

CHAPTER 3

Indian Partnership Act

Statistics Analysis

May 2018	$2 + 4 + 6 + 4 = 16$ Marks
November 2018	$6 + 6 + 4 = 16$ Marks
May 2019	$2 + 4 + 6 + 4 = 16$ Marks
November 19	$2 + 4 + 6 + 4 = 16$ Marks
November 2020	$2 + 4 + 6 + 4 = 16$ Marks
January 2021	$2 + 4 + 6 + 4 = 16$ Marks
July 2021	$6 + 6 + 4 = 16$ Marks
December 2021	$6 + 6 + 4 = 16$ Marks
May 2022	$6 + 6 + 4 = 16$ Marks
November 2022	$2 + 4 + 6 + 4 = 16$ Marks

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UNIT - I : GENERAL NATURE OF PARTNERSHIP

Question 1 :

What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. **May-18**

Answer :

- **Conclusive evidence of partnership:** Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.
- **Circumstances when partnership is not considered between two or more parties:** Various judicial pronouncements have laid to the following factors leading to no partnership between the parties :
 - (i) Parties have not retained any record of terms and conditions of partnership.
 - (ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
 - (iii) No account of the partnership was opened with any bank.
 - (iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

Question 2 :

"Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? **May-19**

Answer :

Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932):

In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

- a) There was an **agreement** between all the persons concerned
- b) The agreement was to **share the profits** of a business and
- c) The business was **carried on by all or any of them** acting for all.

1. **Agreement** : Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

2. **Sharing of Profit** : Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

3. **Agency** : Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Question 3 :

What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932 ?

November 20

Answer :

(i) Partnership at will under the Partnership Act, 1932

According to Section 7 of the Act, partnership at will is a partnership when :

1. no fixed period has been agreed upon for the duration of the partnership; and
2. there is no provision made as to the determination of the partnership.

Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

Question 4 :

"Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932.

January 21

Answer :

- **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners.
- An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.
- It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.
- In KD Kamath & Co., the Supreme Court has held that the two essential conditions to be satisfied are that :
- (1) There should be an agreement to share the profits as well as the losses of business; and
 - (2) The business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.
- The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

Question 5 :

(i) **What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932?**

OR

(ii) **Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities ?** **January 21**

Answer :

(i) **Particular partnership :** A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking, the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

OR

(ii) **Nominal Partner :** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

Liabilities : He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

Question 6 :

State whether the following are partnerships :

- (i) *A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.*
- (ii) *Two firms each having 12 partners combine by an agreement into one firm.*
- (iii) *A and B, co-owners, agree to conduct the business in common for profit.*
- (iv) *Some individuals form an association to which each individual contributes ₹ 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.*
- (v) *A and B, co-owners share between themselves the rent derived from a piece of land.*
- (vi) *A and B buy commodity X and agree to sell the commodity with sharing the profits equally.*

December 21

Answer :

- (i) No, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such persons partners.

Alternatively, this part can also be answered as below :

Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

- (ii) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
- (iii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
- (iv) No, this is not a case of partnership as no charitable association can be floated in partnership.
- (v) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
- (vi) Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Question 7 :

“Sharing in the profits is not conclusive evidence in the creation of partnership”.

Comment.

December 21

Answer :

“Sharing in the profits is not conclusive evidence in the creation of partnership”

- Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
- Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4, in determining the existence or otherwise of partnership.
- But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.
- According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.
- Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.

Question 8 :

Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.

December -21

Answer :

- (i) **Definition of Partnership :** 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (Section 4 of the Indian Partnership Act, 1932)

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

(ii) **Elements of Partnership** : The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **Association of two or more persons** : Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership. The Partnership Act is silent about the maximum number of partners but Section 464 of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.
2. **Agreement** : It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.
3. **Business** : In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.
4. **Agreement to share profits** : The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. **Business carried on by all or any of them acting for all** : The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

Question 9 :

What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932 ?

May-22

Answer :

Partnership for a fixed period (Indian Partnership Act, 1932) : Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

Question 10 :

Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She want to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed ?

Module

Answer :

Ms. Lucy while drafting partnership deed must take care of following important points :

- No particular formalities are required for an agreement of partnership.
- Partnership deed may be in writing or formed verbally.

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

- Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.
- List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:
- Name of the partnership firm.

- Names of all the partners.
- Nature and place of the business of the firm.
- Date of commencement of partnership.
- Duration of the partnership firm.
- Capital contribution of each partner.
- Profit Sharing ratio of the partners.
- Admission and Retirement of a partner.
- Rates of interest on Capital, Drawings and loans.
- Provisions for settlement of accounts in the case of dissolution of the firm.
Provisions for Salaries or commissions, payable to the partners, if any.
- Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Note : Ms. Lucy may add or delete any provision according to the needs of the partnership firm.

UNIT - II : RELATIONS IF PARTNERSHIP

Question 1 :

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from the partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances ?

May-18, May-19, Module

Answer :

➤ A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that :

- (i) the **power of expulsion must have existed in a contract** between the partners;
- (ii) the power has been **exercised by a majority** of the partners; and
- (iii) it has been exercised in **good faith**.

➤ **If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.**

The test of good faith as required under Section 33(1) includes three things :

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

Question 2 :

"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

(I) *Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.*

(II) *A. State the liabilities of a minor partner both:*

- (i) *Before attaining majority and*
- (ii) *After attaining majority.*

OR

B. State the legal position of a minor partner after attaining majority:

(i) When he opts to become a partner of the same firm.

(ii) When he decide not to become a partner. (Nov-18,Dec-21,Module)

Answer :

(I) Rights which can be enjoyed by a minor partner :

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(II) A. (i) Liabilities of a minor partner before attaining majority :

- (a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- (b) Minor has no personal liability for the debts of the firm incurred during his minority.
- (c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.

(ii) Liabilities of a minor partner after attaining majority:

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm. Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

OR

B) (i) When he becomes partner:

If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows :

- (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(ii) When he elects not to become a partner :

- (a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- (b) His share shall not be liable for any acts of the firm done after the date of the notice.
- (c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

Question 3 :

(i) What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?

OR

(ii) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932 ?

Answer :

(i) Effect of notice to an acting partner of the firm :

- According to Section 24 of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.
- Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

OR

(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners :

- (a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

- (b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Question 4 :

- (i) *When the continuing guarantee can be revoked under the Indian Partnership Act, 1932 ?*

OR

- (ii) *What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?* **November -19**

Answer :

- (i) **Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)**

According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

- (ii) **Goodwill :**

The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Question 5 :

With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner. **November -19**

Answer :

Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932) :

- (i) The insolvent partner **cannot be continued as a partner.**
- (ii) He **will be ceased to be a partner from the very date on which the order of adjudication is made.**
- (iii) The **estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.**

- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Question 6 :

Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain :

- (i) *To what extent X will be liable if he failed to give public notice after attaining majority?*
- (ii) *Can Mr. L recover his debt from X?*

November -19, Module

Answer :

- As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
- However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
- If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:
- (A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
- (i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.
- (ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Question 7 :

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share. Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

- (i) *Rights of P & Q to start a competitive business.*
- (ii) *Rights of P & Q regarding their share in property of M/S PQRS & Co.*

November 20

Answer :

(i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)

(1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

- (a) use the firm name,
- (b) represent himself as carrying on the business of the firm or
- (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co after following above conditions in the absence of any agreement.

(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or

his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

Question 8 :

Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.

November -20

Answer :

Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932) :

Where-

- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of section 27 :

- It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.
- Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.
- On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.
- The firm would be liable in both the cases.

Question 9 :

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932.

January 21

Answer :

Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932):

- Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.
- The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932) :

Where, -

- by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.
- a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Question 10 :

M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

- (i) *Whether P's private estate is liable for the price of furniture purchased by the firm?*
- (ii) *Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?*

January -21

Answer :

- According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.
- Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.
- In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.
- In the light of the facts of the case and provisions of law:
 - (i) Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.
 - (ii) It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Question 11 :

Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Z for settling the amount.

In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:

- (i) Can Mr. M validly transfer his interest in the firm by way of sale?***
- (ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer?***

July-21, Module

Answer : According to Section 29 of the Indian Partnership Act, 1932,

- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

- (2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law :

- (i) Yes, Mr. M can validly transfer his interest in the firm by way of sale.
- (ii) On the retirement of the transferring partner (Mr. M), the transferee (Mr. Z) will be entitled, against the remaining partners:
- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

So, in this case on Mr. M's retirement, Mr. Z would be entitled to receive the value of Mr. M's share to the extent of ₹ 6 crore in the firm's assets.

Question 12 :

Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932 ?

July-21

Answer :

- According to Section 19 of the Indian Partnership Act, 1932, subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
- The authority of a partner to bind the firm conferred by this section is called his "implied authority".
- In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
- (a) submit a dispute relating to the business of the firm to arbitration;
- (b) open a banking account on behalf of the firm in his own name;
- (c) compromise or relinquish any claim or portion of a claim by the firm;
- (d) withdraw a suit or proceedings filed on behalf of the firm;
- (e) admit any liability in a suit or proceedings against the firm;
- (f) acquire immovable property on behalf of the firm.
- (g) transfer immovable property belonging to the firm; and
- (h) enter into partnership on behalf of the firm.

Question 13 :

M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

May-22**Answer :**

- (i) **Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):** Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners. In the instant case, Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.
- (ii) **Rights of Transferee of a Partner's interest (Section 29):** A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Hence, here Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts.

Question 14 :

A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Module

Answer : Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

- (1) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or
- (2) Interest at the rate of 6 per cent annum on the amount of his share in the property. Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their option to:
 - (a) the 20% shares of profits (as per the partnership deed); or
 - (b) interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Question 15 :

Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled there for. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership ? **Module**

Answer :

- As per Section 29 of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.
- In the given case during the continuance of partnership, such transferee Mr. B is not entitled:
 - a) to interfere with the conduct of the business.
 - b) to require accounts.
 - c) to inspect books of the firm.
- However, Mr. B is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e. he cannot challenge the accounts.

Question 16 :

Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. **November 20**

Answer :

- A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that :
 - (i) the power of expulsion must have existed in a contract between the partners;
 - (ii) the power has been exercised by a majority of the partners; and (iii) it has been exercised in good faith.
- If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.

UNIT - III : REGISTRATION AND DISSOLUTION OF A FIRM

Question 1 :

Distinguish between dissolution of firm and dissolution of partnership.

May-18, November -19

Answer :

Dissolution of firm Vs. dissolution of partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Question 2 :

What are the consequences of Non-Registration of a Partnership Firm? Discuss. What are the rights which won't be affected by Non-Registration of Partnership firm?

May-18, November -20, Module

Answer :

Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932] :

Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. **These disabilities briefly are as follows :**

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Non-registration of a firm does not, however, affect the following rights :

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.

Question 3 :

i) *Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C. Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.*

(ii) Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1 st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

November -18, Module

Answer :

- (i) Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit or goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

- (ii) A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per section 28 of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X

Question 4 :

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.

Nov-18, May-22

Answer : Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932) :

Court may, at the suit of the partner, dissolve a firm on any of the following ground :

- (1) **Insanity/unsound mind** : Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.
- (2) **Permanent incapacity** : When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (3) **Misconduct** : Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- (4) **Persistent breach of agreement** : Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - (i) Embezzlement,
 - (ii) Keeping erroneous accounts
 - (iii) Holding more cash than allowed
 - (iv) Refusal to show accounts despite repeated request etc.
- (5) **Transfer of interest** : Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
- (6) **Continuous/Perpetual losses** : Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (7) **Just and equitable grounds** : Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
 - (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.

- (iv) Gambling by a partner on a stock exchange.

Question 5 :

“Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.” Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief?

May-19

Answer :

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning. However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which are as follows :

- (i) **No suit in a civil court by firm or other co-partners against third party :** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim :** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm :** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- (iv) **Third party can sue the firm :** In case of an unregistered firm, an action can be brought against the firm by a third party.

Question 6 :

Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932

July-21

Answer :

Mode of Settlement of partnership accounts : As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :-

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order :
- (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Question 7 :

What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932 ?

Module

Answer :

Application For Registration (SECTION 58) :

- (1) ₹ The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-
- (a) The firm's name
 - (b) The place or principal place of business of the firm,
 - (c) The names of any other places where the firm carries on business,
 - (d) The date when each partner joined the firm,
 - (e) The names in full and permanent addresses of the partners, and
 - (f) The duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely :-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Question 8 :

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

Module

Answer : Dissolution of Firm :

The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- (d) subject to agreement between the parties, on the happening of certain contingencies, such as :
 - (i) effluence of time;
 - (ii) completion of the venture for which it was entered into;
 - (iii) death of a partner;
 - (iv) insolvency of a partner.
- (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (f) by intervention of court in case of :
 - (i) a partner becoming the unsound mind;
 - (ii) permanent incapacity of a partner to perform his duties as such;
 - (iii) Misconduct of a partner affecting the business;
 - (iv) willful or persistent breach of agreement by a partner;
 - (v) transfer or sale of the whole interest of a partner;
 - (vi) improbability of the business being carried on save at a loss;
 - (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.



**"Don't let what you cannot do interfere
with what you can do."**