



Risk and Resilience in Agriculture

THE NEW MILLENNIUM IN AGRICULTURAL CONTRACTING: NEW COMPLEXITIES REQUIRE PRODUCERS TO GET BACK TO BASICS

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I. Introduction.

While farmers and ranchers are relying more and more on contracts with agribusinesses for their inputs, the most dramatic change in agricultural contracting in the past two decades has occurred on the sales side. Many producers now attempt to guarantee prices through contracts for future delivery. In 1993, eighty-nine percent (89%) of U.S. farms and ranches made cash sales only. However, contracts for future delivery of livestock and crops accounted for more than forty percent (40%) of total farm sales.¹

The new millennium signals a change in not only the number but also the form agricultural contracts take. The handshake agreement of agricultural folklore, mutually negotiated and tied to personal relationships and trust, has virtually disappeared. Input contracts with agribusinesses are almost always in writing on

forms prepared by the sellers. Agricultural marketing and production contracts are also drafted by the buyers, with negotiations (if any) limited to price and quantity alone.

The changing number and content of today's agricultural contract makes it more important than ever for producers to understand their rights and duties under basic contract law. The purpose of this paper is to provide readers with such information. First, the basic requirements to form an enforceable contract under general contract law are described. Next several special types of agricultural contracts are noted, with emphasis given to some unique rights and obligations each creates. Finally a basic checklist for agricultural contracts is given.

There are many different types of agricultural contracts. Any checklist or description of these contracts will always fall short. Readers are therefore encouraged to seek assistance

from their attorneys when drafting their agricultural contracts. This paper is not intent to be a substitute for competent legal advice.

II: Enforceable Agricultural Contracts Under Basic Contract Law.

Necessary Elements.

*Example 1.*² Lucy sued Zehmer and his wife, asking the court to order them to carry out the terms of a real estate contract. The negotiations took place at the Zehmers' restaurant. The document allegedly transferring ownership of the land was written by Zehmer on the back of a restaurant guest check. The parties negotiated for thirty to forty minutes and modified the writing to include Mrs. Zehmer as a seller. Zehmer claims that he thought the contract was "in jest" and that he had been drinking and was "already high as a Georgia pine" when he signed the contract. Did this negotiation create an enforceable contract?

In examining contracts, courts generally consider five questions: 1) "Was it made by legally competent parties?"; 2) "Did it involve a lawful subject matter?"; 3) "Is there mutual agreement among the parties as to its terms?"; 4) "Did each party receive some consideration in exchange for their promise to perform their responsibilities under the contract?"; and 5) "Must this contract be in writing to be enforceable?". Although some exceptions exist, normally if a court answers "no" to any these questions, then it will find that no legally enforceable contract exists. Let's look at each of these elements in turn.

Competent Parties. Courts normally assume contracting parties are legally competent to make contracts.³ Persons claiming lack of competency at the time of contracting--because of mental illness, drug or alcohol abuse, etc.--bear the burden of establishing this fact. The court in example one rejected

Mr. Zehmer's claim of lack of competence, pointing out that the parties negotiated for more than thirty minutes and modified the agreement. This, it found, demonstrated that Mr. Zehmer was competent.

Lawful Subject Matter. Courts will not enforce illegal contracts terms (e.g., contracts imposing interest rates higher than statutorily authorized or denying debtors rights granted them by law).

Mutual Agreement. To have a contract parties must come to a voluntarily, shared agreement regarding its terms. The agreement must specify all its "material" (important) elements. If there is disagreement or an important term is missing, no enforceable contract exists under general contract law.

Similarly, if one of the parties was simply joking (i.e. there was no intent to make a contract), no contract is created. Be careful, however; courts are not interested in what parties subjectively intended. Instead they look at what a reasonable (objective) person would be led to believe. The court in example one rejected Mr. Zehmer's claim that he was merely "jesting." It found his actions would lead a reasonable person to believe a contract was being negotiated.

Parties claiming lack of an agreement may also raise other arguments. First, they may argue that their actions were not voluntary (i.e., they arose because of threats of physical violence, blackmail, or economic duress). Second, parties may claim there was no "meeting of the minds" because of a mutual mistake regarding a material fact concerning the contract. In example one, a mutual mistake of a material fact might occur if the Zehmers owned two farms and there was a misunderstanding between the parties regarding which farm the negotiation concerned. We can hardly say the parties had

an agreement in this case.⁴ Third, one individual may challenge the existence of a contract because she entered into the contract as a result her reasonable reliance on false statements of material facts made by the other party. The person challenging the contract on this basis must show her reliance was reasonable. If the other party was simply expressing an opinion rather than stating a fact (e.g., the speaker was not giving expert advice), the court will conclude the reliance was not reasonable and the contract will not be affected.

Consideration. Courts normally will not enforce promises that are not backed by some "consideration." Consideration in this context refers to what a party negotiates to receive in exchange for his promise or performance. It must be something the party requested and not something he already has a right to receive. In example one, the Zehmers received a promise of \$30,000 as consideration in exchange for their promise to sell Lucy the land. Lucy in turn received their promise to convey the land as consideration for his promise of payment.

Courts normally do not worry about the adequacy of the consideration received (it is up to the parties to answer this question themselves). Still, courts may look at the size of the consideration in determining whether mistake, economic duress, fraud, or unequal bargaining power is present.

Writing Requirements. Historically, many agricultural contracts are not in writing. Oral contracts are perfectly legal, provided the other contracting requirements listed above are satisfied. Certain contracts, however, must be in writing to be enforceable (the statute of frauds requirement).⁵ These include contracts:

1. for the sale of interests in land;
2. that cannot be performed within one year;
3. to answer for the debts of another; and

4. for the sale of goods of \$500 or more.

Examples of agricultural transactions covered by the writing requirement include the Lucy's and Zehmers' contract in example one, (a transaction in land), an 18 month production contract to raise swine (a contract for more than one year), a landlord's promise to pay the fertilizer bill of her tenant if the tenant defaults (a guarantee), and an agreement to purchase a combine for \$195,000 (a sale of goods of \$500 or more).

There are some important exceptions to the writing requirement. For example, oral contracts for specially manufactured goods (e.g., a feed box specially created for the buyer's truck) and for goods for which payment has already been made and accepted are fully enforceable, even though they involve goods worth more than \$500. Similarly courts will normally enforce oral contracts subject to the writing requirement when one of the parties has nearly completed (substantially performed) his obligations and it would be unfair to not require the other party to carry out his responsibilities. For example, assume that a farmer orally contracts for an easement to build an access road across a neighbor's property. Such an agreement, involving a transaction in land, is subject to the writing requirement. However, if the farmer has built, maintained, and used the road over some time, the court will likely enforce the oral agreement and prevent the neighbor from interfering with the farmer's access, even though the oral agreement does not satisfy the writing requirement.

Conflicting Oral And Written Evidence In Contract Disputes.

*Example 2.*⁶ Millard Feedlot agreed to care for up to 3,000 head of cattle owned by Zummo. Paragraph 8 of their written contract provided, "All death losses and

mysterious disappearances of cattle will be at the expense of the feedlot." Millard testified that when he received the written contract he complained to Zummo about this clause and was assured that the transaction would be governed by the industry standard of "3% loss for death or mysterious disappearances." Millard then signed the contract. Will Millard be allowed to testify regarding this phone conversation?

Under the parol evidence rule, courts will not normally admit into evidence oral testimony which contradicts the terms of a written document unless the writing is shown to be incomplete, ambiguous, or based upon mutual mistake, fraud, misrepresentation, or duress. The court in example two did not permit Millard to testify regarding the phone conversation. It is important, therefore to make sure the written contract accurately reflects all the terms of the agreement.

Discharge Of Contract Obligations.

Contract obligations can be discharged: 1) by performance; 2) as a result of a condition specified in the contract; 3) through operation of law including objective impossibility; 4) if the parties mutually agree to release each other from any remaining obligations; or 5) through breach of contract.

Discharge by performance. Parties normally discharge their contract obligations by completing its term. For example, a grain seller would discharge her obligations by delivering the quantity and quality of crop specified in her contract. Similarly Millard Feedlot in example two would discharge its obligations by carrying out the terms of its feeding contract.

In service contracts, unless the contract specifies otherwise, parties need only substantially perform to discharge their obligations. Substantial performance

generally means that parties perform their obligations in good faith and to a significant degree with only minor deviations. Substantial performance is perhaps easier to illustrate than to define:

Example 3.⁷ Clark's Pork Farms (Clark) contracted with Sand Livestock Systems, Inc. (Sand) to construct new buildings for the farrowing, nursery, and grower stages of a farrow-to-finish hog production operation. Clark believed the finished project was seriously defective and withheld the last payment due, approximately \$80,000.00. Sand filed suit seeking contract damages.

In example three, Sand will have discharged its obligations under this building contract once it substantially completed the buildings, even if small good faith defects remain (e.g., a stuck door, a slight deviation from design specifications, a minor delay in completing the project). If substantial performance is established, the court will normally require the owner to pay the contract price less any damages suffered because of these defects. To avoid fights over whether a project has been substantially performed, building contracts often designate that the last payment will not be made until a named third party (e.g., the architect; county building code inspector; etc.) has approved the final work.

Discharge by a condition subsequent. Parties may also include in their contracts a provision specifying certain events which will terminate the contract (a condition subsequent). In example three, the building contract might provide "this contract will terminate if the producer is unable to get financing for the project within sixty days of the contract's signing." If Clark could not obtain financing, both parties' rights and obligations under the contract would be discharged.

Discharge by operation of law including objective impossibility. Assume our producer

in example three declares bankruptcy prior to the buildings' completion. The bankruptcy court may allow Clark to terminate the contract. The only recourse for the contractor, unless it has made other provisions, is to seek reimbursement for its work as a general creditor.⁸ Similarly, the laws of most states discharge the obligations of a party to a contract when an event occurs--not the fault of that party--which makes it objectively impossible for the average person to perform. Examples of objective impossibility include destruction of the contract's subject matter, subsequent illegality, or death of an essential party. Consider the impact of a drought on a forward contract for the sale of grain. The seller may ask the court to discharge her obligation, claiming destruction of the subject matter. The buyer may well respond that since it is still possible for the seller to cover the obligation by purchasing grain on the open market the contract should still be performed. The court would examine the contract to see whether it specifically identified the sellers' crop as its subject matter. Rather than having a court decide this issue, parties should clearly specify in their contract which goods are covered and what events will terminate their contracts.

Discharge by mutual agreement. Prior to carrying out the contract, both parties may decide it is a bad idea. They may agree to rescind the contract and thereby discharge their obligations. Alternatively, the parties may agree to have another individual carry out its terms. The fact that another individual is carrying out the agreement does not necessarily mean that the original party is off-the-hook if the contract obligation is not properly performed. To avoid potential liability, the original party should obtain a release from the party to whom the obligation is owed.

Discharge by Breach of Contract--Damages. Assume that the contractor in example three did not substantially performed its obligations. Under general contract law, Clark's remaining obligations will be discharged and it may sue the contractor for damages. If the breach occurred early on, Clark might ask the court for compensatory damages--an amount which would put it in the same position it would have been had no contract been made. Compensatory damages in this case might include costs associated with land leveling, permitting, and other preparatory activities. Alternatively, Clark might ask the court for expectancy damages--an amount which would put it in the same position it would have been had the contract been performed. For example, assume that Clark hired another contractor to complete the project, costing it an additional \$20,000 over the original contract price. This difference represents its expectancy damages.

In some instances nonbreaching parties might also ask courts for three other kinds of damages: 1) nominal damages (a token payment when the nonbreaching party has suffered a technical injury but no financial harm); 2) punitive damages (an amount over and above actual damages designed to punish breaching parties); or 3) special or consequential damages (an amount intended to compensate the nonbreaching party for damages caused by special circumstances beyond the contract itself). In example three, the court found that the contract specified that the completed buildings would allow a certain rate of production. The court awarded damages to Clark sufficient to reimburse it for lost profits because the design did not allow them to raise this number of swine.

In nearly all contract cases nonbreaching parties have a duty to mitigate or attempt to reduce any damages they might otherwise suffer as a result of the breach. Clark in

example three cannot simply allow its animals to die if the heating unit installed in the confinement buildings does not work. It must take reasonable measures to mitigate any damages (here consequential damages) caused by this failure.

Discharge by Breach of Contract--Liquidated Damages and Damage Limitation Clauses.

Many contracts include language, referred to as liquidated damages clauses, that specifies in advance what damages must be paid in case of a breach. Courts will normally follow these clauses if they appear reasonable and are not designed as simply a penalty for noncompliance.

Parties may also incorporate into their written contract provisions that limit the type or size of damages in some fashion. For example, agribusiness contracts for inputs often eliminate damages for breach of certain kinds of warranties (promises) and limit their damages for product failure to return of the purchase price.

Example 4.⁹ The Currys engage in "no till" farming. They recently began raising corn continuously on their land and are concerned that this change along with their no till practices might encourage corn root worm problems. Their dealer knew of their practices and recommended they use a particular product. The Currys subsequently suffer huge losses, allegedly because of lodging caused by corn root worms. They sued the chemical company for breach of express and implied warranties. The chemical company pointed to language found at the bottom of the sack, in type about half the size of other print, which denied any liability for warranties beyond the product's chemical composition and limited any damages to return of the purchase price.

The limitation on both warranties and on remedies in example four are perfectly enforceable, provided they are part of the contract. The court found in example four that the language was adequate to eliminate any warranties beyond the chemical composition. It held, however, that because the limitations were in small print and located at the very bottom of the bags they were not "conspicuous" as the state statute required and were not effective against the Currys.

Discharge of Contract by Breach--Specific Performance. The normal remedy for breach of contract is damages. In some cases, however, damages may be difficult to determine or will be insufficient to put innocent parties where they would have been had the contract been properly performed. Innocent parties in these instances may seek equitable relief--a remedy designed to ensure basic fairness is achieved--by asking courts to require the breaching parties to carry out their responsibilities under the contract (specific performance). Courts often grant specific performance in land and other transactions involving unique real or personal property. They rarely grant specific performance where standardized and readily accessible goods are involved.

III. Special Contract Forms in Agriculture. Agricultural Contracts

The rules outlined in section II generally apply to all contracts. Over time, however, legislatures and the courts have established special legislative (statutory) and judge-made (common law) rules for certain agricultural and other commercial transactions. Let's look briefly at some of these special contracts and the unique rules applied to them.

Agistment Contracts.

Black's Law Dictionary describes agistment contracts as "[a] particular kind of bailment [(see below)] under which a person, for consideration takes animals for care and pasturing on his land and the person who cares for the animals has an 'agister's lien' on the animals for that care."¹⁰ The person receiving the animals is called an "agister." In an agistment contract the agister receives exclusive possession but not title to the animals. The contract in example two represents an agistment. In the absence of specific contract language, both special state statutes and judge-made (common) law rules govern agistment agreements. These rules generally cover such topics such as the agister's duty of care and right to retain and sell the livestock to cover the costs of such care (i.e., the "agister's lien" introduced in the definition).

Bailment Contracts.

A "bailment" involves the transfer of custody and control of personal property by one person, the "bailor," to a second person, the "bailee," for a particular purpose. "Agistments" are a special form of bailment. A farmer renting a combine from a local implement dealer is also a bailee. The law governing bailments dates back to the common law of England. More recently a number of states have adopted uniform commercial laws governing leasing of personal property.¹¹ These standardized rules, among other things, fill in any gaps in the leasing contracts; loosen contract formulation and writing requirements; and in some cases impose certain implied warranties (promises) on bailors regarding the leased goods.

Historically, the law imposed a higher duty of care on certain special bailments. Special bailments include storage contracts with warehouses and transportation contracts with commercial carriers. Special bailments are

also subject to both state and federal laws. Persons making transportation or warehousing contracts should review these contracts with their attorneys to make sure their warehousemen's and carriers' actions conform not only with the contract but also with the special protections afforded them by law.

Sale Or Purchase Of Agricultural Products Or Inputs (Goods).

Sales of goods are also governed by standard commercial rules adopted in every state.¹² Traditional agricultural transactions--whether the sale of inputs or agricultural products--involve the sale of goods. The term "goods" here also includes growing crops and unborn young of animals.¹³ The standardized rules for the sale of goods also act as gap-fillers and impose specific warranties in certain instances. In example four, the court found that the contract for pesticides created both an implied warranty of merchantability and an implied warranty of fitness for a particular purpose. An implied warranty of merchantability requires that products sold by merchants must be able to pass in the market without objection, if fungible (nonunique) are of fair or average quality, and must be fit for their ordinary purposes.¹⁴ The implied warranty of fitness for a particular purpose, created by these general rules, requires that if a seller knows both at the time of contracting that the buyer has particular needs and the buyer is relying on the seller's judgment or expertise in selecting or furnishing suitable goods, then the seller is obligated to select goods that are fit for this particular purpose.¹⁵ In example four, the Currys informed the dealer of their need for a pesticide which would work in a no till environment. Under these facts, the court found that the dealer was obligated to provide them with a suitable product based upon their unique needs.

Readers should be aware that some states statutorily limit implied warranties in sales

involving agricultural goods.¹⁶ The Wyoming Statutes, for example, provide, "[w]ith respect to the sale of cattle, hogs, sheep and horses, there shall be no implied warranty that the cattle, hogs, sheep and horses are free from disease."¹⁷ Agriculturists should examine their contracts for limits on sellers' warranties and check with their attorneys to determine if these applicable state laws give them any additional rights or obligations.

Leases Of Agricultural Land

Agricultural land leases are subject to special statutory and common law rules. For example, some state laws allow tenants to holdover on fixed-term agricultural leases (i.e., leases with a stated end point) and turn them into leases that are automatically renewed each year (a year-to-year, periodic lease) unless one of the parties seasonably notifies the other of an intent to quit. Other traditional (common) law and statutory rules protect tenants' rights in case their landlords' interest in the land terminates (the right of emblements or way-going-crops), impose obligations on tenants regarding cropping practices (good husbandry requirements), and give landlords certain rights to take possession of crops to cover unpaid rents (landlord liens). Parties should work with their attorneys to make sure their real estate leases do not contain any unpleasant surprises.

Marketing And Production Contracts

Forward contracting is increasing in importance in agriculture commodities. These contracts can be divided into two forms: marketing contracts and production contracts. Marketing contracts "specif[y] quantity, quality, price, and timing of the product to be delivered by the farmer."¹⁸ With marketing contracts, the producer still owns (holds title to) the commodity until the time of delivery. The uniform laws discussed above for the sale of goods govern marketing contracts.

The second form, production contracts, pay producers "a predetermined fee for raising products of a specified quality and quantity, with the contractor providing inputs and retaining ownership of the commodity throughout the production process."¹⁹ With production contracts, agribusinesses retain title to their commodities from the time of planting or conception to processing. Production contracts thus are another form of bailment or agistment contracts and are subject their special rules.

Critics complain that forward contracts may impose unfair burdens on producers. This can be particularly true under production contracts when producers must make sizable capital expenditures to satisfy contract requirements and processors may terminate the contracts at any time. Early in this century the federal government passed laws to defend agriculturists from other unfair practices by agribusinesses. For example, the Packers and Stockyards Act of 1921 (PSA), as amended, regulates unfair, discriminatory, monopolistic, and conspiratorial actions of packers, live poultry dealers and handlers, and their dealers and agents. Additionally, Congress amended the PSA in 1976 to ensure prompt payment and to require packers with annual purchases in excess of \$500,000 to establish a trust fund for the benefit of unpaid cash sellers of livestock. Congress further amended the PSA in 1987 to provide similar protection to unpaid cash sellers of poultry. Congress passed the Perishable Agricultural Commodities Act in 1930. It regulates merchants, dealers, and brokers involved in the sale of fresh fruits and vegetables. It also requires them to hold all inventories, receivables, and proceeds in trust for unpaid sellers. In 1968 Congress enacted the Agricultural Fair Practices Act (AFPA). The AFPA authorizes producers to bargain collectively with handlers and processors and prohibits acts of discrimination or intimidation designed to discourage producers from

organizing. In 1990, a Florida federal district court, relying on both the AFPA and PSA, required Cargill to reinstate its growers' contract with an association's president.²⁰ The president and the association had earlier sued Cargill under the PSA charging fraudulent practices including misweighing.

States have also established legislation to regulate forward contracting.²¹ For example, the Minnesota legislature passed the Agricultural Contracts statute in 1990. The statute requires production contracts to include arbitration or mediation clauses and restricts termination of contracts which require producers to make "capital investment in buildings or equipment that cost \$100,000 or more and have a useful life of five or more years." The Minnesota statute also imposes an implied promise of "good faith" on the parties and authorizes the Minnesota Commission of Agriculture to adopt rules restricting other unfair trade practices. It also makes parent companies responsible for the production contracts of their subsidiaries. Producers should check to determine if their states have adopted similar protections.

IV. Drafting Your Agricultural Contract: Some General Concerns

While it is virtually impossible to provide one checklist to cover all agricultural contracts, there are some specific topics which all contracts normally address²². Table 1 outlines these topics for three traditional agricultural contracts: an agricultural lease, a traditional forward (marketing) contract, and a production contract. Most of topics listed address traditional "who", "what", "when," "where," and "how" questions. Section IV of the checklist, "Dealing with Conflict," covers several risk management issues that might arise.

In addition to these general topics, producers

should also consider the potential income tax ramifications of their contracts. Delayed pricing and payment clauses may permit producers to move income from one tax year to another. Producers should check with their attorneys and tax accountants to determine whether this tactic is possible and advisable for them.

V. Conclusions And Additional Information On Agricultural Contracts.

The millennium signals new challenges and opportunities in agricultural contracting. Producers must make sure their contracts continue to serve their needs in the 21st century. This paper outlines some of the basics requirements to create an enforceable contract. It also describes some unique characteristics of several special types of agricultural contracts--agistments; bailments; contracts for the sale of goods; real estate leasing contracts; and production and marketing contracts. Each of these contracts is subject to very special rules only briefly introduced in this paper.

A number of extension publications on agricultural leases and production contracts may be available from county extension offices. The following publications are currently available on-line on the Western Risk Management Legal page at: <http://agecon.uwyo.edu/agecon.Prog.RiskMgt/LegalRisk/LEGALPageOne.htm>

AGRICULTURAL BAILMENT & PRODUCTION CONTRACTS.

Clark, Richard T. Leasing Arrangements for Cattle, (University of Nebraska, 1996)

Fausett, Marvin & Kevin C. Dhuyvetter, Beef Cow Leasing Arrangements (Kansas State University Research & Extension, November 1995)

Farm Machinery, Building or Equipment Lease
(Kansas State University Research &
Extension, June 1995)

Massey, Raymond E., Equipment Lease Analyzer
(July 1998)

Tranel, Larry F., Sharemilking in the Midwest
(University of Wisconsin-Extension, April
1997)

CONSTRUCTION CONTRACTS.

Meador, Neil F., Selecting and Working with a
Farm Building Contractor (University of
Missouri-Columbia Extension, October 1993)

Walsh, Patrick & David W. Kammel, Contracting
for Agricultural Construction (University of
Wisconsin-Extension, 1990)

GOODS, SALE OF AGRICULTURAL PRODUCTS.

McEowen, Roger A., Rights and Liabilities
Arising from the Sale of Defective
Agricultural Goods (Kansas State University
Research & Extension, April 1996)

AGRICULTURAL LAND LEASING.

Crop-Share or Crop-Share Cash Farm Leases
(Kansas State University Research &
Extension, April 1997)

Irrigation Crop-Share or Crop-Share Cash Farm
Leases (Kansas State University Research &
Extension, April 1997)

Pasture Lease (Kansas State University Research
& Extension, April 1997)

Kunkel, Phillip & Brian F. Kidwell, Farm Leases
(University of Minnesota Extension Service,
1998)

Langemeier, Larry No, Fixed and Flexible Cash
Rental Arrangements for Your Farm (Kansas
State University Research & Extension, 1997)

Langemeier, Larry N., Crop Lease Arrangements
on Kansas Farm Management Association
Farms (Kansas State University Research &
Extension, May 1998)

Langemeier, Larry N., Crop Share or Crop-Share
Cash Rental Arrangements for Your Farm
(Kansas State University Research &
Extension, October 1996)

Langemeier, Larry N., Irrigation Crop-Share and
Cash Rental Arrangement for Your Farm
Lease (Kansas State University Research &
Extension, April 1997)

Langemeier, Larry N., Pasture Rental
Arrangements for Your Farm (Kansas State
University Research & Extension, April 1997)

Massey, Raymond E. & William W. Casady,
Rental Agreements for Irrigated Land
(University of Missouri-Columbia Extension,
June 1996)

Pershing, Don & J.H. Atkinson, Figuring Rent for
Existing Farm Building (Cooperative
Extension Service, Purdue University, June
1989)

Schroeder, Alan, Managing Risk in and Through
Agricultural Land Leases (University of
Wyoming, 1998)

Tilley, Marcia L., Wheat Pasture Lease
Arrangements (Oklahoma Cooperative
Extension Service, nd)

Table 1: Traditional Topics Covered In Selected Agricultural Contracts

TOPIC/ CONTRACT TYPE	AGRICULTURAL LAND LEASE	FORWARD (SALES) CONTRACT	PRODUCTION CONTRACT
I. BACKGROUND INFORMATION	<input type="checkbox"/> Parties' names. <input type="checkbox"/> Date and place of contract formulation. <input type="checkbox"/> Legal description of land being leased. <input type="checkbox"/> Legal description of any other property (buildings, fixtures, equipment, livestock, etc.) covered by the lease. <input type="checkbox"/> Description of parties' relationship. Normally the contract indicates "this arrangement is a lease; it is not intended to create a partnership, employment, or agency relationship." <input type="checkbox"/> Whether either party may transfer his/her rights/obligations under the contract.	<input type="checkbox"/> Parties' names. <input type="checkbox"/> Date and place of contract formulation. <input type="checkbox"/> Legal description of land where commodity is located or is to be grown; brand, source, or other description of the commodity. <input type="checkbox"/> Description of parties' relationship. Normally the contract indicates "this arrangement is for the sale of goods; it is not intended to create a partnership, employment, or agency relationship." <input type="checkbox"/> Whether either party may transfer his/her rights/obligations under the contract.	<input type="checkbox"/> Parties' names. <input type="checkbox"/> Date and place of contract formulation. <input type="checkbox"/> Legal description of land where commodity is located or is to be grown; brand, source, or other description of the commodity. <input type="checkbox"/> Description of parties' relationship. Normally the contract indicates "'seller' is an independent contractor; the contract is not intended to create a partnership, employment, or agency relationship." <input type="checkbox"/> Whether either party may transfer his/her rights/obligations under the contract.
II. CONTRACT DURATION	<input type="checkbox"/> Beginning and ending time of the contract. <input type="checkbox"/> Factors which might/will terminate the contract. <input type="checkbox"/> Notice required to terminate the contract.	<input type="checkbox"/> Beginning and ending time for the contract. <input type="checkbox"/> Factors which might/will terminate the contract. <input type="checkbox"/> Notice required to terminate the contract.	<input type="checkbox"/> Beginning and ending time for the contract. <input type="checkbox"/> Factors which will/might terminate the contract. <input type="checkbox"/> Notice required to terminate the contract.

TOPIC/ CONTRACT TYPE	AGRICULTURAL LAND LEASE	FORWARD (SALES) CONTRACT	PRODUCTION CONTRACT
III. CONTRACT PURPOSE AND GENERAL OPERATION	<input type="checkbox"/> General description of contract's purpose such as "for the raising of _____ crops and/or _____ livestock..." <input type="checkbox"/> General description of any special management or husbandry requirements. <input type="checkbox"/> Provision, if any, for sharing of costs. <input type="checkbox"/> General description of the property to be returned when lease ends.	<input type="checkbox"/> General description of the contract's purpose such as "for the sale of _____ to be grown /located at _____" (variety/breed to be specified). <input type="checkbox"/> General description of any management or husbandry requirements. <input type="checkbox"/> Provision, if any, for sharing of costs. <input type="checkbox"/> Description of any warranties (promises) made with respect to the commodity. Any limitations place on express or implied warranties associated with the commodity. <input type="checkbox"/> Provision establishing or releasing liens placed upon the commodity to cover production expenses. <input type="checkbox"/> Specification of delivery dates and time(s) when title/risk of loss transfers.	<input type="checkbox"/> A general description of the contract's purpose such as "the producer will grow/raise _____ at the location specified in the contract" (breed/variety to be specified). <input type="checkbox"/> General description of any special management or husbandry requirements. <input type="checkbox"/> Provision, if any, for sharing of costs. <input type="checkbox"/> Provision establishing or releasing liens placed upon the commodity to cover production expenses. <input type="checkbox"/> Specification of delivery dates.
IV. PAYMENT TERMS	<input type="checkbox"/> If a cash lease, then time(s), manner, and location of payment. <input type="checkbox"/> If a share arrangement, then manner, time, location and basis of share payment. Any minimum payment requirements.	<input type="checkbox"/> Specification of payment terms based upon quantity and quality standards. <input type="checkbox"/> Determination of when payment must be made including advanced payments to cover input costs.	<input type="checkbox"/> Specification of payment terms based upon quantity and quality standards. <input type="checkbox"/> Determination of when payment must be made including advanced payments to cover input costs.

TOPIC/ CONTRACT TYPE	AGRICULTURAL LAND LEASE	FORWARD (SALES) CONTRACT	PRODUCTION CONTRACT
V. ACCEPTANCE OF COMMODITY	---	<input type="checkbox"/> Clause outlining how acceptance will occur. <input type="checkbox"/> Clause detailing what will happen with rejected commodities. <input type="checkbox"/> Clause outlining whether seller may provide substitute goods to replace commodities rejected under the contract. <input type="checkbox"/> Provision outlining notice requirements in case of default.	<input type="checkbox"/> Clause outlining how acceptance will occur. <input type="checkbox"/> Clause detailing what will happen with rejected commodities. <input type="checkbox"/> Clause outlining any notice requirement in case of rejection.
VI. DEALING WITH CONFLICT	<input type="checkbox"/> Description of what will occur in case of crop failure, labor action, or other factors beyond the control of the parties. <input type="checkbox"/> Provision for mediation or arbitration of any conflicts under the lease. <input type="checkbox"/> Clause granting attorney fees and costs to nonbreaching party in case of court action. <input type="checkbox"/> Provision for termination of lease upon default.	<input type="checkbox"/> Clause outlining what will occur in case of crop failure, labor action, or other factors beyond the control of the parties. <input type="checkbox"/> Provision for mediation or arbitration of any conflict under the contract. <input type="checkbox"/> Provision specifying and/or limiting damages in case of default. <input type="checkbox"/> Clause granting attorney fees and cost to nonbreaching party in case of a court action.	<input type="checkbox"/> Clause outlining what will occur in case of crop failure, labor action, or other factor beyond the control of the parties. <input type="checkbox"/> Provision for mediation or arbitration of any conflicts under the contract. <input type="checkbox"/> Provision specifying and/or limiting damages in case of default. <input type="checkbox"/> Clause granting attorney fees and cost to nonbreaching party in case of a court action. <input type="checkbox"/> Provision for termination of contract in case of default.

TOPIC/ CONTRACT TYPE	AGRICULTURAL LAND LEASE	FORWARD (SALES) CONTRACT	PRODUCTION CONTRACT
VII. MISCELLAN- EOUS PROVISIONS	<input type="checkbox"/> Clause indicating that the written contract represents the entire agreement between the parties. <input type="checkbox"/> Clause granting the landlord' a right to inspect the leased property. <input type="checkbox"/> Provision for payment for or removal of any improvements placed upon the property. <input type="checkbox"/> Provision of insurance or other protection for landlord in case of third party injury on the property. <input type="checkbox"/> Parties' signatures.	<input type="checkbox"/> Clause indicating that the written contract represents the entire agreement between the parties. <input type="checkbox"/> Clause giving buyer a right to inspect the property and facility. <input type="checkbox"/> Clause granting seller a right of reimbursement for capital expenditures required to carry out contract when contract is terminated prematurely and without fault on the part of the seller. <input type="checkbox"/> Clause retaining title in the commodity to the seller until delivery. <input type="checkbox"/> Parties' signatures.	<input type="checkbox"/> Clause indicating that the written contract represents the entire agreement between the parties. <input type="checkbox"/> Clause giving buyer authority to inspect the property (fields and facilities). <input type="checkbox"/> Clause granting seller a right of reimbursement for capital expenditures required to carry out contract when contract is terminated prematurely and without fault on the part of the seller. <input type="checkbox"/> Parties' signatures.

FOOTNOTES

¹"Farm Structure Home Page,"
[http://www.econ.ag.gov.Briefing/tbe/st
ruc/st3.htm](http://www.econ.ag.gov.Briefing/tbe/st
ruc/st3.htm)

The importance of marketing and production contracts in agriculture varies by industry. In 1990, for example, ninety-two percent (92%) of broilers were sold through production or marketing contracts versus twelve percent (12%) of fed cattle and seven percent (7%) of sheep and lambs. Seven percent (7%) of food grains, fifty-five percent (55%) of potatoes, sixty-five (65%) percent of citrus, and eighty-three (83%) percent of processed vegetables were sold via production or marketing contracts. Patrick M. O'Brien, "Implications for Public Policy," in Food and Agricultural Markets: The Quiet Revolution, 296, 301 (Lyle P. Schertz and Lynn M. Daft, eds., (1994).

²Lucy v. Zehmer, 196 Va. 493, 84 S.E.2d 516 (1994).

³Contracts with minors are a special case. Such contracts are voidable (e.g., minors may give back the purchased property (if they still have it) and demand return of any compensation they paid). However, courts will still enforce some sales to minors of "necessities" (e.g., food, clothing). Additionally courts will fully enforce contracts with "emancipated" minors (those determined by a court to be adults). Persons dealing with minors should check with their attorneys regarding how best to draft their contracts.

⁴What if the mistake of fact is one party's alone? For example if Lucy purchased the land, believing that he could resell at a higher price and later discovers he cannot, his contract obligation will not be affected. The law calls this a unilateral (one person) mistake of fact. Similarly mistakes of law generally have no impact on a contract's enforceability. For example, assume Lucy purchased the land, believing he could subdivide it for recreational homes. He may not back out of the contract later when he discovers the zoning of the area prohibits this use.

⁵The statute of fraud (writing) requirement originated in England with contracts for the sale of land where some parties had an incentive to lie. The statute of fraud lessened this incentive by requiring that contracts transferring an interest in land be in writing, signed by the parties, and adequately describe the land and the transaction involved.

⁶Zummo Cattle Company v. Millard, 482 S.W.2d 17 (Tex. Civ. App. 1972).

⁷Clark's Pork Farms v. Sand Livestock Systems, 563 N.E.2d 1292 (Ind. App. 1990).

⁸"Other provisions" could include a guarantee from a third party that the contract price will be paid.

⁹Stauffer Chemical Company v. Curry, 778 P.2d 1083 (Wyo. 1989).

¹⁰Black's Law Dictionary, 66 (6th ed., 1990).

¹¹These rules were prepared by the National Conference of Commissioners on Uniform State Laws in conjunction with business and legal organizations and law professors across the United States. They can be found in Article 2A of the Uniform Commercial Code (UCC). Readers should check with their attorneys to see which of these uniform laws have been adopted in their states.

¹²See section two of the UCC.

¹³UCC § 2-105(1); 2-107(2).

¹⁴UCC § 2-314.

¹⁵UCC § 2-315.

¹⁶For a summary of state statutes and cases regarding implied warranties and agricultural inputs and products, see J. W. Looney, "Warranties in Livestock, Feed, Seed, and Pesticide Transactions," 25 U. Mem. L. Rev. 1123 (Spring 1995).

¹⁷Wyo. Stat. § 34.1-2-316(c)(v).

¹⁸Janet Perry, Mitch Morehart, David Banker, & Jim Johnson, "Contracting--

A Business Option for Many Farmers,"
Agricultural Outlook, 2, 2 (May 1997).

¹⁹. Id..

²⁰. Baldree v. Cargill, Inc., 758 F.
Supp. 704 (M.D. Fla. 1990), aff'd, 925
F.2d 1474 (11th Cir. 1991).

²¹²¹. Neil D. Hamilton, "State Regulation
of Agricultural Production
Contracts," 25 U. Mem. L. Rev. 1051
(Spring 1995).

22. The Format for this table is based
upon Christopher R. Kelly,
"Agricultural Production Contracts:
Drafting Considerations," 18 Hamline
L. Rol. 397 (Spring 1995).