国家“十五”、“211工程”课题项目

研究生教学用书

教育部学位管理与研究生教育司推荐

国际商法教学案例（英文）选编（第二版）

Selected Cases on International Business Law

沈四宝　王　军　编著

法律出版社
LAW PRESS CHINA

国家"十五"、"211工程"课题项目

研究生教学用书

教育部学位管理与研究生教育司推荐

国际商法教学案例(英文)选编

Selected Cases on International Business Law

第二版

沈四宝 王 军 编著

法律出版社
LAW PRESS · CHINA

图书在版编目(CIP)数据

国际商法教学案例(英文)选编/沈四宝,王军编著.
2版.—北京:法律出版社,2007.8
研究生教学用书.教育部学位管理与研究生教育司推荐
ISBN 978-7-5036-7563-8

Ⅰ.国… Ⅱ.①沈…②王… Ⅲ.国际商法—案例—研究生—教学参考资料—英文 Ⅳ.D996.1

中国版本图书馆CIP数据核字(2007)第112191号

责任编辑/谭柏平　　**装帧设计**/汪奇峰

出版/法律出版社　　**编辑统筹**/法律教育出版分社
总发行/中国法律图书有限公司　　**经销**/新华书店
印刷/北京中科印刷有限公司　　**责任印制**/张宇东

开本/787×960毫米 1/16　　**印张**/33.75　**字数**/648千
版本/2007年8月第2版　　**印次**/2007年8月第1次印刷

法律出版社/北京市丰台区莲花池西里7号(100073)
电子邮件/info@lawpress.com.cn　　**销售热线**/010-63939792/9779
网址/www.lawpress.com.cn　　**咨询电话**/010-63939796

中国法律图书有限公司/北京市丰台区莲花池西里7号(100073)
全国各地中法图分、子公司电话:
第一法律书店/010-63939781/9782　**西安分公司**/029-85388843　**重庆公司**/023-65382816/2908
上海公司/021-62071010/1636　**北京分公司**/010-62534456
深圳公司/0755-83072995　**苏州公司**/0512-65193110

书号:ISBN 978-7-5036-7563-8　　**定价**:42.00元

前　言

本书自其第一版于1999年付梓至今，已历时8年。那时，编者深感案例教学之重要，并深感只有让学生研读原汁原味的英文判例才能缩小他们与发达国家的律师之间的差距。于是，在精挑细选的基础上，该书辑录了公司法、合同法和货物买卖法三个领域的50多个判例，并附加了相关的资料。以后，阅读该书已成为“考研生”进入对外经济贸易大学法学院的“晋身之阶”，又成为他们入学后的必读教材。这些年来，已经有不计其数毕业于这所法学院的学生在国际律师界取得了突出的成就，而他们不会忘记，他们的成长曾凭借了这本书的帮助。今天，它被学生们亲切地称为“灰皮书”。

的确，要透彻地研究和理解“灰皮书”中蕴涵的文化，对每一个开始阅读它的学生都是一种挑战。而对教师们来说，以其中的案例为内容，进行国际商法的讲授和课堂讨论，也同样是一种格外艰辛的工作。这些年来的实践证明，我们的教师和学生不仅敢于接受这种挑战，而且取得了辉煌的战果。

在灰皮书之后，国内介绍英美法案例的书籍不断问世：仅对外经济贸易大学法学院的教师，就已经出版了商事组织法、合同法、证券法、海商法、侵权法等领域的十多种英文案例教材，国内出版社也引进出版了多种英美法原文教材。在这些原文案例教材争奇斗艳之时，灰皮书的编者们既感欣慰，更感压力。

灰皮书至今仍是国内唯一的综合性的国际商法判例教材。如何才能让它更好地服务于当前快速发展的国际商法教学需要呢？首先，该书第一版仅包括了公司法、合同法和货物买卖法三个领域的内容，涵盖范围稍嫌狭窄；其次，这一版本中的许多案例篇幅过长，导致了使用上的不便；第三，该版本之后所附的资料过多，排挤了本应由案例占有的空间。

适逢对外经济贸易大学法学院作为国家级重点学科建设单位进行“十五”、“211”工程项目建设，编者得以对灰皮书进行修订和补充。此次修订，借助最新出版的英文权威著作和资料浩瀚的WESTLAW数据库，编者精心选择了商事组织法、代理法、信托法、合同法和国际货物买卖法五大领域的一百多个英文案例，并编写了案例导言和思考题。其中，商事组织法部分中加入了有限责任合伙、有限责任企业等方面的新判例；国际货物买卖法部分不仅包括了有关英美货物买

卖法律的判例,还选择了美国、德国法院适用联合国《国际货物销售合同公约》的判例。

编者们希望,修订后的灰皮书,能为我们的学生和国内同仁研究国际商法提供更多的帮助。

编者

2007 年 6 月

目　录

第一章　合伙企业 …… (1)
第一节　合伙的概念与特征 …… (1)
Grissum v. Reesman …… (1)
Anderson Hay and Grain Co. v. Dunn and Welch …… (9)
Day v. Avery …… (13)
第二节　合伙企业及其合伙人与第三人的关系 …… (21)
Burns v. Gonzalez …… (21)
National Biscuit Company v. Stroud …… (27)
第三节　有限责任企业 …… (31)
Maureen K. HAGAN v. ADAMS PROPERTY ASSOCIATES, INC. …… (32)
Retropolis, Inc. v. 14th Street Development LLC …… (35)
第四节　合伙协议 …… (36)
Partnership Form …… (37)
第二章　公司法 …… (43)
第一节　公司的法律概念 …… (43)
Salomon v. Salomon & Co., Ltd. …… (43)
Dodge v. Ford Mortor Co. …… (52)
第二节　公司的设立(Incorporation) …… (59)
Timberline Equipment Co., Inc. v. Davenport …… (59)
Kelner v. Baxter …… (63)
Gluckstein v. Barnes …… (65)
第三节　公司章程 …… (71)
Sample of Articles of Incorporation …… (71)
Sample of By-laws …… (83)
Rolled Steel Products (Holdings) Ltd. v. British Steel Corporation and Others …… (93)
Phillips v. National Trappers Ass'n …… (104)
第四节　"揭开公司面纱"原则 …… (108)
Berkey v. Third Ave. Ry. Co. …… (110)

Bartle v. Home Owner Coop. …… (119)
United States v. Kayser-Roth Corporation …… (121)
Trustor v. Smallbone …… (133)
第五节 公司的资金 …… (143)
Hanewald v. Bryan's Inc. …… (144)
Slippery Drive Indus. park v. United States …… (148)
Smith v. Gross …… (156)
Brady v. Brady …… (161)
第六节 公司的管理 …… (168)
Shlensky v. Wrigley …… (169)
Stone v. American Lacquer Solvents Co. …… (174)
Francis v. United Jersey Bank …… (177)
Zahn v. Transamerica Corporation …… (197)
第三章 代理法 …… (212)
第一节 代理关系的确认以及代理人与本人之间的关系 …… (212)
Johnson Realty v. Bender Colo …… (212)
Carrier v. McLlarky …… (217)
第二节 本人及代理人同第三人的关系 …… (220)
Oil Supply Co., Inc. v. Hires Parts Service, Inc. …… (220)
第三节 表见代理 …… (224)
Sarkes Tarzian, Inc. v. U. S. Trust Co. …… (224)
第四节 追认的代理 …… (230)
Estate of Huston v. Mary Deonne Greene …… (230)
第四章 信托法 …… (235)
第一节 信托概述 …… (235)
Lister & Co. v. Stubbs …… (236)
Beswick v. Beswick …… (246)
第二节 信托的设立 …… (253)
Jones v. Lock …… (254)
Lloyds Bank Plc. v. Rosset and Another …… (257)
第三节 受托人的责任 …… (267)
Bahin v. Hughes …… (268)
Williams v. Barton …… (274)
第五章 合同法 …… (278)
第一节 合同的成立 …… (278)

一、意思表示的作出 …… (278)
LUCY et al v. ZEHMER et al …… (279)
Abrams v. Illinois College of Podiatric Medicine …… (281)
二、要约 …… (283)
Moulton v. Kershaw …… (284)
Miller v. U. S. …… (287)
Beard Implement Co. , Inc. v. Krusa …… (290)
三、承诺 …… (293)
Cohen v. Johnson …… (293)
Holwell Securities Ltd. v. Hughes …… (296)
四、电子合同的成立 …… (300)
Specht v. Netscape Communications Corp. …… (300)
第二节 合同的效力 …… (305)
一、对价 …… (305)
Collins v. Collins …… (306)
Hopkins v. Racine Malleable & Wrought Iron Co. …… (307)
Central London Property Trust v. High Trees House Ltd. …… (310)
二、缔约能力 …… (313)
Schoenung v. Gallet …… (313)
Gaddy v. Douglass …… (316)
Williamson v. Matthews …… (322)
三、合同的形式 …… (325)
Brock v. Button …… (326)
Rigg v. New World Pictures, Inc. …… (328)
四、合同的合法性 …… (329)
Matter of Baby M. …… (330)
Matter of Baby M. …… (332)
Dicen v. New Sesco, Inc. …… (336)
五、当事人合意的真实性 …… (339)
Redgrave v. Hurd …… (340)
North Ocean Shipping Co. , Ltd. v. Hyundai Construction Co. , Ltd. and Hyundai Shipbuilding and Heavy Industries Co. , Ltd. (The "Atlantic Baron") …… (344)
Goldsworthy v. Brickell and Another …… (348)
Weaver v. American Oil Co. …… (353)

Wood v. Boynton …… (358)
六、合同无效的后果 …… (361)
Kiriri Cotton Co. ,Ltd. v. Dewani …… (361)
第三节 合同的解释 …… (366)
一、依交易过程和行业惯例解释合同 …… (366)
Frigaliment Importing Co. v. B. N. S. Intern. Sales Corp. …… (367)
二、依履行过程解释合同 …… (373)
Bulley & Andrews,Inc. v. Symons Corp. …… (374)
三、法律解释 …… (377)
Haymore v. Levinson …… (377)
第四节 合同的解除、终止和变更 …… (379)
一、合同的解除 …… (379)
Cehave N. v. Bremer Handelsgesellschaft M. B. H. ,The Hansa Nord …… (380)
Callanan v. Powers …… (384)
二、合同的终止 …… (388)
Ard Dr. Pepper Bottling Co. v. Dr. Pepper Co. …… (388)
三、合同的变更 …… (390)
Bradshaw v. Burningham …… (391)
第五节 不履行合同的后果 …… (394)
一、履行不能 …… (394)
Waddy v. Riggleman …… (394)
二、商业落空 …… (402)
Mineral Park Land Co. v. Howard …… (402)
三、预期违约 …… (405)
Pillsbury Co. v. Ward …… (406)
四、违约损害赔偿 …… (410)
Neri v. Retail Marine Corp. …… (410)
Hadley and Another v. Baxendale and Others …… (414)
Deitsch v. Music Co. …… (417)
White v. Benkowski …… (420)
第六章 国际货物买卖法 …… (424)
第一节 “货物买卖”的定义 …… (424)
一、货物买卖与服务提供的区别 …… (425)
Neibarger v. Universal Cooperatives,Inc. …… (425)

二、买卖与易货的区别 …… (428)
Simpson v. Connolly …… (428)
第二节　国际货物买卖合同的订立 …… (432)
一、招投标 …… (432)
Ardmare Const. Co. v. Freedman …… (432)
二、拍卖 …… (435)
Richards v. Phillips and Others …… (436)
三、格式合同 …… (439)
Butler Machine Tool Co. Ltd. v. Ex-Cell-O Corporation (England) Ltd. …… (440)
四、承诺对要约的实质性更改 …… (445)
Chateau des Charmes Wines Ltd. v. Sabate USA Inc. …… (446)
第三节　国际货物买卖双方的义务 …… (450)
一、卖方的交货义务 …… (450)
Ajax Tool Works, Inc. v. Can-Eng Mfg. Ltd. …… (450)
Exparte Morrison's Cafeteria of Montgomery, Inc. …… (455)
二、卖方交单义务 …… (459)
Toepfer v. Lenersan-Poortman N. V. …… (459)
三、FOB 合同下买方指定船舶的义务 …… (464)
Olearia Tirrena S. P. A. v. N. V. Algemeene Oliehandel …… (464)
四、买方对货物的检验 …… (468)
Chicago Prime Packers, Inc. v. Northam Food Trading Co. …… (468)
五、买方的付款义务 …… (474)
A. E. Lindsay & Co., Ltd. v. Cook …… (475)
W. J. Alan & Co. Ltd. v. El Nasr Export and Import Co. …… (479)
第四节　货物的风险与所有权转移 …… (484)
一、卖方的权利担保 …… (484)
Wright v. Vickaryous …… (484)
二、货物的特定化 …… (487)
Carlos Federspiel & Co., S. A. v. Charles Twigg & Co., Ltd., and Another …… (487)
三、风险划分的界限 …… (492)
Pestana v. Karinol Corp. …… (492)
四、风险转移的后果 …… (496)
Mexican Produce Co. v. Sea-Land Service, Inc. …… (497)

五、提单 …… (500)
Cox, Patterson, & Co. v. Bruce & Co. …… (500)
第五节 国际货物买卖合同的违约救济 …… (505)
一、根本性违反合同 …… (505)
Shuttle Packaging Systems, L. L. C. v. Tsonakis …… (505)
二、损害赔偿 …… (508)
Delchi Carrier SpA v. Rotorex Corp. …… (509)
三、中途停运权 …… (513)
In re Murdock Mach. and Engineering Co. of Utah …… (513)
四、实际履行 …… (518)
Magellan Intern. Corp. v. Salzgitter Handel GmbH …… (518)
五、免责 …… (523)
Viticultural Products, Re …… (523)

第一章 合伙企业

第一节 合伙的概念与特征

合伙企业是现代社会经济生活中比较活跃的商业组织形式。美国各个州的合伙法通常把合伙定义为两个或两个以上的人作为共同的所有权人、以营利为目的从事商务活动的商业组织。根据英美法有关合伙的规定，合伙有普通合伙（GP，General Partnership）、有限合伙（LP，Limited Partnership）、有限责任合伙（LLP，Limited Liability Partnership）、有限责任有限合伙（LLLP，Limited Liability Limited Partnership）等多种类型。此外，有限责任公司（LLC，Limited Liability Company）实际上也是一种特殊的合伙形式。

普通合伙企业有如下几个主要特点：（1）合伙强调的是人的联合，是保持合伙人独立性前提下的联合，合伙人之间地位平等，在合伙协议没有作出具体规定的情况下，各合伙人对合伙的管理及利润分配权具有相同的权利。（2）合伙不具有法人资格，属于自然人企业，合伙人对合伙债务负有无限连带责任，如果合伙企业的财产不足以清偿其债务，债权人有权向任何一位合伙人要求其履行全部债务。（3）合伙是建立在合伙协议基础上，合伙协议是合伙企业的基石。在英美法系国家，合伙协议可以是书面的也可以是口头的，甚至可以以行为来予以证明，合伙协议中应把合伙人之间的权利义务尽量具体地规定下来。但在实践中，合伙协议特别强调合伙人共同经营，共担风险和分享利润这方面的规定。

Grissum v. Reesman

505 S.W.2d 81（1974）

HENRY I. EAGER, Special Commissioner

This is an action in equity in which plaintiff seeks to have the Court declare sundry property, real and personal, as inventoried in her brother's estate, to be partnership property, with one-half owned by plaintiff. In a second and alternate count

she sought to have a trust declared in one-half of the property for her benefit. Since the trial court entered judgment for plaintiff on the first count, it dismissed the second without prejudice, and we are not concerned with it here. The State of Missouri was made a party defendant, because the determination makes a substantial difference in the amount of inheritance taxes due, as well as federal estate taxes, and perhaps others. Decedent devised and bequeathed all his property by will to the plaintiff, so actually the only practical result here is a determination of the amount of taxes which she should pay. The difference in amounts seems to be conceded as approximately $57,000. Nora Grissum, as Executrix, was named as the original defendant, but an Administrator ad Litem was appointed and he appeared both in pleadings and at trial in defense of the action, in lieu of the Executrix. The State of Missouri appeared in pleadings and at trial, and it alone has appealed. We note here that the Statute of Frauds was pleaded by both defendants as a defense. It is unnecessary to digest the pleadings. They were sufficient to raise all the issues discussed. This Court has jurisdiction since the State is a party and the notice of appeal was filed prior to January 1, 1972.

Elwood Grissum died on March 5, 1970. The inventory of his estate, filed in the Probate Court of Cooper County, listed personal property of the value of $65,503.80, and real estate of the value of $220,902; a notation was made that one-half of that property was claimed by Nora E. Grissum. A joint checking account of $17,990.31 and sundry certificates of deposit issued to Nora E. Grissum and Elwood Grissum, 'either or the survivor', were also listed; such joint property aggregated approximately $80,000. The real estate consisted of farmland which plaintiff and her brother had occupied and farmed and the personal property was largly farm equipment, livestock and feed. The farm acreage was 1,104.51 acres, apparently in several tracts but located close together. The title to the real estate was in the name of Elwood Grissum.

The theory of plaintiff's case was and is that a partnership was created orally between her brother and herself, back in the 1930's to operate the farmland then owned or to be acquired, to accumulate property, and to share the benefits 50-50. Plaintiff was prevented from testifying by the effect of the Dead Man's Statute which, of course, imposed a severe handicap upon her. These two continued to farm the land together until Elwood's death in 1970. * 84 There was ample evidence that Nora did the cooking, housework and all related chores, kept the books for the operation, did most of the banking, wrote all checks and paid all the bills, fed the livestock, sorted cattle and hogs and, at times, did actual, hard farm labor. This continued through all the years.

She was regularly consulted about the purchase and sale of livestock and land; she frequently (or usually) accompanied her brother on trips for the purchase or sale of livestock, and such deals were made by agreement. The farm truck bore the legend: 'Elwood & Nora Grissum Farms-Boonville Mo.' Elwood had this placed on the truck. A sign was placed by Elwood over the harness shed bearing the legend, 'Elwood & Nora Grissum Boonville Mo.' This was visible to anyone approaching the house from the highway. (This sign evidence was objected to. It will be discussed later.) Elwood Grissum told sundry people, over the years, both in the presence of Nora and out of her presence, that they were partners on a 50-50 basis. A nephew of Elwood, John Grissum, Jr., who worked with him a great deal over a period of many years, asked Elwood why they could not go partners'; the reply was the Elwood could not do so because he already had a partner, his sister. This nephew was told at sundry times that the arrangement was a partnership; on more than one occasion he heard Nora ask Elwood when he was going to fix up the business so that she would be protected, and his answer was that they would go in and fix it up if they ever got time. In other conversations, Elwood stated on many occasions to other farmers, his doctor, and perhaps others that (in substance) he and his sister were partners in their farm enterprise '50-50', or 'all the way through', or that they 'owned the whole thing together,' or were partners in everything. Some of these statements were made on various occasions to the same individuals. One was made so as to include the real estate. Nora, at times, made similar statements in her brother's presence. On one occasion Elwood told his nephew that he thought Nora should come up' with her partnership half of the work (apparently meaning farm labor), and the nephew replied that she was doing more than her half. Elwood and Nora discussed and decided together on livestock deals and the general operation of the farm. The statements relating to the partnership extended back at least as far as the 1940's and they continued to within a very few weeks of Elwood's death. Nora and Elwood told their banker that everything they had was a joint venture. All entries into the safety deposit box, except one in 1949, were made by Nora. On one occasion Elwood stated that he would have to consult Nora before buying some cattle because she was his partner; he later bought them.

A joint bank account was opened in the names of Elwood and Nora Grissum in June, 1967, with a deposit of $13,128.68, proceeds of the farm operations. Prior to that time the account had been kept in the name of Elwood Grissum. The joint account was continued until Elwood's death with all farm money deposited in it. When money

was borrowed Elwood signed the notes alone. The farm insurance was applied for and issued in both names, i. e. , Elwood and Nora Grissum, from at least as early as 1957 and presumably before. It was stipulated that Elwood filed individual federal income tax returns (and presumably Missouri also) from about' 1966 through 1969, and copies were produced as exhibits. We are not advised what was done before that. For the year 1970, four returns were filed: an individual return for Elwood to the time of his death, a partnership return, a fiduciary return, and an individual return for Nora. The point of all this is that Elwood did, for some years prior to his death, report farm income on individual returns. We shall discuss this later. The exhibits show that land was acquired in the name of Elwood in 1937 (presumably from his father and mother) in 1942, 1946, 1947, 1948, 1949 and 1952. He executed two deeds of trust which were soon paid and released. It is * 85 obvious that most of these tracts were purchases made to increase the farming operation. The occupancy and operation of the farm or farms started in the depression in the 1930's, with (apparently) one eighty-acre tract; at Elwood's death the inventory value (exclusive of joint property) had increased to approximately $286,000. During all this period Nora had lived and worked on the farm. It is certainly true that both Elwood and Nora derived all their living expenses from the operation of the farm, for no other source of income is indicated. It also seems obvious that neither drew down and profits, as such, but that all excess went into the expansion of the farm operation and (some) beginning in January, 1969, into joint certificates of deposit. The defendants put on no witnesses.

The appellant relies here on the following points: (1) that the evidence did not sufficiently establish a partnership; (2) that the Court erred in admitting 'evidence of a collateral nature', and (3) that the action is barred by the Statute of Frauds.

On the first point appellant cites many cases. It would be both confusing and useless to attempt to compare their facts with those in the present case. We have examined them and will try to express here the principles which they seem to enunciate. In general, it is thus held: that mere joint ownership of property, or 'helping out' in the conduct of a store (by a wife) is not sufficient proof of a partnership; that the supposed partners must have made a definite and specific agreement; that the intention of the parties is the primary criterion in deciding whether a partnership exists; that a partnership may be established by oral agreement or it may be implied from the acts and conduct of the parties and from the circumstances; that a participation in profits and losses is the usual and perhaps most cogent test of the intention of the parties, but this is not conclusive; that there may be a joint venture by

an arrangement which is entirely informal, an agreement to share losses may be implied, and there may be an agreement that one party should only lose his labor; that a sharing of profits is necessary in a partnership and evidence of this raises a presumption that a partnership exists; that a sharing of profits is not conclusive of the existence of a partnership and there must be certain rights of management in each partner. (id.) Several of these cases are cited as holding that partnership can only be shown by 'clear and convincing' evidence or by 'cogent, clear and convincing' evidence or by evidence of substantially that character. However, at least one cited case refers to a preponderance of the evidence,' although stating also the cogent, clear and convincing' rule. In Fish v. Fish, 307 S. W. 2d 46 (Mo. App. 1957) at l. c. 52 (Stone, J.), the burden referred to was the preponderance of the credible evidence, and the same degree of proof was referred to in Brooks v. Brooks, 357 Mo. 343, 208 S. W. 2d 279 (1948) and Scott v. Kempland, 264 S. W. 2d 349 (Mo. 1954); in fact, in Brooks the Court said that a preponderance of the evidence was necessary and sufficient to prove a joint venture (and we see no distinction in this respect between a joint venture and a partnership). In that case the Court noted that a higher degree of proof was not required because the suit did not involve an oral contract to convey real estate or the establishment of a resulting trust in real property. The term frequently used in equity cases, with reference to the required degree of proof, is 'clear, cogent * 86 and convincing' evidence. The courts have seldom stopped to analyze that term. As we now construe the phrase, it really means that the court should be clearly convinced of the affirmative of the proposition to be proved. This does not mean that there may not be contrary evidence. The word cogent' adds little, if anything; it means impelling, appealing to one's reason, or convincing. And in viewing the evidence we consider the background of the parties; they were not lawyers or accountants or businessmen, but plain country people.

We shall add a few references to principles stated in the cases cited by the plaintiff. They are, generally, that: a partnership agreement may be implied from conduct and circumstances and there is no essential difference between a partnership and a joint venture; that evidence of a sharing of profits constitutes prima facie evidence of the existence of a partnership and in the absence of other evidence becomes conclusive, Troy, supra; that the parties are not required to know all of the legal incidents of a partnership, Troy, supra; and they are not held to such a standard; that a partnership consists of a factual relationship between two or more persons who conduct a business enterprise together, Schneider, supra. We note further that when the

essentials of such an agreement have been established, expressly or by implication, it is not to be avoided because of uncertainty or indefiniteness as to minor details and, in the absence of express agreement, it will be presumed that profits are to be shared equally.

In Section 358.060(1)[All statutory references are to RSMo 1969, V. A. M. S. unless otherwise noted] a partnership is defined as 'an association of two or more persons to carry on as co-owners a business for profit'; in s 358.070(44) it is provided that with certain exceptions the receipt by one of a share of the profits of a business is prima facie evidence that he is a partner. Section 358.100 recognizes that partnership real estate may be held in the name of one of the partners.

The trial court found generally for the plaintiff on the issue of partnership (Count I). It recognized that there was evidence to the contrary, but found evidence of ample and numerous admissions of the existence of a partnership and of acts performed by the plaintiff in furtherance thereof, with a reliance on Nora's part upon the partnership agreement. The Court also found that if it did not grant aid to the plaintiff she would suffer an equitable fraud based upon her reliance upon the existence of a partnership. We may defer to the findings of the trial court on matters affecting the credibility of witnesses; while this doctrine is usually applied in cases of conflicting oral testimony, it is equally applicable to the obvious belief of the trial court in the truth and credibility of witnesses who testified without contradiction. This means that we have here the trial court's belief of all those witnesses who testified to the many statements of the deceased to the effect that he and his sister were operating in a 50-50 partnership 'all the way through'. Allowing such deference, we make our own findings and conclusions. We shall not quibble here as to the degree of proof required of plaintiff; since real estate is involved, we recognize the clear, cogent and convincing' rule and, using our construction of that test, we are clearly convinced that a partnership was intended and existed.

Over a period of 30 or so years Nora devoted her whole life to the operation and advancement of this farming operation; * 87 Elwood told her and others on many occasions that they were partners, 50-50; we may fairly assume that she relied on these representations for her protection, for any will that her brother had made or might make in her favor could be changed; he had other relatives. The operation was held out to the community as a partnership, both by Elwood's many statements and by the signs which he placed upon the truck and farm building. Farm insurance was issued to both over a period of years. Nora was consulted on the business deals; Elwood refused to buy cattle without consulting her; she wrote all checks and kept all accounts. The