INDIAN PARTNERSHIP ACT, 1932

Introduction –

- Indian Partnership Act, 1932 is applicable to whole of India.
- Act was applicable from 1st October 1932 except for section 69 (effect of non registration) which was applicable from 1st October 1933.
- The Act is based on the English Partnership Act, 1890

Meaning of Partnership – Section 4

- Partnership = relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- Persons, who have entered into partnership with one another are called individually 'partners
- Firm' is the collective of the partners.
- The 'firm name' is the name under which the business is carried on.

Important Points on firm's name –

- ✓ The name of the firm should not be such which will misled or confuse the people with the name of the firm which is already in existence.
- ✓ The name of the firm should not show patronage (connection) with the government.
- ✓ Partnership firm cannot use the word "Limited" as a part of its name.

Essential elements to constitute partnership firm –

- Atleast 2 parties. Persons must be competent to enter into a contract. Parties may be natural or artificial
- Agreement between the parties. Agreement may be oral or in writing. It may be express or implied.
- Agreement must be to share the profits of the business; and
- Business must be carried on by all or any of them acting for all;

Important Points –

Members of HUF carrying on family business together are not partners.
Burmese Buddhist Husband and wife doing business together are not partners.

Sharing of Profits is not the only evidence for partnership –

This means that of two person are only sharing profit then it does not means that they both are partners.

Example –

1) A joint owner of a property sharing its return with the other owner does not make joint owners partner.
2) "Arnab" a trader, owed money to X, Y& Z. He agreed to pay XY&Z out of the profits of his business. Even if X, Y and Z will get their money from the property of Arnab, it does not make them partner of Arnab

Minor as a partner of the firm – Section 30

1) Minor can become **partner for the benefits of the partnership** with the **consent of all the partners**
2) For admitting minor as a partner, an agreement shall be executed through his guardian

Rights of minor in partnership firm	Liabilities of minor in partnership firm
• Right to share profits of the firm • Right to share property of the firm • Right to inspect accounts of the firm • Right to take copy of the accounts	• Minor is not personally liable • However, share of minor in the firm is liable

Election on majority –

a) On attaining majority, **or**
his obtaining knowledge that he had been admitted to the benefits of partnership;
whichever date is later, minor may **within six months** from such date give public notice that he has elected to a partner in the firm or not.

b) If a minor fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

Election on majority –

If a minor elects to become a partner

His rights and liabilities will be similar to those of a full-fledged partner.

He will be personally liable for all the acts of the firm, done since he was first admitted to the benefits of the partnership.

His share of profits and property remains the same as was before, unless altered by agreement.

If a minor does not elect to become a partner-

1) his rights and liabilities shall continue to be those of a minor up to the date on which he gives public notice;

2) his share shall not be liable for any acts of the firm done after the date of the notice; and

3) he shall be entitled to sue the partners for his share of the property.

Partnership Deed –

1) Written document which contains the mutual rights and obligations of partners is known as partnership deed.
2) Partnership Deed is not mandatory.
3) However, it is advisable to have partnership deed in writing.
4) If there is partnership deed then each partner should have 1 copy.
5) If the firm is to be registered then a copy of the deed should be filed with the Registrar of Firms.

What are the contents of partnership deed?

Partnership deed should contain the following details –

- Firm name;
- Names and addresses of partners;
- Details of business of partnership;
- Address of business place;
- Profit sharing ratio
- Date of commencement of partnership firm;
- Duration of partnership firm;
- Amount of capital contribution;
- Salaries, commission and remuneration to partners;
- Rights of the partners;
- Liabilities of the partners;
- Details of retirement of partners;
- Provision for expulsion of a partner;
- Arbitration clause for the settlement of disputes.

Difference between Co-ownership and partnership –

Partnership	Co-ownership
It arises from agreement	It may or may not arise from agreement
Purpose of partnership is to carry business	It may or may not involve carrying business
It involves profit and loss	It may or may not involve profit or loss
Partners have mutual agency	Co-owners do not have mutual agency
Persons who form partnership are called as partners	Persons who own property jointly are called as co-owner
A partner has a lien on the firm property.	A co-owner has no lien on the property

Types of partnership –

Types of partnership

Partnership at will -

Partnership at will is a partnership formed for an indefinite period. Time period of partnership is not fixed nor specified.

1)Such type of partnership can continue for any period of time depending upon the will of the partners.

2)It can be dissolved by any partner by giving a notice to the other partners of his desire to quit the firm

Particular Partnership -

Particular Partnership is a partnership formed for a specific time or for a specific purpose.

Once the time is over or purpose is achieved, it cease to exist

Types of partners

1) Working partner or Active partner –

- Active partner contributes capital and also takes active part in the management of the firm.
- He bears an unlimited liability for the firm's debts.
- He is known to outsiders.
- He shares profits of the firm.
- He is a full-fledged partner.

2) Sleeping or dormant partner –

- Only contributes capital;
- Does not take active part in the business;
- He shares in the profits or losses of the firm;
- His liability is unlimited;
- He is not known to the outsiders.
- A sleeping partner can retire from the firm without giving any public notice

3) Secret partner –

- Secret partner contributes capital;
- Takes active part in the business;
- He shares in the profits or losses of the firm;
- His liability is unlimited;
- his connection with the firm is not known to the outside world.

4) Limited partner –

- The liability of such a partner is limited to the extent of his share in the capital and profits of the firm.
- He does not take active part in the business;
- The firm is not dissolved in the event of his death, lunacy or bankruptcy.

5) Partner in profits only –

- Partners in profit only share in the profits of the firm but not in the losses;
- His liability is unlimited;

- He is not allowed take active part in the business;
- Such a partner is associated for his money and goodwill.

6) Nominal Partner –

- Nominal partner only lends his name and reputation for the benefit of the firm.
- He represents himself or knowingly allows himself to be represented as a partner
- Such type of partner neither contributes capital nor takes part in the management of business.
- He does not share in the profits or losses of the firm.
- He becomes liable to outsiders for the debts of the firm.

Nominal partner can be of two types -

Partner by estoppels

A **partner by estoppel** is someone who is not a **partner** of a firm, but allows others to think that he is a **partner**, through his behaviour or conduct

Example –
Jalal, is not a partner but he tells Ramu that he is a partner in a firm called Alpha Enterprises. On this impression, Ramu sells good worth ` 20,000 to the firm. Later on the firm is unable to pay the amount. Ramu can recover the amount from Jalal. Here, Jalal is a partner by estoppels.

Partner by holding out.

A **partner by holding out** is someone who is not a **partner** of a firm, but knowingly allows the firm to project to others that he is a **partner** of the firm

Example –
Alpha tells Ramu in the presence of Jalal that Jalal is a partner in the firm of Alpha Enterprises. Jalal does not deny it. Later on Ramu gives a loan of ` 20,000 to Alpha Enterprises on the basis of the impression that Jalal is a partner in the firm. The firm fails to repay the loan to Ramu. Jalal is s liable to pay ` 20,000 to Ramu. Here, Jalal is a partner by holding out.

Partnership is a creation of contract – Section 5

- Partnership is created out of contract and not by status.
- The members of a Hindu Undivided Family carrying on a family business or a Burmese Buddhist husband and wife, carrying on business as such, are not partners in such business.

Difference between Partnership firm and other forms of business –

BASIS FOR COMPARISON	PARTNERSHIP FIRM	COMPANY
Meaning	When two or more persons agree to carry on a business and share the profits & losses mutually, it is known as a Partnership firm.	A company is an association of persons who invests money towards a common stock, for carrying on a business and shares the profits & losses of the business.
Governing Act	Indian Partnership Act, 1932	Indian Companies Act, 2013
How it is created?	Partnership firm is created by mutual agreement between the partners.	The company is created by incorporation under the Companies Act.
Registration	Voluntary	Compulsory
Management of the concern	Partners itself.	Directors
Liability	Unlimited	Limited
Contractual capacity	A partnership firm cannot enter into contracts in its own name	A company can sue and be sued in its own name.
Use of word limited	No such requirement.	Must use the word 'limited' or 'private limited' as the case may be.
Legal formalities in dissolution / winding up	No	Yes
Separate legal entity	No	Yes
Mutual agency	Yes	No
Audit	Audit is not compulsory	Various types of audit are compulsory
Number of members	Minimum required is two. Maximum number is 100 subject to some exceptions	Minimum number of members for a private company is 2 and maximum 200. Minimum number of members for a public limited company is 7 and there is no limited for maximum.

BASIS FOR COMPARISON	PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP (LLP)
Meaning	Partnership refers to an arrangement wherein two or more person agree to carry on a business and share profits & losses mutually.	Limited Liability Partnership is a form of business operation which combines the features of a partnership and a body corporate.
Governed By	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008
Registration	Optional	Mandatory
Charter document	Partnership deed	LLP Agreement
Liability	Unlimited	Limited to capital contribution, except in case of fraud.
Contractual capacity	It cannot enter into contract in its name.	It can sue and be sued in its name.
Legal Status	Partners are collectively known as firm, so there is no separate legal entity.	It has a separate legal status.
Maximum partners	100 partners	No limit
Property	Cannot be held in the name of firm.	Can be held in the name of the LLP.
Perpetual Succession	No	Yes
Relationship	Partners are agents of firm and other partners as well.	Partners are agents of LLP only.

BASIS FOR COMPARISON	Partnership	Hindu undivided family
Relationship	Relation subsists between the partners.	It is a single person and it cannot have a partnership by itself
Management	All of the partners may involve in the management	Karta of HUF is managing the business
Share of profit	Partners can share profit as per the agreement	No such sharing of profits in HUF
Property	The properties even though in the name of partnership firm belongs to all partners	This business is a species of ancestral joint property in which every member of a family acquires

Authority	Each partner is the agent of others	It has implied authority to contract debts and pledge the properties and credit of the family for the ordinary purposes of the family business
Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise than agreed to in the agreement	The death of Karta will not lead to the dissolution of the HUF business

Rights and Liabilities of Partners –

Duties of partners – Section 9

- to carry on the business of the firm to the greatest common advantage;
- to be just and faithful to each other; and
- to render true accounts and full information of all things affecting the firm, to any partner or his legal representative
- Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Rights of Partners –

- ✓ Every partner has a right to take part in the conduct of the business;
- ✓ Every partner , has a right of free access to all records, books and accounts of the business.
- ✓ the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm (however, this is subject to the contract)
- ✓ where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- ✓ a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.
- ✓ A partner has power to act in an emergency for protecting the firm from loss
- ✓ Every partner has a right to retire by giving notice where the partnership is at will
- ✓ Every partner has a right to continue in the partnership and not to be expelled from it
- ✓ Any difference, arising as to ordinary matters connected with the business, may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided.
- ✓ No change may be made in the nature of the business without the consent of all the partners;

Property of the firm –

1) The property of the firm includes all property and rights and interests in property, originally brought into the stock of the firm or acquired by purchase for the firm and includes the goodwill of the business – **Section 14**

2) The property of the firm shall be held and used by partners exclusively for the purposes of the business – **Section 15**
3) **The property of the firm belongs to the firm and not to the individual partner or partners.**

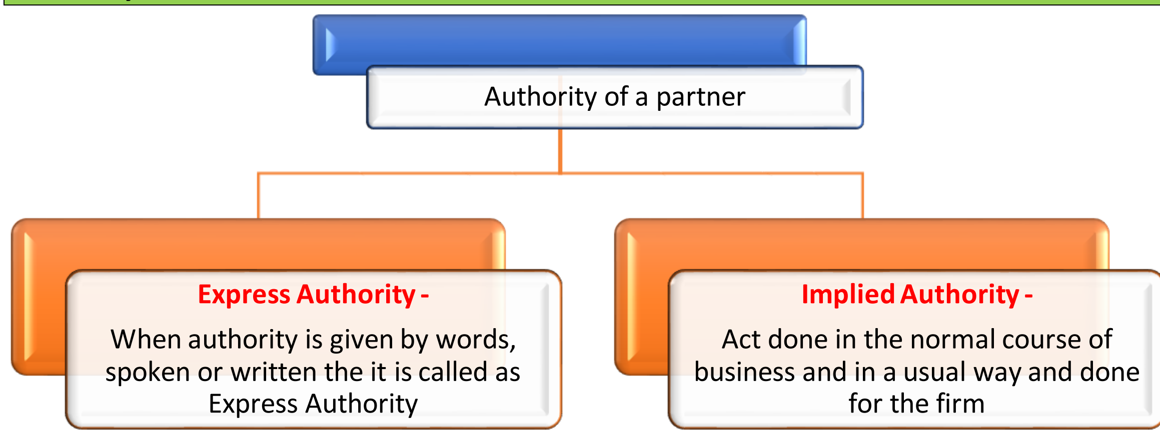
The ultimate test to determine the property of the firm is the real intention of the partners and the Court can take into consideration the following facts:

(1) The source of the purchase money.
(2) The reason due to which the property was purchased or acquired.
(3) The object for which the property was purchased or acquired.
(4) The mode in which the property was obtained.
(5) The use of the property.

Partner to be agent of the firm – Section 18

1) Every partner is an agent of the firm and of other partners for the purpose of the business of the firm.
2) Any act done by the partner binds the firm and all the partners in the firm.
3) However, following acts of the partner does not bind firm and other partners –
   a) If any act was done by the partner for which he had no authority and the person with whom he is dealing knows that he has no authority; or
   b) The party with which the partner was dealing does not know or believe him to be a partner.

Authority of a Partner –



Implied Authority –

1) A partner acting on behalf of the firm has an implied authority to bind the firm.
2) The authority of a partner to bind the firm is called his 'implied authority'
3) The implied authority of a partner does not give him power 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 proceeding filed on behalf of the firm;
   e) admit any liability in a suit or proceeding against the firm;
   f) acquire immovable property on behalf of the firm;
   g) transfer immovable property belonging to the firm; or
   h) enter into partnership on behalf of the firm.

Liability of a partner – Section 25

Every partner is liable, jointly and severally, for all acts of the firm done while he is a partner.

Rights of Transferee of a partner's interest – Section 29

1) This section allows a partner to transfer his interest in the firm, either absolutely or by mortgage or by the creation of a charge on such interest during the continuance of the firm.
2) The transferee who receives such interest in the firm, does not entitled to-
   a) interfere in the conduct of the business; or
   b) to require accounts; or
   c) to inspect the books of the firm
3) Rights of the transferee –
   a) Transferee is entitled to receive the share of profits of the transferring partners;
   b) If the firm is dissolved or the transferring partner ceases to be a partner, the transferee is entitled to receive the share of the assets of the firm to which the transferring partner is entitled

Reconstitution of Firm –

Any change in the existing agreement / relationship of partnership amounts to reconstitution of a firm. This results in change in the partnership agreement.

Reconstitution of a partnership firm may take place in the following occasions-

- Change in profit sharing ratio of the existing partners
- Admission of a new partner
- Retirement of existing partner
- Death of a partner;
- Amalgamation of two partnership firm.

Expulsion of a partner – Section 33

- A partner cannot be expelled by majority of the partners.
- For a partner to be expelled, express power should be there in partnership agreement.

Death or Insolvency of a partner –

1) Where a partner in a firm is adjudicated (declared) as insolvent or is dead, he ceases to be a partner immediately whether or not the firm is thereby dissolved.
2) The estate of a partner who dies, or who becomes insolvent, is not liable for partnership debts contracted after the date of the death or insolvency.
3) However, estate of the partner will liable for debts incurred before death or insolvency.

Rights of outgoing partners –

1) Outgoing partner may carry on a business competing with that of the firm.

> Note –
> - Outgoing partner cannot use the firm name.
> - Outgoing partner cannot represent himself as carrying on the business of the firm
> - Outgoing partner cannot solicit the customers of the partnership firm.

2) The outgoing partner of the representative of the deceased partner is entitled at the option-
   a) to such share of the profits made since he ceased to be a partner; or
   b) to interest at 6% per annum on the amount his share in the property of the firm.

Registration of the Firm –

For the purpose of registration a statement in the prescribed form containing the following details should be submitted –

- the name of the firm;
- the place of business of the firm;
- the names of any other places where the firm carries on business;
- the date when each partner joined the firm;
- the names, in full, and permanent address of the partners; and
- the duration of the firm.

Statement shall be prepared and duly signed by all partners, or by their agents having authority.

Effect of non-registration – Section 69

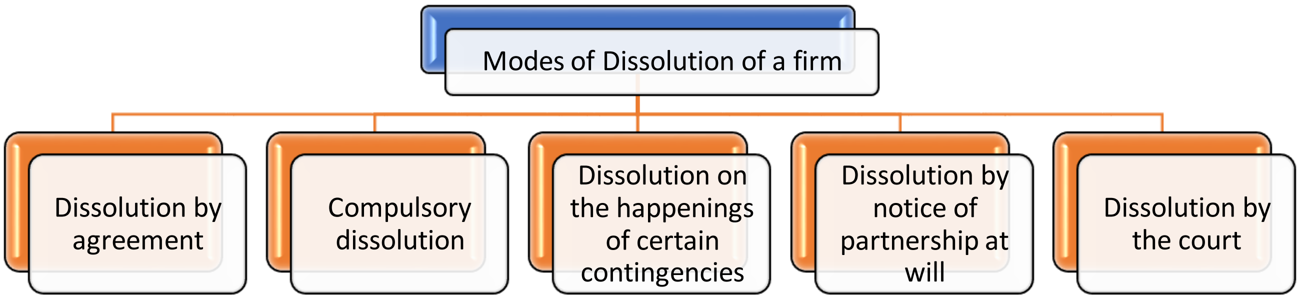
The consequences of non-registration of a firm are as under –

- ✓ A partner cannot sue the partnership firm for his claims;
- ✓ The firm cannot sue any 3rd party for any debts arising out of the contract;
- ✓ No partner can file a suit against other partners of the firm.

Note –
Third parties can file a suit against the firm to enforce their rights.

> However, even if a firm is not registered, it allows following suits –
> a) A suit for the dissolution of a firm
> b) A suit for rendering of accounts of a dissolved firm
> c) A suit for realisation of the property of a dissolved firm.
> d) A suit or claim of set-off, the value of which does not exceed one hundred rupees,
> e) A suit for the realisation of the property of an insolvent partner

Dissolution of a firm –



A) Dissolution by agreement – Section 40

A firm may be dissolved with the **consent of all partners** or in accordance with a contract between the parties.

B) Compulsory dissolution – Section 41

a firm is dissolved –

1) If all the partners or of all the partners but one as insolvent; or
2) By the happening of any event which makes the business unlawful.

C) Dissolution on the happenings of certain contingencies – Section 42

A firm is dissolved –

a) if constituted for a fixed term, by the expiry of that term;
b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
c) by the death of a partner; and
d) by the adjudication of a partner as an insolvent.

D) Dissolution by notice of partnership at will – Section 43

Where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of then notice.

E) Dissolution by the court – Section 44

Court may direct dissolution of a firm on the following grounds –

- ✓ if a partner has become of unsound mind;
- ✓ if a partner has become permanently incapable of performing his duties as partner;
- ✓ if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;
- ✓ if a partner wilfully or persistently commits breach of agreements relating to-
  - a) the management of the affairs of the firm; or
  - b) the conduct of its business; or
  - c) otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- ✓ If a partner has in any way –
  - a) transferred the whole of his interest in the firm to a third party; or
  - b) has allowed his share to be charged; or
  - c) has allowed it to be sold in the recovery of the arrears of land revenue; or

d) of any dues recoverable as arrears of land revenue due by the partner;

- ✓ the business of the firm cannot be carried on save at a loss; or
- ✓ on any other ground which renders it just and equitable that the firm should be dissolved.

Effect of Dissolution –

A) Continuing authority of partners –

1) Authority of the partners continues even after dissolution so long as is necessary to wind up the business.
2) each partner has an equitable lien over the firm's assets which he can apply to pay the debts of the firm and to receive any amount due from partnership firm.

B) Continuing liability of partners –

1) Liability of partners continues till the public notice of dissolution is given.
2) Liability of partners continues for all things necessary for the winding up of the business. The partners may complete unfinished transactions

   Note –

   This authority is only for winding up and not for new transactions.

C) Right to Return of Premium –

a) To buy entry into an existing firm, a new partner sometimes has to pay a premium to the existing partners in addition to any investment of capital.
b) On dissolution, he is entitled to demand the return of a proportion of the premium if the partnership was for a fixed term and was dissolved before the expiry of that term
c) However, in the following 3 cases, partner will not get the premium return –
   1) Where the partnership was dissolved by agreement; or
   2) misconduct of the party seeking return of the premium; or
   3) death of a partner.

D) Settlement of Accounts on Dissolution (order of payment) –

a) Losses shall be paid first out of undistributed profits next out of capital, and lastly, if necessary, by the partners individually in the profit sharing ratio.
b) The assets of the firm including the losses contributed by the partner as above shall be applied in the following manner –
   1) in paying outside creditors;
   2) in repaying advances made by partners
   3) in repaying capital to partners; and
   4) if any amount is left then it shall be divided in PSR.

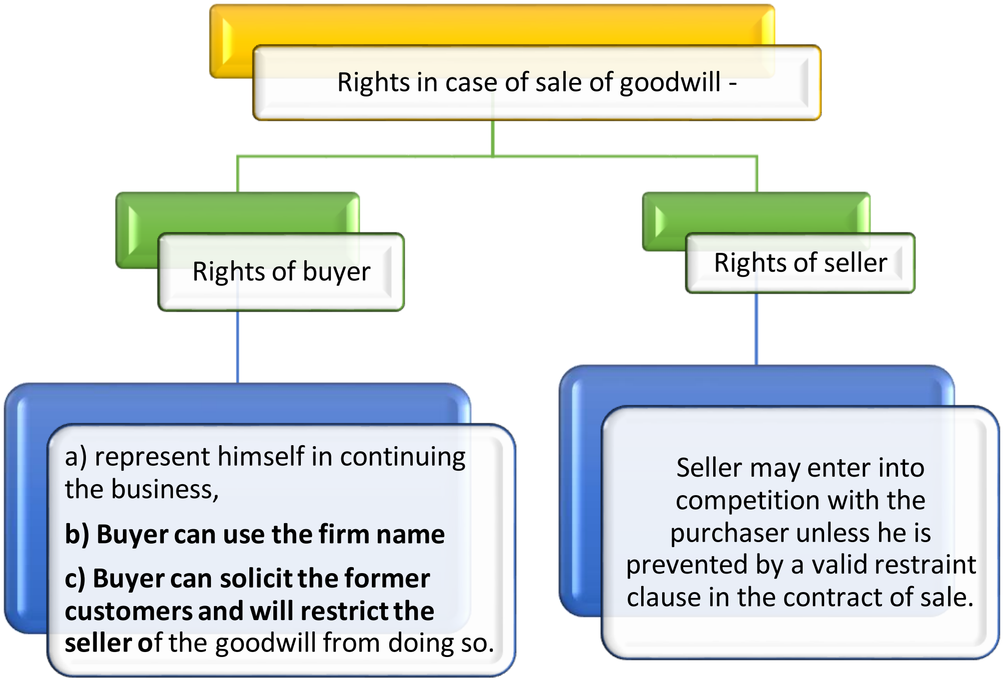
Loss due to insolvency of partners –

In case a partner is insolvent and is not able to contribute towards the deficiency, then –

a) The solvent partners will contribute only their share of deficiency in cash;
b) The available assets should be distributed among the solvent partners in proportion to their capital.

Sale of Goodwill –

Where goodwill is sold the value is divisible among the partners in the same manner as they share profits and losses.



Suit for Libel or Slander –

a) A firm is merely a collection of partners and cannot bring a suit for libel or slander.

b) Libel or slander against a firm means a libel or slander of its partners. Such partners themselves or any one may file the suit for libel or slander