

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

LLCs, LPs and PARTNERSHIPS 2024

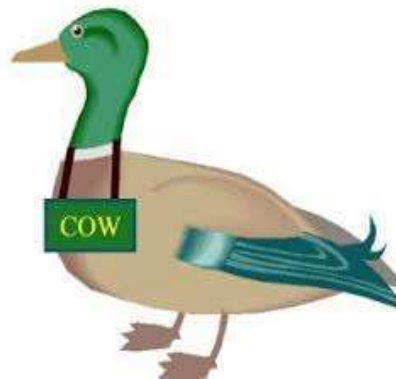
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If it walks like a duck...  
(inadvertent, informal, de facto general partnerships)



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## If it walks like a duck...

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- 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)

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- Test for “joint venture” is same as partnership under Texas law
  - Some litigants and courts have continued to cite the old judicially created 4-element test (in which all 4 elements were required): (1) community of interest, (2) agreement to share profits, (3) agreement to share losses, (4) mutual right of control or management.
- The cases continue to reflect that it is not easy to prevail on such a claim. In the five opinions (4 Texas courts of appeals and 1 federal district court) summarized in the paper:
  - 1 case affirmed a judgment based on a finding of partnership by a jury
  - 1 case survived summary judgment against the party claiming partnership
  - 1 case was dismissed on the pleadings (lacked sufficient specific allegations as to factors)
  - 1 case was disposed of by summary judgment against the party claiming partnership
  - 1 case resolved contradictory jury findings by holding that the jury’s finding rejecting a “statutory partnership” precluded a “common-law partnership”

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## I thought we had a deal!

(The statute of frauds applies to partnership and LLC agreements)



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## I thought we had a deal!

(The statute of frauds applies to partnership and LLC agreements)

***The TBOC defines a partnership agreement and company agreement to include oral and implied agreements:***

TBOC § 151.001(5)

“Partnership agreement” means any agreement, written, implied, or oral, of the partners concerning a partnership and the partnership’s affairs or business, and includes amendments to the partnership agreement....

TBOC § 101.001(1)

“Company agreement” means any agreement, written, implied, or oral, of the members concerning the affairs or the conduct of the business of a limited liability company....

***But these provisions do not override the general statute of frauds in Tex. Bus. & Com. Code § 26.01.***

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