

Module Read in sequence 2, 3, 1

THE INDIAN PARTNERSHIP ACT 1932

Sequence 1, 3, 2

Definition

According to section 4 para 1 of The Indian Partnership Act 1932

"Partnership is the relationship among persons who have agreed to share profits of the business carried on by all or any of them acting for all".

Individually → Partner

Collectively → Firm

Essentials

- minimum 2 persons required as per Partnership Act 1932.
- maximum numbers are concerned it is 100 as per companies Act, 2013 (50 as per companies rules, 2014).
- Only a natural and artificial person can be a partner.
- A firm cannot be a partner but a company can be but not two companies.
- Partnership is a contractual relationship arise out of agreement which may be oral / written.
- To run some business and not for charitable purpose. Business includes trade, profession or occupation.
- Voluntary & contractual.

- Outcome of business may be profit or loss and it must be distributed among partners either in an agreed ratio or in an equal ratio.
- Partnership is nothing but just an extension of law of agency where each & every partner is treated as principal and each and every partner is treated as an agent.

- Association of two or more persons
- Agreement
- Business
- Agreement of share profits
- Business carried on by all or any of them acting for all.

Duration of Partnership

- Partnership may be for a fixed term and as soon as term is over, it may come to an end but here partners have an option to continue and if they decide to continue then it will result into partnership at will.
- It may be for a particular adventure and as soon as adventure is over it will come to an end, but there here again partners have an option to continue and if they decide to continue then it will.

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- Partnership may be at the will of partners where no time span is decided well in advance and where partners keep on carrying on the firm but at any point of time any partner may dissolve the firm by giving notice to all other partners of the firm.

Partnership Deed

It is nothing but a basic document containing terms of engagement among partners. Eg:- Profit sharing ratio, interest on capital, etc. It is not compulsory to have such partnership deed but it is advisable as it is useful in case of disputes among partners.

- Drafted with care & stamped acc: stamp Act, 1899
- Partnership comprises immovable property, instrument $\rightarrow$ writing $\rightarrow$ stamped $\rightarrow$ registered under act.

- Name of firm
- Partner's names (all)
- Nature & place of business
- Date of commencement
- Duration
- Capital contribution
- Profit sharing Ratio
- Admission & retirement
- Rates of int. on capital & drawings & loans
- Provisions of settlement of Account during Dissolution
- Salaries or Commission provision.

ISRO 447! - Provision of expulsion of partner in case of DOMS Gross breach of Duty or fraud.

Registration of Partnership Firm

- Such registration is not compulsory but it is advisable as an unregistered firm suffers from following disabilities.

① Partners of unregistered firm cannot sue internally.

② They cannot sue on third party but third parties can sue on them.

③ They cannot claim set off for an amount exceeding ₹100.

- refer to question/answer of it.

Types of Partners

1. Active Partner: (Ostensible Partner)

- an active partner invest capital, share profits, bear losses take part in day to day daily routine and in case of his retirement public notice is required to be given.
- Acts as an agent
- ordinary course of business
- public notice in order to absolve himself.
- Partner by agreement
- actively participates in conduct of the Partⁿ.p.

2. Sleeping Partner / Dormant Partner:-

Invest capital, share profit, bear losses, do not take part in day to day routine of business and in case of his retirement no public notice is required to be given.

- Partner by agreement
- does not actively take part in conduct of partn^r
- losses are liable

3. Nominal Partner:-

is not invest capital rather he invests his name in partnership firm and he may or may not share the profits of the firm.

- lends his name to firm.
- liable to 3rd party for all firm's act.

4. Partner in Profit Only:-

apparently the name indicate that such partner share profit and do not bear losses but in fact he is also bearing losses but in fact his loss bearing capacity is limited only to the extent of amount invested in Partnership firm.

- entitle to share the profits

5.7 Partner by holding out :- [Section 28]

If a person holds out to the public that I am being a partner of a particular partnership firm even though he is not and if an outsider deals with a person believing him as a partner then the transaction is between will be binding on the original partner of the partnership firm and the person making such false statement is known as partner by holding out.
(in reverse case partner by estoppel)

- when a person represent himself
- knowingly permits himself
- He is liable
- he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

6.7 Minor Partner :-

According to the Indian Contract Act 1932, a minor is not having any contractual capacity but according to Partnership Act a minor can be admitted to the partnership firm with the consent of all other partners and only for the benefits of the Partnership firm and not for the losses.

- Before becoming major he can share profits and so share properties inspect accounts and so far as his liabilities are concerned. It is only limited only to the extent of amount invested.
- On attaining majority, he is required to give a public notice within six months whether he wants to continue with the partnership firm or not. If he is not giving such notice then at the end of the six months it will be deemed as if he has continued with the firm and in such case he will have personal liability for all transactions that has taken place from date when he was admitted to the partnership firm as a minor.

Reconstitution of Partnership Firm

1. Admission of a Partner:-

A new partner may be admitted to the partnership firm with the consent of all partners and newly admitted partner is not responsible for any transaction that has taken place before the date of his admission.

2/2 Retirement of a Partner:-

A partner may retire as per agreement or by giving notice or with the consent of all partners. A retired partner is responsible for all transactions that has taken place before his retirement and he will continue to be liable even ~~for~~ after his retirement if a public notice of his retirement is not given.

- with consent of all
- express agreement.
- at will, by giving notice in writing, of his intention to retire.

3/2 Expulsion of a Partner:- Section 33

A partner may be expelled if:

- such right is given in partnership deed.
- exercised by majority.
- exercised in a good faith means in the interest of partnership firm.

Before we expel a partner, a notice as well as an opportunity of being heard should be given, if it is not given then it will be treated as irregular expulsion where the partner expelled may demand reinstatement in a business or share in profits or pro-
port parties of the firm.

- must be in interest of firm
- existed in contract b/w partners
- exercised by majority
- exercised in good faith
- gives an opportunity of being heard
- expelled with ~~served~~ served notice

4. Death or Insolvency of a Partner:-

If nothing is given in a partnership deed, on happening of death or insolvency of a partner, the entire firm shall be dissolved. We are not required to give notice about insolvency of any partner and after his insolvency any transaction done by him is not binding on other partners.

5. Transfer of Partner's Interest:-

A partner may transfer his interest by sale or charge. Here transferee may share the profits of the firm but he cannot take part in day to day business of the firm. or he cannot inspect books and accounts of the firm.

Duties Rights :-

- ① Rights to take part in day to day routine of business.
- ② Right to inspect books and accounts.
- ③ Rights to share profits either in agreed or equal rates.
- ④ Right to get interest on capital if there is profit.
- ⑤ Right to get interest on advances at 6% whether there is profit or not.
- ⑥ Right to stop admission of a new partner.
- ⑦ Right to use properties of the firm.
- ⑧ Right to retire from the partnership firm and on retirement properties of the partnership firm must be adjusted otherwise retiring partner shall have an option to share subsequent profit or to get interest 6% on the amount kept in the firm.
- ⑨ Right to be consulted on every matters of the firm and if it is a small matter, majority shall take decision but if it is an important issue then Consent

of all needed.

- (10) If any partner by has incurred any expenses in emergency to save firm from losses then he can recovered from the firm.

Duties:-

- (1) Duty to bear losses of the firm.
- (2) Duty to use properties of the firm exclusively for the benefits of the firm.
- (3) Duty not to make any private profit or profit by doing competition and if made the disclose and share it with other partners.
- (4) To provide correct accounts to partners & representative.
- (5) To work for common advantage of the firm.
- (6) To be just and faithful to other partners.
- (7) To indemnify for loss caused by fraud.

- It should be a usual transaction.
- It should be in the name of firm
- It should be in which dealings.

Implied Authority:-

• Partners do following after implied authority:-

- 1) He can purchase and sale goods on behalf of the firm.
- 2) He can collect and make payments on behalf of the firm.
- 3) He can borrow money in a normal course on behalf of the firm.
- 4) To appoint lawyers.
- 5) To appoint employees.
- 6) To draw, write bills of exchange
- 7) To pledge the goods.

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• Partners cannot do following with the help of implied authority:-

- 1) He cannot file case against third party on behalf of the firm.
- 2) He cannot withdraw case.
- 3) He cannot purchase or transfer immovable property.
- 4) He cannot open a Bank account in his own name on behalf of the firm.
- 5) He cannot become partner in any other firms on behalf of the original firm.

• Partners Implied authority & third Party:-

- 1) If any private restrictions are made on partners implied authority then it will not affect third party unless third party has knowledge about it.
- 2) If any third party has filed case against any.
- 3) If any partner has committed any fraud with the third party then against third party the whole firm will be held liable.

Dissolution

⇒ In case of dissolution of partnership one or more partners retire whereas the remaining partner carry on the firm with the same firm name whereas in case of dissolution of partnership firm there is complete breakdown among all the partners and none of the partner will carry on the firm with the firm name.

* Dissolution of the firm without the order of court.

- 1) Fixed term is over.
- 2) Particular adventure is over.
- 3) In case of partnership at will by giving notice to all other partners.
- 4) On happening of death or insolvency of any of the partners.
- 5) Business of the firm with ~~the~~ has become unlawful.

* Dissolution of the firm with the order of court.

→ Court is never giving suo Moto (on its own) order. There should be application by any partner or outsider and on receipt of such application court may give

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dissolution order on any of the following ground:

- 1.) Any partner has become unsound.
- 2.) Any partner has become permanently incapable of working.
- 3.) Business is continuously making losses.
- 4.) Any partner has transferred his interest to third parties.
- 5.) There is lack of fiduciary relationship among partners.
- 6.) There is continuous quarreling among partners.
- 7.)

Settlement of Accounts

- 1.) Dispose off all assets of the firm including goodwill.
- 2.) Amount received should be applied in following manner.
 - (i) Towards third party liability.
 - (ii) Towards advances given by partners.
 - (iii) Towards partners capital contribution.
 - (iv) surplus if any then distribute among partners.
- 3.) If there is any shortfall then partners will have first out of profits then out of capital and then partners will have to bring their personal assets.

Properties of the Firm

• Properties of partnership firm include:-

- 1) Properties contributed as a partner.
- 2) Properties purchased out of profits.
- 3) Goodwill of the firm.

Registration & Dissolution of Firm

★ Registration of firm:-

- effected any time
- post or delivering
- to Registrar of the area
- Business is situated OR proposed to be situated.

• Details:-

- Firm's name
- Firm's place
- Any other place firm carry business.
- Date of joined the firm by partners.
- Duration of firm
- Name & address of the partner.

2) Signed by Partners

3) Verify by partners along with the sign

4) Firm's name not contains

the word like, 'crown', 'Emperor', 'Imperial', 'King', 'Queen'.

* Registration of Firm

May effected at the time of a suit it is necessary to withdrawn suit and register the firm & file a fresh suit.

* Non Registration of Firm:-

1.) No suit in civil court by firms or other co-partners against third party.

- Firm / other person can't action against 3rd party for breach of contract.

- In other words, registered firm can file a suit against third party and person suing is register of firm as partners in firm.

2.) No relief to partners for set off claims:-

- Neither firm nor partner can claim set off, if the suit valued more than ₹100.

3.) Aggrieved Partner cannot bring legal action against other partner or firm:-

4.) Third Party can sue:-

- unregistered firm

75RO 447! 3rd party can sue

Exception (Bouso).

- 3rd party sue to firm.
- don't exceed claim of ₹100 set off.
- sue for dissolution, accounts settlement, realization of property.
- Power of official assignee, release the property of insolvent partner.

* Dissolution Without Order of Court:-

1) By Agreement

- consent between all the partners.

2) Compulsory Dissolution

- Happening of any event.
- Unlawful for the business.

3) Dissolution on happening of certain Contingencies:-

- fixed term expiry.
- Death
- Adjudicated of a partner as an Insolvent.

4) Will:-

- By giving notice
- Date is mentioned
- No date mentioned, as from the date of communication of the notice.

White collar crime means non-violent crime where the primary motive is typically financial in nature.

* Dissolution with the Order of Court:-

(1) Insanity / Unsound Mind:-

- Partner unsoundmind.
- Court dissolve the firm.

(2) Permanently Incapable:-

- such permanent incapacity may result from physical disability or illness, etc.
- Court dissolve the firm.

(3) Misconduct:-

- After prejudicially carrying on the business.
- The nature of business decide whether an act is misconduct or not.

(4) Persistent breach of agreement:-

- willfully or persistently commits breach of agreement.
- Embezzlement a white collar crime in which an individual or entity plays fraud and misappropriation the assets entrusted to them.

(5) Continuous Loss:-

- except as a loss in future also.
- Court may order for dissolution.

(6.) Just & Equitable Grounds:-

- Deadlock* in management
- Loss of substratum
- Gambling by a Partner.

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* a situation, typically one involving opposing parties, in which no progress can be made.

Note:- Read Consequences of Dissolution from Module. please :-)

✱ ✱ ✱ All the Best ✱ ✱ ✱