

PROUD MOMENT FOR MEPL **CONGRATULATIONS** TO ALL THE RANK HOLDERS FROM MEPL

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 ARCHIT RUSTAGI AIR 16	 HARSHIT GUPTA AIR 23	 PIYUSH AGARWAL AIR 24	 SUBHAM AGARWAL AIR 28
 AMIT K.R.OJHA AIR 29	 AYUSH RATHI AIR 30	 YATHARTH AGRAWAL AIR 31	 JAYESH AGGARWAL AIR 35
 TWINKLE JAISWAL AIR 37	 ANANT KOTHARI AIR 32	 RAHUL SHAW AIR 32	 RAUNAK TULSIAN AIR 34
 SHAGOON BAJAJ AIR 34	 ISHIKA GUPTA AIR 35	 SUCHAIT PATNI AIR 40	 MUSKAN KALOTIA AIR 42
 YASH DAMANI AIR 44	 POOJA AGARWAL AIR 44	 AYUSH PASARI AIR 49	 YASH LOHIA AIR 50

CS

 SHRUTI NAGAR AIR 1	 CHIRAAG AGARWAL AIR 1	 ESHAN LOIYA AIR 1	 RASHI AMRUT PARAKH AIR 1
TWO TIMES AIR 1 CS EXECUTIVE & CS PROFESSIONAL			
 KAMODINEE DHARTIA AIR 2	 RAYALI MILAGADA AIR 2	 ANKIT AGARWAL AIR 3	 NARAS DEO CHIVHURE AIR 3
 PULAK BANSAL AIR 3	 RIYA BHADCHANDANI AIR 3	 ANSHUL SAMYA AIR 4	 DIVYA BHARGAVA AIR 4
 SARIKA SINGH AIR 4	 CHUNNI SALMA AIR 4	 CHANCHAL NURLAN AIR 5	 SONI SAKSHAM AIR 5
 AKASH SINHA AIR 5	 AMAN NEGI AIR 6	 NISHI SURANA AIR 6	 PRIYANKA JAISWAL AIR 08
 SANCHARI MUKHERJEE AIR 8	 SARIKA SINGH AIR 10	 SMRITI ARORA AIR 10	 ADHISHEK SARAF AIR 10
 MAHAK AGARWAL AIR 10	 SAUMYA IPSA AIR 10	 ELIZA BAHRAINWALA AIR 10	 SAKSHI POONWAL AIR 10
 EKTA MOTWANI AIR 11	 PALLAVI SINGH AIR 12	 SANJEEV RATHI AIR 12	 BISHAL AGARWAL AIR 13
 MANYA PANDEY AIR 14	 NAKSHINI CHAURASIA AIR 15	 SANYA AGARWAL AIR 15	 SWAPNIL DUBEY AIR 17
 RANA SHARNA AIR 17	 MONIKA SINGH AIR 17	 VIDISHA SINGH AIR 18	 HARSH SHAW AIR 18
 SOURAV PAHARIA AIR 19	 HRIDHAYA S IYER AIR 20	 ADITI PRASAD MAHTO AIR 21	

CMA

 RISHAB OSTWAL AIR 01	 POOJA CHHATWANI AIR 01	 EDEED NIKHIL K.R. REDDY AIR 01	 ABHIJITH A AIR 01	 MANOLI SREEKANTH KUMAR AIR 01
 AYUSH SHEKHAR AIR 02	 KANHAIYA KUMAR AIR 02	 AYUSH JAISWAL AIR 02	 NEEL CHRISTIAN AIR 03	 ISHINI J AIR 03
 SUNAINA CHEMKA AIR 3	 RANG JAIN AIR 03	 SOURAV THAPA AIR 05	 RAKSHA CHHAJED AIR 6	 HETVI ADHIKARI AIR 6
 VISHAL JAIN AIR 7	 AASHITA GUPTA AIR 7	 VIKAY KUMAR SINGH AIR 8	 VIKASH K PODDAR AIR 8	 DIMPLE AGARWAL AIR 08
 NAGAR ZAMA MOHAMMAD AIR 09	 RAJ BANDARI KUMAR AIR 17	 SUSAN S CHERIAN AIR 24	 ARIHANT JAIN AIR 25	 BISHKA TATER AIR 26
 JASIKA JITENDRA PAHAL AIR 27	 TUSHAR NAGDEY AIR 29	 KRUPANAND BAHADUR AIR 29	 DEEPA DARYANI AIR 30	 ADARSH SOLANKI AIR 32
 SIDDHANT JAIN AIR 33	 JINALI CHOUDHARY SHAH AIR 36	 SATYAM JHAVAR AIR 36	 RAHUL SAGARIA AIR 38	 JOY PAUL AIR 43
 RAHUL SAHA AIR 44	 DEEPAK KUMAR AIR 44	 VAISHNAVI VAISH AIR 47	 SANTOSH YAGNA PRAKASH AIR 47	 PRATIMA KUMARI AIR 48
 AMRESH MAJI AIR 49				

The Indian Partnership Act, 1932

3 CHAPTER

UNIT - 1

GENERAL NATURE OF A PARTNERSHIP

INTRODUCTION

It extends to whole of India except the state of Jammu & Kashmir

It came in force on 1st October, 1932 except Section 69, which came in force on 1st October, 1933

Partnership Act is not exhaustive

If partnership Act, 1932 is silent, Indian Contract Act, 1872 is applicable



WHAT IS PARTNERSHIP (SECTION 4)

Partnership is the relation between persons who have agreed to share the profit of a business carried on by all or anyone of them acting for all.

Thus, partnership consists of the following essential elements :

- There must be an agreement.
- There must be two or more persons.
- There must be some business.
- There must be sharing of profit of the business.
- There must be mutual agency between partners.

ESSENTIAL ELEMENTS OF PARTNERSHIP

Agreement	The partnership comes into existence only by an agreement between all the partners and not by status or operation of law. The agreement may be written or oral.
Two or more persons	There must be atleast two persons to form partnership and they must be competent to contract. There is no limitation on the maximum numbers of partners in Partnership Act, but as per the Companies Act, 2013, provides that : <ul style="list-style-type: none"> • The number of partners should not exceed 100 but as per the rules it is 50.
Business	A partnership can be formed only to carry on a business. <ul style="list-style-type: none"> • Where there is no business, there is no partnership. • Business includes every trade, occupation or profession. • The business must be carried on with the view to earn profits. • It is not necessary that the business should consist of a long and permanent undertaking. A partnership may exist in a single business venture or undertaking.
Sharing of profits	There must be an agreement between all the partners to share the profits of the business. <ul style="list-style-type: none"> • No person can claim to be a partner in a business unless he has a right to share in the profits of the business. • The partners may share the profits in any proportion. • However, the sharing of losses is not an essential element of partnership. Thus, the partners may agree that one or more of them shall be liable for losses.
Mutual Agency	The agency relationship means that the business of partnership must be carried on by all or any one of them acting for all. <ul style="list-style-type: none"> • The partners carrying on business of the firm are agents as well principal of each other. • A partner is an agent of other partners in a sense that he binds the other partners by his acts. • A partner is a principal in a sense that he is liable for the acts of the other partners.
Test of partnership	To test whether partnership exists, it is to be checked whether all essential elements of partnership exists or not. The most important element of partnership is the agency relationship between the partners. The partners should be the representative of each other an should be able to bind each other by there acts. (Cox vs Hickman)

GENERAL NATURE OF A PARTNERSHIP

Sharing of profits is not a real test of partnership	<p>A person who receives the profits of business is not necessarily a partner. Thus, sharing of profit is not the final test of partnership. In some cases, the persons are not partners but they still share the profits of the business, such as :</p> <ul style="list-style-type: none"> • Joint owners sharing profits or gross returns. • Where profits are received by the creditor in payment of a debt or as interest on loan. • Where profits are received as wages by an employee. • Where profits are received as an annuity by a widow or representative of a deceased partner. • Where profits are received as consideration of the sale of property.
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PARTNERS, FIRM AND FIRM NAME

Section 4 of the Partnership Act provides; “Persons who have entered into a partnership with one another are individually called ‘partners’ and collectively ‘a firm’ and the name under which their business is carried on is called the ‘firm name’.

The partners of a firm may carry on business under any name which they please to adopt. However the following factors should be kept in mind while choosing the name of the firm:

- The firm’s name should be similar or identical to the name of existing firm’s.
- A firm name shall not contain any of the following words, namely - ‘Crown’, ‘Emperor’, ‘Empress’, ‘Imperial’, ‘King’, ‘Queen’, ‘Royal’ or words implying or expressing the sanction, approval or patronage of Government signifies its consent to use such words as part of the firm name by order in writing.

Basis	Partnership	Joint Stock Company
Formation	It is formed by agreement between parties.	It is formed by getting it registered under the Companies Act, 2013
Separate Entity	It has no separate legal entity apart from its members. It is simply a collection of members.	It has a legal entity of its own separate from its members.
Number of members	Maximum number of members allowed is 100.	Maximum number of members in private company is 200, and in a public company there is no limit.
Liability	Liability of partners are unlimited.	Liability of members is limited to the extent of the value of their shares.
Agency relationship	Every partner is an agent of other partner as well as of the firm.	A member is neither an agent of other members nor of a company unless specifically appointed so.
Right to manage	Every partner has a right to take part in the management of affairs of the firm.	Its management is entrusted to elected members of the company known as directors.
Ownership of property	The partners are joint owners of the property of the firm.	The members of a company are not joint owners of its property.
Transfer of Share	A partner cannot transfer his share in the firm without consent of all the partners.	A member can transfer his shares in the company at his own will without taking consent of anybody.



GENERAL NATURE OF A PARTNERSHIP

Basis	Partnership	Joint Stock Company
Dissolution	It is dissolved on the death or insolvency of any of the partners.	A company has a perpetual succession which is not affected by the death or insolvency of any members.
Governing Act	It is governed by the Indian Partnership Act, 1932	It is governed by the Companies Act, 1956

Basis	Partnership	Hindu Undivided Family
Position of females	Females can be full-fledged partners.	Membership is registered to the male members only.
Agency relationship	Every partner is an agent of other partner as well as of the firm.	There is no agency relationship.
Right to manage	Every partners has a right to take part in the management of affairs of the firm.	It generally vests with Karta, the governing member of the family.
Liability	All the partners are personally liable for the debts of the partnership.	Only Karta is personally liable for the debts of the HUF. Liability of other members is limited to the extend of his share in the property of his family.
Partition of property	A partner cannot sue for the partition of the partnership property. However, he can sue for dissolution.	A co-member can demand partition of HUF property.
Right to see accounts	A partner has a right to demand, inspect and copy the accounts of the firm.	A member has no right to ask for ant accounts of the past dealings of the family.
Registration	The partnership may be registered or unregistered.	There is no concept of registration of HUF.
Dissolution	It is dissolved on the death or the insolvency of the partners.	It is not dissolved on the death or insolvency of a member.
Governing law	It is governed by the Indian Partnership Act, 1932.	It is governed by the Hindu Law.

Basis	Partnership	Co-Ownership
Formation	It is constituted by two or more persons.	Co-ownership arises only when two or more persons jointly own a property.
Formation	It is created by an agreement.	It may be created by an agreement or any other way like inheritance.
Number of members	Maximum 100 persons.	There is no statutory limit on maximum number of co-owners.

GENERAL NATURE OF A PARTNERSHIP

Basis	Partnership	Co-Ownership
Business	Carrying on a business is necessary for existence of a partnership.	It can exist with or without business.
Agency relationship	Every partner is an agent of other partner as well as of the firm.	Co-owners are not agents of each others.
Profits Sharing	Profit sharing is must.	It does not necessarily involves sharing of profits and losses.
Transfer of share	A partner cannot transfer his share without consent of all the partners.	A co-owner can transfer his share without the consent of other co-owners.
Partition of property	A partner cannot sue for partition of partnership property. However he can sue for dissolution.	A co-owner can sue for the transfer of joint property.
Right of lien	A partner has a right to retain the partnership property for the expenses incurred by him.	A co-owner has no such right to retain the property.

Basis	Partnership	Club
Objective	It is formed to earn profits by carrying out a business activity.	It is formed for recreation or such other activities like games, social services, etc.
Agency relationship	Every partner is an agent of the other partner as well as of the firm	No such agency relationship exists between members inter se and members and club.
Liability	All the partners are personally liable for the debts of partnership.	A member of a club is not liable for the debts of the club unless he had participated in the transaction.
Admission	A person may be admitted to partnership with the consent of all.	For admission to a club, consent of other members is not required.
Death	Death or insolvency of a partner dissolves a partnership.	Death or resignation of a member does not affect the existence of a club.



UNIT - 2

MINOR'S POSITION

MINOR'S POSITION IN PARTNERSHIP

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

Rights :	<ul style="list-style-type: none"> a) A minor partner has the right to his agreed share of the profits of the firm b) He can have access to, inspect and copy the accounts of the firm c) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise d) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of public notice served to that effect.
Liabilities :	<ul style="list-style-type: none"> a) Before attaining majority <ul style="list-style-type: none"> i) The liability of the minor is confined only to the extent of his share in the profits and property of the firm ii) Minor has no personal liability for the debts of the firm incurred during his minority iii) Minor cannot be declared insolvent, but if the firm is declared insolvent in share in the firm vests in the Official Receiver / Assignee. b) After attaining majority <p>Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm where he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.</p> <ul style="list-style-type: none"> i) When he becomes partner : <ul style="list-style-type: none"> If the minor becomes a partner of his own willingness or by his failure to give the public notice within the specified time, his rights and liabilities as given in Section 30 (7) are as follows: <ul style="list-style-type: none"> a. He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of the partnership b. His share in the property and the profits of the firm remains the same to which he was entitled as a minor. ii) When he elects not to become a partner: <ul style="list-style-type: none"> a. His rights and liabilities continue to be those of a minor up to the date of giving public notice b. His share shall not be liable for any acts of the firm done after the date of notice c. He shall be entitled to sue the partners for his share of property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

DUTIES AND RIGHTS OF PARTNERS

UNIT - 3

DUTIES AND RIGHTS OF PARTNERS

DUTIES AND RIGHTS OF PARTNERS

<p>Mutual rights and duties of a partner</p>	<p>The mutual relations of the partners of the firm came into existence by an agreement between the partners, giving rise to mutual rights and duties of the partners. Section 9 to 17 of the Indian Partnership Act, 1932 lays down the provisions governing the mutual relations of the partners. These are governed by the contract existing between them which may be expressed or implied by the course of dealing. The contract may be varied by the consent of all the partners; which may be expressed or implied by the course of dealings.</p> <p>The contract may provide that a partner shall not carry on any business other than that of the firm while he is a partner (Section 11). Subject to a contract between the mutual rights and liabilities are as follows:</p>
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RIGHTS

<p>Right to take part in the conduct of the Business [12(a)]:</p>	<p>Every partner has the right to take part in the business of the firm. This is because partnership business is a business of the partners and their management powers are generally co-extensive. Now suppose this management power of the particular partner is interfered with and he has been wrongfully precluded from participating therein. Can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by injunction, restrain other partners from doing so. You should also note in this connection that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc.</p> <p>The above mentioned provisions of law will be applicable only if there is no contract to the contrary between the partners. It is quite common to find a term in partnership agreements, which gives only limited power of management to a partner or a term that the management of the partnership will remain with one or more of the partners to the exclusion of others. In such a case, the Court will normally be unwilling to interpose with the management with such partner or partners, unless it is clearly made out that something was done illegally or in breach of the trust reposed in such partners.</p>
<p>Right to be consulted [12(c)]:</p>	<p>Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners. This means that in routine matters, the opinion of the majority of the partners will prevail. Of course, the majority must act in good faith and every partner must be consulted as far as practicable.</p> <p>You should note that the aforesaid majority rule will not apply where there is a change in the nature of the firm itself. In such a case, the unanimous consent of the partners is needed.</p>



DUTIES AND RIGHTS OF PARTNERS

<p>Right to be consulted [12(c)]:</p>	<p>Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners. This means that in routine matters, the opinion of the majority of the partners will prevail. Of course, the majority must act in good faith and every partner must be consulted as far as practicable.</p> <p>You should note that the aforesaid majority rule will not apply where there is a change in the nature of the firm itself. In such a case, the unanimous consent of the partners is needed.</p>
<p>Right of access to books [12(d)]:</p>	<p>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. The right must, however, be exercised Bona fide.</p>
<p>Right to remuneration [13(a)]:</p>	<p>No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm he can claim it even in the absence of a contract for the payment of the same.</p> <p>It is not uncommon for partners, in actual practice, to agree that a managing partner will receive over and above his share, salary or commission for the trouble that he will take while conducting the business of the firm.</p>
<p>Right to share profits [13(b)]:</p>	<p>Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm. The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners. If there is no agreement then you should make a presumption of equality and the burden of proving that the shares are unequal, will lie on the party alleging the same.</p> <p>There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.</p>
<p>Interest on capital [13(c)]:</p>	<p>Suppose interest on capital subscribed by the partner is payable to him under the Partnership Deed, then in such a case, the interest will be payable only out of profits. As a general rule, interest on capital subscribed by partners is not allowed unless there is an agreement or usage to that effect. The principle underlying this provision of law is that with regards to the capital brought by a partner in the business, he is not a creditor of the firm, but an adventurer.</p> <p>The following elements must be before a partner can be entitled to interest on moneys brought by him in the partnership business: (i) an express agreement to that effect, or practice of the particular partnership or (ii) any trade custom to that effect or (iii) a statutory provision which entitles him to such interest.</p>

DUTIES AND RIGHTS OF PARTNERS

<p>Interest on Advances [13(d)]:</p>	<p>Suppose a partner makes an advance to the firm in addition to the amount of capital to be contributed by him. In such a case, the partner is entitled to claim interest thereon @ 6% per annum. While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and upto the date of payment.</p> <p>From the discussion so far, you will notice that the Partnership Act makes a distinction between the capital contribution of a partner and the advance made by him to the firm. The advances are regarded as loans which would bear interest while capital interest is available only when there is an agreement to this effect.</p>
<p>Right to be indemnified [13(e)]:</p>	<p>Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case under similar circumstances.</p>
<p>Right to stop admission of a new partner [31]:</p>	<p>Every partner has the right to prevent the introduction of a new partner in the firm without the consent of all the existing partners.</p>
<p>Right to retire [32(1)]:</p>	<p>Every partner has the right to retire with the consent of all the other partners and in the case of a partnership being at will, by giving notice to that effect to all the other partners.</p>
<p>Right not to be expelled [33]:</p>	<p>Every partner has the right to continue in the partnership. He cannot be expelled from the firm by any majority of the partners unless conferred by partnership agreement and exercised in good faith and for the benefit of the firm.</p>
<p>Right of outgoing partner to carry on competing business [36(1)]:</p>	<p>An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but without using the firm name or representing himself as carrying on the business of the firm or soliciting the customers who were dealing with the firm before he ceased to be a partner.</p>
<p>Right of outgoing partner to share subsequent profits [37]:</p>	<p>Where any partner has died or ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, the outgoing partner or his estate has at his or his representative's option, the right to such share of the profit made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest @ 6% per annum on the amount of his share in the property of the firm.</p>
<p>Right to dissolve the firm [40]:</p>	<p>A partner has the right to dissolve the partnership with the consent of all the partners. But where the partnership is at will the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm.</p>

**DUTIES**

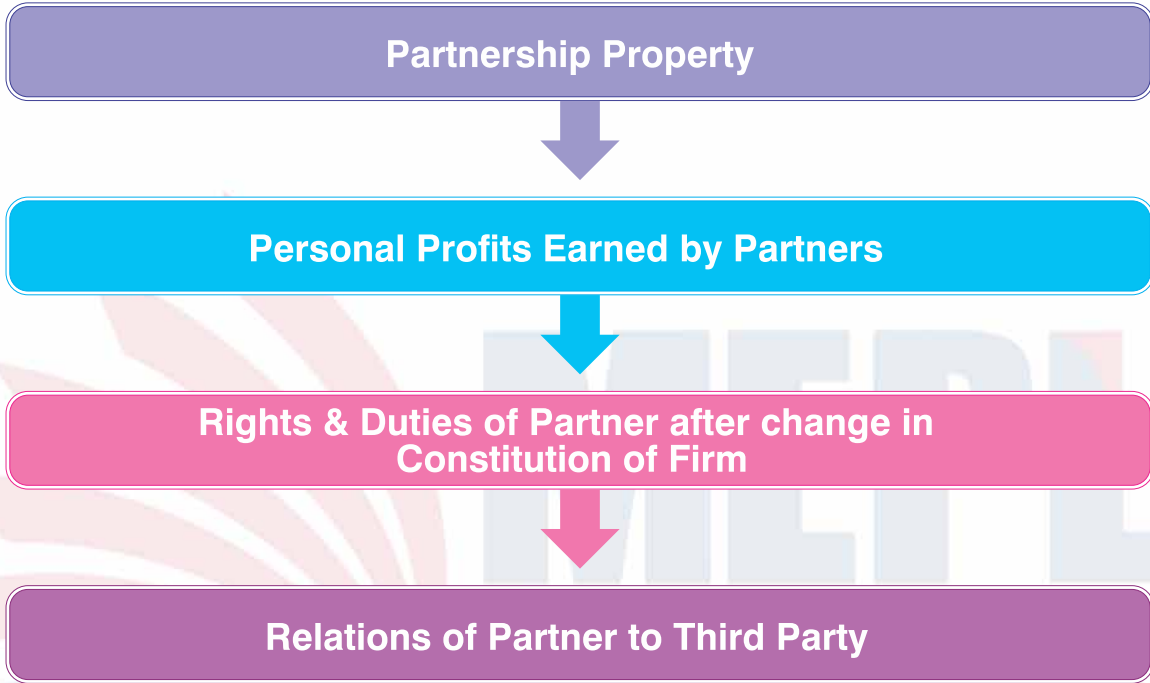
- 1) General duties of a partner: Partners are bound to carry on the business of the firm (i) to the greatest common advantage, (ii) to be just and faithful to each other and (iii) to render to any partner or his legal representative a true account and full information of all things affecting the firm (Section 9).
- 2) To indemnify for fraud or willful neglect: (i) According to Section 10, every partner is liable to indemnify the firm for any damage caused to it by reason of his fraud in the conduct of the business of the firm. (ii) According to Section 13(f), a partner must indemnify the firm for any loss caused to it by willful neglect in the conduct of the business of the firm.
- 3) To attend duties diligently without remuneration; according to Section 12(b) of the Act, every partner is bound to attend diligently to his duties relating to the conduct of the firm's business. Section 13 (a) enumerates that a partner is not, however, normally entitled to remuneration for participating in the conduct of the business.
He is also bound to let his partners have the advantage of his knowledge and skill.
- 4) To share losses [13(b)]: all the partners are liable to contribute equally to the loss sustained by the firm.
- 5) To account for any profit: according to Section 16(a), if a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm of firm's name then he is bound to account for that profit and refund it to the firm.
- 6) To account and pay for the profits of competing business: According to section 16 (b), if a partner carries on business of the same nature as and competing with that of the firm, he must account for and pay to firm all profits made by him in the business. The firm will not be liable for any loss.

RELATIONS OF PARTNERS

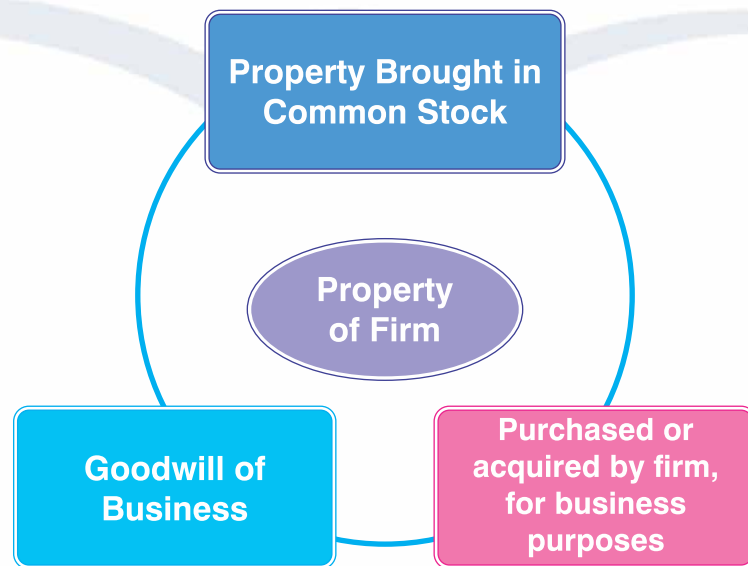
UNIT - 4

RELATIONS OF PARTNERS

LEARNING OBJECTIVES



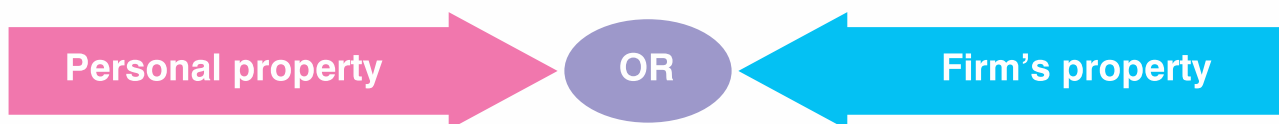
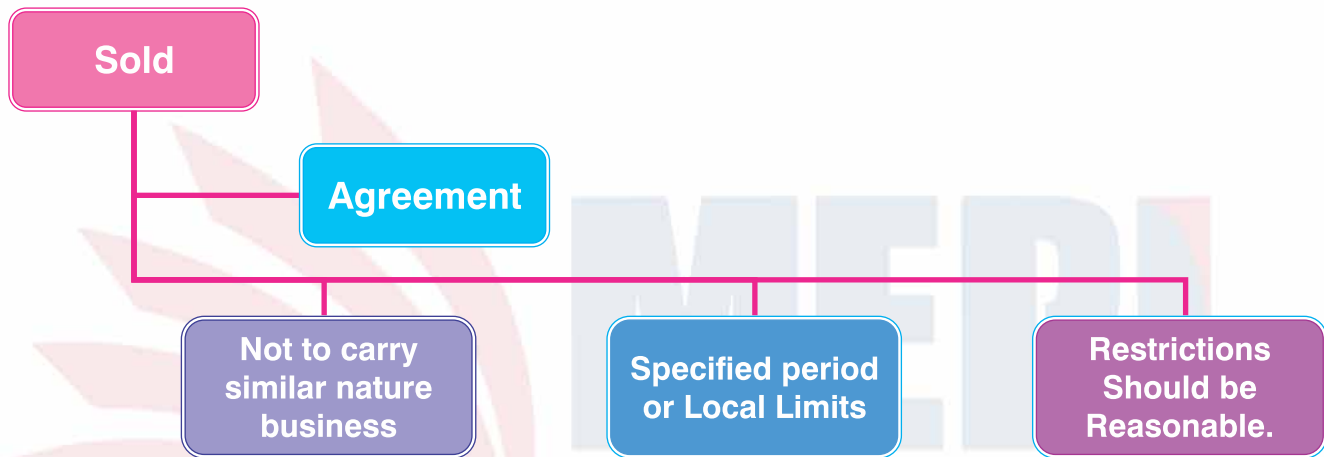
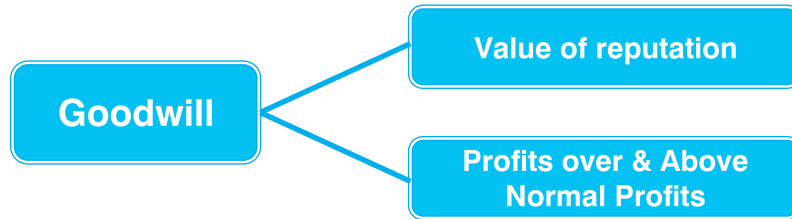
PARTNERSHIP PROPERTY



Decision :- Real intention or Agreement of partners

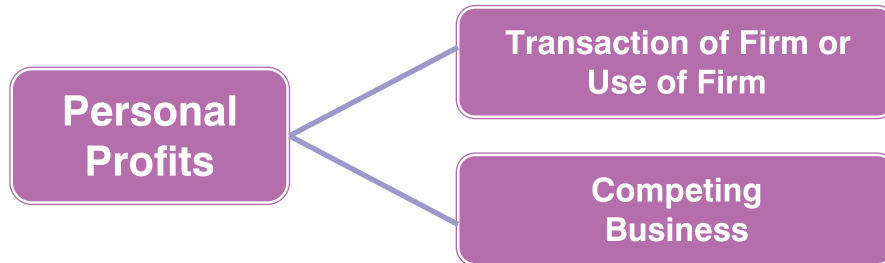


PARTNERSHIP PROPERTY

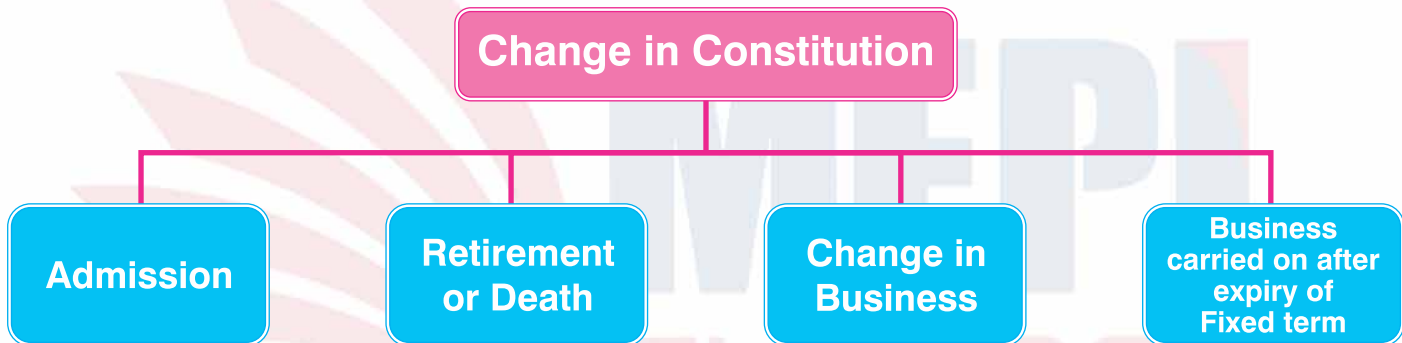


RELATIONS OF PARTNERS

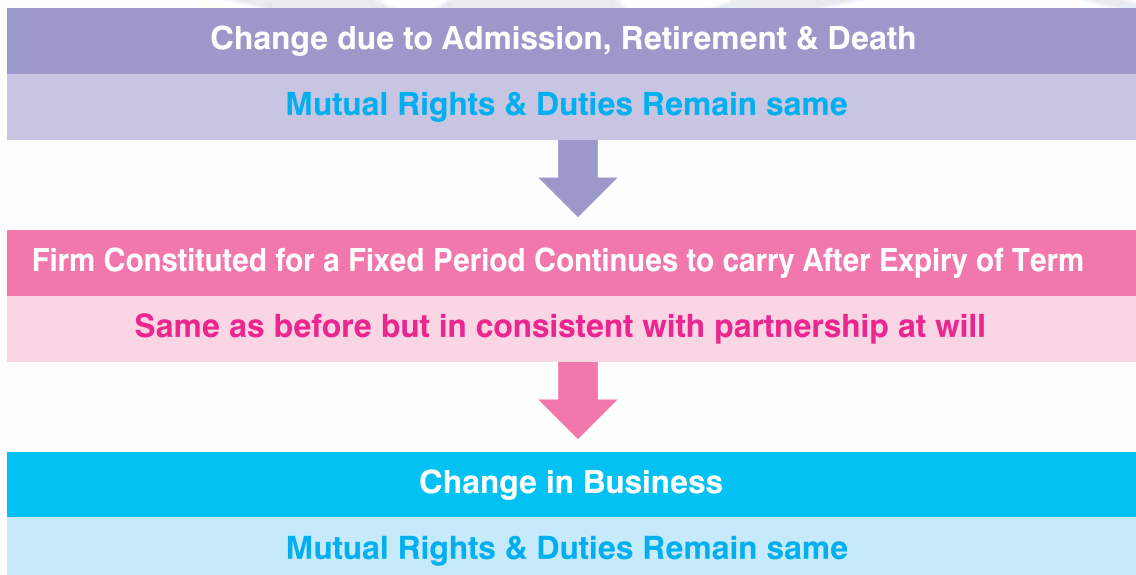
PERSONAL PROFITS EARNED BY PARTNERS



RIGHTS & DUTIES OF PARTNER AFTER CHANGE IN CONSTITUTION OF FIRM



RIGHTS & DUTIES OF PARTNER AFTER CHANGE IN CONSTITUTION OF FIRM





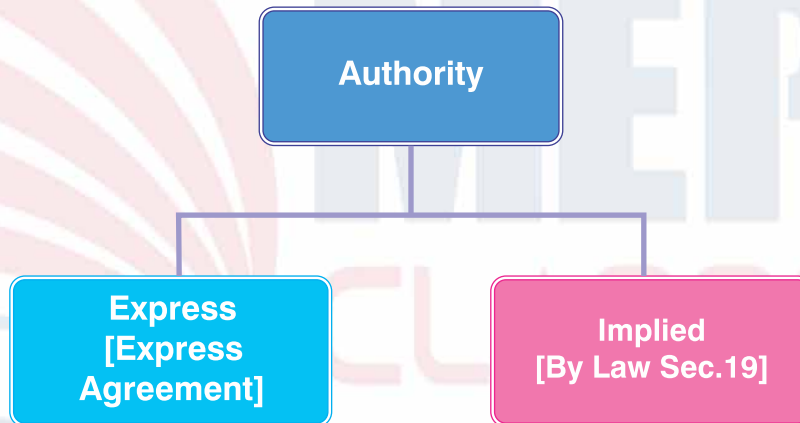
PERSONAL PROFITS EARNED BY PARTNERS

Sec.18 “ Every Partner is the agent of the Firm for the purpose of Business of the Firm”

All Partners are liable to third party for the acts of every partner done for the purpose of business of the firm

IMPLIED AUTHORITY OF A PARTNER OF THE FIRM

Authority means Capacity of a partner to bind the firm by his act.



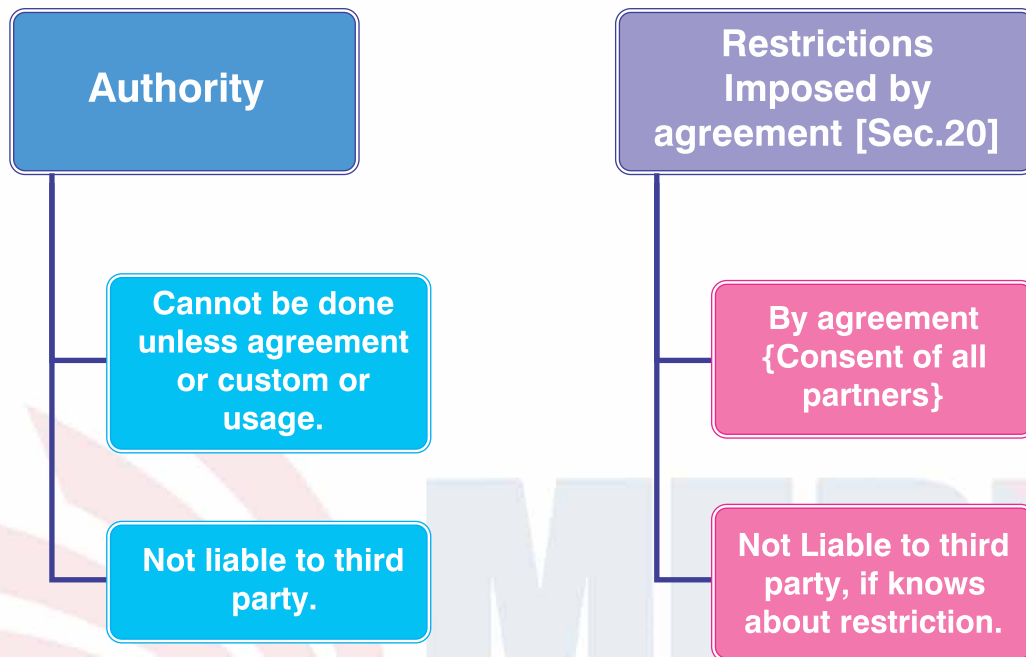
IMPLIED AUTHORITY OF A PARTNER OF THE FIRM

Sec. 19 The act of a partner which is done to carry on, in usual way business of the kind carried on by firm.



RELATIONS OF PARTNERS

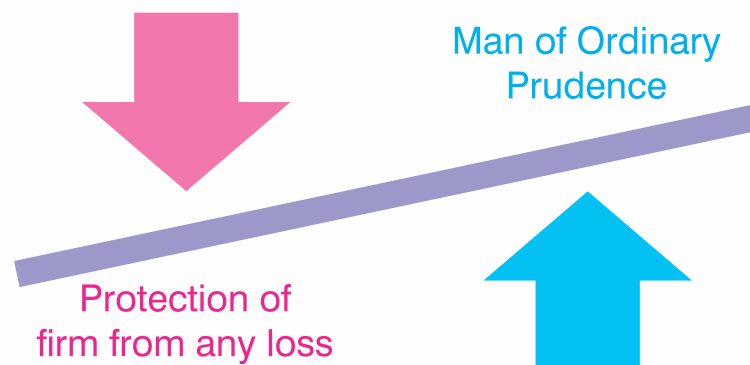
RESTRICTION ON IMPLIED AUTHORITY



ACTS BEYOND IMPLIED AUTHORITY

<p>Sec. 19(2) If no usage or custom of trade to the contrary, partner are not empower to</p>	<ul style="list-style-type: none"> • Submit a dispute • Open a bank account on behalf of firm in his own name • Compromise or relinquish any claim or portion of a claim by firm • Withdraw a suit against a firm • Admit any liability in a suit against a firm • Acquire Immovable property • Transfer Immovable property • Enter into partnership on behalf of firm.
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ACTS IN EMERGENCY [SEC.21]





EFFECT OF ADMISSION BY PARTNER [SEC.23]

Partners as Agent can make Binding Admissions

Ordinary Course of Business

Must relate to the affairs of Firm.

NOTICE TO AN ACTING PARTNER [SEC.24]

Any notice to a partner operates as notice to firm

Must Relate to the Affairs of Firm.

Given to a Working Partner not Sleeping partner

Must not be An Act of Fraud

LIABILITY OF A PARTNERS FOR ACTS OF FIRM [SEC.25]

Every Partner is severally or jointly liable for the acts of firm while he is a partner



Acts of Firms means any act or omission by all partners or any partners or agent of firm giving rise to contractual Liability

R & S are partners. R enters into contract with X.

X commits breach of Contract, Firm can sue

R commits breach of Contract, X can sue the firm

RELATIONS OF PARTNERS

LIABILITY OF A PARTNERS FOR ACTS OF FIRM [SEC.25]

X,Y and Z were partners in the firm when infringement of a trademark took place. X retired. Later on damage arise out of the alleged infringement after dissolution of Firm.

All partners who were members of the firm at the time when infringement took place were liable.

LIABILITY OF FIRM FOR TORT OR WRONGFUL ACTS [SEC.26]

Firm is liable to same extent for any wrongful act

Ordinary Course of Business

With authority of all partners

LIABILITY OF FIRM FOR TORT OR WRONGFUL ACTS [SEC.26]

One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have a shaft of min properly fenced. An injury was caused to a workman.

All partners were held responsible for the same

LIABILITY FOR MISAPPROPRIATION BY A PARTNER [SEC.27]

Partner receives money acting with in his apparent authority



Firm has received money , same is misapplied by a partner



Liable is Liable



LIABILITY FOR MISAPPROPRIATION BY A PARTNER [SEC.27]

P,Q & R carry on partnership business. M, a debtor of the firm, repays his debt of Rs. 50,000 to P who does not inform Q & R about the repayment and purchases a television for his family.

M is discharged of his liability.

<p>Acts beyond implied authority (section 19)</p>	<p>If there is no usage or custom of trade to the contrary, the implied authority of the partners does not empower them to:</p> <ol style="list-style-type: none"> Submit a dispute relating to the business of the firm to arbitration as it is not the ordinary business of partnership to enter into a submission for arbitration; Open a bank account on behalf of the firm in his own name; Compromise or relinquish any claim or portion of a claim by the firm against a third party (i.e. an outsider); Withdraw a suit or proceedings filed on behalf of the firm; Admit any liability in a suit or proceedings against a firm; Acquire immovable property on behalf of the firm; Transfer immovable property belonging to the firm; and Enter into a partnership on behalf on behalf of the firm.
<p>Extension and restriction of partners' implied authority (section 20)</p>	<p>However the implied authority of a partner may be extended or restricted by contract between the parties. The partner can undertake the above-mentioned matters where:</p> <ol style="list-style-type: none"> He has specific or express authority of a partner by agreement, or The usage or custom of trade permits him to do so. <p>Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:</p> <ol style="list-style-type: none"> The third party knows about the restrictions, and The third party does not know that he is dealing with a partner in a firm.
<p>Rights in an emergency :</p>	<p>In emergency a partner has authority to do all such acts for the purpose for protecting the firm from loss as would be done by person of ordinary prudence acting under the similar circumstances s in his own case and such acts bind the firm (Section 21).</p> <p>For example, A, a partner, borrows from B Rs. 1,000 in the name of the firm but in excess of his authority, and utilizes the same in paying off debts of the firm. Here the fact that he firm has contracted debts suggests that it is a trading firm, and as such it is within the implied authority of A to borrow money for the business of the firm. This implied authority, as you have noticed, may be restricted by an agreement between him and other partners. Now if B, the lender is unaware of the restrictions imposed on A, the firm will be liable to repay the money to B. On the contrary, B's awareness as to this restriction will absolve the firm of its liabilities to repay the amount to B. You should further note that the above-mentioned extension or restriction is only possible with the consent of all the partners. Any one partner, or even a majority of the partners, cannot restrict or extend the implied authority.</p>

RELATIONS OF PARTNERS

<p>Acts in emergency (section 21)</p>	<p>Over and above the implied authority which every partner wields subject to the provision of Section 20, the Act further recognizes that each partner can bind the firm by all of his acts done in an emergency, with a view to protecting the firm from any loss, provided he has acted in the same manner a man of ordinary prudence would have acted in the like circumstances.</p>
<p>Admission by partner – its effects (section 23)</p>	<p>Partners, as agents of each other can make binding admissions but only in relation to a partnership transaction and in the ordinary course of the business; an admission or representation by a partner will not however, bind the firm if his authority on the point is limited and the other party knows of the restriction. The section speaks of admissions and representations being evidenced against the firm. That is to say, they will affect the firm when tendered by third parties; they may not have the same effect in case of disputes between the partners themselves.</p> <p>Example :</p> <p>X and Y are partners in 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 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 are both responsible to Z for his loss.</p>
<p>Notice to an acting partner – its effect (section 24)</p>	<p>The notice to a partner, who habitually acts in the business of the firm, on matters relating to affairs of the firm, operates a notice to the firm except in the case of 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 the notice to an agent is the 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.</p> <p>Example :</p> <p>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 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.</p> <p>The only exception would lie in the case of fraud, whether active or tacit. For example, 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 effect, ordinarily, would be constructed 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, this rule would be inoperative and the other partners would be entitled to reject the goods, upon detection by them of the defect.</p>
<p>Liability to third parties (sections 25 to 27)</p>	<p>The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm (section 25).</p> <p>The question of liability of partners to third parties may be considered under different heads. These are as follows:</p> <p>i. Contractual liability :</p>



Liability to third parties (sections 25 to 27)

ii. Liability for tort or wrongful act :

iii. Liability for misappropriation by a partner :

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.

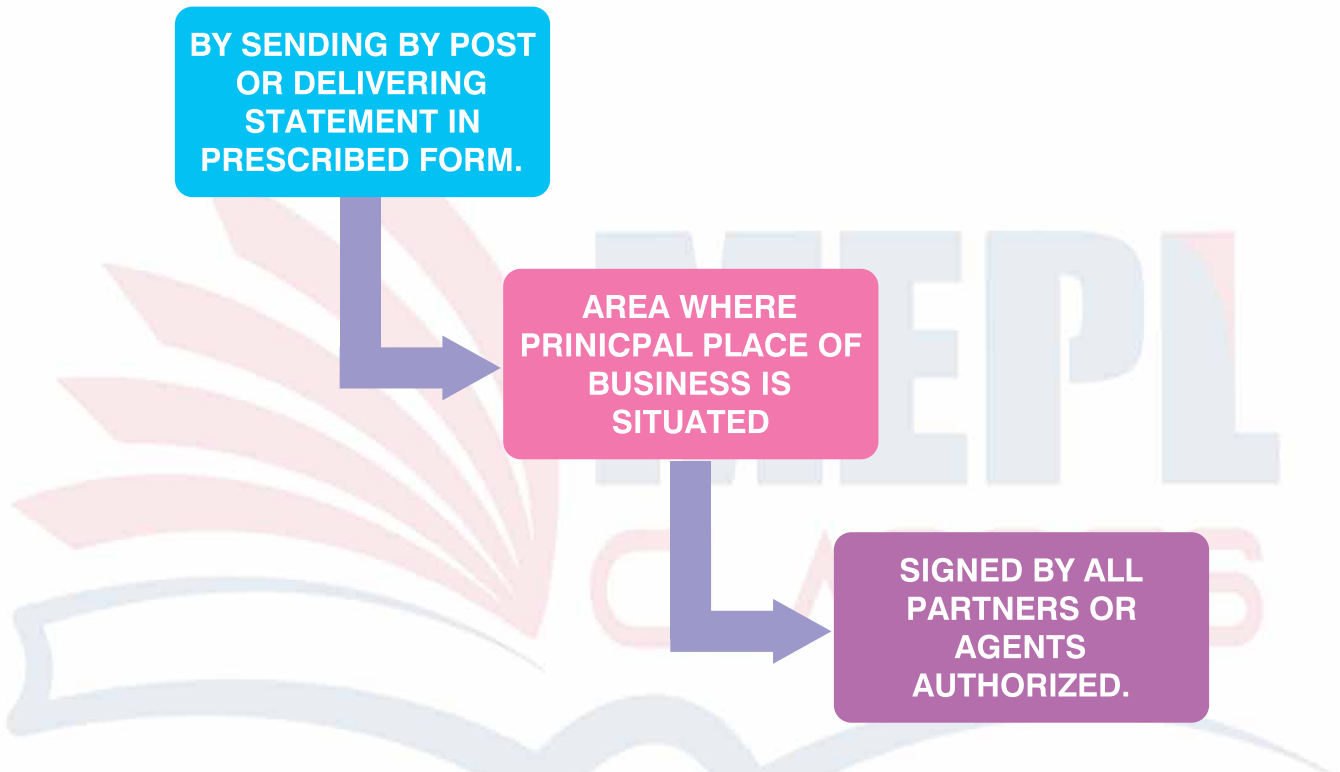
REGISTRATION AND DISSOLUTION OF FIRM

UNIT - 5

REGISTRATION AND DISSOLUTION OF FIRM

REGISTRATION OF FIRM

MODE OF REGISTRATION



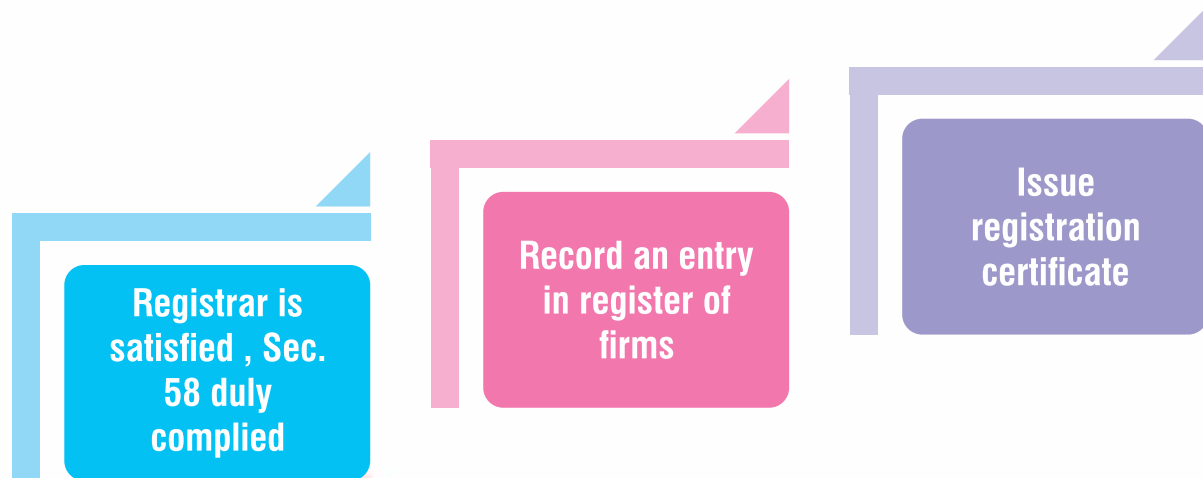
CONTENT OF STATEMENT FOR REGISTRATION

- FIRM'S NAME
- PRINCIPAL PLACE OF BUSINESS
- NAME OF OTHER PLACE OF BUSINESS
- DATE OF JOINING OF PARTNERS
- FULL AND PERMANENT ADDRESS OF PARTNERS
- DURATION OF FIRM



REGISTRATION AND DISSOLUTION OF FIRM

REGISTRATION CERTIFICATE



WHEN REGISTRATION IS COMPLETE

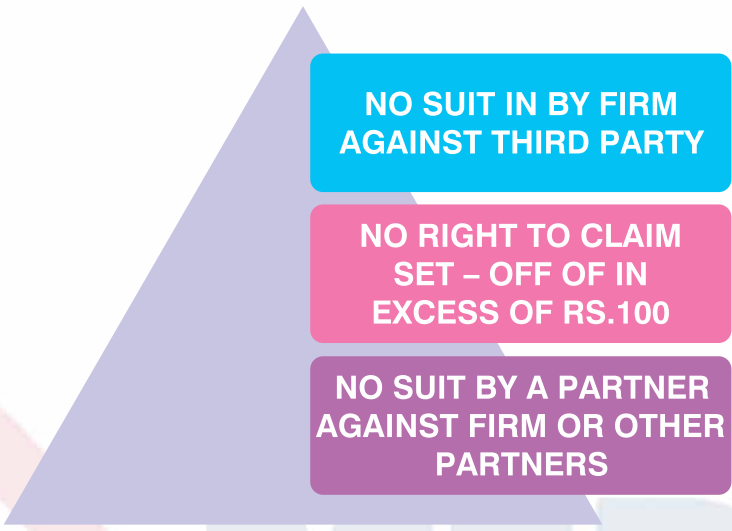
Date of Filing of duly signed and verified statement along with prescribed form & fees.

IMPORTANT POINTS OF REGISTRATION

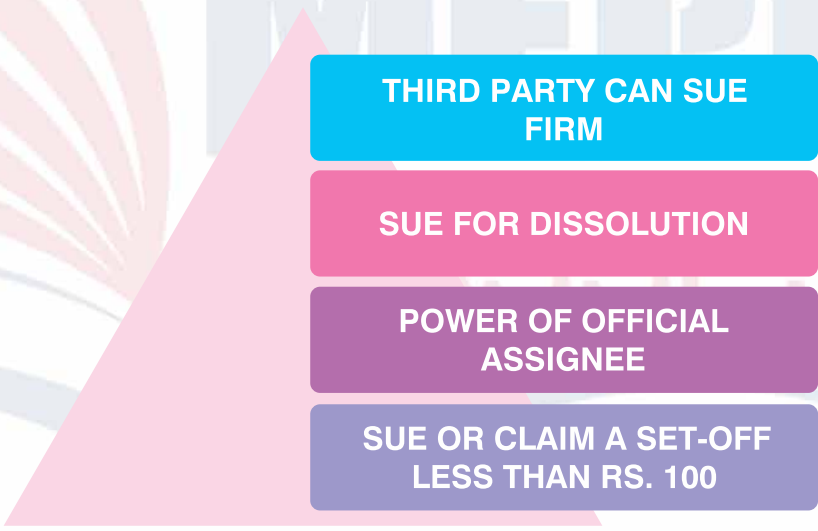
- RECORDING OF AN ENTRY IN REGISTER OF FIRMS IS ROUTINE DUTY
- SUBSEQUENT ALTERATIONS MUST BE REGISTERED
- REGISTRATION CAN BE EFFECTED ANYTIME

REGISTRATION AND DISSOLUTION OF FIRM

CONSEQUENCES OF NON REGISTRATION



RIGHT NOT AFFECTED BY NON-REGISTRATION



REQUIREMENT FOR FILING SUIT BY FIRM





REGISTRATION AND DISSOLUTION OF FIRM

SUIT MAINTAINABLE BY NON REGISTERED FIRM



DISSOLUTION OF FIRM

Meaning	Over and above the implied authority which every partner wields subject to the provision of Section 20, the Act further recognizes that each partner can bind the firm by all of his acts done in an emergency, with a view to protecting the firm from any loss, provided he has acted in the same manner a man of ordinary prudence would have acted in the like circumstances.
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MODES OF DISSOLUTION OF A FIRM

(a) Dissolution by agreement	A firm may be dissolved at any time with the consent of all the partners even in case of particular partnership.
(b) Compulsory Dissolution	(i) Insolvency of all the partners or of all but one partner. (ii) When business of the firm becoming unlawful.
(c) On the happening of certain contingencies such as;	(i) Expiry of fixed time : Where the firm is constituted for fixed term; the firm is dissolved at the expiry of the fixed period. (ii) Completion of the venture for which it was enter into : Where the firm is formed to carry out a particular venture, the firm gets dissolved on the completion of such venture. (iii) Death of a partner : Unless there is an agreement to the contrary, the firm gets dissolved at the death of a partner. (iv) Insolvency of a partner : Unless there is an agreement to the contrary, the firm gets dissolved at the insolvency of a partner.
(d) Dissolution by notice	Where the partnership is at will, a partner can dissolved the firm after giving notice to other partners of his intention to dissolved the firm.
(e) By court	Where a partner wants to dissolve the firm and the other partners do not agree for dissolution, the desiring partner ma go to the court of law and file a suit for dissolution. On hearing the application, the court may or may not allow the dissolution of the firm. A partner may file a suit for dissolution of the firm on anyone of the following grounds : (i) A partner becoming of unsound mind : The suit for dissolution may be filled either by anyother partner or the legal representative of the insane partner. (ii) Permanent incapacity of a partner : Where a partner becomes permanently incapable of performing his duties, the court may allow dissolution of the firm. The incapacity may be due to illness, mental or physical or disablement of any kind. However, it should be of permanent nature.

REGISTRATION AND DISSOLUTION OF FIRM

	<p>The suit for dissolution may be filled by any of the other partners of the firm.</p> <p>(iii) Misconduct of a partner : Where a partner is guilty of misconduct which is likely to affect prejudicially the business of the firm, the court may allow dissolution of the firm. It is not necessary that the misconduct should be related to the business of the firm, it is sufficient if it is capable of damaging the goodwill or business prospects of the firm.</p> <p>(iv) Willful persistence breaches of agreement by a partner : Where a partner willfully or persistently commits a breach of agreements relating to the management of the affairs of the firm, or conducts the partnership business in such a manner that the other partners finds it difficult to carry on the partnership business with him, any of the other partner may file a suit for the dissolution of the firm.</p> <p>(v) Transfer or sell of the whole interest of the partner : Where a partner transfers his whole interest in the partnership firm to a third party without the consent of his company/partners, the court may allow dissolution of the firm.</p> <p>(vi) Perpetual losses : Where the business of the firm cannot be carried on, except of a loss, the court may allow the dissolution of the firm.</p> <p>(vii) Other just and equitable ground : The court may dissolve the firm on any ground which is fair and reasonable according to the opinion of the court.</p>
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CONSEQUENCES OF DISSOLUTION

(a) Continuing liability of partners after dissolution	<p>On dissolution the partners are bound to give public notice of dissolution. The partners will continue to be bound by the acts of the firm after dissolution till a proper public notice is given. However, this rule doesnot apply to a deceased partner, or insolvent partner or retiring dormant partner.</p> <p>Till the affairs of the dissolved firm is in the process of winding up, it is the duty of every partner not to make any personal profits out of the transaction of the firm. In case any partner makes personal profit, he must surrender it to the firm.</p>
(b) Right for utilisation of assets	<p>On a partnership being dissolved, any partner or his representative shall have right, against the other</p> <p>(i) To have property of the firm applied in payment of the debts and liabilities of the firm.</p> <p>(ii) To have the surplus distributed among all the partners or their representatives according to their respective rights.</p>
(c) Continuing authority of partners	<p>The authority of a partner to bind the firm and other partners buy his act ceases except for the acts necessary :</p> <p>(i) For winding up of partnership affairs.</p> <p>(ii) To complete the unfinished transaction pending at the date of dissolution.</p>
(d) Return of premium on pre mature dissolution	<p>Where a partner pays any premium on entering into partnership for fixed term, and the firm dissolves the expiry of fixed time, such a partner shall be entitled for a rateable return of his premium. However, no return of premium is made in the following cases :</p> <ul style="list-style-type: none"> • Where the firm is not constituted for fixed term. • Where the firm is dissolved by the death of a partner. • Where the dissolution is manley due to the misconduct of the new partner himself. • Where the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.



REGISTRATION AND DISSOLUTION OF FIRM

(e) Right to make an agreement in restrained of trade	Either before or after the dissolution of the firm, the partners may agree between themselves that some of them would not carry on a business similar to that of the firm.
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SETTLEMENT OF ACCOUNTS UPON DISSOLUTION

The mode of settlement of accounts between partners upon dissolution of the firm is determined by the partnership agreement. In the absence of such an agreement, the following shall apply :

1. Payment of losses	<p>Losses of the firm including deficiency of capital shall be paid in the following manner :</p> <p>(a) First, the losses shall be paid out of profits.</p> <p>(b) Secondly, if the profits are insufficient to pay losses, then the balance of loss shall be paid out of capital.</p> <p>(c) If still sum balance of losses remains, it shall be paid by the partners individually in the proportions in which they were entitled to share profit.</p>
2. Application of assets	<p>The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order :</p> <p>(a) In paying the debts of the firm to third parties;</p> <p>(b) In paying to each partner rateably what is due to him from the firm for advances as distinguished from capital.</p> <p>(c) In paying to each partner rateably what is due to him on account of capital and;</p> <p>(d) The residue, if any, shall be divided among the partners in the proportion in which they are entitled to share profit</p>
3. Firm debts vs. Private debts	<p>Where there are both debts due from the firm and also personal debts of a partner, the following rules will apply :</p> <p>(a) The property of the firm shall be applied first for the payment of firm's debts and there is any surplus then the share of each partners shall be applied to the payment of his separate debts.</p> <p>(b) The separate property of a partner shall be applied first in the payment of his separate debts and if any surplus is left, then it is applied in the payments of debts of the firm.</p>

GOODWILL ON DISSOLUTION

Goodwill is the value of reputation of the business of the firm. Goodwill can be sold like any other assets of the firm. The partners may decide to sale it separately or along with the other assets of the firm. The purchaser of the goodwill of the firm has :

	<p>(a) The rights to carry on the same business under the old name and</p> <p>(b) The rights to represent himself to the customers of the old firm as the successor in the business of the old firm.</p>
However, the partners selling the goodwill of a firm can :	<p>(a) Carry on a similar business.</p> <p>(b) Also compete with the business sold by them to purchaser and</p> <p>(c) Advertise their business in such manner as they deem fit.</p>

REGISTRATION AND DISSOLUTION OF FIRM

But subject to an agreement to the contrary they :

- (a) Should not use the firm name
- (b) Should not represent themselves as carrying on the old business and
- (c) Should solicit the customers of the old firm.

PUBLIC NOTICE

Public notice is required to be given :

- (a) When a minor admitted to the benefits of partnership elects on attaining majority, to become or not to become a partner in the firm.
- (b) When a partner retires from partnership firm.
- (c) When a partner is expelled from the partnership business.
- (d) When partnership is dissolved.

The notice is to be published in the official gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business. In case of registered firm's, notice is also required to be given to the registrar of firms.