

## UNIT - II : RELATIONS OF PARTNERSHIP

### Question 1 :

*Section 33*

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from the partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

**May-18, May-19, Module**

Answer :

- 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. It is, thus, essential that :
  - (i) the power of expulsion must have existed in a contract between the partners;
  - (ii) the power has been exercised by a majority of the partners; and
  - (iii) it has been exercised in good faith.
- If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33(1) includes three things :

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

### Question 2 :

*Section 4.*

"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

- D) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.
- D) A. State the liabilities of a minor partner both:
  - (i) Before attaining majority and
  - (ii) After attaining majority.



OR

- State the legal position of a minor partner after attaining majority:
- When he opts to become a partner of the same firm.
  - When he decide not to become a partner.

Nov-18, Dec-21, Module

Answer :

(I) **Rights which can be enjoyed by a minor partner :**

- A minor partner has a right to his agreed share of the profits and of the firm.
- He can have access to, inspect and copy the accounts of the firm.
- He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(II) **A. (i) Liabilities of a minor partner before attaining majority :**

- The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- Minor has no personal liability for the debts of the firm incurred during his minority.
- Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.

(ii) **Liabilities of a minor partner after attaining majority:**

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm. Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards 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.

OR

B) **(i) When he becomes partner:**

If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows :



- (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

**(ii) When he elects not to become a partner :**

- (a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- (b) His share shall not be liable for any acts of the firm done after the date of the notice.
- (c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

**Question 3 :**

(i) *What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?*

OR

(ii) *Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932 ?*

**Module**

**Answer :**

**(i) Effect of notice to an acting partner of the firm :**

- According to Section 24 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 affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.
- Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is 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 a notice to the firm.

OR

**(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)**

According to section 16, subject to contract between 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 and pay it to the firm;



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

**Question 4 :**

(i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932 ?

OR

(ii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932 ?

Answer :

**November -19**

(i) **Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)**

According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a 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 change may occur by the death, or retirement of a partner, or by introduction of a new partner.

(ii) **Goodwill :**

The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

**Question 5 :**

With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner.

**November -19**

Answer :

**Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932) :**

- (i) The insolvent partner cannot be continued as a partner.
- (ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- (iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.



- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

**Question 6 :**

*Section 30*

*Minor* Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain :

- (i) To what extent X will be liable if he failed to give public notice after attaining majority?
- (ii) Can Mr. L recover his debt from X?

**November -19, Module**

**Answer :**

- As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
- However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
- If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:
  - (A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
  - (B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
    - (i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.
    - (ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.



**Question 7 :**

*Section 36 & 37*

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in 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. 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:

- (i) Rights of P & Q to start a competitive business.
- (ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

**November 20**

**Answer :**

**(i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)**

- (1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-
  - (a) use the firm name,
  - (b) represent himself as carrying on the business of the firm or
  - (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co after following above conditions in the absence of any agreement.

**(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)**

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or



his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

### **Question 8 :**

*Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.*

**November -20**

**Answer :**

**Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932) :**

Where-

- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and 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.

### **Analysis of section 27 :**

- It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.
- Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should actually come into the custody of the firm.
- On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.
- The firm would be liable in both the cases.

### **Question 9 :**

*Discuss the liability of a partner for the act of the firm and liability of firm for the act of a partner to third parties as per Indian Partnership Act, 1932.*



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### Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932):

Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

### Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932) :

Where, -

- by 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, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.
- a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and 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.

### Question 10 :

M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues 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, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

- (i) Whether P's private estate is liable for the price of furniture purchased by the firm?
- (ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?

January -21



**Answer :**

- According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.
- Further, 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 given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.
- In the light of the facts of the case and provisions of law:
  - (i) Since the delivery of 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 representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.
  - (ii) It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

**Question 11 :**

*Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹ 6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Z for settling the amount.*

*In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:*

- (i) *Can Mr. M validly transfer his interest in the firm by way of sale?*
- (ii) *What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer?*

**July-21, Modu**

**Answer :** According to Section 29 of the Indian Partnership Act, 1932,

- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by creation by him of a charge on such interest, does not entitle the transferee, during continuance of the firm, to interfere in the conduct of business, or to require accounts, inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.



If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law :

Yes, Mr. M can validly transfer his interest in the firm by way of sale.

On the retirement of the transferring partner (Mr. M), the transferee (Mr. Z) will be entitled, against the remaining partners:

(a) to receive the share of the assets of the firm to which the transferring partner was entitled, and

(b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

So, in this case on Mr. M's retirement, Mr. Z would be entitled to receive the value of Mr. M's share to the extent of ₹ 6 crore in the firm's assets.

### Question 12 :

**Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932 ?**

**July-21**

Answer :

- According to Section 19 of the Indian Partnership Act, 1932, subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
- The authority of a partner to bind the firm conferred by this section is called his "implied authority".
- In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
  - (a) submit a dispute relating to the business of the firm to arbitration;
  - (b) open a banking account on behalf of the firm in his own name;
  - (c) compromise or relinquish any claim or portion of a claim by the firm;
  - (d) withdraw a suit or proceedings filed on behalf of the firm;
  - (e) admit any liability in a suit or proceedings against the firm;
  - (f) acquire immovable property on behalf of the firm;
  - (g) transfer immovable property belonging to the firm; and
  - (h) enter into partnership on behalf of the firm.



**Question 17 :**

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 25<sup>th</sup> August, 2018, 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 united approval of rest of the partners.

- (i) Examine whether action by the partners was justified or not?
- (ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

Answer :

**Expulsion of a Partner (Section 33 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.
- The test of good faith as required under Section 33(1) includes three things :
  - (i) The expulsion must be in the interest of the partnership.
  - (ii) The partner to be expelled is served with a notice.
  - (iii) He is given an opportunity of being heard.
- If a partner is otherwise expelled, the expulsion is null and void.
  - (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.
  - (ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:
    - (a) the power of expulsion must have existed in a contract between the partners;
    - (b) the power has been exercised by a majority of the partners; and
    - (c) it has been exercised in good faith.

Answer :  
Resolution

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