

SHORT NOTES

THE INDIAN PARTNERSHIP ACT, 1932

Applicability	1st October 1932 and applies to whole of India.
Definition Sec 4	a relation between persons who have agreed to share profit of a business carried on by all or any of them acting for all.
Essential:	
1. Agreement	<ul style="list-style-type: none"> • There must be an agreement between the persons forming a partnership. • The agreement may be between 2 or more persons but not more than 50 persons. • An agreement may be express or implied. • It may be oral or in writing.
2. Sharing profits	<ul style="list-style-type: none"> • There can be no partnership where there is no intention to carry on the business and to share the profit thereof. • The term 'business' includes every trade, occupation and profession. • Charitable institution or club cannot be floated in partnership.
3. Business Carried on by all or any of them, acting for all	Each partner carrying on the business is principal as well as agent for all the other partners. It is also called “mutual agency”.
True Test of Partnership	<ul style="list-style-type: none"> • True test of partnership is mutual agency rather than sharing profits. • If the element of mutual agency is absent then there will be no partnership. • The act of one partner done on behalf of firm, binds all the partners. • Every person who receives a share of profits is not a partner. Such person are as follows- <ol style="list-style-type: none"> a. a lender of money b. a servant or manager of a firm or agent as his remuneration c. widow or child of a deceased partner d. A previous owner of the business as the consideration for the sale of the goodwill.
Type of Partners:	
1. Active Partner	<ul style="list-style-type: none"> • actively participate in the conduct of partnership. • liable to third parties for the act of the firm. • public notice is required to be given in case of retirement.
2. Sleeping Partner	<ul style="list-style-type: none"> • Contribute capital and has a share in profit. • Does not actively participate in the business. • liable to third parties for the act of the firm. • public notice is not required to be given in case of retirement.
3. Nominal Partner	<ul style="list-style-type: none"> • gives only his name to the firm • neither invest capital nor participate in the business of the firm. • liable to third parties. • public notice is required to be given in case of retirement.

4. Partner by holding out or by estoppel Sec 28	<ul style="list-style-type: none"> • who is not really a partner, represents himself to be a partner and • the persons dealing with the firm believe him to be a partner. • In such cases, he is stopped (i.e., prevented) from denying that he is not a partner.
5. Sub-partner	<ul style="list-style-type: none"> • he is not a partner in the firm but a partner of a partner in the firm. • he gets a share in the profits derived by the partner from the firm. • he cannot bind the firm by his acts. • he does neither enjoy any right against the firm nor does he carry any duties for the business of the firm.
6. Partner in profits only	<ul style="list-style-type: none"> • entitled to share the profits only without being liable for the losses • he is also liable to the third parties for all acts of the profits only.
Type of Partnership	
Based on duration	<p>Partnership at will -</p> <ul style="list-style-type: none"> • it is a partnership in which its duration is not fixed or • where no provision is made as to when and how the partnership will come to an end. • it can be dissolved by any one partner at his will at any time by giving notice to other partners. <p>Partnership for a fixed period:</p> <ul style="list-style-type: none"> • it is a partnership in which its duration is fixed • such a partnership is dissolved on the expiry of the fixed period. • however, it can also be dissolved before the fixed period by adopting the modes of dissolution. • if partnership continues to carry on the business even after the expiry period, the partnership becomes a partnership at will.
Based on venture	<p>Particular Partnership:</p> <ul style="list-style-type: none"> • a partnership is formed for a particular venture or undertaking • such partnership comes to an end on the completion of the venture or undertaking. • if all the partners wish to continue its business even after the completion of the venture, the partnership becomes the partnership at will. <p>General partnership:</p> <ul style="list-style-type: none"> • general partnership is different from a particular partnership. • in this 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.
Position of A Minor Partner Sec 30	<p>a minor cannot be a partner in firm, but he may be admitted to the benefits of partnership</p> <p>A. Before attending majority:</p> <p>Rights-</p> <ul style="list-style-type: none"> • right to share in the profits and the property of the firm. • right to see and copy any of the accounts of the firm. • right to sue the partners for accounts and payment of his share but only severing his connection with the firm and not otherwise.

	<p>Liabilities: limited only to the extent of his share in the profits and property of the firm. He is not personally liable.</p> <p>B. On attending majority he must give notice within 6 months, whether he wants to be a partner or not. If he fails to give such notice, he shall be liable as full-fledged partner.</p> <p>C. If he becomes a partner</p> <ul style="list-style-type: none"> • He is personally liable to 3rd parties for all acts of the firm done since he was admitted to the benefits of partnership. • His share in the property and the profits of the firm remains the same to which he was entitled as a minor. <p>D. If he does not become a partner</p> <ul style="list-style-type: none"> • His rights and liabilities continue as a minor up to the date of giving public notice. • His share shall not be liable for any acts of the firm done after the date of the notice.
REGISTRATION OF A FIRM	
Registration Sec 58	<ul style="list-style-type: none"> • In India registration of firm is optional, not compulsory. • The partnership firm registered with the Registrar of Firms. • A partnership may be registered with the Registrar of Firms • Such Registrar is appointed by the State Government.
Procedure	<ol style="list-style-type: none"> 1. Partners must file the statement in the prescribed form. 2. This statement must be drafted properly and stamped according the provisions of Indian Stamp Act. 3. The statement must be accompanied by the prescribed fee 4. Content - <ul style="list-style-type: none"> • 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 • the duration of the firm 5. This statement is to be signed by all the partners or by their authorized agents. <p>Restriction on names- the firm name shall not contain the words namely Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal, or words expressing or implying the sanction, approval, or Patronage of Govt., without written consent of the State Government.</p>
Certificate of registration Sec 59	<ul style="list-style-type: none"> • After satisfaction about compliance, Registrar shall record an entry of this statement in the register of Firms and issues Certificate of Registration. • Registration is complete and effective from the date when the Registrar makes entries in the Register of Firms.
Penalty for late registration Sec 59a-1:	a penalty of 100 rupees per year of delay or a part thereof.
Consequences of non-registration Sec 69	<ul style="list-style-type: none"> • firm cannot bring an action against the 3rd party for breach of contract but a firm can be registered before filling the suit. • A partner cannot file a suit against the firm, to enforce his rights.

	<ul style="list-style-type: none"> • A partner cannot file a suit against any other present or past partner in the firm, to enforce his rights. • Cannot claim a setoff of exceeding Rs.100 in proceedings instituted against him by third party. • 3rd parties can sue against the firm or its partners.
Rights not affected by non-registration	<ul style="list-style-type: none"> • A partner can sue for dissolution of firm • A partner can sue for accounts of dissolved firm. • An official assignee or receiver or court can sue for recovery of property. • firm can bring a suit to enforce its statutory rights. • firm can claim set off value not exceeding Rs.100.
Registration of death and admission of partner	<ul style="list-style-type: none"> • In case of death no registration required with registrar and firm will be eligible to file suit against 3rd party even without changing firm name. • 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 otherwise firm will not be eligible to file suit against 3rd part.
Partnership Deed	<ul style="list-style-type: none"> • Names of all the partners. • Nature and place of the business of the firm. • Date of commencement of partnership. • Duration of the partnership firm. • Capital contribution of each partner. • Profit Sharing ratio of the partners. • Admission and Retirement of a partner. • Rates of interest on Capital, Drawings and loans. • Provisions for settlement of accounts in the case of dissolution of the firm. • Provisions for Salaries or commissions, payable to the partners, if any. • Provisions for expulsion of a partner in case of gross breach of duty or fraud.
RELATION OF PARTNER	
Rights of Partner: Sec 12 and 13	
1. Right to take part in business	Subject to contract between the partners, every partner has right to take part in the management of the business.
2. Right to be consulted	<ul style="list-style-type: none"> • Every partner shall have the right to express his opinion before the matter is decided. • Routine matters, can be decided by the majority of the partners. • Change in the nature of the business cannot be made without the consent of all the partners.
3. Right of access to books	Every partner whether active or sleeping is entitled to have access to books of the firm and to inspect and take copy.
4. No Right to remuneration	Partner is not entitled to receive any remuneration unless express agreement.
5. Right to share profits	Every partner has the right to have equal share in the profits of the firm unless otherwise agreed.
6. No Right to interest on capital	the partners have no right to receive any interest on their contribution towards the capital unless otherwise agreed.

7. Interest on advances	the partner is entitled to claim interest thereon @6% per annum.
8. Right to be indemnified	Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary course of the business of the firm.
Duties of partner	<ul style="list-style-type: none"> • bound to carry on the business of the firm to the common advantage • to be just and faithful to each other • to render to any partner a true account and full information • liable to indemnify the firm for any damage caused to it by reason of his fraud or wilful negligence. • bound to attend diligently to his duties relating to the conduct of the firm's business.
Partnership property: Sec14	<ul style="list-style-type: none"> • all property which partners may have brought in to business; • all the property purchased by the firm • goodwill of the business. <p>partnership property is also known as 'partnership assets', 'joint stock,' 'common stock' or 'joint estate.</p>
Application of the property of the firm Sec 15	the property of the firm shall be held and used by the partners exclusively for the purposes of the business unless otherwise agreed.
Personal Profit Earned by Partner Sec 16	<p>1. A partner is bound return the profit to the firm, earned by himself from any of the following:</p> <ul style="list-style-type: none"> ➤ From any transaction of the firm. ➤ From use of the property of the firm. ➤ From use of business connection of the firm or firm name <p>2. Partner cannot carry on any business competing with that of the firm while he is a partner otherwise, he is bound to pay to the firm.</p> <p>However, these duties are also subject to a contract to the contrary between the partners.</p>
Change in the Constitution of the firm Sec 17	<p>Ways of change in the constitution of the firm –</p> <ul style="list-style-type: none"> (i) admission of partner, (ii) death or retirement, (iii) partner converts in to partnership at will. (iv) Fixed duration partnership converts in to partnership at will. <p>the mutual rights and duties of the partners in the reconstituted firm remain the same as they were before the change.</p>
Partner to be agent of the firm Sec 18	<ul style="list-style-type: none"> • Every partner is an agent of the firm. • When a partner deals with a third party as an agent of the firm, he binds the firm by his dealings. • It is applicable only to the act done by partners for the purpose of the business of the firm.
Authority of Partner Sec 19:	<p>Express Authority- When an authority is granted to a partner by an agreement of all the partners</p> <p>Implied Authority- When no agreement exists among the partner an implied power is granted to each partner for carrying on the business.</p>
Acts within the implied authority of Partners	<p>Conditions-</p> <ul style="list-style-type: none"> • the act must relate to the normal business of the firm. • the act must be within the scope of the business. • the act must be done in the name of the firm. (Sec 22) <p>Acts</p> <ul style="list-style-type: none"> • sell goods of the firm on its behalf.

	<ul style="list-style-type: none"> • purchase goods on the credit of the firm. • receive payments of the debts due to the firm and to issue receipts for them. • draw cheques in the name of the firm. • settle accounts with the persons dealing with the firm. • sue on behalf of the firm and defend suits in the name of the firm. • may pledge or sell the partnership property.
Acts outside the Implied Authority	<ul style="list-style-type: none"> • Acquire immovable property for the firm. • Transfer immovable property for the firm. • Reference of firms disputes to arbitration. • Compromise fully or partly in a suit or to abandon any claim. • With draw a suit or proceeding filed on behalf of the firm. • Admit any liability in a suit or proceeding against the firm. • Enter into other partnership on behalf of the firm. • Open a bank account on behalf of the firm in his own name.
Extension and Restriction on Implied Authority: Sec 20	<ul style="list-style-type: none"> • extension or restriction is only possible with the consent of all the partners. • a third party is not affected by a secret limitation of a partner's implied authority unless he had actual notice of it.
Partner's Authority in An Emergency: Sec 21	<ul style="list-style-type: none"> • A partner has authority to do all the necessary acts in an emergency • The acts must be done for the purpose of protecting the firm from loss. • The partner must act as a prudent person.
Effect of admissions by a partner Sec 23	<ul style="list-style-type: none"> • an admission or representation made by a partner treated as admission or representation by the firm, • if it is made in the ordinary course of business.
Notice to an Active Partner Sec 24	<ul style="list-style-type: none"> • Notice to active partner equivalent to the notice to the rest of the partners except in the case of a fraud. • It is like notice to agent equivalent to notice to the principal.
Liabilities to the Third Parties: Section 25 to 27	
Contractual liability: Sec 25	<ul style="list-style-type: none"> • Every partner is liable jointly and severally for the acts of the firm. • 'Act of firm' means any act or omission by all the partners or by any partner or agent of the firm. • It is necessary that the act of the firm, must have been done while he was a partner.
Liability for tort or wrongful act: Sec 26	<p>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</p> <p>Conditions</p> <ul style="list-style-type: none"> • they are done in the ordinary course of the business and • with the authority of the partners.
Liability for misappropriation by a partner: Sec 27	<ul style="list-style-type: none"> • when a partner, within his authority, receives money or other property from a third person and misapplies it or

	<ul style="list-style-type: none"> • where a firm received money or property from a third person and the same is misapplied by a partner, while it is in the custody of the firm, Firm is liable to make good the loss.
Rights of Transferee of a Partner's Share: Sec 29	<ul style="list-style-type: none"> • A partner may transfer his interest in the firm by sale, charge, or mortgage. • the transfer may be absolute or partial. <p>The transferee has no right to -</p> <ul style="list-style-type: none"> ➤ to interfere in the conduct of the firm. ➤ to required accounts of the firm, and ➤ to inspect the books of the firm. <p>Rights of Transferee</p> <ul style="list-style-type: none"> • entitled to receive the share of profit of the transferring partner. • 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.
Introduction of New Partners: Sec 31	<p>How to enter?</p> <ul style="list-style-type: none"> • With the consent of all the existing partners, or • In accordance with the contract between the partners or the provisions of partnership deed. <p>Liabilities of New Partner:</p> <ul style="list-style-type: none"> • The liability of a new partner in a firm commences from the date of his admission. • Creditors have no right to sue against the new partner for the pre-existing debts.
Retirement of a Partner: Sec 32	<p>How to retire?</p> <ul style="list-style-type: none"> • with the consent of all other partners, or • in accordance with an express agreement by the partners, or • by giving notice in writing in partnership at will. <p>Liability of retiring partner</p> <ul style="list-style-type: none"> • a retiring partner remains liable for all the acts of the firm done up to the date of his retirement. • a retiring partner, however, continues to be liable to the third party for acts of the firm after his retirement until public notice of his retirement • this notice has been given either by himself or by other partners. <p>Rights of Retired Partner Sec 36 and 37</p> <ul style="list-style-type: none"> • Carry competing business with that of the firm but he may not use the name of the firm or represent himself as carrying on the business of the firm, or solicit the customers of the firm. • Right to share subsequent profits: If there is no final settlement the retired partner is entitled to claim either. <ul style="list-style-type: none"> • Such shares of the profits earned after the retirement of the partner; or • Interest at the rate of 6 per cent annum on the amount of his share in the property.
Expulsion of a Partner: Sec 33	<p>Conditions for expulsion-</p> <ul style="list-style-type: none"> • a contract between the partners;

	<ul style="list-style-type: none"> • a majority of the partners; and • exercised in good faith. <p>Test of good faith -</p> <ul style="list-style-type: none"> • 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. <p>If all these conditions are not present, the expulsion is not deemed to be valid.</p>
Insolvency of a Partner: Sec 34	<ul style="list-style-type: none"> • When a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date of the order of adjudication. • His estate ceases to be liable for any act of the firm done after the date of the order, and • The firm also is not liable for any act of such a partner after the date of Insolvency.
Death of a Partner: Sec 35	<ul style="list-style-type: none"> • it is not necessary to give any notice either to the public or the persons having dealings with the firm. • the estate of the deceased partner is not liable for act of the firm after his death. • If the order to buy the goods is placed before the death but the supply is made after death, the estate of the deceased partner will not be responsible for payment.
Revocation of continuing guarantee by change in the firm: Sec 38	<ul style="list-style-type: none"> • a continuing guarantee given to third party in respect of the transaction of a firm is revoked as to future transactions from the date of any change in the constitution of the firm. • This is however subject to contract.
Dissolution of Firm: Section 39	The dissolution of partnership between all the partners of a firm is called the dissolution of the firm.
Dissolution without the order of the court: Sec 40-43	<ol style="list-style-type: none"> 1. Dissolution by consent of all the partners 2. Dissolution by contract between the partners or it may also be contained in the partnership deed itself. 3. Compulsory dissolution- <ul style="list-style-type: none"> • Insolvency of all the partners or all the partners except one have become insolvent. • Business of the firm becoming unlawful 4. Dissolution on the happening of certain contingencies <ul style="list-style-type: none"> • Expiry of fixed term. • Completion of the adventure or undertaking. • Death of a partner. • Insolvency of a partner. 5. Dissolution by giving a notice of dissolution by any partner to the other partner, if partnership firm is 'at will'.
Dissolution by the order of the court Sec. 44	<ol style="list-style-type: none"> 1. When any of the partners become insane 2. When any of the partners becomes permanently incapable of performing his duty as a partner 3. When any of the partner does misconduct in the firm 4. When a partner willfully commits a breach of agreement 5. When any partner of the firm transfers his whole interest to the third party. 6. When business cannot be carried on except a loss.
Liabilities for the acts done after dissolution: Sec 45	<ul style="list-style-type: none"> • The public notice is necessary to terminate the liability of the partners.

	<ul style="list-style-type: none"> If it is not given, the partners shall remain liable to the third party for their acts done even after the dissolution of the firm.
Right of partners to have business wound up after dissolution Sec 46:	<ul style="list-style-type: none"> to have property of the firm applied in payment of the debts of the firm, and to have the surplus distributed amongst the partners or their representatives according to their respective rights.
Continuing authority of partner after dissolution Sec 47	<p>After the dissolution of a firm, the authority of each partner to bind the firm continue, for the following two purposes:</p> <ul style="list-style-type: none"> For the winding up of the affairs of the firm. For completing the unfinished transactions at the time of dissolution.
Mode of Settlement of Account after dissolution of Firm: Sec 48	
Payment of Losses:	<ul style="list-style-type: none"> Firstly, be paid out of the profits Secondary, shall be paid out of capital Finally, shall be paid by the partners individually in the profit-sharing ratio.
Utilization of Assets	<ul style="list-style-type: none"> First, paying the debts of the firm to the third parties. If there is any surplus, the same shall be utilized in paying partner's loan. If there is still any surplus, the same shall be utilized in paying each partner towards the amount of his capital. If there is still any surplus, the same shall be divided among all the partners in profit sharing ratio.
Payment of firm debts and of separate debts Sec 49	<p>Property of firm</p> <ul style="list-style-type: none"> the property of the firm shall be applied in the firstly paying the debts of the firm to the third parties and if there is any surplus, shall be applied to the payment of his separate debts <p>Separate property</p> <ul style="list-style-type: none"> shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.