PURCHASE OPTIONS IN AGRICULTURAL FARMLAND LEASES

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ABSTRACT

Agricultural farmland leasing is a popular option for many agricultural producers. This Article makes a contribution to the agricultural law literature by providing a comprehensive analysis of state appellate court decisions which involve option to purchase provisions in agricultural farmland leases. From cases involving the statue of frauds and rule against perpetuity, to abandonment, to wills and farm leases, to parole evidence, to operations of a farm in a "farm-like manner," to promissory estoppel and leasing, and to interpretation and construction issues and the validity of purchase options, state appellate courts throughout the country have examined issues relating to purchase options in agricultural leases.

I. INTRODUCTION

Agricultural farmland leasing is a popular option for many agricultural producers. With leased farmland comprising approximately 40% of farmland in the United States, there are many advantages to leasing for the agricultural

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producer.[1] For a beginning producer with limited capital, leasing is an attractive option due to the significant financial cost of purchasing farmland outright.[2] Leasing is also an attractive option due to cash flow concerns which result from the purchase of farmland.[3]

Agricultural leases take a number of forms. Surprisingly, many leases take place without a written agreement and are verbal or handshake in nature.[4] This practice in agriculture is reflective of the adage: "one's word is their bond."[5] A fairly standard lease is the "cash rent" lease where the landowner will receive a set amount in exchange for the lessee to rent the farmland.[6] Another type of lease is the "crop share" lease, in which the landowner and the lessee split the income derived from the crop harvest.[7] Finally, there is a "flexible lease," where the lessee agrees to pay the landowner a certain percentage of the crop's gross revenue,[8] and in the other option a minimum base rent will be established in the lease and then the landowner receives a certain percentage of the gross revenue in excess of the

1. *See* Corbett Kull, *What Landowners Should Know When Renting Out Farmland*, SUCCESSFUL FARMING (May 6, 2019), https://perma.cc/3UFK-AKXE.

2. *See* Katie Park, *As land prices climb, small farmers look to leasing as a way to stay in the game*, PITTSBURGH POST-GAZETTE (Aug. 14, 2018), https://perma.cc/X5AT-TLWT.

3. *See* Larry Van Tassell, *Profitability vs. Feasibility and the Paradox of Purchasing Farmland*, U. NEB.-LINCOLN AGRIC. ECON. (Oct. 21, 2015), https://perma.cc/PY9G-P7VL.

4. *See* Kull, *supra* note 1 ("Even in 2019, most farmland is rented without formal paperwork").

5. *See* Katy Waldman, *Where Does "Your Word Is Your Bond" Come From, and Why Did Melania Steal It?*, SLATE (July 19, 2016), https://perma.cc/8BF4-HPFW.

6. *See* Brianna J. Schroeder, *Cash Rent Agreements*, Janzen Agric. L.: SCHROEDER AG L. BLOG (July 11, 2018), https://perma.cc/N84S-NHWH ("A cash rent lease is a fixed agreement in which a landowner receives a fixed payment from the farmer to rent the farmland. The rent amount is pre-determined—it does not change based on crop, yield, or market prices. The farmer pays for all production inputs (seed, chemicals, labor) and assumes all risks (insects, hail, low market prices). On the other hand, the farmer also reaps all the rewards from a favorable year (fair weather, savvy marketing skills, high market prices). The farmer pays the fixed rent payment and keeps the income derived from the land. The farmer keeps any government program payments.").

7. *See* Brianna J. Schroeder, *Crop Share Agreements*, Janzen Agric. L.: SCHROEDER AG L. BLOG (July 11, 2018), https://perma.cc/GJ8X-TY4Y ("Under a crop share agreement, the landlord and tenant agree that rent will be paid in the form of a percentage of income derived from the subject property.").

8. ALEJANDRO PLASTINA ET AL., IOWA STATE UNIV. EXTENSION & OUTREACH, FLEXIBLE FARM LEASE AGREEMENTS 1 (April 2020), https://perma.cc/NC3N-7BJ3 ("The most common type of flexible lease calls for the landowner to receive cash rent equal to a specified share of the gross revenue of the crop. The value of the crop is determined by multiplying the actual harvested yield by the market price available, usually at harvest time. Under this type of lease both price and yield risks are shared between tenant and owner, in the same proportion as the gross revenue. In this respect, it is similar to a crop share lease.").

minimum base rent value.[9]

While scholars have examined a number of legal issues relating to agricultural leases in law review articles, including articles on agricultural leasing and sustainable agriculture,[10] leasing and bioenergy crop production,[11] agricultural leases and bankruptcy law,[12] and agricultural leasing and tax law considerations,[13] an unexplored area in the literature is an analysis of state appellate cases which involve option to purchase provisions (purchase options) in agricultural farmland leases. An option to purchase provides the lessee the ability to exercise the ability to purchase the farmland "according to specific procedures and within a specific timeframe."[14]

This Article makes a contribution to the agricultural law literature by providing a comprehensive analysis of state appellate court decisions which involve option to purchase provisions in agricultural farmland leases. State appellate courts throughout the country have examined many legal issues related to purchase options in agricultural leases that include the statute of frauds,[15] the

9. *Id.* at 2 ("Another type of flexible lease formula specifies a base or minimum rent, plus the owner receives a share of the gross revenue in excess of a certain base value.").

10. *See, e.g.*, Jamie Baxter, *Legal Institutions of Farmland Succession: Implications for Sustainable Food Systems*, 65 ME. L. REV. 381 (2013); Edward Cox, *A Lease-Based Approach to Sustainable Farming, Part I: Farm Tenancy Trends and the Outlook for Sustainability on Rented Land*, 15 DRAKE J. AGRIC. L. 369 (2010); Edward Cox, *A Lease-Based Approach to Sustainable Farming, Part II: Farm Tenancy Trends and the Outlook for Sustainability on Rented Land*, 16 DRAKE J. AGRIC. L. 5 (2011); Alexia Brunet Marks, *Feeding the Eco-Consumer*, 42 VT. L. REV. 567 (2018); Jesse J. Richardson Jr., *Land Tenure and Sustainable Agriculture*, 3 TEX. A&M L. REV. 799 (2016); Carrie A. Scrufari, *Tackling the Tenure Problem: Promoting Land Access for New Farmers as Part of a Climate Change Solution*, 42 COLUM. J. ENVTL. L. 497 (2017).

11. *See* Elise C. Scott & A. Bryan Endres, *Demanding Supply: Re-Envisioning the Landlord-Tenant Relationship for Optimized Perennial Energy Crop Production*, 25 DUKE ENVTL. L. & POL'Y F. 101 (2014).

12. *See* Margaret Rosso Grossman & Thomas G. Fischer, *The Farm Lease in Bankruptcy: A Comprehensive Analysis*, 59 NOTRE DAME L. REV. 598 (1984).

13. *See, e.g.*, Ryan D. Downs, *A Proposal to Amend Section 2032A to Reduce Restrictions on Cash Leasing of Farm Property*, 73 NEB. L. REV. 342 (1994); A.M. Edwards, III, *Section 2032A: Cash Leases and Cessation of Qualified Use*, 10 VA. TAX REV. 731 (1991); Jon J. Jensen, *Limiting Self-Employment Taxation of Actively Farming Landlords*, 78 N.D. L. REV. 441 (2002).

14. *See* LAND FOR Good, LEASE-TO-OWN STRATEGIES FOR ACQUIRING FARMLAND: LEASING FACT SHEET 1, https://perma.cc/KGM6-JTQH (archived April 19, 2020).

15. *See* James H. Stilwell, *When Actions Speak Louder than Words: The Case for a Quasi-Estoppel Exception to the Statute of Frauds*, 22 REV. LITIG. 69, 70 (2003) ("While oral contracts are often valid, legislatures have enacted statutes—commonly known as "statutes of frauds"—that require certain types of contracts to be in writing and signed to be

rule against perpetuities,[16] abandonment,[17] wills and farm leases, parol evidence,[18] operations of a farm in a "farmlike manner,"[19] promissory estoppel,[20] and leasing.

II. THE STATUTE OF FRAUDS AND RULE AGAINST PERPETUITIES

An issue arising in litigation concerning option to purchase provisions in farm leases is whether the statute of frauds will bar enforcement of an option. As the Supreme Court of Wyoming stated in *Mead v. Leo Sheep Co.*, "The statute of frauds was enacted to prevent fraud, not to aid it, and should receive a reasonable interpretation with that end in view. The great majority of courts have always endeavored to keep that principle uppermost in rendering their decisions."[21]

The defense of statute of frauds was asserted by a landowner against enforcement of a purchase option in the 1964 Texas Court of Civil Appeals case of *King v. Brevard*.[22] The *King* case involved a lease of 320 acres of farmland in

enforceable.").

16. *See* Jesse Dukeminier, *A Modern Guide to Perpetuities*, 74 CALIF. L. REV. 1867, 1868 (1986) ("The fundamental policy assumption of the Rule against Perpetuities is that vested interests are not objectionable, but contingent interests are. The Rule therefore limits the time during which property can be subject to contingent interests to 'lives in being plus twenty-one years.'").

17. *See* Eduardo M. Peñalver, *The Illusory Right to Abandon*, 109 MICH. L. REV. 191, 196 (2010) ("As for the law of abandonment, the standard hornbook rule is deceptively simple: chattels may be freely abandoned. A chattel will be deemed abandoned when 'the owner intentionally and voluntarily relinquishes all right, title, and interest in it.'").

18. *See* Michael A. Lawrence, Comment, *The Parol Evidence Rule in Wisconsin: Status in the Law of Contract, Revisited*, 1991 WIS. L. REV. 1071, 1075 (1991) ("Some courts see the rule as insisting that parties use proper form when expressing their agreements, while others see it as a method of protecting an intention to integrate a transaction into one final and complete repository. Such courts believe that a major function of the rule is the prevention of fraud and perjury, which could result from allowing oral testimony that does not correspond precisely with the written agreement and which 'may be the product of faulty memory, wishful thinking, or outright prevarication.' Other courts, doubtful of the trustworthiness of evidence concerning prior oral agreements and fearful that fact-finders will not appreciate the need for stability and certainty in commercial dealings, expect the rule to improve the quality of judicial resolution of disputes. This is done by precluding finders of fact, especially juries, from considering evidence of prior oral agreements.").

19. A boilerplate term in some farm leases requires the tenant to farm the land in a "good and farmlike manner." *See, e.g.*, Quade v. Heiderscheit, 391 N.W.2d 261, 263-64 (Iowa Ct. App. 1986).

20. Promissory estoppel has been defined by one commentator as "[t]he general theory of obligation based on reliance." Phuong N. Pham, Note: *The Waning of Promissory Estoppel*, 79 CORNELL L. REV. 1263, 1264 (1994).

21. Mead v. Leo Sheep Co., 232 P. 511, 515 (Wyo. 1925).

22. King v. Brevard, 378 S.W.2d 681, 683 (Tex. Civ. App. 1964).

Runnels County, Texas.[23] The trial court granted a motion for summary judgment for the landowner on the statute of limitations defense as well as on the basis the option was unenforceable due to the rule against perpetuities.[24]

On appeal, the landowner asserted that the description of the land in the lease itself was insufficient to comply with the statute of frauds and that the lease itself failed to specifically mention who the lessor was in its second paragraph.[25] The *King* court rejected these arguments, noting that to interpret the lease contract in a way that ignores the landowner as the lessor would be to "force a construction of the instrument both unreasonable and ridiculous."[26] In addition, the statute of frauds did not apply due to the doctrine of partial performance,[27] since the lessee entered into possession under the lease, paid consideration under the lease, and performed the requirements of the lease contract.[28] Thus, the trial court's granting of summary judgment to the landowner was reversed.[29]

The validity of a verbal purchase option in a verbal lease was examined in *Powers v. Hastings*.[30] In the *Powers* case, the landowner and lessees entered into a three-year verbal lease with a verbal option to purchase.[31] The lessees made improvements to the property by converting the land into a dairy farm, but within two years had difficulty making the lease payments and subsequently left the property.[32] Within the three-year lease term, the landowner sold the property to a third party, and the lessees then filed suit for breach of the verbal lease and verbal option agreement.[33]

The trial court granted the landowner's motion for judgment notwithstanding

23. *Id.* at 683.

24. *Id.*

25. *Id.*

26. *Id.* at 684.

27. *See, e.g.*, Exxon Corp. v. Breezevale Ltd., 82 S.W.3d 429, 439 (Tex. Ct. App. 2002) ("Under the partial performance exception to the statute of frauds, contracts that have been partly performed, but do not meet the requirements of the statute of frauds, may be enforced in equity if denial of enforcement would amount to a virtual fraud. The fraud arises when there is strong evidence establishing the existence of an agreement and its terms, the party acting in reliance on the contract has suffered a substantial detriment for which he has no adequate remedy, and the other party, if permitted to plead the statute, would reap an unearned benefit." (citation omitted)).

28. *See King*, 378 S.W.2d at 684.

29. *Id.* at 686.

30. *See* Powers v. Hastings, 582 P.2d 897 (Wash. Ct. App. 1978).

31. *Id.* at 899.

32. *Id.*

33. *Id.*

the verdict[34] on the basis the verbal lease and verbal option agreement was not enforceable due to the statute of frauds defense.[35]

On appeal, the Washington Court of Appeals in *Powers* emphasized the finding the landowners on at least six different occasions admitted the existence of a verbal lease and verbal purchase option either through testimony in court or in written materials in the litigation.[36] The Washington Court of Appeals found such evidence removed any concerns regarding the possibility of fraud which underpins the rationale for the statute of frauds[37] and to apply the statute of frauds given the facts of the case would itself "constitute a gross fraud."[38] In addition, the Washington Court of Appeals also found the recorded court testimony of the landowner in court constitutes a sufficient "memoranda" or "writing" under the statute of frauds in order to create a fact question for a jury.[39]

The Washington Court of Appeals in *Powers* also held a fact question existed on the application of the doctrine of part performance.[40] Under Washington law, three elements are required to meet this exception to the statute of frauds: "(1) delivery and assumption of actual and exclusive possession of the land (2) payment or tender of the consideration, whether in money or property or services, and (3) the making of permanent, substantial and valuable improvements, referable to the contract."[41] The Washington Court of Appeals emphasized the lessees actually moved onto the land in question, made payments to the landowner under the lease, and made improvements to it in the form of starting a dairy farm.[42] Therefore, the Washington Court of Appeals reversed the trial court's grant of the landowner's

34. *See* Hojem v. Kelly, 606 P.2d 275, 276 (Wash. 1980) ("A motion for a judgment N.O.V. should not be granted unless the court can say, as a matter of law, that there is neither evidence nor reasonable inference therefrom sufficient to sustain the verdict. All evidence must be viewed in the light most favorable to the party against whom the motion is made.").

35. *See Powers*, 582 P.2d at 899.

36. *Id.* at 901.

37. *Id.* at 903 ("The statute of frauds was enacted to prevent frauds. Here both parties specifically testified as to the existence of an oral lease with an option to purchase defendants' farm and also to its particulars. The feared uncertainty and potential for fraud, inherent in such oral agreements and which is the basis for the statute of frauds' bar against enforcement, are clearly removed by their testimony.").

38. *Id.*

39. *Id.* ("We further hold that the testimony of defendant . . . in open court as to the details of the oral lease with option to purchase constitutes sufficient 'memoranda' or 'writings' to satisfy the statute of frauds, for we view recorded court testimony as equivalent to signed depositions.").

40. *Id.*

41. *Id.*

42. *Id.*

motion for judgment notwithstanding the verdict.[43] The Washington Supreme Court eventually reviewed the matter and not only affirmed the decision of the Washington Court of Appeals, but instructed the trial court to enter a judgment based upon the verdict in favor of the lessees.[44]

The *King* and *Powers* decisions illustrate there is a reluctance for courts to rigidly apply the statute of frauds in situations where the application of the doctrine would lead to unreasonable results. In addition, these cases exemplify that courts may protect lessees through the doctrine of part performance in cases where lessees have utilized the land, paid rent under the lease, and have made improvements to the property.

The Wisconsin Court of Appeals also rejected the application of the statute of frauds defense in *Olson v. Olson*.[45] *Olson* shows sometimes the validity of a purchase option may be litigated among close family members.[46] In *Olson*, a son sought to exercise a purchase option in a lease of a 240-acre farm which was owned by his parents.[47] The parents contended the purchase option was not enforceable since the lease agreement failed to have attached two appendices which were required to be attached to the lease agreement, including the farm's legal description.[48] The parents argued that since the appendices were not attached, the purchase option would be unenforceable due to the statute of frauds.[49]

The trial court granted specific performance under the purchase option since the son conveyed evidence supporting application of the doctrine of equitable estoppel, an exception to the statute of frauds.[50] In Wisconsin, equitable estoppel requires "(1) action or inaction which induces, (2) good faith reliance by another, (3) to that person's detriment."[51] The Wisconsin Court of Appeals in *Olson* upheld the trial court's finding that equitable estoppel applied in the case, noting the lessee son made improvements to the farm, the parents knew of these improvements, and the lessee made the improvements with the understanding that he could eventually

43. *Id.* at 904.
44. *See id.* at 378.
45. *See* Olson v. Olson, No. 00-2080, 2001 WL 379212, at *1 (Wis. Ct. App. 2001).
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *See* Gillespie v. Dunlap, 373 N.W.2d 61, 64 (Wis. Ct. App. 1985) ("Equitable estoppel closely resembles the doctrine of part performance and requires that a substantial performance of an oral contract conveying land can be enforced if the elements of the contract are clearly and satisfactorily proved so that the contract falls within one of the exceptions to the statute of frauds.").

own the farm with the purchase option.[52] The trial court's grant of specific performance was affirmed.[53]

The rule against perpetuities has also appeared in litigation concerning purchase options in farmland lease agreements. The rule against perpetuities was also invoked by the landowner in the *King* case.[54] The Texas Court of Appeals in *King* remarked, "[O]ptions are generally of a limited duration and that when the wording of an option does not compel a construction that the parties intended that the time element should be unlimited, the [c]ourt will not construe an option contract to run for an indefinite time and thus destroy the validity of the option provision."[55] Therefore, the rule against the perpetuities did not apply to invalidate the purchase option.[56]

III. PURCHASE OPTIONS AND ABANDONMENT

While the actions of a lessee may result in a situation where the statute of frauds does not apply—like the *King*, *Powers*, and *Olson* cases—there are situations where the actions, or inactions, of a lessee could create an abandonment or relinquishment of a purchase option in a farmland lease. Pursuant to the doctrine of abandonment, "Rights acquired under a contract may be abandoned or relinquished by agreement, conduct or by a contract clearly indicating such purpose. To constitute an abandonment of rights, an actual intent to abandon must exist."[57]

The Arkansas Supreme Court found an abandonment of a purchase option in *Hicks v. Woodruff*.[58] The Arkansas Supreme Court in *Hicks* focused on the facts that the lessees allowed the landowner to expend over $11,500 in clearing land on the farm and the lessees also allowed the landowner to rent the farm to someone

52. *See Olson*, 2001 WL 379212, at *3 ("[Lessee] testified that he had signed the lease/option agreement with the understanding that the option to purchase guaranteed that he would eventually own the farm. Since 1990, he performed according to its terms and made improvements to the farm amounting to $87,329.47. [Lessee] stated that he would not have made those improvements if not for an enforceable option to purchase the farm. He further testified that he made $6,320.43 improvements to the old farmhouse and would not have done so absent the option. [Lessee] stated that because his parents lived on the premises, they knew of his efforts and the improvements he made. Based upon this testimony, the trial court was entitled to find that [Lessee's] good faith reliance was to his detriment.").

53. *Id.* at *7.

54. *See* King v. Brevard, 378 S.W.2d 681, 685 (Tex. Civ. App. 1964).

55. *Id.* at 686.

56. *Id.*

57. Hicks v. Woodruff, 382 S.W.2d 586, 587 (Ark. 1964).

58. *Id.*

else despite the right of the lessees to have exclusive control of the land in question.[59] As the *Hicks* court noted, "Certainly it was never in the contemplation of the parties at the inception of the farm lease contract for appellees to gratuitously enrich appellants by making extremely valuable improvements on property they had optioned to sell at a fixed price."[60]

In *Styczinski v. Styczinski*, the Wisconsin Supreme Court examined a litigation between two brothers, one brother being the owner of a dairy farm and the other a lessee.[61] The lease agreement at issue in the *Styczinski* case provided that the lessee would receive rent credits against the purchase price of the dairy farm in the event he decided to elect his purchase option.[62] After approximately three years of the dairy farm being in operation, a fire destroyed the barn on the farm as well as several buildings.[63] However, the brothers had a disagreement regarding the future of the farm after the fire and the lessee completely left the farm and moved out of state.[64]

The *Styczinski* court held the lessee could not recover the rent credits, as it was "clear by the terms of the agreement that the payments were rent and were to become credits against the purchase price only if plaintiff elected to purchase."[65] The *Styczinski* court then concluded the lessee had abandoned and relinquished all rights under the lease.[66]

The lessons of both the *Hicks* and *Styczinski* cases are clear: a farmer-lessee who wishes to exercise a purchase option in a farmland lease must actually exercise their rights, duties, and obligations under a lease and must also avoid actions consistent with abandonment. This applies especially with physically leaving a property when the farmer-lessee has a right to possession of the farm.

59. *Id.*

60. *Id.*

61. Styczinski v. Styczinski, 152 N.W.2d 865, 866 (Wis. 1967).

62. *Id.* at 866-67.

63. *Id.* at 867.

64. *Id.*

65. *Id.* at 868.

66. *Id.* ("Therefore, when plaintiff failed to exercise his option within the time specified and admitted that he never affirmatively sought to exercise the option, he relinquished all of his rights under the lease.").

IV. PURCHASE OPTIONS, WILLS AND FARMLAND LEASES

The law of wills sometimes intersects with purchase options in agricultural farmland leases. In the case of *Butz v. Butz*, the Illinois Court of Appeals found an option to purchase agricultural land existed in a deceased testatrix's will.[67] In the *Butz* case, a widow (mother) and her son (as well as the son's wife) entered into a ten-year written lease for agricultural farmland in 1954 in St. Clair County, Illinois.[68] The lease, which was in effect from March 1, 1955 to March 1, 1965, included an option to renew for ten years but was silent on the time or manner to renew it.[69] In addition, the lease provided an ability for the lessees to exercise the purchase option within two years of the date of the lessor's death.[70]

While the lease was still in effect, the lessor executed a last will and testament.[71] On December 13, 1967, more than two years following the expiration of the ten-year written lease, the lessor died.[72] The will left nine living children as heirs and two of her sons were named as executors.[73] After the will was admitted into probate, the lessee (one of the decedent's other sons) served a notice of exercising the purchase option upon the executors (the lessee's own brothers).[74] A dispute among the brothers arose regarding the property and the property was not conveyed to the lessees.[75] A lawsuit for specific performance was filed by the lessees and the trial court granted specific performance of the option.[76] Specific performance was granted by the trial court on the basis that once the lessees held over from the prior lease, the lease was then renewed for another ten years and thus the option survived.[77]

The Illinois Court of Appeals in *Butz* disagreed with the trial court's conclusion that the lease was renewed for an additional ten-year term.[78] The *Butz* court found that the rule which holds a tenant is a year to year tenant[79] when they

67. *See* Butz v. Butz, 299 N.E.2d 782, 786 (Ill. App. Ct. 1973).
68. *Id.* at 783.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 784.
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *See* Note, *Landlord and Tenant—Holding Over*, 13 HARV. L. REV. 218 (1921) ("Tenancies from year to year owe their origin to judicial legislation growing out of the hardships of the estates at will where no notice was necessary to terminate the lease.

hold over following an expired lease extends to the situation where an option also exists in the expired lease.[80] Thus, while the *Butz* court acknowledged that lease terms such as rent, costs, and essential duties could be consulted to establish the terms for the tenancy from year to year, a purchase option would not become part of such agreement.[81]

While the *Butz* court did not find a valid purchase option the lessees could exercise in the situation, it held such an option existed in the landlord's will. The landlord's will specifically stated:

> Since I have entered into an agreement with my son . . . for the sale of my farm located in Shiloh Valley Township, St. Clair County, Illinois to be performed within two years from my death, I direct that my Executors shall carry into effect the terms of said agreement should my son . . . desire to complete and comply with its terms.[82]

Examining this language, the *Butz* court found this language created an option to purchase in the landlord's will that was clear and mandatory, and thus the decree of specific performance was affirmed on this ground.[83]

In *Olson v. Peterson*, the North Dakota Supreme Court examined a case involving a conflict between the terms of a lease and a landlord's will.[84] In the *Peterson* case, the landowner added a codicil to a will devising certain farmland in 1966.[85] Three years later, in 1969, the landowner entered into a ten year farm lease with an individual who was not the beneficiary under the codicil.[86] During the

Accordingly where a tenant enters under a lease void because of the Statute of Frauds, or under an unfulfilled agreement to lease, and yearly rent has been agreed on, admitted, or actually paid, he is held a tenant from year to year in jurisdictions where such tenancies are allowed.").

80. *See Butz*, 299 N.E.2d at 786 ("We feel that for the benefit of both landlords and tenants this same certainty should exist in situations like that presented by the instant case where there is an option to renew a lease but no indication of how or when it is to be done. Whether the option is to *renew* or *extend*, failure of the tenant to give the lessor adequate notice prior to the termination of the lease invokes the provisions of section 12 of the Landlord and Tenant Act giving the landlord the right to take possession without notice and that if the tenant does hold over into the next crop year, the landlord not having sought possession within a reasonable time, he becomes a tenant from year to year . . . ." (emphasis added)).

81. *Id.*

82. *Id.*

83. *Id.* at 787.

84. Olson v. Peterson, 288 N.W.2d 294, 294 (N.D. 1980).

85. *Id.* at 295.

86. *Id.* at 284.

lease, the landlord died.[87] A dispute regarding the ownership of the property arose between the beneficiary under the codicil and the farm tenant after the farm tenant made an offer to purchase the property under the terms of the lease.[88]

The lease included this provision:

> It is further agreed that the Party of the First Part [farm lessee] shall have an absolute option to purchase the demised premises if and when the party of the Second Part [farm lessor] shall decide to sell the same. In the event the Second Party does desire to so sell, the Party of the First Part shall be notified, in writing, and be given 30 days' notice of such intent and during which period they shall notify the Second Party of their intent to exercise such option. This option shall also be binding upon the heirs successors or assigns of Second Party, upon the demise of the Second Party, in which event the First Parties may purchase the demised premises for the sum of $10,000 or the appraised value, whichever is lower, at the time of the demise of the Second Party.[89]

The North Dakota Supreme Court in *Peterson* noted this provision was "far from a model of clarity" and applied the rule of construction that an ambiguous provision is construed against the lessor.[90] Analyzing this provision, the *Peterson* court ruled the provision created an enforceable option to purchase that the farm lessee could exercise.[91] Thus, the interest of the farm lessee trumped that of the beneficiary's under the landlord's will.[92]

The decisions of the Illinois Court of Appeals in *Butz* as well as North Dakota Supreme Court in *Peterson* emphasize the importance of farm landowners to consider the estate planning implications of permitting a purchase option in a farm lease. As the holding of *Peterson* appears to indicate, a landowner who wishes to devise an interest in farm property through a testamentary disposition would be best to avoid inclusion of a purchase option in a farm lease.[93]

87. *Id.* at 295.
88. *Id.*
89. *Id.* at 294-95.
90. *Id.* at 297.
91. *Id.* at 297-98.
92. *See id.* at 298.
93. *See id.*

V. PAROL EVIDENCE AND PURCHASE OPTIONS

Courts have also examined the issue of whether parol evidence can be admitted to assist in the construction of a farmland lease. Parol evidence is evidence outside of the contract not within the text of the contract.[94] The rule typically applies "if a court finds that a written contract represents the complete and final statement of the parties' agreement."[95]

In some cases involving the construction of an option to purchase, parol evidence is admissible. Such was a situation in the case of *Steel Farms, Inc. v. Croft & Reed, Inc.*, decided by the Idaho Supreme Court in 2012.[96] The *Steel Farms* case involved a situation where outside evidence indicated a question as to whether a farm lease with an option to purchase lasted for four years or five years.[97] The trial court excluded evidence regarding this question, finding the lease terms were unambiguous.[98] However, the Idaho Supreme Court in *Steel Farms* overturned the trial court's finding, analyzing the plain language of the lease and option and finding an ambiguity.[99]

Parol evidence was also held to be properly admitted in the 1975 Louisiana Court of Appeals case *Heth v. Moore.*[100] In *Heth*, the lessor and lessee entered into a lease where the lease stated the lease was to last a total of seven years, but the duration of the lease start and end dates lasted for six years, eleven months.[101] This month difference turned out to be essential to resolve the question of how long the option to purchase in the lease lasted.[102] The Louisiana Court of Appeals in *Heth* held the trial court properly admitted parol evidence to determine this question in the case.[103]

94. *See* KENNETH W. CLARKSON ET AL., BUSINESS LAW: TEXT AND CASES 303 (14 ed. Cengage 2018).

95. *Id.*

96. *See* Steel Farms, Inc. v. Croft & Reed, Inc., 297 P.3d 222 (Idaho 2012).

97. *Id.* at 226.

98. *Id.*

99. *Id.* at 229.

100. *See* Heth v. Moore, 316 So.2d 764 (La. Ct. App. 1975).

101. *Id.* at 767.

102. *Id.*

103. *Id.* at 766.

VI. PURCHASE OPTIONS AND OPERATIONS OF FARMS IN A "FARMLIKE MANNER"

As the *Dennis v. McLean* case of the Oregon Court of Appeals[104] and *Harting v. Barton* decisions of the Washington Court of Appeals[105] indicate, some farm leases may include a provision requiring the farm to be operated in a "farm-like manner" or "professional farm-like manner." The intended purpose of these provisions is relatively straightforward: assumedly to protect the overall value of the farm[106] and in some cases, where the lessor has a financial interest in any proceeds of a harvest under the lease, to protect the interest in future proceeds.[107]

The facts of the *Dennis* case involved an alleged breach of a two-year lease of a dairy farm, which included an option to purchase to the lessee.[108] The lessor alleged the lessee's breached a contract provision to "farm the premises in a good and farmerlike manner and care for the animals and their replacements in a businesslike manner consistent with practices generally accepted by good dairy breeders in the community."[109] The lessor filed a lawsuit seeking damages following the expiration of the lease, proffering evidence at trial that the lessees neglected the milk cows, pastures had been overgrazed, and fences, panels, and corrals on the farm had incurred damages.[110]

The lessees counterclaimed, alleging the lessor breached the lease by failing to give them the first right to refuse purchase of the property.[111] The dairy farm had been sold by the lessor to the lessor's son without first offering it to the lessees.[112] At trial, the lessees contended they were not responsible for the damages incurred on the farm as they alleged the damages arose following the sale of the dairy farm to the lessor's son.[113] The trial court eventually granted the lessees' motion for directed verdict, and a jury returned a verdict of $20,000 for the lessees on the counterclaim.[114]

The Oregon Court of Appeals in *Dennis* affirmed the decision of the trial court in granting the lessees' motion for directed verdict on the right of first refusal

104. Dennis v. McLean, 631 P.2d 839, 840 (Or. Ct. App. 1981).
105. Harting v. Barton, 6 P.3d 91, 93 (Wash. Ct. App. 2000).
106. *Dennis*, 631 P.2d at 840-41.
107. *See Harting*, 6 P.3d at 91.
108. *Dennis*, 631 P.2d at 840.
109. *Id.*
110. *Id.* at 840-41.
111. *Id.* at 840.
112. *Id.*
113. *Id.* at 841.
114. *Id.* at 840.

for the purchase option.[115] However, the trial court also did not include in the jury instructions an instruction allowing the jury to take into account the lessees' actual financial ability to purchase the dairy farm by exercising the purchase option.[116] As the *Dennis* court noted, "What [lessor] requested was an instruction that would have permitted the jury to find that [lessees], by virtue of their inability to purchase, were not damaged."[117] The Oregon Court of Appeals in *Dennis* found this to be an error on the part of the trial court and thus remanded the lessees' counterclaim.[118] The *Dennis* decision illustrates that in litigating concerning a purchase option, a landowner can presumably introduce evidence at trial regarding the ability of a lessee to actually have the financial means to exercise the option.[119]

The Washington Court of Appeals case *Harting v. Barton* also involved a fact pattern relating to an alleged breach of a provision to farm the property in a professional farm-like manner.[120] The facts of the case resembled the *Dennis* case in many respects, but in *Harting*, the contract provision included the word "professional."[121] In the *Harting* case, the landowner and lessee entered into an approximately two-and-a-half year lease in which the lessee would pay the landowner a certain percentage of the proceeds of the crop.[122] During the first year of the lease, the *Harting* court indicated the lessee failed to plant a full spring crop and the landowner had to finish seeding the spring crop to avert a further substantial loss.[123] During the following year, the lessee allegedly failed to curb the growth of weeds on the fields, reportedly reducing the crop and diminishing the value of the farmland.[124]

After the landowner filed a lawsuit to rescind the lease, the lessee counterclaimed for specific performance of the lease option.[125] The trial court ruled in favor of the landowner and found the lessee breached the lease.[126]

The Washington Court of Appeals in *Harting* upheld the trial court's decision.[127] A particular issue of important note in *Harting* was the evidence

115. *Id.* at 842.
116. *Id.* at 842-43.
117. *Id.* at 843.
118. *Id.*
119. *See id.* at 842-43.
120. *See* Harting v. Barton, 6 P.3d 91, 93 (Wash. Ct. App. 2000).
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.* at 94.
126. *Id.*
127. *Id.* at 97.

required to establish a breach of the provision to farm the land in a professional farm-like manner, since the lessee argued such a standard was analogous to professional negligence.[128] At the trial, several witnesses, familiar with the customs and practices of farming in the particular county where the land was located, testified in favor of the landowner.[129] The *Harting* court concluded "the professional liability standard for farmers is not comparable to physicians or lawyers" and thus the utilization of a county standard for customs and practices for the interpretation of professional farm-like manner was appropriate.[130]

Harting is very insightful to guide any future decisions relating to the interpretation of the term professional for a contract provision requiring a lessee to farm in a professional farm-like manner.[131] First, professional is not the standard of traditional professional negligence; and second, in establishing the standard, it is more appropriate to utilize testimony establishing a standard at a county, community, or even regional level within a state as opposed to a statewide standard. This is especially so since variations can occur within crops, soil and even climate within a state, as the *Harting* court noted.[132]

VII. PURCHASE OPTIONS AND PROMISSORY ESTOPPEL

The Iowa Supreme Court had an opportunity to examine the application of the doctrine of promissory estoppel in the agricultural context in the *Kunde v. Estate of Bowman* decision in 2018.[133] In the case of *Schoff v. Combined Insurance Co. of America*, the Iowa Supreme Court outlined the following four elements constituting a promissory estoppel claim in Iowa: "(1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding what the promisee was seeking an assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise."[134]

The Iowa Supreme Court decision in *Kunde* arose relating to the circumstances of a lease of farmland in Jackson County, Iowa.[135] The landowner in *Kunde* and lessee entered into a series of leases of the farm over several years

128. *Id.* at 96.
129. *Id.* at 96-7.
130. *Id.*
131. *See id.* at 91.
132. *Id.* at 97.
133. *See* Kunde v. Estate of Bowman, 920 N.W.2d 803 (Iowa 2018).
134. Schoff v. Combined Ins. Co. of Am., 604 N.W.2d 43, 49 (Iowa 1999).
135. *See Kunde*, 920 N.W.2d at 804.

and allegedly the landowner told the lessee during this time that any improvements to the farm could be made since the farm "would be his."[136] The lessee claimed that he incurred approximately $52,000 in costs between labor and adding tillable acres to the property in reliance on a verbal promise that he would be able to purchase the farm.[137] After attempting to exercise the purchase option, the lessee was told by the daughter of the landlord a third-party right of first refusal existed on the farm and the landowner allegedly told the lessee, "I feel like I lied to you."[138]

Three years after attempting to exercise the purchase option, the landowner was placed in a nursing home, the lessee was served with a notice of termination of the farm lease, and the property was sold at a public auction.[139] The lessee then filed an action against the estate of the landowner.[140] At a jury trial, the jury awarded $52,000 to the lessee against the estate on a contract claim, but the district court granted a motion for directed verdict to the estate on the basis that the existence of a contract was not proven due to insufficient evidence.[141]

The Iowa Supreme Court closely analyzed the lessee's promissory estoppel claim and found for the lessee, holding the lessee raised a question of material fact as to whether he made improvements to the farmland in reliance of the alleged promise of a purchase option.[142] The *Kunde* court noted the lease contract did not include an integration clause,[143] which would have been evidence the lease contract contained the exclusive terms of the agreement between the parties.[144] The *Kunde* court closely examined the language in some Iowa caselaw that appeared to have indicated an element of a promissory estoppel claim includes the element of a clear and definite verbal agreement.[145] The Iowa Supreme Court expressed the opinion a "clear and definite promise," not agreement, would be sufficient for a promissory estoppel claim assuming a plaintiff could meet the other elements on the claim.[146] Thus, the Iowa Supreme Court in *Kunde* found the lessee's

136. *Id.* at 805.
137. *Id.* at 806.
138. *Id.* at 805-06.
139. *Id.* at 806.
140. *Id.*
141. *Id.*
142. *Id.* at 809.
143. *See* Dwight J. Davis & Courtland L. Reichman, *Understanding the Value of Integration Clauses*, 18 FRANCHISE L.J. 135, 135 (1999) ("An integration clause is a provision in a written agreement stating that the writing constitutes the entire agreement between the parties.").
144. *See Kunde*, 920 N.W.2d at 809.
145. *See* McKee v. Isle of Capri Casinos, Inc., 864 N.W.2d 518, 532 (Iowa 2015).
146. *See Kunde*, 920 N.W.2d at 811.

promissory estoppel claim could be tried before a jury, stating:

> [Lessee] has offered evidence that [landlord] promised him an option to purchase the land at a price of $3000 per acre; that [landlord] had reason to believe [lessee] would rely on the promise; that [lessee], in fact, did rely on the promise to his detriment; and that injustice may be avoided only by enforcement of the promise.[147]

While the lessee was afforded a chance for relief on the theory of promissory estoppel in the *Kunde* case, this case still illustrates the importance for lessees and landlords generally to memorialize their intent regarding a purchase option in writing in a lease agreement.

VIII. INTERPRETATION, CONSTRUCTION, AND VALIDITY OF PURCHASE OPTIONS IN FARMLAND LEASES

Finally, the validity of an option to purchase in a farmland lease arose in *Dillenburg v. Campbell*, a case decided by the Iowa Court of Appeals in 2010.[148] *Dillenburg* illustrates the relationship between the timeframe to validly exercise an option to purchase and a state statute of limitations. In *Dillenburg*, the plaintiffs had a ten-year lease with a landowner to rent farmland in Union County, Iowa.[149] Seven years into the lease, the landowner died and the estate was placed into probate.[150] The two children of the decedent served as executors of the estate.[151]

Just over two years following the death of the decedent, in 2006, the estate was closed.[152] Following the closing of the estate, the executors quitclaimed[153] the farmland in question to an LLC[154] which they had created to hold title to the

147. *Id.* at 812.

148. *See* Dillenburg v. Campbell, No. 09–0315, 2010 WL 786009 (Iowa Ct. App. 2010).

149. *Id.* at *1.

150. *Id.*

151. *Id.*

152. *Id.*

153. Gregory Michael Anding, Comment, *Does This Piece Fit?: A Look at the Importation of the Common-Law Quitclaim Deed and After-Acquired Title Doctrine into Louisiana's Civil Code*, 55 LA. L. REV. 159, 160-61 (1994) ("The quitclaim deed is of common-law origins. The distinguishing characteristic of a quitclaim deed is that it 'purports merely to convey whatever title to the particular land the grantor may have, and its use excludes any implication that he has good title, or any title at all.' Thus, it transfers only what interest the grantor may have in the property at the time of the conveyance with no implied warranty of title.").

154. Daniel S. Kleinberger, *The LLC as Recombinant Entity: Revisiting Fundamental Questions Through the LLC Lens*, 14 FORDHAM J. CORP. & FIN. L. 473, 473 (2009) ("It is conventional wisdom that within the United States, 'limited liability companies are a

farmland.[155] Approximately three months after the closing of the estate, and one month prior to the expiration of the ten-year lease, the plaintiffs notified the executors of the estate of their intention to exercise the option to purchase the farmland.[156] The executors contended the claim for exercising the option was barred due to the closure of the estate, and the plaintiffs filed suit for specific performance.[157]

Iowa law provides a statute of limitations on claims against a decedent's estate of the later of the following: four months after second publication of the notice to creditors or one month after service of notice by mail if the claimant's identity is reasonably ascertainable.[158] The statute also requires executors provide notice to claimants by mail of a will's admission to probate.[159]

Under the facts of *Dillenburg*, it was not contested whether notice by mail of admission of the will to probate was provided by the estate to the tenants.[160] Thus, the Iowa Court of Appeals upheld the district court's decision that the statute of limitations did not bar the tenants' claim to exercise the option to purchase the farmland.[161] The evidence in the case indicated one of the executors had received several checks from the plaintiffs for rent with the word "option" written in the memo line; thus, it was clear the executors had notice of the option contract between the decedent and plaintiffs.[162] The *Dillenburg* court thus upheld the district court's ruling granting specific performance for the plaintiffs to exercise

conceptual hybrid, sharing some of the characteristics of partnerships and some of corporations.' A more accurate description is that an LLC combines attributes of four different types of business organizations: general partnerships, limited partnerships, corporations, and closely held corporations.").

155. *See Dillenburg*, 2010 WL 786009, at *1.

156. *Id.*

157. *Id.*

158. *See* IOWA CODE § 633.410(1) (2020) ("All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.").

159. *See* Iowa Code § 633.304(2) (2020) ("At any time during the pendency of administration that the executor has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, the executor shall provide notice by ordinary mail to each such claimant at the claimant's last known address.").

160. *See Dillenburg*, 2010 WL 786009, at *2.

161. *Id.*

162. *Id.*

the purchase option.[163] *Dillenburg* thus illustrates the rule that if proper notice of a will in probate is not granted to a farm tenant, the lack of notice will not bar a tenant's claim to exercise an otherwise valid option to purchase in a lease on the basis that the claim is barred by the statute of limitations for claims against an estate.

IX. CONCLUSION

State appellate cases on farmland leasing illustrate the importance of clarity regarding purchase options for farm landowners and farm renters. Clarity in intent, understanding, and the nature of the option to purchase is essential in the lease relationship. Beyond clarity, agricultural producers and practitioners of agricultural law must be aware of the myriad of issues that may arise concerning leasing in each particular jurisdiction—specifically the requirement that certain agricultural leases may need to be in writing to be enforceable.[164] Proper drafting of the lease is essential.[165] Finally, careful consideration of the option to purchase provision for farm landowners and farm renters is essential to provide for future prudent planning in the event of the death of one of the parties to the lease.[166]

163. *Id.* at *3.

164. For example, in the state of Iowa, while oral farm leases of one year are enforceable, those beyond one year would not be enforceable due to the statute of frauds. *See* IOWA CODE § 622.32(4) (2020).

165. *See* Paul Goeringer, *Poorly Drafted Lease Agreement with Option to Purchase Can Be Resolved Against the Drafter*, U. Md. Extension: RISK MGMT. EDUC. BLOG (Aug. 5, 2016), https://perma.cc/H92F-T28L.

166. *See* E.G. STONEBERG & KELVIN LEIBOLD, IOWA ST. UNIV. EXTENSION & OUTREACH, IMPROVING YOUR FARM LEASE CONTRACT 8 (May 2017), https://perma.cc/2EXM-H3KX ("Written leases make the lease terms more definite and leave less chance for disagreement and misunderstanding. People tend to selectively recall only those portions of conversations that reinforce their point-of-view. It protects not only the original parties, but also assignees and heirs in case either party should die, or the farm is sold.").