

THE INDIAN PARTNERSHIP ACT, 1932

Unit 1 - General Nature of Partnership

* Section 4:-

Partnership - Relation between persons who agree to share profits of a business carried on by all
OR
any of them acting for all.

Partners/
Firm/
Firm Name - Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm" and Name under which their business carried on is called "firm name."

* Act of firm [Section 2(a)] - means any act or omission by all partners, or by any partner, or agent of firm which gives rise to right enforceable by or against firm.

* Who can become a Partner ?

- Person competent to enter into valid contract
- Minor cannot become partner but can be a beneficiary.
- Company can become a partner.
- Two partnership firms cannot enter into partnership

* Essential Elements of Partnership

1. Association of Two or More Persons.

Firm cannot be a partner in partnership firm.

Minor cannot be partner but with consent of all partners, can be beneficiary.

Max. No. of Partners as per Sec 464 of Companies Act 2013-50.

2. Agreement - Must be voluntary & contractual.

- May be oral **[or]** in writing.

- May be express **[or]** implied

3. Business

→ includes trade, occupation, profession

→ Motive ⇒ Acquisition of gains.

4. Agreement to share Profits. - Must be sharing of profits.

If no profit sharing, then no Partnership.

Profit Sharing Ratio = Loss Sharing Ratio (unless otherwise agreed)

No Partnership if

- Co owners share rent from property.
- Charitable institution.

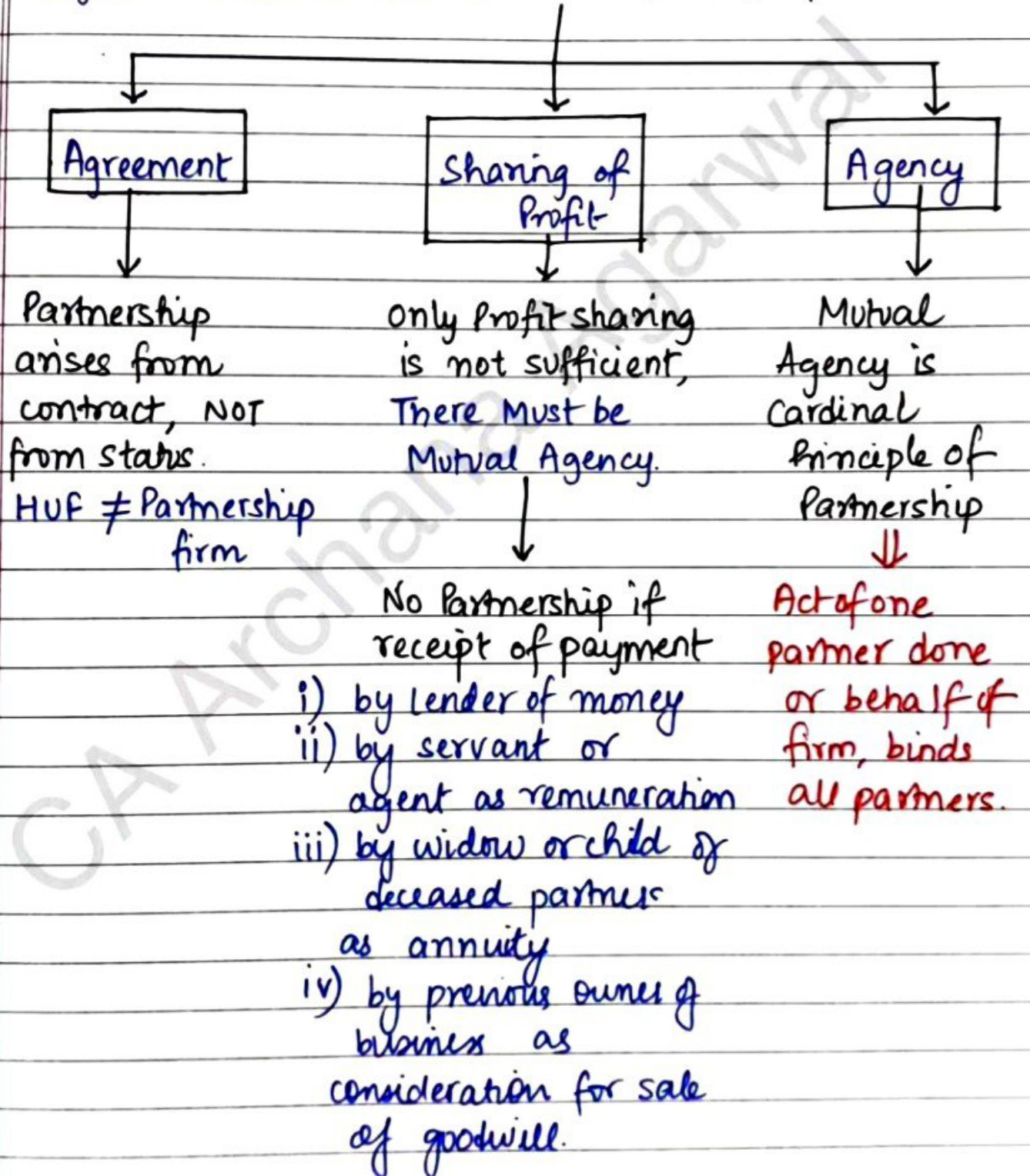
5. Business carried on by all or any of them acting for all.

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Cardinal Principle of Partnership
Partner = Principal = Agent

(also called Mutual Agency)

* True Test of Partnership, [OR]
Mode of Determining Existence of Partnership [Section 6]

Whether group of persons is firm [OR] partners of firm, regard shall be had to Real Relation b/w them.



* D/b	Partnership	Joint Stock Company.
→ Legal Status	No legal entity i.e. not distinct from partners.	Separate legal entity. (Saloman vs. Saloman)
→ Governed by	Indian Partnership Act, 1932	Companies Act, 2013
→ Members	Min: 2 Max: 50	Min: Private co: 2 Public co: 7 Max: Private co: 200 Public co: Unlimited
→ Registration	Not compulsory.	Compulsory (Companies Act, 2013)
→ Winding up	Can be dissolved anytime if all partners agree.	Either wind up by NCLT or name struck off by ROC.
→ Management	Partners.	Directors (Board)
→ Transfer of shares	Share cannot be transferred without consent of all partners.	Shareholder can transfer his shares. Shares of Public Co → traded on stock exchange.
→ Agency	Partner = Agent of other partners.	Member ≠ agent of other partners.
→ Distribution of Profits	As per Partnership Deed.	Through dividends.
→ Liability	Unlimited	Limited.

* D/b	Partnership	Club
→ Meaning	Association of persons formed for profit earning motive.	Association of persons formed for NOT earning profits BUT promoting beneficial purpose i.e health, improvement etc.
→ Relationship	Partners = Agent of other partners	Member ≠ Agent of other members.
→ Interest in property	Partner has interest in firm's property	Member has no interest.
→ Dissolution	Change affects existence	change does not affect existence of club

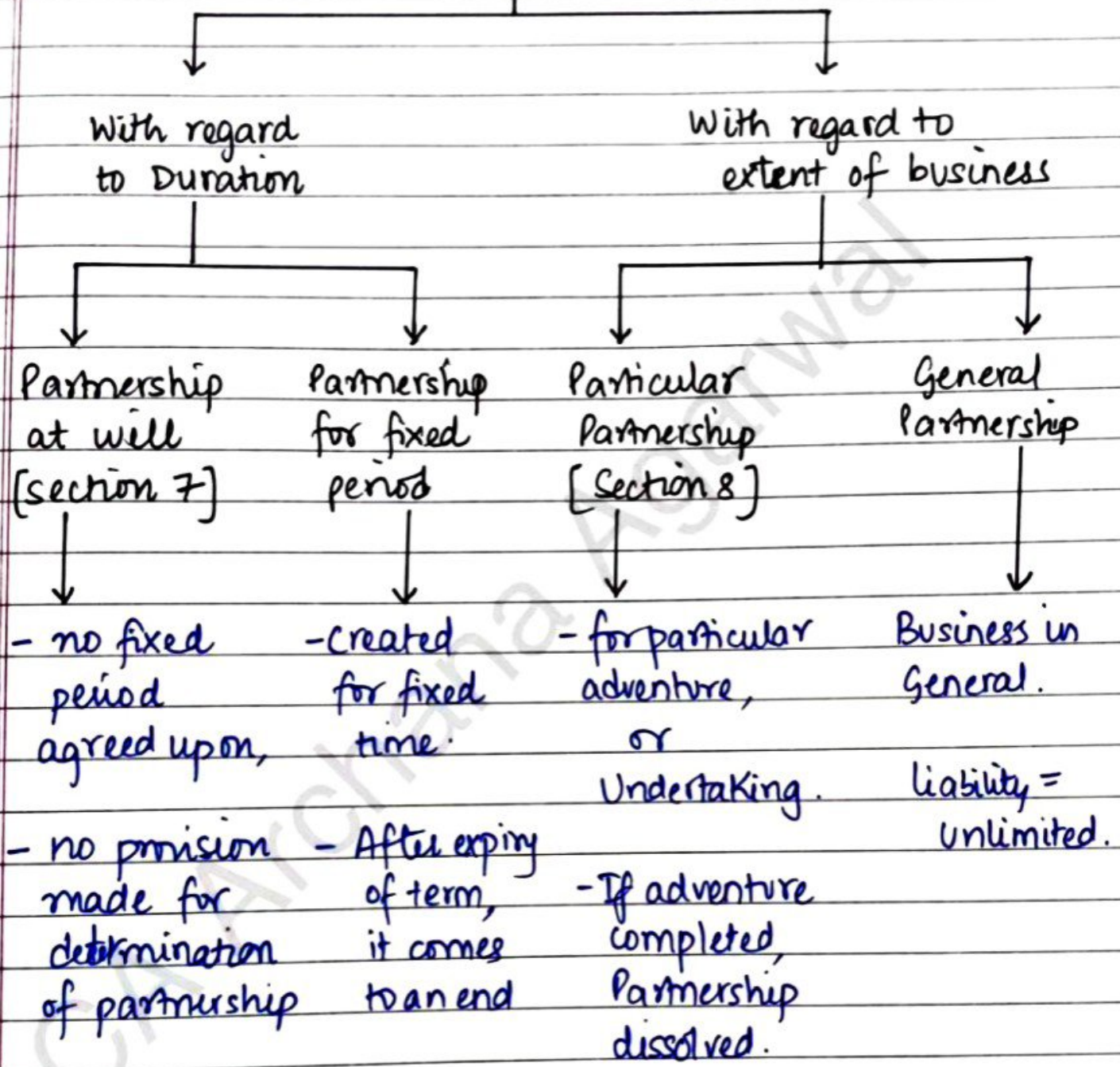
* D/b	Partnership	Co-ownership
→ Formation	Arises out of contract.	Arises out of operation of law i.e. inheritance.
→ Implied agency	Partner = Agent of other partners.	Co-owner ≠ Agent of other co-owners
→ Nature of Interest	Profits/ losses must be shared.	Not necessarily involves sharing of profits/ losses
→ Transfer of interest	Share can be transferred with consent of others.	Share can be transferred without consent

* D/b	Partnership	Association
→ Meaning	Setting up of relation of agency b/w 2 or more partners who entered for sharing profits.	Evolves out of social cause; no motive to earn profits.
→ Examples	Partnership → To run business & earn profit.	Members of charitable institution / religious association.

* D/b	Partnership	Hindu Undivided Family
→ Creation	Created by agreement	Created by status (creation by birth)
→ Death of Member	Ordinarily leads to dissolution of firm.	Death of member — not results in dissolution
→ Management	Partners	Karta.
→ Authority to bind	Partner can bind firm.	Karta / manager has authority to contract for family business & other members.
→ Liability	Liability of Partner is unlimited.	Liability of Karta is unlimited. Other coparcener liable to extent of their share

* D/b	Partnership	Hindu Undivided Family
→ Law	Indian Partnership Act, 1932	Hindu Law
→ Continuity	Subject to contract, dissolved by death or insolvency of partner.	Continued till divided. Not affected by death of member.
→ Max. No. of Members	50.	Unlimited.
→ Share in business	By virtue of agreement, if agreement is silent then equal.	No coparcener has definite share, His share/interest is fluctuating. due to deaths or births in family.

* Kinds / Types of Partnerships.



May be dissolved by any partner by giving notice in writing to all others

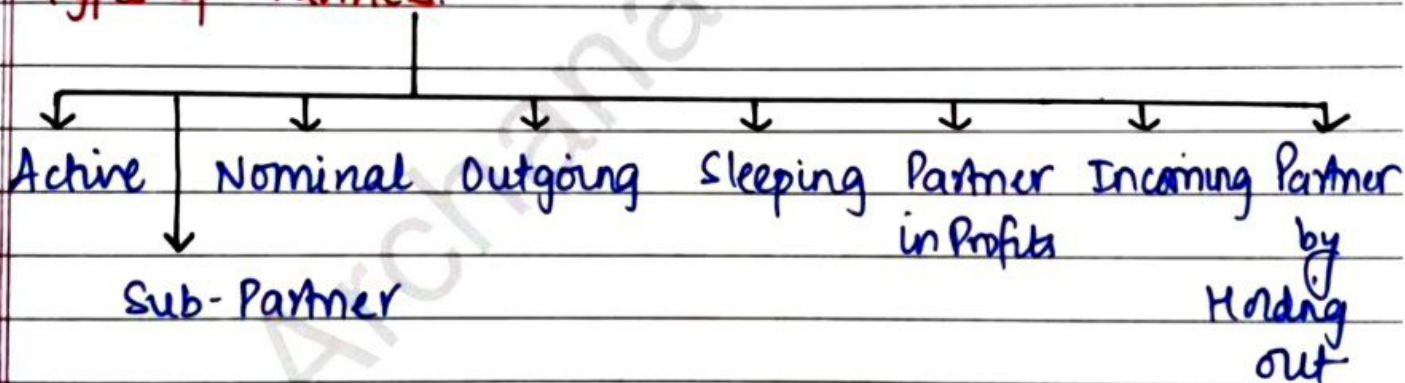
- liability \Rightarrow only with that of particular adventure.

If Partnership for fixed period continues after expiry of term, it is 'Partnership at will'.

* Partnership Deed $\left\{ \begin{array}{l} \text{oral} \\ \text{writing} \end{array} \right.$ | Suggested to have it in writing.

- | | |
|-------------------------------------|--|
| 1. Name of firm | 8. Admission/Retirement |
| 2. Names of all partners. | 9. Rate of interest on Capital, Drawings, loans |
| 3. Nature & place of business | 10. Provision for settlement of a/c's, Salaries, Commission. |
| 4. Date of commencement | 11. Provision for expulsion of partner. |
| 5. Duration of firm. | |
| 6. Capital Contribution. | |
| 7. Profit sharing Ratio of Partners | |

* Types of Partners.



1. Active Partner or Ostensible Partner

- Becomes partner by agreement
- Actively takes part in conduct of business
- Agent of other partners.
- If Retiring, must give public notice.
- liable to third parties.

2. Sleeping or Dormant Partner

- Becomes partner by agreement
- Does not actively participate in business.
- Not required → Public Notice.
- liable to third parties

3. Nominal Partner → Lends his name to firm, with no interest in firm
→ Not entitled to share profits.
→ Don't take part in business
→ Liable to third parties.
→ Does not contribute / invest in firm.

4. Partner in Profits only → Shares profit only, not losses.
→ Liable to third parties for acts of profit only.

5. Incoming Partner → New partner admitted only with consent of all partners.
→ Not liable for acts done before admission.
(Refer sec 31)

6. Outgoing Partner → Partner leaves firm.
→ Liable to third parties for acts of firm until public notice given
(Refer sec 32, 36, 37)

7. Partner by Holding out / Partner by Estoppel. (Section 28) → Person represents himself as partner or knowingly permitted himself to be represented as partner.

Representation → words
→ conduct;

Other party on faith of representation gives credit to firm.

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Then he is liable to anyone who believes