

UNIT - III : REGISTRATION AND DISSOLUTION OF A FIRM

Question 1 :

Distinguish between dissolution of firm and dissolution of partnership.

May-18, November -19

Answer :

Dissolution of firm Vs. dissolution of partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Question 2 :

What are the consequences of Non-Registration of a Partnership Firm? Discuss. What are the rights which won't be affected by Non-Registration of Partnership firm?

May-18, November -20, Module

Answer :

Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932] :

Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows :

UNIT - III : REGISTRATION AND DISSOLUTION OF A FIRM

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Non-registration of a firm does not, however, affect the following rights :

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignee, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.

Question 3 :

i) *Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C. Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.*

(ii) Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

November -18, Module

Answer :

- (i) Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit or goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

- (ii) A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per section 28 of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X

Question 4 :**Nov-18, May-22**

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.

Answer : Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932) :

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

- (1) **Insanity/unsound mind :** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.
- (2) **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 or illness etc.
- (3) **Misconduct :** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- (4) **Persistent breach of agreement :** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - (i) Embezzlement,
 - (ii) Keeping erroneous accounts
 - (iii) Holding more cash than allowed
 - (iv) Refusal to show accounts despite repeated request etc.
- (5) **Transfer of interest :** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
- (6) **Continuous/Perpetual losses :** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (7) **Just and equitable grounds :** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
 - (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

Question 5 :

Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief?

May-19

Answer :

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning. However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which are as follows :

- 1) **No suit in a civil court by firm or other co-partners against third party :** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- 2) **No relief to partners for set-off of claim :** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- 3) **Aggrieved partner cannot bring legal action against other partner or the firm :** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- 4) **Third party can sue the firm :** In case of an unregistered firm, an action can be brought against the firm by a third party.

Question 6 :

Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932

July-21

Answer :

Mode of Settlement of partnership accounts : As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :-

- 1) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order :
- in paying the debts of the firm to third parties;
 - in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - in paying to each partner rateably what is due to him on account of capital; and
 - the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Question 7 :

What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932 ?

Module

Answer :

Application For Registration (SECTION 58) :

- (1) ₹ The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-
- The firm's name
 - The place or principal place of business of the firm,
 - The names of any other places where the firm carries on business,
 - The date when each partner joined the firm,
 - The names in full and permanent addresses of the partners, and
 - The duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

- (2) Each person signing the statement shall also verify it in the manner prescribed.

- (3) A firm name shall not contain any of the following words, namely :-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Question 8 :

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

Module

Answer : Dissolution of Firm :

The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

as a result of any agreement between all the partners (i.e., dissolution by agreement);
by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);

by the business of the Firm becoming unlawful (i.e., compulsory dissolution);

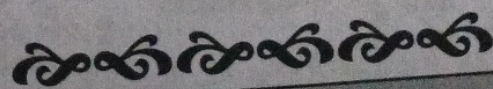
subject to agreement between the parties, on the happening of certain contingencies, such as :

- (i) effluence of time;
- (ii) completion of the venture for which it was entered into;
- (iii) death of a partner;
- (iv) insolvency of a partner.

by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and

by intervention of court in case of :

- (i) a partner becoming the unsound mind;
- (ii) permanent incapacity of a partner to perform his duties as such;
- (iii) Misconduct of a partner affecting the business;
- (iv) willful or persistent breach of agreement by a partner;
- (v) transfer or sale of the whole interest of a partner;
- (vi) improbability of the business being carried on save at a loss;
- (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.



"Don't let what you cannot do interfere with what you can do."