

STATEMENT OF LEGAL ISSUES

1. Is a contract regarding the sale of sand, gravel, rock and similar materials which are located in the ground at the time of the agreement required to be in writing?

The trial court held that such a contract was not required to be in writing.

2. Whether evidence of alleged oral modification to a written contract can be presented to the jury when the term of the contract is for five (5) years, but where either party can terminate the contract upon 90 days notice?

The trial court held that the five year written agreement could be modified by oral evidence.

3. Did the trial court err in allowing the managing partner of a partnership to prepare and submit a new accounting nearly three years after the accounting submitted at the settling up meeting, and to include therein items completely unrelated to the partnership, items of speculated profit that the managing partner claimed he might have made, and new items not included in the original accounting?

The trial court allowed the revised accounting.

4. Is evidence of possible future profits on the sale of cattle based upon fluctuating market conditions speculative damages?

The trial court held that it was not speculative.

5. Whether a written contract, the terms of which is five years, can be amended by oral evidence?

The trial court held that such a contract could be amended by oral evidence.

6. Did the trial court err in refusing to grant Plaintiff's summary judgment for \$80,660.45, plus prejudgment interest at the statutory rate, as monies Defendant Caffee was due to return to Plaintiff von Sternberg on November 28, 2000?

The trial court granted a directed verdict, but informed the jury that damages were in their discretion.

7. Did the trial court err in dismissing the Plaintiff's claim for breach of contract on the issue of overgrazing as too speculative on the issue of damages?

The trial court dismissed the Plaintiff's claim for breach of contract.