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An Agricultural Law Research Article

Judicial Approaches to Resolving Dissension Among Owners of the Family Farm

by

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I. INTRODUCTION

Family farms are at the heart of American agricultural production. They account for ninety-five percent of all farms in the United States and about sixty percent of the nation's farm products.¹ Family farms, often homesteaded, acquired, or developed by parents, grandparents, or great-grandparents, are a long standing and important tradition in rural America. Many Americans trace their heritage to the family farm.

As the family farm is passed from generation to generation, through parents and children or brothers and sisters, family members tend to develop divergent goals regarding the farm's operation. Sadly, when divergent goals are not properly managed, family farms are paralyzed by dissension and deadlock.² To resolve dissension, family farm business owners frequently seek judicial redress.³ Courts have not consistently resolved dissension among family farm owners and have not adopted clear principles to guide future judicial resolution of such dissension.⁴ This Article proposes principles to guide judicial resolution of cases involving family farm disputes.

To establish a foundation for the proposed principles, this Article will first discuss the importance of the family farm and the forms of business organizations family farmers traditionally use.⁵ The Article next discusses the causes of dissension among the owners of the family farm.⁶ After examining legislative and judicial approaches to resolving dissension on the family farm,⁷ the Article concludes by proposing standards for resolving disputes plaguing many family farms.⁸

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1. MICHAEL P. BOEHJE & VERNON R. EIDMAN, *FARM MANAGEMENT* 4 (1983).
 2. The problem of rivalry between family members is not unique to family-owned farm businesses. See 1 F. HODGE O'NEAL & ROBERT B. THOMPSON, *O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS* § 2.02, at 2-3 (2d ed. Supp. 1993).
 3. See *infra* notes 88-146 and accompanying text. The growth in number of shareholder dissension cases decided on oppression grounds has been called "phenomenal." See Harry Haynsworth, *The Effectiveness of Involuntary Dissolution Suits as a Remedy for Close Corporation Dissension*, 35 CLEV. ST. L. REV. 25, 87 (1987)(citing 1 F. HODGE O'NEAL & ROBERT B. THOMPSON, *O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS* at iii (2d ed. 1985)). See also J.A.C. Hetherington, *Defining the Scope of Controlling Shareholders' Fiduciary Responsibilities*, 22 WAKE FOREST L. REV. 9, 9 (1987), ("Conflicts between the interests of controlling and minority shareholders in stock corporations have been and continue to be major—perhaps the single most important problem—in corporation law.").
 4. See *infra* text accompanying notes 88-146.
 5. See *infra* text accompanying notes 9-33.
 6. See *infra* text accompanying notes 34-87.
 7. See *infra* text accompanying notes 88-152.
 8. See *infra* text accompanying notes 153-200.

II. ATTRIBUTES OF FAMILY-OWNED FARMS

Family-owned farms share many attributes of other typical family-owned and operated businesses. In some ways, however, family farms are part of a unique culture, making dispute resolution even more difficult. Family-owned farms are special in many ways. Many immigrants to the United States, as well as Native Americans, trace their roots to small farms. Today's family farmers, and the descendants of family farmers, have a deep emotional tie to farm country. Family farmers, thought to be independent, hardworking, and self-reliant, epitomize many American ideals. The family farmers' historic commitment to long term stewardship of the land is increasingly valued by today's more environmentally-conscious society. Public policy, in many instances, attempts to preserve these attributes of the family farm.

A. Public Policy Favoring Preservation of Family Farms

Congress has demonstrated on many occasions its desire to grant family farms special treatment.⁹ For example, Congress has provided special estate tax provisions designed in part to encourage continuation of family farms. Section 2032A of the Internal Revenue Code encourages family farming by allowing special lower estate tax valuations of land for ongoing farm businesses.¹⁰ In addition, federal

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9. Professor J.W. Looney appropriately observes: "Congress has, from time to time, recognized family farming as important to the economic well-being of agriculture and has specified that new programs funded by USDA must give appropriate attention to the effects they may have on the structure of family orientated agriculture." J.W. Looney, *The Changing Focus of Government Regulation of Agriculture in the United States* 44 MERCER L. REV. 763, 792 (1993). Carol Ann Eiden presents a more cynical view of Congress' efforts to help the family farm. Carol Ann Eiden, *The Courts' Role in Preserving the Family Farm During Bankruptcy Proceedings Involving FmHA Loans*, 11 LAW & INEQ. J. 417, 424-29 (1993).
10. I.R.C. § 2032A (Supp. IV 1992). Although the special-use valuation provisions of § 2032A apply to all closely held businesses, the applicable legislative history describes its importance for preservation of farms. The legislative history describes the incentives it creates for continued use of farm property as farm property:

Your committee believes that, when land is actually used for farming purposes or in other closely held businesses (both before and after the decedent's death), it is inappropriate to value the land on the basis of its potential "highest and best use" especially since it is desirable to encourage the continued use of property for farming and other small business purposes. Valuation on the basis of highest and best use, rather than actual use, may result in the imposition of substantially higher estate taxes. In some cases, the greater estate tax burden makes continuation of farming, or the closely held business activities, not feasible because the income potential from these activities is insufficient to service extended tax payments or loans obtained to pay the tax. Thus, the heirs may be forced to sell the land for development purposes. . . .

However, your committee recognizes that it would be a windfall to the beneficiaries of an estate to allow real property used for farming or

bankruptcy law provides special debt relief for family farmers suffering financial distress.¹¹ Chapter 12 of the Bankruptcy Code makes it easier for family farm businesses to survive bankruptcy intact.¹² Finally, Congress designed many of the federal farm programs with an eye toward providing special benefits to the family farmer.¹³ Farmers Home Administration Farm Ownership Loans are designed to assist family farm operations.¹⁴ Because of the \$50,000 payment limitation with respect to many federal farm programs, small farm operators receive proportionally more federal farm benefits than large corporate farms.¹⁵

To ensure the survival of family farms, over a dozen states have enacted legislation prohibiting corporate ownership of farm land intending to favor families as farm owners.¹⁶ Anti-corporate farm legislation preserves family farms by limiting the ability of non-family corporations to buy land and by making it easier for families to buy farms at lower costs. These statutes also reduce the incentive for family farmers to sell out because of higher land prices.

Though public policy clearly favors preservation of the family farm, the reasons behind the public policy are less certain. Because farmers constitute only two percent of the United States population, family farmers do not wield tremendous political power.¹⁷ Nonetheless, preservation of the family farm has been justified on several policy grounds. Some support for continued preservation of the family farm results from the family farmers' own interests in reducing competition from large corporate farmers. Other reasons, however, extend past the agricultural community's self interest. Some have persuasively argued that family ownership of agricultural land helps preserve rural, social, and economic structures¹⁸ and promotes responsible stew-

closely held business purposes to be valued for estate tax purposes at its farm or business value unless the beneficiaries continue to use the property for farm or business purposes, at least for a reasonable period of time after the decedent's death.

H.R. Rep. No. 1380, 94th Cong., 2d Sess. 21-22 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3375-76.

11. See 11 U.S.C.A. §§ 1201-1231 (West 1993 & West Supp. 1994).
12. See, e.g., Barbara Dockery Tremper, *The Montana Family Farmer Under Chapter 12 Bankruptcy*, 49 MONT. L. REV. 40 (1988).
13. See Looney, *supra* note 9, at 792-93.
14. See 7 C.F.R. § 1943.2 (1993).
15. See 7 U.S.C. § 1308 (1988).
16. See JULIAN C. JUERGENMEYER & JAMES BRYCE WADLEY, *AGRICULTURAL LAW* § 30.12, 154-55 (1982).
17. J.W. LOONEY ET AL., *AGRICULTURAL LAW: A LAWYER'S GUIDE TO REPRESENTING FARM CLIENTS* 6 (1990).
18. The Eighth Circuit acknowledged the legitimacy of these policies in *MSM Farms, Inc. v. Spire*, 927 F.2d 330, 333 (8th Cir. 1991). According to this case, Nebraska's anti-corporate farming statute prevents "a perceived threat that would stem from unrestricted corporate ownership of Nebraska farm land by preventing

ardship of soil, water, and other resources.¹⁹ Family owners of agricultural land also help ensure efficiency. Further, when small farms predominate, no one producer is able to influence prices.²⁰ Since production of food and fiber is so important, the public clearly has an interest in preserving vigorous competition in the farm economy.²¹

B. Structure of the Family Farm

Family members structure family farms in different ways.²² Many family farms are operated without creating a separate legal entity, such as a partnership or corporation, to manage the operation. Often parents own farm real estate while the children serve as employees or tenants. In other cases, each member of the family owns or leases separate parcels of farm real estate but cooperates, often informally, in the management of them. Family members may, for example, share machinery or contribute labor to each other during planting and harvesting. In these informal operations, when individual family members develop differing goals, the joint operation is quite easily dissolved.

Unfortunately for families experiencing dissension, many farms are organized as corporations and partnerships which constitute separate legal entities. Family farms organized as separate legal entities are more difficult to dissolve. According to the 1987 Census of Agriculture, 9.7% of U.S. farms are organized as partnerships, while 3.2% are organized as corporations.²³ Because successful family farms need increasing amounts of capital and management sophistication,

the concentration of farmland in the hands of non-family corporations." *Id.* See also MARTY STRANGE, *FAMILY FARMING: A NEW ECONOMIC VISION* 128-31 (1988)(cited in Looney, *supra* note 9, at 793)(discussing the manipulation of family farm legislation and how corporations have influenced Congress in this area since the passage of the Reclamation Act of 1902); Steven Bahls & Jane Easter Bahls, *Just How Bad Is Corporate Farming?*, *FARM FUTURES*, Dec. 1991, at 7.

19. Carol Ann Eiden has observed that "[f]amily farmers practice better soil conservation methods than nonfamily industrial farms." Eiden, *supra* note 9, at 423. Eiden argues that "[i]ndustrial farms lack the personal link to the land that inspires both valuable stewardship and better food." Eiden, *supra* note 9, at 423.

20. See 1 NEIL E. HARL, *AGRICULTURAL LAW* vi (1983).

21. J.W. Looney has observed:

Farmers are also viewed as a uniquely stabilizing element in society because of their vital role in food and fiber production. Modern society continues to perceive small farms, and especially those identified as 'family farms,' as particularly desirable. These types of farms seem to epitomize and promote the American value of self-sufficiency.

LOONEY ET AL., *supra* note 17, at 5.

22. See BOEHJE & EIDMAN, *supra* note 1, at 356-90.

23. 1987 CENSUS OF AGRICULTURE, *GEOGRAPHIC SERIES VOL. 1.*

the trend toward corporate or partnership farms is likely to continue.²⁴

Family farms desiring to operate as separate legal entities, however, are no longer limited to operation as corporations or partnerships.²⁵ In many states, small businesses are now permitted to operate as limited liability companies.²⁶ Limited liability companies are hybrid business entities which combine the favorable attributes of corporations and partnerships. The owners of limited liability companies obtain the corporate attribute of limited liability and enjoy partnership "pass-through" tax advantages.²⁷ Because of these benefits, many believe that limited liability companies may supplant partnerships as the organization of choice for small businesses.²⁸ Because owners of family farms need to be concerned about both limited liability and "pass-through" tax benefits, limited liability companies will likely be attractive alternatives to family farmers.²⁹

Forming a separate business entity for a family farm, however, has disadvantages. Operating in the form of a partnership, corporation, or

24. See BOEHJE & EIDMAN, *supra* note 1, at 357.

25. For an excellent discussion of the factors important to select a business entity, see J.W. Looney & Lonnie R. Beard, *Farm Business Planning: Coordinating Farm Program Payments with Tax Law*, 57 UMKC L. REV. 157 (1989).

26. As of the summer of 1993, approximately 30 states authorized limited liability companies. *Shop Talk: Tax Trap for Professionals Forming LLCs*, 79 J. TAX'N 63 (1993). The author expects nearly all states to authorize limited liability companies by 1995. For excellent general discussions of limited liability companies, see Wayne M. Gazur & Neil M. Goff, *Assessing the Limited Liability Company*, 41 CASE W. RES. L. REV. 387 (1991); Thomas E. Geu, *Understanding the Limited Liability Company: A Basic Comparative Primer (Part One)*, 37 S.D. L. REV. 44 (1992); Thomas E. Geu, *Understanding the Limited Liability Company: A Basic Comparative Primer (Part Two)*, 37 S.D. L. REV. 467 (1992); Susan Pace Hamill, *The Limited Liability Company: A Possible Choice for Doing Business*, 41 FLA. L. REV. 721 (1989); Robert R. Keatinge, et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 BUS. LAW. 375 (1992).

Several state statutes prohibit limited liability companies from owning or leasing agricultural land. For example, the Kansas anti-corporate farming statute broadly limits the limited liability companies to engage in farming:

No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state.

KAN. STAT. ANN. § 17-5904(a)(Supp. 1992). See also IOWA CODE § 9H.3A (Supp. 1994); MINN. STAT. § 500.24 (Supp. 1994); S.D. CODIFIED LAWS ANN. § 47-9A-1 (Supp. 1993). These statutes are designed to preserve the integrity of statutes that restrict corporate farming.

27. Rev. Rul. 88-76, 1988-2 C.B. 360.

28. See sources cited *supra* note 26.

29. See Steven C. Bahls & Jane Easter Bahls, *A Promising Solution to the Business-Structure Riddle*, FARM FUTURES, Oct./Nov. 1992, at 22.

limited liability company may cause thorny problems when the owners develop divergent goals. If divergent goals are not properly managed, courts may take steps to resolve the dissension. Under partnership law, for example, courts may intervene in partnership affairs when a partner engages in "wrongful conduct that adversely and materially effects the partnership business"³⁰ or when a partner engages in conduct making it "not reasonably practicable to carry on the business in partnership with the partner."³¹ Similarly, corporate law authorizes judicial intervention when managers of the corporation are deadlocked or when "directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent."³² Finally, the law governing limited liability companies typically provides that courts may intervene in the affairs of a limited liability company when members make it "not reasonably practicable to carry on the business" of the limited liability company.³³ Before courts can properly use these powers to fashion remedies resolving dissension among the family farm owners, courts should understand the origin of dissension among family farm owners.

III. THE PROBLEM OF DISSENSION AMONG OWNERS OF FAMILY FARMS

A. Causes of Dissension

The problem of dissension among the owners of family-owned farms is significant. As farm ownership devolves from generation to generation, some heirs may want to aggressively expand the farm while others may wish to operate more conservatively. In addition, those active in the farm likely desire adequate compensation and may want to reinvest most of the earnings in the enterprise. Children moving off the farm, however, often seek current income from the farm to supplement their non-farm income. At some point, these children may want to liquidate their interest in the farm and invest elsewhere hoping for a greater return. If off-the-farm heirs wish to be bought out, heirs working the farm often cannot generate enough cash to accomplish the purchase. These divergent goals too frequently lead to dissension.³⁴ Dissension typically boils over when the senior family members (mother and father), who served as the glue holding the family together, die.

Although dissension among siblings is common, it may also result from transitions of ownership between parent and child. Many times

30. UNIF. PARTNERSHIP ACT § 601(5)(i)(1992).

31. *Id.* § 601(5)(iii).

32. MODEL BUSINESS CORP. ACT. § 14.30(2)(ii) (1984).

33. ABA PROTOTYPE LTD. LIAB. CO. ACT § 902 (1992).

34. See 1 O'NEAL & THOMPSON, *supra* note 2, § 2.04.

the retiring parents, often somewhat more cautious by nature than their children, hesitate before giving control of the farm to the children, who may be approaching middle age.³⁵ Parent and child may have different philosophies about chemical use, participation in federal farm programs, conservation practices, and crop or animal selection. Parents and children may also disagree over who is entitled to farm profits. The parents may desire to draw substantial income from the operation even though they devote increasingly less time to the farm. The children, on the other hand, may wish to exert more control and draw more income from the farm for their own families. Cash flow generated from the farm may not be sufficient to support the desires of both parent and child. Because farming is capital-intensive, without significant additional capital investment, it is often not possible to increase the farm's cash flow enough to support two families. As a result, this blending of the first generation life cycle with the second generation life cycle sometimes causes dissension between family members.³⁶

Family disagreements often result in ineffective use of management time, resource-draining litigation, and inability to obtain needed financing.³⁷ In addition to causing financial loss, valuable family relationships can be damaged beyond repair. Otherwise cordial and healthy relations may turn vindictive and destructive.

Closely-held businesses do not usually provide, in advance, for proper dispute resolution.³⁸ Professor Charles R. O'Kelley notes: "Viewed contractually, the typical closely held corporation is mostly

35. For a discussion of the parent who "hangs on," see O'NEAL & THOMPSON, *supra* note 2, § 2.05.

36. For an excellent discussion of the problems faced by the merging of these life cycles, see BOEJHE & EIDMAN, *supra* note 1, at 357-59.

37. For a discussion of the financial and hardship resulting from dissension on the farm, see Jane Easter Bahls, *Farm Partnership Disputes*, FARM FUTURES, Mar. 1987, at 29-30. For a discussion of the losses to the economy as a result of shareholder dissension, see 1 O'NEAL & THOMPSON, *supra* note 2, § 1.04.

38. Though most family-owned businesses do not provide systems to resolve disputes between owners, systems do exist to resolve disputes. Arbitration can be an effective way of dispute resolution for owners of close corporations. See 1 O'NEAL & THOMPSON, *supra* note 2, § 5.25. Likewise, shareholders might enter into an agreement whereby one shareholder buys the interest of another in the event of deadlock. O'Neal & Thompson, *supra* note 2, § 5.26.

Other possible dispute resolution mechanisms include mediation. Mediation has been used with increasing success over the last few years by farmers and ranchers. See Steven C. Bahls & Jane Easter Bahls, *Resolving Disputes Outside the Courtroom*, FARM FUTURES, Nov. 1992, at 14H. Mediated solutions to disputes between family members are superior to court-imposed or arbitrator-imposed solutions because the parties must agree to a mediated solution. Solutions agreed to by the parties are likely to have a more lasting impact.

gaps.”³⁹ He notes that owners of closely held firms usually fail to agree, *ex ante*, how the “closely held firm and its investors will substantively adapt to most future contingencies.”⁴⁰ Likewise, family-owned farms fail to see how to address future business contingencies and how to respond to changes in shareholders’ expectations. This is partly because business in rural America is often done with a handshake.⁴¹ Instead of seeing lawyers to discuss contingencies and obtain a well-crafted agreement governing family farm operation, families rely on trust and goodwill.⁴² In a 1992 survey conducted by the Agricultural Law Committee of the American Bar Association’s General Practice Section, attorneys representing farmers reported that business agreements controlling farm governance were woefully inadequate.⁴³ The ABA survey found that only thirty-four percent of farmers participating in farm partnerships have “adequate” partnership agreements.⁴⁴ Fewer than half (forty-four percent) of farm corporations have “adequate” bylaws, corporate minutes and shareholders’ (buy-sell) agreements.⁴⁵ Only thirty-two percent of the farmers, according to those surveyed, had adequate estate plans.⁴⁶ Estate plans, of course, are essential in providing for ownership succession that minimize dissent.

The lack of bargaining about future contingencies is not surprising. Family members trust each other. It is often easier to focus on future

39. Charles R. O’Kelley, Jr., *Filling Gaps in the Close Corporation Contract: A Transaction Cost Analysis*, 87 Nw. U. L. REV. 216, 216 (1993).

40. *Id.* See also Steven C. Bahls, *Ag Law Committee Survey: Benefit From More Legal Advice*, 2 A.B.A. GEN. PRAC. SEC. AG. COMMITTEE UPDATE: AGRICULTURAL LAW 3 (1993).

41. According to Allen and Lueck, the reason for the substantial informality in farm business contracts is that markets help self-enforce farm contracts:

It is well known that markets can “self-enforce” contracts. Punishment to cheaters, through lost future trade, encourages cooperation between the contract parties (Kreps). This reputation enforcement is most effective where information about cheating is good and a frequent and long-lived relationship is desired. For Midwestern farmland contracts these conditions are met. Farmers are a part of a small “community” of people who have known each other most of their lives. People would be quickly aware of anyone who cheated another and would avoid future dealings with that person.

Douglas W. Allen & Dean Lueck, *The “Back Forty” on a Handshake: Specific Assets, Reputation, and the Structure of Farmland Contracts*, 8 J.L. ECON. & ORG. 366, 369-70 (1992).

42. Rather than consulting lawyers for preventative purposes during the decision making process, farmers often consult with lawyers only after a transaction has unravelled. See Drew L. Kershner, *Introduction*, 21 S.D. L. REV. 479, 483 (1976). Further, “farmers, unlike most businessmen” do not have automatic access to legal advice. JUERGENSMEYER & WADLEY, *supra* note 16, § 1.2, at 8.

43. Bahls, *supra* note 40.

44. Bahls, *supra* note 40.

45. Bahls, *supra* note 40.

46. Bahls, *supra* note 40.

profits than future problems. When gaps exist in the contract governing the family farm relationship, the majority owners, by default, are the primary gap-filling authorities. If minority shareholders mount a serious dissent through a lawsuit, courts become the secondary gap fillers.⁴⁷ Case law, however, has not been consistent in its approach to resolving dissension on the farm.⁴⁸ Courts should provide clearer guidance to owners of family farms suffering from dissension.

B. Difficulty in Resolving Dissension in Family Farm Businesses

When minority shareholders become unhappy with the majority, they have very few options. If the farm is incorporated and shareholder dissension arises, the majority will probably freeze out minority shareholders. Common techniques majority shareholders utilize to freeze out minority shareholders include restricting the shareholders' rights to participate in management, and denying access to information and rights to receive salaries, dividends, or other distributions.⁴⁹ With publicly-owned corporations, unhappy owners can sell their stock, thereby realizing some value for their interest. In addition, the market provides a powerful incentive for management in publicly-owned corporations to maximize profits, thereby maximizing owners' returns.⁵⁰ If management is incompetent or profits are lackluster, shareholders will sell their shares, depressing stock prices. This in turn makes it more likely that a new owner (often a corporate raider) will acquire control of the corporation. The new owner will likely replace incompetent management so that the company will operate more efficiently. Consequently, incumbent management in a publicly-owned corporation has an incentive to manage efficiently or face being replaced.⁵¹

The market mechanism which encourages efficiency, however, does not operate well with family-owned farm corporations. Corporate raiders are not interested in closely held farm businesses. Realistically, the only potential buyers of these businesses are the other family members. Unfortunately, family members frequently have neither the ability nor the desire to purchase the shares owned by disgruntled family members. As an initial matter, farm businesses generally have

47. See O'Kelley, *supra* note 39, at 216.

48. See *infra* text accompanying notes 88-146. For a general discussion of the courts' failure to provide for clear guidance in corporate dissension cases, see Steven C. Bahls, *Resolving Shareholder Dissension: Selection of the Appropriate Equitable Remedy*, 15 J. CORP. L. 285, 315-18 (1990).

49. See generally 1 O'NEAL & THOMPSON, *supra* note 2, §§ 3.02-3.07 (discussing various squeeze-out techniques).

50. See generally RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* § 14.6, (3d ed. 1986).

51. Frank Easterbrook & Daniel Fischel, *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 HARV. L. REV. 1161, 1174-80 (1981).

a low ratio of liquid to fixed assets.⁵² Most farms, in other words, are land rich but cash poor. As a result, unless they sell all or part of the family farm, the majority shareholders usually cannot generate sufficient cash to purchase the remaining family members' interests.⁵³ Furthermore, even if the majority owners could generate enough cash, they have little incentive to do so. Since majority owners already control management, they gain little by purchasing a minority shareholder's interest. Majority owners in this position will therefore offer a purchase price of no more than the discounted value of the future stream of payments to which the minority shareholder is otherwise entitled, adjusted by the transaction costs of dealing with the shareholder on an ongoing basis.⁵⁴ To the extent dividends and other distributions are not often made by family farms, majority shareholders have little incentive to pay full fair market value for the disgruntled family member's interest.

To increase a minority shareholder's difficulty, two legal doctrines serve to prevent the minority shareholder from removing inefficient or ineffective management and from combatting squeeze-outs in the family farm. The first of these legal doctrines is the Majority Rule Doctrine.⁵⁵ While decisions in families are best made by consensus, the Majority Rule Doctrine allows the majority to operate a family farm operation without involving the minority owners in a meaningful way.⁵⁶ As a result, in order to dispute a business judgment the disgruntled family member must rely on breach of duty. The second doctrine, the Business Judgment Rule, creates another obstacle for minority shareholders. The Rule creates a presumption that management (directors and officers) have fulfilled their duties if they "rationally believe that [their] business judgment is in the best interest of the corporation."⁵⁷ This Rule makes courts unwilling to second guess majority decisions absent a showing that the majority owners are acting

52. See 5 NEIL E. HARL, *AGRICULTURAL LAW* § 41.01(2), at 41-9 (1982).

53. See 1 DONALD H. KELLY & DAVID A. LUDTKE, *ESTATE PLANNING FOR FARMERS AND RANCHERS*, § 1.14, at 1-12 (2d ed. Supp. 1990).

54. See generally Bahls, *supra* note 48, at 292-93.

55. See generally Linda J. Shapiro, Comment, *Involuntary Disassociation of Close Corporations for Mistreatment of Minority Shareholders* 60 WASH. U. L.Q. 1119, 1149 (1982)(observing that the Majority Rule Doctrine conflicts with the minority interests in a close corporation where most shareholders expect to participate in management).

56. Several courts have found that when shareholders in corporations acquire stock, they tacitly agree to be bound by the Majority Rule Doctrine. *Wheeler v. Pullman Iron & Steel Co.*, 32 N.E. 420, 423 (Ill. 1892); *Polikoff v. Dole & Clark Bldg. Corp.*, 184 N.E.2d 792, 795 (Ill. App. Ct. 1962).

57. PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 4.01 cmt. (c), at 227 (A.L.I. Proposed Final Draft 1992). This rule also requires that management be not financially interested in the transaction and reasonably informed with respect to the transaction in question. *Id.*

in bad faith and thus creates difficult problems of proof for disgruntled family members seeking to vindicate their rights as owners.

As a result of these problems, courts have increasingly found a duty in closely held businesses to avoid oppression of disgruntled minority interest holders.⁵⁸ If this duty is violated, courts are permitted by both common law and statute to apply a broad range of equitable remedies.⁵⁹ To determine whether controlling owners have violated the duty to avoid oppression, courts and commentators often look at whether the controlling owners violated the reasonable expectations of the minority owners.⁶⁰ In the family farm context, as in other family business contexts, reasonable expectations might include: (1) the expectation of distributions of earnings, if the profits and cash flow of the business allow;⁶¹ (2) the expectation that owners will share the fruits of the business on a pro rata basis;⁶² (3) the expectation of a significant and meaningful voice in management;⁶³ and (4) the expect-

58. See Bahls, *supra* note 48, at 294-312.

59. See Bahls, *supra* note 48, at 294-312.

60. See *Stefano v. Coppock*, 705 P.2d 443 (Alaska 1985); *Maschmeier v. Southside Press, Ltd.*, 435 N.W.2d 377 (Iowa Ct. App. 1988); *Sawyer v. Curt & Co.*, 1991 Minn. App. LEXIS 117 (Minn. Ct. App. Jan. 31, 1991); *Pedro v. Pedro*, 463 N.W.2d 285 (Minn. Ct. App. 1990); *Fox v. 7L Bar Ranch Co.*, 645 P.2d 929 (Mont. 1982); *Exadaktilos v. Cinnaminson Realty Co., Inc.*, 400 A.2d 554 (N.J. Super. Ct. Law Div. 1979), *aff'd*, 414 A.2d 994 (N.J. Super. Ct. App. Div. 1980), *cert. denied*, 425 A.2d 273 (N.J. 1980); *McCaughey v. Tom McCaughey & Son, Inc.*, 724 P.2d 232 (N.M. Ct. App. 1986); *In re Kemp & Beatley, Inc.*, 473 N.E.2d 1173 (N.Y. 1984); *Meiselman v. Meiselman*, 307 S.E.2d 551 (N.C. 1983); *Balvik v. Sylvester*, 411 N.W.2d 383 (N.D. 1987); *Gee v. Blue Stone Hunting Club, Inc.*, 604 A.2d 1141 (Pa. Commw. Ct. 1992); *Masinter v. WEBCO Co.*, 262 S.E.2d 433 (W.Va. 1980); 2 F. HODGE O'NEAL & ROBERT B. THOMPSON, *CLOSE CORPORATIONS* § 9.30 (3d. ed. 1993); Donald F. Clifford Jr., *Close Corporation Shareholder Reasonable Expectations: The Larger Context*, 22 WAKE FOREST L. REV. 41 (1987); Robert W. Hillman, *Indissoluble Partnerships*, 37 U. FLA. L. REV. 691 (1985); Sandra K. Miller, *Should the Definition of Oppressive Conduct by Majority Shareholders Exclude a Consideration of Ethical Conduct and Business Purpose*, 97 DICK. L. REV. 227 (1993); Robert B. Thompson, *Corporate Dissolution and Shareholders' Reasonable Expectations*, 66 WASH. U. L.Q. 193 (1988).

61. See, e.g., *In re Kemp & Beatty, Inc.*, 473 N.E.2d 1173, 1175 (N.Y. 1984).

62. See, e.g., *Fox v. 7L Bar Ranch Co.* 645 P.2d 929, 936 (Mont. 1982)(finding reasonable expectation of sharing benefits of inherited ranch).

63. See, e.g. *Fox v. 7L Bar Ranch Co.*, 645 P.2d 929, 936 (Mont. 1982); *Skierka v. Skierka Bros., Inc.* 629 P.2d 214, 221 (Mont. 1981); *McCaughey v. Tom McCaughey & Son, Inc.*, 724 P.2d 232, 238 (N.M. Ct. App. 1986); *In re Kemp & Beatley, Inc.*, 473 N.E.2d 1173, 1179, (N.Y. 1984); *In re Wiedy's Furniture Clearance Center, Co.*, 487 N.Y.S.2d 901, 903 (N.Y. App. Div. 1985); *In re Topper*, 433 N.Y.S.2d 359, 365 (N.Y. Sup. Ct. 1980). In the family farm context, the parents do not always wish to give absentee children the absolute right to participate in management. Kelly & Ludtke note:

Generally, they wish to give the absentee children an interest in the farm, while limiting the powers associated with such an interest in order to avoid interference with the operator. But, fairness also requires some

tation that the majority will not profit unfairly from the business at the expense of minority shareholders.⁶⁴

Not all violations of expectations, however, amount to actionable oppression. An off-farm family member's hope for increasing distributions year after year is unlikely to amount to a reasonable expectation in light of the unpredictable nature of farm cash flows. As a general rule, courts have determined that expectations are reasonable and deserving of protection only if the expectations were known and accepted at the time the owner acquired his or her interest.⁶⁵ Even then, before protecting the expectation, courts must determine that the expectation was central to participation in the enterprise.

If majority owners violate their duty to avoid oppression, courts apply equitable remedies. These remedies include dissolving the business,⁶⁶ ordering that the business (or its owners) purchase the interest of the complaining minority owners,⁶⁷ partitioning the business property,⁶⁸ and requiring payment of a dividend or other distribution⁶⁹ or appointment of a receiver, fiscal agent, or provisional direc-

assurances that the farm operators will not use the management position to the disadvantage of the absentee owners.

1 KELLY & LUDTKE, *supra* note 53, § 12.02, at 12-4.

64. See, e.g., *Maddox v. Norman*, 669 P.2d 230, 236 (Mont. 1983).
65. See, e.g., *In re Kemp & Beatley, Inc.*, 473 N.E.2d 1173, 1179 (N.Y. 1984)("[O]ppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to . . . join[ing] the venture."); *Meiselman v. Meiselman*, 307 S.E.2d 551, 563 (N.C. 1983)("[r]easonable expectations' are to be ascertained by examining the entire history of the participants' relationship"); *Lowder v. All Star Mills, Inc.*, 330 S.E.2d 649, 655 (N.C. Ct. App. 1985)("[F]or a plaintiff's expectations to be reasonable, they must be known or assumed by the other shareholders and concurred in by them.").
66. See, e.g., MODEL BUSINESS CORP. ACT § 14.30 (1984); UNIF. PARTNERSHIP ACT § 601(5)(1992); ABA PROTOTYPE LTD. LIAB. CO. ACT § 902 (1992).
67. See, e.g., *Alaska Plastics, Inc. v. Coppock*, 621 P.2d 270, 274-75 (Alaska 1980)(stating that trial courts have the inherent equitable power to provide alternate remedies); *Sauer v. Moffitt*, 363 N.W.2d 269, 275 (Iowa Ct. App. 1984)(stating that the state statute granting the district court power to liquidate a corporation allows the district court to fashion other equitable relief); *Fix v. Fix Material Co., Inc.*, 538 S.W.2d 351, 357 (Mo. Ct. App. 1976)(stating that the court is not limited to the statutory remedy of dissolution, but may consider other appropriate alternative equitable relief); *Maddox v. Norman*, 669 P.2d 230, 237 (Mont. 1983)(stating that a court sitting in equity is empowered to fashion an equitable result); *Baker v. Commercial Body Builders, Inc.*, 507 P.2d 387, 393 (Or. 1973)(stating that courts are not limited to the remedy of dissolution but may, as an alternative, consider other specified appropriate relief).
68. See *Kay v. Key West Dev. Co.*, 72 So. 2d 786, 788 (Fla. 1954); *McCauley v. Tom McCauley & Son, Inc.*, 724 P.2d 232, 236 (N.M. Ct. App. 1986).
69. See *Kisner v. Coffey*, 418 So. 2d 58, 62 (Miss. 1982)(reversing lower court's holding "that there be no payments of dividends without unanimous consent of the board of directors"); *Muller v. Silverstein*, 92 A.D.2d 455, 456 (N.Y. App. Div. 1983); *Patton v. Nicholas*, 279 S.W.2d 848, 857 (Tex. 1955). See also *Dodge v.*

tor.⁷⁰ Courts have also used their equitable powers to remove owners,⁷¹ order forfeiture of unlawful distributions,⁷² set aside a majority owner's action,⁷³ and order an accounting.⁷⁴

Resolving dissension in family farm partnerships and family farm limited liability companies is somewhat simpler than in comparable corporations. Because both partnerships⁷⁵ and limited liability companies⁷⁶ lack continuity of life, owners may withdraw from participation at any time. A limited liability company member may withdraw and force a dissolution even if the withdrawal violates the operating agreement governing the limited liability company.⁷⁷ The member causing the wrongful withdrawal, of course, is liable to the limited liability company for the damages the wrongful withdrawal may have

Ford Motor Co., 170 N.W. 668, 681-82 (Mich. 1919)(stating that directors should not arbitrarily withhold the profits earned by the company and must exercise discretion for the profit of the shareholder); Erdman v. Yolles, 233 N.W.2d 667, 669 (Mich. Ct. App. 1975)(stating that the lower court properly found that the distribution of profits was a dividend); Gottfried v. Gottfried, 73 N.Y.S.2d 692, 695 (N.Y. App. Div. 1947)(allowing the judgment of the controlling directors if made in good faith). Cf. Chounis v. Laing, 23 S.E.2d 628, 640 (W. Va. 1942)(ordering the corporation to pay plaintiff a share of profit "whether represented by dividends, salaries, retained assets or otherwise . . .").

70. See, e.g., Whitman v. Fuqua, 549 F. Supp. 315, 322 (W.D. Pa. 1982); Burleson v. Hayutin, 273 P.2d 124, 128 (Colo. 1954); Drob v. National Memorial Park, Inc., 41 A.2d 589, 597 (Del. Ch. 1945); Handlan v. Handlan, 232 S.W.2d 944, 950 (Mo. 1950); Thisted v. Tower Mgmt. Corp., 409 P.2d 813, 821 (Mont. 1966); Imbriale v. Imbriale, 144 A.D.2d 557, 559, (N.Y. App. Div. 1988).
71. See, e.g., Brown v. North Ventura Rd. Dev. Co., 30 Cal. Rptr. 568, 571 (Dist. Ct. App. 1963)("[S]ince directors hold a position of trust, judicial power to remove them exists independent of statute.").
72. See, e.g., Smith-Shrader Co. v. Smith, 483 N.E.2d 283, 291 (Ill. App. Ct. 1985); ABC Trans Nat'l Transport, Inc. v. Aeronautics Forwarders, Inc., 413 N.E.2d 1299, 1314-15 (Ill. App. Ct. 1980).
73. See, e.g., Whitman v. Fuqua, 549 F. Supp. 315, 324 (W.D. Pa. 1982)(enjoining executive committee from circumventing the delegated responsibilities of the directors); Katcher v. Ohsman, 97 A.2d 180, 186 (N.J. Super. Ct. Ch. Div. 1953)(enjoining holding of special meeting of directors to oust minority shareholder officers and to grant salaries to majority shareholders to the exclusion of minority shareholder); Browning v. C & C Plywood Corp., 434 P.2d 339, 343 (Or. 1967)(stating that the court had the power "to cancel the stock increase and restore the stockholders to their former proportionate status"); Bank of Mill Creek v. Elk Horn Coal Co., 57 S.E.2d 736, 748 (W. Va. 1950)(setting aside sale of corporate assets because of an inadequate price); Lierney v. United Pocahontas Coal Co., 102 S.E. 249, 255 (W. Va. 1920)(setting aside sale of corporate assets because of an inadequate price).
74. See, e.g., Gray v. Hall, 295 N.E.2d 506, 509 (Ill. App. Ct. 1973)(stating that plaintiff is entitled to an accounting of a corporation's books); Segall v. Shore, 215 S.E.2d 895, 899 (S.C. 1975)(ordering an accounting of the business conducted by the partnership and corporation).
75. UNIF. PARTNERSHIP ACT § 601 (1992).
76. ABA PROTOTYPE LTD. LIAB. CO. ACT § 802 (1992).
77. *Id.*

caused.⁷⁸ In the case of the family farm, these damages might be significant if the wrongful dissolution causes premature liquidation of the farm. Upon a member's withdrawal, the remaining members may unanimously agree to continue the business, and the withdrawing member is then entitled to receive, within a reasonable time, the fair value of his or her interest.⁷⁹ If the other members do not continue the business, the business is liquidated.⁸⁰ After creditors are paid, all members are entitled to a return of their contributions and their share of remaining earnings.⁸¹ Partners have similar, though not identical, rights pursuant to the Uniform Partnership Act.⁸²

In light of the statutory scheme governing partnerships and limited liability companies, it would initially seem that judicial intervention in disputes between owners of farm partnerships and limited liability companies is unnecessary. Disgruntled owners may simply withdraw, causing dissolution and triggering the right to some form of distribution. When courts intervene in disputes between corporate owners, the most common remedy is a court-ordered purchase of the complaining owner's interest.⁸³ In effect, partnership statutes and limited liability company statutes provide the same remedy to owners of those entities that are provided to owners of closely held businesses without the necessity of going to court.

Nevertheless, courts might still become involved in limited liability company and partnership oppression cases. A court might become involved, for example, when the limited liability company or partnership documents provide for a lengthy term of existence. In such a case, if a partner or limited liability company member causes a premature dissolution, any distribution owing to that person upon their dissociation will be reduced by the amount of damages the premature dissolution causes the business.⁸⁴ As an illustration, consider the following hypothetical involving a three-person limited liability company operating a family farm. Assume that Farmer Jones left his farm equally to his three children, Bob, Betty, and Bert. Further assume that Bob and Betty operate the farm, while Bert pursues a graduate school education. Assume also that the document chartering the limited liability company provides for a twenty-five-year term of existence. If Bob and

78. *Id.* § 802(C).

79. *Id.* § 902(C).

80. *Id.*

81. *Id.* § 905.

82. See UNIF. PARTNERSHIP ACT §§ 601-603 (1992).

83. J.A.C. Hetherington & Michael P. Dooley, *Illiquidity and Exploitation: A Proposed Statutory Solution to the Remaining Close Corporation Problems*, 63 VA. L. REV. 1, 30-31 (1977)(observing that courts ordered a buyout in 26 of 54 reported corporate cases in a two-year period).

84. ABA PROTOTYPE LTD. LIAB. CO. ACT § 802(C) (1992); UNIF. PARTNERSHIP ACT § 602 (1992).

Betty, the on-farm heirs, form an alliance, they may resent Bert's persistent request for some return from the farm. They may react by squeezing Bert out from participation in the management and financial rewards of the farm. Bob and Betty's wrongful conduct might leave Bert no alternative but to withdraw from the farm. The governing statute is likely to provide that Bert's withdrawal before the end of the twenty-five-year term is wrongful, causing him to suffer a reduction in the amount due to him equal to the amount of damages caused by his premature withdrawal.⁸⁵ As a result of their wrongful action, therefore, Bob and Betty have gained full control of the farm business and paid Bert a discounted amount.

A better course of action for Bob to take would require him to ask a court to use its equitable power to order a remedy more capable of resolving the dispute fairly. Courts of equity have historically exercised broad power over disputes between owners of corporations⁸⁶ and partnerships.⁸⁷ Presumably, just as courts have used their equitable powers to resolve disputes among owners of corporations and partnerships, they may use them to resolve disputes among owners of limited liability companies.

IV. LEGISLATIVE AND JUDICIAL APPROACHES TO RESOLVING DISSENSION AMONG OWNERS OF THE FAMILY FARM

In recent years, courts have decided a significant number of cases involving disputes between owners of family farms. Because of the unique attributes of the family-owned farm and the public policy favoring continuation of family farms, courts have often hesitated to dissolve them, especially farms operated as corporations. Moreover, courts have not been consistent in their approaches to resolving disputes on the family farm. The difficulty courts have in addressing dis-

85. See, e.g., UNIF. PARTNERSHIP ACT § 602 (1992); ABA PROTOTYPE LTD. LIAB. CO. ACT § 802(C) (1992).

86. See *Tower Hill-Connellsville Coke Co. v. Piedmont Coal Co.*, 64 F.2d 817, 825 (4th Cir. 1933); *Toledo, A.A. & N.M. Ry. Co. v. Pennsylvania Co.*, 54 F. 746, 751 (C.C.N.D. Ohio 1893)("[N]ew remedies and unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief.")

87. See, e.g., *Newburger, Loeb & Co., Inc. v. Gross*, 563 F.2d 1057 (2d Cir. 1977), cert. denied, 434 U.S. 1035 (1978); *Wood v. Holiday Mobile Home Resorts, Inc.*, 625 P.2d 337 (Ariz. Ct. App. 1980), cert. denied, 454 U.S. 826 (1981); *Owen v. Cohen*, 119 P.2d 713 (Cal. 1941); *Lau v. Wong*, 616 P.2d 1031 (Haw. Ct. App. 1980); *Tembrina v. Simos*, 567 N.E.2d 536 (Ill. App. Ct. 1991); *Susman v. Venture*, 449 N.E.2d 143 (Ill. App. Ct. 1983); *Ferrick v. Barry*, 68 N.E.2d 690, 694-95 (Mass. 1946)("Even if the court may think that one partner could carry on successfully, if he were allowed to push aside the others, it ought not to sanction such an alteration in the agreed relations of the partners."); *Ohlendorf v. Feinstein*, 636 S.W.2d 687 (Mo. Ct. App. 1982); *Boland v. Daly*, 318 A.2d 329 (Pa. 1974).

putes between owners of family-held farms is vividly illustrated by a review of recent leading family farm dissension cases.⁸⁸

A. The Montana Trilogy of Cases

The Montana Supreme Court has decided more dissension cases involving family farms than the courts of any other state. Over the course of three years, the Montana Supreme Court decided three cases involving dissension among family farm owners. The Montana cases, *Skierka v. Skierka Bros., Inc.*,⁸⁹ *Fox v. 7L Bar Ranch, Inc.*,⁹⁰ and *Maddox v. Norman*,⁹¹ illustrate courts' willingness to measure family farm corporations by different standards than other types of corporations.

In the *Skierka* case, Jeanne Skierka sued a family farm corporation and her brother-in-law, John, who controlled the operation of the corporation. Jeanne alleged that John's conduct amounted to fraud and oppression.⁹² Her claim of oppression alleged that John (1) dominated the management of the corporation; (2) refused to create an executive vice president position for her; (3) refused to establish a reasonable stock valuation, as required by the restrictions on the transfer of stock found in the bylaws; and (4) excluded her from any voice in management aside from participation in the annual meeting.⁹³ Jeanne requested that the court dissolve the family farm corporation as a remedy for the alleged oppression. The Montana Supreme Court upheld the district court's determination that Jeanne had suf-

88. *McCreight v. McCreight*, 473 N.E.2d 577 (Ill. App. Ct. 1985)(finding fiduciary relationship and imposing constructive trust); *Lamb v. Lamb*, 464 N.E.2d 873 (Ill. App. Ct. 1984)(seeking to set aside conveyance of land in family farm because of an alleged violation of fiduciary duty); *Malunney v. Meade*, 359 N.E.2d 1091 (Ill. App. Ct. 1977)(creating constructive trust on family farm and entering decree of partition); *Sauer v. Moffitt*, 363 N.W.2d 269 (Iowa Ct. App. 1984)(bringing action, by owners, for breach of fiduciary duty); *Struckhoff v. Echo Ridge Farm, Inc.*, 833 S.W.2d 463 (Mo. Ct. App. 1992)(bringing action to dissolve family farm corporation); *Mehl v. Mehl*, 786 P.2d 1173 (Mont. 1990)(involving dispute over distribution of property in dissolution of family farm); *Maddox v. Norman*, 669 P.2d 230 (Mont. 1983)(bringing action to dissolve family farm corporation); *Fox v. 7L Bar Ranch*, 645 P.2d 929 (Mont. 1982)(bringing action to dissolve and liquidate family farm); *Skierka v. Skierka Bros., Inc.*, 629 P.2d 214 (Mont. 1981)(alleging fraud by majority owners of family farm); *Herboldsheimer v. Herboldsheimer*, No. A-92-1043, 1993 WL 311616 (Neb. App. Aug. 17, 1991)(partition dispute involving a family farm); *McCauley v. Tom McCauley & Son, Inc.*, 724 P.2d 232 (N.M. Ct. App. 1986)(bringing action to dissolve family farm corporation); *Gimpel v. Bolstein*, 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984)(bringing action to dissolve family farm corporation); *Carnescca v. Carnescca*, 572 P.2d 708 (Utah 1977)(creating implied constructive trust in favor of brother who owned one third of the farm acreage).

89. 629 P.2d 214 (Mont. 1981).

90. 645 P.2d 929 (Mont. 1982).

91. 669 P.2d 230 (Mont. 1983).

92. *Skierka v. Skierka*, 629 P.2d 214, 218-21 (Mont. 1981).

93. *Id.* at 220-21.

ferred unlawful oppression. The court stated that “[o]ppression may be more easily found in a close-held, family corporation than in a larger, public corporation.”⁹⁴ The court then found that “[b]y its very nature, intracorporate problems arising in a close corporation demand the unusual and extraordinary remedies available only in a court of equity.”⁹⁵ The court concluded that if the parties could not agree upon property division and transfer, it would be appropriate for the trial court to liquidate the business.⁹⁶

The *Skierka* case is one of the few cases where a court sustained a trial court’s order to liquidate a farm business. Most courts order remedies other than liquidation.⁹⁷ It is likely that the court permitted liquidation in *Skierka* because of its unique facts. The court in *Skierka* found that Jeanne was defrauded by John in the transaction first creating the corporation.⁹⁸ The court also found that the transactions by which the corporation was formed could be rescinded because of a mutual mistake arising from both parties’ reliance on a belief that unequal stock ownership made no “real difference” in who controlled the corporation.⁹⁹

One year later, the Montana Supreme Court considered a second case involving dissension among owners of a family farm corporation. In *Fox v. 7L Bar Ranch*,¹⁰⁰ the minority shareholder, Melvin Fox, complained that the majority shareholders managed the farm corporation in a way that deprived him of a financial return. Melvin alleged that the majority owners excluded him from having a voice in the business and failed to pay dividends or other remuneration to him.¹⁰¹ Melvin asked the court to dissolve the corporation in response to the the majority shareholder’s wrongful conduct. The Montana Supreme Court sustained the district court’s findings of oppression. The court noted that because there is no ready market for shares in family-owned farms, it is easier for majority shareholders to effectively squeeze out minority shareholders.¹⁰² The court then defined oppression as a violation of the minority shareholder’s reasonable expectations. According to the court, Melvin had a reasonable expectation of sharing in the profits of the farm when he inherited his stock in the farm.¹⁰³ Therefore, the Montana Supreme Court permitted division of

94. *Id.* at 221.

95. *Id.* (quoting *Thisted v. Tower Management Corp.*, 409 P.2d 813, 820 (Mont. 1966)).

96. *Id.* at 222.

97. See *infra* text accompanying notes 100-146.

98. *Skierka v. Skierka Bros., Inc.*, 629 P.2d 214, 218-19 (Mont. 1981).

99. *Id.* at 219.

100. 645 P.2d 929 (Mont. 1982).

101. *Id.* at 931.

102. *Id.* at 933.

103. *Id.* at 936.

the farm, stating that "a division of the 7L Bar [farm] would neither disrupt the business of a going concern nor do any injury to the public."¹⁰⁴

In deciding to allow division of the farm, the court described the factors it considers before using its equitable powers to intervene. Those factors included: (1) whether the corporation can conduct business profitably, (2) whether dissolution would be beneficial or detrimental to shareholders, and (3) whether it would be injurious to the public.¹⁰⁵ In making these determinations, the court stated that courts could consider the length of time the farm had been operating, the market for the sale of an owner's interest, and whether a party might buy the interest of another.¹⁰⁶ The court concluded that it would allow a division of the family farm because to "disallow a division would greatly harm Melvin Fox by making him the victim of corporate formalities."¹⁰⁷

The final case in the Montana trilogy is *Maddox v. Norman*.¹⁰⁸ Decided one year after *Fox*, the *Maddox* case involved a minority shareholder in a family farm corporation who alleged oppression by the controlling shareholders. The plaintiff, Faye Maddox, alleged her brother, Frank Norman, Jr., operated the farm in such a way as to deprive her of a voice in management.¹⁰⁹ Faye and her husband had lived and worked on the ranch, but left the ranch because they could not make an adequate living. After she left, Faye was not notified of corporate meetings. Frank failed to keep separate books and records for the corporation and used corporate property for personal purposes.¹¹⁰ The proceeds of a corporate loan were used to repay a loan on property filed in Frank's name.¹¹¹ Likewise, the proceeds of the sale of calves and crops and rental income of the corporation were deposited in Frank's account.¹¹² Alleging misapplication and waste of corporate funds, Faye requested appointment of a receiver to liquidate the farm's property. The district court refused to liquidate the farm, reasoning that the "prodigal in this instance must defer to the one who stayed at home, built the ranch, worked with the father and struggled to a successful ranch unit."¹¹³

The Montana Supreme Court sustained the district court's refusal to liquidate and ordered Faye to sell her share to the farm corporation.

104. *Id.*

105. *Id.* at 935.

106. *Id.* at 935-36.

107. *Id.* at 936.

108. 669 P.2d 230 (Mont. 1983).

109. *Id.* at 232.

110. *Id.* at 232-33.

111. *Id.* at 233.

112. *Id.*

113. *Id.* at 234.

In justifying its decision, the Montana Supreme Court noted that liquidation of the farm would be an unduly extreme remedy. It also seemed to agree with the district court's determination that Faye, in fact, was a "prodigal."¹¹⁴ Thus, the court stated that the majority shareholders would be unjustly harmed by liquidation of assets they have worked "long and hard to improve."¹¹⁵ The court also acknowledged the practical difficulties in liquidating a ranch by accurately finding that "[l]iquidation of ranch property might take years and might yield a much less satisfactory result than other available remedies."¹¹⁶ The ranch, the court found, was a "successful family ranch and, barring dissolution, is likely to remain so."¹¹⁷ Ordering Faye to sell her stock to the corporation would "allow the ranch to continue operating without unfair interruption" and allow the majority shareholders "to enjoy the rightful fruits of their labors on the ranch while still allowing a full accounting for corporate funds."¹¹⁸ For a third time in three years, the court in *Maddox* used an equitable remedy to resolve oppression.

The Montana trilogy demonstrates at least one court's willingness to look at the special circumstances in cases involving dissension on the family farm. Owners of family farm corporations have reasonable expectations of sharing in both the management and income of the family farm. The Montana cases properly provide that courts should protect the owners' reasonable expectations while at the same time protecting the integrity of the family farm as an economic unit.

B. Cases from Other Jurisdictions

Like the Montana Supreme Court, courts in other states carefully scrutinize family farm disputes to protect the shareholder's reasonable expectations. Relatively recent cases from New York, Iowa, New Mexico, and Missouri demonstrate this careful scrutiny.

In the New York case of *Gimpel v. Bolstein*,¹¹⁹ second and third generation owners of a family farm were embroiled in a dispute over a shareholder, Robert Gimpel, who allegedly stole money from the corporation. After the alleged theft, the corporation fired Robert as an employee. Other shareholders continued to receive substantial benefits from the farm corporation, but because the corporation did not pay

114. The pejorative reference to Faye as a prodigal is somewhat troubling. Faye and her husband left the ranch because it was not economically able to support her. Unlike the prodigal son, Faye did not squander her inheritance nor did she receive more than that to which she was legally entitled. See *Luke* 15:11-32.

115. *Maddox v. Norman*, 669 P.2d 230, 236 (Mont. 1983).

116. *Id.*

117. *Id.* at 238.

118. *Id.*

119. 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984).

dividends Robert received nothing.¹²⁰ Likewise, Robert was excluded from managerial decisions and received very little information about the farm's affairs. Robert petitioned for dissolution alleging the majority shareholders' oppressive actions unlawfully froze him out. The New York Supreme Court found that any violations of Robert's reasonable expectations were his own fault. Because Robert violated the majority shareholders' reasonable expectations of "fidelity and honesty," the only expectations he could have of the majority shareholders was "ostracism and prosecution."¹²¹ Nevertheless the court held that the majority owners must treat Robert with "probity and fair dealing" and that their conduct must not be "burdensome, harsh and wrongful."¹²²

The court faulted the majority owners' conduct of depriving Robert of all return. Like the Montana Supreme Court, the New York Supreme Court referred to a biblical dispute between brothers noting that "[e]ven Cain was granted protection from the perpetual vengefulness of his fellow man."¹²³ Though refusing to liquidate the business because it was not reasonably necessary for the protection of the shareholders' interest,¹²⁴ the court did fashion a remedy to protect Robert. The court required the majority shareholder to make an election. The majority shareholder could elect to pay substantial dividends and adjust shareholder salaries downward, or the majority shareholder could make a substantial and reasonable offer to buy Robert's shares.¹²⁵ By ordering these alternative remedies, the court preserved the integrity of the family farm while protecting the excluded shareholder's interest.

The New Mexico case of *McCauley v. Tom McCauley & Son, Inc.*,¹²⁶ provides another example of a court refusing to liquidate a farm in the face of oppression. In *McCauley*, LaVerne and Fred McCauley, husband and wife, owned sixty percent of the stock in Tom McCauley & Son, Inc., an incorporated family ranch. After they divorced, LaVerne was not reelected as an officer and director of the ranch corporation. In addition, the majority shareholders decided to pay corporate debts before paying dividends to shareholders. LaVerne alleged she was deprived of a voice in management and of the benefits she previously received from the corporation, including: (1) adequate food and lodging for herself and her children; (2) transportation, gas, oil, and other related expenses; (3) clothing; (4) personal maintenance

120. *Id.* at 1017.

121. *Id.* at 1019-20.

122. *Id.* at 1020.

123. *Id.* at 1021 (citing *Genesis* 4:12-15).

124. *Id.*

125. *Id.* at 1022.

126. 724 P.2d 232 (N.M. Ct. App. 1986).

expenses; and (5) increases in her ownership interest in the corporation.¹²⁷ LaVerne sued the corporation for money damages and petitioned the court to order liquidation. The New Mexico Court of Appeals agreed that LaVerne's reasonable expectations to participate in management and share in the farm profits were violated.¹²⁸ It found that the animosity between LaVerne and Fred was "not capable of resolution and thereby present[ed] an irreconcilable barrier to the ability of the corporation to function properly."¹²⁹ Like the Montana Supreme Court in *Fox*, the New Mexico court noted that in closely held family corporations, owners are more susceptible to oppression because there is no ready market for their stock.¹³⁰ As a result, minority shareholders in family corporations are more likely to be held hostage by a controlling owner. To protect against this danger, the court determined, courts should intervene if "the acts complained of serve to frustrate the legitimate expectations of minority shareholders."¹³¹ In family corporations, according to the court, "courts have normally given considerable weight to the hostility existing between family members and its effect upon the minority shareholder's ability to have an effective voice in the running of the corporation."¹³²

After finding oppression, the district court had ordered the corporation to select among one of these three options as a means of resolving the dispute: (1) liquidation of the corporation, (2) partitioning and reorganization of the farm, or (3) purchase of LaVerne's interest.¹³³ With respect to the third choice, the district court had permitted the corporation to discount the value of LaVerne's interest by twenty-five percent because it was a minority interest.¹³⁴ On appeal, LaVerne contended that liquidation was the proper remedy. She also argued that the lower court should not have permitted the corporation to purchase her interest at a discount, stating that ordering the purchase at a discount allowed Fred to benefit from his wrongdoing. The New Mexico Court of Appeals correctly held that the district court was not bound to order dissolution and liquidation; instead the court could fashion remedies using its "reservoir of equitable powers."¹³⁵ Since dissolution of the farm corporation is a harsh remedy, the court of appeals decided that the lower court had properly structured alternative remedies for preserving the farm as an economic unit while providing a return to the minority shareholder.

127. *Id.* at 238-39.

128. *Id.* at 240.

129. *Id.*

130. *Id.*

131. *Id.* at 236.

132. *Id.* at 238.

133. *Id.* at 233.

134. *Id.* at 244.

135. *Id.* at 243.

Sauer v. Moffitt,¹³⁶ an Iowa case, provides further evidence of courts' unwillingness to liquidate a family farm corporation. In *Sauer*, two inactive minority shareholders in the family farm corporation, Martha & Kathy, sued because they did not receive notices of meetings or distributions of earnings. The majority shareholders justified their refusal to send the notices and distributions by alleging that they had a "corporate philosophy" to use earnings to improve the farm and to avoid incurring corporate debt. Accordingly, the majority shareholders argued, the corporation did not have sufficient funds to pay dividends.¹³⁷ The trial court held that the majority owners breached their fiduciary duty and ordered the majority to buy out the plaintiffs' shares. On appeal, Martha and Kathy argued that the court should have ordered a full liquidation of the farm business. The appellate court, like the courts in *Maddox*, *Gimpel*, and *McCauley*, properly noted that courts are not required to liquidate family farm corporations. Instead, the court held that an order requiring redemption of the plaintiffs' shares was sufficient to protect Martha and Kathy.¹³⁸ Though the court ordered the majority to buy out the complaining shareholders, the court noted that it had broad equitable powers to resolve dissension. The court stated it had the power to appoint a receiver to supervise the business operation, order an accounting, issue an injunction to prohibit oppressive conduct, or order a damage award.¹³⁹ The court did not indicate, however, how to select among those remedies.

In the final leading case, *Struckhoff v. Echo Ridge Farms, Inc.*,¹⁴⁰ Cletus Struckhoff, a shareholder in a family farm corporation, quit his employment with the farm and moved to another state. After Cletus quit, his brother, who remained on the farm, substantially increased his own salary. Although the farm had significant profits, the corporation retained all profits to acquire new assets and to reduce debt. No dividends were paid.¹⁴¹ The corporation had not, for a seven year period, held annual shareholders' meetings as the bylaws required.¹⁴² Cletus sued for oppression and convinced the trial court to dissolve the farm corporation. The Missouri Court of Appeals reversed the lower court's determination that Cletus was entitled to dissolution as a matter of law. Discussing remedies, the court of appeals noted that "[d]issolution of a corporation is a drastic remedy and courts should resort to [dissolution] only to prevent irreparable injury, imminent

136. 363 N.W.2d 269 (Iowa Ct. App. 1984).

137. *Id.* at 271.

138. *Id.* at 275.

139. *Id.* at 274-75.

140. 833 S.W.2d 463 (Mo. Ct. App. 1992).

141. *Id.* at 464-65.

142. *Id.* at 465.

danger of loss, or miscarriage of justice,"¹⁴³ and that before ordering dissolution, the trial court should have considered "the effect the dissolution would have on the public as well as the shareholders."¹⁴⁴ Because the defendants submitted affidavits demonstrating that continued existence of the family farm "would benefit the public through its high production and profitability," the court of appeals ruled it was improper for the trial court to summarily order dissolution of the farm corporation.¹⁴⁵ The court failed to fully describe why, in a private dispute between owners of a family farm, the public interest in continuing operation of the farm outweighed the right of the majority shareholder.¹⁴⁶ Nevertheless, the case does demonstrate the extreme hesitancy of courts to require dissolution and liquidation of the family farm.

Case law provides ample evidence of courts' willingness to intervene in disputes among owners of the family farm. Most of these courts, however, refuse to liquidate a family farm, preferring the application of less harsh remedies. Nevertheless, these courts have yet to articulate clear and consistent principles for selecting among equitable remedies.

C. Legislative Approaches

North Dakota is the only state to address by statute the protection of minority shareholders in farm corporations. The North Dakota Century Code protects shareholders who wish to withdraw from a statutory farming and ranching corporation.¹⁴⁷ If neither the remaining shareholders, the corporation, nor a qualified third party wishes to purchase withdrawing owners' shares, the withdrawing shareholders may bring an action to dissolve the farm corporation.¹⁴⁸ The remaining shareholders of the corporation have one year to purchase the withdrawing shareholders' interests.¹⁴⁹ If they fail to do so, the court must dissolve the corporation. The assets of the dissolved corporation will be used to pay the creditors, with any remaining assets distributed to shareholders. Shareholders in North Dakota farm corporations have these rights even if the majority shareholders have not acted wrongfully. The North Dakota statutory solution effectively creates a minority shareholder right to compel a buyout or, if the corpora-

143. *Id.* at 466.

144. *Id.*

145. *Id.*

146. At least one commentator argues that courts should satisfy the public interest before selecting a remedy. See Sandra K. Miller, *Should the Definition of Oppressive Conduct by Majority Shareholders Exclude a Consideration of Ethical Conduct and Business Purpose?* 97 DICK. L. REV. 227, 262-66 (1993).

147. N.D. CENT. CODE § 10-06.1-26 (1993).

148. *Id.*

149. *Id.*

tion refuses, a dissolution.¹⁵⁰ The net result is that North Dakota farm and ranch corporations are treated, for purposes of dissolution, much like partnerships. Partnership law allows a partner to dissociate with a partnership at any time, forcing a buyout of the partner's interest if the other partners wish to avoid dissolution.¹⁵¹ The North Dakota Century Code contains similar dissolution-at-will provisions for farms operating as limited liability companies.¹⁵²

The dissolution-at-will provisions of the North Dakota corporate farming statute, however, do not properly address the problem of dissension among farm corporation shareholders. The shareholder's statutory right to require majority shareholders, even if they are fair and competent, to dissolve the farm makes long-range planning difficult at best. Giving shareholders the power to force dissolution allows an obstreperous, disgruntled shareholder to exact undue concessions from the majority shareholders. Dissolution-at-will rights of minority shareholders do more than level the playing field; they tilt the playing field unduly toward the minority shareholder. If majority shareholders do not accede to the minority shareholder's demands, the farm corporation will be liquidated, perhaps under fire-sale conditions. For the family farm, often held by families for generations, this liquidation results in both financial loss and the loss of a way of life. Although the North Dakota statute permits the shareholders to avoid liquidation by buying the minority shareholder's interest, that may be meaningless since most farm owners lack access to substantial liquid assets and the majority owners may not be able to accomplish the purchase. Therefore the farm may be lost.

V. PROPOSED JUDICIAL STANDARD FOR RESOLVING DISSENSION AMONG THE OWNERS OF THE FAMILY FARM

Although substantially all cases involving dissension among family farm owners do not order liquidation of the farm, the courts' reasoning for disallowing liquidation is inconsistent. The Montana Supreme Court, for example, will not reward the "prodigal" who moves away from the farm,¹⁵³ while the Missouri Court of Appeals emphasizes the

150. Professors Hetherington and Dooley have advocated applying this approach to all corporations. J.A.C. Hetherington & Michael P. Dooley, *Illiquidity and Exploration: A Proposed Statutory Solution to the Remaining Close Corporation Problem*, 63 VA. L. REV. 1, 34-59 (1977). They argue that litigation between owners of closely held corporations is an expensive way to establish a purchase price for the interest of minority shareholders. *Id.* at 34-35. Because the outcome of most shareholder dissension suits is a buyout, the current system, they observe, involves unnecessary transaction costs. *Id.* at 35.

151. UNIF. PARTNERSHIP ACT § 801(1) (1992).

152. N.D. CENT. CODE § 10-06.1-27 (1993).

153. *Maddox v. Norman*, 669 P.2d 230, 234 (Mont. 1983).

need to protect the public interest.¹⁵⁴ Other courts, like the New Mexico Court of Appeals and the Iowa Court of Appeals, defer to the lower court without articulating why they preferred a buyout instead of dissolution. The absence of consistent, articulated standards for resolving disputes between family farm shareholders makes it difficult to predict how courts will resolve dissension.

A. Dissension in Farm Corporations

1. Threshold Standards for Judicial Intervention

Because of the nature of family relationships in farm country, family farm owners rarely negotiate all contingencies that might end in disagreement.¹⁵⁵ Likewise, because of the family relationship and hierarchy, family members do not bargain to create systems for resolving future disputes. Consequently, there are substantial gaps in the family farm contract. Since family farmers do not provide for all contingencies, commentators have properly recognized that courts should apply fiduciary duties to fill gaps in these contracts.¹⁵⁶ Because family-owned businesses, particularly family farms, are unique, courts must often intervene to protect minority shareholders.

Decisions such as *Fox* and *McCauley* properly recognize that all shareholders in family farm corporations expect to participate in management and share profits. Because of the problem of illiquidity of the family-owned farm, shareholders cannot leave a corporation when their reasonable expectations are violated. Consequently, shareholders are often unable to enjoy any return from the corporation unless courts intervene to protect their reasonable expectations.

Protection of parties' reasonable expectations is a fundamental legal doctrine. According to Professor Clifford, this doctrine is "near the center of the legal universe."¹⁵⁷ Similarly, courts have long protected the expectations of parties to contracts.¹⁵⁸ Finally, property law defines and protects the expectations of property owners.¹⁵⁹ Therefore, because shareholders hold a property interest in the corporation and have a contract-type relationship with other shareholders, courts should protect the shareholder's reasonable expectations. To fully protect reasonable expectations, courts must have available a broad array of equitable remedies. As noted above, remedies include

154. *Struckhoff v. Echo Ridge Farms, Inc.*, 833 S.W.2d 463, 466 (Mo. Ct. App. 1992).

155. See *supra* text accompanying notes 38-46.

156. FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 92-93 (1991).

157. Clifford, *supra* note 60, at 42.

158. 1 ARTHUR L. CORBIN, *CORBIN ON CONTRACTS* § 1 (1963).

159. See PATRICK SELIM ATIYAH, *THE RISE AND FALL OF FREEDOM OF CONTRACT* 107 (1979).

ordering: (1) dissolution and liquidation of the corporation;¹⁶⁰ (2) division of the corporation's property;¹⁶¹ (3) payment of dividends;¹⁶² (4) appointment of fiscal agents, receivers, or provisional directors;¹⁶³ (5) removal of directors;¹⁶⁴ (6) forfeiture of controlling shareholders salaries;¹⁶⁵ (7) set-aside of corporate actions;¹⁶⁶ or (8) an accounting.¹⁶⁷

To enhance consistency and provide predictability, courts need guidance concerning which of the remedies to apply in each case. The following standards provide guidance to courts when selecting an appropriate remedy. First, the remedy should maximize the ability of minority shareholders to realize their reasonable expectations. Second, the remedy should minimize the administrative costs associated with resolving the dissension. Third, the remedy should maximize the value of the economic unit while allowing owners to realize value in accordance with their reasonable expectations.¹⁶⁸ These standards are particularly appropriate for resolving disputes among owners of family farm businesses. Courts should balance protecting the minority shareholder's reasonable expectations with maximizing the farm's value as an economic unit. If possible, a court should provide for the minority shareholders, while at the same time preserving the farm as a going concern. If courts adopt the above standards, they will rarely liquidate a farm corporation, but will seek solutions that preserve the farm as a viable economic unit.

When courts select a remedy to protect the shareholder's reasonable expectations, minority owners will realize the value of their bargained-for participation. As a result, if a court finds that a farm shareholder reasonably expects to share earnings, the court could follow the approach of the court in *Gimpel* by ordering the business to alter its financial structure and pay dividends.¹⁶⁹ If a majority improperly applies corporate assets, courts could appoint a special fiscal agent or neutral third party to monitor and approve payments.¹⁷⁰ By ordering narrow and precise remedies such as these, courts protect the reasonable expectation of parties without ordering partial or complete liquidation of the family farm.

160. See Bahls, *supra* note 48, at 295-305.

161. See Bahls, *supra* note 48, at 305-06.

162. See Bahls, *supra* note 48, at 307-08.

163. See Bahls, *supra* note 48, at 308-11.

164. See Bahls, *supra* note 48, at 311.

165. See Bahls, *supra* note 48.

166. See Bahls, *supra* note 48.

167. See Bahls, *supra* note 48.

168. See Bahls, *supra* note 48, at 320.

169. See *Gimpel v. Bolstein*, 477 N.Y.S.2d 1014, 1019 (N.Y. Sup. Ct. 1984). See also *Kisner v. Coffey*, 418 So. 2d 58 (Miss. 1982) (utilizing a similar approach in a non-farm case, the court equalized deferred payments from a medical partnership).

170. See *Roach v. Margulies*, 126 A.2d 45 (N.J. Super. Ct. 1956) (ordering a fiscal agent to monitor and approve payments).

Of course, before a court can protect reasonable expectations, it must determine reasonable expectations. At times, ascertaining the reasonable expectations of family farm owners is difficult. As discussed in *Gimpel*, farm corporations are often generations removed from their founders.¹⁷¹ Therefore, the reasonable expectations of long-deceased founders are difficult to ascertain. Even if expectations can be ascertained, the expectancy and understandings of the shareholders may have changed over time.¹⁷² Yet, not all changes in expectations are reasonable. Consequently, courts should protect changed expectations only if the other owners agree to the changes.

Although reasonable expectations are difficult to ascertain in many businesses, the cases involving disputes between family farm owners generally identify three primary expectations: (1) the expectation that each owner will have some say in management;¹⁷³ (2) the expectation that controlling shareholders will not operate the corporation solely for their own benefit;¹⁷⁴ and (3) the expectation that all shareholders will participate in profits from the farm.¹⁷⁵

Some of the expectations of family farm shareholders are easier for courts to protect than others. If shareholders are not receiving profits from the farm, a court could easily order dividend payments. Courts have a more difficult time, however, protecting the minority shareholder's expectation that the majority owners will not operate the farm solely for their own benefit. If the majority owner chooses to so operate the farm, he or she is often acting in bad faith. To force a shareholder repeatedly acting in bad faith to suddenly change his or her conduct is a difficult task. Such a task would require a court to issue multiple and frequent orders. Courts properly refuse to become

171. *Gimpel v. Bolstein*, 477 N.Y.S.2d 1014, 1019 (N.Y. Sup. Ct. 1964).

172. *See Lowder v. All Star Mills, Inc.*, 330 S.E.2d 649, 655 (N.C. Ct. App. 1985) ("These reasonable expectations are to be determined by examining the entire history of the participants' relationship. That history includes the reasonable expectations created at the inception of the relationship, and those which evolved during the course of the parties' relationship.")

173. *See, e.g., Fox v. 7L Bar Ranch Co.*, 645 P.2d 929, 936 (Mont. 1982); *Skierka v. Skierka Bros., Inc.*, 629 P.2d 214, 221 (Mont. 1981); *McCauley v. Tom McCauley & Son, Inc.*, 724 P.2d 232, 238 (N.M. Ct. App. 1986). Harl also notes: "Finally, off-farm heirs often voice concerns about participation in management. Management, however, is frequently defined as *financial* management with emphasis on decisions relating to how income from the farm operation is to be distributed." HARL, *supra* note 52, § 41.03[1], at 41-28.

174. *See, e.g., Sauer v. Moffit*, 363 N.W.2d 269, 274 (Iowa Ct. App. 1984); *Skierka v. Skierka Bros., Inc.*, 629 P.2d 214, 219 (Mont. 1981); *McCauley v. Tom McCauley & Son, Inc.*, 724 P.2d 232, 239-40 (N.M. Ct. App. 1986).

175. *See, e.g., Fox v. 7L Bar Ranch Co.*, 645 P.2d 929, 936 (Mont. 1982); *McCauley v. Tom McCauley & Son, Inc.*, 724 P.2d 232, 239-40 (N.M. Ct. App. 1986); *Gimpel v. Bolstein*, 477 N.Y.S.2d 1014, 1021 (N.Y. Sup. Ct. 1964). Harl adds that off-farm heirs are usually concerned about receiving a financial return on their farm inheritance. HARL, *supra* note 52, § 41.03[1], at 41-28.

embroiled in prolonged supervision of disputes between business owners.¹⁷⁶ Moreover, when freeze-outs occur courts may not be equipped to force majority shareholders to allow the minority to participate in management. Often a deep schism has developed between the majority and minority shareholders after the founders died or retired. If the founder once effectively resolved disputes because of his or her standing as the patriarch of the farm, a court generally cannot replace the founder and force the parties to work together. Even if a court were to issue an order in such a situation, the schisms may be so deep that the shareholders will comply with neither the letter nor the spirit of the order. Further, if disputes between minority and majority shareholders are numerous and long-standing, the administrative costs, such as attorney fees, appraisals, and expert fees, associated with protecting the parties' reasonable expectations may be prohibitive. Not only do frequent trips to the courthouse impose heavy burdens on the judicial system and zap managerial energy and effectiveness, but the costs of monitoring and enforcing court orders can be substantial.

As a result of the administrative costs of obtaining orders to protect reasonable expectations, courts are often forced to fashion an order which does not fulfill reasonable expectations. These courts should instead seek to maximize the value of the farm as an economic unit, while at the same time allowing shareholders to realize value in accordance with their ownership interest. In family-owned farm cases, the solution that maximizes the value of the business will usually be a forced buyout of the minority shareholder.

Consider the hypothetical case of the Smith Family Farms, Inc. Assume that the three offspring of the founders, Kate, Kurt, and Kevin, own the stock in equal amounts, and that the parents who founded the farm intended to preserve the farm as an economic unit for their children.¹⁷⁷ Assume further that the parents also desire to treat each child equitably when they die.¹⁷⁸

176. See, e.g., *Meiselman v. Meiselman*, 307 S.E.2d 551, 559-60 (N.C. 1983)(holding that an order making the antagonistic owners resolve their differences is inconsistent with a court of equity's reluctance to enforce unwanted personal relationships).

177. Kelly and Ludtke observe:

Members of the farm family often have a deep emotional commitment to the type of life represented by the family farm. The parents may strongly feel this life contributes to emotional stability, personal integrity, and domestic tranquility. . . . [A] predominant objective of the typical farm family may be preservation of the entire farm operating unit as an inheritance for the children.

KELLY & LUDTKE, *supra* note 53, §§ 1.12-1.13, at 1-11.

178. Kelly and Ludtke also observe: "Generally parents want all children to share equally in the value of their estates." KELLY & LUDTKE, *supra* note 53, § 7.29, at 7-29.

Suppose that Kate moves off the farm. As an off-farm heir she probably has different objectives than the on-farm heirs.¹⁷⁹ Kate may want her share of farm profits, which she now considers an illiquid investment. She may desire to liquidate her interest and reinvest in an investment she can control. Her brothers, Kurt and Kevin, may desire to draw salaries but retain other earnings in the corporation to reduce debt, provide a financial cushion, or expand operations. Thinking Kate is too removed from the business to comment meaningfully on management, they may exclude her. If she complains, they may regard her as ungrateful and take steps to freeze her out.

Assume a court decides that Kevin and Kurt violated Kate's reasonable expectations by excluding her from management and failing to distribute earnings. The court will likely find that forcing Kevin and Kurt to accept Kate as a co-manager is too difficult. While a court could issue frequent orders to distribute earnings and allow co-management of the family farm, the cost would be exorbitant. Instead, the court is forced to order a remedy that does not continue the co-management rights and expectations of Kate, Kevin, and Kurt. Available remedies include dissolution and liquidation of a corporation, division of the business, and requiring one party to buy the interests of another.

Dissolving Smith Farms causes economic waste.¹⁸⁰ Though the difference between the value of farm real estate as a going concern (with competent management) and the liquidation value of the farm may be less significant than other businesses, it is nonetheless significant.¹⁸¹ If a farm is liquidated, all owners forfeit any going-concern premium. Further, if a farm is unnecessarily liquidated, the public policy favoring family farms is violated. Both *Fox*¹⁸² and *Struckhoff*¹⁸³ expressly acknowledge the public interest in preserving family farms.

179. Harl correctly observes:

Off-farm heirs may hold quite different goals and objectives from the on-farm heirs. So long as the parents maintain control over the operation, the divergent objectives of on-farm and off-farm heirs may be of little concern. With the parents removed from the scene, or reduced to minority owner status, the differences in objectives may become obvious.

HARL, *supra* note 52, § 41.03[1], at 41-28.

180. See SHANNON PRATT, *VALUING A BUSINESS: THE ANALYSIS AND APPRAISAL OF CLOSELY HELD COMPANIES* 29 (2d ed. 1989); Robert W. Hillman, *The Dissatisfied Participant in the Solvent Business Venture: A Consideration of the Relative Permanence of Partnerships and Close Corporations*, 67 MINN. L. REV. 1, 47 n.147 (1982).

181. The importance of competent farm management is discussed in MURRAY R. WISE, *INVESTING IN FARMLAND* 173-75 (1989).

182. *Fox v. 7L Bar Ranch*, 645 P.2d 929, 935 (Mont. 1982).

183. *Struckhoff v. Echo Ridge Farms, Inc.*, 833 S.W.2d 463, 466 (Mo. Ct. App. 1992).

A more significant reason not to liquidate the farm is that liquidation frustrates the parties' reasonable expectations. Liquidation frustrates all owners' expectations to participate in management and earnings. Also, liquidation frustrates expectations that the family farm will remain in the family. The parent-founders of the Smith Farm Corporation, however, probably intended that if their children could not work together, the on-farm heir would retain control of the farm.¹⁸⁴ Parents, concerned about equity, would also expect off-farm heirs to be compensated for their interest.

Dividing the Smith farm property is probably not feasible. Kate may lack farm management expertise. Even if Kate has the skills to serve as a competent farm manager, the farm might not be divisible into two viable economic units. Though farm real estate is usually easily divisible, today's economies of scale often mean smaller farm units are not profitable. Even if the farm is divisible into two viable economic units, a court might properly hesitate to divide it. The court may have difficulty determining the proper division line for the real estate. Also, courts are likely to have difficulty deciding how to value and divide personal property such as tractors. Additionally, it is difficult to decide which shareholders receive the buildings and improvements, which shareholders are responsible for which long term liabilities and leases, and who is to benefit from existing business arrangements.¹⁸⁵

In the hypothetical Smith Farms case, as with most family farms, the most appropriate remedy may be a forced buyout. This solution best maximizes the value of the business by preserving the farm as an economic unit while protecting the minority shareholder's expectation to receive some compensation from his or her interest in the farm.¹⁸⁶ A forced buyout may, nonetheless, create significant problems for Smith Farms. If Smith Farms is like most farms, it has a relatively low ratio of liquid to fixed assets.¹⁸⁷ Farm businesses, again, are generally land rich but cash poor. As a result, the Smith Farms may not be able to generate the cash quickly enough to pay Kate immediately for the fair market value of her interest. The best solution to this

184. Kelly & Ludtke aptly observe that "although parents may wish to shift management control to a child interested in farming, they typically desire to be fair to all their children." KELLY & LUDTKE, *supra* note 53 § 12.02, at 12-3 & 12-4. They conclude that parents generally "wish to give the absentee children an interest in the farm, while limiting the powers associated with such an interest in order to avoid interference with the operator." KELLY & LUDTKE, *supra* note 53 § 12.02, at 12-4.

185. *See, e.g.*, *Hendley v. Lee*, 676 F. Supp. 1317, 1324-25 (D.S.C. 1987)(refusing to order a division of assets because of these problems).

186. Of course, a forced buyout does not protect the minority shareholder's expectation of participating in management.

187. HARL, *supra* note 52, § 41.01[2], at 41-9.

problem is for a court to order installment payments. State statutes in several jurisdictions give courts the power to order installment payments.¹⁸⁸ In jurisdictions without these statutes, courts utilizing their broad equitable powers to resolve disputes between shareholders may presumably order installment payments.¹⁸⁹ If courts order installment payments, they could also require security or collateral to secure the obligation with collateral.

B. Dissension in Farm Partnerships and Farm Limited Liability Companies

Both partnership law and law governing limited liability companies recognize a court's power to intervene when one owner oppresses another. Section 801 of the Revised Uniform Partnership Act allows courts to dissolve a partnership when "another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner."¹⁹⁰ Frequently when a court dissolves a partnership, it is responding to a situation where one partner violates the reasonable expectations of the other.¹⁹¹

Courts also have the power to dissolve limited liability companies. The American Bar Association Prototype Limited Liability Company Act, for example, provides that a court may decree "dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business. . . ." ¹⁹² The official comments to the "not reasonably practicable" language include "at least some of the causes of dissolution provided for in partnership law, particularly including partner misconduct."¹⁹³

188. See, e.g., ILL. REV. STAT. ch. 805, para. 12.55(f) (1993); MD. CODE ANN. CORPS. & ASS'NS § 4-603 (1993); MINN. STAT. ANN. § 302A.751 (West Supp. 1994). But see CAL. CORP. CODE § 2000(a) (West 1990); N.J. STAT. ANN. § 14A: 12-7(8)(e) (West Supp. 1993)(both requiring cash payment).

189. But see *Taines v. Gene Barry One Hour Photo Processing, Inc.*, 474 N.Y.S.2d 362, 368 (N.Y. Sup. Ct. 1983), *aff'd sub nom. In re Taines*, 486 N.Y.S.2d 699 (N.Y. 1985).

190. UNIF. PARTNERSHIP ACT § 801 (1992).

191. *Ferrick v. Barry*, 68 N.E.2d 690, 694-95 (Mass. 1946)("Even if the court may think that one partner could carry on successfully, if he were allowed to push aside the others, it ought not to sanction such an alteration in the agreed relations of the partners."). See also *Newburger, Loeb & Co., Inc. v. Gross*, 563 F.2d 1057 (2d Cir. 1977), *cert. denied*, 434 U.S. 1035 (1978); *Wood v. Holiday Mobile Home Resorts, Inc.*, 625 P.2d 337 (Ariz. Ct. App. 1980), *cert. denied*, 454 U.S. 826 (1981); *Owen v. Cohen*, 199 P.2d 713 (Cal. 1941); *Lau v. Wong*, 616 P.2d 1031 (Haw. Ct. App. 1980); *Tembrina v. Simos*, 567 N.E.2d 536 (Ill. App. Ct. 1991); *Susman v. Venture*, 449 N.E.2d 143 (Ill. App. Ct. 1982); *Ohlendorf v. Feinstein*, 636 S.W.2d 687 (Mo. Ct. App. 1982); *Boland v. Daly*, 318 A.2d 329 (Pa. 1974).

192. ABA PROTOTYPE LTD. LIAB. CO. ACT § 902 (1992).

193. *Id.* cmt. at 64.

One might ask why courts might intervene in cases of oppression in farm partnerships and farm limited liability companies. Both partners and members of limited liability companies may dissociate and, in most cases, force a buyout or liquidation without court action. Courts, however, might still intervene in limited liability companies and partnerships with a specific term of existence. In partnerships and limited liability companies with a specific term of existence, those partners or members dissociating before the end of the term will suffer a reduction in the amount of damages caused by their premature dissociation.¹⁹⁴ Likewise, partners cannot force payment for their interest until the term of the business expires.¹⁹⁵ As a result, both partners and members of limited liability companies face the risk of incurring a penalty for premature dissociation when they dissociate because of an action of an oppressive majority member's actions. In order to protect owners of partnerships and limited liability companies from suffering this penalty, courts should exercise their equitable powers to fashion a remedy to protect the minority owner from suffering a premature dissolution penalty. In the family farm context, courts should not order a dissolution unless majority owners are unwilling to purchase the minority owners' shares. When courts find oppression, they should order a purchase at fair value without any reduction for damages caused by premature dissolution.

Courts, then, clearly have the statutory power to order a dissolution of both partnerships¹⁹⁶ and limited liability companies.¹⁹⁷ Professors Bromberg and Ribstein are therefore correct in observing that the approach courts take to the misconduct of partners is similar to the approach courts take in shareholder oppression cases.¹⁹⁸ Nevertheless, in the context of family farms, courts exercising their jurisdiction to dissolve partnerships and limited liability companies should remember that dissolution may cause liquidation of the farm, which not only destroys the going-concern value of the farm, but also defeats the family's reasonable expectation that the family farm will remain in the family. To avoid economic waste and to protect these expectations, courts tempted to dissolve family farm partnerships and limited liability companies should consider the approach taken by the courts in *Gimpel v. Bolstein*¹⁹⁹ and *McCauley v. Tom McCauley & Son*,

194. See ABA PROTOTYPE LTD. LIAB. CO. ACT § 802(C) (1992); UNIF. PARTNERSHIP ACT § 603(b) (1992).

195. See UNIF. PARTNERSHIP ACT § 701(h) (1992).

196. UNIF. PARTNERSHIP ACT § 801 (1992).

197. ABA PROTOTYPE LTD. LIAB. CO. ACT § 902 (1992).

198. 2 ALAN R. BROMBERG & LARRY E. RIBSTEIN, PARTNERSHIP § 7.06(c), at 7:63 (1994). See also Robert W. Hillman, *Misconduct as a Basis for Excluding or Expelling a Partner: Effecting Commercial Divorce and Securing Custody of the Business*, 78 Nw. U. L. REV. 527, 547-51 (1983).

199. 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984).

*Inc.*²⁰⁰ In those cases, the courts allowed majority owners the opportunity to avoid a court-ordered dissolution by purchasing the complaining minority shareholder's interest. Allowing parties to continue operating the farm while purchasing the interest of the minority owner preserves the family farm as a viable economic unit while protecting the minority owners' expectations of receiving some value from their minority interests.

VI. CONCLUSION

One of the fundamental problems family farms confront is how to provide for a smooth succession of the farm business as it passes from one generation to the next. Because family farm businesses are built on parents' assumptions, often mistaken, that family members will treat each other with trust and respect, the legal documents governing the family farm are often woefully inadequate to provide for appropriate dispute resolution between owners. If parents had clearly set out the rights, duties, and obligations of both on- and off-farm heirs, the need for judicial intervention would substantially decrease. Unfortunately, thoughtful planning providing for smooth succession is not common enough in rural America.

As a result of inadequate succession planning, courts frequently are asked to intervene in disputes between owners of the family farm. When resolving disputes, courts should strive to develop remedies that both preserve the farm as an economic unit and protect the reasonable expectations of the minority shareholders to receive appropriate financial benefits from the family farm. The standards for selection of remedies described in this article accomplish those objectives. If courts clearly adopt these standards, both attorneys and agricultural producers will gain greater certainty about judicial approaches to disputes among owners of the family farm. Greater certainty encourages family members to resolve their disputes with a handshake at home, instead of a lawsuit at the county courthouse.

200. 724 P.2d 232 (N.M. Ct. App. 1986).