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

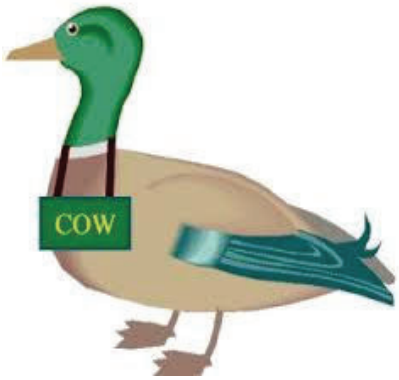
LLCs, LPs and PARTNERSHIPS 2019

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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).

- 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)



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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.

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"Case Law Update"