

4. The Indian Partnership Act, 1932 (21 Marks)

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Unit I: General Nature of Partnership

- * Background → It came into existence on 1 October, 1932
- Applicability → Whole of India (except Sec. 69 of IPA, 1932)
- Where Act 1932 is silent → General principle of Indian Contract Act, 1872 apply
- ↳ WHY ⇒ The partnership is specialised branch of Contract Act, 1872

Section 4 ⇒ Meaning

- Partnership → Partnership is the relation b/w persons min. 2
max. 50
 - who have agreed the profit
 - of a business
 - carried on by all
 - or any of them acting for all } MUTUAL AGENCY
- Partner → Person who entered into partnership one individually called as Partner.
- Firm → Partners collectively known as firm.
- Firm Name → Name under which Business is carried known as Firm Name.

* Elements of Partnership :-

- (i) Agreement → Partnership is the result of agreement
 - Voluntary, Contractual
 - Agreement may be expressed or implied
 - Agreement may be in writing or oral } presumed by the law

- (ii) Business →
 - existence of Business (Profit)
 - motive ⇒ profit making
 - NPO not allowed to do partnership

- (iii) Association of persons →
 - firm cannot become partner in partnership firm
 - minor cannot be admitted as partner
 - min → 2, max → 50 (Sec. 464 of Companies Act, 2013)
 - firm cannot be a partner (not a legal person)

Implied term :- (Contract Act, 1872 applicable (agreement) ¹⁰⁰ (person ⇒ legal person) ¹⁰⁰ (Section 464 shall not exceed 100))

- minor
- unsound mind person
- disqualified by the law

- (iv) Agreement to share profit - • Profit belong 1 person → entitled to only 1 partner ⇒ no partnership exists
- Sharing of profit → partners share the profit in the manner they want (Equal proportion, Specific ratio, Capital contribution proportion)
 - Sharing of loss → agreement to share the loss is not essential
 - profit to minor → minor partner, guaranteed profit to partner

- (v) Business carried on by all or any of them acting for all (Cardinal Principle)
- mutual agency
 - true test of partnership
 - Act of one partner if conduct of business, is act for all
- principal and Agent
 ↳ every partner is a principal as well as agent of the firm (Reason of UNLIMITED LIABILITY)

Section 6 → Mode of determining Existence of Partnership
(TRUE TEST OF PARTNERSHIP)

- Base of Agreement
 - Agreement
 - Sharing of profit
 - Mutual Agency

1. AGREEMENT ⇒ Partnership is created by agreement and ^{not by} status

- relation among partner is created by contract
- Status → Birth → Hindu Undivided Family

2. SHARING OF PROFIT ⇒ Sharing of profit does not ensure status of a person as a partner.

- Sharing of profit is not a conclusive proof of a partnership
- Sharing of profit in Joint venture Business is not partnership.

Not partners :-
• Lender of money (loan)
• widow of partner
• minor
• previous owner of goodwill
• employee, or agent

Types of Partners

1. Dostensible / Active Partner - • a partner who - actively engage in the conduct of business

- act as agent for all partners
- on retirement \rightarrow public notice is required
- He is liable for act of the firm
- Public Notice \Rightarrow after Public Notice of Retirement \Rightarrow Active partner absolved from liability (after retirement activity of firm)

2. Nominal Partner - • lend his name to the firm

- they do not have any real interest
- No investment
- not entitled for profit
- No participation in conduct of business
- LIABILITY \Rightarrow fully liable towards third party

3. Sub Partner - • when a partner agree to share the profit divided from the firm \rightarrow with a third person

eg. X, Y, Z Profit \Rightarrow ₹ 90000
 1: 1: 1

X = 30000, Y = 30000, Z = 30000

\hookrightarrow Z \Rightarrow ₹ 12000 (Z is sub-partner of Y) (₹ 12000 from ₹ 30000)

- Get share only in divided profit
- No authority to interfere in conduct or mgt. of Business.

4. Dormant Partner \rightarrow Sleeping Partner

- no participation in the conduct of business
- Sleeping partner join the firm by 'Agreement'
- Invest capital
- share the profit of the firm
- He is liable for the act of the firm
- Retirement \Rightarrow need not give Public Notice

5. > Partner guaranteed for Profit → partner in profit only
- Partners may agree that a particular person shall get a share in Profit only
 - He will not be called upon to contribute towards losses
 - Liable towards third party

6. > Incoming Partner →
- newly admitted partner in EXISTING Firm
 - CONSENT ⇒ all existing partners is required
 - LIABILITY ⇒ Not liable for any act before his admission

7. > Outgoing Partner →
- partner who leave the firm
 - LIABILITY ⇒ liable for act of the firm till date
 - RETIREMENT ⇒ If public notice is not given ↓ (Section 28)
Liable even after Retirement

8. > Minor Partner →
- admitted for profit only
 - admitted in EXISTING FIRM
 - with minor, no partnership can be created
 - LIABILITY → not liable other than his share [Minor estate is liable for the value of help → required]
↳ NECESSITY

9. > Partner by Holding Out (Section 28) →
- knowingly allows others → Managers, Employee, Friends
 - Retired partner
 - Such person is not really a partner
 - But hold himself out as a partner
↓
self ↳ outsider
 - LIABILITY → liable to third party
 - OR allow others to do it
 - CASE ⇒ Other party on the faith of the Representation gave Credit to the firm
 - once he posed himself as a partner (though he is not), he is stopped from saying that he is not a partner in a firm
- Partner by Estoppel

Unit II : Relations of Partners (Sec. 9 to Sec. 38)

* Relation of Partners to one another :- (Sec. 9 to Sec. 13)

(A) General Duties of Partners (Sec. 9)

- Partner should carry business to greatest Common Advantage
- Follow the principle of → Utmost Good Faith
- provide full information of all things affecting the firm to any partner
- all partners are bound to render accounts to each others.
- if one partner maintain accounts → He is the proper person to explain & provide full information.

(B) Duty to Indemnify the loss caused by Fraud (Sec. 10)

- Fraud is a breach of principle of 'mutual agency'.
- Partner conducting fraud in the conduct of business of the firm,
- must make good the loss → The partner making FRAUD
- Co-partner have right → apply all the loss by fraud to fraudulent partner

eg. A, B, C → C commits fraud in the name of the firm
3:2:1 • Normal course ⇒ A, B, C all are liable

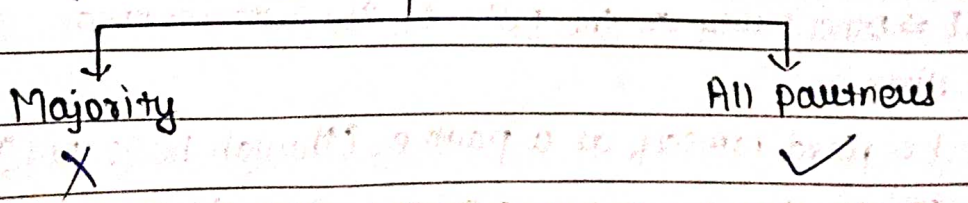
• Fraud ⇒ Co-partners (A, B) → apply → all loss on C

(C) Determination of Rights and Duties of Partners, by contract between the partners (Sec. 11) [Exception ⇒ Indian Contract, 1872 (Sec. 27)]

• Partnership is the relation based on 'consent' of the partners.

* Sec. 11(1)

- mutual rights & duties determined by the contract.
- contract may be expressed | implied
- Contract may varied by contract of



* Exception of Sec. 27 of Indian Contract Act, 1872 \Rightarrow Section 11(2) of Partnership Act, 1932

Date ___/___/___



* Section 11(2)

• Agreement in Restraint of Trade \rightarrow is VOID (Sec. 27 of ICA, 1872)

• NOT with Standing in sec. 27

Partners may make a contract \Rightarrow 'A partner shall NOT carry any business other than that of firm while he is partner'

(D) The conduct of the Business (Sec. 12)

* Sec. 12(a) \Rightarrow Right to take part in the conduct of Business:

• every part have the right to take part in the business of firm.

• above term is effective if there is NO contract about contrary.

* Sec. 12(b) \Rightarrow Every partner is bound to attend diligently to his duties

in the conduct of business:

• he should not attend partially, other than firm, biased

* Sec. 12(c) \Rightarrow Right to be consulted

• every partner shall have Right to express his OPINION

• if differences arise \Rightarrow MAJORITY is the Rule

\downarrow
Routine matter.

\downarrow
good faith

\rightarrow majority is the rule

\downarrow
Change in nature of Business

\downarrow
unanimous consent

(consent of all is required)

* Sec. 12(d) \Rightarrow Right to access the books

• all partners have right to access the book

• minor, active, sleeping \rightarrow access the book

• entitled to access all the book of the firm

• to inspect the book & take copy of the book

* Sec. 12(e) \Rightarrow Right to legal heirs / representatives / duly authorised agent

• after death of partner, his legal representative has right to access and inspect books of the firm



(E) Mutual Rights & Liabilities (Sec. 13)

* Sec. 13(a) ⇒ Right to Remuneration

- Partners have no right to claim remuneration
- If specific agreement ⇒ Partners are entitled for remuneration

* Sec. 13(b) ⇒ Right to share profit

- Basically, partners are entitled to share profit/loss equally.
- If specific agreement ⇒ profit/loss to be shared in mentioned ratio

Note:- There is no relation b/w Capital contribution and Profit sharing

* Sec. 13(c) ⇒ Interest on Capital

- IOC is also a part of Remuneration
- No agreement → No Interest on Capital
- Express agreement required → for IOC
 - ↳ Rate of Interest
 - ↳ unanimous consent

* Sec. 13(d) ⇒ Interest on Advance (Loan)

- If no agreement ⇒ 6% pa interest rate
- If expressed agreement shows 9% Interest on loan → then 9%

* Sec. 13(e) ⇒ Right to be indemnified

- partner indemnified by the firm compensation for the losses
- for ordinary and proper conduct of business of the firm
- Prudent behaviour (careful about the future)

* Sec. 13(f) ⇒ Right to indemnify the firm

- any loss caused by willful negligence of the partner
- firm will be indemnified by the specific partner (loss made losses)



* Partnership Property (Sec. 14)

- 1.) Property of the firm / Partnership Assets / Property of Partnership / Joint Estate / Joint stock
- 2.) Property deemed as belong to the firm
eg. A, B, C are partners \rightarrow Property of A, B, C worth ₹ 700000
 \downarrow
Property of the firm
- 3.) Partnership property includes :-
 - (a) all property, rights and interests which partners brought in business
 - (b) Goodwill of the business may be sold at dissolution of firm.
 - (c) all property, rights and interests which firm purchased or acquired
- 4.) Partnership property belong to the firm \Rightarrow (A) Real intention of partners
(B) Agreement of partners.
- 5.) Property of partners \Rightarrow When any property belonging the partner, used for the firm, it does not become 'Property of the firm'.
eg. A, B, C are partners \Rightarrow C bought a car and used that car for office work & pick up A, B for same \rightarrow It does not become property of firm

* Application of the property of the firm (Sec. 15)

- property of the firm \rightarrow held for the purpose of the firm
 \rightarrow used for the purpose of the firm
- Partners have common interest in the property of the firm.
- During subsistence of firm, partners have no proprietary interest of firm property.
 \rightarrow ownership

* Personal profit earned by Partners (Sec. 16)

- (i) When partners derive any secret profit for himself using the property of the firm, business connection, or behalf of firm name
Solution:- He shall pay it back to the firm
- (ii) If a partner carry on any business of same nature & competing with the firm, he shall pay to the firm.

* Rights and Duties of Partners after change in the firm (Sec. 17)

- Change in the firm → Admission of new partner
- retirement/death of partner
- change in nature of business
- partnership business carried on after expiry of term

Solution :-

- Subject to contract b/w the partners
- mutual rights & duties of partner is reconstituted
- remains same as they are immediately before change

* Relation of Partners to Third Party (Sec. 18) [Sec. 18]

- (i) Partner is agent of the firm (to all other partners)
- (ii) Agent → for the business of the firm
- (iii) Partner is principal for others act
- (iv) Partner is agent when he acts for others

* Implied Authority of a partner as an agent of the firm [Sec. 19]

Partner → (Agent) → (Authority) → which is presumed

- to carry on usual course of business
- act on behalf of and for firm name
- to act for business matter & for firm
- profit if earned belong to the firm
- Sale/purchase for revenue → belong to the firm
- A/c Settlement → belong to the firm
- Borrow money & pay debt on behalf of firm
- Drawing, making, endorsing → on behalf of firm

Implied Authority does not include:- [Sec. 19(2)]

- open A/c on behalf of firm → but his own name
- compromise any dispute/claim of firm
- withdraw a suit filed by the firm
- transfer immovable property belonging to the firm
- enter into partnership on behalf of the firm



* Mode of doing Act to bind firm (Section 22) on Behalf of firm name

(A) The act must relate to usual business of firm, within the scope of partner's authority

- Related to normal course of business

(B) The Act to be done (implied authority) on the name of the firm.

* Partner's authority in an Emergency (Sec. 21)

→ In case of emergency, partners are authorised to do :-

- all such act for protecting the firm from the loss as would be done by partners of 'ordinary prudence'

→ such act bind to firm

* Extension and Restriction of Partner's Implied Authority (Sec. 20)

- only with the consent of all partners

- majority can not restrict or extend the implied authority

• Effect of extension & restriction on 3rd Party :-

(a) 3rd party is unaware

↓
'firm is liable'

(b) 3rd party is aware

↓
'firm is not liable' (firm will be absolved)

* Effect of admission by a partner (Sec. 23)

→ A partner as an agent can make binding admission by a firm

- In relation to partnership transaction

- In ordinary course of business

with
In his authority

- not known to 3rd party

* Effect of Notice to Acting Partner (Sec. 24)

- Notice to acting partner $\left\{ \begin{array}{l} \rightarrow \text{Partner (firm)} \\ \rightarrow \text{Notice to firm} \end{array} \right.$
- ↓
- exception \rightarrow In case of fraud

* Liability to Third Party (Sec. 25 to 27)1. Liability of a partner for acts of the firm (Sec. 25)

- If a partner \rightarrow liable \rightarrow jointly or separately to the firm
- Authority $\left\{ \begin{array}{l} \rightarrow \text{expressed} \\ \rightarrow \text{implied} \end{array} \right.$ Act under the authority \rightarrow Partner is liable
- Damage arise after dissolution of firm \rightarrow Partner is liable

2. Liability of firm for wrongful act of partner (Sec. 26)

- firm is liable to same extent as the partner (any loss)

CONDITION

- Usual course of Business
- with the authority of the partner

3. Liability of firm for misapplication by a partner (Sec. 27)

- Partner's act within authority - firm liable
- Partner misapplied property/money from 3rd party - firm liable
- Firm is liable for act of partner
- Money/property come into the custody of partner

* Rights of Transferee of a partner's interest (Sec. 29)

when partner of a firm transfer his share of interest

(a) by Mortgage, By Sale, By creation of charge

- During the continuation of firm [Transferee [sub partner]]

- not entitled \rightarrow to interfere in conduct of business
- not entitled to enquiry about books
- not entitled to inspect the books



(d) not entitle to challenge the A/c

(e) to get copy of the books

• only entitled to share profit from transferred partner.

* Partners by Holding out (Sec. 28)

→ partners who are not actually partners

→ who represents himself as a partner [by words
by conduct

→ He is 'liable' to third party

* Minors admitted to the benefits of Partnership (Sec. 30)

① When partnership is form, minor cannot become partner
(agreement with minor is void - ab-initio)

② But minor can be admitted to the benefit of firm by [Majority consent X
All partner consent

• Rights of Minor partner

(i) Share profit of the firm

(ii) access, inspect, copy of A/c

(iii) can sue partners for accounts or for payment of his share
↳ CONDITION → If he is sewing his connections with the firm

(iv) attaining majority → within 6 month [elect to be a partner → liable
↳ not elect to be partner → not liable (public notice)

• Liabilities of Minor Partner

① Before attaining majority (no personal liability) → can not declare insolvent

• liability restricted his share in profit & property of the firm

• Dissolution → official assignee

② After attaining majority

(a) Become a partner → liable to third parties like other partners

(b) not to become a partner (public notice) → no liability

* Legal Consequences of Partner coming in & Going out (Sec. 31-35)

1. > Introduction of a New Partner (Sec. 31)

① For admitting a partner → consent is required → all partner

2. > Retirement of a Partner (Sec. 32)

① Partner may retire

- with consent of all partner
- in accordance with express agreement
- in case of partnership at will → by giving notice

② Discharge from liability

• liable → continuing partner after retirement (Principal as well as agent) to third party

③ Retirement of partner does not lead to dissolution of firm but dissolution of partnership.

3. > Expulsion of Partner (Sec. 33)

(A) If mentioned in contract

(B) Power must be exercised by Majority

(C) It has been exercised in good faith

• Good Faith has three things :-

(i) expulsion must be in interest of partnership

(ii) the partner to be expelled is served with a notice

(iii) given an opportunity of being heard

→ # Condition → satisfied ⇒ expulsion valid

↳ Not satisfied ⇒ expulsion void

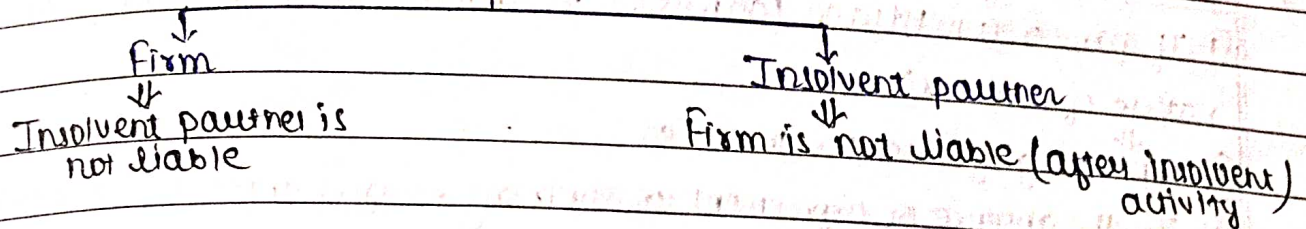
4. > Insolvency of a partner (Sec. 34)

• when partner adjudicated as insolvent, he ceases to be a partner

• on date of adjudication [whether firm is dissolved or not]

Firm not dissolved

Act Performed by & Liability bear, by



5. > Liability of Estate of Deceased Partner (Sec. 35)

• After death of a partner → **FIRM**

- may dissolve
- may not dissolve
- compulsory dissolve

* Rights of Outgoing partner to carry on competing Business (Sec. 36)

• Sec 36(1) - may carry a similar business & advertisement

Donts :- - use of firm name

- Solicit the customer of the firm

- represent himself as carrying the business of the firm

• Sec 36(2) - (Agreement in Restraint of Trade)

- for specified period

- within specified local limit

- restriction imposed must be reasonable

* Rights of Outgoing partner in certain cases to share subsequent profits (Sec. 37)

(i) taken by continuing partners

↓
outgoing partner is not entitled to any share in subsequent profits

(ii) not taken / not settled by continuing partners

↓
Outgoing partner is entitled for :-

• Share of profit made since he ceased to be partner

• eligible for interest @ 6% pa on the amount of his share in firm property



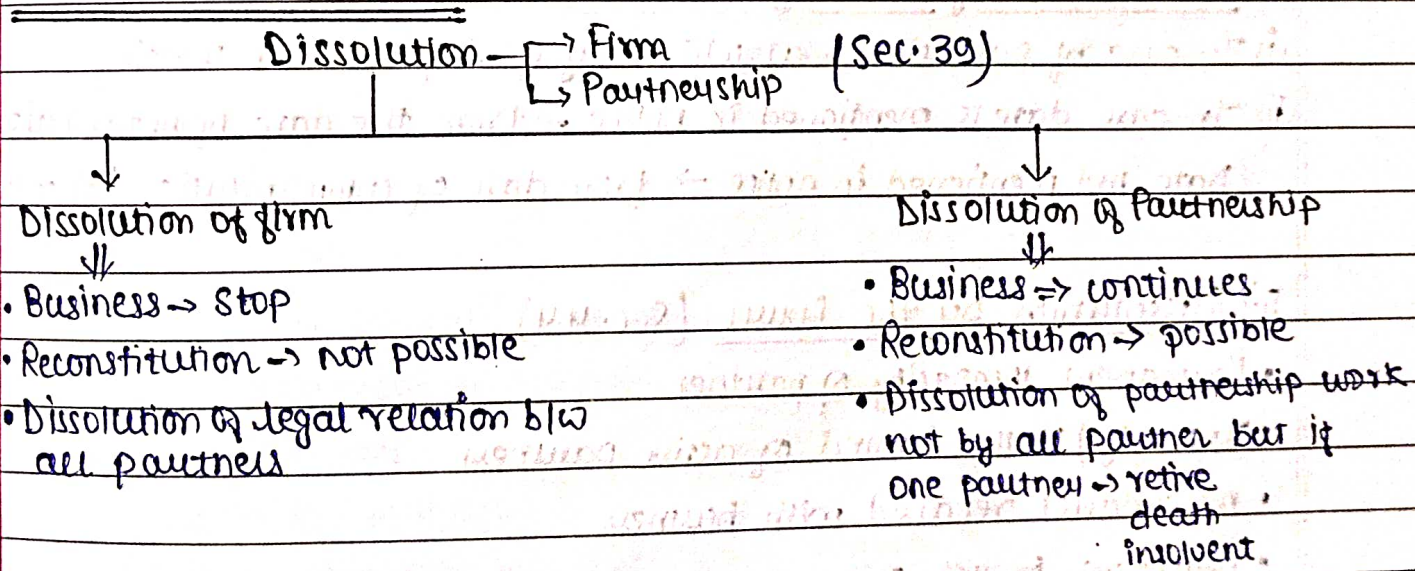
* Registration [Sec. 59]

- (i) Registration is subject to documentation → Sec. 58(1)
- (ii) Registration deemed to be completed as soon as :-
 - (a) Application (b) Prescribed fee
 is delivered to Registrar of firm
- (iii) Registrar make an entry in register of firms and issue certificate of registration
- (iv) Registration may also be effected after filing a suit (by third party)

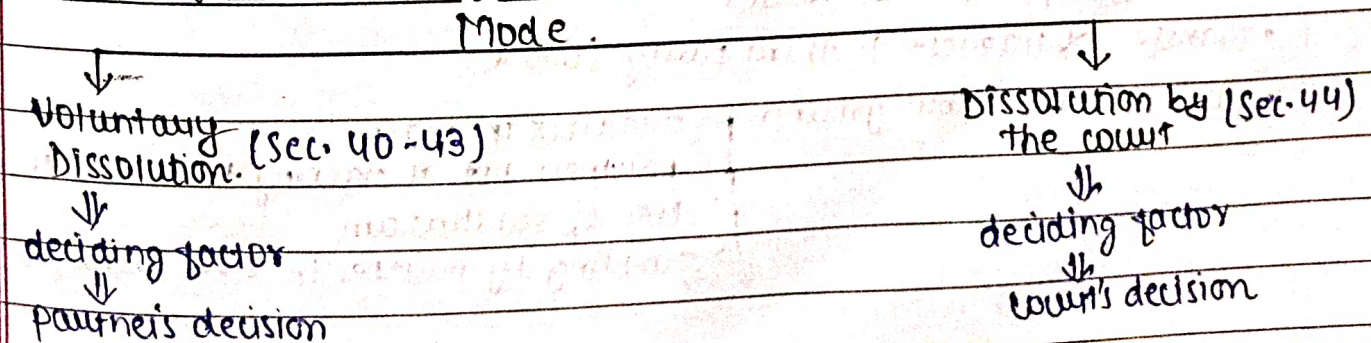
• Late Registration on payment of Penalty [Sec. 59A - 1]

- (i) If statement is not sent / delivered to Registrar → within specified time as per 1(A) of Section 58
- (ii) Firm may be registered after payment to registrar → 100 / year penalty

* Dissolution of a Firm [Sec. 39 to 47]



* Modes of Dissolution of a firm [Sec. 40 - 44]



1) Dissolution by Agreement (Sec. 40)

- firm may be dissolved according to contract b/w the partners.
- with the consent of all the partners.

2) Compulsory Dissolution (Sec. 41)

- unlawful Business
- when business becomes unlawful
- ↳ CONDITION ⇒ lawful branch → may continue

3) Dissolution on happening of certain contingency (Sec. 42)

- Fixed term → expired
- venture (adventure) → completed
- by death of a partner
- Insolvency of a partner (adjudication)

4) Dissolution by notice of Partnership at will (Sec. 43)

- (i) In case of partnership at will → by giving notice in writing
- (ii) In case date is mentioned in notice → from the date of notice (dissolution)
- Date not mentioned in notice → from date of communication (dissolution)

5) Dissolution by the Court (Sec. 44)

- Permanent incapacity of partner
- Insanity / unound mind of active partner
- misconduct related with business
- persistent breach of agreement
 - ↳ continuous
- continuous / perpetual losses
- transfer of interest to third party (whole)
- just and equitable ground
 - ↳ deadlock in mgt.
 - ↳ partners not in talking terms b/w them
 - ↳ loss of substratum
 - ↳ gambling by partner in stock exchange



* Consequences of Non-Registration (Sec. 69)

- (i) Third party can sue the firm
- (ii) No suit in civil court by firm or other co-partner against third party
- (iii) Aggrieved partner cannot bring legal action against other partners
- (iv) No relief to partners for set off of claim (not more than ₹100)

• Exceptions of Section 69 :-

- (i) Third party can sue the firm
- (ii) partner can sue for dissolution
- (iii) Power of an assignee in case of insolvency
- (iv) The right to sue or set off of claim (if not more than ₹100)

* Consequences of Dissolution (Sec. 45 to 55)

1. Liability for the acts of partners after dissolution (Sec. 45)

- (i) partner → public notice given → not liable
 - partner → public notice not given → liable even after dissolution

(ii) Continuing authority for winding up

- affair of the firm
- necessary transaction not completed till dissolution

(iii) Partner rights for utilisation of assets

(iv) Mode of settlement of accounts

- payment of losses

1st cond. → out of profit

2nd cond. → balance of loss paid out of capital

3rd cond. → should be paid by the partners individually

↓
in same proportion of profit

- Utilisation of assets

1st → assets used to pay debt to 3rd party - (firm debt)

2nd → balance of assets used to pay - advances of partners

3rd → balance of assets used → to pay amount of capital to each partner
(same proportion of capital contribution)

IVth → Balance of assets (In any) → divided among all partners (profit ratio)

* Mode of giving Public Notice

Registered Firm

Non-Registered Firm

- publication in Newspaper [official Gazette]
- local language & location
- notice to be sewed on the Registrar of Firm

- giving a publication in the official gazette
- local language & location
- District-Business located

Public Notice

WHEN REQUIRED

- retirement of a partner
- expulsion of a partner
- minor → when not to become a partner

NOT REQUIRED

- Death of a partner
- Insolvency of a partner

