



KANSAS FARM LEASE LAW

**KSU EXTENSION
GARNETT, KANSAS
JANUARY 8, 2025**

Roger A. McEowen

**Professor of Agricultural Law and Taxation
Washburn University School of Law**

roger.mceowen@washburn.edu
washburnlaw.edu/waltr
[@WashburnWaltr](https://twitter.com/WashburnWaltr)
mceowenaglawandtax.substck.com



Agricultural Leases – What are the Issues?

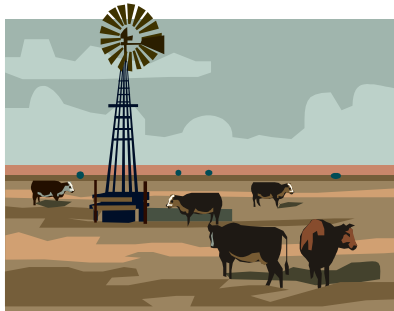
- **Various Issues**

- Removable fixtures
- Permanent improvements
- Landlord's right of entry
- Lease termination
- Lease assignment
- Control of weeds
- Liability for rent in event of natural disaster
- Right of tenant to harvest crop if land is sold or tenant dies
 - "Doctrine of emblements"
- Right to crop that is growing when lease terminates
 - "Away-going" crop



The Importance of Leasing to Agriculture

- **Permits farmers and ranchers to operate larger farm businesses with the same amount of capital**
 - Assists beginning farmers and ranchers in establishing a farming or ranching business





Types of Agricultural Leases

- **Cash lease**
 - Periodic payment of a rental amount that is either a fixed number of \$/acre or fixed amount for the entire farm
- **Flexible cash lease**
 - Specifies that the amount of cash rent fluctuates with production conditions and/or crop or livestock prices



Types of Agricultural Leases

- **Hybrid cash lease**
 - Specifies that the rental amount is to be determined by multiplying a set number of bushels by a price determined according to terms of the lease, but at a later date
 - Tenant markets the entire crop, the landlord benefits from price increases, and the tenant does not bear the entire risk from low commodity prices



Types of Agricultural Leases

- **Guaranteed bushel lease (hybrid-cash lease)**
 - Tenant delivers a set amount of a certain type of grain to a buyer by a specified date; the landlord determines when to sell the grain
- **Minimum cash or crop share lease**
 - Guaranteed cash minimum; with landlord having the opportunity to share in crop production from a good year without incurring out-of-pocket costs; tenant retains production risks
 - Rent is paid in a certain proportion of the crops



Types of Agricultural Leases

- **Crop share lease**
 - Rent paid on basis of proportion of crops
 - Expenses shared by agreement
- **Livestock share lease**
 - Share of livestock, livestock products and crops paid as rent
 - Landlord usually shares expenses
- **Irrigation crop-share leases**
 - Rent certain proportion of crops produced
 - Landlord shares expenses



Other Points Concerning Leases

- **Estate planning implications**
 - Material participation and social security benefits
 - Material participation and post-mortem estate planning techniques
 - Post-death cash leasing
- **Farm program benefits**
 - “Active engagement” test



FSA Regulations

- **When is a cash lease a cash lease?**
 - Notice DCP-172 (Apr. 2, 2007)
 - If any portion of rental payment is based on gross revenue, the lease is a share lease
 - If rent is tied to set amount of production based on future market value that is not associated with the farm's specific production, it's a cash lease



FSA Regulations

- **Beginning with 2009 crop year, tenants and their landlords may reach any agreement desired concerning flexing the cash rent payment and lease will still be deemed to be a share-rent arrangement**



Other Farming Arrangements

- **Custom cutters**
 - Usually treated as independent contractors
- **Croppers**
 - Not treated as tenants if landlord supplies land *and* inputs, controls operation of the farm and pays portion of crop to the person raising and harvesting the crop
 - No legally enforceable interest in crop
 - Only has contract right to compensation in-kind for labor
 - No interest in real property to be terminated
 - A “cropper” is an employee (i.e., a wage earner) that is hired to produce a crop.
 - *Henney v. Lambert*, 237 Iowa 146 , 21 N.W.2d 301 (1946)



Custom Cutters and Croppers

- **Questions concerning status of parties**
 - **Courts look to intent of parties based on facts and circumstances**
 - **Terms of agreement (written or oral)**
 - **Actions of parties**
 - **Type of farming operation**
 - **Has exclusive possession been given?**
 - *See Hoffman v. Estate of Siler*



Agricultural Leases as Estates in Land

- **A lease is an estate in land for a definite period of time that is fixed in advance**
- **Oral agriculture leases are presumed to be tenancies from year to year that automatically renew if no notice of termination is given**
 - State law governs termination of oral agricultural leases
 - KS – 30 days before March 1



Leases and Allocation of Risk

- ***K & M Enterprises v. Pennington, 764 So. 2d 1089 (La. Ct. App. 2000)***
 - **Facts:** The plaintiff leased ground from the defendant and planted 406 acres to corn. The growing crop was consumed by deer, and the tenant sued to recover the lost crop.
 - **Issue:** Whether the tenant bears the risk of loss of the corn crop



Leases and Allocation of Risk

- ***K & M Enterprises v. Pennington, 764 So. 2d 1089 (La. Ct. App. 2000)***
 - **Holding:** Tenant bears the risk
 - Contract language clear and unambiguous
 - “Acts of God” among the “risks” assumed by the tenant
 - Tenant’s right to put up electrical fence not included in landlord’s responsibility to convey “peaceable possession” to tenant



Tenant's Right of Possession

- **Owner can't use land for the owner's purposes without tenant's permission**
 - Hunting
- **Tenant is responsible for the leased premises**
 - Fences
 - *Reynolds case (2002)*



Tenant's Right To Harvest Crops

- **What if the land is sold or the tenant dies before the crop is harvested?**
- **What if a crop is growing at the time of lease termination?**
 - Tenant gets the crop if termination not tenant's fault
 - Written lease can specify otherwise
 - But be careful with the written language
 - *Mears v. Watson (2015)*



Doctrine of Emblements

- ***Taggart v. Battaglia, 140 Or. Ct. App. 585, 915 P.2d 1001 (1996)***
 - **Facts:** Defendant was a Christmas tree farmer that operated a leased Christmas tree farm. Defendant failed to make lease payments, but landlord did not terminate the lease. Plaintiff purchased the farm from the landlord's estate and defendant executed a quit claim deed giving up all interest in the land. During the next Christmas season, defendant reentered the premises and harvested nearly 200 trees.
 - **Issue:** Does the doctrine of emblements allow the defendant to harvest the trees?



Doctrine of Emblements

- ***Taggart v. Battaglia, 140 Or. Ct. App. 585, 915 P.2d 1001 (1996)***
 - **Conclusion:** No. Defendant terminated the lease by executing a quitclaim deed. Doctrine of emblements does not apply when the tenant terminates the lease. The execution of the deed also conveyed the growing crop to the buyer.



Statute of Frauds and Agricultural Leases

- **Agricultural leases as personal service contracts**
 - What happens if either the tenant or the landlord dies during the term of the lease?
 - If landlord dies, heirs assume the lease
 - *Giltner v. Estate of Giltner* (Iowa 2008)
 - What if tenant dies?



***Ames v. Saylor, 267 Ill. App. 3d
672, 642 N.E. 2d 1340 (1994)***

- **Facts:** Parties entered into an oral lease of farmland. After 20 years, the tenant died.
- **Issue:** May the tenant's heirs assume the lease?



Statute of Frauds and Agricultural Leases

- ***Ames v. Saylor, 267 Ill. App. 3d 672, 642 N.E. 2d 1340 (1994)***
 - **Conclusion:** The lease dies with the tenant. A farm tenant's heirs are not entitled to continue to lease the property after the tenant's death until receiving statutory notice of termination.
 - The landlord contracted for the deceased tenant's services only. The lease is a personal services contract.



Distinguishing *Ames v. Saylor*

- ***Wilson v. Fieldgrove (Neb. 2010)***
 - Oral cash lease and death of tenant
 - No statutory notice requirement
 - Common law – 6 months
 - Sharecrop leases are generally personal service contracts
 - Cash leases do not die with the tenant
 - Tenant's services not involved



Doctrine of Emblements

- **Death of the landlord with a growing crop in the field**
 - Landlord owns a fee simple
 - Landlord's heirs succeed to landlord's share of the crop
 - Landlord owns a life estate (issue is who get's the deceased landlord's share – the estate or the holder of the remainder?)
 - Growing crops generally held to be personal property – landlord's crop share becomes personal property of landlord's estate (KS approach)
 - Note: Colorado and Oregon courts have held otherwise



Controlling Noxious Weeds

- **Duty to control is on the party that either owns or supervises the property**
 - Both tenant and landlord are responsible
 - New KS noxious weed statute was revised effective 1/1/21



Permanent Improvements

- **General rule is that permanent improvements belong to the landlord**
- **The question is whether the improvement has become part of the real estate**



Liability

- **General rule – tenant is liable**
 - Control is the issue
 - Landlord can become liable



Assignment

- **Tenant cannot assign or transfer lease without landlord's permission**
 - Voidable
 - Landlord can re-enter, take possession and remove new “tenant” upon 10 days' notice



Sale of Leased Property

- **New owner normally takes the property subject to the existing lease**
- **Tenant need not agree to be the tenant of the new owner**
- **If tenant already paid rent, no need to pay new owner for same time period**
- **Selling landlord can require tenant to pay for any past due rent caused by tenant's abandonment of property before the sale**



Nonpayment of Rent

- **If late three months, landlord can terminate lease on 10-days' written notice**
 - Tenant might pay during the 10 days
- **Unpaid rent gives landlord a lien on “crops” growing on or harvested from the leased premises**
 - Superior to prior existing security interests on crops
 - Attaches to landlord's share of the crop (crop-share)
 - LL has right to possess crop until rent is paid
 - Cash rent – must file to perfect



Requirement That Contracts Be In Writing

- **Statute of Frauds (English Parliament 1677)**
 - Certain contracts must be in writing to be enforceable
 - Marriage contracts
 - Surety contracts
 - Real estate contracts (except certain leases)
 - Part performance exceptions
 - Contracts that cannot be performed within one year
 - Contracts for the sale of goods worth \$500 or more
 - Contracts for “personal property” worth \$5,000 or more
 - Right-of-first refusal in real estate
 - Miscellaneous state requirements



Ag Leases and the Statute of Frauds

- **Part performance**
 - Part performance (i.e. planting a crop) can remove the lease from the statute of frauds requirements
 - *Stuber v. Sowder* (Kan. 1935)
- **Promissory estoppel/detrimental reliance**
 - Possession by tenant may remove statute of frauds requirement
 - *Kolkman v. Roth* (Iowa 2003)
 - *Rhodes v. Sigler* (Illinois 1975)



Notice of Termination of Oral Ag Leases

- **State law controls**
- **State lease law is quite different from state to state**
 - Types of crops
 - Cropping seasons
 - Pasture lease rules may be different from crop lease rules (in some states, but not KS)

■



Serving Notice of Termination

- **Serve on tenant personally**
 - Best to send by registered mail, return receipt requested, or certified mail
 - At tenant's usual place of business
 - Can be left at tenant's residence or by delivering a copy to a person over age 12 who resides on the leased premises
 - If none, can be posted in a conspicuous place
 - *Geran v. Geran (2001)*



Oil and Gas Leases

- **Conveyance of the mineral interest by sale of the lease**
 - Oil and gas, while in the ground, are considered part of the realty
 - Rights can be conveyed by deed
 - Mineral interests may be severed from the surface
 - Upon sale of land, if no reservation made, presumption is that no severance has occurred
 - Many landowners prefer to retain ownership of surface and lease the mineral rights



Oil and Gas Leases

- **Power to sell or lease**
 - Majority owners of mineral interests protected if one or more of holders of minority interests becomes unknown
 - District court appoints a receiver who can negotiate for sale or lease of the interest
 - Owners of less than fee interests must usually join in executing an oil and gas lease



Oil and Gas Leases

- **What if surface leased for crop production?**
 - Crop tenant could recover damages from landlord for damage to tenant's crops or for interference with tenant's use of the surface by the oil and gas operator
 - Landlord could reserve right to lease for oil and gas or could have oil and gas lease made subordinate to surface for drilling
 - If ag lease granted first, subsurface tenant may need to get ag lease tenant's permission before drilling can commence



Oil and Gas Leases

- **Contractual provisions**

- Use of surface

- Lessee typically has right to enter land and explore for minerals (drill) and begin production if discovered
 - Includes implied right to use as much of surface as is reasonably necessary to exercise development rights (i.e., laying pipelines, building roads, constructing buildings)
 - May need additional contract language to restrict location of wells and/or structures
 - May want provision requiring lessor's approval concerning location of wells, structures and roads



Oil and Gas Leases

- **Contractual provisions**
 - Water use clauses tend to be broad
 - Landowner may want to limit use of water by operator
 - Reserve all fresh water or limit operator's use to such amounts as will not interfere with landowner's usage
 - Limit usage to primary production activities
 - No interference with landowner's use or intended use for irrigation purposes
 - Drilling operations not to interfere with irrigation practices during irrigation seasons and until crops harvested



Oil and Gas Leases

- **Contractual provisions**
 - Surface damage clauses
 - Protects landowner against damage to the surface (without the clause, lessee has no liability except for excessive use or negligence)
 - Landowner may want clause requiring lessee to restore surface to original condition
 - Note: State law may require lessee to remove all equipment and structures and to leave land in original condition upon abandonment of an oil or gas well
 - Additional concern may be location of pipelines that might interfere with farming activities



Oil and Gas Leases – Surface Damage Clauses

- ***Trotter v. Wells Petroleum Corp., 11 Kan. App.2d 679, 732 P.2d 797 (1987)***
 - **Facts:** The plaintiff purchased land with oil production and leased the land to the defendant. The defendant buried a pipeline under the plaintiff's pasture and in the process damaged the pasture grass. The lease contract stated: "Lessee shall bury his pipe below plow depth and promptly cover and level all pits" and "Lessee shall pay all damages caused by its operations to growing crops...."
 - **Issue:** Is the plaintiff's pasture a "growing crop" that is subject to the damage provisions of the lease?



Oil and Gas Leases – Surface Damage Clauses

- ***Trotter v. Wells Petroleum Corp., 11 Kan. App.2d 679, 732 P.2d 797 (1987)***
 - **Conclusion:** No. No evidence was offered to indicate the defendant in any way cultivated or worked the pasture so as to alter its natural growth. A reference to “plow depth” in connection with “growing crops” only covers crops resulting from planting, cultivation and labor.



Oil and Gas Leases

- **Common contract clauses**
 - Term usually for a definite term of 2 to 10 years, and so long thereafter as oil and gas is produced in paying quantities
 - “Delay rental” clauses
 - Tenant must either start drilling within a fixed time (usually a year) or pay a stipulated amount for the privilege of extending the lease for an additional period
 - “Unless clause”
 - Lease terminates unless operator either begins drilling or pays the delay rental
 - Some leases require written notice of termination



Oil and Gas Leases

- **Common contract clauses**

- Pooling clause

- Pooling –putting together tracts or parts of tracts to form a drilling unit

- Pooling clauses may not be required under state law (but may be entered into voluntarily)

- » Typical acreage unit for gas is 640 acres

- » Lease likely to remain in force if lessee operating either land covered by lease or other land pooled with it



Oil and Gas Leases

- **Common contract clauses**
 - Unitization clause
 - Bringing together producing properties over a producing reservoir so a single operator can maximize production from that reservoir
 - Note: State law may establish a procedure whereby unitization may be ordered by a state agency in limited circumstances involving secondary recovery activities



Oil and Gas Leases

- **Common contract clauses**
 - Royalty provision
 - Landowner's share is usually $1/8$ to $3/16$ of gross production
 - Operator usually pays all expenses of exploring and producing oil and gas from operator's share ("working interest")
 - For oil, royalty usually paid "in kind" and lessee purchases landowner's share based on market value
 - For gas, royalty usually paid under long-term contract



Oil and Gas Leases

- **Common contract clauses**
 - Storage provision
 - Payment may be made to owner for storage, even in absence of drilling
 - Payment may be low in light of possible interference with surface use
 - Lease may contain clause allowing lease to remain in effect so long as gas storage continues
 - » Complete flexibility to lessee in continuation of lease, but no compensation to landlord for use in gas storage
 - » May want to negotiate a separate agreement



Oil and Gas Leases

- **Common contract clauses**
 - Surrender clause
 - Provides a means or relieving lessee of any obligations once it is apparent that lease is no longer profitable
 - Forfeiture could occur simply on failure to drill or failure to pay delay rental
 - Typically gives lessee right to remove machinery and other structures
 - Should be in writing and filed with Register of Deeds so that title to premises will be unencumbered in the future



Wind Energy Leases (Suggested Provisions)

- **What part of the land is subject to the agreement?**
- **What events trigger early termination?**
- **Automatic renewal clause?**
- **When must construction commence?**
- **Compensation for land use restrictions?**
- **Landowner's rights to use the property?**
- **USDA farm program complications?**
- **Liability for actions of third parties**



Hunting Leases

- **Key consideration**
 - Potential liability sustained or caused by hunters on the property
 - Recreational use statutes vary from state to state



Hunting Lease

- **Not really a lease, but a license to use the property for hunting purposes**
 - Contract right to use defined by the parties
 - Get it in writing
 - Identify parties
 - Property description
 - Types of hunting allowed and when allowed
 - Termination provision
 - Renewals?
 - Liability waiver and indemnification
 - Payment terms



THANK YOU!

- roger.mceowen@washburn.edu
- rmceowen@ksu.edu
- washburnlaw.edu/waltr
- [@WashburnWaltr](#)
- mceowenaglawandtax.substack.com