tax consequences under the 1995 ruling. Specifically, it may be wise to consider slowing the increase in cash value so that it accrues over a longer term. That postpones equity attainment. Also, it may be possible to avoid a taxable transfer under I.R.C. § 83 by providing for a substantial risk of forfeiture on the part of the employee. A taxable transfer does not occur if the interest has not vested.[17] Vesting could be tied to attainment of performance objectives by the employee (or reaching a specified number of years' service).

In conclusion...

The last word has clearly not been written on the tax treatment of split-dollar life insurance contracts. Further guidance from the Internal Revenue Service is to be expected. Moreover, the Service position is likely to be challenged in court.

FOOTNOTES

1 For a discussion of the taxation of life insurance generally, see 5 Harl, *Agricultural Law* § 43.02[2] (1996); Harl, *Agricultural Law Manual* § 5.01[4] (1996).

2 Rev. Rul. 64-328, 1964-2 C.B. 11.

3 *Id*. See Rev. Rul. 55-747, 1955-2 C.B. 228.

4 *Id*.

5 *Id*.

6 Rev. Rul. 55-713, 1955-2 C.B. 23.

7 Rev. Rul. 64-328, 1964-2 C.B. 11.

8 Ltr. Rul. 9604001, Sept. 8, 1995.

9 *Id*.

10 *Id*.

11 *Id*.

12 See, e.g., Rev. Rul. 64-328, 1964-2 C.B. 11. See also Rev. Rul. 55-747, 1955-2 C.B. 228.

13 Ltr. Rul. 9604001, Sept. 8, 1995.

14 I.R.C. § 83(a).

15 Treas. Reg. § 1.83-3(e).

16 Ltr. Rul. 9604001, Sept. 8, 1995.

17 I.R.C. § 83(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

HORSES. The plaintiff was a contestant in a horse show and had ridden her horse up to the arena entrance but was prevented from entering by a mass of people. The defendant was also an entrant and had stopped nearby for the same reason. A horse exiting the arena was forced to walk close to the defendant's horse and bumped the defendant's horse, causing it to rear and kick the plaintiff. The plaintiff sued for damages under negligence and strict liability theories. The defendant argued that La. Rev. Stat. § 9:2795.1 provided immunity from the suit. The statute provided immunity from liability for an "equine activity sponsor, an equine professional, or any other person." The court held that the defendant was within the class of persons provided with immunity from liability. The plaintiff argued that the exception in the statute for willful or wanton disregard for the safety of others applied because the defendant should have known that the defendant's horse would kick if bumped. The defendant testified that the horse had not kicked anyone before but that it was common knowledge that horses could become frightened if their "comfort zone" was invaded. The court held that the incident was within the range of dangers associated with equine activities and held that the defendant did not commit willful or wanton disregard for the plaintiff's safety. **Gautreau v. Washington, 672 So.2d 262 (La. Ct. App. 1996)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. The debtors owned 78 acres of rural land. The debtors' home was situated on 2 acres, 76 acres were contiguous woodlands, and 3.5 acres of the woodland were used as a residence by the debtors' adult daughter and her children. The home site and woodlands were assessed together for property taxes but the 3.5 acres were assessed separately. The 3.5 acres were not included as security for a loan used to buy the entire 78 acres. The court held that the debtors were entitled to a rural homestead exemption for their home site and the woodlands but not for the 3.5 acres used as a residence by the daughter. The court noted that the woodlands qualified as rural property even though the debtors did not use the land for agricultural purposes, because the land was clearly rural in nature and the state exemption statute did not require that a rural homestead property be actively used for farming or other agricultural purposes. ***In re* McCall, 195 B.R. 911 (Bankr. E.D. Ark. 1995)**.

PRIORITY. During the debtor's Chapter 12 case, the county assessed property taxes against the debtor's property. The debtor converted the case to Chapter 7. The county sought seventh priority status for the tax claim under Section 507(a)(7). The court held that when the taxes were assessed a lien was automatically created by Ark. Code § 26-34-101 and the taxes became a secured claim. The court held that Section 507(a)(7) allowed a priority only for unsecured governmental claims; therefore, the county's claim would have to be paid from its security and could not receive priority. ***In re* Wrigley, 195 B.R. 914 (Bankr. E.D. Ark. 1996)**.

CHAPTER 12-*ALM* § 13.03[8].*

VALUATION. The issue in this case was the valuation of the debtors' farm real and personal property to determine the amount of the FmHA (now FSA) secured claim in the property. The court discredited both the FmHA in-house appraisal and the debtor's personal appraisal of the property and used values which were the average of both values. ***In re*** **Fuller, 196 B.R. 41 (Bankr. W.D. Va. 1995)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

ABSOLUTE PRIORITY RULE. The IRS filed a claim in the debtor's Chapter 11 case for unpaid taxes for 1977 through 1985 when the debtor filed accurate income tax returns but did not pay the amounts due. The Bankruptcy Court held that the taxes were dischargeable because the debtor filed accurate returns and did nothing to prevent the IRS from collecting the taxes, such as hiding assets. The District Court reversed, holding that no fraudulent act need be committed by the debtor in order to deny discharge under Section 523. The court held that the debtor's failure to pay the taxes was a willful attempt to evade taxes because the debtor knew the taxes were due and the debtor had the ability to pay the taxes. The appellate court reversed, holding that the knowing failure to pay taxes did not alone constitute a willful attempt to evade taxes. On remand, the debtor filed a Chapter 11 plan, providing for full payment of the secured tax claims over the life of the plan but only 2 percent on the unsecured portion of the tax claims which were determined to be dischargeable under the above ruling. During the proceedings above, the debtors paid a portion of their post-filing wages into an escrow account. The plan provided for use of those funds for payment of unsecured claims. The IRS objected to the plan and the debtors sought confirmation under Section 1129(a)(8). The IRS argued that Section 1129(a)(8) confirmation "cramdown" was not available to the debtors because they would retain an interest in estate property without providing new value to the estate. The debtors argued that the escrow funds were new value contributed to the estate and that the estate property was retained by the debtors only because the property was exempt. The court confirmed the plan. ***In re*** **Haas, 195 B.R. 933 (Bankr. S.D. Ala. 1996), *on remand from*, 48 F.3d 1153 (11th Cir. 1995), *rev'g*, 173 B.R. 756 (S.D. Ala. 1993)**.

DISCHARGE. The debtor timely filed accurate 1986, 1987, 1988 and 1989 income tax returns but did not make any tax payments. In 1988, the debtor filed a no asset Chapter 7 case, a second Chapter 13 case was filed in 1991 and finally the current no asset Chapter 7 case was filed in 1995. The IRS argued that, under Section 108(c) and I.R.C. § 6503(h), the first two bankruptcy cases tolled the three year period of Sections 507(a)(7)(A)(i) and 523(a)(7)(B) such that the taxes were not dischargeable under those sections. The court held that the plain language of Section 108(c) and I.R.C. § 6503(h) indicates that those laws do not apply to bankruptcy provisions. The court noted a significant split in the cases on this issue. The court noted that the IRS had over 1,000 days to collect the 1986, 1987, and 1988 taxes and 343 days to collect the 1989 taxes when the debtor was not involved in a bankruptcy case; therefore, the IRS was not equitably entitled to suspension of the Section 507(a)(7) time period. ***In re*** **Turner, 182 B.R. 317 (Bankr. N.D. Ala. 1995), *aff'd on reconsideration*, 96-2 U.S.Tax Cas. (CCH) ¶ 50,351 (Bankr. N.D. Ala. 1996)**.

LEVY. The debtor had filed a previous Chapter 13 case. The first case was dismissed by a court order which provided that the trustee retain an amount to cover expenses and pay the remainder of the bankruptcy estate to the debtor. The IRS filed a notice of levy against the trustee after the dismissal order and before the funds were repaid to the debtor and the trustee held the funds pending the outcome of this case. The court determined that the funds held by the trustee were subject to the levy once the first case was dismissed. ***In re*** **Schlapper, 195 B.R. 805 (Bankr. M.D. Fla. 1996)**.

CONTRACTS

PROMISSORY NOTE. The defendant was a peanut farmer who had purchased one type of peanut seed for several years until a poor harvest because of disease. The defendant purchased a disease resistant variety from the plaintiff who claimed that the seed was capable of 88 percent germination. However, the actual seed purchased contained some uncertified seed. The defendant experienced reduced yields and obtained a refund of the seed price from the producer. The defendant sought a loan from a bank which refused to make the loan because of a large amount on account with the plaintiff. The plaintiff agreed to take a promissory note at reduced interest and to tell the bank that the account was satisfied. The bank made the loan but the defendant returned the money and rented out the land. The plaintiff sued to recover the amount owed on the promissory note. The defendant argued that the note was void because it was made without consideration from the plaintiff. The court held that the reduced interest rate, extended term for payment and agreement to tell the bank the account was satisfied were sufficient consideration. In addition, the court held that the defendant as the accommodation party cannot assert lack of consideration since the value the defendant received was what the defendant bargained for. The defendant also argued that the contract was void because of illegality since the plaintiff misrepresented to the bank that the account was paid. The court held that this defense was not available to the defendant because the defendant participated in the misrepresentation. **Morey v. Brown Milling, 469 S.E.2d 387 (Ga. Ct. App. 1996)**.

EMPLOYMENT

BREACH OF LOYALTY. The defendant was employed as the manager of a farm supply store owned by the plaintiff. The defendant became dissatisfied with the employment and solicited another chemical company to establish a store in the same area, using the defendant's property and the defendant as manager. When that agreement was reached, the defendant informed the other employees of the move and suggested that they follow him. All of the other employees left for the new store within a month after the defendant resigned and the plaintiff lost 70 percent of its business which followed the salesmen to the new store. The plaintiff sued for breach of employee loyalty and appropriation of trade secrets, the customer information. The plaintiff received a jury award of $75,000 but awarded the defendant $37,000 bonus compensation due under the old employment contract. None of the employees had signed any noncompetition agreement. The court upheld the award of damages for the plaintiff because the defendant actively solicited the other employees while the defendant was still employed by the plaintiff. The court reversed the award of the bonus because the employment contract made the bonus discretionary with the plaintiff. The court held that no actionable appropriation of trade secrets occurred because the employees took no written records and the information about the customers was easily obtained from the customers. **Vigoro Indus., Inc. v. Crisp, 82 F.3d 785 (8th Cir. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

EMERGENCY LIVESTOCK ASSISTANCE. The CCC has adopted as final regulations changing the designation of the Emergency Livestock Assistance regulations from Part 1475 to Part 1439. **61 Fed. Reg. 32643 (June 25, 1996)**.

HERBICIDE. See **Schuver v. E.I. Du Pont de Nemours & Co., 546 N.W.2d 610 (Iowa 1996)** under Products Liability *infra*.

TOBACCO. The FSA has issued a notice of determination of penalty rates for nonquota tobacco:

Type	Cents per pound
Flue-cured	134
Burley	139
Fire-cured (Type 21)	122
Fire-cured (Types 22 & 23)	163
Dark Air-cured	132
Virginia Sun-cured	115
Cigar Filler & Binder	109
Puerto Rico Cigar-filler	57

61 Fed. Reg. 32425 (June 24, 1996).

The CCC has adopted as final regulations requiring a refund on a CCC loan on "nested" tobacco whether or not the producer knew the tobacco was nested. **61 Fed. Reg. 33303 (June 27, 1996)**.

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The decedent died in May 1995 and the will created an irrevocable trust funded with the residuary estate. The surviving spouse was the sole beneficiary of the trust, which was QTIP. The will provided that the trust terminated on the death of the surviving spouse and the trust corpus passed to a trust with one share for each surviving child, each surviving grandchild and for the grandchildren of a pre-deceased grandchild. The surviving spouse amended the spouse's will to provide that any estate and death taxes imposed on property passing under the trust by reason of the spouse's death were to be paid from the spouse's probate estate. The will also provided for additional property from the spouse's estate to be included in the trust shares to the extent of any unused GSTT exemption amount. The IRS ruled that the will provision for paying taxes resulting from the passing of the trust shares did not subject the trust to GSTT. The trusts would be considered as partially exempt from GSTT to the extent of corpus passing from the decedent's original pre-September 25, 1995 trust and partially subject to GSTT to the extent of property passing to the grandchildren's shares from the surviving spouse. **Ltr. Rul. 9627020, April 8, 1996**.

The decedent died in 1970 and the decedent's will established an irrevocable trust for the surviving spouse with equal remainders to the decedent's two children and final remainders to the children's descendants. The trust was funded with stock and the corporation wanted to elect Subchapter S treatment. In order for the trusts to qualify as QSSTs, the trustee sought a construction of the trust in state court that the shares held by the children will be considered as separate trusts. The final remainder holders or their legal representatives disclaimed their interests in the trust which had not vested at the time of the disclaimers. The IRS ruled that only the disclaimers of the minor children would be timely made and that the disclaimers of the adult descendants of the children would constitute gifts. The gifts would constitute additions to the trust and subject a pro rata portion of the trust to GSTT. The IRS also ruled that the state court construction of the trust provisions would not itself subject the trust to GSTT. **Ltr. Rul. 9627010, April 3, 1996**.

GIFT-*ALM* § 6.01.* The taxpayer established three irrevocable trusts, only two of which were at issue in this ruling. In both trusts, a child of the taxpayer was the primary beneficiary and one of three co-trustees, all of which were children of the taxpayer. The trusts granted the taxpayer's grandchildren, their spouses and their issue the right to withdraw contributions to the trust by the end of each calendar year. The trusts did not require the taxpayer or the trustees to notify the beneficiaries with withdrawal rights that any contributions were made. In 1990, the taxpayer made contributions to the trusts on December 31 but the taxpayer's attorney sent letters notifying the beneficiaries of the contributions on December 27. Banking rules prohibited crediting the trusts' accounts until January 2, 1991. On December 10, 1991 the taxpayer's attorney sent letters to the beneficiaries that contributions to the trusts were made; however, not until December 31, 1991 was a check dated December 26, 1991 deposited in the trusts' account. The IRS ruled that the taxpayer was not entitled to a gift tax exclusion amount for contributions to the trusts because the withdrawal rights were shams since the failure of the taxpayer to make contributions within sufficient time to make the withdrawals indicated that the beneficiaries had agreed not to exercise the withdrawal rights. **Ltr. Rul. 9628004, April 1, 1996**.

IRA. The decedent's will bequeathed the residuary estate to a trust for the surviving spouse with remainders to the decedent's children. The residuary estate included three IRAs owned by the decedent. The surviving spouse disclaimed an interest in the trust equal to the value of the IRAs and the children disclaimed any remainder interest in the disclaimed interest. Thus, an amount equal to the value of the IRAs passed by intestacy to the surviving spouse and the executor funded the intestacy bequest with the amounts in the IRAs. The surviving spouse deposited the funds in an IRA in the spouse's name. The IRS ruled that the disclaimers were effective, the IRA funds were treated as passing directly to the surviving spouse and the surviving

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spouse did not need to include the IRA funds in gross income. **Ltr. Rul. 9626049, April 2, 1996**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent had received an interest in trust from the decedent's pre-deceased spouse's estate which had qualified as QTIP. The predeceased spouse's estate claimed a marital deduction for the QTIP trust interest. The trust failed to provide that any income received by the trust during the period between the last distribution and the decedent's death (so-called "stub" income) was to be paid to the decedent's estate. The decedent's estate argued that because of this, the trust was not QTIP and the trust was not includible in the decedent's gross estate. The court noted disagreement in the courts as to whether the "stub" income must be payable to the spouse's estate in order for a terminable interest to be QTIP and held, therefore, that the statute was ambiguous on that point. After discussing the legislative history and the practical consequences of the two interpretations, the court held that the failure of the trust to require the "stub" income to be paid to the spouse's estate did not disqualify the trust as QTIP. **Estate of Shelfer v. Comm'r, 96-2 U.S. Tax Cas. (CCH) ¶ 60,238 (11th Cir. 1996)**.

RETURNS. The IRS has announced that, until revised forms are published in October 1996, the current versions of the following forms are to be used: Forms 706, 706-A, 706-NA, 709, 709-A. **Ann. 96-62**.

VALUATION. The taxpayers, husband and wife, each owned a 50 percent tenancy in common interest in their personal residence. Each taxpayer created an irrevocable trust and contributed their 50 percent share of the house to the trust. The trusts provided that the taxpayers could use and occupy the house for 15 years, at which time the taxpayers' children became the beneficial owners of the trusts. The trust allowed the taxpayers to lease the residence from the trusts at fair rental value after the 15 years. The trust provided that, if a taxpayer died before the 15 years passed, the taxpayer's interest in the trust passed to the taxpayer's estate. The taxpayers executed wills bequeathing each's interest to the surviving taxpayer. The IRS ruled that the trusts were qualified personal residence trusts for purposes of I.R.C. § 2036 and that if a taxpayer survived the 15 years, the interest in the trust was not included in the taxpayer's gross estate. **Ltr. Rul. 9626041, April 2, 1996**.

After the decedent had been diagnosed for cancer with less than a 5 percent chance of recovery, the decedent amended two family partnership agreements to allow the transfer of partnership interests and to have the decedent's son made managing partner at the decedent's death. The decedent transferred remainder interests in the decedent's partnership interests to trusts for the decedent's children in exchange for $250,000 and annuities payable over the decedent's life. The remainder interests were valued using the actuarial tables of Treas. Reg. § 25.2512-5(f) (Table A) for a person of the decedent's age. The annuity agreement had a provision that the remainder interest purchasers agreed to increase the amount to be paid if the remainder interests were revalued by the IRS or Tax Court. The Tax Court originally held that the remainder interests could not be valued using the actuarial table because of the limited life expectancy of the decedent. The savings clause was not effective to change the fact that the purchasers had paid less than fair market value for the remainder interests and that, therefore, the transfers were includible in the decedent's estate as gifts under I.R.C. § 2036 but offset by the $250,000 actually paid. The appellate court remanded the case to determine whether the holding was consistent with *Rev. Rul. 80-80, 1980-1 C.B. 194*, which required that death be "clearly imminent" before the actuarial table could not be used. On remand the Tax Court reiterated its belief that the case precedents established a clearer standard but held the decedent's death at the time of the transfer was clearly imminent since testimony demonstrated that the decedent's chance of surviving for more than one year was less than 10 percent. **Est. of McLendon v. Comm'r, T.C. Memo. 1996-307, *on remand from*, 77 F.3d 477 (5th Cir. 1995), *rev'g without op.*, T.C. Memo. 1993-459**.

The decedent owned undivided partial interests in a ranch, other real property and a pleasure boat. The other undivided interests were owned by a QTIP trust established for the decedent by the decedent's predeceased spouse. The trust assets were includible in the decedent's estate. The estate claimed that the value of the undivided interests should have been discounted for the partial interests owned by the decedent. The IRS argued that the decedent's fee simple interests in the properties merged with the trust interests in the properties so that the decedent would be treated as owning the entire interest in each asset for valuation purposes. The court held that the undivided interests held by the decedent could be valued at a discount because the decedent had no control over the trust assets at death and the trust assets were not subject to estate tax until after the decedent's death. **Bonner v. United States, 84 F.3d 196 (5th Cir. 1996)**. An article on this case by Neil Harl will appear in a future issue of *Agric. Law Digest*.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was a shareholder in several corporations which owned and managed commercial properties. The taxpayer did not receive any wages from the corporations. The taxpayer incurred travel and other expenses in overseeing the corporations' businesses but did not seek reimbursement from the corporations for these expenses. The court held that the taxpayer could not claim the expenses as a business deduction because the expenses were incurred as an employee. **Cavalaris v. Comm'r, T.C. Memo. 1996-308**.

ENVIRONMENTAL CLEANUP COSTS. The taxpayer's parent corporation acquired clean farm land which became contaminated with pesticides and chemicals when the land was used as an industrial waste site. The taxpayer, a subsidiary, donated the land to the county which attempted to convert the land to recreational use until the contamination was found and then the county resold the land back to the taxpayer for nominal consideration. The taxpayer was responsible for the cleanup of the land and sought to deduct the costs of legal fees for negotiating with the EPA, consulting fees for determining the amount of waste, and consulting fees for determining the cleanup required, as ordinary business expenses under *Rev. Rul. 94-38, 1994-1 C.B. 35*. The IRS initially ruled that *Rev. Rul. 94-38* did not apply because the land was not clean when the taxpayer reacquired the land. The IRS also initially ruled that the costs were capital costs not eligible for current deductions because the land was no longer used in a trade or business. On reconsideration, the IRS ruled that the costs were deductible because the taxpayer caused the pollution while owning the land and no further contamination occurred during the break in ownership. The costs were allowed as current deductions because none of the fees created or produced an asset or produced a long-term benefit for the taxpayer. The second ruling did not discuss the issue of whether the expenses were associated with a trade or business but the allowance of the deductions appears to indicate that the IRS found that the land was held by the taxpayer as a trade or business, either from the original use of the land as a industrial site or intended future use. **Ltr. Rul. 9627002, Jan. 17, 1996, revoking, Ltr. Rul. 9541005, Sept. 27, 1995**. An article on this ruling by Neil Harl will appear in a future issue of *Agric. Law Digest*.

INSTALLMENT REPORTING-*ALM* § 6.03[1].* The taxpayers sold a residential property on an installment contract. The taxpayers had their income tax return prepared by a tax preparation firm which failed to follow the taxpayers' directions to report the gain from the sale on the installment method. The lengthy return was not completed until the day for filing the return and the taxpayers signed the return before discovering the error the next day. The tax preparer immediately attempted to obtain an extension of time to file the installment method election but was required to file a private letter ruling. The IRS ruled that the taxpayers would be allowed an extension of time to revoke the election out of the installment method because the error was committed by a preparer, the error was discovered early, immediate steps were taken to correct the error and the taxpayer always intended to report the gain on the installment method. **Ltr. Rul. 9627019, April 8, 1996**.

INVOLUNTARY CONVERSION. The taxpayers' principal residence was destroyed by a fire. The taxpayers received insurance proceeds for the lost personal and real property and used a portion of the proceeds to purchase and remodel another existing residence. The proceeds were also used to purchase personal property. The IRS ruled that the real properties were sufficiently similar to qualify for gain deferral but refused to rule on the factual issue of whether the personal property purchased was sufficiently similar to the personal property lost. **Ltr. Rul. 9627018, April 5, 1996**.

SALE OF RESIDENCE. The taxpayer sold a principal residence and began constructing an addition to an existing building which had been and continued to be rented to unrelated tenants at fair rental value. The addition included a bedroom, family room, two bathrooms, a kitchen, a garage and a driveway. The IRS ruled that the construction of the addition qualified as a new residence for purposes of I.R.C. § 1034 deferral of gain. **Ltr. Rul. 9626020, March 26, 1996**.

S CORPORATIONS

TRUSTS. The decedent died in 1970 and the decedent's will established an irrevocable trust for the surviving spouse with equal remainders to the decedent's two children and final remainders to the children's descendants. The trust was funded with stock and the corporation wanted to elect Subchapter S treatment. The trustee sought a construction of the trust in state court that the shares held by the children would be considered as separate trusts in order for the trusts to qualify as QSSTs. The final remainder holders or their legal representatives disclaimed their interests in the trust which had not vested at the time of the disclaimers. The IRS ruled that the trust was a QSST while the surviving spouse was the beneficiary and the equal shares held by the children would be QSSTs if the proposed state court construction was obtained. **Ltr. Rul. 9627010, April 3, 1996**.

TIMBER. The sole issue in this case was the age at which pine timber becomes merchantable. The taxpayer presented testimony of two independent appraisers and three employees as to the merchantability of pine timber at 10 years of age. The IRS did not provide any rebuttal evidence or attempt to discredit the taxpayer's witnesses. The court held that pine timber becomes merchantable at 10 years of age. **MHC Properties, Inc. v. U.S., 96-2 U.S. Tax Cas. (CCH) ¶ 50,347 (W.D. La. 1996)**.

LANDLORD AND TENANT

CONVERSION. The plaintiff owned land leased to a tenant on a grazing lease. The tenant, however, sold native grass seed on the land to the defendant. The plaintiff sued the defendant for conversion of the grass seed. The trial court awarded the plaintiff damages for the loss of value of the land after the conversion and damages for bringing the suit to recover the property. The defendant argued that the damages in the first part were limited to the sales price of the seed. The court held that, under 23 Okla. Stat. § 64, the plaintiff was entitled to damages equal to the loss of land value because the plaintiff sought recovery with due diligence. The court reversed the second damage award, however, because the plaintiff's counsel failed to provide specific evidence of the legal fees incurred by the plaintiff in pursuit of the property, excluding legal fees incurred to prosecute the action, which were not allowed by the statute. **Ross v. Kan-Tex Seed Co., 914 P.2d 1085 (Okla. Ct. App. 1996)**.

MORTGAGES

REDEMPTION PERIOD. The defendant had borrowed money from the plaintiff and granted a mortgage on some of the defendant's farm land. The defendant defaulted on the loan and the plaintiff brought a foreclosure action. The land was sold and the plaintiff purchased the land at the sale and brought an action for the deficiency amount. The plaintiff obtained a deficiency judgment and three other parcels of the defendant's land were sold in satisfaction of the judgment. The trial court granted the defendant only a six month redemption period on the first sale because the defendant had paid less than one-third of the loan amount before the foreclosure. The redemption period was amended to three months before the second sale and the trial court allowed only a three month redemption period for the second sale. The defendant argued that the second sale was not governed by the shorter period in the redemption statute because no mortgage remained and the first sale proceeds paid more than one-third of the loan amount. The court held that the normal 12 month redemption period applied to the second foreclosure sale because no mortgage existed at the time of the sale and no default occurred because the deficiency judgment was executed upon three days after it was entered. **Farm Credit Bank of Wichita v. Zerr, 915 P.2d 137 (Kan. Ct. App. 1996)**.

NEGLIGENCE

OBSTRUCTION OF CREEK. The plaintiff was a soybean farmer through whose land ran a creek. The creek flooded on occasional heavy rains. The creek flowed through the defendant's property. The defendant placed an obstruction across the creek on the defendant's property causing the flooding of the plaintiff's land to increase from five to 15 acres. The plaintiff sued for negligence for the loss of the additional 10 acres of soybeans lost from a heavy rain while the creek was blocked. The plaintiff provided unrefuted evidence of the amount of normal flooding, the average yield of the flooded acres, the price the lost soybeans would have been sold at (using the average price of the sale of the harvested beans), and the cost of production of the lost soybeans which was not incurred because of the flooding. The trial court found that the defendant caused the blockage of the creek and that the blockage caused the additional flooding. The court awarded damages based on the yield of the 10 acres times the average market price for beans less the costs of production saved. The state District Court reversed, holding that the damages were too speculative and not based on expert testimony. The appellate court reinstated the trial court's judgment, holding that the trial court had discretion to accept the plaintiff's testimony as sufficient to prove the elements of damages, especially where the defendant failed to provide any refutation of the evidence. **Bristol v. Rasmussen, 547 N.W.2d 120 (Neb. 1996)**.

PARTNERSHIPS

FIDUCIARY DUTY. The defendant was a corporation formed for the purpose of acquiring and operating an orchard. The orchard chosen for the purchase included four parcels, one of which was 56 acres. The defendant signed a contract to purchase the orchard land, paid earnest money on the agreement and agreed to make a downpayment at closing. Before the closing, the defendant approached the plaintiffs for the sale of the 56 acres but the plaintiffs wanted to purchase the land with the defendant in a partnership. The plaintiffs agreed to contribute an amount equal to the agreed purchase price to the partnership with the intent that the partnership make the purchase of the 56 acres. The defendant used the contributed funds to make the downpayment on the entire orchard purchase but did not inform the plaintiffs that the money would be used this way or that the defendant would be making a profit on the transactions. The plaintiffs sought an accounting and a share of the profits made on their part of the purchase and the entire land purchase. The court held that because the partnership was formed before the orchard land was acquired by the defendant, the defendant owed a fiduciary duty to the plaintiffs as partners to inform them of the true nature of the transactions; therefore, the entire orchard land became a partnership asset and the plaintiffs were entitled to an accounting of all profits. **Chang v. Century Orchards, Inc., 915 P.2d 425 (Or. Ct. App. 1996)**.

PRODUCT LIABILITY

HERBICIDE. The plaintiff purchased the herbicide Preview, manufactured by the defendant, for application on the plaintiff's soybean fields with the belief that the herbicide would not carry over to the next year's corn crop. However, the next year's and the following year's corn crops showed herbicide carry over damage. The plaintiff sued the manufacturer in negligence and strict liability and the defendant claimed preemption of the suit by FIFRA. The plaintiff provided evidence that the carryover effect was caused by a high pH of the soil in the area. The plaintiff's negligence claims alleged that the defendant was negligent in marketing in an area inappropriate for the herbicide and in failing to withdraw the product once the high pH of the area soil was known, in testing the product to determine whether it was compatible with the area's soil, and in failing to warn the area farmers of the problem. Similar allegations were used to support the strict liability claim. The court held that the action was preempted by FIFRA because the plaintiff's claims were merely another way of stating that the defendant failed to warn on the label of the carryover effects in areas with high pH soil. **Schuver v. E.I. Du Pont de Nemours & Co., 546 N.W.2d 610 (Iowa 1996)**.

PROPERTY

UNLAWFUL DETAINER. The defendant had granted a mortgage on a farm to a bank. When the defendant defaulted on the loan the bank began foreclosure proceedings which, after several bankruptcy filings by the defendant, finally ended in the sale of the property to the bank. After the sale, the parties had several discussions about the defendant repurchasing the farm or leasing the farm. The evidence was contradictory as to whether any agreement was reached. The jury found that no oral lease was entered into by the parties and reached a verdict for the bank to eject the defendant for unlawful detainer. The defendant also challenged the jury instruction on the elements of unlawful detainer because the instruction did not require a finding that the defendant's continued possession was willful and unlawful. The court acknowledged that the jury instruction was incomplete but held that the defendant was not prejudiced by the defect because another jury instruction gave the jury an opportunity to determine whether the defendant's holding over was pursuant to an oral lease agreement. In addition, the court noted that the closing arguments made the requirement of unlawful and willful holding over necessary for a verdict of unlawful detainer. **Agribank FCB v. Cross Timbers Ranch, Inc., 919 S.W.2d 256 (Mo. Ct. App. 1996)**.

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SECURED TRANSACTIONS

PURCHASE MONEY SECURITY INTEREST. The debtor borrowed money from a bank in order to purchase a farm tractor. The bank claimed to have mailed a UCC-1 form with the filing fee to the county recorder. The bank provided no evidence that the form or check was received by the recorder's office or that the recorder's office mishandled the filing. The bank argued that the mere mailing of the form and fee was sufficient filing to perfect the security interest in the tractor. The court acknowledged that there is some precedent for allowing perfection where the recorder received but did not correctly file the security interest, but the court held that the creditor must provide evidence of receipt of the filing before that rule could be applied. The court refused to hold that the mailing of the form and fee was sufficient presumption of filing to perfect the security interest. The court also rejected the bank's request to allow perfection of the security interest under the theory of unjust enrichment to the other secured creditors who will now receive a priority interest in the tractor. The court held that the doctrine of unjust enrichment did not apply where the bank's failure to properly perform a perfection resulted in the benefit to other creditors who were not aware of the benefit until the bankruptcy of the debtor. For the same reason, the court refused to apply equitable subordination to give the bank a priority security interest in the tractor. ***In re* Wright, 196 B.R. 97 (Bankr. W.D. Wis. 1995)**.

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