Legal Aspects of Farm Tenancy in Iowa

by

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I. Introduction

Lease arrangements have always been an important component of the agricultural land tenure system in Iowa, most notably during the 1930's. Presently, more than fifty-four percent of Iowa farmers rent all or part of the land used in their operations.[1] Recent census data indicates that the amount of farmland operated under tenancy is on the increase from ten years ago.[2] The prevalence of the farm tenancy, and its role in assuring access to the basic means of production, suggests that the farm lease is one of the most important legal arrangements in the operation of the farm business. As a result, it is very important for the parties involved in agricultural leases to be aware of the rights and obligations stemming from their relationship. The prevalence of farm leases also means that there are certain to be disputes between tenants and landlords over their respective rights and duties under a tenancy relationship.[3] As a result, the legal nature of the lease relation and the resolution of the disputes arising in connection with farm leases present significant legal issues, particularly to those involved in such disputes. The likelihood for such disputes is increased by considering that more than one-half of the land farmed under a lease in the state is

1. 1 Bureau of Census, U.S. Dept. of Commerce, 1982 Census of Agriculture, Pt. 15, at 3 (1984). The number of farmers in Iowa in 1982 was 115,413, of which 62,479 were operators who rented all or part of their land. *Id.* Tenant operators accounted for 24,252 operations, and part owners, part renters accounted for 38,427. *Id.*

2. *Id.* In 1974, more than 21,731,000 acres were farmed either wholly or partially under a tenancy relation. By 1982, this figure had grown to more than 23,262,000 acres. *Id.*

3. For example, since 1970 there have been in excess of a dozen reported decisions involving landlord-tenancy issues.

believed to be farmed under an oral lease agreement.[4]

Many important legal questions arise from farm leases, and the Iowa legislature and courts have provided considerable guidance on several issues, particularly concerning the right to notice of termination. New wrinkles to old problems continue to crop up; one example is the requirement of notice in pasture leases.[5] At the same time altogether new issues arise, such as whether there is an implied covenant of good stewardship that applies to soil conservation.[6] These issues continue to make farm leases a timely, viable legal topic for Iowa practitioners. The purpose of this article is to present in a concise, straightforward manner an analysis of the Iowa law concerning the use of farm leases and to discuss the current status of legal doctrine on the major aspects of the farm lease arrangement. Through this analysis, the article will attempt to identify a number of legal issues that are either unaddressed, or still open for debate. The discussion will focus on Iowa's law on farm leases, Iowa Code Chapter 562,[7] and the many cases in which the state's appellate courts have had an opportunity to interpret that law. In addition, this article will also discuss issues which have not been addressed by the legislature or courts. The major aspects of these questions and the possible outcome of these issues will be noted.

II. Types of Leases Used in Iowa

A. *In General*

Two main types of lease arrangements predominate in Iowa agriculture, with the difference depending primarily on the form of payment. These two types of common leases are the crop share and the cash lease. Within the category of crop share leases, there are several different types of leases, such as livestock share, hay shares, or hybrid cash-crop leases, depending on the crop grown and the desired relation between the parties. Likewise, there are several methods in which cash rent can be determined, such as a fixed dollar amount, a fixed number of bushels, or some type of sliding cash rent based on performance. Because the type of lease used is a function of the parties' desires, economic considerations, and the parties' particular circumstances, practice in Iowa has shown that there is a wide variety of farm leases that can be devised, some of which may even combine elements of both cash and

4. No recent empirical data exists to support this conclusion. Rather, it is based on discussions with farmers, farm advisors, and attorneys throughout the state, as well as personal observations.

5. Morling v. Schmidt, 299 N.W.2d 480 (Iowa 1980); *see infra* notes 187-99 and accompanying text.

6. *See* Moser v. Thorp Sales Corp., 312 N.W.2d 881 (Iowa 1981).

7. Iowa Code §§ 562.5-.7 (1983), *amended by* Act of May 26, 1983, § 562.6-.7, 1983 Iowa Legis. Serv. 632 (West).

crop type arrangements.[8]

Whether a lease is for crops or cash, a tenant or landlord's ability to enforce its terms will depend in part on the contents of the lease and whether it is in writing. Many farmers and landowners use written agreements to formalize the nature of all their business transactions, including lease arrangements.[9] A written lease offers the opportunity to clearly establish the rights and obligations of the parties and to provide for unusual occurrences.

While the use of written farm leases is common, and perhaps increasing, experience shows that a considerable number of farmers continue to use oral leases. A number of factors, such as tradition, unwillingness to use lawyers or to memoralize agreements, and a lack of awareness of the consequences contribute to the continued use or oral leases in the state. In light of the highly leveraged financial arrangements and the large scale nature of today's farm operation, it would seem to go without saying, from a legal standpoint, that all parties to farm leases would benefit by the certainty that is achieved when an agreement is put into writing. As this article will suggest, the legal relationship between the two parties and their ability to enforce their agreement is enhanced if, at a later time, there is a written agreement available to shed light on the relationship. This is clear when compared to the situation with a mere oral lease where the parties must simply rely on their own memories, which may be subject to the human dimension of selective retention that often arises in the case of a subsequent dispute.

B. *Elements of the Farm Lease*

Although the terms of an agricultural lease are very much a function of the parties desires and the circumstances, there are a number of elements common to typical farm leases. From a legal standpoint the important elements of an agricultural lease are:

(a) the description of the land involved;
(b) the identity of the parties and their signatures;
(c) the terms of the lease, in particular the nature of the farming operation, the rental amount, the method and timing of payment, and the division of responsibility for operating costs;
(d) the length or term of the lease; and
(e) any special provisions concerning the rights and duties of the parties,

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8. For an excellent discussion of the different types of farm leases and the economic considerations involved in drafting the farm lease, see Looney, *Legal and Economic Considerations in Drafting Arkansas Farm Leases*, 35 ARK. L. REV. 395 (1982).

9. Many written leases commonly used in Iowa are based on forms provided by the Iowa State University agricultural extension service and the bar. Perhaps the most common lease form is: Farm Lease—Cash or Crop Shares, Iowa State Bar Association Official Form No. 135 (Revised December 6, 1971). A copy of this form is set out in the Appendix and will be referred to throughout the article.

such as how the farm operation will be conducted.[10]

In addition to these elements, another important component of the lease relationship is the effect of various state statutory provisions incorporated by local law into the terms of the lease. For instance, chapter 562 concerning notice of termination[11] and chapter 570 concerning the landlord's lien for rent[12] are examples of such provisions. Clearly the existence of such elements is much clearer when a written lease is used. Even when an oral lease is used, however, it should be possible to discover, with the assistance of statutory requirements, the parties' intentions as to all these provisions, except perhaps special terms.

A review of the above elements demonstrates the dual nature of the farm lease, as both a conveyance of property for a term and as a contract between the landlord and the tenant creating a business relationship which may make the amount of rent, in part, dependent on the success of the tenant's farming operation. The joint nature of the lease arrangement and the contractual component of the lease is particularly apparent in a crop share arrangement where there is a division of responsibility for the payment of operating costs and a rental payment based on the performance of the operation. The dual nature of the agricultural lease relationship creates the possibility for legal variation in categorizing the relationship and deciding the obligations that flow with it.

C. *Categorization of Farming Arrangements*

As noted above, the parties to a farming arrangement have a great deal of freedom and flexibility in designing their contractual relationship. This article deals specifically with the legal aspects of a landlord-tenant relationship arising from a farm lease. There are, however, other types of relationships which can be used in a farming arrangement; such as an employee-employer relationship, a tenancy in common for crops, a partnership, or a joint venture.[13] The manner in which a farming arrangement is categorized can have an important effect on the legal consequences of the arrangement, especially in a subsequent legal dispute, or bankruptcy. In this regard the language used in the written agreement is very important in determining the nature of the arrangement. If the lease is not carefully drafted or if it is an oral agreement, the relationship may be subject to varying interpretations.

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10. An example of the types of special provisions or boilerplate that can be use in a written farm lease is seen in the Iowa Bar lease form in the Appendix, which includes provisions for dealing with: proper husbandry, harvesting of the crops, care of the soil, weed control, care of trees, shrubs and grass, repairs, etc.

11. IOWA CODE §§ 562.2, .4-.9 (1983).

12. *Id.* § 570.

13. For a recent article which discusses in some detail the differences between these types of relationships, see Grossman & Fischer, *The Farm Lease in Bankruptcy: A Comprehensive Analysis*, 59 NOTRE DAME L. REV. 598, 601-08 (1984).

The question of how a lease arrangement is interpreted can be of particular importance as it relates to the respective financial liability of the parties. As a result, one question commonly faced by the Iowa courts is whether a crop share lease arrangement creates a partnership.[14] In the case of *Federated Mutual Implement & Hardware Insurance Co. v. Eng*,[15] the court had the opportunity to restate its view that the type of business arrangement entered into by the parties to a crop share arrangement constitutes a landlord tenant relationship rather than a partnership or joint venture.[16] As the court noted in *Wilson v. Fleming*,[17] "[c]ourts are reluctant to construe an arrangement such as this [a typical 50-50 stock share lease] between a farm owner and occupant as a partnership unless such relation is clearly shown."[18] In the case where the existence of such a partnership is conceded by the parties the result would, of course, be different.[19]

The one other major question concerning the nature of the farming relationship which the Iowa courts have addressed numerous times is the distinction between a tenancy and a share cropper arrangement.[20] The court has faced this question because of the different treatment given share croppers with regard to statutory notice of termination. The leading case on this question, *Dopheide v. Schoeppner*,[21] sets out the differences between the two arrangements.[22] Under a crop share lease the farmer has an interest in the land similar to other types of tenants and also has a property interest in the growing crops.[23] A share cropper, however, is a farmer who is an employee of the landowner and who has no interest in the land and whose pay is merely a portion of the crops grown.[24]

D. *Rights & Duties Under the Farm Lease Arrangement*

The parties to a farm lease enter the arrangement as a business transaction with each party determining that the terms of the arrangement as drafted are economically satisfactory to them. Any special terms in the lease will probably deal to a large degree with the business side or contractual component of the relationship. In addition, the landlord-tenant component

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14. *See, e.g.*, Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943) The court held that the farming arrangement was a partnership. *Id.* at 234-35, 8 N.W.2d at 728-29.
15. 178 N.W.2d 321 (Iowa 1970).
16. *Id.* at 323-24. *See also* Wilson v. Fleming, 239 Iowa 718, 733, 31 N.W.2d 393, 401 (1948); Johnson v. Watland, 208 Iowa 1370, 1372, 227 N.W. 410, 411 (1929); Florence v. Fox, 193 Iowa 1174, 1177-79, 188 N.W. 966, 969 (1922).
17. 239 Iowa 718, 31 N.W.2d 393 (1948).
18. *Id.* at 733, 31 N.W.2d at 401.
19. Covell v. Johnson, 196 N.W. 987 (Iowa 1924).
20. *See infra* notes 171-84 and accompanying text.
21. 163 N.W.2d 360 (Iowa 1968).
22. *Id.* at 362.
23. *Id.*
24. *Id.*

of the farm lease carries with it a number of legal rights and obligations for both parties which affect the relationship. These rights and obligations, as discussed below, find their sources in the language of the lease arrangement, in the common law of the state, and in the applicable statutes.

The rights and obligations of the tenant and landlord often mirror each other. In other words, what is a right for a tenant is an obligation on the part of a landlord. These rights and obligations operate to ensure that the parties' interests are forwarded in a fair and equitable manner and attempt to ensure that the state's public goal of protecting the land and the interests of farm tenants is met.

A tenant in an agricultural lease arrangement has a number of rights, including: the right of possession of the property for the lease term; the right of quiet enjoyment and use of the property; and the right to receive proper notice of termination before the lease is ended.[25] In addition to these rights, the tenant is under the following obligations: to pay the agreed rental amount at the agreed time; to vacate the premises at the end of the rental period; not to waste or otherwise damage the property; to comply with the terms of the lease agreement; and to provide statutorily sufficient notice to terminate the lease.[26]

As noted above, the rights and obligations of the landlord essentially mirror those of the tenant. The landlord has the right to: receive the rental amount at the time specified; reclaim possession of the property at the end of the rental period; have the property properly cared for by the tenant; enforce the terms of the rental agreement; and terminate the lease if the terms are substantially breached.[27] At the same time, the landlord is under the obligation: not to interfere with the tenant's right to possess the land; not to interfere with the tenant's ability to farm the land unhindered by unreasonable demands; to provide statutorily sufficient notice to terminate the lease; and to comply with the terms of the lease agreement.[28]

The majority of legal questions, cases and disputes dealing with farm leases can be classified as focusing on two subjects: (a) *the termination of leases*; both as to what events can give rise to termination, what procedure must be followed to terminate the lease, and what are the parties relative rights to possess the property; and (b) *the landlord's right to receive the rent*; and related questions of when the rent is due, who has the title to the growing crops, and competing claims for the rent. While both subjects are

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25. *See e.g.* Kuiken v. Garrett, 243 Iowa 785, 51 N.W.2d 149 (1950); IOWA CODE § 562.6 (1983).

26. For an example of the terms and conditions set out in a farm lease, see the Iowa Bar Association Official Form No. 135, Farm Lease—Cash or Crop Shares. *See infra* app. ¶¶ 1, 4, 6, 8.

27. *See infra* notes 39-82 and accompanying text.

28. *See, e.g.*, Kuiken v. Garrett, 243 Iowa 785, 51 N.W.2d 149 (1952). *See also infra* notes 29-38 and accompanying text.

important to both tenants and landlords, the first subject is of particular interest to tenants because their ability to farm depends on their access to agricultural land, while the second issue is of particular interest to landowners, because their ability to pay for the land depends on the level of return. This dichotomy provides a convenient means of organizing the discussion of farm leases. The subjects relating to the duration and termination of the lease agreement and related matters will be discussed in this article. Economic questions relating to agricultural leases, payments of rents, and disputes between landlords, tenants, and creditors will be the subject of a subsequent article.

III. Content, Duration, and Termination of Agricultural Leases

A. *The Basis of Possession*

The essence of an agricultural lease arrangement is the landlord's agreement to divest himself of possession of the land in favor of the tenant for a given period of time, under such conditions as the parties may provide. The Iowa Supreme Court has recognized that the existence of a lease includes the right of the tenant to possess the property pursuant to the lease.[29] This right can be injured by actions of the landlord to wrongfully remove the tenant from possession, which raises the issue of whether damages for breach of the right to possession under a lease may be recovered.[30] A number of reported cases have involved disputes between parties over the right to possess the property during the period of the lease.[31] This issue is somewhat different than the more common decisions involving the question of who has the right to possession at the end of the lease term, for example, whether the lease continues.[32]

Because the questions involving an implied covenant of possession generally arise in disputes in which the landlord has attempted to wrest control of the property from the tenant, either legally or physically, the question of possession is generally discussed in the context of the implied covenant of quiet enjoyment as a term of the lease.[33]

The leading Iowa farm lease case on the right of quiet enjoyment is *Kuiken v. Garrett*,[34] which involved claims that the landlord had mali-

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29. *See generally* Dopheide v. Schoeppner, 163 N.W.2d 360 (Iowa 1968); Kuiken v. Garrett, 243 Iowa 785, 51 N.W.2d 149 (1952); Harmont v. Sullivan, 128 Iowa 309, 103 N.W. 951 (1905).

30. *E.g.*, Dopheide v. Schoeppner, 163 N.W.2d at 360. For a discussion on the question of damages see *infra* notes 34-38 and accompanying text.

31. Kuiken v. Garrett, 243 Iowa at 785, 51 N.W.2d at 149.

32. *E.g.*, Schmitz v. Sondag, 334 N.W.2d 362 (Iowa Ct. App. 1983). *See infra* text accompanying notes 118-23.

33. *E.g.*, Kuiken v. Garrett, 243 Iowa at 785, 51 N.W.2d at 149.

34. 243 Iowa 785, 51 N.W.2d 149 (1952).

ciously interfered with the tenant's right of quiet enjoyment through a course of conduct designed to disrupt the tenant's use of the property.[35] The landlord, during the period of the tenants' possession, caused to be served on them ten different notices to quit, notices to terminate, and other notices commencing legal actions to regain the property.[36] In holding the landlord liable for damages the court said:

> We hold that it is not always that a tenant in possession can be denied the right to damages because he remains on the realty; but that if the landlord harasses and annoys him, and disturbs his quiet enjoyment, by a course of oppression or interference, just compensation may be required.[37]

The court noted that a review of the cases showed that Iowa law would provide, in the proper case, for damages against a landlord, whether or not the tenant chose to leave the property as a result of the landlord's conduct.[38] As long as the element of malice, or lack of good faith on the part of the landlord can be shown an action will lie, with the question of actual malice being for the jury to decide.

B. *Landlord's Right To Rent*

An equally important covenant in a lease is that the tenant will pay the rent promised the landlord.[39] In fact, such a covenant is at the very heart of the arrangement, being the tenant's obligation in exchange for having possession of the property for the term. The failure to pay rent is a breach of the lease which will be grounds for an action to collect the rent, and which may excuse the landlord from a failure to give notice of termination at the end of the term.[40] The rent, however, is not due until the time of payment as established in the lease.[41] The court noted in *Wilson v. Wilson*[42] that "[i]t is well settled that in absence of a contrary agreement, rental is neither earned nor payable until the expiration of the term, or in any event rental is not due prior to the customary time for paying the same."[43]

The court has noted that a tenant's matured crop belongs to the tenant, even after the expiration of the lease, although subject to any landlord's

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35. *Id.*

36. *Id.* at 796, 51 N.W.2d at 156. The court set out a list of ten separate legal actions taken by the landlord. *Id.*

37. *Id.* at 794, 51 N.W.2d at 155.

38. *Id.* at 795, 51 N.W.2d at 155. *See, e.g.*, Harmont v. Sullivan, 128 Iowa 309, 103 N.W. 951 (1905); Kane v. Mink, 64 Iowa 84, 19 N.W. 852 (1884).

39. Ballenger v. Kahl, 247 Iowa 721, 727, 76 N.W.2d 196, 199-200 (1956).

40. *See, e.g.*, Riggs v. Meka, 236 Iowa 118, 17 N.W.2d 101 (1945); *see also infra* notes 212-19 and accompanying text.

41. Ballenger v. Kahl, 247 Iowa at 727, 76 N.W.2d at 200.

42. 220 Iowa 878, 263 N.W. 830 (1935).

43. *Id.* at 882, 263 N.W. at 832.

lien.[44] The ability of the landlord to collect the rent and enforce the lien will depend on the facts of the situation, the terms of the lease, and compliance with the requirements of the landlord's lien statute.[45] In any event, the landlord will not be able to collect as rent more than the share or amount to which he is entitled. To allow otherwise would be to permit an unjust enrichment of the landlord.[46] Therefore, one of the major questions in a dispute over the payment of rent may be when the rent becomes due and owing and thus when landlord's right either to the crops or to collect the rent becomes enforceable.[47] The answer to this question is beyond the scope of this article.

C. *Landlord's Right to Regain Possession*

A third basic covenant to an agricultural lease is that at the end of the lease term the tenant will return possession of the property to the landlord.[48] Failure to render possession can lead to a variety of consequences, including an action on the part of the landlord to regain possession, such as forcible entry and detainer,[49] or an action for double rental for a willful holdover as provided by statute,[50] both of which are discussed later. The right of the parties to possess the land, especially for the following crop year, if there has been a contested attempt to terminate the lease is at the heart of most litigated lease disputes and is at stake in a majority of the

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44. Schulz v. Hoffman, 254 Iowa 868, 873, 118 N.W.2d 532, 535 (1963).

45. IOWA CODE § 570 (1983).

46. *See* Shadle v. Borrusch, 255 Iowa 1122, 1126, 125 N.W.2d 507, 510 (1963).

47. While the law is well settled that a tenant has an obligation to pay the rent, one of the central promises in the lease, the law is not as well settled as to what a landlord can do to collect the rent, especially in relation to competing claims from third parties, such as creditors of the tenant. Iowa has enacted a statutory landlord's lien at chapter 570 of the Code. This statute, however, leaves unresolved a number of questions concerning potential disputes and priorities between landlords, tenants, and third parties. The statute has been the subject of only minimal judicial scrutiny. *See, e.g.*, Prior v. Rathjen, 199 N.W.2d 327 (Iowa 1972) (dealing with the landlord's rights to enforce a landlord lien against a third party purchaser of crops from the tenant). *See also* Corydon State Bank v. Scott, 217 Iowa 1227, 252 N.W. 536 (1934). The subject of landlord's rights to collect rent and the relative priorities between landlords and third parties is ripe for consideration given the increased number of farm financial problems.

48. By statute, all farm tenancies in Iowa terminate on March 1. *See* IOWA CODE § 562.5 (1983).

49. *See, e.g.*, McElwee v. DeVault, 255 Iowa 30, 120 N.W.2d 451 (1963); Van Emmerik v. Vuille, 249 Iowa 910, 88 N.W.2d 47 (1958). *See also infra* notes 365-85 and accompanying text.

50. Section 562.2 of the Iowa Code provides that:

> A tenant giving notice of his intention to quit leased premises at a time named, and holding over after such time, and a tenant or his assignee willfully holding over after the term, and after notice to quit, shall pay double the rental value thereof during the time he holds over to the person entitled thereto.

IOWA CODE § 562.2 (1983). *See, e.g.*, Youngblut v. Wilson, 294 N.W.2d 813 (Iowa 1980). *See also infra* note 369-86 and accompanying text.

reported cases on agricultural leases.[51]

D. *Breach of the Lease*

As long as the parties to a lease arrangement perform the obligations that they have made, and conform both to the written covenants, if any, as well as the oral or implied covenants, then the lease relationship should operate smoothly. In the situation where one party breaches the lease (that is, violates its terms, or at least what one party feels to be its terms), however, the parties' relative rights and obligations become important. Such situations include a tenant failing to pay the rent, the landlord interfering with the tenant's quiet possession, or the breach of a specific term of a written lease. The focus in an alleged breach of lease situation is generally threefold: whether there has been a breach; what damages or other remedies can be obtained from the breaching party; and whether the breach will affect the continuation of the lease. For certain aspects of breach of lease situations, such as failure to pay rent,[52] there exist helpful authorities. On other issues concerning breaches, such as what conduct will rise to a breach of an oral lease,[53] just as with many other areas of Iowa law concerning agricultural leases there is considerably less guidance, and fewer answers than there are questions.

The Iowa court has considered a number of cases involving alleged breaches of farm leases. For example, in *Kuiken v. Garrett*[54] the court dealt with conduct of a landlord which constituted a breach of the tenants' covenant of quiet enjoyment.[55] Another example, *Dopheide v. Schoeppner*,[56] in which the court established the elements that distinguish a "mere cropper" from a tenant, the underlying action was a claim for damages against a landlord for breach of an oral lease.[57] Finally, in *Collins v. Isaacson*,[58] the court considered the alleged breach of an unusual clause providing that interference with the lease by the tenant's father would result in the forfeiture of the lease, and found that the record showed no breach.[59] All of these cases offer guidance in terms of what conduct can constitute a breach and demonstrate that the showing of a breach is inexorably tied to evidence of the parties' actions and to establishing the nature and elements of the lease ar-

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51. *See, e.g.*, Denton v. Moser, 241 N.W.2d 28 (Iowa 1976); Schmitz v. Sondag, 334 N.W.2d 362 (Iowa Ct. App. 1983).

52. Riggs v. Meka, 236 Iowa at 118, 17 N.W.2d at 101.

53. See *infra* notes 211-28 and accompanying text concerning whether there is an implied covenant of good husbandry relating to soil conservation in an oral lease.

54. 243 Iowa 785, 51 N.W.2d 149 (1952).

55. *Id.* at 785, 51 N.W.2d at 149.

56. 163 N.W.2d 360 (Iowa 1968).

57. *Id.* at 360.

58. 261 Iowa 1236, 158 N.W.2d 14 (1968).

59. *Id.* at 1242, 158 N.W.2d at 17.

rangement. Perhaps the most helpful case for the consideration of the alleged breach of an agricultural lease is *McElwee v. DeVault*.[60] In that case a landlord was allowed to terminate a three-year lease for breach of written covenants, only a few months into the first year.[61] The case is perhaps a bit unusual because it involved a very specific written lease, and because the landlord also provided statutory notice of termination.[62] But it does establish a basic proposition: if the landlord can establish a breach of the terms of the lease, and has notified the tenant of the breach, the lease will be terminated.[63] The court will not force the landlord to rent to a breaching tenant.[64] The *McElwee* case provides considerable food for thought and its application is discussed below concerning what types of covenants might be implied to exist in an oral lease[65] and what types of breaches might also be held to constitute a default under the terms of section 562.6 on notice of termination.[66] As noted, the *McElwee* case does not provide the answer as to what conduct will amount to a breach or what a party who feels the agreement has been breached must do to remedy it. The best advice that can be given on these questions is to repeat that what is a breach will depend on the conduct of the parties and on the terms of the lease that can be established. A party who feels a lease has been breached should take steps to notify the breaching party of their attitude toward the conduct and its effect on the continued viability of the lease.

For one form of breach of lease there is ample statutory and case authority. This concerns the breach of the landlord's right to regain possession at the end of the term, which is evidenced by cases in which there has been a willful holdover by the tenant. Iowa law provides for recovery of double rental for a willful holdover.[67] The question of the availability of double rent focuses on the question of the willfulness of the holdover.[68] In *Wederath v. Brant*, which involved a dispute over a lease that was alleged to have been for three years, the court found that the evidence supported a finding that the holdover was willful.[69] In *Youngblut v. Wilson*,[70] however, the court held that where the party had stayed on the land under a claim of right, here a dispute over the forfeiture of an underlying land contract, willfulness had not been established.[71] The court also noted that a statutory predicate to a

60. 255 Iowa 30, 120 N.W.2d 451 (1963).
61. *Id.* at 36, 120 N.W.2d at 455.
62. *Id.* at 32-34, 120 N.W.2d at 452-53.
63. *Id.* at 35, 120 N.W.2d at 455.
64. *Id.*
65. *See infra* notes 224-28 and accompanying text.
66. *See infra* notes 224-28 and accompanying text.
67. IOWA CODE § 562.2 (1983).
68. Wederath v. Brant, 319 N.W.2d 306 (Iowa 1982).
69. *Id.* at 310.
70. 294 N.W.2d 813 (Iowa 1980).
71. *Id.* at 818.

claim for double rent is that the party stay on the land after the termination of the lease and after the service of a notice to quit.[72]

In at least one other case,[73] the court held that while the conduct did not arise to a willful holdover, the landlord was justified in requiring the tenant to pay a reasonable rent, although different than that required in the original lease.[74] The case involved a holdover after proper termination but absent any notice to quit, in which the referees in a partition action sought an accounting for rent from the occupying tenants.[75] The tenants were held accountable for a "reasonable rental value of the premises," because the facts indicated the cotenant in possession took unfair advantage of the cotenants out of possession by planting more valuable crops on the acreage to which they were entitled.[76]

An important question concerning breaches of a farm lease concerns their relationship to the notice requirements of section 562. As discussed below, there is an unanswered question as to whether conduct that is a breach of a lease will also amount to a default that will excuse failure to provide notice of termination.[77] To be safe, the best course may be to provide notice of termination in the event a party feels there is a breach. A more difficult question, however, is presented if the alleged breach occurs after September 1, the statutory time for notice. Obviously there are certain types of alleged breaches that can occur after September 1, such as failure to harvest the crops in a timely fashion.[78] The court has dealt with several cases in which the crops were not harvested until the following year.[79] In these cases the delay in harvesting alone was not alleged to be a breach of the lease, rather the delays were the result of admitted bad weather.[80] The court in both cases, however, agreed that the farmer-tenant was entitled to a reasonable share of the value of the crops, whether he was allowed to harvest them or the landlord harvested them for himself.[81]

While many written leases contain a clause concerning timely harvest of crops, the question might arise as to whether such a clause will be implied in

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72. *Id.*

73. Meier v. Johannsen, 242 Iowa 665, 47 N.W.2d 793 (1951).

74. *Id.* at 670-71, 47 N.W.2d at 796. Thus, the tenant could not force the landlord to continue the original terms merely by holding over. *Id.*

75. *Id.* at 667, 47 N.W.2d at 794.

76. *Id.* at 671, 47 N.W.2d at 796.

77. *See infra* notes 211-28 and accompanying text.

78. *See, e.g.*, Shadle v. Borrusch, 255 Iowa 1122, 125 N.W.2d 507 (1963).

79. Shadle v. Borrusch, 255 Iowa at 1125, 125 N.W.2d at 509; Schulz v. Hoffman, 254 Iowa at 870, 118 N.W.2d at 533.

80. Shadle v. Borrusch, 255 Iowa at 1125, 125 N.W.2d at 509; Schulz v. Hoffman, 254 Iowa at 870, 118 N.W.2d at 533.

81. Shadle v. Borrusch, 255 Iowa at 1126-27, 125 N.W.2d at 510 (landlord required to account to tenant for tenant's share of crops which were picked by the landlord); Schulz v. Hoffman, 254 Iowa at 872, 118 N.W.2d at 535 (crops matured by the end of the lease term may be removed by the tenant within a reasonable time).

an oral crop share lease.[82] This also raises the question as to what conduct is a breach of an oral lease, which by necessity can only be answered by reference to what covenants or promises will be implied as being part of an oral lease.

E. *Duration of the Lease*

As discussed above, the tenant's right to possess and use the property is the heart of the agricultural lease arrangement. That right is protected by the terms of the lease, statutory provisions, and common law doctrines, such as the implied covenant of quiet enjoyment.[83] Intimately related to the tenant's right to possess the land during the term of the lease is the determination of the term or the duration of the lease. Another way to determine how long the tenant has the right to possess under a lease is to consider when the lease can be terminated. This element of a lease is established by reference to specific provisions of the lease agreement in light of the application of statutory law concerning extensions of the lease for failure to provide proper notice of termination.[84] An agricultural lease can be either written, oral, or an extension of one of these.[85] A written lease will include within it a provision stating the length of the lease, ranging from a period of one year to a number of years.[86] In addition a written lease will generally contain an extension clause that will make the lease continue from year to year until one party provides notice of termination.[87] Whether or not such an extension clause is provided, the effect of the Iowa statute is to incorporate such a clause into the lease as a matter of law.[88] An oral lease, if it contains a duration provision, will, as between the parties, be enforceable for a maximum of one year, with statutory extensions due to possible application of the statute

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82. *See infra* app. A. Paragraph four of this lease is an example of such a clause providing for the timely harvest of crops.

83. *See supra* notes 29-38 and accompanying text.

84. *See* IOWA CODE § 562.6 (1983).

85. *See supra* note 9 and accompanying text.

86. For example, Iowa Bar Association Official Form No. 135 states that the landlord leases the described property

> "to have and hold the same to Tenant from the _____ day of _____, 19_, to the _____ day of _____, 19_.

It should be noted that Iowa law places at least one restriction on the length of farm leases. See IOWA CONST. art. 1, § 24, which says: "No lease or grant of agricultural lands, receiving any rent, or service of any kind, shall be valid for a longer period than twenty years." *Id. See* Casey v. Lupkes, 286 N.W.2d 204 (Iowa 1979) (in which the provision was applied to strike off the last 25 years of a 45 year lease).

87. For example, Iowa Bar Association Official Form No. 135 provides, within paragraph five entitled *"Termination of Lease,"* that: "such lease shall continue after such agreed term from year to year, upon the same terms and conditions, unless either party gives due timely and legal written notice to the other of election to cancel or terminate any such extended lease period whereupon the tenancy shall terminate March 1, following." *See infra* app. ¶ 5.

88. IOWA CODE § 562.6 (1983). *See also infra* notes 118-23 and accompanying text.

of frauds.[89] Therefore, there are a number of different circumstances in which a tenant may find himself as to the possible duration of his lease and its status. The possible results include: (a) within the term of a one year written lease; (b) within the term of a multiple year written lease; (c) continuing after the term of a written lease, that provided an extension clause; (d) continuing under a written lease, silent as to extensions, by operation of statute; (e) within the term of an oral lease; (f) continuing under an oral lease, by operation of statute. Depending on how the lease arrangement and the tenant's status is classified, the parties' relative rights and obligations and their ability to terminate the lease arrangement may vary.

At common law, an agricultural lease would have been classified as a tenancy at will if there was no set date of termination, or as a tenancy for a term if the termination date was fixed.[90] This classification would affect how the lease could be terminated, specifically as to whether or not notice of termination is required, and if so, how much notice. For the vast majority of agricultural leases in Iowa, however, there is no longer a distinction between tenancies at will and tenancies for a term, due to the adoption of chapter 562 of the Iowa Code.[91] These provisions are at the very heart of Iowa farm tenancy law. Because these provisions are so important to the farm landlord-tenant relationship they must be explained and understood in great detail.

IV. The Iowa Farm Tenancy Statute

A. *Statutory Notice of Termination*

To begin, the question of when a farm tenancy is terminated is a very important event, both economically and socially. This is important economically because termination requires the tenant to make arrangements for new land and requires the landowner to find a new tenant or to change the nature of the operation. It is important socially because in an agricultural structure that has a high percentage of farm tenancies, as does Iowa, the termination of tenancies requires farm families to move. This disrupts social ties and affects the operation of farm unit cropping practices, such as crop rotation, which places pressures on land resources due to the short-range planning horizon. The impact of erratic termination of farm tenancies has

89. *See infra* notes 118-23 and accompanying text. Note, however, that the case of Fritz v. Iowa State Highway Comm'n, 270 N.W.2d 835 (Iowa 1978) allowed parol evidence of a covenant between the parties to extend an oral lease; that evidence was used in an action by a third party, not in an action between the parties to the contract. *See* Lamb's Estate v. Morrow, 140 Iowa 89, 117 N.W. 1118 (1908).

90. *See* Comment, *Termination of Agricultural Tenancies*, 26 Iowa L. Rev. 366, 370-375 (1941) [hereinafter cited as *Termination of Agricultural Tenancies*]. *See also*, Comment, *The Tenancy at Will in Iowa*, 2 Drake L. Rev. 30 (1952).

91. See Iowa Code § 562.5-.7 (1983).

been recognized by many state legislatures early in this century, and today nineteen states provide some type of special provision fixing the length of notice required for the termination of farm leases.[92] Iowa is no exception, having adopted what could be classified as one of the most restrictive state laws as to the termination of farm tenancies.[93]

Public concern over the impact of farm tenancies on the land and the erratic turnover and termination of tenancies came to a head in the mid-1930's in the U.S.[94] As a side-effect of the Depression on land tenure the number of tenant farmers increased greatly.[95] In 1937 the President's Committee on Farm Tenure recommended that states consider legislation to improve the farm tenancy situation.[96] The Iowa Farm Tenancy Committee investigated the subject and submitted a number of recommendations to the legislature in 1938.[97] While several bills were introduced, only one was enacted pertaining to the procedure for termination of farm tenancies.[98]

This legislation, which is now codified as sections 562.5 and .6, as amended, of the Iowa Code, provides that:

> 562.5 TERMINATION OF FARM TENANCIES. In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March, except in cases of mere croppers, whose leases shall be held to expire when the crop is harvested; if the crop is corn, it shall not be later than the first day of December, unless otherwise agreed upon.

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92. The following states provide some form of special procedure for the termination of agricultural tenancies: Alaska, ALASKA STAT. § 34.03.15 (1983 Supp.); Florida, FLA. STAT. ANN. § 83.03 (West 1983) (three months notice requirement); Georgia, GA. CODE ANN. § 61-105 (1981); Illinois, ILL. ANN. STAT. Ch. 110 § 9-206 (Smith-Hurd 1984) (four months notice); Indiana, IND. CODE ANN. § 32-7-1-2 (Burns 1984) (agricultural tenancies are treated as year-to-year leases with three months notice); Iowa, IOWA CODE §§ 262.6-.7 (1983); Kansas, KAN. STAT. ANN. § 58-2506 (1983) (thirty days notice; also a fall planted crops provision); Louisiana, LA. CIV. CODE ANN., art. 2687 (West 1984); Minnesota, MINN. STAT. ANN. § 500.25 (West 1984); Montana, MONT. CODE ANN. § 70-26-201 (1983); Nevada, NEV. REV. STAT. § 40-260 (1983); New Hampshire, N.H. REV. STAT. ANN. § 540.4 (1983) (no special agricultural rule, though nonresidential tenancy treated differently than residential); North Carolina, N.C. GEN. STAT. § 42-23 (1981) (one month notice requirement); North Dakota, N.D. CENT. CODE §§ 47-16-06, 47-16-15 (1983) (one month notice requirement); South Carolina, S.C. CODE ANN. § 27-35-100 (Law Co-op 1983); South Dakota, S.D. CODIFIED LAWS ANN. § 43-32-22-1 (1983) (four months notice by Nov. 1st); Utah, UTAH CODE ANN. § 78-36-4 (1983); Washington, WASH. REV. CODE ANN. § 59-12.035 (1984); Wisconsin, WIS. STAT. ANN. § 704.40 (1984) (90 days notice by remainderman of life tenant).

93. IOWA CODE § 562.6 (1983).

94. *See Termination of Agricultural Tenancies, supra* note 90, at 367-69.

95. *Id.*

96. *Id.*

97. *See,* IOWA STATE PLANNING BOARD, REPORT AND RECOMMENDATIONS OF THE FARM TENANCY COMMITTEE 1938. *See also Termination of Agricultural Tenancies, supra* note 90, at 369-70.

98. *See Termination of Agricultural Tenancies, supra* note 90, at 369. The bill passed was "Agricultural leases, relating to termination of," 203, 48th G.A. Iowa (1939).

> 562.6 AGREEMENT FOR TERMINATION. If an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, the tenancy shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7, whereupon the tenancy shall terminate March 1 following. However, the tenancy shall not continue because of absence of notice if there is default in the performance of the existing rental agreement.[99]

These provisions, which have been the subject of dozens of cases, are regarded as the Magna Carta of farm tenants, and operate to provide a number of basic rights to tenants. First, there shall be a fixed amount of time between notice of termination and the actual termination date.[100] Second, when there is termination, that all farm tenancies will terminate on the same date, March 1.[101] Third, if there is no notice of termination, or the notice provided does not satisfy the statute, the tenancy will be continued under the same terms and conditions.[102]

Shortly after its passage the constitutionality of Iowa's farm tenancy statute was challenged in the case of *Benschoter v. Hakes*.[103] The statute's constitutionality was questioned on the theories that it denied landlords their property without due process of law and that it impaired the right of contract.[104] The Supreme Court of Iowa rejected both challenges holding that the farm tenancy statute was a reasonable exercise of the police power and that the notice requirement did not impair the right of contract.[105] The court determined that the right of contract was left intact because the statute was, by law, merely made part of all farm leases entered into after its enactment.[106] After reviewing the report of the Iowa Farm Tenancy Committee and the dangers associated with farm tenure problems, the court noted the significance of legislative ends in correcting the then existing evils which pervaded farm tenancy arrangements,[107] and concluded that legisla-

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99. IOWA CODE § 562.5-.6 (1983).

100. IOWA CODE § 562.7 (1983), *amended by*, Act of May 26, 1983, § 562.7, 1983 Iowa Legis. Serv. 632 (West).

101. IOWA CODE § 562.6 (1983), *amended by*, Act of May 26, 1983, § 562.7, 1983 Iowa Legis. Serv. 632 (West).

102. *Id.*

103. 232 Iowa 1354, 8 N.W.2d 481 (1943).

104. *Id.* at 1355, 8 N.W.2d at 483.

105. *Id.* at 1361-64, 8 N.W.2d at 485-87.

106. *Id.* at 1364, 8 N.W.2d at 487. The court noted that the statute had been "in force for more than a year before the execution of the lease involved in this case." *Id.* The statute is incorporated into the lease as an additional term of the lease. *Id.*

107. *Id.* at 1363, 8 N.W.2d at 486.

tion aimed toward those ends clearly fell within the police powers of the state.[108] The court commented, in language as timely today as when written over 40 years ago, that:

> It is quite apparent that during recent years the old concept of duties and responsibilities of the owners and operators of farmland has undergone a change. Such persons, by controlling the food source of the nation, bear a certain responsibility to the general public. They possess a vital part of the national wealth, and legislation designed to stop waste and exploitation in the interest of the general public is within the sphere of the state's police power. Whether this legislation has, or will in the future, accomplish the desired result is not for the court to determine. The legislature evidently felt that unstable tenures lead to soil exploitation and waste. The amendment aims at security of tenure and it is therefore within the police power of the State.[109]

In addition to the question of the constitutionality of the farm tenancy statute, the court in *Benschoter* determined which tenancies the notice requirements apply to.[110] The question faced by the court was whether the notice requirements applied to only tenancies at will and excepted all farm tenancies that provided a fixed termination date, or whether it applied to both.[111] The first sentence of section 562.6, which predated the 1939 amendment, provided the basis for the former argument.[112] Such an interpretation, however, would have severely limited the application of the law, and in effect would have constituted a reduction in the rights of tenants. This is true because at common law, farm leases that were tenancies at will were required to provide six months notice before termination.[113] After a review of previous legislation on this question, the court concluded that the section is not ambiguous, and that the legislative intent was to apply notice requirements to all farm tenancies, whether for a term or at will.[114] This conclusion was not without dissent,[115] and in fact was contrary to the prediction of a major law review article published on the subject just two years prior to the opinion.[116] The majority, however, found ample support, both legal and social, for its conclusion. This decision, in all candor, probably reflected both a

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108. *Id.*
109. *Id.* at 1363-64, 8 N.W.2d at 487.
110. *Id.* at 1356, 8 N.W.2d at 483.
111. Id.
112. Id.
113. *See Termination of Agricultural Tenancies, supra* note 90, at 371-76.
114. Benschoter v. Hakes, 232 Iowa at 1358, 8 N.W.2d at 484.
115. *Id.* at 1364-81, 8 N.W.2d 487-95.
116. *See Termination of Agricultural Tenancies, supra* note 90, at 372. In that analysis the commentator saw the question differently than the *Benschoter* court. He asked whether the statute would embrace tenancies at will, as well as tenancies for a term, concluding that "it seems improbable that the court would so interpret the amendment." *Termination of Agricultural Tenancies, supra* note 90, at 372.

study of the law and the majority's interpretation of the farm tenure condition and its social impact at that time.

The effect of the *Benschoter* decision is to make the notice requirements of chapter 562 applicable to all farm tenancies, both written and oral, both term and at will, except those specifically excluded from its application.[117] As a result of this decision the legal questions in most disputes concerning the effect of the notice provision focus on: (1) whether the lease arrangement is subject to the notice requirement, or whether it fits one of the statutory exclusions; (2) if notice is required, whether proper notice has been given; (3) if no notice was given, whether there was a justification for failure to notify or for proper notice.

B. *Notice—When and How Provided*

In lease situations where the notice requirements of section 562.2 apply, compliance with the statutory requirements of how and when that notice must be provided is crucial to making the notice effective.[118] In early cases interpreting section 562, the court held compliance with section 562.7 to be mandatory.[119] The provisions for the logistics of notice are set forth in section 562.7, which essentially requires that notice must be given by September 1 to terminate the lease for the following crop year.[120] This section provides three methods for giving notice: (a) delivery and acceptance; (b) personal service or publication; and (c) mail.[121] Not surprisingly, there have been a number of cases interpreting these provisions to determine if a landlord's actions were in compliance with the statutory requirements.[122] In addition, these provisions have been the subject of two recent legislative changes which merit discussion.[123]

When the present system of notice of termination for farm tenants was originally adopted by the Iowa legislature the statute required notice by November 1 rather than the present September 1 date.[124] In 1973, section 562.7 was amended to require notice by September 1.[125] This amendment and its effect on written leases executed prior to the change was the subject of a dispute in *Denton v. Moser*.[126] The case involved a written five-year lease entered into in 1968 to run from March 1, 1969 to March 1, 1974, which

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117. Benschoter v. Hakes, 232 Iowa at 1358-61, 8 N.W.2d 484-85.

118. *See* Leise v. Scheibel, 246 Iowa 64, 67 N.W.2d 25 (1954).

119. *Id.* at 66, 67 N.W.2d at 26.

120. IOWA CODE § 562.7 (1983).

121. *Id.*

122. *See infra* notes 126-51 and accompanying text.

123. *See infra* notes 124-25, 151 and accompanying text.

124. The sentence relating to farm tenants was added in 1939, *see* Acts 1939 (48 G.A.) Chapter 235, § 1, in Code 1939 § 1061.

125. Acts 1973 (65 G.A.) Chapter 280, § 1.

126. 241 N.W.2d 28 (Iowa 1976).

provided for cancellation during that period upon the payment of $5,000 and for notice of termination to be given in any event by November 1 for termination on the following March 1.[127]

The lease ran the full five years without cancellation, but on September 8, 1973, the landlord sent the tenant a notice of termination.[128] The tenant refused to vacate and in the subsequent lawsuit argued that the 1973 amendment which became effective July 1 required notice by September 1, which had not been done in this case.[129] The landlord unsuccessfully argued that the contract terms controlled over the statute and that estoppel applied.[130] What the court determined to be the main issue was whether the amendment to section 562.7 applied retroactively to existing leases such as this, or whether it applied only prospectively.[131] The court ruled that absent any sign of legislative intent on this question, resolution of the issue depended on whether the amendment related merely to procedure and remedy, in which case it could be applied retroactively.[132] If, however, it related to a substantive right, it should be given only prospective application.[133] The court concluded that:

> We are satisfied and hold section 562.7 deals only with procedure and remedy. The notice provision merely describes the means by which a landlord can terminate a farm tenancy. It in no way alters or destroys the substantive provisions of the contract which exist without regard to the statute. All it does is require notice to be given and provides for a one-year continuance of the lease if notice is not forthcoming. No rights are cut off, merely postponed.[134]

The 1973 amendment and *Denton v. Moser* may have firmly established when notice must be given, but the manner in which it is given has been the subject of recent litigation and legislation.[135] Even though the statute establishes three methods for providing notice, the simplest and most commonly used method is by mail. While mail may be the most commonly used method three cases of recent vintage demonstrate the types of difficulties that even mailed notice can generate.[136] In a 1978 case, a landlord attempted to terminate a lease by sending the notice by restricted certified mail.[137] The tenant, however, refused to accept it and the notice was returned to the

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127. *Id.* at 29-30.
128. *Id.* at 30.
129. *Id.*
130. *Id.* at 30-31.
131. *Id.* at 31.
132. *Id.*
133. *Id.*
134. *Id.* at 32.
135. *See infra* notes 136-51 and accompanying text.
136. *See infra* notes 141-50 and accompanying text.
137. Long v. Crum, 267 N.W.2d 407, 411 (Iowa 1978).

sender marked "Returned to Sender."[138] The court ruled that "[u]pon proof of a tenant's refusal to accept a notice of termination . . . the statute is satisfied and notice becomes effective."[139] The court stressed, however, that "the proof must show a *refusal* to accept."[140]

The next year, the court was provided an opportunity to show that it was serious when it said proof of refusal was required.[141] In *Escher v. Morrison*[142] a landlord twice attempted to give notice by restricted certified mail under section 562.7(3).[143] Both letters were returned in early September marked "unclaimed," apparently due to the use of a wrong address for the tenant.[144] The court held that, in the absence of a refusal to accept mailed notice "where the notice is not delivered and is returned unclaimed to the sender, service of the notice is incomplete."[145]

The degree to which the Iowa Supreme Court will interpret the provisions of notice strictly was indicated plainly in the 1982 case of *Buss v. Gruis*.[146] In that case a landlord attempted to mail notice of termination to the tenant in July, but used certified mail as opposed to the "restricted certified mail" required at that time by the statute.[147] The letter was not delivered to the addressee but rather to an adult son who signed for it.[148] The evidence indicated that prior to September 1 the tenant had in fact received the notice from the son.[149] In a subsequent dispute over possession of the property the court held that the notice had not complied with the terms of the statute and thus was not effective, and the lease continued for another year.[150] The next year the legislature amended section 562.7(3) which now allows for service by certified mail.[151] The amendment was undoubtedly related to the result in *Buss v. Gruis*.[152]

C. *Effect of Statute on Oral Leases*

As noted above, the common practice of using oral leases for agricul-

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138. *Id.*

139. *Id.*

140. *Id.* (emphasis original). The court made it clear the burden of providing proof of refusal was to be borne by the party claiming compliance with section 562.7. *Id.*

141. Escher v. Morrison, 278 N.W.2d 9 (Iowa 1979).

142. 278 N.W.2d 9 (Iowa 1979).

143. *Id.* at 10.

144. *Id.*

145. *Id.* at 11.

146. 320 N.W.2d 549 (Iowa 1982).

147. *Id.* at 550.

148. *Id.*

149. *Id.*

150. *Id.* at 552.

151. Act of May 26, 1983, § 562.7. 1983 Iowa Legis. Serv. 63 (West).

152. For earlier cases dealing with the interpretation of section 562.7 see Snyder v. Abel, 235 Iowa 724, 17 N.W.2d 401 (1945), and Welch v. Keeran, 233 Iowa 499, 7 N.W.2d 809 (1943).

tural land creates an added potential for legal disputes.[153] The operation of oral leases is perhaps enhanced by the fact that the notification requirement and the resulting continuation or extension of the lease term applies to a lease agreement "whether in writing or not."[154] The Iowa courts have frequently dealt with oral farm leases and in so doing have established a number of basic principles.

The statute of frauds provides that as to contracts "for the creation or transfer of any interest in lands, except leases for a term not exceeding one year" no evidence of the contract is admissible unless in writing itself.[155] Clearly, oral leases of a term not exceeding one year are valid.[156] Likewise, an existing lease, either written or oral, can be validly extended or renewed by a parol agreement for a term not exceeding one year.[157] Further, "an oral lease for a term of not more than [one] year is valid even though the term is to commence at a future time."[158]

The Iowa Supreme Court has held that only the parties to a transaction may rely on the statute of frauds to defeat existence of an agreement.[159] As a result, in a case involving a dispute over the condemnation of a tract of farm land, the state was not permitted to rely on the statute of frauds to prevent introduction into evidence the existence of a covenant to renew an oral lease between a father and a son.[160] The state argued that the statute of frauds would operate to render it impossible to establish an oral lease of a term greater than one year.[161] But in that case, the court recognized the tenant's oral covenant with his father to renew the lease for the length of his life, and allowed the tenant to use the life expectancy of his landlord father as evidence of the value of the lease in the condemnation proceeding.[162] The court reached this conclusion because it had previously ruled that section 562.7 "deals only with procedure and remedy" and merely described how a landlord can terminate a farm tenancy.[163] The farm tenancy statute did not operate to alter or destroy the "substantive provisions of the contract which exist without regard to the statute."[164] Based on the holding in the *Denton* case the court in *Fritz v. Iowa State Highway Commission* concluded:

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153. *See supra* text accompanying notes 10-12.

154. IOWA CODE § 562.6 (1983).

155. *Id.* § 622.32(3).

156. Baie v. Nordstrom, 238 Iowa 866, 869, 29 N.W.2d 211, 213 (1947).

157. *Id.* Nor would such a lease with extensions appear to fall within the limitations of Article 1, Section 24 of the Iowa Constitution outlawing agricultural leases longer than twenty years, or section 558.44, which requires the revocation of farm leases of longer than five years.

158. Baie v. Nordstrom, 238 Iowa at 869, 29 N.W.2d at 213. *See also* Jones v. Marcy, 49 Iowa 188, 190 (1878); Sobey v. Brisbee, 20 Iowa 105, 107 (1865).

159. Lamb's Estate v. Morrow, 140 Iowa at 96, 117 N.W. at 1121.

160. Fritz v. Iowa State Highway Comm'n, 270 N.W.2d at 840.

161. *Id.* at 839.

162. *Id.* at 840.

163. *Id.* at 839-40 (citing Denton v. Moser, 241 N.W.2d 28, 32 (Iowa 1976)).

164. *See* Denton v. Moser, 241 N.W.2d at 32.

> It is clear that the statutes providing for the termination of farm tenancies is not preemptory of the contractual provisions of leases and that the uncontroverted agreement between the parties for the term of the oral lease to continue through the life of the lessor was properly before the jury to determine the measure of recovery.[165]

Two questions that stem from the use of oral leases are: what terms are covered in such leases; and whether they must take on any particular form. Clearly, whatever terms can be established, either by agreement of the parties or by the evidence, will be seen as part of the lease.[166] The court has ruled that "[n]o particular form of words is necessary to constitute a lease, especially an oral lease between parties who are not trained in legal phraseology."[167] As a result, whatever is sufficient to show that the parties intended that one would divest himself of possession of a piece of property and that another would take possession of it, for a given time, amounts to a lease.[168]

D. *Exceptions to the Farm Tenancy Statute*

While the court has interpreted the notice requirements as being mandatory, this does not mean that the requirement applies in all situations or that it must be complied with in order to terminate a lease in all cases. There are two types of situations in which the requirements do not apply: statutory exceptions and judicially recognized common law exceptions to notice. Because the question in many lease disputes turns on whether the facts fit either of these classifications, it is important to consider them in more detail.

1. *Statutory Exceptions to Notice Requirements*

By its terms there are several specific situations to which section 562.6 does not apply. Specific statutory exceptions are provided: (a) where the farmer is a "mere cropper"; (b) where the tenant is not "occupying and cultivating" the property; (c) where the lease involves a tract of less than forty acres; and (d) where there is a "default in the performance of the existing rental agreement."[169] The court has addressed these exceptions in a number of cases.[170]

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165. Fritz v. Iowa State Highway Comm'n, 270 N.W.2d at 840.

166. *See* Baie v. Nordstrom, 238 Iowa at 871, 29 N.W.2d at 212-13.

167. *Id.* at 872, 29 N.W.2d at 214.

168. *Id. See also* Putnam v. McClain, 198 Iowa 287, 289, 199 N.W. 261, 262 (1924); 49 AM. JUR. 2d *Landlord & Tenant* § 11 (1970).

169. IOWA CODE § 562.6 (1983), *as amended by*, Act of May 26, 1983, § 562.6, 1983 Iowa Legis. Serv. 632 (West).

170. *See infra* notes 171-228 and accompanying text.

a. "Mere Cropper"

The reference to the party operating the farm being a "mere cropper" is itself a reference to the distinction between share croppers "and tenants."[171] Although sharecropping has not been as common in Iowa as in many southern states, this provision was included in the language of the Farm Tenancy Committee's proposal.[172] Thus, the above distinction is often an important factor in resolving questions of notice of termination. The Iowa Supreme Court has ruled that whether or not a given contract makes the operator a tenant or a mere cropper depends on the intentions of the parties as evidenced by the terms of the contract, the subject matter, and surrounding circumstances.[173] In *Paulson v. Rogis*,[174] the court adopted the reasoning of a Wisconsin case establishing that there is a clear difference between a tenant and a cropper.[175] While a tenant has an estate in land for a term and has a right of property in the crop, a cropper has no interest in the land but merely "works [the land] in consideration of receiving a portion of the crop[s]" as wages.[176]

In *Dopheide v. Schoeppner*,[177] the court faced this issue in a case in which a party who claimed to be a tenant was attempting to regain possession of a farm on the basis that no notice to terminate had been provided.[178] The owner of the property claimed that the party was a mere cropper not entitled to notice.[179] The court ruled that it could not say as a matter of law that the party was a cropper, that in this situation it was a question for the jury based on the "true intention of the parties to be determined from all the circumstances surrounding the making of the agreement."[180] The court ruled that just because there was "an agreement for a division of crops between the owner of land and the person working it does not alone determine the status of the parties."[181] This is an important consideration, since otherwise all crop share leases would be seen as involving croppers and not subject to the notice requirement.[182]

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171. *See generally* Annot., 95 A.L.R. 3d 1013 (1979). *See also* Comment, *Landlord-Tenant—Termination of Agricultural Tenancy—"Cropper" Defined*, 42 IOWA L. REV. 650 (1957) [hereinafter cited as *Landlord-Tenant-Termination*].

172. *See Termination of Agricultural Tenancies*, *supra* note 90, at 372.

173. Paulson v. Rogis, 247 Iowa 893, 895, 77 N.W.2d 33, 35 (1956) (quoting 52 C.J.S., *Landlord & Tenant*, § 797 (1968). *See also* Dopheide v. Schoeppner, 163 N.W.2d 360 (1968).

174. 247 Iowa 893, 77 N.W.2d 33 (1956).

175. *Id.* at 895, 77 N.W.2d at 35, (citing Strain v. Gardner, 61 Wis. 174, 21 N.W. 35 (1884)).

176. *Id.* at 895, 77 N.W.2d at 35 (quoting BLACK'S LAW DICTIONARY 450 4th ed. 1951).

177. 163 N.W.2d 360 (1968).

178. *Id.* at 362.

179. *Id.*

180. *Id.* (citations omitted).

181. *Id.*

182. Crop share leases depend upon division of the crops between the landlord and the

The court also rejected the view that the question could be determined by reference to whether or not the party lived on the land.[183] While occupancy could be considered a factor, the *Dopheide* opinion delineated a number of additional factors that should be considered in determining if a party is a cropper, including: "who has the right of possession; who furnishes the supplies; who divides off the crops; how long the agreement extends; the extent of control exercised by the owner; and, if the agreement is in writing," the technical words used.[184] These factors have established a relatively clear test for determining whether a party is a cropper or a tenant entitled to notice of termination. The form of agricultural operation in Iowa today that most closely resembles a cropper is a custom operator. A custom operator, however, is generally paid a fixed amount in cash rather than a percentage of the crop.

b. "Occupying and Cultivating"

The statute also provides that a farm tenant must be "occupying and cultivating" land in order to fall within the protection of the notice requirement.[185] In 1980, the court issued a somewhat surprising ruling which has created a potential trap for tenants, and which may run contrary to commonly held beliefs concerning the operation of the statutory notice provisions.[186] In *Morling v. Schmidt*,[187] the court faced a dispute between an owner of agricultural land and a tenant under an oral pasture lease to graze the property.[188] The landlord began to improve the property with the intention of cultivating it the next year.[189] The tenant's cattle had been removed for the winter, and no statutory notice of termination was provided to the tenant.[190] When the tenant brought the cattle back onto the property a dispute arose over who had rightful possession of the land.[191] The trial court ruled in favor of the landlord in the subsequent forcible entry and detainer action, noting that the tenant's defenses under section 562.5 were invalid since the land was not under cultivation.[192] The Iowa Supreme Court adopted this reasoning, stating "we agree that notice under section 562.5 is

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tenant as the means for payment of rent. *See* Looney, *supra* note 8.

183. Dopheide v. Schoeppner, 163 N.W.2d at 363 (citing Paulson v. Rogis, 247 Iowa at 895, 77 N.W.2d at 35).

184. *Id.* at 36.

185. IOWA CODE §§ 562.5-.6 (1983).

186. Morling v. Schmidt, 299 N.W.2d 480 (Iowa 1980). *See also* Paulson v. Rogis, 247 Iowa at 895, 77 N.W.2d at 35 (construing the words "occupying and cultivating").

187. 299 N.W.2d 480 (Iowa 1980).

188. *Id.* at 481.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

required only when land is both occupied and under cultivation."[193] The land in this case was not cultivated, rather it was used for grazing only.[194]

As a result of this ruling, the court has created a distinction as to application of notice requirements between leases that include raising crops and those that are merely for "grazing."[195] There was no discussion in the opinion supporting the conclusion reached, so the possible argument that the proper management of pasture land can involve cultivation was not discussed.[196] The case does indicate that those individuals who graze leased land, such as the pasture lease in *Morling*, or common cornstalk leases for post-harvest gleaning, are not automatically entitled to notice. If such arrangements employ written leases, which would generally include a provision for statutory notice, the result would probably differ. For commonly used oral grazing leases, *Morling* presents a significant limitation on the protection of statutory notice.

The *Morling* decision for the first time made the outcome of a notice requirement case pivot on the meaning of the word "cultivation."[197] As a result, a question is raised as to whether a similar outcome might occur if judicial focus is placed on the word "occupying" found in section 562.5 and 562.6.[198] The issue would be whether a tenant who did not physically reside on the leased tract of land would be entitled to statutory notice of termination. In fact, one early commentator on the newly enacted provision opined that a lessee who did not occupy or reside on the farm fit within the broad definition of "cropper" in the statute and was not protected by its terms.[199]

In *Paulson v. Rogis*,[200] the court appears to have answered that question, concluding that "occupy" does not necessarily mean "reside."[201] The case involved a dispute over a lease arrangement whereby the tenant had stayed on the farm for a number of years after expiration of a written lease.[202] In attempting to terminate the tenancy without statutory notice the landlord argued that because the tenant "did not live on the land he leased he was a field tenant or cropper."[203] The court distinguished the cases offered in support of this position, noting that each had involved situations where the tenant was assumed to be a cropper and also that all had preceded enactment of the statute.[204] Instead the court focused on the legal

193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*
198. IOWA CODE §§ 562.5-.6 (1983).
199. *Termination of Agricultural Tenancies, supra* note 90, at 376.
200. 247 Iowa 893, 77 N.W.2d 33 (1956).
201. *Id.* at 895, 77 N.W.2d at 35. *See also supra* notes 171-84 and accompanying text.
202. Paulson v. Rogis, 247 Iowa at 894, 77 N.W.2d at 35.
203. *Id.*
204. *Id.* at 895, 77 N.W.2d at 35.

definition of "occupy," noting that "occupancy does not necessarily include residence."[205]

Interestingly, for the purposes of the dispute before it, the *Paulson* court said "we find no particular significance in the use of the words 'and cultivating.' "[206] Thus, while *Morling* has raised attention as to the effect of the entire "occupying and cultivating" phrase, it would appear that the *Paulson* decision provides significant guidance only on the "occupy" versus "reside" question.[207] In fact the *Morling* decision cites *Paulson* in support of its position.[208]

c. "Less than 40 Acres"

The effect of this clause of section 562.6 is to provide an exception for small tracts, and remove small leaseholds from the notice provision.[209] Perhaps it is because this provision of the statute is so clear on this point that there have been no cases involving disputes focusing on the number of acres held. This, however, does not lessen the impact of the provision, as there are undoubtedly numerous lease arrangements in the state that involve tracts of less than forty acres, the tenants of which are not entitled by statute to the commonly expected notice of termination.[210]

d. Default in Performance

The notice provision also includes a clause stating that: "the tenancy shall not continue because of absence of notice if there is default in the performance of the existing rental agreement."[211] This provision offers landlords another situation in which notice is not required, or an exception which can be used as a justification for failure to give notice. The question that arises under this provision is its breadth, that is, what constitutes a "default in the performance of the existing rental agreement."

Clearly, the most common form of default that would fall under this provision is the failure of the tenant to pay the rent due the landlord. The Iowa Supreme Court has ruled that it was not the intention of the legislature to require termination of a lease by notice to a tenant who did not carry out the rental agreement or who willfully refused to pay the rent.[212] In *Riggs*

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205. *Id.*

206. *Id. See also Landlord-Tenant—Termination, supra* note 171.

207. Morling v. Schmidt, 299 N.W.2d at 481; Paulson v. Rogis, 247 Iowa at 895, 77 N.W.2d at 35.

208. Morling v. Schmidt, 299 N.W.2d at 481.

209. IOWA CODE § 562.6 (1983), *as amended by*, Act of May 26, 1983, § 562.6, 1983 Iowa Legis. Serv. 632 (West).

210. *Id.*

211. *Id.*

212. Riggs v. Meka, 236 Iowa at 123, 17 N.W.2d at 103-04.

v. Meka,[213] a landlord had agreed to extend for another year a lease with a tenant who was slow in paying rent, but only on the condition that the rent would be paid and that this would be the last year of the lease.[214] The landlord attempted to serve notice of termination but was unable to do so due to an accident suffered by the tenant.[215] The tenant, however, refused to pay the rent or to leave the farm on March 1, arguing that the required statutory notice of termination had not been given.[216] The court ruled that the tenant by his conduct and testimony had waived the right to notice.[217] The court also went on to find as an independent grounds supporting the lack of notice that "in failing to pay the rent at the times required in the lease and in the promissory notes" the tenant defaulted in the performance of the existing rental agreement as provided in the statute.[218]

One issue that could arise under the default provision is whether a lease is automatically terminated by a failure to pay rent or whether the landlord must treat the lease as being broken in order for it to terminate. In a nonfarm lease case, a lease for quarrying sand and gravel included a provision that failure to make rental payments would terminate the lease; the court held this clause to be a condition subsequent which gave the landlord the option to terminate but did not give the tenant the right to terminate the lease by nonpayment of rent and thereby benefit by their own nonperformance.[219] In the context of farm leases it would thus appear that a default in payment would excuse a landlord's failure to give notice of termination; the landlord, however, could choose to ignore the default and continue the lease.

An important but yet unsettled area of law concerning the default clause exception to the statutory notice requirement is the scope of the exception. In other words, the issue is whether a simple breach of the terms of the lease, rather than nonpayment of rent, is sufficient to justify the omission of statutory notice of termination.[220] For example, suppose the party breached the terms of a written lease concerning how the harvesting would be done, or when the road ditches would be mown. Would these types of breaches fit within the default clause? The Iowa Supreme Court had an opportunity to answer this question in *Evans v. Davies*[221] in which the failure

213. 236 Iowa at 118, 17 N.W.2d at 101.

214. *Id.* at 119-20, 17 N.W.2d at 102.

215. *Id.* at 121, 17 N.W.2d at 103.

216. *Id.* at 122, 17 N.W.2d at 103.

217. *Id.*

218. *Id.* at 123, 17 N.W.2d at 104. *See also* Becker v. Rute, 228 Iowa 533, 293 N.W. 18 (1940) (a nonagricultural lease).

219. Vincent v. Kaser Constr. Co., 255 Iowa 1141, 1146, 125 N.W.2d 608, 610 (1963).

220. *See* Becker v. Rute, 228 Iowa at 537, 293 N.W. at 18. The court in *Becker* held that a clause in a written nonagricultural lease providing for the forfeiture of the lease upon the violation of "any provision" in the lease included all terms, covenants, and conditions in the lease, including the provision for payment of rent. *Id.*

221. 232 Iowa 1207, 7 N.W.2d 780 (1943).

to fix fences and the cutting of a hole in a barn were alleged to constitute a default of the lease.[222] The case, however, was decided on the issue of estoppel rather than default.[223]

It would seem that regardless of the nature of the breach the safest route for a landlord to follow, if he feels there has been a breach, would be to notify the tenant of the exact nature of the breach and state that it is being considered as sufficient grounds to terminate the lease. This was the approach that was successfully followed in *McElwee v. DeVault*,[224] where a landlord served notice of termination due to a breach of the lease terms several months into the first year of a three year lease.[225] The court supported the landlord's right to terminate the lease for a breach even under a lease for a term of years.[226]

In the *McElwee* situation, where there was a breach prior to September 1 and a written lease was used, the case is not difficult to resolve.[227] This issue, however, becomes more difficult where the alleged breach or default occurs after September 1, such as in the harvesting of the crops, or where the landlord attempts to use the default clause as an after-the-fact justification for failure to provide timely notice.[228] This type of situation may be more common than the former.

Should a landlord be able to terminate a lease upon the breach of its terms if the breach occurs after September 1? The best answer would seem to be yes, but only if the breach can be positively established. The statute requires only that a default occur before absence of notice is excused. Further, the landlord would be in a better position by notifying the tenant of the conduct that is being considered as a breach and by informing the tenant of his intent to treat the lease as terminated, as opposed to simply remaining silent and then later, in a dispute over possession of the property, claim the benefit of the default clause. On the other hand, there does appear to be a potential danger that the default clause can be used as an after-the-fact excuse for failure to provide timely notice. A broad reading of the term "default" to cover any kind of breach that a landlord could imagine in desiring to terminate a lease after September 1 would result in such a problem. Such a development, however, would be contrary to the judicial sanctity given to the notice requirement of section 562.6. As a result, while the resolution of questions such as these must await judicial consideration of appropriate litigation, the substantial judicial precedent for requiring compliance

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222. *Id.* at 1208, 7 N.W.2d at 780.

223. *Id.* at 1208-09, 7 N.W.2d at 780-81. The court declined to address the issue of whether the alleged conduct might be considered a default for purposes of the farm tenancy statute. *Id.* at 1209, 7 N.W.2d at 781.

224. 255 Iowa 30, 120 N.W.2d 451 (1963).

225. *Id.* at 33, 120 N.W.2d at 453.

226. *Id.* at 36, 120 N.W.2d at 454. *See also supra* notes 60-66 and accompanying text.

227. McElwee v. DeVault, 255 Iowa at 32-33, 120 N.W.2d at 451.

228. *See supra* notes 77-82 and accompanying text.

with statutory notice should serve as a bulwark to prevent possible erosion on this front.

2. *Judicially Recognized Exceptions to Notice Requirements*

While chapter 562 may require notice of termination in the agricultural lease context, the courts have recognized a number of theories which have the effect of making notice unnecessary. These theories are based on the conduct of the parties, especially the tenant, and are basically equitable doctrines from the common law. The effect of these exceptions is that, in certain situations, requiring notice would be of no value if the lease has already expired or if the tenant's conduct is such to indicate that the lease is being treated as terminated. These doctrines, which have been the subject of much litigation, are: (a) agreement; (b) waiver and estoppel; and (c) abandonment and surrender.

a. *Agreement and Consent*

One important judicially recognized exception to the requirement of notice of termination is that the parties can agree to terminate the lease voluntarily,[229] just as they can voluntarily agree to extend the lease.[230] In *Crittenden v. Jensen*,[231] the court faced a dispute involving the admitted execution of an agreement terminating the lease, yet the tenant still argued that landlord failed to provide proper notice.[232] Once the agreement had terminated the tenancy, the court ruled, the statute had no application, and thus no notice was required.[233] The court also noted that "[t]his statute does not mean that a landlord and tenant cannot agree to cancel or terminate a lease and that such a termination can only be brought about by serving the notice provided for in the section."[234]

One question that arises is whether the agreement has to be in writing, or whether it can be an oral agreement, established by parol evidence. In *Crittenden*, the agreement was in writing.[235] In any dispute that might arise concerning notice and agreement, proof of the existence of the agreement will be an important element in justifying why no notice was given. Therefore, it makes good legal sense to reduce the agreement to writing. Case law, however, demonstrates that oral agreements can be effective, if problems of proof can be surmounted.

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229. Denton v. Moser, 241 N.W.2d 28, 31 (Iowa 1976).
230. Baie v. Nordstrom, 238 Iowa at 869, 29 N.W.2d at 211-12.
231. 231 Iowa 445, 1 N.W.2d 669 (1942).
232. *Id.* at 447, 1 N.W.2d at 670.
233. *Id.*
234. *Id.*
235. *Id.*

In *Baie v. Nordstrom*,[236] the Iowa Supreme Court looked at the agreement issue from the other perspective, namely, tenants who had received written notice argued the existence of a previous oral agreement to extend the lease and were successful at trial.[237] The court ruled that the statute did not prevent the parties from making a new lease for an additional term, even though the agreement in question preceded the written notice.[238] On that point, the court concluded that:

> where such new lease has been made one party, without the other's consent, cannot avoid it by giving notice of termination under section 562.6. The statute was not intended to, and does not, interfere with the right of the landlord and tenant to contract with reference to possession of the premises.[239]

The court in *Laughlin v. Hall*[240] referred to the concept of agreement as consent, and used the terms interchangeably.[241] The consent situation, however, is somewhat different than that of an agreement because consent usually involves a situation in which the tenant has been notified by the landlord of a proposed change or termination of the agreement, and the party merely consents to this change either through words or actions.[242] As a result, the idea of consent is often used in connection with the judicially recognized exceptions of waiver and estoppel, discussed below.[243]

Another question that may arise concerns the effect of an agreement to terminate on the continuation of the parties' duties and obligations under the lease. Clearly, these duties and obligations would continue until the date of termination of the lease as agreed upon by the parties in the "agreement," which generally, though not necessarily, will be March 1st of the next year.[244]

The court has noted that an agreement to terminate is different than a surrender of the lease.[245] A surrender involves the tenant yielding up the

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236. 238 Iowa 866, 29 N.W.2d 211 (1947).

237. *Id.* at 868, 29 N.W.2d at 212.

238. *Id.*

239. *Id.* at 868-69, 29 N.W.2d at 212.

240. 236 Iowa 990, 20 N.W.2d 415 (1945).

241. *Id.* at 992, 20 N.W.2d at 416.

242. It appears that consent is a much more passive type of behavior than agreement, although the two are closely related. *See, e.g.* Laughlin v. Hall, 236 Iowa 990, 20 N.W.2d 415 (1945).

243. Although consent is much like acquiescence, it is more closely related to agreement than it is to waiver and estoppel because of its voluntary nature. *See* BLACK'S LAW DICTIONARY 672 (rev. 5th ed. 1979). *See also infra* notes 268-88 and accompanying text.

244. Section 562.5 requires that notice of termination fix the date of March 1 of the next year as the end of the lease; but, because a tenancy terminated by agreement does not require notice, the March 1st date is not always legally binding. Common practice, however, is to conform leases to the March 1st termination date. *See* IOWA CODE § 562.5 (1983).

245. Ballenger v. Kahl, 247 Iowa 721, 724-25, 76 N.W.2d 196, 198-99 (1956).

leasehold to the landlord, so that the lease becomes extinct, an occurrence which may arise either by mutual agreement of the parties or by operation of the law.[246] The effect of a surrender is to extinguish all interests of the tenant in the term and, consequently, the rights of the party dependent upon the continuance thereof.[247] When a lease runs for its full term, on the other hand, providing proper notice to terminate or an agreement to terminate does not constitute a surrender which alters the parties' rights and obligations.[248] Thus, in a case involving a long term leasing arrangement which was properly terminated, the fact of termination did not release the tenant from the established duty of shelling and delivering the landlord's share of the crop after the lease period.[249]

The court in *Ballenger v. Kahl*[250] noted that "when the tenancy continues for the full term it is clear there is no surrender" because there is no part of the term left to surrender.[251] The court also held that the tenants' receipt of notice of termination from the landlord was further evidence against a finding of surrender by mutual agreement.[252] The court further noted that, if the landlord had felt there was mutual agreement to terminate, there would have been no need for formal notice.[253]

Perhaps the most significant issue involving the concept of notice, one arising frequently in farm lease matters, is that of when and how the agreement to terminate can be made. This issue is very important because an agreement to terminate obviates the need to provide notice.[254] Thus if an agreement to terminate could be made early enough, for example as a clause in the original lease providing that the parties agreed not to be bound by section 562.6, or agreed that no notice would be required, arguably a landlord could avoid all of the potential worries and pitfalls of complying with the statute. Not surprisingly, the Iowa courts had the opportunity to confront exactly this type of situation, although not until 1983.[255]

In *Schmitz v. Sondag*,[256] a landlord failed to give notice of termination and instead relied on the language of the lease which said, in part, that the lessee:

> covenants with the [lessor] that at the expiration of the term of [the] lease he will yield up the possession to the first party, without further demand or notice . . . and the [lessee] specifically waives any notice of

246. *Id.* at 725, 76 N.W.2d at 198.
247. *Id.* at 724-25, 76 N.W.2d at 198.
248. *Id.*
249. *Id.* at 726, 76 N.W.2d at 199.
250. 247 Iowa 721, 76 N.W.2d 196 (1956).
251. *Id.* at 725, 76 N.W.2d at 199.
252. *Id.*
253. *Id.*
254. *See* Schmitz v. Sundag, 334 N.W.2d 362, 364 (Iowa Ct. App. 1983).
255. *Id.*
256. 334 N.W.2d 362 (Iowa Ct. App. 1983).

> cancellation or termination of said lease and specifically agrees that this lease shall not be extended by virtue of failure to give notice of cancellation or termination thereof.[257]

Clearly, the landlord and his lawyer in this case thought they had found the perfect answer to avoid complying with statutory notice, by making the tenant contract the protection away in the lease. This approach, however, was clearly out of step with the judicial sanctity evidenced for the notice requirement in such cases as *Benschoter*[258] and *Dethlefs v. Carrier*.[259] Not surprisingly the court of appeals did not accept the argument that this lease clause constituted either valid notice of termination in compliance with the statute, or an agreement that would exclude the lease from the statutory requirement.[260] The court noted that indeed it had been previously held that parties may agree to terminate a lease; but in those cases, the agreement had always been subsequent to the entering of the original lease. Thus, these cases did not support accomplishing the same result by including a provision purporting to terminate the lease in the original lease.[261] The court ruled that:

> defendant asks us to uphold a provision in the original lease which, in essence, nullifies the effect of section 562.7. We do not believe that the legislature intended such a result. Nor can we agree that this statutory protection for tenants may be so readily abrogated. We hold that plaintiff, if found to be a tenant, was entitled to notice.[262]

The *Schmitz* case gave the court of appeals an opportunity to reaffirm judicial support for the notice requirements of section 562.6.[263] One surprising aspect of the case is that one judge, in a separate concurrence, accepted the landlord's theory and argued that the case involved the clearest example of waiver of statutory notice that could be imagined.[264] While that opinion perhaps demonstrates a failure to understand the spirit of the court's earlier cases interpreting the legislative intent and the purpose of the notice requirement, it does underscore the majority's paternalistic view as to the notice protection. This view is so strong that the court will not let parties contract the protection away.[265]

Unfortunately the *Schmitz* case leaves unanswered several questions concerning "mutual agreement" that the court may, in the future, be forced

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257. *Id.* at 364.

258. Benschoter v. Hakes, 232 Iowa 1354, 8 N.W.2d 481 (1943). *See also supra* notes 103-17 and accompanying text.

259. Dethlefs v. Carrier, 245 Iowa 786, 64 N.W.2d 272 (1954).

260. Schmitz v. Sundag, 334 N.W.2d at 365.

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.* at 365 (Donielson, J., concurring).

265. *See id.* at 364-65.

to answer. How subsequent must the agreement be? Is notice to terminate given the day after the lease is signed valid? Can the tenant be required to sign a separate "agreement" to terminate as a condition to signing the lease, or immediately thereafter? As long as landlords and their lawyers attempt to limit the tenant's right to receive the protection of notice, questions such as these will arise. While the answers the court would provide if faced with these questions are not certain, case history suggests that the court will be very hesitant to adopt any approach which limits the effect of the statute. Thus it appears that any "agreement" that was made a condition to entering the lease probably would not be seen as mutual or voluntary and therefore would be considered invalid. Likewise, other attempts to contract away the protection probably would receive little judicial support.

Even with the court's continued support for notice requirements, and its statements indicating that the statute is aimed at the "security of tenure,"[266] the reality of farm leasing practices in Iowa indicates that some landlords and their attorneys have devised one effective method of essentially nullifying the purpose if not the effect of section 562.6. This result is achieved simply by routinely providing statutory notice of termination to all tenants on an annual basis, regardless of whether the lease might later be extended. On the one hand, this practice allows the landlord to reevaluate the tenant's performance after harvest and to renegotiate a new lease. On the other hand, it subjects the tenant to uncertainty as to whether he will in fact have a farm for the next year. If this practice is widely adopted, the legislature may indeed be forced to reconsider section 562.6 and perhaps draft statutory language which would reinvigorate the purpose and effect of the protection for tenants.

b. Waiver and Estoppel

The doctrines of waiver and estoppel are other judicially recognized exceptions to statutory notice, which focus upon the actions and behavior of the tenant.[267] The determination of whether waiver or estoppel has been established entails an evidentiary review of the tenant's conduct. The Iowa courts have found evidence of waiver and estoppel in a number of cases, which provide guidance with respect to these areas.[268]

The Supreme Court of Iowa has held that "estoppel is based upon the idea that one who has made a certain representation should not thereafter be permitted to change his position to the prejudice of one who has relied thereon."[269] In a 1942 farm tenancy case, the doctrine of equitable estoppel

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266. Benschoter v. Hakes, 232 Iowa at 1364, 8 N.W.2d at 487.

267. *See* Smith v. Coutant, 232 Iowa 887, 891, 6 N.W.2d 421, 425 (1942).

268. *See, e.g.*, Laughlin v. Hall, 236 Iowa 990, 20 N.W.2d 415 (1945); Smith v. Coutant, 232 Iowa at 891, 6 N.W.2d at 425.

269. Seymour v. City of Ames, 218 Iowa 615, 619, 255 N.W. 874, 876 (1934).

was stated to be "based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments, to the injury of one to whom they were directed and who reasonably relied thereon."[270]

In the agricultural lease context, the doctrine of estoppel generally comes into question after a landlord has taken action to inform a tenant of a desire to change or terminate the lease, to which the tenant agrees or fails to object. Often the landlord will act in reliance on this conduct, such as by selling the property or by leasing the property to a different tenant, at which time the tenant may attempt to stand on the terms of the lease or the protection of the statute. The effect of the doctrine of estoppel is to prevent the tenant from claiming that protection. For example, in *Wetzstein v. Dehrkoop*,[271] a classic farm lease estoppel case, the landlord notified the tenant of a desire to change the payment terms of a lease, to which the tenant responded that he did not want to rent the farm under the new terms.[272] The lease involved a special clause, apparently negotiated by the tenant, requiring notice to terminate by July 1 as opposed to the then required November 1.[273] After the landlord learned that the tenant did not want the farm for another year under the new terms, the landlord leased the farm to another party.[274] The court found that there was sufficient evidence of conversations and subsequent acts by the tenant, indicating that he knew the lease was terminated, to find the tenant estopped from asserting that the landlord's failure to give proper notice prevented termination of the lease.[275]

In *Laughlin v. Hall*,[276] a tenant's response of "I don't think I do" to a landlord's inquiry as to his desire to rent the farm for an additional year, together with the tenant's failure to take action in response to the obvious rental of the property to another party, were held sufficient to establish estoppel.[277] Similarly, where a tenant told his landlord that notice would not be necessary, made arrangements to remove his property from the premises, and permitted the landlord to enter the premises to fall plow, the court held that estoppel was established.[278]

The ability to establish estoppel depends upon evidence of the transactions between the parties and their conduct. Therefore, claims of estoppel are not always successful, as evidenced in *Leise v. Schiebel*.[279] This case in-

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270. Smith v. Coutant, 232 Iowa at 891, 6 N.W.2d at 424.
271. 241 Iowa 1237, 44 N.W.2d 695 (1950).
272. *Id.* at 1239, 44 N.W.2d at 696.
273. *Id.* at 1238, 44 N.W.2d at 696.
274. *Id.* at 1239, 44 N.W.2d at 696.
275. *Id.* at 1244-45, 44 N.W.2d at 699.
276. 236 Iowa 990, 20 N.W.2d 415 (1945).
277. *Id.* at 995, 20 N.W.2d at 416.
278. Smith v. Coutant, 232 Iowa 886, 6 N.W.2d 421 (1942). *See also* Riggs v. Meka, 236 Iowa 118, 17 N.W.2d 101 (1945); Evans v. Davies, 232 Iowa 1207, 7 N.W.2d 780 (1943).
279. 246 Iowa 64, 67 N.W.2d 25 (1954).

volved what the court referred to as a rather nebulous leasing arrangement which went sour.[280] While there was some evidence of conversations concerning the termination of the lease, the court found that:

> the record [was not any] more favorable to [the] plaintiff on the subject of estoppel. If we were to assume there was anything in defendants' conversations and conduct sufficient to form the foundation for a claim of estoppel, there seems to be no testimony that plaintiff relied on it and was induced by such reliance to delay or forego giving the statutory notice of termination.[281]

A similar result was reached in *Davenport Bank & Trust Co. v. Krenz*,[282] in which the plaintiff argued that several letters and a failed attempt to provide statutory notice were sufficient evidence of estoppel to allow termination of a three year lease during the second year.[283] The court, however, found there was no evidence of reliance and thus no estoppel.[284] The variety of theories and outcomes represented by these estoppel cases clearly demonstrates that the ability of the court to find estoppel is entirely dependent on the actions and conduct of the parties and underlines the importance of establishing an evidentiary record to support the claim of estoppel.

Waiver is a doctrine closely related to that of estoppel. In fact, in most cases the courts have treated "waiver and estoppel" as a unitary theory sanctioning failure to give notice.[285] Even though the doctrines are closely related and both are often present in a given set of facts, there are distinctions between the two. In *Smith v. Coutant*, a case holding waiver to be a sufficient and separate grounds for lack of notice, the court noted the relation between waiver and estoppel: "[t]he doctrines of waiver and . . . estoppel are closely related and the dividing line between them is oftentimes difficult to locate."[286] The court noted that "[s]ome elements are common to both, and the relief asked is usually the same in essentials."[287] The court noted that it has defined waiver as the

> intentional relinquishment of a known right, or such conduct as warrants an inference of such relinquishment . . . and, where conduct is relied upon to constitute waiver, it must appear that the [party] was induced by the association to do or omit some act he would not otherwise have done or omitted.[288]

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280. *Id.* at 67, 67 N.W.2d at 26.
281. *Id.* at 68, 67 N.W.2d at 27.
282. 256 Iowa 1171, 130 N.W.2d 698 (1964).
283. *Id.* at 1175, 130 N.W.2d at 700.
284. *Id.*
285. *See, e.g.*, Laughlin v. Hall, 236 Iowa 990, 994, 20 N.W.2d 415, 416 (1945).
286. Smith v. Coutant, 232 Iowa at 893, 6 N.W.2d at 425.
287. *Id.*
288. *Id.* (citing Hexon v. Knights of Maccabees of the World, 140 Iowa 41, 46, 117 N.W.

As a result, if the actions or conduct of the tenant, especially his statements, indicate an awareness of the right to notice and a relinquishment of it, waiver may be established.[289] Waiver's relationship with estoppel doctrine results from the use of the conduct by the tenant, and the subsequent reliance on it by the landlord, to develop theories that justify the landlord's failure to provide notice.[290] It would appear, however, that a situation could occur in which the tenant's action would amount to a waiver, but in which no estoppel can be established.[291]

c. Abandonment and Surrender

The Iowa courts have recognized other theories concerning the termination of agricultural leases which may obviate the need to give notice. These theories are based on evidence of the tenant's conduct which represents a decision to treat the lease as terminated. One such ground is abandonment of the leasehold. The court has said that "[a]bandonment as applied to leases involves an *absolute relinquishment* of premises by a tenant, and consists of acts or omissions *and an intent to abandon.*"[292] This intent to abandon must include a real or symbolic delivery of possession of the entire property to be effective.[293] Thus, where the landlords of a deceased tenant argued that the sale of the tenant's farm machinery indicated an intent to abandon the lease the court held that the evidence showed "neither a real nor symbolic intent on the part of the defendants to abandon . . . the leased premises."[294]

A closely related theory is that of surrender of the lease.[295] A surrender is a yielding up of "the estate to the landlord so that the leasehold interest becomes extinct by mutual agreement between the parties."[296] A surrender can be made either by agreement of the parties or by operation of law and has the effect of extinguishing "all interest of the tenant in the term and . . . all rights conditioned upon its continuance."[297]

The Supreme Court of Iowa has held that there can be no surrender when a tenancy continues for a full term because there is no part of the lease to surrender.[298] Thus, in a case in which a tenant notified the landlord that he did not wish to renew the lease, and the landlord served formal no-

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19, 20 (1908).

289. *Id.*

290. *Id.*

291. *Id.* at 894, 6 N.W.2d at 426.

292. Read v. Mincks, 176 N.W.2d 192, 194 (Iowa 1970) (quoting Vawter v. McKissick, 159 N.W.2d 538, 540 (Iowa 1968)).

293. Read v. Mincks, 176 N.W.2d at 194.

294. *Id.*

295. *See supra* notes 244-48 and accompanying text.

296. Beall v. White, 94 U.S. 382, 389 (1876).

297. Ballenger v. Kahl, 247 Iowa at 725, 76 N.W.2d at 198.

298. *Id.* at 726, 76 N.W.2d at 199.

tice of termination, there could be no surrender that would excuse a tenant from the obligation to shell and deliver the landlord's share of the crop as was agreed in the lease.[299] Nor could there be a surrender by operation of law in this situation, because the lease was terminated in the manner provided for by statute.[300]

These cases indicate that while the doctrines of abandonment and surrender are available, their applicability will depend on the ability to show the intent of the tenant, accompanied by an act of delivery, in the case of abandonment; or some form of mutual agreement, in the case of surrender.[301] In the context of an abandonment it would appear that if there has in fact been an abandonment there will be no tenant or party challenging the landlord's allegation. The existence of such opposition is at least some evidence that the tenants did not consider themselves as having abandoned the lease. The use of the doctrine of surrender is essentially limited to situations involving actual or putative attempts to terminate the lease in the middle of its term, with the focus of the analysis being on the effect such action has on the rights and obligations of the parties, particularly as to the payment of rent.

E. *Judicial Interpretation of Notice Provisions*

The legislature's adoption of statutory notice requirements and the court's interpretation of the requirements as applying to virtually all farm tenancies combine to create a major change in the law with regards to tenant and landlord relations, with a resulting increase in litigation concerning lease disputes. The typical farm lease dispute that is litigated involves a tenant attempting to claim possession of a farm, on the basis that a landlord had failed to provide proper notice of termination.[302] Within the first twenty years after adoption of the statute, the Iowa Supreme Court faced over twenty cases interpreting the statutory notice provisions.[303] In those various cases the court established a number of important propositions that in effect are the basis of current agricultural tenancy law.

First, the court expanded on the scope of the statute, making compliance with its provisions mandatory upon the parties to all leases.[304] In the case of *Leise v. Schiebel* the court reviewed the extensive provisions for notice in section 562.7 and stated:

> We cannot treat these elaborate provisions as merely discretionary. The statute is mandatory. Unless we can find [that the tenants] have by oral

299. *Id.* at 727, 76 N.W.2d at 200.
300. *Id.*
301. *See supra* notes 244-49, 292-300 and accompanying text.
302. *See, e.g.*, Leise v. Schiebel, 246 Iowa 64, 67 N.W.2d 25 (1954).
303. Pollock v. Pollock, 247 Iowa 20, 21, 72 N.W.2d 483, 485 (1955).
304. Leise v. Schiebel, 246 Iowa 64, 67 N.W.2d 25 (1954).

> agreement, or by their conduct relied on by [the landlord] to his disadvantage, deprived themselves of its protection, we must affirm the trial court's decision requiring notice.[305]

While this case made compliance with the statute mandatory, it created a number of exceptions that landlords could attempt to use to avoid giving notice, for example, agreement, waiver, and estoppel.[306] The court in *Leise* also provided further judicial interpretation of the purpose and utility of the statute, noting that:

> [t]he legislature had provided a method by which to terminate farm tenancies. It is available to either landlord or tenant. It is particularly well suited to meet the situation such as existed here and to permit a landlord to terminate a tenancy in such a way as to leave no uncertainty between the parties at a time calculated to cause a minimum of injury to the tenant who must find a new landlord and negotiate a new contract.[307]

On several occasions the court also discussed the purpose of the statute and the court's role relative to it.[308] In *Smith v. Coutant*, the court noted that, "[p]resumably the statute was enacted for the benefit of the tenant, and possibly for the benefit of the landlord."[309] In a later case, the Supreme Court of Iowa, noting the interpretation in *Smith v. Coutant*[310] and the *Benschoter* holding, that the statute was both constitutional and aimed at the security of tenure,[311] concluded that "[i]t is our duty to construe the statutes liberally."[312]

A review of these cases shows that the court has indeed applied the statutes liberally, some might even say too liberally.[313] There have been circumstances, typically in disputes involving estoppel, where the court has rejected the result of a strict reading of the statute. For an example, see *Wetzstein v. Dehrkoop*,[314] which involved an estoppel dispute wherein the facts tended to show the tenant was taking advantage of the landlord.[315] The court noted that the statutes "were probably enacted for the benefit of the tenant but they were never intended to be used as a device to entrap or to

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305. *Id.* at 66, 67 N.W.2d at 26.

306. *See, e.g.*, Laughlin v. Hall, 236 Iowa 900, 20 N.W.2d 415 (1945) (estoppel). *See also supra* notes 229-68 and accompanying text.

307. Leise v. Schiebel, 246 Iowa at 70, 67 N.W.2d at 28.

308. *See, e.g.*, Smith v. Coutant, 232 Iowa 887, 6 N.W.2d 421 (1942).

309. *Id.* at 895, 6 N.W.2d at 426.

310. *Id.* at 894-96, 6 N.W.2d at 426.

311. Benschoter v. Hakes, 232 Iowa at 1364, 8 N.W.2d at 487.

312. Dethlefs v. Carrier, 245 Iowa at 790, 64 N.W.2d at 275.

313. *See supra* text accompanying notes 98-117. The *Buss v. Gruis* opinion, however, was a narrow interpretation of the notice statute, and may have been the basis of the 1983 amendment to the statute. *See* 1983 Iowa Legis. Serv. 632 (West).

314. 241 Iowa 1237, 44 N.W.2d 695 (1950).

315. *Id.* at 1242-43, 44 N.W.2d at 698.

take an unfair advantage of the landlord."[316]

Another important question that was answered by the court in these early opinions concerned to whom the statute applied. As a practical matter, almost all lease disputes involve tenants attempting to claim possession of a piece of property or a landlord attempting to regain it, rather than a tenant trying to leave the property or a landlord trying to maintain a tenant. The language of the notice requirement provides that the tenancy continues "unless written notice for termination is served upon either party."[317] Before 1983 this same provision read "is given by either party to the other," which for legal purposes has the same effect.[318] In *Pollock v. Pollock*,[319] the court faced the unusual situation where a landlord-plaintiff was suing to recover rent for a property from a tenant on the theory the *tenant had not provided notice of termination.*[320] The case was complicated by the fact that for the year preceding the one in dispute, the landlord had attempted to remove the tenant, but due to lack of notice had been unable to do so.[321] It was the defendant-tenant's view that no notice was required in the following year and that the tenancy was automatically extinguished.[322] In its ruling the court settled two important questions.[323] First, the statute is binding on both partners.[324] Second, the notice requirements are available to automatically renew any lease, whenever and however the original lease period is extended.[325]

V. Other Aspects of Farm Tenancy Law

A. *Soil Erosion and the Covenant of Good Husbandry in Farm Leases*

In light of increased public concern over the level of agricultural soil loss, preservation of the soil is an issue that often arises in connection with modern agricultural leases. The case of *McElwee v. DeVault* provides clear authority that a party can violate a covenant of "good husbandry" by engaging techniques that constitute poor cultivation practices, reduce yields, and possibly even practices that produce excessive soil loss.[326] *McElwee* involved

316. *Id.*

317. Iowa Code § 562.6 (1983), *amended by* Act of May 26, 1983, § 562.6, 1983 Iowa Legis. Serv. 632 (West).

318. Iowa Code § 562.6 (1983).

319. 247 Iowa 20, 72 N.W.2d 483 (1955).

320. *Id.* at 22-23, 72 N.W.2d at 485.

321. *Id.* at 23, 72 N.W.2d at 485.

322. *Id.* at 21, 72 N.W.2d at 484.

323. *Id.* at 20-23, 72 N.W.2d at 484-86.

324. *Id.* at 25, 72 N.W.2d at 486-87.

325. *Id.* at 23, 72 N.W.2d at 485-86. Thus, whenever proper notice is not provided, the lease is renewed for the next year. *Id.*

326. McElwee v. DeVault, 255 Iowa at 35-36, 120 N.W.2d at 454.

a written lease that included a standard "good husbandry" covenant.[327] But given the prevalence of oral leases, a more difficult question is raised with regard to the requirements of good husbandry when an oral lease is used. Is there an implied covenant of good husbandry and if so, more specifically, what are the contents of such an implied covenant,[328] especially as relates to soil loss?

Iowa tenancy law has always contained a strong theme of concern for the protection of the quality of the state's agricultural land. This solicitude for the land and a desire to prevent soil exploitation was one of the justifications relied upon by the court for upholding the constitutionality of chapter 562.6 as a proper police power regulation.[329] More recently the court has upheld as a proper police power regulation legislation making it the duty of every landowner to protect the soil and adhere to maximum soil loss limits.[330] These statutes and opinions have placed Iowa in the position of being a leader in terms of legal recognition of the public right to require proper care of the soil by the individual landowners.[331] With regard to the question of the duty of tenants to care for their soil, there is no clear case authority that establishes an implied covenant of good husbandry to include proper soil maintenance, in part because the court has not faced that specific question. An argument could be constructed, based on the soil conservation statute and the doctrine of waste law, that such a duty exists, yet this falls short of a judicially recognized implied covenant.[332]

The Supreme Court of Iowa has recently given fairly clear indications that if faced with a case in which a tenant's conduct, under either an oral or written lease, causes serious damage to the leasehold in terms of excessive soil erosion, such conduct will be considered a breach of an implied duty of "soil stewardship" which could result in liability for the damage.[333] These indications come from a strongly worded dissenting opinion in *Moser v. Thorp Sales Corp.* written by Chief Justice Reynoldson.[334] This case involved the protracted litigation of a number of disputed claims to a forfeited tract of farm land in Clayton County.[335] The reclaiming owners claimed that the parties who farmed the property during the period in dispute had, through the adoption of unwise farming practices, most notably the conversion of hilly pasture land to intensive row cropping, caused serious damage

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327. *Id.* at 32, 120 N.W.2d at 452.

328. Benschoter v. Hakes, 232 Iowa at 1364, 8 N.W.2d at 487.

329. *Id.*

330. Woodbury County Soil Conservation District v. Ortner, 279 N.W.2d 276, 277 (Iowa 1979).

331. *See* Comment, *Regulatory Authority to Mandate Soil Conservation in Iowa after Ortner*, 65 IOWA L. REV. 1035 (1980).

332. *See* Iowa Code §§ 467A.43, 658.1 (1983).

333. Moser v. Thorp Sales Corp., 312 N.W.2d at 906-07 (Reynoldson, C.J., dissenting).

334. *Id.*

335. *Id.* at 886 (majority opinion).

to the soil that would require fifty years of pasturing to repair.[336] The majority opinion, however, agreed with the trial court's ruling that the plaintiffs had failed "to prove damages or liability" of the defendants (tenants).[337]

The Chief Justice noted the strong tradition in this state for preserving the soil resource, quoting from *Woodbury County Soil Conservation District v. Ortner* where the court had ruled that "[t]he state has a vital interest in protecting its soil as the greatest of its natural resources, and it has the right to do so."[338] As a result he was especially troubled by the majority's willingness to label the destructive cropping methods of the defendant as "acceptable," noting that "[t]here is a strong public policy that should cause courts to scrutinize carefully testimony that farming practices are 'accepted' when general experience and knowledge relating to the natural effect of wind and water on exposed soil red-flag the danger of soil erosion."[339] Rather than approving the defendant's farming practices as acceptable as did the majority, the dissent claimed that the majority's opinion conflicted with overwhelming evidence.[340] The dissent would have held the defendants liable for damages because "while claiming to be landowners they did not manage the farm in a reasonable manner."[341] The dissent went on to determine that "there is an implied covenant that even a tenant, who has an estate in land, must farm the premises in a husbandlike manner," citing for support an earlier case which had dealt with the breach of a lease covenant due to the tenant allowing a weed infestation to arise.[342] The dissent concluded that:

> According to our common law, a tenant is required to cultivate the farm according to the course of good husbandry and must return the premises in the same general condition in which they were at the time of the letting, subject to such general deterioration as is caused by a reasonable use and lapse of time. The [defendants] did not comply with these rules of the game.[343]

The dissenting opinion is of special importance for this discussion because it was joined by two other justices on both the question of liability and proof of damages.[344] More importantly this dissent was joined by a special concurrence of two other justices on the question of liability, but not as

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336. *Id.* at 903-04 (Reynoldson, C.J., dissenting).
337. *Id.* at 899 (majority opinion).
338. *Id.* at 904 (Reynoldson, C.J., dissenting).
339. *Id.*
340. *Id.* at 905.
341. *Id.*
342. *Id.* at 906 (citing Brown Land Co. v. Lehman, 134 Iowa 712, 719, 112 N.W. 185, 188 (1907)). *See also* Schultz v. Ramey, 64 N.M. 366, 328 P.2d 937 (1958).
343. Moser v. Thorp Sales Corp., 312 N.W.2d at 906 (Reynoldson, C.J., dissenting).
344. *Id.* at 907. Both Justices McCormick and Schultz joined in the Chief Justice's opinion. *Id.*

to whether the damages had been proven.[345] As a result, five justices of the Iowa Supreme Court specifically agreed that a farmer, in the same position as the tenant in *Moser*, may be liable to a landowner for soil erosion damages resulting from failure to employ good farming practices.[346] Thus, it could be persuasively argued that in this case a majority of the court has accepted a common law duty of good husbandry with a "soil stewardship" component that will be enforced if the facts as to damage to the soil can be established.[347]

B. *Change of Ownership of Leased Property*

A significant legal aspect of farm tenancies concerns the effect that a change in the ownership of the property or in the identity of the parties might have on the validity of the lease. For example, what happens when a landlord sells the tract to another party? Such a change raises at least three issues: whether the lease terminates automatically; if not, whether statutory notice is required; and, what are the parties' rights as to modification of the lease terms. The typical manner in which such issue might arise, as reflected in a variety of reported cases, include: (a) sale of the leasehold;[348] (b) death of the owner-landlord, with the property now in the hands of heirs, executors or trustees;[349] (c) death of a landlord who was a life tenant;[350] (d) death of the tenant;[351] (e) forfeiture of the vendor landlord's land contract;[352] (f) rental to another party, with justification or after proper termination.[353]

The general rule concerning the effect that a change in the identity of the property owner has on the existence of the lease is that the lease will continue under the same terms, with the new party being the landlord's successor in interest subject to the same benefits and limitations.[354] A change in

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345. *Id.* at 902 (Uhlenhopp, J., concurring specially). This concurrence was joined by Justice Larson.

346. *Id.* at 907 (Reynoldson, C.J., dissenting).

347. *Id.*

348. *See, e.g.*, Benschoter v. Hakes, 232 Iowa at 1355, 8 N.W.2d at 483. *Benschoter* impliedly involved the lease of a tract of land which had been rented by the current landlord's predecessor in interest. *Id. See also* John Hancock Ins. v. Behr, 229 Iowa 900, 295 N.W. 436 (1940).

349. *See, e.g.*, In re Estate of Franzkowiak, 290 N.W.2d 1 (Iowa 1980); Estate of Thompson v. O'Tool, 175 N.W.2d 598 (Iowa 1970).

350. *See, e.g.*, Dethlefs v. Carrier, 245 Iowa 786, 64 N.W.2d 272 (1954). *See also* IOWA CODE §§ 562.8-.10.

351. *See, e.g.*, Read v. Estate of Mincks, 176 N.W.2d 192 (Iowa 1970).

352. *See, e.g.*, Youngblut v. Wilson, 294 N.W.2d 813 (Iowa 1980).

353. *See, e.g.*, Wetzstein v. Dehrkoop, 241 Iowa 1237, 44 N.W.2d 695 (1950); Laughlin v. Hall, 236 Iowa 990, 20 N.W.2d 415 (1945).

354. *See, e.g.*, Colthurst v. Colthurst, 265 N.W.2d 590, 595 (Iowa 1978). The Supreme Court of Iowa recently reaffirmed the general rule as applied to a change in ownership due to the forfeiture of the interest of the landlord under a real estate contract. Ganzer v. Pfab, 360 N.W.2d 754, 756 (Iowa 1985). In *Ganzer*, the court held that the tenant, rather than the ven-

the identity of the landlord does not automatically terminate the lease either at the time of the event or at the end of the term; rather, the general rule is that the new landlord would also be bound by the statutory notice requirements of section 562.6.[355] Thus, if the death of the landlord or the sale of the property occurred after September 1 the new landlord could not terminate a one year lease, such as an oral lease or a holdover by operation of statute, until the crop year following the next one. If the lease was for a longer term, for example, ten years, the parties would be bound to its terms, unless there are separate grounds to invalidate the lease.[356] These general rules, however, may be modified by statute, such as has been done for the rules concerning termination of leases following the death of a life tenant landlord.[357]

The law appears to be well settled that parties who inherit property from a deceased landlord are required to give statutory notice to terminate the lease.[358] The court has held that the statutory notice requirements apply even in the situation where the tenant has also died,[359] thereby modifying the common law rule that a crop share lease was a personal contract that would terminate on the death of the tenant.[360] These cases demonstrate the strong judicial support for the requirement of statutory notice and the liberal construction given its application. As a result, even if there has been a major change in a lease arrangement, as in terms of the ownership of the

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dor, was entitled to possession for the following year because the tenant had not received statutory notice on or before September 1 as required by sections 562.7. *Id.*

355. *See, e.g.*, In re Estate of Franzkowiak, 290 N.W.2d 1, 5 (Iowa 1980).

356. *See, e.g.*, Casey v. Lupkes, 286 N.W.2d 204 (Iowa 1979).

357. IOWA CODE §§ 562.8, .10 (1983). These sections provide that:

> 562.8. Termination of life estate—farm tenancy. Upon the termination of a life estate, a farm tenancy granted by the life tenant shall continue until the following March 1 except that if the life estate terminates between September 1 and the following March 1 inclusively, then the farm tenancy shall continue for that year as provided by section 562.6 and continue until notice of termination is given by the holder of the successor interest in the manner provided by section 562.7. However, if the lease is binding upon the holder of the successor interest by the provision of a trust or by specific commitment of the holder of the successor interest, the lease shall terminate as provided by that provision or commitment. This section shall not be construed to abrogate the common law doctrine of emblements.
>
> 562.10. Rental value. The holder of the interest succeeding a life estate who is required by section 562.8 or 562.9 to continue a tenancy shall be entitled to a rental amount equal to the prevailing fair market rental amount in the area. If the parties cannot agree on a rental amount, either party may petition the district court for a declaratory judgment setting the rental amount. The costs of the action shall be divided equally between the parties.

Id. (Section 562.9 sets out rules for nonfarm tenancies). *See* Egbert v. Duke, 239 Iowa 646, 32 N.W.2d 404 (1948).

358. *See* Dethlefs v. Carrier, 245 Iowa 786, 64 N.W.2d 272 (1954). *See also* IOWA CODE §§ 562.8-.10 (1983).

359. Read v. Estate of Mincks, 176 N.W.2d 192 (Iowa 1970).

360. In re Estate of Grooms, 204 Iowa 746, 753-55, 216 N.W. 78, 81-82 (1927).

property or the identity of the parties, the basic assumption remains that the notice of termination requirements of chapter 562 will apply and parties should guide their conduct accordingly.

C. *Federal Farm Programs and Farm Tenancies*

Participation in federal price support programs may also affect the ability of a landlord to alter the tenancy pattern of a farm. The basic authority for federal price support programs for major crops, including feed grains such as corn, establishes the general principle that participation in federal farm programs should not be used by landlords to alter the number of tenants or the lease arrangements so as to result in the landlord receiving a larger share of the benefits.[361] The apparent purpose of this provision is to require that federal farm programs be made available to tenants and landlords alike and that landlords be prevented from manipulating their tenancies so as to take undeserved benefits. The United States Department of Agriculture has expanded on these principles with regulations which in essence provide that a landlord may not reduce the number of tenants or sharecroppers from a previous year in order to capture an increased share of federal benefits, nor may he extracate any change in a rental agreement having the same effect, or take other action having the effect of allowing the landlord to obtain any of the tenant's share of the benefits.[362]

The regulations provide that:

> Each person on a participating farm or other participating unit as approved by the Deputy Administrator, shall be given the opportunity to participate in the program in proportion to such person's interest in the program crops or the interest such person would have had if the crops had been produced.[363]

In addition to applying to the county committees that administer the local delivery of these programs, these regulations are either included in, or by reference made a part of, the binding contract that a landowner or producer must sign with the government to participate in the federal farm benefits.[364]

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361. *See* 16 U.S.C. § 590h(f) (1982) (the Soil Conservation and Domestic Allotment Act).

362. 7 C.F.R. Part 794 (1982) (division of program payments). *See also* 7 C.F.R. §§ 713.109-.110 (1984).

363. 7 C.F.R. § 794.2(a) (1982).

364. See the appendix to the Agricultural Stabilization and Conservation Service form ASCS-477. This is a form drafted and used by the USDA-Agricultural Stabilization and Conservation Service, entitled "1984 Appendix to Form ASCA-477, Contract to Participate in Price Support and Production Adjustment (PIK) Programs." Paragraph 8 provides that:

> 8. PROVISIONS RELATING TO TENANTS AND SHARECROPPERS
>
> A. Payment shall not be approved for the current year if the County Committee determines that any of the conditions specified below exist:
>
> (1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

The effect of these regulations is not to force landowners into participating in federal farm programs, because the regulations apply only to a "participating farm" and a landowner can always decide not to participate.[365] Additionally, the regulations do not require that a landlord use the same tenant in a following year because the provisions specifically allow changing the

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(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number of tenants and sharecroppers on the farm in the year before the current year in anticipation of, or because of participation in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed rent tenant unless:

(A) Such tenant was living on the farm in the year immediately preceding the current year, or

(B) At least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease contract, agreement or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay over to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would have had under the program.

(iii) To reduce the size of the tenant's or sharecropper's producer unit or,

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State Committee may determine, shall be refunded to CCC.

B. Notwithstanding any other provision of this paragraph, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

Id..

365. 7 C.F.R. § 794.2(a) (1982).

identity of tenants.[366] The regulations do, however, prevent a landowner from reducing the number of tenants from a previous year, or changing the terms of the rental agreement if the effect is to increase the landowner's share of the federal benefits.[367] As a result, participation in federal farm programs, while not locking a landlord to a particular tenant, may bind him to a particular form of tenure.

VI. Actions to Recover Possession of Leased Property

When the parties to a farm tenancy amicably agree to terminate their arrangement, or when a party receiving proper notice of termination vacates as requested, there are no problems as concerns the landlord's right to regain possession of the property. When, however, a tenant allegedly "wrongfully" holds over, or where a tenant feels he has not been given proper notice or has been wrongfully asked to vacate, serious disputes can arise over the parties' relative rights to possess the property. The importance of the right of possession under the lease arrangement has been discussed;[368] the focus here is on how the parties typically join the question of right to possession. The reported cases on farm leases indicate that there are generally three methods by which legal disputes over possession are litigated: (a) forcible entry and detainer actions;[369] (b) actions to quiet title to the property;[370] and (c) declaratory judgment actions to construe the lease.[371]

The most common action to obtain possession of disputed real property in the agricultural lease context is a forcible entry and detainer action brought pursuant to section 648 of the Iowa Code.[372] Section 648.1(2)-(3) provides that such an action is allowable "where the lessee holds over after the termination of his lease . . . [or] holds contrary to the terms of his lease."[373] There have been a great number of reported cases dealing with forcible entry and detainer actions in the farm tenancy context.[374] In *Van Emmerick v. Vuille*, for example, the court discussed the elements of such an action when dealing with a farm lease.[375] The court noted that in such an action, a notice to quit is a condition precedent to, but does not constitute

366. 7 C.F.R. § 794.3(a)(2)(i) (1982).

367. 7 C.F.R. § 794.3(a)(2), (3) (1982).

368. *See supra* notes 48-51 and accompanying text.

369. Van Emmerik v. Vuille, 249 Iowa 911, 88 N.W.2d 47 (1958).

370. Read v. Estate of Mincks, 176 N.W.2d 192 (Iowa 1970); Smith v. Coutant, 232 Iowa 887, 6 N.W.2d 421 (1942).

371. Wetzstein v. Dehrkoop, 241 Iowa 1237, 44 N.W.2d 695 (1950).

372. Iowa Code § 648 (1983).

373. Iowa Code § 648.1(2), (3) (1983).

374. *See, e.g.*, McElwee v. DeVault, 255 Iowa 31, 120 N.W.2d 451 (1963); Olsen v. Martins, 244 Iowa 741, 57 N.W.2d 805 (1953); Kuiken v. Garret, 243 Iowa 785, 51 N.W.2d 149 (1952); Rudolph v. Davis, 237 Iowa 1383, 25 N.W.2d 332 (1946).

375. Van Emmerick v. Vuille, 249 Iowa at 913-14, 88 N.W.2d at 48.

the commencement of, the action.[376] The issue of when the action commences is significant, because section 648.18 provides that thirty days peaceable possession of the property "after the cause of action accrues is a bar" to the action.[377] The thirty days peaceful possession bar has been an issue in several farm tenancies actions.[378] The court has held that mere possession of the farm after the termination of the lease can not be assumed to be peaceable.[379] A forcible entry and detainer action is tried in equity and is therefore subject to de novo review on appeal.[380] Analysis of the various cases in which the Supreme Court of Iowa has considered forcible entry and detainer actions provide valuable insight to understanding how this remedy is used.

Actions to quiet title to the property have also been used to resolve questions concerning the continued existence of a farm lease. For example, in *Smith v. Coutant*, an important case dealing with waiver and estoppel by the tenant, the action was brought by the landlord in the form of a quiet title action.[381] Similarly, *Read v. Estate of Mincks*,[382] which involved a suit by a landlord against the executor of the deceased tenant, was in the form of a quiet title action.[383] The action to quiet title is an equitable action which appears to be used where lease disputes have dragged on over several years, as opposed to the use of forcible entry and detainer actions, which may offer somewhat speedier relief.[384]

A third form of action to determine which parties are to possess the property was used in *Wetzstein v. Dehrkoop*, where the landlord requested a declaratory judgment and a decree construing the lease.[385] In *Dehrkoop*, the Supreme Court of Iowa held that the action was one in equity and that it was reviewable as such on appeal.[386]

In certain circumstances there may be reasons why one of the parties to a lease will attempt to have the lease declared invalid. One such situation, for example, is where the landlord wishes to be able to sell the land free of the lease, or the heirs to a tract of land wish to get rid of their predecessor's tenants. This goal may be particularly appealing if the lease in question is for a number of years or for a fixed low rental amount. In such situations, however, one can assume that the other party to the arrangement will resist

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376. *Id.* at 914, 88 N.W.2d at 48. *See also* IOWA CODE § 648.3 (1983).

377. IOWA CODE § 648.18 (1983).

378. Morling v. Schmidt, 299 N.W.2d 480 (Iowa 1980); Van Emmerick v. Vuille, 249 Iowa 911, 88 N.W.2d 47 (1958); Rudolph v. Davis, 237 Iowa 1383, 25 N.W.2d 332 (1946).

379. Rudolph v. Davis, 237 Iowa at 1386, 25 N.W.2d at 334.

380. McElwee v. DeVault, 255 Iowa 30, 34-35, 120 N.W.2d 451, 453 (1963).

381. Smith v. Coutant, 232 Iowa at 887, 6 N.W.2d at 421.

382. 176 N.W.2d 192 (Iowa 1970).

383. *Id.* at 192.

384. This seems to be the case because in most quiet title actions the tenant has at least a colorable interest in continued possession. *See* Read v. Estate of Mincks, 176 N.W.2d at 192.

385. Wetzstein v. Dehrkoop, 241 Iowa at 1245-47, 44 N.W.2d at 699-700.

386. *Id.* at 1246, 44 N.W.2d at 700.

the attempt to have the lease invalidated. There are a number of theories that might be available to a party desiring to terminate the lease, including: (a) statute of frauds; (b) contractual theories such as fraud, unconscionability, unjust enrichment or undue influence; and (c) the length of the lease.

As discussed above, the statute of frauds applies to the lease of real property, and would be available to a party to the transaction who wished to limit the duration of the lease to the current one year period. The notice requirement of chapter 562 would still have to be met.[387]

The ability of a party to establish a contractual justification for attacking the validity of a lease will depend on his ability to establish the requisite elements of his theory. In *Smith v. Harrison*[388] the court addressed a challenge to a ten year cash lease entered in 1975 for a 320 acre farm in Ida County, at a rent of $23.00/acre, between an eighty-five year old landlord and his tenant.[389] The conservator of the landlord brought an action in 1979 attacking the validity of the lease on the grounds of actual and constructive fraud, undue influence, unjust enrichment and unconscionability.[390] The action was unsuccessful on all grounds.[391] The court said there was no proof of fraud in the case and that the conservator failed to show the tenant utilized unfair persuasion to overcome the landlord's free agency, a showing of which was necessary to establish undue influence.[392] The conservator also lost on the theory of unjust enrichment because it is a theory of restitution that would have first required establishment of grounds for invalidating the lease to allow recovery.[393] On the issue of unconscionability the court held that there was no proof that the lease was unconscionable.[394] While the evidence did show that the lease was a bad bargain, the court noted that "the unconscionability doctrine does not exist, however, to rescue parties from mere bad bargains."[395] The facts in the case were complicated by the fact that the long-term lease was suggested by the landlord who, while of an advanced age, was not incompetent.[396] Although in *Smith v. Harrison* the result was a holding against a challenge to the validity of the lease, the opinion does provide valuable guidance as to what type of showing may be required in the farm lease context to establish a contractual based challenge.[397]

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387. *See supra* notes 92-152 and accompanying text. *See also* Fritz v. Iowa State Highway Comm'n, 270 N.W.2d at 839; Lamb's Estate v. Morrow, 140 Iowa at 94-96, 117 N.W. at 1119-20.

388. 325 N.W.2d 92 (Iowa 1982).

389. *Id.* at 93.

390. *Id.*

391. *Id.*

392. *Id.* at 93-94.

393. *Id.* at 94.

394. *Id.*

395. *Id.*

396. *Id.* at 93.

397. *Id.* at 93-94.

In fact, the court held in 1979 in *Casey v. Lupkes*[398] that unconscionability is available as a basis for avoiding a farm lease, which creates a fact issue to be determined from the lease's terms as of the time the parties entered it.[399] The case involved a challenge to a forty-five year lease by trustees under the will of a deceased lessor.[400] In addition to the unconscionability theory, which was sent back to the district court after a reversal of the lessees' summary judgment, the case involved a separate challenge to the length of the lease based on Article I, section 24, of the Iowa constitution.[401] This section provides that "[n]o lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years."[402] The court held that the lease, which also included a contingency claim for termination on the death of both tenants or their complete disability, was valid for a period of twenty years and invalid for the remaining five years of its twenty-five year term.[403] Thus under the terms of lease as interpreted by the court it would terminate at the earliest of "three events: death of both tenants, their full disability for one year, or the expiration of twenty years from its effective date."[404] The case is also of interest because of the discussion of contingency provisions for termination.[405]

VII. Conclusion

This article has drawn on the rich body of Iowa case law concerning the interpretation of chapter 562 and resolution of agricultural lease disputes in an attempt to craft a comprehensive discussion of the current status of Iowa farm tenancy law. In reflecting on many of the disputes that underlie these cases, perhaps a reader would agree with the Iowa Supreme Court's comment in *Shadle v. Borusch* when it said:

> [the] controversy between plaintiff, farm owner, and his tenant over harvesting and dividing the 1961 corn crop should never have found its way to the courts. It would seem that by exercise of a little common sense the parties and their counsel could have avoided resort to the courts and saved the expense and long delay in the settlement of their differences.[406]

Clearly the court's recommendation of common sense and compromise is a valuable one with regard to farm lease disputes. However slight some of these litigated disputes have been, they have, nonetheless, served the important function of establishing a foundation of law on leases in Iowa.

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398. 286 N.W.2d 204 (Iowa 1979).
399. *Id.* at 207.
400. *Id.* at 205.
401. *Id.* at 206-07.
402. *Id.* at 205 (quoting the Iowa Const. art. I, § 24).
403. *Id.* at 207.
404. *Id.*
405. *Id.* at 206-07.
406. Shadle v. Borusch, 255 Iowa at 1125, 125 N.W.2d at 509.

As is clear from the text a great many questions concerning legal aspects of Iowa farm leases have been resolved. These cases provide significant guidance on farm lease questions. Naturally, some of these questions have been resolved more conclusively than others, as is evidenced by the case of *Houser v. Johnson*,[407] which is currently before the Iowa Supreme Court. This case concerns the validity of a written lease clause providing for no notice of termination, a question that would appear to have been put to rest by the ruling in *Schmitz v. Sondag*.[408] Moreover, it is equally clear that there are many more questions concerning the landlord and tenant's rights and duties in an agricultural lease arrangement that still remains to be litigated.

The effect of chapter 562 and the Iowa farm tenancy cases has been to standardize farm leases, both oral and written, as to the legal treatment of notice of termination as well as other common lease terms. Significant questions remain concerning such matters as the developing environmental consciousness regarding erosion and the care of the soil. In addition, the corollary aspect of farm tenancy law—the rights of landlord and tenant concerning payment of the rent as these relate to the interests of agricultural lenders and suppliers—has barely been addressed in case authorities. It is this area of lease law, especially given the current financial situation with agriculture, that is the most likely area to undergo legal stress and scrutiny in the next few years. Further, other factors contribute to the continued urgency of agricultural lease questions, such as present land tenure patterns, which show no indication that tenancy relations will become less frequent. The present condition of land values would seem to indicate that *increased* use of tenancy is likely. Additionally, increased recognition of the importance of a written lease as an essential business instrument in a farm operation involving lease land will contribute to increased reliance on farm tenancy arrangements.

As a result the likelihood for continued judicial involvement in agricultural lease disputes is very strong. As long as there is agricultural land farmed in this state, there will be tenants and there will be landlords. Given human nature and our laws, disputes relating to farm leases are bound to arise. When they do, the analysis and discussion of the cases drawn together in this article may serve as a starting point for the resolution of farm tenancy disputes both now and in the future.

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407. No. 19231 (Dist. Ct. Cass Co. 1984), *appeal docketed*, No. 84-1070 (Iowa Sup. Ct. Oct. 17, 1984).

408. *See* 334 N.W.2d at 364. *See also supra* notes 229-66 and accompanying text.

IOWA STATE BAR ASSOCIATION
Official Form No. 135 (Revised December 6, 1971) (Trade-Mark Registered, State of Iowa, 1967)

FOR THE LEGAL EFFECT OF THE USE OF THIS FORM, CONSULT YOUR LAWYER

FARM LEASE—CASH OR CROP SHARES

THIS LEASE, made and entered into this _____ day of _____, A. D. 19____,

by and between _____

_____, hereinafter referred to as

Landlord, and _____

_____ hereinafter referred to as

Tenant,

WITNESSETH: That Landlord, in consideration of the agreements hereinafter mentioned to be kept and performed by Tenant, does by these presents lease to Tenant the following described land, situated in _____ County, Iowa, to-wit:

and containing _____ acres, more or less, to have and to hold the same to Tenant from the _____ day of _____, 19____, to the _____ day of _____, 19____. And Tenant, in consideration of the leasing of the premises as above set forth, and in consideration of the promises and performances herein undertaken by the Landlord, agrees with Landlord:

1 To pay as rent for the same to the Landlord at his residence in _____

_____ County, Iowa, or at such other place as he may from time to time direct, as follows:

2. To prepare such ground and to plant such crops as may be designated and directed by Landlord _____ _____; unless otherwise agreed, in writing.[1]

3. **PROPER HUSBANDRY.** Tenant covenants to farm said premises in a good and husbandman-like manner; and consistent therewith, and with the terms of this lease, to get the best crop production the nature of the soil and the season will permit.

4 **HARVESTING OF CROPS.** Tenant covenants to properly care for all growing crops in good and husbandman-like manner, and to harvest all crops in proper season, and failing so to do, Landlord may enter upon said premises by himself or agents, and properly care for or harvest said crops and charge the cost to Tenant as part of the rental herein and so secured

5 **TERMINATION OF LEASE.** This lease shall be continued for the lease term herein provided except as it may be terminated by default of Tenant. Further, such lease shall continue after such agreed term from year to year, upon the same terms and conditions, unless either party gives due timely and legal written notice to the other of election to cancel or terminate any such extended lease period whereupon the tenancy shall terminate March 1, following; provided further such tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement. Due timely and legal written notice shall be notice on or before September 1 as provided by law (Section 562.7 I.C.A. as amended) unless by express agreement the parties provide the same notice at an earlier time, as follows _____

_____

6. **POSSESSION AND CONDITION AT END OF TERM.** At the expiration of the term of this lease, Tenant will yield up the possession of said premises to Landlord, and failing thus to deliver up said premises, Tenant agrees to pay Landlord $_____ per day, as liquidated damages for any holding over period. Said premises at the time of such delivery of possession shall be in as good order and condition as when the same were entered upon by Tenant excusable or insurable loss by fire, inevitable accidents and ordinary wear excepted.

7 **FARM BUSINESS ONLY.** No business other than operation of this farm shall be conducted by the Tenant except _____

8. **CARE OF SOIL.** Tenant shall haul out and distribute upon the poorest tillable soil on said premises (except as may be otherwise directed by landlord) all the manure and compost suitable to be used whether on said premises at the beginning of this lease or accumulated during the term thereof; and further he shall not haul or remove from said premises, nor burn, any straw, stalks, stovers, stubble, or similar plant materials all of which shall be the property of the landlord unless otherwise herein expressly agreed, but Tenant may use the same on the premises for the farming operations.

9. **FERTILIZER, LIME AND CHEMICALS.** (a) Each shall be furnished, as required, by good husbandry, by the parties and in the percentages, as follows:

	% Landlord	% Tenant
(1) Commercial Fertilizer	_____	_____
(2) Lime and Trace Minerals	_____	_____
(3) Weed Control Chemicals	_____	_____
(4) Pest Control Chemicals	_____	_____
(5) Weed Spraying, Weed or Pest	_____	_____
(6) Other	_____	_____

(b) **Allocation:** Phosphate and potash on oats or beans shall be allocated _____% first year and _____% second year, and on all other crops allocated _____% first year and _____% second year. Lime and trace minerals shall be allocated over $ _____ years. If Tenant does not stay enough years to receive the full above allocated benefits, he shall be reimbursed to the extent not received. Except as set out above Tenant agrees to furnish without cost all labor, equipment and application for all fertilizer, lime, trace minerals, and chemicals.

10 **COST OF COMBINING AND SHELLING OF CROPS.** Such expense shall be borne as follows _____

_____

10½ **FARM MACHINERY AND EQUIPMENT,** as necessary shall be furnished at the expense of, and by _____

_____

11. **CARE OF TREES, SHRUBS AND GRASS.** Tenant shall preserve and keep the fruit and ornamental trees, vines and shrubbery, that are now or may be planted upon the premises, from injury by plowing or from cattle or other stock.

12 **WEED CONTROL.** All noxious weeds shall be sprayed or otherwise timely destroyed by Tenant. Weeds in fence rows shall by him be timely cut with a mower or scythe or sprayed with herbicide.

This Printing February, 1985

13. **FURNISHING AND CLEANING SEED.** Seed shall be furnished and cleaned as follows _____

_____

In case any sweet clover, timothy, alfalfa or other grass crops are harvested for seed, Landlord is to receive _____% of all seed free of expense to Landlord but Landlord shall make reasonable adjustment on cash rent if seed is harvested from cash rent land.

14. **DOWN EAR CORN.** Tenant shall reimburse Landlord for one-half of the down ear corn in excess of _____ bushels per acre.

15. **LANDLORD'S RIGHT OF ENTRY.** Landlord reserves the right to plow the ground after Tenant has harvested the crops if notice of the termination of this lease has been properly served. Landlord, or his legal representatives, may enter upon said premises for the purpose of viewing or seeding and making repairs or other reasonable and ordinary purpose as Landlord

16. **NO REMOVAL OF GRAIN OR PRODUCE UNTIL PAYMENT OF RENT.** Tenant further covenants except as arranged with, or agreed by Landlord, not to remove any of the grain or produce raised on said premises, during the term of said lease, until the rent herein specified shall be fully paid nor to sell the same or any part thereof. And if any grain or produce raised on said premises during said term shall be removed or attempted to be removed by any person or persons before the payment of said rent or if Tenant should sell or attempt to sell said grain or produce, or any part thereof, except as aforesaid or if the same or any part thereof shall be claimed or attached or levied upon by execution or claimed by any other person or persons upon any pretense whatever before said rent shall be fully paid then upon the happening of any such contingencies said rent shall immediately become due and payable and Landlord or his legal representative, shall have the right to enter into said premises and take possession of said grain, wherever the same may be found, and to remove the same and sell the same or any part thereof, or if the same shall not be sufficiently matured for harvesting or gathering, to cultivate the same and to preserve or protect the same until it shall be fit, and then harvest and gather or sell the same, or any part thereof, at private or public sale and apply the proceeds thereof to the payment of the expenses and costs of carrying out the provisions of this lease and the payment of said rent hereby reserved.

17. **VIOLATION OF TERMS OF LEASE.** If Tenant shall fail to cultivate said premises as herein agreed, or shall fail to keep any of the covenants contained in this lease or shall assign this lease or underlet said premises or any part thereof without the written consent of the Landlord, then this lease shall at the election of the Landlord, be null and void, and the Landlord, or his legal representatives, shall have the right to take possession of said premises, using force as may be necessary with or without process of law, and all damages growing out of the failure to perform any of the covenants of this lease shall be added to and become part of the rent, recoverable as rent. Without limiting the generality of the foregoing, any failure to pay rent when due shall entitle the Landlord to immediate possession, and any violation of the terms of this lease, or failure to pay any cash rent when due shall cause all unpaid cash rent to become due and collectible at once and without notice to, or demand upon, Tenant.

18. **DELIVERY OF LANDLORD'S GRAIN.** Tenant without cost to Landlord, shall deliver Landlord's grain, when requested by Landlord, from time to time to the elevator at _____, Iowa, or elsewhere as directed by Landlord, at no further distant point.

19. **LANDLORD'S STORAGE SPACE.** Landlord reserves _____% of the crib and granary space for storage of rent share crops.

20. **LANDLORD'S LIEN AND SECURITY INTEREST. TENANTS' WAIVER.** Tenant as to any of his personal property on said premises hereby waives and relinquishes all rights of exemption from sale or seizure under distress or execution, that he now has or may hereafter have by virtue of any law of the state exempting personal property from seizure and sale to the extent necessary to protect Landlord in the enforcement of his liens herein and in the payment of all rental as agreed. Said Landlord shall have in addition to the lien given by law, a security interest as provided in the Uniform Commercial Code of Iowa, upon all personal property owned, kept and used on said premises by Tenant, during the term hereby agreed to be paid. Landlord may proceed at law or in equity with any remedy by law for the recovery of rent, or from the termination of this lease, because of Tenant's default in its performance.

21. **REPAIRS.** Tenant shall keep said premises, including the hedges and fences, in proper **repair**, provided that Landlord shall furnish necessary material that he or his agent consider needful to **repair** said premises within reasonable time after being notified, and Tenant shall haul said material to said premises without charge.

22. **NEW IMPROVEMENTS.** All buildings, fences and improvements of every kind and nature that may be erected on the above described land during the term of this lease by Tenant shall be deemed as additional rent and shall inure to the premises and become the property of the Landlord unless permission to erect and remove same shall be obtained in writing and made a part of this lease.

23. **EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD.** No expense shall be incurred for or on account of Landlord without first obtaining his written order. As to this paragraph and as to paragraphs 21, 22 and 25, no mechanics' liens shall be imposed upon or foreclosed against the real estate described herein.

24. **PARTICIPATION IN GOVERNMENT PROGRAMS.** Participation of this farm in any offered program by the U. S. Department of Agriculture for crop production control or soil conservation and the observance of the terms and conditions of same shall be at the option of Landlord. Division of Government payments thereunder shall be 50-50 unless otherwise agreed between these parties, as follows: _____

_____

25. **WELL, WINDMILL AND WATER SYSTEM.** Tenant agrees to keep the well, windmill and water system in good **repair** at his own expense, except in case of severe windstorm damage or complete destruction which cannot be attributed to his neglect. No guarantee either expressed or implied is made by Landlord for any continuous and adequate water supply.

26. **ACCOUNTING.** The method used for dividing and accounting for the harvested grain shall be a customary method and chosen by Landlord.

27. **ATTORNEY FEES AND COURT COSTS.** Tenant also agrees to pay and discharge all costs and attorney fees or any expense that shall arise from enforcing any of the covenants of this lease by Landlord and all crops growing, or in cribs or granary on said premises shall be security for all sums due or to become due from Tenant to Landlord as evidenced by book account or note held by and originally payable to Landlord (or either, if more than one).

28. **CHANGES IN LEASE TERMS.** No act of either party, or both parties, shall be construed as an extension of this lease, or any change in the terms and provisions unless changes are reduced to writing and signed by both parties.

29. **DELAY IN GIVING POSSESSION.** If Landlord is unable with due diligence, to give Tenant possession at the beginning of the term hereof, the cash rent only shall be rebated on a pro rata basis as to time, until possession can be delivered, which rebated cash rental shall be accepted by Tenant as full settlement of all damages occasioned by said delay; and if possession cannot be delivered within 15 days after the beginning of the said term either Landlord or Tenant may thereupon terminate this lease by giving the other party notice of such termination.

30. **TELEVISION.** Tenant shall have the right to install and remove television antenna on said premises and shall be liable for any and all damages occasioned thereby.

31. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as the appropriate gender, according to the context.

32. **ADDITIONAL PROVISIONS.** By express agreement, the following special provisions are made a part of this lease:

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

_____ _____

_____ _____

TENANT **LANDLORD**

Mailing address of Tenant; also sometimes referred to as Debtor in the Uniform Commercial Code, Section 554.9402:

Address of Landlord; also sometimes referred to as the Secured Party in the Uniform Commercial Code, Section 554.9402:

_____ _____

_____ _____

For additional individual acknowledgments use Official Form No. 11

STATE OF IOWA _____ County, ss:

On this _____ day of _____, 19____, before me, the undersigned a Notary Public in and for said County and said State, personally appeared _____

For additional corporate acknowledgments use Official Form No. 12

_____

to me known to be the identical persons named in and who executed the foregoing Lease, and acknowledged that they executed the same as their voluntary act and deed.

_____

Notary Public in and for said County and State

1(Numbered paragraph 2 above). As to the desirability of this paragraph under certain circumstances, consider "The Farm Operation **Agreement**—Partnership or Lease" by Gene L. Needles and Edward R. Hayes, 6 Drake Law Review 37, at page 50, middle. "Social Security Problems in Farmers' Retirement Planning" by Francis Fitzgibbons, Program of Annual Tax School of the Iowa State Bar Association (1957) page 117; News Bulletin of Iowa State Bar Association October 1956, page 3, and News Bulletin February, 1957, page 1.