

Indian Partnership Act, 1932.

Unit 1.

Definitions: [Section 4.]

1. **Partnership**: - It is relation b/w parties who have agreed to share profits of business carried on by all or any of them acting for all.

→ **Partners** → Persons who have entered into partnership are individually called partners.

→ **Firm** → Collectively called firm.

→ **Firm name** → Name under which Business is carried on.

Elements of Partnership →

1. **Partnership is Association of two or more persons**: -
→ Only a person recognised in the eye of law shall be partner of firm.
→ Minor can't be a partner of firm, however with consent of all partners,
→ Minor may be admitted for profit only.
→ Minimum 2 partners & Maximum 50 partners (As per Company Act).

2. **Agreement**: -
→ Partnership is a result of agreement and not status.
→ Partnership must have voluntary contractual relation.
→ Agreement may be Express or implied.
→ Agreement may also be oral or written.

3. **Business**: -
→ Business means any/every "Trade, occupation, profession".
→ Motive of Business is "Acquisition of gains".

4. **Agreement to Share Profit**: -
→ Partners must agree to share profit of Business as No partnership exist b/w parties. surely of profit. (Prima facie)

5. **Business must be carried on by all or any of them acting for all**: -
→ This is cardinal principle
→ Mutual Agency shall bind all Existing partners. & firm.

Note → Therefore true test of Partnership is mutual agency & not sharing of profit.

Cases to Remember → 1. KD Kamath & Co.

2. Santi Rangan Das Gupta vs. Daisirun Murzabul

True Test of Partnership / Modes of Determining Partnership. [Section 6]

1. There shall be agreement b/w all person concerned:-
→ Partnership is created by agreement b/w partners and not by status unlike HUF.

2. Sharing of Profits:-

→ This is prima facie Evidence

→ Even a non-partner may Share Profits.

Eg. lender of money, agent, share by legal heir of deceased partners etc.

3. Mutual agency:- Cardinal Principle of partnership.

→ Every partner carrying business can be principle or agent.

→ Act of one partner shall bind other partners.

How Partnership is different from:-

1. Company
2. Club
3. HUF
4. Association
5. Co-ownership

} Refer ICAI module

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Kinds of Partnership →

* On the Basis of Duration:-

1. Partnership at will:-

- No fixed Period of Partnership

- No Provision for determination of Partnership.

2. Partnership for fixed Period:- Such partnership come to an end on expiry of fixed period

→ Where duration of Partnership is given in deed.

* On the Basis of Buisness:-

1. Particular Partnership:-

→ Where Partners enter's into buisness to singlitar adventure or specific tasks. & they doesn't enter into any other business except such as per partners agreement

2. General Partnership:-

→ No specific Buisness is Required.

3. Partnership Deed:- It is a agreement b/w partners which may be written or oral defining terms & conditions of partnership.

Following information are needed.

→ If partnership comprises of immovable property Deed must be a written, stamped & registered.

- Name of firm
- Name of all Partners
- Place of Buisness
- Duration of firm
- PSR.
- Capital Contribution of Each partner
- Int. on Capital
- Admission of a partner. / Retireship
- Nature of Buisness
- Date of Commencement.
- Provision of Settlement of firm in dissolved.

11. Provision of Salary & Commission.
12. Provision of Equaliser of partner.
13. Any other information.

Types of Partners:

1. Active Partner / Actual / Ostensible partner :-

- A partner by agreement becomes partner and who actively participates in Business.
- Public notice is must given in case of retirement

2. Dormant Partner :- / Sleeping Partner :-

- Partner by Agreement
- Do not take active participation in Business.
- No need of any notice, in case of retirement.

3. Nominal Partners :-

- Who lend his name to firm. → Do not take part in partnership Business.
- No interest in rights. → Not liable to 3rd party for acts of firm.
- Not liable to share profits.

4. Partner in Profit Only :-

- These Partners are entitled to share only profits of Business.
- Not liable for losses.
- liable to 3rd party for all act of profit only.

5. Incoming Partner :-

- Partner joined an existing firm with consent of all existing partners.
- Not liable for act done before his admission in firm.

6. Outgoing Partner :-

- A partner who leaves a firm that will continue its Business.
- liable to 3rd party, till public notice is given.

7. Partner by holding out :- [Section 28]

- When a person represents himself or knowingly permits to be represented as partner in firm, of which he is liable as partner of firm.

Unit 2 : Relations of Partners

2.1 Relation of partners to one another →

i) General Duties of Partners → (Section 9)

- Bound to carry Business for common advantage.
- Be just and faithful.
- Render true Accounts

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ii) Duty to Indemnify for loss caused by fraud → (Section 10)

- Caused by fraud →
- if due to fraud by a partner firm bear same loss, it is partner's duty to Indemnify it.

iii) Determination of Rights & Duties of Partners → (Section 11)

Sec 11(1) → Mutual rights and duties of partners shall be determined in contract b/w partners.

Sec 11(2) → Such contract may provide that a partner shall not carry on other business that of firm.

iv) Conduct of the Business: (Section 12)

12(a) → Every partner has right to ~~true~~ take part in conduct of Business.

12(b) → Bound to diligently attend his duties.

12(c) → Right to be consulted.

12(d) → Right to have access or to inspect Books of Accounts.

12(e) → Right of legal heir/representative/authorised agents.

v) Mutual rights & liabilities: (Section 13)

13(a) Partners are not eligible to receive remuneration.

13(b) Partners are ~~no~~ entitled to share profits Equally.

13(c) Partners are entitled for int on capital from profit only.

13(d) Partners are entitled for Int at 6% p.a on any advance given by them.

13(e) ~~By~~ firm shall indemnify a partner in respect of payments incurred by him in ordinary conduct of Business or in case of Emergency.

13(f) Partners shall indemnify for any loss caused by their wilful neglect.

2.2 Partnership Property →

1. Property of the firm: (Section 14)

- All the properties of firm, including tangible or Intangible like goodwill shall be considered as joint property or Common Stock.
- However, unless contrary intention appears, such property shall primarily used for firm.

2. Application of property of firm: (Section 15)

- Property of firm shall be primarily used for firm only.

Personal Profit Earned by Partners → (Section 16)

- 16(a) Where a partner derives any profit from any transaction from firm or by using its name.
- 16(b) Partners is doing any competing business and Earned profit. Partner shall pay entire such profit to firm.

Rights & Duties of partners after Change in firm: (Section 17)

- Rights & Duties of partners shall remain unchanged even if changed in firm occurs due to admission or death/retirement of partners or partnership changes business or fixed period Expires.

Relation of Partners to Third Party →

i) Partners to be agent of firm: (Section 18)

For the purpose of business of firm partners are agent of firm.

ii) Implied authority of partners as agent: (Section 19)

19(1) Any act done to carry on business in usual way by partner shall bind them.

19(2) Exception to 19(1): - Implied authority of partner does not Empower him to →

- Submit dispute in arbitration.
- Open firms Bank A/c in own name.
- Compromise any claim by firm.
- Withdrew a suit on firm's behalf.
- Admit any liability against firm.
- Acquire immovable assets on firm's behalf.
- Transfer immovable property belonging a firm.
- Enter into partnership on behalf of firm.

→ MODE of doing act to bind firm: (Section 22)

In order to bind firm, partners must execute all documents mentioning it on behalf of firm.

Section 19 & 22 :-

- 1) Act done by partner which is within his scope shall bind firm.
- 2) Act done for normal conduct of business/firm.
- 3) Act done in name of firm / on behalf of firm.

iii) Extension & Restriction of Partner's implied authority: (Section 20)

Implied Authority →

→ Any act done by partner on behalf of firm within his authority shall bind him unless person dealing known about restriction or does not believe him as partner.

iv) Partner's Authority in an Emergency: (Section 21)

→ If partners act anything to protect firm from loss in ordinary prudence such act shall bind firm.

Effect of admission by partner: - (Section 23)

Any representation made by partner shall be evidence against firm if alone in ordinary course of Business.

Effect of notice to acting partner: - (Section 24)

Any act performed by partner in ordinary course of Business shall bind firm, except in case of fraud.

Liability to third Party: -

i) Liability of a partner for acts of firm: (Section 25)

Every partner shall be jointly and severally liable for all acts of firm done while he is a partner.

(ii) Liability of firm for any wrongful act of Partner: (Section 26)

firm shall be liable for any wrongful act of partner, if done in ordinary course of business or with authority of partners.

iii) Liability of firm for misapplication by partner: (Section 27)

27(a) If a partner receives money or property from third party due to his authority as partner and disappears it.

27(b) firm receives money or property by third party and is misapplied by partner then firm is liable to make good the loss.

Right of transferee of Partner's Interest: (Section 29)

→ Partner may transfer his interest to any other party in full or mortgage or by creation of charge.

Rights of transferee during continuation of Business →

→ Transferee shall not interfere in conduct of Business or to require books of accounts or shall only be entitled to receive share of profit.

→ If Business is dissolved or transferring partner ceases to be partner (retirement, impulsion etc), then transferee has right to receive share in assets of firm & shall be entitled to see books of A/c to ascertain his share.

Minors added to the benefits of partnership: (Section 30)

Minors → Minor cannot be admitted as partner of firm however with consent of all partners minor may be admitted in firm only for benefits & minor shall be not liable to share losses →

Rights →

→ A minor partner has right to his agreed share of the profits of firm.

→ they can access, inspect or copy books of account.

→ They can sue partners for accounts or for payment of his share.

→ After attaining majority, he shall within 6 months elect to be a partner or not to be a partner. → If he elects to be a partner, he shall be receiving profit as he was receiving as minor. → If he elects not to be a partner, he shall not be liable for acts of firm after date of public note.

Liabilities →

→ Before attaining majority:

— liability of minor is confined only to the extent of his share in the profits & property of firm.

— Minors has no personal liability for debts of firm.

→ Minor cannot be declared insolvent, but if firm is insolvent, his share in the firm vests with official assignee.

→ After attaining majority:

→ Within 6 months of attaining majority or obtaining knowledge that he was minor partner, minor partner has to decide if he wants to remain partner in firm or not and communicate same.

→ When he becomes partner:

→ he will be personally liable to third party for all acts of firm.

→ His share in property & profit remains same.

- When he elects not to be a partner →
 - His rights and liabilities continue to be those of a minor upto date of giving public notice.
 - His share shall not be liable for any acts of firm.
 - He shall be entitled to sue partner for his share of property and profit.

Legal Consequences of Partners coming in and going out →

i) Introduction of a partner: (Section 31)

- No person shall be introduced as a partner without consent of all other partners.
- A person who is introduced as a partner of firm does not become liable for act of firm.

Section 32 to 35 shall not apply to partnership of 2 partners.

ii) Retirement of partner: (Section 32)

- A partner may retire by:
 - Consent of all other partners.
 - as per Express agreement.
 - on by giving notice in writing to all other partners.
- It is duty of retiring partner to give public notice to all related parties.
- Retiring partner shall continue to be liable to firm or third party for any act done by him.

~~Ret Rights~~ ⇒ Rights →

- Retiring partner shall be eligible to receive his share of capital as well as surplus profit (if any)

iii) Expulsion of a partner → (Section 33)

- A partner may be compelled from firm by majority of partner and in good faith.

Rules of Expulsion →

- ⇒ Must be as per contract
- Majority vote.

- Power Exercised by majority of partners
- Must be in good faith.

iv) Insolvency of partners → (Section 34)

- Insolvent partner can't be continued as partner.
- He will be cease to be a partner from date of adjustment.
- Estate of Insolvency Insolvent partner is not liable for firm.
- Estate of firm shall not be liable by partner.
- Ordinarily, insolvency of partner results in dissolution.

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→ Opportunity of being heard.

v) Liability of Estate of Deceased partner: (Section 35)

→ Estate of deceased partner shall not be liable by firm.

Right of Outgoing partner to Carry on Competing Business: (Section 36)

- An outgoing partner may carry on business competing that of firm and he can also advertise same, however
 - he should not use name of firm
 - represent himself as partner of firm.
 - solicit the custom of person who are dealing with firm.
- Section 36(2) There may be an agreement to not carry on any competing activity, than partner must follow agreement.

Right of Outgoing partner to share subsequent profit: (Section 37)

- If firm is unable to pay all dues of an outgoing partner. than such partner shall get sharing in profits of business.

Revocation of Continuing Guarantee By change in firm: (Section 38)

- A continuing guarantee is given to firm or third party shall stand revoke for future transaction from date of change in firm.

Unit 3: Registration & Dissolution of firm

Registration of firms →

Application for registration: (Section 58)

→ Application for registration of firm needs to be submitted to Registrar of the area where place of business is situated.

Application form shall consist →

→ Name of firm.

→ Principal Place of Business.

→ Name of any other place where firm can carry on Business.

→ Name & Permanent address of partners.

→ Date when each partner joined Business.

→ Duration of firm if any.

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

→ firm name shall not contain any of following words like →

→ King, Queen, Emperor, Express, Empires, Imperial, Royal etc.

Registration: (Section 59)

→ When registrar is satisfied that all documents are submitted as required in Section 58.

→ He shall record an entry of statement in register called register of firms.

(Section 59(A-L)):- If there is delay in submission of statement to registrar or if such statement is not submitted then firm may be register on payment penalty of ₹100 per year of delay or part thereof.

Consequences of Non-Registration: → (Section 69)

→ Registration of firm is optional however non-registration of firm gives rise to some disability.

Such as →

1. No suit in civil court by firm or other co-partner against third party:-
→ Unless firm is registered, partners can't file any case against third party.

2. No relief to Partner to set of Claim:
→ If an action is brought by 3rd party against firm, then neither firm nor partners can claim any set off more than ₹100/-.

3. Aggrieved Partner cannot bring legal action against other partners of firm:
→ A partner of unregistered firm cannot take legal action against firm or any other partner but such partner may sue for dissolution of firm or for accounts and realisation of his share in firm's property.

4. Third Party can sue firm:

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

Exception: -

1. Right of third party to sue firm or any partner shall not affect.
2. Partner has right for sue for dissolution of firm or for settlement of accounts.
3. Power of official assignee receiver of court remain unaffected.
4. Right to sue or claim self off, if value does not exceed ₹ 100/-.

Dissolution of firm: (Section 39)

Dissolution of partnership b/w all partners of firm is called dissolution of firm.

Difference b/w dissolution of firm vs dissolution from partnership
(Refer module)

Modes of Dissolution of firm:

#1. Without Court Order or Voluntary Dissolution:

i) Dissolution by agreement: (Section 40)

→ A firm can be dissolved with consent of all partners as per agreement.

ii) Compulsory Dissolution: (Section 41)

→ A firm is compulsorily dissolved if Business of firm to be considered as unlawful. Also, if firm is carrying multiple business than if more than one adventure becomes unlawful than firm shall dissolved.

iii) On happening of certain contingencies: (Section 42)

- firm is constituted for fixed term, on Expiry of such term.
- firm is constituted for an adventure & such adventure is completed.
- Death of a partner.
- By adjudicating partner as insolvent.

iv) By notice of partnership at will: (Section 43)

- If partnership at will, firm may be dissolved by giving notice in writing.
- if date is mentioned, firm is dissolved from the date mentioned in notice.

#2. Dissolution by Court: (Section 44)

→ Court may suit of Partner, dissolve a firm on any of following ground:-

- i) Insanity of Partner
- ii) Permanent Incapacity
- iii) Misconduct
- iv) Persistent breach of Agreement
- v) Transfer of Interest
- vi) Continuous/Perpetual losses
- vii) Just & Equitable Ground.

Consequences of Dissolution:-

1. Liability for acts of partner after dissolution: (Section 45)
 - Partner shall continue until public notice is given.
2. Rights of partner to have Business wound up after dissolution: (Section 46)
 - On dissolution every partner or his representative has right to dissolve firm's business.
3. Contingent authority of partners for purpose of winding up: (Section 47)
 - Partners shall be liable until business is completely wind up.
4. Settlement of Partnership Account: (Section 48)
 - First losses & outside liabilities
 - Due from partners
 - Capitals.
 - if surplus, divided in partners.
5. Payment of firm Debt and if Separate Debts: (Section 49)
 - Property of firm shall be first apply to payment of firm's Debt.
 - & thereafter can be used to pay partner's Debt (if any)

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