

THE INDIAN PARTNERSHIP ACT, 1932

UNIT – 1:- GENERAL NATURE OF PARTNERSHIP

DEFINITIONS:

PARTNERSHIP: *Is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all.*

Persons who have entered into partnership with one another are called individually '**partners**' and collectively '**a firm**' and the name under which their business is carried on is called the '**firm name**'.

ELEMENTS OF PARTNERSHIP

- ♣ **ASSOCIATION OF TWO OR MORE PERSONS:** Section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any associations/partnership firm.
- ♣ **AGREEMENT:** *Its an agreement between two or more persons and nature of partnership is voluntary and contractual.*
- ♣ **BUSINESS:** *There can be no partnership where there is no intention to carry on the business and to share the profit thereof.*
- ♣ **AGREEMENT TO SHARE PROFITS:** *There can be no partnership where only of the partners is entitled to the whole of the profit of business. But an agreement to share losses is not essential element. Unless agreed otherwise, these must be borne in the profit sharing ratio.*
- ♣ **BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL:** *There should be a binding contract of mutual agency of mutual agency between the partners.*

TRUE TEST OF PARTNERSHIP

For determining the existence of partnership, it must be proved.

- ♠ There was an **agreement** between all the persons concerned
- ♠ The agreement was to **share the profits** of a business and
- ♠ The business was **carried on by all or any one of them** acting for all.
 - **AGREEMENT:** *Members of family business or a Burmese Buddhist husband wife carrying on business as such are **not partners** in such business.*
 - **SHARING OF PROFIT:** *The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners. **Following persons receive profits but would not be considered as partner:***
 - (a) *By a lender o money to persons engaged or about to engage in any business,*
 - (b) *By a servant or agent as remuneration,*
 - (c) *By a widow or child of a deceased partner, as annuity, or*
 - (d) *By a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof, does not itself make the receiver a partner with the persons carrying on the business.*

Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence, in this regard.
 - **AGENCY:** *Existence of **mutual agency which is the cardinal principal of partnership law**, is very much helpful in reaching a conclusion in this regard. Each partner*

carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners.

DIFFERENCE BETWEEN PARTNERSHIP AND JOINT STOCK COMPANY

BASIS	PARTNERSHIP	JOINT STOCK COMPANY
LEGAL STATUS	A firm is <i>not legal entity</i> i.e. partners and firm are same persons.	A company is a <i>separate legal entity</i> .
AGENCY	<i>Every partner is an agent of the other partner, as well as of the firm.</i>	A <i>member is not an agent of the other members or of the company</i> , his actions do not bind company.
DISTRIBUTION	According to the <i>partnership deed</i>	There is <i>no such compulsion to distribute</i> its profit among its members.
EXTENT OF LIABILITY	<i>Unlimited</i>	<i>Company limited by shares</i> , the liability of a shareholder to the <i>unpaid amount on shares</i> . <i>Company limited by guarantee</i> , up to the <i>amount of guarantee</i> .
PROPERTY	The <i>firm's property is that which is the 'joint estate' of all the partners as distinguished from the 'separate' estate of any of them</i> and it does not belong to a body distinct in law from its member	In a company, <i>its property is separate from that of its members</i> who can receive it back only in the form of dividends or refund of capital
TRANSFER OF SHARES	<i>Cannot be transferred</i> without the consent of all partners.	<i>May share its shares</i> , subject to the provisions contained in the articles.
MANAGEMENT	In the absence of an express agreement to the contrary, <i>all the partners are entitled to participate in the management</i>	<i>Members of a company are not entitled to take part in the management</i> unless they are appointed as directors in which case they may participate.
REGISTRATION	<i>Not compulsory</i>	<i>Compulsory</i>
WINDING UP	Can be dissolved <i>anytime</i>	<i>Winded by NCLT</i> or its name is struck off by the registrar of companies.
NO. OF MEMBERSHIP	<i>50</i>	<i>Private company – 2 to 200</i> <i>Public company – 7 to unlimited</i>
DURATION OF EXISTANCE	<i>Unless there is a contract to the contrary</i> , death, retirement or insolvency of a partner results in the dissolution of the firm.	<i>Perpetual succession</i>

DIFFERENCE BETWEEN PARTNERSHIP AND CLUB

BASIS	PARTNERSHIP	CLUB
DEFINATION	<i>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.</i>	<i>It is an association of persons formed with the object not of earning profits, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.</i>
RELATIONSHIP	They are <i>partners and agent</i> for other partners	They are called <i>members</i> .
INTEREST IN THE PROPERTY	<i>Has interest</i>	<i>No interest</i>
DISSOLUTION	A change in the partners of the firm affect its existence	A change in the members of the club not affect its existence

DIFFERENCE BETWEEN PARTNERSHIP AND HINDU UNDIVIDED FAMILY

BASIS	PARTNERSHIP	JOINT HINDU FAMILY
MODE OF CREATION	By an <i>agreement</i>	<i>By status means its creation by birth</i> in the family
DEATH OF A MEMBER	<i>Ordinarily leads to dissolution</i>	<i>Does not give rise to dissolution</i>
MANAGEMENT	<i>All the partners are equally entitled to take part</i> in business	<i>Karta</i> has the right of management
AUTHORITY TO BIND	<i>Every partner can, by his act, bind the firm</i>	<i>The karta or the manager</i> , has the authority to bind the family
LIABILITY	<i>Unlimited</i>	<i>Liability of karta is unlimited, coparcener are liable to the extent of share of profit.</i>
CALLING FOR ACCOUNTS ON CLOSURE	<i>A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.</i>	On the separation of the joint hindu famiy, <i>a member is not entitled to ask for account</i> of the family business.
GOVERNING LAW	<i>Indian Partnership Act, 1932</i>	<i>Hindu law</i>
MINOR'S LIABILITY	<i>A minor cannot become a partner</i> , through he can be admitted to the benefit of partnership, only with the consent of all the partners.	In HUF business, <i>a minor becomes a member</i> of the ancestral business by the incidence of birth.
CONTINUITY	A firm is <i>subject to a contract between the partners get dissolved by death or insolvency of a partner.</i>	A HUF has the <i>continuity till is divided.</i>
NUMBER OF MEMBERS	<i>50</i>	<i>Unlimited</i>
SHARE IN THE BUSINESS	Decided <i>by agreement</i>	<i>No coparceners has a definite share.</i>

DIFFERENCE BETWEEN PARTNERSHIP AND CO-OWNERSHIP

BASIS	PARTNERSHIP	CO-OWNERSHIP
FORMATION	Arises out of a contract, express or implied	May arise either from agreement or by the operation of law, such as inheritance
IMPLIED AGENCY	A partner is an agent of other	Is not a agent of other co-owner
NATURE OF INTEREST	Sharing of profit and losses	Not necessarily involving sharing of profit and losses
TRANSFER OF INTEREST	Is transferred only by the consent of other partners	May transfer his interest or rights in property without the consent of other co-owner.

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 evolve out of social cause where there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
EXAMPLES	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.

KINDS OF PARTNERSHIPS

♥ **PARTNERSHIP AT WILL**: Is a partnership when:

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

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

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.

♥ **PARTNERSHIP FOR A FIXED PERIOD**: It is a partnership created for a particular period of time. Comes to an end on the expiry of the fixed term.

♥ **PARTICULAR PARTNERSHIP**: Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called particular partnership.

♥ **GENERAL PARTNERSHIP**: Where a partnership is constituted with the respect to the business in general, it is called a general partnership.

PARTNERSHIP DEED

The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the partnership deed.

Partnership deed may contain the following information:

- ◆ *Name of the partnership firm.*
- ◆ *Names of all partners.*
- ◆ *Nature and place of the business of the firm.*
- ◆ *Date of commencement of partnership.*
- ◆ *Duration of the partnership. Etc.*

TYPES OF PARTNERS

- **ACTUAL OR ACTIVE OR OSTENSIBLE PARTNER:**
 - it is a person,
 - who has become a partner by agreement, and
 - *who actively participates in the conduct of the partnership.*
 - In the event of his retirement, he must give a public notice in order to absolve himself of liabilities for act of other partners done after his retirement.
- **SLEEPING OR DORMANT PARTNER:**
 - it is a person,
 - *who is a partner by agreement, and*
 - *who does not actively take part in the conduct of the partnership business.*

They share profits and losses and are liable to the third parties for all acts of the firm. They are not required to give public notice of their retirement.
- **NOMINAL PARTNER:**
 - *who lends his name to firm,*
 - *without having any real interest in firm,*
 - *not entitled to share the profits,*
 - does not take part in the conduct of the business and liable to third parties for all acts of the firm.
- **PARTNER IN PROFITS ONLY:**
 - *Entitled to share the profit only*
 - *Not liable for the losses*
 - *Liable to the third parties for all the acts of the profits only*
- **INCOMING PARTNERS:** New partner admitted.
- **OUTGOING PARTNER:** A partner who leaves a firm in which the rest of the partners continue to carry on business is called a retiring or outgoing partner.
- **PARTNER BY HOLDING OUT:**
 - *When a person represent himself, or*
 - *Knowingly permits himself,*
 - *To be presented as a partner in a firm (when in fact he is not)*
 - *He is liable , like a partner in the firm*
 - *To anyone who on the faith of such representations has given credit to the firm.*

UNIT – 2:- RELATIONS OF PARTNERS

RELATION OF PARTNERS TO ONE ANOTHER:

- ♣ GENERAL DUTIES OF PARTNERS: The *partners should carry business of the firm to the greatest common advantages* and later, they should render to any partner or his legal representatives full information of all the things affecting the firm. All partners are bound to render accounts to each other.
- ♣ DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD: *The partner, committing fraud in the conduct of the business of the firm, must take good the loss sustained by the firm* by his misconduct and the amount so brought in the partnership should be divided between the partners.
- ♣ DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTIES: *Subject to the provisions of the act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners* and such contract may be express or may be implied by a course of dealing. It further provides that such contract may be varied by consent of all the partners. Notwithstanding anything contained in the section 27 (agreement in restraint of trade) of the ICA, the contract between the partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner.
- ♣ THE CONDUCT OF THE BUSINESS: *Subject to contract between the partners-*
 - ♠ *Right to take part in the conduct of the business.*
 - ♠ *Every partner is bound to attend diligently to his duties in the conduct of the business.*
 - ♠ *Any difference arising as to contrary matters connected with the business may be decided by majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of the partners; and*
 - ♠ *Every partners has a right to have access to and to inspect and copy any of the books of the firm.*
- ♣ MUTUAL RIGHTS AND LIABILITIES: *Subject to contract between the partners-*
 - ♥ *A partner is not entitled to receive remuneration for taking part in the conduct of the business;*
 - ♥ *The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;*
 - ♥ *Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;*
 - ♥ *A partner making, for the purpose of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;*
 - ♥ *The firm shall indemnify a partner in respect of payments made and liabilities incurred by him-*
 - (i) *In the ordinary and proper conduct of the business, and*
 - (ii) *In doing such act, in an emergency, for the purposes of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and*

- ♥ A *partner shall indemnify the firm for any loss causes to it by his wilful neglect in the conduct of business of the firm.*
(right to remuneration, right to share profit, interest on capital, interest on advances, right to be indemnified, right to indemnify the firm)

PARTNERSHIP PROPERTY

- ♦ THE PROPERTY OF THE FIRM: *The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:*
 - (i) *All property, rights and interests which partners may have brought into the common stock as their contribution to the common business;*
 - (ii) *All the property, rights and interest acquired or purchases by or for the firm, or for the purposes and in the course of the business of the firm; and*
 - (iii) *Goodwill of the business.*

The determination of a question whether a particular property is or is not 'property' of the firm ultimately depends on the real intention or agreement of the partners.

GOODWILL: Goodwill of a business is subject to a contract between the partners, to be regarded as 'property' of the firm. When the partnership firm is dissolved every partner has a right, in the absence of any agreement to the contrary, to have the goodwill of business sold for the benefits of all partners.

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

- ♦ APPLICATION OF THE PROPERTY OF THE FIRM: *Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.*

PERSONAL PROFITS EARNED BY PARTNERS

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

RIGHT AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM

It may occur in one of the four ways, namely:

- Where *a new partner* or partners come in
- Where some partner or partners go out, *i.e. by death or retirement*
- Where the partnership concerned *carries on business other than the business for which it was originally formed.*
- Where the *partnership business is carried on after the expiry* the term fixed for the purpose.

SUBJECT TO THE CONTRACT BETWEEN THE PARTNERS:

- ♣ *After a change in the firm:* Mutual rights and duties remains same
- ♣ *After the expiry of the term of the firm:* Where a firm continues to carry on business after expiry of term, mutual rights and duties remains same as before.
- ♣ *Where additional undertakings are carried out:* Where a firm constituted to carry out one or more adventures or undertaking carries out other adventures or

undertaking are the same as those in respect of the original adventures or undertakings.

RELATION OF PARTNERS TO THIRD PARTIES

♣ **PARTNER TO BE AGENT OF THE FIRM:** Subject to the provisions of this act, a partner is the agent of the firm for the purposes of the business of the firm.

♣ **IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM:** Subject to the provisions of section 22, *the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.*

*In the absence of any usage or custom of trade to the contrary, the implied authority of a partner **does not empower** him to-*

- ♥ *Submit a dispute relating to the business of the firm to arbitration;*
- ♥ *Open a banking account on behalf of the firm in his own name;*
- ♥ *Compromise or relinquish any claim or portion of a claim by the firm;*
- ♥ *Withdraw a suit or proceedings filed on behalf of the firm;*
- ♥ *Admit any liability in a suit or proceeding against the firm;*
- ♥ *Acquire immovable property on behalf of the firm;*
- ♥ *Transfer immovable property belonging to the firm and*
- ♥ *Enter into partnership on behalf of the firm.*

MODE OF DOING ACT TO BIND FIRM: Shall be done or executed in the firm name, or in any other manner expressing or implying intention to bind the firm.

♣ **EXTENTION AND RESTRICTION OF PARTNER'S IMPLIED AUTHORITY:** The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, *the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:*

- *The third party knows about the restrictions, and*
- *The third party does not know that he dealing with a partner in a firm.*

♣ **PARTNERS AUTHORITY IN AN EMERGENCY:** 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 binds the firm.

EFFECT OF ADMISSION BY A PARTNER: Partners, as agents of each other can make binding admissions but only in relation to partnership transaction and in the ordinary course of business.

EFFECT OF NOTICE TO ACTING PARTNER: *Notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to principle. This notice must be actual and not constructive.* It must be *received by a working partner* and not by a sleeping partner. It must further relate to the firm's business. Except in the case of a fraud on the firm committed by or with the consent of that partner.

LIABILITY TO THIRD PARTIES

♦ **LIABILITIES OF A PARTNER FOR ACTS OF THE FIRM:** *Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.*

♦ **LIABILITY OF THE FIRM FOR WRONGFUL ACT OF A PARTNER:** The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, *if they are done by the partner while acting.*

(a) *In the ordinary course of business of the firm*

(b) *With the authority of the partners.*

♦ **LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS:** Where –

(a) A *partner acting within his apparent authority* receives money or property from a third party and misapplies it, or

(b) A *firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners* while it is in the custody of the firm, the firm is liable to make good the loss.

RIGHTS OF TRANSFEE OF A PARTNER'S INTEREST:

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

The right of such a transferee are as follows:

➤ *During the continuance of partnership, such transferee is not entitled*

✚ *To interfere with the conduct of the business*

✚ *To require accounts, or*

✚ *To inspect books of the firm.*

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

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

✚ *To receive the share of the assets of the firm* to which the transferring partner was entitled, *and*

✚ *For the purpose of ascertaining the share,*

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

MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP

Minor's contract is void. Minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership.

RIGHTS:

♣ *A minor partner has a right to his agreed share of profits and of the firm.*

♣ *He can have access to, inspect and copy the accounts of the firm.*

♣ *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.*

♣ *On attaining majority he may be 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 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.*

LIABILITIES:

♠ *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 debt of the firm incurred during his majority.*

- (c) Minor **cannot be declared insolvent**, but if the firm is declared insolvent his share in the firm vests in the official receiver/assignee.

♠ **After attaining majority:**

Within 6 months of his attaining majority or his obtaining knowledge that he had been admitted to the benefit of partnership, whichever date is later, the 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 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.

- (a) **When he becomes partner:** If the minor becomes a partner on his willingness or by his failure to give the notice within the specified time, his rights and liabilities:
- (i) He **becomes personally liable** to third parties for all the acts of the firm done since he was admitted to the benefit of partnership.
 - (ii) His **share in the property and the profits of the firm** remains the same to which he was entitled as a minor.
- (b) **When he elects not to become a partner:**
- (i) His rights and liabilities continue to be those of a minor **up to the date of giving public notice.**
 - (ii) His share shall **not be liable for any acts of the firm done after the date of the notice.**
 - (iii) He **shall be entitled to sue the partners for his share** of the property and profits. It may be noted that such minor shall give notice to the registrar that he has or has not become a partner.

LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT:

♥ **INTRODUCTION OF A PARTNER:**

- (a) **Subject to contract** between the partners, **no person shall be introduced** as a partner into a firm without the **consent of all the existing partners.**
- (b) **Subject to the provisions of section**, a person who is introduced as a partner into a firm does not thereby becomes liable for any acts of the firm done before he became a partner.

In case of partnership of two partners: this section does not apply to a partnership of two partners which is automatically dissolved by the death of one of them.

♥ **RETIREMENT OF A PARTNERS:**

- (1) **A partner may retire:**
- (a) **With the consent of all the other partners;**
 - (b) **In accordance with an express agreement by the partners; or**
 - (c) **Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.**
- (2) **A retiring partner may be discharged from any liabilities to any third party for Acts of the firm done before his retirement by an agreement made by him with Such third party and the partners of the reconstituted firm, and such agreement may be**

implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.

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

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

- (4) Notices under above third point may be given by the retired partner or by any partner of the reconstituted firm.

♥ EXPULSION OF A PARTNER:

(a) The power of expulsion **must be existed in a contract** between the partners.

(b) The power has been exercised by a **majority of the partners**; and

(c) It has been exercised in **good faith**.

If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.

The test of good faith:

- 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.

♥ INSOLVENCY OF A PARTNER:

(1) Where a partner in a firm is adjudicated an insolvent **he ceases to be partner on the date on which the order of adjudication is made**, whether or not the firm is hereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, **the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent**, done after the date on which the order of adjudication is made.

- ♥ LIABILITY OF ESTATE OF DECEASED PARTNER: Where under a contract between the partners, the firm is not dissolved by the death of a partner, **the estate of a deceased partner is not liable for any act of the firm done after his death**.

RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS:

An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but **subject to contract to the contrary, he may not-**

- (a) **Use the firm name,**
- (b) **Represent himself as carrying on the business of the firm or**
- (c) **Solicit the custom of persons who are dealing with the firm before he ceased to be a partner.**

RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS:

It lays down a substantial law relating to a liability of the surviving or continuing partner, who without a settlement of accounts with legal representatives of the deceased partner utilizes the assets of partnership for continuing the business.

REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM:

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

UNIT – 3:- REGISTRATION AND DISSOLUTION OF A FIRM

REGISTRATION OF FIRMS:

The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning. When the partners decide to get the firm registered as per the provisions, they have to file the statement in the prescribed form. When the registrar is satisfied that the above mentioned provisions have been complied with, he shall record an entry of this statement in the register (called the registrar of firms) and shall file the statement.

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

REGISTRATION: When the registrar is satisfied that the provisions of above section have been duly complied with, he shall record an entry of the statement in a register called the register of firms, and shall file the statement.

Then he shall issue a certificate of registration. *However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the registrar.*

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

The firm may be registered on payment, to the registrar, of a penalty of one hundred rupees per year of delay or a part thereof.

CONSEQUENCES OF NON-REGISTRATION:

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:

- ♣ NO SUIT IN A CIVIL COURT BY FIRM OR OTHER CO-PARTNERS AGAINST THIRD PARTY.
- ♣ No relief TO PARTNERS FOR SET-OFF OF CLAIM.
- ♣ AGGRIEVED PARTNER CANNOT BRING LEGAL ACTION AGAINST OTHER PARTNER OR THE FIRM.
- ♣ THIRD PARTY CAN SUE THE FIRM

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

- ♠ *The right of third parties to sue the firm or any partner.*
- ♠ *The rights of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realisation of the property of a dissolved firm.*
- ♠ *The power of an official assignees, receiver of court to release the property of the insolvent partner and to bring an action.*
- ♠ *The right to sue or claim a set-off if the value of suit does not exceed Rs.100 in value.*

DISSOLUTION OF FIRM:

BASIS	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
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CONTINUATION OF BUSINESS	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
WINDING UP	It involves winding up of the firm and requires realization of assets and settlement of liabilities	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
ORDER OF COURT	A firm may be dissolved by the court	Is not ordered by the court
SCOPE	It necessarily involves dissolution of partnership	It may or may not involve dissolution of firm
FINAL CLOSURE OF BOOKS	It involves final closure of books of the firm	It does not involve final closure of the books.

MODE OF DISSOLUTION OF A FIRM

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

♥ DISSOLUTION WITHOUT THE ORDER OF THE COURT OR VOLUNTARY DISSOLUTION:

It consists of following four types:

- ♦ DISSOLUTION BY AGREEMENT: A firm may be dissolved with the **consent of all partners** or in accordance with a contract between the partners.
- ♦ COMPULSORY DISSOLUTION: 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.

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

- ♦ DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES: **Subject to contract** between the partners, a firm can be dissolved on the happening of any of the following contingencies-
 - (a) **Where the firm is constituted for a fixed term, on the expiry of that term**
 - (b) **Where the firm is constituted to carry out one or more adventures or undertaking, then by completion thereof**
 - (c) **By the death of a partner, and**
 - (d) **By the adjudication of a partner as an insolvent.**

- ♦ DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL:

- (a) **Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.**
- (b) **If the date is mentioned, the firm is dissolved as from the date mentioned in the notice as the date of dissolution, or if no date is so mentioned, as from the date of the communication of the notice.**

♥ DISSOLUTION BY THE COURT:

The court **MAY**, at the suit of the partner, dissolve a firm on any of the following ground:

- (a) INSANITY/UN SOUND MIND: **Where a partner (not a sleeping partner) has become of unsound mind.**
- (b) PERMANENT INCAPACITY: **When a partner, other than the partner suing, has become incapable, such as physical disability, illness etc.**

- (c) **MISCONDUCT:** When a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business.
- (d) **PERSISTENT BREACH OF AGREEMENT** (Embezzlement, keeping erroneous accounts, holding more cash than allowed, refusal to show accounts despite repeated request etc.)
- (e) **TRANSFER OF INTEREST:** When a partner, other than the partner suing, has transferred whole of interest in the firm, in the recovery of arrears of land revenue due by the partner.
- (f) **CONTINUOUS/PERPETUAL LOSSES:** There will be loss in future also.
- (g) **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

- (a) **LIABILITY FOR ACTS OF PARTNERS DONE AFTER DISSOLUTION:** Two fold objectives-
 1. It *seek to protect third parties* dealing with the firm who had no notice of prior dissolution and
 2. It also *seeks to protect partners* of a dissolved firm from liabilities towards third parties.

However, there are exceptions to the rule stated in above example i.e. even where notice of dissolution has not given, there will be no liability for subsequent acts in the case of:

- *The estate of a deceased partner*
 - *An insolvent partner, or*
 - *A dormant partner, i.e. a partner, who was not known as a partner to the person dealing with the firm.*
- (b) **RIGHT OF PARTNERS TO HAVE BUSINESS WOUND UP AFTER DISSOLUTION:** To have the property of the firm applied in payment of the debt and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
 - (c) **CONTINUING AUTHORITY OF PARTNERS FOR PURPOSES OF WINDING UP:** After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution.
 - (d) **SETTLEMENT OF PARTERSHIP ACCOUNTS:** It may be noted that prima facie, accounts between the partners shall be settled in the manner prescribed by partnership agreement. The above mentioned rules apply subject to any agreement between partners. The provision as to what will be the mode of settlement of accounts in the usual course of business. But if the partners, by their agreement, express any different intention as to the mode in which losses will have to be borne eventually or the manner in which capital or advances will have to be paid to any partner, such an intention must be given effect to. However, any such agreement cannot affect the rights of the creditors of the firm.

The significance of the foregoing provisions is that if the assets of the firm are not sufficient to pay off the liabilities of the firm including the amount due to each partner on account of capital, each partner would individually be liable to

contribute towards the losses, including deficiencies of capital, in the proportion in which he entitled to share profits.

(e) PAYMENTS OF FIRM DEBTS AND OF SEPERATE DEBTS: Where there are joint debts due from the firm and also separate debts due from any partner:

- (a) The property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him.*
- (b) The separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payments debts of the firm.*

IMPORTANT CASE LAWS

KD KAMATH & CO.

The supreme court has held that the two essential conditions to be satisfied are that:

- (1) There should be an agreement to share the profits as well as the losses of business; and
- (2) The business must be carried on by all or any of them acting for all, within the meaning of the definition of partnership under section 4

The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstances that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

SANTIRANJAN DAS GUPTA Vs. DASYRAN MURZAMULL (SUPREME COURT)

The supreme court to reach the conclusion that there is no partnership between the parties:

- (a) Parties have not retained any record of terms and conditions of partnership.
- (b) Partnership business has maintained no account of its own, which would be open to inspection by both parties.
- (c) No account of the partnership was opened with any bank.
- (d) No written intimation was conveyed to the deputy director of procurement with respect to the newly created partnership.

VISHNU CHANDRA Vs. CHANDRIKA PRASAD [SUPREME COURT]

The supreme court, held that the expression, 'if any partner want to dissociate from the partnership business', in a clause of the partnership deed which was being constructed, comprehends a situation where a partner wants to retire from the partnership. The expression clearly indicated that in the event of retirement, the partnership business will not come to an end.

INDIAN PARTNERSHIP ACT SECTIONS LIST

SECTION NO.	TOPIC
4	DEFINATION OF 'PARTNERSHIP', 'PARTNER', 'FIRM' AND 'FIRM NAME'
6	Mode of determining existence of partnership
7	Partnership at will
9	General duties of partners
10	Duty to indemnify for loss caused by fraud
11	Determination of rights and duties of partners by contract between the partners
12	Conduct of the business
12(a)	Right to take part in the conduct of the business
12(b)	Right to be consulted
12(c)	Right to be consulted
12(d)	Right of access to books
12(e)	Right of legal heirs/representatives/their duly authorised agents
13	Mutual rights and liabilities
13(a)	Right to remuneration
13(b)	Right to share profits
13(c)	Interest on capital
13(d)	Interest on advances
13(e)	Right to be indemnified
13(f)	Right to indemnify the firm
14	The property of firm
15	Application of the property of the firm
16	Personal profit earned by partners
17	Rights and duties of partners after a change in the firm
18	Relation of partners to third parties
19	Implied authority of partner as agent of the firm
20	Extension and restriction of partners implied authority
21	Partner's authority in an emergency
22	Mode of doing act to bind firm
23	Effect of admissions by a partner
24	Effect of notice to acting partner
25	Liability of a partner for act of the firm
26	Liability of the firm for wrongful acts of a partner
27	Liability of firm for misapplication by partners
28	Partner by holding out
29	Right of transferee of a partner's interest
30	Minors admitted to the benefit of partnership
31	Introduction of a partner
32	Retirement of a partner
33	Expulsion of a partner
34	Insolvency of a partner
35	Liability of estate of deceased partner

36	Rights of outgoing partner to carry on competing business
37	Right of outgoing partner in certain cases to share subsequent profits
38	Revocation of continuing guarantee by change in firm
39	Dissolution of firm
40	Dissolution by agreement
41	Compulsory Dissolution
42	Dissolution on the happening of certain contingencies
43	Dissolution by notice of partnership at will
44	Dissolution by court
45	Liability for acts of partners done after dissolution
46	Rights of partners to have business wound up after dissolution
47	Continuing authority of partners for purposes of winding up
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49	Payment of firm debts and of separate debts
58	Application for registration
59	Registration
59A-1	Late registration on payment of penalty
69	Consequences of non-registration