

Chapter-4

Unit-1 The Indian Partnership Act, 1932

note: Partnership Agreement is also known as Partnership Deed

general nature or partnership

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

Association of 2 or more persons

- firm & minor cannot be partner
- Limit 50

Elements

- must be the result of an agreement
- may be oral or written
- maybe express or implied

Business

- includes trade occupation & profession motive acquisition or gain

Sharing of Profit

- sharing of profit is essential
- sharing loss is not essential

carried on by all or any of them acting for all **KD Kinnuathu & Co.**

- Each partner is principal as well as 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 arises Partnership from contract not from status

Sharing of Profit

is **prima facie** evidence not conclusive evidence

Agency

- Existence of MA is carnal principle
- 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 or Dormant Partner

- not actively participate

Outgoing Partner

- who leaves the firm
- liable for all act till public notice is given

Incoming Partner

- admitted with the consent of all partners
- not liable for act done before admission

Partners by holding out only

- Partner by estoppel

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

Subpartner

Partnership at will - not fixed period agreed upon & no provision as to termination of part

- Partners = fixed term
- Continued after expiry of term
- Can be dissolved anytime 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 - document in writing containing various terms & conditions as to the relationship of partner to each other is = PD

Specific Points

- admission & retin of partner
- Settlement of A/c on Dissol.
- Expulsion of partner

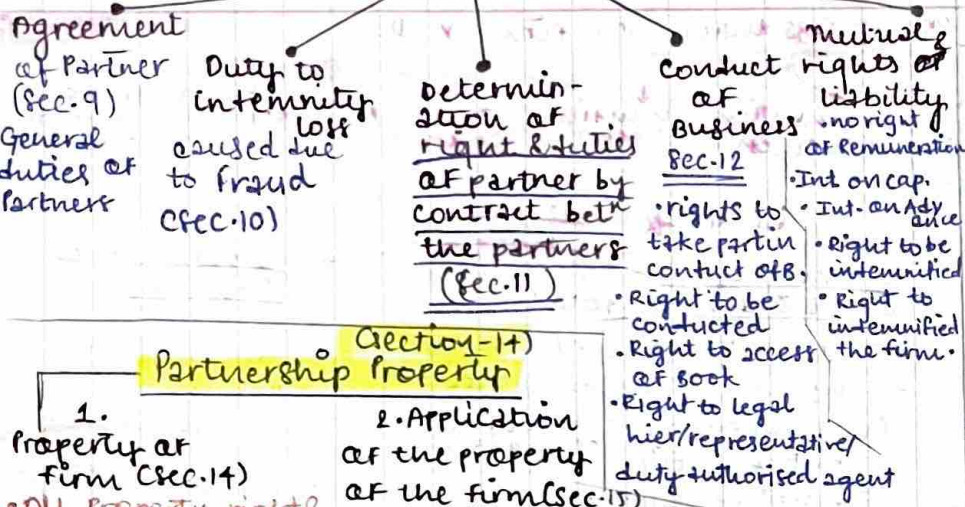
General Points

- name of partner & firm
- Place of business & date
- Nature of business & duration
- 100, 100, & Interest of loan
- salary & commission
- P&L
- Capital

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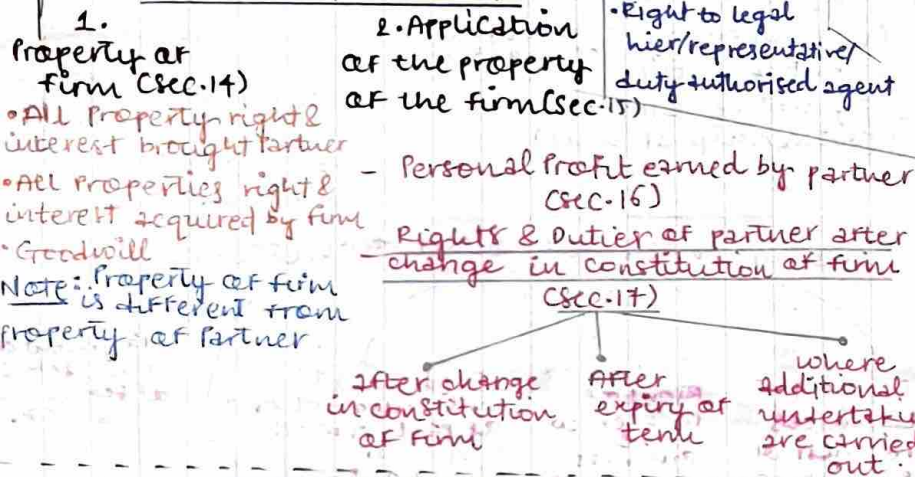
unit-02 relations of Partners

Relation of Partners to one another

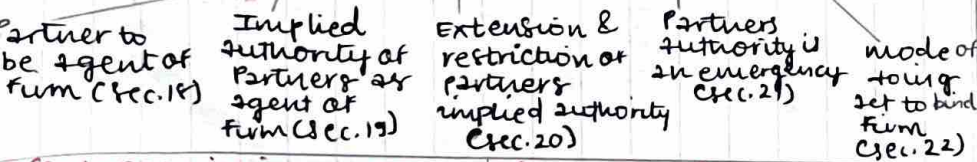


Section-14

Partnership Property



Relation of Partner of third party



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 operator & a notice to firm

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

Liability of a partner for acts of the firm (Sec. 25)

Liability of 3rd party

Liability of the firm for 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 profit only (cannot challenge the account)

On dissolution of firm/retirement or transferring partner is entitled to receive share of Asset of firm & Accounts from date of dissolution.

minor Admitted to the Benefit of Partnership (Sec. 30)

Right

Before attaining majority

Liability

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. 35)

to share subsequent profit in certain cases (Sec. 37)

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

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Unit-03

Registration & Dissolution of a firm

Registration & Dissolution of firm

Application for Registration of firm (Sec-58)

- Statement is prescribed form & accompanied by prescribed fees 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 patronage approval or to Govt. are not 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 a 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)

- Insanity
- Misconduct
- Permanent incapacity
- Persistent breach of Agreement
- Transfer of interest
- Continuous loss
- 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 partners 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 Act 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
Note of settlement of Partnership account

Section 49
Payment of firm debt & of separate debts.