

Unit - 1

Definitions: section 4

1. Partnership: It is relation between person who have agreed to share profits of business carried on by all or any of them acting for all
2. Partners: Persons who have entered into partnership are individually called partners.
3. Firm: Collectively called firm.
4. Firm name: Name under which business is carried on

Elements of Partnership

1. Partnership is association of two or more person:

→ only a person recognised in the eyes of law shall be partner of firm.

→ Minor cannot be a partner of firm, however with consent of all

partners, minor may be admitted for profits only.

→ minimum 2 partners and maximum 50 partners. (as per companies act)

2. Agreement :

→ Partnership is result of agreement not status.

→ Partnership must have voluntary contractual relation

→ Agreement may be express or implied.

→ Agreement may also be oral or written

3. Business :

→ Business means any/every trade, occupation, profession

→ Motive of business is "Aquisition of gains."

4. Agreement to share profit :

→ Partners must agree to share

profits of business as no partnership exist without sharing of profit.

5. Business must be carried on by all or any of them acting for all.

→ This is cardinal principle.

→ Mutual Agency shall bind all existing partners.

Note: Therefore true test of partnership is mutual agency and not sharing of profit.

Cases: 1. KD Kamanath & Co.
2. Shantivanjan Das Gupta vs deis

Section 6: True test of partnership / Mode of determining partnership.

1 There shall be agreement between all person concerned:

→ partnership is created by agreement between partners and not by status unlike HUF etc

2. Sharing of profits:

- This is prima facie evidence
- even a non-partner may share profits.
- e.g. 1. lender of money.
- 2. agent.
- 3. share by legal heir of deceased partner etc.

3. Mutual Agency

* How Partnership is different from

- 1. company :
- 2. club
- 3. HUF
- 4. Association
- 5. co-ownership

} Refer ICAT SM.

* Kinds of Partnership

+ On the basis of Duration.

1. Partnership at will:

- No fixed of partnership.
- No provision for determination of partnership.

2. Partnership for fixed period:

→ where duration of partnership is given in partnership deed.

3. On the basis of business :

1. Particular partnership :

where partners enters into a business to single adventure or specific task.

2. General Partnership :

No specific business is mentioned.

+ Partnership Deed :

• Following information are needed :

1. Name of firm.
2. Name of all partners
3. Place of business
4. Duration
5. Profit sharing Ratio
6. Capital.
7. Interest on capital.
8. Admission of a partner.

+ Types of Partners:

1. Active Partner / Actual Partner / Ostensible Partner:

Partner:

→ A partner by agreement becomes partner and who actively participates in business.

→ Public notice is must given.

2. Dormant Partner:

→ Partner by agreement

→ Do not take active participation in business.

3. Nominal Partner:

→ who lend his name to firm.

* → No interest

4. Partners in profit only:

→ These partners are entitled to share only profit of business.

5. Incoming Partner:

→ Partner joined an existing firm with consent of all existing partners.

6. Outgoing Partner :

A partner who leaves a firm that will continue its business.

7. Partner by Estoppel / Holding Out :

Section 26 : when a person represents himself or knowingly permits to be represented as partner of firm in firm of which he is liable as partner of firm.