

Defination

- According to section 4 para 1 of Partnership Act, 1932 “partnership is the relationship among persons who have agreed to share profits of the business carried on by all or any of them acting for all.

Essentials

- To create partnership minimum 2 persons required as per Partnership Act and so far as maximum numbers are concerned it is 100 as per Companies Act, 2013 (50 as per Companies Rules, 2014. if no. of partners are more than 100 then it will be treated as illegal association.

- Partnership is a contractual relationship arise out of agreement which may be oral or written.
- Partnership is created with the intension to run some business and not for charitable purpose. Business includes trade, profession or occupation.

- Outcome of business may be profit or loss and it must be distributed among partners either in an agreed ratio or in an equal ratio.
- Partnership is nothing but just an extension of law of agency where each and every partner is treated as principal and each and every partner is treated as an agent.

- A partnership firm is not having separate legal existence from partners and so a partnership firm cannot purchase assets in its own name or it cannot sue or be sued or it cannot become partner in any other partnership firm. Only from accounting point of view both partners and partnership firms are different and not from legal point of view.

- The responsibilities of partners in partnership firm is unlimited and in case of loss partners will have to bring their personal assets to be attached to the partnership firm.

Duration of partnership

- Partnership may be for a fixed term and as soon as term is over, it may come to an end but here partners have an option to continue and if they decide to continue then it will result into partnership at will.

- It may be for a particular adventure and as soon as adventure is over it will come to an end, but here again partners have an option to continue and if they decide to continue then it will result into partnership at will.

- Partnership may be at the will of partners where no time span is decided well in advance and where partners keep on carrying on the firm but at any point of time any partner may dissolve the firm by giving notice to all other partners of the firm.

Partnership firm name

- Individually known as partners and collectively as partnership firm. They are free to select any name for the partnership firm but such selected name should not mean any grant or approval or it should not interfere with the goodwill of any other firm.

Partnership deed

- It is nothing but a basic document containing terms of engagement among partners. E.g. profit sharing ratio, interest on capital etc. it is not compulsory to have such partnership deed but it is advisable as it is useful in case of disputes among partners.

Registration of partnership firm

- Such registration is not compulsory but it is advisable as an unregistered firm suffers from following disabilities.
 1. Partners of unregistered firm cannot sue internally.
 2. They cannot sue on third party but third parties can sue on them.
 3. They cannot claim set off for an amount exceeding Rs. 100.

Types of partners

1. **Active partner:** an active partner invest capital, share profits, bear losses take part in day to day routine and in case of his retirement public notice is required to be given.
2. **Sleeping partner:** a sleeping partner invest capital, share profit, bear losses, do not take part in day to day routine of business and in case of his retirement no public notice is required to be given.

- **Nominal partner:** a nominal partner is not invest capital rather he invests his name in partnership firm and he may or may not share the profits of the firm.

- 4. Sub partner: a sub partner is not a partner of the partnership firm rather he is a partner of one of the partner of the partnership firm. He is an outsider not having any authority or responsibility in the partnership firm.

- 5. Partner in profit only: apparently the name indicate that such partner share profits and do not bare losses but infact he is also baring losses but his loss baring capacity is limited only to the extent of amount invested in partnership firm.

- 6. Partner by holding out: if a person holds out to the public that I am being a partner of a particular partnership firm even though he is not and if an outsider deals with a person believing him as a partner then the transactions inbetween will be binding on the original partner of the partnership firm and the person making such false statement is known as partner by holding out. (in reverse case partner by estoppel)

- 7. Minor partner: according to Indian Contract Act, a minor is not having any contractual capacity but according to Partnership Act a minor can be admitted to the partnership firm with the consent of all other partners and only for the benefits of the partnership firm and not for the losses.

- Before becoming major he can share profits, share properties, inspect accounts but not books and so far as his liabilities are concerned, it is limited only to the extent of amount invested.

- On attaining majority, he is required to give a public notice within six months whether he wants to continue with the partnership firm or not if he is not giving such notice then at the end of the six months it will be deemed as if he has continued with the firm and in such case he will have personal liability for all transactions that has taken place from the date when he was admitted to the partnership firm as a minor

Reconstitution of partnership firm

- Admission of a partner: a new partner may be admitted to the partnership firm with the consent of all partners and newly admitted partner is not responsible for any transaction that has taken place before the date of his admission.

- Retirement of a partner: a partner may retire as per agreement or by giving notice or with the consent of all partners. A retired partner is responsible for all transactions that has taken place before his retirement and he will continue to be liable even after his retirement if a public notice of his retirement is not given.

- 3. Expulsion of a partner: a partner may be expelled if:
 - Such right is given in partnership deed.
 - Exercised by majority.
 - Exercised in a good faith means in the interest of partnership firm.

- Before we expel a partner, a notice as well as an opportunity of being heard should be given, if it is not given then it will be treated as irregular expulsion where the partner expelled may demand reinstatement in a business or share in profits or properties of the firm.

- 4. Death or insolvency of a partner: if nothing is given in a partnership deed, on happening of death or insolvency of a partner, the entire firm shall be dissolved. We are not required to give notice about insolvency of any partner and after his insolvency any transaction done by him is not binding on other partners.

- 5. Transfer of partner's interest: a partner may transfer his interest by sale or charge. Here transferee may share the profits of the firm but he cannot take part in day to day business of the firm or he cannot inspect books and accounts of the firm.

True test of partnership

1. Whether a real partnership exist among partners or not is a mixed question of law and fact.
2. Sharing of profits is one of the strongest evidence of partnership but not the ultimate because in many cases it may happen that sharing of profits are there but no partnership.

- Real test of partnership is mutual agency where the relationship of principal and agent exist among partners where each and every partner is treated as principal as well as agent.

Public notice

- Public notice need to be given in following circumstances:
 1. On retirement of a partner, if it is not given, he will continue to be liable even after retirement.
 2. On expulsion of a partner, if it is not given, he will continue to be liable even after explusion.

1. On dissolution of a firm, if it is not given, all will continue to be liable even after dissolution.
2. On minor partner becoming major, if it is not given, at the end of six months it shall be deemed as if he has continued with the firm.

- Public notice need to be given in following manner:

- 1.To the registrar of the firm.

- 2.In an official gazette.

- 3.In a news paper, in a local language, having circulation at the place where main place of business is situated.

Rights of a partner

1. Rights to take part in day to day routine of business.
2. Right to inspect books and accounts.
3. Rights to share profits either in agreed or equal ratio.
4. Right to get interest on capital if there is profit.

1. Right to get interest on advances at 6% whether there is profit or not.
2. Right to stop admission of a new partner.
3. Right to use properties of the firm.

- 8. Right to retire from the partnership firm and on retirement properties of the partnership firm must be adjusted otherwise retiring partner shall have an option to share subsequent profit or to get interest 6% on the amount kept in the firm.

- 9. Right to be consulted on every matters of the firm and if it is a small matter, majority shall take decision but if it is an important issue then consent of all needed.
- 10. If any partner has incurred any expenses in emergency to save firm from losses then he can recovered from the firm.

Duties of a partner

1. Duty to bear losses of the firm.
2. Duty to use properties of the firm exclusively for the benefits of the firm.
3. Duty to maintain fiduciary relationship (relationship based on trust).
4. Duty not to make any private profit or profit by doing competition and if made then disclose and share it with other partners.

- To provide correct accounts to partners and representative.
- To work for common advantage of the firm.
- To be just and faithful to other partners.

Implied authority

- Partners can do following with implied authority:
 1. He can purchase and sale goods on behalf of the firm.
 2. He can collect and make payments on behalf of the firm.
 3. He can borrow money in a normal course on behalf of the firm.

- To appoint lawyer.
- To appoint employees.
- To draw, write bill of exchange.
- To pledge goods.

- Partners cannot do following with the help of implied authority.
 1. He cannot file case against third party on behalf of the firm.
 2. He cannot withdraw case.
 3. He cannot purchase or transfer immovable property on behalf of the firm.

1. He cannot open a bank account in his own name on behalf of the firm.
2. He cannot become partner in any other firm on behalf of the original firm.

- Partners implied authority and third party:
 1. If any private restrictions are made on partners implied authority then it will not affect third party unless third party has knowledge about it.
 2. If any third party has filed any case against any partner then it will be deemed as if case is filed against all partners.

- If any partner has committed any fraud with the third party then against third party the whole firm will be held liable.

Conditions of implied authority

- It should be a usual transaction.
- It should be in the name of firm.
- It should be in which firm is dealing.

dissolution

- In case of dissolution of partnership one or more partner retire whereas the remaining partner carry on the firm with the same firm name whereas in case of dissolution of partnership firm there is complete breakdown among all the partners and none of the partner will carry on the firm with the same firm name.

Dissolution of the firm without the order of the court

1. Fixed term is over.
2. Particular adventure is over.
3. In case of partnership at will by giving notice to all other partners.
4. On happening of death or insolvency of any of the partner.
5. Business of the firm has become unlawful.

Dissolution with the order of court

- Court is never giving suo moto (on its own) order. There should be application by any partner or outsider and on receipt of such application court may give dissolution order on any of the following ground:

- 1. Any partner has become unsound. 2. any partner has become permanently incapable of working. 3. business is continuously making losses. 4. any partner has transferred his interest to third parties. 5. there is lack of fiduciary relationship among partners. 6. there is continuous quarreling among partners. 7. misconduct by a partner

Settlement of accounts

- 1. Dispose off all assets of the firm including goodwill.
- 2. Amount received should be applied in following manner.
 1. Towards third party liability.
 2. towards advances given by partners.
 3. towards partners capital contribution.
 4. surplus if any then distribute among partners.

- 3. If there is any shortfall then partners will bare first out of profits then out of capital and then partners will have to bring their personal assets.

Properties of firm

- Properties of partnership firm include:
 - 1. properties contributed as a partner.
 - 2. properties purchased out of profits.
 - 3. goodwill of the firm.

All the Best