



CHANAKYA 2.0

For CA Foundation

Lecture- 03

Business Laws

Writing Practice Session - Part 03

Top 100 Questions – Q 21 to ~~20~~ 30.

By- Kunal Mandhania Sir



Question no 21

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 ` 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony continued 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 June 2024)

a 1

Law: As per sec 13(a) of partnership act, 1932, normally a partner has no right to receive remuneration.
except

- (i) If it is agreed expressly
- (ii) If it is in tradition/customs.

Conclusion → In present case, P song can claim remuneration from the firm because since it is a tradition in firm to receive remuneration by exception of sec 13, he can also receive remuneration.

Question no 22

Answer

A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932? (MTP Apr. 24) (7 Marks)

emergency

Q2

Law: (i) As per sec-11 of Indian partnership act, only those act will bind firm which is in expressed or implied authority of partner.

(ii) Express authority is one which is decided mutually.

(iii) As per sec-19, act in implied authority the act should be in firm name, related to firm's name and usual way of carrying on business.

(iv) As per sec-20, partners can restrict any act in implied authority or extend any act not in implied authority.

(v) As per sec-21, any act done by partner in case of emergency to protect interest of firm will bind the firm.
^ that a man of ordinary prudence will

Conclusion: In present case, B cannot sue A to claim difference in sale price and minimum price because although selling less than minimum price ~~is~~ was not in authority of A but he did so due to emergency to protect interest of the firm, therefore will bind the firm.

Question no 23

"Whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? (MTP May 24) (4 Marks)

write definition of partner (Sec 4).

Q 3.

To ~~for~~ As per sec 4 read with sec 5, following are the mode to determine existence of partnership :-

(i) Association of two or more person

Partnership is a association of ~~is~~ persons where minimum partner required is 2 and maximum of 50 partners as per companies Act, section 464. Such person should be competent to contract as per sec 11 of contract Act.

(ii) Agreement/Contract

Partnership can be formed only by mutual agreement or contract between partners either expressed or implied oral or written.

(iii) Business

Partnership can be done only to conduct business of any nature with profit motive.

(iv) Sharing of profit.

Partners should conduct business and share profits either as mutually decided or equally. Sharing of profit is prima facie evidence but not true test of partnership.

① Mutual agency

All partners should carry business, carried on all by all or anyone of them acting for all. This is called as mutual agency where all partners are principal as well as agent. This is true test of partnership.

Question no 24

State whether the following are partnerships under the Indian Partnership Act, 1932:

- (i) Two firms each having 12 partners combined by an agreement into one firm.
- (ii) A and B, co-owners, agree to conduct the business in common for profit.
- (iii) Some individuals form an association to which each individual contributes ₹ 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
- (iv) A and B, co-owners share between themselves the rent derived from a piece of land.
- (v) A and B buy commodity X and agree to sell the commodity with sharing the profits equally. [RTP Dec 2023]

Q24]

(i) Yes. Since ~~both~~ is as per sec. 4 they have formed partnership to do business by mutual agreement/contract.

(ii) Yes. Although co-owners are not partnership but if they carry on business for profit they will be deemed to be partners (sec. 4).

(iii) No. because As per sec. 4 partnership can be done only for profit motive to carry on any business, occupation or trade. Here clothes were distributed for free.

(iv) No. A and B are co-owners and not partners. As merely dividing rent from jointly owned property do not make them partner as it is not their business.

(v) Yes. This is partnership because they are mutually carrying on business to share profits.

Question no 25

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, 2023, in the name of M/S PO & 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. (MTP May 24) (7 Marks)

Q25

Law.

(i) As per sec-36 of Partnership Act, an outgoing partner can carry out competing business with firm, provided ~~there~~ nothing agree contract to contrary.

(ii) As per sec-37, outgoing partner cannot-

(a) use firm's name-

(b) cannot represent himself as partner.

(c) cannot solicit customers of firm.

Conclusion: In present case

(i) Yes P and Q can start competing business in pursuant of sec-36 contract to contrary.

(ii) Remaining partners P & Q can carry on business by sharing firm's property.

Question no 26

Sec 30.

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 Dec 2023]

yes

Answer

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

at any time within six months of his 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.

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.

5 min break

Question no 27

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. M/s 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? No sec-69 → unregd. firm - cannot file suit
- (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? No cannot file.
- (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 2022] Yes 2/3 mark specific 4/5 all consequences

Answer

② (u/f) mark then write all consequences

Law – 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.

Conclusion –

- (a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.
- (b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.
- (c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.

Question no 29

A, B & 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 INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 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 INR 350? Assume there is no contract between the partners regarding the above. (RTP June 2024)

Answer

Law – According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Conclusion - According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

yes. B will be liable to return profit to firm as it is derived in pursuant of sec-16.

Question no 30

Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ` 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ` 2800 and ` 200 as a penalty to resume the electricity connection. Mr. John claimed ` 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ` 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ` 3000 to Mr. John? (RTP June 2024) (RTP Dec 24).

Answer

All partners are jointly and severally liable.

Law –

- I. According to Section 4 of the Indian Partnership Act, 1932, "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. Therefore, for determining the existence of partnership, it must be proved:
1. There must be an agreement between all the persons concerned;
 2. The agreement must be to carry on some business;
 3. The agreement must be to share the profits of a business and
 4. The business was carried on by all or any of them acting for all.

Conclusion - On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ` 1500. Mr. John has to claim the rest of ` 1500 from Mr. Raheem.



THANK YOU