

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

LLCs, LPs and PARTNERSHIPS 2022

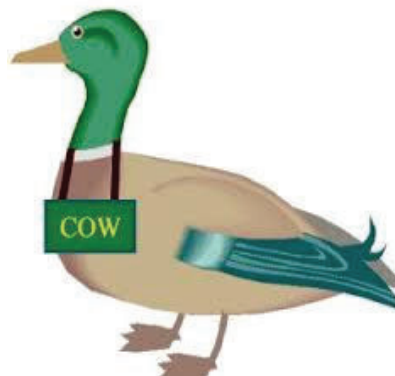
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If it walks like a duck...  
(inadvertent, informal, de facto general partnerships)



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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 number of cases in which an inadvertent or informal partnership has been asserted seems to be declining over the past couple of years; query whether the decline is related to the 2020 decision in ***Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.***
- The cases continue to reflect that such a claim is not usually successful: in the five cases (all federal trial court opinions) summarized in the paper:
  - 2 cases survived summary judgment (genuine issues of fact one way or the other)
  - 1 case was dismissed on pleadings
  - 2 cases were disposed of by summary judgment against the party claiming partnership

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# Soup to Nuts

(a plethora of partnership issues)



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(a plethora of partnership issues)

***Hrdy v. Second Street Properties, LLC***, \_\_ S.W.3d \_\_, 2022 WL 903952  
(Tex. App.—Houston [1st Dist.] 2022, no pet. h.)

- Walker and his cousins formed a limited partnership to hold a piece of property inherited from their uncle. Walker's corporation, Briarwood Capital Corporation, was the general partner, and Walker and his cousins were limited partners. Over the years, Walker and his cousins became embroiled in disputes, and this opinion addresses numerous issues, including:
  - Alleged breaches of fiduciary duty by Walker and Briarwood Capital
  - Whether Walker's cousins (the "Other Limited Partners") validly amended the limited partnership agreement (LPA) and replaced the general partner after removing Briarwood Capital as general partner (including a discussion of the interplay of various provisions of the LPA and principles of ratification and estoppel)
  - Whether dissolution/winding up of the partnership was triggered by the removal of Briarwood Capital
  - Who was the "prevailing party" under the attorney's fees provision of the LPA

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