Cooperative Forms of Agribusiness for Use in Indian Country*, 26 S.D. L. REV. 564 (1981) was directly related to agricultural law. Others were indirectly related. See, e.g., Getches, *Water Rights of Indian Allotments*, 26 S.D. L. REV. 405 (1981).

2. See Harl, *Agricultural Law: A Place in the Intellectual Firmament*, 3 AGRIC. L.J. 537 (1981-82).

wrote a subsequent law review comment on her topic of discussion.³ The second conference focused on "Agricultural Land and the Law in the 1980's: Transferring, Protecting and Conserving This Valuable Resource." The papers presented at that conference dealt with a range of issues associated with agricultural land use including soil and water conservation, farmland preservation, mineral leases on agricultural land, farmland ownership, agricultural land financing and federal tax developments affecting farmland and agriculture including eligibility for special use valuation for estate tax purposes. The papers from that conference were published in *The Agricultural Law Journal*.⁴

Papers from the third conference were also published in *The Agricultural Law Journal*.⁵ The focus was "Agricultural Law and Farm Financial Distress" with discussion centered on a number of finance and credit issues including the nature, scope and measurement of farm financial distress, cooperative financing, income tax problems and strategies during farm financial distress and problems arising from farm product marketing transactions with a focus on the farmer as both debtor and creditor.

The theme of the 1983 conference, and the papers included in this issue, are best characterized by the first part of the title of the article by the conference keynote speaker, Professor Harold Breimyer—"Agriculture at the Crossroads." His discussion focuses on the major areas of concern in agricultural policy today and the options available to makers of that policy. Professor Breimyer sets the stage for the papers that follow by reviewing the major policy and management questions that will be at the forefront "beyond the eighties." The topics covered in other papers focus on use of water resources, administrative problems arising from government programs, farm bankruptcy proceedings, farm product marketing and outside investment in agriculture. The papers deal not only with the policy questions associated with these areas but include practical pointers helpful in representing agricultural clients.

For example, a trio of papers presented at the conference, two of which are included in this issue, addressed water resource issues including the future of irrigated agriculture (Frederick), groundwater management (Thorson),⁶ and problems arising from water transfers (Clyde). These papers are complimented by a thorough discussion by Littlejohn of the tax issues associated with the ownership of natural resources by farmers.

A second area of recent concern is that relating to administration of the United States Department of Agriculture (USDA) programs. Papers by Murphy and Hamilton cover representation of farmers in USDA adminis-

3. Comment, *The Iowa Livestock Warranty Exemption: Illusory Protection for the Buyer*, 67 IOWA L. REV. 133 (1981).

4. 3 AGRIC. L.J. 537-762 (1982).

5. 4 AGRIC. L.J. 443-588 (1983).

6. Professor Norman Thorson of the University of Nebraska School of Law presented *Groundwater Control Measures: The Critical Issues and Developing Problems*, but did not prepare a paper for publication.

trative proceedings including special emphasis on Farmers Home Administration (FmHA) and Agricultural Stabilization and Conservation Service (ASCS) procedures. Practical problems in representing farmers and farm lenders in bankruptcy proceedings are highlighted in papers by Kunkel (representing farmers) and Rosentrater (protecting the lender's rights).

Van Hooser's paper focuses on problems arising from the sale of mortgaged farm products and legislative attempts to modify the Uniform Commercial Code. Geyer proposes modifications in marketing transactions as a means of improved protection for both the buyer and seller of farm products.

Another area of concern has been outside investment in U.S. agriculture. DeBaal and Krause outline major findings from federal data on corporate and foreign investment in U.S. agriculture. Rich and Schumann detailed structuring techniques available for outside investment including those suited to non-resident as well as domestic investors.⁷ In addition to these topical papers, Dale Dahl's presidential address serves to emphasize the development of agricultural law as a separate area of study.

The four conferences of the AALA and the nine issues of the agricultural law symposium issue of the *South Dakota Law Review* nicely illustrate the breadth of what has become known as "agricultural law" and lend credence to the assertion that agricultural law has arrived as a subdiscipline.

7. At the conference John Schumann, Vice President of Northern Trust Company, Chicago, Illinois and Robert Rich of Davis, Graham & Stubbs, Denver, Colorado, addressed *Domestic and Non-Resident Alien Investment in Agriculture: Investment Structuring Techniques for Off-Form Investors*, but did not prepare a paper for publication.