

INDIAN PARTNERSHIP ACT 1932



UNIT-1 GENERAL NATURE OF PARTNERSHIP
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UNIT OVERVIEW

General Nature of Partnership

What is Partnership

Essential
Elements

True Test of
Partnership

Distinctions with other forms of Organization

Vs. Joint
Stock
Company

Vs. Club

Vs. HUF

Vs. Co-
Ownership

Vs.
Association

Types of Partners



DEFINATION OF PARTNERSHIP PARTNER FIRM & FIRM NAME

Partnership

Partnership is a relation between persons who have agreed to share profits of a business carried on by all or any of them acting for all.



A Firm

All the partners entered into partnership with one another are collectively called "A firm"

XYZ & Co.

Firm Name

The name under which the business is carried on is called the "Firm Name"

Partners

Persons entering into partnership with one another are individually called as "Partners"



ELEMENTS OF PARTNERSHIP

Elements of Partnership

Association
of two or
more persons

It must be
the result of
an agreement

To carry on
some
business

To share
profits of
the business

Business
carried on by
all or any of
them acting
for all

1. Association of two or more persons

- Partnership is an **association of 2 or more persons**, only the persons recognized by law can enter into an agreement of partnership.
- A firm cannot be a partner as it is not recognized as a person in the eyes of law.
- The limit on maximum number of partners is put by section 464 of Companies Act 2013 i.e. 50 Partners

2. Agreement

- There must be an agreement entered into by all persons concerned.
- The nature of the partnership is Voluntary and Contractual.
- The Agreement from which relationship of partnership arises may be express.
- It may be oral or in writing.



3. Business

- The term business includes every trade, occupation and profession.
- Two propositions must be kept in mind,
 - i. There must exist a business and
 - ii. The motive of the business is acquisition of gains.

5. Business carried on by all or any of them acting for all

- The business must be carried on by all the partners or by anyone acting on behalf of all.
- This is the **Cardinal principle** of partnership law.
- A binding contract of mutual agency shall be present.
- If the element of mutual agency is absent, then there will be no partnership.
- The true test of partnership is mutual agency rather than sharing of profits.

4. Agreement to share profits

- Sharing of profits is an essential feature of partnership.
- The partners may agree to share the profits in any manner they choose.
- No partnership comes into existence where only one partner is entitled to whole of the profits of the business.
- Agreement to share losses is not an essential element. One or more partners may agree to share all the losses.
- However, in event of losses if nothing has been specifically agreed upon, the losses are to be share in the profit-sharing ratio.
- **Example** : 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** : No charitable institution or club may be floated in partnership [A joint stock company may, however, be floated for non-economic purposes].





Case Law : KD Kamath & Co.

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

Note:- The 'Partnership Agreement' is also known as 'Partnership Deed'.

Space for Notes



TRUE TEST OF PARTNERSHIP

Mode of determining existence of Partnership (Section-6)



- ✓ In order to determine
 - Whether a group of person is or not a firm ?
 - or
 - Whether an person is not a partner in a firm ?

It must be proved

1. There was an agreement between all the persons concerned

2. The agreement was to share the profits of a business and

3. the business was carried on by all or any of them acting for all.



1. Agreement

- ✓ Partnership is created by agreement and not by status (Section 5).
- ✓ The relationship of partnership arises from contract and not from status, members of Hindu Undivided Family carrying on a family business as such are not partners in such business.



Agreement

2. Sharing of Profit

- ✓ The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not itself make such persons partners.



Sharing of Profit



The receipt by a person

- ✓ of a **share of the profits of a business**, or
- ✓ of a **payment contingent upon the earning of profits** or
- ✓ **varying with the profits earned by a business**,

does not of itself make him a partner with the persons carrying on the business; and in particular, the receipt of such share or payment-

- by a **lender of money to persons engaged or about to engage in any business**,
- by a **servant or agent as remuneration**,
- by a **widow or child of a deceased partner, as annuity**, or
- 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.



b

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

c

✓ 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.

d

- ✓ 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, 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.



Crux of the Concept: Sharing of Profit

- ✓ **Sharing of profit is essential element** to constitute a partnership but it is *not a conclusive evidence on its own*. Whether the relation of partnership does exists or not *depends upon whole contract between parties*.
- ✓ Where there is express contract between parties there is no difficulty in determining in existence or otherwise of partnership as per section 4, but where there is no specific agreement / the agreement does not speak of partnership **testing as per section 6** has to refer that is :-
 - *Written or verbal agreement*
 - *Real intention and conduct of the parties*
 - *Other surrounding circumstances*
- ✓ Sharing of profits/Gross return from a property does not make those persons partners; and in particular, the receipt of such share or payment by -
 - a. *lender of money to persons engaged or about to engage in any business*
 - b. *servant or agent as remuneration*
 - c. *widow or child of a deceased partner, as annuity, or*
 - d. *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*



3. Agency

- ✓ Each partner carrying on the business is the principal as well as agent of the other partners.
- ✓ The act done on behalf of the firm, binds all the partners.
- ✓ Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard.
- ✓ The act of one partner done on behalf of firm, binds all the partners.
- ✓ If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.



Case Law : **Santiranjan Das Gupta Vs. Dasyran Murzamull**

In *Santiranjan Das Gupta Vs. Dasyran Murzamull*, following factors weighed upon the Supreme Court to reach the conclusion that there is no partnership between the parties:

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



PARTNERSHIP DISTINGUISHED FROM OTHER FORM OF ORGANISATION

Partnership Vs. Joint Stock Company

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



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



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

Partnership Vs. Club

Basis	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 partners and a partner is an agent for other partners.	Persons forming a club are called members. A member of a club is not the agent of other members.
Interest in the property	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.



Dissolution	A change in the partners of the firm affect its existence.	A change in the membership of a club does not affect its existence.
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Partnership Vs. Hindu Undivided Family

Basis	Partnership	Hindu Undivided Family
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.
Death of member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
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.
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.
Shares in 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.



Partnership Vs. Co-ownership /Joint Ownership

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

Partnership Vs. Association

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

KINDS OF PARTNERSHIP

Based on Duration

At will

Fixed Period

Based on Extent of the business

Particulars

General

Based on Duration

1. Partnership at will

- ✓ According to section 7 of the Act Partnership at will is a partnership when -
 - a. No fixed period has been agreed upon for duration of the partnership
 - b. There is no provision made as to determination of the partnership
- ✓ So if there is an agreement between the partners about the duration or the determination of the firm, this will not be a partnership at will.
- ✓ A partnership at will may be dissolved by any partner by giving notice in writing to all other partners of his intention to dissolve the same.



2. Partnership for a fixed period

- ✓ When the provision for the duration of the partnership is made by the contract, the contract is called 'Partnership for a fixed period', after the expiration of such duration, the partnership shall also end.
- ✓ However, there may be cases when the partners continue their business even after the expiration of duration. They continue to share profits and there is an element of mutual agency. Then in such case, the partnership will now be a partnership at will.

Based on Extent of business

3. Particular Partnership

- ✓ A partnership can be formed for carrying on continuous business, or it can be formed for **one particular venture or undertaking**.
- ✓ If the partnership is formed only to carry out one business venture or to complete one undertaking such a partnership is known as a particular partnership.
- ✓ After the completion of the said venture or activity, the partnership will be dissolved.
- ✓ However, the partners can come to an agreement to continue the said partnership.
- ✓ But in the absence of this, the partnership ends when the task is complete.



Question : In a particular partnership the liabilities of the partners is only limited to the defined business undertaking.

Answer : In a limited liability, the partners are only liable for the liabilities arising out of the particular business venture for which the partnership was formed. Acts not relating to the said venture will not be liabilities of all the partners.

4. General Partnership

- ✓ Where a partnership is constituted with respect to a business in general, it is a general partnership.
- ✓ Unlike a particular partnership in a general partnership the scope of business to be carried out is not defined.
- ✓ So all partners will be liable for all the actions of the partnership.

Space for Notes



PARTNERSHIP DEED

- ✓ *No particular formalities are required for an agreement of partnership.*
- ✓ It may be in **writing** or formed **verbally**.
- ✓ The document in writing containing various terms and conditions as to the relationship of the partners to each other is called the '**Partnership Deed**'.
- ✓ It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- ✓ Where the partnership comprises immovable property, the instrument of partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under Registration Act.



Partnership Deed

Content of Partnership deed

Name of Firm

Name of all partners

Nature and place of business

Date of commencement

Duration of Partnership

Capital Contribution

Profit Sharing Ratio

Admission and Retirement

Rate of interest

Provision of statement of accounts

Provision for Salaries or Commission

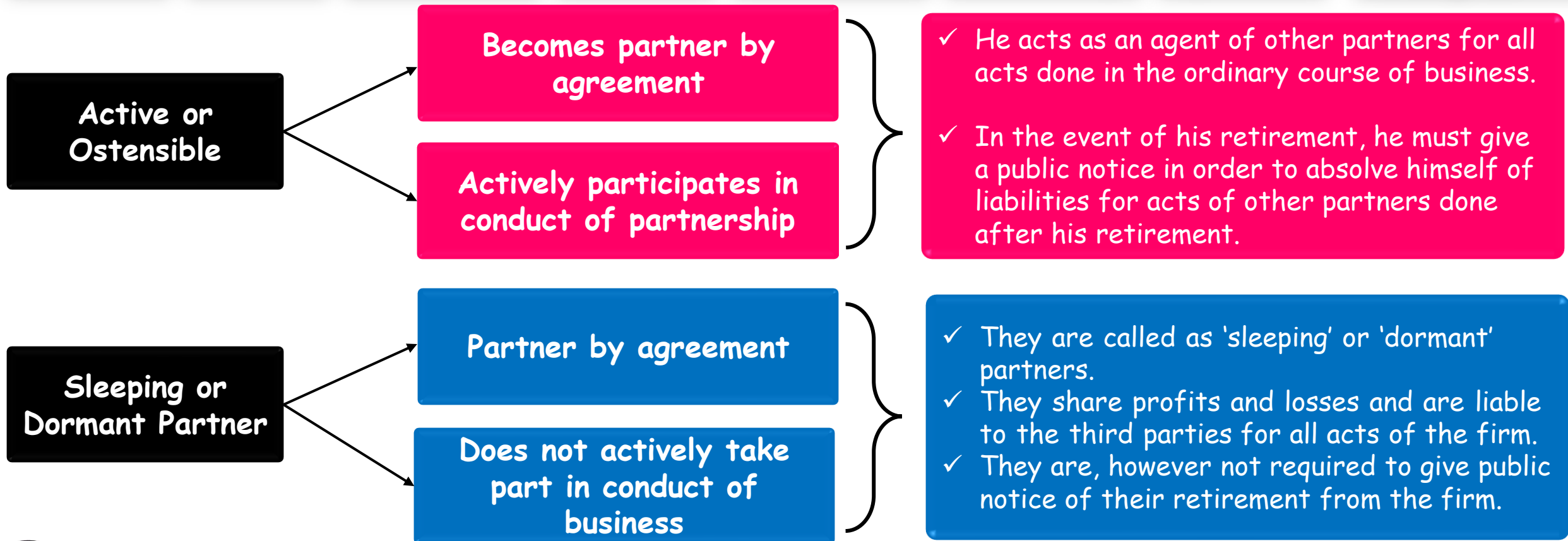
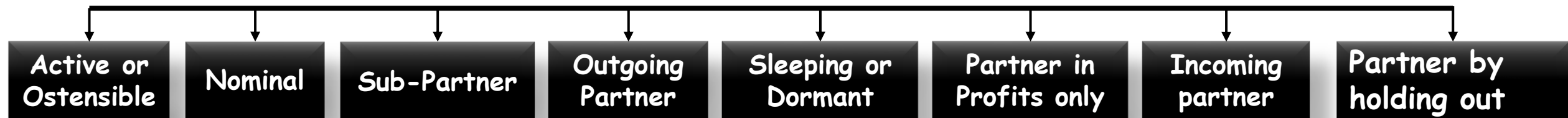
Provision for expulsion of partner

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



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TYPES OF PARTNERS



Nominal Partner

Lends his name to the firm

Not entitled to share the profits

Without having any real interest in firm

Does not take part in the conduct of the business

Liable to third parties for all the acts of the firm

Partner in Profits only

Entitled to share profits only not liable for losses

Liable to third parties for all the acts of profits only

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.



Outgoing Partner

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

Partner by holding out (Section-28)

- ✓ Partnership by holding out is also known as partnership by estoppel.
- ✓ Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character 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.
- ✓ It is only the person to whom representation has been made and who has acted upon it has the right to enforce liability arising out of 'holding out'.
- ✓ This section is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement



Partner by holding out (Section-28)

When person represent himself or knowingly permits himself

To be represented as a partner in a firm,

He is liable like a partner in the firm

To anyone who on the faith of such representation has given credit to the firm

Space for Notes



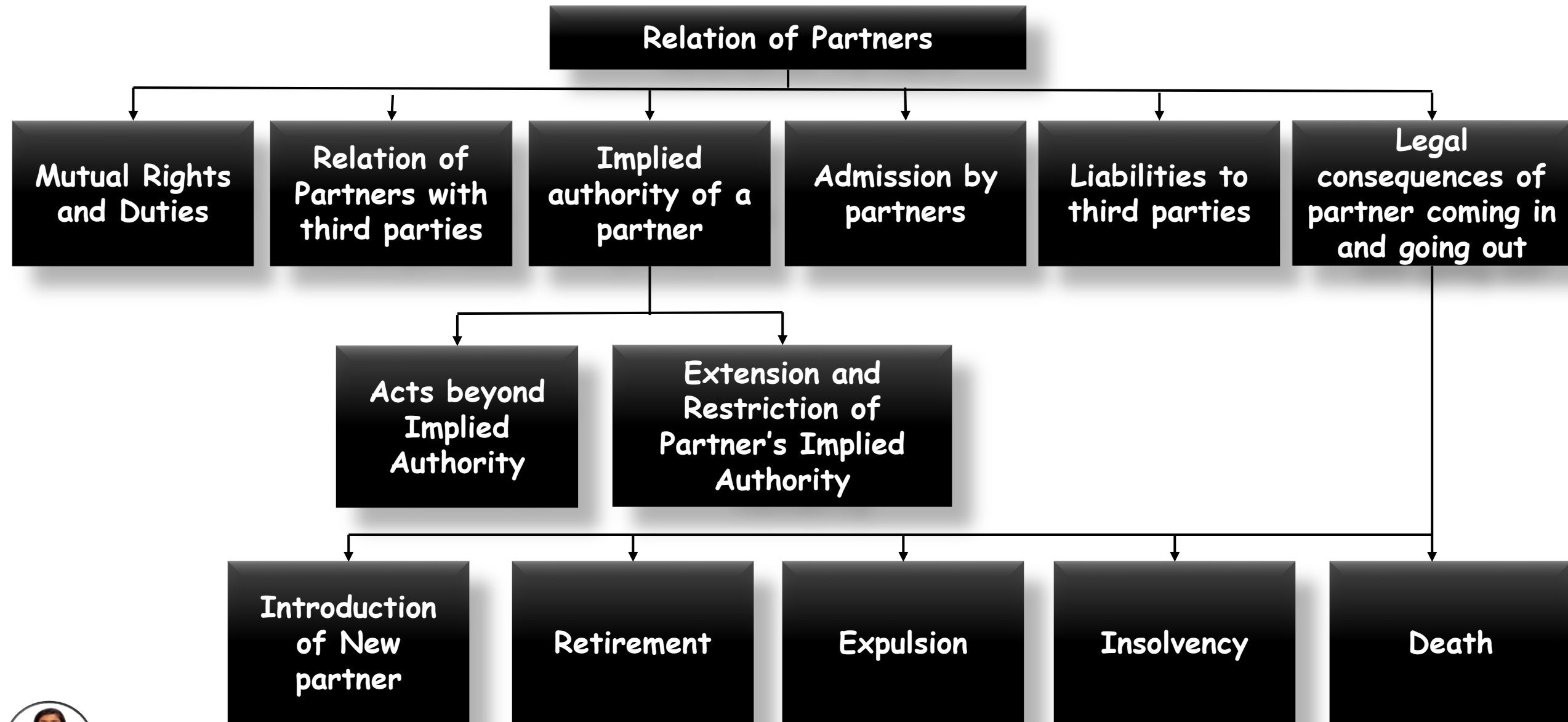
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UNIT-2 RELATION OF PARTNERS

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UNIT OVERVIEW



RELATION OF PARTNERS TO ONE ANOTHER

- ✓ Partnership Act contains various provisions regulating the relationship between partners.

1. General Duties of Partners (Section-9)

- ✓ Partners are bound to carry on the business of the firm to the **greatest common advantage**, to be **just and faithful** to each other and to render **true accounts and full information** of all things affecting the firm to any partner or his legal representative.

Analysis/Summary of Section-9

- ✓ The **partners should carry business of the firm to the greatest common advantages** and **later, they should render to any partner or his legal representatives full information of all things affecting the firm.**
- ✓ A partner must observe **utmost good faith** in his dealings with the other partners.
- ✓ **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.



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2. Duty to indemnify for loss caused by fraud (Section-10)

- ✓ Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
- ✓ An act of a partner imputable 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.
- ✓ 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.

3. Determination of Right and Duties of Partners by Contract between the Partner (Section-11)

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



Analysis/Summary of Section-11

✓ Section 11(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.
- It further provides that such contract may be varied by consent of all the partners.

✓ Section 11(2) :

- The contract of partnership may provide that a partner shall not carry on any business other than that of the firm while he is a partner.
- ✓ Partnership is a relation eminently depending on the consent of the parties, not only for its existence, but for the terms of the agreement in all things consistent with its essential nature and purpose; and an agreement to become partners in the first instance, or to vary the terms at any time, need not be manifested in any particular form.

4. The conduct of business (Section-12)

Subject to contract between the partners-

- a. every partner has a right to take part in the conduct of the business
- b. every partner is bound to attend diligently to his duties in the conduct of the business;
- c. any difference arising as to ordinary matters connected with the business may be decided by majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all partners; and
- d. every partner has a right to have access to and to inspect and copy any of the books of the firm.
- e. in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.



Analysis of The Conduct of Business Section-12

Partnership Act contains various provisions regulating the relationship between partners.

Right to take part in
the conduct of the
Business
[Section 12(a)]

- ✓ 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.
- ✓ Each partner has an equal right to take part in the conduct of their business.
- ✓ Partners can curtail this right to allow only some of them to contribute to the functioning of the business if the partnership deed states so.

Right to consultate
[Section 12(c)]

- ✓ Another one of the rights of partners is their right to freely express their opinion.
- ✓ Partners, by a majority, can determine differences with respect to ordinary matters connected with the business.
- ✓ Each partner can express his opinion to decide such matters.
- ✓ In case of routine matters of business is shall be determined by **majority** and in case of change in nature of business consent of **all partners** is required.



Right to access the books
[Section 12(d)]

- ✓ Every partner is entitled to have access to any of the books of the firm and to inspect or take out a copy thereof.
- ✓ This right is applicable equally to active and dormant partners.

Right of legal heirs/representatives/
their duly authorized agents
[Section 12(e)]

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

Every partner has a right to take part in the conduct of the business

Bound to attend diligently to his duties in the conduct of the business

Right to have access to and to inspect and copy any of the books of the firm

(Section 12)
The conduct of Business

Any difference arising as to ordinary matters connected with the business may be decided by majority of the partners.

In the event of the death of a partner, his heirs or legal representatives or their duly authorized agents shall have a right of access to and to inspect and copy any of the books of the firm



5. Mutual Rights and Liabilities (Section-13)

Subject to contract between the partners-

- a. a partner is not entitled to receive remuneration for taking part in the conduct of the business
- b. the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm
- c. where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits
- d. a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum
- e. the firm shall indemnify a partner in respect of payments made and liabilities incurred by him-
 - i. in the ordinary and proper conduct of the business, and
 - ii. in doing such act, in an emergency, for the purposes of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances
- f. a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of business of the firm.

Analysis of Section-13

Right to remuneration [Section 13(a)]

- ✓ 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. However, the rule can be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration.
- ✓ 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.



Right to Share Profits [Section 13(b)]

- ✓ Partners are entitled to share equally the profits earned and so contribute equally to the losses sustained by the firm.
- ✓ 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 capital of the firm.

Interest on advances [Section 13(d)]

- ✓ In case where a partner gives an advance to the firm in addition to the amount of capital contributed by him, the partner is entitled to claim interest @6% per annum.
- ✓ The interest on advances keep running even after dissolution upto the date of payment.

Interest on capital [Section 13(c)]

- ✓ The following elements must be there before a partner can be entitled to interest on moneys brought by him in the partnership business
 - i. an express agreement to that effect, or practice of the particular partnership or
 - ii. any trade custom to that effect or
 - iii. a statutory provision which entitles him to such interest.

Right to be indemnified [Section 13(e)]

- ✓ 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 as well as in performance of an act.

Right to be indemnify the firm [Section 13(f)]

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



PARTNERSHIP PROPERTY (SECTION 14)

✓ Section 14 :-

Subject to contract between the partners, the property of the firm includes

- **all property** and
- **rights** and
- **interest in property originally brought into the stock of the firm**, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm and
- includes also the **goodwill of the business**.

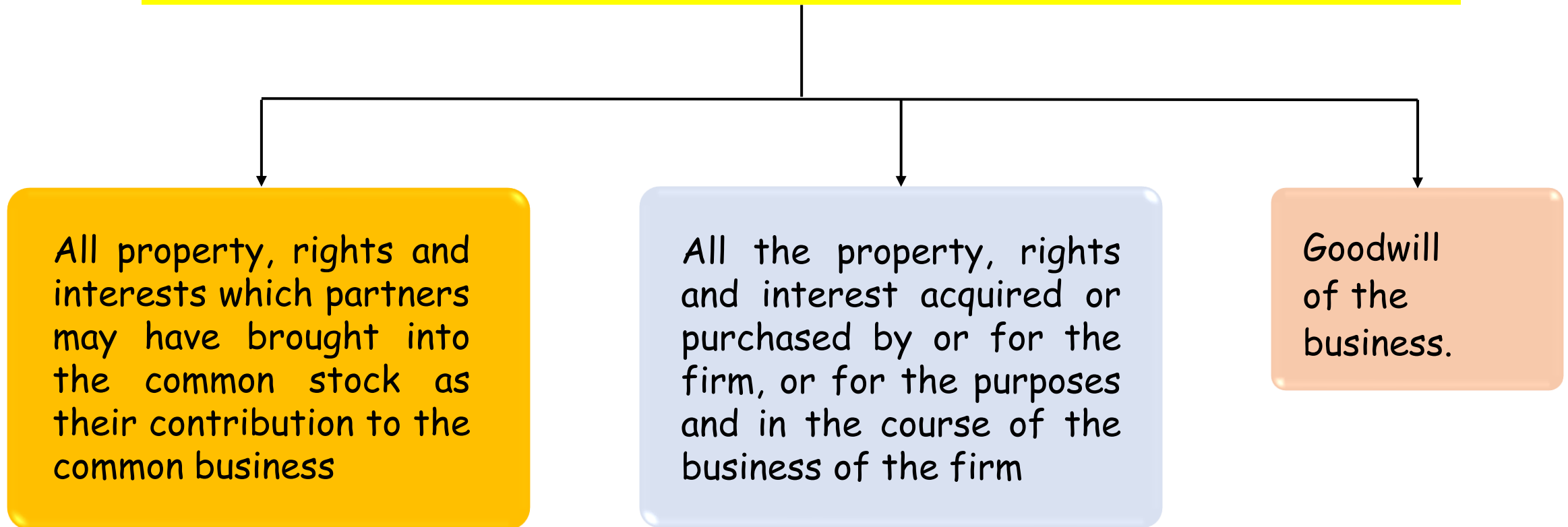
✓ Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

The property of the firm

- ✓ The expression 'property of the firm', also referred to as '**partnership property**', '**partnership assets**', '**joint stock**', '**common stock**' or '**joint estate**', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled.
- ✓ The property which is deemed as belonging to the firm, comprises of the following items:
 - i. All property, rights and interests which partners may have **brought into the common stock** as their contribution to the common business
 - ii. All the property, rights and interests **acquired or purchased** by or for the firm, or for the purposes and in the course of the business of the firm; and
 - iii. **Goodwill** of the business



THE PROPERTY OF THE FIRM (SECTION 14)



Goodwill

- ✓ As per section 14 the Goodwill of the business is subject to a contract between the partners and to be regarded as property of the firm.
- ✓ Section 14 does not define the "Goodwill".
- ✓ However it may be defined as **the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.**
- ✓ When a partnership firm is dissolved every partner has a right, in the absence of any agreement to the contrary, to have the goodwill of business sold for the benefit of all the partners.
- ✓ **Goodwill is a part of the property of the firm :**
 - It can be sold separately or along with the other properties of the firm.
 - Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner 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.



Goodwill of the Estate



✓ **Property of a partner :**

- **Where the property is exclusively belonging to a person, it does not become a property of the partnership** merely because it is used for the business of the partnership, such property will become property of the partnership if there is an agreement.

Application of the Property of the Firm (Section 15)

Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Application of the Property of the firm

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



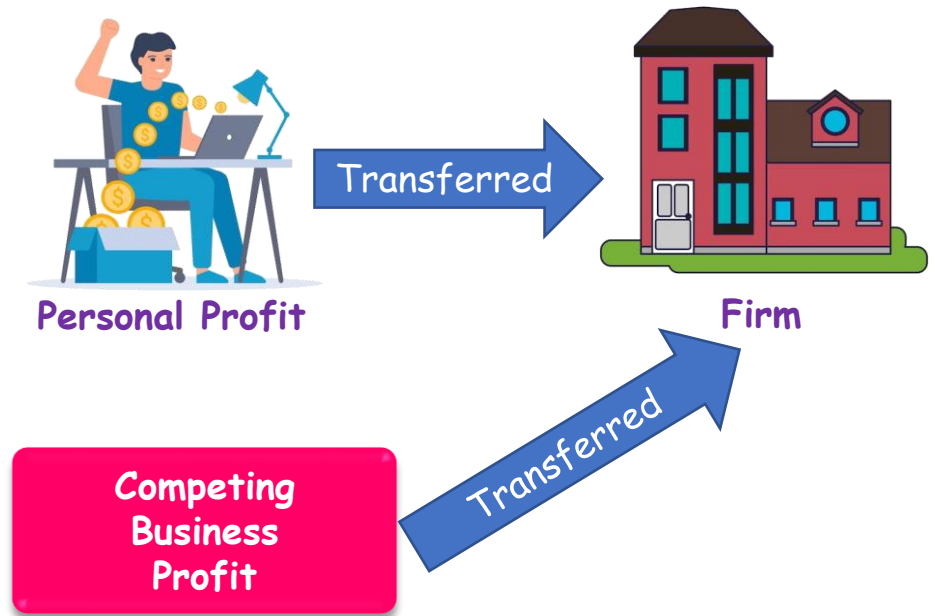
PERSONAL PROFIT EARNED BY PARTNERS (SECTION 16)

According to section 16, subject to contract between the partners :

- If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm.
- 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.

Personal Profit Earned by Partners (Section 16)

- ✓ Where a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm name, he must account for that profit and pay it to the firm.
- ✓ Where a partner carries on a competing business, he must account for and pay to the firm all profits made by him in that business.



RIGHTS & DUTIES OF PARTNERS AFTER CHANGE IN THE FIRM (SECTION 17)

Following are the situations when there is a change in the constitution of the firm

- 1 Admission of new partner
- 2 Death or retirement of a partner
- 3 Partnership carries on business other than original one
- 4 Fixed period partnership carried on even after expiry of fixed period



According to section 17, subject to contract between the partners-

- a. **after a change in the firm:** Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm **remain the same as they were immediately before the change**, as far as may be
 - b. **after the expiry of the term of the firm:** Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the **partners remain the same as they were before the expiry**, so far as they may be consistent with the incidents of partnership at will; and
 - c. **where additional undertakings are carried out:** where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings are the **same as those in respect of the original adventures or undertakings**
-



RELATION OF PARTNERS TO THIRD PARTIES



1. PARTNER TO BE AGENT OF THE FIRM (SECTION 18): Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

Summary of Section 18

- ✓ A partner is the **agent** of the firm for the purpose of the business of the firm.
- ✓ The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves.
- ✓ It is applicable only to the act done by partners for the purpose of the business of the firm.

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

- ✓ Subject to the provisions of section 22:- *the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.*
- ✓ The authority of a partner to bind the firm conferred by this section is called his "implied authority".

19(2) The implied authority of a partner does not empower him to-

- Submit dispute to arbitration
- Open bank account of firm in his own name
- compromise or relinquish any claim or portion
- withdraw a suit or proceedings filed
- admit any liability in a suit or proceedings
- acquire immovable property on behalf of firm
- transfer immovable property
- enter into partnership on behalf of the firm



MODE OF DOING ACT TO BIND FIRM (SECTION 22):

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Analysis of Section 19 & 22

- ✓ The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm
- ✓ **Such an authority of a partner to bind the firm is called his implied authority.** It is however subject to the following restrictions :
 1. The act done must relate to the usual business of the firm, that is, **the act done by the partner must be within the scope of his authority and related to the normal business of the firm.**
 2. The act is such as is **done for normal conduct of business of the firm.** The usual way of carrying on the business will depend on the nature and circumstances of each particular case [**Section 19(1)**].
 3. **The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm (Section 22).**

Conclusion : A partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.



- ✓ **Example :** X, a partner in a firm of solicitors, borrows money and executes a promissory note in the name of firm without authority. The other partners are not liable on the note, as it is not part of the ordinary business of a solicitor to draw, accept, or endorse negotiable instruments; however it may be usual for one partner of firm of bankers to draw, accept or endorse a bill of exchange on behalf of the firm.
- ✓ If partnership be of a general commercial nature,
 - i. he may pledge or sell the partnership property
 - ii. he may buy goods on account of the partnership
 - iii. he may borrow money, contract debts and pay debts on account of the partnership.
 - iv. he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, Promissory notes, bills of exchange, cheques and other negotiable papers in the name and on account of the partnership.

3. EXTENSION AND RESTRICTION OF PARTNERS' IMPLIED AUTHORITY (SECTION 20):

- ✓ The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partners.
- ✓ Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner

Analysis of Section 20

- ✓ The partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners.



- ✓ Under the following circumstances the restrictions imposed on the implied authority of partner by agreement shall be effective against a third party:
 - a. The third party knows about the restrictions, and
 - b. The third party does not know that he is dealing with a partner in a firm
- ✓ **Note** : Extension or restriction is only possible with the consent of all the partners. Any one partner, or even a majority of the partners, cannot restrict or extend the implied authority
- ✓ **Example** : A, a partner, borrows from B Rs.1,000 in the name of the firm but in excess of his authority, and utilizes the same in paying off the debts of the firm. Here, the fact that the firm has contracted debts suggests that it is a trading firm, and as such it is within the implied authority of A to borrow money for the business of the firm. This implied authority, as you have noticed, may be restricted by an agreement between him and other partners. Now if B, the lender, is unaware of this restriction imposed on A, the firm will be liable to repay the money to B. On the contrary, B's awareness as to this restriction will absolve the firm of its liability to repay the amount to B.

4. PARTNER'S AUTHORITY IN AN EMERGENCY (SECTION 21):

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



EFFECT OF ADMISSION BY A PARTNER (SECTION 23)

Section-23

- ✓ An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Analysis of Section 23

- ✓ Partners, as agents of each other can make **binding admissions** but only 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.**
- ✓ **An admissions and representations being evidenced against the firm,**
 - ✓ they will affect the firm when tendered by third parties;
 - ✓ they may not have the same effect in case of disputes between the partners themselves.
- ✓ **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.



EFFECT OF NOTICE TO ACTING PARTNER (SECTION 24)

Section-24

- ✓ Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Analysis of Section 24

- ✓ Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as **notice to the firm**, except in the case of a fraud on the firm committed by or with the consent of that partner.
- ✓ The partner to whom such notice is given must be acting in the business at that time. A notice to dormant or sleeping partner would not operate as notice to the firm.
- ✓ **Question :-** Situation where the firm has appointed a person to manage its work and the person does that. What will happen if a notice is sent to such a person?
- ✓ **Answer :-** An acting partner is a person who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm. If a notice is sent to such a person, it will be considered as a notice sent to a firm.
- ✓ The only exception would lie in the case of fraud, whether active or tacit.



LIABILITY TO THIRD PARTIES (SECTION 25 TO 27)

- ✓ The question of liability of partners to third parties may be considered under different heads.
- ✓ These are as follows :-
 1. **Liability Of A Partner For Acts Of The Firm (Section 25)**
 2. **liability of the firm for wrongful acts of a partner (Section 26)**
 3. **Liability Of Firm For Misapplication By Partners (Section 27)**



1. Liability of a Partner for Acts of the Firm (Section-25)

- ✓ Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Analysis of Section 25

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



- ✓ **"Act of firm" means :** Any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.
- ✓ **In order to bring a case under Section 25,** it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.
- ✓ **Case law/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.

2. Liability of the Firm for Wrongful Act of a Partner (Section-26)

- ✓ Where, by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Analysis of Section 26

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



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

3. Liability of the Firm for Misapplication by Partner (Section-27)

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

Analysis of Section 27

- ✓ Clause (a) covers the case where a partner acts **within his authority and receives money or property** belonging to a third party and misapplies that money or property. It is not necessary that the money should actually come into the custody of the firm.
- ✓ The provision on clause (b) would be attracted when **such money or property has come into the custody of the firm** and it is misapplied by any of the partners.
- ✓ The firm would be liable in both the cases.
- ✓ If the partner receives money **beyond authority**, his **receipt cannot be regarded as receipt of the firm** and the other partners will not be liable, unless the money received comes into their possession or control.



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

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

Analysis of Section 29

- ✓ A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.



✓ Following are the rights of the transferee:

Cannot interfere in the
conduct of business

During the
continuance of business

cannot ask for
accounts

Cannot inspect books of
firm

Receive share of assets
of the firm

On Dissolution of firm or
retirement of transferor

For ascertaining
the share

Entitled to
accounts of the
firm

The Transferee is only entitled to receive the share of the profits of the transferring partner, and he is bound to accept the profits agreed by the partners



MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP (SECTION 30)

1. A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership
2. Such minor has right to such share of the property and of the profits of the firm as may be agreed upon and he may have access to and inspect and copy any of the accounts of the firm.
3. Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act
4. Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Section 48
Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners



5. At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
6. Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.
7. Where such person becomes a partner,-
 - a. his right and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and
 - b. his share in the property and profits of firm shall be the share to which he was entitled as a minor.
8. Where such person elects not to become a partner-
 - a. his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,
 - b. his share shall not be liable for any acts of the firm done after the date of the notice, and



c. he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4)

9. Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

Analysis of Section 30

- ✓ A minor cannot become a partner in a firm because partnership is founded on a contract, he can be validly given a share in the partnership profits.
- ✓ When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows :

1. Rights

- i. Right to his agreed **share of the profits**
- ii. Have **access to, inspect and copy the accounts** of the firm
- iii. 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
- iv. On attaining majority he may **within 6 months** elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.



Minors cannot become a partner in Firm



2. Liabilities

i. Before attaining majority:

- i. confined only to the **extent of his share in the profits** and the property of the firm
- ii. **no personal liability** for the debts of the firm incurred during his minority
- iii. cannot be declared insolvent but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

ii. After attaining majority:

- On attaining majority, he may within 6 months elect to become a partner or not to become a partner.
- If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor.
- If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

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

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

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

- a. His **rights and liabilities continue** to be those of a minor up to the **date of giving public notice.**



- b. His share **shall not be liable** for any **acts of the firm done after the date of the notice**.
- c. He shall be **entitled to sue** the partners for his share of the property and profits. The minor shall **give notice to registrar** that he has or has not become a partner.

LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT (SECTION 31-35)

(i). Introduction of A Partner (Section-31)

1. Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.
2. Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any acts of the firm done before he became a partner.



Analysis of Section 31

- ✓ No new partners can be introduced into a firm without the consent of all the existing partners.
- ✓ **Right and Liabilities of New Partner :**
 - Liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date.
 - 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.
 - Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.
 - But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.
- ✓ **In case of partnership of two partners:** This section does not apply to a partnership of two partners which is automatically dissolved by the death of one of them.



(ii). Retirement of A Partner (Section-32)

1. A partner may retire :
 - a. with the consent of all the other partners
 - b. in accordance with an express agreement by the partners or
 - c. where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
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 he had knowledge of the retirement.
3. Notwithstanding the retirement of a partner from a firm, he and the 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:
Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
4. Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.



Analysis of Section 32

- ✓ A partner is said to retire when he ceases to be a member of the firm without bringing to an end the subsisting relations between the other members, or between the firm and third parties.
- ✓ The term does not cover the case where a partner withdraws from a firm by dissolving it, which should properly be referred as a dissolution and not as a retirement.
- ✓ **Retirement of a partner from a firm does not dissolve it.**



Case Law : *Vishnu Chandra Vs. Chandrika Prasad*

- ✓ The Supreme Court held that the expression 'if any partner wants to dissociate from partnership business', in a clause of the partnership deed which was being construed, comprehends a situation where 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.
- ✓ The retiring partner will **continue to remain liable** for all the acts of the firm done till the time he was a partner. He 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.
- ✓ The retiring partner will continue to remain liable for all acts of the firm, until **public notice of his retirement** is given.



- ✓ A partner may retire where the partnership is at will by giving a notice in writing to all the other partners of his intention to retire.

(iii). Expulsion (Section-33)

1. A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.
2. The provisions of sub-section (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Analysis of Section 33

- ✓ The power of expulsion must have existed in a contract between the partners, the power has been exercised by a majority of the partners and has exercised in good faith.
- ✓ Expulsion is not deemed to be in bonafide interest of the business of the firm, if all the following conditions are not satisfied:
 - i. **Power of expulsion** must exist in the contract
 - ii. Exercised by **majority of partners**
 - iii. Exercised in **good faith**
- ✓ The test of good faith includes three things :
 - Expulsion must be in interest of the partnership
 - The partner to be expelled is served with a notice
 - Given an opportunity of being heard



- ✓ If a partner is otherwise expelled, the expulsion is null and void.
- ✓ **Note :** Expulsion does not necessarily result in dissolution of the firm.
- ✓ The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.
- ✓ **Question :** A, B and C are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C. Considering the provisions of Indian Partnership Act, 1932 state whether they can expel a partner from the firm?
- ✓ **Answer :** A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that :
 - i. the power of expulsion must have existed in a contract between the partners ;
 - ii. the power has been exercised by a majority of the partners ; and
 - iii. it has been exercised in good faith.If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

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



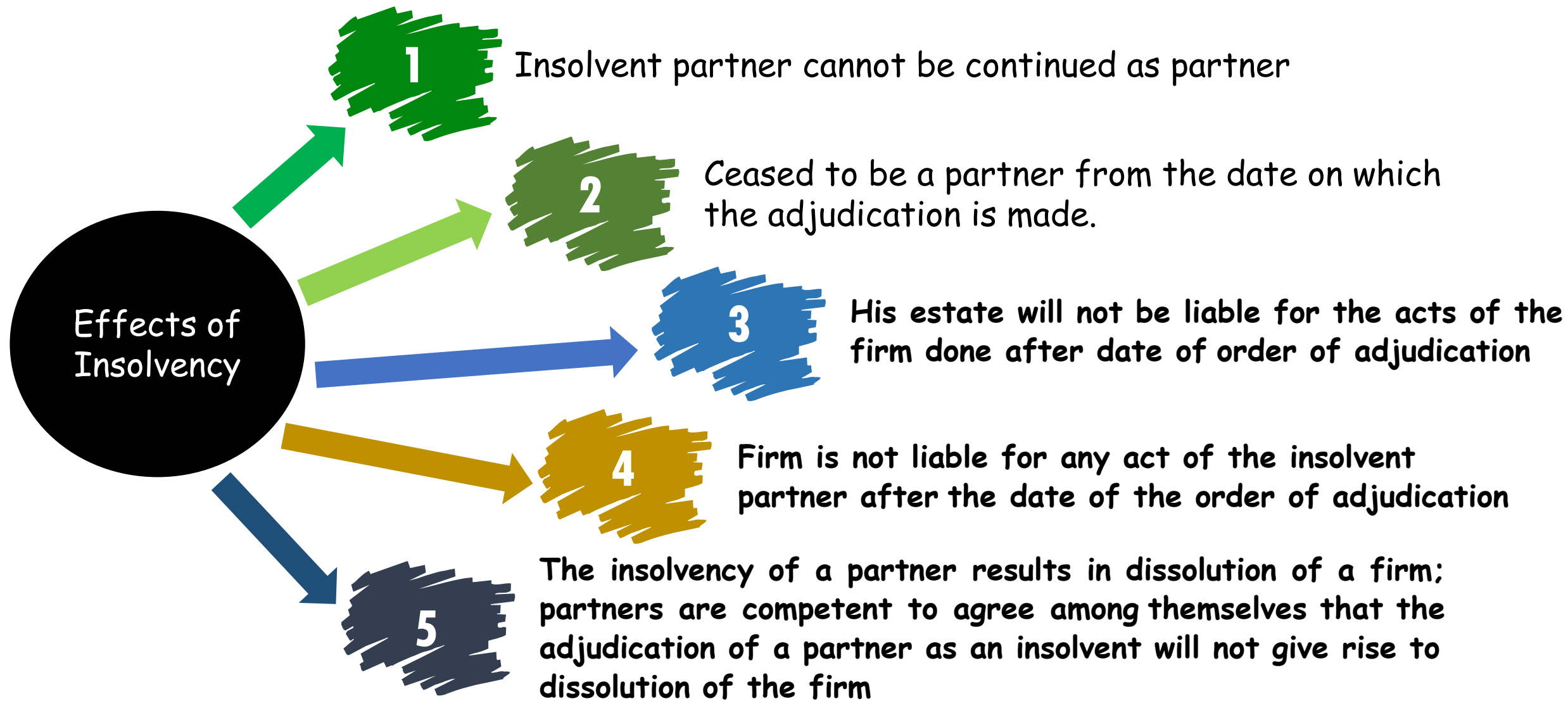
(iv). Insolvency of a Partner (Section-34)

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

Analysis of Section 34

- ✓ When a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date of the order of adjudication whether or not the firm is thereby dissolved.
 - ✓ His estate (which thereupon vests in the official assignee) ceases to be liable for any act of the firm done after the date of the order, and the firm also is not liable for any act of such a partner after such date (whether or not under a contract between the partners the firm is dissolved by such adjudication).
-





(v). Liability of Estate of Deceased Partner (Section-35)

Where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Analysis of Section 35

- ✓ Ordinarily death of a partner leads to dissolution of firm, but the rule regarding dissolution of partnership by death of a partner is subject to contract between partners. Partners are competent to agree that the death of a partner will not have an effect of dissolving the firm.
- ✓ It is not necessary to give any public notice either to public or to the persons dealing with the firm, to absolve the estate of the deceased partner from liability for future obligations of the firm.
- ✓ **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. This is because there was no debt due in respect of the goods in X's lifetime.



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

- ✓ An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-
 - a. use the firm name
 - b. represent himself as carrying on the business of the firm or
 - c. solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
- ✓ **Agreement in restraint of trade-** (2) 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.

Analysis of Section 36

- ✓ A partner may **make an agreement** with his partner that on ceasing to be a partner he will **not carry on any business similar** to that of the firm, such agreement shall be **valid** if the **restrictions** imposed are **reasonable**.
-



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

- ✓ **According to section 37,**
 - Where any member of a firm has died or otherwise ceased to be partner, and
 - the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then,
 - in the absence of a contract to the contrary,
 - the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm:

- ✓ **Provided that** whereby contract between the partners, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.



Analysis of Section 37

- ✓ Section 37 deals with rights of outgoing partners. It lays down a substantial law relating to a liability of the surviving or continuing partner, who **without a settlement of accounts** with legal representatives of the deceased partner utilizes the assets of partnership for continuing the business.
- ✓ Where any person ceases to be a partner because of his death or retirement, and the other partners continue the business of the firm without final settlement of accounts, in such a situation the outgoing partner or his representatives are entitled to either.
 - i. **Share in the profits** of the firm made since he ceased to be a partner as attributable to the use of his share of property of the firm, or
 - ii. **Interest at the rate of 6% per annum** on the amount of his share in the property of the firm.
- ✓ **Example** : 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** : A, B and C are partners. C retires after selling his share in the partnership firm. A and B fail to pay the value of the share to C as agreed to. The value of the share of C on the date of his retirement from the firm would be pure debt from the date on which he ceased to be a partner as per the agreement entered between the parties. C is entitled to recover the same with interest.



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

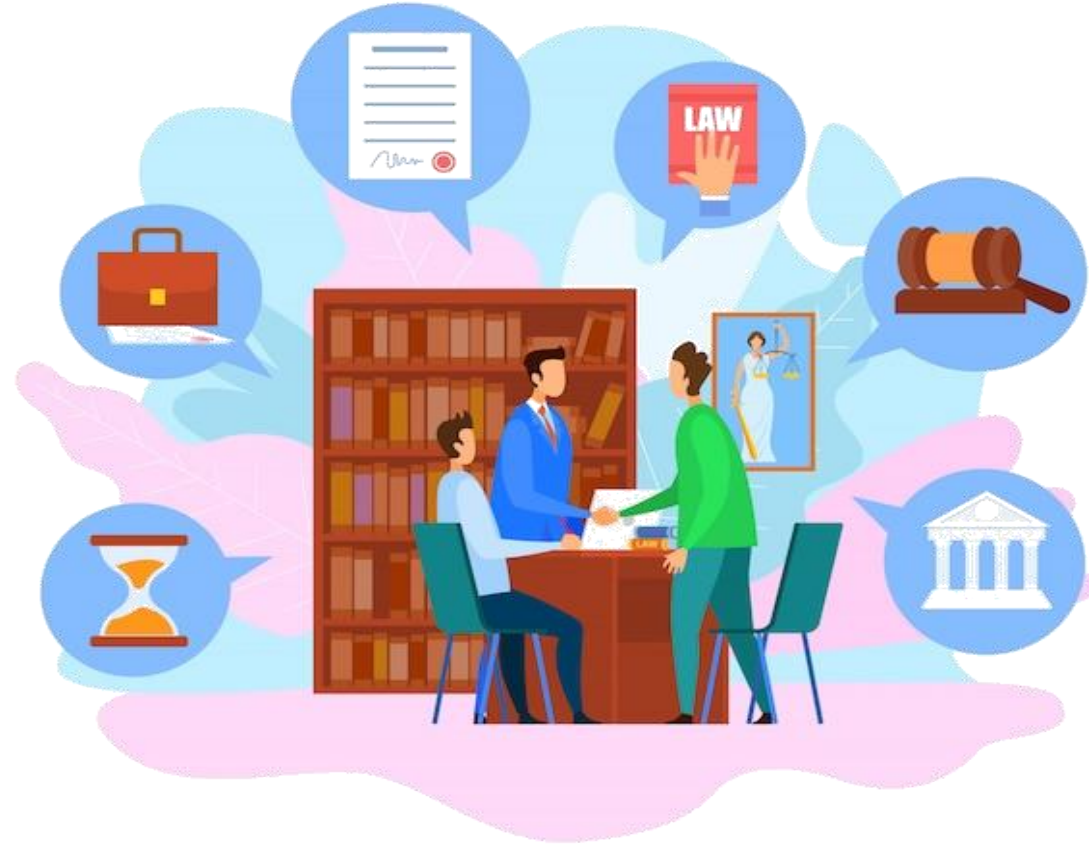
- ✓ According to section 38,
 - A continuing guarantee given to a firm or to third party
 - in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Analysis of Section 38

- ✓ Mere changes in the constitution of the firm operates to revoke the guarantee as to all future transactions.
 - ✓ Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.
-



INDIAN PARTNERSHIP ACT 1932



UNIT-3 REGISTRATION AND DISSOLUTION OF FIRM



CA DEEPIKA RATHI

UNIT OVERVIEW

Registration and Dissolution of a Firm

Mode of effecting
Registration

Consequences of
Non-Registration

Dissolution of Firm

Dissolution without the
intervention of court
(Section 40 to 43)

Dissolution by court
(Section 44)

Dissolution by
Agreement
(Section 40)

Dissolution by operation
of law or compulsory
dissolution (Section 41)

Dissolution on the
happening of certain
contingencies (Section 42)

Dissolution by notice
(Section 43)



REGISTRATION OF FIRMS

- ✓ 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.
- ✓ When the partners decide to get the firm registered as per the provisions of Section 58 of the Indian Partnership Act, 1932, they have to file the statement in the prescribed form.
- ✓ **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 authorized in this behalf.

- (1) Each person signing the statement shall also verify it in the manner prescribed
- (2) A firm name shall not contain any of the following words, namely:-



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

Application for
registration in Prescribe
form along with fees

Submit to



Registrar of the Area

On
Satisfaction

Registrar shall record an
entry of this statement in
the register (called the
Register of Firms) and
shall file the statement

Stating

- Firm's Name
- Place or Principal place of business
- Other places where the firm carries on business
- Duration of firm
- Date when each partner joined
- Name of full and permanent addresses of partners

The above statement should be signed
by all the partners or their agent
specially authorized .

Note : **Subsequent alterations** in the name, place, constitution, etc., of the firm that may occur during its continuance **should also be registered**



CA DEEPIKA RATHI

✓ Registration (Section 59) :-

- When the Registrar is satisfied that the provisions of section 58 (above mentioned provisions) have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.
- The Firm when registered shall use the bracket and word (Registered) immediately after its name.



Registrar is satisfied that the provisions of Section 58 have been duly complied.

shall record an entry of the statement in a Register called the Register of Firms and shall file the statement

shall issue a certificate of Registration.

The firm when registered shall use the bracket and word (Registered) Immediately after its name.

Registration 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.

Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.



✓ **Section 58(1A) :-** The statement in prescribed form for the purpose of registration of firm shall be sent or delivered to the Registrar within a period of **one year** from the **date of constitution** of the firm.

✓ **Late Registration on payment of penalty (Section 59A-1) :-**

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

Note :

- ✓ It is not mandatory for the firm to get registered.
 - ✓ A firm may get registered at any time, in case the firm is not registered within a period of one year from the date of its constitution, then at the time of registration a penalty of Rs. 100 per year or part thereof has to be paid for the delay.
-



CONSEQUENCES OF NON-REGISTRATION (Section 69)

- ✓ Under English Law, registration of firm is compulsory.
- ✓ The Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.
- ✓ However, u/s 69 non-registration of partnership gives rise to a number of disabilities. The disabilities are as follows :-

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

- The firm or any other person cannot bring an action against the third party for breach of contract, unless the firm is registered and persons suing are or have been shown in the register of firms as partners in the firm.
- In simple words, only a registered firm can file suit against a third party.

b. No relief to partners to set-off of claim:

- If an action is brought against the firm by a third party, then neither firm nor the partner can claim any set-off, if the suit be valued for more than Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.

c. Aggrieved partner cannot bring legal action against other partner or the firm:

- A partner of an unregistered firm cannot bring any legal action against the firm or any other partner. Nevertheless, he 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.

d. Third party can sue firm:

- Even if the firm is unregistered, a third party may bring an action against the firm.



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

1. Right of **third parties** to **sue the firm** or any partner
2. Right of partners to **sue for the dissolution of firm** or for the settlement of accounts of a dissolved firm or for realization of the property of a dissolved firm
3. Power of an **Official Assignees, Receiver of court to release** the property of the insolvent partner and to bring an action
4. Right **to sue or claim a set-off** if the value of suit does not exceed **Rs. 100 in value**.
5. 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 realize the property of the firm.

DISSOLUTION OF FIRM (Section 39-47)

According to **Section 39** of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

Analysis of Section 38

When a particular partner goes out, but the remaining partners carry on the business of the firm it is called dissolution of the partnership.

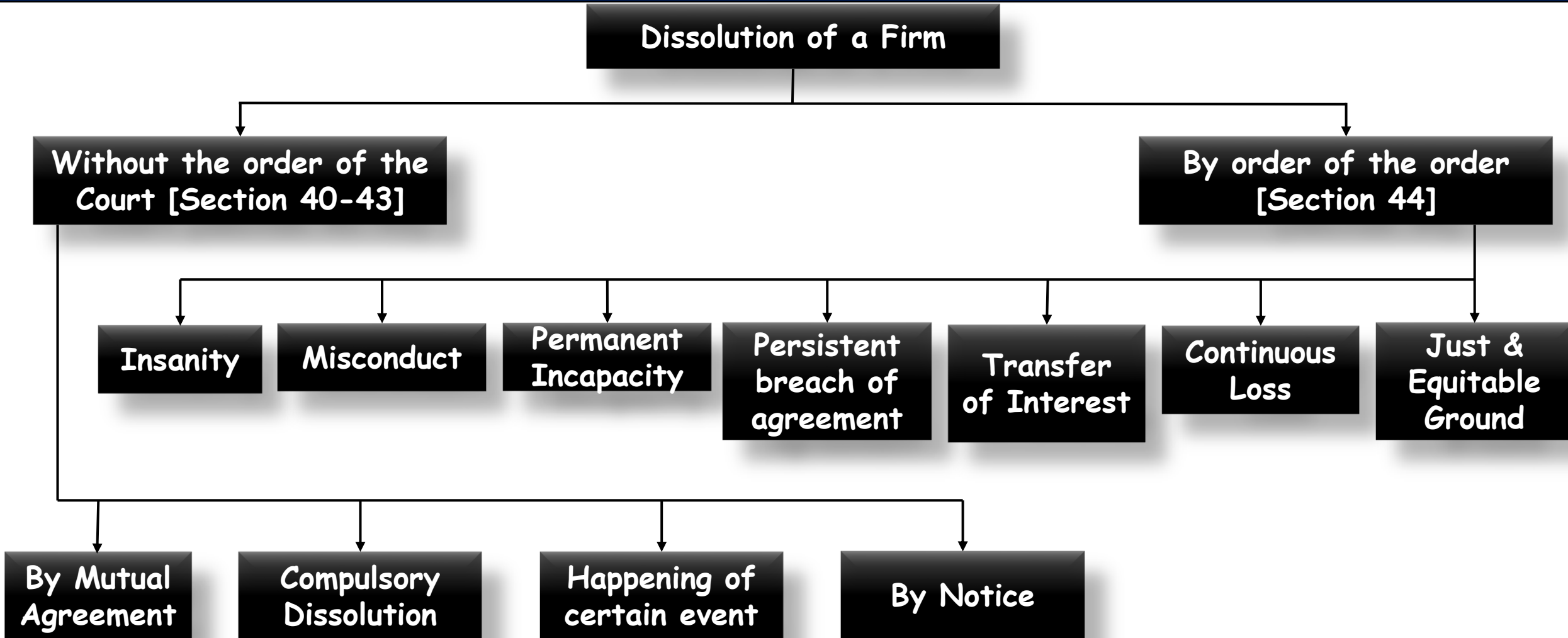


Dissolution of Firm Vs. Dissolution of Partnership

S.No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.



MODE OF DISSOLUTION OF A FIRM (Section 40-44)



The dissolution of partnership firm may be in any of the following ways:

1. DISSOLUTION WITHOUT THE ORDER OF THE COURT OR VOLUNTARY DISSOLUTION :

- i. Dissolution by agreement (Section 40): A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.
- ii. Compulsory Dissolution (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; or
 - By adjudication of all the partners or of all the partners but one as insolvent
 - 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.
- iii. Dissolution on the happening of certain contingencies (Section 42):

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

 - where the firm is constituted for a fixed term, on the expiry of that term
 - where the firm is constituted to carry out one or more adventures or undertaking, then by completion thereof
 - by the death of a partner
 - by the adjudication of a partner as an insolvent.



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

1. **Where the partnership is at will**, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
2. **In case date is mentioned in the Notice:** The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or In case no date is so mentioned, as from the date of the communication of the notice

2. **DISSOLUTION BY THE COURT (SECTION 44)** : Court may, at the suit of the partner, dissolve a firm on any of the following ground :

- a. **Insanity/Unsound Mind:** When a partner other than a sleeping partner has become of unsound mind, other partners or next friend of insane partner may file a suit to dissolve the firm. The courts may dissolve the firm on the basis of such suit.
- b. **Permanent incapacity:** When a partner, other than the partner filing the suit, has become permanently incapable of performing his duties as a partner, then the court may dissolve the firm.
- c. **Misconduct:** Where a partner, other than the partner filing the suit, is guilty of conduct which unreasonably affects the business of the firm, the courts may order dissolution of the firm, giving regard to the nature of the business.
- d. **Persistent breach of agreement:** When a partner wilfully or continuously commits breach of agreements relating to the management of the affairs of the firm or conduct of the business, then the courts may dissolve the firm at the instance of any of the partners. Following comes into the category of breach of contract:



- ✓ Embezzlement
 - ✓ Keeping erroneous accounts
 - ✓ Holding more cash than allowed
 - ✓ Refusal to show accounts despite repeated requests.
- e. **Transfer of interest:** Where a partner has transferred whole of his interest to a third party or has allowed his share to be charged or sold by the court for recovery of arrears of land revenue due by him, the courts may dissolve the firm at the instance of any other partner.
- f. **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order its dissolution.
- g. **Just and Equitable grounds:** Where the court considers any other ground just and equitable for dissolution of the firm, it may dissolve the firm. The following are the cases of just and equitable grounds :
- i. Deadlock in the management
 - ii. Where the partners are not in talking terms between them
 - iii. Loss of substratum
 - iv. Gambling by a partner on a stock exchange.



CONSEQUENCES OF DISSOLUTION (Section 45-55)

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

(a) Liability for acts of partners done after dissolution (Section 45) :-

1. 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.
Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.
2. Notices under sub-section (1) may be given by any partner.

Analysis of Section 45

- Section 45 has two fold objectives-
 1. It seeks to protect third parties dealing with the firm who had no notice of prior dissolution and
 2. It also seeks to protect partners of a dissolved firm from liability towards third parties.



- However, there are exceptions to the rule 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.

Crux of Section 45: Liability of acts of partners done after dissolution

- 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.
- However, there are exceptions to this provision(i.e.), even when no notice of dissolution has been given, there will be no liability for subsequent acts in case of :
 - The estate of deceased partner
 - An insolvent partner
 - A dormant partner



(b) Right of partners to have business wound up after dissolution (Section 46) :-

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

Crux of Section 46: Right of partners to have business wound up after dissolution

- Once a firm is dissolved, every partner or his representative has a right to apply the property of the firm in payments of debts and liabilities of the firm.
- The surplus, if any, can be distributed among the partners according to their rights.

(c) Continuing authority of partners for purposes of winding up (Section 47) :-

- After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.
- Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.



Crux of Section 47: Continuing authority of partners for purposes of winding up

- Post dissolution, the authority of each partner to bind the firm, along with other mutual rights and obligation, continue till such time that they can wind up the affairs of the firm.
- This does not include the acts of a partner who has been adjudicated insolvent.

(d) Mode of settlement of partnership accounts (Section 48) :- In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :-

- i. 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:
- ii. 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



Analysis of Section 48

- ✓ Accounts between the partners shall be settled in the manner prescribed by partnership agreement.
- ✓ Partners, by their agreement, express any different intention as to the mode in which losses will have to be borne eventually or the manner in which capital or advances will have to be paid to any partner, such an intention must be given effect to.
- ✓ However, any such agreement cannot affect the rights of the creditors of the firm.
- ✓ If the assets of the firm are not sufficient to pay off the liabilities of the firm including the amount due to each partner on account of capital, each partner would individually be liable to contribute towards the losses including deficiencies of capital, in the proportion in which he is entitled to share profits.
- ✓ **Example** : 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 (Rs.6,60,000 + Rs.40,000 - Rs.2,00,000 i.e. Rs.5,00,000) would have to be shared equally by Y and X's estate.



- (e) Payment of firm debts and of separate debts (Section 49) :-** Where there are joint debts due from the firm and also separate debts due from any partner:
- i. 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;
 - ii. 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.
-

