

CA FOUNDATION JAN 2025

FREE AGASTYA BATCH

BUSINESS LAWS

THE INDIAN
PARTNERSHIP ACT,
1932

ONE SHOT





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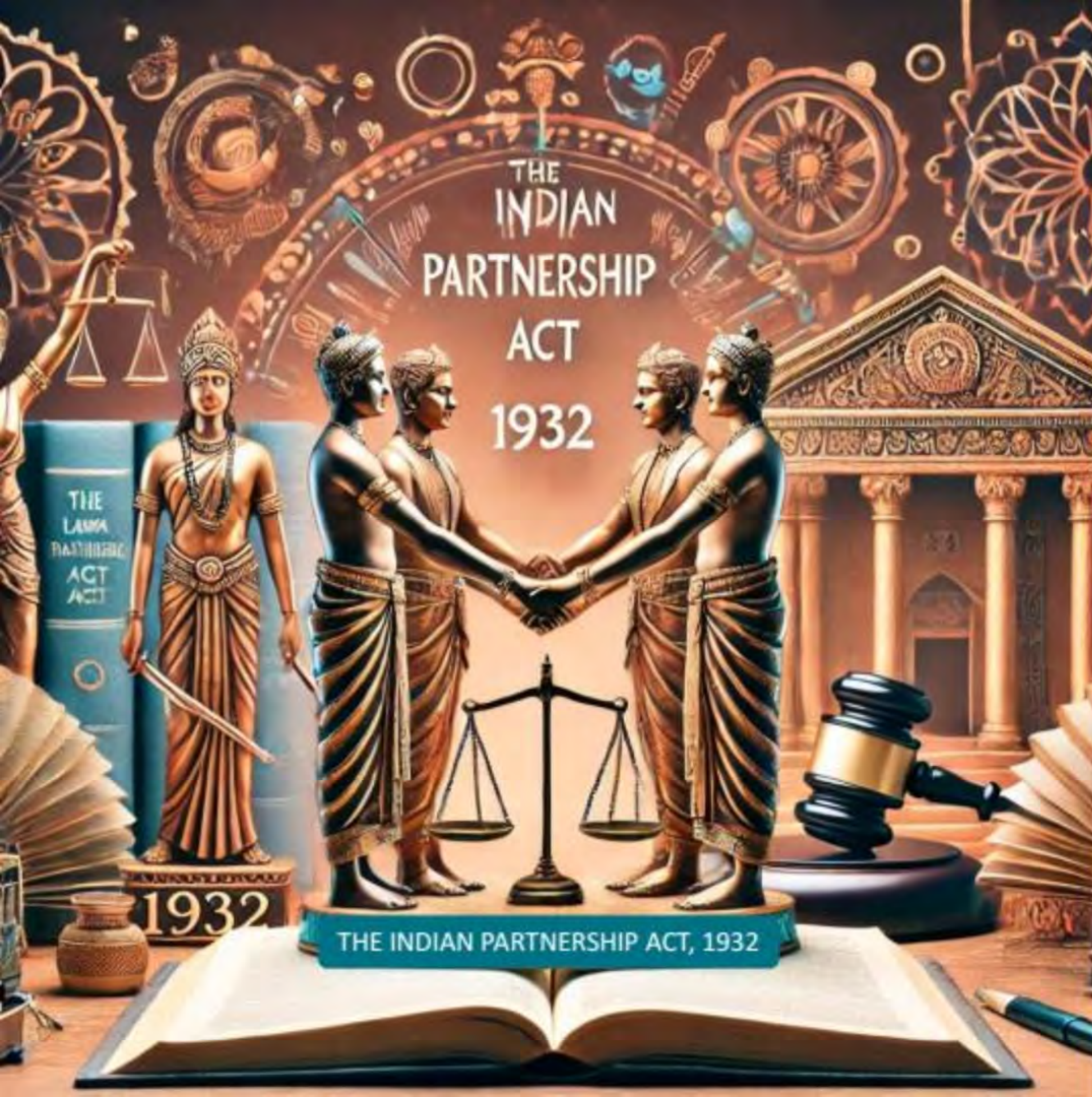
Aur ye hai — Kanoon ka Junoon

Business Laws

By— CA Chaitanya Jain



THE INDIAN PARTNERSHIP ACT, 1932



About *the chapter*

A

UNIT 1 – GENERAL NATURE ✓

B

UNIT 2 – RELATIONS OF PARTNERS ✓

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UNIT 3 – REGISTRATION & DISSOLUTION ✓



UNIT - 1

Topics covered



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WHAT IS PARTNERSHIP ? IMP DEFINITIONS ✓

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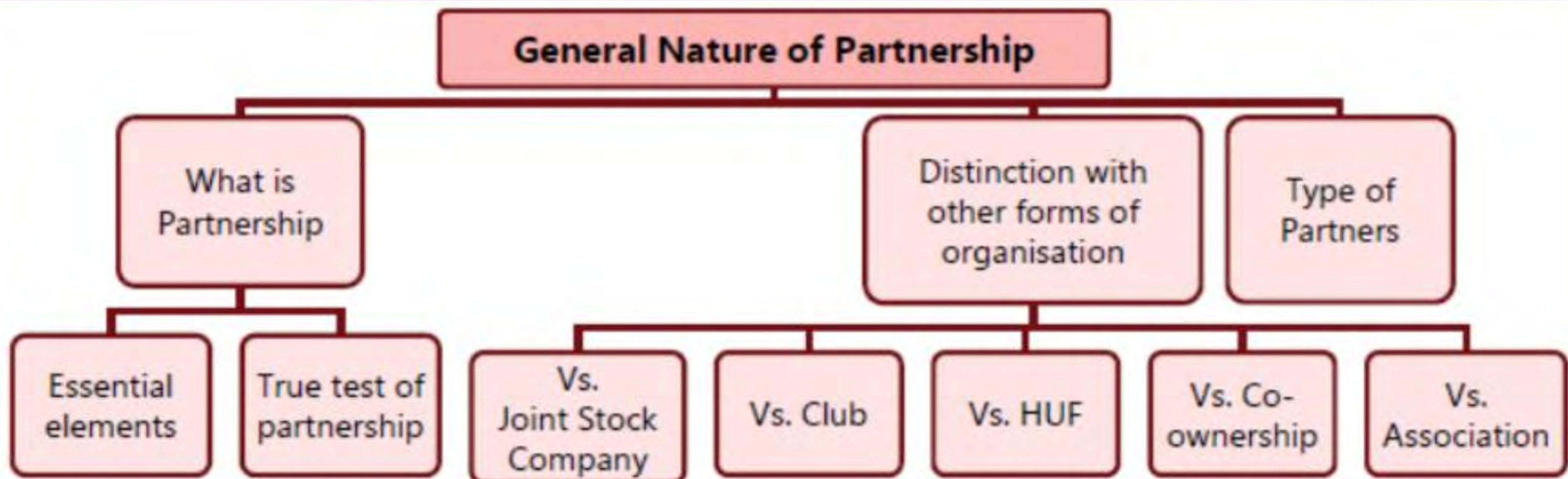
KINDS OF PARTNERSHIP ✓

7

TYPES OF PARTNERS ✓



General Nature of Partnership





PRE-REQUISITE



- Applicable to the whole of India ✓
- Act was passed by British government – 08th April 1932 ✓
- Act became applicable from 1st October 1932 ✓
- It was based on The English Partnership Act, 1890
- This act at this level cover Sections – 1 to 74
- Earlier it was a part of The Indian Contract Act, 1872 under chapter XI



Why ??



MIN

Relationship -->> Two or more persons

एक से भले दो (Better than sole proprietorship)

- ✓ Skill and Talent
- ✓ Capital
- ✓ Risk Share
- ✓ Profit share



LIMIT



DEFINITIONS



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.
- Handwritten notes: (2) above 'relation', 2/more above 'persons', (1) above 'business', (3) above 'Business'.

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.

Partners –

Persons who have entered partnership with one another individually and

Firm – Collectively and

Firm Name –

The name under which their business is carried on (Relationship)



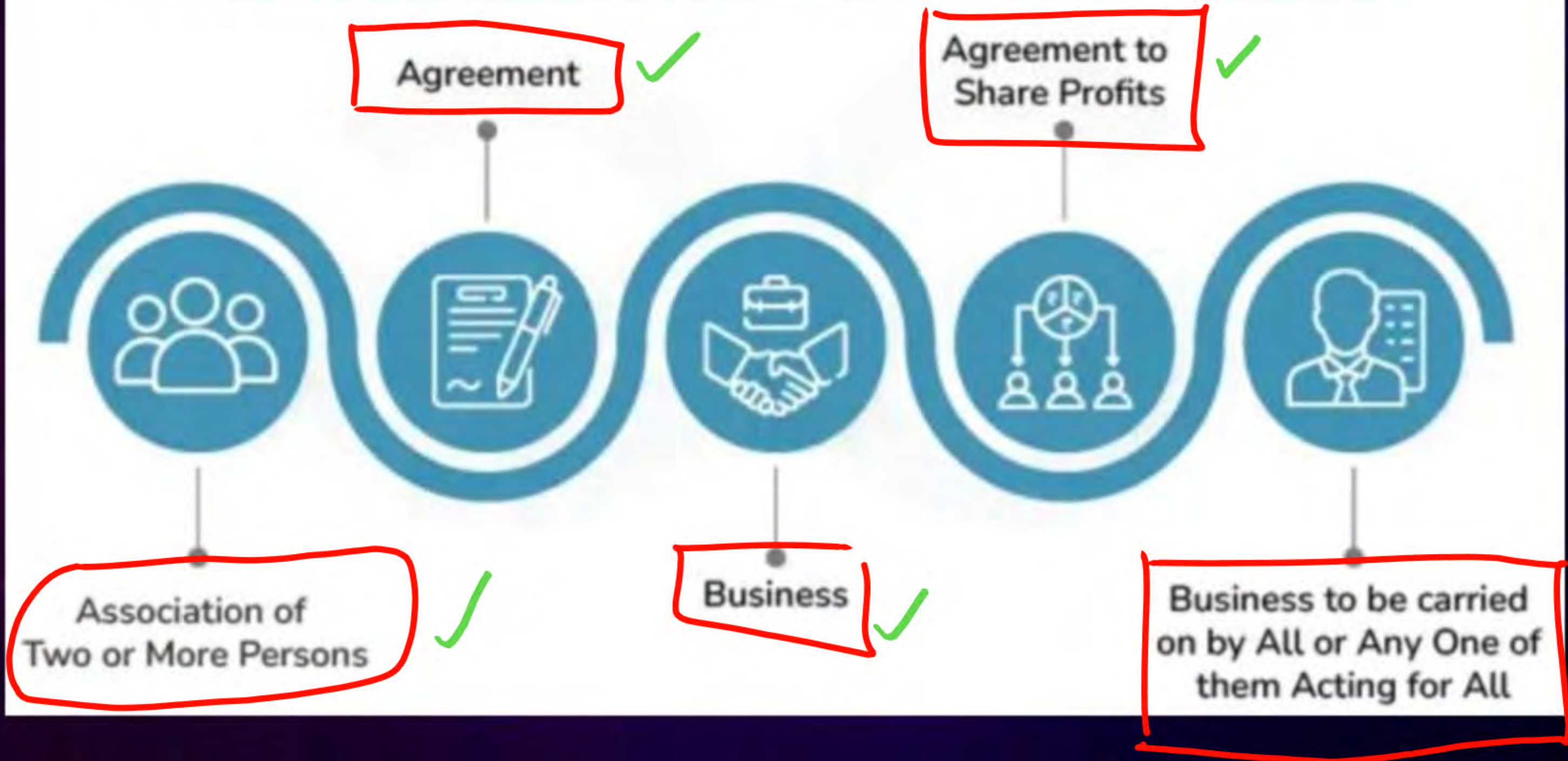
ELEMENTS OF PARTNERSHIP

5 ELEMENTS

which must co-exist (एक दूसरे के साथ) ✓

before a partnership can come into existence

Essential Requirements of a Partnership Act, 1932



Asso. of 2 or more <u>(एक से भले दो)</u>	Agreement <u>(साँझा)</u>	Business <u>(धंधे से बड़ा कुछ नहीं)</u>	Share profit <u>(रोकड़ा)</u>	By all or any one acting for all <u>(हमेशा "हम" - मैं नहीं)</u>
--	--	---	--	---

1

ASSOCIATION OF TWO OR MORE PERSONS



- Only persons recognized by law can enter into an agreement of partnership.
- **NATURAL OR LEGAL PERSON** — Separate legal entity
- 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

BUT Section 464 ✓

The Companies Act, 2013 –

50 partners



2

AGREEMENT



- There **MUST** be an agreement entered into by all the persons concerned.
- The nature of the partnership is **voluntary and contractual.** ✓
- ORAL OR WRITING
- EXPRESS OR IMPLIED ↓
 - from the ACT done by partners and
 - from a CONSISTENT COURSE of conduct being followed,
 - showing MUTUAL understanding between them.



BUSINESS



Every trade, occupation and profession.

The existence of business is essential.



The motive of the business is the **acquisition of gains**

No intention = NO PARTNERSHIP

To carry on the business and to share the profit ✓

4

AGREEMENT TO SHARE PROFITS (Not losses)



✓ PROFIT

Essential feature

BUT

**Not TRUE TEST OF
Partnership**

One partner shares ALL the profit ✓



Silent



How to share ? जैसे चाहे वैसे ✓
In any manner they choose ✓



3:2:1

PSR

equally

LSR

To share Losses ??



Optional – CHOICE ✓
and
Not compulsory ✓

In the event of
losses, unless
agreed
otherwise,

Must be borne in
the profit-
sharing ratio.

PSR

Example 1:

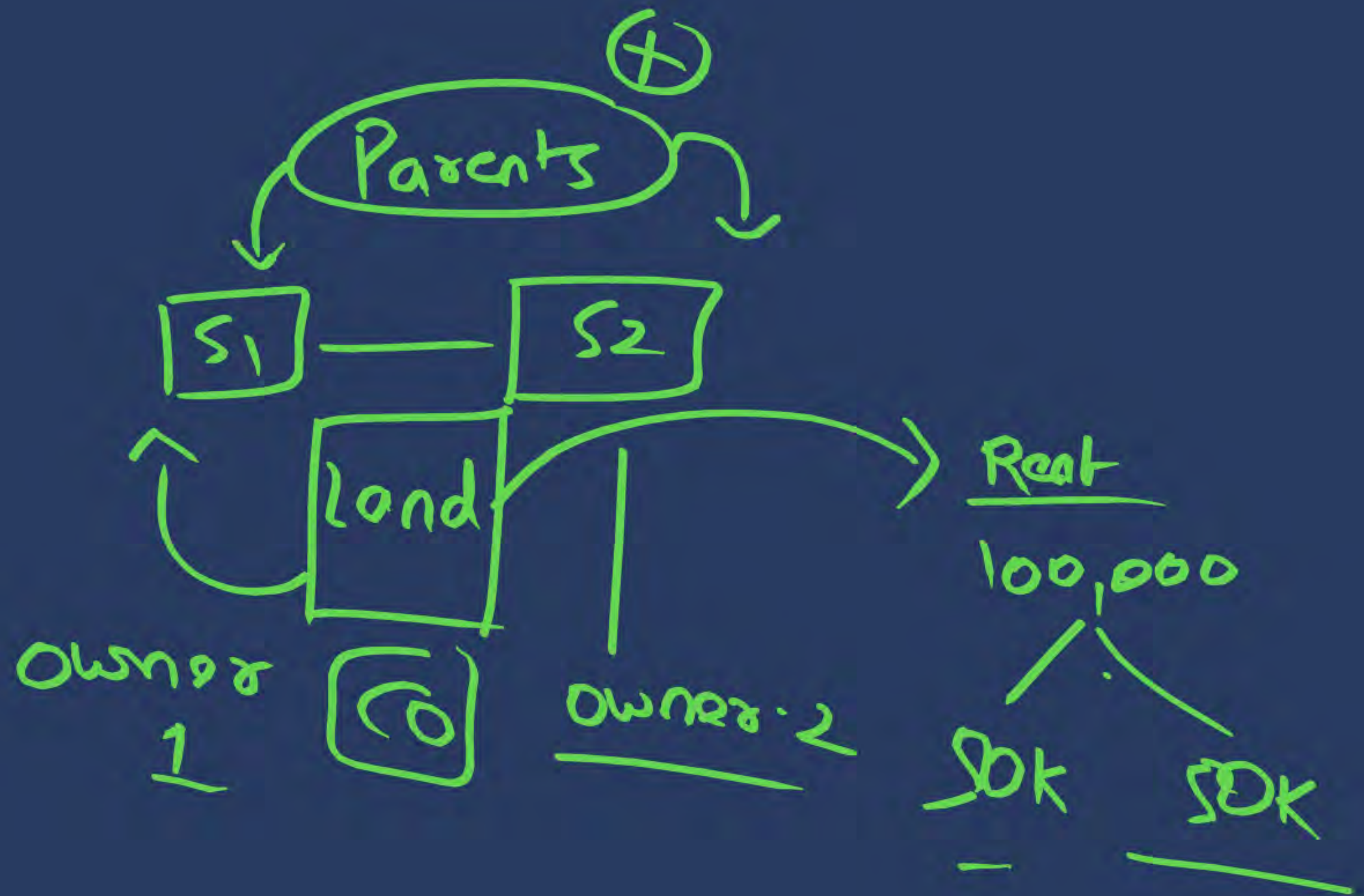
✓
Co-owners who share amongst themselves the rent derived from a piece of land are not partners, because there does not exist any business.

Example 2:

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

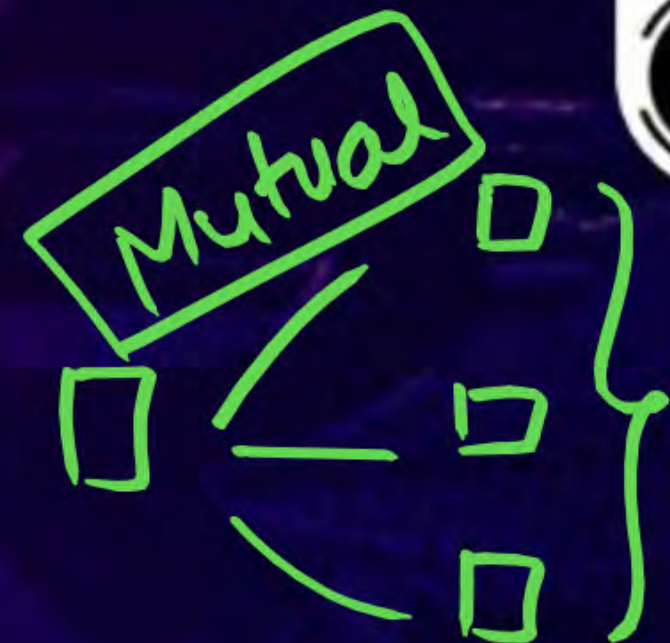
Example 3:

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 Cardinal principle of the partnership Law.

एक (Partner) की हरकत →→ सब (Partners) पर भारी

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

Principal →→ << Agent

Each partner = Principal as well as the agent for all the other partners
Bind and be bound by the acts of each other

QUESTION



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)

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.
 Taxi ? Yes.

2. Two firms each having 12 partners combine by an agreement into one firm. Yes

3. A and B, co-owners, agree to conduct the business in common for profit. Yes.

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. No

5. A and B, co - owners share between themselves the rent derived from a piece of land. No.

6. A and B buy commodity X and agree to sell the commodity with sharing the profits equally.

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:

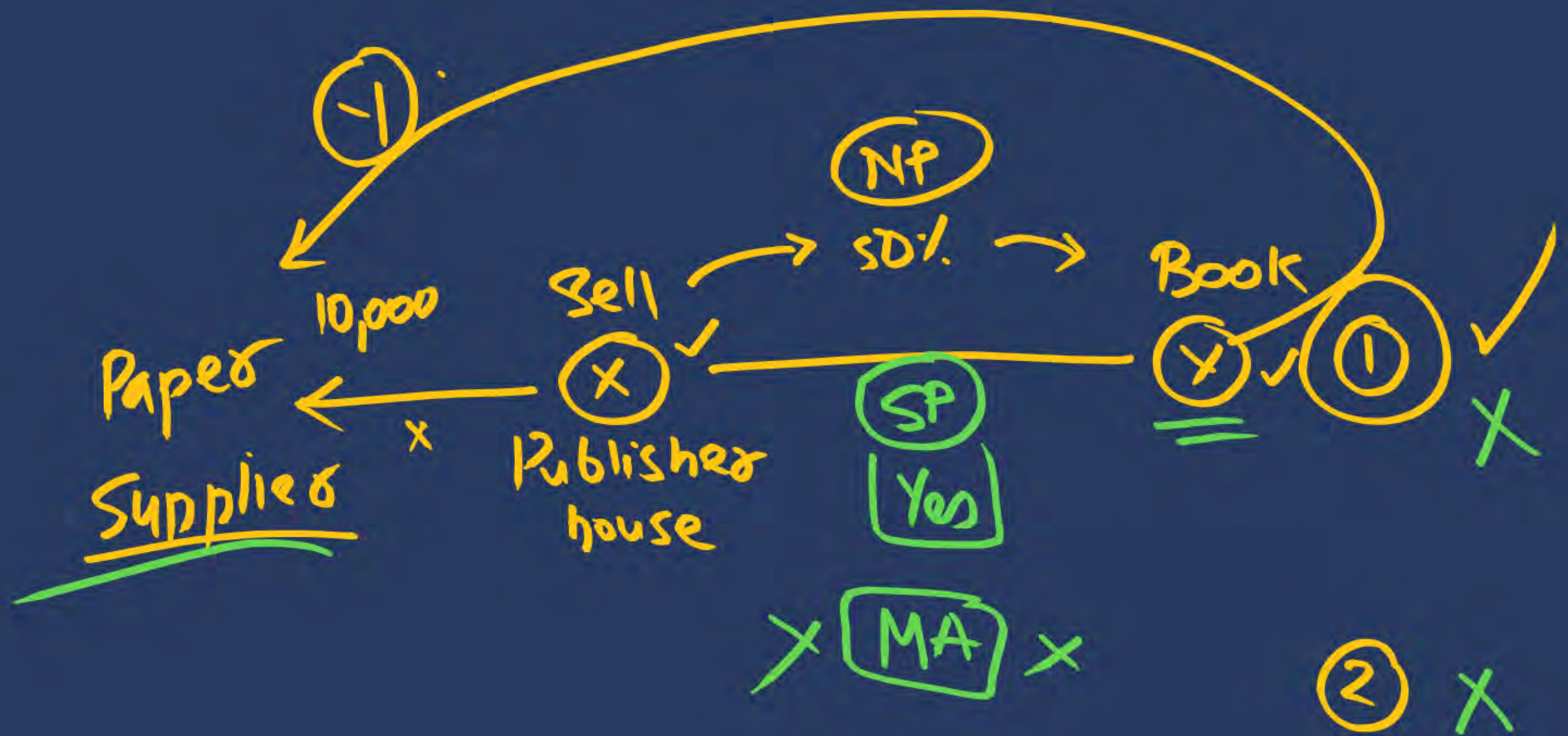
Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

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.

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? ✓ Yes. (X)
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)



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.

असली *Test* क्या है



TRUE TEST OF PARTNERSHIP

Mutual agency



Sharing of Profits



If
Mutual agency is
absent, then there
will be
NO partnership.

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

EE



True test (★)

- (1) Two / more Persons
- (2) Agreement—
- (3) BIZ.
- (4) SP
- (5) MA

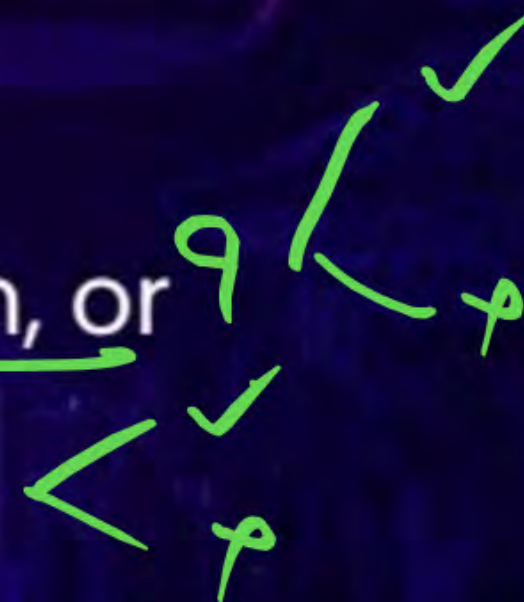


Mode of determining existence of partnership Section 6



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)

TRUE TEST OF PARTNERSHIP



1 Agreement ✓

2 Sharing of Profits

PRIMA FACIE ✓

Conclusive evidence

3 Mutual Agency ☆



QUESTION



✓ SP ≠ CE

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

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

★ Sharing of profit is not a conclusive evidence. It can be an essential element to create a partnership or a prima facie evidence but not a conclusive evidence.

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

★ Cases where profit sharing does not convert into a partnership are as follows :-

- (1) Lender of money receiving interest or any kind of amount.
- (2) Any employee or servant or agent receiving any amount as percentage of profit. Eg: Bonus for an employee.
- (3) Any widow or child receiving Annuity
(of a deceased partner.)

- (4) Previous owner or past owner receiving money in the name of Goodwill / Share $\neq$ does not make him a partner.
- (5) Co-owners receiving money from property holding jointly, does not make them partners.

We need to check partnership as per Section 6 of IPA, 1932 which will check all the relevant facts & real intention & conduct of the partners. True test of partnership

- includes -
- (1) Agreement should be present
 - (2) Sharing of profit
 - (3) Mutual Agency.

"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.

1

Agreement

④ = Defⁿ

⑤
↓

Section 5 –

Partnership is created by agreement and not by status.

The relation of partnership arises from contract and not from status.



NOT PARTNERS

- The members of a HUF carrying on a family business
- Burmese Buddhist husband and wife carrying on business

2

Sharing of Profits



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, ✓

100,000 / 200,000
↑ 5% ↑

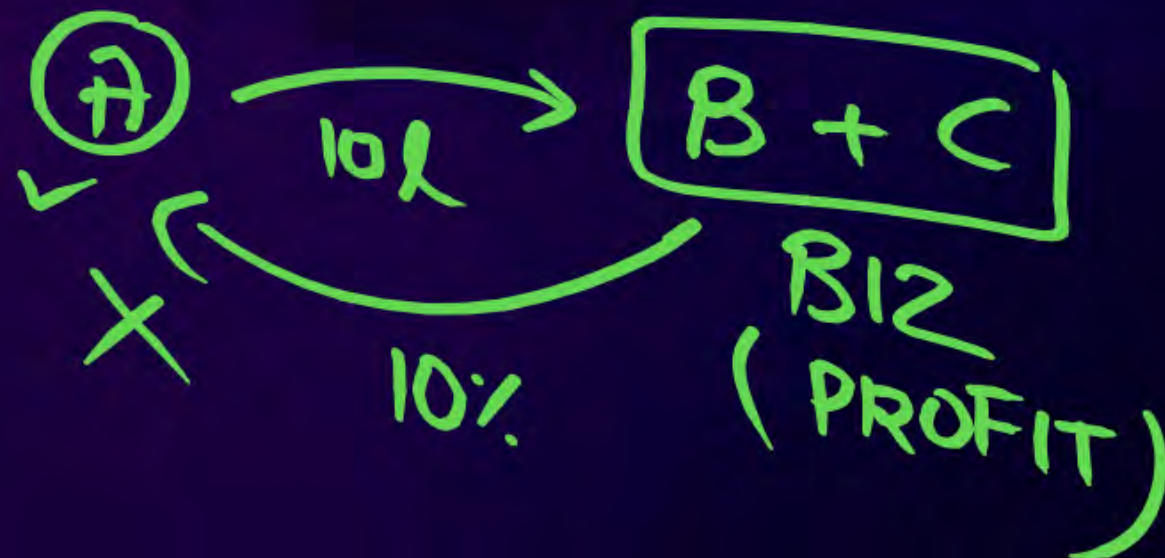
does not of itself make him a partner with the persons carrying on the business. ✓

Case - 1



- 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.

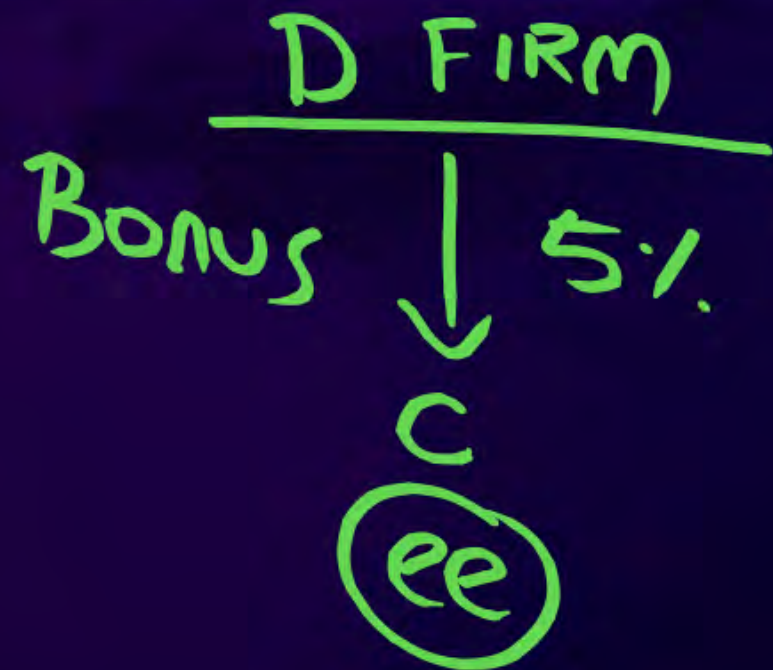


Case - 2



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.

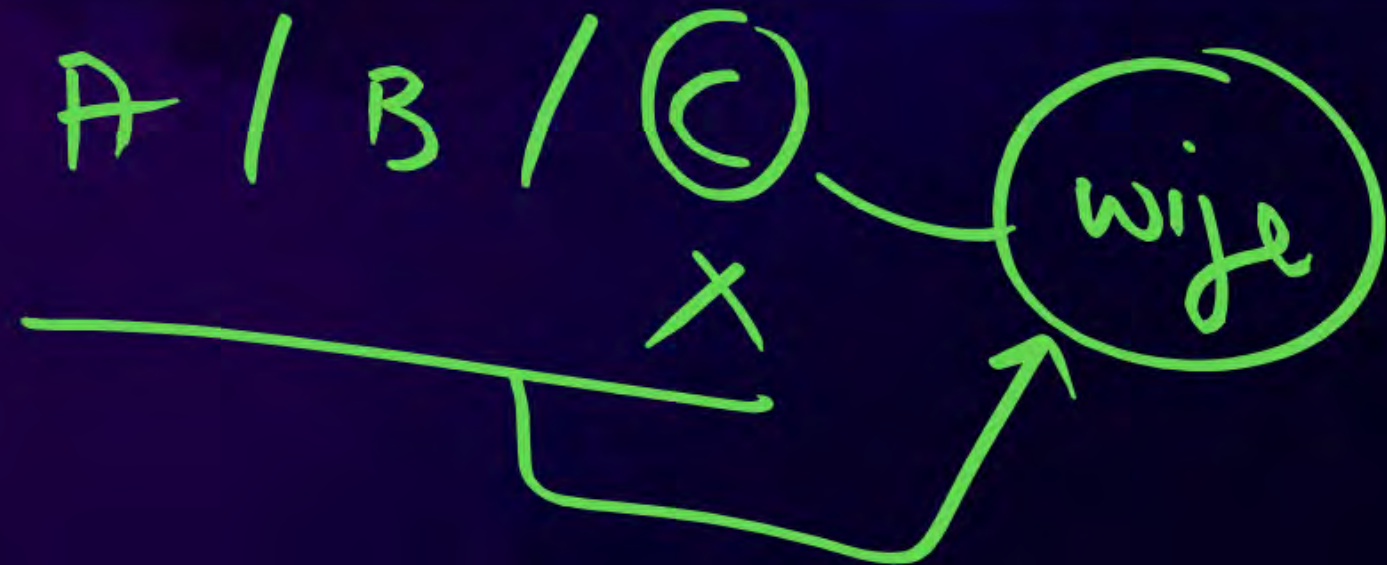


Case - 3



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.



Case - 4



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



- 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 Mutual Agency

- If the elements of mutual agency relationship exist between the parties

MA

- constituting a group formed with a view

- to earn profits

PROFIT

- by running a business,

BIZ

- a partnership may be deemed to exist. ✓

"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)

Example :

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.

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.

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.

10,000



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.

= 3000

John

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 3000 to Mr. John?

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. ✓

✓ dg.

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.

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



Partnership Deed – Formalities



- No 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.
 3. Nature and place of the business of the firm.
 4. Date of commencement of partnership.
 5. Duration of the partnership firm

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)

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 -



Partnership Deed



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.

Next Topic

DIFFERENCE WITH OTHER FORM OF BUSINESS



Partnership



VS

1. Company ✓

2. Club ✓ — ✗

3. HUF ✓

4. Co-Ownership ✓ — ✗





Joint Stock Company (Company)



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

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	Separate Property and Sue ✓

✓ ✓
Enumerate the differences between Partnership and Joint Stock Company.

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

②

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 (Salomon v. Salomon).
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.
Distribution of profits	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.

Extent of liability	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.
Property	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.

Transfer of shares	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.
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

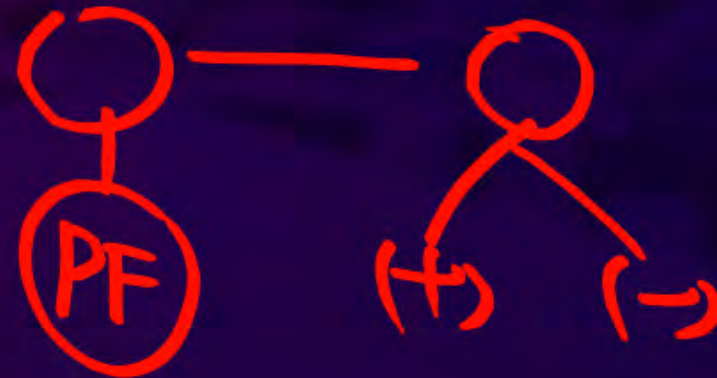


Partnership VS CLUB



Basis of Difference	Partnership	Club
Definition	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.
Relationship ✓	Persons forming a partnership are called <u>partners</u> and a partner is an <u>agent</u> for <u>other partners</u> .	Persons forming a club are called <u>members</u> . A member of a club is not the <u>agent</u> of <u>other members</u> .

Interest in the property	Partner has interest in the property of the firm.	A member of a club has no interest in the <u>property of the club</u> .
Dissolution	A change in the <u>partners of the firm</u> 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 <i>status</i>
Mode of creation	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.
Management	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. ¹
Authority to bind	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

Liability	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.
Calling for accounts on closure	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.
Governing Law	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.



Minor's capacity	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.
Continuity	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.
Number of Members	In case of Partnership number of members should not exceed 50.	Members of HUF who carry on a business may be unlimited in number.
Share in the business	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.

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)

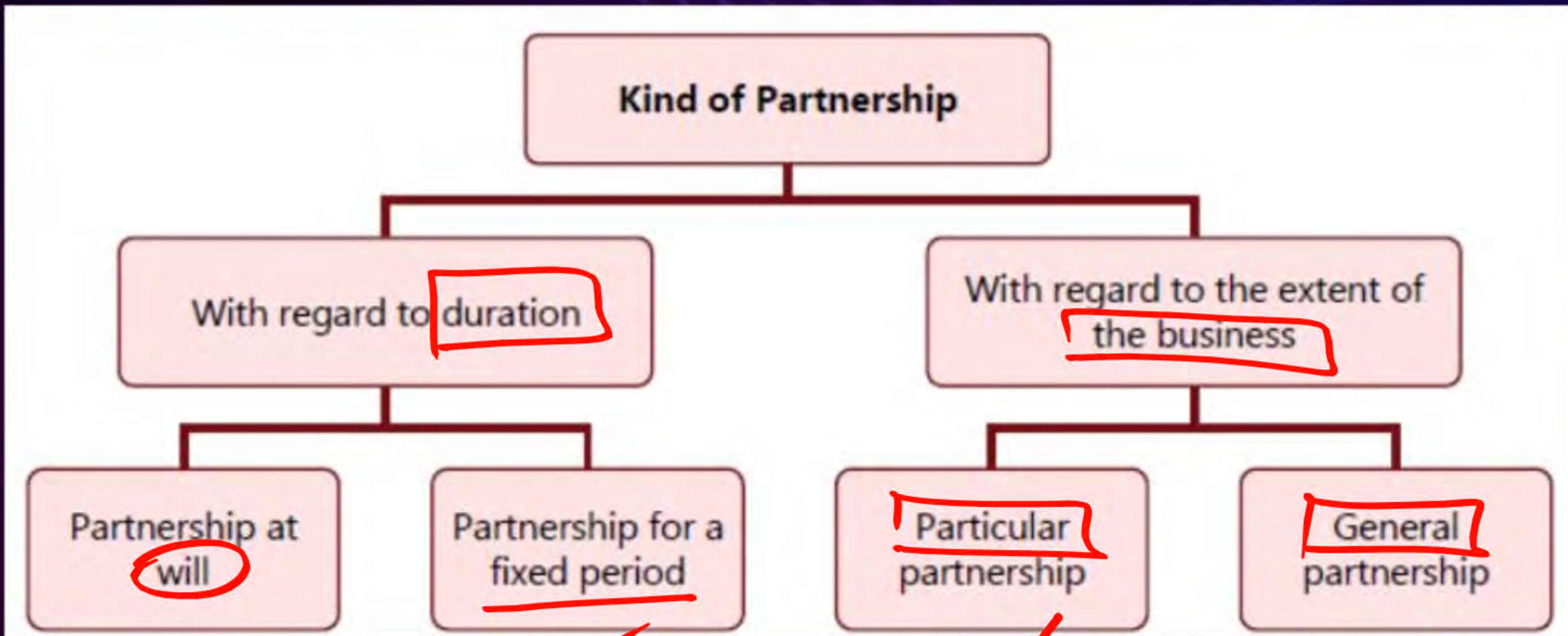


Basis of Difference	Partnership	Co-Ownership
Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent 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 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.

Next Topic

KINDS OF PARTNERSHIPS





Specific

Partnership at WILL – Section 7

मेरी मर्जी



No fixed period has been agreed upon for the duration of the partnership

&

There is no provision made as to the determination of the partnership.

HOW TO Dissolve ??

NOTICE

writing

TO ALL PARTNER

ANY PARTNER



AUTOMATIC CONVERSION



OF

Partnership at FIXED PERIOD INTO →→ 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. ★.

Partnership for 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. ~~☆~~ 1/2/3
- Such a partnership comes to an end on the expiry of the fixed period.

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.

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.

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.

GENERAL Partnership

- Where a partnership is constituted with respect to the business in general, it is called a general partnership.

- The liability of the partners extends only to that particular adventure or undertaking, ✓

UL
only

But

- it is not so in the case of general partnership.

- General partnership is different from limited liability partnership.

What is Particular Partnership as per Indian Partnership Act, 1932?

(MTP Nov'22 2 Marks) (PYP 2 Marks, Jan'21)

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

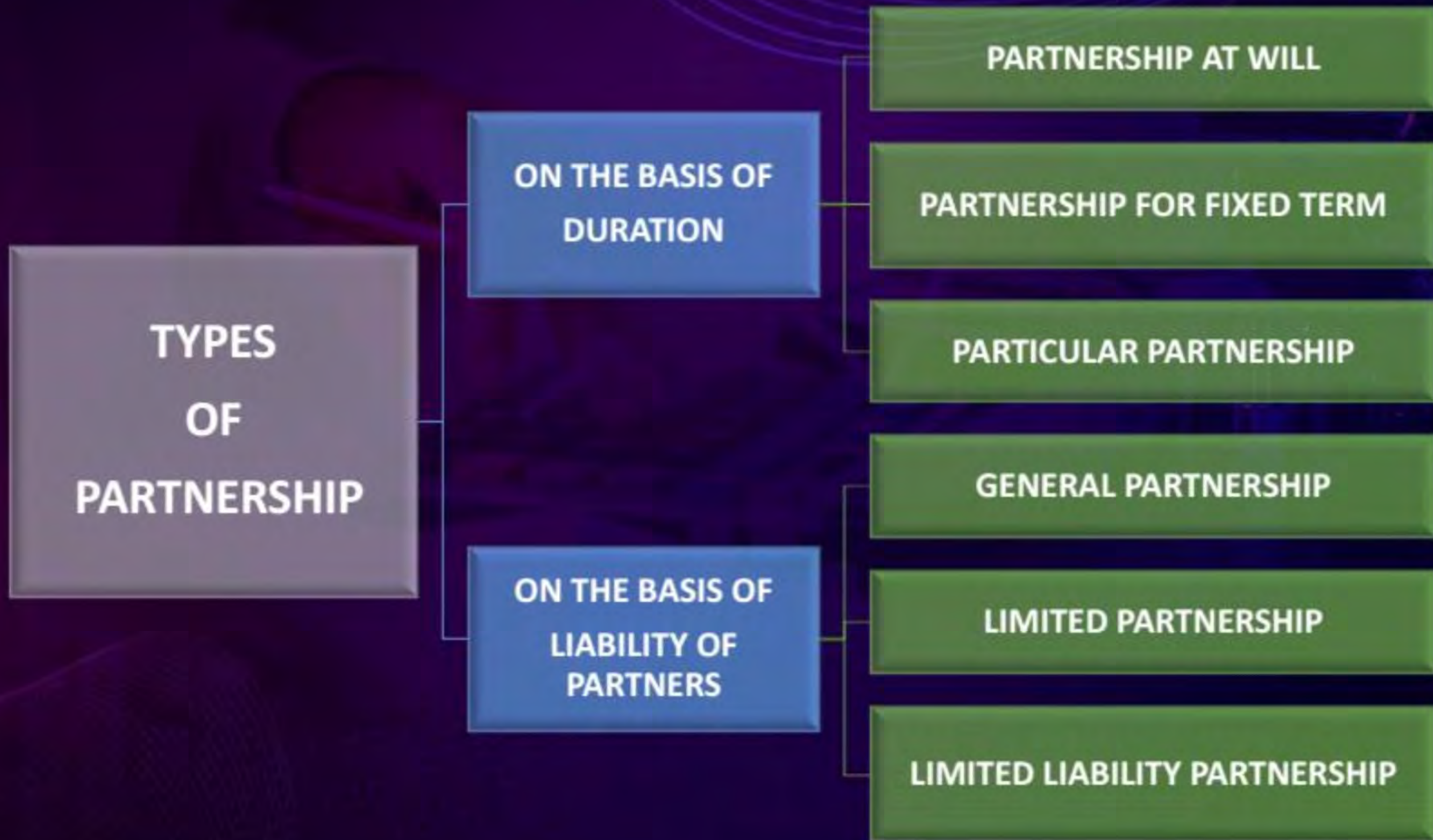
(MTP Dec'23 2 Marks) (RTP Nov'23) (PYP May'22 2 Marks)

WILL

FIXED TIME

PARTICULAR

GENERAL



GENERAL PARTNER VERSUS LIMITED PARTNER

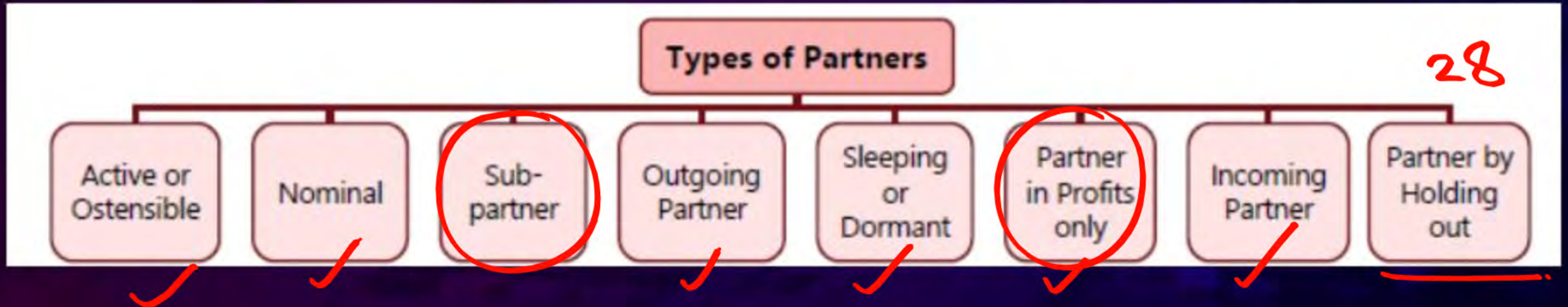
Basis of Comparison	General	Limited
Control/Management	Full control	Minimal to no control
Profit and Loss Sharing	Equal	As stated in agreement
Personal liability	Unlimited	Limited

Next Topic

TYPES OF PARTNERS



Based on the extent of liability

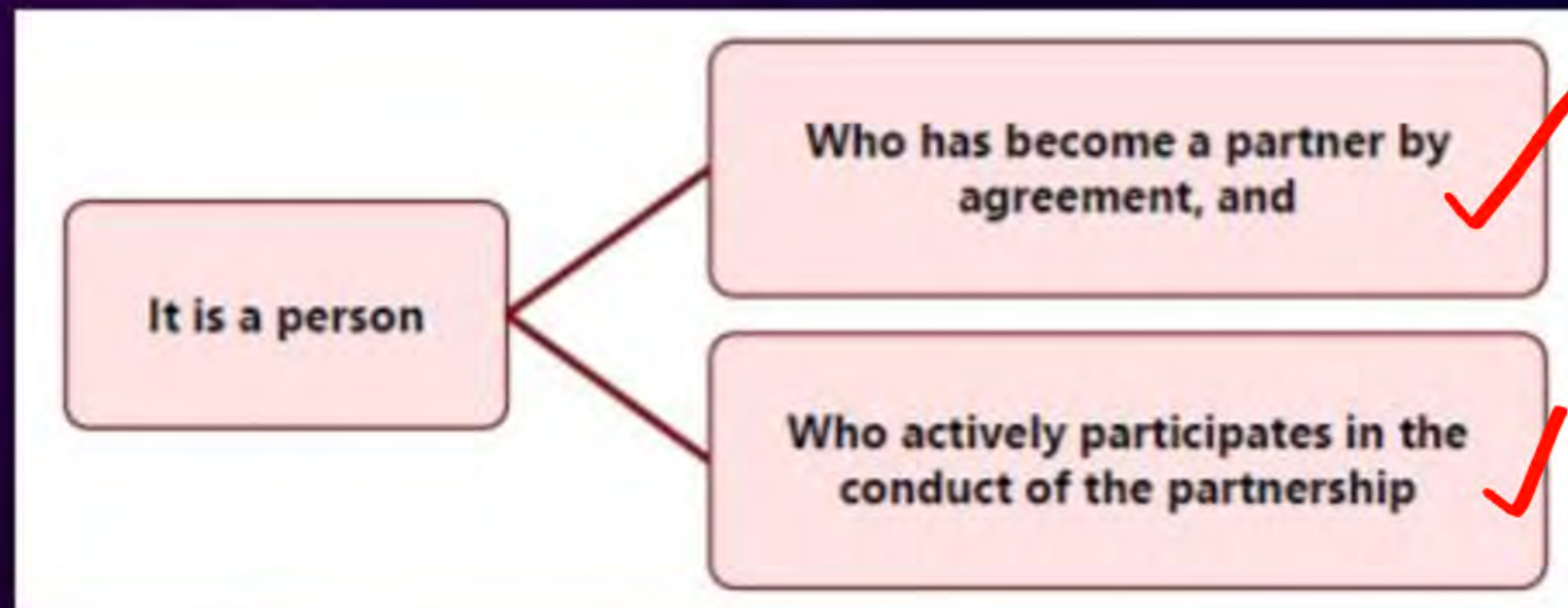


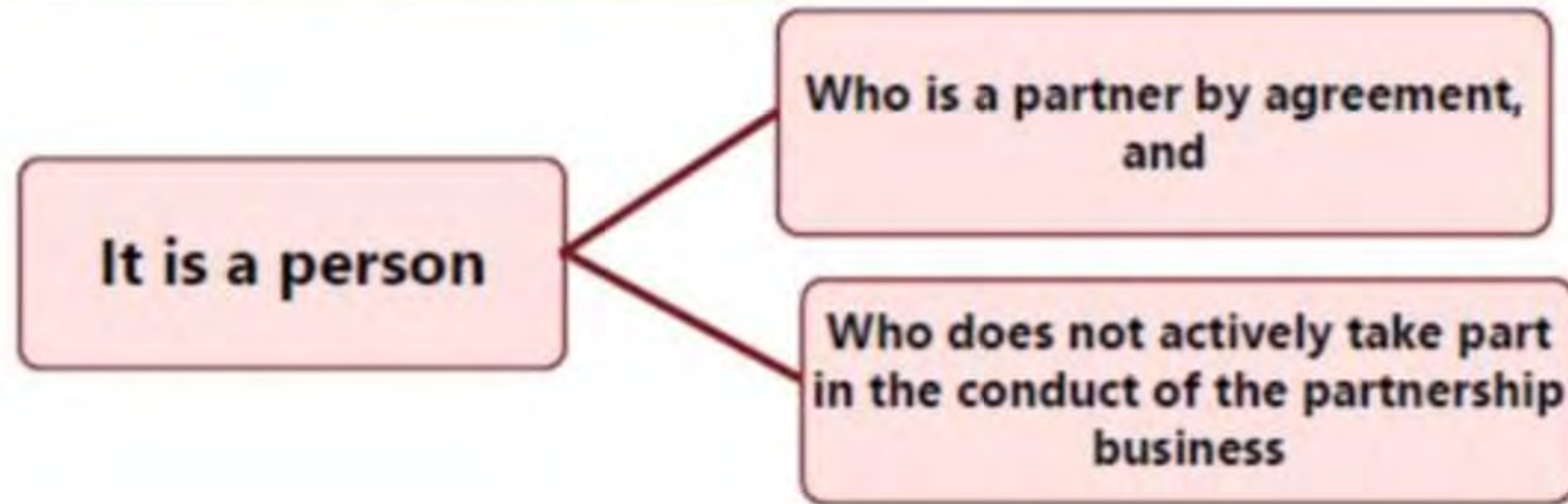
1

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.





- ❖ Who does not actively aprticipates 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.

✓
Lend his name to the firm

Without having any real interest in firm

Not entitled to share the profits

X | Does not take part in the conduct of the business

Liable to third parties for all acts of the firm ✓

Question on Nominal Partner



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)

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.

4

Partner in profits only



	A	B	C
P	✓	✓	✓
L	✓	✓	✓

- ❖ 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.

Yes. *

Entitled to share the profits only

Not liable for the losses

Liable to the third parties for all acts of the profits only

5

Incoming Partner

- ❖ 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 voluntarily
- ❖ 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.

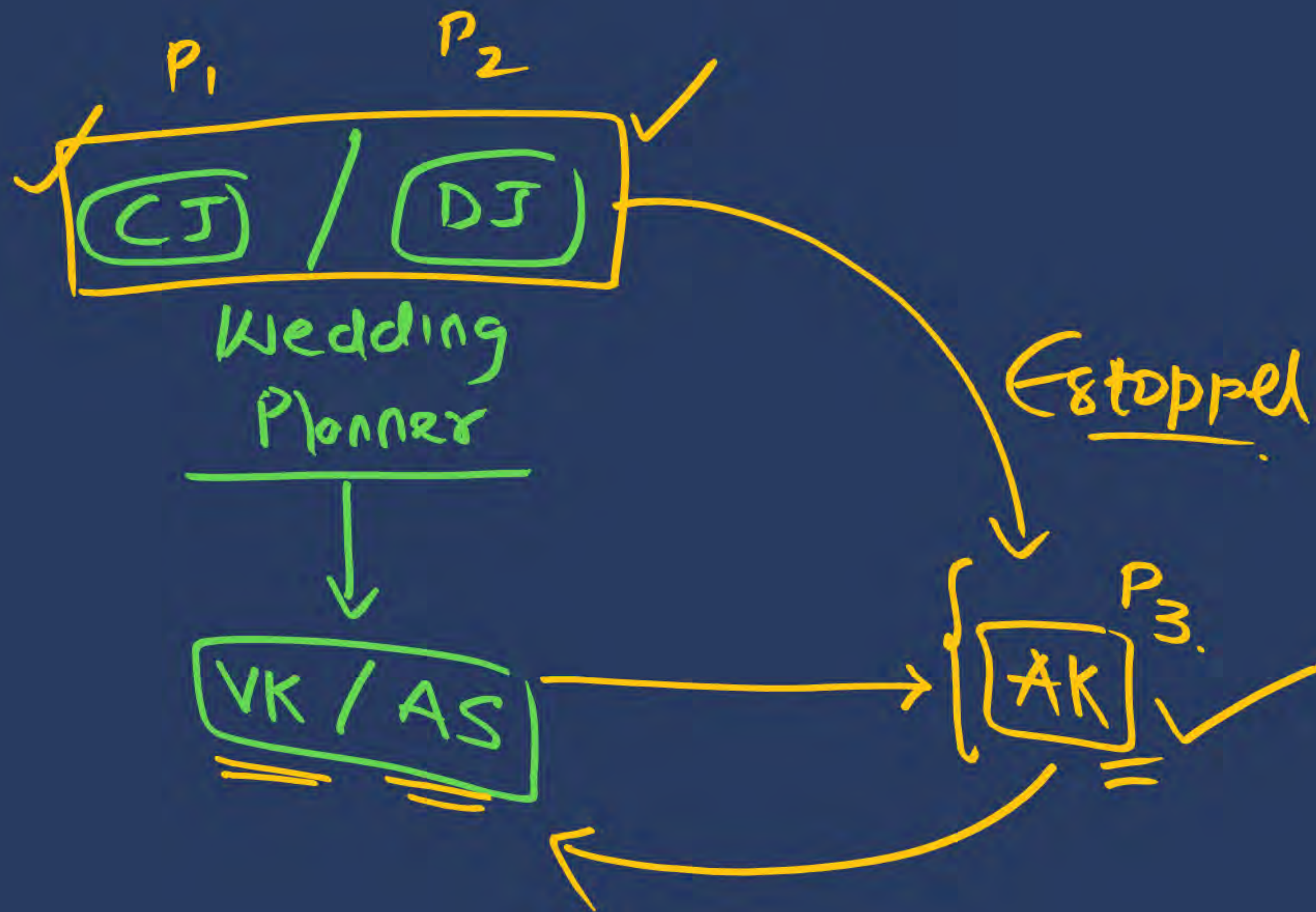
(Novation) ✓



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

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).

- ❖ 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, AK
- ❖ 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.





FEW IMPORTANT POINTERS –

1. Only the person to whom the representation was made and who acted on it can enforce liability due to 'holding out.'
2. It's not necessary to prove fraudulent intention to establish liability for someone who, by representation, led another to act.
3. Section 28 also applies to a retired partner who hasn't given proper public notice of their retirement.
4. If someone gives credit to the firm after a partner's retirement, believing that person is still a partner, the retired partner can be held liable.

Example 7:

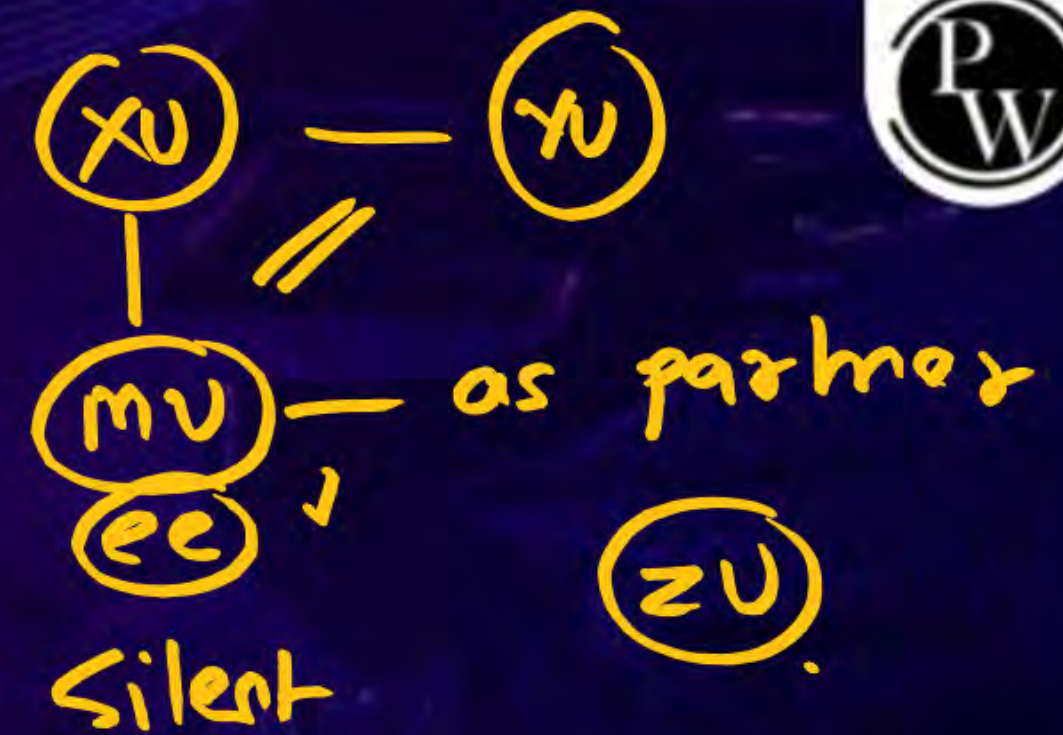
- A partnership firm consisting of P, Q, R and S. S retires from the firm
- without giving public notice and
- his name continues to be used on letterheads. ✓
- Here, S is liable as a partner by holding out to creditors
- who have lent on the faith of his being a partner.

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?



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.

CLIPS



Aspect	Active/Actual/Ostensible Partner	Sleeping/Dormant Partner	Nominal Partner	Partner in Profits Only
Conduct in Business (C)	✓	✗	✗	✗ / ✓
Liable to Third Parties (L)	✓	✓	✓	✓
Invests Capital in Firm (I)	✓	✓	✗	✗ / ✓
Public Notice on Retirement Required (P)	✓	✗	✓	✓
Entitled to Share Profits (S)	✓	✓	✗	✓

Aspect	Active/Actual/Ostensible Partner	Sleeping/Dormant Partner	Nominal Partner	Partner in Profits Only
Entitled to Share Losses	✓	✓	✗	✗
Right to Participate in Management	✓	✗	✗	✗
Real Interest in Business	✓	✓	✗	✓

MODULE Q



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Unit 2

Relation of Partners

p

UNIT - 2



Topics covered

1

RELATION OF PARTNERS TO ONE ANOTHER

SECTIONS - 9, 10, 11 AND 12

MUTUAL RIGHTS AND DUTIES - SECTION 13

9-13

2

IMPLIED AUTHORITY - SECTION 19, 20 AND 22

3

RELATION OF PARTNERS → TO 3RD PARTIES
SECTIONS 18 - 19 - 20 - 21 - 22

4

ADMISSIONS AND NOTICES - SECTION 23 AND 24

5

LIABILITIES TOWARDS → 3RD PARTIES
SECTIONS 25 - 26 - 27



UNIT - 2

Topics covered

6

SECTION 14 AND 15 – PARTNERSHIP PROPERTY

7

SECTION 16 – PERSONAL PROFIT EARNED BY PARTNER

8

SECTION 17 – RIGHT AND DUTY AFTER CHANGE IN A FIRM

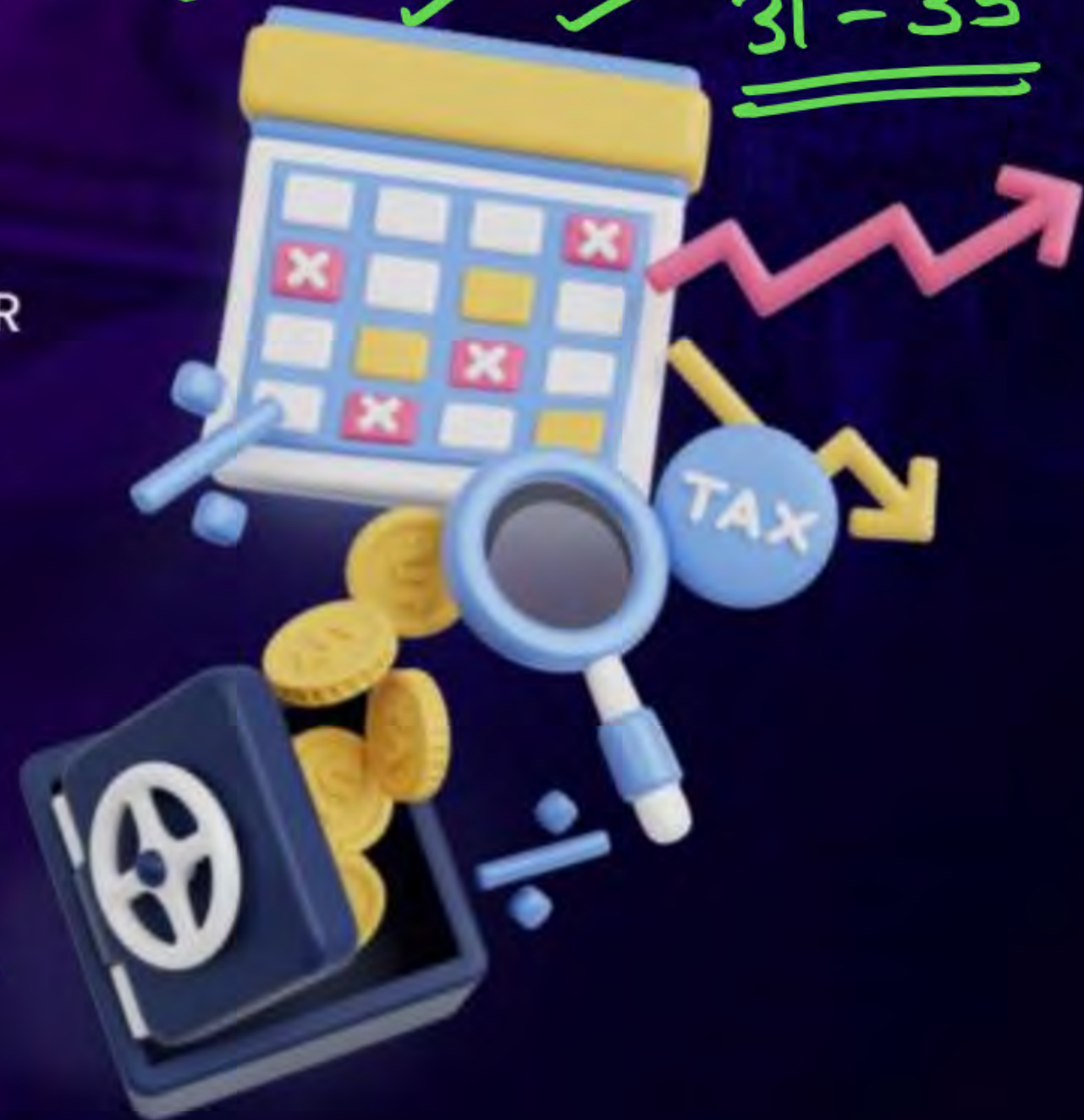
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SECTION 29 – PARTNER'S INTEREST

10

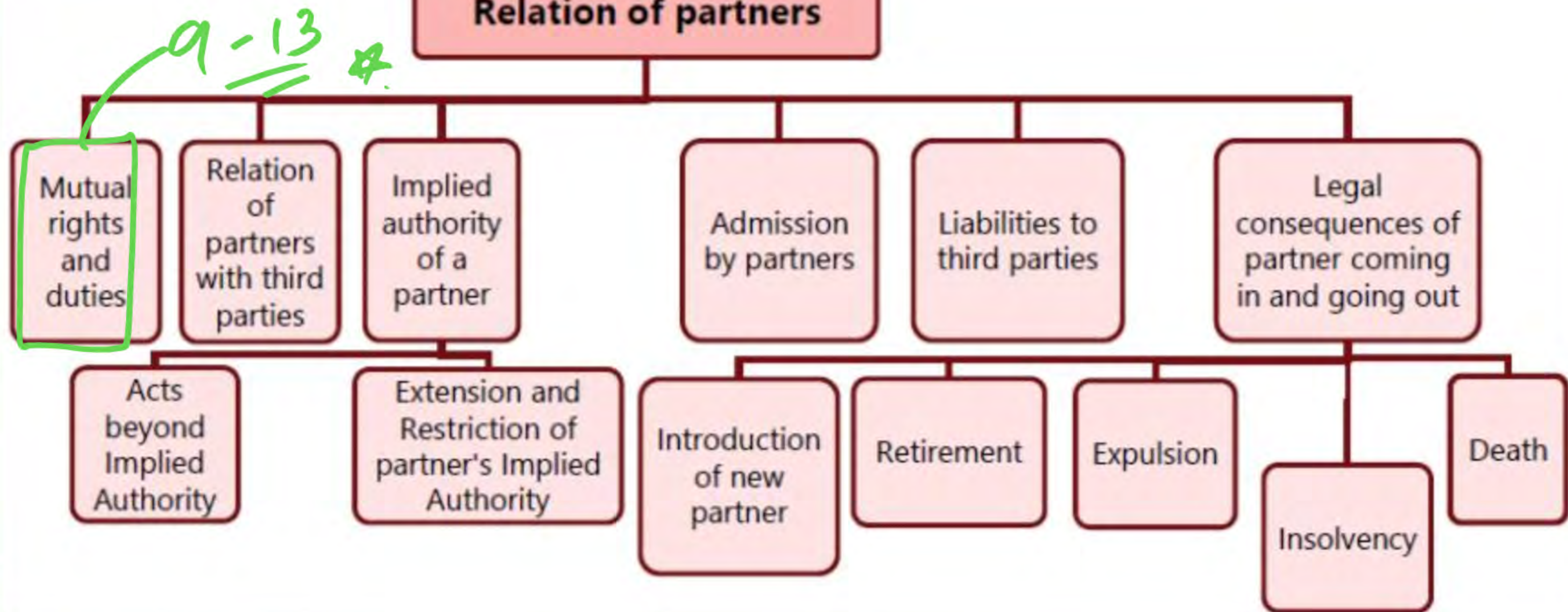
SECTION 30 – MINOR

Partner
In out
31-35



36/37/38

Relation of partners



Next topic

RELATION OF PARTNERS TO ONE ANOTHER



RELATION OF PARTNERS TO ONE ANOTHER

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

GENERAL DUTIES OF PARTNERS (SECTION 9)



- Greatest Common Advantage - ①

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

No comp^{so}.
100%

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

TRUST

Example

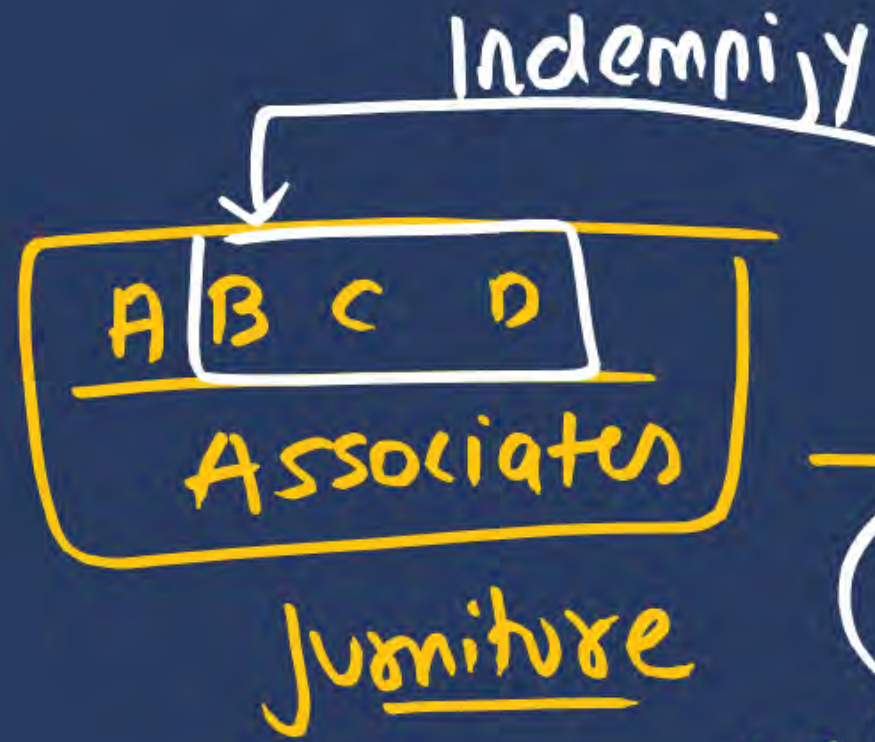
In a transaction between partners for the sale and purchase of a share in the business, if one of them is better acquainted with the accounts than the other, it is his duty to disclose all material facts.

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)

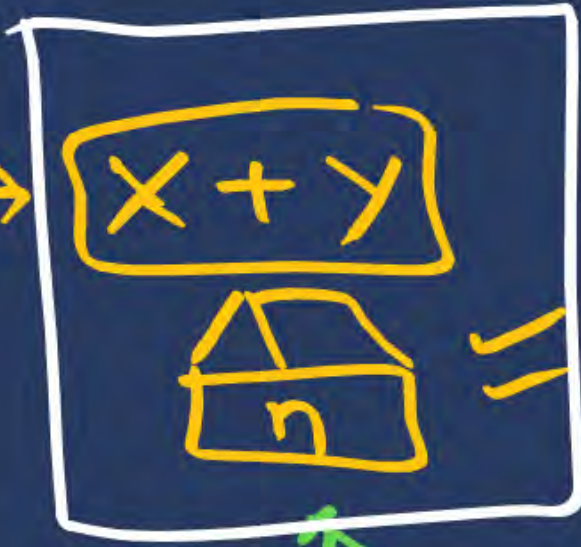


Antique pieces

(A)

✓ authority ✓

✓ course of Biz ✓



(A) = fraud बिना

Firm

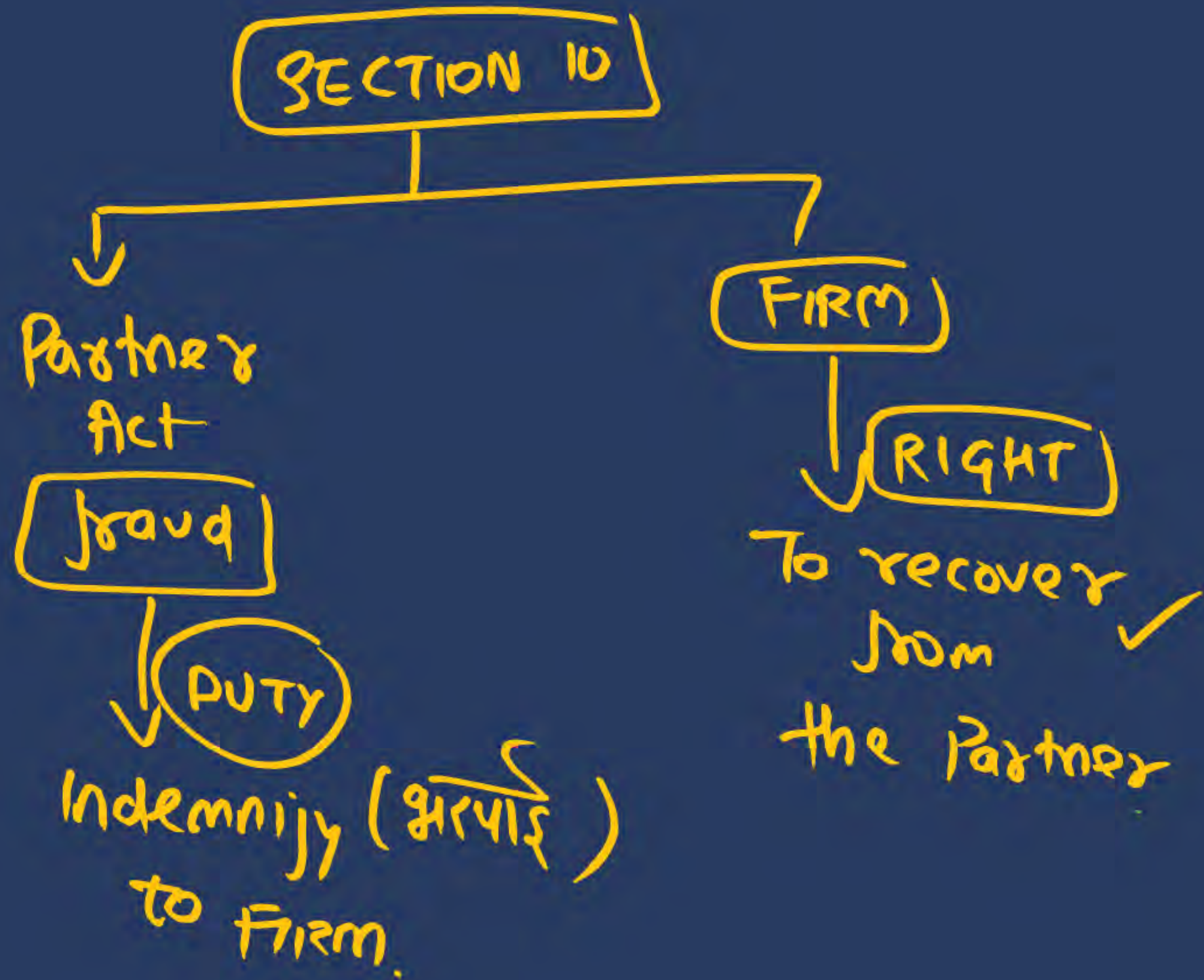
B/C/D
भी

= liable रहेगी

10000

fraud

चोर लुटार



11

DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS



Subject to the contract
between the partners ✓

① ✓

- 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.

Unit 2

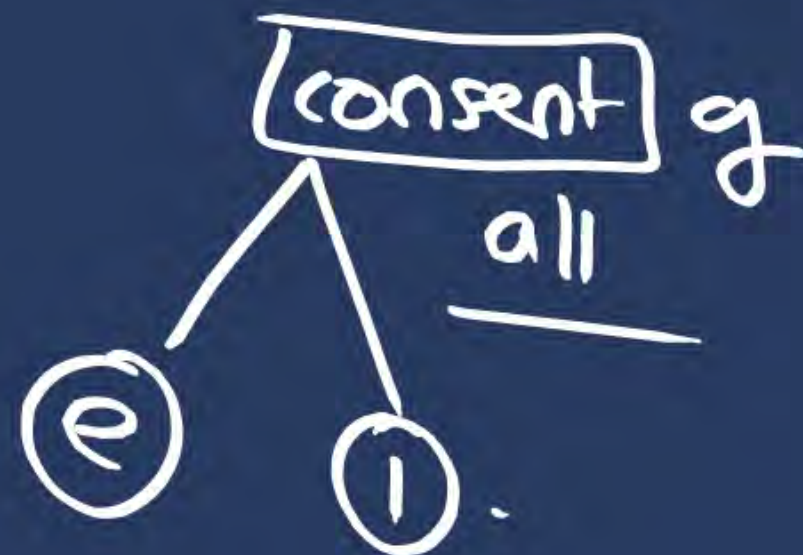
changes



①① Rights / duties



Contract (P. Agree) = changes
(vary)



In the absence
of contract to the
contrary

11

Rights / Duties

determine

consent of all

mutually

Contract b/w
the partners.

Silent

The IPA

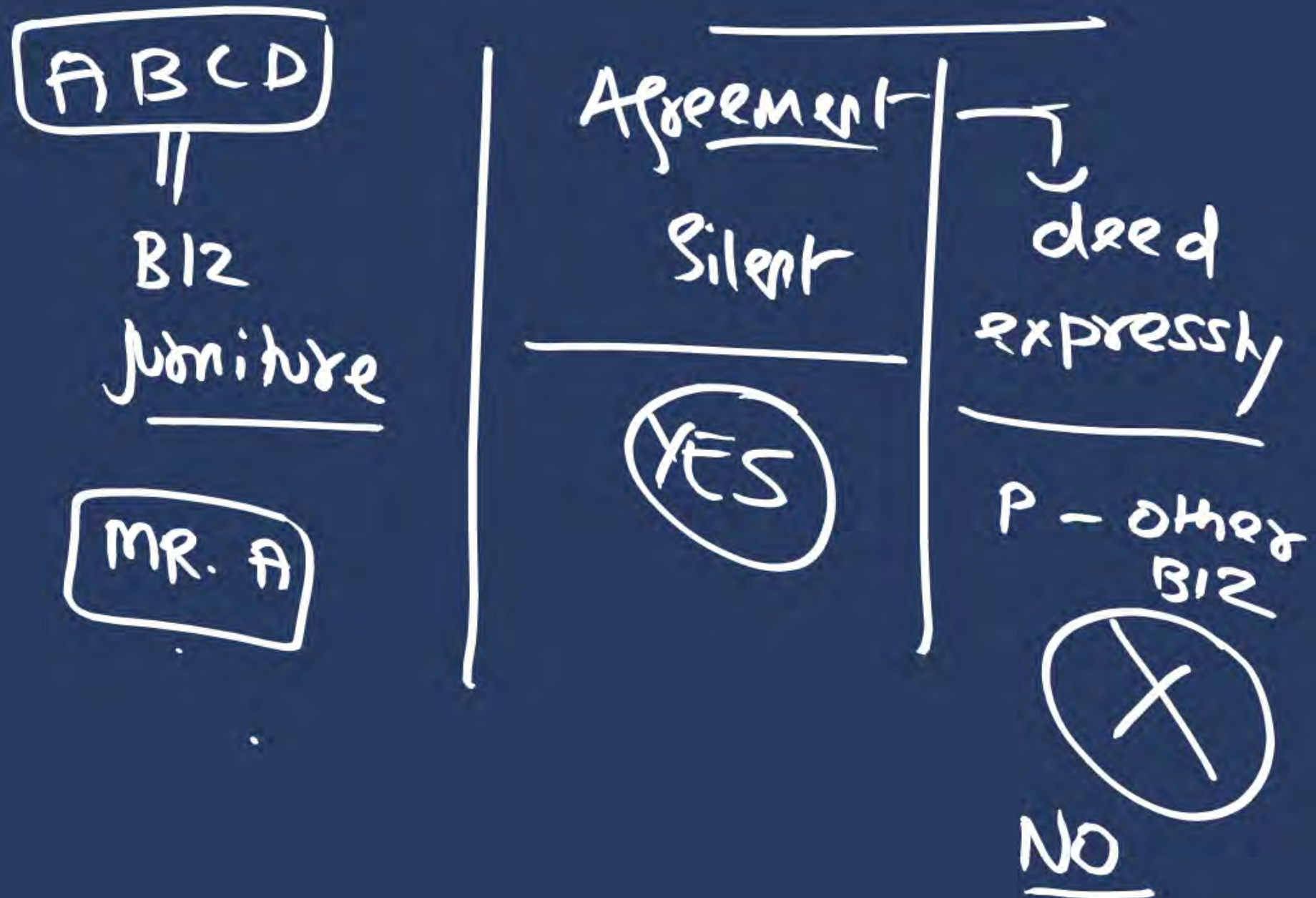
(4141)

BANNER

Subject to the Agree.
B/w the partners

1

Q. क्या एक (P) firm के BIZ. के अलावा
और कोई BIZ कर सकता है ?





AGREEMENT IN RESTRAINT OF TRADE

Partner हो in a firm and और कुछ Business कर सकते है?

Sec. 27

- Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide

NO

- that a partner shall not carry on any business other than that of the firm while he is a partner. ✓

Yes

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.

12

THE CONDUCT (बर्ताव) OF THE BUSINESS

एक तरीके से - Rights है Business Related

?



Subject to the contract
between the partners



चाहे रात 12 (Section) की भी बजे -

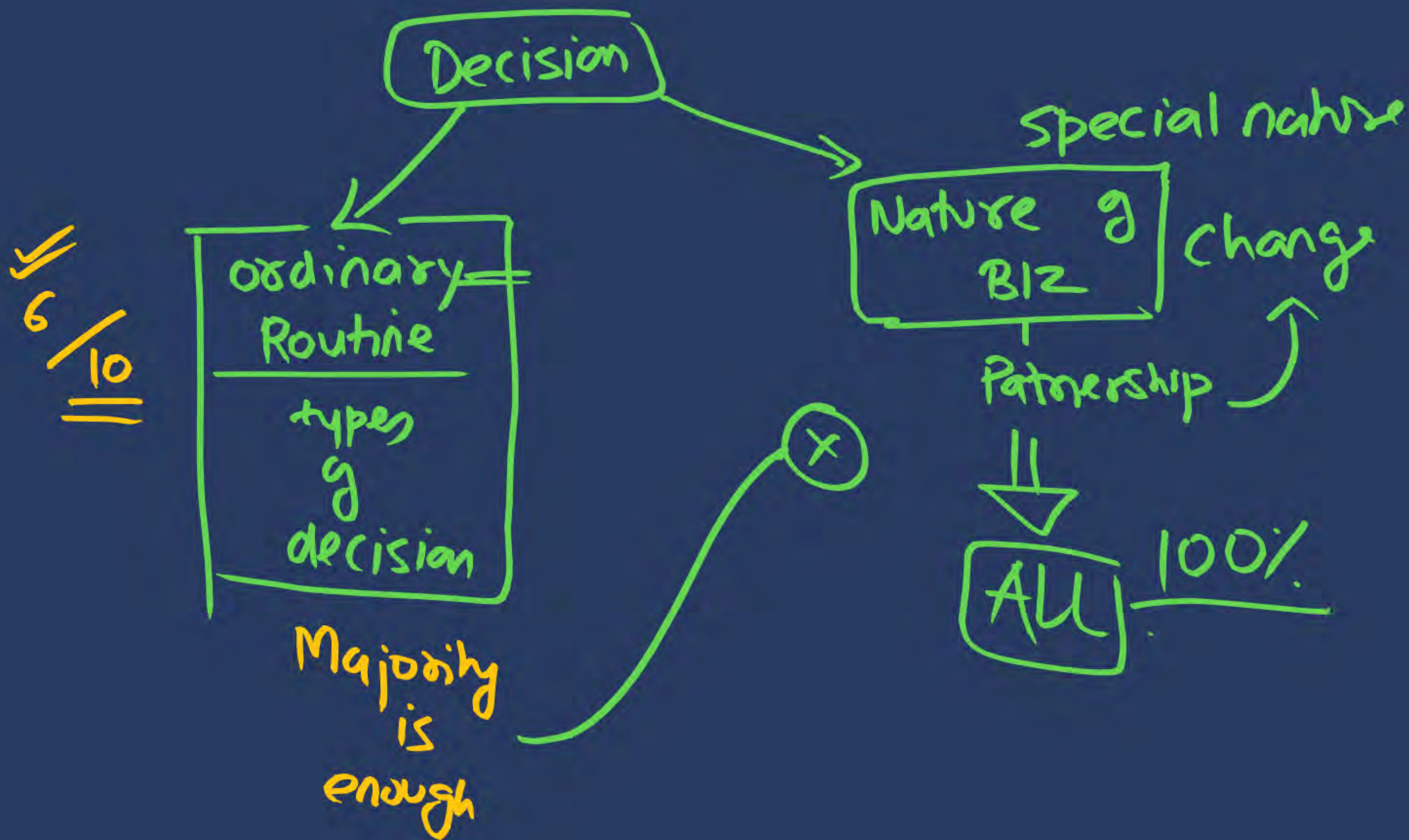
सब business में participate करेंगे (a) , diligently duties निभायेंगे (b) , decision majority के साथ पास करेंगे (c) and Books (पढ़ाई) bhi dekhenge (d) (e)

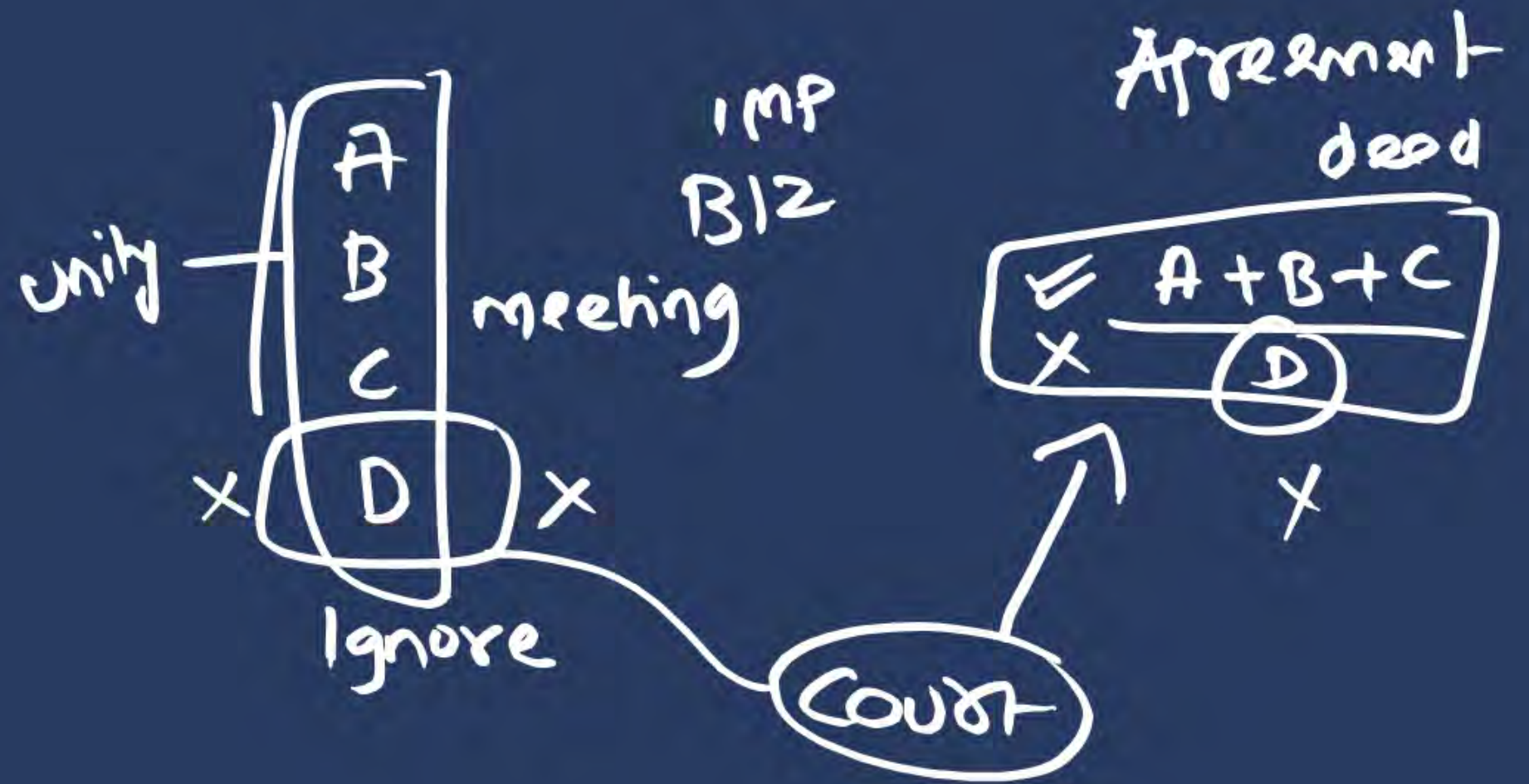
✓

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.
	For Change in Nature of business or Contract → Consent of all Partners	- 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.

Majority

Books
g
Acc.





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 चीज़ें और दोनों का मक़सद 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
- 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.

Next topic

MUTUAL

RIGHTS & LIABILITIES ✓

SECTION 13

Subject to the contract
between the partners

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

PSR / LSR
equally



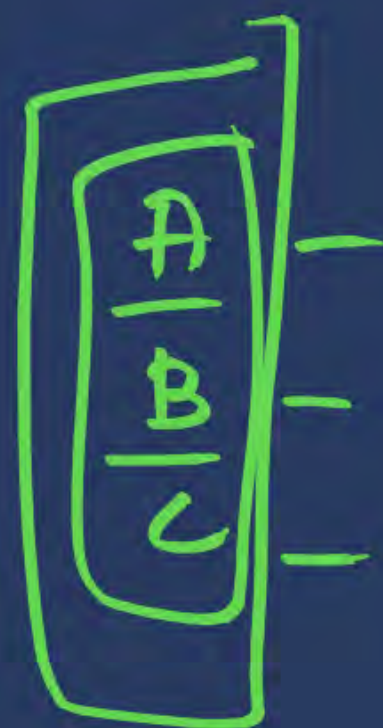
A. Section 13(a) - Right to remuneration *Generally — NO.*

- 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. ✓

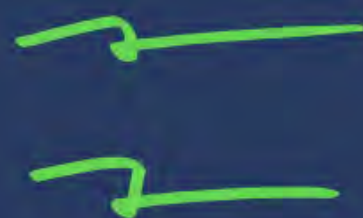
★ Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.

★ 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.

Fraud



✓✓
100,000 / month



✓✓



admit

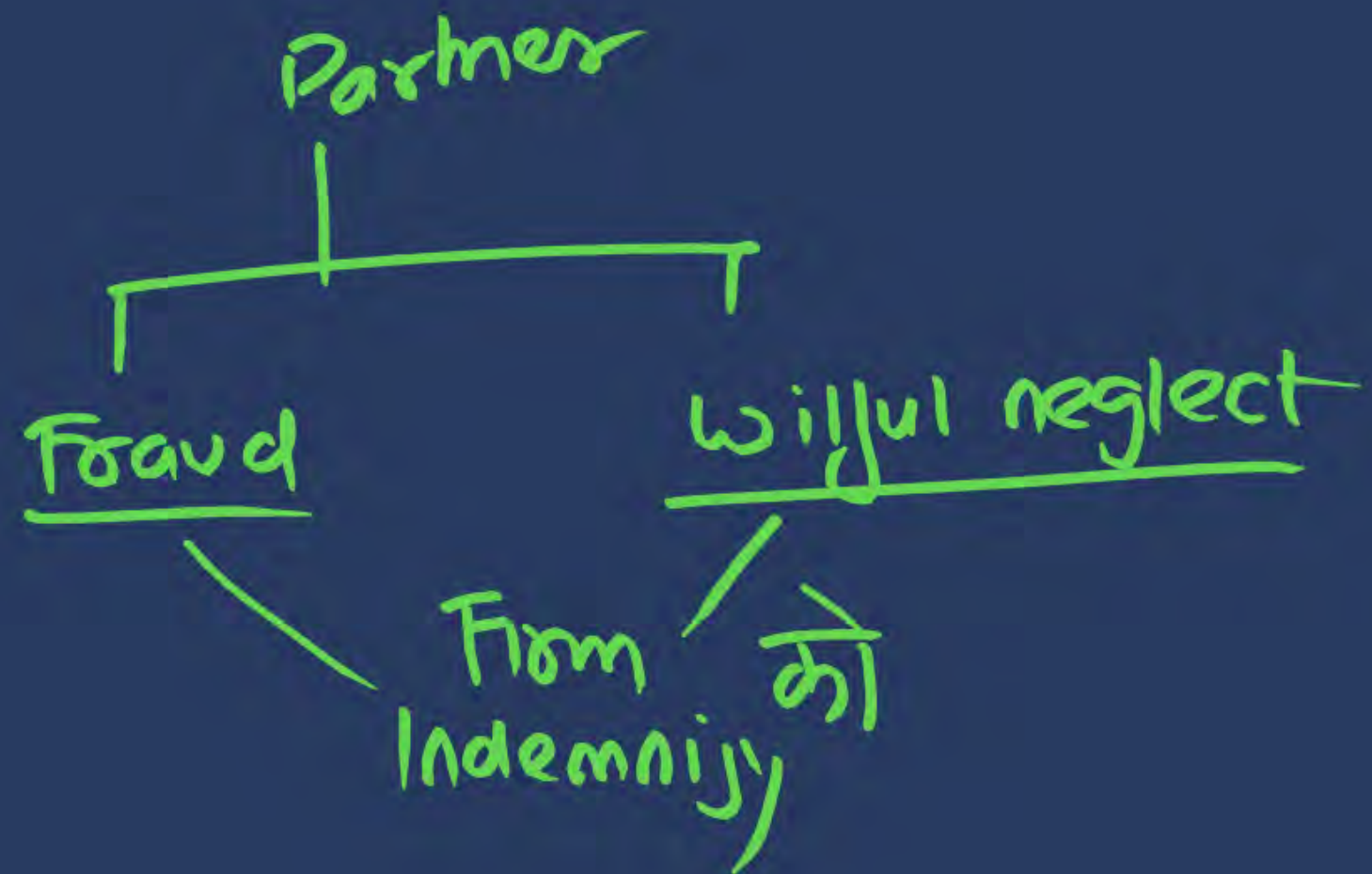


Remuneration



cover

✓✓



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

in the absence of any Agree.

- 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.

Capital

A	B	C
10 l	5 l	1 l

→ Capital ratio = $10:5:1$ ✗

→ PSR = $1:1:1$ ←

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:

- ① an express agreement to that effect, or practice of the particular partnership OR
- ② any trade custom to that effect OR
- ③ 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,
- 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.



	P	Q	R		
				Generally	- express ✓
<u>Capital</u>	10L	5L	1L	<u>Interest</u> (NO)	- custom ✓
					- statutory ✓

Advance (5L) = Int ? — 6%


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.



Next topic

IMPLIED AUTHORITY

SECTION 19 & 20



RELATION OF PARTNERS TO THIRD PARTIES

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

Mutual Agency

(A)

(P)

IMPLIED AUTHORITY



19

What is IMPLIED AUTHORITY ? ✓
क्या allowed नहीं है under Implied authority

20

IMPLIED AUTHORITY को कम या ज़्यादा कैसे कर सकते हैं ?

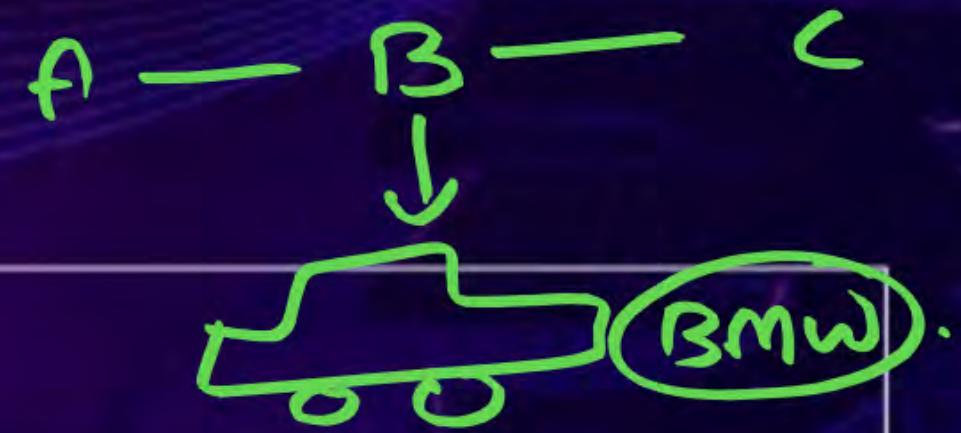
22

✓
Conditions to call an act under IMPLIED AUTHORITY
Generally, क्या allowed है under Implied authority

19 IMPLIED AUTHORITY



- The authority of a partner ①
- to bind the firm (or all the partners)
- by carrying on an act
- done in the usual business way ②



In the name
of the
FIRM

②

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) ✗



Section 19 ✓

An act done by a partner -
can bind the firm (all partners)

if fulfills — three conditions (22)

(1) — Usual way of Biz.

(2) — In the name of firm / done with
Intention of Binding firm

(3) — scope of authority
under

Action	Description
Submit <u>Dispute</u> to <u>Arbitration</u>	Resolve business disputes through arbitration.
Open <u>Bank Account</u>	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.
<u>Withdraw Suit or Proceedings</u>	Withdraw legal cases or proceedings initiated by the firm.
<u>Admit Liability</u>	Acknowledge liability in a lawsuit or legal proceeding against the firm.
Acquire or Transfer immovable <u>property</u>	Purchase real estate for the firm and Sell or transfer real estate owned by the firm
<u>Enter into partnership</u>	Form a partnership with others on behalf of the firm

B.A.D.S किसी Property की W.AL. पर Partnership करके enter करना ✓



VIMP

• B - Bank account in his own name.

• AD - Resolve Dispute Arbitration ✓

• S - Settle or give up any claim

• P - IMM Property (+/-)

• W - Withdraw legal cases

• AL - Admit liability

• P - Enter partnership

own
transfer



Allowed acts under implied authority

If partnership be of a general commercial nature –

1. he may pledge or sell the partnership property
2. he may buy goods and sell goods
3. he may borrow money
4. Contract debts and
5. pay debts
6. he may draw, make, sign, endorse, transfer NI

22

MODE OF DOING ACT, TO BIND FIRM

Restrictions on Implied Authority

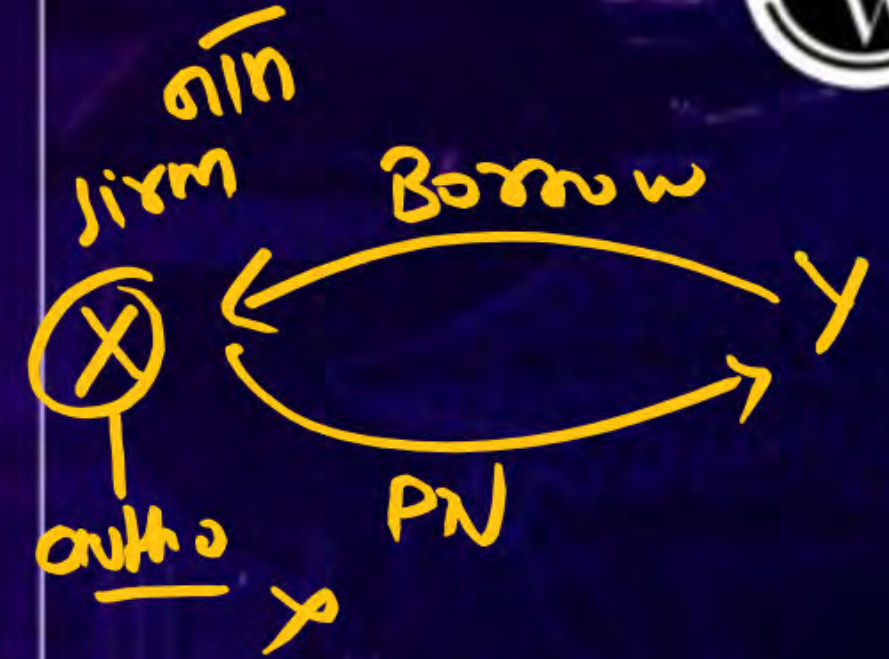


A partner's actions can bind the firm if done in the firm's name or in a way that shows an intention to bind the firm.

1. **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)
2. **Scope of Authority:** The act must be within the partner's authority and connected to the normal business operations.
3. **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.

Example

- (X) a partner in a firm of **solicitors (Lawyers)** ✓ legal. FIRM
- 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.



Equity
firm

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

Example –



20

EXTENTION / RESTRICTION (+/-) IMPLIED AUTHORITY



- May be
- By contract between the partners

III.

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

Implied authority
changes 20 Yes

agreement
(+/-)

Consent
g
All

A/B

B can't
purchase
RM

usually
B
Purchasing
RM.

III
Mr. Khan
10,00,000
RM
CREDIT = B authority

Knowledge

Knowledge
(X)

Recover
only B

Yes
Recover
A
RM.

Example

Pappu – Partner in Virasat Associates borrows from Khadda 1,00,000 in the name of the Virasat Assoc.

But more than his authority

Utilizes the same in paying off the debts of the Virasat.

Virasat is a trading firm, and such act is within the implied authority of Pappu to borrow money for the business of the firm.

Now if as per the restriction as per agreement between all the partners – Pappu is NOT ALLOWED to do so. Then ??

Situation 1 – Khadda is (The lender) is UNAWARE
The firm will be liable to repay the money to Khadda.

Situation 2 – Khadda is (The lender) is AWARE
The firm will NOT be liable to repay the money to Khadda

Under the following conditions -

③

The restrictions imposed on the implied authority of a partner by agreement

(-) Restriction

~~shall be effective against~~ a third party : ^{cannot hold the firm (all P)}
^{liable if →}

1. The ^{khan} third party knows about the restrictions and

2. The third party does not know that he is dealing with a partner in a firm.

18

PARTNER TO BE AN AGENT OF THE FIRM

Mutual
Agency



- 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



PARTNER

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

But

- whereas BEING AN MERE AGENT as such has no interest in either

21

PARTNER'S AUTHORITY IN AN EMERGENCY

- 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.

Next topic

EFFECT OF ADMISSION OF A PARTNER

23

ADMISSION

ADMIT - स्वीकार करना (एक ने किया मतलब सबने किया)



Admissions as Evidence

Liability accept / admit

Representation

- ❖ 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. X

- 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.

Module Example

- 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.

NOTICE - खबर होना — ✱

1. Notice to Active Partner:

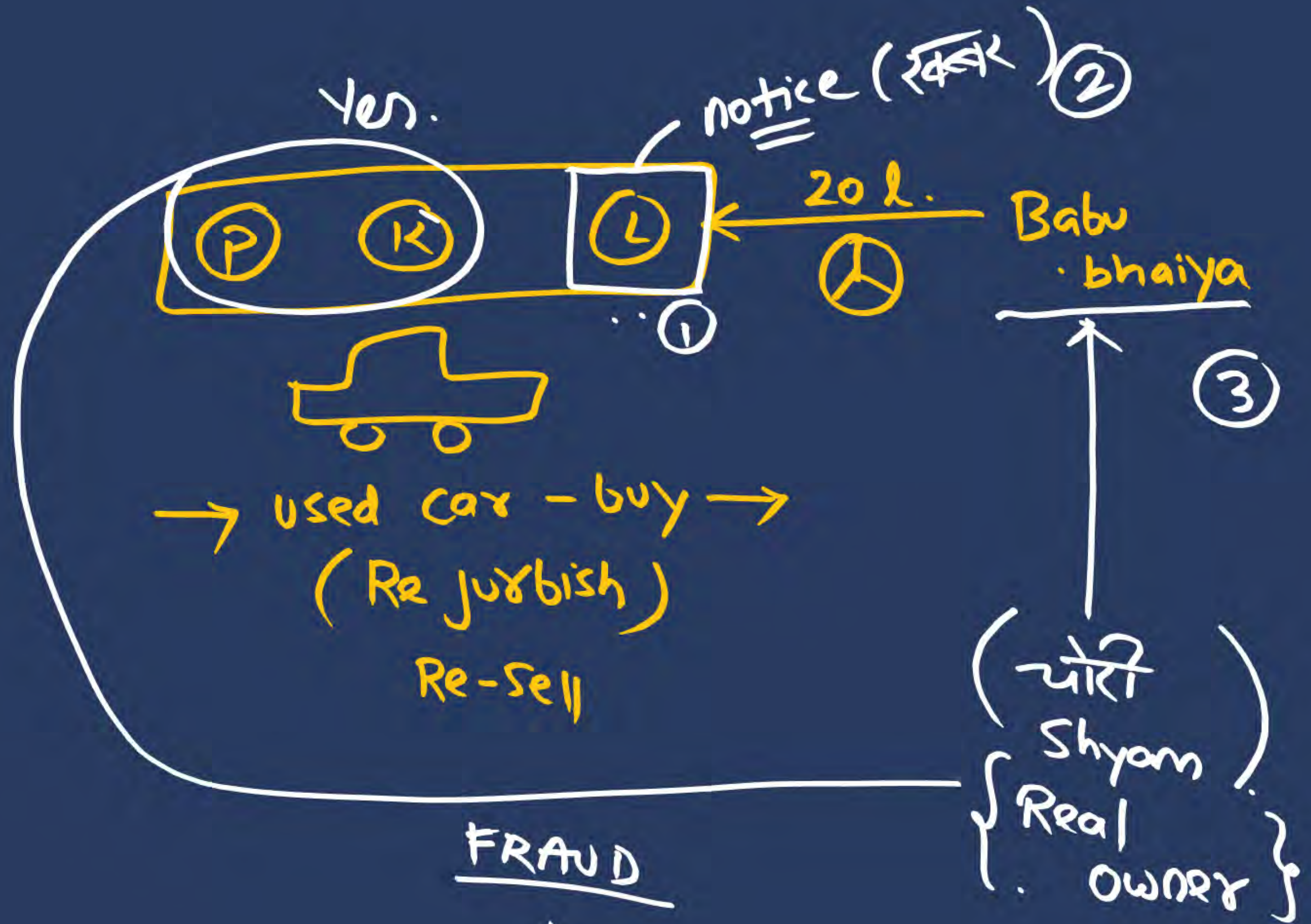
- A notice given to a partner who is actively involved in the firm's business is considered as notice to the entire firm (Just as a notice to an agent is notice to his principal)

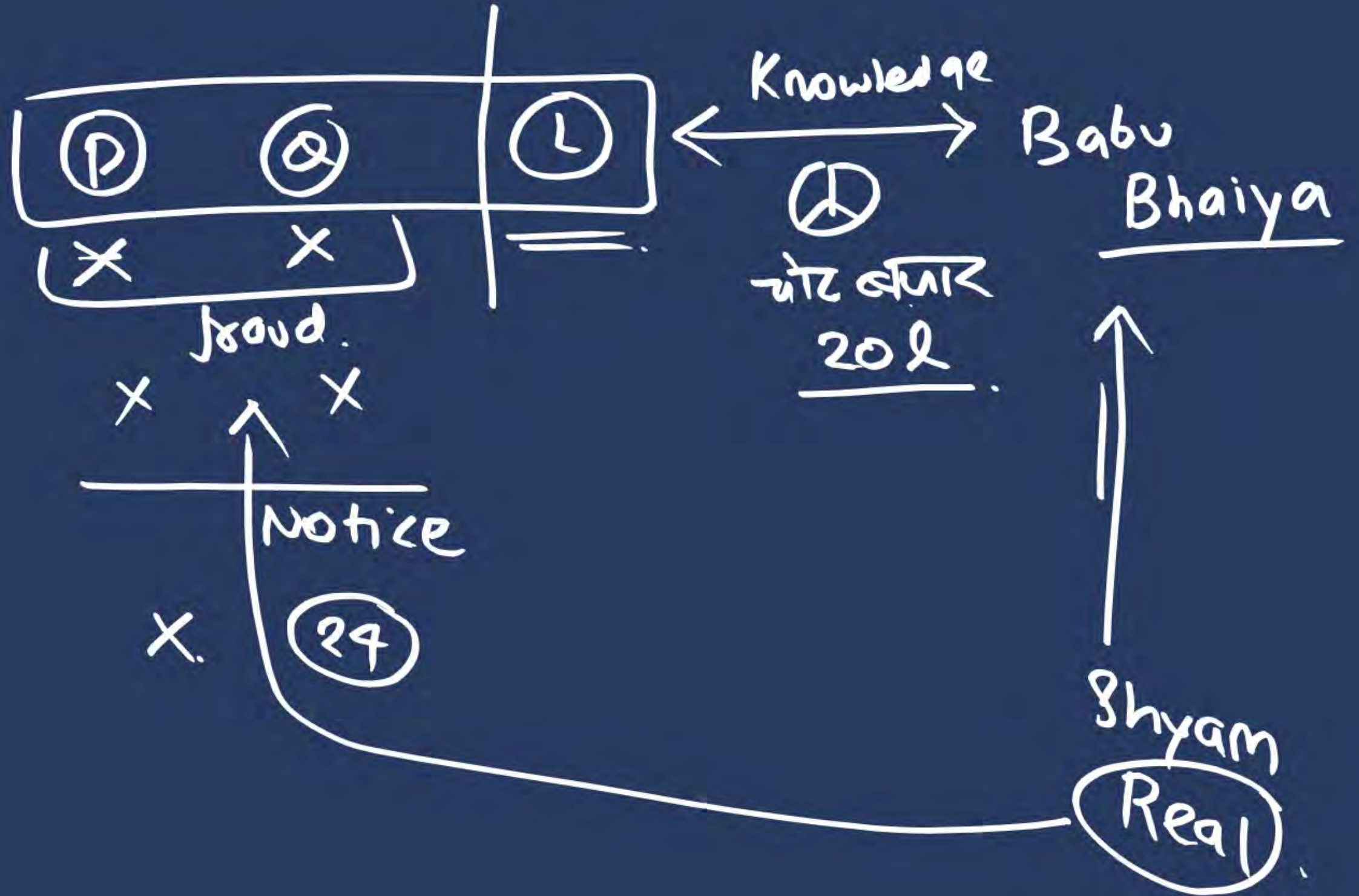
2. Exception for Fraud:

- 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 or sleeping partner. ✓
- Firm's Business: The notice must pertain to the firm's business activities.





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.

Next topic

LIABILITY TO

THIRD PARTIES

SECTIONS – 25 TO 27

The question of liability of partners to third parties



may be considered under different heads. These are as follows:

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



LIABILITY TOWARDS III PARTIES

25

PARTNER की LIABILITY ?

(S)

(Jointly + Severally.)

YES

→ हकत (ACTS) OF THE FIRM

26

Firm की LIABILITY ?

→ गलत हकत (ACTS) OF A PARTNER

27

Firm की LIABILITY ? →

Partner has MISAPPLIED FIRM's Money or FUNDS

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.

25

LIABILITY OF A PARTNER FOR ACTS OF THE FIRM



Authority (express or implied) में रहकर जो भी काम किया है वो -

Business of Firm के लिए किया है ऐसा ही माना जाएगा

Acts of Firm = Any act or omission done by -

- All partners ✓
- Any partner ✓
- Agent of the firm ✓

The partners are jointly and severally responsible to third parties for all acts ✓

Jointly
+
Severally

P ✓
P ✓
P ✓

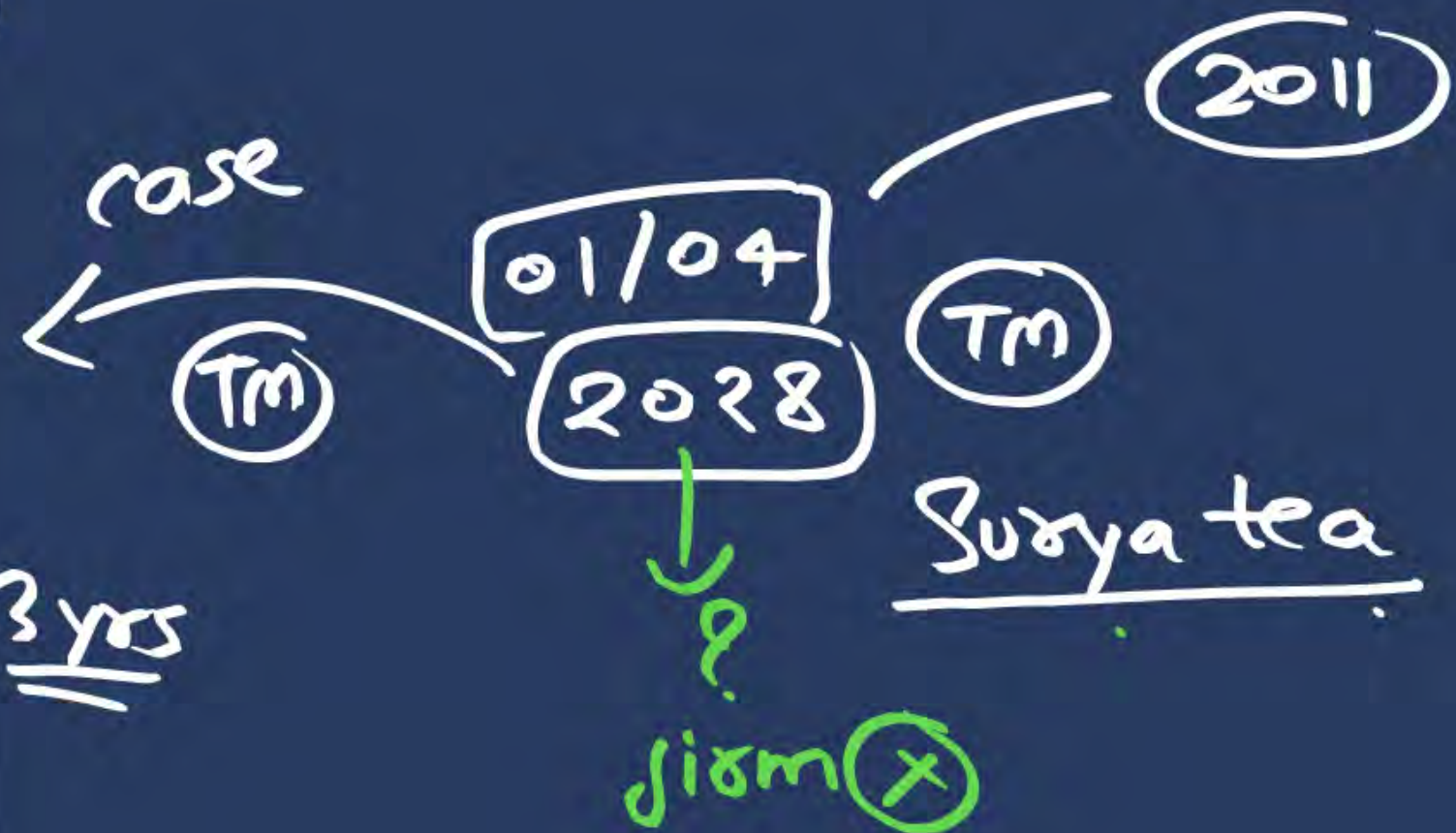
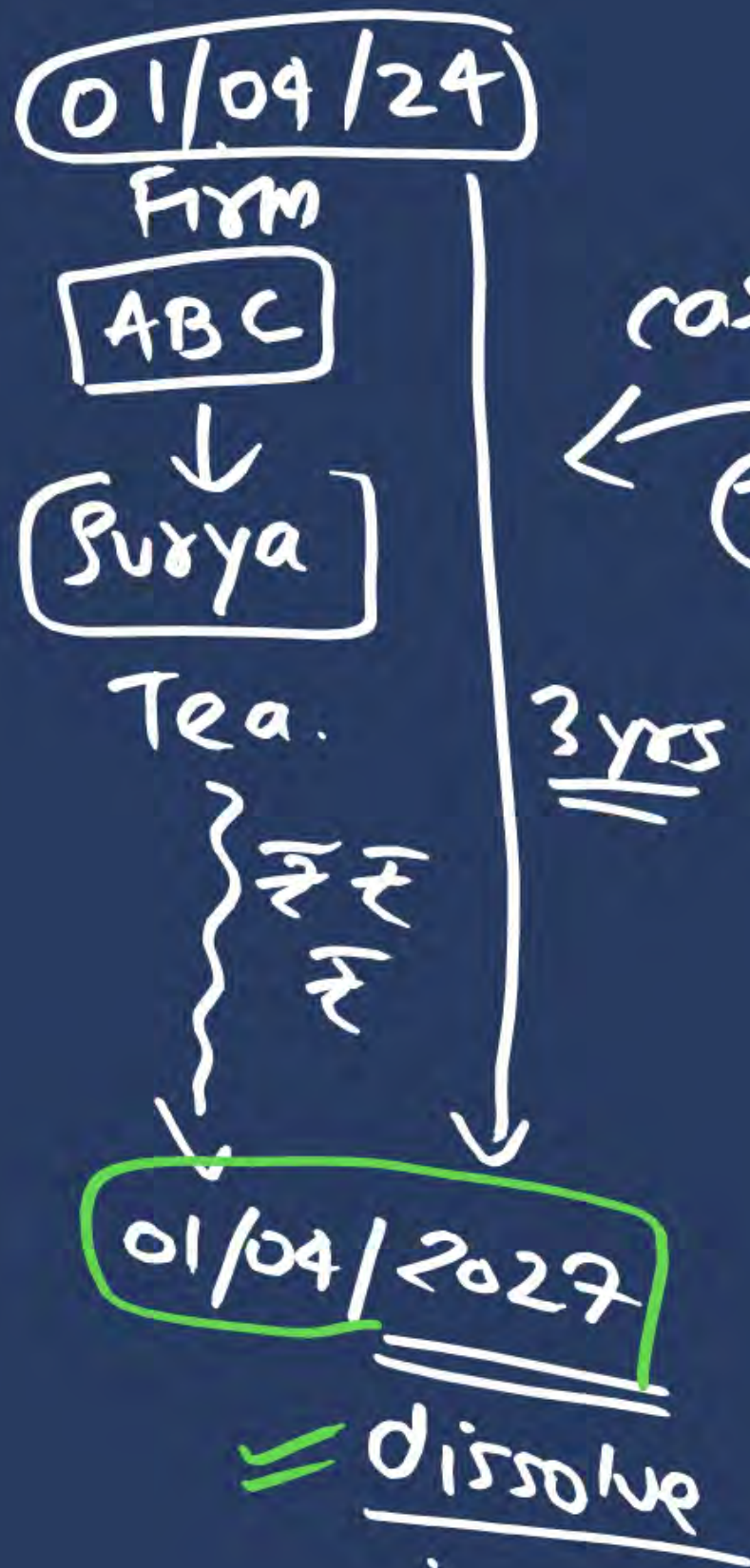
P P P
firm's
Act

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

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.



26

LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER



All the partners or the firm are liable to a third party

For loss or injury caused to 3rd party

by the negligent act of a partner

acting in the ordinary course of the business and with authority.

Act is authorized.....BUT.....

- The method employed by the partner in doing it was unauthorized or wrongful
- This fact would not affect the situation

But
→ negligence
→ B12 (ordinary)
→ Authority



+

Example

One of the two partners in coal mine

acted as a manager (X) ✓



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.

27 LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS

Two type (clauses) of misapplication by partners –

Clause (a) covers the case –

Money comes directly to the partner custody and not firm's custody ✓

Where a partner acts within his authority

He receives money or property belonging to the 3rd party

Misapplies that money or property

Money did not reach the firm. Misapplied directly by the partner

X

Clause (b) covers the case –

Money comes to the custody of the firm and then misapplied by the partner

WITHIN CUSTODY OR NOT → The firm would be liable in both the cases. ✓



clause (b)

Case 1

CJ → DIRECTLY
PF

✓ Custody Firm

Account
500,000

↓ Misapply
K (100,000)

(CJ) Payment

500,000
?
जिम का पैसा

clause (a)

Case 2

CJ → directly X

(X)

→ K Account

500,000

100,000
Misapply

↓ Firm A/c
400,000

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)



Example

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.

Case where firm is not liable UNLESS...



Partner receives
money X

No authority

Firm and other partners are not
liable X

Not under
usual way
of
business X

Unless

It ends up with the
firm
or
under the control of
the other partners.

Example:

Imagine a bakery owned by three partners: A, B, and C. Usually, only Partner A handles payments from customers. One day, Partner B accepts a large amount of money from a supplier for something unrelated to the bakery's usual business. The firm (the bakery) and Partners A and C won't be held responsible for that money because accepting it wasn't part of Partner B's regular duties.

However, if Partner B gives that money to the bakery or A and C somehow get control of it, then the firm (and all partners) would be responsible.

Bakery
BIZ

Authority (X)

(A) — (B) — C

Authority
↓
Cash

↑ authority
(X)

Supplier's

Personal

am.

500,000

deposit
firm
A/C
Custody

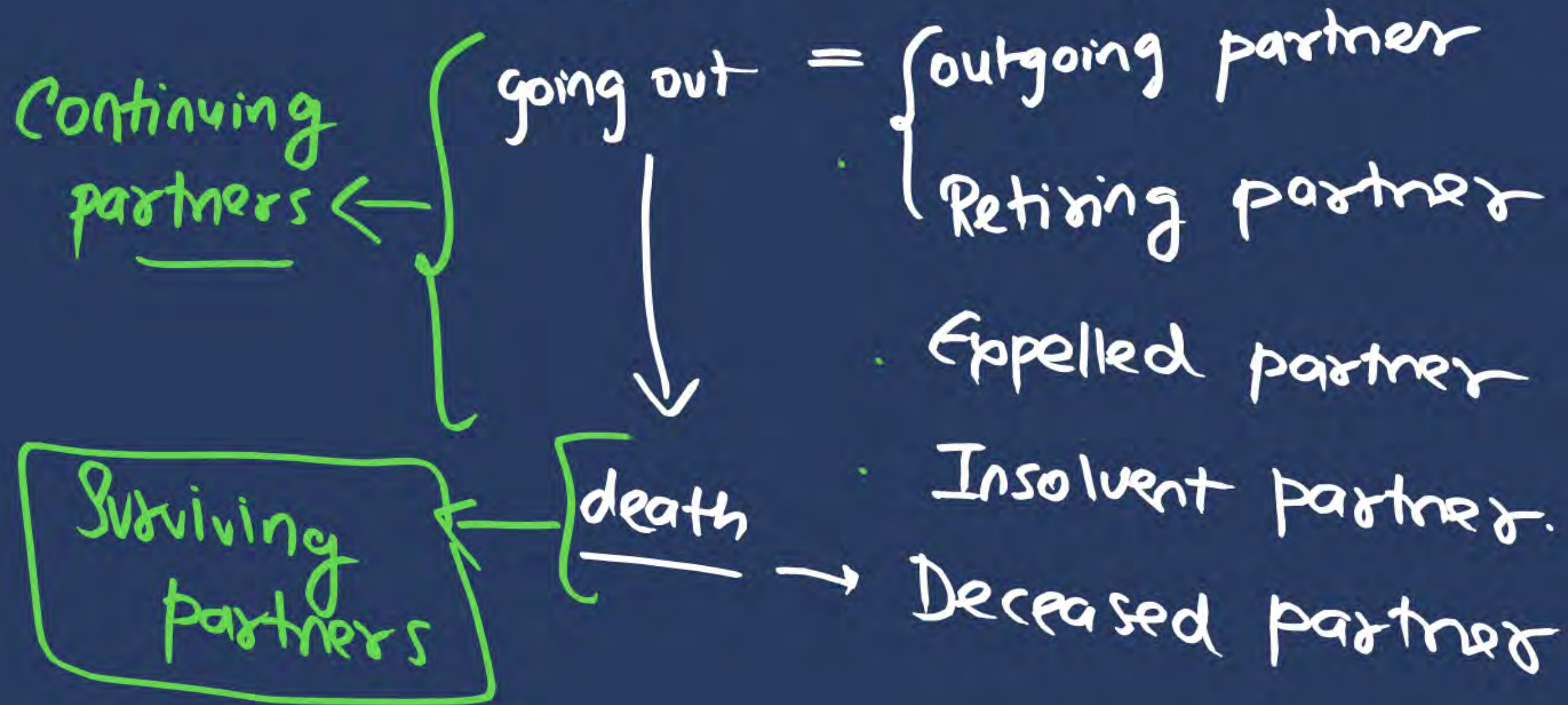
Next topic

LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT

SECTION 31 – 35

Legal consequences

coming in = Incoming partner



Sections	Description	
31	ADMISSION	A
32	RETIREMENT	R
33	INSOLVENCY	I
34	EXPULSION	E
35	DEATH (LIABILITY OF ESTATE)	D



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

A.R.I.E.D

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)

a firm will be reconstituted

31

INTRODUCTION OF A PARTNER



GROUND RULE (Method) -

→ consent of all (P)

→ Banner

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 liability ordinarily commences from the date

When he is admitted as a partner

UNLESS

He agrees to be liable (for firm's obligation) prior to the date

Liability of a New (P) →

Generally - he will be liable from the date of Adm.

NOVATION

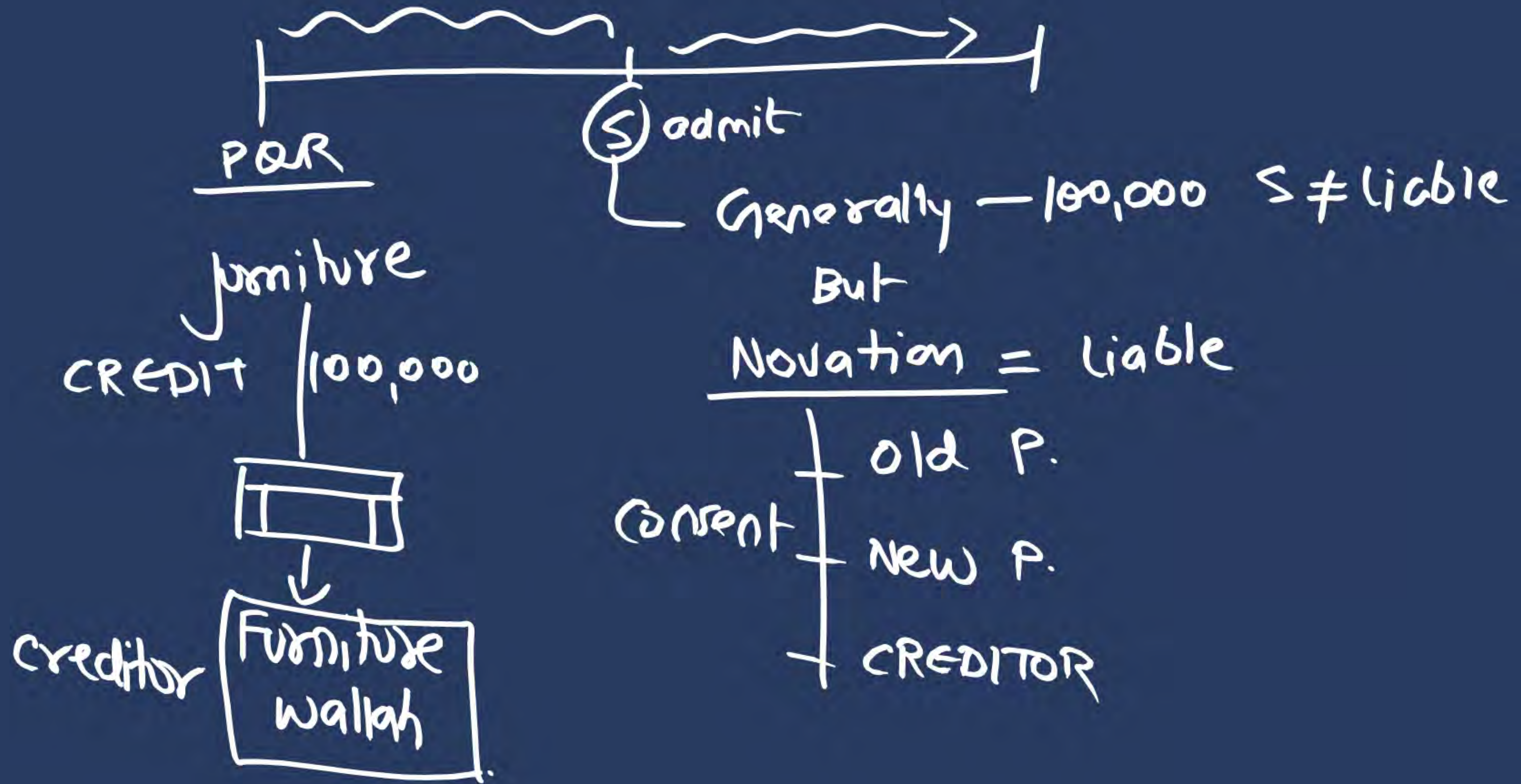
Old Agent — New Agent

PQR

(S)
Admit

ACTS
S is
not
liable

liable for
subsequent-
act.



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

- It is possible through - Novation is the technical term which is not a mere agreement amongst partners. It involves consent of -

- Old Partners
- New Partners
- 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.



An agreement between the partners and the incoming partner that

he shall be liable for existing debts

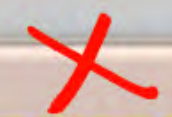
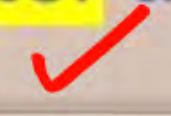
will not ipso facto (by the fact itself / just because)

give creditors of the firm any right against him.

2P

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.

Pointers	Details
<u>Liability for Existing Debts</u>	An incoming partner is <u>not liable</u> for debts and liabilities incurred <u>before</u> their admission. 
<u>Liability for Future Liabilities</u>	An incoming partner is liable for debts and obligations incurred <u>after</u> their admission. 
<u>Partnership Deed</u>	The partnership deed may <u>specify different terms regarding the new partner's liability.</u> 
<u>Indemnity</u>	Any <u>indemnity arrangement for past liabilities</u> should be <u>clearly documented in the partnership deed.</u> 

32

RETIREMENT OF A PARTNER



GROUND RULE (Method) –

A partner may retire –

- With the consent of all the other partners OR
- in accordance with an express agreement by the partners OR
- 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 a Retiring partner

1

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.



Yes
liable
to III
parties
until
gives
PN



2

A retiring partner may be discharged from any liability

- to any third party for acts of the firm
- done before his retirement
- by an agreement made by him with such third party and the partners of the reconstituted firm, and
- such agreement may be implied by a course of dealing between the third party and the reconstituted firm
- after 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.



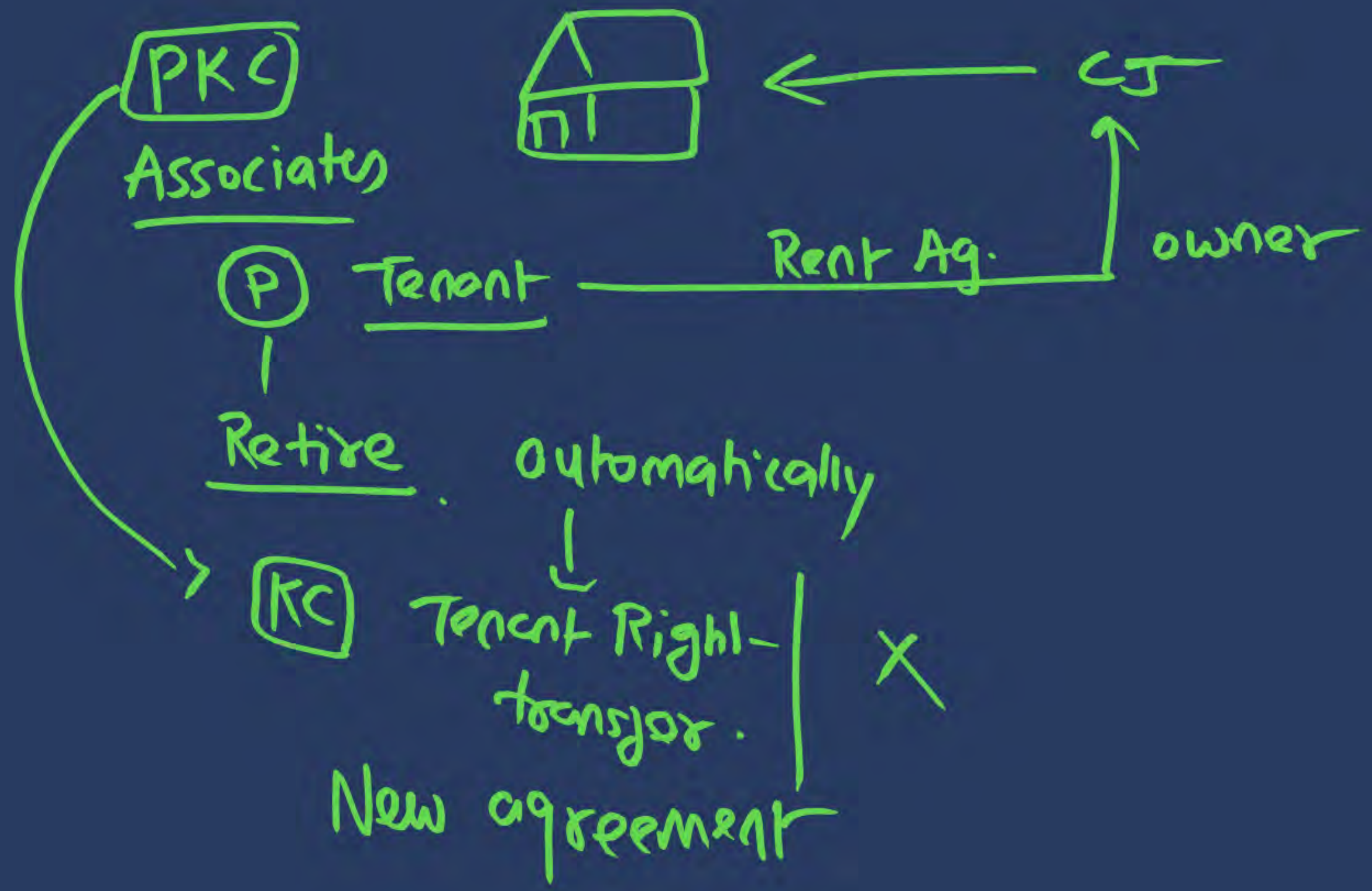
Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

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

- 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 favor of the remaining partners
- even though the retiring partner
- ceases to have any right, title or interest in the business as
such.



33 EXPULSION OF A PARTNER



GROUND RULE (Method) –

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

①

②

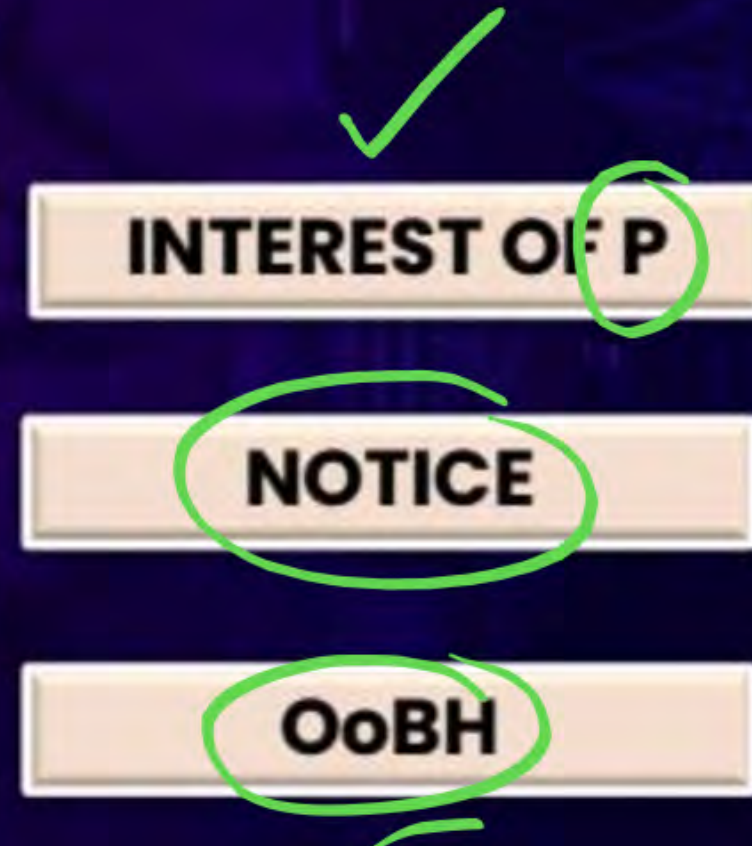
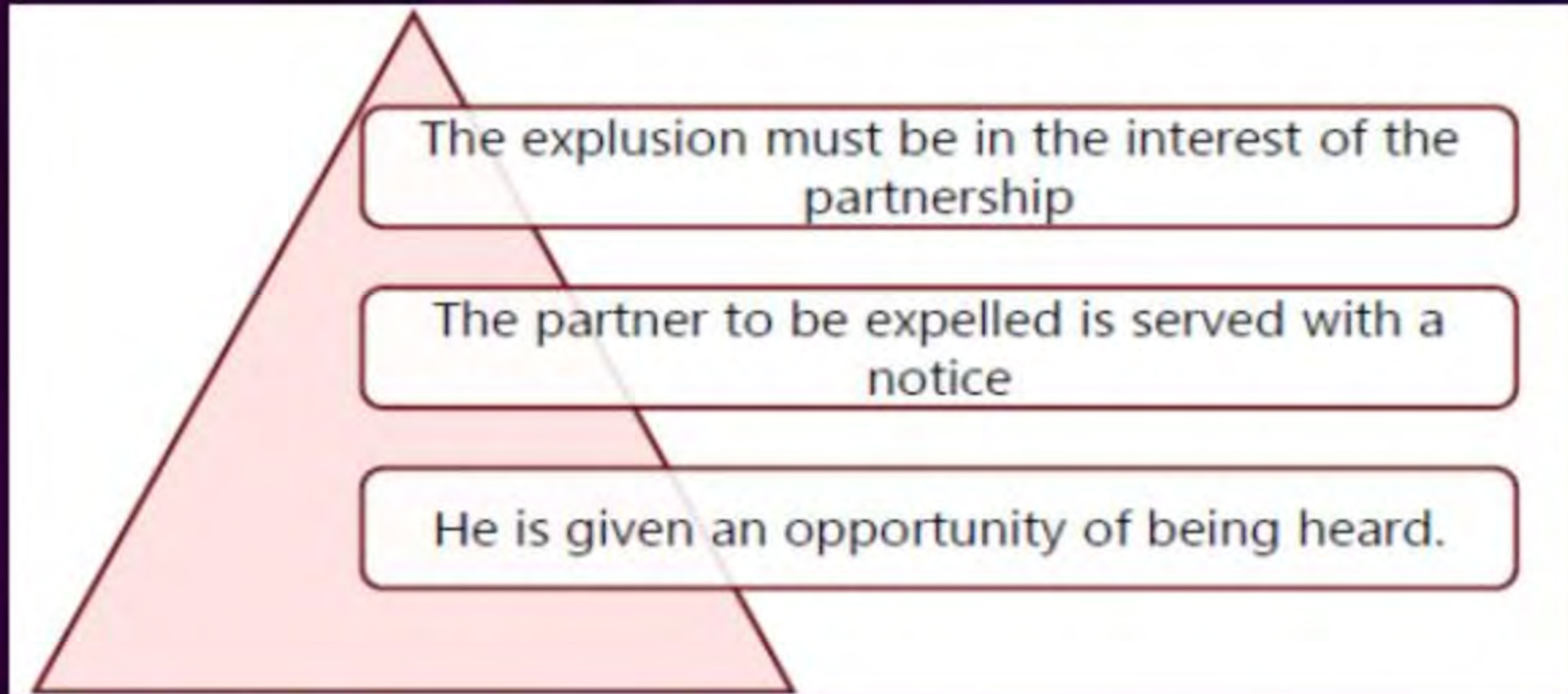
③

VOID

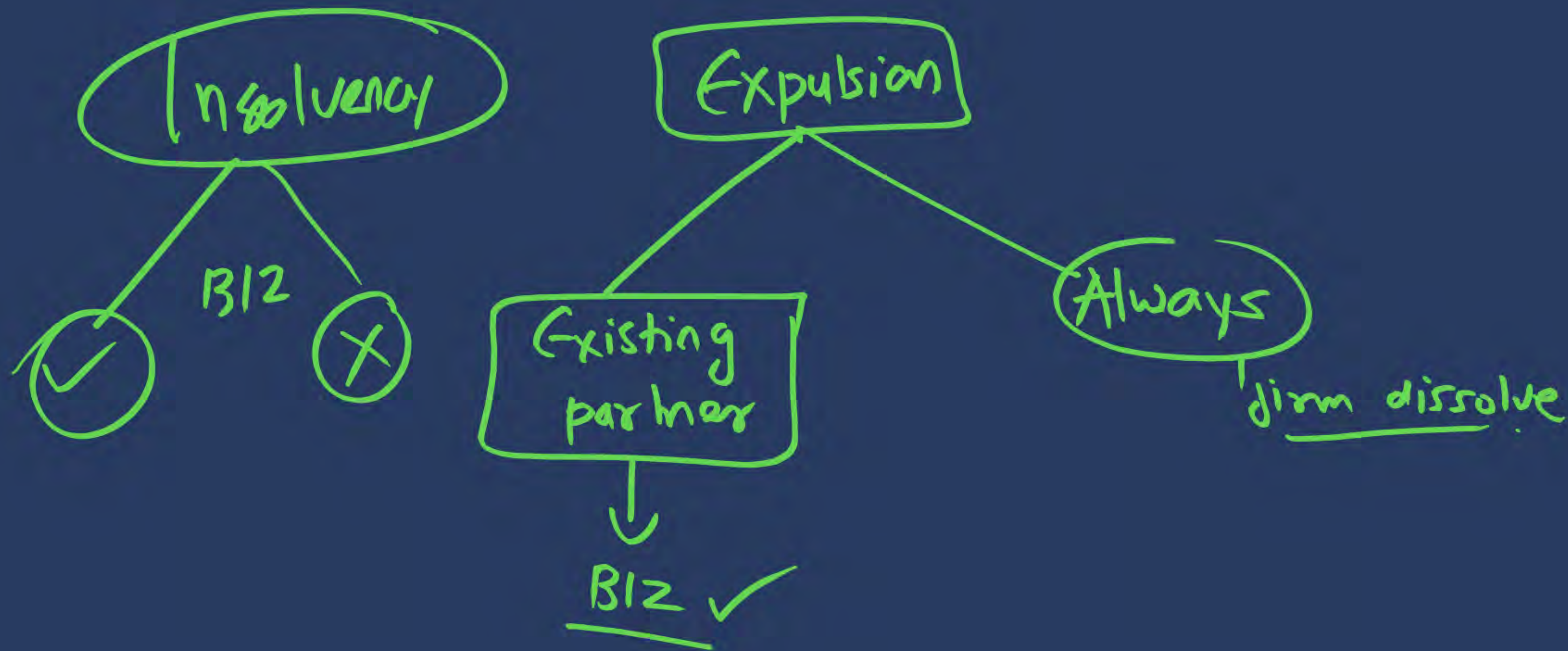
If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.

GOOD FAITH ?

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.



SOME IMP POINTERS -



- It may be noted that under the Act, the expulsion of partners does not necessarily result in dissolution of the firm. NO.
- 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.
- Provisions of Sections 32 (2), (3) and (4) which we have just discussed, will be equally applicable to an expelled partner as if he was a retired partner.

Compulsorily

PN
^

Example

- 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 the test of good faith as required is not present, so expulsion of Partner B is not valid.

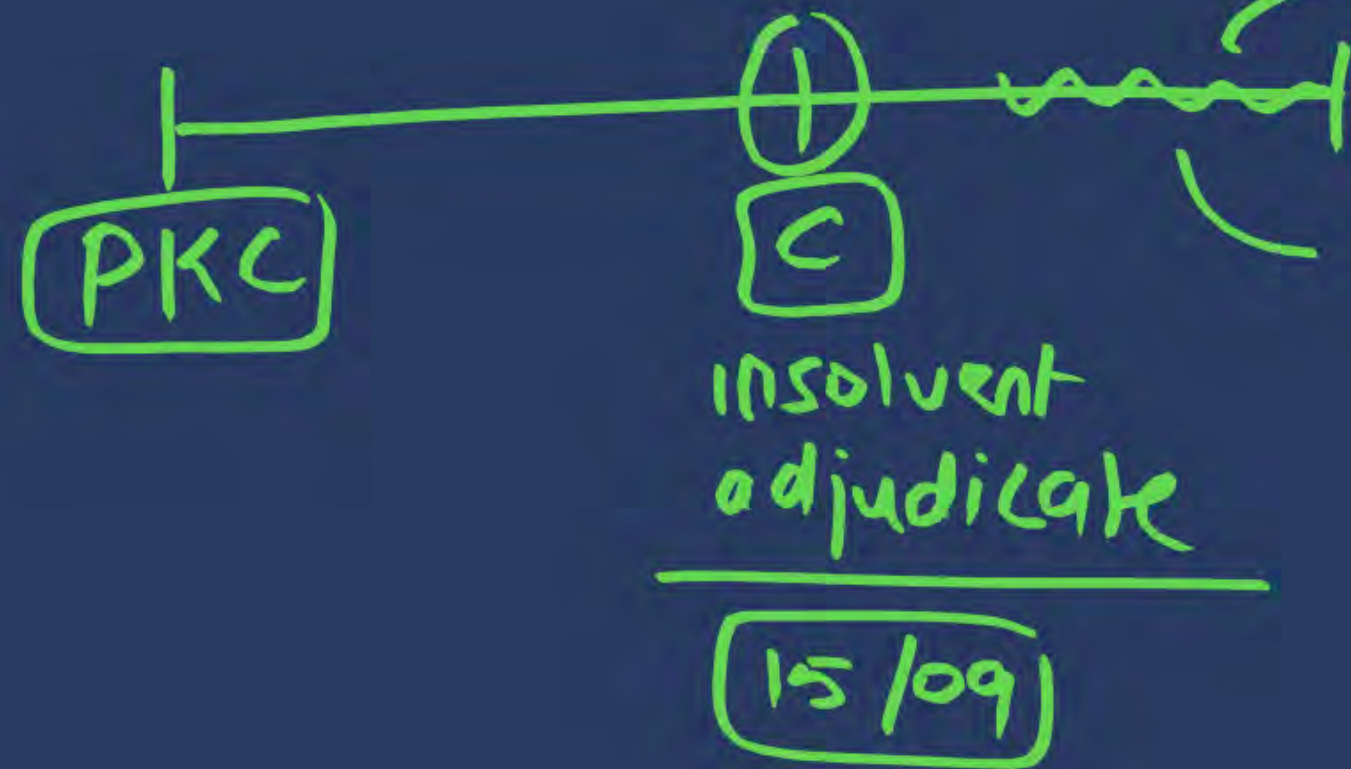
34 INSOLVENCY OF A PARTNER

- 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

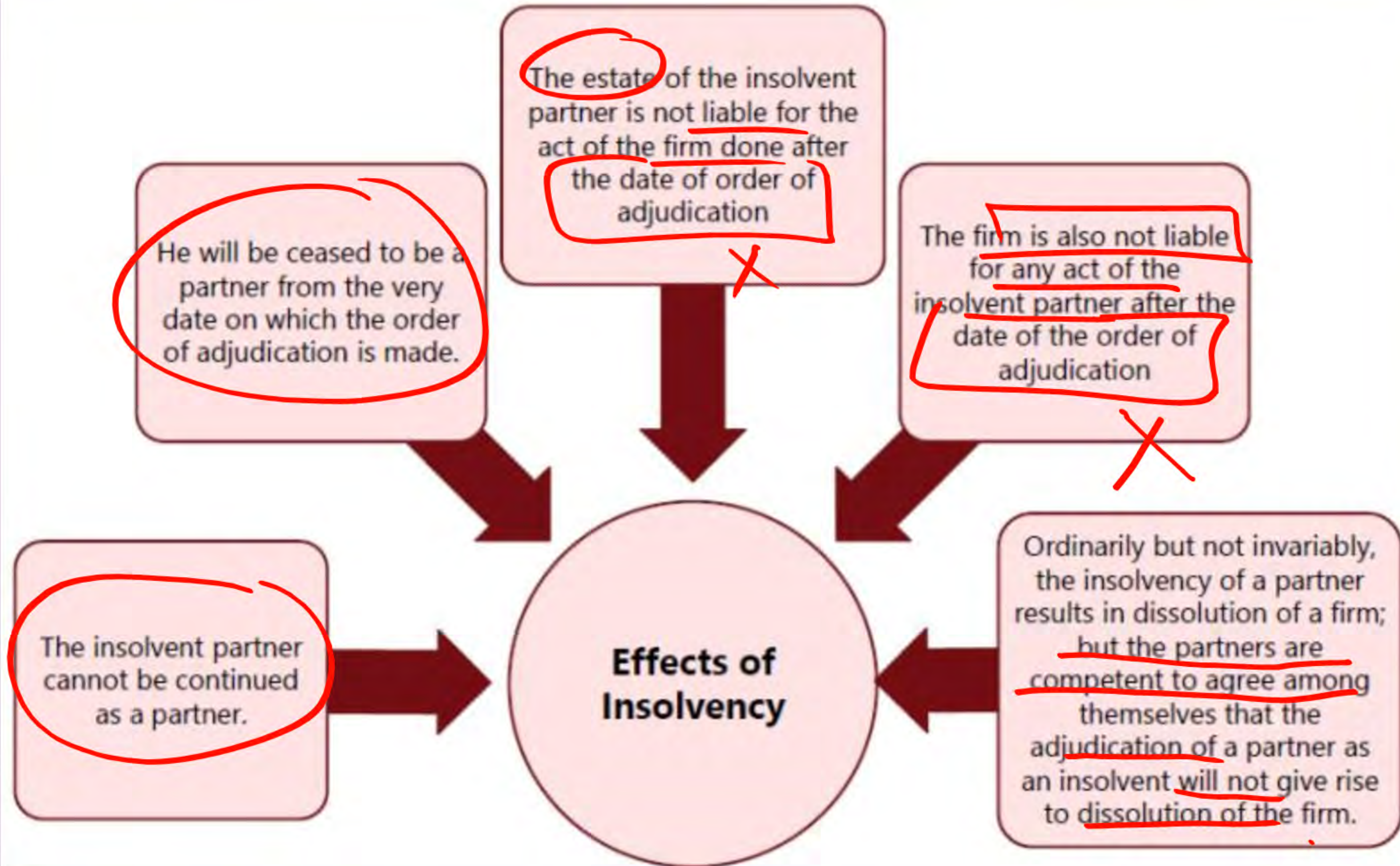
 - the firm is not dissolved by the adjudication of a partner as an insolvent,
 - the estate of a partner so adjudicated is not liable for any act of the firm and
 - the firm is not liable for any act of the insolvent,
 - done after the date on which the order of adjudication is made.



firm ~~act~~ ^{act} estate is not
IP $\neq$ liable

IP = firm / act
Firm $\neq$ liable.

Insolvent = court
= adjudicate) date — Insolvent
↓
ⓧ Partner ⓧ



31 = Admission

32 } = Retirement

33 } = Expulsion

PN

✓

✓

34 — Insolvent = PN X

35 — Death — PN (X)

35

LIABILITY OF ESTATE OF DECEASED PARTNER



Pointers	Details
Effect of Death on Partnership	Ordinarily, the death of a partner leads to the <u>dissolution of the partnership.</u>
<u>Contractual Agreement</u>	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. <u></u>

35 = Death = deceased partner
↓ = dissolution of firm = **Yes**
But = Agreement = BIZ continue
surviving partners.

↓
IVA = only **2P**

= **PN** x Not required

= DP = Estate? future obligation
← → Not liable.

35

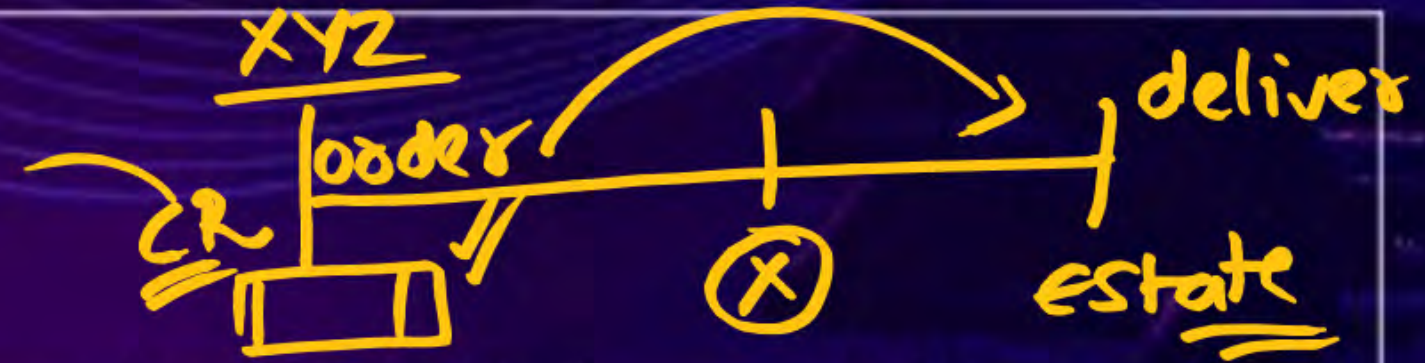
LIABILITY OF ESTATE OF DECEASED PARTNER



Pointers	Details
Liability of Deceased Partner's Estate	The estate of the deceased partner is absolved from liability for future obligations of the firm
<u>Public Notice Requirement</u>	X 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

- 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.
- Because there was no debt due in respect of the goods in X's lifetime.



Sections	Description
14 ✓	PARTNERSHIP PROPERTY ✓
15 ✓	APPLICATION OF THE PROPERTY OF FIRM ✓
16 ✓	PERSONAL PROFIT EARNED BY PARTNERS ✓
17 ✓	RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM ✓
29 ✓	RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST ✓
30 ✓	MINOR ADMITTED TO BENEFITS OF PARTNERSHIP ✓
36 ✓	RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS
37 ✓	RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS
38 ✓	REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM

9

Remaining Provisions

PARTNERSHIP PROPERTY

SECTION 14 & 15

PERSONAL PROFIT – 16

14 PARTNERSHIP PROPERTY



Property of the firm –

PP – PA

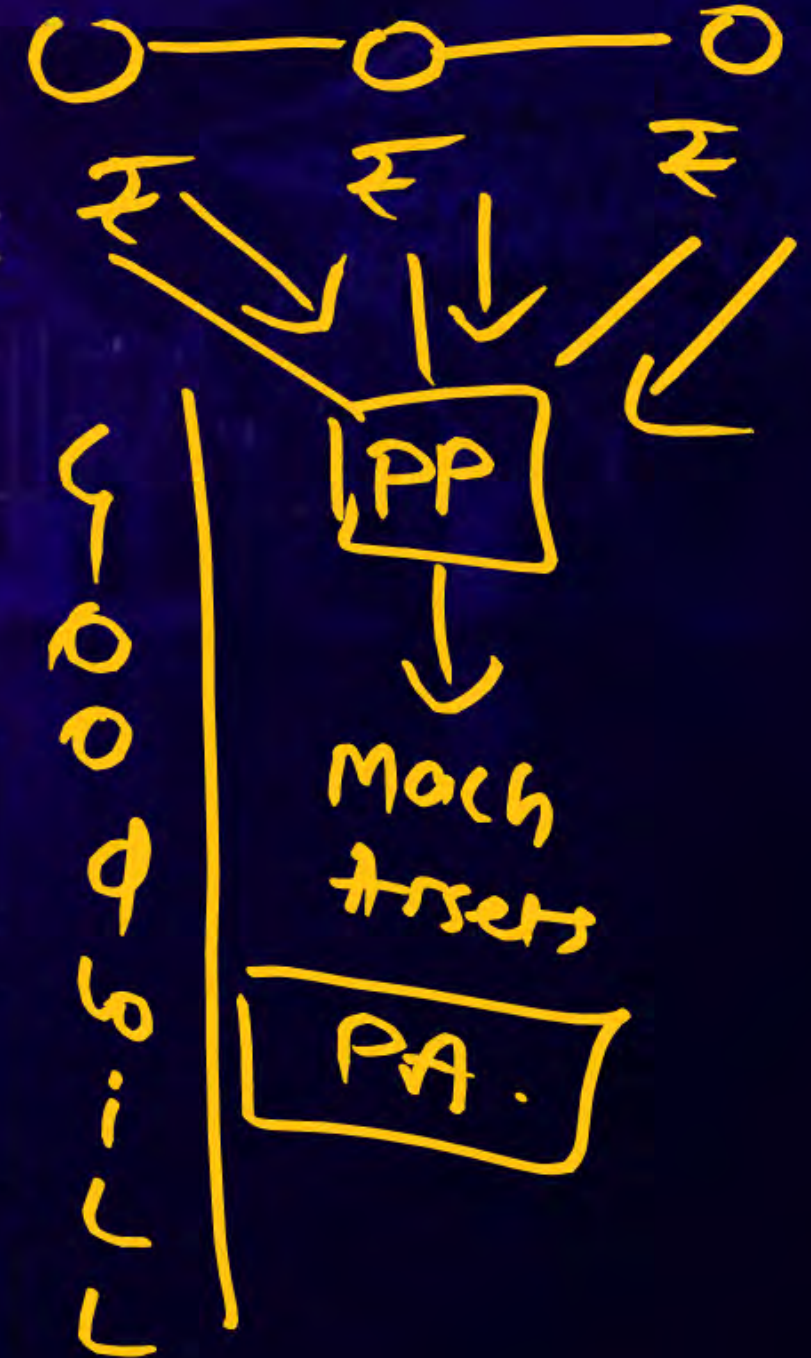
Partnership property – Partnership assets – Joint stock
– Common stock – Joint estate

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

All RIP which partners have brought into the common stock as
their contribution

All RIP acquired or purchased by or for the firm / purpose and in
the course of business

Goodwill of the Business



? Whether a particular property is or is not 'property' of the firm
REAL INTENTION OR AGREEMENT IS IMPORTANT ★



JUST THE MERE FACT ✓

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

Such property will become partnership's property -

If there is an agreement. ★



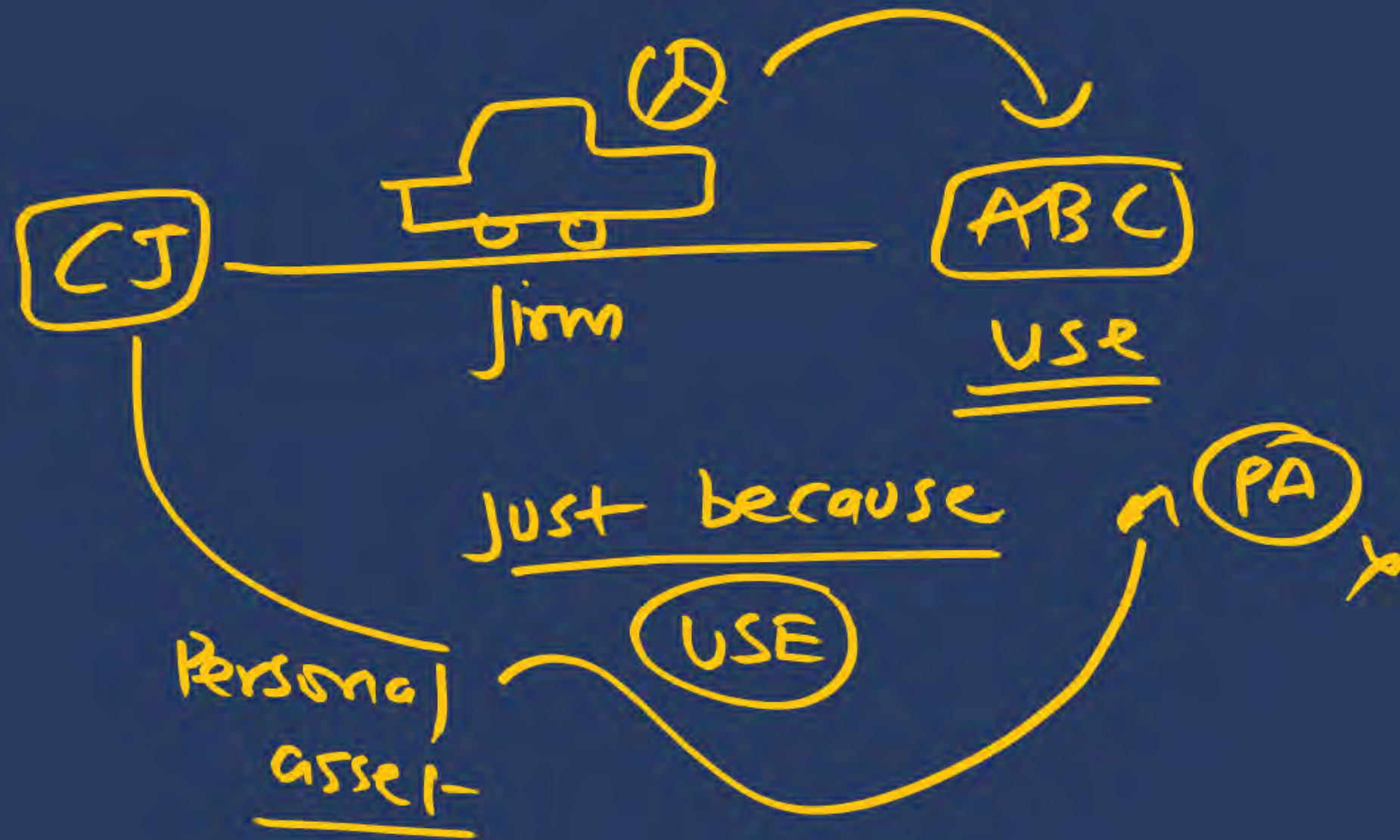
Conversion of Partner's separate property? Possible?

By an agreement at any time

In good faith

Effectual b/w the partners and against the creditors of the firm

mutual understanding



Goodwill



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

15

APPLICATION OF THE PROPERTY OF FIRM



- ❖ 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.

16

PERSONAL PROFIT EARNED BY PARTNERS



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;

Subject to the contract
between the partners

2) individually

$$\frac{A + (B) + C}{30}$$

(Khatta Salt)

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.

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.

$A + B + C$

Refined sugar — Sell
Profit

Wholesaler
Market

30

10

20/- Kg

Sugar

Old

MKT
30/Kg

Remaining Provisions

R/D AFTER THE CHANGE IN THE
FIRM
SECTION 17

TRANSFEREE'S RIGHTS – 29

17 RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM



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.

(+)

death / retire

→ BIZ ✓

1 yr.

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.

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.

29

RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST



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

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.

Tree ✓
Anjali

Tree ✓
Rahul



Mutual
Trust

x
Ⓟ
x
Right / Interest

During the Partnership:

- The transferee cannot:
 - Interfere in the business. X
 - Demand accounts. X
 - Inspect the firm's books. X
- 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.

Remaining Provisions

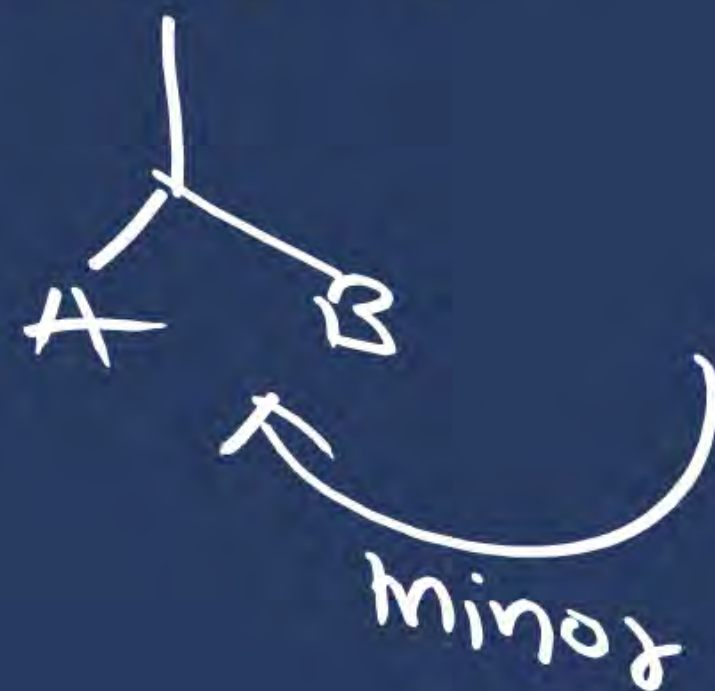
**MINOR ADMITTED TO BENEFITS
OF PARTNERSHIP
SECTION 30**



Aspect	Details
Minor's Contract	A minor cannot be bound by a contract because a <u>minor's contract</u> is <u>void</u> and not merely <u>voidable</u>. <u>void-ab-initio</u>
Partnership and Minors	A minor cannot become a partner in a firm because <u>partnership is founded on a contract.</u> ✓
Admission to Benefits of Partnership	A minor can be <u>admitted</u> to the <u>benefits</u> of partnership under Section 30 of the Act. He can be a <u>beneficiary</u> in the firm. <u>BUT we need 2 MAJOR Partners at least.</u> ★ 2 <u>major</u>
Rights and Liabilities	When <u>admitted</u> to <u>benefits</u> with the <u>consent</u> of all <u>partners</u>, the <u>rights</u> and <u>liabilities</u> of the <u>minor</u> will be <u>governed</u> <u>under</u> <u>Section 30.</u>

$$\begin{array}{c}
 \times \quad \times \\
 \textcircled{25} + \textcircled{12} \\
 \textcircled{\text{new}} \\
 \downarrow \\
 \text{minor} \\
 \hline
 \times
 \end{array}$$

← existing join

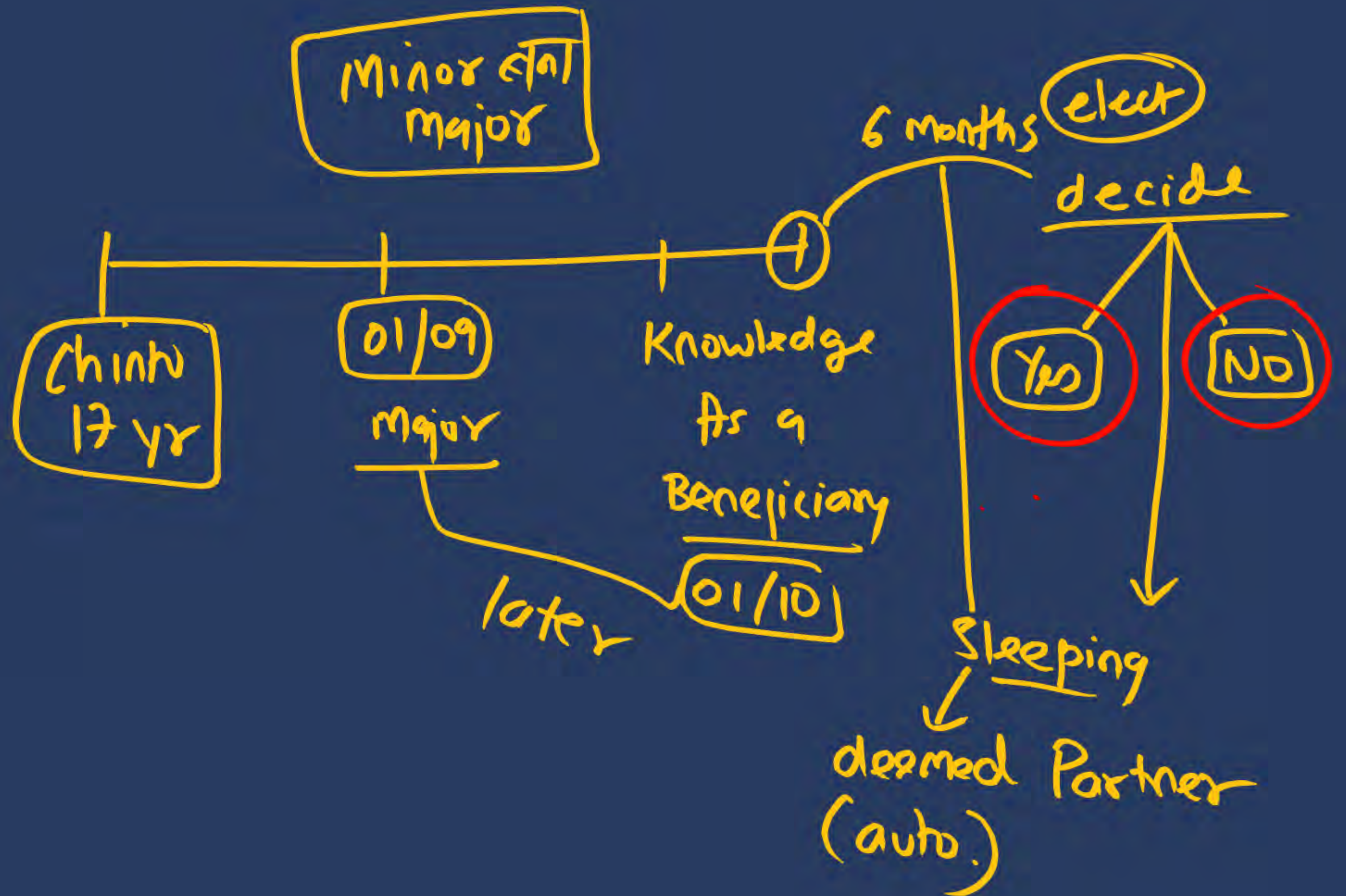


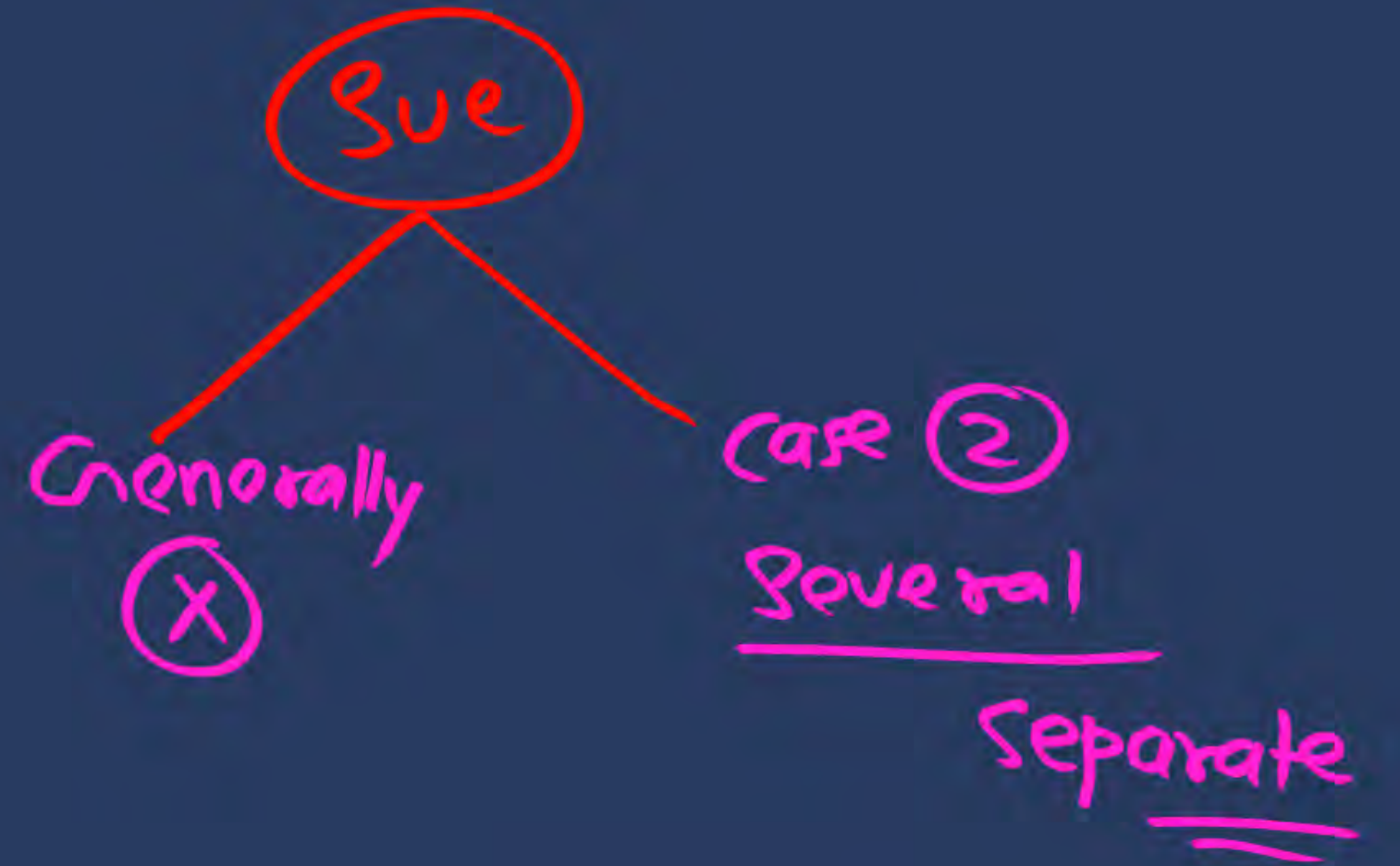
Minor

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. loss (X)
- b. Accounts Access - He can have access to, inspect and copy the accounts of the firm. /u
- 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 X
- 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. ✓





Liability

Liability → After

Minor

Major → Partner

← Before

किस से

→ UL

→ III parties liable

एक

① Limited to Share-jirm

② Insolvent

③ Personal liable

X

X

पहली बार

① or Beneficiary entry

III

Major



2. Liabilities:

Before Attaining Majority

Extent of Liability

Limited to share in profits and property of the firm.

Personal Liability X

No personal liability for debts incurred during minority.

Insolvency X

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

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

Out of willingness or on failure to give public notice within specified time

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.

1-~(X)
firm



Remaining Provisions

RIGHTS OF OUTGOING PARTNER

SECTIONS 36 – 37 – 38

36

RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS



- 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 may not –
 - use the firm name ✗
 - represent himself as carrying on the business of the firm or
 - 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.**

37

RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS



Where any member of a firm has died or otherwise ceased to be partner

without any final settlement of accounts

In the absence of a contract to the contrary

The surviving or continuing partners carry on firm's business with the property of the firm

the outgoing partner or his estate or his representatives is entitled 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:

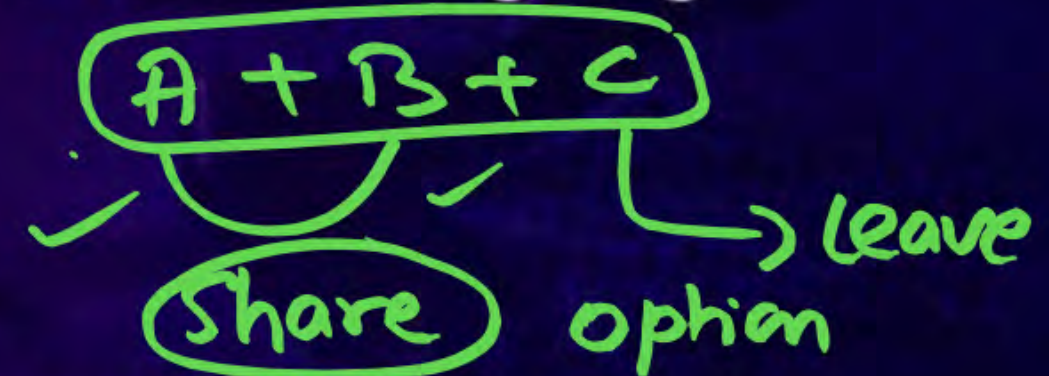
6%

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.

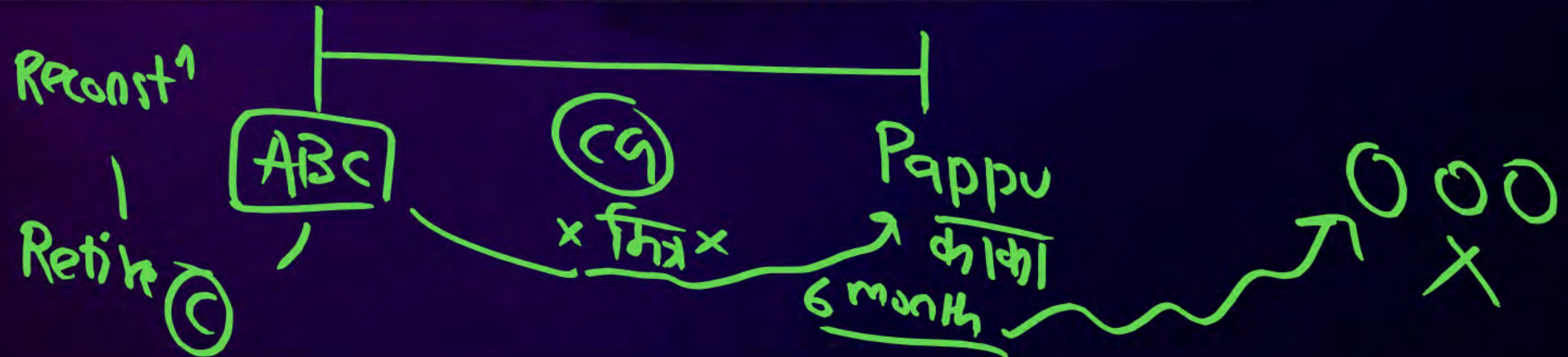
Example 17: A, B and C are partners. C retires after selling his share in the partnership firm. A and B fail to pay the value of the share to C as agreed to. The value of the share of C on the date of his retirement from the firm would be pure debt from the date on which he ceased to be a partner as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

38

REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM



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.





Thank

You

Unit 3

Registration & Dissolution of a Firm

UNIT - 3



Topics covered

1

APPLICATION FOR REGISTRATION - 58



2

REGISTRATION OF FIRMS - 59



3

PENALTY IN 59 A-1



4

CONSEQUENCES OF NON-REGISTRATION - 69



UNIT - 3

Topics covered



1

DISSOLUTION OF FIRM (VS) DISSOLUTION OF PARTNERSHIP

2

MODES OF DISSOLUTION OF FIRM

3

WITHOUT ORDER OF THE COURT - 40 TO 43

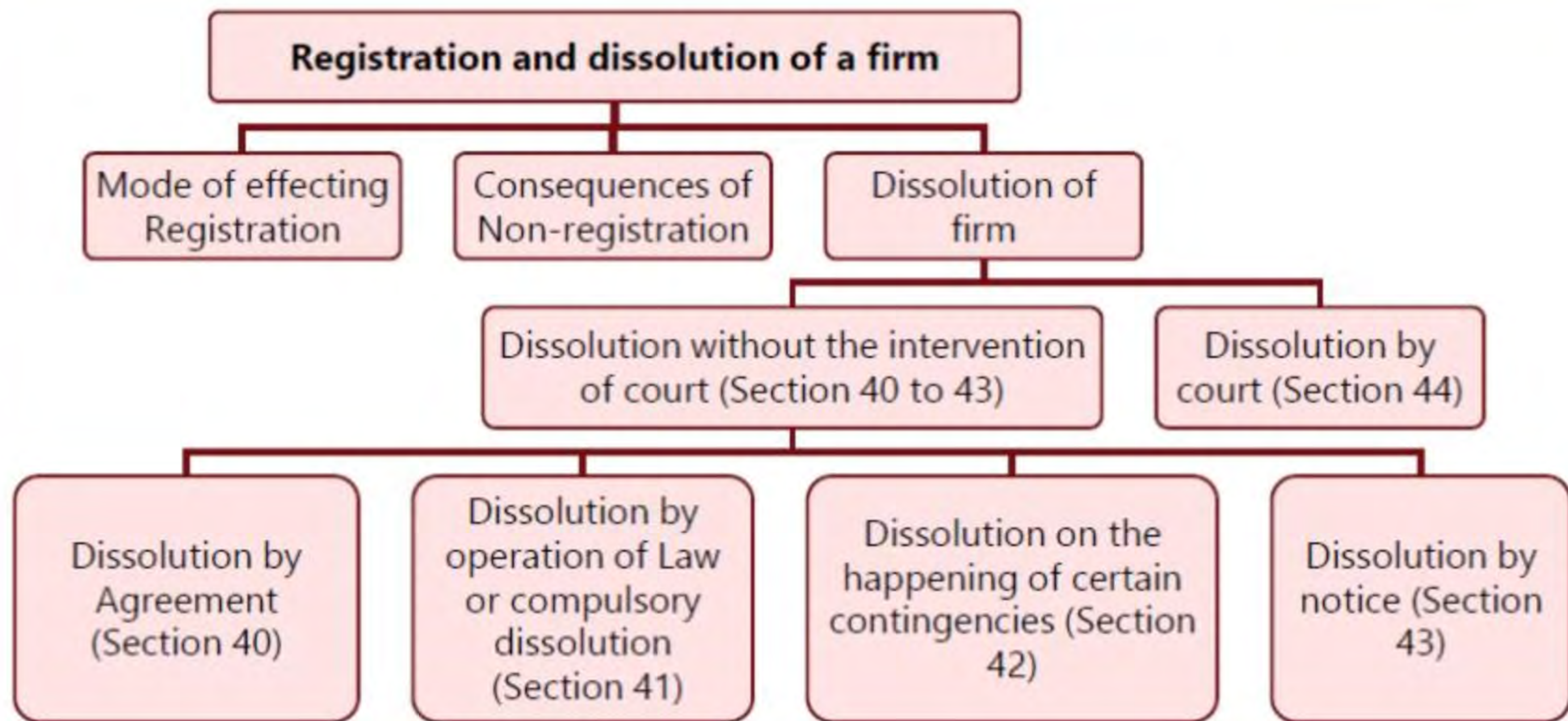
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WITH ORDER OF THE COURT - 44

5

CONSEQUENCES OF DISSOLUTION







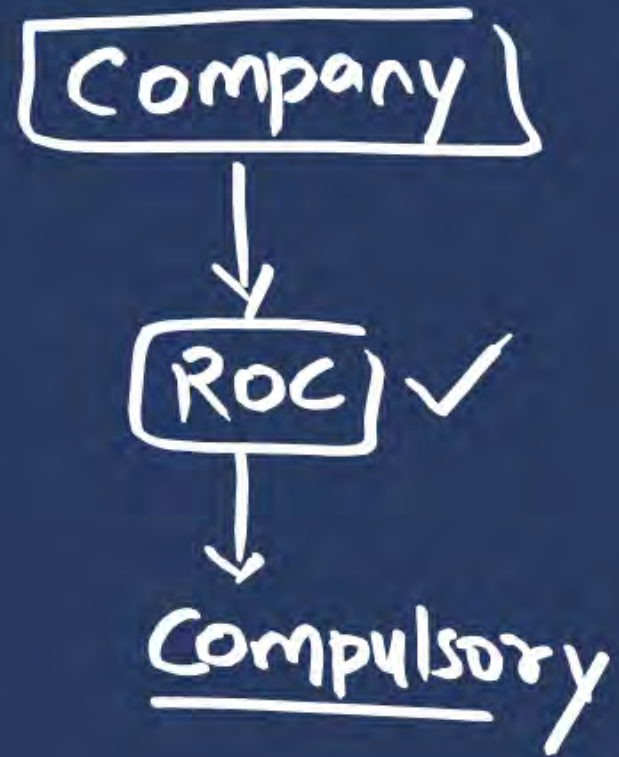
REGISTRATION OF FIRMS

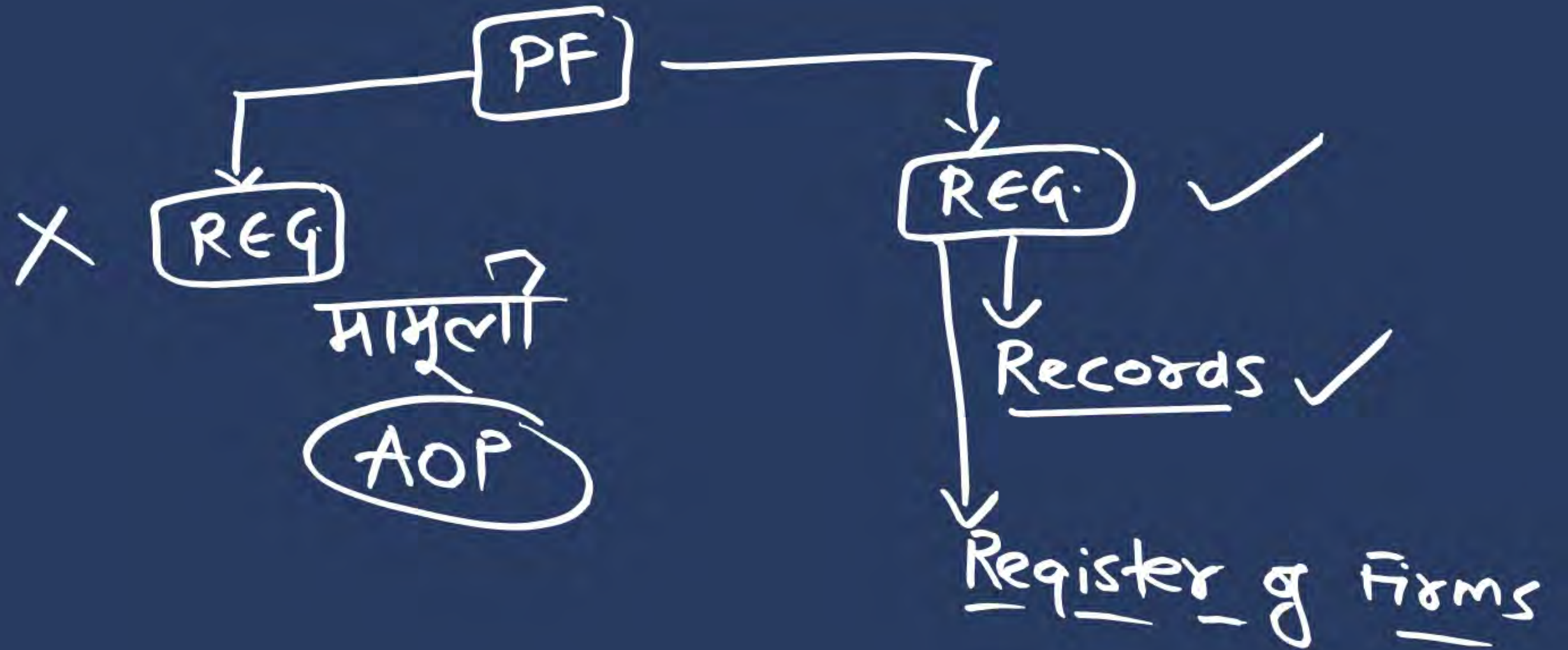


Q Is it compulsory in India to get your firm registered? ✓

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. +



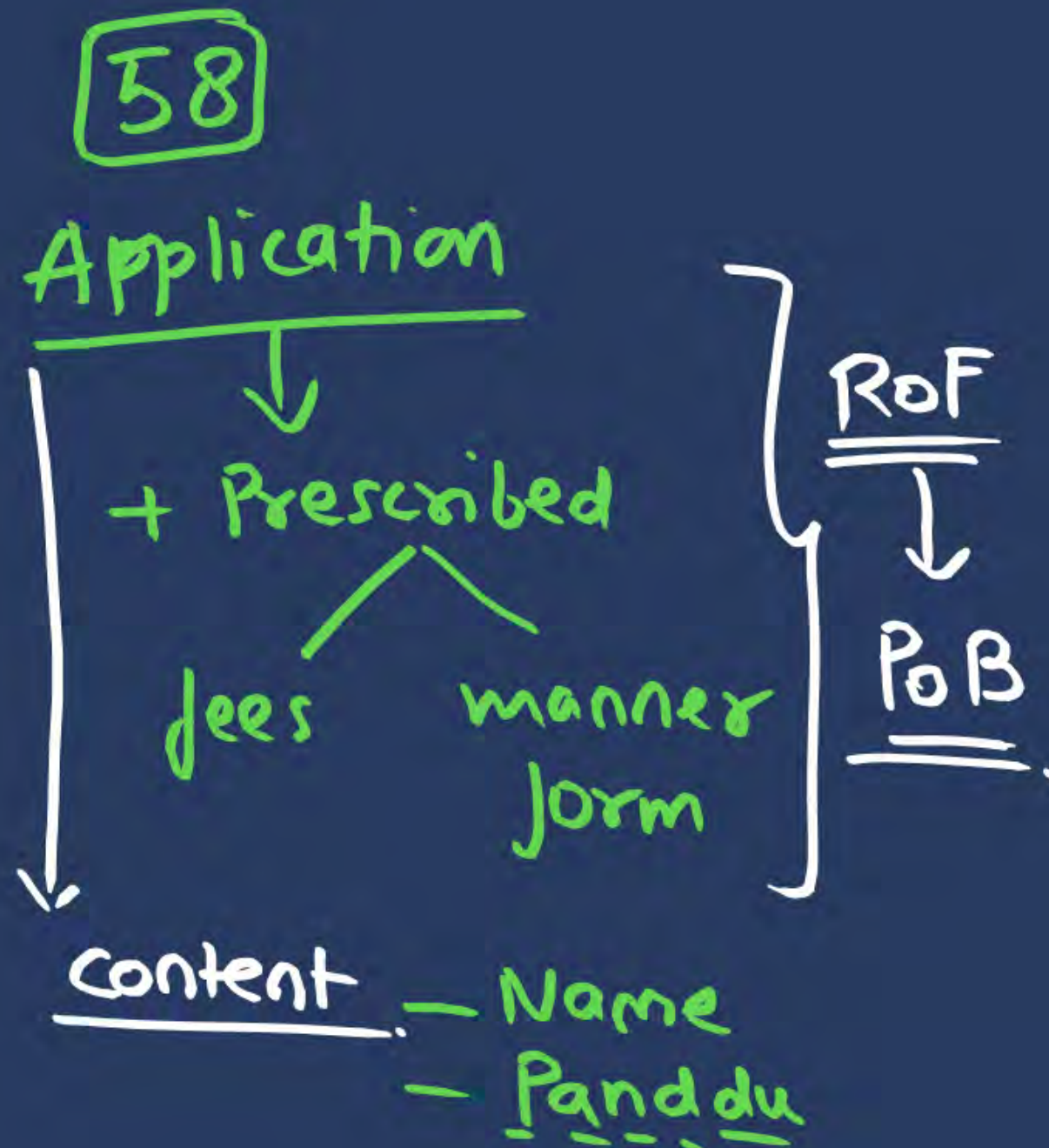


58 APPLICATION FOR REGISTRATION OF A FIRM



- 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 affected 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- (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 authorized 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. ✓

CERTIFICATE OF REGISTRATION

नोंदणीचे प्रमाणपत्र



सत्यमेव जयते

THE INDIAN PARTNERSHIP ACT, 1932
(ACT NO. IX OF 1932)भारतीय भागीदारी अधिनियम, १९३२
(सन १९३२ चा अधिनियम क्रमांक ९)

Registration No. [REDACTED]

It is certified that a firm by name [REDACTED]
with its head office at [REDACTED]has this day been duly registered under The Indian Partnership Act, 1932
(Act No. IX of 1932).याद्वारे असे प्रमाणित करण्यात येत आहे की, [REDACTED]
[REDACTED], महाराष्ट्र, ४०० [REDACTED].
India

येथे मुख्यालय असलेल्या [REDACTED]

या नावाच्या संस्थेची [REDACTED] २० या दिवशी भारतीय भागीदारी अधिनियम, १९३२ (१९३२ चा
अधिनियम क्रमांक ९) अन्वये योग्य रीतीने नोंदणी करण्यात आली आहे.

Given under my hands this [REDACTED]

दिनांक [REDACTED] of या दिवशी माझ्या सहीने देण्यात आले.

Registrar/Deputy Assistant Registrar of
Firms Mumbai/Pune/Nagpur/Aurangabad.निबंधक/उप सहायक निबंधक भागीदारी संस्था,
मुंबई/पुणे/नागपूर/औरंगाबाद.GOVERNMENT OF TELANGANA
REGISTRATION AND STAMPS DEPARTMENTTSGGDG 775
[Barcode]THE REGISTRAR OF FIRMS
Ranga Reddy

Acknowledgement of Registration of Firm

The Registrar of Firms, Ranga Reddy hereby acknowledges the receipt of the
statement prescribed by section 58(1) of the Indian Partnership Act, 1932.The statement has been filed and the name of the firm M/S. [REDACTED]
Plot No [REDACTED] Area/ [REDACTED]
Bandlaguda Jagir/ Rajendranagar/ Rangareddy/ Telangana/ India/ has been
entered in the Register of Firms as [No [REDACTED] of 2023] at Ranga Reddy.

Date: 21/10/2023

REGISTRAR OF FIRMS

Digitally signed by G.
SHTA Ranga Reddy
Date: 2023.10.21 16:03:24
IST

mee seva



59 REGISTRATION OF A FIRM



- 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.

Delivery date
✓ =

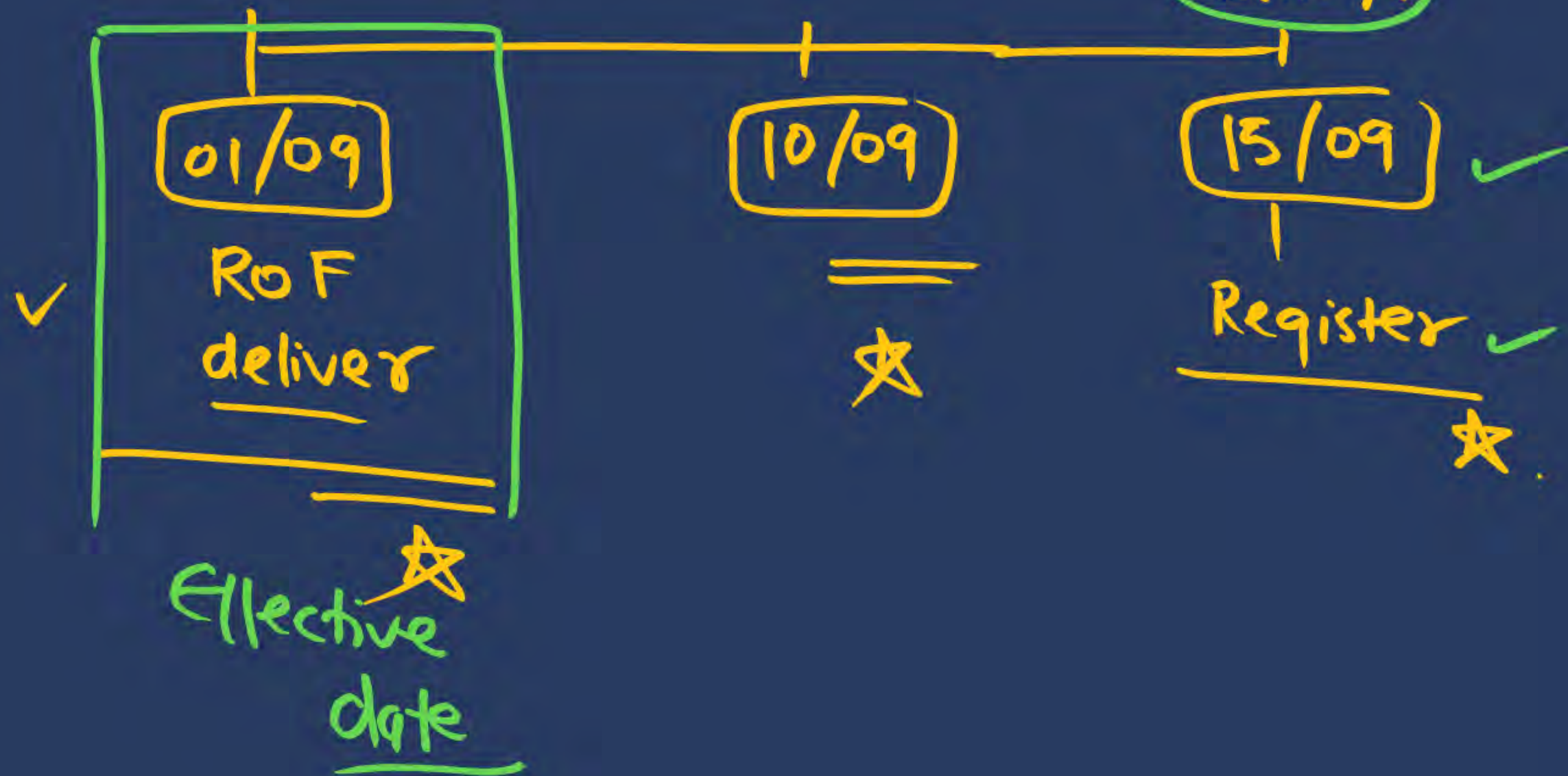
Effective date

&

**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.**

Application
58



59A-1

LATE REGISTRATION ON PAYMENT OF PENALTY ✓

- 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,

100/- yr.

- 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. $\frac{300}{1 \quad 5} = 300 \checkmark$

QUESTION



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

(Module)

QUESTION

69
"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)**

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

(PYP Jun'23 6 Marks)

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.

69 CONSEQUENCES OF NON-REGISTRATION



Disadvantages (Disabilities) of not registering the partnership firm

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
---	--	---	---

1

2

3

4

Sec. 69
 consequences
 of
 non reg
 =

① join UNF^y $\xrightarrow[\textcircled{x}]{\text{Sue}}$ III party

② III party $\xrightarrow[\textcircled{\checkmark}]{} \text{UNF sue Partners - sue } \checkmark$

③ No set off Relief.

④ UNF
 $\begin{matrix} \textcircled{P} & & \textcircled{P} \\ & \text{Sue} & \end{matrix} \times$

UNF
 $\begin{matrix} (P) \end{matrix} \xrightarrow{\text{Sue}} \textcircled{x}$

Exception

★ Dissolution =

$\begin{matrix} \text{Acc.} & \text{A/Prop} \\ \text{Settle} & \text{Realise} \end{matrix}$

Consequences

- 1 UNF — III Sue X
- 2 III — UNF Sue ✓
- 3 Set off X
- 4 UNF
P — P UNF Sue X
Exception

Basic Ed

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 by the firm

In other words,

- To sue a third party, you must 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.

To Sue a third party -

① Register एन्ट प्रेज = Firm ✖

And

② Person_(s) = firm behalf (case)
(sue)

unka नाम

↓

Register
as

PARTNER

A/B/C
death
2018

later
 atg D
 new partner

B+C+D D x

✓ ↓ ✓
x Suit x

A/B/C = Registered → RoF
 Partners

$\frac{58}{59} = \text{COR}$

✓ death x $\xrightarrow{\text{Injoom } \textcolor{red}{x}}$ RoF

x $\xleftarrow{\text{Fresh Reg.}}$

B/C $\xrightarrow{\text{sue III}}$

suit maintainable? YES

FIRM		
P ₁	P ₂	P ₃
A	B	C

✓ ✓

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. ?

2018 | 2019
B/C - (X)

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 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 -

death

1. When a partner dies and firm continues - Old partners can sue even if not notified the ROF ✓
Yes

Admi

2. When taken a new partner (Incoming partner) - Old partners cannot sue. You have to notify the ROF.



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 ~~x~~ **upto 100/-**
- the firm can't pursue other proceedings to enforce the rights arising from any contract.

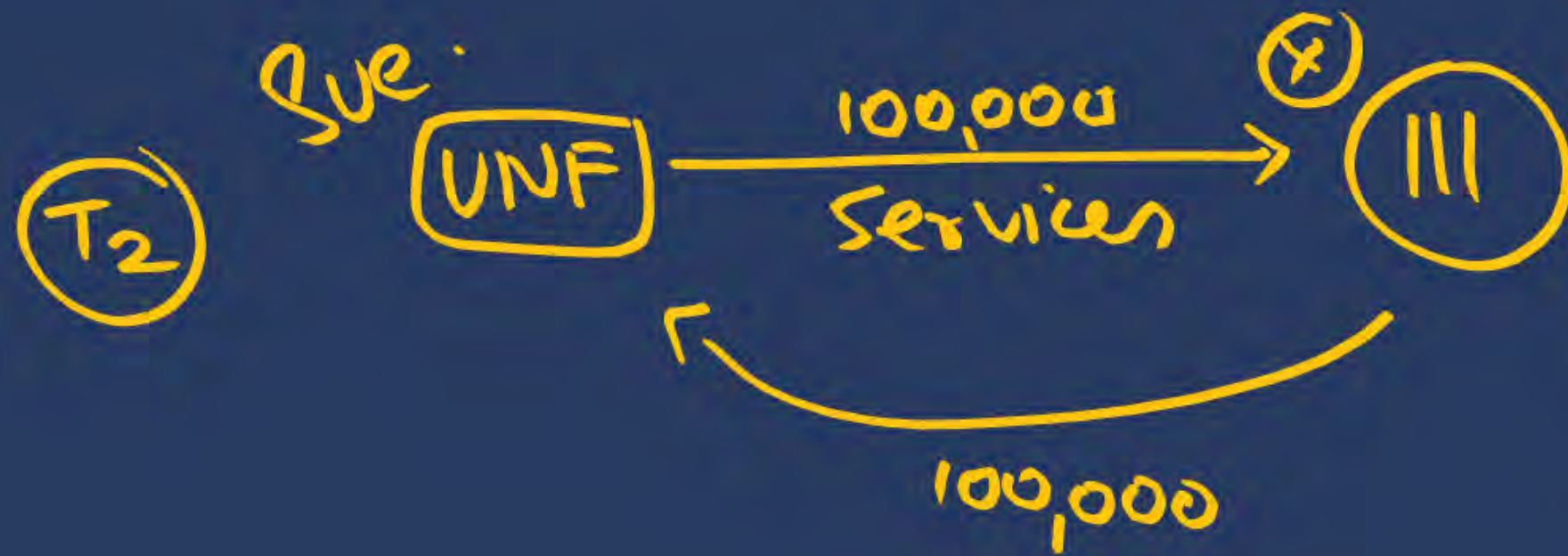
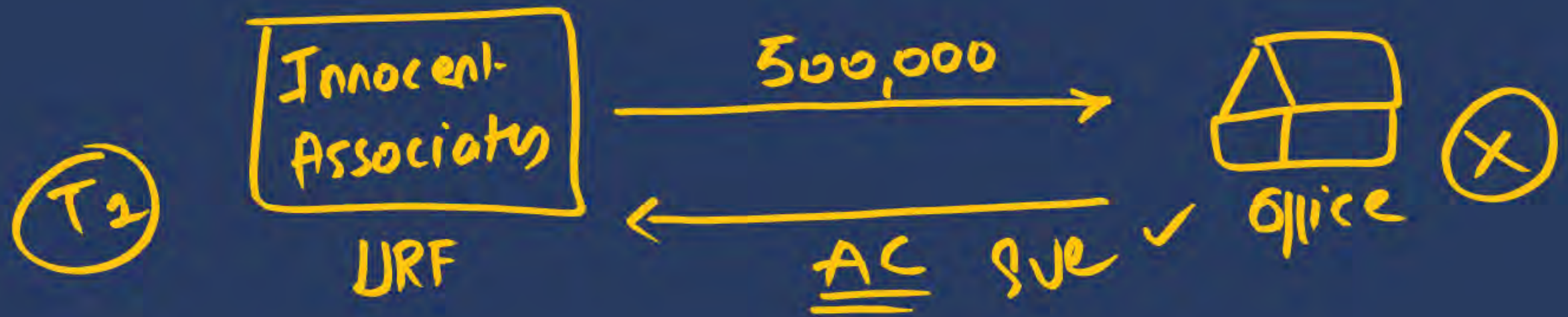
4

Aggrieved partner cannot bring legal action against another 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.

EX

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.



Pay
500,000
- 100,000

400,000
Payment.

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 - — ⑤ Basic Rights

Already Covered -

III alway = sue

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. *Yes.*
3. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.

Non Registration of a firm does not affect these 5 points.

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.

[69] = Basic एड (Rights) $\left\{ \begin{array}{l} RF \\ UNF \end{array} \right\}$ 5 point ✓
 3 already

① Official Assignee / Insolvent partner.
 diem (attach)

② death / LR $\left\{ \begin{array}{l} Power \\ Right \end{array} \right.$

QUESTION

"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)

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



XYZ UNF R — UNF LMN UN

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?



XYZ
UR

LMN
R

(RTP May' 22)

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.

- a. 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.
- b. 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.
- c. In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.

QUESTION



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)

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.

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.

Next Topic

DISSOLUTION OF FIRM

SECTIONS → 39 – 47

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)

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.

39

DISSOLUTION OF FIRM



- 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.

DISSOLUTION

FIRM

✓
(All) — Partners

close down

Assets

Liab

Accounts
Settle

WP



Partnership

★ Any / Some

★ Reconstitution

A' / B / (C)

Share
Settle

- ONE OF THE PARTNERS goes out,
- but the remaining partners carry on the business of the firm,
- It is called dissolution of partnership. ✓

On the other hand

- In the case of dissolution of the firm,
- the whole firm is dissolved.
- The partnership terminates between EACH AND EVERY partner of the firm.

Dissolution of Firm

Vs

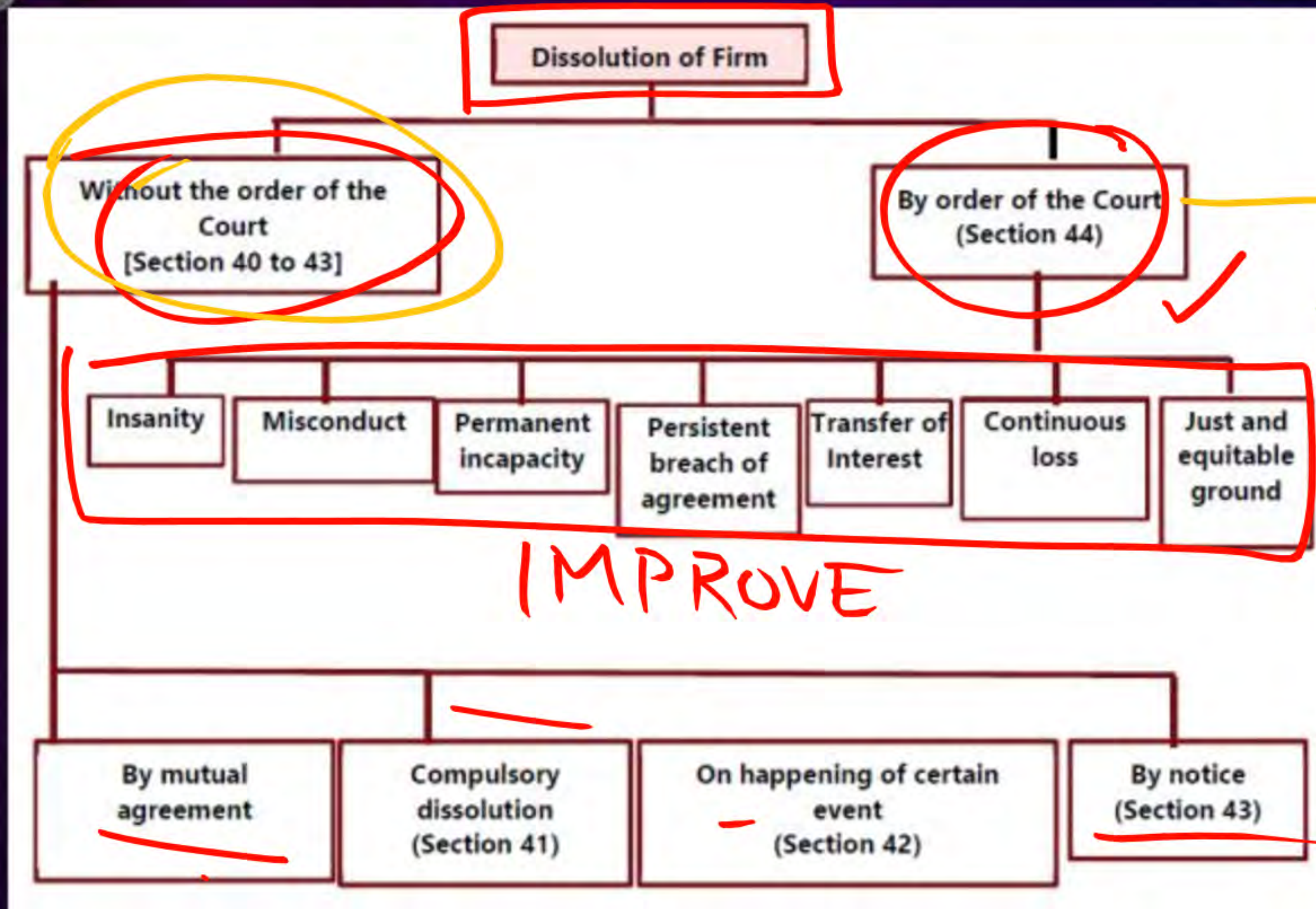
Dissolution of Partnership

①

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



MODES OF DISSOLUTION (SECTIONS 40-44)



done



1 - 40 - Agreement

2 - 41 - Compulsory diss.

3 - 42 - Event - Certain contingencies

4 - 43 - Will - Notice

DISSOLUTION WITHOUT THE ORDER OF THE COURT



It consists of following four types :-

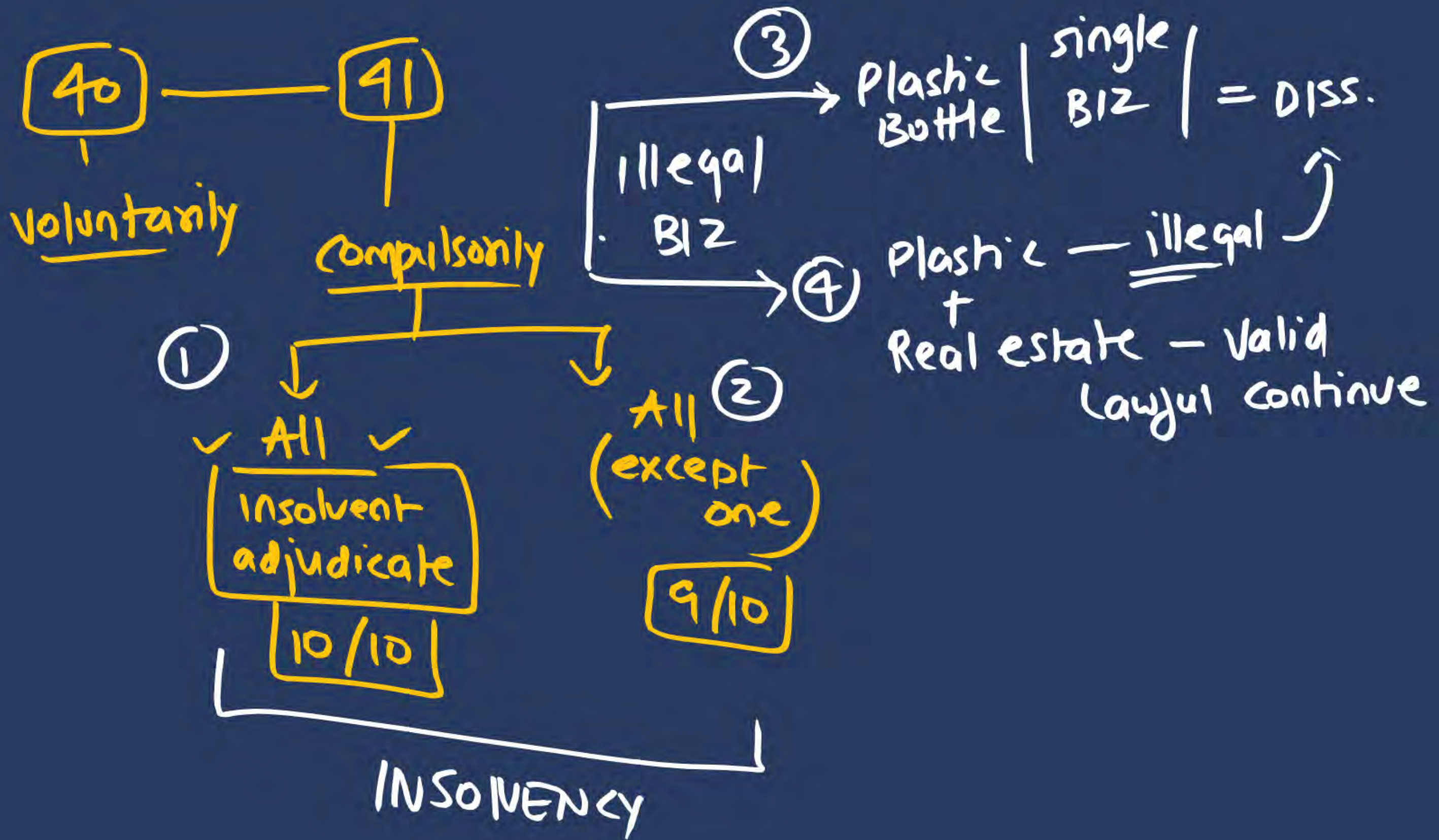
Agreement 40	Compulsory 41	On happening of an event 42	By notice 43
-----------------	------------------	-----------------------------------	-----------------

40 Dissolution by Agreement ✓ Contract = consent - g all.

- This 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.

A firm is compulsorily dissolved –

- 1 • by the adjudication of ALL the partners or ✓
 - 2 • of all the partners but one as insolvent (Except one); or ✓
 - 3 • 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. (Legal to Illegal)
- ★★
- 4 • 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.

QUESTION



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?

Compulsory ✓

(RTP Nov'22)

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.

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)

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.

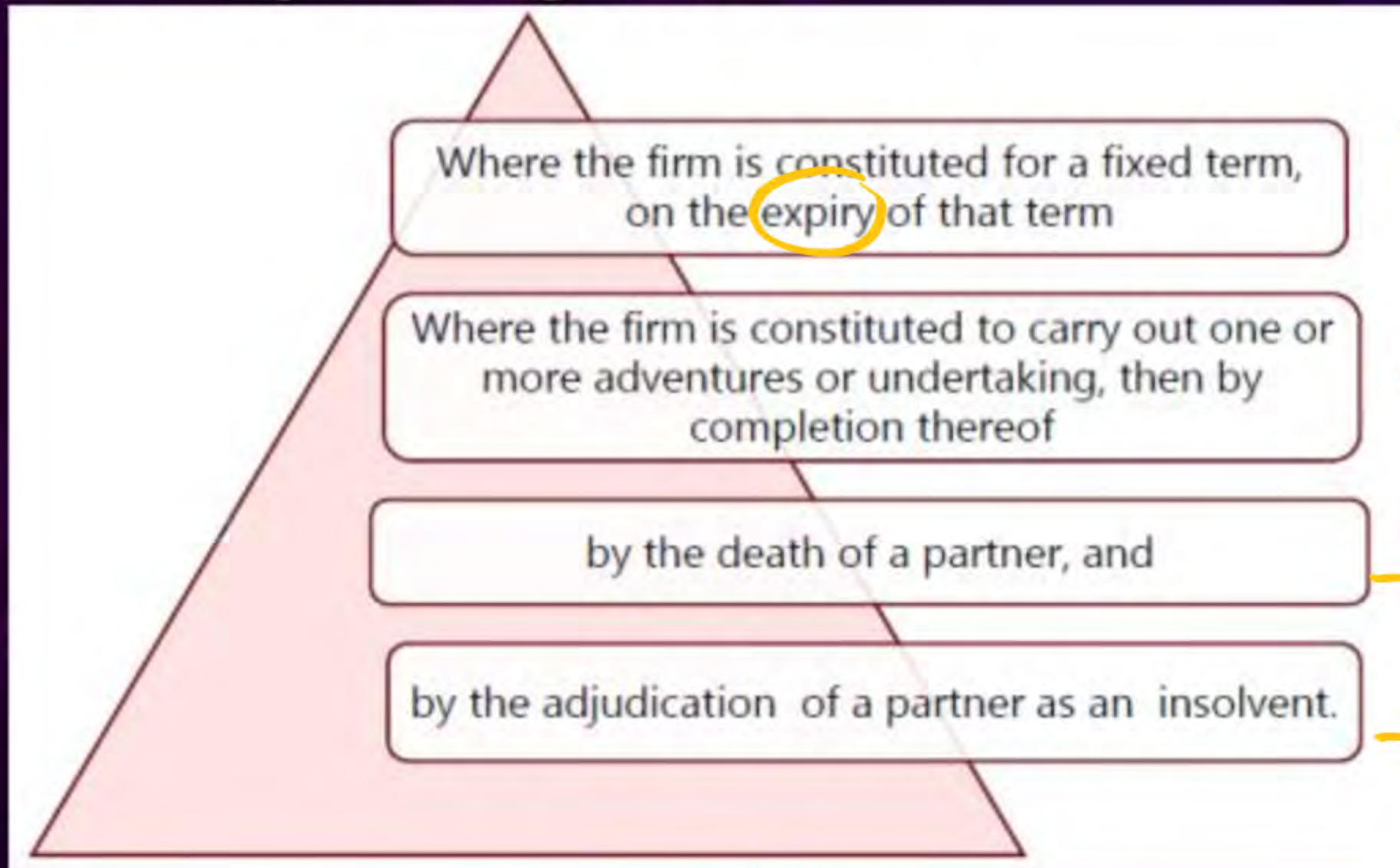
However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.

42

Dissolution on the happening of certain contingencies ✓



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



— fixed term
1 yr ✓
x

— Single adv ✓
x

— death ✓
○

— Insolvent ✓
○ Surviving

43

Dissolution by notice of partnership at will



HOW TO Dissolve ??

NOTICE

writing

TO ALL PARTNER

ANY PARTNER



When Date is –

- Mentioned in the Notice = The firm is dissolved as from the date mentioned
- NOT mentioned = Dissolution as from the date of the communication of the notice.

44 **Dissolution by the COURT -**



Explain the grounds on which court may dissolve a partnership firm in case of any partner files a suit for the same. 44

(PYP May' 22 4 Marks)

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)

44

a. Insanity/unsound mind:

- Where a partner (not a sleeping partner) ^{Active} 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 (Obselete 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:

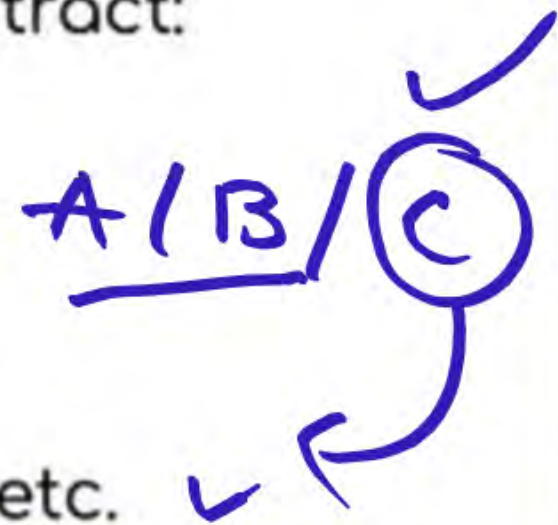
- Where a partner, other than the partner suing,
- is guilty of conduct which is likely to affect prejudicially the carrying on of business,
- the court may order for dissolution of the firm,
- by giving regard to the nature of business.
- It is not necessary that misconduct must relate to the conduct 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. x

B12 ✓
 B12 ✗

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. ✓

A/B/©



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.

A/B/C

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.

A = JMTT
Tax
चौरी

Gov (x)

int
sell

(Z)



CONSEQUENCES OF DISSOLUTION



परिणाम

Result

Exception

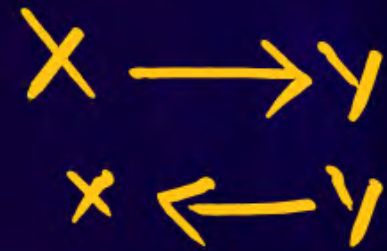
45	<u>PROTECT - NOTICE OF Dissolution -</u> - <u>3rd parties</u> (when unaware of dissolution) $\longleftrightarrow$ Firm - <u>Partners</u> $\longleftrightarrow$ Liabilities towards 3rd parties
46	After DISS. Property of the firm $\rightarrow$ Debt & Liabilities $\rightarrow$ Surplus among partners
47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

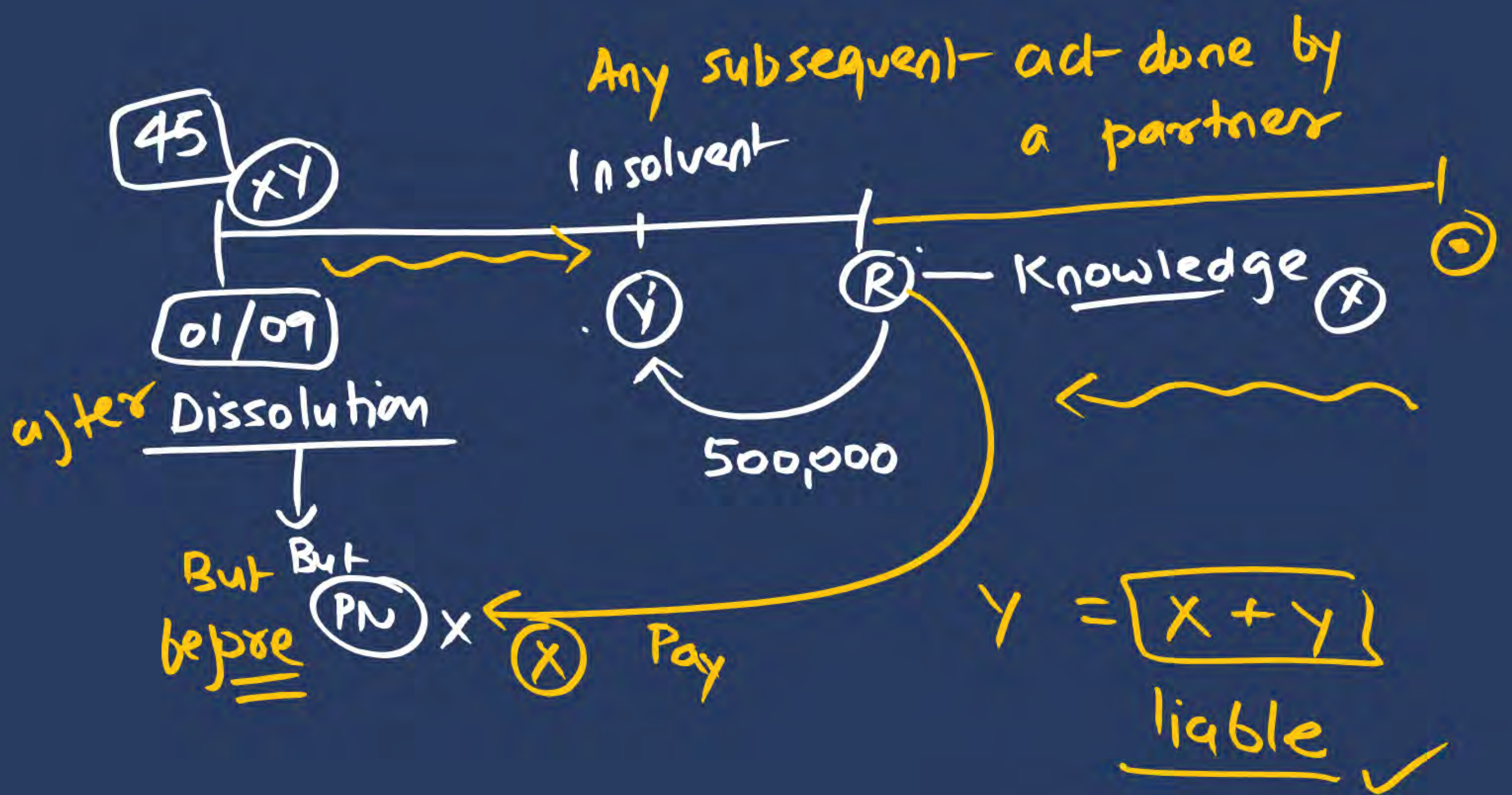
Mode

Practical

It 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

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 person dealing with the firm.

Dissolve → Subsequent - (ATG)
↓
III - Knowledge

QUESTION



NO KNOW
(Z) — (X)(Y) ✓
DISS. 12/06

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)

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.

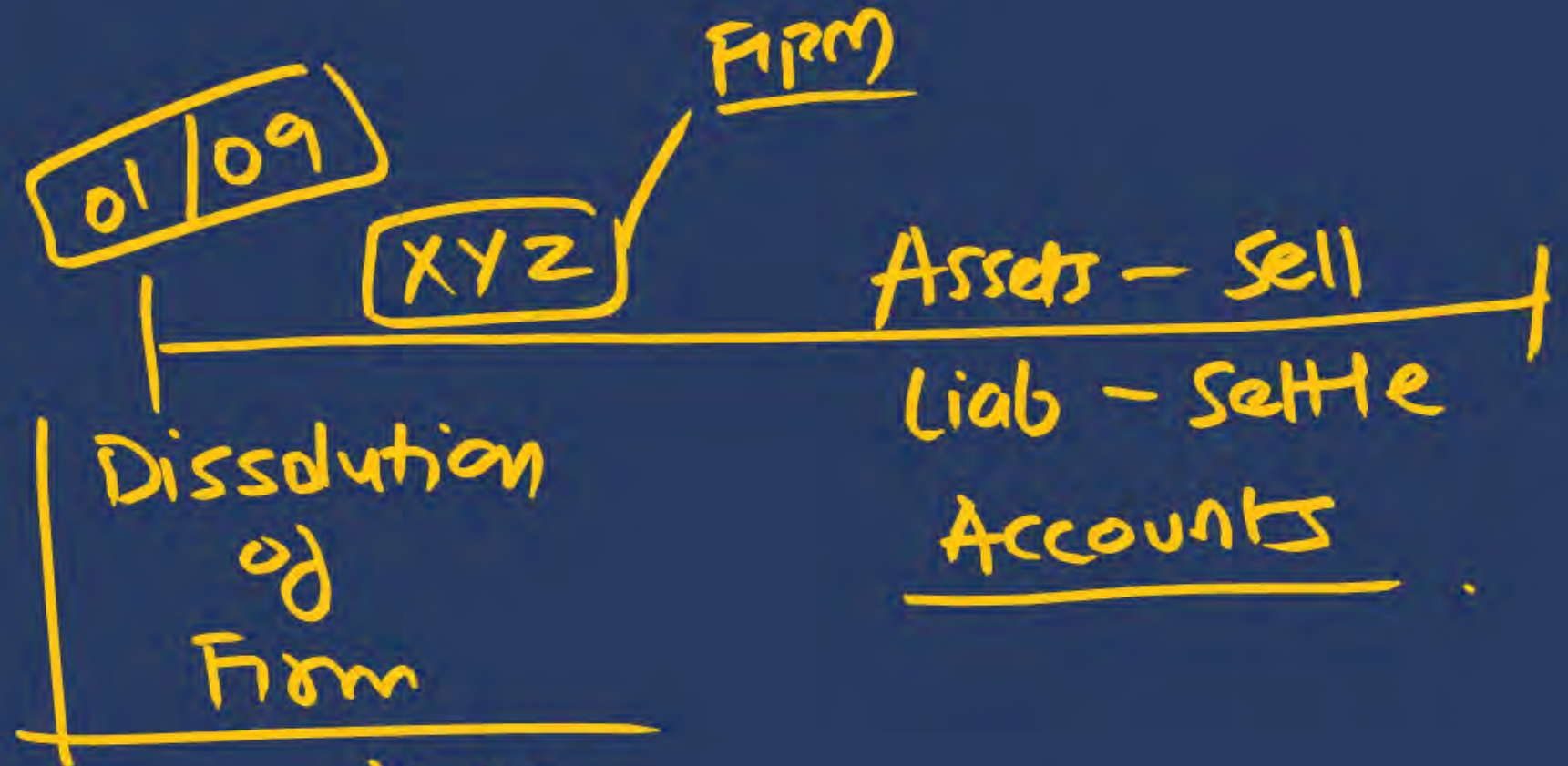
After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

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.

46

Right of partners to have business wound up after dissolution





X X
IMA



46 **Right of partners to have business wound up after dissolution**

- 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.

47

Continuing authority of partners for purposes of winding up



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

After the
DISSOLUTION
of a FIRM



Every
partner's
mutual rights
and
obligations



Notwithstanding
the dissolution



As far as
necessary



To wind up the
affairs of the firm



To complete
transactions begun
but unfinished at
the time of the
dissolution

47



47

Continuing authority of partners for purposes of winding up



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.

Questions on -

MODE OF SETTLEMENT OF PARTNERSHIP ACCOUNTS

48 Mode of Settlement of partnership accounts



Follow these rules but Subject to agreement by the partners

Settle LOSSES out of → Flow -		
PROFITS	CAPITAL	PARTNERS IN PSR

Will bring more money

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

1 : 1 : 1

90,000

(30,000)

60,000

(50,000)

10,000

A B C

3333 - -

①

②

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: $\text{₹}10,000 \div 3 = \text{₹}3,333.33$

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 like this –

Utilize ASSETS in the following flow -			
DEBT III Parties	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) ✓

$$\begin{array}{r}
 150,000 \\
 \underline{50,000} \\
 100,000
 \end{array}
 \begin{array}{r}
 80,000 \\
 \underline{60,000} \\
 20,000
 \end{array}
 \begin{array}{c}
 \boxed{20,000} \\
 \swarrow \quad \downarrow \quad \searrow \\
 1:1:1
 \end{array}$$

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

Capital

6,60,000 ⊗

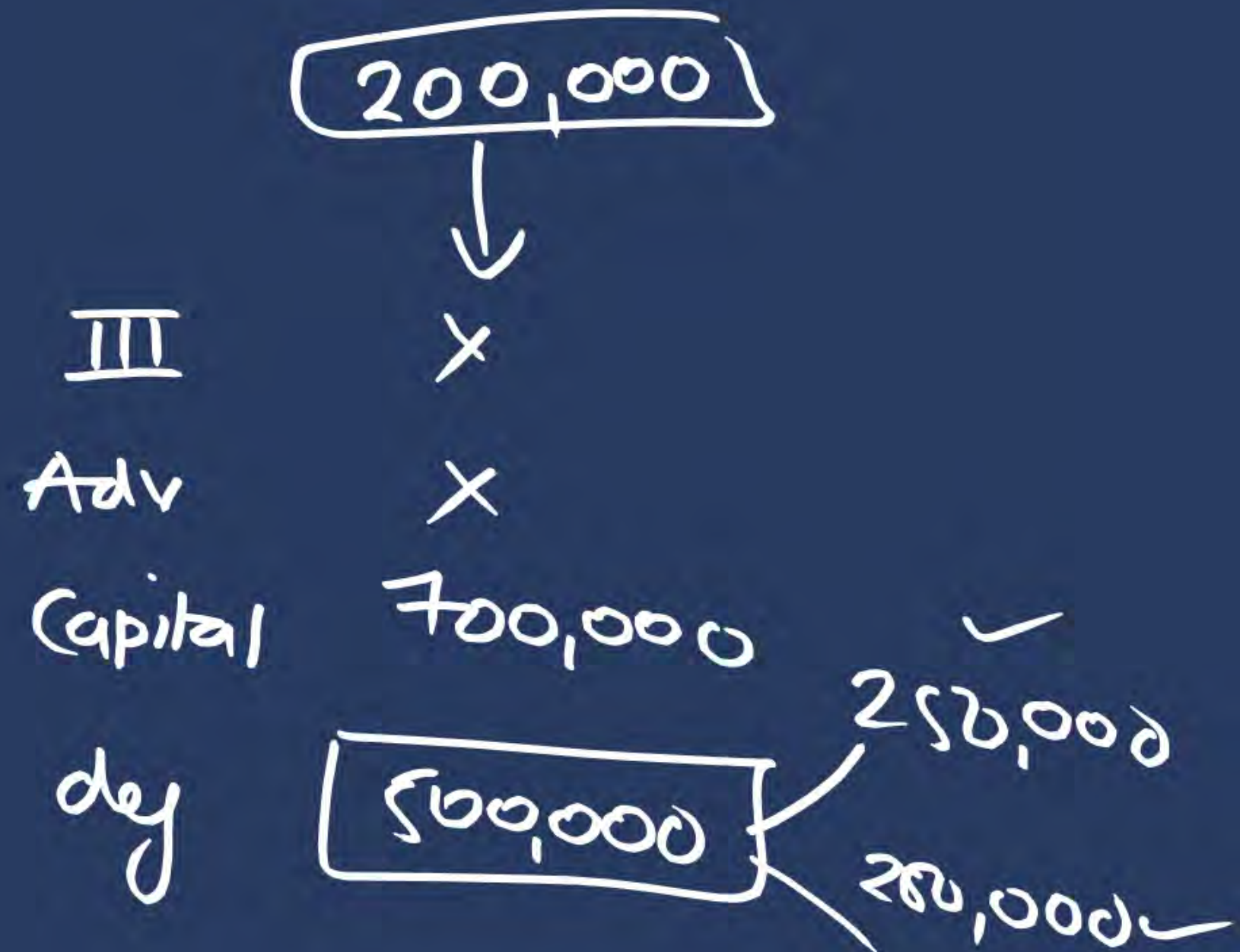
40,000 ⊙



Example 6:

Case 1: Without any specific agreement, ^x 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.



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.**

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%
- Y: ₹40,000 / ₹7,00,000 = 5.71%

700,000 — 6,60,000 X
— 40,000 Y

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 . X
- Y: 5.71% of ₹5,00,000 = ₹28,550 Y

GARNER & MURRAY RULE – ONLY FOR KNOWLEDGE

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

Partners	Capital Contribution (₹)	Deficiency (₹)	Final Capital Deficiency (₹)
A	30,000	6,000	24,000
B	20,000	4,000	16,000
C	10,000	C is Insolvent	0

QUESTION



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.

48

(MTP Mar 22 ✓ 4 Marks)

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 23 4 Marks) (MTP Nov'22 4 Marks) (MAJP Mar'22 4 Marks)

(PYP 4 Marks, Jul'21)

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)

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.

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

- A. The property of the firm shall be applied in –
 - ❖ the first instance in payment of the debts of the firm, and
 - ❖ 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;

- A. 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

Joint
debt

<u>FIRM</u>	<u>debts</u>
FIRM	Assets

- Firm Assets
- ① to settle { firm joint-
debts }
- ② Surplus if any
↓ separate debt

Separate

<u>Partner</u>	<u>debts</u>
Partner	Assets

- ①
- ② Surplus
↓ joint debts settle

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 liabilities / debts

Financial Situation:

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

Category	Arun	Bala	Firm
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 (Use for Firm's debt)			₹10,000
Remaining Firm's Debts after Bala's Surplus			₹40,000

Arun debt

⊗

?

✓✓

✓✓



Thank

You