

Ch-4 :- The Indian Partnership Act, 1932.

came into force on 1st October 1932.

The partnership Act is silent on any point, the general principles of the law of contract apply [section 3].

Unit 1 :- General Nature of Partnership.

Definition :->

Partnership :- According to (Section 4) of 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.

> Partner :- persons who have entered into partnership with one another ~~are~~ with individually.

> collectively :- a firm.

> Firm Name :- Name under which their business is carried on.

* Elements of Partnership :-

• There are following five elements which must co-exist before a partnership can come into existence.

1. Associations of two or more persons :-

- It is an association of 2 or more persons.
- Only persons recognized by law can enter into an agreement of partnership.
- A firm it is not a person recognized in the eyes of law cannot be a partner.
- A minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to be benefits of partnership.
- The partnership Act is silent of maximum number of partners but a section 464 of Companies Act 2013 has a limit of 50 partners in an association / partnership firm.

2. Agreement :- (Section 5, para 1)

- Partnership be the result of an agreement between two or more persons.
- Elements relates to voluntary or contractual nature of partnership
- It can be oral or written.
- It arise from contract not from status.
- The agreement may be fixed for a period or for the execution of particular adventure

• Nature of the partnership is voluntary and contractual.

• It implied from the act done by partners and from a consistent course of conduct.

3. Business:-

- 'Business includes every trade, occupations and profession [Section 2 (b)].
- The word 'business generally conveys the idea of a running business involving numerous transactions. It must be carried on by the firm must be legal.

Two propositions.

i) there must be a existence in a business.

ii) The motive of the business is the "acquisition of gains" which leads to the formation of partnership.

- There can be no partnership when there is no intention to carry on the business & to share the profit thereof.

1. ~~Agree~~ an asset or object.

Acquisition of gains:-
Motive of the business leads to form of partnership.

} to earn (motive of profits)

4. Agreement to Share profits:-

- The sharing of profit is an essential feature of partnership.
- If only one of the partners is entitled to the whole of the profits of the business then there can be no partnership.
- Partners must agree to share the profits in any manner they choose.
- An agreement to share losses is not an essential element.
- Open to one or more partners to agree to share all the losses.
- Event of losses, unless agreed otherwise these must be borne in the profits-sharing ratio.

*Cases Related to Share profits:-

Example 1 :- Co-owners who share amongst themselves the rent derived from a piece of land are not partners because there does not exist any business.

Example 2 :- No charitable institution or club may be floated in partnership [A joint stock may, however, be floated for a non-economic purpose]

Example 3 :- X and Y buy certain bales of cotton which they agree to sale on their joint account and to share the profits equally. In these circumstances X and Y are partners in respect of such cotton business.

5) Business Carried on by All or Any of them Act by All:-

- The business must be carried on by all the partners or by ~~everyone~~ anyone or more of the partners acting for all.
- It is a cardinal principle of the partnership law.
- There should be a binding contract of mutual agency between the partners.
- If an agent in so far as he can bind the other partners by his act and he is a principle to extent that he is bound by the act of other partners.

Note:- 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. There should be relation of trust, faith & confidence between the partn then only it comes to be exist.

Note:- The 'Partnership Agreement' is also known as "Partnership Deed."

Example 4 :- A, B and C are partners in ABC Associates, a partnership firm. If A made certain purchases for the purchases purpose of business from Mr. K then Mr. K can recover the money from A, B, C as all partners are liable for any act done on behalf of firm.

Fact: The exclusive power and control by agreement of the parties is vest one partner or further that only one partner can operate the bank accounts or borrow on behalf of firm, are not destructive of the theory of partnership provided two essential condition mentioned below, are satisfied,

In KD Kamath & Co.
(supreme court held)
this conditions

The essential condition
to be satisfied:

i) There should be an agreement to share the profits as well as the losses of business.

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 Sec. 4.

* Partnership Deed :-

- Result of an agreement.
- In writing or formed verbally.
- It is desirable to have 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 "partnership deed".]
- It should be drafted with care and be stamped according to the provision of the Stamp Act, 1899.
- The partnership comprising immovable property (the instrument of partnership) must be in writing, stamped and registered under the Registration Act.

* Partnership deed contain the following information:

1. Name of the partnership firm.
2. Name of all the partners.
3. Nature and place of the business.
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 & loans.
10. Provision for settlement of accounts in the case of dissolution of the firm.
11. Provision for salaries or commissions payable to the partners, if any.

→ True Test of Partnership :-

Mode of determining existence of partnership (Section 6):

- 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.

The existence of partnership is

It must be proved: →

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 action for all.

① Agreement :-

- Partnership is created by agreement and not by status (Section 5)
- The relation of partnership arises from contract & not from status
- The members of a Hindu Undivided Family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

② Sharing of Profit :-

- Sharing of profit is an essential element to constitute a partnership.
- The sharing of profits of a business ~~are of payments~~ or gross returns arising from property by persons holding a joint or common interest
- Property does not itself make such persons partners.
- The receipt by a person of a share of profits or of payments contingent upon the earning of profits or varying with the profits.
- The receipt of such share or payment
 - a) by a lender of money to persons engaged or about to engage in business.
 - b) by a servant or agent as remuneration.
 - c) by a widow or child of a deceased partner, as annuity.
 - d) by a previous owner as consideration for the sale of the goodwill or share, does not of itself make the receiver a partner with the persons carrying on the business.
- It is only a 'prima facie' evidence and not conclusive evidence.
- The right to participate in profits is strong test of partnership upon a simple participation in profits there is a partnership.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specially speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.

- According to Sec. 6 regard must be had to the real relation between the parties as by all relevant facts.
- Cumulative effect of all relevant facts such as written or verbal agreement, real intention & conduct of parties, other circumstances considered while deciding the relationship between the parties and ascertaining the existence of partnership.

3) Agency :- →

- Existence of Mutual Agency which is the cardinal principle of Partnership law is helpful in reaching a conclusion in this regard.
- The act of one partner done on behalf of firm, binds all the partners.
- Elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profit by running a business, a partnership may be deemed to exist.

(Case study)

Santirajan Das Gupta Vs. Dasyran Murzame (Supreme Court)
Following factors reach to conclusion that there is no partnership between the parties :-

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

* A partner assumes a two-fold character:

1) He is an agent of the firm so far his dealings with the outside world for the purpose of the business of the firm are concerned. He can bind the firm by his acts provided,

- i) the acts are within the scope of his authority,
- ii) they are done in the firm's name, and
- iii) they are done for the purpose of business of firm.

2) He is a principle so far other partners are concerned. The relation between the partners inter se is that of principals.

To sum up:- The law of partnership governing relations to the partners inter se and with the outside world is an extension of the law of principal and agent.

* Formation of Partnership:-

• The object of the partnership should be lawful and other legal formalities should be complied with.

1. Minor partner :- A minor may be admitted to the benefits of partnership with the consent of all the other partners.

2. Consideration :- As no consideration is required to create an agency (Section 185 of the Indian Contract Act 1872), no consideration is required to create partnership which is an extension of the Law of Agency.

Question:-

① Who may be Partners?

→ A contract Act of Partnership may be entered into by every person who is competent to enter into a contract (Section 11 of Indian Contract Act 1872).

• Alien enemy :- An alien enemy cannot be enter into a contract of partnership with an Indian subject. An alien friend can do so.

• Minor :- A minor cannot become a partner in a firm but with the consent of all other partners, he may be admitted to the benefits of partnership.

• Person of unsound mind :- A person of unsound mind is not competent to enter into a contract of partnership.

• Married woman :- A married woman, whether Hindu or belonging to any other community, can enter into a contract of partnership.

• **Corporation** :- A corporation, i.e., a registered company, can enter into a contract of partnership as a single individual but not as a group of individuals comprising it.

② Who are not partners?

- Members of Hindu Undivided Family carrying on family business
- Business Buddhist husband and wife carrying on a business
- Persons having no mutual agency relation,

* Partnership Distinguished from other forms of Organisation :-

① Partnership and Company :- (a company is an artificial person or a legal entity, having a common seal, limited liability & perpetual succession)