

The Indian Partnership Act, 1932

DPP-01

1. 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.

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

1. (H & S)

According to Section 4 of the Indian Partnership Act, 1932 '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. 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

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:

There are two propositions to be considered. 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.

**4. (H & S)**

Business carried on by all or any of them acting for all:

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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.

There is a case of KD Kamath & Co., in which 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.

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| <p>1. 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?</p> <p>2. What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932?</p> <p>3. Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?</p> | <p>4. X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Advice Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.</p> |
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Hints & Solutions

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| <p>1. (H & S)
Ms. Lucy while drafting partnership deed must take care of following important points:</p> <ul style="list-style-type: none"> • 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. <p>List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:</p> <ol style="list-style-type: none"> 1. Name of the partnership firm. 2. Names of all the partners. 3. Nature and place of the business of the firm. 4. Date of commencement of partnership. 5. Duration of the partnership firm. 6. Capital contribution of each partner. 7. Profit Sharing ratio of the partners. 8. Admission and Retirement of a partner. 9. Rates of interest on Capital, Drawings and loans. 10. Provisions for settlement of accounts in the case of dissolution of the firm. 11. Provisions for Salaries or commissions, payable to the partners, if any. 12. Provisions for expulsion of a partner in case of gross breach of duty or fraud. <p>Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.</p> | <p>adventure or undertaking, the partnership is called 'particular partnership'.</p> <p>A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.</p> <p>3. (H & S)
Nominal Partner:
As per Indian Partnership Act, 1932 a person who lends his name to the firm, without having any real interest in it, is called a nominal partner.
Following are the liabilities of the Nominal Partner:</p> <ul style="list-style-type: none"> • 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. <p>4. (H & S)
In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).
Partner by holding out (Section 28): Partnership by holding out is also known as partnership by estoppel. 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. It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.
You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.
The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.</p> |
| <p>2. (H & S)
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</p> | |

The Indian Partnership Act, 1932

DPP-03

1. State the differences between Partnership and Hindu Undivided Family.
2. What is the difference between Partnership and Joint Stock Company?
3. What is the difference between Partnership and Club?
4. What is the difference between Partnership and Co-ownership?
5. What is the differentiate between Partnership and Association?



Hints & Solutions

1. (H & S)

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family.
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other coparcener are liable only to the extent of their share in the profits of the family business.
Calling for	A partner can bring a suit against	On the separation of the joint family, a member is not

accounts on closure	the firm for accounts, provided he also seeks the dissolution of the firm.	entitled to ask for account of the family business.
Governing Law	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
Minor's capacity	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
Continuity	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
Number of Members	In case of Partnership number of members should not exceed 50.	Members of HUF who carry on a business may be unlimited in number.



Share in the business	In a partnership, each partner has a defined share by virtue of an agreement between the partners.	In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family.
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	property, if the joint estate is insufficient to meet them wholly.	agreed to be liable. However, there may be companies where the liability of members is unlimited.
Property	The firm's property is that which is the "joint estate" of all the partners as distinguished	In a company, its property is separate from that of its members who can receive it back only in the

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2. (H & S)

Basis	Partnership	Joint Stock Company
Legal status	A firm is not legal entity i.e. it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members (<i>Salomon v. Salomon</i>).
Agency	In a firm, every partner is an agent of the other partners as well as of the firm.	In a company, a member is not an agent of the other members or of the company, his actions do not bind either.
Distribution of profits	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
Extent of liability	In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has

	property, if the joint estate is insufficient to meet them wholly.	agreed to be liable. However, there may be companies where the liability of members is unlimited.
Property	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
Transfer of shares	A share in a partnership cannot be transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
Management	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered

		under the Companies Act, 2013.
Winding up	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.
Number of membership	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.
Duration of existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.

3. (H & S)

Basis of Difference	Partnership	Club
Definition	It is an association of persons formed for earning profits from a business carried on by all or anyone of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.
Relationship	Persons forming a partnership are called partners and a partner is	Persons forming a club are called members. A member of a club

	an agent for other partners.	is not the agent of other members.
Interest in the property	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.
Dissolution	A change in the partners of the firm affect its existence.	A change in the membership of a club does not affect its existence.

4. (H & S)

Basis of difference	Partnership	Co-ownership
Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.



5. (H & S)

Basis of difference	Partnership	Association
Meaning	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention	Association evolves out of social cause where there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.

	to share the profits of such a business.	
Examples	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.

The Indian Partnership Act, 1932

DPP-04

1. State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?
2. Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.
3. Mr. A (transferor) transfers 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 therefore. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership?
4. Discuss the liability of a partner for the act of the firm, and liability of the firm for the act of a partner to third parties as per the Indian Partnership Act, 1932.
5. 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?

Hints & Solutions

1. (H & S)

Explanation: Under Section 29 of the Indian Partnership Act 1932, a share in a partnership is transferable like any other property. Still, as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such type a transferee are as follows:

1. During the continuance of the partnership, such transferee is not entitled
 - i) to interfere with the conduct of the business,
 - ii) to require accounts, or
 - iii) to inspect any books of the firm.

He is only entitled to receive the share of the transferring partner in the profits, and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

2. On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled to the following against the remaining partners:
 - i) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - ii) to ascertain the share, he is entitled to an account from the date of the dissolution.

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot, by transferring his interest, make anybody else a partner in his place unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned to another person.

2. (H & S)

Explanation: A minor cannot be bound by contract because a contract with minor is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because the partnership is founded based on

a contract. As per Section 30 of the Indian Partnership Act, 1932, even though a minor cannot be a partner in a firm, he can be admitted to the benefits of a partnership. In simple words, he can be validly given a share in the profits of the partnership. It can be done with the consent of all the partners, and the rights and liabilities of such a partner are as follows:

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

3. (H & S)

Explanation: As per Section 29 of The Indian Partnership Act, 1932, a transfer by a partner of his interest in the partnership firm, either absolute or by a 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 the business, or to require accounts, or to inspect the books of the partnership 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 as agreed by the partners.

In the given case, during the continuance of the partnership, Mr. B is not entitled:

1. To interfere with the conduct of the firm's business.
2. To require accounts of the firm
3. To inspect the books of the firm.

However, Mr. B is only entitled to receive the share of the transferring partner of the profits, and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

4. (H & S)

Explanation: As per Section 25 of the Indian Partnership Act, 1932, Liability of a partner for acts of the firm is as follows:

Every partner is liable, jointly with all the other partners of the firm, and 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. Because all acts done within the scope of their authority are acts done towards the business of the partnership firm. The expression "act of firm" signifies 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. In order to bring a case under Section 25, it is necessary that the act of the firm, due to which liability is brought to be enforced against a party, must have been done while he was a partner.

As per Sections 26 & 27 of the Indian Partnership Act, 1932, the Liability of the firm for wrongful acts done by the partner and for misapplication by partners are as follows: 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 therefore to the same extent as a partner.

If 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 any of the partners misapplies the money or property while it is in the custody of the firm, then the firm is liable to make good the loss.

5. (H & S)

Explanation: Under 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, kind of business carried on by the firm binds the firm.

The authority of a partner to bind the firm conferred by the above 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 do certain acts as follows:

- (a) To submit a dispute relating to the business of the partnership firm to arbitration;
- (b) To open a bank account on behalf of the partnership firm in his own name;
- (c) To compromise or relinquish any type of claim or portion of a claim by the partnership firm;
- (d) To withdraw any suit or proceeding filed on behalf of the partnership firm;
- (e) To admit any type of liability in a suit or proceeding against the partnership firm;
- (f) To acquire any immovable property on behalf of the partnership firm;
- (g) To transfer any immovable property belonging to the partnership firm; and
- (h) To enter into a partnership on behalf of the partnership firm.

1. M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of the rest of the partners.

Examine whether action by the partners was justified or not?

What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

2. 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?
3. Sohan, Rohan, and Jay were partners in a firm. The firm is a dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2018, one of the partners, Mr. Jay died in a road accident. The firm ordered M/s AB and Co. to supply the furniture for their business on 25 May 2018, when Jay was also alive. Now Sohan and Rohan continue the business

in the firm's name after Jay's death. The firm did not give any notice about Jay's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25 July 2018. The fact about Jay's death was known to them at the time of delivery of goods. Afterwards, the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of the Indian Partnership Act, 1932, explain whether Jay's private estate is also liable for the price of furniture purchased by the firm.

4. 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 the ladies club over their personal issues and X's wife was hurt badly. X got angry about 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 the test of good faith in such circumstances?
5. When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

Hints & Solutions

1. (H & S)

Explanation: Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

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.

Under Section 33(1), the test of good faith includes three things:

- The expulsion must be done to protect the interests of the partnership firm.
- The partner who is going to be expelled is served with a notice.
- He is given an opportunity of being heard before his expulsion.

If a partner is otherwise expelled, then expulsion is null and void.

- (i) As per the above provisions, action by the partners of M/s XYZ & Associates, a partnership firm, to expel Mr. G from the partnership was justified as he was expelled by united approval of all the partners exercised in good faith to protect the interests of the partnership firm against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G before his expulsion.
- (ii) The following are the factors to be kept in mind prior to expelling a partner from the firm by other partners:
 - (a) the power of expulsion must have existed in a contract between the partners;
 - (b) a majority of the partners has exercised power; and
 - (c) it has been exercised in good faith.

2. (H & S)

Explanation: According to section 37 of the Indian Partnership Act, 1932, when 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 firm's property, 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 of the following:

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 firm's property; or
2. Interest at the rate of 6 percent per annum on the amount of his share in the firm's property.

Based on the above 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 (share of A as per the partnership deed); or
- (b) interest at the rate of 6 percent per annum on the amount of A's share in the property.

3. (H & S)

Explanation: According to Section 35 of the Indian Partnership Act, 1932, if under a contract between the partners, the partnership firm is not dissolved by the death of a partner, then the estate of a deceased partner is not liable for any act done by the firm after his death.

Further, in order that the estate of the deceased partner may be absolved from any liability for the future obligations of the firm, it is not necessary to give any notice either to the public or to the persons having dealings with the partnership firm.

In light of the facts of the case and provisions of law, since the delivery of furniture was made after Jay'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 legal representatives of the deceased partner.

Because there was no debt due in respect of those goods during Jay's lifetime. He was already dead when the delivery of goods was made to the partnership firm and also it is not necessary to give any notice either to the public or to the persons having dealings with the firm on the death of a partner. So, the estate of the deceased partner may be absolved

from any liability for the future obligations of the partnership firm.

4. (H & S)

Explanation: A partner may not be expelled from a partnership 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:

1. the power of expulsion must have existed in a contract between the partners;
2. the power has been exercised by a majority of the partners, and
3. it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in the 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 firm.
- The partner going to be expelled is served with a notice.
- He is given an opportunity of being heard before his expulsion.

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), the expulsion of Partner Y is not valid.

5. (H & S)

Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932) As per the provisions of the 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 changes may occur by the death, or retirement of a partner, or by introduction of a new partner.

The Indian Partnership Act, 1932

DPP-06

1. A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?
2. P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?

Hints & Solutions

1. (H & S)

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (i) the suit must be instituted by or on behalf of the firm which had been registered;
- (ii) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms.

Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It

was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

2. (H & S)

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (i) the suit must be instituted by or on behalf of the firm which had been registered;
- (ii) the person suing had been shown as partner in the register of firms.

In view of this position of law, the suit is in the case is maintainable.

The Indian Partnership Act, 1932

DPP- 07

1. Distinguish between dissolution of firm and dissolution of partnership.
Or
"Dissolution of a firm is different from dissolution of Partnership". Discuss.
2. MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected?
3. M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;
 - (a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?
 - (b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?
 - (c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm?

Hints & Solutions

(H & S)

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 the 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 of the firm.

2. (H & S)

According to Section 41 of the Indian Partnership Act, 1932, a firm is compulsorily dissolved;

- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
- (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

However, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful.

However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.

3. (H & S)

According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

- (a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.
- (b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.
- (c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.