

# Court Rulings Imply New Twist In Livestock Deals

by James D. Ritchie

**I**n this age when many seem eager to sue, time-honored methods of marketing livestock may have to be revised.

A growing number of lawsuits across the country, where courts are holding livestock sellers liable for certain "implied warranties" as to the condition and fitness of animals, threaten to put farmers and livestock marketers in the same category as merchants of hard goods.

You be the judge. Pretend you are sitting on the bench in judgment of each of these true livestock transaction lawsuits:

## Case No. 1

A Florida rancher bought heifers that had been tested and certified brucellosis free by a veterinarian. He turned the cattle in a pasture across the fence from a herd known to be infected with the disease. When some of his heifers tested "hot" later on, the rancher sued the seller and the veterinarian who had originally tested the cattle on the grounds that the seller had implied a warranty that the cattle were fit for breeding purposes—which meant that they were free from disease.

How would you rule?

The Florida court found seller and veterinarian liable for damages—despite the possibility that the heifers might very well have contracted brucellosis after the buyer took them home.

## Case No. 2

An Iowa hog feeder bought feeder pigs from a dealer for \$33 per head. Health certificates, signed by a veterinarian, accompanied the pigs. Shortly after delivery, the pigs became sick. Several died. The buyer sued under the provision that the seller had violated the "implied warranty" provision of Iowa's Uniform Commercial Code.

How would you decide this case?

An Iowa court assessed the seller the full \$33 per head for pigs that died and—deciding that the surviving pigs had a "salvage value" of only \$3 per head—awarded \$30 per head for pigs that

did not die. (Those same pigs later finished out to No. 1 and 2 butchers.)

## Case No. 3

A Nebraska hog producer bought 22 gilts from a hybrid hog company, which guaranteed the gilts for breeding purposes. The gilts broke with atrophic rhinitis within a month. Only 16 of the 22 farrowed, with an average of six pigs per litter. On the advice of his veterinarian, the farmer sold all of his hogs, disinfected buildings and discontinued raising hogs for a year. He also sued the breeding stock company.

What about this case?

A Nebraska court held that, although the breeding stock company made a written guarantee of breeding soundness for the gilts (which would have covered the six gilts that did not farrow), the jury should consider the case on the issue of "implied warranty of fitness for the particular purpose for which the goods were required." The jury did—and awarded the buyer \$14,500 to cover both his original cost and to help compensate him for lost income while he was out of the hog business.

## Subject to Interpretation

"The Uniform Commercial Code (UCC) provisions of implied warranty are subject to interpretation by state courts," says William Deas, attorney for the Livestock Marketing Assn., Kansas City, Mo.

Deas points out that livestock transactions have always been subject to the large body of laws regarding trade and business transactions. For instance, if you bought cattle advertised as bred heifers and they turned out to be open, you have a legitimate complaint against the seller.

"But implied warranties—warranty of merchantability and warranty of fitness for a particular purpose—are automatically applied by law, regardless of whether there are express warranties or not," says Deas.

"The UCC provision of implied warranty can affect all sellers, not just livestock dealers," says Deas. "Nearly everyone who

owns livestock is subject to the provisions of implied warranty when he sells them. Sellers of feeder pigs and feeder calves have been hit most often by lawsuits under the implied warranty feature of the UCC."

## Not Considered

The fact that an animal appears healthy at the time of sale and later breaks with a disease apparently has not been considered by most courts hearing implied warranty cases. Likewise, the possibility that an animal contracted a disease enroute to the buyer's farm or that the buyer's own poor management may have contributed to the animal's lack of "fitness for a particular purpose" seem not to weigh heavily with many juries.


The UCC has been adopted by all states except Louisiana. However, since the Nebraska case mentioned here, that state's legislature has amended the UCC to exclude cattle, hogs and sheep from the implied warranty provision. So far, Nebraska is the only state to do so.

## Way Around

There is a way around the implied warranty provision. A section of the UCC spells out that sales are excluded from implied warranties "by conspicuous language or other circumstances which protect the buyer from surprise."

"A seller can disclaim the implied warranty provision by a statement that the livestock are sold 'as is' or 'with all faults,' but the language of the disclaimer must be specific," says Deas. "Also, there may be no implied warranty if the buyer has an opportunity to inspect the livestock beforehand—even if he declines to inspect the animals."

Disclaimers and other legal maneuverings no doubt are distasteful to many farmers accustomed to buying and selling livestock with a handshake in an atmosphere of mutual trust, Deas admits.

"But it may come to that," he says.   
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