

REVISION – PARTNERSHIP ACT 1932

1. What is the true test of partnership?

Answer- Section 6 of Indian Partnership Act, 1932

1. In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

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

a) There was an agreement between all the persons concerned

b) The agreement was to share the profits of a business and

c) The business was carried on by all or any of them acting for all

Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

So we can say Mutual Agency is True test of Partnership.

2. 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. (i) Examine whether action by the partners was justified or not? (ii) 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?

Answer- Section 33

1. A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that: a) the power of expulsion must have existed in a contract between the partners; b) the power has been exercised by a majority of the partners; and c) it has been exercised in good faith.

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

3. The test of good faith as required under Section 33(1) includes three things: a) The expulsion must be in the interest of the partnership. b) The partner to be expelled is served with a notice. c) He is given an opportunity of being heard.

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

In given question M/s XYZ & Associates is a partnership firm in which X, Y & Z are senior partners. They are engaged in the business of carpet manufacturing and exporting it to foreign countries. They appointed Mr. G an expert in the field of carpet business as their partner. Afterwards Mr. G was blamed for conducting unauthorized activities and was expelled from partnership.

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

3. **X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?**

Answer- Section 33

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 - c) it has been exercised in good faith.
2. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.
3. The test of good faith includes three things:
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 - b) The partner to be expelled is served with a notice.
 - c) He is given an opportunity of being heard.
4. If a partner is otherwise expelled, the expulsion is null and void.

X, Y & Z were partners in a partnership firm carrying there business successfully. Due to some personal issue spouses of X & Y fought in a club in which X's wife was hurt badly. X got angry on this incident and convinced Z to expel Y from partnership. Further Y was expelled from partnership firm without any notice.

Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

4. **What do you mean by "implied authority" of the partners in a firm?**

Answer- Section 19

Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

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

- a) Submit a dispute relating to the business of the firm to arbitration
- b) open a banking account on behalf of the firm in his own name
- c) compromise or relinquish any claim or portion of a claim by the firm
- d) withdraw a suit or proceedings filed on behalf of the firm
- e) admit any liability in a suit or proceedings against the firm;
- f) acquire immovable property on behalf of the firm
- g) transfer immovable property belonging to the firm; and
- h) enter into partnership on behalf of the firm

According Section 22 in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

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

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

Referring to the provisions of the Indian Partnership Act, 1932 decide:

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

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

Answer- Section 19

Subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority'

Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.

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

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

ii) In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm.

iii) In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

6. **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 Rs. 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.**

Answer- Section 35 and 42

1. Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners.

2. 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.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

7. What is Partnership Deed? What are the particulars that partnership deed contains?

Answer- Section 11

1. Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes.

2. 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'.

3. 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 partner's hip must be in writing, stamped and registered under the Registration Act.

4. Partnership deed may contain the following information:

- a) Name of the partnership firm.
- b) Names of all the partners.
- c) Nature and place of the business of the firm.
- d) Date of commencement of partnership.
- e) Duration of the partnership firm.
- f) Capital contribution of each partner.
- g) Profit Sharing ratio of the partners.
- h) Admission and Retirement of a partner.
- i) Rates of interest on Capital, Drawings and loans.
- j) Provisions for settlement of accounts in the case of dissolution of the firm.
- k) Provisions for Salaries or commissions, payable to the partners, if any.
- l) Provisions for expulsion of a partner in case of gross breach of duty or fraud.

8. 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?

Answer Section 29

A partner may transfer his interest in the firm by sale, charge or mortgage. It is no matter whether the transfer is absolute or partial. But the transferee is not entitled :-

- [i] to interfere in the conduct of the firm.
- [ii] to required accounts of the firm, and
- [iii] to inspect the books of the firm.

A transferee becomes entitled to receive the share of profit of the transferring partner and must accept the accounts or profit agreed to by the partners.

If the firm is dissolved, he will be entitled to receive the same share in the assets of the firm, which the transferring partner had.

For the purpose of ascertaining that share, the transferee is entitled to receive an account as from the date of dissolution.

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

Answer- Section 30

though a minor cannot be a partner in firm, but he may be admitted to the benefits of partnership.

Rights of a minor before attaining majority :

1. Minor has the right to share in the profits and the property of the firm.
2. Minor possesses the right to see and copy any of the accounts of the firm.
3. He has the right to sue the partners for accounts and payment of his share.

Such minor is liable to give public notice of his intention that he has elected or not to become partner in the firm. He must give such notice at any time within 6 months of his attaining majority or of his obtaining knowledge that he has been admitted to the benefits of partnership, whichever date is later. If he fails to give such notice, he shall be liable as full-fledged partner in the firm.

- 10. A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?**

Answer- Section 69

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,

- a) the suit must be instituted by or on behalf of the firm which had been registered
- b) the person suing had been shown as partner in the register of firms.

1. 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.

2. Now, in 2017, 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.

- 11. Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a nonregistered partnership firm can face in brief?**

Answer- Section 69

Although registration of firms is not compulsory, yet the consequences or disabilities of nonregistration have a persuasive pressure for their registration. These disabilities briefly are as follows:

1. 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.

2. No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.

3. 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.

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

12. **A, B, C, D and E are partners in a firm. They decided to dissolve the firm from 1st January but failed to give a public notice of its dissolution and continued the business of the firm even that date. C, a dormant partner retired on 4th Jan, D died on 5th January and E was declared insolvent on 10th January. On 11th January, A borrowed in the firm's name Rs. 20 lacs from R who was ignorant of the dissolution. Discuss the liability of partners for Rs. 20 lacs.**

Answer- Section 45

As per the provisions of the Indian Partnership Act, 1932, a public notice of the dissolution of the firm is not required if:

- a) the partner is adjudicated as insolvent, or
- b) a dormant partner retires from the firm, or
- c) the partner dies.

The remaining active partners shall be liable for the acts done after dissolution except the partners mentioned in the above cases.

A, B, C, D and E are partners in a firm. They decided to dissolve the firm from 1st January but failed to give a public notice of its dissolution and continued the business of the firm even that date. C, a dormant partner retired on 4th Jan, D died on 5th January and E was declared insolvent on 10th January. On 11th January, A borrowed in the firm's name Rs. 20 lacs from R who was ignorant of the dissolution.

Here, A and B are liable for Rs. 20 Lacs but C, being a dormant partner, D and E are not liable for Rs. 20 lacs because C retires from the firm and dormant partner's retirement does not make him liable for the acts done after dissolution. D dies and E was adjudicated as insolvent. So, D and E shall also not be liable for any dealings or transactions subsequent to dissolution.

13. **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. Advice Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.**

Answer- Section 28

1. 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.

2. 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'.

3. 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.

4. 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.

In the given case X & Y are partners in a partnership firm. X introduced A, a manager as a partner to Z who is a trader. A remained silent on this. Z believing on same supplied 100 t.v sets to A on credit. Z did not get the amount after the expiry of the time period from the firm and he filled a suit against X and A for recovery of price.

In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out .

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

Answer: 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. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

15. State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932?.

Answer- Dissolution by the order of the court (Sec. 44) :

[1] When any of the partners become insane the court may pass order for the dissolution of the firm.

[2] When any of the partners becomes permanently incapable of performing his duty as a partner, the court may order for dissolution on the petition of other partners.

[3] When any of the partner does misconduct in the firm the court has the power to dissolve the firm. The suit for the dissolution of the firm should be made by an innocent partner.

[4] When a partner willfully commits a breach of agreement and it is not possible for the other partner to conduct the business, he may file a suit for the dissolution of the firm.

[5] The court may order for dissolution when any partner of the firm transfers his whole interest to the third party.

[6] The court may grant order for dissolution on the petition of any partner when business cannot be carried on except a loss.

[7] A firm may also be dissolved by the court on any 'other just and equitable ground-

- i. Deadlock in the management
- ii. partners are not in talking terms between them
- iii. loss of substratum(object)

16. State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932

a. Retirement of a partner

b. Insolvency of a partner

Retirement of Partner (SECTION 32):

1. A partner may retire:

- a) with the consent of all the other partners;
- b) in accordance with an express agreement by the partners; or
- c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

2. A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners

of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.

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

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

5. Notices may be given by the retired partner or by any partner of the reconstituted firm.

Insolvency of a partner (Section 34)

1. The insolvent partner cannot be continued as a partner.

2. He will be ceased to be a partner from the very date on which the order of adjudication is made.

3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,

5. Ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm

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

Answer:-

S.no	Basis	Dissolution of firm	Dissolution of Partnership
1	Continuation of business	It involves discontinuation of business in partnership	It does not affect continuation of business
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.

Section25 LIABILITY OF A PARTNER FOR ACTS OF THE FIRM.

Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner

Section26 LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER.

Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Section27 LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS.

Where –

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

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