

CASE LAW UPDATE: A SURVEY OF RECENT TEXAS PARTNERSHIP AND LLC CASES

LLCs, LPs and PARTNERSHIPS 2018

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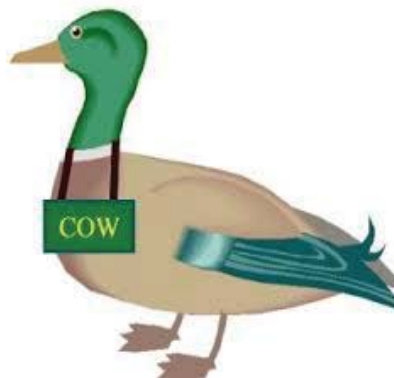
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If it walks like a duck...
(inadvertent, de facto, or disputed general partnerships)



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- Whether a general partnership was created (so as to result in duties among partners, buyout on withdrawal, personal liability of partner, or some other consequence of partnership relationship) is a frequently litigated issue.
- Five statutory factors considered under BOC: (1) receipt or right to receive a share of the profits; (2) expression of an intent to be partners; (3) participation or right to participate in control; (4) sharing or agreeing to share losses or liabilities; and (5) contributing or agreeing to contribute money or property. Proof of all factors not required, but proof of only one ordinarily insufficient.
- Totality-of-the-circumstances analysis.

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- Test for “joint venture” is same as partnership under Texas law (though some cases continue to cite old test).
- Tally of cases from past year in which issue was whether there was a partnership:
No 8, Yes 3
- ***Enterprise Prods. Partners, L.P. v. Energy Transfer Partners, L.P.***
discussed in following presentation

Is the f-word still part of partnership law?
(are partners still “fiduciaries” and does it matter?)



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(are partners still “fiduciaries” and does it matter?)

- BOC Chapter 152 specifies and defines partner’s duties of loyalty and care and obligation of good faith without using word “fiduciary” and expressly rejects trustee standard (recodifies TRPA duty provisions).
- Duties are specified and defined in non-exclusive terms.
- Courts have generally continued to refer to partners as “fiduciaries” and have relied on common-law descriptions of duties as well as statutory descriptions. Few opinions have noted and discussed omission of the word “fiduciary.” Some courts have avoided use of the word “fiduciary” while simply relying on statutory duties.
- Texas Supreme Court has not directly addressed this issue.

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