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William Mitchell Law Review Agricultural Law Symposium: An Introduction

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The agricultural sector of our economy continues to change in response to new developments and new governmental institutions. In the 1970s, the loss of agricultural land, taxation issues, and rural development became a prominent focus for persons concerned with the sector’s well-being, and changes were advanced to encourage the continued viability of family farms. To improve the financial situation of farmers, state legislatures adopted differential tax assessment provisions for qualifying agricultural uses to reduce property taxes, and Congress adopted a new use property valuation provision known as section 2032A in the Tax Reform Act of 1976. In 1981, Congress introduced a unified credit to offset federal estate taxes. These tax provisions were helpful in reducing the tax obligations of agricultural producers.

The agricultural legal community expanded its efforts to assist agriculture in the late 1970s and early 1980s. While in-
come taxation\textsuperscript{8} and land use\textsuperscript{9} continued to be notable topics for advice and legislative action, additional topics such as business arrangements,\textsuperscript{10} cooperatives,\textsuperscript{11} and statutory marketing provisions\textsuperscript{12} provided subjects for discussion and for providing assistance to an agricultural clientele. During the same period, agricultural law as a separate field of study became more prevalent in law schools\textsuperscript{13} as well as undergraduate courses at land grant institutions.\textsuperscript{14} The commencement of the \textit{Agricultural Law Journal},\textsuperscript{15} initiation of an advanced program in agricultural law at the University of Arkansas,\textsuperscript{16} and publication of several books on agricultural law\textsuperscript{17} also occurred during this period.

The 1980s also witnessed the emergence of the American Agricultural Law Association (AALA) as a major national professional organization focusing on legal issues concerning agriculture.\textsuperscript{18} While comprised primarily of attorneys in private practice, its membership from across the United States includes law professors, accountants, bankers, government and

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\textsuperscript{9} E.g., Margaret Rosso Grossman & Thomas G. Fischer, Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer, Wis. L. Rev. 95 (1983); David A. Myers, Farmland Preservation in a Democratic Society: Looking to the Future, 3 Agric. L.J. 605 (1981-1982).
\textsuperscript{10} E.g., J.W. Looney, Business Management For Farmers (1983); C. Allen Bock, Formalizing the Farm Partnership, 54 Neb. L. Rev. 558 (1975).
\textsuperscript{12} E.g., Keith G. Meyer, Potential Problems Connected with the Use of "Crops" as Collateral for an Article 9 Security Interest, 2 Agric. L.J. 115 (1980-1981); Donald L. Uchtmann, et al., The UCC Farm Products Exception—A Time to Change, 69 Minn. L. Rev. 1315 (1985).
\textsuperscript{15} 1 Agric. L.J. 1 (1979-1980).
\textsuperscript{16} Current Developments, Graduate Program in Agricultural Law, 3 Agric. L.J. 363 (1981-1982).
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corporate attorneys, and other professionals serving the agricultural community. The AALA is incorporated as a nonprofit organization and serves as an educational bridge linking professionals with an interest in agricultural law.19

The 1985 Farm Bill20 added conservation21 and the farm financial crisis of the late 1980s22 added bankruptcy23 as prominent topics for the agricultural legal community. Evolving technological, environmental, and international trade issues continue to reshape the body of law addressed by agricultural lawyers. These new topics have meant that the informational and educational role of the AALA has taken on a greater importance. The Association’s monthly newsletter, the Agricultural Law Update, contains short reports and summaries of significant developments in agricultural law. Each month the Update provides an “in-depth” article on an important feature topic. The Update also has periodic surveys of recent law review literature, with published AALA symposia.24 The Update and published AALA symposia provide exceptional opportunities for professionals to enhance their knowledge of current agricultural topics. A membership directory, generally published and distributed to members every other year, contains a list of some of our country’s leading agricultural lawyers and their areas of specialization.

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19. The Association’s business offices are located at the University of Arkansas School of Law in Fayetteville.


The AALA’s annual conferences are another major educational activity and are especially important as a place for members to become acquainted with other professionals. The AALA’s 1992 Annual Educational Conference in Chicago included a preconference tour of the Chicago Mercantile Exchange, and a two day program during which fifty speakers shared their expertise in twelve specialized sessions. Topics ranged from practical tax items to a more learned review of the impact of the recent Supreme Court decision in *Lucas v. South Carolina Coastal Council*\(^{25}\) on rural areas. Other topics included agricultural bankruptcy, legislative developments and ethics, tax consequences of health and retirement benefits, injuries in the agricultural sector, commodity trading and broker responsibilities, employing farm management companies, integrators and contracts, structuring international business transactions, federal farm programs, endangered species, farm and ranch credit, trusts under the Perishable Agricultural Commodities Act, developments in biotechnology, environmental audits, wetlands, pesticide litigation, the European Community’s Common Agricultural Policy, and the General Agreements on Tariffs and Trade. A weighty conference handbook containing the speakers’ outlines provided the 200 attendees with an extensive collection of materials for use in their legal pursuits.

Pursuant to tradition, the AALA has selected a law review to publish articles from its 1992 Conference as a special Agricultural Law Symposium. The AALA is honored to have the William Mitchell Law Review publish this year’s proceedings, and appreciates the dedication and cooperation of the Law Review’s Board of Editors in aiding this Symposium issue.

The issue commences with an insightful and forward looking presidential address by Professor Neil D. Hamilton. After noting the past role of agricultural lawyers, Professor Hamilton outlines six philosophical questions that are expected to shape the future of agricultural law. He concludes with an admonishment, similar to one raised several years ago in another presidential address,\(^{26}\) that agricultural lawyers must address fundamental questions facing society to fulfill their function of protecting and preserving the role of agriculture.

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Federal farm programs are an important subject for many agricultural lawyers due to the financial incentives provided by various price and income support provisions. Alan R. Malasky, Christopher R. Kelley, and Susan A. Schneider offer an introductory analysis of federal farm program law, advice on avoiding disputes, and a review of recent cases involving the Agricultural Stabilization and Conservation Service (ASCS). They also offer suggestions on challenging ASCS decisions involving the choice of forum and qualifying for judicial relief.

A scholarly article by Professor James B. Wadley and Pamela Falk addresses the question of environmental land use controls. After differentiating between urban and rural views on rural land, Wadley and Falk note that the use of regulations is perceived as the most capable means of protecting rural lands from future harm. The Lucas case[^27] is seen as a threat to farm and ranch landowners due to the narrowness of the decision, with the implication that urban-oriented decisions may lead to the erosion in the rural perception of quality of life and social well-being.

Recent financial troubles by many farmers has led to litigation against private and governmental lenders founded on duty-based tort claims. Professor Steven C. Bahls examines five major theories advanced by borrowers against lending institutions. After noting recent legislation to curtail lender liability claims, Bahls concludes that borrowers face difficult hurdles in advancing claims based on a duty-based tort.

Each year the AALA’s conference includes consideration of one or more issues dealing with professional ethics. This year Joanne P. Pitulla and Professor John C. Becker put together a practical analysis of several practice settings encountered by agricultural lawyers. Selected from the ABA Model Rules of Professional Conduct, rules dealing with competence, the obligation to communicate with a client, setting fees, terminating the attorney-client relationship, and multiple representation are applied to enumerated settings. Pitulla and Becker’s analysis is especially insightful for attorneys practicing in rural and small town settings.

A provocative session on issues dealing with integrators and contracts looked at problems that growers may experience in a

vertically integrated production industry. One aspect of these issues involved collective bargaining by agricultural cooperatives to secure higher prices for their products. Donald A. Frederick reviews the statutory and case authority that enables producers to form associations to negotiate collectively with processors. He also outlines several suggestions for improving collective negotiation.

The final paper of the symposium concerns discoveries and breakthroughs in biotechnology as they relate to legal institutions governing property rights. Keith D. Parr examines the forms of intellectual property rights protection and agencies involved with product testing. His discussion also addresses possible future regulations for biotechnology products.

Following these articles is a selected agricultural law bibliography for 1985-1992 prepared by Sally Kelley, Kelly Proctor, and Susan Dale Britton. This bibliography references books, treatises, handbooks, loose-leaf services, popular material, and articles from law reviews and other legal periodicals. The materials are categorized under twenty-four subjects to help persons interested in locating information on an agricultural law topic.

The Association appreciates the time and efforts expended by the speakers of the AALA's 1992 Annual Educational Conference. The presentations, outlines, and articles are a significant component of the Association's educational service activities. The AALA especially thanks the authors and editors for their assistance in facilitating this symposium issue.