

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

LLCs, LPs and PARTNERSHIPS 2020

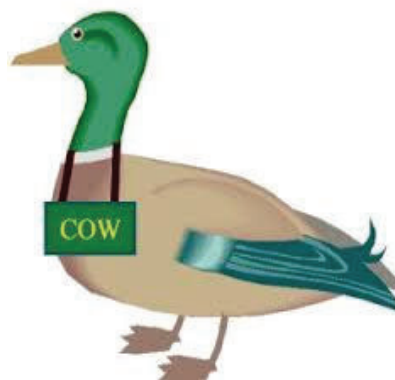
UT Law CLE  
Austin, Texas  
July 23, 2020

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

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



2

## 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.

3

## If it walks like a duck...

(inadvertent, de facto, or disputed general partnerships)

- 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.

4

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

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)

**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.

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

[2020 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the  
29<sup>th</sup> Annual LLCs, LPs and Partnerships session  
"Case Law Update"