

Winter 1984

## Agricultural Law, 17 J. Marshall L. Rev. 243 (1984)

Richard Ausness

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Agriculture Law Commons](#)

---

### Recommended Citation

Richard Ausness, Agricultural Law, 17 J. Marshall L. Rev. 243 (1984)

<https://repository.law.uic.edu/lawreview/vol17/iss1/10>

This Book Review is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact [repository@jmls.edu](mailto:repository@jmls.edu).

## BOOK REVIEW

### AGRICULTURAL LAW

BY JULIAN C. JUERGENSMEYER<sup>1</sup> AND JAMES B. WADLEY,<sup>2</sup> LITTLE, BROWN & CO., BOSTON, MASSACHUSETTS, 1982. 2 VOLUMES, 118 pp., \$140.00.

REVIEWED BY RICHARD AUSNESS<sup>3</sup>

Many Americans believe that farming is a family-oriented activity which still largely operates in a *laissez faire* economic environment. In fact, agriculture in America is increasingly dominated by large-scale corporate enterprises. Moreover, farmers are subject to thousands of laws and government regulations throughout every phase of the agricultural production cycle. Consequently, attorneys who advise agricultural clients must now be familiar with a growing body of legal material relating to agriculture. *Agricultural Law*, by Julian C. Juergensmeyer and James B. Wadley, is a concise introduction into this complex subject.

The treatise is divided into six parts. In the first section the authors argue that agricultural law should be treated as a discrete body of law in a manner similar to environmental law. Although agricultural law includes major portions of property, tort, contract, constitutional and environmental law, the authors note that legal principles from these areas are often uniquely applied to agriculture. Furthermore, many other legal concepts are associated exclusively with agriculture.<sup>4</sup> Consequently, recognition of agricultural law as an independent discipline seems clearly justified.

---

1. Julian C. Juergensmeyer is a Professor of Law and Co-Director of the Center for Agricultural Law, University of Florida.

2. James B. Wadley is an Associate Professor of Law and Director of the Rural Law Center, Washburn University.

3. Professor of Law, University of Kentucky. B.A. 1966, J.D. 1968, University of Florida; LL.M. 1973, Yale University.

4. I. J. JUERGENSMEYER & J. WADLEY, AGRICULTURAL LAW § 1.2 (1982). For example, governmental regulations and activities such as price supports and marketing orders, as well as the concept of "parity" are almost solely confined to the context of agricultural operations.

The second section, part II, discusses the protection and preservation of agricultural lands, restrictions on foreign ownership of farmland and federal regulation of public lands. The authors evaluate some of the devices used to control development of prime agricultural land near urban areas. These devices include cluster zoning, negative easements and purchase of development rights, land banking, large lot zoning, open space zoning, planned unit developments, purchase and leaseback programs, agricultural service districts, transferable development rights, differential taxation, as well as public and private land trusts.<sup>5</sup> In addition, the authors analyze foreign ownership of farmland and describe state laws which restrict the acreage that may be owned by non-resident aliens. Finally, part II discusses and evaluates the management of public lands by the Forest Service under the National Forest Management Act of 1976,<sup>6</sup> and by the Bureau of Land Management under the Federal Land Policy and Management Act of 1976.<sup>7</sup>

Part III is a comprehensive survey of the federal statutes and regulations that affect farming. This section also describes the organizational structure of the Department of Agriculture as well as other federal agencies which administer programs affecting agriculture. These agencies include the Department of Interior, the Department of Labor, the Department of Commerce, the Department of Health and Human Services, the Commodity Futures Trading Commission and the Farm Credit Administration. The remaining chapters in part III examine such federal programs as price supports for agricultural products, marketing agreements and orders for fruits, vegetables, nuts and milk, soil bank programs, and farm credit programs. In addition, the authors discuss many federal acts which affect agriculture, such as the Federal Crop Insurance Act of 1938,<sup>8</sup> the Packers and Stockyards Act,<sup>9</sup> the Perishable Agricultural Commodities Act, 1930,<sup>10</sup> the Plant Patent Act of 1930,<sup>11</sup> the Plant Variety Protection Act,<sup>12</sup> the Federal Seed Act,<sup>13</sup> the United States Warehouse Act,<sup>14</sup> the Clean Air Act,<sup>15</sup> the Clean Water Act,<sup>16</sup> and the Food

---

5. *Id.* at §§ 4.6-4.18.

6. 16 U.S.C. § 1600-1614 (1976).

7. Act of October 21, 1976, Pub. L. No. 94-579, 90 STAT. 2743 (codified in scattered sections of 7, 16, 30, 40 and 43 U.S.C.).

8. 7 U.S.C. §§ 1501-1520 (1976).

9. *Id.* at §§ 181-229 (1976 & Supp. V 1981).

10. *Id.* at § 499 (1976 & Supp. V 1981).

11. 35 U.S.C. §§ 161-164 (1976).

12. 7 U.S.C. §§ 2321-2583 (Supp. V 1981).

13. *Id.* at §§ 1551-1611 (1976 & Supp. V 1981).

14. *Id.* at §§ 241-273 (1976).

15. 42 U.S.C. §§ 7401-7602 (Supp. V 1981).

Stamp Act of 1977.<sup>17</sup> Part III also evaluates the effect of federal and state legislation on farm labor, including the Fair Labor Standards Act of 1938,<sup>18</sup> the Farm Labor Contractor Registration Act of 1963,<sup>19</sup> and state workmen's compensation statutes.

Part IV examines civil liability for agricultural operations. The discussion includes public and private nuisance, tort liability for injuries to recreational users, liability for injuries or property damage caused by pesticides and other farm chemicals, liability for weather modification activities and liability for injuries by farm animals.

Part V, which comprises over half of Volume II, deals with the commercial and tax aspects of agriculture. The three basic forms of ownership—sole proprietorships, partnerships, and corporations—are described and evaluated. The legal status of cooperatives, including treatment under tax<sup>20</sup> and antitrust laws,<sup>21</sup> is also considered. Another portion is devoted to the Uniform Commercial Code, with emphasis on the sale and financing of farm products and equipment.

The authors note that farmers and ranchers often enjoy a preferred position under the tax laws. Accordingly, considerable attention is given to the income and estate tax aspects of farming. Among the topics covered are accounting methods, depreciation, depletion, business expenses, capital expenses, tax consequences of the sale of agricultural property, and estate planning techniques.

Part VI consists of fifty-six sample forms. Some of these are forms provided by state or federal agencies; others are samples of documents that would normally be drafted by an attorney for an agricultural client.

As the foregoing description indicates, *Agricultural Law* is a truly comprehensive work. The authors have covered virtually every topic of interest to the agricultural client. The treatment is concise without being superficial. In general, the level of scholarship is highly impressive. There are copious citations to primary sources such as statutes, cases, and administrative regulations; in addition, the text contains a generous number of citations to secondary sources such as treatises, law review articles, and government publications. In short, the organization of *Agricultural Law* is clear and orderly and a detailed ta-

---

16. 33 U.S.C. § 1251 (1976).

17. 7 U.S.C. §§ 2011-2029 (Supp. V 1981).

18. 29 U.S.C. §§ 201-219 (1976).

19. 7 U.S.C. §§ 2041-2055 (1976).

20. I.R.C. §§ 521, 1381-83, 1385, 1388 (Supp. V 1981).

21. 7 U.S.C. §§ 291-292 (1976).

ble of contents makes it easy to locate material quickly, as do the index and the various tables at the end of volume II.

Notwithstanding its high level of scholarship, *Agricultural Law* is oriented toward the practitioner. Consequently, a good deal of emphasis is given to practical problems. For example, in the chapters on organization of farm businesses, Juergensmeyer and Wadley discuss the various alternatives in terms of such client goals as tax advantages, managerial efficiency, family ownership perpetuation, growth insurance through outside capital, estate planning alterations, limited liability and retirement planning.<sup>22</sup> Similarly, the chapter on estate planning considers the effect of various estate planning alternatives on such client goals as assuring lifetime security for the owner, avoiding or minimizing estate taxes, achieving security for family members after the client's death, rewarding employees, enhancing operational efficiency, maintaining maximum control over the farm operation during the client's lifetime and keeping the farm in the family after the client's death.<sup>23</sup> As the authors point out, some of these objectives are contradictory and, therefore, it is necessary that all of these objectives be identified, understood and explored in discussions with the client by the attorney. Another practical matter that is dealt with in this chapter is the relationship between the farm operation's business format and estate planning considerations.<sup>24</sup>

Although the treatise is concerned with the day-to-day problems of the agricultural law practitioner, it does not neglect broader social issues. One of the pervasive themes in *Agricultural Law* is the conflict between agriculture and urban development. The tension that exists between these competing uses of the land is illustrated in various ways throughout the treatise. For example, part II is largely devoted to a discussion of the many techniques employed by government and private interests to protect agricultural land from development pressure. Another aspect of this rural/urban conflict involves tort liability for farming operations, an issue which is covered in part IV. The economic viability of the family farm, a matter of profound social and political significance, is also given considerable attention. As the authors have noted, many of the federal programs analyzed in part III reflect a national commitment to the integrity of small-scale agricultural enterprises. Much of the tax legislation discussed in part V is also directed toward this goal.

---

22. II J. JUERGENSMEYER & J. WADLEY, *AGRICULTURAL LAW* §§ 30-31 (1982).

23. *Id.* at § 38.

24. *Id.* at § 38.8.

In conclusion, *Agricultural Law* is a major contribution to this growing body of law. Obviously, the scope of agricultural law is so vast that it is not possible to cover every area in detail in a two-volume text. Nevertheless, the authors have provided an excellent overview of the entire subject, while covering selected topics in more depth. Consequently, *Agricultural Law* will be extremely useful to both the specialist and the general practitioner.

