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# Agricultural Leases: Some Issues in the Landlord-Tenant Relationship

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Many farmers in the United States rent part or even all of the land that they cultivate. In number of farms, full tenants accounted for 11.5 percent of all farms in the United States in 1987, and part owners accounted for another 29.2 percent. In amount of farmland, full tenants cultivated 13.2 percent of U.S. farmland, and part owners cultivated 53.9 percent (USDA, p. 358). Of the 282.2 million acres of harvested cropland in the United States, 46.2 million acres were farmed by tenants and 168.7 million acres by part owners (USDC, p. 218). The percent of full tenancy varied from state to state. In Illinois, for example, it was 19.4 percent in 1987 (USDC, Illinois, p. 20); in Georgia, it was 7.2 percent of farms (USDC, Georgia, p. 20). Nearly a quarter of Georgia farmers were part owners in 1987; 43.6 percent of the land (59.2 percent of harvested cropland) was operated by part owners.

## *Sources of Law*

Like any lease, the agricultural landlord-tenant relationship involves a contract under which the tenant enjoys possession and control of the owner's land in exchange for the payment of rent. Though many of the legal principles applied to ordinary commercial lease transactions also apply to agricultural leases, farm leases are in some respects unique. For example, though the rent payment under a farm lease may be cash, many leases specify a share of the crop or livestock or a combination of crop share and cash. Because landowner and farmer often know each other personally, they may handle their relationship informally. Therefore, a surprisingly large number of farm leases are oral agreements based on mutual trust. Moreover, in most states, agricultural leases are governed in part by a specialized body of law: common-law principles and statutes enacted in response to the practical requirements (for example, the crop season) of the farm landlord-tenant relationship.

### *Types of Leases*

Agricultural leases are often divided into three general categories: cash, crop-share, and livestock-share.<sup>1</sup> Under the cash lease, the farmer makes a cash payment (a specified sum or an amount determined by formula) for the use of farmland. Under the typical crop-share lease the landlord provides the land, part of the equipment, and a share of the inputs (seed, fertilizer, and other chemicals) needed for the farming operation. In exchange, the landlord receives a share (often the same as his share of inputs) of the crops as rent. The landlord's share may range from one-third to one-half, depending on the quality of the land, local custom, and contributions of farmer and landlord. Under the typical livestock-share lease, landlord and tenant each own one-half of the livestock and specialized equipment; they share the expenses of the operation and the livestock and crop income (Reiss, pp. 5-13).

### *Nature of the Relationship*

Landowners and farmers are free to choose the type of relationship that will govern the farming operation. Their contract can create a landlord-tenant relationship, an employer-employee relationship, or a partnership.<sup>2</sup> The language of their written agreement will help to determine what type of relationship they have created. Therefore, careful drafting in light of state law will ensure that a document actually creates the type of relationship that the parties intend. Unartful drafting or reliance on an oral agreement may mean that the parties' intentions are not carried out.

When landowner and farmer enter a cash lease, it is difficult to argue that the relationship creates anything but a landlord-tenant relationship. In contrast, an agreement to farm on shares may present important questions of interpretation, especially if the contract does not indicate clearly the nature of the relationship. An ambiguous agreement might be interpreted as a crop-share lease, an employment (or cropper) contract, a tenancy in common in the crops, or a partnership.

The difference between a crop-share lease and an employment contract is particularly significant. Under the former, the farmer has a possessory interest in the land and a property right in the crops. Under the latter, the farmer is an employee who has no interest in the land and who receives a portion of the crops as wages. A Nebraska Supreme Court decision explains:

A lease of real estate is a hiring or renting of it for a certain time for a named consideration. A tenant rents the land and pays for it either in money or a part of the crops or the equivalent. A cropper is a hired hand who farms the land and who is paid for his labor with a share of the crops he works to produce and harvest. The crop belongs to the owner of the land and he pays for the labor of

producing it with a part of the crop. A cropper does not have the right of exclusive possession of the land and has no estate in the crop until he is assigned his share thereof by the owner of the land. (*Hampton v. Struve*, 70 N.W.2d 74 (Neb. 1955)).

The intention of the parties, as inferred from the language of the document and the surrounding circumstances, is critical. Obviously, determining the intention of the parties is more difficult when the agreement is oral and informal.

When an agreement grants the farmer exclusive possession of the land, the parties normally have a landlord-tenant relationship. When exclusive possession is not articulated, however, other contract provisions pointing toward a lease are relevant. These include a fixed term, surrender of possession at the end of the term, prohibition against subletting, a requirement for the farmer to repair improvements, the farmer's right to divide the crop, and the farmer's freedom to control his own activity. Provisions that suggest a cropper contract are the landowner's retained possession of the land and title to the crop, the owner's control over the farmer's activity, and the owners's duty to supply most or all of the farm inputs (Grossman & Fisher, pp. 602-604).

Georgia landlord-tenant law includes several sections (Ga. Code Ann. §§ 44-7-100 to -102) devoted to croppers. Under Georgia law, when a person is employed to work for part of the crop, the landlord-tenant relationship does not arise. Title to the crop (subject to cropper's interest) and possession of the land remain in the landowner (§ 44-7-100). The landlord retains the right to control and possess the crops grown and raised on the land until the landlord has received his part of the crops and has been fully paid for crop-related advances made to the cropper in that year (§§ 44-7-101). If the cropper unlawfully takes possession or disposes of the crop (while title is in the landlord), the landlord can repossess the crops through process of law (§ 44-7-102; see § 44-7-103 (a)). The landlord who refuses to deliver the share to which the cropper is entitled (or its value), is guilty of a misdemeanor (§ 44-7-103 (b)).

In a few states, an ambiguous agreement may create a tenancy in common in the crops rather than a lease:

Where one leases land to another for the purpose of raising a single crop, of which the landowner is to have one part for his rent and the cultivator the remaining part for his pay, the question whether the relation of landlord and tenant exists or the two are tenants in common depends on the intention of the parties, which is usually to be inferred from the circumstances, of which the possession is, in general, determining. Where it is doubtful whether the possession and control are exclusive in the tenant or joint in the owner and cultivator, and whether the right of entry continues for the year or only until the crop is removed, the inclination is to find in favor of the [tenancy in common] (*Wheeler v. Sanitary District*, 110 N.E. 605 (Ill. 1915)).

Courts do not always distinguish clearly between leaseholds and tenancies in common. In fact, several courts have held that every contract to farm on shares, whether a crop-share lease or a cropper contract, creates a tenancy in common in the crops. This approach seems sensible because it confirms the ownership interests of landlord and tenant, particularly important when crops are claimed by creditors in or out of bankruptcy. Even in the tenancy in common, however, the producer has the right to possession of the crops until harvest (Grossman & Fischer, pp. 604-06).

Some farming relationships may involve partnerships rather than leases. For example, a partnership may exist if the operation is conducted at the joint and equal expense of the parties, with equal division of net proceeds. Livestock-share leases are particularly susceptible to this interpretation, especially when landlord and tenant own half of the livestock, split the cost of supplies, and receive half of the livestock and crop income. Again in this situation, the intention of the parties is usually determinative, and a court will examine all the circumstances in characterizing the relationship.

The relevant state's version of the Uniform Partnership Act may affect the characterization. A partnership is "an association of two or more persons to carry on as co-owners a business for profit" (UPA, § 6). A tenancy in common or joint ownership of property does not establish a partnership, even if co-owners share profits from use of the property. Moreover, though sharing profits of a business is normally evidence of partnership, a partnership cannot be inferred when a share of profits is received as payment of rent to a landlord (UPA, § 7). In many livestock-share relationships, the parties will be able to establish that the landowner's share is truly rent, especially when other factors point to existence of a lease.

In Georgia, the situation is complicated by the existence of another type of relationship, called the usufruct.<sup>3</sup> When a lease term is less than five years, the lease conveys only the usufruct—the right to possess and enjoy the real estate—and no estate in land passes from the landlord, unless the contract states otherwise. The usufruct cannot be conveyed without the landlord's consent, nor is it subject to sale or levy (Ga. Code Ann. § 44-7-1). The inability of the farmer to assign the lease should not interfere with normal farming operations. Moreover, though in many states leases are theoretically assignable, many written farm leases contain provisions that prohibit assignment without the landlord's consent. Numerous court decisions have held that farm leases, especially crop-share leases, are unassignable personal service contracts (Grossman & Fischer). Parties whose relationship is characterized as a usufruct, however, must consider whether the lack of a true tenancy alters other rules that normally apply to the landlord-tenant relationship. For example, during the

term of the usufruct, who is liable when a third party is injured on the property? (See Ga. Code Ann. § 44-7-14.)

### *Lease Duration*

Another frequent categorization of farm leases focuses on their duration and method of termination. Lease types in most jurisdictions include the tenancy for years (for a term certain), year-to-year (periodic) tenancy, tenancy at will, and tenancy at sufferance.

The tenancy for years, or for a term certain, is a contract in which the termination date of the tenancy is fixed by the lease. Thus, both tenant and landlord know the date on which the lease ends. Absent statutory or contractual provisions to the contrary, a lease for years ends on the stated termination date, and no additional notice is required from either party. Although most tenancies for years are established in written leases, an oral lease with a definite termination date can also establish a tenancy for years.

A year-to-year (periodic) lease is a tenancy relationship that lasts for one year and continues for successive yearly periods unless it is terminated at the end of any period by timely notice from either party. Year-to-year leases are often oral, but may also be established in a written contract. Year-to-year leases also result when a tenant holds over with the landlord's consent after termination of a written lease for a term certain; the new lease that results is a year-to-year lease. In many states, common-law rules or statutes determine how much notice is required to terminate a year-to-year lease. The notice period in Illinois, for example, is four months; in Missouri, sixty days. If a party fails to give timely notice of termination, the farm lease will continue for another one-year period.

The tenancy at will allows either landowner or tenant to terminate a lease at any time by giving notice to the other party. In Georgia, if no time is specified for termination of a tenancy, the law construes it as a tenancy at will (Ga. Code Ann. § 4-7-6). At common law, the tenancy at will can be terminated without prior notice. In several states, however, laws require prior notice, ranging in length from ten days to three months, to terminate the tenancy at will. In Georgia, the statute requires sixty days' notice from the landlord and thirty days from the tenant (Ga. Code Ann. § 44-7-7).<sup>4</sup>

In a farm situation, the tenancy at sufferance may arise if a tenant holds over without the landlord's consent. Normally, the landlord will act reasonably promptly to remove the holdover tenant from the land, or the tenant will become a year-to-year tenant for a new periodic lease.

### Emblements

The term of a farm lease usually give the tenant the chance to plant and harvest crops during an appropriate growing season.<sup>5</sup> In some midwestern states, for example, the typical farm lease begins 1 March and ends 28 February of the following year; this lease term permits the tenant to plant and harvest many annual crops. Sometimes, however, the lease term ends before a tenant's crop has been harvested. This may occur if the tenant's crop has an atypical growing season (for example, winter wheat) or if the landlord is a life tenant who dies during the lease term.<sup>6</sup>

The doctrine of emblements may protect the tenant whose lease ends before the crops have been harvested. When it applies, the doctrine provides that a tenant may reenter the land to harvest and remove crops that will mature after expiration of the lease.<sup>7</sup> The doctrine does not give the tenant a right to possession of the land, but only the right to ingress and egress on the land for a reasonable time to harvest the crop. Moreover, it does not compensate the tenant for preparation of the land without planting crops. However, statutory provisions or prior agreement with the landlord may protect the tenant.

Three general requirements must be met if the doctrine of emblements is to apply: the crops must be a product of the tenant's labor (and not merely a product of nature); termination of the tenancy must not be the tenant's fault; and the tenancy must be for an uncertain term.

Not all types of crops are protected by the doctrine of emblements. At common law, crops are classified as *fructus naturales* or *fructus industriales*. *Fructus naturales* refers to crops with perennial roots; these include hay, clover, and fruit from trees. *Fructus industriales* refers to crops with annual roots; these are products like corn, oats, and wheat, which are produced by the farmer's labor. The common-law doctrine of emblements applied only to *fructus industriales*. One late nineteenth-century court decision, for example, refused to apply the doctrine to blackberries because the blackberry bushes were permanent improvements to the land, and any one year's crop did not depend on labor performed that year (*Sparrow v. Pond*, 52 N.W. 36 (Minn. 1892)).

In recent years, courts have been more willing to award emblements on crops that require annual care and cultivation to increase the quantity and improve the quality of the product. Accordingly, a number of court decisions have treated perennial crops—for example, orchard fruits (oranges and apples), pecans, grass, hay,<sup>8</sup> and clover—as emblements. Though the rigid *fructus naturales*—*fructus industriales* distinction no longer applies in every jurisdiction, reasoned decisions do require annual labor from the tenant who claims emblements.

When termination of the tenancy is the fault of the tenant, that tenant has no right to emblements. The tenant may be at fault, for example, through breach of the lease contract or voluntary surrender of the leasehold. A common breach is the tenant's failure to pay rent; if that breach results in forfeiture of the tenancy, the tenant's right to the crop ends. Voluntary surrender of the tenancy, for whatever reason, also defeats the tenant's claim to emblements. By surrendering, the tenant gives up all benefits of the leasehold.

In emblements cases, the type of crop and the reason for termination tend to pose few problems. The third requirement, that the lease term be uncertain, is often the focus of analysis. This is appropriate, because uncertainty of the lease term is the basis for the equitable and economic rationales behind the doctrine. That is, the doctrine developed both to encourage agriculture as a matter of public policy and to ensure that tenants who reasonably spent money and effort on the landlord's property were compensated. The tenant whose term is uncertain will be reluctant to plant without the assurance that he will be compensated even if the lease term ends unexpectedly.

In practice, it is clear that a tenant under a lease for a term of years (for a term certain) does not qualify for emblements. The tenant for years cannot plant crops that will mature after the lease terminates, and the landlord can expect to receive possession of the land without encumbrances at conclusion of the lease term. In Georgia, a statutory provision seems to address this situation and modify this normal rule somewhat: "A tenant for years is not entitled to emblements unless, before the end of the period which had been fixed for the termination of the estate for years, the happening of some contingency as provided in the creation of the estate terminates the estate without fault on the part of the tenant" (Ga. Code Ann. § 44-6-104; see also *Knighon v. Gary*, 295 S.E.2d 138 (Ga. 1982)). The language of this provision seems to allow emblements only if the document creating the relationship anticipates the contingency that terminates the estate. Though it has been applied in a farm tenancy case by a 1982 court of appeals decision (*Knighon*), this provision actually appears in the part of the Georgia Code that regulates estates for years, which do not (according to § 44-6-101) involve the relationship of landlord and tenant. The Georgia tenant for years would seem to have rights and duties that go beyond the scope of a mere farm tenant (*e.g.*, §§ 44-6-107, 44-6-105).

In contrast, some lease terms are clearly uncertain for purposes of emblements. The tenancy at will (when the landlord terminates) is uncertain, and the doctrine of emblements will apply. In Georgia, a statutory provision codifies this common-law doctrine: "The tenant at will is entitled to his emblements if the crop is sowed or planted before the landlord gives him notice of termination of the tenancy, . . ." (Ga. Code Ann. § 44-7-8).<sup>9</sup>



Also, the farming tenant who rents from a life tenant has an uncertain term, and if the life tenant dies (thus terminating the lease), the farming tenant will have the right to emblements.<sup>10</sup> In Georgia and a few other states, a statute may extend the undertenant's estate to the end of the lease year in this situation, and the doctrine of emblements need not take effect (Ga. Code Ann. § 44-6-86).<sup>11</sup>

When the lease is a year-to-year lease, which continues for another year absent proper notice to terminate, the question of uncertainty is more complicated. Some of the more recent decisions make a distinction based on the planting situation at the time of notice. These decisions reach results that are fair to both landlord and tenant. Under this approach, the year-to-year tenant who receives notice *before* sowing a crop will not receive emblements (*i.e.*, the tenancy will be considered certain). The tenant who receives notice *after* sowing will be eligible to reenter the land to harvest the crop (*i.e.*, the tenancy will be considered uncertain). The distinction has also been established by state statute (*e.g.*, Colorado).

The doctrine of emblements involves a complicated combination of policy, common law, and state statute. Even when a tenant fails to qualify for the doctrine, he may be successful in invoking other legal theories in an attempt to harvest the crop he planted before the lease terminated.<sup>12</sup>

### ***Bankruptcy***

When one of the parties to a farm lease enters bankruptcy, the court must determine the status of the parties' relationship and the rights of both landlord and tenant in crops and livestock raised under the lease. The issues connected with bankruptcy are numerous and complicated; among these are the status of the landlord lien, the ownership of crops and livestock produced under the lease, the right of the debtor to assume or reject an unexpired lease, and damages for breach of contract terms. These issues are discussed in detail elsewhere,<sup>13</sup> and will not be reviewed here. Nonetheless, a few comments about the practical question of the landlord lien are relevant.

Most states protect the farm landlord with a lien on the tenant's crops for rent and advances. The Illinois statute is typical:

Every landlord shall have a lien upon the crops grown or growing upon the demised premises for the rent thereof, whether the same is payable wholly or in part in money or specific articles of property or products of the premises, or labor, and also for the faithful performance of the terms of the lease (Ill. Rev. Stat. ch. 110, § 9-316).<sup>14</sup>

Georgia law gives the landlord a special lien for rent on crops grown on rented land, superior to all other liens except tax liens; in addition, the landlord has a

general lien on property of the debtor (Ga. Code Ann. § 44-14-341). Landlords who furnish supplies, money, draft animals, and equipment can secure themselves from the crops raised during the lease year (*id.* § 44-14-340). Statutes prescribe procedures for enforcing the landlord's right to payment, often through the judicial procedure associated with a distress warrant (*e.g., id.*, §§ 44-7-70 to -82).

When a tenant enters bankruptcy, however, the state landlord lien will not protect the landlord. Under the federal Bankruptcy Code (§ 545), statutory liens for rent and liens of distress for rent can be avoided, and the landlord will lose this important protection.<sup>15</sup>

Some landowners try to protect themselves by taking a consensual lien—a security interest—in the crops. Though the security interest could be included in the lease itself, it may be better practice to use a separate document for the security interest. When properly created and perfected pursuant to article 9 of the Uniform Commercial Code, the security interest can provide better protection than the landlord lien. It is essential that the security interest be perfected properly; unperfected security interests may be avoided by the trustee (see § 544 of the Bankruptcy Code). Issues of priority between claimants to the same collateral may still exist and will be resolved through application of Article 9 principles (see Meyer, 1983, 1991, for a discussion of these issues). The landlord, like other secured creditors, must also comply with the notice requirements of the federal farm products rule, if the security interest is to be enforced against a purchaser of the tenant's crop (Meyer, 1991).

There is now a nationwide effort to study agricultural liens (including the landlord lien) and to determine whether those liens might somehow be coordinated with Article 9 of the Uniform Commercial Code. The so-called Lien Committee of the American Bar Association<sup>16</sup> has surveyed state lien laws and recommended possible methods for handling agricultural liens and security interests (Meyer, 1991, pp. 1342-48). In addition, the possibility of revision of Article 9 itself is currently the subject of study by an American Law Institute committee (*id.*, p. 1348); a number of scholars and attorneys are considering the agricultural issues. At this stage, one can say only that statutory changes are possible within the next few years.

### ***Regulation of Farm Tenancy: Some Comparative Analysis***

The discussion above does not present a comprehensive picture of the regulation of agricultural tenancy relationships in the United States. It does suggest, however, that landowner and farmer have the freedom to structure their relationship by contract, and that the terms of their contract will be respected and

enforced, should litigation result. The terms of farm tenancy contracts are not normally subject to government supervision.

The discussion also indicates that some regulation of the tenancy relationship exists, particularly through state statutes. For example, the landlord is protected by the landlord lien, and both landlord and tenant receive statutorily mandated notice before termination of certain types of leases. The Statute of Frauds may prevent enforcement of an oral lease that cannot be performed within one year.

Another type of regulation, which exists only in a few states, takes the form of statutory or constitutional provisions that impose maximum limits—ranging from 10 to 51 years—on the duration of agricultural lease terms.<sup>17</sup> The rationale for such provisions (at least during the mid-19th century) was the oppressive nature of long-term leases, which deprive tenants of the incentive to improve land and the fair rewards for doing so (*Casey v. Lupkes*, 286 N.W.2d 204 (Iowa 1979)). Probably because of the tendency of farm leases to have rather short terms, these provisions have rarely been interpreted.<sup>18</sup>

The relatively nonintrusive nature of regulation of farm leases in the United States contrasts markedly with the approach in a number of countries in Europe. In some nations, farm leases are subject to rather significant regulation and sometimes to detailed government oversight. In countries with comprehensive lease regulation, policy focuses on protection of the tenant, who has been perceived as the weaker party in the lease relationship.

Under a number of European farm landlord-tenant laws, security of tenure for the farmer is an important goal. In clear contrast with the United States, where one-year leases are common, regulated farm leases in these countries must be entered for statutorily prescribed minimum lease terms. In the Netherlands for example, the minimum lease term is six years, and the term is 12 years if the farm buildings are part of the leased property. The lease is renewed automatically for six years unless a party gives timely notice; the tenant can appeal the notice and ask to renew despite the owner's desire to terminate (Grossman & Brussaard, p. 265). In Belgium and France, the initial term is nine years (with automatic renewal, absent notice to quit); in Italy, 15 years. In Great Britain, the Agricultural Holdings Act provides a complicated scheme to ensure security of tenure, though many tenancies are year-to-year tenancies. This scheme often operates to give the tenant security of tenure for life and, in some cases, to give a near relative of the tenant the right of succession (Gregory & Sydenham). Many other provisions of the Agricultural Holdings Act provide comprehensive regulation of the landlord-tenant relationship.

A brief consideration of some other requirements of the farm lease law (the *Pachtwet*) in the Netherlands helps to contrast the U.S. lease law with an extreme of legislation.<sup>19</sup> The Dutch law is designed both to further the general

interests of agriculture and to protect the tenant. In addition to the minimum lease terms noted above, the farm lease law leaves little freedom of contract to the Dutch farmer and landowner (Winkler). The farm lease (and any amendment or termination agreement) must be written. Moreover, the maximum rent per hectare is fixed by administrative regulation; maximum rents are fixed by soil types, with adjustments for special characteristics of particular plots.

The written lease must be submitted to an administrative body, the Land Tenure Control Board (*Grondkamer*), for approval. This Board has authority to amend or even to cancel the lease if its provisions do not comply with the lease law. For example, the rent must not exceed the regulatory maximum, and other burdens imposed on the tenant must not be "excessive" (going beyond agricultural purposes), even if landlord and tenant have agreed to those "excessive" conditions. Decisions of this Board can be appealed to the Central Land Tenure Control Board (*Centrale Grondkamer*).

A special judicial tenancy tribunal (the *Pachtkamer*) plays an important role in agricultural lease disputes. For example, if a landlord gives notice of lease termination, the tenant may appeal the termination to the tribunal, which must decide the case on the basis of reasonableness.<sup>20</sup> Even if the landowner or a relative wants to farm the land, the tribunal may extend the lease if the landlord's interest is not paramount and termination would seriously endanger the social position of the tenant. The lease need not be extended if the farmer is 65, though in some cases the tribunal may extend the lease for a successor (child) of the tenant.

The landlord who decides to sell the leased farmland (other than sale to a family member and a few other exceptions) must offer it first to the tenant, a provision designed in part to encourage owner-occupancy of farmland. If the tenant wants to buy the property and the parties cannot agree on the price, the Land Tenure Control Board will appraise the property at its value as leased land. Due to the various provisions for security of tenure and the (rather low) maximum rents, this value is normally 35-45 percent lower than the value of "free" (unleased) land. The tenant's right of priority at the low value of leased land makes purchase attractive.

In recent years, the amount of leased land in the Netherlands has decreased, due in large part to the inflexible provisions in the *Pachtwet* and the low maximum rents. This has resulted in immobility of ground. In addition, the strict provisions of the lease law have led farmers and landowners to enter risky "grey leases"—relationships that do not comply with the law and are not approved by the Land Tenancy Control Board (Kapteijn). Landowners who want to comply with the law and also require tenants to take specific conservation measures on their land are sometimes prohibited from making responsible

decisions about desirable conservation practices, because of uncertainty about whether the Land Tenancy Control Board will reject conservation conditions imposed on the tenant as "excessive" (Walda). This uncertainty raises problems even for nature conservation organizations that own and lease out agricultural land.

Many in the Netherlands believe that it is time for revision of farm tenancy law (see van den Noort) and that a more flexible tenancy system is necessary. A revised law could make leasing attractive to landowners again and make nature conservation an accepted part of lease obligations. Social and economic conditions are far different than in 1941, when the basis for today's law was enacted. Rents do not accurately reflect the productive capacity of the ground, and landowners receive an unreasonably low yield. Milk quotas and manure regulations lead to difficult landlord-tenant conflicts.<sup>21</sup> Moreover, the Dutch law is more restrictive than in many other European nations.<sup>22</sup> Some proposed amendments have begun the legislative process, and the issue has engendered discussion among lawyers, scholars, landlord associations, tenant associations, and other farmers' associations. All interested parties would probably agree that any change in the Dutch *Pachtwet* must balance the interests of landlords, tenants, and society.

### ***Conclusion***

In some situations, relatively stringent regulation may be necessary to implement important government policy or to protect particularly vulnerable parts of society. For example, when the Dutch lease law was enacted, vulnerable tenants needed stability of tenure and other protection. Those strict laws, however, have resulted in diminishment of the very institution (farm tenancy) they were intended to protect, and they are no longer consonant with other needs—for example, conservation—of society. Proposals for change in the Netherlands would include some (limited) possibility for the freedom of contract that has been the hallmark of farm leasing law in the United States. In contrast with the stringent approach in the Netherlands, U.S. lease law has combined a scheme of regulation to protect significant interests with freedom of contract and flexibility in land-use decisionmaking for both landlord and tenant.

### ***Notes***

1. A small percentage of farm leases may be labor-share leases, under which the farmer normally contributes only labor and management, or net-share

- leases, under which the landlord receives cash rent that is a function of annual yields (Reiss).
2. Other possibilities are license (permissive use of realty that does not create an estate in land) or joint venture (similar to a partnership, but involving a single business enterprise). In addition, the relationship may involve a bailment (a delivery of personal property in trust for a particular purpose). On these relationships, see Harris & Schroeder.
  3. The usufruct is a "right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing" (Black's, p. 1712).
  4. Georgia law grants the tenant the right of emblements in this situation (Ga. Code Ann. § 44-7-8).
  5. This discussion is adapted from Grossman & Tanner.
  6. Because an owner of real property can convey no greater estate than he possesses, a lessee who leases from a life tenant loses claim to possession of the land when the life tenancy terminates (when the measuring life ends). This result may be altered if the remaindermen are parties to the lease or agree to continue the lease after the life tenant's death. Some states have statutes that allow the tenant to stay on the land until the end of the lease year. See Ga. Code Ann. § 44-6-86.
  7. The doctrine is one of the exceptions to the old general principle that the tenant must remove fixtures and anything he puts on the land before the lease term expires; thereafter, the property belongs to the landowner.
  8. A 1982 Georgia Court of Appeals decision stated that no court in Georgia had determined judicially whether hay is an emblement (*Knighton v. Gary*, 295 S.E.2d 138 (Ga. 1982)).
  9. The section continues: "if the tenancy is terminated by the judicial sale of the estate by the landlord or by death of the landlord or tenant, or if for any other cause the tenancy is suddenly terminated" (Ga. Code Ann. § 44-7-8).
  10. As to the right of the tenant for life to emblements, see Ga. Code Ann. § 44-6-85: "If a life estate is terminated by the act of someone other than the tenant for life, the tenant and his legal representative shall be entitled to emblements, which are the profits of the crop sowed by him during life, whether the plants are annual or perennial."
  11. But note the language of § 44-6-86:  
*If the tenant for life rents the land by the year* and the life estate is terminated during the year by his death or otherwise, the lessee, upon complying with his contract with the tenant for life, shall be entitled to the land for the balance of the year (emphasis added).

12. These include unjust enrichment, contract (express or implied), custom, or estoppel. See Grossman & Tanner, p. 213-218, for further discussion of these theories.
13. For a more complete discussion, see Grossman & Fischer.
14. The lien attaches when the crops begin to grow and continues for six months after expiration of the lease term. Good faith purchasers take crops free of the landlord's lien, unless the landlord gives written notice to potential buyers under the terms of the statute. The tenant must disclose the names of intended buyers.
15. Note that the laborer's lien may remain valid following bankruptcy. The Georgia laborer's lien (Ga. Code Ann. § 44-14-380 to -382) applies to croppers. See Grossman & Fischer, p. 612.
16. This group is a subcommittee of the Agricultural and Agribusiness Finance, Commercial Financial Services Committee, Section of Business Law.
17. See Harris & Schroeder, p. 121-72 to -73. A few states limit all (or city lot) leases to maximum terms of 75 (Montana) or 99 (Alabama, Nevada, North Dakota, South Dakota) years. *Id.*
18. The Iowa Constitutional provision, valid since 1857, was interpreted by the Supreme Court of Iowa only in 1979 (*Casey v. Lupkes*, 286 N.W.2d 204 (Iowa 1979)).
19. See the book edited by van den Noort for extensive discussion of Dutch farm lease law and policy.
20. The law indicates some situations in which the lease should not be extended at the tenant's request.
21. Revision of the *Pachtwet*, however, will not necessarily resolve these conflicts, which arise out of other legislative schemes.
22. This is perhaps an undesirable situation in an era in which the European Community is striving for harmonization of laws, but different agricultural and social structures in the various nations make identical farm leasing laws unlikely.

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