

CHAPTER 4- THE INDIAN PARTNERSHIP ACT (1932)

UNIT 1- GENERAL NATURE OF PARTNERSHIP

PARTNERSHIP- Relation between persons who have agreed to share profits of a business carried on by all/ any of them acting for all.

ELEMENTS OF PARTNERSHIP

Association of 2 or more people

- A minor cannot be a partner but can get benefits of partnership.
- Max limit- 50 partners (section 464, Companies act)

Partnership agreement = **Partnership deed**

Agreement to share profits

- NO agreement to share loss.

Agreement

- Partnership- Voluntary, contractual
- May be Express/ Implied and oral/ written

Business

- Trade/ occupation/ profession
- Motive- gains

Business carried by all

- Each partner is a principal and agent for all others.
- Binding contract of mutual agency



TRUE TEST OF PARTNERSHIP-



Section 6- "In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

AGREEMENT

Section 5- "The relation of partnership arises from contract and not from status: and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business."

PROFIT SHARING

- Receiving profits from a shared property doesn't make someone a business partner.
- **Section 4-** "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."
- Other relevant factors ascertain partnership.



AGENCY

- Each partner acts as the principal and agent for others.
- Mutual agency- central part of partnership law.

PARTNERSHIP	JOINT STOCK COMPANY
Firm- NO separate legal entity.	Company is a separate legal entity.
Every partner is an agent.	A member is not an agent.
Profits distributed among the partners.	Some portion of profits is distributed among shareholders.
Each partner is liable for debts, which can be recovered from his private property.	Liability of shareholders is limited to the amount. In some companies liability of members is unlimited.
Firms property- 'joint estate' of all partners.	Property is separate from its members, received in the form of dividends/ refund of capital
Share cannot be transferred without consent of all partners.	For shares in stock exchange, transfer is unrestricted.
Registration not compulsory.	Registration compulsory under companies act, 2013
Death, retirement- results in dissolution of firm.	Company continues its succession.



Santiranjan Das Gupta Vs. Dasyran Murzamull

*Court concluded- NO partnership b/w the parties

Reasons-

- No record of terms and conditions.
- No maintained accounts.
- No partnership account in any bank.
- No intimation to deputy director of Procurement.

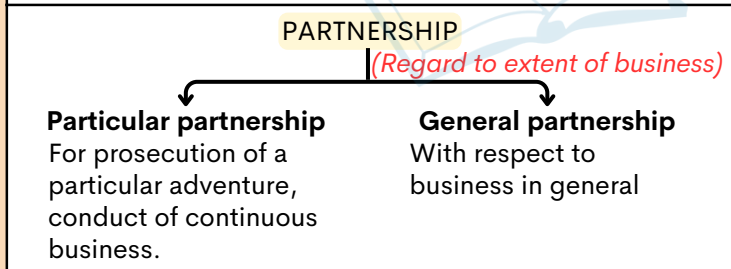
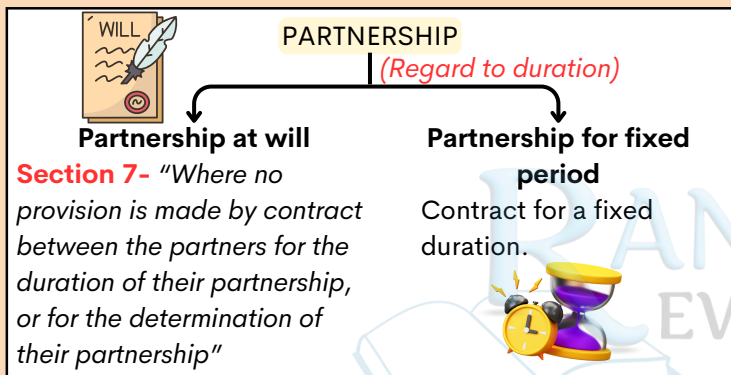


PARTNERSHIP	JOINT STOCK COMPANY
In absence of any agreement, all partners participate in management.	Members don't take part in management unless they are directors.
Partnership can be dissolved any time.	Winding up happens by National Company Law Tribunal or struck off by Registrar of companies.
Max limit (under Companies Rules)- 50	Private- May have 200 members (max), 2 members (min); Public - 7 members (min)

PARTNERSHIP	CO-OWNERSHIP
Arises out of contract- express/ implied.	Arises from agreement/ operations of law.
Partner is an agent to others.	Co- owner is not an agent.
Share profits, losses.	May not involve sharing.
Share transferred by consent.	Share transferred as rights.



PARTNERSHIP	ASSOCIATION
Involves setting up relations b/w 2 or more people, who enter in business for gains and intention to share profits	It evolves out of social cause, NO intention of gains and sharing profits. Eg- Charitable society etc.



- **Partner by holding out-** Person by words/ conduct make others believe that he is the partner (when in fact he is not)

PARTNERSHIP DEED

A result of agreement of partnership, is a document containing terms and conditions to avoid future disputes.

- Drafted and stamped acc. to Stamp Act (1899).
- Partnership should be registered under Registration Act.

INCLUDES



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| <ul style="list-style-type: none"> • Name of firm • Names of partners • Nature + place of firm • Dates of start of partnership • Duration of partnership • Capital contribution of partners | <ul style="list-style-type: none"> • Profit sharing ratio in partners • Admission, retirement of partner • Rate of interest on capital, loans • Provisions of settlement (firm dissolution) • Provisions of salaries |
|---|---|

TYPES OF PARTNERS

- **Actual/ Active/ Ostensible partner-** Partner by agreement, actively participate; gives public notice for retirement.
- **Sleeping/ Dormant partner-** Does not actively participate; they are liable for acts of the firm.
- **Nominal Partner-** Lends his name, without any interest; He is not liable for the acts.
- **Partners in profit only-** Not liable for losses.
- **Incoming partners-** Admitted in existing firm.
- **Outgoing partners-** Leaves the firm (retiring)

