[37] E.g., Rev. Rul. 58-162, 1958-1 C.B. 234.
[38] I.R.C. § 56(a)(6).
[39] S. Rep. 96-1000, 96th Cong., 2d Sess. 8 (1980.
[40] 1958-1 C.B. 234.
[41] 1973-1 C.B. 211.
[42] See n. 4 *supra*.
[43] Ltr. Rul. 8001001, Sept. 4, 1979.
[44] I.R.C. § 56(a)(6).
[45] See n. 4 *supra*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

COWS. The plaintiff was injured when the plaintiff's car struck a cow on a county highway. The plaintiff sued the owner of the cow for damages and the defendant moved for summary judgment on the basis that the plaintiff failed to show that the defendant willfully or knowingly allowed the cow on to the highway. Under La. Rev. Stat. § 3:2803, owners of livestock may not knowingly, willfully or negligently permit the livestock on to specifically named state highways. The highway involved in the accident was not named in the statute. Under La. Rev. Stat. § 3:3001, parish wards may regulate livestock on highways not mentioned in Section 3:2803. The accident occurred in Cameron Parish which had an Ordinance § 4-42 which prohibited livestock owners from willfully or knowingly allowing their livestock on to highways. The defendant argued that there was no evidence of the defendant's knowingly or willfully allowing the cow on to the highway where the accident occurred. The plaintiff argued that the ordinance was unconstitutional in not prohibiting negligent conduct. The court held that the ordinance was constitutional and barred the plaintiff's recovery. **Bolzoni v. Theriot, 670 So.2d 783 (La. Ct. App. 1996)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

OBJECTIONS. The debtors filed for Chapter 7 and claimed exemptions for a homestead and two motor vehicles. The exemption schedules were amended twice and changed the claimed exemption amount for the motor vehicles only in the second amendment and changed the homestead exemption in both amendments. The creditors filed an objection to the exemptions within 30 days after the last amendment but more than 30 days after the first amendment. The court held that the objection to the motor vehicle exemptions was denied as untimely but allowed the objection to the homestead exemption. The court also held that the homestead objection was limited to the homestead exemption amount allowed when the mortgage on the home was executed. ***In re* Ahmed, 194 B.R. 540 (Bankr. D. Conn. 1996)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

ASSESSMENT. During an audit of their 1981 taxes, the debtors signed an IRS Form 870-AD Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment. The debtors claimed the form was signed and delivered to the IRS in 1988 but did not produce a copy of the signed form. The IRS formally made assessments against the debtors in August 1989 and the debtors filed for Chapter 7 in March 1990, within 240 days after the assessment. The debtors argued that the filing of the Form 870-AD was an assessment of the taxes and made the taxes nondischargeable. The court held that only the formal assessment by the IRS was considered for purposes of determining the discharge of the taxes. ***In re* Lilly, 194 B.R. 885 (Bankr. D. Idaho 1996)**.

AVOIDABLE TRANSFERS. The debtor's residence was foreclosed upon by the IRS to satisfy the debtor's individual tax debt. The debtor's spouse also owned one-half of the residence but was not liable for the taxes. The debtor and IRS entered into an agreement to split the proceeds of the sale of the residence, with one-half paid to the IRS and one-half paid to the spouse. The debtor then filed for bankruptcy and sought to recover, under Section 522(h), the amount paid to the IRS as a transfer of exempt property. The court held that the agreement was entered into voluntarily by the debtor; therefore, no recovery could occur. ***In re* Dalip, 194 B.R. 597 (Bankr. N.D. Ill. 1996)**.

CLAIMS. The IRS filed an untimely priority claim in the debtor's Chapter 7 case and the debtor sought to have the claim allowed only as a general unsecured claim. The court held that the timeliness of an IRS tax claim did not affect the priority status of the claim. ***In re* Davis, 81 F.3d 134 (11th Cir. 1996)**.

DISCHARGE. The debtors filed their 1991 tax returns on April 15, 1992 and the debtors filed for Chapter 13 on April 30, 1992. The IRS obtained permission to assess taxes for 1990 and 1991 on May 11, 1992. The debtors converted the case to Chapter 7 in November 1992 and received a discharge in February 1993. The IRS began collection efforts after the discharge but the debtors filed for Chapter 13 in April 1995. The debtors argued that the taxes were now dischargeable because the return was filed more than three years before the petition. The IRS argued, and the court agreed, that the intervening Chapter 13 and 7 cases tolled the limitations period of Section 507(a)(8)(A) to increase the period by the length of those cases. ***In re* Strickland, 194 B.R. 888 (Bankr. D. Idaho 1996)**.

The court held that the debtor's previous bankruptcy case tolled the three year period of Section 507(a)(8)(A) for purposes of a second case. ***In re* Taylor, 81 F.3d 20 (3d Cir. 1996)**.

DISMISSAL. The debtor, a tax protester, had failed to file income tax returns or pay taxes on wages for seven years. The debtor filed a Chapter 7 case and received a discharge, except for the income taxes. The debtor then filed for Chapter 13 and sought to discharge the taxes. The IRS moved to dismiss the case for bad faith. The court held that failure to file returns and pay wages and the failure of the debtor to provide for any payment of the taxes in the Chapter 13 plan were sufficient cause to dismiss the case for bad faith filing. ***In re*** **Greatwood, 194 B.R. 637 (Bankr. 9th Cir. 1996)**.

REFUND. In an effort to pay employment taxes owed by the debtor's business, the debtor sold the business and paid the IRS from the sale proceeds an amount based on what an IRS agent stated was the amount owed. In spite of this, the IRS continued to assess interest and penalties on additional employment taxes owed by the business. When the debtor filed for bankruptcy, the IRS filed a claim for the amount of taxes, interest and penalties still owed. The debtor presented the evidence of the payment from the sale proceeds and the IRS failed to provide any evidence of how the proceeds were applied, if at all, to the debtor's taxes. The Bankruptcy Court held that the debtor provided sufficient evidence to rebut the IRS claim and disallowed the claim. The appellate court reversed, holding that the burden of proof remained with the debtor to rebut the IRS claim. ***In re*** **Ford, 194 B.R. 583 (S.D. Ohio 1996), *rev'g*, 168 B.R. 173 (Bankr. S.D. Ohio 1994)**.

SECURED CLAIMS. The debtors filed for Chapter 13 and the IRS filed a claim for taxes which was partially secured. The debtors' plan provided for payment of the secured tax claim to the extent the claim was secured by nonexempt property. Citing *In re Barbier, 896 F.2d 377 (9th Cir. 1990)*, the IRS argued that the claim was to be considered secured to the extent of all property subject to the prepetition tax lien. The court agreed, holding that a claim was secured to the extent of all property in which the estate had an interest on the date of the petition, which would include property which the debtors would later claim as exempt. ***In re*** **May, 194 B.R. 853 (Bankr. D. S.D. 1996)**.

CONTRACTS

SALE OF GOODS. The plaintiffs entered into a contract to purchase 10 emu chicks from the defendants. The defendant delivered only one healthy chick and the plaintiffs sued for damages. The trial judge refused to allow jury instructions involving damages allowed under the UCC because (1) the transaction was not between merchants and (2) emu chicks were not goods for purposes of the UCC. The jury awarded the plaintiffs damages and the defendants appealed. On appeal, the plaintiffs conceded the error of the first point. The court reversed the jury verdict and held that emu chicks were goods for purposes of the UCC and that the instructions concerning UCC measure of damages should have been allowed. **Sanders v. Barton, 670 So.2d 880 (Ala. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

GRAIN STANDARDS. The Grain Inspection, Packers and Stockyards Admin. (GIPSA) has adopted as final regulations amending the grain standards for barley to include two classes, malting barley and barley; to remove the U.S. Choice grade for two-row malting barley; and to revise several grading procedures and inspection standards. The GIPSA has announced that the new barley standards will not be implemented until June 1, 1997. **61 Fed. Reg. 24663 (May 16, 1996)**.

HERBICIDES. See **Dickman v. Du Pont de Nemours & Co., 663 N.E.2d 507 (Ill. Ct. App. 1996)** under **Products Liability** *infra*.

IRRADIATION. The APHIS has issued a policy statement concerning the use of irradiation as a treatment for plant pests of quarantine significance. **61 Fed. Reg. 24246 (May 15, 1996)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* In 1986, the debtor, a perishable agricultural commodities dealer subject to PACA, purchased several interests in a marketing terminal cooperative which entitled the debtor to lease shops in the terminal market. In 1989 and 1991, the debtor purchased perishable agricultural commodities from several sellers who were not paid for the produce. The sellers filed notices of intent to claim part of the PACA trust before the debtor filed for bankruptcy. The sellers sought to include in the PACA trust, the proceeds from the bankruptcy trustee's sale of the terminal shops' interests held by the debtor. The sellers argued that the rent paid for the shops was derived from the sale of the produce purchased from the sellers. The District Court held that the interests themselves could not be subject to the PACA trust because the interests were purchased before the commodities were purchased from the sellers. In addition, the rent payments were not included in the PACA trust because the payments were bona fide and made in the normal course of business. In reversing and remanding the District Court decision, the appellate court held that the PACA trust, once established by a sale on credit, continued until all unpaid sellers were paid, even though the unpaid sellers changed over time. This made the PACA trust's existence independent of each commodity transaction but also terminated the trust once all unpaid sellers were paid. Therefore, the court reasoned, the interests purchased by the debtor could be subject to the PACA trust if any unpaid sellers existed when the interests were purchased, the interests were purchased with PACA trust assets, and the PACA trust did not terminate for any period after the interests were purchased. The case was remanded to determine whether these factors existed. ***In re*** **Kornblum & Co., Inc., 81 F.3d 280 (2d Cir. 1996), *rev'g and rem'g*, 177 B.R. 187 (S.D. N.Y. 1995)**.

FEDERAL ESTATE AND GIFT TAX

GIFT-*ALM* § 6.01.* The decedent and spouse gave their son $72,000 in exchange for title to the son's house, although the son and spouse continued to live in the house. The decedent and spouse claimed deductions attributed to the property and paid property taxes on the property. The son decided to sell the house and the decedent and spouse transferred the house to the son for no consideration before the sale occurred. The decedent filed a gift tax return for the transaction, valuing the gift at the fair market value of the house, based on the sale price to the third parties. The estate argued that the transfer of title back to the son was not a gift because the son retained possession of the house and, under

I.R.C. § 2036(a) would have had to include the house in the son's estate for estate tax purposes. The court cited *Estate of Durkin v. Comm'r, 99 T.C. 561 (1992)* for three factors in holding that the decedent's estate was barred from challenging the gift tax treatment of the transaction: (1) the decedent had filed a gift tax return consistent with a gift transaction, (2) the decedent had treated the first transaction as a sale and the second as a gift in local records, and (3) the tax treatment of the transactions was challenged only after an IRS audit. **Estate of Corbett v. Comm'r, T.C. Memo. 1996-255**.

REFUNDS. The decedent's estate filed and received an extension to file the federal estate tax return. Prior to the new due date, the estate made a payment of $30,000 designated as an estimated estate tax payment. On the new due date, the estate filed a Form 706 which listed the values of estate property but did not include any schedules to support the valuations. The form was accompanied by a $15,000 check and a letter explaining that the estate was complicated such that final asset values could not be determined and that an amended return would be filed if necessary. Over five years later, the estate filed an amended return which claimed a refund. The court held that the filing of the Form 706 was sufficient to start the limitation periods for refund requests under I.R.C. § 6511(b)(2)(A). **Zeier v. United States, 80 F.3d 1360 (9th Cir. 1996)**.

FEDERAL INCOME TAXATION

AUDITS. The IRS has issued a Market Segment Specialization Program (MSSP) audit guide for auditing of cattle auction barns to detect schemes to underreport cattle sale income from cash transactions. **IRS' Market Segement Specialization Program Training Guide--Cattle Auction Barns, 96 ARD 108-3**.

The IRS has announced a three part test for determining whether a Field Service Advice (FSA) or Technical Advice Memorandum (TAM) should be requested by field agents. Under the first factor, an FSA would be best if the issue is still undergoing factual development. An FSA would also be more appropriate if the requested information applied to case development or strategy. The third factor favors a TAM if the issue is novel or complex. **Field Service Advice/Technical Advice—Summary of Chief Counsel Notice, 96 FED (CCH) ¶ 46,409**.

CASUALTY LOSSES. The taxpayer suffered damages to business property in an earthquake which was declared a disaster by the President. The taxpayer wanted to make an election under I.R.C. § 165(i)(1) to have the losses deducted in the prior tax year but the tax advisor was misinformed as to the election deadline. The taxpayer sought an extension of time to file the election. The IRS granted the extension because the taxpayer's actions were always consistent with the intent to make the election, the taxpayer's actions were reasonable, and the government's interests were not jeopardized by granting the extension. **Ltr. Rul. 9622020, Feb. 24, 1996**.

CORPORATIONS.

SMALL BUSINESS STOCK. The IRS has issued proposed regulations which permit a corporation to redeem a de minimis amount of small business stock without violating the anti-evasion rules of I.R.C. § 1202(c). The proposed rules also allow redemptions which are unlikely to result in evasion of the original issue requirement, such as redemptions upon termination of the shareholder's employment or upon the shareholder's death, disability or mental incompetency. The proposed rules allow redemptions where the shareholder sells stock to an employee. **61 Fed. Reg. 28821 (June 6, 1996)**.

COURT AWARDS AND SETTLEMENTS-*ALM* § 4.02[14].* The taxpayer sued a former employer for wrongful discharge, breach of contract and violation of RICO. After the jury found that the discharge was improper, the taxpayer and employer negotiated a settlement which allocated a portion of the payment to the wrongful discharge claim. The Tax Court held that the taxpayer would be allowed to exclude the payments for wrongful discharge based on the settlement allocation because the settlement was reached by arm's length negotiations by adverse parties. The appellate court reversed, holding that under *Commission v. Schleier, 115 S. Ct. 2159 (1995)*, the award was included in gross income because the settlement was not received on account of personal injuries. The decision is designated as not for publication. **McKay v. Comm'r, 96-1 U.S. Tax Cas (CCH) ¶ 50,279 (5th Cir. 1996), *rev'g*, 102 T.C. 465 (1994)**.

EMPLOYMENT BENEFITS. The IRS has adopted as final regulations governing the eligibility of reimbursed working condition fringe benefits for exclusion from an employee's gross income where the benefits are not deductible in full or part by the employer. Specifically, the regulations allow reimbursed meal and entertainment expenses which qualify as working condition fringes to be excluded even though the employer may only deduct 50 percent of such expenses. The same rule applies for club memberships and payment of travel expenses of an employee's spouse. **61 Fed. Reg. 27005 (May 30, 1996)**.

HOBBY LOSSES. The taxpayer was a surgeon who also spent about 10 hours a week in breeding, training and riding "cutting horses," primarily for competition. For the ten years of this activity, the taxpayer had some income but only net losses. The court held that the taxpayer was not entitled to deduct expenses in excess of income from the cutting horse activity because the activity was not entered into with an intent to make a profit since (1) the taxpayer failed to make any market study of the profitability of such an activity, (2) the taxpayer failed to maintain complete and accurate records, (3) the taxpayer had to rely on others for any expertise in the business, (4) the taxpayer's involvement in the activity was primarily riding the horses in competition and for pleasure, (5) the taxpayer presented no evidence that the assets of the activity would appreciate in value sufficient to recover the losses incurred, (6) the activity sustained several years of consistent losses, and (7) the taxpayer had substantial income from other activities. The taxpayer was also assessed penalties for substantial understatement of tax and an accuracy-related penalty. **Daley v. Comm'r, T.C. Memo. 1996-259**.

LIKE-KIND EXCHANGES. The taxpayer owned a business property and wanted to sell it in a like-kind exchange. The buyers of the property agreed to participate in a three-party exchange and the property was transferred to the buyers in 1988 for no consideration. Within 45 days after the transactions, the taxpayer identified 19 properties which were suitable for an exchange and six properties were transferred through third party facilitators to the taxpayer. However, the transfers did not start until April 25, 1989 and were completed in June 1989, all after the taxpayer's filing of the 1988 federal tax return. Under I.R.C. § 1031(a)(3), the replacement property must be acquired within the earlier of the due date (including extensions) of the tax return for the year of the first transfer or 180 days after the transfer. The taxpayer argued that, because a four month automatic extension was possible, the due date determination should have been made based on the possible extension. The court held that the extension increase was available only if the taxpayer actually applied and met the requirements for the extension. The court noted that, although the extension was automatic, the extension still had some requirements to be met before the extension occurred. Therefore, the transfers were not eligible for like-kind exchange treatment. The transfers, however, were held to be eligible for installment treatment. **Christensen v. Comm'r, T.C. Memo. 1996-254**.

PARTNERSHIPS-*ALM* § 7.03.*

LIMITED LIABILITY COMPANIES. Two corporations formed a limited liability company under the Louisiana Limited Liability Company Act with each corporation owning 50 percent of the LLC. The IRS ruled that the LLC was taxable as a partnership because (1) the LLC lacked centralized management since, under the LLC agreement, the LLC was to managed by the members, and (2) the LLC lacked continuity of life since the LLC agreement required the dissolution of the LLC by the death, bankruptcy, incompetency or withdrawal of a member unless a majority of the remaining members agreed to continue the LLC. **Ltr. Rul. 96220007, Feb. 21, 1996**.

TERMINATION. The IRS has issued proposed regulations governing the effect of a termination of a partnership caused by the sale or exchange of 50 percent or more of the total interests in partnership capital and profits. The proposed regulations provide that, upon the termination, the partnership is deemed to have first transferred all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership. The terminated partnership is deemed to have immediately thereafter distributed the interest in the new partnership to the purchasing partner and other remaining partners in liquidation of the old partnership, either for continuation of the business or dissolution. **Prop. Treas. Reg. § 1.708-1(b)(1)(iv)**. Previously, the termination was deemed to result in a distribution of the partnership *assets* to the purchasing and remaining partners. The new rule means that there is no longer the possibility of gain under I.R.C. § 731(a), no change in the basis of partnership assets, and no new five-year period for purposes of I.R.C. §§ 704(c)(1)(B), 737. I.R.C. § 704(c) property held by the terminated partnership continues as I.R.C. § 704(c) property in the new partnership. Regulations under I.R.C. §§ 704, 731, 737 were also changed to reflect the new rules. **61 Fed. Reg. 21985 (May 13, 1996)**.

PASSIVE ACTIVITY LOSSES. The IRS has released a revised Market Segment Specialiazation Report audit guide for passive activity losses. **IRS's Market Segment Specialiazation Program Training Guide—Passive Activity Losses, IRPO ¶ 216,001**.

PENSION PLANS. The IRS has issued revised Forms 5300, 5303, 5307 and 5310 for requests for determination letters for qualified employee benefit plans. The revised forms include Schedule Q which satisfies the attachments required by *Rev. Proc. 93-39, 1993-2 C.B. 513.*

A corporation established a deferred compensation plan intended to be an eligible deferred compensation plan under I.R.C. § 457(a). The benefits of the plan were available to participating employees in the event of retirement, separation from service or for unforeseeable emergencies. The plan funds were held in a trust which provided that the trust funds were subject to the claims of the employer's general creditors; thus, in the case of bankruptcy, the plan funds would be paid first to the employer's creditors. The IRS ruled that the deferred compensation placed in the plan would be income to the employees when distributed or otherwise made available for the employees' use. **Ltr. Rul. 9622021, Feb. 28, 1996**.

INSURANCE

COVERAGE. The plaintiffs had joined together to raise sheep and decided to do some custom sheep feeding for another corporation. As the plaintiffs were starting their joint effort, the plaintiffs talked to the defendant's agent about insurance coverage for their sheep operation. Although there was some discussion of whether the plaintiffs would be engaging in any custom feeding, the plaintiffs had not begun any custom feeding at the time of the insurance application. The testimony from the parties involved in the application was inconclusive on this point but the court found that the plaintiffs could not have had any expectation of coverage of their custom feeding operation. An ice storm hit the plaintiffs' area after the plaintiffs accepted over 1,000 sheep from another corporation and many of the sheep were lost. The corporation sued the plaintiffs for breach of contract and was awarded damages. The plaintiffs sought contribution from the defendant insurance company under the policy. The case was complicated somewhat by the fact that the insurance policy was not delivered to the plaintiffs until after the disaster. The court held that the insurance policy did not provide coverage for the plaintiffs' liability under the contract because the policy only covered property damage and the plaintiffs had no reasonable expectation that the policy would cover personal liability for the custom feeding operation. **Ide v. Farm Bureau Mut. Ins. Co., 545 N.W.2d 853 (Iowa 1996)**.

MORTGAGES

REDEMPTION. The debtors owned six tracts of farm land which became subject to a judgment lien to satisfy a loan from the creditor. The debtors filed for Chapter 7

******Agricultural Law Manual* **(ALM). For information about ordering the** ***Manual*****, see the last page of this issue.**

bankruptcy and the creditor obtained relief from the automatic stay to pursue foreclosure of the judgment lien. The land was sold at a foreclosure sale, but before the right of redemption period expired, several third parties deposited funds with the clerk of court for the debtors to use to redeem the properties. The bankruptcy trustee indicated that the funds may be included in the bankruptcy estate. The creditor argued that the deposited funds were insufficient for redemption because (1) the trustee could recover the funds from the creditor for inclusion in the bankruptcy estate and (2) any of the third parties could withdraw their funds. Before the trial court confirmed the sale, denying the redemption, the bankruptcy trustee filed an abandonment of the properties involved. The appellate court reversed the denial of the redemption, holding that (1) the trustee's abandonment of the property placed all rights of redemption with the debtors and (2) a debtor may use funds from third parties to make a redemption. **Farm Credit Services v. Dues, 663 N.E.2d 379 (Ohio Ct. App. 1995)**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiff purchased the herbicide Canopy, manufactured by the defendant, and applied the herbicide to soybean crops. The herbicide was advertised by print and by the local dealer as allowing a farmer to plant corn on treated fields in following crop years. The plaintiff alleged that the herbicide had a carryover effect which damaged subsequent corn crops. At trial the defendant moved to exclude all evidence of the herbicide label, arguing that all questions concerning the label were federal questions and the state court had no jurisdiction over federal questions. In the appeal of the trial court judgment for the plaintiff, the defendant argued for the first time that FIFRA preemption deprived the state court of jurisdiction over the case. The court held that FIFRA has no provision giving federal courts exclusive jurisdiction over claims involving FIFRA. The court also held that the issue of FIFRA preemption was an affirmative defense which was required to be raised at the trial level; therefore, the defendant had waived this defense after the trial judgment was entered. **Dickman v. Du Pont de Nemours & Co., 663 N.E.2d 507 (Ill. Ct. App. 1996)**.

PROPERTY

FENCES. The plaintiffs wanted to build a 650 foot partition fence between the plaintiffs' and defendants' properties. The plaintiffs sought a ruling from the township board of trustees that the defendants should contribute one-half of the cost of the fence. The plaintiffs provided only nonexpert personal opinion that the cost of the fence to the defendants was less than the increase in property value to the defendants' property. The defendants also offered only personal nonexpert testimony that the fence would not add any value to their property. The defendants claimed that the fence would not add any value because the defendants did not have any livestock on the property. Under Ohio law, livestock owners were prohibited from allowing livestock to run at large. The court held that the defendants provided sufficient evidence to uphold the trustees' ruling that the defendant was not required to contribute to the cost of the fence. **Wurzelbacher v. Colerain Twp. Bd., 663 N.E.2d 713 (Ohio Ct. App. 1995)**.

WORKERS' COMPENSATION

STATUTORY EMPLOYEE. The plaintiff worked as an itinerant "ring man" for livestock auctions around the country. The plaintiff would work for the defendants about three times a year for five to six days at a time. The defendants were livestock and exotic animal dealers and part of the business was an auction of the animals. The plaintiff was performing the services as a ring man for an exotic animal auction held by the defendants when the plaintiff was injured by one of the animals being auctioned. The plaintiff sued the defendants for negligence and strict liability. The defendants claimed that the plaintiff was a statutory employee entitled only to workers' compensation benefits. The court held that the plaintiff was a statutory employee because (1) the plaintiff's services were performed under a contract, (2) the injury occurred on the employer's premises, and (3) the work performed by the plaintiff was within the usual course of the defendants' business. **Zerebco v. Lolli Bros. Livestock Market, 918 S.W.2d 931 (Mo. Ct. App. 1996)**.

ZONING

AGRICULTURAL USE. The defendant owned a 23 acre farm on land zoned residential. The defendant used the farm primarily for boarding horses, breeding rabbits, growing hay and offering pony rides. The defendant began offering hayrides to the general public, incorporating holiday themes into the rides. For Halloween, the ride involved music and lights in the woods and actors portraying a variety of Halloween figures. Part of the defendant's barn was used as a pre- and post-ride lounge and included vending and game machines. After complaints from neighbors, the county zoning inspector ordered the defendant to cease and desist the haunted Halloween rides and to stop serving food. The defendant argued that hayrides were included in the definition of agricultural use and that Ohio Rev. Code § 519.21 prohibited zoning restrictions on agricultural use of property. The court held that although hayrides were normally included in the definition of agricultural use, the defendant's hayrides had expanded to something which was no longer compatible with an agricultural use. The court noted that the loud noises and lights disturbed the neighbor's animals. **Columbia Twp. Bd. Of Zoning Appeals v. Otis, 663 N.E.2d 377 (Ohio Ct. App. 1996)**.

CITATION UPDATES

Greene v. U.S., 79 F.3d 1348 (2d Cir. 1996), *rev'g*, 864 F. Supp. 407 (S.D. N.Y. 1994) (gifts of commodity futures contracts) see p. 67 *supra*.

AGRICULTURAL LAW PRESS
P.O. BOX 50703
EUGENE, OR 97405

JOURNAL ARTICLES

The inaugural issue of the *Drake Journal of Agricultural Law* has been published, with an intrudction by Neil E. Harl and the following articles:

Grassley, Sen. Charles E. and Jochum, James J., "The Federal Agriculture Improvement and Reform Act of 1996: Reflections on the 1996 Farm Bill."

Hamilton, Neil D., "The Emergence of a New Agriculture in the United States."

Becker, John C. And Haas, Robert G., "The Status of Workers as Employees or Independent Contractors."

Centner, Terence J. And Lathrop, Kyle W., "Differentiating Food Products: Organic Labeling Provisions Facilitate Consumer Choice."

Tanner, Gordon W., "Annual Review of Agricultural Law: Commercial Law Developments."

Mueller, Kristin, "Hormonal Imbalance: An Analysis of the Hormone Treated Beef Trade Dispute Between the United States and the European Union."

McBeth, Daryn, "Public Need and Private Greed—Environmental Protection and Property Rights."

Subscription information may be obtained from the Drake Journal of Agricultural Law, Drake University Law School, Opperman Hall, Suite 187, Des Moines, IA 50311. Ph. 515 271-4969. E-mail: agjourn@acad.drake.edu

ISSUE INDEX

Animals
Cows **95**
Bankruptcy
General
Exemptions
Objections **95**
Federal taxation
Assessment **95**
Avoidable transfers **95**
Claims **95**
Discharge **95**
Dismissal **95**
Refund **96**
Secured claims **96**
Contracts
Sale of goods **96**
Federal Agricultural Programs
Grain standards **96**
Herbicides **96**
Irradiation **96**
PACA **96**
Federal Estate and Gift Tax
Gift **97**
Refund **97**
Federal Income Taxation
Audits **97**
Casualty losses **97**
Corporations
Small business stock **97**
Court awards and settlements **97**
Employment benefits **97**
Hobby losses **97**
Like-kind exchanges **98**
Partnerships
Limited liability companies **98**
Termination **98**
Passive activity losses **98**
Pension plans **98**
Insurance
Coverage **98**
Mortgages
Redemption **98**
Products Liability
Herbicides **99**
Property
Fences **99**
Workers' Compensation
Statutory employee **99**
Zoning
Agricultural use **99**