



CA Foundation May 2025

BUSINESS LAW

EXAM ORIENTED FREE FASTRACK BATCH

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CA Nimesh Agrawal

Details

Time : 4:30 pm to 6:15 pm daily

Source : ICAI Module

Batch Completion : Upto 15th April



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Chapter: 4 - Indian Partnership Act, 1932

Unit - 1- General Nature of Partnership

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

23 - Explain the following terms under the Indian Partnership Act, 1932:

(1) Partner by holding out

(2) Nominal Partner

5)b)4m, Jan2025

Ans - (1) Partner by holding out (Section 28 of the Indian Partnership Act, 1932):

Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

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

22 - Ram and Shyam are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram introduced Gopal to Sundar, a supplier to the firm, as his newly joined partner. Gopal knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gopal, being a partner of the firm, was shared by Sundar with another businessman Madhav. Next day, Sundar supplied the raw material on credit and Madhav lent 5 lakhs to the firm for a short period on the understanding that Gopal is a partner of the firm. On due dates, the firm failed to discharge its liability towards both. Advise Gopal, whether he is liable to Sundar and Madhav for the aforesaid liability of the firm.

3)a)i)3m,MDTP10, 3)a)i)4m,MDTP7, 3)a)i)4m,MTP1,Jan2025, RTP,Jan2025,
3)a)i)3m,Sept2024

Ans - Partner by holding out (Section 28 of the Indian Partnership Act, 1932):

Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

In the instant case, since Gopal allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gopal is held liable to Sundar as he represented himself by his act to be a partner to the RS & Co.

However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

Hence Gopal is liable to Sundar and not to Madhav for the liability of the Firm.

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

- i) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.
- ii) Two firms each having 12 partners combine by an agreement into one firm.
- iii) A and B, co-owners, agree to conduct the business in common for profit.
- iv) Some individuals form an association to which each individual contributes ` 5000 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
- v) A and B, co-owners share between themselves the rent derived from a piece of land.

RTP, Sept2024, RTP, Dec2023

OR

- i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.

4)b)Dec2021

OR

- a) X, a contractor, appointed Y one of his servants to manage his business of loading and unloading railway wagons. Y was to receive 50% of the profits of the business and also to bear the losses, if any.

- g) 10 major persons form an association to which each member contributes ` 10,000. The purpose is to produce medicines for free distribution to poor patients.

3)a)7m,MDTP2

Ans - i) Yes, this is a case of partnership as there exists the element of doing business and sharing of profits equally.

ii) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.

iii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.

iv) No, this is not a case of partnership as no charitable association can be floated in partnership.

v) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.

OR

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

Alternatively, this part can also be answered as below:

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

OR

a) No, this is a case of partnership because no mutual agency relationship exist among X and Y.

g) No, this is not a case of partnership as there is no intention to carry on the business and to share the profits thereof.

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

1)c)i)4m,MDTP5, 1)c)i)4m,MTP1,Sept2024, 6)b)4m,MTP2,Dec2023, 6)b)4m,Dec2022

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

| Basis of difference | Partnership | Co-ownership |
|---------------------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Formation | Partnership always arises out of a contract, express or implied. | Co-ownership may arise either from agreement or by the operation of law, such as by inheritance. |
| Implied agency | A partner is the agent of the other partners. | A co-owner is not the agent of other co-owners. |
| Nature of interest | There is community of interest which means that profits and | Co-ownership does not necessarily involve sharing of |

| | | |
|-----------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| | losses must have to be shared. | 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. |

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

i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership? (3 Marks)

ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Can paper dealer i.e. third party make Y liable for paper supplied to X? (2 Marks)

iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B? (2 Marks)

3)a)7m,MDTP6, 3)a)7m,MTP1,Sept2024, 4)b)6m,Dec2023

Ans - As per Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

i) Yes, it is a case of partnership.

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

ii) No, it is not a case of partnership

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

(iii) No, it is not a case of partnership

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

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

3)a)i)4m,MDTP4, Rtp,June2024, 3)a)i)4m,MTP3,June2024, RTP,June2023

Ans - According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved:

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

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

17 - Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932.

1)c)6m,MDTP1, 1)c)6m,MTP1,June2024, 3)a)6m,MTP2,June2023, 3)a)6m,MTP2,Dec2022, 3)a)6m,MTP1,June2022, 3)a)6m,Dec2021

Ans - Definition of Partnership: 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (Section 4 of the Indian Partnership Act, 1932)

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

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

ELEMENTS OF PARTNERSHIP

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

- 1. Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.
- 2. Agreement:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.
- 3. Business:** Firstly, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.
- 4. Agreement to share profits:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the

profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. Business carried on by all or any of them acting for all: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

16 - "Whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932?

1)c)i4m,MDTP3,1)c)i4m,MTP2,June2024, 3)b)4m,June2019

Ans - Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, 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 relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

2. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate

in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

3. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, 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.

15 - What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932? 1)c)i)MDTP2, RTP, Dec2023, 3)a)i)2m, MTP2, Dec2023

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

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

Comment. 6)b)4m, MTP1, Dec2023, 6)b)4m, Dec2021, 6)b)4m, MTP1, Dec2019

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

Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4 of the Indian Partnership Act, 1932, in determining the existence or otherwise of partnership.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.

According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear, but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.

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

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

4)b)6m, MTP2, Dec2023, 4)b)6m, June2023

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

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

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

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

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

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

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

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

RTP, Dec2022

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

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

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

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

3)a)ii)2m, MTP1, Dec2022, RTP, June2020

Ans - Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking, the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

10 - Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She wants to know the list of information which must be part of

partnership deed drafted by her. Also, give list of information to be included in partnership deed?

6)b)4m,MTP1,Dec2022, 3)a)6m,MTP2,Dec2021, RTP,Dec2020, 6)b)4m,MTP2,June2019, RTP,Dec2018, 6)c)4m,MTP2,Dec2018, 6)b)4m,MTP1,June2018

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

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

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

- Name of the partnership firm.
- Names of all the partners.
- Nature and place of the business of the firm.
- Date of commencement of partnership.
- Duration of the partnership firm.
- Capital contribution of each partner.
- Profit Sharing ratio of the partners.
- Admission and Retirement of a partner.
- Rates of interest on Capital, Drawings and loans.
- Provisions for settlement of accounts in the case of dissolution of the firm.
- Provisions for Salaries or commissions, payable to the partners, if any.
- Provisions for expulsion of a partner in case of gross breach of duty or fraud.

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

3)a)i)2m, June2022

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

08 - Enumerate the differences between Partnership and Joint Stock Company.

3)i)6m, MTP2, June2022, 3)a)6m, MTP1, Dec2021

Ans -

| Basis | Partnership | Joint Stock Company |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legal status | A firm is not legal entity i.e. it has no legal personality distinct from the personalities of its constituent members. | A company is a separate legal entity distinct from its members (Salomon v. Salomon). |
| Agency | In a firm, every partner is an agent of the other partners as well as of the firm. | In a company, a member is not an agent of the other members or of the company, his actions do not bind either. |
| Distribution of profits | The profits of the firm must be distributed among the partners according to the terms of the partnership deed. | There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared. |
| Extent of liability | In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly. | In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited. |
| Property | The firm's property is that which is | In a company, its property is separate |

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.

Transfer of shares

A share in a partnership cannot be transferred without the consent of all the partners.

from that of its members who can receive it back only in the form of dividends or refund of capital.

In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.

Management

In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.

Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.

Registration

Registration is not compulsory in the case of partnership.

A company cannot come into existence unless it is registered under the Companies Act, 2013.

Winding up

A partnership firm can be dissolved at any time if all the partners agree.

A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.

Number of membership

According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.

A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.

| | | |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Duration of existence | Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm. | A company enjoys a perpetual succession. |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|

07 - What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932?

3)a)i)2m, Dec2020, RTP, June2020

Ans - Partnership at will under the Partnership Act, 1932

According to Section 7 of the Act, partnership at will is a partnership when:

1. no fixed period has been agreed upon for the duration of the partnership; and
2. there is no provision made as to the determination of the partnership.

Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

06 - Explain the provisions of the Indian Partnership Act, 1932 relating to the creation of Partnership by holding out.

RTP, Dec2020

Ans - Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

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

Example: X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

05 - "Partner indeed virtually embraces the character of both a principal and an agent". Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932. 5)b)7m,MDTP4, RTP,June2020

Ans - "Partner indeed virtually embraces the character of both a principal and an agent": Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

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.

04 - X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Advise Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.

RTP,Dec2019

Ans - In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

Partner by holding out (Section 28): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

03 - Distinguish between Partnership vs. Hindu Undivided Family. Write any two points.

3)a)2m,MTP1,Dec2019

Ans -

| Basis of difference | Partnership | Joint Hindu 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 a 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 co-partners are liable only to |

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

Q2 - What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

6)b)4m, June 2018

Ans - Conclusive evidence of partnership: Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties

constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

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

01 - State the differences between Partnership and Hindu Undivided Family. RTP, June 2018

Ans -

| Basis of difference | Partnership | Joint Hindu 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 a 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 co -partners are liable only to the |

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



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CA Foundation May 2025

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Chapter: 4 - Indian Partnership Act, 1932

Unit - 2- Relations of Partners

Question Bank

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

38 - P, Q and R, are partners in a construction firm, PQR Associates. P buys cement on behalf of the firm from D. The cement is used in the ordinary course of the firm's business. P uses the cement for his personal purposes. The supplier D, who is unaware of the private use of cement by P, claims the price from the firm. The firm refuses to pay for the price, on the ground that the cement was never received by it. Referring to the provisions of the Indian Partnership Act, 1932, answer the followings:

(i) Whether the Firm's contention is tenable?

(ii) What would be your answer if a part of the cement so purchased by P was delivered to the firm by him, and the rest of the cement was used by him for his private use, about which neither the firm nor the supplier were aware?

3)a)7m, Jan2025

Ans - The given question is based on the Section 18 read with sections 25 & 26 of the Indian Partnership Act, 1932. Section 18 deals with the Partner to be an agent of the firm. This means that a partner is the agent of the firm for the purpose of the business of the firm.

The partner indeed virtually holds the character of both a principal and an agent. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

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.

According to 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. "Act of firm" connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.

As per 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.

According to the facts given in the questions, P, a partner to PQR Associates, buys cement on behalf of the firm from D in the ordinary course of the firm's business. P uses the cement for his personal purposes. D, the supplier was unaware of the private use of cement by P and claims

price from the firm. Firm refuses to pay the price on the ground that the cement was never received by it.

Referring to the stated provisions of the Indian Partnership Act, 1932, following are the answers:

(i) Said Section is applicable only to the act done by partners for the purpose of the business of the firm. In such case, partner act as the agent of the firm for the purpose of the business of the firm. Since in the given case, P, buys cement on behalf of the firm from D in the ordinary course of the firm's business.

Therefore, in the given case, firms' contention of refusal to pay the price on the ground that the cement was never received by it, is not tenable.

(ii) Further for commission of the wrongful act by the partner, 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.

In the given case, part of the cement so purchased by P was delivered to the firm by him and the rest of the cement was used by him for his private use, was not known to the firm and the supplier. Since the act of the P to purchase the cement was in the ordinary course of business with the authority of the partner, however wrongful use by the partner will make the firm liable to the same extent as the partner for loss or injury caused to D.

However, PQR Associates can take action against P, the partner.

37 - Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) "If a partner is otherwise expelled; the expulsion is null and void." Discuss.

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion." Analyse.

1)c)6m,MDTP10, 1)c)6m,MDTP7, 1)c)6m,MTP1,Jan2025, 1(c)6m,Sept2024

Ans - (i) If a partner is otherwise expelled, the expulsion is null and void.

According to Section 33 of the Indian Partnership Act, 1932

(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 bona fide interest of the business of the firm.

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

(i) The expulsion must be in the interest of the partnership.

(ii) The partner to be expelled is served with a notice.

(iii) He is given an opportunity of being heard. Hence, it is correct to say that, if a partner is otherwise expelled, the expulsion is null and void.

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion"

According to Section 32(3) of the Indian Partnership Act, 1932, notwithstanding the expulsion 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 expulsion, until public notice is given of the expulsion.

However, an expelled partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Hence, the statement given is partially correct.

36 - On admission as a new partner, Amar agreed to be liable for the existing debts (referred to as the old debts) of the firm by an agreement signed by the all partners including Amar. Examine, whether Amar will be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

3)a)ii)2m,MDTP10, 3)a)ii)3m,MDTP7, 3)b)ii)MTP1,Jan2025, 3)a)ii)2m,Sept2024

Ans - Rights and liabilities of new partner: 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 the instant case, Amar will not be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

35 - Suman, having 10% share in the property of 200 lakh of a firm retires from the firm on 31 March, 2023. The firm continues with the business thereafter without final settlement of accounts between the existing and retired partners and earned profits of 10 lakh during the financial year ending 31st March, 2024. Suman, in her own interest and in the absence of any provision in the partnership firm on this point, claimed 3 lakh from the firm toward the use of her share in the property and profit of the firm which was rejected by the partners. There is no contract between the partners contrary to the provisions of the Act in this regard. Examine the validity of the amount claimed by Suman under the provisions of The Indian Partnership Act, 1932. 3)a)iii)2m,MDTP10, 3)a)iii)2m,Sept2024

Ans - According to section 37 of the Indian Partnership Act, 1932,

- 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.

In the instant case, Suman is entitled to claim either interest on her share in the property i.e. ` 1,20,000 (6% of ` 20 Lakh) or a share of the profits i.e. ` 1 Lakh (10% of ` 10 Lakh) from the firm for the use of her share in the property.

Therefore, claim of Suman of ` 3 Lakh is not valid.

34 - Sahil, Amit and Kunal were partners in a firm. The firm is a dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2023, one of the partners, Mr. Kunal died in a road accident. The firm ordered M/s AB and Co. to supply the furniture for their business on 25th May 2023, when Kunal was also alive.

Now Sahil and Amit continue the business in the firm's name after Kunal's death. The firm did not give any notice about Kunal's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2023. The fact about Kunal's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Kunal's private estate is also liable for the price of furniture purchased by the firm?

ii) Whether does it make any difference if supplied the furniture to the firm believing that all the three partners are alive?

RTP, Sept2024, RTP, June2022, 4)b)6m, MTP2, June2022, 4)b)6m, MTP1, Dec2021, RTP, June2021

Ans - According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Kunal's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Kunal's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

ii) It will not make any difference even if supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

33 - Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932?

1)c)ii)2m,MDTP5, 1)c)ii)MDTP3, 1)c)ii)2m,MTP1,Sept2024, 1)c)ii)2m,MTP2,June2024,
3)a)ii)2m,June2019

Ans - Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

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

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

32 - M/s ABC & Associates, a partnership firm with A, B and C as senior partners engaged in the business of curtain manufacturing and exporting to foreign countries. On 25th August, 2022, they inducted Mr. P, an expert in the field of curtain manufacturing as their partner. On 10th January 2024, Mr. P was blamed for unauthorized activities and thus expelled from the partnership by approval of all of the remaining partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

3)a)7m,MDTP5, 3)a)7m,MTP1,Sept2024, 4)b)6m,MTP1,June2023, RTP,Dec2020,
4)b)6m,June2019

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

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

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

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

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

a) Action by the partners of M/s ABC & Associates, a partnership firm to expel Mr. P from the partnership was justified as he was expelled by approval of the other partners exercised in good

faith to protect the interest of the partnership against the unauthorized activities charged against Mr. P. A proper notice and opportunity of being heard has to be given to Mr. P.

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

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

31 - State the legal position of a minor partner under the Indian Partnership Act, 1932 after attaining majority:

(A) When he opts to become a partner of the same firm.

(B) When he decides not to become a partner.

5)b)ii)3m,MDTP5, 5)b)ii)MTP1,Sept2024, 3)a)2m,Dec2018

OR

State the liabilities of a minor partner both: (i) Before attaining majority and (ii) After attaining majority.

3)a)ii)MTP1,June2021, 3)b)6m,MTP1,June2020, 3)a)ii)2m,MTP1,June2019

Ans - A) When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, 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.

B) 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. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

OR

Liabilities of a minor partner before attaining majority:

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

2) Liabilities of a minor partner after attaining majority:

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

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

30 - Whether a minor may be admitted in the business of a partnership firm? Also, explain the rights of a minor in the partnership firm under the Indian Partnership Act, 1932.

1)c)6m,MDTP6, 1)c)6m,MTP1,Sept2024, 3)a)ii)4m,MTP2,Dec2023, 3)a)6m,MTP1,June2023, RTP,Dec2021, 3)a)i)3m,MTP1,June2021, 3)b)6m,MTP2,June2021, 3)a)i)3m,MTP1,June2019, 3)a)6m,MTP2,Dec2018, RTP,June2018

Ans - A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights of such a partner will be governed under Section 30 as follows:

Rights:

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii)) He can 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.

29 - A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C.

3)a)ii)3m,MDTP9, 3)a)ii)3m,MDTP8, 3)b)ii)3m,MTP2,Jan2025, 3)a)ii)3m,June2024

Ans - According to Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for all acts of the firm done while he is a partner.

As per section 26, the firm is liable to the same extent as the partner for any wrongful act or omission of a partner while acting:

- (a) in the ordinary course of the business of the firm, or
- (b) with the authority of the partners.

Section 27 provides that the firm is liable if a partner, acting within the scope of his apparent authority, receives money or property from a third party and misapplies it, or if the firm in the course of its business receives money or property and the same is misapplied while it is in the custody of the firm.

In the instant case, both A and B are liable to C for the wrongful acts committed by B. A cannot avoid liability merely on the grounds of being a sleeping partner.

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

Rtp,June2024, RTP,June2022

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

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

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

Rtp, June2024, RTP, Dec2021

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

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

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

26 - State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

1)c)6m,MDTP8,1)c)6m,MTP2,Jan2025, RTP,June2024, RTP,June2023,
3)a)6m,MTP2,June2019, RTP,Dec2018, 3)a)6m,MTP1,June2018

Ans - Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

During the continuance of partnership, such transferee is not entitled

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner, and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share,

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

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

25 - A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B.

Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932?

3)a)7m,MDTP1, 3)a)7m,MTP1,June2024, 4)b)6m,MTP1,June2024

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

In the instant case, M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss.

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

24 - i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

1)c)2m,MDTP4, 5)b)i)4m,MDTP1, 5)b)4m,MTP1,June2024, 1)c)i)2m,MTP3,June2024, RTP,Dec2023

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

5)b)ii)3m,MDTP1, 5)b)3m,MTP1,June2024, RTP,Dec2023, 3)a)4m,Dec2019

Ans - i) Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932): According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

ii) **Goodwill:** The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

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

23 - P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2023, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

(i) Rights of P & Q to start a competitive business.

(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

3)a)7m,MDTP3, 3)a)7m,MTP2,June2024, 4)b)6m,Dec2020

Ans - Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)

1) 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.

(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co. after following above conditions in the absence of any agreement.

(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

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.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

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

1)c)ii)4m,MDTP4, RTP,Jan2025, 1)c)ii)4m,MTP3,June2024, RTP,Dec2023

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

- (i) The insolvent partner cannot be continued as a partner.
- (ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- (iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

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

3)a)ii)3m,MDTP1, 3)a)ii)3m,MTP3,June2024, RTP,June2021, 6)b)4m,Dec2020

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

The two clauses of Section 27 bring out an important point of distinction between the two categories of cases of misapplication of money by partners.

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

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

The firm would be liable in both cases.

20 - "Partner indeed virtually embraces the character of both a principal and an agent".

Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932.

5)b)7m,MTP3,June2024

Ans - "Partner indeed virtually embraces the character of both a principal and an agent":

Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

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.

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

3)a)6m,Dec2023

OR

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

3)a)6m,June2021, RTP,June2019, 3)a)6m,MTP1,Dec2018

Ans - As per the provisions of Sections 19(1) read with the provisions of Section 22 of the Indian Partnership Act, 1932, which deal with the implied authority of a partner, provide that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority.

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

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

As per the provisions of sub-section (2) of Section 19 the Indian Partnership Act, 1932, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- (a) Submit a dispute relating to the business of the firm to arbitration;
- (b) open a banking account on behalf of the firm in his own name;
- (c) compromise or relinquish any claim or portion of a claim by the firm;
- (d) withdraw a suit or proceedings filed on behalf of the firm;
- (e) admit any liability in a suit or proceedings against the firm;

- (f) acquire immovable property on behalf of the firm;
- (g) transfer immovable property belonging to the firm; and
- (h) enter into partnership on behalf of the firm.

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.

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

RTP, Dec2023, RTP, Dec2021

Ans - (i) Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):

Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners. In the instant case, Mr. Vikas can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.

(ii) Rights of Transferee of a Partner's interest (Section 29): A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Hence, here Mr. Vikas, the transferee in M/S ABC Associates, cannot inspect the books of the firm and the contention of the other partners is right that Mr. Vikas cannot challenge the books of accounts.

17 - Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.

In the light of the Indian Partnership Act, 1932, explain:

(i) To what extent X will be liable if he failed to give public notice after attaining majority?

(ii) Can Mr. L recover his debt from X? RTP, Dec2023, RTP, Dec2020, 4)b)6m, Dec2019

Ans - As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.

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

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

(A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.

(ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

16 - What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932? 6)b)4m, June2023

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

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

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

RTP, June 2023

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

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

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

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

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

- i) Can Mr. Naresh validly transfer his interest in the firm by way of sale?**
 - ii) What would be the rights of the transferee (Mr. Akash) in case Mr. Naresh wants to retire from the firm after a period of 6 months from the date of transfer?**
- 4)b)6m,MTP2,June2023, 4)b)6m,MTP2,Dec2022, 4)b)6m,MTP1,June2022, 4)b)6m,June2021**

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

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

2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

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

- i) Yes, Mr. Naresh can validly transfer his interest in the firm by way of sale.**
- ii) On the retirement of the transferring partner (Mr. Naresh), the transferee (Mr. Akash) will be entitled, against the remaining partners:**
 - a) to receive the share of the assets of the firm to which the transferring partner was entitled, and**

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

So, in this case on Mr. Naresh's retirement, Mr. Akash would be entitled to receive the value of Mr. Naresh's share to the extent of ` 6 crore in the firm's assets.

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

5)b)7m,MDTP2, 3)a)6m,Dec2022

OR

Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932.

3)a)ii)2m,Dec2020

Ans - Expulsion of partner and factors to be kept in mind:

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

- 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 bona fide interest of the business of the firm and shall be null and void.

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

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

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

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

RTP,Dec2022

OR

Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd. Explain with reasons:

(i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?

(ii) Against whom can the creditor obtain a decree for the recovery of the price?

RTP, June 2019

Ans - Liability of Partner in case of death

According to Section 35 of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. The estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. Machine was purchased but after that A and B become insolvent and the firm was unable to pay for machine.

On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C. Hence, the estate of C would not be liable for the dues of M/s LMN & Company.

OR

Partnership Liability: The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that 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. Therefore, considering the above provisions, the problem may be answered as follows:

(i) Ram's estate in this case will not be liable for the price of the Machinery purchased.

(ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them.

A suit for goods sold and delivered would not lie against the representative of the deceased partner.

11 - Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership? 3)a)i)4m,MTP1,Dec2022, RTP,June2021

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

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

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

However, Mr. B is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e. he cannot challenge the accounts.

10 - Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm. 1)c)ii)4m,MDTP2, 3)a)ii)4m,June2022

OR

A minor admitted to the benefits of a partnership firm is entitled to certain rights and may also have liabilities to third parties for the acts of the firm. Discuss the rights and liabilities (before attaining majority only) of the minor under the Indian Partnership Act, 1932. 1)c)6m,Jan2025

Ans - Minor as a partner:

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

Rights of a minor in a partnership firm:

- i) A minor partner has a right to his agreed share of the profits and of the firm.
- ii) He can 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.

OR

Ans - Rights are same, for liabilities before majority, refer Ans 32.

Q9 - M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

4)b)6m, June 2022

Ans - Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):

Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

In the instant case, Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.

ii) Rights of Transferee of a Partner's interest (Section 29):

A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to

inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Hence, here Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts.

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

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

Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

4)b)6m,MTP2,Dec2021

OR

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

4)b)6m,MTP1,June2021, 4)b)6m,MTP2,June2019, 4)b)6m,June2018

Ans - According to Section 33 of Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

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.

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

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

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

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

OR

If a partner is otherwise expelled, the expulsion is null and void. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

07 - A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm.

What will be your advice in case M was having knowledge about the agreement?

**4)b)6m,MTP2,June2021, 4)b)6m,MTP1,June2020, 4)b)6m,MTP1,June2019,
4)b)6m,MTP1,Dec2018**

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

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

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

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

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

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

06 - State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932:

i) Retirement of a partner

ii) Insolvency of a partner

RTP, Dec2019

Ans - (i) 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.

(ii) Insolvency of a partner (Section 34)

(1) The insolvent partner cannot be continued as a partner.

(2) He will be ceased to be a partner from the very date on which the order of adjudication is made.

(3) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

(4) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,

(5) Ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

05 - Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.

3)b)6m,MTP1,Dec2019

Ans - Implied authority of a partner

Yes, as per sections 19 and 22 of the Indian Partnership Act, 1932 unless otherwise provided in the partnership deed, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business and is done in a usual manner. Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

04 - What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?

3)a)i)2m, June 2019

Ans - Effect of notice to an acting partner of the firm (6 Marks)

According to Section 24 of the Indian Partnership Act, 1932, 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.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

03 - Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X. supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

3)b)ii)3m, Dec 2018

Ans - A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per section 28 of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Q2 - Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. RTP, Dec2018

Ans - It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:

- (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.

The test of good faith includes:

- (a) that the expulsion must be in the interest of the partnership;
- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

Q1 - A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

- (i) Whether the Firm's contention shall be tenable?
- (ii) What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware?

4)b)6m,MTP2,Dec2018, 4)b)6m,MTP1,June2018

Ans - The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act, 1932. The section provides that subject to the

provisions of Section 22 of the Act, 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' [Sub-Section (1) of section 19]. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

- (i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- (ii) In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm.

In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.



CA Nikesh Agrawal

CA Foundation May 2025

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Chapter: 4 - Indian Partnership Act, 1932

Unit - 3- Registration & Dissolution of a Firm

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

18 - "Dissolution of a partnership firm may occur by mutual agreement with the consent of the majority of partners, while compulsory dissolution requires an order from the court." Discuss this statement with reference to the relevant provisions of the Indian Partnership Act, 1932.

5)b)ii)3m, Jan2025

Ans - Dissolution by Agreement (Section 40 of the Indian Partnership Act, 1932):

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

Hence, the statement 'dissolution of a firm by the consent of the majority of the partners is not correct unless otherwise provided in a contract between them.'

(iii) 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.

Hence, the statement 'compulsory dissolution requires an order from the court' is not correct.

17 - State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932.

5)b)7m,MDTP10, 5)b)7m,MDTP8, 5)b)7m,MDTP3, 5)b)7m,MTP2,Jan2025, 5)b)7m,Sept2024, 5)b)7m,MTP2,June2024, 6)b)4m,June2022, RTP,June2020, 6)b)4m,Dec2018, RTP,Dec2018

Ans - 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:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
- (b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

(d) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:

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

(e) Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.

(f) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(g) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

- (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.

16 - When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. 5)b)7m,MDTP6, RTP,Sept2024, 5)c)MTP2,Sept2024, 6)b)4m,MTP1,June2023, 6)b)4m,MTP2,June2022, 6)b)4m,MTP1,Dec2021, 6)b)4m,MTP2,June2021, RTP,Dec2020, RTP,Dec2019, 6)b)4m,MTP1,June2019

Ans - Dissolution of Firm: The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The

particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved.

The partnership terminates as between each and every partner of the firm.

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

- a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- b) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- c) subject to agreement between the parties, on the happening of certain contingencies, such as:
 - (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
- d) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- e) by intervention of court in case of:
 - (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) willful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

15 - Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. 5)b)i)4m,MDTP5, 5)b)i)MTP1,Sept2024, 6)b)4m,Dec2023, 6)b)4m,MTP2,June2023, 6)b)4m,MTP2,Dec2022, 6)b)4m,MTP1,June2022, 6)b)4m,June2021, 6)b)4m,MTP1,Dec2018

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

- (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.

14 - The Indian Partnership Act does not make the registration of firms compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Still, there are some cases where non-registration of firm does not affect certain rights. Explain with reference to the provisions of the Indian Partnership Act, 1932. 1)c)6m,MDTP9, 5)b)7m,MDTP7, 1)c)6m,June2024, 6)c)4m,MTP1,June2020

Ans - The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

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

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

13 - P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business?

3)a)i)4m,MDTP9, 3)a)i)4m,MDTP8, 3)a)i)4m,MTP2,Jan2025, RTP,Jan2025,
3)a)i)4m,June2024

Ans - Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner / partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

12 - "Dissolution of partnership doesn't mean dissolution of firm". Do you agree with this statement? State any three situations where court can dissolve the partnership firm.

5)b)7m,MDTP9, 5)b)7m,June2024, 6)b)4m,Dec2019, 3)a)2m,June2018

Ans - Dissolution of partnership doesn't mean dissolution of firm. 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'.

Thus, the dissolution of firm means the discontinuation of the legal relation, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, the relationship between such a partner and other is dissolved, but the rest may decide to continue.

In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of

partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Important note: Different mode of presentation to an answer

Dissolution of partnership doesn't mean dissolution of firm. This statement can be proved with the help of some points of distinction between both of them, which are as follows:

Dissolution of Firm Vs. Dissolution of Partnership

| Basis of Difference | Dissolution of Firm | Dissolution of Partnership |
|----------------------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Continuation of business | It involves discontinuation of business in partnership. | It does not affect continuation of business. It involves only reconstitution of firm. |
| 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. |
| Order of court | A firm may be dissolved by the order of the court. | Dissolution of partnership is not ordered by the court. |
| Scope | It necessarily involves dissolution of partnership. | It may or may not involve dissolution of firm. |
| Final closure of the books | It involves final closure of books of the firm. | It does not involve final closure of the books of the firm. |

Dissolution By the Court (Section 44 of the Indian Partnership Act, 1932):

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

(a) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

(b) Permanent incapacity: When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

(c) Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of

the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

(d) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:

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

(e) Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any other partner.

(f) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(g) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

- (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.

11 - X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932? Rtp, June 2024, RTP, June 2023

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

In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

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

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

5)b)7m,MTP1,Jan2025, 3)a)6m,MTP1,Dec2023, 4)b)6m,Dec2022, 6)b)4m,MTP2,Dec2021, RTP,June2021, 6)b)4m,MTP1,June2021, 3)b)4m,Dec2020, 3)b)4m,MTP1,Dec2019, 6)b)4m,June2019, 3)b)4m,June2018

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

(i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But such a

person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

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

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

09 - Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932. **3)a)6m, June2023, RTP, June2019**

Ans - Application for Registration (Section 58 of the Indian Partnership Act, 1932): The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

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

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

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

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

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing.

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

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

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

RTP, Dec2022

Ans - Compulsory dissolution of a firm (Section 41)

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

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

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

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

In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co.

The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm.

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

4)b)6m,MTP1,Dec2022

Ans - Consequences of Non-registration of partnership firm (Section 69 of the Indian Partnership Act, 1932):

Non-registration of partnership gives rise to a number of disabilities. Though registration of firm is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Following are the consequences:

- a) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.
- b) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.
- c) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- d) Third-party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

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

06 - M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

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

RTP, June2022

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

a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.

b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.

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

Q5 - MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected?

RTP, Dec2021

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

a) by the adjudication of all the partners or of all the partners but one as insolvent, or

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

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

Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful.

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

04 - A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? RTP, June 2020. RTP, June 2018

Ans - Retirement / Death of Partner: Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

(i) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or

(ii) Interest at the rate of 6 per cent annum on the amount of his share in the property.

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A shall be entitled, at his option to:

(i) the 20% shares of profits (as per the partnership deed); or

(ii) interest at the rate of 6 per cent per annum on the amount of A's share in the property.

03 - P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable? RTP, June 2019

Ans - As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

(i) The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

(ii) the suit must be instituted by or on behalf of the firm which had been registered.

02 - Mr. A. Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ` 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.

Ans - Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) 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. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

01 - A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?

RTP, June 2018

Ans - As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the

Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (a) the suit must be instituted by or on behalf of the firm which had been registered;
- (b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms.

Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.



CA Nikesh Agrawal

CA Foundation May 2025

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