

Indian Partnership Act 1932

Unit 1 ⇒ General Nature of Partnership

BACK GROUND

1. It came into existence (force) on 1st October 1932

• Applicability → Whole of India → (Except Section 64 of IPA 1932)

• Where Act 1932 is silent → General Principle of Indian Contract Act 1872

⇒ why ⇒ The Partnership is specialized Branch of Contract Act 1872

Section 4 ⇒ Meaning

Partnership ⇒ Partnership is the relation between 'persons' ^{min 2} _{Min 50}

- who have agreed to share the profit of a
- of a business
- carried on by all
- or any of them acting for all.

Partner Person who entered into partnership are **individually** called as partners

Firm Partners collectively known as firm

Firm name Name under which their business is carried it known as firm name

Elements of Partnership

① AGREEMENT ⇒

• Partnership is the result of agreement

• Voluntary, Contractual

• Agreement maybe expressed or implied

• Agreement maybe in writing or oral

(ii) BUSINESS

- Existence of business (Profit)
- Motive \rightarrow Business Run \rightarrow Profit Making
- NPO not allowed to do Partnership

- (iii) Association of Persons \Rightarrow
- Firm cannot become Partner in Partnership Firm
 - Minor can **not** be admitted as a Partner
 - Minimum 2 Maximum 50 [Section 464 Companies Act 2013]
 - Implied form Contract Act 1872 (Applicable)
 - \rightarrow Minor
 - \rightarrow Unsound mind
 - \rightarrow Disqualified by the law

- (iv) Agreement to share Profit
- (1) Profit belong to 1 person \rightarrow entitled to only 1 person
- \rightarrow There is no Partnership

- Sharing of Profit \rightarrow Partners share the profit in the manner they want
- [They Want] \rightarrow Equal Proportion
- \rightarrow Specific Ratio Proportion
- \rightarrow Capital Contribution Proportion

- Sharing of Loss \rightarrow Agreement to share the loss is not essential

- Profit to Minor \rightarrow Minor partner Guaranteed Profit to Partner

- ① Business carried on by all or Any of them acting for all:
- Mutual Agreement
 - True test of partnership
 - Principal & Agent: Every partner is a Principal as well as Agent of the firm
 - ↓
 - Unlimited Liability
 - Act of one Partner if Conduct of business is act for all

Section 6] Mode of determining existence of Partnership

True Test of Partnership

Base of determining

Agreement

- Partnership is created by agreement & status
- Relation among partners is created by contract
- Status → Birth → HUF

Sharing of Profit

- Sharing of profit does not ensure status of a person as a partner
- Profit Share with
 - lender of money
 - widow of partner
 - minor
 - previous owner of good-will
 - employee/agent

sharing of profit is not a conclusive proof of partnership

Sharing of profit is joint venture business

Mutual Agency

- Cardinal Principle
- Every partner is principle as well as agent of other partner (firm)
- Act of one partner bind others (all)
- If mutual agency exist, so partnership → EXIST

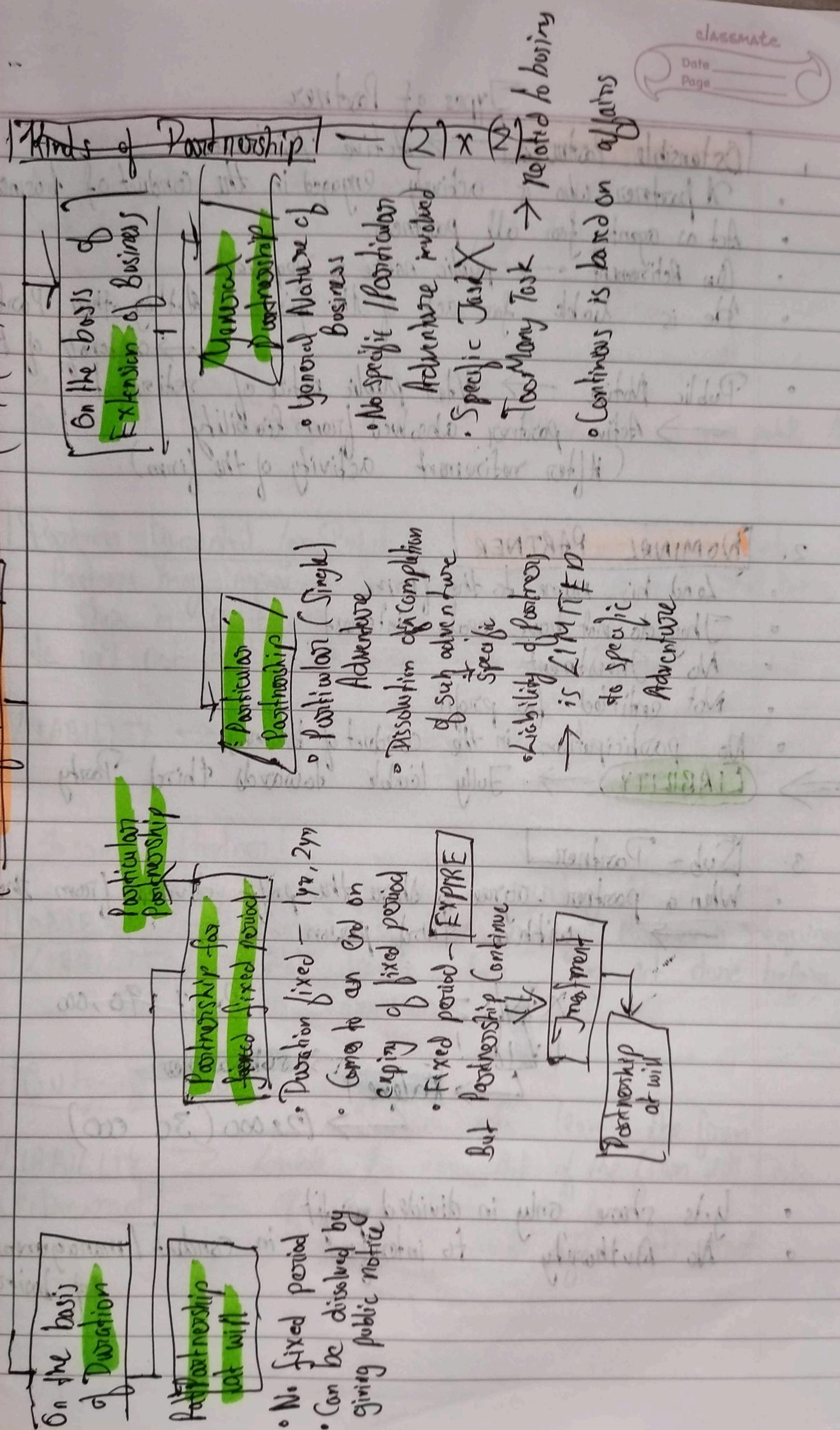
PARTNERSHIP DEED

- Partnership is the outcome of Agreement
- Partnership is the result of Agreement (Deed)
- Deed → Is a document in writing → Stamped
- Deed follows provision of → Stamp Act 1889 1899
- When partnership owns immovable property Deed must be in → writing, stamped & registered

Partnership deed may contain :-

- Firm Name
- Name of Partners
- Nature of Business / Place of Business
- Date of Commencement
- Duration of Partnership [After duration → Partnership continues → Partnership at will]
- Capital Contribution of the Partners
- Profit Ratio
- Condition for Admission / Retirement
- Rate of Interest on Capital &
 - [Drawing]
 - [Loan]
- Provision for Settlement on Dissolution
- Provision for partners remuneration ← Salary
Commission
- Provision of Expulsion of Partner
- Rights & Duties of Partner

Kinds of Partnership (2) x (2)



Types of Partner

Ostensible Partners → Active Partner

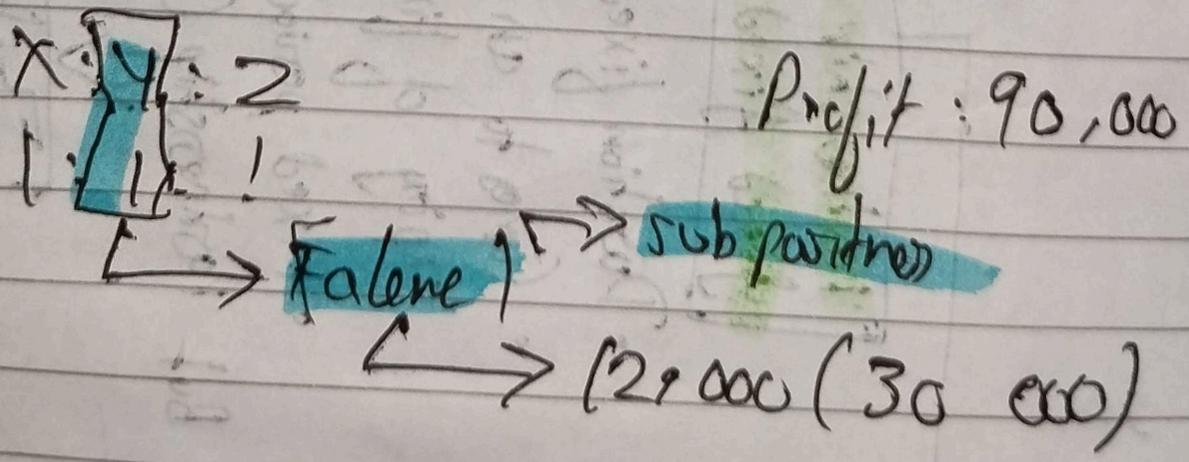
- A partner who is actively engaged in the conduct of business
- Act as agent for all partners
- On Retirement → public notice is required
- He is liable for act of the firm (Act by other Partner on behalf of the firm)
- Public Notice → After public notice of retirement → Active partner absolved from liability (After retirement activity of the firm)

NOMINAL PARTNER

- Lend his name to the firm
- They do not have real interest
- No Investment
- Not entitled for profit
- No participation in the conduct of business
- **LIABILITY** → Fully liable towards third Party

Sub-Partner

- When a partner agree to share the profit divided from the firm with a third person



- Gets share only in divided profit
- No Authority to interfere in conduct / management of business

4. DORMANT PARTNER → Sleeping Partner

- No participation in the conduct of the business
- Such partner → join the firm by agreement
 - Invest Capital
 - Share the profit of the firm

◦ He is liable for the act of the firm

◦ Retirement → Sleeping Partner → Need NOT give public Notice

5. Partners Guaranteed for Profit Partners in Profit-Only

◦ Partners may agree a particular person (partner) shall get a share in profit only.

- He will not be called upon the contribution towards
- Losses
- LIABILITY → Continue the liability towards third party.

6. Incoming Partner

◦ Newly admitted partner in existing firm

◦ CONSENT → Consent of ALL existing partner is required.

◦ LIABILITY → Not liable for any act done before his admission

7. Outgoing Partner

◦ Partner who leave the firm

◦ LIABILITY → Liable for the act of the firm till Date

◦ Retirement → If public notice is not given
LIABLE even after Retirement

6 [MINOR PARTNER]

- A minor is admitted for profit only.
- A minor admitted in existing firm.
- with Minor \rightarrow No Partnership \rightarrow Greater Firm
- **Liability**
 - Minor is not liable other than his share
 - (Minor estate is liable for the value of help required)
 - necessity i

9 Partner by holding out \rightarrow Partner by Estoppel

Knowing allow others \rightarrow managers, friends

\rightarrow Refused partner

- Such person is not really a partner
- but hold himself out as a partner
- self \rightarrow outsider

• on allow others to do it.

• **CASE** other party on the faith of the representation gave credit to the firm.

Once he poses himself as a partner, though he is not a partner

He is stopped from saying that he is not a partner in firm.