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

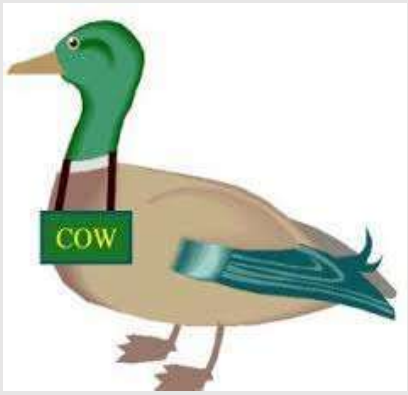
LLCs, LPs and PARTNERSHIPS 2025

UT Law CLE
Austin, Texas
September 18, 2025

Elizabeth S. Miller
Professor of Law
M. Stephen and Alyce A. Beard Chair
in Business and Transactional Law
Baylor Law School

1

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



2

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)

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

- 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 but may be implied): (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 more litigants fail than prevail on claims of an inadvertent or de facto partnership. In the five opinions over the past year applying the statutory five-factor test (1 5th Circuit, 2 Texas courts of appeals, and 2 federal district courts) (summarized in the paper):
  - 1 case affirmed a dismissal of claims based on a partnership due to failure to adequately allege a partnership
  - 1 case affirmed a trial court's finding that no partnership was formed
  - 1 case was disposed of by summary judgment against the party claiming partnership
  - 1 case held that the plaintiff met the pleading burden to allege a partnership
  - 1 case affirmed a trial court's finding of a partnership

You can't sue me!
(The limits of limited liability)

5

You can't sue me!
(The limits of limited liability)

- Texas courts have long recognized that officers or other agents of a corporation (or LLC) may be ***directly liable*** for their own tortious acts taken in a representative capacity in the course of the entity's business.
- A claimant might also seek to hold an officer or other agent ***vicariously liable*** for the obligations of a corporation or LLC on a piercing-the-veil theory.
- A direct theory holds the officer/agent liable for ***the officer's/agent's own debts***; a vicarious theory holds the officer/agent liable for ***the entity's debts***.
- In recent years, these principles became the subject of confusion in case law addressing BOC § 21.223 (and its predecessor TBCA Article 2.21), which imposes strict standards in the context of liability on the basis of veil piercing:

6

Title search: Case Law Update

Also available as part of the eCourse
2025 LLCs, LPs and Partnerships eConference

First appeared as part of the conference materials for the
34th Annual LLCs, LPs and Partnerships session
"Case Law Update"