

The Indian Partnership Act, 1932

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. (Nov'18 RTP)

Provision:

1. It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932.
2. The essential conditions before expulsion can be done are:
 - a) the power of expulsion must have existed in a contract between the partners;
 - b) the power has been exercised by a majority of the partners; and
 - c) It has been exercised in good faith. The test of good faith includes:
 - i) that the expulsion must be in the interest of the partnership;
 - ii) that the partner to be expelled is served with a notice; and
 - iii) that the partner has been given an opportunity of being heard.

Facts of case:

Ram & Co. consists of three partners A, B & C having one third share each in firm. As per A & B C is not able to contribute anything to partnership i.e. his activities are not in the interest of that partnership. Thus they want to remove/expel C from Ram & Co.

Answer:

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

What is Partnership Deed? What are the particulars that partnership deed contain? (Nov'18 RTP)

Provision:

1. Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes.
2. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.
3. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.
4. Partnership deed may contain the following information:
 - a) Name of the partnership firm.
 - b) Names of all the partners.
 - c) Nature and place of the business of the firm.
 - d) Date of commencement of partnership.
 - e) Duration of the partnership firm.
 - f) Capital contribution of each partner.

- g) Profit Sharing ratio of the partners.
- h) Admission and Retirement of a partner.
- i) Rates of interest on Capital, Drawings and loans.
- j) Provisions for settlement of accounts in the case of dissolution of the firm.
- k) Provisions for Salaries or commissions, payable to the partners, if any.
- l) Provisions for expulsion of a partner in case of gross breach of duty or fraud.

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?

Provision:

1. Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.
2. The rights of such a transferee are as follows:
 - a) During the continuance of partnership, such transferee is not entitled
 - i) to interfere with the conduct of the business,
 - ii) to require accounts, or
 - iii) to inspect books of the firm.
 - b) 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.
 - c) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
 - i) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - ii) For ascertaining the share, he is entitled to an account as from the date of the dissolution.
3. 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.
4. 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.

State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932.

Provision:

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

1. **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
2. **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
3. **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct, which is likely to, affect prejudicially carrying on of business, court may order for dissolution of the firm, by giving

regard to the nature of business. It is not necessary that misconduct must relate to conduct of the business. Important point is the adverse effect of misconduct on the business. In each case, nature of business will decide whether an act is misconduct or not.

4. **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - a) Embezzlement,
 - b) Keeping erroneous accounts
 - c) Holding more cash than allowed
 - d) Refusal to show accounts despite repeated request etc.
5. **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
6. **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
7. **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
 - a) Deadlock in the management.
 - b) Where the partners are not in talking terms between them.
 - c) Loss of substratum.
 - d) Gambling by a partner on a stock exchange.

Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.

Or

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

Provision:

1. A minor is incompetent to do the contract and such contract is void-ab-initio. Therefore, a minor cannot be admitted in the business of the partnership firm because the partnership is formed on a contract.
2. Though a minor cannot be a partner in a firm, he can nevertheless be admitted to the benefits of partnership under section 30 of the Indian Partnership Act, 1932. He may be validly have a share in the profit of the firm but this can be done with the consent of all the partners of the firm.
3. Rights of the minor in the firm:
 - a) A minor has a right to his agreed share of the profits and of the firm.
 - b) He can have access to, inspect and copy the accounts of the firm.
 - c) He can sue the partners for accounts or for payments of his share but only, when severing his connection with the firm, and not otherwise. The amount of share shall be determined by a valuation made in accordance with the rules upon a dissolution.

- d) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

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?

Provision: [Section 69 of Indian Partnership Act, 1932]

- As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.
- The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,
 - the suit must be instituted by or on behalf of the firm which had been registered
 - the person suing had been shown as partner in the register of firms.

Answer:

- 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.

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?

Provision:

1. The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act, 1932.
2. The section provides that subject to the provisions of Section 22 of the Act, 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' [Sub-Section(1) of section 19].
3. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.

Answer:

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

- i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- ii) In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm.
- iii) In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

What are the consequences of Non-Registration of a Partnership Firm? Discuss

Or

"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?

Provision:

Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

These disabilities briefly are as follows:

1. **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
2. **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than '100 or pursue other proceedings to enforce the rights arising from any contract.
3. **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
4. **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

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?

Provision:

1. A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
 - a) the power of expulsion must have existed in a contract between the partners;
 - b) the power has been exercised by a majority of the partners; and
 - c) it has been exercised in good faith.
2. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.
3. The test of good faith as required under Section 33(1) includes three things:
 - a) The expulsion must be in the interest of the partnership.
 - b) The partner to be expelled is served with a notice.
 - c) He is given an opportunity of being heard.
4. If a partner is otherwise expelled, the expulsion is null and void.

Facts of case:

X, Y & Z were partners in a partnership firm carrying their business successfully. Due to some personal issue spouses of X & Y fought in a club in which X's wife was hurt badly. X got angry on this incident and convinced Z to expel Y from partnership. Further Y was expelled from partnership firm without any notice.

Answer:

Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

Provision:

1. Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership.
2. Each partner carrying on the business is the principal as well as an agent of other partners. Therefore, the act of one partner done on behalf of firm, binds all the partners.
3. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.
4. Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:
 - a) Parties have not retained any record of terms and conditions of partnership.
 - b) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
 - c) No account of the partnership was opened with any bank
 - d) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership

What is the true test of partnership?

Provision: [Section 6 of Indian Partnership Act, 1932]

1. In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.
2. For determining the existence of partnership, it must be proved.
 - a) There was an agreement between all the persons concerned
 - b) The agreement was to share the profits of a business and
 - c) The business was carried on by all or any of them acting for all.

3. Agreement:

Partnership is created by agreement and 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, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

4. Sharing of Profit:

- a) Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners.
- b) Although the right to participate in profits is a strong test 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.
- c) Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4, in determining the existence or otherwise of partnership.
- d) But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.
- e) According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.

5. **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. 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.

What do you mean by "implied authority" of the partners in a firm?

Provision: [Section 19 of Indian Partnership Act, 1932]

1. Subject to the provisions of section 22, 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.
2. The authority of a partner to bind the firm conferred by this section is called his "implied authority".
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-
 - a) Submit a dispute relating to the business of the firm to arbitration
 - b) open a banking account on behalf of the firm in his own name
 - c) compromise or relinquish any claim or portion of a claim by the firm
 - d) withdraw a suit or proceedings filed on behalf of the firm
 - e) admit any liability in a suit or proceedings against the firm;
 - f) acquire immovable property on behalf of the firm
 - g) transfer immovable property belonging to the firm; and
 - h) enter into partnership on behalf of.

4. Mode Of Doing Act To Bind Firm (Section 22):

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain

Provision: [Indian Partnership Act, 1932]

1. The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm.
2. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other, is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm.
3. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.
 - a) as a result of any agreement between all the partners (i.e., dissolution by agreement)
 - b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution)
 - c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution)
 - d) subject to agreement between the parties, on the happening of certain contingencies, such as:
 - (i) effluence of time;
 - (ii) completion of the venture for which it was entered into;
 - (iii) death of a partner

- e) insolvency of a partner.
- f) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and by intervention of court in case of:
 - i) a partner becoming the unsound mind
 - ii) permanent incapacity of a partner to perform his duties as such
 - iii) Misconduct of a partner affecting the business
 - iv) willful or persistent breaches of agreement by a partner
 - v) transfer or sale of the whole interest of a partner
 - vi) improbability of the business being carried on save at a loss
 - vii) The court being satisfied on other equitable grounds that the firm should be dissolved

Three brothers, X (age 19 years), Y (age 18 years), Z (age 17 years), decide to form a partnership with a provision that Z will share the profit only. Can they do so?

Provision: [Indian Partnership Act, 1932]

1. As per the provisions of the Indian Partnership Act, 1932, a partnership can be formed if all the partners are competent to contract.
2. A minor cannot become a partner in the partnership firm. But, after the formation of partnership, the minor can be admitted into partnership, but with the consent of all the partners, for benefits only.
3. A minor is incompetent to do the contract and such contract is void-ab-initio. Therefore, a minor cannot be admitted in the business of the partnership firm because the partnership is formed on a contract.
4. Though a minor cannot be a partner in a firm, he can nevertheless be admitted to the benefits of partnership under section 30 of the Indian Partnership Act, 1932. He may be validly have a share in the profit of the firm but this can be done with the consent of all the partners of the firm

Facts of case:

Three brothers, X (age 19 years), Y (age 18 years), Z (age 17 years), decide to form a partnership with a provision that Z will share the profit only.

Answer:

Here, Z is not competent to contract because he is a minor. Hence, a partnership cannot be formed with a minor as a partner but after the formation of partnership, a minor can be admitted to the benefit of the firm with the consent of all other partners.

X, Y and Z agreed to share the profits of a business carried on by all or any of them acting for all. The management and control were entrusted in X with power to restrict the rights of Y and Z. Is there a valid partnership?

Provision: [Indian Partnership Act, 1932]

1. As per the provisions 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.
2. Each partner carrying on business is the principal as well as agent of other partners. He is an agent in so far as he can bind other partners by his acts and he is the principal to the extent that he is bound by the act of other partners.

Facts of case:

X, Y and Z agreed to share the profits of a business carried on by all or any of them acting for all. The management and control were entrusted in X with power to restrict the rights of Y and Z.

Answer:

Here, the partnership between X, Y and Z is valid because all the essential elements of partnership exist under the partnership agreement.

Can X and Y be regarded as partners in the following cases?

- X and Y who jointly own a house, let it out on rent of Rs. 10,000 p.a. and share the rental income equally.
- X and Y who jointly own a house, converted the house into a hotel after investing Rs. 1,00,000 each. X manages the hotel and meets all expenses and retains half of gross earnings and hands over the other half to Y.
- X and Y who jointly own a house, converted the house into a hotel after investing Rs. 1,00,000 each. It was agreed that X would manage the hotel on his own and on behalf of Y and the net earnings would be divided equally.
- X, a publisher agrees to publish at his own expense, a book written by Y and to pay Y half of the net profits.
- X admits Y as a partner. Y does not bring any capital. He is not liable for any loss and is to receive Rs. 1,000 p.m. as salary in lieu of profits and have all the powers of a partner.

Answer:

- As per the provisions 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. Here, X and Y are merely co-owners who are sharing the gross returns arising from a joint property.
- As per the provisions 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. Here, X manages the hotel on his own and also bears all expenses on his own. X and Y are merely co-owners who are sharing the gross returns arising from a joint property.
- As per the provisions 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. Here, X and Y are in partnership as both have agreed that X would manage the hotel on his own and on behalf of Y and the net earnings would be divided equally. All the essential elements of partnership exist between X and Y.
- As per the provisions 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. Here, X and Y are not partners because sharing of profit, which is prima facial evidence, exists but mutual agency among X and Y, which is conclusive evidence, does not exist.
- As per the provisions 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. Here, X and Y are partners as X has admitted Y as a partner and also Y has all powers of a partner. Bringing capital or bearing losses are not essential elements of a partnership. X and Y have mutual agency between them.

- X, Y and Z are partners in an unregistered firm. Is the suit maintainable in the following cases?
- X filed a suit against the firm for the recovery of his share of profit.
 - X filed a suit against Y who had stolen the property of the firm.
 - The firm filed a suit against W, a customer for the recovery of the amount due from W.
 - The firm filed a suit against W, a customer for the recovery of the amount due from W and immediately after filing the suit, the firm got itself registered.
 - The firm filed a suit to restrain the third party from misusing the Patent right of firm.
 - W filed a suit against the firm for the recovery of Rs. 10,000 dues from the firm. W also owed Rs. 6,000 to the firm. The firm claimed a set off of Rs. 6,000.
 - X filed a suit for the dissolution of the firm.
 - X filed a suit for the accounts of a dissolved firm.
 - X filed a suit for claiming share of the assets of a dissolved firm.

Answer:

- As per the provisions of the Indian Partnership Act, 1932, an aggrieved partner of an unregistered firm cannot bring legal action against other persons or the firm. Here, X cannot file a suit against the firm for the recovery of his share of profit because the firm is unregistered.
- As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party or other co-partners. But, in this case, X had filed a suit against Y for stealing the property of the firm. X's suit is valid as it is a criminal suit not the civil suit.
- As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party. Here, the firm cannot recover its amount due from W, a customer of the firm, as the firm, being unregistered, cannot file a suit against third party (W).
- As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party. Here, the firm file a suit against W for the recovery of amount due from W. The firm filed the suit at the time when it was unregistered. Now, the firm cannot ratify this act by registering itself.
- As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party. But, here, the firm is restricting the third party from misusing its patent right, which is a criminal offence.
- As per the provisions of the Indian Partnership Act, 1932, third party can sue the firm even if the firm is unregistered and if the suit is filed against the firm and the claim value is more than Hundred Rupees, then firm cannot set-off. Here, W filed a suit against the firm for the recovery of Rs. 10,000 dues from the firm. W also owed Rs. 6,000 to the firm. W is entitled for the recovery of Rs. 10,000 from the firm. But the firm cannot set-off the claim of Rs. 6,000 because it is more than Rs. 100.
- As per the provisions of the Indian Partnership Act, 1932, partners can sue the firm for the dissolution, even if the firm is unregistered. X's suit for the dissolution of the firm is valid.
- As per the provisions of the Indian Partnership Act, 1932, partners can sue a dissolved firm for the settlements of accounts, even if the firm is unregistered. Here, X's suit is valid because he has sued a dissolved firm for the accounts.
- As per the provisions of the Indian Partnership Act, 1932, partners have the right to sue a dissolved firm for the realisation of the assets, even if the firm is unregistered. Here, X's claim is valid as the shares are assets of the dissolved firm and X can claim it even if the firm is unregistered.

X and Y are in partnership. X was appointed to buy goods for the firm. Is X accountable to firm for profit he makes in the following cases?

- a) X without the knowledge of Y, supplied his own goods to the firm at market price and made a huge gain.
- b) X without the knowledge of Y, obtains for his own sole benefit a lease of the building in which the partnership business is carried on.
- c) X without the knowledge of Y, received commission from Z, a supplier of goods to the firm.
- d) It is found out that X is engaged with Z in the supplying goods to the customers of firm.

Answer:

- a) As per the provisions of the Indian Partnership Act, 1932, the partners must not make 'secret profits.' Here, X, without the knowledge of Y, supplied his own goods to the firm and made huge gain. The gains made by X shall be claimed by the firm.
- b) As per the provisions of the Indian Partnership Act, 1932, the profits gain by any partner from the use of the firm's property, the profits shall be claimed by the firm. Here, X obtains the sole benefit by leasing the building belonging to the firm. The benefits so obtained by X, shall be claimed by the firm.
- c) As per the provisions of the Indian Partnership Act, 1932, any profit gained by the partner from a transaction of the firm, shall be claimed by the firm. Here, X, without the knowledge of Y, receives commission from Z, a supplier of firm. The commission received shall be claimed by the firm.
- d) As per the provisions of the Indian Partnership Act, 1932, partner shall not compete with the firm without the consent of the other partners. Any profits made by such unauthorised competition can be claimed by the firm. Here, X is engaged with Z in supplying goods to the customers of the firm. Profits gained by X shall be claimed by the firm.

X paid Y and Z a premium of Rs. 20 lacs on entering into partnership for 10 years and the firm is dissolved at the end of 8 years. State whether X is entitled to repayment of proportionate premium in each of the following alternative cases:

- a) If the dissolution is by the death of Y.
- b) If the dissolution is due to X's own misconduct.
- c) If the dissolution is in pursuance to an agreement which contains no provision for the return of the premium.
- d) If the dissolution is due to Y's misconduct.
- e) If the dissolution is due to the insolvency of Y.

Answer:

- a) As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. But, in case of death of one of the partners, the partner shall not be entitled for the premium. Here, the firm is dissolved due to the death of Y, so X shall not get the premium of the left-out period.
- b) As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. But, in case, the firm is dissolved due to the misconduct of the partner paying the premium, then such partner shall not be entitled to get the premium. Here, the firm is dissolved due to X's own misconduct. So, X shall not be entitled for the return of the premium.
- c) As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. But, in case, there is an agreement that contains no provision regarding the return of the premium, then such partner shall not be entitled to get the premium. Here, the

agreement contains no provision regarding the return of the premium after dissolution. So, X shall not be entitled for the return of the premium.

- d) As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. Here, X shall be entitled for the return of the premium as the dissolution of firm has happened due to Y's misconduct. X shall get the premium for the rest of 2 years i.e. $2 \times 2 = 4$ Lacs.
- e) As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. Here, X shall be entitled for the return of the premium as the firm is dissolved due to the insolvency of Y. X shall get the premium for the rest of 2 years i.e. $2 \times 2 = 4$ Lacs.

A, B, C, D and E are partners in a firm. They decided to dissolve the firm from 1st January but failed to give a public notice of its dissolution and continued the business of the firm even that date. C, a dormant partner retired on 4th Jan, D died on 5th January and E was declared insolvent on 10th January. On 11th January, A borrowed in the firm's name Rs. 20 lacs from R who was ignorant of the dissolution. Discuss the liability of partners for Rs. 20 lacs.

Provision: [Indian Partnership Act, 1932]

- As per the provisions of the Indian Partnership Act, 1932, a public notice of the dissolution of the firm is not required if:
 - the partner is adjudicated as insolvent, or
 - a dormant partner retires from the firm, or
 - the partner dies.
- The remaining active partners shall be liable for the acts done after dissolution except the partners mentioned in the above cases.

Facts of case:

A, B, C, D and E are partners in a firm. They decided to dissolve the firm from 1st January but failed to give a public notice of its dissolution and continued the business of the firm even that date. C, a dormant partner retired on 4th Jan, D died on 5th January and E was declared insolvent on 10th January. On 11th January, A borrowed in the firm's name Rs. 20 lacs from R who was ignorant of the dissolution.

Answer:

Here, A and B are liable for Rs. 20 Lacs but C, being a dormant partner, D and E are not liable for Rs. 20 lacs because C retires from the firm and dormant partner's retirement does not make him liable for the acts done after dissolution. D dies and E was adjudicated as insolvent. So, D and E shall also not be liable for any dealings or transactions subsequent to dissolution.

State with reason whether the following agreements are valid or void:

- An agreement among the partners that no partner shall not carry on any business other than that of the firm while he is a partner.
- An agreement with an outgoing partner that he will not carry on any business similar to that of the firm in the same locality for the next 3 years.
- An agreement among the partners upon the dissolution of the firm that some or all of them will not carry on a business similar to that of the firm in the same locality for the next 3 years.
- An agreement by a partner with the buyer of goodwill of the firm that he will not carry on any business similar to that of the firm in the same locality for the next 3 years.

Answer:

- a) As per the provisions of the Indian Partnership Act, 1932, the contract between the partners may be express or implied by consistent course of act. The contract between the partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner. Here, the above agreement between the partners is valid.
- b) As per the provisions of the Indian Partnership Act, 1932, every outgoing partner has the right to carry on competitive business under certain conditions. Here, the agreement with the outgoing partner, that he will not carry on any business similar to that of the firm in the same locality for the next 3 years, is valid.
- c) As per the provisions of the Indian Partnership Act, 1932, the contract between the partners may be express or implied by consistent course of act. The contract between the partners may provide that the partners shall not carry on any business other than that of the firm after dissolution under certain conditions. Here, the above agreement between the partners is valid.
- d) As per the provisions of the Indian Partnership Act, 1932, if goodwill of the firm is sold after dissolution, then existing partners cannot continue the business unless:
- Agreement of sale of goodwill provides for something else, or
 - Goodwill has been purchased by any of the existing partner.
- Here, the agreement by a partner with the buyer of goodwill of the firm, that he will not carry on any business similar to that of the firm in the same locality for the next 3 years, is valid.

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

- Partnership at will
- Particular partnership

Answer: [Indian Partnership Act, 1932]

(i) Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when:

- no fixed period has been agreed upon for the duration of the partnership; and
- there is no provision made as to the determination of the partnership.

These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will. Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

(ii) Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

"Partner indeed virtually embraces the character of both a principal and an agent". Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932.

Provision: [Indian Partnership Act, 1932]

- Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

2. A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.
3. Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent.
4. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent.
5. The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.
6. The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Provision: [Section 37 of Indian Partnership Act, 1932]

Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firm with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

- a) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or
- b) Interest at the rate of 6 per cent annum on the amount of his share in the property.

Facts of case:

A, B and C are partners in firm. As per the partnership deed, A is entitled to 20 % of partnership property and profits. A retires from firm and dies after 15 days. B and C without settling the accounts continue the partnership business.

Answer:

Based on the previously mentioned provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A shall be entitled, at his option to:

- a) The 20% shares of profits (as per the partnership deed); or
- b) Interest at the rate of 6 per cent per annum on the amount of A's share in the property.

P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z 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?

Provision: [Indian Partnership Act, 1932]

1. As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining

partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

- (i) The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69.(2) of the Act namely,
- (ii) The suit must be instituted by or on behalf of the firm, which had been registered.

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:

- a) Whether Ram's private estate is liable for the price of the machine purchased by the firm?
- b) Against whom can the creditor obtain a decree for the recovery of the price?

Provision: [Indian Partnership Act, 1932]

The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that 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. Therefore, considering the above provisions, the problem may be answered as follows:

- (i) Ram's estate in this case will not be liable for the price of the Machinery purchased.
- (ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was not debt due in respect of the goods in Ram's life time.

What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?

Provision: [Indian Partnership Act, 1932]

1. The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-
 - a) The firm's name
 - b) The place or principal place of business of the firm,
 - c) The names of any other places where the firm carries on business,
 - d) the date when each partner joined the firm,
 - e) the names in full and permanent addresses of the partners, and
 - f) the duration of the firm.
2. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.
3. Each person signing the statement shall also verify it in the manner prescribed.

4. A firm name shall not contain any of the following words, namely: 'Crown', Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

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?
Provision: [Indian Partnership Act, 1932]

1. Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.
2. The rights of such a transferee are as follows:
 - a) During the continuance of partnership, such transferee is not entitled
 - i) to interfere with the conduct of the business,
 - ii) to require accounts, or
 - iii) to inspect books of the firm.
 - b) 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.
 - c) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
 - i) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - ii) for the purpose of ascertaining the share,
 - d) He is entitled to an account as from the date of the dissolution.
3. By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners.
4. 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.
5. A partner's interest in the partnership can be regarded as an existing interest and tangible property, which can be assigned.

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

Retirement of a partner

Insolvency of a partner

Provision: [Indian Partnership Act, 1932]

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:
4. Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
5. Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Insolvency of a partner (Section 34)

1. The insolvent partner cannot be continued as a partner.
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
5. Ordinarily but not invariably, 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

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.

Provision: [Section 28 of Indian Partnership Act, 1932]

1. Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.
2. It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.
3. You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.
4. The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

Facts of case:

In the given case X & Y are partners in a partnership firm. X introduced A, a manager as a partner to Z who is a trader. A remained silent on this. Z believing on same supplied 100 t.v sets to A on credit. Z did not get the amount after the expiry of the time period from the firm and he filled a suit against X and A for recovery of price.

Answer:

In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

"Dissolution of a firm is different from dissolution of Partnership". Discuss.

Provision: [Indian Partnership Act, 1932]

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.

Answer:

Therefore, considering the above points we can conclude that Dissolution of a firm is very much different from dissolution of partnership.

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?

Provision: [Indian Partnership Act, 1932]

1. 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.
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.
3. 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

Answer:

- (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.

When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

Answer: [Section 38 of 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.

What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?

Provision: [Indian Partnership Act, 1932]

1. 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.
2. 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.

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

Provision: [Section 34 of Indian Partnership Act, 1932]

Effects of insolvency of a partner are as follow:

1. The insolvent partner cannot be continued as a partner.
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
5. 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.

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.

Provision: [Indian Partnership Act, 1932]

1. Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners.
2. 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.

Answer:

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partners hip assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

Provision: [Indian Partnership Act, 1932]

1. Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership.
2. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners.
3. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.
4. Circumstances when partnership is not considered between two or more parties:

Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

- a) Parties have not retained any record of terms and conditions of partnership.
- b) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
- c) No account of the partnership was opened with any bank

- d) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

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?

1. In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.
2. For determining the existence of partnership, it must be proved.
 - a) There was an **agreement** between all the persons concerned
 - b) The agreement was to **share the profits** of a business and
 - c) the business was **carried on by all or any of them** acting for all.
3. **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.
4. **Sharing of Profit:** Sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test 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.
5. **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. 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.

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?

Provision: [Section 33 of Indian Partnership Act, 1932]

1. A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
 - a) the power of expulsion must have existed in a contract between the partners;
 - b) the power has been exercised by a majority of the partners; and
 - c) it has been exercised in good faith.

2. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.
3. The test of good faith as required under Section 33(1) includes three things:
 - a) The expulsion must be in the interest of the partnership.
 - b) The partner to be expelled is served with a notice.
 - c) He is given an opportunity of being heard.
4. If a partner is otherwise expelled, the expulsion is null and void.

Facts of case:

In given question M/s XYZ & Associates is a partnership firm in which X, Y & Z are senior partners. They are engaged in the business of carpet manufacturing and exporting it to foreign countries. They appointed Mr. G an expert in the field of carpet business as their partner. Afterwards Mr. G. was blamed for conducting unauthorized activities and was expelled from partnership.

Answer:

Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified 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 proper notice and opportunity of being heard has to be given to Mr. G.