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## CMA INTER LAW REVISION NOTES

### Important Topics/Questions/Sections

#### Partnership Act, 1932

**Question 1:**

Demonstrate the procedure to form a partnership under "The Partnership Act. 1932".  
**[Model Question Paper Set 2 – Dec 23 – 7 Marks] [June 25 - 7 Marks]**

**Answer:**

Partnership is one of the modes of business. It is governed under the Indian Partnership Act, 1932. For constituting a partnership, the following ingredients are necessary-

- There should be an agreement between the parties;
- The agreement must be to share the profits of the business and the business must be carried on by all or any of them acting for all;
- The existing of an agency between the concerned persons inter-se.
- All the above ingredients must exist before a partnership come into existence. Actual starting of business to registration is not a condition precedent.

Procedure to form a partnership

The first step is to decide the number of partners of a firm. The law provides for minimum 2 number of partners. The upper limit is 10 in case of banking business and 20 in respect of other business.

- First decide to who are the partners of the firm, considering the limit envisaged in the Act;
- The name of the partnership firm is selected subject to the provisions of the partnership Act;
- Select the business to be done by the partnership and object of the business;
- Decide the capital to be brought by each and every partner;
- Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This document prescribes the 'a to z' of the partnership firm to be formed;
- The agreement should invariably in writing and signed by all partners;
- The provisions contained in the agreement are binding all partners;
- The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- Open bank account in the name of the partnership firm;
- In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- Acquire all mandatory licenses from the respective authorities for the conduct of the business;

- Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,
- The Registration certificate is the conclusive evidence of the formation of the partnership firm.

**Question 2:**

Prepare the list of mutual rights and liabilities of partners as per the Indian Partnership Act, 1932. **[June 23 - 7 Marks (22)]**

**Answer:**

Followings are the Mutual rights and liabilities of partners:

Section 13 of the Indian Partnership Act, 1932 provides that subject to the contract between the partners-

- I. a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- II. the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;
- III. where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- IV. a partner, making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at 6% per annum;
- V. the firm shall indemnify a partner in respect of payments made, and liabilities incurred, by him-
  - a. in the ordinary and proper conduct of the business, and
  - b. in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- VI. a partner shall indemnify the firm or any loss caused to it by his willful neglect in the conduct of the business of the firm.
- VII. When the profits are not shared equally, the losses are, in the absence of the agreement, to be borne in the same proportion as the profits are shares, regardless, whether one partner has put up more capital than other.

**Question 3:**

Demonstrate the concept of implied authority of a partner. **[MQP\_Paper5\_Set2\_Dec24 - 7 Marks]**

<i>Authority of a Partner</i>	
<b>Partner's Authority</b>	The authority of a partner means the capacity of a partner to bind the firm by his act.
<b>Mode of Authority</b>	Authority of a partner may be <b>express or implied</b> .
<b>Express Authority</b>	The authority conferred on a partner by mutual agreement is called 'express authority.'
<b>Implied Authority</b>	The authority conferred on a partner by the provisions of Section 19 of the Indian Partnership Act is called 'implied authority!'

<p><b>Conditions for Implied Authority</b></p>	<p>Reading together <b>Sections 19(1) and 22</b>. Implied authority covers those acts of partners which fulfill the following three conditions:</p> <ol style="list-style-type: none"> <li>1. The act must relate to the <b>normal business</b> of the firm;</li> <li>2. The act must have been done in the <b>usual way</b> of carrying on the business of the firm;</li> </ol> <p>(It may be noted that the question as to what is usual and what is unusual in a business depends on the nature of business and the usage of trade, e.g. taking loan is considered as usual activity in case of a trading concern but unusual activity in case of a professional concern of solicitors.)</p> <ol style="list-style-type: none"> <li>3. The act must be done in the <b>firm's name</b> or in any other manner expressing or implying an intention to bind the firm.</li> </ol>
<p><b>Acts outside implied authority of partner Sections 19(2)</b></p>	<p>In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do the following eight acts namely—</p> <ol style="list-style-type: none"> <li>1. To submit a dispute to arbitration relating to the business of the firm;</li> <li>2. To open a Bank Account on behalf of the firm in partner's own name;</li> <li>3. To compromise or relinquish any claim or portion of the claim by the firm;</li> <li>4. To withdraw a suit or proceedings filed on behalf of the firm;</li> <li>5. To admit any liability in a suit or proceedings against the firm;</li> <li>6. To acquire immovable property on behalf of the firm;</li> <li>7. To transfer immovable property belonging to the firm; and</li> <li>8. To enter into partnership on behalf of the firm.</li> </ol> <p><b>Note:</b> A partner can do any of the above-mentioned acts only if he is expressly authorised to do that act or the usage or custom of the trade permits him to do that act.</p>

**Question 4:**

State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act. What are the rights of such a transferee? **[June 17 - 5 Marks (12)]**

Modes by which a partner may transfer his interest in the firm:

According to Section 29 of the Indian Partnership Act, 1932 a partner may transfer his interest in the firm by sale, mortgage or charge. The transfer may be absolute or partial.

The transfer does not entitle the transferee, during the continuance of the firm:

(i) to interfere in the conduct of the business of the firm, or

(ii) to require accounts of the firm, or

(iii) to inspect the books of the firm

On transfer of interest by a partner, the transferee only becomes entitled to receive share of profit of the transferring partner. But in this case also the transferee has to accept the account of profits agreed to by the partners **[Section 29(1)]**.

If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled to receive the transferring partner's share in the assets of the firm. For the purpose of ascertaining that share, he is entitled to an account as from the date of the dissolution (Section 29(2)).

**Question 5:**

What are the rights of outgoing partners? [June 17 - 9 Marks (16)]

**Answer:**

**Rights of outgoing partners**

Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

- use the firm name;
- represent himself as carrying on the business of the firm; or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may 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 the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner or the representative of the deceased partner is entitled at the option -

- to such share of the profits 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 at 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

**Question 6:**

Discuss the right and liability of partners after dissolution as per Indian Partnership Act, 1932. [Dec 23 - 7 Marks (22)] [MQP Dec 25 - Set 1 - 7 Marks]

**Answer:**

**Right of partners after dissolution**

Section 46 provides that on the dissolution of a firm, every partner or his representative is entitled as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

### Liability of partners after dissolution

Section 45 provides that the **liability of the partners will continue** for the acts done before the dissolution, even after the dissolution, until public notice is given of the dissolution. The following partner is not liable for the acts after the date on which he ceases to be a partner-

- a deceased partner;
- a partner who is adjudicated as an insolvent;
- a partner, who not having been known to the person, dealing with the firm, to be a person, retires from the firm

In '**Rajagopala Pillai v. Krishnaswai Chetti**' –it was held that the legal representatives of a deceased partner cannot be validly bound by an acknowledgement made by the surviving partner after dissolution caused by death. Once the partnership is dissolved, even the theory of implied agency disappears. After the jural relationship of partners having been put an end, there can be no question of any partner, acting in any representative capacity, so as to bind the firm.

### Question 7:

Demonstrate the differences between various modes for settlement of accounts between the partners after dissolution. **[Model Paper – Set 2 – June 23 – 7 Marks]**

### Answer:

**Section 48** provides the mode of settlement of accounts between the partners after the dissolution. In this regard, the following shall be observed, subject to the agreements by the partners-

- losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly if necessary by the partners individually in the proportions in which they were entitled to share profits;
- 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-
- in paying the debts of the firm to the third parties;
- in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
- in paying to each partner rateably what is due to him on account of capital; and
- the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

### 1. Settlement of Losses

Losses, including deficiencies of capital, shall be settled in the following order:

1. **First out of profits**, if available.
2. **Next out of capital** contributed by the partners.
3. **Lastly, by the partners individually**, if necessary, in the proportions in which they share profits.

### 2. Distribution of Assets

Once the losses have been accounted for, the assets of the firm (including amounts contributed by the partners to make up for capital deficiencies) will be distributed in this specific order:

1. **Paying debts to third parties:** First, the debts owed to third parties are to be paid in full from the firm's assets.
2. **Repayment of loans/advances from partners:** Next, the firm must pay any amounts that were advanced by partners (distinguished from their capital contribution).
3. **Return of capital to partners:** After that, the capital contributed by each partner must be repaid to them.
4. **Division of surplus among partners:** Finally, any remaining surplus (residue) is divided among the partners in the proportion in which they share profits.

#### Example:

Let's consider an example of a partnership firm "XYZ & Co." consisting of **three partners, A, B, and C**. They share profits in the ratio of 3:2:1. The firm is dissolved, and the settlement of accounts needs to be done as per **Section 48**.

#### Scenario:

- **Firm's total assets:** ₹6,00,000
- **Firm's liabilities to third parties:** ₹2,50,000
- **Partner A's loan to the firm:** ₹50,000
- **Capital contributed by partners:**
  - A: ₹1,00,000
  - B: ₹1,50,000
  - C: ₹1,00,000
- **Total capital contribution:** ₹3,50,000
- The firm has **incurred a loss** of ₹1,00,000, and there are **no profits** to cover this loss.

#### Steps for Settlement:

1. **Settlement of losses:**
  - Since there are no profits, the loss of ₹1,00,000 will be settled from the capital.
  - The loss is distributed in the ratio of profits, i.e., 3:2:1.
  - A's share of the loss: ₹50,000
  - B's share of the loss: ₹33,333

- C's share of the loss: ₹16,667
- 2. Paying third-party debts:**
  - The firm's debt to third parties is ₹2,50,000, which will be paid out of the firm's assets.
- 3. Repayment of partner's loan:**
  - After paying third-party debts, the remaining assets are ₹6,00,000 - ₹2,50,000 = ₹3,50,000.
  - Partner A's loan of ₹50,000 is repaid.
- 4. Return of capital to partners:**
  - After paying the loan, ₹3,50,000 - ₹50,000 = ₹3,00,000 is left.
  - The total capital contribution was ₹3,50,000, but after settling losses, the net capital becomes:
    - A's capital: ₹1,00,000 - ₹50,000 = ₹50,000
    - B's capital: ₹1,50,000 - ₹33,333 = ₹1,16,667
    - C's capital: ₹1,00,000 - ₹16,667 = ₹83,333
  - The remaining amount of ₹3,00,000 is distributed rateably according to their reduced capital:
    - A receives ₹50,000
    - B receives ₹1,16,667
    - C receives ₹83,333
- 5. Surplus distribution:**
  - There is no surplus left after returning capital, so no distribution of surplus is required.

In this example, the dissolution process strictly follows the order prescribed by **Section 48**, ensuring that third-party debts are prioritized, followed by partner loans, capital repayment, and finally, profit distribution (if any).

### **Effect of non-registration**

Section 69 of the Act place an unregistered firm under some disadvantages as a result of which firms go for compulsory registration. The consequences of non-registration of a firm are as under;

1. No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
2. No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
3. The provisions of sub-sections (1) and (2) shall apply also to claim of set-off or other proceeding to enforce a right arising from contract, but shall not affect-
  - a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
  - b) the powers of an official assignee, receiver or Court under the Presidency- towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920. to realise the property of an insolvent partner.

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