

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

LLCs, LPs and PARTNERSHIPS 2021

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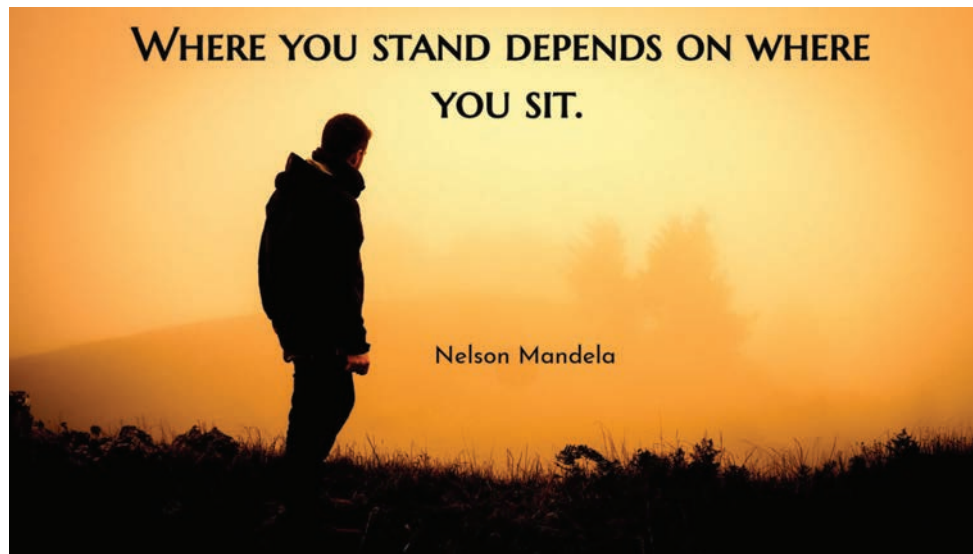
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What's new from the highest authority?



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



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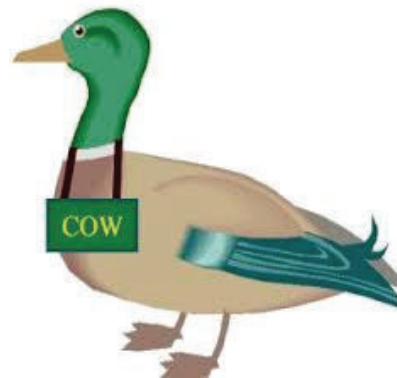
It depends on what you mean by “standing” ...
(standing versus capacity in direct and derivative suits)

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.

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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)

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