

Hello Again!
Inadvertent Partnerships Revisited

John C. Ale
Senior Vice President, General Counsel & Secretary
Southwestern Energy Company

LLCs, LPs and Partnerships
UTCLE – Austin, July 12-13, 2018

1

Definition of Partnership

Association of 2 or more persons

To carry on

A business

As co-owners

2

Implications in Definition

Does *not* require:

Written or even oral agreement, although “association” implies some sort of understanding

Participants to identify themselves as partners

Business actually be conducted, only that they “associate[e] . . . to carry on a business”

Does require:

Business be intended for profit

Associating as owners and not in some other relationship; e.g.

- employer-employee
- lender-borrower
- landlord-tenant

Factors Indicating Partnership

Receiving or right to receive *profits*

Expression of *intent* to be partners

Participating or right to participate in *control*

Sharing or agreement to share *losses or liabilities*

Making or agreeing to make *contributions*

How to Assess Factors *Ingram v. Deere* (Tex. 2009)

Factors considered as a whole

No one factor is determinative

Absence of any factor means no partnership

Presence of all factors means partnership

Only one factor typically is not enough

All other circumstances:

- Factfinder determines
- Reviewed for sufficiency of evidence

5

Factors Not Sufficient by Themselves

Receipt of or the right to receive profits in repayment of debt, as wages, as rent, in liquidation of a former partner's interest or in consideration of the sale of a business

Co-ownership of property (as opposed to operating a business on or with the property)

Sharing of or the right to share gross returns (as opposed to net profits)

Co-ownership of mineral property even if subject to a joint operating agreement

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: Hello Again! Inadvertent Partnerships Revisited

First appeared as part of the conference materials for the
27th Annual LLCs, LPs and Partnerships session
"Inadvertent Partnerships Revisited"