

THE INDIAN PARTNERSHIP ACT, 1932.

(UNIT-1)

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PARTNERSHIP is the relation between persons who have (Section-4) agreed to share the profits of a business carried on by all or any of them acting for all.

Partners: persons who have agreed or entered into partnership with one another are individually called partners.

And collectively called "a firm". It is not a person recognized in the eyes of law cannot be a partner.

And under the name which their business is carried on & called the "firm's name".

* Elements of Partnership

1. Association of two or more persons: Only recognized by law can enter into an agreement of partnership. A minor cannot be partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

Section 464 of the companies Act, 2013 has now put a limit of 50 partners in any association or firm. (Partnership act is silent about the max. no. of)

Agreement: Partnership must be result ^{of} an agreement between 2 or more persons. This element relates to voluntary contractual nature of partnership.

Agreement from which relationship of Partnership arises may be express. It may also be implied. showing mutual understanding in your
It may be oral or in writing.

3. Business : i. there must be existing a business.
Trade Occupation Profession.
(includes)

Existence of business is essential.

ii. Motive of the business is the "acquisition of gains".
No partnership where there is no intention to carry on the business and to share the profits.

4. Agreement to share profits : The sharing of profit is an essential feature.

There can be no partnership where only one of the partners is entitled to the whole of the profits. Must agree to share the profits in any manner they choose.

In the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. Business carried on by all or any of them acting for all: This is the cardinal principle of the partnership law. There should be a binding contract of mutual agency betⁿ the partners.

Each partner carrying on the business is the principal as well as the agent for all the other partners.

He is an agent as he can bind the other partners by his acts & he is a principal to the extent that he is bound by act of other partners.

PARTNERSHIP AGREEMENT — PARTNERSHIP DEED.

Mutual AGENCY is ABSENT then there will be NO Partnership

* TRUE TEST OF PARTNERSHIP

Mode of determining existence of partnership (Section-6)

- i. There was an agreement between all the persons concerned,
- ii. The agreement was to share the profits of a business &
- iii. the business was carried on by all or any of them acting for all.

- i. Agreement: Partnership is created by agreement and not by status (Section 5)
The relation of partnership arises from contract and not from status.

Ex: Hindu Undivided family carrying on a family business.

Burness husband & wife carrying on business

- ii. Sharing of Profit: Sharing profit is an essential element to constitute a partnership. It is only a prima facie evidence & not conclusive evidence.

Holding joint or common interest in the property would not by itself make such persons partners.

It is difficult when either there is no specific agreement or such agreement does not specifically speak of partnership. In such a case - testing the existence or otherwise of partnership relation. (Refer - Section 5)

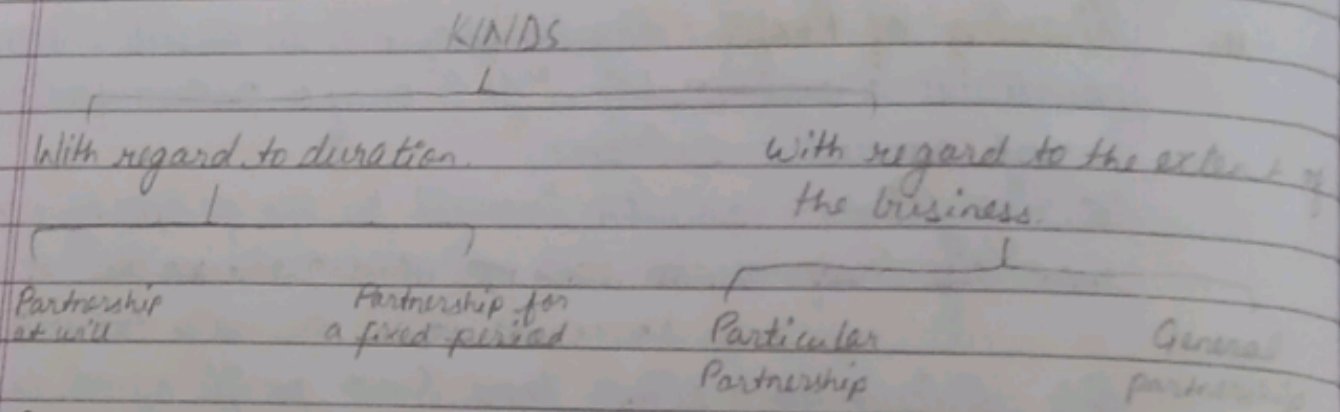
Section 6 : must had the real relation betⁿ parties. Rule is easily stated & is clear, but it is difficult to apply. Effects of facts such as written or verbal agreement, real intention, & conduct of the parties (both together) considered while deciding the relationship betⁿ parties.
 & other surrounding documents.

3. Agency : Mutual agency cardinal principle of partnership law. Each partner carrying on business is an agent of other partners as well as principal.
 The act of one partner done on behalf of firm, binds all the partners.
 Element of mutual agency → view to earn profits by running a business

CASE LAW:

Santiranjana Das Gupta Vs. Dasyrnan Murzbanwall
 (Supreme Court)

* KINDS OF PARTNERSHIPS



1. Partnership at will (Section 7)

- No fixed period has been agreed upon for the duration of the partnership, &
- There is no provision made as to the determination of the partnership.

Where there is an agreement betⁿ the partners either for the duration of the partnership or for the determination, the partnership is not partnership at will.

the process of deciding something officially.

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 Partnership entered into for a fixed term & continued after the expiry of such term, it is to be treated as having become a partnership at will. (It may be dissolved by any partner by giving notice in writing to all other partners).

2. Partnership for a fixed period: Provision is made by a contract for the duration of the partnership, it is called "partnership for a fixed period". It is created for a particular period of time. On the expiry of the fixed period such partnership comes to an end.

3. Particular partnership: A person becomes a partner with another person in any particular adventure or undertaking the partnership is called "particular partnership". (Example: Construction - building)

4. General Partnership: Where a partnership is constituted with respect to the business in general. It is different from a particular partnership.

In Particular partnership → the liability of the partners extends only to that particular adventure or undertaking.

In General partnership → Is different from limited liability partnership.

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* PARTNERSHIP DEED :-

Is the result of an agreement. It may be in writing or formed verbally. In writing to avoid future disputes. It contains various terms & conditions.

It should be drafted with care & be stamped according to the provisions of the Stamp Act, 1899.
It comprises immovable property, the instrument of partnership must be in writing, stamped & registered under the Registration Act.

Partnership deed may contained the following info:

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

* TYPES OF PARTNERS (based on the extent of liability) necessity (unlimited & limited)

1. Active or Actual or Ostensible partner: who has become a partner by agreement & who actively participates in the conduct of the partnership. He must give a public notice in order to absolve himself of liabilities for acts of other partners done after his retirement.
(profits nil nil & partner liable of his retirement)
2. Sleeping or Dormant partner: who is a partner by agreement & who does not actively take part in the conduct of the partnership business. However not required to give public notice of their retirement from the firm.
(Name ke liye partner)
3. Nominal partner: A person who lends lends his name to the firm, without having any real interest in it. He is not entitled to share the profits of the firm. Neither he invest in firm & nor takes part in the conduct. However liable to third parties for all acts of the firm.
4. Partner in profits only: Entitled to share the profits only. Not liable for the losses. Liable to the third parties for all acts of the profits only. (NPN for example)
5. Incoming partners: who is admitted as a partner into an already existing firm with all other partner's consent. Not liable for any act of the firm done before his admission as a partner.

6. Outgoing partner: A person who leaves the firm & the rest of the partners continue to carry on business. Such partner remains liable to third parties for all acts of the firm until public notice is given.

7. Partner by holding out (Section 28): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows other to do it. He stopped denying the character he has assumed.