

# Indian Partnership act, 1932

## \* Unit - 1 :- General Nature of Partnership

Includes 74 sections  
7 chapters and  
7 schedules.

### \* Definitions :- (Section 4)

① Partnership :- It's the relation between the partners ; who have agreed to share profits.

② Partners :- People in partnership.

③ Firm :- Partners are collectively called as firm.

④ Firm name :- Name given to partnership firm.

### \* Elements of partnership.

#### ① Association :-

- It's an association of 2 or more persons.

- Only person recognised by law can become partner  
- Minor can't.

- All benefits can be given to minor  
(with consent of all)

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- Firm is not legal person.

IMP \* Number of members :- (haven't mentioned in Partnership act)  
As per section 464 of Company Act  $\leq 50$

\* Agreement :-

- Can be oral, written or implied.
- Deed is must in partnership.

\* Business :-

- Includes profession too.
- Must be done with intention of gain.

\* Agreement :- (to share profits)

- Sharing of profit is must.
- Agreement to share loss is not essential.
- In absence of agreement;

Loss Ratio = Profit Ratio.

- No charitable institution / club can be partnership.

\* Business carried by all or any of them acting for all.

- Cardinal principle of partnership:-
  - Business must be carried by all and each one acting for all.
  - Acts done by one partner binding on all.

- Principal & agent relationship exists in partnership.

- Mutual agency is more important than sharing of profits.

\* 2 essential elements for partnership:-

In K.D. Kamath & Co.; SC gave held that;

① There should be an agreement to share profits as well as losses.

② Business must be carried down by all or by any one acting for all.

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## \* True Test of Partnership (Section 6)

Following must be proved to determine partnership

- ① There was an agreement between all partners concerned.
- ② The agreement was to share profits.
- ③ Carried on by all or any of them acting for all.

Burmese Buddhist law, 1991;  
Husband can commit following  
but wife can't;  
a) Polygamy b) Adultery

### ① Agreement

- Partnership is created by an agreement and not by status. (sections)
- HUF or BBF carrying on business will not be considered as partners.

### ② Sharing of profit

- Sharing of profits earned from jointly held property will not be considered for partnership.

Prima facie evidence:-  
- Initial impression  
of case or evidence.

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- Sharing of profit is essential element but
  - Its only a prima facie evidence.
  - Not a conclusive evidence.
- Existence of relationship must depend upon whole deed.

### 3.c) Agency

- Existence of mutual agency = Cardinal principle of law.
- Each partner is principle as well as agent.
- Act of 1 partner → binds all partner.
- If there is a mutual agency & sharing of profits, Partnership will be deemed to exist.

IMP  
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In Santiranjana Das Gupta Vs. Dasyran Murzame (CSC) 11a.

Court denied the partnership becoz of following reasons:

- 1) No contract
- 2) No books of accounts.
- 3) No bank account of firm.
- 4) No intimation to deputy director of Provement of newly created partnership.

### \* Differences:

#### ① Partnership & Company

- Legal status
- Agency
- Distribution of profits
- Extent of liability
- Property
- Transfer of share
- Management
- Registration
- Winding up
- Number of membership
- Duration

#### ② Partnership & ~~Partnership~~ Club

- Definition
- Relationship
- Interest in property
- Dissolution

By amendment in hindu Succession act, 2005, every adult in family can become coparcener. On 1st Feb 2016, held that eldest female can also be

Kanya

#### ③ Partnership & HUF

- Mode of creation
- Death of member
- Management
- Authority to bind
- Liability
- Calling for accounts
- Governing law

- Minors capacity
- Continuity
- Number of members
- Share in the business

## ④ Partnership Vs. Co-ownership.

- ① Formation
- ② Implied agency
- ③ Nature of interest
- ④ Transfer of interest

## ⑤ Partnership Vs. Association.

- ① Meaning
- ② Examples

## \* kinds of Partnership

### ① Partnership at will (Section 7)

- Partnership becomes partnership at will when
  1. No fixed period is agreed upon the duration of partnership. and
  2. No provision is made to determination of partnership.

- Partnership for fixed period  $\xrightarrow{\text{continued after expiry}}$  will be treated as partnership at will

- Can be dissolved by any partner by giving notice to all.

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## ② Partnership for fixed period :-

- When the provision is made in the contract about the duration of the firm?

## ③ Particular Partnership :-

Liability of partner in Particular Partnership extends only upto the amount in adventure.

- Partnership may be organised for the prosecution of a single adventure as well as for the conduct of business.
- When the partnership is created to undertake only one adventure is called as particular partnership.

## ④ General Partnership :-

- Where a partnership is constituted with respect to business in general is known as general partnership.

## \* Partnership Deed :-

- The document containing various terms and conditions as to the relationship of partners to each other is called partnership deed.

## \* Types of Partners

### ① Active / Actual / Ostensible partner.

- He acts as an agent of other partners for all acts done in ordinary course of business.
- Must give public notice on retirement to absolve from liabilities.

### ② Sleeping or dormant partner.

- Share profits and losses.
- liable to third parties.
- ~~No~~ need to give public notice.

### ③ Nominal partner.

- A person who lend his name to his firm.
- No profit sharing.
- Liable to third parties.

### ④ Partner in profit only.

- entitled to share profit only.
- Not liable for losses.
- liable to third parties for all acts of the profit only.

⑤ Incoming partner :-

- Admitted as a new partner as already existing firm.
- Not liable for acts done before incoming.

Prospective effect to the incoming of partner is to be given not retrospective.

⑥ Outcoming partner :-

- Who leaves the firm which is still running.
- Liable for third parties until he gives public notice.

⑦ Partner By holding out :-

As per section 28.

- Also known as partnership by estoppel.
- When a man represent himself as a partner & a real partner does not stop him;
- He is stopped from denying the character which he had presumed.
- This rule is also applicable to a former partner who has retired from firm without notice.