

The Indian Partnership Act, 1932

Unit 1 - General Nature of Partnership

* Definitions [Section 4]

- Partnership :- Relation between persons who agree to share profits of a business carried on by all
OR
any of them acting for all.
- Partners / Firm / Firm name :- Persons who have entered into partnership with one another are called individually "Partner" and collectively a "Firm" and Name under which their business carried on is called "Firm name."

* Act of Firm [Section 2(a)] - means any act or omission by all partners, or by any partner, or agent of firm which give rise to right enforceable by or against firm.

* Who can become a partner?

- Person competent to enter into valid contract
- Minor cannot become partner but can be a beneficiary
- Company can become a partner
- Two Partnership firm cannot enter into partnership

* Essential Elements of partnership

1] Association of Two or more persons

Firm cannot be a partner in partnership
Minor cannot be partner but with consent of all partners, can be beneficiary

Max. no. of partners as per Sec. 464 of Companies Act 2013 - 50.

2] Agreement - Must be voluntary & Contractual

- May be oral or in writing
- May be express or implied

3] Business $\rightarrow$ includes trade, occupation, profession

Motive $\Rightarrow$ Acquisition of gains

4] Agreement to share profit - Must be sharing profit

If no profit sharing, then no partnership
Profit Sharing Ratio = Loss Sharing Ratio
(unless otherwise agreed)

No partnership if $\rightarrow$ Co owners share ^{sent} not from Profit
charitable institutions

5] Business carried on by all or any of them acting for all (aka called)

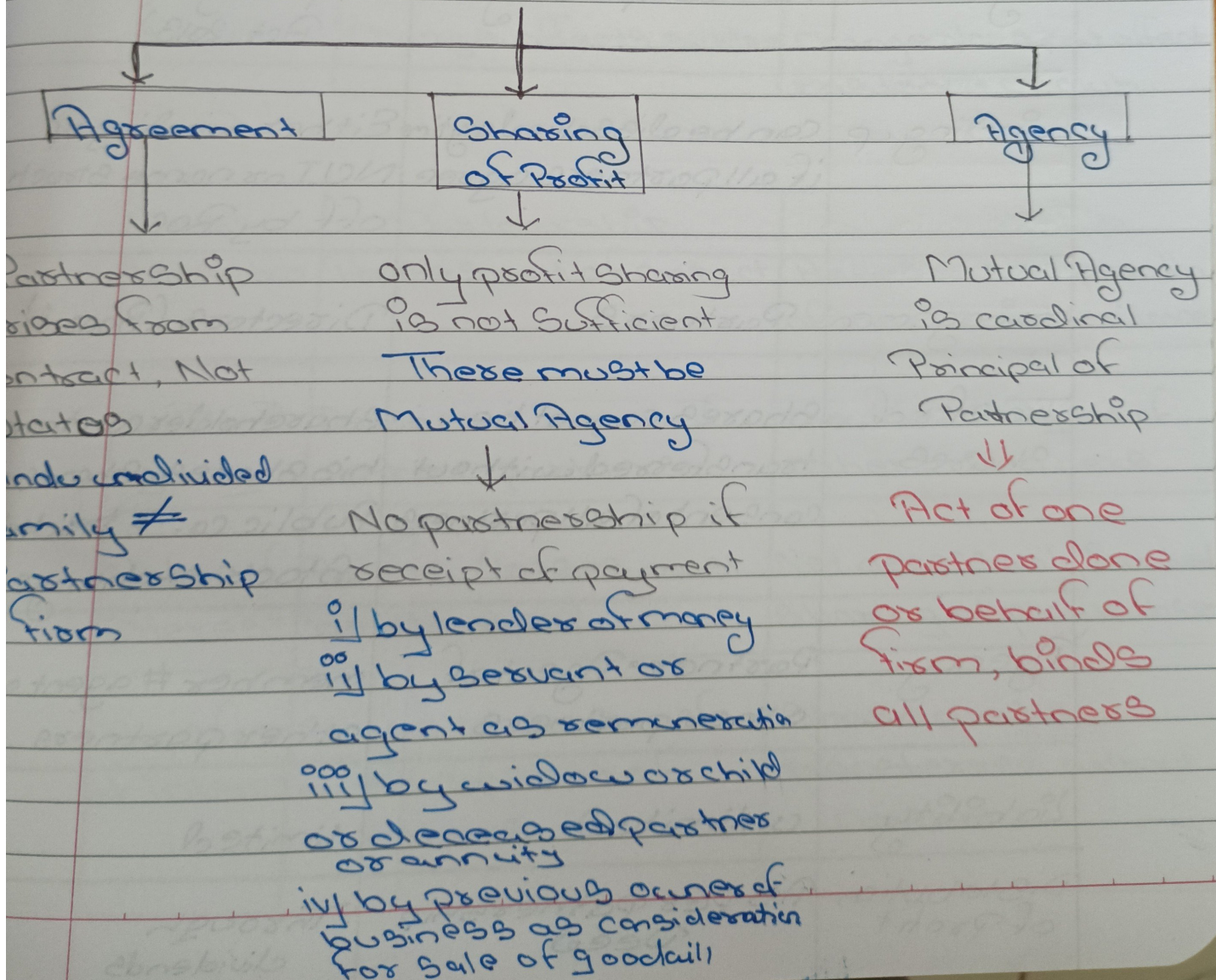
Mutual Agency)

Cardinal Principle of partnership
partner = Principal = Agent

* True Test of Partnership OR
Mode of Determining Existence of partnership
[Section 6]



whether group of persons is firm or partner of firm, regard shall be had to Real Relation b/w them



* Distinguish between

① Partnership vs Joint Stock Company

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Basis	Partnership	Joint Stock Company
Legal Status	No legal entity i.e. not distinct from partners	Separate legal entity (Salmon v. Salmon)
Governed by	Indian Partnership Act, 1932	Companies Act, 2013
members	Min : 2 max : 50	Min: Private co. 2 Public co. 7 max: Private co. 20 Public co. 100
Registration	Not compulsory	Compulsory (Companies Act, 2013)
winding up	Can be dissolved anytime if all partners agree	Either winding up NCLT or name struck off by RoC
management	Partners	Directors (Board)
Transfer of Shares	Shares cannot be transferred without consent of all partners	Shareholder can transfer his shares. Share of Public co. → traded on Stock exchange
Agency	Partner = Agent of other partners	member # agent of other partners
Liability	unlimited	limited
Distribution of Profit	As per Partnership	As per Shareholding

② Partnership v/s club

* Basis	Partnership	club
Meaning	Association of persons formed for profit earning motive.	Association of persons formed for NOT earning profit BUT Promoting beneficial purpose i.e. health, improvement etc.
Relationship	Partner $\neq$ Agent of other Partners	Member $\neq$ Agent of other members
Interest in property	Partner has interest in firm's property	Member has no interest
Dissolution	Change affects existence	Change does not affect existence of club

③ Partnership v/s Co-ownership

Basis	Partnership	co-ownership
Formation	Arises out of contract	Arises out of operation of law i.e. inheritance
Implied agency	Partner = Agent of other partners	co-owner $\neq$ Agent of other co-owners
Nature of interest	Profits/Losses must be shared	Not necessarily involved sharing of profits/losses
Transfer of interest	Share can be transferred with consent of others	Share can be transferred without consent

Q1 Partnership vs Association

Basis	Partnership	Association
Meaning	Getting up of relation of agency b/w 2 or more Partners who entered for sharing profit.	Evolves out of cause; no motive to earn profit.
Examples	Partnership → To run business & earn profit	members of club / institution / religious association

Q3 Partnership vs. Joint Hindu undivided

Basis	Partnership	Hindu undivided
Creation	Created by agreement	Created by status (creation by birth)
Death of member	ordinarily leads to dissolution of firm.	Death of member - not results in dissolution
management	Partners	Karta
Authority to bind	Partner can bind firm	Karta / manager has authority to contract family business & other members
Liability	Liability of partner is unlimited	Liability of Karta is unlimited. other Coparceners liable to

Law	Indian partnership Act, 1932	Hindu law
Continuity	Subject to contract, dissolved by death or insolvency of partner	Continued till divided Not affected by death of member
Max. No. of members	50	unlimited
Share in business	By virtue of agreement if agreement, is silent then equal.	No co partners has definite share, his share / interest is fluctuating due to death or birth in family

* Kinds / Types of Partnerships

with regard
to Duration

with regard
to extent of business

Partnership

at will

(Section 7)

Partnership

for fixed
period
Penalty

Particular
Partnership

Partnership

[Section 8]

General

Partnership

Business

General

- No Fixed
Period agreed
upon,

- created
for fixed
time

- for Particular
adventure
or

undertaking

Liability

= unlimited

- no Provision
made for
determination
of partnership

- After expiry
of term,
it comes
to an end

- If adventure
Completed,
Partnership
dissolved

may be dissolved
by any partner
by giving notice
in writing to
all others

- Liability $\Rightarrow$
only with
that of

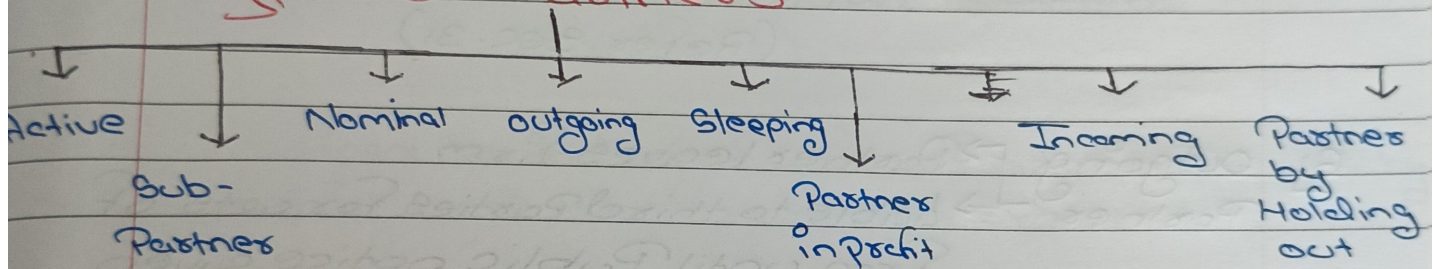
particular
adventure
~~Partnership~~

If partnership for fixed period
continues after expiry of term,
it is 'partnership at will'

* Partnership Deed $\swarrow$ oral
 $\searrow$ writing | Suggested to have it in writing

- | | |
|------------------------------------|---|
| 1. Name of Firm | 8. Admission / Retirement |
| 2. Names of all partner | 9. Rate of interest on Capital, Drawing, loans |
| 3. Nature & Place of business | 10. Provision for Settlement of a/c's, Salaries, commission |
| 4. Date of commencement | 11. Provision for expulsion of partner |
| 5. Duration of Firm | |
| 6. Capital Contribution | |
| 7. Profit Sharing Ratio of Partner | |

* Types of Partners



- 1) Active Partner -
 or
 Ostensible Partner
- Become Partner by agreement
 - Actively takes part in conduct of business
 - Agent of other partners
 - If Retiring, must give Public notice
 - Liable of third Parties

- 2) Sleeping or Dormant Partner
- Becomes Partner by agreement
 - Does not actively participate in business
 - Not required → Public Notice
 - Liable to third Parties

3] Nominal Partner → lends his name to firm, with no real interest
→ Not entitled to share profits
→ Don't take part in business
→ Liable to third parties
→ Does not contribute / invest in firm

4] Partner in profits only → Shares Profit only, not losses
→ Liable to third parties for acts done Profit only

5] Incoming Partner → New Partner admitted only with consent of all Partners
→ Not liable for acts done before joining
(Refer Sec. 31)

6] Outgoing Partner → Partner leaves firm
→ Liable to third parties for acts of firm until Public notice given
(Refer Sec. 32, 36, 37)

7] Partner by Holding out / Partner by Estoppel → Person represents himself as Partner or knowingly permitted himself to be represented as partner
(Section 28)

Representation → words
→ conduct

other party or faith of representation gives credit to firm

↓
Then he is liable to anyone who believes that he is partner & gives credit to firm.

Unit 2 - Relation of partners

* Relation of partners to one Another

1] General Duties of Partners [Section 9]:

Partners are bound to -

- Carry on business of firm to Greatest common advantage
- be just & faithful to each other
- render true a/c & full info of things affecting firm to partner / legal represent

2] Duty to indemnify for loss ^{caused} covered by fraud [Section 10]

Partners to indemnify firm for loss caused by fraud in conduct of business of firm

3] Determination of Rights & Duties of partners by contract b/w partners [Section 11]

→ Mutual Rights & Duties → determined by contract b/w them

Contract
{

 Express
Implied

Contract → may be varied by consent of all

Consent
{

 Express
Implied

→ Partners shall not carry on any other business while he is partner in firm & such contract is valid (Section 27 of Indian Contract Act, 1872)

↓

IF restraint of trade

4) Conduct of business [Section 12]: Subject to Contract between partners

Sec 12(a) - Partner has Right to take part in conduct of business

IF partners stopped from participating → can interfere.

Partner can suit for ^{dissolution} ~~dissolution~~, suit for

But if contract restricts participation of partners then court cannot interfere.

Sec 12(b) - Partner bound to attend diligently to his duties in conduct of business

Sec 12(c) - Any difference arising

↓
as to ^{ordinary} ~~ordinary~~ matters

with business

↓

Decided by majority of Partners; Every partner has right to express opinion

as to change in nature of business

reconstitution

↓

Decided by consent of all partners

Section 12(d) - Partner has
right to
↓
(Sleeping or
Active or otherwise)

- to have access to,
- to inspect,
- copy any books of a/c's of firm

Section 12(e) - In event of death of partner,

- his heir, or
 - his legal representative, or
 - his duly authorised agent
- Shall have right of
- access to
 - to inspect
 - copy
- } books of a/c's of firm

5] Mutual Rights & Duties & Liabilities [Section 13]

Subject to contract between partners;

Section 13(a) - Partner → Not entitled to remuneration for taking part in conduct of business

But if contract provides otherwise then remuneration can be given to partner.

Partner can claim remuneration even if contract is absent, if remuneration payable under continued usage of firm.

Section 13(b) - Partner entitled to share profits equally & contribute to losses equally.

If agreement provides PBR, then follow that ratio. If no agreement, then shared equally.
No connection between capital contribution & Profit sharing

Section 13(c) - where partner entitled to interest on capital, such interest to be payable only out of profits.

Following element must be present if partner is entitled to interest on capital: →

- expressly agree
- trade custom
- Statutory provision which entitles him to interest

If losses then no interest on capital

Section 13(d) - where partner advanced any amount or payment beyond capital, he's entitled to interest @ 6% p.a. (unless otherwise agreed)

Interest on capital a/c ~~stops~~ to run on dissolution, BUT Interest on advance keep running even after dissolution upto payment.

Section 13(e) - Firm shall indemnify partner for payments & liabilities incurred

- in ordinary course of ^{business} action / proper conduct

ii) in doing act of emergency for protecting firm from ~~user~~ loss, as a man of ordinary prudence would do.

Section 13(f) - Partner to indemnify firm for loss caused to it by his wilful neglect in conduct of business

* Property of firm [Section 14]

Subject to contract between partners, property of firm includes

→ all property, rights, & interest in property originally brought into common stock of firm,

→ all property, rights & interests acquired by purchase, or otherwise by or for firm or for purpose & in course of business of firm, and

→ Goodwill of business

If partner permitted his property for being used in partnership business DOES NOT mean that is property of partnership

Unless contrary intention appears, property / Rights / Interest in property acquired with money belonging to firm ~~because~~ Demand to have been acquired for firm.

* Application of property of firm [Section 15]

Subject to contract between partners, property of firm shall be held & used thereby by partners exclusively for purpose of business.

This means assets of partnership must be used for business of partnership & not for personal use of partners.

* Personal Profit Earned By Partners [Section 16]

Subject to contract between partners,

a) If partner derives Profit for himself

- from any transaction of firm, or
 - from use of property, or
 - business connection of firm / firm name
- } He shall Pay the Profit earned to firm

b) If partner carries business of same nature or of competing nature

} He shall Pay profits earned to firm

* Rights & Duties of partners after change in firm [Section 17]

Rights / Duties / liabilities of partners of firm $\Rightarrow$ To Remain Same as they were in beginning (unless otherwise agreed)

- a) after change in ~~condition~~ constitution of firm,
- b) after expiry of term of firm,
- c) additional undertakings are carried out

* Partner to be agent of firm [Section 18]

Every partner = Agent of firm purpose of business of firm

Partner = Principal = Agent		} only for purpose of business of firm
↓	↓	
Act for himself	Act for other Partners	

* Implied authority of partner as agent of firm [Section 19]

1) Act of partner done to carry on in usual way business of kind carried on by firm $\rightarrow$ bind firm.

Authority of partner to bind firm $\rightarrow$ Implied authority

2) In absence of any usage or custom of trade to contrary, Implied Authority of partner does not allow him to: (Act outside Implied Authority)

- a) Submit dispute to arbitration relating to business
- b) Open bank a/c on behalf of firm in own name
- c) Compromise / surrender claim or portion of claim
- d) withdraw suit / Proceeding filed on behalf of firm
- e) admit liability in suit / proceeding against firm
- f) acquire immovable property on behalf of firm
- g) transfer immovable property belonging to firm
- h) enter into partnership on behalf of firm

* Modes of Doing Act To Bind Firm [Section 22]

To bind firm, an act or instrument done or executed by partner or other persons on behalf of firm shall be done or executed in firm name, or implying an intention to bind firm.

Condition for partner's act to bind firm
→ Implied Authority: →

① Act must relate to usual business of firm, within his authority & relate to business of firm

② Act done for normal conduct of firm. Normal conduct depends on nature / circumstances of each case

③ Act to be done in firm's name & implying an intention to bind firm

* If partnership is of general commercial nature, then partner may. (i.e. Acts within Implied Authority)

→ pledge / sell partnership property

→ buy goods on a/c of partnership

→ borrow money, contract debts & pay debts on a/c of partnership

→ Draw / make / sign / endorse / transfer, promissory Note, BoE, cheques, in name & a/c of partnership

* Extension & Restriction of partners' Implied Authority [Section 20]

Partners may, by contract extend or restrict implied authority of any partner(s) [Contract all require]

Notwithstanding any such restriction, an act done by partner on behalf of firm binds firm which falls within his implied authority unless

- a) the person he's dealing with knows of restriction
- b) the person does not know that he's dealing with partner of firm.

* Partner's Authority in an Emergency [Section 21]

In case of Emergency, A partner has authority



to do all such acts for purpose of protecting firm from loss, as would be done by person of ordinary prudence in such case.

↓

and these acts bind firm.

* Effect of Admissions by partners [Section 23]

An admission or Representation made by partner concerning the affairs of firm is evidence against firm if it's made in ordinary course of business

} means admission by partner
↓
binds firm

An admission or representation by partner will not bind firm if his authority is limited AND other party knows of this restriction

* Effect of Notice to Acting partner [Section 24]

Notice to partner who habitually acts in business of firm of matters relating to affairs of firm operates as Notice of firm

this implies

Notice to Active partner = Notice to all partners

Notice must be active & not constructive. It must be received by Active partner, not Sleeping.

Exception: → In case of fraud or firm committed by or with consent of partners, Notice to Active $\neq$ Notice to all Partners

* Liability of partners for Acts of firm [Section 25]

Every partner is liable, jointly & severally with all partners, for all acts of firm done while he's partner.

* Liability of firm for wrongful acts of partners [Section 26]

Firm is liable to same extent as partner for any loss or injury caused to himself by wrongful acts of partner, if they are done by partner while acting

- In ordinary course of business
- with authority of partners

* Liability of firm for misapplication by partners [Section 27]

a) Partner received money/Property

← from → Third party

and misapplies it

b) Firm in ordinary course of business received money/property

← from → Third party

and Partner misapplied it

Then, Firm is liable to make good the loss

Note:- If money received by partner is outside his authority. Then it is not regarded as receipt by firm AND other partners are not liable.

* Rights of Transferee of partner's Interest [Section 24]

Transfer by partner of his interest in firm either by way

- of absolute transfer, or
- mortgage, or
- by creation by him of charge

Transferee not entitled to

- interfere with conduct of business
- require accounts
- inspect books of firm

Transferee entitled to

During continuance of partnership

on dissolution of firm
retirement of partner

- To receive share of profits of transferring Partner
- Bound to accept a/c of profits agreed by Partners

- To receive share of assets of firm to which transferred
- entitled to a/c for date of dissolution

* Minors Admitted to Benefits of partnership [Section 30]

- Minors cannot be partner in firm BUT with consent of all partners → he may be admitted to benefits of partnership.

② Right of minor of firm

- a) Share profits & Property of firm
 - b) to have access to
to inspect,
to copy
- } acts of firm
- c) to file suit for acts or for payment of share only if severing connection with firm.
 - d) to opt to become partner on attaining majority
- He may choose to become partner within 6 months of attaining majority.
- If elects to become partner → Entitled to share
Share If does not elect to be partner → Not liable for acts of firm after public notice served.

③ Liability of minor in firm

I. Before attaining majority

- a) Liability confined only to extent of share in profits / Property
- b) minor → not personally liable for debts incurred during minority
- c) minor → cannot be declared insolvent but if firm declared insolvent his share vests with official Receiver / Assignee.

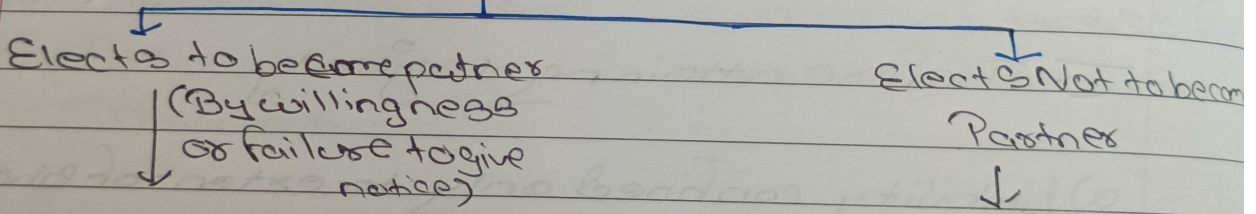
II. Minor's Position on Attaining majority

Decide → Within 6 months of attaining majority his obtaining knowledge that he had been admitted to benefits of firm, whichever date is later, whether remain Partner or leave firm.

Notice → Give Public Notice of his intention → whether Remaining or leaving firm.

Demand Partner → If failed to give notice.
↓
then deemed partner on 6 months expiration

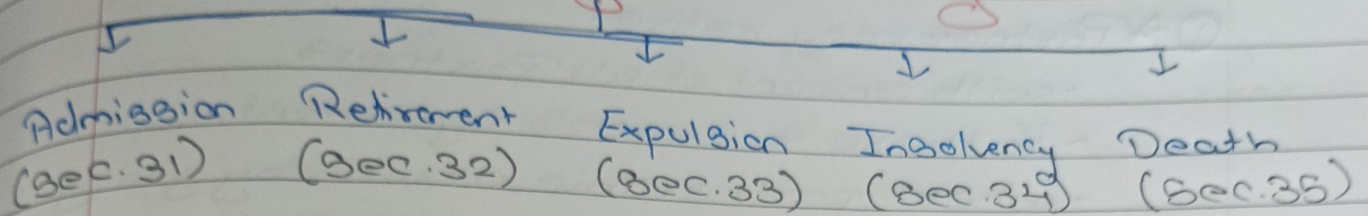
III. On attaining majority if he



- a) Becomes personally liable to third parties for all acts of firm done since he was admitted to benefits of partnership
- b) His share in property & profits of firm remain same as before

- a) Rights & Liabilities Continue to be those of minor up to date of giving Public notice.
- b) His share not liable for acts done at the notice
- c) Entitled to sue partner for his share of Profit/Property

* Reconstitution of firm / legal consequences of partner coming in & going out



① Admission (Introduction of Partner) [Section 31]

- Consent of all partners required if a new person is entering in firm as partners
- New Partner not liable for acts done by firm before his admission.

But he will be liable for past acts if he especially agreed to be liable for them

- Creditors cannot hold new partner liable for past acts as there is no privity of contract b/w new partners & creditors.
- Credit may agree to accept new firm as debtor & discharge old partners → Novation is required

Sec. 31 does not apply in case of partnership of 2 partners, if it is dissolved by death of one of them.

2 Retirement of partner [Section 32]

① → Partner may retire:

- with consent of all Partners,
- if there is express agreement,
- where partnership at will, by giving notice in writing to other partners

② → Retiring partner may be discharged from liability to third party for acts of firm done before retirement by:

- a) Agreement made with third party & partners of reconstituted firm
- b) Agreement may be implied from ^{course of} dealing b/w third party & partners of reconstituted firm.

③ → Retired partner & other partners remain liable as partners to third parties for acts of any of them in firm name before retirement, until public notice is given of retirement

Retired partner not liable to third party who deals with firm without knowledge that he was partner.

④ → Public Notice
may be given

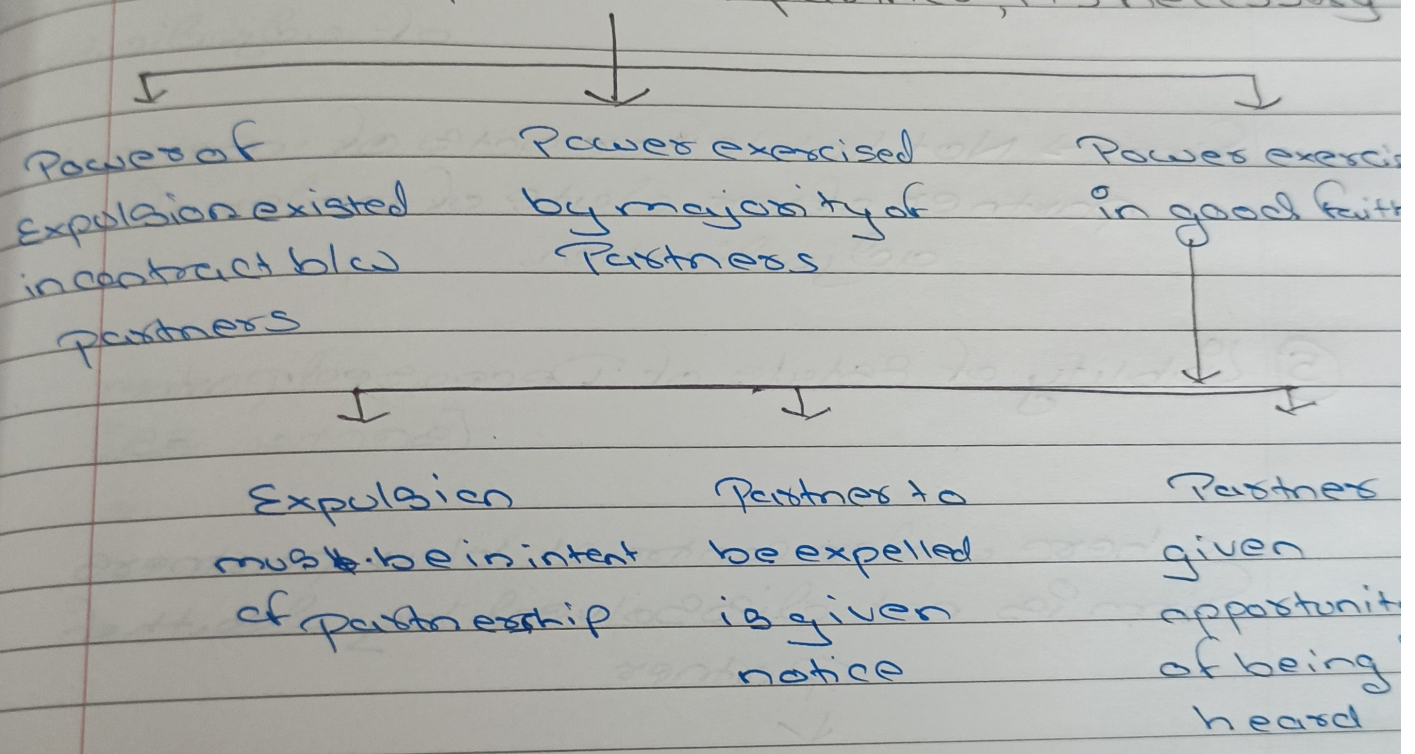
→ Retired Partner or
→ By any other partner
of reconstituted firm

3) Expulsion of firm [Section 32]

Partner cannot be expelled from firm by majority of partners except in good faith & powers conferred by contract between partners.

Sec. 32 (2), (3), (4) apply here also.

For Expulsion of partner; it's necessary



Expulsion does not result in dissolution of firm.

* Expulsion not in bonafide interest if the conditions not present

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④ Insolvency of Partner [Section 34]

Insolvent partner ceases to be partner



From date on which order of adjudication made

Estate of Insolvent partner → Not liable for acts of firm after date of order of adjudication.

Firm → Not liable for acts of insolvent partner after date of order of adjudication.

⑤ Liability of Estate of Deceased Partner [Section 35]

where under contract b/w partners, firm is not dissolved by death of partner



Estate of Deceased partner is not liable for acts of firm done after his death

Public Notice is not required in case death of partner.

* Rights of outgoing partner in certain cases of share subsequent profits [Section 37]

where partner died or ceased to be partner, & surviving or continuing partners carry on business of firm with property of firm without final settlement of accounts, then outgoing partner, or his estate $\Rightarrow$ Entitled at his option or representation

to such share of profits made since he ceased to be partner as may be attributable to his share of property.

OR

Interest @ 6% p.a. on amt. of his share of property

But, where by contract between partners, an option is given to surviving / continuing partners to purchase interest of deceased / outgoing partner, & it is exercised $\Rightarrow$ Then outgoing partner is not entitled to any further share of profit

* Revocation of continuing Guarantee by change in firm [Section 38]

Continuing guarantee given to firm or third party in respect of transactions of firm, is revoked as to future transactions from date of any change in constitution of firm.