

Patronage → support, shelter, language

Unit 3 :- Registration & Dissolution of firm

* Application for registration (Section 518) :-

① The registration of a firm may be effected at any time by informing registrar

- statement prescribing following accompanied by prescribed fee stating :-

① Firm Name

② Place in which firm will be situated.

③ Names of other places where business will carry on.

④ Date when each partner join.

⑤ Particulars of partners

⑥ Duration of firm.

* Each person ~~verifying~~ signing this statement must verify it.

* Note :- firm name should not consist the word which show / express / imply the sanction, approval or patronage of government.
Ex. Crown, Emperor, Empire, King etc.

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To use these state must signify in writing

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~~IMP~~
* Registration (Section 59)

- If registrar is satisfied about the compliance of requirements of section 58; he may record statement in register of firms.
- Then issue certificate of registration.

~~IMP~~
However the Registration is deemed to be completed as soon as statement in prescribed form with prescribed fee is delivered to registrar.

- Registration may also be effected after suit by firm but in that case:
Suit need to be withdrawn → get registration
→ file fresh suit.

* Late registration on payment

- If statement of registration is not delivered in specific time period; mentioned in section 58 (1A) then
→ Penalty of ₹ 100 per year for delay.

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* Consequences of non-registration (Section 69) :-

- Under English law \Rightarrow compulsory to register
 \rightarrow There is penalty for it.

- In Indian Partnership Act; it is not compulsory.

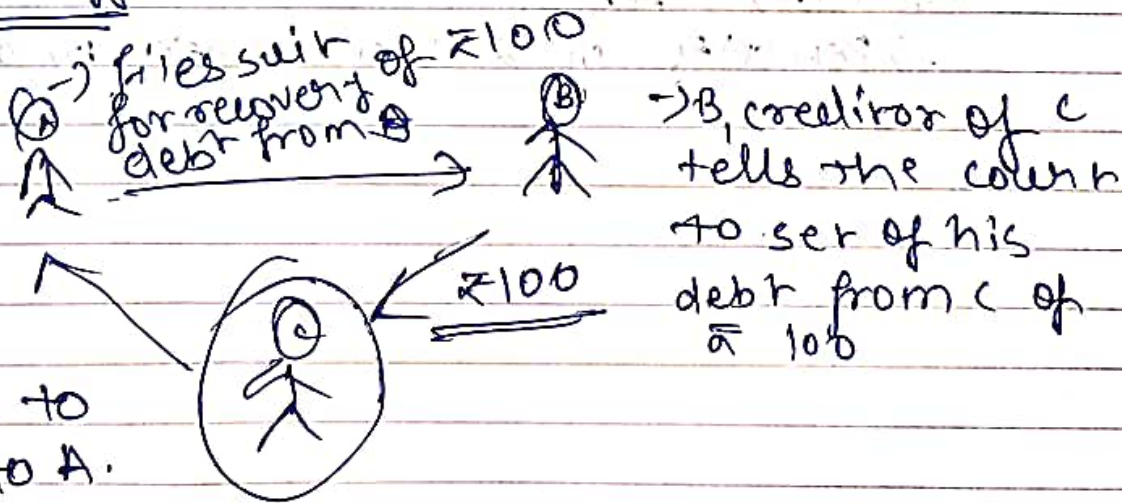
- In section 69, following are disabilities for a non registered firm.

① No suit by firm / co-partners against 3rd party
- Only the registered firm and its members can file suit for breach of contract.

② No relief to partners for set-off claim :-

- If action is brought against 3rd party, then firm can't claim set-off, if suit is valued more than ₹ 100.

Set off



③ Aggrieved partners can't bring legal action against firm or partners of firm.

- Aggrieved partners can't take legal action against firm or partners of.

- But he can ask for dissolution, settling books, realization of books.

④ Third party can sue the firm.

- Action can be brought by third party.

Exceptions

① Right of 3rd party to sue

② Right for suit of dissolution or realization

* ③ Power of official assignee to release property of insolvent partner.

④ Can claim set off. < 100 ₹

⑤ Suit by representatives of deceased partner for realization of share.

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* Dissolution of firm (Section 39-47)

Dissolution of partnership b/w all partners
= Dissolution of firm. Section 39

- It means disconnection of legal relation existing b/w all partners.
- If one or more partners discontinue the partnership, relation b/w that person and others finishes.
- Rest still can decide to continue.

- One partner goes out → others carry on

Dissolution of Partnership

POD → Dissolution (Firm & Partnership)

- ① Continuation of business
- ② winding up
- ③ Order of court
- ④ Scope
- ⑤ Final closure of books.

* Mode of dissolution of firm → Section 40 to 44

contingency :-

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① Voluntary Dissolution (without order of court) :-

i) Dissolution by agreement :- (Section 40)

- This gives rise to the right to the partners to dissolve partnership with consent of all or in accordance with contract.

ii) Compulsory dissolution :- (Section 41)

- By adjudication of all or one of all as insolvent, or;

- By happening of an event which makes it unlawful to be carried on.

IMP Note

If 2 or more businesses are carried on by the firm; then illegality of one can be ground for dissolution.

iii) Dissolution on the happening of certain contingencies

- Subject to contract to the contrary.

- ① Where partnership is for fixed period
- ② Where partnership is for fixed venture.
- ③ Death of partner
- ④ Adjudication of partner as insolvent.

iv) Dissolution by notice of partnership at will.
(Section 43):

1) In partnership at will; firm can be dissolved by giving notice in writing to all partners.

2) Date of dissolution = { Date on notice (if not)
Date of communication

2) Dissolution by court (Section 44):-

a) Insanity or unsound mind :- When a partner (except sleeping) becomes insane; court may order to dissolve the firm by suit of other partners (or) by suit by next friend of mad.

- Temporary sickness can't be ground for dissolution.

b) Permanent Incapacity :- When partner, other than sleeping, has become incapable of doing his duties.

c) Misconduct :- When a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business. Court may dissolve firm. No need of misconduct to be related with ^{conduct} business of firm. Impolnr is adverse effect on business.

In each case nature of business will decide misconduct.

section 44 subclause (d), e
The person suing must be partner
= other than the person suing



Embezzlement, fraud (critical/ethical)

Charged -> Mortgaged / Pledged

#1) Persistent breach of agreement :-

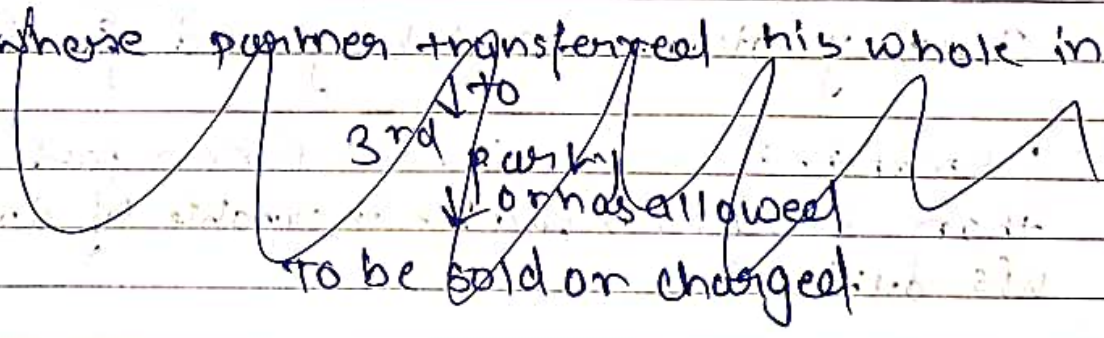
- Where a partner willfully / persistently breach the contracts.
- The court may dissolve the firm at instance of any of the partners.

* Following comes under category of breach of contract.

- 1) Embezzlement
- 2) Keeping erroneous records.
- 3) Holding cash more than allowed.
- 4) Refusal to show books even after repeated request.

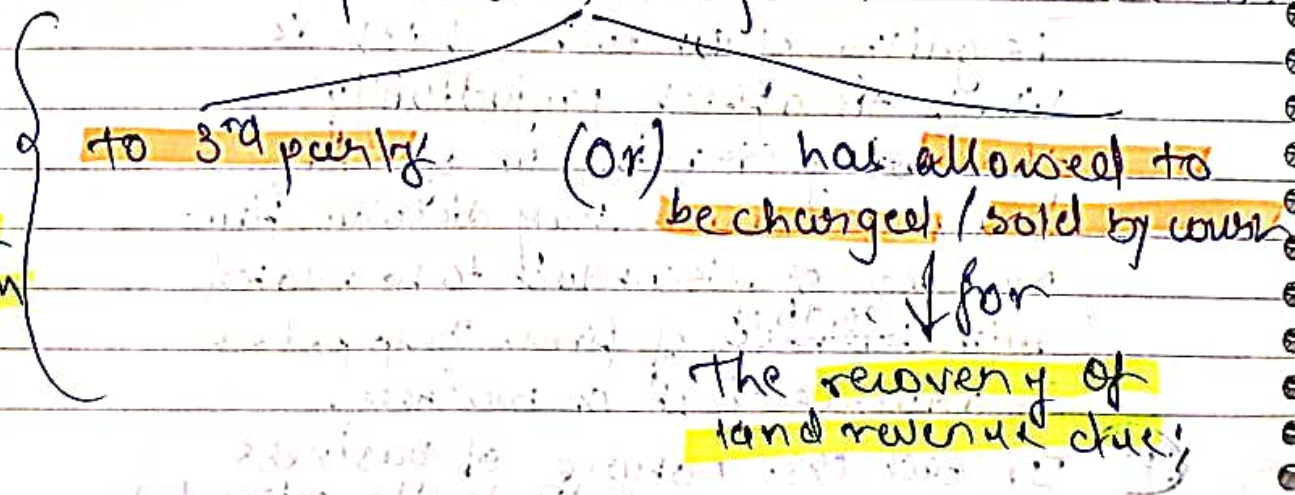
c) Transfer of interest :-

- Where partner transferred his whole interest



Where a partner transferred his whole int

Court may dissolve the firm



→ Partnership loss विनाम तालवती शक्य नही

f) Continuous / perpetual loss

- Where business of firm can't be carried on except in loss in future; government may dissolve the firm.

g) Just and Equitable grounds

- Where the courts consider any other ground just and equitable.

① Deadlock in the management.

② Partners are not intalling terms

③ Loss of substratum

④ Gambling by partners in stock exchange

* consequences of dissolution (Section 45-55)

a) Liability of each partner for acts done after dissolution (Section 45)

Objectives

All the ~~parties~~ ^{partners} are liable for every act of firm until public notice

- Protect 3rd party who didn't have notice of diss. Partners of dissolved firm from liabilities towards 3rd party.

Exceptions

- ① Estate of deceased partner
- ② Insolvent
- ③ Dormant partner

In these cases these won't be liable even if public notice is not given

b) Right of partners to have business after wind up after dissolution (Section 46)

After dissolution, every partner is entitled

- ① To have the property of the firm applied in the firm.
- ② Surplus distributed among all.

c) Continuing authority of partners for purpose of winding up. (Section 47)

After dissolution of firm, partner has right to

- ① Wind up affairs of business.
- ② Complete the unfinished transactions.

Provided that;

- After adjudication
- Firm is not bound for the acts done by insolvent but this proviso
 - Doesn't affect the liability of person who has represented or knowingly permitted himself to be represented as partner of Insolvent.

d) Mode of settlement of Partnership accounts. - (Section 48) :-

It is subject to contract; In settling the accounts of firm after dissolution, following rules to be observed :-

1) Losses, including deficiencies of capital, shall be paid out first out of profits and capital and by the partners if necessary.

2) Assets + sum contributed to make deficiencies of capital must be applied in following order

- a) Paying debts to third parties
- b) Paying due from capital to partners
- c) Paying due to him on the account of capital
- d) Surplus → divided among partners.

e) Payment of firms debt and of separate debts (Section 49):-

- Where there are joint & separate debts due from the firm & separate debts due from the firm & partners.

- i) Property of firm should be applied first in payment of debts of firm; surplus in payment of personal debts.
- ii) Property of partner should be applied first in his separate debt; surplus in firms debt.

Partnership Act, 1932

All Sections

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	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 partners
	10	Duty to indemnify partners 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.
0	14	Property of firm
	15	Application of property of firm
	16	Personal profits earned by partners
	17	Rights & duties of partners after change in firm
	18	Partners to be an agent of the firm
*	19	Implied authority of partners
	20	Extension and restriction of partners implied authority
	21	Partners authority in emergency.

Liability to third parties

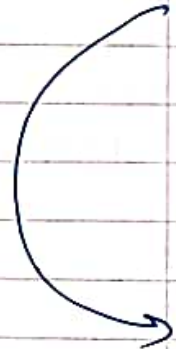
- 22 Mode of doing act to bind the firm
- 23 Effect of admission by partner
- 24 Effect of notice to acting partner
- 25 Liability of partners for acts of firm
- 26 Liability of firm for wrongful acts of partner
- 27 Liability of firm for misapplication by partner
- 27(a) Property is not come in custody of firm.
- 27(b) Property is come in custody of firm.

Legal consequences of partner coming in & going out

- 28 Partner by holding out
- 29 Right of transferee of partner's interest
- 30 Minor admitted for benefits
- 31 Introduction of partner
- 32 Retirement of A partner
- 33 Expulsion of partner
- 34 Insolvency of partner
- 35 Liability of estate of deceased partner
- 36 Rights of outgoing partner to carry on competing business
- 37 Right of outgoing partner in certain cases to share subsequent profits.
- 38 Revocation of continuing guarantee.

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- 58 Application for registration
- 59 Registration
- 59A-1 Late registration on payment of penalty.



- 39 Dissolution of firm (Section 39-47)
- 40 Dissolution by agreement
- 41 Compulsory dissolution
- 42 Dissolution becoz of certain contingencies

Consequences of dissolution

- 43 Dissolution by notice of partnership at will
- 44 Dissolution by court
- 45 Liability for acts of partners done after diss-
- 46 Right of partners to have business wound up
- 47 Continuing authority of partners for purpose of wind up.
- 48 Mode of settlement of accounts
- 49 Payment of firms & separate debts.

* Sections from other acts

Sec 27 Contract Act 1872
Section 27 -> Agreement in restraint of trade

Company act, 2013
464 -> No of partners.