

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

LLCs, LPs and PARTNERSHIPS 2023

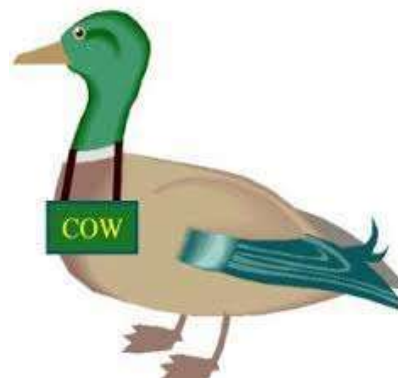
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If it walks like a duck...  
(inadvertent, informal, de facto general partnerships)



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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 six cases (3 federal trial court opinions and 3 Texas court of appeals opinions) summarized in the paper:
  - 2 cases survived summary judgment (genuine issues of fact; one of these cases did not discuss the statutory definition of a partnership or the five factors)
  - 1 case involved enough evidence that the trial court did not abuse its discretion in concluding a partnership existed for purposes of injunctive relief
  - 1 case was dismissed on the pleadings (no discussion of five factors)
  - 1 case was disposed of by summary judgment against the party claiming partnership
  - 1 case reversed jury’s finding of breach of fiduciary duty due to insufficiency of evidence supporting existence of partnership

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## Family Food Fight

(If the family dining room was not a peaceful place, the board room will not be any better...)



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(If the family dining room was not a peaceful place, the family board room will not be any better...)

***Gilbreath v. Horan***, \_\_ S.W.3d \_\_, 2023 WL 3011614 (Tex. App.—Houston [1st Dist.] 2023, no pet. h.)

- At the time of this litigation, the Gilbreath family business consisted of SignAd, Ltd. and eight other Texas limited partnerships (the “Limited Partnerships”), each with a general partner organized as a Texas LLC (the “General Partners”). The General Partners were managed by their respective Boards of Managers consisting of siblings (children of the founder of the business) Wes Jr., Lee, Lisa, and Stacey, each serving a lifetime appointment. (Brother Brett had previously resigned from the Boards after a falling out with Wes Jr., and sister Sheree had been diagnosed with mental illness in her twenties and lived in a mental health facility.) The limited partners of the Limited Partnerships were six trusts of which Lisa and her siblings served as trustees.

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32<sup>nd</sup> Annual LLCs, LPs and Partnerships session  
"Case Law Update"