

SELECTED TOPICS IN AGRICULTURAL CONTRACT LAW

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I. INTRODUCTION TO CONTRACT LAW AND ITS AGRICULTURAL CONTEXT

What is Contract Law?

A contract is an agreement that can be enforced by law. It might be in writing, or it might exist only in the form of spoken words and handshakes. Regardless, a contract always involves a transaction, generally a mutual exchange of promises, such as a promise to pay an amount of rent in exchange for a promise to lease farm land, or a promise to share a crop in exchange for a promise to provide cropping labor. *Black's Law Dictionary* defines a contract as “an agreement between two or more persons which creates an obligation to do or not to do a particular thing.” The American Law Institute further clarifies this definition by defining a contract as “a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Contract law is a mechanism for protecting the expectations that arise from making contracts. It is a body of rules about how a contract is made, what a contract means, and how to compensate those harmed when contracts are broken.

What Does Any of This Have to Do With Agriculture?

Contract law extends into most aspects of our daily life and agriculture is no exception. Transactions such as the sale and lease of farm land, share cropping arrangements, livestock production contracts, and many others all implicate contract law. The farmer who recognizes the applicability of contract law to his or her work has an advantage in the industry. Such a farmer is more likely to:

- Know that it is fine to consult an attorney
- Understand the binding nature of transactions he or she enters into
- Read contract documents carefully
- Avoid disputes
- Manage unavoidable disputes effectively
- Protect his or her interests in the course of doing business

II. CONTRACTS FOR THE SALE AND LEASE OF FARM LAND

“It is a common scene in U.S. agriculture: A landowner and a tenant talk for a few minutes over a cup of coffee, then shake hands to clinch a one-year deal to rent a farm or piece of land. No fuss, no bother, no paperwork.”
-Jonathan Knutson, Ag Week (Dec. 11, 1989)

One of the most common contract issues for farmers involves contracts for the sale and lease of farm land. While the size and technology associated with modern farming has increasingly become more complex, many farmers and landowners still do not rely on written, detailed agreements for these types of business transactions. In fact, the United States Department of Agriculture has stated that over 40% of farm land in the United States is rented or leased to tenant farmers each year. With farms being leased and sold with such a high frequency, it is important to understand the prudence of written documents for such situations. Additionally, it is equally important to spot potential problems associated with the sale and lease of farms.

Oral v. Written Agreements

It is a fundamental principle of Pennsylvania law that competent parties enjoy the utmost freedom to contract. Farm sale and lease contracts freely and voluntarily entered into will be enforced by the courts, as long as the contracts do not violate public policy or are not otherwise illegal transactions. Most contracts are valid despite the fact that they are only oral. However, it is advisable to put agreements in writing for several reasons.

With a writing,

- the parties are likely to think about terms that they would otherwise not discuss
- the parties tend to avoid the problem of selectively recalled contract terms
- the issues should be clarified in any dispute that may arise between the two contracting parties

For example, the lessor may honestly forget that he or she promised to paint the barn without compensation during the period of the lease. If the agreement is in writing, the duty to paint the barn is not only legally binding but often refreshes the lessor's

memory and removes any doubt about the terms of the original agreement. Moreover, the law has declared that a few types of contracts are unenforceable unless they are in writing. Such contracts are said to be within the Statute of Frauds. There are certain statutory provisions governing the legal requirements needed for these types of contracts to be enforceable.

TITLE 33. Pennsylvania Statute of Frauds

Purpose of the Act

The purpose of this act is to prevent fraud and not encourage it. It is not merely a rule of evidence but a declaration of public policy that operates as a limitation upon judicial authority to afford a remedy unless renounced or waived by the party entitled to claim its protection.

A Quick Checklist for Pennsylvania Farmers

- ☐ Are you wanting to form a land lease? If so, refer to more specific information in the section titled “Land Leases and the Statute of Frauds.”
- ☐ Are you conveying a part of your farm or another interest in your land to another person?
- ☐ Does the contract you wish to enter into have specific dates or provisions?
- ☐ Would it be difficult to accurately recite the agreed upon provisions of the contract?
- ☐ Does the contract involve something of value to you or a large amount of money? Refer to the section “Effect of Statute of Frauds on the Purchase and Sale of Agricultural Goods” for more specific information.

If you answered yes to any of the above questions, it is advisable to memorialize your contract in writing. In fact, the Statute of Frauds may even mandate that you do.

An Overview and Example of the Statute of Frauds

The Statute of Frauds was first codified in England in 1677 and was originally titled “An act for prevention of frauds and perjuries.”¹ The Statute of Frauds is really a part of the body of substantive law that provides that certain contracts must be in writing in order to be enforced. Any statute that requires a transaction to be put in writing for legal efficacy is termed a “statute of frauds.” Pennsylvania has a general statutory provision referred to as the Statute of Frauds but also a number of other statutory sections scattered in different parts of the Pennsylvania Code requiring various types of contracts to be in writing. The Statute of Frauds does not serve to make all types of oral contracts void. **Despite the Statute of Frauds, oral contracts may still be enforced. However, it is extremely prudent to memorialize all contractual agreements in writing to avoid disputes and possible problems.** The purpose of the Statute of Frauds is to avoid the potential enforcement of spurious claims.

However, the Statute of Frauds also has the potential to deny the enforcement of many nonfraudulent claims so it is prudent that contracting parties fully understand the implications of these types of provisions. Accordingly, “Pennsylvania courts have emphasized that the Statute is *not* designed to prevent the performance or enforcement of oral contracts that in fact *were* made” and want to utilize the Statute of Frauds as a judicial tool promoting fairness and efficiency, rather than fraud and dishonesty.² For example, assume that Farmer Bill and Farmer John enter into a 10 year land lease (a contract governed by the PA Statute of Frauds.) Farmer Bill defaults on his end of the deal and Farmer John takes Farmer Bill to court. At trial, both farmers admit to the existence of the oral contract. However, Bill claims that the PA court should not enforce the contract because he and John did not comply with the Statute of Frauds. In such a case, courts will often enforce the contract even though both Bill and John failed to meet the formal requirements of the Statute of Frauds.

¹ Problems in Contract Law, p. 353.

² See **Long v. Brown**, 399 Pa. Super. 312, 319, 582 A.2d 359, 362 (Pa. Super 1990). Parties contracting over the sale of land were undergoing a dispute on deed restrictions. It was determined that a signed but undelivered deed can be used to satisfy the Statute of Frauds. This is particularly true when there is other documentation that indicates a desire to transfer the property.

Since the purpose of the statute is to prevent fraud, the statute is narrowly construed to prevent the use of the statute itself to perpetuate a fraud. Therefore, if the party against whom the lease is being enforced admits the oral agreement was made, the lease may be enforced. However, the terms of the oral lease must be proved clearly and unequivocally. For this reason, it is particularly advisable that complicated transactions involving many details be put in writing to avoid such disputes in the first place.

Sale of Land and the Statute of Frauds

Pennsylvania law requires that all contracts for the sale of land be in writing. A prudent landowner will want to do this anyway to prevent possible land disputes. For those interested, Pennsylvania's Statute of Frauds provision for the sale of land can be found at 33 P.S. §§ 1-8.

Land Leases and the Statute of Frauds

A land lease is an agreement under which a property owner allows a tenant to use for the property for a specified period of time and rent. In Pennsylvania, land leases are governed by 68 P.S. § 250.201 et seq. Although a prudent farmer is likely to put all land leases in writing, Pennsylvania only requires that land leases for a duration of three years or more be put in writing. Farm leases are given special treatment in Pennsylvania because of the legislatively perceived vulnerability of tenants and because of the lessee's interest in crops that are growing on the leased property. In these situations, the Statute of Frauds acts to protect the lessee from arbitrary action to terminate the lease and from being deprived of rights to a crop upon termination of a lease. Titled the "Landlord and Tenant Act", this provision requires a lease for a term of more than three years to be in writing in order to be legally valid. This section is Pennsylvania's Land Lease Statute. The section provides:

Real property, including any personal property thereon, may be leased for a term of more than three years by a landlord to a tenant or by their respective agents lawfully authorized in writing. Any such lease must be in writing and signed by the parties making or creating the same, otherwise it shall have the force and effect of a lease at will **only** and shall **not** be given any greater force or effect either in law or equity....unless the tenancy has continued for more

than one year and the landlord and tenant have recognized its rightful existence by claiming and admitting liability for rent, in which case the tenancy shall be from year to year.

In short, this means that the lease of real property, including agricultural land, for terms of more than three years must be memorialized in a writing that is signed by the parties creating the lease. Therefore, an oral lease less than three years in duration is outside this statute's application.

In the event that an oral lease has a duration of more than 3 years, the Statute of Frauds provision does **not** render the oral lease unenforceable in its entirety. Rather, the oral lease has the effect of leases "at will." This means that if a defendant admits that an oral contract for more than three years was formed, then the purpose of the Statute of Frauds has been satisfied and the contract will be afforded full legal effect. It should be noted that in the event of a dispute, it could be difficult to procure such admissions from even seemingly honest business parties if it is to their advantage that the oral contract not be given full legal effect.

Also, 68 P.S. §250.203 of the Landlord and Tenant Act addresses when leases for more than 3 years may be assigned, granted, or surrendered. Accordingly, renewals and a lessee's voluntary termination of the lease must be done in writing in such situations. For example, a tenant enters into a 30-year lease with his neighbor, the landlord. During the duration of the lease, the tenant orally notifies his landlord he wishes to surrender the lease and terminate his responsibility to continue making lease payments. The lease, however, is not terminated until the tenant makes a written notification of this intent.³ To summarize, agricultural land leases of three years or more are legally treated as contracts for the sale of an interest in land and contracting parties should take the necessary steps to ensure that their contract satisfies the relevant Statute of Frauds provisions.

³ See 202 Marketplace v. Evans Products Co., E.D. Pa. 1984, 593 F. Suppl.1133, affirmed 824 F.2d 1363. Even though a lease may not specify a writing, the Statute of Frauds requires evidence in writing, when a party is to be charged with "assigning, granting, or surrendering" an estate in real property. The Statute of Frauds protects a grantor asserted to have created a leasehold interest, but it also protects a tenant asserted to have surrendered one. Nevertheless, while the landlord may have a contract right merely to oral notice of termination, the tenant has a statutory right to avoid a judicial declaration of surrender except upon the proffer of a writing signed by the tenant (LEXIS-NEXIS Case Overview).

Memorializing All Provisions

Given that agricultural contracts are more easily enforceable if in writing, it is important that **all provisions** of the agreement between the parties be reflected in the written document that memorializes the agreement, whether or not those provisions are necessary to satisfy the Statute of Frauds. In the event two parties choose to enter into a written contractual agreement, the contracting parties should thoughtfully word the document. They should also consider how a court might interpret their contract in the event that a dispute does arise. Contract interpretation refers to the process by which “a court gives meaning to contractual language when the parties attach materially different meanings to that language.”⁴

Respecting a party’s freedom to contract and a party’s intent are important issues in contract law. There are several public policy reasons for not lightly reading in certain contractual terms, as this would conflict with the basic right of the contracting parties to set the terms themselves. Moreover, a court is often unlikely to interpret a written document as a contract without all of the material elements present. A material element is an aspect of a contract which “constitutes substantially the consideration of the contract, or without which it would not have been made.”⁵

For example, a properly signed land lease agreement is hardly more than a piece of paper if the material terms (such as rent and duration of the lease) are not addressed in the document. Though by no means exhaustive, the following checklist may be a useful starting point for the terms necessary to the drafting of an enforceable agricultural contract.

⁴ Contracts book p.420.

⁵ *Black’s Law Dictionary*

Material Terms Checklist:

- ✓ Identify all parties to the agreement by specifying their full names and addresses.
- ✓ Make sure all parties, including any cotenants or relevant business partners, have signed the document.
- ✓ Clearly specify the date on which the lease begins and terminates. If it is a contract for labor, machinery hire, or the sale of goods, make sure the date on which the business transaction will occur is specified.
- ✓ If the contract involves property, fully describe the land. Use a legal description if possible.
- ✓ If the document is a lease agreement, full agree on the rental terms. Specify when and in what form the rent should be paid.
- ✓ Can the agreement be renewed? If so, specify the renewal or termination terms unambiguously.

Industry Usage

Contracting parties may agree on a choice of words but may attribute entirely different meanings to a word or sequence of words. The trend in contract law today is to interpret the parties' agreement as it would be understood by a reasonable person in the position of the parties. Of course, courts adhere to the meaning given to the document if the parties agree, even if this interpretation would be very different from what an outside party would attach to it. Contractual interpretation becomes blurry, however, when two parties think they agree but in actuality have conflicting meanings of the exact same language.

The importance of making sure you and the other contracting party fully agree on all terms is perhaps best illustrated by the following case description. In Frigaliment Importing Co. v. B.N.S. International Sales Corp., two corporations enter into an agreement for the sale of chicken. The plaintiff, a Swiss corporation, sued for breach of warranty, contending that the shipment of meat from the New York based company was unsatisfactory. Put more clearly, the opening line of the case starts with "The issue is,

what is chicken? Plaintiff says ‘chicken’ means a young chicken, suitable for broiling and frying. Defendant says ‘chicken’ means any bird of that genus that meets contract specifications on weight and quality, including what it calls ‘stewing chickens’ and plaintiff pejoratively terms ‘fowl.’⁶ The sales contract contained the important material elements of the sale—the quantity, price, delivery date, and wrapping instructions. However, the product was described merely as “U.S. Fresh Frozen Chicken, Grade A, Government Inspected, Eviscerated.”

The New York Company used a combination of chicken products to fill the order, including broilers, fryers, and stewing chicken or fowl. The Swiss Corporation filed suit, contending that the common trade usage of “chicken” in the poultry industry means “young chicken” only and the contents of their order should have reflected as much. In this situation, the court in Frigaliment extensively examined the various types of evidence that both corporations introduced in an effort to convince the court that their meaning of the word “chicken” should prevail. In the end, the court relied upon the poultry trade usage of the word “chicken” as set forth in federal USDA regulations. Because of the lack of complete agreement between the contracting parties to the poultry agreement, one corporation was made to bear the costs of the business transaction. Neither party had reason to believe their definitions of the seemingly simple word “chicken” were so vastly different. In such a situation it is common for a court to use the industry trade usage of the word, as that is most likely what a reasonable person in the position of the parties would interpret the word to mean. However, the most economically efficient way to avoid misunderstandings with your contracting party is to **discuss ALL contractual terms openly, honestly, and carefully.**

Gap Filling

Courts often find it necessary to imply terms that are not explicitly found in the parties’ contractual agreement. This is the case when the written agreement between two parties does not fully encapsulate the entire actual agreement between the parties. In this situation, a court may choose to interpret the contract “in light of the parties’ own dealings, past and present, and of the customs and mores of the community in which they

⁶ 190 F. Supp. 116 (S.D.N.Y. 1960), 116.

were acting.”⁷ Two parties may both firmly believe that their contract supplies all of the necessary terms only to find out that the situation that arose was unforeseeable. Alternatively, the parties may have foreseen the necessity of a certain term but neglected to make a contractual provision for it.⁸

When such a situation occurs, courts often look to the Restatement Second of Contracts developed by the American Law Institute. In particular, §204 deals with gap filling and has been used as a guide in most Pennsylvania courts to provide instruction on the matter.⁹ The section, entitled Supplying an Omitted Essential Term, provides in pertinent part:

When the parties to a sufficient bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court.

To illustrate this gap filling process, let us assume that Farmer A leases 100 acres of land to Farmer B. In the lease agreement, a section provides that the tenant agrees “to use diligence to prevent noxious weeds from going to seed on the farm.” Farmer A believes “diligence” refers to buying and applying herbicides while Farmer B thinks “diligence” simply refers to occasional weeding. The parties obviously intended two entirely different procedures to control the noxious weeds. In such a case, there was no provision in the written lease explicitly stating the necessary procedure to be employed by Farmer B. When a dispute arises, a court will most likely want to resolve the issue by providing an omitted term. Instead of analyzing the relative bargaining powers of Farmer A and B, a court applying Restatement §204 will probably conclude that the “parties would have agreed to the decent thing, thus arriving at the same conclusion as under a test of ‘community standards.’”¹⁰ In other words, the court will supply the term that is “reasonable” under the circumstances and will likely conclude that reasonable should be determined by the practices that control noxious weeds employed by farmers on neighboring farms.

⁷ Contracts book p.515

⁸ Calamari & Perillo p.158.

⁹ Cited and applied by the Pennsylvania Supreme Court in Banks Engineering Co, Inc. v. Polons, 561 Pa. 638, 752 A.2d 883 (2000).

¹⁰ Calamari & Perillo p. 158

The same gap filling process is employed for other issues involving agricultural contracts. For example, where there is a contract for the sale of goods but nothing is said as to price, courts often infer that there has been an inference of a promise to pay a reasonable value for the goods or service.¹¹ Similarly, when a lease allows for a renewal or extension and the written document does not describe the way in which this could be accomplished, it can be assumed that the contracting parties will purport with local community standards and act in good faith to set a reasonable rent price.

Parol Evidence Rule

The Parol Evidence Rule (PER) is really a substantive rule of evidence in contract law that acts to exclude certain types of evidence from court. The PER acts to show a preference for agreements formally expressed in writing and assumes that if two contracting parties truly wanted an agreement fully enforced by the law, then they would have formally documented the agreement. Though the word parol means “oral” the PER really governs any evidence, written or oral, extrinsic to or outside of the written contract. The PER as applied by Pennsylvania courts has an underlying policy of promoting overall efficiency (both judicial and economic) by elevating clarity over vagueness and ambiguity. In other words, once contractual terms appear to be final, it is more efficient overall not to be able to contradict them. **To avoid this type of dispute, a prudent farmer completely memorializes the entire agreement in writing.**

If the PER applies in a given dispute, its application has the effect of preventing one party from submitting any extrinsic evidence when that evidence is offered to supplement or contradict the written agreement. To determine if the PER applies, first determine if the document is an integration of the parties’ agreement. PA courts have determined that “a written contract is ‘integrated’ if it represents a final and complete expression of the parties’ agreement.”¹² Documents can be partial or total integrations. When a document is a partial integration, a document is intended to be final but does not include **all** the details of the agreement between the two contracting parties. In the case of a partially integrated document, no evidence of prior or contemporaneous negotiations

¹¹ See Crawford’s Auto Center, Inc. v. Commonwealth of PA, 655 A.2d 1064 (Pa. Commw. 1995).

¹² See Lenzi v. Hahnemann University 445 Pa. Super 187, 664 A.2d 1375, 1379 (Pa. Super. 1995).

or agreements (oral or written) may be admitted if this evidence would contradict a term of the writing. A totally integrated document is one that was intended to include all details of the parties' agreement and no evidence of prior or contemporaneous negotiations or agreements may be admitted to either contradict or add to the writing. Therefore, a court must first determine the level of a document's integration to determine whether the PER applies in any given instance.

Courts traditionally used the "Four Corners approach" to determine the level of integration (whether an agreement is integrated should be determined from the terms embodied in the written document). Today, PA courts are more willing to look to the total surrounding circumstances of the contracting parties as well as the four corners of the document. The absence or presence of an integration or merger clause can also be extremely important in making such a determination. A merger clause is a contractual provision that states the writing is intended to be final and complete, designed specifically to result in the PER's application. Furthermore, PA courts have held that "although the presence of an integration clause within an agreement makes the PER particularly applicable, its absence does not automatically subject the written agreement to parol evidence."¹³ A writing can be fully integrated even without a merger clause if it unambiguously details the parties' rights and obligations. Moreover, if the written document embraces the field of the alleged oral document (i.e. addresses the same subject matter and are greatly interrelated) then no parol evidence is allowed. According to PA courts,

it is well established that parol evidence of a contemporaneous oral agreement is inadmissible if the subject of such agreement would naturally and normally have been included in the writing between the parties. Therefore, if the written agreement and the alleged oral agreement 'relate to the same subject matter and are so interrelated that both would be executed at the same time, and in the same contract, the scope of the [oral] agreement must be taken to be covered by the writing.'¹⁴

¹³ See Kehr Packages, Inc. v. Fidelity Bank, 710 A.2d 1169, 1173 (Pa. Super. 1998).

¹⁴ See Gianni v. R. Russell & Co., Inc., 281 Pa. 320, 324, 126 A.711, 792 (landmark PA case discussing PER).

An Example of How the Parol Evidence Rule Relates to a Farm Lease

To illustrate this point, consider the following hypothetical. Farmer John and Farmer Bill enter into a one year land lease agreement. Both parties sign a written lease, stipulating that the lease could be renewed as long as John lets Bill know of his intentions to renew the lease at least a month before it automatically terminates. John informs Bill of his intentions to renew the lease two weeks before the termination date. Bill refuses to honor John's request, pointing him to the relevant language in the lease regarding renewability. John then sues Bill for breach of an alleged oral contract. John claims that the two parties had made an oral agreement two days before the signing of the lease, stipulating that Bill only needed two weeks notice of John's intentions to renew the lease. The lease does not have a merger or integration clause in it. Farmer Tom was present at the negotiations between John and Bill and can testify as a witness that John and Bill did in fact agree to a two week renewability period. Does the Parol Evidence Rule apply, barring evidence of the alleged oral contract made prior to the execution of the written lease document?

Pennsylvania courts are likely to first inquire whether the oral agreement comes within the field embraced by the written one. Courts have consistently held that "where the cause of action rests entirely on an alleged oral understanding concerning a subject which is dealt with in a written contract, it is presumed that the writing was intended to set forth the entire agreement as to that particular subject...If it is mentioned, covered, or dealt with in the writing, then presumably the writing was meant to represent all of the transaction on that element."¹⁵ Especially since the alleged oral agreement is unambiguously addressed in the written lease, a court is unlikely to allow extrinsic evidence such as Farmer Tom's oral testimony, to contradict any written term.

¹⁵ See Gianni v. R. Russell & Co., 281 Pa. 320, 324, 126 A. 791, 792 (Pa. 1924).

In conclusion, it may be helpful to consider the following suggestions:

- ❑ Make sure that your written document embodies all preliminary negotiations and verbal agreements in their entirety. Do not rely on the ability to use these prior or contemporaneous agreements to contradict or add to the written document.
- ❑ The parol evidence rule never bars consideration of subsequent oral agreements and a written contract may be modified after its execution (however, a “no oral modifications” clause contained in the document may prevent this).
- ❑ Understand the significance of signing a document containing a merger or integration clause.
- ❑ Never sign a document without carefully reading the terms contained within. If you are unsure of whether the document fully purports with your expectations, it may be wise to consult with competent legal counsel before binding yourself to a contract that is not beneficial to your agricultural situation.

Importance of Formally Recording Your Agricultural Deed and Lease

Deeds associated with the sale of land must be recorded according to Pennsylvania law. While it is not legally required that you record other contracts related to farm land such as land leases, it is extremely prudent to record such leases as well.

Recording and the Sale of Farm Land

Each county in Pennsylvania has an office of the Recorder of Deeds. A deed is a “written instrument, signed and delivered, by which one person conveys land, tenements, or hereditaments to another.”¹⁶ A Pennsylvania 1706 “Act for the acknowledgement and recording of deeds” provided that within six months every deed or conveyance of real property has to be either 1. acknowledged by 2 witnesses before a justice of the peace or 2. acknowledged before the recorder of deeds or his deputy. A properly drawn up deed is binding even if not recorded, but it is usually in your best interests to record it. For example, the former owner could go on getting mortgages, judgments, and suits on your property since records in the Courthouse show he or she still owns it.¹⁷ Registration of land is not meant to make land more valuable by extinguishing non-titleholders' rights in the land. Rather, it is intended to make title more marketable by making title more

¹⁶ Black’s Law Dictionary

¹⁷ P.4 Montgomery County website at www.

certain to potential purchasers. Though the fees vary from county to county in PA, a recent inquiry to the Cumberland County Recorder of Deeds Office confirmed that the fee for recording a simple deed is \$28.50 and the recording of an agricultural land lease starts at \$17.00¹⁸ Before recording documents directly related to real estate, a County Parcel Identification Number (PIN) is needed. This can be assigned by the County Board of Assessments. Please note that some townships require the pre-registration of deeds before the actual registration occurs in the Recorder of Deeds Office. Contact your local Recorder of Deeds Office for specific information regarding the official recording of instruments in your county.

Recording and the Lease of Farm Land

It is also a good idea to record other types of agricultural contracts such as land leases and other similar legal instruments. The recording of such documents puts future purchasers on notice that the contractual obligation exists and could be a binding or running obligation with the land conveyance or interest transfer. The tenant farmer should record his lease with the county courthouse. Recording the lease will provide any prospective purchasers with notice that the property they are interested in purchasing is potentially encumbered by a leasing tenant farmer. This would protect the tenant farmer because it would be the duty of the prospective purchaser to go to the courthouse and do a title search in order to find out if the land they are interested in has any potential title defects. In the event you lose the document, a certified copy of the instrument can be obtained from the Office of the Recorder of Deeds. Documents recorded at this office should show up in the event an interested party chooses to perform a title search on the property. Please remember that such documents might also be subject to the Statute of Frauds (see an Overview and Example of the Statute of Frauds at page 7 for an in-depth discussion of this topic). The recording of such agricultural documents is highly recommended and can serve to prevent future legal disputes.

¹⁸ Please note this rate was last checked in June 2002. Though rates vary from county to county, this should provide you with a rough estimate of the minimal expense involved with the recording of such documents.

The Implied Duty of Good Husbandry in Farm Leases

Most farm leases have contract clauses providing for the tenant farmer to fully utilize good husbandry practices. In general, good husbandry refers to the duty of the lessee to treat and care for the leased land in such a manner so that it will return to the lessor in the same general condition in which it was originally leased.¹⁹ Good husbandry clauses can be general or specific in nature and it is important to carefully look at the particular requirements for each contract you sign. Most generalized good husbandry clauses are usually interpreted to mean compliance with the level of husbandry practiced in the local farming area.²⁰

It has been established in Pennsylvania that in the absence of language to the contrary, there is “an implied covenant on the part of the lessee to surrender premises to lessor upon expiration of [lease] term in substantially the same condition as when lessee took possession, normal wear and tear excepted.”²¹ It is generally presumed that a leasing tenant will conduct farm operations according to the prevailing community usages or customs. Every tenant has an implied duty not to injure the property through “malicious, abnormal, or unusual use.”²² Moreover, the tenant has a duty “to prevent decay and dilapidation ... such as reasonable care will dictate.” A tenant is not responsible for ordinary wear and tear, so long as the land is cultivated according to the requirements of good husbandry.

However, it is important to read these types of clauses very closely, as the lessor may not be satisfied with local good husbandry standards and may impose a tougher standard of husbandry on the lessee. In the event that the lessor is convinced the lessee has failed to adhere to the prescribed level of husbandry, the lessor may bring a civil action as a remedy.²³ Though it is relevant to note that most courts have held in favor of tenants who have used methods bordering on the fine line between good and bad husbandry, permanently or substantially damaging the land (for example, removing valuable topsoil from the land) is not looked upon favorably by the court.²⁴ Pay close

¹⁹ Farm & Ranch Real Estate Law p. 152.

²⁰ *Id* at 152

²¹ *Patton v. U.S.*, 139 F. Supp. 279 (D.C. Pa. 1955).

²² 8 Summ. Pa. Jur. 2d Property §26:111 (2000).

²³ 8 Summa. Pa. Jur. 2d Property §26:90 (2001).

²⁴ P.3 of “Farm Leases” Kunkel & Larison [www. Extension.umn.edu/Documents/P/F/DF2593.html](http://www.Extension.umn.edu/Documents/P/F/DF2593.html).

attention to contractual provisions governing general maintenance, land use, conservation, and the control of noxious weeds.

Agricultural Contracts, Emblements, and the “Way-going Crop”

Upon signing any agricultural land contract it is important to understand the concepts of emblements and way-going crops. **As with any other contractual provision, it is prudent to memorialize a clause pertaining to emblements or way-going crops in your agricultural contract.** Rights in growing crops are typically causes for concern at the life tenant’s death or the sale of land to a third party. Emblements refer to the growing crop, or profits of a crop which has been sown or planted when a tenant dies or land is sold. The phrase “way-going crop” is used to refer to a crop which will not ripen until after the termination of the lease. To clarify, an **emblemment** is a crop that is growing upon the death of a tenant or the **sale of land** and a **“way-going crop”** is a crop that is growing upon the termination of a **land lease**. Disputes often arise over the right to harvest certain types of growing crops when agricultural land contracts (either for the sale of land or land leases) are terminated suddenly or abruptly.²⁵

Illustration One:

Farmer John sows a crop in the fall which requires a growing period longer than the unexpired term of his lease. Does Farmer John have a right to the crop?

Answer:

Since this illustration involves a land lease, we use the doctrine of “way-going crop.” The answer depends, to a large extent, on the type of crop grown. This doctrine has been judicially interpreted to mean “that if a tenancy, or an estate, comes to an end without fault or act of the tenant at an unpredictable time which the tenant could not have foreseen at the time he acquired the estate, he is entitled to take those crops planted by him which will not mature until after the unforeseen termination of the tenancy....However, it has been held that where a tenant’s lease has a fixed expiration date, he must harvest and remove the crops before the expiration of the tenancy.”²⁶ Therefore, a tenant under a signed yearly lease with a fixed expiration date will not usually be allowed to harvest crops after the termination of the lease, even if they were planted before the lease terminated.

²⁵ Ag Law, p.115

²⁶ Farm & Ranch Real Estate Law, p.281

Exceptions have been made by courts however. It is a general agricultural custom that a landowner or subsequent lessee should not unfairly benefit from the time and efforts expended by the initial lessee (the tenant farmer). Exceptions have been made particularly to accomplish the goal of “avoiding waste of land and the equity that a tenant should be entitled to the crops or their value since it was his labor that produced them.”²⁷ In the case of AKC, Inc. v. Joel Opatut Family Trust,²⁸ a tenant leased farmland for the purpose of planting and harvesting trees and nursery stock. Upon termination of the lease, the landlord obtained an order removing the tenant from the leased property and compelling the tenant to diligently remove its trees and nursery stock. The landlord and tenant consented to an order enjoining the landlord from interfering with the removal process. Also, it was agreed to stay the issuance of a warrant of removal and the tenant consented to act with due diligence in removing its trees. The tenant employed 20 to 30 men, seven days of week, regardless of weather conditions, and within about two months cleared approximately 32 of its 40 acres. Once the remaining trees and shrubs began blooming, they could no longer be safely removed, and with the onset of fall, digging recommenced.

Even before all of the trees were removed, the landlord sought a resolution of its claim for damages. In particular, the landlord claimed it was unfair that the tenant continued to use the property, "albeit for the purpose of removing trees without the payment of rent." Therefore, the landlord sought an award of damages, based upon the continuation of rent, until all of the trees had been removed. In fact, the landlord also sought double damages on the theory that its tenant was wrongfully holding over after expiration of its lease.

Essentially, the Court recognized that the landlord and tenant understood that throughout many of their yearly leases, the tenant would plant thousands of trees and shrubs and that upon service of a notice to quit "it would be practically impossible for the tenant to remove all the trees and shrubs prior to the end of the lease term." The Court pointed out that the parties could have provided expressly, in their lease, for removal of the trees after the lease term, but they did nothing "other than leave the resolution of their

²⁷ Swanson p. 578

²⁸ 337 N.J. Super. 381, 766 A.2d 1235 (Ch. Div. 2000).

present dispute" to the courts. Consequently, the Court held that the tenant was entitled to remove his crops.

Obviously, the tenant would have suffered a great deal had the common law imposed that it requirement to remove the trees immediately upon termination of the lease or lose them. Thus, regardless of the underlying law absent lease language, it would have been better for both sides to work this issue out in advance. **Parties can avoid the application of the “way-going crop” doctrine by memorializing their agreement in writing.** Once again, we see the prudence of having a written rather than an oral contract to avoid unexpected results.

Illustration Two:

If the landowner sells his land to another person, without any provisions addressing the ownership of crops, do the growing crops become the personal property of the new landowner?

Answer:

Growing crops are considered part of the realty in a land sale unless

1. Made the subject of sale by contract or
2. Are reserved by the seller.

Ordinarily, they pass with a sale of the land on which they are growing.²⁹ Once again, making this clear in writing can avoid disputes.

Illustration Three:

What happens to the crops if a landowner sells his land to another person when a tenant who had a valid lease with the original landowner has growing crops on the property?

Answer:

As used in illustration one, the tenant who had the land lease with the original owner could always try to invoke the doctrine of “way-growing crop” to protect his interests. Especially in this case, it is particularly prudent to memorialize land leases in writing and record them even if the law does not absolutely require it (see section on Recording and the Lease of Farm Land on page 20 for a more in-depth discussion on what recording a land lease involves.). If a land lease is recorded at the local courthouse, then any future purchaser of the land will be on “notice” that the lease with the original tenant exists. If a lease is properly memorialized and recorded, then a court would almost certainly allow

²⁹ Dyer v. Royal Ins. Co., 220 Md 105, 150 A.2d. 915.

the original tenant to harvest his crops upon their maturity, despite the new owner's wishes.

III. SHARE-CROPPING CONTRACTS

Introduction

Today, it is common practice for the owner of a farm to enter into a cropping a farmer. By this agreement, the farmer undertakes to grow certain produce on the owner's farm and then shares the crops grown, or the proceeds derived from their sale, with the owner of the farm. Although cropping agreements may differ in language and create relationships peculiar to the particular arrangements of the parties, ordinarily such an agreement establishes a cotenancy in the crops while they are being cultivated that lasts until they are divided between the cultivator and the land owner. When the crops are divided, title to the respective shares vests in the manner of and pursuant to the terms of the cropping agreement.

In the usual cropping agreement, the land owner and cropper are co-owners of the crop that is being grown until it is divided between them, or sold. The cropper acquires no estate in the land. The owner retains his property rights in the premises, except that he may not, ordinarily, interfere with the operation of the cropper. The cropper's rights are purely contractual.

The usual cropping agreement does not establish the relationship of landlord and tenant, or lessor and lessee. It is generally not an employment contract, nor does it ordinarily create a partnership. It is however, a joint adventure in a very limited sense, in which the cultivator of the crops and the owner of the land intend to share in the gross product produced, or in the gross returns from the adventure. Whereas a land lease conveys an estate in land, a cropping agreement is only a contract.

The Objective Theory of Mutual Assent

Sometimes, the distinction between a share cropping agreement and a land lease is not all that clear, particularly when parties contract for a land lease in which rent is to be paid with a portion of the crops grown on the land. Whether you choose to form a share cropping agreement or a land lease, it is important to understand the concept of

mutual assent. In the event a dispute occurs over whether a document is a share cropping agreement or a land lease, courts may use the theory of mutual assent to resolve this question.

In order for a contract to be valid and enforceable, a court requires that mutual assent be present. Mutual assent is reflected in the process of offer and acceptance. It has been said that mutual assent is a “meeting of the minds,” when two parties agree on the same bargain at the same time. This usually occurs when one person makes an offer and the other person agrees to the offer through acceptance.

Agricultural contracts, just like any other type of contract, are governed by a sense of objectivity. Objectivity in contract law is governed by the “reasonable person” standard. In the field of contracts, as generally elsewhere, the court must look to the outward expression of a person as manifesting his intention rather than to this secret and unexpressed intention. The law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. An agreement or mutual assent is of course essential to a valid contract but the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. If his words and acts, judged by a reasonable standard, manifest an intention to agree, it is immaterial what may be the real but unexpressed state of his mind.

The case of *Lucy v. Zehmer*³⁰ provides an interesting example of how this objectivity standard applies in an agricultural context. In this case, Lucy alleged that the Zehmers had sold him 472 acres, known as the Ferguson Farm, for \$50,000. Zehmer claims that the alleged transaction occurred in a bar and he considered the offer to be in jest only. According to court testimony, Lucy said, "I bet you wouldn't take \$50,000 cash for that farm," and Zehmer replied, "You haven't got \$50,000 cash." Lucy said, "I can get it." Zehmer said he might form a company and get it, "but you haven't got \$50,000.00 cash to pay me tonight." Lucy asked him if he would put it in writing that he would sell him this farm. Zehmer then wrote on the back of a pad, "I agree to sell the Ferguson Place to W. O. Lucy for \$50,000.00 cash." Lucy said, "All right, get your wife to sign it." Zehmer came back to where she was standing and said, "You want to put your name to this?" She said "No," but he said in an undertone, "It is nothing but a joke," and she

³⁰ *Lucy v. Zehmer*, 84 S.E.2d 516 (1954).

signed it. In his testimony Zehmer claimed that he "was high as a Georgia pine," and that the transaction "was just a bunch of two doggoned drunks bluffing to see who could talk the biggest and say the most."

Nevertheless the evidence showed that Lucy did not understand the transaction to be a joke but considered it to be a serious business transaction and the contract to be binding on the Zehmers as well as on himself. The very next day he arranged with his brother to put up half the money and take a half interest in the land. The day after that he employed an attorney to examine the title. After receiving the report from his attorney that the title was good he wrote to Zehmer that he was ready to close the deal.

Not only did Lucy actually believe, but the evidence shows he was warranted in believing, that the contract represented a serious business transaction and a good faith sale and purchase of the farm. In the field of contracts, as generally elsewhere, "We must look to the outward expression of a person as manifesting his intention rather than to his secret and unexpressed intention. 'The law imputes to a person an intention corresponding to the reasonable meaning of his words and acts.'"³¹

At no time prior to the execution of the contract had Zehmer indicated to Lucy by word or act that he was not in earnest about selling the farm. They had argued about it and discussed its terms, as Zehmer admitted, for a long time. Lucy testified that if there was any jesting it was about paying \$50,000 that night. The contract and the evidence show that he was not expected to pay the money that night. Zehmer said that after the writing was signed he laid it down on the counter in front of Lucy. Lucy said Zehmer handed it to him. In any event there had been what appeared to be a good faith offer and a good faith acceptance, followed by the execution and apparent delivery of a written contract. Both said that Lucy put the writing in his pocket and then offered Zehmer \$5 to seal the bargain. Not until then, even under the defendants' evidence, was anything said or done to indicate that the matter was a joke.

This case illustrates the general rule that the mental assent of the parties is not requisite for the formation of a contract. If the words or other acts of one of the parties have but one reasonable meaning, his undisclosed intention is immaterial except when an unreasonable meaning which he attaches to his manifestations is known to the other

³¹ *First Nat. Bank v. Roanoke Oil Co.*, 192 S.E. 764, 770.

party. The law, therefore, judges an agreement between two persons exclusively from those expressions of their intentions which are communicated between them. An agreement or mutual assent is of course essential to a valid contract but the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. If his words and acts, judged by a reasonable standard, manifest an intention to agree, it is immaterial what may be the real but unexpressed state of his mind.

Here, we had a case in which defendant husband wrote and signed a contract to sell his farm to plaintiffs and persuaded defendant wife to sign by telling her the contract was a joke on plaintiffs. When plaintiffs attempted to finalize sale, defendants attempted to deny contract on the grounds that defendant husband was drunk when making the contract and the contract was a joke on plaintiffs. Defendants' true intent in agreeing to sell their farm was not determinative so long as their words and actions warranted a reasonable person's belief that a contract was intended. Plaintiffs reasonably believed the sale contract was a serious business transaction. As a result, Zehmer was forced to "make good" on his contract and go through with the sale of the Ferguson Farm.

Accordingly, an offer can be defined as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it."³² Many contracts cases revolve around whether a particular communication was an offer or merely a preliminary negotiation, an "invitation for an offer."³³ For example, a price quote or advertisement is usually considered an invitation for an offer. An offer differs from preliminary negotiations in that an offer is more definite and certain in its terms. An offer can be a promise, undertaking, or commitment that reflects an intent to enter into a contract.

An acceptance is also needed for the manifestation of mutual assent. An acceptance has been defined as "a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." Courts judge parties by their conduct, not the actual state of their minds and any conduct taken that is inconsistent with the offer of the proposed contract has the effect of terminating the power of acceptance.

³² RESTATEMENT (SECOND) OF CONTRACTS § 24

³³ *Id* at 62.

Another example can be taken from the case of *Ray v. Eurice*.³⁴ This case represents the general rule that one having the capacity to understand a written document is bound by his signature in law, regardless of whether the person did in fact read the document. One who makes a written offer which is accepted, or who manifests acceptance of the terms of a writing which he should reasonably understand to be an offer or proposed contract, is bound by the contract, even though ignorant of the terms of the writing or of its proper interpretation. In *Ray*, a home owner entered into a contract with a builder for the construction of a house. The builder submitted its own specifications for the house for the approval but the owners had their own set of specifications. The owners' specifications were integrated into the final contract that was signed by all parties. The builder then refused to build the house according to the owners' specifications. The court held that the builder breached the contract. There was no fraud or duress in the making of the contract and any mistake regarding which specifications were part of the contract was unilateral on the part of the builder. The owners intended that their specifications were to be used and this was clearly stated in the contract that integrated those specifications. The builder signed the contract and was bound by its contents. The actual intent of the builder was immaterial because it had agreed in writing to a clearly expressed intent to the contrary. As this case clearly suggests, **it is of paramount importance for both parties to fully read any written document before signing it to make sure the document reflects the mutual assent of the parties.**

In conclusion, the proper test for determining the existence of mutual assent is objective and not subjective. The proper inquiry used is not what the party making it thought it meant but what a reasonable person in the position of the parties would have thought it meant. Additionally, an offer may be accepted only by a person in whom the offeror intended to create a power of acceptance. If the offeror provides that the offer must be accepted by certain methods or terms, then mutual assent only exists if the other party accepts the offer using that method and terms. What mutual assent really reflects is objective evidence that the parties wanted to enter into a transaction. It would hardly make sense for a court to give legal effect to a transaction that neither party wanted to be legally binding.

³⁴ *Ray v. Eurice*, 93 A.2d 272 (1952).

Additional Share Cropping Considerations

Share cropping arrangements, by definition, are not contracts which involve the transfer of property rights. Because of this, the Statute of Frauds requirement that land leases for a duration of three years or more be in writing does not apply. However, while a formal writing is not required by the law, it is generally prudent that the contracting parties still memorialize their intent. As illustrated from the section above on the objective theory of mutual assent, a writing document helps to ensure that a “meeting of the minds” occurs between two contracting parties. Also, when a writing is created, the Parol Evidence Rule (see article on page 16 for an explanation of this rule) encourages that all aspects of the contract be memorialized in the writing.

Good Husbandry Requirements

A good husbandry clause is standard in both land leases and share cropping arrangements. Because it is more common for parties to memorialize leases in writing, parties must often rely on an implied requirement of good husbandry for share cropping agreements (see previous section on the Implied Duty of Good Husbandry in Farm Leases at page 21 for a more detailed discussion of this topic). In order to avoid disputes involving husbandry practices, it is prudent that the parties objectively agree on how the share cropper should comply with husbandry standards. Recall from the previous Good Husbandry section involving land leases that if a good husbandry clause is not included in the written contract, courts usually infer that parties should comply with the level of husbandry most commonly practiced in the local farming area. If you wish to comply with a tougher or more lenient standard of good husbandry, then it is even more important that the contract modify the implied covenant of good husbandry “read into” all agricultural contracts for share cropping.

The Right to Crop under a Share Cropping Arrangement

Depending on the jurisdiction, there is conflicting case law on whether there is a right to crop under a non-lease, share-cropping arrangement if the landowner leases or sells land on which the crop is planted. In order to protect your interest in any growing crop under a share cropping arrangement, it is of particular importance to memorialize

your contract in writing. It is also particularly prudent to register such document at the Recorder of Deeds office in your county. By having a registered written contract, any future buyers or lessee will be “on notice” that the land is already encumbered with a prior obligation. It would also be prudent to carefully draft the written contract to make it known that:

- The share-cropping arrangement is not assignable. By including this provision in the contract, the parties may be responsible for breach of contract if such an assignment occurs.
- The share-cropping arrangement shall be binding upon the heirs and any future parties in interest to the land.

Such a written, memorialized contract may in fact be the only remedy for a share-cropper who wishes to maintain a right to crop under such an arrangement.

IV. AGRICULTURAL PRODUCT SALES

Introduction

Farmers buy and sell agricultural products on a regular basis. While the parties to such a transaction often give little thought to the transfer of products, at its most basic level a contract is formed every time an agricultural product is exchanged for consideration (i.e. usually money). For example, the selling of grain to a wholesaler is the sale of an agricultural product. It is prudent to understand how transactions such as the sale or purchase of livestock and the purchase of feed, seed, or herbicides may be subject to specialized contract rules such as those found in the Uniform Commercial Code.

A General Overview of the Uniform Commercial Code

Specialized rules for the sale of agricultural goods are located in Pennsylvania's Uniform Commercial Code. Traditional agricultural transactions involve the sale of goods. The term "goods" has been defined in the Uniform Commercial Code as:

All things, (including specially manufactured goods) which are moveable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities, and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty.

Therefore, under the UCC, farmers often sale and purchase goods that are subject to special rules.

Uniform Commercial Code Statute of Frauds

Pennsylvania has adopted UCC provisions applying the Statute of Frauds to the sale of Goods for a price of \$500 or more. (For a general overview of the Statue of Frauds see page 7). 13 pa. C.S.A. §2201(1) clearly sets forth the general rule that the sale of agricultural goods over \$500 must be in writing in order to be enforceable. The full text of this statute can be found below.

Title 13 Commercial Code Chapter 22. Form, Formation and Readjustment of Contract

(a) General rule. Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against who enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed up but the contract is not enforceable under this subsection beyond the quantity of goods shown in such writing.

(b) Writing confirming contract between merchants. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (a) against such party unless written notice of objection to its contents is given within ten days after it is received.

(c) Enforceability of contracts not satisfying general requirements. A contract which does not satisfy the requirements of subsection (a) but which is valid in other respects is enforceable:

- (1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the business of the seller and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;
- (2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
- (3) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 2606).

Therefore, an oral contract for milk at a price of \$500 or more is unenforceable under the UCC.³⁵ Under §2201(a), the memorandum must have been signed by the party against whom enforcement is sought. This section also differs from non-UCC Statute of Frauds provisions in that an omitted or incorrectly stated term will not be fatal and invalidate the writing. Even a mistake regarding quantity or price will not invalidate the memorandum under the UCC. The essential element of applying this statutory provision involving an agricultural transaction is that the transaction involve a “good.” 13 Pa. C.S.A. §2201(b) addresses when a given written memorandum satisfies the Statute of Frauds provision.

§2201(b) also provides for a situation in which a memorandum can be enforceable even against a party who does **not** sign it. This section is called the Merchant’s Exception to the Statute of Frauds. There have been numerous situations in which farmers have been held to be “merchants” under the UCC definition (see section Farmers as Merchants at page 39) so it is important to understand the implications regarding selling goods over \$500 to other farmers or merchants. Under §2201(b), if one merchant receives a signed confirmation from the other merchant, then the merchant will usually be bound unless he objects within 10 days after receiving the confirmation. Unless the buying merchant objects within the 10 days, the UCC treats the confirmation just as if it was a signed memorandum.

13 Pa.C.S.A. §2201(c) provides three instances in which contracts for the sale of goods over \$500 are exempted from the Statute of Frauds requirement. Specially manufactured goods, contract admission, and part payment or performance are all exceptions to the general rule set forth in § 2201 (a).

Farmers as Merchants

A determination that a farmer is a merchant is key to applying the UCC to an agricultural product transaction since nearly all agricultural products are goods. It should be noted that 13 Pa.C.S.A. §2201(b) is commonly called the “Merchant’s Exception” to

³⁵ Any alleged oral agreement for sale of scrap metal was unenforceable because sale price of metal was over \$500 A1 Ferro Commodities Corp., S.A. v. Tube City Iron and Metal Co., E.D. Pa. 1990, 728 F. Supp. 1158, affirmed 914 F.2d 241.

the Uniform Commercial Code. This provision is commonly referred to as this because it applies only “between merchants.” The Merchant’s Exception serves to eliminate the requirement that a person actually sign some writing before he can be held liable in contract theory. However, a written confirmation between merchants to which there has been no timely objection does not prove that a contract actually exists. Rather, the only effect is that a merchant who fails to object to a confirmation may not raise the Statute of Frauds as a defense. 13 Pa.C.S.A. §2201(b) applies only when both parties are considered merchants. Courts have previously held that farmers can be members of this merchant class, so it is important to understand the legal ramifications of conducting farm business as a “merchant.”

Whether a farmer is a merchant is a factual question that must be determined on an individualized case-by-case basis in Pennsylvania. This question is used to distinguish between the actual merchant and the casual or inexperienced seller or buyer of farm goods. Also, whether a farmer is a merchant depends upon which UCC Article II merchant provision is implicated along with facts specific to that farmer. If a farmer is **not** a merchant, then the confirmation doctrine does **not** apply and the farmer can rely upon the Statute of Frauds defense previously discussed in this paper.

In general, a merchant includes:

- (1) a person who deals in goods of the kind;

Example: A farmer who solely or primarily sells only corn is considered a person who deals in goods of the kind. The farmer is a merchant because the farmer sells the crop produced, often the entire crop in a single sales transaction to one buyer.

- (2) a person who by occupation is held out as having knowledge or skill peculiar to the goods or practices involved in the transaction;

Example: Some courts have held that a farmer who raises crops as a livelihood, who does not sell them “as a hobby or merely for pleasure,” is a professional and, therefore, a merchant. In particular, an Indiana case, which involved a claimed breach of an oral contract for the sale of 14,000 bushels of soft red wheat, held that a farmer who raises crops for sale, by virtue of that occupation, necessarily is held out as having the knowledge and skill peculiar to the transaction and, therefore, has the status of a merchant. Whether the farmer actually possesses such knowledge and skill, the court emphasized, is immaterial.

- (3) one “to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.”

Example: A farmer that employs an auctioneer to sell his livestock becomes a merchant.³⁶

As the following case illustrates, courts have often had difficulty determining whether or not a farmer is a merchant for UCC purposes. In *Continental Grain v. Harbach*,³⁷ the plaintiff alleged a telephone agreement had been reached by which the defendant farmer had agreed to sell Continental Grain Company 25,000 bushels of soybeans for \$3.81 per bushel. The Grain Company claims to have mailed written confirmation of this agreement to the farmer, who did not give any kind of written objection to this agreement. After suing for breach of contract, the grain company then claimed the farmer was a merchant and that the transaction fell within the Merchant’s Exception to the Statute of Frauds. In response to this claim, the farmer denied that he was a merchant, saying he had only sold soybeans for a few months, despite the fact that he had been a farmer for many years. Defendant farmer also asserted that he could not be considered a dealer of soybeans since he lacked selling experience.

Upon hearing all evidence, the U.S. District Court held that the farmer **was** a merchant and that his lack of experience in selling soybeans was not the only dispositive factor determining the farmer’s status as a merchant. The court held the farmer to be a merchant under the second part of the UCC’s merchant definition. Because the farmer was intimately familiar with the specific confirmation practices commonly used in oral forward contracts,³⁸ the farmer was a merchant by holding himself out as having knowledge in the practice involved in the transaction.

It is worth noting that Official Comment 2 to this UCC provision suggests that “the term ‘merchant’ is to be defined broadly ... and therefore includes farmers if they

³⁶ See *Bradford v. Northwest Ala. Livestock Ass’n*, 379 So.2d 609 (Ala. Civ. Ct. App. 1980).

³⁷ Explained in this paper, this case can further be referenced in its entirety at 400 F. Supp. 695 (N.D. Ill. 1975). Though Illinois substantive law was applied, this case provides a good example of the types of fact-sensitive inquiries courts make when determining whether a farmer is a merchant within a given UCC provision.

³⁸ A forward or future contract is one in which the buyer agrees to pay a fixed price for a good in advance, which could be different from the market price for the good when delivery is due. Such agricultural transactions could be subject to UCC regulation, so it is imperative you understand the contractual terms of such a future contract.

can be said to be in business in any respect. Nevertheless, some courts have held on the basis of the dictionary definition of the word “farmer” that a “tiller of the soil” is not a merchant for UCC purposes.”³⁹ In some situations, it is beneficial for farmers to affirmatively claim merchant status. This is especially the case when farmers want to invoke the UCC Merchant’s Exception to the Statute of Frauds against companies involved in large-scale agribusiness.

Furthermore, it should be mentioned that “confirming memoranda are a common part of modern business transactions. Yet, many businessmen are not fully aware of the legal significance of these writings. For the unsuspecting businessman, a confirmatory writing could trap him into costly litigation which easily could have been avoided.”⁴⁰ UCC merchant rules represent an attempt to create clearer, simpler, and more economically efficient rules for commercial transactions. Anyone interested in entering into an agricultural contract should be aware of the legal significance of these writings and be familiar with UCC provisions governing these types of commercial transactions.

It should also be emphasized that Article II of the Uniform Commercial Code applies to transactions in goods only. If the transaction is for services, rather than goods, then the transaction is governed by common law contract principles. Therefore, contracts for labor and machinery hire are ordinarily outside the scope of UCC provisions. However, even though the law doesn’t require a written contract, good business judgment often does require one.

Uniform Commercial Code and the Parol Evidence Rule

It is extremely important to make sure any document providing for the sale of agricultural goods embodies the full agreement between parties. As discussed earlier on page 16, the Parol Evidence Rule also applies to contracts for the sale of agricultural goods. Special consideration should be given to this rule in light of its application to contracts for the sale of agricultural goods as well.

³⁹ This can be found in William D. Hawkland’s Uniform Commercial Code Series §2-104:2, which provides actual UCC text along with commonly cited cases for each provision.

⁴⁰ Charles D. Onafry, *The Merchant’s Exception to the Uniform Commercial Code’s Statute of Frauds*, 32 VILL. L. REV. 133.

V. CONCLUSION

New challenges and opportunities are consistently emerging in agricultural contracting. Farmers must make sure their contracts continue to serve their needs in the 21st century. This paper has outlined some of the basic considerations in contracts involving the sale/lease of land, share cropping agreements, and agricultural sales. However, each of these topics is only briefly introduced in this paper and each agricultural contract is unique in its scope and application. While it is important to spot some of the contractual issues discussed within, it is equally important to know when to receive the advice of a competent attorney when and if the need may arise. It is our hope that understanding the prudence of having carefully drafted written contracts may serve to eliminate future disputes in the area of agricultural contracts.