Installment Land Contracts In Iowa

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INSTALLMENT LAND CONTRACTS IN IOWA

Marshall Harris* and N. William Hines**

INTRODUCTION[1]

Ownership of a farm of his own has been an objective of the American farmer since earliest times. Until about the time of World War I the aspiring young couple could go west and preempt, homestead, or buy with little or no cash a family-sized farm of their own. As the west became settled and competition for land became keen, young farmers found it increasingly difficult to attain ownership—tenancy increased rapidly and many young farmers remained hired men until middle aged, some permanently. The chief ways to become a farm owner were to be born or marry into the right family or to progress up the agricultural ladder from laborer to tenant to owner. Regardless of which procedure was used, credit became an essential element in the acquiring of control over farm land.

When the commercial land credit system failed to meet the needs of farmers, the Federal Farm Loan Act[2] was passed in 1916 to improve credit practices and to increase the amount of credit available. The chief features of the act were amortization of the loan by installment payments, low rate of interest, and long term over which to repay. Subsequent amendments and additions to the act have been designed to keep the credit system in tune with the farmers' needs. Private credit agencies readily accepted innovations that proved responsive to agricultural credit needs.

A hallmark of land credit for farmers during the last half-century has

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[1] For publications dealing with land contract sales of farms see Clark, *Installment Land Contracts in South Dakota*, Part 1, 6 S.D.L. Rev. 248 (1961); Dolson, *A Comparison of Land Contracts and Other Security Devices in Kentucky*, 32 U. Cinc. L. Rev. 435 (1963); Dolson & Zile, *Buying Farms on Installment Land Contracts*, 1960 Wis. L. Rev. 383 (1960); Elefson & Raup, *Financing Farm Transfers with Land Contracts*, Ag. Exp. Sta., Univ. of Minn., Bull. 454 (1961); Hill & Fitzgerald, *The Land Contract as a Farm Finance Plan*, Ag. Exp. Sta., Mich. State Univ., Bull. No. 431 (1960); Krausz, *Installment Land Contracts for Farmland*, Extension Serv., Univ. of Ill., Cir. No. 823 (1960); Loftzgard & Lembke, *Use of the Contract for Deed for Land Purchases in North Dakota*, Ag. Exp. Sta., N. Dak. State, Bull. No. 424 (1960); Mann, *A Comparative Study of Laws Relating to Low-Equity Transfers of Farm Real Estate in the North Central Region*, Ag. Exp. Sta., Univ. of Mo., Bull. No. 782 (1961); Pine & Badger, *Buying and Selling Farms by Contract in Kansas*, Ag. Exp. Sta., Kan. State Univ., Cir. No. 390 (1963).

[2] Federal Farm Loan Act, 39 Stat. 360 (1916).

been flexibility. Flexibility of agricultural credit has been maintained chiefly because of the numerous sources from which it is available. Public agencies (the Farm Credit Administration and the Farmers Home Administration[3]), commercial institutions (chiefly insurance companies, local banks, and building and loan associations), and private parties (men of means and land owners) all have furnished credit to farmers to buy land.

With few exceptions until recently, land credit was available only to those who could make a substantial down payment—usually 50 per cent or more of the purchase price and seldom less than 35 per cent. This high-equity financing generally was associated with mortgage lending. Low-equity credit involving down payments of less than 35 per cent was used sparingly. The installment land contract was usually the security device for purchasing land with a small down payment.

Land contracts were used in the Midwest during settlement times, particularly in the cut-over areas of the lake states, by the railroads in disposing of their land grants and by large speculative land companies in selling their holdings.[4] Later land contracts were used to dispose of properties acquired by lenders at distress sales during the early 1930's.[5] Since World War II, land contracts have enjoyed widespread popularity as a low-equity financing device in the sale of both urban and rural property.[6] In Iowa the use of land contracts increased six-fold during the decade of the 1950's, from 7 per cent to 42 per cent of all farm real estate transfers.[7]

The Problem

Recent trends in the use of credit to finance farm purchases furnish some insight into the nature and magnitude of the problem. Data on the use of land contracts in financing farm sales have become available only recently on a national basis. For the Midwest, they may be summarized briefly as follows:

1. Buyers of farm land are using credit increasingly to finance the transactions.

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[3] Bankhead-Jones Farm Tenant Act, 50 Stat. 522 (1937).

[4] *E.g.*, Springfield & N.E. Traction Co. v. Warrick, 249 Ill. 470, 94 N.E. 933 (1911); Missouri River F.S. & G.R.R. v. Brickley, 21 Kan. 275 (1878).

[5] *E.g.*, Hively v. Graff, 151 Kan. 594, 100 P.2d 685 (1940); Mercer v. Federal Land Bank, 300 Ky. 311, 188 S.W.2d 489 (1945).

[6] See Clark, *supra* note 1; Hines, *Forfeiture of Installment Land Contracts*, 12 Kan. L. Rev. 475 (1964); Rudolph, *The Installment Land Contract as a Junior Security*, 54 Mich. L. Rev. 929 (1956). Land contracts have been utilized for the sale of Iowa farms for over a century. See Notson v. Stephens, 1 Iowa 302 (1848).

[7] See Elefson & Raup, *supra* note 1.

2. Buyers are borrowing an increasing portion of the purchase price, that is, making lower down payments.
3. Sellers are financing about two of five farm sales.
4. Sellers are requiring lower down payments than other lenders.
5. Land contracts are used more frequently by sellers than mortgages —about three to two.
6. Land contracts require lower down payments than mortgages— about one-fifth to one-fourth of the purchase price compared to over two-fifths.[8]

The trends emphasize the present role of low-equity financing through the use of land contracts.

Expectations are that low-equity financing will continue to be prevalent in the future. In fact, the need for low-equity financing will likely become greater over the next two decades. The average value of farms in Iowa increased four-fold between 1940 and 1960.[9] In 1960, the land and improvements of the more efficient Iowa farms averaged in value over $100,000.[10] The end is not in sight. Farms will continue to get larger and more valuable if projected trends are realized. Capital required for livestock, machinery, and operating expenditures is increasing more rapidly than that required to purchase land and buildings. Total capital needed for the more efficient farms of the state may soon reach a quarter of a million dollars, although it is not anticipated that full ownership of this capital will be required.

As these conditions are attained, the problems of financing farm ownership may be expected to become more acute. If credit arrangements cannot be fashioned to meet the evolving situation, family farming as it is known in Iowa may begin to disappear rapidly. Low-equity financing through the use of land contracts may fulfill a part of the need.

The basic problem of the farmer of the future to which this study is addressed is that of financing the ownership of farm land without dissipating too much of his capital in making the initial down payment. A corollary problem of the future farmer is to secure the necessary credit without jeopardizing too much his prospects of attaining unencumbered ownership. From the viewpoint of the seller, the problem is to arrange the sale in such a way that the buyer will be able to meet the conditions specified in the contract and, in case the buyer is unable to perform the contract, to assure a quick and inexpensive method for repossessing the property. Stated more directly, the problem is one of

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[8] Farm Real Estate Market Developments, Economic Research Service. U.S. Dep't of Agriculture 14-20 (Dec. 1962).

[9] Bureau of Census, 1959 Census of Agriculture: Iowa 3 (1961).

[10] *Id.*, at 30.

adapting the provisions in land contracts and adjusting the law governing them to meet the credit requirements of future buyers and sellers of farm land.

The Objectives

The objectives of the study are to find solutions to the problems raised above. More specifically they are:

1. To present and analyze the Iowa law that governs land contracts.
2. To indicate the circumstances under which land contracts are being used.
3. To describe the provisions of typical land contracts in the state.
4. To analyze the strengths and weaknesses of typical land contracts as a means of low-equity financing.
5. To suggest alternative lines of action to make land contracts a more effective means of low-equity financing.

The Methods

To answer these questions, evidence was sought from the following three main sources:

1. The Iowa law governing land contracts as revealed by the statutes, court decisions, and commentaries by legal writers.
2. The provisions of land contracts as shown by a sample of contracts drawn from the state.
3. The circumstances under which land contracts are used as determined by interviews with a sample of buyers and sellers and informed persons.

The first step in the study was to investigate the law governing land contracts. This involved a searching of the pertinent primary and secondary sources of information and preparing a treatise on the present status of the law. Revisions of this statement were made and subject-matter coverage was added from time to time as the study progressed.

The second step was to design questionnaires for use in interviewing sellers and buyers who were using land contracts and to compile a list of questions to guide the discussions with informed persons. Ideas gained through the legal research were used in constructing the questionnaires.

The third step was to interview a random sample of buyers and sellers throughout the state and to record their replies. The discussions with "informed persons" were also appropriately recorded. The interviews were conducted by seven senior students of the College of Law between the summer session and the fall semester. The interviewers were themselves interviewed upon completion of their experience and also made written reports covering general impressions gained from the study.

The fourth step involved the securing of certified copies of the land contracts of the selected buyers and sellers as recorded in the recorders' offices in the respective counties.

The last step was the analysis of the data obtained from the three major sources. The analysis was concerned with each source of data separately and jointly. Appropriate statistical measures were calculated to describe selected conditions and to show certain relations.

A pilot study involving eight contracts was completed in Johnson County to perfect the sampling procedure, to develop the questionnaires that were used in interviewing buyers and sellers, to finalize definitions and concepts used in the study, to prepare instructions for the field interviewers, and to test some of the proposed analytical procedures. The pilot study also furnished insight into legal questions of concern to sellers and buyers under land contracts and into differences between recommended legal procedures and how contracts are consummated in actual practice. It also revealed that essentially all land contracts are recorded, a finding that was verified by subsequent interviews. The knowledge that land contracts are almost always recorded in Iowa was essential in designing the sampling procedure.

The Sample

The sampling procedure for selecting the buyers and sellers to interview and the contracts to analyze involved two major steps: (1) A sampling of the counties within the state to reduce as much as reasonably possible travel and interviewing costs, and (2) a sampling of the land contract transactions within each of the sample counties to obtain the minimum number of contracts consistent with the proposed analysis and limitation of funds.

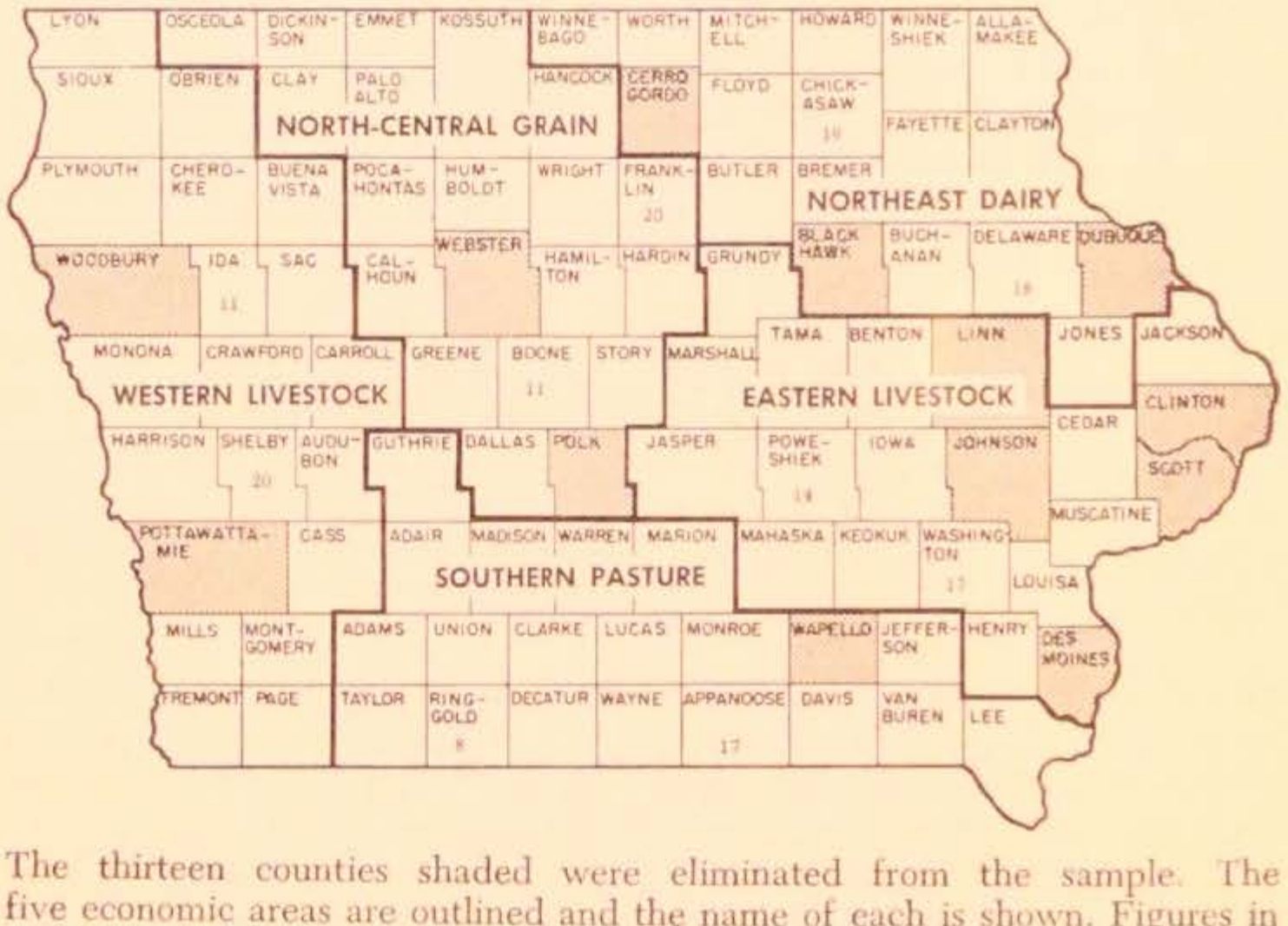
Two arbitrary decisions were made in sampling the counties of the state. First, it was decided to eliminate all counties (13) with cities of 25,000 or more population. Second, it was decided to secure two counties within each of the five economic areas of the state. Except for these two restrictions, a random sample of ten counties was drawn. The counties are shown in Figure 1.

The sampling within each county was accomplished by listing each of the installment land contracts in order of their appearance in the grantor-grantee index in the recorder's office for the time period July 1, 1951, to June 30, 1956. A random sample was drawn of every Nth contract at a rate sufficient to yield the desired number of contracts. From the sample thus secured, all contracts were eliminated on urban properties, on farm land of less than eighty acres, and for less than a five-year term. These determinations were made by reviewing each contract

document in the sample. If this process did not yield enough contracts, an additional sample was drawn following the same procedure.

FIGURE I

Sample of Installment Land Contracts



The thirteen counties shaded were eliminated from the sample. The five economic areas are outlined and the name of each is shown. Figures in the two counties in each economic area show the number of contracts and buyers for each county.

Nature of the Installment Land Contract

An examination of the general character of the installment land contract reveals an external simplicity and internal complexity. On its face the installment land contract is exactly what the label implies—an agreement whereby real property is sold, the purchase price to be paid in periodic installments. The seller agrees to deliver a deed to described real estate when the buyer has paid the specified amount of money. The effect of postponing the final passage of legal title is to create a security interest in the seller. In Iowa, as in most jurisdictions, if the contract so provides, the seller's security interest may be enforced directly against the land in a summary non-judicial procedure. It is the availability of this summary remedy, commonly called a forfeiture, that sets the installment land contract apart from other security arrangements involving land.

Probing a little deeper, it becomes apparent that the installment land

contract is a legal-economic agreement involving much more than purchase price and installment payments. From a legal viewpoint, it also should set forth in appropriate written language all of the arrangements between the parties, including particularly those concerned with financial matters and alternative lines of action in case one party fails to meet fully his commitments. From an economic viewpoint, the contract should contain provisions covering all aspects of the financial arrangements protecting both the security interest of the seller and the equity interest of the buyer, with particular emphasis on those provisions designed to facilitate performance of the contract as originally planned.

Upon still deeper analysis, the installment land contract exhibits something of a split personality. The agreement is at one time a contract of sale, a type of land transfer, and a security arrangement. Much of the legal-economic concern with the installment land contract is directed to an effort to harmonize these conflicting facets of its makeup.

Contract of Sale. Installment land contracts should not be confused with other types of contracts often utilized in the course of a land sale. Contractual options to purchase property are fairly easily distinguishable, but the difference between the installment land contract and the common binder contract is not quite so obvious.[11] The binder contract is the instrument that regulates the rights of the buyer and seller between the time of the initial agreement to terms and completion of the sale. This study is concerned with neither the legal requirements nor economic consequences of such binder contracts.

The installment land contract is subject to the same general legal and economic standards as any other contract of sale. Thus, under the rules of offer and acceptance, the contract of sale is consummated whenever there occurs a meeting of the minds of the parties, regardless of the fact that they intend a later formalization of the agreement.[12] The contract must be supported by consideration, but this is rarely a problem in the normal installment land contract because mutual promises are involved. The troublesome problem is the application of economic standards to the various promises making up the consideration, such as purchase price, installment schedule, interest rate, prepayment privilege, acceleration of payments, and so on.

The agreement of the parties must be definite and certain as to all essential matters, or at least must be capable of being made certain

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[11] See generally North, Van Buren & Smith, Real Estate Financing 191-92 (1928); Hines, *Forfeiture of Installment Land Contracts*, 12 Kan. L. Rev. 480-81 (1964); Note, *Forfeiture and the Iowa Installment Land Contract*, 46 Iowa L. Rev. 786 (1961).

[12] See McGeorge v. White, 295 Ky. 367, 174 S.W.2d 532 (1943); Caldwell v. Cline, 109 W. Va. 553, 156 S.E. 55 (1930).

through resort to established rules of construction.[13] The minimum legal essential terms of an installment land contract include the financial arrangements—purchase price and repayment schedule, a description of the land which identifies the property with reasonable certainty, and a designation of the parties to the contract. It is not essential that all terms of the contract be spelled out at the time the contract is made so long as the means are specified for deciding the matters left for future determination.[14] The minimum essential economic terms of an installment land contract include, among others, financial arrangements that are reasonable and equitable in light of the existing and prospective economic situation, and provisions setting forth the rights and duties of the parties with sufficient clarity and completeness to permit both seller and buyer to make future economic plans with reasonable confidence and to use the property as a basis for additional credit if and when needed.

Transfer of Land. The fact that real property is the subject of the installment contract affects legal rules governing the transaction. Because an interest in land is transferred the contract must be evidenced by a written memorandum to be enforceable under the Statute of Frauds.[15] The installment land contract is a recordable instrument under Iowa law, and the unrecorded interest of a contract purchaser may be defeated by a second sale by the seller to a bona fide buyer.[16] In most land contract situations, however, the buyer will be in possession of the farm and his possession will be notice of his interest which will prevent a subsequent buyer from being a good faith purchaser.[17]

Another and most important ramification of the fact that land is the subject of the contract is the effect on the specific enforceability of the contract. Traditionally, contracts for the sale of an interest in real property have been specifically enforceable in equity.[18] This rule is the source of the doctrine of equitable conversion, which has a profound effect in adjusting the rights and duties of parties to installment land contracts. Under the doctrine of equitable conversion, once an enforceable land contract is consummated, the purchaser becomes the equit-

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[13] See Miller v. Hartford Fire Ins. Co., 251 Iowa 665, 102 N.W.2d 368 (1960); Hartung v. Billmeier, 243 Minn. 148, 66 N.W.2d 784 (1954); Wurweiler v. Cox, 138 Ore. 110, 5 P.2d 699 (1931).

[14] See 3 American Law of Property § 11.13 (Casner ed. 1952).

[15] Iowa Code §§ 622.32-.33 (1962); Federal Land and Securities Co. v. Hatch, 147 Iowa 18, 125 N.W. 837 (1910).

[16] Iowa Code § 558.41 (1962); Bell v. Rierschbacher, 245 Iowa 436, 62 N.W.2d 784 (1954).

[17] See Moore v. Pierson, 6 Cole 279 (Iowa 1858).

[18] See Pazawich v. Johnson, 241 Iowa 10, 39 N.W.2d 590 (1949); Down v. Coffie, 235 Iowa 152, 15 N.W.2d 216 (1944); 5 Williston, Contracts § 1419 (Rev. ed. 1937).

able owner of the property and the interest of the seller becomes a personal property interest—a secured claim for the purchase price.[19] As between the parties, equitable conversion is invoked in allocating the benefits and burdens incident to ownership of the property.[20] With regard to third persons dealing with the contracting parties, the doctrine is utilized to determine the disposition of the interest on death of a party[21] and to ascertain the power of creditors of either party to directly reach the land in satisfaction of debts.[22]

The fact that real property rather than personal property is involved in the transfer under an installment land contract is of little or no economic concern. The basic economic concerns regarding purchase price and other financial arrangements are the same for both real and personal property. The process of valuation, the length of term of the agreement, and other procedural matters may vary, but the concept of a fair market value and a repayment schedule based upon anticipated income are the same.

Security Arrangement. Recognition of the fact that the installment land contract is essentially a device for securing real estate credit is the key to understanding the rights and duties of the parties in carrying out the contract and upon breach. When the land contract seller is viewed as a secured creditor, the buyer as a debtor, and the land as security for the debt (the balance of the purchase price), the installment land contract looks very similar to other types of land-based security arrangements.

In Iowa, the mortgage is the only other security device directly involving the purchase of real estate that is recognized by the law. More accurately, all land-based security arrangements except the installment land contract must be enforced as mortgages in Iowa.[23] Thus, any arrangement such as a deed absolute or a deed of trust intended as security is enforceable only as a mortgage.[24] Similarly, the reservation of a power of sale by the mortgagee is ineffective.[25] The Iowa courts

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[19] Larson v. Metcalf, 201 Iowa 1208, 207 N.W. 382 (1926); Cumming v. First Nat'l Bank, 199 Iowa 667, 202 N.W. 556 (1925).

[20] See Pazawich v. Johnson, 241 Iowa 10, 39 N.W.2d 590 (1949); Flower v. Cruikshank, 77 Iowa 110, 41 N.W. 587 (1889).

[21] See Newberry Co. v. Shannon, 268 Mass. 116, 167 N.E. 292 (1929); Clapp v. Tower, 11 N.D. 556, 93 N.W. 862 (1903).

[22] See Note, *Rights of a Judgment Creditor Against a Vendor or Vendee Following an Executory Contract for the Sale of Land*, 43 Iowa L. Rev. 366 (1958).

[23] Sullivan v. Murphy, 212 Iowa 159, 232 N.W. 267 (1930); Morton Farm Mut. Ins. Ass'n v. Farquhar, 200 Iowa 1206, 206 N.W. 123 (1925).

[24] See Witousek & Co. v. Holt, 224 N.W. 530 (Iowa 1929); Hinman v. Sage, 208 Iowa 982, 221 N.W. 472 (1928); Fort v. Colby, 165 Iowa 95, 144 N.W. 393 (1913).

[25] See Iowa Code § 654.1 (1962); Varner v. Interstate Exch., 138 Iowa 201, 115 N.W. 1111 (1908).

are extremely vigilant in guarding against attempts to circumvent a debtor's right under mortgage law to redeem his real property transferred as security.[26]

Except in case of default, whether the security instrument is drafted as a mortgage or a land contract may be of no economic concern. The purchase price, down payment, interest rate, repayment schedule, arrangements as to taxes, insurance and upkeep of the property, and other similar rights and duties may be the same whether the security arrangement is a mortgage or a land contract. In fact, they are similar as a general rule except that the down payment is usually significantly lower under an installment land contract than under a mortgage that calls for repayment on installments.

The principal burden of the insistence upon classifying all security arrangements, except land contracts, as mortgages is the requirement that all mortgages be foreclosed by a statutory special execution sale from which a one-year period of redemption is provided.[27] Installment land contracts, on the other hand, may be forfeited summarily upon thirty-day notice of default.[28] The distinction between the rights of a mortgagee and contract seller in realizing upon their respective security interests is well established in Iowa.[29]

Forfeiture is the attribute that gives vitality to the installment land contract. Forfeiture makes economically feasible the association of a very low down payment with other desirable features of an installment transaction. It is the association of a low down payment and the forfeiture provision that makes an installment land contract both a legal and an economic instrument. The unique legal-economic nature of installment land contracts is the focus of this study.

ENTERING INTO A LAND CONTRACT

Some of the conditions surrounding the negotiation and completion of the land contract were studied. They include the characteristics of the buyers and sellers, the experience of buyers with the use of land contracts, who suggested a land contract, why a land contract was selected, how many buyers had tried to obtain mortgage credit, who prepared the contract, to what extent earnest money agreements were used, representations about the farm, parties to the contract, and recordation.

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[26] See Brown v. Hermance, 233 Iowa 510, 10 N.W.2d 66 (1942); McGuire v. Halloran, 182 Iowa 209, 160 N.W. 363 (1916).

[27] Iowa Code § 628.3 (1962).

[28] Iowa Code § 656.2 (1962).

[29] See Westerman v. Raid, 203 Iowa 1270, 212 N.W. 134 (1927); Downey v. Riggs, 102 Iowa 88, 70 N.W. 1091 (1897).

Characteristics of Buyers and Sellers

To understand why the distinguishing features of low down payment and forfeiture meet the peculiar needs of an increasing number of sellers and buyers of farm land, some information was obtained in the field study on the characteristics of those who used land contracts. Information elicited included age, occupational experience, other property holdings, and relationship to the other party.

The Buyers. The buyers were older than anticipated and the large number of buyers who were fifty years or older was surprising. The average age of all buyers was 40.7 years, which was almost as old as the average of all Iowa farmers of 47.7 years. Although half of the buyers were under forty years of age, only a small proportion were younger than thirty years and 18 per cent were over fifty years of age. The age group containing the most buyers was the 35-39 year group with thirty-four buyers. The age distribution was as follows:

Range in Years	*Number of Buyers*
Under 25	2
25-29	13
30-34	28
35-39	34
40-44	28
45-49	21
50-54	12
55-59	13
60 and over	3
	154

The average buyer had only about ten to fifteen years from date of purchase before he would pass his maximum physical vigor and normally would be reducing his farming operations or hiring someone to do a part of the labor that he formerly performed. Many of the buyers over fifty years of age had already reached that stage.

In many cases the impression was strong that the buyer was forced into purchasing a farm by economic necessity. The tenant farmer who could not renew his lease or obtain another tenancy either bought a farm or quit farming. In many cases, the farmer's lack of training for nonfarm employment effectively precluded a free choice in this matter. The possibility of obtaining nonfarm work was remote for most buyers, particularly those over thirty-five years of age.

The data reveal that on the average the buyers who were relatives of their sellers were younger than those who were only friends or were strangers. Although the differences among the averages were not large —relatives, thirty-eight years; friends, forty-three years; and strangers, forty-two years—the differences were statistically significant. The older

buyers tended to have accumulated a larger net worth and to have made a larger down payment in proportion to the purchase price.

Although by experience many buyers were equipped only for farming, the 154 buyers in the sample attained the status of farm owner after many combinations of work experience. Occupational experience from age fourteen to the attainment of ownership included working on the home farm as an unpaid family laborer, working as a farm hired hand, joint operation with father, working at nonfarm or off-farm employment, military service, and farming as a tenant.

The buyers averaged 22.8 years of farm expeience. About one-third (32.7 per cent) of the average buyer's occupational experience was spent as a farm tenant and about one-fourth (26.7 per cent) on the home farm before the buyer began working for himself. The average amount of time spent in each occupational experience from fourteen years of age to the date of the interview may be summarized as follows:

	Average Years		*Buyers*
Experience	*Number*	*Per cent*	*Reporting*
On father's farm	7.1	26.7	128
Farm hired man	1.9	7.1	37
Father-son agreement	.4	1.5	7
Military service	1.0	3.8	42
Off-farm work	2.8	10.5	46
Farm tenant	8.7	32.7	112
Farm owner	4.7	17.7	154
Before buying this farm	(2.2)	(8.3)	25
After buying this farm	(2.5)	(9.4)	154

Land-contract financing, in Iowa, during the period under study served three types of buyers: (1) Farm reared persons who attained ownership via the tenancy route, 61.1 per cent; (2) farm reared persons who had not been a tenant before becoming an owner, 22.7 per cent; and (3) persons not reared on a farm, including three with no farm experience whatsoever, 16.2 per cent.

The recent trend among many credit agencies is to give increasing weight to personal characteristics of the borrower, particularly their ability to manage a farm. Yet, nearly one-third of the land-contract buyers did not have independent farm management experience as tenant operators prior to buying their farms, and a fourth of these were not even reared on a farm. The advisability of a person without experience in farm management buying a farm with a low down payment is subject to question from the viewpoints of both seller and buyer. One of the weakest links in the installment land contract chain is the lack of farm management experience of such a large proportion of the buyers.

Most of the buyers (133) did not own another farm at the time of buying the land contract. Of the twenty-one buyers who owned addi-

tional land, seventeen owned one other farm, two owned two other farms, and two owned three or more other farms.

Each buyer was asked whether he was a native of the community in which his farm was located. Almost two-thirds of them (99) answered in the affirmative. Of the other fifty-five, six were from another place within the county, forty were from outside the county but within Iowa, while nine buyers were from some other state. Many of the forty-nine buyers from outside of the county in which they purchased their farms stood a good chance of experiencing organizational and managerial difficulties during their first few years as new owners.

Only one buyer of five (30) indicated that the seller was his parent; and one of ten (16) said that he bought the farm from an in-law or other relative. Thus, 30 per cent (46) of the farms were bought from relatives while 70 per cent (108) were bought from nonrelatives. Only one of four (36) reported that the seller was a friend while almost half (72) of the buyers reported that they did not know the sellers before buying the farm. Analysis was made to determine whether kinship between buyers and sellers had an influence on the terms and conditions of the contracts. Some interesting relations are shown.

Buyers who bought from relatives tended to achieve ownership at an earlier age, to make smaller down payments, to pay lower rates of interest, and to repay over a longer term of years. Those who bought from relatives knew less about the law on land contracts and the content of their contracts. Their contracts also covered less completely and less clearly all of the items that might well be in a land contract.[30]

The Sellers. The average age of the sellers who were interviewed was sixty-five years, ranging from forty-eight to eighty-seven years. This was about twenty-five years older than the buyers. Most of the sellers (87) were farmers—fifty-nine retired, twenty-eight active. Next in order of frequency were business and professional men, twenty-nine; widows, nineteen; and miscellaneous, nineteen.

The sellers who were active and retired farmers charged lower rates of interest than did widows and business and professional men. This association was probably due to the fact that active and retired farmers tended to sell their farms to relatives, while widows and business and professional men tended to sell their farms to friends and strangers.

Many of the sellers did not depend entirely upon annual payments under their land contracts for current family living expenses. Almost half (76) of them owned one or more other farms, and one of eight owned some other business. Of those who owned other farms, about

[30]See Statistical Appendix, p. 121 *infra*.

half owned only one other farm, a fourth owned two farms and the other fourth owned three or more farms.

Practically all of the land-contract transactions were between two private parties. Only one in fifteen of the land contracts involved an individual buyer and a nonprivate seller—of which seven were estates, two were corporations, and one was a partnership. All of the buyers were private individuals.

Experience with Land Contracts

Typical buyers were having their first experience with installment land contracts. Only eighteen of them had used a land contract previously. For many buyers this was the big financial transaction of their life; it could make or break them as farm operators.

About three of four of the thirty-three sellers interviewed likewise reported no previous experience with a land contract. Seven sellers had sold land by installment contracts previously—two of them twice each and one (a banker) had used six land contracts. A larger proportion of sellers than buyers had previous experience with land contracts, but for most of them the present sale was their only experience.

Unfamiliarity with the instrument and the lack of opportunity to learn by experience make it desirable for sellers and buyers to gain as much knowledge as is reasonably possible about land contracts before becoming committed to the agreement. An attorney consulted in such a situation should take pains to explain to his client the legal consequences of various provisions in the contract.

Who Suggested a Land Contract

In less than a fourth of the cases the buyer alone suggested the use of a land contract. A sale on contract was usually suggested by the seller or some third party, according to reports made by buyers. Those who suggested the use of a land contract may be summarized as follows:

Who Suggested	*Number of Contracts*	*Who Suggested*	*Number of Contracts*
Sellers	62	Real Estate Brokers	17
Buyers	36	Lawyers	4
Sellers and Buyers	30	Others	5
			154

Why Land Contract Was Selected

A question was raised with each buyer as to the chief reason a land contract was selected rather than a mortgage. The reactions of the buyers point specifically to one major characteristic of typical land con-

tracts, low down payments, as their reason for preferring this type of transaction. The replies can be classified as follows:

Why Selected	*Number of Contracts*
Lack of cash for high down payment	62
Seller wanted tax advantage of low down payment	32
Combination of the two preceding	10
Seller wanted to keep money invested in farm	9
Lower rate of interest	3
Miscellaneous reasons	38
	154

A low down payment may be advantageous to both buyers and sellers. Typical buyers did not have enough assets to make a high down payment without depleting seriously their operating capital. Typical sellers wanted a low rather than a high down payment to realize an income tax advantage by spreading their taxable gain over a number of years. Because the interests of the parties usually were not in conflict, negotiation on whether to use a land contract or a mortgage was unnecessary. Insofar as the buyers were informed, only two sellers raised any questions or objections to the use of land contracts.

Of the 154 buyers, nine took over land contracts from other buyers. Of these nine, seven took over the contract under the same terms as the original buyers, while in two cases a new contract was drafted but substantial changes were not made in its terms and conditions. The original buyers gave up their contracts for a number of reasons, including payments too hard to meet, poor health, did not like farming, wanted to buy another place, wanted to move back to home state, and the original buyer was a straw man to hold the deal until the real buyer returned from the armed service.

The question was asked of the sellers: Why was a land contract used rather than selling under a mortgage or having the buyer finance the purchase elsewhere? The reasons given were that sellers wanted to help the buyer, the buyer could not make a down payment large enough to use a mortgage, a land contract was the only way the buyer could get started, the buyer was a son, the buyer needed to save capital to invest in machinery and livestock, and the seller sought to reduce capital gains income tax.

Availability of Mortgage Loans. Only thirteen of the 154 buyers reported that they had tried within two years prior to buying under a land contract to obtain a mortgage loan to purchase the same or a comparable farm. These buyers had contacted the Farmers Home Administration, insurance companies, loan companies, banks, the Federal Land Bank, and the seller.

The reasons why the buyers under land contracts did not negotiate a mortgage loan, according to their replies, were: The down payment required was too large, could not obtain the loan, the land contract was more attractive, the term was too long, the seller backed out, no farm was available nearby, and had to wait too long to obtain the loan.

Who Prepared the Land Contracts

Most of the land contracts were drafted by lawyers, but 27 per cent were drafted by nonlawyers. The distribution was as follows:

Who Prepared	*Number of Contracts*	*Who Prepared*	*Number of Contracts*
Seller's lawyer	63	Real estate broker	27
Mutual lawyers	42	Mutual banker	9
Buyer's lawyer	8	Seller (and others)	5
Lawyers	113	Nonlawyers	41

The failure of many buyers to consult a lawyer at any stage in negotiating the contract is worthy of note. In reply to the question: When did you consult your lawyer?, almost half of the buyers (67) replied that they did not consult a lawyer at all; sixteen consulted a lawyer at the signing of the contract or soon thereafter; and only seventy-one used a lawyer in any way during the preparation of the contract. Thirty-nine of the buyers reported that they depended upon the seller's lawyer to have all of the papers in proper order. Two-thirds of the buyers knew that the seller had a lawyer during the drafting, twelve became aware of the seller's lawyer at or soon after the signing, and thirty-nine buyers never knew whether the seller had legal counsel.

These data reinforce the conclusion that more attention needs to be given to assuring the use of competent legal advice in drafting land contracts. Three outstanding characteristics of the situation surrounding the preparation of land contracts are: The heavy dependence on sellers' lawyers, the reliance on mutual lawyer, and the large proportion of contracts drafted by nonlawyers.

Inequities are likely to arise when a party who is poorly informed of his rights and responsibilities enters into a contract without legal advice. This situation is general among sellers and buyers of farm land, yet in almost half of the contracts surveyed, one of the parties was without legal counsel. The seller's attorney drafted sixty-three of the contracts and the buyer's lawyer drafted eight. Buyers in particular are vulnerable, for if they depend upon the sellers' lawyers their interest may not be protected adequately.

Also of concern is the number of cases in which one attorney served

both parties to the contract. Whether the representation of both parties by a mutual attorney was consistent with the strict letter of the sixth canon of legal ethics was not determined. Representation of both parties to the contract is proper only if all of the pertinent facts are divulged to both parties and the parties consent to the arrangement. Of course, contracts between certain related parties frequently are prepared by the "family lawyer." It would seem strange indeed for a father to employ one lawyer and a son to secure the services of another to draft their land contract. But the attorney asked to mutually represent two strangers should evaluate the situation judiciously to assure that such employment would not be unprofessional. In cases where one attorney handles the contract, whether he represents one party or both, an effort should be made to assure that each party understands the nature of the contract relationship and the legal effect of the contract provisions.

The major concern, however, is with the forty-one land contracts that were drafted by nonlawyers—tweny-seven by real estate brokers, nine by mutual bankers, and five by sellers. The real estate brokers reportedly had some help in drafting the agreements—from the broker's lawyer, his secretary and others who had prepared legal forms. But it was the opinion of the buyer that the person who exerted the most influence on the content of the contract was the real estate broker himself.

Both sellers and buyers should consider the advisability of securing the services of their own lawyer to advise them concerning the contract. They should have an attorney view contracts drafted by nonlawyers before they are signed. Professional counsel is particularly important where the contract must be specially tailored to the situation of the parties.

Binder Contract

An earnest money agreement, binder contract, or option to purchase was used by twenty-four of the buyers. These were short-term agreements to permit time for final negotiation and completion of the land contract. Delays might arise if one of the parties does not reside in the county, some known problem about the abstract demands investigation, or the buyer needs additional time to get the required down payment.

Typically, the land contract can be drafted in a short time after the seller and buyer have reached agreement on purchase price, interest rate, and repayment schedule. Opportunity to check the abstract of title and to make other investigations may be provided for in the contract. If a substantial lapse of time before completion of the contract is likely or if there is more than one prospective buyer, the use of an earnest money agreement appears particularly advisable.

Representations About the Farm

During negotiation of the contract the seller naturally tries to present the farm in the most favorable light and makes flattering statements about it. The buyer usually tries to discover any shortcomings or deficiencies of the farm. Statements made by the seller or his representative may be questioned later. If the farm does not turn out to be all that the buyer expected, representations made by the seller or his agent may be grounds for rescission of the contract or an action for damages.

Although the rule of "buyer beware" generally applies to land contracts, the seller is not relieved from liability for fraudulent misrepresentations concerning the farm.[31] A seller's misrepresentations are actionable in Iowa if he falsely represents a material fact which he knows to be untrue, and the buyer reasonably relies on the misrepresentation to his injury.[32] Generally, the seller is not responsible for misstatements of law;[33] for merely voicing his opinions regarding the land,[34] or for failing to perform a later act which he had expressed an intention to do.[35]

To be fraudulent, a misrepresentation must concern a fact material to the transaction. Examples of material facts in a land contract are size of farm, quality of soil, current or past incomes, cost of the property to the seller, and privileges and encumbrances appurtenant to the land. Ordinarily a statement by the seller concerning the value of the land is regarded as a mere opinion and will not support a charge of fraud.[36]

Absolute certainty of the untruth of a statement is not required for an actionable misrepresentation. Fraud may be found where the party making the misrepresentation (1) has actual knowledge of the falsity, (2) states it in a context which infers actual knowledge of the fact when he has no such knowledge, or (3) is in a special situation or possesses special means of knowledge such as to make it his duty to know the veracity of the statement.[37] Fraud may also be committed by suppress-

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[31] Cohail v. Langman, 204 Iowa 1011, 216 N.W. 765 (1927) (rescission).

[32] Wycoff v. A & J Home Benevolent Ass'n, 254 Iowa 653, 119 N.W.2d 126 (1962); Lamasters v. Springer, 251 Iowa 69, 99 N.W.2d 300 (1959).

[33] Schneider v. Schneider, 125 Iowa 1, 13-14, 98 N.W. 159, 163 (1904); Doshiel v. Harshman, 113 Iowa 283, 292, 85 N.W. 85, 88 (1901).

[34] Boysen v. Petersen, 203 Iowa 1073, 211 N.W. 894 (1927). *Cf.* Smith v. Smith, 206 Iowa 606, 219 N.W. 512 (1928) (fraud if opinion amounts to a declaration of fact).

[35] Lamasters v. Springer, 251 Iowa 69, 99 N.W.2d 300 (1959) (intention must be not to perform).

[36] Bossingham v. Syck, 118 Iowa 192, 91 N.W. 1047 (1902).

[37] Davis v. Central Land Co., 162 Iowa 269, 275, 143 N.W. 1073, 1075 (1913). See also Hayward, *Negligent Misrepresentations and the Iowa Requirement of Scienter in Fraud*, 36 Iowa L. Rev. 648 (1951).

ing the truth about a material fact.[38] Where a fiduciary relationship exists between the parties to the contract, the standard for evaluating the character of representations is appreciably higher.[39]

The seller may seek to protect himself by inserting in the contract a provision that purports to relieve him of responsibility for any statements made during negotiations. Provisions found in the contracts contained one or more of the following: (1) That the buyer has inspected the premises (and improvements) personally, (2) that he buys them in their present conditions, (3) that no statement or representation of the seller, or his agent, whether written or oral, except those expressed in the contract are a part of the sale, and (4) that the buyer is relying entirely on his own judgment and not upon any statements or representations of the seller or his agent.

An examination was made to determine if such provisions were related to who prepared the contracts or kinship between seller and buyer. The use of such provisions seemed to be influenced by who prepared the contract. Contracts prepared by real estate agents and bankers contain a higher proportion of such provisions than contracts prepared by attorneys or the parties themselves. No correlation was discovered between the kinship of the parties and the frequency of the disclaimer provisions.

The inclusion of such a disclaimer provision does not relieve the seller of responsibility for fraudulent misrepresentations. The law will not enforce a contract provision immunizing a party from his own fraud.[40] If such a provision has any value, it is to alert the buyer to make a reasonable investigation of the property—a duty he has in any event.

Parties to the Contract

In the land contract, as in all sale contracts, it is important to make sure that any person who has an interest in the property is effectively made a party to the contract. Ascertainment of the marital status of the seller is of particular importance. In Iowa a surviving spouse has a one-third interest in any real property owned by the other spouse during

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[38] Wykoff v. A & J Home Benevolent Ass'n, 254 Iowa 653, 119 N.W.2d 126 (1962); Foreman v. Dugan, 205 Iowa 929, 218 N.W. 912 (1928) (partial answer may constitute fraud).

[39] State Bank v. Brown, 142 Iowa 190, 119 N.W. 81 (1909). See also Davis v. Central Land Co., 162 Iowa 269, 275, 143 N.W. 1073, 1075 (1913).

[40] United States v. United States Cartridge Co., 198 F.2d 456 (8th Cir. 1952), *cert. denied*, 345 U.S. 910 (1953); Bryant v. Troutman, 287 S.W.2d 918 (Ky. 1956) (land contract); Robinson v. Tate, 34 Tenn. App. 215, 236 S.W.2d 445 (1950).

the marriage and conveyed away without his or her consent.[41] Thus, if the seller's spouse does not sign the contract and survives the seller, the buyers' interest may be effective for only two-thirds of the land.

A similar matter that should be given close scrutiny is the authorization of a person signing in a representative capacity. If a guardian, trustee, corporate officer, personal representative, agent, or the like who signs the contract does not have the power to make the sale or bind the person he represents, the buyer may receive less than he bargained for. Care also should be exercised to assure that the names and signatures of the parties are consistent with other instruments in the title record and are uniformly written within the contract.

The characteristics of the sellers and buyers of the 154 land contracts studied as evidenced by the contracts may be stated as follows:

Characteristic	*Number of Contracts*
Specified as seller (party of the first part)	
One person	43
Husband and wife	100
Other multiples	11
Specified as buyer (party of the second part)	
One person	33
Husband and wife	115
Other multiples	6
Spousal interests	
Husband and wife signed	105
Sellers specified as unmarried	23
Sellers not specified as unmarried	26
Joint tenancy specified	
Seller	1
Buyer	25

Whether due care was taken to secure the signatures of all parties with a legal interest in the properties cannot be determined from the contracts studied and the interviews. Most of the twenty-six sellers, who were not specified as unmarried, were officers of corporations, executors, administrators, trustees, and attorneys in fact. No evidence directly indicated that a spouse failed to sign the contract. It was also not determined whether all parties signing in a representative capacity were authorized to enter the contract.

Names of persons invariably appeared in two places on the contracts —in the first paragraph where the parties were named and at the end where the contract was signed. The names should be identical in each and every place. Differences were observed in about one-fourth of the contracts. The variations may be characterized as follows:

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[41] Iowa Probate Code § 238(1) (1963).

Kind of Variation	*Number of Variations*
Added an initial	21
Dropped an initial	5
Changed name to initial	2
Changed initial to name	1
Changed initial	1
Added name	3
Changed name	1
Changed name to abbreviation	2
Added a person	5
Added or dropped "Mrs."	2
Spelling differed	10
	53

Joint Tenancy. Joint tenancy may cause land contract parties concern and unforeseen problems. Evidence from several sources indicates that an increasing proportion of Iowa farms are being held by husband and wife in joint tenancy with right of survivorship. If the buyer wishes to receive the title to the land in joint tenancy, he should probably so specify in the contract. If the contract is made out to the buyer and his wife as joint tenants with the right of survivorship, the equitable title will be regarded as held in joint tenancy. Thus, if the buyer should die, his spouse would succeed to the entire interest in the land. If the contract creates one form of co-ownership and the deed is executed in another form, presumptively the deed controls.[42]

If the sellers hold the property as joint tenants, a sale by land contract works a severance of the joint tenancy and thereafter the sellers' interests are held as tenants in common.[43] This rule should alert the buyer to the fact that a deed from the survivor of two persons who owned the property as joint tenants at the time of sale may not be sufficient to pass the entire property. Because the joint tenancy was converted into a tenancy in common by the sale, to get clear title, if one of the parties die, it would be necessary for the buyer to obtain a deed from the estate or the heirs of the first to die.[44] Apparently if the contract specifically provided that the co-tenants are to receive the payments under the contract with the right of survivorship, the joint tenancy is preserved.

The rule that a sale on contract severs a joint tenancy also has subtle implications in case of forfeiture. If the sale destroys the survivorship feature, does a subsequent forfeiture restore the joint tenancy? Apparently not. A co-ownership in Iowa is presumed to be a tenancy in com-

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[42] *Cf.* Swensen v. Union Central Life Ins. Co., 225 Iowa 428, 280 N.W. 600 (1938).

[43] *In re* Baker's Estate, 247 Iowa 1380, 78 N.W.2d 863 (1956).

[44] MARSHALL, IOWA TITLE OPINIONS AND STANDARDS § 20.3(D) (1963).

mon by statute.[45] Further, a joint tenancy may be created only where such intent is clear.[46] It would seem the mere exercise of a contract remedy would not be such an act. However, if the contract preserves the joint tenancy by subjecting the payments to a survivorship feature, arguably upon forfeiture the property is repossessed as joint tenants. The relationship between joint tenancy and land contract forfeiture is at best unclear at the moment in Iowa. Both buyers and sellers are well advised to exercise caution in relation to property held in joint tenancy lest they incur unexpected consequences.

Recording

In the field study an effort was made to discover any unrecorded land contracts by inquiring in each community what local farms were believed to have been purchased on contract. Not a single unrecorded contract was found. The regularity with which land contracts are recorded in Iowa is in striking contrast with the practice in some other midwestern states.[47] Apparently the universality of land contract recording is best explained by the right granted by statute to record the evidence of forfeiture.[48] It is difficult in jurisdictions without such a statute to interject a forfeiture into the chain of title, so to avoid title clearance problems the contracts simply are not recorded.[49]

Many buyers either did not know or did not give a reason why the contract was recorded. The reasons given by the buyers as to why the contracts were recorded may be summarized according to whether the recording was at the buyer's or seller's direction:

Reasons	*Buyer's Direction*	*Seller's Direction*
Homestead tax exemption	40	6
Good business	38	11
State law requires	14	6
Lawyer advised it	10	—
Miscellaneous reasons	15	18

[45] Iowa Code § 557.15 (1962).

[46] See Wood v. Logue, 167 Iowa 436, 149 N.W. 613 (1914); Iowa Code § 557.15 (1962).

[47] In Kansas, for example, it is estimated that only 10 per cent of all land contracts are recorded. See, Traylor, *The Land Installment Contract as a Credit Instrument in Farm Real Estate Markets in Kansas*, Master's Report, Kansas State Univ. 18 (1959).

[48] Iowa Code § 656.5 (1962).

[49] See generally Note, *Installment Contracts for the Sale of Land in Missouri*, 24 Mo. L. Rev. 240, 256 (1959); Richards, *Installment Contracts for the Purchase of Land in South Dakota*, Ag. Exp. Sta., S. Dak. State College 18 (1959).

The actual recording of the contracts was accomplished by various parties as follows:

Who Recorded	*Number of Contracts*	*Who Recorded*	*Number of Contracts*
Buyers	81	Buyer's lawyer	15
Sellers	18	Mutual lawyer	11
Seller's lawyer	17	Others or no answer	12
			154

FINANCIAL ARRANGEMENTS

The success of the land contract as a means for transferring farm land is in large part dependent on the economic soundness of the provisions setting forth the financial arrangements between the parties. Financial arrangements include numerous items that may influence directly fulfillment of the conditions of the contract. The purchase price is of foremost importance—does it represent a fair market price of the farm? Rate of interest and length of term are the two major elements that determine the amount of the periodic installment payments. The amount of the down payment is of strategic concern to both parties. Is it sufficient to safeguard the security interests of the seller and does it leave the buyer with enough capital to permit efficient operation of the farm? The repayment schedule, which is a function of the purchase price, interest rate, length of term, and down payment, should be determined in light of the needs of the two parties. The privilege of making prepayments and a provision on variable payments under unusual conditions add flexibility to the repayment schedule, and should recognize, at least in part, the fluctuating annual income of farmers. Synchronization of the time of installment payment with receipt of major farm income should be advantageous to both parties.

The various items that make up the financial arrangements should be tailor-made to fit the needs of the particular buyer and seller. As a consequence, only general findings and principles will be presented. The analysis is prepared to assist in making future land contracts serve in the best possible way the seller, the buyer, and the community.

A summary statement of the financial arrangements will serve as a backdrop for a separate consideration of each item. The average purchase price of the 154 farms was $28,422, with an average down payment of $5,861, leaving an unpaid principal sum of $22,561. The debt was to be repaid, with an average interest of 4.0 per cent, over a term of 16.5 years. The calculated amount of the average payment on the debt for the first year of the contract was $1,999, including $1,106 on

principal and $893 on interest. The average amount of the unpaid principal at the end of the term was $6,516.

Purchase Price

The average purchase price ($28,422) of the farms in the study was lower than typical farms within the sample counties and throughout the state during the same period.[50] This discrepancy is explained by the fact that the sample farms averaged smaller in total acreage and lower in price per acre. To what the lower-than-average per acre price was attributable could not be determined. The finding of smaller-than-average farm size was not surprising. The practice of the farmer to begin ownership on an undersized unit and to increase its size as he gains in financial strength has been recognized for years.

The question that remains unanswered is whether the sale price of farms financed by land contracts is higher than if cash or mortgage financing had been used. Nor can it be answered conclusively. In theory, it would seem that low-equity financing would bring more buyers into the market, and that an increase in number of buyers would result in an increase in the price of land. In practice, it appears that several factors might have operated in the opposite direction, or at least tended to neutralize the effect of increased buyers, and leave the price unaffected. An important factor, perhaps, was the seller's desire for a low down payment owing to the tax advantage—in these cases it was the seller and not the buyer that suggested a low down payment. The second possible factor was the close kinship between many sellers and buyers—the purchase price between relatives may have been less than the market price. A third reason was that many sellers, particularly those retiring from farming, wanted to keep their money invested in farm land by financing the transaction, accepting the so-called market price, along with a low down payment, and spreading the repayment income over their prospective life. Another possible reason was the inadequacy of the land market in registering accurately small changes in the supply-demand situation that might arise from the use of land contracts.

To obtain some insight into the price situation buyers were asked if the purchase price was more than it would have been if a mortgage rather than a land contract had been used. Of the 154 buyers, 130 replied

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[50] Comparisons of averages in value and size for the 154 farms in the sample, the ten counties and the state show the following relationships:

Item	*Sample*	*Counties*	*State*
Average value per farm (dollars)	$28,422.00	$34,231.00	$36,090.00
Average value per acre (dollars)	$174.80	$194.00	$199.00
Average size of farm (acres)	162.00	176.40	176.50
Average size of farms of 80 and over acres	162.00	204.10	207.90

in the negative, twelve in the affirmative and twelve did not reply. Of the twelve who replied that the price was higher, five gave the low down payment as a reason, one indicated a low interest rate, and six gave miscellaneous reasons—combinations of low down payment, low rate of interest, and greater credit risk. Many of the buyers seemed more interested in other terms of the contract than in purchase price. The reports of buyers are evidence that the use of land contracts as a financing device did not have an appreciable effect upon the price of land.

In addition, the buyers did not pay a high price in anticipation of further appreciation in the value of the land. In reply to the question regarding their expectations of changes in the price of land, eighty-four expected prices to remain the same, nineteen expected them to go up, thirteen to go down, thirty-seven were not concerned with the trend in land prices, and one did not answer the question. The present and future price of land apparently was not of major concern to most farm buyers.

Many factors other than price enter into the decision to buy farm land under the contracts. A tenant may buy when he has the necessary money for down payment and operating capital, or when he must buy to stay in farming. The young relative may buy when it fits family plans —the family cycle is important. The farmer that is increasing the size of his farm may buy when he can find land that meets his requirements, and so on. The decision to buy apparently was not basically a price-related matter.

The associations between purchase price and selected variables included in the study, as shown by statistical measures, are of little help in determining the effect of low-equity financing on land prices. The analysis did not reveal an association between purchase price and kinship, or kinship and price per acre, as might have been expected. The data show that as buyers bought higher priced farms, they had larger net worths, paid higher prices per acre, made larger down payments and made larger repayments. But these associations do not indicate that the use of land contracts had an effect upon the price of farm land.[51]

Rate of Interest

The rate of interest in the land contracts under study was highly variable, ranging from 0 to 5.0 per cent. The majority of the contracts, however, provided for 4.0 or 4.5 per cent interest. The average interest rate for the 154 contracts was 4.0 per cent. It was 4.19 per cent for the

[51] See Statistical Appendix, p. 121 *infra*.

147 contracts that contained interest charges. The United States average interest rate on Federal Land Bank loans for the same period was 4.18 per cent.[52] This was slightly higher than the average for Iowa, where almost all of the outstanding Land Bank loans were for 4.0 per cent.[53] The Land Bank real estate mortgage loans usually bear a slightly lower rate of interest than the average of other loans. The rate of interest for the 154 contracts was distributed as follows:

	Number of Farms		
Rate of Interest	*Related*	*Not Related*	*Total*
0	3	4	7
1	0	0	0
2	1	0	1
3	6	3	9
3.5	4	2	6
4	28	37	65
4.5	2	47	49
5.0	2	15	17
	46	108	154

A study was made of change of rate of interest over the five-year period. Real estate mortgage data indicate that the rate of interest remained fairly constant over the period with a slight rise in the last year. The average interest rates on installment land contracts for the various years did not show significant differences. All of the evidence except kinship points to the conclusion that the rate of interest on the land contracts studied was comparable to that of real estate mortgage loans.

When the contracts were divided between those buyers and sellers who were relatives and those who were not related by blood or marriage, the related buyers' rate of interest was about one-half of 1 per cent lower than the nonrelatives'. The comparison is as follows:

Group	*Number of Contracts*	*Average Interest Rate*
Relatives—		
All relatives	46	3.59
No-interest contracts eliminated	43	3.84
Nonrelatives—		
All nonrelatives	108	4.17
No-interest contracts eliminated	104	4.33

A more detailed comparison may be revealing. The related group was divided into father-son and other relatives, and the nonrelative

[52] Agricultural Statistics, U.S. Dep't of Agriculture 601 (1957).

[53] Farm-Mortgage Loans of the Federal Land Banks, Agricultural Research Service, U.S. Dep't of Agriculture 18 (1958).

group into friends and strangers. The average rate of interest for each group was as follows:

Group	*Average Interest Rate*
Father-son	3.63
Other relatives	3.47
Friends	3.86
Strangers	4.33

Analysis of the data shows that related buyers pay a significantly lower rate of interest than strangers. Also, the rate of interest increased as the knowledge of the buyer about the law and contract provisions increased and the completeness and clearness of the contract increased.[54]

The rate of interest should be viewed also from the standpoint of its relation to the risk involved. The risk presumably would increase as the ratio of the down payment to the purchase price decreased. Thus, if the down payment were 10 per cent of the purchase price, the risk would be greater than if down payment were 60 per cent. Rate of interest tended to be associated with ratio of down payment to purchase price but not as expected—the rate of interest increased as the ratio increased, that is, the higher the down payment in relation to purchase price, the higher the rate of interest. It would seem that risk, as measured by the ratio, did not have the expected effect upon the rate of interest.[55]

To sum up, the rate of interest for farm installment land contracts was comparable to that of farm mortgages considering all land contracts and all mortgages. But land contracts of relatives average about one-half of 1 per cent lower than of nonrelatives. The rate for nonrelatives was slightly higher (about one-fourth of 1 per cent) than for farm mortgages. Whether this shows a tendency for installment land contracts to yield a higher interest than mortgages is problematic. First, mortgage data do not separate purchase money mortgages from other mortgages. Purchase money mortgages, mortgages to secure unpaid balance of purchase price, might be expected to bear a different rate of interest than other mortgages. Second, data on mortgages is not separated into related and non-related transactions. Also, a larger proportion of land-contract buyers probably are related to their sellers than are farm-mortgage buyers. This would tend to make the average for land contracts lower than it would be if both groups contained the same proportion of relatives. Of course, relatives could likely borrow at a lower rate on mortgages as well as on land contracts. It would appear, considering all available data, that the rate of interest on these 154 land contracts was comparable to the going rate of interest on farm mortgages.

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[54] See Statistical Appendix p. 121 *infra*.
[55] See Statistical Appendix p. 121 *infra*.

The conviction is growing that a "good-risk" debt situation depends more upon the managerial capacity of the buyer, the size of the farm unit, and the adequacy of operating capital than upon the level of the down payment. An inadequate farm, either in acres or productivity, and a poor manager with little operating capital may be a "poor risk" even if the down payment represents a comparatively high proportion of the purchase price. Whereas, capable management and adequate resources may make a low down payment an acceptable risk. Thus, low-equity financing and high-risk financing need not be associated.

Length of Term

The number of years that a contract can continue in force has an inverse effect upon the amount of unpaid balance that must be repaid annually, provided all of the unpaid balance is to be repaid within the period. The seller and buyer usually are interested in a term of sufficient duration to suit their individual needs. The buyer may want to get his farm free of debt as soon as possible and pay as little interest as necessary. The seller may want a long term to assure him a steady income during the remainder of his life, or a short term to permit an early investment elsewhere. A more sound approach economically would involve gauging the length of the term of the contract by the buyer's prospective ability to meet annual payments. Factors to consider are potential net farm income, family living expenses, and financial position in regard to farm operating capital, for example, debt on personal property.

The effect of the length of term upon the annual repayment schedule may be reduced significantly if a substantial part of the purchase price remains unpaid at the end of the term. Almost half of the contracts in the study provided for a large balloon payment at the end of the term, averaging nearly $15,000.

The term of years may be stated specifically in the contract. It may be determined also by calculating the number of years required to complete the payments at the repayment rate stated. The termination date on some contracts in the sample was indefinite or difficult of determination; for example, payment of a certain amount annually until the death of the seller.

The length of the term was determined for all of the contracts except three for which a definite term could not be assigned. The average term of 151 contracts was 16.5 years. The range was up to seventy years. The most frequent terms were ten, twenty, and fifteen years with forty-five, fifteen, and ten contracts respectively. The distribution may be summarized as follows:

Years	*Number of Contracts*
0-9	14
10-14	66
15-19	25
20-24	25
25 and over	21
Not determined	3
	154

The statistical analyses reveal associations between the length of the term and four other variables. The term was significantly longer for relatives than for nonrelatives. It declined, however, as the proportion of the purchase price that was paid down increased. As the length of the term increased, the size of the annual repayments provided for in the contracts tended to decline. There was a tendency also for larger down payments to be associated with shorter terms.[56]

The term of the contracts in the study was shown in many ways. The term was usually associated with the repayment schedule. Three general patterns were observed: (1) Contracts provided that stipulated payments should be made until the purchase price was paid in full; (2) they provided that stipulated payments should be made until a specified date at which time the unpaid balance would become due and payable; and (3) they provided that stipulated payments should be made until the unpaid principal was reduced to a specified amount, at which time the contract could be converted to a deed and mortgage.

The chief concern should be to make clear the dates upon which the financial relations of the parties begin and end under the contract. The exact ending date need not be specified, but the provisions should supply clearly the facts necessary to calculate the ending date. Because the term of the contract is so intimately associated with the repayment schedule the two are readily combined. One of the following provisions should fit most situations:

1. The sum of $_____ shall be paid on the unpaid principal beginning on _____ and on each _____ thereafter until all payments are made in full.
2. The sum of $_____ shall be paid on the unpaid principal beginning on _____ and on each _____ thereafter until $_____ remains unpaid at which time the balance is due and payable.
3. The sum of $_____ shall be paid on the unpaid principal beginning on _____ and on each _____ thereafter until $_____ remains unpaid at which time a deed and mortgage will be exchanged for the contract as herein provided.

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[56] See Statistical Appendix p. 121 *infra.*

If an ending date is desired in place of the unpaid principal in the last two provisions, substitute a date for the dollar amount. If the annual payment is to include interest, as under the Standard Plan of amortization, add the words "and interest" between the words "principal" and "beginning."

Down Payment

The down payment is the payment or payments made on the purchase price prior to possession. In the contracts studied, frequently a payment was made at or before execution of the contract, and another one was made before or when the buyer took possession. Both are included in the down payment.

The average down payment for the 144 contracts that provided for a down payment was $6,260. The average down payment at time of execution for the 135 contracts involved was $2,989. The average down payment subsequent thereto but prior to possession was $4,941 for the 101 contracts providing for such payments. Comparable averages for all contracts were: $2,620 at execution and $3,241 before possession, making a total of $5,861. Down payments were to be made both at execution and possession on 88 of the 154 contracts. The down payments averaged 21.4 per cent of the purchase price of the 144 contracts that provided for a down payment and 20.0 per cent if all contracts were included, ranging from 0 to 54.9 per cent of the purchase price. The distribution of the ratios of the down payment to the purchase price was as follows:

Ratio in Per cent[57]	*Number of Contracts*
0	10
.1-10.0	24
10.1-20.0	46
20.1-30.0	54
30.1-40.0	11
40.1-50.0	8
50.1 and over	1
	154

What was the effect of low down payment on purchase price? A large majority of the sellers reported that they would not have changed the purchase price of the farm regardless of whether the down payment had been more or less. They suggested that most sellers have a price set from the start and do not change, that you cannot get a farm cheaper by offering a larger down payment. Buyers also know what price they will pay, and it, too, does not seem to be influenced by the level of down

[57] The unusual class intervals are due to the "do not exceed 30 per cent" requirement of § 453 (b) (2) (A) (ii) of the Internal Revenue Code.

payment. However, nine of the sellers thought that the size of the down payment influenced the purchase price of farms in their communities. Their explanations were as follows: The number of prospective buyers was larger with lower down payments, some sellers were ready to take advantage of a buyer who had only a low down payment to offer, and the risk was greater with a lower down payment so the price was higher.

The buyers obtained their down payments from a variety of sources. Their reports on the source of their down payments may be summarized as follows:

Source of Down Payment	*Number of Contracts*
Savings	107
Loans	14
Gift	1
Inheritance	5
Savings and loans	13
Savings and gifts	1
Savings and inheritance	3
No down payment	10
	154

Two important matters in determining the amount of the down payment are concerned with safeguarding the seller's position as to capital gains taxes and the buyer's position as to operating capital.

The tax law provides that if more than 30 per cent of the sale price is received in the year of sale, the entire capital gain is taxable in that year.[58] If 30 per cent or less is received, the tax is confined to the proportion of the capital gain that is received during the tax year. The 30 per cent covers all payments on the purchase price, including payment under a binder contract, payment at execution of the agreement, payment prior to or at possession, the capital gain value to the seller of an existing mortgage that is taken over by the buyer, and any other payment on the sale price during the year of sale, as for example, at the end of six months if payments are semi-annual. Care needs to be exercised in many land contracts so that the total of all payments on the purchase price (sale price) during the year of sale do not exceed 30 per cent thereof. Payments on purchase price can exceed 30 per cent thereof in any subsequent year without requiring that the tax be paid immediately on the entire capital gain.[59]

Both the seller and buyer have an interest in safeguarding the buyer's position as to operating capital. The buyer is most likely to make all of

[58] It should be noted that twenty of the contracts provided for down payments of over 30 per cent.

[59] See Int. Rev. Code of 1954, § 453; 3 CCH 1964 STAND. FED. TAX REP. §§ 2866.051, 2871.27.

the required payments under the contract, if after making the down payment he has sufficient capital to operate the farm efficiently. If the down payment depletes his operating capital to the place that he does not have sufficient livestock or machinery or enough cash reserve to purchase needed feed, seed, fertilizer, and other items required by modern technology, the farm likely will not yield enough net income to meet annual payments on principal and interest. A large down payment does not always strengthen the financial position of either party. There is a place in most land contract transactions where a substantial increase in the down payment would severely reduce the debt-paying ability of the buyer. This is the place where the interests of the two parties in the size of the down payment are mutual, not in conflict. Neither party is planning wisely when the down payment is permitted to have an adverse effect on the debt-paying ability of the buyer. The buyer should keep his financial position strong by not exhausting unduly his operating capital. The seller's financial position is not necessarily strengthened by requiring that the buyer weaken his debt-paying ability by a large down payment.

In the contracts studied, the amount of the down payment was associated with several factors worthy of note. The down payment increased as the purchase price of the farms and the net worth of the buyers increased, but decreased as the ratio of net worth to purchase price increased. This indicates that buyers with larger net worths could buy the higher priced farms and make larger down payments, but they did not have to pay down proportionately as much of the purchase price as buyers with smaller net worths. Net worth of the buyers should be an item of major consideration in arranging the terms of land contracts. Larger down payments did not result in smaller annual repayments, as might have been expected. But buyers who made the larger down payments bought higher priced land and larger farms. Strangers required larger down payments than did relatives.[60]

Repayment Schedule

Generally, two methods are used for repaying a debt in installments. The most common method is the so-called Standard Plan wherein a calculation is made of the annual payment needed to repay the loan in the specified number of years at the specified rate of interest. The annual payments remain constant throughout the contracts. During the first years a large proportion of the payment is allocated to interest, but

[60]See Statistical Appendix, p. 121 *infra*.

during the latter years the major part of the payment goes to repayment of the principal.

Under the method popularly known as the Springfield Plan, the same amount is paid on the principal each year. The interest declines each year, being calculated annually on the unpaid principal. Under this plan the buyer's payments are highest in the first years of the contract. His principal payments remain constant over the term, but his total payment lessens as he reduces the unpaid balance and thus owes less interest.

One or the other of these plans was used in all of the land contracts examined. However, variations in the repayment schedules were so great that a meaningful classification of the data was difficult to construct. An attempt was made to present as accurate a picture as possible of the burden of the repayment schedule over the contract term using comparable measures. A "normal payment" was calculated for the first year of each contract. The "normal payment" was in fact the first year's payment in most cases because most of the contracts employed the Springfield Plan of amortization. The calculation showed an average first-year payment of $1,999—$1,106 principal and $893 interest.

The study was not designed to answer the question of whether the repayment schedule was reasonable. To make this determination many factors would have to be considered: (1) Is the farm unit of adequate size when measured in terms of acres and value? (2) is the supply of personal property, including particularly livestock and machinery, adequate for the kind of farming planned? (3) what is the debt situation on personal property? (4) will some of the income be received from nonfarm sources? (5) what is the likelihood of an unusually large expenditure in any one year and how is it safeguarded? Generally, the repayment schedule should be worked out on the basis of anticipated income from the farm, considering average or typical years, with an awareness that the farm business is uniquely susceptible to years of unusually low profits.

The data yielded some interesting comparisons between the repayment schedule and other variables. Repayment increased in amount as the purchase price increased (and also as size and price per acre, the components of purchase price, increased), as would be expected. But repayments also increased as the down payments increased—the down payments did not increase fast enough to prevent the higher priced farms from requiring larger annual repayments. Also, buyers with larger net worths did not increase their down payments rapidly enough to prevent the necessity of larger annual repayments. But the larger repay-

ments were associated with shorter terms of years in spite of their association with higher purchase prices, that is, repayment rose more rapidly than purchase price.[61]

Two ideas that might be used in adjusting repayments to the peculiar needs of the parties are a repayment schedule that features (1) an increasing periodic payment and (2) variable payments.

(1) Neither the Standard nor the Springfield Plan of repayment gives adequate recognition to the purchaser's potential ability to pay. The Springfield Plan with large early payments is most subject to criticism on this ground. Normally the buyer is most able to make larger payments at the latter stages of his purchase, not at the beginning. This situation suggests that the optimum payment plan would be one that calls for the payments to start at a lower level and accelerate as the buyer becomes able to make larger payments. As long as the payments were never less than the interest on the debt, few sellers should have strong objections to such a repayment schedule, if they would receive their total purchase price within the same term of years.

(2) Farm prices are subject to such vacillation that in some contracts the buyer and seller may wish to share part of the inherent risk. This can be accomplished by expressing the repayment schedule in a formula that is related to a variant that can be readily determined. For example, (1) the contract could provide that the purchase price would be repaid in full when the specified quantity of a farm product (e.g., bushels of corn) was delivered each year for a stated number of years. Such a provision would provide for an indeterminate total purchase price as well as variability in the dollar value of annual payments. (2) The contract could set forth a formula that would provide for the payment of the value of a stated quantity of a given quality of some farm product (e.g., corn or milk) at a specified place on a stated date. The annual payment would be the stated quantity of the product multiplied by its price at the place on that date. The quantity of the product would remain the same from year to year. The variability of annual payment would depend entirely upon the current market price of the product. None of the land contracts contained a provision for either of these procedures, but such provisions are in use in the midwest.[62]

Balloon Payments

Almost half of the farm sellers and buyers (68 of 154) found it con-

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[61] See Statistical Appendix, p. 121 *infra*.

[62] See Rauchenstein, *Selling Farms on a Product-Payment Basis*, Ag. Exp. Sta., Univ. of Wis. Bull. No. 534 (1958); Stewart & Justus, *Paying for Farm on Rent-Plus and Product-Payment Plans*, College of Agriculture, Univ. of Ill., Research Report 13 (1955).

venient to provide for a termination of the relationship before the annual installments repaid the entire purchase price. At the end of the contract a lump sum payment, commonly known as a "balloon payment," covered the amount of the unpaid principal. Apparently it was visualized that most of these buyers would obtain a loan from a commercial lending institution to make the balloon payment, giving a mortgage on the property as security. As noted later, some of the contracts provided that the seller would give a deed and accept a mortgage upon reduction of the unpaid balance to the specified amount. In both cases, the amount of the principal that remained unpaid at the end of the term of the contract was analyzed as a balloon payment, except where the conversion to a deed and mortgage was optional with either the buyer or seller and the amount to be paid could not be determined.

The average balloon payment was $14,981 or 44 per cent of the purchase price for the contracts involved. The range was from $800 to $75,000 and from 2.2 per cent to 84.9 per cent of the purchase price. The distribution of the size of the balloon payments was as follows:

Size of Balloon Payments	*Number of Contracts*
Below $4,999	8
$ 5,000- 9,999	16
10,000-14,999	17
15,000-19,999	12
20,000-24,999	7
25,000-29,999	3
30,000-34,999	3
35,000 and over	2
	68

The distribution of ratio of balloon payment to purchase price was as follows:

Ratio	*Number of Contracts*
Below 10.0	2
10.0-19.9	4
20.0-29.9	6
30.0-39.9	11
40.0-49.9	14
50.0-59.9	18
60.0-69.9	8
70.0-79.9	4
80.0 and over	1
	68

The provisions regarding the balloon payments were variable. The following patterns were observed: (1) Although using different words, the idea was conveyed that at a stated date the entire unpaid balance

would be due and payable; (2) the balloon payment was sometimes shown as the last item in a tabular presentation of the amounts due on specified dates; and (3) the balloon-payment paragraph sometimes provided that the seller agreed to execute and deliver a deed and the buyer agreed to execute and deliver a mortgage for the unpaid balance. The repayment schedule and interest rate on the mortgage were not always provided.

Whether the parties should agree to exchange the contract for a deed and mortgage when the unpaid principal has been reduced to an amount specified or simply to declare the remaining amount due and payable depends upon the circumstances. If the seller is in postion to continue to finance the transaction, it may be agreeable to the buyer to exchange a deed and mortgage with him. If so, both parties have an added assurance of knowing what the payments will be until the entire indebtedness is repaid. Normally under this type of provision, the parties are not in position to take advantage of a higher or lower rate of interest or to speed up or slow down the repayment schedule.

Where the contract does not contemplate the seller accepting a mortgage for the unpaid balance, the seller may need to find a new investment for his money and the buyer may need to find a new lender. The difficulty of finding a new lender usually would not be great for buyers who had repaid over 50 per cent of the original principal. But those who still owed over 60 per cent of the purchase price might experience some difficulty in negotiating a loan.

For a provision effecting a deed and mortgage shift see Exchange Contract for Mortgage, p. 71. If a simple balloon payment is desired, the following provision will fit most situations.

> FINAL PAYMENT. The parties agreed that when the principal sum has been reduced to $_____ (or at a specified date) the entire unpaid principal will become due and payable and final settlement will be made at that date.

Prepayments

The debt-paying ability of farmers varies widely from year to year, for their annual income is affected by production conditions and the prices of their products. Production conditions, due to the weather, are largely beyond the control of most Iowa farmers. A few farmers irrigate in dry seasons, and some farmers partially safeguard their annual income through crop and livestock insurance. All farmers can have a limited effect on stabilizing their annual income through good farm and financial management. Farmers likewise have little control over the price that they receive for their products. If it is anticipated that prices are going to be low, they can increase production, which will

drive prices still lower if all farmers do the same, or they can shift to another product. Regardless of the means used to maintain a steady income, farmers' annual income varies widely. As a consequence, their ability to meet fixed annual charges under land contracts will vary widely—less widely than income, perhaps, but still the variations are significant. One of the means used by sellers and buyers in the land contracts studied to compensate in part for such variations was to permit prepayments on the unpaid principal in any year when the buyer's income was unusually high.

In absence of a contract provision, the seller is not required to accept a prepayment.[63] Every seller and buyer should consider the advisability of including a prepayment provision in their land contract. An express provision authorizing prepayments may provide that the buyer may make, at his option, larger than required payments under conditions specified in the contract. It may provide also that accumulated prepayments can be used to offset all or a part of the payment due on the principal in any subsequent year. Prepayments may be used also to offset interest payments as they become due. The conditions under which prepayments can be used to offset payments due on the principal and interest may be limited to meet the needs of the parties.

Buyers' and Sellers' Reactions. In the field study, the buyers were asked the questions, Can you make payments in advance on principal? and Does the contract provide for this? In regard to the first question, 140 of the buyers said that they could make prepayments, thirteen said they could not, and one did not know. The replies to the second question were 135, nine and ten, respectively. The buyers' answers and the provisions of the contracts did not coincide in many cases. For example, nineteen of the buyers of the twenty-five contracts with no prepayment provisions said that they could make prepayments. The discrepancy is mitigated by a general feeling that sellers would permit prepayments although the contracts did not so provide. For example, five buyers said they could make prepayments, but that such was not provided in their contracts. Another five said that they could, but did not know what their contracts provided.

The sellers were approached on prepayments from another viewpoint. They were asked, Would a contract purchase be more effective and used more if it permitted buyers, within limits, to make prepayments in years of good prices and high production? Their replies were twenty-four in the affirmative, six in the negative, and three did not know. The reasons for the affirmative answers were in terms of gearing payments to farm income, enabling buyer to build up a backlog, reducing the

[63] See Anderson v. Haskell, 45 Iowa 45 (1876).

amount of interest to be paid, and permitting the buyer to get out of debt as soon as possible. The negative replies included these ideas: Such a privilege would be of no value to the seller, too much bookkeeping would be required, buyer might refinance at lower rate of interest, and too rapid repayment might have an income tax disadvantage. Summarizing the buyers' and sellers' responses, it seems fair to say that more prepayment provisions would have been used if the parties had considered the matter.

The conditions of prepayment should be tailor-made to suit each unique situation. The crucial items for discussion are: (1) The amount of the prepayment, that is, how much more than the required payment on principal or interest can be made in any one year, using a minimum, a maximum, or both; (2) the time that the prepayment can be made, whether at the regular payment period, at any time, or at a specified date; and (3) the use of the prepayment to reduce the unpaid balance, as an offset in the place of some future principal payment, or in the place of a future payment on interest.

An analysis of the prepayment provisions in the contracts included in the study reveals how such provisions were used and sheds some light on how such provisions may be made more effective. The important elements in the prepayment provisions in the 154 contracts may be summarized as follows:

Prepayment Provision	*Number of Contracts*
A. Amount of prepayment—	
No limitation	55
Minimum only	51
Minimum and maximum	10
Maximum only	5
Percentage of purchase price	3
Mutually decided	3
Unclear	2
No provision	25
	154
B. Time of prepayment—	
Regular payment date	87
Anytime	33
No specification	4
Mutually decided	3
Unclear	2
No provision	25
	154
C. Use of prepayment—	
No specification	69
Reduce principal	44

Future payment	10
Next payment	1
Mutually decided	3
Unclear	2
No provision	25
	154

Amount of Prepayment. The amount of the prepayment may well be limited. Among the limitations specified in these contracts were: (1) Not less than a stated amount—$100, $500, or annual payment on principal; (2) not more than a stated amount, $500, $1,000, annual payment on principal, or a larger sum; (3) not more that a stated percentage of the principal sum including the regular annual payment; (4) not less than a stated amount and not more than a stated amount; and (5) not less than a stated amount with no limitation on the maximum amount.

Where only the minimum was shown, it was usually in terms of "$100 or multiples thereof." Such a provision prevents unreasonably small payments and odd sums. The few provisions that provided for a maximum were usually designed to prevent the total payment, prepayment plus regular payment on principal, from being too large from the seller's viewpoint. A large payment in any one year may cause the seller an increased income tax on his capital gain.

Whether a prepayment provision should be included depends heavily upon the situation of the seller. Such a provision is always beneficial to the buyer because it is at his option. The seller may not want to include a prepayment provision if the disadvantages to him outweigh the advantages. Some sellers may find it inconvenient to accept an exceptionally large prepayment in any year. For retired persons and others who depend largely upon payments under the contract, the inconvenience of an uneven annual income may be substantial. The possibility of shortening the term over which the seller will receive income may well be of concern. The problem of investing the prepayment may be a deterrent. The income tax ramifications of a substantial prepayment is always a matter to be weighed.

Time of Prepayment. The time of the year that a prepayment can be made may be specified in the contract if any particular time would be disadvantageous for the seller. In absence of a specified time, the buyer is free to make prepayments whenever it is convenient to him. If specified, the date should meet the needs of the two parties and should meet the criteria discussed under Time of Payment, page 43. The use of the regular date of payment makes easy the recalculation of the repayment schedule.

Use of Prepayment. In the absence of a contrary provision, prepay-

ments normally would be used immediately to reduce the unpaid balance. This would reduce the cost of interest under either amortization plan. Forty-four of the prepayment provisions called for such use, while sixty-nine did not mention the use to be made of the prepayment. When read in connection with the general repayment and interest clauses, however, it appeared that all prepayments would be used immediately to reduce the unpaid balance.

A minor matter that may loom large in the minds of some parties is the recalculation of payments subsequent to a prepayment. If the repayment schedule follows the Springfield Plan, calling for a constant annual payment on the principal sum, the recalculation is of little concern, except that it must be made. The principal payment required for the next year would be the same as if the prepayment had not been made. The interest payment would be less because the balance owing is decreased. If the repayments follow the Standard Plan of amortization, the recalculation of the annual payments becomes more involved. The recalculation would follow the same process as the original calculation.[64]

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[64] Some examples will indicate the computation of annual payments, without and with prepayments, for the two amortization Plans: Assume an original debt of $25,000, interest at 5 per cent and term of 20 years.

Springfield Plan: An annual payment on principal of $1,250 is required to repay the loan in 20 years—$1,250 x 20 years = $25,000. Interest is additional and is computed for each year on the current unpaid balance. The first scheduled annual payment would be $2,500 ($1,250 principal and $1,250 interest—$25,000 x 5 per cent). The second annual payment would be $2,437.50 ($1,250 principal and $1,187.50 interest—$23,750 x 5 per cent).

If a prepayment of $1,000 on principal is made at the end of the first year, the second annual payment would be $2,387.50 ($1,250 principal and $1,137.50 interest—$22,750 x 5 per cent). Under the Springfield Plan an accumulated prepayment of $1,000 might be used to reduce the payment on principal due in any subsequent year to $250 from the scheduled $1,250, if such conditions were specified in the contract. The recalculation process would be reversed—the principal would not be reduced as scheduled and the interest would be based on the unpaid balance.

Standard Plan: The annual payment on principal and interest is constant. The portion of the payment that applies to principal increases each year over the period of the loan, while the interest portion declines. The total annual payment is $2,006, computed as follows: $25,000 x .080243 (obtained from interest tables for Standard Plan Amortization) = $2,006. The interest portion of the first payment amounts to $1,250 ($25,000 x 5 per cent). The remainder of the total payment, $756, is payment on principal. The second annual payment is made up of interest and principal as follows: $25,000 - $756 = $24,244 x 5 per cent = $1,212.20 (interest). The remainder ($2,006 - $1,212.20 = $793.80) is payment on principal.

Prepayments used to offset scheduled payments under the Standard Plan can be handled by one of two approaches, either of which would need to be specified in the contract. The approach most easily computed is to continue the annual payment of $2,006. If a prepayment of $1,000 on principal is made at the end of the first year, the unpaid portion of the principal would be reduced to $23,244 ($24,244 - $1,000 = $23,244). The second annual payment of $2,006 would consist of interest and principal as follows: $23,244 x 5 per cent = $1,162.20

Ten of the contracts provided that prepayments could be used not only to reduce the unpaid balance, but any future payment on principal would be waived in an amount equal to the total of the accumulated prepayments. These provisions encourage the buyer to make prepayments, for in years of low income he could use prepayments already made to reduce or to replace completely the scheduled principal payment. A provision covering the privilege of making a larger-than-scheduled payment in years of above-normal income and the concomitant right of using accumulated prepayments in a year of below-normal income should be considered by every seller and buyer using a land contract. Such a provision would add security to the financial arrangements in many land contracts. This arrangement would not leave the seller without income in any year, for the buyer would still make the required interest payment. From one viewpoint, such prepayments are the same as regularly scheduled principal payments—they are immediately deducted from the unpaid principal; the buyer ceases to pay interest on the amount prepaid; and the seller can use the prepaid sum as he sees fit. From another viewpoint, prepayments are unlike scheduled payments—the total of all prepayments is a recorded sum that represents the amount of regular, scheduled payments that may not be required as they become due. Each time a prepayment is used as an offset against scheduled payments, the repayment schedule must be adjusted. Either the amount of remaining scheduled payments or the length of the term must be increased. Because the interest payment is always calculated on the unpaid balance, neither the seller nor buyer gains or loses interest, assuming the contract rate is the going interest rate.[64]

Some sellers and buyers may find it advantageous to use prepayments to offset scheduled payments on interest as well as on principal. Where this appears advisable, the use of prepayments as an off-

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interest) and the remainder, $843.80, ($2,006 - $1,162.20) is paid on principal. The effect of continuing the scheduled annual payment would be to shorten the term of the contract.

The second approach under the Standard Plan is to recompute the annual payment, lowering it but leaving the term of the loan unchanged. Again, assuming a prepayment on principal of $1,000 is made at the end of the first year, subsequent annual payments would be $1,923.32 computed as follows: $25,000 - $756 (first principal payment) = $24,244 - $1,000 (prepayment) = $23,244 x .082745 = $1,923.32. Of the second annual payment $1,162.20 would be interest and $761.12 would be on principal. (The amortization or repayment factor—.082745—is for 19 annual payments at 5 per cent interest). By this approach the amount of the annual payment would be recomputed each time prepayments are applied against the principal. Under either approach the recalculation process would be reversed if accumulated prepayments later were used to offset any scheduled payment. If the contract provides that payment on the principal in years of low farm income can be reduced to the extent of accumulated prepayments, it should indicate which approach is to be used in handling future payments.

set against scheduled interest payments could be handled the same as their use in the place of principal payments.

The inclusion of a prepayment privilege appears to be satisfactory to most sellers and buyers, but the use of accumulated prepayments to offset a scheduled payment on principal or interest was not widely practiced. The recalculation of the annual payment may appear quite cumbersome to some parties, while others may never have thought of this use of prepayments. The calculations are easily made, as explained in footnote 64. The scheduled payments can be increased, or decreased, or remain the same and the term of the agreement can be extended, shortened, or remain the same. The use of prepayments to offset regular scheduled payments adds a degree of variability that may initially trouble some sellers and buyers. But the advantages to be gained by providing for possible adjustments in the repayment schedule far outweigh the simplicity of inflexible scheduled payments.

If a seller and a buyer enter into a land contract with the expectation that its condition will be fulfilled, they should try to safeguard the transaction in every reasonable way. That a buyer has a better chance of meeting the annual payment schedule if he can make prepayments and use accumulated overpayments to offset future payments cannot be questioned. The land contract may function more effectively as a security device with the built-in safeguard of a properly worded prepayment privilege.

The essence of the analysis of the prepayment provisions in land contracts and of the reaction of buyers and sellers to prepayment provisions may be summarized as follows: (1) The majority of contracts contain a prepayment provision, (2) more sellers and buyers would use prepayment provisions if they understood them, (3) many prepayment provisions could be improved, (4) setting minimum and maximum amounts should be considered in most prepayment provisions, (5) requiring the prepayment amount to be in terms of $100 or multiples thereof makes for ease in bookkeeping, (6) limiting prepayments to regular payment dates may be desirable, (7) the prepayment should be used immediately to reduce the unpaid balance, and (8) a provision permitting the use of accumulated prepayments to offset against payments on principal or interest or both in any year should be considered. The following provision is an illustration of what an appropriate prepayment provision might contain.

> PREPAYMENT PRIVILEGE. It is further agreed that the buyer can make prepayments in $100 or multiples thereof at any regular payment date, except within the year of sale. Such prepayment will be used immediately

to reduce the then existing unpaid balance the same as regular payments on the principal as provided above, and a record will be kept of the total amount of such prepayments as they are made, and total accumulated prepayment or any part thereof may be credited in any year at the option of the buyer to the payment required on the principal or interest or both.

Time of Payment

A safeguard that could be provided for in most land contracts is a reasonable coordination of the time of year that the buyer receives his largest income and when the payment or payments on principal and interest are due. Although the time of the year when payments become due can be specified exactly, the time of largest income may vary more than thirty days from year to year on a well-organized farm.

Some buyers receive a large part of their income during two or more months of the year. In such cases, the payments might well be coordinated with their incomes. Similarly, there is no reason why a dairy farmer who receives income each month might not find it advantageous to make payments soon after he receives the milk check, if monthly payments fit well the needs of the seller. Indeed, monthly payments are quite common in town residence purchases where buyers receive their income on a monthly basis.

To learn something about the coordination of income and payments, the buyers were asked what month or months during the year they received the largest income from their farms. The time of the largest income and the time of the payment on each contract was compared to determine how well the two time periods were coordinated. It was decided that if the largest income was received within three months immediately prior to the month in which the payment was due, the two dates would be adequately coordinated. For example, if payment was due in March and the buyer's largest income was received during the prior February, January, or December, his income and payments would be well coordinated because normally he would be in a better position to make the payment than if the income were received a longer time before payment was due or afterwards.

The 124 buyers used in this analysis did not coordinate very well their peak incomes and payments on their land contracts. Possibly one cause of this lack of coordination is that "moving date" in Iowa has traditionally been March 1. Possession was usually given on that date and annual payments were usually related to the date of possession. Sixty per cent of the payments were due in March. The monthly distribution of payments were as follows:

Month	*Number of Payments*	*Month*	*Number of Payments*
January	14	July	3
February	3	August	1
March	106	September	19
April	5	October	5
May	7	November	5
June	3	December	6
			177

For purposes of analysis the land contracts were divided into four groups as follows:

1-1, One peak income and one payment per year.

2-1, Two peak incomes and one payment per year.

1-2, One peak income and two payments per year.

2-2, Two peak incomes and two payments per year.

Of the 177 opportunities for coordination of the month in which income was received and the month in which payment was due, only 40 per cent (70) were well coordinated, that is, the buyer's income was within three months immediately prior to the month in which payment was due. The relation of month of largest income to month in which largest payment was due, is summarized as follows:

Group	*Contracts (Number)*	*Income (Number)*	*Payments (Number)*	*Well Coordinated (Number)*	*Not Coordinated (Number)*	*Coordination Opportunities (Number)*
1-1	71	71	71	36	35	71
2-1	21	42	21	11	31	42
1-2	21	21	42	12	30	42
2-2	11	22	22	11	11	22
Total	124	156	156	70	107	177

In the interviews, neither buyers nor sellers seemed much concerned with this situation. Whether those who counseled with them brought up the subject was not determined. Only ten buyers indicated preference for a payment date different from that specified in their contracts. The most frequent reason for wanting a change in payment date was that the payment had to be made in advance of the usual date of their largest income. Other reasons included the desire to make two payments rather than one or one rather than two. One buyer indicated a desire to make the payment at any time during the year.

The sellers almost unanimously agreed that contracts should provide that the payment on principal and interest would be due when the buyer receives his major income. The reasons given were that the seller would more likely get the payments, and that it would be easiest for the buyer to pay when he receives the cash. The sellers also indicated that they would be willing to accept several smaller payments a year in the

place of one or two large payments, provided they received the same total amount annually.

It would seem that the interests of both parties would be promoted if the contract adequately coordinated the periods of income and payment. The payment date should not be fixed at a time that will handicap the farming operation. Ideally it should be soon after the receipt of the major farm income. Coordination of the payment date with income is an easy matter that increases the likelihood of successful fulfillment of the contract without causing either party any problem. It should be done in most contracts as a matter of course.

GENERAL CONTRACT PROVISIONS

Collected in this section is a mélange of problems of varying degrees of importance connected with land contracts. The common characteristic of these problems is that they relate directly to neither financial arrangements nor remedies. In treating these matters, generally an effort has been made to survey each item briefly, report the findings of the field study, and then to draw the material together by way of suggestions for improvement.

One area of major importance, that too frequently is inadequately handled, is the duty of the seller to give the buyer a marketable title and the conditions under which the title will pass to the buyer. The date that responsibility for taxes and special assessments passes from the seller to the buyer should be determined by the parties and their agreement stated clearly in the contract. The contract likewise should contain a provision specifying when the risk of loss shifts from the seller to the buyer and the insurance, if any, that each party will carry during the time that each is responsible for any loss that might occur.

Any reservations of interests that the seller desires to make should be discussed and the agreement spelled out in the contract, covering particularly the rights to use, to inspect periodically, and to participate in management. Ownership of growing crops may become an issue in case the contract is silent on the matter. Provisions on fixtures and personal property should cover items, if any, that the seller will leave on the farm when he gives possession and items the buyer may take with him in case of forfeiture.

The contract may contain provisions that would encourage the buyer to maintain the farm in a good state of repair and even to improve it. But provisions on meeting standards of good husbandry and making improvements need to be carefully drawn to attain these objectives. The effect of limitations on the right of the parties to assign their interest in the contract should be considered. Finally, if there is an existing mort-

gage on the farm, or if the contract is to be exchanged for a deed and mortgage under specified conditions, or if either party wishes to subsequently mortgage the property, appropriate provisions would expedite the process.

Title, Abstract, and Deed

One problem with the installment land contract that has given it a questionable reputation among some buyer's advisers is the rule that absent a controlling provision, the seller is not required to have clear title to the land until such time as the buyer has a right to demand a deed—normally when he has completely paid for the property.[65] Because in such a case the buyer runs the risk of purchasing land his seller does not own or have the power to sell, it is of great importance that the seller's duty to prove an acceptable title before commencement of the payments is spelled out in the contract. In most cases, the contract should provide that before the buyer assumes possession, the seller is to furnish an abstract showing acceptable title and execute and place in escrow a satisfactory deed.

Title. In Iowa, unless the contract provides otherwise, the seller must possess a title that is marketable to enforce a land sale contract.[66] A marketable title is one that is acceptable to a reasonable purchaser, willing and ready to perform his contract, in the exercise of that prudence which businessmen ordinarily bring to bear upon such transactions.[67] The quality of title required in a given case depends upon the language of the contract. Either more or less than marketable title may be required.[68] For example, the Iowa court has held that reference to marketable record title precludes proof of the title through use of evidence extrinsic to the county records.[69]

Customarily, in Iowa practice the seller proves his ownership of land by an abstract of title, but without an appropriate contract provision he has no duty to furnish such proof.[70] Where the contract requires the furnishing of an abstract, such a provision is enforceable and may be a condition precedent to performance by the purchaser. Where no time

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[65] McCubbin v. Urban, 247 Iowa 862, 77 N.W.2d 36 (1956); 1 PATTON ON TITLES § 42 (1957).

[66] See Carter v. Bair, 201 Iowa 788, 208 N.W. 283 (1926).

[67] *Cf.* Smith v. Huber, 224 Iowa 817, 277 N.W. 557 (1938) (agreement to convey without reservation requires marketable title).

[68] See Harris v. Bills, 203 Iowa 1034, 213 N.W. 929 (1927).

[69] Creel v. Hammans, 234 Iowa 532, 13 N.W.2d 305 (1944).

[70] See Dodd v. Groos, 175 Iowa 47, 156 N.W. 845 (1916); Knox v. McMurray, 159 Iowa 171, 140 N.W. 652 (1913); Hunt v. Tuttle, 133 Iowa 647, 110 N.W. 1026 (1907). See generally 1 PATTON ON TITLES § 42 (1957).

is specified for furnishing an abstract, the seller must furnish it at a reasonable time before the time of performance.[71]

In the field study, concern was focused on two provisions involving the title—its marketability and when it passed from seller to buyer. Most contracts contained provisions requiring an abstract of title showing that the seller held a marketable or merchantable title. Under the contracts, title usually passed when the buyer completed all of the payments of principal and interest and fulfilled other conditions in the contract or when the contract was exchanged for a deed and mortgage.

The content of the provisions in the 154 contracts on title may be summarized as follows:

Item	*Number of Contracts*
Kind of title—	
No provision	13
Marketable or merchantable title	141
When title passes—	
No provision	4
Exchange for mortgage only	13
Either exchange for mortgage or final payment	20
At final payment only	117
Title held by escrow agent	8

The thirteen contracts that did not specify the kind of title merely indicated that the seller would convey the property. Eight of these contracts did not provide for an abstract of title. The other five provided that the seller would furnish an abstract but did not set a standard as to the kind of title that the abstract must show. The title requirements in the other 141 contracts were stated in terms of a marketable or merchantable title, a good and marketable or merchantable title, a perfect title, a title free of encumbrances, a free and clear title, a title acceptable to the buyer, or a lawful title.

Only four of the contracts did not specify clearly when the title was to pass from seller to buyer. One contract, for example, said the seller ". . . has this day sold . . ." without indicating that the title would be transferred upon completion of the contract or otherwise indicating when the seller was to transfer title to the buyer. Under eight contracts the seller immediately deeded the property to the buyer but left it with an escrow agent to hold until the terms of the contract were fulfilled.

One incident of the seller's retention of legal title is the right to possess the property. Thus, in absence of an appropriate contract provision, the buyer technically has no right to the possession of the prem-

[71] See Martin v. Roberts, 127 Iowa 218, 102 N.W. 1126 (1905); 1 PATTON ON TITLES § 42 (1957).

ises.[72] Because in the normal land contract it is contemplated that the buyer will work the land to satisfy the purchase money debt, courts usually are willing to find an implied right to possession in a contract where such right is not spelled out. For example, where the buyer is to pay interest on the debt, his right to possession has been inferred.[73] To avoid any question, however, the buyer's right to possession should be expressly provided for in the contract.

Abstract. An abstract of title is essentially a capsule history of the title to land. Its presentation by the seller and review by the buyer are routine matters, but to safeguard the buyer's interests the procedure should be covered in the contract. A study of the 154 contracts showed the following about presentation and review of the abstract:

Item	*Number of Contracts*
Presentation at final settlement	138
Presentation at possession	44
Presentation at possession but not at final settlement	8
Abstract not mentioned	8
Review schedule established—	
At possession	14
At final settlement	9

In all eight cases where no mention was made of an abstract, the buyer depended upon the person who prepared the contract to see that all papers were in proper form, and in no case was this person the buyer's lawyer. It would seem that these buyers did not appreciate the importance of safeguarding their position by requiring an acceptable abstract of title. Neither were they adequately informed as to the proper procedure to follow in regard to the examination of the title.

The abstract should be prepared by a competent abstractor as soon as the seller and buyer are reasonably sure that the transaction will be completed. It should meet the approval of the seller's attorney and then be submitted to the buyer for review. The contract should provide for a review of the abstract by the buyer's attorney, preferably before the buyer goes into possession of the property, but in any case before final delivery of the deed. The parties should agree on a reasonable time for the seller to present the abstract to the buyer, and for the buyer to complete his review and either accept the abstract or indicate any defect that needs to be cured. The parties should likewise agree on a reasonable time for the seller to correct the defects and for the buyer

[72] See *In re* Boyle's Estate, 154 Iowa 249, 134 N.W. 590 (1912).

[73] See generally Note, *Land Contracts-Wisconsin Form*, 17 Wis. L. Rev. 90 (1942).

to review the corrected abstract. If the title defects cannot be cured so as to meet the standard of marketability, the parties may work out a compromise arrangement or terminate the negotiation.

Deed. According to the general practice in Iowa as reflected by the contracts examined, the seller furnishes the buyer a warranty deed. The majority of the contracts (144) provided simply for a warranty deed; the terms general warranty, or special warranty, or good and sufficient warranty were seldom used.

A provision in the contract should indicate that the deed will specify the recipient or recipients as the buyer may designate, and that it will show that the property is to be held as tenants in common, as joint tenants with right of survivorship, or otherwise as the buyer may desire. If joint tenancy is intended, it must be clearly stipulated to overcome the statutory presumption favoring tenancy in common. To reduce the possibility of confusion, the contract should usually show specifically the name or names of the person or persons to whom the title will pass —the names that will be shown on the deed—and how the property will be held.

In many cases, potential title trouble can be avoided by requiring that the seller immediately execute a proper deed and deliver it to an escrow agent to hold pending final performance by the buyer. If the buyer fully performs the contract, the escrow agent then delivers the deed, but the delivery relates back to the time the deed was placed in escrow.[74] Thus, if the seller has died, become incompetent, or moved away, practical difficulties in obtaining an effective deed to the property are avoided. The use of escrow arrangements was not investigated in the study, but there is evidence that escrows are widely used in some communities.

Questions involving title, abstract, and deed are closely related and may be covered effectively in a single contract provision.

> TITLE, ABSTRACT, AND DEED. The seller further agrees to transfer a marketable record title to the land sold and to furnish the buyer an abstract of title, covering the period between the original government grant and the appropriate date as shown in this contract, for review a month before the buyer is given possession. The buyer will be given thirty days to review the abstract and the seller will be given thirty days to correct defects, if any. If defects cannot be cured within thirty days, the buyer may rescind the contract at his option. The seller will bear all the cost of perfecting the abstract of title. The seller further agrees, upon fulfillment of all the conditions of this contract, to convey the property by warranty deed

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[74] See Leedham v. Leedham, 218 Iowa 767, 254 N.W. 61 (1934); Mohr v. Joslin, 162 Iowa 34, 142 N.W. 981 (1913); Dettner v. Behrens, 106 Iowa 585, 76 N.W. 853 (1898).

to the buyer shown above or to whomsoever he may designate, showing the title to be held under whatever arrangement the buyer may desire. The deed will be executed at or before the buyer takes possession and will be deposited with an escrow agent for delivery to the buyer upon completion of the terms of this contract.

Taxes and Special Assessments

In Iowa, real estate taxes and special assessments are levied directly against the land, without a personal liability for payment on the part of the land owner.[75] Because the property itself is liable for the taxes, a lien against the land is created by statute immediately upon the levying of the tax or assessment.[76] Both the seller and buyer in an installment land contract have an interest in assuring that the real estate taxes and assessments are promptly paid. Because in Iowa, taxes and assessments are levied on a calendar year basis and payable in the year following the levy, and may be paid in two installments,[77] misunderstandings concerning which party should pay what taxes are not infrequent. Normally the buyer is expected to pay the taxes and assessments during the duration of the contract. A failure to make such payments imperils the security of the seller. On the other hand, taxes and assessments owing before the buyer takes possession are liens upon the land which the buyer effectively has the burden of satisfying to prevent the farm being sold to satisfy the delinquent taxes. Of course, a title examination before the buyer assumes possession should reveal a lien on the property resulting from delinquent taxes and excuse the purchaser from further performance until the encumbrance is discharged. Every land contract should contain an express provision dealing with the proration of taxes and assessments.

The tax and special assessment provisions of the 154 installment land contracts are summarized briefly as follows:

Provision	*Number of Contracts*
Seller to pay taxes to a specified date	109
No specific requirement on seller to pay taxes	45
Buyer to pay taxes from a specified date	133
No specific requirement on buyer to pay taxes	21
No provision on taxes	3
Seller to pay special assessments to specified date	24
No provision on seller to pay special assessments	130
Buyer to pay special assessments from specified date	89
No provision on buyer to pay special assessments	65
No provision on special assessments	60

[75] Clinton v. Shugart, 126 Iowa 179, 101 N.W. 785 (1904); Hunt v. Rowland, 22 Iowa 53 (1867).

[76] Iowa Code § 445.28 (1962).

[77] Iowa Code § 445.36 (1962).

The lapse of time between the shift in responsibility for taxes and special assessments and possession averaged 90.2 days, not including two cases of exceptionally long periods—1,020 and 3,900 days. The range was from 0 to 420 days. The lapse of time for most (100) of the contracts was sixty days, from January 1 to March 1. Only nine of the 154 contracts provided that the shift in responsibility for taxes should be at any time other than January 1. Of these nine, five contracts provided for the shift on July 1, and the other four provided that the shift would take place on the same date that possession was given. The distribution was as follows:

Between Taxes and Possession	*Number of Contracts*
No date	3
Same day	5
1 to 30 days	7
31 to 100 days	113
101 to 360 days	20
361 or more days	6
	154

If taxes are to be apportioned between the parties for the year in which the transfer of ownership occurs, the provision should show the proportion, in percentage or fraction, that is to be paid by each party. In theory, taxes are a cost of owning land. Presumably they are paid out of current or prospective earnings. Reasonably, it would seem they should be paid by the person who enjoys the rents and profits—the owner. Therefore, the shift in responsibility for taxes from seller to buyer should be at the date of the shift in the right to rents and profits. Usually this is the date that possession changes hands.

Only five of the contracts examined met the criterion that payment of taxes should be the responsibility of the person due rents and profits, that is, that the date of possession and the responsibility for taxes should be the same date. The explanation turns largely on two built-in rigidities: (1) Occupancy of farms is usually changed on March 1—this is the moving date for Iowa farmers; it is the date specified in landlord and tenant law governing farm leases.[78] (2) Taxes are levied on the basis of the calendar year—from January 1 to December 31, inclusive.[79] It is easiest to provide that the responsibility for taxes shall shift on January 1. It is most convenient for possession to change hands on March 1. The January 1 and March 1 lapse of time was characteristic of two-thirds of the contracts.

[78] Iowa Code § 562.5 (1962).
[79] Iowa Code § 444.9 (1962).

Although the January 1 and March 1 arrangement is customary and convenient, it should be remembered that it requires the buyer to pay taxes for two months before he receives possession. In such cases, the taxes possibly should be prorated, one-sixth to the seller and five-sixths to the buyer. If the lapse of time is greater than one hundred days, as it was in twenty-six contracts (in six of which it was for longer than one year), consideration should be given to the fairness of the arrangement. If the lapse of time is long, the provision should be quite specific so it would not be subject to misinterpretation.

Over a third of the contracts contained some type of penalty provision regarding taxes and assessments. Usually this provision was stated in general terms and tied in with other provisions covering insurance and attorney's fees. Sometimes a requirement to pay taxes and assessments was combined with a provision regarding a default in the payments on principal and interest, and occasionally it was included in the provision covering the action to be taken by the seller in case the buyer failed to keep the property in a good state of repair. In essence, the penalty was directed to the seller's remedies, including forfeiture, in case the buyer was in default in regard to these items. Termination of the contract need not be the only remedy for default in paying taxes. The contract could provide for the other party to pay the taxes (including fines), at his option, and add or subtract them from the unpaid principal, as the case may be. The remedy of forfeiture might be used to prevent persistent delinquency in paying taxes. The provision might also include a requirement that tax receipts would be furnished the other party at his option.

Taxes and special assessments may be covered in a single provision such as follows:

> TAXES AND SPECIAL ASSESSMENTS. Seller agrees to pay _____ (all or a stated proportion) of the regular taxes and special assessments levied against the property for the year _____ and payable in the year _____; and buyer agrees to pay, before they become delinquent, all subsequent taxes and assessments against said property. If either party fails to pay the taxes and assessments assigned to him by this provision, the other party may at his option make the required payments and such payments shall be added or credited to the balance owing on the purchase price. If the buyer has permitted taxes or special assessments to become delinquent in any year, the seller may thereafter require the buyer to regularly present tax receipts.

Risk of Loss and Insurance

During the extended duration of an installment land contract the typical farm is subject to diverse losses ranging from soil erosion to destruction by fire of major buildings. In Iowa, without a contrary con-

tract provision, the risk of loss for injury to the property shifts to the buyer upon his signing the contract.[80] To say that the buyer has the risk of loss means that if the property is damaged, the buyer is neither excused from performing the contract nor entitled to an adjustment in the purchase price to represent the diminution in the value of the land.

Iowa's law placing the risk of loss on the buyer from execution of the contract represents the "American rule" on this issue,[81] but it should be noted that dissatisfaction with this result has been voiced in many quarters.[82] Some jurisdictions place the risk of loss on the seller until delivery of the deed,[83] while the uniform Vendor-Purchaser Risk Act makes the risk turn on possession.[84] All of these rules are operative only in absence of an agreement covering risk of loss, so to avoid the problem it is necessary only to specifically allocate the risk in the contract.[85]

Placing the risk of loss upon one party does not necessarily safeguard the interests of either party. The liability of a judgment proof buyer is of little value to the seller whose property has been decimated in value by a fire. Similarly, the fact that he is relieved from completing the purchase by virtue of a substantial loss to the property may be of little consolation to the buyer whose plans were built around the particular farm involved. A properly drawn insurance clause would provide the requisite protection in most cases.

Although the law allocates the risk of loss, it does not require the party bearing the risk to replace the loss or insure against it. Provisions creating a duty to insure against and restore losses are commonly included in land contracts.

Both parties to a land contract have an insurable interest in the property involved, and occasionally both parties will carry insurance. More commonly a single insurance policy is carried payable to both parties "as their interests may appear." An interesting problem is raised by the situation where only the party not bearing the risk of loss carries insurance. When the risk of loss is on the seller and the buyer insures, it seems well-settled that the seller has no interest in the insurance proceeds.[86] On the other hand, there is substantial authority holding that

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[80] O'Brien v. Paulsen, 192 Iowa 1351, 186 N.W. 440 (1922).

[81] 3 AMERICAN LAW OF PROPERTY § 11.30, p. 90 (Casner ed. 1952).

[82] *Id.* at 90-2.

[83] Anderson v. Yaworski, 120 Conn. 390, 181 Atl. 205 (1935); Libman v. Levenson, 236 Mass. 221, 128 N.E. 13 (1920); Johnson v. Stalcup, 176 Wash. 153, 28 P.2d 279 (1934).

[84] § 1. The Uniform Act has been adopted in California, Michigan, New York, North Carolina, Oregon, South Dakota, and Wisconsin.

[85] 3 AMERICAN LAW OF PROPERTY § 11.30, p. 89 (Casner ed. 1952).

[86] Vogel v. Northern Assurance Co., 219 F.2d 409 (1955); Zenor v. Hayes, 228 Ill. 626, 81 N.E. 1144 (1907); Lampesis v. Travelers Ins. Co., 101 N.H. 323, 143 A.2d 104 (1958).

insurance procured by the seller may be utilized for the benefit of the buyer, even though the buyer has the risk of loss.[87] The better reasoned cases support this result on the ground of unjust enrichment and require the buyer to indemnify the seller for the premium payments.[88]

The decision to insure in each land contract is dependent on the attitudes and values of the parties and their respective economic situations. Some parties will be financially strong enough to be "self-insuring," others simply may not believe in insurance. In most contract sales, however, it would seem good practice to cover the risk of loss by insurance from execution to completion of the contract.

An analysis of the 154 land contracts studied and the responses of sellers and buyers to specific questions reveals how risk of loss and insurance are currently handled in land contracts. It will show also some of the problems that should command attention of the two parties and their attorneys when negotiating and drafting the contract. The discussion is focused on the two time periods of most concern—from execution of the contract to possession by the buyer, and from possession to completion of the purchase. An analysis of the coverage of risk of loss by insurance in the 154 contracts is summarized briefly as follows:

Time Period	*Number of Contracts*
Execution to possession only	17
Execution to fulfillment	55
Possession to fulfillment	66
No insurance provision	16
	154

The two most significant figures are the complete absence of an insurance provision in sixteen of the contracts and risk of loss covered by insurance in seventeen of the contracts from execution to possession only. Thus, thirty-three of the contracts did not require that the buyer, after possession, protect the seller against risk of loss by any insurance. One contract mentioned that no buildings were on the property. But it seems unlikely that all thirty-three of the transactions were adequately safeguarded against risk of loss without some insurance after possession was given to the buyer.

Execution to Possession. Seventy-two of the 154 contracts made pro-

[87] Alabama Farm Bureau Mut. Ins. Serv. v. Nixon, 268 Ala. 271, 105 So.2d 643 (1958); Williams v. Lilley, 67 Conn. 50, 34 Atl. 765 (1895); Brady v. Welsh, 200 Iowa 44, 204 N.W. 235 (1925); Godfrey v. Alcorn, 215 Ky. 465, 284 S.W. 1094 (1926); Skinner & Sons Shipbuilding & Dry Dock Co. v. Houghton, 92 Md. 68, 48 Atl. 85 (1900); Order of Eagles v. Weatherby, 82 N.J. Eq. 455, 88 Atl. 847 (1913); People's Street Ry. Co. v. Spencer, 156 Pa. 85, 27 Atl. 113 (1893); Russell v. Elliott, 45 S.D. 184, 186 N.W. 824 (1922).

[88] *Cf.* Gard v. Razanskas, 248 Iowa 1333, 85 N.W.2d 612 (1957).

vision for the risk of loss between the time of execution of the contract and when the buyer was to be given possession. The lessons from the analysis of these provisions may be summarized as follows: (1) Less than half (72) of the contracts contained a specific provision as to risk of loss from execution to possession; (2) in over a fourth (19) of these seventy-two contracts the sellers assumed the risk of loss by promising to turn the property over to the buyer in as good condition as when he bought it; (3) in these contracts practically all (62) of the sellers agreed to carry insurance to cover risk of loss from execution to possession; (4) the use to be made of proceeds from insurance in case of loss was specified in less than half (33) of the provisions; (5) the type of insurance coverage intended was mentioned in about half (34) of the provisions; (6) the amount of the insurance was shown in about a third (26) of the provisions; and (7) incomplete blanks, unclear provisions, and lack of specificity were relatively common in the risk of loss and insurance provisions.

Each land contract that involves valuable improvements should contain a provision fixing responsibility for risk of loss between execution of the contract and transfer of possession to the buyer. Because the seller is in possession, it would seem reasonable that he be held responsible in the contract for any loss that may occur, the law to the contrary notwithstanding. The two conventional ways of doing this, judging from the contracts in this study, are either (1) for the seller to agree to maintain the improvements in as good condition as at execution or (2) for him to agree to carry insurance against insurable losses and that the insurance proceeds may be used at the option of the buyer either to replace or repair any loss or damage or to reduce the purchase price. Of the two approaches, the second seems much the superior because it fully spells out the responsibility of the seller and specifically requires insurance coverage.

A good provision covering risk of loss between execution and possession should specify: (1) The requirement that insurance will be carried to cover insurable losses, (2) who will pay for the insurance, (3) the amount of insurance, (4) the kind of insurance, (5) what improvements are covered, (6) the company in which the insurance will be carried, and (7) what use will be made of the proceeds. The provision should indicate that the insurance transaction will be concurrent with the execution of the contract. An appropriate clause might be selected from the following:

> RISK OF LOSS—INSURANCE PRIOR TO POSSESSION. It is further agreed that the seller will keep all of the normally insurable improvements on the above described real estate insured in an amount not less than

$\$$_____, covering damages by fire, wind, lightning, and other casualty, including extended coverage, in an insurance company acceptable to the buyer, beginning at the execution of this agreement and continuing up to possession by the buyer. The proceeds of such insurance in case of loss shall be accepted by the buyer as full compensation for the improvements so damaged or destroyed and will be used at the option of the buyer to replace or repair such improvements or applied on the balance of the purchase price hereunder. The interest of the buyer in the insurance shall be properly noted on the policy.

RISK OF LOSS—INSURANCE PRIOR TO POSSESSION. It is further agreed that first party will assign to second party, when this agreement is executed, the presently outstanding insurance policy on said premises, at no cost to the buyer, and that in event of damage or destruction of any of the improvements prior to the date of possession by the second party, the insurance payable for such loss shall be used to replace or repair the improvement if the buyer so desires, and if the same is not used to replace or repair such damage or loss, the insurance received for such loss shall be applied on the balance of the purchase price hereunder.

Possession to Fulfillment. The allocation of the risk of loss between possession by the buyer and fulfillment of the contract was not stipulated in so many words in the contracts reviewed. The law and local custom apparently make such provision unnecessary. The great majority of the contracts (121) contained a provision about insurance on the property during this period.

Analysis of these insurance provisions indicates that the following items might well be considered in a discussion of insurance on the premises: (1) The kind of coverage, (2) what is to be insured, (3) the amount of the insurance, (4) in whose name should the policy be held, (5) with what company the insurance should be carried, (6) who is to pay the premiums, (7) who is the beneficiary, (8) who holds the policy, (9) what use is to be made of insurance proceeds in case of loss, and (10) should a penalty provision be included.

The 121 contracts that mentioned insurance during this period reveal a wide variety of provisions. The shortest is as follows: "The purchasers shall maintain insurance satisfactory to the sellers." Another short provision states: "[The first parties] will continue to carry the insurance on the buildings thereon, the second parties agreeing to pay the premiums for said insurance during the term of this contract." Provisions as brief as these leave unanswered several important questions. The content of the 121 insurance provisions sheds some light on these questions and may be summarized briefly as follows:

Insurance Provisions	*Number of Contracts*
Kind of coverage—	
Fire	42
Wind including tornado	31

Lightning	18
Extended coverage	8
No specifications	79
What is insured—	
Buildings or improvements	74
No specifications	47
Amount of insurance—	
Insurable amount	37
Dollar amount stated	22
Percentage of value	11
Fair value	9
Present value	7
Amount of unpaid principal	6
An adequate amount (adequately)	5
An approved amount	5
Reasonable, mutually decided, other	4
No specifications	15
In whose name—	
Seller's name	10
No specifications	111
With what company—	
Reliable, responsible, reputable, etc.	39
Seller approved	32
No specifications	66
Who pays premium—	
Buyer	121
Who is the beneficiary—	
Seller	63
As interests may appear	21
No specification	37
Who holds the policy—	
Seller	39
Third party	2
No specification	80
Use of Insurance payments—	
Repair or replace loss	12
Pay on purchase price	11
Option of: Buyer	9
Seller	2
No specification	108
Penalty for not meeting insurance provision	7
Unclear provisions	14
No insurance provision	33

Sellers and buyers show little concern in these contracts for the kind of insurance that is carried. It would seem that the provision should indicate the kind of damage or destruction that is to be covered by the insurance. Fire, wind, tornado, hail, lightning, other casualty, and extended coverage are the items mentioned most frequently. The tendency

in present-day insurance seems to be toward a comprehensive type of coverage, which would include all of these items, and others.

The provisions likewise contain little as to what is covered in the insurance. The typical words are "improvements" or "premises" or "buildings." Presumably items normally insurable are to be insured. If there is a possibility of disagreement, the provision should indicate specifically what is to be insured. In some situations the insurance might cover only the dwelling and major farm buildings. In other situations some of the smaller buildings might be included; for example, the milk house or pumping and water storage facilities. General coverage of all appurtenances to the insured item might also be required; an electric pump, for example, might deserve coverage. Of course, if the present insurance is to be continued for the term of the agreement, both parties should know what items are included in the policy.

The amount of the insurance was specified in most of the provisions, but the specifications were diverse and fulfillment of some provisions would appear impossible. For example, one contract provided ". . . the amount of said insurance shall be at least equal to the unpaid balance of the purchase price on said real estate . . . ." The unpaid balance at the execution of this agreement, which apparently was when the provision was to become effective, was 95 per cent of the purchase price. It is questionable whether the buyer could obtain so much insurance, and if he could, such excessive coverage seems an utter waste of needed funds.

Usually, the provisions do not indicate in whose name the policy is to be drawn, but the buyer agreed to pay the premiums in every insurance provision examined. In each of the ten contracts specifying that insurance is to be purchased in the name of the seller, the seller is also the beneficiary, and is given custody of the insurance policy. In these cases the seller apparently could keep the insurance payment and, only at his option, use any part of it to repair or replace the damaged property. Regardless of the wisdom of this arrangement, it does seem reasonable to award possession of the policy to the party named as beneficiary.

The seller retained the right to approve the company in which the insurance would be held in about one-fourth of the provisions. In about a third of the provisions the insurance company was characterized as reliable, responsible, reputable, or other similar description. Both parties are so intimately concerned with risk of loss that they should be able to mutually agree upon the insurance company if the issue is raised during preparation of the contract. If there is some difference of opinion, it would be more easily settled during the drafting of the agreement than afterward.

On the matter of the use to made of the insurance money, the sellers and buyers included in the study were asked, Who will get the insurance proceeds for losses on the farm? Their replies were as follows:

Use of Proceeds	*Buyers' Replies*	*Sellers' Replies*
Given to buyer	57	8
Given to seller	39	10
Replace loss or to seller	31	8
Divided between two parties	9	0
As interests may appear	6	7
No insurance was carried	5	0
No answer or do not know	7	0
	154	33

The difference between the number of contracts without insurance provisions (33) and the number of buyers who reported that no insurance is carried (5) would indicate that many buyers carried insurance on the property although such was not required in the contract. Of the fifty-seven buyers who replied that they would get the insurance proceeds for losses on the farm, only three of their contracts contained such a provision. No inquiry was made as to what the insurance policies actually provided about the seller's interest in the insurance.

The remoteness of a loss seems to make it easy for farmers to overlook the necessity for specifying how the proceeds will be used. The importance of foreseeing the ramifications of a substantial loss cannot be overstressed. For example, a requirement that insurance proceeds must be applied to the purchase price may be completely unsatisfactory to the buyer whose operation is disabled by the loss and who does not have other funds to effect a restoration of the damage.

Most of the contracts do not contain provisions indicating how the insurance proceeds are to be used. Among those contracts providing for the use of insurance proceeds, most frequently the proceeds can be used either to repair or replace the loss or to reduce the unpaid principal at the option of the buyer. Two other ideas might be of value: (1) The repair or replacement should not require an exact or approximate duplication of the original. For example, if a dairy barn is destroyed, the buyer should be in position to replace it with a beef cattle barn, or a combination barn and granary, if such would meet better his future needs. (2) If all of the insurance money is not used for repair or replacement, the buyer should be required to use the remainder to reduce the unpaid principal.

A specific penalty for failure to procure the requisite insurance is rarely included in the insurance provision. Commonly, failure to perform the duties set forth regarding insurance was included as a general

default in the remedy provisions of the contracts. Consideration should be given to a provision authorizing the seller to pay the premiums and add the payment to the purchase price.

Risk of loss to the real estate of most land contracts is so important that the risk of loss and insurance provision should be given detailed attention. The provision should cover all essential items and all reasonable contingencies. The following suggested provision is submitted for consideration:

> RISK OF LOSS—INSURANCE AFTER POSSESSION. It is also agreed that from and after the time he takes possession the buyer will insure the premises against loss owing to fire, wind, lightning, hail, other casualty, and extended coverage on the normally insurable improvements, particularly the dwelling, barn, _____, up to and including their full insurable value. The policy will be in the name of the buyer and seller. It will be obtained from a company approved by the seller, and will be kept in the possession of the buyer but available for review at any reasonable time by the seller. The premiums will be paid by the buyer. A loss payable clause will show that the insurance proceeds, if any, will be paid to the two parties, but the proceeds will be used only to repair or replace any loss or damage or to reduce the unpaid principal at the option of the buyer. In case the buyer should fail to pay the premiums at least ten days before they become due and payable, the seller may pay the premiums and add the cost to the unpaid principal which will draw interest until paid at the rate specified above.

Other Insurance. Although not mentioned in the land contracts studied, two additional types of insurance might be considered by buyer and seller, particularly if the total down payment up to and including date of possession is a small proportion of the purchase price. The first is comprehensive liability insurance and the second is declining balance term life insurance on the life of the buyer.

The role of a comprehensive liability policy would be to assure, insofar as possible, that the transaction will be carried to completion. It would afford protection against many of the multitude of contingencies that might make it impossible for the buyer to carry out the contract. Among these are liabilities for damages to the person or property of third parties due to acts of the buyer, his family, employees, and livestock.

The carrying out of the land contract might be safeguarded also by term insurance on the life of the buyer. The most appropriate and least expensive policy would be one for the term of the land contract or until the buyer has acquired a substantial equity in the property. The principal sum of the policy is usually related over time to the unpaid balance on the contract.

Comprehensive liability insurance that covers certain risks of doing

business and term life insurance on the buyer would seem to make it feasible for the contract to provide a lower down payment or a slower rate of repayment of the principal sum, or both, than in the absence of such insurance. Both parties are concerned, and the matter is an appropriate subject for discussion by them.

Reservation of Use Rights

Installment land contracts may contain a provision whereby the seller reserves the right to use some specified part of the premises. The kinds of use rights reserved in fifteen of the contracts may be divided into the following categories: (1) To use storage facilities for grain crops, (2) to remove part of the real property, and (3) to live on the premises and to receive certain perquisites from the farm.

Reservations of storage facilities for grain crops—chiefly corn, oats, and soy beans—were made in ten of these contracts. In all cases the reservations were to end by the normal time for the harvest of the specified crops subsequent to possession. Usually a date was specified from five to seven months after possession was given on March 1. Some of the provisions call for a reasonable period or until the buyer needs the facilities for next year's crops. Where both corn and oats were involved, two dates were frequently specified.

The right to remove a part of the real property was seldom reserved. In one case the right was reserved to live in a two-room residence and use a garage for seven months and later to remove them from the premises. In another case the right to cut and remove one hundred hedge posts was reserved.

The right to live on the premises was reserved by three sellers. The duration of the right ranged from one year to so long as the seller or his wife shall live. In one contract the right included, besides the dwelling and adjacent land (about one-fourth acre), a furniture shop, a shed for the buggy, and a stall and feed for one horse (the contract reflects the way of life of the cultural group involved).

Reservations of the right to continue to use part of the property after the buyer has been given possession should be given special attention, for they are contrary to the normal situation. The contract should be specific as to what use right is reserved, to which part of the property the reservation attaches, and when the reservation will come to an end. The right to remove a part of the real estate should be equally specific. The provision might well read as follows:

> RESERVATION OF RIGHT TO USE. It is agreed that the seller can continue to use the _____ for _____. The buyer will maintain the property during this time in the same way as if he were using it and will

keep it insured as provided for elsewhere in this contract. The buyer assumes no responsibility for any personal property of the seller that the seller may leave or bring upon the premises.

Seller's Right to Inspect

None of the 154 contracts contained a provision expressly giving the seller the right to inspect the property after the buyer took possession. Except by agreement, a seller normally has no right to enter the property to inspect it or for any other purpose. In cases where maintenance of improvements and adherence to standards of good husbandry are particularly important, a seller may wish to make a specific reservation of a reasonable right to inspect. A provision on inspection may be stated as follows:

> INSPECTION OF THE PREMISES. The seller may from time to time come upon the premises at reasonable daylight hours to inspect the buildings and land after giving reasonable notice to the buyer of each inspection.

Seller's Right to Manage

None of the land contracts provided that the seller reserved any right to participate in the management of the property. Participation in management may not be desirable in contracts between private individuals, but if the land contract is used by institutional lenders, such as insurance companies and banks, some management services may be supplied by the lender. The tendency has been observed for certain lenders to render such service as a part of their regular loan agreements. The shift by commercial lenders from serving only as a loan collection agency toward assisting in limited management decisions may continue in good land areas. Accelerating this trend is the steadily increasing purchase price of farms, resulting in substantial increases in the size of farm real estate loans. If low-equity financing is to be adapted to institutional lenders, consideration should be given to servicing the loan. Where any participation in management is anticipated, it should be provided for specifically in the contract.

> MANAGEMENT. The seller agrees to furnish limited management services as provided in Schedule _____, attached hereto.

Ownership of Growing Crops

Questions regarding the ownership of growing crops do not arise frequently. Although not free from question, apparently, in absence of a specific provision, mature crops are not included in a sale of land on contract.[89] It is clear that without a provision, the land contract buyer becomes the owner of unmatured crops growing on the land when he

[89] See Moffett v. Armstrong, 40 Iowa 484 (1875).

takes possession.[90] Questions are likely to arise where growing crops on the land are unmatured at the time of the sale but mature before the buyer takes possession, and where unmatured crops are growing on the land at the time a forfeiture is effected.[91]

Only 12 of the 154 land contracts mentioned the ownership of growing crops. Six of these provisions indicated that the buyer was to receive the crops growing on the premises. All six of these contracts were made and entered into while major crops were growing on the farm, between June 28 and October 16. Five of the twelve contracts provided that the seller was to have the crops grown or harvested prior to the date of possession. One of the contracts was concerned with what happened to growing crops in case of forfeiture. It provided that upon default the seller would ". . . after giving thirty days notice in writing of the cancellation of this contract, have the right to enter upon the real estate herein described and take immediate possession thereof including the right to the current year's crop . . . ."

The buyers were asked: Under your contract, what disposition would be made of crops in the field, if you were forfeited out before harvest time? Their replies were as follows:

Disposition of Growing Crops	*Replies*
Belong to the buyer	20
Belong to the seller	11
Question would not arise, for payment is due when crops are not in the fields	18
No provision in the contract	61
No answer or don't know	44
	154

The sellers were asked a similar question; their replies indicated an equal lack of knowledge. The most common reply was that they did not know or that the contract contained no provision on growing crops. Some sellers thought that they would get the crops, and some said the problem would not arise, for payments are due in March or the contract could not be forfeited before harvest time.

Because of the uncertainty in the law on the matter of ownership of growing crops under certain circumstances, a contract for the sale of a farm under cultivation should contain a provision specifying the parties' rights to crops under potentially troublesome situations. For example:

GROWING CROPS. It is agreed that all crops that are harvested before

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[90] Weyrauch v. Johnson, 201 Iowa 1197, 208 N.W. 706 (1926) (dictum); Newburn v. Lucas, 126 Iowa 85, 101 N.W. 730 (1904) (deed).

[91] *Cf.* Clark v. Strohbeen, 190 Iowa 989, 181 N.W. 430 (1921).

the buyer takes possession remain the property of the seller. Crops standing on the property at the time that the buyer takes possession become the property of the buyer. In case of forfeiture, all crops become the property of the seller where the forfeiture is instituted within one month subsequent to the default. Otherwise, their value is divided between the parties in a proportion based on the relative maturity of the crops at the time of the forfeiture.

Fixtures and Personal Property

A troublesome question in many land contract situations is what improvements and other items of property closely associated with the farming business are included in a transfer of the farm in absence of a specific contract provision. Three problem areas are discernible: (1) The distinction between fixtures and personal property of the seller at the time of sale, (2) the distinction between fixtures and personal property of the buyer upon forfeiture, and (3) the sale of articles of personal property concurrent with the sale of the farm.

Generally a land contract purchaser is in the same position as any other purchaser of a farm with regard to fixtures.[92] Farm purchases create particularly vexing fixture problems because of the great number and variety of items of property associated with the land in a typical farming operation. Over forty different items of property were specifically included or excluded in the land contracts studied. Little difference was observed generally between the kinds of items that were included and those that were excluded.[93] Many of the items mentioned have be-

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[92] See 5 AMERICAN LAW OF PROPERTY § 19.6 (Casner ed. 1952).

[93] Personal property items that are specifically included or excluded as a part of the real property in the 154 Iowa land contracts may be presented in the following general categories:

1. *The dwelling*—
   a. Bathroom fixtures including bath tub.
   b. Electric water heater and water system.
   c. Electric light fixtures including light globes.
   d. Gas fixtures and stoves.
   e. Carpeting.
   f. Window shades and venetian blinds.
   g. Kitchen cupboard.
   h. Linoleum attached to the floor.
   i. Screens and storm windows.
   j. Shrubs, trees and plants.
2. *Farm buildings*—
   a. Portable buildings, including brooders and hog houses.
   b. Elevators and electric motors.
   c. Granaries, including corn crib and steel grain bin.
   d. Self-feeders and feed bunks.
   e. Hay fork including ropes and pulleys.
   f. Water tank and heater.
   g. Milk house equipment, including wash tank and heater.
   h. Oil burners and blowers.

come important in recent years with the emphasis upon improving the farm home, almost universal use of electricity, growing recognition of the value of a pure and reliable supply of water, and the pattern of intensive farm operation which requires an operator to make substantial improvements. The items mentioned most frequently were fences, building materials, water system, window shades, screens, and storm windows. The handling of the seller's interest in the local fire department or telephone company, or his ownership of Federal Land Bank stock or interest in cooperative associations will depend in part upon the right that the seller has in disposing of such items. If transferable, most of these off-farm interests are more closely associated with the farm than with the farm owner and usually should go with the land.

The Iowa court has applied a consistent criterion in its consideration of fixture problems. The court has said:

> ". . . the true criterion of a fixture is the united application of three requisites, as follows:
>
> 1. Actual annexation to the realty, or something appurtenant thereto. 2. Application to the use or purpose to which that part of the realty with which it is connected is appropriated. 3. The intention of the party making the annexation to make a permanent accession to the freehold."[94]

Like most such standards the fixture test is much easier to state than to apply. It has not always yielded a consistent result in apparently similar cases.[95]

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3. *Water system*—
   a. Pressure pump and tank.
   b. Pump jack and assembly.
   c. Stock water tank.
   d. Hog waterer on tank.
4. *Building and fence material*—
   a. Posts.
   b. Gates.
   c. Barbed and woven wire.
   d. Loose lumber.
   e. Unlaid tile.
   f. Ladder.
   g. Miscellaneous building material.
5. *Crops*—
   a. Corn crop.
   b. Grain (harvested).
   c. Straw.
6. *Miscellaneous*—
   a. Share in fire department.
   b. Share in telephone.
   c. Federal Land Bank stock.
   d. Unattached items.
   e. Items owned by the tenant.

[94] Cornell College v. Crain, 211 Iowa 1343, 235 N.W. 731 (1931).

[95] *Compare* Fischer v. Johnson, 106 Iowa 181, 76 N.W. 658 (1898) *with* VanWagner v. VanNostrand, 19 Iowa 422 (1866).

If the farm involved in the contract is occupied by a tenant of the seller, the buyer may be mislead if he assumes that all fixtures will pass with the land. In Iowa, a tenant has the right to remove property attached by him to the land if it is either a trade fixture or an agricultural fixture and if the removal will not cause substantial damage to the real estate.[96] Thus, a naive buyer who assumes that such items as a water system, corn crib, or hog houses are a part of his purchase may be put to an unexpected replacement expense when the seller's tenant rightfully removes them.

Because of the great variety of property found on the typical farm and the uncertainty inherent in the law of fixtures, land contract parties should specify the handling of any property of questionable status. A simple provision enumerating the items included or excluded should suffice.

> FIXTURES AND PERSONAL PROPERTY. The following items are included in the purchase price and will be left on the property when the buyer is given possession _____

Many of the same problems arise on the repossession of the land by the seller under a forfeiture right. Generally, any improvements that the buyer has placed on the land inure to the benefit of the seller on forfeiture.[97] Again, the key determination will be whether the items at issue are so closely associated with the land that they become fixtures, or whether they remain personal property of the buyer which he may remove when he vacates the premises.

If it is anticipated that the ownership of various items of property used by the buyer on the land may be disputed in event of a forfeiture, a provision covering the matter might be included in the agreement. For example:

> FIXTURES AND PERSONAL PROPERTY. It is agreed that if the seller should exercise his right of forfeiture under this contract, the buyer shall have the right to remove the following items of property from the land, regardless of their degree of attachment to the land, by compensating the seller for any damage done to the land by their removal: _____

Even if it is determined that an article of property is not a fixture that passes with the land, in many cases the buyer may desire to purchase the property anyway. In the study the buyers were asked the question: When you purchased the farm did you also buy personal property from the seller? If the answer was in the affirmative, an addi-

[96] See Cornell College v. Crain, 211 Iowa 1343, 235 N.W. 731 (1931); Winmike v. Heyman, 185 Iowa 114, 169 N.W. 631 (1918).

[97] See O'Byron v. Weatherly, 201 Iowa 190, 206 N.W. 828 (1926).

tional inquiry was made about the purchase price and financial arrangements. Twenty-three of the buyers replied that they had purchased personal property from the seller. Of this number twenty paid cash, two made an oral promise to pay within a year, and one paid one-sixth down and gave an installment note secured by a chattel mortgage for the balance. The average purchase price of such personal property for the twelve reporting was $2,482, with a range from $50 to $10,000.

If some items of personal property are to be conveyed from the seller to the buyer for a stated price in addition to that specified for the realty, the transaction should be handled in one of two ways: (1) Either sell it under a separate agreement, whether oral or written, or (2) include it in the land contract in a separate provision that lists the items, shows the purchase price, and outlines the repayment terms, whether cash or installment. The common practice of lumping the personal property sold together and including it with the realty to arrive at a single purchase price for the farm has little to commend it other than expediency. Besides providing a more accurate picture of the transaction, a separate schedule showing the personal property sold and the price for each article is helpful in establishing the income tax results of such a sale—the seller's gain or loss and the buyer's basis.[98]

Improvements and Good Husbandry

During the term of the installment land contract both parties have a substantial interest in preserving and improving the value of the land. The seller has a reasonable interest in encouraging improvement of the property and assuring its maintenance in good condition. As a practical matter, in a land contract the seller's interest in the property is analogous to the mortgagee's interest under a mortgage. The property stands as "security" for the unpaid principal sum and any increase or decline in its market value represents a corresponding appreciation or diminution in its security value.

The buyer's interest in maintaining and improving the property is dissimilar from the seller's interest in several respects. Ordinarily the buyer is interested in the property's use value or productivity as contrasted with its market or security value. Maintenance and upkeep are expense items to the buyer. A certain level of deterioration may be acceptable to the buyer when he is in financial trouble, but this is the exact time that the seller becomes most concerned with maintenance of the

[98] This is a particularly sensitive problem since the addition of § 1245 to the Internal Revenue Code. Generally this new section requires the recapture as ordinary income of any gain on the sale of depreciated property.

property. In short, their interests tend to be in conflict when the buyer finds it difficult to meet the installment payments.

An analysis of the 154 land contracts indicates that the parties are not as concerned with provisions regarding maintenance and improvement of the property as perhaps they ought to be. The content of the provisions, although quite variable, may be summarized as follows:

Provision	*Number of Contracts*
Existing improvement—	
No alteration	10
No removal	13
Added improvement—	
No alteration	17
No removal	18
No waste to be committed	7
Follow good husbandry practices	11
Maintain in good state of repair	37
No improvement or good husbandry provision	89

Some of the provisions seemed unduly restrictive. For example, provisions were found limiting the proportion of the farm or the number of acres that can be planted to corn, preventing the growing of beans, or requiring the use of fertilizer under specified conditions. A few contracts provided in the improvements or good husbandry provision that failure to meet the requirement shall constitute a default and be subject to forfeiture and re-entry as provided in other cases of breach of contract. It would seem that only in the most extreme case would failure to meet the enumerated standards of good husbandry result in a breach of such magnitude as to result in forfeiture and re-entry. A properly worded provision, however, may well be the basis for injunctive relief to prevent continuation of an improper or wasteful practice.

Analysis of the improvements and good husbandry provisions indicates that consideration should be given to the inclusion of a provision in every contract to attain, insofar as possible, the following goals: (1) Reasonable control over material alteration or removal of improvements and adding of new improvements, (2) maintenance of good husbandry and farming practices, (3) proper repair and upkeep of the premises, and (4) prevention of waste.

The provision should encourage, and not discourage, the addition of improvements needed to maintain a high level of productivity. It should not hamper adjustments in farming and alterations in farm buildings to meet changing conditions. As a norm, the contract should protect the seller's "security" interest in the property and not hamper the buyer's right to use the farm in a manner that maximizes his net income over time. Such a provision might well read as follows:

IMPROVEMENTS AND GOOD HUSBANDRY. It is agreed that to

promote the most effective use of the premises the buyer may make improvements and material changes in the property, if in so doing he will not reduce the value of the property. It is further agreed that neither existing improvements nor any improvements subsequently made by the buyer will be removed or destroyed without the written consent of the seller. The buyer will commit no waste on the premises, but will operate the farm with good husbandry and follow accepted farming practices and maintain the property in a good state of repair, except for normal wear and tear.

Assignment

The right to sell his interest under the land contract prior to completion of the purchase may be important to either the seller or the buyer. For some reason, such as ill health or business reverses, the seller may need to convert his interest in the contract into immediate cash. Similarly, the buyer may change his mind about farming or discover that he has overextended himself and wish to recover his equity in the land through a sale of his interest. Recognition of the possibility of transferring their respective interests enhances the flexibility of the land contract for both parties.

At common law, in absence of a contrary contract provision, both buyer and seller could freely assign their interests in the land contract.[99] Consistent with the public policy favoring free alienability of real property interests, courts narrowly construe contract provisions restricting assignments.[100] For example, a sub-contract from the buyer to another party generally is held not to violate a provision prohibiting assignments.[101]

In Iowa, the disfavor toward restrictions on assignment is manifested in a statute. Section 539.2 of the Iowa Code specifically provides that non-negotiable instruments are freely assignable notwithstanding any contract provision to the contrary. This statute apparently applies to land contracts, although persuasive arguments have been made that it should not.[102]

Rarely, if ever, would a contract restrict the seller's right to assign his interest. Usually the seller's only duty under the contract is to convey good title when the buyer completes his payments. As long as the contract is recorded, or he is in open possession of the land, it should make little difference to the buyer what the seller does with his interest. Any subsequent purchaser from the seller with actual or constructive notice of the contract takes the land subject to the buyer's rights under the contract.

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[99] See Note, *Instruments Containing Restrictions on Assignments Under Iowa Code Section 539.2*, 33 Iowa L. Rev. 114 (1947).

[100] See 3 AMERICAN LAW OF PROPERTY § 11.36, p. 104 (Casner ed. 1952).

[101] 4 WILLISTON, CONTRACTS § 954A, p. 2660, n. 4 (Rev. ed. 1936).

[102] See Note, 33 Iowa L. Rev., *supra* note 99.

A party retaining legal title to land that has been sold by him on a land contract can transfer his contract right to receive payments and his security interest in the land.[103] Unless the contract indebtedness is in the form of negotiable notes and the assignee is a holder in due course, the assignee of the seller's interest steps into the seller's shoes with regard to the buyer's rights and defenses under the contract.[104]

The difficult problems under the Iowa statute concern the effect to be given contract restrictions on the buyer's right of assignment. Seventeen of the 154 contracts contained provisions placing restrictions on the buyer's right to assign the contract. Interviews indicated that a substantial proportion (42 per cent) of the buyers believed their right to assign was limited. Most frequently Iowa contracts provide that the buyer may assign his interest only with the written consent of the seller. In many cases the seller may have a legitimate interest in attempting to discourage the buyer from assigning the contract to a party not meeting the seller's approval.

The statute would seem to indicate that the buyer may make an effective assignment of his interest without complying with a contract provision requiring the seller's consent.[105] However, if violation of the assignment provision is made grounds for forfeiture of the contract, it would seem the assignee would be purchasing a problem. If the court permits the seller to forfeit for breach of the assignment provision, what can the assignee do to correct the default? Whether the policy of Section 539.2 would prevent the enforcement of forfeiture for breach of provision restricting assignment has not been authoritatively decided,[106] but the court has endorsed the enforcement of a provision accelerating the entire balance owing in case of breach of a contract provision restricting assignment.[107] This decision would seem to indicate that the court will not extend the force of the statute to relieve the assignee from a provision in the contract penalizing unauthorized assignments. Even if the contract provides for forfeiture in case of breach of the assignment restriction, it would seem that the assignee should be able to tender the balance owing on the contract and compel the seller to convey the land.[108]

If the buyer's assignee agrees to assume the buyer's personal liability on the contract, it would appear the seller may enforce the contract di-

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[103] See 3 American Law of Property § 11.41, pp. 111-12 (Casner ed. 1952).
[104] Moore v. Elliott, 213 Iowa 374, 239 N.W. 32 (1931).
[105] *Cf.* Bull v. Weisbrod, 185 Iowa 318, 170 N.W. 536 (1919).
[106] *Cf.* Thomassen v. DeGoey, 133 Iowa 278, 110 N.W. 581 (1907).
[107] Risser v. Union Sec. Co., 200 Iowa 987, 205 N.W. 648 (1925).
[108] *Cf.* Bull v. Weisbrod, 185 Iowa 318, 170 N.W. 536 (1919).

rectly against the assignee.[109] The buyer, however, may not escape his liability under the contract by assigning his interest to another party, unless the seller accepts the substitution of the assignee's liability and releases the buyer.[110]

Although the effectiveness of efforts to penalize breach of a limitation on assignment may be uncertain, the parties to a land contract should recognize the possibility that in the future one or the other of them might desire to assign his interest and attempt to agree on the effect of such a transfer. The content of assignment provisions may vary greatly depending on the peculiar situation underlying each contract. The following is an example of one type of assignment clause:

> ASSIGNMENT. It is agreed that either party may assign his interest in the contract. If the buyer assigns his interest, he agrees to immediately notify the seller of such fact. If the buyer's assignee agrees to assume fully the buyer's obligations on the contract and if the assignee is acceptable to the seller, the seller agrees to release the buyer from all liability on the contract.

Mortgage Provisions

Although this study was concerned principally with the use of installment land contracts in the transfer of farm land ownership, one or more provisions regarding a mortgage were noted in a third of the contracts examined. Mortgage provisions were included under the following conditions: (1) The seller agreed to give a deed and accept a mortgage in the place of the contract when the unpaid balance had been reduced to a specified amount; (2) the property was already mortgaged, which mortgage would continue under the terms of the contract and be discharged by the seller or assumed by the buyer under specified conditions; (3) a mortgage loan from a third party was to be obtained concurrently with execution of the contract to furnish the seller cash in addition to the down payment under the contract; and (4) one of the parties reserved the right to place a new mortgage on the property.

Exchange Contract for Mortgage. A provision permitting the conversion of the contract purchase into a deed-and-mortgage arrangement was not included in nearly as many contracts as its merit might indicate was advisable. Unfamiliarity and inexperience with such provisions and lack of knowledge of their economic value probably account in large part for the low incidence of use. Essentially a mortgage-for-unpaid-balance provision authorizes a shift in the purchase arrangement when the buyer's interest reaches an agreed level. The seller agrees to deliver

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[109] See Coral Gables Co. v. Kleaveland, 220 Iowa 1280, 263 N.W. 339 (1935).
[110] See Vanderwilt v. Broerman, 201 Iowa 1107, 206 N.W. 959 (1926).

the buyer a deed and accept a purchase money mortgage to secure the balance owing on the purchase price. Such a shift may be advantageous to both parties, but generally the most material advantages accrue to the buyer.

From the buyer's viewpoint, the chief advantage of the shift to a mortgage is removal of the jeopardy of forfeiture. The mortgage may also provide more favorable financial terms, particularly if the contract interest rate was high or the repayments of principal were spread over a short period of time because of the original low-equity position of the buyer. Another possible advantage to the buyer would be his more favorable position to obtain production credit for farm operations. His credit position also might be strengthened with mechanics, suppliers, and other possible creditors.

From the seller's viewpoint, the shift to a deed and mortgage may serve his interests if it (1) calls for a higher rate of interest, (2) provides either more or less rapid repayment of the principal, or (3) would otherwise meet better his requirements at the time of the shift than would continuation of the contract. For example, the seller might find a discount market for a mortgage when one would not exist for a land contract. A contract generally is looked upon as a less attractive instrument, probably owing to the original high risk involved.

The most persuasive argument for making the change from contract to mortgage when the unpaid principal has been reduced to that of a typical mortgage in the community is that the original reason for using the land contract no longer exists. At the time of the shift, if he were free to seek credit elsewhere, the buyer could pay the entire amount due on the contract by mortgaging the property to a commercial lending agency. At the outset of the purchase the extraordinary right of forfeiture is justified by the high risk assumed by the seller. The higher the risk, the greater the necessity for a quick and inexpensive remedy for the seller to recover his property in case of default. But when the buyer's equity becomes substantially equivalent to or more than that under a typical mortgage, the protection afforded the seller under the mortgage foreclosure procedure should be sufficient.

In the personal interviews with buyers and sellers an effort was made to discover the reason why more deed-and-mortgage provisions were not included in the contracts. The factor principally responsible for the absence of a deed-and-mortgage shift was simply that such a provision was not considered. Both buyers and sellers indicated a strongly favorable attitude toward the inclusion of such a provision.

The substance of the buyers' reactions to a deed-and-mortgage provision may be stated as follows: (1) Many buyers thought that their

contracts contained such a provision, when in fact they did not; (2) most buyers would expect the shift to be made only after they had paid a substantial proportion of the purchase price of the farm, around 50 per cent; and (3) many more buyers would have requested such a provision had they been informed of such a possibility.

The essence of the analysis of sellers' reactions to giving a deed in return for a mortgage, when a specified portion of the principal is paid, can be summarized as follows: (1) The great majority of the sellers registered no objection to such a provision; (2) making the shift when 50 per cent of the principal remains unpaid would be satisfactory to most sellers; and (3) the chief reason for not including such a provision was that no one mentioned it. It was apparent from both the buyers' and sellers' replies that a much larger proportion than 28 of 154 contracts might have contained a mortgage-for-unpaid-balance provision had the parties considered the matter.

Examined from the standpoint of prospective agricultural credit needs, the incorporation of a deed-and-mortgage shift into the land contract appears a promising method of improving low-equity financing. Creating a right to such a shift offers an opportunity to make the contract purchase less burdensome for the buyer without appreciably affecting the safety of the seller's security interest. Exchange of the land contract for a mortgage relationship when the buyer's equity becomes substantial is such a logical corollary of the low-equity-high-risk rationale underlying forfeiture, that it seems strange the law does not guarantee such a right.

Perhaps the Iowa legislature should consider adding to Chapter 656 of the Iowa Code a section limiting enforcement of the forfeiture remedy to cases where less than 50 per cent of the purchase price has been paid. The effect of such a statute would be to place the seller who had received half the purchase price in about the same position as a mortgagee. If more detail were desired, the statute might specifically provide that the shift from contract to deed and mortgage would take place either (1) at the option of the buyer, (2) at the option of either party in absence of a contrary contract provision, or (3) at the option of either party, regardless of a contrary contract provision.

Regardless of whether such a statute ever becomes law, it is within the power of the contracting parties to write a deed-and-mortgage shift into their contract. It is difficult to imagine a situation where such a provision should not be considered. An analysis of the provisions found in the various contracts may provide suggestions for drafting a deed-and-mortgage shift. Three basic patterns were observed in the contracts: (1) The shift was unqualified and was to occur at a specified

point, (2) the shift could be required at the option of the buyer after a specified point, and (3) the shift would be operative at the option of either party after a specified point.

The analysis was concerned with the completeness and clearness with which these provisions were presented and the specificity with which each item was covered. Matters that should be considered in drafting a deed-and-mortgage shift provision are: (1) Who decides that the shift from the contract to the deed and mortgage is to be made, (2) the time or conditions at which the shift is to take place, (3) the financial arrangements to be specified in the mortgage, (4) the terms of mortgage to be used, (5) whether a note or notes will accompany the mortgage, (6) whether an abstract is to be furnished, and (7) who bears the cost of making the shift. The results of the analysis are outlined below:

	Deed-and-Mortgage Shift Provisions	*Number of Contracts*
1.	Shift to a deed and mortgage to be made—	
	At the option of the buyer	17
	At the time specified in the contract provision	11
2.	Shift to made when—	
	Principal sum is reduced to a specified amount	20
	Principal sum is reduced to a specified percentage	3
	A specified date arrives	2
	Procedure is unclear	3
3.	Financial arrangement in the mortgage—	
	Payments on principal specified	9
	Payments on principal to be agreed upon	2
	Payments on principal not mentioned	17
	Interest rate specified	17
	Interest rate to be agreed upon	1
	Interest rate not over a stipulated percentage	2
	Interest rate not mentioned	8
4.	Effect on rate of repayment of principal sum—	
	No change	8
	Increased	6
	Decreased	2
	No provision regarding rate of repayment	12
5.	Note is not provided for	11
6.	Provisions regarding abstract of title—	
	Abstract to be given when shift is made	10
	No provision regarding an abstract	18
7.	Who bears the cost of making the shift—	
	Buyer	5
	Provision for attorney's fee	4
	No provision regarding cost	19

If the shift is to the advantage of one party, it would seem that he might want the option of requesting it. Since the shift generally is to the advantage of the buyer, he would desire either a firm provision pro-

viding for the shift or an option. If either the repayment schedule on the principal or the rate of interest is to be increased substantially, the buyer may want to insist upon an option, for his ability to repay a larger sum may not materialize as anticipated. Either a firm provision in the contract or a shift at the option of the buyer would seem to meet adequately the needs of the parties.

The time or condition for the shift to a deed and mortgage was specified in most of the twenty-eight contracts. The "when" is a most important element and should be stated specifically. The specifications in the contracts examined were in terms of the amount of the unpaid principal, percentage of the unpaid principal, or a stated date. Any of these three alternatives would appear to be suitable.

The provision regarding a mortgage for the unpaid balance should be quite specific as to the principal repayment schedule, the rate of interest, and where, when, and to whom the payments are to be made. A statement that payments under the mortgage would be the same as provided for in the land contract would usually suffice, but if any of the conditions are to be changed, the adjustment should be specified. Changes in repayments, whether principal or interest, may be arranged to meet the anticipated needs of the parties.

An item included in only a few of the provisions concerned who bears the added cost of making the shift, such as the attorney's fees for drafting the mortgage and notes and the cost of recording the mortgage. Most of the provisions did not mention these costs, the others provided that the buyer would pay them. These costs might well be shared if the shift is to the mutual advantage of both parties. Otherwise, the party desiring the shift, usually the buyer, should pay the costs. The cost of the abstract should be borne by the seller regardless of when the deed is given, except for entries caused by the buyer.

The mortgage-for-unpaid-balance provision should indicate clearly the desires of the two parties in regard to the items discussed above. A provision similar to the following might be appropriate:

> MORTGAGE FOR UNPAID BALANCE. When the amount owing upon this contract shall be reduced to $_____, at the option of the buyer, the seller shall execute and deliver to the buyer a good and sufficient warranty deed for said real property, and concurrently therewith and in satisfaction of the amount then owing upon said contract, the buyer, his wife joining therein if married, shall execute and deliver to the seller a promissory note on the day when deed is delivered in the amounts and payable as follows: _____ and at the same time, the buyer, his wife joining therein if married, shall execute and deliver to the seller a good and sufficient purchase money mortgage upon said real property securing said promissory note, which mortgage shall be in the usual form used in this county. The seller at his own expense shall deliver to the buyer

an abstract of title, the same as is provided for herein upon completion of this contract. The buyer shall at his own expense cause said mortgage to be duly recorded, pay for the drafting of the mortgage, and pay other expenses in connection therewith.

One of the following should be inserted in the blank left for the repayment schedule: (a) "The schedule for repayment of principal, rate of interest, and where, when, and to whom the payments are to be made shall be exactly the same in the mortgage as provided for above under this contract"; (b) "The principal sum shall be repaid in the amount of $_____ annually (or semi-annually, quarterly, monthly, or otherwise, as specified) with interest on the unpaid balance at the rate of _____ percent, at _____, on the _____ day of each _____ to the seller"; or (c) other specific provisions patterned after either (a) or (b) to meet the desires of the two parties.

Existing Mortgage. Some reference was made to existing mortgages on the property in eighteen of the contracts. The analysis of provisions regarding existing mortgages may be summarized briefly as follows: Some blanks in standard provisions were not completed, leaving some doubt as to interpretation; financial arrangements in existing mortgages were usually restated briefly in the contract, but frequently did not cover adequately the amount of the unpaid balance, repayment schedule, rate of interest, or length of term; who was responsible for paying off the mortgage was clearly shown; and the mortgagee was usually named.

A provision should be included in every contract where an existing mortgage on the property remains unpaid. The provision should show (1) the face value of the mortgage, (2) the unpaid balance, (3) the repayment schedule, (4) the interest rate, (5) whether the seller or the buyer is to complete the payments and otherwise fulfill the mortgage, (6) to whom and where payments are to be made, (7) who is the mortgagee, and (8) if the seller is responsible for repaying the mortgage, a statement that the unpaid balance on the mortgage will not be permitted to be more at any time than the unpaid balance on the land contract. A provision similar to the following might well be used.

EXISTING MORTGAGE. The seller agrees to complete payments on an existing mortgage on the property held by _____ of a face value of $_____ and an unpaid balance of $_____ in the amount of $_____ annually (or semi-annually, quarterly, monthly, or otherwise, as specified) with interest on the unpaid balance at the rate of _____ per cent, payments to be made on the _____ day of each _____ to _____ at _____, said mortgage is recorded in _____ County, Book _____, page _____; and the seller also agrees to keep the unpaid balance on said mortgage smaller in total amount than the unpaid balance on this contract.

> If the unpaid balance on the contract should become equal to or less than the unpaid balance on the mortgage, the buyer shall have the right to make payments due on the mortgage directly to said mortgagee and the amount of said payments allocated to the principal and not to interest shall reduce the amount of the unpaid balance on this contract. The seller will, at the option of the buyer, deliver a good and sufficient warranty deed and abstract for the property, as provided for above, upon condition that the buyer assumes and agrees to repay fully the mortgage.

If it is agreed that the buyer will assume the existing mortgage, the first part of the provision might begin as follows: "The buyer agrees to assume an existing mortgage . . . ." The last clause of the first paragraph and the remainder of the provision would not be needed.

Concurrent Mortgage. Although the purpose of the loan was not absolutely clear, one land contract contained a provision that a mortgage may be placed upon the property by the seller concurrently with the execution of the land contract. Such an arrangement may prove to be of considerable importance in the future. It could be used to obtain a larger sum for the seller than the buyer could make as the down payment. For example, if the seller were retiring and needed a substantial sum to purchase or build a house in town, he could combine the down payment of the buyer and the mortgage loan to meet this need. Or, if the buyer found that he could use part of his capital more effectively by making a larger investment in livestock, equipment, and current operating expenses than by making a larger down payment, the concurrent mortgage technique could be used to provide cash for the seller.

In the contract referred to, the interests of the parties were adequately safeguarded by a prepayment provision, the use of past prepayments for meeting current payments on principal, foregoing the principal payment in case of crop failure during the early years of the contract, and an option of the buyer to assume the mortgage and complete all payments under the contract, at which time the seller would give the buyer a deed to the property.

In using such a technique, especial care should be taken to safeguard the respective interests of the parties. There is no magic in such an arrangement. As a mortgagor, the seller would be personally liable to repay the amount borrowed whether or not the buyer assumed the mortgage.[111] If the loan is well within the value of the land, this liability should cause little concern where the seller may compel the mortgagee to proceed directly against the land. He may not have such a right in Iowa.[112]

The repayment schedules for the mortgage and the contract are of

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[111] *Cf.* Mowbray v. Simons, 183 Iowa 1389, 168 N.W. 217 (1918).

[112] See generally OSBORNE, MORTGAGES § 258, p. 713 (1951). *Cf.* Satchell v. Alsop, 215 Iowa 161, 244 N.W. 838 (1932).

major importance. The mortgage loan would have to be repaid and the annual usable income of the seller would thereby be reduced. It would seem inadvisable to increase the repayment schedule of the buyer to meet the mortgage payments in addition to his regular contract payments except in the most unusual circumstances. A provision placing the responsibility for repayment of the mortgage on the seller might read as follows:

> CONCURRENT MORTGAGE. It is further agreed that concurrently with the execution of this agreement the seller may place a first mortgage in the amount of $_____ against said property on the following terms _____. The principal and interest payments and all other conditions of said mortgage are to be paid and performed by the seller up to and until such time as said buyer assumes and agrees to pay the then remaining mortgage indebtedness. The unpaid balance on said mortgage shall never exceed 80 per cent of the unpaid balance on the contract.

New Mortgage. Some reference was made to the possibility of placing a new mortgage on the property in nineteen of the contracts. These points stand out in the analysis of the new mortgage provisions: (1) Only a few sellers reserved specifically the right to place a new mortgage on the property, although it would seem that all sellers held a mortgagable interest in the contract; (2) a few contracts provided that when either buyer or seller can obtain a mortgage equal to the unpaid balance, the contract can be paid off and a deed given to the buyer, which provisions were similar to the mortgage-for-unpaid-balance provisions, except the mortgagee was to be a third party rather than the seller; (3) the amount of the mortgage seemed to be left to the party who held the option or it could be the maximum that was obtainable; (4) the provisions usually specified that financial arrangements in the mortgage could be no more onerous than those in this contract, and that the person would repay the mortgage who benefits from it; (5) most of these contracts provided that the unpaid balance on the mortgage could never exceed the unpaid balance on the contract; and (6) who was to be the mortgagee and who was to pay the cost of the mortgage were seldom indicated.

A provision authorizing the use of the land sold on contract as the basis of future credit for either party or both is a possibility worth serious consideration. Such a provision may appreciably increase the flexibility of the land contract in meeting the future credit needs of the parties. For the seller, the arrangement desired is one permitting him to obtain a loan secured directly by the land. For the buyer, what is most necessary is an arrangement that will enable him to obtain credit based on his interest in the land.

The seller who has embarked on a contract sale may find it extremely difficult to realize cash on his investment if later such a need arises.

If he can find a buyer for his contract, the discount demanded is usually high. A lender accepting a mortgage from the seller would normally be subject to the rights of the contract purchaser in the land. A contract seller has a mortgagable interest, but essentially his interest is a claim for purchase money secured by a summarily enforceable lien. However, if the land contract buyer can be persuaded to subjugate his interest to a later mortgage placed on the land by the seller, it should be an easy matter for the seller to borrow against the land. Such an arrangement should be approached with caution by buyer and consented to only if the seller's right to mortgage is reasonably limited and if the buyer is assured that the mortgage will be discharged at or before the final payment due on the contract. The buyer should also insist upon safeguards against the seller allowing the mortgage to become in default, such as the right to make payments on the mortgage and credit them against the unpaid purchase price.

The buyer's problem in securing credit based on his interest in the land is much like that of the seller. Theoretically, the buyer is the equitable owner of the land and should therefore have the right to mortgage it. The jeopardy of his losing all rights in the land through a forfeiture effectively curtails his utilizing the land as a security. This is particularly true in Iowa where it has been held that a seller has no obligation to give notice of forfeiture to a known mortgagee of the buyer.[113] Short of obtaining an omission of the forfeiture right, it would seem the most the buyer could do in the contract, to enhance the attractiveness of his interest as security, would be to specify his right to mortgage his interest and to exact from the seller a promise to give reasonable notice of forfeiture to any mortgagee of whom he is informed by the buyer.

REMEDIES

The subject of remedies is the area of land contract law that has received the greatest attention in the past.[114] This emphasis appears justi-

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[113] See Votruba v. Hanke, 202 Iowa 658, 210 N.W. 753 (1926).

[114] See Ballantine, *Forfeiture for Breach of Contract*, 5 Minn. L. Rev. 329 (1921); Clark & Richards, *Installment Land Contracts in South Dakota, Part II*, 7 S.D. L. Rev. 44 (1962); Corbin, *The Right of a Defaulting Vendee to the Restitution of Instalments Paid*, 40 Yale L.J. 1013 (1931); Dolson, *A Comparison of Land Contracts and Other Security Devices in Kentucky*, 32 U. Cinc. L. Rev. 435 (1963); Dolson & Zile, *Buying Farms on Installment Land Contracts*, 1960 Wis. L. Rev. 383 (1960); Hancock, *Installment Contracts for the Purchase of Land in Nebraska*, 38 Neb. L. Rev. 953 (1959); Henson, *Installment Land Contracts in Illinois: A Suggested Approach to "Forfeiture,"* 7 DePaul L. Rev. 1 (1957); Hetland, *The California Land Contract*, 48 Calif. L. Rev. 729 (1960); Hines, *Forfeiture of Installment Land Contracts*, 12 Kan. L. Rev. 475 (1964); Howe, *Forfeitures in Land*

fied on the ground that but for the expeditious remedy of forfeiture the land contract would be no different than a mortgage. However, it might be observed that the concentration on remedies has generally resulted in a neglect of those aspects of the contract that in large part determine whether or not a default will occur—the matters discussed in the preceding sections on Financial Arrangements and General Contract Provisions.

Upon breach of a land contract the injured party has a bountiful menu of remedies for repairing his damage. The seller's remedies are by far more attractive than the buyers, but the buyers remedies are usually adequate to protect his interest. The seller has two remedies, forfeiture and foreclosure, that are not available to the buyer. Both parties can avail themselves of actions for rescission, specific performance, and damages. If the seller's remedies on the contract are to be completely effective, a provision accelerating the buyer's duty to make payments may be necessary.

Forfeiture

Availability of the remedy of forfeiture is the feature that gives the land contract its distinctive attributes. In this context forfeiture means the right to terminate the contract and extinguish the buyer's interest in the land by a summary non-judicial procedure. Forfeiture is more or less of the nature of a private strict foreclosure of the seller's security interest in the land sold on contract.

In Iowa, the procedure for effecting forfeiture has been prescribed by statute. Forfeiture will be permitted only if the contract is within the purview of the statute, and then only if the statutory procedure is strictly followed. Generally, in order to enforce a forfeiture in Iowa it is necessary that (1) the contract contain a forfeiture provision, (2) the buyer is in default on a material obligation, (3) the seller has not become estopped from enforcing the forfeiture right or waived it, (4) the seller fully complies with the statutory forfeiture procedure, (5) the buyer does not correct his breach within the allotted time, and (6) a forfeiture is not grossly inequitable under the circumstances.

Forfeiture Provision Necessary. If a forfeiture power is desired, the

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Contracts, in CURRENT TRENDS IN STATE LEGISLATION 1953-1954, 417 (1954); Lashkowitz, *Land Purchase Contracts in North Dakota*, 36 N.D. L. Rev. 159 (1960); Levin, *Maryland Rule on Forfeiture Under Land Installment Contracts . . . A Suggested Reform*, 9 Md. L. Rev. 99 (1948); Rudolph, *The Installment Land Contract as a Junior Security*, 54 Mich. L. Rev. 929 (1956); Vanneman, *Strict Foreclosure on Land Contracts*, 14 Minn. L. Rev. 342 (1930). For the final product of the regional study see Mann, *A Comparative Study of Laws Relating to Low-Equity Transfers of Farm Real Estate in the North Central Region*, Ag. Exp. Sta., Univ. of Mo., Bull. No. 782 (1961).

importance of including a forfeiture provision in the contract cannot be overemphasized. The Iowa court has made it abundantly clear that the forfeiture statute only spells out the procedure for exercising a remedy specifically reserved in the contract.[115] The statute does not create a right of forfeiture where provision for such was not made in the contract. Absent a specific forfeiture provision, the seller's only recourse against the land in case of default by the buyer is an action to foreclose the contract as a mortgage.[116]

Ninety per cent of the contracts examined contained forfeiture provisions. Most of the contracts that did not provide for forfeiture were between related parties, and the inference was that the provision was deliberately omitted.

About 10 per cent of the contract provisions referred specifically to Chapter 656 of the Iowa Code on Forfeiture of Real Estate Contracts. More frequently the contract provision referred generally to Iowa law or the laws or statutes of Iowa without mentioning a particular chapter. It was usually provided that in case of default the seller may forfeit the contract in the manner provided for in the statutes.

A time of the essence clause was associated with the forfeiture provision in 87 per cent of the 154 contracts. Usually the provision was tied to the meeting of specific payments such as those on principal, interest, taxes, and insurance. Other conditions included maintenance of the property in good repair at all times and special provisions unique to the particular contract. Time was stressed to emphasize the importance of meeting each requirement punctually.

A provision specifically making punctuality of performance an essential matter under the contract is not necessary to the enforcement of a forfeiture right. It is well settled that even if the contract did not expressly make time of the essence, time may be made of the essence by a notice requiring performance within a reasonable time.[117] The statutory thirty-day notice procedure clearly would seem to take care of the reasonable notice requirement in Iowa.

Buyer's Default. Only those defaults for which the contract prescribes forfeiture as a remedy may be the basis of a forfeiture procedure. In most contracts, forfeiture is prescribed as a remedy for the failure of the buyer to perform "any or all covenants in the contract." Eighty-four per cent of the contracts examined contained this general provision. Such a catchall clause removes any doubt about the scope of the forfeiture right, but a question might be raised concerning the

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[115] Schwab v. Roberts, 220 Iowa 958, 263 N.W. 19 (1935).
[116] Iowa Code §§ 654.11-.12, 656.1 (1962).
[117] Mintle v. Sylvester, 202 Iowa 1128, 211 N.W. 367 (1926).

justification of making every breach of the contract a ground for forfeiture.

In the contracts a number of defaults were mentioned specifically in relation to forfeiture. The defaults specifically mentioned include the following:

1. Failure to make payments on—
   a. Principal sum.
   b. Interest.
   c. Taxes.
   d. Special assessments.
   e. Insurance.
2. Failure to—
   a. Make repairs as needed.
   b. Maintain property in husbandlike manner.
   c. Pay mortgage assumed by buyer.
   d. Buy life insurance payable to seller.
3. Cause waste or damage to the property.
4. Remove improvements.
5. Permit mechanic's or other lien on the property.
6. Use property for nonfarm or unlawful purposes.
7. Failure to observe restrictions on use of land, such as—
   a. Per cent of land in cultivation.
   b. Per cent of land in corn.
   c. No land planted to beans except by agreement.

Estoppel or Waiver. Considering the Iowa court's frequent expression of its distaste for forfeiture,[118] it is not surprising that in some cases a seller's conduct is found to estop him from invoking a forfeiture right or that the seller is sometimes said to have waived his forfeiture right.

Occasionally a seller is estopped to declare a forfeiture because he is not in a position to perform the contract himself. This may be true where he does not have good title to the property[119] or in situations where he has disabled himself from performing by conveying an interest in the property to another person.[120] In one case it was held that

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[118] Westercamp v. Smith, 239 Iowa 705, 715, 31 N.W.2d 347, 352 (1948); Kilpatrick v. Smith, 236 Iowa 584, 593, 19 N.W.2d 699, 703 (1945).

[119] See, *e.g.*, Sarazin v. Kunz, 226 Iowa 1309, 286 N.W. 471 (1939) (sheriff's tax certificate for unpaid judgment); Marx v. King, 193 Iowa 29, 34, 186 N.W. 680, 682-83 (1922). *But cf.* Spangler v. Misner, 238 Iowa 600, 608, 28 N.W.2d 5, 11 (1947) (forfeiture permitted where purchaser knows of defective title and fails to rescind).

[120] Kilpatrick v. Smith, 236 Iowa 584, 19 N.W.2d 699 (1945) (vendor leased premises depriving himself of right to possession). *But cf.* Roder v. DeVries, 246 Iowa 841, 69 N.W.2d 425 (1955) (forfeiture valid where tenant agreed to give up possession).

a seller who conveyed the land to a third party during the thirty-day notice period precluded his performance of the contract and therefore was barred from declaring a forfeiture.[121] In another case a seller whose wife did not join in the contract was estopped from enforcing a forfeiture provision by his subsequent act of deeding an undivided one-third interest in the land to his wife in anticipation of her dower interest.[122]

More frequently a waiver of the forfeiture right is found from the conduct of a seller in his dealings with the buyer. Where a waiver is found it is usually premised on a finding of numerous or substantial changes in the pattern of performance acquiesced in by the seller.[123] Early Iowa cases were very quick to find waivers.[124] In one older case a finding of waiver was predicated on the fact that the seller did not immediately declare a forfeiture on default.[125] The more recent cases have generally involved situations where the seller excused one default or waived a certain kind of default, but was held not to waive forfeiture permanently.[126]

Thirty of the 154 contracts contained a provision to protect the seller against a diminution of his rights by a waiver of some default. The provisions which declare that any such waiver shall not become permanent are of two general types: (1) Provisions which declare that any extension of time or other waiver shall not affect the right of the seller subsequently to require prompt compliance with any provision in the contract, and (2) provisions which state that any delay or failure to enforce or to declare forfeiture shall not affect the seller's rights under the contract. These two types of provisions were in about equal numbers among the contracts that contained waiver provisions. The principle benefit of such provisions is educational and not legal. It is doubtful that a non-waiver provision does anything more than restate the law, but such restatement has the effect of alerting the parties to the situation in respect to waivers.

Procedure. A forfeiture may be obtained in Iowa only through careful observance of the procedure set out in Chapter 656 of the Iowa Code. It is well settled that forfeiture secured without compliance

[121] Auxier v. Taylor, 102 Iowa 673, 72 N.W. 291 (1897).
[122] McWhirter v. Crawford, 104 Iowa 550, 73 N.W. 1021 (1898).
[123] Marshall v. Pratt, 195 Iowa 741, 185 N.W. 5 (1921) (no obligation to change in method of payment).
[124] Blair v. Blair, 48 Iowa 393 (1878) (oral waiver sufficient).
[125] Gaughen v. Kerr, 99 Iowa 214, 68 N.W. 694 (1896).
[126] Cassiday v. Adamson, 208 Iowa 417, 224 N.W. 508 (1929); Westerman v. Raid, 203 Iowa 1270, 212 N.W. 134 (1927); Janes v. Towne, 201 Iowa 690, 207 N.W. 790 (1926).

with the statutory notice procedure will not effectively terminate the buyer's interest in the land.[127]

The seller's notice procedure under Chapter 656 is relatively straightforward. All that is required is that the seller serve a written notice on the buyer or his successor in interest and on the party in possession of the property. This notice must reasonably identify the contract and accurately describe the real estate. It must specify the terms and conditions in default and shall notify the party served that unless within thirty days the default is corrected and the costs of serving the notice paid, the contract will stand forfeited. This notice must be served in the manner prescribed for the service of original notice in a civil suit, which means generally that if the party to be served may be found in Iowa he must receive personal service. If personal service cannot be had in Iowa, service by publication plus mailed notice to the party's last known address will suffice.[128]

It should be noted that the initial service of notice is a non-judicial, unrecorded act. If the purchaser fails to correct the default, however, the notice of forfeiture and the proof of service are usually recorded to get evidence of the completed forfeiture into the chain of title to the property. The statute provides that a duly recorded copy of the notice together with the proof of service shall be constructive notice to all parties of the due forfeiture of the contract.[129]

Of the 154 contracts, 42 per cent provided for the giving of a notice of default, and only 29.9 per cent specified the length of the notice period. The length of notice specified was usually thirty days. The most characteristic features of the notice-of-default provisions were their diversity and difficulty of interpretation. Several contracts provided that in case of default on any of the enumerated agreements, the contract shall be void and of no effect and shall cease and determine at once and become forfeited, without any declaration of forfeiture, re-entry, or any act of the seller. Some of these contracts called for "immediate possession" in case of default. Others provided for forfeiture without notice at sixty days after default. Some such contracts contained a further provision that if the buyer was in possession of the property he would peacefully remove, or in default thereof, he may

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[127] Iowa Code §§ 656.1-.6 (1962); Westercamp v. Smith, 239 Iowa 705, 31 N.W.2d 347 (1948); Holman v. Wahner, 221 Iowa 1318, 268 N.W. 168 (1936); Lake v. Bernstein, 215 Iowa 777, 246 N.W. 790 (1933); Waters v. Pearson, 163 Iowa 391, 144 N.W. 1026 (1914); Nolan v. Foley, 141 Iowa 671, 120 N.W. 310 (1909); Cody v. Wiltse, 130 Iowa 139, 106 N.W. 510 (1906); Thompson v. Colby, 127 Iowa 234, 103 N.W. 117 (1905).

[128] Iowa Code § 656.3 (1962); Iowa R. of Civ. P. §§ 56, 60, 60.1 (1962).

[129] Iowa Code § 656.5 (1962).

be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such. A variation of the sixty-day notice idea was that if payment remained due and unpaid for sixty days after maturity, the agreement may be considered simply a lease for the use of the premises that the seller may terminate by giving a ten-day written notice. Such provisions would seem to indicate that the parties believed that they had contracted around the thirty-day statutory notice provision. Obviously they had not.[130]

An occasional contract provided that the grace period following notice of default shall be sixty days, ninety days, six months, or eight months. One such provision read as follows:

> ". . . it is mutually agreed that a period of eight (8) months shall be substituted in the place and stead of the 'thirty (30) days' after the completed service of the notice as provided in Chapter 656 of the 1954 Code of Iowa, before the contract will stand forfeited and cancelled."

A contract that provided for the giving of a ninety-day notice contained these words also ". . . and at the end of the crop year following the time when said ninety days notice is given to the buyers they will peaceably vacate the premises . . . ." Provisions similar to these two are not common, but they show that some sellers and buyers agree on provisions more lenient than the minimum protection afforded by the statute.

It would appear that the parties may effectively substitute any length of notice period they desire for the thirty days guaranteed in Chapter 656, so long as the contract notice period is not less than thirty days. Apparently, if a longer notice period is agreed upon in the contract, the seller not only must comply with the service requirements of the statute, but in addition he must observe the terms of the contract regarding the length of the notice period. This result seems consistent with the notion that the statute simply specifies the minimum procedural guarantees for the enforcement of a right arising from the contract. As will be demonstrated in the succeeding section, it would seem that in many cases the parties should consider extending the minimal grace period afforded by the statute.

The cases litigated in Iowa involving the statutory notice procedure center around the problem of who should be served. In some instances there was no showing in the notice of proof of service that the party in possession had been served.[131] Presumably the buyer or his successor

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130 *Cf.* Wilson v. Piper, 234 Iowa 456, 12 N.W.2d 826 (1944).

131 Fulton v. Chase, 240 Iowa 771, 37 N.W.2d 920 (1949); Eastman v. DeFrees, 235 Iowa 488, 17 N.W.2d 104 (1945) (serving operator not in physical possession is sufficient).

in interest will be the party in possession, but this need not be the case. If the buyer is the party in possession, this fact should be shown in the notice and proof of service.

The interpretation to be placed on "successor in interest"[132] has been at issue in several cases. Relying on the decisions, it would seem accurate to say notice need be served only on assignees or grantees of the buyer and on the party in possession. Apparently, even an assignee of the contract need not be served if the assignment was for security only.[133] A person holding a chattel mortgage from the buyer on the crops growing on the land is not entitled to notice of forfeiture.[134] A mechanic's lien claimant for improvements made by the buyer has no right to notice under the statute.[135] The inchoate dower interest in the property held by the buyer's wife is not an interest which entitles her to notice of forfeiture.[136]

An interesting question is raised by the situation where the buyer is served a notice of default, but he does not believe a default has occurred. How should the buyer raise the issue of the existence of the default? Must he wait until the notice period expires and then defend an action to evict him by attempting to prove the lack of cause for the forfeiture? It would seem as a practical matter that the buyer should act immediately upon receipt of the notice and bring a declaratory judgment action to determine the issue, asking the court for a temporary injunction against the declaration of forfeiture.

Correcting Defaults. Under the statute the buyer in default may terminate the forfeiture proceeding at any time within the thirty-day period by performing the terms and conditions in default and paying the reasonable cost of serving the notice. If the default is corrected in this fashion, the right of forfeiture is extinguished for the breach upon which the notice was based.

If the buyer is not able to remedy the default within the duration of the grace period, the seller is then empowered to declare a forfeiture. Forfeiture is not automatic upon the expiration of the grace period; the seller must indicate his intention to terminate the contract. In most cases this simply means that the seller should inform the buyer that his interest has been forfeited and that he no longer has any rights under the contract or any interest in the land. Recording the notice of

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[132] Iowa Code § 656.2 (1962).
[133] Votruba v. Hanke, 202 Iowa 658, 210 N.W. 753 (1926).
[134] O'Connor v. Hassett, 207 Iowa 155, 222 N.W. 530 (1928).
[135] *Cf.* Hunt Hardware Co. v. Herzoff, 196 Iowa 715, 195 N.W. 264 (1923) (Lien holder must notify vendor).
[136] Eastman v. DeFrees, 235 Iowa 488, 17 N.W.2d 104 (1945).

forfeiture and proofs of service is an act clearly showing an intent to carry through on the forfeiture.

The seller who has properly exercised his forfeiture right may demand that the buyer immediately surrender possession of the premises. If the buyer refuses, the seller may commence a summary action for possession after serving a three-day notice to quit the premises. It is well settled in Iowa that the land contract buyer whose rights have been forfeited is subject to a forcible detainer action for possession of the property.[137] Thus, if the matter is expedited fully, the contract seller may repossess his land within six weeks after the original default on the contract.

In discussing Chapter 656 the Iowa court once observed, "This is a merciful provision of our statute extending a little grace to a party in default who may be staggering under the load of his undertaking."[138] The ability of the average contract buyer to repair his default within thirty days is a question of some concern. It would appear that in all too many cases the quantity of grace extended is truly "little." When the question of the length of the grace period was put to the sellers and buyers interviewed, the buyers were strongly of the opinion that the thirty-day period was not adequate, and the sellers were about evenly divided on the issue.

The replies of buyers to the question on adequacy of the length of the grace period were as follows: thirty-eight reported that the thirty-day notice was satisfactory, 115 said no, and one did not reply. Among the reasons given for a satisfactory answer were: The buyer would know if a default on payments were imminent and could make necessary arrangements; if the buyer could not raise the money in thirty days, he probably never could; and a thirty-day period is long enough for all but exceptional cases. Of the buyers who preferred a longer period, seven suggested sixty days, thirty preferred ninety days, forty wanted six months and thirty-six favored one year. The reasons for suggesting a longer grace period may be summarized as follows: Buyer might need more time to sell livestock without sacrificing them at a low price or before they are ready for market; not enough time to negotiate a new loan, such negotiation might take up to three months; does not give time enough to liquidate; not enough time in case of crop failure, disaster, or sickness; and not long enough time if payments occur at time of year when buyer has little income.

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[137] See Spangler v. Misner, 238 Iowa 600, 28 N.W.2d 5 (1947); Cassiday v. Adamson, 208 Iowa 417, 224 N.W. 508 (1929); Fowler v. Dieleman, 192 Iowa 563, 185 N.W. 79 (1921).

[138] Waters v. Pearson, 163 Iowa 391, 397, 144 N.W. 1026, 1029 (1914).

On the question of whether the thirty-day grace period was satisfactory, fifteen sellers said that it was, sixteen said that it was not, and two did not offer an evaluation. The reasons suggested in support of the thirty-day grace period were: The buyer knows he is buying on a small margin, thirty days is long enough to raise the money; if he can not raise the payment in thirty days, he probably cannot raise it at all; and thirty-day notice prevents the buyer from taking advantage of the seller. Of those who thought that thirty days was unsatisfactory, not one suggested that it was too long. The reactions may be summarized as follows: The buyer's hogs may not be ready to market in thirty days; one must be fair in case of loss of livestock or crops; you should not crowd the buyer; thirty days does not give a buyer a chance; and the man who is trying should be given more time.

The sellers who thought that thirty days was unsatisfactory were asked to suggest an appropriate length of time for a satisfactory grace period. Their suggestions were as follows: A ninety-day period, five sellers; six months, five sellers; one year, four sellers; and two years, one seller.

About half of the sellers were of the opinion that a grace period longer than thirty days would cause no increase in the sale price of the farm, the amount of the down payment, or the interest rate. Only one of ten thought that a longer grace period might result in an increase in one or all of these factors. The others offered no evaluation.

A longer grace period was probed from another angle—whether it would cause fewer sellers to use a land contract. Eight sellers thought that it would, ten replied in the negative, and fifteen offered no comment. The eight sellers who thought that a longer grace period would cause some sellers not to use land contracts suggested that if the grace period was for one year, the buyer could get two years' income before the seller could repossess the farm, the buyer could wreck the farm in a longer period, and the seller would lose income over a longer period of time.

The sellers were also asked, Would it be satisfactory to you as a seller if the law were changed so that the grace period increased as the payments reduced the unpaid principal of the contract? Eighteen of the thirty-three sellers replied in the affirmative, seven said no, seven did not reply and one said no difference. The reasons for the favorable replies were: With a higher equity there would probably be no defaults; it would give the buyer a better chance; and with the larger equity it would not be "right" for the buyer to lose the farm. Those who replied in the negative suggested that a longer grace period would make no difference if the buyer was in trouble; a longer period complicates the

matter; it can be provided for in the contract if the parties so desire; and the law should stay as it is.

This important matter was investigated from yet another viewpoint. Each buyer was asked whether he had ever made payment after the date that it was due or otherwise defaulted in his contract. Although all of these contracts were less than five years old, thirteen of the buyers reported that they were late at least once in making a payment. One reported that he had otherwise defaulted but did not reveal the nature of the default. In all instances of failure to make timely payments, the buyers were able to work out an agreement with the sellers to make the payment late. The delay ranged from ten days up to one year, but the most frequent delay was for about three months. In several cases the buyer asked for more time during which he could sell something (usually livestock or crops) to get the money.

The thirteen buyers who made late payments were also asked questions about whether the sellers served notice of termination, whether any court action was taken, and whether the sellers treated them fairly. No seller served a notice of termination, or started court action—the agreement about the late payment was worked out by the parties to their mutual satisfaction. The buyers felt that the sellers were fair in negotiating the late-payment agreements.

The sellers likewise seemed little concerned about failure of the buyer to make payments on time. Six of the thirty-three sellers interviewed said that their buyers had defaulted on one or more payments—three of these reported late payments two or more times. In no instance was legal action of any kind taken. Arrangements were worked out with the buyers. Postponements were agreed upon because of drought and to permit the buyer to sell his livestock. The sellers said that they generally were satisfied with the arrangement.

In summary, the interviews seemed to reveal a general dissatisfaction with the thirty-day period on the part of both the buyer and seller in many cases and a general indifference toward defaults. If neither party believes the minimum protection afforded by the statute is adequate to the situation of the particular contract and the seller is not greatly concerned about punctuality of performance, a lengthening of the grace period in the contract would seem warranted. This is an adjustment that can be written into the contract forfeiture provision either as a fixed grace period or as a variable period that lengthens as the buyer's equity increases. The latter arrangement would seem most likely to adequately safeguard full performance of the contract.

Forfeiture Inequitable. Even though the seller carefully follows the statutory forfeiture procedure and the buyer does not make timely

performance of the obligation in default, the forfeiture may be upset by the court on the ground that it is grossly inequitable. This exact situation has never occurred in Iowa, but the court has indicated it would invalidate a patently unjust forfeiture on equitable principles.[139] Such a result would be consistent with the principle frequently repeated by the court that "equity abhors forfeiture."[140] Indeed, many other jurisdictions that recognize forfeiture provisions refuse to enforce the right in a situation where substantial equities of the buyer would thereby be destroyed.[141]

A forfeiture provision embodying the ideas suggested above is:

> FORFEITURE. For any breach or default in the performance of any of the following enumerated obligations _____ the seller, or his successor in interest, at his option may declare this contract forfeited after _____ days notice in writing served as provided for in Chapter 656 of the 1962 Code of Iowa, and all rights and interests hereby acquired or existing in favor of the buyer under this contract shall terminate and the property shall revert to and revest in the seller as fully and perfectly as if this contract had never been made. The seller shall retain any and all payments made on principal and interest and any improvements made to the property as liquidated and agreed damages for breach of this contract.

Other Remedies for Default

Unlike forfeiture, which may be utilized only if specifically authorized in the contract, the parties have several other remedies that are available unless specifically excluded by the contract. The remedy of foreclosure would seem to be of use only to the seller, but actions for rescission, damages, and specific performance are appropriate for either party. Also, either party may wish to include a provision authorizing him to perform the other party's obligation in default, and charge or credit such performance to the purchase price.

In Iowa, the rule is firmly established that the inclusion of a forfeiture provision in a contract does not prevent the seller from electing to waive forfeiture and pursue some other remedy.[142] It is equally well settled that if the seller exercises his forfeiture right, all other remedies that he might have are destroyed.[143] What remedy a party will choose in a particular case depends on a number of factors, not the least among

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[139] See Holman v. Wahner, 221 Iowa 1318, 1324, 268 N.W. 168, 171 (1936).

[140] See Westercamp v. Smith, 239 Iowa 705, 715, 31 N.W.2d 347, 352 (1948); Kilpatrick v. Smith, 236 Iowa 584, 593, 19 N.W. 2d 699, 703 (1945); Cody v. Wiltse, 130 Iowa 139, 143-44, 106 N.W. 510, 511 (1906).

[141] Barnard v. Lee, 97 Mass. 92 (1867); Richmond v. Robinson, 12 Mich. 193 (1864). See generally Hines, *supra* note 114.

[142] See generally Note, *Forfeiture and the Iowa Installment Land Contract*, 46 Iowa L. Rev. 786, 792 (1961).

[143] Except, of course, an action for past due payments on the contract. *Cf.* First Nat'l Bank v. Barthell, 201 Iowa 857, 208 N.W. 364 (1926).

which is the current value of the land. For example, suppose property is sold for $50,000 when it is worth that amount, the purchaser paying $5,000 down and $5,000 each year for two years before breach. If the property has increased in value, on default by the buyer, the seller would likely elect to forfeit or, if the seller is the breaching party, the buyer would opt a damage action or specific performance. On the other hand, if the property is worth only $25,000 at the time of breach, the seller might elect an action for specific performance, or a damage action, or he might choose to foreclose the contract as a mortgage and take a deficiency judgment. Where the property declines in value, if the seller is the party in default, the purchaser would probably want to rescind.

Even though a party usually will not be able to use all of the remedies available to him in a given case, he usually will want to be in a position to choose the remedy most favorable to his interests. Therefore, serious deliberation should precede the inclusion in the contract of any provision that has the effect of limiting the range of remedies available on default.

Of the 154 contracts, 17.5 per cent contained provisions authorizing foreclosure, 3.2 per cent contained provisions covering specific performance, and none contained any mention of rescission. Other than the limitations occasionally placed on the forfeiture right, no contract specifically excluded the availability of any remedy. Generally, the fact that the contract specifies certain remedies is not construed as indicating an intent to exclude reliance on remedies not mentioned but otherwise available at law.

Foreclosure.[144] A seller may foreclose on a purchaser's interest in an installment land contract after the latter's default.[145] In foreclosure the land contract is treated as a mortgage and the foreclosure procedure is governed by the law with respect to mortgages.[146] The seller is regarded as a mortgagee and the buyer is treated as a mortgagor.[147]

In Iowa, the only method of foreclosure recognized is foreclosure by judicial sale. Consequently, a seller under an installment land contract in Iowa can only foreclose by following the statutory procedure set out in Chapter 654 of the Iowa Code.[148] The purchaser's failure to perform

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[144] Portions of the following discussion are taken from the Note, *Forfeiture and the Iowa Installment Land Contract*, 46 Iowa L. Rev. 786 (1961).

[145] Iowa Code § 654.11 (1962). See Dimon v. Wright, 206 Iowa 693, 214 N.W. 673 (1927); Boynton v. Salinger, 147 Iowa 537, 126 N.W. 369 (1910).

[146] Iowa Code § 654.12 (1962); Johnson v. McGrew, 42 Iowa 555 (1876).

[147] Iowa Code § 654.12 (1962).

[148] Iowa Code § 654.11 (1962). See Dimon v. Wright, 206 Iowa 693, 214 N.W. 673 (1927) (foreclosure affirmed); Boynton v. Salinger, 147 Iowa 537, 126 N.W. 369 (1910) (foreclosure invalid on installments beyond statute of limitations).

the contract results in a judicial sale of the property subject to the statutory one-year right of redemption.[149] In Iowa, a foreclosure sale terminates all the rights of both the seller and purchaser in the installment land contract, excepting the statutory redemption right, and a buyer at the sale acquires them. The dearth of cases involving foreclosure of land contracts in Iowa shows that this cumbersome and expensive procedure is rarely used when forfeiture is available.

In one situation, foreclosure may be the only remedy available to the vendor under an installment land contract. If a court of equity finds from the course of dealings between the parties that an instrument in the form of a land contract was in fact intended to be a mortgage, the court will allow only a foreclosure. For example, in *Swartz v. Stone*[150] a mortgagee received a deed to the mortgaged property from the mortgagor and at the same time contracted to sell the property back to him. The Iowa court viewed this transaction as an invalid attempt to increase the mortgagee's security without the use of foreclosure. The court held that the forfeiture instituted by the mortgagee was ineffective because the contract was intended only as a continuation of the mortgage and thus could only be terminated by statutory foreclosure subject to the purchaser's one-year right of redemption.[151]

Normally the party foreclosed against is allowed to retain possession during the running of the redemption period.[152] If this is likely to cause a substantial burden to the seller, an authorization for the appointment of a receiver may be included in the contract. A receiver can be appointed only by the court and whether a receiver will be appointed in a given case is a matter in the court's discretion.[153] However, generally a receiver will not be appointed unless the contract provides for one, or the seller is granted a security interest in the rents and profits of the farm after default.[154]

It should be clear that if the foreclosure sale of the property does not produce enough money to satisfy the seller's claim, ordinarily he is entitled to a deficiency judgment.[155] Neither the sellers nor the buyers interviewed seemed well informed concerning the possibility of a deficiency judgment against the buyer in connection with foreclosure. Their replies about a deficiency judgment were as follows:

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[149] Iowa Code §§ 628.3, 654.5 (1962).

[150] 243 Iowa 128, 49 N.W.2d 475 (1951).

[151] Note, *Forfeiture and Iowa Installment Land Contract*, 46 Iowa L. Rev. 786, 796 (1961). *Cf.* Davis v. Wilson, 237 Iowa 494, 498, 21 N.W.2d 553, 557 (1946) (courts look behind the form of the instrument).

[152] Iowa Code § 557.14 (1962).

[153] Iowa Code ch. 680 (1962).

[154] See Des Moines Marble & Mantel Co. v. McConn, 210 Iowa 266, 227 N.W. 521 (1929).

[155] Iowa Code § 654.6 (1962).

Seller's Right	*Buyers' Replies*	*Sellers' Replies*
Can get deficiency judgment	36	9
Cannot get deficiency judgment	75	17
Do not know or no reply	43	7
	154	33

The possibility of a deficiency judgment is a matter that the parties might wish to alter in their contract. In many cases the buyer may not wish to expose himself to the jeopardy that if the land loses value he may not only lose the farm and what he has paid on it, but also he may be subject to a judgment for any deficiency between the contract price and the total amount received by the seller. A provision governing foreclosure might read as follows:

> FORECLOSURE. For any breach or default by the buyer of any of the agreements contained in this contract, the seller at his option may declare the entire amount of the purchase price due and collectible at once and foreclose the contract. Upon the granting of foreclosure a receiver shall be appointed to take possession of and manage the property.

Rescission. In Iowa, the parties can at any time mutually agree to rescind the installment land contract. The agreement to rescind is in the nature of a contract itself and must result from the mutual assent of the parties.[156] However, the agreement to rescind need not be formalized but may result from the conduct of the parties clearly indicating their mutual understanding that the contract is terminated, or clearly evidencing acquiescence to its termination.[157] Rescission by mutual consent extinguishes the contractual rights of the parties.[158] Each party is thereafter to be restored to his original position so far as this is equitably and reasonably possible.[159]

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[156] McLain v. Smith, 201 Iowa 89, 202 N.W. 239 (1925). If there is a mutual agreement to rescind, it must be founded upon a sufficient consideration. See Wood v. Whitton, 66 Iowa 295, 19 N.W. 907 (1884). Ordinarily surrender of their mutual rights under the contract is a sufficient consideration to support a rescission. McLain v. Smith, *supra*.

[157] Fulton v. Chase, 240 Iowa 771, 37 N.W.2d 920 (1949) (mutual rescission); Kilpatrick v. Smith, 236 Iowa 584, 19 N.W.2d 699 (1945) (mutual rescission by conduct). In the absence of a statute to the contrary, a written contract for the sale of land may be rescinded by a subsequent oral agreement between the parties. See Henderson v. Beatty, 124 Iowa 163, 99 N.W. 716 (1904). However, proof of rescission of a written contract by oral agreement must be clear and convincing. See McLain v. Smith, 201 Iowa 89, 202 N.W. 239 (1925).

[158] Wilson v. Holub, 202 Iowa 549, 210 N.W. 593 (1926) (neither may thereafter base a claim in that contract).

[159] *E.g.*, Fulton v. Chase, 240 Iowa 771, 37 N.W.2d 920 (1949); Kilpatrick v. Smith, 236 Iowa 584, 19 N.W.2d 699 (1945); Fowler v. Dieleman, 192 Iowa 563, 185 N.W. 79 (1921). However, the vendee is apparently liable for the value of the

In addition to mutual rescission, one party may rescind unilaterally if one of the accepted grounds for such action exists.[160] The rescinding party must notify the other party of his intention within a reasonable time,[161] and if his rescission is based on inability of the other party to perform, he must tender performance unless such tender would be clearly unavailing.[162] Because rescission involves a restoration of the status quo at the time the contract was executed, the land is returned to the seller while the purchaser is given a lien for return of payments made and the value of his improvements less reasonable rental for the period during which he was in possession.[163]

Specific Performance. A contract to convey real property is specifically enforceable in equity by either the seller[164] or the purchaser.[165] The fact that land is the subject of the contract generally satisfies the specific performance prerequisite that the remedy at law is inadequate. Thus, if the contract is sufficiently definite in its terms, the court of equity may at its discretion compel either defaulting party to perform his obligation under the contract.[166] If the contract is oral, it

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use of the property during the time he occupied it. See McLain v. Smith, 201 Iowa 89, 202 N.W. 239 (1925).

[160] There are several valid grounds for rescission. See Orr v. Graybill, 237 Iowa 628, 644, 23 N.W.2d 414, 422 (1946) (mental incapacity); Frederick v. Davis, 133 Iowa 362, 110 N.W. 611 (1907) (nonpayment of purchase price); Smith v. Bricker, 86 Iowa 285, 288, 53 N.W. 250, 251 (1892) (mutual mistake); Benson v. Cowell, 52 Iowa 137, 2 N.W. 1035 (1879) (failure of performance by the vendee); Brainard v. Holsaple, 4 Greene 485 (Iowa 1854) (fraud).

[161] Keifer v. Dreier, 200 Iowa 798, 205 N.W. 472 (1925); Tidgwell v. Bouma, 176 Iowa 47, 59, 157 N.W. 200, 204 (1916). Courts have said that where the means of the knowledge lies within the reach of the party who seeks rescission, and he negligently fails to avail himself of the means of knowledge afforded him, he cannot extend the time for rescission by such negligent conduct. Tidgwell v. Bouma, *supra*.

[162] Dolliver v. Elmer, 220 Iowa 348, 350, 260 N.W. 85, 86 (1935); Nelson v. Chingren, 132 Iowa 383, 385, 106 N.W. 936, 937 (1906).

[163] See Kunde v. O'Brian, 214 Iowa 921, 925, 243 N.W. 594, 596 (1932) (rescinding purchaser must pay reasonable rental for use of land); Larson v. Metcalf, 201 Iowa 1208, 1215, 207 N.W. 382, 385 (1926) (vendee's lien allowed to secure repayment of expenditures); Carroll v. Mundy & Scott, 185 Iowa 527, 529, 170 N.W. 790, 791 (1919) (value of improvements by purchaser may be offset). See also Note, *Vendee's Recovery for Improvements in Iowa*, 41 Iowa L. Rev. 117 (1955).

[164] Allen v. Adams, 162 Iowa 300, 143 N.W. 1092 (1913); Hounchin v. Salyards, 155 Iowa 608, 133 N.W. 48 (1911). See Horak, *Specific Performance for the Purchase Price*, 1 Iowa Law Bull. 53 (1915).

[165] Carter v. Bair, 201 Iowa 788, 208 N.W. 283 (1926); Nelson v. Robinson, 189 Iowa 1076, 178 N.W. 416 (1920); Brown v. Ward, 110 Iowa 123, 81 N.W. 247 (1899).

[166] *Cf.* Pazawich v. Johnson, 241 Iowa 10, 39 N.W.2d 590 (1949) (specific performance denied if contract is uncertain); Down v. Coffie, 235 Iowa 152, 15 N.W.2d 216 (1944); Donovan v. Murphy, 203 Iowa 214, 212 N.W. 466 (1927).

must be established by clear, satisfactory, and convincing evidence[167] and it must be certain enough in its terms to allow enforcement.[168]

Specific performance is not an absolute right in the hands of the injured party, but is a matter of judicial discretion. As a result, courts will decree specific performance only when the equities demand such a decree, and will deny it if some good reason for doing so is shown.[169] For example, specific performance will not be decreed if there is inequality or hardship in the contract. In such a case, equity will often deny its aid, and the plaintiff will have to proceed at law to recover any damages to which he may be entitled.[170] Also, if it is known by the buyer at the time of execution of the contract that the seller had no title, and had no prospects of obtaining it, specific performance will be denied even though damages may be recovered at law.[171]

As a prerequisite to any suit for specific performance, the plaintiff must show that he has performed all the conditions placed upon him by the contract, or that he is ready, willing, and able to perform such requirements.[172]

Until 1959, the doctrine of specific performance was limited in Iowa to those cases in which this remedy also would have been available to the resisting party.[173] However, the cases supporting this much criticized

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[167] Nelson v. Nelson, 245 Iowa 1225, 65 N.W.2d 154 (1954); Williams v. Chapman, 242 Iowa 294, 46 N.W.2d 56 (1951).

[168] *Cf.* Kelley v. Creston Buick Sales Co., 239 Iowa 1236, 34 N.W.2d 598 (1948); Fenton v. Clifton, 204 Iowa 933, 216 N.W. 53 (1927).

[169] Shisler v. Catholic Cem. Impr. Ass'n, 207 Iowa 306, 222 N.W. 838 (1929) (evidence insufficient to establish genuineness of contract to will property). Specific performance has been denied a party to an agreement to exchange property when his land was found to be of substantially less value, the validity of the title was dubious, and the other party was mentally weak. See Dunlop v. Wever, 209 Iowa 590, 228 N.W. 562 (1930).

[170] See Dunlop v. Wever, *supra* note 169; Griffin v. Nash, 187 Iowa 345, 174 N.W. 233 (1919); Ormsby v. Graham, 123 Iowa 202, 98 N.W. 724 (1904).

[171] Ormsby v. Graham, *supra* note 170. It appears that a court may deny specific performance where there exists a combination of objectionable features, no one of which alone would be enough, but which together would act to create an injustice. See Staly v. McNerney, 233 Iowa 1065, 10 N.W.2d 584 (1943) (dictum).

[172] First Trust Joint Stock Land Bank v. Resh, 226 Iowa 780, 285 N.W. 192 (1939). Good intention alone is not the equivalent of ability to perform. However, if the proper acts accompany the intentions, a vendor may be able to perform his contract even though the title is not free from encumbrance. In such a case, the vendor must intend to apply the purchase price to satisfy the liens, and he must take the necessary steps to assure that such liens are removed and that upon performance by the vendee, the vendor will be able to convey good title shortly thereafter. *Id.* at 787, 285 N.W. at 196.

[173] See *e.g.*, Marti v. Ludeking, 193 Iowa 500, 504, 185 N.W. 476, 478 (1921) (both parties must be eligible for specific performance); Luse v. Deitz, 46 Iowa 205, 206 (1877) (same).

doctrine of mutuality were overruled in the case of *Gingerich* v. *Protein Blenders, Inc.*[174] Specific performance is now available to an injured party even though the defendant could not avail himself of the remedy.

Because actions for specific performance and damages are both based on the affirmance of the contract, the two remedies are not considered inconsistent and commencement of an action demanding one type of relief will not preclude a court from awarding the other form of relief.[175] Accordingly, in an action for specific performance, legal damages are often sought as an incidental or alternative form of relief. Thus, if specific performance has for some reason become impossible, a court of equity will retain jurisdiction in order to assess damages without compelling the plaintiff to bring an action at law.[176]

When a husband, as seller, enters an installment land contract and the purchaser seeks specific performance occasioned by the fact that the wife refuses to join in the conveyance, the court is faced with the problem of abatement. Under the theory of abatement, the purchase price is adjusted downward by an amount equal to the present value of the wife's dower interest. Not only is the court forced to consider and value an uncertain interest, but it is also compelled to thrust a hardship upon one of the parties.[177]

However, operating under the above theory, the Iowa court has traditionally granted specific performance, allowing the purchaser either to retain one-third of the purchase price or to deposit that amount with the court[178] as an indemnity against possible failure of his interest, if the wife survives the husband.

Action for Damages. The standard remedy available to the party whose injury is a result of non-performance of the contract is an action

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[174] 250 Iowa 654, 659, 95 N.W.2d 522, 525 (1959).

[175] 3 AMERICAN LAW OF PROPERTY § 11.71 (Casner ed. 1952). Generally a provision for liquidated damages will not preclude specific performance, although it may be denied where the contract is truly in the alternative. Thus if the contract calls for the doing of certain acts or the payment of certain money, equity will not interfere but will apparently leave the injured party to his remedy at law. See 1 POMEROY, EQUITY JURISPRUDENCE § 447 (4th ed. 1918). See also Kettering v. Eastlack, 130 Iowa 498, 107 N.W. 177 (1906).

[176] Renkin v. Hill, 49 Iowa 270 (1878). *Cf.* Smith v. Waterloo, Cedar Falls & Northern Ry. Co., 191 Iowa 668, 182 N.W. 890 (1921).

[177] See generally Horack, *Specific Performance and Dower Rights*, 11 Iowa L. Rev. 97 (1925). It appears that due to the hardship which arises a court could legitimately refuse to grant specific performance. Dunlop v. Wever, 209 Iowa 590, 228 N.W. 562 (1930).

[178] Thompson v. Colby, 127 Iowa 234, 103 N.W. 117 (1905) (vendee retains one-third of purchase price); Bradford v. Smith, 123 Iowa 41, 98 N.W. 377 (1904) (same); Presser v. Hildenbrand, 23 Iowa 483 (1867) (same).

for damages. Either the seller or buyer may bring this action at law to recover losses caused by non-performance of the contract.[179]

In Iowa, if a purchaser breaches a land contract, the seller's measure of damages is the difference between the contract price and the market price less the portion of the purchase money already paid.[180] However, in a damage action, if the seller's damages were less than the payments already made, this excess should be awarded to the buyer if he cross-claimed for them.[181]

If the purchaser is suing for the injury caused by the seller's failure to possess an acceptable title, the measure of damages is slightly different. The Iowa position is derivative of the prevailing English Rule which allows the purchaser to recover only his deposit with interest and costs if the seller is unable to give good title. Under this view, the purchaser is not entitled to recover damages for his loss of the bargain.[182]

Iowa has qualified the English Rule to the extent that it is applicable only where the seller in good faith is prevented from making the conveyance by factors beyond his control.[183] However, if the seller having title refuses to convey or has rendered himself unable to convey or fraudulently has led the buyer to believe he has title,[184] then the purchaser can recover the value of the bargain in addition to the purchase money paid plus interest.[185] Of course, if the purchaser is in default at the time of the suit, he will not be allowed to recover damages from the seller for his breach.[186]

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[179] 5 WILLISTON, CONTRACTS, § 1338 (Rev. ed. 1936). For qualifications to the fundamental principal see *id.* §§ 1345, 1363, 1363A, 1396, 1402, 1410.

[180] Prichard v. Mulhall, 127 Iowa 545, 103 N.W. 774 (1905) (vendor may have advance payments applied upon the damages).

[181] See Waters v. Pearson, 163 Iowa 391, 144 N.W. 1026 (1914).

[182] Flureau v. Thornhill, 2 Wn. Bl. 1078, 96 Eng. Rep. 635 (C.P. 1776). See 5 WILLISTON, CONTRACTS § 1399 (Rev. ed. 1936). Moreover, the English rule seems to be that even though the vendor knows, or should have known, that his title was defective his only obligation is to restore the purchaser to his original position. See Bain v. Fothergill, 7 H.L. 158, 43 L. J. Ex. 243 (1874).

[183] Emmert v. Jelsma & Holdebrand, 191 Iowa 424, 182 N.W. 652 (1921) (dictum); Donner v. Redenbaugh, 61 Iowa 269, 16 N.W. 127 (1883) (dictum); Foley v. McKeegan, 4 Cole 1 (Iowa 1856).

[184] When the vendee is induced to enter a land contract through the fraudulent representations of the vendor, he has a number of remedies which he may choose. For example, the vendee may plead any damages which accrue to him by reason of the fraud as a partial defense in an action by the vendor for the purchase money. See Coe v. Lindley, 32 Iowa 437 (1871). Also the vendee may rescind the contract, stand with the bargain and recover damages on account of the fraud, or plead the fraud as a defense, or cross-claim, in an action by the vendor. *Ibid.*

[185] Emmert v. Jelsma & Holdebrand, 191 Iowa 424, 182 N.W. 652 (1921) (dictum); Donner v. Redenbaugh, 61 Iowa 269, 16 N.W. 127 (1883) (dictum); Foley v. McKeegan, 4 Cole 1 (Iowa 1856).

[186] *Cf.* Martin v. Harvey, 245 N.W. 432 (Iowa 1932).

The English Rule and its variations have been widely attacked.[187] It would seem appropriate that the traditional measure of damages should be available to the buyer as well as the seller. If the land has increased in value, the purchaser, as any contracting party, should be allowed the benefit of his advantageous bargain. Accordingly, he should be allowed to combine a claim for restitution of the payments he has made with his claim for expectancy damages. The parties have it in their power to make enforceable agreements in the contract governing the measure of damages on breach.

The parties may also stipulate in the contract the specific amount of damages recoverable in the event of breach. A liquidated-damages provision may legitimately define the measure of recovery, unless it appears from the circumstances surrounding the transaction that a penalty for non-performance was intended.[188]

Acceleration

In the absence of an appropriate provision, if one party to a land contract defaults in the performance of one contract obligation, the other party generally has no right of action for other payments or performances not yet due under the contract.[189] Because the only performance usually left the seller after the execution of the contract is the delivery of good title when the buyer has fully performed, it is the seller who is most interested in a contract provision making the buyer's unmatured obligations due and payable in case of a default. Without such a provision the seller is faced with the prospect of repeated actions to recover each unpaid payment as it comes due, or recurring forfeiture proceedings in which the buyer always manages to correct the default within the thirty-day period. Foreclosure of the contract may be completely impractical if the foreclosure is to satisfy only one or two delinquent installments. A provision designed to remedy the above problems is generally called an acceleration clause. Such a provision usually provides that in case of default by the buyer, the seller may, at his option, declare the balance owing under the contract immediately

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[187] See, *e.g.*, 5 CORBIN, CONTRACTS § 1098 (1964); 5 WILLISTON, CONTRACTS § 1399 (Rev. ed. 1936). Corbin suggests that such limitation on the vendor's liability may be more reasonable in England where land is not subject to rapid fluctuations in value and the installment land contract is not widely used.

[188] Selby v. Matson, 137 Iowa 97, 114 N.W. 609 (1908). If the court finds that the sum agreed upon was a penalty rather than liquidated damages to cover the damages actually sustained by the breach, the provision may be disregarded and the sum awarded may be more or less than that stipulated. Foley v. McKeegan, 4 Cole 1 (Iowa 1856).

[189] See Witmer v. Fitzgerald, 209 Iowa 997, 229 N.W. 239 (1930); Vanderwilt v. Broerman, 201 Iowa 1107, 206 N.W. 959 (1926).

due and payable. If the seller's actions for specific performance, damages, and foreclosure are to be satisfactory remedies, the inclusion of an acceleration clause would seem necessary.

The coupling of acceleration with forfeiture creates a very harsh remedy and should be approached with caution. Besides the question of whether such a remedy is justified in a particular contract, there is also a strong likelihood that a provision combining acceleration and forfeiture is not enforceable. The issue has not been litigated in Iowa. The relevant statutory provision is written in terms of the buyer "performing the terms and conditions in default."[190] Such a passage is ambiguous at best, but given the Iowa court's disposition to interpret forfeiture rules strictly, it is a good guess that the court will not endorse a contract that permits the seller to accelerate the contract for a minor default, and then declare forfeiture for a failure to pay the whole balance in thirty days.[191] An opinion letter written by Jesse Marshall for the Title Standards Committee advises against relying on such a technique.[192] In other jurisdiction, the courts have split about evenly on this question.[193]

Of the 154 contracts, forty-five contained some kind of an acceleration clause. Thirty-seven of the provisions followed the same general idea that in case of a default in the payment of one installment, the whole amount is due automatically or may be declared due and payable at the option of the seller. The other eight contracts contained variations to meet unusual situations. The wordings of the acceleration clauses would indicate that many of them came from one of several standard provisions. Some of the clauses were separate provisions and others were related to one of the enforcement or remedy provisions.

Although a specific question regarding an acceleration clause was not asked of sellers and buyers, it would appear that few of them knew that their contracts contained such a provision. The reasons for including or excluding an acceleration clause were not discussed with any of the persons interviewed.

Whether the contract contains an acceleration clause is a matter to be negotiated in drafting each contract. The draftsman may be the key person in making the decision on acceleration, the buyer and seller frequently would not think of such a provision by themselves. Where necessary to make effective the seller's remedies other than forfeiture,

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[190] Iowa Code § 656.2(3) (1962).

[191] Eight of the contracts studied linked acceleration and forfeiture.

[192] MARSHALL, IOWA TITLE OPINIONS AND STANDARDS § 20.4(E) (1963).

[193] See Crugher v. Braun, 322 Mich. 707, 34 N.W.2d 473 (1948); Needles v. Keys, 149 Minn. 477, 184 N.W. 33 (1921); Glein v. Miller, 45 N.D. 1, 176 N.W. 113 (1920).

an acceleration clause probably should be included in most contracts. It would also appear possible to modify the acceleration-forfeiture pattern in such a manner as to make that combination reasonable from the standpoint of preventing numerous defaults, and equitable from the standpoint of removing much of the harshness to the buyer. Consider the following:

> ACCELERATION. In case the buyer is in default on any provision of this contract, the seller may, after thirty days notice in writing, declare the entire unpaid principal, interest, and other sums due and payable at once; but this provision shall become operative in regard to forfeiture only after the third default for which the seller has given the buyer notice as provided by law.

EXPERIENCE UNDER THE CONTRACT

A final matter of concern is the relationship between the use of land contracts and the experience of parties operating under them. The relationship could not be based on extensive actual experience, for no farmer in the study had operated under the contract for over five years. Yet, some insights were gained from these brief experiences and from plans that the buyers proposed to follow. Attention was focused on whether the buyers were operating the farms themselves or renting them, changes that they expected to make in the type of farming, problems of meeting their financial commitments, both parties' attitudes toward the use of land contracts as a means of attaining farm ownership, and the buyers' knowledge of the law governing the contract relationship and the content of their own contracts.

Operation of the Farm

Most of the buyers had the attainment of owner-operatorship as their major objective; few of them bought the farms solely as investments. Consequently, over 90 per cent of the buyers were operating their farms, and less than one-tenth of them were renting their places. Most of the buyers were doing the major part of the work themselves—a few were hiring the work done and a few were operating jointly with some member of their immediate family. The ways that the farms were being operated are summarized as follows:

Operation of the Farm	*Number of Replies*
Buyer doing most of the work	129
Buyer hiring most of the work	10
Renting to a tenant	11
Joint operation with family	4
	154

Changes in Farming

Most of the buyers, 55 per cent, were following the same general farming methods as the sellers had followed. Those who reported changes were usually producing more grain, adding conservation practices, using more livestock, producing a different kind of livestock, using more fertilizer, or making technological adjustments. Only a few of the buyers, however, associated such changes with the use of a land contract as the means of financing the purchase. Those who did indicated that the smaller down payment, in comparison with that required under a mortgage, permitted the development of conservation practices and reduction of crop land in favor of hay and pasture land.

The buyers generally were safeguarding their annual debt-paying ability by diversification as well as intensification of their operations. Over half of them reported three major sources of income, over one-third reported two, and one in ten reported dependence on only one major source of farm income. The buyers were generally familiar with the diversified enterprises on their farms. A third of them had rented the farms before they bought them. Two-thirds were natives of the community in which their farms were located, giving them an advantage in determining what to depend upon to "pay off" the land contract. Some of the buyers were handicapped in producing livestock, owing to inadequacy of their farm buildings. One of five reported that they would have to add buildings to house the livestock that they were or would be keeping.

Meeting Financial Commitments

Besides depending on intensification of farming operations and improved farming methods, twenty-four of the buyers expected to get a part of the income with which to make annual payments from off-farm sources—chiefly the buyer or his wife working at nonfarm employment. Seventeen reported on the proportion of the annual payment expected from nonfarm income, the range was from 5 to 100 per cent, with over half of them reporting that 50 per cent or more of the annual payment would come from nonfarm sources.

During the five years prior to the 1959 Census of Agriculture, the number of part-time farms in Iowa increased by 60 per cent, from 7,320 to 11,660, in spite of the substantial decline in the total number of farms from 192,933 to 174,707. During the same five years, the number of farmers who worked off the farm for one hundred days or more increased by 15 per cent, from 20,858 to 23,465.[194] In the future,

[194] Bureau of Census, 1959 Census of Agriculture: Iowa 3, 7, 140 (1961).

as opportunities for off-farm employment increase, owing chiefly to expansion of industry and urbanization, more farm operators can be expected to obtain some of their income from nonfarm sources. Some of these will be classified as part-time farmers and others will be full-time farmers who work off the farm during seasons of low farm activity.

The major problem of farmers who work off the farm for a significant part of their income is the use of farm resources at maximum efficiency. Off-farm employment is less disruptive to types of farms that depend entirely upon cash crops and most disruptive to those that have large numbers of livestock that consume home-grown feed. No endeavor was made to measure the impact of working off the farm upon efficiency of operation of these farms.

The use of land contracts may increase among young farmers who combine farming with nonfarm employment. The chief concern is the rapidity with which capital can be accumulated. Even with under-sized farms, over half of the buyers indicated that they were accumulating capital faster under their land contracts than prior to purchasing their farms. If their replies present an accurate picture, most buyers improved their financial position by purchasing farms. This would tend to refute the idea that young farmers generally would be in better financial position if they would rent rather than sink so much of their capital in land.

Low-equity financing, it has been said, may handicap the buyer from securing operating capital and this would have an adverse effect upon his farm operations. Only five buyers reported that they ever felt handicapped in obtaining credit or in financing machinery by chattel mortgage because they bought their farms under a land contract. Two of these five said the land contract was the reason given by the loan agency for refusing a loan; one reported that the loan agency said the buyer was already too much in debt with his land contract; one said that the loan agency would not make a loan unless the debt on real estate was no more than 50 per cent of its market value; and one simply reported that the land contract hurts credit.

Attitude Toward Land Contracts

Although the study was not centered on the attitudes of farm people about land contracts, some insight was gained on a few attitudes. The areas of concern were the use of land contracts as a means of getting started in farming, local reaction to the land contract as a credit instrument, and the buyers' evaluations of their own contract.

The old agricultural ladder concept of working up from hired man to tenant to owner has been changing for several decades. A few buyers,

however, suggested that this was still the best way to get started in farming. Renting was reported as the best means of accumulating the capital required for machinery, livestock, and down payment, but only four buyers suggested working as a hired man. A few buyers suggested that it would be most difficult for a young man on his own and without substantial family assistance to get started in farming at the present time, regardless of the process that he followed. The buyers' replies on the best way for a beginning farmer with little capital to get started in farming may be summarized as follows:

Method	*Number of Buyers*
Rent	61
Buy under land contract	59
Lease with option to buy	8
Work as a hired man	4
Buy under a mortgage	3
Other methods, combinations chiefly	17
No reply	2
	154

The sellers took essentially a similar viewpoint.

The relationship was not close between the buyers' occupational experience and their suggestions as to the best method of getting started in farming. Of those buyers who had experience in renting a farm, forty-nine recommended renting and forty-four suggested buying under a land contract. Of those who had no experience in renting, twelve suggested renting and sixteen recommended purchasing under a land contract. Of the thirty-seven who had worked on farm as a laborer, only one suggested that procedure for getting started in farming.

The attitude in local communities toward the use of land contracts may retard their use somewhat as a means of attaining farm ownership. One buyer in six reported that farmers in their communities looked with disfavor on land contracts. The major reasons were: The seller keeps the deed, the down payment usually is too low, and it is a gamble for both parties. These reactions were related more to the land contract as a security device than to its impact on farming operations. Only one in twenty buyers reported that their purchase on a land contract deterred them from making permanent improvements such as soil conservation, buildings, ponds, dams, and waterways. Only a few of them indicated that they would add small temporary improvements and fixtures if the contract provided that they could take the improvements with them in case of default. It would seem that land contracts had a slight deleterious effect on improving and developing the farms for only a small proportion of the buyers.

Toward the end of the interview each buyer was asked two questions: (1) Are you satisfied with your land contract? and (2) Are there any disadvantages of a land contract as compared with a mortgage? The reasons for their replies were sought in each case. Practically all of the buyers reported that they were satisfied with their land contracts; only eight indicated dissatisfaction.

Buyers were generally aware of the advantages of making a low down payment, which was mentioned specifically more than any other characteristic. In addition, many buyers reported that the land contract was the only way that they could buy a farm—the implication being that they did not have enough capital to buy under a mortgage. The second most frequently mentioned reason was the low annual payments. A good number of buyers said that the payments were as low as renting. Others reported that they received a "good deal"—the emphasis was upon acquiring ownership on a low annual payment.

Second only to low down payments and low annual payments, and associated characteristics, were several items that furnished valuable clues to the buyers' reactions to land contracts. A few buyers, for example, reported that they had good relations with their sellers, indicating that the sellers would always be fair to them. Other buyers felt more secure than when they were renting. Still others reported that they were satisfied with their contract because it permitted the development of independence and provided full control over decision making. Other reasons included easier to build up an equity and favorable provisions, such as length of term, prepayment, and deferred payments.

An endeavor to read "behind the words" would lead to a deeper understanding of the position of the prospective buyer in obtaining a farm to operate. Many buyers evidently compared land contracts with mortgages and found that they could buy a farm under a land contract, but that such was not possible under a mortgage. Other buyers compared their situation under land contracts with their experience in renting, or what would have been their situation if they were renting, and found that buying under a land contract was as cheap as renting, among other favorable comparisons. They scored land contracts high in comparison with either renting or buying under a mortgage. The reasons for the favorable attitude toward land contracts may be summarized as follows:

Reasons	*Number of Replies*
Low down payment	38
Low annual payments	29
Only way could have attained ownership	24
Good deal compared with alternatives	24

Good relations with the seller (usually family affair)	7
More secure than renting (won't have to move)	7
Gains full control of operation (independence)	2
Easier to save and build up equity	5
Special provisions (term, prepayment, moratorium)	5

A third of the buyers reported one or more disadvantages of a land contract as compared with a mortgage. The disadvantages specified by the buyers were concerned chiefly with the possibility of a forfeiture with only a thirty-day grace period and with the deed or title remaining with the seller until the entire sum is paid. A few objected that they could not pay off the sum due at a rate faster than provided for in the contract, which "they could do, if they had a mortgage," and that they got back nothing for improvements added in case of a forfeiture. Less important disadvantages included the difficulty of negotiating production credit and selling their interest under a land contract as compared to a mortgage. Disadvantages associated with land contracts generally did not loom large in the eyes of the buyers because they were overshadowed by the many advantages recognized.

All of the interviewed sellers but one reported that they were satisfied with their land contracts. Their reasons were: A land contract provides a steady source of income with little responsibility for overseeing; it is the easiest way to sell the farm; it enables the son to buy the farm; it is as good as a mortgage; the quick forfeiture would not permit a delinquent buyer to wreck the farm; and land contracts are advantageous taxwise.

Buyers' Knowledge of Land Contract Law and Provisions

Folklore holds that laymen generally, and farmers in particular, have little awareness of the law governing the contractural relationships they enter. In the interviews held with the 154 contract buyers a concerted effort was made to test the accuracy of this common belief. Thirteen questions were asked concerning matters that should be of considerable importance to persons buying a farm on contract. The questions were designed both to test the buyers' level of understanding of the general law and to measure their knowledge of their own contracts.

Specifically, the questions asked related to the right to sell, assign, or otherwise transfer their interest in the farm, the privilege of making prepayments on the principal sum, grace period in case of default, deficiency judgment if the contract is forfeited, redemption period in case of forfeiture, disposition of insurance proceeds in case of loss, ownership of growing crops in case of forfeiture, return of money paid on principal when the contract is forfeited, preparation of abstract of title,

and the right to exchange the contract for a deed and mortgage when a stated portion of the principle was repaid. The accuracy of the buyers' replies may be summarized as follows:

	Percentage Distribution		
Rights and Duties	*Yes*	*No*	*No Reply*
Sell, assign, transfer interest—			
Replies agree with law	57.2	18.8	24.0
Buyers reply contract so provides	31.1	37.7	31.2
Contract so provides	29.9	70.1	——
Replies agree with contracts	45.5	54.5	——
Buyers reply permission or notice is required	39.6	27.3	33.1
Contract so provides	24.0	76.0	——
Replies agree with contracts	30.5	69.5	——
Prepayment on principal—			
Buyers reply they can make prepayment	90.9	8.4	0.7
Contract so provides	83.8	16.2	——
Replies agree with contracts	81.2	18.8	——
Buyers reply contract so provides	87.7	5.8	6.5
Replies agree with contracts	78.6	21.4	——
Grace period on default—			
Buyers reply they have a grace period	43.5	28.6	27.9
Contract so provides	64.9	25.3	9.8
Replies agree with contracts	44.8	55.2	——
Deficiency judgment in case of forfeiture—			
Buyers reply sellers can get judgment	23.4	48.7	27.9
Replies agree with the law	48.7	51.3	——
One-year redemption in case of forfeiture—			
Buyers reply they have such a period	21.4	37.7	40.9
Replies agree with the law	37.7	62.3	——
Insurance proceeds—			
Replies agree with contracts	19.5	80.5	——
Growing crops—			
Replies agree with contracts	0.7	99.3	——
Return of payments on principal—			
Replies agree with law	68.2	31.8	——
Abstract of title furnished—			
Buyers reply sellers furnish abstract	42.2	54.5	3.3
Contracts so provide	94.8	5.2	——
Replies agree with contracts	46.4	53.6	——
Exchange for a deed and mortgage—			
Buyers reply contract so provides	47.4	48.6	5.0
Replies agree with contracts	38.4	61.6	——

To obtain a composite picture of the buyers' knowledge of legal and contractual provisions under which their contracts would be carried out, a scoring system was devised. On each of thirteen items a correct answer was given a score of one, without regard to the importance or difficulty of the question. The distribution of the 154 scores is as follows:

Score	*Number*	*Score*	*Number*
0	2	7	24
1	1	8	17
2	5	9	13
3	8	10	6
4	17	11	1
5	28	12	0
6	32	13	0
			154

The average of the scores was 6.0, with two buyers failing to answer any question correctly and no buyer answering correctly more than eleven questions. The average score indicates a generally low level of knowledge on the part of the buyers of both the law and the provisions of their land contracts.

To summarize, the replies indicate that contract buyers are poorly informed as to their rights under the law. Their knowledge ranged from slightly under 70 per cent correct on whether any payments on principal are returned to them in case of default to less than 40 per cent on whether they had a one-year redemption period in case of forfeiture. They were also poorly informed on provisions in their contracts. Their knowledge scored highest on their right to make prepayments on principal, over 80 per cent, and lowest on the contractual requirement to obtain permission or give notice upon transfer of their interest and on how insurance proceeds would be handled in case of a loss, about 30 per cent and 20 per cent, respectively.

The buyers' knowledge of the law and contractual provisions scored significantly higher for friends and strangers than for relatives. The tendency for relatives to "trust" each other is a part of agriculture's folklore and mores. But as agriculture shifts from a customary to a contractual economy (and this process is going on at a rapid rate), kinship should not continue to have a deleterious effect upon doing business in a businesslike manner. Buyers' knowledge was also associated with size of farm, grade of contract, and rate of interest. Possibly the better drafted contracts made it easier for the buyers to understand their content. Also, those who bought larger farms and paid higher interest may have been more concerned about the content of their contracts than the others.[195]

The buyers' lack of knowledge might not result in disagreement or controversy, for usually they would do more or meet higher requirements than those called for by the law or by the contracts. But their low level of knowledge of the law and contractual provisions would in-

[195] See Statistical Appendix, p. 121 *infra*.

dicate that they may be prevented from fulfilling the contracts in ways most favorable to them. The importance of farm people securing professional counsel in the sale of property on contract seems amply demonstrated by the results of this study.

EPILOGUE

The Situation

Improvement of land-based agricultural credit has been an objective commanding widespread attention since the turn of the century. Trends over the years have been toward making lower down payments, repaying the loan in installments over an increasingly long period of years, requiring lower rates of interest, and making credit arrangements fit more adequately the needs of the farmer. Buyers of farms are finding it increasingly necessary to finance their purchase, and they are financing an increasing proportion of the purchase price. Also, sellers are financing an increasing proportion of their sales and are requiring lower down payments than other lenders. Perhaps the most spectacular development in credit during the last two decades has been movement toward low-equity financing by means of installment land contracts.

Low-equity financing through land contracts permits the farmer to attain ownership without dissipating his capital in making a large initial down payment. Through the reservation of a forfeiture right the seller may safeguard his position, if the buyer is unable to perform, by a quick and inexpensive means for repossessing the property.

The need for low-equity financing is expected to increase in the future as the average size of farms continues to get larger, and modern technology requires more capital invested in nonland factors of production. One question of major concern emerging from present trends is: What adjustments are necessary in the land contract to accommodate a possible accelerating need for low-equity financing of farm purchases?

The Suggestions

The history of the installment land contracts in Iowa may be fairly characterized as revealing a preoccupation with remedies for breach of the contract. If the contract is to become a more effective device for serving the credit needs of the farmer, the primary concern must be shifted to improving it to safeguard against the causes of default. Possible improvements can be accomplished through legislation, judicial construction, and provisions in the contract. This monograph has been addressed primarily to the improvement of the contract provisions. Suggestions for making land contracts serve sellers and buyers most effectively have been made at various places throughout the mono-

graph. Some of them are underlined by bringing them together here in brief form.

The land contract should be drafted by a qualified attorney. Usually, each party should have his own attorney, particularly if the contract is between strangers. Occasionally, one attorney might represent both parties, if the contract is between members of the same family. If the attorney of one party prepares the contract, he should give the other party all of the pertinent facts about the contract relationship and endeavor to explain fully the legal effect of the contract provisions.

Each land contract should be tailor-made to fit the particular needs of the seller and buyer. Complete dependence on a form contract, however complete and clear, will seldom meet the unique requirements of the situation. Crucial provisions should be discussed fully before they are drafted; they should be reviewed in detail before the agreement is signed. Both parties should understand as fully as reasonably possible what the provisions mean and how they will be interpreted under the law.

In specifying the financial arrangements, consideration should be given to the deferment of payment on principal, the amortization plan, provision for prepayments, and the time of the year in which payments are due. The financial position of both parties might be strengthened by deferring payments on principal (but probably not on interest) for a year or more until the buyer has all of his livestock and machinery paid for and the farm is producing at full capacity. The amortization plan can fit the needs of the parties—it can be a constant annual payment on principal and interest, a declining annual payment as the amount of the unpaid principal is reduced, or an increasing annual payment to fit the growing financial strength of the buyer and the need of the seller for additional income. Authorization of prepayments on principal would fit the requirements of most sellers and buyers, and many contracts might provide for the use of accumulated prepayments to offset required payments on principal (and in some cases interest), at the option of the buyer, in case of crop failure or other causes of low farm income. The time that payments are due could be coordinated with the time of the year in which the buyer usually receives income from the farm, so he would not have to hold large sums of cash for long terms or borrow large sums for short terms pending sale of crops or livestock.

Contract parties are generally confused as to when the risk of loss passes from the seller to the buyer. This confusion is in large part due to the fact that the law is inconsonant with the reasonable expectations of the parties. Change of such a law seems a matter ripe for legislative

consideration. Provisions should be included in the contract not only specifying who shall bear the risk of loss, but also indicating how this risk should be covered by insurance and what use may be made of insurance proceeds.

Most land contracts might provide that the contract will be exchanged for a deed and mortgage when the unpaid principal has been reduced to a specified proportion, perhaps 50 per cent. The reason for the seller's retention of title and the need for forfeiture largely pass when the principal is reduced to the place that the buyer can obtain mortgage credit from commercial sources. Here again, legislation might be considered limiting the availability of forfeiture to cases in which less than half of the purchase price has been paid.

The thirty-day grace period in case of default and notice of forfeiture may be lengthened as the unpaid principal is reduced. The grace period could be lengthened step by step to approximate the redemption period of a foreclosed mortgage by the time that the unpaid principal was reduced to an amount equal to the down payment required on farm mortgages. Thought should be given also to limiting the forfeiture remedy to serious breaches of the contract and granting either party the right to correct the other party's minor defaults and charge or credit the cost of such correction to the balance owing on the contract.

STATISTICAL APPENDIX

A simple correlation analysis was made of data obtained in the survey. Ten variables used in the analysis relate to financing, three variables relate to attributes of buyers, and one variable attempts to measure the grade (or relative quality) of the contracts.

Table I identifies the variables, the units of measurement used for the variables, and the mean values of the variables.[196] Results of the

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[196] Characteristics of the sample were presented on page 5. Characteristics of the 14 variables used in the simple correlation analysis and the analysis of variance are summarized as follows:

Financial Factors

Purchase Price—Total. Purchase price was expressed in dollars as shown on each of the 154 land contracts in the sample, averaging $28,422 per farm, with 14 farms under $10,000 and 13 farms over $50,000.

Purchase Price—Per Acre. This was the average purchase price per acre for each of the 154 farms, that is, purchase price divided by number of acres. The range was from $26 to $500, with an average of $175. See footnote 50 for some comparisons.

Down Payment. This was the amount, in dollars, that the 154 buyers paid on the purchase price of their farms at execution of their contracts or before taking possession of the farms. The average was $5,861, with a range from $0 to $30,080. Down payment is discussed on page 30.

Net Worth. The net worth, in dollars, that is, total assets less total liabilities, was determined for each of the 154 buyers through personal interviews. Accurate net worth figures are difficult to obtain. The average net worth was over $23,000, with a range of from less than $5,000 to over $100,000.

Down Payment/Purchase Price (DP/PP). This ratio shows the percentage that the down payment was of the purchase price for each of the 154 land contracts. The average was 21.4 per cent, with a range from 0 to 54.9 per cent. The ratio is discussed on page 30, and a distribution in 10-per cent intervals is presented.

Net Worth/Purchase Price—(NW/PP). This ratio shows the percentage that the net worth was of the purchase price for each of the 154 contracts. The average was 91.5 per cent, with a range from 15.3 per cent to 817.5 per cent.

Repayment Schedule. The repayment, in dollars, for each of the 154 contracts was derived from provisions in the contracts. It was calculated to show, on as comparable a basis as possible, the payment(s) for the first year on principal and interest. The average repayment as calculated, was $1,999, of which $1,106 was on principal and $893 was on interest. The range was from $455 to $9,800. Repayment is discussed on page 32.

Length of Term. The term of years that the buyers would have to repay the principal (purchase price less down payment) was derived from all of the contracts except 3 with indeterminate terms. The average length of term was 16.5 years, ranging from 5 (contracts with shorter terms were not included in the sample) to over 70 years. The term of years is discussed on page 28.

Interest Rate. The rate of interest that the 154 buyers paid on the unpaid balance of the purchase price was obtained from the land contracts. The average was 4.0 per cent, ranging from 0 to 5.0 per cent, with 7 contracts providing for no interest and 17 specifying 5.0 per cent. Interest is discussed on page 25.

Size of Farm. The size (acreage) of each of the 154 farms was derived from the interviews of buyers and the acreage shown in their contracts. The average size was 162 acres, with a range from 71 to 640 acres. All farms under 80 acres were eliminated from the sample, except one involving a fractional share.

analysis, including the correlation coefficients and the statistical significance of these coefficients, are shown in Table II. The results of the analysis of variance are shown in Table III (see page 122).

The term "significance" refers to the degree of confidence with which one can reject the hypothesis that the correlation coefficient for the universe (all land contracts recorded in Iowa during the period 1951-56) from which this sample is drawn is zero. For coefficients significant at the 1 per cent level, there is only one chance in one hundred that no correlation exists between these variables in the universe of land contracts; and for coefficients significant at the 5 per cent level, there is only one chance in twenty that there is no correlation.[197]

Three variables included in the correlation analysis—kinship, knowledge, and grade—deal with qualitative aspects of land contracts for which conventional measures were not available. Measurement systems were devised in an attempt to attach quantitative values to these variables (see pages 105-108 and footnotes 196 and 198). It should be recognized, therefore, that the numerical values derived for these qualitative variables are not strictly comparable with the commonly accepted values used for the other variables in the correlation analysis. In order to test the reliability of the measurement systems used for the three qualitative variables, their values were compared with the mean values of all variables in an analysis of variance framework. The results of the analysis of variance corresponded closely with the results of the correlation analysis with respect to the discrete kinship variable. The other two qualitative variables—knowledge and grade[198]—which

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Buyer Attributes

Age. The age, in years, of each of the 154 buyers was determined as of the time of the interviews. The average age was 40.7 years, with a range from 23 to 68. Age of buyers is discussed on page 11, and a distribution by 5-year intervals is presented.

Relationship with Seller (Kinship). Relationships between sellers and buyers was determined by replies from the 154 buyers. Three degrees of "kinship" were used: Relatives, 46; friends, 36; and strangers, 72. The groups were numbered 1 to 3 seriatim. An average would be meaningless. Kinship is discussed on page 13.

Knowledge of Law and Contract. This was a contrived measure, based upon replies to 13 questions, asked the 154 buyers, and designed to reveal their knowledge of selected aspects of the law and of specific provisions in their contracts. The possible range of knowledge was from 0 to 13, with an average of 6, or a "grade" of less than 50 per cent. See page 105 for further discussion.

Quality of Contract

Grade. This was a contrived measure, based on the content of the 154 contracts. It is explained in detail in footnote 198. The average grade was 8.5, with 9 contracts with a grade of 3 and 6 contracts with a grade of 13.

[197] See SNEDECOR, STATISTICAL METHODS 173, 246-49, 256 (1959).

[198] The measure of the knowledge of the 154 buyers of the law that governs land contract relationships and of selected provisions of their contracts was discussed on pages 105-108. (Footnote continues on pages 113-115.)

were quantified, were not significantly related to the quantitative variables in the analysis of variance, except for a relationship between grade and size, as shown in Table III, although some significant correlation coefficients were obtained for these variables in the correlation analysis. Analysis of variance is better adapted to a discrete type of variable, like kinship, than to continuous, yet contrived, measures like knowledge and grade.

Results of the correlation analysis and the analysis of variance are interpreted in the following sections. Discussion is focused on the coefficients that are statistically significant. It should be noted, however, that these coefficients are measures of *association* and do not necessarily indicate *cause-and-effect relationships.*

FINANCIAL FACTORS

Purchase Price–Total

The purchase price of the farms was correlated positively with six variables and negatively with one variable. Several of these variables showed high correlation coefficients, and they probably were closely inter-related. As the purchase price increased the farms became larger (.650), the down payments larger (.798), and the repayment schedule higher (.865), as might be expected. Purchase price was also associated with price per acre (.585). The more complete and clearer contracts (grade) were associated with the higher-priced farms (.196).

During the progress of the study the hypothesis emerged that differences in completeness of coverage and clearness of presentation of the provisions of the contracts were associated with other variables. In order to test this hypothesis a summary evaluation of each contract was made as to the completeness with which it covered the various provisions that should be in a typical installment land contract and the clearness with which the included provisions were stated.

As to completeness, each contract was placed in one of five categories ranging from those that contained all essential provisions and provided for substantially all visualized contingencies to those that failed to cover one or more of the minimum essential provisions and did not provide for all normal contingencies.

Five categories of completeness were developed as follows: The norm was established of a contract that contained all essential provisions and all normal contingencies. Two categories above and two below the norm were then devised, which made five categories as to completeness. The essential provisions were those necessary for the transfer of title; those covering financial arrangements as to purchase price, down payment, interest rate, and repayment schedule; those stating the date of entering into the contract and the date of possession; and those that contained adequate forfeiture arrangements. The normal contingencies included the date that the contract was to be completed, provisions on dower rights, when responsibility for taxes shifts from seller to buyer, a statement that time is of the essence, and arrangements regarding insurance. The above-normal contingencies included provisions regarding special assessments, prepayments, risk of loss, improvements and fixtures, waste and good husbandry, assignment, penalties, acceleration clause, defaults and inspection.

The correlation of purchase price and net worth (.372) indicates that the buyers with the larger net worths purchased the higher-priced farms. A negative association of purchase price with the NW/PP ratio (-.258) indicates that the buyers who purchased the higher-priced farms had a less favorable (lower) ratio between net worth and purchase price than those who purchased the lower-priced farms. It should be noted that the correlation between purchase price and the DP/PP ratio was not significant (.053). The purchase price of the farms probably did not have an inverse effect upon the proportion of the purchase price that was paid down, judging by the positive coefficient. Most of the buyers of the lower-priced farms probably would experience more difficulty in meeting their repayment schedule than those of the higher-valued farms. If so, the higher NW/PP ratio on the lower-valued farms was a safeguarding characteristic worthy of note.

Purchase Price—Per Acre

The price per acre was correlated with purchase price (.585), of which it is an important component—the higher the price per acre, the higher the purchase price. The high correlation with down payment

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As to clearness, each contract was placed in one of three categories ranging from the most to the least clearly stated, considering the entire contract without regard for its completeness. The three categories of clearness were developed as follows: The norm was established of a contract that was understood with relative ease, intelligible, relatively lucid and without serious ambiguity, free from major obscurity and confusion, and not subject to widely divergent interpretation. One category was established above the norm for the most clearly drawn contracts. One category below the norm included the least clearly drawn contracts.

The five categories of completeness may be summarized briefly as follows:

1. *Exceptional*—contract covered the essential provisions and substantially all of the visualized contingencies.
2. *Very Good*—contract covered the essential provisions but less than substantially all of the visualized contingencies while more than the normal contingencies.
3. *Good*—contract covered the essential provisions and the normal contingencies.
4. *Fair*—contract did not cover either all of the essential provisions or all of the normal contingencies, or both, but was sufficient to pass title and a third party could determine with reasonable certainty what the two parties meant for each of the crucial items.
5. *Poor*—contract failed to contain all the essential provisions and was seriously deficient as to normal contingencies.

The three categories of clearness may be summarized briefly as follows:

A. *Lucid*—contract was clearly written, readily understood, and not subject to different interpretations.
B. *Clear*—contract could be understood, intelligible, plain, and without serious ambiguity.
C. *Obscure*—contract was not easily understood, unintelligible in places, and ambiguous on crucial items.

The completeness and clearness grades were combined into one numerical

(.532) and repayment (.529) probably were via the purchase price variable. It could be reasoned that buyers who purchase better (higher-priced) land, having a larger net worth (.286), could have made larger down payments and larger annual repayments. The negative association with the NW/PP ratio (-.184) was probably due to the influence of purchase price on the ratio.

Down Payment

The amount of the down payment was correlated with purchase price (.798), as we have seen. Down payment was also correlated with other financial factors, namely, repayment schedule (.651), DP/PP ratio (.535), price per acre (.532), and net worth (.375), and with size (.435), kinship (.275), grade (.190), and negatively with length of term (-.173) and NW/PP ratio (-.176).

The positive association of down payment with repayment schedule probably arises because of the joint association with purchase price; otherwise, as the down payment increased, the repayment would decrease—a negative correlation, *ceteris paribus* (other things remaining

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value to make them usable in the analysis. The following cross-classification table was set up and the indicated values were assigned to each cell.

Completeness	*Clearness*		
	A	*B*	*C*
1	13	12	11
2	11	10	9
3	9	8	7
4	7	6	5
5	5	4	3

This combination of completeness and clearness resulted in eleven possible values, ranging from three to thirteen inclusive.

The element of judgment in such a system of grading is obvious. For example, whether the contract provisions are lucid, clear, or obscure is subject to the judgment of the researcher. In addition, rigid counting could not be applied to the completeness criterion for a contract could be exceptional in completeness without containing one of the normal contingencies; for example, insurance would not be involved on land without buildings or perhaps with only a small building as a corncrib, and interest rate need not be included if the parties agreed that no interest would be charged. Furthermore, a judgment is involved if a provision was so brief or so vague and ambiguous that it is debatable whether the provision was in fact included.

The average grade of the 154 contracts was 8.5 of a possible maximum grade of 13. The distribution of the grades was as follows:

Score	*Number*	*Score*	*Number*
3	9	9	17
4	–	10	24
5	10	11	24
6	8	12	3
7	18	13	6
8	35		154

unchanged). The correlations with price per acre, size, and net worth are likewise probably tied up in the financial arrangements complex.

It might have been expected that down payment would be correlated positively with kinship, for parents might have required relatively smaller down payments and strangers might have required relatively larger down payments. The coefficient was positive rather than negative, and analysis of variance also indicated a significant association, the means being $3,885 for relatives, $6,491 for friends, and $6,794 for strangers. Also the larger down payments might have been expected to shorten the length of the term, and this was shown by the negative correlation. The negative correlation of -.176 shows that the larger the down payments the lower the ratio of net worth to purchase price. This ratio is strongly influenced by the thirty-seven buyers whose net worth was greater than the purchase price.

Net Worth

Net worth was correlated positively with seven variables. The association with the NW/PP ratio of .599 was expected; buyers with larger net worths do not buy proportionately more expensive farms—the net worth of several buyers exceeded the purchase price of their farms. Although buyers with larger net worths did not buy *proportionately* higher-priced farms, they did tend to buy the higher-priced farms (.372) and they made larger down payments (.375) and larger annual repayments (.428). They also paid a higher price per acre (.286) for larger farms (.165). The slight tendency for older buyers to have accumulated more net worth is also noted (.157, at about the 5 per cent level).

Ratio—Down Payment/Purchase Price (DP/PP)

The DP/PP ratio is correlated positively with four variables and negatively with one variable. The ratio's correlation with down payment (.535) appears to be influenced by down payment and not by purchase price, judging from the simple correlations of .535 and .053, respectively. The DP/PP ratio shows a positive relationship with kinship (.405), and age (.164), the latter at the 5 per cent level. It would seem that the more remote the kinship between buyers and sellers, the higher should be the DP/PP ratio, as shown by the coefficient of .405. This association was found likewise in the analysis of variance. Also, the older buyers were, as expected, in position to make relatively higher down payments (.164).

The correlation also shows a possible association between DP/PP ratio and rate of interest (.156, barely at the 5 per cent level). This is surprising. If differences in rates of interest are due primarily to risk,

it would be expected that the higher the down payment in relation to the purchase price, the lower the risk and consequently the lower the rate of interest. The opposite results indicate that other factors might have been more important than risk, as measured by the DP/PP ratio, in determining the rate of interest.

The negative correlation of the DP/PP ratio to length of term (-.279) indicates that the buyers who made the smaller down payments in proportion to the price of their farms arranged for longer terms in which to complete paying for their farms. This indicates a safety factor of value to both sellers and buyers.

Ratio—Net Worth/Purchase Price (NW/PP)

The ratio of net worth to purchase price increased as net worth increased (.599) but the ratio decreased as purchase price increased (-.258). The correlations were accounted for, at least in part, by the ratio being calculated by using these two variables. NW/PP ratio is also associated negatively with price per acre (-.184) and down payment (-.176), both between the 1 per cent and 5 per cent levels, and size (-.214), at the 1 per cent level.

Repayment Schedule

The amount of the annual repayment was correlated positively with purchase price (.865), down payment (.651), price per acre (.529), size (.518), and net worth (.428) and negatively with length of term (-.153, at almost the 5 per cent level). The observed close associations of the several items of the financial arrangements are noted again. The associations are so important as to negate largely the expected high negative correlation between repayment schedule and length of term. The negative correlation is in the right direction, but it is slightly below significance at the 5 per cent level. Its low value indicates that other factors caused much variability.

The correlation of repayment and net worth might have been expected to be negative, for larger net worths should have permitted larger down payments (.375) and larger down payments should have reduced the annual repayments, but they did not—the correlation was positive (.651). High correlations of purchase price with these two variables and with price per acre and size were noted. The correlation was positive, therefore, between repayment and net worth.

Length of Term

The negative correlations among length of term and DP/PP (-.279), kinship (-.183), down payment (-.173), and repayment schedule

(-.153) seem reasonable. As the length of the term increases, the DP/PP ratio should decline, down payment should decline, kinship should be closer, (confirmed by simple correlation but not by analysis of variance), and rate of repayment should be lower. These few and relatively low simple correlations indicate a low level of association between length of term and the other factors.

Interest Rate

The rate of interest specified in the land contracts was correlated positively with kinship (.283), grade (.160), DP/PP (.156), and knowledge (.155)—all except kinship at near the 5 per cent level. The analysis of variance also showed a significant relationship between interest and kinship. It was expected that relatives would charge a lower rate of interest than strangers, and that the impact of kinship upon interest would be shown to be significant by the analysis of variance. The low correlations between interest and the other variables, none of which was significant at the 1 per cent level and some of them just below the 5 per cent level, mean that the rate of interest depended heavily upon factors not used in the analysis.

Size of Farm

Size of farm (in acres) was positively correlated with seven variables. The highest correlations were with purchase price (.650), repayment (.518), and down payment (.435). These associations would be expected—the larger farms sold at higher prices for which the buyers made larger down payments and larger annual repayments. Negative correlation with the NW/PP ratio (-.214) probably arose out of the association with purchase price. It could be expected also that the buyers would purchase larger farms as their net worths increased (.165), that they would know more about the law and their contracts (.194), and that their contracts would be more complete and clearer (.165). The associations seem reasonable.

BUYER ATTRIBUTES

Age

Age of the buyers was associated with kinship (.229), shown by both the correlation coefficient and the analysis of variance, with DP/PP (.164) and with net worth (.157, at about the 5 per cent level). It was not surprising that the younger buyers were more closely related to the sellers than the older buyers, that net worth increased as the buyers' age increased, and that the younger buyers paid down a smaller proportion of the purchase price than did the older buyers. The age vari-

able, however, did not have a major impact upon the land contracts as shown by the few and relatively low simple correlation coefficients.

Relationship with Seller (Kinship)

Kinship between seller and buyer was correlated significantly with more variables than any other variable except down payment. Unlike down payment, however, none of the simple correlation coefficients were high. The positive correlations were: DP/PP (.405), interest (.283), down payment (.275), age (.229), knowledge (.226), and grade (.203). The negative correlation was with length of term (-.183).

It was anticipated that buyers who were related to sellers would make lower down payments in relation to purchase price than non-relatives, their interest charge would be lower, their down payment would be smaller, they would attain ownership at a younger age, they would know less about the law and their contracts, they would have longer terms in which to repay the balance of the purchase price, and their contracts would be less clear and complete. Some of these associations should serve as warnings of the need for relatives to be more businesslike in their dealing.

Kinship was shown to have a significant relationship with many of the same variables in the analysis of variance. Variance among the means was significant for DP/PP, interest, down payment, age, knowledge, and grade. The analysis of variance, however, was not significant for length of term as was the simple correlation at the 5 per cent level. Analysis of variance did not reveal significant relations between kinship and any of the other variables—the same findings as the simple correlations.

Knowledge of Law and Contract

The buyers' knowledge of the law governing land contracts and of the content of contracts, as measured by answers to thirteen questions, was correlated positively with kinship (.226), grade (.203), size (.194), and rate of interest (.155). The analysis of variance for buyers' knowledge, however, did not reveal significant variance among the means for these or any of the other variables.

Those who bought larger farms and paid higher rates of interest may well have been more concerned with the content of their contracts and their position under the law. Also, the level of knowledge may have been influenced slightly by the completeness and clearness of contracts. Buyers' knowledge was not among the important variables in the analysis of association. The low level of knowledge, as measured by the average score, however, is a matter of considerable concern.

QUALITY OF CONTRACT

Grade

The grade assigned each contract on the basis of its completeness and clearness was correlated positively with six variables–four at near the 1 per cent level and two at the 5 per cent level. The grade of the contract increased as kinship moved from parents to strangers (.203). The buyers who had the more complete and clearer contracts also had more knowledge of the law and the content of their contracts (.203). The more complete and clearer contracts also were associated with higher purchase price (.196), larger down payments (.190), larger farms (.165), and higher interest rates (.160). The analysis of variance indicated significant relationship between grade and knowledge and size. It must be concluded that the grade of the contract was associated only weakly with the other variables.

TABLE I

Characteristics of Variables Selected for Special Statistical Analysis Relating to 154 Iowa Farms Purchased by Land Contracts

Variable Identifications	*Units of Measurement°*	*Means*
Financial Factors:		
Purchase price—		
Total	Dollars	28,422
Per acre	Dollars per acre	175
Down payment	Dollars	5,861
Net worth	Dollars	23,016
Ratios—		
Down payment/purchase price	Per cent	19.9
Net worth/purchase price	Per cent	91.5
Repayment schedule	Dollars	1,999
Length of term	Years	16.5
Interest rate	Per cent	4.0
Size of farm	Acres	162.0
Buyer Attributes:		
Age	Years at date of interview	40.7
Relationship with seller	Classification: 1. relative, 2. friend, 3. stranger.	—
Knowledge of law and contract	Measure of knowledge of selected aspects of law and specific provisions of own contract. Possible range of score: 0-13.	6
Quality of Contract:		
Grade	Measure of clearness and completeness of contract. Grade ranges from 3 to 13.	8.5

°For a more detailed discussion of measurement employed, see footnote 196, page 111.

TABLE II

Simple Correlation Coefficients for Selected Variables
Relating to 154 Iowa Farms Purchased by Land Contracts

Variable Identifications†	FINANCIAL FACTORS: Purchase Price — Total	Purchase Price — Per Acre	Down Payment	Net Worth	Ratios—DP/PP	Ratios—NW/PP	Repayment Schedule	Length of Term	Interest Rate	Size of Farm	BUYER ATTRIBUTES: Age	Relationship with Seller	QUALITY OF CONTRACT: Knowledge of Law and Contract
Financial Factors:													
Purchase price — Total	---												
Per acre	.585**												
Down payment	.798**	.532**											
Net worth	.372**	.286**	.375**										
Ratios —													
Down payment/purchase price	.053	.119	.535**	.076									
Net worth/purchase price	—.258**	—.184*	—.176*	.599**	—.068								
Repayment schedule	.865**	.529**	.651**	.428**	—.023	—.141							
Length of term	—.013	—.045	—.173*	—.102	—.279**	—.091	—.153						
Interest rate	—.007	—.083	.039	—.043	.156	—.010	.053	—.084					
Size of farm	.650**	—.147	.435**	.165*	—.076	—.214**	.518**	.049	.029				
Buyer Attributes:													
Age	.106	.057	.140	.157	.164*	.093	.145	—.030	.107	.040			
Relationship with seller	.088	.018	.275**	.034	.405**	—.041	.083	—.183*	.283**	.048	.229**		
Knowledge of law and contract	.122	—.016	.103	.028	.059	—.102	.082	.063	.155	.194*	.048	.226**	
Quality of Contract:													
Grade	.196*	.072	.190*	.034	.043	—.113	.094	.071	.160*	.165*	.067	.203*	.203*

* Significant at 5 per cent level.
** Significant at 1 per cent level.
† For characteristics of variables see Table I and footnotes 196 and 198, pages 111 and 112.

TABLE III

Analysis of Variance for Selected Variables Relating to 154 Iowa Farms Purchased by Land Contracts

Variable Identification†	*Discrete or Contrived Variables* Kinship	Knowledge	Grade
Financial Factors:			
Purchase Price —			
Total			
Per acre	S°		
Down payment			
Net worth			
Ratios —			
Down payment/purchase price	S		
Net worth/purchase price			
Repayment schedule			
Length of term			
Interest rate	S		S
Size of farm			
Buyer Attributes:			
Age	S		
Relationship with seller			
Knowledge of law and contract	S		S
Quality of Contract:			
Grade	S		

°S indicates significant degree of explanation for variance among the means at the 5 per cent level.
†For characteristics of variables see Table I and footnotes 196 and 198, pages 111 and 112.