

THE INDIAN PARTNERSHIP ACT, 1932

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General Nature Of Partnership

WHAT IS PARTNERSHIP?

- **Section 4** of the Indian Partnership Act, 1932, lays down that “**Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all.**”
 - **Persons** who have entered into partnership with one another are called individually “Partners” and collectively “a **firm**”.
 - The **name** under which their business is carried on is called the “**firm name**”.
 - **The legal status of a firm:** A firm is **not a legal entity**. It is merely a collective name for the individuals, who have entered into partnership. It does not have a separate legal entity distinct from the partners who compose it. As a firm is not a legal entity, **there cannot be partnership of firms.**
 - A company can be a partner in a firm.
1. The term ‘Partnership’ has been defined under ____ of the Partnership Act, 1932: **(ICAI STUDY MAT)**
 - a. Section 3
 - b. Section 4
 - c. Section 5
 - d. Section 6
 2. A firm is the name of: **(ICAI STUDY MAT)**
 - a. The partners
 - b. The minors in the firm
 - c. The business under which the firm carries on business
 - d. The collective name under which it carries on business

WHAT ARE THE ESSENTIAL ELEMENTS OF PARTNERSHIP/ Mode Of determining existence of Partnership (sec 6) (T/Q, A)

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

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

All the following elements must be present if an association of persons is to be called a partnership:

1. Association of two or more persons

- (a) There must be at least **two persons** to form a partnership.
- (b) As far as the **maximum number of partners**, in a firm is concerned, the **Partnership Act is silent. However, section 464 of the Indian Companies Act, 2013** lays down that maximum person in partnership firm can be **50**
- (c) If the number of maximum partners exceeds these limits, the partnership becomes an **illegal association** of persons.
- (d) Only Person recognized by Law , who is a separate legal person , competent to contract can become Partner



As per **section 11** of Contract Act, a person is competent to contract if he is a major, of sound mind and is not disqualified from contracting by any law. Thus a partner must fulfill the conditions of section 11. **A minor cannot become partner however, a minor u/s 30 of the Partnership Act, can be admitted to the benefits of the partnership firm with the consent of all the partners**

2. Agreement between persons

- (a) According to section 5 of Partnership Act, **the relation of partnership arises from agreement/contract and not from status.**
- (b) The agreement of partnership may be expressed or implied.
- (c) It may be Oral or written
- (d) Partnership is voluntary and contractual in nature
- (e) Thus, the member of a Joint Hindu Family carrying on a business, or the co-owners of a business are not 'partner' because HUF and co-ownership are created by operation of law and not by contract.



If a partnership firm has partners, say, X, Y and Z, and if Y dies, his successor cannot claim to be a partner on the ground of having the status of the deceased partner's successor. He will have to make a new contract with the other partners to become a partner in the same firm.

3. Business

- (a) Partnership can be formed **only** for the purpose of carrying on some business.
- (b) Section 2(b) of Partnership Act says that the terms 'business' includes every trade, occupation or profession.

- (c) Thus, an **association created primarily for charitable, religious and social purposes are not regarded as partnership.**
- (d) E.g. -when two or more persons agree to share the income of a joint property, it does not amount to partnership, such relationship is termed as co-ownership.

4. Sharing of Profits

- (a) The sharing of profits is an essential feature of partnership.
- (b) There can be no partnership where only one of the partners is entitled to the whole of the profits of the business.
- (c) Partners must agree to share the profits in any manner they choose.
- (d) 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.

Sharing of profits is important but not conclusive. In the following cases there is no partnership even though there is sharing profits:

- (a) A creditor/lender taking a share of profits in lieu of interest and part-payment of principal.
- (b) An employee/servant getting a share of profits as remuneration.
- (c) Share of profits given to workers as bonus.
- (d) Share of profits given to the widow or children of deceased partners as annuity.
- (e) Share of profits given to a previous owner of the business as the consideration for the sale of the goodwill

5. Mutual Agency

- The underlying or **cardinal principle** which governs partnership is the **mutual agency** relationship amongst the partners.
- It means **each partner is the agent of the firm as well as principal of the other partners.** The business of the firm may be carried on by all the partners or by any of them acting for all.
- Thus, **a partner is both an agent and a principal.**
- He can bind the other partners by his acts and is also bound by the acts of the other partners.
- The law of partnership is regarded as an extension of the general law of agency.
- Example : A, B and C are partners in ABC Associates, a partnership firm. If A made certain purchases for the purpose of business from Mr. K, then Mr. K can recover the money from A, B or C as all partners are liable for any act done on behalf of firm.

Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. **(MTP Apr. 24) (3+3 = 6 Marks)**

"Whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? **(MTP May 24) (4 Marks)**

1. The most important element in partnership is: **(ICAI STUDY MAT)**
 - a. Business
 - b. Sharing of profits
 - c. Agreement
 - d. Business to be carried on by all or any of them acting for all.
2. In the absence of agreement to the contrary all partners are: **(ICAI STUDY MAT)**
 - a. Not entitled to share profits
 - b. Entitled to share in capital ratio
 - c. Entitled to share in proportion to their ages
 - d. Entitled to share profits equally
3. What among the following is not an essential element of partnership: **(ICAI STUDY MAT)**
 - a. There must be an agreement entered into by all the persons concerned
 - b. The agreement must be to share the profits of a business
 - c. The business must start within six months from the date of agreement
 - d. The business must be carried on by all or any one of them acting for all.
4. Partnership is a relationship, which arises from: **(ICAI STUDY MAT)**
 - a. Operation of law
 - b. An agreement
 - c. Status
 - d. Almighty
5. Which is not a characteristics of partnership firms? **(ICAI STUDY MAT)**
 - a. Perpetual succession
 - b. Unlimited liability of partners
 - c. Mutual agency
 - d. Sharing of profits of business

Practical Question

Is there valid Partnership in following cases

Situations	Valid Partnership ???
1. X agrees with Y to carry passengers by taxi from Delhi to Gurgaon on following terms, viz., Y is to pay X ` 100 per mile, X and Y are to share costs of repairing and replacement of cars, and divide equally between them proceeds of fares received from passengers.	
2. X and Y are co-owners of a house let-out to a tenant. X and Y divide the Net Rents (after	

deduction of incidental taxes, etc.) between themselves.	
3. X and Y, the co-owners of a house, use the house as a hotel managed either by themselves or by a duly appointed manager for their common profit.	
4. X and Y buy 200 bales of cotton, agreeing to share the same between them.	
5. X agrees with Y a goldsmith, to buy and furnish gold to Y to be worked up by him and sold, and that they shall share in the resulting profit or loss.	
6. X and Y agree to work together as carpenters but X shall receive all profit and shall pay wages to Y.	
7. 10 Person made a association for helping poor	
8. X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?[Dec 2023(2 Marks)]	
9. X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Is liable to a paper dealer for paper supplied to X to print Y's book? [Dec 2023(2 Marks)]	
10. A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B? [Dec 2023(2 Marks)]	

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

- (i) Two firms each having 12 partners combined by an agreement into one firm.
- (ii) A and B, co-owners, agree to conduct the business in common for profit.
- (iii) 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.
- (iv) A and B, co-owners share between themselves the rent derived from a piece of land.
- (v) A and B buy commodity X and agree to sell the commodity with sharing the profits equally. [RTP Dec 2023]

Mr. Ram and Mr. Raheem are working as teacher in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partner. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ₹ 3000 to Mr. John? [RTP June 2023] (RTP June 2024)

Hint -

PARTNERSHIP DISTINGUISHED FROM OTHER FORMS OF ORGANISATION

Partnership Vs. Joint Stock Company

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

Property	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
Transfer of shares	A share in a partnership cannot be transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles.
		In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
Management	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
Winding up	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.
Number of membership	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.
Duration of existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.

Partnership Vs. Club

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

Partnership vs. Hindu Undivided Family

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family. ¹
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other coparcener are liable only to the extent of their share in the profits of the family business.

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

Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common. [Nov. 2022 (4 Marks)]

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

Partnership vs. Association

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

Kinds of Partnership Firms

With regard to duration		With regard to Extent of Business	
Partnership at will (sec 7)	Partnership for fixed period[May 2022 (2 Marks)]	Particular Partnership(sec 8)	General Partnership
1 No Period fixed for duration of partnership 2 No provision is made for determination of Partnership Partnership may be dissolved by any partner by giving a notice to that effect to all the other partners.	- Partnership created for a particular period of time. - Such partnership comes to an end on the expiry of the fixed period. - If after period it continues , it becomes partnership at will	- Partnership is formed for a particular period or for a specific venture. - Partnership is automatically dissolved on the completion of the venture.	Partnership which is constituted with respect to business in general. A general partnership is different from a particular partnership. In the case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of general partnership

1. A partnership for which no period or duration is fixed under the Indian Partnership Act is known as: **(ICAI STUDY MAT)**
 - a. Unlimited partnership
 - b. Co-ownership
 - c. Particular partnership
 - d. Partnership at will
2. A partnership formed for the purpose of carrying on particular venture or undertaking is known as: **(ICAI STUDY MAT)**
 - a. Limited partnership
 - b. Special partnership
 - c. Joint venture
 - d. Particular partnership
3. A partnership at will is one: **(ICAI STUDY MAT)**
 - a. Which does not have any deed
 - b. Which does not have any partner
 - c. Which does not provide for how long the business will continue
 - d. Which cannot be dissolved.
4. When partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a: **(ICAI STUDY MAT)**
 - a. Partnership for a fixed period.
 - b. Particular partnership
 - c. Partnership at will.
 - d. General partnership.

Kinds of Partners

Actual / Ostensible Partner/ Active partner	• He is one who becomes a Partner by an agreement and is actively engaged in the conduct of the business of Partnership. • In case of retirement from the firm, he needs to give public notice of his retirement otherwise he will continue to be liable for all acts of partner even after retirement
Sleeping / Dormant Partner:	• They share profits and losses and are liable to the third parties for all acts of the firm. • They are, however not required to give public notice of their retirement from the firm.
a. The “dormant partner” of the firm is: (ICAI STUDY MAT) a. not required to give notice of his retirement.	

	b. required to give notice of his retirement c. not liable to the third parties for all act of the firm. d. does not share profits and losses.
<u>Nominal Partner:</u>	• A person who lends his name to the firm, without having any real interest in it, is called a nominal partner. • He is not entitled to share the profits of the firm. • Neither he invests in the firm nor takes part in the conduct of the business. • He is, however liable to third parties for all acts of the firm.
Mr. Pawan is nominal partner in the partnership firm so he: (ICAI STUDY MAT) a. is not entitled to share the profits. b. is entitled to share the profits. c. can take part in the conduct of business. d. Is not liable to third parties for all acts of the firm. 2. Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932 (a) Whether Bohan is liable for the dues of Karan against the firm. (b) In case, Karan has filed the suit against firm, whether Bohan would be liable? [RTP Nov 2022] Hint - In the instant case, (a) Bohan is a nominal partner. Even he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners. (b) In case, Karan has filed the suit against firm, answer would remain same	
<u>Partner in Profits only</u>	• A 'partner in profits only' is one who is entitled to a share only the profits of the firm and is not liable for losses, if any. • However, he shall be liable like all other partners, since the liability of partners is joint and several. • So, if the firm incurs any loss and the other partners become insolvent, the third parties may hold such a partner liable. • He must give public notice of his retirement
1. Select the odd one out of the available options for the entitlement of "Partners in profits only": (ICAI STUDY MAT) a. He is entitled to share the profits only. b. He is liable for the losses of the firm.	

c. He is not liable for the losses of the firm. d. He is liable to the third parties for all acts of the profits only.	
<u>Incoming Partner:</u>	He is a person who is admitted to a Firm already existing , with the consent of all the Partners. He is not liable for any act done by the Firm before his admission. Where he specifically agrees to bear the past liabilities, he will be liable to other Partners for it.
<u>Outgoing Partner:</u>	A partner who leaves a firm in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner remains liable to third parties for all acts of the firm until public notice is given of his retirement.
<u>Partner by Holding out</u>	Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical. It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'. You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention. The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable
Mr. Samarth retires from the partnership firm without giving public notice and his name continues to be used on letterhead of the firm. Mr. Samarth is in the case of repayment of loan to creditors. (ICAI STUDY MAT) a. liable as a partner. b. not liable as a partner. c. responsible. d. liable as a retiring partner.	

	X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Here,
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	in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).
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	A partnership firm consisting of P, Q, R and S. S retires from the firm without giving public notice and his name continues to be used on letterheads. Here, S is liable as a partner by holding out to creditors who have lent on the faith of his being a partner.
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Practical Question

R is not a partner in a particular firm. But, he represents himself or knowingly permits himself to be represented as a partner of that particular firm to Sanjay, who on the faith of such representation gives credit to the firm. Is R liable as a partner in the firm?

Law	Partner by estoppel/holding out is one represents himself or knowingly permits himself to be represented as a partner in a firm, where in fact he is not as such a partner. When a third party on the faith of such a representation contracts with the alleged firm, then such a person shall be held liable as a partner by estoppels/holding out, to such a third party
Conclusion	In the given case R, not being a partner, represents himself/knowingly represents himself to be a partner in the firm and Sanjay on the faith of such representation gives credit to the firm. Thus applying the above stated provisions R shall be regarded as a Partner by estoppels/holding out and he shall be liable in respect of this contract

Practical Question

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

Law	According to the sec 28 of the Indian Partnership Act, 1932, when a person represents himself or knowingly Permits himself to be represented as a partner in the Erin, when in fact he is not, then he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm. Thus when a person by his words or conduct has wrongly induced a third party to believe that he is a partner then he shall by liable as a Partner by holding out, to such a party, under the law of estoppel. This rule is also applicable to a former partner Who has retired from the firm without giving a proper public notice of his retirement. In such a case a person who even subsequent to the retirement of the partner, gives credit to the firm on the belief that he was a partner, shall be entitled to hold him liable, under the law of estoppel as a partner by holding out
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Conclusion	Thus applying the above provisions in the given case it can be concluded that Mr. P becomes a partner by holding out because he failed to give public notice of his retirement and made representations on behalf of the firm. Thus Mr. X can recover the amount not only from the firm but also from Mr. P under the law of estoppel
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Partnership Deed

Partnership is the result of an agreement. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. 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.

Partnership deed may contain the following information:-

1. Name of the partnership firm.
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.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

2

Relation of Partners

Rights and Liabilities of a minor participating in Partnership Firm (A+) [Sec.30]

1. Minor cannot enter in to a contract, and hence he generally cannot enter into Partnership.
2. **Before** admission of a minor as a beneficiary , there must be an existence of partnership
3. If **all** the Partners agree, a minor may be admitted to the benefits of an already existing Firm.
4. **There must be at least two major Partners before a Minor is admitted into the benefits of Partnership.**
5. **Rights of a minor in a Firm:**

Share of Profits & Property	Inspection and coping of accounts	Filing of suit	Option to become Partner
(a) To share profits, and (b) To share property of the Firm.	(a) To have access to the accounts, and (b) To inspect and copy, any of the Firm's accounts. (c) He cannot inspect books other than account books that may contain confidential information restricted to Partners only.	(a) To file a suit for his share of profits of the Firm's property when he is not given his due share. (b) This can be exercised only when he decides to sever his connections with Firm.	On attaining majority, he may within 6 months elect to become a partner or not to become a partner.
Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. ICAI Study Mat			

6. Liabilities of a minor in the Firm:

Before attaining majority	Position on attaining majority
(a) Liability is confined only to the extent of his share in profits and property of Firm. (b) He is neither personally liable nor is his private estate liable. (c) 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.	(a) Decision: Within 6 months of his attaining majority or his obtaining knowledge that he had been admitted to the benefits of the Firm, whichever date is later, the minor partner has to decide whether he shall remain a Partner or leave the Firm. (b) Notice: He shall give a public notice of his intention, i.e. whether opting to become or not becoming a Partner. (c) Deemed Partner: Where he fails to give notice, he becomes a Partner in the Firm on the expiry of such period.

7. Exercise of option by minor on attaining majority:

Elects to become a Partner	Elects not to become a Partner
- He becomes personally liable to third parties for all acts of the Firm done since he was admitted to the benefits of the Firm. - His share in the property and profits of the Firm remains the same as he was entitled as a Minor.	- He discontinues from the firm - His rights and liabilities continue to be those of a Minor up to the date of giving public notice. - His share is not liable for any acts of the Firm done after the date of the public notice. - He is entitled to sue the Partners for his share of the property and profits in the Firm.

Practical Question

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:

- To what extent X will be liable if he failed to give public notice after attaining majority?
- Can Mr. L recover his debt from X? **ICAI Study Mat[RTP Dec 2023]**

Law

Conclusion	
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(1) Duties of a Partner in Partnership Firm

Duties of a Partner

The duties of partners may be classified as follows:

- Absolute duties
- Qualified duties

(a) Absolute Duties (sec 9)

Absolute duties are **imposed by law and cannot be varied by an agreement among the partners.**

- **Duty to act in good faith:**
should be just and faithful in dealing with other partners.
- **Duty to carry on the business of the firm to the greatest common advantage:**
He must use his knowledge and skill for the common benefit of the firm and should not make any personal or private profits.
- **Duty to render true accounts:**
It is the duty of every partner to keep proper accounts and render correct and true accounts to each other. A partner should explain all the accounts to the other partners and must give true and correct picture of the firm.
- **Duty to give full information:**
Every partners is bound to provide full information to the other partners regarding material facts relating to the affairs of the partnership.
- **Duty to indemnify for the loss caused by fraud: (sec 10)**
The purpose of his provision is that every partner should deal honestly with the customers of the firm. If some loss is caused to the firm due to fraud of a particular partner, the firm has the right to recover the same from the partner.



The firm and the other innocent partners shall be liable to the third parties for the fraud caused by the guilty partner. The innocent partners can recover the loss from the guilty partner.

- **Duty not to transfer his rights and interest:**
The relationship between the partners is of mutual trust and confidence. A partner cannot assign his rights and interest in the firm to an outsider so as to make him a partner of the firm. However, a partner may assign his profits and share in partnership assets to anybody after ensuring that such an assignee does not get any rights in the firm.

(b) Qualified Duties

Qualified duties are those that depend upon the contract between the partners and therefore can be varied by express or implied agreement among the partners. The partners of the firm are free to decide their mutual and respective duties by way of an agreement. If the agreement is silent, then the duties imposed by the Indian Partnership Act will prevail.

- **Duty to attend his duties diligently: (sec 12(b))**

It is the duty of every partner that he should diligently (carefully) attend to the affairs of the business of the firm.

- **Duty to share loss equally. (sec 13 (b))**

An agreement to share profits implies an agreement to share losses as well.

- **Duty to account for personal profits: (sec 16)**

If a partner derives any profit without the consent of the other partners from partnership transactions or from the use of any partnership property, name or business connection, he must account for it and pay to the firm. This is because the relationship between the partners is a fiduciary relationship (relation of trust and confidence) and no partner is entitled to make personal profits.



X and Y were partners carrying on the business of importing sugar from foreign countries and reselling the same. X was authorised to buy the sugar for the firm. While buying sugar for the firm, X bought some quantity for himself and resold the same on his personal account. X is liable to account for these personal profits. The reasons for this is that the opportunity to make personal profit came in X's way while he was carrying on the business of the firm.

Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? **(MTP May 24) (2 Marks)**

- **Duty to Account for Profits in a Competing Business.(sec 16)**

It is the duty of every partner not to carry on any business similar to, or in competition with, the business of the firm. If a partner carries on a business of the same nature and competing with that of the firm, then he must account for and pay to the firm all the profits made by him in the business, and the firm is not liable for any loss.

- **Duty to use firm's property exclusively for the firm(sec 15):** Property of the firm belongs to all the partners. It is the duty of every partner of the firm to hold and use the property of the firm exclusively for the purpose of the business of the firm. However, subject to agreements to the contrary, the partners may agree to use the partnership property in any manner they decide.



In the absence of an agreement to the contrary, if a partner uses the firm's property and makes personal profits, then he must pay back the profit to the firm.

- **Duty to indemnify for willful neglect (sec13(f):** Willful neglect means an intentional and purposeful omission to do a certain act. A partner guilty of willful neglect in the conduct of the business causing loss to the business is bound to compensate or indemnify the firm for such a loss.



The firm is liable to a third person for the willful neglect or fraud of any of the partners.

Practical Question

X and Y are in Partnership for refining sugar. Y was appointed to buy sugar for the Firm. Without the knowledge of X, he supplied his own sugar to the Firm at Market Price and made a huge gain. Is he accountable for profit he makes?

Or

Four partners established a partnership for refining sugar. One of them was a wholesale grocer and had great skill in buying sugar at a right and proper time for the business. Accordingly the business of selecting and purchasing sugar was entrusted to him. According to his skill and knowledge, he bought sugar for himself at a time when he thought that the price are likely to rise. The sugar rose in value and the firm was in want of same. He sold his own sugar to the firm, without letting the partners know that it was his sugar that was sold. Is he accountable to the firm for profit he makes?

Law	As per the Indian Partnership Act, If a partner derives any profit without the consent of the other partners from partnership transactions or from the use of any partnership property, name or business connection, he must account for it and pay to the firm. This is because the relationship between the partners is a fiduciary relationship (relation of trust and confidence) and no partner is entitled to make personal profits.
Conclusion	After applying above law to present situation, we conclude that, the profit derived by Y is against the partnership Act, thus shall be accountable to the firm and shall has to pay such profit to the firm.

Practical Question

A, B & C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of INR 350? Assume there is no contract between the partners regarding the above. (RTP June 2024)

Conclusion	
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Rights of a Partner under the Partnership Act

1. Take part in business [Section 12(a)]

To participate in the conduct and management of the Firm's business.

2. To be heard and consulted [section 12(c)]:

To express his opinion and be heard in all matters affecting the Firm's business. **All matters shall be decided by majority. But, a change in the nature of business and reconstitution of the Firm can be effected only with the consent of all the Partners.**

3. Access to books: [Section 12(d)]: Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out of copy thereof. In the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm. [Section 12(e)]

4. Remuneration

No partner is entitled to receive any remuneration in addition to his share of profit except if decided in partnership agreement previously. 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. [Section 13(a)]

Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹ 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm? [RTP May 2022] (RTP June 2024)

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

5. Equal share of profits: [Section 13(b)]:

Unless otherwise agreed partners share the profits of the Firm **equally**.

6. Interest on Capital: [Section 13(c)]:

- **No interest is generally allowed on capital contributed by Partners.**
- If the Partnership agreement provides for the payment of interest on capital, **it shall be payable only out of profits.**
- When there are losses, interest on capital will not be allowed.

7. Interest on Advances: [Section 13(d)]:

- Where a Partner has advanced any amount to the Firm over and above his capital, he will be entitled to interest at a rate agreed upon, and if no rate is agreed, at 6% p.a.

- Interest is payable even if firm suffers losses and even after dissolution upto date of payment

8. Indemnification by Firm [Section 13(e)]

A Partner shall be indemnified for all payments made and liabilities incurred by him in the proper and ordinary conduct of Firm's business and in doing such act in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence in his own circumstances

9. Use property of Firm (SECTION 15):

- Every Partner is entitled to hold and apply the same exclusively for the purpose of business.
- If he uses it directly or indirectly for private purpose, he must account to the firm for the profits that he has earned by the use of property

10. Agent of Firm

Every Partner is an agent of the Firm of the purpose of the Firm's business. [Sec.18] The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either

What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932? [June 2023 (4 Marks)]

DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS (SECTION 11):

Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing

Concept of Implied Authority of a Partner

Authority of a Partner	
Express Authority [Sec. 11]	Implied Authority [Sec. 19]
• Conferred on a Partner by mutual agreement. • Agreement may be oral or written • May also be implied by a course of dealing.	• Where there is (a) no agreement or (b) the Partnership agreement is silent, • 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.

Partner's act to bind Firm [Sec.22]: In order to bind the Firm, any act done or instrument executed by any Partner or other person on behalf of the Firm shall be – (a) done in the **Firm's name**, or (b) in any manner showing an **express or implied intention** to bind the Firm.

Implied Authority [Sec. 19]

1. In the Firm's name

The Act must be done in Firm's name or should, in some manner, imply an intention to bind the Firm.

	A and B are Partners in a stationery business. A buys pencils on credit from a wholesaler in Firm's name but gives them to his children. Taking goods on credit is normal in business, it is within A's implied authority. It will bind the Firm even though A had misappropriated it for his personal use. Although firm may later recover such amount from A
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2. Normal Business:

- 1) Act done by Partners must relate to normal business of the Firm.
- 2) If the act is of a nature that is not common in the type of business carried on by Firm, it will not bind the Firm even if it has been done in the Firm's name.

	Z, a Partner of a Firm dealing in readymade garments places an order for liquor worth ₹ 50,000 in the Firm's name. It does not relate to normal business of the Firm. The Firm will not be bound by it as it is not within Z's implied authority
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3. Usual way of carrying on business:

- 1) Act must be done in the usual way of carrying on the Firm 'business.
- 2) What is usual and what is unusual in a business depends on (a) nature of business and (b) usage of trade.

Example: X, a partner in a firm of solicitors, borrows money and executes a promissory note in the name of firm without authority. The other partners are not liable on the note, as it is not part of the ordinary business of a solicitor to draw, accept, or endorse negotiable instruments

	Buying and selling of goods, drawing and accepting bills of exchange, taking loan, etc., are normal, activities for a trading concern. But, for an auctioneering Firm or a Firm of solicitors, activities like taking loan, drawing and accepting B/E, etc., are not considered to be a usual activity.
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4. Acts within and outside implied authority

Acts within Implied Authority	Acts outside Implied Authority [Sec. 19(2)]
In a trading Firm, the following acts are considered to be within the Partner's implied authority- (a) Purchase, on behalf of the Firm, goods dealt by the Firm or used by the Firm in its business, (b) Sale of the goods of the Firm, (c) Receiving payments of debts due to the Firm and issuing receipt for it, (d) Settlement of accounts with third parties who deal with the Firm,	In the absence of any usage or custom of trade to the contrary, implied authority of a Partner does not enable him to- (a) Submit to arbitration, a dispute relating to the business of the Firm, (b) Open a bank account on behalf of the Firm in Partner's own name, (c) Compromise or relinquish any claim or portion of claim by the Firm. (d) Withdraw any suit or proceeding filed on behalf of the Firm,

(e) Appointment of employees as may be required to carry on the Firm's business,	(e) Admit any liability in a suit or proceeding against the Firm,
(f) Borrowing money on behalf of the Firm,	(f) Acquire immovable property on behalf of the Firm,
(g) Pledging as security, goods of the Firm for loans obtained,	(g) Transfer immovable property belonging to the Firm.
(h) Drawing, accepting and endorsing negotiable instruments on behalf of the Firm,	(h) Enter into Partnership on behalf of the Firm.
(i) Hiring solicitor to defend actions against the Firm.	

5. **Restriction or extension of Implied Authority [Sec. 20]:**

- 1) The Partners, by mutual agreement of **all**, **can restrict or extend** the implied authority of any Partner.
- 2) Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party if third party **knows** about the restrictions

6. **Partner's authority in an emergency [Sec. 21]:**

- 1) In case of an emergency, a Partner has the authority to do all such acts so as to protect the Firm from loss, as would be done by a man of ordinary prudence under similar conditions. These acts bind the Firm even though they do not form part of the partner's implied authority.

	Partners of a Firm by an express contract decided that no Partner would have the authority to sell goods above value ` 1 lakh without consulting the other Partner. Due to unfavourable conditions, prices crashed. One Partner, in order to save the Firm from loss, sold all stock worth ` 15 lakhs without consulting any other Partner. The Firm is bound by such act, even though it is beyond his authority.
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Practical Question

A & B are Partners in a Firm dealing in cloth. A placed an order in the Firm's name and on the Firm's letter pad for five bags of wheat to be supplied at his residence. Is the Firm liable to pay the price of wheat?

Law	As per Sec. 19, of the Indian Partnership Act, partner has certain implied authorities to act on behalf of firm, but firm shall be liable only if such act is related to firms business, If the act is of a nature that is not common in the type of business carried on by Firm, it will not bind the Firm even if it has been done in the Firm's name.
Conclusion	After applying above law to present situation, we conclude that, firm shall not be liable for the Act of A, the firm deals with trading of cloth, which nowhere relates to buying of wheat. Unless A had been expressly authorised to purchase wheat on behalf of the Firm, there is no implied authority.

Practical Question

Shyam, Mohan and Keshav were partners in M/s Nandlal Gokulwale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932. [RTP June 2023]

Law	
Conclusion	

Practical Question

A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932? (MTP Apr. 24) (7 Marks)

Law	
Conclusion	

Practical Question

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 India Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement? (C.A. Foundation MTP Nov. 2018)

Law	
Conclusion	

Practical Question

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? (C.A. Foundation MTP May 2018, Nov. 2018)

Law	The firm is liable for the acts of a partner within the scope of his implied authority. Further if the partner receives any money or property from a third person in the course of business of the firm & misapplies it or where a firm in the course of business receives money or property and the same is misapplied by a partner while in the custody of the firm, the firm shall be liable to compensate the third party. Further it is a duty of the partner to indemnify the firm for the loss sustained by it due to his fraud or misconduct.
Conclusion	(i) Thus Firm's contention is not valid and it shall be bound to pay the price irrespective of the fact of not having received the stationery.

	(ii) Where the stationery has been delivered to the firm and then it is used by A for private purpose, then also the firm shall be bound to make payment to D. In both the above cases the firm can sue A for the loss sustained by it due to A's misconduct
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Liabilities of a Partner to third party under the Partnership Act

LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION 25)	The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority Example 10: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place, it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.
LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION 26)	- The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting: a. in the ordinary course of the business of the firm b. with the authority of the partners. - Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the business E.g - One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was also held responsible for the same.
LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION 27)	(a) 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. Note - For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm. (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. Note - If receipt of money by one partner is not within the scope of his apparent authority, his receipt cannot be regarded as a receipt by the firm and the other partners will not be liable, unless the money received comes into their possession or under their control. Example : A, B, and C are partners of a place for car parking. P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Practical Question

A, B, C and D are Partners in a Firm of Solicitors. A receives money from a client for the purpose of making a specific investment. A never invests it but applies it to his own use. The other Partners are not aware of this transaction. Is the Firm liable for A's act?

Law	As per Sec. 26, A wrongful act or omission on the part of a Partner which he has done in the ordinary course of the Firm's business. As a result of such action / omission, any third party has suffered injury, or any penalty is incurred. The Firm is liable to the same extent as the erring Partner.
Conclusion	After applying above law to present situation, we conclude that, though act of A was wrong but being partner of the firm, firm shall be liable for his act, if it caused loss to any third party. However, firm can recover such amount from guilty partner.

Property of a Partnership Firm Sec 14**1. Partner's to decide:**

The Partners, by an agreement, are free to determine as to what shall be the property of the Firm and what shall be treated as a separate property of one or more of the Partners.

2. Factors for consideration

When there is no such agreement, and to ascertain whether a certain property belongs to the Firm or not, the following shall be considered-

- 1) Source from which the property had been acquired
- 2) Purpose for which the property was acquired, and
- 3) Manner in which such property has been dealt with

3. Property of Firm [Sec. 14]

When there is no contract to the contrary, property of the firm includes

- 1) All properties, rights and interests originally brought into the stock of the Firm,
- 2) Property acquired by purchase or otherwise by or for the Firm,
- 3) Property acquired for the purposes and in the course of business of the Firm,
- 4) Property, rights and interest in property with money belonging to the Firm, and
- 5) Goodwill of the Firm's business.

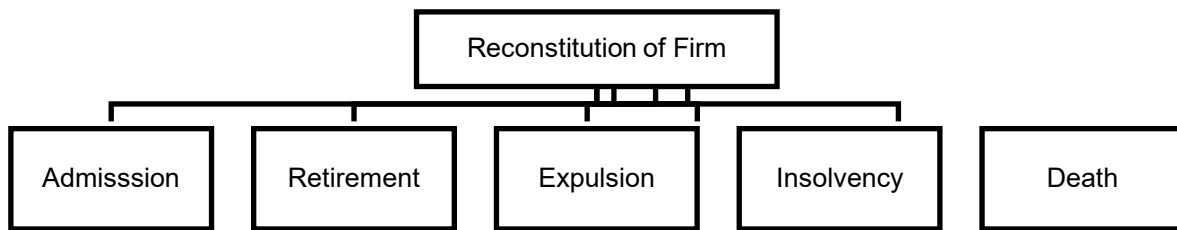
4. Application of Firm's Property [Sec. 15]:

Every Partner is, as a rule, a joint owner of the Partnership Property and is entitled to hold and apply the same exclusively for the purpose of the business.

5. Partner's Property-whether Firm's?

When a Partner's property is used for Firm's business, it does not automatically become the Firm's property. But, where the Partners have an intention to make it as Firm's property, it can be made so.

Reconstitution of Partnership Firm



1. Admission [Sec. 31]:

- (a) A person can be admitted into already existing Firm, only with the **consent of all the existing Partners**.
- (b) The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner
- (c) Such new partner is **not liable** for any act done by the Firm **before his admission except** he specifically agrees to bear the past liabilities and consented with creditors.

2. Retirement [Sec. 32]:

- (a) Modes of Retirement : Partner may retire-
 - With other Partner's consent
 - In accordance with an express agreement,
 - By giving written notice of his intention to retire in a Partnership at will.
- (b) Liability :
 - Retiring Partner may be discharged from liability to any third party for acts of Firm done before his retirement by (a) an agreement made with such third party and the Partners of reconstituted Firm, or (b) implied from the course of dealing between the third party and reconstituted Firm after he had knowledge of the retirement.
 - A retired Partner along with other Partners continues to be liable to third parties for acts done by any of them in the Firm name before retirement, until public notice is given of his retirement.
 - A retired Partner is not liable to any third party who deals with the Firm without knowledge that he was a Partner.
- (c) Public Notice : Can be given by – (a) Retired Partner, or (b) any Partner of reconstituted Firm.
- (d) Rights of outgoing partner
To carry on competing business but he may not-
 - (i) use the firm name;
 - (ii) represent himself as carrying on the business of firm, or
 - (iii) solicit the customers who were dealing with the firm before he ceased to be a partner. **(Sec. 36)**

If final settlement is pending, legal representatives of the deceased partner or the retiring partner are entitled to any of the following two options:

- (a) Share of the profit earned after the death or retirement.
- (b) Claim interest at the rate of 6 per cent per annum on the amount of his share in the property. **(Sec. 37)**

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. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? **ICAI Study Mat**

Practical Question

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

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

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

- i. Rights of P & Q to start a competitive business.
- ii. Rights of P & Q regarding their share in property of M/S PQRS & Co. **(MTP May 24) (7 Marks)**

Law

Conclusion

Practical Question

P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932. **[June 2023 (6 Marks)]**

Law

Conclusion	

3. **Expulsion** [Sec. 33]:

- (a) Expulsion of a Partner [Sec. 33]: A partner cannot be expelled from a Firm by any majority of partner except in the exercise in good faith of powers conferred by the contract between the partners.
- (b) Good Faith: Hence, for any expulsion by majority, it is necessary that if-
- The power of expulsion must have **existed in the contract** between Partners,
 - Such power has been exercised by a majority of the Partners, and
 - Such power has been exercised **in good faith** for the interest of the Firm and not used as vengeance against a Partner.
- (c) What constitutes Good Faith? An expulsion is said to be in good faith:
- Such expulsion is done to **protect the interests** of Partnership and of the Firm,
 - The Partner who is to be expelled had been **served with a Notice**.
 - Such partner has given an **opportunity of being heard**.
- (d) Expulsion Void: When a Partner is otherwise expelled than in good faith, it is null and void. He continues to be Partner, and can (a) claim reinstatement or (b) sue for the refund of his share of Capital and profits in the Firm.
- (e) Position of Expelled Partner : even expelled partner has to give public notice

Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932? [Nov. 2022 (6 Marks)]

Practical Question

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? (C.A. Foundation May 2018), (C.A. Foundation MTP May 2019)(ICAI study mat)

Law	According to provisions of Section 33 of the Indian Partnership Act, 1932, a partner can be expelled from a firm on the fulfilment of the following conditions : (1) When the power of expulsion of a partner is expressly conferred on the partners in the deed of partnership. (2) The power of expulsion must be exercised by a majority of partners in the interest of the firm. (3) The power of expulsion must be exercised in good faith. Further the power of expulsion is said to have been exercised in good faith only if (a) The expelled partner has been served with a notice of charges against him (b) The expelled partner has been given a reasonable opportunity of being heard by the other partners (c) The expulsion is in the interest of the firm
Conclusion	In the given case it is evident that expulsion of Y was not valid since it was not done in good faith. Thus Y, the expelled partner shall have a right to sue the other partners for reinstatement in the firm

Practical Question

Ram & Co. a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. (CA Foundation RTP Nov 2018)

Law	
Conclusion	Thus A & B can expel C, provided the power of expulsion is conferred by the partnership deed and the expulsion is being done in good faith, in the interest of the firm, after affording C a reasonable opportunity of being heard and a notice with respect to the same is served on C

Practical Question

M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

- (a) Examine whether action by the partners was justified or not?
 (b) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (6 Marks) (May 19)(ICAI study Mat)[MTP Apr 2023(6 Marks)]

Law	Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932): A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. The test of good faith as required under Section 33(1) includes three things: • The expulsion must be in the interest of the partnership. • The partner to be expelled is served with a notice. • He is given an opportunity of being heard. If a partner is otherwise expelled, the expulsion is null and void.
Conclusion	(a) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G. (b) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners: - the power of expulsion must have existed in a contract between the partners; - the power has been exercised by a majority of the partners; and - it has been exercised in good faith.

4. Insolvency [Sec. 34]: [RTP Dec 2023]

- (a) When a Partner in a Firm is adjudicated insolvent, he ceases to be a Partner on the date of the order, irrespective of whether the Firm is dissolved or not.
- (b) When under a contract between the Partners, the Firm is not dissolved by the insolvency of a Partner the estate of such Partner is not liable for any act of the Firm.
- (c) Also, further the Firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

5. Death [Sec. 35]:

- (a) The Firm is generally dissolved on the death of a partner.
- (b) When under a contract between the partners, the Firm is not dissolved by the death of a Partner, (a) the estate of deceased Partner remains liable only for such acts as were done during the tenure of his Partnership, and (b) His estate is not liable for any act of the Firm done after his death.
- (c) No public notice is required on the death of a Partner.

Practical Question

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

Law	According to section 35 of the Indian Partnership Act, 1932, where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or to the persons dealing with the firm
Conclusion	Thus applying the above stated provisions in the given case, it can be concluded that Mr. X, the supplier may sue M/s. ABC & Co. for the recovery of his dues, but he cannot hold the legal heirs of Mr. C liable, since Mr. C's estate shall not be liable for transactions of the firm made after his death i.e. after 1st October 2018

Practical Question

Sohan, Rohan and Jay were partners in a firm. The firm is dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2018, one of the partners, Mr. Jay died in a road accident. The firm has ordered M/s AB and Co. to supply the furniture for their business on 25 May 2018, when Jay was also alive

Now Sohan and Rohan continue the business in the firm's name after Jay's death. The firm did not give any notice about Jay's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25 July 2018. The fact about Jay's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co.

has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Jay's private estate is also liable for the price of furniture purchased by the firm? [RTP May 2022] (RTP May 2019) [MTP Jun 2022 (6 Marks)]

Law	According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.
Conclusion	In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Jay's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Jay's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

6. Transfer of interest [Sec. 29]:

Basics	By virtue of Section 31, which we will discuss hereinafter, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.
Mode of transfer	(a) Sale, or (b) Mortgage, or (c) Creation of a Charge on such Interest by the transferor. (d) Attach to any decree of court.
Rights of transferee	
During the continuance of partnership	(i) such transferee is not entitled : a. to interfere with the conduct of the business, b. to require accounts, or c. to inspect books of the firm. He is only entitled to ✓ receive the share of the profits of the transferring partner and

	he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts
On the dissolution of the firm or on the retirement of the transferring partner	(ii) the transferee will be entitled, against the remaining partners: - to receive the share of the assets of the firm to which the transferring partner was entitled, and - for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.
1 State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee? ICAI Study Mat [RTP June 2023] (RTP June 2024) 2 Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership? ICAI Study Mat [MTP Nov 2022(4 Marks)] 3 M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932. [May 2022 (6 Marks)]	

Miscellaneous Concepts

Effect Of Admission of Partner (sec 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. - they may not have the same effect in case of disputes between the partners themselves. Example: X and Y are partners in a firm dealing in spare parts of different brands of motorcycle bikes. Z purchases a spare part for his Yamaha motorcycle after being told by X that the spare part is suitable for his motorcycle. Y is ignorant about this transaction. The spare part proves to be unsuitable for the motorcycle and it is damaged. X and Y both are responsible to Z for his loss.
Effect of notice to Acting partner (sec 24)	The notice to a partner, who habitually acts in business of the firm, on matters relating to the affairs of the firm, operates as a notice to the firm except in the case of a fraud on the firm committed by or with the consent of that partner. Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must be received by a working partner and not by a sleeping partner. It must further relate to the firm's business. Only then it would constitute a notice to the firm. Example 8: P, Q, and R are partners in a business for purchase and sale of second hand goods. R purchases a second hand car on behalf of the firm from S. In the course of dealings with S, he comes to know that the car is a stolen one and it actually belongs to X. P and Q are ignorant about it. All the partners are liable to X, the real owner. The only exception would lie in the case of fraud, whether active or tacit. Example 9: A, a partner who actively participates in the management of the business of the firm, bought for his firm, certain goods, while he knew of a particular defect in the goods. His knowledge as regards the defect, ordinarily, would be construed as the knowledge of the firm, though the other partners in fact were not aware of the defect. But because A had, in league with his seller, conspired to conceal the defect from the other partners, the rule would be inoperative and the other partners would be entitled to reject the goods, upon detection by them of the defect.
Revocation of Continuous Guarantee by change in firm	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.
When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?	

(MTP Apr. 24) (4 Marks)

TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. A partner can be expelled if:
 - a. Such expulsion is in good faith
 - b. The majority of the partner does not agree on such expulsion
 - c. The expelled partner is given an opportunity to start a business competing with that of the firm
 - d. Compensation is paid
2. Which of the following is not the right of partner i.e., which he cannot claim as a matter of right?
 - a. Right to take part in business
 - b. Right to have access to account books
 - c. Right to share profits
 - d. Right to receive remuneration.
3. Which of the following acts are not included in the implied authority of a partner?
 - a. To buy or sell goods on accounts of partners.
 - b. To borrow money for the purpose of firm.
 - c. To enter into partnership on behalf of firm.
 - d. To engage a lawyer to defend actions against firm.
4. The reconstitution of the firm takes place in case of
 - a. Admission of a partner
 - b. Retirement of a partner
 - c. Expulsion or death of a partner
 - d. All of the above
5. A new partner can be admitted in the firm with the consent of
 - a. All the partners
 - b. Simple majority of partners
 - c. Special majority of partners
 - d. New partner only.
6. A partner may be expelled from the firm on the fulfilment of the conditions that the expulsion power is exercised.
 - a. As given by express contract
 - b. By majority of partners
 - c. In absolute good faith
 - d. All of the above
7. A minor is:
 - a. A partner of a firm
 - b. Representative of the firm
 - c. Entitled to carry on the business of the firm
 - d. Entitled to the benefits of the firm
8. If a partner commits fraud in the conduct of the business of the firm:
 - a. He shall indemnify the firm for any loss caused to it by his fraud
 - b. He is not liable to the firm.
 - c. He is liable to the partners
 - d. He is liable to the third parties
9. Partners are bound to carry on the business of the firm-
 - a. To the greatest common advantage
 - b. For the welfare of the society
 - c. For the advantage of the family members
 - d. For earning personal profits

10. The liability of a minor partner is limited to the extent of:
 - a. His share in the firm
 - b. His personal assets
 - c. His share in the firm as well as his personal assets
 - d. He is not liable
11. The authority of a partner to bind the firm for his acts as contained in section 19 of the Partnership Act is known as:
 - a. Express authority
 - b. Legal authority
 - c. Implied authority
 - d. Managerial authority
12. Which are the matters that require unanimous consent of all the partners:
 - a. Admission of a partner
 - b. Transfer by a partner of his interest in the firm
 - c. Fundamental change in the nature of the business
 - d. All of the above
13. For admitting a minor into the benefits of the partnership, which of the following is required?
 - a. Consent of the minor's guardian
 - b. Consent of the Registrar of firms
 - c. Consent of all the partners of the firm
 - d. All of the above
14. The implied authority of a partner of the firm does empower him to:
 - a. Open a bank account on behalf of the firm in his own name.
 - b. Enter into partnership on behalf of the firm.
 - c. Acquire immovable property on behalf of the firm.
 - d. Act expressing or implying an intention to bind the firm.
15. In case of transfer of share in a partnership firm by one partner to any third party give such third party entitlement:
 - a. to interfere with the conduct of the business.
 - b. to require accounts.
 - c. to receive the share of the profits of the transferring partner as agreed by the partners.
 - d. to receive the share of the profits of the transferring partner whether or not agreed by the partners.

3

REGISTRATION AND DISSOLUTION

Dissolution

- According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership
- all partners of a firm is called the 'dissolution of the firm'.
- Thus, the dissolution of firm means the discontinuation of the legal relation existing
- **between all the partners** of the firm.
- But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership but the remaining partners carry on the business of the firm, it is called dissolution of partnership.
- In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	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 of the firm.

Modes of Dissolution (Sections 40-44)

By Order of the Court [Sec. 44]	Other Modes
1. Partner's insanity 2. Permanent incapacity of partner 3. Partner guilty of misconduct 4. Breach of agreement 5. Transfer of interest by a Partner 6. Heavy losses of Firm 7. Just and equitable grounds	1. Mutual Agreement [Sec. 40] 2. Compulsory dissolution [Sec. 41] 3. Happening of certain contingencies [Sec.42] 4. Notice of Partnership at Will [Sec. 43]

Dissolution by other Modes/without order of court of order/voluntary	
(i) Dissolution by Agreement (Section 40):	Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.
(ii) Compulsory dissolution (Section 41):	A firm is compulsorily dissolved • by the adjudication of all the partners or of all the partners but one as insolvent; or • by the happening of any event which makes it unlawful for all the business of the firm to be carried on or for the partners to carry it on in partnership. Example: A firm is carrying on the business of trading a particular chemical and a law is passed which bans on the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved.
G, I and S were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act, 1932 can G, I and S continue the partnership or will their partnership firm get dissolved? [RTP Nov 2022] Hint-	
(iii) Dissolution on the happening of certain contingencies (Section 42):	Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies- (i) On expiry of term – If Partnership for fixed term (ii) On completion of adventure – If particular adventure (iii) By death or insolvency of partner – If nothing is specified in deed
(iv) Dissolution by notice of partnership at	(i) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

will (Section 43):	(ii) In case date is mentioned in the Notice: The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or in case no date is so mentioned, as from the date of the communication of the notice
<i>When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. ?(ICAI STUDY MATERIAL) [MTP Jun 2022(4 Marks)] [MTP Apr 2023(4 Marks)]</i>	

Dissolution by Order of the Court [Sec. 44]

The Court may, at suit of a Partner, dissolve a Firm on the following grounds,

1. **Partner's insanity:**

- If a Partner (not a sleeping partner) has become of unsound mind, the Firm is dissolved.
- The Court may order dissolution based on a petition made by any of the other (sane) Partners or by the next friend of the insane Partner.

2. **Permanent Incapacity:**

- A Partner becomes permanently incapable of performing his duties as a Partner.
- Application to Court shall be made by the partner who is not incapacitated.
- Permanent incapability must be shown to the Court.
- Example :** A, B and C are partners in a firm. A has severe infection and got typhoid. Due to this, he was not able to conduct business for few weeks. This kind of illness cannot be treated as the ground for dissolution.

	if a Partner was diagnosed for paralysis which on evidence was found to be curable, dissolution shall not be granted.
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3. **Misconduct of Partner:**

- Dissolution may arise, if a Partner is found guilty of conduct which is likely to affect the carrying on of business of the Firm prejudicially.
- It is not necessary that misconduct must relate to the conduct of the business
- Application to Court shall be made by one who is not guilty of misconduct, i.e. other Partners.

	A & B are Partners in a Firm. A has adulterous relations with B's wife. This is sufficient ground for the compulsory dissolution of the Firm [Abbot v. Crump] . Conduct of A, though not committed in actual business, is likely to affect prejudicially carrying on business because this destroys their mutual confidence.
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- Sufficient grounds for dissolution - Persistent refusal or neglect by a Partner to attend to business, taking away of Partnership books by a Partner.

4. **Persistent Breach of agreement:**

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

- Embezzlement,

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

5. **Transfer of interest by a Partner:**

The Court may order dissolution when a Partner has in any way- (a) transferred the whole of his interest in a Firm to a third party, or (b) allowed his share to be charged on account of a decree passed by a court towards payment of liabilities of the Partnership, or (c) allowed his share to be sold in the recovery of arrears of land revenue.

6. **Heavy losses of Firm:**

The Firm has been continuously suffering losses. It is apparent that in future also the business cannot be carried on except at a loss.

7. **Just and equitable grounds :**

If, on any other ground, it can be proved to the satisfaction of the court that it is just and equitable to dissolve the Firm, the Court may order dissolution. Sufficient reasons include— (a) Deadlock in management, (b) Disappearance of Substratum of business, (c) Partners not on speaking terms.

State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932? (MTP May 24) (7 Marks)

Rights and Liabilities of the Partners upon Dissolution of the Firm

1. **Liability for acts of Partners done after dissolution [Sec. 45]:**

The Partners continue to be liable as such to third parties for any act done by any of them which would have been the act of the Firm if done before dissolution, until Public Notice is given of the dissolution.

(a) Public notice may be given by any Partner.

(b) The estate of a Partner (i) who dies, (ii) who is adjudged insolvent, (iii) who retires from the Firm and who is not known to the person dealing with the Firm to be a Partners is not liable u/s 45 for acts done after the date on which he ceases to be a Partner.

Practical Question

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

Law	By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.
Conclusion	In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some

	goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. Following the provisions of Section 45, X and Y are continuing liable against third party even after dissolution of firm until public notice is given. As in the given problem, X became insolvent, therefore, Y will be liable to Z
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2. **Right of partners to have business wound up after dissolution (Section 46):** On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
3. **Surrender Personal profits earned after dissolution [Sec. 50]:**
 Unless there is a contract to the contrary,
 - Any profits from transactions undertaken in Firm name or by use of Firm's property,
 - After the dissolution (by death) but before completion of winding up,
 - Made by surviving Partner or representative of a deceased Partner,
 - Shall be surrendered to the Firm.
 However, where any partner or his representative has bought the Goodwill of the Firm, he is entitled to use the Firm name.
4. **Duty not to carry on similar business for specified period of time [Sec. 54]:**
 Upon or in anticipation of Firm's dissolution, Partners may enter into an agreement that some or all of them will not carry on business similar to that of the Firm—(a) within a specified period, or (b) within specified local limits. Every Partner, in view of such agreement, shall not carry on similar business.
5. **Continuing authority of Partners [Sec.47]:**
 - (a) The authority to bind the Firm, other mutual rights and liabilities of Partners continue, in so far as may be necessary- (i) to wind up the affairs of the Firm, and (ii) to complete the transaction that had begun but left unfinished at the time of dissolution.
 - (b) The Firm is not bound by the acts of a Partner who is declared insolvent.
 - (c) However, the person who has, after adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent, will be liable for his acts.
6. **Application of property towards Firm's and personal debts [Sec. 49]:**
 - (a) In case of Joint Debts due from Firm and also separate debts due from Partners, (a) Firm's property shall be applied first to pay Firm's debts and (b) if there is any Surplus, then, the share of each Partner shall be applied in the payment of his separate debts or paid to him directly.
 - (b) Separate Property of any partner shall be applied – (a) First in the payment of his Separate Debts, and (b) Surplus, if any, in the payment of the debts of the Firm.

Settlement of Accounts between the Partners upon dissolution.

1. **Sale of Goodwill after dissolution [Sec. 55]:** Goodwill, shall, subject to agreement between Partners, be included in the Assets. It may be sold either separately or along with the assets of the Firm.
2. **Payment of Losses [Sec.48]:** Losses, including deficiencies of Capital, shall be paid –
 - (a) First out of Profits
 - (b) Next out of Capital
 - (c) Finally, if necessary, by the Partners individually in their profit sharing ratio.
3. **Assets [Sec.48]:** Appreciation of Firm's assets, including any sums contributed by Partners to make up deficiencies of capital, shall be applied in the following manner and order-
 - (a) Payment of the Firm's debts to third parties,
 - (b) Payment of each partner's advances to the Firm other than capital,
 - (c) Payment of each partner's capital.
 - (d) Residue if any shall be divided among the partners in their profit sharing ratio.

Example 6: X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed 6,60,000 to the capital of the firm and Y only 40,000. The assets amounted to 2,00,000. In such situation, the deficiency (6,60,000 + 40,000 – 2,00,000 i.e. 5,00,000) would have to be shared equally by Y and X's estate.

If in the above example, the agreement provided that on dissolution the surplus assets would be divided between the partners according to their respective interests in the capital and on the dissolution of the firm a deficiency of capital was found, then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser.

State the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the Indian Partnership Act, 1932? **[Dec 2023(4 Marks)]**

Practical Question

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. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Law	
Conclusion	

REGISTRATION OF FIRMS

APPLICATION FOR REGISTRATION (SECTION 58)	(1) 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- - The firm's name - The place or principal place of business of the firm, - The names of any other places where the firm carries on business, - the date when each partner joined the firm, - the names in full and permanent addresses of the partners, and - the duration of the firm. (2)The statement shall be signed by all the partners, or by their agents specially authorised in this behalf. (3)When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration
<i>What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?(ICAI STUDY MATERIAL) [June 2023 (6 Marks)]</i>	
NOTE	A firm name shall not contain any of the following words, namely:- 'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.
REGISTRATION (SECTION 59):	Registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar. Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.
PENALTY (SECTION 59A-1):	If the statement in respect of any firm is not sent or delivered to the Registrar within the time specified in subsection (1A) of section 58, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.
Non Registration (SECTION 69)	
Basics	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.
Consequences (section 69)	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 ` 100 or pursue other proceedings to enforce the rights arising from any contract. (iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved. (iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.
<i>"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms In India? (ICAI STUDY MATERIAL) [Nov. 2022 (6 Marks)]</i>	
Exceptions	Non-registration of a firm does not, however effect the following rights: 1. The right of third parties to sue the firm or any partner. 2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm. 3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action. 4. The right to sue or claim a set-off if the value of suit does not exceed ` 100 in value.

	5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.
Special Cases	Example 1: A & Co. is registered as a partnership firm in 2017 with A, B and C partners. In 2018, A dies. In 2019, B and C sue X in the name and on behalf of A & Co. without fresh registration. Now the first question for our consideration is whether the suit is maintainable. As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar. The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely, (i) the suit must be instituted by or on behalf of the firm which had been registered; (ii) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.
Special Cases	Now, in the above example, what difference would it make, if in 2019 B and C had taken a new partner, D, and then filed a suit against X without fresh registration? Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

Practical Question

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

Law

Conclusion	

Practical Question

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

- Whether M/s LMN & Company can file the suit against M/s XYZ & Company?
- What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?
- What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm? [RTP May 2022]

Law

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

Conclusion

- On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.
- In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.
- In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.

Practical Question

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

In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual

consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co

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

In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable?[MTP Nov 2022(6 Marks)]

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

TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. *Registration of a firm is:*
 - a. *Compulsory*
 - b. *Optional*
 - c. *Occasional*
 - d. *None of the above*
2. *An unregistered firm cannot claim:*
 - a. *Set on*
 - b. *Set off*
 - c. *Set on and set off*
 - d. *None of the above*
3. *As per the accepted view, the registration of the firm is considered complete when*
 - a. *Complete application for registration is filed with the Registrar.*
 - b. *Registrar files the statement and makes entries in the Register of Firms.*
 - c. *Registrar gives notice of registration to all partners.*
 - d. *Court records the statement and certifies the entries in Register of Firms.*
4. *A partnership firm is compulsorily dissolved where*
 - a. *All partners have become insolvent*
 - b. *Firm's business has become unlawful*
 - c. *The fixed term has expired*
 - d. *In cases (a) and (b) only*
5. *On which of the following grounds, a partner may apply to the court for dissolution of the firm?*
 - a. *Insanity of a partner*
 - b. *Misconduct of a partner*
 - c. *Perpetual losses in business*
 - d. *All of the above*
6. *Which of the following do not constitute a ground for dissolution by Court?*
 - a. *Misconduct by partner*
 - b. *Transfer of interest by partner*
 - c. *Just and equitable grounds*
 - d. *Insolvency of a partner*
7. *Upon dissolution of firm, losses, including deficiencies of capital, shall be paid first-*
 - a. *Out of Profits*
 - b. *Out of Capital*
 - c. *By the partners in their profit sharing ratio*
 - d. *By the partners equally*
8. *Public notice in case of a firm is not required in case of:*
 - a. *Admission of a partner*

- b. Retirement of a partner*
 - c. Expulsion of a partner*
 - d. Dissolution of the firm.*
- 9. Which of the following do not constitute ground for dissolution by Court?*
 - a. Insanity of the partner*
 - b. Business carried on at a loss*
 - c. Wilful misconduct of a partner*
 - d. Expulsion of a partner*
- 10. Dissolution of partnership between all the partners of a firm is called-*
 - a. Dissolution of partnership*
 - b. Dissolution of partners*
 - c. Dissolution of the firm*
 - d. Reconstitution of firm*
- 11. A partnership firm has to be registered with:*
 - a. Director of firms*
 - b. Registrar of firms*
 - c. Registrar of companies*
 - d. Competent Court*
- 12. In settling the account after dissolution, the firm's assets shall be first applied in-*
 - a. Losses including deficiencies of capital.*
 - b. Payment of partner's loan.*
 - c. Payment of partner's goodwill share.*
 - d. Distribution to partners in their profit sharing ratio.*
- 13. X, Y and Z are partners in a firm. Due to differences amongst the partners, there is deadlock in the management. X applies to the court for the dissolution of the firm. Will he succeed?*
 - a. Yes, on just and equitable ground*
 - b. No, because it is not a valid ground for dissolution*
 - c. No, it will require consent of all the partners*
 - d. Yes, if the Registrar of Firm agrees.*
- 14. A firm is compulsorily dissolved on the:*
 - a. Death of a partner*
 - b. Adjudication of a partner as an insolvent*
 - c. Expiry of a fixed period for which the firm was constituted*
 - d. Business of the firm becoming illegal due to happening of an event.*
- 15. The partnership deed does not include:*
 - a. The nature of the business of the firm.*
 - b. The duration of the firm.*
 - c. The date when each partner joined the firm.*
 - d. The date when each partner exit the firm.*

16. Mr. A, partner of ABC Associates give notice in writing to all other partners i.e. Mr. B and Mr. C of his intention to dissolve the firm on 01.09.2020. Such notice was dated 30.08.2020. In the given case, the firm stands dissolved with effect from
- 30.08.2020.
 - 01.09.2020.
 - Neither 30.08.2020 nor 01.09.2020 but as per the date mentioned in partnership deed as last date of existence of the firm.
 - Either 30.08.2020 or 01.09.2020 as mutually agreed by all three partners.
17. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. Such dissolution is known as .
- Dissolution by contract.
 - Dissolution by agreement.
 - Dissolution by will.
 - Dissolution of Partnership.
18. The statement for the purpose of registration under Section 58(1) of Indian Partnership Act, 1932 can be signed by:
- Any one partner of the Firm
 - Legal heirs of all partners of the Firm
 - All the partners or by their agents specially authorised in this behalf
 - Agents of all partners of the Firm.

Extra Questions for Practise

- 1 What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?
 - (ii) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?
 - (iii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? **[RTP Dec 2023]**

- 2 What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? **(MTP Apr. 24) (3 Marks)**

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

INTRODUCTION

Enactment	- The Ministry of Law and Justice on 9th January 2009 notified the Act - The LLP Act, 2008 has 81 sections (of which section 81 is now omitted with effect from 1st April 2022) and 4 schedules. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: #d3d3d3;"> <th style="padding: 5px;">Schedule</th><th style="padding: 5px;">Deals with</th></tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">I</td><td style="padding: 5px;">mutual rights and duties of partners and limited liability partnership and its partners where there is absence of a formal agreement amongst them</td></tr> <tr> <td style="text-align: center; padding: 5px;">II</td><td style="padding: 5px;">conversion of a firm into LLP.</td></tr> <tr> <td style="text-align: center; padding: 5px;">III</td><td style="padding: 5px;">conversion of a private company into LLP.</td></tr> <tr> <td style="text-align: center; padding: 5px;">IV</td><td style="padding: 5px;">conversion of unlisted public company into LLP.</td></tr> </tbody> </table>	Schedule	Deals with	I	mutual rights and duties of partners and limited liability partnership and its partners where there is absence of a formal agreement amongst them	II	conversion of a firm into LLP.	III	conversion of a private company into LLP.	IV	conversion of unlisted public company into LLP.
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IV	conversion of unlisted public company into LLP.										
Need	- to meet with the contemporary growth of the Indian economy - A need has been felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the statute-based governance structure of the limited liability company on the other hand - It provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.										
Meaning	- LLP as a separate legal entity and business organisation is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. - Since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’ LLP is called a hybrid between a company and a partnership.										
1. “LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.(module) Ans - LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets. Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital. 2. Examine the concept of LLP.											

Some Imp Definitions	Body Corporate [(Section 2(1)(d))]: It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes— - a LLP registered under this Act; - a LLP incorporated outside India; and - a company incorporated outside India, but does not include— - a corporation sole; - a co-operative society registered under any law for the time being in force; and - any other body corporate specified by Central Government by notification in the Official Gazette Business [Section 2(1)(e)]: “Business” includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude. Designated Partner [Section 2(1)(j)]: “Designated partner” means any partner designated as such pursuant to section 7. Entity [Section 2(k)]: “Entity” means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932. Financial Year [Section 2(1)(l)]: “Financial year”, in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year. However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year. Example : If a LLP has been incorporated on 15th October, 2022, then its financial year may be from 15th October, 2022 to 31st March, 2024. However, the LLP can always maintain its first accounts from 15th October, 2022 to 31st March, 2023 i.e. for a period of less than 12 months. The period for which the first accounts of LLP are prepared shall not exceed 18 months. Foreign LLP [section 2(1)(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India. Limited Liability partnership agreement [Section 2(1)(o)]: It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP. Small limited liability partnership [Section 2(1)(ta)]: It means a limited liability partnership— <table border="1" data-bbox="475 1980 1385 2031"> <tr> <td data-bbox="475 1980 893 2031">Contribution</td><td data-bbox="896 1980 1385 2031">Up to ` 25L, &</td></tr> </table>	Contribution	Up to ` 25L, &
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Turnover for immediately preceding F.Y	Up to ` 40 L, or				
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	9. Tribunal [Section 2(1)(u)] : means the National Company Law Tribunal constituted u/s 408 of Companies Act 2013.				
Partners [Sec.5]	a) Any Individual or Body Corporate may be a Partner in a LLP. b) An individual shall not be capable of becoming a Partner of a LLP, if — • He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force, • He is an undischarged insolvent, or • He has applied to be adjudicated as an insolvent and his application is pending.				
Minimum number of partners (Section 6):	(i) Every LLP shall have at least two partners. (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.				
The following persons can become partner in LLP:	(i) Individuals (Resident Indians including Non Resident Indians & Overseas Citizen of India as well as foreign nationals)* (ii) Limited Liability Partnerships (iii) Companies (including foreign companies)* (iv) Foreign Limited Liability Partnerships* (v) Limited Liability Partnerships incorporated outside India (vi) Foreign Companies. Note - Co-operative society and corporation sole cannot become partner in a LLP.				
Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain. (module) Hint - HUF is not covered in the definition of body corporate and cannot be partner in LLP.					
Foreign LLP [Sec.59]	The Central Government may make rules for provisions in relation to establishment of place of business by Foreign LLPs within India and carrying on their business therein by applying or incorporating, with such modifications, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed				

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics of Partnership)			
Particulars	Company	Partnership Firm	LLP
1 Perpetual Succession	Yes	No	Yes
2 Liability	Limited	Unlimited	Limited to agreed Contribution
3 Artificial person but separate legal Entity	yes	no	yes
4 Seperation of Ownership From management	yes	No	Partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
5 Separate Property in its own name	Yes	No	Yes
6 Trasferability Of Shares	Freely transferable in Public co	With consent of partners	With consent of partners
7 Incorporated Association (Registration Compulsory)	Yes	No	Yes
8 Common Seal	not mandatory	Not required	not mandatory
9 Capacity to sue in its own name	Yes	Through partners	Yes
10 Min Members /Partners	Pvt – 2 Public – 7 OPC- 1	2	at least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India
11 Max Members / Partners	Pvt- 200 Public – No limit	50	No limit
12 Agreement	MOA/AOA	Partnership deed	LLP Agreement
13 Business	For profit or non profit	Only for profit	Only for profit
14 Mutual Agency	Members not agent of company	All partners are agent of firm and of other partners	All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Enumerate the various characteristics of the LLP (ICAI study Material)

ADVANTAGES OF LLP FORM (LOL-FEE)

L	1. All partners enjoy limited liability .
O	2. organised and operates on the basis of an agreement.
L	3. Less legal and procedural requirements.
F	4. Flexible Capital Structure
E	5. Easy to form
E	6. Easy to dissolve.

Designated Partners [Sec.7]

Minimum no. of Designated Partners [Sec 7[1]]:	a) Every LLP shall have at least 2 Designated Partners who are Individuals and at least one of them shall be a Resident in India. b) In case of a LLP in which all the Partners are Bodies Corporate or in which one or more Partners are Individuals and Bodies Corporate, atleast 2 individuals who are Partners of such LLP or Nominees of such Bodies Corporate shall act as Designated Partners. (Note: Resident in India means a person who has stayed in India for a period of not less than 120 days during the Financial year). Example 2: There is an LLP by the name Indian Helicopters LLP having 5 partners namely Mr. A (Non resident), Mr. B (Non Resident) Ms. C (resident), Ms. D (resident) and Ms. E (resident). In this case, at least 2 should be named as Designated Partner out of which 1 should be resident. Hence, if Mr. A and Mr. B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms. C, Ms. D and Ms. E.
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1) What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP? (ICAI study Material)

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so? (module)

Hint - Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Who can be Designated Partners? [Sec 7[2]]	a) At the time of Incorporation :If the Incorporation Document		
	<table> <tr> <td>Specifies who are to be Designated Partners</td><td>Such Persons shall be Designated Partners on Incorporation.</td></tr> </table>	Specifies who are to be Designated Partners	Such Persons shall be Designated Partners on Incorporation.
Specifies who are to be Designated Partners	Such Persons shall be Designated Partners on Incorporation.		

	States that each of the Partners from time to time of LLP is to be Designated Partner	Every Partner shall be a Designated Partner.
	b) At any other time: Any Partner may become or cease to be a Designated Partner by and in accordance with the LLP Agreement.	

Incorporation of LLP[Sec. 11 &12]

Incorporation Document[Sec.11]:	1. For a LLP to be incorporated: a) two or more persons associated for carrying on a lawful business with a view to earn profit shall subscribe their names to an incorporation document; b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated (Incorporation documents are now processed electronically by Registrar, Central Registration Centre since 2nd October 2018); and c) Statement to be filed: ➤ there shall be filed along with the incorporation document, a statement in the prescribed form: ○ made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and ○ by any one who subscribed his name to the incorporation document, ○ that all the requirements of this Act and the rules made thereunder have been complied with, ○ in respect of incorporation and matters precedent and incidental thereto. 2. The incorporation document shall— a) be in a form as may be prescribed; b) state the name of the LLP; c) state the proposed business of the LLP; d) state the address of the registered office of the LLP; e) state the name and address of each of the persons who are to be partners of the LLP on incorporation; f) state the name and address of the persons who are to be designated partners of the LLP on incorporation; g) contain such other information concerning the proposed LLP as may be prescribed. 3. If a person makes a statement as discussed above which he—
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	a) knows to be false; or b) does not believe to be true, shall be punishable (Penalty for false declaration) ➤ with imprisonment for a term which may extend to 2 years and ➤ with fine which shall not be less than `10,000 but which may extend to `5 Lakhs.
Registration[Sec.12]:	1. When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of 14 days— a) register the incorporation document; and b) give a certificate that the LLP is incorporated by the name specified therein. 2. The Registrar may accept the statement delivered under clause (c) of subsection (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with. 3. The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal. 4. The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.
Effect of registration [Sec.14]	On Registration, a LLP by its name shall be capable of — a) Suing and being sued, b) Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible, c) Having a common seal, if it decides to have one, and d) Doing and suffering such other acts and things as Bodies Corporate may lawfully do and suffer.
What are the effects of registration of LLP(ICAI study Material) 2) Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. (ICAI study Material) Solution - Essential elements to incorporate Limited Liability Partnership (LLP) - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India: i. To complete and submit incorporation document in the form prescribed with the Registrar electronically; ii. To have at least two partners for incorporation of LLP [Individual or body corporate]; iii. To have registered office in India to which all communications will be made and received;	

- iv. To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- v. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
- vi. To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- vii. LLP Name.

1) Steps to incorporate LLP: Refer register

Provisions relating to Registered Office and Name of LLP

Registered Office [Sec.13]	- Every LLP shall have a Registered Office to which all communications and notices may be addressed and where they shall be received. - A Document may be served on a LLP, Partner or Designated Partner thereof, by sending it by post under a certificate of posting or by Registered Post or by prescribed mode u/r 15 such as Electronic Transmission, Courier, 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. - A LLP may change the place of its Registered Office and file the Notice of such change with the Registrar, subject to such conditions as may be prescribed. Any such change shall take effect only upon such filing. - On contravention of provisions of Sec. 13, the LLP and its every Partner shall be punishable with fine of 500 for each day during which the default continues, subject to a maximum of Z 50,000 for the LLP and its every partner.
Name of LLP	Name[Sec.15]: - Every LLP shall have either the words "Limited Liability Partnership" or the acronym "LLP" as the last words of its name. - A LLP shall not be registered by a name which, in the opinion of the Central Government is — [i] Undesirable, or [ii] Identical or [iii] too nearly resembles to that of any other LLP, or a Company or a Registered Trade Mark of any other person under the Trade Marks Act, 1999. Reservation of Name [Sec.16]: Proposal: A person may apply in form FiLLip and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as — - The Name of a proposed Limited Liability Partnership, or - The Name to which a Limited Liability Partnership proposes to change its name.

	b) Reservation: Upon receipt of the application and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in Sec.15[2], reserve the name for a period of 3 months from the date of intimation by the Registrar.
Rectification of Name of Limited Liability Partnership [Sec.16]	a) Directions by Central Government: The Central Government may direct a LLP to change its name or new name, where it is satisfied that the LLP has been registered whether through inadvertence or otherwise and whether on its first registration or on its registration by a new body corporate with a name which is identical with or too nearly resembles — - the name of any other LLP or a company. - A registered trademark of a proprietor under the trade marks act, 1999, as is likely to be mistaken, then on an application of such LLP or proprietor referred above or a company b) The LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow. Note: An application of the Proprietor of the registered trademarks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act. c) Action by Central Government: If the LLP is in default in complying with any directions given, the Central Government shall allot a new name to the LLP in such prescribed manner and the Registrar shall enter the new name in the register of LLPs in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter. d) Notice of Change: In case of change of Name of LLP or obtaining of new name, the LLP shall within 15 days from the date of such change, give Notice of Change to the registrar along with the Order of Central Government. e) Changes in Certificate of Incorporation: The Registrar on receipt of the notice shall carry out the necessary changes in the Certificate of Incorporation. f) Changes in LLP Agreement: Within 30 days of such change in the Certificate of Incorporation the LLP shall change its name in the LLP Agreement.
M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008? (module) Hint - Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor. Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.	

TEST YOUR KNOWLEDGE

Multiple Choice Questions

- 1) Ministry of Corporate Affairs enforced the LLP Act, with effect from-
 - a. 31st March, 2008
 - b. 1st April 2008
 - c. 31st March, 2009
 - d. 1st April 2009
- 2) Whether partnership law applies to the LLP-
 - a. Yes
 - b. No
- 3) State which of the statement is correct under the Limited Liability Partnership Act, 2008-
 - a. All partners have unlimited liability
 - b. All partners have limited liability
- 4) Which of the following cannot be converted into LLP?
 - a. Partnership firm
 - b. Private company
 - c. Listed company
 - d. unlisted company
- 5) The approved name of LLP shall be valid for a period of ____ from the date of approval:
 - a. 1 Month
 - b. 2 Months
 - c. 3 months
 - d. 6 months
- 6) Name of the Limited Liability Partnership shall be ended by:
 - a. Limited
 - b. Limited Liability partnership or LLP
 - c. Private Limited
 - d. OPC
- 7) Which one of the following statements about limited liability partnerships (LLPs) is incorrect?
 - a. An LLP has a legal personality separate from that of its members.
 - b. The liability of each partner in an LLP is limited.
 - c. Members of an LLP are taxed as partners.
 - d. A listed company can convert to an LLP.
- 8) For the purpose of LLP, Resident in India means:
 - a. Person who has stayed in India for a period of not less than 182 days during the current year.
 - b. Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
 - c. Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year.
 - d. Person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.