



CHAPTER

INDIAN PARTNERSHIP ACT, 1932

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Q. 1 Define partnership , partner and firm ?

Ans. Section 4:

'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'.



Q.2 What are the essential elements of partnership ? or What do you mean by mutual agency ?

Ans. The following are the essential elements of partnership :

1. Association of two or more persons:

Partnership is an association of two 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:

Partnership must be the result of an agreement between two or more persons. There must be an agreement, either express or implied , entered into by all the persons concerned. Thus, the nature of the partnership is voluntary and contractual.

3. Business:

There must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The motive of the business is the "acquisition of gains".

4. Agreement to share profits:

The sharing of profits is an essential feature of partnership. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element.

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.
- 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 rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.



Q.3 What is the true test of partnership ?

or

What is the mode of existence of partnership ?

Ans. Mode of determining existence of partnership (Section 6):

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 by status (Section 5).
- The relation of partnership arises from contract and not from status.
- So the members of a Hindu Undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on 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.

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. 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.
- 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.



Q.4 Difference between

- a) Partnership Vs. Joint Stock company
- b) Partnership Vs. Club
- c) Partnership vs. Hindu Undivided Family
- d) Partnership vs. Coownership
- e) Partnership vs. Association

Ans. a) Partnership Vs. Joint Stock company

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 (<i>Salomon v. Salomon</i>).
Agency	In a firm, every partner is an agent of the other partners, as well	In a company, a member is not an agent of the other members or of the

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	as of the firm.	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. Some portion become distributable among the shareholders only when dividends are declared.
Extent of liability	In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares. In the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.

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 who can receive it back only in the form of dividends or refund of capital.
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	Members of a company are not entitled to take part in the management unless they are

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	participate in the management.	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	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

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	50.	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.

b) Partnership Vs. club

Basis	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	Persons forming a club are called members. A member of a club is not the agent of other members.

	partners.	
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.

c) Partnership vs. Hindu Undivided Family

Basis	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

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		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 HUF 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.

d) Partnership vs. Coownership

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Basis	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.

e) Partnership vs. Association

Basis	Partnership	Association
Meaning	Partnership means and involves setting up relation of agency between two or more persons who have entered into	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

	a business for gains, with the intention to share the profits of such 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.5 What are the various types of partnership ?

Ans. The various types of partnerships are :

Partnership at will (Section 7):

- ▶ 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.
- ▶ 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.
- ▶ It may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

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.

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.

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.6 What are the various types of partners ?

Ans. The various types of partners are :

Active or Actual or Ostensible partner	It is a person <ul style="list-style-type: none">▶ Who has become a partner by agreement, and▶ Who actively participates in the conduct of the partnership.▶ 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.
Sleeping or Dormant Partner	It is a person <ul style="list-style-type: none">▶ Who is a partner by agreement, and▶ Who does not actively take part in the conduct of the partnership

	<p>business.</p> <ul style="list-style-type: none"> ▶ 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.
Nominal Partner	<ul style="list-style-type: none"> ▶ 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	<p>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 .</p>
Incoming partners	<ul style="list-style-type: none"> • 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.

Outgoing partner	<ul style="list-style-type: none">▶ 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.
Partner by holding out (Sec. 28)	<ul style="list-style-type: none">▶ 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'.▶ 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.
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Q.7 Write a short note on Partnership deed ?

Ans. 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:-

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| 1. Name of the partnership form. | 7. Profit Sharing ratio of the partners. |
| 2. Names of all the partners. | 8. Admission and Retirement of a partner. |
| 3. Nature and place of the business of the firm. | 9. Rates of interest on Capital, Drawings and loans. |
| 4. Date of commencement of | 10. Provisions for settlement of accounts |

<p>partnership.</p> <ol style="list-style-type: none">5. Duration of the partnership firm.6. Capital contribution of each partner..	<p>in the case of dissolution of the firm.</p> <ol style="list-style-type: none">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.
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