

frivolous. The penalty may be \$1,000 if the understatement of liability involved reckless or intentional disregard of rules and regulations. **OBRA 1989 § 7732, amending I.R.C. § 6694(b).**

- The penalty for failure to furnish a copy of the return to the taxpayer is increased from \$25 or \$50. The maximum annual penalty per person is \$25,000. **OBRA 1989 § 7733, amending I.R.C. § 6695(a).**

- The penalty for failure to sign the return is increased from \$25 to \$50. **OBRA 1989 § 7733(b), amending I.R.C. § 6695(b).**

- The penalty for failure to provide an identifying number is increased from \$25 to \$50. **OBRA 1989 § 7733(c), amending I.R.C. § 6695(c).**

- The penalty for failure to file correct information returns is increased from \$25 to \$50 for each failure to file unless failure is due to reasonable cause and not to willful neglect. **OBRA 1989 § 7733(d), amending I.R.C. § 6695(e).**

- The penalty for failure to file a return or pay tax where the failure is fraudulent is 15 percent per month, rather than 5 percent, up to 75 percent of the total, rather than 25 percent. **OBRA 1989 § 7741, amending I.R.C. § 6651(f).**

- For failure to deposit taxes on the date prescribed, unless for reasonable cause and not due to willful neglect, a penalty is imposed of 2 percent if not more than 5 days late, 5 percent if more than 5 but not more than 15 days late, and 10 percent if for more than 15 days late. **OBRA 1989 § 7742, amending I.R.C. § 6656.**

RESEARCH EXPENDITURES
The allocation of research and experimental expenditures was extended to September 30, 1990. **OBRA 1989 § 7111, amending I.R.C. § 864.**

S CORPORATIONS. For taxable years beginning after December 31, 1989, S corporations are obligated to make estimated tax payments on net recognized built-in gains, for the tax imposed if passive investment income exceeds 25 percent of gross receipts and the corporation has earnings and profits from years it was a C corporation and any recapture of investment tax credit. **OBRA 1989 § 7209, amending I.R.C. § 6655(g).**

SMALL ISSUE BONDS. The provisions for qualified small issue bonds to finance manufacturing facilities and farm property have been extended to September 30, 1990. **OBRA 1989 § 7105, amending I.R.C. § 144(a)(12)(A).**

SOCIAL SECURITY TAX. The maximum earnings subject to social secu-

rity tax was scheduled to increase to \$50,400 for 1990. OBRA 1989 increases this amount to \$51,300. Thus, an employee will be subject to a maximum tax of \$3,924.45 at 7.65 percent of \$51,300 of wages. A self-employed person will be subject to a maximum tax of \$6822.90 at 15.3 percent of \$51,300 of self-employment income. **OBRA 1989 § _____, amending I.R.C. § _____.** In 1990, one-half of the self-employment tax will be income tax deductible.

TARGETED JOBS CREDIT. The targeted jobs credit has been extended through September 30, 1990. **OBRA 1989 § 7703, amending I.R.C. § 51(c).**

WITHHOLDING TAX. The payment of withheld income tax and social security tax is to be accelerated when the withheld amount reaches \$100,000. Deposits by those depositing on the basis of eighth-month periods is required on the next banking day after the day taxes in the deposit reach \$100,000. The provision is effective for amounts required to be deposited after July 31, 1990. **OBRA 1989 § 7632, amending I.R.C. § 6302(g).**

Cases, Regulations, and Statutes

BANKRUPTCY

GENERAL

AVOIDANCE OF FRAUDULENT TRANSFERS. A trustee was not estopped, by state court foreclosure judgment, from seeking recovery of horses sold at pre-petition foreclosure sale as a fraudulent transfer because of insufficient consideration paid by the successful bidder. Creditor, Colorado State University, had waived Eleventh Amendment prohibition against suit by bankruptcy trustee where university had filed claims against the bankruptcy estate for deficiency amount resulting from the sale of the horses. See *I.R.C. § 106(a)*. **Matter of Windrush Assoc. II, 105 B.R. 195 (Bankr. D. Colo. 1989).**

CLAIMS. A lessor of farmland was allowed a claim for rent or damages for failure to pay rent where the rent was payable annually and the lessee filed bankruptcy four days before the annual rent payment

was due and rejected the lease in bankruptcy. **Matter of Vause, 886 F.2d 794 (6th Cir. 1989), rev'g on point 105 B.R. 399 (S.D. Ohio 1988), aff'g 72 B.R. 647 (Bankr. S.D. Ohio 1987).**

ESTATE PROPERTY. An ERISA qualified employee pension plan was not estate property where the trustee had stipulated that the plan was a spendthrift trust. **In re Colsden, 105 B.R. 500 (N.D. Iowa 1988).**

An ERISA qualified employee pension plan was estate property where state exemption for ERISA plans did not govern enforceability of anti-alienation clauses and exemption preempted by ERISA. **In re Siegel, 105 B.R. 556 (D. Ariz. 1989), aff'g 98 B.R. 1 (Bankr. D. Ariz. 1989).** For discussion of the issue of ERISA preemption, see *Agricultural Law Digest* Vol 1, p. 10 (1989).

The debtor's post-petition entitlement to payments under the Disaster Assistance

Act of 1988 and Emergency Feed Program were held to be proceeds of crops and includible in estate property subject to pre-petition federal tax lien. **In re White, 89-2 ¶ 9622 (Bankr. N.D. Iowa 1989).**

EXEMPTIONS. A homestead exemption was not allowed for a farm residence sold in a foreclosure action. Also, a homestead exemption was not allowed in farmland surrounding the homestead where the land was not claimed as part of the homestead on the debtors' schedule of exemptions. **In re Ellerstein, 105 B.R. 214 (Bankr. W.D. N.Y. 1989).**

A homestead exemption, Colo. Rev. Stat. § 38-41-201, was allowed for real property on which the debtors lived in a pickup camper shell while beginning to build a permanent house. **In re Lepka, 105 B.R. 638 (Bankr. D. Colo. 1989).**

The Tenth Circuit Court of Appeals has reversed two lower courts' decisions and held that a livestock farmer's breeding live-

stock was "tools of a trade" for purposes of avoidance of a lien impairing the debtor's exemption in the livestock. *In re Heape*, 886 F.2d 280 (10th Cir. 1989), rev'g 85 B.R. 577 (D. Kan. 1988).

Farm debtors were not allowed an exemption in redemption rights as to rental payments to be made to estate by debtors for rental of estate-owned farmland acquired from debtors by foreclosure. The debtors could not take an exemption in property created postpetition. *In re Harris*, 886 F.2d 1011 (8th Cir. 1989).

TRUSTEE AS BONA FIDE PURCHASER. A trustee, as a bona fide purchaser, could not avoid the life estate interest of the debtor's mother in farmland where, although the quitclaim deed granting the life estate was unrecorded, the trustee would have constructive notice of the life estate from the tenant knowledge of the mother's co-ownership of the land. *Lumb v. Redmond*, 105 B.R. 658 (D. Kan. 1989).

CHAPTER 7

DISCHARGE. Creditor's claim held nondischargeable by default as a sanction for debtor's dilatory tactics in failure to comply with bankruptcy court orders for creditor's examination and discovery. *In re Olson*, 105 B.R. 654 (D. Kan. 1989), aff'g 61 B.R. 384 (Bankr. D. Kan. 1986).

CHAPTER 12

DISPOSABLE INCOME. In determining whether income of a Chapter 12 debtor during execution of a plan is disposable income, the court is to first obtain calculations from the trustee and then provide the debtor and creditors with an opportunity to object under 11 U.S.C. § 1229(a)(1). *Farm Credit Bank v. Hurd*, 105 B.R. 430 (W.D. Tenn. 1989).

TRUSTEE'S FEES. Chapter 12 debtors not allowed to pay attorney's fees directly in avoidance of trustee's fees, because attorney's fees were administrative expenses. *In re Heller*, 105 B.R. 434 (Bankr. N.D. Ill. 1989).

FEDERAL INCOME TAX

ALLOCATION OF PAYMENTS. A bankruptcy court held that it has the authority to allocate federal tax payments

made under a Chapter 11 plan between withheld employee trust fund taxes and the debtor's non-trust fund taxes, whether the payments are considered voluntary or involuntary. The court held that another hearing would be required to determine the impact of alternative allocations on the successful collection of all taxes against the effect of the allocations on the successful reorganization of the debtors. *In re Greenberg*, 105 B.R. 691 (Bankr. M.D. Fla. 1989).

Another court, however, has ruled that Chapter 11 plan payments of federal taxes are involuntary, and therefore, may not be allocated by the plan. *Matter of Gilley Consulting Engineers, Inc.*, 105 B.R. 734 (Bankr. N.D. Ga. 1989).

INTEREST ON TAX CLAIMS. Interest accruing post-petition on taxes due after filing of petition is an administrative expense. *In re Mark Anthony Construction, Inc.*, 886 F.2d 1101 (9th Cir. 1989), rev'g 78 B.R. 260 (Bankr. 9th Cir. 1987); *In re Flo-Lizer*, 89-2 U.S.T.C. ¶ 9616 (S.D. Ohio 1989).

TAX LIENS. Federal lien for unpaid taxes which were not dischargeable in debtor's bankruptcy remained effective against debtor's exempt property remaining after bankruptcy case. *Crow v. Long*, 89-2 U.S.T.C. ¶ 9619 (E.D. Mo. 1989).

CONTRACTS

SALES. A purchaser made a timely revocation of acceptance of purchased honey storage equipment where buyer's inspection of equipment prevented by seller. *Hart Honey Co. v. Cudworth*, 446 N.W.2d 742 (N.D. 1989).

FARM CREDIT SYSTEM

BORROWERS' RIGHTS. The Federal Land Bank of Omaha was held to have complied with the regulations governing forbearance in foreclosure effective at the time of the foreclosure. Although the foreclosure occurred after passage of the Farm Credit Act Amendments of 1985, the foreclosure occurred prior to the effective date of regulations issued implementing the Act. *Federal Land Bank of Omaha v. Johnson*, 446 N.W.2d 446 (S.D. 1989).

No private cause of action was held to exist under the Agricultural Credit Act of 1987 to enforce a borrower's rights under

the act. *Renick Brothers, Inc. v. Federal Land Bank Ass'n of Dodge City*, 721 F. Supp. 1198 (D. Kan. 1989).

The Eighth Circuit Court of Appeals, however, has held that borrowers did have a right of a private action under the Agricultural Credit Act of 1987 to enforce the borrowers' right to have an independent appraisal of their farm land in determining whether restructuring of their loan would be more advantageous than foreclosure. *Zajac v. Federal Land Bank of St. Paul*, 887 F.2d 844 (8th Cir. 1989).

PRODUCTION CREDIT ASSOCIATIONS. A reorganization of a production credit association was held to be a liquidation which required approval of the Farm Credit Administration where the association's assets were transferred to a new state-chartered association. The FCA's rejection of the liquidation was held to be reasonable and not arbitrary or capricious. *Amarillo Prod. Credit Ass'n v. Farm Credit Admin.*, 887 F.2d 507 (5th Cir. 1989).

FEDERAL ESTATE & GIFT TAX

PRIOR TRANSFER CREDIT. The federal estate tax credit, I.R.C. § 2013, for federal estate tax paid on property in a decedent's estate which was received from the estate of another decedent is not available if the property transferred is not susceptible to valuation. The value of property transferred to a trust from a decedent's estate was not determinable and the property not eligible for the credit where the trustee had discretion to distribute trust income to the current decedent and others. *Ltr. Rul. 8944005, July 26, 1989.*

GENERATION SKIPPING TRANSFERS. Under I.R.C. § 2612(c)(2) a transfer to a skip person is not considered a generation skipping transfer if the in-between generation dies before the generation skipping transfer occurs. IRS held that rule applies where the transfer occurs by reason of a settlement between the beneficiaries of the generation skipping trust and second generation beneficiaries whose parent had predeceased the grandfather who had created the trust. *Ltr. Rul. 8944041, no date given.*

An irrevocable trust was created for the taxpayer's spouse with all income to be distributed to the spouse and granting a testamentary power of appointment to the

spouse over the trust corpus. If the spouse fails to exercise the power of appointment, the trust corpus could pass to trusts for the spouse's children or grandchildren. The spouse was held to be the transferor for generation skipping tax purposes if the grantor predeceases the spouse. **Ltr. Rul. 8944009, July 31, 1989.**

MARITAL DEDUCTION. An inter vivos marital trust and will did not contain a formula clause subject to the Economic Recovery Tax Act of 1981 transitional rule (which limits the amount of the marital deduction to the greater of \$250,000 or one-half of the adjusted gross estate) where the trust was to be funded with the minimum amount necessary to pay the least amount of federal estate tax. **Estate of Bruning v. Comm'r, 89-2 U.S.T.C. ¶ 13,821 (10th Cir. 1989), aff'g T.C. Memo. 1988-5.**

QUALIFIED DOMESTIC TRUSTS A trust for a resident alien was ruled to be a qualified domestic trust (QDOT) eligible for the marital deduction where the trustee is a U.S. citizen, all income is to be distributed to the surviving spouse beneficiary at least annually, the trustee elects to treat the trust as a QDOT and the trust instrument requires the trustee to amend the trust to conform with regulations to be issued by IRS governing QDOT's. **Ltr. Rul. 8942056, July 25, 1989.**

SPECIAL USE VALUATION. Inclusion of stock transferred by the decedent within three years of death in the decedent's estate under I.R.C. § 2035(d)(3)(B) for purposes of determining whether requirements for special use valuation of other estate property have been met does not qualify the stock for special use valuation. **Estate of Slater v. Comm'r, 93 T.C. No. 41 (1989).**

TRUSTS. Grantor transferred S corporation stock to a trust in which the grantor was the sole income beneficiary for the lesser of seven years or until death and in which the grantor held the power to require the trustee to convert non-income producing property into income producing property. The transfer was ruled a gift with a value based upon actuarial factors prescribed under I.R.C. § 7520 if the transfer occurred after April 30, 1989. If the grantor failed to exercise the power to require the trustee to convert non-income producing property in a taxable year, a taxable gift occurs in that year in the amount the failure to exercise the power decreases the value of the income interest and in-

creases the value of the remainder interest. **Ltr. Rul. 8945005, Aug. 3, 1989.**

FEDERAL FARM PROGRAMS

BORROWERS' RIGHTS. The FmHA has announced interim rules for protection of borrowers' rights where loans have been sold to the private sector. **54 Fed. Reg. 47957 (Nov. 20, 1989), amending 7 C.F.R. §§ 1957.1 et seq.**

CONSERVATION RESERVE PROGRAM. The Conservation Reserve Program has been amended to allow land which has been cropped in two of the years between 1981 and 1988 to be enrolled in the program if it has been planted with trees. In addition, crops may be planted on CRP acres, subject to limitations to be imposed by regulations, if the land is planted with hardwood trees. CRP payments are to be suspended for the time crops are planted. The Secretary of Agriculture is authorized to accept bids of up to 10 percent over the maximum acceptable county rental rate if the excess amount is planted to hardwood trees. Penalties are to be provided by regulations where the producer fails to provide adequate maintenance for the trees. **Global Climate Change Prevention Act of 1989, Pub. L. 101-___, ___ Stat. ___ (passed Nov. 20, 1989, unsigned).**

DISASTER ASSISTANCE ACT OF 1989. The Commodity Credit Corporation has announced final regulations for implementing the 1989 Tree Assistance Program under the Disaster Assistance Act of 1989. **54 Fed. Reg. 47669 (Nov. 16, 1989), amending 7 C.F.R. Part 1478.**

FmHA has announced interim rules for implementing the loan program under the Disaster Assistance Act of 1989. **54 Fed. Reg. 48227 (Nov. 22, 1989), amending 7 C.F.R. §§ 1945.167, .169, 1980.101.**

LOANS. The FmHA has published an amended version of Form FmHA 1980-27 "Contract of Guarantee (Line of Credit)." **54 Fed. Reg. 47345 (Nov. 14, 1989).**

FmHA has issued an interim rule implementing section 303 of the Disaster Assistance Act of 1989 to allow Indian tribes and tribal corporations to make application for the reduction of the unpaid principal balances on loans to the fair market value of the land purchased with the

proceeds of FmHA loans. **54 Fed. Reg. 47509 (Nov. 15, 1989), amending 7 C.F.R. §§ 1956.105, 1956.137.**

The Agricultural Marketing Service has announced a proposed rule that the announced Class II milk price announced by the 15th of the month prior to the month the price became effective would no longer be revised on the fifth day of the effective month. The rule affects marketing orders in the Middle Atlantic states and certain Midwestern and Southern states. **54 Fed. Reg. 47527 (Nov. 15, 1989).**

PIK PROGRAM. A farmer who was entitled to payment of No. 2 corn as payment under the USDA's payment-in-kind program was required by the grain storage warehouseman to sign the entitlement certificate, undated, prior to receiving the corn. The farmer was held entitled to damages from the warehouseman where the farmer received lesser grade corn. The farmer, however, was held not entitled to punitive damages for actionable fraud for the poorer grade of corn received and for the warehouseman's backdating of the entitlement certificate such that the farmer was prevented by the statute of limitations from pursuing an administrative appeal with the USDA for receiving the poorer grade corn. **Maddux v. Cargill, Inc., 777 S.W. 2d 687 (Tenn. App. 1989).**

FEDERAL INCOME TAXATION

CAPITAL GAIN AND LOSS. Sales of heifer-calves raised by dairy farm owner for more than 24 months but before calves became milking cows were sales of property used in the dairy business and eligible for capital gains treatment. The dairy farmer raised the calves as replacement animals and sold only calves less suitable for milking and all bulls. **Edwin Messmer v. Comm'r, T.C. Memo. 1989-231.**

A partner was not allowed capital loss from abandonment of an interest in partnership property until the taxable year foreclosure against the property occurred where partner failed to prove any previous statement or act to third parties of intent to abandon property. **John Echols v. Comm'r, 93 T.C. No. 45 (1989).**

COOPERATIVES. The amount of a cooperative's payments to patrons in per-unit retains was based upon whether or not the patron had its farm products processed in the cooperative's processing mill operation which was operated as a separate division of the cooperative. IRS ruled that

the per-unit retains payments were equitably allocated and therefore deductible under I.R.C. § 1382(b)(3). **Ltr. Rul. 8945015, Aug. 11, 1989.**

FRINGE BENEFITS. IRS has announced a safe harbor value for employers who use the automobile lease valuation rule for computing fair market value for vehicles provided or deemed provided after December 31, 1988, Treas. Reg. § 1.61-21(d)(5)(ii). Such employers may use the manufacturer's invoice price plus 4 percent. In addition, IRS announced that the safe harbor was also available to manufacturers who provided automobiles to their employees. **Notice 89-110, I.R.B. 1989-49, Dec. 4, 1989.**

Under the regulations, Treas. Reg. § 1.61(e)(5), employers were not allowed to change methods of valuing vehicles provided to employees. IRS has announced an exception to allow change to the vehicle cents-per-mile valuation rule if such valuation is proper if the safe harbor rule had been available at the time of the original election of valuation method. **Notice 89-110, I.R.B. 1989-49, Dec. 4, 1989.**

LIENS. Federal tax liens held priority over real estate mortgages where mortgages had incorrect legal description of mortgaged property at time federal tax liens created. Correction of property description did not relate back to date of filing of mortgage. **Samco Mortgage Corp. v. Keehn, 721 F. Supp. 1209 (D. Wyo. 1989).**

PARTNERSHIPS. The limited partnership statutes of Delaware, Illinois and Missouri have been ruled to correspond with the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 89-123, I.R.B. 1989-47, 9.**

The Tax Court has ruled that it lacked jurisdiction to hear a petition filed by a tax matters partner more than 90 days after IRS mailing of a notice of final partnership administrative adjustment even though the notice was filed after the statute of limitations for the notice had run. **Genesis Oil & Gas, Ltd. v. Comm'r, 93 T.C. No. 46 (1989).**

In a state with a limited partnership act which does not materially correspond to the Uniform Limited Partnership Act, a limited partnership was held to lack the corporate characteristic of continuity of life because the partnership agreement did not provide that, upon withdrawal of a general partner, less than all of the limited partners may agree in writing to continue the business of

the partnership and for appointment of one or more general partners. **Ltr. Rul. 8945034, Aug. 15, 1989.**

TEMPORARY REGULATIONS. The temporary regulations sections 1.752-0T, -1T, -2T, -4T and 1.704-1T have been amended and issued as proposed regulations. Section 1.752-1T(d)(3)(v) was amended to provide that the economic risk of loss of a partner who agrees to pay the interest on a partnership nonrecourse loan if the partnership fails to do so must be computed with respect to interest accruing economically on the partner's liability after the determination of the partner's economic risk of loss. Section 1.752-1T(d)(3)(vii) was amended to require that a partner must have more than a 10 percent interest in partnership tax items in any year in order for the partner to be considered to have an economic risk in a nonrecourse loan to the partnership. If the lender owns an interest in a partnership which is a partner in the borrowing partnership, the 10 percent rule is satisfied if the lender, directly or indirectly, has more than a 10 percent interest in the borrowing partnership tax items. The related person regulations, section 1.752-1T(h), have been amended to consider related natural persons to have a 100 percent percentage of related ownership with respect to each other. **54 Fed. Reg. 48090 (Nov. 21, 1989).**

PENSION PLANS. I.R.C. § 89 governing nondiscrimination rules for employee pension plans has been repealed. **Pub. L. No. 101-140, Sec. ____ , 102 Stat. ____ (1989).**

S CORPORATIONS. A trust to which the grantor transferred stock in an S corporation was held an eligible shareholder where the grantor was to receive all the income from the trust and trust corpus was to be distributed to the grantor's estate if the grantor died more than three but less than eight years after creation of the trust. **Ltr. Rul. 8945005, Aug. 3, 1989.**

WAGE INCOME AND EXPENSE METHOD DEPRECIATION. Since 1986, one of the limitations imposed on the claiming of expense method depreciation (maximum of \$10,000 per year for married taxpayers filing jointly) has been that the amount eligible to be expensed is limited to the taxable income derived from an active trade or business. **I.R.C. § 179(b)(3)(A).** An important question is whether wage income constitutes trade or business income. Although no formal authority exists, it appears that wage income should be viewed as trade or business income for this purpose. See

Treas. Reg. § 1.162-17. Therefore, it should be possible to combine wage income with a net loss from a farm business or other business with the resulting positive income figure enabling the taxpayer to claim expense method depreciation.

SAFE HARBOR INTEREST RATES

| | December 1989 | | | |
|------------|---------------|--------|-----------|---------|
| | Annual | annual | Quarterly | Monthly |
| Short-term | | | | |
| AFR | 8.02 | 7.87 | 7.79 | 7.74 |
| 110%AFR | 8.85 | 8.66 | 8.57 | 8.51 |
| 120%AFR | 9.96 | 9.44 | 9.33 | 9.26 |
| Mid-term | | | | |
| AFR | 8.06 | 7.90 | 7.82 | 7.77 |
| 110%AFR | 8.88 | 8.69 | 8.60 | 8.54 |
| 120%AFR | 9.70 | 9.48 | 9.37 | 9.30 |
| Long-term | | | | |
| AFR | 8.09 | 7.93 | 7.85 | 7.60 |
| 110%AFR | 8.91 | 8.72 | 8.63 | 8.57 |
| 120%AFR | 9.75 | 9.52 | 9.41 | 9.34 |

INSECTICIDES AND PESTICIDES

REGISTRATION. Non registrants were held not to have any right to challenge a cancellation of a registration of a herbicide, dinoseb, where all registrants of the herbicide had either failed to challenge the cancellation or had entered into an agreement for cancellation. **Northwest Food Processors Ass'n v. Reilly, 886 F.2d 1075 (9th Cir. 1989).**

LAND SALE CONTRACTS

FORFEITURE. In an action under a State statute challenging a trial court's "adjustment of the equities" in a forfeiture of a contract to purchase a farm, the Supreme Court of South Dakota has held that such adjustment need not take into account the income tax consequences to the buyer and seller. **Beitelspacher v. Winther, # 16388, # 16389, ___ N.W.2d ___ (S.D. 1989).**

NEGLIGENCE

INSURANCE. An insurer of a grain elevator was not liable for failure to inspect the facility where the injured worker failed to provide any evidence of the insurer's duty to inspect. **Rice v. Hart-**

ford Acc. & Indem. Co., 777 S.W.2d 213 (Ark. 1989).

NUISANCE

HOG TRANSFER STATION. A hog transfer station, used only as a collection and shipping point for hogs, located within one-half mile of the corporate limits of a village was not enjoined where evidence supported the finding that operation would not be offensive, unwholesome or nuisance. Experts had testified that proper operation would not produce insect, rodent or odor problems. Decrease of value of surrounding property was held an insufficient reason for declaring operation a nuisance. **Village of Goodfield v. Jamison, 544 N.E.2d 1229 (Ill. App. 1989).**

PRODUCTS LIABILITY

COMBINES. A farm laborer was injured by a fall off the combine while attempting to clean an air conditioner condenser on the combine. The court upheld a jury verdict that the combine was not defective where expert evidence was presented that safer positions on the combine existed from which to clean the condenser. **Broussard v. Massey-Ferguson Co., Inc., 549 So.2d 899 (La. App. 1989).**

RIPARIAN RIGHTS

ADVERSE POSSESSION. Upstream water user not allowed to claim prescriptive right to water of downstream user where upstream user failed to demonstrate that its use of water decreased downstream user's supply of water. **College Irrigation Co. v. Logan River & Blacksmith Fork Irrigation Co., 780 P.2d 1241 (Utah 1989).**

SECURED TRANSACTIONS

AFTER-ACQUIRED PROPERTY. Creditor with perfected security interest in after-acquired accounts receivable of debtor rice trading company had priority interest in accounts receivable for rice sold by debtor but owned by another rice trading company. Debtor had agreed to act as seller in name only to facilitate the sale of the rice owned by the other rice trading company and debtor held right to payment for rice in constructive trust for other company. The creditor's lien in the accounts receivable took priority over the constructive trust because the creditor acquired its rights in the accounts receivable as a good faith purchaser for value where the creditor was not notified of the sham aspects of the transaction. **In re Howell Enter., Inc., 105 B.R. 494 (Bankr. E.D. Ark. 1989).**

CONFLICTING SECURITY INTERESTS. A security interest in the debtor's rice and milo crops created subsequent to another security interest in the crops under an after-acquired property clause was not allowed priority over the prior security interest as a security interest securing a loan for planting the crop under U.C.C. § 9-312(2) where the loan was an extension of an existing loan. The extension was considered not to be new value given for the security interest. **Niedermeier v. Central Prod. Credit Ass'n, 777 S.W.2d 210 (Ark. 1989).**

DRAGNET CLAUSE. Clause in security agreement granting security interest in farm equipment, livestock and growing wheat to secure existing and future obligations of debtor was enforceable as to deficiency resulting from foreclosure of real estate mortgage. The court applied U.C.C. rules as to dragnet clauses securing existing indebtedness although indebtedness had also been secured by real estate mortgage. **In**

re Johnson, 105 B.R. 661 (D. Kan. 1989).

LEASE V. SECURITY INTEREST. A lease of farm equipment was a true lease and not a security for a sale of equipment where (1) lessee required to return equipment at end of lease, (2) lessee did not have an option to purchase the equipment at the end of the lease, (3) lessor held title to equipment, and (4) only the lessor could assign rights under the lease. **Borg-Warner Leasing, Inc. v. First Nat'l Bank of Effingham, 544 N.E.2d 1322 (Ill. App. 1989).**

PURCHASE MONEY SECURITY INTERESTS. A creditor's purchase money security interest in a combine was not perfected within 20 days after the purchaser took delivery of the combine where the creditor did not sign the loan agreement until 22 days after delivery, although the financing statement had been filed earlier, and the loan was made subject to approval by the creditor. The failure of the creditor to perfect the purchase money security interest within 20 days after delivery subordinated the security interest to another creditor's prior security interest in the purchaser's farm equipment. **NBD-Sandusky Bank v. Ritter, 446 N.W.2d 340 (Mich. App. 1989).**

STATE REGULATION OF AGRICULTURE

LIVESTOCK. Livestock shipper's conviction for importation of livestock into state without health certificates reversed where evidence showed that livestock had ultimate destination outside of state. Wyoming Stat. § 11-19-111 held to bar only importation without health certificates of livestock where livestock's destination was in Wyoming. **Mendicoa v. State, 780 P.2d 1346 (Wyo. 1989).**

Reminder: The next issue of Agricultural Law Digest will be published January 5, 1990 and will contain developments since this issue.

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