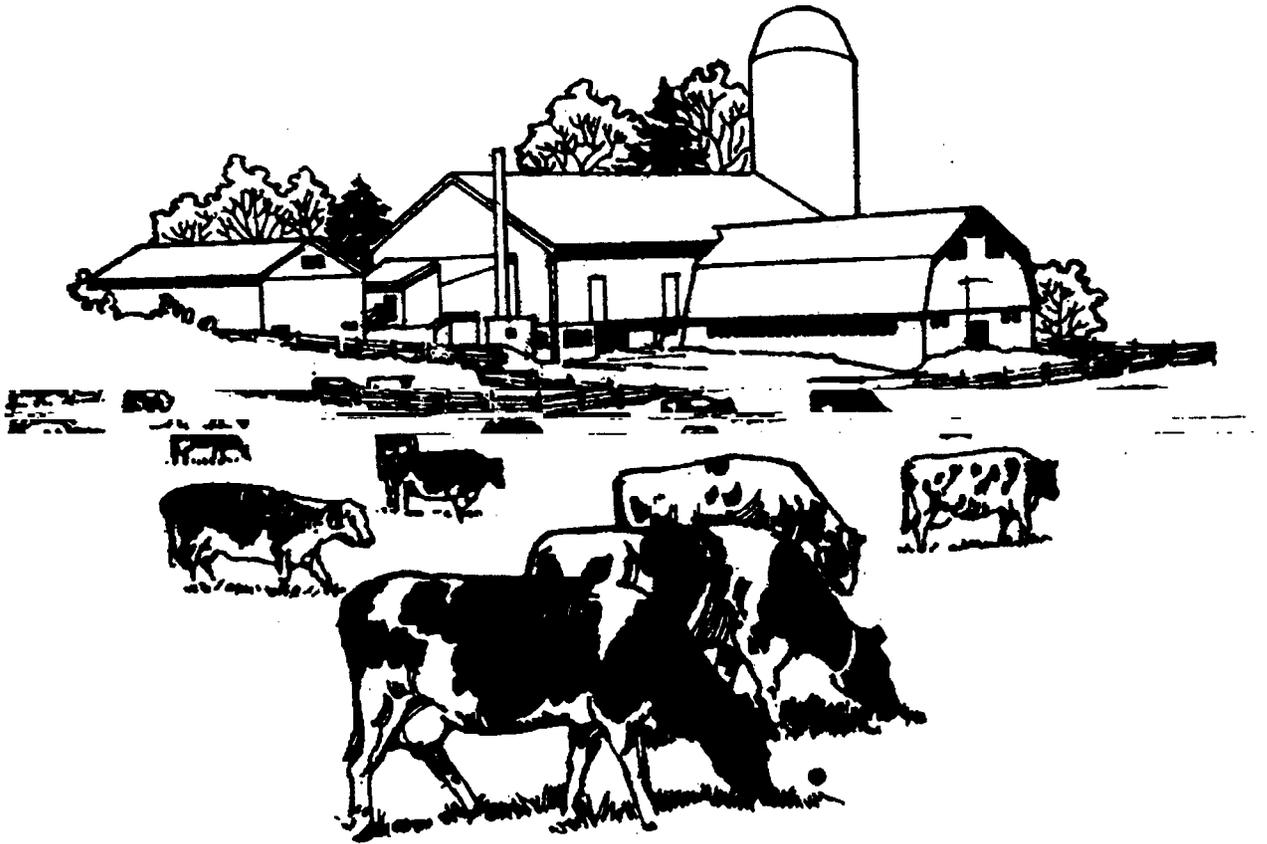


Sharemilking in the Midwest



Sharemilking Considerations for Dairy Producers

by Larry F. Tranel

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The information in this bulletin is designed for educational use only, and is not intended to serve as legal advice. The sample documents contained in the publication should be filled out only by parties to a legal agreement, or by lawyers authorized to practice law. Seek legal advice before entering into any legally binding agreement.

Sharemilking in the Midwest

Introduction

Sharemilking is a contractual arrangement between a landlord/lessor/employer and tenant/lessee/employee (hereafter known as OWNER and SHAREMILKER, respectively). Sharemilking combines management, land, labor, cattle and/or machinery in a multi-party dairy enterprise without forming a more formal arrangement such as a limited liability company, partnership or corporation. Sharemilking models from New Zealand and Australia are attracting interest in the Midwest because of their ability to motivate productive dairy enterprises; to support beginning and retiring farmers; and to attract investors. These two countries profit from efficiency of sharemilking arrangements.¹ As one observer put it:

Sharemilking is a vital cog to our (New Zealand) dairy industry and it would be very difficult, if not impossible, for young farmers who are not farmers' sons, to achieve farm ownership without the benefit of a few years in this form of occupation. Not only does Sharemilking provide a spring-board (from working for a labor rate or percentage wage) directly into farm ownership, it also allows farm owners to semi-retire gracefully.²

The overall goal of sharemilking is to build career bridges for beginning, mid-career and retiring farmers. Sharemilking arrangements can provide management expertise, economic incentives and a systematic method of asset acquisition for new entrants into the industry. On the other hand, sharemilking can provide established sharemilkers and owners with secure strategies to modify workload, phase-in retirement and exit farming.

Sharemilker Preparation and Career Paths

Dairying has become an increasingly technical and management intensive industry. Successful standards of efficiency continue to rise as do cost levels. Both practice and theory are required if a sharemilker wishes to become a successful manager and/or ultimately attain farm ownership.

Initial education and training can be acquired in Wisconsin through regional technical colleges or through one of the three colleges of agriculture associated with the University of Wisconsin System. The Wisconsin School for Beginning Dairy Farmers, a program associated with the Farm and Industry Shortcourse, UW-Madison, provides an excellent opportunity for persons wanting to engage in grass-based dairying. Following or during training, potential sharemilkers are encouraged to negotiate apprenticeships on successful dairy farms where they will be paid as they receive experience and mentoring in dairy farm management skills.

Apprenticeship experiences with successful dairy farmers as well as networking with other farmers, would prepare a potential sharemilker to begin a sharemilking work experience providing full-time labor to an operation. An initial full-time sharemilker might contract on a 75:25 basis, for example, where the farm owner receives 75% of the proceeds for his/her investment and the sharemilker receives 25% for his/her labor. The actual percentage might increase as managerial skills increase depending upon the contributions of the farm owner and his/her sharemilker. As experience and/or herd equity build, this percentage increases. This is a **major incentive necessary for sharemilking to succeed in the long run.**

A major step for beginning sharemilkers is to garner equity in cattle along with experience. Creative financial arrangements and receiving a percentage of the herd growth in the sharemilker's beginning positions are paramount for stepping up the dairy farm career ladder in a reasonable number of years.

Sharemilking positions may only last one to three years if equity progression is successful. After a contract milking experience, one then garners ownership in a herd through equity growth, financing and/or leasing. Sharemilkers should continually aim to better themselves and find positions which "fit" their increasing cow numbers, efficiency standards and workload ability. Also, consider reworking present arrangements based on a new set of contributions.

Locating Sharemilker Positions

As a prospective sharemilker, being selected for a particular position depends on a variety of considerations. Applying for a sharemilker position should be no different than any other job search. Respond to or seek out prospective positions in a professional manner. This begins with a visit and/or letter of application and resume.

Once a potential owner is interested, arrange an on-farm interview consisting of a detailed look at the milking system, housing arrangements, feed storage, calf rearing facilities along with the pasture and cropping system. Consider the income potential based primarily on housing/feeding/milking efficiencies and carrying capacity.

Ask questions to display managerial alertness. Judge the owner's willingness to make periodic changes to improve profits. Contact a previous operator or a neighbor to reference the owner's ability to work with a sharemilker in a fair and mutually beneficial relationship.

Many farms need development work to accommodate additional cows, which can pay handsome dividends to a sharemilker and the owner. Therefore, one should not forget that some sweat equity may be needed for farm improvements. This can be an excellent investment for sharemilkers, as sweat equity often improves relations with the owner.

If not in a pleasant work situation, consider breaking the relationship in a professional manner but realize a reliable character is what one is trying to document. After each sharemilking opportunity, obtain a reference, including work descriptions. To garner experience, consider working on 2-5 farms before attempting to be a sharemilker.

A major obstacle for the sharemilker is obtaining the financing to purchase or lease cattle and/or machinery. Consider providing labor for a percentage of the milk sales initially, begin cattle ownership in year two or three and work with a lender/investor for financing. If the parties are compatible, the owner might assist by leasing the cattle and co-signing the loan for a certain period of time. Or, outright financing from the owner may be an option, but be aware of major problems with any owner financing if the relationship turns sour.

The next step involves consideration of the cash flow feasibility for both the sharemilker and the owner. Most lenders will assist with this "cash flow" analysis but the sharemilker should also assess the profitability (very different from cash flow) of the farm operation (see Appendix A).

Selecting a Sharemilker

From the owner's view, selecting an honest and dependable sharemilker is of great economic value--one that can make or break an operation. Therefore, solicit sharemilkers through agriculture schools, advertisements and especially farmer/agri-business "word-of-mouth".

Learn how the potential sharemilker would manage details of the operation. In these discussions, one can often decide rather quickly the compatibility and management potential. Contact previous employers. If two references had a problem getting along with an individual, it may be more than a slight misunderstanding or personality conflict.

Experience from New Zealand shows that most arbitration cases come from sharemilkers who are managing a herd for the first time on their own.³ The sharemilker should not be liable for poor performance due to inexperience unless he/she misrepresented skills beforehand. Owners might consider being more involved in general farm management decisions with first time sharemilkers.

Sharemilking Agreements

Sharemilking can be designed as a share lease arrangement or an employer-employee relationship. A properly signed and executed sharemilking agreement is a legal document that binds the owner and sharemilker to their obligations in the provisions of the agreement. In the interest of both parties, a well designed and fair agreement is an investment to **preclude** misunderstandings.

The basis of all good arrangements between a sharefarmer and owner is a mutual trust and an understanding of each other's responsibilities with incentive to develop the total enterprise.

United Dairy Farmers of Victoria, Australia

Most owners and sharemilkers desire to develop an agreement that is economically sound and equitable to all parties. Thus, an ideal share lease arrangement has two main objectives: 1) attaining the maximum economic efficiency in resource use, and 2) allocating the returns between owner and sharemilker based on their respective contributions.⁴ An economically efficient lease is achieved if the lease arrangement lends itself to letting the whole farm achieve its total profit maximizing potential, while still representing the individual parties to the lease. Optimum farm organization as well as profit-maximizing production practices should be attainable under an economically efficient lease.

To be equitable, the lease must reward the suppliers of the inputs with outputs in the same proportions. If the owner is supplying 50% of the inputs, 50% of the output should accrue to the owner. **Distributive equity contributes to economic efficiency.** In addition, leases should provide the mechanism to respond to changing economic conditions (production costs/levels, asset values, herd size, milk price, etc.) as well as giving the parties to the lease a method of communication and arbitration.

Negotiation plays a large role in determining the farm's ultimate distribution. Factors such as the sharemilker's earning potential, alternative staffing options, overall farm profitability, farm size and efficiency, living accommodations, school district and neighbors impact the sharemilker's and owner's negotiating strengths. Even so, strive toward making it equitable.

Designing a Fair Share Milking Arrangement

Both the owner and sharemilker generally want to do “what’s fair” -- often following the custom of the community. Farms, however, are not alike. There is considerable variation in what individual sharemilkers can contribute in labor, management, and capital. Economic and technological changes in agriculture will affect arrangements over time.

Custom can be used as a general guide. However, in developing the details of the arrangement, a fair agreement is more likely to result through an honest evaluation of what each party will contribute to the farm business. **The general principle, is that each party should share returns of the farm business in the same proportions that they share the costs.**

There is reason to believe rental practices based on custom fail to fully take into account the difference in the productivity of farms and the contribution made by owners and sharemilkers. In order to determine which percentage allocation is most fair on a particular farm, a contributions worksheet (Appendix A) should be completed.

Thus, arrangements need to be examined periodically to determine if contributions of the two parties are in line with the division of income. This should be done annually, however, more experienced sharemilkers in a 50:50 agreement might negotiate on a 3 year basis.

Determining Contributions

To the extent that contributions are used as a guide to determining a fair arrangement, income should be shared by the owner and sharemilker in about the same proportion as each contributes to the farm business. The values assigned as contributions from various items represent the judgement of the parties involved. They are subject to bargaining and can be difficult to estimate. If they are to be used as a guide for dividing other expenses as well as income, great care must be used to arrive at realistic, accurate values. The fair or appropriate value of all the contributions should be mutually agreed upon **annually or over the length of the contract.**

When the fixed contributions of both the owner and sharemilker have been carefully estimated and agreed upon, the shares are determined. This is accomplished by dividing the total value of fixed contributions of each party by the sum of the fixed contributions of both parties. Variable expenses as well as income can then be shared in that same proportion.

A fair sharemilking arrangement allows for a just compensation to each party for their capital and labor contributions. The prevailing economic conditions can guide what constitutes a reasonable return on investment and a reasonable wage for labor. **A most important incentive for both parties is to realize and share in an increase in herd growth over time.** Cull cows are sold in proportion to the percent of cattle owned but the growth is shared based on the percentage earned. Thus, in a 70:30 agreement in which no cattle are initially owned by the sharemilker, all cull cows initially go to the owner but increases in herd size and heifer inventory accrue to each in the 70:30 share, if agreeable.

Drawing Up an Agreement

An example contract is included in Appendix C. When drawing up an agreement, the following key points should be considered:

Parties to the Agreement

- This should identify the farm owner(s) and sharemilker(s).

Term of Agreement

- When the Agreement will begin and end.
- Extraordinary circumstances due to personal, health, economic or weather factors.
- Length of formal notice required for termination and penalty for early termination.

Provision of Assets and Services by Each Party

- Who provides the land, labor, livestock, machinery and facilities and in what amount?
- Who maintains and repairs which capital items?

Income Sharing

- Define share of the sale of milk, cull cows, calves, payment for rearing calves, and secondary enterprises.
- Method of payment. How is each party to be paid for his/her share of income and how will he/she pay his/her share of costs (consider direct payment from the dairy).

Cost Sharing

- Define which costs are to be shared and the percentage split between the two parties (costs are shared to encourage wise and efficient use of inputs).
- The party who provides an asset is usually responsible for the interest, insurance, depreciation, taxes, repairs and maintenance of that particular input.

Dealing With Disputes

- The failure of either the owner or sharemilker to comply with the agreements set forth in this lease shall make one liable for damages to the other party. In the event an agreement cannot be reached, the matter shall be referred to a committee of three arbitrators, one chosen by the owner, one chosen by the sharemilker, and a third chosen by the two. None of the arbitrators chosen shall be related to either party or have an interest in the questions decided. The decision of this committee shall be in writing and accepted by both parties. The cost of arbitration shall be borne equally.

Taxation of Sharemilking Agreements

- Because of the complexities of the tax system, sharemilkers and farm owners are encouraged to consult Appendix B and seek expert tax advice.

Appendix A.

Sharemilking Arrangement Worksheet

Budgeting divisions of incomes and expenses are important in developing agreements to which parties are not disillusioned with lower than expected returns. By using the Sharemilking Arrangement Worksheet, scenarios can be developed for individual farms where production variables such as land price, cattle intensity per acre, machinery ownership levels and/or building investment render a more custom-based common lease unfair.

As depicted in Table A1, the aim of the worksheet is to include all the fixed assets on the upper left hand side to establish a current fair market value and charge for each fixed asset. These fixed assets have ownership costs known as the DIRT 5--depreciation, interest, repairs, taxes and insurance. Actual values for fair market value depreciation (not the tax depreciation allowed) should be used. The interest cost should include either the interest paid on debt of those assets, an opportunity cost (percentage return) which could be earned somewhere else or a weighted average combination of the two. Leased assets have costs equal to the annual lease payment, instead of the DIRT 5.

Table A1.

Debt Serviceable		SHARE LEASE ARRANGEMENT WORKSHEET			Milk/Cow	
Lessor \$83,136		Gary G. Frank and Larry F. Tranel			14,400	
Lessee \$47,661		University of Wisconsin-Extension			Herd Size 180	
Fixed Costs Item	Value	Charge	Owner Contribute	% of Total	Sharemilker Contributes	% of Total
LAND	\$210,000	8.00%	\$16,800	100.0%	\$ 0	0.0%
Property Tax	\$ 9,000		\$ 9,000	100.0%	\$ 0	0.0%
Lime Charge	\$ 500		\$ 500	100.0%	\$ 0	0.0%
Insurance	\$ 1,500		\$ 1,500	100.0%	\$ 0	0.0%
BUILDINGS	\$130,000					
Depreciation		6.00%	\$ 7,800	100.0%	\$ 0	0.0%
Interest		8.00%	\$10,400	100.0%	\$ 0	0.0%
Repair/Tax/Ins.		3.50%	\$ 4,550	100.0%	\$ 0	0.0%
LIVESTOCK	\$216,000					
Interest		8.00%	\$ 8,640	50.0%	\$ 8,640	50.0%
Insurance		0.50%	\$ 540	50.0%	\$ 540	50.0%
MACHINERY	\$ 25,000					
Interest		8.00%	\$ 0	0.0%	\$ 2,000	100.0%
Depreciation		12.00%	\$ 0	0.0%	\$ 3,000	100.0%
Repairs/Insurance		5.00%	\$ 0	0.0%	\$ 1,250	100.0%
LABOR	\$ 44,275		\$ 0	0.0%	\$44,275	100.0%
MANAGEMENT	\$347,040	0.00%	\$ 0	50.0%	\$ 0	50.0%
(as a percent of the Gross Income calculated below)						
-----TOTAL-----		SHARE-----			Share-----	
FIXED COSTS	\$119,435		\$59,730	50.01%	\$59,705	49.99%

These fixed asset contributions generally determine the breakdown of variable expenses and incomes. In the above example, the fair market value of the land is estimated at \$210,000. The owner's opportunity cost on owning the land is 8%, which is the charge used to determine the owner's annual contribution of \$16,800 since the owner owns 100% of the land. Property taxes on the farm are \$9,000 which is contributed 100% by the owner. The owner in this example contributes \$500 to lime and \$1500 to insure the farm annually.

The owner also contributes 100% of the buildings which has an estimated fair market value of \$130,000. Depreciation on buildings is estimated at 6% or \$7,800; interest on buildings is charged at 8% or \$10,400; and repairs, taxes and insurance on buildings total 3.5% or \$4,550 annually. Livestock is valued at \$216,000 and each party contributes one-half. An 8% interest charge equates to an \$8,640 contribution to each. Insurance on livestock is estimated at .05% or \$540 for each party.

The sharemilker supplies the \$25,000 worth of machinery on this farm. Interest at 8% or \$2,000; depreciation at 12% or \$3,000; and repairs and insurance at 5% or \$1,250 are the annual contributions by the sharemilker for his/her machinery. Labor is supplied 100% by the sharemilker and is valued at \$44,275 (husband and wife team). Management is included with labor in the example. Management is often contributed as a separate percent charge of gross income and divided on percentages based on each party's management contribution.

The total fixed costs in this example farm equal \$119,435 annually. The owner contributes \$59,730 or 50.01% of the total. The sharemilker contributes \$59,705 or 49.99%. Thus, this example based on fixed asset contributions would suggest a 50:50 sharemilking arrangement meaning that since the owner contributes 50% of the assets, he/she should receive 50% of the incomes. The same is true for the sharemilker. As asset and investment levels or the mix of ownership changes, so too would the contribution percentages.

Table A2 contains the variable costs which are usually shared. The value of each cost equals the annual sum accrued in a typical year. The total variable costs in the left column are the annual sum of these variable costs for the whole farm.

Table A2.	FARM	OWNER		SHAREMILKER	
Vet and Med	\$ 4,576	\$ 2,288	50.0%	\$ 2,288	50.0%
Farm Supplies	\$ 3,700	\$ 1,850	50.0%	\$ 1,850	50.0%
Breeding Fees	\$ 250	\$ 125	50.0%	\$ 125	50.0%
Purchased Feeds	\$104,218	\$52,109	50.0%	\$52,109	50.0%
Crop Expenses	\$ 6,500	\$ 3,250	50.0%	\$ 3,250	50.0%
Fuel/Oil/Gas	\$ 544	\$ 272	50.0%	\$ 272	50.0%
Utilities	\$ 4,984	\$ 2,492	50.0%	\$ 2,492	50.0%
Labor Hired	\$ 5,000	\$ 0	0.0%	\$ 5,000	100.0%
Rent/Lease/Hire	\$ 10,224	\$ 5,112	50.0%	\$ 5,112	50.0%
Other Expenses	\$ 14,593	\$ 7,297	50.0%	\$ 7,297	50.0%
-----TOTAL-----		-----SHARE-----		-----SHARE-----	
Variable Costs	\$154,589	\$74,795	48.38%	\$79,795	51.62%
-----TOTAL-----		-----SHARE-----		-----SHARE-----	
CONTRIBUTIONS	\$274,024	\$134,525	49.1%	\$139,500	50.9%

The variable expenses (except labor hired) in this example are shared on a 50:50 basis. If the fixed asset would be contributed on a 70:30 basis by the owner and sharemilker respectively, the variable expenses would then be split on this same level. The total variable expenses on the 50:50 example equal \$154,589. The difference in the contributions is the hired labor which is the responsibility of the sharemilker. This hired labor might be included as a fixed asset contribution rather than a variable expense increasing the contribution of the sharemilker before a percentage breakdown is calculated.

The total contributions amount for the farm is the sum of the total fixed and variable costs. The total contributions for the farm are \$274,024 annually with the owner supplying \$134,525 or 49.1% and the sharemilker supplying \$139,500 or 50.9%. Due to the hired labor of \$5,000, the sharemilker in this example actually contributes about \$5,000 of additional value to the operation. The incomes to the farm are generally rounded which customarily would mean a 50:50 split of income. Technically, this farm would more accurately divide income on a 49:51 basis to be precisely equitable.

Table A3 contains the incomes from the farm in total dollar value for each income type and the total gross incomes of the farm. The bottom left side of Table A3 depicts the net return over variable costs for the total farm followed by the net return over cash costs excluding interest and labor (exc IL); net return over cash costs excluding labor (exc L); net return over cash costs followed by the net return over total costs.

Table A3.

INCOMES		OWNER		SHAREMILKER	
Milk Sales	\$311,040	\$155,520	50.0%	\$155,520	50.0%
Cull Cow Sales	\$ 25,200	\$ 12,600	50.0%	\$ 12,600	50.0%
Calf Sales	\$ 10,800	\$ 5,400	50.0%	\$ 5,400	50.0%
Gvt.Prg.Income	\$ 0	\$ 0	50.0%	\$ 0	50.0%
Crop Sales	\$ 0	\$ 0	50.0%	\$ 0	50.0%
Other Income	\$ 0	\$ 0	50.0%	\$ 0	50.0%
-----TOTAL-----		SHARE-----		SHARE-----	
Gross Incomes	\$347,040	\$173,520	50.0%	\$173,520	50.0%

NET RETURN OVER					
Variable Costs	\$192,451	\$ 98,726	51.3%	\$ 93,726	48.7%
Cash Costs exc IL	\$175,071	\$ 83,136	47.5%	\$ 91,936	52.2%
Cash Costs exc L	\$128,591	\$ 47,296	36.8%	\$ 81,296	63.2%
Cash Costs	\$ 84,316	\$ 47,296	56.1%	\$ 37,021	43.9%
Total Costs	\$ 73,016	\$ 38,996	53.4%	\$ 34,021	46.6%

The owner of the cows generally would obtain cull cow and calf sales. However, in a 70:30 split where the owner also owns 100% of the cattle, the owner would garner 100% of the cull cows and calf sales. Herd inventory growth over time, though, might build on the 70:30 basis which is an important, but negotiable, incentive for the sharemilker.

Figuring the total cost picture on the farm is the first step in determining a fair lease arrangement (Tables A1 and A2). Once this cost picture has been determined, this would then be divided between the owner and sharemilker (Table A3). Based on the value and charge columns of the worksheet, the user inputs the percent of the total the sharemilker contributes to the operation. The owner's contribution is automatically calculated as are the owner's and sharemilker's contribution in dollar value for each income or expense item. Aside each total is the share in dollar value and percentage of the owner and sharemilker.

The Sharemilking Arrangement Worksheet is also available in a computer spreadsheet form. This includes an input form (A3670-W) where the various blanks can be filled in so an individual with access to the spreadsheet can run the program. This SHARE MILK program can be obtained through the UW-Extension Office at 222 N. Iowa St. Dodgeville WI 53533 (608) 935-3354.

Appendix B. **Classifying Sharemilking Arrangements for Tax Reporting**⁵

Tax consequences vary depending upon the formation of the operating agreement. A sharemilking arrangement is, in effect, either a farm lease or employer-employee arrangement. Due to the ability of an owner to fully deduct benefits such as health insurance, housing, SEP's, etc. and the ability of the employee to receive these benefits tax free provides an ample reason to consider an employer-employee relationship versus a lessor-lessee relationship. Tax laws change, however, so refer to current information.

The 1995 *Farmers Tax Guide* briefly addresses farm leases on page 16 by stating -- "The rent you receive for the use of your farmland is generally rental income, not farm income, and is reported on Form 4835 and Schedule E. However, if you materially participate in the farming operations on the land, the rent may be considered farm income rather than rental income and is reported on Schedule F and subject to self-employment taxes (SE)." Sharemilkers would report income and expenses on Schedule F. The classification of share leases involves the determination of two completely different tests of material participation.

Test No. 1. Material participation for purposes of the self-employment (SE) tax. This test determines whether the landlord reports the activity on Schedule F (Farm Income and Expenses) or on Form 4835 (Farm Rental Income and Expenses). The *Farmers Tax Guide* (IRS Publication 225) explains the four tests for material participation of a *farm landlord*: **You materially participate if you have an arrangement with your tenant for your participation and meet any one of the four following tests --**

Test 1. You do any *three* of the following --

1. Advance, pay, or stand good for at least half the direct cost of producing the crop;
2. Furnish at least half the tools, equipment, and livestock used to produce the crop;
3. Consult with your tenant; and
4. Inspect the production activities periodically.

Test 2. You regularly and frequently make, or take an important part in making management decisions substantially contributing to or affecting the success of the enterprise.

Test 3. You work 100 hours or more spread over a period of five weeks or more in activities connected with crop or livestock production.

Test 4. You do things that, considered in their total effect, show that you are materially and significantly involved in the production of the farm commodities.

Test No. 2. Material participation for passive activities. This test determines whether the income or loss of an activity is active or passive. This is important since passive losses are not deductible. In drafting a sharemilking agreement, the following guidelines apply:

1. The agreement should be written and should contain lease terms similar to those commonly used in the particular geographic area.
2. The landlord should not contribute to losses or agree to reduce future payments for tenant losses. The terms are indicative of partnerships and joint ventures.
3. The landlord should not participate in day-to-day operations of the farm. However, occasional consultation on major management decisions and occasional inspection of the production activities are permissible.
4. The agreement should specify a sharing arrangement that is a fixed percentage of sales or receipts, not a percentage of income or profit.

Endnotes

1. Conversation with Ken Lewis, Dairy Farm Consultant, New Zealand during travels to New Zealand in 1994.
2. Sharemilking: How Sharemilking Agreements Can Benefit Both Parties, Ralph du Faur, Farm Books, New Zealand, 1993. p.7.
3. Sharemilking: How Sharemilking Arrangements Can Benefit Both Parties, Ralph du Faur, Farm Books, New Zealand, 1993.
4. Livestock Share Lease, UW-Extension Publication A2851, Leslie F. Huber, Robert A. Luening, and Arnon R. Allen
5. Harris, Daughtrey and Bock. Agriculture Issues and Form Preparation, Fall 1995.

Sharemilking Agreement ¹

SECTION I. CONTRACTING PARTIES, DESCRIPTION OF PROPERTY AND EFFECTIVE DATE.

1. This share agreement is made this ____ day of ____ 19__, between:

_____, whose address is _____
 _____ hereafter called the
 OWNER and,
 _____, whose address is _____
 _____ hereafter called the
 SHAREMILKER.

2. The OWNER, in consideration of the agreements with the SHAREMILKER stated later, will allow the SHAREMILKER to occupy and use for dairy purposes, the following property:

- a. Name of farm _____
- b. Acres (more or less) _____
- c. County and State _____
- d. legally described as _____

 (township) (section) (range)

3. This agreement shall become effective on the ____ day of _____, 19__, and shall continue in force until the ____ day of _____, 19__.

The lease shall identify the parties, the property that is being leased and the beginning and ending dates of the lease in sufficient detail so that there is no ambiguity about these items.

Under Wisconsin law, if the sharemilker continues to occupy the property after the end of the sharemilking agreement with the owner's consent, a year-to-year lease has been created that can be terminated only by one party giving notice at least 90 days before the end of a term.

The agreement might review any provisions which would need to be made under extraordinary circumstances due to personal, health, economic or weather factors.

The parties might also consider an earnest money provision to prevent a party from breaking the contract between signing and commencement of duties.

¹This sharemilking agreement is provided as an example for educational purposes. Although one may choose to use it for a legal document, its purpose is educational in nature and users must accept full responsibility for its use as the University of Wisconsin-Extension or this author shall not be liable for unintended misrepresentations, if any, outlined herein. Prospective parties to such an agreement are urged to consider each individual clause and where necessary to vary such clause or add new clauses so that the intention of the parties is clearly set out.

SECTION II. STATUS OF THE PARTIES

1. *The relationship of the parties shall be deemed to be that of an _____ (EMPLOYER-EMPLOYEE or LEASOR-LESSEE). Nothing in this agreement shall be deemed to constitute a partnership, limited liability company or corporation. The owner and sharemilker shall distribute incomes and expenses on a _____ share basis unless otherwise specified in this contract.*

SECTION III. DWELLING AND FARM BUILDINGS

1. *The OWNER shall provide and maintain in good order suitable accommodation for the SHAREMILKER the dwelling and farm buildings. The cost of utilities for the dwelling shall be the responsibility of the SHAREMILKER. The SHAREMILKER shall keep the house accommodation and farm buildings in good and clean condition and shall be responsible for neglect above normal wear.*

2. *The OWNER shall provide the necessary materials and repair for structural soundness of buildings, silos and unloaders, water lines, permanent fencing and well. Minor repairs and maintenance due to use of facilities under \$ _____ are to be split on a _____ share.*

SECTION IV. PROVISIONS FOR COWS AND YOUNGSTOCK

1. *The SHAREMILKER shall for the purposes of this Agreement provide and maintain on the said land not more than _____ cows nor less than _____ cows to freshen annually.*

2. *The SHAREMILKER shall throughout the term of this Agreement by the application of culling and good farming practices maintain and continue the above cows as a satisfactory milking herd.*

3. *The SHAREMILKER shall at all proper times take all necessary steps to have the cows effectively serviced and bred and shall record in writing the dates of all calvings and of all services of the cows and furnish the same to the OWNER when demanded.*

4. *The SHAREMILKER, or his competent hire, shall supervise each milking and shall take proper and prompt steps to treat any stock requiring attention and when necessary call in at their shared expense of herd ownership a competent veterinarian.*

5. *Calf sale income is to be distributed in _____ shares. The SHAREMILKER shall be entitled to raise _____ head of replacement per year to maintain herd size and an additional _____ head which are owned on a _____ share between the owner and sharemilker.*

6. *Cull cow income is to be distributed in respective shares of herd ownership. The SHAREMILKER shall make prudent decisions as to level of culling versus herd growth.*

Depending upon career stage and managerial ability of the sharemilking party, tax benefits relative to health care, etc. might encourage an employer-employee relationship over a lease arrangement. Cash rental of the farm may also be an option to consider based upon risk and other factors.

The share should be identified relative to a 50:50, 60:40 or other share for the owner and sharemilker respectively.

If no house is available, renting a nearby house might be considered. The housing cost should be included in the owner's contributions.

The parties may include a clause for requirements on AI or natural service to be used.

A major incentive occurs for the sharemilking party in obtaining herd ownership. Flexibility for growth in replacements should be considered carefully.

SECTION V. MACHINERY AND IMPLEMENTS

1. The SHAREMILKER shall provide and maintain (or hire) at his own cost and expense the following farm implements:

In agreements where both parties own machinery, a clause could be included as to who pays what repairs. Most commonly, each party would pay the repairs for the machinery each owns.

SECTION VI. FERTILITY AND WEEDS

1. The OWNER agrees to apply corrective fertilizer in the amount of _____ pounds of P₂O₅, _____ pounds of K₂O, _____ pounds of _____, and lime to the level of _____ pH at the commencement of this agreement. Maintenance fertilizer during the length of this agreement shall be split by the OWNER and SHAREMILKER on a _____ share. Nitrogen fertilization of the pastures are to be in _____ applications at the rate of _____ pounds of actual N on _____, _____, and _____ each year.

2. The SHAREMILKER agrees to control thistles and other weeds upon the said land as far as is practical to the prevention of any increase compared with the commencement of this agreement. Weed spray shall be split by the OWNER and SHAREMILKER on a _____ share.

3. Manure is to be hauled/applied at appropriate times and in conformity with current waste regulations and technology. Manure is not to be removed from the farm and applied according to the following plan:

If the manure management plan allows spreading manure on the pasture and/or hay ground during the term of the contract, a clause could be included to set out the rights and limits for doing so.

SECTION VII. LAND USE AND CROP/PASTURE SYSTEM

1. The SHAREMILKER agrees to keep livestock out of the fields to protect sod crops when the soil is soft. The SHAREMILKER also agrees to not overgraze pastures, especially in late summer (July-August). Grazing or harvesting forage during the pre-winter recovery period from September 1 until growth terminates IS / IS NOT allowed. The sharemilker should be allowed to harvest _____ crops of hay during the year.

2. No pasture shall be tilled without consent of the OWNER.

Clauses specific to management of intensively grazed pasture might define rest periods, grazing heights, stock density, stockpiling and related issues.

3. Approximately _____ acres of the farm can be used on a rotational cropping basis with _____ acres in pasture, and _____ acres in woods not to be grazed. A Soil Conservation Plan is to be followed. The tracts that are included in these respective classes shall be designated at the beginning of the contract by way of field maps.

4. During each year the contract is effective, sufficient legume/grass forage shall be seeded to provide for approximately _____ acres. If any seeding fails, the substitute crop(s) shall be mutually agreed upon.

SECTION VIII. LABOR

1. The SHAREMILKER shall devote the whole of his time and attention to the efficient carrying out of this agreement and shall not engage in outside employment. The SHAREMILKER shall be entitled to vacation as usual for dairy farm workers but prior to the SHAREMILKER shall arrange at own expense for a competent person to perform duties during the absence.

2. The SHAREMILKER in addition to his own labor shall employ and keep employed as a minimum labor force throughout the term of this agreement, the following types of employees or their equivalent:

PROVIDED HOWEVER that any failure to employ such a minimum labor force shall not in itself be deemed a default under this agreement.

SECTION IX. OTHER RIGHTS, PRIVILEGES AND PAYMENT

1. The SHAREMILKER shall have the right to erect, maintain and remove at the SHAREMILKERS expense, temporary fence and moveable buildings on the farm, provided no damage to the property is done.

2. Any changes in this lease shall be in writing and signed by both parties. A copy should be attached to this lease.

3. The SHAREMILKER shall not assign any of his rights, privileges, or benefits under this agreement without the consent in writing of the OWNER.

4. The SHAREMILKER acknowledges that the OWNER is allowed to observe and perform obligations from time to time.

5. Incomes and expenses shall be received and paid according to the following plan:

In certain situations, the owner might contribute some labor and management. Clause(s) detailing expectations or limitations might be included.

Item 2 allows that one or both parties may want to negotiate the contract after it is signed. This provision makes it more cumbersome to amend the contract, but it eliminates confusion of changes to which the parties agreed. The Statute of Frauds requires changes to be in writing for contracts more than \$500.

A share split of each bill or a biweekly or monthly billing on agreed date from sharemilker to owner (vice versa) would allow each party to receive directly their respective share of milk and other income versus a joint account.

SECTION X. TERMINATION OF AGREEMENT

- 1. Failure on the part of either party to perform any of the terms, covenants, or conditions covered by this agreement, shall constitute grounds for termination thereof at the option of the other party.
- 2. Failure of the part of either party to comply with the agreements set forth in this lease shall make one liable for damages to the other party. In the event an agreement cannot be reached, the matter shall be referred to a committee of three arbitrators, one chosen by the owner, one chosen by the sharemilker, and a third chosen by the two. None of the arbitrators chosen shall be related to either party or have an interest in the questions decided. The decision of this committee shall be in writing and accepted by both parties. The cost of arbitration shall be borne equally.
- 3. Failure on the part of either party to perform any of the terms, covenants, or conditions covered by this agreement, shall give the non-breaching party the right to perform, or have performed, any of the terms, covenants, or conditions remaining undone by breaching party and to sell or retain sufficient of the breaching party's assets to cover all costs incurred in fulfilling the contract. In case of dispute, the decisions as to the violation of the agreement shall rest with the committee of arbitration herein provided for.

Upon termination, parties might consider a penalty for early severance to end contract while terms are being carried out.

At termination in arrangements with shared herd ownership, the cows might be most fairly split on a random basis whereby the sharemilker, for example, splits the herd in half and the owner is allowed to pick his half. This generally constitutes a fair split as the sharemilker is most familiar with the herd and by chance will get either half.

SECTION XI. SIGNATURES

(Date)

(Type or print Seller's name)

(Date)

(Type or print Buyer's name)

County of) _____

State of) _____

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in said state personally appeared _____, _____, _____, and _____ to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

(Notary Public)

All parties to the contract should sign it. The signatures might be notarized so the contract can be recorded at the County Register of Deeds. Recording the contract puts a potential buyer on notice that the sharemilker has a right to the dairy for the term of the contract.

The notary public identifies the persons who signed the contract in their presence.

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