

CHAPTER 3 THE INDIAN PARTNERSHIP ACT, 1932

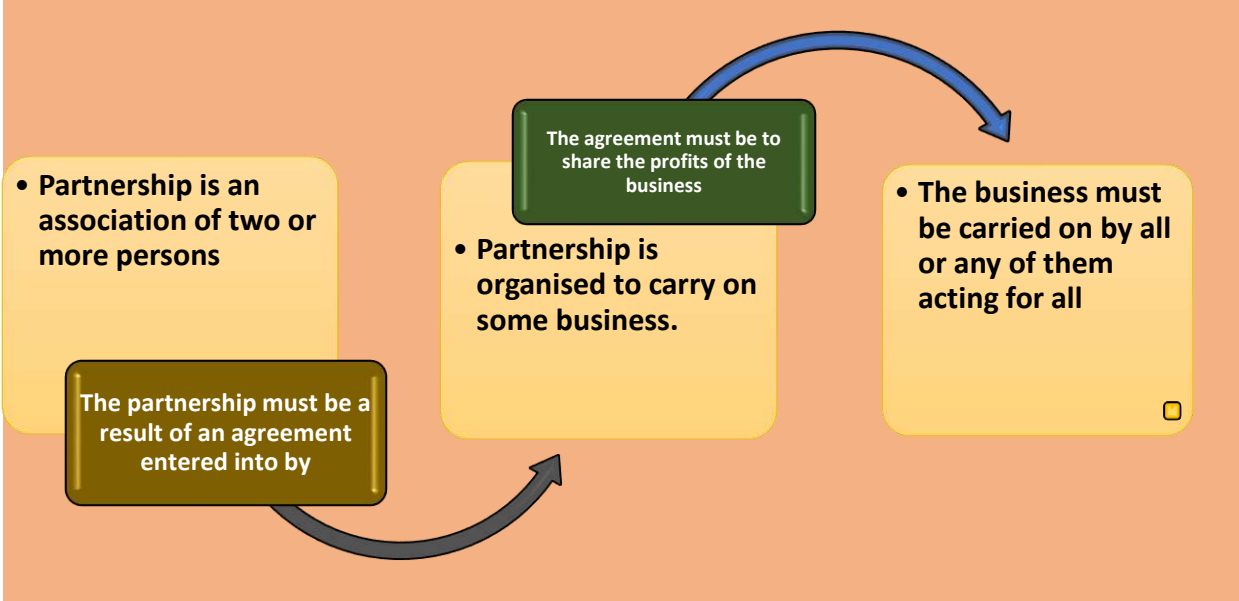


LIMITATIONS



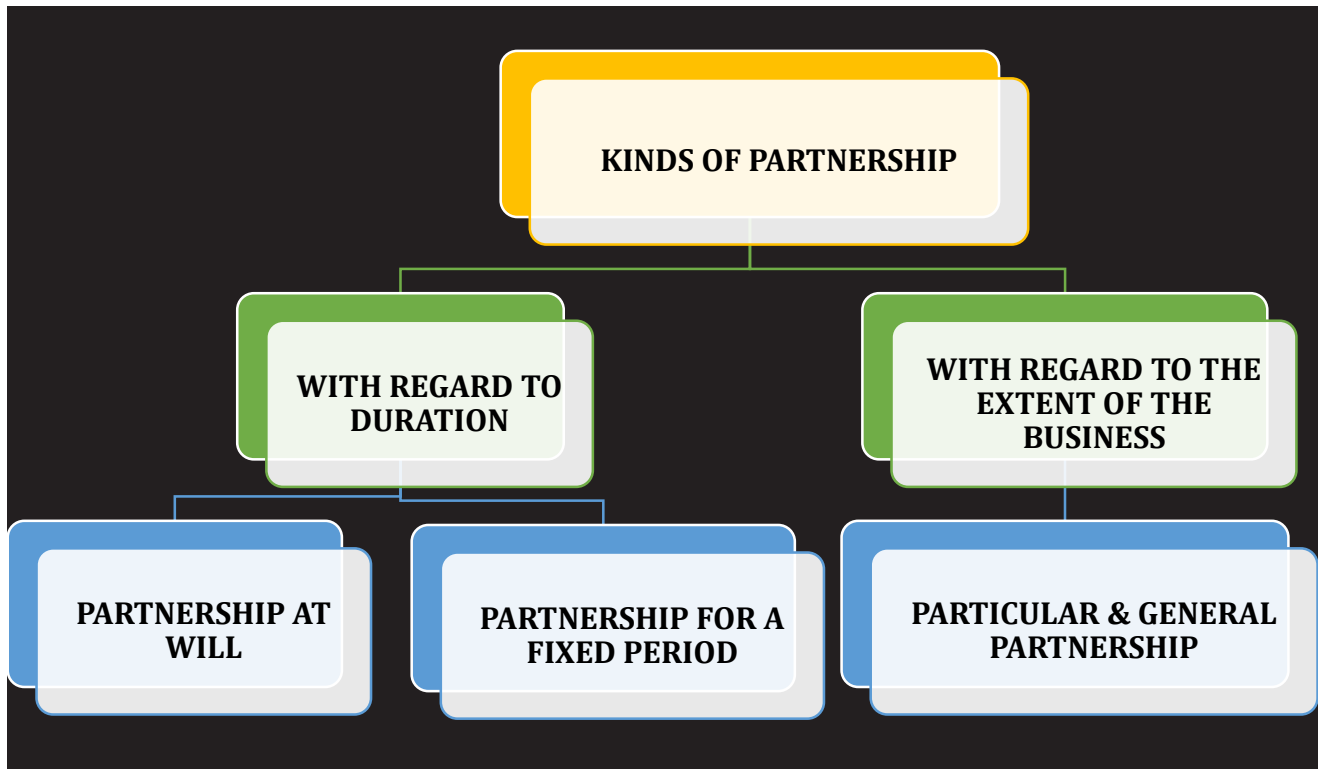
UNIT: 1

GENERAL NATURE OF A PARTNERSHIP



<p>PARTNER', 'FIRM' AND 'FIRM NAME' (SECTION 4)</p>	<p>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'</p>
<p>ELEMENTS OF PARTNERSHIP</p>	<ol style="list-style-type: none"> 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 2. AGREEMENT: It may be observed that partnership must be the result of an agreement between two or more persons. 3. BUSINESS: In this context, we will consider two propositions. First, there must exist a business. 4. AGREEMENT TO SHARE PROFITS: The sharing of profits is an essential feature of partnership. 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. <i>This is the cardinal principle of the partnership Law.</i>
<p>TRUE TEST OF PARTNERSHIP</p>	<p>For determining the existence of partnership, it must be proved.</p> <ol style="list-style-type: none"> 1. There was an agreement between all the persons concerned 2. The agreement was to share the profits of a business and 3. The business was carried on by all or any of them acting for all.
<p>PARTNERSHIP DEED</p>	<p>Partnership is the result of an agreement. 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'</p> <p>Partnership deed may contain the following information: -</p> <ol style="list-style-type: none"> 1. Name of the partnership form. 2. Names 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 firm.
6. Capital contribution of each partner.



**Question 1****Differentiate Dissolution of Firm and Dissolution of Partnership****Answer:**

Basis of Difference	Dissolution of firm	Dissolution of Partnership
Meaning	It refers to close the operation the business and end the business or economics relationship among partners.	It refers to making changes in the business relationship among the partners and continues the operation of the business.
Business Relationship among partners	Business relationship among the partners will end when there is the dissolution of the firm.	Business relationships among the partners will changes when there is the dissolution of the partnership.
Close the business operation	The closure of a business operation I also known as the dissolution of the firm	In this case, no need for closure of business operations.
Voluntarily or compulsorily	The operation can be voluntarily closed by the decision of the partners and compulsory if ordered by the court.	The partners can only make voluntarily in the business relationship among partners.
Closure of books	The books are closed because of the operators of business ends.	The books do not need to close because the operation of the business will continue
Account prepared	Realisation account prepared in the dissolution of the firm	Revaluation account prepared in the dissolution of partnership
Assets and liabilities	Realise the value of assets and payments made to settle liabilities	Reevaluate the value of assets and reassessed the value of liabilities
Effect	Dissolution of the firm does include the dissolution of the	Dissolution of the partnership does not include the dissolution of partnership

	partnership	
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Question 2**Briefly explain the difference between Partnership and Co-ownership.****Answer:**

Difference between Partnership and Co-ownership

	Basis	Partnership	Co-ownership
1.	Agreement	It arises from an agreement.	It may or may not arise from an agreement.
2.	Business	It is formed to carry on a business.	It may or may- not involve carrying on a business.
3.	Profit or Loss	It involves profit or loss.	It may or may not involve profit or loss.
4.	Mutual agency	Partners have a mutual agency relationship.	Co-owners do not have a mutual agency Relationship.
5.	Name of persons involved	The persons who form partnership are called partners	The persons who own some property jointly are called owners.
6.	Maximum limit	The Maximum limit of partners is 10 for a banking business and 20 for any other Business.	There is no maximum limit of owners.
7.	Transfer of interest	A partner cannot transfer his share to a stranger without the consent of other partners.	A co-owner can transfer his share to a stranger without the consent of other co-owners.

8.	Right to claim partition	A partner has no right to claim partition of property but can sue the other partners for the dissolution of the firm and accounts.	A co-owner has the right to claim partition of property.
9.	Lien on property	A partner has a lien on the partnership property for expenses incurred by him on behalf of the firm.	A co-owner has no such lien.

Question 3**Define Partnership.****Answer:**

'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. 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'.

Question 4**List out the basic elements of partnership.****Answer:**

ASSOCIATION OF TWO OR MORE PERSONS: Partnership is an association of 2 or more persons. A gain, only person's recognized by law can enter in to an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. A gain; 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.

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.

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 there

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.

BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

Question 5

What tests would apply for determining the existence of partnership?

Discuss.

Answer:

As must be clear from the discussion of various elements of partnership, there is no single test of partnership.

For example, in one case there may be sharing of profits but may not be any business, in the other case there may be business but there may not be sharing of profits, in yet another case there may be both business and sharing of profits but the relationship between persons sharing the profits may not be that of principal and agent. And in either case therefore, there is no partnership.

Thus, all the essential elements of partnership must coexist in order to constitute a partnership.

To emphasize this fact, **Section 6** expressly provides that "in determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be given to the real relation between the parties, as shown by all relevant facts taken together."

Thus, the existence of partnership has to be determined with reference to the real intention of the parties, which must be gathered from all the facts of the case and the surrounding circumstances.

Question 6

What are the rights of outgoing partners?

Answer:

Rights of outgoing partners

Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not:

- use the firm name;
- represent himself as carrying on the business of the firm; or
- Solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner or their representative of the deceased partner is entitled at the option:

- ❖ to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or
- ❖ To interest at 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

Question 7

Who is a Partner by "Holding Out" or "Estoppels"?

Answer:

If any person behaves and/or poses or presents in such a way that others consider him to be a partner, he will be held liable to those persons who have been misled, suffered or lent finance to the firm on assumption that he is a partner. Such a person is known as "Partner by Holding out or Estoppels." He is not a true partner and he is not entitled to any share in the Profit in the firm.

Question 8

What acts do not fall within the implied authority of a partner under the Indian Partnership Act, 1932?

Answer:

Implied Authority of a partner:

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

When implied authority cannot be availed by a partner

Section 19(2) of the Indian Partnership Act, 1932 lays down that 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 bank account on behalf of the firm in his own name.
 - Compromise or relinquish any claim or portion of a claim by the firm against a third party.
 - Withdraw a suit or proceeding 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 or
 - Enter into partnership on behalf of the firm.
- Some other instances implied authority is also noteworthy.
- A partner has no implied authority to bind the firm by giving a guarantee which is apparently unconnected with the partnership trade.
 - He cannot accept shares of a company against the debt due to the firm.
 - No right of set off his own separate debts against debt due to the firm.

Question 10**What is Partnership deed? What is its content?****Answer:**

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

1. Partnership deed may contain the following information: -
2. Name of the partnership form.
3. Names of all the partners.
4. Nature and place of the business of the firm.
5. Date of commencement of partnership.
6. Duration of the partnership firm.
7. Capital contribution of each partner.
8. Profit Sharing ratio of the partners.
9. Admission and Retirement of a partner.
10. Rates of interest on Capital, Drawings and loans.
11. Provisions for settlement of accounts in the case of dissolution of the firm.
12. Provisions for Salaries or commissions, payable to the partners, if any.
13. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Question 11**Name different types of Partner.****Answer:**

- Sleeping or Dormant Partner:
- Nominal Partner
- Partner in profits only
- Incoming partners
- Outgoing partner
- Partner by holding out(Section28)

Question 12**Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. (Nov. 2002)**

Answer:**Minor as a partner:**

A minor is incompetent to do the contract and such contract is void-ab-initio (Mohiribibi vs. Dharam Das Ghose). Therefore, a minor cannot be admitted in the business of the partnership firm because the partnership is formed on a contract. Though a minor cannot be a partner in a firm. He can nevertheless be admitted to the benefits of partnership under section 30 of the Partnership Act, 1932. He may be validly having a share in the profit of the firm but this can be done with the consent to all the partners of the firm.

Rights of the minor in the firm:

- A minor has a right to his agreed share of the profits and of the firm.
- He can at 11 age access to inspect and copy the accounts of the firm.
- He can sue the partners for accounts or for payments of his share but only, when severing his connection with the firm and not otherwise. The amount of share shall be determined by a valuation made in accordance with the rules upon dissolution.
- 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.

Question 13

What do you mean by “implied authority” of the partners in a firm?

Answer:**Implied Authority Of Partner As Agent Of The Firm (Section 19):**

Subject to the provisions of section 22, the act of a partner which is one to carry on, in the use always, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”. 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 proceedings 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

Question 14

Is it possible for the partners in a firm having majority to expel a partner under the provisions of the Indian Partnership Act, 1932? Does the firm get dissolved if the expulsion of a partner is not valid?

Answer:

Expulsion of a Partner

According to the provisions of the Indian Partnership Act, 1932 as contained in Section 33, a partner may be expelled from the partnership subject to the following three conditions:

The power of expulsion of a partner should be conferred by the contract between the partners.

The power should be exercised by a majority of the partners.

The power should be exercised in good Faith which includes interest of partnership, notice to the partner to be expelled. and an opportunity of being heard. Hence, mere majority is not enough.

Accordingly. it is possible for the majority of partners in a Firm to expel a partner but it is subject to Fulfillment of other conditions as stated above.

It should be noted that the expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of a partner also does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

(Jiwan Singh v. Lakshmi Chand AIR (1935) Lh.332. Dwaraka Das v. Cluni Lal (1907).

Question 15

What is the DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD?

Answer:

Every partner's shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Analysis of section 10: The partner, committing fraud in the conduct of the 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 partners.

An act of a partner imputable to the firm or the principles of agency, which is a fraud on his co-partners, entitles the co-partners, as between themselves, to throw the whole of the consequences upon him.

Question 16

What is the procedure of registration 1 of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non- registration?

Answer:

Registration of a Partnership & Consequences of Non-Registration
Procedure: (Section 58 & 59 Indian Partnership Act 1932)

The registration of a firm may be affected at any time by filing an application in the form of a statement giving the necessary information, with the Registrar of Firms of the area. The application shall be accompanied by the prescribed fee. It shall also state:

- a) the name of the firm;
- b) the place or principal place of business of the firm;
- c) the names of to her places where the firm carries on business;
- d) The date when each partner joined the firm
- e) The names in full and permanent address of the partners;
- f) The duration of the firm.

The statement shall be signed by all the partners or by their agents specially authorized in this behalf Section 58(i). It shall also be verified by them in the prescribed manner (Section 58(2)). When the Registrar is satisfied that the above provisions have been duly complied with, he shall record an entry of the statement in the Register of Firms and file the statement (Section 59). He shall then issue under his hand a certificate of registration.

The non-registration of the firm does not affect the following:

- ❖ The right of a firm *or* partners of a firm having no place of business in India.
- ❖ The right to file any suit or claim of set off exceeding Rs. 100in value.
- ❖ The right of a partner co sue for the dissolution of the firm, or for the accounts of the dissolved firm, or for share of the property of the dissolved firm. This disability of a partner to sue disappears with the dissolution of the firm.
- ❖ The powers of an Official Receiver. Assignee or Court to realize the property of an insolvent partner of an unregistered firm.
- ❖ The right of a third party to preceede against an unregistered firm or any of its partners.
- ❖ The right of an unregistered firm to enforce a right arising otherwise than out of a contract (Section 69(3) and (4).

Question 17**Explain rights and liabilities of Partner subject to partnership.****Answer:**

- a) MUTUAL RIGHTS AND LIABILITIES (SECTION 13): Subject to contract between the partners-
- b) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- c) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;
- d) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
- e) a partner making, for the purposes 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;
- f) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him-
- g) in the ordinary and proper conduct of the business, and
- h) 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
- i) A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of business of the firm.

Question 18**State the modes by which a partner may transfer his interest in the firm in favors of another person, under the Indian Partnership Act, 1932. What are the rights of such a transferee?****Answer:****Modes by which a partner may transfer his Interest entitlements & non- entitlements:**

According to Section 29 of the Indian Partnership Act, 1932 a partner may transfer his interest in the firm by sale mortgage or charge.

The transfer may be absolute or partial. The transfer does not entitle the transferee, during the continuance of the firm:

- (a) To interfere in the conduct of the business of the firm, or
 1. To require accounts of the firm. or
 2. To inspect the books of the firm

On transfer of interest by a partner, the transferee only becomes entitled to receive share of profit of the transferring partner. But in this

case also the transferee has to accept the account of profits agreed to by the partners [Section 29(i)].

IF the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled to receive the transferring partner's share in the assets or the firm. For the purpose of ascertaining that share, he is entitled to an account as from the date of the dissolution(Section29(2)).

Question 19

Write a short note on right to remuneration.

Answer:

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 the business of the firm. 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.

Question 20

What is the Effect of admission on partnership?

Answer:

According to section 23, an admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Analysis of section 23:

Partners, as agents of each other can make binding admissions but only in relation to partnership transaction and in the ordinary course of business. An admission or representation by a partner will not however, bind the firm if his authority on the point is limited and the other party knows of the restriction. The section speaks of admissions and representations being evidenced against the firm. That is to say, they will affect the firm when tendered by third parties; they may not have the same effect in case of disputes between the partners themselves.

Question 21

Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.

Answer:

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

Rights:

- ❖ A minor partner has a right to his agreed share of the 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 within 6 month select 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.

Question 22

What are the liabilities of minor?

Answer:

Liabilities:

(i) 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.

(ii) 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.

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

- (i) He becomes personally liable to third parties for all acts of the firm one since he was admitted to the benefits 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 have been titled 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

Question 23

What do you understand by “Implied Authority • of a partner? Is such authority subject to any condition? Which of the acts of a partner come within the implied authority under the Indian Partnership Act. 19321

Answer:

Implied Authority of a Partner:

Meaning: Where there is no partnership agreement or where the agreement is silent 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 (Section 19(1) Indian Partnership Act 1932). This authority of a partner to bind the firm by his acts is called implied authority. It is subject to the following conditions:

- ❖ The act done by the partner must relate to the normal business of the firm.
- ❖ The act must be such as is done within the scope of the business of the firm in the usual way.

- ❖ The act must be done in the name of the firm, or in any other manner expressing or implying an intention to bind the firm (Section 22).

Acts falling within the Implied Authority of a partner:

1. Purchasing goods on behalf of the firm. In which the firm deals or which are employed in the firm's business.
2. Selling goods of the firm.
3. Receiving payment of the debt due to the firm and giving receipts for them.
4. Settling accounts with the persons dealing with the firm.
5. Engaging servants for the partnership business.
6. Borrowing money on the credit of the firm.
7. Drawing accepting. Indorsing bills and other negotiable instruments in the name of the firm.
8. Pledging any goods of the firm for the purpose of borrowing money.
9. Employing a solicitor to defend an action against the firm for goods supplied.

Question 24

What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non-registration?

Answer:

APPLICATION FOR REGISTRATION (SECTION 58):

- The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-
 - a) The firm's name
 - b) The place or principal place of business of the firm,
 - c) The names of any other places where the firm carries on business,
 - d) The date when each partner joined the firm,
 - e) The names in full and permanent addresses of the partners, and
 - f) The duration of the firm.

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

- Each person signing the statement shall also verify it in the manner prescribed.
- **A firm name shall not contain any of the following words, namely:-** 'Crow', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or

words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

- **Non consequences of non-registration:** Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities 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:

- 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.
- 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.
- 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 personal legend 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.
- Third party can sue the firm:** In case of an UN registered firm, an action can be brought against the firm by a third party.

Question 25

"Mere sharing in the profits of a business is nor a conclusive proof of existence of partnership. "Comment

Answer:**Sharing of Profit**

According to Section 4 of the Indian Partnership Act, 1932.

"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". This clearly reveals that sharing of profits of a business is an important criterion of partnership. But in determining whether it is conclusive evidence of partnership or not, the regard shall be had to the real relations between the parties, as shown by all relevant facts taken together. Section 6 of the Indian Partnership Act, 1932, categorically lies down that receipt by a person of a share of the profits of a business does not by itself make him a partner with the persons carrying on the business as there are number of cases where the persons sharing the profits do not have relationship of partners.

For Instance, in the following cases partnership relation does not exist:-

- ❖ Joint owners of some property in sharing of profits or gross returns arising from the property.
- ❖ A leader of the firm who receives a share of profit.
- ❖ A widow or child of a deceased partner who receive a share of profit.
- ❖ A servant or agent who receives a share of profit as part of his remuneration.
- ❖ A person who receives a share of profit in consideration of sale of business or good will of the business.

Hence, mere participation in the profits of a trade is not a conclusive evidence of partnership.

Question 26

Explain the concept of Goodwill.

Answer:

Good will is defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal profits. It is a partnership property.

In case of dissolution of firm, every partner has a right according to the deed in the absence of any agreement, to have a share in the goodwill on it being sold. It can be sold separately, or along with other properties of the firm.

Question 27

Explain the provisions of the Indian Partnership Act, 1932 relating to creation of Partnership by holding out. Upto what extent such partner will be liable to the Partnership firm.

Answer:

Partnership by ' Holding Out'

According to Section 28 of the Indian Partnership Act, 1932 "anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner". The statement includes with its purview representation by all possible means enumerated in this section. Thus the person sought to be charged with liability by holding out must have done something which amounts to a representation that he was a partner in the business. This is known as creation of partnership by ' holding out'.

Extent of liability of a partner by holding out:

A partner by holding out is liable as a partner in the firm to anyone who has on the faith of, any such representation gives credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the persons giving credit (section 28(1)).

Provisions of section 28 are also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such case a person, who, even subsequent to the retirement gives credit to the firm on behalf that he was a partner will have been titled to hold him liable.

Where after a partner's death the business is continued in the Old firm name the continued use that name or of the Deceased partner's name as a part there of shall not be itself make his legal representative or his estate liable for any act of the firm done after his death (Section 28 (2)).

If a person holds out to be the partner of a firm, he becomes personally liable. He does not become partner of the firm and is not entitled to any rights as against those who in fact are partners in the firm. By holding out he does not become an agent of the firm.

Question 28

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

Answer:

- Dissolution of a Firm may take place (Section 39 - 44)
- As a result of any agreement between all the partners (i.e., dissolution by agreement);

- By the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- By the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- Subject to agreement between the parties, on the happening of certain contingencies, such as:
 - Effluence of time;
 - Completion of the venture for which it was entered into;
 - Death of a partner;
 - Insolvency of a partner.
- By a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- by intervention of court in case of:
 - a partner becoming the unsound mind;
 - permanent incapacity of a partner to perform his duties as such;
 - Misconduct of a partner affecting the business;
 - willful or persistent breaches of agreement by a partner;
 - Transfer or sale of the whole interest of a partner
 - Improbability of the business being carried on save at a loss;
 - The court being satisfied on other equitable grounds that the firm should be dissolved.

Question 29

Describe the provisions of Indian Partnership Act, 1932 regarding the admission of minor in the partnership firm. State the rights and liabilities of such minor before or after he attains majority.

Answer:

Minor's Admission into a Partnership Firm: According to Section 11 of the Indian Contract Act, 1872 and agreement by or with a minor is void (*Mohiribibi vs. Dharm Das Ghose*). As such a minor is incapable of entering into a contract of partnership but with the consent of all the partners for the time being a minor may be admitted to the benefits of partnership [Section 30(1)]. This provision is based on the rule that a minor cannot be a promisor but he can be a promisee or a beneficiary.

Position before and on his attaining the age of majority

Position before attaining majority:

Rights:

1. He has a right to such share of the property and of profits of the firm as may have been agreed upon.
2. He has a right to have access to and inspect and copy any of the accounts of the firm but not books. (Section 30(2)).
3. When he is not given his due share of profit, he has a right to file a suit for his share of the property of the firm. But he can do so only if he wants to sever his connection with the Firm. [Section 30 (4)].

Liabilities:

1. The liability of the minor partner is confined only to the extent of his share in the profits and property of the firm. Over and above this, he is neither personally liable nor is his private estate liable [Section 30 (3)].
2. He cannot be declared insolvent but if the Firm is declared insolvent his share in the Firm vests in the Official Receiver or Official Assignee.

Position on attaining majority:

On attaining majority such a minor has to decide within 6 months whether he shall continue in the Firm or leave it. These six months run from the date of his attaining majority or from the date when he first comes to know that he had been admitted to the benefits of partnership whichever date is later. Within this period he should give a public notice of his choice: (a) to become or (b) not to become a partner in the Firm.

If he fails to give a public notice he is deemed to have become a Partner in the firm on the expiry of the said six months. [Section 30(5)]

When such a minor elects to become a partner:

1. He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
2. His share in the property and profits of the firm is the share to which he was entitled as a minor partner [Section 30 (7)].

When such a minor elects not to become a partner:

1. His rights and liabilities continue to be those of a minor up to the date of the notice.
2. His share is not liable for any acts of the Firm done after the date of the public notice.
3. He is entitled to sue the partners for his share or the property and profits in the Firm [Section 30(8)].

Question 30**What is the effect of non-registration under Act?****Answer:**

Indian Partnership Act does not make registration of partnership compulsory nor does it impose any penalty.

However, non-registration gives raise to certain disabilities U/S 69:

Firm or any person on its behalf cannot bring action against third party for breach of contract, unless firm is registered and persons suing are shown in register of firms.

- ❖ Neither firm nor any partner can claims to of if any suit is brought by the third party against the firm.
- ❖ Partner of unregistered firm cannot bring any action against the firm or any partner of such firm.

Unregistered firm however can bring a suit for enforcing the right arising otherwise than out of contract.

Question 31**Describe the procedure of registration of firm under the Indian Partnership Act. What is the rule of evidence with regard to entries in tile Register of firms?****Answer:**

The Indian Partnership Act, 1932 provides that registration of firms may be affected at any time by filing an application in the form of a statement giving the necessary information, with the Registrar of Firms of the area. Section 57 of the Act empowers the State Government to appoint Registrar of Firms *for* the purposes of the Partnership Act and defines the areas within which they shall exercise their powers and perform their duties.

Application for registration of a firm shall be accompanied by the prescribed fee. It shall state:

- a) The name of the firm;
- b) Place or principal place of business of the firm;
- c) Names of other places where the firm carries on business;
- d) Date when each partner joined the firm;
- e) names in full and permanent addresses of the partners;
- f) Duration of the firm.

The application shall be signed by all the partners *or* by their agents specially authorized in this behalf. It shall also be certified by them in the prescribed manner.

When the Registrar is satisfied that the *above* provisions have been complied, he shall record an entry in the Registrar of Firms and issue a certification of registration. Registration takes effect from the date on which the Registrar makes entries in the Register of Firms. Any statement notice or intimation recorded with the Registrar by any person shall be a conclusive proof against him of any fact therein stated. The third parties can however, challenge the fact of statement and prove that it is false and is based on misrepresentation *or* fraud (Section 68).

Question 32

State the act which is considered beyond the implied authority of a partner under the provision of the Indian Partnership Act 1932.

Answer:

According to Section 19 of the Indian Partnership Act, 1932, unless there is usage or custom of trade to the contrary, the following acts of a partner are considered beyond his implied authority.

1. Submit a dispute relating to the business of the firm to arbitration.
2. Open a bank account on behalf of the firm in his own name.
3. Compromise or relinquish any claim or portion of a claim by the firm against a third party (i.e. an outsider).
4. Withdraw a suit or proceedings filed behalf of the firm.
5. Admit any liability in a suit a proceeding against the firm.
6. Acquire immovable property on behalf of the firm.
7. Transfer immovable property belonging to the firm.
8. Enter in to partnership on behalf of the firm.

Question 33

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain

Answer:

Dissolution of Firm:

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

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

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

- (a) As a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) By the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory Dissolution);
- (c) By the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- (d) Subject to agreement between the parties, on the happening of certain contingencies,

Such as:

- (i) Effluence of time;
- (ii) Completion of the venture for which it was entered into;
- (iii) Death of a partner;
- (iv) Insolvency of a partner.

In case of death, it is to be noted that the partners may make a contrary agreement only if their number exceeds two. If there are only two partners the only result of either's death will necessarily be the dissolution of the firm. This was made clear by the Supreme Court in Commissioner of Income-tax vs. G.S. Mills.

(e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and

(f) by intervention of court in case of:

1. A partner becoming the unsound mind;
2. Permanent incapacity of a partner to perform his duties as such;
3. Misconduct of a partner affecting the business;
4. Willful or persistent breaches of agreement by a partner;
5. Transfer or sale of the whole interest of a partner;
6. Improbability of the business being carried on saves at a loss;
7. The court being satisfied on other equitable grounds that the firm should be dissolved

Question 34

When is the registration of a Partnership firm deemed to be complete under the Indian Partnership Act 1932? What are the consequences when a partnership firm is not registered?

Answer:

Registration of firm: Registration of a partnership firm is affected by delivering to the Registrar of Firms, a statement in the prescribed form accompanied by the prescribed fee (Section 58 of the Indian Partnership Act). The act of the party by way of presentation not Statement under Section 58 makes registration effective; whereas the Act of the Registrar in recording an entry of the statement in the Registrar of the Firms is only a clerical act (Jayalakshmi R&O M vs. Income Tax commissioner).

The effects of non-registration of a firm as contained in section 69 are as follows:

1. Suits between Partner & Firm [Section 69 (1)] a partner of an unregistered firm cannot sue the firm or any partner of the firm to enforce a right arising from a contract or conferred by the Partnership Act. He can do so if (i) the firm am registered and the person suing is or has-beens how in the Registrar of Firms as a partner in the firm.
2. Suits between Firm and third parties [Section 69(2)] an unregistered firm cannot sue a third party to enforce a right arising from a contract.
3. Claim of set-off [Section 69(3)]: An unregistered firm or any partner thereof cannot claim a set-off in a proceeding instituted against the firm by a third party to enforce a right arising from a contract until the registration of the firm is affected. This right of set off, however, is not affected if the claim of set-off is less than Rs.100 in value [Section 69 (4) (b)]

Question 35

“Sharing of profits is only a prima facie not a conclusive evidence of the existence of partnership.” Examine the validity of the statement in the light of the provisions of the Indian Partnership Act, 1932 and state as to how you would determine whether a group of persons does or does not constitute partnership

Answer:

It is true that sharing of profits of business is an essential element to constitute a partnership. But it is only a prima facie evidence but not a

conclusive evidence of the existence of partnership. It is also true that the partners agree to share the profits of a business which is carried on by all or by one of them acting for all. However, the sharing of profits would not by itself make such person partner with the persons carrying on a business. Sharing of profits by the following person will not make them partners in the partnership firm:

- I. By a lender of money to persons engaged or about to engage in any business;
- II. By a servant or agent as remuneration.
- III. By widow or child or a deceased partner as annuity, or
- IV. By a previous owner or part owner of the business as consideration for the sale of goodwill or share Thereof.

To determine whether a group of persons running a business does or does not constitute partnership, Section 6 of the India Partnership Act, 1932 has to be referred. According to Section 6 “In determining whether a group of persons is or is not firm, regard shall be had to the real relation between the parties as shown by all relevant facts taken together. It is very clear from this that in determining relationship between parties and ascertaining the existence of partnership all relevant facts such as follows are to be considered –

- I. There must be an agreement between two or more persons
- II. There must be a business of partnership
- III. The partners must have agreed to share the profits of business
- IV. The business must be carried on by all or any one of them acting for all.

In other words there must be mutual agency between the partners. Existence of mutual agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion in this regard. In this situation each partner is the principal as well as agent of the other partners.

Hence, in order to determine whether the relation of partnership exists between two or more persons or not, one should examine all the facts and circumstances as cited above.

Question 36

"Implied authority of a partner can be extended or restricted". Discuss the above statement in the light of the provisions of the Indian Partnership Act, 1932. How far, are third parties affected by restrictions placed on such implied authority?

Answer:

Section 19 (2) of the Indian Partnership Act, 1932, provides that the act of a partner which is done to carry on the usual way, business of the kind carried on by the firm bind the firm, provided the act is done in the firm's name or in any manner expressing or implying an intention to bind the firm. The implied authority of a partner extends only to such acts which are common in the type of business carried on by the firm and are done by him in usual way of carrying on the firm's business. Thus, if it is usual to give credit to customers, in a particular business, the giving of credit by a partner to a customer will bind the firm. However, if a usual act is done in an unusual manner, this must raise a suspicion as to the authority of a partner and the protection on the ground of implied authority may not be available.

Question 37

What do you mean by “implied authority” of the partners in a firm? Point out the extent of partner’s implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932

Answer:

Implied authority of partner

As per Section 19 of the Indian Partnership Act, 1932 “Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, the business of the kind carried on by the partner binds the firm”. The authority of a partner to bind the firm conferred by this section is called his ‘implied authority’. Section 21 of the Act provides that a partner has authority in an emergency to do all such act for the purpose of protecting the firm from the 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. Conditions for the authority of a partner in an emergency:

- (i) The act should be done by the partner in an emergency
- (ii) The act of the partner should be for the purpose of protecting the firm from loss.
- (iii) The act should be, as a person of ordinary prudence would do in his own case
- (iv) Such an act should bind the firm. To protect the firm, a partner has an authority to do all such acts in emergency to save the firm from loss. It may be noticed that the powers of a partner to act in an emergency are similar to those of an agent in similar circumstances under Section 139 of the Indian Contract Act, 1872

Question38

Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

Answer:

Settlement of partnership accounts (Section48)

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:

1. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
3. in paying the debts of the firm to third parties;
4. in paying to each partner rate ably what is due to him from capital;
5. in paying to each partner rate ably what is due to him on account of capital; and
6. The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

SHORT ANSWER**Question39**

Partnership of particular adventure or undertaking

Answer:

Particular partnership: a partnership formed for a single transaction or enterprise as distinguished from one organized for carrying on a general business.

Question40

What is the status of partnership from an accounting viewpoint?

Answer:

From an accounting viewpoint, partnership is a separate business entity. From legal viewpoints, however, a partnership, like a sole proprietorship, is not separate from the owners

Question 41

Collective name under which business carries on is called

Answer:

Firm name

Question 42

All partners are entitled to share

Answer:

Profits equally

Question43

A minor is entitled to share

Answer:

To benefits of firm

Question 44

Where partnership is not for a fixed period of time, it is known as

Answer:

Partnership at will

Question 45

Partners who takes part in business of firm is called

Answer:

Active partner

Question 46

True test of partnership is

Answer:

Mutual agency

Question 47

Partnership arises by way of agreement only. (True / False)

Answer:

True

Question 48

A share in a partnership be transferred like any other

Answer:

Property

Question 49

Under which Act, Maximum number of partnership is mentioned?

Answer:

The companies Act

Question 50

Partnership agreement may be in form of

Answer:

Express or Implied

Question 51

Each of partner is principal as well as an

Answer:

Agent

Question 52

Where a partnership agreement provides neither for the duration nor for the determination of the partnership

Answer:

Partnership at will

Question 53

On failure by a minor to give public notice within six months, effect is

Answer:

Minor automatically become partner

Question 54

Every partner is bound to attend _____ to his duty

Answer:

Diligently

Question 55

Partner is agent of firm for the purpose of

Answer:

Business of firms

Question 56

Registration of firm is covered by Section

Answer:

Section 59

Question 57

A partner is not an agent of other partners in a partnership firm.

Answer:

Incorrect: The basis of the partnership is mutual agency; hence a partner is an agent of all other partners.

CASESTUDY:**Question 58**

A, B and C were partner in a firm of drapers. The partnership deed authorized the expulsion of a partner when he was found guilty of flagrant breach of duty. A was convicted of travelling without ticket. On this ground, he was expelled by the other partner's B and C. Is the expulsion justified?

Answer:

Yes, the expulsion is justified. In this case, the partnership deed authorized expulsion on the ground of flagrant breach of duty. Doing an act which brings a partner within the penalties of criminal law is flagrant breach of duty. Also, the expulsion decision was taken by majority of partners (Carmiche IVs. Evans (1904) 90 LT573

Question 59

Akash'. Ashish and anil were partners in a firm. By his willful neglect and misconduct Anil caused used serious loss to the business of the firm. After several warnings to Anil, Akash and Ashish passed a resolution expelling Anil from the firm. By another resolution they admitted Abhishek as a near in place of Anil. Anil objects to his expulsion as also to the admission of Abhishek. Is he justified in his objections?

Answer:

A partner may be expelled from a firm by majority of the partner's only if

The power to expel has been conferred by contract between the partners, and

Such power has been exercised in good faith for the benefit of the firm.

The partner who is being expelled must be given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion.

Yes, Anil is justified in his objections.

In the absence of an express agreement authorizing expulsion, the expulsion of a partner is not proper and is without any legal effect.

Anil's objection to the admission of Abhishek is also justified as a new partner can be admitted only with the consent of all the partners.

[Section 31(i)]

Question 60

Mayur and Nupur purchased a taxi to ply it in partnership. They had done business for about a year when Mayur, without the consent of Nupur, disposed of the taxi Nupur brought an action to recover his share in the sale proceeds. Mayur's only defense was that the firm was not registered. Will Nupur succeed in her suit?

Answer:

As per Section 69 (3) of Indian Partnership Act, the term set off may be defined as the adjustment of debts by one party due to him from the other party who files a suit against him. It is another disability of the partners and of an unregistered firm that it cannot claim a set-off when a suit is filed against it.

Yes, Nupur will succeed in her suit. As the business had been closed on the sale of the taxi, the suit in the question is for claiming share of the assets of a dissolved firm.

Section 69 (3) specially protects the right of a partner of an unregistered firm to sue for the realization of the property of a dissolved firm.

Question 61

X and Y were partners carrying on a banking business. X had committed adultery on several women in the city and his wife had left on this ground. Y applied to the court for dissolution of the firm on this ground. Will he succeed?

Answer:

As per Section 44(c) of Indian Partnership Act, 1932 sometimes, a partner is guilty of misconduct. When the Court is satisfied that the misconduct adversely affects the partnership business the Court may allow the dissolution of the firm. In this case, though A is guilty of misconduct but his misconduct does not have any adverse effect on their business as bankers [Snow v. Mi /form (1868) 18 LT 142]. Like the above case, the Court observed that how can it be said that a man's money is less safe because one of the partners commits adultery. It was further observed that: in those cases, where the moral conduct of a partner would affect the firm business, it can be a ground for dissolution of the firm. E.g. where a medical man had entered into partnership with another and it was found that his conduct was very immoral towards some of his patients; the firm can be dissolved on the ground of misconduct by the partner

Question 62

A, B, C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from firm and dies after 15 days. B, 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?

Answer:

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 entitled to claim either.

Such shares of the profits earned after the death or retirement of the

- Partner which is attribute to the use of his share in the property of the firm; or
- Interest at the rate of 6 per cent per annum on the amount of his share in the property.

Based on the aforesaid provisions of the **Section 37 of the Indian Partnership Act, 1932** in the given problem, A's representative, at his option, can claim: the 20% shares of profits (as per the partnership deed); or

Interest at the rate of 6 per cent per annum on the amount of A's shares in the property.

Question 63

Arun, Varun and Tarun started a Kiran a business in Chennai on 1st January, 2012 for a period of five years. The business resulted in a loss of <20,000 in the first year, <25,000 in the second year and <35,000 in the third year, Varun and Tarun wish to dissolve the firm while Arun wants to continue the business. Advise Varun and Tarun.

Answer:

As per provisions of Sec. 44 (f) of Indian Partnership Act, 1932, Varun and Tarun are advised to make a petition to the Court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. Since the firm was constituted for fixed term of five years it cannot be dissolved without the consent of all the partners and as such Varun and Tarun cannot compel Arun to dissolve the firm.

Question 64

Ram, Shyam and Gopal are partners in a firm. Ram retires. Shyam and Gopal continue to carry on firm's business in the same

"firm name". Do you agree that in this situation change in the relationship between partners involved but this is not extinguishment of the existence of the firm itself? Give reasons.

Answer:

Effect of Retirement of Partner

As per the provision of Section 39 of the Indian Partnership Act, 1932 "The dissolution of partnership between all the partners of a firm is called the dissolution of firm. "But when one or more partner ceases to be a partner in a firm but other continues the business of partnership, it is called dissolution of partnership. Thus in this case when Ram retires and Shyam and Gopal continue to carry on firm's business in the old firm's name. The firm in such a case is called a reconstituted firm. Reconstitution of a firm involves a change in the relation of partner and not the end of the firm

Question 65

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

Answer:

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

1. Power of expulsion should exist in the partnership deed (contract between the partners.
2. Power has been exercised by the majority of the partners in good Faith.

The test of good Faith includes:

1. That the expulsion must be in the interest of the partnership:
2. That the partner to be expelled is served with a notice: and
3. That the partner has been given an opportunity of being heard.
4. Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.
5. Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as before

Question 66

A, B and C are partners in a firm. A introduces D to X as a partner in business. D, in fact, was not a partner in the firm's business. D did not deny this statement. X advanced a loan of Rs. 20 lakhs to the firm. Firm's failure to repay the loan X wants to hold D responsible for the repayment of the above loan. Referring to the provisions of the Indian Partnership Act, 1932 decide whether X would succeed in recovering the loan from D.

Answer:

Yes, X can hold D responsible for the repayment of loan as he is the partner by Stoppel or by holding out. Section 28(1) Indian Partnership Act, 1932 lays down this principle as follows: "Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person represented to be a partner does or does not know that representation has reached the person so giving credit." Hence D becomes a partner by holding out as he did not deny the statement given by A. Hence D is liable to make repayment of loan.

Question 67

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

Explain with reasons:

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

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

Answer:**Partnership Liability:**

The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any

act of the firm done after his death **Therefore, considering the above provisions, the problem may be answered as follows:**

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

[Bagel vs. Willer]

(ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was no debt due in respect of the goods in Ram's life time.

[Bagel vs. Willer]

Question 68

Anil and Sunil purchased a lorry to ply it in partnership. They plied the lorry for about two years when Anil, without the consent of Sunil, disposed of the lorry. Sunil brought an action to recover his share in the sale proceeds. Anil resisted Sunil's claim on the plea that the firm was not registered. Will Sunil succeed in his claim? Decide with

reference to the provisions of the Indian Partnership Act, 1932.

Answer:

Effect of non-registration

The problem is based on the provisions of Section 69 of the Indian Partnership Act. As per this section a partner of an unregistered firm is excluded 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. Applying these provisions, Sunil will succeed in his claim as the business had been closed on the sale of the lorry, and the action now was for the realization of the assets of a dissolved firm.

Question 69

Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh

liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.

Answer:

Implied authority of a partner

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

Question 70

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?

Answer:

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 final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

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

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

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

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

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

Question 71

Abhinav buys certain goods worth Rs. 50,000 from an unregistered firm Ram & Sons. Ram & Sons has to pay Rs. 60,000 to Abhinav for the goods purchased by the firm in the past. Referring to the provisions of the Indian Partnership Act, 1932 decide whether Ram & Sons can compel Abhinav to accept Rs. 10,000 i.e. the difference between Rs.60, 000 and 50,000 as the final settlement?

Answer:

Section 69 of the Indian Partnership Act, 1932 provides that an unregistered firm cannot claim a set off exceeding Rs. 100 in value. In the given case the difference between Rs. 60,000 and 50,000 is of Rs. 10,000 for which the right of set off is not available. Therefore, Ram & Sons cannot compel Abhinav to accept Rs. 10,000 as the final settlement.

Question 72

A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm.

The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

(i) Whether the Firm's contention shall be tenable?

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

Answer:

The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act 1932. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority' [Sub-Section (i) of section 19]. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership Hence, if the partnership is

of a general commercial nature, he may buy goods on account of the partnership.

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

(i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods,

(ii) In the second case also the answer would be the same as above, i.e. the implied authority of the partner binds the firm. In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

Question 73

A and B entered into an agreement to carry on a business of manufacturing and selling toys. Each one of them contributed Rs. 35 lacs as their capital with a condition that A and B will share the Referring to the provisions of the Indian Partnership Act, 1932 decide whether there exists a partnership between A and B.

Answer:

Yes, it is a case of partnership between A and B as sharing losses is not an essential condition to create a partnership. Section 13(b) of the Indian Partnership act 1932 provides Subject to the contract between the partners, the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm." In the given case the partners make a contract contrary to this provision where A agrees to bear all the losses of the business

Question 74

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

Answer:

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

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

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

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

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

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

PAST EXAMINATION QUESTIONS

MAY - 2018

Question1

What are the consequences of Non-Registration of a Partnership Firm? Discuss.

Answer:

Under the English law, the registration of firms is compulsory. But the Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration. However, under section 69, non-registration of partnership gives rise to a number of disabilities. Thus, the consequences of non-registration have a persuasive pressure for their registration. These disabilities are as follows:

Question2

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?

Answer:

A partner may not be expelled from a firm by any majority of the partners, except in exercise of good faith of power conferred by contract between the partners. 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 includes three things:

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

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

Having regard to above we can say that expulsion of partner 'Y' by X & Z is not in accordance with the provision of Indian Contract Act and thus not valid

Question3

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

Answer:

The business must be carried on by all the partners or by anyone or more of the partner acting for all. This is the cardinal principle of the partnership law. An act of one partner in the course of the business of the firm is in fact an act of all partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership. Sharing of profit is an essential element to constitute a partnership, but it is only a prima facie evidence and not conclusive evidence. Conclusive evidence of existence of partnership is only mutual agency.

The receipt of profit share by one person of a business does not itself make him a partner with the persons carrying on the business. Such cases are:

- a) By a servant or agent as remuneration.
- b) By a widow or child of a deceased partner, as annuity.
- c) By a lender of money to persons engaged or about to engage in any business.
- d) By a previous owner or part owner of the business.

NOV - 2018

Question1

Mr. A, Mr. Band Mr. C was partners in a partnership firm M/s ABC & Co., which is engaged in the business soft trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of 1 he firm were settled and the amount due to the legal he I so Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth 20, 00,000 to M/s ABC &Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal he is of Mr. C. Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.

Answer:

According to the facts of this case the situation existent clearly indicates the application of Section 37 of the Indian Partnership Act, 1932 according to which were any member of a firm has died or otherwise ceased to be partner and the surviving or continuing partners carry on the businesses of the firm without any final settlement of the accounts as between them and the outgoing partner of his estate, then in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the 'profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six percent per annum on the amount of his share in the property of the firm.

In this case since there has been no decisive settlement of accounts between the heirs of Mr. C and Mr. A &Mr. B so it's pretty clear that the interest of the heir soft Mr. C is still existent in the profits and property of the firm and Mr. X wants to recover the amount not only from M/s ABC & Co. but also from the legal he iron Mr. C he is justified in claiming such a recovery and his claim is legal and just according to the provisions of Section 37.

Question2

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.

Answer:

The four grounds as mentioned under Section 44 on which the court can dissolve a partnership firm are:

1. **Insanity/Unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the Court may dissolve the firm on the other partners or by the next friend of the insane partner.
2. **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.
3. **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect pre judicially the carrying on of business, the Court may order for dissolution of the firm, by giving regarding to the nature of business.
4. **Persistent breach of agreement:** Where a partner other than the partner suing, will fully or persistently commits breach of agreements relating to them 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.

NOV - 2019

Question 1

When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

Answer:

According to Section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

In other words, mere changes in the constitution of the firm operate to revoke the guarantee as to all future transactions. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

Question 2

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

Answer:

Section 14, specifically states that the goodwill of a business is subject to a contract between the partners, to be regarded as "property of the firm". It may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business. Goodwill is a part of the property of the firm.

NOV - 2019

Question 1

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

Answer:

As per the provisions of Indian Partnership Act, 1932, effects of Insolvency of a partner will be as follows:

1. The insolvent partner cannot be continued as a partner.
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of Adjudication.
4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.
5. Ordinarily, the insolvency of a partner would result in dissolution of firm but remaining partner's may Agree to carry it on.

Question 2

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?

Answer:

A minor who is admitted to the benefits of a partnership firm during minority, must within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later) he has to elect whether he wants to become a partner, or sever his connection with the firm. He may give public notice of his election to continue or repudiate but if he fails to give any public notice within the period stated above, he will be deemed to have elected to become a partner in the firm. Since, then he will be liable as other partner to the third parties for all acts of the firm done since he was admitted to the benefits of partnership. In the given case.

(i) X will be liable to all third parties if he failed to give public notice after attaining majority.

(ii) Yes, Mr. L a supplier to the firm can recover his debt from x.

Question 3

Dissolution of a firm is different from dissolution Partnership". Discuss.

Answer:

As per the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the "dissolution of the firm particular partner goes out, but the remaining partner carries on the business: of the firm, it is called dissolution of partnership.

Dissolution of Firm Vs. Dissolution of Partnership

S. No	Basic of Dissolution	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	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.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

DEC - 2020

Question 1

(a) (i) What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932?

Answer:

(a) (i) Partnership at will according to Section 7 of the Act, partnership at will is a partnership when:

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

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.

OR

(ii) Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act 1932?

Answer:

(ii) 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 bona - fide 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.

(b) Referring to the provisions of the Indian Partnership Act, 1932, Answer the following:

(i) What are the consequences of Non-Registration of Partnership firm?

Answer:

(b) (i) Under the English Law, the registration of firms is compulsory. Therefore,

there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration. However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities 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:

(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.

(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 Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) Aggrieve Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

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

(ii) What are the rights which won't be affected by Non-Registration of Partnership firm?

Answer:

(ii) Non-registration of a firm does not, however effect the following rights:

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

5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realize the property of the firm.

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

Answer:

(ii) Provision: Sec. 37 of Indian Partnership Act 1932 provides that where a partner dies a ceases to be a partner and the surviving a continuing partner carry on the business of the firm with the property of the firm without any final settlement of accounts between them and the outgoing partner in the absence of contract to contrary the outgoing partner or his estate is entitled at the option of himself or his representative to such share of profit made since he ceased to be partner as may be attributable to the use of his share of the property of firm or to interest at the rate six percent per annum on the amount of his share in the property of the firm.

Conclusion: Applying the above provision P and Q can ask their share of profit made since they ceased to be partner or 6% p.a. interest on their share from M/S PQRS & Com, whichever is beneficial to them.

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

Answer:

(b) According to Section 27 of Indian Partnership Act, 1932.

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.

It may be observed that the workings of the two clauses of Section 27 is 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 partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

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

The firm would be liable in both the cases.

JAN - 2021**Question 1**

(a) (i) What do you mean by “Particulars Partnership” under the Indian Partnership Act, 1932?

Answer:

1. Particular Partnership:

- a) When a partnership is formed for carrying a particular adventure or an undertaking it is called particular partnership
- b) Such partnership will come to an end on completion of said adventure or undertaking. However, this is subject to agreement between the parties.
- c) In case of Particular partnership, the liability of partners extends to that particular adventure or undertaking only

OR

(ii) Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?

Answer:

NOMINAL PARTNER:

- a) He is a person, who lends his name to the firm, without having any real interest in it.
- b) However, he is liable to third parties for all the acts of the firm (Just like an active partner)

(b) “Business carried on by all or any of them acting for all.” Discuss the statement under the Indian Partnership Act, 1932.

Answer:

BUSINESS CARRIED ON BY ALL OR ANY OF THE, ACTING FOR ALL (MUTUAL AGENCY):

- a) Business must be carried on by all the partners or by anyone or more of the partners acting for all.
- b) In other words, there should be a binding contract of mutual agency between the partners.
- c) Each partner carrying on the business will act as Principal as well as agent for all the other partners.

Question 2

M, N, and P were partners in a firm. The firm ordered JP Limited to supply the furniture. P dies, and M and N continue the business in the firm’s name. The

firm did not give any notice about P's death to the public or the persons dealing with the firm. The Furniture was delivered to the firm after P's a death, fact about his death was known to them at the time to delivery. Afterwards the firm became insolvent and failed to pay the price of Furniture to JR Limited.

Explain with reasons:

- i. Whether P's private estate is liable for the price of furniture purchased by the firm?**
- ii. Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?**

Answer:

PROVISION: According to the provision of Indian Partnership Act, 1932, "In case of death of a partner the deceased partner will be ceased to be a partner from the date of his death and his estate will not be liable for the debts of the firm incurred after the date of his death."

CONCLUSION: By applying above provisions to the given case, we can conclude that.

- 1) P's estate is not liable for the price of the machine purchased by the firm, since this liability is incurred after his death.
- 2) The answer will remain same even if JR Limited believes that all the partners are alive.

(b) Discuss the liability of partner for the act of the firm and liability of firm for wrongful of a partner to third parties as per Indian Partnership Act, 1932.

Answer:

- 1) **LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SEC. 25):** Every partner is jointly and severally liable, for all the acts of the firm, done while he is a partner.
- 2) **LIABILITY OF THE FIRM OR WRONGFUL ACTS OF A PARTNER (SEC.26):** If a partner commits wrongful acts while acting within his authority. Then the firm is liable to the third party who suffers loss or injury due to such wrongful acts.
- 3) **LIABILITY OF FIRM FOR MISAPPROPRIATION BY A PARTNER (SEC.27):** in the following two cases, the firm is liable to third parties for misappropriation done by a partner.
 - a) When the partner acts within his authority, receives money or other property from a third person and misapplies it, or
 - b) Where a firm in the course of its business receives money or property from a third person and the same is misapplied by any of its partners while it is custody of the firm.

JULY - 2021

Question 1

Define Implied Authority In the absence of any usage or custom of trade to the

contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provision of The Indian partnership Act, 1932?

Answer:

Implied Authority of A Partner (Sec. 19 & 22):

- I. Authority conferred on a partner by provision of Sec. 19 of this Act is known as implied Authority.
- II. When a partner acts within his implied authority, then remaining partners will be bound by such acts.
- III. In order to bind remaining partners, all the below stated conditions must be satisfied.
 - a) The act relates to normal business of the firm.
 - b) The act is done in the usual of carrying on the business of the firm; [Sec .19(1)]
 - c) The act is done in the firm`s name or in any other manner expressing or implying the intention to bind the firm [Sec. 22]

IN THE ABBENCE OF ANY USAGE OR CUSTOM OF TRADE TO THE CONTRARY, FOLLOWING ACTS ARE OUTSIDE THE SCOPE OF IMPLIED AUTHORITY.

- I. Submit a dispute relating to the business of the firm to arbitration.
- II. Open a bank account on behalf of the firm in his own name
- III. Compromise or relinquish any claim or portion of a claim by the firm.
- IV. Withdraw a suit or proceedings filed on behalf of the firm.
- V. Admit any liability in a suit or proceeding against the firm.
- VI. Acquire immovable property on behalf of the firm.
- VII. Transfer immovable property belonging to the firm.
- VIII. Enter into partnership on behalf of the firm.

Question 2

Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of Rs. 6 crores to his friends Mr. Z which he is unable to pay on due time so. He wants to sell his share in the firm to Mr. Z for setting the amount.

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

- I. Can Mr. M validity transfer his interest in the firm by way of sale?
- II. What would be the right of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 month from the date of transfer?

Answer:

I. As per Sec 29 of the Indian Partnership Act.

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

II. **The rights of transaction on the retirement of the transferring partners are as follows:**

- Transferee is entitled to receive the share of the assets of the firm to which the transferring partner was entitled.
- To ascertain his share, he is entitled to access and inspect the accounts of the firm.

Conclusion: In this case.

I. Mr. M can validity transfer his interest in the firm by way of sale.

II. Mr. Z is entitled to aforesaid rights after the retirement of Mr. M from the firm.

Question 3

Subject to agreement by partners state the rules that should be observed by the partners in setting the accounts of the firm after dissolution under the provision of The Indian Partnership Act, 1932.

Answer:

Subject to contract between the partners after dissolution of the firm. Its accounts must be settled as follows:

- I. Payment of losses: Losses including deficiencies of capital are to be paid first out of profit then out of capital and lastly by the partners individually in the properties in which they were entitled to share profits.
- II. Application of assets: The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital must be applied in the following manner and order
 - Payment of debts of the firm to third parties
 - Payment of each partner advance to the firm other than capital.
 - Payment of each partner's capital.
 - Surplus if any shall be divided amongst the partners in their profit- sharing ratio.
 - Deficiency if any shall be contributed by the partners in their loss- sharing ratio.

DEC - 2021

Question 1

State the rules regarding registered office of a Limited Liability Partnership

(LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008.

Answer:

Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

- (i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (ii) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- (iii) 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 and any such change shall take effect only upon such filing.
- (iv) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with fine which shall not be less than ` 2000, but which may extend to ` 25000.

Question 2

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.

Answer:

(i) 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:

- ✓ Association of two or more persons
- ✓ Agreement Business
- ✓ Agreement to share Profits
- ✓ Business carried on by all or any of them acting for all

ELEMENTS OF PARTNERSHIP

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

1. **Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of

partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

2. 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.
3. **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.
4. **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.
5. **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.
6. **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing

of profits. If the element of mutual agency is absent, then there will be no partnership

Question 3

State whether the following are partnerships:

- (i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.**
- (ii) Two firms each having 12 partners combine by an agreement into one firm.**
- (iii) A and B, co-owners, agree to conduct the business in common for profit.**
- (iv) Some individuals form an association to which each individual contributes ` 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.**
- (v) A and B, co-owners share between themselves the rent derived from a piece of land.**
- (vi) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.**

Answer:

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

Alternatively, this part can also be answered as below:

- ii. Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.
- iii. Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
- iv. Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
- v. No, this is not a case of partnership as no charitable association can be floated in partnership.
- vi. No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
- vii. Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Question 4

“Sharing in the profits is not conclusive evidence in the creation of partnership”.
Comment.

Answer:

“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, 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

JUNE 2022

Question 1

i. What do you mean by ‘Partnership for a fixed period’ as per the Indian Partnership Act, 1932? 2 Marks

Answer

i. Partnership for a Fixed Term

Now during the creation of a partnership, the partners may agree on the duration of this arrangement. This would mean the partnership was created for a fixed duration of time.

Hence such a partnership will not be a partnership at will, it will be a partnership for a fixed term. After the expiration of such a duration, the partnership shall also end.

However, there may be cases when the partners continue their business even after the expiration of the duration. They continue to share profits and there is an element of mutual agency. Then in such a case, the partnership will now be a partnership at will.

ii. Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm. 4 Marks

Answer

ii. Section 30 of the Indian Partnership Act, provides that though a minor cannot 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 by an agreement executed through his guardian with the other partners.

The rights and liabilities of a minor who has been admitted to the benefits of partnership are governed by the following rules:-

- + The minor is entitled to receive his agreed share of the property and of the profits of the firm.
- + The minor has the right of inspecting and taking copies of the books of account of the firm. He has, however, no such right in respect of books other than accounts, as they may contain secrets which should be restricted to the partners alone
- + The minor is not personally liable to the debts of 3rd parties for the debts of the firm, but his liability is limited only up to his share in the partnership assets and profits. If partnership falls short in short in extinguishing the debts of the firm the separate person property of the minor cannot be applied for the payment of the debts of the firm.
- + The minor is not entitled to take part in conducting of the business as he has not representative capacity to bind the firm.
- + The minor cannot bring any suit against the partners for an account or payment of his share of the property or profits of the firm.
- + On attaining majority or on knowing that he had been admitted to the benefits of partnership, whichever is later, the minor must decide within 6 months whether he would like to become a partner in the firm and give public notice of his decision. If he remains silent and fails to give such a notice, it will be presumed that he has elected to be a partner in the firm.

Question 2

Explain the grounds on which court may dissolve a partnership firm in case of any partner files a suit for the same. 6 Marks

Answer

The firm also can be dissolved by the intervention of the court. The Indian

Partnership Act, 1932 empowers the court to effectuate the dissolution of a firm in several circumstances. The following conditions can invoke the power of the court to dissolve a firm, as per Section 44.

1. Partner of unsound mind

If it comes to the notice of the court that a partner of the firm is of unsound mind, then legal actions will be taken to dissolve such firm. Otherwise, if one or more partners have been declared mentally unsound or unstable, the court can initiate the dissolution process. However, mental instability is not an absolute ground for dissolution. Moreover, it is not always necessary that the state of instability is a permanent one. Therefore, it can be effectuated only with the consent of the other partners. Other similar circumstances like the character or the nature of the partner's involvement are also considered to be a ground for dissolution.

2. Incapability or misconduct of the partner

Incapacity of a partner is when he/she becomes temporarily or permanently unable to discharge his duties as a partner of the firm. If the partner ignores the agreements and performs an illegal or unethical activity, then the dissolution of the partnership can be done on the grounds of professional misconduct. If the partner's behaviour is not professional or ethical, then the required action will be taken. A partner can be charged with professional misconduct when his ill actions cause harm to the firm.

3. Breach of agreements

The partnership can be dissolved if the partner has breached the agreements that are related to the management of business affairs. The dissolution of a partnership also can be done when a partner indulges in any other illegal or unethical business activities.

4. Transfer of shares

If the partner other than the suing partner has transferred or sold his rights and shares to a third party, then the other partners can file for dissolution of the firm, according to Section 44 of the Indian Partnership Act.

5. Runs on losses

Any business is susceptible to face losses due to unforeseen circumstances. In such cases, the court can choose to dissolve the firm that can no longer churn profits.

6. Other justifiable causes

If the court finds any other justifiable and equitable reasons apart from the ones mentioned above, then it has the right to issue an order to dissolve the partnership or the firm itself.