

# CA Foundation

## Paper 2 - Business Law

### Chapter 4 (IPA)

### *The Indian Partnership Act, 1932*

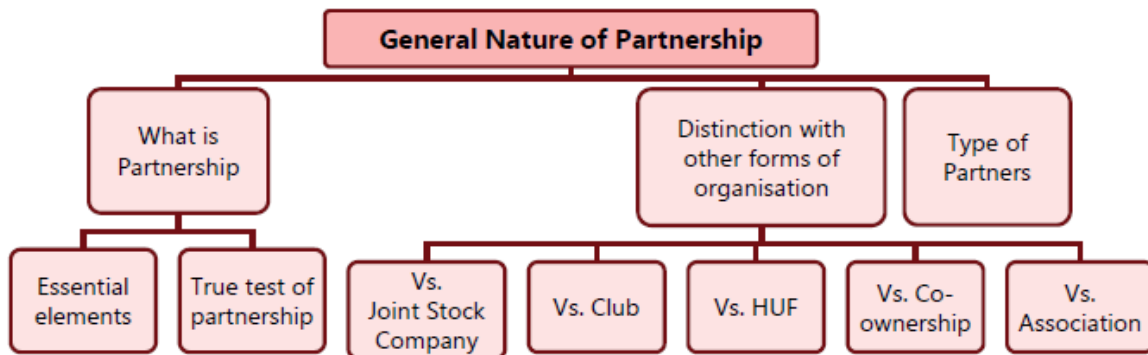
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## Unit 1 - General Nature of Partnership



### PRE-REQUISITE

- Applicable to the whole of India
- Act became applicable from 1st October 1932
- This act at this level cover sections - 1 to 74

### DEFINITION OF 'PARTNERSHIP', 'PARTNER', 'FIRM' AND 'FIRM NAME' (SECTION 4)

- '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.

**Partners** - Persons who have entered into partnership with one another individually and

**Firm** - Collectively and

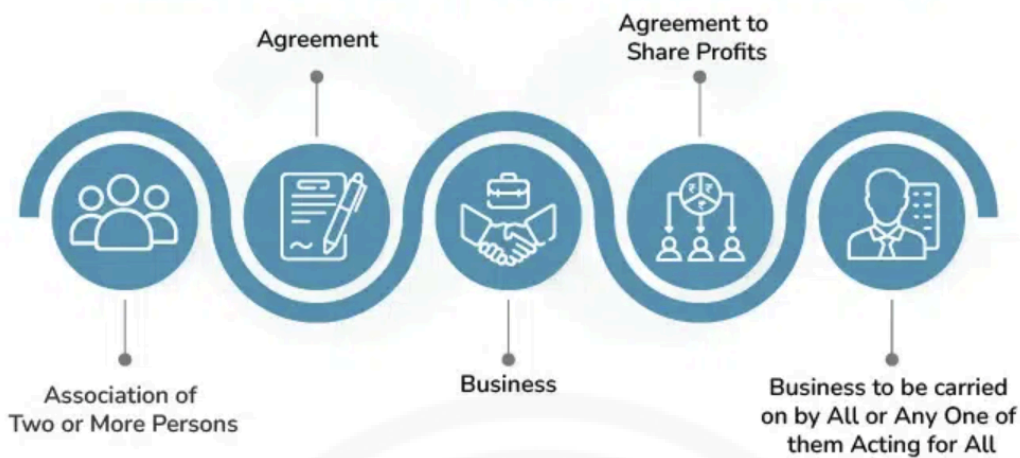
**Firm Name** - The name under which their business is carried on.

### ELEMENTS OF PARTNERSHIP

- The definition of the partnership contains the following five elements
- which must co-exist
- before a partnership can come into existence.

## 4.1 ► General Nature of Partnership

### Essential Requirements of a Partnership Act, 1932



Asso. of 2 or more ( एक से भले दो )	Agreement ( साँझा )	Business ( धंधे से बड़ा कुछ नहीं )	Share profit ( रोकड़ा )	By all or any one acting for all ( हमेशा "हम" - मैं नहीं )
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#### 1. ASSOCIATION OF TWO OR MORE PERSONS:

- Partnership is an association of 2 or more persons.
- Again, only persons recognized by law can enter into an agreement of partnership. ( **NATURAL OR LEGAL PERSON** )
  - A firm - since it is not a person recognized in the eyes of law cannot be a partner.
  - A minor cannot be a partner in a firm,
  - ★ but with the consent of all the partners, may be admitted to the benefits of partnership.

NATURAL PERSON AND MAJOR	YES
NATURAL PERSON AND MINOR	NO
FIRM	NO
LLP	YES
COMPANY	YES

- MAXIMUM NO. OF PARTNERS -
  - The partnership Act is Silent
  - Section 464 of the Companies Act, 2013 - 50 partners

## 2. AGREEMENT:

- There must be an agreement entered into by all the persons concerned.
- This element relates to **voluntary contractual** nature of partnership. Thus, the nature of the partnership is **voluntary and contractual**.
- An agreement from which relationship of Partnership arises may be express.
- It may also be implied -
  - from the **act** done by partners and
  - from a **consistent course** of **conduct** being followed,
  - showing **mutual understanding** between them.
- It may be **oral** or in **writing**.

## 3. BUSINESS:

- First, there **must exist a business**.  
**'Business'** includes **every trade, occupation and profession**. The existence of business is **essential**.
- Secondly, the **motive** of the business is the **"acquisition of gains"** which leads to the formation of partnership.
- Therefore, there can be **no partnership** where there is **no intention** to carry on the **business** and to **share the profit** thereof.

## 4. AGREEMENT TO SHARE PROFITS (Not losses) :-

- The sharing of profits is an essential feature of partnership **(NOT TRUE TEST OF PARTNERSHIP - Will be covered ahead)**
- There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. ★
- Partners must agree to share the profits in any manner they choose.
- But **an agreement to share losses is not an essential element**.

## 4.1 ► General Nature of Partnership

- It is open to one or more partners to agree to share all the losses. (Choice and not compulsion)
- However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

*Example 1: Co-owners who share amongst themselves the rent derived from a piece of land are not partners, because there does not exist any business.*

*Example 2: No charitable institution or club may be floated in partnership [A joint stock company may, however, be floated for non-economic purposes].*

*Example 3: X and Y buy certain bales of cotton which they agree to sell on their joint account and to share the profits equally. In these circumstances, X and Y are partners in respect of such cotton business.*

### 5. BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL:

#### MUTUAL AGENCY -

- The business must be carried on by all the partners or
- by anyone or more of the partners acting for all.
- This is the cardinal principle of the partnership Law.
- In other words, there should be a **binding contract of mutual agency** between the partners.

**An act of one partner in the course of the business of the firm is in fact an act of all partners.**

**Each partner = Principal as well as the agent for all the other partners.**

- He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.

The true test of partnership is **mutual agency** rather than sharing of profits. If mutual agency is absent, then there will be no partnership.

*Example 4: A, B and C are partners in ABC Associates, a partnership firm. If A made certain purchases for the purpose of business from Mr. K, then Mr. K can recover the money from A, B or C as all partners are liable for any act done on behalf of firm.*

*In KD Kamath & Co.*

*The Supreme Court has held that the two essential conditions to be satisfied are that:*

- 1. There should be an agreement to share the profits as well as the losses of business; and*
- 2. The business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.*

*The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.*

### Partnership Deed

The 'Partnership Agreement' is also known as 'Partnership Deed'.

- Which can be written as well as verbal but desired is written to avoid future disputes.
- Express or implied
- It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If it is for immovable property then written + stamped and registered.
- No particular formalities are required for an agreement of partnership.
- Partnership deed may contain the following information:-
  1. Name of the partnership firm.
  2. Names of all the partners.

## 4.1 ► General Nature of Partnership

3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

A partnership firm may add or delete any provision according to the needs of the firm.

### TRUE TEST OF PARTNERSHIP

#### Mode of determining existence of partnership (Section 6):

Why do we require this ?

- ☐ To check if a group of persons is or is not a firm, or
- ☐ whether a person is or not a partner in a firm,

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 (**Mutual Agency**)

#### 1. Agreement:

**Section 5** - Partnership is created by agreement and not by status. The relation of partnership arises from contract and not from status.

- The members of a Hindu Undivided family carrying on a family business  
- NOT PARTNERS



- Burmese Buddhist husband and wife carrying on business - NOT PARTNERS

### 2. Sharing of Profit:

**Profit-linked payments** does not automatically make someone a partner in a business.

- The receipt by a person of a share of the profits of a business, or
- of a payment contingent upon the earning of profits or
- varying with the profits earned by a business,

does not of itself make him a partner with the persons carrying on the business. Cases -

- a. by a lender of money to persons engaged or about to engage in any business,

*Example: Imagine A lends ₹10 lakhs to B's business and they agree that A will receive 10% of the profits as interest. Even though A receives a share of the profits, A is not considered a partner. A is merely a lender, not involved in the day-to-day running of the business.*

- b. by a servant or agent as remuneration,

*Example: C is an employee at D's firm, and they agree that C will receive a bonus equal to 5% of the business profits. Despite C receiving profit-based remuneration, C is not a partner; C remains an employee.*

- c. by a widow or child of a deceased partner, as annuity, or

*Example: E was a partner in a firm, but after E's death, the firm agrees to pay E's widow F an annuity of ₹50,000 per year, sourced from the business's profits. F is not a partner in the firm; she's just receiving a benefit as a dependent of the deceased partner.*

- d. by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.

*Example: G sells his share of the business to H but agrees to receive payments based on the business's future profits as consideration. G is*

## 4.1 ► General Nature of Partnership

*not a partner after selling his share; G is just receiving deferred payment for the sale.*

Sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence

- **CO-OWNERS -**

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 BUT NOT THE ONLY TEST OF PARTNERSHIP. It depends upon the whole contract between the parties.

- **REFER SECTION 6 WHEN -**

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.

- **REAL INTENTION -**

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.

### 3. Agency - Covered above in detailed

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.

### *Santiranjan Das Gupta Vs. Dasyran Murzamull (Supreme Court)*

*In this case following factors weighed upon the Supreme Court to reach the conclusion that there is NO partnership between the parties:*

- 1. Parties have not retained any record of terms and conditions of partnership.*
- 2. Partnership business has maintained no accounts of its own, which would be open to inspection by both parties.*
- 3. No account of the partnership was opened with any bank.*
- 4. No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.*

### PARTNERSHIP DISTINGUISHED FROM OTHER FORMS OF ORGANISATION

#### Partnership Vs. Joint Stock Company (Company)

I	Incorporated Association
T	Transferability of Shares
O	Ownership - separate from its members
P	Perpetual Succession
C	Common Seal
L	Limited Liability
A	Artificial Legal Person
S	Seperate Legal Entity
S	Seperate Property and Sue

I  
T.O.P.  
C.L.A.S.S.

## 4.1 ► General Nature of Partnership

Basis	Partnership	Joint Stock Company
<b>Legal status</b>	A firm is not legal entity i.e. it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members ( <i>Salomon v. Salomon</i> ).
<b>Agency</b>	In a firm, every partner is an agent of the other partners as well as of the firm.	In a company, a member is not an agent of the other members or of the company, his actions do not bind either.
<b>Distribution of profits</b>	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
<b>Extent of liability</b>	In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.
<b>Property</b>	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
<b>Transfer of shares</b>	A share in a partnership cannot be transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles.

		In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
<b>Management</b>	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.
<b>Registration</b>	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
<b>Winding up</b>	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.
<b>Number of membership</b>	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100.  However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.
<b>Duration of existence</b>	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.



## 4.1 ► General Nature of Partnership

### Partnership Vs. Club

Basis of Difference	Partnership	Club
<b>Definition</b>	It is an association of persons formed for earning profits from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.
<b>Relationship</b>	Persons forming a partnership are called partners and a partner is an agent for other partners.	Persons forming a club are called members. A member of a club is not the agent of other members.
<b>Interest in the property</b>	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.
<b>Dissolution</b>	A change in the partners of the firm affect its existence.	A change in the membership of a club does not affect its existence.

### Partnership vs. Hindu Undivided Family

Basis of difference	Partnership	Joint Hindu family
<b>Mode of creation</b>	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
<b>Death of a member</b>	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
<b>Management</b>	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family. <sup>1</sup>

<b>Authority to bind</b>	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
<b>Liability</b>	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other coparcener are liable only to the extent of their share in the profits of the family business.
<b>Calling for accounts on closure</b>	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
<b>Governing Law</b>	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
<b>Minor's capacity</b>	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
<b>Continuity</b>	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
<b>Number of Members</b>	In case of Partnership number of members should not exceed 50.	Members of HUF who carry on a business may be unlimited in number.
<b>Share in the business</b>	In a partnership, each partner has a defined share by virtue of an agreement between the partners.	In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family.

## 4.1 ► General Nature of Partnership

Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common.

<b>Basis difference of</b>	<b>Partnership</b>	<b>Co-ownership</b>
<b>Formation</b>	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
<b>Implied agency</b>	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
<b>Nature of interest</b>	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
<b>Transfer of interest</b>	A share in the partnership is transferred only by the consent of other partners.	A co - owner may transfer his interest or rights in the property without the consent of other co-owners.

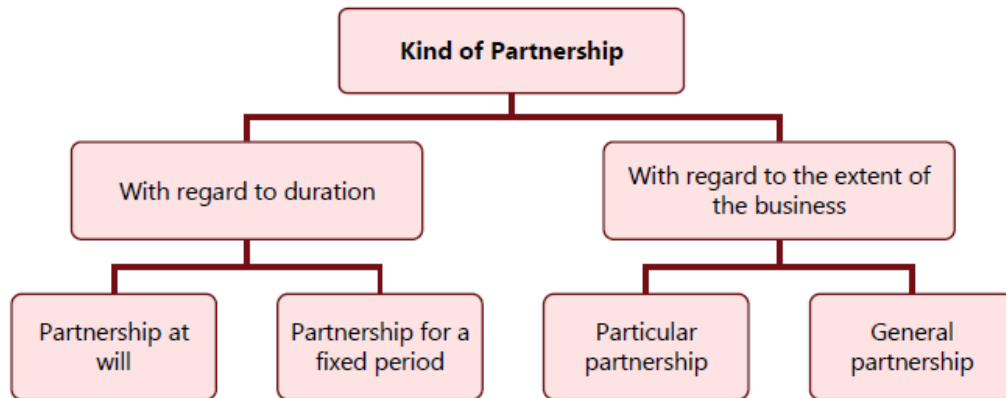
Partnership vs. Association

<b>Basis difference of</b>	<b>Partnership</b>	<b>Association</b>
<b>Meaning</b>	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business.	Association evolves out of social cause and there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
<b>Examples</b>	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.



## KINDS OF PARTNERSHIPS

The following chart illustrates the various kinds of partnership:



The various kinds of partnership are discussed below:

### 1. Partnership at WILL (Section 7) -

- a. No fixed period has been agreed upon for the duration of the partnership;

And

- b. 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.

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.

### 2. Partnership for a fixed period:

- Where a provision is made by a contract -
- for the duration of the partnership, the partnership
- It is a partnership created for a particular period of time.
- Such a partnership comes to an end on the expiry of the fixed period.

## 4.1 ► General Nature of Partnership

### 3. Particular partnership:

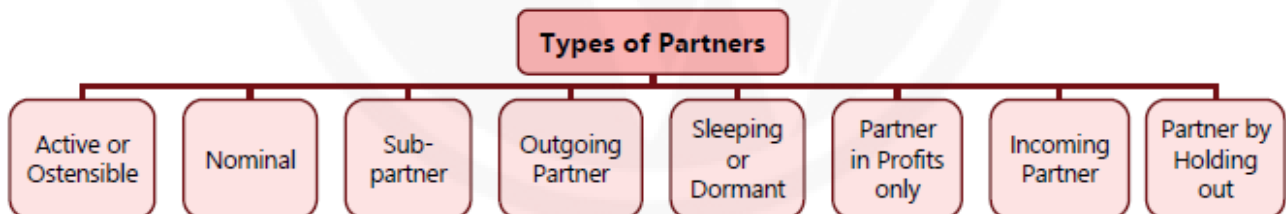
- A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business.
- A partnership, constituted for a single adventure or undertaking is, subject to any agreement,
  - dissolved by the completion of the adventure or undertaking.

### 4. General partnership:

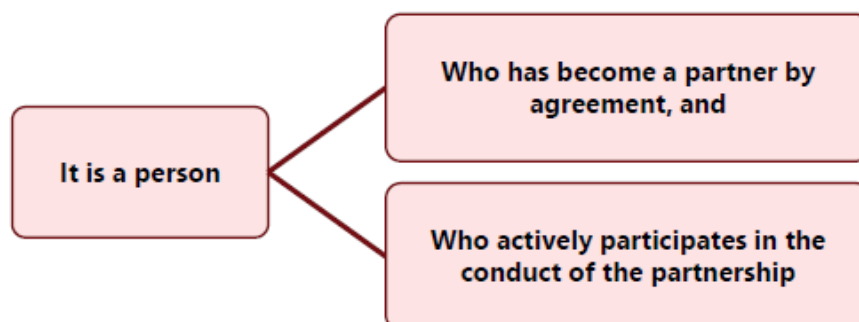
- Where a partnership is constituted with respect to the business in general, it is called a general partnership.
- A general partnership is different from a particular partnership.
- In the case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but
- it is not so in the case of general partnership.
- General partnership is different from limited liability partnership.

## TYPES OF PARTNERS

Based on the extent of liability, the different classes of partners are:

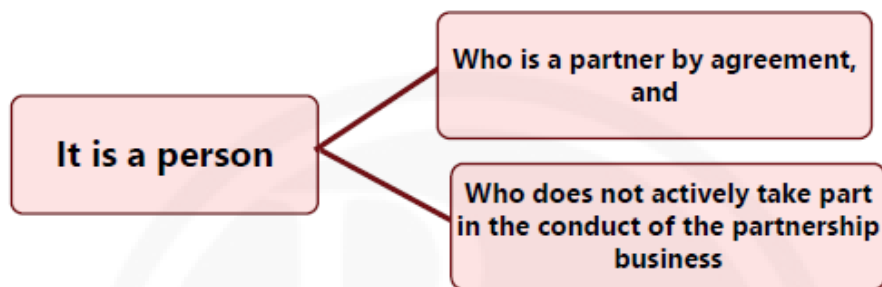


### 1. Active or Actual or Ostensible partner:



- ❖ Who actively participates in the conduct of partnership / business
- ❖ He acts as an agent of other partners for all acts done in the ordinary course of business.
- ❖ In the event of his retirement, he must give a public notice in order to absolve himself of liabilities for acts of other partners done after his retirement.

### 2. Sleeping or Dormant Partner:

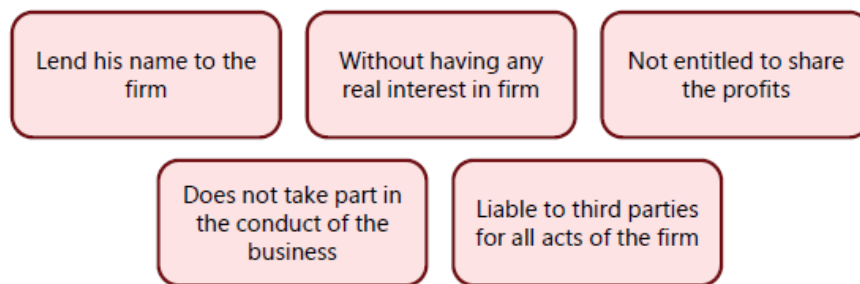


- ❖ Who does not actively participate in the conduct of partnership / business
- ❖ They share profits and losses and
- ❖ are liable to the third parties for all acts of the firm.
- ❖ They are, however NOT required to give public notice of their retirement from the firm.

### 3. Nominal Partner:

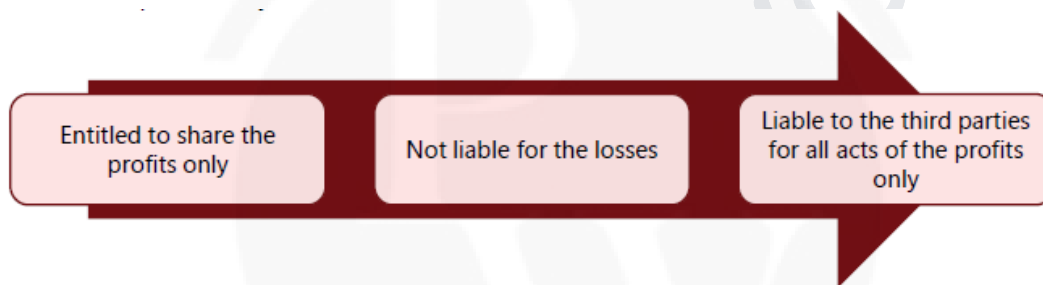
- ❖ A person who lends his name to the firm,
- ❖ without having any real interest in it, is called a nominal partner.
- ❖ He is not entitled to share the profits of the firm.
- ❖ Neither he invests in the firm nor takes part in the conduct of the business.
- ❖ He is, however liable to third parties for all acts of the firm.

## 4.1 ► General Nature of Partnership



### 4. Partner in profits only:

- ❖ A partner who is entitled to share the profits only
- ❖ without being liable for the losses is known as the partner for profits only and
- ❖ Also liable to the third parties for all acts of the profits only.



### 5. Incoming partners:

- ❖ A person who is admitted as a partner into an already existing firm
- ❖ with the consent of all the existing partners is called as “incoming partner”.
- ❖ Such a partner is NOT liable for any act of the firm done BEFORE his admission as a partner.

### 6. Outgoing partner:

- ❖ A partner who leaves a firm
- ❖ in which the rest of the partners continue to carry on business is called a retiring or outgoing partner.
- ❖ Such a partner remains liable to third parties for
- ❖ all acts of the firm UNTIL public notice is given of his retirement.

*Example 5: Mr. A joined as a partner on 10th September, 2021 in a firm MNQ Associates which was existing from 10th July, 2017. Mr. A will not be*

*liable for any acts of the firm done before his date of joining i.e. 10th September, 2021*

### 7. Partner by holding out (Section 28):

- ❖ 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.
- ❖ A person may himself, by his words or conduct have induced others to believe that he is a partner or
- ❖ he may have allowed others to represent him as a partner.
- ❖ The result in both the cases is identical.

*Example 6: 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. Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).*

- ❖ 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'.
- ❖ 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.
- ❖ 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

## 4.1 ► General Nature of Partnership

credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

*Example 7: A partnership firm consisting of P, Q, R and S. S retires from the firm without giving public notice and his name continues to be used on letterheads. Here, S is liable as a partner by holding out to creditors who have lent on the faith of his being a partner.*

### CLIPS

Aspect	Active/Actual /Ostensible Partner	Sleeping/Dor mont Partner	Nominal Partner	Partner in Profits Only
Conduct in Business (C)	✓	✗	✗	✗
Acts as an Agent for Other Partners	✓	✗	✗	✗
Liable to Third Parties (L)	✓	✓	✓	✓
Entitled to Share Profits (S)	✓	✓	✗	✓
Entitled to Share Losses	✓	✓	✗	✗
Invests Capital in Firm (I)	✓	✓	✗	✗ / ✓

Aspect	Active/Actual /Ostensible Partner	Sleeping/Dor mont Partner	Nominal Partner	Partner in Profits Only
Right to Participate in Management	✓	✗	✗	✗
Real Interest in Business	✓	✓	✗	✓
Public Notice on Retirement Required (P)	✓	✗	✓	✓

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## “ PROBLEM KYA HAI ? - Unit 1 ”

### Question Bank

#### *IPA*

*This section is complied with questions and suggested answers for the chapter - IPA*

- ❖ *ICAI Study material*
- ❖ *Previos year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

*Compiled by - CA Chaitanya Jain*



## **MODULE Q**

### **Question 1**

Mr. XU and Mr. YU are partners in a partnership firm. Mr. XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader believing MU as partner supplied 50 Laptops to the firm on credit.

After expiry of credit period, ZU did not get amount of Laptop sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of price. Does MU is liable for such purpose?

### **Answer 1**

As per Section 28 of Indian Partnership Act, 1932, 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.

A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

In the given case, MU (the Manager) is also liable for the price because he becomes a partner by holding out as per Section 28 of Indian Partnership Act, 1932.

## **RTPs, MTPs and PYQPs**

### **Question 1**

Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932

- Whether Bohan is liable for the dues of Karan against the firm.
- In case, Karan has filed the suit against firm, whether Bohan would be liable?

**(RTP Nov'22)**

**Answer 1**

Nominal Partner is a partner only in name. The person's name is used as if he were a partner of the firm, though actually he is not. He is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. A nominal partner must give public notice of his retirement and his insanity is not a ground for dissolving the firm.

In the instant case, Bohan was admitted as nominal partner in the firm. A creditor of the firm, Karan has claimed his dues from Bohan as he is the partner in the firm. Bohan has denied for the claim by replying that he is merely a nominal partner.

- a. Bohan is a nominal partner. Even he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.
- b. In case, Karan has filed the suit against firm, answer would remain same.

**Question 2**

Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be \$ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of \$2800 and \$200 as a penalty to resume the electricity connection. Mr. John claimed \* 3000 from Mr. Ram but Mr. Ram replied that he is liable only for \$ 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of 73000 to Mr. John?

**(RTP Jun'24, May'23)**

**Answer 2**

According to Section 4 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. Therefore, for determining the existence of partnership, it must be proved:

1. There must be an agreement between all the persons concerned;
2. The agreement must be to carry on some business;
3. The agreement must be to share the profits of a business and
4. The business was carried on by all or any of them acting for all.

On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. Rs. 1500. Mr. John has to claim the rest of Rs. 1500 from Mr. Raheem.

### Question 3

#### Answer 3

Enumerate the differences between Partnership and Joint Stock Company.

(MTP Jun'22 6 Marks) (MTP 6 Marks, Oct'21)

Basis	Partnership	Joint Stock Company
Legal status	A firm is not legal entity i.e. it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members ( <i>Salomon v. Salomon</i> ).
Agency	In a firm, every partner is an agent of the other partners as well as of the firm.	In a company, a member is not an agent of the other members or of the company, his actions do not bind either.

<b>Distribution of profits</b>	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
<b>Extent of liability</b>	In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.
<b>Property</b>	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
<b>Transfer of shares</b>	A share in a partnership cannot be transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles.

		In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
Management	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
Winding up	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.

Number of membership	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.
Duration of existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.

#### Question 4

What is Particular Partnership as per Indian Partnership Act, 1932? (MTP Nov'22 2 Marks)

(PYP 2 Marks, Jan'21)

#### Answer 4

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.

#### Question 5

Ms. Lucy while drafting partnership deed taken care of few important points. What are those points?

She wants to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed?

(MTP Nov'22 4 Marks) (SM) (MTP 6 Marks, Nov'21)

**Answer 5**

Ms. Lucy while drafting partnership deed must take care of following important points:

- No particular formalities are required for an agreement of partnership.
- Partnership deed may be in writing or formed verbally. 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'.
- Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.



### Question 6

Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.

(MTP May'23 6 Marks) (MTP Nov'22 6 Marks) (MTP Mar'22 6 Marks) (MTP Nov'22 6 Marks) (MTP Mar'22 6 Marks)

### Answer 6

**Definition of Partnership:** '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. (Section 4 of the Indian Partnership Act, 1932)

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

### ELEMENTS OF PARTNERSHIP

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

The Partnership Act is silent about the maximum number of partners but Section 464 of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.

2. **Agreement:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done



by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. **Business:** In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.
4. **Agreement to share profits:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.
5. **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners.

He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

#### Question 7

"Sharing in the profits is not conclusive evidence in the creation of partnership".  
Comment.

(MTP Nov'23 4 Marks) (PYP Dec'21 4 Marks)

**Answer 7**

"Sharing in the profits is not conclusive evidence in the creation of partnership"

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.

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 of the Indian Partnership Act, 1932, in determining the existence or otherwise of partnership.

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.

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.

Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.

**Question 8**

What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?

(MTP Dec'23 2 Marks) (RTP Nov'23) (PYP May'22 2 Marks)

**Answer 8**

Partnership for a fixed period (Indian Partnership Act, 1932): Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

**Question 9**

What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932?

(MTP Dec'23 4 Marks) (PYP Nov'22 4 Marks)

**Answer 9**

Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common.

Basis of difference	Partnership	Co-ownership
Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co - owner may transfer his interest or rights in the property without the consent of other co- owners.

**Question 10**

State whether the following are partnerships:

1. A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.
2. Two firms each having 12 partners combine by an agreement into one firm.
3. A and B, co-owners, agree to conduct the business in common for profit.
4. Some individuals form an association to which each individual contributes 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
5. A and B, co - owners share between themselves the rent derived from a piece of land.
6. A and B buy commodity X and agree to sell the commodity with sharing the profits equally.

**(PYP Dec 21 6 Marks)**

**Answer 10**

1. No, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such persons partners.

Alternatively, this part can also be answered as below:

Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

2. Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
3. Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
4. No, this is not a case of partnership as no charitable association can be floated in partnership.
5. No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
6. Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

**Question 11**

State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

1. X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?
2. X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Is liable to a paper dealer for paper supplied to X to print Y's book?
3. A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?

**(PYP Dec'23 6 Marks)**

**Answer 11**

1. As per Section 4 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.

Yes, it is a case of partnership.

**Reason:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.

2. No, it is not a case of partnership

**Reason:** Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

3. No, it is not a case of partnership

**Reason:** Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co-owners. Because, neither there is existence of business, nor mutual agency is there.

**Question 12**

What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932?

(PYP 2 Marks, Jan'21)

**Answer 12**

Nominal Partner: A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

Liabilities: He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

**Question 13**

"Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932.

(PYP 4 Marks, Jan'21)

**Answer 13**

Business carried on by all or any of them acting for all: The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners.

An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.

It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.

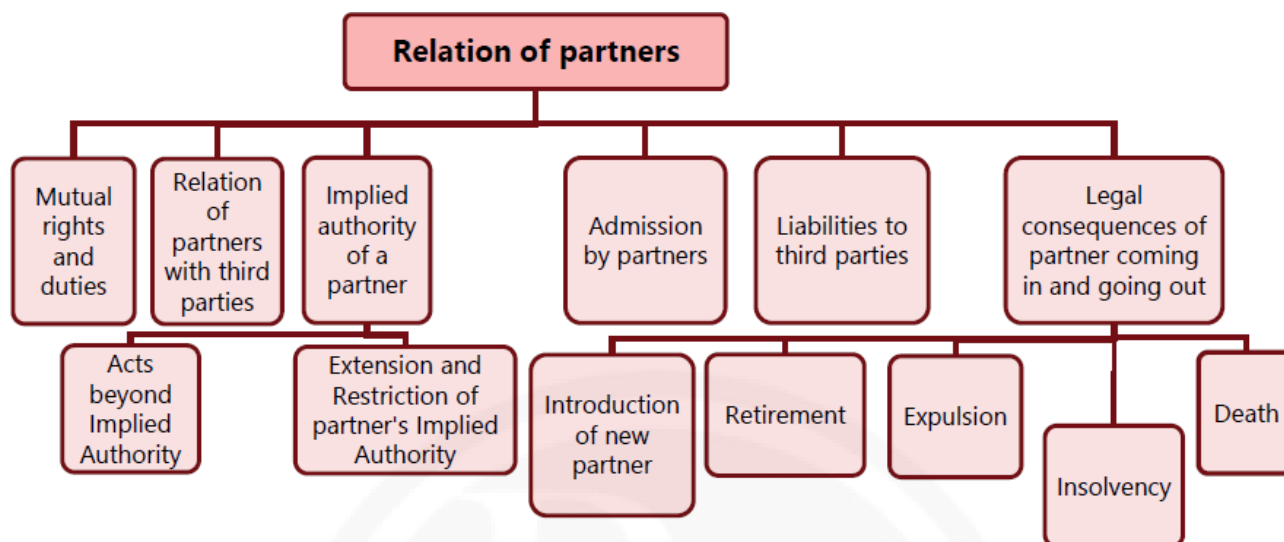
In KD Kamath & Co., the Supreme Court has held that the two essential conditions to be satisfied are that:

1. there should be an agreement to share the profits as well as the losses of business; and
2. the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

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## Unit 2 - Relations of Partners



### RELATION OF PARTNERS TO ONE ANOTHER

The Partnership Act contains various provisions regulating the relationship between partners.

9	General Duties Of Partners ( Generally 9 बजे की Duty होती है )
10	Duty To Indemnify For Loss Caused By Fraud ( late हो गया 10 बजे पहुँचा loss हो गया, इनको लग रहा है मैंने fraud किया )
11	Determination Of Rights And Duties Of Partners By Contract Between The Partners ( Meeting बुलाया rights & Duties बताया )
12	The Conduct Of The Business ( कैसे काम करना है - Conduct )
13	Mutual Rights And Liabilities ( तेरा मेरा )

#### 1. GENERAL DUTIES OF PARTNERS (SECTION 9):

They are Absolute duties of partners means can't be changed with the contract -

- Greatest Common Advantage -

The partners should carry business of the firm to the greatest common



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advantages and

- Disclose full information and interest -

They should **render** to any partner or his legal representatives **full information** of all things affecting the firm.

- Maintain Good faith -

A partner must observe the **utmost good faith** in his dealings with the other partners.

- Render TRUE Accounts -

All the partners are bound to render accounts to each other but

where some of the accounts are kept by one of them, prima facie he would be the proper person to explain and give full information about them.

*Example 1: In a transaction between partners for the sale and purchase of a share in the business, if one of them is better acquainted with the accounts than the other, it is his duty to disclose all material facts.*

### 2. DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD (SECTION 10):

- The partner, committing **fraud** in the **conduct** of the **business** of the firm,
- must make **good the loss** sustained by the firm by his **misconduct** and
- the **amount** so **brought** in the **partnership** should be **divided** between the partners.
- An act of a partner imputable (Unwanted or false credit) to the **firm** or the principles of agency,
- which is a **fraud on his co-partners**,
- **entitles** the **co-partners** as between themselves, to throw the whole of the **consequences upon him**



( सबकुछ fraud करने वाले partner के माथे ) Means in case of an act done by partner which is a fraud and made the firm liable because of his act - Gives firm the right to recover the amount from him later)

### 3. DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS - (SECTION 11):

- a. Subject to the provisions of this Act,
  - the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and
  - such contract may be express or may be implied by a course of dealing.
  - Such contract may be varied by consent of all the partners, and
  - such consent may be express or may be implied by a course of dealing.
- b. Agreements in restraint of trade-
  - Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872,
  - such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

"Partnership relies heavily on mutual consent, both for its creation and for setting the terms of the agreement. Partners can agree to form or change the partnership at any time, and this agreement doesn't need to follow a specific format."

### 4. THE CONDUCT ( बरताव ) OF THE BUSINESS (SECTION 12):

( एक तरीके से - Right and Duties है Business Related )

Subject to the contract between the partners

चाहे रात 12 (Section) की भी बजे -

सब business में participate करेंगे (a) , diligently duties निभायेंगे (b),

## 4.2 ► Relations of Partners

decision majority के साथ पास करेंगे (c) and Books ( पढ़ाई ) bhi dekhenge  
(d) (e)

Section 12	Aspect	Details
a	Participation in Business	Every partner has the right to take part in the conduct of the business.
b	Duties and Diligence	Every partner must diligently attend to their duties in the business.
c	Decision Making	- Differences on ordinary matters decided by majority. - All partners have the right to express opinions before decisions. - No change in the nature of the business without consent of all partners.
d	Access to Books	Every partner has the right to access, inspect, and copy any of the firm's books.
e	Rights of Heirs (Upon Death)	Heirs or legal representatives have the right to access and inspect copies of the firm's books.

### a. Section 12(a) - Right to take part in the conduct of the Business -

Every partner has the right to take part in the business of the firm.

This is because partnership business is a business of the partners and their management powers are generally co-extensive (साथ साथ चलती है दोनों चीजें और दोनों का मकसद एक ही है )

"These legal rules apply only if the partners haven't agreed otherwise.

- When Management powers are assigned to certain partners as per the contract -
- In such cases, courts usually won't interfere unless there's clear evidence of illegal actions or a breach of trust."

*Example 2: Now suppose this management power of the particular partner is interfered with and he has been wrongfully precluded from participating therein. Can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by injunction, restrain other partners from doing so. It may be noted in this connection that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc.*

b. **Section 12(b)** - Every partner is bound to attend diligently to his duties in the conduct of the business;

c. **Section 12(c) - Right to be consulted:**

- Where any **difference arises** between the partners with regard to the **business** of the firm,
- it shall be determined by the views of the **majority** of them, and
- every partner shall have the **right to express** his **opinion** before the matter is decided.
- But no change in the nature of the business of the firm can be made **without the consent** of **all the partners**.
- This means that in **routine matters**, the **opinion** of the **majority** of the partners will **prevail**.
- Of course, the **majority** must act in **good faith** and **every partner** must be **consulted** as far as practicable.

**The unanimous (100%) consent of the partners is needed -**

The aforesaid majority rule will not apply where there is a change in the nature of the firm itself.

d. **Section 12(d) - Right of access to books :**

- Every partner whether active or sleeping
- is entitled to have access to any of the books of the firm and

## 4.2 ► Relations of Partners

- to inspect and take out of copy thereof.
  - The right must, however, be exercised *bona fide*.
- e. **Section 12(e) - Right of legal heirs/ representatives/ their duly authorised agents-**
- In the event of the death of a partner,
  - his heirs or legal representatives or
  - their duly authorised agents
  - shall have a right of access to and to inspect and copy any of the books of the firm.

### 5. MUTUAL RIGHTS AND LIABILITIES (SECTION 13):

Subject to the contract between the partners

Section 13	Aspect	Details
a	<b>No Remuneration</b>	A partner is <b>not entitled to receive remuneration</b> for participating in the conduct of the business.
b	<b>Profit and Loss Sharing</b>	Partners are <b>entitled to share equally</b> in profits and <b>must contribute equally</b> to losses.
c	<b>Interest on Capital</b>	Interest on capital is <b>payable only out of profits</b> if a partner is entitled to it.
d	<b>Interest on Advances</b>	A partner who makes a <b>payment or advance</b> beyond their agreed capital is <b>entitled to 6% interest per annum</b> .
e	<b>Indemnification by Firm</b>	The firm shall <b>indemnify a partner</b> for payments and liabilities incurred:
		- <b>In ordinary and proper conduct</b> of business.
		- <b>In an emergency</b> , to protect the firm from loss, as a prudent person would do.
f	<b>Indemnification by Partner</b>	<b>A partner must indemnify the firm</b> for any loss caused by their <b>willful neglect</b> in conducting business.

#### A. Section 13(a) - Right to remuneration

- No partner is entitled to receive any remuneration in addition to his share in the profits of the firm
- for taking part in the business of the firm.
- But this rule can always be varied by an express agreement, or by a course of dealings,

- in which event the partner will be entitled to remuneration.

★ Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.

★ In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

### B. Section 13(b) - Right to share Profits

- Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm.
- The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners.
- If there is NO agreement then you should make a presumption of equality and the burden of proving that the shares are unequal, will lie on the party alleging the same.

★ There is **no connection between** the proportion in which the partners shall **share the profits** and the proportion in which they have **contributed towards the capital** of the firm.

### C. Section 13(c) - Interest on Capital

Generally NO but the following elements must be there before a partner can be entitled to interest on moneys brought by him in the partnership business:

- an **express agreement** to that effect, or practice of the particular partnership OR
- **any trade custom** to that effect OR
- a **statutory provision** which entitles him to such interest.

### D. Section 13(d) - Interest on advances

- Suppose a partner makes an **advance** to the firm
- in **addition** to the amount of **capital** to be **contributed** by him,

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- in such a case, the partner is entitled to claim interest thereon @ 6% per annum.
- ★ While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.

### E. Section 13(e) - Right to be indemnified -

- Every partner has the right to be indemnified by the firm
- in respect of payments made and liabilities incurred by him
- in the ordinary and proper conduct of the business of the firm
- as well as in the performance of an act in an emergency for protecting the firm from any loss,
- ★ if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

### F. Right to indemnify the firm [Section 13(f)]:

- A partner must indemnify the firm for any loss caused to it
- by wilful neglect in the conduct of the business of the firm.

## PARTNERSHIP PROPERTY (SECTION 14)

### 1. THE PROPERTY OF THE FIRM (SECTION 14):

Property of the firm' - 'partnership property' - 'partnership assets' - 'joint stock' - 'common stock' - 'joint estate',

All property, rights and interests to which the firm, that is, all partners collectively, may be entitled.

- This is comprised of the following items:
  - a. all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
  - b. all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
  - c. Goodwill of the business.

- The determination of the question whether a particular property is or is not 'property' of the firm **ultimately depends on the real intention or agreement of the partners.**
- Thus, the **mere fact that the property of a partner is being used for the purposes of the firm shall not** by itself make it partnership property, **unless it is intended to be treated as such.**
- Partners may -
  - by an agreement at any time,
  - convert the property of any partner or partners or the separate property of any partner into a partnership property.
  - if made in good faith, would be effectual between the partners and against the creditors of the firm

### Goodwill:

Aspect	Details
Goodwill as Property	Goodwill is considered <b>property</b> of the firm, subject to a contract between the partners.
Definition of Goodwill	Goodwill represents the <b>value of the reputation</b> of a business, leading to <b>profits above the normal level</b> expected.
Rights Upon Dissolution	Upon dissolution, each partner has the right to have the <b>goodwill sold</b> for the benefit of all partners, unless agreed otherwise.
Sale of Goodwill	Goodwill can be sold <b>separately</b> or along with other properties of the firm.
Restrictions on Competition	A partner may agree with the buyer of goodwill <b>not to compete</b> in a similar business within a specified time or area.
Validity of Restriction	Such an agreement is <b>valid</b> if the restrictions are <b>reasonable</b> , despite Section 27 of the Indian Contract Act, 1872.

### Property of a partner:

- Where the property is exclusively belonging to a person,
- it does not become a property of the partnership



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- merely because it is used for the business of the partnership,
- such property will become property of the partnership if there is an agreement.

### 2. APPLICATION OF THE PROPERTY OF THE FIRM (SECTION 15):

- Section 15 provides that the property of the firm
- shall be held and used exclusively for the purpose of the firm.
- In partnership, there is a community of interest which all the partners take in the property of the firm.
- But that does not mean that during the subsistence of the partnership,
- a particular partner has any proprietary interest in the assets of the firm.
- Every partner of the firm has a right to get his share of profits
- till the firm subsists and
- he has also a right to see that all the assets of the partnership
- are applied to and used for the purpose of partnership business.

### PERSONAL PROFIT EARNED BY PARTNERS (SECTION 16)

- a. If a partner derives any profit for himself -
- i. from any transaction of the firm, or
  - ii. from the use of the property or
  - iii. business connection of the firm or the firm name,
  - iv. he shall account for that profit and pay it to the firm;
- b. If a partner carries on any business of the same nature as and competing with that of the firm,
- he shall account for and pay to the firm all profits made by him in that business.

Subject to the contract between the partners

*Example 3: A, B, C & D established partnership business for refining sugar. A, who was himself a wholesale grocer, was entrusted with the work of selection and purchase of sugar. As a wholesale grocer, A was well aware of the variations in the sugar market and had the suitable*

*sense of propriety as regards purchases of sugar. He had already in stock sugar purchased at a low price which he sold to the firm when it was in need of some, without informing the partners that the sugar sold had belonged to him. It was held that A was bound to account to the firm for the profit so made by him. This rule, however, is subject to a contract between partners.*

*Example 4: A, B, C and D started a business in partnership for importing salt from foreign ports and selling it at Chittagong. A struck certain transactions in salt on his own account, which were found to be of the same nature as the business carried on by the partnership. It was held that A was liable to account to the firm for profits of the business so made by him. This rule is also subject to a contract between the partners.*

### RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM (SECTION 17)

**Subject to the contract between the partners**

How a change may take place in the constitution of the firm. It may occur in one of the four ways -

Where a new partner or partners come in

Where some partner or partners go out, i.e., by death or retirement

Where the partnership concerned carries on business other than the business for which it was originally formed

Where the partnership business is carried out on after the expiry of the term fixed for the purpose.

- a. after a change in the firm:** If the firm's constitution changes, the partners' rights and duties stay the same as before, **as much as possible.**

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- b. **after the expiry of the term of the firm:** If a firm with a fixed term continues after the term ends, the partners' rights and duties remain the same, consistent with a partnership at will
- c. **where additional undertakings are carried out:** If a firm takes on new ventures, the rights and duties for these are the same as for the original ventures.

### RELATION OF PARTNERS TO THIRD PARTIES

Sections	Heading
Section 18	Partner to be an <b>Agent</b> of the Firm
Section 19	<b>Implied Authority</b> of Partner as Agent of the Firm
Section 20	<b>Extension</b> and <b>Restriction</b> of Partners' Implied Authority
Section 21	Partner's Authority in an <b>Emergency</b>
Section 22	<b>Mode</b> of Doing Act to Bind Firm

#### 1. PARTNER TO BE AN AGENT OF THE FIRM (SECTION 18) :-

##### **MUTUAL AGENCY -**

Subject to the contract between the partners

A partner is the agent of the firm for the purpose of the business of the firm.

Not applicable to all transactions and dealings between the partners themselves. ONLY to the act done by partners for the purpose of the business of the firm.

- The partners are both a principal and an agent.
- AGENT VS PARTNER

Being a partner - he has a community of interest with other partners in the whole property and business and liabilities of partnership but

Being a mere agent whereas an agent as such has no interest in either.

### 2. IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM (SECTION 19) :-

The authority of a partner to bind the firm (or all the partners) by carrying on an act done in the usual business way.

- In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to ( Means ये सब implied authority में cover नहीं होता है )

Action	Description
Submit Dispute to Arbitration	Resolve business disputes through arbitration.
Open Bank Account	Open a bank account in the partner's own name for the firm.
Compromise or Relinquish Claim	Settle or give up any claim or part of a claim for the firm.
Withdraw Suit or Proceedings	Withdraw legal cases or proceedings initiated by the firm.
Admit Liability	Acknowledge liability in a lawsuit or legal proceeding against the firm.
Acquire or Transfer immovable property	Purchase real estate for the firm and Sell or transfer real estate owned by the firm
Enter into partnership	Form a partnership with others on behalf of the firm

### 3. MODE OF DOING ACT TO BIND FIRM (SECTION 22) :-

- A partner's actions can bind the firm if done in the firm's name or in a way that shows an intention to bind the firm.
- Combined reading of - Sections 19 and 22 -

A partner's actions that are typical for the business type will bind the

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firm if done in the firm's name or in a way that shows intent to bind the firm.

- **Restrictions on Implied Authority:**
  - **Usual Business:** The act must relate to the usual business of the firm. (The usual way of carrying on the business will depend on the nature and circumstances of each particular case)
  - **Scope of Authority:** The act must be within the partner's authority and connected to the normal business operations.
  - **Firm's Name:** The act must be done in the firm's name or in a manner that expresses or implies an intention to bind the firm.

You must remember that an implied authority of a partner may differ in different kinds of business.

*Example 5: X, a partner in a firm of solicitors, borrows money and executes a promissory note in the name of firm without authority. The other partners are not liable on the note, as it is not part of the ordinary business of a solicitor to draw, accept, or endorse negotiable instruments; however, it may be usual for one partner of firm of bankers to draw, accept or endorse a bill of exchange on behalf of the firm.*

- **If partnership be of a general commercial nature,**
  1. he may pledge or sell the partnership property;
  2. he may buy goods on account of the partnership;
  3. he may borrow money, contract debts and pay debts on account of the partnership;
  4. he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, Promissory notes, bills of exchange, cheques and other negotiable papers in the name and on account of the partnership.

### 4. EXTENSION AND RESTRICTION OF PARTNERS' IMPLIED AUTHORITY (SECTION 20) :-

- The implied authority of a partner

- may be extended or restricted by contract between the partners.
- Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:
  - a. The third party knows about the restrictions, and
  - b. The third party does not know that he is dealing with a partner in a firm.

*Example 6: A, a partner, borrows from B 1,000 in the name of the firm but in excess of his authority, and utilizes the same in paying off the debts of the firm. Here, the fact that the firm has contracted debts suggests that it is a trading firm, and as such it is within the implied authority of A to borrow money for the business of the firm. This implied authority, as you have noticed, may be restricted by an agreement between him and other partners. Now if B, the lender, is unaware of this restriction imposed on A, the firm will be liable to repay the money to B. On the contrary, B's awareness as to this restriction will absolve the firm of its liability to repay the amount to B.*

To restrict or extend the implied authority

Extension or restriction is only possible with the consent of all the partners.

NOT any one partner or even a majority of the partners

### 5. PARTNER'S AUTHORITY IN AN EMERGENCY (SECTION 21)

- A partner has authority, in an emergency,
- to do all such acts for the purpose of protecting the firm from loss
- as would be done by a person of ordinary prudence,
- in his own case, acting under similar circumstances, and such acts bind the firm.

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### EFFECT OF ADMISSIONS BY A PARTNER (SECTION 23)

- Admissions as Evidence :-
  - Admissions made by a partner
  - in the course of the partnership business
  - are considered binding on the firm.
  - If a partner admits to a certain fact or liability, it can be used as evidence against the firm in legal proceedings.
- Binding admissions can only be made in relation to -
  - partnership transaction and
  - in the ordinary course of business.
  - An admission or representation by a partner will not however bind the firm if his authority on the point is limited and the other party knows of the restriction.
  - **Fraud or Misrepresentation:** Admissions made fraudulently or under duress might not be binding.
- **With Third Parties:** Admissions by a partner are effective and binding, meaning third parties can use these admissions as evidence in claims or disputes involving the firm.
- **Internal Disputes:** The same admissions may not have the same binding effect in disputes between partners, where the context of the admission and the partnership agreement may play a larger role in resolving the issue.

#### Examples:

If a partner admits to owing money to a supplier, the supplier can use this admission to claim the debt from the firm.

Similarly, if a partner acknowledges a contract with a customer, the firm is bound by that admission in its dealings with the customer.



### Impact in Internal Disputes: ★

#### Disputes Between Partners:

In disputes between the partners themselves, the effect of such admissions may be limited. The internal resolution of disputes might involve considering the partnership agreement, the partner's authority, and the context of the admission.

#### Examples: ★

If two partners are disputing a matter internally, one partner's admission might not automatically resolve the issue unless it is clear that the admission was made in the course of partnership business and is binding according to the partnership agreement.

*Example 7: X and Y are partners in a firm dealing in spare parts of different brands of motorcycle bikes. Z purchases a spare part for his Yamaha motorcycle after being told by X that the spare part is suitable for his motorcycle. Y is ignorant about this transaction. The spare part proves to be unsuitable for the motorcycle and it is damaged. X and Y both are responsible to Z for his loss.*

### EFFECT OF NOTICE TO ACTING PARTNER (SECTION 24)

#### 1. Notice to Active Partner:

- A notice given to a partner who is actively involved in the firm's business is considered as notice to the entire firm ( Just as a notice to an agent is notice to his principal)

#### 2. Exception for Fraud:

- This rule does not apply if the notice relates to fraud committed by or with the consent of that partner.

#### 3. Requirements for Valid Notice:

- **Actual Notice:** The notice must be actually received by the partner.
- **Active Partner:** It must be received by a working partner, not a passive

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or sleeping partner.

- **Firm's Business:** The notice must pertain to the firm's business activities.

A notice given to a partner actively involved in the firm is effectively a notice to the whole firm, except in cases involving fraud. The notice must be actual, received by an active partner, and relevant to the firm's business.

*Example 8: P, Q, and R are partners in a business for purchase and sale of second hand goods. R purchases a second hand car on behalf of the firm from S. In the course of dealings with S, he comes to know that the car is a stolen one and it actually belongs to X. P and Q are ignorant about it. All the partners are liable to X, the real owner. The only exception would lie in the case of fraud, whether active or tacit.*

*Example 9: A, a partner who actively participates in the management of the business of the firm, bought for his firm, certain goods, while he knew of a particular defect in the goods. His knowledge as regards the defect, ordinarily, would be construed as the knowledge of the firm, though the other partners in fact were not aware of the defect. But because A had, in league with his seller, conspired to conceal the defect from the other partners, the rule would be inoperative and the other partners would be entitled to reject the goods, upon detection by them of the defect.*

### LIABILITY TO THIRD PARTIES (SECTION 25 TO 27)

The question of liability of partners to third parties may be considered under different heads. These are as follows:

Sections	Heading
Section 25	Liability Of A Partner For Acts Of The Firm
Section 26	Liability Of The Firm For Wrongful Acts Of A Partner
Section 27	Liability Of Firm For Misapplication By Partners

Aspect	Section 25: Liability of a Partner for Acts of the Firm	Section 26: Liability of the Firm for Wrongful Acts of a Partner	Section 27: Liability of Firm for Misapplication by Partners
Scope of Liability	Partners are liable for acts within the firm's business.	The firm is liable for wrongful acts by partners.	The firm is liable for misuse of its property by partners.
Nature of Acts	Acts done in the firm's business and authority.	Wrongful acts like fraud or negligence by partners.	Misuse or misapplication of firm's property by partners.
Extent of Liability	Partners are personally liable.	Firm is jointly and severally liable.	Firm is liable for losses from misapplication.
Responsibility of Firm	Firm is not directly liable.	Firm bears responsibility for wrongful acts.	Firm is responsible for misapplication losses.
Impact on Third Parties	Partners can be sued for business-related acts.	Firm can be sued for partners' wrongful acts.	Firm can be sued for misapplied funds.
Legal Recourse	Partners can be individually sued.	Legal action can be taken against the firm.	Legal action can be taken against the firm.

### 1. LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION 25):

- The partners are jointly and severally responsible to third parties for all acts
- which come under the scope of their express or implied authority.
- This is because that all the acts done within the scope of authority are

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the acts done towards the business of the firm.

- The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm,
- which gives rise to a right enforceable by or against the firm.
- Again in order to bring a case under Section 25,
- it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

*Example 10: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place, it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.*

### 2. LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION 26):

- The firm is liable to the same extent as the partner
- for any loss or injury caused to a third party
- by the wrongful acts of a partner,
- if they are done by the partner while acting:
  - a. in the ordinary course of the business of the firm
  - b. with the authority of the partners.

★ If the act in question can be regarded as authorized and as falling within either of the categories mentioned in Section 26, -

The fact that the **method employed** by the **partner** in doing it was **unauthorized** or wrongful **would not affect** the **question**.

★ Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the **negligent** act of a **partner acting** in the **ordinary course** of the **business**.

*Example 11: One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was also held responsible for the same.*

### 3. LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION 27):

Two clauses of Section 27 - Two categories of cases of misapplication of money by partners.

A. Clause (a) covers the case -

- where a partner acts within his authority and
- due to his authority as partner,
- he receives money or property belonging to a third party and
- misapplies that money or property.

For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

B. Clause (b) would be attracted -

- when such money or property has come into the custody of the firm and
- it is misapplied by any of the partners.

The firm would be liable in both the cases.

- If receipt of money by one partner is not within the scope of his apparent authority,
- his receipt cannot be regarded as a receipt by the firm and
- the other partners will not be liable,
- unless the money received comes into their possession or under their control.

*Example 12: A, B, and C are partners of a place for car parking. P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.*

### RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST (SECTION 29)

Transfer of Interest:

- A partner's share in a partnership can be transferred like any other

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property.

- A partner's interest in the partnership can be regarded as an **existing interest** and **tangible** property which can be assigned.
- However, since partnerships rely on **mutual trust**, the transferee (buyer) doesn't get the same rights as the original partner..

During the Partnership:

- The transferee **cannot**:
  - Interfere in the business.
  - Demand accounts.
  - Inspect the firm's books.
- The transferee **can only**:
  - Receive the transferring partner's share of the profits.
  - Must accept profits as agreed by the original partners without questioning the accounts.

After Dissolution or Partner's Retirement:

- The transferee is **entitled to**:
  - Receive the transferring partner's share of the firm's assets.
  - Request an account of the assets from the date of dissolution to determine their share.

Consent of all the partners is required -

- 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.

### MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP (SECTION 30)

Aspect	Details
Minor's Contract	A minor cannot be bound by a contract because a minor's contract is void and not merely voidable.
Partnership and Minors	A minor cannot become a partner in a firm because partnership is founded on a contract.

Admission to Benefits of Partnership	A minor can be admitted to the benefits of partnership under Section 30 of the Act. He can be a beneficiary in the firm. We need 2 MAJOR Partners atleast.
Rights and Liabilities	When admitted to benefits with the consent of all partners, the rights and liabilities of the minor will be governed under Section 30.

### 1. Rights of a Minor :

#### "PASTES":

- a. **Profits Share** - A minor partner has a right to his agreed share of the profits and property of the firm.
- b. **Accounts Access** - He can have access to, inspect and copy the accounts of the firm.
- c. **Suing (when severing connection)** - He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- d. **Time to Elect (6 months after majority)** - On attaining majority, he may within 6 months elect to become a partner or not to become a partner.
- e. **Entitlement (to share if becomes partner)** - If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor.
- f. **Share (not liable for acts after public notice if opts out)** - 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.

### 2. Liabilities:

#### Before Attaining Majority

##### Extent of Liability

— Limited to share in profits and property of the firm.

##### Personal Liability

— No personal liability for debts incurred during minority.

##### Insolvency

— Cannot be declared insolvent. Share vests in Official Receiver/Assignee if firm is insolvent.



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### └─ After Attaining Majority

#### └─ Decision to Become Partner or Not

- | └─ Must decide within 6 months of majority or upon knowledge of admitting him for the benefit of the firm.
- | └─ Failure to decide results in automatic (Deemed) partnership.

#### └─ Elects Not to Become Partner

- | └─ Public Notice
  - | └─ Rights and liabilities remain as a minor until notice given.
  - | └─ Share not liable for acts of firm after notice date.
  - | └─ Entitled to sue for share of property and profits.

#### └─ Becomes a Partner

##### └─ Liabilities

- | └─ Personally liable to third parties for acts done since benefits admitted ( जब पहली बार beneficiary बना )

##### └─ Rights

- | └─ Share in property and profits remains as entitled as a minor.

### A. Before attaining majority:

- a. The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- b. Minor has no personal liability for the debts of the firm incurred during his minority.
- c. Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee (which means minor can recover his share in the firm on proportionate basis from official receiver/assignee)

### B. After attaining majority:

- Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.
- Where he has elected not to become partner, he may give public notice

that he has elected not to become partner and such notice shall determine his position with regard to the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

**a. When he becomes partner:**

If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

- I. He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- II. His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

**b. When he elects not to become a partner:**

- I. His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- II. His share shall not be liable for any acts of the firm done after the date of the notice.
- III. He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

### LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT (SECTION 31 – 35)

Any change in the relation of partners will result in **reconstitution** of the partnership firm. Thus,

**I.R.A.D.E.**

1. **Admission** of a new partner (Section 31) **(A)**
2. **Retirement** of a partner (Section 32) **(R)**
3. **Insolvency** of a partner (Section 34) **(I)**
4. **Expulsion** of the partner (Section 33) **(E)**
5. **Liability** of **estate** of a **deceased** partner (Section 35) **(Death)**

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a firm will be reconstituted

### 1. INTRODUCTION OF A PARTNER (SECTION 31):

GROUND RULE (Method) -

1. No new partners can be introduced into a firm without the consent of all the existing partners.
2. Subject to the contract between the partners

Rights and liabilities of new partner:

- The liabilities of the new partner ordinarily commence from the date
- when he is admitted as a partner,
- unless he agrees to be liable for obligations incurred by the firm prior to the date.

What about the case where the new partner could be liable for the existing or old acts as well ? Is it possible ? YES

- It's possible through - **Novation** is the technical term which is **not a mere agreement** amongst partners. It involves consent of -
  - a. Old Partners
  - b. New Partners
  - c. Creditors
- The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The **creditor's consent is necessary** in every case to make the transaction operative.
- Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In case of partnership of two partners: ★

This section does not apply to a partnership of two partners which is automatically dissolved by the death of one of them.

Aspect	Details
Liability for Existing Debts	An incoming partner is <b>not liable</b> for debts and liabilities incurred before

	their admission.
Liability for Future Liabilities	An incoming partner is liable for debts and obligations incurred <b>after</b> their admission.
Partnership Deed	The partnership deed may specify different terms regarding the new partner's liability.
Indemnity	Any indemnity arrangement for past liabilities should be clearly documented in the partnership deed.

### 2. RETIREMENT OF A PARTNER (SECTION 32):

#### GROUND RULE (Method) -

1. A partner may retire -
  - a. With the **consent of all** the other partners OR
  - 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.

#### Rights and liabilities of new partner:

Date of Public Notice is IMPORTANT. Retiring partner is not liable for the acts and contracts made after this date but liable for the ones before this. If Retiring partner wants to be discharged for the acts and contracts made before the date of public notice then a new agreement (Novation) is required.

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

## 4.2 ► Relations of Partners

- after they had knowledge of the retirement.
3. The retired partner and the existing 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. This public notice can be given by existing as well as retiring partner
- Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

### *In Vishnu Chandra Vs. Chandrika Prasad [Supreme Court]*

The Supreme Court in *Vishnu Chandra Vs. Chandrika Prasad*, held that the expression 'if any partner wants to dissociate from the partnership business', in a clause of the partnership deed which was being construed, comprehends a situation where a partner wants to retire from the partnership. The expression clearly indicated that in the event of retirement, the partnership business will not come to an end.

*Example 13: Mere retirement of a partner, who was the tenant of the premises in which the partnership business was carried out, would not result in assignment of the tenancy rights in favour of the remaining partners even though the retiring partner ceases to have any right, title or interest in the business as such.*

### 3. EXPULSION OF A PARTNER (SECTION 33)

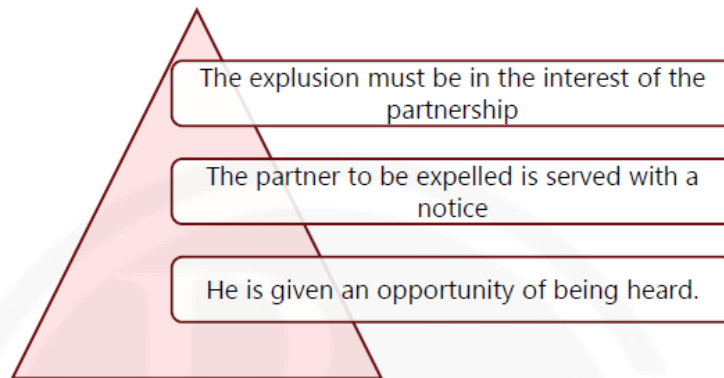
- GROUND RULE (Method) -
  - a. the power of expulsion must have existed in a contract between the

partners;

- b. the power has been exercised by a **majority of the partners**; and
- c. it has been exercised in **good faith**.

If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.

- The test of good faith as required under Section 33(1) includes three things:



If a partner is otherwise expelled, the expulsion is null and void.

- It may be noted that under the Act, the expulsion of partners does not necessarily result in dissolution of the firm.
- The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

*Example 14: A, B and C are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C. Considering the provisions of Indian Partnership Act, 1932 state whether they can expel a partner from the firm?*

**Answer -**

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

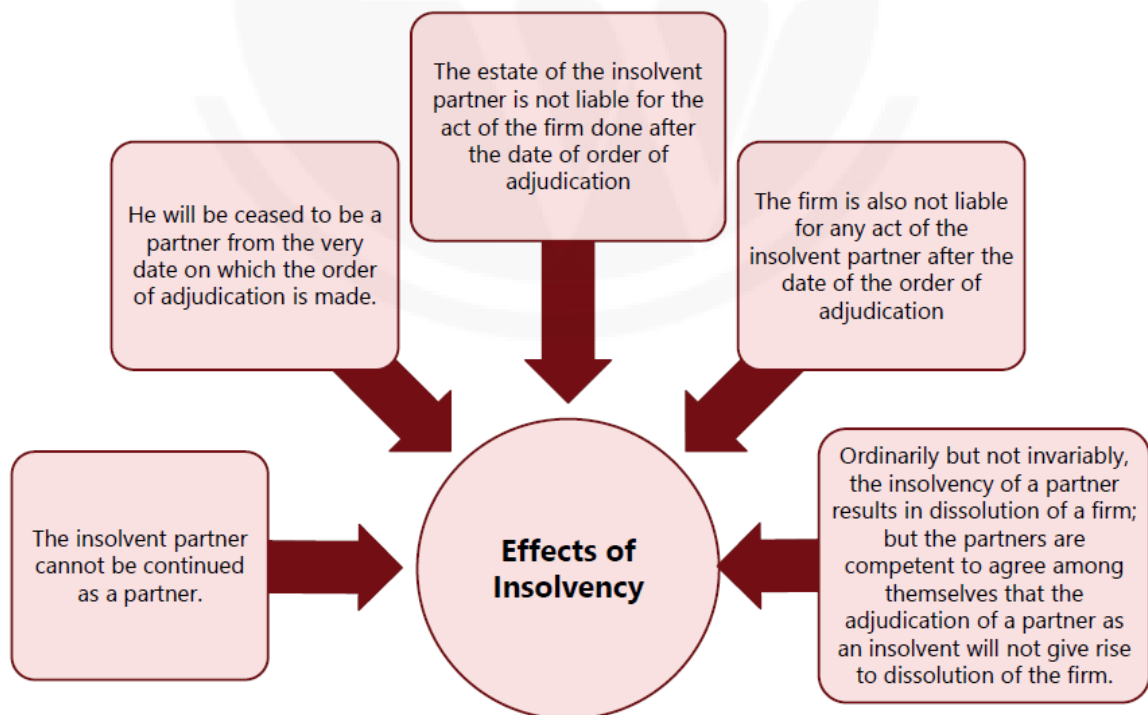
- In this context, you should also remember that provisions of Sections 32 (2), (3) and (4) which we have just discussed, will be equally applicable to an expelled

## 4.2 ► Relations of Partners

partner as if he was a retired partner.

### 4. INSOLVENCY OF A PARTNER (SECTION 34):

1. Where a partner in a firm is adjudicated as an insolvent -
  - he **ceases** to be a **partner** on the date
  - on **which** the **order** of **adjudication** is made,
  - **whether** or **not** the firm is hereby **dissolved**.
2. Where under a contract between the partners
  - the **firm is not dissolved** by the adjudication of a partner as an insolvent,
  - the **estate of a partner so adjudicated is not liable** for any act of the firm and
  - the **firm is not liable** for any act of the insolvent,
  - **done after** the date on which the order of adjudication is made.



### 5. LIABILITY OF ESTATE OF DECEASED PARTNER (SECTION 35):



Aspect	Details
Effect of Death on Partnership	Ordinarily, the death of a partner leads to the dissolution of the partnership.
Contractual Agreement	Partners can agree that the death of one partner will not dissolve the partnership concerning the surviving partners, unless the firm consists of only two partners.
Dissolution Exception	If the partnership consists of only two partners, the death of one will dissolve the partnership.
Liability of Deceased Partner's Estate	The estate of the deceased partner is absolved from liability for future obligations of the firm
Public Notice Requirement	No notice is required to be given to the public or persons dealing with the firm to absolve the deceased partner's estate from future liabilities.

*Example 15: X was a partner in a firm. The firm ordered goods in X's lifetime; but the delivery of the goods was made after X's death. In such a case, X's estate would not be liable for the debt; a creditor can have only a personal decree against the surviving partners and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in X's lifetime.*

### RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS (SECTION 36)

- An outgoing partner may carry on business competing with that of the firm and
- he may advertise such business, but subject to contract to the contrary, he

## 4.2 ► Relations of Partners

may not,-

- a. use the firm name,
- b. represent himself as carrying on the business of the firm or
- c. solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

- Agreement in restraint of trade-

- A partner may make an agreement with his partners
- that on ceasing to be a partner
- he will not carry on any business similar to that of the firm
- within a specified period or within specified local limits and,
- notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

### RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS (SECTION 37)

- Where any member of a firm has died or otherwise ceased to be partner, and
- the surviving or continuing partners carry on the business of the firm
- with the property of the firm
- without any final settlement of accounts
- as between them and the outgoing partner or his estate, then,
- in the absence of a contract to the contrary,
- the outgoing partner or his estate is entitled at the option of himself or his representatives
- to such share of the profits made since he ceased to be a partner
- as may be attributable to the use of his share of the property of the firm or
- to interest at the rate of 6% per annum
- on the amount of his share in the property of the firm:

Provided that whereby contract between the partners, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised,

- the estate of the deceased partner, or the outgoing partner or his estate, as the case may be,

- is not entitled to any further or other share of profits;
- but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof,
- he is liable to account under the foregoing provisions of this section.

*Example 16: A, B and C are partners in a manufacture of machinery. A is entitled to three- eighths of the partnership property and profits. A becomes bankrupt whereas B and C continue the business without paying out A's share of the partnership assets or settling accounts with his estate. A's estate is entitled to three-eighths of the profits made in the business, from the date of his bankruptcy until the final liquidation of the partnership affairs.*

*Example 17: A, B and C are partners. C retires after selling his share in the partnership firm. A and B fail to pay the value of the share to C as agreed to. The value of the share of C on the date of his retirement from the firm would be pure debt from the date on which he ceased to be a partner as per the agreement entered between the parties. C is entitled to recover the same with interest.*

### REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM (SECTION 38)

- A continuing guarantee given to a **firm** or to **third party**
- in respect of the transaction of a firm is **REVOKED**
- in the absence of an agreement to the contrary,
- as to **future transactions** from the **date** of any **change** in the **constitution** of the firm.

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# “ PROBLEM KYA HAI ? - Unit 2 ”

## Question Bank

### *IPA*

*This section is complied with questions and suggested answers for the chapter - IPA*

- ❖ *ICAI Study material*
- ❖ *Previos year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

*Compiled by - CA Chaitanya Jain*

**MODULE QUESTION**

**Question 1**

A, B and Care 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. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

**Answer 1**

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 firms 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.

1. 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
2. Interest at the rate of 6% annum on the amount of his share in the property.

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their 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.

**Question 1**

A, B and C are partners in M/s ABC & Company. The firm has decided to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. The machine was purchased but thereafter A and B became insolvent and the firm was unable to pay for machine. Explain, would the estate of C liable for the dues of M/s LMN & Company?

**(RTP Nov'22)**

### Answer 1

#### Liability of Partner in case of death

According to Section 35 of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. 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.

In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. Machine was purchased but after that A and B became insolvent and the firm was unable to pay for machine. On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C. Hence, the estate of C would not be liable for the dues of M/s LMN & Company.

### Question 2

Shyam, Mohan and Keshav were partners in M/s Nandlal Gokulwale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932.

**(RTP May' 23)**

### Answer 2

According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person

with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Further, according to Section 21, a partner has authority, in an emergency to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss. Hence, this sale will bind the firm.

### Question 3

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

(RTP Nov'23)

### Answer 3

Revocation of continuing guarantee (Section 38 of the 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.

### Question 4

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

(RTP Nov'23)

### Answer 4

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.

Goodwill may be defined as the value of the reputation of a business 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.



**Question 5**

M/s ABC Associates has been a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Vikas, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Vikas joining them as partner in M/s ABC Associates. After some time, Mr. Vikas felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Vikas be introduced as a partner if his father wants to retire? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

**(RTP Nov'23) (PYP May'22 6 Marks)**

**Answer 5**

1. **Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):** Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.  
In the instant case, Mr. Vikas can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.
2. **Rights of Transferee of a Partner's interest (Section 29):** A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.  
Hence, here Mr. Vikas, the transferee in M/S ABC Associates, cannot inspect the books of the firm and the contention of the other partners is right that Mr. Vikas cannot challenge the books of accounts.

**Question 6**

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

**(RTP Nov' 23)**

**Answer 6**

Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

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.

**Question 7**

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:

1. To what extent X will be liable if he failed to give public notice after attaining majority?
2. Can Mr. L recover his debt from X?

**(RTP Nov'23) (SM)**

**Answer 7**

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.

However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

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.

1. 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.
2. 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.

#### Question 8

Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of \$ 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony continued getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

(RTP Jun'24) (RTP May'22)

#### Answer 8

By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the

business of the firm, he can claim it even in the absence of a contract for the payment of the same.

In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.

#### Question 9

A, B & C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted With the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of INR 350? Assume there is no contract between the partners regarding the above.

(RTP Jun'24) (RTP Nov'21)

#### Answer 9

According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners -

- A. if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- B. if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

In the given scenario, B had sold iron bar to the firm at the current prevailing market rate of 350 per Kg though he had stock with him which he bought for INR 200 per Kg. Hence, he made an extra profit of INR 150 per Kg. This arises purely out of transactions with the firm. Hence, B is accountable to the firm for the extra profit earned thereby.

**Question 10**

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?

**(RTP Jun 24) (RTP May'23) (SM)**

**Answer 10**

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.

The rights of such a transferee are as follows:

1. During the continuance of partnership, such transferee is not entitled
  - a. to interfere with the conduct of the business,
  - b. to require accounts, or
  - c. to inspect books of the firm.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.
2. On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
  - a. to receive the share of the assets of the firm to which the transferring partner was entitled, and
  - b. for the purpose of ascertaining the share,

he is entitled to an account as from the date of the dissolution.

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. 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.

**Question 11**

Sohan, Rohan and Jay were partners in a firm. The firm is dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30 th June 2020, one of the partners, Mr. Jay died in a road accident. The firm has ordered M/s AB and Co. to supply the furniture for their business on 25th May 2020, when Jay was also alive.

Now Sohan and Rohan continue the business in the firm's name after Jay's death. The firm did not give any notice about Jay's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2020. The fact about Jay's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a casé against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Jay's private estate is also liable for the price of furniture purchased by the firm? (MTP Jun'22 6 Marks)

(RTP May 22) (MTP 6 Marks, Oct'21)

**Answer 11**

According to Section 35 of the Indian Partnership Act, 1932, 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.

Further, 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.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Jay's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Jay's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner. So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.



**Question 12**

Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefore. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership?

**(MTP Nov'22 4 Marks) (SM) (RTP May 21)**

**Answer 12**

As per Section 29 of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

In the given case during the continuance of partnership, such transferee Mr. B is not entitled:

- to interfere with the conduct of the business.
- to require accounts.
- to inspect books of the firm.

However, Mr. B 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.

**Question 13**

M/s ABC & Associates, a partnership firm with A, B and C as senior partners engaged in the business of curtain manufacturing and exporting to foreign countries. On 25th August, 2020, they inducted Mr.

P, an expert in the field of curtain manufacturing as their partner. On 10th January 2022, Mr. P was blamed for unauthorized activities and thus expelled from the partnership by approval of all of the remaining partners.

- Examine whether action by the partners was justified or not?
- 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?

**(MTP Apr'23 6 Marks) (SM)**



Answer 13

Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

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.

The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

A. Action by the partners of M/s ABC & Associates, a partnership firm to expel Mr. P from the partnership was justified as he was expelled by approval of the other partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. P. A proper notice and opportunity of being heard has to be given to Mr. P

B. The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

- the power of expulsion must have existed in a contract between the partners;
- the power has been exercised by a majority of the partners; and
- it has been exercised in good faith.

Question 14

Mr. Naresh is one of the four partners in M/s XY Enterprises. He owes a sum of Rs. 6 crore to his friend Mr. Akash which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Akash for settling the amount.

In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. Naresh validly transfer his interest in the firm by way of sale?

(ii) What would be the rights of the transferee (Mr. Akash) in case Mr. Naresh wants to retire from the firm after a period of 6 months from the date of transfer?

(MTP May'23 6 Marks) (MTP Nov'22 6 Marks) (MTP Mar'22 6 Marks)

(PYP 6 Marks, Jul 21)

Answer 14

According to Section 29 of the Indian Partnership Act, 1932,

1. A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.
2. If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law:

- (i) Yes, Mr. Naresh can validly transfer his interest in the firm by way of sale.
- (ii) On the retirement of the transferring partner (Mr. Naresh), the transferee (Mr. Akash) will be entitled, against the remaining partners:

A. to receive the share of the assets of the firm to which the transferring partner was entitled, and

B. for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

So, in this case on Mr. Naresh's retirement, Mr. Akash would be entitled to receive the value of Mr.

Naresh's share to the extent of Rs. 6 crore in the firm's assets.

#### Question 15

A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles.

A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sell at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles was continuously declining. To save the loss of firm, A sold the stock at lower price.

Meanwhile, A tried to contact B but couldn't do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932?

(MTP Nov'23 6 Marks)

**Answer 15**

According to Section 13(e) of Indian Partnership Act 1932, every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

In the instant case, due to some emergency, A sold the stock at lower price to save the firm from loss. A couldn't contact B as he was on foreign trip.

Hence, on the basis of above provisions and facts of the problem given, selling by A at a lower price was to save the firm from loss. As the act of A was in favour of firm, he was not liable to bear the loss.

**Question 16**

Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm.

**(MTP Dec'23 4 Marks) (PYP May'22 4 Marks)**

**Answer 16**

**Minor as a partner:** A minor is not competent to contract. Hence, a person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

**Rights of a minor in a partnership firm:**

1. A minor partner has a right to his agreed share of the profits and of the firm.
2. He can have access to, inspect and copy the accounts of the firm.
3. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
4. 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.

**Question 17**

P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932.

**(MTP Dec' 23 6 Marks)**

**Answer 17**

According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with the continuing partners continue to be liable to any third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was a partner.

As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

In the instant case, since Mr. R has not given the public notice of his retirement from the partnership firm and Mr. S believes that Mr. R is a partner, Mr. R will be liable to Mr. Sunder the provisions of Section 32.

Also Mr. E, who has been introduced as a partner of the firm to which Mr. E has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above

Over and above R and E, P and Q being the partners of the firm along with the firm will also be held liable to S.

Therefore, S can recover the payment from the Firm, P, Q, R and E.

**Question 18**

Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932?

**(PYP Nov'22 6 Marks)**

**Answer 18**

Expulsion of partner and factors to be kept in mind:

As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

1. the power of expulsion must have existed in a contract between the partners;
2. the power has been exercised by a majority of the partners; and
3. it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm and shall be null and void.

The test of good faith as required under Section 33(1) includes three things:

1. The expulsion must be in the interest of the partnership
2. The partner to be expelled is served with a notice
3. He is given an opportunity of being heard.

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.

**Question 19**

P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932.

**(PYP Jun' 23 6 Marks)**

**Answer 19**

According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with the continuing partners continue to be liable to any third party for acts of the firm after his retirement until public notice of his

retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was a partner.

As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

In the instant case, since Mr. R has not given the public notice of his retirement from the partnership firm and Mr. S believes that Mr. R is a partner, Mr. R will be liable to Mr. S under the provisions of Section 32.

Also Mr. E, who has been introduced as a partner of the firm to which Mr. E has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above.

Over and above R and E, P and Q being the partners of the firm along with the firm will also be held liable to S. Therefore, S can recover the payment from the Firm P, Q, R and E.

#### **Question 20**

What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932?

**(PYP Jun'23 4 Marks)**

#### **Answer 20**

Conduct of the Business (Section 12 of the Indian Partnership Act, 1932): Subject to contract between the partners-

- A. every partner has a right to take part in the conduct of the business;
- B. every partner is bound to attend diligently to his duties in the conduct of the business;
- C. any difference arising as to ordinary matters connected with the business may be decided by majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all partners; and
- D. every partner has a right to have access to and to inspect and copy any of the books of the firm.



- E. in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

#### Question 21

Discuss the rule regarding a partner's implied authority to bind the firm for his acts. Also, explain the situations when the partner has no implied authority to bind the firm.

**(PYP Dec'23 6 Marks)**

#### Answer 21

As per the provisions of Sections 19(1) read with the provisions of Section 22 of the Indian Partnership Act, 1932, which deal with the implied authority of a partner, provide that 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, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm.

Such an authority of a partner to bind the firm is called his implied authority.

As per the provisions of Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

As per the provisions of Section 21 of the Indian Partnership Act, 1932, a partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

As per the provisions of sub-section (2) of Section 19 the Indian Partnership Act, 1932, 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 the firm.

#### Question 22

Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.

(RTP May 21)

#### Answer 22

Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932): Where-

- A. a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- B. a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

#### Analysis of section 27:

It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

#### Question 23

Mr. A (transferor) transfers his share in a partnership firm to Mr. B (transferee). Mr. B felt that the book of accounts was displaying only a small amount as profit inspite of a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners were of the opinion that Mr. B cannot challenge the books of accounts. As an advisor,

help them solve the issue applying the necessary provisions from the Indian Partnership Act, 1932.

**(RTP Nov 21)**

**Answer 23**

As per Section 29 of the Indian Partnership Act, 1932, during the continuance of the business, a transferee is not entitled

- I. To interfere with the conduct of the business
- II. To require the accounts
- III. To inspect the books of the firm He is only entitled to his share of profit.

Keeping the above points, in the given case, since the partnership business is in continuance, Mr. B is bound to accept the profits as agreed to by the partners. He cannot challenge the accounts. He is only entitled to receive the share of profits of Mr. A (transferring partner).

**Question 24**

M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

- (i) Whether P's private estate is liable for the price of furniture purchased by the firm?
- (ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?

**(PYP 6 Marks, Jan'21) (RTP May'21)**

**Answer 24**

According to Section 35 of the Indian Partnership Act, 1932, 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.

Further, 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.

In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.

In the light of the facts of the case and provisions of law:

- (i) Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.
- (ii) It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

#### **Question 25**

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932.

**(PYP 4 Marks, Jan'21)**

#### **Answer 25**

Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932): Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

**Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932):** Where, -

by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third

party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

A partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

#### Question 26

Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932?

(PYP 6 Marks, Jul'21)

#### Answer 26

According to Section 19 of the Indian Partnership Act, 1932, 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.

The authority of a partner to bind the firm conferred by this section is called his "implied authority" 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 the firm.

#### Question 27

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

- A. Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.

B. State the liabilities of a minor partner both:

- (i) Before attaining majority and
- (ii) After attaining majority.

**(MTP 6 Marks, Mar'21)**

**Answer 27**

A. Rights which can be enjoyed by a minor partner:

1. A minor partner has a right to his agreed share of the profits and of the firm.
2. He can have access to, inspect and copy the accounts of the firm.
3. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
4. 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.

B. (i) Liabilities of a minor partner before attaining majority:

- a. The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- b. Minor has no personal liability for the debts of the firm incurred during his minority.
- c. Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

(ii) Liabilities of a minor partner after attaining majority:

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

**Question 28**

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?

(MTP 6 Marks, Mar'21)

**Answer 28**

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:

1. the power of expulsion must have existed in a contract between the partners;
2. the power has been exercised by a majority of the partners; and
3. it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

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

**Question 29**

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

(MTP 6 Marks, Apr'21) (RTP Nov'21)(SM)

**Answer 29**

A minor cannot be bound by a contract because a minor's contract is void and not merely voidable.

Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract.

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this



has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

**Rights:**

1. A minor partner has a right to his agreed share of the profits and of the firm.
2. He can have access to, inspect and copy the accounts of the firm.
3. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
4. 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.

**Question 30**

A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party.

Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement?

**(MTP 6 Marks, Apr'21)**

**Answer 30**

According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on



the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows about the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

Now, referring to the case given in the question, M supplied furniture to A, who ultimately sold them to a third party and M was also ignorant about the agreement entered into by the partners about the change in their role. M also is not aware that he is dealing with a partner in a firm. Therefore, M on the basis of knowledge of implied authority of A, can recover money from the firm.

But in the second situation, if M was having knowledge about the agreement, he cannot recover money from the firm.

### Question 31

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr. A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A.

Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A 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?

**(MTP 6 Marks, Nov'21)**

### Answer 31

According to Section 33 of Indian Partnership Act, 1932, 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:

1. the power of expulsion must have existed in a contract between the partners;
2. the power has been exercised by a majority of the partners; and
3. it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33(1) includes three things:

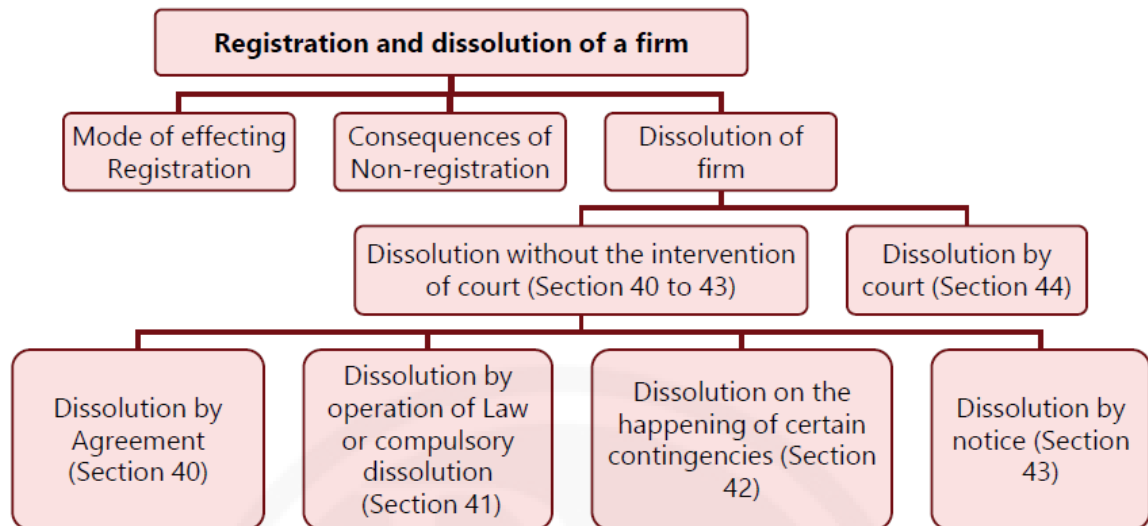
- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

According to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid as he was not served any notice and also he was not given an opportunity of being heard. Also the matter of fight between A and Y was on personal reasons, hence not satisfying the test of good faith in the interest of partnership. Since the conditions given under above provisions are not satisfied, the expulsion stands null and void.

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## Unit 3 - Registration & Dissolution of a Firm



### REGISTRATION OF FIRMS

- Is it compulsory in India to get your firm registered ? - NO, ITS OPTIONAL.
- Under the English Law, the registration of firms is compulsory.
- Therefore, there is a penalty for non-registration of firms.
- But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

### APPLICATION FOR REGISTRATION (SECTION 58):

- Apply to ROF of your POB area
- Prescribed Form and Fees
- Content - NAME PANDDu
- Statement shall be signed by all the portners or their agents

- 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,

## 4.3 ► Registration & Dissolution of a Firm

- stating- (**NAME - PANDDu**)
  - a. The firm's **name**
  - b. **P** - The place or principal **place** of business of the firm,
  - c. **A** - Additional place - The names of **any** other places where the firm carries on business,
  - d. **N** - New partner the **date** when each **partner** joined the firm,
  - e. **D** - Details of Partners - the **names** in full and **permanent addresses** of the partners, and
  - f. **DU** - the **duration** of the firm.
- The statement shall be signed by all the partners, or by their agents specially authorised in this behalf. Each person signing the statement shall also verify it in the manner prescribed.

*A firm name shall not contain any of the following words, namely:-*

Note: '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.

  
सत्यमेव जयते  
**GOVERNMENT OF INDIA**  
**MINISTRY OF CORPORATE AFFAIRS**  
Central Registration Centre

**Certificate of Incorporation**

[Pursuant to sub-section (2) of section 7 and sub-section (1) of section 8 of the Companies Act, 2013 (18 of 2013) and rule 18 of the Companies (Incorporation) Rules, 2014]

I hereby certify that [REDACTED] PRIVATE LIMITED is incorporated on this Thirteenth day of January Two thousand twenty under the Companies Act, 2013 (18 of 2013) and that the company is limited by shares.

The Corporate Identity Number of the company is XXXX09DL202XXX36XXXX

The Permanent Account Number (PAN) of the company is [REDACTED] \*

The Tax Deduction and Collection Account Number (TAN) of the company is [REDACTED] \*

Given under my hand at Manesar this Thirteenth day of January Two thousand twenty .

GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS  
Digital Signature Certificate  
VILAS SAMBHAJI HAJARE  
DEPUTY REGISTRAR OF COMPANIES  
For and on behalf of the Jurisdictional Registrar of Companies  
Registrar of Companies  
Central Registration Centre

### REGISTRATION (SECTION 59):

- When the Registrar is satisfied that the provisions of Section 58 have been duly complied with,
- he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement.
- Then he shall issue a certificate of Registration.
- However, registration is deemed to be completed as soon as -
  - an application in the prescribed form
  - with the prescribed fee and
  - necessary details concerning the particulars of partnership is delivered to the Registrar.

*Take the delivery date as effective date and not the date when ROF makes an entry in the register.*

- The recording of an entry in the register of firms is a routine duty of Registrar.

### LATE REGISTRATION ON PAYMENT OF PENALTY (SECTION 59A-1):

- If the statement in respect of any firm is not sent or delivered to the Registrar within the time specified in sub- section (1A) of section 58,
- then the firm may be registered on payment, to the Registrar,
- of a penalty of **one hundred rupees per year** of delay
- or a part thereof. Ex - Consider 2.1 or 2.5 years as 3 years.

### CONSEQUENCES OF NON-REGISTRATION (SECTION 69)

#### Disadvantages (Disabilities) of not registering the partnership firm -

- Section 69 - non-registration of partnership firm gives rise to a number of disabilities which we shall presently discuss. These are as follows:

Suit - UNRG Firm to 3rd Party  NO	Suit - 3rd Party to UNRG Firm  YES	Set off Claim - N.A.  (Allowed only upto Rs. 100)	Suit - Partner of UNRG Firm to Other Partner or UNRG Firm  NO
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## 4.3 ► Registration & Dissolution of a Firm

### 1. No suit in a civil court by firm or other co-partners against third party:

- An Unregistered 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,

In other words,

- To sue a third party you have to be registered and
- the persons suing have been in the register of firms as partners in the firm.

### 2. Third party can sue the firm:

In case of an unregistered firm, an action can be brought against the firm by a third party.

### 3. 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 Rs. 100 or
- the firm can't pursue other proceedings to enforce the rights arising from any contract.

### 4. 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.

**Exceptions:** Non-registration of a firm does not, however effect the following rights:

मतलब Firm RG. हो UNRG. या ना हो ये हक हमेशा रहेंगे -

### Already Covered -

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.

4. Power of an Official Assignees, Receiver of Court -

To release the property of the insolvent partner and to bring an action.

5. Power and right of Legal Representative (LR) or heir -

- of the deceased partner of a firm for accounts of the firm
- to realise the property of the firm.

*Example 1: A & Co. is registered as a partnership firm in 2017 with A, B and C partners. In 2018, A dies. In 2019, B and C sue X in the name and on behalf of A & Co. without fresh registration. Now the first question for our consideration is whether the suit is maintainable. ?*

### *Answer -*

*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,*

1. *the suit must be instituted by or on behalf of the firm which had*



## 4.3 ► Registration & Dissolution of a Firm

*been registered;*

- 2. the person suing had been shown as partner in the register of firms. 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 the above example, what difference would it make, if in 2019 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.**

Summary -

**Cases where NO Fresh registration taken -**

- 1. When a partner dies and firm continues - Old partners can sue even if not notified the ROF**
- 2. When taken a new partner (Incoming partner) - Old partners cannot sue. You have to notify the ROF.**

### DISSOLUTION OF FIRM (SECTIONS 39 - 47)

- Section 39 of the Indian Partnership Act, 1932 -

The dissolution of **partnership between ALL partners of a firm** is called the 'dissolution of the firm'.

- Thus, the dissolution of firm means the discontinuation of the legal relation existing between **ALL** the partners of the firm.
- But when only one or more partners retires or becomes incapacitated from acting as a partner

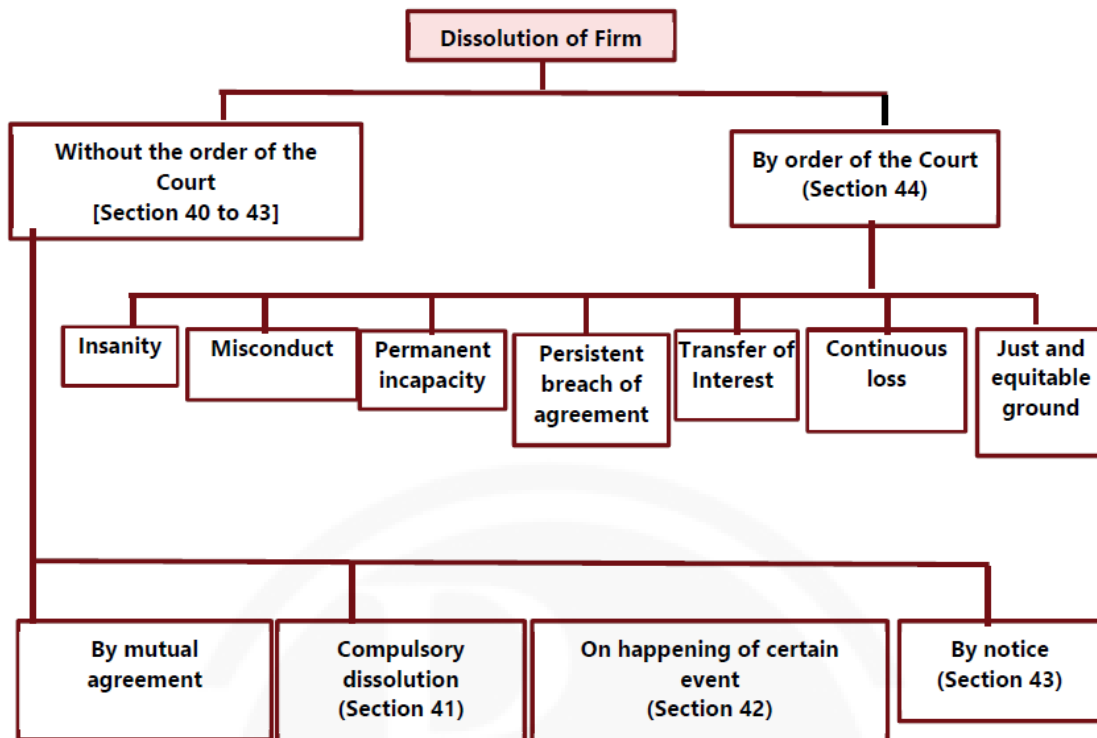
- due to death, insolvency or insanity,
- the partnership, i.e. the relationship between such a partner and other is dissolved, but the rest may decide to continue.
- In such cases, there is in practice, no dissolution of the firm.
  
- The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership.
  
- 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.

### Dissolution of Firm Vs. Dissolution of Partnership

Aspect	Dissolution of Firm	Dissolution of Partnership
<b>Definition</b>	Complete termination of the firm, including all partnerships within the firm.	Termination of the existing partnership, but the firm may continue with new partners.
<b>Closure of Business</b>	✓ The entire business is closed.	✗ The business may continue with new or remaining partners.
<b>Legal Entity</b>	✓ The firm ceases to exist as a legal entity.	✗ The firm continues with a reconstituted partnership.
<b>Impact on Partners</b>	✓ All partners' relationships are terminated.	✗ Only the existing partnership is terminated; partners may reform with new terms.
<b>Winding Up of Affairs</b>	✓ Assets are liquidated, debts are paid off, and any surplus is distributed among partners.	✗ The existing partnership's affairs are settled, but the firm's operations continue.
<b>New Agreement Needed</b>	✗ No new agreement as the firm is dissolved completely.	✓ A new partnership agreement is needed if the firm continues with remaining or new partners.
<b>Third-Party Relationships</b>	✓ All third-party contracts and relationships are terminated.	✗ Third-party contracts may continue under the reconstituted firm.
<b>Distribution of Assets and Liabilities</b>	✓ Assets and liabilities are distributed among partners.	✗ Assets and liabilities remain with the continuing firm.

## 4.3 ► Registration & Dissolution of a Firm

### MODES OF DISSOLUTION OF A FIRM (SECTIONS 40-44)



#### 1. VOLUNTARY DISSOLUTION or DISSOLUTION WITHOUT THE ORDER OF THE COURT OR

It consists of following four types :-

Agreement 40	Compulsory 41	On happening of an event 42	By notice 43
-----------------	------------------	-----------------------------------	-----------------

##### A. Dissolution by Agreement (Section 40):

- Section 40 gives right to the partners to dissolve the partnership -
- by agreement with the consent of all the partners or
- in accordance with a contract between the partners.
- 'Contract between the partners' means a contract already made.

##### B. Compulsory dissolution (Section 41):

A firm is compulsorily dissolved -

- by the adjudication of ALL the partners or
- of all the partners but one as insolvent (Except one); or

→ by the happening of any event which makes it unlawful for the business of the firm or for the partners to carry it on in partnership.

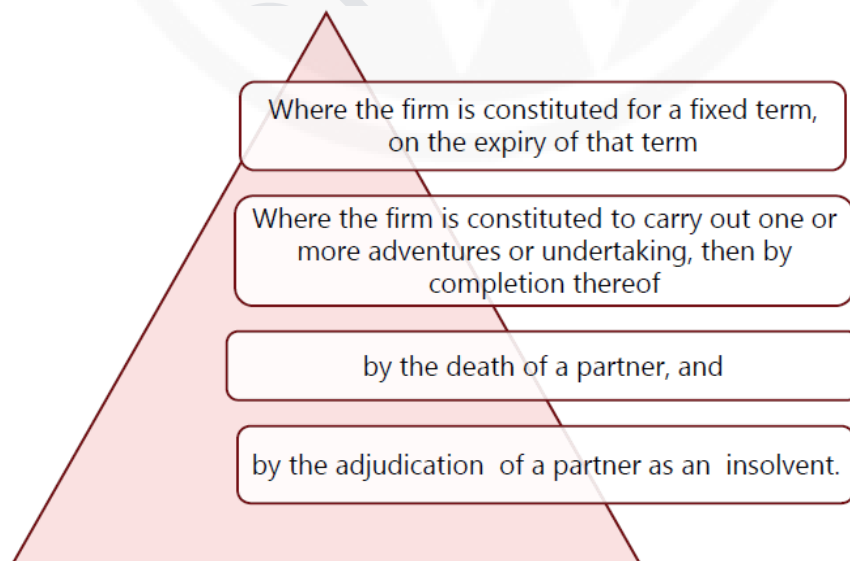


- However, when more than one separate adventure or undertaking is carried on by the firm,
- the illegality of one or more
- shall not of itself cause the dissolution of the firm in respect of
- its lawful adventures and undertakings.

*Example 2: A firm is carrying on the business of trading a particular chemical and a law is passed which bans on the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved.*

### C. Dissolution on the happening of certain contingencies (Section 42):

Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies-



### D. Dissolution by notice of partnership at will (Section 43):

- Where the partnership is at will -
- the firm may be dissolved by any partner

## 4.3 ► Registration & Dissolution of a Firm

- giving notice in writing to all the other partners
- of his intention to dissolve the firm.
- In case date is mentioned in the Notice:
  - A. The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or
  - B. in case no date is so mentioned, as from the date of the communication of the notice.

### 2. DISSOLUTION BY THE COURT (SECTION 44):

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

#### IMPROVE -

I: Insanity/Unsound Mind

M: Misconduct

P: Persistent Breach of Agreement

R: Repeated Losses (Continuous/Perpetual Losses)

O: Obsolete Capacity (Permanent Incapacity)

V: Voluntary Transfer of Interest

E: Equitable Grounds (Just and Equitable Grounds)

#### a. 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

*Example 3: A, B and C are partners in a firm. A has severe infection and got typhoid. Due to this, he was not able to conduct business for few weeks. This kind of illness cannot be treated as the ground for dissolution.*

#### b. Permanent incapacity (Obsolete capacity) :-

- 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.

### c. Misconduct:

- Where a partner, other than the partner suing,
- is guilty of conduct which is likely to affect prejudicially the carrying on of business,
- the 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 the conduct of the business.
- The 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.

### d. 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:
  - Embezzlement,
  - Keeping erroneous accounts
  - Holding more cash than allowed
  - Refusal to show accounts despite repeated request etc.

## 4.3 ► Registration & Dissolution of a Firm

*Example 4: If one of the partners keeps erroneous accounts and omits to enter receipts or if there is continued quarrels between the partners or there is such a state of things that destroys the mutual confidence of partners, the court may order for dissolution of the firm.*

### e. Transfer of interest (Voluntary):

- 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 due by the partner,
- the court may dissolve the firm at the instance of any other partner.

f. **Repeated/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.

### g. 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-

- 1) **Deadlock** in the management.
- 2) Where the **partners** are not in **talking terms** between them.
- 3) Loss of **substratum**.
- 4) **Gambling** by a partner on a **stock exchange**.

## CONSEQUENCES OF DISSOLUTION (SECTIONS 45 - 55)

Consequent to the dissolution of a partnership firm, the partners have certain rights and liabilities, as are discussed:



45	<b>PROTECT - NOTICE OF Dissolution -</b> - 3rd parties (when unaware of dissolution) <-----> Firm - Partners <-----> Liabilities towards 3rd parties
46	After DISS. Property of the firm → Debt & Liabilities → Surplus among partners
47	Continuing authority of Partners after WP - R / O / Authority to bind the firm → For the purpose of WP only
48	Mode of Settlement - Losses and Assets
49	- Firm's property → For Firm's debt first then separate debt of partners and - Partners' separate property → For separate debt first then firm's debt

## 1. Liability for acts of partners done after dissolution (Section 45):

Section 45 has two fold objectives-

- a. It seeks to protect third parties dealing with the firm who had no notice of prior dissolution and
- b. It also seeks to protect partners of a dissolved firm from liability towards third parties.

*Example 5: X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount because no public notice was given.*

However, there are exceptions to the rule stated in above example i.e. even where notice of dissolution has not been given, there will be no liability for subsequent acts in the case of:

- a. the estate of a **deceased** partner,
- b. an **insolvent** partner, or
- c. a **dormant** partner, i.e., a **partner** who was **not known** as a **partner** to the

## 4.3 ► Registration & Dissolution of a Firm

person dealing with the firm.

### 2. Right of partners to have business wound up after dissolution (Section 46):

- On the dissolution of a firm every partner or his representative is entitled,
- as against all the other partners or their representative,
- to have the property of the firm applied in payment of the debts and liabilities of the firm, and
- to have the surplus distributed among the partners or their representatives according to their rights.

### 3. Continuing authority of partners for purposes of winding up (Section 47):

जो Authority, winding up के लिए ज़रूरी है वो rights and obligations रहेगी partners के पास

After the dissolution of a firm -

- the authority of each partner to bind the firm, and
- the other mutual rights and obligations of the partners,
- continue notwithstanding the dissolution, so far as may be necessary
- to wind up the affairs of the firm and
- to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent;

but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

### 4. Mode of Settlement of partnership accounts (Section 48):

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

Settle LOSSES out of → Flow -		
PROFITS	CAPITAL	PARTNERS IN

		PSR
--	--	-----

- a. **Losses**, including deficiencies of capital, shall be paid
- first out of profits,
  - next out of capital, and,
  - lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

### EXAMPLE -

ABC Partners with three partners: Amit, Bharat, and Chetan. They have decided to dissolve the partnership and need to settle the firm's accounts.

### **DATA -**

Profits: ₹30,000

Capital: ₹50,000 (Amit: ₹20,000, Bharat: ₹15,000, Chetan: ₹15,000)

Losses/Deficit: ₹90,000

### **Step 1: Settle Losses Out of Profits**

The first step is to use the profits to cover the losses.

Losses: ₹90,000

Profits Available: ₹30,000

So, the firm will use ₹30,000 from the profits to reduce the loss:

Remaining Loss: ₹90,000 - ₹30,000 = ₹60,000

### **Step 2: Settle Remaining Losses Out of Capital**

Remaining loss of ₹60,000 using the partners' capital contributions.

Capital Available: ₹50,000 (Amit: ₹20,000, Bharat: ₹15,000, Chetan: ₹15,000)

Remaining Loss after Capital Adjustment: ₹60,000 - ₹50,000 = ₹10,000

Now, the firm has no capital left, and there is still a ₹10,000 loss to cover.

### **Step 3: Settle Any Further Losses by Partners Individually**

The final step - The partners cover the remaining loss of ₹10,000 personally.

(Assuming they share profits and losses equally (1:1:1):

Each partner must contribute: ₹10,000 ÷ 3 = ₹3,333.33

## 4.3 ► Registration & Dissolution of a Firm

- b. The **assets (Include Goodwill in the calculation)** of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

Utilize ASSETS in the following flow -			
DEBT	ADVANCE (Partner's)	CAPITAL	Residual - To Partners in PSR

- I. in paying the **debts** of the firm to third parties;
- II. in paying to **each partner** rateably what is **due** to him from **capital**; (To be read as Advances from Partner)
- III. in paying to each partner rateably what is due to him on **account of capital**; and
- IV. the residue, if any, shall be **divided among** the **partners** in the **proportions** in which they were entitled to share profits

### **Example -**

Imagine a small partnership firm called XYZ Associates with three partners: Xavier, Yash, and Zara. They have decided to dissolve the partnership.

### **DATA-**

Assets Available: ₹1,50,000

Debts to Third Parties: ₹50,000

Advances from Partners: Xavier: ₹10,000, Yash: ₹5,000, Zara: ₹5,000

Total Advances: ₹20,000

Capital Contributed by Partners: Xavier: ₹30,000, Yash: ₹20,000, Zara: ₹10,000

Total Capital: ₹60,000, Profit-Sharing Ratio: Equal (1:1:1)

### **Step 1: Pay Debts to Third Parties**

The first priority is to pay off the debts to third parties.

Debts to third parties: ₹50,000

Remaining assets after paying debts: ₹1,50,000 - ₹50,000 = ₹1,00,000

### **Step 2: Pay Advances from Partners**

Next, the firm pays back the advances made by the partners.

Total Advances: ₹20,000 (Xavier: ₹10,000, Yash: ₹5,000, Zara: ₹5,000)

Remaining assets after paying advances: ₹1,00,000 - ₹20,000 = ₹80,000

### **Step 3: Pay Capital Contributed by Partners**

Now, the firm returns the capital that each partner originally contributed.

Total Capital: ₹60,000 (Xavier: ₹30,000, Yash: ₹20,000, Zara: ₹10,000)

Since ₹80,000 is available, it can fully cover the total capital of ₹60,000.

Remaining assets after paying capital: ₹80,000 - ₹60,000 = ₹20,000

### **Step 4: Divide Any Residual Assets Among Partners**

Any remaining assets are divided among the partners based on their PSR

Remaining assets to be divided: ₹20,000 Profit-sharing ratio: Equal (1:1:1)

Each partner receives:

Xavier: ₹20,000 ÷ 3 = ₹6,666.67, Yash: ₹6,666.67, Zara: ₹6,666.67

### **Example 6:**

*Case 1: Without any specific agreement, the deficiency is shared equally between X's estate and Y, so both bear ₹2,50,000 of the loss.*

*X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed Rs. 6,60,000 to the capital of the firm and Y only Rs. 40,000. The assets amounted to Rs. 2,00,000. In such situation, the deficiency (6,60,000 + 40,000 - 2,00,000 i.e. 5,00,000) would have to be shared equally by Y and X's estate.*

### **Case 2:**

*With an agreement to distribute assets based on capital contribution, X's estate bears a larger portion of the deficiency (₹4,71,450), while Y bears a smaller portion (₹28,550).*

**Capital Proportion:**

- X: ₹6,60,000 / ₹7,00,000 = 94.29%

## 4.3 ► Registration & Dissolution of a Firm

- $Y: ₹40,000 / ₹7,00,000 = 5.71\%$

*Deficiency Covered by Each Partner: The deficiency of ₹5,00,000 would be shared in these proportions:*

- *X's Estate: 94.29% of ₹5,00,000 = ₹4,71,450*
- *Y: 5.71% of ₹5,00,000 = ₹28,550*

- If in the above example, the agreement provided that on dissolution the surplus assets would be divided
- between the partners according to their respective interests in the capital and
- on the dissolution of the firm a deficiency of capital was found,
- then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser.

### **GARNER & MURRAY RULE -**

Deficiency Allocation:

- When a partner is insolvent during the dissolution of a partnership,
- the deficiency (shortfall) caused by their inability to pay
- is distributed among the solvent partners
- based on their last agreed capital contributions, not their profit-sharing ratios.

Partner	Capital Contribution (₹)	Deficiency Allocation (₹)	Final Capital After Deficiency (₹)
A	30000	6000	24000
B	20000	4000	16000
C	10000	C is Insolvent	0

### **5. Payment of firm debts and of separate debts (Section 49):**

Where there are joint debts due from the firm and also separate debts due from any partner:

- a. the property of the firm shall be applied in -
  - i. the first instance in payment of the debts of the firm, and
  - ii. if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;
  
- b. the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm

Imagine a partnership firm called ABC Traders with two partners, Arun and Bala. The firm owes money to third parties, and both Arun and Bala also have personal			
<b>Financial Situation:</b>			
Firm's Debts (Joint Debts): ₹1,50,000			
Firm's Assets: ₹1,00,000			
Arun's Separate Debts: ₹50,000			
Arun's Separate Assets: ₹30,000			
Bala's Separate Debts: ₹40,000			
Bala's Separate Assets: ₹50,000			
<b>Category</b>	<b>Arun</b>	<b>Bala</b>	<b>Firm</b>
Firm's Debts (Joint Debts)			₹1,50,000
Firm's Assets			₹1,00,000
Remaining Firm's Debts			₹50,000
Arun's Separate Debts	₹50,000		
Arun's Separate Assets	₹30,000		
Remaining Arun's Separate Debts	₹20,000		
Bala's Separate Debts		₹40,000	
Bala's Separate Assets		₹50,000	
Remaining Bala's Separate Debts		₹0	
Bala's Surplus Assets		₹10,000	
Remaining Firm's Debts after Bala's Surplus			₹40,000

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# “ PROBLEM KYA HAI ? - Unit 3 ”

## Question Bank

### *IPA*

*This section is complied with questions and suggested answers for the chapter - IPA*

- ❖ *ICAI Study material*
- ❖ *Previos year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

*Compiled by - CA Chaitanya Jain*

Question 1

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

(Module)

Answer 1

APPLICATION FOR REGISTRATION (SECTION 58):

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.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

2. Each person signing the statement shall also verify it in the manner prescribed.
3. 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.

Question 1

M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm.

M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

- a. Whether M/s LMN & Company can file the suit against M/s XYZ & Company?
- b. What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?

- c. What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm?

**(RTP May' 22)**

**Answer 1**

According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

- On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.
- In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.
- In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.

**Question 2**

G, I and S were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act 1932, can G, I and S continue the partnership or will their partnership firm get dissolved?

**(RTP Nov'22)**

**Answer 2**

**Compulsory dissolution of a firm (Section 41)**

A firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

In this case, the firm is carrying on the business of trading in a particular chemical and a law is passed which bans the trading of such a particular chemical.

The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved in the light of Section 41 of the Indian Partnership Act, 1932.

**Question 3**

State whether the following are partnerships under the Indian Partnership Act, 1932:

1. Two firms each having 12 partners combined by an agreement into one firm.
2. A and B, co-owners, agree to conduct the business in common for profit.
3. Some individuals form an association to which each individual contributes Rs. 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
4. A and B, co-owners share between themselves the rent derived from a piece of land.
5. A and B buy commodity X and agree to sell the commodity with sharing the profits equally.

(RTP Nov'23)

Answer 3

1. Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
2. Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
3. No, this is not a case of partnership as no charitable association can be floated in partnership.
4. No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
5. Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Question 4

X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932?

(RTP Jun' & May' 23)

Answer 4

By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.

In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given.

After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

Following the provisions of Section 45, X and Y are continuing liable against third party even after dissolution of firm until public notice is given. As in the given problem, X became insolvent, therefore, Y will be liable to Z.

#### Question 5

Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

**(MTP Mar 22 4 Marks)**

#### Answer 5

Mode of Settlement of partnership accounts: As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

1. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
  - a. in paying the debts of the firm to third parties;
  - b. in paying to each partner rateably what is due to him from capital;
  - c. in paying to each partner rateably what is due to him on account of capital; and
  - d. the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

#### Question 6

P & Co. is registered as a partnership firm in 2018 with A, B and P as partners dealing in sale and purchase of motor vehicles. In April 2019/A dies. Now only B and P continue the firm and same business with same firm name P & Co.

In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co. The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm.

In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable?

**(MTP Nov' 22 6 Marks)**

**Answer 6**

**Consequences of Non-registration of partnership firm (Section 69 of the Indian Partnership Act, 1932):** Non-registration of partnership gives rise to a number of disabilities. Though registration of firm is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Following are the consequences:

- A. 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.
- B. 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.
- C. 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.
- D. Third-party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

In the instant case, since the fresh registration has not been taken after introduction of new partner S, the firm P & Co. will be considered as unregistered firm. Hence the firm which is not registered cannot file a case against the third party. Hence the firm P & Co. cannot sue X.

**Question 7**

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

(MTP Apr'23 4 Marks) (MTP Jun'22 4 Marks)(SM) MTP 4 Marks, Apr'21)

(MTP 4 Marks, Oct'21)

**Answer 7**

**Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. 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. 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.

**Dissolution of a Firm may take place (Section 39 - 44)**

- 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; (iv) insolvency of a partner.
- E. 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
- F. 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 breach of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) business being carried on at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.



**Question 8**

Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

(MTP May 234 Marks) (MTP Nov'22 4 Marks) (MAJP Mar'22 4 Marks)

(PYP 4 Marks, Jul'21)

**Answer 8**

**Mode of Settlement of partnership accounts:** As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

1. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
  - a. in paying the debts of the firm to third parties;
  - b. in paying to each partner rateably what is due to him from capital;
  - c. in paying to each partner rateably what is due to him on account of capital; and
  - d. the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

**Question 9**

Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India. Also, explain the rights unaffected due to non-registration of firms.

(MTP Nov'23 6 Marks)

**Answer 9**

The Indian Partnership Act, 1932 does not make the registration of firm's compulsory nor does it impose any penalty for non-registration. However, under Section 69 of the Indian Partnership Act, 1932, non-registration of partnership gives rise to a number of disabilities. 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 Rs. 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.

Following are the Rights unaffected due to non-registration of firms:  
Non-registration of a firm does not, however effect the following rights:

- a. The right of third parties to sue the firm or any partner
- b. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
- c. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
- d. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.
- e. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

**Question 10**

Explain the grounds on which court may dissolve a partnership firm in case of any partner files a suit for the same.

**(PYP May' 22 4 Marks)**

**Answer 10**

According to Section 44 of the Indian Partnership Act, 1932, Court may, at the suit of the partner, dissolve a firm on any of the following grounds:

- A. **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.
- B. **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.
- C. **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- D. **Persistent breach of agreement:** Following comes into category of breach of contract:
  - Embezzlement,
  - Keeping erroneous accounts
  - Holding more cash than allowed
  - Refusal to show accounts despite repeated request etc.
- E. **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 due by the partner, the court may dissolve the firm at the instance of any other partner.
- F. **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.

G. **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.

#### Question 11

"Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India. Also, explain the rights unaffected due to non-registration of firms.

**(PYP Nov'22 6 Marks) (SM)**

#### Answer 11

It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

**Following are the consequences of Non-registration of Partnership Firms in India:**

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69 of the Indian Partnership Act, 1932, non-registration of partnership gives rise to a number of disabilities. 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 Rs. 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.

Following are the Rights unaffected due to non-registration of firms: Non-registration of a firm does not, however effect the following rights:

- The right of third parties to sue the firm or any partner
- The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
- The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
- The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.
- The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

#### Question 12

Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932.

**(PYP Jun'23 6 Marks)**

#### Answer 12

**Application for Registration (Section 58 of the Indian Partnership Act, 1932):** 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-

- The firm's name
- The place or principal place of business of the firm,
- The names of any other places where the firm carries on business,
- the date when each partner joined the firm,
- the names in full and permanent addresses of the partners, and
- the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

1. Each person signing the statement shall also verify it in the manner prescribed.
2. 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.

**Registration (Section 59):** When the Registrar is satisfied that the provisions of section 58 (above mentioned provisions) have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms and shall file the statement.

The Firm when registered shall use the brackets and word (Registered) immediately after its name.

### Question 13

State the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the Indian Partnership Act, 1932?

**(PYP Dec'23 4 Marks)**

### Answer 13

**Mode of Settlement of partnership accounts:** As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

1. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
  - a. in paying the debts of the firm to third parties;
  - b. in paying to each partner rateably what is due to him from capital;
  - c. in paying to each partner rateably what is due to him on account of capital; and
  - d. the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

### Question 14



MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning 'Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected?

(RTP Nov'21)

#### Answer 14

According to Section 41 of the Indian Partnership Act, 1932, a firm is compulsorily dissolved;

- a. by the adjudication of all the partners or of all the partners but one as insolvent, or
- b. by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

However, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto.

Else the business of the firm shall be treated as unlawful.

However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.

#### Question 15

"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?

**(MTP 4 Marks, Mar'21)**

**Answer 15**

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning.

However, under Section 69, non-registration of partnership gives rise to a number of disabilities which 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.
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.

**Question 16**

"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms In India?

(MTP 4 Marks, Nov'21) (RTP May'21)

Answer 16

It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

**Following are consequences of Non-registration of Partnership Firms in India:**

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. 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. In other words, a registered firm can only file a suit against a third party and the persons suing have been 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 Rs. 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.

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