

8/2/24

Indian Partnership Act, 1932

why - sole prop bus. prob

When - 1st oct 1932

where - whole of India

~~Problem - Sole prop~~

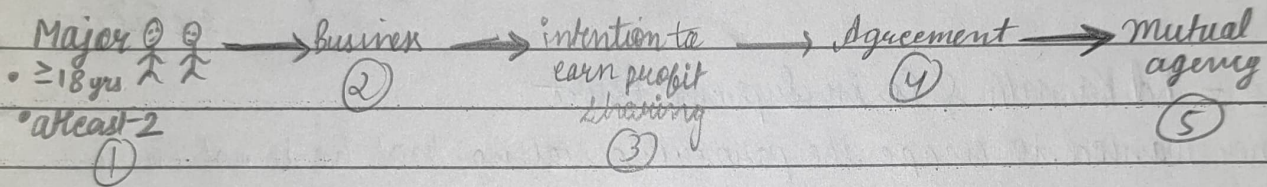
Problem - Sole prop
 oldest form of business

- limited capital (cap ↓)
- Skill Set (stability ↓)
- High Risk (Risk ↑)

Act brings the law in force

Sec 4 - Individually termed as - Partners
Together - firm

Name under which business is done - Firm Name



Elements of Partnership -

1) Major Partner -

min 2 } as per sec 464 of Companies Act
max = 50

Companies Act → Partnership firm = Max 100

Companies Rules → max 50

Can minor be a partner? **NO** → but can be admitted only for profits (NO losses, NO liability)

2) Business -

Lawful / Regular Activity / Acquisition of gain

3) Sharing of Profit -

- Every partner is not required to share losses
- Profit sharing Ratio or loss sharing Ratio can be different
- Profit is essential element of Partnership → there is always a Consideration

Agreement = Voluntary + Contractual
apri marzi se on paper it is enforceable by law

4) Agreement -

Partnership Contract = Partnership Deed

Express
(Written)

Oral

(Recommended in writing)

5) Mutual Agency -

- cardinal principle of partnership - most Imp
- Conclusive evidence of Partnership - Last
- Principal agent Relationship
- One for all, all for one

Note - All 5 conditions shall be fulfilled to create the partnership relation

Case law - Kd Kamath & Co in Supreme Court

A partner wanted to escape the partnership stating that he is not in a partnership since all decisions are taken by single individuals only.

But the Supreme Court highlighted two essentials of partnership -

- i) The agreement to do business sharing profit & losses
- ii) with mutual agency → one for all, all for one

True Test of Partnership (Sec 6)

(i) Agreement (Sec 5) -

A partnership is a result of an agreement and it is not created by status as in case of a Hindu undivided family business.

(ii) Profit Sharing -

Sharing of profit is an essential element for creation of partnership relation. For mere sharing of profit does not create partnership. The following instances involve sharing of profits without creation of partnership -

- by a lender of money, who lend money for business
- by a servant appointed in a firm

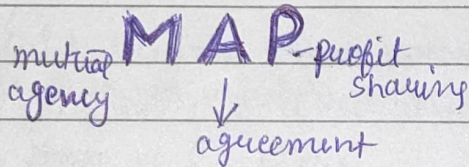
All partnership are association but all associations are not partnership. Since, some associations are meant for non-profit purpose.

- by an amount received by the widow or child of the deceased partner.
- by a seller of goodwill receiving share of profit on sale of his share in the firm.

3) Mutual Agency -

Mutual agency or the principal agent relationship is the cardinal principle of the partnership. The principal agent relationship is a conclusive evidence of the creation of partnership.

One for all and all for one is the core of the existence of partnership.



Brand Ambassador are ^{necessarily} not Nominal partners.

MUF

Joint Stock Company

Club

Association

Co-ownership (zmp)

V/S Partnership

Kinds of Partnership

On the basis of time

- 1) Partnership at will - A partnership formed without any definite period of time i.e. without any fixed period and not including any provision to determine the fixed period is partnership at will.
 - If any of partner wish to dissolve the firm in case of partnership at will can do so by giving a notice to other partners, unless otherwise agreed upon in the partnership deed.
- 2) Partnership for fixed period - where the duration of partnership is fixed by contract between partners it is known as partnership for a fixed period.
 - The partnership is dissolved on completion of such period, however if continued it is treated as partnership at will.

Partnership → at will (focus area of business is defined)

↓
General purpose
(No focus area is defined all business are covered)

On the basis of purpose -

1) Particular Purpose Partnership - A partnership may be organized for a particular purpose as well as to continue regular business. However where a person enters into a partnership for a single adventure or undertaking is dissolved on completion of ~~the~~ such adventures or undertaking. If partnership is continued after completion of such adventure or undertaking it is considered as partnership for general purpose.

Possible case study Examples -

① A Partnership firm > cannot make new
B Partnership firm > partnership firm because NO SEPRATE LEGAL ENTITY.

② XYZ firm > can make partnership because SLE exist.
PQR firm

③ XYZ firm > can make partnership
ABC firm
↓
amalgamate
(Business Sell)
• If separate legal entity exist two can combine to form a partnership firm.

④ X LTD Company > yes (SLE exist) • Amalgamation is allowed
XYZ firm but two firms combines to form one firm not allowed

⑤ X LTD Company > yes (SLE exist)
Y LTD Company

2) General Purpose Partnership - A partnership formed for promotion of general purpose where the liability of all partners is unlimited is known as partnership formed for general purpose.

Partnership → Agreement (Name - Partnership deed)

Written Oral

↓
recommended
serves as proof

Content of Partnership Agreement

1. Firm's Name
2. Firm's Address
3. Principal place of Business
4. Partner's Name
5. Partner's Address
6. Duration of the firm
7. PSR
8. Capital Contribution
9. Admission & Retirement provisions
10. Expulsion ~~of~~ of Partners
11. Nature of Partnership
12. Salary / Remuneration to partners
13. JOC / JOD
14. Provision with respect to dissolution of firm and settlement of accounts.

Types of Partners (26 Jan)

1. Ostensible or Active Partner - It is a partner who actively participates in the conduct of business & is liable to the third party for the debts.

On retirement from the firm such partner shall give a public notice.

2. Nominal Partner - A partner who lends his name to the firm without any real interest in the functioning of the firm and does not share profits or losses of the firm, but ~~he~~ has an unlimited liability towards the third parties.

3. Sub-Partner - A partner who is not the partner of the firm but a partner of different partners of the firm is not liable for the activity of the former partnership firm. (In - sham Partner → UnX)

4. Outgoing Partner - Any partner who is leaving the partnership firm on account of - retirement

- Compulsion (removal)

- Death & Insolvency

will not be liable to the outsiders after leaving the firm

5. Sleeping or Dormant Partner - It is a partner who does not actively participate in the business of firm. Since sleeping partner is retiring from the firm public notice is not required. Such partner is liable to third party.

6. Partners in Profit Only - These are partner who share only in profits of the firm and not in losses but have unlimited liability towards the outsiders.

	Nominal	Partners in Profit only
Eg - Minor	X	✓
Capital	X	✓
Profit	X	✓
Losses	X	X
Unlimited liability	✓	✓

7. Incoming Partner - Admission of partner is a new partner admitted to the affairs of the partnership. He is liable to the partnership firm from his date of joining the firm.

8. Partner by Holding Out (Sec 28) - A person who by his conduct or by words spoken or written by another partner, leads the public to believe that he is a partner in the firm shall be liable to an unlimited extent, if any person relying on such representation makes any investment in the partnership firm.

Unit - 2

Section 9 - General duties of Partners - (29 Jan)

- i) to work for greatest common advantage of the firm.
- ii) to disclose full information to other partner
- iii) to work with utmost good faith
- iv) to render true books of accounts
- v) the legal representative shall be provided ~~that~~ with complete information related to the firm.

Section 10 - Indemnify in case of fraud -

where a partner has engaged in any activity, fraudulently, he is required to compensate for all the losses incurred by other partners as a consequence of committing such fraud.

Section 11 -

- 1) All partners shall follow rights and duties as stated in the partnership agreements.
- 2) A partner in a partnership firm shall not perform any business apart from business of the firm.

IPA - specific act (applicable to partnership firm)

ICA - General Act

IPA - sec 11(2) Partners of the firm cannot do any business except business of the firm	conception →	IPA 16(b) - can do other business + competing business but share profits of other business with the firm
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ICA - sec 27 (other than PA)
Any person can do any
business if it is competing
business to be done outside
local limits

indemnify = compensate = reimbursement = वापस दिना

Section 12 - Right of Conduct related to Business

- a) Right to take part in conduct of business
 - b) Right to perform all duties in the firm diligently
 - c) Every partner has right to inspect the books
 - d) The legal representative of the deceased partner shall have the right to inspect the books of accounts
 - e) Fundamental business decisions related to ~~nature~~ nature of business or admission of partners to be agreed upon by consent of all partners, however regular business decisions to be decided by majority partners
- (June 23)
same as
Sec-9 Duties of Partners

Section 13 - Mutual Rights and liabilities

- i) a partner is not entitled to salary in absence of partnership.
- ii) partners to share profits and losses equally.
- iii) where a partner is entitled to interest on loan the interest shall be paid atleast at 6% p.a.
- iv) where interest is to be paid on capital, it is only an appropriation of profit.
- v) the firm shall indemnify the partner for any expenses incurred in the course of emergency, upto the amount incurred by a person of ordinary prudence.
- vi) any loss incurred to the firm by neglect of any partner shall be ~~compensate~~ compensate or ~~indemnified~~ indemnified by such partner to the firm.

Section-14 Property of the firm

any asset whether tangible or intangible shall be regarded as the property of the firm where the same is acquired by use of funds of the firm.

Provided that, ~~whether~~ where an asset is ~~not~~ purchased solely for the purpose of a partner, the same shall be the property of the partner.

Note: goodwill

Note - Goodwill is an intangible asset which is easy to understand, but difficult to define. It is the reputation of business and can be sold separately from the business. It is goodwill which enables the firm to earn super profits as compared to other firms operating in same business.

Section 15 - Use of firm Property

The property of the firm shall be used for the purpose of the firm's business only.

Section 16 - Personal Profit

- (a) Where a partner has made any secret profit using the name of the firm, use of firm's property, transactions or any business connection, then the partner shall account for such profit to the firm.
- (b) A partner can engage to another business apart from the business of the firm provided that, the profit arising from such business are accounted for by such partner.

Section 17 - Change in partnership firm

Subject to any changes, if any in partnership agreements the rights and duties of the partners shall remain the same -

- ① Admission
- ② Retirement / Death
- ③ Continuation of business after expiry of fixed period
- ④ Change from particular purpose or adventure to a general purpose partnership.

Section 18 -

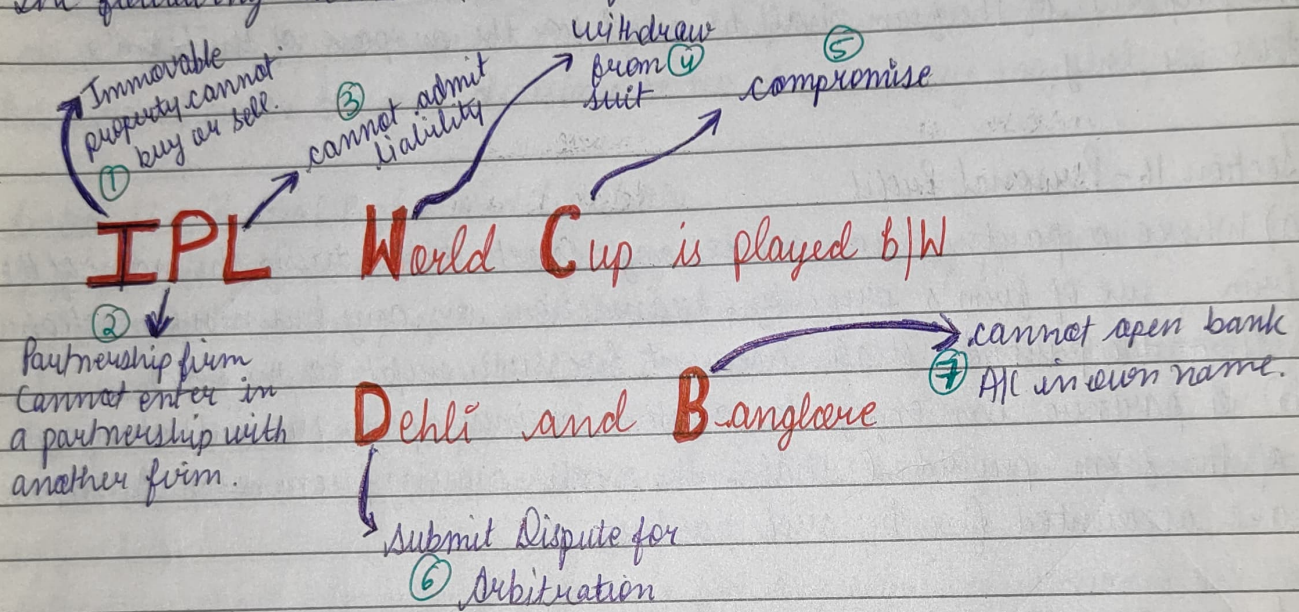
In the transaction of business of the firm all the partners are the agent of the partnership firm and liable towards third party.

Section 19 - Implied authority of partner

Implied authority is the right of every partner in the partnership firm.

- C - common business transaction } Sec 19
- U - Usual Manner
- N - Name of the firm - Sec 22

The following activities are beyond the implied authority of partners -



The following are the activities under implied authority.

- (i) Pledge or sale of partnership property - movable.
- (ii) Buy goods on behalf of partnership firm.
- (iii) Borrow money, contract debts or pay debts on behalf of firm
- (iv) Draw, make, endorse, sign negotiable instruments like bill of exchange, cheques, promissory notes on behalf of partnership firm.

Sec 20 - Extension or Restriction of Authority

The authority which is implied can be extended or restricted by an agreement b/w partners requiring consent of all partners.

Provided that, where the outsider is unaware of such restriction the firm is liable, however if such fact is known to ~~partner~~ outsider then firm is not liable (partner is personally liable)

do not write in exam

Section 21 - Indemnity for expenses

The partner has the right to recover any expenses which are incurred during the course of emergency.

Section 23 - Effect of Admissions by partner

The partner is an agent of the firm and shall have admission or representation of any act done by other partners within the restricted authority and performed in the normal course of business.

Section 18

Agent hie
(mutual agency exists)

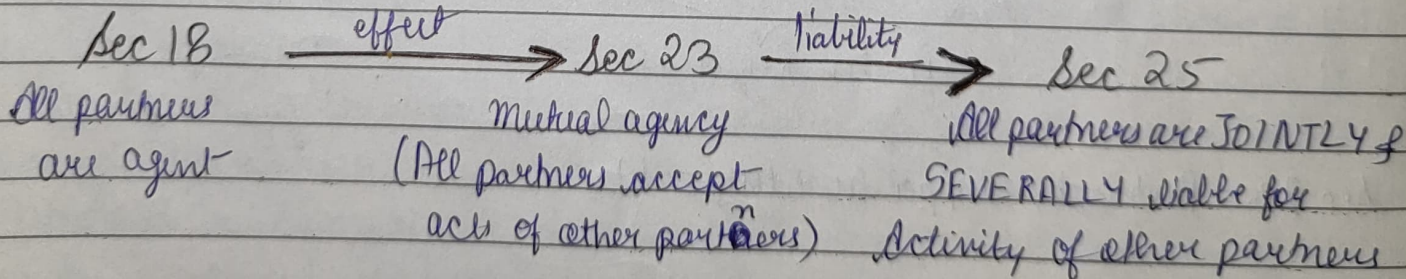
Section 23

effect of Sect 18
(act done by one partner - binds the other partners of the firm)

Section 24 - Notice to Partners

A notice to an active partner is notice to the entire firm, i.e any notice given to an active partner shall make the firm liable unless the active partner is involved in any kind of fraud by participation, abatement or conduct.

Under such circumstance, notice to partner is not considered as notice to the firm.



Sec 25 -

A partner shall be jointly & severally liable for the activity of all the other partners, performed in the course of business.

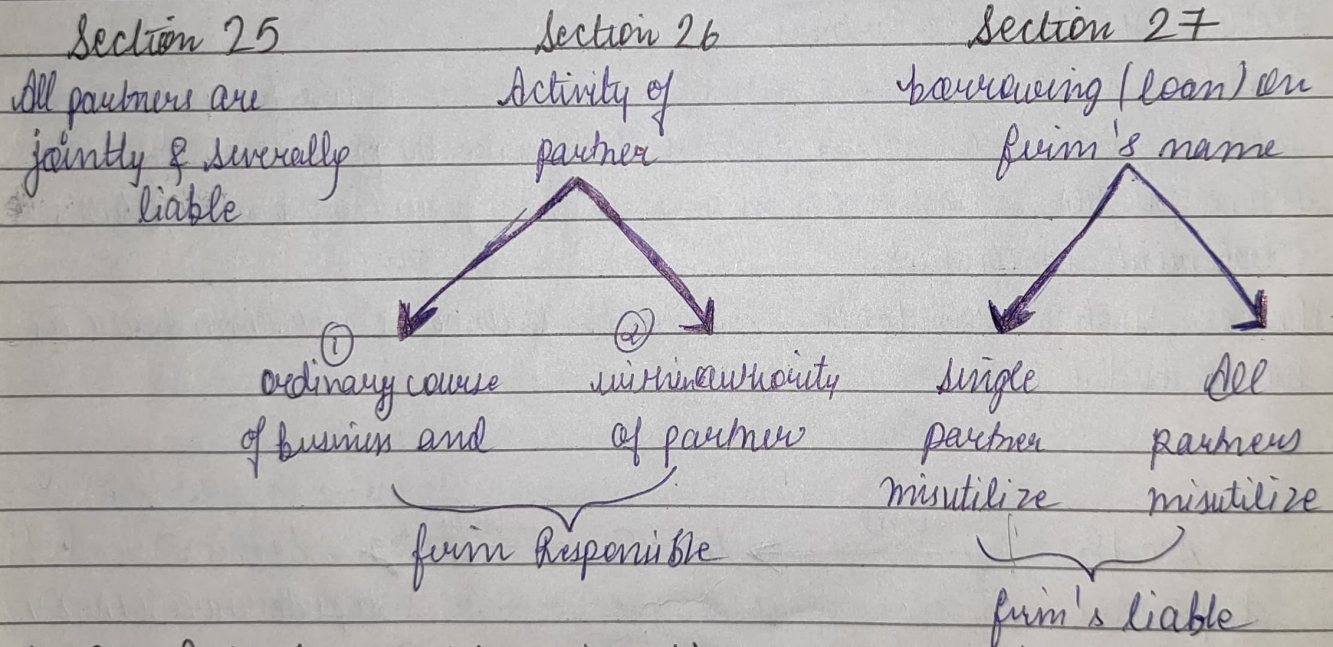
Sec 26 -

Where any loss or injury arises to any third party due to the conduct of any of the partners which is in the

- ordinary course of business of the firm and
- authorised by the firm, then the assets of the firm shall be liable towards the debt.

Sec 27 -

where funds raised in the name of the firm are misutilised by all the partners of the firm or any one of the partners of the firm the entire partnership firm is responsible for repayment of such loan



Sec 28 - Partner by estoppel (holding out) Already written in types of partners

Section 29 - Transfer of Interest

A partner cannot sell, transfer, pledge, mortgage his interest in the firm in favour of the transferee without the consent of all partners. The transferee during the continuation of business shall only participate in the distribution of profit & losses and the rights shall be restricted to:-

- (i) No interference in the business of the firm.
- (ii) cannot make copy of the books of accounts.
- (iii) inspection of books is not allowed.

Provided that, where the transferee retires from the firm or the firm is dissolved the transferee shall have the right to inspect the books in order to determine his share in the partnership firm's property.

Section 30 -

A minor cannot be a partner in a firm however he can be admitted to the benefits of partnership firm.

In the course of minority the minor shall have the following:-

Rights:

- i) can participate in the benefits of the firm.
- ii) participate in the business of the firm and inspect the books of A/c.
- iii) can sue the other partner to recover his share after severing his connection from the firm. breaking/cut off
- iv) on attaining majority shall be given a period of SIX months, to decide whether to continue as a major partner or retire from the firm, the latter shall require a public notice.

Liabilities:

- (i) minor shall not be liable for any debts incurred during period of minority.
- (ii) The share in the property or his share of profit is only liable towards the firm.
- (iii) the minor cannot be declared insolvent however, the firm can be insolvent in such case the share of minor is with the official receiver/ assignee available for recovery on proportionate basis.

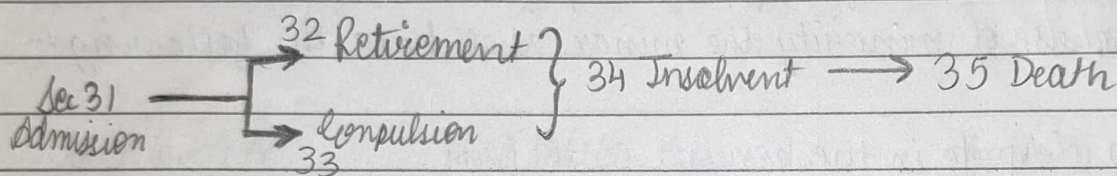
On attaining majority:

Rights/Liabilities where he becomes a major partner

- (i) personally liable to an unlimited extent for all transactions undertaken since the day he was admitted to the firm.
- (ii) all rights and liabilities shall be of the major partner

Rights/Liabilities where he does NOT become a partner

- (i) shall retire in capacity of a minor.
- (ii) No liability for any acts of the firm.
- (iii) Can sue the firm to recover any share in the property of the firm.



Section 31 - Admission

Any person can be admitted as a partner in the firm with the mutual consent ~~in the~~ of all the other partners and shall be liable for all activities in capacity of an agent after the date of admission as a partner in the firm.

Section 32 - Retirement

- i) A partner can retire from the firm
 - by consent of all partners
 - by an express agreement
 - where the partnership is at will by giving a notice to other partners.
- ii) the retirement shall be valid from the date of giving a public notice by an active partner i.e. a sleeping partner does not require a public notice.
- iii) The retirement of any partner shall not result in dissolution of the firm (CHANDRA vs CHANDRIKA, Supreme Court).
- iv) The liability of acts done prior to public notice, the partner shall continue.

to be responsible upto a future date. Provided that,
The partner can ~~not~~ enter to a agreement with such third party to
absolve his liability from the transaction done earlier.

Section 33- Compulsion of a partner

A partner may be expelled from the firm

provided that, i) such removal is in good faith

ii) provided by a express agreement in the deed and

iii) supported by majority of partners

The test of good faith requires that

a) a notice is served on the partner being expelled

b) an opportunity of being heard is given

c) the removal is in the best interest of the firm.

Section 34- Insolvent

- On insolvency of any of the partners, unless otherwise provided for the partnership firm is dissolved.
- No public notice is required for insolvency.
- The partner ceases to be a partner from the date of insolvency.
- The estate of the insolvent partner shall not be liable towards the firm.

Section 35- Death of a partner

- On death of a partner firm is automatically dissolved, unless otherwise provided for.
- Public Notice is not required in case of death.
- The estate of the deceased partner is not responsible for the debts of the firm after the death of partner.
- The estate of the deceased partner shall be transferred to his legal representatives.

Section 36 - Right to do competing business of retired partner
A partner on leaving the partnership firm can do competing business if, the partner refrains from:

- i) Soliciting clients of the firm
- ii) Representing himself as partner of the firm
- iii) Name of the firm

Section 37 - Right of outgoing partner to share subsequent profits
where in case of retirement, expulsion, insolvency or death of a partner the firm fails to pay the lumpsum amount due to such partner or his representative, the partner shall have the option to share in future profits & losses in the agreed ratio or treat such amount due as a loan to the firm chargeable @ 6% p.a interest.

Provided that, where a partner discharges liability of the outgoing partner shall be entitled to the excess share of outgoing partner.

Section 38 - Revocation of Continuing Guarantee

where the partners of the firm enter into a continuing guarantee, unless otherwise agreed upon, the guarantee shall be revoked in case of death or incapacity of any partner to continue.

~~Section 39 -~~
→ closure of business other than corporate bodies

- ① Dissolution
- ② Liquidation → closure of business of Corporate Bodies
- ③ Winding up → paying off liability through assets

Unit-3

Section 58 - Registration of firm

A statement signed by atleast two partners containing details with respect to the firm:

firm's Name

Place of Business

Date of each partner's Joining

Duration of firm

Name & address of partners

Shall be signed and delivered to registrar of firms.

Note: The name shall not contain the words crown, emperor, king, etc

Section 59 -

If registration is satisfied → issued → Certificate of Registration → Every firm shall use the word "registered" next to its name.

Section 69 -

Consequences of Non-Registration

- (i) No suit in a civil court by firm or other co-partners against any third party.
- (ii) No relief to partners for set off of claim
- (iii) Any partner cannot bring any legal action in civil court against any other partner or firm.
- (iv) The third party can sue the firm even if the firm is unregistered.

Non-Registration does not affect the following (Exception of sec 69) -

1. The right of the third party to sue the firm.
2. The right to sue or claim set off upto value of ₹100.
3. The right of the partners to sue the firm or other partners for settlement of account in course of dissolution.
4. The power of an official assignee / receiver of court to release the property of insolvent partner if the firm fails.
5. Suit by legal representative or heirs of deceased partners of the firm for settlement of accounts.

- ① Dissolution of Partnership (Business Band) Firm
- ② Dissolution of Partnership - Partner's relation / PR change in case of Admission, retirement, expulsion

Dissolution of firm → Court (Sec 44)

↓
Self (Sec 40/41/42/43)

Section 40 -

A firm may be dissolved by consent of all partners by way of a written agreement confirming dissolution.

Section 41 -

Compulsory dissolution of the firm in the following two cases:

- business of firm becoming unlawful
- Insolvency of all partners

Section 42 -

Firm is dissolved on happening of any of the following contingencies:

- (i) On expiry of fixed term
- (ii) By death of a partner
- (iii) by insolvency of a partner
- (iv) On completion of particular purpose

Section 43 - Dissolution of partnership at will

where a firm is formed as a partnership by will, unless otherwise stated in the agreement, the partnership can be dissolved by notice given by any of the partner to the firm.

Section 44 - Dissolution of Partnership ^{Firm} by Court

1) Insanity -

where a partner (other than sleeping partner) engages in any activity rendering him of unsound mind on permanent basis, then the other partner or the next friend of insane partner can call for dissolution of firm.

2) Permanent Incapacity -

Where a partner, other than incapacity partner suing has become permanently incapacitated to participate in business, then the other partners can call for dissolution.

3) Misconduct -

Where a partner other than a partner suing, is ~~guilty~~ guilty of any misconduct may or may not be related to business then if such activity brings adverse impact on the firm the other partners can call for dissolution.

4) Persistent Breach of Agreement -

Where a partner intentionally commits any breach of agreement like ~~embezzlement~~ ^{hoarding} of cash, keeping erroneous accounts, holding more cash than required or refusal to submit books of A/c's this can call for dissolution of firm by other partners.

5) Transfer of Interest -

Where a partner has transferred interest in the partnership firm in favour of a third party without the consent of other partners, the court shall dissolve the firm.

6) Perpetual Loss -

Where the business of the firm cannot be carried on without incurring further losses the firm can be dissolved.

7) Just & Equitable Grounds -

Where the court considers any other grounds just and equitable it may dissolve the firm

- Deadlock in management
- Loss of substratum
- where partners are not in talking terms
- Gambling by a partner on Stock Exchange

Section 45 -

The fact of dissolution shall be conveyed by a public notice given by partners to the third party, in absence of a public notice partners continue to stay liable for the acts of other partners provided that ~~the~~, the section does not apply to:

- (i) estate of deceased partner
- (ii) insolvent partner
- (iii) Dormant partner
- (iv) partner retired with public notice

Section 46 -

The rights of the partners on dissolution shall extend to use of assets of the firm to pay off the liabilities and distribute surplus, if any as agreed between them.

Section 47 -

The partner, other than the insolvent partner, shall have the authority to complete the ~~the~~ incomplete transactions and wind up the affairs of the partnership after dissolution.

Provided that, where an insolvent represents himself to be a partner, he shall be liable as a partner by holding out

Section 48 - Mode of settlement of accounts

The liability of the dissolved firm shall be settled in the following manner, subject to agreement between partners -

- i) LOSSES, including deficiency of capital, shall be first met out of profits, next from partners capital if shortage exists to be contributed by partners.
- ii) The assets of the firm along with the deficiency of capital ~~shall~~ shall be used as follows:
 - (a) payment to the third party
 - (b) payment to partners on account of capital what is due to him (loan)

- (c) payment to partners from capital of the firm (capital)
- (d) Any surplus, shall be distributed in agreed.

Proportion

If agreement is silent & deficiency of assets is to borne equally

If agreement provides capital ratio, then such deficiency shall be contributed in capital Ratio only.

Section 49 -

	1 st Pref	2 nd Pref
Firm's Assets	Firm liability	Partner's Individual Liability
Partner's Assets	Partner's liability	Firm's liability