Agricultural Law is Law by the Exception

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law
Roger McEowen's Blog: https://agriculturallaw.lawprofessorsblogs.com/
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Overview

Most judges know contract law. Most judges know property law. Most judges know tax law. But relatively few judges truly understand agricultural law - and that matters. Agriculture is one of the few areas of American law where legislatures have repeatedly rejected general legal rules in favor of industry-specific exceptions. When courts overlook those exceptions, the result can be decisions that frustrate legislative intent and create uncertainty for farmers and ranchers.

Agriculture is perhaps the clearest example in American law that the Legislature—not the common law—has repeatedly chosen to create industry-specific rules that displace otherwise applicable legal principles

Agricultural law has never fit neatly within traditional legal categories. It is not simply contract law applied to farmers, property law involving rural land, environmental law with tractors, or tax law affecting ranchers. Instead, agricultural law is an integrated discipline that draws from virtually every area of the law while simultaneously creating specialized rules that frequently override general legal principles. In that sense, agricultural law is often "law by the exception."

That reality presents a recurring problem. Judges, particularly those without substantial agricultural backgrounds, often approach agricultural disputes by applying general legal principles without recognizing that Congress or state legislatures intentionally crafted agricultural exceptions. The result is judicial decisions that, while perhaps logical under general legal doctrine, fail to account for the unique statutory and regulatory framework governing agriculture.

The problem is not ideological. It is institutional. Few judges receive meaningful training in agricultural law. Few law schools offer more than a single agricultural law course, and many offer none at all. Consequently, judges routinely confront complex disputes involving federal farm programs, tax rules, water law, livestock transactions, conservation programs, bankruptcy, secured lending, food law, and environmental regulation with little-to-no specialized background.

The consequences can be significant.

Agriculture Has Long Been Treated Differently by Legislatures

From the earliest days of the Republic, legislatures recognized that farming differs fundamentally from other businesses. It reflects the Jeffersonian Ideal of a nation comprised of small family farms.

Agriculture involves:

Biological production cycles;
Dependence upon weather;
Seasonal income;
Long production periods;
Highly leveraged capital structures;
Significant public interest in food security; and
Extensive federal involvement through farm programs.

Accordingly, legislatures created specialized rules governing nearly every aspect of agricultural production.

Examples include:

Cash accounting for most farmers under I.R.C. §446;
Farm income averaging under I.R.C. §1301;
Special involuntary conversion rules under I.R.C. §1033(e);
Installment reporting exceptions under I.R.C. §453;
Unique self-employment tax rules under I.R.C. §§1402(a)(1) and (13);
Special bankruptcy provisions in Chapter 12;
Agricultural liens under Article 9 of the Uniform Commercial Code;
Packers and Stockyards Act protections;
Right-to-farm statutes;
Recreational use statutes;
State fence laws;
Agricultural nuisance doctrines;
Crop insurance statutes;
Federal conservation programs; and
Specialized environmental statutes governing pesticides and wetlands.

None of these reflect ordinary commercial law. Each represents a legislative judgment that agriculture deserves distinct treatment because agricultural production presents unique economic and social realities. Unfortunately, courts sometimes forget that point.

Tax Law: Courts Sometimes Forget Farming Is Different

Agricultural tax law contains countless examples where general tax principles cannot simply be imported into farming. Congress has repeatedly enacted provisions recognizing farming's unique characteristics.

Cash accounting. Most businesses cannot use the cash method. Farmers generally can. Congress intentionally preserved cash accounting because agricultural income is highly seasonal and production expenses frequently precede income by many months or even years. Yet courts occasionally analyze agricultural accounting disputes as though farming were simply another inventory business. It is not.

Farm income averaging. Farm income averaging exists because Congress recognized weather, disease, commodity markets, and biological production create extraordinary income fluctuations. No comparable relief exists for most businesses. Courts interpreting I.R.C. §1301 must therefore begin with the legislative purpose rather than treating the statute as merely another computational provision.

Livestock sales. Special rules governing breeding livestock, draft animals, dairy animals, and involuntary conversions recognize biological production cycles unique to agriculture. Ignoring those statutory purposes often produces incorrect analyses.

The windfall cases under IRC §199A. Perhaps no recent tax issue better illustrates this point than the litigation involving the former cooperative deduction under IRC §199A(g). After enactment of the Tax Cuts and Jobs Act, statutory drafting produced an unintended deduction that greatly favored cooperative patrons. The provision created substantial inequities among similarly situated producers. Congress eventually corrected the statute. Yet the controversy demonstrated that agricultural tax provisions often operate within unique statutory structures unfamiliar to judges, practitioners, and even legislators. Agricultural tax law cannot always be understood by analogy to general business taxation.

Bankruptcy: Chapter 12 is Specifically for "Family Farmers"

Chapter 12 represents perhaps the clearest example of agricultural exceptionalism. Congress enacted Chapter 12 after concluding that traditional Chapter 11 reorganization simply did not work for family farmers. Courts interpreting Chapter 12 must therefore remember that Congress intended a debtor-friendly reorganization system specifically tailored to agricultural realities. When courts import Chapter 11 concepts without recognizing Chapter 12's unique legislative purpose, they risk frustrating congressional intent.

The Supreme Court's decision in *Hall v. United States*,[1] illustrates the difficulties that can arise when statutory language conflicts with practical agricultural realities. Congress ultimately amended the Bankruptcy Code in the Family Farmer Bankruptcy Clarification Act of 2017 to reverse the practical effect of *Hall*, confirming that taxes arising from the sale of farm assets used in a Chapter 12 reorganization could receive more favorable treatment.[2] The legislative response underscores that agricultural bankruptcy often requires specialized rules that differ from general bankruptcy principles.

Right-to-Farm Laws Are Frequently Misunderstood

The same pattern appears in nuisance litigation. Courts have occasionally minimized the significance of right-to-farm statutes by importing traditional nuisance doctrines without giving sufficient weight to the Legislature's decision to protect established agricultural operations from encroaching residential development. Several states have responded with statutory amendments clarifying that these laws were intended to provide meaningful - not merely symbolic - protection.

Nearly every state has enacted some form of right-to-farm legislation. These statutes represent legislative judgments balancing agricultural production against suburban encroachment. Yet courts have not always

[1] 566 U.S. 506 (2012).
[2] As noted in In re Pedersen, 593 B.R. 785 (Bankr. N.D. Iowa 2018).

interpreted these statutes consistently. Some decisions narrowly construe statutory protections despite clear legislative language favoring continued agricultural production. Others effectively rewrite statutory requirements through common-law nuisance analysis. The result is diminished predictability for agricultural producers who relied upon legislative assurances that established farming operations would receive protection.

Recreational Use Statutes

Iowa provides a striking example of why agricultural context matters. In *Sallee v. Stewart,*[3] the Iowa Supreme Court construed Iowa's recreational use statute narrowly in litigation arising from injuries sustained by school children visiting a working dairy farm. Many in the agricultural community believed the decision frustrated the Legislature's objective of encouraging landowners to allow educational and recreational access to farms without fear of expansive tort liability. The Legislature responded promptly by amending the statute to restore broader immunity, effectively overruling the court's interpretation. Few examples better illustrate the institutional dialogue that occurs when courts fail to appreciate the practical realities that agricultural statutes were designed to address.

Many states adopted recreational use statutes to encourage landowners to allow hunting, fishing, hiking, and similar activities without fear of expansive tort liability. Agricultural landowners frequently rely upon these statutes. Yet courts occasionally construe exceptions broadly enough to undermine legislative objectives. When immunity exceptions become the rule, legislatures—not courts - should make that policy choice.

Fence Law and Livestock Liability

Agriculture also demonstrates why historical context matters. Traditional open-range and fence-out principles evolved over centuries. Modern judges unfamiliar with livestock production occasionally approach livestock-escape cases using ordinary negligence principles while overlooking specialized fence statutes and long-established agricultural doctrines. The resulting decisions sometimes disregard legislative choices unique to rural communities.

Packers and Stockyards Act

Federal courts have likewise struggled over the proper interpretation of the Packers and Stockyards Act. For years, courts divided over whether producers had to prove injury to overall competition or whether unfair treatment of individual producers could suffice. That disagreement produced inconsistent outcomes across jurisdictions despite Congress's obvious concern with protecting livestock producers from abusive market practices. When courts lose sight of agriculture's unique marketing structure, statutory interpretation becomes unnecessarily inconsistent.

Why These Errors Occur

Concrete examples abound. In *Baur v. Baur Farms, Inc.*[4] where the Iowa Supreme Court initially treated the family farming corporation much like any closely held business, giving insufficient weight to the reality that many farm

[3] Sallee v. Stewart, 827 N.W.2d 128 (Iowa 2013).
[4] 832 N.W.2d 663 (Iowa 2013).

corporations exist primarily to preserve family ownership across generations rather than maximize short-term shareholder value. On rehearing, the Court significantly narrowed its earlier opinion, recognizing that ordinary corporate-law principles cannot always be applied mechanically to family agricultural operations. Kansas decisions likewise illustrate the point. *Simmons v. Porter*[5] exposed the danger of overlooking the operational realities of modern farming. The Kansas Supreme Court's decision may have produced what some would regard as a fairer result for the injured employee, but it did so by overruling decades of precedent and effectively rewriting Kansas tort law. The Legislature had adopted comparative fault without eliminating the common-law assumption-of-risk doctrine, and prior Kansas decisions had repeatedly interpreted that legislative silence as preserving the doctrine in its limited sphere of application. Rather than leaving that policy choice to the Legislature, the Court concluded that comparative fault implicitly displaced assumption of risk and abolished the defense itself. Whether one agrees with the outcome or not, the decision illustrates how courts sometimes substitute their own policy judgments for those of the elected branches.

These cases illustrate a broader point. Courts unquestionably possess the authority—and indeed the duty—to interpret statutes and develop the common law. But where legislatures have deliberately enacted special rules governing agriculture, judicial fidelity requires giving effect to those policy choices rather than substituting judicial preferences for legislative judgment. Agricultural law is replete with statutory exceptions reflecting policy determinations about food production, rural economies, and the unique risks of farming. Whether a judge agrees with those policies is beside the point. Under our constitutional system, it is the Legislature's role to make those choices and the judiciary's role to apply them faithfully. Respecting legislative judgments in agriculture is not a matter of favoring farmers; it is a matter of separation of powers. Where elected lawmakers have deliberately adopted specialized agricultural rules, courts should hesitate before substituting common-law doctrines or policy preferences that effectively nullify those legislative choices. Courts should therefore be cautious not to rewrite those legislative judgments under the guise of statutory interpretation.

Most judges are exceptionally capable lawyers. The problem is specialization.

Few judges have:

Represented farmers;
Drafted farm leases;
Handled USDA administrative appeals;
Interpreted conservation contracts;
Litigated water rights;
Advised livestock producers;
Worked through cooperative tax issues; or
Administered complex farm estates.

Yet they must decide disputes involving all of these subjects. Agricultural law increasingly resembles tax law or patent law - highly specialized disciplines requiring technical understanding beyond ordinary legal education.

[5] 298 Kan. 299, 312 P.3d 345 (2013).

The Need for Greater Judicial Familiarity

Agriculture remains one of the nation's most regulated industries. Judicial decisions increasingly affect:

Food production;
Water use;
Pesticide regulation;
Animal disease control;
Tax planning;
Estate planning;
Conservation programs;
Renewable energy;
Carbon markets; and
Property rights.

Those decisions deserve judges who appreciate not only general legal doctrine but also the legislative choices that intentionally distinguish agriculture from other industries. Courts should resist the temptation to force agricultural disputes into conventional legal frameworks when legislatures have deliberately created exceptions.

Conclusion

Agriculture has never fit neatly within the assumptions that underlie much of American jurisprudence. Its seasonal cycles, biological realities, specialized financing arrangements, federal regulatory overlay, and unique tax rules have long justified legal doctrines that differ from those governing ordinary commercial activity. When courts fail to appreciate those differences, the consequences extend well beyond the litigants before them. They affect landowners, lenders, producers, rural communities, and ultimately the nation's food supply. The answer is not specialized agricultural courts or special treatment for farmers. Rather, it is better judicial education. Continuing judicial education should include regular instruction in agricultural law comparable to the specialized education many judges already receive in tax, complex commercial litigation, water law, and patent matters. Courts should also be more willing to appoint neutral agricultural experts when disputes turn on specialized farming practices unfamiliar to the judiciary.

Better informed courts produce better precedent. And in agriculture, where legal certainty often determines whether family operations survive from one generation to the next, that is no small matter.