

Indian Partnership Act, 1932

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| Partnership | '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. |
| Elements | <ol style="list-style-type: none"> 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 (Mutual Agency) |
| True Test of Partnership | <p>For determining the existence of partnership, it must be proved.</p> <ol style="list-style-type: none"> 1. There was an agreement between all the persons concerned; 2. The agreement was to share the profits of a business and 3. The business was carried on by all or any of them acting for all. |
| Partnership Vs. Other Forms of Organizations | Refer Main Notes |
| Kinds of partnerships | <ol style="list-style-type: none"> 1. With Regard to Duration 2. With Regard to extent of business |
| With Regard to Duration | <p>1.Partnership at will-</p> <p>(i) No fixed period (ii) No provision made as to the determination of the partnership. May be dissolved by any partner by giving notice in writing</p> <p>2.Partnership for a fixed Period-</p> <p>Where a provision is made by a contract for the duration of the partnership.</p> |
| With Regard to Extent of business | <p>1.Particular partnership-</p> <p>Partnership constituted for a single adventure or undertaking. General Partnership</p> <p>2.General partnership-</p> <p>Partnership is constituted with respect to the business in general.</p> |
| Types of Partners | <ol style="list-style-type: none"> 1. Active or Actual or Ostensible partner- <ul style="list-style-type: none"> ▪ Who has become a partner by agreement. ▪ Actively participates in the conduct of business. ▪ Must give a public notice on his retirement. 2. Sleeping or Dormant Partner- <ul style="list-style-type: none"> ▪ Who is a partner by agreement. ▪ Who does not actively take part in the conduct of the partnership business. ▪ Not required to give public notice of their retirement from the firm. 3. Nominal Partner- <ul style="list-style-type: none"> ▪ A person who lends his name to the firm. |

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| | <ul style="list-style-type: none"> ▪ Not entitled to share the profits. ▪ Doesn't take part in the conduct of the business. ▪ Liable to third parties for all acts of the firm. <p>4. Partner in profits only- A partner who is entitled to share the profits only.</p> <p>5. Incoming partners- A person who is admitted as a partner into an already existing firm.</p> <p>6. Outgoing partner- A partner who leaves a firm in which the rest of the partners continue.</p> <p>7. Partner by holding out/Partner by Estoppel-</p> <ul style="list-style-type: none"> ▪ Person who has, by his words or conduct have induced others to believe that he is a partner or ▪ has allowed others to represent him as a partner. |
| General Duties of partners (Sec 9) | <p>Partners are bound to-</p> <ul style="list-style-type: none"> ▪ Carry on the business of the firm to the greatest common advantage. ▪ Be just and faithful to each other. ▪ Render true accounts and full information of all things affecting the firm to any partner or his legal representative. |
| Duty to Indemnify for loss (Sec 10) | <p>Partner to indemnify the firm for loss caused by his fraud in the conduct of the business.</p> |
| Determination of Rights & Duties sub to contract b/w partners (Sec 11) | <ul style="list-style-type: none"> ▪ Rights and duties of the partners may be determined by contract b/w them. ▪ Contract may be express or implied. ▪ It may provide that a partner shall not carry on any business other than that of the firm while he is a partner. |
| Conduct of Business (Sec 12) | <p>Sub to contract b/w partners-</p> <ul style="list-style-type: none"> ▪ Every partner can take part in business. ▪ Every partner bound to attend duties diligently. ▪ If difference arises- Majority shall prevail, in case of change of nature of business-consent of all partners required. ▪ Every partner can access, inspect & take copy of BoA. ▪ LR of deceased partner can access, inspect & take copy of BoA. |
| Mutual Rights and Liabilities (Sec 13) | <ol style="list-style-type: none"> 1. Remuneration-Can't be claimed unless express agreement/ Implied by course of dealing/Customary. 2. Profits & Losses- Equal sharing unless agreement to contrary 3. Interest on Capital-from profits only. Further, IoC can be claimed only if-Express agreement/Trade custom/Statutory Provision. 4. Interest on Advances-6% per annum upto the date of dissolution |

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| | <p>5. Firm to indemnify partner for expenses & liabilities incurred in ordinary course + in emergency.</p> <p>6. Partner to indemnify firm for loss due to his wilful neglect.</p> |
| Property of Firm (Sec 14) | <p>Property of the firm includes property & rights and interest brought into stock of the firm or acquired afterwards including goodwill.</p> <p>Property of partner used for firm's business shall not be deemed as partnership property merely because it is used for the business of the partnership.</p> |
| Application of the Property of firm (Sec 15) | The property of the firm shall be held and used by the partners exclusively for the purposes of the business unless there is contract to contrary. |
| Personal Profit Earned by Partners (Sec 16) | If partner derives profit by use of firm's property/business connection/from competing business he must return such profit to firm. (unless there's agreement to contrary) |
| Right & Duties after a change in firm (Sec 17) | <p>Change in firm can take place when:</p> <ol style="list-style-type: none"> 1. New partner comes in. 2. Some Partner(s) goes out. 3. Where partnership carries on business other than for which it was originally formed. 4. Partnership business is carried on after the fixed period. <p>In case of change, rights & duties shall remain same as before sub to contract to contrary.</p> |
| Partner to be agent of the firm (section 18) | Partner shall be Principal as far as he binds himself and he will be deemed as agent as far as he binds other partners. |
| Implied Authority (Sec 19+Sec 22) | <p>Acts done by partner will bind the firm if:</p> <ol style="list-style-type: none"> 1. Act relates to usual business of firm. 2. Act is done in normal conduct of business. 3. Act is done in firm name or in any other manner expressing or implying an intention to bind the firm. |
| | <p>Implied Authority doesn't include:</p> <ol style="list-style-type: none"> (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 |

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| | (h) enter into partnership on behalf of the firm. |
| | Implied authority may be extended or restricted by consent of all other partners. It shall be effective against 3 rd party if: 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. |
| Partner's authority in emergency (Sec 21) | Partner is authorized to do all acts as done by a person of ordinary prudence to protect the firm from loss in a situation of emergency. |
| Effect of admissions by a partner (section 23) | Any representation made by partner wrt to partnership transaction & in ordinary course of business shall bind the firm unless his authority is restricted and other party knows of such restriction |
| Effect of notice to acting partner (Sec 24) | Notice to any acting partner shall be equivalent to the notice to the firm. |
| Liability of a partner for acts of the firm (Sec 25) | All partners shall be jointly & severally liable for acts of the firm. |
| Liability of the firm for wrongful acts of a partner (Sec 26) | Acts done by partners: (a) in the ordinary course of the business of the firm (b) with the authority of the partners. will bind the firm. |
| Liability of firm for misapplication by partners (Sec 27) | Where- (a) a partner receives money or property from a 3 rd party and misapplies it, or (b) a firm receives money or property from a third party, and the money or property is misapplied by any of the partners. The firm is liable to make good the loss. |
| Partner by Holding Out (Sec 28) | Already Discussed |
| Rights of transferee of a partner's interest (section 29) | 1. During Continuance of partnership: Transferee is not entitled: <ul style="list-style-type: none"> ▪ to interfere with the conduct of the business, ▪ to require accounts, or ▪ to inspect books of the firm. He is bound to accept the profits as agreed to by the partners. 2. On Dissolution of firm or on retirement: (a) to receive the share of the assets of the firm. (b) he is entitled to an account as from the date of the dissolution. |
| Minors admitted to the benefits of partnership (section 30) | 1. Rights: (i) Right to agreed share of the profits and of the firm (ii) Access to, inspect and copy the BoA of the firm. (iii) Can sue the partners for accounts or for payment of his share |

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| | <p>but only when severing his connection with the firm. (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 partner his share will remain same.</p> <p>2. Liabilities:</p> <ul style="list-style-type: none"> ▪ Before Attaining Majority <ul style="list-style-type: none"> (a) Liability confined to the extent of his share in the profits and the property of the firm. (b) No personal liability for the debts incurred during his minority. (c) minor cannot be declared insolvent ▪ .After Attaining Majority <ul style="list-style-type: none"> (a) When he becomes partner on his own willingness or by his failure to give the public notice within specified time- <ul style="list-style-type: none"> (i) Personally liable to 3rd parties for all acts of the firm done since he was admitted to the benefits of partnership. (ii) His share in the property and the profits of the firm remains the same to which he was entitled as a minor. (b) when he elects not to become a partner- <ul style="list-style-type: none"> (i) Rights and liabilities continue to be those of a minor up to the date of giving public notice. (ii) his share shall not be liable for any acts of the firm done after the date of the notice. (iii) he shall be entitled to sue the partners for his share of the property and profits. Such minor shall give notice to the registrar that he has or has not become a partner. |
| <p>Introduction of a Partner (Sec 31)</p> | <p>Partner shall be introduced with the consent of all partners. (Sub to contract). He shall be liable for acts of the firm after his admission.</p> |
| <p>Retirement of Partner (Sec 32)</p> | <p>Partner may retire-</p> <ol style="list-style-type: none"> 1. With the consent of all partners/ Express Agreement/ By giving Notice-in case of partnership at will 2. Retiring partner may be discharged from his liability to any 3rd Party if-Agreement with 3rd party & all other partners 3. If public notice of retirement not given- partner continue to be liable 4. Notice may be given by retired partner or any other partner |
| <p>Expulsion of Partner (Sec 33)</p> | <p>A partner may be expelled if-</p> <ul style="list-style-type: none"> (a) Power of expulsion existed in the contract b/w partners. (b) Power exercised by Majority. (c) Power exercised in good faith. |

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| Insolvency of Partner (Sec 34) | 1. Insolvent partner will cease to be partner from the date of order of adjudication. 2. Estate not liable for firm's act after adjudication. 3. Firm not liable for partner's acts after adjudication. 4. Insolvency will lead to dissolution-sub to contract. |
| Liability of Estate of Deceased Partner (Sec 35) | Estate of deceased partner will not be liable for the acts of firm after the date of death partner even if no public notice has been given. |
| Rights of Outgoing Partner to carry on competing business (Sec 36) | <p>Outgoing Partner may carry competing business but he can't:</p> (a) use the firm name, (b) represent himself as carrying on the business of the firm or (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner. He may also agree that he won't carry on similar business after retirement within a specified period/local limits. |
| Right of outgoing partner in certain cases to share subsequent profits (Sec 37) | 1. If firm carries on business without final settlement of A/cs b/w Outgoing partner/LR of deceased partner and the continuing partner, firm shall be liable to pay- Profits as attributable to use of his share or Interest @6% p.a. |
| Revocation of continuing guarantee by change in firm (Sec 38) | Continuing Guarantee given to any 3 rd Party wrt transactions with a firm shall get revoked as to future transactions if there is any change in the constitution of firm. |
| Application of Registration (Sec 58) | Registration may be effected anytime by delivering to the registrar of firm a statement in the prescribed form along with the prescribed fee. If Registrar is satisfied with the formalities, he shall issue a certificate of Registration. |
| Consequences of Non-Registration (Sec 69) | 1. No suit in a civil court by firm or other co-partners against third party 2. No relief to partners for set-off of claim (if value of suit is more than Rs. 100) 3. Aggrieved partner cannot bring legal action against other partner or the firm(except for dissolution of the firm or for accounts and realization of his share) 4. Third party can sue the firm |
| Rights unaffected | 1. Right of third parties to sue the firm or any partner. 2. Right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm. 3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action. |

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| | <p>4. The right to sue or claim a set-off if the value of suit does not exceed ` 100 in value.</p> <p>5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.</p> |
| | <p>1. If a new partner has been admitted in the firm, registrar should be notified, in case of failure-firm shall not be regarded as a registered firm.</p> <p>2. If a partner retires, firm still be regarded as registered even if fact not notified to registrar.</p> |
| Dissolution of Partnership Vs. Dissolution of Firm | Refer main notes |
| Dissolution without the order of Court | <p>1. Dissolution by Agreement (Sec 40)</p> <p>2. Compulsory Dissolution (Sec 41)- (a)All partners or All partners except one adjudicated insolvent (b)Business of the firm becomes unlawful</p> <p>3. Dissolution on the happening of certain contingencies (Sec 42)</p> <ul style="list-style-type: none"> ▪ On the expiry of term fixed (in case of fixed period partnership) ▪ Where the firm is constituted to carry out one or more adventures or undertaking, then by completion thereof. ▪ By the death of a partner. ▪ By the adjudication of a partner as insolvent. <p>4. Dissolution by notice of partnership at will (Sec 43)- Any partner can give notice and dissolve the firm</p> |
| Dissolution by the Court (Sec 44) | <p>On a suit of the partner Court may dissolve the firm on the following grounds-</p> <ol style="list-style-type: none"> 1. Insanity/Unsound Mind 2. Permanent Incapacity 3. Misconduct 4. Persistent breach of Agreement- Embezzlement/Keeping erroneous accounts/Holding more cash than allowed/ Refusal to show accounts despite repeated request etc 5. Transfer of Interest 6. Continuous/Perpetual Losses 7. Other Just & Equitable grounds- Deadlock in the management/Where the partners are not in talking terms between them/Loss of substratum/Gambling by a partner on a stock exchange |
| Liability for acts of partners done after | If public notice of dissolution not given , partners will continue to be liable for all acts of the firm done after dissolution. However, the |

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| dissolution (Sec 45) | estate of a deceased partner, an insolvent partner and a dormant partner shall not be liable for any such acts. |
| Right of partners to have business wound up after dissolution (Sec 46) | Every partner is entitled to have to property of the firm applied in the payment of debts of the firm and get the surplus distributed. |
| Continuing authority of partners for purposes of winding up (Sec 47) | After dissolution, partners shall continue to bind the firm for acts done as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution. |
| Mode of Settlement of partnership accounts (Sec 48) | <p>1. Losses to be set off- First out of Profits→then out of capital→then by partners personally in PSR</p> <p>2. Assets to be utilised for- 3rd Party debts→Repayment of Capital to Partners→Amt due on a/c of Capital→Surplus to be divided in PSR</p> |
| Payment of firm debts and of separate debts (Sec 49) | <p>1. Property of firm to be applied First in paying firm's debts→then partner's share be applied in payment of his separate debt</p> <p>2. Partner's personal property to be applied First in paying his personal debts→then in payment of firm debts</p> |

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