

Practice Questions of Partnership Act 1932

1. **Mr. A bought goods of Rs.2,00,000 from M/s Krishna and co which is a partnership firm consisting of 3 partners Mr. G, Mr. S and Mr. T. After few weeks Mr. A paid Rs. 50,000 to Mr. T, who then utilized that amount for his personal purposes without the knowledge of other partners. Mr. T is a partner whose authority to accept payments on behalf of the firm is restricted by the firm (Mr. A was unaware about these restrictions).**

Mr. G and Mr. S are following up with Mr. A for full payment of Rs.2,00,000 since the money paid to T never reached the firm and his authority has also been restricted by the firm in this regard. Mr. A now seeks your advice in this regard.

Answer:- According to section 20, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

In the given case, Mr. A bought goods of Rs.2,00,000 from M/s Krishna and co which is a partnership firm consisting of 3 partners Mr. G, Mr. S and Mr. T. After few weeks Mr. A paid Rs. 50,000 to Mr. T, who then utilized that amount for his personal purposes without the knowledge of other partners. Mr. T is a partner whose authority to accept payments on behalf of the firm is restricted by the firm (Mr. A was unaware about these restrictions). Now, Mr. G and Mr. S are insisting Mr. A for full payment of Rs. 2,00,000.

Since, Mr. A was unaware about the restriction imposed on Mr. T to accept payment, Mr. T's act of accepting payment binds the firm. Thus, Mr. G and Mr. S cannot compel Mr. A to pay full amount. Mr. X is liable to pay only Rs. 1,50,000 to the firm.

2. **M/s Sonesh Traders is a partnership firm consisting of 5 partners A, B, C, D & E. After doing business as a firm for long, Mr. A wanted to retire from the firm and all partners also did not object to his retirement and finally he retired from the firm w.e.f. 1st Jan 2020, but neither A nor the firm gave any public notice of his retirement.**

On 5th April 2020, the firm bought goods of Rs. 80,000 on credit from Mr. P

who is regular goods supplier of the firm, due to sudden COVID19 surge the firm gone into bankruptcy and nothing could be recovered from the estate of the then partners of the firm B, C, D and E.

Mr. A is financially sound so the creditor Mr. P wanted to sue Mr. A for goods supplied to the firm after his retirement as well there are some old arrears due from the firm of Rs.155,000 (this related to transactions prior to A's retirement). Mr. P wants to recover both the amounts from A. State liability of A, in this regard?

Answer:- As per the provisions section 25 of the Indian Partnership Act, 1932, a partner is liable for all acts of the firm which are done by him or other partners, while he was a partner of the firm. Further, as per section 32, a partner who wishes to retire from the firm may do so if all other partners agree to his proposal of retirement. Relation between the retiring partner and other partner does not end until a public notice of his retirement is given, if he fails to do the same, then such retiring partner will be held liable for all the liabilities incurred even after his retirement, as outsiders may not be aware about such retirement and might have believed into the credit worthiness of the firm along with the credit worthiness of retired partner, except in case of sleeping partner's retirement; there is no need to give public notice.

In the given case, M/s Sonesh Traders is a partnership firm consisting of 5 partners A, B, C, D & E. After doing business as a firm for long, Mr. A wanted to retire from the firm and all partners also did not object to his retirement and finally he retired from the firm w.e.f. 1st Jan 2020, but neither A nor the firm gave any public notice of his retirement. On 5th April 2020, the firm bought goods of Rs. 80,000 on credit from Mr. P who is regular goods supplier of the firm, due to sudden COVID19 surge the firm gone into bankruptcy and nothing could be recovered from the estate of the then partners of the firm B, C, D and E. Mr. A is financially sound so the creditor Mr. P wanted to sue Mr. A for goods supplied to the firm after his retirement as well there are some old arrears due from the firm of Rs.155,000 (this related to transactions prior to A's retirement). Mr. P wants to recover both the amounts from A.

Thus, as per the context of above provision, Mr. A is liable to pay Rs. 2,35,000 to Mr. P as no public notice of his retirement was given and, Mr. A was a part of partnership firm when the liability of Rs. 1,55,000 was incurred.

3. **Mr. S, Mr. T and Mr. D are partners of a firm dealing in Handicraft goods. Mr. S bought certain stationary items in the name of the firm and the Invoice was also prepared in the name of the firm. Mr. S used those goods for his personal needs and failed to pay the amount to the supplier, that supplier is now asking other partners to pay for the same. Can Mr. T and Mr. D be compelled to pay stationary bills outstanding?**

Answer- According to the provisions of sections 19(1) and 22 of the Indian Partnership Act, 1932, 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, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority. But one of the exceptions to this rule says, the act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.

In the given case, Mr. S, partner of the firm dealing in Handicraft goods with other partners named Mr. T and Mr. D, bought stationery items for his personal consumption in the name of the firm and also the bill was raised in the name of the firm. Later, he failed to pay the amount of the bill due to which supplier asked Mr. T and Mr. D to pay the bill.

Here, the act of purchasing stationery items was not within the implied authority of Mr. S as firm was a dealer of Handicraft nor related to normal course of business. Thus, the supplier cannot be held the firm liable for the bill outstanding and hence, no liability of Mr. T and Mr. D arises. But, Mr. S is liable to pay the outstanding bill amount to the supplier.

4. **Baba wanted to start a business of toys for which he had no capital of his own. Baba went to a moneylender and asked for Rs.5,00,000 as loan. Moneylender agreed on the condition that he should be paid 1/4th of profits of the business to be carried by Baba. Baba used to buy the goods and sell them and whatever profit was earned was shared by Baba and the moneylender.**

The moneylender had no interface in the business except he had access to

accounts and was sharing profits.

After few years Baba gone missing as he left India and settled in US. The creditors of Baba are now intending to recover their debts from moneylender. Can moneylender be held liable for the acts of Baba as a partner in the business of Baba?

Answer :- according to section 4 of the Indian Partnership Act, 1932, partnership is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Further, section 6 states that existence of Mutual Agency is the cardinal principle of partnership law. 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.

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Here, there is no mutual agency relationship between Baba and moneylender, as he was having no interface in the business of Baba other than a share of profit. Thus, there being no mutual agency, the creditors of Baba cannot held moneylender liable as a business partner of Baba.

- 5. Amar and Prem are partners of a business carried by them. Galib who was appointed as manager of the partnership firms used to tell customers of the firm that he is also partner in the firm. One of the customer of the firm paid Rs.1,00,000 as advance to the firm. Amar and Prem went missing from India and settled in Dubai. That customer, who had belief in Galib's statement that he is partner in the firm, wants to file suit for recovery of the amount on Galib. Galib is contending that he was in fact not a partner but mere manger of the firm. Can Galib be held liable for the liability?**

Answer- According to section 28 of the Indian Partnership Act, 1932, 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. Partnership by holding out is also known as partnership by estoppel. In other words, when a person represents himself, or knowing permits himself, to be represented as partner in the firm, he is liable like partner in a firm to anyone who on the faith of such representation has given credit to the firm.

In the given case, Amar and Prem are partners of a business carried by them. Galib who was appointed as manager of the partnership firms used to tell customers of the firm that he is also partner in the firm. One of the customer of the firm paid Rs.1,00,000 as advance to the firm. Amar and Prem went missing from India and settled in Dubai. That customer, who had belief in Galib's statement that he is partner in the firm, wants to file suit for recovery of the amount on Galib.

Here, Galib represented himself as a partner of the firm in front of the customer, which made him partner of the firm by estoppel. Thus, Galib would be liable for the amount of advance borrowed from the customer Rs. 1,00,000 as a partner by holding out.

6. **Upyog and Upkar are partners of the firm. Upyog and Upkar agreed to pay 10% commission on goods sold to any customer referred by Updesh who is friend of Upkar. Updesh used to communicate to people that he is also partner of the firm and they can deal with the firm. Umesh has never met Updesh nor did he ever heard of Updesh's false statement that he is partner in the firm.**

Umesh advanced Rs.300,000 to the firm which the partners are not repaying.

Umesh has now heard from someone that Updesh is also partner of the firm.

Umesh intends to recover the amount from Updesh. Can he do so?

Answer- According to section 28 of the Indian Partnership Act, 1932, 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. It is called as partner by estoppels. A person may himself, by his words or conduct has induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical. But 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'.

In the given case, Upyog and Upkar are partners of the firm. Upyog and Upkar agreed to pay 10% commission on goods sold to any customer referred by Updesh who is friend of Upkar. Updesh used to communicate to people that he is also partner of the firm and they can deal with the firm. Umesh has never met Updesh

nor did he ever heard of Updesh's false statement that he is partner in the firm.

Umesh advanced Rs.300,000 to the firm which the partners are not repaying. Umesh has now heard from someone that Updesh is also partner of the firm. Umesh intends to recover the amount from Updesh.

Here, Updesh had never made a representation to Umesh that he is a partner in the firm and nor he acted on that belief. Thus, Updesh will be liable to only those persons to whom he represented himself to be partner of the firm. Hence, Umesh cannot recover the advanced amount from Updesh.

- 7. X and Y are partners in construction business X who also owns a cement whole sell shop, was assigned the job of procuring cement required for the business of partnership. X knew that the prices of cement are going to increase in coming month and the firm would require large quantity of cement. After few months X bought cement bags in his own name and with his own money and after that he supplied the cement bags to the partnership firm at higher rate.**

After few months Y came to know about the profit X made by supplying the cement bags to the firm state any liability of X in such circumstance?

Answer:-According to section 16 of the Indian Partnership Act, 1932, subject to contract between the partners,

- 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 or the firm name, he shall account for that profit and pay it to the firm;
- b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

In the given case, Mr. X and Mr. Y are the partners of the construction firm. Mr. X, who also owns a cement whole sell shop, was assigned the job of procuring cement required for the business of partnership firm. Though Mr. X was having knowledge that the prices of the cement are going to increase in coming month and the firm would require large quantity of cement after few months, he bought cement bags worth few lacs for his own shop with his own name and money and didn't bought it for the firm. After few months, when the firm was in requirement of cement bags, Mr. X supplied those bags to the partnership firm at higher rate making enough profit. Later on, Mr. Y came to know about Mr. X's act of making profit by supplying the

cementbagsto thefirm.

Here, Mr. X made a secret profit through the transaction with the firm and also the business connection of the firm. Mr. X is liable to account to the firm for profits of the business so made by him.

8. **M, R and P have recently started a business in partnership, there partnership deed contains profit sharing ratio and nothing else. After 2 year of successful running the business, M started similar business in his personal capacity where he and his daughter used to look after the business.**

R and P raised objection to M's carrying on of similar business, but M has told them that their partnership deed does not prohibit carrying on similar business, so he can legally carry similar business. Decide rights and obligations of M, R and P?

Answer- As per section 11 of the Indian Partnership Act, 1932, clearly provides that, notwithstanding anything contained in section 27 of the Indian Contract Act, the contract between the partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner. Further section 16 of the act provides that subject to contract between the partners,

- 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 or the firm name, he shall account for that profit and pay it to the firm;
- b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in thatbusiness.

In the given case, Mr. M, Mr. R and Mr. P are the partners of the recently started partnership firm with a deed containing only the profit sharing ratio and nothing else. After one year of successful running the business, Mr. M started similar business in his personal capacity. Mr. R and Mr. P objected the similar carrying of business by Mr. M, but Mr. M denied their objection on the ground that there is no such clause in the partnership deed to this effect so he can legally carry on similar business.

Conclusion: Here, Mr. M is carrying business which is competing with the business of the firm in which he is a partner. Thus, objection raised by Mr. R and Mr. P is valid and Mr. M would be liable to the firm all the profit earned by him out of that business.

9. **R, J and D have agreed to form a partnership firm of which total capital would**

be Rs.9 Lacs and each of them would contribute equal amount. R being socially active was taking more efforts than other partners in the business activities. As per the partnership deed interest is payable on capital @5% p.a. but there is nothing in the agreement as to remuneration to partners.

R who took all the efforts to grow business is claiming that he should be paid remuneration, at least as much as he used to get earlier in another firm where he was working as marketing manager before they all started the partnership firm. Is he entitled to get remuneration?

Answer: - According to section 13 of the Indian Partnership Act, 1932, subject to contract between partners, a partner is not entitled to receive remuneration for taking part in the conduct of the business in addition to his share of profit in 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. Further, where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits provided there must be either an express agreement to that effect, or practice of the particular partnership or any trade custom to that effect; or a statutory provision which entitles him to such interest.

In the given case, R, J and D have agreed to form a partnership firm of which total capital would be Rs.9 Lacs and each of them would contribute equal amount. R being socially active was taking more efforts than other partners in the business activities. As per the partnership deed interest is payable on capital @5% p.a. but there is nothing in the agreement as to remuneration to partners.

R who took all the efforts to grow business is claiming that he should be paid remuneration, at least as much as he used to get earlier in another firm where he was working as marketing manager before they all started the partnership firm

Here, as there is no agreement as per the clauses of partnership deed for payment of remuneration to the partners nor there is any usage of trade to pay remuneration. Therefore, R would not be entitled to any remuneration for his efforts.

- 10. Jai and Veeru own a business in partnership where they manufacture Cloth. Jai started a manufacturing unit in his personal capacity where he would be manufacturing raw material required by Plastic companies.**

Veeru wants to stop Jai from running that other business as that is affecting Jai's involvement in firms' activities. Can Jai be prevented from carrying that other

business? Would your answer be different if the partnership deed contained a condition that “no partner should carry any business other than firm’s business”

Answer- As per the provisions of the Indian Partnership Act, 1932, partners of the firm can carry on their own business while they are partners provided there is no such express contract restraining partner from carrying any business other than that of the firm while he is a partner. Further, according to section 16 of the act, subject to contract between the partners,-

(1) 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 or the firm name, he shall account for that profit and pay it to the firm;

(2) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

In the given case, Jai and Veeru own a business in partnership where they manufacture Cloth. Jai started a manufacturing unit in his personal capacity where he would be manufacturing raw material required by Plastic companies. Veeru wants to stop Jai from running that other business as that is affecting Jai’s involvement in firms’ activities.

Here, there is neither condition contained in partnership deed which states that partners shall not carry on their personal business other than the business of the firm nor the business carried by Jai is competing with that of the firm’s business. Therefore, Veeru cannot restrain Jai from carrying his other personal business.

On the other hand, if the partnership deed contained a condition that “no partner should carry any business other than firm’s business”, then Veeru would be in position to stop Jai from carrying a business other than that of the firm.

