



HANDWRITTEN BOOK

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CHAPTER - 1

INDIAN REGULATORY FRAMEWORK

Why Indian Regulatory Framework ??

Purpose of Indian Regulatory Framework is to provide set of Uniform Rules and Regulations that will govern conduct of people interacting with each other in Personal as well as Business Relationship

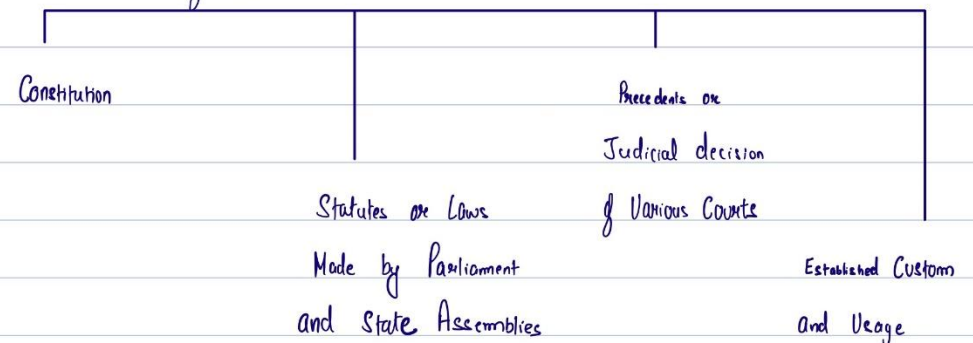
What is Law

Law is set of [Obligation / Duties] Imposed by Government for securing Welfare and Providing Justice to Society

Sources of Law

Main Sources of Law

Main Sources of law are



Points to Remember.

- India is a Parliament democracy
- Constitution of India is basis and source of all laws
- We elect our Representatives to the Parliament and
Legislative Assemblies of Various State.
- These Representatives of People makes law in Parliament and
State Assemblies of Various State

Parliament is law
Making body

Law passed by Parliament
May apply throughout all or
portion of India

Law passed by State Legislatures
apply within borders of state
concerned

About Government of India Act, 1935

- Government of India Act, is precursor
for the Constitution of India.
- Government of India Act, 1935 was passed
by Parliament of United Kingdom
- It defines characteristics from Unitary to
Federal.

- In 1937, Federal Court was established and had the Jurisdiction of
Appellate, Original and Advisory.
- Powers of Appellate Jurisdiction Extended to Civil and Criminal Cases
Advisory Jurisdiction was Extended with Powers of Federal
Court to Advise Governor-General in Matter of public opinion.
- Federal Court operated 12 Years and heard Roughly 151 Cases.
- Federal Court was supplanted by India's Current Apex Court,
the Supreme Court of India.

Central Law vs State Law

- People who wrote the Constitution decided to law - Making Powers between Central Government and
Various State Government.
- Depending on the list in which it figures a Matter
would become the subject for Central Law or
State Law.

Indian Constitution has
3 lists

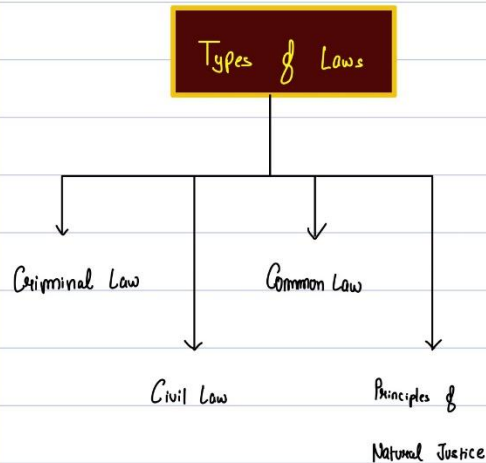
Central List	State List	Joint List
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Process of Making Law



- ➔ Law is Proposed in Parliament Called as **Bill**
- ➔ After Discussion and debate Law is Passed in Lok Sabha
- ➔ Then it has to be Passed in Rajya Sabha
- ➔ Then it has to obtain Assent of **President of India**
- ➔ Finally Law will be notified by Government in the publication Called as "**Official Gazette of India**"
- ➔ Once it is notified and effective it is called "**An Act of Parliament**"

Law will become Applicable from date Mentioned in notification
↓
as Effective date



VIDHYODAY

Criminal Law



Criminal Law is Concerned with Laws Pertaining to Violations of Rules of Law (or) Public Wrong and Punishment for Same

Criminal Law is Governed under

Indian Penal Code [and] Code of Criminal Procedures

It defines Crimes
its Nature and Punishment

Procedures
It defines Exhaustive
or Executing
the punishments of Crime

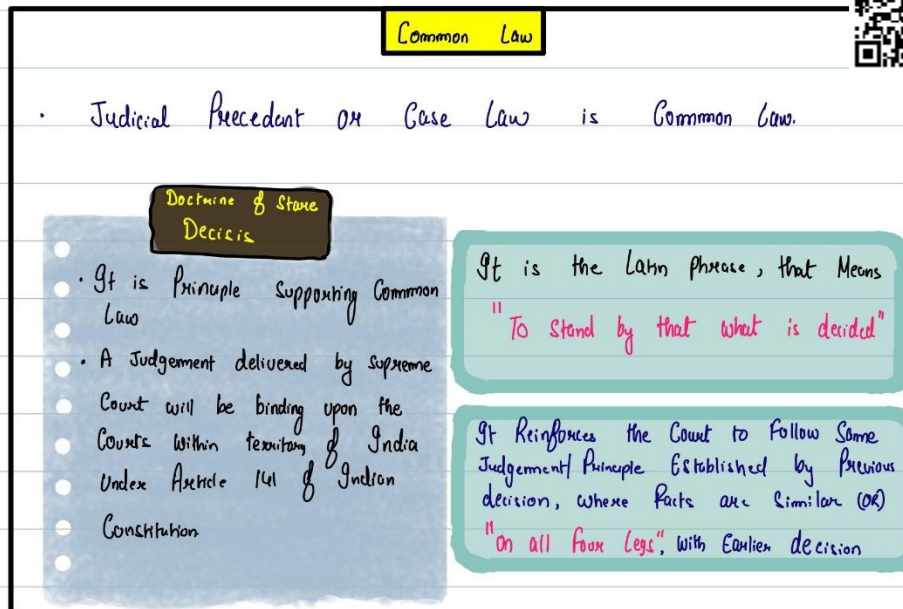
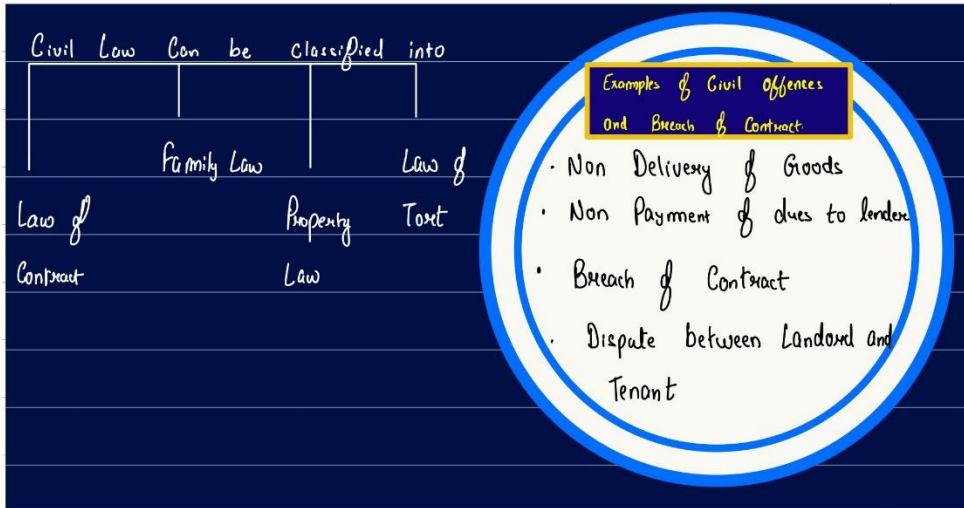
Examples of Criminal Offences are

- Murder
- Rape
- Theft
- Fraud
- Cheating
- Assault

Civil Law



- Civil Law Primarily Focuses on dispute Resolution rather than Punishment
- Act of Process and Administration of Civil Law are Governed by **Code of Civil Procedure [1908] [CPC]**
- Civil Court Enforce the Violation of Certain Rights and obligation through the Institution of Civil Suit



Principle of Natural Justice



- Natural Justice also known as *Jus Naturalis* deals, with certain Fundamentals of Justice Going beyond Written Law.

Nemo Juez in Causa Sua

It Means, No one should be Made Judge in own Cause and its a Rule Against Prejudice

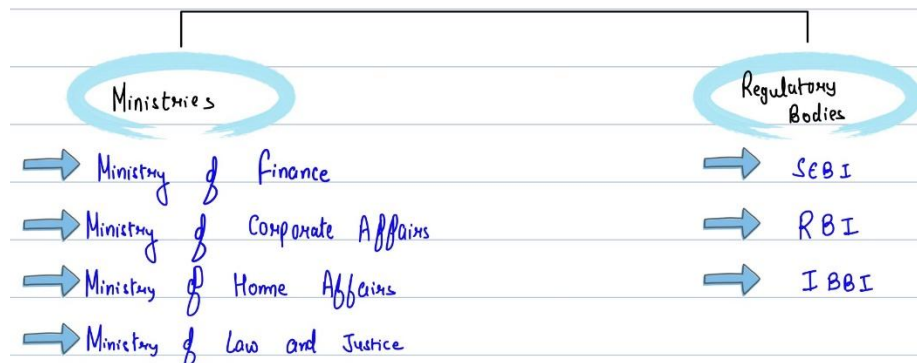
Audi Alteram Partem

- It Means, Hear the other Party or Give other Party a Fair Hearing.
- Reasoned decision are Rule of Natural Justice.

note to self:

A Judgement Can Overrule OR Alter a Common Law, but it Cannot Overrule or Change a Statute

Enforcing the Law





Ministry of Finance

It is the Ministry within Government of India Concerned with Economy of India, Serving as Treasury of India.

It Concerns itself with

- Taxation
- Financial Legislation
- Financial Institutions
- Capital Market
- Centre and State Finance
- Union Budget

Also known as
Vitta Mantxalaya



Which Finance Ministers
Presented, How Many Numbers
of Budgets ??

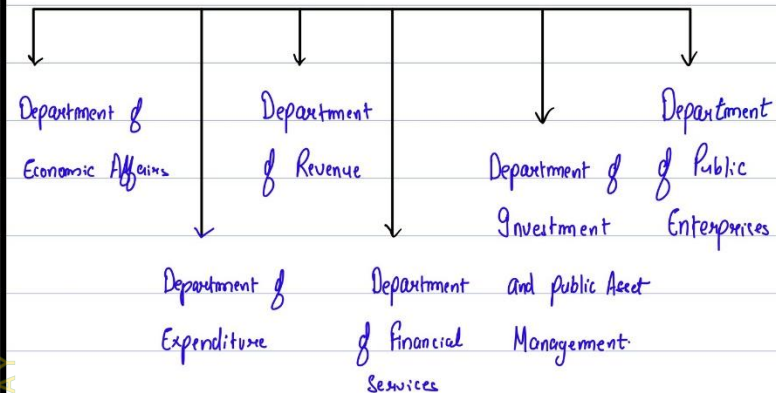
Shri Manmaji Desai → 10
Shri P. Chidambaram → 9
Shri Pranab Mukherjee → 8
Shri Yashwant Sinha → 8
Dr. Manmohan Singh → 6

Constitution of Ministry of Finance

Ministry of Finance is the Apex
Controlling Authority of Four
Central Services i.e.

- Indian Revenue Service
- Indian Audit and Accounts Service
- Indian Economic Service
- Indian Civil Accounts Service

Departments of Ministry of Finance



Ministry of Finance is also an apex Controlling Authority of Indian Cost and Management Accounts Service

Ministry of Corporate Affairs



It is an Indian Government Ministry

Primarily Concerned with Administration of

- Companies Act 2013
- Companies Act 1956
- LLP Act, 2008
- Insolvency and Bankruptcy Code

Ministry is Mostly Run by Civil Servants of the ICLs Cadre

The officers are elected through, the Civil Service examinations, Conducted by Union Public Service Commissions [UPSC]

Highest Post, directorate General of Corporate Affairs [DGCOA], is Fixed at apex Scale for the ICLs



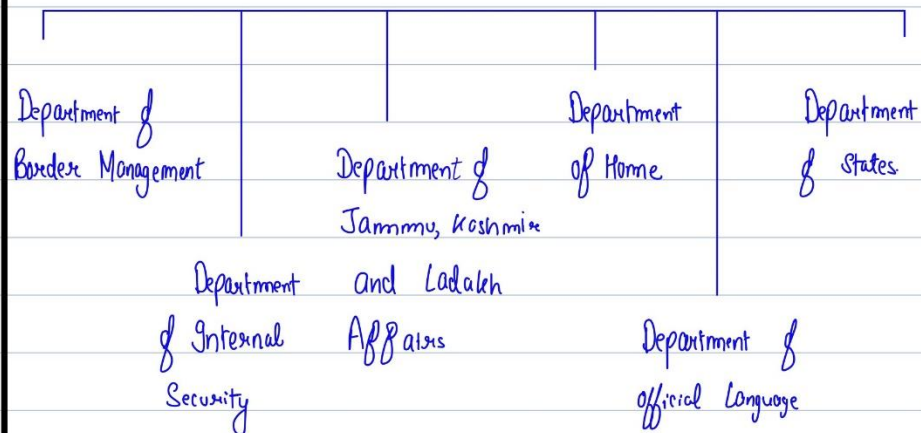
Ministry of Home Affairs

Also known as
Grih Mantvalaya

- It is Ministry of Government of India.
- It is Interior Ministry of India, it is Mainly Responsible for the Maintenance of Internal Security & Domestic Policy.

Home Ministry is Headed by,
Union Minister of Home Affairs

Departments of Ministry of Home Affairs

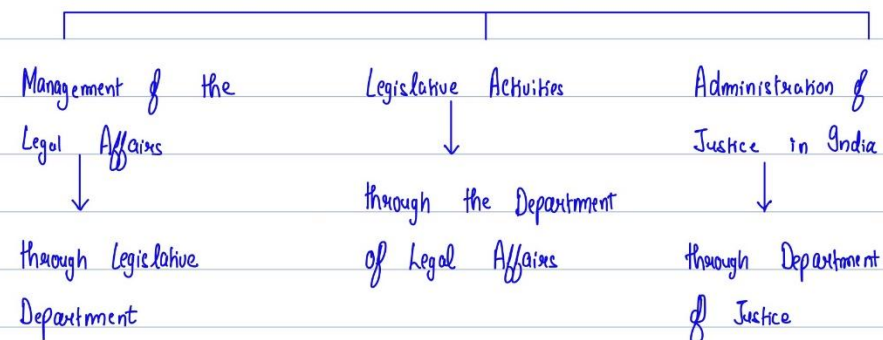


Department of Official Language



Ministry of Law and Justice

- In Government of India, it is Cabinet Ministry
- It deals with



Department of Legal
Affairs is concerned with
↓
Advisory Ministry of
Central Government

Legislative department
is concerned with
↓
Drafting of Principal
Legislation of Central
Government

Departments of Ministry of Law and Justice

Department
of Legal Affairs

Legislative
Department

Department of
Justice

Securities and Exchange Board of India



It is Regulatory body for Security and Commodity Market in India

It is Under
Ownership of Ministry of
Finance Under Government
of India

It was
established on
12/4/1988 as an
Executive body

Was Given Statutory Power
On 30/01/1992 through
SEBI Act, 1992

Reserve Bank of India

RBI is India's Central Bank and Regulatory body, Responsible for Regulation of Indian Banking System.



It is Under Ownership of [Ministry of Finance
Government of India]

It is Responsible for the Control, Securing, Maintaining Supply of an Indian Rupee

It also Manages Country's Main Payment Systems and Works to Promote its economic development

BRENM → • Bharatiya Reserve Bank Note Mudran, it is Specialized division of RBI through which it Prints and Mints Indian Currency Notes
• There are two Currency Printing Press in [Nashik [Western India]
Dewas [Central India]

National Payment Corporation of India

It is specialised division to regulate the Payment and Settlements in India

Deposit Insurance and Credit Guarantee Corpn.

Division of RBI for Providing Insurance of deposits and Guaranteeing of Credit facility to all Indian Banks



Insolvency and Bankruptcy Board of India

- It is Regulator for overseeing Insolvency Proceedings and Entities

like

- Insolvency Professional Agencies [IPA]
- Insolvency Professionals [IP]
- Information Utilities in India [IU]

Established on
01st October 2016

- It was Given Statutory Powers through Insolvency Bankruptcy Code which was Passed by Lok Sabha on 05th May 2016

It Covers

- Individuals
- Companies
- LLP
- Partnership



- It Attempts to simplify the Process of Insolvency and Bankruptcy Proceedings

- It handles Cases using two Tribunal

National Company
Law Tribunal

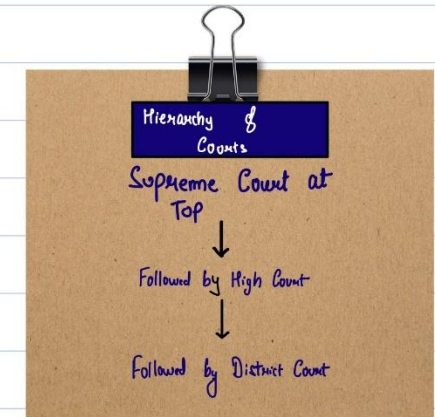
Debt Recovery Tribunal

Structure of Indian Judicial System

- When there is dispute between Citizens
OR
Between Citizens and Government these disputes are Resolved by Judiciary

Functions of Judiciary Systems

- Regulation of Interpretation of Acts and Codes
- Dispute Resolution
- Promotion of Fairness Among Citizens of Land.



About Court Decisions

Decision of High Court are only binding in Respective State but are only persuasive in other States

Decision of Supreme Court are binding on all High Courts under Article 141 of Indian Constitution

Decision of Supreme Court is the final Word on Matters

Supreme Court



Supreme Court
Established on
26/01/1950

- Apex Body of Judiciary
- Chief Justice of India is the highest Authority Appointed Under Article 126

Principle Bench of Supreme Court Consists of 7 Members, including Chief Justice of India



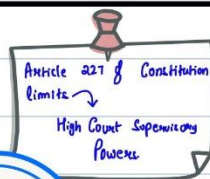
- Presently Number have Increased to 34 including Chief Justice of India due to rise in No. of Cases.

- An Individual Can seek Relief in Supreme Court by filing a Writ Petition under Article 32



High Court

- Highest Court of Appeal in Each State and Union Territory is High Court.



Oldest High Court is Calcutta High Court Established on 02/07/1862

High Court have Appellate

- Original Jurisdiction
- Supervisory Jurisdiction

In India there are 25 High Courts
↓
One for each state and Union territory.

Six States share Single High Court

note to self:

An Individual Can seek Remedies Against Violation of Fundamental Rights in High Courts by filing writ under Article 226

District Court

- District Courts are below High Courts

District Court Judge deals with Civil Law Matters ie

- Contractual Disputes
- Claim for Damages etc.

Court of Session deals with Criminal Matters.

- Under Pecuniary Jurisdiction, Civil Judge can try suits valuing not more than ₹ 2 Crore

- Court Get territorial Jurisdiction based on Areas Covered by them

- Cases are decided based on
 - Local limits within which Parties reside
 - Situation of Property Under dispute

Jurisdiction Means Power to Control.



Metropolitan Court:




• Metropolitan Courts are established in Metropolitan Cities in Consultation with High Courts



Metropolitan Courts are opened in the Cities where population is 10 Lakhs or More

Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate








Metropolitan Magistrate has powers as the Court of Magistrate of First Class.





Q1.	What is Law?	
Ans:	Law is a set of obligations and duties imposed by the government for securing welfare and Providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.	SPQ
Q2.	What are the sources of Law?	
Ans:	The main sources of law in India are the <ul style="list-style-type: none"> Constitution, The statutes or laws made by Parliament and State Assemblies, Precedents or the Judicial Decisions of various Courts and in some cases, established Customs and Usages. 	SPQ
Q3.	What is the process of making Law?	
Ans:	Process of making Law <ul style="list-style-type: none"> Law is proposed in parliament it is called a Bill. After discussion and debate, the law is passed in Lok Sabha. Thereafter, it has to be passed in Rajya Sabha. It then has to obtain the assent of the President of India. Finally, the law will be notified by the Government in the publication called the Official Gazette of India. The law will become applicable from the date mentioned in the notification as the effective date. Once it is notified and effective, it is called an Act of Parliament. 	SPQ




Q4.	To whom Law making power has been given by Constitution of India?	
ANS:	People who wrote the Constitution of India decided to divide the Law making power between: Central Government and State Government	SPQ
Q5.	Classify law in Indian Legal system?	
ANS:	<div> <div>CRIMINAL LAW</div> <ul style="list-style-type: none"> Criminal law is concerned with laws pertaining to violations of Rules of law or Public wrong and punishment for same It is governed by Indian Penal Code and Code of Criminal Procedures Examples: Murder, Theft, Fraud </div> <div> <div>CIVIL LAW</div> <ul style="list-style-type: none"> It focus on dispute resolution rather than punishment It is governed by Code of Civil Procedure It is classified into : Law of Contract, Family Law, Property Law, Law of Tort </div> <div> <div>COMMON LAW</div> <ul style="list-style-type: none"> Judicial Precedent or Case Law is Common Law Doctrine of Stare Decisis: "To stand by that which is decided" It reinforces the court to follow same judgement/principle established by previous decisions , where facts are similar. </div> <div> <div>PRINCIPLES OF NATURAL JUSTICE</div> <ul style="list-style-type: none"> Natural Justice also know as Jus Naturals deals with certain fundamentals of justice going beyond written law. Nemo Judex in causa sua : no one should be made judge in own case and its a rule against prejudice Audi Alteram Partem: hear the other party or give other party a fair hearing </div>	SPQ

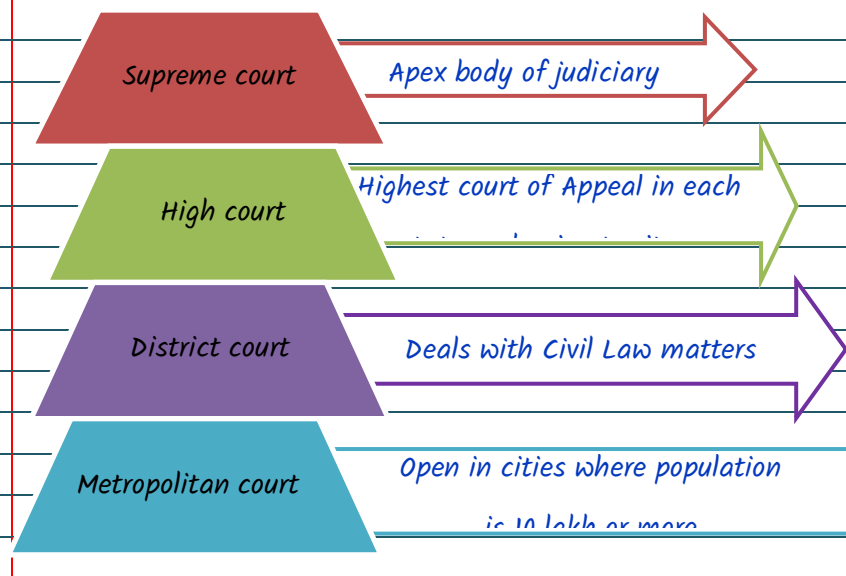


Q6.	Name the regulatory bodies enforcing the Law in India?	
ANS:	The regulatory bodies enforcing the Law in India are:	
	1. Ministry of Finance	
	2. Ministry of corporate Affairs (MCA)	
	3. Ministry of home affairs	
	4. Securities Exchange Board of India (SEBI)	
	5. Reserve Bank of India (RBI)	
	6. Insolvency and Bankruptcy Board (IBBI)	
	7. Ministry of Law and Justice	
		SPQ
Q7.	What are the primary responsibilities and functions of a Ministry of Finance as outlined in a country's constitution?	
Ans:	The Ministry of Finance (VittaMantralaya) is a Ministry within the Government of India concerned With The Economy Of India, serving As The Treasury Of India. It concerns itself With taxation, financial legislation, financial institutions, capital markets, central and state finances, and the Union Budget. One of the important functions of the Finance Ministry is the presentation of the Union Budget.	
		SPQ
Q8.	What specific departments or divisions fall under the purview of the Ministry of Finance as established by the constitution?	
Ans:	Departments under the Ministry of Finance-	
	a) Department of Economic Affairs	
	b) Department of Expenditure	
	c) Department of Revenue	
	d) Department of Financial Services	
	e) Department of Investment and Public Asset Management	
	f) Department of Public Enterprises	
		SPQ

Q9.	Ministry of Corporate affairs administer which acts and by whom it is run?	
Ans:	Ministry of corporate affairs	
	• It is an Indian Government Ministry.	
	• primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.	
	• Responsible mainly for the regulation of Indian enterprises in the industrial and services sector.	
	• The Ministry is mostly run by civil servants of the ICL Scadre.	
	• These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.	
	• The highest post, Director General of Corporate Affairs (DGCOA), is fixed at Apex Scale for the ICLS.	
		SPQ
Q10.	What specific departments or divisions fall under the purview of the Ministry of Home affairs?	
Ans:	Ministry of Home Affairs (GṛhaMantralaya)	
	• Is a ministry of the Government of India.	
	• As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.	
	• The Home Ministry is headed by Union Minister of Home Affairs.	
	Departments of Ministry of Home Affairs	
	a) Department of Border Management	
	b) Department of Internal Security	
	c) Department of Home	
	d) Department of Official Language	
	e) Department of States	
	f) Department of Jammu, Kashmir and Ladakh Affairs	
		SPQ

Q11.	Can you provide an overview of the Ministry of Law and Justice's mandate and its scope of operations based on constitutional provisions?	
Ans:	<u>Ministry of Law and Justice</u>	
	<ul style="list-style-type: none"> In the Government of India is a Cabinet Ministry deals with the <ul style="list-style-type: none"> ➤ Management of the legal affairs, through the Legislative Department ➤ Legislative activities through the Department of Legal Affairs ➤ Administration of justice in India through the Department of Justice 	
	<u>Departments of Ministry of Law and Justice</u>	
	<ul style="list-style-type: none"> Department of Legal Affairs Legislative Department Department of Justice 	
Q12.	Can you provide an overview of the RBI's mandate and its scope of operations based on constitutional provisions?	
ANS:	<u>Reserve Bank of India</u>	
	<ul style="list-style-type: none"> It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system. It is under the ownership of Ministry of Finance, Government of India. <ul style="list-style-type: none"> It is responsible for the control, issue and maintaining supply of the Indian rupee. It also manages the country's main payment systems and works to promote its economic development. Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialized division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India). 	

Q13.	Can you provide an overview of IBBI's mandate and its scope of operations based on constitutional provisions?	
ANS:	<u>Insolvency and Bankruptcy Board of India (IBBI)-</u>	
	<ul style="list-style-type: none"> It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India. It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016. It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country. It attempts to simplify the process of insolvency and bankruptcy proceedings. It handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal. 	
Q14.	How is the Indian judiciary organized at different levels, and what are the key components of this structure?	
ANS:	When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary. <u>The functions of judiciary system of India are:</u>	
	<ul style="list-style-type: none"> Regulation of the interpretation of the Acts and Codes, Dispute Resolution, Promotion of fairness among the citizens of the land. 	
	In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and District Courts.	



SPQ

VIDHYODAY
VIDHYA KA UDAY

SPACE FOR NOTES

CHAPTER - 2

THE INDIAN PARTNERSHIP ACT, 1932

UNIT - I

GENERAL NATURE OF PARTNERSHIP

Definitions



Partnership

➡ Partnership is the Relation between persons who have Agreed to share the profits of business

↓
"Carried on by all ~~low~~ any of them Acting for all"

Partners, Firm and Firm Name



➡ Persons who have entered into partnership with one another are called Individually "Partners" and Collectively "A Firm"

➡ Name under which their business is carried on is called the "Firm Name".

Elements of Partnership

The Definition of Partnership
Contains the following
Five Elements
↓

which Must Co-Exist
before a partnership
Can Come into existence

Partnership is an
association of two (or)
More Persons

The Partnership Must
be a result of an
Agreement entered into
by all Person Concerned

Partnership is
Organised to Carry
on some business

The Agreement Must
be to share the
Profits of business

The business Must
be Carried on by all
(or) any of them
Acting for all.

Association of Two (or) More Persons



👉 Partnership is an Association of Two (or) More Persons

- Only Person Recognised by law Can enter into an Agreement of Partnership

Can a Firm be Partner in Firm?

Firm is not Person
Recognised in the Eyes of
Law
→ Hence Cannot be Partner

Can Minor be Partner??

Minor Cannot be a Partner
in a firm, but with
Consent of all the Partner
↓
May be Admitted to
Benefits of Partnership.

Maximum No. of Partner.

- Partnership Act is Silent about Maximum No. of Partner.
- Section 464 of Companies Act 2013, has put a limit of 50 Partners in any Association/Firm.

AGREEMENT



➡ Partnership Must be the Result of an Agreement between two (or) More Person.

- Agreement Must be entered into by all the Persons Concerned
- Nature of Partnership is Voluntary and Contractual.
- Partnership Agreement May be Express (or) Implied.
- The Agreement May be Implied, from Act done by Partners and from a Consistent Course of Conduct being followed
→ showing Mutual Understanding between them.

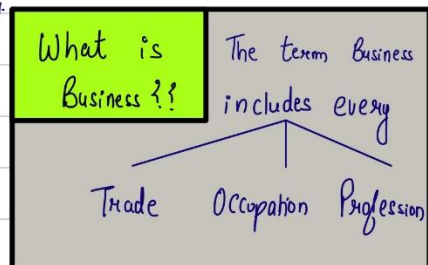
- It May be

Oral (or)
in Writing



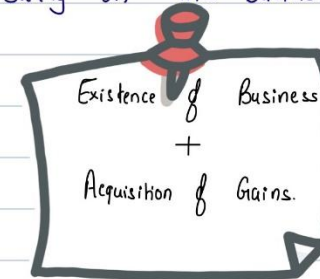
Business.

- There Must Exist a business
- Existence of Business is essential



• The Motive of Business is the "Acquisition of Gains", which leads to Formation of Partnership.

- There can be no partnership when there is no Intention to Carry on the business and to share profit



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 profits of business

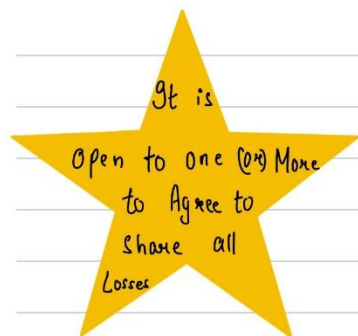
Points to Remember

① Partners Must Agree to share profits in any Manner they choose

② Agreement to share losses is not essential Element.

How to share Losses??

Unless otherwise Agreed, losses Must be borne in Profit sharing Ratio.



Example → Coowners who share Amongst themselves, then Rent derived from piece of land are not partners because there does not Exist any Business

note to self:

- No Charitable Institution (or) Club May be floated in Partnership
- A Joint stock Company May be floated for Non-Economic Purpose.

Business Carried on by All (or) Any of them Acting for All

Cardinal
Principle of the
Partnership Law

The business Must be Carried on by all the Partners (OR) by anyone or More of the partner Acting for all.

In other Words, there should be a binding Contract of Mutual Agency between the partners

note to self:

- True test of Partnership is Mutual Agency
→ Rather than sharing of Profit.
- If the Element of Mutual Agency is Absent there will be no Partnership.

Points to be Remembered.

- An act of one partner in the Course of the business of the firm is in fact an Act of all the partners
- Each Partner Carrying on the business is
→ Principal as well as Agent for all other partners.
- He is an Agent in so far as he can bind the other partners by his Acts and he is principal to the extent that he is bound by
→ the Act of other partners.

KD Kamath and Co.



👉 The Supreme Court has held that the two Essential Conditions are :-

- There should be an Agreement to share Profits as well as Losses of Business.
- The business Must be Carried on by All (OR) any of them Acting for all.
→ within the Meaning of definition of "Partnership"

Destructive & Theory of Partnership

The Fact that Exclusive Control and Management is vested in one partner (or) that only one partner can operate Bank A/c (or) borrow on behalf of firm are not "Destructive of theory of Partnership"

→ Provided two Essential Conditions Mentioned Earlier are Satisfied.

Partnership Agreement is also known as
↓
"Partnership Deed"

True Test of Partnership

Mode of Determining Existence of Partnership [Section 5]



👉 In Determining whether a Group of Person is (or) is Not a firm } Regard shall be had to the Real Relation between the Parties, as shown by all Relevant Facts taken together.

OR

Whether a Person is (or) Not a firm

👉 For Determining the Existence of Partnership, it Must be Proved

There Must be an Agreement between all the Persons Concerned	+	The Agreement was to share the Profits of a business	+	The Business was Carried on by all (or) any of them acting for all.
--	---	--	---	---

Agreement



👉 Partnership is Created by Agreement and Not Status [Section-5]

- In Particular, the Members of HUF Carrying on family business as such (or) Burmese Buddhist husband and Wife Carrying on business as such are not Partners in such business.

Sharing of Profit



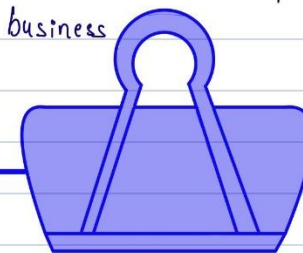
➡ The sharing of Profit (or) Gross Returns arising from Property by person holding a Joint (or) Common Interest in that property does not of Itself Make such Persons Partners.

➡ The Receipt by a person of share of Profits of business (or) of a payment Contingent upon the Earnings of Profits (or) Varying with the Profits earned by business

does not Itself Make him partner with the persons Carrying on the business and in particular, the Receipt of such share (or) payment

- By a Lender of Money to Persons engaged (or) About to engage in any business
- By a servant / Agent as Remuneration.
- By a widow (or) child of deceased partner as Annuity.

- By a Previous owner (or) Part owner of business as
→ Consideration for sale of Goodwill / Shares then of
does not Itself Make the Receiver a partner with Person Carrying on the business



Sharing of Profit is an essential element to constitute Partnership

But

It is only **Prima Facie** evidence and not **Conclusive Evidence**

DON'T FORGET

Point to Remember	➡ The sharing of Profits (or) Gross Return Accruing from property by persons, holding Joint (or) Common Interest in property would not by Itself Make such persons partner.
-------------------	---

Although the Right to participate in profit is a strong test of partnership and there may be cases where, upon a simple participation in profits, there is partnership
 → Yet whether the relation does or does not exist must depend upon
 → "the whole Contract between Parties"

When there is Express Agreement between Partners to share the profit of business and the business is carried on by all or any of them acting for all
 ↓

there will be no difficulty in applicability of Section-4 in determining the Existence of Partnership.

When to Refer Section 6??

☞ When either is no specific Agreement
 (OR)
 the Agreement is such as does not specifically speak of Partnership

☞ In such Case for testing the Existence of Partnership Relation, Section 6 has to be referred.

According to Section 6, regard must be had to, the Real Intention between the parties as shown by all Relevant facts taken together.

☞ Cumulative effect of all Relevant effects such as

- Written or Verbal Agreement
 - Real Intention
 - Conduct of Parties
 - Other Surrounding Circumstances
- } are to be considered while deciding Relationship between the parties and Ascertain the Existence of Partnership.

Agency.



☞ Existence of Mutual Agency is Cardinal Principle of Partnership Law.

- Each Partner carrying on the business is the Principal as well Agent of other partners
- 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 constituted a Group formed
 → with a view to earn profits by running a business, a Partnership may be deemed to exist.



Santi Ranjan Das Gupta v/s Dargan Murzammull
[Supreme Court]

In this Case Law following factors weighed upon Supreme Court to reach the Conclusion that there is no partnership between the parties

- Parties have not retained any Records of Terms and Conditions of Partnership
- Partnership business has Maintained no Accounts of its own, which would be open for Inspection to both the parties.
- No Account of Partnership was opened with any Bank.
- No Written intimation was Conveyed to Deputy Director of Procurement with Respect to Newly Created Partnership

Kinds of Partnership

With Regard to
Duration I

With Regard to
Extent of the business II

Partnership
at Will
I (a)

Partnership for
Fixed Period
I (b)

Particular
Partnership
II (a)

General
Partnership
II (b)

I (a) Partnership at Will [Section 7]

Partnership at will is partnership when

No Fixed Period has been Agreed upon the Duration of Partnership

And

Time is no provision Made as to determination of the partnership.

DON'T FORGET

Where a partnership entered into for fixed term, after expiry of such term, it is treated as Partnership at will



note to self:

A Partnership at will May be dissolved by any partner by giving Notice in Writing to all other partners of his Intention to dissolve the same

I(b) Partnership For Fixed Period



☞ Where a provision is Made by Contract
↳ for duration of Partnership, the partnership is called "Partnership For Fixed Period".

- It is a partnership Created for a particular Period of time
- Such Partnership Comes to an end on the Expiry of the Fixed Period.

II(a) Particular Partnership



☞ A Partnership May be Organised for

↓
"Prosecution of Single Adventure as well as for Conduct of a Continuous business."

• When a person becomes a partner with another person in any particular Adventure (or)
Undertaking } the Partnership is called "Particular Partnership"

note to self:

This partnership is dissolved by Completion of Adventure (or) Undertaking.

II(b) General Partnership



☞ When a partnership is Constituted with Respect to the business in General, it is called General Partnership.


Partnership Deed




☞ Partnership is a Result of an Agreement.

- No Particular formalities are Required for an Agreement of Partnership.
- It May be in Writing (or) Formed Verbally. But it is desirable to have partnership Agreement in Writing to avoid disputes.

What is Partnership Deed

 The Document in Writing Containing the Various terms & Conditions as to Relation of partner to each other
 ↓
 is called "Partnership Deed"

Partnership Deed be stamped According to Provisions of
 ↓
 "Stamp Act, 1893"

 Where the Partnership Comprises Immovable Property, the Instrument of partnership

- ├─ Must be in writing
- ├─ Stamped
- └─ Registered under Registration Act.

Partnership Deed May Contain the Following Information

1. Name of Partnership Firm.
2. Name of all the partners.
3. Nature and Place of the business of the Firm.

4. Date of Commencement of Partnership.

5. Duration of the Partnership

6. Capital Contribution of each Partner

7. Profit sharing Ratio of the Partner

8. Rates of

- ├─ Interest on Capital
- ├─ Interest on Drawings
- └─ Interest on Loan.

9. Admission and Retirement of Partner.

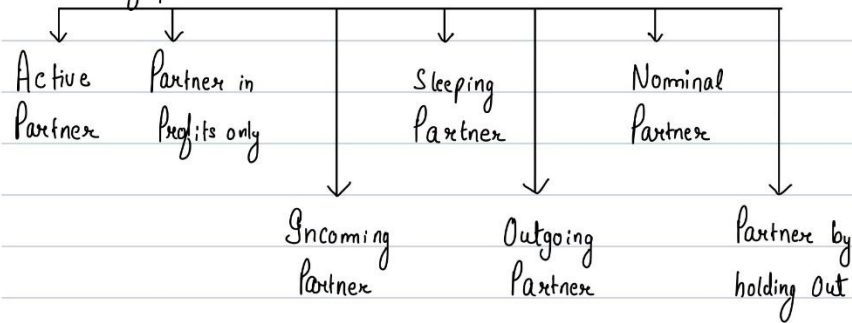
10. Provisions for settlement of Accounts in the Case of dissolution of the firm.

11. Provisions for Salaries (or) Commissions, payable to the partners [if any]

12. Provisions for Expulsions of a partner in case of Breach of duty (or) Fraud.

Types of Partners

Based on Extent of Liability, different classes of partner are



Way to Learn

A → Amazon
P → Prime
I → Is

S → Short
O → of
N → New

H → Howare
S → Series

Active Partner

It is a person who has become a partner by Agreement and who actively participates in the conduct of the partnership.

- Also called as Actual Partner OR Ostensible Partner

Points to Remember.

- He Acts as an Agent of other partners for all Acts done in Ordinary Course of Business.
- In the event of Retirement of Active Partner → he Must give public Notice in order to Absolve himself of liabilities for acts of other partners done after his Retirement.

Partners in Profit only

A Partner who is entitled to share the profits only without being liable for losses is known as "Partners in Profit only"

- He is also liable to the third parties for all Acts of Profits only.

Incoming Partners

A Person who is admitted as a partner into an already Existing firm, with Consent of all Existing Partner is called Incoming Partner.

- Such Partner is not liable for any Act of the firm done before his Admission as a Partner.

Sleeping Partner



It is a person

- who is partner by Agreement and
- who does not Actively take part in the conduct of the partnership business



• Also called as Dormant Partner

• They share Profits and Losses and are liable to third parties for all Acts of the firm.

Sleeping Partners
are not required to
give public notice of
their retirement

Outgoing Partner



A Partner who leaves a firm in which

- the rest of partners continue to carry on business is called a
- Retiring Partner
- Outgoing Partner

• Such Partner Remains liable to third parties for all Acts of Firm, Until Public Notice is given of his Retirement.

Nominal Partner



A Person who lends his Name to the Firm

↳ without having a Real Interest in it, is called a Nominal Partner.

Points to Remember

① He is not entitled to share the Profits of the firm.

② Neither he Invest in the Firm nor takes part in Conduct of the firm

③ He is liable to third Parties for all Acts of the firm.

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

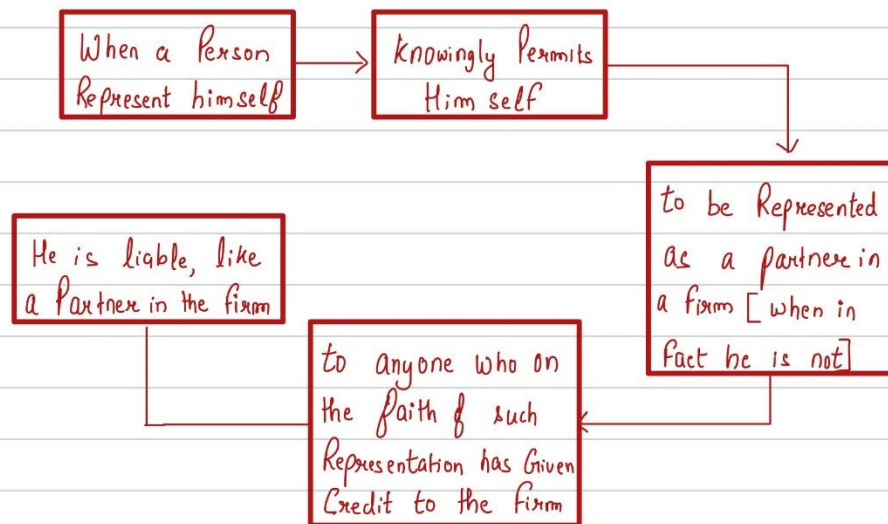


Allows others to do it

partner

- Then in above Case, he is then stopped from denying the character he has Assumed
 ↳ and upon the faith of which Creditors May be presumed to have Acted.

Detailed Analysis



Sub Partner



- Partners agree to share, his share of profits in Partnership firm with an Outsider, such an Outsider is called Sub Partner
- Neither has Rights Against the firm/ Nor Liab for debts of firm

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 Represent him as a partner.

The Result in both the Cases is Identical

Partners



Difference between Partnership and Joint Stock Company

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



		they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
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.

Difference between Partnership and Club

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



Difference between Partnership and Hindu Undivided Family

<i>Basis</i>	<i>Partnership</i>	<i>Hindu Undivided Family</i>
Mode of creation	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
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 coparceners are liable only to the extent of their share in the profits of the family business.
Calling for accounts and 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.


Difference between Partnership and Co-ownership


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

Difference between Partnership and Association


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

Q1.	Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? Also, give list of information to be included in partnership deed?	
ANS:	Ms. Lucy while drafting partnership deed must take care of following important points:	
	<ul style="list-style-type: none"> 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 <u>partnership deed</u>. 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. 	
	<u>List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:</u>	
	<ul style="list-style-type: none"> 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. 	

	<ul style="list-style-type: none"> Provisions for expulsion of a partner in case of gross breach of duty or fraud. 	
	Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.	
		ICAI STUDY MAT.
Q2.	What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.	
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:	
	<ul style="list-style-type: none"> (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. 	
		MTP / MAY-2018

Q3.	"Sharing in the profits is not conclusive evidence in the creation of partnership". Comment.	
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.	

MTP / NOV-1995

Q4.	What is Particular Partnership as per Indian Partnership Act, 1932?	
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.	
		JAN - 2021
		
Q5.	Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.	
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	
		MTP
	ELEMENTS OF PARTNERSHIP The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:	
	1. Association of two or more persons: Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot	



	be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership. The Partnership Act is silent about the maximum number of partners but Section 464 of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.		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 partners.
2.	Agreement: It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.		
3.	Business: In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.		
4.	Agreement to share profits: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.		
5.	Business carried on by all or any of them acting for all: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership		
		Q6.	
		(i)	What do you mean by Partnership for a fixed period as per the Indian Partnership Act, 1932?
		(ii)	Can a minor become a partner in a partnership firm? Justify your answer
		ANS:	
		(i)	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.
		(ii)	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.
		Q7.	Explain the provisions relating to the creation of Partnership Act, 1932
		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



SPQ



RTP



	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.
	11. As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time
	RTP
Q8.	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. Advice Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932
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
	RTP/ICAI STUDY MAT
Q9.	Explain the following kinds of partnership under the Indian Partnership Act, 1932:
(i)	Partnership at will
(ii)	Particular partnership
ANS:	
(i)	Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, 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.
	These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will. Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will. A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.
(ii)	Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business.

NOV - 2020



	Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called <i>particular partnership</i> . A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking. 17. "Partner indeed virtually embraces the character of both a principal and an agent"	
Q10.	"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.	
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.	
Q11.	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?	
ANS:	Nominal Partner is a partner only in name. The person 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.	
		

37



General Duties of Partners

Duty 1 ▶ The Partner should Carry business of the firm to Greatest Common Advantages and they should Render to any partner or his legal Representative Full Information of all things affecting the firm

Duty 2 ▶ A Partner Must observe the utmost Good Faith in his dealings with other partner.

Duty 3 ▶ All the partners are bound to Render Accounts to each other

Duty to Indemnify for Loss Caused by fraud [Section-10]



Where some of Accounts are kept by any of them
↓
Prima Facie he would be proper person to Explain and Give Full Information.

☞ The Partner Committing the fraud in Conduct of business of the firm, Must Make Good the loss sustained by the firm by his Misconduct and the Amount so brought in the partnership, should be divided between the Partner.

CHAPTER - 2

THE INDIAN PARTNERSHIP ACT, 1932

UNIT - 2

RELATIONS OF PARTNERS

Determination of Right and Duties of Partners by Contract between the Partners [Section - 11]

According to Section 11(1), subject to provisions of the Act the Mutual Rights and duties of Partners of Firm May be determined by the Contract between the Partners.



Such Contract May be $\left[\begin{array}{l} \text{Express} \\ \text{Implied} \end{array} \right]$ by Course of dealing

Such Contract May be Varied by Consent of all the Partners

The Contract between the Partners May Provide that a partner shall not carry on any business other than that of firm while he is partner.

Conduct of Business [Section - 12]



Right to take Part in Conduct of Business [Section - 12(1)]

Partnership business is business of Partners and their Management Powers are Generally Co-Extensive

Every Partner has the Right to take part in business of the firm.

Right to be Consulted [Section - 12(c)]



Where Any difference arises between the Partners, with regard to business of the firm

it shall be determined by the Views of Majority of them and Every Partner has the Right to Express his opinion before the Matter is decided

Majority Must Act in Good Faith and Every Partner Must be Consulted as far as practicable.

No change in Nature of business of the firm can be Made, without Consent of all the Partners

It may be mentioned that the aforesaid majority rule will not apply, when there is change in nature of firm itself

In such case Unanimous Consent of Partner is needed

Right of Access to Books [Section - 12(d)]

Every Partner whether Active or Sleeping is entitled to



- Access to any of Books of Firm
- Inspect books of firm
- Take Copy there of.

Right of Legal Heirs/ Representatives/ Duly Authorised Agents [Section 12(e)]

- In the Event of Death of Partner
 - His heirs
 - Legal Representative
 - Duly Authorised Agents
 Shall have Right to Inspect/ Take Copies of/ Inspect Books of Accounts.

Mutual Rights and Liabilities [Section - 13]

Right to Remuneration [Section - 13 (a)]

- No Partner is Entitled to Receive any Remuneration in addition to his Share in the Profits of the firm for taking part in business of the firm.
- Above Rule Can be Varied by
 - An Express Agreement
 - By Course of Dealing

Right to share Profit [Section - 13 (b)]

- Partners are Entitled to

Equally in Profits Earned

Equally is loss Sustained by the firm.

- Amount of Partners Share Must be Ascertained by Enquiring whether there is any Agreement in that behalf between the partner.

There is no Connection between

Proportion in which they share Profits

and Proportion in which they have Contributed to Capital

Interest on Capital [Section-13(c)]

- following Elements Must be there before partner is Entitled to Interest on Capital

An Express Agreement

Trade Custom to that affect

Statutory Provision

Interest on Advance [Section - 13(d)]



- When Partner Make Advance to firm [in addition to Amount of Capital] ↓

in such a case the Partner can claim Interest thereon @ 6% p.a.

Right to be Indemnified [Section - 13(e)]



- Every Partner has the right to be Indemnified by the firm in respect of

(a) Payment Made and Liabilities Incurred by him in Ordinary Course and Proper Conduct of business of firm as well as in Performance of an Act in an Emergency of firm.

(b) For any loss if $\left\{ \begin{array}{l} \text{Payment} \\ \text{Liability} \\ \text{Act} \end{array} \right\}$ are such as Prudent Man would do in his own Case under Similar Circumstances

Right to Indemnify the Firm [Section - 13(f)]



A partner must Indemnify the firm for ↓

any loss caused to it by wilful neglect in Conduct of business of firm.





Partnership Property [Section - 14]

Property of Firm

- Property of firm is also referred as
 - Partnership Property
 - Partnership Assets
 - Joint Stock
 - Common Stock
 - Joint Estate
- All Property, Rights and Interests to which the firm [ie all partners] Collectively May be Entitled

Partnership Property in the Absence of Agreement:

- All Property, Right, Interest which partners May have brought into Common stock as their Contribution to Common business
- All Property, Right and Interest acquired/purchased by firm, in course of business of firm
- Goodwill of Business

To determine whether a Property is (or) not Property of firm Ultimately depend upon

Real Intention
Agreement of Partner

Application of Property of the firm [Section - 15]

- Property of firm shall be held and used for Exclusively for purpose of the firm.
- Particular Partner has just Proprietary Interest in Assets of the firm.

- Every partner of the firm has a Right to get his share of profit till the firm subsists

and

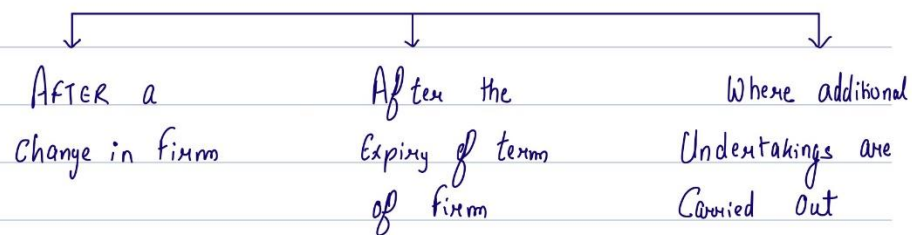
he has also the Right to see that all Assets of Partnership are applied to and used for purpose of Partnership business



Personal Profit Earned by Partners [Section -16]

- Where a partner derives any profit for himself from
 - Any Transaction of firm
 - From Use of Property
 - Business Connection of firm
 - Firm Name
 he must Account for that profit and pay it to the firm.
- Where a Partner carries on a competing business he must Account for and pay to the firm
 - All profits Made by him in that business

Rights and Duties of Partner After change in firm [Section -17]



(a) After a change in firm

- Where a change occurs in Constitution of a firm, the Mutual Rights and Duties of Partner in Reconstituted firm

↳ The Mutual Rights and Duties of the Partners in the Reconstituted firm remains the same as they were immediately before change

(b) After the Expiry of Term of the firm

- Where a firm is constituted for fixed term carry on business after expiry of firm

↳ The Mutual Rights and Duties of Partners remain the same as they were before the Expiry.

(c) Where Additional Undertakings are Carried out

- When a firm constituted to carry out one or more
 - Adventure
 - Undertakings
 but carries out other Adventure/Undertakings are the same in respect Original Adventure/Undertaking



Relation of Partners to third Parties

Partner to be an Agent of the Firm [Section-18]

- A Partner is Agent of the Firm for the purpose of business of the firm.
- The Partner Indeed Virtually Embraces the character of both
 - └ A Principal
 - └ An Agent
- So far Partner Acts for himself and his own Interest in Common Concern of Partnership, he May Properly be deemed a principal
 - ↳ and so far he Acts for his partners he May Properly be deemed as Agent.



Implied Authority of Partner as agent of the Firm [Section - 19]

- Section 19(1) and Section-22 deal with Implied Authority of Partner.

Meaning of Implied Authority

"An Authority of Partner to bind the Firm is called Implied Authority"

Act of Partner which is done to carry on, in the usual way, business of kind carried on by the firm, binds the firm provided that



Act is done in the firm Name



Any Manner Expressing or Implying an Intention to bind the firm.

Restriction of Implied Authority

- ① Act done Must Relate to Usual business of the firm
- ② Act is such as is done in normal Course of Conduct of business. Usual way of Carrying on the business will depend upon Nature and Circumstances of the Case [Section - 19 (1)]
- ③ Act to be done in the Name of the firm or in any other Manner Expressing or Implying an Intention to bind the firm.

Extension and Restriction of Partners Implied Authority [Section- 20]



• The Implied Authority of Partners May be Extended (or) Restricted by Contract between Partners.

• The Restriction Imposed on Implied Authority of Partners by Agreement shall be effective against a third party if

Third Party knows about Restrictions

and

Third party does not know that he is dealing with Partners in a firm.

Partners Authority in an Emergency [Section - 21]



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 a Man of Ordinary Prudence would do, in his own case, Acting Under Similar Circumstances and such Acts bind the firm.

EFFECT OF ADMISSIONS By Partners [Section-23]



• Partners as Agents of each other Can Make binding Admission but only in Relation to partnership transaction and in Ordinary Course of business.

• An Admission (or) Representation by Partners will not however bind the firm if his Authority on the point is limited and other party knows Restriction.



EFFECT OF NOTICE TO ACTING PARTNER [Section 24]

- Notice to Partner



Who habitually Acts in business of firm



On Matters Relating to the affairs of the firm



operates as notice to the firm except in case of fraud on firm committed by or with the consent of that partner.



• Notice to one is Equivalent to Notice to the rest of Partners of the firm,



Just as notice to an Agent is notice to his Principal

Points to Remember

- Notice Must be Actual and Not Constructive

It Must be Received by Working Partner and not sleeping Partner.

- It Must further relate to firm business, only then it would constitute Notice to the firm.

Liability to third Party

[Section 26 to Section-27]



Liability of a Partner for Acts of firm (Section-25)

- The Partners are Jointly and Severally Responsible to third party for Acts of the firm which come under their Express and Implied Authority.

Liability of the firm for Wrongful Acts of Partner [Section - 26]



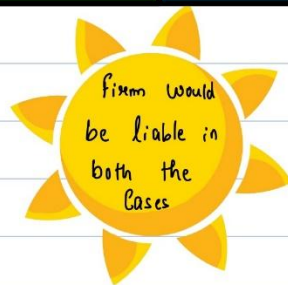
- The firm is liable to the same extent as the partner for any loss (or) injury caused to third party by wrongful Acts of Partner, if they are done by partner while Acting

→ In Ordinary Course of Business of the firm
→ With the Authority of Partners

Liability of Firm for Mis Application By Partners [Section - 27]

The Point below covers a clear distinction between two Category of Cases of Mis application of Money by Partners.

Clause - A	Clause - B
<ul style="list-style-type: none"> Clause (A), Covers the Case where, Partner Acts within his Authority and due to his Authority as partner, he Receives Money (or) Property belonging to third Party and Mis applies Such Money (or) Property. For this purpose it is not Necessary whether Money have Actually Come in Custody of Firm or Not. 	<ul style="list-style-type: none"> Clause (B) would be attracted when such Money/Property have Come into Custody of firm ↓ and is Mis applied by any of the Partners.



Right of Transferee of Partner Interest [Section 29]

A share in Partnership is transferable like any other property. But as Partnership Relation is based on Mutual Confidence
 ↳ the Assignee Interest of Partners Interest by Sale
Mortgage
Otherwise

Cannot enjoy same Rights and Privileges as the Original Partner.

Rights of Transferee

The Rights of such a transferee are as follows :-

1 During Continuance of Partnership, such transferee is not Entitled

- To Interfere with Conduct of Business
- To Require Accounts
- To Inspect Books of Firm.

He is only Entitled to Receive the share of Profits of transferring Partner and He is bound to Accept the Profits he cannot Challeng accounts

2. On the Dissolution of the Firm or On Retirement of Transferring Partner, the transferee will be Entitled Against the Remaining Partner

→ To Receive the share of Assets of the firm to which the transferring partner was Entitled.

→ For the purpose of Ascertaining the share
he is Entitled to an Account as from the date of Dissolution.

<p>Points to Remember</p>	<ul style="list-style-type: none"> # No Person Can be Introduced as a partner in a firm, without Consent of all the partners # A Person Cannot by transferring his own Interest, Make anybody else a partner in his Place, Unless the other partners Agree to Accept that Person as partner. # A Partner Can transfer his Interest, i.e. Partner Interest in Partnership Can be Regarded as an Existing Interest and Tangible Property which Can be Assigned.
-----------------------------------	--



Minor Admitted to Benefits of Partnership [Section - 30]

Can Minor be a Partner?

- A Minor Cannot be a partner in a firm because, Partnership is founded on Contract.
- He Can be Validly Given a share in Partnership Profits.
- This Can be done with Consent of all the partners.

Rights of Minor

- Minor partner has Right to his Agreed share in Profits of the firm
- He Can
 - Have Access to
 - Inspect the Accounts
 - Copy of Accounts of the Firm.

- He Can Sue the Partners for Accounts of the firm or for payment of his share
↳ but only when serving Connection with the firm and Not otherwise.

Minor becoming Major

On attaining Majority, he May

Within 6 Months Elect to become Partner (or) Not-

If he Elects to become Partner then

he is Entitled to share to which he

was Entitled as

Minor.

If he Elects

not to be partner

he is not liable

for the Acts of firm

after date of public

Notice

Liabilities of Minor



Before attaining Majority

After attaining Majority

Before Attaining Majority

(a) Liability of Minor is Confined only to the Extent of his share [in Profits in Property of firm.

(b) Minor has no Personal Liability for debts of the firm Incurred during his Minority

(c) Minor Cannot be declared Insolvent, but if firm is declared Insolvent

↳ Minor share in the firm Vests with official Receiver/ Assignee.

After Attaining Majority



Within 6 Months of his attaining Majority

On his obtaining knowledge that he had been admitted to benefits of Partnership

[whichever is later]

Minor Partner has to decide whether he shall remain a partner or leave the firm.

When 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 in the firm.

If he fails to give such notice, he shall become partner in firm on the expiry of said 6 months.



When He Becomes Partner

When He becomes Partner by His Own Willingness

Failure to Give Public Notice

His Rights and Liabilities under Section 30C are as follows :-

(a) He becomes personally liable to third party for all the Acts of the firm done since he was admitted to the benefits of Partnership.

(b) His share in Property and the Profits of the firm remains same to which he was entitled as Minor.

When he Elects Not to become Partner.

(a) His Rights and Liabilities Continue to be those of Minor upto date of Giving Public Notice

(b) His share shall not be liable for any Acts of the firm done after (the date of notice

(c) He shall be entitled to sue the Partners for his share of Property and Profits

Minor shall Give notice to Registrar that he has (or) has not become a Partner.



Legal Consequences of Partnership Coming in and Going Out [Section 31 to Section 35]

Liabilities of New Partner [Section - 31]



Liabilities of New Partner Ordinarily Commences from the date when he is admitted as partner

↳ Unless he Agrees that he is liable for obligations Incurred by firm Prior to the date.

Note to sell:

Creditors Consent is Necessary in Every Case to Make transaction operative.

Thus an Agreement between the Partner and the Incoming Partner that he shall be

↓
Liable for Existing Debts will not **Ipso Facto**

↓
Give Creditors of firm Right Against him

In Case of Partnership of two partners, this Section does not apply ↓
as it is Automatically dissolved on death of any one Partner.



Retirement of Partner [Section-32]

• A Partner may retire

- With the Consent of all other partners
- in accordance with express agreement by the partners
- Where Partnership is at will, by giving notice in writing to all other partners of his intention to retire.

* 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 Reconstituted firm →

and such Agreement may be implied by course of dealing between the third party and the reconstituted firm after he has knowledge of the retirement

Subsection-(3), Notwithstanding Retirement of partner from a firm, he and partners continue to be liable as third party for any act done by any one of them, which would have been an act of firm if done before retirement until public notice is given for retirement.

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

Notice under subsection (3) may be given by Retired partner or by any partner of Reconstituted firm.

Case Law - Vishnu Chandra vs Chandrika Prasad



Supreme Court held that expression "If any partner wants to disassociate from Partnership business, in clause of Partnership deed which was being construed, Comprehends a situation where a partner wants to retire from Partnership. The expression clearly indicated that in the event of retirement, the Partnership business will not come to end.

Liabilities of an Outgoing Partner

- A Retiring Partner continues to be liable to third party for acts of firm after his Retirement.
 - Until public notice of Retirement has been given either by [Himself or] by any other partner.

Liability of a Retired Partner to third party continues until Public Notice of Retirement is Given.

DON'T FORGET

The Retired Partner will not be liable to any third party if later deals with the later deals with the firm without knowing former was Partner.

Liability of Acts of firm done before Retirement.

- As regard the liability for the Acts of the firm done before Retirement, the Retiring Partner remains liable for the same.
 - Unless there is an Agreement Made by him
 - third party concerned
 - Partners of Reconstituted firm

Such an Agreement May be Implied by a Course of dealing between the third Party and Reconstituted Firm after he had knowledge of Retirement

When No Public Notice Required?

- If Partnership is at will, Partner by Giving notice in Writing to all other Partners of his Intention to Retire will be Relieved as Partner without Giving public notice.

Test of Good faith [Sec-33(1)]

- Expulsion Must be in Interest of Partnership
- Partner to be Expelled is served with the notice
- He is Given an opportunity of being heard.

If Partner is otherwise Expelled
↓
the Expulsion is Null and Void.



Expulsion of Partner [Section - 33]

- Power of Expulsion Must have Existed in a Contract between the Partners
- Power has been Exercised by Majority of Partners
- It has been Exercised in Good Faith

If all these conditions are not present, Expulsion is not deemed to be bonafide in Interest of Firm.

Points to Remember

- Expulsion of Partner does not Necessary Result in dissolution of Firm
- Invalid Expulsion of Partner does not put an End to Partnership Even if Partnership is at will
→ and it will deemed to Continue as before.



Insolvency of Partner [Section 34]

When a Partner in firm is adjudicated as Insolvent he Ceases to be partner

→ on the date of Order of adjudication whether or not firm is dissolved

His Estate (which thereupon Vests in official Assignee)

↓
Ceases to be liable for any Act of the firm done after date of Order.

Firm is also not liable for Any Act of Partner after such date

Insolvent partner
Cannot be Continued
as a partner

He will be Ceased
to be a partner from
the very date on which
the order of adjudication
is Made



Effects of Insolvency

The estate of insolvent
partner is not liable
for the act of firm
done after the
date of Order of
adjudication

Ordinarily but not
Invariably the insolvency of
partner results in dissolution
of firm

but the partners are
Compent to agree among
themselves that adjudication of
partner as insolvent will not
give rise to dissolution
of firm

The firm is not liable
for any act of the
insolvent partner after the
date of order of
adjudication.

Liability of Estate of Deceased Partner [Sec-35]



Ordinarily, the effect of death of Partner is Dissolution of Partnership, but this rule is subjected to Contract between the parties.

The Estate of the deceased partner May be Absolved from liability for future obligations of the firm, it is not Necessary to Give any Notice to Public (or) Person dealing with Firm



Rights of an Outgoing Partner to Carry on Competing Business [Section 36]



An Outgoing Partner May Carry on business Competing with that of firm and he May Advertise such business but subject to Contract to Contrary he May not

- Use the Firm Name
- Represent himself as Carrying on the business of the firm
- Solicit the Custom of Persons who are dealing with the firm before he Ceased to be a partner.

Agreement in Restraint of Trade

A Partner May Make an Agreement with his Partner that on Ceasing to be Partner he will not Carry on the business similar to that of firm

- Within Specified Period
- Within Specified Local Limits

Notwithstanding Anything Contained under Section-27 of Indian Contract Act
↓
Such Agreement will be Valid if Restriction Imposed are Reasonable

Right of Outgoing Partner in Certain Cases to Share Subsequent Profits [Section - 37]



- Where any Member has died (or) Ceased to be Partner



and the Surviving Partner carries on business of the Firm with the Property of the Firm without final Settlement of Accounts as between them and outgoing Partner, then



In Absence of Agreement to Contrary, then Outgoing Partner is entitled to such share of Profits Made



Since he Ceased to be Partner as may be attributable to use of his share of the Property of the Firm



Or, to Interest at Six Percent Per Annum on Amount of his share in Property of the Firm.

Revocation of Continuing Guarantee By Change in Firm [Section - 38]






- According to Section 38, a Continuing Guarantee Given to a Firm (or) Third party in Respect of Transaction of Firm




In Absence of Agreement to Contrary, Revoked as to Future Transactions

Such Change May Occur

[By Death of Partner
	By Retirement of Partner
	By Admission of Partner.




Q1.	With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner?		
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.		
		RTP	
Q2.	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.		
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.		
		RTP	
Q3.	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?		
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.
<div style="background-color: #800000; color: white; padding: 5px; display: inline-block;">ICAI STUDY MAT.</div>	
Q4	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
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.
<div style="background-color: #800000; color: white; padding: 5px; display: inline-block;">RTP</div> 	
Q5	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

	<i>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?</i>		<i>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.</i>
ANS:	<u>Liability of Partner in case of death</u>		<i>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.</i>
	<i>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.</i>		
	<i>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.</i>		
		RTP	MTP
Q6	<i>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 were continuing 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?</i>		Q7. <i>A,B and 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 ₹ 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for` 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` 350? Assume there is no contract between the partners regarding the above.</i>
ANS:	<i>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</i>		ANS: <i>According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –</i>
		(a)	<i>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;</i>



<p>(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.</p> <p>In the given scenario, Mr. 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 ` 200 per Kg. Hence, he made an extra profit of ` 150 per Kg. This is arising purely out of transactions with the firm. Hence, Mr. B is accountable to the firm for the extra profit earned thereby.</p> <div data-bbox="577 496 840 587">RTP</div> 	<p>such money or property has come into the custody of the firm and it is misapplied by any of the partners. The firm would be liable in both the cases.</p> <div data-bbox="1682 252 1944 343">RTP</div> 
<p>Q8 Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.</p> <p>ANS: <u>Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932): Where-</u></p> <p>(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or</p> <p>(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss</p> <p>Analysis of section 27: It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners. Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm. On the other hand, the provision of clause (b) would be attracted when</p>	<p>Q9 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?</p> <p>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.</p> <p>(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</p> <p>(ii) Interest at the rate of 6 per cent annum on the amount of his share in the property.</p> <p>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:</p> <p>(i) the 20% shares of profits (as per the partnership deed); or</p> <p>(ii) interest at the rate of 6 per cent per annum on the amount of A's share in the property.</p> <div data-bbox="1552 1273 1899 1358">ICAI STUDY MAT.</div> 

Q10	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
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. S 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.

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Q11	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?
ANS:	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. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.
Q12	"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership." (a) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. (b) State the liabilities of a minor partner both:

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ANS:

(a) Rights which can be enjoyed by a minor partner:

- (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.

(b) (1) 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.

Q13

A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sell at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles was continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but couldn't do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932?

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

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

MTP



CHAPTER - 2

THE INDIAN PARTNERSHIP ACT, 1932

UNIT - 3

REGISTRATION AND DISSOLUTION OF FIRM



Application For Registration [Section 58]

The Registration of a firm May be effected at any time by

[Sending by Post (or) Delivering to Registrar] of the area in which any place of business of firm is situated (or) Proposed to be

Situated →

a statement in prescribed form and Accompanied by Prescribed fee stating :-

- (a) The Firm's Name
- (b) The Place (or) Principal place of business of firm.
- (c) The Name of any other places where firm carries on business
- (d) Date when each partner joined the firm
- (e) The Names in full and permanent Addresses of the Partners
- (f) The Duration of the firm.

The Statement shall be Signed by

Signing of Statement

All the Partners (OR) By their Agents specially Authorised in this behalf.



Points to Remember

① Each Person Signing the statement shall also verify it in the Manner prescribed

② A Firm shall not Contain any of following Names :-

- Crown
- Emperor
- Empress
- Empire
- Imperial
- King
- Queen
- Royal
- Words Expressing (or) Implying the Sanction
- Approval (or) Patronage of Government

When the State Government Signifies its Consent to the Use of such Words as part of Firm Name
→ by Order in Writing

• The Registration of Partnership is optional and one partner Cannot Compel another partner to join in the Registration of the Firm.

Registration [Section 59]

When the Registrar is satisfied that provisions of Section 58 have been Complied with

→ he shall Record an entry of the statement in the Register Called

"The Register of Firms" and file the Statement

The Firm when Registered shall Use the Bracket and Word (Registered), immediately after its name

When Registration is deemed to be Completed ??

Registration is deemed to be Completed as soon as application in

Prescribed form with Prescribed fee and Necessary details Concerning the details of Partnership is delivered to Registrar.

Recording of an entry in the Register of Firm is Routine duty of Registrar.

Registration when suit is filed

Registration May also be effected even

after suit is filed by Firm

but in that Case it is Necessary to withdraw suit first, get the Firm Registered and then file a fresh suit

Late Registration on Payment of Penalty [Section 59 A-1]



In Case of Failure to send and deliver the statement within a time specified in Section 58(1A)



The Firm May get Registration on Payment of One Hundred Rupees [Rs. 100] per Year of delay (or) part thereof
→ as penalty to Registrar of Firms.



Consequences of Non-Registration [Section-69]

English Law

Under English Law, the Registration of Firm is Compulsory. Therefore there is penalty for Non-Registration.

Indian Law.

Indian Partnership Act does not Make Registration of Firm is Compulsory, nor it does Impose Penalty for Non-Registration.



According to Section - 69



Non Registration of partnership gives Rise to Number of Disabilities

1. No Suit in a Civil Court by Firms (or) other Co- Partners against third party



A Registered firm Can only file a suit against third party and the party suing have been in the Register of firms as partners in the firm.

2. No Relief to Partners for set off of Claim :-



If an Action is brought against the firm by third party then

→ neither the firm nor the partner Can claim set off, if the suit be Valued for More than Rs 100



(or) Pursue other Proceedings to enforce the arising from any Contract.

3. Aggrieved Partner Cannot bring Legal Action Against other Partner (or) the Firm



A partner of an Unregistered firm [or any other person on his behalf] is precluded from bringing Legal Action against the firm (or) any person
→ Alleged to be a partner in firm.

Such Partners May Sue for

- Dissolution of Firm (or)
- For Accounts and Realization of his share in Firm's Property, where Firm is dissolved.

4. Third Party Can Sue the Firm



👉 In Case of Unregistered Firm an Action Can be brought Against the Firm by a third Party.

EXCEPTIONS

Non Registration of Firm does not, however effect the following Rights



- (a) The Right of third parties to Sue Firm (or)
Any Partner.

(b) The Right of Partners to Sue for

- Dissolution of Firm
- For Settlement of Accounts of a dissolved firm.
- For Realization of the Property of a dissolved firm.

(c) The Power of an official Assignees
Receiver of Court to Release of Property of Insolvent Partner and to bring an Action.

(d) The Right to Sue
Claim set off if the Value of suit does not exceed Rs 100 in Value

(e) The Right to suit and Proceedings instituted by Legal Representatives (or) heirs of the deceased partner of firm for Accounts of Firm (or)
to Realise the property of the Firm.

Dissolution of Firm [Section 39 to 47]



Section - 39

According to Section 39 of the Indian Partnership Act, 1932, the dissolution of Partnership between all partners of firm is called
→ "Dissolution of the firm"

Clarification Points

Thus the Dissolution of firm Means discontinuation of the legal Relation existing between all the partners of the firm.

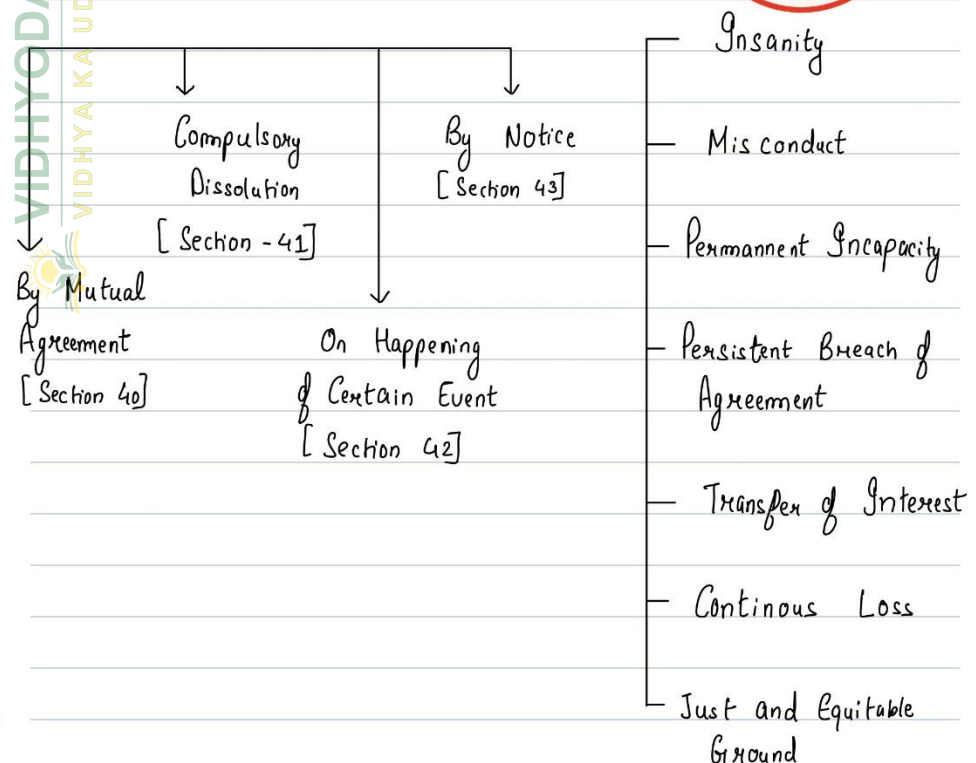
- But when only one (or) More partners Retires, there is death, Insolvency or Insanity, Relation between such a partner and other is dissolved but Rest May decide to Continue [there is no dissolution of firm]
- The Particular partner goes out, but the Remaining partners carry on the business of the firm
→ it is called "Dissolution of Partnership"
- In the case of Dissolution of the firm, the whole firm is dissolved.

Modes of Dissolution of Firm

Without the Order
of Court
(or)
Voluntary Dissolution

With the Order of
Court
[Section - 44]

Way to learn
Important Padsan
to Chacha Ji



Without the Order of Court [Section 40 to 44]

Dissolution by Agreement [Section-40]



Section 40 Gives Right to Partners to dissolve the Partnership by Agreement with the Consent of all the partners (OR) in Accordance with "Contract between the partners."

"Contract between the partners", Means a Contract Already Made.

Compulsory Dissolution [Section-41]



A firm is Compulsory Dissolved

By the adjudication of all the partners (OR) of all the partners but one as Insolvent.

(OR)

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 Partnership.

However, when More than one separate adventure (OR) Undertaking is carried on by the firm
↳ the Illegality of one or More shall not itself Cause the dissolution of the firm in respect of its lawful Adventures and Undertaking.

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



Dissolution on the happening of Certain Contingencies [Section 42]

Subject to the Contract between the Partners, a firm Can be dissolved on the happening of any of following Contingencies

- When the firm is Constituted for Fixed term, on Expiry of Fixed term
- When the firm is Constituted to carry out one (OR) More Adventure (OR) Undertaking, then by Complete there of
- By Death of Partner
- By the Adjudication of Partner as Insolvent



Dissolution by Notice of Partnership at Will [Section 43]

Where the partnership is at will
→ the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm.

On which date firm is dissolved



If Date Mentioned in Notice

The firm is dissolved as from the date mentioned in notice as at date of dissolution

If No Date Mentioned in Notice

As from the date of communication of the notice.

Dissolution by Court [Section -44]



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

(a) Insanity / Unsound Mind :-

Where a partner [not sleeping partner] has become of Unsound Mind the Court may dissolve firm

On a suit of the other partners
Next friend of the Insane Partner.

When sleeping partner is of unsound mind, firm will not get dissolved.

(b) Misconduct :-

When a partner [other than sleeping partner] is guilty of conduct which is likely to affect, prejudicially the carrying on of business, the Court may order dissolution of the firm, by giving regard to nature of business.

It is not necessary that Misconduct must relate to business

Important point is Adverse effect of Misconduct on business.

Nature of business will decide whether an act is Misconduct or not.

(c) Permanent Incapacity :-

When a partner [other than the sleeping partner], 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
Illness etc

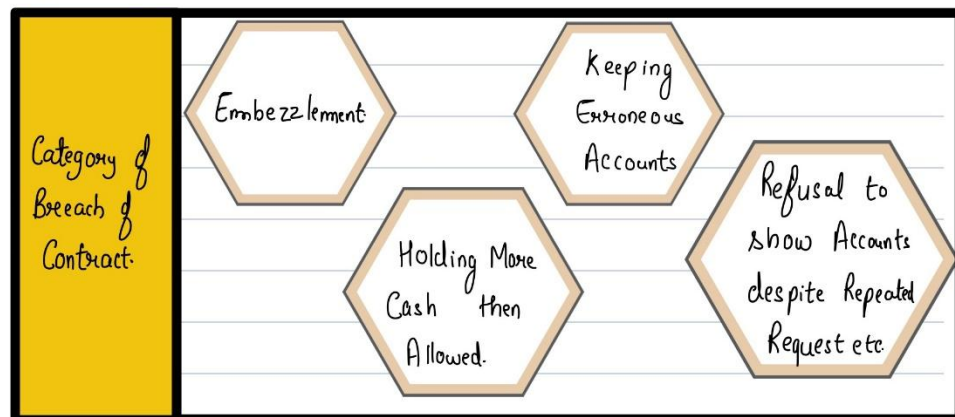
(d) Persistent Breach of Agreement :-

☞ Where a partner [Other than partner suing], willfully & persistently commits breach of Agreements relating to

Management of affairs of the firm (OR)
Conduct of the business (OR)
Otherwise } So conducts himself in matters relating to the business

that is not reasonably practicable for other partners to carry on business in partnership with him

the court may dissolve the firm at the instance of any of the partner.



(e) Transfer of Interest :-

☞ Where a partner [Other than partner suing], has transferred the whole of his interest in firm to third party (OR)

has allowed his share to be charged (OR) sold by court, in the recovery of arrears of land revenue due by the partner

the court may order for dissolution of the firm.

(f) Continuous/Perpetual Losses :-

☞ Where the business of the firm cannot be carried on except at loss in future also
↳ the court may order for its dissolution.

(g) Just and Equitable Grounds

☞ The following are the cases for the Just and Equitable Grounds :-

Deadlock in the Management
Where the partners are not in talking terms between them.
Loss of substratum.
Gambling by a partner on a stock exchange.



Consequences of Dissolution [Section 45 to 55]

Consequent to the Dissolution of a partnership firm, the partners have certain rights and liabilities as follows

Liability for Acts of Partners done after Dissolution [Section 45]

Section 45 has two fold objectives

It seeks to protect third parties dealing with the firm who had no notice of prior dissolution.

and

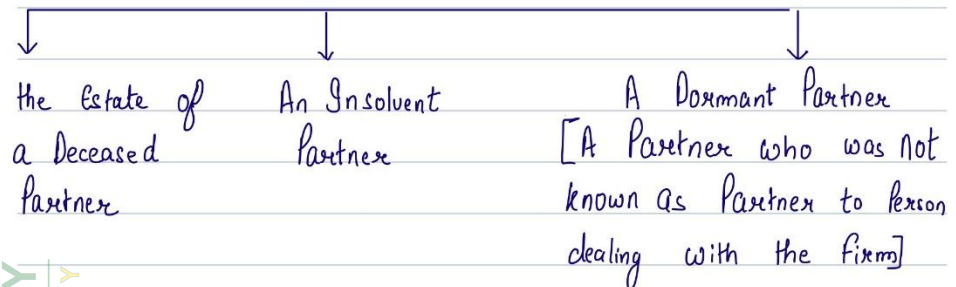
It also seeks to protect partners of a dissolved firm from liability towards third parties.

Example → X and Y carried on business in partnership, executed on December 1, a deed dissolving the partnership from the date, but failed to give public notice. On December 20, X borrowed in firm name a certain sum of money from R (who is ignorant of dissolution), in such a case

→ Y would also be liable for the amount because no public notice was given.

Exception to Above Rule

Even when notice of dissolution has not been given, there will be no liability for subsequent acts in case of:-



Right of Partners to have business wound up after dissolution [Section -46]

On the dissolution of a firm every partner (or) his Representative is entitled, as against all the other partners (or) their Representative is entitled

as against all other partners (or) their Representative

to have property of the firm applied in payment of debts and liabilities of firm and

to have surplus distributed among partners (or) their Representative according to the rights

Continuing Authority of Partners for purposes of Winding up [Section 47]



👉 After the dissolution of a firm



The Authority of Each Partner to bind the firm } Continue not
and } withstanding
the other Mutual Rights and obligation of the dissolution
the partners

so far as Necessary to wind up the affairs of the firm
and
to complete transactions begun but unfinished at the time
of dissolution, but not otherwise.

Point to Remember

👉 Provided that the firm is no case bound by the Acts of a partner who has been adjudicated Insolvent

👉 But this Proviso does not affect the liability of any person who has after the adjudication Represented himself (or) knowingly permitted himself to be Represented as partner of the Insolvent

Mode of Settlement of Partnership Accounts [Section 48]

In Settling Accounts of firm after Dissolution, following Rules, subjected to an Agreement between partners shall Apply :-

👉 Losses including Deficiencies of Capital

It shall be paid first out of Profit
Next out of Capital
Lastly [if Necessary] by partners Individually in the proportion in which they were entitled to share profit

👉 Assets of firm including Sum Contributed by partner to Make up Deficiency of Capital

In paying the debts of the firm to third parties.

In paying to each partner Rateably what is due to him from Capital

In paying to each partner Rateably what is due to him on Account of Capital.

the Residue [if any] shall be divided among the partners in proportion in which they were entitled to share Profits.



Payment of Firm Debts and of Separate Debts [Section 49]

When there are Joint debts due from the firm and also separate debts due from any partner

Property of Firm

Separate Property

the Property of Firm shall be applied in first Instance in payment of debts of firm

the Separate Property of any partner shall be applied first in payment of Separate Debts

and

and



if there is any surplus, then
→ share of each partner shall be Applied to the payment of his Separate Debts (or) paid to him.


Surplus (if any) in payment of debts of firm

Difference between Dissolution of Firm and Dissolution of Partnership

<i>Basis</i>	<i>Dissolution of Firm</i>	<i>Dissolution of Partnership</i>
<i>Continuation of business</i>	<i>It involves discontinuation of business in partnership.</i>	<i>It does not affect continuation of business. It involves only reconstitution of the firm.</i>
<i>Winding up</i>	<i>It involves winding up of the firm and requires realization of assets and settlement of liabilities.</i>	<i>It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.</i>
<i>Order of court</i>	<i>A firm may be dissolved by the order of the court.</i>	<i>Dissolution of partnership is not ordered by the court.</i>
<i>Scope</i>	<i>It necessarily involves dissolution of partnership.</i>	<i>It may or may not involve dissolution of firm.</i>
<i>Final closure of books</i>	<i>It involves final closure of books of the firm.</i>	<i>It does not involve final closure of the books of the firm.</i>



Q1	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?	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.
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.	 <div>RTP</div>
Q2	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?	Q3
ANS:	<u>Compulsory dissolution of a firm (Section 41)</u> 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	<p>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;</p> <p>(a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?</p> <p>(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?</p> <p>(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?</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.</p>  <div>RTP</div>

Q4	"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India?	(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.
ANS:	It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. Following are consequences of Non-registration of Partnership Firms in India: The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, nonregistration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:	<div>ICAI STUDY MAT.</div> 	
(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. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.	Q5	What are the various grounds under the Indian Partnership Act, 1932, on which the Court may, at the suit of the partner, dissolve a 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.	ANS:	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 ground:
(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.	(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

77

Dates to be remembered

CHAPTER - 3

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

Ministry of Law and justice
Notified LLP Act 2008 on

9th January 2007

Parliament passed Bill on

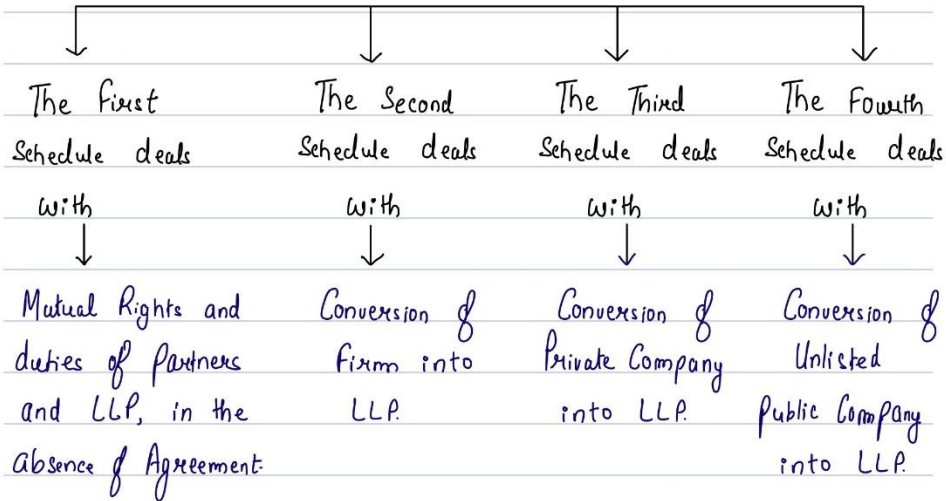
12th December 2008

President of India assented
Bill on

7th January 2009



4 Schedules of LLP



Administration of LLP Act and Rules

Ministry of Corporate Affairs and Registrar of Companies (RoC) are entrusted with the task of administering the LLP Act, 2008

Central Government has the Authority to frame the Rules
→ and can amend them by notification in official Gazette.



Partners [Section-5]

Who Can be Partner

Any Individual/ Body Corporate may be partner in LLP

Who Cannot be Partner

An Individual shall not be Capable of becoming a partner of LLP if

- he has been found of unsound mind
- he is an Undischarged insolvent
- he has applied to be adjudicated as an insolvent and his application is pending.



Minimum No. of Partners [Section-6]

Every LLP shall have atleast 2 partners

If at any time the number of partners of LLP is reduced below two

and LLP carries on business for more than 6 Months while the no. of partners is below two

then the only partner carrying on business shall be personally liable for the obligations during that period.

Foreign LLP [Section 2 (41)]



It Means a LLP formed, Incorporated or registered outside India which establishes a place of business within India.



means the period from 1st day of April of a year to 31st day of March of following year.

Designated Partners [Section - 7]



Every LLP shall have atleast 2 designated partners who are individual and atleast one of them shall be resident in India.

If in LLP, all the partners are body corporate

OR

in which one or more partners are individuals and body corporate, atleast 2 individuals who are partners of such LLP or nominee of such body corporate shall act as designated partners.

Meaning of Resident in India

The term resident in India, means a person who has stayed in India for a period of not less than 120 days during the financial year.

Small Liability Partnership Section - 2 (fa)



It Means Limited Liability Partnership

① Contribution of which does not exceed

And

② the turnover of which as per the the Statement of Accounts and Solvency for the immediately preceding financial year does not exceed

Twenty Five Lakhs Rupees

Such highest Amount not exceeding 5 Crore Rs

Twenty Five Lakhs Rupees

Such highest Amount not exceeding 50 Crore Rs

③ Which Meets such other Requirements as may be prescribed and fulfills such terms and conditions as may be prescribed

Non applicability of the Indian Partnership Act, 1932 [Section-4]



Save as otherwise provided, the provisions of Indian Partnership Act 1932 shall not apply to LLP

Characteristic of LLP

16
Points

① LLP Agreement



- Mutual Rights and duties of the partners within a LLP are governed by an Agreement between the partners.
- LLP Act 2008, provides flexibility to partners to devise the agreement as per their choice.
- In the absence of any Agreement
↳ the Mutual Rights and duties shall be governed by the provisions of The LLP Act, 2008.

2. Artificial Legal Person



- A LLP is an Artificial Legal Person because

It is created by legal process and is clothed with all rights of an individual.

What LLP Can Do??

It can do everything which any Natural Person can do

What LLP Cannot Do??

- It Cannot be sent to jail
- It Cannot take an oath
- It Cannot Marry (or) get divorce
- It Cannot practice a learned profession like CA (or) Medicine.

A LLP is

Invisible
Intangible
Immortal

but not fictitious because it really exists

3. COMMON SEAL



- A LLP being an Artificial Person can Act through its partners & Designated Partners.
- LLP May have Common Seal, if it decides to have one.
- Thus it is not Mandatory to have Common Seal.

DON'T FORGET

- It shall Remain under Custody of some responsible official and + It shall be affixed in the presence of atleast 2 Designated Partners of the LLP.

4. Management of Business



➡ The Partners in LLP are entitled to Manage the business of LLP.

Designated Partners are Responsible for Legal Compliances.

5. Minimum & Maximum Number of Partners



Minimum No. of Partners

- Every LLP shall have atleast 2 partners.
- It shall also have atleast two Individuals as designated partners. → [of whom one shall be Resident in India]

Maximum No. of Partner

- There is no Maximum limit on no. of Partners.

note to self:

Person who stayed in India for a period of not less than 120 days in Preceding F.Y.

6. Business for Profit only



➡ The Essential Requirement for forming LLP is Carrying on a Lawful business with a view to earn profit.

➡ Thus LLP Cannot be formed for Charitable Non-Economic Purpose.

7. LLP is a Body Corporate



Section 2(i) (cd) of the LLP Act 2008, Provides that

LLP is a body Corporate [Formed & Incorporated] Under this Act

and is legal Entity separate from that of its partner and shall have perpetual succession.

Therefore any Change in partners of a LLP shall not affect the [Existence, Rights, Liabilities] of the LLP.

Section 3 of LLP Act Provides that a LLP is a body Corporate formed and Incorporated under this Act and is a legal entity separate from that of its partners.

8. Perpetual Succession



The LLP Can Continue its existence irrespective of changes in partners.

[Death, Insanity, Retirement, Insolvency] of Partners has no Impact on existence of LLP.

It is Capable of Entering into Contract and holding property in its own Name

9. Separate Legal Entity



The LLP as a Separate Legal Entity

is liable to full extent of its assets

but liability of partner is limited to their Agreed Contribution in the LLP

10. Mutual Agency



➡ No Partner is liable on account of

- Independent
- Unauthorized Actions.

} of other partners.

➡ Thus Individual partners are shielded from joint liability created by another partner

- Wrongful business decision
- Misconduct.

All Partners of LLP will be the Agents of LLP alone.

No one partner can bind the other partner by his Acts.

11 Limited Liability



➡ Every Partner of LLP, for the purpose of business of LLP

→ the Agent of LLP but not of other partner.

Liability of Partner will be limited to their Agreed Contribution in the LLP.

Such Contribution May be

- Tangible
- Intangible
- Both.

12. Investigation



➡ The Central Government has powers to Investigate the affairs of an LLP

↳ by Appointment of Competence authority for the purpose.

13. Compromise (OR) Arrangement



Any

- Compromise
- Agreements including

Mergers
Amalgamation

} of LLP shall be in accordance with Provision of LLP Act.

14. Conversion into LLP



[Firm
Private Company
Unlisted Public Company] would be allowed to be converted into LLP in accordance with the provisions of LLP Act 2008.

15. E-filing of Documents



[Every Form
Application of Document] Required to be filed (or) delivered under the Act and Rules

shall be filed in Computer Readable Electronic Form on its website

→ WWW.mca.gov.in

Authenticated By

- ☞ Partner
- ☞ Designated Partner

How to Authenticate

- Authentication Can be done by Use of :-
- ☞ Electronic Signature
 - ☞ Digital Signature

16. Foreign LLPs



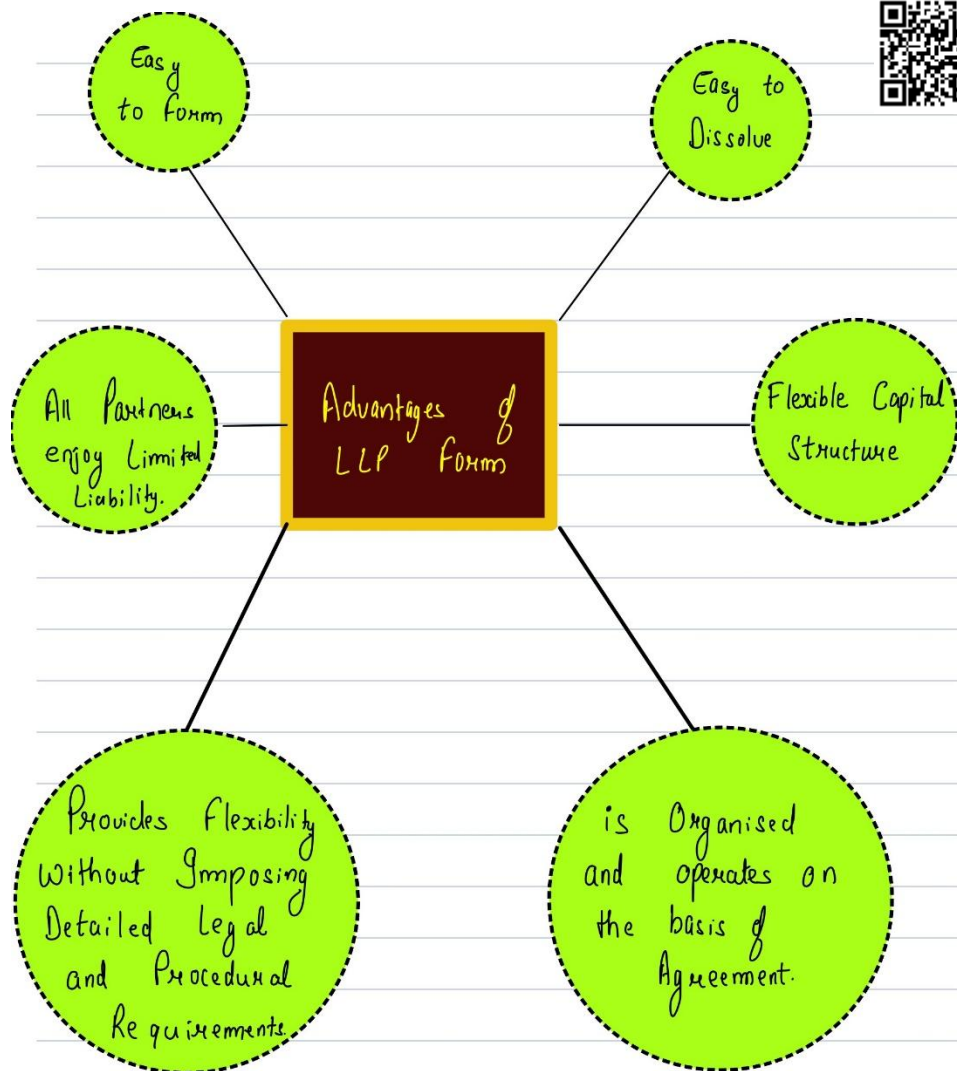
Section 2(1)(m) defines foreign LLP

" as a Limited Liability partnership ← Formed Incorporated Registered } Outside India

note to self:

Foreign LLP Can become a partner in Indian LLP

Which established as place of business within India."



INCORPORATION OF LLP

Incorporation Document (Section -11)

👉 The Most Important Document Needed for Registration is the Incorporation Document.

For LLP to be Incorporated

Two or More
person associated for
carrying a lawful business
↓
with a View to profit
↳ Shall subscribe
their Names to Incorporation
Document.

The Incorporation Document
shall be filed
[in such Manner
with such fees
[as May be Prescribed]
↓
with Registrar of
state in which the
Registered office of LLP
is to be situated.

Statement to be filed.



There shall be filed along with Incorporation Document

↳ "A statement in prescribed form" may
by either

An Advocate
A Company Secretary
A Chartered Accountant
A Cost Accountant

by Any one who
Subscribed his Name
to the Incorporation
Document.

who is engaged
in formation of
LLP.

that all Requirements of [this Act
Rules Made thereunder] have been
in Respect of Incorporation and Matters
↳ Precedent and
Incidental thereto.

About Incorporation Document



The Incorporation Document shall

- be in a form as May be prescribed.
- State the Name of LLP.
- State the Proposed business of LLP
- State the Address of Registered office of LLP
- State the [Name } of Persons who are to be
Address } partners of LLP on Incorporation
- State the [Name } of Persons who are to be
Address } designated partners of LLP on
Incorporation.
- Contain such other Information Concerning the
proposed LLP as May be prescribed

Penalty Provisions.

👉 If a Person Makes a Statement which he
 knows to be false (OR) Does not believe to be True
 shall be Punishable with

Imprisonment.
 for a term
 which May extend
 to 2 Years.

Fine
 Not less than
 ₹ 10,000 May Extend
 to ₹ 5,00,000.



Incorporation by Registration (Section - 12)



👉 When the Requirements imposed by
 Clause (b) and (c) of subsection (1) of Section 11
 have been Complied with, the Registrar
 shall Retain the Incorporation Document

and

Unless the Requirement Imposed by Clause (a) of
 that subsection has not been Complied with
 he shall within 14 days

Register the Incorporation Document.

Give a Certificate that LLP is Incorporated
 by Name Specified there in.

👉 The Registrar May Accept the statement delivered
 under Clause (c) of sub section (1) of Section 11 as
 sufficient evidence

↳ that the Requirement Imposed by clause (a)
 of that subsection has been Complied with.

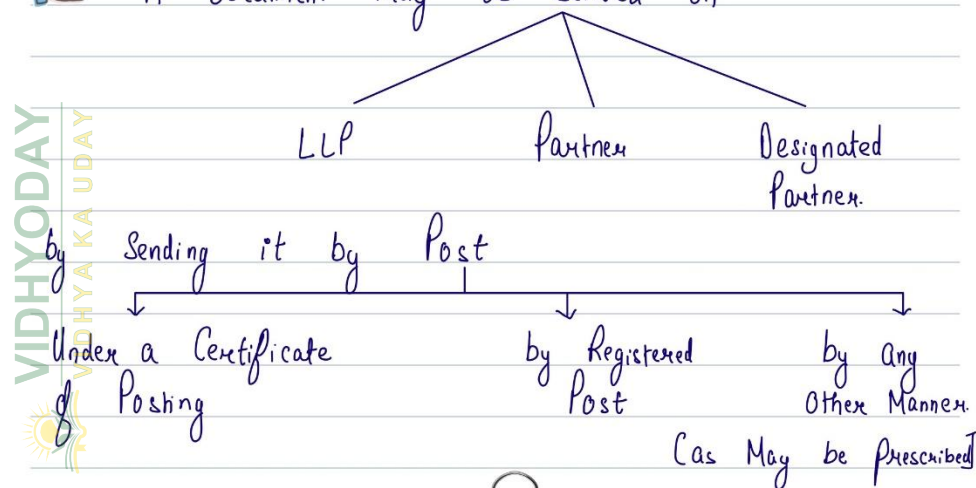
👉 The Certificate Issued under clause (b) of Subsection (3) shall be ☐ signed by Registrar
☐ Authenticated by Common Seal



Registered office of LLP and change therein [Section 13]

👉 Every LLP shall have Registered office to which all Communication and Notices May be Addressed and where they shall be Received.

👉 A Document May be Served on



Certificate shall be
Conclusive evidence that LLP
is Incorporated by Name
Stated there in



Where to Post Documents

- 👉 At Registered office
- 👉 Any other Address Specifically declared by LLP

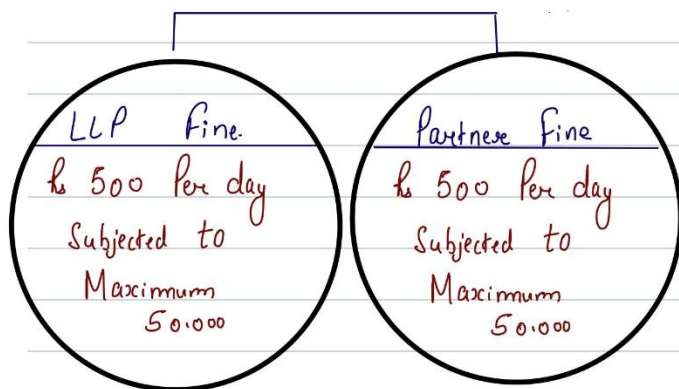
Change of Registered Office

👉 A LLP May change the place of its Registered office and file the Notice of such change with the Registrar
→ in such form and Manner and subject to such Conditions as May be prescribed

DON'T FORGET

"and any such Change shall take effect only upon such filing"

Penalty Provisions.



DON'T FORGET

↓
"There is no Imprisonment"

Effect of Registration [Section 14]



On Registration
↓
a LLP shall by its name be Capable of

Suing and being Sued

Acquiring } of Property
- Owning }
- Holding }
- Developing }
- Disposing }

Whether
Movable Tangible
Immovable Intangible

Having a Common Seal (if it decides to have one)

Doing and Suffering such other Acts and things as body Corporate May Lawfully do and Suffer.



Name [Section - 15]

Every LLP shall have either the words
 "Limited Liability Partnership" (OR) Acronym
 "LLP".

No LLP shall be Registered by a name which
 in opinion of Cbi is
 Identical Too Nearly Resembles
 that of

Any other LLP
 Any Company
 Registered Trademark of any person
 under Trade Mark Act, 1999



Reservation of Name [Section 16]

[Section-16(i)] A Person May apply in such form, Manner,
 Accompanied by such fee as May be prescribed to Registrar for Reservation
 of name set out in application as

the Name of
 Proposed LLP the Name to which
 a LLP proposes to change
 its Name.

Upon Receipt of application and payment of Prescribed fee } Registrar May, if
 satisfied

(Subject to Rules prescribed by Cbi in the Matter)
 that the name to be Reserved is not one which
 may be Rejected on ground referred in Section 15(2)
 → Reserve the Name for a period of 3 Months
 from the date of Intimation by Registrar.

Change of Name of LLP [Section - 17]



Notwithstanding anything Contained in Section 15 and 16

If through Inadvertence
↓
otherwise a LLP on its first Registration

is Registered by a name which is Identical with or too nearly Resembles to

Any other LLP

Any Company

Registered Trademark of proprietor under Trade mark Act, 1999

is likely to be Mistaken for it

then on Application of LLP
Proprietor
↓
Company then CG May direct that LLP to change its name (or) New Name

within a period of three Months from date of Issue of such direction

Provided that on Application of Proprietor of Registered Trademark shall be Maintainable within a Period of 3 Years from

[Date of Incorporation
Change of Name of LLP

If LLP has made default in Complying with any direction given Under Subsection (1)

the CG shall allot new name to LLP in such Manner as May be Prescribed and the Registrar shall

Enter the new name in Register of LLP in place of old name

Issue a fresh Certificate of Incorporation with new name



Difference between LLP and firm

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s)	The death, insanity, retirement or insolvency of the partner(s)
7.	Name	Name of the LLP to contain the word limited liability partnership (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner is limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	Designated partners	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.

12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing of documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.


Difference between LLP and Limited Liability Company





	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
5.	No. members/partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners of the LLP can be individuals or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members.



VIDHYODAY
VIDHYA KA UDAY

Q1	Enumerate the various characteristics of the LLP?	
ANS:		
1.	Body Corporate	
2	Perpetual Succession	
3	Separate legal entity	
4	Mutual Agency	
5	LLP Agreement	
6	Artificial Legal person	
7	Common Seal	
8	Limited liability	
9	Management of business	
10	Minimum and maximum number of partners	
11	Business for profit only	
12	Investigation	
13	Compromise or Arrangement	
14	Conversion into LLP	
15	E-Filing of documents	
16	Foreign LLPs	
Q2	"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.	
ANS:	1. LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership	
	2. Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The partners will be limited to their agreed contribution in the LLP, while the liability of the LLP itself will be liable for the full extent of its assets.	
	3. Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.	

ICAI STUDY MAT.

4.	The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.	
Q3	Explain Small Limited Liability partnership under LLP Act, 2008?	
ANS:	Small Limited Liability Partnership [Section 2 (1)(ta)] :	
	It means a limited liability partnership —	
a)	the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and	
b)	the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or	
c)	which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.	
Q4.	X, Y and Z have recently completed their Graduation from different streams and wanted to start a business with capital of Rs. 5, 00,000 each. X and Y are in favour to start with a private limited company but Z wants to form a Partnership firm. They approached a friend to solve dispute between them and choose between company and partnership firm. He advises them to commence the business with LLP which is the hybrid of company and partnership firm. Sostate some merit points of LLP?	

ICAI STUDY MAT/RTP

RTP

Ans:	Advantages to form LLP are:
	<ul style="list-style-type: none"> is organized and operates on the basis of an agreement provides flexibility without imposing detailed legal and procedural requirements. Easy to form All partners enjoy limited liability Flexible capital structure Easy to dissolve



SPQ

Q5 List out the documents that need to be filed at the time of incorporation of LLP?

ANS:	The incorporation document shall—
(a)	be in a form as may be prescribed;
(b)	state the name of the LLP;
(c)	state the proposed business of the LLP;
(d)	state the address of the registered office of the LLP;
(e)	state the name and address of each of the persons who are to be partners of the LLP on incorporation;
(f)	state the name and address of the persons who are to be designated partners of the LLP on incorporation;
(g)	contain such other information concerning the proposed LLP as may be prescribed.



SPQ

Q6 A, B, and C are the partners in a LLP having a registered office in Pune and place of business in Mumbai. Now they wanted to change their registered office to Mumbai from Pune. Mr. A in his opinion said that they cannot change their Registered office as they inform Pune as their

registered office at the time of incorporation. Mr. B in his opinion said that they can change their registered office by changing the address in website and all the legal papers without filing notice to registrar. Mr. C is confused with the opinion of both of them and concerned with the penal provisions of the act. You are called to advise them.

Ans: **Provision: Change in registered office therein (Section13):**

- A LLP may change the place of its registered office and file the notice of such changewith the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ₹500 for each day during which the default continues, subject to a maximum of ₹50,000 for the LLP and its every partner.

FACTS OF CASE: In the given situation LLP has registered office in Pune and now wants to shift to Mumbai

Conclusion: As per the provision of LLP Act, 2008 it can shift its registered office from Pune to Mumbai.



SPQ

Q7 State the provision regarding reservation of name of LLP?

ANS: **RESERVATION OF NAME (SECTION16):**

A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—

- The name of a proposed LLP; or
 - The name to which a LLP proposes to change its name.
- Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the

rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section(2) of section 15, reserve the name for a period of 3 months from the date of intimation by the Registrar.



SPQ

Q 8 Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of ₹ 10,00,000 against the LLP but the worth of the assets of LLP are only ₹ 7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹ 3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

ANS: A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.



SPQ

Q 9 M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

ANS: Provision: Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- undesirable; or
- identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.



Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to— (a) that of any other LLP or a company; or (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999

Facts of case: LLP was registered with name M/s Vardhman Steels LLP. One partner from partnership firm M/s Vardhimaan Steels claims that LLP is incorporated with resemble name

Conclusion: Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor. Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

SPQ

Q10	There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?
ANS:	<p>Provision: Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. , the term “resident in India” means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year.</p> <p>Facts of case:In the given case there are 4 partners Rahul, Raheem, Kartar, Albert. Out of which Rahul and Albert are non-residents. And LLP wants to make Rahul and Raheem as designated partner.</p> <p>Conclusion:so LLP can do so because out of two designated partners atleast one should be resident of India and in this case out of Rahul and Raheem , Raheem is resident of India.</p>
Q11	What are the effects of registration of LLP?
ANS:	<p>EFFECT OF REGISTRATION (SECTION 14):</p> <ul style="list-style-type: none"> • Suing and being sued • acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible; • having a common seal, if it decides to have one; and • doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

ICAI STUDY MAT.

Q12	Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008.
Ans.	<p>Essential elements to incorporate Limited Liability Partnership (LLP)- Under the LLP Act, 2008,</p> <p>the following elements are very essential to form a LLP in India:</p> <ol style="list-style-type: none"> To complete and submit incorporation document in the form prescribed with the Registrar electronically; To have at least two partners for incorporation of LLP [Individual or body corporate]; To have registered office in India to which all communications will be made and received; To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs. To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.

ICAI STUDY MAT/

MAY 2018 / NOV 2018

Meaning of Negotiable Instruments



- Negotiable Instruments is an Instrument [Word Instrument Means document], which is freely transferable [by Customs of Trade], from one person to another by
 [Mere delivery OR
 By Indorsement and Delivery]

- Property in such an Instrument pass to bonafide transferee for Value

Act does not
define Negotiable
Instrument

Section 13 of the Act Provides
for only three kinds of NI

- Bills of Exchange
- Promissory Notes
- Cheques [Payable either to Order/ Bearer]

Negotiable Instrument is

Payable to
Order

Payable to
Bearer

Hundries

- Treasury Bills
- Bearer debentures
- Railway Receipts
- Delivery Orders
- Bill of lading

They all are Negotiable
Instruments either by
Mercantile Customs
(OR)
Usage.



CHAPTER = 4

THE NEGOTIABLE INSTRUMENTS ACT, 1881



Negotiable Instrument is payable to Order when

- It is Expressed to be so payable
- When it is Expressed to be payable to a specified Person and does not Contain words Prohibiting its transfer [ie transferable by indorsement and delivery]

Negotiable Instrument is payable to Bearer when

- When it is Expressed to be so payable [Ex → Pay Bearer]
- When only (or) last indorsement on the instrument is an indorsement in blank [ie Person who Possess it Can demand Payment]

For Example → A cheque Made Payable to specified person and cheque is endorsed by signing on back of cheque by that specified Person.

Characteristics of Negotiable Instruments

- It is Necessarily in writing
- It should be Signed
- It is freely transferable from one person to another
- Holders title is free from defects
- It Can be transferred any Number of times till its Satisfaction

- Every Negotiable Instrument Must Contain an Unconditional Promise (or) Order to pay Money. The Promise (or) order to pay Must Consist of Money only.

- | | | |
|-----------------|---|-----------------|
| Sum Payable | } | Must be Certain |
| Time of Payment | | |
| Payee | | |

- Instrument should be delivered. Mere drawing of Instrument does not Create Liability.

Promissory Notes



Meaning

According to Section-4 of Negotiable Instrument Act, 1881

"Promissory Note is instrument in writing [Not being Bank Note and Currency Note], Containing an Unconditional Undertaking Signed by Maker, to pay Certain sum of Money [only to (or) the order of Certain Person or to the bearer of Instrument]

Specimen of Promissory Note

₹ 10,000
Lucknow
April 10, 2022
Three months after date, I promise to pay Shri Ramesh (Payee) or to his order the sum of Rupees Ten Thousand, for value received.
Stamp
Sd/-
Ram
To,
Shri Ramesh,
B-20, Green Park,
Mumbai.
(Maker)



Essential Characteristics of Promissory Notes



(a) Writing An Oral Promise to pay is not sufficient

(b) Express Promise . There Must be Express Promise to pay
• Mere Acknowledgement of debt is insufficient

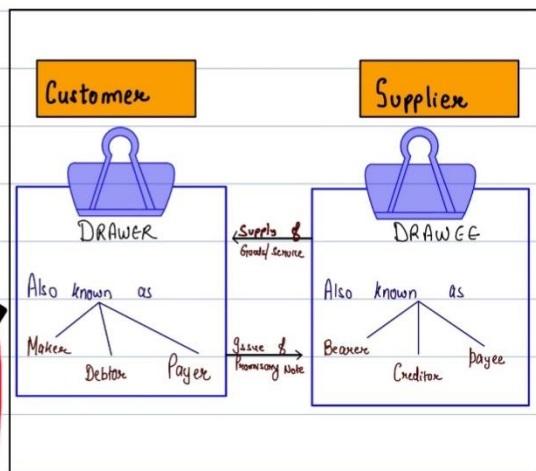
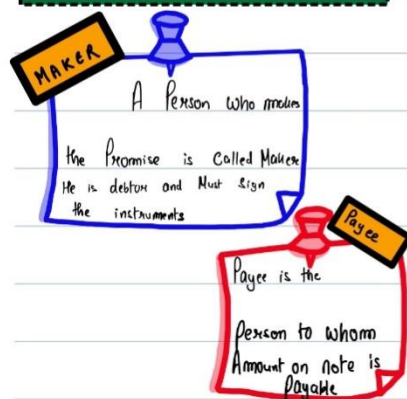
Example → I Acknowledge myself to be Indebted to B Rs 1000, to be paid on demand, for Value received.

(c) Definite and Unconditional . Promise to pay should be definite and Unconditional
• Instruments payable on [Performance or] of Particular Act on happening
Non-Performance or Non-happening of an Event
are not Promissory Notes.

• However Promise to pay May be subject to a Condition, which according to Ordinary Experience of Mankind bound to happen

Example → I Promise to pay B Rs 500 seven days after my Marriage with C. Promissory note is invalid as marriage with C may/may not happen.

Parties to Promissory Note



VIDHYODAY
VIDHYA KA UDAY

(d) Signed by Maker . A Promissory note Must be signed by Maker otherwise it is Incomplete and Ineffective

(e) To Pay Money only . Promise to pay Money only

Example → I Promise to pay B Rs. 500 and deliver him my black house on next 1st January. It is not Valid promissory note as promisor needs to deliver black house, which is not money

(f) Certain Sum . Promise to pay Certain Sum.

• Sometime language of Promissory note is such that, Amount payable is easily ascertainable. In such Case Promissory note will be Valid.

Example → "I Promise to pay B Rs 500 and all other Sums which shall be due to him". Promissory note is invalid as the amount payable is not certain.

(g) Maker and Payee Must be Certain, Definite and Different Person . According to Section 31 of Bank of India Act [RBI Act]

Promissory note Cannot be payable to Bearer



note to self:
Only { Reserve Bank (or) Central Government } Can Make/Issue Promissory note Payable to Bearer.

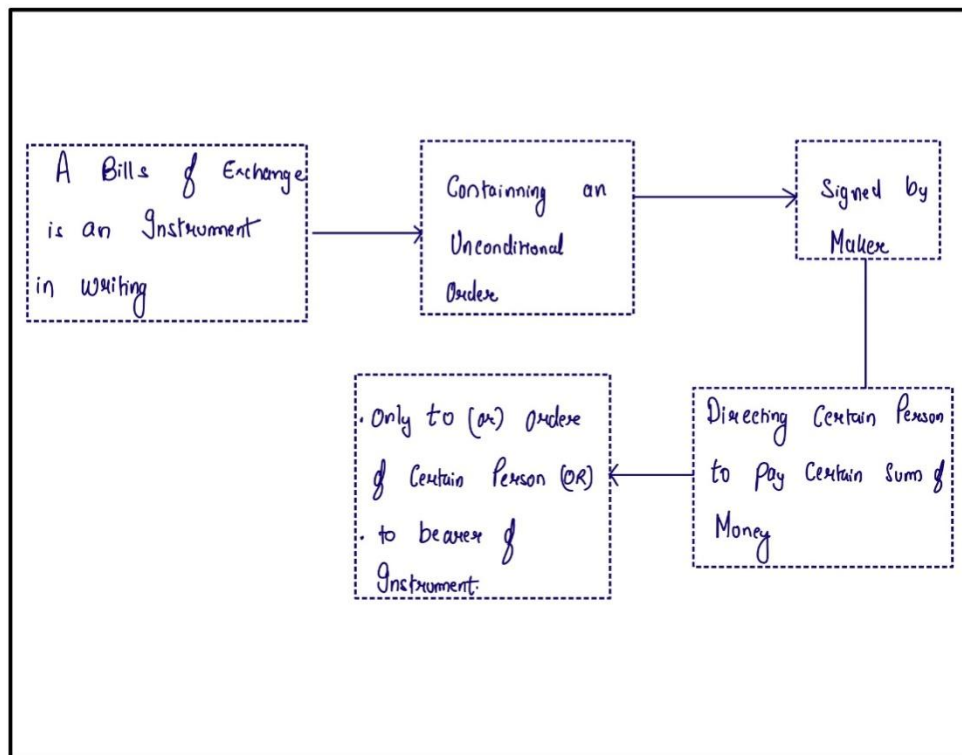
(H) Stamping . A Promissory note Must be Properly Stamped in Accordance with Provisions of Indian Stamp Act.

• Such Stamp Must be duly Cancelled by

Maker's Signature (OR) Initials (OR) Otherwise
on Such Stamp



Bills of Exchange



Specimen of Bill of Exchange

Mr. A (Drawer)
48, MP Nagar, Bhopal (M.P.)
April 10, 2022

₹ 10,000/-
Four months after date, pay to Mr. B (Payee) a sum of Rupees Ten Thousand, for value received.

To,
Mr. C (Drawee)
576, Arera Colony, Bhopal (M.P.)

Signature
Mr. A

Parties to Bills of Exchange



Drawer

- The Maker of Bill of Exchange

Drawee

- Person directed by drawer to pay is called drawee
- He is the person on whom, Bill is drawn
- On Acceptance of Bill he is called Acceptance and is liable for payment of Bill

Payee

- Person named in the Instrument to whom } the Money by
to whose order } Instrument is directed to be paid

Drawee liability is Primary and Unconditional.

Characteristics of Bills of Exchange



- It Must be in Writing
- Must Contain Express order to Pay
- Order to Pay Must be Definite and Unconditional
- Drawer Must sign the Instrument
- Sum Must be Certain
- Order Must be to Pay Money only
- It Must be Stamped

- Drawer, Drawee and Payee Must be Certain
- All the three Parties May not necessarily be 3 different Persons
- One Party Can play Role of two
- But, there Must be two distinct Person in any case

Example → "On demand pay to bearer the sum of Rupees Five Hundred, for Value Received". It is Invalid BOE

However, Bill of Exchange Payable on Demand, in which Name of Payee is Mentioned is Valid

note to self:

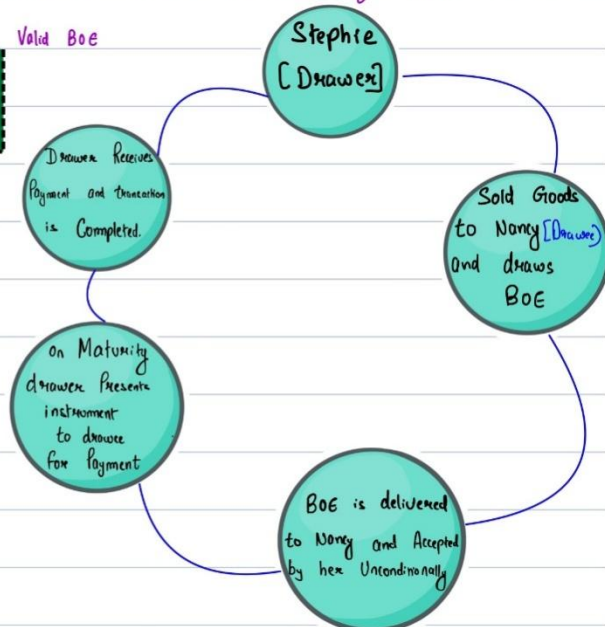
As per Section - 21 of RBI Act, 1934, Bills of Exchange Cannot be Made payable to bearer on demand.

Example → "On Demand pay to A or order the sum of Rupees Five Hundred for Value Received". It is Valid BOE

Process of Bills of Exchange

Drawer → Stephanie

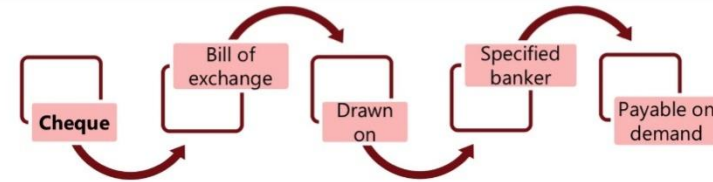
Drawee → Noney



Cheque
[Section - 6]

Cheque is a Bills of Exchange drawn on specified Banker and not Expressed to be Payable otherwise than on demand and it Includes

- Electronic Image of Truncated Cheque
- Cheque in Electronic Form



Meaning of Payable on Demand

It should be Payable Whenever the holder Chooses to Present it to drawee

Banker

The term Banker includes

- Any Person Acting as Banker
- Any Post office Saving Bank.



Cheque v/s Bills of Exchange

Combined Reading of Section 5 and Section 6, tells us that Bills of Exchange is Negotiable instrument in writing containing an instruction to third party to pay stated sum of Money at designated future date (or) on demand.

- Cheque is also Bills of Exchange, but is drawn on Banker and payable on demand.

Specimen of Cheque

Pay	Date:.....
a sum of Rupees.....₹	
A/C No. 12345678910	
ABC Bank 622, Vijay Nagar, Indore (M. P.)	
01212 1125864 000053 38	Signature

Parties to Cheque



Drawer

- The person who draws cheque i.e. makes a Cheque
- His liability is Primary and Conditional

Drawee

Specified Bank on whom cheque is drawn
Drawee makes payment of Cheque
In case of cheque, drawee is always banker

Payee

Person named in instrument i.e. person in whom favour cheque is is called payee
To whom ^{OR} to whose order the money instrument is directed to be paid is called payee
The payee may be

- Drawer himself
- Third party

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VIDHYA KA UDAY

Drawee in Case of Need

When on Bill or any indorsement thereon, name of any person is given in addition to drawee to be resorted to in case of need, such person is called

"Drawee in Case of Need"

All Cheques are Bills, but all bills are not Cheques



Essential Characteristics of Cheque



- All Essential Characteristics of Bills of Exchange
- Must be drawn on Specified Banker
- It Must be Payable on demand

Point (b) and (c) distinguish Bill from Cheque.

Classification of Negotiable Instruments



Bearer Instrument and Order Instrument Section - 13

Bearer Instrument

It is an Instrument, where the name of payee is Blank or where the name of payee is specified with words "or Bearer" (OR) where the last indorsement is Blank; such instrument can be negotiated by mere delivery.



Inland Instrument and Foreign Instrument [Section - 11 and 12]

Inland Instrument

Promissory Note
 Bill of Exchange
 Cheque drawn/
 Made in India/
 Made payable in/
 Drawn upon
 Resident in India

shall be deemed to be an Inland Instrument.

Foreign Instrument

A Foreign Instrument is one which is not an Inland Instrument.

Summary of Inland Instrument

- Promissory note
- Bills of Exchange
- Cheque

Payable in India
 (OR)
 Drawn upon Person
 Resident in India

are Inland Instruments.

Summary of Foreign Instrument

- Promissory note
- Bills of Exchange
- Cheque

Person Resident	Made Payable	Foreign Bill
Outside India	In India	✓
Outside India	Outside India	✓
In India	Outside India	✓



Liability of Maker/ Drawer of Foreign Bill

In the Absence of a Contract to Contrary

↳ Liability of Maker/ Drawer of Foreign Promissory Note/Bill/ Cheque is Regulated in all essential Matters by Law of Place where you Made the Instrument, and the Respective Liabilities of the [Acceptor] [Endorser] where Instrument is Made payable

Example → A Bill of Exchange is drawn by A in Berkeley where the Rate of Interest is 15% and accepted by B payable in Washington where Rate of Interest is 6%. The Bill is indorsed in India and is dishonoured. An action on the Bill is brought in India. He is liable to pay Interest at 6% only. But if A is charged as drawer he is liable to pay Interest at 15%.



Inchoate and Ambiguous Instrument

Inchoate Instruments

- It Means an Instrument is Incomplete in Certain Respects
- The drawer } of Negotiable Instrument May sign and deliver
Maker } the Instrument to Another Person in his Capacity
Acceptor } leaving the [Instrument wholly blank (or)
Indorser } [Having written on it Word Incomplete
- It Gives Power to its holder to Make it Complete by Writing any Amount either [within limits specified therein (or)
[or within the limits specified by the Stamps affixed on it.

note to self:

The Principle of this Rule of on inchoate Instrument is based on Principle of Estoppel.

Liability on Drawing Inchoate Instruments



Person signing and delivering the Inchoate Instrument is liable both
 [to holder and
 to holder in due Course

Rights of Holder v/s Rights of Holder in due Course



Holder of such an Instrument
 Cannot Recover the Amount in
 excess of the Amount
 intended
 ↓
 to be paid by Signer

Holder in due Course Can
 Recover any Amount on
 such Instrument Provided
 ↓
 It is Covered by the
 Stamp affixed on Instrument

Section - 20

Where one Person signs and delivers to another a paper stamped in accordance with law relating to Negotiable Instruments, then in force in India and

[Either wholly Blank (or) there on an Incomplete
 having written } Negotiable Instrument



he thereby gives Prima Facie Authority to holder thereof to make or complete, as the case may be, upon it a Negotiable Instrument for any Amount specified there in and Not Exceeding the Amount, Covered by Stamp.

Example → A Person signed a Blank Acceptance on a Bill of Exchange and kept in his drawer. The Bill was stolen by X and he filled it up for Rs 20000 and negotiated it to an innocent Person for value. It was held that Signer to the blank acceptance was not liable to holder in due Course, because he never delivered the instrument intending to be used as negotiable instrument



Ambiguous Instruments

According to Section 17 of the Act

Where an Instrument May be constructed either as Promissory Note
Bill of Exchange
 the holder May at his election treat it as either, and Instrument shall be hence forward treated Accordingly.

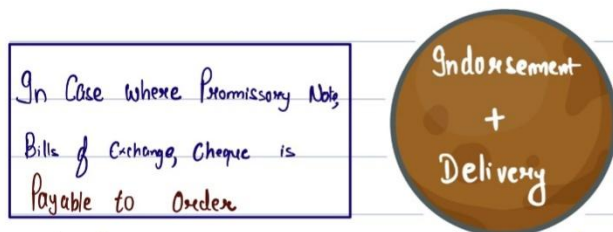
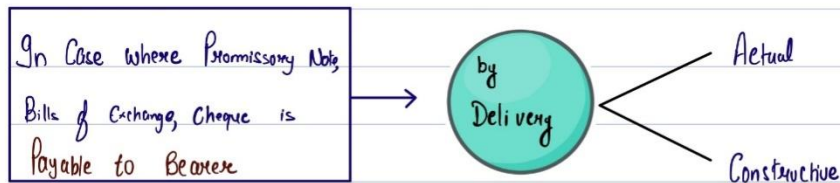
- Thus an Instrument which is Vague and Cannot be clearly identified either as [BOE (or) Promissory Note] is an Ambiguous Instrument



Negotiation [Transfer] of Negotiable Instruments

- According to Section 14 of Negotiable Instrument Act, when Negotiable Instrument is transferred to any person with a view to constitute person holder thereof, the instrument has been deemed to have been Negotiated

Modes of Negotiation



- A Promissory Note/BOE/cheque Payable to Bearer is negotiable by delivery thereof
- A Promissory Note/BOE/cheque Payable to Order is negotiable by holder by [Indorsement and Delivery]



Negotiation by Delivery [Section - 47]

Subject to Provisions of Section 58



- a. Promissory Note } Payable to Bearer is negotiable by delivery thereof
- Bill of Exchange }
- Cheque }

Section - 58

Instrument obtained by Unlawful Means (or) for Unlawful Consideration

Exception to Above



- Promissory Note } delivered on Condition that it is not to take effect except in a certain event is not negotiable unless such event happens
- Bill of Exchange }
- Cheque }

Exception or Exception [This means that this is inclusion]



Except is the hands of Holder for Value without notice of Condition.

Negotiation by Indorsement [Section - 48]

Subject to Provisions of Section - 58

- [Promissory Note } Payable to Order, is negotiable by Holder by Indorsement and delivery thereof
- Bill of Exchange }
- Cheque }

Importance of Delivery in Negotiation [Section - 46]



• Delivery Must be Voluntary and object of delivery should be to pass property in the Instrument to person to whom it is delivered.

• Delivery Can be Actual
Constructive

Actual Delivery

Actual delivery takes place when Instrument changes hand Physically

Constructive Delivery.

Constructive Delivery takes place when

When Instrument is delivered to agent Clerk, servant of Indorsee on his behalf	When Indorsee after indorsement hold the Instrument as an agent of indorsee
--	---

Section- 46 also lays down that when an Instrument is Conditionally or for special purpose only, the property in it does not pass to transferee even though it is endorsed to him.

Unless the instrument is negotiated to a holder in due course

• If a person Makes the indorsement of the Instrument, but before same could be delivered to indorsee the indorser dies, the Legal Representatives of the deceased person cannot negotiate the same by mere delivery thereof

Points to Remember

- Contract on negotiable Instrument until delivery remains Incomplete and Revocable
- The Delivery is essential, not only at time of Negotiation but also at time of Making/ Drawing Negotiable Instrument
- Rights in the instrument are not transferred to Endorsee unless after Indorsement same is delivered



Delivery when Effective between Parties

Negotiations of Instruments
Between the Parties

How Delivery is to be
Made

As between Parties
Standing in
Immediate Relation

Delivery to be effectual Must be
Made by, the Party Making,
Accepting or Endorsing, the
Instrument, or by Person
Authorised by him in that
behalf

As between such
Parties and any holder of
the Instrument other
than holder in due course

It May be shown that, the
Instrument was Delivered Conditionally,
or for Special Purpose only and
Not for the Purpose of
Transferring Absolutely the Property
there in

you got this

Dishonour of Cheque for Insufficiency of
Fund in the Accounts [Section 138 to Section 142]



Dishonour of Cheque for Insufficiency etc of
funds in the Accounts [Section - 138]

Where any Cheque drawn by Person on an Account Maintained by
him with a Banker :-

For Payment of any Amount of Money.

To Another Person from that Account

For discharge in whole or } of any debt
in part } or other liability

Is Returned by Bank unpaid.

Either because of the
Amount of Money standing to Credit of that Account is insufficient
to honour the cheque
that Exceeds the Amount Arranged to be Paid from
that Account by an Agreement Made with Bank.

A Cheque given as
Gift } in discharge of
Donation } Moral obligation or
Security } for an Illegal Consideration
is outside Purview of this
Section.



When Section - 138 Shall Not Apply

• Cheque Presented to Bank within Period of 3 Months from

[date on which it is drawn } whichever is
within Period of Validity } earlier

• Payee (or) Holder in due Course of Cheque [as Case May be]
Makes a demand of said Amount of Money by Giving notice in
writing to drawer of Cheque

Within 30 days of Receipt of Information by him from the
bank Regarding the Cheque as unpaid

• Drawer of such Cheque fails to Make Payment of said
Amount of Money to

[Payee (or)
to holder in due Course } within fifteen days
of the Cheque } of Receipt of such
Notice

DON'T FORGET

We May Conclude
that Complaint Can be filed
after 45 days of
dishonour of Cheque
↓
ie 30 day of Notice
Period +
15 days of the
Receipt of Notice

Debt or Liability
Means legal Enforceable
debt or other liability

Penalty

According to Sec-138, dishonour
of Cheque is a Criminal offence
and is punishable

Imprisonment upto 2 years OR
Fine upto twice the amount of Cheque OR
Both

Presumption in Favor of Holder
[Section - 139]



When a Cheque is dishonoured, it shall be Presumed [Unless Contrary is
proved]

that holder of Cheque Received the Cheque of Nature referred
is Section 138 for the discharge, in whole (or) in part
any debt or other liability

Presumption is Rebuttable Presumption



• As the Provision clearly Provides that Person Issuing the Cheque is
at liberty to Prove the Contrary

• The effect of this Presumption is to place evidential burden on Accused.

**Defence which May not be allowed in any Prosecution under
Section 138 [Section - 140]**



• It shall not be defence in Prosecution of an offence under Section 138
that drawer had no Reason to believed when he Issued Cheque
that Cheque May be dishonoured on presentments for Reasons stated
in that Section.

Presentment of Instruments

[Section 61 to Section 71]



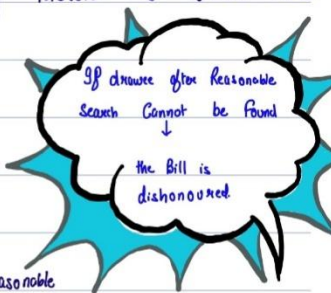
Presentment for Acceptance [Section - 61]

- A Bill of Exchange Payable after Sight Must [if no time/place is specified therein for Presentment] → be presented to the Drawee for Acceptance [if he can be found by Reasonable Search] →

by a Person entitled to demand Acceptance, within Reasonable time after it is drawn and in business hour on a business day

- In default of such Presentment, no Party thereto is liable thereon to party Making such default.

- If the bill is directed to drawee at a particular place, it Must be Presented at that Place → if at due date for Presentment [he cannot after Reasonable Search be found there, the Bill is dishonoured]



Where Authorised by [Agreement ~~or~~ Usage] a Presentment through the Post office by Means of Registered letter is sufficient

Presentment of Promissory Note for Sight [Section - 62]



A Promissory Note, payable at Certain Period, after Sight, Must be Presented to the Maker thereof for Sight [if he can after Reasonable Search be found] → by a person entitled to demand Payment, within Reasonable time after it is Made and in business Hour on Business day.

- In default of such Presentment, no party thereto is liable thereon to person Making such default.

Drawee time for Deliberation. Section - 63



- The Holder Must, if so Required by Drawee of Bills of Exchange Presented to him for Acceptance → Allow the drawee 48 hours [Exclusive of Public Holidays] to Consider whether he will Accept it.

Hours of Presentment [Section - 65]



Presentment for Payment Must be Made during Usual hours of Business and if at Bankers, during banking Hour.



Presentment for Payment
[Section - 64]

[Promissory Notes
Bills of Exchange
Cheque] } Must be Presented for Payment to
 Maker Acceptor Drawee } as here in
 Behalf of }
 Holder } Provided

In default of such Presentment, the other parties thereto are not liable thereon to such holder.

Whether Authorised by Agreement or Usage →
the Presentment through Post office by Means of Registered Letter is sufficient

Exception.

When Promissory note is payable on demand and it is not payable at specified place →
No Presentment is Necessary in order to Charge Maker thereof.



Presentment for Payment of Instrument Payable after date (or) Sight [Section - 65]

[A Promissory Note (or)
Bills of Exchange] } Made Payable at specified period after date
 or Sight thereof }
 → Must be Presented for Payment at Maturity



Presentment for Payment of Promissory Note Payable by Installments [Section - 67]

A Promissory Note Payable by Installments Must be Presented for Payment on third day after date fixed for Payment of Each Installment and Non-Payment for such Presentment has the same effect as Non-Payment of Note at Maturity



Presentment for Payment of Instrument Payable at Specified Place and Not Elsewhere [Section - 68]

[Promissory Note
Bill of Exchange
Cheque] } Made, drawn and Accepted Payable at specified place
 and not Elsewhere Must →
 in order to Charge any party thereto, be Presented for Payment at that Place



Instrument Payable at Specified date [Section - 69]

[Promissory Note
Bill of Exchange] } Made, drawn or Accepted, Payable at specified place
 Must, in order to Charge Maker/drawee thereof
 be Presented for Payment at that Place



Presentment where No Exclusive Place specified [Section-73]

{ Promissory Note } Not Made Payable as Mentioned in { Section-68 } Must
 { Bill of Exchange } { Section-69 } be

Presented for Payment at that

- Place of Business [if any] (or)
- At Usual Residence of { Maker } as the Case } May be
 { Drawee }
 { Acceptor }



Presentment when Maker etc has no known Place of Business and Residence [Section-71]

If { Maker } of Negotiable Instrument has no known place of Business
 { Drawee } (or) Fixed Residence and
 { Acceptor } No place is specified in the Instrument for Presentment
 for Acceptance/Payment, such Presentment May be Made
 to him in Person, wherever he can be found.



Presentment of Cheque to Charge Drawee [Section-72]

Subjected to Provision of Section 84, a cheque Must, in order to
 charge the drawer, be Presented at Bank, upon which it is drawn
 before the Relation before the drawer and his Banker has been
 Altered to Prejudice of the drawer



Presentment of Cheque to Charge any other Person [Section-73]

A Cheque Must, in order to Charge any Person Except the drawer, be
 Presented within Reasonable time after delivery thereof by such Person



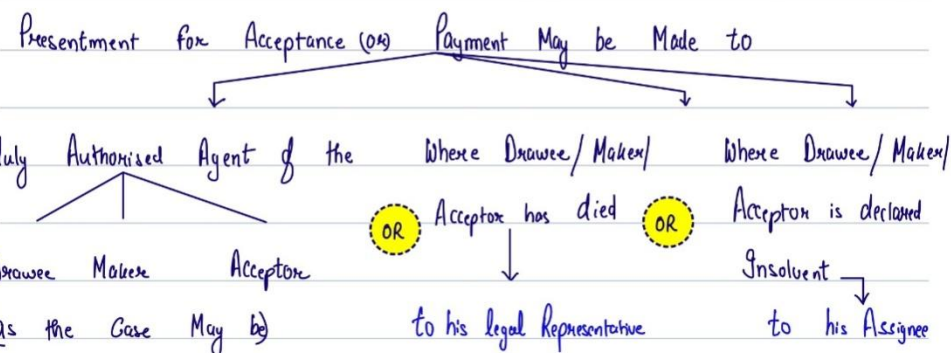
Presentment of Instrument Payable on Demand [Section-74]

Subjected to Provision of Section 31

a Negotiable Instrument Payable on demand
 Must be Presented for Payment within Reasonable
 time after it is Received by holder



Presentment by (or) to Agent, Representative of Deceased (or) Assignee of Insolvent [Section-75]





Excuse for delay in Presentment for Acceptance/ Payment
[Section - 75 A]

- Delay in Presentment for Acceptance (or) Payment is Excused if the delay is Caused by Circumstances beyond the Control of holder and not Imputable to

- His default
- Misconduct
- Negligence

note to self:
When the Cause of delay Ceases to operate/ Presentment Must be Made within Reasonable time



When Presentment Unnecessary [Section 76]

No Presentment for Payment is Necessary and instrument is dishonoured on due date for Presentment in any of following Cases :-

- (a) (i) If the Maker, drawee or Acceptor intentionally Prevent the Presentment of Instrument (or)



- (ii) the Instrument being Payable at his place of Business, he Closes such place on a business day during Usual Hours of Business.

- (iii) If the Instrument being Payable at some other specified place, neither he nor any Person Authorised to Pay it

attends at such place during Usual business hours.

- (iv) If the Instrument being Payable at any specified place, he Cannot after due search be found

(b)

As Against any party sought to be charged therewith, if he has Engaged to Pay notwithstanding Non - Presentment



(c)

As Against any party if, after Maturity, with knowledge that Instrument has not been Presented

- (i) he Makes a part Payment on Account of the Amount due on Installment



OR

- (ii) Promises to Pay the Amount due thereon in whole or in part

OR

- (iii) otherwise Waives his Right to take Advantage of any default in Presentment for Payment.

(d)

As Against the drawee, if drawee could not suffer damage From the want of such Presentment





Liability of Banker for Negligently dealing with Bill Presented for Payment [Section - 77]

When a Bill of Exchange, Accepted Payable at a specified Bank, has been duly presented for payment and dishonoured



[if Banker so negligently or Improperly keeps deals with or delivers back such bills as to cause loss to the holder, he must compensate the holder for such loss]



Rules of Compensation [Section - 117]

Compensation Payable in case of dishonour of [Promissory Note, Bills of Exchange, Cheque] by any Party liable to the holder or

any endorsee, shall be determined by following Rules :-

Rule - 1 Holder is entitled to the amount due upon the Instrument,



together with the expenses properly incurred

in [Presenting, Noting, Prototyping it]

Rule - 2



When the Person charged Resides at a place different from that at which the instrument was payable



the holder is entitled to receive such sum at current rate of Exchange between the two places.

Rule - 3

An Endorsee who being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 12% p.a.



Rule - 4

When the [Person charged and] Reside at different places, [Such Endorsee] the Endorsee is entitled

to receive such sum at current rate of Exchange between two places



★ Interest and Expenses

FROM

Interest shall be paid from date of Payment

TO

Interest shall be paid upto date of Payment/Realization

Also all Expenses caused by dishonour and Payment shall be paid

Rule - 5 The Party Entitled to Compensation May draw a bill upon Party liable to Compensate him [payable at sight ^{OR} payable on demand] for the Amount due to him together with all Expenses properly Incurred by him.

Such bill Must be Accompanied by [Instrument dishonoured ^(and) Protest thereof [if any]]







If such bill is dishonoured, the Party dishonouring the same is liable to Make Compensation thereof in same Manner as in Case of Original Bill



Difference between promissory note and bill of exchange

	Basis	Promissory Note	Bills of Exchange
1.	Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
2.	Nature of Instrument	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	Parties	In a promissory note, there are only 2 parties namely: (i) the maker and (ii) the payee	In a bill of exchange, there are 3 parties which are as under: (i) the drawer (ii) the drawee (iii) the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

Q1.	What are the essential characteristics of Negotiable Instruments?		debt is insufficient.
ANS:	<u>Essential Characteristics of Negotiable Instruments</u>		<ul style="list-style-type: none"> The promise to pay should be definite and unconditional A promissory note must be signed by the maker otherwise it is incomplete and ineffective.
	<ul style="list-style-type: none"> It is necessarily in writing. It should be signed. It is freely transferable from one person to another. Holder's title is free from defects. It can be transferred any number of time still its satisfaction. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only. The sum payable, the time of payment, the payee, must be certain. The instrument should be delivered. Mere drawing of instrument does not create liability. 	SPQ	<ul style="list-style-type: none"> Promise to pay money only. Promise to pay a certain sum. The maker and payee must be certain, definite and different persons. A promissory note cannot be made payable to the bearer [Section 31 of the Bank of India Act, 1934 (RBI Act)]. Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'. Stamping: A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials on such stamp or otherwise.
Q2.	Who are the parties to a bill of exchange?		
ANS:	<u>Parties to the bill of exchange</u>	SPQ	Q4. Who are parties to a cheque?
	Drawer: The maker of a bill of exchange.		ANS: Drawer: The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
	Drawee : The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.		Drawee: The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.
	Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.		"drawee in case of need"—When in the bill or in any indorsement thereon, the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".
Q3.	What are the essential characteristics of Promissory Note?		Payee: The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.
ANS:	<u>Essential Characteristics of a Promissory Note</u>		SPQ
	<ul style="list-style-type: none"> In writing—An oral promise to pay is not sufficient. There must be an express promise to pay. Mere acknowledgment of 		



		Q6. Explain what is 'presentment for acceptance', as per the provisions of the Negotiable Instruments Act, 1881
	<p style="text-align: center;">Cheque</p> <pre> graph TD C[Cheque] --> M[Person who is a maker] C --> D[Person who is directed to pay] C --> F[Person in whose favour issued] M --> Dr[Drawer] D --> Dw[Drawee] F --> P[Payee] Dr --> Dw Dw --> P </pre>	<p>ANS: <u>Presentment for acceptance [Section 61]</u></p> <p>A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.</p> <p>In default of such presentment, no party there to is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.</p> <p>If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.</p> <p>Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.</p>
Q5.	Explain the meaning of 'Negotiation by delivery' with the help of an example. Give your answer as per the provisions of the Negotiable Instruments Act, 1881.	
ANS:	<p><u>Negotiation by delivery [Section 47]</u></p> <p>Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.</p> <p>Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.</p>	<p>Q7. State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument as per The Negotiable Instruments Act, 1881:</p> <ol style="list-style-type: none"> Ram draws a bill of exchange in Delhi upon Shyam a resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance. Ramesh draws a bill of exchange in Mumbai upon Suresh a resident of Australia and accepted to be payable in Chennai after 30 days of sight. Ajay draws a bill of exchange in California upon Vijay a resident of Jodhpur and accepted to be payable in Kanpur after 6 months of acceptance. Mukesh draws a bill of exchange in Lucknow upon Dinesh a resident of China and accepted to be payable in China after 45 days of acceptance.
	<p>Example:</p> <p>A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.</p>	<p style="text-align: center;">MTP</p> <p style="text-align: center;">RTP</p>

Ans.	“Inland instrument” and “Foreign instrument” [Sections 11 & 12 of the Negotiable Instruments Act, 1881] A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument. Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.	ANS:	Provision: Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole.
	Following are the answers as to the nature of the Instruments:		Facts of case: In the above case Manoj draws a promissory note in favour of Umesh cuts it into half and delivers it to Umesh. He cuts the note into half and sends one of it to Umesh. Later he asks Umesh to return it back and on the other hand Umesh asks for the other piece. As delivery of half of the instrument is not a delivery is not the delivery of the instrument the transfer of a part of the instrument shall not be treated as delivery.
	1. In first case, Bill is drawn in Delhi by Ram on a person (Shyam), a resident of Jaipur (though accepted to be payable in Thailand after 90 days) is an Inland instrument.		Conclusion: So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him.
	2. In second case, Ramesh draws a bill in Mumbai on Suresh resident of Australia and accepted to be payable in Chennai after 30 days of sight, is an Inland instrument.		
	3. In third case, Ajay draws a bill in California (which is situated outside India) and accepted to be payable in India (Kanpur), drawn upon Vijay, a person resident in India (Jodhpur), therefore the Instrument is a Foreign instrument.		
	4. In fourth case, the said instrument is a Foreign instrument as the bill is drawn in India by Mukesh upon Dinesh, the person resident outside India (China) and also payable outside India (China) after 45 days of acceptance.		
		Q9.	Explain the modes of Negotiations in instruments, as per the provisions of the Negotiable Instruments Act, 1881.
		Ans:	MODES OF NEGOTIATION
			A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.
			A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.
			Negotiation by delivery [Section 47]
			Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.
			Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.
Q8.	Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted. Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.		

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	Negotiation by indorsement[Section48]	Q11.	Classify Negotiable Instruments on following basis:	SPQ
	Subject to the provisions of section58, a promissory note, bill of exchange or cheque Payable to order, is negotiable by the holder by indorsement and delivery thereof.		a) "Bearer instrument " and "order instrument"	
			b) Inchoate and Ambiguous instruments	
		Ans:	a) Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words "or bearer" or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.	
		RTP		
Q10.	Explain what is 'presentment for payment', as per the provisions of the Negotiable Instruments Act, 1881.		Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.	
Ans:	Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as herein after provided.			
	In default of such presentment, the other parties there to are not liable there on to such holder.		(b) Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives a power to its holder to make it complete by writing any amount either within limits specified there in or within the limits specified by the stamp's affixed on it.	
	Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.			
	Exception: Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.			
	Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:		Ambiguous Instrument: Section 17 of the Act, reads as: "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thence forward treated accordingly.	
	Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.		Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall there after be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.	
		SPQ		

<p>Q12. M drew a cheque amounting to ₹ 2lakh payable to N and subsequently delivered to him. After receipt of cheque N indorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?</p>	<p>first half sent by him. He can change his mind and refuse to send the other half of the P/N.</p>
<p>Ans: Provision: Negotiation by indorsement [Section 48] : Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.</p> <p>FACTS OF CASE: M drew cheque payable to N and delivered to him and further N indorsed it to C which kept in safe locker. Later P found it in safe locker after the death of N.</p> <p>CONCLUSION: No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)</p>	<p>Q14. Rama executes a promissory note in the following form, 'I promise to pay a sum of 10,000 after three months'. Decide whether the promissory note is a valid promissory note.</p> <p>Ans: The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.</p>
<p>Q13. M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.</p>	<p>Q15. Anjum drew a cheque for ₹20,000 payable to 'Babloo' and delivered it to him. 'Babloo' indorsed the cheque in favour of 'Rehansh' but kept it in his table drawer. Subsequently, 'Babloo' died, and cheque was found by 'Rehansh' in 'Babloo's table drawer. 'Rehansh' filed the suit for the recovery of cheque.</p>
<p>Ans: Provision: Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole.</p> <p>FACTS OF CASE: M makes promissory note to N and he cuts the note in half for safety of transmission. He then call backs half note from N.</p> <p>CONCLUSION: So, the claim of N to have the other half of the P / N sent to him is not maintainable. M is justified in demanding the return of the</p>	<p>Whether 'Rehansh' can recover cheque under the provisions of the Negotiable Instrument Act 1881?</p> <p>Ans. According to section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.</p> <p>The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the</p>



indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. [Section 57]
In the given case, cheque was indorsed properly but not delivered to indorsee i.e. 'Rehansh', Therefore, 'Rehansh' is not eligible to claim the payment of cheque.

RTP

