

Partnership Act

classmate

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Unit - 1 : General Nature of Partnership

* Partnership :

it 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.

† Elements of Partnership :

- Association of 2 or more persons
- Agreement
- Business
- Agreement to share profits
- Business carried on by all or any of them acting for all.

1. Association of 2 or more persons :

Partnership is an association of 2 or more persons. Only persons recognized by law can enter into an agreement of partnership.

2. Agreement :

→ Partnership is must be result of an agreement between two or more persons.

→ There must be the result of an agreement between two or more persons.

→ There must be an agreement entered into by all the persons concerned.

3. Business :

→ first, there must exist a business business ^{includes} ~~means~~ every trade, occupation and profession.

→ The motive of the business is the acquisition of gains.

→ Therefore there is no partnership when there is no intension to carry on the business & to share the profits.

4. Agreement To share profits :

→ Sharing of profits is an essential element of partnership.

→ No partnership where only one partner is entitled to the whole profits of business.

→ Partners must agree to share the profits in any manner they choose.

→ But an agreement to share losses is not an essential agreement.

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.
- There should be a binding contract of mutual agency between the partners.
- The true test of partnership is mutual agency. If these elements of mutual agency is absent, then there will be no partnership.

In KD Kamnath & Co.

- The two essential conditions to be satisfied are that:
 1. An agreement to share the profit
 2. Business must be carried on by all or any of them acting for all.

True Test of Partnership

1. Agreement :

- Partnership is created by an agreement not by status.
- and therefore members of HUF & Burmese Buddhist husband & wife carrying on business are not partners in a business.

2. Sharing of Profit :

- The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such person partners.

The receipt by a person -

- of a share of profits of a business [OR]
- of a payment contingent upon the earning of profits [OR]
- varying with the profits earned by a business.

Does not of itself make himself as a partner with the person carrying on

the business and particulars, the receipt of such share or payment.

- (a) lender of money to persons engaged or about to engage in any business
- (b) servant or agent as remuneration.
- (c) widow or child of a deceased partner as annuity.
- (d) by a previous owner or part owner of the business, as consideration for the sale of goodwill or share thereof.

3. Agency:

- Mutual Agency is the Cardinal Principal of Partnership.
- Each partner carrying on the business is the principal as well as an agent of other partners. Act of one can binds all the partners.

Case : Santiranjana Das Gupta vs. Dasyran Muzamull
(supreme court)

- Supreme court reach the conclusion that there is no partnership between the parties :

a parties have not retained any record of terms & conditions of partnership.

(b) Partnership business has not maintained of accounts of its own which would be open to inspection of by both parties.

(c) No account of the partnership was opened with any bank.

d. No written intimation was conveyed to the Deputy Director of Procurement with respect to newly created p'ship

* Kinds of Partnership

with regard to duration

with regard to the extent of the business

Partnership at will

Partnership for a fixed period.

Particular Partnership

General Partnership

1. Partnership at will :

- No fixed period has been agreed upon for the duration of the partnership.
- No provision (purpose) made as to the determination of the partnership.
- Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

2. Partnership for a fixed period :

- Purpose is made by a contract for the duration of the partnership, the partnership is called partnership for a fixed period.
- This kind of p'ship created created only for fixed period.
- Such p'ship comes to an end on the expiry of the fixed period.

3. Particular Partnership :

- This kind of p'ship made for a [^] single adventure as well as for the prosecution of

continuous
conduct of a business.

→ where a person becomes partner with other in any particular adventure or undertaking the partnership is called particular partnership.

→ It is dissolved by the completion of the adventure or undertaking.

4. General Partnership :

→ where a p'ship is constituted with respect to the business in general, it is called a general partnership.

→ general p'ship differs from particular p'ship. in particular p'ship liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of general p'ship.

* Partnership Deed

meaning: The document in writing containing the various terms & conditions as to the relationship of the partners to each other is called "partnership deed".

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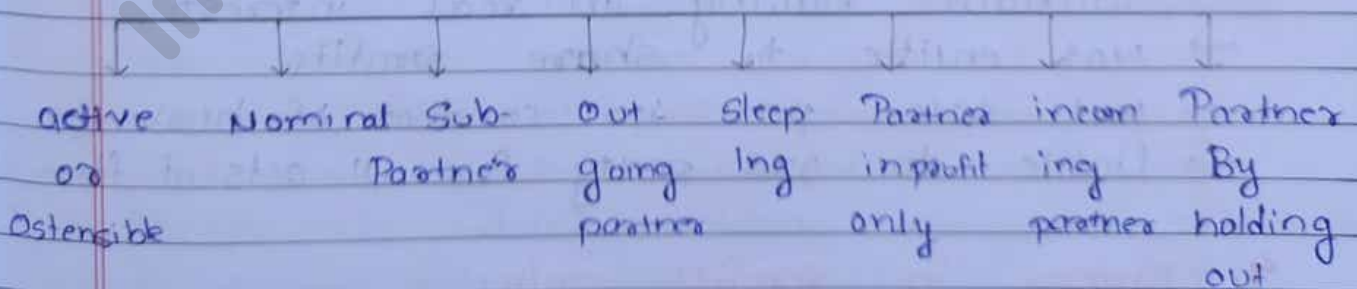
* Partnership Deed

meaning : "The document in writing containing the various terms & conditions as to the relationship of the partners to each other is called "partnership deed".

* Partnership deed contain following info:-

1. Name of the partnership firm
2. Names of all the partners.
3. Nature and place of business of firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of partners.
7. Profit sharing Ratio of the partners.
8. Admission & Retirement of a partner.
9. Rates of interest on capital, drawings & loans.
10. Provisions for settlement of account in case of dissolution of the firm.
11. Provisions for salaries & commissions payable to the partners.
12. Provisions for expulsion of partner in case of gross breach of duty or fraud.

* Types of Partners



1. Active Partner:

- Becomes partner by agreement.
- actively participates in the conduct of pship.
- Acts as an agent of other partners
- must give a public notice before or at the time of retirement
- he is ~~will~~ not liable for acts done by other partners after his retirement.

2. Sleeping or Dormant Partner:

- partner by agreement
- not actively participate in the business
- entitle to share profits & held liable to the third party for all acts of firm.
- Not required to give public notice of their retirement.

3. Nominal Partner:

- Person who lends his name to the firm
- without having an real interest
- Not entitle to share profits
- Not take part in conduct of business
- Liable to 3rd party for all acts of firm.

4. Partner in profits only:

- entitle to share profits only.
- Not liable for the losses

→ Liable to the 3rd party for all acts of the profits only.

5. Incoming Partner :

- admitted as a partner into already existing firm with the consent of all the existing partner.
- Not liable for any act of firm done before his admission as a partner.

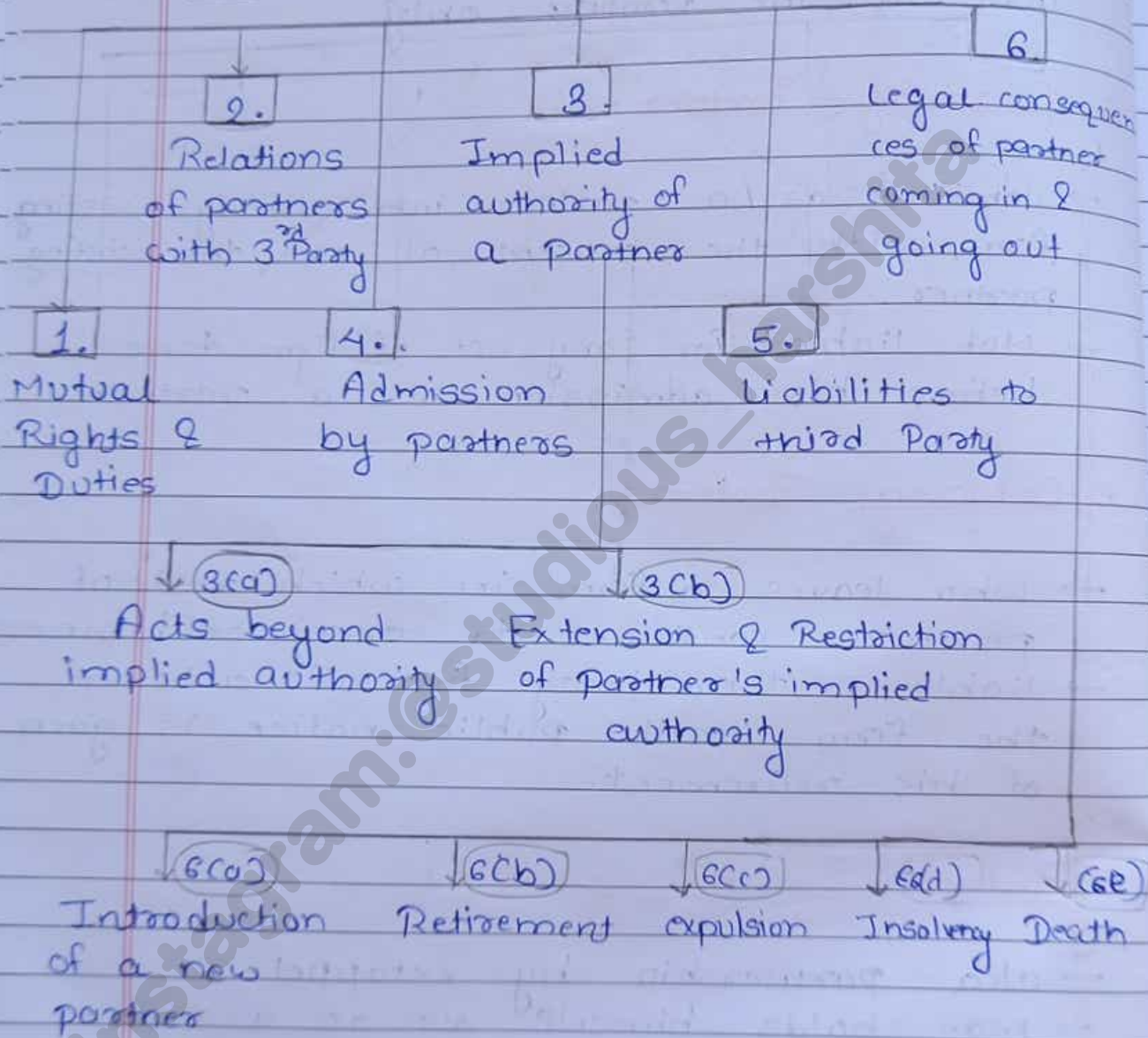
6. Outgoing Partner :

- who leaves a firm in which rest of partners continue to carry on business.
- liable to third party for all acts of the firm until public notice is given of his retirement.

7. Partner By Holding Out :

- aka partnership by estoppel.
- man holds himself out as a partner or allows others to do it, he is then stopped from denying the character he has assumed & upon the faith of which, creditors may be presumed to have acted.
- He is liable like a partner in the firm.

Unit - 2 Relations of Partners



* Relations of Partners to one another

1. General duties of partners : section 9 :

Partners are bound to carry on the business of the firm to the greatest common advantage,
 → to be just faithful to each other and to render true accounts & full information of all things affecting the firm to any partner or his legal representative.

2. Duty to indemnify for loss caused by fraud : section 10

→ Every partner shall ^{compensate, भरपाई} indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

→ An act of a partner imputable to the firm or the principal of agency, which is a fraud on his co-partners, entitles co-partners to throw the whole consequences upon him.

3. Determination of rights and duties of partners by contract between the partners : section 11 :

→ The mutual rights & duties of partners of

a firm may be determined by contract between the partners, and such contract may be implied or express by a course of dealing

→ such contract may be vary by consent of all the partners, consent may be express or implied by course of dealing.

→ Agreement in restraint of trade: a partner shall not carry on any business other than that of the firm while he is a partner.

4. The Conduct of the business: section 12

a. every partner has a right to take part in the conduct of the business.

b. every partner is bound to attend diligently to his duties in the conduct of business

c. any difference arising as to ordinary matters connected with the business may be decided by majority of partners, & every partner shall have the right of to express his opinion before the matter is decided, but no change may be made in the nature of business without the consent of all partners

- d. every partner has a right to access to & inspect & copy any of the books of firm.
- e. In the event of death of a partner, his heirs or legal representatives or their duly authorised agent shall have a right to access to and to inspect and copy any of the books of firm.

5. Mutual Rights and Liabilities: section 13.

- a. a partner is not entitled to receive remuneration for taking part in the conduct of business.
- b. the partners are entitled to share equally to the losses sustained by the firm.
- c. where a partner is entitled to share interest on the capital subscribed by him such interest shall be payable only out of profits.
- d. A partner making for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of 6% per annum.

e. the firm shall indemnify a partner in respect of payment made & incurred liabilities by him - ₹

(i) in the ordinary and proper conduct of the business &

(ii) in doing such act, in an emergency, for the purposes of protecting the firm from loss, as would be done by a person of ordinary course of prudence in his own case, under similar circumstances.

f. a partner shall indemnify the firm for any loss caused by to it by his wilful neglect in the conduct of business of the firm.

Partnership Property : Section 14 :

<p>All property, rights & interest which partners may have brought into the common stock as their contribution to the common business.</p>	<p>All property, right & interest acquired or purchased by or for the firm, or for the purposes & in the course of the business of the firm</p>	<p>Goodwill of the business</p>
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Goodwill:

→ As per sec 14, the goodwill of the business is subject to a contract between the partners and to be regarded as property of the firm.

→ section 14 does not define the ~~firm~~ goodwill.

→ However it is 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".

→ When a partnership firm is dissolved every partner has a right, in the absence of any agreement to the contrary, to have the goodwill of business sold for the benefit of all the partners.

→ Goodwill is a part of a firm's property.

→ It can be sold separately or along with the other properties of the firm.

→ Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner

will not carry on any business similar to that of the firm within a specified period or within specified local limits & notwithstanding anything contained in sec 27 of ICA, 1872.

→ such agreement shall be valid if the restrictions are reasonable.

Property of a partner:

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

Application of the property of firm: sec. 15

→ 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.

Personal Profit earned by Partners :

Section 16 :

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

Right & Duties of Partners after change in the firm: section 17

Following are the situations when there is a change in the constitution of the firm :

1. Admission of new partner.
2. Death or retirement of a partner.
3. Partnership carries on business other than original one.

4. Fixed period partnership carried on through after expiry of fixed period.

Partner to be Agent of the firm:

section 18:

→ Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the firm business of firm.

Implied Authority of Partner as Agent of the firm: section 19:

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

→ Subject of the provision of sec 19: The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

→ The authority of a partner

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) acquire ^{transfer} immovable property ~~on~~ belonging to the firm.

(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.

Extension & Restriction of partners

implied authority: Sec. 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 3rd party.

1. > The 3rd party knows about the restriction.

2. > The 3rd party does not know that he is dealing with a partner in a firm.

Partner's Authority in an Emergency :

section 21 : A partner has an 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.

Minors Admitted to the benefits of Partnership : section 30

• Rights :

- A minor partner has a right to his agreed share of the profits & of the firm.
- He can have access to , inspect & copy the accounts of the firm.
- He can sue the firm partners for accounts or for payment of his share but only when severing his connection with the firm , and not otherwise.

4. On attaining majority he may within 6 months elect to become a partner or not to become a partner.

4.a. If he elects to become a partner he is entitled to the share to which he was entitled as a minor.

4.b. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

2 Liabilities :

2.1 Before Attaining Majority :

(a) The liability of the minor is confined only to the extent of his share in the profits & the property of 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.

2.2 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 firm.

where he has elected not to become partner he may give public notice that he has elected not to become partner & 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 6 months.

(a) when he becomes partner :

(i) He becomes personally liable to third parties since he was admitted.

(ii) his share in the property & the profits of the firm remains the same.

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

(i) his rights & liabilities continue to be those of a minor up to the date of giving public notice.

(ii) ~~at~~ his share shall not be liable for any acts of the firm done after the date of the notice.

(iii) He can sue partners for his share of the property & profits. He shall give notice to the Registrar that he has or has not become a partner.

Effect of Admissions by a partner

Section 23: An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business and liable.

Effect of Notice to Acting Partner : **sec 24.**

→ 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 fraud on the firm committed by or with the consent of that partner.

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

Liability of a partner for act of firm:

section 25: Every partner is liable, jointly with all the other partners & also severally, for all acts of the firm done while he is a partner.

Liability of the firm for Wrongful Act of a partner: **Section 26.**

where the wrongful act or omission of a partner

- In the ordinary course of business of firm
- with the authority of the partners

loss or injury is caused by

Liability of the firm for misapplication

by partner: **Sec 27** where:

- A partner acting within his apparent authority receives money or property

from a third party and misapplies it

OR

b. A firm in the course of its business receives money or property from a third party & money or property is misapplied by any of the partners when it is in the custody of the firm, the firm is liable to make good the loss.

Right of transferee of a partner's interest : Sec. 29.

1. 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 interference in the conduct of the business or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive
2. The firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of

the firm to which the transferring partner is entitled to, & for the purpose of ascertain that share, to an account as from the date of the dissolution

Summary is

Rights of the transferee cannot interfere with the 'conduct' of business. Receipt of share of 'undivided' business asset of the firm is not a condition to be satisfied.

During the continuance of the business On dissolution of firm or settlement of transfer

can't ask for inspection of books & accounts. Entitled to inspect books & accounts for ascertaining value of the share in firm.

Introduction of a partner : section 31

- 1 Subject to contract between the partners & to the provisions of Sec 31. No person shall be introduced as a partner into a firm without the consent of all existing partners.
- 2 Subject to the provisions of section 31, a person who is introduced as a partner into a firm does not thereby become liable for any acts done by before he become a partner.

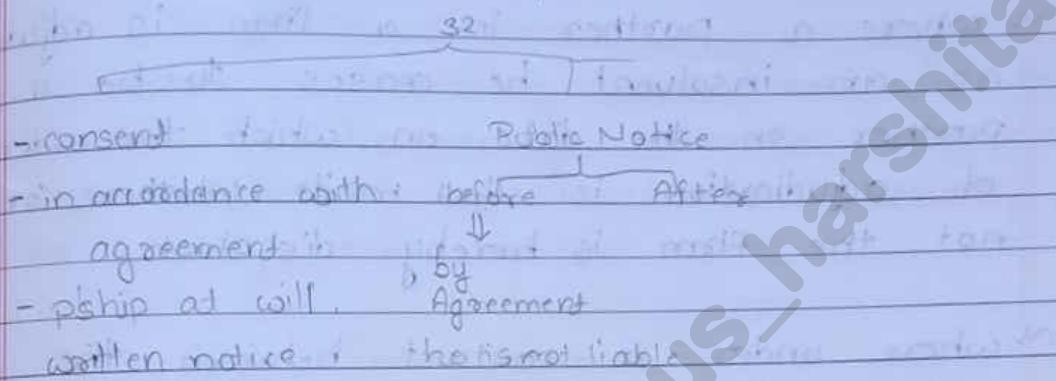
Retirement of A partner : sec 32

1. A partner may retire :
 - (a) with consent of all the other partners
 - (b) in accordance with an express agreement by partners
 - (c) where partnership at will, by giving notice in writing to all the other partners of his intention to retire

2. A Retiring partner may be discharged from any liability to any 3rd party for acts of the firm doing before his retirement by an agreement made by him with such 3rd party & the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the 3rd party & the reconstituted firm after he had knowledge of retirement.

3. Notwithstanding the retirement of a partner from a firm, he had and the partners continue to be liable as partners to third party 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 the retiring partner is not liable for to any third party who deals with the firm without knowing that he was a partner



Expulsion of a partner : Sec 33

- (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
- (iii) It has been exercised in good faith.

→ The provisions of sub section (2), (3) & (4) of section 32 shall apply to an expelled partner as if he were a retired partner

- expulsion must be in the interest of p'ship
- expulsion is served with notice.
- He is given an opportunity of Being heard.

→ If a partner is otherwise expelled, the expulsion

is null and void.

Insolvency of a Partner: sec 34:

~ where a partner in a firm is adjudicated as an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.

~ where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner:

Sec 35: 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.

Right of outgoing partner to carry on competing business : Sec 36.

An outgoing partner may carry on business competing with that of the firm & he may advertise such business, but subject to contract to contrary, he may not -

- (A) use firm name,
- (B) represents himself as carrying on the business of the firm
- (C) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreement in restraint of trade : (2)

A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm.

↳ Notwithstanding anything contained in sec 24 of ICA, 1872, such agreement shall be valid if such restrictions imposed are reasonable.

Right of outgoing partner in certain cases to share subsequent profits: **SEC 37**

where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partner carrying on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at her option of himself or his representatives to such share of the profits made since he is ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six percent per annum on the amount of his share in or to interest @ 6% per annum on amount of his share in property of firm.

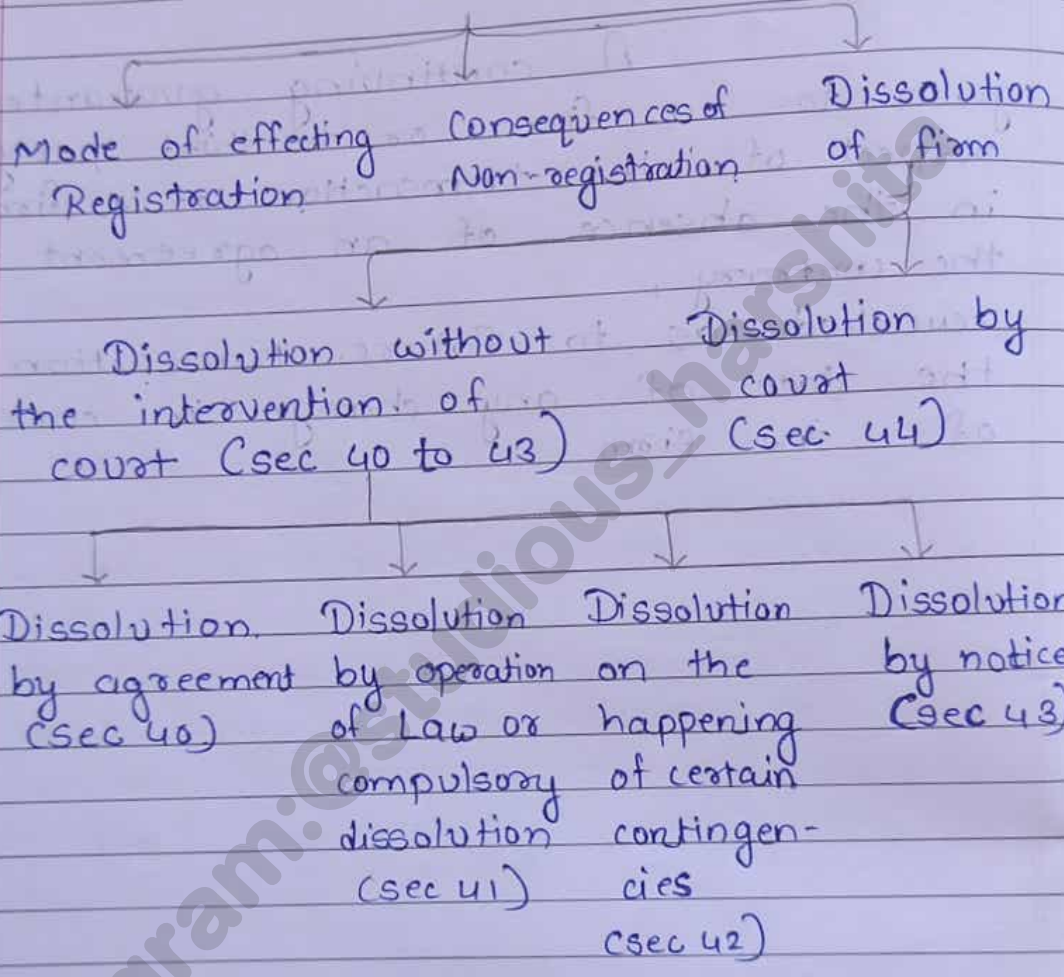
⇒ Although the principle applicable to such cases is clear but at times some complicated question

Revocation of continuing guarantee by change in firm : sec : 38

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

Instagram: @studious_harshita

Unit - 3 : Registration & Dissolution of a Firm :



Registration of Firms

Application for Registration :

1. The registration of a new 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 of any other places where the firm carries on business.
- (f) The duration of the firm.

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

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

(2) A firm name shall not contain any of the following word.
 ↳ Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal or words expressing or implying the sanction, approval or patronage of Govt. except when the Govt. signifies its consent to use such word.

Registration : Sec 59;

↳ when the registrar is satisfied that the provisions of sec 58 have been duly complied with, he shall record an entry of the statement in a register called: "The Register of Firms" & shall file the statements

Late Registration : on payment of penalty : Sec 59 A-1

↳ If the statement in respect of any firm is not sent or delivered to the registrar within the time specified in sub section (A) of sec 58, then the firm may be registered on payment to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof

Consequences of Non-Registration:

Sec : 69 :

- Under **English Law**, the registration of firms is compulsory. Therefore there is a penalty for non-registration.
- But, **Indian Partnership Act** does not make the registration of firms compulsory nor does it impose any penalty for non-registration.
- However uls 69 non-registration of partnership gives rise to a number of disabilities, as follows:
 - a. No 'suit' in a civil court by firm or other co-partners against third party:
 - The firm or any other person cannot bring an action against the third party for breach of contract entered into by the firm.
 - Unless the firm is registered & the persons suing are or have been shown in the register of firms as partners in the firm.
 - In other words, only registered firm can 'suit' file against the third party.

b. 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.

c. Aggrieved partner cannot bring legal action against other partner or the firm:

→ A partner of an unregistered firm 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.

d. Third party can sue the firm:

→ In case of an unregistered firm, an action can be brought against the firm by a third party.

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→ 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.

d. Third party can sue the firm:

→ In case of an unregistered firm, an action can be brought against the firm by a third party.

exceptions: Non-registration of a firm does not, however, affect the following rights:

1. The right of third parties to sue the firm does or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an official assignee, Receiver of court to seize and release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹100 in value.
5. The right to suit and proceeding instituted by legal representative of heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

Dissolution of Firm : Sec 39 :

The dissolution of partnership between all partners of a firm is called the 'dissolution of firm'.

Dissolution of Firm vs Dissolution of Partnership

Dissolution of FIRM	Dissolution of PARTNERSHIP
1. It involves discontinuation of business in partnership.	It does not effect continuation of business. It only reconstitution of the firm.
2. It involves winding up of the firm & requires realization of asset	It only involves only reconstitution and requires only revaluation of assets & liabilities of the firm.
3. A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4. It necessarily involves dissolution of partnership.	Dissolution of It may or may not involve Dissolution of firm.

It involves final closure of books of the firm

It does not involve final closure of the books of the firm

Modes of Dissolution :-

1 Dissolution Without the order of the court or voluntary dissolution:

(i) Dissolution by Agreement : section 40 :

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

(ii) Compulsory dissolution : section 41 :

→ A firm is compulsorily dissolved.

- by the adjudication of all partners or of all the partners but one as insolvent [or]
- by the happening of any event which makes it unlawful for the business of the firm to be carried on for the partners to carry it on in partnership.

→ However, when more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its

lawful adventures and undertakings.

(iii) Dissolution on the happening of certain contingencies : sec 42 :

→ Subject to a contract between the partners, a firm can be dissolved on the happening of any of the following contingencies -

1. where the firm is constituted for a fixed term, on the expiry of that term;

2. where the firm is constituted to carry out one or more adventures or undertakings, when then by completion thereof, thereof;

3. By the death of a partner;

4. By the adjudication of a partner as an insolvent.

(iv) Dissolution by notice of partnership at will : sec 43 :

(1) where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all other partners of his intension to dissolve the firm.

(2) In case date is mentioned in the Notice: The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or In case no date is so mentioned, as from the date of the communication of the notice.

2. Dissolution by the court : section 44 :

(a) Insanity / unsound mind :

→ where a partner has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.

→ Temporary sickness is no ground for dissolution of firm.

(b) permanent incapacity :

→ where 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 disabilities or illness etc.

(c) Misconduct :

→ where a partner other than the partner suing, is guilty of conduct which is likely to affect prejudicially

the carrying on of the 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 must relate to on the business.

→ In each case nature of business will decide whether an act is misconduct or not.

d. Persistent breach of agreement:

→ Where a partner other than the partner suing, willfully or persistently commits breach of contract agreement 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 into category of breach of contract.

- Embezzlement
- Keeping erroneous accounts
- Holding more cash than allowed.
- Refusal to show accounts despite repeated request etc.

e. Transfer of interest:

- where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any ^{other} partner.

d f. Continuous / Perpetual Losses

- where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

d. 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 & equitable grounds -

1. Deadlock in the management
2. where the partners are not in talking terms between them.
3. Loss of substratum.
4. Gambling by a partner on a stock exchange.

Consequences of Dissolution : Sec 45-55

a. Liability for acts of partners done after dissolution : Sec 45 :

(1) → Notwithstanding the dissolution of a firm the partners continue to be liable as such to third party for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution.

→ Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person who dealing with the firm to be a partner, retires from the firm, is not liable

under this section, for acts done after the date on which he ceases to be a partner.

(2) Notice under sub section (1) may be given by any partner.

b. Right of partners to have business wound up after dissolution : **sec 46**

→ On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the the debts & liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

c. Continuing authority of partners for purposes of winding up : **sec 47**

→ After the dissolution of a firm the authority of each partner to bind the firm and the other mutual rights & obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm & to complete transaction begun but unfinished, at the

time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

d. Mode of Settlement of partnership accounts.

Sec 48:

1. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, & lastly, if necessary, by partners individually in the proportions in which they were entitled to share profits.

2. 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 & order:

(a) in paying the debts of the firm to third parties

(b) in paying to each partner rateably what is due to him from capital.

(c) in paying to each partner rateably what is due to him on account of capital.

(d) The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

e. Payment of firm debt & of separate ~~due~~ debts:

Sec 49:

→ where there ^{are} joint debts due from the firm & also separate debts due from partners:

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

(ii) The separate property of any partner shall be applied ~~for~~ first in the payment of his separate debts & surplus, if any, the payment of debts of the firm.