



CHAPTER

INDIAN PARTNERSHIP ACT, 1932

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Q. 1 Whether a minor may be admitted in the business of a partnership firm? Explain the rights and liabilities of a minor during minority in the partnership firm.

Ans. A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract.

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. 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	<ul style="list-style-type: none">(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.<ul style="list-style-type: none">➤ 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.
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<p>Liabilities Before attaining majority</p>	<p>(a) The liability of the minor is confined only to the EXTENT of his share in the profits and the property of the firm.</p> <p>(b) Minor has NO personal liability for the debts of the firm incurred during his minority.</p> <p>(c) Minor CANNOT BE declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.</p>
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Q.2 What are the liabilities of a minor after attaining majority ?

Ans. The liabilities of a minor after attaining majority are as follows :

<p>Liabilities After attaining majority</p> <ul style="list-style-type: none"> • 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. 	
<p>When he elects not to become a partner:</p>	<p>When he becomes partner:</p>

<p>He may give public notice that he has elected</p> <p>NOT TO BECOME partner and such notice shall determine his position as regards the firm.</p>	<p>If he fails to give such notice</p> <p>he shall become a partner in the firm</p> <p>on the EXPIRY of the said six months.</p>
<p>(i) His rights and liabilities continue to be those of a minor up to the date of giving public notice.</p> <p>(ii) His share shall not be liable for any acts of the firm done after the date of the notice.</p> <p>(iii) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.</p>	<p>If the minor becomes a partner on his OWN willingness or</p> <p>by his FAILURE to give the public notice within specified time,</p> <p>his rights and liabilities as given in Section 30(7) are as follows:</p> <p>(i) He becomes personally LIABLE to third parties for all acts of the firm done SINCE he was admitted to the benefits of partnership.</p> <p>(ii) His share in the property and the profits of the firm</p>

	REMAINS THE SAME to which he was entitled as a minor.
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Q.3 Explain the duties of a partner of a partnership firm ?

Ans.The duties of a partner can be divided into two parts a)
 (a) Mandatory duties : these are provided in Section 9 & 10 of the Indian Partnership Act , 1932 which cannot be changed by mutual agreement amongst partners :

Section 9	<ul style="list-style-type: none"> ▶ The partners should carry business of the firm to the greatest common advantages and ▶ to be just and faithful to each other i.e. a partner must observe the utmost good faith in his dealings with the other partners and ▶ to render true accounts and full information of all things affecting the firm to any partner or his legal representative.
SECTION 10	<p>DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD :</p> <ul style="list-style-type: none"> ▶ Every partner shall indemnify (compensate or to make good) the firm ▶ for any loss caused to it

▶ by his fraud in the conduct of the business of the firm.

b) General duties : The general duties as provided in the Act are subject to the agreement by partners. These can be changed by an agreement amongst the partners. Unless otherwise provided , every partner has the following duties :

<p>To attend diligently [Sec 12 (b)]</p>	<p>Every partner is bound to attend diligently (carefully) to his duties in the conduct of the business</p>
<p>Not to claim remuneration for taking part [Sec. 13(a)]</p>	<p>A partner is not entitled to receive remuneration for taking part in the conduct of the business;</p>
<p>To contribute equally to the losses [Sec. 13(b)]</p>	<p>The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;</p>
<p>To indemnify the firm[Sec. 13(f)]</p>	<p>A partner shall indemnify the firm for any loss caused to it by his wilfull neglect in the conduct of business of the firm.</p>
<p>To hold and use firm’s property for business purpose [Sec 15]</p>	<ul style="list-style-type: none"> ▶ Subject to contract between the partners, ▶ the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

<p>To account for and pay the personal profits from transactions of firm [Sec 16(a)]</p>	<p>If a partner derives any profit for himself from</p> <ul style="list-style-type: none"> • any transaction of the firm, or • from the use of the property or • business connection of the firm or • the firm name, <p>he shall account for that profit and pay it to the firm;</p>
<p>To account for and pay the personal profits from competing business [Sec 16(b)]</p>	<p>If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.</p>



Q.4 What are the various rights of the partners ?

Ans. Unless otherwise agreed , every partner has the following rights :

<p>Right to take part [Sec.12 (a)]</p>	<p>Every partner has a right to take part in the conduct of the business;</p>
<p>Right to express opinion [Sec. 12 (c)]</p>	<p>Every partner shall have the right to express his opinion before the matter is decided. Any difference arising as to ordinary matters connected with the business may be decided by MAJORITY</p>

	of the partners, but no change may be made in the nature of the business without the consent of ALL partners;
<p>Right to have access to books</p> <p>[Sec. 12 (d)]</p>	<p>Every partner ,whether active or sleeping ,has a right to have access to and to inspect and copy any of the books of the firm.</p> <p>The right must, however, be exercised <i>bona fide</i>.</p>
<p>Right to share profits equally</p> <p>[Sec. 13 (b)]</p>	<p>The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm</p>
<p>Right to receive interest on capital</p> <p>[Sec. 13 (c)]</p>	<p>The following elements must be there before a partner can be entitled to interest on moneys brought by him in the partnership business:</p> <ul style="list-style-type: none"> (i) an express agreement to that effect, or practice of the particular partnership or (ii) any trade custom to that effect; or (iii) a statutory provision which entitles him to such interest. <p>Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits.</p>

<p>Right to claim interest on advances [Sec. 13 (d)]</p>	<p>A partner making, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;</p>
<p>Right to be indemnified [Section 13 (e)]</p>	<p>Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him</p> <ul style="list-style-type: none"> i. in the ordinary and proper conduct of the business of the firm ii. in performing an act in an emergency for protecting the firm from any loss, he has acted in a manner as a person of ordinary prudence would have acted in similar circumstances in his own .
<p>Right to prevent introduction of a new partner [Sec. 31]</p>	<ul style="list-style-type: none"> ▶ Subject to contract between the partners and to the provisions of section 30, ▶ no person shall be introduced as a partner into a firm without the consent of all the existing partners.
<p>Other Rights</p>	<ul style="list-style-type: none"> ▶ Right to retire [Sec. 32] ▶ Right not to be expelled [Sec 33]

	<ul style="list-style-type: none"> ▶ Right to carry on competing business [Sec. 36(1)] ▶ Right to share subsequent profits [Sec. 37] ▶ Right to dissolve the partnership [Sec 40]
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Q.5 How a partner can retire from the firm ? what are his rights and duties at/ after retirement ?

Ans.

<p>Retirement of partners [Sec. 31(1)]</p>	<p>A partner may retire:</p> <ul style="list-style-type: none"> (a) with the consent of all the other partners; (b) in accordance with an express agreement by the partners; or (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
<p>Liabilities of an outgoing partner</p>	
<p>Sec. 31(3)</p>	<ul style="list-style-type: none"> ▶ A retiring partner CONTINUES to be liable to third party for acts of the firm after his retirement ▶ until public notice of his retirement has been given

- (b) represent himself as carrying on the business of the firm or
- (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

EXCEPTION

- ▶ However, the partner may agree with his partners that on his ceasing to be so,
- ▶ he will not carry on a business similar to that of the firm within a specified period or within specified local limits.
- ▶ Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36(2)].
- ▶ A similar rule applies to such an agreement of sale of the firm's goodwill [Section 53(3)].

Sec. 37 :
Right to share subsequent profits :

- ▶ Section 37 deals with rights of outgoing partners and a liability of the surviving or continuing partner,
- ▶ who without a settlement of accounts with legal representatives of the deceased partner utilizes the assets of partnership for continuing the business.
- ▶ A retiring partner at his option ,is entitled to claim either of the

following :

- a) such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or
 - b) to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.
- ▶ However if the surviving or continuing partners purchases the interest of a deceased or outgoing partner , then the outgoing partner or his estate, is not entitled to any further or other share of profit.



Q.6 The relation of partners with third parties are governed by the mutual agency relationship existing among the partners. Comment
Is the firm liable for all the acts of a partner due to mutual agency relationship. Comment.

Ans. 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 a principal and so far as he acts for his partners, he may properly be deemed as an agent.

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.



Q.7 Define implied authority ?

Ans. 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, business of the kind carried on by the firm, in the usual way, binds the firm.

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

Sections 19(1) and 22 deal with the implied authority of a partner. The impact of these Sections is that

- ▶ 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,
- ▶ provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm.
- ▶ Such an authority of a partner to bind the firm is called his implied authority.

It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. [Section 19(1)].
3. The act to be done in the FIRM'S NAME or in any other manner expressing or implying an intention to bind the firm (Section 22).



Q.8 What are the restrictions on the implied authority of a partner ?

Ans. 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.



Q.9 Can the authority of a partner be restricted or extended ? What is the effect on third parties of such restriction or extension ?

Ans. Extension and restriction of partners' implied authority (section 20):

The implied authority of a partner may be extended or restricted by contract between the partners.

Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be EFFECTIVE AGAINST a third party:

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

However, this restriction or extension is only possible with the consent of all the partners. Any one partner, or even a majority of the partners, cannot restrict or extend the implied authority.



Q.10 All partners are liable to third parties for all acts of a partner which fall within the scope of his implied authority. Explain the effect of implied authority and liability of the firm towards third parties in various cases ?

Ans.	Sec. 20	EXTENSION AND RESTRICTION OF PARTNERS' IMPLIED AUTHORITY
	Sec. 23	EFFECT OF ADMISSIONS BY A PARTNER An admission or representation made by a partner concerning the AFFAIRS of the firm is evidence against the firm, if it is

	<p>made in the ORDINARY COURSE of business.</p> <p>An admission or representation by a partner will NOT BIND the firm if his authority on the point is limited and the other party knows of the restriction</p>
Sec. 24	<p>EFFECT OF NOTICE TO ACTING PARTNER</p> <ul style="list-style-type: none"> ▶ Notice to a partner ▶ who habitually acts in the business of the firm (working partner and not sleeping partner) ▶ 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.
Sec. 25	<p>LIABILITY OF A PARTNER FOR ACTS OF THE FIRM</p> <ul style="list-style-type: none"> ▶ 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
Sec. 26	<p>LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER</p> <p>The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting.</p>

	<p>(a) in the ordinary course of the business of the firm</p> <p>(b) with the authority of the partners.</p>
Sec. 27	<p>LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS</p> <p>The firm is liable to the third parties in the following two cases of misappropriation by a partner</p> <p>(a) a partner acting within his APPARENT AUTHORITY receives money or property from a third party and misapplies it, or</p> <p>(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.</p>



Q.11 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?

Ans. 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:

Rights during continuance	<p>During the continuance of partnership, such transferee is NOT entitled</p> <ul style="list-style-type: none">a) to interfere with the conduct of the business,b) to require accounts, orc) to inspect books of the firm. <p>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.</p>
Rights after dissolution	<p>On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be ENTITLED , against the remaining partners:</p> <ul style="list-style-type: none">a) to receive the share of the assets of the firm to which the transferring partner was entitled, andb) for the purpose of ascertaining the share, <p>he is entitled to AN ACCOUNT as from the date of the dissolution.</p>

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.



Q.12 Can majority of partners expel any one partner ? When an expulsion is valid ?

Ans.

Sec.
33(1)

A partner may not be expelled from a firm by any MAJORITY of the partners, unless the following conditions are satisfied :

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

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

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

- (i) The expulsion must be in the interest of the partnership.
- (ii) The partner to be expelled is served with a notice.
- (iii) He is given an opportunity of being heard.

If a partner is otherwise expelled, the

	expulsion is null and void.
Sec. 33(2)	The provisions of sub-section (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.



Q.13 What are the effects of Insolvency of a partner ?

Ans. Effects of insolvency of a partner (section 34)

Sec. 34(1)	<ul style="list-style-type: none">▶ 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
Sec. 34(2)	<ul style="list-style-type: none">▶ 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 necessarily , 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.
Sec 45	No public notice is required on the insolvency of a partner.

Q.14 What are the effects of death of a partner ?

Ans. Unless otherwise agreed by the partner , a firm is dissolved on the death of a partner [Sec. 42 (c)]

Where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. (Sec. 35)



Q.15 What are the effects of introduction of a partner ?

Ans. Introduction of a partner (section 31)

31(1)	<p>Admission of a partner</p> <ul style="list-style-type: none">▶ Subject to contract between the partners and to the provisions of section 30(regarding minor partner) ,▶ no person shall be introduced as a partner into a firm without the consent of all the existing partners.
31(2)	<p>Rights and liabilities of new partner</p> <ul style="list-style-type: none">▶ Subject to the provisions of section 30,▶ a person who is introduced as a partner into a firm does not thereby become liable for any acts of the firm done before he became a partner.

This rule has following exceptions :

- a) An incoming partner is liable for the acts done before his admission if
 - i. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm and
 - ii. creditors may agree to accept the new firm as their debtor and discharge the old partners.
- b) A minor on attaining majority decides to become a partner, is liable for all acts of the firm SINCE he was admitted to the benefits of partnership (Sec 30)



Q.16 How a change in the constitution takes place ?

Ans. The change in constitution of a firm takes place in the following cases :

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



Q.17 What are the rights and duties of a partner after a change in the constitution in the firm ?

Ans. Subject to the contract between the partners, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change in the firm. Section 17 provides for the following 3 types of changes :

- ▶ after a change in the firm Sec 17 (a)
- ▶ after the expiry of the term of the firm Sec 17 (b)
- ▶ where additional undertakings are carried out Sec 17 (c)



Q.18 Can a partner exceed his authority in an emergency ? what are his rights in an emergency ?

Ans. Partner's authority in an emergency (section 21)

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



Q.19 Define partnership property and property of a partner ?

Ans. THE PROPERTY OF THE FIRM (SECTION 14)

The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or joint estate', denotes all property, rights and

interests to which the firm i.e. all partners collectively, may be entitled.

The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:

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

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



Q.20 What is the effect on continuing guarantee on change in constitution of partnership ?

Ans. According to section 38, in the absence of an agreement to the contrary,

- a continuing guarantee given to a firm or to third party
- in respect of the transaction of a firm is,
- revoked as to future transactions
- from the date of any change in the constitution of the firm.

