

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

LLCs, LPs and PARTNERSHIPS 2021

UT Law CLE
Austin, Texas
July 7, 2021

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

Douglas K. Moll
Beirne, Maynard & Parsons, L.L.P. Professor of Law
University of Houston Law Center

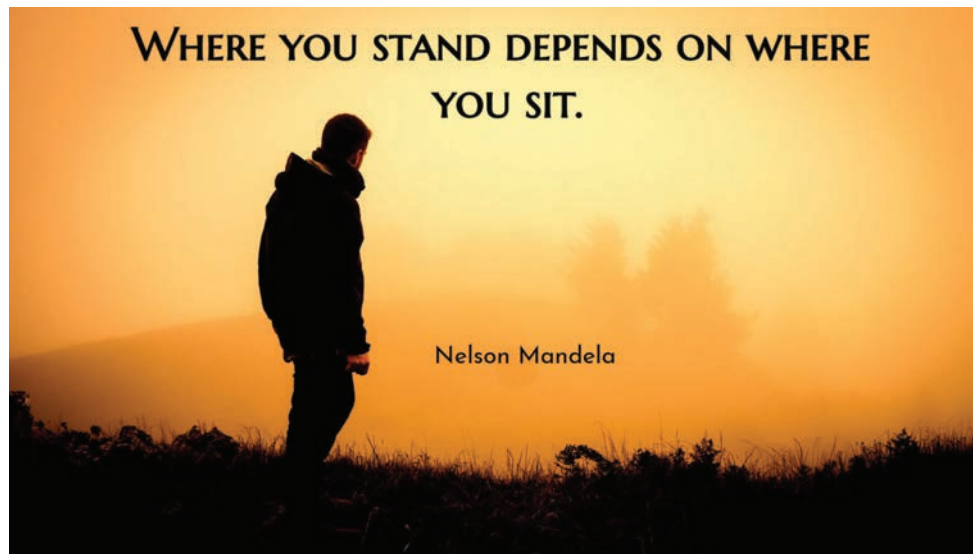
1

What's new from the highest authority?



2

It depends on what you mean by “standing” ...
(standing versus capacity in direct and derivative suits)



3

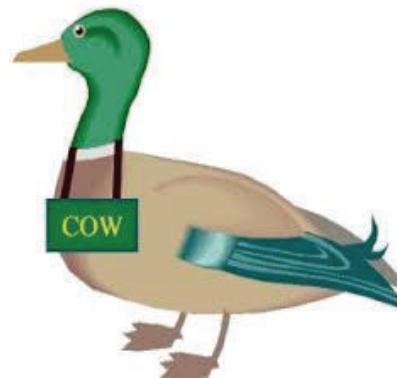
It depends on what you mean by “standing” ...
(standing versus capacity in direct and derivative suits)

Pike v. Texas EMC Management, LLC, 610 S.W.3d 763 (Tex. 2020)

- A judgment in favor of a limited partner was challenged on appeal on the basis that the limited partner lacked “standing” as a limited partner to recover damages individually for loss of the value of the partner’s interest based on injury suffered by the partnership.
- The Texas Supreme Court explained that both capacity and standing are necessary to bring a lawsuit and “[a] **plaintiff has standing when it is personally aggrieved**, regardless of whether it is acting with legal authority; a **party has capacity when it has the legal authority to act**, regardless of whether it has a justiciable interest in the controversy.”
- The court held that **the prohibition on an owner’s recovery of loss in value of its interest in a business organization—reflected in case law and articulated in statutes—is not a matter of constitutional standing that affects a court’s subject-matter jurisdiction**. The court thus held that a **partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization**.
- An assertion that a plaintiff lacks capacity to recover must ordinarily be raised in a verified plea in the defendant’s answer, but the **court avoided determining whether lack of capacity was waived in this case** because the court went on to find that the evidence was insufficient to support the damages awarded to the limited partner.

4

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



5

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

- Whether parties have created a general partnership (so as to result in duties among partners, buyout on withdrawal, personal liability of partner, or some other consequence of partnership relationship) has been a frequently litigated issue.
- Five statutory factors considered under TBOC: (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, BUT “[a]n agreement not to be partners unless certain conditions are met will ordinarily be conclusive on the issue of partnership formation as between the parties.” **Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.**, 593 S.W.3d 732 (Tex. 2020)

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Case Law Update: A Survey of Recent Texas Partnership and LLC Cases

Also available as part of the eCourse

[2021 Case Law, Legislative, and Secretary of State Updates for LLCs, LPs, and Partnerships](#)

First appeared as part of the conference materials for the
30th Annual LLCs, LPs and Partnerships session
"Case Law Update"