

Prima facie :- True at first glance
Indemnify :- Compensate

Relations of Partners

2.1 Relation of partners to one another.

1. General duties of partners (Section 9) :-

- Partners must observe utmost good faith in his dealings with other partners.
- All partners are bound to render accounts to each other.
- Where some accounts are kept by one of them; prima facie he would be liable to explain & disclose all material facts.

2. Duty to indemnify for loss caused by fraud Section 10 :-

- If a partner → commit the fraud → should be liable wholly for loss.
- If a partner → does fraud → empowers co-partners to throw whole consequence on them.
him

3. Determination of rights and duties of partners by contract (Section 11) :-

1) Mutual rights and duties → May be determined by way of contract.

- Such contract may be expressed or implied which is varied by consent of all partners.

IMP

2) Agreement in restraint of trade :-

- Notwithstanding anything contained in Section 27 of Indian Contract Act, 1872

- Contracts which provide that ;
Partners shall not carry on any business other than that of firm, is valid.

- Partnership → relation depending on consent of all.

According to Sec. 27 of ICA, 1872; Agreement which restricts any person or entity from doing business is void.

4) Conduct of the business (Section 12):

Subject to contract :-

1) Right to take part in conduct of business [12(a)]
- Every partner has right to take part in conduct of firm.

:- Management powers are generally co-extensive.

↓

Unless there is subject to contract to contrary.

b) Every partner is bound to attend his duties carefully to his duties. Section [12 (a)].

c) Right to be consulted :- Section [12 (c)].

- Decisions regarding → normal conduct of business
are decided by majority.

- Decisions regarding → change in nature of business
Must be decided by unanimous consent of all.

d) Right to the access of books [Section 12 (d)] :-

- Every partner ; [active, sleeping]

↓
entitled to access books.

Bona-fide → genuine, real, without intention to deceive.

- The right must be bona-fide.

e) Right of legal heirs / representatives. [Section 12 (e)]

- In event of death of partners :-
all of these have right to inspect & copy books.

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5. Mutual Rights & Duties liabilities :- (Section 13)

① Right to remuneration [Section 13(a)]

- No partner is entitled to receive any remuneration / salary [apart from his share in Profit]
- Rule doesn't apply :-
 - a) When there is contract to contrary.
 - b) When it's payable under continuous usage of firm. (or) where it's customary to pay partner.

② Right to share profits :- [Section 13(b)]

- Subject to the contract to the contrary;
- Equal right is there to everyone to share profits and losses equally.

IMP There is no relation between share in profit and amount invested.

③ Interest on capital :- (Section 13(c))

Partner can take interest on capital if :-

- a) Express agreement or;
- b) Practice of particular partnership or;
- c) Any trade or custom;
- d) Statutory provision which entitle him to so.

Indemnify \rightarrow damages compensation

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4) Interest on advance :- Section [13(d)]

- If a partner give advance [in addition of capital] to firm. He is entitled to receive interest on it @ 6% P.A.

- Interest on advances keep running even after dissolution till the repayment.

5) Right to be indemnified :- Section [13(e)].

- Every partner has right to be indemnified in respect of;

- a) Payments done by him
 - b) Liability incurred by him
 - c) Act in an emergency for protecting firm from loss.
- In ordinary course of business.

6) Right to indemnify the firm :- [Section 13(f)]

- Partner must compensate the loss caused by wilful neglect / wrongful conduct.

* Partnership Property :- (Section 14)

1. The property of the firm :-

- All partners **are collectively entitled**. (in absence of contract to contrary).
- Property is **deemed** to be property of firm which consist;
 - 1) **All property, rights & interests** which partners have brought into firm and;
 - 2) Property **purchased for the firm** and;
 - 3) **Goodwill** of business.
- To determine whether a property belong to firm or not; it depends on **real intention or agreement between partners**.

* Goodwill :-

- Goodwill is **subject to contract**.
- This section **does not define goodwill**.
- Goodwill may be defined as the **value of the reputation of business** in respect of **profit expected in future** over and above the normal level level of profits, earned by undertaking.

- / /
- In absence of contract to the contrary ;
 - Every partner has right to sell goodwill for benefit of all.

After sale of goodwill ;

- Partner can ^{may} make agreement with buyer that he will not carry business of same category / for period of time / in particular area.
- That agreement would be valid notwithstanding anything contained in section 27 of ICA 1872.

* Property of partner :-

- Personal property of a partner does not become partnership property merely because it's used for business purpose.

* Personal profits earned by partners :- (Section 16)

- Subject to the contract to the contrary
- a) If a partner derives any profits from any transaction / from using partnership property / using business connection, shall be accountable to firm.
 - b) If a partner carry same business ; he shall be accountable to all profits.

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* Rights and duties of partners after change in firm. [section 17]

* Reconstitution can occur in 4 ways.

- ① When a new partner comes in.
- ② Where a/some partner goes out.
- ③ When it carries on other business other than the business for which it was formed.
- ④ When partnership continues even after completing fixed period/venture.

① After change in firm:-

- Mutual rights and duties remain same in the reconstituted firm.

② After expiry of the term of p. firm:-

- Mutual rights and duties remains same.
- It will be considered as partnership at will.

③ Where additional undertakings are carried out:-

- Are the same as those in respect of the original adventures or undertakings.

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* Relation of the partners to the third parties.

① Partner to be an agent of the firm :- [Section 18]

- Partner virtually embraces the character of ~~both~~ both principal as well as an agent.
- So far as he acts for himself in it's own interest; he will be deemed as principal.
- When he acts for other partners, he'll be deemed as an agent.

② Implied authority of partner :- [Section 19].

1) Subject to provisions of section 22;

- Act of partner; binds the firm.
- The authority of partner to bind the firm given by this section is called his 'Implied authority'.

2) In absence of any trade / custom to contrary; his implied authority does not empower him to :-

- ③
- Submit a dispute relating to business to arbitration.
 - Open bank account on behalf of firm in own name.
 - Compromise / relinquish any claim by firm.
 - Withdraw suit filed by firm.
 - Admit any liability in a case or suit against the firm.
 - Acquire immovable property on behalf of the firm.
 - Transfer immovable property belonging to firm.
 - Enter into partnership on behalf of firm.

/ /

* Mode of doing act to bind the firm :- (Section 22)

- An act / instrument (doc) done on behalf of the firm expressing or implying an intention to bind firm.
- Section 19(1) & section 22 deals with implied authority of partner.
- Implied Authority :- Authority of a partner to bind the firm is called as his implied authority.
- Implied authority is subject to following restrictions:
 - 1) The act must be done in a usual scope of business.
 - 2) Within scope of his authority.
 - 3) The act must be done in the name of firm or any other manner expressing / implying intention to bind the firm.
- If the partnership is of a general commercial nature.
 - 1) He may pledge or sell partnership property.
 - 2) He may buy goods on account of partnership.
 - 3) Borrow money, contract debts, & pay debts.
 - 4) He may draw, make, sign, endorse, transfer & negotiate any negotiable instruments on account of firm.
- Sec. 19(2) → contains acts beyond implied authority

To impose restriction
consent of all is needed;
majority doesn't apply.

* Extension and restriction of partners implied authority:- Section (16) 20.

- Implied authority can be restricted or extended by way of contract.

- Under following conditions, the restrictions imposed on implied authority shall be effective against the third party.

1. The third party knows about the restrictions; &

2. The third party doesn't that he has dealings with the partner in the firm.

* Partners' authority in an emergency:- [Section 21]

- In the case of emergency;

All acts done to protect firm for loss done by person with ordinary prudence bind the firm.

* Effect of admissions by a partner:- [Section 23]

- Partners; as an agent of each other can make binding and admissions but only in relation to partnership transaction.

Prudence - intelligence
Pledge -> Mortgage
(here)

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* Effect of notice to acting partners :- [Section 24]

- Notice to a partner in a firm is a notice to all partners.

- Notice to one is equivalent to notice to all.

Conditions :-

1. Notice must be actual not constructive.
2. It must be received by working partner not nominal or sleeping.
3. Must relate to business matters.
4. The exception would lie in case of fraud.

All cases →
Partners
must be
Partners
while
doing
these
acts.

* Liability to third parties :- (Section 25 to 27)

1. Liability of a partner for acts of the firm :- (Section 25)

* For purpose of this clause :- Several = Separate

- All partners are jointly and severally liable for the third parties which come within scope of their implied authority.

- Act of the firm = Any act or omission by all or any partner/agent of firm which give rights enforceable by or to firm

/ /

2. Liability of partner for wrongful acts of partner. (Section 26).

- Firm is liable to the same extent as partner for any loss or injury.

a) He must be partner.

b) Act must be done in ordinary course. or;

c) With authority of partners.

- All partners are liable in case of negligence.

3. Liability of firm for misapplication by partners. (Section 27).

In both
of these
cases
Partner
have authority
to receipt money

Clause (a) :- If money is not come in custody of firm & ~~the~~ misapplied.

Clause (b) :- Money come in custody of firm & then misapplied.

- Firm would be liable in both cases.

- If partner has no authority to receipt the money;
- Firm & other partners won't be liable (unless money has come in their possession)

/ /

* Rights of transferee of partner's interest (Section 29)

- Share in partnership property is transferable.
- Assignee of partner's interest by sale, mortgage or otherwise;
 - Can't enjoy same rights and privileges as original partner.

* Rights of transferee.

- i) During the continuation of partnership, partner is not entitled to;
 - a) to interfere with the conduct of business.
 - b) to require accounts.
 - c) to inspect books of firm.he is entitled to receive profits only.
- ii) At the time of dissolution.
 - a) Receive share of his profits. (to which transferring partner was entitled)
 - b) To inspect books for ascertaining the share.

Note.

As per section 31, partner can't transfer his interest without taking his permission. also he is not debarred from doing so.

void ab ~~initio~~ initio -
Void from the initial.

* Minors admitted to the benefits of partnership.
(Section 30):-

- Minor can't be bound as contract by minor is void ab initio. (Section 11)
- Therefore, minor can't become a partner.

But

- He can be admitted to the benefits of partnership.
- He can validly give share in partnership profits
- Consent of all partners required.

* Rights

- ① Right in profits
- ② Access to books
- ③ Sue partners for not settling his account but only after separating with firm.
- ④ After majority, he has to decide to stay or exit from partnership within 6 months.

* If he choose to become partner

- he will be entitled to share to which he was entitled till now

* If he choose not to become partner

- his share won't be liable after

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* Liabilities

i) before attaining majority.

- liability is limited only upto share of profit and property.
- No personal debts, incurred in his minority.
- Minor can't be declared insolvent.
- If firm is insolvent, minor can receive his share on proportionate basis from assign.

ii) After attaining majority.

- Within 6 months after attaining majority (or) on his knowledge that he had been admitted to benefits of partnership, whichever is later, the minor has to decide whether he wants to continue as a partner.
- If he doesn't want to continue.
 - has to give public notice (6 months)
- If he fails to give notice,
 - he would be partner automatically.

* If he choose to become a partner.

- By own willingness or by failure to give public notice, minor can become partner.

sec 30 (7)

- He will be liable for all do's done after he admitted for benefits. ^{done}

- Share in profits and property remain same

* If he doesn't want to become a partner.

- Rights & liabilities will continue as minor until he give public notice.

- His share won't be liable after notice.

- Entitled to sue partners for share in profits and property.

Any change in partnership
Such as admission, retire-
ment, expulsion etc.
firm will be reconstituted

* legal consequences of Incoming and outgoing partners.

a) Introduction of new partner. (Section 31) :-

Rights and liabilities :-

- Person is ^{nor} liable for acts done prior to his admission unless he agrees to be liable to the debts of ~~the~~ before his admission.
- ^{new} Firm may accept liability of old and creditors may agree to shift the debt from old firm to ~~the~~ new.
- consent of creditors necessary.

* Novation :-

technical term in contract for substituted liability. But a mere agreement among partners can't operate as novation thus even if partner agrees to be liable for old/existing debts of firm, it won't give (ipso facto) by the fact itself any rights against new partner to creditors.

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* In case of partnership in 2 persons.

- It will automatically be dissolved after 1 partner going out.

* Retirement of a Partner (Section 32) :-

1) A partner may retire :-

a) With consent of all partners.

b) In accordance with an express agreement or

c) Where the partnership is at will, by giving notice in writing to all other partners of his intention to retire.

2) Retiring partner can be discharged by agreement ^{from liability} b/w third party and other partners for the acts done before retirement.

3) Retiring partner is liable for the acts done before he gave public notice.

↳ Provided that

Retired partner won't be liable for ~~the~~ acts third party if they don't know that he is a partner.

4) Notice in Section 32(3) can be given by;

i) retiring partner

ii) Partners in reconstituted firm.

Bona fide → Real, genuine

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* Expulsion of partner (Section 33)

- i) Power of expulsion must exist in contract.
- ii) This must be exercised by majority; and;
- iii) In good faith.

- If all these conditions aren't present, it will not be deemed to be in bona fide interest of firm.

- Good faith

- It must be in interest of partnership.
- Notice should be given, being
- Opportunity of remaining heard.

- Expulsion otherwise is null & void.

- Expulsion does not result in dissolution.

- Invalid ~~expul~~ expulsion of a partner does not put end on partnership even if it's at will.

* Insolvency of partner (Section 34) :-

1) If a partner is adjudicated; he ceases to be a partner from the date of adjudication.

2) If contract is there; estate of that partner won't be liable for act of firm and firm won't be liable for acts done by him, after adjudication.

* Effects of Insolvency

- ① Can't continue as a partner
- ② He will be ceased to be a partner from very date.
- ③ Estate of insolvent is not liable for anything
- ④ Firm is not liable
- ⑤ Ordinarily, firm will be dissolved unless contract to contrary.

* Liability of estate of deceased partner (Sec 35)

- Ordinal effect → dissolution

- If there is contract to contrary
 - 1) may be absolved from liability for future oblig.
 - 2) not necessary to give public notice.

* Right of outgoing partner to carry on competing business. (Section 36)

Outgoing partner may carry on business that of same kind.

- He can advertise the business.

* But subject to contract to contrary, he may not

- ① Use firm name
- ② Represent as partner of firm
- ③ Solicit the custom of persons dealing with firm

* Right of outgoing partner in certain cases to share subsequent profits. (Section 37)

- Any member dies (died or otherwise **ceased to be a partner** but **firm carry on** the firm carry on the business **with^{out} settling** his accounts then the **Representative of firm** will be entitled to

a) **To share profits**

b) **To interest @ 6% on share.**

Provided that:

-> **If other partner purchases that share by the contract b/w partner this won't be applicable.**

-> **But if that partner does not comply with all conditions of ceased partner this will be applicable.**

* **Revocation of continuing guarantee by reconstitution.** (Section 38)

- **Continuing guarantee given to firm or third party revokes after reconstitution.**

→ **unless contract to contrary**

Partnership Act, 1932

All Sections

— / / —

	Section	Provision
	4	Definition of partnership, firm, firm name, partner.
	5	Partnership is formed by an agreement
	6	Mode of determining existence of partnership
	7	Partnership at will
	9	General duties of partner
	10	Duty to indemnify partner for loss by fraud.
	11 (1)	Determination of general duties
	11 (2)	Agreement in restraint of trade = valid
Conduct of the business	12 (a)	Right to take part in conduct of business
	12 (c)	Right to be consulted.
	12 (d)	Right to access books
	12 (e)	Right of legal heir / representative.
Mutual Rights & Liabilities	13 (a)	Right to remuneration
	13 (b)	Right to share profits
	13 (c)	Right to capital interest on capital
	13 (d)	Right to Interest on advances
	13 (e)	Right to be indemnified
	13 (f)	Right to indemnify the firm.
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	15	Application of property of firm
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	17	Rights & duties of partners after change in firm
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* Sections from other acts

Section Contract Act 1872

Section 27 -> Agreement in restraint of trade

company act, 2013

464 -> No of partners.