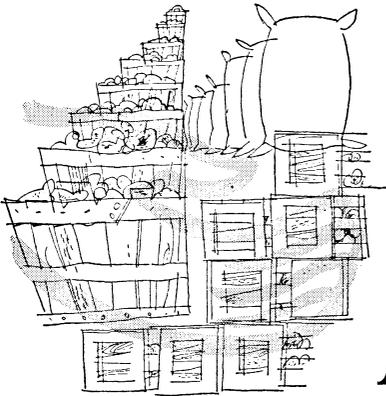


# Ownership



## An understanding

of ownership is basic to the consideration of such problems as ownership transfer, risk bearing, pricing, and financing. Transfer of ownership of farm products from original producer to ultimate user is one of the main functions of marketing. Risks result from the ownership of farm goods during their movement from producer to consumer. They affect farmer and consumer alike by increasing marketing costs. Maintaining fair play and honest dealing in futures trading is vital because future prices are used as base prices in the buying and selling of

actual, physical products. Other types of selling in which the seller puts off for a time some part of his obligation to deliver, transfer title, or perform other duties are contracts for processed fruits and vegetables and forward sales of broiler chickens. The large amounts of financing involved in the ownership of farm products require important decisions with regard to the availability of funds and the benefits and liabilities from their use. Several factors influence the financing of farm marketing.

## Rights and Duties of Ownership

The transfer of ownership of farm products from original producers to ultimate users is one of the main functions of marketing.

Ownership includes rights to possess, control, use, and enjoy property and the benefits from it and to sell or otherwise dispose of it according to law.

Certain duties and liabilities also attach to ownership. Owners must control and use their property so as to avoid unwarranted interference with the legal rights of others. Liabilities include risks of losses, declines in prices, and possible damages due to the inadequate control or the illegal use of the property.

Property may be an object (such as a bale of cotton or a cow), or it may be any kind of an intangible, such as a right to receive or recover a debt, or money, or damages for breach of contract.

Large amounts of funds are involved in the ownership of agricultural products, and an understanding of the role of ownership is basic to the consideration of such problems as financing, risk bearing, ownership transfer, and pricing, all of which (plus others) are involved in marketing farm products.

An important attribute of ownership is the power or ability of the owner to transfer to others all or any part of his bundle of rights, duties, and liabilities. Transfers may take the form of sales or bailments. A general description of the effects of the different forms of transfer may be of assistance in selecting outlets, methods, and agencies through which farm goods are marketed.

**LEGAL TITLE** to agricultural products, together with the entire bundle of rights, duties, and liabilities incident to ownership, may be transferred by means of sale.

The time and manner of such transfers have legal consequences that may be of prime importance to sellers and buyers. Such consequences may be illustrated by sales "f. o. b. (free on board) shipping point" and by sales "f. o. b. destination," or "delivered sales," two common types of contract terms used in the sale of agricultural

products. In sales that specify delivery of the commodity f. o. b. shipping point, the buyer is liable for freight charges and he assumes the risks of loss due to destruction or quality deterioration upon delivery of the goods to the carrier. In sales that specify delivery of the products f. o. b. destination, the seller is liable for freight and retains the risks of loss due to destruction or quality deterioration before the goods arrive at the destination.

Risks of loss due to a price decline, however, are assumed by the buyer as of the time the contract of sale is made, provided the seller substantially complies with terms of the contract.

It is beyond the scope of this chapter to enumerate all the many possible combinations of contract terms, customs, and other factors that may affect the time and manner of transferring property. The general rule is that a contract to sell specified or ascertained goods transfers property in them to the buyer at such time as the parties to the contract intend that it should be transferred. In ascertaining the intentions of the parties, the terms of the contract, conduct of the parties, trade practices, and other circumstances relating to the transaction may be taken into account. If the intentions of the parties are clearly manifest in the contract as, for example, terms stating delivery f. o. b. destination, the terms of the contract are generally decisive with regard to time and manner of passing property.

In the absence of contract terms that clearly show the intentions of the parties, general rules have been formulated for ascertaining the intentions of the parties with regard to the time at which ownership of goods passes from the seller to the buyer. For example, an unconditional contract to sell specific goods, in a deliverable state, passes the property in the goods to the buyer when the contract is made.

A contract to sell specific goods where the seller is bound to do something to the goods, for the purpose of putting them into deliverable state,

does not pass the property until such thing is done. Goods delivered to the buyer on approval, on trial, or on satisfaction, or on other similar terms passes property therein to the buyer when the buyer signifies his approval or acceptance to the seller, does any other act adopting the transaction, or retains the goods without giving notice of rejection within a reasonable time.

Although title to goods may have passed to the buyer, the unpaid seller and also the buyer have certain rights that may affect the incidents of ownership. The unpaid seller has a right to retain goods for the purchase price while he is in possession of them; a right of stopping the goods in transit after he has parted with the possession of them, in the case of the insolvency of his buyer; a right to withhold delivery of the commodity; and a limited right of resale of the goods. These rights are contingent upon the possession of goods by the seller after the contract of sale has been consummated, except if the buyer is insolvent.

Such rights of the unpaid seller restrict the incidents of ownership that normally pass to the purchaser.

The buyer, in the absence of contrary agreement, is entitled to examine the goods before the property is finally vested in him. A refusal by the seller to allow opportunity for inspection generally justifies the buyer in refusing to fulfill the contract.

When the terms of bargaining specify that property is to pass before delivery of the goods, the buyer has a reasonable time after delivery in which to examine the goods. If they are not of the kind and quality ordered, he may then refuse to accept them and thereby rescind the contract.

The buyer is deemed to have accepted the goods when he so intimates to the seller or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has

rejected them. But the acceptance of the goods by the buyer does not generally constitute a release of the seller's liability for defective performance.

OWNERS at various stages of the marketing procedure may transfer a part of the bundle of rights, duties, and liabilities incidental to ownership to intermediate agencies for some special object or purpose. Such transfers may include bailments for sale, transportation, storage, or for other purposes.

Important intermediate agencies employed to sell farm products include brokers, factors or commission merchants, auctioneers, and cooperative marketing associations. The employment of them for the sale of agricultural products usually establishes an agency relationship by means of which certain rights, duties, and liabilities incident to ownership are transferred to the agents and others are retained by the principal.

Brokers, used in the sale of agricultural products, are agents whose job is to bring buyers and sellers together for the purpose of negotiating sales. They usually do not physically handle the goods while the transactions are being negotiated. Generally the right to conclude the sale resides in the principal who retains the complete bundle of rights, duties, and liabilities incident to ownership of the goods. Brokers are paid a brokerage fee or commission for their services and they have no lien on the goods.

Factors or commission merchants are agents who are entrusted with the possession of goods of another for the purpose of selling them. It is their duty to exercise reasonable care, prudence, and diligence in handling, storing, and caring for the goods consigned to them for sale, and they are liable for any losses resulting from a breach of this duty.

In the absence of special directions, if the factor or commission merchant pursues the usual and regular course which has been adopted by custom and experience as proper and prudent

under like circumstances, he usually would not be responsible for any losses.

Although title to goods consigned to factors or commission merchants to be sold remains in the principal until the goods are sold, a factor or commission merchant usually has the right to sell the goods and to collect payment for them in his own name. He has a lien on the goods for advances made by him and for his commission. Such a lien is a general one in that it secures not only the indebtedness due for services performed on the specific goods concerning which the lien is claimed, but also the general balance of the accounts, arising out of transactions in the regular course of the factor's or commission merchant's calling, owed to him by his principal.

An auctioneer is an agent who is authorized to sell to the highest bidder goods of another at public sale, usually referred to as an auction market. As an agent, the auctioneer is obligated to obtain the best price he fairly can for the goods and is responsible for damages arising from his failure to pursue the regular course of business. Special terms or conditions may be inserted in auction sales as in other contractual arrangements but, unless special terms or customs in the bargain or other circumstances show a contrary intention, the property in the goods passes when the bid is accepted without waiting for delivery or payment. Although the auctioneer is not an insurer of the safety of the goods entrusted to him for sale, he is under obligation to keep them with ordinary and reasonable care. The auctioneer has a special property interest in, and a lien upon, goods of his principal in his possession, and upon the proceeds therefrom when sold, for his advances thereon and for his commissions and other charges.

A cooperative marketing association, a business organization usually incorporated, is owned and controlled by the members and furnishes marketing services on a nonprofit basis for the mutual benefit of its patrons.

Cooperative marketing contracts, which define the rights and obligations of members and the association, may be of the purchase-and-sale type or of the agency type. Under a purchase-and-sale contract, title to the products passes to the association on or before the delivery of the products, in accordance with the stated intentions of the parties. An association which operates under an agency contract does not take title to the products marketed. Under either type of marketing contract, the grower surrenders direct control over the sale of the products and the association is obligated to return to patrons the sale price of the products on the basis prescribed in the contract, less authorized deductions.

Marketing contracts ordinarily provide that the association may exercise its sole discretion and judgment in grading, processing, packing, warehousing, financing, and marketing the products of the members and the responsibility for mistakes of management and for loss in collection must be borne by the members. In addition, they usually specify that the association may enjoin a breach of the stipulation to deliver; that it may mortgage, pledge, hypothecate, or otherwise encumber the produce; that it may commingle the products with those of other producers; and that it may make deductions from the proceeds of sales to meet costs of operations.

The agencies employed to transport agricultural products include common and private carriers. A common carrier of goods is one who holds himself out, in the exercise of a public calling, to transport goods for hire, for whomsoever may employ him. A private carrier, on the other hand, is one who undertakes, by special agreement, in a particular instance, to transport goods without being bound to serve every person who may apply for his services. The distinction is important because of the differences in liabilities involved. In either case, the owner usually retains title to the products transported and transfers to the carrier physical

possession along with some other incidents of ownership.

Common carriers are liable for all losses or damages to goods received for carriage, irrespective of negligence and from whatever cause, except losses resulting from the act of God, the public enemy, the act of the State, the act of the shipper, and damages due to the nature of the goods themselves. The carrier may be liable for loss or damage resulting from the excepted causes, if his own negligence or that of his agents, servants, or employees contributed to the loss or damage.

The extraordinary liability of the common carrier attaches when the goods are delivered and accepted by the carrier, and it terminates, generally, when the transportation of the goods is completed and the goods are delivered to either the consignee or to a connecting carrier in accordance with the terms of the contract.

The exception to the general rule of liability that relates to the inherent nature of the products involved is especially applicable to some agricultural commodities. In the absence of negligence, the carrier is not liable for the deterioration of perishable fruits and vegetables in its custody due to natural causes. The carrier is not liable for the destruction of cotton by fire started in the bale at the gin and not discoverable at the time the bale was delivered to the carrier. A carrier of livestock is not liable for their natural tendency to deteriorate or for other loss or damage during transportation due to inherent characteristics of the animal and not to any fault or negligence on the part of the carrier. The measure of the common carrier's duty as to such goods is to exercise reasonable care and diligence to protect them from loss or injury while they are in its custody, taking into consideration the nature of the commodity, the conditions of the weather, and the time necessary to complete the transportation.

The carrier is obligated to guard the goods from destruction or injury by

the elements; from the effects of delays; and from every other source of injury which he may avert, and which, in the exercise of care and ordinary intelligence, may be known or anticipated. Live animals must have food and water, when the distance shipped demands it. Fruits and some other perishable products must be transported with expedition and be protected from frost. It has been held that where a carrier undertakes to transport fruit or dairy products, he may be required to ice them during the journey in order to prevent their destruction. The Interstate Commerce Act, applicable to shipments in interstate commerce, now permits the carriers to provide different tariffs for different services rendered by them. If the shipper fails to take advantage of the special services provided, he cannot hold the carrier liable for losses due to failure to supply heat or refrigeration.

Acts of God that exempt common carriers from liability refer to unusual natural causes such as fire caused by lightning, unusual floods, violent wind and rain storms, and hurricanes or tornadoes which the carrier could not reasonably be expected to foresee. The exemption of the act of the public enemy refers only to acts of the public enemy of the State, the armed forces of another nation with which the State to which the carrier owes allegiance is at war. A carrier is not liable for goods placed in its custody when they have been taken from the carrier, without collusion on its part, by legal process, valid on its face, and when the carrier has with reasonable promptness notified the owner or the shipper. Justice requires that, if loss or damage to goods shipped is due to acts of the shipper, the shipper and not the carrier should be liable.

Liability of private carriers for damage to goods transported is much more limited than that of common carriers. As a general rule, a private carrier is not absolutely liable for damages to goods transported, but

he is under the duty of exercising at least ordinary care and diligence to prevent damage of the goods entrusted to him, and is liable where injury results from his negligence or failure to use due care.

In the case of a common carrier, the owner's right to possession is conditioned. A common carrier has a specific, but not a general, lien for its freight charges on all goods delivered to it for transportation by the owner. The lien, if any, of private carriers by land is based upon agreement with the shipper.

Storage or warehousing plays a vital role in marketing agricultural products. A warehouseman is a person who is lawfully engaged in the business of storing goods for profit. The warehouseman is not an insurer of the goods in storage but is liable for any loss or injury to the goods as a result of his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise. This liability commences as soon as the goods are received by the warehouseman and it continues until the goods are delivered to the owner or the holder of the warehouse receipt.

The warehouseman has a lien for storage and preservation of the goods; for all lawful claims for money advanced for such items as interest, insurance, transportation, labor, weighing, and cooperage; for all reasonable charges for notices and advertisements of sale; and for the sale of the goods where default has been made in satisfying the warehouseman's lien.

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver them to him until the lien is satisfied. The lien is lost by a surrender of the goods.

THE TYPES of ownership of business usually involved in marketing agricultural products include individual proprietorships, partnerships, corporations, and cooperative associations.

Some important legal and economic consequences may flow from differ-

ences in type of ownership of business involved in marketing agricultural products. The differences may have important influences on the volume of capital available, nature and durability of the operating unit, concentration of management and control, and the distribution of responsibilities and liabilities.

In an individual proprietorship, the simplest form of ownership organization, ownership is vested in one individual who supplies his own capital, is sole manager and operator of the business, has unlimited liability (except for certain small exemptions) for claims against the business, and is entitled to all profits and other benefits from his operations. The duration of business under an individual proprietorship is limited by the duration of life or legal competency of the individual owner. Usually the volume of capital is more limited and the operations more restricted for individual than for other types of ownership.

A partnership is a voluntary association, based on contract, of two or more persons to carry on as co-owners a business for profit. Special forms of partnership include joint-stock companies, business trusts, joint adventures, and limited partnerships, among others. Every partner usually is an agent of the partnership for the purpose of its business. The partners are jointly and severally responsible for every debt incurred on behalf of the partnership. Since the dissolution of a partnership usually may be brought about at any time by the expressed will of any partner, by the death or legal incompetency of any member, or by other means, the duration of the association is uncertain.

A corporation is an artificial person or being, endowed by law with the capacity of perpetual succession. The owners may be few or many. The characteristics of a corporation are the concentration of management, transferability of ownership interests, making the perpetual succession a possibility; power to take, hold, and convey prop-

erty in the company name; power to sue and be sued in the company name; and limited liability of owners.

Cooperatives take the form of corporations and unincorporated associations. There are three basic principles that make cooperatives different from other forms of business enterprise. The first is ownership and control of the cooperative by those who use its service. Control is exercised by the owners as patrons rather than as investors. The second is that the provision is made to return to patrons on an equitable basis any amounts over the cost of performing the marketing, purchasing, or other service which the cooperative is set up to perform. The patronage refund is the best known of the devices used by cooperatives to attain operation at cost. The third of the three basic concepts of cooperative business is that of limited returns to share capital. In contrast to other forms of business, the capital of a cooperative is invested by the owners as patrons primarily to provide themselves with needed services. (*L. D. Howell, Charles W. Bucy.*)

## Selling: The Transfer of Ownership

Sale by private negotiation or agreement, the striking of a bargain between a buyer and a seller or their agents is the oldest and commonest way to change title to farm products.

It is used in each of the stages from the farmer's local market to the retail store.

Its general characteristics include face-to-face negotiation between individuals in markets where there is relatively little organization, where the