

Indian Partnership Act, 1932

Assignment

Q. No.	Questions and Answers	Marks
1	Is the registration of a partnership firm compulsory? Explain. Discuss the various disadvantages that a non-registered partnership firm can face in brief? (ICAI SM, Nov. 2020, May 2019, RTP May 2021, May 2018)	5
Ans.	As per the Indian Partnership Act, 1932, the registration of a partnership firm is <u>not mandatory</u> . An Indian partnership firm need not be registered from the beginning but can be <u>registered during continuation</u> also. But, if a partnership firm is not registered, it has to face some consequences: 1) <u>No suit in a civil court by the firm or other co-partners against the third party</u> : The firm or any of its partners cannot bring an action against the third party for breach of contract entered into by the firm unless the firm is registered. 2) <u>No relief to partners for set-off of claim</u> : If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract. 3) <u>An aggrieved partner cannot bring legal action against other partners or the firm</u> : A partner of an unregistered firm (or any other person on his behalf) cannot bringing legal action against the firm or any partner of 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 if the firm is dissolved. 4) <u>Third-party can sue the firm</u> : In the case of an unregistered firm, an action can be brought against the firm by a third party.	5
2	Explain the following kinds of partnership under the Indian Partnership Act, 1932: 1) Partnership at will 2) Particular partnership (Jan. 2021, RTP May 2020, Nov. 2020, RTP Nov. 2019)	4
Ans.	1) Partnership at will : As per the provision of the Indian Partnership Act, 1932, partnership at will is a partnership when: i) <u>no fixed period</u> has been agreed upon for the <u>duration</u> of the partnership, and ii) there is <u>no provision</u> made as to the <u>determination</u> of the partnership. A partnership at will may be <u>dissolved by any partner by giving notice</u> in writing to all the other partners of his <u>intention</u> to dissolve the same. 2) Particular Partnership : A partnership may be formed for a <u>single business adventure</u> as well as for the <u>conduct of continuous business</u> . If a person becomes a partner with another person for any <u>particular</u> business adventure or undertaking, the partnership is called ' <u>particular partnership</u> '. A particular partnership is <u>dissolved by the completion of the business adventure</u> for which it was formed.	4
3	X was minor introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due. Explain: 1) To what extent X will be liable?	6

	2) Can L recover his debt from X? (Nov. 2019, ICAI SM, RTP Nov. 2020)	
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a minor <u>cannot be admitted to a partnership firm</u>, but, with the <u>consent of all the partners</u>, he may be <u>admitted to the benefits</u> of the partnership.</p> <p>But, if the minor:</p> <ul style="list-style-type: none"> • <u>has attained majority</u>, or • <u>obtains the knowledge</u> that he had been admitted to the benefits of the partnership firm, <u>whichever is later</u>, <p>then such person shall, within 6 months from the date of attaining the majority or obtaining the knowledge of being admitted to the benefits of the partnership, give a public notice that he has or has not elected to become a partner in the firm.</p> <p>Provided that, if he <u>fails to give such notice</u>, he shall become a partner in the firm on the <u>expiry</u> of said six months.</p> <p>Fact of the case:</p> <p>X was introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due.</p> <p>Conclusion:</p> <p>1) Since X <u>failed to give the public notice</u> after attaining the majority, he should <u>become a partner</u> in the firm on the <u>expiry of six months</u> after attaining the majority. After becoming the partner of the firm, his <u>rights and liabilities</u> as a major partner will be applicable, but he also becomes <u>personally liable to third parties</u> for all acts of the firm done since he was admitted to the benefits of the partnership.</p> <p>2) Yes, L can <u>recover</u> his debt from X because now X has attained majority and is <u>liable to third parties</u> for all acts of the firm.</p>	6
4	Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. (Nov. 2020, RTP May 2021)	4
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932, a partnership firm <u>shall be liable for the misapplication by partners</u> in the following cases:</p> <p>a) A partner, acting within his authority, <u>receives money or property from a third party</u> and misapplies it (it is not necessary that such property or money had come into the custody of the firm); or</p> <p>b) A firm in the course of its business receives money or property from a third party, and such money or property is misapplied by any of the partners <u>while it is in the custody of the firm</u>.</p> <p>In both the case, the partnership firm shall be liable for the loss caused by such misapplication.</p>	4
5	<p>Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price. Does MU is liable for such a purpose?</p> <p>(Nov 2018, ICAI SM, RTP Nov. 2019, RTP Nov 2020)</p>	3

Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a <u>partner by holding out/partner by estoppel</u> means when a person is <u>represented as a partner by other partners of the firm</u>, he is then stopped from denying the character he has assumed and upon the faith of which creditors have presumed him to be a partner. Also, if a person himself, by his words or conduct, have <u>induced others to believe that he is a partner</u>, then also he shall be regarded as partner by holding out or partner by estoppel.</p> <p>Facts of the case: Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price.</p> <p>Conclusion: In the present case, MU (an employee) is also liable for the price because he becomes a partner by holding out.</p>	3
6	<p>When does the dissolution of a partnership firm take place? (ICAI SM, RTP Nov. 2019)</p>	4
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the dissolution of a partnership firm takes place in the following cases:</p> <p>a) Dissolution without the order of the Court or voluntary dissolution. b) Dissolution by order of the Court.</p> <p>a) Dissolution without the order of the Court or voluntary dissolution:</p> <p>i) Dissolution <u>by agreement between the partners</u>. ii) By <u>adjudication</u> of all or any <u>partner as insolvent</u>. iii) On the happening of certain <u>contingencies</u> between partners like expiry of the time period of partnership. iv) Business of the firm becoming <u>unlawful</u>. v) By giving <u>notice of dissolution</u> by all the partners.</p> <p>b) Dissolution by order of the Court:</p> <p>i) Partner becoming of <u>unsound mind</u>. ii) <u>Permanent incapacity</u> of the partner to perform his duties. iii) <u>Misconduct</u> of partner affecting the business. iv) <u>Willful breaches</u> by a partner. v) <u>Transfer or sale of the whole interest</u> of a partner. vi) <u>Continuous losses</u> incurred by the firm. vii) The Court is satisfied on <u>just and equitable grounds</u> for the dissolution of the firm.</p>	4
7	<p>Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts. Explain the rights of Amaan's legal representatives against the firm under the Indian Partnership Act, 1932. (ICAI SM, RTP May 2020)</p>	4
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -</p>	4

	<ul style="list-style-type: none"> • Interest at 6% p.a, on amount of his share in the property, or • Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher. <p>This provision is subject to the contract to the contrary.</p> <p>Fact of the case: Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts.</p> <p>Conclusion: In the present case, Amaan's legal representatives shall be entitled at their option to:</p> <ul style="list-style-type: none"> • 20% profits; or • Interest at the rate of 6% p.a. on the amount of Amaan's share in the property. <p>Amar and Aman cannot continue the business without settling the accounts with Amaan's legal representatives.</p>	
8	<p>M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, they inducted Mr G, an expert in the field of carpet manufacturing, as their partner. On 10th January 2020, Mr G was blamed for unauthorized activities and thus expelled from the partnership by the united approval of the rest of the partners.</p> <p>i) Examine whether action by the partners was justified or not? ii) What should have the factors to be kept in mind prior to expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (ICAI SM, May 2018, May 2019, Nov 2020)</p>	6
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.</p> <p>The test of good faith includes three things:</p> <ol style="list-style-type: none"> 1) The expulsion must be in the interest of the partnership. 2) The partner to be expelled is served with a notice. 3) He is given an opportunity of being heard. <p>If a partner is otherwise expelled, the expulsion is null and void.</p> <p>Fact of the case: M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, they inducted Mr G, an expert in the field of carpet manufacturing, as their partner. On 10th January 2020, Mr G was blamed for unauthorized activities and thus expelled from the partnership by the united approval of the rest of the partners.</p> <p>Conclusion:</p> <p>i) Action by the partners of M/s XYZ & Associates, a partnership firm, to expel Mr G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr G. A proper notice and opportunity of being heard has to be given to Mr G.</p>	6

	<p>ii) The following are the factors to be kept in mind prior to expelling a partner from the firm by other partners:</p> <p>a) the power of expulsion must have existed in a contract between the partners;</p> <p>b) the power has been exercised by a majority of the partners; and</p> <p>c) it has been exercised in good faith.</p>																			
9	Distinguish between 'Dissolution of Firm' and 'Dissolution of Partnership'. [Any 4 points] (Nov. 2019, May 2018)	4																		
Ans.	<p>(Any 4 points)</p> <table border="1"> <thead> <tr> <th>Basis</th> <th>Dissolution of Firm</th> <th>Dissolution of Partnership</th> </tr> </thead> <tbody> <tr> <td>Continuation of Business</td> <td>It involves <u>discontinuation of business</u> in partnership.</td> <td>It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.</td> </tr> <tr> <td>Winding-up</td> <td>It involves the winding up of the firm and requires the <u>realization of assets and settlement of liabilities</u>.</td> <td>It involves only reconstitution and requires the only <u>revaluation of the assets and liabilities of the firm</u>.</td> </tr> <tr> <td>Order of Court</td> <td>A firm may be dissolved by <u>order of the Court</u>.</td> <td>Dissolution of Partnership is <u>not ordered by the Court</u>.</td> </tr> <tr> <td>Scope</td> <td>It necessarily involves the <u>dissolution of the partnership</u>.</td> <td>It may or <u>may not involve the dissolution of the firm</u>.</td> </tr> <tr> <td>Final closure of books</td> <td>It involves the <u>final closure of the books of the firm</u>.</td> <td>It does <u>not involve the final closure of books of the firm</u>.</td> </tr> </tbody> </table>	Basis	Dissolution of Firm	Dissolution of Partnership	Continuation of Business	It involves <u>discontinuation of business</u> in partnership.	It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.	Winding-up	It involves the winding up of the firm and requires the <u>realization of assets and settlement of liabilities</u> .	It involves only reconstitution and requires the only <u>revaluation of the assets and liabilities of the firm</u> .	Order of Court	A firm may be dissolved by <u>order of the Court</u> .	Dissolution of Partnership is <u>not ordered by the Court</u> .	Scope	It necessarily involves the <u>dissolution of the partnership</u> .	It may or <u>may not involve the dissolution of the firm</u> .	Final closure of books	It involves the <u>final closure of the books of the firm</u> .	It does <u>not involve the final closure of books of the firm</u> .	4
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10	State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. (Nov. 2018, RTP May 2020)	4																		
	<p>As per the provision of the Indian Partnership Act, 1932, the Court may, at the suit of the partner, dissolve a firm on any of the following ground:</p> <p>1) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of <u>unsound mind</u>, the Court may <u>dissolve the firm</u> on a suit of the other partners or by the next friend of the insane partner.</p> <p>2) Permanent incapacity: When a partner, other than the partner suing, has become in any way <u>permanently incapable</u> of performing his duties as a partner, then the Court may <u>dissolve the firm</u>. Such <u>permanent incapacity</u> may result from physical disability or illness etc.</p> <p>3) Misconduct: Where a partner, other than the partner suing, is <u>guilty of conduct which is likely to affect the business</u>, the Court may order for <u>dissolution of the firm</u> by giving regard to the nature of business.</p> <p>4) Persistent breach of agreement: Where a partner other than the partner suing, <u>willfully or persistently commits a breach of agreements</u> 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</p>	1 mark for each point (write any 4 points)																		

	<p>of any of the partners. The following comes into the category of breach of contract:</p> <ol style="list-style-type: none"> i) Embezzlement, ii) Keeping erroneous accounts iii) Holding more cash than allowed iv) Refusal to show accounts despite repeated requests etc. <p>5) Transfer of interest: Where a partner other than the partner suing has <u>transferred the whole of his interest in the firm to a third party</u> or has allowed his share to be charged or sold by the Court, in the recovery of arrears of land revenue, the Court may <u>dissolve the firm</u> at the instance of any other partner.</p> <p>6) Continuous/Perpetual losses: Where the business of the firm <u>cannot be carried</u> on except at a <u>loss</u> in future also, the Court may order for its <u>dissolution</u>.</p> <p>7) Just and equitable grounds: Where the Court considers any other ground to be <u>just and equitable</u> for the <u>dissolution of the firm</u>, it may dissolve a firm. The following are the cases for just and equitable grounds:</p> <ol style="list-style-type: none"> i) <u>Deadlock</u> in the management. ii) Where the <u>partners are not on talking terms</u>. iii) Loss of <u>substratum</u>. iv) <u>Gambling by a partner</u> on a stock exchange. 	
11	<p>“Mutual Agency is the cardinal principle of the partnership law”. Discuss. (Jan. 2021, RTP May 2020)</p>	3
Ans.	<ol style="list-style-type: none"> 1) As per the Indian Partnership Act, 1932, the existence of <u>mutual agency</u> is the <u>cardinal principle</u> of partnership law. It is also known as the <u>true test of partnership</u>. 2) Each partner carrying on the business is the <u>principal</u> as well as an <u>agent</u> of other partners. So, the act of one partner done on behalf of the firm <u>bind all the partners</u>. 3) If the elements of a mutual agency relationship exist between the parties constituting a group formed with a view to earning profits by running a business, a partnership may be deemed to exist. 	3
12	<p>M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continue the business in the firm’s name. The firm did not give any notice about P’s death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P’s death; the fact about his death was known to them at the time of delivery. Afterwards, the firm becomes insolvent and failed to pay the price of furniture to JR Limited.</p> <p>Explain with reasons:</p> <ol style="list-style-type: none"> 1) Whether P’s private estate is liable for the price of furniture purchased by the firm? 2) Whether does it make any difference if JR Limited supplied the furniture to the firm, believing that all the three partners are alive? <p>(Nov 2018, RTP May 2021, Jan. 2021, May 2022 RTP, Nov 2022 RTP)</p>	4
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the estate of a deceased partner is <u>not liable for any act of the firm done after his death</u>. It is not necessary to give any notice either to the public or the person having dealt with the firm regarding the death of the partner.</p>	4

	<p><u>Facts of the case:</u> M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continue the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death; the fact about his death was known to them at the time of delivery. Afterwards, the firm becomes insolvent and failed to pay the price of furniture to JR Limited.</p> <p><u>Conclusion:</u> 1) The delivery of the furniture was made after P's death; his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was <u>no debt due with respect of the goods in P's lifetime</u>. 2) It <u>would not make any difference</u> even if JR Limited supplied furniture to <u>the firm believing that all the three partners are alive</u>, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so <u>the estate of the deceased partner may be absolved from liability for the future obligations of the firm</u>.</p>	
13	<p>Mr A (transferor) transfer his share in a partnership to Mr B (transferee). Mr B is not entitled to few rights and privileges as Mr A is entitled, therefore. Discuss in brief the points for which Mr B is not entitled during the continuance of the partnership? (ICAI SM, RTP May 2021, Nov 2021 RTP, July 2021, June 2022)</p>	5
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, when a partner transfers his interest in the firm to a transferee, then such transferee <u>shall not be entitled</u>, during the continuance of the firm:</p> <ul style="list-style-type: none"> • to interfere in the conduct of business, or • to require an account, or • to inspect the books of the firm. <p>But, <u>the transferee is entitled:</u></p> <ul style="list-style-type: none"> • to receive the share of the assets of the transferring partner at the time of the dissolution of the firm, and • to require the accounts of the firm for ascertaining his share from the date of the dissolution. <p><u>Facts of the case:</u> Mr A (transferor) transfer his share in a partnership to Mr B (transferee). Mr B is not entitled to few rights and privileges as Mr A is entitled, therefore.</p> <p><u>Conclusion:</u> In the given case, during the continuance of partnership, such transferee Mr B is not entitled:</p> <ul style="list-style-type: none"> ✓ To interfere with the conduct of the business. ✓ To require accounts. ✓ To inspect books of the firm <p>However, Mr B is only entitled to receive the share of the profits of the transferring partner, and he is bound to accept the profit as agreed to by partners, i.e, he cannot challenge the accounts.</p>	5
14	<p>What is the conclusive evidence of partnership? State the circumstances when the partnership is not considered between two or more parties. (May 2018, Dec 2021)</p>	5

Ans.	As per the provision of the Indian Partnership Act, 1932, the existence of <u>Mutual Agency</u> , which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion with respect to the determination of the existence of the partnership. Each partner carrying on the business is the <u>principal as well as an agent of other partners</u> . So, the act of one partner done on behalf of the firm binds all the partners. Circumstances when a partnership is not considered between two or more parties according to various judicial pronouncements: 1) Parties have <u>not retained any record of the terms and conditions</u> of the <u>partnership</u> . 2) Partnership business has <u>maintained no accounts</u> of its own, which would be open to inspection by both parties. 3) <u>No account</u> of the partnership was opened with any <u>bank</u> . 4) <u>No written intimation</u> was conveyed to the <u>Deputy Director of Procurement</u> with respect to the newly created partnership.	5
15	“Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm”. Explain the mode of determining the existence of partnership as per the Indian Partnership Act, 1932? (May 2019, Dec 2021)	4
Ans.	As per the provision of the Indian Partnership Act, 1932, in determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. For determining the existence of a partnership, the following things must be present: 1) Agreement: Partnership is created by agreement and not by status. The relation of partnership arises from the contract and not from status. 2) Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is <u>only prima facie evidence</u> and not conclusive evidence in that regard. The sharing of profits would not by itself make such person partners. 3) Agency: The existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of the firm binds all the partners.	4
16	Explain different types of partners. (Jan. 2021)	7
Ans.	Types of partners: 1) Active or Actual or Ostensible Partner: A person who has become a partner <u>by agreement</u> and <u>actively participates</u> in the conduct of the partnership business is known as an actual or active or ostensible partner. In the event of <u>retirement</u> , he had to give <u>public notice</u> in order to <u>relieve himself</u> of all liabilities for acts of other partners done after the retirement. 2) Sleeping or Dormant Partner: A person who is a partner by agreement and who does <u>not actively take part in the conduct of the partnership business</u> . A sleeping partner <u>share profits</u> and is also <u>liable to the third parties</u> for all acts of the firm. Public notice is not required in the event of retirement. 3) Nominal Partner: A person who <u>lends his name to the firm</u> without having any real interest in it is called a nominal partner. He is <u>not entitled to share</u>	7

	<p><u>the profits</u> of the firm. Neither he invests in the firm nor takes part in the conduct of the business. However, a nominal partner is <u>liable to third parties</u> for all acts of the firm.</p> <p>4) Partner in profits only: A partner who is entitled to <u>share profits only</u> without being liable for the losses is known as the partner for profits only and is also <u>liable to the third parties</u> for all the acts of the firm.</p> <p>5) Incoming Partner: A person who is <u>admitted as a partner</u> into an already <u>existing firm</u> with the <u>consent of all the existing partners</u> is called an incoming partner. Such a partner is <u>not liable for any act</u> of the firm done <u>before his admission as a partner</u>.</p> <p>6) Outgoing Partner: A partner who <u>leaves the firm</u> in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner <u>remains liable to third parties for all acts</u> of the firm until <u>public notice</u> is given of his retirement.</p> <p>7) Partner by Estoppel: When a person, who is <u>not a partner</u> in the firm, <u>represents himself as a partner</u> in a firm, he is liable to anyone who, on the <u>faith of such representation</u>, has given credit to the firm.</p>	
17	<p>Ms Lucy, while drafting the partnership deed to take care of few important points. What are those points? She wants to know the list of information which must be part of the partnership deed drafted by her. Also, give a list of information to be included in the partnership deed? (ICAI SM)</p>	6
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a document which contains various <u>terms and conditions</u> related to the <u>relationship of partners</u> to each other is called a partnership deed.</p> <p>The information contained in a partnership deed is as follows:</p> <ol style="list-style-type: none"> 1) Name of the <u>partnership firm</u>. 2) Name of all the <u>partners</u>. 3) Nature and place of the <u>business of the firm</u>. 4) Date of <u>commencement of partnership</u>. 5) <u>Duration</u> of the partnership firm. 6) <u>Capital contribution</u> of each partner. 7) <u>The profit-sharing ratio</u> of the partners. 8) <u>Admission</u> and <u>retirement</u> of a partner. 9) <u>Rates of Interest</u> on Capital, Drawings and Loans. 10) Provisions for <u>settlement of accounts</u> in the case of <u>dissolution of the firm</u>. 11) Provisions for <u>salaries</u> or <u>commissions payable</u> to the partners, If any. 12) Provisions for the <u>expulsion of a partner</u> in case of <u>breach of duty</u> or <u>fraud</u> <p>Ms Lucy, while drafting the partnership deed to take care of few important points:</p> <ol style="list-style-type: none"> i) The partnership agreement must be in writing. An oral partnership agreement is not a partnership deed. ii) The partnership deed contains various terms & conditions as to the relationship of the partners to each other. iii) The partnership comprises of immovable property, then the partnership deed must be in Writing, stamped & registered under Registration Act iv) If the partnership comprises of no immovable property, then the partnership deed must be writing and Stamped according to the provisions of Stamp Act, 1899. 	6

18	When can the continuing guarantee be revoked under the Indian Partnership Act, 1932? (Nov. 2019)	2
Ans.	1) As per the provision of the Indian Partnership Act, 1932, a <u>continuing guarantee</u> given to a firm or to the third party, in respect of the transaction of a firm, is revoked as to future transactions from the date of any change in the constitution of the firm. 2) Such change may occur by the <u>death</u> or <u>retirement</u> of a partner or by the <u>introduction of a new partner</u> .	2
19	Explain the various effects of insolvency of a partner as per the Indian Partnership Act, 1932. (Nov. 2019)	4
Ans.	As per the Indian Partnership Act, 1932, where a partner in a firm is <u>adjudicated insolvent</u> , he <u>ceases to be a partner</u> on the date on which the order of adjudication is made, whether or not the firm is dissolved. Effects of insolvency of a partner: 1) The insolvent partner <u>cannot be continued</u> as a partner. 2) He will be <u>ceased to be a partner</u> from the very date on which the order of adjudication is made. 3) The <u>estate</u> of the insolvent partner is <u>not liable for the acts of the firm</u> done after the date of order of adjudication. 4) The <u>firm is also not liable</u> for any act of the insolvent partner after the date of the order of the adjudication. 5) The insolvency of a partner results in the <u>dissolution of the firm</u> , but the partners are competent to agree among themselves that the <u>adjudication of a partner as an insolvent will not give rise to dissolution of the firm</u> .	4
20	Define 'Goodwill' as per the Indian Partnership Act, 1932. Also, explain the rights of the buyer and seller of goodwill as per the Indian Partnership Act, 1932. (Nov. 2019)	6
Ans.	<u>Goodwill has not been specifically defined</u> in the Indian Partnership Act, 1932. But, as per the Indian Partnership Act, 1932, goodwill has been regarded as a partnership property. <u>Meaning of Goodwill:</u> 'Goodwill' means the benefits arising from a firm's business' connections or reputation. Goodwill is an intangible asset but, it has value. Upon the dissolution of the firm, the goodwill of the firm, subject to the contract, is sold and its proceeds are distributed as capital. <u>Rights of buyer and seller of goodwill:</u> 1) Buyer's rights: On the sale of goodwill, the <u>buyer</u> may, subject to the terms of the contract of sale: a) <u>represent himself</u> in continuing the business, b) <u>maintain his exclusive rights</u> to the use of the firm name, and c) <u>solicit former customers</u> of the business and <u>restrain the seller</u> of the goodwill from doing so. 2) Seller's rights: The <u>seller</u> may enter into <u>competition with the purchaser of the goodwill</u> unless the seller is prevented by a valid <u>restraint clause</u> in the contract of sale.	6
21	"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of the partnership." 1) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. 2) State the liabilities of a minor partner both:	4 2

	<p>i) Before attaining majority and ii) After attaining majority.</p> <p style="text-align: center;">(ICAI SM, Nov. 2018, Nov 2021 RTP, June 2022)</p>	
Ans.	<p>1) As per the provision of the Indian Partnership Act, 1932, rights which can be enjoyed by a minor partner are:</p> <p>a) A minor partner has a right to his agreed <u>share of the profits</u> and of the firm.</p> <p>b) He can have access to, <u>inspect and copy the accounts</u> of the firm.</p> <p>c) He can <u>sue the partners for accounts or for payment of his share</u> but only when severing his connection with the firm and not otherwise.</p> <p>d) On <u>attaining majority</u>, he may <u>within 6 months</u> elect to become a partner or not to become a partner. If he elects to <u>become a partner</u>, then he is entitled to the <u>share</u> to which he was entitled as a minor. If he <u>does not</u>, then he is <u>not liable</u> for any acts of the firm <u>after the date of the serving of such public notice</u>.</p> <p>2) Liabilities of a minor partner before attaining majority:</p> <p>a) The liability of the minor is confined only to the <u>extent of his share in the profits and the property of the firm</u>.</p> <p>b) Minor has <u>no personal liability</u> for the debts of the firm incurred during his minority.</p> <p>c) Minor <u>cannot be declared insolvent</u>, but if the firm is declared insolvent, his share in the firm vests in the Official Receiver/ Assignee.</p> <p>3) Liabilities of a minor partner after attaining majority:</p> <p>a) <u>Within 6 months</u> of his <u>attaining majority</u> or on his <u>obtaining knowledge</u> that he had been admitted to the <u>benefits of partnership</u>, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.</p> <p>b) Where he has elected <u>not to become a partner</u>, he may give <u>public notice</u> that he has elected not to become a partner, and such notice shall <u>determine</u> his position in the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.</p>	<p>4</p> <p>1</p> <p>1</p>
22	<p>What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?</p> <p style="text-align: right;">(May 2019)</p>	2
Ans.	<p>1. As per the provision of the Indian Partnership Act, 1932, notice to a partner, who habitually acts in the business of the firm, of any matter relating to the business of the firm is deemed as notice to the firm, except in the case of a fraud committed by or with the consent of such partner.</p> <p>2. Thus, notice to one partner is equivalent to the notice to the rest of the partners of the firm. This is just like a notice to an agent is a notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business, only then it would constitute notice to the firm.</p>	2
23	<p>What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?</p> <p style="text-align: right;">(ICAI SM)</p>	4
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the following is the procedure for the registration of a partnership firm:</p> <p>1) The registration of a partnership firm is <u>optional</u>. Also, if a firm is required to be registered, then it <u>need not be registered from the beginning</u>; it can be registered during continuation also.</p>	4

	<p>2) For the registration, an <u>application to the registrar</u> shall be submitted, with the prescribed form and the prescribed fee, stating:</p> <ul style="list-style-type: none"> ✓ The <u>firm's name</u>. ✓ The <u>place or principal place of the business</u> of the firm. ✓ The <u>names of any other places</u> where the firm carries on business. ✓ The <u>date when each partner joined the firm</u>. ✓ The <u>name in full</u> and <u>permanent addresses</u> of the partners. ✓ The <u>duration</u> of the firm. <p>3) Such an application statement shall be <u>signed by all the partners or by their authorized agents</u>. Each person signing the application shall also verify it in the manner prescribed.</p> <p>4) A partnership firm <u>shall not contain</u> any of the words in its name like <u>Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal</u>, etc.</p> <p>5) The registration of a partnership is <u>effective from the date when all documents with prescribed form and prescribed fees are delivered to the registrar</u>. The date on which the Registrar makes an entry in the register of the firms is immaterial.</p>	
24	Discuss the liability of a partner for the act of the firm and liability of the firm for the act of a partner to third parties as per the Indian Partnership Act, 1932. (Jan. 2021)	4
Ans.	<p>1) <u>Liability of a partner for acts of the firm</u>: As per the provisions of the Indian Partnership Act, 1932, every partner is liable, jointly and severally, with all other partners for all acts of the firm done while he is a partner.</p> <p>2) <u>Liability of the firm for wrongful acts of a partner</u>: As per the provisions of the Indian Partnership Act, 1932, where the wrongful act or omission of a partner, in the ordinary course of the business of a firm or with the authority of his partners, any loss or injury is caused to any third party or any penalty is incurred, the firm is liable for such loss or injury or penalty to the same extent as the partner.</p>	4
25	What are the rights which won't be affected by the Non-Registration of Partnership firm? (Nov. 2020)	4
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, non-registration of a firm does not affect the following rights:</p> <ol style="list-style-type: none"> 1) Right of third parties to sue the firm or any other party. 2) Right of partners to sue: <ul style="list-style-type: none"> ✓ for the dissolution of the firm, or ✓ for the settlement of accounts of the dissolved firm, or ✓ for the realization of the property of the dissolved firm. 3) Power of an Official Assignee of Court to release the property of the insolvent partner and to bring an action. 4) Right to use or claim a set-off if the value of suit does not exceed ₹100 in value. 	4
26	P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31 st July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share.	6

	<p>Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:</p> <ol style="list-style-type: none"> 1) Rights P & Q to start a competitive business. 2) Rights of P & Q regarding their share in the property of M/S PQRS & Co. <p style="text-align: right;">(Nov. 2020)</p>	
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, an outgoing partner may carry the business that is <u>competing</u> with that of the firm, but <u>he may not</u>:</p> <ol style="list-style-type: none"> a) use the firm's name; b) represent himself as carrying on the business of the firm; or c) solicit the customers who were dealing with the firm before such outgoing partner was ceased to be a partner. <p>However, the partner may agree with the outgoing partner that he will not carry on a business similar to that of the firm <u>within a specified period</u> or <u>within specified local limits</u>. Such an agreement will not be in restraint of trade if the restraints are reasonable.</p> <p>As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -</p> <ul style="list-style-type: none"> • Interest at 6% p.a. on amount of his share in the property, or • Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher. <p>This provision is subject to the contract to the contrary.</p> <p><u>Facts of the case:</u></p> <p>P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share.</p> <p><u>Conclusion:</u></p> <ol style="list-style-type: none"> 1) P & Q can start a competitive business in the name of M/S PQ & Co. after following the above conditions in the absence of any agreement. 2) In the present case, P & Q shall be entitled at their option to: <ul style="list-style-type: none"> • profits of the firm made from the date on which P & Q left the firm; or • interest at the rate of 6% p.a. on the amount of P & Q's share in the property. 	6
27	<p>Ram, Laxman and Bharat are partners of a partnership firm RLB Furniture's & Co. The firm is a dealer in office furniture. Ram was in charge of purchase and sale, Laxman was in charge of maintenance of accounts of the firm, and Bharat was in charge of handling all legal matters. Recently through an agreement among them, it was decided that Ram will be in charge of maintenance of accounts and Laxman will be in charge of purchase and sale. Being ignorant about such an agreement, Shyam, a supplier, supplied some furniture to Ram, who ultimately sold them to a third party at a profit. Referring to the provisions of the Partnership Act, 1932, advise whether Ram's actions were correct or not?</p> <p style="text-align: right;">(Jan. 2021, July 2021)</p>	6

Ans.	<p>As per the provision of the Indian Partnership Act, 1932, it is the duty of the partner to <u>act within the scope of his actual authority</u>. If he <u>exceeds his authority</u>, he shall <u>compensate the other partners for loss</u>, unless they ratify his act. Also, a partner must not make any <u>secret profits</u>.</p> <p>Facts of the case: Ram, Laxman and Bharat are partners of a partnership firm RLB Furnitures & Co. The firm is a dealer in office furniture. Ram was in charge of purchase and sale, Laxman was in charge of maintenance of accounts of the firm, and Bharat was in charge of handling all legal matters. Recently through an agreement among them, it was decided that Ram will be in charge of maintenance of accounts and Laxman will be in charge of purchase and sale. Being ignorant about such an agreement, Shyam, a supplier, supplied some furniture to Ram, who ultimately sold them to a third party at a profit.</p> <p>Conclusion: Here, Ram has to compensate the other partners and the firm as Ram had acted outside his actual authority and made an agreement with Shyam for the purchase of furniture, which was not within the scope of his duties. Ram's duty was the maintenance of accounts of the firm, not sale and purchase of the furniture. Also, the profit which Ram has made from selling the furniture shall be claimed by the firm.</p>	6
28	<p>State the legal consequence of the following as per the provisions of the Indian Partnership Act, 1932:</p> <ol style="list-style-type: none"> 1) Retirement of a partner 2) Insolvency of a partner <p style="text-align: right;">(RTP Nov. 2019)</p>	4
Ans.	<ol style="list-style-type: none"> 1) Retirement of a partner <ol style="list-style-type: none"> a) A partner may retire: <ul style="list-style-type: none"> ✓ with the consent of all the other partners; or ✓ in accordance with an express agreement by the partners; or ✓ if the partnership is at will, then by giving notice in writing to all the other partners of his intention to retire. b) A retiring partner may be <u>discharged from any liability to any third party for acts of the firm done before his retirement</u> by an agreement made by him with such third party and the partners of the reconstituted firm. c) Notwithstanding the retirement of a partner from a firm, the retired partner shall continue to be <u>liable as a partner to third parties for any act done before the date of his retirement</u>. d) Notice of retirement may be given by <u>the retired partner or by any partner of the reconstituted firm</u>. 2) Insolvency of a partner <ol style="list-style-type: none"> a) The insolvent partner <u>cannot be continued as a partner</u>. b) He will not be a partner from the date on which the <u>order of adjudication</u> is made. c) The estate of the insolvent partner is <u>not liable</u> for the acts of the firm done <u>after the date of order of adjudication</u>. d) The firm is also <u>not liable</u> for any act of the insolvent partner <u>after the date of the order of adjudication</u>. e) The insolvency of a partner <u>results in the dissolution of a firm</u>, but the partners are competent to agree among themselves that the 	4

	adjudication of a partner as an insolvent will not give rise to dissolution of the firm.	
29	<p>A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of ₹350? Assume there is no contract between the partners regarding the above.</p> <p style="text-align: right;">(May 2019, Nov 2021 RTP)</p>	4
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932, subject to the contract between the partners, if any partner has <u>derived any personal profits</u>:</p> <ul style="list-style-type: none"> • from any <u>transaction</u> of the firm or from the use of <u>firm's name</u> or <u>firm's property</u>; or • from the business carried on by the partner, which is <u>competing and of the same nature</u> as that of the firm, <p>then the partner shall account for such profits and pay it to the firm.</p> <p><u>Facts of the case:</u></p> <p>A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost.</p> <p><u>Conclusion:</u></p> <p>In the given scenario, Mr. B had made an extra profit of ₹150 per Kg. This is arising purely out of the transaction of the firm. Hence, Mr. B is accountable to the firm for the extra profit earned by him.</p>	4
30	<p>MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected?</p> <p style="text-align: right;">(Nov 2021 RTP, Nov 2022 RTP)</p>	5
Ans.	<p>According to Section 41 of the Indian Partnership Act, 1932, a firm is <u>compulsorily dissolved</u>:</p> <ol style="list-style-type: none"> a) by the <u>adjudication of a partner or all partners as insolvent</u>, or b) by the happening of an event that makes the business of the firm <u>unlawful</u>. <p>However, where more than one businesses are carried on by the firm, the illegality of one or more businesses shall not itself cause the dissolution of the firm in respect of its lawful businesses.</p>	5

	<p><u>Facts of the case:</u> MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health.</p> <p><u>Conclusion:</u> Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful. However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.</p>	
31	<p>Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm? (May 2022 RTP)</p>	3
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932 a partner is <u>not entitled to receive remuneration</u> for taking part in the conduct of the business. But this rule can be <u>varied by an express agreement</u>, or by a <u>course of dealings</u>, in which the partner will be entitled to remuneration. Thus, a partner can claim remuneration where, in a firm, it is <u>customary to pay remuneration</u> to a partner for conducting the business of the firm. He can claim it even in the absence of a contract for the payment of remuneration.</p> <p><u>Facts of the case:</u> Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that.</p> <p><u>Conclusion:</u> In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.</p>	3
32	<p>M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932:</p>	3

	<p>a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?</p> <p>b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?</p> <p>c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm? (May 2022 RTP)</p>	
Ans.	<p>According to provisions of Section 69 of the Indian Partnership Act, 1932, a firm or any of its partners <u>cannot bring an action against the third party</u> for breach of contract entered into by the firm unless the firm is registered. But, an action can be brought <u>against the unregistered firm</u> by a third party.</p> <p>Facts of the case: M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price.</p> <p>Conclusion:</p> <p>a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.</p> <p>b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.</p> <p>c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.</p>	3
33	<p>Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932:</p> <p>a) Whether Bohan is liable for the dues of Karan against the firm.</p> <p>b) In case, Karan has filed the suit against firm, whether Bohan would be liable? (Nov 2022 RTP)</p>	3
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932, a person who <u>lends his name to the firm</u> without having any real interest in it is called a nominal partner. He is <u>not entitled to share the profits</u> of the firm. Neither he invests in the firm nor takes part in the conduct of the business. However, a nominal partner is <u>liable to third parties</u> for all acts of the firm.</p> <p>Facts of the case: Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners.</p> <p>Conclusion:</p> <p>a) In the present case, Bohan is a nominal partner. Even if he is not entitled to share the profits of the firm, he is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.</p> <p>b) In case, Karan has filed the suit against firm, the answer would remain same.</p>	3