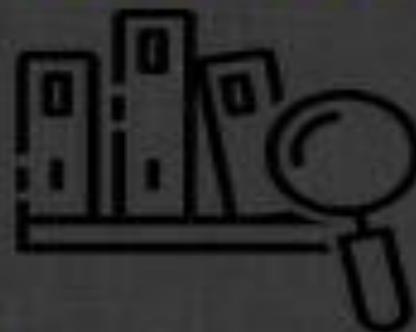




*Achin Nahata*



**ICAI - RTP  
NOV 18 TO NOV 21**



**RTP**

**Nov 2018 – Nov 2021**

**Q1. X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Advice Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.**

**Q2. Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due. In the light of the IPA, 1932, explain:**

- (i) To what extent X will be liable if he failed to give public notice after attaining majority?**
- (ii) Can Mr. L recover his debt from X?**

**Q3. A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?**

Q4. A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹ 350 per Kilogram. B already had 1000Kg of iron bars in stock which he had purchased before price hike in the market for ₹ 200 per Kg. He supplied iron bars to the firm without the firm realizing the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of ₹ 350? Assume there is no contract between the partners regarding the above.

Q5. Mr. A transfers his share in a partnership firm to Mr. B (transferee). Mr. B felt that the book of accounts was displaying only a small amount as profit in spite of a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners were of the opinion that Mr. B cannot challenge the books of accounts. As an advisor, help them solve the issue applying the necessary provisions from the Indian Partnership Act, 1932.

**Q6. MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto ,a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto 'use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates &cups) be affected?**

**Q7. M, N and P were partners in a firm. The firm ordered JRL limited to supply the furniture. P dies, and M and N continues the business in the firm's name . the firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited. Explain with reasons:**

- A. Whether P's private estate is liable for the price of furniture purchased by the firm?**
- B. Whether does it make any difference if JRL Limited supplied the furniture to the firm believing that all the three partners are alive?**



**Q8. P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?**

**Q9. Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd. Explain with reasons:**

- (i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?**
- (ii) Against whom can the creditor obtain a decree for the recovery of the price?**

Q.10. Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932.

# Q11. What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?

## **APPLICATION FOR REGISTRATION (SECTION 58):**

(1) 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.

(2) The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

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

(4) 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.

**(ii) What do you mean by “implied authority” of the partners in a firm? Point out the extent of partner’s implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932.**

**Implied Authority of Partner as Agent of the Firm (Section 19):** 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.

(1) 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 filed 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.

**Mode Of Doing Act To Bind Firm (Section 22):** In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

## Q12. What is Partnership Deed? What are the particulars that the partnership deed may contain?

**Partnership Deed:** 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. Partnership deed may contain the following information:

- Name of the partnership firm.
- Names of all the partners.
- Nature and place of the business of the firm.
- Date of commencement of partnership.
- Date of commencement of partnership.
- Duration of the partnership firm.
- Capital contribution of each partner.
- Profit Sharing ratio of the partners.
- Admission and Retirement of a partner.
- Rates of interest on Capital, Drawings and loans.
- Provisions for settlement of accounts in the case of dissolution of the firm.
- Provisions for Salaries or commissions, payable to the partners, if any.
- Provisions for expulsion of a partner in case of gross breach of duty or fraud.

A partnership firm may add or delete any provision according to the needs of the firm.

**Q13. 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?**

**ANSWER:**(i) Section 29 of the Indian Partnership Act, 1932 provides that 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
  - to interfere with the conduct of the business,
  - to require accounts, or
  - 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, 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.

## Q14. State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932?

**DISSOLUTION BY THE COURT (SECTION 44):** Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- ***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.
- ***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.
- ***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.
- ***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.

• ***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.

• ***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.

• ***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-

- Deadlock in the management.
- Where the partners are not in talking terms between them.
- Loss of substratum.
- Gambling by a partner on a stock exchange.

**Q.15. State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932:**

**(a) Retirement of a partner**

**(b) Insolvency of a partner**

### **RETIREMENT OF A PARTNER (SECTION 32):**

- A partner may retire:
  - with the consent of all the other partners;
  - in accordance with an express agreement by the partners; or
  - where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- 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.
- 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.
- Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

## **(ii) Insolvency of a partner (Section 34)**

- The insolvent partner cannot be continued as a partner.
- He will be ceased to be a partner from the very date on which the order of adjudication is made.
- The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- Ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm

## Q.1. When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

**ANSWER : Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

- **Dissolution of a Firm may take place (Section 39 - 44)**
- as a result of any agreement between all the partners (i.e., dissolution by agreement);
- by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
- by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) willful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

## **Q16. Explain the following kinds of partnership under the Indian Partnership Act, 1932: (i) Partnership at will (ii) Particular partnership**

Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when: 1. no fixed period has been agreed upon for the duration of the partnership; and 2. there is no provision made as to the determination of the partnership. These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will. 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.

(ii) 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.

**Q17. “Partner indeed virtually embraces the character of both a principal and an agent”. Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932.**

“Partner indeed virtually embraces the character of both a principal and an agent” : Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

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. Section 18 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 as 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.

**Q18. Explain the provisions of the Indian Partnership Act, 1932 relating to the creation of Partnership 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.

Example: X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price . Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

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'.

## Q 19. Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm?

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 none the less be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. 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:

### Rights:

- a. A minor partner has a right to his agreed share of the profits and of the firm.
- b. He can have access to, inspect and copy the accounts of the firm.
- c. 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.
- d. On attaining majority, he may within 6 months select to become a partner or not to become a partner.
- e. 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.

## **Q 20. Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.**

Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932 ): Where-

- A. A partner acting with in 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.

Analysis of section 27:

It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners. Clause (a) covers the case where a partner acts with in his authority and duet his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm. On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

**Q 21. Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled there for. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership?**

As per Section 29 of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

In the given case during the continuance of partnership, such transferee Mr. B is not entitled:

- a. to interfere with the conduct of the business.
- b. to require accounts. to inspect books of the firm.

However, Mr. B 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.

## **Q22. “Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.” In light of the given statement, discuss the consequences of non-registration of the partnership firms in India?**

It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. Following are consequences of Non – registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non- registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non- registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

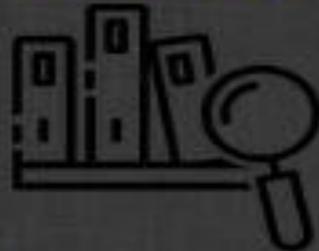
1. No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, are 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.
2. No relief to partners for set-off of claim: If an action is brought against the firm by a third party, the n 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.
3. Aggrieved partner can not 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.



*Achin Nahta*



**ICAI – MTP  
2020 and 2021**



Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932

**(i) Krish, Kamya and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kamya become insolvent and her private assets are sufficient to pay  $\frac{1}{5}$  of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.**

A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement? **(6 Marks)**

# QUESTION - 6

A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement?

ANSWER

## QUESTION 9

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?



What are the consequences of Non-Registration of a Partnership Firm? Discuss.

**ANSWER**

**Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932]:**

Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (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.
- (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 Rs. 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.

**What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.**

ANSWER

Conclusive evidence of partnership: Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership.

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.

If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

**Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:**

- (i) Parties have not retained any record of terms and conditions of partnership.
- (ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
- (iii) No account of the partnership was opened with any bank
- (iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

## QUESTIO – 5

“Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership.”

- (i) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.
- (ii) State the liabilities of a minor partner both:
  1. Before attaining majority and
  2. After attaining majority

## ANSWER

### **(i) Rights which can be enjoyed by a minor partner:**

- (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.

## **(1) Liabilities of a minor partner 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.

**(2) Liabilities of a minor partner 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.

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

## **ANSWER**

**Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue.

In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

### **Dissolution of a Firm may take place (Section 39 - 44)**

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);

(d) subject to agreement between the parties, on the happening of certain contingencies, such as:

(i) effluence of time;

(ii) completion of the venture for which it was entered into;

(iii) death of a partner;

(iv) insolvency of a partner.

(e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and

**(f) by intervention of court in case of:**

- (i) a partner becoming the unsound mind;
- (ii) permanent incapacity of a partner to perform his duties as such;
- (iii) Misconduct of a partner affecting the business;
- (iv) willful or persistent breaches of agreement by a partner;
- (v) transfer or sale of the whole interest of a partner;
- (vi) improbability of the business being carried on save at a loss;
- (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

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?

ANSWER

Section 29 of the Indian Partnership Act, 1932 provides that 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, 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.

# What is Partnership Deed and state the information contained therein?

## Partnership Deed

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.
- A partnership firm may add or delete any provision according to the needs of the firm.



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**JULY 21**

**Q1. Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of The Indian Partnership Act, 1932?**

**a) IMPLIED AUTHORITY OF A PARTNER (SEC.19 & 22):**

- i) Authority conferred on a partner by provisions of **Sec.19** of this Act is known as Implied Authority.
- ii) When a partner acts within his implied authority, then remaining partners will be bound by such acts.
- iii) In order to bind remaining partners, all the below stated conditions must be satisfied:
  - a) The act relates to normal business of the firm.
  - b) The act is done in the usual way of carrying on the business of the firm; **[Sec.19(1)]**
  - c) The act is done in the firm's name or in any other manner expressing or implying the intention to bind the firm. **[Sec.22]**

**IN THE ABSENCE OF ANY USAGE OR CUSTOM OF TRADE TO THE CONTRARY, FOLLOWING ACTS ARE OUTSIDE THE SCOPE OF IMPLIED AUTHORITY:**

- i) Submit a dispute relating to the business of the firm to arbitration.
- ii) Open a bank account on behalf of the firm in his own name.
- iii) Compromise or relinquish any claim or portion of a claim by the firm.
- iv) Withdraw a suit or proceedings filed on behalf of the firm.
- v) Admit any liability in a suit or proceedings against the firm.
- vi) Acquire immovable property on behalf of the firm.
- vii) Transfer immovable property belonging to the firm.
- viii) Enter into partnership on behalf of the firm.

Q2. Mr. M is one of the four partners in M/s XY Enterprises. He owes sum of 1 6 crore to his friend Mr. Z which he is unable to pay on due time. So he wants to sell his share in the firm to Mr. Z for settling the amount. In the light of the provisions of The Indian Partnership Act, 1932, discuss each of the following:

- (i) Can Mr. M validly transfer his interest in the firm by way of sale
- (ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer ?

Q3. Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of The Indian Partnership Act, 1932.

b) Subject to contract between the partners, after dissolution of the firm, its accounts must be settled as follows:

- i) **Payment of losses**: Losses including deficiencies of capital, are to be paid first out of profits, then out of capital, and lastly, by the partners individually in the proportions in which they were entitled to share profits.
- ii) **Application of assets**: 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:
  - Payment of debts of the firm to third parties.
  - Payment of each partner's advances to the firm other than capital.
  - Payment of each partner's capital.
  - Surplus, if any, shall be divided amongst the partners in their profit-sharing ratio.
  - Deficiency, if any, shall be contributed by the partners in their loss-sharing ratio.

**JAN 21**

## What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932?

**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.

## Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?

**Nominal Partner:** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

**Liabilities:** He is not entitled to share the profits of the firm. Neither he invests 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.

## **"Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932**

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. 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. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership. In *KD Kamath & Co.*, the Supreme Court has held that the two essential conditions to be satisfied are that:

- i. there should be an agreement to share the profits as well as the losses of business; and
- ii. the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

**M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.**

**Explain with reasons: (i) Whether P's private estate is liable for the price of furniture purchased by the firm?  
(ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?**

## **Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932**

Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932): 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 party, must have been done while he was a partner. Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932): Where, by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner. a partner acting within his apparent authority receives money or property from a third party and misapplies it, or 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.

**NOV 19**

**& Before**

## **When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?**

According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

## **What do you mean by Goodwill as per the provisions of Indian Partnership Act,1932?**

Goodwill: The term “Goodwill” has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

## **With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner**

- (i) The insolvent partner cannot be continued as a partner.
- (ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- (iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

**Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain: (i) To what extent X will be liable if he failed to give public notice after attaining majority?  
(ii) Can Mr. L recover his debt from X?**

**Dissolution of a firm is different from dissolution of Partnership". Discuss**

S. NO.	BASIS OF DIFFERENCE	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
1.	<b>Continuation of business</b>	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	<b>Winding up</b>	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.	<b>Order of court</b>	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	<b>Scope</b>	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	<b>Final closure of books</b>	It involves final closure of books of the firm.	It does not involve final closure of the books.

## Question 3

"Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932?

(Ans.) Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

1. There was an agreement between all the persons concerned

2. The agreement was to share the profits of a business and

3. the business was carried on by all or any of them acting for all.

1. **Agreement:** Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

2. **Sharing of Profit:** 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. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

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. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

**M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25<sup>th</sup> August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.**

**(i) Examine whether action by the partners was justified or not?**

**(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?**

## Discuss The Provisions Regarding Personal Profits Earned By A Partner Under The Indian Partnership Act, 1932?

### Personal Profit Earned By Partners (Section 16 Of The Indian Partnership Act,1932)

According To Section 16, 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 And Competing With That Of The Firm, He Shall Account For And Pay To The Firm All Profits Made By Him In That Business

## (Question)

“Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.” Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief?

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning. However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which are as follows:

- (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.
- (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.
- (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.

**(Question)**

**(a) "Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."**

**(I) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.**

**(II) A. State the liabilities of a minor partner both:**

**(i) Before attaining majority and**

**(ii) After attaining majority.**

**(ANS) (a) (I) Rights which can be enjoyed by a minor partner:**

**(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.**

**(II) A. (i) Liabilities of a minor partner 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) Liabilities of a minor partner 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.**

*(Ques) State The Legal Position Of A Minor Partner After Attaining Majority:*

*(I) When He Opts To Become A Partner Of The Same Firm.*

*(Ii) When He Decide Not To Become A Partner.*

**(ANS)**

**(i) 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) of the Indian Partnership Act, 1932, are as follows:

(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

**(ii) When he elects not to become a partner:**

(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice.

(c) 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.

## *(Question)*

### *State Any Four Grounds On Which Court May Dissolve A Partnership Firm In Case Any Partner Files A Suit For The Same*

(Ans) Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932):

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

- (1) **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.
- (2) **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.
- (3) **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.
- (4) **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:
  - (i) **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.
  - (ii) **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.
  - (iii) **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.**

Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X. supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P.

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

(Ques) Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.

**(Question)**

**(a) What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?**

**(Ans) Effect of notice to an acting partner of the firm:-**

According To Section 24 Of The Indian Partnership Act, 1932, Notice To A Partner Who Habitually Acts In The Business Of The Firm Of Any Matter Relating To The Affairs Of The Firm Operates As 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 Further Relate To The Firm's Business. Only Then It Would Constitute A Notice To The Firm.

### Question 3

*(a) Distinguish between dissolution of firm and dissolution of partnership.*

<b>S. No.</b>	<b>Basis of Difference</b>	<b>Dissolution of Firm</b>	<b>Dissolution of Partnership</b>
1.	<b>Continuation of business</b>	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	<b>Winding up</b>	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.	<b>Order of court</b>	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	<b>Scope</b>	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	<b>Final closure of books</b>	It involves final closure of books of the firm.	It does not involve final closure of the books.

## *(Question)*

*What are the consequences of Non-Registration of a Partnership Firm? Discuss.*

**(Ans.) Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932]:** Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (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.
- (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

(Question)

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

## (Question)

**What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties**

(Ans) Conclusive evidence of partnership:- Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. 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. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

- (i) Parties have not retained any record of terms and conditions of partnership.
- (ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
- (iii) No account of the partnership was opened with any bank
- (iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

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