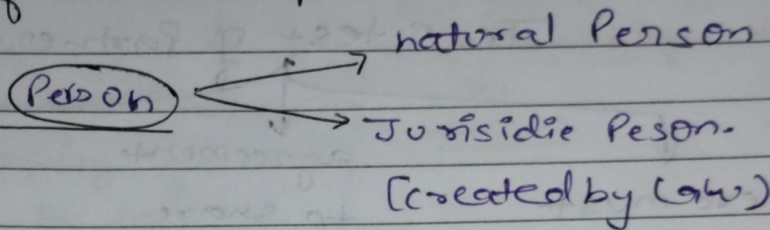


# Chapter-4 The Indian Partnership Act, 1932

## → Unit - 1 The Indian Partnership Act, 1932

- Section-4 → Partnership means a relation between ~~two~~ two or more person who agree to share the profit of business carried by all or any of them acting for all.

## → Elements of Partnership

1. 2 or more Person 
  - min. = 2
  - max. ⇒ 50.

2. Agreement → no agreement → no Partnership.
  - oral
  - writing
  - Implied

Partnership is different from HUF.

↓  
is by agreement

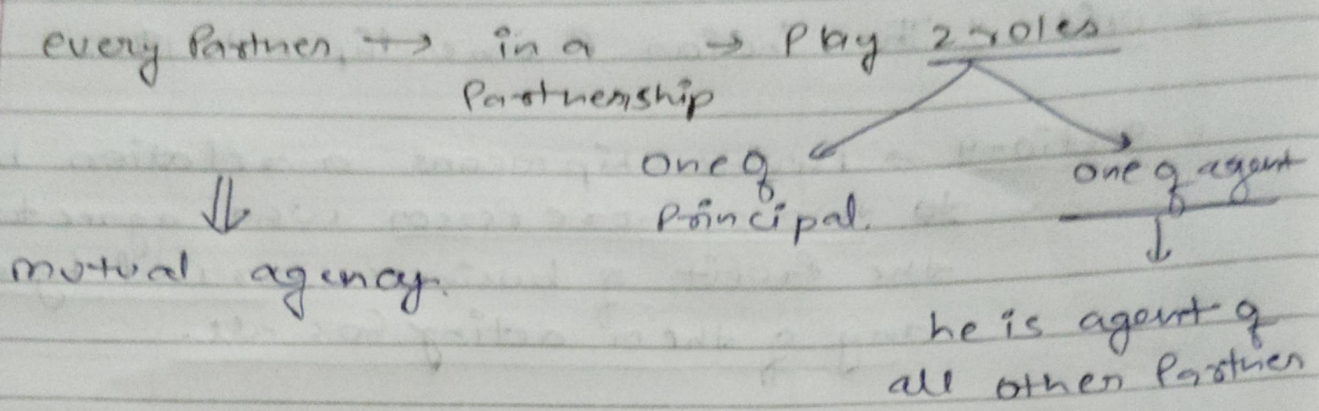
↓  
is by relation.

3. Sharing of Profit → essential condition.

↓  
Sharing of Profit is must, sharing of loss is not essential.

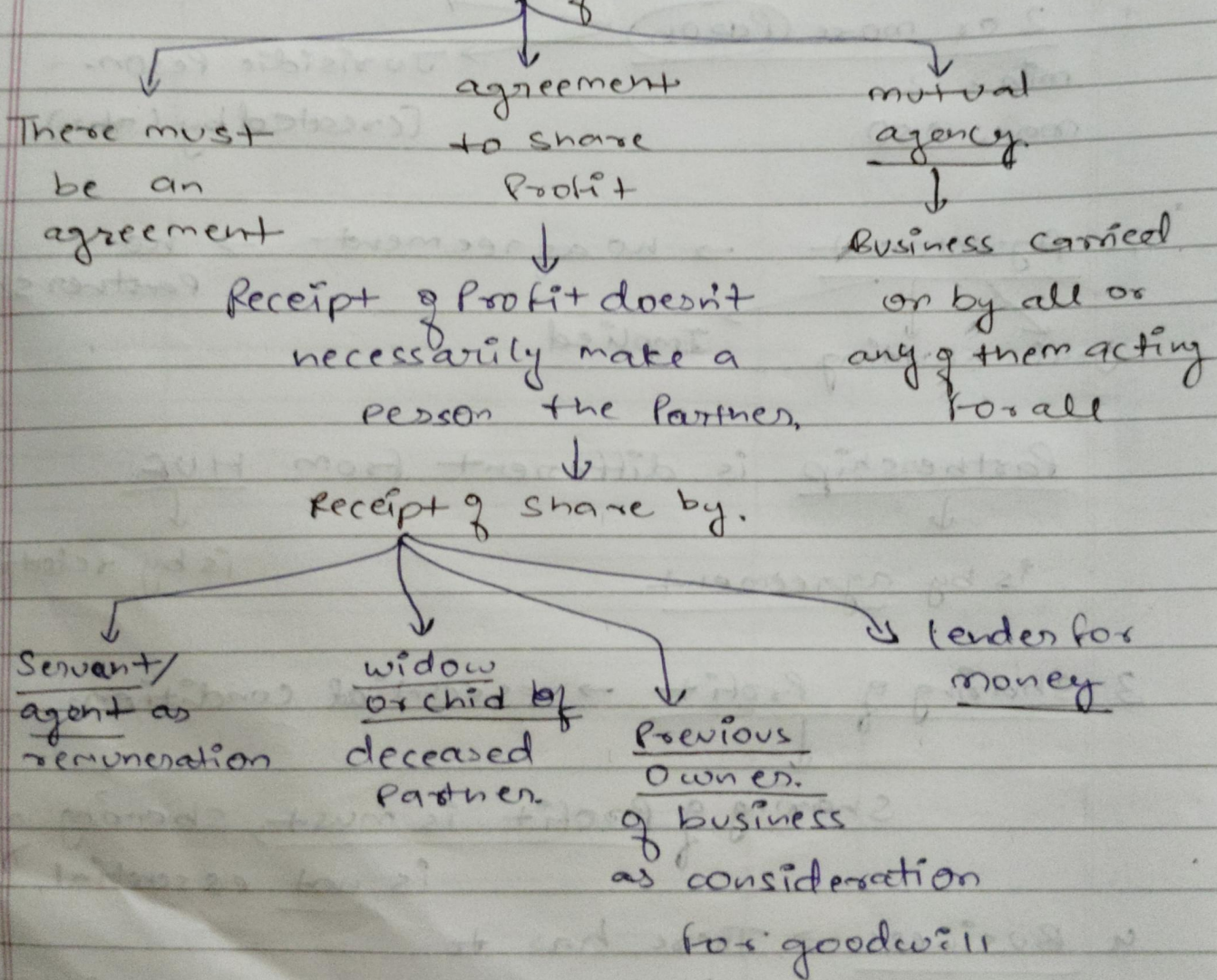
4. Business → There has to be business to earn profit  
[not charity, purpose is a Partnership]

5. Carried on by all or any of them acting for all



→

True test of Partnership.



Basis	Partnership	Joint Stock Company
<b>Legal status</b>	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> ).
<b>Agency</b>	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.
<b>Distribution of profits</b>	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.
<b>Extent of liability</b>	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 property, if the joint estate is insufficient to meet them wholly.	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 agreed to be liable. However, there may be companies where the liability of members is unlimited.
<b>Property</b>	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.
<b>Transfer of shares</b>	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.
<b>Management</b>	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.
<b>Registration</b>	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
<b>Winding up</b>	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.
<b>Number of membership</b>	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.
<b>Duration of existence</b>	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.

Basis of Difference	Partnership	Club
Definition	It is an association of persons formed for <u>earning profits</u> from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some <u>beneficial purposes</u> such as improvement of health or providing recreation for the members, etc.
Relationship	Persons forming a partnership are called <u>partners</u> and a partner is an agent for other partners.	Persons forming a club are called <u>members</u> . A member of a club is not the agent of other members.
Interest in the property	Partner has <u>interest</u> in the property of the firm.	A member of a club has <u>no interest</u> in the property of the club.
Dissolution	A change in the partners of the firm <u>affect</u> its existence.	A change in the membership of a club does not <u>affect</u> its existence.

## Partnership vs. Hindu Undivided Family

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by <u>an agreement</u> .	The right in the joint family is created <u>by status</u> 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 <u>equally</u> entitled to take part in the partnership business.	The right of management of joint family business generally vests in the <u>Karta</u> , the governing male member or female member of the family. <sup>1</sup>

<sup>1</sup> **Joint Hindu Family:** The amendment in the Hindu Succession Act, 2005, entitled all adult members - Hindu males and females to become coparceners in a HUF. They now enjoy equal rights of

<b>Authority to bind</b>	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.
<b>Liability</b>	In a partnership, the liability of a partner is <u>unlimited</u> .	In a Hindu undivided family, only the <u>liability</u> of the Karta is unlimited, and the other coparceners are liable only to the extent of their share in the profits of the family business.
<b>Calling for accounts closure</b>	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
<b>Governing Law</b>	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
<b>Minor's capacity</b>	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.
<b>Continuity</b>	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.
<b>Number of Members</b>	In case of Partnership number of members should not exceed 50.	Members of HUF who carry on a business may be unlimited in number.
<b>Share in the business</b>	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.

Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common.

Basis difference	of 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 interest	of 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 interest	of 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.

### Partnership vs. Association

Basis difference	of 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 to share the profits of such a business.	Association evolves out of social cause and there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
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.



# → Kind of Partnership ←

Based on duration

Based on extent

of business

at will

fixed

Particular

general

Partnership  
formed for

Partnership

Partnership

Partnership

no fixed period  
or  
no fixed purpose

Partnership

Partnership

Partnership

formed for  
fixed duration

formed for  
particular  
undertaking

where  
Partnership  
is formed  
to do business

note → when partners carries business even after expiry of fixed period then it becomes partnership at will

or  
venture

in general

## [Types of Partners]

	Active Partner	Dormant	Nominal
① He participate in day to day business	✓	X	X
② He contributes Capital.	✓	✓	X
③ Share Profit	✓	✓	X
④ liable for acts of the firms	✓	✓	✓
⑤ he has to give public notice on retirement	✓	X	✓

→ Nominal Partners → he lends his name to the [no real interest] firm & it is liable to third parties for the acts of the firm in firm.

→ Partner by holding out / estoppel

when a person represents himself as a partner

he is liable like a partner in firm

to anyone who on the faith of representation of such person gives credit to the firm

to be represented as a partner in firm.

\* he is not liable to all the creditors of the firm

→ Partnership deed → result of an agreement

→ it may be in writing or formed verbally.

→ in writing to avoid future disputes

→ Partnership agreement is also known as Partnership deed.

→ it should be drafted with care & be stamped according to the provision of the Stamp act 1899