FARM TENANCY LAWS IN ILLINOIS

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CONTENTS

Types of Farm Leases ........................................... 3
Written Versus Oral Leases ................................. 3
Tenancies From Year to Year ................................. 4
Actions for Collection of Rent ............................... 5
Landlord’s Lien on Crops ...................................... 7
Abandonment and Emblements .............................. 8
Tenant’s Right to Take Removable Fixtures .......... 8
Eviction and Suits for Possession of Land ........... 9
Miscellaneous Laws on Landlord-Tenant Relations 10
A Livestock Lease May Be Considered a Partnership 14
Social Security ................................................ 14
Summary of Farm Tenancy Laws ......................... 15

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Although farm landlords and tenants must depend upon legal principles of tenancy for settlement of their differences, they frequently know very little about these principles. The purpose of this circular is to give the reader a clearer understanding of the legal nature and effectiveness of agreements between landlords and tenants, and of the rights and duties of each.

Types of Farm Leases

Basically, three major types of farm leases are used in Illinois—the livestock-share lease, the crop-share or crop-share-cash lease, and the cash lease.

Livestock-share lease

The livestock-share lease, predominant in northern and western Illinois, usually provides for a 50-50 sharing of gross sales from the farm. The landlord and tenant normally contribute towards the enterprise in proportion to their share of the gross receipts. Under this kind of lease, productive livestock is owned jointly, with the tenant furnishing all of the labor and most or all of the operating equipment and the landlord furnishing the land and improvements.

Crop-share or crop-share-cash lease

Depending on the area of the state, a crop-share lease provides that the tenant give the landlord a share of all of the grain crops (1/3, 2/3, 1/2). The crop-share-cash lease adds cash rent for the farmstead, hay, and pasture land. The tenant usually furnishes all of the labor and operating equipment.

Cash lease

A tenant with a cash lease pays cash rent for the use of the farm and improvements and assumes responsibility for all of the labor and equipment on the farm. His risk is greater under this type of lease because the cash rent must be paid regardless of whether the tenant's operating expenses are met.

Written Versus Oral Leases

Though not essential under the law, a written lease is very valuable when a dispute arises. It contains the understanding and agreement of the parties, sets forth their rights and duties, and states the time for

1 Farm leases are more fully discussed in Circular 781, "Farm Leases for Illinois." You can obtain a copy of this circular from your farm adviser or by writing to the Information Office, College of Agriculture, Urbana.
which the farm is to be leased. Under an oral lease, common law and custom, which may not be suitable to the specific farm, normally control the operation of the farm. Any special oral agreements are often quite difficult to prove.

There is another disadvantage to using oral agreements. An Illinois law provides that oral leases that cannot be performed within one year from the date of making are not enforceable. For example, an oral lease for a year made during the winter, possession to commence in March, cannot be performed in one year. Therefore each party legally has the right to back out of the agreement anytime before the tenant takes possession. For tenants in possession of the farm when the oral agreement is made, see discussion of "Tenancies from Year to Year" below and on page 5.

If a written lease is used it must meet five legal requirements.

1. Both parties must sign it. If the farm is held jointly, all joint tenants should sign. To cover possible contingencies, such as death of one of the parties, it is advisable for all persons who have any interest in the land to sign the lease. However, it is not legally necessary that the spouse of the owner or tenant sign to make the lease effective.

2. A definite period during which the farm is to be leased must be stated.

3. The property to be leased must be accurately described.

4. A lessor (landlord) and lessee (tenant) must be named.

5. The payment of rent must be provided for.

A good lease will, of course, contain much more than these essentials.

**Tenancies From Year to Year**

In the eyes of the law a tenant without a written lease or an enforceable oral lease is a tenant from year to year. This kind of tenancy is given protection by a minimum notice period.

Under Illinois law if written notice is not given by either party prior to 60 days before the end of the lease term, a lease exists for another year. This notice must be given within four months before the 60-day period. For example, an Illinois tenancy that commences on March 1 requires that written notice be given between September 1 and December 30 (September 2 and December 31 when the tenancy terminates on March 1 of a leap year).

When written leases are not renewed but the tenant remains on the farm, a tenancy from year to year arises. The written lease is, of course, at an end, but the courts have said that normal provisions of
the written lease will carry over into the tenancy from year to year. However, special provisions, such as an option to buy, will not carry over.

The courts rigidly adhere to the law when terminating a “tenancy from year to year.” For example, the courts have held that a written notice within the statutory period is essential; that this notice must be signed by one having authority; and that it must accurately describe the property in question. In addition, the notice must be delivered to the tenant (or to the landlord if the tenant is terminating the lease), or to someone in the household above the age of 10 years. If no one is in actual possession of the premises, notice may be posted on the premises. Giving notice by certified mail would also seem to be sufficient, since this mail must be signed for and a receipt obtained.

When there is a written lease, the notice provision in the lease governs. If the lease does not contain a notice provision, no notice is necessary.

The 60-day notice period does not always protect the tenant, since it may be given after the fields have been plowed in the fall, fertilizer spread, or wheat seeded. Under the law, the landlord is not obligated to pay the tenant for his work, fertilizer, or seed. However, the tenant is permitted to harvest fall-seeded grain, since it was seeded before the landlord gave notice of termination. A good written lease could solve this problem by providing for a longer notice period.

An oral agreement made in the fall to continue the lease for another year, even though not legally enforceable, may be enforced by the courts if one party relies on the oral contract and makes a substantial performance. Courts have held that fall plowing, fertilizing, sowing, etc., by a tenant who relies on an oral agreement to continue the lease is sufficient reason to renew the tenancy from year to year for another year, even though the landlord later changes his mind about the agreement and gives the tenant a 60-day notice to quit.

**Actions for Collection of Rent**

Several legal actions are available to a landlord for the collection of rent. These are discussed below.

**Distress for rent**

Subject to certain limitations, the Landlord and Tenant Act permits a landlord to seize, for rent only, personal property of the tenant in the county where the tenant resides. However, he may not seize any other person's property that might also be on the premises. The distress proceeding permits the landlord to hold the tenant's goods until adjudication of his claim.
Although this procedure is relatively simple, legal assistance is desirable. A distress warrant is prepared and served on the tenant. At the time of service the landlord or his agent (the agent may be a constable or sheriff) seizes the tenant's property, segregates the goods, prepares an inventory, and then files a copy of the distress warrant with the clerk of a court of record or competent jurisdiction, or with a justice of the peace if the amount claimed for rent does not exceed $1,000.

The distress proceeding has two principal limitations. First, the right does not extend beyond a period of six months from the end of the lease term or termination of the tenancy. Second, the law exempts certain articles of the tenant's personal property from being distrained by the landlord. This exempted property includes necessary wearing apparel, Bible and school books, $100 worth of household furniture (plus an additional $300 worth if the tenant is the head of a family), state or federal pensions or bonus payments for one year after receipt, and other property worth $100 to be selected by the debtor (plus an additional $300 worth if he is the head of a family). At the time the distress warrant is served the tenant should be notified of these rights and given an opportunity to select exempt property.

In written leases today, it is common for tenants to waive these exemptions. The Illinois courts hold that the waiver is valid if the tenant is unmarried because the exemption is a personal right. However, these waivers have been held invalid as against heads of families on the ground that the exemption is as much for the families as for the debtors themselves. To be binding against the head of a family, the waiver must be made in advance by means of a chattel mortgage.

**Distress before rent is due**

Although distress proceedings are not ordinarily commenced until a tenant defaults, the distress statute enumerates certain situations in which distress before rent is due is allowed. Distress may be instituted "if any tenant shall, without the consent of his landlord, sell and remove, or permit to be removed, or be about to sell and remove, or permit to be removed, from the demised premises, such part or portion of the crops raised thereon, as shall endanger the lien of the landlord upon such crops for the rent agreed to be paid." This law is very strictly construed by the courts. Before recognizing the right to distrain (to take, through legal process, the property of another and hold it to secure payment of an obligation), they require a showing that the landlord's lien is clearly endangered.
Debt and assumpsit

The Landlord and Tenant Act lists debt and assumpsit as legal actions by which owners, executors, or administrators can sue for and recover rent or a fair and reasonable satisfaction for the use of lands. Debt is an action to recover a sum of money due from another. Assumpsit is an action to recover damages caused by failure to perform a simple contract.

Attachment, garnishment, and replevin

Attachment of property and garnishment of wages or other income are remedies offered to any creditor as a means of asserting possession over the debtor's property and intangible assets (stocks, bonds, mortgages, etc.). When a landlord has established a right against his tenant for rent due, he may resort to these actions.

The statutory action of replevin is often used to recover property that has been wrongfully taken or detained for nonpayment of rent.

Landlord's Lien on Crops

Illinois law gives a landlord a lien for rent upon crops grown or growing that attaches as soon as the crops begin to grow. It is usually enforced by using the distress proceeding described earlier. In interpreting the law, the courts have reached the following conclusions:

1. The landlord's lien does not apply to any property of the tenant other than crops, and then only to crops grown on land for which the landlord is entitled to rent. It is good only for the rent for the year in which the crops are in the ground. However, fall-seeded crops such as winter wheat, which grow in two different years, are subject to the rent for both of those years.

2. The landlord's lien is superior to chattel mortgages or other claims against the crops, and can be lost only by waiver or failure to enforce within six months after the expiration of the lease term.

A lien does not give the landlord a right to immediate possession of the crops. Before the landlord can recover his share, the crop must be harvested and the landlord's share designated. Until this is done, the crop belongs entirely to the tenant.

3. The landlord's lien is against the crop, not against the tenant. However, to enforce the lien against third parties, it is necessary to show that the purchaser knew that the crop was grown on rented land. If a purchaser, such as an elevator, has no knowledge of the tenancy and the origin of the grain, he is not subject to the landlord's lien. As a matter of protection, many landlords furnish a list of their tenants to all elevator operators in the community.
Many leases contain provisions attempting to create liens on all property belonging to the tenant. Illinois courts hold that such provisions are, in effect, chattel mortgages, and to be valid must be acknowledged before a notary and recorded or filed according to the law on chattel mortgages.

**Abandonment and Emblements**

A landlord's security for rent is endangered when a tenant abandons the farm before the end of the lease. To cover such a situation, an Illinois law provides that the landlord or his agent may seize any grain or other crops grown or growing upon the premises or the part abandoned, even though the rent is not yet due. The landlord may cultivate, harvest, and sell the crop, take out his rent and the expense to which he has been put, and give the remainder to the tenant. However, the tenant has the privilege of redeeming the crops by paying the rent and reimbursing the landlord for the expenses incurred in handling the crop.

By court interpretation, this law does not give the landlord the right to mature and harvest annual crops growing when the tenant leaves at the end of the lease. The tenant has the right, known as the right to emblements, to return and harvest such crops.

**Tenant's Right to Take Removable Fixtures**

Whether a tenant has a right to remove improvements erected at his own expense is a question that often arises between farm landlords and tenants. Usually neither gives any thought to the question until the tenant, having to move, proposes to take the improvements with him only to find that the landlord claims they are part of the real estate and must remain. A written lease should set forth the agreement of the parties as to the tenant's right to remove fixtures erected at his expense, or to be paid for the unexhausted value of these fixtures.

In the absence of a written agreement, an Illinois law partially clarifies the rights of each party. Essentially this law provides that a tenant may take removable fixtures erected at his own expense if he does not owe the landlord any back rent and if he removes the fixtures before the term of his lease expires. The courts have construed this law to include improvements that the tenant brings onto the farm as well as those he actually erects there. For a tenant to be entitled to his privileges under this law, he must satisfy three conditions:

1. He must not owe the landlord back rent because, under the law, a landlord may hold the improvements for back rent.
2. He must have put the improvements on the land himself.
3. He must remove the improvements before the term of his lease expires. Otherwise, he cannot by law remove them, since he will no longer be on the land as a tenant.

The general rule seems to be that a fixture is removable when the parties intend it to be and when it can be removed without material injury to the land or other buildings. The Illinois courts have held that a blacksmith shop on skids was a removable fixture but a crib built on posts set in the ground was not, despite an oral agreement by the landlord that the tenant could take the crib with him.

Any questions as to whether such objects as temporary fences, bins, cribs, hog houses, etc. are removable by the tenant should be settled in a lease. A tenant whose lease does not cover the proposed improvement, should, before starting to build, get a written agreement from the landlord allowing him to remove the improvement or promising to pay its fair value to the tenant when he leaves. In the absence of an express agreement by the landlord to pay, a tenant cannot recover for improvements even though he may not be permitted to remove them. The Illinois Supreme Court has held that a tenant's right to be paid for improvements comes from express contract only.

Eviction and Suits for Possession of Land

Illinois landlords have three principal legal actions available to forcibly remove tenants. These actions are discussed below.

Forcible entry and detainer

The action of forcible entry and detainer may be maintained when a tenant refuses to leave after the expiration of his lease or after proper notice to quit the premises. It is designed to give a quick remedy to one entitled to possession against the unlawful holding over by one in actual possession or against one who has made an unlawful entry. The landlord needs to show only his right to possession; he does not need to prove title to the real estate.

The landlord must file a complaint in writing in a court of record or before a justice of the peace, describing the premises and stating that he is entitled to possession of them and that the tenant is unlawfully withholding possession. The tenant, of course, may deny the allegation, but he may not bring in collateral counterclaims and defenses.

Since the action of forcible entry and detainer is based on the right to possession rather than to title, a new lessee can bring suit to dispossess an old tenant holding over. However, the landlord should
bring the action. The new tenant should not have to bear the expense of gaining possession.

**Ejectment**

Ejectment is a second remedy available to a landlord to recover possession of his property from a tenant after expiration or breach of a lease. Since proof of title is required in an ejectment action, most landlords prefer to use the forcible entry and detainer action.

A landlord may recover damages for rents and profits in an ejectment action. A statement of claims may be filed at any time within a year after the judgment in ejectment.

**Summary judgment on affidavit**

Summary judgment on affidavit provides a third means for the recovery of land. This measure is particularly recommended when there is a good chance that the tenant will not contest the complaint or when the landlord has an especially strong case. The law provides that “any time after the opposite party has appeared or after the time within which he is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment of decree in his favor. . . .”

**Miscellaneous Laws on Landlord-Tenant Relations**

**Arbitration**

The Illinois arbitration act provides that “all persons having requisite legal capacity may, by an instrument in writing to be signed by them, submit to one or more arbitrators . . . any controversy existing between them, and may, in such submission, agree that any court of competent jurisdiction . . . may pass upon any questions of law arising in such arbitration proceedings, and that a judgment . . . of such court shall be rendered upon the award made pursuant to such submission, and for payment of fees and costs of the arbitrator or arbitrators.”

The arbitration proceeding is voluntary, with the law merely regulating the method by which arbitration may be conducted. However, an agreement to arbitrate is irrevocable if made when there is an existing controversy. On the other hand, general agreements to submit to arbitration any controversies that may arise in the future have been held void on the ground that they deprive the parties of their right to resort to the courts.

Although this position of the courts seems to be well settled in Illinois, the use of such agreements should not be discouraged. If the
parties stand by their agreement, the benefits of arbitration can still be realized. The object of arbitration is to avoid the formalities, delay, and expense of litigation in court. If the arbitrators act within the scope of their authority under a submission agreement, their decision is conclusive on the parties.

An agreement to settle by appraisal some well-defined special problem that may arise in the future is valid under Illinois law. The courts distinguish between this kind of agreement and an agreement to arbitrate future controversies. One court has said that an appraisal provision actually amounts to an agreement that certain facts will be required as a condition to recovery.

**Recording and execution of leases**

Illinois law does not require the recording of leases. However, under the Torrens system of land registration, used only in Cook county, leases and other instruments creating a charge on the land frequently are registered.

Leases executed outside the State of Illinois affecting property in Illinois are valid if they are good where executed.

**Time limitation for action on leases**

In the case of written leases, suit may be brought in Illinois within 10 years after the cause of action arises or within 10 years after any payment or written promise to pay has been made. In the case of oral agreements, suit must be commenced within five years after the cause of action arises.

**Death of a life tenant**

The death of a life tenant immediately terminates his rights in the property. However, rent can be collected from a tenant of the deceased life tenant in proportion to the amount of rent accrued to the time the life tenant died. If any portion of the lease term remains, the balance of the rent is paid to the remaindermen.

**Game and fish privileges**

Although fish and game ownership rests in the state, persons living on the land have certain hunting and fishing rights that others do not have. They have the right to destroy any wild bird or wild animal (other than game birds or migratory waterfowl) damaging their property, and they and their children actually residing on the land may fish, hunt, and trap on their land without obtaining a license.

Only occupants of the land are excused from obtaining a license. An occupant’s children who do not live at home must obtain licenses.
And an owner who does not live on his own land must obtain a license in order to hunt, trap, or fish there. Children under 16 are not required to obtain a license to fish with a hook and line anywhere, although they must have a license to hunt and trap away from home.

Only the requirement of obtaining a license is waived. Occupants must comply with legal limits and all other provisions of the Fish and Game Code.

**Tenant's duty to farm well**

Among the principles that the courts have laid down as a part of the tenant's duty to farm well are the following: (1) only a reasonable use of the property for the purpose for which it is obtained is permissible; (2) no waste should be committed; (3) the farming should be done in a husbandlike manner; (4) the soil should not be unnecessarily exhausted by negligent or improper tillage; and (5) repairs should be made. Unless a lease provides or implies otherwise, it is presumed that a tenant will conduct the farm business according to well-established customs or usages of the region in which he lives.

Although the tenant must not farm in such a way as to injure the land, he is not required to yield up the land in the same condition as when he took over its management, nor in every respect to have properly tilled, manured, or pastured it. On the other hand, the tenant cannot set up a claim for farming the land in a more beneficial manner than required. In the absence of specific agreement, the tenant has the right to determine the cropping system.

As developed by the courts, the doctrine of waste has not furnished an adequate basis for establishing good land usage. However, the theory of equitable waste, allowing an owner to prevent an obvious injury to the premises, has helped protect the landlord.

A distinction as to the amount of waste permitted has been drawn between a life tenant and a tenant for a year or a term of years, giving a life tenant much more liberty to commit waste. The language of some wills and deeds creating life estates includes the statement "without impeachment for waste," which excuses the life tenant still further from making a reasonable use of the premises. The courts distinguish between "permissive" waste (damage that the tenant fails to prevent) and "voluntary" waste (damage resulting from positive acts of the tenant). Liability is greater for voluntary waste.

Clearing woods, breaking up pastures, altering buildings, cutting hay too early, sowing all the land to wheat shortly before the end of the term, selling manure, over-tillage, and unusual rotations have been called waste by the courts at various times. However, with improved
fertilization processes and the increasing acceptance of continuous corn rotations, it would seem that if the tenant maintained the fertility level of the soil, then continuous corn, soybeans, etc. would not be considered an unusual rotation or over-tillage in the sense of being waste. Again, a good written lease could set forth the obligations of the tenant and present a much clearer determination of what constitutes waste.

**Crop ownership**

The crop belongs to the tenant until it is harvested and divided. A lease may provide various places for the crop to be divided, such as in wagons in the harvest field, in cribs on the farm, or at elevators where the crop is sold. Although the rule that a growing crop belongs to the tenant is well-established, insurance companies will insure a landlord's interest in the crop, considering it simply another risk.

If a part of the farm is taken by condemnation, the tenant, and possibly the landlord, are entitled to damages to growing crops. If the award is for the value of a mature crop, the landlord should share in the award just as if the crop had been harvested. Tenants with long-term written leases should be able to collect damages for the over-investment in labor and machinery resulting from the shrinkage in acreage.

**Right to maintain trespass action**

The right to maintain trespass belongs to the tenant once he has entered into possession, and may be enforced even against the landlord unless he is on the property to collect rent, for necessary and reasonable inspections of the premises, to make improvements, to deliver a notice, or by permission. The landlord may reserve additional rights of entry in a written lease.

**Right to sue for injury to the farm property**

The right to sue for injury to the farm or property on it depends upon legal rights in the property damaged. Since growing crops belong to the tenant, the courts have held that the right to sue for damage to such crops belongs exclusively to the tenant, even though the landlord's rent is payable out of the crop. On the other hand, injury to the farmland, buildings, fences, trees, etc. gives the landlord a cause of action.

**Right to assign or sublet**

A tenant may assign his lease or sublet the farm or any part of it unless he is prohibited from doing so by the terms of a written lease.
A Livestock Lease May Be Considered a Partnership

Although it has been assumed that livestock leases are not partnerships, some leases may meet the legal tests of a partnership. The question as to whether a partnership exists depends upon the parties' intentions and way of doing business. If they make joint operating decisions, if each has some rights to make independent business decisions binding on the other, if they share net or gross income, and if they have a common business account, the arrangement is likely to be called a partnership by the courts.

If a partnership exists, all of the partners are responsible for any injuries to persons outside of the partnership, and each partner should have personal liability insurance. In addition, an income tax return has to be made for the partnership, and an accounting is necessary if one of the partners dies.

If a partnership is not desired, a written lease containing an express denial that a partnership is intended carries some weight with Illinois courts. However, if the tests described above are met, the courts may still hold that a livestock lease is a partnership.

If the parties want a partnership, they should use a partnership agreement rather than a lease agreement.

Social Security

Farm rental income counts toward social security if, in accordance with a rental agreement, the landlord "materially participates" in the production or management of the production of the farm commodities on his land.

Elements of material participation

The Social Security Administration considers various points in determining whether a landlord is materially participating in the farm business. Among these are (1) physical work by the landlord; (2) management decisions; (3) advice and consultation; (4) inspection; (5) furnishing equipment and livestock; and (6) bearing expenses of production.

Guides for determining whether a landlord is materially participating

If a landlord has an arrangement calling for his participation and if he meets the requirements in one of the tests below, he is materially participating.

Test 1. Does any three of the following. (1) pays or stands good for at least one-half of the direct costs of producing the crop;
(2) furnishes at least one-half of the tools, equipment, and livestock used in producing the crop; (3) advises and consults with the tenant periodically; (4) inspects the production activities periodically.

Test 2. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the enterprise.

Test 3. Works 100 hours or more spread over a period of five weeks or more in activities connected with producing the crop.

Test 4. Takes part in activities which, considered in their total effect, show that he is materially and significantly involved in the production of the farm commodities.

Cases that are in any way doubtful may be submitted for advice to the nearest district office of the Social Security Administration or the District Director of Internal Revenue.

The application of social security to farmers is discussed in Farm People and Social Security (OASI—25f), a publication of the U. S. Department of Health, Education, and Welfare, Washington, D.C. You can obtain this publication from your local social security office or by writing to the Department.

Summary of Farm Tenancy Laws

1. Most Illinois legislation pertaining to landlords and tenants concerns the landlord-tenant relationship in general and is not designed specifically for farm tenancy.

2. Common-law principles serve as a general guide in landlord-tenant relationships, particularly under oral leases, but they are not complete or modern enough to apply to all of the issues that may arise. Written leases are highly desirable to cover the many gaps in the law.

3. If there is no written agreement, a tenancy from year to year generally exists. The law requires that these tenancies be terminated by a 60-day written notice.

4. Oral leases that cannot be performed within one year from the time they are made are unenforceable in Illinois because of the Statute of Frauds. However, substantial performance, such as fall plowing and seeding in reliance upon an oral lease, has been held sufficient to make the lease enforceable.

5. One large body of statutes consists of remedies for the collection of rent. The actions of debt, assumpsit, replevin, attachment, and garnishment affect farm tenancy only generally. Distress for rent and the provision for distress before rent is due apply more directly to farm tenancies.
6. The landlord's lien for rent against crops grown during the year the rent accrues applies to any purchaser who knows that the seller is a tenant and that he has raised the crops on rented land. A landlord must use an appropriate action, such as distraint, to enforce his lien.

7. The Illinois statute on abandonment protects a farm landlord for rent and expenses to the extent that he is able to mature and harvest crops left by the tenant, but it does not make provisions for damages resulting from the abandonment.

8. The right to emblements (the right to harvest crops maturing after the term of the lease) is recognized by Illinois courts.

9. Tenants not subject to distress for rent may take from the rented premises movable fixtures that they have built, provided they do so while still in possession of the land as tenants. The definition of "removable" is vague, but in general it means those improvements that can be removed without undue injury to the premises.

10. No special actions are provided in Illinois law for the eviction of farm tenants, but general actions, such as forcible entry and detainer, ejectment, and summary judgment on affidavit, can be used.

11. Arbitration can be used by farm landlords and tenants for the settlements of disputes. However, an agreement to arbitrate cannot be enforced if it precedes the controversy. This prevents agreements for arbitration, contained in farm leases, from being binding and effective if one party refuses to arbitrate.

12. Courts have laid down rules that a tenant must farm in a husbandlike manner and not commit waste. However, waste has not furnished an adequate restriction against poor land usage.

13. Some livestock leases may qualify for partnership treatment. When operating as a partnership or in doubtful cases, the partners need adequate liability insurance for protection against injuries, negligence, etc.

14. Landlords are eligible for social security if they "materially participate" in the operation or management of the farm.

(A few of the less important laws are not included in this summary. A discussion of these laws may be found in the text.)