



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

LLCs, LPs and PARTNERSHIPS 2016

**Sponsored by UTCLE
Austin, Texas
July 14, 2016**

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If it walks like a duck...

(inadvertent, disguised, 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.

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If it walks like a duck...

(inadvertent, disguised, or disputed general partnerships)

- Score of cases from past year:
Yes 1, No 4, Maybe 2
- Cases are emphasizing that sharing gross revenue is not the same as sharing profits, and references to “partnership” and “partners” are not determinative.

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None of its business

(medical malpractice of limited partner not ordinary course of business of hospital limited partnership)

Doctors Hosp. at Renaissance, Ltd. v. Andrade, Tex. Sup. Ct. 2016

- Plaintiffs sought to hold hospital liable for physician’s negligence in delivering baby.
- Hospital was a limited partnership, and physician was a limited partner; plaintiff relied on statutory provisions imposing liability on partnership for acts in the “ordinary course of business” or with “authority” of the partnership.
- Are *limited* partners agents of the limited partnership? Arguably not, but if so, purpose of this partnership did not include practice of medicine.

4

None of its business

(medical malpractice of limited partner not ordinary course of business of hospital limited partnership)

Doctors Hosp. at Renaissance, Ltd. v. Andrade, Tex. Sup. Ct. 2016

- Broad language regarding purposes of limited partnership in partnership agreement included operation of healthcare facility and any other business deemed appropriate by general partner; agreement also provided that Texas law controlled in event of conflict with agreement.
- Limited partnership was licensed to provide health care as hospital, but court said partnership agreement did not contemplate inclusion of illegal practice of medicine by partnership (and no showing of actual exercise of control by partnership over medical care). ⁵

None of its business

(medical malpractice of limited partner not ordinary course of business of hospital limited partnership)

Doctors Hosp. at Renaissance, Ltd. v. Andrade, Tex. Sup. Ct. 2016

- Court addressed statutes that authorize partnerships among physicians to perform professional service within scope of partners' practice.
- Assuming without deciding that a professional partnership may be vicariously liable for a physician partner's medical negligence, this was ordinary limited partnership rather than professional partnership.
- Limited partner was not acting with "authority" of partnership because agreement deprived limited partners of authority to act for partnership. ⁶

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First appeared as part of the conference materials for the
25th Annual LLCs, LPs and Partnerships session
"Case Law Update"