

NORTHERN ILLINOIS UNIVERSITY

AGRICULTURAL LAW SEMINAR

PROFESSOR LUNA

FALL 2008

AGRICULTURAL LAW SEMINAR

INSTRUCTOR: Professor Luna

OFFICE HOURS: 10:30-11:30 Tuesday/Thursday or (b) or by appointment;
or (c) at gluna@niu.edu.

In addition to the above and with the exception of one hour before class my office is open for questions, debate, arguments, etc.

REQUIRED MATERIALS: Course Packet: GUADALUPE T. LUNA,
AGRICULTURAL LAW (2008)

COMPUTER/CELL PHONE USAGE: Students are reminded the NIU Unacceptable Practices on the use of computers, cell phones and email remains in full force.

ATTENDANCE

- * Students are responsible for all information, assignments and instructions whether contained in the Syllabus or announced in the classroom.
- ** Students are strongly encouraged to attend class regularly, be fully prepared to participate in class discussion, and/or exercises.
- *** The Professor reserves the right to decrease a student's final grade for failure to attend class regularly and to increase a student's final grade for class participation.

Extended absence from class in violation of ABA Rules and/or School Policy and failure to turn in the required assignments ensures an automatic failure for the Seminar.

SEMINAR: AGRICULTURAL LAW

Professor Luna

Fall 2008

I. SCOPE AND PURPOSE

Welcome to Agricultural Law. During the past few years Congress has legislated agricultural legislation that is keeping practitioners busy. The new legislation continues to provide expanded opportunities for graduating law students. Even if you never plan to practice in the area of agricultural law for a living, it is almost certain that you will run into someone who has an agriculturally related problem.

In sum, this Seminar examines the administrative and legal framework regulating the market structure of agricultural in the United States. At a fundamental level Agricultural Law offers an excellent chance to explore some broader themes that have significant practical application in many areas of law.

II. COLLATERAL READING

Agricultural law is a relatively rare subject in the law school curriculum. As a result, almost all of the available secondary literature is practitioner-oriented. This means that for our purposes the materials are sometimes too technical and often pay insufficient attention to the constitutional and contractual law aspects of the material. Additionally nothing on the market corresponds to hornbooks or outlines available for other law school courses.

- One exception: PEDERSEN & MEYER, *AGRICULTURAL LAW NUTSHELL* (1994).

III. RESEARCH PAPERS: GENERAL GUIDELINES

A. Read Eugene Volokh, *Writing A Student Article*, 48 J. LEGAL EDUC. 342 (1996).

B. For full course credit by the designated dates please turn in:

1. "Topic Selection Report" → September 3rd.
2. Outline → September 24th.
3. First draft; and → October 29th.
4. Final Product → Last Class Session.

- Your completed paper should be no less than 30 pages in length, including footnotes. Generally, the paper should not exceed 50 pages in length;

- The text of the paper should be double-spaced;
- Footnotes should be single-spaced, preferably on the same page as the corresponding text. For example:

The systemic and ongoing demise of independent farm operations is well documented as well as lamented.¹ A confluence of globalization and rising production costs in the present are jeopardizing even further existing independent owner operations whether domestically or internationally.²

- Over-reliance on a few authorities or complete reliance on web sites **will not fulfill** the Seminar's requirements for full credit.

- C. Be **forewarned!** No late papers beyond the designated final dates will be accepted. Failure to turn in a draft or any written assignment on the designated date(s) ensures a decrease in your final grade ranging from either a half-step to a whole step down of the grade.

IV. TOPIC SELECTION AND REPORT

Agricultural law exists on three levels that include the federal, state and international law levels. A paper might explain the meaning of a specific (and significant) case in the context of a developing area of the law or analyze an area of the law more generally. Or a paper might seek to influence legal development by such methods as suggesting statutory reform, or supplying a new framework of critical analysis for future decision-making in the courts.

You need to choose a topic that is interesting, important and novel enough to be worth your investment of time and effort, yet not so broad that it cannot be fully researched in semester and analyzed in a 30-50 page document. Before you settle on a topic become familiar with the subject matter and its attendant issues. Locate the significant cases and articles on the question and read them carefully. This review is really the first part of your research. Recognize, however, that you may explore and reject several topics before you find one that will work for you.

Warning: Your paper **should not** be limited to a **description** of the law on a certain point or a review of a **single case**.

¹A general concern over the loss of independent farming operations is extensive. See e.g., David A. McGranahan & Calvin L. Beale, *Understanding Rural Population Loss*, 17 RURAL AMERICA 2 (2002) (population losses in agricultural 'frontier' counties and relationship to a 'decline in economic opportunities in agriculture.');

Linda Lobao & Katherine Meyer, *The Great Agricultural Transition: Crisis, Change and Social Consequences of Twentieth Century U.S. Farming*, 27 ANN. REV. OF SOC. 103 (2001 ("...exodus of Americans from farming.")).

²See e.g., MARCEL MAZOYER, PROTECTING SMALL FARMERS AND THE RURAL POOR IN THE CONTEXT OF GLOBALIZATION, available at <http://www.fao.org.html>; United States — Subsidies On Upland Cotton, World Trade Organization, WTDS267/AB/R (March 2005) (involving Brazil's complaint of U.S. subsidies on cotton and its undue hardship on its farmers).

Your work must be original, so it is important to pay attention to what other commentators have had to say on your issue. If the ground has already been fully covered in the way that you envision changing or refining your topic is still possible. As long as you have something new to say it is quite possible to be “original” on a topic that others have addressed. Please feel free to meet with me to explore ways of shaping and defining your topic.

A. TOPIC SELECTION REPORT

By **September 3rd** please submit a short (1 or 2 pages) topic selection report, which should include:

- * A brief discussion of your topic, with an explanation of its significance as a contribution to legal scholarship;
- * A preliminary list of the primary cases, statutes, or secondary materials upon which your analysis will rely; and
- * A short plan for the additional research you plan to undertake.

Remember that any paper worth doing will be complex enough that your topic will be subject to constant adjustment and redefinition as you make progress. Put differently, if you have a clear idea of exactly what you will read and what you will say, your topic is probably too easy.

B. OUTLINE

A detailed outline of your paper is due on **September 24th**. The outline should present logically and concisely your paper’s arguments and analysis, indicating your major sources of support or where you intend to look. The outline will allow you to detect any weaknesses in your organization, analysis and research.

C. FOOTNOTES

Please keep in mind footnotes are a vital part of a legal research paper. Footnotes are used to provide references for general propositions of law as well as all cases, statutes, and rulings, and sources of all theories or ideas that are not your own. Wherever possible cite to primary rather than secondary authorities; if significant authority conflicts with your proposition be certain to cite to it as well. Be sure to use correct citation forms and correct use of signals.

Footnotes can also be used to explain facts or arguments not mentioned in the text, and to give more detail about or quote from important cases and statutes. Keep in mind however, that the text of your paper must be complete in itself, that is, the logical steps of your analysis must not depend on the footnotes.

D. EDITING, WRITING, AND REWRITING

A first draft is due on October 29th. Your final paper is due the last class session.

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No late papers beyond the designated final dates will be accepted. Failure to turn in a draft or any written assignment on the designated date(s) ensures a decrease in your final grade ranging from either a half-step to a whole step down of the grade.

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POSSIBLE TOPICS

The following are suggestions to demonstrate a small measure of the wide-range of topic possibilities. Recognize they are *recommendations* aimed at helping you generate potential topics.

TIPS

1. Remember to look up the nation's farm bill and or present testimony on the forthcoming bill for research possibilities.
2. While agricultural law is also grounded in state law, much of the following is governed by federal law: look up the CFR!
3. What constitutes Agricultural Law? Anything related to food production!

Animal Rights/Issues

- PETA influences on farming practices
- Hormone use in animals

Agricultural Employees

- Migrant Seasonal Agricultural Workers Act (federal law)
- Analyzing the doctrine of cases interpreting farmworker legislation
- Health Issues
- Pesticides and health of workers
- Housing Issues
- Children in the fields
- Unemployment Issues

Civil Rights Issues and the USDA

- Small based operations
- Claims against the USDA:
 - Native Americans
 - Black Farmers
 - Hispanic Farmers
 - Women Farmers

Environmental Issues

- Water
- Land Use (e.g., conservation)

- Pesticides

Ethanol issues: fuel vs. food, etc.

Food Safety Issues

- E.g., food recalls
- Food labeling issues
- Food processing plants
- Hormone use in food supply

Hunger “Food Insufficiency”

Immigration

- Closely connected to labor issues
- Federal Law: *see* Immigration Reform Control Act of 1986
- Agricultural Exceptionalism (exemption from health, safety, employment laws)

Landlord/Tenant Law

- Agricultural Leases (primarily state driven).

Obesity and food production (fast food vs. slow food)

- E.g., health costs attendant to fast food production
- Subsidized food/food availability and hunger issues.

Patent Law/Intellectual Property

- Who owns the creation? *E.g.*, hybrids vs. non-hybrids
- Hi-tech food creations

Farm Politics

- Protecting small farming operations
- Gender issues and farm policies

Public Land Management Issues (federal/state)

- State Trust Land Grazing Programs
- Federal logging issues

Farm subsidies

Underground food economies/outsider farms/gardens etc.

Zoning issues

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A FEW AGRICULTURAL LAW WEB SOURCES

INTERNATIONAL

Food and Agriculture Organization of the United Nations

<http://www.fao.org/>

FEDERAL

Agricultural Network Information Center <http://www.central.agnic.org> (land grant institutions; National Agricultural Library)

Center for Disease Control: <http://www.cdc.gov>

Environment Reporter <http://pubs.bna.com/ip/BNA/ENR.NSF>

National Agricultural Law Center <http://www.nationalaglawcenter.org>

National Agricultural Library <http://www.nalusda.gov>

USDA.gov <http://www.usda.gov>

STATE SITES: Check individual states etc., Illinois Department of Agriculture, <http://www.agr.state.il.us>

NON-GOVERNMENTAL ENTITIES (GENERALLY)/CONSUMER ADVOCACY GROUPS

Farmland Information Center <http://www.farmlandinfo.org>

Institute for Agriculture and Trade Policy <http://www.iatp.org>

Aglog.blogspot.com

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EDITING COMMENTS

awk awkward wording or sentence structure

B/B Blue book error

Def'n definition question

P/V Passive Voice

R/P Repetitive words or ideas; needs editing

S/S Sentence Structure problem

V/T Verb Tense

V/G Vague

W/C Word Choice poor

W/T Weak transition

BLUEBOOK CITATION FORMATS

- Books are in small roman fonts → EMILIO FROST, ALL ABOUT THE WEATHER (1993)
- Articles are in italics → Mariana Smith, *All About Eve*, 33 NEW MEXICO L. REV. 23 (2003).
- News Articles → Emilio Frost, *Hormones Found in Piglets*, N.Y. TIMES, Mar. 24, 2003, at A1.
- Signals are appropriate! *See e.g., infra; supra*

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V. Assignments:³ Hand-out and generally at least one chapter per class.

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³Subject to Change