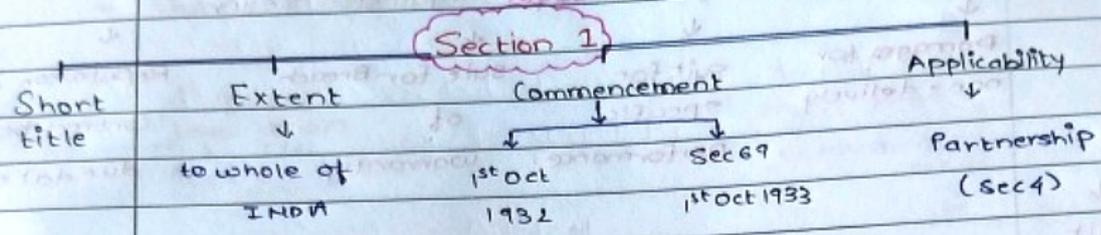


The Indian Partnership Act, 1932

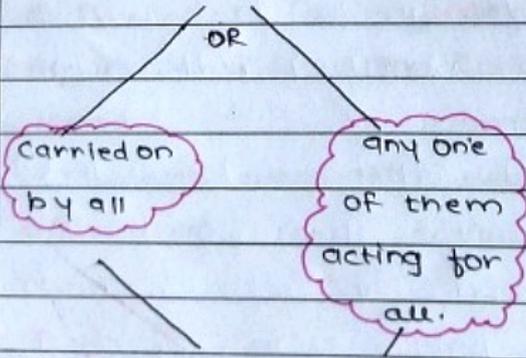


Section 3 = Application of provision of IPA 1932.

The provisions of Indian Contract Act 1872 will continue to apply to contracts for partnership unless they're inconsistent with this act.

= Definition of Partnership [Sec 4]

- Partnership
- ① is the relation → mutual agency
 - ↓
 - ② b/w persons
 - ↓
 - ③ who have agreed
 - ↓
 - ④ to share the profits of business



⑤ MUTUAL AGENCY.

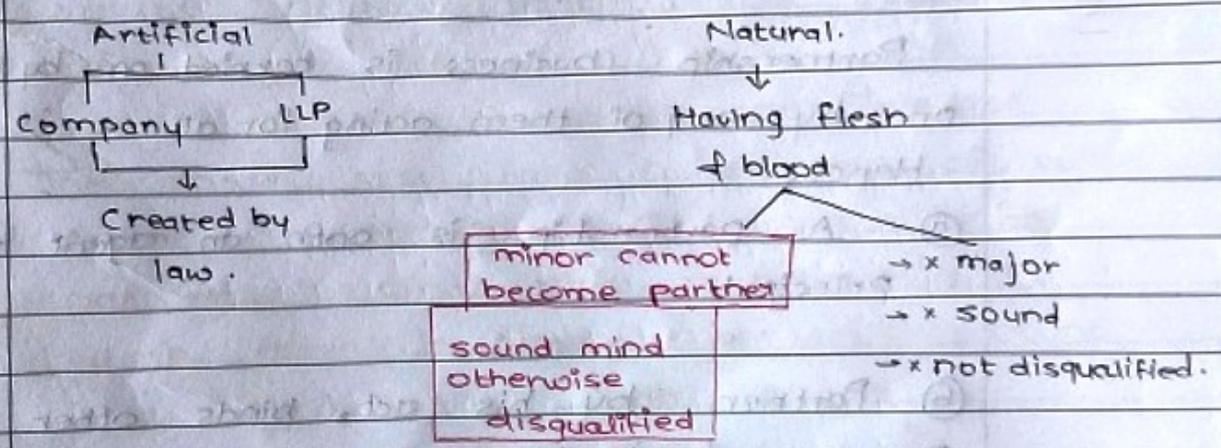
= Elements for existence of Partnership.

- ① Association
- ② Agreement
- ③ Sharing of profit. (includes losses)
- ④ Business.
- ⑤ Mutual Agency. *

= Association of persons.

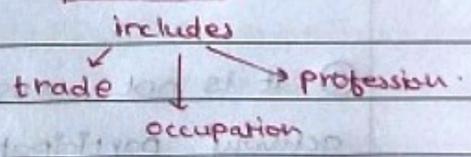
- = Sound mind
- = major
- = not otherwise disqualified.

= Persons

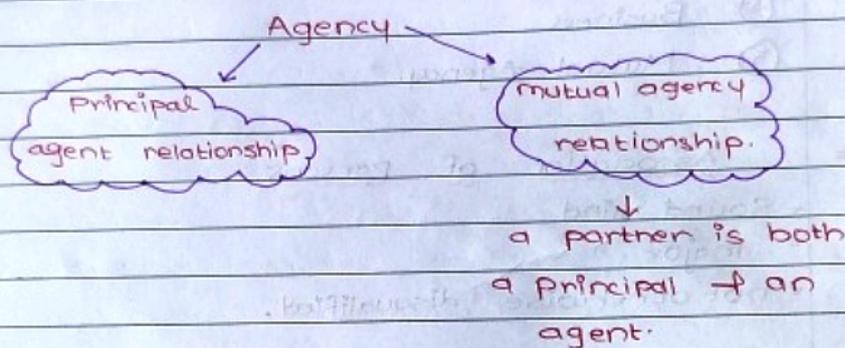


= Sharing of Profit of a business

In simple words, persons entering into agreement must be having motive of earning profit. Associations created for charitable, religious & social purposes are not partnerships.



Sharing profits of business is one of the most essential element of Partnership but it cannot be the conclusive evidence of partnership.



= Mutual Agency

Partnership business is carried on by all or by any of them acting for all.

Hence,

- ① A partnership is both an agent & a principal.
- ② Partner by his act, binds other partners & is in turn bound by acts of other partners.
- ③ It is not essential that all partners should actively participate in business. Business may be managed by one or more partners & remaining partners will be bound by their acts provided.

Such acts relate to carrying on firm's business in the ordinary course of business in firm's name.

= Real relation [Sec 6]

In determining whether a group of persons is or is not a firm

OR

whether a person is or is not a partner of the firm

↓
Regard shall be had to the real relation between partners.

↓
ie. existence of mutual agency - True test.

The true test lies in existence of mutual agency relationship ie. the capacity of a partner to bind other partners by his acts done in firm's name & be bound by the acts of other partners.

Ram, Somyam & Somy & associates
Somy didn't take care of work
didnt cover shaft

[For determining existence it must be proved:

- (i) There was agreement
- (ii) to share profits.
- (iii) carried on by all or any of them acting for all]

Specific Exclusions from Partnership

- (a) a lender of money ^(Investor) → to any persons engaged or about to engage in any business.
- (b) a servant or agent as remuneration.
 (Barber & Owner of Salon)
- (c) a widow or child of deceased partner - as annuity. (written in Partnership Deed)
- (d) a previous owner or a part owner of business as consideration for sale of goodwill.
- (*) (e) joint owner sharing gross returns arising from property held by them are not partners.
 (very important)

= Section 30 → Minor may be admitted to the benefits of partnership with the consent of all existing partners.

in other words, minor may become beneficiary in partnership but cannot become partner-in-partnership.

minor

Disqualified to enter into agreement minor is never liable under any contract

= Persons competent to be partners.

- (a) Every person competent to enter into a valid contract.
- (b) minor cannot become a partner, he may become beneficiary.
- (c) company can become a partner.
- (d) Two partnership firms cannot enter into partnership.

(*) = Section 28 Partners by Holding Out

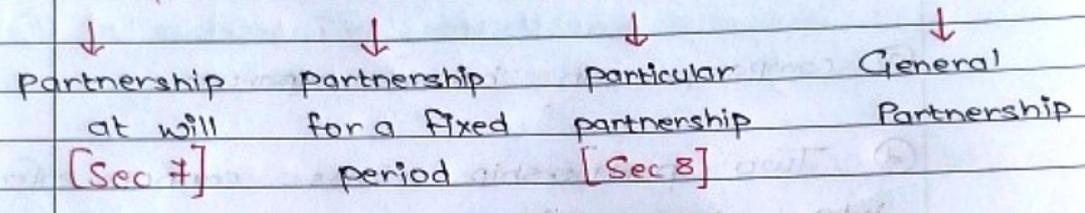
28(1)
28(2)

Anyone who by
 • words spoken or written or
 • by conduct represents himself
 or knowingly permits himself to be
 represented to be partner in a firm, is
 liable as a partner in that firm, is liable
 as a partner in that firm to anyone
 who has on the faith of any such represent-
 ation given credit to the firm, such partnership
 is known as the partnership by holding out
 or partnership by estoppel

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 gives credit to firm on the believe that he was a partner, will be entitled to hold him liable.

= Types of Partnership / kinds of partnership



① Partnership at will [Sec 7]

= when a no fixed period has been agreed upon for the duration of the partnership,

= there is no provision made as to the determination of the partnership.

in simple words, there is no provision in the partnership deed - as how partnership will be coming to an end!

= A partnership at will may be dissolved by any partner by giving notice in writing to all other partners of his intention to dissolve the same.

② Partnership for a fixed period

= ① When provision is made by a contract for duration of partnership, the partnership is called partnership for fixed period.

= ② It is created for a particular period of time.

= ③ It comes to an end on the expiry of the fixed period.

③ Particular Partnership [Sec 8]

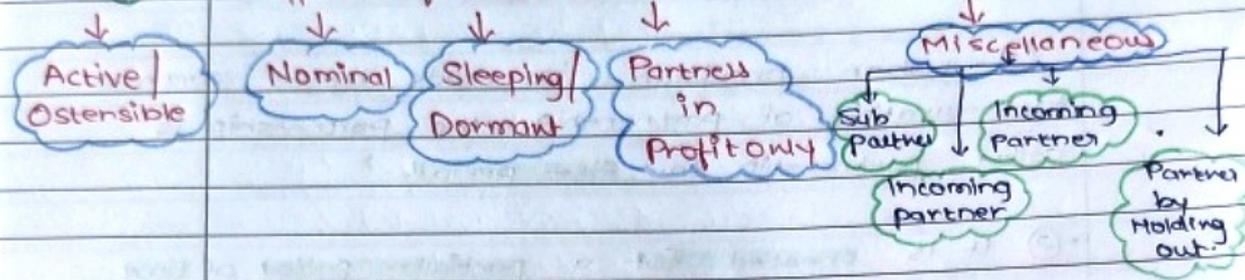
= ① Person may become partner with another in particular undertaking.

= ② Adventure undertaking: once the undertaking is completed, particular partnership is dissolved.

④ General Partnership

- In case of particular partnership, the liability of partners is limited to that particular undertaking but it is not so in case of General partnership which is constituted / created for business in general.

* = Types of Partners



* ① Active/Ostensible Partner:-
who actively participates in the conduct of partnership business.

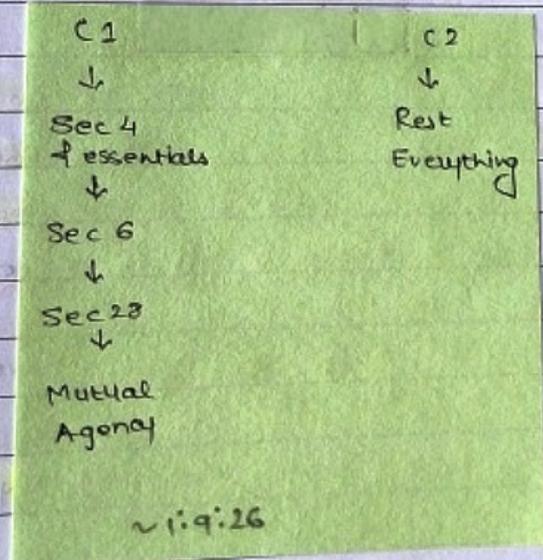
② Sleeping partner:- (sirf paisa lagayega, paisa khayega)
who does not actively take part in conduct of the partnership business.

③ Nominal Partner:-
A partner who lend his name to the firm without having any real interest in the firm & is not entitled to share the profits, does not take active participation in business. However he is liable to third parties for all acts of the firm.

④ Partner in profits only:-
→ entitled to share the profits only.
→ not liable for losses.
→ liable to third parties for all acts of partners.

= Public Notice

- ① Active Partner = he must give public notice to absolve himself from liabilities.
- ② Nominal Partner = same as active partner.
- ③ Sleeping partner = Not required to give public notice.
- ④ Partner in profits only = depends.



Unit 2 - Relations of Partners

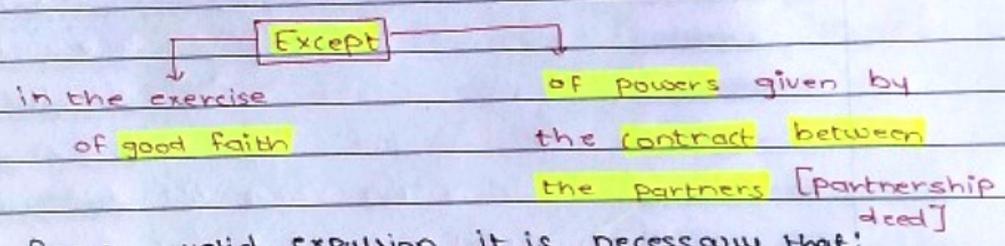
① Reconstitution of firm

- = (a) Admission (sec 31)
- (b) Retirement (sec 32)
- (c) Expulsion (sec 33)
- (d) Insolvency (sec 34)
- (e) death (sec 35)
- (f) transfer of interest (sec 29)

= (c) Expulsion (Sec 33) (very important)

A partner cannot be expelled from a firm

→ by majority of partners.



= For a valid expulsion it is necessary that:

→ power of expulsion must have existed between the partners. in the contract.

→ power has been exercised by majority of partners.

→ power has been exercised in good faith for the interest of firm & not used as vengeance against a partner.

(personal revenge)
 (extra marital affairs of partner wife of other partner)

(garage, partner gets & gets car back) (doctor doesn't do checkup he checks)
 (wives of partners fight) (banking & lending loans extra love affairs)

= What constitutes good faith?

= Such expulsion is done to protect the interest of partnership & firm.

= The partner who is to be expelled has been served with a notice.

= Such partner has ^{been} given an opportunity of being heard.

= Expulsion void

When a partner is otherwise expelled, that in good faith, it is null & void.

→ He continues to be an partner & can claim (a) reinstatement.

OR (b) sue for refund of his share of

= Capital & profits in the firm.

⊕ = Death [Section 39]. (v. Important)

(a) A firm is generally dissolved on the death of a partner.

(b) When under a contract between the partners.

the firm is not dissolved by the death of a partner.

(a) The estate of partner remains liable only for such acts as were done during tenure of his partnership.

(b) His estate is **NOT LIABLE** for any act of the firm done after his death.

(c) **No public notice is required** on the death of a partner.

Transfer of Interest [Section 29] (v. important)

↓
modes of transfer [Sec 29]

- (a) Absolute transfer, or
- (b) Mortgage or
- (c) Creation of charge (movable property) by the transferor

↓
Transferee not entitled to [Sec 29]

- (a) Interfere with the conduct of business.
- (b) to require accounts
- (c) to inspect books of the firms.

↓
Transferee's Rights.

↓
During continuance of partnership.

→ to receive share of Profit of the transferring partner

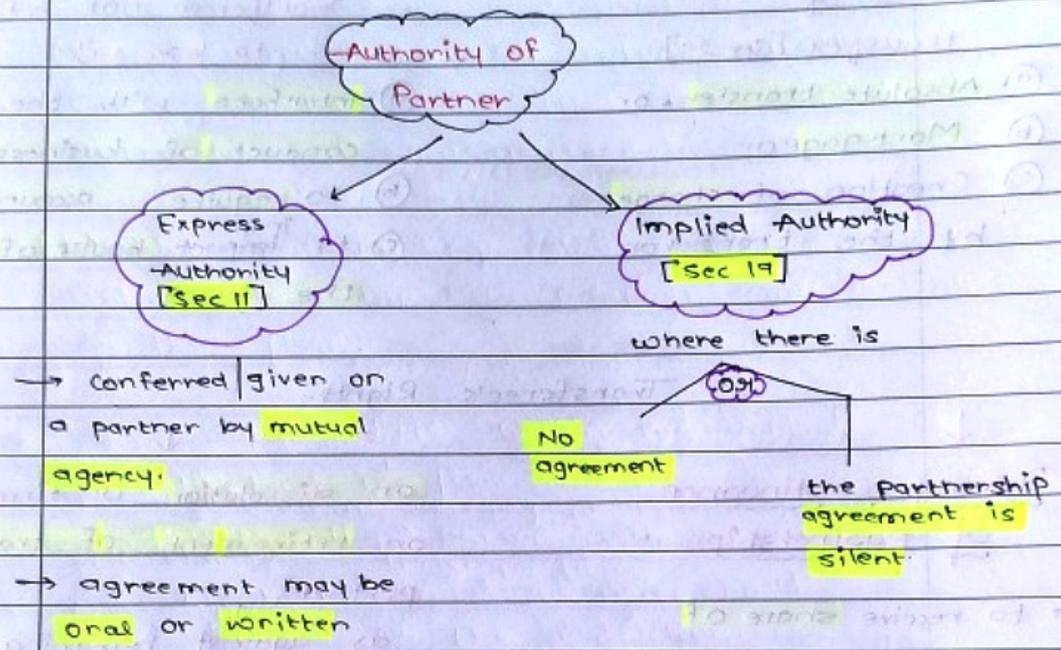
→ to bound to accept the account of profit goods agreed by the partners.

↓
on dissolution of firm or on retirement of transferring partner as against remaining partners.

→ To receive the share of assets of the firm to which the transferring partner was entitled.

→ For the purpose of ascertaining the share transferee is entitled to an account as from the date of dissolution.

* Concept of Implied Authority of partner
[Sec 19] (v. Important)



Condition of partner's act to bind the firm i.e. for Implied authority [Sec 19(1)]

1. Normal Business:

- (a) Act done by partner must relate to normal business of the firm.
- (b) If the act is of nature not relating to the normal business of firm, it will not bind the firm even if it has been done under firm's name.

2. Usual way of carrying on Business.

(a) Act must be done in usual way of carrying on firm's business.

(b) What is usual of unusual depends on

- (i) Nature of business
 - (ii) Usage of trade
- ↓
Custom

3. In the firm's name

The act must be done under firm's name or should be done in some manner which shows an intention to bind firm.

(stationery lalia)

(liquor lalia)

(readymade garments - credit sale)

in (CA) firm → loan/advance ps service sectors

* Restriction or extension of Implied Authority [Sec 20]. (V. Important)

(a) The partners by mutual agreement can restrict or extend the implied authority of any partner.

(b) Notwithstanding any restriction, any act done by a partner on behalf of the firm.

→ which falls within his implied authority, bind the firm.

→ unless the person with whom he is dealing.

→ knows of the restriction.

in simple words the third party is not affected by limitation of implied authority unless he has actual notice of it.

→ does not know or believe that partner to be a partner.

* Acts outside Implied Authority [Sec 19(2)]

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In the absence of any custom to the contrary, implied authority of a partner does not enable him to

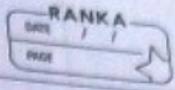
- (a) Submit to arbitration a dispute relating to business of the firm.
- (b) Open a bank account on the behalf of firm in partners own name.
- (c) Compromise or ^{to end} relinquish any claim or portion of claim by the firm.
- (d) Withdraw any suit or proceeding filed on behalf of firm.
- (e) Admit any liability in a suit or proceeding.
- (f) Acquire immovable property on behalf of firm.
- (g) Transfer immovable property belonging to the firm.
- (h) Enter into partnership on behalf of firm.

* Partners authority in emergency [Sec 21]
(very important)

= In case of an emergency partner has the authority to do all such acts so as to protect the firm from loss. as would be done by a man of ordinary prudence under similar conditions. This acts binds the firm even through outside the implied authority of the partner.

* Personal profit earned

~~In case of an emergency, a partner has the authority to do all such acts so as to protect the firm from loss. as would be done by a man of ordinary prudence under similar conditions. This acts binds the firm even though outside~~



* Personal Profit earned [Sec 16]

According to section 16, subject to contract b/w 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 & pay it to the firm.

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

(Very Important)

* Liability to third parties [Sec 25-27]

↓
Sec 25
liability of a partner for acts of the firm.

↓
Sec 26
liability of the firm for wrongful acts of the partner

↓
Sec 27
liability of firm for misapplication by partners

Section 25

Every partner is jointly liable with all other partners & also severally for all acts of the firm done while he is a partner.

Section 26

Whereby the wrongful act or omission of a partner in the ordinary course of business of the firm or with authority of his partners, loss or injury is caused to any third party, or any penalty is increased, the firm is liable to the same extent as the partners.

Section 27

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Where

(a) a partner acting within his apparent authority receives money or property from a third party & misapplies it

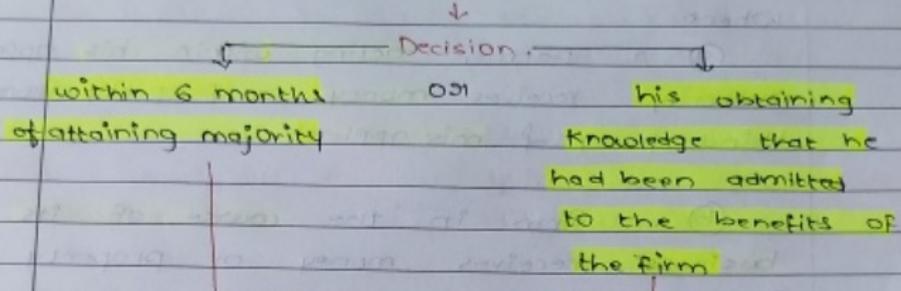
(b) a firm in the course of its business receives money or property from a third party & the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

* Rights & liabilities of minor in a partnership firm [Sec 30] (very important.)

Rights

- (a) = sharing of profits & property of firm.
- (b) = inspection & copying of accounts. He cannot inspect books other than account books that may contain confidential info. restricted to partners only.

Position on attaining majority



Whichever is lower,

minor has to decide whether he shall remain a partner or leave the firm.

↓

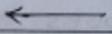
He shall give a public notice of his intention

PN Given

IF he fails to give notice

deemed partner

He becomes partner in the firm on the expiry of such period.



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Option to become partner:

Not become a partner

Opt to become a partner.

(a) Right to file a suit for his share of profits of the firms property when he is not given his due share.

(a) He shall be entitled to the same share, which he was getting as a minor.

(b) This can be exercised only when he decides to sever his connection with firm.

= Liabilities of minor in a firm.

(a) Liability is confined (limited) only to the extent of his share in profit & property of the firm.

(b) He is neither liable nor his private estate is liable.

(c) He cannot be declared insolvent, but if the firm is declared insolvent, his share in the firm rests in the official receiver.

Exercise of option by minor
on attaining majority.

elects to
become a partner

elects not to become
a partner

→ He becomes personally
liable to third party for
all acts of the firm
done since he was
~~admitted~~ admitted to the
benefits of the firm

→ Rights → liabilities continue
to be those of minor
till the date of P.N.

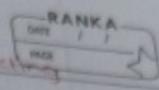
→ Not liable for any act
of the firm done after
the date of public notice.

→ His share in the property
& profits of the firm remains
the same as he was entitled
as a ~~to~~ minor.

→ Entitled to sue the
partner for his share
of property & profit in
the firm.

and or registered

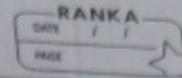
Sec 24 - Effect of notice to an acting partner of the firm.



- According to section 24 of the IPA 1932, notice to a partner who habitually acts in the business of firm of any matter relating to the affairs of the firm operates as notice to the firm.
- Except in the case of fraud on the firm committed by or with the consent of that partner.
- This notice must be actual & not constructive.
- It must relate to the firm's business, only then it would be regarded as notice to the firm.

Section 13(a)

- = A partner is not entitled to receive remuneration for taking part in conduct of business.
- = but this rule can always be varied by an express agreement, or by a course of dealing in which event the partner will be entitled to remuneration.
- = Thus a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.
- = In other words where it is customary to pay remuneration to a partner for conduct of the business, he can claim it even in the absence of contract.

Section 36 & 37

Sec 36

↓

Rights of outgoing partner to carry on competing business

Sec 37

↓

Rights of outgoing partner to share subsequent profits.

Section 36

→ He may carry on business competing with that of firm & may also advertise such business but subject to a contract to contrary, he may not:

→ use the firm's name.

→ represent himself as carrying partner in firm's name or

→ solicide the customer of persons who were dealing with firm before he ceased to be a partner.

→ He may sometimes agree with his partner that on his cessation he will not carry on a business similar to that of the firm within

→ a specified period

→ specified local limit

not within withstanding anything contained in section 27 of ICA 1872, such agreement shall be valid if the restrictions are reasonable.

Section-37

- In the absence of contract to contrary, outgoing partner is entitled to such share of profits made since his cessation as may be attributable to the use of his share of the firm's property.
- Alternatively he can claim interest at 6% p.a. on his share in the firm's property.
- The right is available only when the firm carries on the business with the firm's property without final settlement of accounts b/w them & outgoing partner.
- Even the representative of deceased partner can claim share in subsequent partner.
- When a contract is between partners, an option to purchase the interest of outgoing partner was exercised by the other partners, then the outgoing partner will not be entitled to any further share of profit.

* Two marks segment topics

- ① Revocation of continuing guarantee
- ② Goodwill
- ③ Insolvency of a partner
- ④ Retirement of a partner.

② Goodwill:-

The term "goodwill" has not been defined in IPA 1932. Section 14 of the act says that goodwill of a business is to be regarded as a property of firm.

Goodwill maybe defined as value of the reputation of a business house in respects of profit expected in future over & above the normal level of profits earned by undertaking

Section 38:
Revocation of continuing guarantee
by change in firm [Sec 38].

* Continuing Guarantee

- A continuing guarantee given to a firm or
 - to the third party in respect of the transaction of the 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 a change may occur by the death, or retirement of partner or by a introduction of a new partner.

Foreign LLP [section 2(1)(m)]: It means a LLP formed, incorporated or registered in India which establishes a place of business within India.

Definition: Limited Liability Partnership means

Unit 2
Relations of Partners

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Category I

Category II

Category III

- Reconstitution of firm
 - Expulsion
 - Death
 - transfer of interest

- Sec 24
- Sec 16
- Goodwill
- Revocation of continuing guarantee
- Settlement of partnership a/c.

- Rest everything.

• Implied Authority [Sec 19-20]

• Partners authority in emergency

• Rights & authorities of minor as a partner in partnership firm [Sec 80]

• Liability to third parties [Sec 25-27]

• Rights of outgoing partner

Unit 3

- Registration & Dissolution of firm.

→ Consequences of non registration of partnership firm. [Section 69]

↓
advantages of Registration

↓
disadvantages / disabilities
consequences of not registering the firm

→ Disabilities.

- (i) No suit in a civil court by firm or other co-partners against third party.

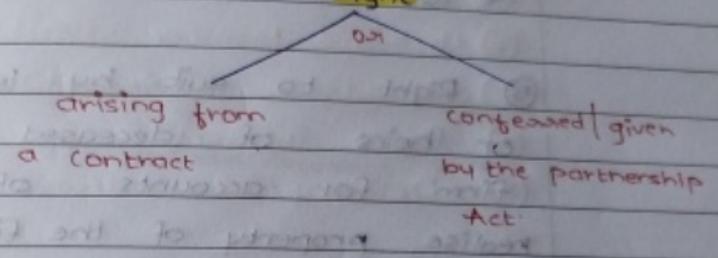
An unregistered firm cannot file suit against third party to enforce any right arising from a contract, unless the firm is registered & the persons suing have been shown in the registrar of firms as partners in the firm.

In other words, a registered firm can only file a suit against a third party & persons suing have

Persons suing → individuals whose name appear in the registrar as a partner & who must be at a partner in the firm at the day of suit.

(ii) No civil suit against partners - If firm aggrieved partner cannot bring legal action against other partner of the firm.

→ A partner of an ~~any~~ unregistered firm cannot sue the firm or any other partner of the firm to enforce a right



(iii) No relief to partners for set-off claim.

→ An unregistered firm or a partner thereof cannot claim a set-off or other proceedings to enforce a right arising from a contract.

Exceptions: Non registration of firm not to affect the following.

① Third party can sue the firm, in case of an unregistered firm, an action can be brought against the firm by a third party.

② Right of a partner to sue for

- (a) dissolution of firm
- (b) settlement of accounts of dissolved firm
- (c) realising the property of a dissolved firm.

③ power of an official assignee, receiver of court to realise the property of the insolvent partner → to bring action.

④ Right of firm to institute a suit or claim of set-off not exceeding ₹ 100

⑤ Right to suit by legal representative or heirs of deceased partner of a firm for accounts of the firm or to realise property of the firm.

Note: Non registration of firm

does not affect partners' right to seek settlement of accounts of a dissolved firm.

Section 69(1) prohibits institution of civil suit & not criminal suit.

