

SWIFTSCANS FOR CA FOUNDATION JUNE' 23



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The swiftscans contain all the questions of


- RTP - May' 18 to June' 23.
- Question papers - May' 18 – Dec' 22.
- Mock test papers

The swiftscans have been divided chapter wise to make it easier for you to follow. Do try to solve the questions before looking into the answers.


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Swiftscans – CA foundation The partnership Act 1932

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**State the differences between Partnership and Hindu Undivided Family.
(RTP May' 18/ MT Nov' 19))**



Partnership	Hindu Undivided Family
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 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.
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 governing male or female member of the family.
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.
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 copartners are liable only to the extent of their share in the profits of the family business.

Partnership	Hindu Undivided Family
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.
A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
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 Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
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.
In case of Partnership number of members should not exceed 50	Members of HUF who carry on a business may be unlimited in number.



Enumerate the differences between Partnership and Joint Stock Company. (MT)/
(MT)



Partnership	Joint stock company
A firm has no separate legal entity distinct from its members	A company is a judicial person distinct from its members
Every partner is an agent of the other partners as well as that of the firm	A member is not the agent of the other members or the company i.e., his acts do not bind the other members or the company
The profits of the firm must be distributed amongst the partners	The profits of the company may or may not be distributed to the members
In case of partnership the liability of a member is unlimited i.e., each partner is personally liable for the debts incurred by the company.	In case of a company the liability of a member is limited to the unpaid value of the shares held by him. However, there may be some companies with unlimited liability.
The firm's property is the joint estate of all the Partners	The company's property is not the property of the members

Partnership	Joint stock company
A share in partnership cannot be transferred without the consent of the other partners	The shares of a company are easily transferrable from one person to another
If there is no express agreement to the contrary every partner has a right to participate in the management.	The members of a company are not entitled to take part in the management unless they are appointed as directors.
In case of partnership the minimum number of partners is 2 and maximum is 50.	In case of a private company the minimum and maximum number of members is 2 and 200 respectively and in case of public company it is minimum 7 and maximum unlimited.
A partnership firm can be dissolved at any time with the contract of all the partners.	A company being a legal person can be wound up only by the order NLLT name struck off by the ROC.



What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932? (Dec' 22)



Basis of difference	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.



Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail. (Dec' 21)/ (MT)/ (MT)/ (MT)



'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. (Section 4 of the Indian Partnership Act, 1932). The definition of the partnership contains the following five elements which must coexist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

Association of two or more persons: Partnership is an association of 2 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 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.

Agreement: There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

Business: In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

Agreement to share profits: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

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.



“Partner indeed virtually embraces the character of both a principal and an agent”. Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932. (RTP May’ 20)



Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm. As per section 4, 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. The definition clearly suggests that any of the partners can be the agent of the others. So far as a partner acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent. The partner indeed virtually embraces the character of both a principal and an agent. The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either. The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.



“Sharing in the profits is not conclusive evidence in the creation of partnership”.
Comment. (Dec’ 21)



“Sharing in the profits is not conclusive evidence in the creation of partnership”

Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties. Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4, in determining the existence or otherwise of partnership. But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred. According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership. Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.



What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. (May' 18/ MT Nov' 19)



The cardinal principle of partner, mutual agency is the conclusive evidence of partner. Existence of this principle helps to decide whether two or more persons are partners or not. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership is deemed to exist.

Circumstances when partnership is not considered between two or more parties:

Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

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



Mr. Ram and Mr. Raheem are working as teacher in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of 2800 and 200 as penalty to resume the electricity connection. Mr. John claimed 3000 from Mr. Ram but Mr. Ram replied that he is liable only for 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partner. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of 3000 to Mr. John? **(RTP June' 23)**



According to Section 4 of the Indian Partnership Act, 1932, "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. Therefore, for determining the existence of partnership, it must be proved.

1. There must be an agreement between all the persons concerned;
2. The agreement must be to carry on some business;
3. The agreement must be to share the profits of a business and
4. The business was carried on by all or any of them acting for all.

In the above case Ram and Raheem jointly took John's flat on rent. The rent was inclusive of electric bill. John failed to pay the electric bill and had to pay the electricity bill of 2800 and 200 as penalty to resume the electricity connection. Mr. John claimed 3000 from Mr. Ram but Mr. Ram claiming they are partners. On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them.

Therefore, Mr. Ram is liable to pay his share only i.e. 1500. Mr. John has to claim rest 1500 from Mr. Raheem.



"Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932. **(Jan' 21)**



The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. The true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.

In *KD Kamath & Co.*, the Supreme Court has held that the two essential conditions to be satisfied are that:

- i. there should be an agreement to share the profits as well as the losses of business; and
- ii. the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4. The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.



State whether the following are partnerships:

- i. A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.
- ii. Two firms each having 12 partners combine by an agreement into one firm.
- iii. A and B, co-owners, agree to conduct the business in common for profit.
- iv. Some individuals form an association to which each individual contributes ` 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
- v. A and B, co-owners share between themselves the rent derived from a piece of land.
- vi. A and B buy commodity X and agree to sell t e commodity with sharing the profits equally. **(Dec' 21)**



- i. **Y**es, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.
- ii. Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
- iii. Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
- iv. No, this is not a case of partnership as no charitable association can be floated in partnership.
- v. No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
- vi. Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.



What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932? (May' 22)



Partnership for a fixed period (Indian Partnership Act, 1932): 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. Once the period is over the firm and partnership comes to an end. However if the partners want they may continue and it shall become a partnership at will.



Explain the following kinds of partnership under the Indian Partnership Act, 1932:

- i. Partnership at will (RTP May' 20)/ (Nov' 20)
- ii. Particular partnership (RTP May' 20)/ (Jan 21)/ (MT)



Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when:

- i. no fixed period has been agreed upon for the duration of the partnership; and
- ii. there is no provision made as to the determination of the partnership.

These two conditions must be satisfied before a partnership can be regarded as a partnership at will.

A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

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.



X and **Y** are partners in a partnership firm. **X** introduced **A**, a manager, as his partner to **Z**. **A** remained silent. **Z**, a trader believing **A** as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, **Z** did not get amount of T.V sets sold to the partnership firm. **Z** filed a suit against **X** and **A** for the recovery of price. Advice **Z** whether he can recover the amount from **X** and **A** under the Indian Partnership Act, 1932. **(RTP Nov' 19)**



As per the provisions of the Partnership Act, 1932 if a partner of the firm represents another as a partner to third party even though he is not a partner and such person does not deny it, then he is a partner by estoppels or holding out. If the third party contracts with the firm believing that the person represented is a partner then such partner by estoppels shall be liable for the contract and his liability shall be severe.

In the above case **X** and **Y** are partners of the firm. **X** introduced **A**, manager, as a partner to **Z** and **A** remained silent. **Z** sold 100 TV sets to the firm on credit and the firm did not pay. As **A** is a partner by estoppel he shall also be laible for the contract and his liability shall be sever i.e., extend to the whole contract.

Thus **Z** can recover the money from **X** and **A**.



Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?(Jan' 21)



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

Liabilities: He is not entitled to share the profits of the firm, neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.



Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932

- a) Whether Bohan is liable for the dues of Karan against the firm.
- b) In case, Karan has filed the suit against firm, whether Bohan would be liable? (RTP Nov' 22)



A nominal Partner is a partner only in name. 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 the share of profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for the acts of the firm. A nominal partner must give public notice of his retirement and his insanity is not a ground for dissolving the firm.

In the instant case, Bohan was admitted as nominal partner in the firm. A creditor of the firm, Karan has claimed his dues from Bohan as he is the partner in the firm. Bohan has denied for the claim by replying that he is merely a nominal partner. Since he is a nominal partner he shall be liable for the acts of the firm.

Therefore

- a) Bohan is liable to Karan like other partners.
- b) In case, Karan has filed the suit against firm, answer would remain same.



Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. (RTP Dec' 21)

OR

Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm. (May' 22)



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 Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

Rights:

- i. A minor partner has a right to his agreed share of the profits and of the firm.
- ii. He can have access to, inspect and copy the accounts of the firm.
- iii. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- iv. On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.



State the legal position of a minor partner after attaining majority:

- i. When he opts to become a partner of the same firm.
- ii. When he decide not to become a partner.



A minor cannot become a partner of the firm however he can be admitted to the benefits of the firm. On attaining majority the minor shall within 6 months from the day he attains majority or the day he comes to know he was a beneficiary whichever is later he must give a notice to the registrar and a public notice of whether he wants to become a partner or not. If he fails to give notice he shall automatically become the partner of the firm.

- i. If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30 of the Indian Partnership Act, 1932, are as follows:
 - a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
 - b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
- ii. When the minor elects not to become a partner:
 - a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
 - b) His share shall not be liable for any acts of the firm done after the date of the notice.
 - c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.



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

- i. Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.
- ii. State the liabilities of a minor partner both:
 - a) Before attaining majority and
 - b) After attaining majority. (MT Mar’ 19)/ (Nov’ 18)/ (MT May’ 20)/ (MT)



U/s 30 of the Partnership Act, 1932 a minor can become a beneficiary of the firm.

- i. A minor when admitted to the benefits of the firm shall have the following rights:
 - a) A minor partner has a right to his agreed share of the profits and of the firm.
 - b) He can have access to, inspect and copy the accounts of the firm.
 - c) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
 - d) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.
- ii. **a) Liabilities of a minor partner before attaining majority:**
 - i. The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
 - ii. Minor has no personal liability for the debts of the firm incurred during his minority.
 - iii. Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

b) Liabilities of a minor partner after attaining majority: Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.



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

- i. To what extent X will be liable if he failed to give public notice after attaining majority?
- ii. Can Mr. L recover his debt from X? (Nov' 19)



As per the provisions of Section 30 of the Indian Partnership Act, 1932, a minor can be admitted to the benefits of the firm. At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

- a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

In the above case X was introduced to the benefits of partnership of M/s ABC & Co. After attaining majority he failed to give notice. Since X has failed to give a public notice, he shall become a partner in the firm. Mr. L, a supplier filed a case against the firm for recovery of debt.

Thus

- i. X will be personally liable to Mr. L.
- ii. Mr. L can recover his debt from X in the same way as he can recover from any other partner.



Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm? **(RTP May' 22)**



By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.

In the given case, Moni and Tony were partners in the firm and they admitted Sony as a new partner. Sony actively engaged in day-to-day activities of the firm. The firm had a tradition that all active partners will get a monthly remuneration of 20,000 but no express agreement was there. Moni and Tony were getting salary from the firm but no salary was given to Sony from the firm. As existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.

Thus Sony is entitled to get remuneration from the firm.



What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? (Nov' 19)



The term “Goodwill” has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act states that the goodwill of a business shall be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.



A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of 350? Assume there is no contract between the partners regarding the above. (RTP Dec' 21)



According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –

- a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- b) if a partner carries on any business of the same nature 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.

In the given scenario, Mr. B had sold iron bar to the firm at the current prevailing market rate of 350 per Kg though he had stock with him which he bought for 200 per Kg. Hence, he made an extra profit of 150 per Kg. This is arising purely out of transactions with the firm.

Hence, Mr. B is accountable to the firm for the extra profit earned thereby.



Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? (Nov' 19)



According to section 16, subject to contract between the partners:

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



"Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? (Nov' 19)



According to Section 19 of the Indian Partnership Act, 1932, subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority". In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- 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.



Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932? **(July' 21)**



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.

- i. There was an **agreement** between all the persons concerned
- ii. The agreement was to **share the profits** of a business and
- iii. The business was **carried on by all or any of them** acting for all.

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

Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

Existence of **Mutual Agency** which is the cardinal principle of partnership is conclusive evidence of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the 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 is deemed to exist.



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

What will be your advice in case M was having knowledge about the agreement? (MT Aug' 18)/ (MT Mar' 19)/ (MT May' 20)/ (MT)



According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners. Any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

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.

In the above case A, B and C are partners of the firm which deals in office furniture. A was in charge of purchase and sale, B in charge of maintenance and C in charge of handling legal matters. They agreed that henceforth A will be in charge of maintenance and B would be in charge of sales and purchase. M a supplier of furniture who was not aware of this agreement supplied some furniture to A who sold it to a third party. As M was not aware of the change in authority he shall not be bound by such agreement.

Thus M can recover the money from the firm.

On the other hand if M was aware of the change in the authority of the partners he shall also be bound by the terms of the agreement and cannot recover the money from the firm.



In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932? **(MT Aug' 18)**



As per section 19 of the Indian Partnership Act, 1932 any act done by the partner as an agent if done in the usual course of the business shall bind the firm. The authority of a partner to bind the firm is called his “implied authority”

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

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



Shyam, Mohan and Keshav were partners in M/s Nandlal Gokulwale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932. (RTP June' 23)



According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner. Further, according to 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.

On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss.

Hence, this sale will bind the firm.



Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. (Nov' 20)/ (RTP May' 21)



As per section 27 of Indian Partnership Act, 1932, where-

- a) 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, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm. On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners. The firm would be liable in both the cases.



A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

- i. Whether the Firm's contention shall be tenable?
- ii. What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware? (MT Oct' 18)



As per section 19 of the Indian Partnership Act, 1932 the implied authority of the partner binds the firm for any act done by him in the usual course of the business. In the eyes of law every partner is the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership. If the partner does any act in the name of the firm and in the ordinary course of the business the firm shall be liable even if the firm had not enjoyed the benefit of such contract. However the firm can recover it from the partner who had contracted in the firm's name.

In the above case A, B and C are partners of a firm. A with an intent to deceive D contracts with D to purchase stationery in the name of the firm. This order to purchase was in the usual course of the business for the firm. A uses the stationery for his personal use. D claims the money from the firm and the firm refuses to pay on the grounds that the stationery was never used by the firm. As the act of A was done in the usual course of the business it shall be binding on the firm even though the goods were never used by the firm.

- i. The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- ii. In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm.

In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.



What do you mean by “implied authority” of the partners in a firm? Point out the extent of partner’s implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932. (RTP May’ 19)



As per section 19 of the Indian Partnership Act, 1932 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 to bind the firm conferred by this section is called his “implied authority”. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- 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.

As per 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 conditions, and such acts shall bind the firm.



Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932. (MT Nov' 19)



As per the provisions of the Indian Partnership Act, 1932 unless otherwise provided in the partnership deed, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business and is done in a usual manner.

In the above case Mahesh, Suresh and Dinesh are partners of a firm. Mahesh without the consent of others borrows 50,000 from Ramesh on behalf of the firm. As the act is done in the usual course of the firm, it is binding on the firm.

So Ramesh can also hold Suresh and Dinesh liable even though the loan was taken without their consent.



What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? (Nov' 19)



According to Section 24 of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive.



Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. (RTP May' 18)/ (MT Oct' 18)



A minor is incompetent to contract and any contract with a minor is void-ab-initio. It was also held in the case of *Mohiri Bibi V Dharmodas Ghosh* that a minor shall not have any contractual capacity and hence a contract with a minor shall be void. Any agreement between two or more persons to enter into a partnership is a contract and a minor cannot enter into a contract. Thus a minor cannot be admitted in the business of partnership firm because the partnership is formed on a contract. However section 30 of the Partnership Act, 1932 states that a minor cannot be a partner of the firm however he can be admitted to the benefits of the firm with the consent of the other partners.

Rights of the minor in the firm: A minor when he is admitted to the benefits of the firm shall have the following rights:

- a) a minor has a right to his agreed share of the profits and of the firm.
- b) he can have access to, inspect and copy the accounts of the firm.
- c) he can sue the partners for accounts or for payments of his share but only, when severing his connection with the firm, and not otherwise. The amount of share shall be determined by a valuation made in accordance with the rules upon dissolution.
- d) on attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.



A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? (RTP May' 18)



As per section 37 of the Indian Partnership Act, 1932 where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner and the firm, then, if there is no agreement to the contrary the legal representatives of the deceased partner or the retired partner are entitled to claim either:

- i. Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or
- ii. Interest at the rate of 6 per cent annum on the amount of his share in the property.

In the above case A, B and C are partners of a firm. The contract specifies that A is entitled to 20% of the partnership property. A retires and then dies and the partners do not settle his account. On the death of the partner the legal heirs are entitled to get his share or interest.

Thus A's Legal representatives shall be entitled, at their option to:

- i. 20% shares of profits (as per the partnership deed); or
- ii. interest at the rate of 6 per cent per annum on the amount of A's share in the property.



Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932? (Dec' 22)



As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

- 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 and shall be null and void.

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

1. The expulsion must be in the interest of the partnership
2. The partner to be expelled is served with a notice
3. He is given an opportunity of being heard.

So a partner may be expelled by other partners strictly in compliance with the provisions of section 33.



Mr A (transferor) transfer his share in a partnership firm to Mr B (transferee). Mr B is not entitled for few rights and privileges as MrA (transferor) is entitled therefor. Discuss in brief the points for which Mr B is not entitled during continuance of partnership? (RTP May' 21)/ (RTP Dec' 21)/ (MT)



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

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

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

However, Mr B is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e. he cannot challenge the accounts.



Ram & Co., a firm consists of three partners A, B and C having $\frac{1}{3}$ rd share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. (RTP Nov' 18)



As per section 44 of the Indian Partnership Act, 1932 a partner may be expelled from the firm if the following conditions are fulfilled:

- 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.

The test of good faith includes:

- a) that the expulsion must be in the interest of the partnership;
- b) that the partner to be expelled is served with a notice; and
- c) that the partner has been given an opportunity of being heard.

If the expulsion does not fulfill all the conditions the expulsion is null and void.

In the above case A, B and C are partners of the firm. A and B want to expel C as his activities are against the interest of the firm.

Thus, in the given case A and B the majority partners can expel the partner only if such expulsion is in good faith as stated above.



A, B and C are partners in M/s ABC & Company. The firm has decided to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. The machine was purchased but thereafter A and B became insolvent and the firm was unable to pay for machine. Explain, would the estate of C liable for the dues of M/s LMN & Company? **(RTP Nov' 22)**



According to Section 35 of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. The estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. Machine was purchased but after that A and B become insolvent and the firm was unable to pay for machine. On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C.

Hence, the estate of C would not be liable for the dues of M/s LMN & Company.



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

- i. Examine whether action by the partners was justified or not?
- ii. What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (Nov' 19)/ (MT)



As per the provisions of the Partnership Act, 1932 a partner can be expelled from a firm by a majority of partners but only if the expulsion is in good faith. The test of good faith as required under Section 33(1) includes three things:

- 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.

In the above case G was introduced as a partner in a firm. Later it was found that he was involved in unauthorized activities and all the partners consented to expel G.

Thus

- i. As the expulsion is in the interest of partnership it is valid provided he was given a notice and an opportunity of being heard.
- ii. The factors to be kept in mind for expulsion is:
 - a. The power of expulsion is given in the contract
 - b. The power is exercised with the consent of majority; and
 - c. The expulsion is in good faith.



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? (RTP Nov' 18)/ (RTP June' 23)



Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property. Such transfer may take place either by way of sale, pledge or mortgage. By virtue of Section 31, a person cannot be introduced as a partner in a firm without the consent of all the partners. A partner is not debarred from transferring his interest but for such transfer he must get the consent of all the other partners. However as the partnership relationship is based on mutual confidence, the assignee of a partner's interest cannot enjoy the same rights and privileges as the original partner. The rights of such transferee are as follows:

1. During the continuance of partnership, such transferee is not entitled
 - a) to interfere with the conduct of the business,
 - b) to require accounts, or
 - c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

2. On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
 - a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.



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

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

(July' 21)/ (MT)/ (MT)/ (MT)



According to Section 29 of the Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm,

- i. to interfere in the conduct of business,
- ii. to require accounts, or to inspect the books of the firm,

but he is entitled to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

If 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, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the above case partner M sells his share in the firm to Mr. Z.

Thus

- i. Mr. M can validly transfer his interest in the firm by way of sale.
- ii. On the retirement of the transferring partner, the transferee, Mr. Z, will be entitled, against the remaining partners:
 - a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.



Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. **(Jan' 21)**



As per section 25 of the Indian Partnership Act, 1932, every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm. The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. In order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

As per sections 26 & 27 of the Indian Partnership Act, 1932, where, by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable thereof to the same extent as the partner. A partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.



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



As per section 37 of the Indian Partnership Act, 1932 where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

- i. Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or
- ii. His share shall be treated as advance and he shall be entitled to interest on the amount of his share in the property. The rate of interest shall be rate agreed in the contract and if nothing is agreed @6%.

In the above case A retires from the firm and is later dead. The other partners continue the business without settling the account.

Thus A's legal representatives shall be entitled, at his option to:

- i. 20% shares of profits (as per the partnership deed); or
- ii. interest at the rate of 6% per annum on the amount of A's share in the property.



When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? (Nov' 19)



According to section 38 of the Indian Partnership Act, 1932, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.



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

- i. Whether P's private estate is liable for the price of furniture purchased by the firm?
- ii. Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?(Jan' 21)/ (RTP May' 21)/ (MT)/ (RTP May' 22)/ (MT)



According to Section 35 of the Indian Partnership Act, 1932, 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. Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.

In the light of the facts of the case and provisions of law:

- i. Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.
- ii. It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of P shall not be liable.



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

- i. Whether Ram's private estate is liable for the price of the machine purchased by the firm?
- ii. Against whom can the creditor obtain a decree for the recovery of the price?
(RTP May' 19)



As per section 35 of the Indian Partnership Act, 1932, 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. The liability for such contracts shall only be on the surviving partners.

In the above case Ram, Mohan and Gopal are partners of a firm. The firm ordered a machine with Sunrise Ltd. in the ordinary course of business which was delivered to the firm after the death of Ram. The firm later became insolvent and failed to pay the money. As the liability was incurred after the death of Ram his estate shall not be liable for the contract.

- i. Thus Ram's estate in this case will not be liable for the price as the of the Machinery purchased.
- ii. The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them.



P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share. Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

- i. Rights of P & Q to start a competitive business.
- ii. Rights of P & Q regarding their share in property of M/S PQRS & Co. (Nov' 20)



As per section 36 of the Indian Partnership Act, 1932, an outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

- i. use the firm name,
- ii. represent himself as carrying on the business of the firm or
- iii. solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. 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.

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry 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, is entitled at the option of himself or his representatives to 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 to interest at the rate of 6% per annum on the amount of his share in the property of the firm.

In the above case, P, Q, R and S are the partners in M/S PQRS & Co. P & Q decided to leave the partnership firm and started competitive business in the name of M/S PQ & Co. R & S continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Thus from the above, we can infer that

- i. P & Q can start competitive business in the name of M/S PQ & Co after following above conditions in the absence of any agreement.
- ii. P & Q will get their share in property of M/s PQRS & Co.



Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. (Nov' 20)



A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

- 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.



X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? **(May' 18)/ (MT)**



As per section 33 a partner may be expelled from the firm if the following conditions are fulfilled:

- 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 bonafide interest of the business of the firm.

The test of good faith includes three things:

3. The expulsion must be in the interest of the partnership.
4. The partner to be expelled is served with a notice.
5. He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

In the above case X, Y and Z are partners of a firm. The spouses of X and Y fought and X's wife was hurt. Y on this incident convinced Z to expel Y from the partnership. Y was expelled without serving any notice. In this case expulsion was with the consent of majority however the conditions for good faith were missing. If the expulsion is not in good faith the expulsion is null and void.

Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.



X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A. Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A and Z.

Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? (MT)



According to Section 33 of Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

- 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 bonafide interest of the business of the firm. The test of good faith as required under Section 33 includes three things:

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

If a partner is otherwise expelled, the expulsion is null and void.

In the above case partner Y misbehaved with the Mrs A, wife of partner A. the partners without serving any notice to Y decided to expel him. According to the test of good faith as required under Section 33, expulsion of Partner Y is not valid as he was not served any notice and also he was not given an opportunity of being heard. Also the matter of fight between A and Y was on personal reasons, hence not satisfying the test of good faith in the interest of partnership.

Since the conditions given under above provisions are not satisfied, the expulsion stands null and void.



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

Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. (Nov' 18)



As per the provisions of the Indian Partnership Act, 1932, the death of a partner results in the dissolution of the firm. However the partners may by a contract agree that the death of a partner shall not dissolve the firm and the remaining Partners shall continue the firm. In case of death of the partner a notice of the same need not be given to the public. Death shall automatically result in the deceased ceasing to be a partner of the firm and his property shall not be liable for the acts of the firm done after his death.

In the above case A, B and C are partners in a firm where the name of all the partners is written along with the name of the firm. C passed away and the other partners did not remove his name from the list of partners in front of the head office nor from the letter heads. The firm continued its business after settling the accounts but the amount was not paid to the legal heirs. X supplied furniture to the firm and the firm was unable to pay for it due to heavy losses. X wanted to recover the money from the firm as well as the legal heirs of C. As the contract was made after the death of C, the estate of C is not liable. In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners deceased partner.

Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.



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

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. (Nov' 18)



As per the provisions of the Indian Partnership Act, 1932, a partner when retiring from the firm must give a public notice of his retirement. If notice of retirement is not given then the partner shall be liable for the acts of the firm even after his retirement. However if the existence of a partner was not known then even if he retires without giving any public notice he shall not be liable for the subsequent acts of the firm.

In the above case M, N and P are the partners of the firm. Partner P retired from the firm but failed to give notice of retirement. After retirement P visited a fair along with the other partners and the firm gave their card to a dealer in which P's name was also printed. The dealer sold some refrigerators to the firm and could not recover the dues. X wants to sue P also. As P was a partner whose existence was known to the third parties and he retired without giving any public notice he shall also be liable.

Thus P is also liable to X for the refrigerators sold.



State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932:

- (i) Retirement of a partner
- (ii) Insolvency of a partner (**RTP Nov' 19**)/ (**Nov' 19**)



Retirement of partner:

A partner may retire:

- i. with the consent of all the other partners;
- ii. in accordance with an express agreement by the partners; or
- iii. where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

The retiring partner shall be liable for the acts of the firm before his retirement until public notice is given. Provided that he shall not be liable even if public notice is not given if the third party did not know he was a partner of the firm. A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the remaining partners.

Insolvency of a partner:

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



M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932. (**May'22**)



Subject to contract between the partners and to the provisions of Section 30 of Partnership Act, 1932, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

Further as per section 29 a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners. So the transferee shall have a right to his share but shall have no right to take part in the business of the firm or to check, inspect or copy the accounts of the firm.

In the above case, Mr. A, a partner, transfers his share in the firm to his son Mr. Prateek, the other partners Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts.

Therefore Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners. Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts.



M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

- a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?
- b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?
- c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm? (RTP May' 22)



According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

In the above case M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided.

Therefore

- a) M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.
- b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.
- c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.



Distinguish between dissolution of firm and dissolution of partnership. (May' 18)



The following are the differences between dissolution of firm and dissolution of partnership:

Dissolution of firm	Dissolution of partnership
It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
It necessarily involves dissolution of partnership.	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.



Referring to the Provisions of the Indian Partnership Act, 1932, answer the following:

- i. What are the consequences of Non-Registration of Partnership firm?
- ii. What are the rights which won't be affected by Non-Registration of Partnership firm?(Nov' 20)/ (MT)



Consequences of Non-registration of partnership firm: Under Section 69 of the Indian Partnership Act, 1932 non-registration of partnership gives rise to a number of disabilities. Though registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

Following are the consequences of non-registration:

- a) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.
- 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 (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- 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.

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

- a) The right of third parties to sue the firm or any partner.
- b) 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.
- c) The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
- d) The right to sue or claim a set-off if the value of suit does not exceed 100 in value.



What are the consequences of Non-Registration of a Partnership Firm? Discuss. (May' 19)

OR

Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief? (Nov' 19)/ (MT May' 20)/ (RTP May' 21)/ (MT)/ (Dec' 22)

OR

What are the consequences of Non -Registration of a Partnership Firm? Discuss. (MT Nov' 19)



Registration of a partnership firm under the Indian Partnership Act, 1932 is optional. However an unregistered faces certain disqualifications. These consequences are so grave that a firm would opt for registration. The following are the disabilities of an unregistered firm:

1. **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
2. **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.
3. **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
4. **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.



What is Partnership Deed? What are the particulars that the partnership deed may contain? (RTP Nov' 18)/ (MT Oct' 18)



Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally but it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

Partnership deed may contain the following information:

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

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



What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? (RTP May' 19)



U/s 58 of the Indian Partnership Act, 1932, the registration of a firm may be affected at any time by:

1. A statement in the prescribed form along with the fee shall be sent to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated. The statement shall be sent by post or hand and shall state: -
 - i. The firm's name
 - ii. The place or principal place of business of the firm,
 - iii. The names of any other places where the firm carries on business,
 - iv. The date when each partner joined the firm,
 - v. The names in full and permanent addresses of the partners, and
 - vi. 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.
3. A firm name shall not contain any of the following words, namely:- 'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.



X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932? **(RTP June' 23)**



By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties 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.

In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. Following the provisions of Section 45, X and Y are continuing liable against third party even after dissolution of firm until public notice is given.

As in the given problem, X became insolvent, therefore, Y will be liable to Z.



P & Co. is registered as a partnership firm in 2018 with A, B and P as partners dealing in sale and purchase of motor vehicles. In April 2019, A dies. Now only B and P continue the firm and same business with same firm name P & Co. In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co. The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm. In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable? (MT)



As per section 69 of the Indian Partnership Act, 1932 on eof the disqualifications of an unregistered firm is no suit in a civil court by firm or other co-partners against third party. The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm. So if a partnership firm wants to sue a third party two conditions must be fulfilled:

- i. the firm must be registered; and
- ii. the partners suing should be named as partners of the firm.

In case of a registered firm if the firm continues its business after the death of a partner without any fresh registration a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm. The suit shall be valid if it is filed by the remaining partners in respect of such subsequent dealings or transactions. However in case the firm takes a new partner the suit cannot be filed without fresh registration.

In the instant case, one of the partners of a firm dies and later the firm takes a new partner. Since the fresh registration has not been taken after introduction of new partner S, the firm P & Co. will be considered as unregistered firm.

Hence the firm which is not registered cannot file a case against the third party and so it cannot sue X.



A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration? **(RTP May' 18)**

OR

P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable? **(RTP May' 19)**



As per section 69 of the Partnership Act, 1932 if a partnership firm wants to sue a third party two conditions must be fulfilled:

- i. the firm must be registered; and
- ii. the partners suing should be named as partners of the firm.

In case of a registered firm if the firm continues its business after the death of a partner without any fresh registration a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm. The suit shall be valid if it is filed by the remaining partners in respect of such subsequent dealings or transactions. However in case the firm takes a new partner the a suit cannot be filed without fresh registration.

In the above case A & Co. a registered partnership firm with A, B and C as partners. A dies and without fresh registration the firm sues X. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable. Further in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. In this case the second condition partners suing should be named as partners of the firm is not fulfilled, as the name of D is not registered.

Therefore, in the first case the firm can sue the third party without fresh registration. However in the second case the firm cannot sue as D's name has not been entered in the register of firms and partner suing i.e., D is not named as a partner of the firm.



State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932? (RTP Nov' 18)

OR

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. (Nov' 18)/ (RTP May' 20)/ (May' 22)



U/s 44 of the Partnership Act, 1932 court may, at the suit of the partner, dissolve a firm on any of the following ground:

1. **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
2. **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
3. **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.
4. **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or conducts himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - i. Embezzlement,
 - ii. Keeping erroneous accounts
 - iii. Holding more cash than allowed
 - iv. Refusal to show accounts despite repeated request etc.

5. **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
6. **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.
7. **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
 - i. Deadlock in the management.
 - ii. Where the partners are not in talking terms between them.
 - iii. Loss of substratum.
 - iv. Gambling by a partner on a stock exchange.



G, I and S were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act, 1932 can G, I and S continue the partnership or will their partnership firm get dissolved? (RTP Nov' 22)



As per section 41 of the Partnership Act, 1932, a firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

In this case, the firm is carrying on the business of trading in a particular chemical and a law is passed which bans the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved in the light of Section 41 of the Indian Partnership Act, 1932.

Therefore G, I and S cannot carry the partnership and the partnership shall be dissolved.



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



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

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

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



When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. (MT Mar' 19/ RTP Nov' 19)



The Dissolution of Firm means the discontinuation of the relation existing between all the partners of the Firm. In the case of dissolution of the firm the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place in any of the following cases:

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



MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected? (**RTP Dec' 21**)



According to Section 41 of the Indian Partnership Act, 1932, a firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. However, where 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.

In the above case MN partnership firm has two different lines of manufacturing business - one manufacturing of Ajinomoto and the other manufacture of paper plates & cups. Law was passed banning Ajinomoto thus making it an unlawful business. Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful. However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.

Thus the firm may not dissolve, they can continue the manufacture of paper plates and cups.



Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She wants to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed? (MT)/ (MT)



Ms. Lucy while drafting partnership deed must take care of following important points:

- i. No particular formalities are required for an agreement of partnership.
- ii. Partnership deed may be in writing or formed verbally. 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'.
- iii. Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- iv. If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:

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

Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.



Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. (MT Aug' 18)/ (July' 21)/ (MT)/ (MT)/ (MT)



Subject to a contract between the partners while settling the accounts of a firm after dissolution, the following rules shall be observed:

- i. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- ii. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - 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; and
 - d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.