

THE INDIAN PARTNERSHIP ACT, 1932

UNIT 1

- Partnership → Relation between Partners
- Firm → Partners who have entered into Partnership are collectively called Firm
- Firm Name → Name under which their business is carried on



- Firm and minor cannot be Partner
- Limit 50 (Sec. 404 of Co. Act)
- Firm cannot be Partner in another Firm
- Minor can be Partner only with Consent of all Partners
- Must be the result of an agreement
- May be oral or written
- May be express or implied
- includes Trade occupation and Profession motive (acquisition of Gain)
- No Partnership when NO Intention to carry business.
- Sharing of profit is essential
- Sharing of loss is not essential
- No Partnership → where one Partner entitled to whole profit
- Each partner is principal as well agent
- He can bind other Partner by his act (agent)
- He is bound by the acts of other partner (Principal)

TEST OF PARTNERSHIP

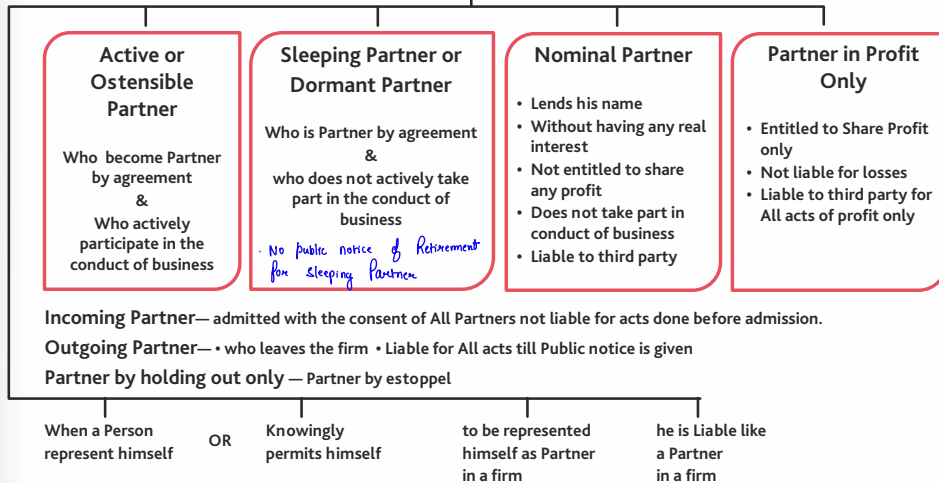
Agreement between Partners
Agreement can be to share Profit
Business is carried on by all or any of them
Acting for all

Agreement
Relation of Partnership arises from contract not from status

Sharing of Profit
Sharing of Profit is Prima facie evidence not conclusive evidence

Mutual Agency
Existence mutual agency is cardinal principal's law
Each Partner carrying on business is Principal as well as agent

TYPE OF PARTNERS



VARIOUS KINDS OF PARTNERSHIP

WITH REGARD TO DURATION

Partnership at Will

- Not fixed period agreed upon & No provision as to determination of Partnership
- Partner is for fixed term Continued after Expiry of term
- Can be dissolved any time by giving notice in Writing

Partnership for Fixed Period

- Contract for duration of Partnership
- Partnership comes to end on Expiry of fixed Period

WITH REGARD TO EXTENT OF BUSINESS

General Partnership

- Partnership constituted with respect to business in General

Particular Partnership

- Particular adventure or undertaking
- Liability extends to Particular venture or undertaking
- Partnership dissolved on Completion of Adventure/ Undertaking

PARTNERSHIP DEED

A document in writing containing various terms and conditions as to the relationship of Partner to each other is called Partnership deed.

SP Partnership
Comprises of Immemorial Propriety then deed
Must be in Writing
Stamped
Registered

CLAUSES

SPECIFIC POINTS

- Admission & retirement of Partner
- Settlement of A/c on Dissolution
- Exclusion of Partners

GENERAL POINTS

- Name of Partners & Firm ✓
- Place of Business & Date ✓
- Nature of Business & Duration ✓
- Capital ✓
- IOD, IOC & Interest on Loan ✓
- Salary & Commission ✓
- P S R ✓

Partnership VS HUF

- Legal status
- Agency
- Distribution of profit
- Extent of liability
- Property
- Transfer of Shares
- Management
- Registration
- Winding up
- No. of membership
- Duration of Existence

Partnership VS Club

- Definition relationship
- Interest in Property
- Dissolution
- Mode of creation
- Death of member
- Management
- Authority to bind
- Liability
- Calling for accounts on clauses
- Governing Law
- Minors capacity
- Continuity
- Number of members
- Share in business

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Partnership VS Co ownership

- Co-ownership either by Agreement/ either by inheritance
- One Co-owner is the Agent of other Co-owner when as a Partner is Agent of other Partner
- Does not necessarily for Profit
- Can transfer interest in Property without the Consent

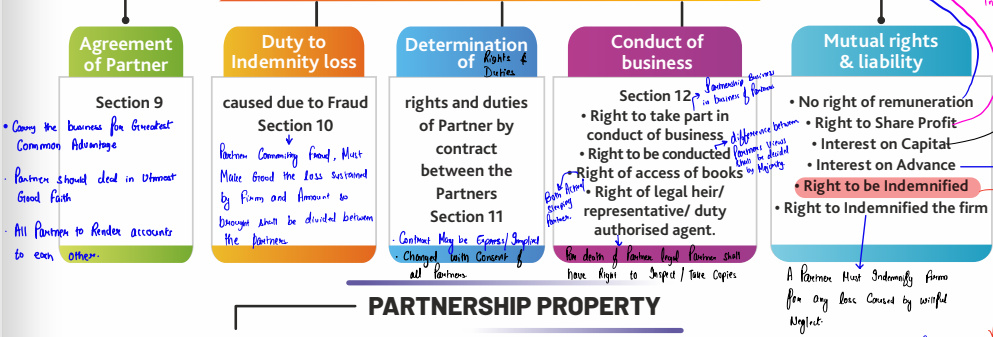
Partnership VS Association

- For Social Cause
- No Motive to Earn Profit
- No intention for business
- Mention of charitable Society

THE INDIAN PARTNERSHIP ACT, 1932

UNIT 2

RELATION OF PARTNER TO ONE ANOTHER



No Remuneration in addition to his share of Profit. However can be varied by Express Agreement

Partner to share Profit/loss equally in absence of Agreement

Int. allowed when there is Express Agreement/Trade Custom/Statutory Provision

Partners to share Profit/loss equally in absence of Agreement

Int. allowed when there is Express Agreement/Trade Custom/Statutory Provision

Partner to be indemnified by firm for Payment of liabilities incurred in ordinary course of business and for any loss.

A Partner Must Indemnify firm for any loss caused by wilful Negligence

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PARTNERSHIP PROPERTY

Property of Firm (Section 14)

- All Property right & Interest brought Partner
- All Properties right & Interest acquired by Firm
- Goodwill

Note: Property of firm is different from Property of Partner

Application of Property of Firm (Section 15)

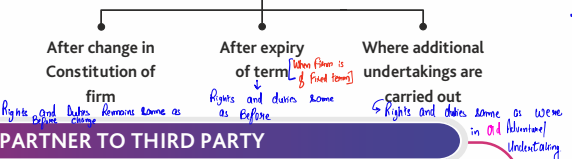
Property of Firm shall be held and used exclusively for the Purpose of Firm

Partner has not Proprietary Interest

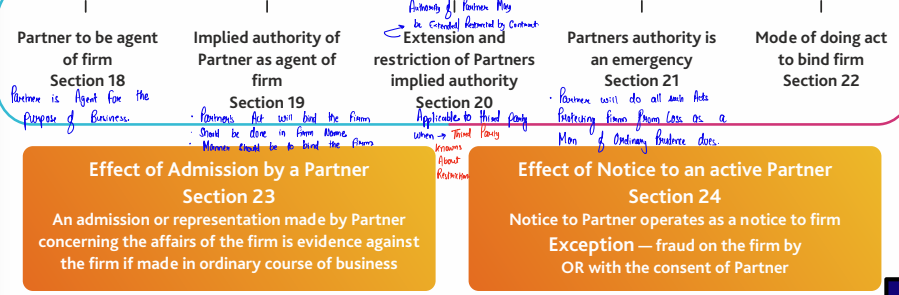
Personal Profit earned by Partner (Section 16)

Personal Profit Cannot Using Firm Assets → By this to firm

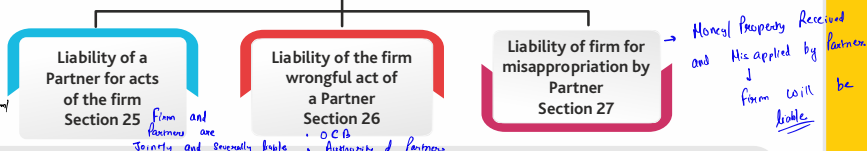
Rights and Duties of Partner after change in Constitution of Firm (Section 17)



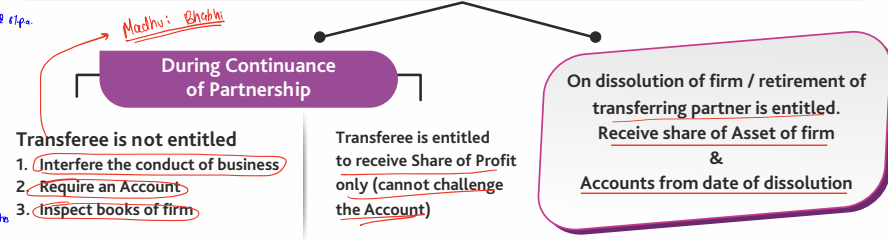
RELATION OF PARTNER TO THIRD PARTY



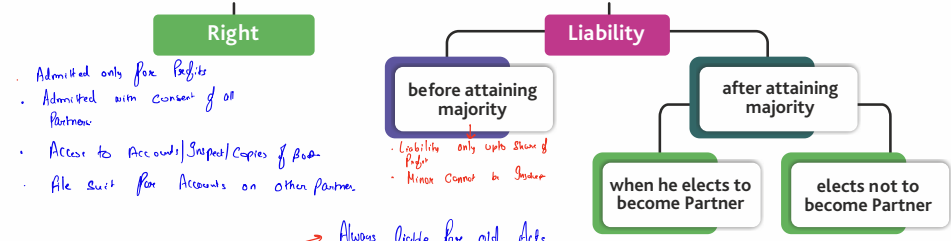
LIABILITY TO THIRD PARTY



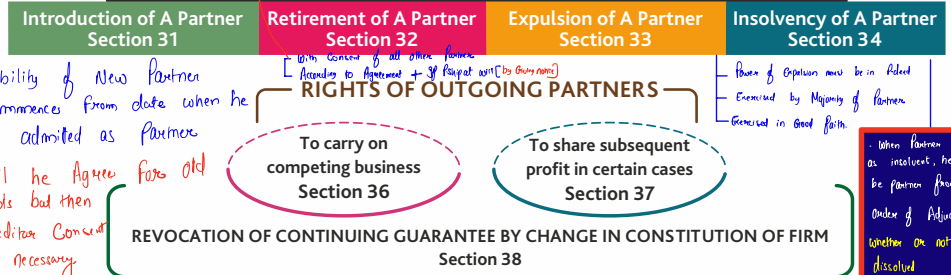
RIGHT OF A TRANSFEREE OF A PARTNER'S INTEREST (Section 29)



MINOR ADMITTED TO THE BENEFIT OF PARTNERSHIP (Section 30)



LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT



An Outgoing Partner liable to third party for acts of firm unless Public notice is given. If Partnership is at will no Public notice need only notice to be given to all Partners

V.V.V. Singh

DISSOLUTION OF FIRM

Application for Registration of Firm Section 58

- Statement in prescribed form and accompanied by prescribed fees stating certain details.
- Statement shall be signed by All the partners or by their agent specifically authorised in this behalf also same should be verified
- Certain words expression or implying the sanction

OR

approval or patronage Govt. are, not allowed.

Registration Section 59

Registrar shall record the entry of the statement in Register

Once firm is registered then in Brackets word "Registered" affix to Name

Late Registration on Payment of Penalty Section 59A - 1

Late Registration on Payment of Penalty

- Penalty is Rs 100 Per Year/Part thereof
- Penalty to be paid to Registrar of Firms

DISSOLUTION OF FIRM

Without the Court Order (Section 40 to 43)

- Mutual Agreement (Section 40)
- Compulsory Dissolution (Section 41)
- On happening of certain event by notice (Section 42)
- By Notice (Partnership at Will) (Section 43)

By Order of Court (Section 44)

- Insanity
- Misconduct
- Permanent Capacity
- Persistent breach of Agreement
- Transfer of Interest
- Continuous Loss
- Just and Equitable Ground

RIGHT AND LIABILITIES OF PARTNERS AFTER DISSOLUTION

Section 45

Liabilities for Acts of Partner done after dissolution

It protects the third party dealing with the firm who had notice of firm dissolution

Section 46

Right of Partner to have business wound up

Apply Property of firm in Payment of debt and liabilities of firm

Section 47

Continuing authority of Partner for the purpose of winding up

Partners liable for previous acts even after dissolution of firm

Section 48

Mode of settlement of Partnership Account

Payment of Losses

Part firm out of Profits
None after Capital
Losses by Partner in Risk

Section 49

Payment of firm debt and of separate debts

Property of firm

Applied first in Payment of separate debts
Applied first in Payment of Partnership debt

Firms Cannot use the following Names →
Empress, King, Empire, Queen, Royal, Words Implying Approval/Patronage of Govt.
[Set Cos allow Using Such Names]

CONSEQUENCE OF NON-REGISTRATION (Section 69)

Disabilities

Exceptions

CONSEQUENCE OF NON-REGISTRATION (Section 69)

Continuation of Business

- No Suit in Civil Court by Firm
- No Set off claim of More than 100
- Agreed partner Cannot file Case against other partner
- Third party Can sue the Firms

Winding up

Order of Court


Scope

Final Closure of books

- Third Party have Right to Sue
- Partner Can Sue for Dissolution of firm
- Claim set off up to 100
- Right to Set Proceedings initiated by Legal Representatives
- Power of official assignee to Release Property of Insolvent Partner

Without the Order of Court [Section 40 to 44]

Dissolution by Agreement [Section-40]

 Section 40 Gives Right to Partners to dissolve the Partnership by Agreement with the Consent of all the partners (OR) in Accordance with "Contract between the partners."

"Contract between the partners", Means a Contract Already Made.

Compulsory Dissolution [Section-41]

 A firm is Compulsory Dissolved

By the adjudication of all the partners (OR) of all the partners but one as Insolvent .

OR


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 Partnership.

However, when More than one separate adventure (or) Undertaking is carried on by the firm
↳ the Illegality of one or More shall not itself Cause the dissolution of the firm in respect of its lawful Adventures and Undertaking.

Example → A firm is carrying on the business of trading a particular chemical and the law is passed which bans chemical trading. The business of the firm becomes unlawful and so the firm will have to be Compulsorily dissolved.

Dissolution on the happening of Certain Contingencies [Section 42]

 Subject to the Contract between the Partners, a firm can be dissolved on the happening of any of following Contingencies

- When the firm is constituted for fixed term, on Expiry of fixed term.
- When the firm is constituted to carry out one (or) More Adventure (or) Undertaking, then by Complete thereof.
- By Death of Partner
- By the Adjudication of Partner as Insolvent 

Dissolution by Notice of Partnership at Will [Section 43]

👉 Where the partnership is at will
→ the firm may be dissolved by any partner
giving notice in writing to all other partners
of his intention to dissolve the firm.

👉 On which date firm is dissolved

If Date Mentioned
in Notice

The firm is dissolved
as from the date
mentioned in notice
as at date of dissolution


If No Date Mentioned
in Notice

As from the date
of communication of
the notice.

Dissolution by Court [Section -44]

Court may at suit of partner, dissolve a firm
on any of following ground.


(a) Insanity / Unsound Mind :-

 Where a partner [not sleeping partner] has become of Unsound Mind the Court May dissolve firm

When sleeping partner is of Unsound Mind, firm will not get dissolved.

↳ On a suit of the other partners
↳ Next friend of the Insane partner.

(b) Misconduct :-

 When a partner [other than suing partner] is guilty of conduct which is likely to affect, prejudicially the carrying on of business, the Court May order dissolution of the firm, by giving regard to Nature of business.


Temporary Sickness is no ground for dissolution of firm.

It is not necessary that Misconduct must relate to business

Important Point is Adverse effect of Misconduct on business.


Nature of business will decide whether an Act is Misconduct or not.

(c) Permanent Incapacity :-

 When a partner [other than the partner suing], has become in any way permanently incapable of performing his duties as partner
↳ then the Court May dissolve the firm.

Such Permanent Incapacity May Result from Physical Disability
Illness etc

(d) Persistent Breach of Agreement :-

 Where a partner [Other than partner suing], wilfully & persistently commits breach of Agreements relating to

Management of affairs of the firm (OR)
Conduct of the business (OR)
Otherwise } So conducts himself in matters relating to the business

that is not reasonably practicable for other partners to carry on business in partnership with him

↓
the court may dissolve the firm at the instance of any of the partners.

Category of Breach of Contract.

Embezzlement

Keeping Erroneous Accounts

Holding More Cash than Allowed.

Refusal to show Accounts despite Repeated Request etc.

(e) Transfer of Interest:-



Where a partner [other than Partner suing], has transferred the whole of his Interest in Firm to third party

(OR)

has allowed his share to be charged (or) sold by Court, in the Recovery of Arrears of land Revenue due by the partner

the Court May order for Dissolution of the Firm.

(f) Continuous/Perpetual Losses:-



Where the business of the firm cannot be carried on except at loss in future also

↳ the Court May order for its Dissolution.

(g) Just and Equitable Grounds



The following are the cases for the Just and Equitable Grounds :-

Deadlock in the Management.

Where the partners are not in talking terms between them.

Loss of substratum.

Gambling by a partner on a stock exchange.