chapter-4

Unit 1 The Indian Partnership Act, 1932

general nature of partnership

note: Partnership Agreement is also known = Partnership De

Partnership – Relation between partners
Firm – partners who have entered into partnership are collectively called Firm.
Firm name – Name under which their business is carried on

Elements

- **Association of 2 or more persons**
  - Firm & minor cannot be partner
  - Limit 50
- **Agreement**
  - must be the result of an agreement
  - may be oral or written
  - may be express or implied
- **Business**
  - includes trade occupation & profession motive (acquisition of gain)
- **Sharing of profit**
  - sharing of profit is essential
  - sharing loss ≠ essential
- **carried on by all or any of them acting for all** — KD Kamnath & co.
  - Each partner is principal as well agent
  - He can bind other partner by his act (agent)
  - He is bound by the acts of other partner (principal)

Test of Partnership

- **Agreement** — Relation of partnership arises from contract not from status
- **Sharing of Profit** — is prima facie evidence not conclusive evidence
- **mutual Agency** — Sati rayan Das gupta vs. Dasyu ... mukherjee
  - Existence MA is cardinal principal's law
  - Each Partner carrying on business is principal as well as agent.

Kind of Partnership

- **with regard to duration**
  - Partnership at will
  - Partnership for a fixed period
- **with regard to the Extent of the Business**
  - Particular Partnership
  - General Partnership

Explain

Types of Partners

- **active or Ostensible Partner** — actively participate in the conduct of Business
- **Sleeping/Dormant Partner** — not actively participate
- **nominal Partner**
  - lend his name
  - without having any real interest
  - not entitled to share any profit
  - Does not take part in conduct of Business
  - liable to 3rd party
- **Partner in Profit only**
  - entitled to share profit only
  - not liable for losses
  - liable to third party for all acts of profit only
- **incoming Partner** — admitted with the consent of all partners, not liable for act done before admission
- **Outgoing partner**
  - who leaves the firms
  - liable for all act till public notice is given
- **Partners by holding out only**
  - Partner by estopple
- **Sub partner**

Partnership at will

not fixed period agreed upon & no provision as to determination of partnership

- Partners = Fixed term continued after Expiry of term
- Can be dissolved any time by giving notice in writing

Partnership for fixed Period

- Contract for duration of Partnership

General Partnership

- Partnership constituted with respect to Business in General

particular Partnership

- Particular adventure or undertaking
- Liability extends to particular venture or undertaking

Partnership Deed

Partnership Deed :- Document in writing containing various terms & conditions as to the relationship of Partner to each other is = PD

Specific Points

- admission & retirement of Partner
- Settlement of A/c on Dissolution
- Expulsion of partner

General Points

- name of partner & firm
- place of Business & Date
- Nature of Business & Duration
- IOD, IOC & Interest of Loan
- salary & commission
- PSR
- Capital

Chapter-4 Unit:02 Relations of Partners

Relation of Partners to one another

- Agreement of Partner (Sec.9)
  - General duties of partners
- Duty to indemnity loss caused due to fraud (Sec.10)
- Determination of right & duties of partner by contract betn the partners (Sec.11)
- Conduct of Business Sec.12
  - rights to take part in conduct of B.
  - Right to be consulted
  - Right to access of book
  - Right to legal hier/representative/duly authorised agent
- Mutual rights & liability
  - no right of Remuneration
  - Int on cap.
  - Int. on Advance
  - Right to be indemnified
  - Right to indemnified the firm.

Partnership Property (Section-14)

1. Property of firm (Sec.14)
   - All property right & interest brought partner
   - All properties right & interest acquired by firm
   - Goodwill

   Note: Property of firm is different from property of Partner
2. Application of the property of the firm (Sec.15)

- Personal Profit earned by partner (Sec.16)

Rights & Duties of partner after change in constitution of firm (Sec.17)

- After change in constitution of firm
- After expiry of term
- where additional undertakings are carried out.

Relation of Partner of third party.

- Partner to be agent of firm (Sec.18)
- Implied authority of Partners as agent of firm (Sec.19)
- Extension & restriction of partners implied authority (Sec.20)
- Partners authority is an emergency (Sec.21)
- Mode of doing act to bind firm (Sec.22)

Effect of Admission by a partner (Sec.23)

An admission or representation made by partner concerning the affairs of the firm is evidence against the firm if made in ordinary course of Business.

Effect of notice to an active partner (Sec.24)

notice to partner operates as a notice to firm

EXCEPTION - fraud on the firm by OR with the consent of Partner.

liability of 3rd Party

- liability of a partner for acts of the firm (Sec.25)
- liability of the firm wrongful act of partner (Sec.26)
- liability of firm for misappropriation by partner (Sec.27)

Right of a transferee of a partner's interest (Sec.29).

- During continuance of partnership
  - transferee is not entitled
    1. Interfere the conduct of Business
    2. Require an account
    3. Inspect books of firm
  - transferee is entitled to receive share of ~~part~~ profit only (cannot challenge the Account)
- On dissolution of firm/retirement of transferring partner is entitled - Receive share of Asset of firm & Accounts from date of dissolution.

Minor admitted to the Benefit of Partnership (Sec.30)

- Right
- liability
  - Before attaining majority
  - After attaining majority
    - when he elects to become partner
    - elects not to become Partner

LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT

- Introduction of A partner (Sec.31)
- Retirement of a Partner (Sec.32)
- Expulsion of a partner (Sec.33)
- Insolvency of a partner (Sec.34)

Rights of Outgoing Partners

- to carry on competing Business (Sec.36)
- to share subsequent profit in certain cases (Sec.37)

- Revocation of continuing guarantee by change in constitution of firm (Sec.38).

chapter-04 Unit-03 Registration & dissolution of a firm,

~~Dissolution~~ Registration of firm

Application for Registration of firm (sec-58)

- Statement is prescribed form & accompanied by prescribed feet stating certain details.
- Statement shall be signed by all the partners or by their agent specifically authorised in this behalf also same should be verified
- certain words expression or implying the sanction or approval or patronage of Govt. are ≠ allowed.

Registration (sec-59)

Registrar shall record the entry of the statement in Register

Late Registration on Payment of Penalty (sec-59A-1)

late Registration on payment of penalty

Dissolution of a firm (section-39 to 47)

Dissolution of firm Vs Dissolution of Partnership

- continuation of Business
- winding up
- Order of court
- scope
- final closure of Books.

(Imp) ★ Dissolution of firm

Without the court Order (sec-40 to 43)

- mutual Agreement (sec-40)
- compulsory Dissolution (sec-41)
- On happening of certain event by notice (sec-42)
- By notice (sec-43) (partnership at will)

By order of court (sec-44)

1. Insanity
2. misconduct
3. Permanent capacity
4. Persistent breach of Agreement
5. transfer of Interest
6. continuous loss
7. Just & Equitable Ground.

CONSEQUENCE OF NON-REGISTRATION (section-69)

Disabilities

- no suit in civil court by Firm or other co-partners against third party
- no relief to partner for set-off or claim
- Aggrieved partner cannot bring legal action against other partners or the firm
- third party can sue the firm.

Exceptions

Consequences of Dissolution (sec-45-55)

- **Section 45** Liabilities for Acts of partner done after dissolution
- **Section 46** Right of Partner to have Business wound up
- **Section 47** Continuing authority of partner for the purpose of winding up
- **Section 48** Mode of settlement of partnership account
- **Section 49** Payment of firm debt & of separate debts.