Agricultural Law Update

VOLUME 6, NUMBER 7, WHOLE NUMBER 67 APRIL 1989

Official publication of the American Agricultural Law Association

INSIDE

IN FUTURE ISSUES

CRP contract terminates existing lease

Weimerskirch v. Leander, 764 P.2d 663 (Wash. App. 1988), may be the first state appeals court case to interpret the application of conservation reserve program contract rules on the transfer of land subject to an underlying farm lease. The Washington State Appeals Court held that CRP rules require that the contracts may not be revised or revoked "unless by the mutual agreement between the parties." The court ruled in a dispute in which a purchaser from the original owner-lessor argued that the sale of the property, in which the lessees did not exercise a right of first refusal to purchase, meant that under state law the lessees' rights in the lease were forfeited and all CRP payments should now come to the new owner. The court rejected that argument holding that:

> In order to give effect to the entire CRP contract, the provision giving options to new owners must be read as applying in those situations in which all the parties to the CRP contract agree to the terms of the sale.

The purchaser argued that the signing of the CRP contract did not modify the lease between the seller and the lessees and that the seller never intended to give up the right to sell, as reflected in the lessees' right of first refusal to purchase in the lease. The court noted that:

> The terms of the CRP contracts are inconsistent with those of the earlier lease. The purpose of the lease was to permit cultivation of the acreage by the (plaintiffs) whose rent was calculated as a percentage of crops raised. Under the CRP contract, the acreage was taken out of production. In addition, the provision in the lease regarding a sale conflicts with the provisions of the CRP contracts that they not be revoked or revised "unless by the mutual agreement of the parties."

After reviewing the conflicting testimony of the parties to the lease concerning the lessor's reservation of a right to sell, the court affirmed the finding of the trial court that the CRP contracts terminated the lease and substituted the terms of the CRP contract which require mutual agreement for there to be a later revocation as the purchaser was arguing had happened here.

While involving an interpretation under state law, the court's treatment of the underlying lease and the preemptive effect given the CRP contract provisions, make the case worthy of note. – *Neil D. Hamilton*

Program applicants' rights prior to execution of the CRP contract

Frequently, a landlord and tenant will jointly participate in the Conservation Reserve Program (CRP). Disputes between landlords and tenants in pre-contract negotiations sometimes occur. The case of *Kennell v. Torry*, 685 F. Supp. 184 (S.D. Ill. 1988) illustrates that a tenant is not entitled to exercise the protections of the CRP regulations until the CRP contract has been executed. In other words, federal law does not provide a remedy to lessees of farmland for damages resulting from their negotiations or dealings with landlords and occurring prior to ASCS acceptance of their offer to participate in the CRP.

The regulations in *Kennell* were those relating to the division of payments and the rights of tenants and sharecroppers. 7 C.F.R. § 704.26, § 704.28 (1988). The primary issue in the case was whether the tenant had an implied private right of action to challenge the allegedly unfair actions of the landlord.

Torry, the landlord, and Kennell, the tenant, had an oral year-to-year rental agreement under which Kennell received two thirds of the profits of the farming enterprise and Torry received one third. After two years, they decided to enroll the farmland in the CRP. Torry requested and Kennell apparently agreed to a nine-tenths to one-tenth split of the program payments in favor of Torry. Their offer to participate in the CRP was rejected by the ASCS county committee because of the disparity in the proposed disbursement of the payment proceeds between the landlord and the tenant. Torry thereupon terminated Kennell's lease and entered into a new lease with a different tenant. The new tenant apparently also agreed to the

(Continued on next page)

same 90-10 payment split. However, on this occasion, the USDA approved Torry's reapplication to the CRP. Kennell filed the instant lawsuit, claiming that he had not been treated fairly in the 90-10 payment-split arrangement. He alleged this to be in violation of the Soil Conservation Act and/or the CRP provisions of the Food Security Act of 1985.

Kennell either stipulated or informally acknowledged that neither the Soil Conservation Act nor the CRP provisions expressly confers a private right of action. Therefore, Kennell attempted to prove that an implied private right of action existed under the circumstances.

The court applied a four-part *Cort v. Ash* analysis to determine whether a private right of action was implicit in the CRP statutory provisions. *Cort v. Ash*, 422 U.S. 66 (1975). The four questions analyzed were: (1) whether plaintiff is one of the class for whose "especial benefit" the statute was enacted; (2) whether there is an indication of legislative intent, explicit or implicit, either to create the remedy or to deny it; (3) whether it is consistent with the underlying purposes of the legislative scheme to imply the remedy for the plaintiff; and (4) whether the cause of action is one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law.

Under the first *Cort* element, the court determined that Kennell is not one of a class for whose "especial benefit" the statute was enacted. The court made a striking factual conclusion on this point. In examining the legislative history, it found that Congress, in enacting the Soil Conservation Act and the CRP, did not intend to confer a financial benefit on landowners and their tenants but rather intended "to deny federal agricultural benefits to them if they cultivated highly erodible land." 685 F. Supp. at 185-186. Thus, the court found that the class intended to be benefitted by the CRP is U.S. taxpayers, not farmers. The court was persuaded by a portion of the legislative history of the Soil Conservation Act that stated that the then-current law pertaining to farm subsidies had caused taxpayers to pay twice: "once for farm support programs and again for the cost of soil erosion." 1985 U.S. Code Cong. & Admin. News 1676, 1966-67. 685 F. Supp. at 186. The legislative history indicated to the court that Congress had no intent "to protect tenant farmers from greedy landowners" in enacting the statute. 685 F. Supp. at 185. In a footnote, the court limited this conclusion to rights created by the statute itself, and noted that once a binding contract existed between the landowner and his tenant *and* the USDA, the tenant is then protected. 16 U.S.C. § 3843(c). 685 F. Supp. at 185.

Addressing the second inquiry of the *Cort* test, the court found that the legislative history of the Soil Conservation Act "reveals no explicit or implicit indication that Congress intended to create or deny a remedy for the situation Kennell complains of." 685 F. Supp. at 186. The court noted that the USDA regulations for the CRP may themselves provide this remedy. 7 C.F.R. Part 704.28 (1988). An administrative remedy is provided where a landowner has used coercion, fraud, or misrepresentation to deprive any other person of cost-share assistance or land rental payments. The court noted that this administrative remedy does not provide any indication of legislative intent concerning such an implied remedy.

The third inquiry of the *Cort* test requires a determination of whether the recognition of an implied remedy would be consistent with the underlying purposes of the statute. On this point, the court noted that the implied remedy that the plaintiff sought concerned conduct by the landlord that allegedly occurred prior to either party becoming an actual participant in the CRP. The court's reasoning implied that only CRP program participants, and not contract bidders, are eligible for whatever statutory remedies might exist. It should be noted that the terms of the anti-fraud administrative remedy expressly apply to a program "participant." 7 C.F.R. § 704.28 (1988).

Addressing the fourth and last inquiry of the *Cort* test, the court found that Kennell's claim "sounds in tort – sort of a breach of duty of fair dealing on the part of the landowner." 685 F. Supp. at 187. The court held that to recognize an implied cause of action sounding in tort but based solely on federal law would be in effect to establish a federal common law action in contravention of the rule of *Erie v. Tompkins*, 304 U.S. 64 (1938). Therefore, the court found that this factor was not met.

The court noted that it might be willing to find an implied federal cause of action if the purpose of the CRP were to subsidize farmers, which was found not to be the case.

– Julia R. Wilder

§ This material is based upon work supported by the USDA, Agricultural Research Service, under Agreement No. 59-32-U4-8-13. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the USDA.

Agricultural Law Update

VOL 6, NO 7, WHOLE NO 67 APRIL 1989

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Positions noted

The National Center for Agricultural Law Research and Information, University of Arkansas School of Law, Fayetteville, Arkansas has openings for two full time staff attorneys. J.D. required. LL.M., M.A. (Agricultural or Environmental Sciences), or M.B.A. (Agribusiness) desirable. Must be qualified to teach 1 law school course (Ag Law curriculum). June 1989 availability. Contact Director, NCALRI, Waterman Hall, University of Arkansas, Fayetteville, Arkansas 72701. 501-575-7642.

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CRP payments as part of "farming operation" for Ch. 12 bankruptcy purposes

One of the stated Congressional purposes of the Conservation Reserve Program (CRP) is to "provide needed income support for farmers." 7 C.F.R. § 704.1 (1988). The bankruptcy court in *In re Paul*, 83 Bankr. 709 (Bankr. D.N.D. 1988) held that farmers who proposed to enroll a portion of their farmland in the CRP, as part of their Chapter 12 plan of reorganization, were "family farmers" as defined in 11 U.S.C. section 101(17)(A) and therefore were entitled to relief under Chapter 12. More specifically, the court found that the enrollment of the debtor's land in the CRP constituted a valid part of a farming operation. This case illustrates the usefulness of CRP income as a means of financing a Chapter 12 plan.

In *In re Paul*, the secured creditor had objected that the debtors did not qualify as a "family farmer," under 11 U.S.C. section 101(19), because they were proposing to receive more than twenty percent of their income from the CRP and from off-farm employment. Specifically, the court found that one-third of debtors' income would be from the CRP. The court rejected the position of the secured creditor, reasoning that "farmers who, on a long-term basis, intend to continue to farm should not be denied relief under Chapter 12 because they are forced by economic necessity into scaling down their core farming operation by moving into collateral income-producing endeavors." 83 Bankr. at 713. Since the CRP contract has a ten-year term, the court determined that the land "will one day be returned to crop production." *Id.* Therefore, the court found that the debtors' long-term commitment to farming was not mitigated by the fact of the farm's *partial* enrollment in the CRP.

The *In re Paul* court based its holding on cases authorizing other farmer methods of increasing cash flow for purposes of farm financing. These other methods have included cash renting the land and selling part of a line of farm machinery. 83 Bankr. at 713. Under a "totality of the circumstances analysis," the court found that the CRP payments received by the debtors would be an integral part of the income derived from their ongoing farming operation.

– Julia R. Wilder

§ This material is based upon work supported by the USDA, Agricultural Research Service, under Agreement No. 59-32-U4-8-13. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the USDA.

Federal Register *in brief*

The following is a selection of matters that have been published in the *Federal Register* in the past few weeks:

1. Food Safety and Inspection Service; Net weight labeling of meat and poultry products; proposed rule and withdrawal; comments due 5/5/89. 54 Fed. Reg. 9370.

2. FCIC; General Crop Insurance regulations; final rule; effective date 3/8/89. Regards crop insurance on two different crops being planted on same acreage within same crop year. 54 Fed. Reg. 9766.

3. FCIC; General Crop Insurance regulations; good experience discount; proposed rule. 54 Fed. Reg. 9825.

4. Agricultural Marketing Service; Christmas trees; grade standards; proposed rule; comments due 5/8/89. 54 Fed. Reg. 10014.

5. PSA; Antibiotic and sulfa residues in slaughter animals; economic responsibility for violative residues from packer to producer; notice of intent to institute proposed rulemaking withdrawn; effective date 3/9/89. 54 Fed. Reg. 10018.

6. PSA; Amendment to certification of central filing system; Louisiana; 3/8/89. 54 Fed. Reg. 10031.

7. FmHA; Delinquent borrowers; annual operating loans; implementation of provisions of the Supplemental Appropriations Act; effective date 3/20/89. 54 Fed. Reg. 11363.

8. USDA; Dairy Indemnity Payment programs; final rule; effective date 3/22/89. Operation of the program is extended through 9/30/89. 54 Fed. Reg. 11693.

9. FCA; Financially related services; proposed public hearing; June 14, 1989, McLean, VA. 54 Fed. Reg. 12011.

10. INS: IRCA; aliens; adjustment of status; interim rule; effective date 4/3/89. 54 Fed. Reg. 13360.

– Linda Grim McCormick

AG LAW CONFERENCE CALENDAR

Air and Water Pollution Control Law

May 25-27, 1989, Hyatt Regency Hotel, Washington, D.C.

Topics include: implementing the Clean Water Quality Act of 1987 Amendments; wetlands protection; and Superfund/RCRA developments.

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Environmental Issues Affecting Commercial Real Estate Transactions

May 25, 1989, ALI-ABA Video Law Review Program.

Topics include: potential liabilities attaching to real estate sales and leases; cleanup preconditions on real estate sales and leases.

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Seventh Annual Pacific Bankruptcy Law Institute

May 23-26, 1989, Hyatt Regency Hotel, San Francisco, CA.

Topics include: Debtor in possession financing; lender liability.

Sponsored by Norton Institutes on Bankruptcy Law.

For more information, call 404-535-7722.

Seventh Annual Western Mountains Bankruptcy Law Institute

June 28-July 2, 1989, Jackson Lake Lodge, Jackson Hole, Wyoming.

Topics include: Debtor in possession financing; recent developments in agricultural bankruptcy law.

Sponsored by Norton Institutes on Bankruptcy Law.

For more information, call 404-535-7722.

Third Annual Northeast Bankruptcy Law Institute

July 28-Aug. 1, 1989, Le Chateau Frontenac, Quebec City, Quebec, Canada.

Topics include: Setoff/recoupment; debtor in possession financing; lender liability.

Sponsored by Norton Institutes on Bankruptcy Law.

For more information, call 404-535-7722.

An overview of the animal rights movement

by Alice A. Devine

In recent years, the animal rights movement in the United States has grown, receiving a great deal of puhlicity, ranging from newspaper and magazine articles to CBS television's "48 hours."[1] These publications or programs often leave the reader or viewer uncertain as to what the real issues are and where the movement is going. The issues are complex and include within their scope the protection of endangered species, the ethics of animal experimentation, and the care of the family pet.

The animal rights movement may he characterized as a social movement by more than thirty organizations to reform societal thinking regarding the care or use of animals.[2] The philosophies underlying the movement focus on moral issues and a broadening of human responsibility.[3] Issues relating to the treatment and use of animals are difficult to differentiate hecause they ask us to question what it is to be human and what it is to be an animal.[4] Emotionalism inevitahly accompanies most discussions of the suhject and makes issue clarification even more difficult.[5]

This article is intended to clarify some of the philosophies included in the animal rights movement. It will also identify some of the many animal rights groups and provide an overview of recent activities in the U.S.

Philosophies

Traditionally, three basic capacities have been used to define the duties that humans have toward nonhumans: (1) sentience, or the capacity to experience pleasure and pain; (2) rationality, or the capacity to reason; and (3) autonomy, or the capacity to make free choices. According to some philosophers, the absence of one or more of these capacities excluded the nonhuman from human concerns.[6]

Much of this philosophy can be traced to the book of *Genesis* wherein God gave humanity dominion over all living things.[7] This philosophy was also carried into Western common law.[8] The common law categorized animals as either wild (ferae naturae) or domestic (domitae naturae), and both were considered property of the state.[9]

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Any opinions, findings, conclusions, or recommendations expressed herein are those of the author and do not necessarily reflect the views of the Committee or any members of the House of Representatives

Other philosophers such as Montaigne, Voltaire, David Hume, Charles Darwin, and Jerry Benthain believed that animals had the capacity to feel, reason, and to act according to choice. Therefore, these philosophers concluded that animals merited humanity's most serious concern.[10]

Michael Allen Fox, in his book *The Case for Animal Experimentation,* summarized the philosophies of modern animal rights activists into two viewpoints. The first is that any use of animals as a means to human ends must he defended and moral acceptability demonstrated.[11] The second viewpoint held by animal rights activists is that because pain is a bad thing, no matter who or what experiences it, any practice which involves inflicting suffering is a prima facie wrong, and therefore, requires justification to prove such actions should not he condemned.[12]

Generally, animal rights activists are demanding the following rights for animals: respect, well-being, and affection. The demands relating to respect include: (1) recognition of the important contributions that nonhumans are making to the human and nonhuman global communities; (2) no discrimination based upon species membership and an opportunity to he left in a natural state or in an environment that allows choice of social interactions and preferences of the animal; (3) freedom of access; (4) provision of legal guardians to protect the rights of animals; and (5) freedom from imposition of disrepect or freedom from such things as forced labor.[13]

The demands relating to well-being include: (1) right to life independent of moral, economic or political needs; (2) right to wildlife preserves; (3) right to an environment free of human-created stress; (4) freedom from slaughter and cruelty; (5) freedom to develop in the most natural way possible; (6) proper medical care; (7) right to euthanasia equal to humans; (8) right of legal adoption of an animal by a human being; (9) freedom to access via guardians the political and legal institutions.[14]

The demands relating to affection include: (1) an optimum aggregate in shaping and sharing affection; (2) freedom to associate with the same or other species; (3) the option to accept or reject a preferred opportunity to participate in the affection process; (4) freedom to form relationships based upon affection; and (5) the opportunity to use policy instruments to protect the rights relating to affection.[15]

Deprivations of animals rights

Activists cite a variety of activities which, in their opinion, deprive animals of one or more of the aspects related to respect, well-being, and affection. These activities include hunting and trapping; slaughtering animals for food; factory farming; animal genocide as characterized by the extinct, endangered, or threatened species; experimentation on animals; and animal cruelty and abandonment.[16]

Hunting and trapping have been criticized because of the pain inflicted upon animals caught in traps. Secondly, animal activists question whether hunting and trapping are still necessary, as they once were, to provide food and clothing. Further, the slaughter of animals defies the concepts of respect, well-heing, and affection.[17]

The slaughter of animals for food and factory farming have been condemned hased upon the premise that eating meat has caused health problems in humans, such as cancer and heart disease. Secondly, because of the consumption of meat, much of the nation's cropland is devoted to raising crops that are fed to livestock. Animal activists suggest that these resources may be hetter utilized if they were devoted to alleviating world hunger.[18] Factory farming is criticized for its perceived effect on animals, which are allegedly victimized by overcrowding, restricted movement, unnatural diets, and unanesthetized surgical procedures in order to maintain a profit for agribusiness corporations.[19] Activists claim that the Animal Welfare Act[20] and state anti-cruelty laws do not adequately protect farm animals.[21]

Animal genocide, according to animal activists, is directly linked to human exploitation and control of the environment. Environmental alterations have reduced the habitat available for many plant and animal species. Hunting is further criticized by animal activists because uncontrolled hunting or poaching has endangered species such as the African rhinoceros, whales, dolphins, and seals.[22]

Experimentation on animals has generated a great deal of criticism.[23] Animal experimentation, or vivisection, has been condemned for its infliction of pain and suffering on animals. Animal activists argue that federal and state laws do not protect or ensure the welfare of

animals.[24] Animal activists prefer that biomedical researchers consider and adopt alternatives to animal experimentation.[25]

Finally, animal activists condemn cruelty to animals. Activists cite such activities as cock fighting, hull fighting, and circuses in which animals have heen trained under a great deal of cruelty to perform unnatural acts as examples of animal exploitation. Further, animal activists condemn the abandonment and eventual euthanasia of unwanted animals, normally dogs and cats.[26]

The movement

It is difficult to estimate the size and economic hase of the animal rights movement. In 1982, one report estimated that the movement consisted of numerous national and local groups. The same report estimated that the then three major groups – the Friends of Animals (FOA), the Humane Society of the United States (HSUS), and the Fund for Animals, had a combined membership of 446,000.[27] In 1988, HSUS alone had a membership of 800,000 and assets of over 10 million dollars.[28]

Other groups with substantial wealth include the Massachusetts Society for the Prevention of Cruelty to Animals with over 40 million dollars in assets and the American Society for the Prevention of Cruelty to Animals with over 10 million dollars in assets.[29]

Funding for these organizations is derived from a variety of sources, bequests and donations being the largest. Income is also generated from investments, membership dues, and services for animals.[30]

The size of the movement and the wealth of some of the organizations within the movement indicate this to be a potentially powerful political force.[31] However, divisions of philosophy and strategy, as well as allegations of conflicts on interest on behalf of organizational board members, have prevented the movement from reaching its full potential.

Previously discussed were the demands of the activists that animals be given basic "rights" of respect, well-being, and affection. The animal rights movement is divided into more than thirty national organizations that may promote one or more of those listed concerns related to the three basic rights.

Further, the movement is divided philosophically into animal welfare groups and animal rights groups. Animal welfare groups are concerned mostly with assuring proper care, treatment, and shelter for animals. Animal rights groups go beyond the concept of protecting the physical well-being of animals. Animals rights groups seek to establish legal rights for animals.[32]

The animal rights movement is still further divided by philosophical differences in strategy to achieve their desired goals. Some groups such as the People for the Ethical Treatment of Animals (PETA) actively seek to "liberate" animals while other groups seek less violent means of reform.[33]

The goals and strategies of these organizations vary according to the particular philosophy adopted. Generally, antivivisection groups attack the validity of biomedical research as cruel and unnecessary for the advancement of medicine. Opponents of biomedical research use reports of corruption, abuse, waste, and fraud in science and medicine to persuade public opinion against vivisection. Secondly, antivivisection activists persistently seek legislation to ban experimentation with animals and establish legal rights for animals.[34]

Another strategy adopted by many groups is a concerted effort to recruit professionals such as philosophers, lawyers, veterinarians, physicians, and scientists. Almost all of the animal rights movement organizations have adopted major public education or propaganda campaigns to project their message. Paid advertising, news media, and written articles are just a few of the tools used by the organizations.[35] Many of the readers of this publication may be surprised to learn that in 1983 the Young Lawyers Division of the American Bar Association established the Animal Protection Committee. This committee was established to provide a forum for attorneys for exchange of ideas and information about animal related laws and "to increase the protection that animals are afforded under the law."[36]

Finally, some radical fringe elements of the animal rights movement have resorted to illegal actions such as breaking into research facilities and "liberating" animals. Incidents of violence have been reported across the United States Canada, and parts of Europe.[37]

Current regulations

The animal industry is regulated on the national level by the Animal Welfare Act, 7 U.S.C.A. § 2131 et seq. (1988). This law was designed to assure the humane treatment of animals in transportation; to assure the humane treatment of animals in research; to protect owners of animals from theft; and to regulate persons selling, transporting or handling animals to be used in research, exhibition, or as pets.[38]

The act defines animal to include dogs, cats, monkeys, guinea pigs, hamsters, rabbits, or other warm-blooded animals.[39] The term animal does not include the following: (1) horses not used for research; (2) farm animals such as livestock or poultry for use in improving animal nutrition, breeding, management, or production efficiency; or (3) farm animals intended for use for improving the quality of food and fiber.[40]

The act generally regulates the activities of research facilities, dealers, and exhibitors. Dealers and exhibitors are required under the act to obtain a license prior to selling, transporting, or offering for sale or transport animals used in research or for use as pets. Research facilities are prohibited from purchasing dogs or cats from anyone except operators of auction sales, or licensed persons.[41] All dealers, exhibitors, research facilities, intermediate handlers, and carriers are required to keep records reflecting the purchase, sale, transportation, and identification of previous owners.[42]

The act authorizes the Secretary of the USDA to inspect these facilities. The act is enforced by the Animal and Plant Health Inspection Service (APHIS). Violations of the act may result in revocation or suspension of licenses or civil or criminal penalties. The act also requires the Secretary of Agriculture to report to Congress his findings relating to the treatment of animals in licensed facilities and in transportation. 7 U.S.C.A. § 2155 (1988). The act also prohibits animal fighting ventures, 7 U.S.C.A. § 2156 (1988). Trade secrets held by research facilities are protected under the act. 7 U.S.C.A. §2157 (1988).

Two other federal laws also regulate the treatment of animals. The Horse Protection Act, 15 U.S.C.A. § 1821 (1976) makes it unlawful to show, exhibit, auction, or sell "unsound" or sore horses.[43] The 28-Hour Law, 45 U.S.C.A. § 71 et seq. requires common carriers engaged in interstate commerce to unload animals for rest, water, and feeding for at least five consecutive hours every twenty-eight hours.[44] The expenses of feed and water are to be assumed by the

(Continued on next page)

owner or custodian of the animals. Rail lines are entitled to place a lien on the animals to assure payment by the owners. The carrier may be liable for civil penalties for violation of the act.[45]

In addition to these federal regulations, every state has adopted some form of anti-cruelty statute. These statutes may address one or more of the issues relating to cruelty, neglect, or deprivation of environment to animals.[46] The breadth of the regulation of these statutes varies according to community standards and values.[47] For example, North Dakota has a broad statute, which generally prohibits cruel acts; requires that animals be provided with food, water, and shelter; and prohibits animals from being enclosed without exercise or wholesome change of air. This statute also regulates the transportation of animals.[48] Other state regulations may address only one aspect or may exclude research facilities or farm animals.[49]

Movements to expand regulations

In the past few years, there have been several attempts at the federal and state levels to expand the regulation of this area. Last year H.R. 1770, 100th Cong. (first introduced as H.R. 4535, 99th Cong.) was introduced. This bill would amend the Animal Welfare Act to provide that:

> any person may commence a civil action on his own behalf or on behalf of any animal protected by this Act to compel any person or persons charged with the duty by statute or regulation to enforce the provisions of the Act to execute such duty.

This bill would have created a private right of action for, and granted standing to, "any person" to sue any other person to compel him to enforce the Animal Welfare Act. The bill would have also allowed attorney fees to either the prevailing plaintiff or the prevailing defendant if such action was found to be frivolous, unreasonable, or without foundation.[50] At the time of its introduction, the bill had sixty-eight cosponsors. The bill is currently before the House Judiciary Committee.

Currently, H.R. 425, 101st Cong., entitled the Animal Welfare Protection Act of 1989, would amend the Animal Welfare Act with respect to the issuance of temporary retraining orders and injunctions in specified instances. This bill has twenty-nine cosponsors and is before the House Committee on Agriculture.[51]

There have been many attempts at the state level to increase regulation of animals. Probably the most notable was the movement that took place in Massachusetts. In 1987, the Massachusetts Coalition to End Animal Suffering and Exploitation (CEASE) gathered over sixty-five thousand signatures to amend the Massaachusetts Constitution to require the Massachusetts Commissioner of the Department of Food and Agriculture to issue regulations ensuring that farm animals are maintained in good health, and that cruel and inhumane practices are not utilized in the raising, handling, and transportation of farm animals. The petition called for the formation of a scientific advisory board to examine agricultural practices and propose regulations to the Commissioner. The petition specifically attacked the veal industry and demanded that regulations be adopted to stop the perceived abuses of veal crates.[52]

Farm organizations, such as the American Farm Bureau Federation of Massachusetts launched major campaigns to defeat the initiative. Opponents of the initiative sought to inform voters that farm animals are humanely treated and that the proposed law would significantly increase the cost of the finished product at the market place.[53] Through these efforts, the petition was defeated.

Conclusion

Although the Massachusetts initiative failed, it had an enormous effect upon the livestock industry in the United States. Today, almost every local, state, and national livestock association has started discussing and examining the practices of their industry. Perhaps this is exactly what the animal activists have wanted. Agriculturalists must develop the sophistication and understanding of the philosophies of those within the animal rights movement, to assure that attempts to reform the animal industry are logically accepted or rejected.

Further, agriculturalists should adopt some of the strategies of the animal rights movement. For example, professionals involved in agricultural should be called upon to research and produce scholarly publications regarding the validity of animal activists' concerns. Secondly, agriculturalists should encourage good animal husbandry practices and inform the public of the benefits of those practices. Finally, agriculturalists may want to seek coalitions with other interested groups such as researchers or sportsmen to exchange information. By adopting these strategies, agriculturalists may be able to overcome some of the emotionalism surrounding these issues with reasonable responses.

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1. *"48 hours"* (CBS television broadcast, Feb. 2, 1989). See also Newsweek, May 23, 1988 at 59.
2. Martin, *The Animal Rights Movement in the United States: Its Composition, Funding Sources, Goals, Strategies, and Potential Impact on Research* 2 (1982) (available in Harvard University's Office of Government and Community Affairs). [Hereinafter Martin].
3. Note, *The Rights of Nonhuman Animals and World Public Order A Global Assessment*, 28 N.Y.L. Sch. L. Rev. 377 (1988). [Hereinafter Note].
4. M.A. Fox, *The Case for Animal Experimentation* 13 (1986). [Hereinafter Fox].
5. *Id.*
6. Note, at 381.
7. *Genesis* 1:26 (King James).
8. Note, at 381.
9. *Id.* at 382.
10. *Id.* at 383.
11. Fox, at 5-7.
12. *Id.*
13. Note, at 385-388.
14. *Id.* at 387.
15. *Id.* at 387-388.
16. *Id.* at 388-397.
17. *Id.* at 188.
18. *Id.* at 389-391.
19. *Id.*
20. 7 U.S.C.A. § 2131 *et seq.* (1988). *See also* N Harl, *Agricultural Law* 87-89 (1988 Supp.)
21. Bennett and McCarthy, *Statutory Protection for Farm Animals*, 3 Pace Envtl. L. Rev. 229 (1986). *See also*, Falkin, *Taub v. State: Are State Anti-cruelty Statutes Sleeping Giants?* 2 Pace Envtl. L. Rev. 255 (1985).
22. Note, at 391-392. *See also* Bickerford, *Modernizing Animal Law: The Case for Wildlife* 3 Pace Envtl. L. Rev. 257.
23. *Id.* at 393-394.
24. *Id.* at 395-396. *See also* Regan, *Progress without Pain: The Argument for Humane Treatment of Research Animals*, 31 St Louis U.L.J. 513 (1987) and Dukes, *The Improved Standards for Laboratory Animals Act: Will it Ensure that the Policy of the Animal Welfare Act Becomes a Reality?*, 31 St Louis U.L.J 519 (1987)
25. Note, at 393-395.
26. *Id.* at 396-397.
27. Martin, at 2-11.
28. 1988 Annual Report of the Humane Society of the United States
29. Anderson, *Animal Rights Make Popular Cause*, Topeka Capital Journal, Oct. 13, 1988.
30. Martin, at 4.
31. *Id.* at 2-11.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. Molbegott, *YLD Committee Promotes Animal Rights*. Barrister, at 24 (Spring, 1986).
37. Martin, at 9.
38. Animal Welfare Act, 7 U.S.C.A. § 2131 *et seq.* (1988).
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. Horse Protection Act, 15 U.S.C.A. § 1821 (1976).
44. *Id.*
45. *Id.*
46. Bennett and McCarthy, *Statutory Protection for Farm Animals*, 3 Pace Envtl. L. Rev. 229 at 240 (1986).
47. *Id.* at 240.
48. *Id.* at 240-253.
49. *Id.*
50. H.R. 1770, 100th Cong. (1988). *See also* Cohen, *"Congressional Power to Confer Standing: Proposed Amendment to the Animal Welfare Act,"* Cong. Rev. Serv. No. 87-987 A (1987).
51. H.R. 425, 101st Cong. (1989).
52. Proposed Amendment to Mass. Gen. L. ch. 129, New section 49-59 (filed Sept. 4 1987).
53. NASDA, *Action Alert*, (Dec. 18, 1987). *See also* Farm Journal, *Animal Rights Groups Flex Their Political Muscle*, H-1 (Jan. 1988).

STATE ROUNDUP

IOWA. *Halls analysis affirmed.* The Iowa court has become the first federal district court to adopt the theory that the federal rules on the assignment of farm program payments preempt the application of state commercial law claims. In *In re Mattice*, (Bankruptcy No. 86-3351-W), Civil Order No. 88-22-W (S.D. Iowa 1988), a case involving claims made by FmHA, the court adopted the reasoning first put forward in *In re Halls*, 79 Bankr. 417 (Bankr. S.D. Iowa 1987). The bankruptcy court had applied the same reasoning in resolving this case. *See In re Mattice*, 81 Bankr. 504 (Bankr. S.D. Iowa 1987). The court in its analysis noted that Congress had clearly stated an intention to restrict the alienability of farm program payments and that the federal regulations restricting assignments did just that. In the face of this clear Congressional intent, the court ruled that state law must give way. The court noted that it did not believe the Eighth Circuit Court of Appeals' decision in *In re Sunberg*, 729 F.2d 561 (1984), was controlling because there the court was dealing with an implied restraint on encumbrances whereas in this case the restrictions on encumbrances were express.

The court's ruling is certain to continue the confusion on the issue of creditor claims to farm program payments. To date, there have been three cases that specifically reject the preemption theory adopted in *Halls*. These include the Northern District Bankruptcy Court's decision in *Arnold*, the Kansas bankruptcy court's decision in *In re George*, 85 Bankr. 133 (1988), and the Colorado bankruptcy court's decision in *In re Harvie*, 84 Bankr. 197 (1988). The decision in *Mattice* is the first by a federal district court. The district court decision is subject to the same criticism that can be directed at *Halls*, in that it fails to recognize that the restrictions on encumbrances found in the federal regulations are found in the rules concerning the direct assignment of payments using the ASCS procedure for assignments. None of the creditor claims in either *Halls* or *Mattice* involved assignments. Further, there is nothing to suggest that the ASCS rule concerning the prohibition of state based claims against generic certificates was also meant to reach the proceeds of the certificates. *See*, Hamilton, *Securing Creditor Interests in Federal Farm Program Payments*, 33 S.D.L. Rev. 1 (1988) and *see generally*, Turner and Callahan, *The Nature, Treatment, and Classification of Security Interest in Government Farm Payment Programs and Related Issues*, 10 J. Agric. Tax'n & L. (1988).

– Neil D. Hamilton

MASSACHUSETTS. *Animal rights referendum rejected.* On November 8, 1988, Massachusetts voters rejected a referendum to establish new requirements for the humane treatment of farm animals in Massachusetts, although earlier public opinion surveys had shown strong support for the measure. The referendum, had it passed, would have prohibited the use of strict confinement for animals such as hens and veal calves. The use of anesthetics for practices such as beak trimming would also have been required. A successful referendum would have established a Scientific Advisory Board on Farm Animal Welfare which would have the authority to establish regulations governing the raising, transportation, and processing of both livestock and poultry. The board's approval would also have been required on all agricultural construction projects with costs in excess of $10,000.

Despite the defeat of this referendum, it is widely believed that agricultural interests across the country will be increasingly confronted by the demands of animal rights proponents in the future.

– Julia R. Wilder

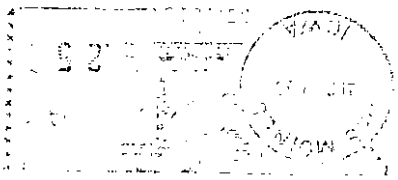
This material is based upon work supported by the USDA, Agricultural Research Service, under Agreement No. 59-32-U4-8-13. Any opinions, findings, conclusions, or recommendations expressed in this report are those of the author and do not necessarily reflect the view of USDA.

MISSOURI. *Failure to extend credit not a prima facie tort.* The Missouri Western District Court of Appeals held in *Boatman's Bank of Butler v. Berwald*, 752 S.W.2d 829 (1988), that the defendants, operators of a dairy farm, did not make out a sufficient cause of action for *prima facie* tort. The bank had encouraged the defendants to enter into an agreement for an extension of an additional line of credit, but subsequently refused to grant the extra credit when the bank believed collateral was insufficient. Additionally, the bank refused to allow the borrowers to sell their cattle, which the bank had secured, in the dairy buy-out program.

In a jury trial, Berwald was awarded $50,000 actual and $100,000 punitive damages. These were offset by an award of $58,336 on the bank's note. On appeal, the court reversed the awards to Berwald and affirmed the trial court's finding for the note. Additionally, the appeals court remanded for determination of attorneys' fees and interest from the date of default. The court stated that the elements for *prima facie* tort were not met.

In Missouri, *prima facie* tort was first recognized in *Porter v. Crawford & Co.*, 611 S.W.2d 265 (Mo. Ct. App. 1980). The elements as outlined in *Porter* are: (1) an intentional lawful act by the defendant; (2) an intent to cause injury to the plaintiff; (3) injury to the plaintiff; and (4) an absence of any justification or an insufficient justification for the defendant's act. The *Berwald* court declared the plaintiff ". . . carr[ies] a heavy burden of proving 'actual intent' of the Bank to injure them. . . ." 752 S.W.2d at 833. The court continued by stating that "[t]he fact that injury might he the natural and probable consequence of the Bank's act is not sufficient to show the malice required for *prima facie* tort." *Id.* Therefore, since the plaintiff failed in showing that the bank intended to cause harm, an action in *prima facie* tort was not available.

– Philip J. York



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