

CHANAKYA 2.0

For CA Foundation

Lecture- 01

Business Laws

Top 100 Questions – Q 31 to 40
Writing Practice Session - Part 04

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Question no 31

State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932? (MTP May 24) (7 Marks)

Shortcuts → Imp Battle

- 1 I → Insanity of a partner.
- 2 M → Misconduct
- 3 P → Permanent incapacity.
- 4 BA → Breach of agreement.
- 5 T → Transfer of interest.
- 6 L → Losses.
- 7 E → Equitable and Just grounds.

Q 31

Dissolution on

Dissolution means putting an end to moral relationship between partners. Here all partners go and firm discontinues.

Dissolution can be done through various modes. Following are the grounds where dissolution is done through order of court :-

under sec- 44 :-

- (i) Partner's insanity - If a partner becomes insane, other sane partners or friend of insane partner can apply to court to dissolve firm.
- (ii) Misconduct of Partner - Any misconduct by partner either due to conducting business in firm or outside the firm is a ground to apply to court to dissolve the firm.
- (iii) Permanent incapacity - If a partner becomes permanently incapable due to illness or bodily distress, partner can apply to court to dissolve firm.
- (iv) Breach of agreement - If a partner persistently breach agreement, then court may order to dissolve firm.

(v) Trif of interest → In case of trif of interest by a partner other partners may apply to court to dissolve the firm

(vi) Loss. If firms suffer from persistent losses, partners

(vii) Just and equitable & ground due to any just and equitable ground firm can be dissolved.

Question 32

M/s ABC Associates has been a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Vikas, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Vikas joining them as partner in M/s ABC Associates. After some time, Mr. Vikas felt that the books of accounts were displaying only a small amount as profit despite 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 believed that he cannot challenge the books of accounts. Can Mr. Vikas be introduced as a partner if his father wants to retire? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

NO

29

sec 31

→ (i)

Trf of inter → can
partner - ~~can~~

(ii)

(iii)

Trf of inter → 29
Retire → ~
agreed → sec 4

[RTP Dec 2023]

Q 32

Law:- (i) As per sec-4 of Partnership Act a partner cannot be made by status, it should be made only by agreement or contract between partners.

(ii) As per sec-31 of Partnership Act any person can be admitted as partner ~~due to~~ with consent of all partners

(iii) No consent is required to transfer interest by other partners (sec-29).

(iv) Although transferee dummy partnership can share profits but he is not entitled to inspect books of account

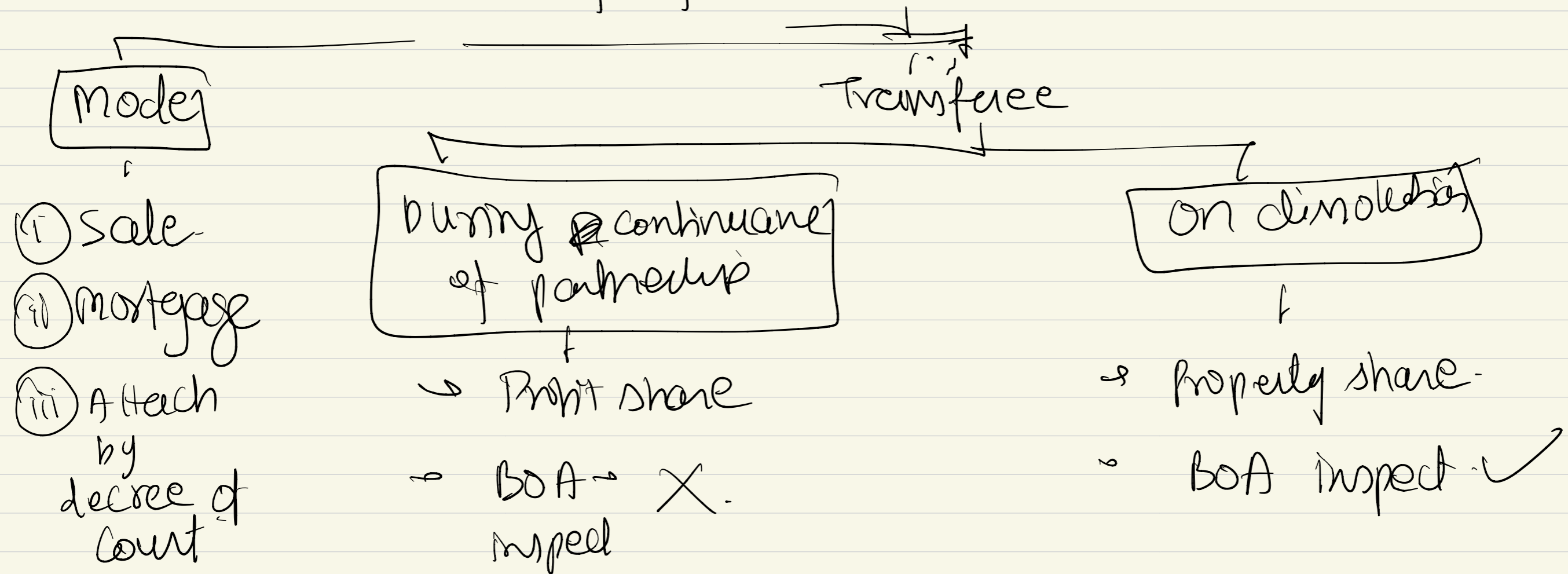
Conclusion - After applying above laws in present situation, we conclude that-

(i) Mr. Vikas cannot be introduced as partner if his father retire without consent of all partners because partnership arises only by contract or agreement not by status

(ii) Other partners cannot object transfer of interest to Mr. Vikas as per Sec-29.

(iii) Mr. Vikas being transferee during partnership has no right to inspect books of accounts, he is entitled to his share of profit.

Trf of interest (Sec-29)



Question 33

15. With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner.

[RTP Dec 2023]

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.**

(vi) In case of insolvency, public notice is not required.

Question 34

X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932? [RTP June 2023]

Answer

Law (i) By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.

(ii) As per sec-34, property of insolvent partner is not liable for acts of firm.

Conclusion - Following the provisions of Section 45, X and Y are continuing liable against third party even after dissolution of firm until public notice is given. As in the given problem, X became insolvent, therefore, Y will be liable to Z.

Question 35

G, I and S were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act, 1932 can G, I and S continue the partnership or will their partnership firm get dissolved?

Sec 41 → compulsory dissolution
yes- NO

[RTP Nov 2022]

Law: As per sec 41 of partnership Act, 1932, A firm will be compulsorily dissolved if

(i) All partners or all except 1 dies or becomes insolvent.

(ii) All business becomes illegal due to change in law

Conclusion → In present case, G, S and I cannot continue partnership and will be compulsorily dissolved because their only business of dealing in chemicals became illegal due to government's ban.

Question 36

24. 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 2018, 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 25 May 2018, 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 25 July 2018. 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?

NO

[RTP May 2022]

Answer

Law - According to Section 35 of the Indian Partnership Act, 1932,

- i. where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.**
- ii. Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.**

ii) on death of a partner no public notice is required

Conclusion - In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Jay's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due 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 not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Question 37

31. P & Co. is registered as a partnership firm in 2018 with A, B and P as partners dealing in sale and purchase of motor vehicles. In April 2019, A dies. Now only B and P continue the firm and same business with same firm name P & Co.

In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co.

The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm.

In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable?

[MTP Nov 2022(6 Marks)]

Hint → Law → (i) consequences sec 69

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(ii) Fresh registrations → not required → Rehire → firm name
required → Admissibility

Condemnation In present situation, suit by P.L Co. is not maintainable because due to admission of partner fresh registration was required which firm failed to comply so they have to bear consequences of sec 69.

Question 38

32. M/s ABC & Associates, a partnership firm with A, B and C as senior partners engaged in the business of curtain manufacturing and exporting to foreign countries. On 25th August, 2020, they inducted Mr. P, an expert in the field of curtain manufacturing as their partner. On 10th January 2022, Mr. P was blamed for unauthorized activities and thus expelled from the partnership by approval of all of the remaining partners.

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

[MTP Apr 2023(6 Marks)]

Law

As per sec-33 of Part Act 1932, a partner may be expelled from firm if following conditions are satisfied.

(i) If expressly provided in the contract

(ii) In good faith.

(i) After giving notice of expulsion.

(ii) ~~Case~~ It should be in firm's interest.

(iii) Should be given reasonable opportunity of being heard.

(iv) By majority of partners

Conditions, yes action of partner is justified because he was expelled due to unauthorized activity, which is in interest of firm i.e. in good faith and expelled at consent of all partners.

Question 39

22. Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932

(a) Whether Bohan is liable for the dues of Karan against the firm.

(b) In case, Karan has filed the suit against firm, whether Bohan would be liable?

[RTP Nov 2022]

Law As per provisions of **Partnership Act 1932** **Answer**

Nominal Partner is a partner only in name. The person's name is used as if he were a partner of the firm, though actually he is not. He is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. A nominal partner must give public notice of his retirement and his insanity is not a ground for dissolving the firm.

Conclusion In the instant case, Bohan was admitted as nominal partner in the firm. A creditor of the firm, Karan has claimed his dues from Bohan as he is the partner in the firm. Bohan has denied for the claim by replying that he is merely a nominal partner.

(a) Bohan is a nominal partner. Even he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.

(b) In case, Karan has filed the suit against firm, answer would remain same.



THANK YOU