

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

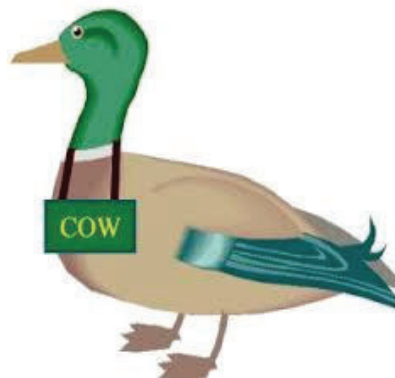
LLCs, LPs and PARTNERSHIPS 2019

UT Law CLE  
Austin, Texas  
July 18, 2019

Elizabeth S. Miller  
M. Stephen and Alyce A. Beard Professor  
of Business and Transactional Law  
Baylor Law School

1

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



2

### If it walks like a duck...

(inadvertent, de facto, or disputed general partnerships)

- 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.

### If it walks like a duck...

(inadvertent, de facto, or disputed general partnerships)

- Test for “joint venture” is same as partnership under Texas law (though some cases continue to cite old test).
- In cases from the past year (pp. 1-8) in which courts applied the five-factor totality-of-the-circumstances test (as well as in cases in which courts relied on the old joint-venture test), the claim that a partnership (or joint venture) existed failed in each case. In one case, the claim of a partnership failed due to the one-year provision of the statute of frauds.

**Breaking News**  
(Texas Supreme Court grants petition  
for review in inadvertent partnership case)



5

**Breaking News**  
(Texas Supreme Court grants petition  
for review in inadvertent partnership case)

On June 28, the Texas Supreme Court granted the petition for review in  
***Enterprise Prods. Partners, L.P. v. Energy Transfer Partners, L.P.***

ETP obtained a judgment in the trial court for more than \$500 million based on the jury's finding of a partnership under the 5-factor test and a breach of the statutory duty of loyalty.

Dallas Court of Appeals reversed based on unmet conditions precedent in preliminary agreements of parties.

Oral argument is set for October 8, 2019.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Case Law Update: A Survey of Recent Texas Partnerships 2019

Also available as part of the eCourse

[2019 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the  
28<sup>th</sup> Annual LLCs, LPs and Partnerships session  
"Case Law Update"