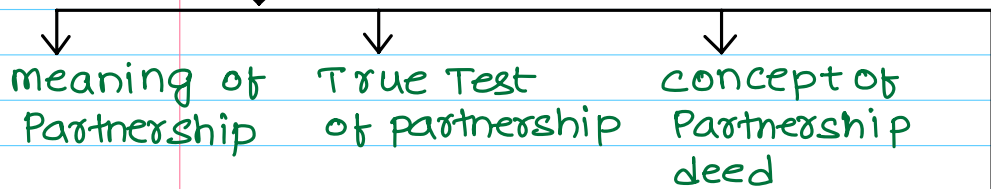


THE INDIAN PARTNERSHIP ACT, 1932

UNIT I: Learning objectives

Basics of Partnership

Partnership v/s other forms of organisations



miscellaneous

Kinds of Partners

Kinds of Partnerships

- | | |
|----------------------------|--------------------------------|
| Active | Partnership at will |
| Dormant/ Sleeping Incoming | Partnership for a fixed period |
| outgoing | General Partnership |
| Nominal | Particular Partnership |
| Others. | |

Company

HUF

Club

Co-ownership

Association

I. BASICS OF PARTNERSHIP

Definition of Partnership

Partnership is a relation between persons who enter into an agreement to share profits of the business which is carried on by all (or) any one acting for all.

Elements of Partnership

Partnership is an association of persons.

Agreement with all persons in association

TO make the profits

TO do/carry on the business.

TO share the profits

Business is carried on by all/any of them acting for all.

understanding certain terms

Relation of one person to another

=

Partner

eg: A, B, C

A ↔ B = Partners

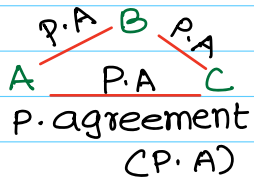
B ↔ C = Partners

C ↔ A = Partners.

Name of the relation

=

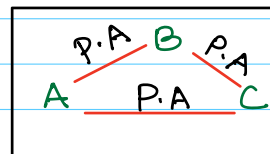
Partnership agreement



collective name of a partner in a partnership

=

Partnership firm



Name given to the firm

=

Firm name.

eg: ABC & CO
A & CO etc.

2. ANALYSIS ON ELEMENTS OF PARTNERSHIP

PART A

condition - 1

condition - 2

condition - 3

Association of persons

Agreement

Business

A partnership is an association of 2/more persons

A person recognised in eyes of law can only enter into 'PS.'

A PS is created out of an agreement between the partners.

Agreement must be with all the partners

minor cannot become a partner.

Hence, a PS cannot become a partner.

Agreement may be

Since partner has to agree, PS is wholly voluntary & contractual.

oral/written

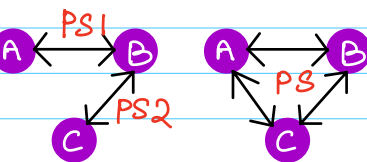
Express/implied

from consistent course of dealing showing mutual understanding.

minor is eligible to benefits of PS.

max. no. of partners ≠ 100.

| P ₁ | P ₂ | PS? |
|----------------|----------------|-----|
| CO | CO | ✓ |
| I | I | ✓ |
| CO | I | ✓ |
| I | CO | ✓ |
| LLP | CO | ✓ |
| LLP | LLP | ✓ |
| I | LLP | ✓ |
| PS | CO | X |
| PS | LLP | X |
| PS | I | X |



PS1: A & B

PS: A, B & C

PS2: B & C

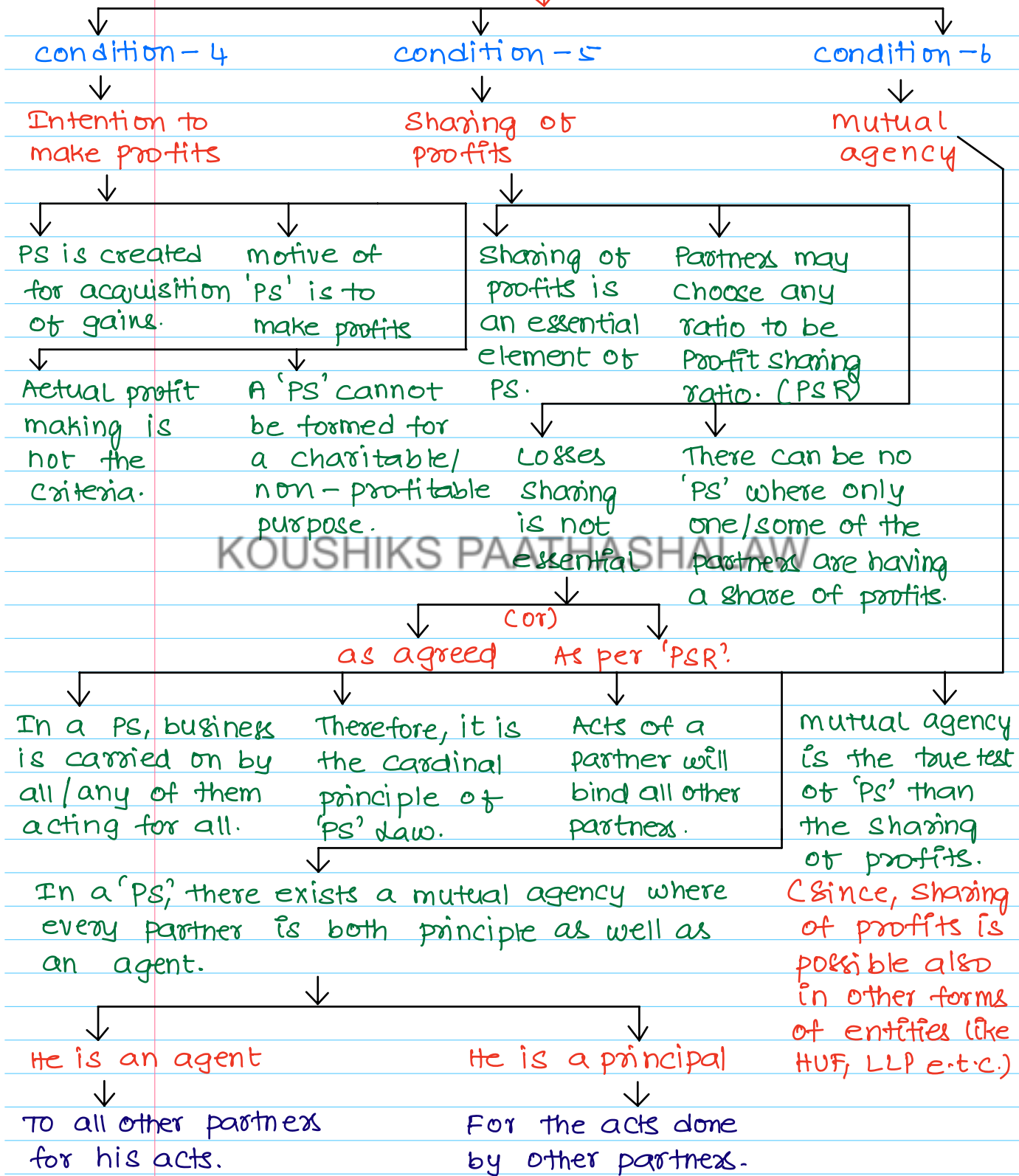
NO PS b/w

A & C

carrying on of the business is the motive of a PS.

Business includes
 * trade
 * Occupation
 * Profession.

PART-B



3. PARTNERSHIP V/S OTHER FORMS OF ORGANISATIONS

A. Partnership v/s Company.

| Point of diff | Partnership | Company. |
|----------------------------|--|---|
| 1. Legal Status | PS is not an entity distinct from its partners. | company has a separate legal existence. |
| 2. Agency | In a 'PS' there exists a mutual agency in which every partner is an agent to all other partners. | In a 'company' members are not the agents of the company. Their acts don't bind other members. |
| 3. Distribution of profits | PS must distribute the profits as per the terms of deed. | company may distribute profits in the form of dividends. |
| 4. Extent of liability | In a 'PS' the private property of partners may be held liable to pay debts. Debts of PS is first paid out of joint estate of 'PS', if insufficient partner is personally liable. | * In case of CLBS, liability is limited to the extent of unpaid amount on shares. * In case of CLBG, liability is limited to guarantee given. * company may also have unlimited liability |
| 5. Transfer of shares | Share of partner can be transferred only with consent of all partners. | * Shares of private co are transferable with restrictions. * Shares of public co are freely transferable. |
| 6. Registration | PS regn is optional. | Co regn is mandatory. |
| 7. Management | Business is carried on by all/any one of them | * members cannot manage unless they are directors. * members may elect directors. |
| 8. No. of members | partners \geq 100 | pvt co \geq 200, pubco - UL |

B. Partnership v/s Co-ownership

| Point of diff | Partnership | Co-ownership |
|-------------------------|---|--|
| 1. Formation | Partnership is formed by way of agreement either express/implied. | Co-ownership is formed by way of agreement (or) by way of any operation of law. |
| 2. Implied agency | Partner is agent to other partners. There exists a mutual agency. | One co-owner is not an agent to another co-owner. |
| 3. Nature of interest | Profit/loss sharing is the criteria. | ownership sharing is the criteria not just sharing of profits/losses. |
| 4. Transfer of interest | The share of partner cannot be transferred to any other person unless the consent of all existing partners is obtained. | The share of a coowner can be transferred to any other person without the consent of another co-owner. |

C. Partnership v/s Association

| Point of diff | Partnership | Association |
|---------------|--|---|
| 1. meaning | <ul style="list-style-type: none"> * PS is an association of 2/more persons * entering into an agreement * to do the business * to make the profits. * to share the profits. * with mutual agency. | <ul style="list-style-type: none"> * Formed for a social cause. * No motive to make business & profits. |
| 2. Examples | PS to do any business | <ul style="list-style-type: none"> * Charitable trusts * Religious trusts, societies etc. |

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D. Partnership v/s club

| Point of diff | Partnership | Club |
|------------------|---|--|
| 1. Definition | PS is an AOP formed to share the profits of business. | <ul style="list-style-type: none"> * Club is an AOP formed for a non profit motive. * It is formed for some beneficial purpose. * Its object is to promote any field like science, health, commerce, law etc. |
| 2. Relation Ship | One partner is an agent to another partner. | members of club are not agents to club/ other members of the club |

| | | |
|-------------------------|---|--|
| 3. Interest in property | Every partner has interest in the property of the firm | members of club donot have any interest on property of the club. |
| 4. Dissolution | change in partners will affect the existence of the firm. | change in members do not affect the existence of the club. |

E. Partnership v/s Hindu undivided family (HUF)

| Point of diff | Partnership | HUF |
|---------------------------|--|--|
| 1. Mode of creation | PS is created by agreements. | HUF is created by * Birth * marital tie. |
| 2. Death of partner | Death of a partner will lead to the dissolution of 'PS'. | Death of family member donot lead to dissolution of HUF. |
| 3. management of business | 'PS' business is managed by all/ any of the partners. | HUF business is generally governed by "Karta" who is a senior coparcener member. |
| 4. Authority to bind | A partner can, by his act, bind the firm. | Karta, by his acts, binds the family w.r.t. business. |
| 5. Governing law | PS is governed by "Indian Partnership Act, 1932". | HUF is governed by Hindu law - "Hindu succession Act". |

| | | |
|----------------------------|---|--|
| <p>6. minor capacity</p> | <ul style="list-style-type: none"> * In a PS, a minor cannot be admitted as a partner. * However, with the consent of all the partners, he may be allowed to take benefits of PS. | <p>In a HUF, a minor is entitled to the ancestral property by incidence of birth even without attaining age of majority.</p> |
| <p>7. maximum members</p> | <ul style="list-style-type: none"> * max partners allowed in a 'PS' ≠ 100 (SD by rules) | <p>max. number of family members is not defined and therefore unlimited</p> |
| <p>8. Share of profits</p> | <p>Share of profits in 'PS' is definite and determined by agreement b/w the partners.</p> | <ul style="list-style-type: none"> * Share of profits is indeterminate. * It is fluctuating. * Share is enlarged by death and is diminished by the birth. |

4. TYPES OF PARTNERS

| Particulars | Analysis |
|------------------------------|---|
| 1. Active partner | <ul style="list-style-type: none"> * Is a person who become a partner by an agreement. * Actively participates in the conduct of 'Ps'. * He acts as a agent of all the partners in ordinary course of Ps. * He need to give public notice of retirement to absolve himself from all liabilities after his retirement. |
| 2. Sleeping/ Dormant partner | <ul style="list-style-type: none"> * Is a person who become a partner by an agreement. * Donot actively participate in conduct of 'Ps'. * He need not give any public notice of his retirement. * They are liable for the acts of active partners. |
| 3. Incoming partner | <ul style="list-style-type: none"> * He is a person who is admitted in an already existing firm as a partner. * Admission only with consent of all other partners. * He is not liable for the acts of the firm done before his admission. |
| 4. Outgoing partner | <ul style="list-style-type: none"> * He is a partner who leaves the firm while other partners decided to continue the firm. * He is liable for the acts of the firm after his retirement till he gives a public notice of his retirement. |
| 5. Nominal partner | <ul style="list-style-type: none"> * He is a person who lends his name. * He has no real interest on firm. * He doesnot participate in conduct of 'Ps'. * He is not entitled to profits. * He is liable to third parties for acts of firm. |

| Particulars | Details. |
|-----------------------------|--|
| 6. Partner in profits only. | <ul style="list-style-type: none"> * He is entitled only for profits. * He is not liable to share losses. * He is liable to third parties for the acts of the firm. |
| 7. Partner by holding out | <ul style="list-style-type: none"> * Partner by holding out is also called as Partnership by estoppel. * <u>Conditions for attracting PSHO</u> <ul style="list-style-type: none"> • A person represented himself as a partner (or) knowingly permits others to represent his name. • He is later stopped/not allowed to deny the partnership, with the creditors who on the faith that he is a partner given credit to firm. |

IMPORTANT

Additional analysis

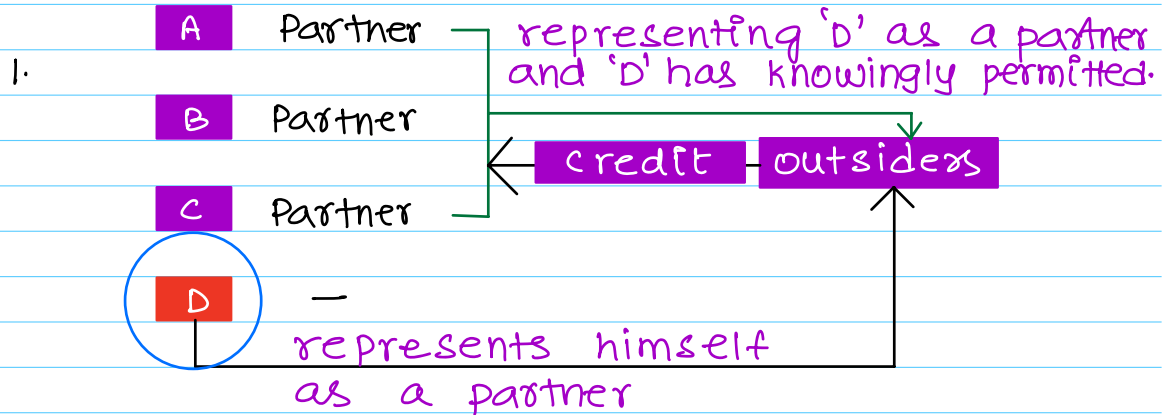
- * All persons become partners by an agreement either express/ implied by conduct.
- * Nominal partners donot get profits share, instead they receive other remuneration.
- * There is no PS without sharing liability.

Example

| Particulars | P-A | P-B | P-C | P-D | Remarks |
|--------------------|-----|-----|-----|-----|---------------|
| Share of profits | ✓ | ✓ | ✓ | ✓ | Permitted |
| Share of losses | ✓ | ✓ | ✓ | ✓ | Permitted |
| Share of profits | ✓ | X | ✓ | ✓ | Not permitted |
| Share of losses | ✓ | X | ✓ | ✓ | Permitted |
| Share of Liability | ✓ | ✓ | ✓ | ✓ | Permitted |
| Share of Liability | ✓ | X | ✓ | ✓ | Not permitted |

* Partner by holding out is liable only towards creditors and not for all the acts of firm.

Examples



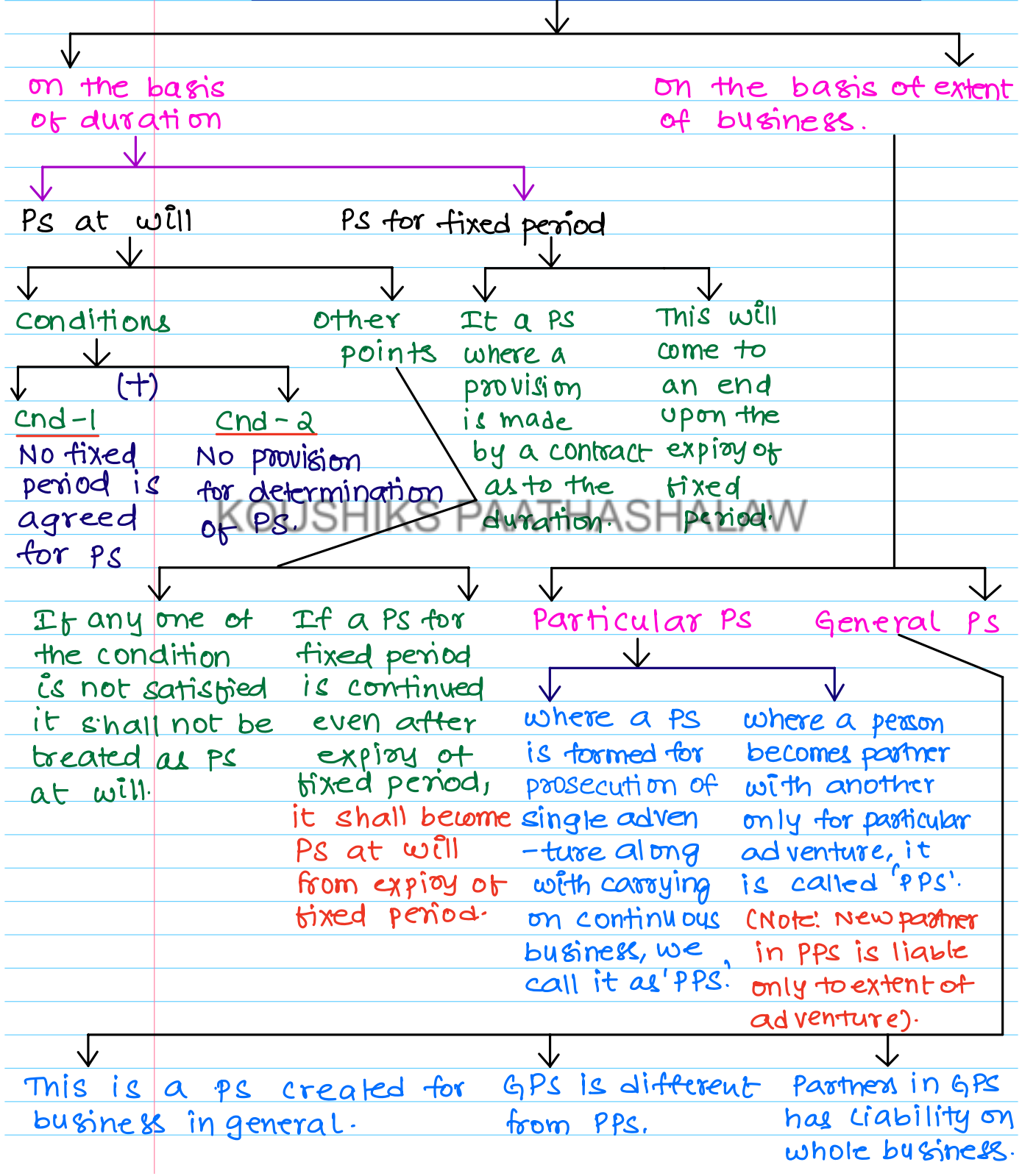
* Partner by holding out is not entitled to share of profits/losses. He is liable if both the conditions are satisfied.

C1: There is a credit amount coming into the hands of Partnership AND

C2: That creditor should prove in the court that he gave credit on the faith that 'D' is also a partner.

* Representation may be fraudulent/not fraudulent.

TYPES OF PARTNERSHIPS



PARTNERSHIP DEED

Basics

PS is an agreement blw 2/more persons
It may be in writing/verbal

An agreement setting out T&C of PS blw partners is called as "PS Deed"
It is desirable to register the relationship to avoid future disputes.

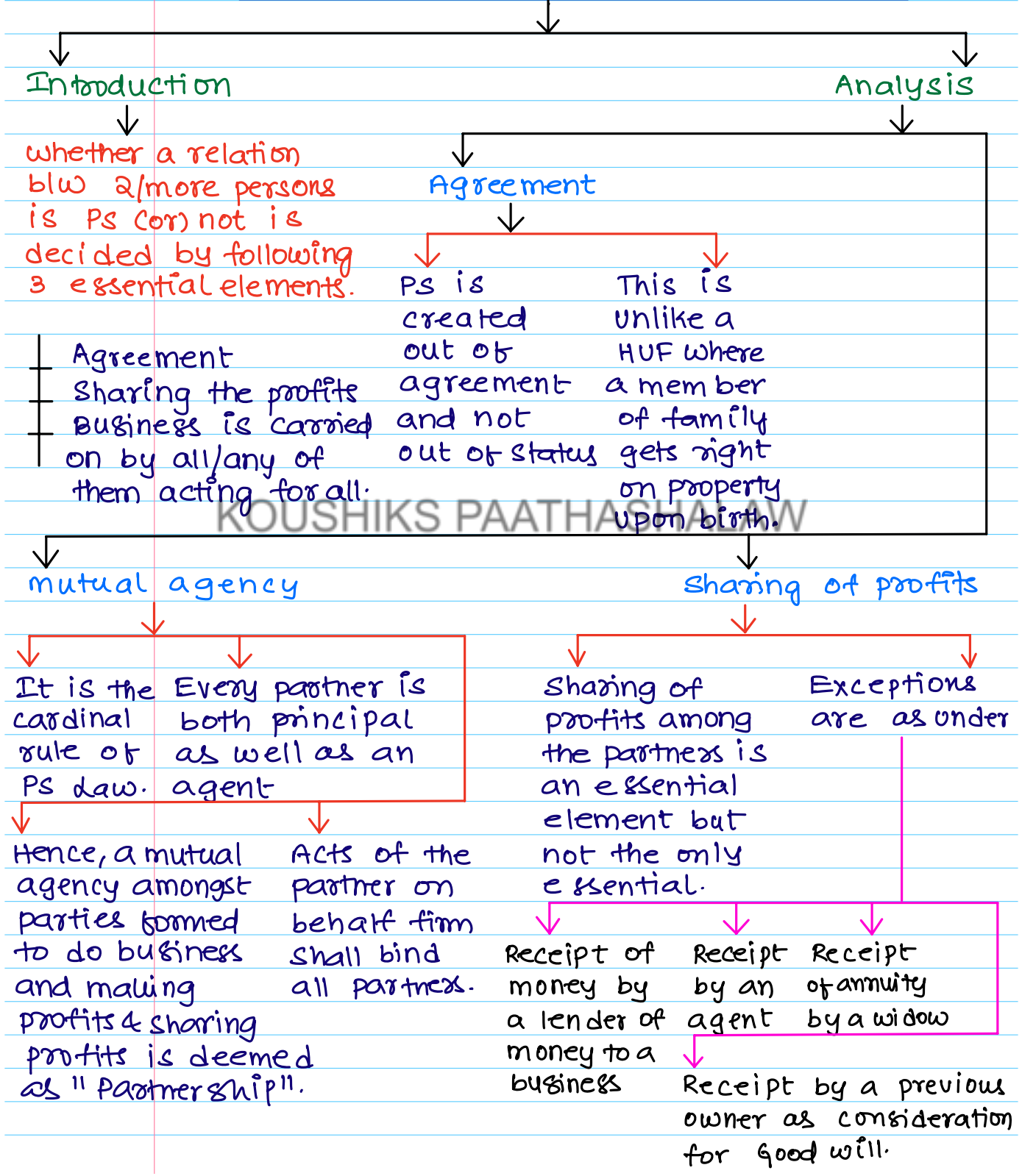
It should be stamped & care-fully drafted

If PS has immovable properties, then it is mandatory to register the Deed.

Contents of a PS Deed

- * Name of PS Firm.
- * Names of partners.
- * Nature of business.
- * Place of business.
- * Date of Commencement.
- * Duration of PS
- * Capital contribution
- * Profit sharing ratio
- * Interest on drawings
- * Interest on capital and many more.

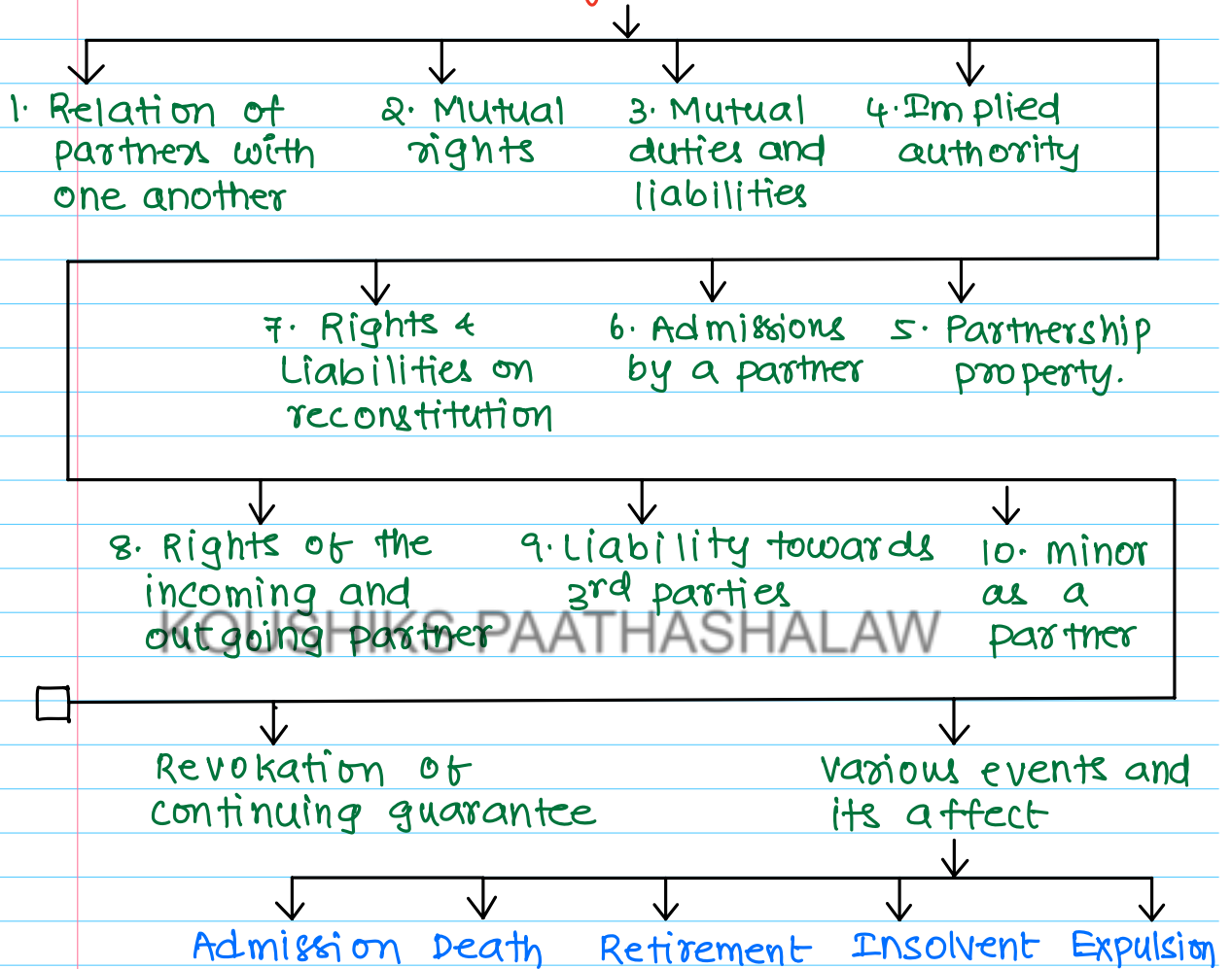
TRUE TEST OF 'PS'



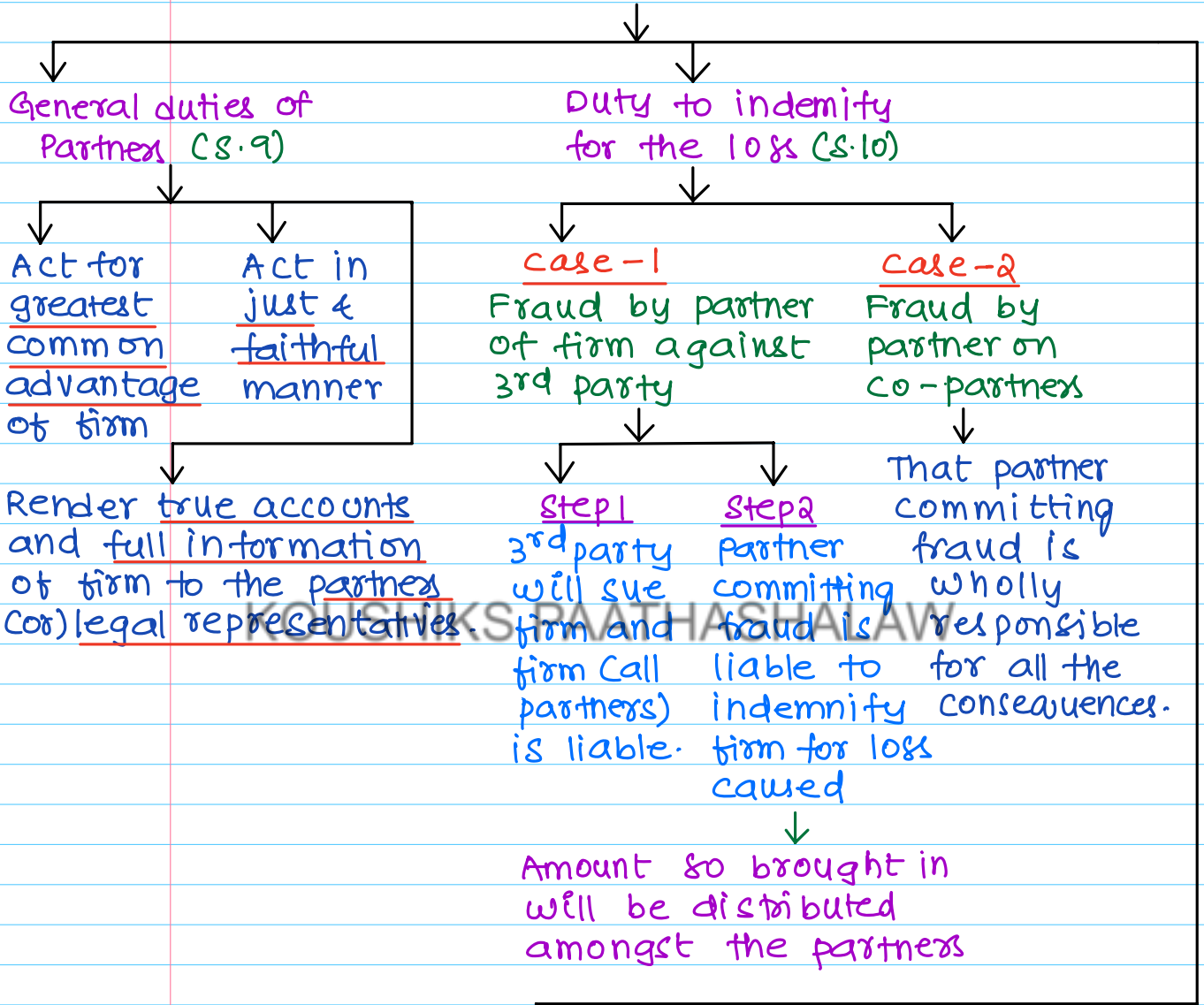
8m - 10m

UNIT 2 : RELATIONS OF PARTNERS

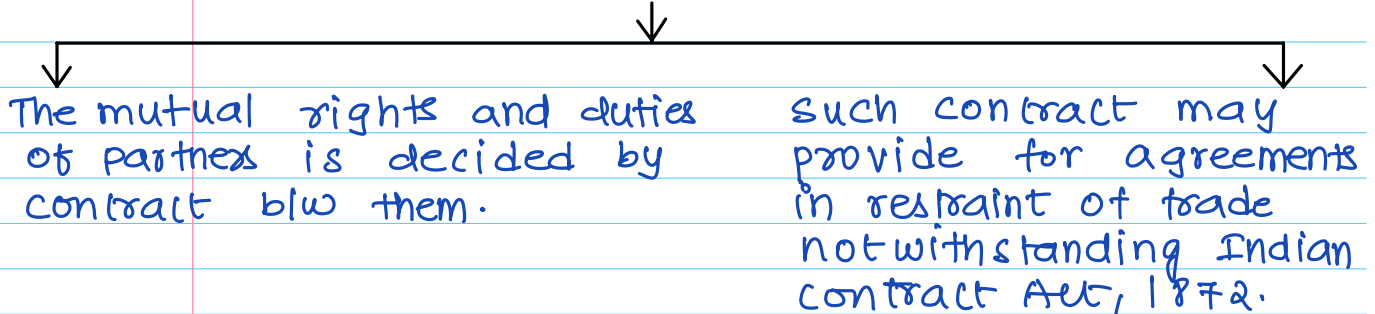
Learning objectives



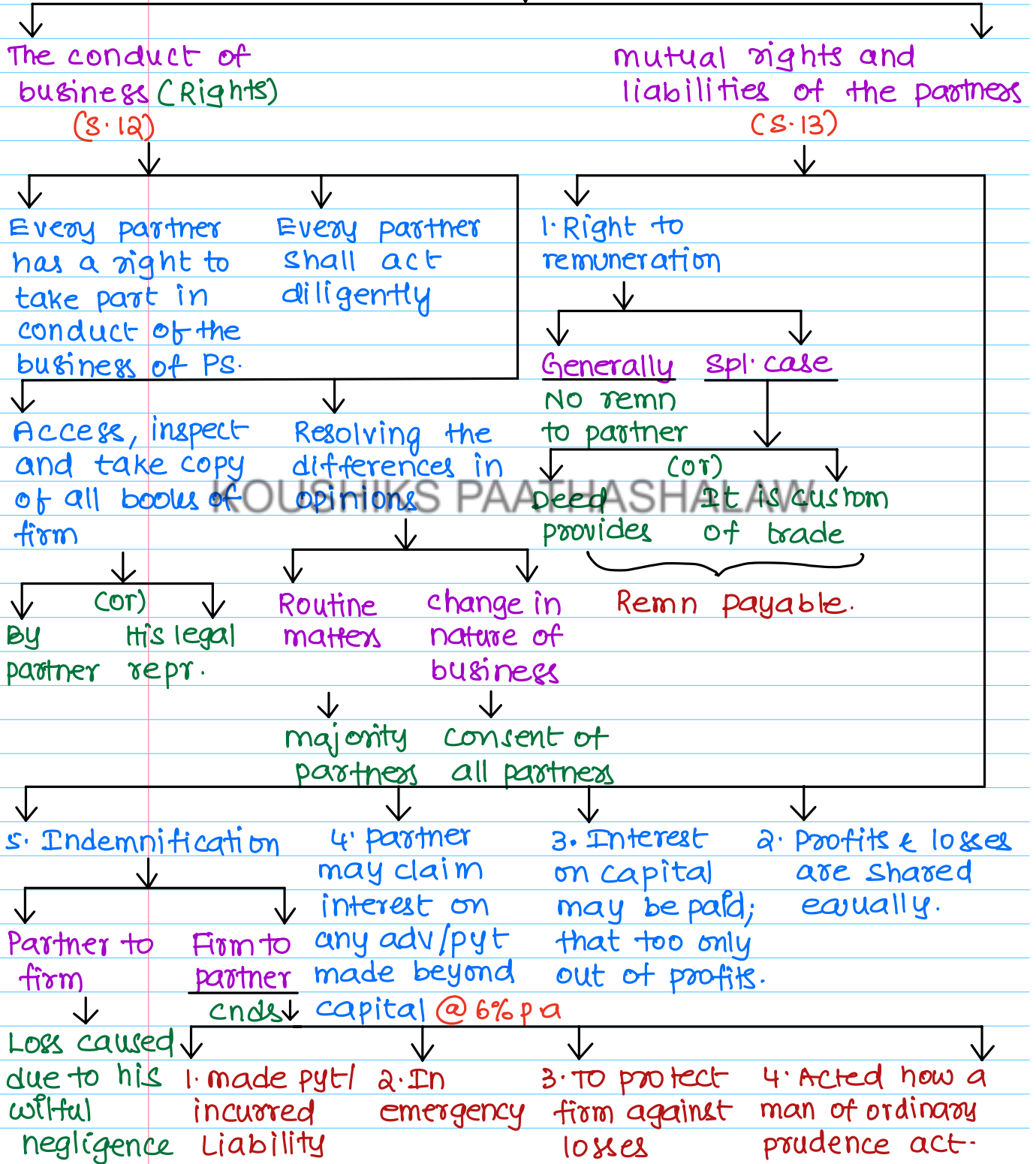
Basic rights and duties of Partners (Part I)



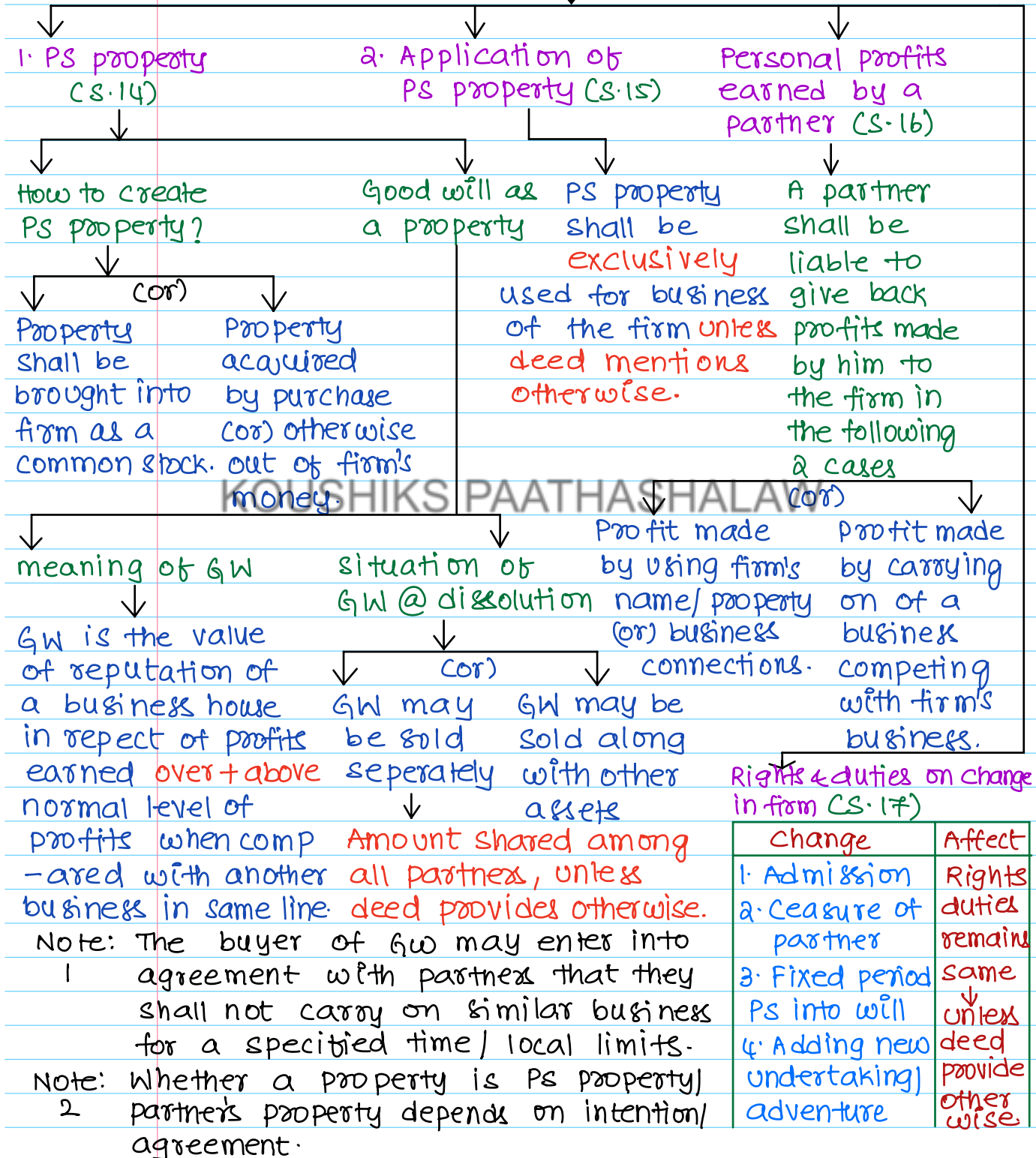
Determination of rights and duties by contract (S.11)



Basic rights and duties of Partners (Part II)



2. OTHER RIGHTS AND DUTIES



3. **MINOR - AS A PARTNER (S.30)**

1. Basic rights of a minor

minor cannot become a partner in a firm.
 minor can be admitted for benefits of 'PS'.

minor has right to access, inspect and take copy of BOA.

minor is entitled to a share in the profits & property of the firm.

A minor on attaining the majority may elect either to continue/not to continue in the PSF within the prescribed time.

2. Rights & Liabilities upon attaining the majority.

situation-1
 Elect to become a partner.

- Express agreement
- mere silence

He shall elect to continue within 6ms of attaining majority/ obtaining knowledge that he is admitted to benefits of PS.

situation-2
 Elect not to become a partner

* Give a public notice to that effect

* Liable as a minor.
 * Not liable for the acts of the firm after giving public notice.
 * Can sue the partner for settling the accounts

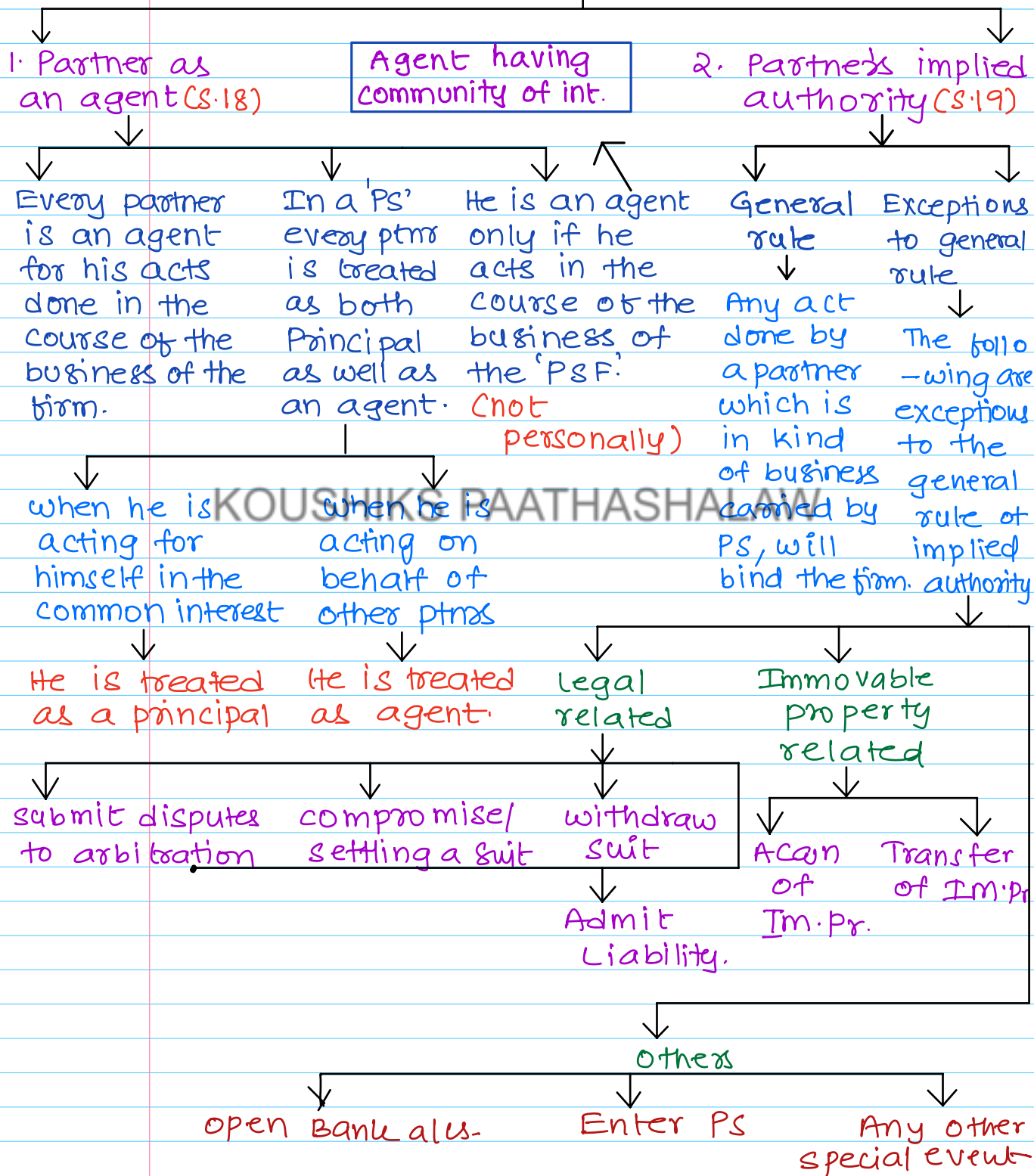
Notes

- minor cannot ask for settlement of accounts while he is in continuance and he cannot sue.
- minor upon attaining the majority has to prove in the court that he has no knowledge that he is admitted to benefits of P.S.

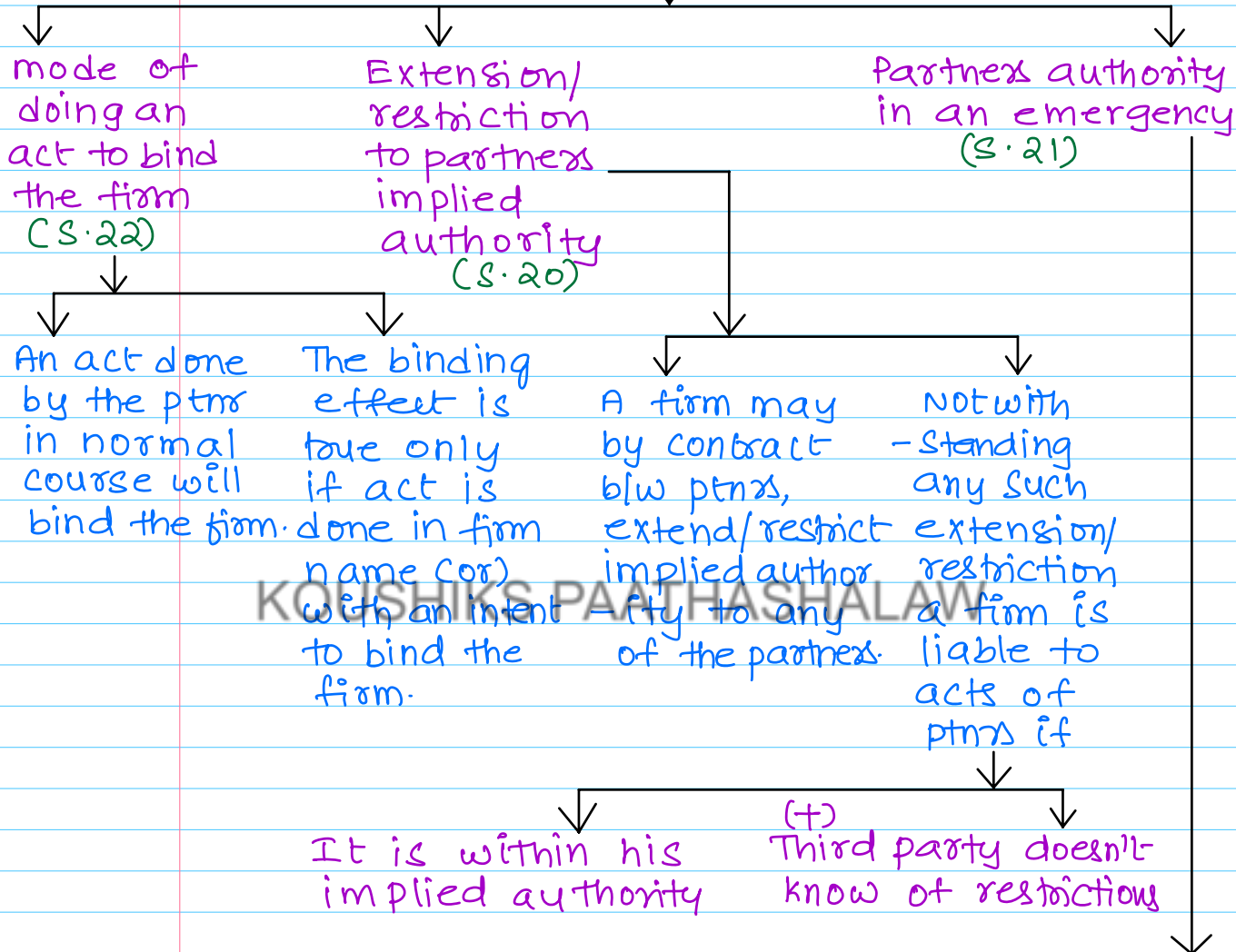
His share in profits & property is same as that of in case of minor.

PART-I

4. **RELATION W.R.T. THIRD PARTIES**



PART-II



Notes:

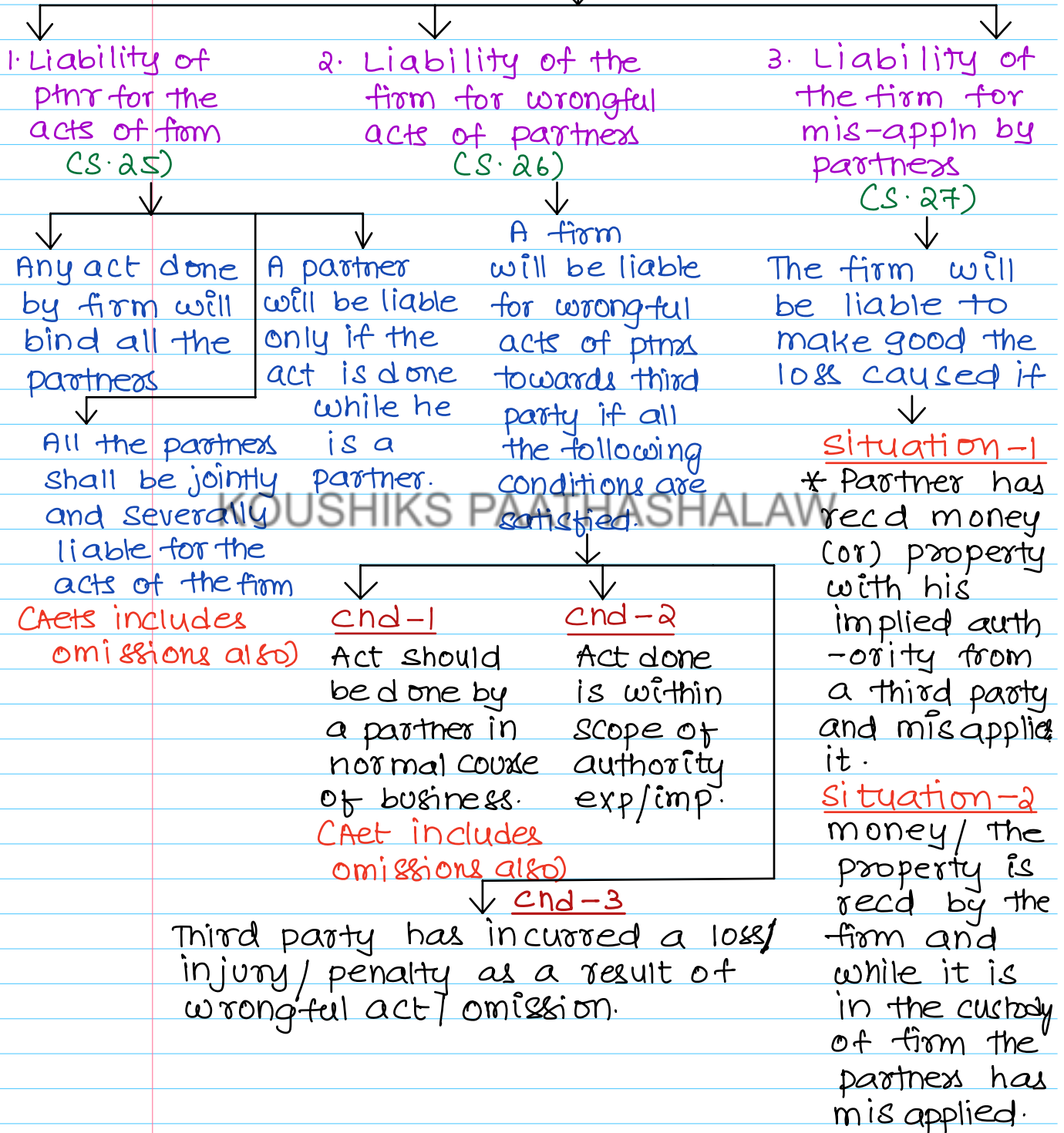
* As per S. 19 + S. 22, firm will be liable for acts of partner if all these ends are satisfied —

- Acts done by partner
- Acts done in normal course of business and in kind nature.
- Acts done in firm name/with intent to bind the firm.

The firm is liable to indemnify the partner for his acts done

- in emergency to protect firm against loss
- Act like how a man of ordinary prudence would have done in his own case.

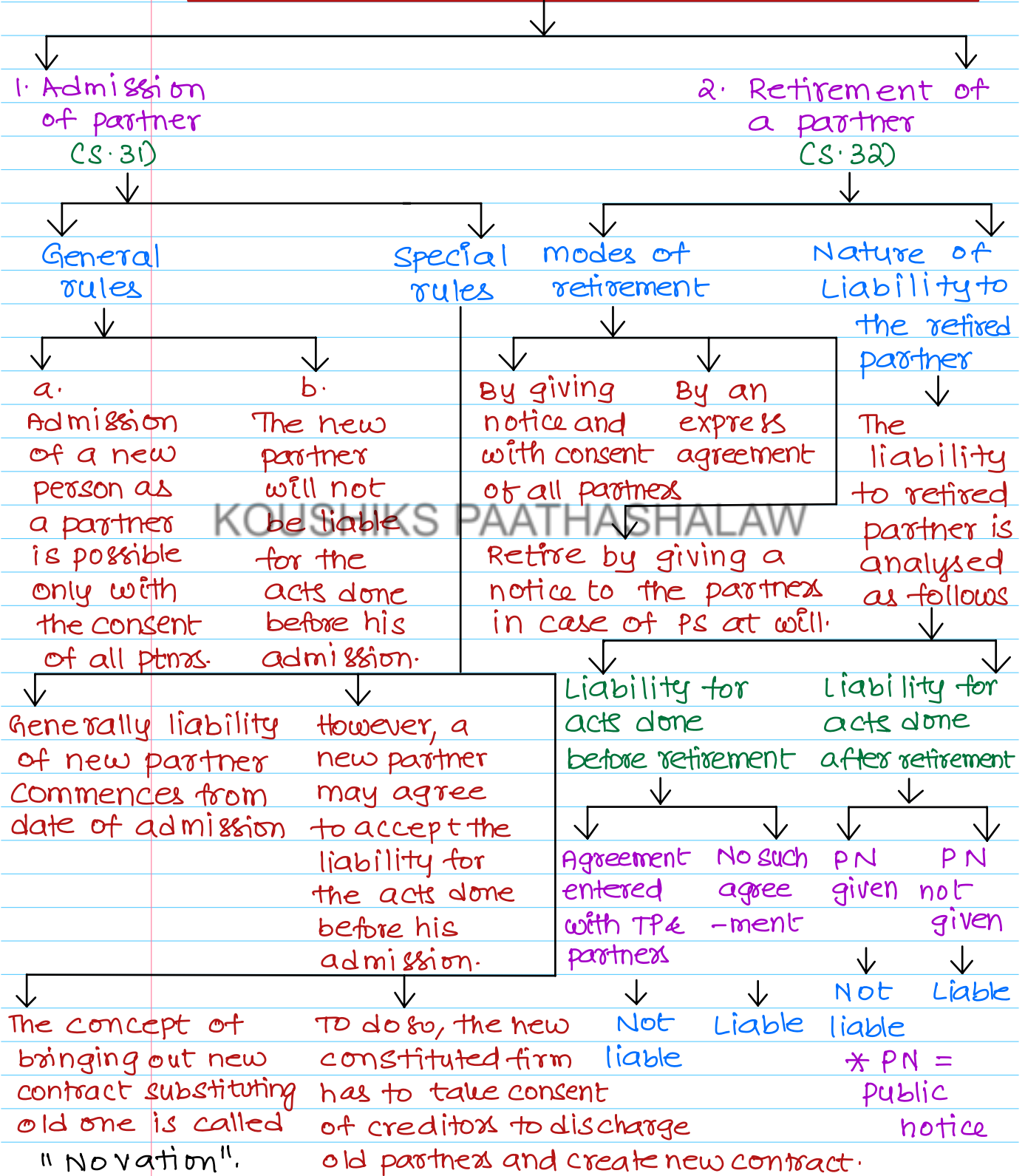
S. LIABILITY TO THIRD PARTY (S.25-27)



MOST IMP

LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT (S.31-S.35)

6.



LIABILITY > ASSETS

contd

3. Expulsion of a partner (S.33)

Under the following conditions a partner may be expelled

Cond-1
Decision by majority of partners

Cond-2
Decision to be taken in Good faith

Cond-3
Contract b/w the partners to expel.

4. Liability of estate of deceased partner (S.35)

The death of a partner will lead to the dissolution of PS unless there is a contract otherwise.

Test-1
Expulsion made in interest of PSF.

Test-2
Notice served on concerned partner

Test-3
Gave him a "OBH".

The estate of 'DP' is not liable for acts done after his death.

5. Insolvency of a partner (S.34)

Effects of insolvency are as under

1. Insolvent partner cannot continue as a partner.

2. He shall cease to be a partner from date of order of adjn.

3. Estate of "IP" not liable for acts done after insolvency.

4. Firm not liable for acts of "IP" done after insolvency.

5. Generally the insolvency of a partner will lead to dissolution of the firm. However, partners may agree by a contract otherwise.

Addl notes:

* Expulsion not in accordance with this section is void.

* Invalid expulsion will not affect the firm.

7.

ADMISSIONS AND NOTICE BY AN ACTIVE PARTNER (S.23 & S.24)

a. Admissions made by a partner (S.23)

b. Notice to an active partner (S.24)

General rule

Exception to rule

General rule

Exception to rule

Any admission/representation by the partner will act as the evidence against the firm if the following 2 cnds are satisfied

The admission/representation made by the partner will not bind the other partners in the following cases

Notice to a partner who will habitually act for the firm will operate as notice to firm.

Notice not given concerning affairs of firm

Cnd-1

Cnd-2

Case-1

Case-2

Acts are concerning the affairs of the firm

Acts are done in the OCB of firm.

Acts are done not concerning to affairs of the firm

Acts not done in OCB of firm

Notice is given to a sleeping partner

There involves fraud.

Case-3

Rights of partner is limited

(+)

Third party knows of that limitation.

8.

SPL RIGHTS OF AN OUTGOING PARTNER (S. 36 & S. 37)

a. Right of OGP for share in subsequent profits (S. 37)

b. Right of OGP to carry on the competing (or) conflicting business (S. 36)

a. When section gets attracted?
When there exists

b. Options available to discharge the OGP

a. If there are agreements in restraint of trade

b. In all other cases

Retirement
Expulsion
Insolvency
Death

The OGP may be discharged in 3 ways namely —

If the partner agreed that he shall not carry on any competing business upon ceasing to be partner

OGP may carry on competing business with that of a firm but he cannot do the 3 things as follows unless there exists a contract do so.

way-1 (or)
Settle his a/c and pay him the share of profits & property.

way-2 (or)
If no a/c is settled and the firm is continued by surviving partners, then the OGP/his LR are legally entitled to opt for

way-3 (or)
The surviving partners may opt to purchase the interest/rights of OGP. In such case neither OGP/LR have any subsequent rights.

He cannot engage as such not with standing S. 27 of ICA, 1872.

Use firm name
Represent as partner of firm
Solicit business connecti - one of firm.

subsequent share interest in profits @ 6% p.a.

9.

MISCELLANEOUS (S.29 + S.38)

a. Right of transferee of a partnership interest (S.29)

b. Revocation of continuing guarantee (S.38)

1. when section gets attracted? 2. Modes of T's

Section gets attracted if any ptr has transferred his P-ship interest to another person i.e. transferee.

sale charge mortgage

1. Types of C.G

C.G given to the firm. C.G given to a TP w.r.t. the txn made by PSF

2. Effect of C.G on reconstitution of firm

4. Ineligibility of T's

3. Rights of T's

cannot participate in conduct of business

cannot take copy of Bof. cannot access the Bof.

Generally right in the share of profits

upon dissolution (or) ceasure Right in the share of assets belonging to the OGP.

Generally Past txns future txns cannot be revoked will stand revoked

If contract provides differently

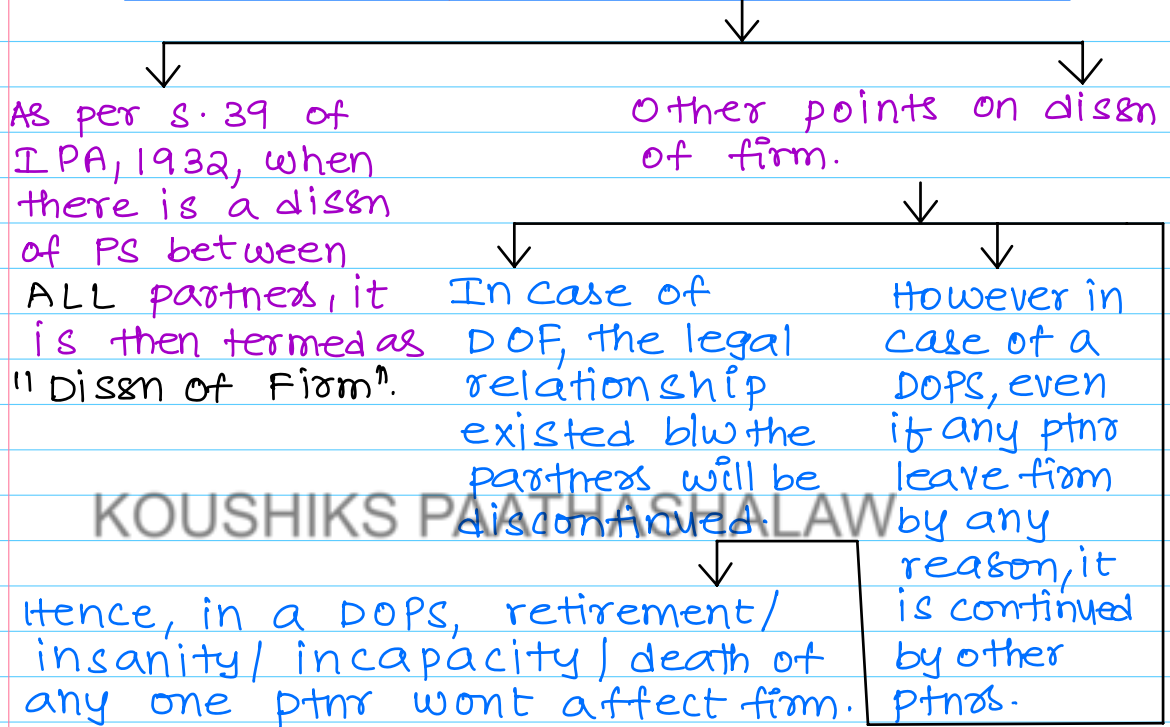
Then, C.G shall continue even after re-constitution.

UNIT III

REGISTRATION AND DISSOLUTION

1. DISSOLUTION:

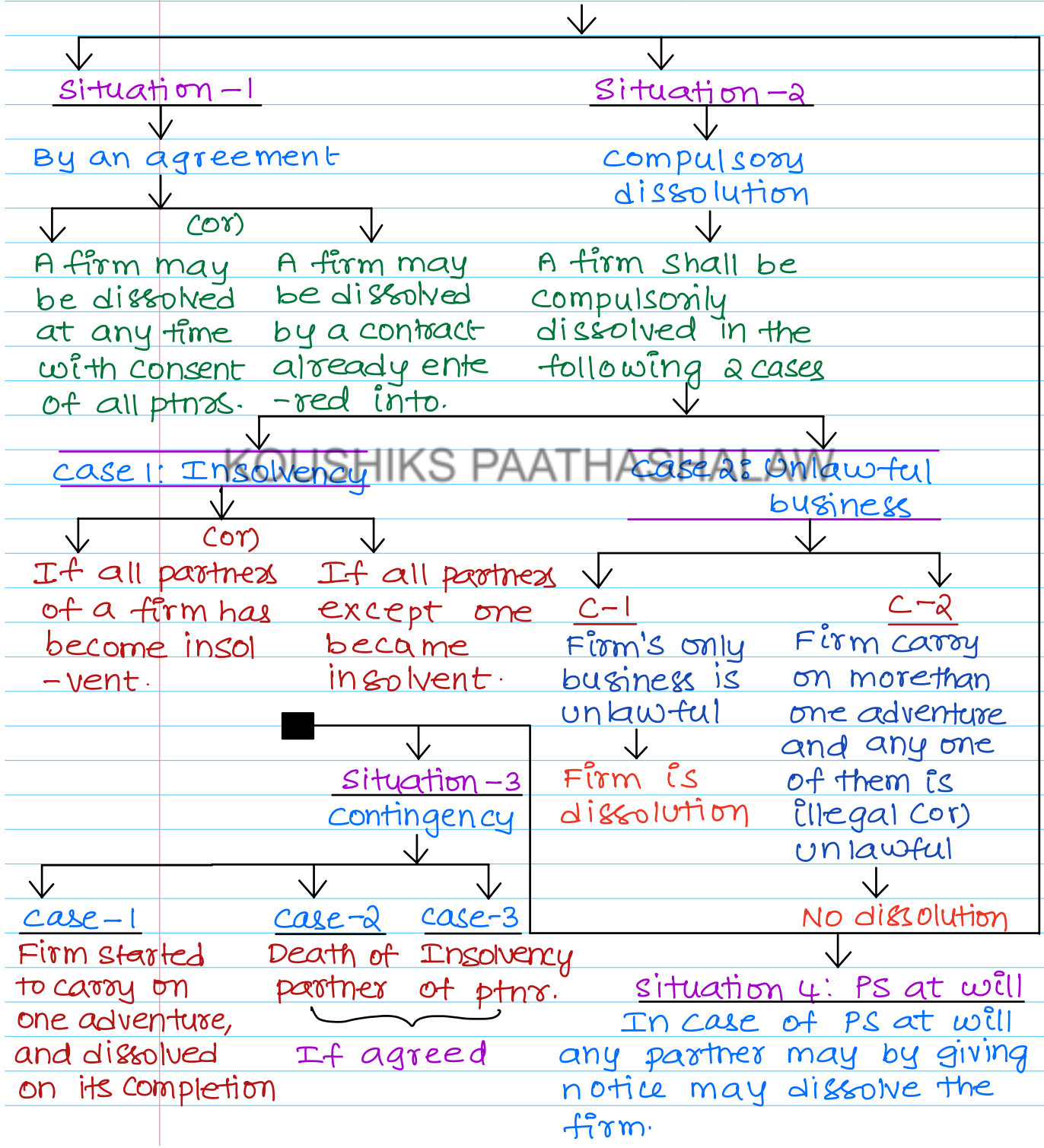
1. Basic concept of Dissolution of firm



2. DISSOLUTION OF FIRM V/S DISSOLUTION OF PS

| Particulars | DOF | DOPS |
|-----------------------------|--|---|
| 1. Continuation of business | It involves discontinuance of business | It involves only re-constitution. |
| 2. Winding up | It involves realising assets & settling liabilities. | It involves re-const & realn of Assets & Liab. |
| 3. Court order | may require court order | Never req a court order. |
| 4. Scope | DOF will lead to DOPS. | DOPS may not lead to DOF |
| 5. Closure of books | DOF will result in final closure of all books. | DOPS will result in closure of books of out going partner only. |

3: DISSOLUTION WITHOUT COURT ORDERS
(S. 40-5.44)



4. DISSOLUTION - BY COURT ORDER

1. Insanity/unsound mind

where a partner being a active partner became unsound, then, any other partner (or) next friend of partner may apply to dissolve the firm and the court may dissolve.

2. Permanant incapacity

where a partner, other than partner suing has become permanently incapacitated to perform his duties as partner, the court may order dissolution of firm.

3. misconduct

where a partner, other than the partner suing has been guilty of misconduct which prejudicially affect the business of the firm, court may order dissolution of firm.

6. Just and equitable

Court may, on an application made by any partner, order for dissolution of firm on just and equitable grounds.

Eg: Deadlock
* in mgt
* Loss of substratum
etc.

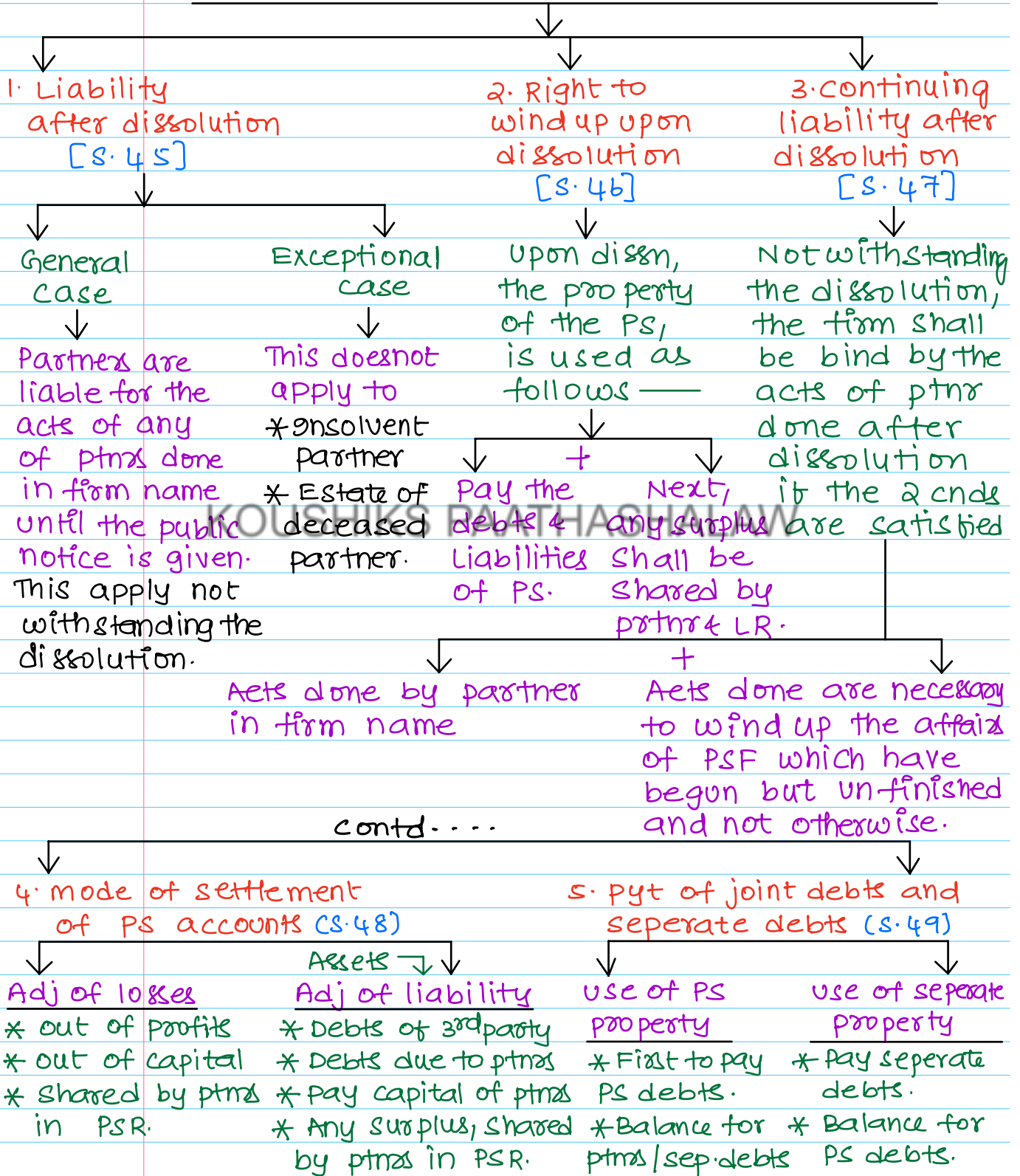
5. Continuous (or) perpetual losses

where a partner's firm cannot continue except with losses in future also, upon a application, the court may order dissolution of firm.

4. Persistent breach of agreements

where a partner other than a partner suing has willfully (or) persistently made breach of agreements with the mgt of affairs of partner's (or) conduct of its business (or) it is not reasonably practicable for other partners to continue, the court may order dissolution.
Eg: Embezzlement, fraudulent accounts

(S. 45 - S. 49)
 5. CONSEQUENCES OF DISSOLUTION



(S. 58 & 59)

6. REGISTRATION OF PS

1. Application for registration (S. 58)

2. Registration (S. 59)

a. Basics of registration

Registration nature

Optional

when to register?

At any time

(need not be at beginning)

Application to whom?

ROF of area where any business of firm is located.

manner of sending appn

- * Post
- * Hand delivery.

manner of application

- * prescribed form
- * prescribed fee.

If ROF is satisfied with the compliance of S. 58, he shall

- * Register the firm &
- * Enter the firm name in register of firms

3. Penalty (S. 59A)

If statement u/s 58 is not filed within time, ROF may levy a penalty of ₹100 every year of default

ICAI

b. contents of regn form

Firm name

Principal POB

Other POBs

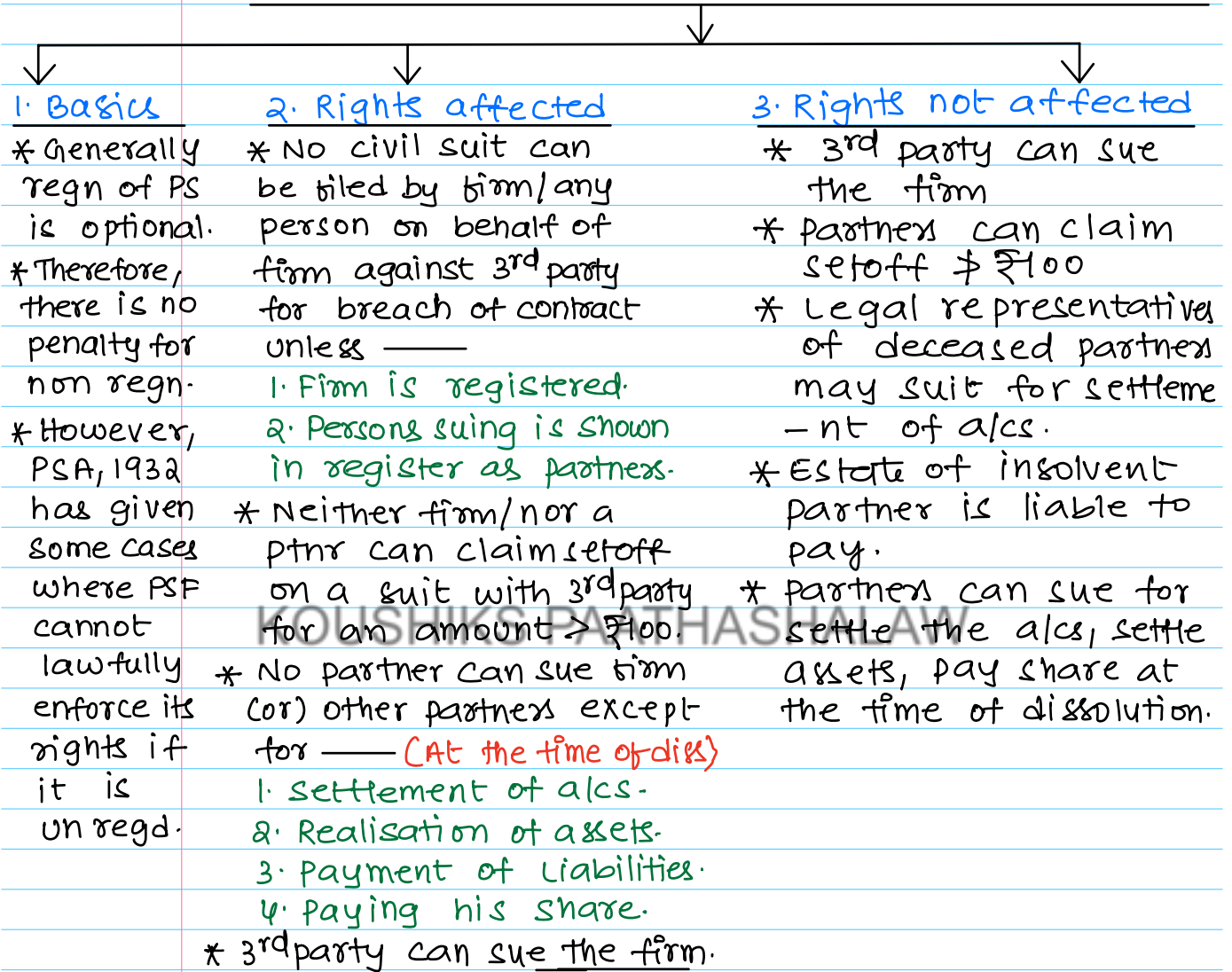
Names & Duration
addr of partners.

Shall not contain words "Crown" "Empire" etc & any words giving false impression of Govt. patronage.

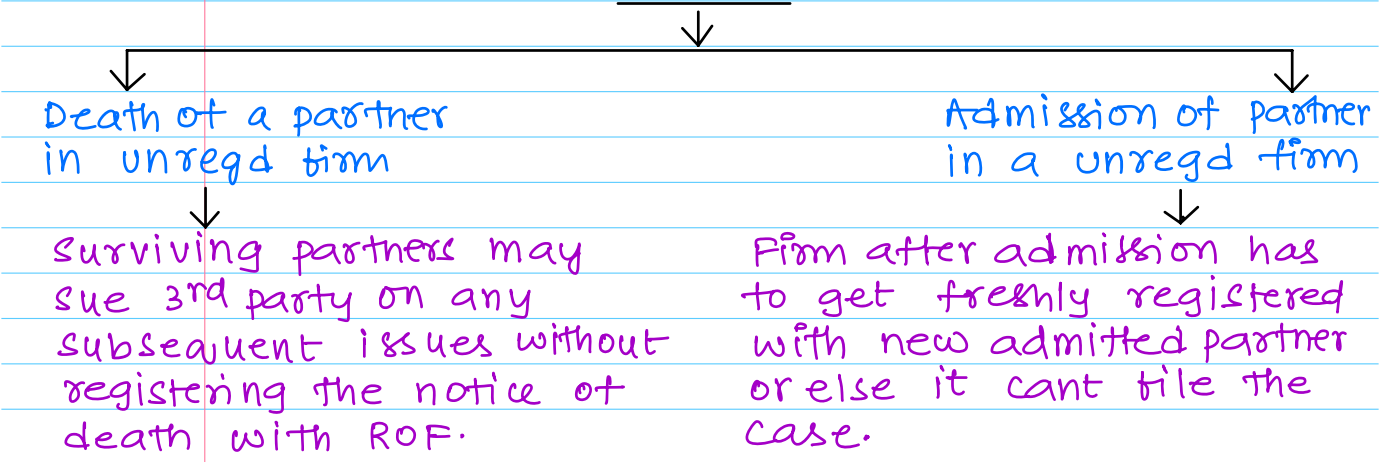
Regd. firm shall use word in brackets as "Registered".

- S. 69 -

7. CONSEQUENCES OF NON-REGISTRATION



Case



_____ x _____

Koushik
4/11/23

KOUSHIKS PAATHASHALAW