

OUTLINE

PREFACE	V
ACKNOWLEDGMENTS	VII
TABLE OF CASES	XXXI
Chapter 1. Introduction	1
I. Overview	1
II. History and Sources of American Law.....	3
A. Basic Sources of Law.....	3
B. Stare Decisis	6
III. Classifications of Law	7
A. Substantive Law.....	7
1. Criminal Law	7
2. Civil Law	7
3. Law of Equity	8
B. Uniform Laws.....	8
IV. Court Systems	9
A. State Court Systems	9
B. Federal Court System	12
V. Civil Procedure	14
VI. Enforcing a Judgment.....	14
VII. Legal Research	15
Chapter 2. Contracts.....	17
I. Contract Formation—The Common Law.....	17
A. Offer and Acceptance	17
B. Solicitations	18
C. Other Common Law Requirements	19
II. Application of UCC Article 2 to Contracts.....	19
A. Scope of Article 2	19

III.	Contract Formation Under the UCC	20
A.	Contracts Involving Merchants.....	20
B.	Auction Sales	22
IV.	Requirement That Contracts Be in Writing ...	26
A.	Merchant's Confirmatory Memo Rule.....	27
B.	The Statute of Frauds	30
C.	The Statute of Frauds and Auction Sales	31
D.	The Statute of Frauds and Agricultural Leases—Non-UCC Issues	31
1.	Agricultural Leases as Personal Services Contracts	33
V.	The UCC and Contract Provisions	34
A.	Quantity.....	34
B.	Price	36
C.	Delivery.....	36
VI.	Agricultural Lease Provisions—Common Law Concerns	39
A.	In General.....	39
B.	The Doctrine of Emblements and “Away- Going” Crops.....	40
C.	Common Lease Provisions.....	42
1.	Crop and Livestock Leases	42
2.	Oil and Gas Leases	45
3.	Wind Energy Leases	47
4.	Hunting Leases	49
VII.	Warranties	50
A.	Express Warranties	50
B.	Implied Warranties.....	53
1.	Implied Warranty of Merchantability.....	53
2.	Implied Warranty of Fitness for a Particular Purpose.....	57

C. Disclaiming Implied Warranties	59
D. One-Sided Contracts	61
1. Agricultural Production Contracts	62
2. Genetically Modified Organism (GMO) Contracts	63
VIII. Contract Performance	65
A. Risk of Loss.....	65
B. Right of Inspection	65
C. Commercial Impracticability.....	66
D. Adequate Assurance	66
IX. Remedies upon Breach of Contract	67
A. Buyer's Remedies	67
1. Right of Rejection.....	67
2. Right to "Cover".....	68
3. Right of Specific Performance	69
4. Nonconforming Goods.....	70
5. Timeframe for Exercising Remedies....	71
B. Seller's Remedies.....	71
C. Liquidated Damages	72
D. Handling Deposits After Breach	72
X. Statute of Limitations	73
Chapter 3. Secured Transactions	75
I. Overview	75
II. Secured Transaction Basics	76
A. Scope of Article 9	76
1. Overview.....	76
2. Application to Leases.....	78
3. Consignment Situations	81
B. Definitions	82
1. Security Agreement	82
2. Security Interest	83
3. Financing Statement	84

4. Debtor	86
5. Collateral.....	86
6. Buyer in the Ordinary Course of Business.....	86
7. Fixture	88
C. Effectiveness of the Security Agreement	88
1. Against the Debtor.....	88
i. The Need to Properly Identify the Debtor	88
2. Attachment.....	89
i. Giving of Value	89
ii. Rights in the Collateral	90
iii. Attachment of After-Acquired Property	93
3. Against Third Parties	97
i. Perfection.....	97
ii. Methods of Perfection	100
iii. Continuation Statement	113
iv. Termination Statement	116
D. Perfection Against Proceeds	117
1. Classification of Government Farm Program Payments	119
E. Priorities Among Security Interests	120
1. PMSI in Crops	121
2. PMSI in After-Acquired Property	122
3. PMSI in Livestock Rule	123
F. Using Crops as Feed—The “Identifiable Proceeds” Problem.....	124
G. Fixtures.....	126
H. Unperfected Security Interests	127
III. Rights of Purchasers Acquiring Property Subject to a Security Interest	127
A. Debtor’s Right to Sell Collateral	127

B.	Inventory Property.....	128
C.	Farm Products.....	128
D.	Rights of Farmer in Failure of Elevator.....	133
E.	Rights of Cash Sellers of Livestock and Poultry	134
IV.	Default by the Debtor.....	136
A.	Right to Possession	137
B.	Right and Duty to Dispose of Collateral	138
1.	In General.....	138
2.	Commercial Reasonableness	139
3.	Revised Article 9	141
C.	Proceeds of Disposition	142
D.	Effect of Creditor's Disposition of Property	142
E.	Debtor's Right to Redeem	143
F.	Secured Party's Liability for Failure to Comply with the Code.....	144
V.	Statutory Priority Rules	144
A.	General Priority Rules for Liens	144
B.	Ag Supply Dealer Liens	148
C.	Revised Article 9 and Agricultural Liens.....	150
1.	Rules for Perfection and Priority	150
2.	The Landlord's Lien	152
3.	Summary	153
Chapter 4. Bankruptcy		155
I.	Overview	155
II.	Types of Bankruptcy	155
A.	Liquidation	155
B.	Reorganization	156

III.	Who Can Be a Debtor?	157
IV.	Involuntary Bankruptcy	158
V.	Commencing a Voluntary Bankruptcy Case	163
	A. The Automatic Stay	164
	B. Lifting the Automatic Stay.....	167
	C. Exempt Property	169
	1. Federal Exemptions	171
	2. State Law Exemptions.....	173
	3. “Tools of the Trade”	179
	4. Lien Avoidance	180
VI.	Chapter 7 Bankruptcy (Liquidation)	181
	A. Meeting of Creditors	181
	B. Distributions of Property	182
	C. Discharge of Debts	185
	1. Debts Ineligible for Discharge.....	185
	2. Debtors Ineligible for Discharge	188
	3. Frequent Discharge	189
VII.	Chapter 11 Bankruptcy (Reorganization)....	189
VIII.	Chapter 12 Bankruptcy (Reorganization)	190
	A. The Debtor	191
	1. Family Farmer	191
	i. Gross Income from Farming.....	193
	ii. Debts Arising from Farming	196
	2. Debtor in Possession	197
	B. The Trustee.....	197
	C. The Reorganization Plan	199
	1. Filing the Plan	199
	2. Plan Confirmation	202
	i. Feasibility of the Reorganization Plan	202
	ii. Good Faith Proposal.....	203

iii. Funding the Reorganization Plan	203
iv. The “Cram-Down” Rule	204
3. The Disposable Income Requirement.....	205
4. Determining “Present Value”.....	206
i. Meaning of “Present Value”.....	207
D. Conversion and Dismissal	209
1. Debtor’s Right to Convert.....	209
2. Debtor’s Right to Dismiss.....	209
3. Conversion or Dismissal for Cause....	209
E. Protection of Farmer Interests	210
1. Authority to Operate the Farm Business.....	210
2. Authority to Sell Property	211
3. Adequate Protection	211
F. Discharge	212
G. Modification of Plans	213
H. Tax Provisions	214
1. No Separate Tax Entity.....	214
2. Non-Priority Provision.....	214
i. Timing of Asset Sales.....	215
ii. “Farm Asset Used in Farming” ...	216
iii. Computation of Priority and Non-Priority Tax Claims	218
3. Planning Points.....	220
IX. Income Taxation in Bankruptcy.....	221
A. Bankruptcy Estate as New Taxpayer	221
1. Election to Close the Debtor’s Tax Year.....	222
2. Tax Attributes	224
3. Bankruptcy Estate	225
4. Abandonment	225

B. Discharge of Indebtedness.....	227
1. Nature of the Debt—Recourse or Nonrecourse.....	227
2. Handling Discharge of Indebtedness Income.....	230
i. Bankruptcy	231
ii. Insolvent Debtors	231
iii. Real Property Business Debt	232
iv. Solvent Farmers.....	232
3. Primary Residence Indebtedness.....	234
4. Purchase Price Adjustment.....	235
Chapter 5. Real Property.....	237
I. Overview	237
II. Nature and Ownership of Real Property	237
A. Estates in Land	237
1. The Fee Simple.....	238
2. The Life Estate.....	242
3. Agricultural Leases as Estates in Land.....	243
i. The Importance of Leasing to Agriculture.....	245
ii. Allocation of Risk Between Landlord and Tenant	248
iii. Custom Farming Arrangements.....	248
B. Other Interests in Land.....	250
1. Easements and Profits.....	250
i. Easements in Gross and Appurtenant Easements.....	251
ii. Affirmative and Negative Easements	252
iii. Implied Easements	254

iv.	Prescriptive Easements (Adverse Possession).....	255
v.	Termination of Easements	256
2.	Ownership and Use of Abandoned Railways	258
III.	Forms of Co-Ownership of Land.....	264
IV.	Transferring Title to and Interests in Real Property	267
A.	Short-Term Contract for Sale of Land—Elements	267
1.	Names of Parties and Type of Ownership	267
2.	Signed Writing	267
3.	Legal Description of Land	267
4.	Selling Price and Time of Payment	270
5.	Real Estate Taxes	270
6.	Risk of Loss	271
7.	Personal Property	272
8.	Quality of Title and Real Estate Deeds	272
i.	General Warranty Deed.....	273
ii.	Special Warranty Deed.....	274
iii.	Quitclaim Deed.....	274
iv.	Recording the Deed	275
9.	Rights of Seller upon Buyer's Default	276
B.	Real Estate Mortgages.....	277
1.	In General.....	277
2.	Remedies Available to Mortgagees upon Default.....	278
3.	Mortgage Foreclosure Moratoria	280
C.	Special Rules for FSA Loans	281

D. Restructuring Farm Credit System	
Loans.....	289
E. Installment Land Contracts	291
V. Income Tax Aspects of Property Transfers... 294	
A. Income Tax Basis and the Computation of Gain.....	294
B. Options for Postponing or Avoiding the Recognition of Gain on Sale or Exchange of Real Property.....	298
1. Exclusion of Gain on Sale of a Principal Residence.....	298
2. Involuntary Conversion.....	302
3. Like-Kind Exchange	303
C. Income Tax Aspects of Installment Sales.....	309
1. Installment Reporting of Gain	309
2. Minimum Interest Rules	312
3. Disposition of the Contract by the Seller.....	314
i. Cancellation of the Contract.....	315
ii. Pledging the Contract	316
iii. Related Party Rules	316
4. Apportioning Purchase Price on Acquisition of Real Property	317
VI. Property Tax Aspects of Real Property Ownership.....	318
VII. Special Income Tax Problems for Sellers of Assets	320
A. Modification of Contract Terms	320
VIII. Repossession of Property Sold Under an Installment Sale	321
A. Repossession of Land	321

1. Calculating Gain on Repossession of Real Property	322
B. Repossession of Personal Property Under Installment Sale	327
1. Voluntary Repossessions	327
2. Involuntary Repossessions	329
IX. Rescission of Contract	333
X. Bad Debt Deduction	334
A. Elements Necessary for Deductibility	334
B. Business Bad Debts	335
C. Nonbusiness Bad Debts	336
D. Guarantees	336
E. Reporting Bad Debts.....	338
XI. Recoveries from Settlements and Court Judgments.....	339
Chapter 6. Cooperatives.....	341
I. Overview	341
II. Nature of Co-Ops.....	343
A. Marketing Co-Ops	344
B. Supply Co-Ops.....	346
III. Formation of Co-Ops	346
IV. Management	349
V. Financial Structure	350
A. Stock and Membership Purchases	350
B. Patronage Based Financing.....	350
C. Borrowed Capital	354
VI. Liability of Co-Op Directors to Member- Shareholders and Others	355
A. Obedience to Articles of Incorporation, Bylaws, Statutes and Laws	357
1. Illegality.....	357
2. Ultra Vires.....	357

B. Fiduciary Duty of Obedience, Loyalty and Care.....	358
1. Conflicts of Interest	358
2. Corporate Opportunities.....	360
3. Fairness	361
4. Confidentiality	362
C. Duty of Care	362
1. Attention to Co-Op Matters.....	363
2. Reliance on Officers and Employees...	363
3. Delegation of Duties	364
4. Decision Making—The Business Judgment Rule	364
D. Common Law Liability	366
1. Fraud	366
2. Conversion.....	366
3. Tort	366
4. Corporate Waste	366
5. Nuisance	367
E. Shareholder Derivative Suits.....	367
VII. Income Tax Treatment of Co-Ops and Their Members.....	368
A. In General.....	368
B. Taxation of Co-Op Members.....	369
C. Taxation of the Co-Op.....	372
1. Nonexempt Co-Ops	373
i. Deductibility of Losses	378
ii. Income Tax Effects of Bankruptcy	381
2. “Exempt” Co-Ops.....	381
D. The Domestic Production Deduction.....	390
VIII. Antitrust Laws	394
A. The Sherman Act	394
B. The Clayton Act.....	397

C. The Capper-Volstead Act.....	398
D. Other Laws Granting Limited Immunity to Agricultural Co-Ops.....	402
1. The Cooperative Marketing Act.....	402
2. The Robinson-Patman Act.....	402
3. The Agricultural Marketing Agreement Act.....	402
4. The Agricultural Fair Practices Act ..	403
Chapter 7. Civil Liabilities	405
I. Overview	405
II. Intentional Torts	405
A. Intentional Interference with a Person ...	407
1. Assault.....	407
2. Battery.....	408
3. False Imprisonment.....	409
B. Intentional Interference with Real Property	409
1. Trespass.....	409
C. Intentional Interference with Personal Property	412
1. Trespass to Chattels	412
D. Intentional Disparagement of Food Products	413
III. Privileged Invasion.....	414
A. Self-Defense.....	414
B. Defense of Property.....	415
C. Arrest	416
D. Reclaiming Property and Privileged Necessity.....	417
IV. Liability to Persons Entering One's Property	418
A. In General.....	418

B.	Trespasser.....	419
C.	Child Trespasser	419
D.	Licensee	422
E.	Social Guest.....	423
F.	Invitee	423
G.	Modern Approach to Tort Liability of Landowners and Occupiers	424
1.	Liability for Injuries on Leased Premises	425
2.	Recreational Use of Land	426
3.	Equine Activity Liability Acts.....	430
4.	Agritourism Acts	431
5.	Natural Conditions	433
V.	Negligence.....	433
A.	In General.....	433
B.	Defenses to Negligent Torts	436
1.	Contributory Negligence	437
2.	Assumption of Risk	438
3.	Acts of Nature	438
C.	Special Situations	439
1.	Guest Statutes.....	439
2.	Good Samaritan Laws	440
3.	Bailments	441
4.	Manufacturer's Liability.....	441
i.	FIFRA Preemption.....	443
ii.	Alterations and/or Multiple Component Parts.....	449
iii.	“Economic Loss” Doctrine	449
5.	Last Clear Chance to Avoid Injury	450
VI.	Strict Liability	451
A.	Wild Animals	451
B.	Dogs and Other Domestic Animals	452

C. Maintaining Dangerous Conditions on Property	453
D. Unnatural Land Uses	453
E. Conversion	455
VII. Other Liabilities Arising from Land Use	457
A. Noxious Weeds	457
B. Nuisance	459
1. In General.....	459
2. Remedies.....	461
3. Classifications of Nuisance.....	461
4. Potential Defenses Against Nuisance Actions	463
i. In General.....	463
ii. Right-to-Farm Laws.....	463
VIII. Employer's Liability for Injuries to Employees	466
A. Employment Not Covered by Workers' Compensation	467
1. Duty to Provide Reasonably Safe Tools and Appliances	467
2. Reasonably Safe Workplace	467
3. Duty to Warn of Hidden Dangers	468
4. Duty to Hire Reasonably Competent Fellow Employees	468
5. Duty to Make Reasonable Rules for Conduct of Employees.....	469
6. An Employer's Common Law Defenses.....	469
i. Assumption of Risk	469
ii. Negligence of a Co-Employee	470
iii. Contributory Negligence and Comparative Fault	470

B. Employment Covered by Workers' Compensation.....	471
C. Occupational Safety and Health Act of 1970	474
IX. Employer's Liability to Third Persons for Acts of Employees.....	477
A. Master-Servant or Independent Contractor Relationship.....	477
X. Liability for Communication of Animal Diseases	481
A. Trespassing or Straying Animals.....	481
B. Landlord's Duty Regarding Diseased Premises.....	482
C. Disposal of Animal Carcasses	483
XI. Fence Laws and Trespassing Livestock.....	484
A. Fence Law Theories	484
B. Distraint	487
C. Impregnating Female Animals	487
D. Partition Fences	488
1. Boundary by Acquiescence	488
2. Adverse Possession	489
3. Location of Partition Fence	489
E. Duty to Build and Maintain a Partition Fence	490
1. What Is a Legal Fence?	491
2. Division of Partition Fence Responsibility	491
F. Highway Fences	493
G. Railroad Fences	494
Chapter 8. Water Law	497
I. Overview	497
II. Natural Streams and Lakes	498

A. Water Rights in Non-Navigable Waters	498
1. Riparian Systems.....	498
2. Prior Appropriation	501
3. Permit (Administrative) Systems	504
B. Water Rights in Navigable Waters	506
III. Recreational Use of Rivers and Streams	507
A. Public Access	507
B. Fencing Across a Watercourse	510
IV. Diffused Surface Water.....	512
A. Rules Governing Drainage of Surface Water.....	513
1. English Rule—Absolute Ownership ..	513
2. Civil Law Rule.....	514
3. Reasonable Use Rule	515
4. Drainage Codes	516
V. Underground Water	517
A. Rules Governing Utilization of Groundwater	518
1. Rule of Absolute Ownership—English Rule.....	518
2. Reasonable Use Rule	519
3. Prior Appropriation	521
4. Correlative Rights.....	522
B. State Groundwater Regulation	522
VI. Boundary Disputes.....	524
A. Accretions and Avulsions.....	525
VII. Weather Modification Systems.....	526
A. In General.....	526
1. Different Public Interests.....	527
2. Tort Liability Issues.....	528

Chapter 9. Environmental Law.....	531
I. The Legal Basis of Environmental Law.....	531
A. Statutory Law.....	531
B. Common Law.....	533
C. Unconstitutional “Takings” Issues.....	534
1. Eminent Domain.....	534
2. Regulatory (Non-Physical) Takings....	537
D. The “Commerce Clause”	544
II. Federal Regulatory Approach—Air.....	546
A. Clean Air Act	546
1. In General.....	546
2. Greenhouse Gas Emissions	551
B. Animal Feeding Operations.....	554
C. Preemption of State Common Law Claims	554
III. Federal Regulatory Approach—Soil and Water.....	557
A. Soil Erosion.....	557
B. Conservation Reserve Program.....	558
C. Conservation Security/Stewardship Program	559
D. Clean Water Act	559
1. Point Source Pollution and the NPDES.....	560
2. Control of Nonpoint Source Pollution	576
3. Wetlands.....	583
i. Isolated and Nonadjacent Wetlands	586
ii. Exemption for “Normal Farming Activities”	594
iii. Swampbuster.....	597

iv.	The Interplay of Swampbuster and CWA § 404	606
v.	Wetlands Case Law Developments	609
vi.	Wetland “Takings” Implications	610
E.	Safe Drinking Water Act	611
F.	Surface Mining Control and Reclamation Act	612
IV.	Federal Regulatory Approach—Land	614
A.	Hazardous Waste	614
1.	Comprehensive Environmental Response Compensation and Liability Act	614
i.	CERCLA Components	614
ii.	Elements of Liability.....	617
iii.	Secured Creditor Exemption	623
iv.	Pesticide Exemption	624
v.	Proposed Exemption for Small Businesses	625
vi.	Defenses Against Liability	625
vii.	Summary	630
2.	Resource Conservation and Recovery Act	631
B.	Chemicals	634
1.	Federal Insecticide, Fungicide, and Rodenticide Act	634
2.	Toxic Substances Control Act.....	644
C.	Plants, Fish and Wildlife	645
1.	Endangered Species Act	645
i.	The Listing Process.....	646
ii.	Recovery Plans	649

iii.	The Prohibition Against “Taking” Species	650
iv.	Citizen Suits	656
v.	Exemptions	657
vi.	Constitutional Issues	658
D.	Livestock	660
1.	Taylor Grazing Act.....	661
2.	Federal Land Policy and Management Act	664
i.	Constitutional Issues	667
3.	Federal Grazing Permits and the Clean Water Act.....	671
Chapter 10. Regulatory Law	673	
I.	Overview	673
A.	Federal and State Regulation	673
B.	Administrative Agencies.....	674
II.	Antitrust Laws	678
A.	Resale Price Maintenance	678
1.	In General.....	678
B.	Packers and Stockyards Act	680
1.	History of the Act	680
2.	Provisions of the Act	681
i.	Registration Requirement	681
ii.	Prompt Payment	681
iii.	Bonding	684
iv.	False Weighing	684
v.	Gratuities.....	684
vi.	Coordinated Buying	685
vii.	Bribery	685
viii.	Recordkeeping	686
ix.	Price Manipulation	686
x.	Other Prohibited Practices	689

xi.	Enforcement	689
C.	Agricultural Fair Practices Act	690
D.	Federal Marketing Orders and Check- Offs.....	691
E.	Antitrust and Concentration in Agriculture.....	697
III.	Regulation of Animals and Plants.....	699
A.	Animal Welfare Act.....	699
B.	Horse Protection Act	700
C.	“28 Hour Law”	701
D.	Seed Sales	702
1.	Federal Seed Act	702
2.	Plant Patents.....	705
i.	Plant Patent Act.....	705
ii.	Plant Variety Protection Act	707
iii.	Trade Secrets.....	713
E.	Genetically Modified Organisms.....	715
1.	Federal and State Regulation	715
2.	Labeling of Genetically Modified Organisms	718
IV.	Regulation of Agricultural Commodities	719
A.	Perishable Agricultural Commodities Act	719
1.	Covered Persons.....	720
2.	Provisions of the Act	721
3.	Enforcement Proceedings	724
B.	United States Grain Standards Act	725
C.	United States Warehouse Act	727
V.	Regulation of Food Products	730
A.	In General.....	730
B.	Food Adulteration and Misbranding.....	730
C.	Organic Foods.....	732

D. Veterinary Feed Directive (VFD)	733
E. Produce Safety Rule.....	735
VI. Federal Labor Laws Impacting Agriculture.....	738
A. The Fair Labor Standards Act	738
1. Wage Requirements.....	738
2. Joint Employment.....	744
3. Prohibited Acts.....	745
4. Enforcement Proceedings	746
B. Migrant and Seasonal Worker Protection Act	747
1. Covered Employers	748
2. Covered Employees	749
3. Worker Protections	750
4. Defenses to Liability	752
5. Exemptions.....	753
6. Penalties	754
VII. Foreign Ownership of Agricultural Land	756
A. In General.....	756
B. State Restrictions.....	756
1. Illinois.....	757
2. Indiana.....	758
3. Iowa.....	758
4. Kentucky.....	759
5. Minnesota	760
6. Missouri.....	761
7. Nebraska	762
8. North Dakota	763
9. Oklahoma	764
10. South Dakota.....	764
11. Wisconsin.....	765
C. Foreign Investment Disclosure Act.....	765
INDEX.....	769