

The Indian Partnership Act, 1932  
Chapter 3 - Units - 3

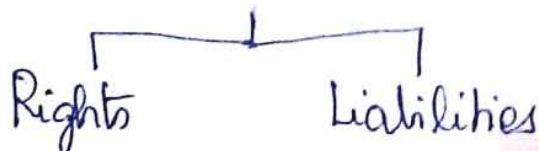
MY CAREER POINT  
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Unit 1 - General Nature of Partnership

- Elements and True test of partnership
- Distinction with other forms of organisation - (5)
- Types of partners - (8) + Kinds of partnership - (4)

Unit 2 - Relations of partners

- Rights and Duties of partners
- Partnership property
- Personal profits earned by partners
- Rights and duties after change of firm
- Third party relationships - Implied Authority
- Effect of
  - Admissions by a partner.
  - Notice to Acting Partner
- Liability to third parties
- Rights of a transferee of a partner's interest
- Minor admitted to benefits of partnership



• Legal consequences of partner coming in and going out

- Introduction
- Retirement
- Expulsion
- Insolvency

• Rights of outgoing partner to carry on competing business

• Revocation of continuing guarantee  
[ To share subsequent profits

### Unit 3 - Registration and Dissolution of Firm

- Mode of effecting Registration
- Consequences of non-Registration
- Dissolution of Firm

Without order of court (Voluntary) - (4)      By Court (7)

• Consequences of Dissolution - (9)

• Mode of giving public notice.

Ask them to prepare

- glossary of terms.
- Sections references
- Caselaws References

Definitions (Sec. 4)

- ① Partnership - Relation between persons who agree to
  - Shared the profits of business
  - Carried on by all (or)
  - Any of them acting for all
- ② Partner - Individual
- ③ Firm - Collective
- ④ Firm Name - Name under which business is carried on by all.

Elements - (5)

1 Association of Two or more persons

- { People recognised by law (Capacity to contract)
- { Firm X - Not a person
- { Minor X - Not a partner - But can be a BENEFICIARY
- Sec. 464 of Companies Act 2013 - Limits to 50.

2 Agreement

- { Two or more persons
- { Contractual + Voluntary
- { Express / Implied
- { Oral / Writing

(4)

(3)

Business

- Every trade/occupation / Profession
- It should exist
- Motiv - ACQUISITION OF GAINS

(4) Agreement to share profits

- Profits in any manner (PSR)
- Sharing of losses not an ESSENTIAL (PSR) if nothing is written

- Examples -
- Co-owners
  - Charitable Institutions
  - Cotton business (Particular partnership)

(5) Business carried on by all or any of them acting

for all.

- CARDINAL PRINCIPLE
- CONTRACT OF MUTUAL AGENCY
- Every partner is the PRINCIPAL as well as AGENT (Bind) (Bind)

TRUE TEST OF PARTNERSHIP

MUTUAL AGENCY

Case law

KD KAMATH & CO.

write the essentials + inference.

- Desirable withy
- Stamp Act
- Immovable property ↓ registration
- Add/Delete

Partnership Agreement → Partnership Deed.

(10 points)

How to determine if partnership exists or not?? - (3)

CONCEPT 1 - Agreement (Sec. 6)

Anises from contract and not STATUS < HUF etc. Business

CONCEPT 2 - Sharing of profits (Gross Returns)

-> This does not automatically make them partners

-> Receiving money does not make him a partner

Examples

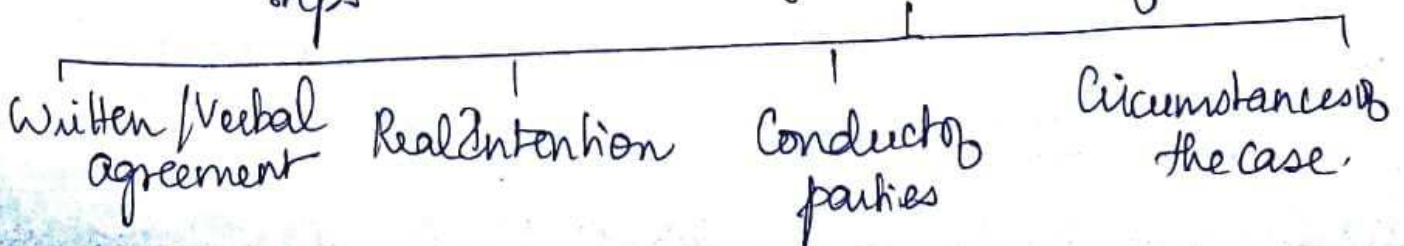
- Lender of money (Creditor) - Loan Repayment
- Servant (Remuneration)
- Widow / Child - Beneficiary - Deceased partner
- Previous Part owner - Consideration for goodwill

PRIMA FACIE evidence and not CONCLUSIVE

From the face of it

-> Task is difficult - when there is no specific agreement

-> Apply the following steps - Analyse Relevant facts



(6)

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**CONCEPT 3** - Existence of Mutual Agency

**Caselaw** - Santiranjana Das Gupta vs. Daryan Muzanull

- No records
- No accounts maintenance
- No bank accounts
- No written intimation.

Kinds of partnership

Duration

Extent of Business

@will

Fixed period

Particular  
(adventure/  
undertaking)

General.  
(All activities)

No fixed period

No provision (clause) for determination of partnership

Fixed term expires + partnership is continued → @will

Dissolution - one partner to others - **NOTICE**

Types of Partner

① **Active / Actual / Ostensible**

Agent → ordinary course of business

Public Notice to absolve from liabilities.

② **Sleeping / Dormant**

Liable to third parties

Public notice of Retirement **not required**

**do not make**

Unit II - Relation of partners

Duties of partners

- General - Carry on business to greatest common advantage
- Just & faithful
- Sec. 9. - Render true accounts
- Inform other partners / LR's of important matters

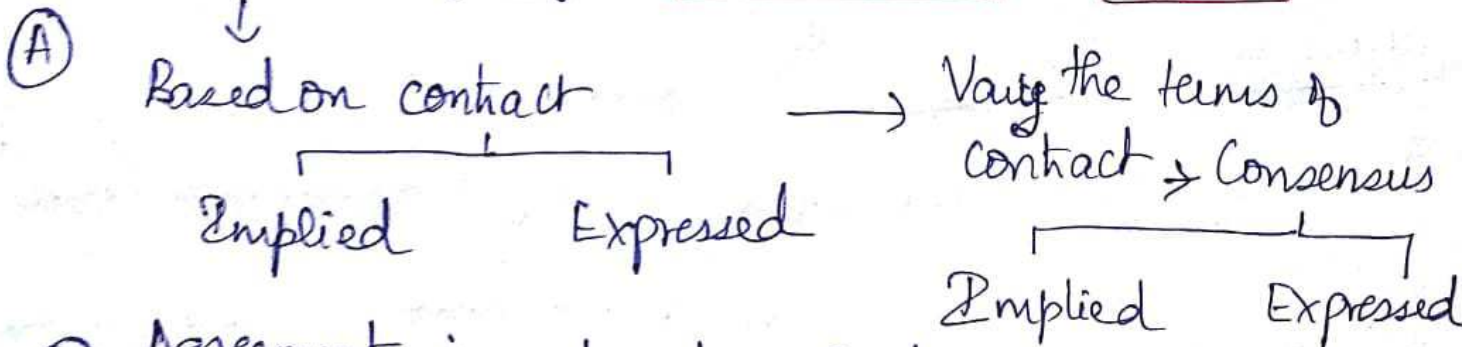
Indemnify for loss -> Due to fraud - Sec. 10.

Making good the loss.

Am't brought in divided between partners.

Determination of rights and duties

Sec. 11



Agreements in restraint of Trade

Sec 11

Not to carry on any business other than firm

Conduct of Business

Sec. 12

- ⊗ Right to participate
- ⊗ Attend diligently

- ⊗ Access to Inspect Copy
- ⊗ Ordinary matters - majority
- Key Issues - Everyone-unanimous

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5 Mutual Rights and liabilities - Sec. 13

If the contract does not have any specific provisions then,

- Partner is not entitled for remuneration
- Equal Profit and loss sharing
- Interest on capital (out of profits)
- Payment of Advance (Loan to firm) - 6% p.a. Interest
- Firm to indemnify partner

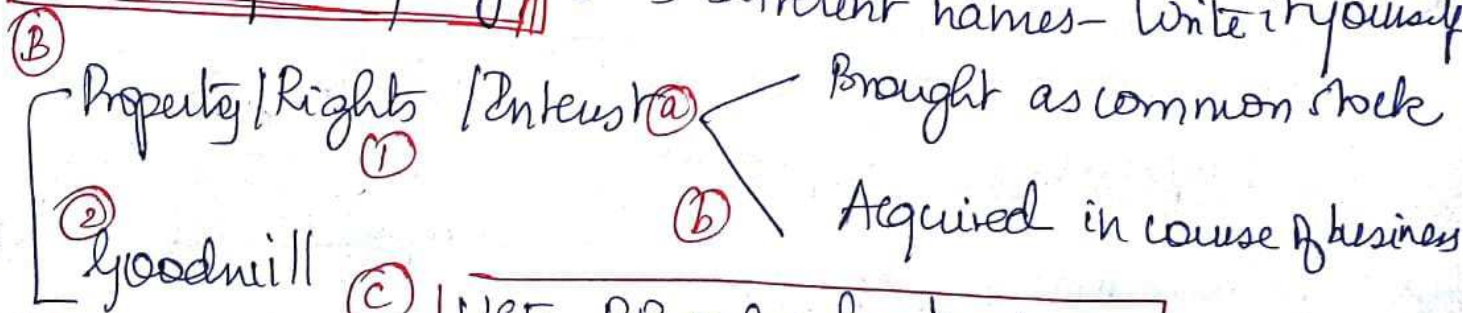
Payments for conducting business

Acts of emergency.

→ Partner to indemnify firm for loss - WILFUL NEGLECT.

Partnership Property

5 Different names - Write it yourself



USE PP only for business

Determination of partnership property - CR Read

- Goodwill - on dissolution - Every partner's rights
- Value of Reputation - Sold separately or with others
- Reputation - Sec. 27 of PCA, 1872



(9)

Personal profit earned by partners - Sec. 16

CASE 1

- Txn of the firm
- Use of partnership property
- Business connections of firm
- Use of firm name

CASE 2

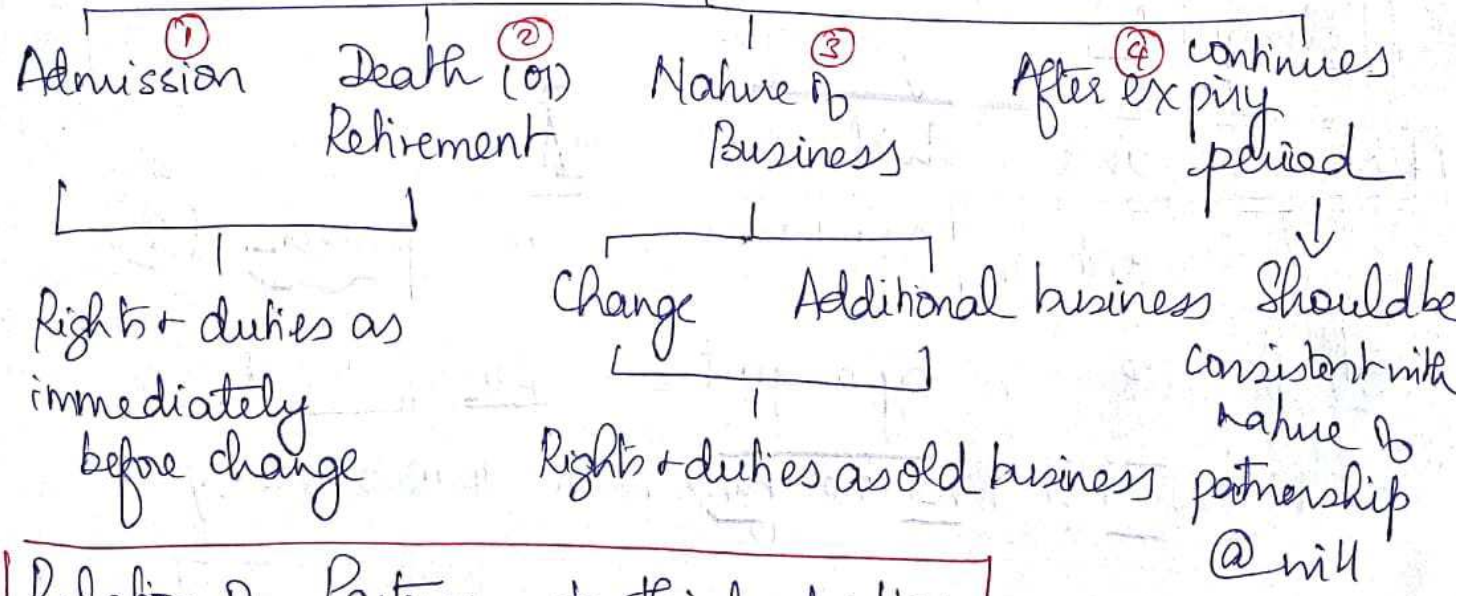
- Carries on Business
- Same nature
- Competing

Eg. Sagar Salt

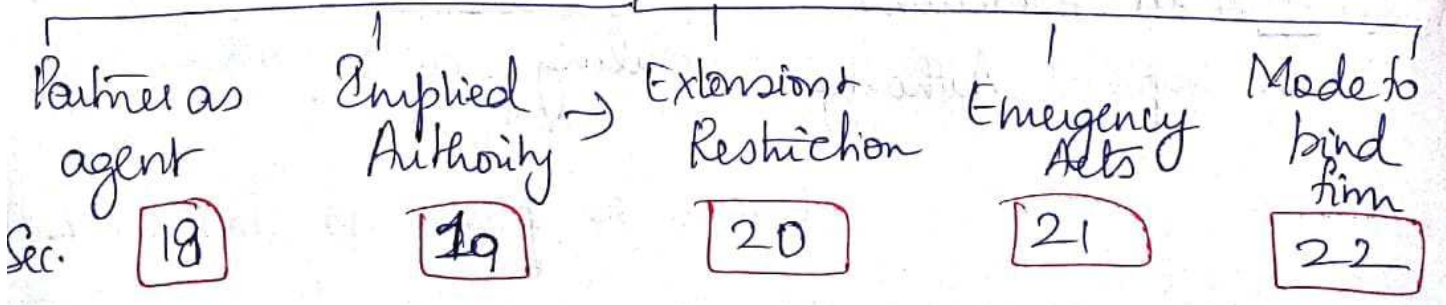
Account and pay for all profits made.

Sec. 17

Rights and Duties - Change in firm (Constitution Fundamentals)



Relation of Partners to third parties



Key points

(10)

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Sec. 18 - Difference between partnership agency + normal agent - COMMUNITY OF INTEREST

Mutual agency -

Cannot be applied to dealings b/w partners

Can be Applied Act done by partners for purpose of business of firm

IMPLIED AUTHORITY - Authority of a partner to bind the firm - 8 cases - No power  
Sec. 19

Compromise - Settlement reached by each side making concessions

Relinquish - To give up.

Example  
CR Read

Extension and Restriction of IA Sec-20

Consent of ALL partners is required (X)

Concept 1  
- Acts with IA by a partner - BINDS THE FIRM

Concept 2  
- It does not bind the firm when THIRD PARTY

knows about restrictions in Implied Authority

Is not aware that he is dealing with a partner of a firm  
(Treats the person as an individual)

(11)

Sec. 22 - Key points

- ⊗ Relate to usual business of the firm
- ⊗ Within scope of authority
- ⊗ Relates to normal business
- ⊗ Depends on 
 { Nature  
 circumstances } of each case
- ⊗ Done in name of the firm
- ⊗ Intention is to bind the firm

Effect of Admission by a partner - Sec. 23

Here the word refers to Representation made by a partner

Partners can make 
 { Binding admissions  
 Ordinary course of business }

(Agents) Eg: Spare parts

Effect of Notice to aching partner - Sec. 24

Notice to one of them - Notice to all - Binds firm - Eg.: secondhand car

Exception - FRAUD - Eg.: Defect in goods. ← ⊗

Active Tacit  
(Hidden)  
or  
Implicit

(12)

Liability to third parties

Sec. 25

Sec. 26

Sec. 27

Liability of a partner for acts of firm

Liability of firm for wrongful acts of partner

Misapplication by partners

- ① Joint & several liability
- ② Express / Implied Authority
- ③ within scope of authority of partner
- ④ Done when the concerned person was a partner

Ex: Infringement of TM

Violation of law  
generally used with Intellectual Property Rights

(IPR)

Patent

Copyright

TM's

Designs

Sec. 26

- ① loss or injury caused to third party
- ② Act done in ordinary course of business
- ③ with authority of partners
- ④ Method employed - UNAUTHORIZED - Immaterial.

Example - Coal mine shaft

Sec. 27

Situation - Suya has the authority in the firm BSR & Co. to receive cash on behalf of the firm. Now

Case A - If Suya receives money from Raj (third party) and misapplies it or

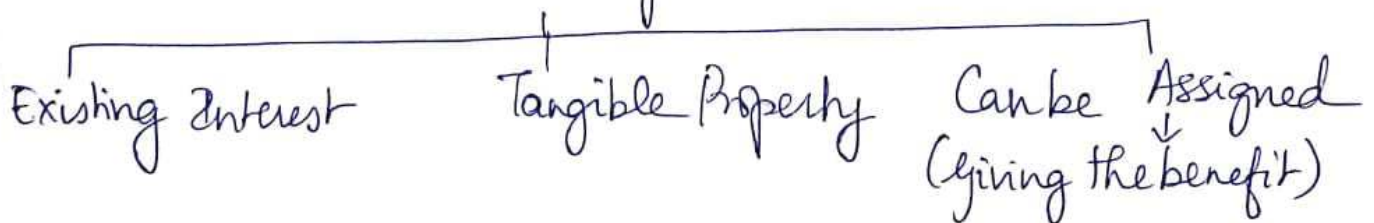
Case B - Suya receives money, places it in the cash box of BSR & Co., and Ajay (another partner) misappropriates the cash

In the above two situations all partners of BSR firm are liable but when the case is

Case C - Ajay who has NO apparent authority receives the money, it is not a receipt by the firm if Ajay misappropriates WITHOUT bringing the same into custody of the firm; then the firm BSR is NOT LIABLE

Sec. 29 - Rights of a transferee of a partner's interest

⊗ Partner's interest is regarded as



**Mode of Transfer**

L **Absolute** - Right to dispose of his interest for consideration or donation

L **Mortgage** - Represents a loan or lien (right to hold back) on a property that has to be paid over a specified period of time  
(Sec. 58 of TO PA)

L **Creation of charge** - An immovable property of one person (existing partner) is by the act of the party made security for the payment of money to another. That is the asset is not allowed to be sold or transferred.  
(Sec. 100 of TO PA)

To understand more about mortgage and charge check out link <https://keydifferences.com/difference-between-mortgage-and-charge.html>

**Rights of Transferee**

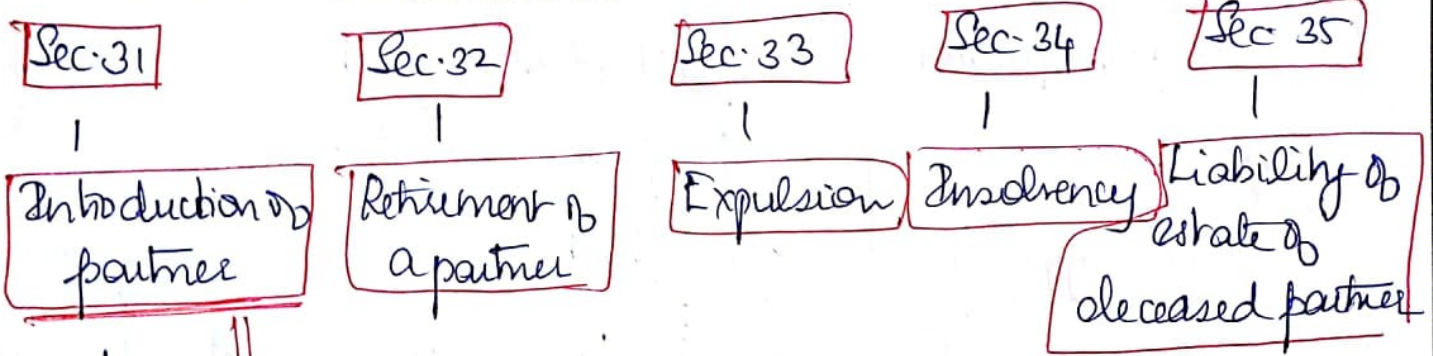
Continuance of firm - **Cannot**

- ⊗ Interfere in conduct
- ⊗ Ask for accounts / inspect books
- ⊗ Must accept share.

**Dissolution**

- ⊗ Can ask for accounts to ascertain share
- ⊗ Receive share of assets

Sec. 30- CR discussion (15)



- Consent of all existing partners
- Liable for acts of firm after becoming partner (Date of admission)
- New partner can assume liability of old debts
- Difference b/w mere agreement + Novation

Assume X and Y are partners in a firm. They consent to bring in Z as a new partner from 1<sup>st</sup> Jan '18

**CASE 1:** Z shall be liable for all acts of firm on or after 1<sup>st</sup> Jan '18.

**CASE 2:** Z can accept liability for existing debts

**Mere agreement** b/w X, Y & Z will not make Z answerable to creditors of old debts i.e. Ipso facto does not give creditors any right against Z

To make Z liable - old creditors must agree to it.

**Novation** - contract of substituted liability must exist. Pg 3.32 + 1.73

Retirement - CR read (16)

Sec. 33 - Expulsion

- (1) Specified in contract
- (2) Majority of partners exercise
- (3) Good faith

All Conditions apply

Expulsion is in (A) interest of partnership

(B) Served a notice

Partner to be expelled (C) opportunity of being heard

Otherwise EXPULSION IS NULL AND VOID

Sec. 34 - Insolvency

Adjudication - A formal judgement on a disputed matter -

Write down 5 points from diagram Pg 3.35 (Effects)

Sec. 35 - CR discussion (X)

Sec. 36 - Outgoing partner can carry on competing business - conditions

(\*) Cannot use firm name

(\*) Cannot represent himself as carrying on business of

(\*) No soliciting customers of old business. firm

Sec. 37 - Text Book - Read Sec. 38 - Handout.



Registration and Dissolution - Unit 3

Application + Registration - Sec. 58 + 59 - CR Read

Consequences of Non-Registration

Registration not compulsory

Penalty for not registering

- ⊗ L No suit in civil court
- ⊗ L No set-off for value > Rs. 100
- ⊗ L Aggrieved partner cannot take action against other partners
- ⊗ L Third party can sue the firm

But still the following rights exist

Partner can sue for

L Dissolution

L Settlement of Accounts

L Realization of property of dissolved firm

⊗ Official Assignee - Officer of law court who distributes a bankrupt person's (insolvent) assets to creditors.

Court Receiver - Takes custody and preserves property under litigation.

SO OA/CR rights is unaffected

## Key words glossary - Sec. 44 + others

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**Embezzlement** - theft or misappropriation of funds placed in one's trust or belonging to one's employer

**Deadlock** - a situation where no progress can be made

**Substratum** - Foundation / Base

**Prima facie** - Based on first impression

**Restraint** - Condition keeping something in control

**Rescinded** - Revoke, Cancel or repeal

**Injunction** - a judicial order restricting a person from starting or continuing some task.

**Estate** - Assets / Property

Dissolution and consequences of dissolution to be done in class.

**Official Gazette** - Public journal and an authorized legal document of GOI weekly published by Dept. of Publication, Ministry of Housing & Urban Affairs. Printed by GOI Press.

Consequences of dissolution

Make a list of all sections eg: below - Make a table

Section	Concept
45	Liability for acts of partners after dissolution
46	Right of partner to have business wound up after dissolution
(complete till sec. 55).	

Sec. 45

- ⊗ Public notice of dissolution should be given
- ⊗ Till then partners continue to be liable
- ⊗ Exceptions
  - 1 Estate of deceased partner
  - 2 Insolvent partner
  - 3 Dormant partner

Sec. 46

- Partner has rights to have property of firm applied  
or  
Representative
- ⊗ 1 Settle debts + liabilities of firm
  - ⊗ 2 Surplus to be distributed as per agreement.

Sec. 47

- Even on dissolution rights + obligations of partners continue to complete unfinished transactions

- Second para - CR Read - Example below

Eg: Assume X, Y and Z are partners. Y is adjudicated insolvent. Now generally speaking X and Z are not liable for acts of Y after adjudication. But if X represents himself or permits anyone to introduce him as a partner of Y after insolvency, then X will be made liable for acts of Y even after insolvency judgement

Sec. 48 - CR Read (X)

Sec. 49

Joint property

- 1 Apply for settling firm debts
- 2 Surplus for separate debts of the partner

Separate property

- 1 Apply for settling separate debts of partner
- 2 Surplus for firm's debts

Sec. 50

Dissolution by death → If surviving partners carry on business with representative

↓  
Amounts to personal profits

↓  
To be accounted for by them to other partners

Eg: Lease Renewal

Sec. 53 - Partners / Representative are entitled to restrain by injunction - other partners carrying on similar business

Sec. 52 and Sec. 55 CR Read

Sale of goodwill after dissolution

Rights of buyer and seller of goodwill

Agreement in restraint of trade

Sec. 72

Venacular - Local

Rescind - To cancel

Restraint - In restriction of

(22)

## LLP

### Designated partner -

- They are similar to Directors of a Private Limited Co.
- DP's can only be individuals
- Two or more partners can be DP's in a LLP
- one must definitely be an Indian Resident
- He should have a DPIN - Designated Partner Identification Number.



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Chartered Accountant



Questions to ponder - Unit I - K.D. Kamath case law based

1. A, B, C are partners, Ms. B is given an exclusive power to operate the bank account of A, B, C firm and this provision is a part of the partnership deed. At a later time, C files a case in the court showing this provision that partnership did not exist. Is C correct?

Unit II

Sec. 10 and Sec. 13 - Difference

Sec. 10 - A and B are in partnership. B commits a fraud by stealing money out of partnership business. Justify.

Sec. 13 - A and B are in partnership, A who is in charge of maintaining accounts and paying taxes on time misses (fails) to pay tax on due date. Justify.

Can you point out when you will quote Sec. 10 and Sec. 13, now??



## Partnership Property - Concepts 1 and 2

Case A - A, B and C are partners in a firm, each contribute Rs. 2 lakhs as capital. B in addition allows A and C to use his private car for business meetings. The car will remain the personal property of B and will not become joint property of partnership. Concept 1

Case B - In the above case if A and C approach B and ask him to bring his car as capital contribution into the firm and if B agrees to it, then the car will become property of partnership firm.

### Sec. 18 - Partner to be an agent questions

Qn.1. - A partner is both a principal and an agent. Justify

Qn.2. - What is the difference between a normal agent and a partner acting as an agent?

Qn.3. - A partner is an agent of another partner. Yes or No?? Justify.



(25)



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**Sec. 26 - Liability of firm for wrongful acts of a partner**

X and Y are partners in a firm. Y is in charge of safe keeping of cash box. Y decides to make a duplicate set of keys for operational convenience, which is not authorized as per partnership deed. One of the employees of the firm steal the cash using the duplicate keys. Here both, X and Y are liable to any third party who has suffered a loss, due to the theft.

**Sec. 30 - Minor admitted as partner - Sec. 30(7)(a)**

A, B and C are in partnership. B dies, B's son (X) who is a minor is admitted to the benefits of partnership in Jan 2014. X becomes a major in Mar 2016 and he wishes to continue as a partner.

In such a situation, X is personally liable for all debts of the firm starting Jan 2014.



## Sec. 32 (2)

X, Y and Z are in a partnership firm. X decides to retire on 15<sup>th</sup> Dec 2020. The firm has contracted (entered) debts for Rs. 2 lakhs on 1<sup>st</sup> Nov. 2020, with Mr. P (creditor). Now, X, Y and Z can make an agreement with P, that going forward only Y and Z will be liable for the debt incurred on 1<sup>st</sup> Nov 2020, thus relieving X.

## Sec. 32 (3) - Case A

X decides to retire on 15<sup>th</sup> Dec 2020 but does not give a public notice till 31<sup>st</sup> Dec 2020. If the firm enters into a liability with Mr. A (Third party - creditor) between 15<sup>th</sup> and 31<sup>st</sup> Dec 2020, then X will also continue to be liable.

## Case B

In the above case, X will not be liable (even if he fails to give public notice) if A has given money to the firm without knowing that X is a partner.



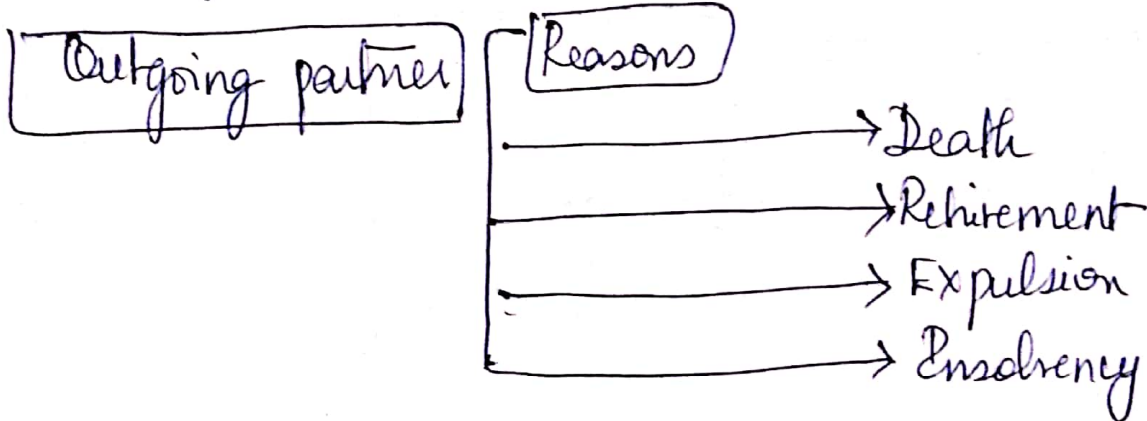
Pg 3:33 - Example - Meritment - Assignment - Tenancy

A, B and C are partners. A is the tenant for a house in Delhi. The partnership business uses this house for conducting their business activities. A decides to retire from the firm. This does not automatically make B and C tenants of the house. The tenancy rights cannot be assigned.

Assignment in simple terms means giving a benefit to others. Liabilities cannot be assigned.

Sec 35 - Concept

X, Y and Z are partners in a firm, if X dies, then X will be called the deceased partner, Y and Z will be called surviving partners.





Registration of firms - consequences of non-registration

(ii) No relief to partners for set off of claim -

A, B and C are partners in a firm which is not registered. They borrow a loan from D third party to the extent of Rs. 3 lakhs in 2017. In 2018, D borrows Rs. 2 lakhs from ABC firm. On due date ABC firm fails to repay Rs. 3 lakhs to D. D files a case, ABC firm in such situation cannot claim set off as the value exceeds Rs.100

(iii) Aggrieved partner

Case 1 - A, B, C are partners in an unregistered firm. Due to certain misunderstanding B files a case against A and C; will the law entertain this?

Case 2 - B files a case for dissolution of the firm (or) for accounts (or) for realisation of his share in firm's property

In such a situation will your answer differ? why?