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

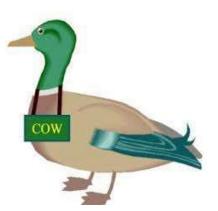
LLCs, LPs and PARTNERSHIPS 2023

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

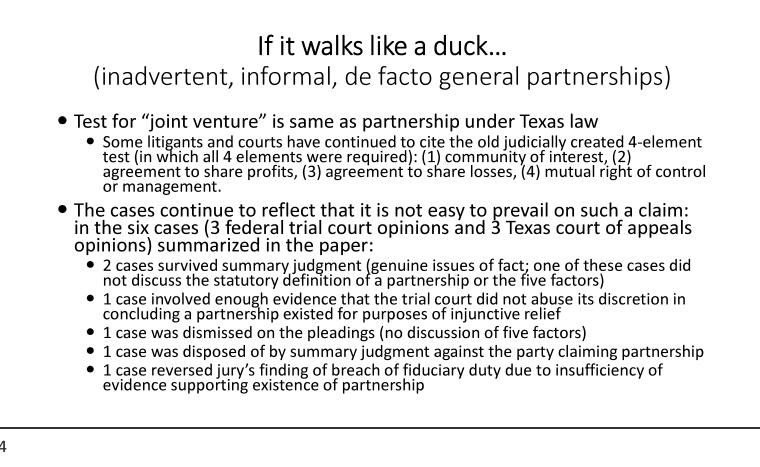


# If it walks like a duck...

(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 (Ťex. 2020)

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## Family Food Fight (If the family dining room was not a peaceful place, the board room will not be any better...)



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(If the family dining room was not a peaceful place, the family board room will not be any better...)

*Gilbreath v. Horan*, \_\_\_ S.W.3d \_\_\_, 2023 WL 3011614 (Tex. App.—Houston [1st Dist.] 2023, no pet. h.)

 At the time of this litigation, the Gilbreath family business consisted of SignAd, Ltd. and eight other Texas limited partnerships (the "Limited Partnerships"), each with a general partner organized as a Texas LLC (the "General Partners"). The General Partners were managed by their respective Boards of Managers consisting of siblings (children of the founder of the business) Wes Jr., Lee, Lisa, and Stacey, each serving a lifetime appointment. (Brother Brett had previously resigned from the Boards after a falling out with Wes Jr., and sister Sheree had been diagnosed with mental illness in her twenties and lived in a mental health facility.) The limited partners of the Limited Partnerships were six trusts of which Lisa and her siblings served as trustees. Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

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

Also available as part of the eCourse <u>2023 LLCs, LPs and Partnerships eConference</u>

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