

TIPA, 1932.

## Unit 1 General Nature of Partnership.

• 'Partnership' is the relation between person who have agreed to share the profits of a business carried on by all or any of them acting for all.

### # ELEMENTS OF PARTNERSHIP

1. Association of 2 or more persons:  
→ Partnership act is silent about the maximum number of partners but section 464 of Companies Act, 2013 has now put a limit of 50 partners in any association/ Partnership firm.

2. Agreement  
→ An agreement from which relationship of Partnership arises may be express, implied, oral or written.

3. Business  
→ Existence of Business with motive of 'acquisition of gains' is essential

4. Agreement to share Profits  
→ There can be no Partnership where only one of the partners is entitled to the whole of profits of business.  
→ Sharing of profits is essential but sharing of loss in an agreement isn't essential.

5. Business carried on by all or one of them acting for all:  
→ There should be a binding contract of mutual agency between the partners

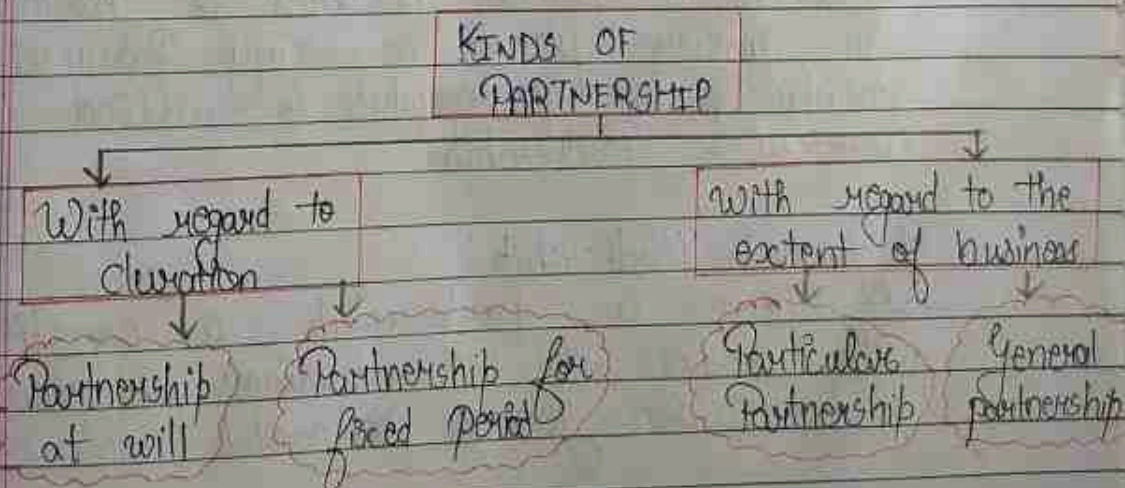
## # TRUE TEST OF PARTNERSHIP

### MODES OF DETERMINING EXISTENCE OF PARTNERSHIP sec 6.7

For determining the existence in partnership, it must be proved

1. There was an agreement between all the persons concerned.
2. The agreement was to share the profits of a business and
3. The business was carried on by all or any of them acting for all.

## # KINDS OF PARTNERSHIP



### 1] Partnership at will: Section 4

→ Partnership at will is a partnership when

1. no fixed period has been agreed upon for the duration of the partnership; and
2. There is no provision made as to the determination of partnership.

→ When a partnership entered into for a fixed term is continued after the expiry of such period, it is treated as partnership at will.

### 2] Partnership for fixed period:

→ Where a provision is made by a contract for the duration of partnership, the partnership is called 'partnership for fixed period'.

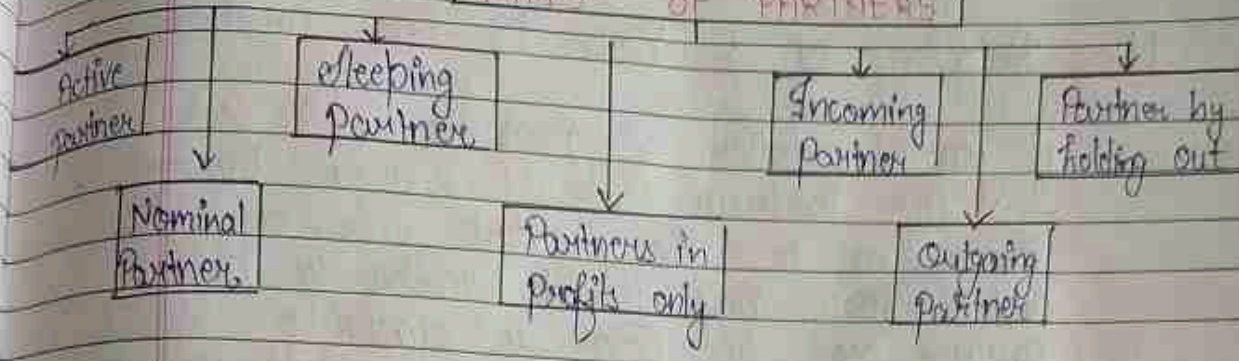
### 3] Particular Partnership:

→ When a person becomes a partner with another person in any particular adventure, the partnership is called 'Particular Partnership'.

### 4] General Partnership:

→ Where a partnership is constituted with respect to the business in general, it is called general partnership.

## TYPES OF PARTNERS



- Partner by holding out (Sec 28)
- A.K.A Partnership by estoppel
- A person may himself, by his words or conduct have induced others to believe that he is a partner or he may allowed others to represent him as a partner.
- The section is also applicable to former partner who has retired from the firm without giving proper public notice of his retirement
- In both the above cases, the person is liable for the transaction even though he is not a real partner.

TIPA, 1932  
Unit 2 Relation of Partners

## Relation of Partners to one another

1] General duties of Partners Sec 9

→ The partners should carry business of the firm to the greatest common advantage and later, they should render to any partner or his legal representative full information of all the things affecting the firm

2] Duty to indemnify for loss caused by fraud Sec 10

→ Every partner shall indemnify the firm for any loss caused to it by its fraud in the conduct of business of the firm.

→ An act of a partner imputable to the firm on principles of agency which is a fraud on his co-partners, entitles the co-partners to throw the whole of the consequences upon him

3] Determination of rights & duties of partners by contract between the partners Sec 11

→ Mutual rights and duties of partners of a firm may be determined by contract between the partners

→ Agreement in restraint of trade Sec 27 of TPA

A partner shall not carry on any business other than that of the firm while he is a partner.

- 4] The Conduct of the business (Sec 12)
- i] Right to take part in the conduct of the business (Sec 12 a)
  - ii] Right to be consulted (Sec 12 c)
  - iii] Right to access books (Sec 12 d)
  - iv] Right of legal heirs (Sec 12 e)

- 5] Mutual rights and Liabilities (Sec 13)
- Subject to contract between partners
- a) Partner is not entitled to receive remuneration for taking part in the conduct of the business.
  - b) Partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm.
  - c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits.
  - d) any payment/advance made by partner beyond capital shall be given 6% p.a interest.
  - e) The firm shall indemnify a partner in respect of payments made and liabilities incurred by him
    - i) in ordinary and proper conduct of business
    - ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss
  - f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of business

## # Partnership Property Sec 14

### 1. Property of the firm Sec 14

- The Partnership property includes =
- i) all properties, rights and interests which partners bring in as their contribution to business
  - ii) all properties, rights & interests purchased by firm
  - iii) goodwill of the firm.

→ Any partner may upon the sale of goodwill make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within specified period or within specific local limits. Such contract shall be valid if restrictions imposed are reasonable.

→ Where the property is exclusively belonging to a person, it does not become a property of Partnership merely because it is used for the business of Partnership.

### 2. Application of the Property Sec 15

→ The property of the firm shall be held and used exclusively for the purpose of the firm.

## # Personal Profit earned by Partners Sec 16

- Subject to contract between partners
- i) If a partner derives any profit for himself from any transaction of the business from the use of property or connection of the firm name, he shall account for that profit and pay it to the firm.
  - ii) If a partner carries on any business of same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

## # Relation of Partners to third Parties.

Principal to be an agent of firm Sec 12

Implied authority of Partner as agent of firm Sec 19

Extension and Restrictions of Partners

Implied authority Sec 20

Partners authority Sec 21

## # Effect of admissions by a partner Sec 23

- Partners, as agents of each other can make binding admission but only in relation to partnership transaction within their authority. The act of one partner will bind the others to third party as a firm in entirety.



# Effect of Notice to acting partner Sec 24  
→ Notice to active partner is equivalent to the notice to most of partners of the firm just as notice to an agent is notice to his principal except in case of fraud committed by or with consent of that partner.

## # Liability to third parties

1. Liability of a partner for acts of the firm Sec 25

→ The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express and implied authority.

2. Liability of the firm for wrongful acts of a partner Sec 26

→ The firm is liable to the same extent as the partner for any loss or injury caused to third party by wrongful acts of a partner.

3. Liability of firm for misapplication by partner. Sec 27

→ If partner acts within his authority

clause (a) - Partner receives money or property from third party which isn't in custody of firm & he misapplies it

clause (b) - the money or property is in custody of firm and is misapplied

In both the cases firm is liable.  
If partner goes beyond his authority, firm is not liable.

## # Rights of Transferee of Partner's Interest

- ⇒ 1) During the continuance of partnership, transferee is not entitled:
- a) to interfere with the conduct of business,
  - b) to require accounts or
  - c) to inspect books of the firm.

He is only entitled to receive the profits of firm that too without challenging accounts done by partners.

- 2) On dissolution, transferee is entitled:
- a) to receive the share of 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 dissolution.

→ A partner cannot by transferring his own interest, make anybody else a partner in his place; unless other partners agree to accept that person as partner.

→ A partner is not debarred from sharing his interest & transferring it to third party as it is an existing interest and tangible property which can be assigned.

# Minors admitted to the benefits of Partnership Sec 30

→ A minor cannot enter into contract of Partnership but can be admitted for the benefit of firm under sec 30 of T.P.A. 1932

### • Rights of Minors:

- i) Right to his agreed share of profits
- ii) Inspect accounts of firm
- iii) He can sue partners for payment of his share only while severing his connection with firm, and not otherwise.
- iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner by giving public notice

### • Liabilities of Minor:

- i) Before attaining majority:
  - a) only to the extent of his share in the profits and profit property of firm
  - b) No personal liability
  - c) He cannot be declared insolvent. even if firm is declared insolvent his share in the firm vests in official receiver / assignee.
- ii) After attaining majority:
  - a) When he becomes partner:  
→ Share in profits & Property remains same but he also becomes personally liable to 3<sup>rd</sup> parties.
  - b) When he elects not to become a partner  
→ He shall give notice to registrar & then is not liable for any acts of firm.  
→ He can sue partners for share in profits & property

## IMP

### # Legal consequences of partners coming in and going out.

- 1) Admission of Partner (Sec 31)
  - No new partner can be introduced into a firm without consent of all existing partners.
  - The liabilities of new partner ordinarily commence from date of admission, unless he agrees to be liable for obligations incurred by firm prior to the date.
  - An agreement between partners and incoming partner that he shall be liable for existing debts will not ipso facto give creditors of firm any right against him.

- 2) Retirement of Partner (Sec 32)
  - A partner may retire
    - a) with consent of all other partners
    - b) in accordance with express agreement by partners or
    - c) by giving notice to all other partners of his intention to retire
  - Retiring partner may by an agreement with third parties and existing partners discharge himself of the liabilities before the date of his retirement.
  - The retiring partner is liable till he gives public notice of his retirement from firm.
  - Retired partner is not liable to any third party who deals with firm without knowing that he was a partner.

4) Expulsion of a Partner (Sec 33)  
→ The expulsion is in bonafide interest of firm when:

- a) The power of expulsion exist in contract
- b) Power is exercised by majority of partners
- c) It is exercised in good faith

→ The test of good faith in sec 33(1) includes:

- i) The expulsion must be in the interest of partnership
- ii) The Partner to be expelled is served with a notice
- iii) He is given an opportunity of being heard

→ Expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of partner does not put an end to partnership even if partnership is at will be deemed to continue as before.

4) Insolvency of a partner (Sec 34)

- a) Where a partner is adjudicated as insolvent he ceases to be a partner on the date on which the order of adjudication is made.
- b) Where firm isn't dissolved, the estate of insolvent partner is not liable after the date of adjudication for transactions of firm.

5) Death of Partner (Sec 35)

- a) Dissolution of firm due to death depends on contract between partners unless there are only 2 partners
- b) Estate of deceased partner is absolved from liability for future obligation without any notice required

## # Rights of outgoing partner to carry on competing business (Sec 35)

→ 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 -

- use the firm name
- represent himself as carrying on the business of the firm
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

## # Right of outgoing partner in certain cases to share subsequent profits (Sec 34)

→ If a partner dies or ceases to be a part of the firm, the firm may use his property without any final settlement of accounts and attribute interest of 6% p.a. on the amount of his share in the property of the firm.

→ If the provisions of contract gives an option to continuing partners to purchase the interest in property of deceased / outgoing partner and is exercised by all the partners then the outgoing partner will not be entitled to any further share in profits.

## # Revocation of continuing guarantee (Sec 33)

→ Subject to agreement between partners, a continuing guarantee given to a firm or to third party w.r.t transaction of a firm is revoked as to future transactions from the date of any change in the constitution of the firm.

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## Unit 3: Registration and dissolution of a firm

### # Registration of firms

#### • Application of firms (Sec 58)

- Registration of a firm may be effected at any time by sending Registrar a statement in prescribed form and prescribed fee stating information of firm
- The statement shall be signed by all the partners, or, by their agents specially authorised in this behalf.

#### • Registration (Sec 59)

- When Registrar is satisfied that provisions of sec 58 are duly complied with, he shall record entry of statement in a register called Register of firms and issue certificate of registration.
- If a firm wants to file a suit, it is essential to first register the firm.

#### • Late registration on payment of penalty (Sec 59A)

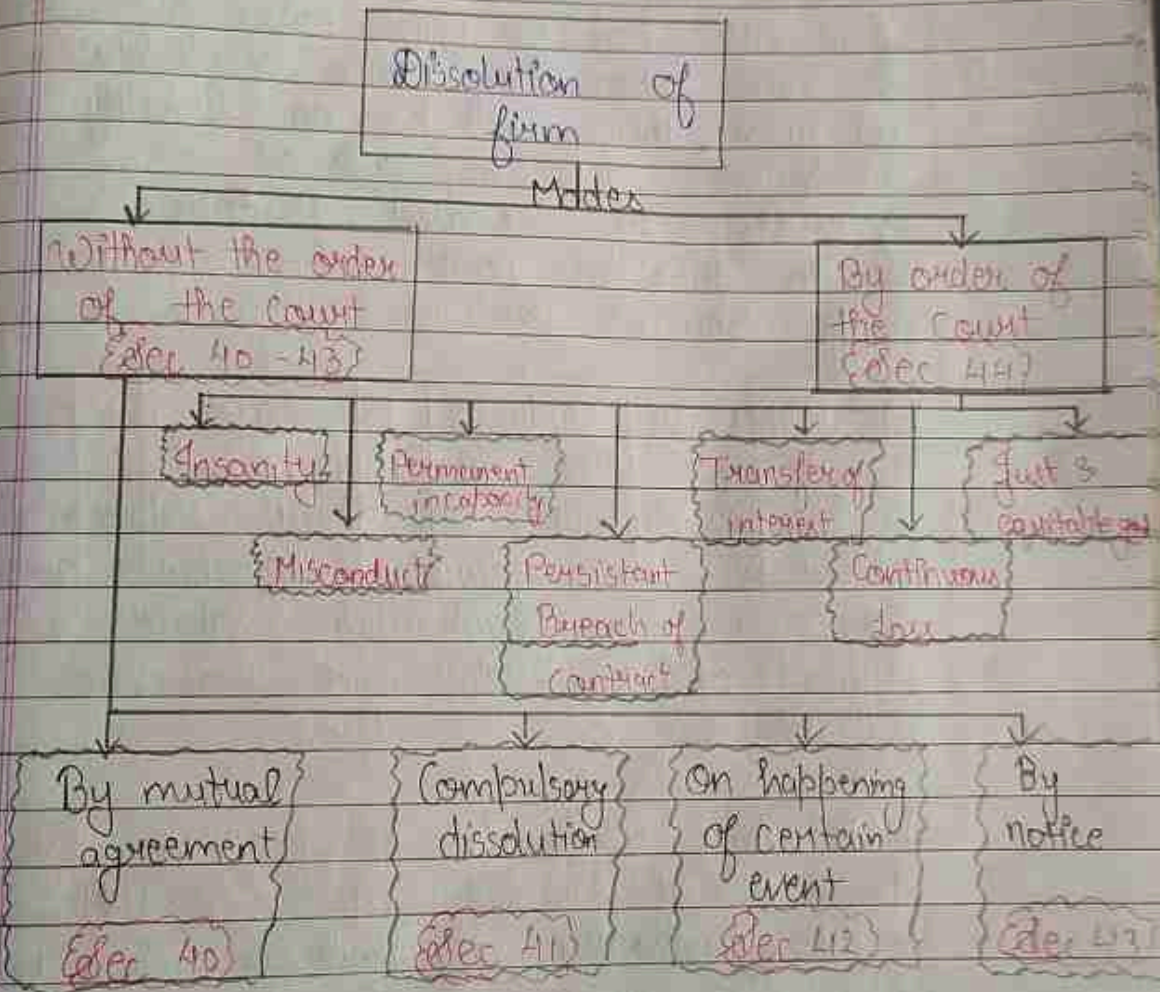
- Penalty - ₹100 per year

### # Consequences of non-Registration (Sec 69)

It is not mandatory for a firm to register under TIPA, 1932 but its consequences are:-

- No suit in a civil court by firm or other co-partners against third party
- No relief to partners for set-off of claim
- Aggrieved partner cannot bring legal action against other partner or firm
- Third party can sue the firm

# Dissolution of firm (Sec 39)  
 The dissolution of partnership between all partners of a firm is called the dissolution of the firm.





## # Consequences of dissolution

### a) Liability of Partners for acts done after dissolution (Sec 45)

→ It protects third parties dealing with the firm who had no prior notice of dissolution.  
→ Even when the notice of dissolution is not given, there will be no liability for subsequent acts in case of -

- estate of deceased partner
- an insolvent partner
- a dormant partner.

### b) Right of Partners to have business wound up after dissolution (Sec 46)

→ Every partner or their representative are entitled to have surplus distributed among themselves from partnership property after payment of all debts and liabilities on dissolution of the firm.

### c) Continuing authority of partners for the purpose of winding up (Sec 47)

→ The authority of partners does not end until the completion of all the outstanding transaction till the date of dissolution.

→ Also the firm isn't bound for insolvent partner's acts after adjudication unless the partners represent the insolvent person as a partner of the firm in future transactions.

### d) Mode of settlement of Partnership accounts (Refer 418)

→ subject to agreement, the following steps shall be followed for dissolution:

(i) Losses, including capital deficiency, shall be paid first out of profits, next out of capital and lastly by contribution in PSR by partners.

(ii) The assets to be applied in following manner:

- (a) in paying debts to third parties
- (b) Capital dues of partners
- (c) Advances on capital account
- (d) residue, if any shall be divided by partners in their PSR

### e) Payment of firm debts and of separate debts (Refer 419)

Where there are joint debts due from the firm and also from any partner:

Jiski  
Property  
uski  
debt  
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i) the property of firm shall be applied in payment of firm's debt and if any surplus is left, then share of each partner shall be applied to payment of his separate debt or paid to him;

ii) the separate property of any partner shall be applied first in payment of his separate debt and surplus, if any, in the payment of debts of the firm.

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