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EXAM ORIENTED MARATHON NOTES

Chapter 3: The Indian Partnership Act, 1932

Unit 1: General Nature of a Partnership

Important Questions

Q.1 Define Partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail. [Dec 21, 6 Marks]

Answer:

Definition — Sec. ____: Partnership is the _____ between _____ who have _____ to _____ of a _____.

The essential elements for the existence of a partnership as per the Indian Partnership Act, 1932 are as follows:

- 1) _____ of two or more person
- 2) _____ between person
- 3) _____
- 4) _____
- 5) A _____
(_____)

ASSOCIATION OF TWO OR MORE PERSONS: Partnership is an association of 2 or more persons. Again, only persons _____ can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a _____ cannot be a partner in a firm, but with the consent of all the partners, _____ to the _____ of partnership.

The partnership Act is _____ about the maximum number of partners but section _____ of the Companies Act, 2013 has now put a limit of _____ partners in any association/partnership firm.

Agreement: Partnership is created by agreement and not by status (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 are not partners in such business.

Sharing of Profit: Sharing of profit is an _____ to _____ a partnership. But it is only a _____ and _____, in that regard.

Although the right to participate in profits is a _____ of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties. e.g. a Manager, as a part of his remuneration, may be given a share in profits of the business. He does not thereby become a Partner.

BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the _____ of the partnership Law. In other words, there should be a _____ of mutual agency between the partners.

An act of one partner _____ of the firm is in fact an act of all partners. Each partner carrying on the business is the _____ as well as the _____ for all the other partners. He is an _____ in _____ he can _____ the other partners by his acts and he is a _____ to the _____ that he is _____ by the act of other partners. So, the act of one partner done on behalf of firm, binds all the partners.

It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Related Question: "Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? [May 19, 4 Marks]

Answer:

Mode of determining existence of partnership (Section ___ of the Indian Partnership Act, 1932): In determining whether a _____ is or is not a _____, or whether a _____ is or not a _____ in a firm, _____ shall be had to the _____ between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

1. There was an agreement between all the persons concerned
2. The agreement was to share the profits of a business and
3. The business was carried on by all or any of them acting for all.

1. Agreement:

2. Sharing of Profit:

3. Agency:

Specific Exclusions from Partnership:

(a) _____ sharing _____ from property _____ by them are not Partners.

(b) A Partnership is **NOT** created when share or payment is received by -

- a _____ - to any persons _____ or about to _____ in any business,
- a _____ or _____ - as _____,
- a _____ or _____ of a _____ - as _____.
- a _____ or _____ owner of the business, as _____ for sale of G/W or share thereof.

Related Question: "Sharing in the profits is not conclusive evidence in the creation of partnership". Comment. [Dec 21 - 4 Marks]

Related Question: "Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932. [Jan 21 - 4 Marks]

Related Question: What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. [May 18, 4 Marks] [MTP Oct 19, 4 Marks]

Answer:

Circumstances when partnership is not considered between two or more parties: Various _____ have laid to the following factors leading to no partnership between the parties:

- Parties have _____ any record of _____ of partnership.
- Partnership business has _____ of its own, which would be _____ by both parties
- No _____ of the partnership was _____ with any _____
- No _____ was _____ to the _____ with respect to the newly created partnership.

State whether X and Y are Partners in the following circumstances

1. X agrees with Y to carry passengers by taxi from Delhi to Gurgaon on following terms, viz., Y is to pay X ₹ 100 per mile, X and Y are to share costs of repairing and replacement of cars, and divide equally between them proceeds of fares received from passengers.	
2. X and Y are co-owners of a house let-out to a tenant. X and Y divide the Net Rents (after deduction of incidental taxes, etc.) between themselves.	
3. X and Y, the co-owners of a house, use the house as a hotel managed either by themselves or by a duly appointed manager for their common profit.	
4. X and Y buy 200 bales of cotton, agreeing to share the same between them.	
5. X agrees with Y a goldsmith, to buy and furnish gold to Y to be worked up by him and sold, and that they shall share in the resulting profit or loss.	
6. X and Y agree to work together as carpenters but X shall receive all profit and shall pay wages to Y.	
7. X and Y are joint owners of a ship.	
8. X, a publisher, agrees to publish at his own expense a book written by Y and to pay Y half the Net Profit.	

Related Question: State whether the following are a partnership: - [Jan 21 - 6 Marks] [1 Mark Each]

1. A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as a taxi on other days and equally divide the earnings.
2. Two firms, each having 12 partners, combine by an agreement into one firm.
3. A and B, co-owners, agree to conduct the business in common for profit.
4. Some individuals form an association to which each individual contributes RS. 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
5. A and B, co-owners share between themselves the rent derived from a piece of land.
6. A and B buy commodity X and agree to sell the commodity with sharing the profits equally.

Answer:

(i) ____, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such persons partners.

Alternatively, this part can also be answered as below:

_____, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

(ii) _____, this is a case of partnership because there is an agreement between two firms to combine into one firm.

(iii) _____, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.

(iv) _____, this is not a case of partnership as no charitable association can be floated in partnership.

(v) _____, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.

(vi) _____, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Q.2 Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P.

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. [Nov 18, 3 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Section _____ in The Indian Partnership Act, 1932

Anyone who by

- _____ or _____ or
- by _____

_____ or _____ to be _____, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the _____ of any such representation given credit to the firm, whether the person

representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. Such partnership is known as Partnership by holding out or partnership by estoppel.

Conclusion

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Related Question: X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Advise Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932. [RTP Nov 19]

Q.3 State the differences between Partnership and Hindu Undivided Family. [RTP May 18]

Related Question: Distinguish between Partnerships vs. Hindu Undivided Family. Write any two points. [MTP Oct 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Related Question: Enumerate the differences between Partnership and Joint Stock Company. [MTP Oct 21 - 6 Marks]

Q.5 Explain the following kinds of partnership under the Indian Partnership Act, 1932:

- (i) Partnership at will [Dec -20 2 Marks]
- (ii) Particular partnership [RTP May 20] [Jan 21- 2 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Related Question: Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities? [Jan 21- 2 Marks]

Q.6 What is Partnership Deed and state the information contained therein? [MTP March 18, 4 Marks] [MTP Oct 18, 4 Marks] [MTP April 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Related Question: Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? Also, give list of information to be included in partnership deed? [MTP Oct 20 - 6 Marks] [MTP Nov 21 - 6 Marks]

EXAM ORIENTED MARATHON NOTES

Chapter 3: The Indian Partnership Act, 1932

Unit 2: Relations of Partners

Important Questions

Reconstitution of firm - Expulsion | Death | Transfer of Interest

Q.1 M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? [May 19 ,6 Marks] [MTP Oct 20- 6 Marks]

Related Question 1: X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? [May 18, 6 Marks] [MTP April 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven)

Related Question 2: Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. [RTP Nov 18]

Related Question 3: X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A.

Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A and Z.

Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?
[MTP Nov 21 - 6 marks]

Related Question 4: Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. [Dec-20 2 Marks]

Answer:

Expulsion of a Partner (Section ___ of the Indian Partnership Act, 1932):

A partner may not be expelled from a firm by a _____ of partners except in _____, in _____, of _____ by contract between the partners.

The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the _____ of the partnership.
- The partner to be expelled is _____.
- He is given an _____.

If a partner is otherwise expelled, the expulsion is null and void.

(i) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was _____ as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A _____ and _____ has to be given to Mr. G.

(ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

- (a) the _____ must have _____ in a contract between the partners;
- (b) the power has been exercised by a _____ of the partners; and
- (c) it has been exercised in _____.

Related Question Answer:

Conclusion

1. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is _____.

2. Thus, in the given case A and B the majority partners _____ expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

3. According to the test of good faith as required under Section 33(1), expulsion of Partner Y is _____ as he _____ and also he _____. Also, the matter of fight between A and Y was on _____, hence _____. Since the conditions given under above provisions are _____, the expulsion _____.

Q.2 Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ` 20,00,000 to M/s ABC & Co. M/s ABC & Co. Could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. [Nov 18, 3 Marks]

Related Question 1: Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.

Explain with reasons:

- (i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?
- (ii) Against whom can the creditor obtain a decree for the recovery of the price? [RTP May 19]

Related Question 2: M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death. fact about his death was known to them at the time

of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

(i) Whether P's private estate is liable for the price of furniture purchased by the firm?

(ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive? [Jan 21 - 6 Marks] [RTP May 21]

Related Question 3: Sohan, Rohan and Jay were partners in a firm. The firm is dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2020, one of the partners, Mr. Jay died in a road accident. The firm has ordered M/s AB and Co. to supply the furniture for their business on 25th May 2020, when Jay was also alive.

Now Sohan and Rohan continue the business in the firm's name after Jay's death. The firm did not give any notice about Jay's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2020. The fact about Jay's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Jay's private estate is also liable for the price of furniture purchased by the firm? [MTP Oct 21 - 6 Marks]

Answer:

Liability of _____ partner (Section ____ of The Indian Partnership Act, 1932)

(a) The Firm is _____ on the death of a Partner.

(b) When under a contract between the Partners, the Firm is not dissolved by the death of a Partner,

(i). the estate of deceased Partner remains liable only for such acts as were done during the _____ of his Partnership, and

(ii). His estate is NOT liable for any act of the Firm done after his death.

(c) _____ is required on the death of a Partner.

Therefore, considering the above provisions, the problem may be answered as follows:

Mr. X (creditor) can have only a _____ against the _____ (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners.

A suit for goods sold and delivered _____ against the representatives of the deceased partner. Hence, the legal heirs of Mr. C _____ be held liable for the dues towards Mr. X.

Related Question Answer:

1. Therefore, considering the above provisions, the problem may be answered as follows:

- (i) Ram's estate in this case will _____ liable for the price of the Machinery purchased.
- (ii) The creditors in this case can have only a _____ against the _____ and decree against the partnership assets in the hands of those partners.
- (iii) However, since the surviving partners are already insolvent, _____ suit for recovery of the debt would lie against them.
- (iv) A suit for goods sold and delivered _____ lie against the representative of the deceased partner. This is because there was _____ in respect of the goods in Ram's life time.

2. Therefore, considering the above provisions, the problem may be answered as follows:

- (i) P's estate in this case will _____ liable for the price of the furniture purchased by the firm because the furniture _____ after p's death.
- (ii) If JR Limited supplied the furniture to the firm believing that all three partners are alive _____, P's private estate _____ liable for the price of the furniture.

3. Therefore, considering the above provisions, the problem may be answered as follows:

Since the delivery of furniture was made after Jay's death, his estate _____ be liable for the debt of the firm.

A suit for goods sold and delivered _____ lie against the representatives of the deceased partner.

This is because there was _____ in respect of the goods in Jay's lifetime. He was already dead when the delivery of goods was made to the firm and also it is _____ either to the public or the persons having dealings with the firm on a death of a partner.

So, the estate of the deceased partner may be _____ from liability for the future obligations of the firm.

Q.3 State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee? [MTP March 18, 6 Marks] [MTP April 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven)

Related Question 1: Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹ 6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr Z for settling the amount. In the light of the provisions of The Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. M validly transfer his interest in the firm by way of sale?

(ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer? [July 21 - 6 marks]

Related Question 2: Mr. A (transferor) transfers his share in a partnership firm to Mr. B (transferee). Mr. B felt that the book of accounts was displaying only a small amount as profit in spite of a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners were of the opinion that Mr. B cannot challenge the books of accounts. As an advisor, help them solve the issue applying the necessary provisions from the Indian Partnership Act, 1932. [RTP Nov 21]

Answer:

Section ___ of the Indian Partnership Act, 1932 provides that a share in a partnership is _____, but as the partnership relationship is based on _____, the _____ of a partner's interest by _____, _____ or otherwise cannot _____ the same _____ as the _____ partner.

The rights of such a transferee are as follows:

(1) During the _____, such transferee is _____

(a) to _____ with the _____ of the business,

(b) to _____, or

(c) to _____ of the firm.

He is only entitled to receive the share of the profits of the _____ partner and he is bound to accept the profits as agreed to by the partners, i.e., he _____ the accounts.

(2) On the _____ of the firm or on the _____ of the transferring partner, the transferee will be entitled, against the remaining partners:

(a) to _____ of the assets of the firm to which the _____, and

(b) for the _____ the share, he is _____ to an account as from the _____.

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

Related Question Answer:

1. The rights of a transferee (Mr. Z) are as follows:

1. During the continuation of the partnership, such transferee is not entitled

- a) to interfere with the conduct of the business,
- b) to require accounts, or
- c) to inspect the books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

2. On dissolution of the firm or on the retirement of the transferring partner, the transferee partner is entitled

- a) to receive the share of assets of the firm to which the transferring partner was entitled and
- b) for the purpose of ascertaining the share, he is entitled to an account from the date of the dissolution.

2. As per Section 29 of the Indian Partnership Act, 1932, during the continuance of the business, a transferee is not entitled

- To interfere with the conduct of the business
- To require the accounts
- To inspect the books of the firm He is only entitled to his share of profit.

Keeping the above points, in the given case, since the partnership business is in continuance, Mr. B is bound to accept the profits as agreed to by the partners. He cannot challenge the accounts. He is only entitled to receive the share of profits of Mr. A (transferring partner).

Implied Authority [Section 19 & 20]

Q.4 A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

(i) Whether the Firm's contention shall be tenable?

(ii) What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware? [MTP March 18, 6 Marks] [MTP Oct 18, 6 Marks]

Related Question 1: A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement? [MTP Aug 18, 6 Marks] [MTP March 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven)

Related Question 2: Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932. [MTP Oct 19, 6 Marks]

Related Question 3: In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932? [MTP Aug 18, 6 Marks] [July 21 - 6 Marks] CS LLM Arjun Chhabra (Law Maven)

Answer:

Conditions for Partner's act to bind the Firm i.e., for Implied Authority:

1. _____:

(a) _____ by Partners must relate to _____ of the Firm.

(b) If the act is of a _____ that is _____ in the type of business carried on by Firm, it will not bind the Firm even if it has been done in the Firm's name.

(c) **Example:** Z, a Partner of a Firm dealing in readymade garments places an order for liquor worth ₹ 50,000 in the Firm's name. It does not relate to normal business of the Firm. The Firm will not be bound by it as it is not within Z's implied authority.

2. _____:

(a) Act must be done in the _____ of carrying on the Firm's business.

(b) What is usual and what is unusual in a business depends on (a) _____ and (b) _____.

(c) **Example:** Buying and selling of goods, drawing and accepting bills of exchange, taking loan, etc., are normal activities for a trading concern. But, for an auctioneering Firm or a Firm of solicitors, activities like taking loan, drawing and accepting B/E, etc., are not considered to be a usual activity.

3. _____

The Act must be done in _____ or should, in _____, _____ an _____. e.g. A and B are Partners in a stationery business. A buys pencils on credit from a wholesaler in Firm's name but gives them to his children. Taking goods on credit is normal in business, it is within A's implied authority. It will bind the Firm even though A had misappropriated it for his personal use.

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

- (i) The firm's contention is _____, for the reason that the partner, in the _____ on behalf of the firm has an _____ to _____. The firm is, therefore, _____ for the price of the goods.
- (ii) In the second case _____, the answer would be the _____ as above, i.e., the implied authority of the partner binds the firm.

In both the cases, however, the firm ABC can take action against __, the partner but it has to pay the price of stationery to the supplier D.

Related Question Answers:

1. Restriction or extension of Implied Authority [Sec. ____]:

(a) The Partners, by _____, can restrict or extend the Implied Authority of any

Partner.

(b) Notwithstanding any restriction, any act done by a Partner on behalf of the Firm which falls within his implied authority, binds the Firm, unless the person with whom he is dealing

- knows of the restriction or
- does not know or believe that Partner to be a Partner.

So, a third party is not affected by limitation of implied authority unless he has actual notice of it.

M supplied furniture to A, who ultimately sold them to a third party and M was also _____ about the agreement entered into by the partners about the change in their role. M also is not aware that he is dealing with a partner in a firm. Therefore, M on the basis of _____ of A, _____ recover money from the firm.

But in the second situation, if M was _____ about the agreement, he _____ recover money from the firm.

2. Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

3. Implied authority of partner as agent of the firm (Section _____):

The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority"

In the _____ of any _____ or _____ to the _____, the implied authority of a partner does not _____ him to-

- _____ relating to the business of the firm to _____;
- _____ a _____ on behalf of the firm in his _____;
- _____ any _____ or _____ by the firm;
- _____ filed on behalf of the firm;
- _____ in a suit or proceedings filed on behalf of the firm;
- _____ immovable property on behalf of the firm;

(g) _____ immovable property belonging to the firm; and

(h) _____ into _____ on behalf of the firm.

Q.5 What do you mean by "implied authority" of the partners in a firm? Point out the extent of partner's implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932. [RTP May 19]

Partner's authority in an emergency [Sec. ____]:

In case of an emergency, a Partner has the authority _____ so as to _____, as would be done by a man of _____. These acts bind the Firm even though they do not form part of the Partner's implied authority.

PRACTICAL QUESTION

X and Y are Partners of a Trading Firm. They decide that no Partner shall have the right to buy or sell goods beyond the value of ₹ 10,000 without the consent of the other Partner. Owing to sudden slump in the market, the prices crashed.

X in order to save the Firm from loss, sold all the perishable stock worth ₹ 2, 00,000 without consulting Y. Is Firm bound by X's Act?

Hint/ Answer: ____

The act has been done to _____

Q.6 What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? [May 19, 2 Marks] CS LLM Arjun Chhabra (Law Maven)

Answer:

Effect of notice to an acting partner of the firm

According to Section ____ of the Indian Partnership Act, 1932, notice to a partner who _____ in the business of the firm of _____, except in the case of a _____ on the firm _____ by or with the _____ of that partner.

Thus, the notice to one is _____ to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice **must be** _____. It must further relate to the _____. Only then it would _____ a notice to the firm.

PRACTICAL QUESTION	X, Y and Z are Partners of a Trading Firm. X who actively participates in the Management of the business of the Firm, bought certain goods for the Firm. The Seller told X about the defect in the goods, (a) Is the Firm liable to the seller? (b) Would it make any difference if there was a collusion between X and the seller to conceal the defect from other Partners?	<p style="text-align: center;">Hint/ Answer:</p> <p>(a) The Firm is _____ to seller because notice to acting Partner _____ as a notice to the Firm.</p> <p>(b) The Firm is _____ to the seller because notice to a acting Partner _____ as a notice to the Firm in case of _____ by a Partner and third party against the Firm.</p>
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Q.7. Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? [May 19, 2 Marks] CS LLM Arjun Chhabra (Law Maven)

Answer:

Personal Profit earned by Partners (Section ___ of the Indian Partnership Act, 1932)

According to section ___, _____ contract between the partners:

(a) If a partner _____ any profit for himself from:

- _____ of the firm, or
- from the _____ or _____ of the firm or
- the _____,

he shall _____ for that profit and pay it to the firm;

(b) If a partner _____ on any business of the _____ and _____ with that of the firm, he shall _____ for and pay to the firm all profits made by him in that business.

PRACTICAL QN	X and Y are in Partnership for refining sugar. Y was appointed to buy sugar for the Firm. Without the knowledge of X, he supplied his own sugar to the Firm at Market Price and made a huge gain. Is he accountable for profit he makes?	<p style="text-align: center;">Hint / Answer: _____</p> <p>_____ Contract between the Partners, if a Partner _____ any profit for himself from any transaction of the Firm, he must account for the profit and pay it to the Firm.</p>
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Related Question: A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted

with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is Rs. 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for Rs. 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of Rs. 350? Assume there is no contract between the partners regarding the above. [RTP Nov 21]

Answer:

In the given scenario, Mr. B had sold iron bar to the firm at the current prevailing market rate of Rs.350 per Kg though he had stock with him which he bought for Rs.200 per Kg. Hence, he made an extra profit of Rs. 150 per Kg. This is _____ . Hence, Mr. B is _____ to the firm for the extra profit earned thereby.

Q.8 Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. [Jan 21 - 4 Marks]

Related Question: Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. [Dec 20 - 4 Marks] [RTP May 21]

Answer:

LIABILITY TO THIRD PARTIES (SECTION __ TO __)

The question of liability of partners to third parties may be considered under different heads. These are as follows:

1. LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION ____): Every partner is liable, _____ with all the other partners and _____, for all acts of the firm done while he is a partner.

Example: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place. it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.

2. LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION ____): Where, by the _____ or _____ of a partner in the _____ of a firm, or with the _____ of his partners, _____ or _____ is caused to any _____, or any _____ is incurred, the firm is liable therefor to the same extent as the partner.

Example: One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result, thereof, an injury was caused to a workman. The other partner was also held responsible for the same.

3. LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION ____):

Where-

(a) a partner _____ receives _____ or _____ from a third party and _____ it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Example 12: A, B, and C are partners of a place for car parking P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Analysis of section 27: Only reading

It may be observed that the workings of the two clauses of Section 27 is designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

Q.9 P.Q.R. and S are the partners in M/S PQRS & Co. a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

- (i) Rights of P & Q to start a competitive business.
- (ii) Rights of P & Q regarding their share in property of M/S PQRS & Co. [Dec 20, 6 Marks]

Rights of outgoing Partner	
To carry on competing business [Section ___]	To share subsequent profits - [Section ___]
<p>1. He may carry on business _____ with that of the Firm and may _____ such business but _____, he may not</p> <p>(a) _____ the Firm name or</p> <p>(b) _____ as carrying on the Firm's business or</p> <p>(c) _____ who were dealing with the firm before he ceased to be a partner.</p>	<p>1. In the _____, Outgoing Partner is _____ to such share of profits made _____, as may be _____ to the use of his share of the Firm's property.</p>
<p>2. He may sometimes agree with his Partners that on his cessation, he will not carry on a business _____ to that of Firm within - (a) a _____ or (b) _____ and, _____ of the Indian Contract Act, 1872, such agreement shall be _____ if the _____ are _____.</p>	<p>2. _____, he can _____ interest at _____ on his share in the Firm's property.</p>
<p>• Outgoing Partner has the right to receive his share of the property of the Firm, including goodwill.</p>	<p>3. This right is available only when the Firm carries on the business with Firm's property _____ of accounts between them and outgoing Partner.</p>
<p>4. Even the _____ of a _____ Partner can claim share in _____ profits.</p>	<p>4. Even the _____ of a _____ Partner can claim share in _____ profits.</p>
<p>5. When by a contract between Partners, an _____ was _____ by other Partners, then, Outgoing Partner will not be entitled to any further share of the profits.</p>	<p>5. When by a contract between Partners, an _____ was _____ by other Partners, then, Outgoing Partner will not be entitled to any further share of the profits.</p>
<p><u>In the instant case</u></p> <p>P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.</p> <p><u>Conclusion</u></p> <p><u>In the light of the above provision and facts of the case</u></p>	

(i) P & Q has the right to start a competitive business but subject to subsection (1) of section 36.

(ii) P & Q shall be is entitled to such share of profits made since their cessation, as may be attributable to the use of their share in the Firm's property or Alternatively, they can claim interest at 6% p.a. on their share in Firm's property.

Manisha, Madhuri, and Juhi are partners sharing profits and losses equally. Juhi dies on 1st October 2017. After making all the necessary adjustments for assets, liabilities, goodwill and Joint Life Policy, the capital accounts of the partners are ₹100000, ₹140000 and ₹240000 respectively. Manisha and Madhuri decide to continue the business. Juhi's account is not settled until 1st January 2018. The profit for the year is ₹180000. Assume the accounting year ends on 31st March every year. Determine the option that the legal representative of Juhi shall choose.

Ans:

Option 1: Share in Subsequent Profits

Profit for the year = _____

But, profit until 1st October 2017 is already adjusted. Therefore, we need to pay him only the profit from 1st October 2017 to 31st December 2017 i.e. for 3 months. We assume that profits are earned evenly during the year.

Hence, profit for 3 months = $180000 \times \frac{\quad}{\quad}$

= _____

Juhi's share = $45000 \times \frac{\quad}{\quad}$

= ₹ _____

Option 2: Interest @ 6%

Interest = $240000 \times \frac{\quad}{100} \times \frac{\quad}{12}$

= ₹3600

Conclusion: Since, share in subsequent profits is more beneficial, he should go for Option 1.

Q.10 Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. [RTP May 18] [MTP Oct 18, 6 Marks] CS LLM Arjun Chhabra (Law Maven) [RTP Nov 21]

Answer:

Section__ of Indian Partnership Act,1932

1. Minor cannot become _____: Minor _____ enter in to a contract, and hence he generally cannot enter into Partnership.
2. Minor into _____ of Partnership: If all the Partners agree, a minor _____ of an _____ Firm. There must be atleast two major Partners before a Minor is admitted into the benefits of Partnership.

Related Question: "Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

- (I) Referring to the previsions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. [Nov 18, 4 Marks]
- (II) A.State the liabilities of a minor partner both:
 - (i) Before attaining majority and
 - (ii) After attaining majority. [Nov 18, 2 Marks] [MTP March 19, 6 Marks]

OR
- B. State the legal position of a minor partner after attaining majority:
 - (i) When he opts to become a partner of the same firm.
 - (ii) When he decide not to become a partner. [Nov 18, 2 Marks]

Answer:

(i) _____ which can be enjoyed by a minor:

Share of Profits & Property	Inspection and copying of accounts
(a) To share _____, and (b) To share _____ of the _____.	(a) To have _____ to the _____, and (b) To _____ and _____, any of the _____. (c) He cannot inspect books other than _____ that may contain _____ restricted to

Position on attaining majority	
<p>(a) _____: Within ___ months of his attaining majority or his _____ that he had been _____ of the _____, whichever date is _____, the minor has to decide whether he shall remain a Partner or leave the firm.</p> <p>(b) _____: He shall give a _____ of his _____, i.e. whether opting to become or not becoming a Partner.</p> <p>(c) _____: Where he _____, he becomes a Partner in the Firm on the _____.</p>	
Option [Right] to become partner	
Not to become a partner	Opt to become a partner
<p>(a) To _____ for his _____ of the Firm's property when he is _____.</p> <p>(b) This can be exercised only when he _____ with Firm.</p>	<p>(a) he _____ shall _____ be _____, which he was getting as a minor.</p>
(ii) _____ of a minor in a firm	
<p>(a) Liability is _____ only to the extent of his _____ in profits and property of Firm.</p> <p>(b) He is _____ nor is his _____ liable.</p> <p>(c) He cannot be _____, but if the Firm is declared insolvent, his share in the firm vests in the _____ or Official _____.</p>	
(iii) Liabilities of a minor partner _____:	
Elects to become a Partner	Elects NOT to become a Partner
<ul style="list-style-type: none"> • He becomes _____ to third parties for all acts of the Firm done since he was admitted to the _____ • His share in the property and profits of the firm _____ as 	<ul style="list-style-type: none"> • His rights and liabilities continue to be those of a Minor _____ • His share is not liable for any acts of the Firm done after the date of the public

he was entitled as a Minor.

notice.

Related Question: Master X was introduced to the benefits of partnership of M/s ABC & Co. With the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.

In the light of the Indian Partnership Act, 1932, explain:

- (i) To what extent X will be liable if he failed to give public notice after attaining majority?
- (ii) Can Mr. L recover his debt from X? [RTP Nov 20] [Nov 19, 6 Marks] CS LLM
Arjun Chhabra (Law Maven)

Answer:

As per the provisions of Section 30(5) of the Indian Partnership Act, 1932

1. At any time within six months of his (Minor) attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
2. However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

- (A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

Conclusion

- (i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.

(ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Q.11 Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of R 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm? **RTP MAY 22**

Answer:

By virtue of provisions of Section ___ (___) of the Indian Partnership Act, 1932 a partner is _____ remuneration for taking part in the conduct of the business. But this rule can always be varied by an _____, or _____, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.

In other words, where it is _____ to a partner for conducting the business of the firm, he can claim it even in the _____ for the payment of the same.

In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners

Q.12 When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?
[Nov 19, 2 Marks]

OR

What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?
[Nov 19, 2 Marks]

Answer:

Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)

According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

OR

Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Q.13 With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner. [Nov 19, 4 Marks] CS LLM Arjun Chhabra (Law Maven)

Related Question: State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932:

- (i) Retirement of a partner
- (ii) Insolvency of a partner [RTP Nov 19]

Answer:

Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932)

- (i) The insolvent partner cannot be continued as a partner.
- (ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- (iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Related Question Answer:

RETIREMENT OF A PARTNER (SECTION 32):

- (1) A partner may retire:

- (a) with the consent of all the other partners;
 - (b) in accordance with an express agreement by the partners; or
 - (c) Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- (2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.
- (3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:
- Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
- (4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Q.14 Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. [MTP Aug 18, 4 Marks] [July 21 - 4 Marks]

Answer:

Settlement of partnership accounts (Section 48)

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

EXAM ORIENTED MARATHON NOTES

Chapter 3: The Indian Partnership Act, 1932

Unit 3: Registration and Dissolution of a Firm

Important Questions

Q.1 What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? [RTP May 20]

Q.2 "Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief? [May 19, 4 Marks] [May 18, 4 Marks] [MTP Oct 19, 4 Marks] [Dec-20, 2Marks] CS LLM Arjun Chhabra (Law Maven) [RTP May 21] [MTP Nov 21, 4 Marks]

Related Question: What are the consequences of Non-Registration of a Partnership Firm? Discuss. [May 18, 4 Marks] [MTP Oct 19, 4 Marks]

Related Question: What are the rights which won't be affected by Non-Registration of Partnership firm? [Dec-20, 2Marks]

Answer:

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning.

However, under Section 69, non-registration of partnership gives rise to a number of disabilities which are as follows:

I. _____ by firm or other co-partners against third party: An Unregistered Firm cannot file a suit against a third party to enforce any right arising from a contract, unless the firm is _____ and the _____ are or have been shown in the _____ as _____ in the firm. In other words, a _____ firm can only file a suit against a third party and the _____ have been in the register of firms as partners in the firm.

"person suing" means persons in the _____ whose _____ in the _____ as _____ and who must be _____ partners in the firm at the date of the suit.

II. No _____ between _____ and _____/Aggrieved partner cannot bring legal action against other partner or the firm: A Partner of an unregistered Firm

cannot sue the Firm or any other Partner of the Firm to _____

(1) _____ from a _____, or

(2) _____ by the Partnership Act.

III. No relief to partners for set-off of claim: An Unregistered Firm or a Partner thereof cannot claim a set-off or other proceeding to enforce a right arising from a contract.

Exceptions i.e. Non-registration not to affect the following - [Sec. 69]

1. Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

2. Right of Partners to sue for - (a) _____ of the Firm, or (b) _____ of a dissolved Firm, or (c) _____ the property of a dissolved Firm.

3. Power of an Official Assignee, Receiver or Court to realise the property of an Insolvent Partner and to bring an action on behalf of the Insolvent Partner.

4. Right of the Firm to institute a suit or claim of set-off not exceeding 100.

5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

Related Question: M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. Ms LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

(a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?

(b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?

(c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm? **RTP MAY 22**

Answer:

According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied.

But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

- (a) On the basis of above, M/s LMN & Company _____ file the suit against M/s XYZ & Company as M/s LMN & Company is an _____ firm.
- (b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer _____ as in point ____ above.
- (c) In case M/s LMN & Company is a registered firm, it _____ the suit against M/s XYZ & Company.

PRACTICAL QUESTION	A, B and C are Partners of an Unregistered Firm. D owes this Firm. ₹ 1,000 on a contract. The Firm files a suit against D. The suit is dismissed for nonregistration of Firm. The Firm is registered later on. Can the Firm now successfully bring the suit against D?	
PRACTICAL QUESTION	A & B purchased a taxi to ply in Partnership. They plied the taxi for a year when A, without the consent of B, disposed of the taxi which brought the Partnership to an end. B brought an action to recover his share in the sale proceeds. A resisted B's claim on the ground that the Firm was not registered. Will B succeed in his claim?	
PRACTICAL QUESTION	X, Y and Z are Partners in Unregistered Firm. X steals the property of the Firm. Y filed a suit against X. X registered Y's claim on the plea that the Firm was not registered. Will Y succeed?	
PRACTICAL QUESTION	X, Y and Z are Partners in a Registered Firm. X died and D was admitted as a Partner. The Firm filed a suit against W in the name and on behalf of Firm without notifying to the Registrar of Firms about the changes in the constitution of the Firm. Is the suit maintainable?	

Q.3 A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration? [RTP May 18] CS LLM Arjun Chhabra

Answer:

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- a) the suit must be instituted by or on behalf of the firm which had been registered;
- b) the person suing had been shown as partner in the register of firms.

In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms.

It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

Q.4 "Dissolution of a firm is different from dissolution of Partnership". Discuss. [Nov 19, 4 Marks] [May 18, 2 Marks]

Answer:

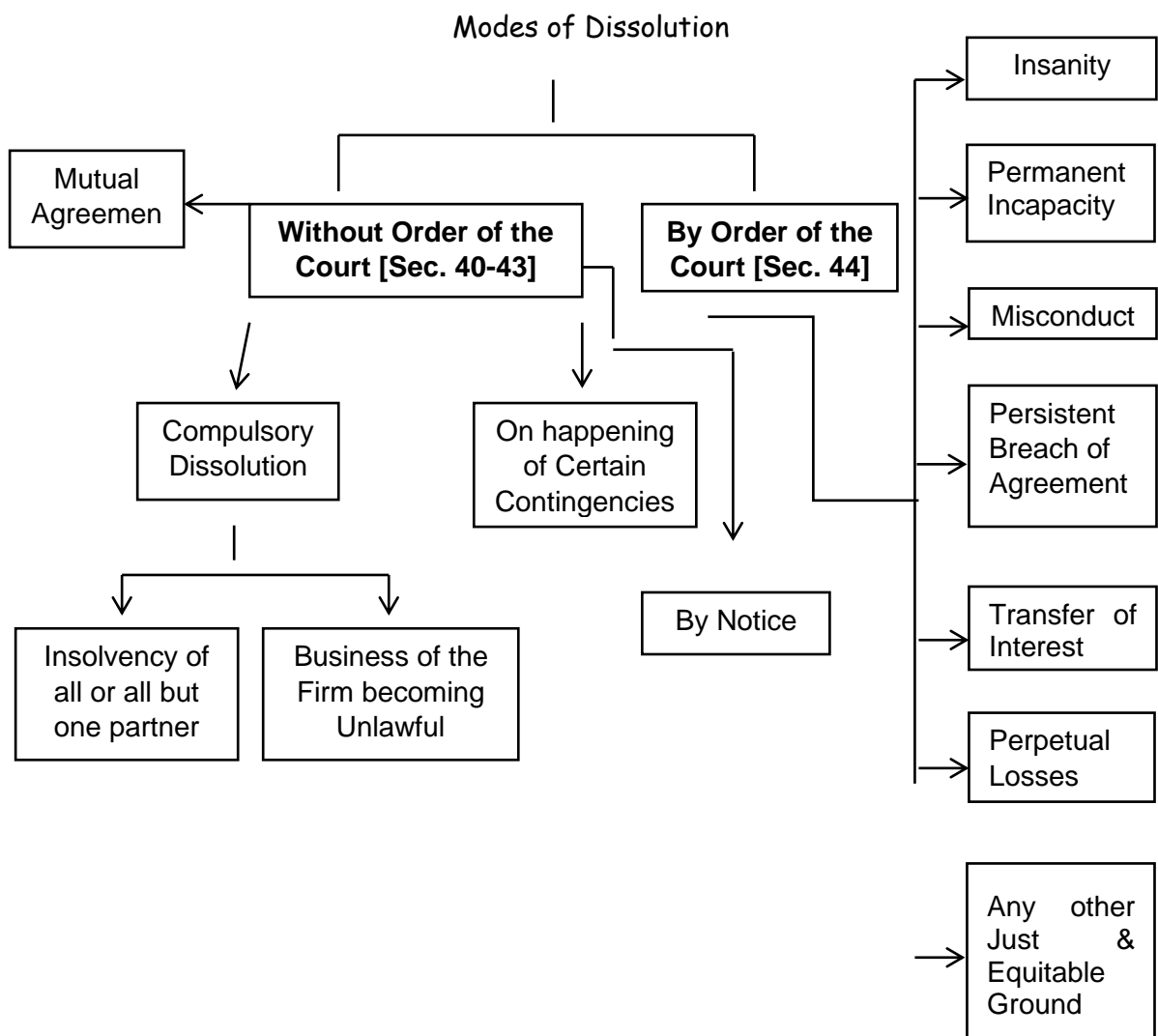
DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNERSHIP

S. NO.	BASIS OF DIFFERENCE	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
1.	Continuation of business	It involves discontinuation of Business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.

4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Q.3 State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. [Nov 18, 4 Marks] [RTP May 20] CS LLM Arjun Chhabra (Law Maven)

Answer:



Q.4 MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing

making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected? [RTP Nov 21]

Answer:

According to Section 41 of the Indian Partnership Act, 1932, a firm is compulsorily dissolved;

- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
- (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

However, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful.

However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.