



Business Laws

The Indian Partnership Act, 1932



CHAPTER - 3

THE INDIAN PARTNERSHIP ACT, 1932

INTRODUCTION

THE ACT COVERS MAINLY FOLLOWING :

- The Act gives guidance about relationship of partners as well as with outsiders.
- Concept of partnerships and its essentials.
- 'Principal - agent relationship' among the partners.
- Points of difference between partnership and other various forms of organization.
- It is very popular form of business organisation.
- Be familiar with the legal provisions regulating relation of partners' interest as well as relations with the third parties.
- The scope of implied authority of a partner to bind the partnership by his acts.
- Various situations in which the constitution of a firm may change and its effect on the rights and duties of the partners.
- How the share in a partnership is transferred and what shall be the rights and obligations of such transferee.
- Mode of getting a firm registered with the authorities.
- The effect of registration of a firm upon the rights of partners' inter-se and the rights of the third parties.
- Effect of nonregistration on rights of partners and the third parties.
- Various circumstances when a firm is dissolved.
- The consequences and the effects of the dissolution upon rights and liabilities of various parties.

THEORY QUESTIONS

Q-1 Define partnership, partner, firm and firm name as well as indicate essentials of partnership?

Ans.

'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually '**partners**' and collectively '**a firm**', and the name under which their business is carried on is called the '**firm name**'.

ELEMENTS OF PARTNERSHIP

1. **ASSOCIATION OF TWO OR MORE PERSONS:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

The partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.

2. **AGREEMENT:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual.

An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. **BUSINESS:** In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership.

4. **AGREEMENT TO SHARE PROFITS:** The sharing of profits is an essential feature of partnership. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses.

5. **BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL :** The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners.

Q-2 What are the true tests of partnership ?**Ans.**

1. **Agreement:** Partnership is created by agreement and by status (Section 5). The relation of partnership arises from contract and not from status;

2. **Sharing of Profit:** The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

As discussed earlier, sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence, in that regard.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred. According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together.

3. **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners.

Q-3 Indicate points of differences between partnership and joint stock company?**Ans.**

Basis	Partnership Joint	Stock Company
Legal status	A firm is not legal entity i.e., it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members
Agency	In a firm, every partner is an agent of the other partners, as well as of the firm.	In a company, a member is not an agent of the other members or of the company, his actions do not bind either.
Distribution of profits	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members.
Extent of liability	In a partnership, the liability of the partners is unlimited.	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable.
Property	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members.
Transfer of shares	A share in a partnership cannot be transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
Management	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate.
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
Winding up	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.

Number of membership	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.
Duration of existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.

Q-4 Indicate difference between partnership and club?**Ans.**

Basis of Difference	Partnership	Club
Definition	It is an association of persons formed for earning profits from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.
Relationship	Persons forming a partnership are called partners and a partner is an agent for other partners.	Persons forming a club are called members. A member of a club is not the agent of other members.
Interest in the property	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.
Dissolution	A change in the partners of the firm affect its existence.	A change in the membership of a club does not affect its existence.

Q-5 Indicate difference between partnership and Huf ?**Ans.**

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family.

Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other coparcener are liable only to the extent of their share in the profits of the family business.
Calling for accounts on closure	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
Governing Law	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
Minor's capacity	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
Continuity	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
Number of Members	In case of Partnership number of members should not exceed 50.	Members of HUF who carry on a business may be unlimited in number.
Share in the business	In a partnership each partner has a defined share by virtue of an agreement between the partners.	In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family.

Q-6 Indicate points of difference between partnership and co-ownership ?

Ans.

Basis of difference	Partnership	Co-ownership
Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.

Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co - owner may transfer his interest or rights in the property without the consent of other co-owners.

Q-7 Indicate points of difference between partnership and association ?**Ans.**

Basis of difference	Partnership	Association
Meaning	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business.	Association evolve out of social cause where there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
Examples	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.

Q-8 Write a note on different kind of partnership ?**Ans.****1. Partnership at will according to Section 7 of the Act, partnership at will is a partnership when:**

- no fixed period has been agreed upon for the duration of the partnership; and
- there is no provision made as to the determination of the partnership.

Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

2. Partnership for a fixed period: Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.**3. Particular partnership:** A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

4. General partnership: Where a partnership is constituted with respect to the business in general, it is called a general partnership. A general partnership is different from a particular partnership. In the case of a particular partnership the liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of general partnership.

Q-9 Write a note on partnership deed and its likely content ?

Ans. Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

Partnership deed may contain the following information:-

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Q-10 Write a note on types of partners?

Ans.

- (a) Active or Actual or Ostensible partner:** He acts as an agent of other partners for all acts done in the ordinary course of business. In the event of his retirement, he must give a public notice in order to absolve himself of liabilities for acts of other partners done after his retirement.
- (b) Sleeping or Dormant Partner:** They are called as 'sleeping' or 'dormant' partners. They share profits and losses and are liable to the third parties for all acts of the firm. They are, however not required to give public notice of their retirement from the firm.
- (c) Nominal Partner:** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner. He is not entitled to share the profits of the firm. Neither he invest in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.
Partner in profits only: A partner who is entitled to share the profits only without being liable for the losses is known as the partner for profits only and also liable to the third parties for all acts of the profits only.
- (d) Incoming partners:** A person who is admitted as a partners into an already existing firm with the consent of all the existing partners is called as "incoming partner". Such a partner is not liable for any act of the firm done before his admission as a partner.
- (e) Outgoing partner:** A partner who leaves a firm in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner remains liable to third parties for all acts of the firm until public notice is given of his retirement.

- (f) **Partner by holding out** : Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

Q-11 Write a note on relation of partners to one another ?

Ans.

- (a) **GENERAL DUTIES OF PARTNERS** : Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.
- (b) **DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD** : Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
- (c) **DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS** :
- (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.
Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.
 - (2) **Agreements in restraint of trade**- Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.
- (d) **The conduct to Business**
- (i) **Right to take part in the conduct of the Business** : Every partner has the right to take part in the business of the firm. This is because partnership business is a business of the partners and their management powers are generally coextensive.

Example: Now suppose this management power of the particular partner is interfered with and he has been wrongfully precluded from participating therein. Can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by injunction, restrain other partners from doing so. It may be noted in this connection that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc.

The above mentioned provisions of law will be applicable only if there is no contract to the contrary between the partners. It is quite common to find a term in partnership agreements, which gives only limited power of management to a partner or a term that the management of the partnership will remain with one or more of the partners to the exclusion of others. In such a case, the Court will normally be unwilling to interpose with the management with such partner or partners, unless it is clearly made out that something was done illegally or in breach of the trust reposed in such partners.

- (ii) **Right to be consulted** : Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners. This means that in routine matters, the opinion of the majority of the partners will prevail. Of course, the majority must act in good faith and every partner must be consulted as far as practicable. It may be mentioned that the aforesaid majority rule will not apply where there is a change in the nature of the firm itself. In such a case, the unanimous consent of the partners is needed.
- (iii) **Right of access to books** : Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out of copy thereof. The right must, however, be exercised bona fide.
- (e) **Mutual rights and liabilities**
- (i) **Right to remuneration** : No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm he can claim it even in the absence of a contract for the payment of the same.
- (ii) **Right to share Profits** : Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm. The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners. If there is no agreement then you should make a presumption of equality and the burden of proving that the shares are unequal, will lie on the party alleging the same. There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.
- (iii) **Interest on Capital** : The following elements must be there before a partner can be entitled to interest on moneys brought by him in the partnership business: (i) an express agreement to that effect, or practice of the particular partnership or (ii) any trade custom to that effect; or (iii) a statutory provision which entitles him to such interest.
- (iv) **Interest on advances** : Suppose a partner makes an advance to the firm in addition to the amount of capital to be contributed by him, in such a case, the partner is entitled to claim interest thereon @ 6% per annum. While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.
- (v) **Right to be indemnified** : Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.
- (vi) **Right to indemnify the firm** : A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

Q-12 Write a note on Partnership property ?

Ans. The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled. The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:

- (i) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- (ii) all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
- (iii) Goodwill of the business.

The determination of the question whether a particular property is or is not 'property' of the firm ultimately depends on the real intention or agreement of the partners. Thus, the mere fact that the property of a partner is being used for the purposes of the firm shall not by itself make it partnership property, unless it is intended to be treated as such. Partners may, by an agreement at any time, convert the property of any partner or partners (and such conversion, if made in good faith, would be effectual between the partners and against the creditors of the firm) or the separate property of any partner into a partnership property.

Property of a partner: Where the property is exclusively belonging to a person, it does not become a property of the partnership merely because it is used for the business of the partnership, such property will become property of the partnership if there is an agreement.

APPLICATION OF THE PROPERTY OF THE FIRM : Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Q-13 What if a partner make personal profit ?

Ans. Subject to contract between the partners,-

- (a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- (b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Q-14 What are the rights and duties of partner after changes in firm. ?

Ans. Before going into rights and duties, we should first know how a change may take place in the constitution of the firm. It may occur in one of the four ways, namely,

- ☉ Where a new partner or partners come in
- ☉ Where some partner or partners go out, i.e., by death or retirement
- ☉ Where the partnership concerned carries on business other than the business for which it was originally formed
- ☉ Where the partnership business is carried on after the expiry of the term fixed for the purpose.

Subject to contract between the partners-

- (a) **after a change in the firm:** Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;
- (b) **after the expiry of the term of the firm:** Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and
- (c) **where additional undertakings are carried out:** where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Q-15 Explain relations of partners with third parties?**Ans.**

1. **PARTNER TO BE AGENT OF THE FIRM :** Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

You may recall that a partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

It clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

2. **IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM :** Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

- (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
 - (a) Submit a dispute relating to the business of the firm to arbitration;
 - (b) open a banking account on behalf of the firm in his own name;
 - (c) compromise or relinquish any claim or portion of a claim by the firm;
 - (d) withdraw a suit or proceedings led on behalf of the firm;
 - (e) admit any liability in a suit or proceedings against the firm;
 - (f) acquire immovable property on behalf of the firm;
 - (g) transfer immovable property belonging to the firm; and

(h) enter into partnership on behalf of the firm.

It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. The usual way of carrying on the business will depend on the nature and circumstances of each particular case [Section 19(1)].
3. The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm

If partnership be of a general commercial nature,

- (i) he may pledge or sell the partnership property;
- (ii) he may buy goods on account of the partnership;
- (iii) he may borrow money, contract debts and pay debts on account of the partnership;
- (iv) he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, Promissory notes, bills of exchange, cheques and other negotiable papers in the name and on account of the partnership.

3. **EXTENSION AND RESTRICTION OF PARTNERS' IMPLIED AUTHORITY**

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows about the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

4. **PARTNER'S AUTHORITY IN AN EMERGENCY**

A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Q-16 What is the effect of notice to acting partner ?

Ans. The notice to a partner, who habitually acts in business of the firm, on matters relating to the affairs of the firm, operates as a notice to the firm except in the case of a fraud on the firm committed by or with the consent of that partner. Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must be received by a working partner and not by a sleeping partner. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

The only exception would lie in the case of fraud, whether active or tacit.

Example:

A, a partner who actively participates in the management of the business of the firm, bought for his firm, certain goods, while he knew of a particular defect in the goods. His knowledge as regards the defect, ordinarily, would be construed as the knowledge of the firm, though the other partners in fact were not aware of the defect. But because A had, in league with his seller, conspired to conceal the defect from the other partners, the rule would be inoperative and the other partners would be entitled to reject the goods, upon detection by them of the defect.

Q-17 Write a note on liabilities of a partner to third parties ?**Ans.**

1. **LIABILITY OF A PARTNER FOR ACTS OF THE FIRM** : Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a partner, must have been done while he was a partner.

2. **LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER** : The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting.

- (a) in the ordinary course of the business of the firm
 (b) with the authority of the partners.

If the act in question can be regarded as authorized and as falling within either of the categories mentioned in Section 26, the fact that the method employed by the partner in doing it was unauthorized or wrongful would not affect the question. Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the business.

3. **LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS**

- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
 (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Q-18 Write a note on rights of transferee of partner, interest ?

Ans. A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

- (1) During the continuance of partnership, such transferee is not entitled
- (a) to interfere with the conduct of the business,
 (b) to require accounts, or
 (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

- (2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - (b) for the purpose of ascertaining the share,
- he is entitled to an account as from the date of the dissolution.

By virtue of Section 31, which we will discuss hereinafter, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

Q-19 Explain status of minor if admitted to partnership ?

Ans. You have observed that a minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

(1) Rights:

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(2) Liabilities:

(i) Before attaining majority:

- (a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- (b) Minor has no personal liability for the debts of the firm incurred during his minority.
- (c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

(ii) After attaining majority:

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

- (a) When he becomes partner:** If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

- (i) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (ii) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(b) When he elects not to become a partner:

- (i) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- (ii) His share shall not be liable for any acts of the firm done after the date of the notice.
- (iii) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

Q-20 Right a note on reconstitution of partnership.

Ans.

- (i) **INTRODUCTION OF A PARTNER :** As we have studied earlier, subject to a contract between partners and to the provisions regarding minors in a firm, no new partners can be introduced into a firm without the consent of all the existing partners.

Rights and liabilities of new partner: The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.

But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

(ii) RETIREMENT OF A PARTNER

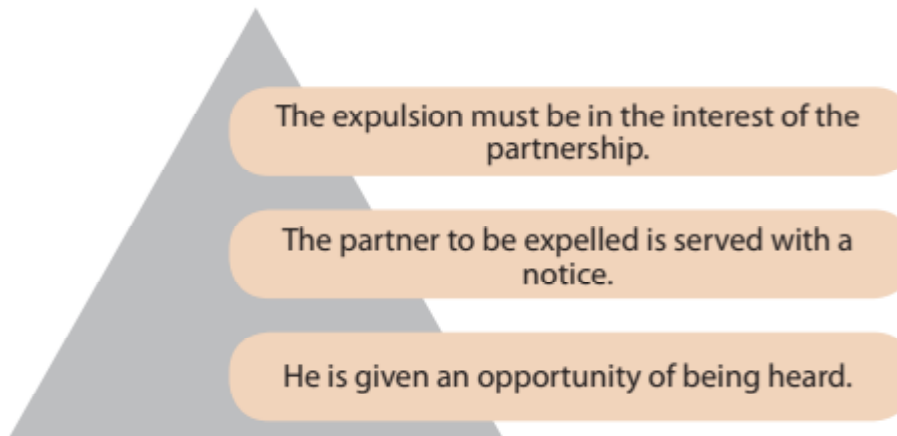
- (a) with the consent of all the other partners;
 - (b) in accordance with an express agreement by the partners; or
 - (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- (2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.
- (3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:
- Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
- (4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

(iii) EXPULSION OF A PARTNER

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bona de interest of the business of the firm.

The test of good faith as required under Section 33(1) includes three things:



If a partner is otherwise expelled, the expulsion is null and void.

It may be noted that under the Act, the expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

(iv) INSOLVENCY OF A PARTNER

- (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.
- (2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

(v) Liability of estate of deceased partner

Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

Q-21 Is registration of firm is compulsory ? What details required to be provided ?

Ans. The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorized in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

When the Registrar is satisfied that the above mentioned provisions have been complied with, he shall record an entry of this statement in the register (called the Register of Firms) and shall file the statement.

Subsequent alterations in the name, place, constitution, etc., of the firm that may occur during its continuance should also be registered.

When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

Registration may also be effected even after a suit has been led by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.

Q-22 What are the consequences of non registration of firm ?

Ans. Disabilities of non- registration are :

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Exceptions: Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.

2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ' 100 in value.

Q-23 Indicate points of difference between didolution of partnership and dissolution of firm ?

Ans.

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Q-24 Write a note on model of dissolutiion of firm ?

Ans. The dissolution of partnership firm may be in any of the following ways:

1. DISSOLUTION WITHOUT THE ORDER OF THE COURT OR VOLUNTARY DISSOLUTION:

It consists of following four types:

(i) Dissolution by agreement

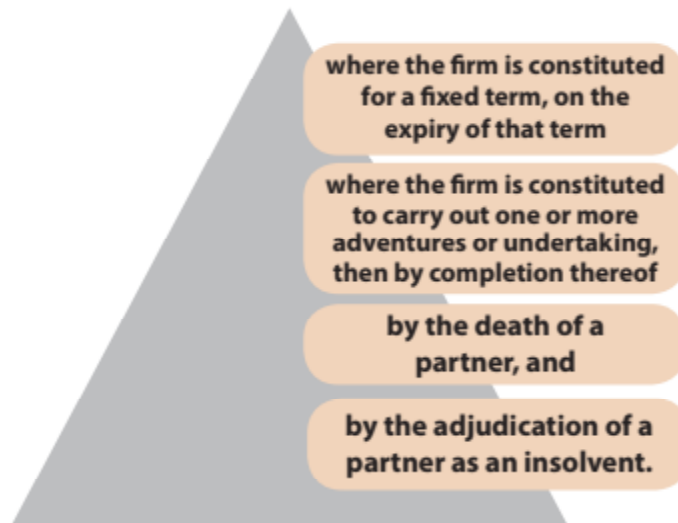
A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

(ii) Compulsory dissolution

A firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, when more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

(iii) Dissolution on the happening of certain contingencies : Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies.



(iv) Dissolution by notice of partnership at will :

- (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
- (2) If the date is mentioned, the firm is dissolved as from the date mentioned in the notice as the date of dissolution, or if no date is so mentioned, as from the date of the communication of the notice.

(2) DISSOLUTION BY THE COURT :

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- (a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
- (b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.
- (d) **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - Embezzlement,
 - Keeping erroneous accounts

- Holding more cash than allowed
 - Refusal to show accounts despite repeated request etc.
- (e) Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
- (f) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (g) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
- (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.
 - (iv) Gambling by a partner on a stock exchange.

Q-25 Write a note on consequences of dissolution of firm.

Ans.

- (a) **Liability for acts of partners done after dissolution** : (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:
Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.
- (2) Notices under sub-section (1) may be given by any partner
- (b) **Right of partners to have business wound up after dissolution** : On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
- (c) **Continuing authority of partners for purposes of winding up** : After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise: Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.
- (d) **Settlement of partnership accounts** : In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-
- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
 - (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

- (a) in paying the debts of the firm to third parties;
- (b) in paying to each partner rateably what is due to him from capital;
- (c) in paying to each partner rateably what is due to him on account of capital; and
- (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

(e) Payment of firm debts and of separate debts : Where there are joint debts due from the firm and also separate debts due from any partner:

- (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;
- (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

(f) Personal profits earned after dissolution : Where a firm is dissolved by the death of a partner and the surviving partners or the surviving partners along with the representatives of the deceased partner carry on business of the firm, any personal profits by them, before the firm is fully wound up, must be accounted for by them to other partners. Thus, a lease expiring on the death of a partner, which is renewed by the surviving partners, before final winding up, belongs to the partnership.

This section has to be read with Section 53 which provides that in the absence of an agreement to the contrary, each partner or his representative is entitled to restrain (by injunction) other partners from carrying on a similar business in the name of the firm or from using the property of the firm for their own benefit till the affairs of the firm are completely wound up.

(g) Return of premium on premature dissolution : According to Section 51, in the case of dissolution of partnership earlier than the period fixed for it, the partner paying the premium is entitled to the return of the premium of such part thereof as may be reasonable, regard being had to the terms of agreement and to the length of time during which he was a partner, except when the partnership is dissolved:

- (1) by the death of one of the partners;
- (2) mainly due to the misconduct of the partner paying the premium;
- (3) pursuant to an agreement containing no provisions for the return of the premium or any part thereof.

The partner paying the premium gets a proportionate part of the premium where the partnership is dissolved:

- (1) Without the fault of either party; or
- (2) owing to the fault of both; or
- (3) on account of the fault of the partner receiving the premium; or
- (4) due to the insolvency of the partner receiving the premium, where the partner paying the premium was unaware of the others embarrassing circumstances at the time of entering into the partnership.

(h) Rights where partnership contract is rescinded for fraud or misrepresentation : Where a contract creating partnership is rescinded on the ground of fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is entitled;

- (1) to a lien on the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him ;
- (2) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(3) to an indemnity from the partners guilty of fraud or misrepresentation against all the debts of the firm.

(i) Sale of Goodwill after dissolution : (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill: (2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but subject to agreement between him and the buyer, he may not,-

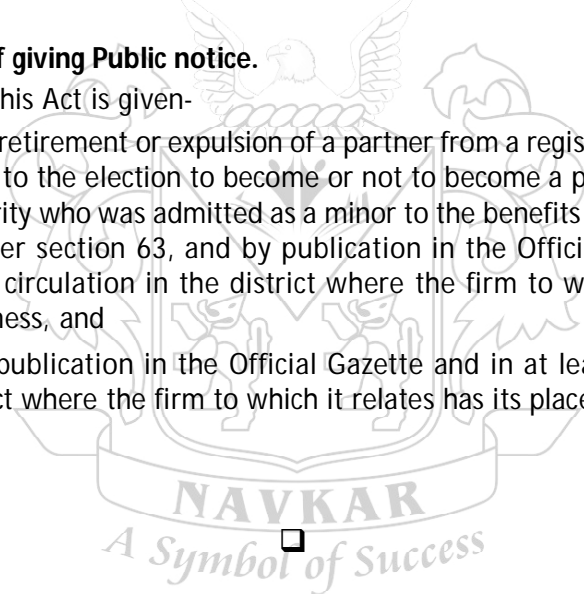
- (a) use the firm name,
- (b) represent himself as carrying on the business of the firm, or
- (c) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreement in restraint of trade: (3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 such agreement shall be valid if the restrictions imposed are reasonable.

Q-26 What are the modes of giving Public notice.

Ans. A public notice under this Act is given-

- (a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulation in the district where the firm to which it relates has its place or principal place of business, and
- (b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.



CLASS WORK

MULTIPLE CHOICE QUESTIONS

- The term 'Partnership' has been defined under ____ of the Partnership Act, 1932:
(a) Section 3 (b) Section 4 (c) Section 5 (d) Section 6
- A partnership for which no period or duration is fixed under the Indian Partnership Act is known as:
(a) Unlimited partnership (b) Co-ownership
(c) Particular partnership (d) Partnership at will
- The most important elements in partnership is:
(a) Business (b) Sharing of profits
(c) Agreement (d) Business to be carried on by all or any of them acting for all.
- A firm is the name of:
(a) The partners (b) The minors in the firm
(c) The business under which the firm carries on business
(d) The collective name under which it carries on business
- A partnership formed for the purpose of carrying on particular venture or undertaking is known as:
(a) Limited partnership (b) Special partnership
(c) Joint venture (d) Particular partnership
- In the absence of agreement to the contrary all partners are:
(a) Not entitled to share profits (b) Entitled to share in capital ratio
(c) Entitled to share in proportion to their ages (d) Entitled to share profits equally
- A partnership at will is one:
(a) Which does not have any deed (b) Which does not have any partner
(c) Which does not provide for how long the business will continue
(d) Which cannot be dissolved.
- What among the following is not an essential element of partnership:
(a) There must be an agreement entered into by all the persons concerned
(b) The agreement must be to share the profits of a business
(c) The business must start within six months from the date of agreement
(d) The business must be carried on by all or any one of them acting for all.

9. A partner can be expelled if:
- (a) Such expulsion is in good faith
 - (b) The majority of the partner does not agree on such expulsion
 - (c) The expelled partner is given an opportunity to start a business competing with that of the rm
 - (d) Compensation is paid
10. Which of the following is not the right of partner i.e., which he cannot claim as a matter of right?
- (a) Right to take part in business
 - (b) Right to have access to account books
 - (c) Right to share profits
 - (d) Right to receive remuneration.
11. Which of the following acts are not included in the implied authority of a partner?
- (a) To buy or sell goods on accounts of partners
 - (b) To borrow money for the purpose of rm
 - (c) To enter into partnership on behalf of rm.
 - (d) To engage a lawyer to defend actions against rm.
12. The reconstitution of the rm takes place in case
- (a) Admission of a partner
 - (b) Retirement of a partner
 - (c) Expulsion or death of a partner
 - (d) All of the above
13. A new partner can be admitted in the rm with the consent of
- (a) All the partners
 - (b) Simple majority of partners
 - (c) Special majority of partners
 - (d) New partner only.
14. A partner may be expelled from the rm on the fulfillment of the conditions that the expulsion power is exercised.
- (a) As given by express contract
 - (b) By majority of partners
 - (c) In absolute good faith
 - (d) All of the above
15. A minor is:
- (a) A partner of a firm
 - (b) By majority of partners
 - (c) Entitled to carry on the business of the firm
 - (d) Entitled to the benefits of the firm
16. If a partner commits fraud in the conduct of the business of the firm:
- (a) He shall indemnify the rm for any loss caused to it by his fraud
 - (b) He is not liable to the firm.
 - (c) He is liable to the partners
 - (d) He is liable to the third parties
17. Partners are bound to carry on the business of the rm-
- (a) To the greatest common advantage
 - (b) For the welfare of the society
 - (c) For the advantage of the family members
 - (d) For earning personal profits
18. The liability of a minor partner is limited to the extent of:
- (a) His share in the firm
 - (b) His personal assets
 - (c) His share in the rm as well as his personal assets
 - (d) He is not liable

19. The authority of a partner to bind the firm for his acts as contained in section 19 of the Partnership Act is known as:
- (a) Express authority
 - (b) Legal authority
 - (c) Implied authority
 - (d) Managerial authority
 - (a) Compulsory
 - (b) Optional
 - (c) Occasional
 - (d) None of the above
20. An unregistered firm cannot claim:
- (a) Set on
 - (b) Set off
 - (c) Set on and set off
 - (d) None of the above
21. On dissolution the partners remain liable to till:
- (a) Accounts are settled
 - (b) Partners dues are paid off
 - (c) Public notice is given
 - (d) The registrar strikes off the name
22. As per the accepted view, the registration of the firm is considered complete when
- (a) Complete application for registration is led with the Registrar.
 - (b) Registrar files the statement and makes entries in the Register of Firms.
 - (c) Registrar gives notice of registration to all partners.
 - (d) Court records the statement and certifies the entries in Register of Firms.
23. A partnership firm is compulsorily dissolved where
- (a) All partners have become insolvent
 - (b) Firm's business has become unlawful
 - (c) The fixed term has expired
 - (d) In cases (a) and (b) only
24. On which of the following grounds, a partner may apply to the court for dissolution of the firm?
- (a) Insanity of a partner
 - (b) Misconduct of a partner
 - (c) Perpetual losses in business
 - (d) All of the above
25. Which of the following do not constitute a ground for dissolution by Court?
- (a) Misconduct by partner
 - (b) Transfer of interest by partner
 - (c) Just and equitable grounds
 - (d) Insolvency of a partner
26. Upon dissolution of firm, losses, including deficiencies of capital, shall be paid first-
- (a) Out of Profits
 - (b) Out of capital
 - (c) By the partners in their profit sharing ratio
 - (d) By the partners equally
27. In settling the accounts of a firm after dissolution, the goodwill of the firm-
- (a) Must be included in the assets
 - (b) May be sold separately
 - (c) May be sold along with the assets of the firm
 - (d) All of the above

28. Public notice in case of a firm is not required in case of:
- (a) Admission of a partner (b) Retirement of a partner
(c) Expulsion of a partner (d) Dissolution of the firm.
29. Which of the following do not constitute ground for dissolution by Court?
- (a) Insanity of the partner (b) Business carried on at a loss
(c) Wilful misconduct of a partner (d) Expulsion of a partner
30. Dissolution of partnership between all the partners of a firm is called-
- (a) Dissolution of partnership (b) Dissolution of partners
(c) Dissolution of the firm (d) Dissolution of partners

THEORETICAL QUESTIONS

1. Explain the provisions of the Indian Partnership Act, 1932 relating to the creation of Partnership by holding out.
2. What is the true test of partnership?
3. Enumerate the differences between Partnership and Joint Stock Company.
4. What do you mean by "implied authority" of the partners in a firm?
5. State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?
6. Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.
7. What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non-registration?
8. When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.



HOME WORK

1. A and B were two partners in a firm of sugar dealers. Unknown to B, A supplies at a particular time his own stock of sugar to the firm at market price and makes profit. Can he personally keep this profit?
Hint: No. profit from competitive business
2. A and B, co-owners of a house, let it to a paying guest. They divide the net rents between them. Are they partners?
Hint: No. consider difference of partnership and co ownership
3. X, Y and Z carry on business on partnership basis. A to whom they sent goods for sale on commission basis, secretly allows Z a share in the commission, which he receives in consideration of Z's using his influence to send goods to him. X and Y come to know of the secret deal of Z. X and Y ask Z to account for the commission and share it with them, but Z refuses. Decide.
Hint: Yes. consider private profits by partners
4. D, J and A are only partners in a firm. They decide to dissolve the partnership with effect from 1st April, 1988. The partners do not give a public notice of the dissolution, but continue the business. During the course of business, D, J and A endorse certain Bills of Exchange of the partnership to a third party M, who was not aware of the dissolution. M, the third party, had supplied certain stationery to the firm. The Bills of Exchange are dishonoured. The third party M wants to claim the money.
Decide:
Whether the firm will be liable to pay for the bills of exchange?
Hint: Yes. consider effects of not giving public notice
5. A, B and C are partners in a firm called ABC. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it. Decide:
(i) Whether the firm's contention is tenable?
Hint: No. consider transaction of partners with implied authorities
6. Ram and Kishan were partners in a business as suppliers of leather goods and they were regular contractors to the Government. Kishan, without the knowledge of Ram, supplied to the Government certain leather goods in which the firm was also dealing and made substantial profits.
Can Ram claim the profit earned by Kishan? Explain.
Hint: Yes. profit from competitive business
7. A and B are partners in a firm dealing in cloth. A placed an order in the firm's name and on the firm's letter pad for five bags of wheat to be supplied at his residence. Is the firm liable to pay the price of wheat?
Hint: Yes. consider transaction of partners with implied authorities.

8. A and B were partners in a firm dealing in purchase and sale of cloth. B started cloth manufacturing business individually. Can A ask B to share the profits of cloth manufacturing business with him?
Hint: No. profit from competitive business
9. A, B and C are partners of an unregistered firm. D owes this firm ' 1,000 on a contract. The firm files a suit against D. The suit is dismissed for non-registration of the firm. The firm is registered later on. Can the firm now successfully bring the suit against D?
Hint: Yes. consider effects of non registration.
10. A, B and C were partners in a share broker's firm. X, a customer of the firm, delivered certain securities to the firm for sale. A and B sold away the securities without the knowledge of C and misappropriated the money. Who will be held liable to X for the payment of the price of securities?
Hint: firm. consider transaction of partners with implied authorities
11. A and B purchased a taxi to ply in partnership. They plied the taxi for a year when A, without the consent of B, disposed of the taxi. B brought an action to recover his share in the sale proceeds. A resisted B's claim on the ground that the firm was not registered. Will B succeed in his claim?
Hint: Yes as it is a matter of co ownership
12. Kumar, Kishore and Krishna are partners in a business. Kumar is entitled, according to the terms of the Partnership deed, to $\frac{3}{8}$ th of the partnership property and profits. Kumar retires from the firm. Kishore and Krishna continue the business under the name of the firm, without paying out the share of Kumar in the assets of the firm or settling account with Kumar. Is Kumar entitled to any profits of the firm made after the date of his retirement?
Decide stating the provisions of the Indian Partnership Act in this regard.
Hint: Yes. Subsequent profits or 6% interest at the choice of kumar.
13. 'A' is a publisher; he agrees to publish at his own expense a book written by 'B' and to pay 'B' half of the net profits. Does this create a relationship of partnership between A and B? Give reasons.
Hint: No. Mutual agency is needed.



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