

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

LLCs, LPs and PARTNERSHIPS 2020

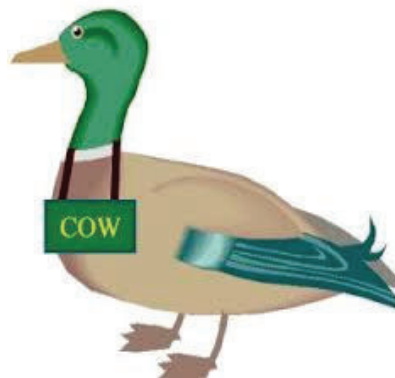
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If it walks like a duck...
(inadvertent, de facto, or disputed general partnerships)



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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.

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If it walks like a duck...

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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 in which courts applied the five-factor totality-of-the-circumstances test, the claim that a partnership existed succeeded in one case, survived summary judgment in another, and failed in two others.

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If it walks like a duck, but we say we don't have a duck until
pigs fly, it's not a duck...
(inadvertent, de facto, or disputed general partnerships)



5

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Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P., 593 S.W.3d 732 (Tex. 2020)

- 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.
- Texas Supreme Court affirmed.

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